

**UNPUBLISHED**

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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**No. 11-1628**

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MARK BRODY,

Plaintiff - Appellant,

v.

NORTH CAROLINA STATE BOARD OF ELECTIONS; GARY O. BARTLETT,  
as director,

Defendants - Appellees.

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Appeal from the United States District Court for the Western  
District of North Carolina, at Charlotte. Max O. Cogburn, Jr.,  
District Judge. (3:10-cv-00383-MOC-DSC)

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Submitted: November 30, 2011

Decided: December 15, 2011

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Before NIEMEYER, AGEE, and KEENAN, Circuit Judges.

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Affirmed by unpublished per curiam opinion.

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Mark Brody, Appellant Pro Se. Susan Kelly Nichols, NORTH  
CAROLINA DEPARTMENT OF JUSTICE, Raleigh, North Carolina, for  
Appellees.

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Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Mark Brody appeals the district court's order dismissing his case under Fed. R. Civ. P. 12(b)(1) and 12(b)(6). Brody brought suit against the North Carolina State Board of Elections and Gary Bartlett, in his official capacity as Director. Brody alleges that several North Carolina election statutes are in violation of the First Amendment and the Equal Protection Clause of the Fourteenth Amendment.

Because Brody sought injunctive and declaratory relief against a state official, the Ex Parte Young exception to sovereign immunity applies. Va. Office for Prot. & Advocacy v. Stewart, 131 S. Ct. 1632, 1637 (2011); DeBauche v. Trani, 191 F.3d 499, 505 (4th Cir. 1999). Therefore, we find that the district court erred in dismissing Brody's suit on sovereign immunity grounds.

Nonetheless, we affirm the judgment of the district court on alternative reasoning. "We are not limited to evaluation of the grounds offered by the district court to support its decision, but may affirm on any grounds apparent from the record." United States v. Smith, 395 F.3d 516, 519 (4th Cir. 2005). Our review of the record leads us to conclude that Brody has presented no cause of action for which relief may be granted. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials

before the court and argument would not aid the decisional process.

AFFIRMED