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CIRCUIT COURT OF
MONTGOMERY COUNTY, ALABAMA
GINA J. ISHMAN, CLERK

IN THE CIRCUIT COURT OF
MONTGOMERY COUNTY, ALABAMA

STATE OF ALABAMA ex rel. BROOK LYNN DROGAN, and JUSTIN JUDE LeBLANC, as Relators,	)	
Plaintiffs,	)	
v.	)	**CIVIL ACTION NO.: CV-2026-901053**
THOMAS HAWLEY TUBERVILLE, individually and in his capacity as the certified nominee of the Alabama Republican Party for the office of Governor,	)	
Defendants.	)	

PLAINTIFFS' RESPONSE TO MOTION TO DISMISS

COME NOW the Plaintiffs and respectfully submit this response in opposition to the Motion to Dismiss (docs. 19, 20) filed by Defendant Thomas Hawley Tuberville ("Tuberville").

Introduction and Standard of Review

Much of the discussion in Tuberville's memorandum in support of his motion to dismiss is hyperbole and is irrelevant to the legal questions presented. For example, the repeated exhortation he was the overwhelming winner of the Republican primary is irrelevant to whether his certification and potential election as Governor violates the Alabama Constitution. Constitutional rights are not decided by majority rule (particularly when those voting belong only to one political party). *See Johnson v. Craft*, 87 So. 375, 387 (1921) ("The people themselves are bound by the Constitution; and, being so bound, are powerless, whatever their numbers, to change or thwart its mandates, except through the peaceful means of a constitutional convention, or on amendment according to the mode therein prescribed, or through the exertion of the original right of

revolution.").[1] We don't take a poll in this country to determine whether the Constitution should be enforced.

In addition, Tuberville's attempt to engraft his political party's purported "factual findings" regarding his residency is not only irrelevant, it also violates the basic law regarding a motion to dismiss. When a motion to dismiss makes a facial challenge to a court's subject matter jurisdiction under Alabama Rule of Civil Procedure 12(b)(1), "the court must accept as true the allegations in the complaint and consider the factual allegations of the complaint in the light most favorable to the non-moving party." *Ex parte Safeway Ins. Co. of Alabama, Inc.*, 990 So. 2d 344, 349 (Ala. 2008) (quoting *Erby v. United States*, 424 F. Supp. 2d 180, 181 (D.D.C. 2006)). "The court may look beyond the allegations contained in the complaint to decide a facial challenge, 'as long as it still accepts the factual allegations in the complaint as true.'" *Id.* (quoting *Abu Ali v. Gonzales*, 387 F. Supp. 2d 16, 17 (D.D.C. 2005)).

Tuberville asks this Court to do exactly the opposite—disregard the allegations of Plaintiffs' Complaint in favor of the purported "findings of fact" made by his buddies on the Alabama Republican Party Executive Committee. (doc. 20 at 8-9). The standard of review on a Rule 12(b)(1) motion requires this Court to accept Plaintiffs' factual allegations as true, while the purported factual findings on which Tuberville relies are diametrically opposed to them. Both cannot be true. Accordingly, this Court must disregard Tuberville's purported findings of fact and credit the allegations of the Complaint. If Tuberville really wants to discuss the facts and evidence, he should respond to Plaintiffs' discovery and sit for a deposition.

[1] If this were truly a simple popularity contest, it should be noted that twice as many voters cast their ballots in favor of ratifying the Alabama Constitution of 2022 containing the 7-year durational residency requirement than voted for Tuberville in the recent Republican primary.

I. § 17-16-44 DOES NOT STRIP THIS COURT OF JURISDICTION TO DECIDE CONSTITUTIONAL ISSUES.

There is really no dispute that the present quo warranto action is not an election contest. Plaintiffs make no argument that Tuberville failed to handily win the Republican primary for Governor, nor is there any claim that he is not the certified Republican nominee. Plaintiffs do not question the vote totals or otherwise seek to challenge or undo the results of that primary. That election is now final, and the certified result is not challenged here. Instead, the question before this Court is whether Tuberville's status as the certified nominee and his placement on the General Election ballot violate the Alabama Constitution.

Despite that, Tuberville argues that a statute restricting the court's jurisdiction to hear election contests also serves to deprive this Court of the inherent power to hear statutory quo warranto actions or even to interpret and apply the Alabama Constitution. Alabama law does not support this conclusion.

