

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.

**DEFENDANT'S MOTION TO STAY  
PROCEEDINGS**

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 hereby respectfully moves to stay any and all further proceedings in this matter, including discovery, pending a ruling on Defendant's Motion to Dismiss filed simultaneously herewith, and expressly incorporated herein.

Defendant has asserted that this Court lacks jurisdiction over this matter because the recent recognition of Plaintiff as a political party under N.C. Gen. Stat. § 163A-950 renders moot all of the claims in the Complaint. Determination of jurisdiction is a necessary prerequisite to proceeding in this matter. "Without jurisdiction the court cannot proceed at all in any cause. Jurisdiction is power to declare the law, and when it ceases to exist, the only function remaining to the court is that of announcing the fact and dismissing the

cause.” *Stop Reckless Econ. Instability Caused By Democrats v. FEC*, 814 F.3d 221, 228 (4<sup>th</sup> Cir. 2016)(quoting, *Ex parte McCardle*, 74 U.S. 506, 514 (1868)).

Pursuant to Local Rule 7.1(b), undersigned counsel consulted with Plaintiff’s counsel. Plaintiff’s counsel consents to staying these proceedings until resolution of Defendant’s Motion to Dismiss.

### **CONCLUSION**

For the reasons stated above, Defendant respectfully requests a stay of the proceedings until this Court rules on whether it has jurisdiction to continue to hear this matter.

Respectfully submitted, this the 19<sup>th</sup> day of June, 2018.

JOSHUA H. STEIN  
Attorney General

/s/ James Bernier, Jr.  
James Bernier, Jr.  
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**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 19<sup>th</sup> day of June, 2018.

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