

No. SC-2026-0540

IN THE SUPREME COURT OF ALABAMA

STATE OF ALABAMA *ex rel.*
BROOKE LYNN DORGAN, *et al.*,

Plaintiff-Appellant,

v.

THOMAS HAWLEY TUBERVILLE,

Defendant-Appellee.

On Appeal from the Circuit Court of
Montgomery County, Alabama,
Case No.: CV-2026-901053

BRIEF OF APPELLEE

Oral Argument Not Requested

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STATEMENT REGARDING ORAL ARGUMENT

Appellee does not request oral argument. In this case and others, there have been efforts to obtain judicial intervention to assess whether Appellee has the qualifications to be Governor. *See, Ex parte McFeeters*, No. SC-2026-0691, Petition for Writ of Mandamus (filed Aug, 21, 2026). Appellants here have shown commendable candor in admitting that they seek an extension of existing law. But there should be little need for any “extension” of the rules in current circumstances, i.e., in the midst of a Statewide election. Likewise, there is no need to explore in oral argument the wisdom of an “extension” of existing law. In the event this case cannot be resolved by summary disposition, it is likely moot, given the pace of the election process.

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STATEMENT OF JURISDICTION

Appellee Thomas Hawley Tuberville agrees with Appellants that this Court has jurisdiction to hear this appeal, as provided by Ala. Code § 6-6-603. The appeal was filed within the time allowed by Rule 4(a)(1), Ala. R. App. P., as the Notice of Appeal was filed in timely fashion on July 14, (C. 150), five days after the July 9 circuit court decision. (C. 149).

Appellee also agrees that Ala. Code § 6-6-232 provides, with respect to declaratory relief, for appellate “review [] as other orders and judgments.” However, this appeal arises from an order that advised the case involved “the sole claim of quo warranto.” (C. 148, 149) (R. 45-46). *See also, Ex parte Sierra Club*, 674 So. 2d 54, 57-58 (Ala. 1995) (treating quo warranto claims as excluding declaratory claims). For that reason, this Court should not conclude, at this stage, that there is appellate jurisdiction to review whether declaratory relief should have been issued.

INTRODUCTION

What this appeal seeks may be rightly considered preposterous. After the primary election has been completed and candidates certified, in the run-up to a statewide general election, a single circuit judge selected by the voters in a single county along with 12 jurors from a single county should have *implicit* power under the Constitution to resolve the eligibility of the candidates. That cannot be the law. Only severely misplaced lawyer self-confidence, born from usually doing an excellent job solving genuine disputes between individuals, could lead to the argument being pursued on appeal.

As shown in more detail below, the mere listing in the Constitution of what conditions make a person eligible to be Governor does not empower a circuit judge to order that person disqualified from being chosen by the voters of Alabama. That is especially true when there are conflicting factual inferences about whether those conditions are absent, and 500,000 primary election voters have chosen the candidate as political party nominee for the general election. Yet that is how the claims boil down. Worse, the claims are made by individuals with no actual injury from the alleged violation, i.e., generalized grievances with no judicially cognizable

interest. The circuit court showed the wisdom of judicial humility and dismissed the claims. She should be affirmed.

STATEMENT OF THE CASE

Parties

Appellants are Brooke Lynn Dorgan and Justin Jude LeBlanc (Hereafter, “Plaintiffs” or “Relators”). They are identified in this appeal only as Relators for the State of Alabama, and in their Complaint allege they are adult resident citizens of Alabama, who are registered and eligible to vote. (C. 6 ¶¶ 1, 2,3).

There is one Appellee: Thomas Hawley Tuberville who is the “certified Republican nominee for Governor of Alabama.” (C. 6 ¶4).

Course of Proceedings

Relators filed this action on June 17, and titled it Expedited Complaint for Quo Warranto and Declaratory Relief. In short, they contend that Tuberville does not satisfy the “seven-year durational residency” provision to be Governor as set out in § 117 of the Alabama Constitution. (C. 5)

As filed originally, Relators also named Secretary of State Wes Allen as a defendant. (C. 6 ¶ 5).

The Complaint recounts that, before this filing, there have been proceedings that disputed whether Tuberville was a “resident citizen.” One occurred in January 2026 labeled an “intraparty challenge” which was before the Alabama Republican Party (“ALGOP”) and was dismissed “without hearing evidence.” (C. 25). There also was a pre-primary action filed in Covington County Circuit Court that was dismissed without receipt of evidence. (C. 25).

Then, after Tuberville won the primary election and was certified on May 27 as ALGOP’s nominee for Governor, a post-primary election contest was filed. (C. 25 ¶ 80). The Complaint alleges that there was a closed-door hearing before a committee of ALGOP, and it “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). On June 14, shortly after the hearing, it was announced that Tuberville would remain the ALGOP nominee.

The Complaint identifies two counts. One is titled “Quo Warranto” and alleges that, as nominee, Tuberville was a “quasi-officer” subject to this form of relief. The second is titled “Declaratory and Injunctive Relief,” and alleges, that under Ala. Code § 17-9-3(b), in light of the

“resident citizen” duration requirement of the Constitution, Allen may not direct that Tuberville’s name be printed on the general election ballots. The second count sought an order against Allen not to direct Tuberville’s name to be on the ballot (C. 25, 26).

On June 22, Tuberville filed a Motion to Dismiss for Lack of Jurisdiction (C. 35-70) and included a six-page document titled the ALGOP “Final Decision” with findings concluding that Tuberville was a “resident citizen” of Alabama for “the seven years next before” election (C. 64-70).

Tuberville argued that, in accord with the limits on circuit court jurisdiction set out in § 142 of the Constitution, the jurisdiction stripping statute, Ala. Code § 17-16-44, barred the circuit court from issuing a judgment that would bar him status as GOP nominee. He also argued that “quo warranto” relief was available only to an officer and he was not yet elected to office. He also pointed out that “quo warranto” relief was affirmatively barred by Ala. Code § 6-6-598, which denies relief when the validity of an election may be challenged under other provisions of the Code. Tuberville noted that his eligibility as a candidate can be, and was, disputed in an election contest before the ALGOP, as allowed by Ala.

Code § 17-13-71(2). That meant no quo warranto relief could be available. Lastly, Tuberville disputed that the Relators had suffered any injury from Tuberville being certified as GOP nominee for Governor and being listed on the general election ballot. (C. 58-59). Therefore, they lacked standing.