A. § 17-16-44 Must be Strictly and Narrowly Construed.

While Tuberville characterizes § 17-16-44 as all-encompassing and a broad divesting of all court jurisdiction regarding elections and ballot eligibility, the Alabama Supreme Court has repeatedly held that the statute must be strictly and narrowly construed. As the court noted in regard to the statutory predecessor to § 17-16-44:

> Statutes restricting the jurisdiction of courts of equity, as defined at common law, and reiterated by statute in Alabama, **should be strictly construed.** Construing this statute as a whole, it appears, broadly speaking, to cover **cases inquiring into the validity of elections theretofore held** — a proceeding in the nature of a contest of an election, whether the legality, conduct or results of the election be the point of attack. We doubt if it would include a case of injunction against the exercise of any form of official power, derived through or by virtue of an election not authorized by law and therefore wholly void. The equity jurisdiction in such case does not rest so much upon matters going to the conduct of the election, but upon the usurpation or abuse of official power under color of a void election. The statute was enacted prior to the statute before us and other similar statutes authorizing a referendum to

> the voters of a county or other municipal corporation in matters pertaining to their corporate functions. We are of opinion section [17-16-44] does not apply to the case before us. Following our former decisions, and, we think, in keeping with sound principles, we hold that the court of equity has the power by injunction to prevent the holding of such election as is here involved, in a case wholly unauthorized by law, there appearing no adequate legal remedy.

Dennis v. Prather, 103 So. 59, 62 (Ala. 1925) (emphasis added). *See also Veitch v. Vowell*, 266 So. 3d 678, 683 (Ala. 2018); *Working v. Jefferson Cnty. Election Comm'n*, 2 So. 3d 827, 838 (Ala. 2008).

The strict and narrow construction of § 17-16-44 must be contrasted with the broad and liberal construction afforded to the quo warranto statute. *See State v. Birmingham Waterworks Co.*, 64 So. 23, 29 (Ala. 1913) ("When the remedy by information in the nature of quo warranto has been regulated by legislative enactments, these enactments are regarded by the courts as in the nature of remedial statutes, to which a strict construction is not to be applied. In such cases the usual rules of construction of remedial statutes are held applicable, and the courts will so construe them as to promote and render effective the remedy sought."); *Walker v. Junior*, 24 So. 2d 431, 434 (Ala. 1945) ("Any other construction of these former decisions would overlook the liberal application of quo warranto and emasculate it by a system of refined dialectics."); *see also Ex parte Burks*, 487 So. 2d 905, 907 (Ala. 1985) ("[A] remedial statute should receive a liberal interpretation if necessary to effectuate its purpose or objective."); Ala. Code § 6-6-593(a) ("The court is at all times open for the trial of a [quo warranto] case or the granting of orders therein.")

Applying a strict construction to § 17-16-44 demonstrates its inapplicability to the present quo warranto action.

First, § 17-16-44 does not strip a court's jurisdiction if there is other "authority . . . specially and specifically enumerated and set down by statute." *Id.* The quo warranto statute specially and specifically grants jurisdiction to courts to hear cases involving the eligibility of public office

holders. Ala. Code § 6-6-591(a)(1). *See Walker v. Junior*, 24 So. 2d 431, 434 (Ala. 1945) ("[U]nless it unequivocally appears that the Legislature intended to provide another remedy that would exclude the authority of the courts in quo warranto, the jurisdiction will remain."). As a result, §17-16-44 does not deprive this Court of jurisdiction.

Second, § 17-16-44 itself is expressly limited to "any proceeding for ascertaining the **legality, conduct, or results of any election**" or "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" § 17-16-44 (emphasis added). Plaintiffs do not seek to "inquir[e] into the validity of elections theretofore held," challenge "the results of any election," or question the Republican Party's authority to select its nominee (even one that is ineligible), so § 17-16-44, strictly construed, does not bar this Constitutional challenge.

In support of his argument, Tuberville asserts that a finding by this Court that he was constitutionally ineligible to serve as Governor would "affect" the general election and therefore falls within the scope of § 17-16-44. (doc. 20 at 3). This argument reads the statute more broadly than the wording and intent of the statute allow. First, as the court held in *Dennis*, the focus of § 17-16-44 is on "cases inquiring into the validity of elections **theretofore held**," not elections that have yet to take place. That is why the Supreme Court has recognized that § 17-16-44 does not divest the courts of jurisdiction to enjoin future elections. *See Dennis*, 103 So. at 62 ("But this court is committed to the proposition that equity will interfere by injunction to restrain elections nor authorized by law. It will also restrain the usurpation of office, or the assumption of functions of office where no lawful office exists.")

