

IN THE COURT OF APPEALS OF MARYLAND

GREGORY HALL,

*Petitioner*

v.

PRINCE GEORGE’S COUNTY  
DEMOCRATIC CENTRAL  
COMMITTEE, *et al.*,

*Respondents*

\*  
\*  
\*  
\* September Term, 2012  
\*  
\* Petition Docket No. 542  
\*  
\*  
\*  
\*  
\*  
\*

\* \* \* \* \*

ANSWER OF RESPONDENT PRINCE GEORGE’S COUNTY DEMOCRATIC  
CENTRAL COMMITTEE TO PLAINTIFF GREGORY HALL’S  
PETITION FOR WRIT OF CERTIORARI

Under the Maryland Constitution, if a vacancy occurs in a House of Delegates seat, the County Central Committee of the political party of the Delegate who vacated the seat is to submit to the Governor the name of a person to fill the vacancy. Md. Const., Art. III, § 3(a). The Constitution confers virtually unlimited discretion on the Central Committee in selecting that person, as long as he or she is legally qualified for the office. In this case, Petitioner Gregory Hall misled Respondent Prince George’s County Democratic Central Committee (the “County Democratic Central Committee” or “Committee”) about his background and qualifications, and the Committee submitted his name to the Governor before the relevant facts became known. Before the Governor took any action on the recommendation, the County Democratic Central Committee met to withdraw Mr. Hall’s name, and would have done so, on November 20, 2012 and again on

November 26, 2012, but for the filing by Mr. Hall himself of the action in the Circuit Court.

For several weeks now, Mr. Hall has been trying to use this litigation to force the County Democratic Central Committee to make a *decision that it does not want to make*: appointing Mr. Hall to fill the vacancy. Yet, the power to make that decision is conferred, by the State Constitution, on the Committee—*not* on Mr. Hall. Indeed, Mr. Hall is effectively attempting to use the Courts to force the County Democratic Central Committee to award him the great privilege of a seat in the General Assembly—a seat to which he has never been elected and to which he has no legal claim or entitlement whatsoever.

The Circuit Court correctly rejected this effort and ruled that the County Democratic Central Committee had the right to withdraw its submission of Mr. Hall's name as of November 26, 2012, and maintains that right currently. (Circuit Court Opinion and Order (Petition for Writ of Certiorari, Exhibit B). For the reasons set forth in that Opinion and Order, Mr. Hall's claim to the contrary is without merit. Given, however, the significance of the issues involved; the fact that they are issues of first impression; and, the importance of providing full representation in the House of Delegates to the people of the 24<sup>th</sup> Legislative District, the County Democratic Central Committee agrees with Respondent Governor Martin O'Malley that the public interest would be served by: (i) granting the petition for writ of certiorari (*except* as to Issue V raised in the petition, challenging the validity of a form of affidavit, a contention that is

frivolous as explained below); (ii) lifting the stay; and, (iii) if the stay is not lifted, hearing and resolving the case on an expedited basis.

### **STATEMENT OF THE CASE**

On October 10, 2012, Speaker of the House of Delegates Michael E. Busch announced that he would follow advice he had received from the Attorney General's Office concluding that Delegate Tiffany Alston (D-Prince George's), representing the 24th Legislative District, had been suspended from office without pay or benefits by operation of law, and took steps necessary to suspend such pay and benefits. On November 1, 2012, the Attorney General's Office issued advice to the Speaker concluding that Ms. Alston had been permanently removed from office by operation of law, effective as October 9, 2012.

On November 2, 2012, the County Democratic Central Committee held a meeting at which it considered the question of which name to submit to the Governor under Article III, § 13(a)(1) of the Maryland Constitution with respect to the vacant 24th Legislative District Seat. At that meeting, the County Democratic Central Committee heard presentations from several individuals who had applied to be considered by the Committee to fill the vacancy.

