

**IN THE CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA
FIFTEENTH JUDICIAL CIRCUIT**

State of Alabama ex rel. Brooke Dorgan,)
 et al.,)
)
Plaintiffs,)
 v.)
)
 Thomas Tuberville, et al.,)
)
Defendants.)

**Civil Action No.
03-CV-2026-901053.00**

SECRETARY OF STATE WES ALLEN’S MOTION TO DISMISS

I. INTRODUCTION

Plaintiffs ask this Court to tread uncharted waters. So far as the Secretary of State can tell, the Supreme Court of Alabama has never held that a quo warranto action can (1) bypass the jurisdiction-stripping statute’s bar and thus affect an ongoing election cycle; (2) adjudicate the qualifications of a party’s *nominee*; or (3) permit naming third parties (like Secretary Allen) not identified by the quo warranto statutes (and then asserting collateral claims against them). But Plaintiffs did get one thing right: time is of the essence. The Secretary’s statutory deadline to certify candidates to the State’s probate judges so that they can begin designing, proofing, and printing ballots is August 26, 2026. *See* ALA. CODE §§ 17-9-3(b), 17-13-22 (requiring certification 69 days before the General Election). This Court should decline Plaintiffs’ invitation to extend quo warranto beyond its statutory bounds and promptly dismiss so that this lawsuit—and any appeals—do not interfere with the time-sensitive preparations for the November General Election. Accordingly, the Secretary moves to dismiss this action pursuant to Rules 12(b)(1) and 12(b)(6) of the Alabama Rules of Civil Procedure.

II. STANDARD OF REVIEW

The Secretary of State moves to dismiss under Rule 12(b)(1) for lack of subject-matter jurisdiction. In ruling on a motion to dismiss asserting a facial attack on subject-matter jurisdiction under Rule 12(b)(1), the Court accepts the allegations of the complaint as true. *Ex parte Ala. Dep't of Transp.*, 978 So. 2d 17, 21 (Ala. 2007). A factual attack, by contrast, addresses the underlying facts and may consider “evidence beyond the face of the complaint.” *Ex parte Safeway Ins. Co. of Ala., Inc.*, 990 So. 2d 344, 350 (Ala. 2008). Plaintiffs bear the burden to prove that jurisdiction exists. *Id.*

The Secretary also moves to dismiss under Rule 12(b)(6) for failure to state a claim upon which relief can be granted. A Rule 12(b)(6) motion “tests the sufficiency of the pleadings to determine if the plaintiff has stated a claim upon which relief can be granted, and in ruling on such a motion, the trial court’s examination is limited to the pleadings.” *Pub. Rels. Couns., Inc. v. City of Mobile*, 565 So. 2d 78, 81 (Ala. 1990). “In considering whether a complaint is sufficient to withstand a motion to dismiss under Rule 12(b)(6), Ala. R. Civ. P., a court ‘must accept the allegations of the complaint as true.’” *Crosslin v. Health Care Auth. of City of Huntsville*, 5 So. 3d 1193, 1195 (Ala. 2008) (quoting *Creola Land Dev., Inc. v. Bentbrooke Hous., L.L.C.*, 828 So. 2d 285, 288 (Ala. 2002)). “Factual allegations must be enough to raise a right to relief above the speculative level ... on the assumption that all the allegations in the complaint are true.” *Duran v. Buckner*, 157 So. 3d 956, 971 (Ala. Civ. App. 2014) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007)). But “conclusory allegations, unwarranted deductions of facts or legal conclusions masquerading as facts will not prevent dismissal.” *Ex parte Gilland*, 274 So. 3d 976, 985 n.3 (Ala. 2018) (quoting *Oxford Asset Mgmt., Ltd. v. Jaharis*, 297 F.3d 1182, 1188 (11th Cir. 2002)).

III. ARGUMENT

A. The jurisdiction-stripping statute bars judicial review of this suit seeking to affect the conduct and results of elections.

