

IN THE CIRCUIT COURT OF COVINGTON COUNTY, ALABAMA

Ken McFeeters,
Plaintiff,

v.

Tommy Tuberville, et al.,
Defendants.

Case No. CV-26-900042

**PLAINTIFF’S RESPONSE IN OPPOSITION TO DEFENDANT
TUBERVILLE’S MOTION TO DISMISS AND MOTION FOR
THRESHOLD DETERMINATION OF CONSTITUTIONAL ELIGIBILITY**

COMES NOW the Plaintiff, Ken McFeeters, appearing pro se, and respectfully files this Response in Opposition to Defendant Alabama Republican Party’s Motion to Dismiss and further moves this Court for a Threshold Determination of Constitutional Eligibility prior to dismissal or further proceedings.

The central issue before this Court is not political preference, campaign strategy, or speculative injury. The issue is whether a candidate seeking the Office of Governor of the State of Alabama satisfies the express constitutional residency requirements mandated by the Alabama Constitution.

The Alabama Republican Party seeks dismissal without first resolving the foundational jurisdictional fact upon which the controversy rests: whether Defendant Tommy Tuberville has in fact satisfied the seven-year residency requirement required for eligibility to serve as Governor of Alabama.

The Motion to Dismiss should therefore be denied.

I. INTRODUCTION

This action arises from a direct constitutional controversy concerning the qualifications of a candidate seeking the Office of Governor of the State of Alabama.

Plaintiff does not ask this Court to determine partisan questions or political policy. Plaintiff seeks a narrow and precise judicial determination regarding constitutional eligibility.

The Alabama Constitution imposes explicit residency qualifications for the Office of Governor. Those qualifications are not discretionary. They are mandatory conditions precedent to lawful candidacy.

Plaintiff alleges that Defendant Tommy Tuberville has failed to provide sworn testimony and supporting evidence establishing satisfaction of the constitutional residency requirement.

Rather than answer the factual question directly, Defendant seeks dismissal through procedural avoidance.

However, before this Court may dismiss the matter, the Court must first determine whether a live constitutional controversy exists concerning Defendant's eligibility. Plaintiff submits that such controversy plainly exists.

II. THE COURT MUST FIRST RESOLVE THE THRESHOLD CONSTITUTIONAL QUESTION

The Defendant seeks dismissal through procedural mechanisms before the underlying constitutional qualification question has been adjudicated.

However, where the central controversy concerns constitutional eligibility for public office, procedural dismissal cannot properly precede determination of the underlying constitutional condition itself.

Plaintiff respectfully submits that the Court must first determine the source and existence of lawful authority supporting continued ballot access before procedural termination of the action may occur.

Where the challenged condition concerns constitutional eligibility itself, the threshold factual and constitutional question necessarily precedes dismissal.

Plaintiff respectfully states that dismissal prior to adjudication of the constitutional eligibility issue would effectively operate as a substantive determination permitting continued candidacy without judicial resolution of the constitutional qualification dispute presented to the Court.

The judicial role is one of judgment rather than presumption. As recognized in *Marbury v. Madison*, "It is emphatically the province and duty of the judicial department to say what the law is." Plaintiff respectfully submits that this duty necessarily includes determining whether constitutional qualifications for office have in fact been satisfied where directly challenged in a live controversy.

Additionally, due process requires meaningful opportunity to be heard before deprivation of claims involving constitutional rights and election integrity. The Plaintiff respectfully submits that the threshold constitutional issue identified herein must be resolved before coercive procedural dismissal may properly occur.

A court cannot properly dismiss an action challenging constitutional eligibility without first determining whether the constitutional qualifications at issue have been satisfied.

The threshold question is straightforward:

Has Defendant Tommy Tuberville been a resident of the State of Alabama for the constitutionally required period preceding the gubernatorial election?

That issue is factual in nature and capable of judicial determination.

The Plaintiff has requested sworn testimony, documentary proof, and deposition testimony directed specifically toward this constitutional requirement.

The Notice of Deposition filed in this matter expressly sought sworn testimony from Defendant Tuberville and related witnesses concerning residency qualifications.

The Plaintiff's Complaint likewise seeks judicial resolution of that constitutional question.

A dismissal prior to factual determination would effectively insulate constitutional eligibility requirements from judicial review.

III. THE ISSUE PRESENTED IS JUSTICIABLE

The Defendant may attempt to characterize this controversy as political or speculative. It is neither.

The Alabama Constitution establishes objective eligibility requirements for the Office of Governor. Courts routinely determine questions involving:

1. Residency;
2. Domicile;
3. Qualification for office;
4. Ballot eligibility; and
5. Compliance with constitutional candidacy requirements.

The judiciary possesses both the authority and duty to determine whether constitutional prerequisites for office have been met.

Plaintiff's request is narrowly tailored:

Plaintiff asks this Court to require sworn evidentiary proof concerning constitutional eligibility before permitting Defendant to proceed as a qualified candidate.

That request presents a concrete controversy suitable for judicial review.

IV. PLAINTIFF POSSESSES STANDING

Plaintiff possesses standing as:

1. A candidate appearing in the same gubernatorial primary election;
2. A voter subject to the integrity of the election process;
3. A citizen entitled to constitutional compliance in public elections; and

4. A directly affected participant in the electoral process.

The injury is neither hypothetical nor generalized.

If an allegedly constitutionally ineligible candidate is permitted to remain on the ballot, the Plaintiff suffers direct competitive, electoral, and constitutional injury.