Among those individuals was the Petitioner, Mr. Hall. Along with other candidates for consideration, Mr. Hall was asked by a Committee member whether there was anything troublesome or questionable in his background that the Committee should know. Mr. Hall answered only that he made some mistakes as a youth and got in trouble by mixing with the wrong crowd. In particular, Mr. Hall failed to disclose what became

known to the Committee only after November 7: that Mr. Hall had been involved in the shooting death of a thirteen-year old child and had been convicted of unlawful gun possession in that incident; that he had unpaid state taxes; that he had repeatedly been ordered to pay overdue child support; and, that he had misrepresented his ownership of a business. Mr. Hall failed to bring any of that information to the attention of the County Democratic Central Committee during the November 2, 2012 meeting.

On November 7, 2012, the County Democratic Central Committee submitted to the Governor, in writing, the name of Gregory Hall to fill the vacancy in the 24th Legislative District. On November 16, 2012, Governor O'Malley sent a letter to the Committee asking the Committee to withdraw its submission of Mr. Hall's name to fill the vacancy in the 24th Legislative District and to take no further action until the Governor received a formal opinion from the Office of the Attorney General. On November 17, 2012, the County Democratic Central Committee added to its agenda for the regularly scheduled meeting to be held on November 20, 2012 the consideration of the Governor's request set forth in his November 16, 2012 Letter.

On November 20, 2012, the Attorney General issued a formal opinion to the Governor concerning the vacancy of the 24th Legislative District Seat, several hours prior to the scheduled meeting of the Committee that evening. That same day, the Attorney General's Office issued a letter of advice to Delegate Jolene Ivey (D-Prince George's), finding that the County Democratic Central Committee had the power to withdraw Mr. Hall's name, even after expiration of the 30-day period following the

existence of the vacancy, but that if the Central Committee submitted a new name, that new recommendation would not be binding on the Governor.

On November 20, 2012, the Committee held its regularly scheduled meeting and as part of the agenda the Committee considered the request of the Governor to withdraw its submission of Gregory Hall's name. The Committee was informed of the issuance of the Attorney General's Formal Opinion concerning the alleged vacancy of the Seat and the Attorney General's conclusion that the Seat was vacant as of October 9, 2012. The Committee was also informed that Mr. Hall had commenced this lawsuit, that Mr. Hall had filed a motion for a temporary restraining order, and that a hearing on Mr. Hall's request had taken place earlier that day in the Circuit Court. The Central Committee voted 12-8 that evening to hold in abeyance any action on Governor O'Malley's request to withdraw the submission of Mr. Hall's name until a show cause hearing was held by the Court. The Committee would clearly have voted to withdraw Mr. Hall's name that evening but for the legal proceedings initiated, in the Circuit Court, by Mr. Hall earlier in the day.

On Saturday evening, November 24, 2012, the County Democratic Central Committee Chair sent an e-mail to Committee members, calling an emergency meeting for November 26, the following Monday. At the meeting that Monday evening, November 26, counsel to the County Democratic Central Committee informed the Committee of the representation made to the Circuit Court at a hearing held that afternoon that the Committee would not, that evening, take any binding vote to withdraw Mr. Hall's name. Rather, the Committee adopted a resolution, by a vote of 20 to 1, that it

was the “sense of the Committee” that the Committee “withdraws its recommendation of Mr. Hall per request from Governor Martin O’Malley and pending the results of legal proceedings before the Prince George’s County Circuit Court.” The Committee would obviously have taken binding action to withdraw Mr. Hall’s name at that meeting had it been free to do so.

The parties to the Circuit Court action filed cross-motions for summary judgment and the Circuit Court heard argument on December 4, 2012. The Circuit Court issued its opinion the next day, December 5, holding that the County Democratic Central Committee had, as of November 26, 2012, and continues to maintain, the right to withdraw Mr. Hall’s name unless and until the Governor actually appointed him.