**(i) The Election Contest Final Decision -
ALGOP Candidate Committee**

Relators' description of the ALGOP election contest proceedings in their Complaint as a "show trial" (C. 25 ¶ 80) requires correction. As noted, Tuberville attached the ALGOP Final Decision to his Motion to Dismiss. (C. 36, 41-42, 63-70). That decision described the hearing process for McFeeters's contest and the matters he presented to the Committee:

"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."

(C. 67). The Final Decision also outlined its procedures made available to McFeeters, and his awareness of the opportunities presented by

ALGOP's Rules Governing Contests of Primary Elections and his failure to use all the opportunities available. (C. 68-69) (noting post on Facebook by McFeeters about reading through those Rules six days before commencing Contest).

The ALGOP Final Decision found the evidence submitted by Tuberville to be "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)." It recited several supporting facts, including that, in March 2019, Tuberville registered to vote in Alabama and obtained an Alabama driver's license, and also that he has filed Alabama tax returns for 2019 that do not indicate residency in any other State. (C. 69). The ALGOP Final Decision concluded that Tuberville's temporary absences from Alabama do not cause a loss of resident status. (C. 70) (citing Ala. Const., Art. I, § 31).

(ii) Secretary of State Dismissed Voluntarily

The Secretary of State, for his part, filed a motion to dismiss shortly after Tuberville. He argued that the jurisdiction-stripping statute, Ala. Code § 17-16-44, barred the claims that he was not a proper party to the

suit, that Dorgan and LeBlanc lacked standing, and that equitable relief was not available. (C. 83-98).

On June 22, Plaintiffs posted bond as security for costs. (C. 105-06). Two days later, on June 24, Plaintiffs gave notice of voluntary dismissal of the Secretary of State. (C. 107).

Plaintiffs filed a Response to Tuberville’s Motion to Dismiss on June 26. (C.110-28). There, they urged a strict construction of the jurisdiction-stripping statute, and a broad construction of the quo warranto statute. Using that predicate they argued that “quo warranto” relief is available against the nominee of a political party chosen in a primary election because he is a “quasi-officer,” particularly because the “resident citizen” duration requirement was in the State Constitution.

(iii) The Court’s Hearing on Motion to Dismiss

The circuit court held a lengthy oral argument on June 29. There is a transcript made part of the record on appeal. (R. 1 - 133). The circuit court said the hearing on the issue of jurisdiction was a “very narrow,” and “very limited” one, (R. 3), so the presentations did not focus the particular facts of Tuberville’s residential, voting, or travel history.

Disposition Below

On July 9, the circuit court dismissed the action, in an order with an extended explanation of the competing positions. (C.143-49). It noted the agreement of the parties as to ALGOP's completion of its contest procedures, including its Final Decision that Tuberville is eligible to be elected Governor:

It is undisputed that the Republican Party maintains and indeed exercised its authority to hear a post-primary election contest challenging Senator Tuberville's eligibility on the same grounds raised in the instant quo warranto. The party held a hearing before issuing its Final Decision finding that Senator Tuberville met the "resident citizen" duration requirement of § 117 of the Constitution of Alabama. Thereafter, the Republican[Party] certified Senator Tuberville as its nominee for the Office of Governor.

(C. 145) (*See also, id.* (citing Ala. Code §§ 17-16-70 through 89). The circuit court further noted Tuberville's argument that part of the quo warranto article of the Code, Ala. Code § 6-6-598, barred quo warranto relief. Elsewhere, the court was careful to note: "The sole cause of action in this case is for quo warranto – no other claim has been joined." (C. 148).

After noting the competing arguments of the parties, including that a nominee is sometimes treated as a "quasi-officer," (C. 147) the court

held that it “lacks authority to extend the application of quo warranto to a certified nominee.” Accordingly, it granted Tuberville’s motion to dismiss. (C. 148).

STATEMENT OF ISSUES

I. In light of the restrictions on circuit court jurisdiction for disputes that affect elections, imposed by Ala. Code § 17-16-44, may the court review the “resident citizen” status after the nomination of a Governor candidate in a primary election?

II. Does the quo warranto statute, Ala. Code § 6-6-591 *et seq.*, provide for relief against a candidate, nominated after a political party primary election and before the general election, on grounds that he is not “eligible” to be elected for the office?

STATEMENT OF FACTS

Appellant has not included in its Statement of Facts in its brief certain allegations made in his initial pleading. (C. 5-28). Some of those factual allegations from the Complaint which were not included are as follows:

“On March 28, 2019, Tuberville was issued an Alabama Driver License using the address of the Auburn House owned by his wife and son Tucker. On the same day, Tuberville also registered to vote in Alabama, listing the same Auburn address as his legal residence.” (C. 16 ¶ 37(a)).

“On November 14, 2025, Tuberville claimed an age-based (65+) homestead exemption on the Auburn House. (C. 20 ¶ 54).

“Since 2020, Tuberville has received a pension from the Retirement Systems of Alabama based on his tenure as the head football coach at Auburn University. Tuberville’s financial disclosure from 2020 indicated he was receiving roughly \$57,638 per year from his state pension fund.” (C. 22 ¶ 63).

“Individuals domiciled within Alabama are taxable on their entire income, whether earned within or outside Alabama, regardless of their physical presence within Alabama at any time during the taxable year. Individuals domiciled within Alabama are required to file a Resident Individual Income Tax Return each year. Footnote 36. Ala. Dept of Revenue, Administrative Code, Chapter 810-3-3-.01(1).” (C. 22 ¶64).

“On January 27, 2026, an intraparty challenge to Tuberville’s residency was filed by one of Tuberville's primary opponents, but the Alabama Republican Executive Committee voted to dismiss the challenge without hearing evidence. That same opponent filed a pre-primary legal action in Covington County Circuit Court that was dismissed without the court receiving evidence.” (C. 24 – 25 ¶77).

“Tuberville’s primary opponent filed a post-primary election contest, which was heard in a closed-door hearing before a committee of the Alabama Republican Executive Committee on June 14, 2026. That hearing 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. Shortly after the conclusion of the hearing, the Alabama Republican Executive Committee announced that Tuberville would continue to be the Republican nominee" (C. 25 ¶80).

The Appellant having asserted his factual allegations has now opened the door for the Appellee to include in the Statement of Facts, the factual findings of the Alabama State Executive Committee of the Alabama Republican Party. The full specific ALGOP findings are:

- 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 another 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.

