

No. SC-2026-0540

IN THE SUPREME COURT OF ALABAMA

STATE OF ALABAMA ex rel.
BROOKE LYNN DORGAN and JUSTIN JUDE LEBLANC,

Appellants,

v.

THOMAS HAWLEY TUBERVILLE,

Appellee.

On Appeal from the
Circuit Court of Montgomery County, Alabama (03-CV-2026-901053)
(The Honorable Brooke Reid, Circuit Judge, Presiding)

APPELLANTS' REPLY BRIEF

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ADDITIONAL STATEMENT OF FACTS

While Tuberville supplements the Statement of Facts by adding a handful of additional allegations from the Complaint, he fails to note the context of those factual allegations. The Complaint notes that Tuberville obtained a driver's license and registered to vote in Alabama but alleges that he did so only as a subterfuge, in an effort to intentionally mislead and deceive the public into falsely believing that he was actually a resident of this state. In particular, the Complaint alleges:

Early in 2019, Tuberville decided to run for the United States Senate seat then occupied by Senator Doug Jones. After consulting with his political and legal advisors, Tuberville undertook a series of acts calculated to give the false appearance that the Tubervilles had moved their legal residence from Florida to the Auburn House owned by Tucker and Suzanne Tuberville. Much of the documentation that Tuberville now relies on to support his claim of Alabama residency was manufactured and fabricated pursuant to this scheme.

(C. 16, ¶ 37).

Curiously, Tuberville also attempts to graft onto the presumed facts the tainted findings from the show trial put on by the Alabama Republican Party. Of course, he also had to include the Complaint's presumed-correct allegations that the charade presented by the party "failed to comply with internal party rules regarding depositions and

document subpoenas and was essentially a show trial with a foregone finding in Tuberville's favor." (C. 25, ¶ 80).

Among those "findings" by the Republican tribunal was that Tuberville allegedly moved to Alabama sometime in 2018, without identifying any specific date for his alleged relocation from Florida. (TubBrief at 24). Of course, it continues to be impossible for Tuberville to reconcile this false claim with the undisputed fact that he voted in Florida in November 2018 after swearing under penalty of perjury that he was a full-time Florida resident. (C. 15, ¶¶ 33-34).

ARGUMENT

“I’m not an everyday resident of Alabama. I’m a carpetbagger.”

—Tommy Tuberville, Aug. 3, 2019 (C. 17, ¶ 39)

“I go back to Auburn for 3 or 4 ballgames a year.”

—Tommy Tuberville, April 2026 (C. 17, 43)

Tuberville and his amici spend more than 130 pages of briefing trying desperately to avoid an obvious and very inconvenient truth: Tuberville is constitutionally ineligible to serve as Alabama’s Governor. Raising every conceivable procedural and legal roadblock they can muster, Tuberville and his political allies ask this Court to simply look the other way while he thumbs his nose at an Alabama constitutional requirement that has existed since this state was founded more than 200 years ago. Without blushing, Tuberville argues that it is no business of the courts to examine whether the Constitution would be violated by his election to Alabama’s highest office.

Alabama has long held that it is up to the judiciary—undisputably a co-equal branch of our government—to uphold and enforce the provisions of the Constitution when threatened by unscrupulous politicians and others more concerned with their own power than the

rights enshrined in our most sacred laws. Tuberville’s position—that only the Alabama Republican Party can interpret the Constitution—is contrary to that long tradition and should be rejected by this Court.

I. QUO WARRANTO APPLIES TO CERTIFIED NOMINEES.

Tuberville and his amici argue that quo warranto is limited to public officials who have already been elected to office and does not extend to certified nominees.

Tuberville does not deny that this Court has, on numerous occasions, noted the special and valuable status afforded to party nominees by declaring them to be “quasi-officers” under the law. *See, e.g., 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.”); *Boyd v. Garrison*, 19 So. 2d 385, 387 (Ala. 1944) (describing the “quasi office” of a certificate of nomination as “a valuable right”).

On several prior occasions, this Court has had the clear opportunity to hold that quo warranto was inapplicable to nominees as quasi-officers. First, in *State ex rel. Norrell v. Key*, 165 So. 2d 76, 78 (Ala. 1964), this Court reiterated that “[t]he holder of a certificate of nomination has the

status of a quasi officer” but passed on deciding “whether quo warranto is an appropriate remedy to oust a nominee from that office.”

