

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION

CYNTHIA PARHAM, ET AL.

PLAINTIFFS

VS.

CIVIL ACTION NO. 3:20cv572-DPJ-FKB

MICHAEL WATSON, in his official capacity
as Secretary of State of Mississippi, ET AL.

DEFENDANTS

DEFENDANTS' RESPONSE IN OPPOSITION TO
PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION

Defendants Michael D. Watson, Jr., in his official capacity as Secretary of State of Mississippi, and Lynn Fitch, in her official capacity as Attorney General of the State of Mississippi (“defendants”) file this response to plaintiffs’ motion for preliminary injunction [Doc. 10] and state:

1. On September 17, 2020, plaintiffs moved for preliminary injunctive relief targeting several provisions of Mississippi’s absentee voting laws in light of the November 3, 2020 general election. [Doc. 10].

2. On September 24, 2020, plaintiffs served defendants with a copy of their motion for preliminary injunction and briefing. [Doc. 11].

3. The Court should deny plaintiffs’ motion because they have failed to prove a substantial likelihood of success on the merits and further failed to prove any of the other equitable factors considered on a preliminary injunction inquiry weigh in their favor, and because other elections-related considerations implicated by the nature and timing of plaintiffs’ motion prohibit granting their requested relief.

4. Defendants' opposition to plaintiffs' motion is based on the foregoing, their separate memorandum of authorities submitted simultaneously to the Court, their separately filed motion to dismiss, and the following exhibits affixed hereto: Affidavit of Hawley Rae Robertson (Exhibit "1"); Affidavit of Jeffrey (Exhibit "2"); Affidavit of Larry Ware (Exhibit "3"); and Affidavit of Thomas E. Dobbs (Exhibit "4").

FOR THESE REASONS, and those set forth in their separate memorandum of authorities, the defendants respectfully request an order denying plaintiffs' motion for preliminary injunction [Doc. 10].

THIS the 8th day of October, 2020

Respectfully submitted,

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AFFIDAVIT OF HAWLEY RAE ROBERTSON

STATE OF MISSISSIPPI
COUNTY OF HINDS

Personally appeared before me, Hawley Rae Robertson, an adult resident citizen of the State of Mississippi over the age of twenty-one, who after first having been duly sworn, deposed and stated on oath, hereby makes this affidavit upon personal knowledge, and states:

1. My name is Hawley Rae Robertson. I am the Assistant Secretary of State for the Elections Division in the Mississippi Secretary of State's Office. I have been employed at the Secretary of State's Office since November 2013 in the Elections Division, and was appointed to the position of Assistant Secretary of State for the Elections Division in January 2020. I am a licensed attorney and active status member of the Mississippi Bar.

2. Among other things, my job responsibilities include: advising the Secretary of State with respect to elections matters; studying Mississippi election laws and other federal and states' election laws, changes to the laws and elections-related caselaw; training county and municipal election officials; compiling election returns; and providing information regarding elections to state and local officials, organizations, voters, and the general public.

3. As part of my responsibilities, I regularly review data contained in the Statewide Elections Management System ("SEMS"), which includes election-related information such as

county voter rolls, data entered by local election officials regarding absentee voting, and voter history data. I also regularly communicate with state and local election officials regarding elections-related matters, and have communicated with local election officials in all 82 Mississippi counties regarding the November 3, 2020 general election (the “November election”). I am familiar with the plans and actions that the Secretary of State’s Office and other state and local election officials have already taken in planning and preparing for voting in the November election, and officials’ plans and actions to be undertaken in the next several weeks in that regard leading to election day on November 3rd, and subsequent post-election day activities.

4. This affidavit addresses the timetables and ballot for the November election, the extensive measures the Secretary of State’s Office and local election officials are taking to ensure in-person voting is safe on election day, the state laws implicated by plaintiffs’ motion for preliminary injunction, the formal administrative rules implemented by the Secretary of State’s Office for the November election, and the stark and significant problems that plaintiffs’ requested injunctive relief would create for the State and local election officials if implemented now, in the middle of the ongoing absentee voting process.

5. I have personal knowledge of the facts contained in this affidavit. To the extent this affidavit contains any information that could be considered opinion testimony regarding Mississippi elections, elections-related matters, or within the other information detailed below, such testimony is based upon my years of experience, training, and knowledge gained in my capacity as Division Director of the Elections Division of the Secretary of State’s Office, and earlier as counsel in the Elections Division.

Timetables and the Ballot for the November Election

6. Federal Presidential, Senate, and Congressional elections, as well as state Supreme Court and judicial elections, proposed state constitutional changes, and a referendum for a new state flag design are on the ballot for the November election. A true and correct copy of the official statewide sample ballot is affixed hereto as Exhibit “A”. Other elections will take place in November that are not reflected on the statewide sample ballot. Elections for all local election commissioners, and some local school boards will also be on the ballot in every county in the State. Some other local elections will also be on the ballot in some counties, such as local referenda and other special elections, depending upon the locality.

7. Planning and preparations for the November election by the Secretary of State’s Office and other state and local elections officials began many months ago. Several election-related events have already taken place, and several deadlines have passed. A true and correct copy of the Secretary of State’s Official 2020 Elections Calendar is affixed hereto as Exhibit “B”.

8. As of the date of this affidavit, and as reflected on the Elections Calendar, absentee voting for the November election is already well underway. Local clerks’ offices were required to make absentee ballot applications available to voters beginning on September 4, 2020. *See* Miss. Code Ann. § 23-15-625. Ballots for active duty military and U.S. citizens living overseas were transmitted on or before September 19, 2020. *See* Miss. Code Ann. § 23-15-683. Local clerks’ offices began making absentee ballots available to voters on September 21, 2020. *See* Miss. Code Ann. § 23-15-715.

Enhanced Polling Place Safety Preparations for the November Election

9. In light of COVID-19 concerns, the Secretary of State's Office recognizes the responsibility of the State's government officials at every level to ensure that the November election is conducted in a manner that ensures the safety of all persons involved.

10. In addition to usual preparations for voting and polling place activities which would occur in conjunction with and leading up to any election, in light of the potential risks and concerns associated with COVID-19, the Secretary of State's Office, and state and local election officials, are working diligently to plan, prepare, and implement all necessary precautionary measures to ensure that all Mississippi polling places are equipped to ensure the safety and security of election officials, poll managers (also sometimes commonly called "poll workers"), and voters who vote in-person at their precincts for the November election.

11. The Secretary of State's Office has studied, and continues to study, available public health guidance and other information issued by the Centers for Disease Control and Prevention ("CDC"), and other public health organizations, regarding precautions and safety measures for polling places used on election day for the November election. The Secretary of State's Office has also consulted CDC and Mississippi Department of Health guidance regarding polling place precautions and safety.

12. The CDC's specific guidance regarding polling place precautions and safety is particular to the conduct of in-person voting, as opposed to general guidance such as the organization's oft-referenced guidance regarding limits on persons involved in indoor or outdoor social gatherings, and thus more relevant to the Secretary of State's Office's and local election officials' planning and preparations for in-person voting at polling precincts for the November

election. A copy of the CDC polling place guidelines has been provided to all local election officials, including circuit clerks and election commissioners.

13. 2020 House Bill 824 (“HB 824”), passed by the Legislature earlier this year, authorized the Secretary of State’s Office to promulgate temporary administrative rules governing polling place safety for the November election in response to the COVID-19 health crisis. Over the past few months, the Secretary of State’s Office drafted and developed such rules based on the CDC’s polling place guidelines and other relevant information from public health authorities. The polling place safety rules have been formally implemented and published pursuant to the required state administrative procedures laws and govern all Mississippi polling places on election day on November 3rd. A true and correct copy of the Secretary of State’s polling place safety administrative rules is affixed hereto as Exhibit “C”. The Secretary of State’s Office has been communicating with local election officials regarding the administrative rules. The Secretary of State’s Office is also prepared to meet any need to adapt the polling place rules to account for any circumstances that may change between now and implementation on election day on November 3rd.

14. Among other things, the polling place administrative rules include provisions addressing: requirements for election officials to wear personal protective equipment (“PPE”) which includes masks while performing their duties; mask recommendation for voters; social distancing measures to be enforced inside and adjacent to polling places; steps that will reduce the number of voters who congregate at indoor polling precincts at the same time; voters believing they may have had exposure to COVID-19 or are exhibiting symptoms will be directed to vote through curbside or open air voting; and posted signage to inform voters about social

distancing, masks, curbside voting, limiting nonessential visitors, and other relevant safety measures and procedures.

15. Training classes for poll managers and other local election officials have been conducted and will continue to be conducted in the next few weeks leading to election day, and these training classes will, in addition to teaching the poll managers how to conduct the election, address safety issues such as use of masks, personal and polling place surface-area sanitizing, polling place distancing, and other matters promoting behaviors that reduce the risk of spreading germs.

16. In addition to the administrative rules governing polling precincts and training, the Secretary of State's Office has obtained and distributed PPE and other safety equipment to all counties for use at polling places on election day. A true and correct copy of a spreadsheet listing the inventory of the safety equipment provided to all counties is affixed hereto as Exhibit "D".

17. The Secretary of State's Office has worked cooperatively with each county in the State in this process, and every county has ordered and been provided with face masks (for election officials, and also to offer to voters who need one), hand sanitizer, gloves, face shields, and other protective equipment for in-person voting on election day and in-person absentee voting at the courthouses during the absentee voting window leading to election day. Face masks and face shields have been purchased and provided to each county, such that every election official who works at county polling places on election day will have a face mask and face shield.

18. Polling precincts will also be equipped with sufficient single-use (disposable) pens (which will be used in counties that utilize paper balloting), and single-use (disposable)

stylus-style pens (which can be used for writing and for touch screen voting devices in counties that utilize those devices), and gloves. 750,000 disposable pens, and 750,000 disposable stylus-style pens have been distributed among the counties for election day, to be used in addition to other supplies counties have procured themselves.

19. The disposable pens will be available to ensure that voters do not have to re-use those implements used by other voters. Gloves will be available to allow poll workers and voters to minimize, if not eliminate, contact with essential items at the polling precincts such as poll books, electronic poll books, voter access cards, machines, and other surfaces. The use of any shared-use objects will be minimized, and essentially, no voter will need to touch any surfaces he or she may encounter at the polling precinct.

20. Hand sanitizer, as well as extra cleaning agents, and disinfecting sprays and wipes will be available such that polling places may be cleaned regularly throughout the day on election day.

21. CARES Fund Money has been made available to counties to fulfill county-specific requests, such as sneeze guards/barrier shields, additional disinfectants, aides for social distancing (such as marking tape), and extra tables. Some counties have even purchased pop-up tents to assist with open-air voting. 2020 House Bill 1789 (“HB 1789”) passed by the Legislature also authorizes additional CARES funding to each county to hire additional poll workers.

22. The Secretary of State’s Office and local election officials are closely monitoring elections trends and developments associated with COVID-19 health risks and appropriate governmental responses which may be necessary with respect to in-person voting. To date, there have been no indications that counties will have any significant issues in running polling places on election day. Counties have been conducting poll manager training, there have been no

reports of any significant shortages of poll managers, and no polling place consolidations have occurred. And, only a few counties have reported moving a polling place, but the number is not any higher than a regular election year.

23. The Secretary of State's Office also closely monitored the counties' experiences with in-person voting on September 22, 2020, when special elections were held for vacant seats in the Legislature. The special elections were held in several election districts comprised of portions of fifteen counties and numerous polling places in different areas of the State, including House District 66 located in Hinds County. Preliminary polling results available in SEMS show that 14,763 ballots were cast in the September 22 special elections, including 13,342 voted in-person and 1,331 voted by absentee (in-person and by mail). To date, the Secretary of State's Office has not received any reports of significant problems, related to COVID-19 concerns, or otherwise, at any polling places involved in the special elections.

24. Should any future developments between now and election day for the November election arise, the Secretary of State's Office and local election officials are prepared to adapt accordingly as will be necessary to ensure that every voter is provided an opportunity to cast his or her ballot in a safe polling location for the November general election.

The Mississippi Election Code

25. The modern Mississippi Election Code, as originally enacted by the Legislature in 1986 and subsequently modified, is codified at Mississippi Code Annotated Section 23-15-1 et seq. The Election Code is the comprehensive set of state laws that govern every aspect of elections in the State, including the November election.

26. Specific sections of the Election Code govern the mechanics of casting ballots, including ballot-building, voting systems, absentee balloting, and all other matters relating to the

conduct of elections. *See* Miss. Code Ann. § 23-15-331 et seq., § 23-15-391 et seq., § 23-15-541 et seq., § 23-15-621 et seq. The Election Code establishes a voting system that requires in-person voting at polling precincts on election day, with limited excuses for which qualifying voters may cast an absentee ballot either in-person at their local courthouse prior to election day, or in some instances, in-person or by mail. *See* Miss. Code Ann. § 23-15-713, § 23-15-715.

27. Under the Election Code, local officials in Mississippi's 82 counties are responsible for conducting elections, including county registrars (most often, circuit clerks), county election commissioners, and voting precinct poll managers. The responsibilities of those local officials include matters such as administering absentee balloting to voters, administering in-person voting on election day, the post-election tabulation, certification, and reporting of election results, and other associated duties. *See* Miss. Code Ann. § 23-15-541 et seq., § 23-15-621 et seq.

Election Code's Absentee Voting Laws and Processes

28. The Election Code primarily provides seven different excuses that allow a voter to cast an absentee ballot in a Mississippi election:

- students, teachers, or their spouses who will be absent from their home county on election day;
- members of Mississippi's congressional delegation, their spouses, and employees;
- anyone who will be away from their home county on election day;
- anyone who must be at work during polling hours on election day;
- anyone age 65 or over;
- anyone who has a qualifying permanent or temporary physical disability; and/or
- anyone who is a parent, spouse, or dependent of a person with a qualifying permanent or temporary disability who is hospitalized (within certain geographical parameters), and will be with that disabled person on election day.

See Miss. Code Ann. § 23-15-713.¹

29. Several of the foregoing absentee excuses require a voter claiming the excuse to appear in-person at his or her local clerk's office to apply for and cast an absentee ballot. *See* Miss. Code Ann. § 23-15-715(a). Only the following categories of voters may cast their absentee vote by either voting in-person at their local clerk's office or by receiving and returning their applications and ballots through the mail:

- voters temporarily residing outside of their home county (who must provide a mailing address outside of their home county);
- voters age 65 or over;
- voters who have a qualifying permanent or temporary physical disability; and
- voters who are parents, spouses, or dependents of persons who are hospitalized with a qualifying permanent or temporary physical disability (within certain geographical parameters), and will be with the disabled person on election day.

See Miss. Code Ann. § 23-15-715(b).

30. When a voter casts an absentee ballot in-person at his or her local clerk's office, the voting process is ordinarily completed all at one time. The voter appears at the clerk's office and requests to vote absentee. *See* Miss. Code Ann. 23-15-715(a). The voter provides identification, then the clerk or deputy clerk provides the voter with an application, then the voter completes and signs the application, and then the clerk or deputy clerk attests to the voter's signature on the application. *See* Miss. Code Ann. § 23-15-627, § 23-15-717. The voter next fills out his or her ballot in secret, seals the ballot in an absentee ballot envelope, completes and signs the back of the absentee ballot envelope, and then the clerk or deputy clerk attests to the voter's signature on the ballot envelope. *See* Miss. Code Ann. § 23-15-719.

¹ Different federal and state laws govern balloting and procedures for absentee voting by military and overseas voters. *See* 52 U.S.C. § 20301 et seq.; Miss. Code Ann. § 23-15-671 et seq.

31. The process differs when a voter casts an absentee ballot by mail. As stated above, only voters who are permanently or temporarily physically disabled, age 65 or over, temporarily residing outside of their home county, and persons tending to certain hospitalized physically disabled persons qualify to vote absentee by mail. *See* Miss. Code Ann. § 23-15-715(b).

32. An absentee voter eligible to vote by mail pursuant to Code Section 23-15-715(b) first requests an application from his or her local clerk's office by telephone or in writing. *See* Miss. Code Ann. § 23-15-627. The voter completes the application, which must be attested to by an official authorized to administer oaths, and mails the completed application to his or her local clerk's office. *See* Miss. Code Ann. § 23-15-631(c), § 23-15-715(b). Most commonly, the attesting official is a notary public, but may be any official listed in Section 11-1-1, Miss. Code Ann.

33. Upon receiving a completed application, the clerk or deputy clerk mails the voter an absentee ballot, absentee ballot envelope, and instructions. *See* Miss. Code Ann. § 23-15-631, § 23-15-715(b), § 23-15-719. The voter fills out his or her ballot, seals the ballot in the absentee ballot envelope, completes and signs the back of the absentee ballot envelope before a notary or other official authorized to administer oaths who attests the voter's signature on the ballot envelope, and mails the envelope to his or her local clerk's office. *See* Miss. Code Ann. § 23-15-631, § 23-15-635, 23-15-721(1), (3).

34. The above-described process is essentially the same for all voters eligible to vote absentee by mail. However, if an absentee voter is eligible to vote absentee by virtue of a temporary or permanent physical disability under Code Section 23-15-713(d), a person age 18 or older, as opposed to a notary or other official authorized to administer oaths, may witness the

voter's signature on the voter's application and back of the absentee ballot envelope. *See* Miss. Code Ann. § 23-15-627, § 23-15-631(1)(c), § 23-15-721(2). Additionally, voters who are registered with their local clerk's office as permanently physically disabled are automatically sent their absentee ballots by mail forty days prior to an election. *See* Miss. Code Ann. § 23-15-629(4).

35. The Election Code prescribes the required forms for the absentee voting process. *See* Miss. Code Ann. § 23-15-627 (absentee application form), § 23-15-635 (ballot envelope form for mail-in absentee voting), § 23-15-719 (ballot envelope forms for in-person absentee voting); 2020 House Bill 1521 ("HB 1521"), § 5, 8, 12. The Code also supplies the specific written instructions that local clerk's offices must print and provide to voters with their absentee ballots. *See* Miss. Code Ann. § 23-15-631; HB 1521, § 11. A true and correct copy of HB 1521 is affixed hereto as Exhibit "E".

**HB 1521's Amendment to Code Section 23-15-713(d)'s
Temporary Physical Disability Excuse**

36. Prior to July 2020, the Election Code's absentee excuses included the following provision allowing voters to cast an absentee by reason of a "physical disability":

(d) Any person who has a temporary or permanent physical disability and who, because of such disability, is unable to vote in person without substantial hardship to himself or others, or whose attendance at the polling place could reasonably cause danger to himself or others.

See Miss. Code Ann. § 23-15-713(d) (Rev. 1993).

37. On July 2, 2020, the Legislature passed HB 1521 and amended the disability excuse provision to clarify who may qualify as having a "temporary physical disability" in relation to the upcoming November election "due to COVID-19." The statutory language currently provides:

(d) Any person who has a temporary or permanent physical disability and who, because of such disability, is unable to vote in person without substantial hardship

to himself, herself or others, or whose attendance at the polling place could reasonably cause danger to himself, herself or others. For purposes of this paragraph (d), “temporary physical disability” shall include any qualified elector who is under a physician-imposed quarantine due to COVID-19 during the year 2020 or is caring for a dependent who is under a physician-imposed quarantine due to COVID-19 beginning with the effective date of this act and the same being repealed on December 31, 2020.

See Miss. Code Ann. § 23-15-713(d) (Rev. 2020) (revisions underlined); HB 1521, § 6.²

38. In mid-August 2020, a group of plaintiffs sued the Secretary of State and two local circuit clerks in Hinds County Chancery Court for a declaration interpreting Section 23-15-713(d) to allow “any voter with pre-existing conditions that cause COVID-19 to present a greater risk of severe illness or death to vote by absentee ballot during the COVID-19 pandemic,” and to allow “any voter to vote absentee if he or she wishes to avoid in-person voting at a polling place due to guidance from the [Mississippi Department of Health], the [Centers for Disease Control and Prevention], or other physician or public health authorities to avoid unnecessary public gatherings during the COVID-19 pandemic or if he or she is caring for or supporting a such a voter.”

39. After the Chancery Court issued a declaration granting the plaintiffs’ requested declaratory relief in part, the parties appealed and cross-appealed the ruling to the Mississippi Supreme Court. On September 18, 2020, the Mississippi Supreme Court affirmed in part, and reversed in part. *Watson v. Oppenheim*, No. 2020-CA-00983-SCT (Miss. Sept. 18, 2020). A true and correct copy of the Mississippi Supreme Court’s published opinion is affixed hereto as Exhibit “F”.

40. With respect to the first sentence in Section 23-15-713(d), the Court held that “the chancery court’s order erred to the extent it declared that Section 23-15-713(d) ‘permits any

² HB 1521 also amended related subsection -713(e) to include the same operative “physician-imposed quarantine” language with respect to the parent, spouse, or dependent of hospitalized persons. *See* HB 1521, §6.

voter with pre-existing conditions that cause COVID-19 to present a greater risk of severe illness or death to vote by absentee ballot during the COVID-19 pandemic.’ Having a preexisting condition that puts a voter at higher risk does not automatically create a temporary disability for absentee-voting purposes.” *Watson*, at ¶13, Exhibit “F”. Further, with respect to the provisions added to Section 23-15-713(d) by HB 1521, the Court rejected the plaintiffs’ position and held that “the plain meaning of ‘physician-imposed quarantine’ requires a directive issued by a duly-authorized physician that orders a voter to quarantine, not mere ‘guidance’ or a ‘recommendation.’” *Watson*, at ¶15, Exhibit “F”.

The Secretary of State’s Office has Limited Regulatory Authority Regarding Certain Elections-Related Matters and Has Implemented New Rules for the November Election

41. The Election Code does not grant the Secretary of State blanket authority to regulate election-related matters or force local election officials to comply with the Code. The Code generally does not authorize the Secretary of State to compel local election officials to interpret and apply the Code’s statutory provisions governing absentee voting excuses in any particular manner. Likewise, the Code generally does not authorize the Secretary of State to regulate how local election officials administer the process of transmitting and receiving absentee ballot materials to and from voters, or other matters relating to how individual voters may undertake the processes for obtaining and casting absentee ballots.

42. There are a few exceptions to the Secretary of State’s general lack of authority to regulate elections process-related matters. Some provisions in federal laws and the Election Code specifically authorize the Secretary of State to implement administrative rules regarding various election processes. *See, e.g.*, Miss. Code Ann. § 23-15-227 (as amended by HB 824, authorizing promulgation of rules and regulations “as are necessary to ensure the safety of poll managers, election commissioners, electors, and their families at the voting precincts during a

COVID-19 public health risk”), § 23-15-573(6) (authority to establish uniform affidavit for voters failing to present identification at polling places), § 23-15-631(3) (authority to prepare instructions for absentee voters to comply with identification requirements), § 23-15-637 (as amended by HB 1521, authority to ensure absentee ballots cast are final and facilitate change in law regarding examination and tabulation of absentee ballots at county courthouses as opposed to polling places), § 23-15-639(3) (authority to ensure compliance with identification requirements in examination of absentee ballots), § 23-15-701 (authority to adopt rules and ensure compliance with the Uniformed and Overseas Citizens Absentee Voting Act, 52 U.S.C. § 20304).

43. As explained above, the Secretary of State’s Office has implemented polling place safety administrative rules for the November election in light of COVID-19 concerns pursuant to HB 824. *See* Exhibit “C”.

44. The Secretary of State’s Office also began working on other administrative rules when the Legislature enacted HB 1521 in early July 2020. Pursuant to HB 1521, the Secretary of State’s Office was required to implement new administrative rules to facilitate previously anticipated changes in the law, including a new requirement that absentee ballots cast are final, such that the voter cannot vote in-person on election day, as well as a change from the prior process in which poll managers evaluated and tabulated absentee ballots at individual polling precincts on election day after the polls close to a process where county resolution boards evaluate and tabulate absentee ballots at county courthouses on election day, as well as in the days following election day for absentee ballots postmarked by election day and received within five business days. *See* Miss. Code Ann. § 23-15-637, § 23-15-639, § 23-15-641, § 23-15-643.

45. Code Section 23-15-639(1)(b) and (2)(b) includes signature matching requirements that are part of the absentee ballot examination process at issue in this lawsuit. *See* Complaint (Document No. 1 at 45-47, 53-55). Under those Code provisions, as amended by HB 1521, when local officials on county resolution boards examine and tabulate absentee votes, they compare the signature on an absentee ballot application with the signature on the back of the application's associated absentee ballot, and if the signatures do not correspond, then the ballot is rejected. *See* Miss. Code Ann. § 23-15-639(1)(b), (2)(b), § 23-15-641(1).

46. As part of the Secretary of State's Office's formal administrative rules recently implemented as required by HB 1521, there are rules providing a process by which local election officials must provide an absentee voter with notice and an opportunity to cure when a potential signature mismatch on the voter's absentee application and ballot envelope is identified. A true and correct copy of the Secretary of State's Office's administrative rules is affixed hereto as Exhibit "G". The signature mismatch and cure portion of the rules are included at Part 17, Chapter 4. The administrative rules have been formally implemented and published on October 5, 2020, pursuant to applicable process required by the Mississippi Administrative Procedures Law. *See* Miss. Code Ann. § 25-43-1.101 et seq. The rules are permanent, are now included in the State's Administrative Code, and apply to local officials administering the November election, as well as future elections.

The Election Code's Absentee Voting Requirements are Designed to Protect the Integrity of Elections and Safeguard Against Voter Fraud

47. As previously mentioned, the modern Election Code was enacted in 1986. On several occasions since the Code's enactment, the Mississippi Supreme Court has explained the purposes of the Election Code's absentee balloting requirements include preservation of the

integrity of elections, and that those requirements provide for the deterrence and detection of voter fraud, and punishment of offenders.

48. For example, in 1997, in an opinion authored by then Justice Michael P. Mills, the Mississippi Supreme Court recognized:

At the polls on election day, the voting process is conducted in public view. There are poll managers, candidate representatives, party representatives and members of the general public on hand to witness the events and to ensure the integrity of the election process. When a voter receives assistance in this setting, the public nature of the process is designed to ensure that the voter's will is not overcome and the statutory requirements are met. These safeguards are not available, however, during the absentee voting process.

When the Legislature provided for absentee ballots to be voted by mail, it established other safeguards to maintain the integrity of the election process, which safeguards are intended to provide the absentee process with a comparable level of protection as exists at the polls. The purpose is to ensure that the elector himself marks his ballot free from any interference or improper influence. The mandatory provisions of Section 23-15-635 require, among other things, that the absent elector vote his ballot in the presence of a witness, place the ballot in the envelope, and sign the elector's certificate across the flap. The voter and the witness then swear, in the language provided by the statute, that this process was followed. The oaths of the voter and the witness are the only devices that ensure the integrity of this process. And, by way of Section 23-15-753, the Legislature has made it a crime, known as vote fraud, to violate the statutory provisions applicable to absentee voting. Vote fraud, therefore, is a *malum prohibitum* offense.

McFarland v. State, 707 So. 2d 166, 179 (Miss. 1997).³

49. Most recently, and in relation to this Fall's general election, the Mississippi Supreme Court reiterated that the Election Code's provisions governing absentee voting by mail protect the integrity of elections and guard against voter fraud: "This Court requires strict compliance with the statutes concerning absentee ballots. ...[A]s opposed to voting at the polls,

³ A notary public or other official authorized to administer oaths is the "witness" referenced in the *McFarland* opinion's citation to Code Section 23-15-635. That Section establishes the form of "Elector's Certificate" included on absentee mail-in envelopes, and requires that an attesting witness who is a notary or other official authorized to administer oaths sign the ballot envelope. *See also* Miss. Code Ann. § 23-15-627, § 23-15-715(b).

in a public setting where the integrity of the election process can be ensured, absentee voting takes place in a private setting where the opportunity for fraud is greater. ... Thus, [i]t is imperative that the appropriate elected officials strictly adhere to the statutes concerning absentee ballots.” *Watson v. Oppenheim*, at ¶19 (Miss. Sept. 18, 2020) (internal quotes and citations omitted), Exhibit “F”.

50. Since the Election Code’s enactment in 1986, the Mississippi Supreme Court has decided numerous cases involving alleged election fraud premised on asserted violations of the Code’s absentee provisions in the context of election challenges. *See, e.g., Thompson v. Jones*, 17 So. 3d 524, 526-28 (Miss. 2008); *Ruhl v. Walton*, 955 So. 2d 279, 280-81 (Miss. 2007); *Straughter v. Collins*, 819 So. 2d 1244, 1252 (Miss. 2002); *Campbell v. Whittington*, 733 So. 2d 820, 821-23 (Miss. 1999); *Pegram v. Bailey*, 708 So. 2d 1307, 1309-13 (Miss. 1997); *Rogers v. Holder*, 636 So. 2d 645, 647-50 (Miss. 1994). Mississippi appellate courts have also decided appeals from criminal convictions stemming from in-person and mail-in absentee voting schemes. *See, e.g., Sowers v. State*, 101 So. 3d 1156, 1157-59 (Miss. 2012) (mail-in absentees); *Sewell v. State*, 721 So. 2d 129, 131 (Miss. 1998) (mail-in absentees); *McFarland v. State*, 707 So. 2d 166, 178 (Miss. 1997) (mail-in absentees); *Tucker v. State*, 62 So. 3d 397, 400-02 (Miss. Ct. App. 2010) (in-person absentees); *Eason v. State*, 916 So. 2d 557, 559-61 (Miss. Ct. App. 2005).

51. Mississippi appellate decisions only reflect election contests and criminal convictions that were appealed. The Secretary of State’s Office is further aware of other instances of allegations or convictions involving absentee voter fraud. For example, in November 2018, District Attorney’s Office in Madison, Mississippi charged several persons with election law violations, including allegations pertaining to in-person and mail absentee voting, in

connection with 2017 municipal elections in Canton, Mississippi. I understand some of the indictments have resulted in convictions.

52. The Secretary of State's Office also regularly receives complaints from voters, candidates, local election officials, and other persons regarding potential violations of the State's absentee voting laws. The Election Code does not authorize the Secretary of State's Office to investigate or prosecute potential violations of criminal laws. The Secretary of State's Office's regular practice is to refer absentee voting complaints to the Public Integrity Division of the Attorney General's Office, a local District Attorney's Office, or other law enforcement agencies.

53. On some occasions in the past, the Federal Bureau of Investigation and/or the United States District Attorney's Offices in Mississippi have contacted the Secretary of State's Office for information in connection with absentee voting. Although I was not employed at the Secretary of State's Office at the time, I am aware that the United States District Attorney's Office for the Southern District of Mississippi prosecuted violations of the federal Voting Rights Act related to absentee voting and occurring in Noxubee County approximately fifteen years ago. The fact findings contained in Judge Tom S. Lee's reported opinion fully describe the illegal absentee voting activities at issue in the case. *See United States v. Brown*, 494 F. Supp. 2d 440, 455-70 (S.D. Miss. 2007), *aff'd*, 561 F.3d 420 (5th Cir. 2009).

Plaintiffs' Requested Injunctive Relief Targeting the Election Code's Absentee Eligibility and Attestation Provisions, Particularly Now that Absentee Voting is Well Underway, Would Alter Longstanding State Law, Disrupt the Orderly Administration of the November Election, and Cause Confusion

54. On April 13, 2020, counsel for plaintiffs in this lawsuit sent a letter to the Secretary of State, demanding that the State make numerous changes to its voting laws in light of counsel's COVID-19 concerns. The changes outlined in the April 13 letter encompass the claims for relief plaintiffs have asserted in this lawsuit. I was copied on the April 13 letter, along

with the Governor, Lt. Governor, and Speaker of the House of Representatives. A true and correct copy of the April 13 letter is affixed hereto as Exhibit “H”.

55. On September 17, 2020, the plaintiffs e-filed a motion for preliminary injunction in this lawsuit. (Document No. 10 filed on the court docket). At that time, no counsel for defendants had entered an appearance in the lawsuit. Plaintiffs did not serve counsel for defendants with a copy of their motion for preliminary injunction until September 24, 2020. (Document No. 11 filed on the court docket).

56. Page 1 of plaintiff’s motion for preliminary injunction (Document No. 10 filed on the court docket) seeks an injunction providing the following relief regarding the Election Code’s “Excuse Requirement,” which plaintiffs define as the Code’s “limitations on who may vote by absentee ballot” (Document No. 10-1 filed on the court docket at p. 7):

Ordering Defendants to advise voters that the Excuse Requirement will be applied during the COVID-19 pandemic, and specifically in the November election, so as to allow voters to vote absentee if they reasonably believe that voting in person would risk their contracting coronavirus and exposure to COVID-19 or the health of others, or if they are quarantined pursuant to the advice of public health officials.

Alternatively, ordering Defendants to apply the Excuse Requirement so as to allow voters to vote absentee if they reasonably believe that voting in person would risk their contracting coronavirus and exposure to COVID-19 or the health of others or if they are quarantined pursuant to the advice of public health officials.

57. Local election officials are solely responsible for issuing absentee ballot applications, absentee ballots, absentee envelopes, and instructions to voters. *See generally* Miss. Code Ann. § 23-15-621 et seq., § 23-15-711 et seq. Plaintiffs’ motion for preliminary injunction does not explain how their requested injunctive relief targeting the Secretary of State and Attorney General would operate upon local election officials. In any event, I understand that

either form of plaintiffs' foregoing requested relief would effectively allow any voters to deem themselves eligible to vote absentee by mail for the November election.

58. The Election Code, as originally enacted in 1986 and as it stands today, provides for only a few limited absentee excuses, and even fewer absentee excuses which allow voters to cast ballots by mail. Absentee balloting by mail has traditionally only accounted for a small fraction of total ballots cast in recent Mississippi elections, including elections with what is considered high voter turnout. For example, according to available data as inputted by local officials in SEMS for the 2016 general election in Mississippi (which included a Presidential election), 1,209,357 legal votes were cast while only 28,716 mail-in absentee ballots were requested (approximately 2% of the total legal votes cast). The State's system of absentee balloting, which depends entirely upon its administration by local election officials throughout the State, is neither designed nor equipped to accommodate a high increase increase in the volume of mail-in absentee balloting, much less a sudden and significant change in law that could produce a high volume of mail-in absentee voting.

59. Local election officials' administrative planning and preparation for the November election, among other things, required local officials to budget for and expend resources based on expected needs. In addition to overall resources necessary to run the November elections, local officials had to expend funds on absentee voting supplies (such as printing absentee applications, absentee ballots, instructions, and envelopes), and had to make plans and expend resources on absentee voting staffing (such as employees in the Clerk's Office who assist with absentee voting, and local officials who serve on resolution boards that process and tabulate absentee ballots).

60. Months ago, local elections officials budgeted for and purchased absentee voting supplies, as well as all other supplies necessary for the November election. Absentee supplies are costly, and sufficient supplies must be purchased in advance of the absentee balloting period to avoid interruption and delays in the process. There are also several particular factors that increase the costs of absentee voting supplies. Most, if not all, local officials must use outside vendors to print absentee ballot materials and regular ballot materials. Outside vendors are necessary because ballots for the November election include federal elections and must be scannable pursuant to provisions of the federal Help America Vote Act. Absentee ballots must be printed on a different tinted paper than regular ballots. *See* Miss. Code Ann. § 23-15-649. Anytime local election officials send absentee ballot applications, ballots, and envelopes, they must pay postage. And, a unique added cost for absentee ballots, and regular ballots, exists for the November election because all ballots must be printed in color for the November election, *i.e.*, all ballots must contain a color image of the proposed new state flag. *See* 2020 House Bill 1796, § 2.

61. Absentee voting staffing is also a challenge for counties during any general election when statewide offices or federal offices are on the ballot. Absentee ballots for all in-person and mail-in absentee voting is performed through the county registrar, *i.e.*, the local circuit clerk's office. Issuing and processing absentee ballots requires sufficient clerical staff who are responsible for detail-oriented and manpower-intensive tasks, such as in-person voter-service, checking registrations, taking information from voters by phone, logging applications and ballots sent and received through SEMS, physically mailing and receiving applications and ballots, and safeguarding returned ballots until election day. At the same time, the local circuit clerk's office must continue to fulfill the clerk's other duties which include, but are not limited

to, voter registration, running the Circuit Court and its filing system, issuing marriage licenses and other licenses, and in recent weeks in most counties, drawing jury pools for jury trials. And, during the current particular and ongoing absentee balloting process for the November election, due to COVID-19 concerns, clerk's offices are also having to deal with ensuring that appropriate safety measures are taken at the courthouse, and in some instances criminal trial backlogs.

62. Based on my communications with local election officials regarding the November election, county officials budgeted for and have already expended their resources for absentee voting based on a consideration of several factors. Such factors included anticipated higher absentee voter turnout than previous high turnout elections, due to COVID-19 concerns and public interest in the November election. However, the Legislature did not significantly broaden the Election Code's absentee excuses to allow for a significant increase in volume of absentee voting or absentee voting by mail for the November election. As a result, when counties were in the planning stage months ago, the Secretary of State's Office recommended that counties purchase enough absentee supplies, and make judgments regarding absentee voting staffing, based on an estimated absentee voter turnout of 125% of the turnout from the 2016 presidential election (for example, if the county had 4,000 absentee voters for the 2016 election, they should estimate 5,000 for the November election). I understand that most counties made their plans around that estimate, or a similar estimate. I am not aware of any county that has purchased supplies or made staffing plans in anticipation that all voters would be allowed to vote absentee in-person or by mail. Nor am I aware of any county that has sufficient supplies, staffing, and resources to accommodate an abrupt shift that would allow virtually anyone to vote absentee in-person or by mail, given that the absentee process for the November election began several weeks ago when applications became available on September 4, 2020, and the absentee

balloting window opened on September 21, 2020. *See* Miss. Code Ann. § 23-15-625, § 23-15-715.

63. At this point in the middle of the absentee balloting process, a sudden and unexpected increase in the volume of mail-in absentee voting could cause local election officials to run out of printed absentee ballot materials, and result in increased costs and delays in obtaining additional materials. Requiring counties to expend additional unbudgeted resources on absentee voting may also deplete funds otherwise available for the November election, including funds already devoted to in-person voting and polling place safety, necessary election day-related activities, and other election-related expenses.

64. Based on my Mississippi elections-related experience, and my communications with local election officials, organizations, and voters regarding the now ongoing absentee balloting process for the November election, a sudden and significant court-ordered change to the absentee balloting process (that could itself be subject to further changes through appeals processes) at this time would also present significant risks of misinformation and confusion among local election officials and voters. Among other reasons, a court-ordered change in the process would present those risks because local election officials have training and experience in administering elections under the Code's current absentee excuse system, which is not designed for virtually universal mail-in absentee voting, and many voters, political parties, organizations, campaigns, and candidates also have experience with voting under the Code's current absentee excuse system and recognize state law only allows for limited classifications of voters to vote absentee by mail. There has also been widespread media coverage regarding the issue of absentee voting eligibility for the November election, and there has been particularly widespread coverage of the fact that the Legislature has not enacted a broad expansion of absentee voting for

the November election, which the Mississippi Supreme Court confirmed in its *Watson v. Oppenheim* decision several weeks ago.

65. Pages 1-2 of plaintiff's motion for preliminary injunction (Document No. 10 filed on the court docket) seeks an injunction providing the following relief regarding the Election Code's "Notarization Requirement," which plaintiffs define as the Code's "requirement that both absentee ballot applications and absentee ballots be notarized" (Document No. 10-1 at p. 7 filed on the court docket):

Prohibiting Defendants from enforcing the Notarization Requirement for all voters during the COVID-19 pandemic in Mississippi;

Ordering Defendants to issue guidance instructing all local and county election officials to accept otherwise validly submitted absentee ballot applications and count otherwise validly cast absentee ballots that are missing notarization or the signature of an official authorized to administer oaths; [and]

Ordering Defendants to issue guidance instructing all local and county election officials to accept otherwise validly submitted absentee ballot applications and count otherwise validly cast absentee ballots that are missing notarization or the signature of an official authorized to administer oaths during the COVID-19 pandemic in Mississippi, including the November election.