### **DISCUSSION**

**I. The Court Should Grant Review of Questions I through IV Set Forth in Petition and Should Affirm the Judgment of Circuit Court As to Those Issues.**

Mr. Hall asks the Court to determine whether, if a Central Committee submits a name to the Governor to fill a vacancy within the 30-day period, the Governor has a mandatory duty to appoint that person within 15 days; whether the Central Committee has authority to withdraw the name after the 30-day period expires but before the Governor appoints anyone; and whether a writ of mandamus should issue to compel the Governor to appoint Mr. Hall to the seat. Question II is when the 15-day period expires. The County Democratic Central Committee agrees that the Court should review and determine these issues, and will contend that the Circuit Court correctly decided all of them. The County Democratic Central Committee does not oppose review of that issue

but submits that it is unnecessary for the Court to decide it because here is no question that the County Democratic Central Committee would have withdrawn the name *within* the 15-day period but for Mr. Hall's own actions in seeking to enjoin the Committee from acting. In addition, for reasons set forth below, the petition should not be granted as to Issue V raised by Mr. Hall, a frivolous contention that an affidavit expressly made on personal knowledge should not have been considered because of the wording of the oath.

**A. The Circuit Court Correctly Found that the Central Committee Had the Power to Withdraw Mr. Hall's Name After Expiration of the 30-Day Period and Before the Governor Made Any Appointment.**

The mere submission of Mr. Hall's name to the Governor by the County Democratic Central Committee did not confer any office on Mr. Hall. His appointment could not be complete unless and until the Governor actually issued him a commission appointing him to the Delegate seat. "To constitute a valid appointment to office there must be some open, unequivocal act of appointment on the part of the officer of body empowered to make it." *Goodman v. Clark of Circuit Court for Prince George's County*, 291 Md. 325, 329 (1971). The Attorney General of Maryland has specifically ruled that "the signing of the commission [by the governor] was clearly necessary to complete the appointment" of an individual to fill a vacant seat in the House of Delegates. 62 Op. Atty. Gen. 453 (1977). That ruling is consistent with the principle, for example, that the appointment of a state official is not complete upon nomination by the Governor, but only upon confirmation by the State Senate. *Dyer v. Bayne*, 54 Md. 87, 90 (1880).

In this case, Mr. Hall was not, in fact, appointed by the Governor to fill the House of Delegates seat. No commission has ever been issued. Mr. Hall's appointment was not

completed as of November 26, 2012 and is not completed as of the present day. Given that Mr. Hall's appointment was never completed, the County Democratic Central Committee had the right to withdraw his name, even after expiration of the 30-day period. It is well-established that, "[a]n appointment may be revoked or rescinded *at any time before it becomes final and complete.*" 67 C.J.S. Officers § 64 (2012) (emphasis added). When one body or official has the power to nominate and another has the power to confirm or take other action to make the appointment effective, the nominating official clearly has the inherent right to withdraw the nomination until the confirmation is complete. For example, Article II, section 10 of the Maryland Constitution confers on the Governor the power to appoint senior state officials "with the advice and consent of the Senate." That provision does not expressly give the Governor the right to withdraw a nomination before the State Senate acts on it. Yet, the Governor clearly has that power. Likewise, the County Democratic Central Committee had the power to withdraw its submission before the Governor acted on it.

**B. The County Democratic Central Committee Would Have Withdrawn Mr. Hall's Name Well Within the 15-Day Period But For Mr. Hall's Own Actions.**

It is undisputed that the County Democratic Central Committee submitted Mr. Hall's name to the Governor on November 7, 2012. Md. Const., Art. III, § 13(a)(1) provides that it is the "duty of the Governor to make said appointment within fifteen days after the submission thereof to him." Even if the Governor was legally obligated to appoint Mr. Hall—and he did not, for reasons stated in the Governor's Answer to the



Petition—the Governor certainly was not obligated to do so *prior* to expiration of that fifteen-day period.

It is clear that the County Democratic Central Committee would have withdrawn Mr. Hall's name on November 20, 2012—indisputably within the 15-day period—but for the filing of the suit in the Circuit Court and a motion for a temporary restraining order. The November 20 meeting was called in response to the Governor's request to withdraw Mr. Hall's name. Hours before the meeting, Mr. Hall filed his lawsuit and a motion for a temporary restraining order. When the Committee was informed of the filing, and of the fact that a show cause hearing was contemplated by the Circuit Court, the Committee decided to delay taking any action on the withdrawal of Mr. Hall's name pending a court hearing. Thus, but for the filing of the Circuit Court action, the Committee would have voted to withdraw Mr. Hall's name on November 20, 2012. It cannot be the case that the Committee would be faulted for failure to act on that evening when that failure resulted directly from Mr. Hall's own actions in filing the lawsuit and motion for TRO.