The Supreme Court of Alabama “has been unequivocal in stating that elections normally do not fall within the scope of judicial review.” *Crouch v. Howard*, 23 So. 3d 663 (Ala. 2009) (quoting *Sears v. Carson*, 551 So. 2d 1054, 1056 (Ala. 1989)). The Legislature made things even clearer by enacting a statute commonly known as “the jurisdiction-stripping statute.” ALA. CODE § 17-16-44. In full, the jurisdiction-stripping statute provides:

No jurisdiction exists in or shall be exercised by any judge or court to entertain *any* proceeding for ascertaining the legality, conduct, or results of any election, except so far as authority to do so shall be *pecially and specifically* enumerated and set down by statute; and any injunction, process, or order from any judge or court, whereby the results of any election are sought to be inquired into, questioned, or affected, or whereby any certificate of election is sought to be inquired into or questioned, save as may be specially and specifically enumerated and set down by statute, shall be null and void and shall not be enforced by any officer or obeyed by any person. If any judge or other officer hereafter undertakes to fine or in any wise deal with any person for disobeying any such prohibited injunction, process, or order, such attempt shall be null and void, and an appeal shall lie forthwith therefrom to the Supreme Court then sitting, or next to sit, without bond, and such proceedings shall be suspended by force of such appeal; and the notice to be given of such appeal shall be 14 days.

Id. (emphases added); *see also King v. Campbell*, 988 So. 2d 969, 977 (Ala. 2007).¹ “This section strictly limits the judiciary’s power to ‘affect’ the procedures by which Alabama’s public representatives are elected and limits the remedies for election irregularities to those remedies specifically authorized by the legislature.” *Ex parte Krages*, 689 So. 2d 799, 808 (Ala. 1997).

The Alabama Supreme Court has held that the jurisdiction-stripping statute applies to challenges concerning which candidates will appear on the ballot. *Rice v. Chapman*, 51 So. 3d 281 (Ala. 2010) (per curiam). In *Rice*, a voter and a Supreme Court candidate filed suit challenging a

¹ *Accord* ALA. CONST. art. IV, § 142(b) (“The circuit court shall exercise general jurisdiction in all cases except as may otherwise be provided by law....”).

competitor candidate's alleged failure to timely file required paperwork; the petitioners sought to have the challenged candidate's name removed from the primary ballot before the election or to have votes for him not counted. *Rice*, 51 So. 3d at 283. The Supreme Court rejected their claim, holding that the jurisdiction-stripping statute barred the suit because it sought to "impact the 'conduct' of the June 1, 2010, Republican primary election by having the court either remove the name of one of the candidates, Eric Johnston, from the ballot or instruct the Republican Party not to canvass votes cast for Johnston." *Id.* at 284-85.

The jurisdiction-stripping statute applies here because Plaintiffs' suit similarly affects the conduct and validity of elections. To proceed, they must thus show that their claims are "specially and specifically enumerated and set down by statute." ALA. CODE § 17-16-44. They cannot do so. Plaintiffs rely on general statutes whose "general language ... clearly cannot meet the requirement ... that a court's authority must be 'specially and specifically enumerated by statute.'" *Rice*, 51 So. 3d at 284-85. Just the opposite: the Legislature expressly disclaimed that a quo warranto proceeding could be used to challenge "[t]he validity of an election which may be contested under this Code." ALA. CODE § 6-6-598.² That Plaintiffs seek extraordinary relief does not entitle them to bypass the jurisdiction-stripping statute's bar. *See Rice*, 51 So. 3d at 282-85 (holding statute deprived circuit court of jurisdiction over "petition for a writ of prohibition, mandamus, certiorari, or other appropriate extraordinary relief"); *Harvey v. City of Oneonta*, 715 So. 2d 779, 780 (Ala. 1998) (holding that under jurisdiction-stripping statute "the circuit court did not have jurisdiction to entertain this action for declaratory or injunctive relief").

² Section 6-6-598 provides in full: "The validity of an election which may be contested under this Code cannot be tried under the provisions of this article."

Because Plaintiffs’ suit affects the conduct and results of elections and is not specifically authorized by any statute, the jurisdiction-stripping statute bars their claims. “A court without subject-matter jurisdiction ‘may take no action other than to exercise its power to dismiss the action.’” *Chapman v. Gooden*, 974 So. 2d 972, 984 (Ala. 2007) (quoting *State v. Prop. at 2018 Rainbow Drive*, 740 So. 2d 1025, 1029 (Ala. 1999)). “Any other action” would be “null and void.” *Id.*

The Secretary respectfully requests that the Court dismiss this action in its entirety on this threshold ground before entertaining discovery or any further proceedings. Doing so is in the interest of judicial economy and would preserve the resources of the Court and the parties because such further proceedings would ultimately prove void under the jurisdiction-stripping statute.