(C. 64, 69)

STATEMENT OF STANDARD OF REVIEW

The standard of review of a circuit court decision granting a motion to dismiss for lack of jurisdiction is *de novo*.

“A ruling on a motion to dismiss is reviewed without a presumption of correctness. This Court must accept the allegations of the complaint as true. Furthermore, in reviewing a ruling on a motion to dismiss we will not consider whether the pleader will ultimately prevail but whether the pleader may possibly prevail.”

“*Newman v. Savas*, 878 So. 2d 1147, 1148-49 (Ala. 2003) (citations omitted). ‘Matters of subject-matter jurisdiction are subject to de novo review.’ *DuBose v. Weaver*, 68 So. 3d 814, 821 (Ala. 2011).

Poiroux v. Rich, 150 So. 3d 1027, 1033 (Ala. 2014). Further,

“[a] court ruling on a Rule 12(b)(1) motion to dismiss “may consider documents outside the pleadings to assure itself that it has jurisdiction.” . . . The level of scrutiny with which the Court examines the allegations in the complaint that

support a finding of jurisdiction, however, depends upon whether the motion to dismiss asserts a facial or factual challenge to the court's jurisdiction.

The court may look beyond the allegations contained in the complaint to decide a facial challenge, “as long as it still accepts the factual allegations in the complaint as true.””

Ex parte Safeway Ins. Co. of Alabama, 990 So. 2d 344, 349 (Ala. 2008) (citation omitted).

Munza v. Ivey, 334 So. 3d 211, 215-16 (Ala. 2021).

SUMMARY OF ARGUMENT

The circuit court was correct in finding that it lacked jurisdiction over the claims by Relator Plaintiffs Dorgan and LeBlanc that Defendant Thomas H. Tuberville is ineligible to be elected Governor. Section 142 of the Constitution provides for “law” to limit the jurisdiction of the circuit court, and Alabama’s law-making department of the government did so in Ala. Code § 17-16-44. Under that “law,” no jurisdiction “exists in . . . any. . . court to entertain any proceeding for ascertaining the legality, conduct, or results of any election,” unless “authority to do so shall be specially and specifically enumerated and set down by statute. . . .” Moreover, “any . . . order from any . . . court, whereby the result of any

election sought to be inquired into, questioned, or affected . . . are void . . .” (*Id.*).

In a Governor election, the election reviewing authority is assigned in the primary election nominating process to the political party by statute, *see* Ala. Code 17-13-70, 71. After the general election, that authority is reserved in the Constitution to the legislature itself by § 115, and the statutes adopted for that process, Ala. Code §§ 17-16-65 (joint convention) to 73. There is no role for a circuit court or judge of the Court.

In short, Plaintiffs claim that the seven-year “resident citizen” duration feature of § 117 is violated by Tuberville being the ALGOP nominee for the Governor does nothing to give a circuit court any power. Other provisions of the Constitution (§§ 44, 45, 115, 142) assign responsibility for resolving any dispute about compliance with § 117 elsewhere. Moreover, when a candidate is alleged to not comply with § 117 due to absence from the state, that implicates § 31 as well because “temporary absence” does not mean loss of “resident” status.

The effort to enable judicial relief through the quo warranto statute (Ala. Code § 6-6-591 or seq.) is due to fail. Its text lacks the needed specificity. It does not contain language required by § 17-16-44 to

authorize a court to bar the winner of a political party primary election from being placed on the ballot in the general election. *See Rice v. Chapman*, 51 So. 3d 281 (Ala. 2010) (Ethics Act direction that name not appear on ballot, no mention of court). There is nothing that says anything about persons not yet in a public office, as it aims at persons who “usurp [] . . . any public office.” *See Talton v. Dickinson*, 72 So. 3d 723, 725-6 (Ala. 1954).

In addition, the quo warranto statute contains its own affirmative denial that it specifically allows relief that affects elections. Under § 6-6-598, even one who could be said to “usurp” a public office is not subject to the quo warranto remedy when it arises out of “the validity of an election which may be contested under this Code,” i.e., § 17-13-70 *et seq.* and §§ 17-16-40,65 *et seq.* Plaintiffs’ denial that they do not contest the validity of the ALGOP primary election is insufficient to avoid § 6-6-598. That statute has long been understood to apply when the ground of challenge could have been made as a contest of the election. There is no doubt that a challenge to eligibility under § 117 could be lodged in a contest, and so quo warranto relief is not allowed.

The cases that find the jurisdiction-stripping statute inapplicable do not involve an otherwise procedurally proper candidate who is ineligible. Rather, they involve the lack of authority for persons with official power as if they are conducting an “election” when they are not, i.e. to schedule balloting when “election” not allowed at all, or the wrong time, failure to use “election materials when receiving ballots, listing a person as if they were a candidate in an “election,” when they actually did not apply. Or they involve an official refusal to exercise power specifically set down by statute. (DLBr. at 33-34).

Relators have no special ground for relief because of the political party nominating Tuberville, or because most current members of the legislature belong to the same political party as Tuberville. (DLBr. at 24). This ground for relief was not presented below and should not be allowed at this stage.

Last but not least, at this stage of the election process, the Relator allegations about Tuberville are not justiciable. The Relators suffer no injury from Tuberville merely being listed on the general election ballot. Their complaint is merely a generalized grievance not suitable for judicial resolution at this time. Moreover, they have articulated no special

circumstances that counsel for deeming the allegations justiciable. To the extent they are allowed their declaratory claim here, despite telling the circuit court they were not pursuing it, this Court should find declaratory relief not justiciable.

ARGUMENT

At the outset, Tuberville agrees with the Relators that this case does involve “important Constitutional questions,” (DLBr. at 20), but they include more than § 117. The Relators’ discussion about the Alabama Constitution, and “durational residency,” needs supplementation – with comparison of texts from the Constitution not mentioned, historical development, and context. Their emphasis on the oath set out in § 279, *see* DLBr. at 22-23,¹ adds nothing to explain how the several provisions are the Constitution at issue here (§§ 31, 44, 115, 117, 139, and 142) resolve the opposing arguments. They argue as if only § 117 (with help from § 42) matters, when in truth, there are other texts in the Constitution that counsel against any circuit court action, as shown in more detail below.

¹ Citing *Ex parte Griffith*, 178 So. 2d 169, 174 (Ala. 1965); *Johnson v. Croft*, 87 So. 375, 380 (Ala. 1921); *Birmingham Ry. Light & Power Co. v. Jung*, 49 So. 434, 440 (Ala. 1909)

I. The restrictions on the jurisdiction of the circuit court in Ala. Code § 17-16-44 allowed by § 142 of the Constitution are not lost merely because a provision of the Constitution is disputed.

