

No. SC-2026-0540

IN THE SUPREME COURT OF ALABAMA

STATE OF ALABAMA EX REL. BROOK LYNN DORGAN, et al.,
Plaintiffs-Appellants,

v.

THOMAS H. TUBERVILLE,
Defendant-Appellee.

On Appeal from the Circuit Court of Montgomery County
(03-CV-2026-901053)

**BRIEF OF ATTORNEY GENERAL STEVE MARSHALL
AS *AMICUS CURIAE* IN SUPPORT OF APPELLEE**

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STATEMENT REGARDING ORAL ARGUMENT

Oral argument is not needed in this case because the facts and legal arguments are adequately presented in the briefs. *See* Ala. R. App. P. 34(a)(3).

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INTEREST OF *AMICUS CURIAE*

Confining the writ of quo warranto to its proper scope is of paramount importance to the Attorney General. He is “the chief law officer of the state,” after all, “and on him are conferred various authorities and duties in connection with instituting and prosecuting, in the name of the state, suits and other proceedings at law and in equity for the preservation and protection of the rights and interests of the state.” *State ex rel. Carmichael v. Jones*, 252 Ala. 479, 484 (1949). “All litigation concerning the interest of the state”—including proceedings in quo warranto—is “under the direction and control of the Attorney General.” Ala. Code § 36-15-21.

The Attorney General himself may bring an action in quo warranto, of course. But by statute, so can other individuals in certain circumstances. First, a district attorney may do so at the direction of a circuit judge who “believes” there is cause to bring the action “and it is necessary for the public good.” Ala. Code § 6-6-591(b). And second, “an action may be commenced without the direction of the judge in the information of any person giving security for the costs of the action.” *Id.* Because these latter actions are brought in the name of the State by private entities in

derogation of the common law, the Attorney General has a strong interest in ensuring that such litigation remains limited to its narrow bounds. That is especially true where, as here, the Attorney General has not superintended or taken over the litigation.

The Attorney General thus respectfully submits this brief as an *amicus curiae* to explain why the Relators’ use of the writ of quo warranto is improper. As explained more below, and contrary to Relators’ attempt, the writ is not meant to arrest the State’s elections process for judicial review of a gubernatorial nominee’s eligibility to *become* a public officer. A political party’s nominee is by definition a participant in an election, and “[e]lections belong to the political branch of the government”—not the judiciary. *Longshore v. City of Homewood*, 171 So. 2d 453, 455 (Ala. 1965). Nor should private actors get a veto on Alabama’s carefully ordered system of election administration, particularly in the middle of an election. *See Purcell v. Gonzalez*, 549 U.S. 1, 4-5 (2006); *see also, e.g., Allen v. Milligan*, 146 S. Ct. 1377 (2026) (staying injunction where election machinery was already in motion); *Ex parte Merrill*, 264 So. 3d 855, 859 (Ala. 2018) (same).

Election litigation uniquely affects State officials, who are often defendants—and often represented by the Attorney General—or will otherwise be affected. The underlying dispute in this case, for instance, has already created litigation in multiple forums, several of which have involved the Secretary of State (represented by the Attorney General).¹ While defending that litigation is crucial to keeping the upcoming election on track so that *voters* may choose between the nominees the political parties put forward, it depletes State resources that would have otherwise been used elsewhere to conduct the election. Thus, instead of honoring Alabama’s election contest framework, which funnels such disputes to a single forum *after* the election concludes,² Relators’ actions—ostensibly brought in the name of the State—*harm* the State’s interest by departing from the narrow statutory provision for privately brought quo warranto proceedings.

¹ See *McFeeters v. Tuberville, et al.*, 01-CV-2026-903312 (Jefferson Cnty. Cir. Ct. filed July 7, 2026); *McFeeters v. Tuberville, et al.*, No. 23-CV-2026-900042 (Covington Cnty. Cir. Ct. filed Mar. 24, 2026); *McFeeters v. Stadthagen, et al.*, 2:26-cv-1423-EGL (N.D. Ala. filed August 13, 2026); C.64-70 (Final Decision, *McFeeters v. Tuberville* (Ala. Republican Party, June 14, 2026)).

² See Ala. Const. art. V, § 115; Ala. Code § 17-16-40 *et seq.*

SUMMARY OF THE ARGUMENT

Those dissatisfied with elections cannot bring any kind of litigation they like in any forum they like at any time they like. Such proceedings are instead strictly limited both as a matter of jurisdiction and public policy. Because those limits apply here, the Circuit Court correctly dismissed this suit for lack of jurisdiction.

