

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

NORTH CAROLINA DIVISION OF SONS )  
OF CONFEDERATE VETERANS, INC., )

Plaintiff, )

v. )

1:21CV296

NORTH CAROLINA DEPARTMENT OF )  
TRANSPORTATION, J. ERIC )  
BOYETTE, in his official )  
capacity as SECRETARY OF )  
TRANSPORTATION OF THE STATE OF )  
NORTH CAROLINA, NORTH CAROLINA )  
DIVISION OF MOTOR VEHICLES, )  
and TORRE JESSUP, in his )  
official capacity as )  
COMMISSIONER OF MOTOR VEHICLES )  
OF THE STATE OF NORTH CAROLINA, )

Defendants. )

**MEMORANDUM OPINION AND ORDER**

**OSTEEN, JR., District Judge**

Presently before the court is a Motion to Dismiss in Lieu of an Answer filed by Defendants North Carolina Department of Transportation, North Carolina Division of Motor Vehicles, J. Eric Boyette (in his official capacity as Secretary of the North Carolina Department of Transportation), and Torre Jessup, (in his official capacity as Commissioner of North Carolina Division

of Motor Vehicles) (together, "Defendants"). (Doc. 8.)<sup>1</sup> The North Carolina Division of Sons of Confederate Veterans, Inc.

("Plaintiff") responded in opposition. (Doc. 10.) Defendants replied. (Doc. 15.) Plaintiff then filed a Motion for Stay of Proceedings, (Doc. 18), which Defendants opposed, (Doc. 21).

For the reasons set forth herein, this court will grant Defendants' motion to dismiss and deny Plaintiff's stay motion.

#### **I. FACTUAL BACKGROUND**

On a motion to dismiss, a court must "accept as true all of the factual allegations contained in the complaint." King v. Rubenstein, 825 F.3d 206, 212 (4th Cir. 2016). The facts, taken in the light most favorable to Plaintiff, are as follows.

Plaintiff is a nonprofit corporation organized under North Carolina law and is affiliated with the Sons of Confederate Veterans, Inc. ("SCV"). (Compl. (Doc. 5) ¶ 1.) Plaintiff's insignia "is a representation of the Confederate Battle Flag flanked on the left, top, and right sides by the words 'SONS OF CONFEDERATE VETERANS,' and on the bottom side by the year

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<sup>1</sup> All citations in this Memorandum Opinion and Order to documents filed with the court refer to the page numbers located at the bottom right-hand corner of the documents as they appear on CM/ECF.

'1896,'" (id. ¶ 21), the year in which SCV was founded, (id. ¶ 9).<sup>2</sup>

North Carolina's Department of Transportation ("NCDOT"), through the Division of Motor Vehicles ("DMV"), issues specialty license plates<sup>3</sup> that "set aside" a "designated segment of the plate" to feature the emblems of nationally recognized civic organizations. (Id. ¶¶ 24–25 (quoting N.C. Gen. Stat. § 20-79.4(a3), (b)(44)).) As part of this program, Plaintiff's members "have held and renewed special commemorative license plates identifying them as members of the SCV" via the featuring of the organization's insignia on their North Carolina license plates. (Id. ¶ 26.) But, beginning in July 2020, the DMV started withholding "the shipment of the specialty plates to SCV members." (Id. ¶ 29.) In response, Plaintiff and its members "made numerous and varied efforts to engage with Defendants regarding this matter, via telephone calls, emails, and visits

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<sup>2</sup> This court notes that Plaintiff's insignia was attached to the Complaint as an exhibit. (Compl. (Doc. 5) at 14.) It and other exhibits attached to Plaintiff's Complaint, (see id. at 12–19), may be considered in adjudicating Defendants' motion to dismiss. Goines v. Valley Cmty. Servs. Bd., 822 F.3d 159, 166 (4th Cir. 2016) (stating that at the Rule 12(b)(6) stage courts may "consider documents that are . . . attached to the complaint as exhibits").

<sup>3</sup> These plates, like all license plates issued by the DMV, "remain the property of the State[.]" N.C. Gen. Stat. § 20-63(a).

to DMV offices.” (Id.) Eventually, the plates were released in December 2020. (Id.)

However, effective January 1, 2021, Defendants decided to “no longer issue or renew specialty license plates bearing the Confederate battle flag or any variation of that flag.” (Id. at 15.) Plaintiff was informed of this decision in a January 11, 2021 letter from NCDOT which states that the “DMV will either issue SCV members standard plates and refund any specialty-plate fees paid or provide them with different specialty plates.” (Id. at 16.) The letter justifies this decision on grounds that “specialty license plates constitute government speech[,]” and “license plates bearing the Confederate battle flag have the potential to offend those who view them.” (Id. at 15.) The letter also notes that the DMV “will continue to recognize [Plaintiff] as a civic organization entitled to the issuance of a specialty plate[,]” and accordingly the “DMV remains open to considering alternative artwork” for Plaintiff’s specialty plate that “does not contain the Confederate battle flag.” (Id.)

## **II. PROCEDURAL HISTORY**

On March 8, 2021, Plaintiff filed its Complaint in Lee County Superior Court against Defendants. (Compl. (Doc. 5).) The Complaint asserts (1) a 42 U.S.C. § 1983 claim, (2) a preliminary and permanent injunction claim, (3) a declaratory

judgment claim, and (4) an attorney fees claim. (Id. ¶¶ 35–59.) On April 8, 2021, Defendants filed a petition with this court to remove the case from state to federal court on federal question and supplemental jurisdiction grounds. (Doc. 1.) On May 6, 2021, Defendants filed a motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6), (Doc. 8), along with an accompanying memorandum, (Defs.' Mem. of Law in Supp. of Mot. to Dismiss in Lieu of Answer ("Defs.' Br.") (Doc. 9)). Plaintiff responded in opposition. (Br. in Opp'n to Defs.' Mot. to Dismiss ("Pl.'s Br.") (Doc. 10).) Defendants replied. (Doc. 15.) Additionally, pursuant to an order of this court, (Doc. 16), Plaintiff filed a supplemental memorandum, (Doc. 17).

Subsequently, on December 29, 2021, Plaintiff filed a motion to stay this court's proceedings, (Doc. 18), accompanied by a supporting memorandum, (Mem. of Law in Supp. of Mot. for Stay of Proceedings ("Pl.'s Stay Br.") (Doc. 19)). Defendants responded in opposition, (Defs.' Opp'n to Pl.'s Mot. for Stay. ("Defs.' Stay Br.") (Doc. 21)), and Plaintiff replied, (Doc. 22).

Both Defendants' motion to dismiss and Plaintiff's motion for stay are now ripe for adjudication.

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