66. As mentioned, local election officials are solely responsible for issuing and accepting absentee ballot applications, absentee ballots, absentee envelopes, and absentee balloting instructions. *See generally* Miss. Code Ann. § 23-15-621 et seq., § 23-15-711 et seq. Plaintiffs' motion for preliminary injunction does not explain how their requested injunctive relief targeting the Secretary of State and the Attorney General would operate upon local election officials, or what particular authority the Secretary of State and/or the Attorney General has under state law to "issue guidance instructing all local and county election officials" in administering the absentee voting process that occurs between local officials and voters. I interpret the various forms of injunctive relief sought by plaintiffs' motion as calculated to

effectively waive the Election Code's requirements that certain absentee voters who vote by mail must have their applications and ballot envelopes notarized or witnessed by an official authorized to administer oaths for the November election.

67. Plaintiffs' requested preliminary injunctive relief, or any similar relief, targeting the Election Code's requirements that absentee applications and ballot envelopes for mail-in balloting be attested by a notary or an official authorized to administer oaths would cause significant confusion and disruption to the ongoing absentee voting process in the November election, for similar reasons that granting plaintiffs' requested relief broadening absentee eligibility would likewise cause those problems.

68. As stated previously, absentee voting for the November election is already ongoing and election day is only a few weeks away. The Election Code's existing system of attesting witness requirements has been in place since 1986. Local election officials have years of training and experience in administering elections under the Code's current absentee process. Many voters, political parties, campaigns, candidates, and organizations also have years of experience in voting under the Code's current absentee excuse system.

69. The forms and instructions used for the absentee mail-in voting process are set up to require mail-in absentee voters who are not physically disabled to have their applications and ballot envelopes notarized or witnessed by an official authorized to administer oaths. *See* Miss. Code Ann. § 23-15-631. Absentee ballot applications, absentee ballot envelopes, and instructions have already been printed and prepared for the November election. At this juncture, the unbudgeted costs associated with changing forms would burden counties and local election officials.

70. Eliminating the requirement that mail-in voters' absentee ballot applications and ballot envelopes be notarized or witnessed by an official authorized to administer oaths would likely confuse officials and voters, and lead to the spread of misinformation. The lack of a requirement would conflict with instructions mailed to absentee voters. *See* Miss. Code Ann. § 23-15-631. Given that absentee voting is already well underway as of the date of this affidavit, instructions have already been distributed to voters that specify the Code's attestation requirements. Election officials and media outlets have broadcast information to the public noting the requirement of having absentee materials notarized or witnessed by an official authorized to administer oaths. Additionally, many other similar voter resource materials produced by organizations exist in the public domain that advise absentee mail-in voters to follow the Code's attestation requirements.

71. Plaintiffs' requested injunctive relief, or any similar relief, would also effectively eliminate the existing safeguards enacted by the Legislature to protect the integrity of the November election and safeguard the absentee voting process against voter fraud. No safeguards would be in place to ensure that the person signing the ballot materials is in fact the person signing them.

72. When voters who do not have a qualifying physical disability vote absentee by mail, they are required to complete their absentee ballot applications and absentee ballot envelopes by printing their name, signing their name, and having the forms attested by a notary or other official authorized to administer oaths in the appropriate places on the forms. If the application or ballot envelope is not required to include a notary or other authorized official's attestation, then only a printed name and signature would be required under the relief plaintiffs' motion for preliminary injunction seeks. As plaintiffs have framed their request for relief, no

corroborating witness signature would be required. Aside from a mailing address on an application (which may or may not be a voter's actual address on file because applicants for absentee ballots may provide any mailing address to a local clerk's office), there are no places on the forms designated to include identifying information, such as a date of birth, driver's license number, or last four social security digits that could be used to verify that the person whose name and signature are on the ballot materials actually signed the documents.

73. Preliminary injunctive relief allowing mail-in absentee voters to skip the requirements of having a notary or other official authorized to administer oaths verify absentee applications and ballot envelopes at this stage in the already ongoing absentee balloting process also risks nullifying voters' ballots. Preliminary injunctive relief is subject to further modification by the Court, or on appeal. If voters rely on a preliminary ruling and fail to obtain the proper attestation on his or her ballot materials, and the preliminary ruling is later modified, their votes could be rejected during the evaluation and tabulation process undertaken by resolution boards beginning on election day. And given that statewide, regional, and local races are on the November election ballot, in a close race any rejected ballots could determine the election.

74. Page 2 of plaintiff's motion for preliminary injunction (Document No. 10) seeks an injunction providing the following relief regarding the State's "Cure Prohibition," which plaintiffs define as the State's "failure to provide voters notice of and the opportunity to cure alleged signature mismatches pursuant to the State's error-prone signature matching procedure" (Document No. 10-1 filed on the court docket at p. 8):

Ordering Defendants to issue guidance instructing all local and county election officials to provide adequate notice and an opportunity to cure rejections of absentee ballots on the basis of perceived signature mismatch.

75. As discussed above, the Secretary of State's Office has implemented formal administrative rules effectuating a notice and cure process for potential signature mismatches discovered in the absentee tabulation and examination process as provided in Code Section 23-15-639. The administrative rules are permanent, and the rules govern the November election and future elections. *See* Exhibit "G".

76. In contrast to the above-described problems that a court-ordered change in absentee eligibility or the absentee attestation process would cause at this point in the ongoing absentee balloting process for the November election, the Secretary of State's recently-implemented notice and cure administrative rules will not cause any significant disruption to the ongoing absentee balloting process, or confuse local election officials or voters.

77. Plaintiffs' expert witness, Dr. Marc Meredith, explains at page 40 of his declaration (see Document No. 10-4 filed on the court docket) that, based on available data, the number of absentee ballots that were rejected for signature issues in the 2018 general election was minimal—i.e., a total of 53 ballots (or .03% of the absentee ballots cast by mail) were rejected for "a problem with the voter's signature on the ballot." Information entered into the SEMS system by local officials regarding the 2018 general election, and other high turnout elections, is consistent with Dr. Meredith's assessment. Further, even if local officials somehow under-reported the number of signature mismatch rejections in the 2018 general election as Dr. Meredith speculates, based on past experience, the Secretary of State's Office estimates that no more than a few hundred ballots have ever been rejected for a signature mismatch in any high turnout election.

78. The low number of possible signature mismatches identified in any given election is also consistent with the general proposition, reflected in data contained in SEMS, that many

voters who cast absentee ballots do so in-person at their local Clerk's Office. Voters who vote in-person absentee, in almost all instances, sign their absentee applications and ballot envelopes with the same pen, at the same time, which is not likely to produce a potential signature mismatch. Additionally, unlike other states that I understand use digital signature databases and have experienced a significant volume of possible signature mismatches on absentee ballot materials, local election officials in Mississippi cannot use a digital signature database to check signatures on absentee ballot materials because no such database exists.

79. Based on the estimated low volume of possible signature mismatches identified in the November general election, the requirement for local election officials to implement the Secretary of State's administrative rules will not impose any significant unexpected costs or efforts on local election officials.

80. The timing of local officials' implementation of the Secretary of State's administrative rules is also not problematic. New administrative rules were anticipated by election officials when the Legislature enacted HB 1521 in July. Different from an abrupt and unanticipated change involving the ongoing absentee balloting process, local election officials have known for months the new rules would be forthcoming. Local officials also have time to prepare to comply with the new rules, as they will only impact the examination and tabulation of ballots beginning on November 3, 2020, unlike an instantaneous change to the currently ongoing absentee balloting process.

81. The notice and cure process for potential signature mismatches implemented by the Secretary of State's administrative rules also should not confuse voters. Only a very small fraction of a fraction of absentee by mail voters would likely ever become aware of the process. Only a few voters would thus ever receive a notice of possible signature mismatch. And for any

voters who do receive a notice, the instructions provided on the one-page cure form are straightforward. See Exhibit "G" at page 8.

DATED: October 8, 2020.



Hawley Rae Robertson
Assistant Secretary of State

Sworn to and subscribed before me, this the 8 day of October, 2020.



Notary Public

My Commission Expires:

Jan. 23, 2024



SAMPLE Official Election Ballot

STATE OF MISSISSIPPI

2020 General Election

Tuesday, November 3, 2020

TO VOTE: YOU MUST DARKEN THE OVAL(●) COMPLETELY USING A BLACK OR BLUE PEN.

Do not use a red pen, felt tip pen or any type of pencil.

Do not cross out or erase - If you make a mistake, you may request a new ballot.

**For United States
President
Vote for ONE**

- Presidential Electors for Joseph R. Biden Jr. for President and Kamala D. Harris for Vice President Democrat
- Presidential Electors for Donald J. Trump for President and Michael R. Pence for Vice President Republican
- Presidential Electors for Don Blankenship for President and William Mohr for Vice President American Constitution
- Presidential Electors for Brian Carroll for President and Amar Patel for Vice President American Solidarity
- Presidential Electors for Phil Collins for President and Bill Parker for Vice President Independent
- Presidential Electors for Howie Hawkins for President and Angela Nicole Walker for Vice President Green
- Presidential Electors for Jo Jorgensen for President and Jeremy 'Spike' Cohen for Vice President Libertarian
- Presidential Electors for Brock Pierce for President and Karla Ballard for Vice President Independent
- Presidential Electors for Kanye West for President and Michelle Tidball for Vice President Independent
- _____
Write-in

**For United States
Senate
Vote for ONE**

- Mike Espy Democrat
- Cindy Hyde-Smith Republican
- Jimmy L. Edwards Libertarian
- _____
Write-in

**For US House Of Representatives
1st Congressional District
Vote for ONE**

- Antonia Eliason Democrat
- Trent Kelly Republican
- _____
Write-in

**For US House Of Representatives
2nd Congressional District
Vote for ONE**

- Brian Flowers Republican
- Bennie G. Thompson Democrat
- _____
Write-in

**For US House of Representatives
3rd Congressional District
Vote for ONE**

- Dorothy Dot Benford Democrat
- Michael Guest Republican
- _____
Write-in

EXHIBIT A TO AFFIDAVIT

TURN BALLOT OVER TO CONTINUE VOTING

**For US House Of Representatives
4th Congressional District
Vote for ONE**

Steven M. Palazzo Republican

Write-in

**SPECIAL NONPARTISAN JUDICIAL
ELECTION
For Circuit Court Judge
Circuit Court, District 08 Place 1
Vote for ONE**

Brian K. Burns Nonpartisan

Caleb E. May Nonpartisan

Write-in

**NONPARTISAN JUDICIAL ELECTION
For Supreme Court Justice
Supreme Court District 1(Central)
Position 1
Vote for ONE**

Kenny Griffis Nonpartisan

Latrice Westbrooks Nonpartisan

Write-in

**NONPARTISAN JUDICIAL ELECTION
For Supreme Court Justice
Supreme Court District 1(Central)
Position 2
Vote for ONE**

Leslie D. King Nonpartisan

Write-in

**NONPARTISAN JUDICIAL ELECTION
For Supreme Court Justice
Supreme Court District 2(Southern)
Position 3
Vote for ONE**

Mike Randolph Nonpartisan

Write-in

**NONPARTISAN JUDICIAL ELECTION
For Supreme Court Justice
Supreme Court District 3(Northern)
Position 3
Vote for ONE**

Josiah Dennis Coleman Nonpartisan

Percy L. Lynchard Nonpartisan

Write-in

TURN BALLOT OVER TO CONTINUE VOTING

**Statewide
Ballot Measure 1
Initiated by Petition and
Alternative by Legislature**

Initiative Measure No. 65, Should Mississippi allow qualified patients with debilitating medical conditions, as certified by Mississippi licensed physicians, to use medical marijuana?

Legislative Budget Office Fiscal Analysis for Initiative 65:

The overall cost to Mississippi for the first year is estimated to be \$11,068,150. The anticipated expenses for the first year to implement a medical marijuana program is \$24,068,150 (Plants - seeds to Sale: \$5,000,000; Licensing, Monitoring, Inspection: \$16,220,150; and Cost to Collect Revenue: \$2,848,000). The anticipated revenue is \$13,000,000 (User ID Cards: \$2,500,000; Commercial Licenses: \$500,000 and sales fee at 7 percent: \$10,000,000).

The anticipated expenses for years following the first for a medical marijuana program is \$15,338,000 (Plants - seeds to Sale: \$5,000,000; Licensing, Monitoring, Inspection: \$8,756,000; and Cost to Collect Revenue: \$1,582,000). The anticipated revenue is \$26,000,000 (User ID Cards: \$5,000,000; Commercial Licenses: \$1,000,000 and sales fee at 7 percent: \$20,000,000). The overall annual revenue is anticipated to be \$10,662,000, all of which must be used to support the state marijuana program.

Alternative Measure No. 65 A, Shall Mississippi establish a program to allow the medical use of marijuana products by qualified persons with debilitating medical conditions?

Legislative Budget Office Fiscal Analysis for Initiative 65A:

The cost or revenue impact associated with this initiative is undeterminable.

**VOTE FOR APPROVAL OF EITHER, OR
AGAINST BOTH**

- FOR APPROVAL OF EITHER Initiative Measure No. 65 OR Alternative Measure No. 65A
- AGAINST BOTH Initiative Measure No. 65 and Alternative Measure No. 65A

AND VOTE FOR ONE

- FOR Initiative Measure No. 65
- FOR Alternative Measure No. 65A

**Statewide
Ballot Measure 2
House Concurrent Resolution No. 47**

This amendment provides that to be elected Governor, or to any other statewide office, a candidate must receive a majority of the votes in the general election. If no candidate receives a majority of the votes, then a runoff election shall be held as provided by general law. The requirement of receiving the most votes in a majority of Mississippi House of Representative's districts is removed.

VOTE FOR ONE

- YES
- NO

**Statewide
Ballot Measure 3
House Bill 1796 - Flag Referendum**

Please vote 'Yes' or 'No' on whether the following design shall be the official Mississippi State Flag



- YES
- NO



**Mississippi Secretary of State's Office
Elections Division
(800) 829-6786**

www.sos.ms.gov

2020 ELECTIONS CALENDAR

* Updated August 17, 2020 to reflect changes from House Bill 1521 (2020 Legislative Session)*

This calendar is provided for planning purposes only. Dates are subject to change or revision. Please refer to the proper citation in the Mississippi Code, the Mississippi Constitution, the United States Code and other cited sources for more complete legal requirements of the calendar entries posted below. Contact the Secretary of State's Office for updates or further information.

Mississippi election officials are required by State and Federal law to perform certain duties. This calendar is intended to serve only as an informational tool for election officials and the general public. Omission of any date does not relieve local election officials of their obligations to perform those duties as required by law.

- **Calendar entries pertaining to Campaign Finance deadlines are printed in green.**

JANUARY

- 2nd Qualifying Period Begins.** First day candidates may file petitions and/or qualifying statements and pay qualifying fees for the offices of President, U. S. Senate, U. S. Representative, Supreme Court Justice, County Election Commission, Yazoo-Mississippi Delta Levee Commission and Miss. Levee Commission. (*Miss. Code Ann. §§ 23-15-299, 23-15-359, 23-15-977, 23-15-1093*)
- 7th Legislative Session Begins.** (*Miss. Const.1890 §36 and Miss. Code Ann. § 5-1-7*)
- 10th Qualifying Deadline, 5:00 p.m.:** Party Primary and General Election qualifying deadline for all candidates for U. S. Senate, U. S. Representative and Yazoo-Mississippi Delta Levee Commission. (*Miss. Code Ann. §§ 23-15-299, 23-15-359*)

State Party Executive Committees forward copies of all qualifying papers, with proof of payment of qualifying fees, to MSOS by 6:00 p.m.

Permanently Disabled Voters List: Deadline for Circuit Clerk Offices to deliver to the Election Commissions the list of permanently disabled voters who receive absentee ballots automatically for the March 10, 2020 Primary Elections. (*Miss. Code Ann. § 23-15-629(3)*)

Absentee Ballot Applications: Absentee ballot applications are available in the Circuit Clerks' Office for the March 10, 2020 Primary Election. Absentee ballots will not be available at this time. (*Miss. Code Ann. § 23-15-625*)

14th Mandatory Voter Roll Maintenance: County Election Commissioners meet to purge rolls. (*Miss. Code Ann. § 23-15-153(1)(a)*)

NOTE: This date is within 90 days of a federal election – *no systematic purging may occur at this time. Voters may continue to be purged from the voter roll based upon death, conviction of disenfranchising crimes, adjudication of incompetence and voluntary request.*

Party Candidate Lists: Deadline for the Secretary of State to receive from all political parties a certified list of candidates qualifying for the 2020 Primary and General Elections, with mailing address and office sought. (*Miss. Code Ann. § 23-15-296*)

15th Presidential Preference Primary Election Qualifying Deadline, 5:00 p.m. (*Miss. Code Ann. § 23-15-1093*)

State Party Executive Committees forward copies of all qualifying papers for Presidential candidates, with proof of payment of qualifying fees, to MSOS by 6:00 p.m.

20th HOLIDAY

Primary Election Sample Ballot Deadline: Deadline for the state executive committee of each political party to furnish to MSOS the names of the qualified candidates seeking Federal office. MSOS publishes the Primary Election sample ballot of only the Federal races to the counties. (*Miss. Code Ann. § 23-15-331*)

25th First UOCAVA Absentee Ballot Transmitted: Circuit Clerks' Offices send absentee ballots for the first and second Primary Elections to UOCAVA (Uniformed and Overseas Citizens) voters who requested an absentee ballot this calendar year, i.e., since Jan. 1, 2020. (*Miss. Code Ann. § 23-15-685*)

Permanently Disabled Voter List: County Election Commission returns the updated list to the Circuit Clerk's Office. (*Miss. Code Ann. § 23-15-629(3)*)

27th **Absentee Ballots Available:** Earliest day to vote by an absentee ballot in the Circuit Clerk's Office in the Primary Election. (*Miss. Code Ann. § 23-15-715*)

Required Issuance of TVIC: Circuit Clerks' Office issue a Temporary Miss. Voter ID card (TVIC) to voters who apply and are eligible for the Miss. Voter ID card through the date of the second Primary Election.

30th **Permanently Disabled Absentee Voters:** Circuit Clerks' Offices mail absentee ballots to voters on the permanently disabled list. (*Miss. Code Ann. § 23-15-629(4)*)

31st **Campaign Finance Deadline, 5:00 p.m.:** Annual Reports due in the respective office. (*Miss. Code Ann. § 23-15-807(b)(iii)*)

FEBRUARY

3rd **Voter Registration:** Circuit Clerks' Offices may remain open from 8:00 a.m. until 7:00 p.m., including the noon hour. (*Miss. Code Ann. § 23-15-37*)

4th **Voter Registration:** Circuit Clerks' Offices may remain open from 8:00 a.m. until 7:00 p.m., including the noon hour. (*Miss. Code Ann. § 23-15-37*)

Mandatory Voter Roll Maintenance: County Election Commissioners meet to purge rolls. (*Miss. Code Ann. § 23-15-153(1)(a)*)

NOTE: This date is within 90 days of a federal election – *no systematic purging may occur at this time.* Voters may continue to be purged from the voter roll based upon death, conviction of disenfranchising crime, adjudication of incompetence and voluntary request.

5th **Voter Registration:** Circuit Clerks' Offices may remain open from 8:00 a.m. until 7:00 p.m., including the noon hour. (*Miss. Code Ann. § 23-15-37*)

6th **Voter Registration:** Circuit Clerks' Offices may remain open from 8:00 a.m. until 7:00 p.m., including the noon hour. (*Miss. Code Ann. § 23-15-37*)

7th **Voter Registration:** Circuit Clerks' Offices may remain open from 8:00 a.m. until 7:00 p.m., including the noon hour. (*Miss. Code Ann. § 23-15-37*)

8th **Voter Registration:** Circuit Clerks' Offices must remain open this Saturday from 8:00 a.m. until 12:00 noon for voter registration. (*Miss. Code Ann. § 23-15-37*)

10th Primary Election Voter Registration Deadline: Applicants who register in-person in the Circuit Clerk’s office today and those who mail registration applications post-marked no later than today are eligible to vote in the March 10, 2020 Primary Elections. (*Miss. Code Ann. § 23-15-47*)

17th HOLIDAY

25th Appointment of Poll Workers: Deadline by which County Election Officials appoint poll managers for the Primary Elections. (*Miss. Code Ann. § 23-15-265*)

Publication of Notice of Poll Worker Training: County Election Officials must post notice of the time and location of poll manager training at the Courthouse and publish the same in a newspaper at least five (5) days prior to the date of the training. (*Miss. Code Ann. § 23-15-239(1)(4)*)

28th Publication of Notice of L&A Testing: County Election Officials must provide public notice of the time and location of L&A testing at least five (5) days prior to the date of the testing. Candidates, candidate representatives, political parties, news media and the public are permitted to observe L&A testing. (*Miss. Code Ann. § 23-15-531.6(3)(b)*)

29th UOCAVA Voter Registration Deadline: To be eligible to vote in the upcoming Primary Elections, Circuit Clerks’ Offices must be in **actual receipt** of a completed FPCA from a UOCAVA voter. (*Miss. Code Ann. § 23-15-677(2)*)

Absentee Voting: Circuit Clerks’ Office must be open from 8:00 a.m. until 12:00 p.m. (*Miss. Code Ann. § 23-15-653*)

MARCH

~~**2nd Primary Runoff Election Voter Registration Deadline:** Applicants who register in-person in the Circuit Clerk’s office today and those who mail registration applications post-marked no later than today are eligible to vote in the March 31, 2020 Primary Runoff Elections, if any. (*Miss. Code Ann. § 23-15-37(2)*) **(Moved to May 26, 2020)**~~

Qualifying Deadline, 5:00 p.m. Non-partisan judicial offices, i.e., Supreme Court (*Miss. Code Ann. § 23-15-977*)

5th Poll Manager Training Deadline: No poll manager or resolution board member may serve in the Primary Election unless he/she has received training within the twelve (12) months immediately preceding the date of the election. (*Miss. Code Ann. § 23-15-239(1)(a)*)

7th In-Person Absentee Voting Deadline, 12:00 p.m.: Circuit Clerks’ Offices OPEN from 8:00 a.m. until 12:00 p.m. (*Miss. Code Ann. § 23-15-653*)

- 8th **L&A Testing Deadline.** (*Miss. Code Ann. § 23-15-531.6(3)(a)*)
- 9th **Absentee Ballot by Mail Deadline, 5:00 p.m.:** Circuit Clerks' Offices must be in **actual receipt** of absentee ballots returned by mail for ballots to be timely. This is not a postmark deadline but an actual receipt deadline. (*Miss. Code Ann. § 23-15-637*)
- 10th **PRIMARY ELECTION DAY.** Polling places open from 7:00 a.m. until 7:00 p.m. (*Miss. Code Ann. § 23-15-1031*)
- PRIMARY ELECTION DAY:** Yazoo-Mississippi Delta Levee District Commissioner (*Gen. Laws of 1930, Ch. 85, Gen. Laws of 1968, Ch. 574, Gen. Laws of 1983, Ch. 317*)
- UOCAVA Absentee Ballot Deadline, 7:00 p.m.:** Absentee ballots received by the Circuit Clerks' Offices by 7:00 p.m. from **only** UOCAVA voters by email, fax or mail are timely, and must be delivered to the voters' respective precincts for processing by the poll managers. (*Miss. Code Ann. § 23-15-699(6)*)
- Presidential Only, Absentee Ballot Deadline, 7:00 p.m.:** Absentee ballots received by the Circuit Clerks' Offices by 7:00 p.m. must be delivered to the voters' respective precincts for processing by the poll managers and if accepted, counted for the Presidential race only. (*Miss. Code Ann. § 23-15-731*)
- 11th **Late Received Absentee Ballots:** The applications and unopened absentee ballot envelopes received by the Circuit Clerks' Office after the applicable deadlines must be stamped with the date and hour of receipt and retained for twenty-two (22) months. (*Miss. Code Ann. §§ 23-15-647, 23-15-733*)
- 17th **Voter ID Affidavit Ballot Deadline, 5:00 p.m.:** Last day voters who cast an affidavit ballot by reason of voter photo ID may present an acceptable form of photo ID or complete an affidavit of religious objection in the Circuit Clerks' Offices. (*Miss. Const. 1890 § 249-A*)
- 19th **Canvass of Returns and Announcement of Results:** County Election Officials forward certified election results to the respective State Executive Committee and MSOS. (*Miss. Code Ann. § 23-15-597*)
- 20th **Tabulated Statement of Party Vote:** Deadline by which State Executive Committees declare primary election results, forward to MSOS the tabulated statements of the vote, announce the names of the party nominees and submit the names of candidates for the Runoff Elections. (*Miss. Code Ann. § 23-15-599*)
- 25th **CONGRESSIONAL DISTRICT 2 – National Voter Registration Act, Systematic Purging Deadline:** Voters may not be purged from the voter roll based upon the confirmation card process or made inactive within 90 days before the date of the Federal General Election. (*52 U. S. C. A. § 20507*)

~~31st **PRIMARY RUNOFF ELECTION DAY.** Polling places are open from 7:00 a.m. until 7:00 p.m. (Miss. Code Ann. § 23-15-1031) (Moved to June 23, 2020 via Governor’s Executive Order)~~

APRIL

27th HOLIDAY

MAY

8th **Campaign Finance Deadline, 5:00 p.m.:** All judicial candidates seeking election this year, and political committees which have received contributions or made expenditures in support of or in opposition to judicial candidates must file the May 8th Periodic Report with the Secretary of State’s Office. (Miss. Code Ann. § 23-15-807)

9th **Runoff UOCAVA Absentee Ballot Transmitted if not previously sent:** Circuit Clerks’ Offices send absentee ballots for the second Primary Elections to UOCAVA (Uniformed and Overseas Citizens) voters who requested an absentee ballot this calendar year, i.e., since Jan. 1, 2020 and not already received a ballot. (Miss. Code Ann. § 23-15-685)

10th **Legislative Session Ends:** *Sine Die* (Miss. Const. 1890 §36) (Calendar to be updated when legislature resumes and announces updated *Sine Die*.)

11th **Absentee Ballots Available:** Earliest day to vote by an absentee ballot in the Circuit Clerk’s Office in the Primary Runoff Election. (Miss. Code Ann. § 23-15-715)

Required Issuance of TVIC: Circuit Clerks’ Office issue a Temporary Miss. Voter ID card (TVIC) to voters who apply and are eligible for the Miss. Voter ID card through the date of the second Primary Election.

14th **Permanently Disabled Absentee Voters:** Circuit Clerks’ Office must mail an absentee ballot to all voters on the county’s permanently disabled voters list and to those voters who complete an absentee ballot application before Primary Runoff Election absentee ballots are available. (Miss. Code Ann. §§ 23-15-629(4), 23-15-715)

25th STATE AND FEDERAL HOLIDAY

26th **Primary Runoff Election Voter Registration Deadline:** Applicants who register in-person in the Circuit Clerk’s office and those who mail registration applications post-marked no later than today are eligible to vote in the June 23 Primary Runoff Election. (Miss. Code Ann. § 23-15-37(2))

Voter Registration Deadline for the Special Election in House District 88 (Jasper and Jones County): Applicants who register in-person in the Circuit Clerk’s office and those who mail registration applications post-marked no later than today are eligible to vote in the Special Election for House District 88. (Miss. Code Ann. § 23-15-37(2))

JUNE

- 1st** **Qualifying Deadline, 5:00 p.m.:** General Election qualifying deadline for County Election Commission. (*Miss. Code Ann. § 23-15-213*)
- 9th** **Appointment of Poll Workers for Primary Runoff Elections:** Deadline by which County Election Officials appoint poll managers for the Runoff Election. (*Miss. Code Ann. § 23-15-265*)
- Publication of Notice of Poll Worker Training for Primary Runoff Election:** County Election Officials post notice of the time and location of poll manager training at the Courthouse and publish the same in a newspaper at least five (5) days prior to the date of the training. (*Miss. Code Ann. § 23-15-239(1)(4)*)
- Publication of Notice of L&A Testing for Primary Runoff Election:** County Election Officials must provide public notice of the time and location of L&A testing at least five (5) days prior to the date of the testing. Candidates, candidate representatives, political parties, news media and the public are permitted to observe L&A testing. (*Miss. Code Ann. § 23-15-531.6(3)(b)*)
- 10th** **Campaign Finance Deadline, 5:00 p.m.:** All judicial candidates seeking election this year, and political committees which have received contributions or made expenditures in support of or in opposition to judicial candidates must file the June 10th Periodic Report with the Secretary of State's office. (*Miss. Code Ann. § 23-15-807*)
- 13th** **Runoff Election Absentee Voting:** Circuit Clerks' Offices must be open from 8:00 a.m. until 12:00 p.m. (*Miss. Code Ann. § 23-15-653*)
- UOCAVA Voter Registration Deadline:** To be eligible to vote in the upcoming Runoff Primary Elections, Circuit Clerks' Offices must be in **actual receipt** of a completed FPCA from a UOCAVA voter. (*Miss. Code Ann. § 23-15-677(2)*)
- 18th** **Poll Manager Training Deadline for Runoff Election:** No poll manager or resolution board member may serve in the Primary Runoff Election(s) unless he/she has received training within the twelve (12) months immediately preceding the date of the election. (*Miss. Code Ann. § 23-15-239(1)(a)*)
- 20th** **In-Person Absentee Voting Deadline, 12:00 p.m., for Primary Runoff Election:** Circuit Clerks' Offices OPEN from 8:00 a.m. until 12:00 p.m. (*Miss. Code Ann. § 23-15-653*)
- 21st** **L&A Testing Deadline for Primary Runoff Election.** (*Miss. Code Ann. § 23-15-531.6(3)(a)*)

22nd **Absentee Ballot by Mail Deadline, 5:00 p.m., for Primary Runoff Election:** Circuit Clerks' Offices must be in **actual** receipt of absentee ballots returned by mail for ballots to be timely. This is not a postmark deadline but an actual receipt deadline. (*Miss. Code Ann. § 23-15-637*)

23rd **PRIMARY RUNOFF ELECTION DAY.** Polling places are open from 7:00 a.m. until 7:00 p.m. (*Miss. Code Ann. § 23-15-1031*) (*Moved via Executive Order from March 31*)

**SPECIAL ELECTION FOR MISSISSIPPI HOUSE OF REPRESENTATIVES
DISTRICT 88: Jasper and Jones Counties.**

23rd **UOCAVA Absentee Ballot Deadline, 7:00 p.m.:** Absentee ballots received by the Circuit Clerks' Offices by 7:00 p.m. from UOCAVA voters by email, fax or mail are timely, and should be delivered to the voters' respective precincts for processing by the poll managers. (*Miss. Code Ann. § 23-15-699(6)*)

Late Received Absentee Ballots: The applications and unopened absentee ballot envelopes received by the Circuit Clerks' Offices after the applicable deadlines must be stamped with the date and hour of receipt and retained for twenty-two (22) months. (*Miss. Code Ann. §§ 23-15-647, 23-15-733*)

30th **Voter ID Affidavit Ballot Deadline, 5:00 p.m.:** Last day voters who cast an affidavit ballot by reason of voter photo ID may present an acceptable form of photo ID or complete an affidavit of religious objection in the Circuit Clerks' Offices. (*Miss. Const. 1890 § 249-A*)

JULY

2nd **Canvass of Returns and Announcement of Primary Runoff Election Results:** County Election Officials forward certified election results to the respective State Party Executive Committee and MSOS. (*Miss. Code Ann. § 23-15-597*)

3rd **Tabulated Statement of Party Vote:** Deadline by which State Executive Committees declare primary runoff election results, forward to MSOS the tabulated statements of the vote, announce the names of the party nominees and submit the names of candidates for the General Election. (*Miss. Code Ann. § 23-15-599*)

3rd **STATE HOLIDAY OBSERVED**

10th **Campaign Finance Deadline, 5:00 p.m.:** All judicial candidates seeking election this year, and political committees which have received contributions or made expenditures in support of or in opposition to judicial candidates must file the July 10th Periodic Report with the Secretary of State's office. (*Miss. Code Ann. § 23-15-807*)

AUGUST

5th Qualifying Period Begins. First day candidates may file petitions and/or qualifying statements for the offices of County School Board, Municipal Separate School District Trustee, Special Municipal Separate School District Trustee or Consolidated/Consolidated Line School District Trustee. (*Miss. Code Ann. §§ 37-5-9, 37-7-211, 37-7-225, 37-7-711*)

National Voter Registration Act, Systematic Purging Deadline: Voters may not be purged from the voter roll based upon the confirmation card process or made inactive within 90 days before the date of the Federal General Election. (*52 U. S. C. A. § 20507*)

SEPTEMBER

4th Qualifying Deadline, 5:00 p.m.: Candidates for the offices of County School Board, Municipal Separate School District Trustee, Special Municipal Separate School District Trustee or Consolidated/Consolidated Line School District Trustee. (*Miss. Code Ann. §§ 37-5-9, 37-7-211, 37-7-225, 37-7-711*)

Qualifying Deadline, 5:00 p.m.: Candidates for a County Special Elections. (*Miss. Code Ann. § 23-15-839*)

Permanently Disabled Voters List: Circuit Clerks deliver the permanently disabled voter list to the Election Commission for purging prior to the General Election. (*Miss. Code Ann. § 23-15-629*)

4th Absentee Ballot Applications: Absentee ballot applications are available in the Circuit Clerks' Office for the November 3, 2020 General Election. Absentee ballots will not be available at this time. (*Miss. Code Ann. § 23-15-625*)

7th STATE HOLIDAY

9th General Election Sample Ballot Deadline: Deadline by which the MSOS publishes the official November General Election sample ballot of Federal and judicial races to the counties. (*Miss. Code Ann. § 23-15-367(3)*)

14th Mandatory Voter Roll Maintenance: County Election Commissioners meet to purge rolls. (*Miss. Code Ann. § 23-15-153(1)(d)*)

NOTE: This date is within 90 days of a federal election – *no systematic purging may occur at this time.* Voters may continue to be purged from the voter roll based upon death, conviction of disenfranchising crimes, adjudication of incompetence and voluntary request.

19th UOCAVA Absentee Ballot Transmitted: Circuit Clerks' Offices send absentee ballots for the General Election (and any possible runoff election) to UOCAVA voters who requested an absentee ballot this calendar year, i.e., since Jan. 1, 2020. (*Miss. Code Ann. § 23-15-685*)

Permanently Disabled Voter List: County Election Commission returns the updated list to the Circuit Clerk's Office. (*Miss. Code Ann. § 23-15-629(3)*)

21st Absentee Ballots Available: Earliest day to vote by an absentee ballot in the Circuit Clerk's Office in the General Election. (*Miss. Code Ann. § 23-15-715*)

Required Issuance of TVIC: Circuit Clerks' Office issue a Temporary Miss. Voter ID card (TVIC) to voters who apply and are eligible for the Miss. Voter ID card through the date of the General Election.

24th Permanently Disabled Absentee Voters: Circuit Clerks' Offices mail absentee ballots to voters on the permanently disabled list. (*Miss. Code Ann. § 23-15-629(4)*)

28th Voter Registration: Circuit Clerks' Offices may remain open from 8:00 a.m. until 7:00 p.m., including the noon hour. (*Miss. Code Ann. § 23-15-37*)

29th Voter Registration: Circuit Clerks' Offices may remain open from 8:00 a.m. until 7:00 p.m., including the noon hour. (*Miss. Code Ann. § 23-15-37*)

30th Voter Registration: Circuit Clerks' Offices may remain open from 8:00 a.m. until 7:00 p.m., including the noon hour. (*Miss. Code Ann. § 23-15-37*)

OCTOBER

1st Voter Registration: Circuit Clerks' Offices may remain open from 8:00 a.m. until 7:00 p.m., including the noon hour. (*Miss. Code Ann. § 23-15-37*)

2nd Voter Registration: Circuit Clerks' Offices may remain open from 8:00 a.m. until 7:00 p.m., including the noon hour. (*Miss. Code Ann. § 23-15-37*)

3rd Voter Registration: Circuit Clerks' Offices must remain open this Saturday from 8:00 a.m. until 12:00 noon for voter registration. (*Miss. Code Ann. § 23-15-37*).

