



AlaFile E-Notice

03-CV-2026-901583.00

Judge: MONET M. GAINES

To: BRYAN M. TAYLOR
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NOTICE OF ELECTRONIC FILING

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

JARROD WAYNE SCHULTE ET AL V. NEHEMIAH EZEKIEL JOHN WAHL ET AL
03-CV-2026-901583.00

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D001 NEHEMIAH EZEKIEL JOHN WAHL
MOTION TO DISMISS PURSUANT TO RULE 12(B)
[Filer: TAYLOR BRYAN MCDANIEL]

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CIRCUIT COURT OF

MONTGOMERY COUNTY, ALABAMA

GINA J. ISHMAN, CLERK

STATE OF ALABAMA

Revised 3/5/08

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Unified Judicial System

03-MONTGOMERY

☐ District Court☒ Circuit Court

CV2

JARROD WAYNE SCHULTE ET AL V. NEHEMIAH
EZEKIEL JOHN WAHL ET AL**CIVIL MOTION COVER SHEET**

Name of Filing Party: D001 - NEHEMIAH EZEKIEL JOHN WAHL

Name, Address, and Telephone No. of Attorney or Party. If Not Represented.

BRYAN M. TAYLOR

3125 Blue Lake Drive, Suite 101

Birmingham, AL 35243

Attorney Bar No.: TAY076

☐ Oral Arguments Requested**TYPE OF MOTION****Motions Requiring Fee**

- ☐ Default Judgment (\$50.00)
Joinder in Other Party's Dispositive Motion
(i.e. Summary Judgment, Judgment on the Pleadings,
or other Dispositive Motion not pursuant to Rule 12(b))
(\$50.00)
- ☐ Judgment on the Pleadings (\$50.00)
- ☐ Motion to Dismiss, or in the Alternative
Summary Judgment (\$50.00)
- Renewed Dispositive Motion (Summary
Judgment, Judgment on the Pleadings, or other
Dispositive Motion not pursuant to Rule 12(b)) (\$50.00)
- ☐ Summary Judgment pursuant to Rule 56 (\$50.00)
- ☐ Motion to Intervene (\$297.00)
- ☐ Other _____
pursuant to Rule _____ (\$50.00)

*Motion fees are enumerated in §12-19-71(a). Fees
pursuant to Local Act are not included. Please contact the
Clerk of the Court regarding applicable local fees.

☐ Local Court Costs \$ 0 _____

Motions Not Requiring Fee

- ☐ Add Party
- ☐ Amend
- ☐ Change of Venue/Transfer
- ☐ Compel
- ☐ Consolidation
- ☐ Continue
- ☐ Deposition
- ☐ Designate a Mediator
- ☐ Judgment as a Matter of Law (during Trial)
- ☐ Disburse Funds
- ☐ Extension of Time
- ☐ In Limine
- ☐ Joinder
- ☐ More Definite Statement
- ☒ Motion to Dismiss pursuant to Rule 12(b)
- ☐ New Trial
- ☐ Objection of Exemptions Claimed
- ☐ Pendente Lite
- ☐ Plaintiff's Motion to Dismiss
- ☐ Preliminary Injunction
- ☐ Protective Order
- ☐ Quash
- ☐ Release from Stay of Execution
- ☐ Sanctions
- ☐ Sever
- ☐ Special Practice in Alabama
- ☐ Stay
- ☐ Strike
- ☐ Supplement to Pending Motion
- ☐ Vacate or Modify
- ☐ Withdraw
- ☐ Other _____
pursuant to Rule _____ (Subject to Filing Fee)

Check here if you have filed or are filing contemporaneously
with this motion an Affidavit of Substantial Hardship or if you
are filing on behalf of an agency or department of the State,
county, or municipal government. (Pursuant to §6-5-1 Code
of Alabama (1975), governmental entities are exempt from
prepayment of filing fees) ☐

Date:

9/21/2026 11:54:48 PM

Signature of Attorney or Party
/s/ BRYAN M. TAYLOR

*This Cover Sheet must be completed and submitted to the Clerk of Court upon the filing of any motion. Each motion should contain a separate Cover Sheet.

**Motions titled 'Motion to Dismiss' that are not pursuant to Rule 12(b) and are in fact Motions for Summary Judgments are subject to filing fee.



IN THE CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

**STATE OF ALABAMA ex rel. Jarrod Wayne
Schulte, Amanda Beth Schulte, and Valtoria
Jackson, as Relators, and individually for
mandamus or prohibition and declaratory
relief,**

Petitioner-Relators,

v.