First, quo warranto actions do not lie against party nominees because they are not public officers. Quo warranto is a statutory proceeding that permits litigants to bring an action in the name of the State only in certain enumerated “cases”—as relevant here, when a public officer occupies his position unlawfully. *See* Ala. Code § 6-6-591(a)(1). So if the position at issue is “not a public office ..., then the court never acquire[s] jurisdiction of the subject-matter.” *State v. Roberts*, 83 So. 49, 50 (Ala. 1919). That is the case here. Senator Tuberville is, as far as this case is concerned, simply the Republican Party’s nominee for governor and is not a public officer himself; he thus acts with no sovereign authority and owes no duty to the public as a nominee. An action in quo warranto does not lie against him.

Next, the jurisdiction-stripping statute (Ala. Code § 17-16-44) bars Relators’ unauthorized suit seeking to affect the conduct and results of elections. That statute deprives courts of jurisdiction “to entertain any proceeding for ascertaining the legality, conduct, or results of any election, except so far as authority to do so shall be specially and specifically enumerated and set down by statute.” Under straightforward application of this Court’s precedents, this lawsuit affects both the Republican Party’s 2026 Primary Election as well as the forthcoming General Election. The quo warranto statutes do not provide “special and specific” authority for courts to interject themselves into those elections. The statute itself makes that clear, expressly providing that “[t]he validity of an election which may be contested under this Code cannot be tried under the provisions of” the quo warranto article. Ala. Code § 6-6-598.

Last, Relators bring a political question to this Court to resolve. But Section 115 of the Alabama Constitution provides that gubernatorial election contests must be resolved elsewhere: “Contested elections for governor ... shall be determined by both houses of the legislature in such manner as may be prescribed by law.” Courts have a vitally important role to play in many election disputes, but not this one.

If Tuberville wins the upcoming general election, Relators will have their opportunity to litigate his eligibility for that position at the proper place and time. But like every other “qualified elector,” Relators must wait their turn. *See* Ala. Code § 17-13-70. If they do not, the State will likely face further suit—both during this election cycle and in future cycles—from other sore-loser plaintiffs who similarly adapt quo warranto proceedings to their political ends. That does not serve “the public good” that the writ is meant to further. *Rouse v. Wiley*, 440 So. 2d 1023, 1025 (Ala. 1983). The Court should affirm.

ARGUMENT

I. The Writ Of Quo Warranto Does Not Lie Against Party Nominees Because They Are Not Public Officers.

The trial court correctly determined that the writ of quo warranto does not lie against a political party’s “certified nominee” and that it therefore lacked jurisdiction over this action. C.149.³

³ Relators’ voluntary dismissal of their declaratory-judgment claims forecloses their invocation of those claims on appeal. *Contra* Br.iii, 1, 19. Relators voluntarily dismissed the Secretary of State—against whom they initially sought declaratory relief, C.107—and conceded at the hearing below that the dismissal “leaves [Relators] only with a quo warranto” claim, R.45:24-46:1.

1. “In this state quo 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). By statute, a private entity may bring an action in quo warranto only for certain categories of “cases.” *See* Ala. Code § 6-6-591(a). Relators claim their challenge fits within the first category: “When any person usurps, intrudes into or unlawfully holds or exercises any public office, civil or military....” Ala. Code § 6-6-591(a)(1) (emphasis added); *see* Br.41-42. For that kind of quo warranto action to “be brought,” it must target a party that “come[s] within the definition of a ‘public officer.’” *State ex rel. Burdette v. Coats*, 500 So. 2d 1, 2 (Ala. 1986). This requirement is jurisdictional. If the position at issue is “not a public office ..., then the court never acquire[s] jurisdiction of the subject-matter.” *State v. Roberts*, 83 So. 49, 50 (Ala. 1919).⁴

⁴ Relators’ drive-by argument that jurisdiction is proper because the writ may “literally be used against someone cutting hair without a license” thus misses the point. Br.41. While the statute specifically authorizes a quo warranto action when someone unlawfully engages in “any profession requiring a license,” Ala. Code § 6-6-591(a)(1), that language simply *confirms* that a plaintiff or relator must find a specific, statutorily provided avenue for their claim. Relators have not done so here.

Relators’ theory of the case thus depends on their named defendant—Tuberville—being a “public officer” within the meaning of the quo warranto statute. But a political party’s nominee for governor—which is all Tuberville is for purposes of this case—is not a “public officer.” A public officer is someone “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,” he has “some portion of the sovereign power” in that he may “enact, execute, or administer the laws.” *Id.* (cleaned up). A nominee has no such power. Unless and until he is elected, he cannot perform the sovereign functions of the government and bears no duty to the public. Relators’ claim thus fails at the outset.

Relators argue that their suit may nonetheless proceed because (they say) a political party’s nominee is a “quasi-officer,” which they reason is good enough for quo warranto work. Br.38-44. But a political party’s nominee is not even a “quasi” *public* officer but—at most—a “quasi” *party* officer. *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)). The nominee’s authority, duties, and status derive *from the party*, not the public. See *Ala. Republican Party v. McGinley*, 893 So. 2d 337, 346-47 (Ala. 2004) (discussing the near-“plenary power” political parties have over their nominees).

