

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

BRIDGET SULLIVAN,

Plaintiff,

v.

PATRICK HARRIGAN,

Defendant.

Civil Action No. 1:25-CV-1016

UNITED STATES' MEMORANDUM IN SUPPORT OF
MOTION TO DISMISS

NOW COMES the United States of America, by and through Clifton T. Barrett, United States Attorney for the Middle District of North Carolina, and submits this memorandum in support of its Motion to Dismiss pursuant to Rule 12(b)(1) of the Federal Rules of Civil Procedure for lack of subject matter jurisdiction. In support of this memorandum, the United States submits Government Exhibit (GE) A.

As an initial matter, the United States recognizes that a predicate issue before this Court is the pending Motion to Substitute (Dkt. No. 3), in which the United States asks to be substituted as the defendant in place of the Honorable Patrick Harrigan, United States Representative for the 10th Congressional District of North Carolina ("Congressman Harrigan"). If the Court grants that Motion and substitutes the United States, the Complaint should be dismissed because Plaintiff Bridget Sullivan has failed to exhaust her administrative remedies under the Federal Tort Claims Act ("FTCA"), 28 U.S.C. §§

1346(b), 2671-2680, and because these claims are barred by that Act.

I. STANDARD OF REVIEW

Before considering the merits of a case, the Court must consider the threshold matter of whether subject matter jurisdiction exists. *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 93-95 (1998); *Constantine v. Rectors & Visitors of George Mason Univ.*, 411 F.3d 474, 479-80 (4th Cir. 2005). The party invoking the jurisdiction of the Court -- here the Plaintiff -- bears the burden of proving that the court has subject matter jurisdiction. *Richmond, Fredericksburg & Potomac R.R. Co. v. United States*, 945 F.2d 765, 768 (4th Cir. 1991); *Williams v. United States*, 50 F.3d 299, 304 (4th Cir. 1995) (internal citations omitted).

When analyzing a Rule 12(b)(1) motion, “the district court is to regard the pleadings as mere evidence on the issue and may consider evidence outside the pleadings without converting the proceeding to one for summary judgment.” *Evans v. B.F. Perkins Co.*, 166 F.3d 642, 647 (4th Cir. 1999) (internal quotation marks and citation omitted). A court should grant a motion to dismiss based on lack of subject matter jurisdiction “only if the material jurisdictional facts are not in dispute and the moving party is entitled to prevail as a matter of law.” *Richmond*, 945 F.2d at 768.

Here, the United States has submitted one exhibit with its motion to dismiss. *See* Government Exhibit A, Declaration of S. Clouse. This Court may consider this document when determining whether it has subject matter jurisdiction. *See, e.g., Price v. City of Rock Hill*, No. 0:21-cv-02686-TLW, 2022 WL 9822178, at *6 (D.S.C. Oct. 17, 2022)

(considering, on a motion to dismiss, a declaration “by the Office of General Counsel, United States House of Representatives” regarding the plaintiff’s failure to “administratively present[] his defamation claim against Representative [Ralph] Norman to the House”).

II. BACKGROUND AND PROCEDURAL HISTORY

Plaintiff brought this lawsuit against Patrick Harrigan. *See* Compl. at 1. At all times relevant to the Complaint, Harrigan was, and is, the United States Representative for the 10th Congressional District of North Carolina.¹ Plaintiff alleges that she suffered injuries primarily arising out of social media posts that the Congressman made on his official X account stating that Sullivan was fired by her employer, which she denies. *See id.* ¶¶ 12, 19, 27, 36. The Complaint asserts causes of action for libel *per se* and libel *per quod*, as well as a claim for punitive damages under North Carolina law.

The United States has filed a motion to substitute itself as the defendant in this case, pursuant to the FTCA. *See* Dkt. No. 3. The FTCA is the “exclusive” remedy for money damages for alleged personal injury caused by “the negligent or wrongful act or omission of any employee of the Government while acting within the scope of his office or employment . . .” 28 U.S.C. § 2679(a)-(b)(1). In support of its motion, the United States attached a certification from the United States Attorney for the Middle District of North Carolina, stating that Congressman Harrigan was acting within the scope of his office or

¹ *See* <https://harrigan.house.gov/> (last visited November 5, 2025) and <https://bioguide.congress.gov/search/bio/H001101> (Harrigan has been serving in Congress since January 3, 2025 to present) (last visited November 5, 2025).

employment as a Member of Congress at the time of the alleged conduct. *See* Dkt. No. 4-

1. If this Court grants the United States' pending motion and substitutes the United States as the defendant, the Complaint is subject to dismissal for the reasons below.

III. ARGUMENT

A. Because Plaintiff has failed to exhaust her administrative remedies under the FTCA, there is no subject matter jurisdiction over her claims.