5th General Election Voter Registration Deadline: Applicants who register in-person in the Circuit Clerk's office today and those who mail registration applications post-marked no later than today are eligible to vote in the General Election. (*Miss. Code Ann. § 23-15-47*)

- 9th** Campaign Finance Deadline, 5:00 p.m.: All judicial candidates seeking election this year, and political committees which have received contributions or made expenditures in support of or in opposition to judicial candidates must file the October 9th Periodic Report with the Secretary of State's office. (*Miss. Code Ann. § 23-15-807*)
- 12th** **FEDERAL HOLIDAY**
- 23rd** Publication of Notice of Poll Worker Training: County Election Officials must post notice of the time and location of poll manager training at the Courthouse and publish the same in a newspaper at least five (5) days prior to the date of the training. (*Miss. Code Ann. § 23-15-239(1)(4)*)
- 24th** UOCAVA Voter Registration Deadline: To be eligible to vote in the upcoming General Election, Circuit Clerks' Offices must be in **actual receipt** of a completed FPCA from a UOCAVA voter. (*Miss. Code Ann. § 23-15-677(2)*)
- Absentee Voting: Circuit Clerks' Office must be open from 8:00 a.m. until 12:00 p.m. (*Miss. Code Ann. § 23-15-653*)
- 26th** General/Special Election Runoff Voter Registration Deadline: Applicants who register in-person in the Circuit Clerk's office today and those who mail registration applications post-marked no later than today are eligible to vote in the General Election. (*Miss. Code Ann. § 23-15-47*)
- Publication of Notice of L&A Testing: County Election Officials must provide public notice of the time and location of L&A testing at least five (5) days prior to the date of the testing. Candidates, candidate representatives, political parties, news media and the public are permitted to observe L&A testing. (*Miss. Code Ann. § 23-15-531.6(3)(b)*)
- 27th** Campaign Finance Deadline, 5:00 p.m.: All opposed judicial candidates seeking election this year, and political committees which have accepted contributions or made expenditures in support of or in opposition to these judicial candidates and county general or special election candidates must file the Pre-Election Report with the appropriate office. (*Miss. Code Ann. § 23-15-807(b)(i)*)
- 29th** Poll Manager Training Deadline: No poll manager or resolution board member may serve in the General Election unless he/she has received training within the twelve (12) months immediately preceding the date of the election. (*Miss. Code Ann. § 23-15-239(1)(a)*)
- 31st** In-Person Absentee Voting Deadline, 5:00 p.m.: Circuit Clerks' Offices OPEN from 8:00 a.m. until 5:00 p.m. (*Miss. Code Ann. § 23-15-653*)

NOVEMBER

- 1st** **L&A Testing Deadline.** (*Miss. Code Ann. § 23-15-531.6(3)(a)*)
- 3rd** **GENERAL ELECTION and REGULAR SPECIAL ELECTION DAY:** Polls open at 7:00 a.m. and close at 7:00 p.m. (*Miss. Code Ann. § 23-15-833*)
- UOCAVA Absentee Ballot returned by email and fax Deadline, 7:00 p.m.:** Absentee ballots received by the Circuit Clerks' Offices by 7:00 p.m. from **only** UOCAVA voters by email and fax are timely. (*Miss. Code Ann. § 23-15-699(6)*)
- 10th** **Absentee Ballot by Mail, including Presidential-only Absentee by Mail Ballot and UOCAVA Absentee by Mail Ballot, Receipt Deadline, 5:00 p.m.:** Circuit Clerks' Offices must be in **actual receipt** of absentee ballots returned by mail for ballots to be timely. Ballots returned by mail must be postmarked on or before election day to be timely. (*Miss. Code Ann. § 23-15-637*)
- Voter ID Affidavit Ballot Deadline, 5:00 p.m.:** Last day voters who cast an affidavit ballot by reason of voter photo ID may present an acceptable form of photo ID or complete an affidavit of religious objection in the Circuit Clerks' Offices. (*Miss. Const. 1890 § 249-A*)
- 10th** **Publication of Notice of Poll Worker Training:** County Election Officials must post notice of the time and location of poll manager training at the Courthouse and publish the same in a newspaper at least five (5) days prior to the date of the training. (*Miss. Code Ann. § 23-15-239(1)(4)*)
- 11th** **State Holiday**
- 12th** **Late Received Absentee Ballots:** The applications and unopened absentee ballot envelopes received by the Circuit Clerks' Office after the applicable deadlines must be stamped with the date and hour of receipt and retained for twenty-two (22) months. (*Miss. Code Ann. §§ 23-15-647, 23-15-733*)
- 13th** **Delivery of Returns:** Deadline for County Election Commissions to transmit to the Secretary of State their counties' General Election returns, including their certified recap sheets and the total number of votes cast in the county for each candidate. (*Miss. Code Ann. §§ 23-15-601, 23-15-603*)
- 14th** **Absentee Voting:** Circuit Clerks' Office must be open from 8:00 a.m. until 12:00 p.m. (*Miss. Code Ann. § 23-15-653*)
- UOCAVA Absentee Ballot Deadline:** Circuit Clerks' Offices send absentee ballots for the General Runoff Election to UOCAVA voters who requested an absentee ballot this calendar year, i.e., since Jan. 1, 2020. (*Miss. Code Ann. § 23-15-685*)

Absentee Ballots for Permanently Disabled Voters: Circuit Clerks' Offices mail absentee ballots to voters on the permanently disabled list. (*Miss. Code Ann. § 23-15-629(4)*)

- 16th** **Publication of Notice of L&A Testing:** County Election Officials must provide public notice of the time and location of L&A testing at least five (5) days prior to the date of the testing. Candidates, candidate representatives, political parties, news media and the public are permitted to observe L&A testing. (*Miss. Code Ann. § 23-15-531.6(3)(b)*)
- 17th** **Campaign Finance Deadline, 5:00 p.m.:** All opposed judicial candidates in a runoff election, and political committees which have accepted contributions or made expenditures in support of or in opposition to these judicial candidates, and county general and special election candidates in a runoff election must file the Pre-Runoff Report with the appropriate office. (*Miss. Code Ann. § 23-15-807(b)(i)*)
- 19th** **Poll Manager Training Deadline:** No poll manager or resolution board member may serve in the General Runoff Election unless he/she has received training within the twelve (12) months immediately preceding the date of the election. (*Miss. Code Ann. § 23-15-239(1)(a)*)
- 21st** **In-Person Absentee Voting Deadline, 5:00 p.m.:** Circuit Clerks' Offices OPEN from 8:00 a.m. until 5:00 p.m. (*Miss. Code Ann. § 23-15-653*)
- 22nd** **L&A Testing Deadline.** (*Miss. Code Ann. § 23-15-531.6(3)(a)*)
- 23rd** **Determination of Election for Supreme Court.** (*Miss. Code Ann. § 23-15-607*)
- 24th** **GENERAL and SPECIAL RUNOFF ELECTION DAY:** Polls open at 7:00 a.m. and close at 7:00 p.m. (*Miss. Code Ann. § 23-15-833*)
- UOCAVA Absentee Ballot returned by email and fax Deadline, 7:00 p.m.:** Absentee ballots received by the Circuit Clerks' Offices by 7:00 p.m. from **only** UOCAVA voters by email and fax are timely. (*Miss. Code Ann. § 23-15-699(6)*)
- 26th** STATE HOLIDAY
- 27th** STATE HOLIDAY

DECEMBER

- 3rd** **Absentee Ballot by Mail, UOCAVA Absentee by Mail Ballot, Receipt Deadline, 5:00 p.m.:** Circuit Clerks' Offices must be in **actual receipt** of absentee ballots returned by mail for ballots to be timely. Ballots returned by mail must be postmarked on/before election day to be timely. (*Miss. Code Ann. § 23-15-637*)

Voter ID Affidavit Ballot Deadline, 5:00 p.m.: Last day voters who cast an affidavit ballot by reason of voter photo ID may present an acceptable form of photo ID or complete an affidavit of religious objection in the Circuit Clerks' Offices. (*Miss. Const. 1890 § 249-A*)

4th **Late Received Absentee Ballots, 5:00 p.m.**: The applications and unopened absentee ballot envelopes received by the Circuit Clerks' Office after the applicable deadlines must be stamped with the date and hour of receipt and retained for twenty-two (22) months. (*Miss. Code Ann. §§ 23-15-647, 23-15-733*)

Delivery of Returns: Deadline for County Election Commissions to transmit to the Secretary of State their counties' General Election returns, including their certified recap sheets and the total number of votes cast in the county for each candidate. (*Miss. Code Ann. §§ 23-15-601, 23-15-603*)

Declaration of Results by Secretary of State. (*Miss. Code Ann. §§ 23-15-605*)

14th **Determination of Election for Supreme Court Justices (if a runoff occurs)**. (*Miss. Code Ann. § 23-15-607*)

25th **STATE HOLIDAY**

Mississippi Secretary of State
125 South Congress St., P. O. Box 136, Jackson, MS 39205-0136

ADMINISTRATIVE PROCEDURES NOTICE FILING

AGENCY NAME Secretary of State		CONTACT PERSON Hawley Robertson	TELEPHONE NUMBER (601) 359-6360	
ADDRESS 401 Mississippi St.		CITY Jackson	STATE MS	ZIP 39205
EMAIL Hawley.Robertson@sos.ms.gov	SUBMIT DATE 10/5/2020	Name or number of rule(s): 1 Miss Admin Code, Part 18 Chapters 1 - 2, Rule 1.1 - 2.9		

Short explanation of rule/amendment/repeal and reason(s) for proposing rule/amendment/repeal: Creation of rules regarding polling place safety and COVID-19.

Specific legal authority authorizing the promulgation of rule: Miss. Code Ann. 23-15-637(3)

List all rules repealed, amended, or suspended by the proposed rule: None

ORAL PROCEEDING:

- An oral proceeding is scheduled for this rule on Date: _____ Time: _____ Place: _____
- Presently, an oral proceeding is not scheduled on this rule.

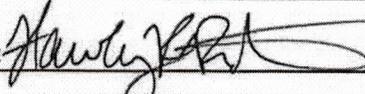
If an oral proceeding is not scheduled, an oral proceeding must be held if a written request for an oral proceeding is submitted by a political subdivision, an agency or ten (10) or more persons. The written request should be submitted to the agency contact person at the above address within twenty (20) days after the filing of this notice of proposed rule adoption and should include the name, address, email address, and telephone number of the person(s) making the request; and, if you are an agent or attorney, the name, address, email address, and telephone number of the party or parties you represent. At any time within the twenty-five (25) day public comment period, written submissions including arguments, data, and views on the proposed rule/amendment/repeal may be submitted to the filing agency.

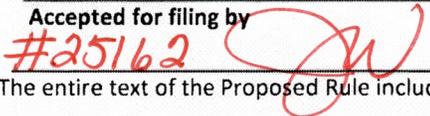
ECONOMIC IMPACT STATEMENT:

- Economic impact statement not required for this rule. Concise summary of economic impact statement attached.

TEMPORARY RULES	PROPOSED ACTION ON RULES	FINAL ACTION ON RULES
<input checked="" type="checkbox"/> Original filing <input type="checkbox"/> Renewal of effectiveness To be in effect in _____ days Effective date: <input checked="" type="checkbox"/> Immediately upon filing <input type="checkbox"/> Other (specify): _____	Action proposed: New rule(s) <input type="checkbox"/> Amendment to existing rule(s) <input type="checkbox"/> Repeal of existing rule(s) <input type="checkbox"/> Adoption by reference Proposed final effective date: <input type="checkbox"/> 30 days after filing <input type="checkbox"/> Other (specify): _____	Date Proposed Rule Filed: _____ Action taken: <input type="checkbox"/> Adopted with no changes in text <input type="checkbox"/> Adopted with changes <input type="checkbox"/> Adopted by reference <input type="checkbox"/> Withdrawn <input type="checkbox"/> Repeal adopted as proposed Effective date: <input type="checkbox"/> 30 days after filing <input type="checkbox"/> Other (specify): _____

Printed name and Title of person authorized to file rules: Hawley Rae Robertson, Assistant Secretary of State, Elections

Signature of person authorized to file rules: 

OFFICIAL FILING STAMP	DO NOT WRITE BELOW THIS LINE OFFICIAL FILING STAMP	OFFICIAL FILING STAMP
	<div style="border: 1px solid black; height: 150px; width: 100%;"></div>	<div style="border: 1px solid black; height: 150px; width: 100%;"></div>
Accepted for filing by 	Accepted for filing by	Accepted for filing by

The entire text of the Proposed Rule including the text of any rule being amended or changed is attached.

Title 1: Secretary of State

Part 18: Polling Place Safety

Rule: Polling Place Safety and COVID-19

Part 18 Chapter 1: Definitions

Rule 1.1 Definitions. For the purposes of these rules the below terms mean the following:

- A. “Absentee Ballot” means a ballot provided to a voter, prior to Election Day, who has submitted an absentee ballot application pursuant to Miss. Code Ann. Section 23-15-627 and Section 23-15-715.
- B. “Candidate” means an individual, who has qualified through the appropriate office, and whose name is printed on the official ballot.
- C. “Credentialed Poll Watcher” means a poll watcher of good conduct and behavior, that is authorized in writing to act as the representative of a candidate on the ballot, a political party that has a candidate on the ballot, or an election official authorized to have a poll observer such as the Secretary of State, Attorney General, or Department of Justice.
- D. “Officials in charge of the election” means either a County or Municipal Election Commissioner, who was elected or appointed pursuant to applicable laws, or a Party Executive Committee Member conducting a primary election, or the County or Municipal Registrar, and is responsible for the conduct of an election within their jurisdiction.
- E. “Facemask” means a surgical mask or any other kind of securely fastened cloth covering that covers the mouth and nose.
- F. “Personal Protective Equipment” means equipment worn to minimize exposures to hazards that cause workplace injuries and illness.
- G. “Poll Manager” means an official appointed by Election Commissioners, pursuant to applicable laws, to operate the polling place and aid in conducting an election by performing duties prescribed by applicable law.
- H. “Polling Place” means a location designated by the county board of supervisors for each county, or the local governing authority for each municipality, serving as the location at which voters assigned to said precinct may appear and cast their ballot, including the Circuit Clerk’s Office for absentee voting.
- I. “Resolution Board Member” means an individual appointed to the Resolution Board pursuant to Miss. Code Ann. § 23-15-523 to process absentee ballots and review any blank, damaged, defective or over-voted ballots.

Source: *Miss. Code Ann.* §§ 23-15-637(3); 23-15-227(6).

Rule 2.1 Election Officials Must Wear Personal Protective Equipment in the performance of duties. Poll Managers, Resolution Board Members, officials in charge of the election, and other election officials, must wear personal protective equipment, including a facemask, when performing their duties within a jurisdiction that is under a public health emergency relating to

COVID-19. A voter, who is not wearing personal protective equipment, **must not be barred entry** into the polling place due to his/her failure to wear personal protective equipment.

Source: *Miss. Code Ann.* § 23-15-227(6).

Rule 2.2 Candidates and credentialed poll watchers must wear masks when observing. A candidate or credentialed poll watcher must wear a facemask, as defined in this Part, when observing a polling place, processing absentee ballots, and/or the canvassing of results, or any other election process open to the public that also allows observers.

Source: *Miss. Code Ann.* § 23-15-227(6).

Rule 2.3 Effect of other orders, ordinances, resolutions, and other legal directives on Rule 2.1 and Rule 2.2. If any jurisdiction in which a precinct is located falls under the jurisdiction of any order, resolution, ordinance, or any other legal directive (whether federal, state, county, or municipal) which requires stricter measures regarding the use of personal protective equipment than those in these rules, the Poll Managers, Resolution Board Members, Election Commissioners, candidates, credentialed poll watchers, and other election officials will be required to abide by those rules when performing their duties on Election Day, and in the case of candidates and credentialed poll watchers, when observing any election process open to the public.

Source: *Miss. Code Ann.* § 23-15-227(6).

Rule 2.4 Polling places serving more than one purpose on the date of the election. If a location hosting a polling place is used for an additional purpose on Election Day, and entry to the location is conditioned upon wearing a facemask or temperature check, a person wishing to vote shall not be denied entry to the location for failure to wear a facemask or failure to submit to a temperature check upon entry to cast his/her ballot. However, after the individual has casted his/her ballot at the polling place, he/she may be required to exit the building and conform to any rules required for entry to the building.

Source: *Miss. Code Ann.* § 23-15-227(6).

Rule 2.5 Lowering of facemask when presenting photo identification required under Miss. Code Ann. Section 23-15-563. When a voter wearing a facemask is presenting acceptable photo identification pursuant to Miss. Code Ann. Section 23-15-563 and the poll manager is unable to identify the voter, the poll manager may ask the voter to step back six (6) feet, in accordance to social distancing guidelines, to briefly lower his/her face mask so the poll manager may identify that the picture on the acceptable photo identification fairly depicts the elector. If a physical barrier (sneeze guard) is located between the poll manager and the voter, the voter is not required to step back six (6) feet, but still shall lower his/her face mask for identification purposes.

Source: *Miss. Code Ann.* §§ 23-15-227(6); 23-15-563.

Rule 2.6 Entering and Exiting polling place. If the physical structure of the polling place allows it, the polling place must have a separate entrance and exit for voters.

Source: *Miss. Code Ann.* § 23-15-227(6).

Rule 2.7 Social Distancing. The polling place must be set up to allow for social distancing between voters. The polling place must have clearly visible markings six (6) feet apart to indicate where voters should stand to practice social distancing. Voters who fail to practice social distancing shall be asked by the bailiff of the polling place to practice social distancing as marked in the polling place. If the voter repeatedly fails to follow social distancing guidelines, the voter may be asked to vote by curbside voting pursuant to Rule 2.8 of these Rules.

Source: *Miss. Code Ann.* § 23-15-227(6).

Rule 2.8 Curbside Voting and Open-Air Voting.

- (a) When a voter states he/she has had significant exposure to COVID-19, or is exhibiting symptoms of COVID-19 (including, but not limited to coughing, vomiting, headaches, fever, sore throat, congestion, or loss of taste and/or smell), poll managers may direct the voter to an open-air voting option outside the physical structure of the polling place and away from other voters entering or exiting the polling place, or to vote by curbside voting from the voter's motor vehicle.
- (b) When poll managers have directed a voter to vote by curbside voting or open-air voting, two (2) poll managers must carry the pollbook, the receipt book, and a ballot or voting device to the voter's motor vehicle or an area outside the polling place that is away from any voters entering or exiting the polling place. After determining the person is a qualified elector, as provided by law, by locating the person's name in the pollbook, the poll managers shall identify the voter by requiring the elector to submit acceptable photo identification, as required by *Miss. Code Ann. Section 23-15-563*. The elector shall then be allowed to sign his/her name in the receipt book and cast his/her ballot in secret. To ensure the secrecy of the vote, other passengers in the motor vehicle, except those persons who are disabled, shall exit the motor vehicle until the elector has completed casting his/her ballot. After the voter casts his/her ballot, the poll managers must mark "VOTED" by the voter's name and in the appropriate column in the pollbook.
 - a. If the ballot provided to the voter is a paper ballot, the initialing poll manager shall initial the ballot as provide by law, and the elector, after marking the ballot must fold the ballot or place it in a ballot sleeve. After the voter marks the ballot, the initialing poll manager or alternate initialing poll manager must determine whether the initials on the ballot are genuine, and upon a determination that the initials are genuine, shall without delay place the ballot in the ballot box.
- (c) If there are less than three (3) poll managers immediately present within the polling place conducting an election, and a voter wishing to curbside vote arrives, all voting at the polls shall stop until the poll managers conducting the curbside voting return to the polls.

When voting is occurring within the polling place, there shall be at least three (3) poll managers immediately present to conduct the election. Until a minimum of three (3) poll managers are present, the remaining poll manager or poll managers shall ensure the security of the ballot box, the voting devices, and any ballots and election materials.

Source: *Miss. Code Ann.* §§ 23-15-227(6); 23-15-541.

Rule 2.9 Required Signage in the Polling Place. When constructing the polling place, poll managers must place the below listed signs at their assigned locations. Each is provided, in full, in the Appendix of this Part.

1. “Health Alert” Sign – Must be posted at the entrance to the polling place.
2. “Social Distancing” Sign – Must be posted where poll managers expect lines to form at the voting location to remind voters of social distancing standards
3. “Pollbook Table” Sign – Must be posted where poll managers have placed the pollbook so voters are aware of the six-foot line and expected procedures.
4. “Safety Procedures” – Must be posted at the entrance to the polling place.
5. “Facemasks Strongly Suggested” – Must be posted at the entrance to the polling place.

Source: *Miss. Code Ann.* § 23-15-227(6).

APPENDIX A
“Health Alert/Curbside” Sign

HEALTH ALERT



Do not enter this building if you are experiencing any of these symptoms or have been in contact with anyone with these symptoms:

- Shortness of Breath
- Cough
- Fever (100.4F)
- Nasal congestion
- Sore Throat
- Achiness

Please call () _____ - _____ to vote curbside.

**Appendix B
"Social Distancing" Sign**

**HELP PREVENT
THE SPREAD OF**

COVID-19

SOCIAL DISTANCE

**PLEASE MAINTAIN A SAFE DISTANCE
FROM THOSE AROUND YOU.**



Appendix C
"Poll Book" Sign

STOP!



Photo ID & Poll Book Procedures

Please Follow Poll Workers Instructions:

Step 1 – Place photo ID face up on table

Step 2 – Step back to 6 feet from table

Step 3 – Poll Worker will review ID and find your record

Step 4 – Step up and sign poll book and take ID

Appendix 4
“Safety Procedures” Sign

HELP PREVENT THE SPREAD OF

COVID-19



WASH YOUR
HANDS OFTEN



AVOID CLOSE
CONTACT



COVER COUGHS
AND SNEEZES



CLEAN AND
DISINFECT



AVOID TOUCHING
YOUR FACE



VOTE CURBSIDE
IF YOU ARE SICK



**Appendix 5
“Mask Suggested” Sign**

ATTENTION



**FACE MASKS ARE
STRONGLY ENCOURAGED
BEYOND THIS POINT**

As Recommended by the CDC and
Mississippi Department of Health.



County	MEMA 2 Liters	KN-95 Masks	Gloves	Face Shields	3 Ply Masks	Stylus	Pens	Safety Wipes	Spray Bottles	Germicide	Add'l MEMA 2 Liters
Adams	82	154	900	135	900	12912	0	38	20	19	0
Alcorn	94	157	900	140	1200	16388	0	34	18	17	1
Amite	26	132	700	111	400	6636	0	42	22	21	11
Attala	30	110	600	90	600	8243	0	40	21	20	13
Benton	20	70	400	65	300	4032	0	10	6	5	0
Bolivar	72	252	1400	224	1100	15553	0	56	29	28	12
Calhoun	40	70	400	60	400	6162	0	20	11	10	0
Carroll	24	87	500	73	300	4772	0	28	15	14	5
Chickasaw	44	120	700	105	500	7966	0	30	16	15	4
Choctaw	4	87	500	70	200	3423	0	34	18	17	12
Claiborne	28	158	900	145	300	4285	0	26	14	13	3
Clarke	32	168	900	145	500	7716	0	46	24	23	15
Clay	48	67	400	53	600	9274	0	28	15	14	3
Coahoma	2	108	600	90	700	10162	0	36	19	18	9
Copiah	68	125	700	106	900	13078	0	38	20	19	5
Covington	46	130	700	115	700	9516	0	30	16	15	5
DeSoto	140	426	2400	385	5700	0	108345	123	42	41	264
Forrest	150	421	2400	387	2300	30830	0	75	35	68	31
Franklin	16	89	500	75	200	3909	0	28	15	14	8
George	50	127	700	105	700	10043	0	44	23	22	8
Greene	24	91	500	78	300	4905	0	26	14	13	6
Grenada	60	160	900	147	700	10059	0	26	14	13	2
Hancock	110	197	1100	172	1600	22701	0	50	26	25	6
Harrison	270	530	2900	476	6500	0	122421	162	55	108	169
Hinds	526	773	4000	665	8100	0	152019	324	109	216	93
Holmes	46	177	1000	160	600	8741	0	34	18	17	5
Humphreys	22	97	600	84	300	4370	0	26	14	13	6
Issaquena	0	25	200	20	0	612	0	10	6	5	5
Itawamba	92	138	700	110	700	10326	0	56	29	28	28
Jackson	96	304	1700	272	4000	54144	0	96	33	64	180
Jasper	38	144	800	127	500	7593	0	34	18	17	9
Jefferson	18	60	300	48	200	5664	0	24	13	12	7
Jefferson Davis	22	107	600	89	400	3778	0	36	19	18	10
Jones	132	333	1800	296	2200	29525	0	74	38	52	36
Kemper	26	112	600	98	300	5285	0	28	15	14	4
Lafayette	48	168	900	150	1500	0	28786	36	19	18	66
Lamar	100	273	1500	250	1700	23234	0	46	24	23	33
Lauderdale	168	396	2200	356	2100	0	41098	80	41	40	4
Lawrence	20	144	800	120	400	5692	0	48	25	24	17
Leake	56	172	1000	153	700	9471	0	38	20	19	1
Lee	112	436	2400	400	2400	0	46429	72	37	36	67
Leflore	62	187	1100	169	1000	14408	0	36	19	18	18
Lincoln	84	155	800	125	1000	14231	0	60	31	30	9
Lowndes	76	390	2300	370	1900	26720	0	40	21	20	67
Madison	158	572	3200	528	3500	0	67045	132	44	88	102
Marion	60	182	1000	160	800	10798	0	44	22	22	5
Marshall	88	174	900	150	1100	15537	0	48	24	24	4
Monroe	86	153	800	127	1200	16525	0	52	27	26	7
Montgomery	20	129	700	114	300	4320	0	30	16	15	9
Neshoba	56	187	1000	160	800	0	16469	54	28	27	11
Netwon	58	141	800	125	600	0	12546	32	17	16	0
Noxuee	32	99	600	91	300	11777	0	16	9	8	1
Oktibbeha	58	145	800	125	1300	18709	0	40	21	20	47
Panola	84	193	1100	172	1100	0	21281	42	21	21	5
Pearl River	112	206	1100	180	1600	0	31265	52	26	26	15
Perry	24	110	600	95	400	5540	0	30	15	15	9
Pike	96	200	1100	175	1100	15961	0	50	26	25	0
Pontotoc	80	158	800	130	1000	13937	0	56	29	28	7
Prentiss	56	107	600	92	700	9598	0	30	16	15	2
Quitman	16	67	400	57	200	3311	0	20	11	10	3
Rankin	208	446	2400	398	4500	0	84615	144	49	96	123
Scott	62	159	900	136	800	12011	0	46	24	23	9
Sharkey	6	65	400	55	100	2182	0	20	10	10	8
Simpson	60	176	1000	153	800	11191	0	46	23	23	6
Smith	44	143	800	125	500	7541	0	36	19	18	4
Stone	36	120	700	105	500	0	9484	30	16	15	4
Sunflower	58	141	800	124	700	9877	0	34	18	17	5
Tallahatchie	30	141	800	120	400	6498	0	42	22	21	12
Tate	56	220	1200	200	800	11594	0	40	21	20	9
Tippah	40	126	800	126	700	9426	0	48	25	24	14
Tishomingo	44	157	900	143	600	8359	0	28	15	14	5
Tunica	24	72	400	60	300	4191	0	24	12	12	5
Union	62	125	700	105	800	10749	0	40	20	20	62
Walthall	30	140	800	120	500	6751	0	40	21	20	10
Warren	98	225	1300	202	1300	17456	0	46	24	23	4
Washington	96	244	1400	225	1500	20766	0	38	20	19	21
Wayne	46	176	1000	154	600	9017	0	44	23	22	9
Webster	12	85	500	68	300	4743	0	34	18	17	13
Wilkinson	26	64	400	55	300	4481	0	18	10	9	1
Winston	44	74	400	62	600	8097	0	24	13	12	2
Yazoo	62	173	900	150	900	12702	0	46	24	23	19

EXHIBIT D TO AFFIDAVIT

MISSISSIPPI LEGISLATURE

REGULAR SESSION 2020

By: Representative Beckett

To: Apportionment and
Elections

HOUSE BILL NO. 1521
(As Sent to Governor)

1 AN ACT TO AMEND SECTIONS 23-15-637 AND 23-15-651, MISSISSIPPI
2 CODE OF 1972, TO PROVIDE THAT ABSENTEE BALLOTS RECEIVED BY MAIL
3 MUST BE POSTMARKED BY THE DATE OF THE ELECTION AND RECEIVED BY THE
4 REGISTRAR NO MORE THAN FIVE BUSINESS DAYS AFTER THE ELECTION; TO
5 PRESCRIBE THE TIME FOR CASING ALL ABSENTEE BALLOTS IN PERSON IN
6 THE OFFICE OF THE REGISTRAR TO BE DEPOSITED IN A SECURED AND
7 SEALED BOX IN THE CIRCUIT CLERK'S OFFICE UPON RECEIPT; TO PROVIDE
8 THAT THE BALLOT BOX USED SHALL BE SEALED AT THE CLOSE OF EACH
9 BUSINESS DAY AND SHALL REMAIN SEALED UNTIL THE BEGINNING OF THE
10 NEXT BUSINESS DAY; TO PROVIDE THAT ALL VOTES CAST BY ABSENTEE
11 BALLOT SHALL BE FINAL; TO PROVIDE THAT NO PERSON WHO VOTES
12 ABSENTEE BEFORE THE ELECTION SHALL BE ALLOWED TO VOTE IN PERSON ON
13 ELECTION DAY; TO AUTHORIZE THE SECRETARY OF STATE TO ISSUE CERTAIN
14 RULES RELATING TO ABSENTEE BALLOTS; TO AMEND SECTION 23-15-645,
15 MISSISSIPPI CODE OF 1972, TO PROVIDE THAT ABSENTEE BALLOTS CAST IN
16 THE REGISTRAR'S OFFICE SHALL BE PROCESSED ON ELECTION DAY AND
17 ANNOUNCED SIMULTANEOUSLY WITH ALL OTHER VOTES CAST ON ELECTION
18 DAY; TO PROVIDE FOR THE RETENTION AND DESTRUCTION OF PACKAGES OF
19 PROTESTED, VOID AND WHOLLY BLANK BALLOTS, VOTED BALLOTS, OPEN
20 PACKAGES OF UNUSED BALLOTS, SEALED PACKAGES OF UNUSED BALLOTS, AND
21 ALL ABSENTEE AND MILITARY BALLOTS AND BALLOT ENVELOPES; TO AMEND
22 SECTION 23-15-649, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT FOR
23 ALL ELECTIONS THE ELECTION OFFICIALS SHALL PREPARE ABSENTEE
24 BALLOTS IN THE SAME FORM AS OFFICIAL BALLOTS OR BALLOTS WITH A
25 HEADER OF DIFFERENT TINT; TO AMEND SECTIONS 23-15-627 AND
26 23-15-713, MISSISSIPPI CODE OF 1972, TO EXTEND THE ELIGIBILITY FOR
27 ABSENTEE VOTING IN PERSON OR BY MAIL TO ANY PERSON UNABLE TO
28 APPEAR PERSONALLY AT THE POLLING PLACE OF THE ELECTION DISTRICT IN
29 WHICH HE OR SHE IS A QUALIFIED VOTER BECAUSE OF A
30 PHYSICIAN-IMPOSED QUARANTINE DUE TO COVID-19 DURING THE YEAR 2020
31 OR THE VOTER IS CARING FOR A PERSON WHO MAY BE EXPOSED TO SUCH
32 RISK; TO AMEND SECTIONS 23-15-715 AND 23-15-719, MISSISSIPPI CODE
33 OF 1972, TO PROVIDE THAT FOR ALL ELECTIONS THE REGISTRAR SHALL
34 MAIL TOGETHER TO THE ABSENTEE VOTER THE APPLICATION AND PROPER



35 ABSENTEE VOTER BALLOT; TO PROVIDE CERTAIN CONDITIONS ON COUNTING
36 ABSENTEE BALLOTS BY THE RESOLUTION BOARD; TO AMEND SECTIONS
37 23-15-625, 23-15-629, 23-15-631, 23-15-635, 23-15-639, 23-15-641,
38 23-15-647, 23-15-699, 23-15-721, 23-15-731, 23-15-733 AND
39 23-15-735, MISSISSIPPI CODE OF 1972, TO CONFORM TO THE PROVISIONS
40 OF THIS ACT; AND FOR RELATED PURPOSES.

41 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

42 **SECTION 1.** Section 23-15-637, Mississippi Code of 1972, is
43 amended as follows:

44 23-15-637. (1) (a) Absentee ballots and applications
45 received by mail, except * * * for fax or electronically
46 transmitted ballots as otherwise provided by Section 23-15-699 for
47 UOCAVA ballots, must be * * * postmarked on or before the date of
48 the election and received by the registrar no more than five (5)
49 business days after the election; any received after such time
50 shall be handled as provided in Section 23-15-647 and shall not be
51 counted.

52 (b) All ballots cast by the absent elector appearing in
53 person in the office of the registrar shall be cast with an
54 absentee paper ballot and deposited into a sealed ballot box by
55 the voter, not later than 12:00 noon, or 5:00 p.m. during the year
56 2020 on the Saturday immediately preceding elections held on
57 Tuesday, the Thursday immediately preceding elections held on
58 Saturday, or the second day immediately preceding the date of
59 elections held on other days. At the close of business each day
60 at the office of the registrar, the ballot box used shall be
61 sealed and not unsealed until the beginning of the next business
62 day, and the seal number shall be recorded with the number of



63 ballots cast which shall be stored in a secure location in the
64 registrar's office.

65 (2) The registrar shall deposit all absentee ballots which
66 have been timely cast and received by mail in * * * a secured and
67 sealed box in a designated location in the registrar's office upon
68 receipt. The registrar shall not send any absentee ballots to the
69 precinct polling locations.

70 (3) The Secretary of State shall promulgate rules and
71 regulations necessary to ensure that when a qualified elector who
72 is qualified to vote absentee votes by absentee ballot, either by
73 mail or in person with a regular paper ballot, that person's
74 absentee vote is final and he or she may not vote at the polling
75 place on election day. Notwithstanding any other provisions of
76 law to the contrary, the Secretary of State shall promulgate rules
77 and regulations necessary to ensure that absentee ballots shall
78 remain in the registrar's office for counting and not be taken to
79 the precincts on election day.

80 **SECTION 2.** Section 23-15-651, Mississippi Code of 1972, is
81 amended as follows:

82 23-15-651. The results of the vote by absentee balloting
83 shall be announced simultaneously with the vote cast on election
84 day; provided that absentee ballots received after 7:00 p.m. the
85 day before the election shall be kept in a secured and sealed
86 ballot box, and shall be announced after the five-business-day
87 period for receiving absentee ballots.



88 **SECTION 3.** Section 23-15-645, Mississippi Code of 1972, is
89 amended as follows:

90 23-15-645. (1) Absentee ballots cast in the registrar's
91 office and received by mail that are deposited into a sealed
92 ballot box shall be processed on election day but not tallied
93 until after closing of the polls and announced simultaneously with
94 all other votes cast on election day.

95 (2) After the votes have been counted, the officials shall
96 preserve all applications, envelopes and the list of absent voters
97 along with the mailed paper and paper ballots and other election
98 materials and return the same to the registrar.

99 (3) Notwithstanding any other provision of law to the
100 contrary, for federal and presidential general, special or primary
101 elections, packages of protested, void and wholly blank ballots,
102 voted ballots, open packages of unused ballots, sealed packages of
103 unused ballots, and all absentee and military ballots and ballot
104 envelopes, if any, shall be preserved for twenty-two (22) months
105 after the date of any such general, special or primary election.
106 For all other statewide, county or municipal elections, sealed
107 packages of unused ballots, packages of protested, void and wholly
108 blank ballots, open packages of unused ballots and all absentee
109 and military ballots and ballot envelopes shall be retained for
110 four (4) months, and may then be destroyed, provided a certificate
111 articulating the election district identifying data and numbers of
112 such ballots is filed with the balance of ballots described in



113 this section, for the balance of the twenty-two-month retention
114 period.

115 **SECTION 4.** Section 23-15-649, Mississippi Code of 1972, is
116 amended as follows:

117 23-15-649. For all elections, * * * the election officials
118 shall prepare and print, as soon as the deadline for the
119 qualification of candidates has passed or forty-five (45)
120 days * * * before the election, whichever is later, official
121 ballots for each voting precinct to be known as absentee voter
122 ballots, which ballots shall be prepared and printed in the same
123 form and shall be of the same size and texture as the regular
124 official ballot except that they shall be printed on tinted paper
125 of a tint different from that of the regular official ballot or
126 with a header of different tint.

127 **SECTION 5.** Section 23-15-627, Mississippi Code of 1972, is
128 amended as follows:

129 23-15-627. Any elector described in Section 23-15-713 may
130 request an absentee ballot application and vote in person at the
131 office of the registrar in the county in which he or she resides.

132 The registrar shall be responsible for furnishing an absentee
133 ballot application form to any elector authorized to receive an
134 absentee ballot. Except as otherwise provided in Section
135 23-15-625, absentee ballot applications shall be furnished to a
136 person only upon the oral or written request of the elector who
137 seeks to vote by absentee ballot; however, the parent, child,



138 spouse, sibling, legal guardian, those empowered with a power of
139 attorney for that elector's affairs or agent of the elector, who
140 is designated in writing and witnessed by a resident of this state
141 who shall write his or her physical address on such designation,
142 may orally request an absentee ballot application on behalf of the
143 elector. The written designation shall be valid for one (1) year
144 after the date of the designation. An absentee ballot application
145 must have the seal of the circuit or municipal clerk affixed to it
146 and be initialed by the registrar or his or her deputy in order to
147 be * * * used to obtain an absentee ballot. A reproduction of an
148 absentee ballot application shall not be valid unless it is a
149 reproduction provided by the office of the registrar of the
150 jurisdiction in which the election is being held and which
151 contains the seal and initials required by this section. Such
152 application shall be substantially in the following form:

153 "OFFICIAL APPLICATION FOR ABSENT ELECTOR'S BALLOT

154 I, _____, duly qualified and registered in the ____ Precinct
155 of the County of _____, and State of Mississippi, coming within
156 the purview of the definition 'ABSENT ELECTOR' will be absent from
157 the county of my residence on election day, or unable to vote in
158 person because (check appropriate reason):

159 () (PRESIDENTIAL APPLICANT ONLY:) I am currently a
160 resident of Mississippi or have moved therefrom within thirty (30)
161 days of the coming presidential election.



162 () I am an enlisted or commissioned member, male or female,
163 of any component of the United States Armed Forces and am a
164 citizen of Mississippi, or spouse or dependent of such member.

165 () I am a member of the Merchant Marine or the American Red
166 Cross and am a citizen of Mississippi or spouse or dependent of
167 such member.

168 () I am a disabled war veteran who is a patient in any
169 hospital and am a citizen of Mississippi or spouse or dependent of
170 such veteran.

171 () I am a civilian attached to and serving outside of the
172 United States with any branch of the Armed Forces or with the
173 Merchant Marine or American Red Cross, and am a citizen of
174 Mississippi or spouse or dependent of such civilian.

175 () I am a citizen of Mississippi temporarily residing
176 outside the territorial limits of the United States and the
177 District of Columbia.

178 () I am a student, teacher or administrator at a college,
179 university, junior or community college, high, junior high,
180 elementary or grade school, whose studies or employment at such
181 institution necessitates my absence from the county of my voting
182 residence or spouse or dependent of such student, teacher or
183 administrator who maintains a common domicile outside the county
184 of my voting residence with such student, teacher or
185 administrator.

186 () I will be outside the county on election day.



187 () I have a temporary or permanent physical disability,
188 which may include, but is not limited to, a physician-imposed
189 quarantine due to COVID-19 during the year 2020. Or, I am caring
190 for a dependent that is under a physician-imposed quarantine due
191 to COVID-19 beginning with the effective date of this act and the
192 same being repealed on December 31, 2020.

193 () I am sixty-five (65) years of age or older.

194 () I am the parent, spouse or dependent of a person with a
195 temporary or permanent physical disability who is hospitalized
196 outside his or her county of residence or more than fifty (50)
197 miles away from his or her residence, and I will be with such
198 person on election day.

199 () I am a member of the congressional delegation, or spouse
200 or dependent of a member of the congressional delegation.

201 () I am required to be at work on election day during the
202 times which the polls will be open.

203 I hereby make application for an official ballot, or ballots,
204 to be voted by me at the election to be held in _____, on _____.

205 Mail 'Absent Elector's Ballot' to me at the following address
206 _____ * * *.

207 () I wish to receive an absentee ballot for the runoff
208 election_____.

209 I realize that I can be fined up to Five Thousand Dollars
210 (\$5,000.00) and sentenced up to five (5) years in the Penitentiary
211 for making a false statement in this application and for selling



212 my vote and violating the Mississippi Absentee Voter Law. (This
213 sentence is to be in bold print.)

214 If you are temporarily or permanently disabled, you are not
215 required to have this application notarized or signed by an
216 official authorized to administer oaths for absentee balloting.
217 You are required to sign this application in the proper place and
218 have a person eighteen (18) years of age or older witness your
219 signature and sign this application in the proper place.

220 DO NOT SIGN WITHOUT READING. (This sentence is to be in bold
221 print.)

222 IN WITNESS WHEREOF I have hereunto set my hand and seal this
223 the ____ day of _____, 2____.

224 _____
225 (Signature of absent elector)

226 SWORN TO AND SUBSCRIBED before me this the ____ day of _____,
227 2____.

228 _____
229 (Official authorized to administer oaths
230 for absentee balloting.)

231 TO BE SIGNED BY WITNESS FOR VOTERS TEMPORARILY OR PERMANENTLY
232 DISABLED:

233 I HEREBY CERTIFY that this application for an absent
234 elector's ballot was signed by the above-named * * * elector in my
235 presence and that I am at least eighteen (18) years of age, this
236 the ____ day of _____, 2____.



237

(Signature of witness)

238

239 CERTIFICATE OF DELIVERY

240

I hereby certify that _____ (print name of voter)

241

has requested that I, _____ (print name of person

242

delivering application), deliver to the voter this absentee ballot

243

application.

244

(Signature of person delivering application)

245

246

(Address of person delivering application)"

247

248 **SECTION 6.** Section 23-15-713, Mississippi Code of 1972, is
249 amended as follows:

250

23-15-713. For the purpose of this subarticle, any duly

251

qualified elector may vote as provided in this subarticle if * * *

252

the elector falls within at least one (1) of the following

253

categories:

254

(a) Any qualified elector who is a bona fide student,

255

teacher or administrator at any college, university, junior

256

college, high, junior high, or elementary grade school whose

257

studies or employment at such institution necessitates his or her

258

absence from the county of his or her voting residence on the date

259

of any primary, general or special election, or the spouse and

260

dependents of * * * that student, teacher or administrator if such

261

spouse or dependent(s) maintain a common domicile, outside of the



262 county of his or her voting residence, with such student, teacher
263 or administrator.

264 (b) Any qualified elector who is required to be away
265 from his or her place of residence on any election day due to his
266 or her employment as an employee of a member of the Mississippi
267 congressional delegation and the spouse and dependents of such
268 person if he or she shall be residing with such absentee voter
269 away from the county of the spouse's voting residence.

270 (c) Any qualified elector who is away from his or her
271 county of residence on election day for any reason.

272 (d) Any person who has a temporary or permanent
273 physical disability and who, because of such disability, is unable
274 to vote in person without substantial hardship to himself, herself
275 or others, or whose attendance at the voting place could
276 reasonably cause danger to himself, herself or others. For
277 purposes of this paragraph (d), "temporary physical disability"
278 shall include any qualified elector who is under a
279 physician-imposed quarantine due to COVID-19 during the year 2020
280 or is caring for a dependent who is under a physician-imposed
281 quarantine due to COVID-19 beginning with the effective date of
282 this act and the same being repealed on December 31, 2020.

283 (e) The parent, spouse or dependent of a person with a
284 temporary or permanent physical disability who is hospitalized
285 outside of his or her county of residence or more than fifty (50)
286 miles distant from his or her residence, if the parent, spouse or



287 dependent will be with such person on election day. For purposes
288 of this paragraph (e), "temporary physical disability" shall
289 include any qualified elector who is under a physician-imposed
290 quarantine due to COVID-19 during the year 2020 or is caring for a
291 dependent who is under a physician-imposed quarantine due to
292 COVID-19 beginning with the effective date of this act and the
293 same being repealed on December 31, 2020.

294 (f) Any person who is sixty-five (65) years of age or
295 older.

296 (g) Any member of the Mississippi congressional
297 delegation absent from Mississippi on election day, and the spouse
298 and dependents of such member of the congressional delegation.