A role defined by party governance and subordinate to party control is not a public office. So the quo warranto statute, limited by its terms to public officers, does not extend to such party positions. Because the statute does not mention *party* offices—and Relators limit their challenge to usurping *public* office—the alleged usurpation lies outside the statute.

The common law underscores this conclusion. The quo warranto statute “take[s] the place of the common law remedy.” *Douglas v. Griggers*, 401 So. 3d 288, 296 (Ala. 2024) (quoting *State ex rel. Fitts v. Elliott*, 23 So. 43, 43 (Ala. 1898)). But the statute is “modeled on” that remedy, *Birmingham Bar Ass’n v. Phillips & Marsh*, 196 So. 725, 732 (Ala. 1940), and thus “should be construed” in light of it, *Dennis v. State*, 111 So. 2d 21, 24 (Ala. Ct. App. 1959). “Statutes in derogation or modification of the common law are presumed not to alter the common law in any way not expressly declared.” *Ex parte Christopher*, 145 So. 3d 60, 65 (Ala. 2013) (cleaned up). And in fact, the Court derived from the common

law its definition for the statutory term “public office.” *See King*, 395 So. 2d at 7 (citing *Lacy v. State*, 68 So. 706, 710 (Ala. Ct. App. 1915), which, in turn, quoted from “Mechem on Public Officers, § 1”).

There appears to be “no precedent” suggesting that party nominees were subject to quo warranto at common law. *Burkett ex rel. Leach v. Ulmer*, 15 A.2d 858, 860 (Me. 1940). By contrast, “[a]uthorities from other jurisdictions are so nearly uniform” in holding that quo warranto is unavailable against party nominees that “it would be mere redundancy to cite them all.” *State v. Carrington*, 190 N.W. 390, 391 (Iowa 1922) (collecting cases). The only cases holding otherwise that the Attorney General has found involve application of specific statutes—not the common law—with no counterpart in Alabama. *E.g.*, *State v. Fernandez*, 143 So. 638, 640-41 (Fla. 1932) (applying state law providing that “all contests over the results of primary elections shall be determined in the same manner as like contests over the results of general elections”); *Jarman v. Mason*, 229 P. 459, 462 (Okla. 1924) (same).

Alabama’s quo warranto statute does not express a departure from the common law understanding in this regard. Just the opposite: It *reinforces* that understanding by expressly including the “public office”

limitation. The principle that party nominees are not subject to quo warranto therefore “prevails.” *Cook v. Meyer*, 73 Ala. 580, 583 (1883); *cf. State ex rel. Reeder v. Danielson*, 328 P.2d 868 (Or. 1958) (en banc) (citing 74 C.J.S. Quo Warranto p. 190, § 8 and 29 C.J.S. Elections p. 176, § 120 and holding—under a similar quo warranto statute with the same “public office” limitation—that “which of two candidates for public office” is “entitled to [be the] nominee at the general election” “is not a proceeding in the nature of quo warranto”).

2. None of the cases Relators cite are to the contrary. They instead either reserve answering whether a quasi officer is subject to quo warranto or do not involve quo warranto actions at all. *See State ex rel. Norrell*, 165 So. 2d at 78 (“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); *Johnson v. Roberson*, 682 So. 2d 58, 60 n.3 (Ala. 1996) (recounting the question in *Norrell* and concluding that

“we do not decide it either”);⁵ *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).

Relators additionally mistake *Talton v. Dickinson*, 72 So. 2d 723 (Ala. 1954), as “clearly stand[ing] for the proposition that quo warranto is available to challenge the eligibility of a party nominee,” Br.39. But that is not at all what *Talton* stands for. The challengers there alleged that a party nominee was too old to hold the office of county superintendent of education. This Court 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 that “[s]uch action” “was not taken in the case at bar.” 72 So. 2d at 725. Instead, the plaintiffs sued under the Declaratory Judgment Act between the primary and general elections. *Id.* “Pretermitt[ing] the question as to whether or not the remedy of statutory contest [was] the proper and exclusive remedy,” the Court held that declaratory judgment was improper regardless because the “[t]he defendant ...

⁵ Although *Johnson* suggested that “a safe practice” for future litigants might be to bring both a quo warranto proceeding and some other form of proceeding simultaneously, that recognizes only that the question would then be preserved and presented for decision—not that quo warranto was available, which the Court expressly did not decide.

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 Court held, the plaintiffs “show[ed] absolutely no right to have the court adjudicate” whether the defendant was ineligible to hold office. *Id.*

The Court 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. This Court again emphasized that a declaratory judgment would be improper (“[t]he proceeding is not available to adjudicate anticipatory rights”) and noted that only after the superintendent assumed “public office” (and aged) would a writ of quo warranto become “the exclusive remedy to determine whether or not a party is usurping a public office.” *Id.* (internal citation omitted). Contra Relators, the *Talton* Court was not speaking of party *nominees* when it discussed the viability of a quo warranto action.