Second, if Tuberville's argument was correct, no statutory quo warranto action could ever be brought against any elected official since, if successful, the result of the election would be "affected" by that official's disqualification. Tuberville cites no case that reads § 17-16-44 so broadly.

Tuberville's reliance on *Rice v. Chapman*, 51 So. 3d 281 (Ala. 2010) is misplaced. *Rice* dealt with a candidate's demand that the court inject itself into a Republican **primary** election by disqualifying his opponent and removing him from the primary ballot. The courts have long recognized that the conduct of primary elections and political parties' selection of their own nominees falls within the authority of the political parties. More importantly, *Rice* was not a quo warranto action, which the Supreme Court has since held is the proper vehicle for challenging a nominee's eligibility. Finally, the Supreme Court has distinguished *Rice* from cases in which the plaintiffs were challenging a nomination and ballot rules on constitutional grounds. *See, e.g., Veitch v. Vowell*, 266 So. 3d 678, 682 (Ala. 2018) (distinguishing *Rice* and finding § 17-16-44 not applicable to candidate's challenge based on constitutionality of election statute). *Rice* also did not deal with a Constitutional requirement such as that imposed by § 117 in the present case.

Similarly, *Parks v. State ex rel Owens*, 13 So. 756 (Ala. 1893), does not support Tuberville's argument for dismissal. *Parks* stands for the unremarkable notion that quo warranto cannot be employed if there exists an adequate alternative judicial remedy, such as a judicial election contest. Here, however, Tuberville has made clear that there is no judicial remedy available to challenge Tuberville's constitutional ineligibility. The statutory election contests exclude the courts and limit the reviewing authority to the State political parties or, after the general election, the Legislature. The total absence of a judicial remedy renders the holding in *Parks* inapplicable. *See Walker v. Junior*, 24 So. 2d 431, 433 (Ala. 1945) (quo warranto appropriate if "election contest statute

affords no remedy to a contestant in the circumstances"); *State v. Elliott*, 23 So. 124, 124–25 (Ala. 1898) ("[T]he statutory contest does not displace the older remedy by quo warranto, unless the statute so declares, or it is implied in its terms; that, in the absence of such expression or implication, the statutory remedy is cumulative.").

Finally, for the same reasons, Tuberville can't rely on Ala. Code § 6-6-598 as grounds for dismissal. Although that statute restricts quo warranto relief involving "the validity of an election which may be contested under this Code," Plaintiffs are not challenging the "validity" of the primary election. *See Mizell v. State*, 55 So. 884, 885 (Ala. 1911) (statutory predecessor of § 6-6-598 limits quo warranto challenging "the manner of conducting or ordering [an election], or of canvassing the returns, are questions that cannot be gone into in quo warranto, if the statute authorizes a contest of the election.").

B. This is Not an Election Contest.

As noted above, § 17-16-44 is only concerned with election contests challenging "the results of any election" or "inquiring into the validity of elections theretofore held." *Dennis v. Prather*, 103 So. 59, 62 (Ala. 1925). This quo warranto action does neither, so the statute does not deprive this Court of jurisdiction. "Where matters pertaining to nomination are regulated by statute, questions of compliance with a statute and infringement of legal rights conferred are judicial; and the courts are not ousted of jurisdiction or bound by the decisions of party authorities with regard thereto." *Kinney v. House,* 10 So.2d 167, 168 (1942). *See also Bostwick v. Harris*, 421 So. 2d 492, 493 (Ala. 1982) ("This is not an election contest case, but is a case involving statutory interpretation relating to the timeliness of [a candidate's] declaration of candidacy for Alabama Supreme Court, Place 3. That the courts are empowered, upon appropriate invocation of their jurisdiction, to adjudicate this cause is a settled issue."). As the Supreme Court held in *Perloff v.*

Edington, 302 So.2d 92, 96 (Ala. 1974), "[i]f the [state party] committee or the chairman fail or refuse to follow the mandates of the statutes, the only recourse of either the contestant or the contestee is to the courts. In such cases, the courts are open." *See also Osborne v. Banks*, 439 So. 2d 695, 700 (Ala. 1983).

