IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
Civil Action No. 5:22-cv-276-D

NORTH CAROLINA GREEN PARTY, et al., Plaintiffs, v. NORTH CAROLINA STATE BOARD OF ELECTIONS, et al., Defendants, and NORTH CAROLINA DEMOCRATIC PARTY, et al. Intervenor-Defendants.	**MEMORANDUM OF LAW IN SUPPORT OF STATE BOARD DEFENDANTS' MOTION TO DISMISS**

NOW COME Defendants, the North Carolina State Board of Elections, Damon Circosta, Stella Anderson, Jeff Carmon, III, Stacy Eggers, IV, Tommy Tucker, and Karen Brinson Bell, named in their official capacities only ("Defendants" or "State Board"), through counsel, to provide this memorandum in support of their motion to dismiss Plaintiffs' Amended Complaint as moot.

NATURE OF THE CASE

Plaintiffs are a political party, candidates supported by the party, and members, voters, and supporters of the party and its candidates. [D.E. 1; *see also* Amended Complaint, D.E. 27].]. Plaintiffs filed this action in the run up to the November 2022 general election seeking declaratory and injunctive relief in order to be certified as a political party in North Carolina ahead of that election and to have their chosen candidates appear on the ballot for that election. *Id.*

On August 1, 2022, the State Board certified the Green Party as a political party in North Carolina, mooting that requested relief. [D.E. 54, 54-1; 64, pp. 11-12]. Thus, all claims and relief requested arising under N.C.G.S. § 163-196(a)(1) regarding the certification of the Green Party as a political party in North Carolina are moot.

On August 5, 2022, the Court enjoined the enforcement of the candidate filing deadline for a new political party found within N.C.G.S. § 163-98 and ordered the State Board to accept the Green Party's candidates and place them on the November 2022 general election. [D.E. 64]. The State Board complied with that order.[1] Thus, all claims and relief requested arising under N.C.G.S. § 163-198 regarding the candidate filing deadline and Green Party candidates appearing on the November 2022 general election ballot are moot.

The only remaining legal claim from Plaintiffs is a request for declaratory relief pertaining to the above legal disputes, which is also moot. Finally, Plaintiffs request an award for reasonable attorney's fees and litigation costs pursuant to 42 U.S.C. § 1988, which may be addressed after a judgment of dismissal based on mootness.

STATEMENT OF THE FACTS

A. Plaintiffs' Pleadings.

On July 14, 2022, Plaintiffs filed a Complaint initiating this action. [D.E. 1]. The initial Complaint named the state agency – the North Carolina State Board of Elections – as the sole

[1] Plaintiff Matthew Hoh appeared as a candidate for U.S. Senate on the ballot. *See* 11/08/2022 Official General Election Results – Statewide, https://er.ncsbe.gov/?election_dt=11/08/2022&county_id=0&office=FED&contest=1378, last visited May 4, 2023.
Plaintiff Michael Trudeau appeared as a candidate for N.C. Senate District 16. *See* 11/08/2022 Official General Election Results - N.C. Senate, https://er.ncsbe.gov/?election_dt=11/08/2022&county_id=0&office=NCS&contest=1297, last visited May 4, 2023.

Defendant. *Id.* On July 21, 2022, Plaintiffs filed an Amended Complaint as a matter of course pursuant to Rule 15(a). [D.E. 27]. The Amended Complaint added the individual board members of the State Board and its Executive Director as official capacity Defendants. *Id.*, p. 1, ¶¶ 15-20. In all other ways, the Amended Complaint is identical to the initial Complaint. *Id.*

The Amended Complaint alleges that the State Board improperly failed to certify the Green Party as a political party in North Carolina at its June 30, 2022 Board meeting, based upon its ongoing investigation into alleged fraudulent signatures appearing on the signature petitions collected on behalf of the party by independent contractors, and as a result, its candidates would not be able to appear as candidates for the November 2022 general election. *Id.*, ¶¶ 63-74; [D.E. 52-8, pp. 9-19; 53]. Plaintiffs claimed that this failure to certify the party violated Plaintiffs' rights under the First and Fourteenth Amendments. [D.E. 27, ¶¶ 84-92]. In relief, Plaintiffs requested that the Court enter an order for declaratory and injunctive relief directing the State Board to certify the Green Party and enjoin the State Board's enforcement of the July 1 candidate filing deadline so that the Green Party's candidates on the November 8, 2022 general election ballot. *Id.*, p. 25. On the same day, Plaintiffs moved for a preliminary injunction. [D.E. 28, 29, 30].

B. Relief Requested Mooted.

The State Board completed its review of the Green Party's signature petitions, and on August 1, 2022, the State Board met again and voted to certify the Green Party as a recognized political party in North Carolina. [D.E. 54, 54-1].

On August 5, 2022, this Court entered an order granting in part and denying in part the motion for preliminary injunction. [D.E. 64]. Specifically, the Court found that having received certification from the State Board, that portion of the relief sought was moot. *Id.*, pp. 11-12. As

a result, the Court denied Plaintiffs' request for that specific relief. *Id.* With respect to the remaining relief requested, the Court enjoined the candidate filing deadline found within N.C.G.S. § 163-98 as applied to the Green Party candidates and ordered the State Board to accept Green Party candidates and place them on the November 2022 general election ballot. *Id.*, pp. 32-33.