B. Quo warranto actions cannot be used to challenge a candidate’s qualifications—only those of public office holders.

A quo warranto action is not the proper vehicle to challenge a candidate’s qualification because a candidate does not hold a public office exercising the sovereign power of the State. “[Q]uo warranto is a statutory proceeding and to be maintained it must meet the requirements of the statute as to parties and procedure.” *State ex rel. Norrell v. Key*, 165 So. 2d 76, 77 (Ala. 1964). A quo warranto action may be brought in the name of the State “[w]hen any person usurps, intrudes into or unlawfully holds or exercises any public office, civil or military.” ALA. CODE § 6-6-591(a)(1). But it “cannot be brought against a party who does not come within the definition of a ‘public officer.’” *State ex rel. Burdette v. Coats*, 500 So. 2d 1, 2 (Ala. 1986).

The Supreme Court of Alabama defines “public office” as “the right, authority, and duty, created by law, by which . . . an individual is invested with some portion of the sovereign functions of the government, to be exercised by him for the benefit of the public.” *State ex rel. Gray v. King*, 395 So. 2d 6, 7 (Ala. 1981). “Constitutionally,” the Court explained, “the term ‘public office’

implies an authority to exercise some portion of the sovereign power, either by enacting, executing or administering the laws.” *Id.*

Here, Plaintiffs challenge Senator Tuberville’s qualifications to hold the office of Governor. But Senator Tuberville has not been elected Governor and does not exercise the sovereign functions of that office. To try to get around this bar, Plaintiffs contend that a party’s nominee is a “quasi-officer” subject to quo warranto. But a party’s nominee is a quasi-officer only *of the party*—not a public officer exercising sovereign authority. *Bridges v. McCorvey*, 49 So. 2d 546, 548 (Ala. 1950) (“A candidate seeking nomination of a party to run for a state or county office is a candidate for a *party office* and, when nominated, has a status as a quasi officer.” (emphasis added)). Therefore, Senator Tuberville is not even arguably usurping a *public* office and a quo warranto proceeding is not the appropriate means to challenge his qualifications.

While Plaintiffs contend that a party nominee’s “eligibility for office is subject to legal challenge under Alabama’s quo warranto statute,” Doc. 2 ¶ 16 & n.20, the cases they cite do not support that proposition. Those cases instead either make clear that they do not reach that issue or do not even involve quo warranto actions at all. *See State ex rel. Norrell v. Key*, 165 So. 2d 76, 78 (Ala. 1964) (“We make no decision whether quo warranto is an appropriate remedy to oust a nominee from that office.”); *King v. Campbell*, 988 So. 2d 969, 979-980 (Ala. 2007) (on appeal from declaratory-judgment action, recounting appellees’ arguments citing *Norrell* and rejecting party nominee’s argument that “quasi-officer” status—“useful in settings not involving vested rights to public offices of statutory creation”—prevented abolition of office); *Bridges*, 49 So. 2d at 548 (discussing quasi-officer issue, but not quo warranto); *Boyd v. Garrison*, 19 So. 2d 385, 387 (Ala. 1944) (same).

Despite Plaintiffs’ claims, they have cited no case (nor has the Secretary located one) in which the Supreme Court of Alabama held that a candidate for office—even if a “quasi officer”—is properly subject to quo warranto. *See Norrell*, 165 So. 2d at 78; *see also Johnson v. Roberson*, 682 So. 2d 58, 60 n.3 (Ala. 1996) (acknowledging *Norrell* did not reach issue and likewise declining to decide it). This Court should not break that new ground here.

C. The Secretary is not a proper party to this suit.

1. The Secretary cannot be named as a party to this action and both he and the collateral claims for relief against him must be dismissed.

Quo warranto proceedings are a creature of statute and must strictly comply with the statutory requirements “as to parties and procedure.” *Norrell*, 165 So. 2d at 77. As relevant here, a quo warranto action is “used to determine whether one is properly qualified and eligible to hold a public office.” *Turner v. Ivey*, 387 So. 3d 1088, 1094 (Ala. 2023) (internal quotations omitted).³ The scope of the action is limited to that narrow purpose; the *only* proper defendant to a quo warranto action challenging an officeholder’s right to hold a particular office is *that* officeholder. *Brannan v. Smith*, 784 So. 2d 293, 295-296 (Ala. 2000); *see also Ex parte Sierra Club*, 674 So. 2d 54, 58 (Ala. 1995). Because this suit does not challenge Wes Allen’s right to hold office as Secretary of State, he is an improper defendant and all claims against him must be dismissed.

