

STATE OF NORTH CAROLINA
COUNTY OF MECKLENBURG

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
23CV040918-590

ATLANTIC COAST CONFERENCE,

Plaintiff,

v.

BOARD OF TRUSTEES OF FLORIDA
STATE UNIVERSITY,

Defendant.

DEFENDANT'S MOTION TO
DISMISS OR, IN THE
ALTERNATIVE, STAY THE ACTION

Pursuant to Rules 12(b)(1), 12(b)(2), 12(b)(6), and 12(b)(7) of the North Carolina Rules of Civil Procedure, Defendant Florida State University Board of Trustees (the "FSU Board")¹ hereby moves to dismiss the claims in Plaintiff Atlantic Coast Conference's (the "ACC's") First Amended Complaint ("Amended Complaint"). In the alternative, the FSU Board requests a stay of the ACC's anticipatorily-filed lawsuit in favor of the FSU Board's more comprehensive action currently pending in the Circuit Court of the Second Judicial Circuit in and for Leon County, Florida (the "Florida Action") pursuant to N.C. Gen. Stat. § 1-75.12. In support of this Motion, the FSU Board shows the Court as follows:

1. The ACC filed a Complaint for Declaratory Judgment against the FSU Board after-hours on December 21, 2023, in an admitted "race to the courthouse" to secure what it hoped would prove to be a more favorable forum because it speculated

¹ The defendant's proper name is Florida State University Board of Trustees.

that the FSU Board might vote to authorize the filing of a lawsuit in Florida the very next day.

2. Notwithstanding the ACC's improper attempt at "procedural fencing," the ACC's lawsuit against the FSU Board is fundamentally flawed and subject to dismissal under Rule 12(b) for a host of reasons:

- a. *First*, the ACC prematurely filed suit before an actual or justiciable controversy arose, warranting dismissal pursuant to Rules 12(b)(1) and/or 12(b)(6).
- b. *Second*, in its race to the courthouse, the ACC made no attempt to provide member notice or to obtain the two-thirds member vote required by its Constitution to initiate this lawsuit, warranting dismissal pursuant to Rules 12(b)(1) and/or 12(b)(6).
- c. *Third*, the ACC is not permitted to sue the FSU Board in North Carolina, as the FSU Board has not waived its sovereign immunity anywhere except within the boundaries of the State of Florida pursuant to Fla. Stats. §§ 1001.72(1) and 768.28(1), warranting dismissal under Rules 12(b)(1), 12(b)(2) and/or 12(b)(6).
- d. *Fourth*, the Amended Complaint fails to plead that the FSU Board approved the Grants of Rights as required by Florida law.
- e. *Fifth*, North Carolina law for unincorporated nonprofit associations does not support the ACC's attempt to impose broad, extra-contractual,

fiduciary duties on each of its members to act in the best interest of the ACC, warranting dismissal under Rule 12(b)(6).

3. In the alternative, if the Court does not dismiss this action, the Court should stay it in favor of the Florida Action under N.C. Gen. Stat. § 1-75.12. The Florida Action is the broader and more comprehensive action, and the ACC should not be entitled to any first-filing deference as a result of its improper forum-shopping.

4. Pursuant to BCR 7.2, this Motion is accompanied by a brief, which is incorporated by reference herein.

5. This Motion is further supported by the following exhibits, attached hereto:

a. Exhibit 1 is a copy of the Amended Complaint for Declaratory Judgment filed on January 29, 2024, in the Florida Action, Case No. 23-CA-002860.

b. Exhibit 2 is a copy of the Complaint filed on November 26, 2012, in the North Carolina Superior Court Division, Guilford County (and subsequently designated as mandatory complex business) in the lawsuit captioned *Atlantic Coast Conference v. University of Maryland, College Park; Board of Regents, University System of Maryland*, Case No. 2012CVS10736.

WHEREFORE, the FSU Board respectfully requests that the Court dismiss the ACC's anticipatorily-filed action against the FSU Board pursuant to Rule 12(b) or, in the alternative, stay this case pending final resolution of the Florida Action pursuant to N.C. Gen. Stat. § 1-75.12.

This the 7th day of February, 2024.

BRADLEY ARANT BOULT CUMMINGS LLP

/s/ C. Bailey King, Jr.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing DEFENDANT'S MOTION TO DISMISS OR, IN THE ALTERNATIVE, STAY THE ACTION was filed with the clerk using the CM/ECF system, which will send electronic notification to all following counsel of record.

This the 7th day of February, 2024.

/s/ C. Bailey King, Jr.

C. Bailey King, Jr.

*Attorney for Defendant Florida State University
Board of Trustees*