299 (h) Any qualified elector who will be unable to vote in
300 person because he or she is required to be at work on election day
301 during the times at which the polls will be open.

302 **SECTION 7.** Section 23-15-715, Mississippi Code of 1972, is
303 amended as follows:

304 23-15-715. Any elector desiring an absentee ballot as
305 provided in this subarticle may secure same if:

306 (a) Not more than forty-five (45) days nor later than
307 12:00 noon, or 5:00 p.m. during the year 2020, on the Saturday
308 immediately preceding elections held on Tuesday, the Thursday
309 immediately preceding elections held on Saturday, or the second
310 day immediately preceding the date of elections held on other
311 days, he shall appear in person before the registrar of the county



312 in which he resides, or for municipal elections he shall appear in
313 person before the city clerk of the municipality in which he
314 resides and, when the elector so appears, he shall execute and
315 file an application as provided in Section 23-15-627 and vote by
316 absentee ballot, except that if the ballot has not been printed by
317 forty-five (45) days preceding the election, the elector may
318 appear and file an application anytime before the election. Then
319 the absentee ballot shall be mailed by the circuit clerk to the
320 elector as soon as the ballot has been printed.

321 (b) Within forty-five (45) days next prior to any
322 election, any elector who cannot comply with paragraph (a) of this
323 section by reason of temporarily residing outside the county, or
324 any person who has a temporary or permanent physical disability,
325 persons who are sixty-five (65) years of age or older, or any
326 person who is the parent, spouse or dependent of a temporarily or
327 permanently physically disabled person who is hospitalized outside
328 of his county of residence or more than fifty (50) miles away from
329 his residence and such parent, spouse or dependent will be with
330 such person on election day, may make application for an absentee
331 ballot by mailing the appropriate application to the registrar.
332 Only persons temporarily residing out of the county of their
333 residence, persons having a temporary or permanent physical
334 disability, persons who are sixty-five (65) years of age or older,
335 or any person who is the parent, spouse or dependent of a
336 temporarily or permanently physically disabled person who is



337 hospitalized outside of his county of residence or more than fifty
338 (50) miles away from his residence, and such parent, spouse or
339 dependent will be with such person on election day, may obtain
340 absentee ballots by mail under the provisions of this subsection
341 and as provided by Section 23-15-713. Applications of persons
342 temporarily residing outside the county shall be sworn to and
343 subscribed before an official who is authorized to administer
344 oaths or other official authorized to witness absentee balloting
345 as provided in this chapter, said application to be accompanied by
346 such verifying affidavits as required by this chapter. The
347 applications of persons having a temporary or permanent physical
348 disability shall not be required to be accompanied by an affidavit
349 but shall be witnessed and signed by a person eighteen (18) years
350 of age or older. The registrar shall send to such absent voter a
351 proper absentee voter ballot within twenty-four (24) hours, or as
352 soon thereafter as the ballots are available, containing the names
353 of all candidates who qualify or the proposition to be voted on in
354 such election, and with such ballot there shall be sent an
355 official envelope containing upon it in printed form the recitals
356 and data hereinafter required.

357 (c) Except when the voter has requested a runoff ballot
358 on the initial absentee ballot application, upon request for a
359 runoff ballot pursuant to Section 23-15-719, the registrar shall
360 mail together the absentee ballot application and the absentee
361 ballot to the absent voter for the runoff election.



362 **SECTION 8.** Section 23-15-719, Mississippi Code of 1972, is
363 amended as follows:

364 23-15-719. (1) * * * Except where the registrar has already
365 mailed a ballot with an application, upon receipt of a properly
366 completed application form by an elector qualified to vote
367 absentee as provided in this article, the registrar shall mail the
368 absent voter an absentee ballot within one (1) business day, or as
369 soon as the absentee ballot is prepared and available, containing
370 the names of all the candidates and propositions, if any, to be
371 voted on in the election. The registrar shall include with the
372 absentee ballot an official envelope that complies with the
373 provisions of this article, as well as information to comply with
374 Section 23-15-641(3) related to the status of the elector's
375 ballot. The registrar shall identify the applicant by requiring
376 him to present identification as required by Section 23-15-563,
377 and shall then deliver the ballots to the applicant by mail or to
378 the applicant in the registrar's office. The registrar shall not
379 personally hand deliver ballots to voters * * *. After the
380 applicant has properly marked the ballot and properly folded it,
381 he shall deposit it in the envelope furnished him by the
382 registrar.

383 After * * * the absentee voter has sealed the envelope, he or
384 she shall subscribe and swear to an affidavit and mail the ballot
385 to the address provided on the absentee ballot official envelope.
386 The affidavit shall be in the following form, which shall be



387 printed on the back of the envelope containing the applicant's
388 ballot:

389 "STATE OF MISSISSIPPI
390 COUNTY OF _____

391 I, _____, do solemnly swear that this envelope contains
392 the ballot marked by me indicating my choice of the candidates or
393 propositions to be submitted at the election to be held on the ___
394 day of _____, 2___, and I hereby authorize the registrar to
395 place this envelope in the ballot box on my behalf, and I further
396 authorize the election managers to open this envelope and place my
397 ballot among the other ballots cast before such ballots are
398 counted, and record my name on the poll list as if I were present
399 in person and voted.

400 I further swear that I marked the enclosed ballot in secret.

401 _____
402 (Signature of voter)

403 SWORN TO AND SUBSCRIBED before me, _____, this the ___
404 day of _____, 2___.

405 (Registrar) _____
406 (Registrar) "

407 After the completion of the requirements of this section, the
408 elector shall deliver the envelope containing the ballot to the
409 registrar.

410 (2) If the voter has received assistance in marking his
411 ballot, the person providing the assistance shall complete the



412 following form which shall be printed on the back of the envelope
413 containing the applicant's ballot:

414 "CERTIFICATE OF PERSON PROVIDING VOTER ASSISTANCE

415 (To be completed only if the voter has received assistance in
416 marking the enclosed ballot.) I hereby certify that the
417 above-named voter declared to me that he or she is blind,
418 temporarily or permanently physically disabled, or cannot read or
419 write, and that the voter requested that I assist the voter in
420 marking the enclosed absentee ballot. I hereby certify that the
421 ballot preferences on the enclosed ballot are those communicated
422 by the voter to me, and that I have marked the enclosed ballot in
423 accordance with the voter's instructions.

424 _____

425 Signature of person providing assistance

426 _____

427 Printed name of person providing assistance

428 _____

429 Address of person providing assistance

430 _____

431 Date and time assistance provided

432 _____

433 Family relationship to voter (if any)"

434 (3) The envelope used pursuant to this section shall not
435 contain the form prescribed by Section 23-15-635 and shall have
436 printed on the flap on the back of the envelope in bold print and



437 in a distinguishing color, the following: **"YOUR VOTE WILL BE**
438 **REJECTED AND NOT COUNTED IF THIS ENVELOPE IS NOT SIGNED ACROSS THE**
439 **FLAP OF THIS ENVELOPE BY YOU AND AN ATTESTING WITNESS."**

440 **SECTION 9.** Section 23-15-625, Mississippi Code of 1972, is
441 amended as follows:

442 23-15-625. (1) The registrar shall be responsible for
443 providing applications for absentee voting as provided in this
444 section. At least sixty (60) days * * * before any election in
445 which absentee voting is provided for by law, the registrar shall
446 provide a sufficient number of applications. In the event a
447 special election is called and set at a date which makes it
448 impractical or impossible to prepare applications for absent
449 elector's ballot sixty (60) days * * * before the election, the
450 registrar shall provide applications as soon as practicable after
451 the election is called. The registrar shall fill in the date of
452 the particular election on the application for which the
453 application will be used.

454 (2) The registrar shall be authorized to disburse
455 applications for absentee ballots to any qualified elector within
456 the county where he or she serves. Any person who presents to the
457 registrar an oral or written request for an absentee ballot
458 application for a voter entitled to vote absentee by mail, other
459 than the elector who seeks to vote by absentee ballot, shall, in
460 the presence of the registrar, sign the application and print on
461 the application his or her name and address and the name of the



462 elector for whom the application is being requested in the place
463 provided for on the application for that purpose. However, if for
464 any reason such person is unable to write the information
465 required, then the registrar shall write the information on a
466 printed form which has been prescribed by the Secretary of State.
467 The form shall provide a place for such person to place his or her
468 mark after the form has been filled out by the registrar.

469 (3) It shall be unlawful for any person to solicit absentee
470 ballot applications or absentee ballots for persons staying in any
471 skilled nursing facility as defined in Section 41-7-173 * * *
472 unless the person soliciting the absentee ballot applications or
473 absentee ballots is:

474 (a) A family member of the person staying in the
475 skilled nursing facility; or

476 (b) A person designated by the person for whom the
477 absentee ballot application or absentee ballot is sought, the
478 registrar or the deputy registrar.

479 As used in this subsection, "family member" means a spouse,
480 parent, grandparent, sibling, adult child, grandchild or legal
481 guardian.

482 (4) The registrar in the county wherein a voter is qualified
483 to vote upon receiving by mail the envelope containing the
484 absentee ballots shall keep an accurate list of all persons
485 preparing such ballots * * *. The list shall be kept in a
486 conspicuous place accessible to the public near the entrance



487 to * * * the registrar's office. The registrar shall also furnish
488 to each precinct manager a list of the names of all persons in
489 each respective precinct voting absentee * * * by mail and in
490 person to be posted in a conspicuous place at the polling place
491 for public notice. The application on file with the registrar and
492 the envelopes containing the ballots that voters mailed to the
493 registrar shall be kept by the registrar * * * in his or her
494 office in a secure location. At the time such boxes are delivered
495 to the election commissioners or managers, the registrar shall
496 also turn over a list of all such persons who have voted and whose
497 mailed ballots are in * * * the registrar's office.

498 (5) The registrar shall also be authorized to mail one (1)
499 application to any qualified elector of the county, who is
500 eligible to vote by absentee ballot, for use in a particular
501 election.

502 (6) The registrar shall process all applications for
503 absentee ballots by using the Statewide Election Management
504 System. The registrar shall account for all absentee ballots
505 delivered to and received by mail as well as those who voted
506 absentee in person from qualified voters by processing such
507 ballots using the Statewide Election Management System.

508 **SECTION 10.** Section 23-15-629, Mississippi Code of 1972, is
509 amended as follows:

510 23-15-629. (1) The application for an absentee ballot of a
511 person who is permanently physically disabled shall be accompanied



512 by a statement signed by such person's physician, or nurse
513 practitioner, which statement must show that the person signing
514 the statement is a licensed, practicing medical doctor or nurse
515 practitioner and must indicate that the person applying for the
516 absentee ballot is permanently physically disabled to such a
517 degree that it is difficult for him or her to vote in person.

518 (2) An application accompanied by the statement provided for
519 in subsection (1) of this section shall entitle such permanently
520 physically disabled person to automatically receive an absentee
521 ballot for all elections on a continuing basis without the
522 necessity for reapplication.

523 (3) The registrar of each county shall keep an accurate list
524 of the names and addresses of all persons whose applications for
525 absentee ballot are accompanied by the statement set forth in
526 subsection (1) of this section. Sixty (60) days * * * before each
527 election, the registrar shall deliver such list to the election
528 commissioners * * * who shall examine the list and delete from it
529 the names of all persons listed who are no longer qualified
530 electors of the county. Upon completion of such examination, the
531 election commissioners * * * shall return the list to the
532 registrar by no later than forty-five (45) days * * * before the
533 election.

534 (4) The registrar shall * * * mail a ballot to all persons
535 who are determined by the election commissioners * * * to be



536 qualified electors pursuant to subsection (3) of this section by
537 no later than forty (40) days * * * before the election.

538 **SECTION 11.** Section 23-15-631, Mississippi Code of 1972, is
539 amended as follows:

540 23-15-631. (1) The registrar shall enclose with each
541 ballot * * * mailed to an absent elector separate printed
542 instructions furnished by the registrar containing the following:

543 (a) All absentee voters, excepting those with temporary
544 or permanent physical disabilities or those who are sixty-five
545 (65) years of age or older, who mark their ballots in the county
546 of the residence shall use the registrar of that county as the
547 witness. The absentee voter shall come to the office of the
548 registrar and neither the registrar nor his or her deputy shall be
549 required to go out of the registrar's office to serve as an
550 attesting witness.

551 (b) Upon receipt of the enclosed ballot, you will not
552 mark the ballot except in view or sight of the attesting witness.
553 In the sight or view of the attesting witness, mark the ballot
554 according to instructions.

555 (c) After marking the ballot, fill out and sign the
556 "ELECTOR'S CERTIFICATE" on the back of the envelope so that the
557 signature is across the flap of the envelope to ensure the
558 integrity of the ballot. All absent electors shall have the
559 attesting witness sign the "ATTESTING WITNESS CERTIFICATE" across
560 the flap on the back of the envelope. Place the necessary postage



561 on the envelope and deposit it in the post office or some
562 government receptacle provided for deposit of mail so that the
563 absent elector's ballot * * * will * * * be postmarked on or
564 before the date of the election and received by the registrar no
565 more than five (5) business days after the election.

566 Any notary public, United States postmaster, assistant United
567 States postmaster, United States postal supervisor, clerk in
568 charge of a contract postal station, or other officer having
569 authority to administer an oath or take an acknowledgment may be
570 an attesting witness; provided, however, that in the case of an
571 absent elector who is temporarily or permanently physically
572 disabled, the attesting witness may be any person eighteen (18)
573 years of age or older and such person is not required to have the
574 authority to administer an oath. If a postmaster, assistant
575 postmaster, postal supervisor, or clerk in charge of a contract
576 postal station acts as an attesting witness, his or her signature
577 on the elector's certificate must be authenticated by the
578 cancellation stamp of their respective post offices. If an
579 officer having authority to administer an oath or take an
580 acknowledgement acts as attesting witness, his or her signature on
581 the elector's certificate, together with his or her title and
582 address, but no seal, shall be required. Any affidavits made by
583 an absent elector who is in the Armed Forces may be executed
584 before a commissioned officer, warrant officer, or noncommissioned



585 officer not lower in grade than sergeant rating or any person
586 authorized to administer oaths.

587 (d) When the application accompanies the ballot it
588 shall not be returned in the same envelope as the ballot but shall
589 be returned in a separate preaddressed envelope provided by the
590 registrar.

591 (e) A candidate for public office, or the spouse,
592 parent or child of a candidate for public office, may not be an
593 attesting witness for any absentee ballot upon which the
594 candidate's name appears, unless the voter is related within the
595 first degree to the candidate or the spouse, parent or child of
596 the candidate.

597 (f) Any voter casting an absentee ballot who declares
598 that he or she requires assistance to vote by reason of blindness,
599 temporary or permanent physical disability or inability to read or
600 write, shall be entitled to receive assistance in the marking of
601 his or her absentee ballot and in completing the affidavit on the
602 absentee ballot envelope. The voter may be given assistance by
603 anyone of the voter's choice other than a candidate whose name
604 appears on the absentee ballot being marked, the spouse, parent or
605 child of a candidate whose name appears on the absentee ballot
606 being marked or the voter's employer, an agent of that employer or
607 a union representative; however, a candidate whose name is on the
608 ballot or the spouse, parent or child of such candidate may
609 provide assistance upon request to any voter who is related within



610 the first degree. In order to ensure the integrity of the ballot,
611 any person who provides assistance to an absentee voter shall be
612 required to sign and complete the "Certificate of Person Providing
613 Voter Assistance" on the absentee ballot envelope.

614 (2) The foregoing instructions required to be provided by
615 the registrar to the elector shall also constitute the substantive
616 law pertaining to the handling of absentee ballots by the elector
617 and registrar.

618 (3) The Secretary of State shall prepare instructions on how
619 absent voters may comply with the identification requirements of
620 Section 23-15-563.

621 **SECTION 12.** Section 23-15-635, Mississippi Code of 1972, is
622 amended as follows:

623 23-15-635. (1) The form of the elector's certificate,
624 attesting witness certification and certificate of person
625 providing voter assistance on the back of the envelope used by
626 absentee voters * * * who are not absent voters as defined in
627 Section 23-15-673, shall be as follows:

"ELECTOR'S CERTIFICATE

629 STATE OF _____

630 COUNTY * * * OF _____

631 I, _____, under penalty of perjury do solemnly swear
632 that this envelope contains the ballot marked by me indicating my
633 choice of the candidates or propositions to be submitted at the
634 election to be held on the ___ day of _____, 2____, and I



635 hereby authorize the registrar to place this envelope in the
636 ballot box on my behalf, and I further authorize the election
637 managers to open this envelope and place my ballot among the other
638 ballots cast before such ballots are counted, and record my name
639 on the poll list as if I were present in person and voted.

640 I further swear that I marked the enclosed ballot in secret.
641 **Penalties for vote fraud are up to five (5) years in prison and a**
642 **fine of up to Five Thousand Dollars (\$5,000.00). (Miss. Code.**
643 **Ann. Section 23-15-753.) Penalties for voter intimidation are up**
644 **to one (1) year in jail and a fine of up to One Thousand Dollars**
645 **(\$1,000.00). (Miss. Code. Ann. Section 97-13-37.)**

646 _____
647 (Signature of voter)

648 CERTIFICATE OF ATTESTING WITNESS

649 Under penalty of perjury I affirm that the above named voter
650 personally appeared before me, on this the ___ day of _____,
651 2____, and is known by me to be the person named, and who, after
652 being duly sworn or having affirmed, subscribed the foregoing oath
653 or affirmation. That the voter exhibited to me his or her blank
654 ballot; that the ballot was not marked or voted before the voter
655 exhibited the ballot to me; that the voter was not solicited or
656 advised by me to vote for any candidate, question or issue, and
657 that the voter, after marking his or her ballot, placed it in the
658 envelope, closed and sealed the envelope in my presence, and
659 signed and swore or affirmed the above certificate.



660 _____

661 (Attesting witness) (Address)

662 _____

663 (Official title) (City and State)

CERTIFICATE OF PERSON PROVIDING VOTER ASSISTANCE

664 (To be completed only if the voter has received assistance in

665 marking the enclosed ballot.) I, under penalty of perjury, hereby

666 certify that the above-named voter declared to me that he or she

667 is blind, temporarily or permanently physically disabled, or

668 cannot read or write, and that the voter requested that I assist

669 the voter in marking the enclosed absentee ballot. I hereby

670 certify that the ballot preferences on the enclosed ballot are

671 those communicated by the voter to me, and that I have marked the

672 enclosed ballot in accordance with the voter's instructions.

674 **Penalties for vote fraud are up to five (5) years in prison and a**

675 **fine of up to Five Thousand Dollars (\$5,000.00). (Miss. Code.**

676 **Ann. Section 23-15-753.) Penalties for voter intimidation are up**

677 **to one (1) year in jail and a fine of up to One Thousand Dollars**

678 **(\$1,000.00). (Miss. Code. Ann. Section 97-13-37.)**

679 _____

680 Signature of person providing assistance

681 _____

682 Printed name of person providing assistance

683 _____

684 Address of person providing assistance



685

Date and time assistance provided

687

Family relationship to voter (if any)"

688
689 (2) The envelope * * * shall have printed on the flap on the
690 back of the envelope in bold print and in a distinguishing color,
691 the following: **"YOUR VOTE WILL BE REJECTED AND NOT COUNTED IF**
692 **THIS ENVELOPE IS NOT SIGNED ACROSS THE FLAP OF THIS ENVELOPE BY**
693 **YOU AND AN ATTESTING WITNESS."**

694 **SECTION 13.** Section 23-15-639, Mississippi Code of 1972, is
695 amended as follows:

696 23-15-639. (1) * * * The examination and counting of all
697 absentee ballots shall be conducted as follows:

698 (a) At the * * * opening of the regular balloting and
699 at the * * * opening of the polls, the * * * resolution board
700 established under Section 23-15-523 and trained in the process of
701 canvassing absentee ballots shall first take the envelopes
702 containing the absentee ballots of such electors from the * * *
703 secure location at the circuit clerk's office, and the name,
704 address and precinct inscribed on each envelope shall be announced
705 by the election managers.

706 (b) The signature on the application shall then be
707 compared with the signature on the back of the envelope. If it
708 corresponds and the affidavit, if one is required, is sufficient
709 and the * * * resolution board find that the applicant is a



710 registered and qualified voter or otherwise qualified to
711 vote, * * * the envelope shall then be opened and the ballot
712 removed from the envelope, without its being unfolded, or
713 permitted to be unfolded or examined.

714 (c) Having observed and found the ballot to be regular
715 as far as can be observed from its official endorsement, the * * *
716 resolution board shall deposit it in the ballot box with the other
717 ballots before counting any ballots and enter the voter's name in
718 the receipt book provided for that purpose. * * * All absentee
719 ballots received prior to 7:00 p.m. the day before the election
720 shall be counted in the registrar's office by the resolution board
721 when the polls close and then added to the votes cast in each
722 precinct. All absentee ballots received after 7:00 p.m. the day
723 before the election but not later than the fifth business day
724 after the election shall be processed by the resolution board.

725 * * *

726 (* * *2) The * * * resolution board shall also take such
727 action as may be prescribed by the Secretary of State to ensure
728 compliance with the identification requirements of Section
729 23-15-563.

730 (3) The resolution board shall process the absentee ballots
731 using the procedure provided in subsection (1) of this section.

732 **SECTION 14.** Section 23-15-641, Mississippi Code of 1972, is
733 amended as follows:



734 23-15-641. (1) For all absentee votes received by mail, if
735 an affidavit or the certificate of the officer before whom the
736 affidavit is taken is required and such affidavit or certificate
737 is found to be insufficient, or if it is found that the signatures
738 do not correspond, or that the applicant is not a duly qualified
739 elector in the precinct, or otherwise qualified to vote, or that
740 the ballot envelope is open or has been opened and resealed, or
741 the voter is not eligible to vote absentee * * *, the previously
742 cast vote shall not be allowed. Without opening the voter's
743 envelope the * * * resolution board shall mark across its face
744 "REJECTED", with the reason therefor.

745 (2) For all absentee votes received by mail, if the ballot
746 envelope contains more than one (1) ballot of any kind, the ballot
747 shall not be counted but shall be marked "REJECTED", with the
748 reason therefor, and the registrar shall promptly notify the voter
749 of such rejection. The voter's envelopes and affidavits, and the
750 voter's envelope with its contents unopened, when such vote is
751 rejected, shall be retained and preserved in the same manner as
752 other ballots at the election. Such votes may be challenged in
753 the same manner and for the same reasons that any other vote cast
754 in such election may be challenged.

755 (3) If an affidavit is required and the officials find that
756 the affidavit is insufficient, or if the officials find that the
757 absentee voter is otherwise disqualified to vote, the envelope
758 shall not be opened and a commissioner or executive committee



759 member shall write across the face of the envelope "REJECTED"
760 giving the reason therefor, and the registrar shall promptly
761 notify the voter of such rejection.

762 (4) The ballots marked "REJECTED" shall be placed in a
763 separate envelope in the secure ballot transfer case and delivered
764 to the officials in charge of conducting the election at the
765 central tabulation point of the county.

766 (5) All electors voting absentee shall be provided with
767 written information to inform the person how to ascertain whether
768 his or her ballot was counted and, if rejected, the reason
769 therefor.

770 **SECTION 15.** Section 23-15-647, Mississippi Code of 1972, is
771 amended as follows:

772 23-15-647. The registrar shall keep safely and unopened all
773 official absentee ballots which are received * * * by mail after
774 the applicable cutoff period establishing its validity. Upon
775 receipt of such ballot, the registrar shall write the day and hour
776 of the receipt of the ballot on its envelope. All such absentee
777 ballots returned to the registrar after the cutoff time shall be
778 safely kept unopened by the registrar for the period of time
779 required for the preservation of ballots used in the election, and
780 shall then, without being opened, be destroyed in like manner as
781 the used ballots of the election.

782 **SECTION 16.** Section 23-15-699, Mississippi Code of 1972, is
783 amended as follows:



784 23-15-699. (1) Absent voters who have requested to receive
785 absentee ballots and balloting materials may choose to receive
786 such ballots and balloting materials by mail, facsimile device
787 (FAX) or electronic mail delivery (e-mail). The Secretary of
788 State shall establish procedures that allow an absent voter to
789 make the choice authorized by this subsection.

790 (2) Consistent with the choice that the absent voter
791 exercises pursuant to subsection (1) of this section, the
792 registrar shall, in addition to mail, be authorized to use
793 electronic facsimile (FAX) devices and electronic mail delivery
794 (e-mail) to transmit balloting materials and absentee ballots. If
795 the absent voter does not indicate a preference, delivery of such
796 information shall be by mail.

797 (3) The registrar is authorized to receive by electronic
798 facsimile (FAX) devices and electronic mail delivery (e-mail):

799 (a) Voted absentee ballots;

800 (b) Completed federal postcard applications as
801 described in Section 23-15-677, which shall serve to request
802 absentee ballots or to register to vote or to do both
803 simultaneously; and

804 (c) Completed Federal Write-In-Absentee Ballots as
805 described in Section 23-15-692.

806 (4) Once the registrar has received a voted absentee ballot
807 pursuant to this section, he shall place the ballot in an absentee
808 ballot envelope designated for absentee ballots under this



809 subarticle and fill out the required information on the envelope.
810 The registrar shall then notate on the envelope that the ballot
811 was received under this section and a signature across the flap of
812 the envelope shall not be required. Except as provided in this
813 section, absentee ballots received under this subsection shall be
814 treated in the same manner as other absentee ballots received
815 under this subarticle.

816 (5) Access to voted absentee ballots before they are placed
817 in an absentee ballot envelope shall be strictly limited to
818 election officials who must process the ballot and any election
819 official who views the ballots before they are placed in the
820 envelope shall have the duty to protect the secrecy of the ballot
821 choices; however, the failure of an election official to comply
822 with this subsection shall not invalidate the ballot.

823 (6) Each circuit clerk shall furnish a suitable electronic
824 mail delivery (e-mail) address that can be used to allow absent
825 voters to comply with the provisions of this subarticle. Absentee
826 ballots returned by mail by any absent voter as defined in Section
827 23-15-673 must be received by the registrar by * * * the deadline
828 for receipt of mail absentee ballots provided for in Section
829 23-15-637.

830 **SECTION 17.** Section 23-15-721, Mississippi Code of 1972, is
831 amended as follows:

832 23-15-721. (1) Absentee ballots requested under the
833 provisions of Section 23-15-715 for electors temporarily residing



834 outside the county * * * of residence shall be mailed to the
835 elector's address outside of the county in which he or she is
836 registered, and such electors shall appear before any official
837 authorized to administer oaths or other official authorized to
838 witness absentee balloting as provided in this * * * article. The
839 elector shall exhibit to such official his or her absentee ballot
840 unmarked and thereupon proceed in secret to fill in * * * the
841 ballot. After the elector has properly marked the ballot and
842 properly folded it, he or she shall deposit it in the envelope
843 furnished him or her. After * * * the elector has sealed the
844 envelope he or she shall deliver it to the official before whom he
845 or she is appearing and shall subscribe and swear to the elector's
846 certificate provided for in Section 23-15-635, which affidavit
847 shall be printed on the back of the envelope as provided for in
848 Section 23-15-635 containing the elector's ballot.

849 (2) Electors who are temporarily or permanently physically
850 disabled shall sign the elector's certificate and the certificate
851 of attesting witness shall be signed by any person eighteen (18)
852 years of age or older.

853 (3) After the completion of the requirements of this
854 section, the elector shall mail the envelope containing the ballot
855 to the registrar in the county wherein * * * the elector is
856 qualified to vote. * * * The ballots must be * * * postmarked by
857 the date of the election and received by the registrar no more
858 than five (5) business days after the election to be counted; any



859 received after such time shall be handled as provided in Section
860 23-15-647 and shall not be counted.

861 **SECTION 18.** Section 23-15-731, Mississippi Code of 1972, is
862 amended as follows:

863 23-15-731. Any presidential absentee ballots received in the
864 mail by the registrar * * * after the delivery of ballot boxes to
865 the election managers and * * * before the deadline for receipt of
866 absentee ballots provided for in Section 23-15-637 shall be
867 retained by the registrar and shall be delivered, together with
868 the applications of the qualified absentee elector to an election
869 official designated to receive them. The registrar shall receive
870 a receipt from the designated election official for all such
871 ballots and applications delivered. The designated election
872 officials shall, upon the canvassing of the returns, count such
873 ballots as if delivered to the proper precincts and such ballots
874 shall be considered valid for all purposes as if they had been
875 actually deposited in the proper precinct ballot boxes. The
876 appropriate election officials shall examine the affidavit of each
877 envelope. If the officials are satisfied that the affidavit is
878 sufficient and that the absentee voter is otherwise qualified to
879 vote, an official shall announce the name of the voter and shall
880 give any person present an opportunity to challenge in like manner
881 and for the same cause as the voter could have been challenged had
882 he or she presented himself or herself personally in such precinct
883 to vote. The ineligibility of the voter to vote by absentee



884 ballot shall be a ground for a challenge. The officials shall
885 consider any absentee voter challenged when a person has
886 previously filed a written challenge of such voter's right to
887 vote. The election officials shall handle any such challenge in
888 the same manner as other challenged ballots are handled, and if
889 the challenge is not affirmed, the officials shall then open the
890 envelope. The officials shall then open the envelope in such
891 manner as not to destroy the affidavit printed thereon and shall
892 deposit the ballot marked "OFFICIAL ABSENTEE BALLOT," in a ballot
893 box reserved for absentee ballots. The commissioners shall
894 endorse on their pollbooks a proper notation to indicate that the
895 absentee voter has voted in such election by absentee ballot.

896 **SECTION 19.** Section 23-15-733, Mississippi Code of 1972, is
897 amended as follows:

898 23-15-733. The registrar shall keep safely and unopened all
899 official presidential absentee ballots which are received
900 subsequent to the * * * deadline for receipt of mail absentee
901 ballots provided for in Section 23-15-637. Upon receipt of such
902 ballot, the registrar shall write the day and hour of the receipt
903 of the ballot on its envelope. All such absentee ballots returned
904 to the registrar shall be safely kept unopened by the registrar
905 for the period of time required for the preservation of ballots
906 used in the election, and shall then, without being opened, be
907 destroyed in like manner as the used ballots of the election.



908 Such information shall be processed through the Statewide Election
909 Management System.

910 **SECTION 20.** Section 23-15-735, Mississippi Code of 1972, is
911 amended as follows:

912 23-15-735. Except for ballots voted in person at the office
913 of the registrar, absentee ballots shall not be delivered in
914 person to an absentee voter or to any other person * * *.

915 **SECTION 21.** This act shall take effect and be in force from
916 and after its passage.



IN THE SUPREME COURT OF MISSISSIPPI

NO. 2020-CA-00983-SCT

***MICHAEL D. WATSON, JR., IN HIS OFFICIAL
CAPACITY AS THE MISSISSIPPI SECRETARY
OF STATE AND BECKY BOYD, IN HER
OFFICIAL CAPACITY AS RANKIN COUNTY
CIRCUIT CLERK***

v.

***HARRIETT OPPENHEIM, DAVE MILLER, JOY
PARIKH, MARY HARWELL, MARTIN CLAPTON,
AND MICHELLE COLON***

DATE OF JUDGMENT:	09/02/2020
TRIAL JUDGE:	HON. DENISE OWENS
TRIAL COURT ATTORNEYS:	ROBERT B. McDUFF REILLY MORSE LANDON PAUL THAMES JOSHUA FIYENN TOM JUSTIN L. MATHENY DOUGLAS T. MIRACLE TONY R. GAYLOR THERESA J. LEE JONATHAN S. TOPAZ KRISSEY CASEY NOBILE KRISTI HASKINS JOHNSON TONY R. GAYLOR JACOB ARTHUR BRADLEY WILLIAM 'TREY' JONES, III
COURT FROM WHICH APPEALED:	HINDS COUNTY CHANCERY COURT
ATTORNEYS FOR APPELLANTS:	JUSTIN L. MATHENY WILLIAM 'TREY' JONES, III LYNN FITCH KRISTI HASKINS JOHNSON DOUGLAS T. MIRACLE KRISSEY CASEY NOBILE JACOB ARTHUR BRADLEY

EXHIBIT F TO AFFIDAVIT

ATTORNEYS FOR APPELLEES: ROBERT B. McDUFF
THERESA J. LEE
REILLY MORSE
LANDON PAUL THAMES
JOSHUA FIYENN TOM
JONATHAN S. TOPAZ
DALE E. HO

NATURE OF THE CASE: CIVIL - OTHER
DISPOSITION: ON DIRECT APPEAL: REVERSED. ON
CROSS-APPEAL: AFFIRMED - 09/18/2020

MOTION FOR REHEARING FILED:
MANDATE ISSUED:

EN BANC.

BEAM, JUSTICE, FOR THE COURT:

¶1. Six Plaintiffs brought suit in the Hinds County Chancery Court on August 26, 2020, through an amended complaint,¹ seeking a declaratory judgment regarding the meaning of the absentee-ballot provision under Mississippi law and its most recent addition in the context of the COVID-19 pandemic. Their claims deal exclusively with Mississippi Code Section 23-15-713(d), which allows the following to vote by absentee ballot:

Any person who has a temporary or permanent physical disability and who, because of such disability, is unable to vote in person without substantial hardship to himself, herself or others, or whose attendance at the voting place could reasonably cause danger to himself, herself or others.

Miss. Code Ann. § 23-15-713(d) (Rev. 2018). The Legislature added the following through House Bill 1521, which went into effect on July 8, 2020:

For purposes of this paragraph (d), “temporary physical disability” shall include any qualified elector who is under a physician-imposed quarantine due to COVID-19 during the year 2020 or is caring for a dependent who is under a physician-imposed quarantine due to COVID-19 beginning with the effective

¹ Initially, seven Plaintiffs had filed a complaint on August 11, 2020.

date of this act and the same being repealed on December 31, 2020.

H.B. 1521, Reg. Sess., 2020 Miss. Laws ch. ___, § 6.

¶2. The Plaintiffs requested that the chancery court grant the following relief:

1. Declare that [Section] 25-15-713(d) permits any voter with pre-existing conditions that cause COVID-19 to present a greater risk of severe illness or death to vote by absentee ballot during the COVID-19 pandemic.
2. Declare that [Section] 25-15-713(d) permits any voter to vote absentee if he or she wishes to avoid voting in-person at a polling place due to guidance from the [Mississippi Department of Health (MDH)], the [Centers for Disease Control and Prevention (CDC)], or other physicians or public health authorities to avoid unnecessary public gatherings during the COVID-19 pandemic or if he or she is caring or supporting a voter.
3. Issue a preliminary and permanent injunction that orders Defendant Secretary of State to instruct county elections officials about the application of [Section] 24-15-713(d) as declared by the [chancery court] and orders Defendants to take steps to educate the public about their right to vote by absentee ballot under [Section] 24-15-713(d) as declared by [the chancery court] during the COVID-19 pandemic.

¶3. The chancery court issued its order on September 2, 2020. The chancery court granted the Plaintiffs' first request, ruling as follows:

[T]he relief requested . . . , as it pertains to the issue of . . . whether [Section] 23-15-713(d) permits any voter with pre-existing conditions that cause COVID-19 to present a greater risk of severe illness or death to vote by absentee ballot during the COVID-19 pandemic – is well taken and the relief sought is hereby GRANTED to the extent that such pre-existing “physical . . . condition impairs, interferes with, or limits a person’s ability to engage in certain tasks or actions or participate in typical daily activities and interactions” or an “impaired function or ability” that interferes thereof.²

² We note that quoted language appears to have come from Merriam-Webster’s definition of “disability.” *See Disability*, Merriam-Webster, <https://www.merriam-webster.com/dictionary/disability> (last visited Sept. 9, 2020).

¶4. The chancery court denied the Plaintiffs’ second request, finding that Section 24-15-713(d) does not permit any voter to vote absentee if he or she wishes to avoid voting in-person at a polling place due to guidance from the MDH, the CDC, or public-health authorities to avoid unnecessary public gatherings during the COVID-19 pandemic. The chancery court declared, however, that “a voter will be allowed to vote absentee if he or she or any dependent has consulted with a physician who recommends, because of that individual’s physical disability or that of their dependent, not attending any public gathering because of the possibility of contracting COVID-19[.]”

¶5. The chancery court denied the Plaintiffs’ third request for injunctive relief. The chancery court also denied the Plaintiffs’ requests for attorneys’ fees and costs, which the Plaintiffs do not cross-appeal.

¶6. On September 3, 2020, Secretary of State Michael D. Watson, Jr., appealed the chancery court’s September 2 order and filed an emergency motion for expedited consideration due to upcoming election deadlines. On September 4, 2020, the Plaintiffs filed a notice of cross-appeal.³ This Court entered an order granting the motion for expedited consideration and entered a briefing schedule.⁴

¶7. The Secretary of State argues that the plain terms of Section 24-15-713(d) require that in order to vote absentee, a voter must have a “physical disability,” and “because of” that

³ Rankin County Circuit Clerk Becky Boyd also filed a notice of appeal on September 4. Under Rule 28(j) of the Mississippi Rules of Appellate Procedure, Boyd joins in the Secretary of State’s appeal and briefs.

⁴ See Order, *Watson v. Oppenheim*, No. 2020-TS-00983 (Miss. Sept. 4, 2020).

disability, voting in-person “could reasonably cause danger” to the voter or others. The Secretary of State maintains that any voter who has a preexisting condition that is not itself a “physical disability” cannot satisfy the statute, whether or not the voter believes that COVID-19 might make voting in person dangerous. The Secretary of State contends that the chancery court erred to the extent its order suggested that Section 23-15-713(d) applies to voters otherwise.

¶8. The Secretary of State also claims that the Plaintiffs misread the Legislature’s recent addition to Section 23-15-713(d) and that the chancery court partially accepted their interpretation in error. The Secretary of State contends that the chancery court correctly disagreed with the Plaintiffs’ broad reading of the phrase “under a physician-imposed quarantine” to include anyone who is following general public-health guidance to avoid public gatherings. But the chancery court, according to the Secretary of State, erred when it suggested that a physician’s “recommendation” to quarantine can be a “physician-imposed quarantine.”

¶9. The Secretary of State maintains that according to the plain meaning of Section 23-15-713(d), a voter is only “under a physician-imposed quarantine” if the voter has been ordered to quarantine by an authorized physician. The Secretary of State contends that an authorized physician includes a voter’s personal physician who has authority by virtue of a physician-patient relationship. The Secretary of State further contends that the state health officer, or other physician authorized by law, may also order voters to quarantine.⁵ But a

⁵ The Secretary of State points to State Health Officer Dr. Thomas Dobbs’s recent order that persons who have contracted COVID-19 quarantine under penalty of law, a

recommendation or generalized public-health guidance, which does not actually impose a quarantine on anyone or compel anyone to do anything, does not suffice under the plain terms of the statute.

¶10. In their cross-appeal, the Plaintiffs contend that the phrase “physician-imposed quarantine” encompasses both mandatory and nonmandatory directives from the state health officer to avoid community events just as it encompasses similar communications from voters’ own personal physicians, whose directives can only be nonmandatory since they have no authority to issue mandatory orders.

DISCUSSION OF LAW

¶11. The matter before us presents only a question of law concerning the chancery court’s interpretation of Section 23-15-713(d) in the Plaintiffs’ suit for declaratory relief. As with all questions of law, we review the chancery court’s decision de novo. *Edwards v. Stevens*, 963 So. 2d 1108, 1109 (Miss. 2007) (citing *Ladner v. Necaize*, 771 So. 2d 353, 355 (Miss. 2000)).

¶12. In construing any statute, the function of our courts “is not to decide what a statute should provide, but to determine what it does provide.” *Smith v. Webster*, 233 So. 3d 242, 247 (Miss. 2017) (quoting *Lawson v. Honeywell Int’l, Inc.*, 75 So. 3d 1024, 1027 (Miss. 2011)). “Court[s] must not broaden or restrict a legislative act.” *Lawson*, 75 So. 3d at 1027 (citing *Barbour v. State ex rel. Hood*, 974 So. 2d 232, 240 (Miss. 2008)). If the statute’s language is clear and unambiguous, we apply its plain meaning and refrain from using

“physician-imposed quarantine” for purposes of Section 23-15-713(d).

principles of statutory construction. *Id.* at 1027. “Mississippi law mandates that ‘all words and phrases contained in the statutes are used according to their common and ordinary meaning’” *Id.* at 1028 (quoting Miss. Code Ann. § 1-3-65 (Rev. 2005)). When a popular word is used that contains no statutory definition, it must be accepted in its popular sense. *Lambert v. Ogden*, 423 So. 2d 1319, 1321 (Miss. 1982). Absent a statutory definition of a term, our courts may properly consider dictionary definitions “to ascertain the meaning of a word in its common or popular sense.” *Lawson*, 75 So. 3d at 1028.

