

**THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION
CIVIL CASE NO. 1:15-cv-00044-MR-DSC**

TODD W. SHORT,)	
)	
Plaintiff,)	
)	
vs.)	<u>ORDER</u>
)	
)	
STATE OF NORTH CAROLINA, et al.,)	
)	
Defendants.)	
_____)	

THIS MATTER is before the Court on the Plaintiff’s Motion to Lift Stay or Issue Ruling [Doc. 24] and the Plaintiff’s Motion and Notice of Constitutional Question [Doc. 27].

Upon review of the Plaintiff’s Amended Complaint, the Court will lift the stay of this action and allow the case to proceed. By lifting the stay, the Court in no way intends to express any opinion as to whether the Plaintiff’s Amended Complaint states any claim upon which relief can be granted.

The Plaintiff further moves the Court, pursuant to Rule 5.1(a)(1)(B) of the Federal Rules of Civil Procedure and 28 U.S.C. § 2403, to certify to the North Carolina Attorney General that the constitutionality of a North Carolina statute has been questioned by the Plaintiff’s Amended Complaint. [Doc.

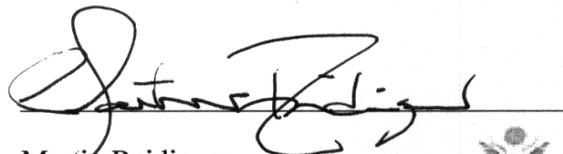
27]. Certification to a state attorney general is required, however, only where the State is not a party to the action. See 28 U.S.C. § 2403(b) (“In any action, suit, or proceeding in a court of the United States to which a State or any agency, officer, or employee thereof is *not* a party . . . the court shall certify such fact to the attorney general of the State”) (emphasis added); see also Fed. R. Civ. P. 5.1(a)(1)(B) (notice required where state statute is questioned and parties do not include the state, one of its agencies, or one of its officers or employees). Here, the Plaintiff has named both the State of North Carolina and the North Carolina Department of Health and Human Services as defendants. Accordingly, the Court is not required to provide certification of a constitutional question to the State Attorney General.

IT IS, THEREFORE, ORDERED that the Plaintiff’s Motion to Lift Stay or Issue Ruling [Doc. 24] is **GRANTED**, and the stay of this matter is hereby **LIFTED**. The Plaintiff shall proceed with service on the named Defendants.

IT IS FURTHER ORDERED that the Plaintiff’s Motion and Notice of Constitutional Question [Doc. 27] is **DENIED AS MOOT**.

IT IS SO ORDERED.

Signed: May 6, 2015


Martin Reidinger
United States District Judge