The jurisdiction-stripping statute, Ala. Code § 17-16-44, is well known, even if its text is lengthy. Its main point of course is that court orders that affect the results of “elections” are to be very limited, and do not arise from implied power as a court. In the critical language, the court’s power must be “specially and specifically enumerated and set down by statute.” That limitation operates not only for “ascertaining the legality, conduct, or results of any election,” but also when “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”

This statute of course operates under § 142 of the Constitution itself as a limitation “provided by law” on the “general jurisdiction” of the circuit court in “cases.” And the phrase “provided by law” does not refer to the declaratory power of the Judicial Department. Rather, it refers to the power conferred on the legislature by §§ 44 and 45 of the Constitution. (“The style of the *laws* of this state shall be: ‘Be it enacted by the legislature of Alabama. . . .’”) (emphasis added).

None of that means § 17-16-44 could never be applied to create a violation of the Constitution. But there is no such claim in this action. Instead, the Relators claim is more limited and unjustified: There is an implicit responsibility on the circuit court because the claim invokes a provision of the Constitution. In truth though, there are multiple countervailing provisions of the Constitution that counsel against court action. To the extent that courts has a “special duty” here because the Constitution is implicated, the duty extends to several other provisions:

- the power to be “judicial” under Article VI, § 139,
- the limitations on the time requirement for a “resident citizen” in § 117 reflected in § 31 for “temporary absences,” and
- the reservation by § 115 for “contested elections” to “be determined” by the legislature.

None of that implies any presumptive power in the circuit court to resolve whether § 117 of the Constitution is violated, despite the provisions of “law” that direct courts not to.

A. The Constitution counsels against jurisdiction for the Circuit Court, given the operation of its several provisions implicated by this action.

As a part of the “judicial” department, the circuit court is only authorized to render judgment when a dispute is “justiciable.” And, even if the dispute might otherwise be justiciable, the Constitution itself may assign resolution to other parts of the government or implicitly restrict circuit court resolution. *See, e.g., Belser v. Blount County*, 393 So. 3d 1163 (Ala. 2023) (challenge to legislative vote requirement in Ala. Const., Art. IV, sec. 71.01 non-justiciable political question).² *See also, Rucho v. Common Cause*, 588 U.S. 684 (2019) (correction of partisan motives to legislative design of election districts not remediable by court).

Relators cannot avoid the limits imposed by § 17-16-44 by worrying that “no court, ever, would be permitted to interpret or apply § 117’s eligibility requirement,” as if that never happens. (DLBr. at 24). Worse,

² In contrast, there is no textual commitment to the legislature when one of its members commits a crime *after* he is in office, and violates § 60 of the State Constitution, and its bar on person convicted of certain crimes being “eligible to the legislature.” *See State ex rel. James v. Reed*, 364 So. 2d 303, 305 (Ala. 1978) (elected in 1974, convicted later in 1977). Thus, the legislature’s power to judge the returns and qualifications of its members before accepting legislative office did not extend to crimes committed after entering office.

Relators cast the concern in partisan terms not even alleged to be actionable by the pleadings, as if it would only arise when there is a Republican supermajority in the Alabama legislature. (*Id.*)

The circuit judge confronted the current political reality in more elegant terms and asked what happens if “the roles were reversed and the Democrats certified a nominee who . . . basically the republicans are saying does not meet the eligibility criteria.” (R. 89: 16-19). Under those circumstances, Tuberville’s counsel responded: “it becomes a very large question. And if you Democrats screw it up, . . ., [t]he people start to lose confidence in your sense of power. And so that what happened in 1986. . .” (R.90:5 - 10). That of course is when the Republican Hunt defeated the Democrat Baxley after disputes about how the Democrats counted votes in its primary election.

Changing the rules in the middle of an election is not good politics and sometimes becomes judicially actionable. *See Roe v. Alabama*, 68 F. 3d 404 (Ala. 1995) (absent ballots witnessing requirement and finding construction in *Roe v. Mobile County Appointing Board*, 676 So. 2d 1206 (Ala. 1995) to be such a post-election change of the rules as to deny due process of law). To the extent Relators now cast the problem as if it only

occurs when Republicans dominate the government, it was needlessly pejorative and misleading.

The circuit court understood the reason for the resolution of this dispute to be non-judicial when she asked “if there is a question of fact where reasonable minds may differ, . . . it sounds like defendants’ position is the court will not have a place at all in that process. It will be strictly a legislative function post general election.” (R. 90:24 -25, 91:12 – 16). She was correct. And, before the general election, Tuberville’s position is that the issue is reserved for the political party by statute, even though a dispute about “resident” status is based on the Constitution. *See* Ala Code. § 17-13-70, 71, 7(a). *See also, Knight v. Gray*, 420 So. 2d 247, 248-49 (Ala. 1982) (“resident” requirement for legislators in § 47 of the Constitution).

The precedent cited for claiming circuit court jurisdiction is inapt. *See* DLBr. at 24-26. For instance, *Marbury v. Madison*, 5 U.S. 137 (1803), concludes that Article III of the U.S. Constitution does not allow the Supreme Court to resolve the dispute presented; it lacks jurisdiction to resolve whether Marbury was denied his judicial commission improperly. The Alabama case cited, *Jefferson County v. Weissman*, 69 So. 3d 827

(Ala. 2011) is likewise no genuine guidance. It involves § 106 of the State Constitution, which, by its very unusual terms, specifically directs the “courts” to “pronounce void every . . . local law which the journals do not affirmatively show was passed in accordance with the provisions of this section.” (Ala. Const., art IV, § 106). There is nothing like that here (or in most “judicial” problems), and it is no wonder the *Weissman* case would say the courts have a “special province” for a § 106 claim.

Relators feature the non-binding *Opinion of the Justices, No. 338*, 624 So. 3d 107, 110 (Ala. 1993), cited at DLBr. at 25-26 and urge that it indicates error by the circuit court here. Factually, *Opinion No. 338* is inapposite, as it does not involve an election dispute. It concerns the allocation of tax money for education funding. Moreover, *Opinion No. 338* makes clear that it reflects “merely advisory opinions . . . of the individual Justices.” *Id.* at 109 (quoting *Opinion of the Justices, No. 1*, 96 So. 487 (Ala. 1923)). In due course, in later binding precedents, the directives of the circuit court to the legislature approved in *Opinion No. 338* were concluded to be non-justiciable. *See Ex parte James*, 836 So. 2d 813, 819 (Ala. 2002). *A fortiori*, trying to assess disputed issues of “resident citizen” arising from “temporary absence” that are set to be confronted by

the political party, and the legislature under election contest statutes, should be found non-justiciable.

