

## VIRGINIA:

*In the Supreme Court of Virginia held at the Supreme Court Building in the  
City of Richmond on Tuesday the 31st day of January, 2012.*

In Re: Virginia State Board of Elections, et al., Petitioners

Record No. 120149

Upon a Petition for a Writ of Prohibition

Upon consideration of this case, the Court is of the opinion that the petition for a writ of prohibition should be dismissed because the Circuit Court of the City of Richmond has subject matter jurisdiction over the case underlying this petition and because prohibition does not lie to correct error. "The writ of prohibition does not lie to correct error, but to restrain an inferior court from acting in a matter of which it has no jurisdiction, or in which it is transcending the bounds of its jurisdiction." In re Hannett, 270 Va. 223, 237-38, 619 S.E.2d 465, 471-72 (2005) (quoting Moss v. Barham, 94 Va. 12, 14, 26 S.E. 388, 388 (1896)). Furthermore, the Circuit Court of the City of Richmond has subject matter jurisdiction over the case underlying this petition. See Brown v. Saunders, 159 Va. 28, 36, 166 S.E.2d 105, 107 (1932) (whether Constitutional limitations have been exceeded by the legislature is a question for judicial determination); Jamerson v. Womack, 244 Va. 506, 508, 423 S.E.2d 180, 181 (1992).

It is therefore ordered that the said petition be dismissed. Plaintiffs' motion for leave to intervene is denied.

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JUSTICE McCLANAHAN, dissenting.

Without any analysis of the separation of powers issue raised

by the Petitioners pursuant to Va. Const. Art. I, § 5, Art. II, § 4, and Art. III, § 1, I cannot conclude that the circuit court has jurisdiction to hear this case and grant the relief sought based upon the general statutory authority granted by Code §§ 8.01-620 and 8.01-184. These statutes no doubt give the circuit court jurisdiction to hear declaratory judgment actions and injunctions. That analysis is, however, incomplete in the context of analyzing whether a writ of prohibition lies if the circuit court's exercise of jurisdiction violates the constitutional separation of powers doctrine. See In re Phillips, 265 Va. 81, 86, 574 S.E.2d 270, 273 (2003) ("The General Assembly's power under Article VI, § 1 to enact legislation fixing the original jurisdiction of circuit courts is subject to the separation of powers mandate of Article III, § 1").

Since this Court has recognized the "well settled principle regulating the jurisdiction of courts of equity that such courts will not, with few exceptions, enjoin the holding of an election, or interfere, by its process of injunction, with the holding of an election," such an analysis should be undertaken by this Court, Scott v. James, 114 Va. 297, 304-05, 76 S.E. 283, 285 (1912); because it is not the "duty of the court to substitute its judgment for that of the legislature, but simply to declare what the law is, and to state whether or not the act is in conflict with the constitutional requirement." Wilkins v. Davis, 205 Va. 803, 813, 139 S.E.2d 849, 855-56 (1965) (quoting Brown v. Saunders, 159 Va. 28, 46, 166 S.E. 105, 111 (1932)). Consistent with that principle, this Court, in Wilkins, Brown, and Jamerson, did not arrogate to

the judiciary the authority to engage in a function exclusively reserved for the General Assembly by the express terms of the Constitution of Virginia.

A Copy,

Teste:

*Pat L. Harrison*

Clerk