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CIRCUIT COURT OF
MONTGOMERY COUNTY, ALABAMA
GINA J. ISHMAN, CLERK

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

DORGAN BROOKE LYNN, LEBLANC JUSTIN JUDE, Plaintiffs,	)	
V.	)	Case No.: CV-2026-901053.00
TUBERVILLE THOMAS HAWLEY, ALLEN WESLEY, Defendants.	)	

ORDER

This matter came before the Court on June 29, 2026 for Hearing on Defendant Thomas Hawley Tuberville's (hereinafter "Senator Tuberville") Motion to Dismiss Plaintiffs' Expedited Complaint for Quo Warranto and Declaratory Relief. The grounds asserted in the Motion to Dismiss are set forth in Senator Tuberville's Memorandum in Support of Motion to Dismiss for Lack of Jurisdiction. (Doc. 20). The Plaintiffs' response and objection to said motion was submitted in advance of the hearing. (Doc. 45). Although the Plaintiffs initially asserted a claim for declaratory relief against the Alabama Secretary of State in his official capacity, that claim was voluntarily dismissed prior to the hearing on Senator Tuberville's Motion to Dismiss. The Court notes that the briefs submitted by both parties were thoroughly researched and focused on the applicable statutory and case law relevant to the issues. The Court has invested considerable time in analyzing the same.

The central issue raised in the Defendant's Motion to Dismiss is whether the Circuit Court has jurisdiction over a quo warranto action challenging the eligibility of the certified nominee of a major political party on grounds that he does not meet the residency requirement set forth in §117 of the Alabama Constitution. In order to resolve the issue, this Court is tasked with considering a number of statutes and cases, however imperfectly they align.

Based upon the briefs of the parties and as conceded by the Plaintiffs, there is no Alabama case directly on point. There are, however, numerous Constitutional provisions and statutes that must be given due consideration by the Court.

The Plaintiffs' sole cause of action is for quo warranto pursuant to Alabama Code § 6-6-591, which states in pertinent part:

> "(a) An action may be commenced in the name of the state against the party offending in the following cases:
> (1) When any person usurps, intrudes into or unlawfully holds or exercises any public office, civil or military, any franchise, any profession requiring a license, certificate, or other legal authorization within this state or any office in a corporation created by the authority of this state…"

The Defendant points out that § 6-6-591 must be read in conjunction with §6-6-598, which states:

> "The validity of an election which may be contested under this Code cannot be tried under the provisions of this article."

"The purpose of the writ of quo warranto is to ascertain whether an officeholder is 'constitutionally and legally authorized to perform any act in, or exercise any functions of, the office to which he lays claim.'" Hudon v. Ivey, 383 So.3d 636 (Ala. 2023) citing 65 Am Jur. 2d Quo Warranto § 122 (1972). In short, quo warranto may be used to challenge whether someone elected or appointed to public office is lawfully holding that office.

The Defendant asserts that this Court lacks jurisdiction to entertain the quo warranto on several grounds, including § 142 of the Alabama Constitution, Ala. Code § 17-16-44 (commonly referenced as the "jurisdiction-stripping statute"), and Ala. Code § 6-6-598. The Defendant further asserts that the quo warranto statute on its face requires the Defendant to hold a *public office* unlawfully whereas the Defendant is merely the nominee of a political party, not a public officer.

In response, the Plaintiffs contend that § 17-16-44 must be narrowly construed and does not deprive the Court of jurisdiction and that Courts have an exclusive duty to interpret and apply the Alabama Constitution. The Plaintiffs further suggest that quo warranto is a proper cause of action to challenge constitutional eligibility and that Alabama case law suggests quo warranto may be used to challenge the eligibility of the certified nominee of a major party.

In examining the applicable statutes referenced in Defendant's Motion to Dismiss, Ala. Code § 17-16-44 provides:

> "No jurisdiction exists in or shall be exercised by any judge or court to entertain any proceeding for ascertaining the legality, conduct, or results of any election, except so far as *authority to do so shall be specially and specifically enumerated* and set down by statute; and 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, *save as may be specially and specifically enumerated and set down by statute*, shall be null and void and shall not be enforced by any officer or obeyed by any person. If any judge or other officer hereafter undertakes to fine or in any wise deal with any person for disobeying any such prohibited injunction, process, or order, such attempt shall be null and void, and an appeal shall lie forthwith therefrom to the Supreme Court then sitting, or next to sit, without bond, and such proceedings shall be suspended by force of such appeal; and the notice to be given of such appeal shall be 14 days."