Further supporting this conclusion, the quo warranto statutes strictly limit which parties may be joined to quo warranto proceedings—none of which would permit naming the Secretary as a defendant here. Those statutes permit joinder in only three circumstances. First, they require that when a relator sues on behalf of the State that “his name must be joined as plaintiff with the state.” ALA. CODE § 6-6-595. Second, they permit joining as a party the person asserting they are “rightly entitled to the office” the defendant occupies. ALA. CODE § 6-6-597. Last, for quo warranto

³ Other types of quo warranto actions exist—for example, those challenging the proper incorporation of an entity, ALA. CODE § 6-6-591(a)(3)—but are not at issue here.

actions involving entities alleged to be improperly incorporated, “the alleged corporation may be joined as a party defendant.” ALA. CODE § 6-6-594. These are the only provisions that speak to the propriety of the parties to a quo warranto.

Because no statute permits naming a third-party election official like the Secretary in a quo warranto action, Plaintiffs cannot do so here. *Norrell*, 165 So. 2d at 77; *see also Martin v. Martin*, 329 So. 3d 1242, 1245 (Ala. 2020) (“It is a well established principle of statutory interpretation that ‘[t]he expression of one thing implies the exclusion of others.’” (quoting Antonin Scalia & Bryan A. Garner, *READING LAW* 107-11 (2012)); *cf. Douglas v. Griggers*, 401 So. 3d 288, 291 (Ala. 2024) (holding that there are only two methods to commence a quo warranto action because the quo warranto statutes provided only those methods). This conclusion is a continuation of the common-law understanding that a quo warranto action is directed “against him who usurped an office.” *Douglas*, 401 So. 3d at 292 (citation omitted). The Secretary therefore must be dismissed from this suit. *Cf. Brannan*, 784 So. 2d at 295, 297 (affirming dismissal because, among other reasons, the defendant was “not a proper party” because “there [was] no allegation” that he was “usurping” a public office).

That Plaintiffs attempt to collaterally seek injunctive relief and a declaratory judgment against Secretary Allen in Count II changes nothing. If anything, Plaintiffs’ attempt to seek declaratory and injunctive relief in the name of the State—and against a State official like the Secretary no less—without any specific authority permitting them to do so is even more improper. In any event, this separate relief is barred by the jurisdiction-stripping statute as explained above. *See supra* § III.A. Additionally, courts lack jurisdiction to entertain proceedings challenging a candidate’s qualifications to appear on the general election ballot if the ground could be raised in

an election contest or if the challenger otherwise failed to exhaust remedies before the party. *See, e.g., Dunning v. Reynolds*, 570 So. 2d 668, 669 (Ala. 1990) (per curiam).

Moreover, “injunctive relief is a remedy, not a separate cause of action,” and thus provides no basis for the Secretary’s inclusion in this suit. *Ala. Med. Cannabis Comm’n v. Ala. Always, LLC*, Nos. CL-2024-0588 & -0616, --- So.3d ----, 2025 WL 728629, at *3 (Ala. Civ. App. Mar. 7, 2025). Plaintiffs thus “must prove a viable cause of action” supporting their request for injunctive relief and any lack of subject-matter jurisdiction over those underlying claims likewise dooms the injunction. *Id.* To the extent Plaintiffs purport to bring a standalone claim for injunctive relief it thus fails for these reasons; and to the extent they premise their relief on the underlying quo warranto action, it fails for all the reasons given above.

Plaintiffs’ request for declaratory relief fares no better. In addition to the reasons explained above, where a quo warranto action properly lies, a declaratory judgment action will not—it is “not justiciable.” *Hudson v. Ivey*, 383 So. 3d 636, 641 (Ala. 2023). That makes Plaintiffs’ claims particularly self-defeating in that they incorporate their quo warranto claim into their declaratory judgment claim. Doc. 2 ¶ 89 (“Plaintiffs repeat and re-allege the foregoing paragraphs as if fully set out herein.”).