* * *

Given its plain language and common-law heritage, the quo warranto statute does not recognize a party nominee as a public officer against whom a quo warranto action may proceed. Because Relators thus

failed to satisfy “a condition on which the right to proceed in the name of the State is given,” *State ex rel. Radcliff v. Lauten*, 56 So. 2d 106, 107 (Ala. 1952), they “usurp[ed] the authority of the State” and the Circuit Court was required to dismiss, *Brannan v. Smith*, 784 So. 2d 293, 297 (Ala. 2000) (quotation omitted). The Court should affirm on that basis.

II. The Jurisdiction-Stripping Statute Bars This Unauthorized Suit Seeking To Affect The “Results” And “Conduct” Of Elections.

Affirmance is necessary for another reason. The jurisdiction-stripping statute—Alabama Code § 17-6-44—bars courts from exercising jurisdiction over challenges to candidate qualifications at this stage of the election cycle. It thus bars this case, which is (1) a belated challenge to the results of the May 26, 2026 Republican Primary Election for governor that, (2) if successful, will impact the conduct of the upcoming November 3, 2026 General Election. For either or both of those reasons, the jurisdiction-stripping statute provides another ground to affirm the Circuit Court’s dismissal.

This Court “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) (per curiam)); *see also Longshore*, 171 So. 2d at 455 (“Elections belong to the political branch of the government, and, in absence of special constitutional or statutory provisions, are beyond the control of judicial power.” (internal citations and quotation marks omitted)); *Ex parte State ex rel. Tucker*, 181 So. 761, 762 (Ala. 1938) (per curiam) (“An election is a political matter, with which courts of equity have nothing to do. Moreover, the effect of interference in such matters might often result in the destruction of the government.” (quoting 4 Pomeroy’s Equity Jurisprudence, 4th Ed, p. 4067))).

The Legislature codified this policy in Alabama Code § 17-16-44, commonly known as “the jurisdiction-stripping statute.” It 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 specially 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).⁶

This provision “severely restricts a court’s jurisdiction to hear actions challenging the conduct or results of elections,” *Rice v. Chapman*, 51 So. 3d 281 (Ala. 2010) (per curiam), and “strictly limits the judiciary’s power to ‘affect’ the procedures by which Alabama’s public representatives are elected,” *Ex parte Krages*, 689 So. 2d 799, 808 (Ala. 1997) (per curiam) (plurality). Even for challenges involving “election irregularities,” it generally allows only “those remedies specifically authorized by the legislature.” *Id.*

At root, this case presents no more than a run-of-the-mill challenge to candidate qualifications. The relief sought would affect the results of the primary and the conduct of the general, yet Relators provide no “specially and specifically enumerated” authority to maintain it. The jurisdiction-stripping statute thus bars it.

⁶ *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....”); *King v. Campbell*, 988 So. 2d 969, 977 (Ala. 2007) (recognizing that “[t]he Legislature has restricted the jurisdiction of the circuit courts by enacting § 17-16-44”).

A. Relators’ action seeks to affect the “results” of the primary election and the “conduct” of the general election.

This Court’s precedent makes clear that this lawsuit is a prohibited attack on the result of the Republican Party’s 2026 Primary Election and an unauthorized attempt to impact the upcoming General Election.

1. Start with the primary. In *Roper v. Rhodes*, this Court recognized that a pre-general election challenge alleging that a candidate was ineligible to run in the primary and primary runoff is a contest of those elections. 988 So. 2d 471, 477 (Ala. 2008). In that case, the Ropers sued the winner of a primary runoff election—Rhodes—before the general election took place. The Ropers argued that Rhodes was ineligible for office because he had failed to file appropriate paperwork under the Fair Campaign Practices Act (FCPA) that was due before the primary and primary runoff. They sought his removal from the general election ballot for that reason. 988 So. 2d at 472-73. To avoid the jurisdiction-stripping statute, the Ropers framed their case as about enforcing a statutory requirement under the FCPA rather than an election contest. *Id.* at 475.

This Court rejected the Ropers’ framing, recognizing instead that the case was necessarily “an attempt to contest the primary and primary

runoff elections.” *Id.* at 477. The Ropers’ “allegations necessarily le[d] to the conclusion that if Rhodes” violated “the FCPA before” the primary elections then “he was ineligible to participate in” those elections. *Id.* If the Ropers “prevailed” in removing Rhodes from “the general election ballot,” the Court reasoned, “the results of the primary and runoff elections would be affected—indeed they would be negated.” *Id.* The Court thus held that the jurisdiction-stripping statute barred the suit. *Id.* at 477-78.

