UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

JOAQUÍN CARCAÑO *et al.*, Plaintiffs, *v.* ROY A. COOPER, III *et al.*,[1] Defendants	CASE NO. 1:16-CV-00236-TDS-JEP

JOINT STATUS REPORT

Pursuant to the letter submitted to the Court on behalf of all parties on April 4, 2017, the parties hereby submit this joint status report setting forth their positions regarding how the above-captioned matter should proceed in light of the enactment of H.B. 142.

A. Plaintiffs' Position: Plaintiffs intend to file a Fourth Amended Complaint asserting federal constitutional and statutory claims against H.B. 142, whether upon the consent of the parties or with leave of the Court. Although H.B. 142 purports to "repeal" H.B. 2, in actuality H.B. 142 perpetuates many of H.B. 2's harms, as well as H.B. 2's stigmatization of transgender individuals and those who are lesbian, gay, or bisexual (collectively "LGBT" people).

H.B. 142 discriminates against transgender individuals in exercising one of life's most basic and essential functions: using the restroom. Under Section 2 of H.B. 142, state

[1] Pursuant to Federal Rule of Civil Procedure 25(d), Governor Roy A. Cooper, in his official capacity as Governor of North Carolina, is automatically substituted for former Governor Patrick L. McCrory as a party in this action.

agencies and local governments are forbidden from establishing—and transgender individuals are barred from obtaining the protection of—policies ensuring the right of transgender individuals to use the restroom or other single-sex, multi-user facilities consistent with their gender identity. Further, until December 2020, Sections 3 and 4 of H.B. 142 block local governments from protecting LGBT people against discrimination in employment and public accommodations. By targeting all LGBT people for disfavored treatment and singling out transgender individuals for additional discrimination, H.B. 142 violates the most basic guarantees of equal treatment and due process under the U.S. Constitution.

The Governor has indicated that "there is no state law barring the use of multiple occupancy bathroom facilities in accordance with gender identity,"[2] while other state entities charged with enforcing the law, including UNC, have not offered any view on whether transgender individuals may use multiple occupancy bathroom facilities consistent with their gender identity.

With respect to the existing preliminary injunction, which applies by its terms only to Part I of H.B. 2, because H.B. 2 (including Part I) has been repealed, the preliminary injunction no longer has any force or effect, even though it remains in place. Accordingly, the preliminary injunction can be lifted.

With respect to the existing stay of district court proceedings, once a Fourth Amended Complaint is filed, the stay should be lifted. The Fourth Circuit appeal in the

[2] Stipulation of Voluntary Dismissal at 3, *Carcaño v. Cooper*, No. 16-1989 (4th Cir. Apr. 20, 2017), ECF 114.

Carcaño case has been dismissed, and the Fourth Circuit remand from the Supreme Court in the *G.G.* case will not be heard until September at the earliest, and may not be decided until 2018. This case should not be further stayed, especially given the lengthy stays to which it already has been subject and the ongoing harms to the Plaintiffs and others imposed by H.B. 2 and now H.B. 142.

B. UNC Defendants' Position: H.B. 2, the North Carolina law challenged in this lawsuit, was repealed in its entirety on March 30, 2017, by North Carolina Session Law 2017-4 or H.B. 142. *See* "Act to Reset S.L. 2016-3," S.L. 2017-4, § 1 (Mar. 30, 2017). We understand that Plaintiffs may seek leave to file an Amended Complaint, but have not yet sought consent to do so. Unless and until an Amended Complaint is filed, it is premature for the UNC Defendants to take a position regarding what impact that Complaint may have on these proceedings and the merits of any potential additional claims that may be brought by Plaintiffs. The UNC Defendants will determine what steps to take, if any, after the new Amended Complaint is filed. The UNC Defendants also respectfully request the Court to wait to act on the existing stay until the new Amended Complaint is filed and a proper motion to lift the stay is made. It would be premature for the parties to take a position on the stay, or for the Court to act on it, without seeing the contents of the new Complaint.

C. Legislative Defendants' Position: The North Carolina law challenged in this lawsuit, S.L. 2016-3 or H.B. 2, was repealed in its entirety on March 30, 2017, by North Carolina Session Law 2017-4 or H.B. 142. *See* "Act to Reset S.L. 2016-3," S.L. 2017-4, § 1 (Mar. 30, 2017). Notwithstanding H.B.2's repeal, Plaintiffs have indicated that they plan to file a Fourth Amended Complaint challenging new provisions in H.B. 142. Until that

amended complaint is filed and the Legislative Defendants have had an opportunity to review it, they can take no position on what effect, if any, the amended complaint should have on these proceedings, including whether the existing stay should be lifted. The Legislative Defendants therefore do not agree that the existing stay should be lifted upon the filing of the Fourth Amended Complaint.

The Legislative Defendants do agree with Plaintiffs that the existing preliminary injunction can be lifted. That injunction applied only to Part I of H.B.2, *see* Doc. 127 at 81-82, which has now been repealed.

It is the Legislative Defendants' position that, if and when a Fourth Amended Complaint is filed, the parties should confer within two weeks of the filing and then submit an updated status report to the Court within one week of the parties' conference.

D. Governor Roy Cooper's Position: The enactment of H.B. 142 (N.C. Session Law 2017-4) by the North Carolina General Assembly has repealed Part I of the previously enacted H.B. 2, (N.C. Session Laws 2016-3), which was the main focus of the litigation in this matter. In light of this repeal, Governor Cooper agrees with Plaintiffs that the preliminary injunction entered by this Court, to suspend application of Part I of H.B. 2, should be lifted. Following the enactment of H.B. 142, the Fourth Circuit appeal in the *Carcaño* matter has been dismissed upon stipulation of all the parties to the appeal, [Fourth Circuit Case No. 16-1989, DE114-1], and the mandate to this Court has issued accordingly. [Fourth Circuit Case No. 16-1989, DE 116].

Plaintiffs have indicated their intent to amend their Third Amended Complaint in light of the enactment of H.B. 142. However, a draft of the proposed Fourth Amended

Complaint has not yet been shared with defendants. As a result, Governor Cooper is not currently aware of the scope of the prospective litigation, including the identity of the prospective parties and the nature of the amended claims. Without waiving any applicable rights or defenses, Governor Cooper anticipates that he may be in position to consent to Plaintiffs' filing of a Fourth Amended Complaint, and intends to proceed as appropriate thereafter depending on the nature of the allegations. It is therefore suggested that within two weeks of Plaintiffs' filing of the Fourth Amended Complaint, the parties should submit to this Court a joint supplemental status report reflecting their respective positions as to the revised litigation parameters.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that, on this date, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all CM/ECF participating attorneys.

This the 28th day of April, 2017.

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