**NEHEMIAH EZEKIEL JOHN WAHL,
individually and in his capacity as the Certified
Nominee of the Alabama Republican Party for
the office of Lieutenant Governor, and
WESLEY HARRISON ALLEN, in his official
capacity as Alabama Secretary of State,**

Defendants.

Case No. 03-CV-2026-901583.00

DEFENDANT JOHN WAHL’S MOTION TO DISMISS

COMES NOW Defendant John Wahl (“Wahl”), by and through undersigned counsel, and, pursuant to Rules 12(b)(1), 12(b)(6), and 12(b)(7) of the Alabama Rules of Civil Procedure, moves this Court to dismiss all claims asserted against him in the Expedited Complaint for Quo Warranto Relief, Verified Petition for Writ of Mandamus or Prohibition, and Request for Declaratory Relief (Doc. 2) (the “Complaint”).¹ In support, Wahl states as follows:

I. INTRODUCTION

This lawsuit asks a circuit court to remove a political party’s nominee from a statewide general-election ballot while that election is under way. The Supreme Court of Alabama has already decided that the courts lack jurisdiction to do so. Ala. Code § 17-16-44 withdraws

¹This motion is a facial challenge; Wahl concedes no allegation of the Complaint. Wahl is separately moving for a protective order and a stay of discovery, including the Notice of Deposition Duces Tecum served with the Complaint, pending resolution of this motion.

jurisdiction over “any proceeding for ascertaining the legality, conduct, or results of any election” unless a statute “specially and specifically” authorizes it. An action to strip a party nominee of his place on the general election ballot because of alleged ineligibility challenges the *results* of the primary that nominated him, *Roper v. Rhodes*, 988 So. 2d 471, 477 (Ala. 2008), and an order striking a candidate's name from the ballot affects the *conduct* of the election, *Rice v. Chapman*, 51 So. 3d 281, 284 (Ala. 2010) (per curiam). Relators' suit does both. It is a belated contest of the Republican primary runoff and an attempt to alter a general election already in progress. No statute authorizes it. The quo warranto statute on which Relators rely expressly forbids its use to try “[t]he validity of an election which may be contested under this Code.” Ala. Code § 6-6-598.

Nor does quo warranto reach Wahl at all. It lies against one who “usurps, intrudes into or unlawfully holds or exercises any public office.” Ala. Code § 6-6-591(a)(1). Wahl holds no public office. He is a party nominee, and the Supreme Court of Alabama has refused to adjudicate a mere nominee’s eligibility for an office to which he “had not been elected and might never have been elected.” *Talton v. Dickinson*, 72 So. 2d 723, 725 (Ala. 1954).

Finally, the Complaint fails on its own terms. Relators assert that Wahl is ineligible to be the Republican Party’s nominee for Lieutenant Governor because, they say, he does not meet the Alabama Constitution’s requirement of having been a “resident citizen[]” of Alabama “at least seven years next before the date of [the] election.” Ala. Const. art. V, § 117. They state that a person may have several residences but only one “domicile,” Doc. 2 ¶ 15, and plead that section 117’s “resident citizen” requirement refers to domicile, *Id.* ¶ 14. Never mind for a moment that the Constitution doesn’t mention the word domicile. Even accepting Relators’ theory (which is based entirely on cases interpreting election *statutes*), domicile once acquired “is presumed to continue until a new one is gained.” Doc. 2 ¶ 15. The case they cite for that rule, *Horwitz v. Kirby*, 197 So.

3d 943 (Ala. 2015), held that more than one hundred University of Alabama students who lived in Tuscaloosa, registered to vote there, and voted there had *not* lost their home domiciles. The Alabama Constitution adds that “temporary absence from the state shall not cause a forfeiture of residence once obtained.” Ala. Const. art. I, § 31. Against those rules, the Complaint alleges only that Wahl obtained a Tennessee driver license and a Tennessee voter registration. It fails to allege that he abandoned his Alabama residence—and its own exhibits show him driving an Alabama-registered vehicle, listing an Alabama address, throughout the period in question. The claims against Wahl should be dismissed.

II. THE ALLEGATIONS OF THE COMPLAINT

Relators are three individuals suing in the name of the State and individually. Doc. 2 ¶¶ 1–3. Wahl is the Alabama Republican Party’s “certified nominee” for Lieutenant Governor, *id.* ¶¶ 4, 32. Relators allege that Wahl is constitutionally ineligible for that office because he has not been a “resident citizen[]” of Alabama “at least seven years next before the date of [the] election.” *Id.* ¶¶ 8, 13, 25.

