

**BEFORE THE STATE EXECUTIVE COMMITTEE OF
THE ALABAMA REPUBLICAN PARTY**

KEN MCFEETERS,)
)
Contestant,)
v.)
)
TOMMY TUBERVILLE,)
)
Contestee.)

FINAL DECISION

Sec. 117 of the Alabama Constitution requires the Governor and Lieutenant Governor to “have been citizens of the United States ten years and residents of this state at least seven years next before the date of their election.” Mr. Ken McFeeters commenced this Primary Election Contest to challenge whether Sen. Tommy Tuberville meets that requirement. After examining the evidence and arguments presented by McFeeters and Tuberville and considering applicable Alabama law, we conclude that Tuberville meets the requirements of Sec. 117. Accordingly, we deny and dismiss the Contest.

Discussion

A. Legal Standard for Determining “Residence” in Political Contexts

Under Alabama law, the term “resident,” when used in the context of political rights and office eligibility, is legally synonymous with “domicile.” *Mitchell v. Kinney*, 5 So. 2d 788, 793 (Ala. 1942) (“the terms ‘legally resides,’ ‘inhabitant,’ ‘resident,’ etc., when used in connection with political rights are synonymous with domicile”) (citing *Shepherd v. Sartain*, 64 So. 57 (Ala. 1913)). This rule has been reaffirmed by the Alabama Supreme Court as recently as 2015. *Horwitz v. Kirby*, 197 So. 3d 943, 950–51 (Ala. 2015) (holding that, for purposes of voting rights, a college student’s domicile does not change simply because they leave home to attend college without a

decided intention to leave one's former domicile and a "certain state of mind" as to making a new locale one's home).

B. Determining Domicile

Domicile is defined as residence at a particular place accompanied by an intention to remain there permanently, or for an indefinite length of time. *Mitchell*, 5 So. 2d at 203. Alabama courts have consolidated this principle into two distinct elements for determining one's domicile: (1) one's physical presence in the chosen place of residence, and (2) an accompanying intent to remain there, either permanently or for an indefinite length of time. *Rabren v. Mudd*, 285 Ala. 531, 535 (Ala. 1970); *see also Livermore v. Livermore*, 822 So. 2d 437, 442 (Ala. 2001). The intent to remain permanently may be inferred from the intent to remain "for an unlimited time." *Ex parte Phillips*, 152 So. 2d 144, 147 (Ala. 1963).

Alabama law establishes several important presumptions governing questions regarding one's domicile. First, a domicile, once acquired, is presumed until a new one has been gained "facto et animo." *Jacobs v. Ryals*, 401 So. 2d 776, 778 (Ala. 1981) (citing *Ex parte Weissinger*, 22 So. 2d 510 (Ala. 1945) ("[I]n order to displace the former, original domicile by acquisition of one of choice, actual residence and intent to remain at the new one must concur"). Second, the fact that a person lives in a particular place creates a prima facie presumption that such place is his or her domicile, which is rebuttable by facts to the contrary. *Mitchell*, 5 So. 2d at 793. Third, where the facts as to one's domicile are conflicting, the presumption is strongly in favor of the original or former domicile, as against an acquired one. *Horwitz*, 197 So. 3d at 950.

Determining one's domicile in the context of state elections is a mixed question of law and fact dependent upon the intention and acts of the individual. *Mitchell*, 5 So. 2d at 793 (finding that the domicile of an individual voter is a mixed question of law and facts depending on the individual

voter's intention and acts). Determining an individual's domicile, which is the consideration for determining whether a political candidate meets the "resident citizen" requirement, is based on a range of factors. *Harris v. McKenzie*, 703 So. 2d 309 (Ala. 1997). The Alabama Supreme Court has identified the following factors as relevant to determining the domicile of a city council candidate whose residency was contested: voter registration, physical habitation, where the candidate's family lives and where the candidate's children attend school, employment location, and community involvement. *Id.* at 311–13. The Court noted in particular that registration to vote is a "potent consideration" for a court to take into account when determining one's domicile, as voting "is indicative of intention with respect to the question [of domicile] and is regarded as importantly bearing upon the place of domicile." *Id.* at 311 (*quoting Ambrose v. Vanderford*, 167 So. 2d 149, 153 (Ala. 1964) (*also quoting Ex parte Weissinger*, 22 So. 2d 510, 514 (Ala. 1945))).

