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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.* BROOKE LYNN DORGAN, *et al.*,	)	
Plaintiffs,	)	
v.	)	**No. 03-CV-2026-901053**
THOMAS HAWLEY TUBERVILLE, *et al.*,	)	
Defendants.	)	

DEFENDANT TUBERVILLE'S
MEMORANDUM IN SUPPORT OF
MOTION TO DISMISS FOR LACK OF JURISDICTION

Defendant Thomas Hawley Tuberville ("Tuberville") hereby moves this Court to dismiss this action for lack of jurisdiction. On its face, the action disputes the certification to the Secretary of State of Tuberville as the Republican nominee after winning the May 19 primary election with over 420,000 votes. In essence, the Court is being asked to seize control of the election process, and repudiate the choice of several hundred thousand Republican primary voters. Moreover, the action seeks to second-guess the post-election decision of the Republican Party that reviewed and resolved a dispute under Ala. Code §§ 17-13-70, 71 over

whether Tuberville is "eligible" to be Governor in light of the "resident citizen" duration requirement of § 117 of the Constitution. Under the guise of seeking enforcement of § 117, this action asks this Court to exceed what is allowed it by § 142 of the Constitution, and the power it confers on circuit courts.

I. The Court's jurisdiction to issue any order affecting elections is limited under § 142 of the Constitution by the statute codified at Ala. Code § 17-16-44.

Under § 142 of the Constitution, when the legislature has expressly "provided by law" for there to be no jurisdiction, the Constitution says the Court loses its "general jurisdiction" to do anything. The legislature has "provided by law" in Ala. Code § 17-16-44 that the circuit court lacks jurisdiction, given the subject matter. It reads:

> 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 . . . . [Any] authority to do so shall be specially and specifically enumerated and set down by statute.

(*Id.*) In the next clause, the statute also says that, absent a specific statutory enumeration, "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 . . . shall be null and void. . . . ." (*Id.*)[1]

Yet, that is exactly what the Complaint seeks. It wants an order that directs Secretary of State Allen to stop the printing of Tuberville's name on the general election ballot. (Doc. 2 at 23). Elsewhere, the Complaint requests an order that Tuberville not be "the certified nominee" (*Id.* at 22) and explains that he "was nominated as the Republican candidate for Governor by winning the Republican primary election." (Doc. 2 at 21 ¶ 78). There should be no doubt that the Complaint asks this Court for an order that "the results of any election are sought to be . . . affected."

There is no statute that confers "specifically enumerated" power on this Court to do what is prohibited. Yet the action seeks to do just that. A similar effort to order judicially the delisting of a candidate from the ballot was rebuffed in *Rice v. Chapman*, 51 So. 3d 281 (Ala. 2010). There, a candidate did not make a timely filing required by the Ethics Act, and the Act directed, "other provision of the law notwithstanding, . . . the name

[1]Ala. Code § 17-16-44 goes even further and forbids action against officials who disobey a prohibited court order, provides for an appeal to the Supreme Court, and suspension of the order "by force of such appeal."

of the person shall not appear on the ballot." Ala. Code § 36-25-15©. In *Rice v. Chapman*, the Court held there was no jurisdiction to order ballot officials to do anything, as the language quoted above did not specifically provide for the circuit court to do anything.

Relators make no mention of *Rice v. Chapman*. The only statute cited is Ala. Code § 6-6-591 (Doc. 2 at 2 ¶6), in the article of the Code titled "Quo Warranto," and it says nothing about disputing who can be a candidate in a primary or general election. It does not even provide for removal of a name from an election ballot. Instead, the statute speaks of an action when a person "unlawfully holds or exercises any public office."

On the other hand, elsewhere in the same "quo warranto" article, Ala. Code § 6-6-598, the statute advises the remedy is not available when it addresses certain election matters. Thus, § 6-6-598 affirmatively bars use of § 6-6-591 when the "validity of an election may be contested under this Code. . . ." Because the ground for relief here, challenging eligibility under § 117 of the Constitution, is one that may be asserted to contest the validity of an election, the quo warranto remedy is not available. *See Parks v. State ex rel. Owens*, 13 So. 756 (Ala. 1893)(reversing trial court

relief to quo warranto relators contesting the declared result, and noting grounds for election contest). Under the *Parks* case, Realtors cannot avoid dismissal by ostensibly denying that they are pursuing an election contest. (Doc. 2 at 2 ¶ 6). Just as an election contest is available to challenge whether a candidate is "eligible" for the office sought, it is not available in an action under § 6-6-591.