Alternatively stated, the Court is deprived of jurisdiction to determine disputes involving elections unless specially and specifically enumerated and set down by statute. However, "Statutes restricting the jurisdiction of courts of equity, as defined at common law, and reiterated by statute in Alabama, should be strictly construed." Dennis v. Prather,103 So.59 (Ala. 1925).

The Plaintiffs contend that Ala. Code § 6-6-591 (quo warranto) confers jurisdiction because it specifically grants the Court authority to hear matters wherein a person is alleged to "…unlawfully hold or exercise any public office… or other legal authorization within this State."

With respect to the primary election itself, it is well-settled, "Alabama statutes commit to the state executive committees of the political parties the responsibility and authority to conduct primary election contests." Ala.Code §§ 17–16–70 through 17–16–89. In discharging that responsibility, the party committee exercises powers "such as those conferred on a court of special and limited jurisdiction." *Boyd v. Garrison,* 246 Ala. 122, 19 So.2d 385, 388 (1944).

Moreover, Alabama Code § 17-13-71 provides:

> "The contests of nomination by a party for office, other than a county office, may be instituted by any qualified elector of the state, or of the political subdivision, as the case may be, who belongs to that party and who legally participated in such primary election, upon the following grounds, which may be used separately, or else be joined in the same contest:
> (1) Malconduct, fraud, or corruption on the part of any inspector, clerk, returning officer, canvassing board, or other persons.
> (2) When a person whose nomination is contested was not eligible to the office sought at the time of the declaration of nomination…"

"For over 50 years, the courts in this state have adhered to the legislative mandate that political parties are empowered to settle their own disputes in primary elections. The same rules apply regardless of the office involved. The statutory scheme was first enacted in 1931 and bestowed on political parties in primary election contests subpoena power and prehearing discovery authority which the circuit courts did not have for 40–odd years thereafter. The legislature recognized that these disputes require an early resolution and it gave the political parties the tools to resolve them." Ex Parte Baxley, 496 So.2d 688 (Ala. 1986).

It is undisputed 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.

§ 117 of the Constitution of Alabama explicitly and unambiguously sets forth the requirements for the Office of Governor:

> "The governor [and lieutenant governor] shall each be at least thirty years of age when elected, and shall have been citizens of the United States ten years and resident citizens of this state at least seven years next before the date of their election."

While the Court has no authority to intervene in primary election contests, the Plaintiffs argue that a quo warranto action lies because the nomination of Senator Tuberville as the Republican nominee for the Office of Governor has been certified to the Secretary of State for inclusion on the general election ballot. The Plaintiffs urge that Alabama state courts have recognized a duty to hear cases where a state party executive committee has failed to follow the mandates of Alabama law. Perloff v. Edington, 293 Ala. 277, 302 So.2d 92 (1974) (writ of prohibition); Hobbie v. Vance, 292 Ala. 367, 294 So.2d 743 (1974) (declaratory judgment and mandamus).

It is undisputed Senator Tuberville was elected by a majority of Republican primary voters as the Republican nominee for the Office of Governor and has been certified as such. This Court is keenly aware that the right to vote in a democracy is among the most precious of all individual rights. The Defendant rightfully asserts that the authority of the judiciary is restricted in matters involving elections, though Alabama case law makes clear that Courts are not divested of all authority merely because the issue presented is one that may impact an election.

"It has long been held that a suit 'arises under' the Constitution if a petitioner's claim 'will be sustained if the Constitution (is) given one construction and will be defeated if (it is) given another." Powell v. McCormack, 395 U.S.486 (1944) citing Bell v. Hood, 327 U.S. 678, 685, 66 S.Ct. 773, 777, 90 L.Ed. 939 (1946). The Constitutional requirements for the Office of Governor are in effect specific constitutional limitations on legislative authority. Judicial enforcement of a constitutional mandate does not derogate the principle of separation of powers. As articulated by the Plaintiffs, the interpretation of the Alabama Constitution has been described as "the special province of the Courts." Jefferson Cnty. v. Weissman, 69 So.3d 827, 838 (Ala. 2011).