Alabama law recognizes that temporary absence from one's domicile does not forfeit residency for political purposes, provided the individual has not exhibited an intent to abandon the former domicile and acquire a new one elsewhere. Ala. Const. art. I, § 31 ("[t]hat temporary absence from the state shall not cause a forfeiture of residence once obtained"); *see also Jacobs*, 401 So. 2d 776 (Ala. 1981). In *Jacobs*, although the Court does not explicitly address the consequences of a temporary absence for purposes of running for state-wide office, the Alabama Supreme Court stated that "temporary absence from one's residence for the purposes of his employment and the like, without the intent to abandon the home town and acquire a domicile elsewhere permanently, or for an indefinite time, does not forfeit his right to vote." *Id.* at 778 (citing *Wilkerson v. Lee*, 181 So. 296, 298 (Ala. 1938)).

C. Applying Alabama Law to this Contest

1. McFeeters Evidence

McFeeters commenced this Contest, so the burden is on him to prove that Tuberville does not meet the legal requirements to be Governor. McFeeters presented evidence as to the ownership and property taxes on Tuberville's home in Alabama and his property in Florida. He also examined Tuberville on the witness stand about his background, his time coaching—both at Auburn and after—his time after coaching, and his time as a U.S. Senator, as well as how much time he spends in Auburn, how much time he spends in Florida, and how much time he spends in the District of Columbia, together with the details of his travel back and forth.

The evidence presented by McFeeters is not sufficient to prove that Tuberville fails to meet the requirements of Sec. 117. To accomplish this, McFeeters would have had to prove that Tuberville was not physically present in Alabama or that he did not intend to remain there. Owning property in another state does not prove that, nor does spending time in another state.

McFeeters has complained of not being able to present all of the evidence that he wanted to in this Contest. If that is the case, then he has no one to blame but himself.

McFeeters has been trying to get Tuberville disqualified for months. Shortly after the qualifying period ended in late January, McFeeters filed a Candidate Challenge with the Alabama Republican Party, questioning whether Tuberville met the legal requirements to be Governor and encouraging the Party to investigate. The Candidate Committee considered his Challenge and dismissed it without a hearing on February 1.

On March 24, McFeeters sued Tuberville and the Alabama Republican Party in Covington County Circuit Court, seeking to have the Court determine that Tuberville was ineligible. *See McFeeters v. Tuberville et al.*, Case No. 2026-cv-900042, Covington County Circuit Court. On

May 18, and without McFeeters ever having served his Complaint on Tuberville, the Court dismissed the case due to lack of jurisdiction.

All of which brings us to this Contest. This Contest has proceeded pursuant to the Rules Governing Contests of Primary Elections, and we provided him a copy of these Rules on May 21, six days before he commenced this Contest. According to his post on Facebook on May 24, McFeeters was reviewing the Rules. He commenced this Contest on May 27, presumably having already thought through how he would prosecute the Contest differently from his two previous unsuccessful attempts at disqualifying Tuberville, including by conducting discovery (taking depositions, subpoenaing documents, etc.) pursuant to the Rules. Nevertheless, he waited until June 3 to retain counsel to assist him with this Contest, and he waited until June 8—two days before the Rules required both parties to submit all of their evidence for the Hearing, including the transcript for any deposition taken—to serve a notice of deposition. To our knowledge, he has not noticed any other deposition, nor has he served any requests for documents, requests for admissions, interrogatories, or any other discovery in this Contest, all of which are permitted by the Rules.

