



## AlaFile E-Notice

01-CV-2007-003613.00

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# NOTICE OF ELECTRONIC FILING

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IN THE CIRCUIT COURT OF JEFFERSON COUNTY, ALABAMA

PATRICK COOPER VS LARRY LANGFORD  
01-CV-2007-003613.00

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**IN THE CIRCUIT COURT OF JEFFERSON COUNTY, ALABAMA**

**PATRICK COOPER,** )  
 )  
Plaintiff and Mayoral Candidate, )  
 )  
v. )  
 )  
**LARRY LANGFORD,** )  
 )  
Defendant. )

**Case No. CV-2007-03613**

**REPLY BRIEF OF DEFENDANT MAYOR-ELECT LARRY LANGFORD**

**Introduction**

Defendant Larry Langford, the Mayor-Elect of Birmingham, replies to both Plaintiff Patrick Cooper’s “Pretrial Memorandum” and his “Opposition to Langford’s Motion to Dismiss.” Not every point made by Cooper will be addressed. Langford’s original Pretrial Brief fully responds to some issues. For example, Langford relies upon *Hadnott v. Amos*, 320 F.Supp. 107 (M.D. Ala. 1970), *affirmed*, 401 U.S. 968 (1971), Langford has already given a detailed response to that decision and sees no reason to respond further. The points Langford wishes to make in reply are set out below:

1. Cooper cites *City of Birmingham v. Graffeo*, 551 So.2d 357, 361, n.1 (Ala. 1989), for the proposition that § 11-43-1 applies to the City of Birmingham. Cooper misses the point entirely. Section 11-43-1 is not a part of the statutory scheme found at § 11-46-1, *et seq*, exempts Class One Municipalities. See § 11-46-20. Accordingly, the post-election remedies found in the § 11-46-1 Chapter are not available to Cooper.

2. Several cases cited by Cooper show in the underlying facts that the cases have no application to this proceeding. In *Mitchell v. Kinney*, 5 So.2d 788 (Ala. 1942), an election contest was filed contesting the election of the probate judge in Cullman County. However, the

residency of the elected candidate was not the issue—the issue was whether or not he had paid his poll tax, because if he had not, he would not have been a “qualified elector” as required to run for that office. In *Ex Parte Coley*, 942 So.2d 349 (Ala. 2006), the issue was whether or not the defendant in a civil action was a resident of Perry County or Jefferson County for purposes of determining proper venue of the civil action against her. The Alabama Supreme Court found that the operative fact was the county of defendant’s voter registration. The Court noted that at the time the lawsuit was filed in Jefferson County, the defendant was a registered voter in Jefferson County. The defendant, who had been a student for several years at Judson College but who otherwise resided in Jefferson County, did not register to vote in Perry County until the day of her deposition. The operative fact for determining residency of a voter or political candidate (and seemingly for a defendant in a civil action) continues to be voter registration as was found in *Harris v. McKenzie*, 703 So.2d 309 (Ala. 1997). Accordingly, neither *Mitchell* nor *Coley* supports the positions advocated by Cooper.

3. Cooper argues that the statute granting the City of Birmingham a Charter provides for election contests; Cooper has filed the statute with the Court because it was uncodified. At the time cities, could not operate without a Charter granted by the State Legislature. Today no such requirement exists. Even though the City of Birmingham has gone through numerous forms of government, all created by various statutes, Cooper maintains that the statutory Charter of the City of Birmingham is still in effect. Nothing could be further from the truth. If that Charter were still in effect, then the City of Birmingham:

- Under § 5 of the Charter would have 18 Aldermen elected in 9 different Wards;
- Under § 16 would require a one year residency for persons to hold the office of Mayor;

- Under § 18 would allow for jury trials in election contests;
- Under § 41 would have the power to levy taxes on real property;
- Under § 47 could require all male inhabitants who have resided in the City for 10 days or more and who are between the ages of 18 and 50 years to work on the city streets at least 5 days in each calendar year.<sup>1</sup>

Obviously, none of these provisions applies today because the Charter itself has been supplanted by a whole series of statutes, the most recent of which is the Mayor-Council Act now before the Court.

4. Cooper argues that Title 11 of the *Alabama Code* should be read to allow for the filing of election contests in each city of the State. The problem with that point is that under § 11-46-20, the City of Birmingham is exempted from the entire Chapter dealing with Election Contests. The simple fact is that the Mayor-Council Act does not provide for any post-election remedies and the City of Birmingham is not covered by § 11-46-1. Cooper can argue all day that that result is unjust and that the people of Birmingham ought to have the right to file election contests. That is a problem for the Legislature, not for this Court because election contests are purely statutory creatures.

5. Cooper argues that the remedy of *Quo Warranto* should allow him to proceed with this action. Langford has already addressed the issue in great detail. Additionally, Langford would call to the Court's attention the fact that many of the cases cited by Cooper do not apply at all here. For example, Cooper cites *Rouse v. Wiley*, 440 So.2d 1023 (Ala. 1983), for the proposition that the writ of *Quo Warranto* is available here. However, in *Rouse v. Riley* the

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<sup>1</sup> No doubt all who fall into this category would rejoice at knowing the requirement died with the statute.

individual residencies at issue did not concern elected officials. Messrs. Freeman and Rouse were members of the Mobile County Personnel Board, an appointed position, not an elected one.

*Quo Warranto* has been expressly allowed only in one extreme set of circumstances to contest the election of an elected candidate. In *Dunlap v. State Ex Rel. Durrett*, 622 So.2d 1305 (Ala. 1993), where in a city council election in Eutaw, Alabama, election officials reversed the actual vote count. In other words, the candidate who had the winning votes was given the votes of the loser and the loser received the votes of the winner. In that case, the facts were undisputed. The losing candidate failed to file an election contest, but did at a later date file a *Quo Warranto* action. Circuit Judge Claude Nielson granted the writ and the Alabama Supreme Court affirmed. This case can only be read as limited to its facts. That is, where under undisputed circumstances a mistake was made that altered the outcome of the election the writ will lie.

In *Walker v. Junior*, 24 So.2d 431 (Ala. 1946), the Court did not allow the use of *Quo Warranto* but suggested that it might be available upon remand. The circumstances were again extraordinary. The allegations in the plaintiff's complaint were that ballots were distributed in a municipal election that only contained the name of one candidate for mayor—in short, the other candidate's name did not appear on the ballot at all. The Court suggested that *Quo Warranto* might be available at the end of the case, but since it was an election contest and the grounds in the election contest statute did not address the issue presented, the decision of the trial court to dismiss the contest was affirmed.

### CONCLUSION

At this point, Cooper has failed to show that this Court has jurisdiction or that Langford's unquestioned intent to become a resident of Birmingham, coupled with indicia of that intent, are

not controlling of the outcome here. For these reasons, this action is due to be dismissed, or, judgment should be entered for Langford.

Respectfully submitted,

/s/ Russell Jackson Drake  
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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing has been served upon the following individuals by ECF service and/ or U.S. Mail, postage prepaid and correctly addressed, on this **12<sup>th</sup> day of November, 2007**:

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