Upon substituting the United States as the defendant in this case, this Court should dismiss the Complaint for lack of subject matter jurisdiction because Plaintiff has failed to exhaust her administrative remedies pursuant to the FTCA. The FTCA waives the sovereign immunity of the United States for tortious acts for which a private individual would be liable in similar circumstances. The waiver of sovereign immunity, and consequently the right to sue the United States in tort, exists entirely by consent as expressed in the FTCA, which fixes the terms and conditions upon which suit may be instituted. *Honda v. Clark*, 386 U.S. 484, 501 (1967). The conditions of the waiver of sovereign immunity define the subject matter jurisdiction of the federal courts and must be strictly construed. *McMahon v. United States*, 342 U.S. 25, 27 (1951). A Plaintiff's ability to recover under the FTCA depends upon her compliance with the terms and conditions of the FTCA.

"It is well established that the United States Government, as sovereign, is immune from suit unless it consents to be sued [and] [t]he terms of its consent . . . define [a] court's jurisdiction to entertain the suit." *Gould v. United States Dep't of Health and Human Servs.*, 905 F.2d 738, 741 (4th Cir. 1990). The waiver of sovereign immunity "must be

scrupulously observed and not expanded by the courts.” *Kokotis v. United States Postal Serv.*, 223 F.3d 275, 278 (4th Cir. 2000). The FTCA’s limited waiver of sovereign immunity for damages against government tortfeasors is subject to the condition that an administrative claim must first be presented to the appropriate agency and denied before suit can be filed. *See* 28 U.S.C. § 2675(a). In other words, a claimant must first exhaust any applicable administrative remedies before taking advantage of the United States’ waiver of sovereign immunity in district court. *See McNeil v. United States*, 508 U.S. 106, 113 (1993) (The presentment requirement is “unambiguous” and “bars claimants from bringing suit in federal court until they have exhausted their administrative remedies.”).

In the Fourth Circuit, “[i]t is well-settled that the requirement of filing an administrative claim is jurisdictional and may not be waived.” *Henderson v. United States*, 785 F.2d 121, 123 (4th Cir. 1986) (internal citation omitted). *See also Estate of Van Emburgh by and through Van Emburgh v. United States*, 95 F.4th 795, 800 (4th Cir. 2024); *Plyler v. United States*, 900 F.2d 41, 42 (4th Cir. 1990).

Nowhere in the Complaint does Plaintiff allege that she exhausted her administrative remedies. The United States House of Representatives has also not received any administrative claim from Plaintiff. *See* GE A, Declaration of S. Clouse. Without proof that Plaintiff properly presented her claims under the FTCA, the Complaint should be dismissed for lack of subject matter jurisdiction.

B. Alternatively, Plaintiff's claims for libel are barred by the FTCA and should be dismissed for lack of subject matter jurisdiction.

Even if Plaintiff had administratively presented her claims for libel to the United States House of Representatives, this Court would still lack subject matter jurisdiction because the FTCA does not waive sovereign immunity for these claims.

As discussed above, the FTCA constitutes “a general waiver of sovereign immunity . . . subject to various exceptions.” *Talbert v. United States*, 932 F.2d 1064, 1065-66 (4th Cir. 1991) (internal citations omitted). One such exception provides that the United States is not liable for “[a]ny claim arising out of assault, battery, false imprisonment, false arrest, malicious prosecution, abuse of process, *libel*, *slander*, misrepresentation, deceit, or interference with contract rights . . .” 28 U.S.C. § 2680(h) (emphasis added). As such, there is no subject matter jurisdiction over Plaintiff's claims. Since the FTCA preserves “sovereign immunity against defamation actions[,]” these claims must be dismissed. *Shirvinski v. U.S. Coast Guard*, 673 F.3d 308, 316 (4th Cir. 2012).

C. The FTCA precludes punitive damages relief.

The Complaint also seeks punitive damages. *See* Compl. at ¶¶ 35-37. Under the FTCA, however, the United States is not liable for punitive damages, 28 U.S.C. § 2674, and the “*only* relief” available under the statute is “money damages.” *Talbert*, 932 F.2d at 1065-66 (internal quotation marks and citation omitted) (emphasis added). This remedy “for injury or loss of property . . . arising or resulting from the negligent or wrongful act or omission of any employee of the Government . . . is *exclusive* of any other civil action or proceeding for money damages . . .” 28 U.S.C. § 2679 (emphasis added). Therefore,

Plaintiff's Third Claim for Relief must also be dismissed.

IV. CONCLUSION

For the foregoing reasons, the United States respectfully requests that the Court enter an order dismissing the Complaint.

This the 6th day of November, 2025.

Respectfully submitted,

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CERTIFICATE OF WORD COUNT

I certify that this brief complies with the word count limit set forth in L.R. 7.3(d). The number of words in this memorandum, exclusive of the caption, signature lines, certificate of service, and any cover page or index, according to the word count feature of the word processing software used to prepare the Memorandum, does not exceed 6,250 words.

This the 6th day of November, 2025.

/s/ Lynne P. Klauer

Lynne P. Klauer

Assistant United States Attorney

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CERTIFICATE OF SERVICE

I hereby certify that on November 6, 2025, the foregoing was electronically filed with the Clerk of the Court using the CM/ECF system, and that a copy or copies of the document(s) was or were served via the CM/ECF system (or by other means, if specified below) on the following:

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