Given the Relators’ claim that Wahl does not meet the Alabama Constitution’s “resident citizen[]” requirement, it’s curious what the Complaint does *not* allege. It does not allege that Wahl wasn’t *born* here in Alabama. Or that he hasn’t *lived* here for the past seven years. Or even that he moved to Tennessee, worked there, filed taxes there, or cast a ballot there. What is alleged, even if taken as true, would not establish that Wahl doesn’t meet the resident citizen requirement. In fact, Relators attached to the Complaint documentary evidence of Wahl’s Alabama residence at the time in question: the traffic citation from April 11, 2023 intended by Relators to show that Wahl carried a Tennessee driver’s license at the time. The same citation shows that the vehicle Wahl was driving, of which he is listed as the owner, bore an Alabama license tag for 2023, and it

lists “8971 Lentzville Rd” as the vehicle owner’s address. Doc. 4 (Ex. B). Relators’ later exhibits place that same address in Athens, Alabama, and show the same Alabama tag on the same vehicle in 2025 and 2026. Doc. 6 (Ex. D); Doc. 7 (Ex. E). Relators’ own exhibits thus document Wahl’s residency in Alabama during the very period in which, on their theory, he was not a “resident citizen.” Doc. 2 ¶ 25.

Count I seeks a writ of quo warranto on the theory that Wahl, as a party nominee, is a “quasi officer” who has “usurped and intruded into the public office of nominee for Lieutenant Governor.” *Id.* ¶¶ 24, 26. It asks the Court to find that Wahl “is not lawfully eligible to be the certified nominee or to hold the office.” *Id.* (prayer following ¶ 29). Count II seeks a writ of mandamus or prohibition directing the Secretary of State to keep Wahl’s name off the general-election ballot. *Id.* ¶¶ 30–39. Count III seeks a declaratory judgment that Wahl does not meet the constitutional requirements for the office. *Id.* ¶¶ 40–43. The Complaint asserts that this “is not an election contest.” *Id.* ¶ 6.

III. STANDARD OF REVIEW

This motion presents a facial challenge to subject-matter jurisdiction under Rule 12(b)(1), in which the Court accepts the Complaint’s allegations as true. *Ex parte Ala. Dep’t of Transp.*, 978 So. 2d 17, 21 (Ala. 2007). Relators bear the burden of establishing jurisdiction. *Ex parte Safeway Ins. Co. of Ala.*, 990 So. 2d 344, 350 (Ala. 2008). A court without subject-matter jurisdiction “may take no action other than to exercise its power to dismiss the action.” *Chapman v. Gooden*, 974 So. 2d 972, 984 (Ala. 2007) (citation omitted).

A Rule 12(b)(6) motion “tests the sufficiency of the pleadings,” and the Court’s examination is limited to them. *Pub. Rel. Couns., Inc. v. City of Mobile*, 565 So. 2d 78, 81 (Ala. 1990). The Court views the allegations most strongly in the pleader’s favor and asks whether the

pleader could prove any set of circumstances that would entitle him to relief. *Nance v. Matthews*, 622 So. 2d 297, 299 (Ala. 1993). But “conclusory allegations, unwarranted deductions of facts or legal conclusions masquerading as facts will not prevent dismissal.” *Ex parte Gilland*, 274 So. 3d 976, 985 n.3 (Ala. 2018) (citation omitted). Exhibits attached to a complaint are part of it “for all purposes.” Ala. R. Civ. P. 10(c).

Rule 10(c) also permits a party to adopt statements from another pleading or motion by reference. Wahl adopts and incorporates Secretary of State Wes Allen’s Motion to Dismiss (Doc. 31) (the “Secretary’s Motion”) to the extent specified below and to the extent its arguments apply to the claims against Wahl.

IV. ARGUMENT

A. Section 17-16-44 deprives the Court of jurisdiction over this suit.

The Supreme Court of Alabama “has been unequivocal in stating that elections normally do not fall within the scope of judicial review.” *Crouch v. Howard*, 23 So. 3d 663, 664 (Ala. 2009) (quoting *Sears v. Carson*, 551 So. 2d 1054, 1056 (Ala. 1989)). The Legislature codified that principle in Ala. Code § 17-16-44:

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.

The statute “strictly limits the judiciary’s power to ‘affect’ the procedures by which Alabama’s public representatives are elected and limits the remedies for election irregularities to those

remedies specifically authorized by the legislature.” *Ex parte Krages*, 689 So. 2d 799, 808 (Ala. 1997) (per curiam). Wahl adopts Part III.A of the Secretary’s Motion and adds the following.