¶13. We find that the chancery court’s order erred to the extent it declared that Section 25-15-713(d) “permits any voter with pre-existing conditions that cause COVID-19 to present a greater risk of severe illness or death to vote by absentee ballot during the COVID-19 pandemic.” Having a preexisting condition that puts a voter at a higher risk does not automatically create a temporary disability for absentee-voting purposes.

¶14. The Legislature addressed the COVID-19 pandemic and amended Section 23-15-713(d) on July 8, 2020, to provide that, “‘temporary physical disability’ shall include any qualified elector who is under a physician-imposed quarantine due to COVID-19 during the year 2020 or is caring for a dependent who is under a physician-imposed quarantine due to COVID-19” H.B. 1521, Reg. Sess., 2020 Miss. Laws ch. __, § 6.

¶15. We find that the plain meaning of “physician-imposed quarantine” requires a directive issued by a duly-authorized physician that orders a voter to quarantine, not mere “guidance” or a “recommendation.” The term “quarantine” for purposes of Section 23-15-713(d) means “a restraint upon the activities . . . of persons . . . designed to prevent the spread of disease”

or “a state of enforced isolation.” *Quarantine*, Merriam-Webster, <https://www.merriam-webster.com/dictionary/quarantine> (last visited Sept. 9, 2020). The term “impose” means “to establish or apply by authority” or “to establish or bring about as if by force.” *Impose*, Merriam-Webster, <https://www.merriam-webster.com/dictionary/impose> (last visited Sept. 9, 2020).

¶16. Had the Legislature intended to allow a voter to vote absentee based on a physician’s recommendation, it would have provided so accordingly with plain language. The Legislature did not do so. Instead, it promulgated a straightforward term that bestows certainty with regard to its intent behind the language added to Section 23-15-713(d) in July. And we are not permitted to add to or take from what the Legislature has plainly stated. *See Lawson*, 75 So. 3d at 1030 (“This Court ‘cannot . . . add to the plain meaning of the statute or presume that the legislature failed to state something other than what was plainly stated.’” (alteration in original) (quoting *His Way Homes, Inc. v. Miss. Gaming Comm’n*, 733 So. 2d 764, 769 (Miss. 1999))).

¶17. In turn, we reject the Plaintiffs’ cross-appeal that “physician-imposed quarantine” encompasses both mandatory and nonmandatory directives from the state health officer. And we do so for the same reason we find that the Legislature did not intend to allow a voter to vote absentee based simply on a physician’s recommendation. Had the Legislature intended this meaning, it would have used language other than “physician-imposed quarantine.” The Plaintiffs’ claim on appeal is without merit.

¶18. Finally, the chancery court’s remarks concerning the circuit clerk’s responsibilities

with regard to absentee ballots was not an issue properly raised and properly before the chancery court. To prevent any possible misunderstandings on this matter, which we are certain the chancery court did not intend, we must reiterate what this Court has said with regard to absentee ballots.

¶19. “This Court requires strict compliance with the statutes concerning absentee ballots.” *Lewis v. Griffith*, 664 So. 2d 177, 185 (Miss. 1995) (citing *Stringer v. Lucas*, 608 So. 2d 1351, 1361 (Miss. 1992)). “[A]s opposed to voting at the polls, in a public setting where the integrity of the election process can be ensured, absentee voting takes place in a private setting where the opportunity for fraud is greater.” *Thompson v. Jones*, 17 So. 3d 524, 527 (Miss. 2008) (quoting *Campbell v. Whittington*, 733 So. 2d 820, 827 (Miss. 1999)). Thus, “[i]t is imperative that the appropriate elected officials strictly adhere to the statutes concerning absentee ballots.” *Straughter v. Collins*, 819 So. 2d 1244, 1252 (Miss. 2002) (quoting *Stringer*, 608 So. 2d at 1361).

¶20. As the Secretary of State correctly states in his brief, voters are required to make a good-faith determination that they qualify before executing their absentee forms. Local officials are likewise obligated to act in good faith when ensuring that only authorized voters apply for and cast absentee ballots in the manner prescribed by law.

CONCLUSION

¶21. Since the issues have been fully briefed and because of the impending absentee-ballot deadlines, no motion for rehearing will be allowed, and the Clerk of this Court is directed to issue this Court’s mandate immediately.

¶22. (1) The chancery court erred to the extent that its order declares that Section 25-15-713(d) permits any voter with preexisting conditions that cause COVID-19 to present a greater risk of severe illness or death to vote by absentee ballot during the COVID-19 pandemic. (2) The chancery court erred to the extent that its order allows a “recommended” quarantine to qualify as a “physician-imposed quarantine.” Accordingly, we reverse those parts of the chancery court’s order.

¶23. We affirm the chancery court’s denial of the Plaintiffs’ request for a declaration that Section 25-15-713(d) “permits any voter to vote absentee if he or she wishes to avoid voting in-person at a polling place due to guidance from the MDH, the CDC, or other physicians or public health authorities to avoid unnecessary public gatherings during the COVID-19 pandemic.”

¶24. **ON DIRECT APPEAL: REVERSED. ON CROSS-APPEAL: AFFIRMED.**

RANDOLPH, C.J., MAXWELL, CHAMBERLIN AND ISHEE, JJ., CONCUR. KING, P.J., CONCURS IN PART AND DISSENTS IN PART WITH SEPARATE WRITTEN OPINION JOINED BY KITCHENS, P.J. COLEMAN AND GRIFFIS, JJ., NOT PARTICIPATING.

KING, PRESIDING JUSTICE, CONCURRING IN PART AND DISSENTING IN PART:

¶25. The majority reverses the chancery court’s order “to the extent” it errs on the issue of which voters may cast an absentee ballot under the physical disability qualifier. Maj. Op. ¶¶ 7, 13. Yet, the chancery court did not err to any extent on this issue. It held that voters with a physical disability that causes COVID-19 to present a greater risk of severe illness or death may vote by absentee ballot. The Secretary of State specifically agrees that this holding is

correct. And yet the Secretary of State appeals, arguing that “to the extent” the chancery court made a broader holding than it did, this Court should reverse the chancery court. But in so arguing, the Secretary of State, and now this Court, read a broader “extent” into the chancery court’s order that simply does not exist. Because the Secretary of State agrees with the portion of the chancery court’s order that does exist, he essentially appeals nothing. As such, this Court need not and should not address this portion of the chancery court’s order or the appeal.

¶26. The Secretary of State admits that the four plaintiffs with preexisting conditions proved that those conditions constituted a “physical disability” for the purposes of Mississippi Code Section 23-15-713(d) (Rev. 2018), *amended by* H.B. 1521, Reg. Sess., 2020 Miss. Laws ch. ___, § 6. The Secretary of State then requests that this Court “confirm that a voter’s ‘underlying condition’ must itself constitute a ‘physical disability’ to qualify under Section 23-15-713(d)’s absentee excuse.” But that is exactly what the chancery court held: that to qualify for an absentee ballot, a voter’s underlying condition must constitute a physical disability. The Secretary of State’s appeal is essentially smoke and mirrors: it asks this Court to reverse the chancery court’s ruling and to render the same holding as did the chancery court. This Court injudiciously takes the bait.

¶27. The exact language of the order granting the plaintiffs’ request states:

whether Mississippi Code § 23-15-713(d) permits any voter with pre-existing conditions that cause COVID-19 to present a greater risk of severe illness or death to vote by absentee ballot during the COVID-19 pandemic – is well-taken and the relief sought is hereby GRANTED *to the extent that* such pre-existing “physical . . . condition impairs, interferes with, or limits a person’s ability to engage in certain tasks or actions or participate in typical daily

activities and interactions” or an “impaired function or ability” that interferes thereof[.]

(Emphasis added.) The Secretary of State and the plaintiffs agree that the quoted language in the holding is the dictionary definition of “disability” that should be used to define that statutory term. The chancery court very clearly qualified that any preexisting conditions that cause COVID-19 to present a greater risk of severe illness or death must qualify as a “physical disability” in order to for such preexisting condition to then qualify the voter for an absentee ballot. The chancery court did so in a single sentence to ensure the clarity of the qualification in its holding. This Court quotes only a portion of that single sentence out of context in order to find that it erred. Maj. Op. ¶ 13 (“We find that the chancery court’s order erred to the extent it declared that Section 23-15-713(d) ‘permits any voter with pre-existing conditions that cause COVID-19 to present a greater risk of severe illness or death to vote by absentee ballot during the COVID-19 pandemic.’”). Yet, the chancery court holds that to no extent; it held that only voters with preexisting conditions that constitute physical disabilities would qualify for an absentee ballot. The Secretary of State’s appeal and this Court’s response reversing the trial court’s order appear to be merely a politicized way of de-emphasizing the explicit statutory language that allows voters with a physical disability that would render in-person voting unreasonably dangerous for the voter to attend the voting place to vote via absentee ballot.

¶28. I consequently dissent to the portion of the majority that addresses this issue. The chancery court was clear in its holding that only preexisting conditions rendering COVID-19 riskier and that also constitute physical disabilities qualify a voter to vote by absentee ballot.

The Secretary of State was clear that he agrees with this position; yet, he inexplicably twisted the chancery court's clear order in an attempt to render it much broader than it actually is. This Court enabled the manipulation of the chancery court's order, and, unlike the Secretary of State, goes even further in its failure to clarify that those with a preexisting condition that constitutes a physical disability qualify for an absentee ballot. This Court should simply affirm the chancery court's order and leave its holding in place: a voter with preexisting conditions that cause COVID-19 to present a greater risk of severe illness or death qualifies to vote by absentee ballot during the COVID-19 pandemic if, and only if, such preexisting conditions constitute a physical disability.

KITCHENS, P.J., JOINS THIS OPINION.

Mississippi Secretary of State

125 South Congress St., P. O. Box 136, Jackson, MS 39205-0136

ADMINISTRATIVE PROCEDURES NOTICE FILING

AGENCY NAME Secretary of State		CONTACT PERSON Hawley Robertson	TELEPHONE NUMBER (601) 359-6360	
ADDRESS 401 Mississippi St.		CITY Jackson	STATE MS	ZIP 39205
EMAIL Hawley.Robertson@sos.ms.gov	SUBMIT DATE 10/5/2020	Name or number of rule(s): 1 Miss Admin Code, Part 17 Chapters 1 - 4, Rule 1.1 - 4.2		

Short explanation of rule/amendment/repeal and reason(s) for proposing rule/amendment/repeal: Creation of rules requiring absentee ballots remain in the registrar's office and providing for the counting of said ballots. The rules have been amended since the original notice to include rules for "curing" certain specified deficiencies in a voter's absentee ballot. Under Miss. Code Ann. §25-43-3.113(2)(b)(iv), these rules will be effective on November 3rd, 2020, before the 30th day due to the fact that an earlier effective date is necessary because of imminent peril to the public health, safety or welfare.

Specific legal authority authorizing the promulgation of rule: 23-15-637(3)

List all rules repealed, amended, or suspended by the proposed rule:

ORAL PROCEEDING:

- An oral proceeding is scheduled for this rule on Date: _____ Time: _____ Place: _____
- Presently, an oral proceeding is not scheduled on this rule.

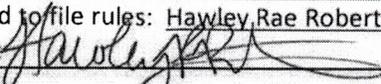
If an oral proceeding is not scheduled, an oral proceeding must be held if a written request for an oral proceeding is submitted by a political subdivision, an agency or ten (10) or more persons. The written request should be submitted to the agency contact person at the above address within twenty (20) days after the filing of this notice of proposed rule adoption and should include the name, address, email address, and telephone number of the person(s) making the request; and, if you are an agent or attorney, the name, address, email address, and telephone number of the party or parties you represent. At any time within the twenty-five (25) day public comment period, written submissions including arguments, data, and views on the proposed rule/amendment/repeal may be submitted to the filing agency.

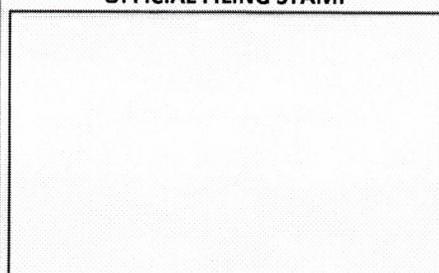
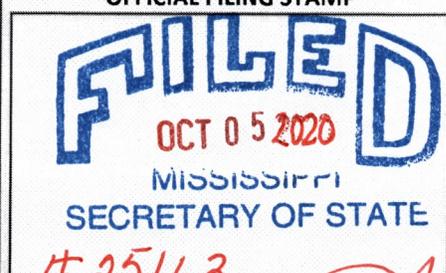
ECONOMIC IMPACT STATEMENT:

- Economic impact statement not required for this rule. Concise summary of economic impact statement attached.

TEMPORARY RULES	PROPOSED ACTION ON RULES	FINAL ACTION ON RULES
<input type="checkbox"/> Original filing <input type="checkbox"/> Renewal of effectiveness To be in effect in _____ days Effective date: <input type="checkbox"/> Immediately upon filing <input type="checkbox"/> Other (specify): _____	Action proposed: <input type="checkbox"/> New rule(s) <input type="checkbox"/> Amendment to existing rule(s) <input type="checkbox"/> Repeal of existing rule(s) <input type="checkbox"/> Adoption by reference Proposed final effective date: <input type="checkbox"/> 30 days after filing <input type="checkbox"/> Other (specify): _____	Date Proposed Rule Filed: 9/9/2020 Action taken: <input type="checkbox"/> Adopted with no changes in text <input checked="" type="checkbox"/> Adopted with changes <input type="checkbox"/> Adopted by reference <input type="checkbox"/> Withdrawn <input type="checkbox"/> Repeal adopted as proposed Effective date: <input type="checkbox"/> 30 days after filing <input checked="" type="checkbox"/> Other (specify): November 3 rd , 2020

Printed name and Title of person authorized to file rules: Hawley Rae Robertson, Assistant Secretary of State

Signature of person authorized to file rules: 

OFFICIAL FILING STAMP 	DO NOT WRITE BELOW THIS LINE OFFICIAL FILING STAMP 	OFFICIAL FILING STAMP 
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Accepted for filing by	Accepted for filing by	Accepted for filing by
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The entire text of the Proposed Rule including the text of any rule being amended or changed is attached.

Title 1: Secretary of State

Part Number 17 – Absentee Voting

Part 17 Chapter 1: Definitions

Rule 1.1 *Definitions*. For the purposes of these rules, the below terms mean the following:

- A. “Absent Voter” means a voter who has submitted a valid absentee ballot application under Miss. Code Ann. Section 23-15-627 and is authorized to cast an absentee ballot.
- B. “Absentee Ballot” means a ballot provided to a voter, prior to election day, who has submitted an absentee ballot application pursuant to Miss. Code Ann. Section 23-15-627 and Section 23-15-715.
- C. “Official in charge of the election” means either a county election commissioner, county party executive committee member, or circuit clerk for county elections, and municipal election commissioner, municipal party executive committee member, or municipal clerk for municipal election, who is/are responsible for the conducting election within their individual jurisdictions and type of election.
- D. “Poll Manager” means an election official appointed by the local election officials in charge of the election, pursuant to applicable laws, to operate the polling place and aid in conducting an election by performing duties prescribed by applicable law.
- E. “Polling Place” means a location, designated by the county board of supervisors for each county or the local governing authority for each municipality, at which voters in the district, to which the precinct is assigned, may appear and cast their ballot.
- F. “Registrar” means an official appointed by the State Board of Election Commissioners pursuant to Miss. Code Ann. Section 23-15-223. The Registrar is the clerk of the county, unless the State Board of Election Commissioners finds the circuit clerk to be an improper person to register voters. For municipal elections, the registrar is the municipal clerk.
- G. “Resolution Board” means an group of individuals consisting of an odd number of not less than three registered voters of the county, or municipality for municipal elections, appointed by the officials in charge of the election to process absentee ballots, review blank, overvoted, undervoted, and damaged ballots, and to transfer non-scannable ballots to scannable ballots pursuant to Miss. Code Ann. § 23-15-523.
- H. “Statewide Elections Management System” or “SEMS” means the master voter roll for the State of Mississippi.

Source: *Miss. Code Ann.* §§ 23-15-637(3); 23-15-227(6).

Part 17 Chapter 2: Voted Absentee Ballot is Final Vote

Rule 2.1 *Absentee Ballot Cast*. For the purposes of this Chapter, an absentee ballot is the final vote of a voter when, during absentee ballot processing by the Resolution Board, the ballot is marked accepted. A rejected ballot is not a final vote, and should a ballot be rejected or a mailed absentee ballot not timely received, and that voter cast an affidavit ballot in the precinct on

election day, the affidavit ballot may be counted if found legal. An affidavit ballot cast by a voter whose absentee ballot was accepted by the Resolution Board should be rejected, as the voter had already cast his/her final vote.

Source: *Miss. Code Ann.* § 23-15-637.

Rule 2.2 *In-Person Absentee Ballots.* When an absent voter casts an absentee ballot in-person at the registrar's office, and the ballot is deposited by the voter into a secure ballot box, the absent voter may not cast a regular ballot on election day for the same election. If an absent elector, after having cast an absentee ballot, appears at the polling place on election day and seeks to cast a regular ballot, the voter must be informed that he/she is not entitled to cast a regular ballot, but may cast an affidavit ballot. In the process of providing an absentee ballot, the registrar will use either SEMS to document the request, issuance, and receipt of the ballot, or mark directly on the pollbook to indicate the absent voter has voted absentee by printing "VOTED AB" in the pollbook beside the voter's name in the Election Date/Write Voted column. In canvassing the election, the officials in charge of the election must ascertain whether the absentee voter's absentee ballot was accepted by the Resolution Board, and if accepted, must reject the affidavit ballot cast by the elector. If the absentee ballot was rejected by the Resolution Board, the officials in charge of the election may count the affidavit ballot if it is determined to be legal.

Source: *Miss. Code Ann.* § 23-15-637(3).

Rule 2.3 *Absentee Ballot by mail.*

(a) When a registrar mails an absentee ballot to an absent voter, SEMS will be used to document the request and issuance of the ballot. In the process of providing an absentee ballot, the registrar will use SEMS to produce pollbooks, or mark directly on the pollbook, to indicate the absent voter has been mailed an absentee ballot or absentee ballot has been received by the registrar by printing "VOTED AB" in the pollbook beside the voter's name in the Election Date/Write Voted column. If an absent elector appears at the polling place on election day, after having been mailed an absentee ballot or returned an absentee ballot and seeks to cast a regular ballot, the voter must be informed that he/she is not entitled to cast a regular ballot, but the voter may cast an affidavit ballot. The absentee ballot, upon receipt by the registrar, processed as received in SEMS and deposited into a secure ballot box, shall be final, if accepted by the Resolution Board.

(b) In canvassing the election, the officials in charge of the election shall check the Absentee Ballot Received Report (BP-001 from SEMS) and SEMS to see whether an absentee ballot was received by the registrar, and also check to see whether the Resolution Board accepted the absentee ballot. If the absent voter's absentee ballot has been received within five (5) business days of the election and accepted by the Resolution Board, the officials in charge of the election shall reject the absent voter's affidavit ballot. If the absent voter's absentee ballot has not been received within five (5) business days after the election, or was rejected by the Resolution Board, the officials in charge of the election may accept the affidavit ballot if determined to be legal.

Source: *Miss. Code Ann.* § 23-15-637(3).

Part 17 Chapter 3: Counting Absentee Ballots

Rule 3.1 *Public Notice of Meeting of Resolution Board to Process Absentee Ballots.* Public notice of the meeting of the Resolution Board must be posted at least five (5) business days prior to the election at the office of the registrar (courthouse for county elections and municipal office building for municipal elections), at the meeting place of the election commission, on the wall of each polling place as a precinct sign on Election Day, and any other place deemed appropriate by the officials in charge of the election. If the county has a website or official social media pages, then notice shall be provided on the website and social media pages as well. The public notice must include the time, location, and purpose of the Resolution Board's meeting. All meetings of the Resolution Board shall be open to the public.

Rule 3.2 *Counting Absentee Ballots.*

(a) At a time determined by the officials in charge of the election, but not before the opening of the polls, the Resolution Board, established under Section 23-15-523, shall meet to process absentee ballots.

(b) The Resolution Board shall first break the seal on the ballot box containing the absentee ballot envelopes and absentee ballot applications, and remove the applications and envelopes containing the absentee ballots of such electors from the ballot box.

(c) The Resolution Board shall:

- 1) Announce the name, address, and precinct as shown on each absentee ballot application. (Miss. Code Ann. § 23-15-639(1)(a)).
- 2) Check for the original seal of the Circuit Clerk and original initials of the Circuit Clerk or deputy circuit clerk on the absentee ballot application.
 - a) If the seal or initials are not present, mark the absentee ballot envelope "REJECTED" and write the reason for the rejection on the envelope.
- 3) Ensure the absentee ballot application is signed by the voter.
 - a) If the application is not signed by the voter, mark the envelope "REJECTED" and write the reason for the rejection on the absentee ballot envelope.
 - b) EXCEPTION: Military and overseas voters ("UOCAVA") may use the Federal Post Card Application ("FPCA") to request an absentee ballot. The FPCA may be electronically signed by the voter, meaning the voter's name may be typewritten, instead of signed. A military or overseas absentee ballot must not be rejected for this reason.
- 4) Ensure the absentee ballot application is acknowledged or witnessed as required by law.

- a) For voters who vote an absentee ballot in the Circuit Clerk's Office, the clerk or deputy clerk will complete the acknowledgement on the application. The acknowledgement is located near the bottom of the application and begins with the words "SWORN TO AND SUBSCRIBED BEFORE ME."
 - b) For voters who are temporarily or permanently disabled, a witness signs the certificate at the bottom of the application. The witness certificate is located below the acknowledgement and begins with the words "I HEREBY CERTIFY." An acknowledgement does not need to be completed on the application of a voter who is voting an absentee ballot because of a temporary or permanent disability.
 - c) The Federal Post Card Application (FPCA), used by military and overseas voters (UOCAVA), does not require an acknowledgement or a witness signature at all.
 - d) Excluding military and overseas voters (no acknowledgement or witness signature required) and voters who are voting absentee because of a temporary or permanent disability (witness signature only required), all absentee ballot applications must be acknowledged by the Circuit Clerk, a deputy clerk or "someone authorized to administer oaths," such as a notary public.
 - i) If the application is not acknowledged as required by law or signed by a witness (for absentee voters who are temporarily or permanently disabled only), mark the absentee ballot envelope "REJECTED" and write the reason for the rejection on the envelope.
- 5) Ensure the absentee ballot envelope is signed by the voter across the flap of the envelope.
- a) If the ballot envelope is not signed by the voter across the flap of the envelope, mark the envelope "REJECTED" and write the reason for the rejection on the envelope.
 - b) **EXCEPTION:** The envelope of an absentee ballot returned by a military or overseas (UOCAVA) voter by e-mail or fax will not be signed by the voter. These ballots are received by the Circuit Clerk's Office, placed in an envelope by the Circuit Clerk or a deputy clerk and marked to indicate the ballot is a UOCAVA (military or overseas) voter. A military or overseas (UOCAVA) absentee ballot must not be rejected for this reason.
- 6) Ensure the absentee ballot envelope is acknowledged or witnessed as required by law, and the witness signed across the flap of the envelope.
- a) For voters who vote an absentee ballot in the Circuit Clerk's Office, the Circuit Clerk or a deputy clerk will acknowledge the voter's signature on the absentee envelope by signing across the flap of the envelope.
 - b) For voters who are temporarily or permanently disabled, a witness to the voter's signature signs the certificate by signing across the flap of the envelope. An

acknowledgement does not need to be completed on the absentee ballot envelope of a voter who is temporarily or permanently disabled.

- c) The absentee ballots of military and overseas (UOCAVA) voters who return their ballots by e-mail or fax to the Circuit Clerk's Office are placed in an absentee ballot envelope by the Circuit Clerk or deputy clerk and marked to indicate the ballot is that of a military or overseas (UOCAVA) voter.
 - d) Excluding military and overseas (UOCAVA) voters and voters who are voting by absentee because of a temporary or permanent disability, all absentee ballot envelopes must be acknowledged by the Circuit Clerk, a deputy clerk of "someone authorized to administer oaths," such as a notary public.
 - i) If the envelope is not acknowledged as required by law or signed by a witness (for absentee voters who are temporarily or permanently disabled only), mark the envelope "REJECTED" and write the reason for the rejection on the envelope.
- 7) Compare the voter's signature on the absentee ballot application to the voter's signature across the flap of the absentee ballot envelope.
 - a) If the signatures are clearly not the same (beyond any doubt), mark the absentee ballot envelope "REJECTED", write the reason for the rejection on the envelope, and process pursuant to Rules 4.1 and 4.2.
 - 8) Check the BP-001 to ensure the absentee voter is still a qualified elector of the county and precinct associated with the absentee ballot.
 - 9) If the absentee voter is listed on the BP-001 as no longer being a qualified voter, (voter is listed on the Voided ballots pages of BP-001) mark the absentee ballot envelope "REJECTED" and write the reason for the rejection on the envelope.
 - 10) Provide the poll watchers the opportunity to challenge every absentee ballot in the same manner and for the same reasons any other voter may be challenged, and take immediate action.
 - 11) If everything is in order, mark the UNOPENED absentee ballot envelope "ACCEPTED."
 - 12) Mark whether the ballot was Accepted or Rejected on the BP-001 provided by the officials in charge of the election.
- (d) The Resolution Board, after marking all absentee ballots as "Accepted" or "Rejected," shall sort the ballots grouping the "Accepted" ballots together and grouping the "Rejected" ballots together.
- 1) The "Rejected" ballots shall be bundled together in a separate strong envelope marked for "Rejected" ballots and returned to a ballot box, which will be sealed.

- 2) The “Accepted” ballots, after verifying the ballots were marked “Accepted,” may be opened by the Resolution Board and deposited into a sealed ballot box, without unfolding the ballot. The “Accepted” absentee ballot envelopes and applications shall be retained in a sealed and secure ballot box to preserve the record of the election.

(e) After the close of the polls at 7:00 p.m., the Resolution Board will open the ballot box containing the accepted absentee ballots, record the seal number, and count the votes:

- 1) In elections in which an optical mark scanner or digital central scanner is used, the Resolution Board, or designated election official under oath, shall immediately begin processing the accepted ballots through the central scanner.
- 2) In elections in which a central scanner is not utilized, the Resolution Board shall immediately begin hand-counting all accepted absentee ballots.

(f) The totals shall then be combined with the precinct tabulation totals for the unofficial vote count.

(g) The Resolution Board may recess as necessary and resume meeting as necessary at any time during the canvass of the election prior to certification by the officials in charge of the election, which may include returning after five (5) business days to mark as “Accepted” or “Rejected” any absentee ballots returned by mail during the allowable time. The Resolution Board should announce the time, date, and location when the meeting shall resume at the recess of the previous meeting.

Source: *Miss. Code Ann.* §§ 23-15-637; 23-15-639(3); 23-15-523.

Part 17 Chapter 4: Signature mismatch and cure

Rule 4.1 *Notice of signature mismatch on absentee ballot application and absentee ballot envelope.* When a voter’s absentee ballot is rejected under Miss. Code Ann. § 23-15-639 for the signatures not corresponding on the absentee application and absentee ballot envelope, the registrar must notify the voter within one (1) business day of the election that the voter’s absentee ballot has been tentatively rejected. The notice must inform the voter that his/her ballot has been tentatively rejected because the signature on the absentee application does not correspond to the signature on the absentee ballot envelope and the process for curing such deficiency. The notice must also inform the voter that if he/she does not cure the signature mismatch by noon on the 10th calendar day post-election, the voter’s ballot will not be counted. Notice to the voter shall be made first by telephone, if a phone number is available, and followed by email or facsimile if either is available to transmit the notice and the Absentee Cure Form. If email or facsimile is not available to transmit notice and the Absentee Cure Form, it shall be transmitted by first-class mail to any rejected absentee voter.

Source: *Miss. Code Ann.* §§ 23-15-637; 23-15-639.

Rule 4.2 *Cure process or rejected absentee ballots.*

- (a) When a voter's absentee ballot is rejected due to the signature on the absentee application not corresponding to the signature on the absentee ballot envelope, the voter may cure the deficiency by completing an "Absentee Cure Form." The Absentee Cure Form, which must take the form as prescribed in these rules, must be delivered to the voter within one (1) business day of rejection of the voter's absentee ballot and include the notice of deficiency. The Absentee Cure Form may be delivered to the voter by mail, email, facsimile, or in-person at the registrar's office. The appropriate official in charge of the election shall complete the return due date on the Absentee Cure Form prior to sending to the voter.
- (b) The Absentee Cure Form shall ask the voter to:
- 1) Declare that the voter submitted his/her absentee ballot;
 - 2) Verify the voter's identity by either:
 - a) Providing the voter's Mississippi Driver's License Number or DPS issued photo ID number;
 - b) If the voter does not have a Mississippi Driver's License Number or DPS issued photo ID, providing the last four digits of his/her Social Security Number; or,
 - c) If the voter has neither a Mississippi Driver's License Number or DPS issued photo ID, or the last four digits of his/her Social Security Number, attaching a legible copy of a state-accepted form of photo identification which lists the voter's name and address; an official federal, state, county or municipal document which lists the voter's name and address; or a utility or telephone bill or tax or rent receipt; and
 - d) Sign and date the form prior to returning it.
- (c) If a voter timely returns a completed Absentee Cure Form and the information provided verifies the voter's identity, the otherwise valid absentee ballot shall be counted in the final election results irrespective of any impairment previously identified. If a voter elects to attach a copy of a state-accepted identification document to the Absentee Cure Form, the address listed on such document need not match the voter registration address provided if the document otherwise verifies the voter's identity.
- (d) Only the voter, or a person authorized by the voter named in writing on the form, may return the Absentee Cure Form to the registrar by email, facsimile, mail carrier, commercial carrier, or in-person. A completed Absentee Cure Form must be returned to the registrar by noon (12:00 p.m.) on the 10th calendar day post-election. If a completed Absentee Cure Form is not returned within the allotted time, then the voter's absentee ballot will stand as rejected and not be counted. An original copy of the affidavit is not required for timely delivery, but the signature on the affidavit must be unique to the individual. A typed signature is not acceptable.

Source: *Miss. Code Ann.* §§ 23-15-637; 23-15-639.

Absentee Cure Form

You are receiving this form because there was a deficiency on your absentee ballot application and/or absentee ballot envelope. For your absentee ballot to be counted, complete and return this cure form as soon as possible. **This form must be received by your County Election Commissioners by 12:00 p.m. on _____ (10th day post-election). Please note that this is an actual receipt date and NOT a postmark date.**

Once completed, the form can be returned to the officials in charge of the election by you or a person authorized by you. The cure form can be returned by:

- Email
- Facsimile (FAX)
- Delivering it in person to the registrar
- Mail or commercial carrier

If this form is not returned by the deadline, your absentee ballot will not be counted.

READ AND COMPLETE THE FOLLOWING:

I am an eligible voter in this election and registered to vote in _____ County, Mississippi. I solemnly swear or affirm that I requested, voted, and returned an absentee ballot for the _____ (date of the election) general/special/primary/runoff election, and that I have not voted more than one ballot in this election.

_____ Voter's Name (Printed)	_____ Name of Person Authorized to Return
_____ Voter's Signature	_____ Signature of Person Authorized to Return
_____ Voter's Residential Address	_____ Relationship to Voter (if any)
_____ Voter's Date of Birth	_____ Address of Person Authorized to Return
_____ Voter's Driver's License #, DPS Issued Photo ID #, or Last Four of SSN	
_____ Date	



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SENT VIA EMAIL

April 13, 2020

Hon. Michael Watson
Mississippi Secretary of State
401 Mississippi Street
Jackson, Mississippi 39201
Email: michael.watson@sos.ms.gov

Re: Ensuring Ballot Access for Mississippi Voters During the Coronavirus Pandemic

Dear Secretary Watson:

The undersigned civil and human rights groups write to request that you take all necessary steps to preserve the fundamental right to vote and ensure that every eligible Mississippi voter can safely and securely register to vote in light of the ongoing COVID-19 pandemic. The conditions created by the pandemic present unique challenges to casting a ballot in the upcoming 2020 elections, including the primary runoff election and the Special Election for House District 88—scheduled for June 23, 2020.

As you know, the COVID-19 pandemic presents an enormous public health threat and is significantly disrupting day-to-day life across the United States. The President has issued nationwide social distancing guidelines, which have already been extended through April 30.¹ On April 3, Governor Reeves's stay-at-home order went into effect through April 20.² Numerous other Southern states have issued statewide shelter-in-place orders, some of which will remain in place through early summer.³ To-date, over 2,000 people in Mississippi have

¹ Jeanine Santucci et al., *Trump extends federal social distancing guidelines to April 30 after floating Easter deadline*, USA Today, Mar. 29, 2020, [usatoday.com/story/news/politics/2020/03/29/coronavirus-trump-extends-social-distancing-guidelines-april-30/2937504001/](https://www.usatoday.com/story/news/politics/2020/03/29/coronavirus-trump-extends-social-distancing-guidelines-april-30/2937504001/).

² State of Mississippi, Office of the Governor, Executive Order No. 1466, <https://www.sos.ms.gov/Education-Publications/ExecutiveOrders/1466.pdf>.

³ Governor Ralph Northam of Virginia issued a statewide stay at home order to remain in effect through June 10, 2020. Virginia Governor: Ralph S. Northam (Mar. 30, 2020), <https://www.governor.virginia.gov/newsroom/all-releases/2020/march/headline-855702-en.html>. Governor John Bel Edwards of Louisiana issued a statewide stay at home order which has already been extended once and will now be in place through at least April 30, 2020. Melinda Deslatte, Louisiana 'stay at home' order to be extended through April, Associated Press, March 20, 2020, <https://apnews.com/bb2ccd9b5e7ca52660980a300c98a2db>. Governor Ron DeSantis of Florida issued a statewide stay at home order through April 30, 2020. Mary Ellen Klas & Steve Contorno, *Florida Gov. Ron DeSantis issues statewide stay-at-home order*, Tampa Bay Times, Apr. 1, 2020, <https://www.tampabay.com/news/health/2020/04/01/florida-gov-ron-desantis-issues-statewide-stay-at-home-order/>.

contracted COVID-19.⁴ And it is unclear even to top epidemiological experts when and how this crisis will end.

This reality presents real barriers to voters given current requirements for registering and casting a ballot in Mississippi. Given the Governor's stay-at-home order and public health concerns, many Mississippi voters will be reluctant or unable to register to vote and/or cast a ballot in person during the 2020 election cycle. Even if the stay-at-home order is lifted before the election, it is very likely that both low-risk and high-risk individuals will remain reluctant to vote in-person after months of complying with the stay-at-home order and social distancing guidelines. Your office can and must act now to ensure that Mississippi can carry out safe and democratic elections in the midst of this national crisis.

This public health crisis has created unprecedented logistical concerns for elections officials nationwide and some states have put voters in the unconscionable position of choosing between their health and their vote.⁵ But many states are implementing innovative solutions to ensure no one has to choose between protecting their health and exercising their right to vote. For example, Georgia's Secretary of State has mailed absentee ballot request forms to all of Georgia's 6.9 million registered voters in advance of the May 19 primary.⁶

We therefore request that you act quickly to prevent the violation of the fundamental right to vote of all eligible Mississippi voters by taking the following action:

- 1. Permit every qualified voter in Mississippi to vote by mail-in absentee ballot.**
This change and the others listed that alter the current application of state election statutes are constitutionally mandated to prevent an undue burden on Mississippians' fundamental right to vote. Requiring voters who do not meet the existing statutory excuses for absentee voting to vote in person in this ongoing public health crisis would amount to a severe burden on their right to vote. These required modifications can be implemented using the Governor's limited emergency powers under Miss. Code Ann. § 33-15-11, *et seq.*, which he can delegate to you for the specific purpose of safeguarding Mississippi voters and elections. At a minimum, you have the option to use these powers to interpret Miss. Code Ann. § 23-15-713(d) such that "temporary...physical disability" or "any person . . . whose attendance at the voting place could reasonable cause danger to himself or others" includes the current pandemic as a valid excuse to vote absentee. Expanded vote-by-mail should complement, not eliminate, in-person voting.
- 2. Mail absentee ballot applications to every registered voter or implement a centralized, online absentee ballot request system,** while also allowing absentee ballots to be requested in as many ways as possible, like email or fax. Currently, voters seeking to vote by absentee ballot must request an application from their

⁴ *Mississippi, Coronavirus in the U.S.: Latest Map and Case Count*, N.Y. Times (last visited Apr. 9, 2020), available at <https://www.nytimes.com/interactive/2020/us/coronavirus-us-cases.html#states>

⁵ Ella Nilsen & Li Zhou, *How Wisconsin's election disenfranchised voters*, Vox, Apr. 7, 2020, <https://www.vox.com/2020/4/7/21212053/wisconsin-election-coronavirus-disenfranchised-voters>.

⁶ Mark Niesse, *Georgia to Mail Absentee Ballot Request Forms to All Active Voters*, Atlanta Journal Constitution, Mar. 24, 2020, <https://www.ajc.com/news/state--regional-govt--politics/georgia-mail-absentee-ballot-request-forms-all-active-voters/s1ZcJ57g8qqIwyG6LNWfIM/>.

county clerk in person, by phone, or by mail. Since most voters will likely choose to vote by mail in 2020, this step should be made as simple as possible. For example, the absentee ballot application should be made available online. No one should be required to leave their home to request an absentee ballot application. Alternatively, circuit clerks could mail an absentee ballot to every registered voter.

3. **Notify voters of, and widely advertise, updated voter registration deadlines⁷ and undertake extensive voter education to ensure voters know how to register and vote during the coronavirus epidemic.** Even healthy, low-risk individuals may be reluctant to vote in-person after months of complying with the stay-at-home order and social distancing guidelines. The Secretary of State's office can help mitigate these fears by clearly communicating the steps it is taking to protect Mississippi voters at the polls. An important, but simple, initial step would be to update your website's 2020 Election Calendar. At present, it still incorrectly shows March 31 as the Primary Runoff Election Day, and March 2 as the registration deadline for the Primary Runoff Election, and there is no mention at all the special election. And, besides Governor Reeves' Executive Order and Amended Writ of Election, there has been no other announcement that the registration deadline for the primary runoff or special elections were extended to go along with the postponed elections.
4. **Implement an online voter registration system,⁸** so that voters can register to vote without leaving their homes, including a process for people without state-issued IDs to register. The option to register by mail is not a sufficient substitute to online registration because many voters do not have access to printers, envelopes, and stamps at home. The online voter registration system should be fully automated, so the submission and the processing of registration applications occurs electronically.
5. **Eliminate the requirement that absentee ballot applications be notarized or witnessed** to reduce the number of public, in-person interactions necessary to cast an absentee ballot.
6. **Allow any voter or a designee to drop off their absentee ballot at any polling place** or in secure drop boxes at accessible locations.
7. **Allow for out-of-precinct voting by requiring election officials to count the ballots of any in-person voter who appears at the incorrect polling place, but in the correct county, for all of the state or local ballot items for which the voter is**

⁷ Governor Reeves, by Executive Order No. 1461, delayed the March 31st Primary Runoff Election for the 2nd Congressional District to June 23, 2020, along with the registration deadline to comply with federal law and the Mississippi Election Code. Miss. Exec. Order No. 1461 (2020). Governor Reeves, by Amended Writ of Election, also delayed the April 21st Special Election for House District 88 to June 23, 2020. On April 7, 2020, a subset of the undersigned organizations sent a detailed letter outlining this specific request.