Relators make no headway, in arguing at p. 34-35, against this understanding of the allocation of power by invoking § 42 of the Constitution (and the separation of powers), as if it demands a role by the Judicial Department in all government matters. Section 42 itself contemplates that the legislature may be assigned a judicial power by the Constitution when it says, “except as expressly directed or permitted in this constitution...” The allocation of final responsibility to the legislature in § 115 for resolving disputes about nominees compliance with § 117 is an express provision that adjusts the separation of power. And, § 142 has the same effect when it explicitly denies circuit courts power under § 142, as “provided by law.” (Ala. Const. § 142).

1. The “resident citizen” seven-year requirement is not difficult especially given the allowance for temporary absences.

Above all, § 117 of the Constitution calls for the Governor to be a “resident.” In common parlance that probably means a shelter with a roof and walls that could be used as a place for sleep. It does not obviously

mean that being a “resident” of some other place is forbidden. There is no adjective that disqualifies if the place is not a “primary residence.”

Not mentioned by Relators is § 31 of the Constitution. It indicates that measurement of the duration of being a “resident” is not affected by “temporary absence.” Thus, § 31 reads: “That temporary absence from the state shall not cause a forfeiture of residence once obtained.” People that spend most of their time as agents of the State in Washington DC – like a U.S. Senator - would not lose their status as a “resident.” Nor would they necessarily lose their status if, though they claim to be a “resident” of Alabama, their primary employment had been a Washington DC law firm that required regular presence in Washington DC as a lobbyist for private interest groups. Nor would they lose Alabama “resident” status because they made regular visits to a Florida beach house they own or leave to go out of state on business every Sunday night to return on Friday night.

Provisions like § 31 protecting status from inferences arising out of “temporary absence” have been in the Alabama Constitution since the 1868 Constitution – listed by Relators as the “Carpetbagger Constitution.” That would be over 150 years - in 1875, 1901, and 2022.

The effort to ask judges to exclude categorically from official public life because of how much time an Alabama “resident” spends at his Alabama residence has the air of some very embarrassing moments in Alabama’s judicial history.

One also must also be a “citizen” of Alabama. For each of these requirements, these conditions must have been present for “seven years next before their election.” It is not clear exactly what makes one a “citizen,” beyond residing. For instance, under the U.S. Constitution’s Fourteenth Amendment, ratified by the States in 1868, for persons born in the United States, where one “resides” makes one a “citizen” of that State. *See* U.S. Const., amend. XIV, § 1 (“citizen of the United States *and of the State wherein they reside*” if “born or naturalized . . . in the United States.”) The history of how this § 117 language was arranged helps, as shown below.

2. The “citizen” requirement is easy for a “resident” to satisfy.

The “citizen” qualification of § 117 also does not require much. Alabama’s Constitution did not require a Governor be a “citizen” *of Alabama* until 1875. Originally, the Alabama Constitution did not provide for a Governor to be more than a “resident” of Alabama, and a

“native citizen” (not of Alabama) but of the United States. *See* Ala. Const. (1819), Art. IV, sec. 4 (“at least four years next preceding his election”).³

Also, in the 1875 Constitution, the “citizen” qualification imposes a very low bar for being a “citizen,” as it reads: “[A]ll persons resident in this state,” are deemed ‘citizens’ of Alabama merely by having “declared their intention to become citizens of the United States. . . .” *See id.* Art. I, sec. 2.

Moreover, under the 1875 Constitution, like § 31 of the current Constitution, time at a residence in another State did not end resident status in Alabama. Thus, § 32 was added and declared “t[h]at temporary

³ There is no text that uses the term “domicile” to describe the Governor’s qualifications. In 1875, when the words “resident” and “citizen” were joined in the same phrase “resident citizen of this state,” still there was no use of the term “domicile.” *See* Ala. Const. (1875) Art. V, sec. 6 (“at least seven years next before the day of his election”).

It would be strange indeed now for a court to disqualify someone from office by adding the word “domicile” to the State Constitution’s qualifications to be Governor, deeming to have lost his status as a “resident” in Alabama, especially given the jurisdiction restrictions on courts.

In 1868, the Constitution abandoned any qualification specific to the office of Governor. It added a new section 2 that declared: “That all persons resident in the State, born in the United States, or naturalized, or who shall have legally declared their intention to become citizens of the United States, are hereby declared citizens of the State of Alabama, possessing equal civil and political rights and public privileges.”

absence from the state shall not cause a forfeiture of residence once obtained.” *See id.*, § 32. That protection of “residence” against claims of absence was retained in the 1901 Constitution. *See* Ala. Const. (1901), Art. I, sec. 31 (revised numeration).

Historically then, under the Constitution, a person could be a “citizen” of Alabama merely by being an Alabama “resident,” and a “citizen” of the United States. And, since status as a “resident” was not forfeited by temporary absence, neither was “citizen” status. How much absence is too much not to be “temporary” is hard to measure in a judicially manageable way. It is no wonder that resolving disputes about whether a candidate is eligible to be Governor due to his “resident citizen” status under § 115 are assigned to decisionmakers other than the courts. *See* Ala. Const., art. V, sec. 115; Ala. Code §§ 17-16-40(2), 65 to 68.

B. None of the rules of construction invoked by Relators show error below in dismissing for lack of jurisdiction.

Despite criticizing Tuberville for invoking § 17-16-44 to restrict circuit court action on whether a candidate is “eligible” to be elected, not a single case cited by Relators shows error by the circuit court. The main precedent cited by Relators, *Dennis v. Prather*, 103 So. 59, 62 (Ala. 1925) does not involve candidate eligibility. It involves the conditions for

holding a referendum on whether the county seat could be moved, i.e., an “election” not authorized by law to be held. To the same effect is *Working v. Jefferson County Election Commission*, 2 So. 3d 827, 838 (Ala. 2008), where an election to fill a local official position arising from a resignation was not authorized, or void. *Accord, King v. Campbell*, 988 So. 2d 969, 978 (Ala. 2007). *Veitch v. Vowell*, 266 So. 3d 678, 683 (Ala. 2018) involves a statute that allocated voters in a way deemed to violate federal law, and there was not a majority of the Court that deemed the decision to have any effect on the upcoming election. *See id.* at 684 (Bryan, concurring in the result).