1. The Complaint seeks to negate the results of the Republican primary runoff.

In *Roper*, plaintiffs sued the winner of a party primary runoff before the general election, alleging that he was ineligible and seeking his removal from the general-election ballot. 988 So. 2d at 472–73. They insisted they were merely enforcing a statutory qualification, not contesting an election. *Id.* at 475. The Supreme Court disagreed. Because the plaintiffs’ allegations “necessarily [led] to the conclusion” that the candidate had been ineligible to participate in the primary and runoff, a judgment removing him from the ballot would mean that “the results of the primary and runoff elections would be affected—indeed they would be negated.” *Id.* at 477. The suit was therefore “an attempt to contest the primary and runoff elections,” and § 17-16-44 barred it. *Id.* at 477–78.

This case is *Roper* again. Relators’ assurance that this “is not an election contest,” Doc. 2 ¶ 6, is the same characterization the *Roper* plaintiffs offered and the Supreme Court rejected. Every fact on which Relators rely—the 2020 license and registration and the 2023 traffic stop, *id.* ¶¶ 16–18, 22—predates the June 16, 2026 primary runoff. If those allegations established ineligibility, Wahl was ineligible to be nominated, and the judgment Relators request—that Wahl “is not lawfully eligible to be the certified nominee,” *id.* (prayer following ¶ 29)—would negate the primary election. That is an inquiry into the “results” of an election, and it could have been brought, if at all, only in a contest of the primary nomination. *See* Ala. Code § 17-13-71; Part IV.A.3, *infra*.

2. The Complaint seeks to alter the conduct of the ongoing general election.

Rice forecloses the suit independently. There, a voter and a rival candidate alleged that a candidate was ineligible and sought to have his name removed from the ballot or his votes not

counted. 51 So. 3d at 284. The Supreme Court held that either form of relief would “impact the ‘conduct’ of” the election and so triggered § 17-16-44. *Id.* Relators seek exactly that: an order that Wahl’s name not “appear on the general election ballot.” Doc. 2 ¶¶ 35, 38–39 & prayer following ¶ 39.

3. No statute “specially and specifically” authorizes this proceeding.

Because § 17-16-44 applies, Relators must identify a statute that specially and specifically authorizes this suit. They cannot. The only statutes they invoke are the quo warranto provisions, Ala. Code § 6-6-590 *et seq.*, and those provisions exclude this very use: “The validity of an election which may be contested under this Code cannot be tried under the provisions of this article.” Ala. Code § 6-6-598. A party nomination is such an election. The Code authorizes a contest of a primary nomination, and ineligibility of the nominee is among the grounds on which it may be contested. Ala. Code § 17-13-71(2). Relators may not bypass that statutorily prescribed channel by relabeling their challenge.

Relators’ alternative labels do not help them. The Supreme Court has repeatedly applied § 17-16-44 to dismiss election challenges regardless of the form of relief requested. *See Rice*, 51 So. 3d at 282–85 (petition for writ of prohibition, mandamus, or other extraordinary relief); *Roper*, 988 So. 2d at 473 n.3 (declaratory judgment, injunction, mandamus, and quo warranto); *Wood v. Booth*, 990 So. 2d 314, 316, 324 (Ala. 2008) (affirming dismissal for lack of jurisdiction of action seeking the same four remedies to remove party nominees from general-election ballot); *Harvey v. City of Oneonta*, 715 So. 2d 779, 780-81 (Ala. 1998) (declaratory and injunctive relief). Because the Court lacks jurisdiction, the claims against Wahl must be dismissed. *Chapman*, 974 So. 2d at 984.

B. Quo warranto does not lie against a political party’s nominee.

Count I fails for a further reason that goes to the Court’s jurisdiction: a party nominee does not hold a “public office.” Wahl adopts Part III.B of the Secretary’s Motion and adds the following.²

1. Quo warranto reaches only one who holds or exercises a public office.

“[Q]uo warranto is a statutory proceeding and to be maintained it must meet the requirements of the statute as to parties and procedure.” *State ex rel. Norrell v. Key*, 165 So. 2d 76, 77 (Ala. 1964). Relators proceed under § 6-6-591(a)(1), which reaches one who “usurps, intrudes into or unlawfully holds or exercises any public office, civil or military.” The defendant must therefore come within the definition of a “public officer,” *State ex rel. Burdette v. Coats*, 500 So. 2d 1, 2 (Ala. 1986)—one “invested with some portion of the sovereign functions of the government, to be exercised by him for the benefit of the public.” *State ex rel. Gray v. King*, 395 So. 2d 6, 7 (Ala. 1981). If the position is not a public office, “the court never acquire[s] jurisdiction of the subject-matter.” *State v. Roberts*, 83 So. 49, 50 (Ala. 1919).