Pursuant to the Court's order, the State Board accepted the filings of the Green Party candidates and they appeared on the November 2022 general election ballot.[2]

LEGAL STANDARD

The standard of review for lack of subject matter jurisdiction pursuant to a motion to dismiss under Rule 12(b)(1) of the Rules of Civil Procedure is set forth generally in *Adams v. Bain*, 697 F.2d 1213, 1219 (4th Cir. 1982). Plaintiffs bear the burden of proving subject matter jurisdiction on a motion to dismiss. *Id.* "Generally, when a defendant challenges subject matter jurisdiction via a Rule 12(b)(1) motion to dismiss, the district court may regard the pleadings as mere evidence on the issue and may consider evidence outside the pleadings without converting the proceeding to one for summary judgment." *Velasco v. Gov't of Indon.*, 370 F.3d 392, 398 (4th Cir. 2004) (citing *Bain*, 697 F.2d at 1219, and *Evans v. B.F. Perkins Co.*, 166 F.3d 642, 647 (4th Cir. 1999)).

ARGUMENT

I. THE COURT SHOULD DISMISS THIS ACTION FOR LACK OF SUBJECT MATTER JURISDICTION BECAUSE IT IS MOOT.

As there is no justiciable issue in this case, it should be dismissed for lack of jurisdiction under Rule 12(b)(1). "When a case or controversy ceases to exist, the litigation is moot, and the

[2] *See* footnote 1, *supra*.

court's subject matter jurisdiction ceases to exist also." *S.C. Coastal Conservation League v. United States Army Corps of Eng'rs*, 789 F.3d 475, 482 (4th Cir. 2015) (*per curiam*). A case can become moot due either to a change in the facts or a change in the law. *Ross v. Reed*, 719 F.2d 689, 693-94 (4th Cir. 1983).

"A claim for injunctive relief is moot when there is no effective relief available in federal court." *SAS Inst., Inc. v. World Programming Ltd.*, 874 F.3d 370, 389 (4th Cir. 2017). "Mootness has been described as the doctrine of standing set in a time frame: The requisite personal interest that must exist at the commencement of the litigation (standing) must continue throughout its existence (mootness)." *Arizonans for Official English v. Arizona,* 520 U.S. 43, 68 n.22, 117 S. Ct. 1055, 137 L. Ed. 2d 170 (1997). "A claim is moot when the parties lack a legally cognizable interest in the outcome." *SAS Inst., Inc.*, 874 F.3d at 389; *see also Powell v. McCormack*, 395 U.S. 486, 496 (1969) ("A case is moot when the issues presented are no longer 'live' or the parties lack a legally cognizable interest in the outcome.")

In the Amended Complaint's request for relief, Plaintiffs requested (1) a declaratory judgment regarding the State Board's failure to certify the Green Party as a new political party, and (2) an injunction ordering the State Board to certify the Green Party ahead of the 2020 general election. [D.E. 27, p. 25]. This relief was temporal, in that it was directly tied to the November 2022 general election. The relief needed to arrive before that election, and when it did, as a result of certification by the State Board and pursuant to the preliminary injunction order of this Court, Plaintiffs' request for relief was fully satisfied. Plaintiff Green Party became a certified party, and its candidates appeared on the ballot. The election has now passed, and as such, no further relief remains available.

"A claim may be mooted when the claimant receives the relief he or she sought to obtain

through the claim, because the court no longer has [ ] effective relief to offer." *Williams v. Ozmint*, 716 F.3d 801, 809 (4th Cir. 2013) (internal quotations omitted). A case can "become moot if subsequent events made it absolutely clear that the allegedly wrongful behavior could not reasonably be expected to recur." *United States v. Concentrated Phosphate Exp. Ass'n*, 393 U.S. 199, 203, 89 S. Ct. 361, 364 (1968). Generally, "'[c]ompliance with the provisions of a preliminary injunction . . . does not render moot [Plaintiffs'] underlying claims' because 'if the injunction is dissolved without a decision on the merits, there is nothing to keep defendants from resuming the activity that had been restrained by the preliminary injunction.'" *Marie v. Mosier*, 122 F. Supp. 3d 1085, 1102 (D. Kan 2015) (internal quotation marks and citations omitted) (second alteration in original). This is true unless, "it is absolutely clear, absent the injunction, that the allegedly wrongful behavior could not reasonably be expected to recur." *Id*. (quoting *Vitek v. Jones*, 445 U.S. 480, 487, 100 S. Ct. 1254, 63 L. Ed. 2d 552 (1980) (quoting *United States v. Concentrated Phosphate Exp. Ass'n*, 393 U.S. 199, 203, 89 S. Ct. 361, 21 L. Ed. 2d 344 (1968))).

That is precisely what happened here. Plaintiffs requested that the Green Party be certified as a party, and the State Board certified the Green Party as a party. [D.E. 54-1]. Pursuant to N.C.G.S. § 163-96, the Green Party remains certified and will remain certified through the November 2024 general election. Thereafter, the Green Party will remain certified so long as the Green Party candidate for N.C. Governor obtains 2% or more of the vote in the next contest for Governor of North Carolina, or the Green Party candidate for U.S. President appears on the general election ballot of 70% or more of the states. *Id.*, § 163-96(a)(1) and (3). Thus, under state law, the party's electoral success will determine whether they remain a certified party, not any relief that can be granted by this Court in this action.

Plaintiffs also wanted their candidates on the ballot for the November 2022 general election, and their candidates were on the ballot. As noted above, the relief here was temporal. There is nothing the State Board can do which would reverse or take away the relief granted here, as the election for which Plaintiff Green Party wanted their candidates on the ballot has already taken place.

In this case, there is no ongoing injury as required for declaratory or injunctive relief because the relief afforded to Plaintiffs through the State Board's actions and through the Court's preliminary injunction order, provided complete relief. Moreover, for similar reasons, as explained above, there is no reasonable expectation of recurrence.

Plaintiffs' Amended Complaint is therefore moot and should be dismissed.

CONCLUSION

For the foregoing reasons, Plaintiffs' Amended Complaint should be dismissed.

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

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