One factor in how to construe the limitation on the quo warranto remedy is that "the additional optional remedy . . . might leave the question of the rightful incumbency of the office in protracted doubt and uncertainty." *Parks*, 13 So. at 759. To allow a quo warranto action under § 6-6-591 to proceed here would allow the same ground allowed for disputing "the validity of an election under this Code." It also would leave the Governor candidate nomination by 422,000 Republican primary voters in doubt and uncertainty. The circuit court is not the forum for a decision with such anti-democratic effects, and ALGOP is not to be denied its choice of nominee for a Statewide office by a single judge elected in a single county.

The only statutes that authorize the second guessing of the outcome declared in a primary election is provided in Ala. Code §§ 17-13-70 and 71, the election contest procedures. These procedures include assessing whether a candidate with the most votes is "eligible to the office sought." *Id.* § 17-13-70. By separate statute, the assessment of the nominee's "qualifications" is reserved for the political party "in its own way" by Ala. Code § 17-13-7(a). *See Knight v. Gray*, 420 So. 2d 247, 248-49 (Ala. 1982)("resident" requirement for legislators in § 47 of the Constitution).

Ala. Code § 17-9-3(a), cited in the Complaint, does not authorize the Secretary of State to second-guess the assessment of qualifications by the political party for candidates. (Doc. 2 at 7 ¶ 18, at 23 ¶ 96 (citing). Nothing in that statute directs the Secretary to make his own assessment of the qualifications of candidates certified by a political party chair. In fact, § 17-9-3 establishes that a candidate is "entitled to have their name printed on the appropriate ballot for the general election." Nothing says the Secretary can make his own assessment of who is "otherwise qualified," especially when there has been a special hearing on the subject by the candidate's political party. That assessment is left to the political party. The situation

described in the Complaint bears no resemblance to the case cited in the Complaint, *Bostwick v. Harris*, 421 So. 2d 492, 493 (Ala. 1982), where persons did not file for candidacy in timely fashion. In other words, the Secretary has no power under § 17-9-3 to evaluate whether Tuberville is "otherwise qualified," as the certification from the political makes Tuberville "entitled" to have his name of the ballot.[2]

Circuit court efforts to control the primary election contest procedure that evaluate who is qualified are not allowed. *See Ex parte Baxley*, 494 So. 2d 30 (Ala. 1986)(mandamus issued to halt circuit court supervision of subpoenas for primary election contest). As explained there,

> [T]he committee acquires exclusive jurisdiction to hear the contest, and the circuit court is without power to invade or defeat such jurisdiction. . . . The circuit court, being without power to invade or defeat the subcommittee's jurisdiction, is without power and jurisdiction . . . ."

Id. at 31 (*quoting*, *Ex parte Skidmore*, 168 So. 2d 483, 484 (Ala. 1964)).

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[2]Subsection (b) of § 17-9-3 provides no additional basis for second-guessing the political party assessment of qualification, despite what might be implied by the Complaint, at 7 ¶ 18. It directs the judge of probate to prepare the ballot "with the names of each candidate qualified under the provisions of this section . . . ." That obliges the judge of probate to accept the certification of the political party, and does not diminish the fact that the candidate is "entitled" to have his name of the ballot.

In short, the Complaint seeks a role that is not allowed by the statutes or the Constitution.

A. The Republican Party election contest decision, and findings that Tuberville has been a "resident citizen" for the required seven years, cannot be second-guessed.