Tuberville's position is that no court can hear any challenge to his constitutional ineligibility either before or after the primary because that issue is exclusively reserved for the Alabama Republican Party. And, according to Tuberville, after the general election, no court has jurisdiction to interpret or apply the Constitution to his ineligibility because any such challenge falls within the exclusive purview of the Legislature. In other words, at no time can Tuberville's obvious failure to satisfy the constitutional prerequisites for Governor ever be subject to judicial scrutiny or review. That position runs counter to almost 250 years of precedent and the core concept of separation of powers. *See* ALA. CONST., § 42(c) ("To the end that the government of the State of Alabama may be a government of laws and not of individuals, and except as expressly directed or permitted in this constitution, the legislative branch may not exercise the executive or judicial power, the executive branch may not exercise the legislative or judicial power, and the judicial branch may not exercise the legislative or executive power.").

II. Courts Have a Special Duty to Decide Constitutional Challenges.

Tuberville's astonishing argument that this Court is powerless to decide whether his certification and election violate the Alabama Constitution is contrary to extremely well-established law. Tuberville's approach, if accepted by this Court, would completely immunize from judicial review the constitutional question of Tuberville's eligibility. No court, ever, would be permitted to interpret or apply § 117's eligibility requirement, and instead, it could only be decided by the Alabama Republican Party or the Republican super-majority in the Alabama Legislature.

This Court, and the Alabama Supreme Court, would forever be barred from passing on the meaning and application of the Alabama Constitution. That simply cannot be the law.

It is of course beyond dispute that the Alabama "Constitution is the supreme law of the state, and to it all rules of evidence, procedure, and expediency in conflict with its mandates and prohibitions must yield. The [Alabama] Constitution is the supreme law, limiting the power of the legislature and binding departments of State government and the people themselves subject only to restraints resulting from Federal Constitution and the people themselves." *Alexander v. State ex rel. Carver*, 150 So. 2d 204, 208 (Ala. 1963). "The Constitution of Alabama, like that of the nation and of the other states, is the supreme law within the realm and sphere of its authority. Subject only to the restraints resulting from the Constitution of the United States, the Constitution of Alabama is the highest form and expression of law that exists in this state. The source of its creation and the character of its sanction, [namely] the people's deliberate will, invest the Constitution with its paramount quality. The Constitution's control is absolute wherever and to whatever its provisions apply; and every officer, executive, legislative, and judicial, is bound by oath to support the [Alabama] Constitution, to vindicate and uphold its mandates, and to observe and enforce its inhibitions without regard to extrinsic circumstances." *Johnson v. Craft*, 87 So. 375, 380 (1921).

It should also be universally understood that the courts of this state have a solemn and exclusive duty to interpret and apply the Alabama Constitution. Indeed, the interpretation of the Alabama Constitution has been described as "the special province of the courts." *Jefferson Cnty. v. Weissman*, 69 So. 3d 827, 838 (Ala. 2011). *See also Marbury v. Madison,* 5 U.S. (1 Cranch) 137, 177, 2 L.Ed. 60 (1803) ("It is emphatically the province and duty of the judicial department to say what the law is."); *McInnish v. Riley*, 925 So. 2d 174, 186–87 (Ala. 2005) ("It is the province and

duty of the *judicial* branch of government to interpret the constitution and to say what the law is. . . .”). As the Alabama Supreme Court has explained:

> The executive and legislative branches of the State have broad powers and responsibilities in the area of public education, but the powers of each branch of government are bounded by the mandates and restraints of the constitution of the State of Alabama. This principle of separation of powers of government that is now included in the Alabama constitution was first decided in the famous case of *Marbury v. Madison,* . . . . **It is the province and duty of the judicial branch of government to interpret the constitution and to say what the law is, and an order issued by a court of competent jurisdiction that interprets the constitution is binding upon the Legislature unless the order is stayed or overturned by a higher court.**

Opinion of the Justices, 624 So. 2d 107, 110 (Ala. 1993) (emphasis added). Nor does § 142 of the Alabama Constitution alter or restrict the judiciary’s duty and obligation to hear and decide constitutional questions. As the Supreme Court has noted:

> Under the provisions of [§ 142], “[t]he circuit court shall exercise general jurisdiction in all cases except as may otherwise be provided by law.” Included within the general jurisdiction of the circuit court is the power to decide whether the actions of the executive or legislative branches are consistent with the requirements of the fundamental law of the people—their constitution. **In short, the circuit court has the power, and indeed the duty, when requested to do so in cases involving justiciable controversies, to interpret the constitution, and its interpretation, unless changed by a competent court having the power to overturn it, must be accepted and followed.**

Id. (emphasis added).