In State ex. rel. James v. Reed, 364 So.2d 303 (Ala. 1978), the Alabama Supreme Court determined that § 53 of the Alabama Constitution reserving to both houses of the legislature the power to punish its members for contempt or to expel a member by 2/3 vote did not negate that § 60 (providing that no person convicted of embezzlement of public money, bribery, perjury, or other infamous crime, shall be eligible to the legislature , or capable of holding any office of trust or profit in this state) of the Alabama Constitution operated as a specific constitutional limitation on legislative authority, thereby allowing for judicial enforcement of its mandate.

The requirements for the Office of Governor in § 117 of the Alabama Constitution are clearly set forth and unambiguous, and indeed, as suggested by the Plaintiffs, courts have a solemn and exclusive duty to interpret and apply the Alabama Constitution. That point is not to be overlooked. The Alabama "Constitution is the supreme law of the state, and to it all rules of evidence, procedure, and expediency in conflict with its mandates and prohibitions must yield. The [Alabama] Constitution is the supreme law, limiting the power of the legislature and binding departments of State government and the people themselves subject only to restraints resulting from Federal Constitution and the people themselves." Alexander v. Sate ex.rel.Carver, 150 So.2d 204, 208 (Ala. 1963). The suggestion that Courts are without authority, when properly invoked, to rule upon the Constitutional eligibility of a nominee to hold office is lacking in merit.

Whether the Circuit Court's jurisdiction has been properly invoked through the vehicle of quo warranto, however, is a more nuanced question.

Although not binding upon this Court, the Georgia Supreme Court has observed in distinguishing quo warranto from election contests, "They do not serve precisely the same function, because an election contest is brought by or on behalf of the unsuccessful candidate, but quo warranto is brought by or on behalf of the people for the protection of the public." White v. Miller, 235 Ga. 192 (GA 1975) citing Cutts v. Scandrett, 108 Ga. 620, 628, 34 S.E. 186.

The Defendant points to the mandate in Ala. Code §6-6-598 that quo warranto cannot be maintained because "the validity of an election under this Code cannot be tried under the provisions of this article." The Defendant further maintain that Alabama's election contest laws provide the exclusive remedy at this juncture in the election process.

Ala. Code § 17-13-71 clearly sets forth that contests for nomination by a party for office can be maintained on the ground that a person whose nomination is contested was not eligible to the office sought at the time of declaration of the nomination. Because the ground for relief sought by the Plaintiffs (challenging eligibility of a purported nominee under § 117 of the Constitution) has already been exercised in this case to contest the validity of the Defendant's nomination (and may be asserted following the general election), the Defendant maintains that quo warranto is barred. Conversely, the Plaintiffs aver that they do not contest the validity of the Republican primary election, but rather, seek a judicial determination as to whether Senator Tuberville as a certified nominee meets the constitutional residency requirement to hold the Office of Governor. (Doc. 2, p. 2 and p. 22). Those are distinct inquiries.

In examining relevant case law, Hudson v. Ivey, 383 So.3d 636 (Ala. 2023) stands for the proposition that quo warranto is the exclusive remedy when someone is unlawfully exercising public office. "Stated another way, the purpose of the writ of quo warranto is to ascertain whether an officeholder is 'constitutionally and legally authorized to perform any act in, or exercise any functions of, the office to which he lays claim.'" *Id.* citing 65 Am Jur. 2d Quo Warranto § 122 (1972). The Plaintiff in Hudson sought removal of a judge appointed to a reallocated judgeship on grounds of unconstitutional delegation of legislative authority. Quo warranto was appropriate because a judge had already been appointed by the Governor and was exercising the duties of the reallocated judgeship.

The instant Expedited Complaint for Quo Warranto and Declaratory Relief asserts that "Tuberville has 'usurped, intruded into, or unlawfully holds or exercises a public office" and that he "has usurped and intruded into the *public office* of nominee for Governor through his certified nomination as a candidate." (Doc. 2, p.1 and p. 21). While the "office of nominee" has been recognized by Alabama Courts as conferring "quasi-officer" status, thereby giving its holder a valuable right, there is currently no case law of which this Court is aware holding that a "quasi-officer" falls within the definition of public officer. Rather, State ex.re. Norrell v. Key, 165 So.2d 76 (Ala. 1964) noted that the holder of a certificate of nomination has status as a "quasi-officer," but made no decision regarding whether quo warranto was an appropriate remedy to oust a nominee from office.

The Plaintiffs cite Talton v. Dickinson, 72 So.2d 723 (Ala. 1954) for the proposition that quo warranto is the exclusive remedy to determine whether or not a party is usurping public office. However, the Talton Court specifically noted, "The defendant in the proceeding, appellee here, was only a party nominee to the office, had not been elected and might never have been elected in so far as the present proceedings are concerned, and the private citizens who filed the bill as parties complainant show absolutely no right to have the court adjudicate on the question." *Id.* at p. 13.