Then, in *Johnson v. Roberson*, 682 So. 2d 58, 60 (Ala. 1996), this Court again passed on deciding whether a nominee was subject to quo warranto but went out of its way to describe the filing of a quo warranto proceeding “**against the purported nominee**” as “[a] safe practice.” *Id.* at n.3 (emphasis added).¹

Finally, in *King v. Campbell*, 988 So. 2d 969, 979 (Ala. 2007), this Court observed that “in the context of measuring the timeliness of a quo warranto proceeding, that 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.**” (emphasis added).

¹ The *Johnson* Court recommended joining the quo warranto claim with “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.” *Id.* Appellants initially sued the Alabama Secretary of State but dismissed him when he took the formal position that he had no authority over the placement of a nominee’s name on the general election ballot. See C. 93 (“The Secretary has no oversight authority over probate judges (who are separately elected) or the ballot-printing process; he merely certifies to them ‘the fact of nomination’ of a candidate by a political party. See Ala. Code § 17-9-3(b). . . . In short, the Secretary’s mechanical certification does not give him oversight authority over probate judges, ballot printing, or otherwise make him a proper party for the relief that Plaintiffs seek.”).

On at least three prior occasions, therefore, this Court could have easily declared that quo warranto does not apply to certified nominees but found the question sufficiently weighty as to put off a decision until it was presented in a more adversarial posture. Certainly, the application of quo warranto to nominees was not so “preposterous” that this Court could reject it out of hand, despite several opportunities to do so. If, as Tuberville claims, quo warranto is categorically unavailable until the defendant assumes office, why would this Court instruct litigants to sue the “purported nominee” in quo warranto and refer to it as a “safe practice,” and why would this Court say that quasi-officer status requires the quo warranto proceeding to be filed **before the election**?

While declining to hold that quo warranto did not extend to certified nominees, the Court has repeatedly held that quo warranto was the “exclusive remedy” for challenging a person’s eligibility to hold office. *See 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).

Tuberville also fails to address the special legal status that certified nominees enjoy under Alabama’s system governing political parties.

Primary and general elections are a part of a “state-controlled elective process,” *Ray v. Blair*, 343 U.S. 214, 227 (1952), that recognizes party executive committees as “official arm[s] of the state.” *Davis v. Schnell*, 81 F. Supp. 872, 878 (S.D. Ala.), *aff’d*, 336 U.S. 933 (1949). Only state-certified candidates can appear on the primary or general election ballots. See Ala. Code § 17-9-3(a)(1); 17-13-17; 17-13-18(d). Certified nominees, as quasi-officers, exercise authority that is not available to the general public. See *State v. Wait*, 138 N.W. 159, 163 (Neb. 1912) (“While a nomination as a candidate for election to an office does not make the nominee, strictly speaking, an officer, he is in his relation to the party which placed its confidence in him a quasi officer, and his duties are to be measured by that relation.”).

Based on these special attributes and considerations, this Court should adopt the position taken by the Florida Supreme Court in *State v. Fernandez*, 143 So. 638, 640 (1932), in which the court reasoned that “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.”

II. § 6-6-598 DOES NOT PRECLUDE QUO WARRANTO RELIEF.

Tuberville bases much of his argument on his claim that Ala. Code § 6-6-598 prohibits a claim for quo warranto under these facts. As noted in Appellants’ initial brief, Tuberville’s reliance on this statute is misplaced.

Section 6-6-598 provides that “[t]he validity of an election which may be contested under this Code cannot be tried under the provisions of this article.” This prohibition is inapplicable here, however, because Appellants are not trying or challenging the **validity** of any election. Not only do Appellants concede that Tuberville handily won the Republican primary, their claims in this case are wholly dependent on the fact that Tuberville was the victor and was certified as such by the party and the Secretary of State. As noted previously, Appellants do not dispute the vote totals or election procedures involved in the primary and do not dispute that the Republican Party had the power to elect Tuberville as its nominee.

Unlike the plaintiffs in *Parks v. State ex rel. Owens*, 13 So. 756 (Ala. 1893), and *Mizell v. State*, 55 So. 884 (Ala. 1911), Appellants are not asking the courts to “inquire into the election” based on claims of illegal votes or improprieties in the location of polling places or vote tabulation. Instead, Appellants seek to challenge a legal status that arose only **after** the primary election was concluded and the result was certified.