Tuberville is wrong that the Legislature can divest the Judicial branch of jurisdiction to hear and decide Constitutional questions such as that presented in this quo warranto case.

III. QUO WARRANTO APPLIES TO QUASI-OFFICERS LIKE TUBERVILLE.

“The writ of quo warranto is a common law writ used to determine whether one is properly qualified and eligible to hold a public office. The writ is utilized to test whether a person may lawfully hold office, unlike impeachment, which is the removal of an officeholder for inappropriate acts while lawfully holding office. . . . Stated another way, the purpose of the writ of quo warranto

is to ascertain whether an officeholder is 'constitutionally and legally authorized to perform any act in, or exercise any functions of, the office to which he lays claim.'" *Ex parte Sierra Club*, 674 So. 2d 54, 56–57 (Ala. 1995). The ancient remedy of quo warranto "looks to the sovereign power of the state with respect to the use or abuse of franchises—which are special privileges—created by its authority, and which must, as a principle of fundamental public policy, remain subject to its sovereign action in so far as the interests of the public, or any part of the public, are affected by their usurpation or abuse." *Birmingham Bar Ass'n v. Phillips & Marsh*, 196 So. 725, 731–32 (Ala. 1940)

A. Quo Warranto is the Proper Cause of Action to Challenge Tuberville's Constitutional Eligibility.

The Alabama Supreme Court has held that "[i]t is fully settled in this State that statutory quo warranto is the appropriate remedy to . . . oust a usurper intruding into an office" *Hudson v. Ivey*, 383 So. 3d 636, 643 (Ala. 2023); *Reed v. State ex rel. Davis*, 961 So. 2d 89, 95 (Ala. 2006). The Supreme Court has also held that "[i]t is well established that the remedy [of quo warranto] lies to challenge a person's right to hold office based on grounds of ineligibility." *State ex rel. James v. Reed,* 364 So.2d 303, 305 (Ala.1978). "The writ of quo warranto is a common law writ used to determine whether one is properly qualified and eligible to hold a public office. The writ is utilized to test whether a person may lawfully hold office, unlike impeachment, which is the removal of an officeholder for inappropriate acts while lawfully holding office." *Hudson v. Ivey*, 383 So. 3d 636, 639-640 (Ala. 2023). "[T]he purpose of the writ of quo warranto is to ascertain whether an officeholder is 'constitutionally and legally authorized to perform any act in, or exercise any functions of, the office to which he lays claim.'" *Id.* Recently, the Supreme Court has repeatedly reaffirmed that "[a] quo warranto action is the exclusive means for determining whether a person unlawfully holds an office." *Hudson v. Ivey*, 383 So. 3d 636, 641 (Ala. 2023); *Naftel v.*

State ex rel. Driggars, 361 So. 3d 751, 753 n.2 (Ala. 2022); *Riley v. Hughes*, 17 So. 3d 643, 647 (Ala. 2009).

Indeed, in *Johnson v. Roberson*, 682 So. 2d 58 (Ala. 1996), the Supreme Court gave litigants the following roadmap:

> A safe practice for the filing of such a contest would be to join a quo warranto proceeding against **the purported nominee** or independent candidate with a petition for a writ of mandamus or prohibition against the appropriate election officers to prevent them from placing that person's name on the general election ballot.

682 So. 2d at 60 n.3 (emphasis added).

B. Quo Warranto Applies to Tuberville as Major Party Nominee.

Tuberville's motion takes the position that the Alabama Republican Party, as "a private political party," should have the absolute right to nominate anybody they want, including someone who doesn't satisfy the basic Constitutional eligibility requirements. Of course, Plaintiffs don't dispute that the party has the right to nominate, but that doesn't mean that the courts must look the other way when a constitutional challenge is mounted against that nominee. Political parties have the right to make choices, but those choices have consequences, and there is accountability for those choices.