⁸ On March 30, 2020 the North Carolina State Board of Elections and the Dept. of Motor Vehicles announced that they would be implementing a new online voter registration program writing, "the free service comes at a time when many county boards of elections have limited access or are closed to the public, and while residents are being asked to stay home because of the spread of COVID-19." The Official North Carolina DMV Website, Voter Registration Application, <https://www.ncdot.gov/dmv/offices-services/online/Pages/voter-registration-application.aspx>.

eligible to vote. Because the pandemic will likely cause widespread polling place closures, you should not punish voters who cannot find their correct polling places.

8. **Allow any person designated by the voter** (including staff of nursing homes and senior centers if the voter resides in these facilities) **to pick up the voter's absentee ballot and drop that absentee ballot off by the close of polls on Election Day.**
9. **Make absentee ballots available until Election Day and accept absentee ballots postmarked by Election Day** and received within 10 days of Election Day or received in office on Election Day if submitted in person.
10. **Clarify that curbside voting is available to any voter** unable to enter the polling place on Election Day due to COVID-19 concerns.
11. **Anticipate that absentee ballot use will increase dramatically** in the 2020 election cycle and order enough paper ballots and supplies to conduct a nearly 100% mail-based election. To address higher voting-by-mail volume, allow early processing of ballots before Election Day.
12. **Recruit additional staff to process this larger quantity of absentee ballots** and communicate with the public and news media that a larger quantity of absentee ballots could lead to delays in reporting vote totals.
13. **Provide voters notice and an opportunity to address and cure issues with absentee ballots:** you should adopt policies and practices providing voters with timely notice of technical defects on their ballots/ballot envelopes and an opportunity to cure those defects remotely.

These steps, along with others recommended by the bipartisan National Task Force on Election Crises,⁹ will protect all voters, but are particularly important for older voters, low-income people, voters with disabilities, and people of color, who are less likely to have access to healthcare, social networks, and transportation necessary to feel safe voting in person.

Moreover, if polling places need to be relocated to protect vulnerable populations like the elderly and people with disabilities, the affected voters must be promptly notified of the change, the relocation widely advertised, and election officials must ensure that any changes comply with the Voting Rights Act of 1965, the Americans with Disabilities Act, and other federal nondiscrimination and election laws. Finally, to prepare for the likely event that many poll workers will be unavailable,¹⁰ your office should begin working with local election officials to recruit and train additional poll workers.

⁹ National Task Force on Election Crises, COVID-19 Election Guide, <https://tinyurl.com/vebvk2h>.

¹⁰ Nationally, two-thirds of poll workers are age 61 or older. Election Administration Commission, Election Administration and Voting Survey: 2018 Comprehensive Report 9, https://www.eac.gov/sites/default/files/eac_assets/1/6/2018_EAVS_Report.pdf.

Given the urgency of this matter, we request your response by April 20, 2020. We are available for a call or videoconference at your convenience. We look forward to working with you.

Respectfully,



Caren Short
Senior Staff Attorney
Brandon Jones
Policy Counsel
Southern Poverty Law Center

Arekia Bennett
Executive Director
Mississippi Votes

Joshua Tom
Legal and Interim Director
ACLU of Mississippi

Carol Andersen
Co-President
Christy Wheeler
Co-President
League of Women Voters MS

Reilly Morse
General Counsel
Mississippi Center for Justice

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Executive Director
Mississippi NAACP

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Hawley Robertson, Asst. Secretary of State
hawley.robertson@sos.ms.gov

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION**

CYNTHIA PARHAM, ET AL.

PLAINTIFFS

VS.

CIVIL ACTION NO. 3:20cv572-DPJ-FKB

**MICHAEL D. WATSON, JR., in his official
capacity as Secretary of State of Mississippi, ET AL.**

DEFENDANTS

AFFIDAVIT OF JEFFREY L. LEE

STATE OF MISSISSIPPI
COUNTY OF HINDS

Personally appeared before me, Jeffrey L. Lee, an adult resident citizen of the State of Mississippi over the age of twenty-one, who after first having been duly sworn, deposed and stated on oath, hereby makes this affidavit upon personal knowledge, and states:

1. My name is Jeffrey L. Lee. I am currently the Assistant Secretary of State for the Business Services and Regulation Division of the Mississippi Secretary of State's Office ("Business Services and Regulation Division," or sometimes just the "Division"). I am a licensed attorney and member of the Mississippi Bar. I have been employed by the Secretary of State's Office for five years. I have been the Assistant Secretary of State for the Business Services and Registration Division for 16 months. To the extent this affidavit contains any information that could be considered opinion testimony regarding notary services and regulation, such testimony is based upon my years of experience, training, and knowledge gained in my capacity as an attorney employed by the Secretary of State's Office and as Assistant Secretary of State for the Business Services and Regulation Division.

2. Pursuant to state law governing notaries public, the Business Services and Regulation Division commissions and maintains the registration of notaries public in Mississippi,

and regulates notaries public by promulgating administrative rules. A true and correct copy of the Division's notary rules is affixed hereto as Exhibit "A." I am the custodian of registration and commission records kept for notaries public in Mississippi. The Division maintains a searchable database of all commissioned notaries public in Mississippi. Access to the searchable database, which includes the contact information of all registered notaries public, including their names, businesses, addresses, and other contact information, is available to the public on-line through the Secretary of State's website. Anyone may also obtain the same contact information of notaries public by contacting the Secretary of State's Office in writing or by telephone.

3. According to the Division's records, there are currently 35,567 active notaries public in Mississippi. The Division's publicly accessible records can be searched on-line to show, among other things, the number and contact information for active notaries public by location, such as by county. For example, the Division's records show that there are 964 active notaries in Forrest County, Mississippi, and 894 active notaries in neighboring Lamar County, Mississippi.

4. Subject to state law, including the notary statutes set forth in the Mississippi Code and rules and regulations promulgated by the Secretary of State's Office, any active and commissioned notary public may provide services to the public.

5. Individual notaries offer notarial services directly to the public in Mississippi, and may easily be identified through sources such as internet searches, telephone books, and social media platforms.

6. Various organizations and entities also provide notary services to the public, including but not limited to, banks and financial institutions, offices of registrars and other

divisions of colleges, community colleges and other schools, packaging and mailing service businesses, and mobile notary services.

7. According to the Division's database, at least 71 throughout the state are providing mobile notary services. Additionally, based on the Secretary of State's Office's experiences in past Mississippi elections, organizations, political campaigns, candidates, and other groups commonly provide notary services to potential absentee voters through events and individualized contacts during an election cycle.

8. Through my role as Assistant Secretary of State for the Business Services and Regulation Division, I am aware that COVID-19 public health concerns have presented challenges to individuals', organizations', and entities' provision of notary services to the public in the past several months. Notaries providing service to the public have responded to those challenges by adapting the means through which they provide their services.

9. Banks and financial institutions are only one example of businesses and organizations that provide notarial services to the public in Mississippi. Local branches of banks and financial institutions are currently providing notarial services inside branch offices by appointment, or in the regular course of business, while implementing COVID-19 precautions, such as the use of masks, social distancing, and other common precautionary measures that have become well-recognized by public health authorities in recent months. Additionally, many banks are offering notarial services through their drive-thru service areas and/or through curbside service for customers concerned about taking even further COVID-19 precautions.

10. To assist in my foregoing assessment of banking institutions' current notarial services and practices in light of COVID-19 public health concerns, after the plaintiffs in this lawsuit served their motion for preliminary injunction on the Secretary of State, the Secretary of

State's Office contacted 32 branches of different banks in all geographical areas of the State, as a representative sample of the hundreds of bank branches throughout the State due to the limited time available for the Secretary of State's Office to respond to plaintiffs' motion for preliminary injunction in this lawsuit, as well as 14 bank branches of different banks in Hattiesburg, Mississippi as a representative sample of banks located there.

11. Of the 32 bank branches outside of Hattiesburg and across the State contacted by the Secretary of State's Office, 24 of the branches are providing drive-thru and/or curbside notarial services while 4 are providing notarial services inside the branch with COVID-19 precautions in place. Eighteen bank branches are offering notarial services to any customer, 10 are offering notarial services to account holders only. Two branches contacted included Keesler Federal Credit Union and Renasant Bank. Representatives of those banks advised that all of their branches across the state are currently offering notarial services to any customer. Keesler is providing notarial services inside with COVID-19 precautions in place, while Renasant is providing notarial services through curbside service.

12. According to her declaration submitted in this lawsuit (Document 10-2), plaintiff Cheryl Goggin is a registered voter in Hattiesburg, Mississippi.

13. Of the 14 bank branches in Hattiesburg, Mississippi contacted by the Secretary of State's Office, 3 are providing curbside notarial services while 11 are providing notarial services inside the branch with COVID-19 precautions in place. Five bank branches are offering notarial services to any customer, 9 are offering notarial services to account holders only.

DATED: October 6, 2020



Jeffrey L. Lee
Assistant Secretary of State
Business Services and Regulation

Sworn to and subscribed before me, this the 6th day of October, 2020.



Notary Public

My Commission Expires:

June 25, 2022



Title 1: Secretary of State

Part 5: Business Services – Notaries Public

Part 5 Chapter 1: Notary

Rule 1.1 The Secretary of State is required to issue rules to implement the Mississippi Notary Law, in accordance with Senate Bill 2647 of the 2007 Session of the Mississippi Legislature, Section 25-33-1 et seq. Mississippi Code of 1972 as amended, effective July 1, 2007. The purpose of this chapter is to implement the Mississippi Notary Law, clarify and establish qualifications for the office of Notary Public, to provide written guidelines on notary practice, to provide for the revocation or suspension of a notary commission for official misconduct, misfeasance or malfeasance in office and to prescribe required forms and establish certain fees.

Source: Section 25-33-1 et seq. Mississippi Code of 1972 as amended.

Rule 1.2 Definitions. The following terms shall have the respective meanings provided in these rules.

Source: Section 25-33-1 et seq. Mississippi Code of 1972 as amended.

Rule 1.3 Acknowledgment. “Acknowledgment” means a notarial act in which an individual at a single time and place:

- A. appears in person before the notary and presents a document;
- B. is personally known to the notary or identified by the notary through satisfactory evidence; and
- C. indicates to the notary that the signature on the document was voluntarily affixed by the individual for the purposes stated within the document and, if applicable, that the individual had due authority to sign in a particular representative capacity.

Source: Section 25-33-1 et seq. Mississippi Code of 1972 as amended.

Rule 1.4 Affirmation. “Affirmation” means a notarial act, or part thereof, which is legally equivalent to an oath and in which an individual at a single time and place:

- (1). appears in person before the notary;
- (2). is personally known to the notary or identified by the notary through satisfactory evidence; and
- (3). makes a vow of truthfulness or fidelity on penalty of perjury, based on personal honor and without invoking God or using any form of the word “swear.”

Source: Section 25-33-1 et seq. Mississippi Code of 1972 as amended.

Rule 1.5 Appears in person before the notary. “Appears in person before the notary” means that the principal and the notary are physically close enough to see, hear, communicate with, and give identification documents to each other.

Source: Section 25-33-1 et seq. Mississippi Code of 1972 as amended.

Rule 1.6 Commission. “Commission” means both to empower to perform notarial acts and the written evidence of authority to perform those acts.

Source: Section 25-33-1 et seq. Mississippi Code of 1972 as amended.

Rule 1.7 “Credible witness” means an honest, reliable, and impartial person who personally knows an individual appearing before a notary and takes an oath or affirmation from the notary to vouch for that individual’s identity.

Source: Section 25-33-1 et seq. Mississippi Code of 1972 as amended.

Rule 1.8 “Felony” or “disqualifying felony” means the conviction of any of the crimes below under the laws of this state or any other state or country:

- A. Murder, rape, bribery, theft, arson, obtaining money or goods under false pretenses, perjury, forgery, embezzlement or bigamy,
- B. “Theft” in subsection (1) includes the following offenses: larceny, taking unlawful possession of a motor vehicle, armed robbery, robbery, receiving stolen property, extortion, felony shoplifting and timber larceny.
- C. You may, however, apply for the office of Notary Public if you have been convicted of a disqualifying felony if:
 1. You have received a full and complete pardon from the Governor for your crime(s) or if the Mississippi Legislature has restored your right to suffrage (right to vote), and
 2. Disclose your conviction(s) in your application and provide copies of the conviction order(s) and supply a copy of the Pardon from the Governor or Act of the Legislature restoring your rights.

Source: Section 25-33-1 et seq. Mississippi Code of 1972 as amended.

Rule 1.9 “Journal of notarial acts” and “journal” mean a device for creating and preserving a chronological record of notarizations performed by a notary.

Source: Section 25-33-1 et seq. Mississippi Code of 1972 as amended.

Rule 1.10 “Jurat” means a notarial act in which an individual at a single time and place:

- (1). appears in person before the notary and presents a document;
- (2). is personally known to the notary or identified by the notary through satisfactory evidence;
- (3). signs the document in the presence of the notary; and
- (4). takes an oath or affirmation from the notary vouching for the truthfulness or accuracy of the signed document.

Source: Section 25-33-1 et seq. Mississippi Code of 1972 as amended.

Rule 1.11 Legal resident or other legal resident of the United States. “Legal resident” or “other legal resident of the United States” means that you must have been granted permanent resident status in the United States by the United States Immigration and Naturalization Service. You must possess a Resident Alien Identification Card (Green Card) issued directly to you by the Immigration and Naturalization Service.

Source: Section 25-33-1 et seq. Mississippi Code of 1972 as amended.

Rule 1.12 Notarial act and notarization. “Notarial act” and “notarization” mean any act that a notary is empowered to perform under law or regulation.

Source: Section 25-33-1 et seq. Mississippi Code of 1972 as amended.

Rule 1.13 Notarial certificate and certificate. “Notarial certificate” and “certificate” mean the part of, or attachment to, a notarized document that is completed by the notary, bears the notary’s signature and seal, and states the facts attested by the notary in a particular notarization.

Source: Section 25-33-1 et seq. Mississippi Code of 1972 as amended.

Rule 1.14 Notary public and notary. “Notary public” and “notary” mean any person commissioned to perform official acts under the laws of this state.

Source: Section 25-33-1 et seq. Mississippi Code of 1972 as amended.

Rule 1.15 Oath. “Oath” means a notarial act, or part thereof, which is legally equivalent to an affirmation and in which an individual at a single time and place:

- A. appears in person before the notary;
- B. is personally known to the notary or identified by the notary through satisfactory evidence; and
- C. makes a vow of truthfulness or fidelity on penalty of perjury while invoking God or using any form of the word “swear.”

Source: Section 25-33-1 et seq. Mississippi Code of 1972 as amended.

Rule 1.16 Official Misconduct, Misfeasance and Malfeasance. “Official Misconduct,” “Misfeasance” and “Malfeasance” mean:

- A. a notary’s performance of any act prohibited, or failure to perform any act mandated, by the Mississippi Notary Law or any other law and/or regulation in connection with a notarial act by the notary; or
- B. a notary’s performance of an official act in a manner found by the Secretary of State to be negligent or against the public interest.

Source: Section 25-33-1 et seq. Mississippi Code of 1972 as amended.

Rule 1.17 Resident of the State of Mississippi. “Resident of the State of Mississippi” means:

- A. you maintain a permanent residential street address in the State of Mississippi, and state, and
- B. you do not maintain a permanent residence in another state or country,
- C. you do not claim homestead exemption or similar benefit in another state or country,
- D. you are not registered to vote in another state or country,
- E. you do not have a driver's license issued by another state or country,
- F. you do not own automobiles registered in another state or country, or
- G. you do not claim or maintain any other status that indicates that you are a resident of another state or country.

Source: Section 25-33-1 et seq. Mississippi Code of 1972 as amended.

Rule 1.18 Personal knowledge of identity. “Personal knowledge of identity” and “personally knows” mean familiarity with an individual resulting from interactions with that individual over a period of time sufficient to dispel any reasonable uncertainty that the individual has the identity claimed.

Source: Section 25-33-1 et seq. Mississippi Code of 1972 as amended.

Rule 1.19 Principal. “Principal” means:

- A. a person whose signature is notarized; or
- B. a person, other than a credible witness, taking an oath or affirmation from the notary.

Source: Section 25-33-1 et seq. Mississippi Code of 1972 as amended.

Rule 1.20 Regular place of work or business. “Regular place of work or business” means a stationary office or workspace where one spends all or some of one's working or business hours.

Source: Section 25-33-1 et seq. Mississippi Code of 1972 as amended.

Rule 1.21 Satisfactory evidence of identity. “Satisfactory evidence of identity” means identification of an individual based on:

- A. at least one (1) current document issued by a federal, state, or tribal government agency bearing the photographic image of the individual's face and signature and a physical description of the individual, though a properly stamped passport without a physical description is acceptable; or
- B. the oath or affirmation of one (1) credible witness unaffected by the document or transaction who is personally known to the notary and who personally knows the individual, or of two (2) credible witnesses unaffected by the document or transaction who each personally knows the individual and shows to the notary documentary identification as described in Subparagraph (1) of this section.

Source: Section 25-33-1 et seq. Mississippi Code of 1972 as amended.

Rule 1.22 Seal. “Seal” means a device for affixing on a paper document an image containing a notary’s name, jurisdiction, commission expiration date, and other information related to the notary’s commission.

Source: Section 25-33-1 et seq. Mississippi Code of 1972 as amended.

Rule 1.23 Signature witnessing. “Signature witnessing” means a notarial act in which an individual at a single time and place:

- A. appears in person before the notary and presents a document;
- B. is personally known to the notary or identified by the notary through satisfactory evidence; and
- C. signs the document in the presence of the notary.

Source: Section 25-33-1 et seq. Mississippi Code of 1972 as amended.

Part 5 Chapter 2: Notary Application

Rule 2.1 Qualifications for Notary Public.

- A. Except as provided in Subsection (3), the Secretary of State shall issue on behalf of the Governor a notary commission to any qualified person who submits an application to the Secretary of State in accordance with this Chapter.
- B. A person qualified for a notary commission shall:
 1. be at least eighteen (18) years of age;
 2. a resident of the State of Mississippi and have resided in the county of residence for least thirty (30) days prior to the submission of the application;
 3. a citizen or legal resident of the United States;
 4. read and write English; and
 5. not be convicted of a felony.
- C. The Secretary of State may deny an application based on:
 1. failure of the applicant to meet any requirements of the Mississippi Notary Law or this Chapter;
 2. failure of the applicant to complete and submit the proper Application Form, Bond and Oath;
 3. submission of an official application containing material misstatement or omission of fact;
 4. the applicant is currently incarcerated, on probation or parole, or
 5. revocation, suspension, restriction, or denial of a notarial commission or an official finding that the applicant had engaged in official misconduct, misfeasance or malfeasance as defined in this Chapter, whether or not disciplinary action resulted in this state or any other state or nation.
- D. Denial of an application may be appealed by filing in proper form with the Secretary of State within forty-five (45) days after denial, except that an applicant may not appeal when the Secretary of State within five (5) years prior to the application has:
 1. denied or revoked for disciplinary reasons any previous application, commission, or license of the applicant; or

2. made a finding under this Chapter that grounds for revocation of the applicant's commission existed.

Source: Section 25-33-1 et seq. Mississippi Code of 1972 as amended.

Rule 2.2 Application for Notary Public Commission.

Every application for a notary commission shall be made on SOS Form NP 001, Application for Notary Public Commission, and include:

- A. a statement of the applicant's personal qualifications, as described in this Chapter;
- B. the required surety bond in the amount of Five Thousand Dollars (\$5,000.00) from a surety licensed by the Mississippi Department of Insurance;
- C. the official oath of office;
- D. such other information as the Secretary of State may deem appropriate; and
- E. the application fee.

Source: Section 25-33-1 et seq. Mississippi Code of 1972 as amended.

Rule 2.3 Statement of Personal Qualifications.

The application for a notary commission shall be notarized and state or include, at least:

- A. the applicant's date of birth;
- B. the applicant's physical residence address, a valid email address, and telephone number;
- C. the applicant's business address and telephone number, the business mailing address, if different, and the name of the applicant's employer, if any;
- D. a declaration that the applicant is a citizen of the United States or the applicant's status as a permanent legal resident of the United States (green card);
- E. a declaration that the applicant can read and write English;
- F. a declaration that the applicant has never had a denial, revocation, suspension, restriction, and or resignation of a notarial commission in this state or any other state or nation;
- G. a declaration that the applicant has not been convicted of a disqualifying felony in this state or other state nation and is not presently incarcerated or on parole.

Source: Section 25-33-1 et seq. Mississippi Code of 1972 as amended.

Rule 2.4 Application Fee.

Every applicant for a notary commission shall pay to this State a nonrefundable application fee as set forth in Section Rule 9.1 of this Chapter.

Source: Section 25-33-1 et seq. Mississippi Code of 1972 as amended.

2.5 Bond.

- A. A notary commission shall not become effective until an oath of office and a Five Thousand Dollar (\$5,000.00) bond have been filed with the Secretary of State. The bond shall be issued and executed by a surety licensed by the Mississippi Department of Insurance, for a term of four (4) years commencing on the commission's effective date

and terminating on its expiration date, with payment of bond funds to any person conditioned upon the notary's misconduct, misfeasance or malfeasance as defined in this Chapter.

1. The bond must be on SOS Form NP 002, Official Notary Public Bond, or a bond substantially in the form prescribed for public official bonds in Section 25-1-15 of the Mississippi Code of 1972.
2. The bond must be submitted to the Secretary of State within sixty (60) days of the application date. Failure to timely submit the bond will result in the rejection of the notary application.
3. If a notary bond has been exhausted by claims paid out by the surety, the Secretary of State may suspend the notary's commission until:
 - a. a new bond is obtained by the notary; and
 - b. the notary's fitness to serve the remainder of the commission term is determined by the Secretary of State.

Source: Section 25-33-1 et seq. Mississippi Code of 1972 as amended.

Rule 2.6 Oath of Office. Every applicant for a notary commission shall take the Oath of Office prescribed by Section 268 of the Mississippi Constitution in the presence of a notary of the State of Mississippi. The oath shall be taken before a Mississippi Notary Public and submitted on SOS Form NP 003, Oath of Office.

Source: Section 25-33-1 et seq. Mississippi Code of 1972 as amended.

Part 5 Chapter 3: Commissioning Documents

Rule 3.1 Commissioning Documents. Upon issuing a notary commission, the Secretary of State shall provide to the notary a written commission including the Notary Identification Number and starting and ending date.

Source: Section 25-33-1 et seq. Mississippi Code of 1972 as amended.

Rule 3.2 Where an application is submitted without a bond, the Secretary of State shall provide the applicant a pre-commission document indicating the starting and ending for use in purchasing a bond.

Source: Section 25-33-1 et seq. Mississippi Code of 1972 as amended.

Part 5 Chapter 4: Jurisdiction and Term

Rule 4.1 Jurisdiction and Term. A person commissioned as a notary may perform notarial acts in any part of this State for a term of four (4) years from the date of the commission, unless the commission is earlier suspended, revoked or resigned pursuant to this Chapter. The date of the commission shall be the date the completed application was received by the Secretary of State; however, an applicant may not perform notarial acts prior to the actual issuance of the notary commission.

Source: Section 25-33-1 et seq. Mississippi Code of 1972 as amended.

Rule 4.2 Recommissioning. A current or former notary applying for a new notary commission shall submit a new completed application and comply with all the provisions of the Mississippi Notary Law and this Chapter. A current notary may submit an application to be recommissioned ninety (90) days prior to the expiration of an existing commission. The date of the new commission shall be the date immediately after the expiration date of the current commission.

Source: Section 25-33-1 et seq. Mississippi Code of 1972 as amended.

Rule 4.3 Change of Address. Within thirty (30) days after the change of a notary's residence, business, or mailing address, the notary shall send to the Secretary of State a signed notice of the change, giving both old and new addresses on SOS Form NP 004, Application for Change of Notary Address.

Source: Section 25-33-1 et seq. Mississippi Code of 1972 as amended.

Rule 4.4 Change of Name.

A. Within thirty (30) days after the change of a notary's name by court order or marriage, the notary shall send to the Secretary of State a signed notice of the change, giving both former and new names, with a copy of any official authorization for such change on SOS Form NP 005, Application for Change of Notary Name.

B. A notary with a new name shall continue to use the former name in performing notarial acts until the following steps have been completed, at which point the notary shall use the new name:

1. the notice described in Subsection (1) has been delivered or transmitted;
2. a Confirmation of Notary's Name has been received from the Secretary of State; and a Replacement commission issued.
3. a new seal bearing the new name exactly as in the Replacement Commission has been obtained; and
4. the surety for the notary's bond has been informed in writing.

Source: Section 25-33-1 et seq. Mississippi Code of 1972 as amended.

Rule 4.5 Resignation.

A. A notary who resigns his or her commission shall send to the Secretary of State by a signed notice indicating the effective date of resignation on SOS Form NP 007, Notice of Notary Resignation or Death.

B. Notaries who cease to reside in or to maintain a regular place of work or business in this State, or who become permanently unable to perform their notarial duties, shall resign their commissions.

Source: Section 25-33-1 et seq. Mississippi Code of 1972 as amended.

Rule 4.6 Disposition of Seal and Journal.

- A. Except as provided in Subsection (2), when a notary commission expires or is resigned or revoked, the notary shall:
 - 1. as soon as reasonably practicable, destroy or deface all notary seals so that they may not be misused; and
 - 2. within thirty (30) days after the effective date of resignation, revocation, or expiration, send to the Circuit Clerk of the County where the Notary the notarial journal and records.
- B. A former notary who intends to apply for a new commission and whose previous commission or application was not revoked or denied by this State, need not deliver the journal and records within thirty (30) days after commission expiration, but must do so within 6 months after expiration unless recommissioned within that period.

Source: Section 25-33-1 et seq. Mississippi Code of 1972 as amended.

Rule 4.7 Death of Notary. If a notary dies during the term of commission or before fulfilling the obligations stipulated in this Chapter, the notary's personal representative shall:

- A. notify the Secretary of State of the death in writing;
- B. as soon as reasonably practicable, destroy or deface all notary seals so that they may not be misused; and
- C. within six (6) months after death, send to the Circuit Clerk of the County of residence of the notary listed in the records of the Secretary of State's Office the notary's journal of notarial acts and any other notarial records.

Source: Section 25-33-1 et seq. Mississippi Code of 1972 as amended.

Part 5 Chapter 5: Notary Actions

Rule 5.1 Powers and Limitations of Notary Public.

- A. A notary is empowered to perform the following notarial acts:
 - 1. acknowledgments;
 - 2. oaths and affirmations;
 - 3. jurats;
 - 4. signature witnessings; and
 - 5. any other acts so authorized by the law of this State.
- B. A notary shall not perform a notarial act if the principal:
 - 1. is not in the notary's presence at the time of notarization;
 - 2. is not personally known to the notary or identified by the notary through satisfactory evidence;
 - 3. shows a demeanor which causes the notary to have a compelling doubt about whether the principal knows the consequences of the transaction requiring a notarial act; or
 - 4. in the notary's judgment, is not acting of his or her own free will.
- C. A notary may certify the affixation of a signature by mark on a document presented for notarization if:
 - 1. the mark is affixed in the presence of the notary and of two (2) witnesses unaffected by the document;

2. both witnesses sign their own names beside the mark;
3. the notary writes below the mark: “Mark affixed by (name of signer by mark) in presence of (names and addresses of witnesses) and undersigned notary under Section 504; and
4. the notary notarizes the signature by mark through an acknowledgment, jurat, or signature witnessing.

Source: Section 25-33-1 et seq. Mississippi Code of 1972 as amended.

Rule 5.2 Disqualifications. A notary is disqualified from performing a notarial act if the notary:

- A. is a party to or named in the document that is to be notarized;
- B. is a spouse, ancestor, descendant, or sibling of the principal, including in-law, step, or half relatives and other persons residing in the same household;
- C. will receive as a direct or indirect result any commission, fee, advantage, right, title, Interest, cash, property, or other consideration exceeding in value the fees specified in this Chapter;
- D. is an employee notary. An employee notary is not disqualified from performing a notarial act solely by virtue the employee/employer relationship, participation in an employee stock ownership plan (ESOP), or a qualified retirement plan;
- E. is an attorney notary. An attorney notary is not disqualified from performing a notarial act solely by virtue of the attorney client relationship;
- F. is a shareholder notary. A shareholder notary is not disqualified solely by virtue of a corporation/shareholder relationship.

Source: Section 25-33-1 et seq. Mississippi Code of 1972 as amended.

Rule 5.3 Refusal to Notarize.

- A. A notary shall not refuse to perform a notarial act based on the principal’s race, advanced age, gender, religion, national origin, health or disability.
- B. A notary shall perform any notarial act described in this Chapter for any person requesting such an act who tenders the appropriate fee, unless:
 1. the notary knows or has good reason to believe that the notarial act or the associated transaction is unlawful;
 2. the act is prohibited under this Chapter;
 3. the number of notarial acts requested practicably precludes completion of all acts at once, in which case the notary shall arrange for later completion of the remaining acts; or
 4. a notary may but is not required to perform a notarial act outside the notary’s regular workplace or business hours.

Source: Section 25-33-1 et seq. Mississippi Code of 1972 as amended.

Rule 5.4 Avoidance of Influence.

- A. A notary shall not influence a person either to enter into or avoid a transaction involving a notarial act by the notary, except that the notary may advise against a transaction if Section Rule 5.1 (3) or (4) of this Chapter applies.

B. A notary has neither the duty nor the authority to investigate, ascertain, or attest the lawfulness, propriety, accuracy, or truthfulness of a document or transaction involving a notarial act.

Source: Section 25-33-1 et seq. Mississippi Code of 1972 as amended.

Rule 5.5 False Certificate.

A. A notary shall not execute a certificate containing information known or believed by the notary to be false.

B. A notary shall not affix an official signature or seal on a notarial certificate that is incomplete.

C. A notary shall not provide or send a signed or sealed notarial certificate to another person with the understanding that it will be completed or attached to a document outside of the notary's presence.

Source: Section 25-33-1 et seq. Mississippi Code of 1972 as amended.

Rule 5.6 Improper Documents.

A. A notary shall not notarize a signature:

1. on a blank or incomplete document; or
2. on a document without notarial certificate wording.
3. When he/she has good reason to believe that the certification is desired for an unlawful or improper purpose. It is therefore, the duty of the notary to examine the document, as may be necessary to establish that the requested notarization is appropriate and not contrary to public interest.

B. A notary shall neither certify nor authenticate a photograph.

C. A notary who is not an employee of the issuing government agency shall neither certify nor authenticate a copy of any official government document including but not limited to the following:

1. Birth Certificate
2. Death Certificate
3. Driver's License
4. Passport
5. Social Security Card
6. Any official government-issued identity card

D. Nothing in this section shall prohibit a Notary from notarizing a signature on a document which has a copy of an official government document embedded or attached as an exhibit.

Source: Section 25-33-1 et seq. Mississippi Code of 1972 as amended.

Rule 5.7 Intent to Deceive. A notary shall not perform any official action with the intent to deceive or defraud.

Source: Section 25-33-1 et seq. Mississippi Code of 1972 as amended.

5.8 Testimonials. A notary shall not use the official notary title or seal to endorse, promote, denounce, or oppose any product, service, contest, candidate, or other offering.

Source: Section 25-33-1 et seq. Mississippi Code of 1972 as amended.

5.9 Unauthorized Practice of Law.

- A. If notarial certificate wording is not provided or indicated for a document, a non-attorney notary shall not determine the type of notarial act or certificate to be used.
- B. A non-attorney notary shall not assist another person in drafting, completing, selecting, or understanding a document or transaction requiring a notarial act.
- C. This section does not preclude a notary who is duly qualified, trained, or experienced in a particular industry or professional field from selecting, drafting, completing, or advising on a document or certificate related to a matter within that industry or field.
- D. A notary shall not claim to have powers, qualifications, rights, or privileges that the office of notary does not provide, including the power to counsel on immigration matters.
- E. A non-attorney notary who advertises notarial services in a language other than English shall include in the advertisement, notice, letterhead, or sign the following, prominently displayed in the same language:
 - 1. the statement: “I am not an attorney and have no authority to give advice on immigration or other legal matters”; and
 - 2. the fees for notarial acts specified in Section 302.
 - 3. A notary may not use the term “notario publico” or any equivalent non-English term in any business card, advertisement, notice, or sign.

Source: Section 25-33-1 et seq. Mississippi Code of 1972 as amended.

Rule 5.10 Imposition and Waiver of Fees.

- A. For performing a notarial act, a notary may charge the maximum fee specified in Section 5.11, charge less than the maximum fee, or waive the fee.
- B. A notary shall not discriminatorily condition the fee for a notarial act on the attributes of the principal as delineated in Section 5.3, though a notary may waive or reduce fees for humanitarian or charitable reasons.
- C. A Notary shall waive the fee for notarizing applications for an absentee ballot or an absentee ballot envelope.

Source: Section 25-33-1 et seq. Mississippi Code of 1972 as amended.

Rule 5.11 Fees for Notarial Acts.

- A. The maximum fees that may be charged by a notary for notarial acts are:
 - 1. for acknowledgments, five dollars (\$5.00) per signature;
 - 2. for oaths or affirmations without a signature, five dollars (\$5.00) per person;
 - 3. for jurats, five dollars (\$5.00) per signature;
 - 4. for signature witnessings, five dollars (\$5.00) per signature;
- B. A notary may charge a travel fee when traveling to perform a notarial act if:

1. the notary and the person requesting the notarial act agree upon the travel fee in advance of the travel; and
2. the notary explains to the person requesting the notarial act that the travel fee is both separate from the notarial fee in Subsection (a) and neither specified nor mandated by law.

Source: Section 25-33-1 et seq. Mississippi Code of 1972 as amended.

Rule 5.12 Payment Prior to Act.

- A. A notary may require payment of any fees specified in Section 302 prior to performance of a notarial act.
- B. Any fees paid to a notary prior to performance of a notarial act are non-refundable if:
 1. the act was completed; or
 2. in the case of travel fees paid in compliance with Section 302, the act was not completed for reasons stated in Sections 201--206 after the notary had traveled to meet the principal.

Source: Section 25-33-1 et seq. Mississippi Code of 1972 as amended.

Rule 5.13 Fees of Employee Notary. An employer may prohibit an employee who is a notary from charging for notarial acts performed on the employer's time.

Source: Section 25-33-1 et seq. Mississippi Code of 1972 as amended.

Rule 5.14 Notice of Fees. Notaries who charge for their notarial services shall conspicuously display in their places of business, or present to each principal outside their places of business, an English-language schedule of fees for notarial acts, as specified in this Rule 5.11.

Section 25-33-1 et seq. Mississippi Code of 1972 as amended.

Rule 5.15 Journal of Notarial Acts.

- A. A notary shall keep, maintain, protect, and provide for lawful inspection a chronological official journal of notarial acts a permanently bound book with numbered pages.
- B. A notary shall keep no more than one active journal at the same time.

Source: Section 25-33-1 et seq. Mississippi Code of 1972 as amended.

Rule 5.16 Entries.

- A. For every notarial act, the notary shall record in the journal at the time of notarization at least the following:
 1. the date and time of day of the notarial act;
 2. the type of notarial act;
 3. the type, title, or a description of the document or proceeding;
 4. the printed name and address of each principal;
 5. the fee, if any, charged for the notarial act;

6. the address where the notarization was performed if not the notary's business address; and
- B. If the principle is not personally known to the notary, the notary may require, the signature of the principal and the evidence of identity of each principal, in the form of either: a notation of the type of identification document, its issuing agency, its serial or identification number, and its date of issuance or expiration;
- C. A notary shall not record a Social Security card or credit card number in the journal.
- D. A notary shall record in the journal the circumstances for not completing a notarial act.
- E. As required in Section 401.03, a notary shall record in the journal the circumstances of any request to inspect or copy an entry in the journal, including the requester's name, address, signature, and evidence of identity. The reasons for refusal to allow inspection or copying of a journal entry shall also be recorded.

Source: Section 25-33-1 et seq. Mississippi Code of 1972 as amended.

Rule 5.17 Inspection, Copying, and Disposal of Journal.

- A. In the notary's presence, any person may inspect an entry in the official journal of notarial acts during regular business hours, but only if:
 1. the person's identity is personally known to the notary or proven through satisfactory evidence;
 2. the person affixes a signature in the journal in a separate, dated entry;
 3. the person specifies the month, year, type of document, and name of the principal for the notarial act or acts sought; and
 4. the person is shown only the entry or entries specified.
- B. If the notary has a reasonable and explainable belief that a person bears a criminal or harmful intent in requesting information from the notary's journal, the notary may deny access to any entry or entries.
- C. The journal may be examined without restriction by a law enforcement officer in the course of an official investigation, subpoenaed by court order, or surrendered at the direction of the Secretary of State.
- D. Upon complying with a request under Subsection (a), the notary shall provide a copy of a specified entry or entries in the journal at a cost of not more than five dollars (\$5.00) per copy; other entries on the same page shall be masked.
- E. A notary shall safeguard the journal and all other notarial records and surrender or destroy them only by rule of law, by court order, or at the direction of the Secretary of State.
- F. When not in use, the journal shall be kept in a secure area under the exclusive control of the notary, and shall not be used by any other notary nor surrendered to an employer upon termination of employment.
- G. Within ten (10) days after the journal is stolen, lost, destroyed, damaged, or otherwise rendered unusable or unreadable as a record of notarial acts, the notary, after informing the appropriate law enforcement agency in the case of theft or vandalism, shall notify the Secretary of State by any means providing a tangible receipt or acknowledgment, including certified mail and electronic transmission, and also provide a copy or number of any pertinent police report.

H. Upon resignation, revocation, or expiration of a notary commission, or death of the notary, the journal and notarial records shall be delivered to the Clerk of the Circuit Court of the County of residence of the notary in accordance with Section 25-33-7 of the Mississippi Code of 1972.

Source: Section 25-33-1 et seq. Mississippi Code of 1972 as amended.

Rule 5.18 Official Signature. In notarizing a paper document, a notary shall:

- A. sign by hand on the notarial certificate exactly and only the name indicated on the notary's commission;
- B. not sign using a facsimile stamp or an electronic or other printing method; and
- C. affix the official signature only at the time the notarial act is performed.

Source: Section 25-33-1 et seq. Mississippi Code of 1972 as amended.

Rule 5.19 Official Seal.

- A. A notary shall keep an official seal that is the exclusive property of the notary. The seal shall not be possessed or used by any other person, nor surrendered to an employer upon termination of employment.
- B. An image of the official seal shall be affixed by the notary on every paper document notarized.
- C. An image of the seal shall be affixed only at the time the notarial act is performed.
- D. When not in use, the seal shall be kept secure and accessible only to the notary.
- E. Within ten (10) days after the seal of a notary is stolen, after informing the appropriate law enforcement agency, or lost, the notary shall notify the Secretary of State by submitting an Application for Replacement Commission, SOS Form NP 006. The Notary shall also provide a copy or number of any pertinent police report. Upon receipt of such notice the Secretary of State shall issue to the notary a replacement commission with a new Notary Identification Number.
- F. As soon as reasonably practicable after resignation, revocation, or expiration of a notary commission or death of the notary, the seal shall be destroyed or defaced so that it may not be misused.

Source: Section 25-33-1 et seq. Mississippi Code of 1972 as amended.

Rule 5.20 Seal Image.

- A. Near the notary's official signature on the notarial certificate of a paper document, the notary shall affix a sharp, legible, permanent, and photographically reproducible image of the official seal that shall include the following elements:
 - 1. the notary's name exactly as indicated on the commission (abbreviations beyond those already appearing on the commission are not permissible);
 - 2. the identification number of the notary's commission;
 - 3. the words "Notary Public" and "State of Mississippi [insert county of residence] County";
 - 4. the words "Commission expires [insert expiration date]";

5. a border in a circular shape with a diameter no less than one and one-half inches and no larger than two and one-half inches, surrounding the required words.
- B. Illegible information within a seal impression may be typed or printed legibly by the notary adjacent to but not within the impression.
- C. An embossed seal impression that is not photographically reproducible may be used in addition to but not in lieu of the seal described in Subsection (1).
- D. The model seals contained in Section 902.07 of the Appendix of Forms meet the seal image requirements of Section 403.02(1). The model seals are merely examples of valid seal formats. Other seal formats that meet the requirements of Rule 5.19 shall likewise be considered valid.

Source: Section 25-33-1 et seq. Mississippi Code of 1972 as amended.

Part 5 Chapter 6: Certificates for Notarial Acts.