To be sure, collateral relief may at times be appropriate in the context of a quo warranto, but it must be directed at the challenged officeholder. *See Hudson*, 383 So. 3d at 643. Bringing a quo warranto action would thus, for example, allow a court to adjudicate the constitutionality of a challenged statute or the legality of the appointment of the challenged officeholder. *Id.* Similarly, appropriate injunctive relief could issue to restrain the challenged officeholder from exercising the powers and authority of the office at issue. *See Tyson v. Jones*, 60 So. 3d 831, 834 & n.6 (Ala. 2010). But quo warranto actions are not “a valid procedural device” to merely challenge actions

taken by one whose right to hold office is not at issue. *Brannan*, 784 So. 2d at 296. And Plaintiffs cite no case—nor has the undersigned located any—holding that either collateral claims or relief in a quo warranto proceeding could properly be sought as to some third party.

The Secretary is not a proper party to this suit and the claims against him must be dismissed.

2. Plaintiffs lack standing to sue the Secretary; any alleged injuries are not traceable to his actions and he has no authority to implement the relief they seek.

Even assuming Plaintiffs have suffered some cognizable injury, they cannot establish standing because the Secretary did not cause and cannot redress it. Lack of standing is a “jurisdictional defect.” *Prop. at 2018 Rainbow Drive*, 740 So. 2d at 1028 (citation omitted). The test from *Lujan v. Defenders of Wildlife*, 504 U.S. 555 (1992), is “the means of determining standing in Alabama.” *Ex parte Aull*, 149 So. 3d 582, 592 (Ala. 2014). Under *Lujan*, a plaintiff must establish three elements to prove standing: (1) injury in fact, (2) traceability, and (3) redressability. 504 U.S. at 560-61 (1992).

For purposes of traceability and redressability, plaintiffs must demonstrate “a causal connection between [their] injury and the challenged action of the defendant.” *Lewis v. Governor of Ala.*, 944 F.3d 1287, 1296 (11th Cir. 2019) (en banc) (internal quotations marks and citation omitted); accord *Town of Mountainboro v. Griffin*, 26 So. 3d 407, 411-12 (Ala. 2009) (“The absence of adversary or *the correct adversary parties* is in principle fatal’ to justiciability and thus to subject-matter jurisdiction.” (quoting *Ex parte State ex rel. James*, 711 So. 2d 952, 960 (Ala. 1998) (alterations adopted)). Plaintiffs must also prove that it is “likely, as opposed to merely speculative” that the alleged injuries would “be redressed by a favorable decision” against the defendant. *Ex parte Ala. Educ. Television Comm’n*, 151 So. 3d at 287 (citing *Lujan*, 504 U.S. at 56-61) (internal quotations marks omitted). In other words, the relief sought from the defendant must actually remedy the injury suffered. *See id.* at 289 (citing *Steel Co. v. Citizens for a Better*

Env't, 523 U.S. 83, 106 (1998)). Ultimately, “it must be *the effect of the court’s judgment on the defendant*—not an absent third party—that redresses the plaintiff’s injury, whether directly or indirectly.” *Lewis*, 944 F.3d at 1301 (internal quotations marks and citation omitted).

Here, ordering the Secretary to refrain from “directing or ordering Tuberville’s name to be printed on the general election ballot,” Doc. 2 ¶ 93, would not provide Plaintiffs with any relief because the Secretary lacks that authority. The Secretary has no oversight authority over probate judges (who are separately elected) or the ballot-printing process; he merely certifies to them “the fact of nomination” of a candidate by a political party. *See* ALA. CODE § 17-9-3(b). Alabama law provides that each county’s “judge of probate shall then prepare the ballot with the names of each candidate qualified under this section printed on the ballot.” *Id.* In short, the Secretary’s mechanical certification does not give him oversight authority over probate judges, ballot printing, or otherwise make him a proper party for the relief that Plaintiffs seek.

Additionally, although Plaintiffs do not appear to contend that the Secretary should himself have adjudicated the candidate qualification issue presented here, any such claim would likewise fail if they did. Alabama law “does not require the Secretary of State to determine whether each nominee meets all the qualifications for his or her particular office.” Op. to Hon. Jim Bennett, Ala. Att’y Gen. Op. 1998-0200. The Secretary’s office is “a nonjudicial office without subpoena power or investigative authority or the personnel necessary to undertake a duty to investigate a nonresident candidate’s qualifications, even if such a duty could properly be implied.” *McInnish v. Bennett*, 150 So. 3d 1045, 1048 (2014) (Bolin, J., concurring). When a dispute about a candidate arises, the Secretary has no duty to investigate a candidate’s qualifications.⁴ Here, such disputes

⁴ To the extent the candidate provides official notice to the Secretary of his own ineligibility, the Secretary may refuse to certify that candidate. *See, e.g., Bahakel v. Allen*, 2:23-cv-01652-AMM (N.D. Ala.) (ECF No. 35). Those narrow circumstances are not presented here.

must be adjudicated through election contests heard by a political party, a court, or the Legislature itself in a contest involving certain officers such as the Governor.⁵ The Secretary neither certified Senator Tuberville as the Republican Party’s gubernatorial nominee nor can he undo the “fact of [that] nomination” as presented here.