Lastly, the statute cited by Relators, Ala. Code § 17-16-59, cited in DLBr. at 30-31, governs “the contest of any election, either before the judge of probate or the circuit court,” not a contest of a Statewide office tried before the legislature like § 17-16-65. It does not authorize a judge to decide an election dispute involving a Statewide office and therefore is not the kind of jurisdiction allowed by § 17-16-44.

Relators cannot avoid § 17-16-44 by invoking the *Dennis* court language that counseled against its use on elections that have occurred, rather than elections that have not yet taken place. That view cannot be

squared with *Rice v. Chapman*, supra, where § 17-16-44 was held to bar judicial relief against an upcoming election. Of course, as noted previously, the *Dennis* case does not involve candidates so it should not be read to understood to resolve disputes about whether a candidate is eligible for office.

Relators cannot avoid § 17-16-44 by fearing it might be used to bar relief against any public official that was elected, as it might “affect” his election. If the conduct occurred pre-election and could be presented as part of a “contest,” then a claim quo warranto based on that conduct would be barred – by § 6-6-598.

Even without the effect of § 6-6-598, it begs belief that the bar on any order “whereby the results of any election are . . . affected” cannot operate here – i.e., after the primary election and before the general election. If relief were ordered in this action, it certainly would “affect” both election results.

Relators cannot avoid such a common sense understanding by arguing such a construction might lead to an application that denies quo warranto jurisdiction over conduct occurring after taking office. (DLBr. at 31-32). That is a far cry from the claims made here. By arguing that

Tuberville is not eligible, Relators are seeking to affect both the primary election results, and the general election. *Dennis v. Prather*, cited for a contrary view, does not involve election of a person to office. Even the *Prather* holding that the jurisdiction-stripping statute does not affect conduct unlawfully scheduling what is termed an “election.” Moreover, it is well-established that § 17-6-44 applies only when the eligibility of a *candidate* is disputed. *See Working v. Jefferson County Election Comm.*, 2 So. 3d 827 (Ala. 2008) Once office is assumed, the person being challenged is no longer a candidate.

C. The restriction on court jurisdiction in § 17-16-44 cannot be avoided by denying the claims made are an “election contest.”

Relators accomplish nothing by insisting their claims are not an “election contest.” An “election contest” is only part of what § 17-16-44 denies to courts. Though it is a good starting point for knowing when jurisdiction is absent, the language of § 17-16-44 is obviously broader and is implicated despite how they attempt to cabin the relief they seek.

The abstract quotation from *Kinney v. House*, 10 So. 2d 167, 168 (Ala. 1942), (DLBr. at 33) is not on point. The case holds that judicial relief is not available against the probate judge acting as the person who

prints ballots, when the certification of names is ambiguous. Hardly a precedent for judicial intervention when a candidate is alleged to be ineligible, but whose name is printed on properly printed ballots. And in *Kinney*, there is no mention of the jurisdiction stripping statute (i.e., Ala. Code § 17-16-44 or its then-existing codification). Under established rules about precedent, that means this Court is not bound “when a subsequent case finally brings the jurisdictional issue.” *Ex parte Town of Lowndesboro*, 950 So. 2d 1203 (Ala. 2006).

Bostwick v. Harris, 421 So. 2d 492, 493 (Ala. 1982) is to the same effect as knowing where the time restraints imposed on officials conducting the nominating process are not observed. Again, there is no mention of the jurisdiction-stripping statute, and it should hardly be understood to open the door to court second-guessing primary election results.

The other cases cited here by Relators involve abdication by a political party of the adjudicatory power to provide some possible remedy for a disputed primary election. *See* DLBr. at 33-34 (citing *Perloff v. Edington*, 302 So. 2d 92, 96 (Ala. 1974) (political party fails to convene timely); *Osborne v. Banks*, 439 So. 2d 695, 700 (Ala. 1983) (political party

refuses to conduct election contest). Here there is no dispute that ALGOP exercised this authority with its Final Decision that Tuberville has been a “resident citizen of this state for at least seven years next before their election.” (Ala. Const. § 117).

In the end, Relators are left merely with the extravagant assertion that “no court” could ever “interpret or apply the Constitution to his eligibility.” DLBr. at 34. But the reservation of the issue to the legislature does not always mean that there could never be a judicial proceeding where the issue arose. Were a proper contest initiated in timely fashion under § 115, and the legislature took no action whatsoever under the Constitution, that would raise a potential basis for a properly framed court action.⁴

⁴ Compare *Moore v. Harper*, 600 U.S. 1, 23 (2023) (federal assignment of election regulation by the Constitution to State “Legislature” does not always preclude normal State judicial review), with *Bush v. Gore*, 531 U.S. 98, 114-15 (2000) (concurring opinion of Rehnquist, C.J.) (state court interpretation of election law that distorts “beyond what a fair reading required can itself raise constitutional problem”). See also, *Roe v. Mobile County Appointing Board*, 676 So. 2d 1206, 1218 (Ala. 1995) (“No court, state or federal, has jurisdiction to hear evidence in an election contest for a statewide election....”)

D. In denying effect on any election, Relators have cast their action as non-justiciable.

By denying they challenge “the results of any election” or that they are “inquiring into results of an election,” they reveal the true character of their suit – a mere statement from the circuit court about their views on whether Tuberville is eligible to be Governor. Such a statement would not be a “judicial” act, but instead an improper “advisory opinion.” As the debate is limited by the Relators not to involve the elections, and no relief sought against any official that confers anything on Tuberville. Moreover, there is no person injured by Tuberville’s merely being a nominee. Thus, in claiming they do not care that Tuberville won that election, they are the kind of litigants who merely want to debate, not resolve an injury in just fashion. They cannot claim yet that they are injured by Tuberville winning the election. Under these circumstances, there is not a justiciable controversy that would empower a circuit court to issue any judgment. *See Citizens Caring for Children v. Town of Cedar Bluff*, 904 So. 2d 1253 (Ala. 2004)(citing *Jones v. Black*, 48 Ala. 540 (1872)(election for judge of criminal court)); *Talton v. Dickinson*, 72 So. 3d 723, 726 (Ala. 1954)(dispute about party nominee’s ineligibility to office not “justiciable”).

