

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
Civil Action No. 3:18-cv-00006

CONSTITUTION PARTY OF NORTH
CAROLINA,

Plaintiff,

v.

KIM WESTBROOK STRACH, in her official
capacity as Executive Director of the North
Carolina State Board of Elections and Ethics
Enforcement,

Defendant.

MOTION TO DISMISS
(Fed. R. Civ. P. 12(b)(1), (c), (h)(3))

NOW COMES defendant, KIM WESTBROOK STRACH, in her official capacity as Executive Director of the North Carolina Bipartisan State Board of Elections and Ethics Enforcement (“SBE”), by and through her undersigned counsel and, for the reasons stated more fully in the Memorandum in support of this motion, moves the Court to dismiss this matter pursuant to Rule 12(b)(1) and (h)(3), or in the alternative to grant her judgment on the pleadings pursuant to Rule 12(c), for lack of subject matter jurisdiction. Plaintiff’s asserted claims are moot due to the recognition of Plaintiff as one of North Carolina’s official political parties pursuant to N.C. Gen. Stat. § 163A-950.¹

Further support for this motion is set forth in the accompanying Memorandum of Law in Support of Motion to Dismiss filed on this same date and incorporated herein by

¹ In fact, as a newly recognized party, Plaintiff has submitted its list of candidates to the SBE pursuant to N.C. Gen. Stat. § 163A-953. These candidates are entitled to be on ballot for the General Election in November as candidates of the Constitution Party of North Carolina once the candidates have completed their paperwork, paid the required fee, and are otherwise qualified. *Id.*

reference as though fully set forth. Defendant also files herewith a motion to stay this matter pending the Court's resolution of its jurisdiction.

WHEREFORE, the Defendant respectfully prays that this Court dismiss this action against her.

Respectfully submitted, this the 19th day of June, 2018.

JOSHUA H. STEIN
Attorney General

/s/ James Bernier, Jr.
James Bernier, Jr.
Special Deputy Attorney General
N.C. State Bar No. 45869
Email: jbernier@ncdoj.gov
N.C. Department of Justice
Post Office Box 629
Raleigh, NC 27602-0629
Telephone: (919)716-6900

CERTIFICATE OF SERVICE

I hereby certify that on this day I electronically filed the foregoing with the clerk of Court using the CM/ECF system which will send notification of such to all counsel of record in this matter, including:

S. Mark Henkle
Martineau King, PLLC
8701 Red Oak Blvd.
P.O. Box 31188
Charlotte, NC 28231

This the 19th day of June, 2018.

/s/ James Bernier, Jr.
James Bernier, Jr.
Special Deputy Attorney General