The same result follows here. Relators frame this case as enforcing constitutional residency requirements for governor against Tuberville. *See, e.g.,* Br.24, 33-35. But Relators allege that Tuberville has long been ineligible to run for governor this year, including before the primary; as in *Roper*, nothing pertinent has changed since that election. Br.19 (asserting Tuberville “hasn’t lived here for the past seven years”). If true, Relators’ allegations would “necessarily lead to the conclusion that” Tuberville was “ineligible to participate in” the primary election that he won. *Roper*, 988 So. 2d at 477. And if Relators “prevail” in having Tuberville “removed from the general election ballot,” the “results of” the May Primary Election “would be negated.” *Id.* That makes this a challenge to

the results of a primary election masquerading as a quo warranto action. The jurisdiction-stripping statute prohibits that.

2. Relators' claim would also affect the "conduct" of the upcoming general election. Ala. Code § 17-16-44. The Court's decision in *Rice v. Chapman*, 51 So. 3d 281 (Ala. 2010), is on point. There, a voter and an incumbent Supreme Court candidate challenged another candidate's eligibility for office because (they alleged) he failed to file his required paperwork timely. On that basis, they sought to have the candidate's name removed from the primary ballot before the election or, alternatively, to have votes for him not counted. *Id.* at 284. This Court rejected their claim, holding that either form of requested relief would "impact the 'conduct' of" the upcoming election, thereby triggering the jurisdiction-stripping statute. *Id.* at 284

The same is true here. As in *Rice*, Relators seek "to impact the 'conduct' of" the general election "by having the court ... remove the name of one of the candidates ... from the ballot" because of his purported ineligibility for office. *Id.*⁷ That triggers the jurisdiction-stripping statute. *Id.*

⁷ Relators' request for last-minute equitable relief fails for practical reasons as well. Under Alabama law, it is simply too late to remove

3. Relators’ arguments to the contrary rely on inapposite precedent. For example, this Court has found jurisdiction where the question presented concerned whether an election was authorized *at all*—a very different claim than the one Relators bring here.⁸ That distinction forecloses Relators’ reliance on *Dennis v. Prather*, which considered whether Russell County faced a statutory bar to hold an election. 103 So. 59, 62 (Ala. 1925). The *Dennis* Court even recognized “[t]he general rule” that “courts of equity will not interfere by injunction with the holding of elections political in character, nor take jurisdiction of a contest after the election is held.” *Id.* at 61-62.

Relators’ citations to *Bostwick v. Harris*, 421 So. 2d 492 (Ala. 1982) (per curiam), and *Osborne v. Banks*, 439 So. 2d 695 (Ala. 1983) (per

Tuberville’s name from the ballot. The Secretary of State’s deadline to certify candidates to the probate judges was August 26 (*see* Ala. Code §§ 17-9-3(b), 17-13-22) and absentee voting begins on September 9 (*see* Ala. Code §§ 17-11-5(a), -12). An order declaring Tuberville ineligible now cannot undo what has already been done.

⁸ *See, e.g., Veitch v. Vowell*, 266 So. 3d 678 (Ala. 2018) (plurality) (jurisdiction to determine challenge to legislation concerning the appropriate electorate); *Working v. Jefferson Cnty. Election Comm’n*, 2 So. 3d 827 (Ala. 2008) (per curiam) (jurisdiction to determine if a vacancy on the Jefferson County Commission should be filled by special election or appointment); *King v. Campbell*, 988 So. 2d 969 (Ala. 2007) (jurisdiction to determine if an election should be held for circuit judge).

curiam), miss the mark as well because those decisions cannot be used to circumvent the Court’s direct holdings in *Rice* and *Roper*.⁹ And to the extent that *Bostwick* or *Osborne* have not already been abrogated, they should be overruled. The reasoning of *Bostwick* is conclusory and does not mention the jurisdiction-stripping statute, *see* 421 So. 2d at 493, so the *Rice* Court was not bound by (and indeed did not even discuss) *Bostwick* when the parties there raised jurisdiction stripping. *Osborne*’s reasoning, on the other hand, relied heavily on *Bostwick* and turned on the fact that—unlike here—the political party had refused to entertain a challenge to candidate qualifications.

Nor can Relators rely on cases that did not discuss the jurisdiction-stripping statute to argue that it does not apply. *See, e.g., Kinney v. House*, 10 So. 2d 167 (Ala. 1942) (per curiam). “When questions of jurisdiction have been passed on in prior decisions *sub silentio*, this Court has never considered itself bound when a subsequent case finally brings the

⁹ Relators have not asked the Court to overrule *Rice* and *Roper*, both of which are more recent and control here for the reasons explained above. *See Moore v. Prudential Residential Servs. Ltd. P’ship*, 849 So. 2d 914, 926 (Ala. 2002) (“Stare decisis commands, at a minimum, a degree of respect from this Court that makes it disinclined to overrule controlling precedent when it is not invited to do so.”).

jurisdictional issue.” *Ex parte Town of Lowndesboro*, 950 So. 2d 1203, 1210 (Ala. 2006) (quoting *Pennhurst State Sch. & Hosp. v. Halderman*, 465 U.S. 89, 119 (1984)). That some past cases adjudicated suits concerning elections without discussing whether the jurisdiction-stripping statute applies does not mean that Relators can duck its application here.