Plaintiffs would need to enjoin either the Republican Party to undo “the fact of nomination” or every probate judge in the State to stop ballot printing (if not both), but the Secretary cannot give Plaintiffs the relief they seek. As a result, they lack standing against the Secretary and this Court must dismiss all claims against him for lack of subject-matter jurisdiction.

D. Plaintiffs cannot show that they meet the requirements for equitable relief.

In addition to success on the merits, a party seeking preliminary or permanent injunctive relief must also show “that without the injunction the plaintiff will suffer immediate and irreparable injury;” “that the plaintiff has no adequate remedy at law;” and “that the hardship imposed upon the defendant by the injunction would not unreasonably outweigh the benefit to the plaintiff.” *White v. John*, 164 So. 3d 1106, 1116-17 (Ala. 2014). Plaintiffs cannot do so here.

1. Plaintiffs have not suffered any irreparable harm and have an adequate remedy at law because other means exist to challenge a candidate’s qualifications.

That Plaintiffs cannot maintain *this* challenge does not mean that the law does not provide them other options. As a result, they are neither irreparably harmed nor lacking for adequate alternative remedies. While “[o]ne potential adequate remedy at law is an award of money damages,” money damages are not the only alternative. *Teleprompter of Mobile, Inc. v. Bayou Cable TV*, 428 So. 2d 17, 20 (Ala. 1983). Indeed, any available remedy—including other

⁵ See ALA. CONST. art. V, § 115 (“Contested elections for governor ... shall be determined by both houses of the legislature in such manner as may be prescribed by law.”); ALA. CODE § 17-16-65 (“The two houses of the Legislature, in joint convention assembled, and presided over by the Speaker of the House of Representatives, shall constitute the tribunal for the trial of all contests for the office of Governor”).

proceedings—that could cure the injury complained of is adequate. *See, e.g., Selma Air Ctr., Inc. v. Craig Field Airport & Indus. Auth.*, 210 So. 3d 1140, 1142 (Ala. Civ. App. 2016) (finding that landlords had an adequate remedy based on availability of common-law ejectment actions, statutory ejectment actions, and unlawful-detainer proceedings). Here, at least two alternatives are plain, and either one forecloses the unprecedented equitable relief Plaintiffs seek here.

First, if Plaintiffs voted in the Republican Primary Election and were actually injured by Senator Tuberville’s status as the Republican gubernatorial *nominee*, then they should have filed a timely election contest after the Primary Election. *See* ALA. CODE § 17-13-71 (establishing the grounds for “contests of nomination” by qualified electors as including “[w]hen a person whose nomination is contested was not eligible to the office sought at the time of the declaration of nomination”); *see also Talton v. Dickinson*, 72 So. 2d 723, 725 (Ala. 1954) (“The ineligibility of a person for the office sought at the time of the declaration of nomination is a ground of statutory contest.”). Plaintiffs provide no explanation for declining to take this option. Indeed, they acknowledge that one of Senator Tuberville’s opponents initiated such a challenge. Doc. 2 ¶ 80. Their after-the-fact opinion that those proceedings did not turn out the way they prefer (*id.*) does not excuse their failure to take advantage of that sole statutory means for challenging the qualifications of a party’s *nominee*. Having sat on their rights, Plaintiffs are not entitled to the extraordinary and unprecedented relief they seek here to disqualify a party’s nominee by means other than a statutory election contest after a primary election.⁶

⁶ The delay itself also counsels against any finding of irreparable injury. *Accord Wreal, LLC v. Amazon.com, Inc.*, 840 F.3d 1244, 1248 (11th Cir. 2016) (“[F]ailure to act with speed or urgency in moving for a preliminary injunction necessarily undermines a finding of irreparable harm.”)