The Complaint does not allege that Wahl holds, exercises, or claims any public office. It alleges that he is a “certified nominee,” Doc. 2 ¶¶ 4, 32, and then asserts that he has “usurped and intruded into the public office of nominee for Lieutenant Governor.” *Id.* ¶ 26. There is no “public office of nominee.” A nominee exercises no sovereign power and owes the public no official duty; the office of Lieutenant Governor will be filled by the voters, and its term has not begun. Relators try to close the gap by calling Wahl a “quasi officer.” *Id.* ¶¶ 10, 24. But the source of that phrase,

²Wahl recognizes that the Supreme Court of Alabama is considering a related question in *State of Ala. ex rel. Dorgan v. Tuberville*, No. SC-2026-0540 (Ala. pending). Whatever that Court decides about the availability of quo warranto against a nominee, Parts IV.A and IV.C of this motion independently require dismissal of the claims against Wahl.

Bridges v. McCorvey, 49 So. 2d 546, 548 (Ala. 1950), describes the status of one who is a candidate for “a party office.” A nominee’s status derives from his party, not from the sovereign.

No Alabama decision holds that a party nominee is subject to quo warranto. In *Norrell*, the Supreme Court noted that “[t]he holder of a certificate of nomination has the status of a quasi officer,” but stated: “We make no decision whether quo warranto is an appropriate remedy to oust a nominee from that office.” 165 So. 2d at 78. The Court again declined to decide the question in *Johnson v. Roberson*, 682 So. 2d 58, 60 n.3 (Ala. 1996). *Johnson*’s further suggestion that pairing quo warranto with mandamus or prohibition would be a “safe practice,” *id.*, was dicta addressed to a minor-party nomination that the Court assumed was not subject to the primary-contest statutes. It has no application to a nomination, like Wahl’s, won in a primary runoff that could have been contested under Ala. Code § 17-13-71(2). *See Roper*, 988 So. 2d at 478. Nor do *Bridges* or *Boyd v. Garrison*, 19 So. 2d 385 (Ala. 1944), decide the question; neither involved quo warranto. Quo warranto “must meet the requirements of the statute as to parties and procedure,” *Norrell*, 165 So. 2d at 77, and where a complaint does not allege that the defendant “unlawfully holds or exercises” an office, quo warranto is not “a valid procedural device” against him. *Brannan v. Smith*, 784 So. 2d 293, 295–96 (Ala. 2000).

2. *Talton* forecloses adjudicating a nominee’s eligibility before he holds office.

Relators cite *Talton v. Dickinson* for the proposition that quo warranto is “the exclusive remedy to contest a nominee-candidate’s eligibility for office.” Doc. 2 ¶ 26 n.27. But *Talton* does not so hold. *Talton* affirmed the dismissal of a declaratory judgment action that sought to disqualify the party nominee, based on age, between the primary and the general election, because the fact that the nominee had not yet been elected to the office meant there was no “justiciable controversy.” 72 So. 2d at 724-26. The plaintiffs “show[ed] absolutely no right to have the court

adjudicate” his eligibility, because he “was only a party nominee to the office, had not been elected and might never have been elected.” *Id.* It explained that the courts will not “adjudicate anticipatory rights and it is not sufficient that the parties anticipate that a justiciable controversy may arise.” *Id.* at 726. And because a pre-election declaratory judgment action is not justiciable, the exclusive remedy, the Court said, would be a quo warranto if the nominee were to be elected and “usurping a public office.” *Id.* at 726. *Talton* thus supports dismissal of Counts I and III alike: Relators ask the Court to adjudicate, before any election has been decided, the eligibility of a man who holds no office.

C. The claims against Wahl are not ripe.

A court lacks subject-matter jurisdiction over a claim that presents no justiciable controversy. A claim that depends on events that have not yet occurred is not justiciable: “it is not sufficient that the parties anticipate that a justiciable controversy may arise.” *Talton v. Dickinson*, 72 So. 2d 723, 726 (Ala. 1954) (citing *Callen v. Callen*, 257 Ala. 226, 58 So. 2d 462 (1952)); *cf. Texas v. United States*, 523 U.S. 296, 300 (1998) (“A claim is not ripe for adjudication if it rests upon ‘contingent future events that may not occur as anticipated, or indeed may not occur at all.’” (quoting *Thomas v. Union Carbide Agric. Prods. Co.*, 473 U.S. 568, 580–81 (1985))).