Further, the election statute on which Tuberville relies in claiming that Appellants could have instituted an election contest, Ala. Code § 17-13-71, is expressly limited to a challenger “who belongs to that party and who legally participated in such primary election.”² Appellants do not belong to the Alabama Republican Party and did not participate in the Republican Primary. Because they do not satisfy those statutory requirements, they could not have contested Tuberville’s primary election victory under this statute. *See Hiltz v. Bedwell*, 352 So. 3d 691, 694 (Ala. 2021) (“[S]tatutes governing election contests must be strictly construed.”); *Fluker v. Wolff*, 46 So. 3d 942, 950 (Ala. 2010) (“An election

² Similarly, Ala. Code § 17-13-83 provides that primary election contests may only be brought by a “qualified elector of a party . . . if the elector participated in the primary.” Ala. Code § 17-13-78(a)(1) requires a challenger to certify in writing that he or she voted in that party’s primary election.

contest is a statutory matter, and the statute governing the election must be strictly observed and construed.”). As a result, § 6-6-598’s restriction does not apply.

III. § 17-16-44 DOES NOT STRIP COURTS OF JURISDICTION TO HEAR QUO WARRANTO CASES.

Tuberville and his amici contend that Alabama’s jurisdiction-stripping statute, Ala. Code § 17-16-44, precludes Appellants’ quo warranto action because it might “affect” the general election. Tuberville’s argument reads § 17-16-44 much too broadly.

First, Tuberville concedes that § 17-16-44 must be strictly and narrowly construed. *See Dennis v. Prather*, 103 So. 59, 62 (Ala. 1925) (“Statutes restricting the jurisdiction of courts of equity, as defined at common law, and reiterated by statute in Alabama, should be strictly construed.”); *Veitch v. Vowell*, 266 So. 3d 678, 683 (Ala. 2018); *Working v. Jefferson Cnty. Election Comm’n*, 2 So. 3d 827, 838 (Ala. 2008).

Second, a reading of § 17-16-44 reveals that it is textually limited to inquiries into the validity and result of elections which have already taken place. The statutory language 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.” Ala. Code § 17-16-44 (emphasis added).

This Court has previously held that:

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.

Dennis v. Prather, 103 So. 59, 62 (Ala. 1925) (emphasis added). *Dennis* has never been overturned and has been cited by this Court over twenty times. As noted above, Appellants do not seek to “inquir[e] into the validity” of the Republican primary that resulted in Tuberville’s nomination and certification by the Secretary of State.

In response, Tuberville and the Attorney General argue that his disqualification on constitutional grounds would “affect” the results of the primary and the “conduct” of the general election by removing him as an eligible candidate. Both arguments expansively and liberally construe § 17-16-44 in violation of the mandated strict construction.

As regards the alleged “affect” on the Republican primary, Tuberville has already been certified by the party and by the Secretary of State. That result is not challenged and will not change. Tuberville is the Republican nominee and Appellants concede that the Republican Party had the almost unfettered power to nominate him and certify the results of the party’s primary.

Tuberville and the Attorney General rely on *Roper v. Rhodes*, 988 So. 2d 471 (Ala. 2008), as their only authority that a post-primary challenge to a candidate’s place on the ballot automatically triggers § 17-16-44. *Roper* is one of a handful of cases interpreting and applying the ballot ineligibility provision of the Alabama Fair Campaign Practices Act. The facts and legal analysis in those cases subsequently caused this Court to expressly limit the holdings in *Roper* and those other cases solely “to proceedings seeking judicial enforcement of § 17-5-18.” *Bryan v. Hubbard*, 6 So. 3d 491, 501 (Ala. 2008). This case obviously does not involve the judicial enforcement of the FCPA.

In addition, *Roper* focused on the fact that the defendant’s conduct complained of by the plaintiffs predated the primary and runoff elections, so that the plaintiffs were really seeking to revisit the winning

candidate's eligibility to participate in those previous elections. 988 So. 2d at 477. Here, Appellants do not question whether Tuberville was properly allowed to run in and win the Republican primary. Appellants have consistently acknowledged the right of a political party to nominate the candidate of its choice. Appellants challenge only Tuberville's constitutional eligibility to now serve as the certified nominee—which presumes that the results of the primary are valid and correct. To quote the Attorney General's brief: "An order declaring Tuberville ineligible now cannot undo what has already been done." (Marshall Brief at 31 n.7).