Johnson v. Roberson, 682 So.2d 58 (Ala. 1996) is the most persuasive case cited in support of the Plaintiffs' argument that quo warranto may be utilized to challenge the eligibility of a nominee not yet elected to office. The Plaintiff in Johnson was the Democratic nominee for a county commission seat who lost to the Patriot Party candidate, Roberson, in the general election. Following the election, Johnson filed a complaint for declaratory relief challenging whether the Patriot Party complied with statutory requirements to have Roberson's name placed on the ballot. In denying the declaratory relief requested, the trial Court held that Johnson's challenge was untimely because it was asserted after the general election. The Court noted that it was too late to challenge a nomination after the candidate's name had been placed on the ballot and he was elected to office. In a footnote, the Court mentioned Norrell, and further offered that, "a safe practice would be to join quo warranto with a petition for writ of mandamus or prohibition when challenging a candidate's eligibility after the primary election, but prior to the general election." *Id.* Johnson is distinguishable on the grounds that an election contest was unavailable under the circumstances of that case. While Johnson is persuasive, the facts of Johnson are not factually similar to the present case and there is no subsequent case in which the Court's admonition has been reiterated or affirmed. The sole cause of action in this case is for quo warranto—no other claim has been joined.

While the Plaintiffs correctly assert that the quo warranto statute is broad in nature, the allegation in the instant case is that the Defendant unlawfully holds the "public office of nominee for Governor." Ala. Code § 36-25-1 (Code of Ethics for Public Officials) defines "public official" as, "Any person elected to public office, whether or not that person has taken office, by vote of the people at state, county, or municipal level of government or their instrumentalities, including governmental corporations, and any person appointed to a position at the state, county, or municipal level of government or their instrumentalities, including governmental corporations…"

In Burdette v. State Department of Revenue, 487 So.2d 944 (Ala. 1986), the Supreme Court observed: "The terms 'public officer' and 'state officer' have been given various meanings by the authorities, *See generally* § 81A C.J.S. *States* § 80 (1977); 72 Am.Jur.2d *States, Territories, and Dependencies,* § 62 (1974); 67 C.J.S. *Officers* § 8 (1978); 63A Am.Jur.2d *Public Officers and Employees* § 9 (1984). The key characteristic of each is that an officer, public or state, is invested with some portion of the sovereign power of the state, to be exercised by him for the benefit of the public. *See, e.g., State ex rel. Gray v. King,* 395 So.2d 6 (Ala.1981); *Lacy v. State, supra.* An individual, to be an officer, must exercise his duties in his own right and not by permission and under the supervision and control of another." *See Jefferson County v. Case,* 244 Ala. 56, 12 So.2d 343 (1943). *See generally* 67 C.J.S. *Officers* § 10 (1978)."

This Court has wrestled at length with the narrow issue of whether quo warranto may be utilized to challenge the Constitutional eligibility of a certified nominee prior to the general election. Indeed, there is no Alabama case expressly endorsing or rejecting the use of quo warranto to challenge eligibility of a certified nominee prior to the general election. Public interest certainly weighs in favor of judicial resolution of Constitutional eligibility to hold office in advance of a general election. There is also a very strong argument that quo warranto should be available cause of action to challenge the Constitutional eligibility of the certified nominee of a major political party prior to general election for the practical and compelling reasons set forth in the Plaintiffs' response to Motion to Dismiss, including the observation of the Florida Supreme Court in a 1932 case holding, "To an appreciable degree the welfare of the state depends on the manner in which primary laws are executed." State v. Fernandez, 143 So. 638, 640 (1932). While this Court lacks authority to extend the application of quo warranto to a certified nominee, that does not imply that it should not be extended in this case, nor that the Plaintiffs are estopped altogether from seeking Court resolution of Constitutional eligibility to hold office.

While declaratory or other injunctive relief may be available to challenge a certified nominee's eligibility to hold office under the Alabama Constitution, for the aforementioned reasons, this Court finds that it does not have jurisdiction over the sole claim of quo warranto at this time. Accordingly, Defendant's Motion to Dismiss is GRANTED. This is a final order from which immediate appeal may be taken.

DONE this 9th day of July, 2026.

/s/ BROOKE E REID
CIRCUIT JUDGE