

THE STATE OF SOUTH CAROLINA
In The Supreme Court

IN THE SUPREME COURT’S ORIGINAL JURISDICTION

Appellate Case No. 2012-213345

South Carolina Republican Party, Petitioner,

v.

South Carolina Election Commission, The Honorable
Jeannette W. McBride, in her official capacity as Richland
County Clerk of Court; South Carolina Democratic Party;
Richland County Election Commission. Respondents,

MOTION OF THE RICHLAND COUNTY ELECTION COMMISSION
TO DISMISS FILED UNDER RULE 240, SCACR

Respondent Richland County Election Commission (“County Commission”) respectfully moves to dismiss the Emergency Petition for Writs of Prohibition and Injunction filed by the South Carolina Republican Party (“Republican Party”) for lack of jurisdiction under Rule 240, SCACR. The South Carolina Democratic Party (“Democratic Party”) served the Richland County Election Commission, through its counsel, with a signed and executed Stipulation of Dismissal pursuant to Rule 41(a), SCRCR. *See* Exhibit “A”. As a result, Plaintiff’s Stipulation of Dismissal of the underlying circuit court action and the related Amended Temporary Restraining Order has now been abandoned by Plaintiff Democratic Party and no remaining dispute regarding actions taken by the circuit court remain before this Court.

Now that the Democratic Party has served its Stipulation of Dismissal of the matter filed with the circuit court below, the Petition filed by the Republican Party along with any related pleadings should be dismissed by this Court. County Commission respectfully requests that the Court issue an Order directing the Richland County Election Commission and staff to immediately proceed to meet all statutory obligations required to certify the county election results for the general election conducted on November 6, 2012. In order to meet its statutory obligations, the County Commission requests: (a) vacate all underlying Orders for a Temporary Restraining Order (including the Amended Order) issued by the Court of Common Pleas for Richland County; (b) the Court to direct the State Law Enforcement Division (“SLED”) to return all ballots and materials seized by Orders of the Honorable L. Casey Manning dated November 8, 2012 to the County Commission; and (c) the Court order that the County Commission shall have until 5:00 p.m. on Friday, November 16, 2012 to complete its statutory duties, including but not limited to certifying the election results to the State Election Commission as required by law. The County Commission respectfully asserts that any Order issued by this Court pursuant to this Motion to Dismiss will not cause any party to lose any statutory rights to challenge or protest any final election matter results certified by the County Commission due to the underlying circuit court stay which prevented the County Commission from completing its statutory obligations to certify the final election results to the State Election Commission as required by S.C. Code Ann. §7-17-20.

CONCLUSION

For the reasons stated above, the Court should: (a) dismiss the Emergency Petition for Writs of Prohibition and Injunction currently pending before it; (b) vacate all underlying

Orders for a Temporary Restraining Order (including the Amended Order) issued by the Court of Common Pleas for Richland County; (c) order the return of all ballots and materials seized by SLED to the County Commission; and (d) provide for the County Commission to have until 5:00 p.m. on Friday, November 16, 2012, to complete its statutory obligations regarding the ballots cast in the 2012 General Election conducted on November 6, 2012. The above referenced actions by this Court will allow the County Commission to comply with applicable statutory requirements so that it can properly certify the election results to the State Election Commission. In an abundance of caution and in order to avoid additional interim legal challenges, if any, County Commission requests that the Court confirm that any deadline or time period for any party or candidate in the general election to file or make a protest does not begin until the County Commission has certified the results to the South Carolina State Election Commission.

Counsel for Richland County Election Commission has consulted and advised counsel for the South Carolina Democratic Party and counsel for the South Carolina Republican Party that a Motion to Dismiss would be filed with this Court on Tuesday, November 13, 2012. Counsel for the Democratic Party advised that his client had no objection to the Motion. Counsel for the Republican Party advised that his client does not support the Motion.

Respectfully submitted this 13th day of November, 2012.

ATTORNEYS FOR RESPONDENT
RICHLAND COUNTY ELECTION COMMISSION

s/ Steven W. Hamm

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PROOF OF SERVICE

The undersigned employee of RICHARDSON PLOWDEN & ROBINSON, P.A., attorneys for Appellant, does hereby certify that service of the foregoing **MOTION OF RESPONDENT RICHLAND COUNTY ELECTION COMMISSION'S MOTION TO DISMISS** in the above-captioned matter was made upon all counsel of record this 13TH day of November 2012, by electronic mail and by depositing a copy of same via electronic mail, hand delivery and/or in the U.S. Mail, postage prepaid, addressed as indicated below:

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s/ Kathy J. Templeton

Kathy J. Templeton

November 13, 2012
Columbia, South Carolina