In Tuberville's case, after winning the primary election, there was a contest heard and decided by the 20-person Candidate Committee of the Alabama State Republican Executive Committee. The hearing began with written Evidentiary Submissions on June 10, objections to any evidence, and live testimony on June 14. The ALGOP decided that Tuberville meets the "resident citizen" duration requirement of § 117, therefore is "eligible to the office sought." A copy of the seven page ALGOP Final Decision signed by Chairman Scott Stadthagen is attached As Exhibit A. The ALGOP Final Decision explicitly found Tuberville to be "a resident citizen of Alabama since prior to November 2019." It also made several findings about the evidence:

- 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 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.

Exhibit A (*McFeeters v. Tuberville*, Final Decision at 6 (ALGOP June 14, 2026).

The Complaint ignores these findings but criticizes the ALGOP election contest saying it was a "closed-door hearing, . . . and was essentially a show trial" that "failed to comply with internal party rules." (Doc. 2 at 21 ¶ 80). But the Final Decision recites a history that belies that allegation. At pages 5-6, the Final Decision reports on the months long efforts to challenge Tuberville's eligibility, provisions of ALGOP Rules

allowing for depositions, and document subpoenas well before the May 27 filing of an Election Contest. *See* Ex. A (Final Decision at 5-6). And the only effort made was a Notice of Deposition for Senator Tuberville two days before evidence was due. Still Tuberville appeared in person before the Candidate Committee voluntarily, and testified under oath on cross-examination. The Contestant did not testify, and was not required to speak.

The lengthy discourse in the Complaint about Tuberville's house in Santa Rosa beach, especially the travel there after election to the U.S. Senate signify nothing that justifies action by this Court. In January 2021, as a necessary consequence of election to the Senate, the full U.S. Senate, as the "judge" of his qualifications to be a Senator from Alabama, necessarily determined him to be an "inhabitant" of Alabama.[3] By the terms of the Complaint, at 7 ¶ 20, status as an "inhabitant" is equivalent to deeming Alabama as Tuberville's "domicile," and his being a "resident

[3] *See* U.S. Const., art. I, sec. 3 ("No person shall be a Senator . . . who shall not, when elected, be an Inhabitant of that for which he shall be chosen."), sec. 5 ("Each House shall be the Judge of the Elections, Returns and Qualifications of its Members . . . .")

citizen," despite whatever conflicting inferences it may otherwise conjure for his time before that action. (Doc. 2 at 9-12).

From reading the Complaint, the Court would be unaware that Tuberville's time as a Senator away from Alabama does not impair his status as a "resident citizen." Section 31 of the Constitution explicitly says: "Temporary absence from the state does not cause forfeiture of residence once obtained." Just as Tuberville's spending most of his time in Washington as Senator does not cause a loss of his resident status in Alabama; likewise, his time in Florida also has no such inherent effect.

B. Election debate by the voters, and final review by the Constitution in the legislature, confirms no need for a role by this court.

After political party nominees are certified, the assessment of eligibility is made by voters in an election campaign. Thereafter, if a candidate wins the election, a trial is available "by both houses of the legislature." Ala. Const., Art. V, § 115 ("Contested election for governor . . . shall be determined by both houses of the legislature in such manner as may be prescribed by law."). The implementing statutes are in Ala. Code §§ 17-16-40, 65. Those statutes provide that eligibility for the office is a ground for election contest, but only in the legislature. They reserve to the

legislature the authority to issue a "final judgment" which "become[s] effective as a judgment and shall have the force and effect of vesting the title to the office." *Id*. § 17-16-65. There is no role for a circuit judge in this process, unless assigned specifically by a commission of eight legislators, *Id*. §§ 17-16-66, 67, 68.

In sum, the Complaint asks this Court to second guess one election tribunal, i.e., the nominating political party, and prevent a second tribunal from exercising its authority conferred by § 115 of the Constitution. It is completely out of bounds.

C. The Complaint, by denying any effort to affect the primary election, does not avoid the jurisdiction restrictions of § 17-16-44 .

There is no mention in the Complaint of the jurisdiction limitations imposed by § 17-16-44, or of the limitations on relief imposed by § 6-6-598. Relators allege instead that jurisdiction is provided by Ala. Code § 6-6-591, and that it does "not contest the validity of the results of the Republican primary for Governor." (Doc. 2 at 2 ¶ 6). That does not avoid § 17-16-44, as its language is broader. It restricts jurisdiction when "the results of an election are sought to be . . . affected . . . ." Thus, there is no jurisdiction

when the primary election would be "affected." And there is no jurisdiction when a nominee elected by primary voters may not be eligible to win the general election.