Rule 6.1 Notarial Acts. The party drafting a document for notarization is responsible for the form of the certificate, its wording and legal sufficiency. A notary public is not required to draft, edit or amend a certificate where the document presented does not contain an acceptable certificate; the notary shall instead, refused to notarize the document pursuant to Rule 5.6.

Source: Section 25-33-1 et seq. Mississippi Code of 1972 as amended.

Rule 6.2 Signer by Mark and Person Unable to Sign.

Certificates may be used for signers by mark or persons physically unable to sign or make a mark if:

- A. for a signer by mark, the notary and two (2) witnesses unaffected by the document observe the affixation of the mark, both witnesses sign their own names beside the mark, and the notary writes below the mark: "Mark affixed by (name of signer by mark) in presence of (names and addresses of two (2) witnesses) and undersigned notary ; or
- B. for a person physically unable to sign or make a mark, the person directs the notary to sign on his or her behalf in the presence of the person and two (2) witnesses unaffected by the document, both witnesses sign their own names beside the signature, and the notary writes below the signature: "Signature affixed by notary in presence of (names and addresses of person and two (2) witnesses).

Source: Section 25-33-1 et seq. Mississippi Code of 1972 as amended.

Part 5 Chapter 7: Sanctions and Remedies for Improper Acts

Rule 7.1 Revocation.

- A. The Secretary of State may revoke a notary commission for any ground on which an application for a commission may be denied under this Chapter.
- B. The Secretary of State shall revoke the commission of any notary who fails:
 1. to maintain a residence in this State; and

2. to maintain status as a legal resident of the United States.
- C. Prior to revocation of a notary commission, the Secretary of State shall inform the notary of the basis for the revocation and that the revocation takes effect on a particular date unless a proper appeal is filed with the Secretary of State before that date.
- D. Resignation or expiration of a notary commission does not terminate or preclude an inquiry into the notary's conduct by the Secretary of State whereupon it shall be made a matter of public record whether or not the finding would have been grounds for revocation.

Source: Section 25-33-1 et seq. Mississippi Code of 1972 as amended.

Rule 7.2 Suspension.

- A. The Secretary of State may suspend a notary commission for actions contrary to the Mississippi Notary Law, other laws and the requirements of this Chapter.
- B. Prior to suspension of a notary commission, the Secretary of State shall inform the notary of the basis for the suspension and that the suspension takes effect on a particular date unless a proper appeal is filed with the Secretary of State before that date.
- C. Resignation or expiration of a notary commission does not terminate or preclude an inquiry into the notary's conduct by the Secretary of State whereupon it shall be made a matter of public record whether or not the finding would have been grounds for suspension.

Source: Section 25-33-1 et seq. Mississippi Code of 1972 as amended.

Rule 7.3 Other Remedial Actions for Misconduct.

- A. The Secretary of State may deliver a written Official Warning to Cease Misconduct, Misfeasance or Malfeasance to any notary whose actions are deemed to be in violation of this Chapter, the Mississippi Notary Law or other laws of the State of Mississippi.
- B. The Secretary of State may also seek any other remedies available under law or equity.
- C. The remedies and sanctions of this chapter do not preclude other remedies and sanctions provided by law.

Source: Section 25-33-1 et seq. Mississippi Code of 1972 as amended.

7.4 Official Notice. Official notice required by this Chapter shall be by Certified mail to the notary at the residence address shown on the records of the Secretary of State and/or such other address as the Secretary of State may deem necessary.

Source: Section 25-33-1 et seq. Mississippi Code of 1972 as amended.

7.5 Publication of Sanctions and Remedial Actions. The Secretary of State shall regularly publish a list of persons whose notary commissions have been suspended or revoked by the Secretary of State or a court.

Source: Section 25-33-1 et seq. Mississippi Code of 1972 as amended.

7.6 Criminal Sanctions In addition to civil sanctions provided by this Chapter and the Mississippi Notary Law, there are criminal sanctions which may be applicable to a notary who violates state or federal criminal statutes.

Source: Section 25-33-1 et seq. Mississippi Code of 1972 as amended.

7.7 Complaints

- A. Complaints against a Mississippi notary public for violation of the requirements of this Chapter, the Mississippi Notary Law or any other law or regulation shall be made in writing and under oath to the Secretary of State.
- B. Complaints should state all pertinent facts and include a copy of the notarial certificate in question and the status of any pending litigation.
- C. Complaints alleging violations of criminal statutes shall be made to the District Attorney for the county in which the violation occurred.
- D. Where civil or criminal litigation is pending or anticipated, the Secretary of State's Office may, in its sole discretion, defer action on the Complaint pending the outcome of the litigation.

Source: Section 25-33-1 et seq. Mississippi Code of 1972 as amended.

Rule 7.8 Appeals.

- A. Appeals should be addressed to the Business Services Division of the Secretary of State's Office.
 - 1. The appeal shall be in writing and under oath.
 - 2. The written appeal shall include submission of copies of three pages from the Notary's Journal including the pages before and after the entry of information surrounding the certificate in question.
- B. Appeals will be on the record unless an oral hearing is requested.
- C. Oral hearings are in the sole discretion of the Secretary of State's Office.
- D. Where an oral hearing is granted, the hearing will be conducted informally with relaxed rules of evidence in accordance with Chapter 5 of these Regulations.
- E. The Notary Public shall bring the original journal to any oral hearing for review by the hearing officer.

Source: Section 25-33-1 et seq. Mississippi Code of 1972 as amended.

Part 5 Chapter 8: Apostilles and Authentications

Rule 8.1 Authentications. On a notarized document sent to another state or nation, evidence of the authenticity of the official seal and signature of a notary of this [State], if required, shall be in the form of:

- A. a certificate of authority from the Secretary of State and authenticated as necessary by additional certificates from United States and/or foreign government agencies; or
- B. in the case of a notarized document to be used in a nation that has signed and ratified the Hague Convention Abolishing the Requirement of Legalization for Foreign Public

Documents of October 5, 1961, an Apostille from the Secretary of State in the form prescribed by the Convention.

Rule 8.1.1 Refusal. The Secretary of State may refuse certification for a document when it has good reason to believe that the certification is desired for an unlawful or improper purpose. It is therefore, the duty of the Authentication Officer to examine the document, as may be necessary to establish that the requested authentication is appropriate and not in contrary to public interest.

Source: Section 25-33-1 et seq. Mississippi Code of 1972 as amended.

Rule 8.2 Certificate of Authority.

A certificate of authority evidencing the authenticity of the official seal and signature of a notary of this [State] shall be substantially in the following form:

Certificate of Authority for a Notarial Act

I, _____ (name, title, jurisdiction of authenticating official), certify that _____ (name of notary), the person named in the seal and signature on the attached document, was a Notary Public for the [State] of _____ [name of jurisdiction] and authorized to act as such at the time of the document's notarization. To verify this Certificate of Authority for a Notarial Act, I have affixed below my signature and seal of office this ____ day of _____, 20__.

(Signature and seal of commissioning official)

Source: Section 25-33-1 et seq. Mississippi Code of 1972 as amended.

Rule 8.3 Apostille. An Apostille prescribed by the Hague Convention, as cited in 28 U.S.C.A. in the annotations to Rule 44 of the Federal Rules of Civil Procedure, shall be in the form of a square with sides at least 9 centimeters long and contain exactly the following wording:

APOSTILLE	
(Convention de La Haye du 5 octobre 1961)	
1. Country: _____	
This public document	
2. has been signed by _____	
3. acting in the capacity of _____	
4. bears the seal/stamp of _____	
CERTIFIED	
5. at _____	
6. the _____	
7. by _____	
8. Number _____	
9. Seal/Stamp _____	

10. Signature:

Source: Section 25-33-1 et seq. Mississippi Code of 1972 as amended.

Part 5 Chapter 9: Notary Public Fees and Forms.

The Secretary of State charges the following fees:

Rule 9.1 Fees and Forms.

- | | | |
|----|---|-------------------|
| A. | Application Fee | \$25.00 |
| B. | Notice of Address Change | \$20.00 |
| C. | Notice of Name Change | \$20.00 |
| D. | Application for Replacement Commission | \$20.00 |
| E. | Notice of Notary Resignation or Death | (no fee) |
| F. | Other Forms | \$20.00 |
| G. | Issuing a certificate of authority | \$5.00 |
| H. | Issuing an Apostille | \$5.00 |
| I. | Notary Bulk Data Download | \$150.00 per year |
| J. | Notary Download | \$50.00 per month |
| K. | Application for Notary Public Commission, SOS Form NP 001 | |
| L. | Official Notary Public Bond and Notary Public Oath of Office, SOS Form NP 003 | |
| M. | Application for Change of Notary Address, SOS Form NP 004 | |
| N. | Application for Change of Notary Name, SOS Form NP 005 | |
| O. | Application for Replacement Commission, SOS Form NP 006 | |
| P. | Notice of Notary Resignation or Death, SOS Form NP 007 | |

Q. Bulk Data Notary Request form, SOS Form NP 008

R. Notary Download Request Form, SOS Form NP 009

Source: Section 25-33-1 et seq. Mississippi Code of 1972 as amended.

Rule 9.2 Seal Requirements for Notaries Public Commissioned before July 1, 2007.

A. Notaries public commissioned prior to July 1, 2007 may use an official seal that does not comply with Section Rule 5.20 provided that seal complies with Section 25-33-3 of the Mississippi Code Annotated, as amended.

B. Notaries public commissioned prior to July 1, 2007 must obtain a seal that complies with Section Rule 5.20 upon being recommissioned on or after July 1, 2007.

Source: Section 25-33-1 et seq. Mississippi Code of 1972 as amended.

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION**

CYNTHIA PARHAM, ET AL.

PLAINTIFFS

VS.

CIVIL ACTION NO. 3:20cv572-DPJ-FKB

**MICHAEL D. WATSON, JR., in his official
capacity as Secretary of State of Mississippi, ET AL.**

DEFENDANTS

AFFIDAVIT OF LARRY WARE

STATE OF MISSISSIPPI
COUNTY OF HINDS

Personally appeared before me, Larry Ware, an adult resident citizen of the State of Mississippi over the age of twenty-one, who after first having been duly sworn, deposed and stated on oath, hereby makes this affidavit upon personal knowledge, and states:

1. My name is Larry Ware. I am currently the Chief Investigator for the Public Integrity Division of the Mississippi Attorney General's Office (the "PID"). I have been employed by the Mississippi Attorney General's Office as an investigator in the PID for over 11 years. I am a Certified Fraud Examiner, and received my certification in October 2015, following 400 hours of self-study, and 40 hours of testing.

2. I have testified as a witness in over 20 state proceedings, including trials and grand juries. In those proceedings, I have not been called upon to offer expert testimony, or tendered as an expert witness. As discussed below, the facts contained in this affidavit are based upon my review of available statistical and other historical information regarding the PID's past investigations of voting related complaints, and prosecutions of cases arising from voting-related complaints. To the extent this affidavit contains any information that could be considered opinion testimony regarding voting-related criminal investigations, such testimony is based upon my years of

experience, training, and knowledge gained in my capacity as an investigator with the PID, and training as a Certified Fraud Examiner.

3. Through my years of experience with the PID, I am familiar with the State's voting laws. I am also familiar with complaints presented to the PID relating to alleged voting law violations and the PID's investigations of voting-related complaints. I have personally participated in several investigations of voting-related complaints. I have also reviewed available statistical and other historical information regarding the PID's past investigations of voting related complaints, as well as the Mississippi Attorney General's Office's prosecution of cases arising from voting-related complaints.

4. The PID has statewide authority to investigate and prosecute alleged criminal violations of state election laws. Local law enforcement agencies and District Attorneys are likewise authorized to investigate and/or prosecute alleged criminal violations of state election laws that occur within their local jurisdictions.

5. In addition to general authority to investigate and prosecute other laws related to alleged violations of criminal laws related to voting, the authority of the Mississippi Attorney General's Office and the PID, District Attorneys, and local law enforcement agencies extends to cases involving alleged criminal violations of the Election Code specifically relating to absentee voting as set forth in Mississippi Code Sections 23-15-751 and 23-15-753. Code Section 23-15-751 prohibits, among other things, officers from making false statements in certificates on absentee ballot materials. Code Section 23-15-753 prohibits several activities classified as "voter fraud" in connection with absentee balloting, including, but not limited to, vote buying, vote selling, improperly influencing voters, swearing falsely to affidavits on absentee ballot materials, and compensating persons for assisting voters in marking ballots on the basis of the number of voters

assisted or absentee ballots cast by voters receiving assistance.

6. The PID often receives complaints related to voting issues from the Mississippi Secretary of State's Office, other state and local agencies, and members of the public. According to available records, the PID has opened 159 investigations into voting-related complaints since 2000. Complaints are generally more frequent in election years. From 2016 to present, the PID has received and investigated ten complaints specifically related to absentee balloting voting issues.

7. Over my years of service with the PID, I have personally participated in the PID's investigations arising from voting-related complaints, as well as complaints specifically related to absentee voting issues.

8. Based on my investigatory experience of absentee balloting-related complaints, training as a certified fraud examiner, and my review of statistical and historical data maintained by the PID, complaints of potential criminal violations related to absentee balloting are less frequent than other potential criminal violations related to other voting-related complaints. Among absentee balloting complaints, more complaints relate to absentee voting by mail by voters who qualify for a physical disability excuse, or persons who allegedly have improperly attempted to influence physically-disabled voters. I attribute the difference to the fact that physically-disabled voters are only required to have any person over eighteen witness their absentee ballot materials, as opposed to a notary or other official authorized to administer oaths attesting their absentee ballot materials, which serves as a deterrent to potentially illegal activities such as falsifying signatures or attempted improper influence of voters.

9. Further based on my investigatory experience of absentee balloting-related complaints, training as a certified fraud examiner, and my review of statistical and historical data maintained by the PID, in voting-related cases sometimes involving absentee ballot materials that

have been notarized, the notarizations assist investigators by providing a means to more easily identify, locate, and interview the notary involved, and assist investigators in determining whether or not signatures on absentee ballot materials have been falsified. Title 1, Part 5, Chapter 1, Rules 5.15 and 5.16 of the Mississippi Administrative Code require all notaries to keep a journal of all notarial acts performed, which includes, among other things, type of notarial act performed, and the date, time, and address where the notarial act was performed, if not at the notary's usual place of business.

10. The Mississippi Attorney General's Office and the PID, as well as other law enforcement agencies, have successfully prosecuted absentee balloting cases in the past twenty-five years. Several cases of which I am aware eventually resulted in appeals from convictions and reported decisions issued by the Mississippi Supreme Court and/or Mississippi Court of Appeals which describe the facts and circumstances of each case, including: *Sowers v. State*, 101 So. 3d 1156 (Miss. 2012) (mail-in absentee ballots); *Tucker v. State*, 62 So. 3d 397 (Miss. Ct. App. 2010) (in-person absentee vote buying scheme); *Eason v. State*, 916 So. 2d 557 (Miss. Ct. App. 2005) (in-person absentee ballots); *Sewell v. State*, 721 So. 2d 129 (Miss. 1998) (mail-in absentee ballots); and *McFarland v. State*, 707 So. 2d (Miss. 1997) (mail-in absentee ballots).

11. The PID often works with other law enforcement agencies in conjunction with investigations of suspected criminal activity. The PID does not keep records of absentee voting-related or other voting-related cases and prosecutions independently conducted by local state law enforcement, or federal authorities that investigate and prosecute potential violations of federal law in connection with voting in Mississippi elections.

12. However, I am aware of a number of indictments and criminal proceedings stemming from absentee voting incidents in conjunction with recent elections in Canton, Mississippi. True and

correct copies of public records associated with those criminal proceedings are affixed to my affidavit as Exhibit "A." I am also aware of a prominent federal Voting Rights Act enforcement action brought by the United States Attorney's Office for the Southern District of Mississippi regarding absentee voting and other voting-related activities in Noxubee County, Mississippi in the mid-2000s, which is reported in the case of *United States v. Brown*, 494 F. Supp. 2d 440 (S.D. Miss. 2007).

DATED: October 7, 2020.



Larry Ware
Chief Investigator, Public Integrity Division
Mississippi Attorney General's Office

Sworn to and subscribed before me, this the 7th day of October, 2020.



Notary Public

My Commission Expires:

May 7, 2023



FILED
MADISON COUNTY

NOV 20 2018

ANITA WRAY, CIRCUIT CLERK

INDICTMENT

BY AWray D.C.

STATE OF MISSISSIPPI

VS.

CAUSE NO. 2018-0510-E

VICKI MCNEIL, a/k/a "Marie"

DEFENDANT

Indictment for the offense of:

VOTER FRAUD

(2 Counts)

Miss. Code Ann. §§23-15-753 and 23-15-631(f)

STATE OF MISSISSIPPI
COUNTY OF MADISON

IN THE CIRCUIT COURT OF MADISON COUNTY, JULY TERM 2018

Recalled October 17, 2018

The Grand Jurors for the State of Mississippi, taken from the body of good and lawful citizens of Madison County, elected, summoned, impaneled, sworn and charged to inquire in and for the body of the county aforesaid, at the term aforesaid of the Court aforesaid, in the name and by the authority of the State of Mississippi, upon their oaths present that:

VICKI MCNEIL, a/k/a "Marie",

COUNT I

VICKI MCNEIL, a/k/a "Marie", on or about the 27TH day of March, 2017, in the county aforesaid and within the jurisdiction of this Court, did willfully, unlawfully, knowingly and intentionally aid, abet, assist, and cause Robert Jefferson to vote on an Absentee Ballot, when **VICKI MCNEIL, a/k/a "Marie"** was a candidate in the election and whose name appeared on the Absentee Ballot, in violation of Miss. Code Ann. §23-15-631(f), thereby violating Miss. Code Ann. §23-15-753 (1972, as amended);

COUNT II

And, based upon a series of acts connected together and constituting parts of a common scheme and plan **VICKI MCNEIL, a/k/a "Marie",** on or about the 27TH day of March, 2017, in the county aforesaid and within the jurisdiction of this Court, did willfully, unlawfully, knowingly and intentionally aid, abet, assist, and cause Helen Jefferson to vote on an Absentee Ballot, when **VICKI MCNEIL,**

a/k/a "Marie" was a candidate in the election and whose name appeared on the Absentee Ballot, in violation of Miss. Code Ann. §23-15-631(f), thereby violating Miss. Code Ann. §23-15-753 (1972, as amended);

All of the above (Count I through Count II) being against the peace and dignity of the State of Mississippi

Endorsed: A True Bill

Josh Ammerman
FOREPERSON OF THE GRAND JURY

Byron Buckley
ASSISTANT DISTRICT ATTORNEY

AFFIDAVIT

COMES NOW Josh Ammerman, Foreperson of the October 17, 2018, Madison County Grand Jury, and makes oath that this Indictment presented to this Court was concurred by twelve (12) or more members of the Grand Jury, and that at least fifteen (15) members thereof were present during all deliberations.

Josh Ammerman
FOREPERSON OF THE GRAND JURY

SWORN TO AND SUBSCRIBED before me on this, the 20 day of November, 2018.

**ANITA WRAY CIRCUIT CLERK
OF MADISON COUNTY, MISSISSIPPI**

BY: *AWray* DC



IN THE CIRCUIT COURT OF MADISON COUNTY, MISSISSIPPI

STATE OF MISSISSIPPI

FILED
MADISON COUNTY

VS.

SEP 09 2019

CAUSE NO.

2018-0509

2018-0510

(JG)

VIKI MCNEIL

ANITA WRAY CIRCUIT CLERK

BY [Signature] D.C.

DEFENDANT

MOTION TO NOLLE PROSEQUI INDICTMENT

COMES NOW the State of Mississippi and enters its motion to *nolle prosequi* an Indictment filed against the Defendant referenced above, subject to approval by the Court, and in support of said Motion offers the following:

BASED ON AGREEMENT FOR DEFENDANT TO
RESIGN FROM OFFICE (SEE EXHIBIT ATTACHED)
AND IN THE INTERESTS OF JUSTICE &
JUDICIAL ECONOMY

WHEREFORE, PREMISES CONSIDERED, the State respectfully moves the Court to *Nolle Prosequi* the Indictment in this cause.

Respectfully submitted, this the 6th day of SEPTEMBER, 20 19.

STATE OF MISSISSIPPI

BY:

[Signature]

ASSISTANT DISTRICT ATTORNEY

ORDER

THIS CAUSE having come on for hearing on the State's *Motion to Nolle Prosequi Indictment* filed herein, and the Court, finding same to be reasonable, approves the entry thereof.

SO ORDERED, this the 9th day of September, 20 19.

[Signature]
CIRCUIT JUDGE

304/694

September 5, 2019

Dr. William F. Truly,
Mayor
City of Canton
226 East Peace Street
Canton, MS 39046

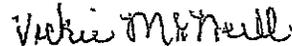
Dear Dr. Truly:

It is with a heavy heart and with deep regret that I must resign my position as the City Alderwoman for Ward 5. As you are aware, for the past nine months, I have been battling the residual effects of a stroke that I suffered on December 23, 2018, along with other debilitating medical conditions. Upon the onset of my illnesses, I held out hope that I would be able to return and continue to serve the constituents that I have been dedicated to serving even prior to my terms in office.

However, a series of medical setbacks have prohibited me from functioning in the capacity that both my ward and I have become accustomed. Therefore, I am officially resigning my office, effective September 23, 2019. That will give me the time needed to transition from public servant to private citizen in a manner that will benefit the wonderfully supportive citizens of Ward 5.

It has been a tremendous honor and privilege to serve Ward 5, the community where I grew up and where I raised my family. Despite my desire to continue to serve, I am no longer able to efficiently and effectively perform my duties to the people who have become my second family. Thus, I thank the citizens of Ward 5 and you for the opportunity to assist in strengthening the place I have called home for so many years. I will never be able to fully extend the gratitude I feel for the citizens of Ward 5 who have supported me and my efforts to be of service.

Respectfully,



Vickie McNeill, Alderwoman
Ward 5
City of Canton

U.S. POSTAGE >> PITNEY BOWES
ZIP 39046 \$ 000.50⁰
02 4W
0000360355 SEP. 09. 2019



Edward Blackmon
Attorney at Law
P.O. Box 105
Canton, MS 39046

ANITA WRAY
MADISON COUNTY CIRCUIT CLERK
P. O. DRAWER 1626
CANTON, MISSISSIPPI 39046

FILED
MADISON COUNTY

JAN 08 2019

ANITA WRAY, CIRCUIT CLERK

BY Anita Wray D.C.

INDICTMENT

STATE OF MISSISSIPPI

VS.

CAUSE NO. 2019-0059-A

**COURTNEY L. RAINEY and
ANDREW GRANT**

DEFENDANTS

Indictment for the offense of:

VOTER FRAUD

(1 Count/Rainey Only)

and

CONSPIRACY TO COMMIT VOTER FRAUD

(1 Count/Both Defs)

Miss. Code Ann. §§23-15-753, 23-15-627 & 97-1-1

STATE OF MISSISSIPPI
COUNTY OF MADISON

IN THE CIRCUIT COURT OF MADISON COUNTY, JULY TERM 2018

Recalled November 28, 2018

The Grand Jurors for the State of Mississippi, taken from the body of good and lawful citizens of Madison County, elected, summoned, impaneled, sworn and charged to inquire in and for the body of the county aforesaid, at the term aforesaid of the Court aforesaid, in the name and by the authority of the State of Mississippi, upon their oaths present that:

COUNT I

COURTNEY L. RAINEY, on or about the 2nd day of June, 2017, in the county aforesaid and within the jurisdiction of this Court, did willfully, unlawfully, knowingly and feloniously encourage or cause Eric McCoy to violate a provision of law regarding absentee voting to wit: encouraging and causing Eric McCoy to vote by absentee ballot when she well knew Eric McCoy was ineligible to vote because he no longer lived in Ward, in violation of Miss. Code Ann. §23-15-753, (1972, as amended);

COUNT II

And, based upon a series of acts connected together and constituting parts of a common scheme and plan **COURTNEY L. RAINEY and ANDREW GRANT**, on

or about and between the dates of May 22, 2017 and May 31, 2018, in the county aforesaid and within the jurisdiction of this Court, did willfully, feloniously and knowingly conspire with each another to commit voter fraud, in violation of Miss. Code Ann. §23-15-753 and §97-1-1 (1972, as amended);

All of the above (Count I and Count II) being against the peace and dignity of the State of Mississippi

Endorsed: A True Bill

Josh Ammerman
FOREPERSON OF THE GRAND JURY

Benjamin Buckley
ASSISTANT DISTRICT ATTORNEY

AFFIDAVIT

COMES NOW Josh Ammerman, Foreperson of the November 28, 2018, Madison County Grand Jury, and makes oath that this Indictment presented to this Court was concurred by twelve (12) or more members of the Grand Jury, and that at least fifteen (15) members thereof were present during all deliberations.

Josh Ammerman
FOREPERSON OF THE GRAND JURY

SWORN TO AND SUBSCRIBED before me on this, the 8th day of January, 2019.



**ANITA WRAY CIRCUIT CLERK
OF MADISON COUNTY, MISSISSIPPI**

BY: *Anita Wray DC*

CAPIAS INSTANTER

FILED
MADISON COUNTY

FEB 04 2019

THE STATE OF MISSISSIPPI

ANITA WRAY, CIRCUIT CLERK

To the Sheriff of Madison County - Greetings:

BY [Signature] D.C.

We command you to take the body of **COURTNEY L RAINNEY** if to be found in your County, and safely keep, so that you have said body before the Honorable, the Circuit Court of Madison County, in said State, to be holden at the Courthouse thereof, in the City of Canton, instanter, then and there to answer unto the State of Mississippi on a charge of **VOTER FRAUD; CONSPIRACY TO COMMIT VOTER FRAUD** (23-15-753; 23-15-627) by indictment of said Court at the January term, A. D., 2019, thereof, herein fail not, and have then this writ, with the manner you have executed the same.

Given under my hand and seal, and issued the 8th day of January A. D., 2019.

Anita Wray

By: [Signature] DC

STATE OF MISSISSIPPI
COUNTY OF MADISON

MADISON COUNTY SHERIFF'S OFFICE

I have this day executed the within writ personally by delivering a true copy of this Capias and a true copy of the indictment to:

You have been served an indictment by the Madison County Sheriff's Office. You must appear in person at the Madison County Court House on the _____ Day of _____, 20____. Failure to appear will result in Warrant issued for your arrest!

COURTNEY L RAINNEY
and placing same in the Madison County jail.

RANDY TUCKER, SHERIFF

This the 4 day of Feb 2019
Randall Tucker

BY _____ DS

By: [Signature] DS

(CIRCUIT CLERK)

FILED
MADISON COUNTY

NOV 20 2018

ANITA WRAY, CIRCUIT CLERK

BY AWray D.C.

INDICTMENT

STATE OF MISSISSIPPI

VS.

CAUSE NO. 2018-0518-R

COURTNEY L. RAINEY

DEFENDANT

Indictment for the offense of:

VOTER FRAUD

And

INTIMIDATING A WITNESS

Miss. Code Ann. §§23-15-753 and 97-9-113

STATE OF MISSISSIPPI

COUNTY OF MADISON

IN THE CIRCUIT COURT OF MADISON COUNTY, JULY TERM 2018

Recalled October 17, 2018

The Grand Jurors for the State of Mississippi, taken from the body of good and lawful citizens of Madison County, elected, summoned, impaneled, sworn and charged to inquire in and for the body of the county aforesaid, at the term aforesaid of the Court aforesaid, in the name and by the authority of the State of Mississippi, upon their oaths present that:

COUNT I

COURTNEY L. RAINEY, on or about the 21st day of April, 2017, in the county aforesaid and within the jurisdiction of this Court, did willfully, unlawfully, knowingly and feloniously attempt to procure or influence the vote of Emma Ousley by the payment of money in exchange for his vote in the Canton Municipal Election in 2017, in violation of Miss. Code Ann. §23-15-753, (1972, as amended);

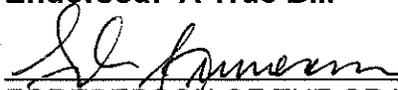
COUNT II

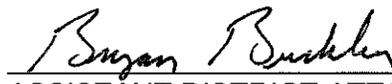
And, based upon a series of acts connected together and constituting parts of a common scheme and plan **COURTNEY L. RAINEY**, on or about and between August 1, 2017 through August 17, 2018, did intentionally and knowingly attempt to solicit, encourage or request a witness to provide false information intended to defeat or defend against an existing criminal charge or to hinder or interfere an

ongoing investigation of criminal act, to-wit: Emma Ousley (a witness to a crime purportedly committed by Defendant) at her home at the Canton Place Apartments, by requesting Ms. Ousley to change her story that she provided to investigators so the defendant would not get in trouble, in violation of Miss. Code Ann. §97-9-113(d), (1972, as amended), and being against the peace and dignity of the State of Mississippi.

All (Counts I and II) being against the peace and dignity of the State of Mississippi

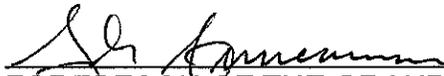
Endorsed: A True Bill


FOREPERSON OF THE GRAND JURY


ASSISTANT DISTRICT ATTORNEY

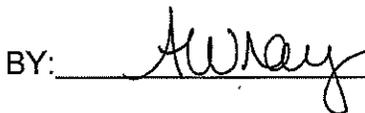
AFFIDAVIT

COMES NOW Josh Ammerman, Foreperson of the October 17, 2018, Madison County Grand Jury, and makes oath that this Indictment presented to this Court was concurred by twelve (12) or more members of the Grand Jury, and that at least fifteen (15) members thereof were present during all deliberations.


FOREPERSON OF THE GRAND JURY

SWORN TO AND SUBSCRIBED before me on this, the 20 day of November, 2018.

**ANITA WRAY CIRCUIT CLERK
OF MADISON COUNTY, MISSISSIPPI**

BY:  DC



CAPIAS INSTANTER

THE STATE OF MISSISSIPPI

To the Sheriff of Madison County - Greetings:

We command you to take the body of COURTNEY L RAINNEY if to be found in your County, and safely keep, so that you have said body before the Honorable, the Circuit Court of Madison County, in said State, to be holden at the Courthouse thereof, in the City of Canton, instanter, then and there to answer unto the State of Mississippi on a charge of VOTER FRAUD AND INTIMIDATING A WITNESS

(23-15-753,97-9-113) by indictment of said Court at the November term, A. D., 2018, thereof, herein fail not, and have then this writ, with the manner you have executed the same.

Given under my hand and seal, and issued the 20th day of November A. D., 2018.



Anita Wray

Anita L. Wray DC

STATE OF MISSISSIPPI
COUNTY OF MADISON

MADISON COUNTY SHERIFF'S OFFICE

I have this day executed the within writ personally by delivering a true copy of this Capias and a true copy of the indictment to:

You have been served an indictment by the Madison County Sheriff's Office. You must appear in person at the Madison County Court House on The _____ Day of _____, 20____. Failure to appear will result in Warrant issued for your arrest!

RANDY TUCKER, SHERIFF

COURTNEY L RAINNEY
and placing same in the Madison County jail.

This the 6 day of Dec 2016
Randall Tucker

BY _____ DS

By: *[Signature]* DS

(CIRCUIT CLERK)

entered of record.

THE COURT HAVING conducted a sentencing hearing on 23rd day of September, 2019, at which time the Defendant appeared before the Court in her own proper person and with her counsel of record, Carlos Tanner and John Hall. The State of Mississippi appeared by and through Assistant District Attorney Katie Moulds. After hearing the matters presented, the Court finds as follows:

IT IS THEREFORE ORDERED, that upon the verdict of the jury and the findings of the Court, the Defendant, **COURTNEY L. RAINEY**, is hereby adjudicated guilty of **INTIMIDATING A WITNESS IN COUNT II**, as charged in the indictment in this cause, and the Court imposed the sentence as follows:

(1) To serve a term of **FIFTEEN (15)** year(s) in the custody of the Mississippi Department of Corrections, in **COUNT II. PROVIDED, HOWEVER**, that the execution of the last **THREE (3)** year(s) of the sentence imposed herein is/are hereby stayed and that portion of the sentence is/are suspended **AND** the Defendant shall be released and placed on **SUPERVISED PROBATION** under the direct supervision of the Mississippi Department of Corrections on the terms, provisions and conditions prescribed elsewhere in this Order. The sentence imposed shall run **consecutively** to any and all other sentences.

(2) To serve a term of **FIVE (5)** year(s) on **SUPERVISED PROBATION** under the direct supervision of the Department of Corrections which shall commence upon the Defendant's release from custody of the Mississippi Department of Corrections.

During the term of **SUPERVISED PROBATION** or **POST-RELEASE SUPERVISION** the Defendant shall obey all orders of this Court and all the terms and conditions of probation or post-release supervision as may be imposed by this Court or the

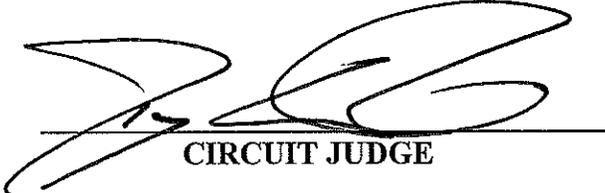
Mississippi Department of Corrections (“MDOC”), including but not limited to those conditions set forth by Miss. Code Ann. §47-7-35 (1972, as amended), as well as any modification or alterations thereto made by either this Court or the MDOC. It is further provided that, if the Defendant is adjudicated to be guilty of a material breach, violation or nonobservance of any of the terms, provisions or conditions of probation or post-release supervision, the probationary term may be revoked, the stay of execution and suspension of sentence terminated, and the Defendant’s custody may be remanded to the MDOC for incarceration until the unserved portion of his sentence is fully satisfied.

(3) To pay court costs, fees and assessments in the amount of **\$698.50**, to be paid at the rate of \$75.00 per month beginning within thirty (30) days after release from custody until paid in full.

IT IS HEREBY ORDERED that payments for any applicable court costs, fees and assessments, fine(s) or restitution paid by the Defendant shall be applied as follows: **FIRST** to court costs, fees and assessments; **SECOND** to fine(s); **THIRD** to restitution.

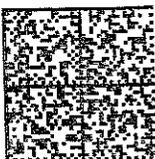
IT IS FURTHER ORDERED that all time served in pretrial detainment in this cause is credited against this sentence.

SO ORDERED AND ADJUDGED THIS THE 23RD DAY OF SEPTEMBER, 2019.


CIRCUIT JUDGE

ANITA WRAY
MADISON COUNTY CIRCUIT CLERK
P. O. DRAWER 1626
CANTON, MISSISSIPPI 39046

E. CARLOS TANNER, III
P O BOX 3709
JACKSON, MS 39207



U.S. POSTAGE PITNEY BOWES

ZIP 39046 \$ 000.50⁰
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0000360355 SEP. 24. 2019

STATE OF MISSISSIPPI

In the Circuit Court of MADISON County Cause/Case No. 2018-0518 CT-II

TO THE MISSISSIPPI DEPARTMENT OF CORRECTIONS:

NOTICE OF CRIMINAL DISPOSITION

You are hereby notified that at the SEPTEMBER 2019 term of the Circuit Court, Judge ARTHUR - 100747 presiding, the following disposition was imposed for the crime(s) hereinafter described MADISON COUNTY

- I. A. Disposition(s) Reported: Prisoner Commitment Suspended Sentence/Probation Revocation Acquittal Other Disposition
 (Check all that apply)
- A-1. Provisional Sentence Non-Adjudication Sentenced under RID Sentenced under Shock Probation
 (Compliance/Non-Compliance Order constitutes Final Disposition) Bad Check Diversionary Program Restitution Center in ANITA WRAY, CIRCUIT CLERK County
- B. Conviction as Result of: Guilty Plea Guilty Plea After days of Commencement of trial
 Jury Verdict after 2 days in trial Revocation Hearing

SEP 26 2019

II. Name COURTNEY L. RAINEY Alias
 SSN 587-37-0721 Race B Sex F Date of Birth 9-6-1980
 Last Known Residence 423 CHERRY ST. CANTON MS 39046
 Place of Birth Country of Citizenship
 Alien Registration/Immigration # FBI #

III. Count I Charge
 MS Code § Orig. Case# Agency
 Count II Charge INTIMIDATING A WITNESS
 MS Code § 97-9-113 Orig. Case# Agency
 *Count III Charge
 MS Code § Orig. Case# Agency

IV. Date of Sentence 09-23-2019 Credit for Time Served (ONLY for this/these charge(s))
 Sentence(s) Initially Imposed by Order: Count I ; Count II 15 YRS; *Count III

<input type="checkbox"/> Check if reporting additional Counts on Reverse Side	Portion of Sentence to be Served (Yrs/Mos)	Portion of Sentence Suspended (Yrs/Mos)	To be served on Probation (Yrs/Mos)	Other Disposition (See Legend on Reverse Side)
Count I	<u> </u>	<u> </u>	<u> </u>	<u> </u>
Count II	<u> </u>	<u>3 YRS</u>	<u>5 YRS</u>	<u> </u>
*Count III	<u> </u>	<u> </u>	<u> </u>	<u> </u>

 to run concurrent with
 to run consecutive with

Conditions/Designation of Sentence: Habitual Psychological/Psychiatric Alcohol/Drug Treatment/Testing Other

V. Confined In Jail to
 [On This/These to
 Charges Only] to
 to
 Released on Bond Pending Appeal to
 Defendant Currently Housed In:

VI. Fine \$ Indigent Fee \$ Restitution \$
 Court Costs \$ 698.50 Attorney Fees \$ Other Fees \$
 Conditions of Payment TO BE PD WIN 30 DAR

Send Prisoner Commitments, Provisional Sentence Orders and Revocation Orders to:
 Director of Records INS Liaison
 MDOC MS Supreme Court
 P. O. Box 88550 P. O. Box 117
 Pearl, MS 39208-8550 Jackson, MS 39208

Send Suspended Sentence/Probation Notices, Provisional Sentence Orders and Revocation Orders to:
 Data Operations INS Liaison
 MDOC MS Supreme Court
 723 North President St. P. O. Box 117
 Jackson, MS 39202-3097 Jackson, MS 39205-0117

Acquittal/Other Notices to: INS Liaison (Above Address)



ANITA WRAY
 Clerk

 9-26-2019

FILED
MADISON COUNTY

NOV 20 2018

ANITA WRAY, CIRCUIT CLERK
BY Anita Wray D.C.

INDICTMENT

STATE OF MISSISSIPPI

VS.

CAUSE NO. 2018-0517

COURTNEY L. RAINEY

DEFENDANT

Indictment for the offense of:

VOTER FRAUD

(2 Counts)

and

CONSPIRACY TO COMMIT VOTER FRAUD

(1 Count)

Miss. Code Ann. §§23-15-753, 23-15-627 & 97-1-1

STATE OF MISSISSIPPI
COUNTY OF MADISON

IN THE CIRCUIT COURT OF MADISON COUNTY, JULY TERM 2018

Recalled October 17, 2018

The Grand Jurors for the State of Mississippi, taken from the body of good and lawful citizens of Madison County, elected, summoned, impaneled, sworn and charged to inquire in and for the body of the county aforesaid, at the term aforesaid of the Court aforesaid, in the name and by the authority of the State of Mississippi, upon their oaths present that:

COUNT I

COURTNEY L. RAINEY, on or about the 24th day of May, 2017, in the county aforesaid and within the jurisdiction of this Court, did willfully, unlawfully, knowingly and feloniously seek to procure or influence the vote of Louvenia Brown by payment of an item of value, to wit: "a Walmart Gift Card", in exchange for her vote in the Canton Municipal Election in 2017, in violation of Miss. Code Ann. §23-15-753, (1972, as amended);

COUNT II

And, based upon a series of acts connected together and constituting parts of a common scheme and plan **COURTNEY L. RAINEY**, on or about the 24th day of May, 2017, in the county aforesaid and within the jurisdiction of this Court, did willfully, unlawfully, knowingly and feloniously seek to procure or influence the vote of Louvenia Brown by payment of an item of value, to wit: "Flood Relief", in

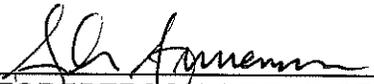
exchange for her vote in the Canton Municipal Election in 2017, in violation of Miss. Code Ann. §23-15-753, (1972, as amended);

COUNT III

And, based upon a series of acts connected together and constituting parts of a common scheme and plan **COURTNEY L. RAINEY**, on or about the 24th day of May, 2017, in the county aforesaid and within the jurisdiction of this Court, did willfully, feloniously and knowingly conspire with another, Andrew Grant, to commit voter fraud, in violation of Miss. Code Ann. §23-15-753 and §97-1-1 (1972, as amended);

All of the above (Count I through Count III) being against the peace and dignity of the State of Mississippi

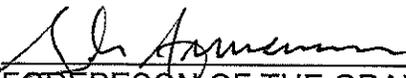
Endorsed: A True Bill


FOREPERSON OF THE GRAND JURY


ASSISTANT DISTRICT ATTORNEY

AFFIDAVIT

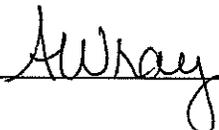
COMES NOW Josh Ammerman, Foreperson of the October 17, 2018, Madison County Grand Jury, and makes oath that this Indictment presented to this Court was concurred by twelve (12) or more members of the Grand Jury, and that at least fifteen (15) members thereof were present during all deliberations.