Second, if Plaintiffs simply don't want Senator Tuberville to become Governor, then they should file a proper election contest in the correct forum after the General Election if he is declared the winner of that election. ALA. CODE § 17-16-40 (“The election of any person declared elected to the office of Governor ... may be contested [w]hen the person whose election to office is contested was not eligible thereto at the time of such election.”). Plaintiffs do not explain why the availability of that remedy after the General Election would be insufficient.

Plaintiffs characterize *Talton* as standing for the proposition that a “quo warranto action is the exclusive remedy to contest a candidate’s eligibility for office,” Doc. 2 ¶ 85, but misunderstand *Talton*’s holding. The challengers in *Talton* contended that a candidate was too old to hold the office of county superintendent of education. The Supreme Court of Alabama noted that “[t]he ineligibility of a person for the office sought at the time of the declaration of nomination is a ground of statutory contest,” but “[s]uch action, however, was not taken in the case at bar.” 72 So. 2d at 725. Instead, the plaintiffs filed a declaratory judgment action in between the dates of the Primary and General Elections. *Id.* But the declaratory judgment proceeding was improper because “[t]he defendant in the proceeding ... was only a party nominee to the office, had not been elected and might never have been elected in so far as the present proceedings are concerned.” *Id.* Thus, the plaintiffs “show[ed] absolutely no right to have the court adjudicate on the question.” *Id.*

Talton then considered whether the superintendent, if qualified to begin his term, may “on account of age, be ineligible to serve his full term.” *Id.* at 726. The court again emphasized that a declaratory judgment action was improper but noted that in that case, where the superintendent would in fact have assumed a “public office,” quo warranto would lie: “[W]e entertain the view that a proceeding in quo warranto is the exclusive remedy to determine whether or not a party is usurping a public office.” *Id.* (internal citation omitted). Read with necessary context, it is plain

that the *Talton* court was not speaking of candidates at all when discussing the viability of a quo warranto action. To the contrary, it reaffirmed that election contests are the proper vehicle for challenging “[t]he ineligibility of a person for the office sought at the time of the declaration of nomination.” *Id.* at 725.

2. *The equities weigh heavily against Plaintiffs’ requests for mid-election relief.*

Injunctive relief at this point would upend the status quo, irreparably injure the State, and the public interest weighs strongly against it.

Plaintiffs’ requested relief would threaten significant voter confusion and jeopardize the State’s ability to meet statutory deadlines for the General Election. For statewide candidates, the Secretary must certify the fact of a candidate’s nomination to all probate judges in the State no later than 69 days before the General Election—here, August 26, 2026. ALA. CODE §§ 17-9-3(b), 17-13-22. This deadline cannot be moved; probate judges must design, proof, and print the numerous ballot styles to be used in the General Election so as to have them completed and delivered when absentee voting begins on September 9, 2026.

That leaves just two months to litigate this action start to finish, both in this Court and for any appellate proceedings that may follow. And while disruptive enough on its face, imagine the problems and confusion that would ensue if this Court granted Plaintiffs’ requested relief and then that decision was reversed on appeal. The financial and administrative toll on the State and the confusion inflicted upon voters weigh strongly against Plaintiffs. By contrast, Plaintiffs let pass their opportunity to initiate an election contest after the Primary Election and may still yet initiate an election contest after the General Election—they face no harm.

Moreover, courts must avoid changing the rules of the election so late in the game because it will risk disruption and voter confusion. *See Ex parte Merrill*, 265 So. 3d 855, 859 (Ala. 2018) (noting that the Supreme Court of Alabama stayed an injunction entered on the eve of an election);

Purcell v. Gonzalez, 549 U.S. 1 (2006) (holding that lower federal courts should not ordinarily alter the election rules on the eve of an election); *Allen v. Milligan*, 146 S. Ct. 1377, 1381 (2026) (holding district court erred by “interpos[ing] itself into Alabama’s ongoing efforts to conduct its imminent 2026 congressional elections). Because Plaintiffs cannot show that the equities weigh in favor of an injunction even on the face of their complaint, their motion should be denied.

IV. CONCLUSION

This Court should quickly dismiss on the threshold issue that the jurisdiction-stripping statute denies it jurisdiction to proceed. In the alternative, for all the reasons discussed above, Plaintiffs’ claims are due to be dismissed in their entirety or, at the very least, as to the Secretary.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on June 22, 2026, I electronically filed the foregoing with the Court using AlaFile, which will send notification of such filing to all counsel of record.

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