B. Relators fail to show that their claims are “specially and specifically” enumerated by statute.

Because the jurisdiction-stripping statute applies, Relators must cite authority “specially and specifically enumerated and set down by statute” permitting them to maintain this suit challenging past and future elections. Ala. Code § 17-16-44. They do not.

Relators identify no statute that authorizes either this action generally or the relief sought specifically. They rely on the quo warranto statutes, but those provisions expressly *foreclose* using quo warranto to challenge “[t]he validity of an election which may be contested under this Code.” Ala. Code § 6-6-598.¹⁰ The general authority to initiate a quo

¹⁰ 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.” Below, Relators relied on the Court’s discussion in *State ex rel. Harris v. Elliott*, 23 So. 124 (Ala. 1898), of the predecessor to this provision to argue that its modern-day prohibition does not apply. *See*

warranto action does not “specially and specifically” authorize judicial interference of ongoing or just-completed elections.

In addition, Relators’ gambit to bypass the jurisdiction-stripping statute would fail no matter what form of extraordinary relief they sought, for *any* relief for their claim would necessarily affect the results and conduct of elections. *E.g.*, *Rice*, 51 So. 3d at 282-85 (jurisdiction-stripping statute deprived circuit court of jurisdiction over “petition for a writ of prohibition, mandamus, certiorari, or other appropriate extraordinary relief”); *Roper*, 988 So. 2d at 472 n.2 (“The relief sought by the Ropers included a declaratory judgment, an injunction, a writ of mandamus, and a writ of quo warranto.”); *Harvey v. City of Oneonta*, 715 So. 2d 779, 780 (Ala. 1998) (under jurisdiction-stripping statute, “the circuit court did not have jurisdiction to entertain this action for declaratory or injunctive relief”). Relators need *specific* authorization, which they lack. *Accord*, *e.g.*, Ala. Code § 17-16-56 (providing jurisdiction over election contests of certain county and municipal offices).

C.116. But the quo warranto action there was allowed to proceed only because the right to contest the mayor’s election arose under Gadsden’s charter—not the Alabama Code—and thus did not trigger the predecessor to § 6-6-598. *Id.* at 124-25.

These limits do not prevent all statutory quo warranto actions against elected officials. *Contra* Br.31-32. Instead, they funnel challenges involving elections to the proper time, place, and type of proceeding. So while the jurisdiction-stripping statute will always bar a mid-election challenge like this one (for instance), and the quo warranto statute itself prohibits its use for matters that could be the subject of an election contest, *see* Ala. Code § 6-6-598, a statutory quo warranto action may still be brought where (1) the underlying issue did not trigger one of the statutory grounds for an election contest, or (2) the disqualifying issue did not occur until after the general election. That Relators instead prefer to maintain this particular proceeding at this particular time and in this particular forum does not entitle them to circumvent the well-established limits for election-related suits or alternative remedies available to them.

III. Relators Ask The Judiciary To Decide Nonjusticiable Political Questions.

Relators' claims also fail because they are nonjusticiable political questions. Relators allege that Tuberville's candidacy violates Section 117 of the Alabama Constitution, but courts in this State lack jurisdiction to decide that question about a political party's nominee for governor. The Constitution grants jurisdiction to courts generally "*except* as may be

otherwise provided by law.” Ala. Const. art. VI, § 142(b) (emphasis added). As discussed above, the jurisdiction-stripping and quo warranto statutes are some of that “law” that provide “otherwise.” Yet even if those statutes did not exist, the Constitution also withholds jurisdiction from courts to make eligibility determinations until *after* an election has been decided. It does so through Section 115, which calls for a contest for specific offices, including governor, to be decided by the Legislature. And because the question is for the Legislature, it becomes a nonjusticiable political question if presented to the courts.

The Alabama Constitution mandates the separation of powers among the branches of government. Article III, § 42 provides that “the judicial branch may not exercise the legislative or executive power” to ensure that the State is a “government of laws and not of individuals.” The judiciary thus cannot decide “political questions.” *Birmingham Jefferson Civic Ctr. Auth v. City of Birmingham*, 912 So. 2d 204, 214 (Ala. 2005) (“*BJCCA*”).