It was McFeeters's right to commence the Contest. It was also his right to conduct discovery pursuant to the Rules. Just as it was his right not to conduct any discovery except a single noticed deposition, and it was his right not to serve that notice of deposition until two days before the Rules required him to submit his evidence.

But it is not his right to complain about being unfairly denied the opportunity to present the evidence that he wants. The Rules made clear how he could present whatever evidence he wanted. And he had months to consider what the best evidence of Tuberville's ineligibility would be and how best to obtain that evidence. Instead, McFeeters chose to ignore the Rules and the

discovery rights they provided to him until it was too late to do what he wanted. That is not our fault or the fault of the Rules. If there is any blame for this, it lies squarely on McFeeters.

2. Tuberville Evidence

The evidence presented by Tuberville is conclusive as to his being a resident citizen of Alabama since prior to November 2019 (i.e., during the seven-year period required by Sec. 117).

Among other things, this evidence proves:

- Tuberville resided in Florida prior to 2018.
- Tuberville purchased his Auburn house in October 2018.
- Tuberville subsequently moved to Alabama.
- Tuberville filed a 2018 Alabama tax return indicating split-residency that year—part in Florida and part in Alabama.
- Tuberville registered to vote in Alabama and obtained an Alabama driver’s license in March 2019, listing the Auburn house as his residence.
- Tuberville filed Alabama tax returns for 2019 and each subsequent year that do not indicate residency in any other state.
- In 2019 and 2020, Tuberville successfully ran to be one of Alabama’s U.S. Senators, and has served as such since he was sworn in in January 2021.
- In January 2021, the U.S. Senate determined Tuberville to be a resident of Alabama.
- Tuberville voted in Alabama in the 2020, 2022, and 2024 elections.

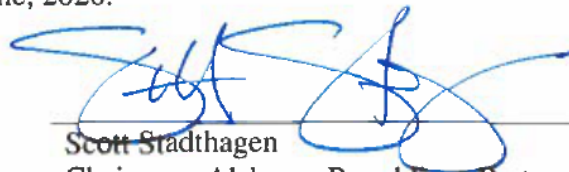
Based on applicable precedent from the Alabama Supreme Court, including *Harris v. McKenzie*, 703 So. 2d 309 (Ala. 1997), this evidence is sufficient for us to conclude that Tuberville has been physically present in Alabama with the intent to remain here. Indeed, the Alabama Supreme Court has recognized one of the facts proved by Tuberville—registration to vote—is a

particularly “potent consideration” to take into account when determining domicile, as voting “is indicative of intention with respect to the question [of domicile] and is regarded as importantly bearing upon the place of domicile.” *Id.* at 311 (*quoting Ambrose v. Vanderford*, 167 So. 2d 149, 153 (Ala. 1964) (*also quoting Ex parte Weissinger*, 22 So. 2d 510, 514 (Ala. 1945))). Moreover, Alabama law recognizes that temporary absence from one’s domicile (*e.g.*, representing Alabama in the U.S. Senate) does not forfeit residency for political purposes, provided the individual has not exhibited an intent to abandon the former domicile and acquire a new one elsewhere. Ala. Const. Art. I, § 31 (“[t]hat temporary absence from the state shall not cause a forfeiture of residence once obtained”); *see also Jacobs*, 401 So. 2d 776 (Ala. 1981). No evidence was presented of any intent by Tuberville to abandon his Alabama residency.

Conclusion

McFeeters commenced this Contest but failed to carry his burden of proving that Tuberville does not meet the legal requirements to be Governor of Alabama. That would be sufficient by itself to warrant dismissal of this Contest. But Tuberville also proved the inverse: He does meet the legal requirements to be Governor of Alabama. Accordingly, this Contest is denied and dismissed, and Tuberville is confirmed as the nominee of the Alabama Republican Party to be Governor of Alabama.

Done on this the 14th day of June, 2026.



Scott Stadthagen
Chairman, Alabama Republican Party