For all the focus on § 117, and what it expects for persons elected as Governor, it says nothing about how Relators have framed the dispute. In their narrow perspective, that supposedly does not involve any election, § 117 actually has no prescription. Section 117 does not say who is not “eligible” to be a nominee. It speaks only of who can be certified as the winner of an election.

II. The quo warranto statute should not be extended to reach persons who are mere nominees of a private political party and have not won election to public office.

Even if this action is not barred by the quo warranto statute itself (Ala. Code § 6-6-598) because the ground raised could be brought in an election contest, there is no basis for relief. Relators seek an unjustified extension of the quo warranto remedy to persons who have not yet attained a “public office.” Tuberville does not hold a “public office . . . within this state.”

Relators argue the statute reaches Tuberville, not because he holds any “public office” but because he has a “legal authorization within this state . . .” (DLBr. at 36). In other words, Tuberville was certified by the ALGOP as its nominee to be on the general election ballot and therefore has a “legal authorization.” This misreads the clauses of § 6-6-591(a).

The disputed text for what can be challenged under the statute reads:

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.

Ala. Code § 6-6-591(a)(1) (emphasis added). In context, “other legal authorization” refers to what is required to have a “profession,” like a “license” or “certificate.” “Other legal authorization” is not a general description for “public office.” Nor is a political party nominee typically thought to be “profession.” The case using the statute against a person acting as a lawyer without a license, *Birmingham Bar Ass’n, v. Phillips & Marsh*, 196 So. 725, 731-32 (Ala. 1940), hardly warrants use against a political party nominee who won a primary election of 500,000 voters.

A. The eligibility requirements for office in the State Constitution do not imply quo warranto is the proper action against a nominee before winning public office.

Relators claim far more from several precedents cited in this section to justify quo warranto relief against a nominee. The main cited case, *Hudson v. Ivey*, 383 So. 3d 636 (Ala. 2023), only relates to nominees because the plaintiff – not the defendant -- was a nominee. And, the

nominee sought declaratory relief against a statute that permitted appointment of a judge appointed in another county with the effect of ending the office she was seeking. The Court held that her only remedy was to seek quo warranto against the appointed judge, even though she made a claim that the action violated the Constitution. The *Hudson* case obviously does not mean there is a special rule for quo warranto relief when the claim is based on the Constitution. *See also, Riley v. Hughes*, 17 So. 3d 643, 647 (Ala. 2009) (challenge to Governor appointments pursuant to statute to college board of trustees, no constitutional claim).

Nor does the case quoted by Relators, *Johnson v. Roberson*, 682 So. 2d 58, 60 n.3 (Ala. 1996). It holds merely that an election contest was untimely filed. *Id.* at 60 (footnote omitted). The suggestion in dicta that quo warranto relief be pursued along with an election contest in case the contest is not available is inapt here. The case involves a political party that lacks the statutory power to decide an election contest, (unlike the ALGOP's election contest hearing and decision here, *supra* at 16-17, 22-23), and that "the contest would be decided by the circuit court." *Id.* at 60.

The other case cited, *State ex rel. James v. Reed*, 364 So. 2d 303, 305 (Ala. 1978), concerns conduct occurring after being elected. It does not

implicate the remedies to prevent election due to pre-election conduct, or allocation by a text of the Constitution like § 115 to a government body other than the courts.

B. Status as the nominee of a major political party that nominates by primary election provides no special basis for quo warranto relief.

1. “Quasi-officers” are not subject to quo warranto action, especially when the nominee of a political party.

The argument that a certified party nominee, even if a “quasi-officer,” should be subject to quo warranto relief is foreclosed by *Talton v. Dickinson*, 72 So. 2d 723 (Ala. 1954). Relators read the case for the opposite conclusion, as if it implies otherwise. (DLBr. at 39). There, in concluding that claims against a school superintendent was ineligible due to age was non-justiciable because he was not yet elected, this Court offered that quo warranto would be the exclusive remedy. But that did not mean quo warranto relief could be sought against a mere nominee.

Not mentioned by Relators is that the *Talton* case relied in part on *Seavey v. Van Hatten*, 92 N.Y.S. 2d 402 (A.D. 1949), a case that holds quo warranto relief is not available to challenge one who has not yet assumed the public office. *Id.* at 404. In arguing that *Talton* supports treating quo

warranto as available to challenge a party nominee, Relators seem quite wrong. *Seavey* also confirms that declaratory relief is not available in advance of assuming office. *Id.* at 405.

Alabama precedent rejects the conclusion that “quasi-officer” status is sufficient to be challenged in a quo warranto action. *See 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” with 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).

Nothing in past cases warrants application of “new legal theories” or “novel and untested,” as Relators argue. (DLBr. at 40-41)⁵ Indeed, an election dispute for the State’s highest office may be the worst possible circumstance for judicial intervention. It is the situation most likely to cause widespread public loss of confidence in judicial decision-making, and a waste of judicial capital needed for resolving individual disputes. *See, e.g., Bush v. Gore*, 531 U.S. 98 (2000) (Florida Supreme Court effort to supervise uncertainty in vote-counting for federal election). Nothing cited by Relators requires a different course.

2. The winning of a political party primary election provides no special basis for judicial action by quo warranto relief.

Relators’ argument for adopting Florida’s more than 80-year-old position in *State ex rel. Watkins v. Fernandez*, 143 So. 638, 649 (Fla. 1932), is misguided. There, unlike Alabama, where the quo warranto statute provides explicitly that the contest statutes displace quo warranto relief whenever the same issue could have been presented, *see Ala. Code* § 6-6-598, the Florida court noted that “the remedy by contest is merely

⁵ (citing *Lavoie v. Aetna Life & Cas. Co.*, 374 So. 2d 310, 311 (Ala. 1979), and *Roberts v. Meeks*, 397 So. 2d 111, 114 (Ala. 1981); *Ex parte Brown*, 331 So. 3d 79, 81 (Ala. 2021) (appellate court declines to intervene).

cumulative and not exclusive.” 143 So. at 641. In other words, Alabama’s contest procedure is not merely cumulative with quo warranto procedures.

