

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA  
Civil Action No. 1:17-CV-078

RUSSELL F. WALKER,

Plaintiff,

v.

NORTH CAROLINA STATE  
BOARD OF ELECTIONS AND  
HOKE COUNTY BOARD OF  
ELECTIONS,

Defendants,

MOTION TO DISMISS

(Fed. R. Civ. P. 12(b))

NOW COMES the Defendant, The North Carolina State Board of Elections (“State Board”), by and through its undersigned counsel, and, for the reasons stated more fully in the Memorandum in support of this motion, moves the Court pursuant to Rule 12(b)(1) & (6) of the Federal Rules of Civil Procedure to dismiss this action on the grounds that:

1. The Eleventh Amendment bars the Complaint.
2. Plaintiff has failed to state a claim for which relief can be granted.

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

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

This the 17<sup>th</sup> day of March, 2017.

JOSH STEIN  
Attorney General

/s/ James Bernier, Jr.  
James Bernier, Jr.  
Assistant Attorney General  
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**CERTIFICATE OF SERVICE**

I hereby certify that on 17 March 2017, I electronically filed the foregoing MOTION TO DISMISS with the Clerk of Court using the CM/ECF system, and served the following non-registered party by U.S. Mail:

Russell F. Walker, *Pro Se*  
176 Quewhiffle Rd.  
Aberdeen, NC 38315

This the 17<sup>th</sup> day of March, 2017.

/s/ James Bernier, Jr.  
James Bernier, Jr.  
Assistant Attorney General