Every claim against Wahl rests on such a contingency. The injury Relators allege is that an ineligible person will serve as Lieutenant Governor. The Constitution frames the qualifications in terms of a person who is “elected,” measured against “the date of their election.” Ala. Const. art. V, § 117. The election has not occurred. Until it does, a judgment that Wahl is “not lawfully eligible . . . to hold the office of Lieutenant Governor,” Doc. 2 (prayer following ¶ 29), would decide a question that may never need deciding.

The Supreme Court of Alabama has refused to adjudicate a party nominee's eligibility on this basis. In *Talton*, the Court held that the plaintiffs "show[ed] absolutely no right to have the court adjudicate" a nominee's eligibility, because he "was only a party nominee to the office, had not been elected and might never have been elected." 72 So. 2d at 725. A declaratory-judgment proceeding "is not available to adjudicate anticipatory rights." *Id.* at 726; *see Ex parte Sierra Club*, 674 So. 2d 54 (Ala. 1995) (describing *Talton* as holding that "qualified electors could not use a declaratory judgment action to determine the eligibility of a nominee for public office"). The quo warranto statute reflects the same limit. It reaches one who "usurps, intrudes into or unlawfully holds or exercises" a public office, Ala. Code § 6-6-591(a)(1), which describes a present wrong by a present officeholder, not a prospective one.

The timing of this suit illustrates the problem. The Legislature provided a remedy for challenging the eligibility of a party nominee: a contest of the primary nomination, for which ineligibility is an enumerated ground. Ala. Code § 17-13-71(2); *Roper*, 988 So. 2d at 478. Objections to a nomination belong in that proceeding, before the general election. *See State ex rel. Norrell v. Key*, 165 So. 2d 76, 77–78 (Ala. 1964). That window has closed. The remedy of quo warranto against an officeholder opens, if at all, only when a person holds the office. Relators have filed in the interval between the two, and no statute authorizes a proceeding there. The Court should decline to create one. The claims against Wahl should be dismissed as unripe.

D. The Complaint fails to state a claim because it does not allege that Wahl abandoned his Alabama residence.

Every count rests on one premise: that Wahl has not been a “resident citizen” of Alabama for the seven years before November 3, 2026. Doc. 2 ¶¶ 25, 33, 41. The Complaint pleads no facts that would establish that premise.

1. A person may maintain more than one residence, and the Complaint does not allege that Wahl ceased maintaining his Alabama residence.

Relators plead that Wahl has not been a resident citizen of Alabama for the constitutionally required period. Doc. 2 ¶¶ 14, 25, 33, 41. But nothing in Section 117 forbids an Alabama candidate from having a second residence. Section 117 requires only that the Governor and Lieutenant Governor have been “resident citizens” of Alabama for the seven years preceding their election. The Constitution nowhere provides that maintaining a second residence forfeits an existing Alabama residence. To the contrary, Alabama law has long recognized that a person’s presence or residence elsewhere does not, standing alone, establish that an existing residence has been lost.

Section 118 reinforces the point. It requires constitutional officers other than the Lieutenant Governor to “reside at the state capital during the time they continue in office.” Ala. Const. art. V, § 118. That provision does not require those officers to abandon every other residence they maintain. It simply imposes an additional residency requirement while they hold office.

The relevant question under Section 117 therefore is not whether Wahl ever maintained a residence somewhere outside Alabama. It is whether he remained a resident citizen of Alabama for the seven years preceding the election. The Complaint does not even attempt to establish that Wahl ever ceased maintaining his Alabama residence.

2. *Horwitz* holds that residing, registering, and even voting elsewhere do not displace an established domicile.

Recognizing (and even conceding) that the Constitution does not forbid an out-of-state residence, Relators plead that, for purposes of political eligibility to the office of Lieutenant Governor under § 117, residence means domicile, Doc. 2 ¶ 14. They plead that a person “can have but one domicile, and when once acquired is presumed to continue until a new one is gained.” *Id.* ¶ 15. *Horwitz* shows how much it takes to overcome that presumption. The Supreme Court

reviewed the ballots of 108 University of Alabama students who lived in Tuscaloosa, had registered to vote there, and had voted there. It held that 105 of them had not established that their existing legal residences in the home communities had been displaced. *Id.* The Court applied “a settled principle of law” that “an individual’s mere presence in a particular community as a student results neither in his acquisition of a voting residence there nor in the loss of his existing voting residence elsewhere, such presence being regarded as temporary in the absence of independent facts and circumstances indicating a contrary intent.” *Id.* (quoting William H. Danne, Jr., Annotation, *Residence of Students for Voting Purposes*, 44 A.L.R.3d 797, 818 (1972)).

