

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

PATRICK L. MCCRORY, in his official capacity)
as Governor of the State of North Carolina,)
and FRANK PERRY, in his official capacity)
as Secretary, North Carolina Department of)
Public Safety,)

Plaintiffs,)

vs.)

UNITED STATES OF AMERICA,)
UNITED STATES DEPARTMENT)
OF JUSTICE, LORETTA E. LYNCH, in her)
official capacity as United States Attorney)
General, and VANITA GUPTA, in her official)
capacity as Principal Deputy Assistant Attorney)
General,)

Defendants.)

CASE NO. 5:16-cv-238-BO

**PLAINTIFFS' NOTICE OF VOLUNTARY
DISMISSAL WITHOUT PREJUDICE**

Plaintiff Patrick L. McCrory, in his official capacity as Governor of the State of North Carolina, and plaintiff Frank Perry, in his official capacity as Secretary of the North Carolina Department of Public Safety, (collectively, "plaintiffs") hereby give notice of voluntary dismissal of their claims in this case, without prejudice, as to all defendants pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i). In support, plaintiffs would respectfully show the Court as follows:

1. Plaintiffs filed this action on May 9, 2016, seeking a judicial determination as to whether North Carolina's Public Facilities Privacy and Security Act, N.C. Session Law 2016-3 ("the Act"), violates federal law.

2. In response to the filing of this action, defendant Loretta Lynch directed the United States Department of Justice to file a largely duplicative action in the United States District Court for the Middle District of North Carolina later that same day. United States of America v. State of North Carolina et al., Case No. 1:16-cv-00425-TDS-JEP (M.D.N.C.) (“Middle District Case”).
3. Defendants then availed themselves of the full sixty days granted to the federal government under the Federal Rules of Civil Procedure to file a response to plaintiffs’ complaint in this Court. See Fed. R. Civ. P. 12(a)(2)-(3) (granting the federal government and its employees 60 days, rather than 21 days, after service to answer a complaint). When the time came for defendants to respond, they filed a motion to dismiss on technical grounds under Rule 12(b)(1) rather than an answer, even though this Court had already made very clear findings in support of a prior ruling retaining jurisdiction over the action. As a result, progress in this action has been delayed.
4. In contrast, the United States has aggressively pressed forward in pursuing its later-filed lawsuit in the Middle District. In the Middle District Case, the United States filed a motion for preliminary injunction, to which a response in opposition has now been filed. Additionally, a scheduling order has already been entered, and discovery requests and responses are currently being exchanged among the parties.
5. Furthermore, the Middle District Case has been consolidated for purposes of discovery with a related action filed by the ACLU and others to challenge the validity of the Act. Those plaintiffs sought a preliminary injunction against the Act, and when the Court largely rejected their request to enjoin enforcement of the Act on August 26, 2016, they initiated an appeal to the Fourth Circuit, which is currently pending.

6. In light of the fact that plaintiffs' claims in this action have now been asserted as counterclaims in the Middle District Case, the substantial costs to the State of litigating similar legal issues in two different judicial districts, and the interests of judicial economy and efficiency, plaintiffs feel compelled to file this notice of voluntary dismissal without prejudice. The counterclaims asserted by the State of North Carolina, Governor McCrory, and the North Carolina Department of Public Safety in the Middle District Case, which seek a judgment declaring that the Act does not violate federal law, suffice to protect the State's interests regarding the Act and thus will be diligently pursued in the Middle District. As such, nothing herein affects the validity of the counterclaims asserted in the Middle District Case.
7. Defendants have not filed an answer or motion for summary judgment, and therefore neither an order from the Court nor a stipulation among the parties is necessary for a dismissal without prejudice.

Accordingly, pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i), plaintiffs hereby respectfully give notice of voluntary dismissal of their claims in this case, without prejudice, as to all defendants named herein.

Respectfully submitted, this the 16th day of September, 2016.

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*appearing pursuant to Local Rule 83.1(e)

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CERTIFICATE OF SERVICE

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

This the 16th day of September, 2016.

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