Additionally, the People of Alabama possess a direct interest in lawful compliance with constitutional qualifications governing executive office.

V. THE COURT SHOULD REQUIRE A THRESHOLD EVIDENTIARY DETERMINATION

Rather than dismiss the action, this Court should order a limited threshold evidentiary proceeding narrowly focused upon the constitutional residency requirement.

Plaintiff respectfully requests:

1. Production of sworn affidavits regarding residency;
2. Production of documentary evidence demonstrating domicile and continuous residency;
3. Limited expedited discovery;
4. Depositions previously noticed;
5. Judicial determination regarding constitutional eligibility.

This approach protects:

- the due process rights of all parties;
- the integrity of Alabama elections;
- judicial economy; and
- the constitutional structure itself.

If Defendant satisfies the constitutional requirements through competent evidence, the matter may then proceed accordingly.

If Defendant cannot establish constitutional eligibility, dismissal would be improper because the underlying constitutional defect would remain unresolved.

VI. THE MOTION TO DISMISS IMPROPERLY SEEKS TO AVOID FACTUAL REVIEW

Plaintiff respectfully submits that the present Motion to Dismiss attempts to convert procedural administration into substantive adjudication.

Where dismissal would effectively determine whether constitutional objections may proceed to adjudication at all, the procedural mechanism acquires substantive constitutional effect.

Plaintiff further respectfully states that constitutional qualifications for public office cannot become immune from judicial scrutiny merely through procedural avoidance.

The Alabama Constitution establishes mandatory eligibility requirements. Those requirements necessarily remain subject to judicial determination where properly challenged.

To dismiss the present action without first resolving the factual constitutional controversy would effectively presume constitutional eligibility without adjudication of the underlying facts.

The burden of establishing constitutional qualification properly rests upon the candidate asserting eligibility for constitutional office once substantial factual challenge has been raised.

The Alabama Republican Party's Motion to Dismiss attempts to terminate this action without adjudicating the central constitutional fact in dispute.

But constitutional qualifications are not self-proving.

Where credible allegations challenge a candidate's eligibility, courts possess authority to examine the underlying facts.

Plaintiff has not asked this Court to speculate.

Plaintiff has asked the Court to require sworn proof.

That request is fundamentally reasonable, constitutionally grounded, and narrowly tailored.

The Defendant's refusal to provide direct sworn clarification regarding residency only reinforces the necessity of judicial inquiry.

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VII. THE INTEREST OF THE PEOPLE OF ALABAMA FAVORS RESOLUTION ON THE MERITS

Plaintiff further respectfully states that he was not provided notice of the hearing concerning the Motion to Dismiss.

Due process requires notice reasonably calculated to apprise parties of proceedings affecting their rights and meaningful opportunity to be heard.

Where a pro se litigant receives no notice of a dispositive hearing, dismissal or adverse adjudication raises serious due-process concerns.

Plaintiff respectfully preserves objection to any hearing, ruling, recommendation, or disposition occurring without proper notice.

The absence of notice materially prejudiced Plaintiff's ability to:

1. Present argument;
2. Respond to the Motion to Dismiss;
3. Present evidence concerning constitutional eligibility;
4. Request evidentiary relief;
5. Address jurisdictional and constitutional issues before the Court.

Plaintiff respectfully submits that procedural fairness requires that Plaintiff be afforded meaningful opportunity to be heard before adjudication of dispositive issues.

Accordingly, Plaintiff respectfully requests that the Court:

- vacate any ruling entered following a hearing for which Plaintiff received no notice;
- reset the matter for hearing with proper notice to all parties;
- and permit Plaintiff opportunity to fully brief and present the threshold constitutional issues raised herein.

VIII. REQUEST FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court:

1. DENY Defendant Tuberville's Motion to Dismiss;
2. SET a prompt threshold evidentiary hearing regarding Defendant's constitutional eligibility and residency qualifications;
3. ORDER production of sworn affidavits and supporting documentary evidence concerning residency;

4. PERMIT expedited discovery and depositions limited to the issue of constitutional eligibility;
5. PRESERVE the integrity of the electoral process pending judicial determination; and
6. VACATE any ruling or adverse determination entered following proceedings for which Plaintiff did not receive notice;
7. RESET the matter for hearing with proper notice and opportunity to be heard;
8. GRANT such other and further relief as this Court deems just and proper.

Respectfully submitted,

/s/ Ken McFeeters

Ken McFeeters
Plaintiff, Pro Se

Date: May 14, 2026

IN THE CIRCUIT COURT OF COVINGTON COUNTY, ALABAMA

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Plaintiff,**

v.

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Defendants.**

**PROPOSED THRESHOLD DETERMINATION ORDER
ORDER SETTING THRESHOLD EVIDENTIARY HEARING**

Upon consideration of Plaintiff's Opposition to Defendant's Motion to Dismiss and Motion for Threshold Determination, the Court finds that a justiciable constitutional controversy exists concerning the eligibility qualifications of Defendant Tommy Tuberville for the Office of Governor of the State of Alabama.

IT IS THEREFORE ORDERED:

1. Defendant's Motion to Dismiss is HELD IN ABEYANCE pending threshold factual determination.
2. The Court shall conduct a limited evidentiary hearing concerning Defendant's residency qualifications under the Alabama Constitution.
3. The parties may conduct limited expedited discovery solely concerning residency, domicile, and constitutional eligibility.
4. Defendant shall produce sworn affidavit testimony and supporting documentation relevant to residency qualifications.

DONE this ____ day of _____, 2026.

CIRCUIT JUDGE