

possesses the authority to hold a motion in abeyance if resolution of a pending matter will help clarify the current issues or make currently disputed issues moot.” *Rice v. Astrue*, 4:06-CV-02770-GRA, 2010 WL 3607474, at *2 (D.S.C. Sept. 9, 2010) (citing *Rhines v. Weber*, 544 U.S. 269 (2005) and *United States v. Franczak*, 8 F. App’x 246 (4th Cir. 2001)). Plaintiffs expect that they will file a petition for a writ of certiorari to the Fourth Circuit, asking the Supreme Court to reverse the Fourth Circuit’s decision. Should the Court grant Plaintiffs’ petition, the rulings upon which the the Duke Defendants rely in their Joint Motion may be, themselves, reversed or modified, rendering the Duke Defendants’ Joint Motion moot.¹ Therefore, the proceedings on the Duke Defendants’ Joint Motion should be held in abeyance until the outcome of Plaintiffs’ anticipated petition for a writ of certiorari and any other related appellate proceedings are concluded.

In the alternative, Plaintiffs respectfully request that the Court order that Plaintiffs’ response in opposition to the Duke Defendants’ Joint Motion for Judgment on the Pleadings be extended for 60 days, so that the proceedings on the Joint Motion may, at least, take into account the issues raised in Plaintiffs’ petition for a writ of certiorari.

CONCLUSION

For the foregoing reasons, the Duke Defendants’ Joint Motion for Judgment on the Pleadings should be held in abeyance pending resolution of Plaintiffs’ petition for certiorari, or, in the alternative, for at least 60 days so that the briefing on the Joint Motion may take into account the issues raised in the petition.

¹ Moreover, even if the Fourth Circuit’s decision were to stand, then Plaintiffs will explain why the Court should deny the Joint Motion as to Counts 18 and 32.

Dated: March 25, 2013

Respectfully submitted by:

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IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

RYAN MCFADYEN, *et al.*,
Plaintiffs,

v.

DUKE UNIVERSITY, *et al.*,
Defendants.

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1:07-CV-953

CERTIFICATE OF SERVICE

I hereby certify that on March 25, 2013, I electronically filed the foregoing with the Clerk of Court using the CM/ECF System, which will send notice of the filing to counsel of record for all Defendants and Defendant Linwood Wilson, all of whom are registered CM/ECF users.

Respectfully submitted,

/s/ Robert C. Ekstrand
Robert C. Ekstrand, Counsel for Plaintiffs