

No. 1170216

IN THE SUPREME COURT OF ALABAMA

Ex parte Secretary of State John Merrill and Ed
Packard, *Petitioners.*

(In re: Virginia Tuggle, et al.,

Plaintiffs,

v.

Alabama Secretary of State John Merrill and Director of
Elections Ed Packard,

Defendants.)

STATE DEFENDANTS' EMERGENCY MOTION TO STAY

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EMERGENCY MOTION TO STAY

Secretary of State John Merrill and Director of Elections Ed Packard, Petitioners, pursuant to Rule 8 of the Alabama Rules of Appellate Procedure, respectfully move this Court to stay the Preliminary Injunction or Temporary Restraining Order issued by the Circuit Court in a matter in which the plaintiffs lack standing.

In support of this motion, Petitioners rely on the arguments made in their petition for a writ of mandamus. As stated therein, the Circuit Court granted emergency injunctive relief to the plaintiff requiring non-parties (Counties) to maintain electronic records related to elections. The Defendants to this action do not have authority to maintain such records or to require local officials to do so. Plaintiffs therefore lack standing, the Circuit Court lacks jurisdiction, and the order is a nullity. Although a nullity, it will, if not stayed, cause confusion among elections officials and be disruptive to an election scheduled for tomorrow.

The Order, complaint, and Defendants' motion to dismiss are attached the mandamus petition.

Defendants have not petitioned the Circuit Court for a stay. Time is of the essence, and, when setting a hearing on a motion to dismiss, the Circuit Court indicated that "[t]his order does not moot or provide the basis for a stay of the injunction entered in this case on this same date." See order attached as Ex. 1.

WHEREFORE, Petitioners John Merrill and Ed Packard respectfully request that this Court stay the Preliminary Injunction or TRO issued by the Circuit Court.

Respectfully submitted,

Steven T. Marshall
Attorney General

s/ James W. Davis
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CERTIFICATE OF SERVICE

I hereby certify that on this 11th day of December,
2017, a copy of the foregoing has been served on the
following recipients:

Hon. Roman Ashley Shaul
Circuit Court of Montgomery County
Montgomery County Courthouse
251 S. Lawrence St.
Montgomery, Alabama 36104

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s/ James W. Davis
Of Counsel



IN THE CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

TUGGEY VICTORIA,)
HARD PAUL,)
MILES PAMELA,)
DANNENMUELLER DAN ET AL,)
Plaintiffs,)

V.)

Case No.: CV-2017-901909.00

JOHN MERRILL, SECRETARY OF)
STATE,)
PACKARD ED,)
Defendants.)

ORDER

The MOTION TO DISMISS (Doc. # 12) filed by DEFENDANTS is hereby set for HEARING on December 21, 2017 at 1:30 PM, in courtroom 4A, Montgomery County Courthouse.

This order does not moot or provide the basis for a stay of the injunction entered in this case on this same date.

DONE this 11th day of December, 2017.

/s/ HON. ROMAN ASHLEY SHAUL
CIRCUIT JUDGE