



**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.)

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 because Relators do not believe they can trust the voters to choose their own Governor. As further grounds, Tuberville shows the following:

1. This action is due to be dismissed because of the directives in

Ala. Code § 17-16-44. It is not allowed to proceed as a quo warranto action, or as an action for declaratory or injunctive relief.

2. Relators ask this Court to do what Alabama law does not allow: (I) second-guess the result of a completed Republican primary, (ii) disregard the Republican Party's statutorily authorized contest process to test the "resident citizen" status of its primary election winner, (iii) prevent Alabama voters from deciding whether the Republican nominee should be elected as their next Governor, and (iv) not allowing the process for disputing those general election results as set out in § 115 of the State Constitution.

3. Alabama's law limiting court jurisdiction does not reflect distrust of the general election voters, or the primary election voters. It reflects the opposite. The Constitution and the Election Code leave political questions of candidate selection, nominee certification, and gubernatorial election contests to the voters, the political parties, and, after the general election, and the legislature sitting in the manner prescribed by law, see Ala. Const., Art. V, § 115..

4. Relators' filing proceeds from the different premise that this Court should intervene before the general election, and not allow Alabama

voters to choose him as their Governor. This kind of action is what the Constitution and Legislature barred from the judiciary in Ala. Code § 17-16-44.

5. As directed in § 115 of the Constitution, the legislature has prescribed detailed procedures for election contests after both primary and general elections, including procedures for presenting evidence, conducting proceedings, and resolving challenges to candidate qualifications, including whether the candidate is “eligible to the office sought.” In the primary election context, Alabama law allows political parties to evaluate candidate qualifications and resolve contests. In the general-election context, the Constitution expressly provides that a contested election for Governor shall be determined by both houses of the legislature, in the manner it directs by law. These provisions show that the legislature knows how to create election-contest procedures when it chooses to do so.

6. Just as important, the legislature chose not to give those powers to the Secretary of State and chose not to give them to the courts except where authority is “specially and specifically enumerated and set down by statute.” Ala. Code § 17-16-44. That statute is not a technicality. It is a jurisdictional boundary of circuit court judicial power, under § 142

of the Alabama Constitution. It prevents courts from entertaining proceedings that seek to ascertain, question, or affect the legality, conduct, or results of an election unless the Legislature has specifically authorized judicial action.

For these reasons, and those set out in the attached Memorandum, the Court lacks subject-matter jurisdiction, and this action should be dismissed.

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.

/s/ Joe Espy, III
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