Accordingly, it will not be necessary for this Court to decide the issue of when the 15-day period expired. The name would have been withdrawn well within the 15-day period but for Mr. Hall's own actions. The Governor certainly could not then have been obligated to appoint Mr. Hall because the legal situation was as if Mr. Hall's name had, in effect, never been submitted to the Governor by the Committee in the first place. As the Attorney General correctly concluded, that left the Governor free to appoint whomever he chose, under Md. Const. Art. III, §13(a)(2).

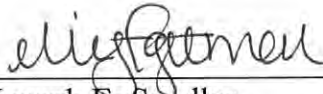
## **II. The Court Should Not Grant the Petition As to Question V.**

In support of the County Democratic Central Committee's Motion for Summary Judgment, the Committee submitted an affidavit of its chair, Terry Speigner. In full compliance with Md. Rule 2-501(c), Mr. Speigner's Affidavit stated that, "I am over the age of eighteen (18) years, competent to testify to the matters set forth herein and have personal knowledge of the following matters . . ." Further, the form of the oath used in the Affidavit was one of the forms set forth in Md. Rule 1-304. In any event, Mr. Hall's response to the County Democratic Central Committee's Motion for Summary Judgment failed to identify with particularity *any* material fact as to which Mr. Hall contended that there was a genuine dispute. Thus to the extent Mr. Hall believed that the Circuit Court should not have accepted any fact asserted in the Affidavit, he failed to comply with Md. Rule 2-501(b), and the Circuit Court certainly did not err in relying the Affidavit. For these reasons, the assertion that the Circuit Court should not have considered the Affidavit is frivolous and there is no reason for this Court to review Question V of the petition.

### **CONCLUSION**

For the reasons set forth above, the Court should grant Mr. Hall's petition for writ of certiorari, except as to Question V. For the reasons set forth in the Governor's separate Motion to Lift Stay, the Court should lift the stay entered on December 6, 2012. The County Democratic Central Committee agrees with the Governor that, if the stay is not lifted, the Court should set an expedited schedule for briefing and argument that will permit resolution of the case as soon as possible.

Respectfully submitted,



---

Joseph E. Sandler  
Elizabeth F. Getman  
SANDLER, REIFF, YOUNG & LAMB, P.C.  
1025 Vermont Ave., N.W. Suite 300  
Washington, D.C. 20005  
Telephone: (202) 479-1111  
Facsimile: (202) 479-1115  
[sandler@sandlerreiff.com](mailto:sandler@sandlerreiff.com)  
[getman@sandlerreiff.com](mailto:getman@sandlerreiff.com)

Dated: December 11, 2012

## CERTIFICATE OF SERVICE

I hereby certify that on December 11, 2012, I caused the foregoing Answer of Respondent Prince George's County Democratic Central Committee to Petition for Writ of Certiorari to be served by e-mail and first class mail upon:

Walter W. Green, Esq.  
Law Office of Walter W. Green  
7309 Baltimore Avenue, Suite 115  
College Park, MD 20740  
[WGreen@greenslaw.com](mailto:WGreen@greenslaw.com)

Irwin R. Kramer  
Kramer & Connolly  
465 Main Street  
Reisterstown, MD 21136  
[IRK@kramerslaw.com](mailto:IRK@kramerslaw.com)

Tiffany T. Alston  
10111 Cleary Lane  
Bowie, MD 20721  
[Tiffany@alstonlegal.com](mailto:Tiffany@alstonlegal.com)

Matthew J. Fader  
Assistant Attorney General  
200 St. Paul Place, 20th Floor  
Baltimore, MD 21202  
[mfader@oag.state.md.us](mailto:mfader@oag.state.md.us)

Raouf M. Abdullah  
Raouf M. Abdullah & Associates LLC  
14714 Main Street  
Upper Marlboro, MD 20772  
[rma.abdullahlaw@gmail.com](mailto:rma.abdullahlaw@gmail.com)

  
\_\_\_\_\_  
Elizabeth E. Getman