Nor does the Complaint avoid the potentially broader limitations on quo warranto relief imposed by § 6-6-598. Thus, where the validity of an election which may be contested - whether or not the election is actually contested. The Complaint seeks an "order . . . whereby the results of any election are . . . affected," so § 17-16-44 operates to deny the Court jurisdiction.

On its face, the Complaint alleges that Tuberville's right to participate in and win the primary election was disputed on residency grounds - the same allegation made here. (Doc. 2 at 20-21 ¶¶ 77-81). The Complaint says that he "was nominated as the Republican candidate for Governor by winning the Republican primary election" held May 19. (Doc. 2 at 21 ¶ 78). And the Complaint says that Tuberville's primary opponent filed a post-primary election contest. (*Id.* at 20 ¶ 77). And finally, the Complaint repeats that "Tuberville does not meet the Constitutional eligibility requirement to be certified as the Republican nominee or to be elected as Governor." (Doc. 2 at 21 ¶81) .

In short, despite their denials, the Relators seek this Court to affect the election, and therefore the court lacks jurisdiction under § 17-16-44.

II. The quo warranto statute, Ala. Code § 6-6-591, is inapplicable to bar a private political party nominee for public office from being included on the general election ballot.

Were Ala. Code § 6-6-598 not a bar to this action, § 6-6-591 by its own terms, provides for no relief against Tuberville because he has no "office" that is within the purview of the statute. As mere nominee of a political party - a private organization, for a public office of the State, § 6-6-591 does not apply. The Complaint cannot avoid that undisputed fact.

The statute on its face requires the defendant to hold a "public office" unlawfully, and reads as follows:

> (a) An action may be commenced in the name of the state against the party offending in the following cases:
>
> > (1) **When any person usurps, intrudes into or unlawfully holds or exercises 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;
> >
> > (2) When any public officer, civil or military, has done or suffered any act by which, under the law, he forfeits his office; or

> (3) When any association, or number of person, acts within this state as a corporation without being duly incorporated.

(Emphasis added). None of these provisions mention relief against a "quasi-officer." The focus is on a "public officer."

The allegations of the Complaint are not that Tuberville as nominee is a "public officer," but that he is a "quasi-officer,"(Doc. 2 at 21 ¶ 83; at 6 ¶ 16). None of the cases cited in the Complaint (Doc. 2 at 6 ¶ 16 n.20) indicate that quo warranto relief is available against a "quasi-officer" under § 6-6-591.[4] The language of § 6-6-591 does not mean more than what it says. *See State ex rel. Burdette v. Coats*, 500 So. 2d 1 (Ala. 1986)(public

[4] *State ex rel. Norrell v. Key*, 165 So. 2d 76, 78 (Ala. 1964) (rejected quo warranto relief against a nominee for office chosen by improperly limited electorate not filed until after he entered office); *King v. Campbell*, 988 So. 2d 969, 979 (Ala. 2007)(denying declaratory relief, nominee for judgeship not due status as "quasi-officer " due protection from decrease in number of judicial "offices" under Ala. Const., Art. VI, § 151); *Bridges v. McCorvey*, 49 So. 2d 546, 548 (Ala. 1950)(refusing writ, noting nominees for government office are "quasi-officers" in resolving whether statutes authorizing political party contest procedures apply to disputes about party officer elections); *Boyd v. Garrison*, 19 So. 2d 385, 387 (Ala. 1944)(injunctive relief denied, as barred by predecessor codification of § 17-16-44, despite "valuable right" as nominee being like certificate of election).

"employees" do not hold "public office"). As explained in *State ex rel Gray v. King*, 395 So. 2d 6, 7 (Ala. 1981):

> A public office is the right, authority, and duty, created by law, by which for a given period, either fixed by law or enduring at the pleasure of the creating power, an individual is **invested with some portion of the sovereign functions of the government,** to be exercised by him for the benefit of the public.