Finally, Tuberville and his amici rely on *Rice v. Chapman*, 51 So. 3d 281 (Ala. 2010), as standing for the proposition that § 17-16-44 addresses actions that affect the "conduct" of future elections. Of course, *Rice* was not a quo warranto action based on constitutional ineligibility but was instead an action to enforce provisions of the Alabama Ethics Act and Fair Campaign Practices Act. 51 So. 2d at 283. In addition, the case involved the Republican Party's conduct of a primary, not a general election. *Id.* That distinction is critical because it implicates the party's undisputed right to control its own primary and certify its own primary candidates.

More importantly, *Rice* does not discuss or attempt to distinguish the holding in *Dennis* that § 17-16-44 is concerned with inquiries into elections that have already been held.

Finally, *Rice* has been distinguished by this Court in *Veitch v. Vowell*, 266 So. 3d 678, 683 (Ala. 2018), as inapplicable to constitutional challenges to the conduct of future elections.

Appellants' quo warranto action does not seek to change the result of the Republican primary election and does not seek to control the conduct of the general election. Instead, this case seeks to have a court examine and decide whether Tuberville is constitutionally ineligible to serve as Alabama's next governor. As a consequence, § 17-16-44 does not deprive the courts of subject matter jurisdiction.

IV. APPELLANTS HAVE “STANDING”

Tuberville also suggests that Appellants may lack “standing” because they have only “generalized grievances” that don’t demonstrate the required injury.

Of course, Tuberville’s argument ignores that the quo warranto statute unequivocally grants any citizen the right to bring such an action. *See Rouse v. Wiley*, 440 So. 2d 1023, 1024 (Ala. 1983) (“Private individuals

in Alabama are authorized by [Alabama Code] § 6-6-591 to institute quo warranto actions.”).

V. THE CASE IS NOT MOOT.

Tuberville’s final attempt to make this case go away is a claim that this matter is “likely moot” because the deadline for removing Tuberville’s name from the general election ballot has allegedly passed. (TubBrief at 58).

Appellants’ Complaint seeks broad relief and is not limited to preventing Tuberville’s name from appearing on the ballot. (C. 26: “Wherefore, Plaintiffs respectfully request that this Court issue a writ of quo warranto finding that Tuberville is not lawfully eligible to be the certified nominee or to hold the office of Governor, award Plaintiffs their costs and attorney’s fees, and grant such other, further, or different relief that this Court deems proper.”).

Of course, Appellants would have preferred to have had this case resolved before the general election ballots were printed and sent out to voters, since that would have allowed the Republican Party to replace the ineligible Tuberville on the ballot and voters would have had a choice between two constitutionally eligible candidates. Tuberville’s

intransigence and the inevitable delays of litigation have now made that impossible.

That does not mean that there is no longer any remedy available, however. If this case is returned to the circuit court and Tuberville is found to be ineligible, any votes cast for him will not count. If he receives the most votes in the general election, the results will be declared void. *See Banks v. Zippert*, 470 So. 2d 1147, 1149 (Ala. 1985) (“Where there is a contested election in Alabama, the statute provides that if the person who received the highest number of legal votes be ineligible or disqualified, the election must be declared void.”); *see also* Ala. Op. Att’y Gen. No. 2001-041 (Nov. 30, 2000).

In any event, Alabama voters deserve to know whether Tuberville is constitutionally ineligible before they go to the polls in November.

CONCLUSION

For all of the reasons set forth above, Appellants respectfully request that this Court reverse the dismissal of this action and remand this case to the circuit court for a trial on the merits.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that this brief complies with the word limitation set forth in the Alabama Rules of Appellate Procedure 28(j)(i). According to the word-count function of Microsoft Word, the brief contains 3,359 words from the Statement of the Case through the Conclusion. I further certify that this brief complies with the font requirements set forth in the Alabama Rules of Appellate Procedure 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

I hereby certify that on September 3, 2026, I filed the foregoing with the Clerk of the Court using the electronic filing system and served a copy on all counsel to this proceeding by email:

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