1. As the Certified Republican Nominee, Tuberville is a Quasi-Officer.

The Alabama Supreme Court has repeatedly observed that "[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." *Bridges v. McCorvey*, 49 So. 2d 546, 548 (Ala. 1950); *see also King v. Campbell*, 988 So. 2d 969, 979 (Ala. 2007) ("[I]n the context of measuring the timeliness of a quo warranto proceeding, . . . the holder of a certificate of nomination has the status of a 'quasi-officer,' thereby obliging the relator to initiate his action prior to the election."); *State*

ex rel. Norrell v. Key, 165 So. 2d 76, 78 (Ala. 1964) ("The holder of a certificate of nomination has the status of a quasi officer."). Further, the court has held that "[a] certificate of nomination in a primary gives to its holder a quasi office with limited effect in value and in time. But it is a valuable right of the same sort as a certificate of election to an office which is more lasting and permanent." *Boyd v. Garrison*, 19 So. 2d 385, 387 (Ala. 1944).[2]

In fact, in *Johnson v. Roberson*, 682 So. 2d 58, 60 n.3 (Ala. 1996), the Supreme Court expressly directed lawyers and litigants to utilize quo warranto "against **the purported nominee**." (Emphasis added).

Finally, in *Talton v. Dickinson*, 72 So. 2d 723 (Ala. 1954), a group of taxpayers and voters filed a declaratory judgment action against the Democratic nominee for Etowah County superintendent of education, alleging that he did not meet the statutory eligibility requirements to hold that office. The complaint was filed after the nominee won the primary but before the general election. The Supreme Court held that a declaratory judgment was not available but observed that

[2] Although Tuberville is correct that the Alabama Supreme Court has not been directly called upon to decide whether quo warranto may be used to challenge a gubernatorial nominee's eligibility to hold office, it is also true that the Court has encouraged the use of quo warranto to challenge a candidate's eligibility to hold office and has never ruled it out as the proper remedy in this context. Indeed, the cases cited above all strongly suggest that, when properly presented with the question, the Supreme Court would find that quo warranto applied. Contrary to Tuberville's suggestion that the absence of definitive precedent justifies dismissal, "the court should be especially reluctant to dismiss on the basis of the pleadings when the asserted theory of liability is novel or extreme, since it is important that new legal theories be explored and assayed in light of actual facts rather than a pleader's suppositions." *Lavoie v. Aetna Life & Cas. Co.*, 374 So. 2d 310, 311 (Ala. 1979) (cleaned up); *see also Roberts v. Meeks*, 397 So. 2d 111, 114 (Ala. 1981) ("[T]he courts should be especially reluctant to dismiss a case on the pleadings when the theory of liability is novel and untested. Such cases should be explored in light of actual facts developed on discovery or otherwise . . . ."). Circuit courts regularly address issues of first impression when they arise—otherwise, such issues would never reach the appellate courts. *See, e.g., Ex parte Brown*, 331 So. 3d 79, 81 (Ala. 2021); *Craft v. McCoy*, 312 So. 3d 32, 35 (Ala. 2020); *Morrow v. Caldwell*, 153 So. 3d 764, 767 (Ala. 2014). "Quo warranto is a remedial writ and its use may be extended to new situations on a proper showing." *Belle Island Inv. Co. v. Feingold*, 453 So. 2d 1143, 1146 (Fla. Dist. Ct. App. 1984).

"a proceeding in quo warranto, . . . is the exclusive remedy to determine whether or not a party is usurping a public office." *Id.* at 726. Talton clearly stands for the proposition that quo warranto is available to challenge the eligibility of a party nominee.

2. Certified Party Nominees Are Subject to Quo Warranto.

The nominees of the two major political parties are occupying public offices and easily fall within those subject to quo warranto.

First, the quo warranto statute is broadly worded and must be liberally construed. It operates against anyone "hold[ing] or exercise[ing] any public office, civil or military, any franchise, any profession requiring a license, certificate, or other legal authorization within this state or any office in a corporation created by the authority of this state." Ala. Code § 6-6-591(a)(1). It includes anyone acting with "legal authorization." It can literally be used against someone cutting hair without a license.

