

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

RUSSELL F. WALKER,)
)
 Plaintiff,)
)
 v.) 1:17-CV-78
)
 NORTH CAROLINA STATE BOARD)
 OF ELECTIONS and HOKE)
 COUNTY BOARD OF ELECTIONS,)
)
 Defendants.)

ORDER AND JUDGMENT

The plaintiff Russell Walker has sued the North Carolina State Board of Elections and the Hoke County Board of Elections, asking that the electoral system for Hoke County Commissioners be declared unconstitutional as violative of the Equal Protection Clause. Doc. 2 at ¶¶ 21-22; Doc. 42 at ¶¶ 21-22. The State Board moves to dismiss, contending that it is entitled to Eleventh Amendment immunity, that Mr. Walker lacks standing, and that the complaint fails to state a claim. Docs. 15, 16.¹

In his amended complaint, Mr. Walker alleges that there are five County Commissioners, all elected at-large, Doc. 42 at ¶¶ 8-9; that four of the current commissioners are non-white and one is white, *id.* at ¶ 12; that the county population is approximately 51 percent white and 49 percent non-white, *id.* at ¶ 10; that there is “racial

¹ Mr. Walker’s allegations in the original complaint were almost identical. *See* Doc. 2. The Court previously agreed to the defense suggestion, to which Mr. Walker did not object, that the motion to dismiss filed as to the original complaint be considered as to the amended complaint, because the legal issues for the original and amended complaints are the same. Doc. 41 at ¶ 2.

block voting in the City of Raeford,” *id.* at ¶ 15; and that his right to vote has been “debased and diluted.” *Id.* at ¶ 17.

The plaintiff asks the Court for a declaratory judgment that the current at-large method violates “the Fourteenth Amendment to the United States Constitution and Article 1 § 19 of the North Carolina Constitution,” *id.* at ¶ 21, and that it “constitutes a racial gerrymander in violation of the Equal Protection Clause of the Fourteenth Amendment.” *Id.* at ¶ 22. He alleges that the State Board was “created by state statute and empowered by state law with the responsibility of administering elections for the State of North Carolina,” *id.* at ¶ 2, and asks the Court to enjoin the State Board and the Hoke County Board of Elections “from enforcing or giving any effect to the current ‘at large’ election procedures for . . . the method of election of members of the Hoke County Board of Commissioners.” *Id.* at ¶ 24. He also asks the Court to require the election of commissioners by “a districting plan that does comply with the one-person, one-vote requirement of the state and federal constitutions.” *Id.* at ¶ 25.

Under the Eleventh Amendment, private individuals may not sue a nonconsenting state in federal court. *Bd. of Trs. of the Univ. of Ala. v. Garrett*, 531 U.S. 356, 363 (2001). The Eleventh Amendment bars “not only actions in which a State is actually named as the defendant, but also certain actions against state agents and state instrumentalities.” *Regents of the Univ. of Cal. v. Doe*, 519 U.S. 425, 429 (1997); *accord Libertarian Party of Va. v. Va. State Bd. of Elections*, No. 1:10-CV-615, 2010 WL 3732012, at *5 (E.D. Va. Sept. 16, 2010), *aff’d*, 434 F. App’x 174 (4th Cir. 2011) (unpublished) (per curiam).

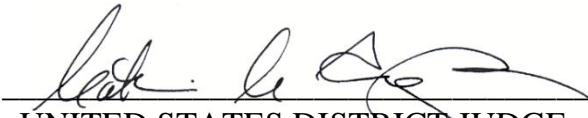
It is undisputed that the State Board functions as a quintessential “arm of the State” in approving candidates for official ballots and making other official election decisions. *See Mt. Healthy City Sch. Dist. Bd. of Educ. v. Doyle*, 429 U.S. 274, 280 (1977); *Libertarian Party*, 2010 WL 3732012, at *5; N.C. Gen. Stat. §§ 163-19 to -28. A suit against the State Board is therefore functionally equivalent to a suit against the state of North Carolina and the State Board is entitled to the same sovereign.

Mr. Walker relies upon *McBurney v. Cuccinelli*, 616 F.3d 393 (4th Cir. 2010), to assert that he may sue the State Board seeking prospective relief only. However, as the defendant correctly responds, *McBurney*—like *Ex parte Young*, 209 U.S. 123 (1908), the case upon which *McBurney* rests—was a suit against an individual state official, not a state agency. *See McBurney*, 616 F.3d at 399; *Libertarian Party*, 2010 WL 3732012, at *5. The Eleventh Amendment’s jurisdictional bar against suing states and state agencies “applies regardless of the nature of the relief sought.” *Pennhurst State Sch. & Hosp. v. Halderman*, 465 U.S. 89, 100 (1984).

For this reason, Mr. Walker’s suit against the State Board is barred by the Eleventh Amendment. The Court need not address the State Board’s other arguments.

It is **ORDERED AND ADJUDGED** that the State Board’s motion to dismiss, Doc. 15, is **GRANTED** and all claims against the North Carolina State Board of Elections are **DISMISSED**.

This the 15th day of May, 2017.


UNITED STATES DISTRICT JUDGE