The significance of *Horwitz* is straightforward. A person may live somewhere else, register to vote there, and even vote there without those facts alone establishing that his prior residence has ceased. Those facts may be relevant evidence, but they do not automatically establish the loss of an existing residence.

The students in *Horwitz* did more than register; they lived in Tuscaloosa and voted there. And yet, the Supreme Court ruled that their existing residences nonetheless remained legally binding. Relators allege less about Wahl and Tennessee than the record showed about those students and Tuscaloosa.

3. Temporary absence does not forfeit residence.

Alabama’s Constitution and Code independently foreclose the inference Relators ask the Court to draw. “[T]emporary absence from the state shall not cause a forfeiture of residence once obtained.” Ala. Const. art. I, § 31. “No person shall lose or acquire a domicile either by temporary absence from his or her domicile without the intention of remaining” Ala. Code § 17-3-32. That statute “codif[ies] the presumption in favor [of] a domicile once established.” *Horwitz*, 197 So. 3d at 958. And “[t]emporary absence from one’s residence for the purposes of his employment

and the like, without the intent to abandon the home town and acquire a domicile elsewhere permanently, or for an indefinite time, does not forfeit” one’s residence for voting purposes. *Wilkerson v. Lee*, 236 Ala. 104, 107, 181 So. 296, 298 (1938) (quoted in *Horwitz*, 197 So. 3d at 951).

4. The Complaint pleads paperwork, not abandonment, and its own exhibits point to Alabama as Wahl’s domicile.

Measured against those rules, the Complaint is missing the elements that matter. It does not allege that Wahl’s Alabama domicile ever ended, or when. It does not allege that Wahl gave up his Alabama home or ceased maintaining a residence in Alabama.

Instead, it alleges two documents: a Tennessee driver license and a Tennessee voter registration. Doc. 2 ¶¶ 16–18, 22. At most those are evidence that Wahl maintained connections with Tennessee or maintained a residence there. They are not the "physical presence in the new domicile" that Relators themselves say a change requires, *id.* ¶ 15, and they say nothing about the abandonment of his Alabama residence.

The registration oath does not fill the gap. As quoted in the Complaint, it states a plan “to remain at such residence for an undetermined period of time.” *Id.* ¶ 18. That is a statement about a Tennessee residence. It does not say that Wahl had given up his Alabama residence. Supreme Court has explained that “[u]ncertainty as to whether one will remain in a given place is not the same as actually having formed a present intent to remain in that place indefinitely.” *Horwitz*, 197 So. 3d at 951 n.6.

And that distinction is critical. A person may maintain more than one residence. The existence of a Tennessee residence therefore does not, without more, establish the absence of an Alabama residence.

Relators’ own exhibits, which are part of the Complaint, Ala. R. Civ. P. 10(c), point the other way. The April 2023 citation that Relators attach to show the Tennessee license also shows that the vehicle Wahl was driving was registered in Alabama for 2023, with an owner’s address of 8971 Lentzville Road—an address Relators’ other exhibits place in Athens, Alabama. Doc. 4 (Ex. B); Doc. 6 (Ex. D); Doc. 7 (Ex. E). Relators allege that Wahl holds an Alabama license and “currently represents himself as a resident citizen of the State of Alabama.” Doc. 2 ¶¶ 4, 19–21. Nothing in the Complaint identifies a point at which Wahl ceased maintaining an Alabama residence.

Relators may respond that residence is a mixed question of law and fact, *id.* ¶ 15, unsuited to resolution on a motion to dismiss. But Wahl does not ask the Court to weigh evidence or resolve a factual dispute. He asks whether the Complaint states the necessary allegations to support its claim that he was not a resident citizen of Alabama for the required seven-year period.

It does not. What remains is the bare assertion that Wahl “has not been a resident citizen of the State of Alabama for the seven years next preceding the general election.” *Id.* ¶¶ 25, 33, 41. That is a legal conclusion “masquerading as [a] fact[],” and it cannot prevent dismissal. *Gilland*, 274 So. 3d at 985 n.3.

Because Section 117 does not prohibit a second residence, and because the Complaint does not allege facts showing that Wahl ceased maintaining his Alabama residence during the relevant seven-year period, each count fails to state a claim.