(Emphasis added). By this standard, Tuberville does not have, as the nominee for Governor of a political party, a "public office." He exercises no portion of the sovereign functions of the State.

The fact that a nominee has some right "of the same sort as a certificate of election to an office" (Doc. 2 at 6 ¶ 16) hardly means he holds a "public office." In the words of the *Gray v. King* case, a nominee for public office does not "exercise any portion of the sovereign functions of government." *Id.* at 7. Even a certificate of election to an office fails to confer a portion of the sovereign functions of government. Whatever the alleged "same sort" means, have rights of that kind is not the holding of a "public office."

The case cited in the Complaint at 22 ¶ 85, *Talton v. Dickinson*, 72 So. 3d 723, 726 (Ala. 1954) does not hold that a nominee holds or usurps

a "public office." It merely denies declaratory relief not to be available to test the possibility that a local officer, if elected, would become ineligible during his term of office because of age restrictions imposed by statute. The dispute was deemed not yet a "justiciable controversy." *Id.* As the court noted, that the defendant "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, and the private citizens who filed the bill as parties complainant show absolutely no right to have the court adjudicate on the question". *Id.* at 725.

Relators misread the *Talton* case in arguing for larger meaning. The additional comment in the *Talton* case that quo warranto "is the exclusive remedy to determine whether or not a party is usurping a public office" fails to establish that quo warranto relief is available *before holding an office*, or that one holds a public office merely by being a nominee for that public office. In fact, the very case cited after noting that quo warranto is the exclusive remedy, *Seavey v. Van Hatten*, 92 N.Y.S. 2d 402 (A.D. 1949) holds the opposite. It advises that quo warranto relief is not available to challenge one who has not yet assumed the public office. *Id.* at 404. It

also confirms that declaratory relief is not available in advance of assuming office. *Id.* at 405. The *Seavey* case does not indicate that a nominee holds a public office. In sum, the citation in Alabama's *Talton* decision fails to justify reading § 6-6-591 to apply to nominees for "public office," and instead confirms that *Talton* holds cases disputing eligibility of nominees to be non-justiciable.

III. The Plaintiffs's allegations fail to reflect standing to obtain some or all the relief against Allen and removing Tuberville from the general election ballot.

This Court is also without jurisdiction because Brogan and LeBlanc lack standing to obtain relief. They have no right to any relief as Relators against anyone except Tuberville, and no standing to obtain relief against Allen. They have failed to allege any "injury" they suffer from Tuberville being on the ballot. *See Citizens Caring for Children v. Town of Cedar Bluff*, 904 So. 2d 1253 (Ala. 2004). At most, they make claims as person "registered and eligible to vote." *See* Complaint at 2 ¶¶ 2, 3). In contrast to an affected candidate who may fail to win an office, a mere voter does not have standing to pursue removal by court order of a candidate from the ballot due to ineligibility, except in a contest. *See Bryan v. Hubbard*,

6 So. 3d 491, 504 (Ala. 2008)(removal of candidate for non-compliance with campaign finance filings deadlines). Allowing an uninjured person to obtain relief from a court would be acting as a legislature, not a court, as the *Cedar Bluff* case explains:

> In the absence of such an injury, there is no case or controversy for a court to consider. Therefore, were a court to make a binding judgment on an underlying issue in spite of absence of injury, it would be exceeding the scope of its authority and intruding into the province of the Legislature.

904 So. 2d at 1256. In light of that holding, Brogan and LeBlanc should not be allowed as mere voters to disrupt political party candidate choices, and the authority of the legislature, by obtaining declaratory or other relief. (Doc. 2 at 22-23 (requesting injunctive relief).

CONCLUSION

Accordingly, Tuberville urges the Court to dismiss this action for lack of subject matter jurisdiction.

Respectfully submitted.

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CERTIFICATE OF SERVICE

I hereby certify that I have electronically filed the foregoing with the Clerk of the Court using the AlaFile System, which will send electronic notification of such filing to counsel of record as listed below, on this the 22nd day of June, 2026.

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