IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

NORTH CAROLINA GREEN PARTY, ANTHONY NDEGE, MICHAEL TRUDEAU, MATTHEW HOH, SAMANTHA WORRELL, SAMANTHA SPENCE, K. RYAN PARKER AND AARON MOHAMMED, *Plaintiffs*, v. NORTH CAROLINA STATE BOARD OF ELECTIONS and DAMON CIRCOSTA, STELLA ANDERSON, JEFF CARMON, STACY EGGERS IV, TOMMY TUCKER, and KAREN BRINSON BELL, in their official capacities as members or employees of the North Carolina State Board of Elections, *Defendants*, and NORTH CAROLINA DEMOCRATIC PARTY; DSCC, *Intervenor-Defendants*.	**Case No. 5:22-cv-276-D-BM**

INTERVENORS' MEMORANDUM OF LAW
IN SUPPORT OF MOTION TO DISMISS

This case is moot. "A case becomes moot—and therefore no longer a 'Case' or 'Controversy' for purposes of Article III—when the issues presented are no longer 'live' or the parties lack a legally cognizable interest in the outcome." *Already, LLC v. Nike, Inc.*, 568 U.S. 85, 91 (2013) (internal quotation marks omitted). "A change in factual circumstances can moot a case . . . , such as when the plaintiff receives the relief sought in his or her claim, or where an event occurs that makes it impossible for the court to grant any effectual relief to the plaintiff." *Williams*

v. Ozmint, 716 F.3d 801, 809 (4th Cir. 2013) (citations omitted). Because Plaintiffs here have received all the relief sought in their Amended Complaint, this case is moot and the Court must dismiss the action for lack of jurisdiction under Article III. *See Id.* ("A court is deprived of jurisdiction over a case when the case becomes moot.").

In their Amended Complaint, Plaintiffs sought two forms of relief: (1) "a declaratory judgment holding that NCSBE's failure to certify NCGP as a new political party pursuant to § 163-96(a)(2) is unconstitutional and that § 163-96(a)(2) is unconstitutional as applied;" and (2) "an order directing NCSBE to certify NCGP as a new political party entitled to place its candidates on North Carolina's November 8, 2022 general election ballot pursuant to § 163-96(a)(2), with sufficient time to ensure the candidates' inclusion on the ballots to be prepared in mid-August 2022, and enjoining NCSBE form enforcing the July 1 filing deadline under § 163-98 as applied to Plaintiffs." (D.E. 27 at 25.)

On August 1, 2022, the North Carolina State Board of Elections unanimously voted to certify NCGP as a political party, rendering "that portion of plaintiffs' requested relief . . . moot," as the Court recognized. (D.E. 64 at 12.) All that remained was "plaintiffs' request that the court enjoin the application to it of the July 1 candidate-filing deadline under N.C. Gen. Stat. § 163-98 and order defendants to place Green Party candidates Matthew Hoh and Michael Trudeau on North Carolina's November 8, 2022 general election ballot." *Id.* The Court granted that relief on August 5, 2022. (*Id.* at 32-33.) North Carolina held its general election on November 8, 2022, with Mr. Hoh appearing on the Green Party line for U.S. Senate and Mr. Trudeau appearing on the Green Party line for North Carolina Senate District 16. *See* Election Results Dashboard, N.C. State Bd. of Elections, *available at* https://www.ncsbe.gov/results-data/election-results/about-election-results-dashboard (last accessed May 3, 2023).

Plaintiffs have "receive[d] the relief [they] sought to obtain through the claim," and the Court therefore no longer "has effective relief to offer." *Williams*, 716 F.3d at 809 (internal quotation marks and alterations omitted). Accordingly, their claims are moot, and must be dismissed for lack of subject matter jurisdiction. *Id.*; Fed. R. Civ. P. 12(b)(1).[1]

Respectfully submitted, this the 8th day of May 2023.

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*Admitted by Special Appearance

[1] Plaintiffs' outstanding claim for attorneys' fees under 42 U.S.C. § 1988 does not change the fact that their claims are moot. *See S-1 v. Spangler*, 832 F.2d 294, 297 n.1 (4th Cir. 1987) ("The fact that the [plaintiffs] still assert a claim for costs and attorney's fees against the [defendants] does not avert mootness of the underlying action on the merits."); *Bd. of Educ. for Montgomery Cnty., Md. v. Khan*, No. Civ.A. DKC20042365, 2005 WL 2250796 at *6 (D. Md. Sept. 15, 2005) ("[A]ttorneys' fees will not keep an otherwise moot issue alive.").

CERTIFICATE OF COMPLIANCE

I hereby certify that the foregoing Memorandum contains 887 words, based on the word count of the word processing system used to prepare this brief, and thereby complies with the Local Civil Rule 7.2(f).

DATED: May 8, 2023.

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CERTIFICATE OF SERVICE

I hereby certify that on this date, I caused the foregoing document to be filed and served on all counsel of record by operation of the CM/ECF system for the United States District Court for the Eastern District of North Carolina.

DATED: May 8, 2023.

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