Alabama’s primary election laws do not imply the status of “public officer” on primary election winners who have not yet won the general election. (DLBr. at 43). First, as noted, the “quo warranto” article itself denies the remedy “when the validity of an election may be contested under this Code.” Ala. Code § 6-6-598. This provision controls here because the dispute about whether Tuberville is eligible to be Governor is a listed ground for filing an election contest. *See* Ala. Code § 17-13-71(2). Relators are incorrect in saying the court below held otherwise (DLBr. at 32). Relators “quo warranto” action challenges the eligibility of Tuberville to be Governor due to his “resident citizen” status – the very thing that could be disputed in an election contest. That is enough under § 6-6-598 to block quo warranto relief regardless of how Alabama pays for primary elections. Thus, even if a mere nominee were deemed an “officer” potentially subject to quo warranto relief, § 6-6-598 would block operation of the quo warranto remedy.

Relators barely mention § 6-6-598 and say nothing about it in proposing this Court follow the Florida *Fernandez* case. However,

elsewhere they cite *Mizell v. State*, 55 So. 884, 885 (Ala. 1911) erroneously as casting § 6-6-598 to widen quo warranto relief to allow eligibility disputes like election contests do. (DLBr. at 32-33). But they are wrong. The *Mizell* case says in a part not quoted by Relators that the predecessor codification of § 6-6-598 does just what Tuberville argues:

“[§ 6-6-598] excludes inquiry into the election, if the Code authorizes a contest, whether the grounds for contest include the things complained of or not [In contrast to cases where the contest comes only from a municipal charter], the present Code . . . does give the right to contest the election in question, and section [6-6-598] applies and cuts off the right to do so under quo warranto proceedings.”

Id. at 885. (citing *Parks v. State ex rel. Owens*, 13 So. 756 (Ala. 1893)). Nothing in the *Mizell* case indicates that when there is a right to contest an election on the ground that the candidate is not “eligible,” quo warranto relief is available. The phrase cited by Relators is merely to contrast some of the contest grounds with issues that are not a proper subject of contest, i.e. the “validity” of the election. In none of those listed issues does the court indicate that whether the candidate is “eligible” for the office would be a proper ground for quo warranto relief.⁶

⁶ The listed actions not blocked from quo warranto relief are: “determine what purported to be an election was not sanctioned or authorized by law, - that is, that the statute authorizing same was void, or that the law did

The *Mizell* citation to the *Parks* decision is telling. In *Parks*, the Supreme Court reversed quo warranto relief for several unsuccessful candidates who bypassed the opportunity to file an election contest (See 13 So. at 756). It confirms that Relators cannot avoid the effect of § 6-6-598 by insisting this action is not an “election contest.” The text does not permit quo warranto relief by announcing that an election contest is not being pursued. Rather the statutory text out whether the election “may be contested” on the ground seeking quo warranto relief. Because the grounds for relief here – not being “eligible” for the office – is ground for contest, quo warranto relief is not available. Indeed, in the *Parks* case, the Supreme Court rejected the argument that quo warranto relief is due when “the wrong and irregularity complained of . . . are not made a ground of contest.” 13 So. at 759; *id.* (seeing quo warranto as an “additional optional remedy which might leave the question of the rightful incumbency of the office in protracted doubt and uncertainty.”)

The outcome would be the same if a mere nominee were deemed to be someone with “other legal authorization.” (DLBr. At 41). The quo

not authorize an election for the office in question, or that it related to territory not included in the law, or that the election was called ordered by those with no color of authority; . . .” 55 So. at 885.

warranto remedy, read expansively, remains limited by § 6-6-598, which is itself due to be interpreted liberally.

The limited obligations that arise from State payment of the primary election balloting does not forfeit the private authority of the political party or its candidate and nominees. Moreover, Alabama plainly preserves the autonomy for political parties when using this process. *See, e.g., McGinley v. Alabama Republican Party*, 893 So. 2d 337 (Ala. 2004) (subject to due process limitations). And, contrary to what Relators argue, Alabama statutes do not limit participation in State-funded primaries to “the two major political parties.” (DLBr. at 43). In fact, the cited statute, Ala. Code § 17-6-22 indicates which party is on the “general election ballot,” and references the primary election process in Chapter 13. There, the limitation is based not on who is “major,” but on whether the party nominees received 20% of the statewide vote in the last general election. *See* Ala. Code § 17-13-40. Moreover, it is incorrect that only candidates “properly certified by one or the two major parties can appear on a primary or general election ballot.” (DLBr. at 43). Actually, Ala. Code § 17-9-3(a)(1) says explicitly allows ballot access nominees of a political party that

files petitions with the signature of three percent of the qualified electors in the last general election.⁷

III. The passage of time, and the absence of needed parties make the claims moot, and mere generalized grievances.

This appeal is likely moot. *See Bell v. Eagerton*, 908 So. 2d 204 (Ala. 2002). It challenges Tuberville's status as nominee of a political party and his listing on ballots for the general election. The process for printing and distributing those ballots has begun. The officials who print those ballots are not parties to the appeal, or the proceedings below. Indeed, they are not parties to a proceeding that merely invokes the quo warranto statute. And quo warranto relief would not extend to them. Nor would quo warranto relief extend to other officials or the ALGOP that nominated Tuberville.

Relators make passing reference to this appeal including a request for declaratory relief. But in the trial court, they made clear that they were not seeking declaratory relief (R. 45-46). Were it allowed, despite

⁷ The continuing precedential effect of the *Fernandez* case in Florida courts is not certain. It was not followed in *League of Women Voters of Florida v. Scott*, 232 So. 3d 264 (Fla. 2017). *See id.* at 271 (Lewis J., dissenting). Moreover, the *Fernandez* case acknowledges that other jurisdictions do not treat nominations as subject to quo warranto relief.

this concession, the requirements for declaratory relief would be absent because of the need to bind the officials that administer elections. *See* Ala. Code § 6-6-227 (“no declaration shall prejudice the rights of persons not parties to the proceeding”). Absent joinder of ALGOP and election officials, the claims are merely generalized grievances against Tuberville, and not now justiciable. If Tuberville wins, the proper place to seek a remedy is in the legislature.

CONCLUSION

For these reasons, Tuberville urges the Court to agree that the Circuit Court lacked jurisdiction and affirm that decision, or alternatively, dismiss this appeal as moot.

Respectfully submitted this 27th day of August 2026.

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CERTIFICATION OF COMPLIANCE

I hereby certify that the font of the *Appellee's Brief* is set in Century Schoolbook 14, and that the response contains 10,608 words.

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CERTIFICATE OF SERVICE

I certify that on the 27th day of August, 2026, I will serve a copy of the *Brief of Appellants* on all counsel of record by email in accordance with Rule 57(h)(5), Ala. R. App. P., at the following email address:

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