

STATE OF NORTH CAROLINA
WAKE COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
05 CVS 15474

DIEBOLD ELECTION SYSTEMS, INC.,)

Plaintiff,)

v.)

THE NORTH CAROLINA STATE)
BOARD OF ELECTIONS and THE)
NORTH CAROLINA OFFICE OF)
INFORMATION TECHNOLOGY)
SERVICES,)

Defendants)

and)

JOYCE MCCLOY,)

Defendant-Intervenor.)

ORDER OF DISMISSAL

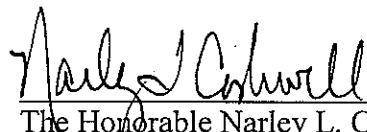
This cause was heard before the undersigned Judge on November 28, 2005 on Plaintiff's Motion for a Preliminary Injunction. After granting Proposed Defendant-Intervenor's Motion to Intervene pursuant to Rule 24, Defendant-Intervenor made a motion to dismiss the case for lack of subject matter jurisdiction and for failure to state a claim upon which relief could be granted. Defendants joined in the motion.

Now, therefore, having heard arguments of counsel, reviewed the documents referenced by counsel and the allegations of the Complaint, it appears to the court that the motion should be granted because the court lacks jurisdiction over the subject matter of this action; because the plaintiff has failed to state a claim for which relief can be granted; and because, in essence, this court is being asked for an advisory opinion interpreting a statute in the absence of a case or controversy.

Further, pursuant to Rule 12(b) (1) and (6) and (h) (3) and applicable case law, and N.C. Gen. Stat. § 1-253 et seq. and applicable case law, it appears to the court by the suggestion of the parties and by the court's own assessment of the plaintiff's claims that this case must be dismissed because this court lacks jurisdiction, the plaintiff has failed to state a claim upon which relief can be granted, and the court is being asked for an advisory opinion in the absence of a case or controversy.

IT IS THEREFORE ORDERED that plaintiff's Complaint should be and is hereby DISMISSED pursuant to N.C. Gen. Stat. § 1A-1, Rule 12(b) (1) and Rule 12(h) (3) for lack of subject matter jurisdiction; pursuant to N.C. Gen. Stat. § 1A-1, Rule 12(b) (6) for failure to state a claim upon which relief can be granted; and pursuant to N.C. Gen. Stat. § 1-253 et seq. and cases decided under that statute for lack of an actual case or controversy.

This the 30th day of November, 2005.



The Honorable Narley L. Cashwell
Superior Court Judge Presiding