E. Counts II and III fail against Wahl for additional reasons.

Count II. Count II seeks extraordinary writs against the Secretary of State. Doc. 2 ¶¶ 31, 34, 37–39. It identifies no duty owed by Wahl and seeks no relief against him. Mandamus requires a clear legal right and an imperative duty owed by the respondent, *Ex parte Water Works & Sewer*

Bd. of City of Anniston, 328 So. 3d 802, 808 (Ala. 2020), and prohibition lies only “to restrain courts and judicial bodies of inferior jurisdiction from abuses of power.” *Barber Pure Milk Co. of Montgomery v. Ala. State Milk Control Bd.*, 150 So. 2d 693, 695 (Ala. 1963); *see Ala. State Bar v. Simpson*, 272 So. 2d 245, 247 (Ala. 1972). Wahl is neither a public official under a duty nor an inferior tribunal. Wahl adopts Part III.C.3(ii) of the Secretary’s Motion.

Count III. If quo warranto lies, a declaratory-judgment action is “not justiciable.” *Hudson v. Ivey*, 383 So. 3d 636, 641 (Ala. 2023). If it does not, Count III has no cause of action to support it. And under *Talton*, a declaratory judgment on a mere nominee’s eligibility seeks an adjudication of “anticipatory rights” and must therefore be dismissed. 72 So. 2d at 725–26. Wahl adopts Part III.C.3(iii) of the Secretary’s Motion.

To the extent Relators assert Counts II and III individually, as voters and citizens, Doc. 2 ¶¶ 2–3, they allege only a generalized grievance that does not confer standing. *Morrow v. Bentley*, 261 So. 3d 278, 292 (Ala. 2017); *Munza v. Ivey*, 334 So. 3d 211, 218 (Ala. 2021). Wahl adopts Part III.C.2 of the Secretary’s Motion.

F. The Alabama Republican Party is a required party that Relators have not joined.

Under Rule 19(a), a person must be joined if, in his absence, complete relief cannot be accorded among those already parties, or if he claims an interest relating to the subject of the action and disposing of the action in his absence may impair or impede his ability to protect that interest. Ala. R. Civ. P. 19(a). A pleading asserting a claim must name any such person who is not joined and state why. Ala. R. Civ. P. 19(c). Rule 12(b)(7) permits dismissal for failure to join a party under Rule 19.

The Alabama Republican Party is such a party. Relators sue Wahl “in his capacity as the Certified Nominee of the Alabama Republican Party,” Doc. 2 at 1, and the principal relief they

seek is a judgment that he “is not lawfully eligible to be the certified nominee.” *Id.* (prayer following ¶ 29). Nomination is the Party’s act; the Secretary merely certifies “the fact of nomination.” Ala. Code § 17-9-3(b); *see* Doc. 31 at Part III.C.1 (observing that Relators would need to enjoin “the Republican Party to undo ‘the fact of nomination’”). The Party has a direct interest in the identity of its nominee, in the integrity of its own certification, and in how any vacancy in its nomination would be filled. *See* Ala. Code § 17-13-23. Those interests are constitutionally protected: “In no area is the political association’s right to exclude more important than in the process of selecting its nominee.” *Cal. Democratic Party v. Jones*, 530 U.S. 567, 575 (2000). A judgment that Wahl is not lawfully the Party’s nominee, entered in the Party’s absence, would impair those interests and could not bind the Party. The Complaint neither names the Party nor explains its absence, as Rule 19(c) requires. If the Court does not dismiss on the grounds above, it should dismiss under Rule 12(b)(7) or, alternatively, order joinder.

G. Wahl adopts the Secretary’s remaining arguments to the extent applicable.

Wahl further adopts Part III.D of the Secretary’s Motion (laches) to the extent it applies to the claims against him and rest on the Complaint and matters subject to judicial notice.

V. CONCLUSION

Wahl respectfully requests that the Court dismiss all claims against him. The Court lacks subject-matter jurisdiction under Rule 12(b)(1) because Ala. Code § 17-16-44 bars this proceeding and because quo warranto does not lie against a political party’s nominee. Independently, the Complaint fails to state a claim under Rule 12(b)(6) because it does not allege that Wahl abandoned his Alabama domicile. In the alternative, Wahl requests dismissal under Rule 12(b)(7) or an order joining the Alabama Republican Party, together with such other relief as the Court deems just.

Respectfully submitted this 21st day of September, 2026.

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CERTIFICATE OF SERVICE

I hereby certify that on this the 21st day of September, 2026, I electronically filed the foregoing with the Clerk of Court using the AlaFile system, which will send notification of such filing to all counsel of record, including:

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