Second, major party nominees are "public officials" for purposes of both the Alabama Ethics Law and the Alabama Fair Campaign Practices Act. *See* Ala. Code § 36-25-15; §17-5-1, *et seq.*; *Muncaster v. Alabama State Ethics Comm'n*, 372 So. 2d 853, 855 (Ala. 1979). Both the Ethics Law and the FCPA apply to "[a]ny person elected to public office, **whether or not that person has taken office**." Ala. Code § 36-25-1(27); § 17-5-2(17) (emphasis added).

Third, the major party nominees for Governor also exhibit other attributes of public office holders. Accepting the gubernatorial nomination of a major party requires one to submit to the rules governing public officials and public office. Starting with the fact that the State of Alabama pays for the parties' primaries (Ala. Code §§17-13-3, 17-13-4), the primary and general elections are "part of the state-controlled elective process." *Ray v. Blair*, 343 U.S. 214, 227 (1952). "Political parties have legitimate constitutional authority to promulgate rules for the regulation of their affairs

and, in Alabama, the legislature has specifically authorized them to do so." *Ex parte Graddick*, 495 So. 2d 1367, 1370 (Ala. 1986) (citation omitted). Party executive committees are "official arm[s] of the state and [their] action constitute[] state action." *Davis v. Schnell*, 81 F. Supp. 872, 878 (S.D. Ala. 1949), *aff'd,* 336 U.S. 933 (1949). "Thus, as a state actor, the activities of [party executive committees] come under constitutional scrutiny. The party, like other state agents, is constitutionally bound to follow its own rules." *Gartrell v. Knight*, 546 F. Supp. 449, 452 (N.D. Ala. 1982).

From beginning to end, the State controls and regulates the election and ballot eligibility process. Only the two major political parties can hold State-financed primaries. Ala. Code § 17-6-22. The two major parties are required to notify the Secretary of State if they want to hold a primary. Ala. Code § 17-13-46. Only candidates who have been properly certified by the two major parties to the Secretary of State can appear on a primary or general election ballot. Ala. Code §§ 17-9-3(a)(1); 17-13-17; 17-13-18(d) Only candidates certified by the Secretary of State to the probate judges can appear on the ballots. Ala. Code §§ 17-13-5(b); 17-13-22.

Under similar facts, the Florida Supreme Court has held:

> The primary law of this state gives the holder of a nomination to office under it something more than the convenience of having his name printed on the ballot. The rights acquired under it are valuable not alone to those who acquire them, but to the people of the state generally. To an appreciable degree the welfare of the state depends on the manner in which the primary laws are executed. In many localities, nomination in a primary is equivalent to election, it is conclusive as to the election of delegates and committeemen, it is frequently employed as a means for the electorate to express their choice as to appointive officers, in case of the death or resignation of the incumbent the nominee in the primary, if there be one, is generally named to fill the vacancy. Under [Florida law] only the nominee thereunder is entitled to have his name placed on the ballot to be voted for at the next general election, and all parties who participated in said primary election are precluded from being candidates in or having their names printed on the general election ballot. **We think under such a showing the rights acquired by the nominee in a Florida primary election are well within the test necessary to determine the applicability of quo warranto. The Legislature has prohibited the rights so**

> **acquired to the public generally, and the reasons for such prohibition were of a public character. The remedy by quo warranto should therefore be extended to such a nomination.**

State v. Fernandez, 143 So. 638, 640 (1932) (emphasis added). This Court should adopt the reasoning of the *Fernandez* court in this proceeding.

Conclusion

Plaintiffs respectfully ask this Court to take the Alabama Supreme Court at its word and accept jurisdiction over this quo warranto proceeding challenging Tuberville's obvious and flagrant violation of the Alabama Constitution's long-standing residency requirement. Tuberville's attempt to evade judicial scrutiny of his constitutional ineligibility flies in the face of almost two centuries of established law empowering the courts with the authority—and the solemn duty—of interpreting and applying the Alabama Constitution. The voters of this State deserve to know—before the general election—whether Tuberville meets the constitutional requirements for Governor or whether he is a scofflaw, seeking to hide behind procedural technicalities, acting as if he is above the law and willing to violate the very Constitution that he solemnly swore to uphold. Tuberville's motion to dismiss should be denied, and this case should proceed to expedited discovery.

Respectfully submitted,

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CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing has been served on counsel for all parties to the proceedings on this the 26th day of June, 2026 by electronically filing the foregoing with the AlaFile System which will send a copy of such filing to all counsel of record:

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