There are “several formulations” of political questions, but they are all nonjusticiable. *Id.* (quoting *Baker v. Carr*, 369 U.S. 186, 217 (1962)); see also *Vieth v. Jubelirer*, 541 U.S. 267, 278 (2004) (plurality). Two

formulations apply to this dispute. The first is a question “committed to the legislature by the text of the Alabama Constitution.” *BJCCA*, 912 So. 2d at 216. The second is a question the judiciary cannot answer “without expressing lack of the respect due coordinate branches of government.” *Id.* at 215.

A. The Constitution charges the Legislature—not courts—with deciding whether a party’s nominee meets the constitutional requirements to be governor.

This Court first “interpret[s] the text in question” “to determine whether there is a ... constitutional commitment of an issue to” the Legislature. *Id.* Here, there is. Section 115 provides: “Contested elections for governor ... *shall be determined* by both houses of the legislature in such manner as *may be prescribed by law*.” Ala. Const. art. V, § 115 (emphases added). The Constitution does not define “contested elections” or when they should occur, but the Legislature has prescribed their scope through Title 17 of the Code of Alabama.¹¹

Under that Title, whether a person is constitutionally eligible to be governor is a ground for, and thus falls within the scope of, election

¹¹ See Ala. Code § 17-13-71 (primary election contests); *id.* § 17-16-40 (general election contests).

contests for governor. *See* Ala. Code § 17-13-71(2); Ala. Code § 17-16-40(2); *see also Working*, 2 So. 3d at 837 (using election-contest grounds to determine whether “the present challenge” fell “within the scope” of an election contest). Contest procedures under Title 17, promulgated under the authority of Section 115, are thus the exclusive means for litigating Tuberville’s eligibility to be governor. Those procedures leave primary election contests to the “exclusive jurisdiction” of the political parties. *Ex parte Baxley*, 494 So. 2d 30, 31 (Ala. 1986). And they leave general election contests for certain offices—including governor—to the Legislature directly, mandating that its “two houses ..., in joint convention assembled, and presided over by the Speaker of the House of Representatives, shall constitute the tribunal for” those contests. Ala. Code § 17-16-65. There is no room for judicial interference.

There is no “separate provision of the Constitution that would be defeated by” this conclusion. *BJCCA*, 912 So. 2d at 217. Section 117, which provides the constitutional residency qualifications for governor, does not have “a field of operation” exclusive of Section 115; the two operate together. *See State ex rel. James v. Reed*, 364 So. 2d 303, 307 (Ala. 1978). Section 117 mandates that “the governor ... shall have been ... [a]

resident citizen[] of this state at least seven years next before the date of [his] election.” Ala. Const. art. V, § 117. It thus provides the “residency” qualification that may serve as a basis for a gubernatorial election contest under Section 115. The Court has seen this type of relationship between constitutional provisions before and enforced it. *Cf. Reed*, 364 So. 2d at 307 (“The legislative power to judge the constitutional qualifications of age, citizenship, and residency (§ 47, Constitution of Alabama, 1901) is exclusive under § 51.” (citing *Buskey v. Amos*, 310 So. 2d 468 (Ala. 1975))).¹²

Nor do these limitations usurp the judiciary’s “special duty to decide constitutional challenges,” *contra* Br.24 (capitalization altered), but instead recognize the Legislature’s constitutional prerogative. The Constitution cannot violate itself. And even if Section 115 authorized the

¹² Confusingly, *Reed* goes on to say that this “exclusive” prerogative of the Legislature “does not operate to the exclusion of” the Court’s ability to determine whether Section 60 bars individuals with certain convictions from holding office. 364 So. 2d at 307. Setting that contradictory conclusion aside, Section 60 is different than Section 117 such that *Reed*’s reasoning concerning it is inapposite. Section 60 “embodies the policy that a person proven not to be of good moral character, through *conviction* of an infamous crime, may not hold a public office.” *Id.* (emphasis added). Whether that conviction occurred is a question susceptible to only one answer and thus Section 60 has an independent “field of operation” the judiciary can enforce. *Id.* at 307. That is not true for Section 117.

Legislature to engage in an otherwise judicial function, it may do so when “expressly directed or permitted” by the Constitution. Ala Const. art. III, § 42. Respecting the authority Section 115 grants to the Legislature thus vindicates rather than violates the separation of powers. *See Wood v. Booth*, 990 So. 2d 314, 337 (Ala. 2008) (Smith, J., concurring specially); *cf. Buskey*, 310 So. 2d at 468-69 (“[A]ny challenge to [a Senator’s] qualifications must ... be addressed to the Senate itself.” (emphasis added)); *Nunn v. Baker*, 518 So. 2d 711, 713 (Ala. 1987) (recognizing that most state constitutions contain similar provisions regarding legislative qualification, which “deprive the courts of jurisdiction”).

Tuberville’s eligibility to be governor under Section 117 is thus a nonjusticiable political question. The Constitution textually commits its resolution to the Legislature, not the judiciary.

B. Courts cannot determine the eligibility of a gubernatorial candidate “without expressing lack of the respect due” the Legislature.

Relators raise a nonjusticiable political question for a second reason: Courts cannot determine the eligibility of a gubernatorial candidate “without expressing lack of the respect due [a] coordinate branch[] of government”—the Legislature. *BJCCA*, 912 So. 2d at 215.

“Legislators take the same oath of office that judges and justices take—to support the Constitution of the United States and the Constitution of Alabama.” *Id.* at 219 (quotations omitted). The judiciary shows respect for the Legislature by “presum[ing] that ... legislators comply with their oath of office” when carrying out their duties. *Id.* One of those duties is to resolve contests under Section 117.

That remedy is perfectly adequate. As explained above, the Legislature provides two avenues to enforce Section 117: primary election contests adjudicated by the political parties and general election contests adjudicated directly by the Legislature. And general election contests are accessible to any “qualified elector.” Ala. Code § 17-16-40.

The “dominant consideration” of “finality” to the Legislature’s pronouncements on gubernatorial eligibility favors finding a political question here. *Id.* at 220. The Republican Party has already adjudicated a related election contest and determined that Tuberville meets Section 117’s residency requirement. And if Tuberville wins the general election, the Legislature may also decide that question in a general election contest. “Uncertainty and instability” in government, as well as

embarrassment to the Legislature, would result by a contrary judicial pronouncement. *BJCCA*, 912 So. 2d at 221.

Countenancing such suits would also permit litigants to embroil the judiciary in political and election disputes and encourage forum shopping by political challengers. This case is a good example: The issues presented here have now been presented in *five* different sets of proceedings—three in circuit courts in three different counties (including this case), one case in federal district court, and an election contest heard by the Republican Party.¹³

Compounding this problem are the public policy concerns unique to the election context. An “election case concerns a principle at the very heart of the democratic process—the integrity of elections.” *Taylor v. Cox*, 710 So. 2d 406, 409 (Ala. 1998) (See, J., concurring specially). “Confidence in the integrity of our electoral processes is essential to the functioning of our participatory democracy.” *Purcell*, 549 U.S. at 4. But competing

¹³ See *McFeeters v. Tuberville, et al.*, 01-CV-2026-903312 (Jefferson Cnty. Cir. Ct. filed July 7, 2026); *McFeeters v. Tuberville, et al.*, No. 23-CV-2026-900042 (Covington Cnty. Cir. Ct. filed Mar. 24, 2026); *McFeeters v. Stadthagen, et al.*, 2:26-cv-1423-EGL (N.D. Ala. filed August 13, 2026); C.64-70 (Final Decision, *McFeeters v. Tuberville* (Ala. Republican Party, June 14, 2026)).

pronouncements—particularly between separate branches of government—as to gubernatorial eligibility risks “voter confusion and consequent incentive to remain away from the polls.” *Id.* Imagine the chaos that would ensue if these lawsuits were allowed to proceed and a court reached a different result than the Legislature. Without any structure to determine which branch prevails, the competing adjudications would present a constitutional crisis and create extended uncertainty as to who would (or could) serve as governor.

For all these reasons and more, Section 115 of the Constitution requires judicial restraint when the eligibility of a gubernatorial candidate or the governor is scrutinized under Section 117.

* * *

This case is about preserving the separation of powers as manifest in our State’s prescribed system of election administration. Section 115’s grant of power to the Legislature would be meaningless if gubernatorial eligibility under Section 117 could be decided at any time by any of the 148 circuit judges in the State. *BJCCA*, 912 So. 2d at 212 (“[J]ust as this Court will declare legislative usurpation ..., so it must decline to exercise the judicial power when to do so would infringe upon the exercise of

legislative power.”). And if the judiciary could decide gubernatorial eligibility, it would cause the proliferation of sore-loser lawsuits. Instead of a prompt election contest that would resolve uncertainty quickly and finally, the question would fester in cumbersome and potentially cumulative litigation, eventually arriving at this Court for it to pick winners and losers—a political role it was never meant to have. At root, the question Relators ask this Court to answer is a nonjusticiable political question and the Court should treat it as such.

CONCLUSION

The Court should affirm.

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CERTIFICATE OF COMPLIANCE

I certify that this brief complies with the word limitation set forth in Alabama Rule of Appellate Procedure 28(j)(1), as incorporated by Alabama Rule of Appellate Procedure 29(c). According to the word-count function of Microsoft Word, the brief contains 6,969 words from the Interest of Amicus Curiae through the Conclusion. I further certify that this brief complies with the font requirements in Rule 32(a)(7). The brief was prepared in the Century Schoolbook font using 14-point type. See Ala. R. App. P. 32(d).

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CERTIFICATE OF SERVICE

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