FOREPERSON OF THE GRAND JURY

SWORN TO AND SUBSCRIBED before me on this, the 20 day of November, 2018.



**ANITA WRAY CIRCUIT CLERK
OF MADISON COUNTY, MISSISSIPPI**

BY:  DC

CAPIAS INSTANTER

THE STATE OF MISSISSIPPI

To the Sheriff of Madison County - Greetings:

We command you to take the body of COURTNEY L RAINEY if to be found in your County, and safely keep, so that you have said body before the Honorable, the Circuit Court of Madison County, in said State, to be holden at the Courthouse thereof, in the City of Canton, instanter, then and there to answer unto the State of Mississippi on a charge of VOTER FRAUD AND CONSPIRACY TO COMMIT VOTER FRAUD (23-15-753,23-15-627,) by indictment of said Court at the November term, A. D., 2018, thereof, herein fail not, and have then this writ, with the manner you have executed the same.

Given under my hand and seal, and issued the 20th day of November A. D., 2018.



Anita Wray

Anita E. Wray DC

STATE OF MISSISSIPPI
COUNTY OF MADISON

MADISON COUNTY SHERIFF'S OFFICE

I have this day executed the within writ personally by delivering a true copy of this Capias and a true copy of the indictment to:

You have been served an indictment by the Madison County Sheriff's Office. You must appear in person at the Madison County Court House on The ___ Day of ___, 20___. Failure to appear will result in Warrant issued for your arrest!

RANDY TUCKER, SHERIFF

COURTNEY L RAINEY
and placing same in the Madison County jail.

This the 6 day of Dec 2018
Randall Tucker

BY _____ DS

By: JH 5032 DS

(CIRCUIT CLERK)

FILED
MADISON COUNTY

NOV 20 2018

ANITA WRAY, CIRCUIT CLERK

BY AWray D.C.

INDICTMENT

STATE OF MISSISSIPPI

VS.

CAUSE NO. 2018-0516

COURTNEY L. RAINEY

DEFENDANT

Indictment for the offense of:

VOTER FRAUD

(1 Count)

and

VOTING BY UNQUALIFIED PERSON

(1 Count)

Miss. Code Ann. §§23-15-753, 23-15-627 & 97-13-35

STATE OF MISSISSIPPI
COUNTY OF MADISON

IN THE CIRCUIT COURT OF MADISON COUNTY, JULY TERM 2018

Recalled October 17, 2018

The Grand Jurors for the State of Mississippi, taken from the body of good and lawful citizens of Madison County, elected, summoned, impaneled, sworn and charged to inquire in and for the body of the county aforesaid, at the term aforesaid of the Court aforesaid, in the name and by the authority of the State of Mississippi, upon their oaths present that:

COUNT I

COURTNEY L. RAINEY, on or about the 17th day of November, 2017, in the county aforesaid and within the jurisdiction of this Court, did willfully, unlawfully, knowingly and intentionally swear to an Affidavit on an Absentee Ballot application form, in that she did falsely swear that she was duly and qualified elector in the City of Canton, Madison County, Mississippi, when she well knew that she was not eligible to vote in City of Canton Municipal Election, in that she no longer resided at any address that allowed her to vote in the election of The City of Canton Municipal Election, in violation of Miss. Code Ann. §§23-15-753 and 23-15-627, (1972, as amended);

COUNT II

And, based upon a series of acts connected together and constituting parts of a common scheme and plan **COURTNEY L. RAINEY**, on or about the 17th day of November, 2017, in the county aforesaid and within the jurisdiction of this Court, did willfully, unlawfully, knowingly and intentionally vote in the Canton Municipal Election, when she well knew that she was not eligible to vote in the election, in that she no longer resided at any address that allowed her to vote in the election of City of Canton Municipal Election, in violation of Miss. Code Ann. 97-13-35, (1972, as amended);

All of the above (Count I and Count II) being against the peace and dignity of the State of Mississippi

Endorsed: A True Bill

Josh Ammerman
FOREPERSON OF THE GRAND JURY

Bryan Buckley
ASSISTANT DISTRICT ATTORNEY

AFFIDAVIT

COMES NOW Josh Ammerman, Foreperson of the October 17, 2018, Madison County Grand Jury, and makes oath that this Indictment presented to this Court was concurred by twelve (12) or more members of the Grand Jury, and that at least fifteen (15) members thereof were present during all deliberations.

Josh Ammerman
FOREPERSON OF THE GRAND JURY

SWORN TO AND SUBSCRIBED before me on this, the 20 day of November, 2018.



**ANITA WRAY CIRCUIT CLERK
OF MADISON COUNTY, MISSISSIPPI**

BY: *AWray* DC

CAPIAS INSTANTER

THE STATE OF MISSISSIPPI

To the Sheriff of Madison County - Greetings:

We command you to take the body of COURTNEY L RAINEY if to be found in your County, and safely keep, so that you have said body before the Honorable, the Circuit Court of Madison County, in said State, to be holden at the Courthouse thereof, in the City of Canton, instanter, then and there to answer unto the State of Mississippi on a charge of VOTER FRAUD AND VOTING BY UNQUALIFIED PERSON (23-15-753,23-15-627,) by indictment of said Court at the November term, A. D., 2018, thereof, herein fail not, and have then this writ, with the manner you have executed the same.

Given under my hand and seal, and issued the 20th day of November A. D., 2018.



Anita Wray

BY: Anita L. Wray DC

STATE OF MISSISSIPPI
COUNTY OF MADISON

MADISON COUNTY SHERIFF'S OFFICE

I have this day executed the within writ personally by delivering a true copy of this Capias and a true copy of the indictment to:

You have been served an indictment by the Madison County Sheriff's Office. You must appear in person at the Madison County Court House on The ___ Day of ___, 20___. Failure to appear will result in Warrant issued for your arrest!

RANDY TUCKER, SHERIFF

COURTNEY L RAINEY
and placing same in the Madison County jail.

This the 6 day of Dec 2018
Randall Tucker

BY _____ DS

By: [Signature] DS

(CIRCUIT CLERK)

FILED
MADISON COUNTY

NOV 20 2018

ANITA WRAY, CIRCUIT CLERK

BY AWray D.C.

INDICTMENT

STATE OF MISSISSIPPI

VS.

CAUSE NO. 2018-0515-R

COURTNEY L. RAINEY

DEFENDANT

Indictment for the offense of:

VOTER FRAUD

(1 Count)

and

VOTING BY UNQUALIFIED PERSON

(1 Count)

Miss. Code Ann. §§23-15-753, 23-15-627 & 97-13-35

STATE OF MISSISSIPPI

COUNTY OF MADISON

IN THE CIRCUIT COURT OF MADISON COUNTY, JULY TERM 2018

Recalled October 17, 2018

The Grand Jurors for the State of Mississippi, taken from the body of good and lawful citizens of Madison County, elected, summoned, impaneled, sworn and charged to inquire in and for the body of the county aforesaid, at the term aforesaid of the Court aforesaid, in the name and by the authority of the State of Mississippi, upon their oaths present that:

COUNT I

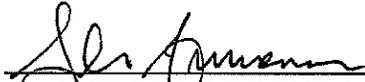
COURTNEY L. RAINEY, on or about the 25th day of October, 2017, in the county aforesaid and within the jurisdiction of this Court, did willfully, unlawfully, knowingly and intentionally swear to an Affidavit on an Absentee Ballot application form, in that she did falsely swear that she was duly and qualified elector in the City of Canton, Madison County, Mississippi, when she well knew that she was not eligible to vote in City of Canton Municipal Election, in that she no longer resided at any address that allowed her to vote in the election of The City of Canton Municipal Election, in violation of Miss. Code Ann. §§23-15-753 and 23-15-627, (1972, as amended);

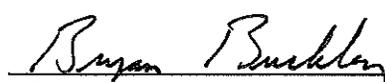
COUNT II

And, based upon a series of acts connected together and constituting parts of a common scheme and plan **COURTNEY L. RAINEY**, on or about the 25th day of October, 2017, in the county aforesaid and within the jurisdiction of this Court, did willfully, unlawfully, knowingly and intentionally vote in the Canton Municipal Election, when she well knew that she was not eligible to vote in the election, in that she no longer resided at any address that allowed her to vote in the election of City of Canton Municipal Election, in violation of Miss. Code Ann. 97-13-35, (1972, as amended);

All of the above (Count I and Count II) being against the peace and dignity of the State of Mississippi

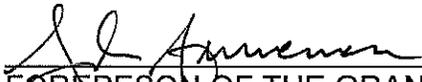
Endorsed: A True Bill


FOREPERSON OF THE GRAND JURY


ASSISTANT DISTRICT ATTORNEY

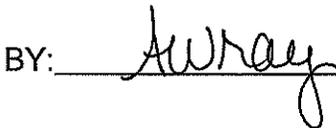
AFFIDAVIT

COMES NOW Josh Ammerman, Foreperson of the October 17, 2018, Madison County Grand Jury, and makes oath that this Indictment presented to this Court was concurred by twelve (12) or more members of the Grand Jury, and that at least fifteen (15) members thereof were present during all deliberations.


FOREPERSON OF THE GRAND JURY

SWORN TO AND SUBSCRIBED before me on this, the 20 day of November, 2018.

**ANITA WRAY CIRCUIT CLERK
OF MADISON COUNTY, MISSISSIPPI**

BY:  DC



F I L E D
MADISON COUNTY

NOV 20 2018

ANITA WRAY, CIRCUIT CLERK

BY AWray D.C.

INDICTMENT

STATE OF MISSISSIPPI

VS.

CAUSE NO 2018-0514

COURTNEY L. RAINEY

DEFENDANT

Indictment for the offense of:

VOTER FRAUD

Miss. Code Ann. §§23-15-753

STATE OF MISSISSIPPI

COUNTY OF MADISON

IN THE CIRCUIT COURT OF MADISON COUNTY, JULY TERM 2018

Recalled October 17, 2018

The Grand Jurors for the State of Mississippi, taken from the body of good and lawful citizens of Madison County, elected, summoned, impaneled, sworn and charged to inquire in and for the body of the county aforesaid, at the term aforesaid of the Court aforesaid, in the name and by the authority of the State of Mississippi, upon their oaths present that:

COURTNEY L. RAINEY,

On or about the 27th day of April, 2017, in the county aforesaid and within the jurisdiction of this Court, did willfully, unlawfully, knowingly and feloniously attempt to procure or influence the vote of Montel Handy by the payment of money in exchange for his vote in the Canton Municipal Election in 2017, in violation of Miss. Code Ann. §23-15-753, (1972, as amended); being against the peace and dignity of the State of Mississippi

Endorsed: A True Bill

[Signature]
FOREPERSON OF THE GRAND JURY

[Signature]
ASSISTANT DISTRICT ATTORNEY

AFFIDAVIT

COMES NOW Josh Ammerman, Foreperson of the October 17, 2018, Madison County Grand Jury, and makes oath that this Indictment presented to this Court was concurred by twelve (12) or more members of the Grand Jury, and that at least fifteen (15) members thereof were present during all deliberations.



FOREPERSON OF THE GRAND JURY

SWORN TO AND SUBSCRIBED before me on this, the 20 day of November, 2018.



**ANITA WRAY CIRCUIT CLERK
OF MADISON COUNTY, MISSISSIPPI**

BY: AWray DC

CAPIAS INSTANTER

FILED
MADISON COUNTY

THE STATE OF MISSISSIPPI

DEC 06 2018

To the Sheriff of Madison County - Greetings:

ANITA WRAY, CIRCUIT CLERK

BY *[Signature]* D.C.

We command you to take the body of **COURTNEY L RAINY** if to be found in your County, and safely keep, so that you have said body before the Honorable, the Circuit Court of Madison County, in said State, to be holden at the Courthouse thereof, in the City of Canton, instanter, then and there to answer unto the State of Mississippi on a charge of **VOTER FRAUD**

(23-15-753) by indictment of said Court at the November term, A. D., 2018, thereof, herein fail not, and have then this writ, with the manner you have executed the same.

Given under my hand and seal, and issued the 20th day of November A. D., 2018.



Anita Wray

Anita L. Wray DC

STATE OF MISSISSIPPI
COUNTY OF MADISON

MADISON COUNTY SHERIFF'S OFFICE

I have this day executed the within writ personally by delivering a true copy of this Capias and a true copy of the indictment to:

You have been served an indictment by the Madison County Sheriff's Office. You must appear in person at the Madison County Court House on The _____ Day of _____, 20____. Failure to appear will result in Warrant issued for your arrest!

RANDY TUCKER, SHERIFF

COURTNEY L RAINY
and placing same in the Madison County jail.

This the 6 day of Dec 2018
Randall Tucker

BY _____ DS

By: *[Signature]* DS

(CIRCUIT CLERK)

FILED
MADISON COUNTY

NOV 20 2018

ANITA WRAY, CIRCUIT CLERK

BY Anita Wray D.C.

INDICTMENT

STATE OF MISSISSIPPI

VS.

CAUSE NO. 2018-0513

COURTNEY L. RAINEY

DEFENDANT

Indictment for the offense of:

VOTER FRAUD

Miss. Code Ann. §§23-15-753

STATE OF MISSISSIPPI

COUNTY OF MADISON

IN THE CIRCUIT COURT OF MADISON COUNTY, JULY TERM 2018

Recalled October 17, 2018

The Grand Jurors for the State of Mississippi, taken from the body of good and lawful citizens of Madison County, elected, summoned, impaneled, sworn and charged to inquire in and for the body of the county aforesaid, at the term aforesaid of the Court aforesaid, in the name and by the authority of the State of Mississippi, upon their oaths present that:

COURTNEY L. RAINEY,

On or about the 27th day of March, 2017, in the county aforesaid and within the jurisdiction of this Court, did willfully, unlawfully, knowingly and feloniously attempt to procure or influence the vote of Marvin Cain by the payment of money in exchange for his vote in the Canton Municipal Election in 2017, in violation of Miss. Code Ann. §23-15-753, (1972, as amended); being against the peace and dignity of the State of Mississippi

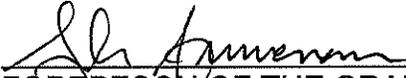
Endorsed: A True Bill

[Signature]
FOREPERSON OF THE GRAND JURY

[Signature]
ASSISTANT DISTRICT ATTORNEY

AFFIDAVIT

COMES NOW Josh Ammerman, Foreperson of the October 17, 2018, Madison County Grand Jury, and makes oath that this Indictment presented to this Court was concurred by twelve (12) or more members of the Grand Jury, and that at least fifteen (15) members thereof were present during all deliberations.



FOREPERSON OF THE GRAND JURY

SWORN TO AND SUBSCRIBED before me on this, the 20 day of November, 2018.



**ANITA WRAY CIRCUIT CLERK
OF MADISON COUNTY, MISSISSIPPI**

BY: AWray DC

CAPIAS INSTANTER

FILED
MADISON COUNTY

DEC 08 2018

ANITA WRAY, CIRCUIT CLERK

BY [Signature] D.C.

THE STATE OF MISSISSIPPI

To the Sheriff of Madison County - Greetings:

We command you to take the body of **COURTNEY L RAINEY** if to be found in your County, and safely keep, so that you have said body before the Honorable, the Circuit Court of Madison County, in said State, to be holden at the Courthouse thereof, in the City of Canton, instanter, then and there to answer unto the State of Mississippi on a charge of **VOTER FRAUD**

(23-15-753) by indictment of said Court at the November term, A. D., 2018, thereof, herein fail not, and have then this writ, with the manner you have executed the same.

Given under my hand and seal, and issued the 20th day of November A. D., 2018.



Anita Wray

BY: Anita L. Wray DC

STATE OF MISSISSIPPI
COUNTY OF MADISON

MADISON COUNTY SHERIFF'S OFFICE

I have this day executed the within writ personally by delivering a true copy of this Capias and a true copy of the indictment to:

You have been served an indictment by the Madison County Sheriff's Office. You must appear in person at the Madison County Court House on The _____ Day of _____, 20____. Failure to appear will result in Warrant issued for your arrest!

RANDY TUCKER, SHERIFF

COURTNEY L RAINEY
and placing same in the Madison County jail.

This the 6 day of Dec 2018
Randall Tucker

BY _____ DS

By: [Signature] DS

(CIRCUIT CLERK)

FILED
NOV 27 2019
CIRCUIT CLERK

IN THE CIRCUIT COURT OF MADISON COUNTY, MISSISSIPPI
STATE OF MISSISSIPPI
VS
COURTNEY L. RAINEY

2018-0513; 2018-0514; 2018-0515; 2018-0516; 2018-0517;
CAUSE NO. 2018-0518, COUNT 1; 2019-0059, COUNT 1 (JA)
DEFENDANT

MOTION FOR ENTRY OF ORDER OF NOLLE PROSEQUI

RY
20
CIRCUIT CLERK

COMES NOW the State of Mississippi and enters its motion for Entry of Order of *Nolle Prosequi* the above referenced causes against the Defendant, subject to approval by the Court, and in support of said Motion offers the following:

1. That the Defendant was tried and convicted in Cause Number 2018-0518(JA), Count 2 for the crime of Intimidating a Witness;
2. That based on the verdict of the jury and sentence imposed in 2018-0518(JA), Count 2, the State finds that the ends of justice are best met by dismissing without prejudice the remaining causes against the Defendant;
3. That the State finds that it is also in the interest of judicial economy for the remaining causes against the Defendant to be dismissed without prejudice;

WHEREFORE, PREMISES CONSIDERED, the State respectfully moves the Court for the entry of an Order of *Nolle Prosequi* in the above-referenced cause.

Respectfully submitted this the 27th day of NOVEMBER, 2019.

BY: [Signature]
STATE OF MISSISSIPPI
ASSISTANT DISTRICT ATTORNEY

THIS CAUSE having come on for hearing on the State's Motion for Entry of Order of *Nolle Prosequi* filed herein, and the Court, finding same to be reasonable, approves the entry thereof.

IT IS THEREFORE ORDERED that the above referenced causes are dismissed without prejudice.

SO ORDERED AND ADJUDGED, this the 27th day of November, 2019.

[Signature]
CIRCUIT JUDGE

312-3104

NOLLE PROSEQUI COPY FOR C.RAINEY

Laurie Prince

Mon 12/2/2019 9:27 AM

To: Emma Garrett; Carlos Tanner <carlos.tanner@gmail.com>;

Cc: Nikki Jones;

1 attachment
C.RAINEY NP.pdf

FILED
MADISON COUNTY

JAN 08 2019

ANITA WRAY, CIRCUIT CLERK

BY A. Wray DC.

INDICTMENT

STATE OF MISSISSIPPI

VS.

CAUSE NO. 2019-0063-R

VALERIE SMITH

DEFENDANT

Indictment for the offense of:

VIOLATION OF VOTER REGISTRATION STATUTES

(3 Counts)

Miss. Code Ann. §§23-15-35, 23-15-39 & 23-15-93

STATE OF MISSISSIPPI
COUNTY OF MADISON

IN THE CIRCUIT COURT OF MADISON COUNTY, JULY TERM 2018

Recalled November 28, 2018

The Grand Jurors for the State of Mississippi, taken from the body of good and lawful citizens of Madison County, elected, summoned, impaneled, sworn and charged to inquire in and for the body of the county aforesaid, at the term aforesaid of the Court aforesaid, in the name and by the authority of the State of Mississippi, upon their oaths present that:

COUNT I

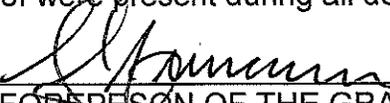
VALERIE SMITH, on or about the 22nd day of March, 2017, in the county aforesaid and within the jurisdiction of this Court, in her official capacity as the Clerk of the Municipality of Canton, Mississippi, charged with complying with the provision of law regarding the registration of voters, did willfully and unlawfully refuse or neglect to perform the duties imposed upon her regarding the registration of voters, in that she signed the voter registration application of Retheny Donnell Harris, attesting it was sworn and subscribed before "her", when the application had not been sworn or subscribed before her, in violation of Miss. Code Ann. §23-15-39, (1972, as amended);

COUNT II

And, based upon a series of acts connected together and constituting parts of a common scheme and plan **VALERIE SMITH**, on or about the 22nd day of March, 2017, in the county aforesaid and within the jurisdiction of this Court, in her official capacity as the Clerk of the Municipality of Canton, Mississippi, charged

AFFIDAVIT

COMES NOW Josh Ammerman, Foreperson of the November 28, 2018, Madison County Grand Jury, and makes oath that this Indictment presented to this Court was concurred by twelve (12) or more members of the Grand Jury, and that at least fifteen (15) members thereof were present during all deliberations.



FOREPERSON OF THE GRAND JURY

SWORN TO AND SUBSCRIBED before me on this, the 8th day of January, 2018~~8~~⁹

**ANITA WRAY CIRCUIT CLERK
OF MADISON COUNTY, MISSISSIPPI**

BY: Anita Wray DC



CAPIAS INSTANTER

FILED
MADISON COUNTY

FEB 08 2019

ANITA WRAY, CIRCUIT CLERK

BY [Signature] D.C.

THE STATE OF MISSISSIPPI

To the Sheriff of Madison County - Greetings:

We command you to take the body of **VALERIE SMITH** if to be found in your County, and safely keep, so that you have said body before the Honorable, the Circuit Court of Madison County, in said State, to be holden at the Courthouse thereof, in the City of Canton, instanter, then and there to answer unto the State of Mississippi on a charge of **VIOLATION OF VOTER REGISTRATION STATUTES** (23-15-35;23-15-39) by indictment of said Court at the January term, A. D., 2019, thereof, herein fail not, and have then this writ, with the manner you have executed the same.

Given under my hand and seal, and issued the 8th day of January A. D., 2019.

Anita Wray

By: [Signature] DC

STATE OF MISSISSIPPI
COUNTY OF MADISON

MADISON COUNTY SHERIFF'S OFFICE

I have this day executed the within writ personally by delivering a true copy of this Capias and a true copy of the indictment to:

You have been served an indictment in the Madison County Sheriff's Office. You must appear in person at the Madison County Courthouse on The _____, 20____. Failure to appear will result in Warrant issued for your arrest!

RANDY TUCKER, SHERIFF

VALERIE SMITH
and placing same in the Madison County jail.

This the 6 day of February 2019
Randall Tucker

BY _____ DS

By: [Signature] DS

(CIRCUIT CLERK)

IN THE CIRCUIT COURT OF MADISON COUNTY, MISSISSIPPI
MADISON COUNTY

STATE OF MISSISSIPPI

JUN 21 2019

VS.

ANITA WRAY, CLERK

CAUSE NO. 2019-0063-R

BY _____ D.C.

Valerie Smith

DEFENDANT

PETITION TO ENTER GUILTY PLEA

COMES NOW YOUR DEFENDANT, and respectfully petitions this Honorable Court to accept his/her plea of guilty to the crime of Violation of Voter Registration, and in support thereof would show unto the Court the following:

1. My true name is Valerie Lynetta Smith, also known as _____, I request that all proceedings against me be had in my true name. I am 55 years of age. My date of birth is 3-28-64, and my Social Security Number is 587-98-3662. I completed _____ years of school and 4 years of college. I (can) (cannot) read and write. There is nothing wrong with me physically or mentally which might impair my ability to read and understand this petition or to impair my ability to knowingly, willingly, and voluntarily enter this plea of guilty. I have never been treated for a mental or nervous condition, disease, or disorder other than: (if none, state "none") N/A

_____. I am not under the influence of any drugs

Valerie L Smith
DEFENDANT

or intoxicants or any other substance which might impair my ability to understand this petition and these proceedings.

2. I am represented by an attorney who is (court appointed) (retained by me): His/her name is Dennis C. Sweet, III. I have either read this petition in the presence of my attorney or had it read to me by him/her and he/she has explained it to me in detail and has answered any and all questions I had about it.

3. I wish to plead guilty to the charge of Violation of Voter Registration Statute.

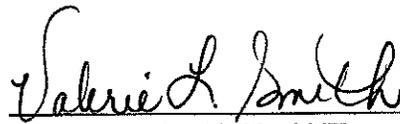
4. My attorney has advised me as to the possibilities of my acquittal or conviction on the charge against me, and has thoroughly discussed all aspects of my case with me. My attorney has counseled and advised me, and has made no threats or promises of any type or kind to induce me to enter this plea of guilty. The decision to seek entry of this plea was mine alone, based on my own reasons, and free from any outside influences.

5. I understand that I have the right to plead not guilty to any offense charged against me. If I choose to plead not guilty, the Constitution guarantees me:

- (a) the right to a speedy and public trial by jury;
- (b) the right to see, hear, and cross-examine all witnesses called to testify against me;

Valerie L Smith
DEFENDANT

- (c) the right to use the power and process of the Court to compel the production of any evidence, including the attendance of any witnesses in my favor;
- (d) the right to have the assistance of an attorney at all critical stages of the proceedings against me;
- (e) the presumption of innocence, that is, the State must prove all of the elements of any charge beyond a reasonable doubt that I am guilty;
- (f) the right to a unanimous jury verdict of all twelve jurors before I could be found guilty;
- (g) the right to take the witness stand and testify in my own behalf if I want to; I further understand that if I do not wish to take the witness stand and testify, this fact cannot be held against me, and that the jury would be instructed that my refusal to testify may not be held against me; I understand that unless I knowingly, willingly, and voluntarily agree to do so, I cannot be compelled to give testimony against myself in violation of my Fifth Amendment rights.
- (h) I further understand that should I be convicted in a jury trial, I have the right to appeal my conviction to the Mississippi Supreme Court, and with the assistance of counsel at no cost to me should I be financially unable to pay for an attorney to represent and assist me.


DEFENDANT

Knowing and understanding the Constitutional and other legal rights and guarantees set forth in this paragraph, I hereby waive each and every one of them and renew my desire to enter a plea of guilty.

6. I have fully informed my attorney of all the facts and circumstances known to me about the charge against me. My attorney has counseled and advised me on the nature and elements of the charge, on any and all lesser-included charges, and on all possible defenses that I might have in this case. My attorney advises me and I understand that the elements of the charge to which I am pleading guilty are as follow: that I did willfully, unlawfully, feloniously, knowingly _____

7. I wish to plead guilty and request the court to accept my plea of guilty on the basis of the following: on the date(s) as set forth in the indictment or bill of information, I did, in Madison County Mississippi, willfully, unlawfully, feloniously Violated the provision of 23-15-93 regarding the registration of electors by certifying that the elector had personally appeared before me in filling out their application when they had not.

8. I know that if I plead guilty to this charge, the sentence may be _____ years (minimum) to _____ years (maximum) incarceration, and/or a fine of \$ _____ (minimum) to \$ _____ (maximum). I also have been told by my attorney that any sentence I may receive is up to the Court, that the Court is not required to carry out any understanding made by me and my attorney with the District Attorney; I understand that

See offer letter

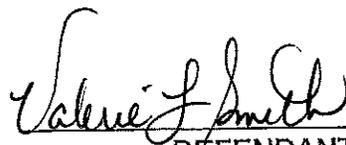
Valerie J. Smith
DEFENDANT

the Court is not required to follow the recommendation of the District Attorney, if any. The District Attorney will take no part other than providing to the Court, police reports and other factual information which may be requested by the Court; and the District Attorney shall make no recommendation to the Court concerning my sentence except as follows: (if none, state "none") See offer letter

There are no other criminal prosecutions or charges currently pending against me except: (if none, state "none") _____ . The State has made no agreement with me regarding those charges as expressly stated in paragraph 8 above or as stated in a separate guilty plea petition filed by me in that cause(s).

9. I have been convicted of no felonies in this or in any other State of the United States, except as follows: (if none, state "none") _____

10. I (am) (am not) presently on probation or parole. I understand that pleading guilty in this case may cause revocation of my probation or parole. I further understand that if my probation or parole is revoked, any sentence in that case may be consecutive to or in addition to any sentence in this case.


DEFENDANT

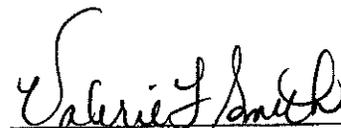
11. I understand that no one can assure me of parole or early release from prison. If this conviction is regarded a sex offense, I will likely be required to undergo psychiatric evaluation prior to being paroled, if parole is granted. If I am sentenced as an habitual criminal, I will not be eligible for parole or other early release.

12. I declare that no officer or agent of any branch of government, Federal, State, or Local, has made any promise or suggestion of any kind to me, or within my knowledge, to anyone else, that I will receive a lighter sentence, or probation, or any other form of leniency if I plead guilty, and that I have not been threatened, forced, intimidated or coerced in any manner by anyone.

13. I believe that my attorney has done all that anyone could do to counsel and assist me. I AM SATISFIED WITH THE ADVICE AND COUNSEL HE/SHE HAS GIVEN ME. I recognize that if I have been told by my attorney that I might receive probation or a light sentence, this representation is merely his opinion and that it is not binding on the Court or the District Attorney.

14. I understand that my plea of guilty may be withdrawn at any time during a hearing on this petition, prior to the acceptance of my plea by the Court.

15. I OFFER MY PLEA OF GUILTY FREELY AND VOLUNTARILY AND OF MY OWN ACCORD AND WITH FULL UNDERSTANDING OF ALL THE MATTERS SET FORTH IN THE INDICTMENT OR INFORMATION AND IN THIS PETITION AND WITH UNDERSTANDING OF THE CERTIFICATE OF MY ATTORNEY WHICH IS PART OF THIS PETITION.



DEFENDANT

16. HABITUAL CRIMINAL PARAGRAPH. If applicable, note the statute under which the plea of guilty is to be taken:

_____ MISS. CODE ANN. §99-19-81 (1972, as amended); or under

_____ MISS. CODE ANN. §99-19-83 (1972, as amended);

_____ Neither

I understand that if my plea is accepted to the charge described in paragraph 3 above, the conviction of said crime may later be used against me for the purposes of enhanced sentencing and/or sentencing as an habitual offender, should I later be convicted of another criminal offense.



DEFENDANT

WHEREFORE, PREMISES CONSIDERED, the Defendant prays that this petition will be granted, that the plea of guilty will be accepted and that the Defendant will be convicted and sentenced for the crime of Violation of Voter Registration Statute.

_____, just as if the Defendant had been found guilty of that crime by the verdict of a jury.

SIGNED AND SWORN TO UNDER OATH on this, the 21st day of June, A.D., 20 19, with full knowledge that if I willfully and corruptly swear, testify, or affirm falsely to any material matter under oath, affirmation or declaration legally administered in this Court I will, upon conviction, be punished additionally for the crime of perjury.

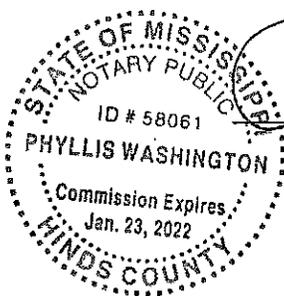
[Signature]
DEFENDANT'S ATTORNEY

[Signature]
DEFENDANT

STATE OF MISSISSIPPI
COUNTY OF MADISON

SWORN TO AND SUBSCRIBED before me on this, the 21st day of June, A.D., 20 19.

SEAL



[Signature]
(OFFICIAL TITLE) NOTARY

[Signature]
DEFENDANT

CERTIFICATE OF ATTORNEY OF RECORD

The undersigned, as attorney and counselor of record for the Defendant in this cause, hereby certifies:

1. I have read and fully explained to the Defendant the allegations contained in the indictment or bill of information in this case;
2. To the best of my knowledge and belief the statements, representations, and declarations made by the Defendant in the foregoing petition are in all respects accurate and true;
3. I have explained the minimum and maximum penalties for each charge or count to the Defendant, and consider him/her competent to understand the charge against him/her and the effect of his/her plea of guilty;
4. The plea of guilty offered by the Defendant in this petition accords with my understanding of the facts he/she has related to me, and is consistent with my advice to the Defendant;
5. In my opinion, the plea of guilty as offered by the Defendant in this petition is voluntarily and knowingly made. I recommend that the Court accept the plea of guilty;
6. Having discussed this matter carefully with the Defendant, I am satisfied that he/she is mentally competent and physically sound; there is no mental or physical condition of which I am aware which would affect his/her ability to understand these proceedings; further, I have no reason to believe that he/she is under the influence of drugs or intoxicants (any exception should be stated by counsel for the Record).

SIGNED BY ME IN THE PRESENCE OF THE DEFENDANT ABOVE NAMED AFTER FULL DISCUSSION OF THE CONTENTS OF THIS CERTIFICATE WITH THE DEFENDANT ON THIS, THE 21ST DAY OF June, A. D., 20 19.



ATTORNEY FOR DEFENDANT



DEFENDANT

OFFICE OF THE DISTRICT ATTORNEY

John K. Bramlett, Jr.
DISTRICT ATTORNEY
TWENTIETH JUDICIAL DISTRICT
RANKIN/MADISON COUNTIES

P. O. BOX 121
CANTON, MS 39046
PHONE (601)859-7838
FAX (601)859-8880

P. O. BOX 68
BRANDON, MS 39043
PHONE (601)825-1472
FAX (601)825-9605

June 18, 2019

Hon. Dennis C. Sweet, III
Sweet & Associates PA
P.O. Box 1178
Jackson, MS 39215-1178

Re: **State v. Valerie Smith**
Madison County Cause Number(s): 2019-0063(JR), 2019-0064(JR), 2019-0056⁶⁵(JR)

Dear Mr. Sweet:

Please be advised that the District Attorney's Office, pursuant to rule 15.4(a)(2)(B) of the Mississippi Rules of Criminal Procedure, will make the following recommendation as to sentence in exchange for your client's plea of guilty to the crime(s) charged in the above styled and number cause number(s):

OFFER: Plead guilty to Violation of Voter Registration Statutes in Count 1 of 2019-0063(JR). ONE (1) year MDOC, suspended, and the Defendant placed on Supervised Probation for a term of ONE (1) year. Pay a fine to Madison County in the amount of \$500.00. Pay an investigative fee in the amount of \$500.00 to the District Attorney's Office. Pay all statutory court costs/fees/assessments as imposed by the Court.

The remaining Counts in 2019-0063(JR) as well as 2019-0064(JR) and 2019-0056(JR) will be Nolle Prossed.

The minimum and maximum sentences for above reference offenses are listed:

CRIME

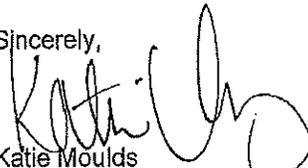
Minimum Fine – \$0	Maximum Fine – \$1,000
Minimum Sentence – 0 years	Maximum Sentence – 1 year

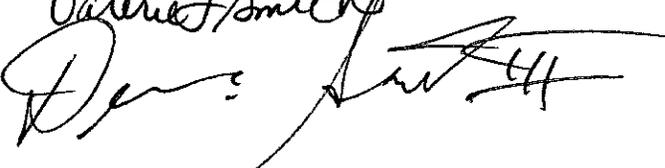
******Please note it is the responsibility of defense counsel to verify that the information listed as to the minimum and maximum sentences is accurate and correct.**

This offer is based on the defendant having 0 prior felony conviction(s). If this information is incorrect the above stated plea offer is withdrawn and you will need to contact this office so that we can extend a modified plea recommendation.

Failure to file a written plea petition by the dates set forth by the order of the court will result in the withdrawal of the plea offer and the defendant will be subject to an open plea or trial. If you have any questions, or if you would like to discuss this matter further, please contact the undersigned prior to the above date.

Sincerely,


Katie Moulds
Assistant District Attorney

IN THE CIRCUIT COURT OF MADISON COUNTY, MISSISSIPPI

STATE OF MISSISSIPPI

FILED
MADISON COUNTY

VS.

JUN 25 2019 CAUSE NO. 2019-0063 (R)

AS TO COUNT(S) II + III ONLY

Valerie Smith

ANITA WRAY, CIRCUIT CLERK

BY

NO

D.C.

DEFENDANT

MOTION TO NOLLE PROSEQUI
SPECIFIC COUNT(S) OF A MULTI-COUNT INDICTMENT

COMES NOW the State of Mississippi and enters its motion to *nolle prosequi* specific Count(s) contained in an indictment filed against the Defendant referenced above, subject to approval by the Court, and in support of said Motion offers the following:

DEFENDANT PLED GUILTY TO COUNT(S) I ON OR
ABOUT June 24, 20 19, AND AS A PART OF THE PLEA
AGREEMENT, THE STATE HAS AGREED TO NOLLE-PROSEQUI
COUNT(S) II & III

WHEREFORE, PREMISES CONSIDERED, the State respectfully moves the Court to Nolle Prosequi COUNT(S) II & III only of the Indictment in this cause.

Respectfully submitted, this the 25th day of JUNE, 20 19.

STATE OF MISSISSIPPI

BY:

Kathleen [Signature]

ASSISTANT DISTRICT ATTORNEY

ORDER

THIS CAUSE having come on for hearing on the State's *Motion to Nolle Prosequi Specific Counts of a Multi-Count Indictment* filed herein, and the Court, finding same to be reasonable, approves the entry thereof.

SO ORDERED, this the 25th day of June, 20 19.

[Signature]

CIRCUIT JUDGE

307 / 434

attorney to prosecute an appeal; 5) the Defendant's plea(s) of guilty is/are freely, voluntarily and intelligently made; and 6) there is a factual basis for the plea(s) which establishes the Defendant's guilt beyond any reasonable doubt; 7) the Petition(s) should be granted and the Defendant's plea(s) of guilty should be accepted.

IT IS THEREFORE ORDERED AND ADJUDGED that the plea(s) of guilty is/are accepted and entered and the Defendant is found to be guilty of and is convicted for the crime(s) of **VIOLATION OF VOTER REGISTRATION STATUTES** as charged in the Indictment(s) and/or Bill(s) of Information.

IT IS FURTHER ORDERED that the Defendant's application to waive deferment of sentence and pre-sentence report and to proceed with sentencing instanter is granted and the Court, being fully advised in the premises finds and determines that: a) the victim(s) and the investigating officer(s) were notified in advance of these proceedings; b) the defendant's plea(s) of guilty was/were entered **WITH** a recommendation of sentence from the State; c) questions and comments from all interested parties were invited and those submitted were received and considered; d) the Defendant and Defendant's Attorney were given an opportunity to address the court on all matters relevant to these proceedings including the presentation of circumstances in extenuation and mitigation; e) the recommendation of sentence, if made, by the State is hereby accepted and adopted by the Court as the sentence of the Court; and f) sentence should now be imposed.

IT IS THEREFORE ORDERED AND ADJUDGED that the Defendant is sentenced as follows:

(1) To serve a term of **ONE (1)** year(s) in the custody of the Mississippi Department of Corrections in Cause Number(s) **2019-0063 COUNT I. PROVIDED, HOWEVER,** that pursuant to Section 47-7-33 **OR** Section 47-7-34 of the Mississippi Code of 1972, **THE**

execution of the last **ONE (1)** year(s) of the sentence(s) imposed herein is/are hereby stayed and that portion of the sentence(s) is/are suspended **AND** the Defendant shall be released and placed on **SUPERVISED PROBATION** under the direct supervision of the Mississippi Department of Corrections on the terms, provisions and conditions prescribed elsewhere in this Order. Said sentence imposed shall run **CONSECUTIVELY** to any and all other sentences.

(2) To serve a term of **ONE (1)** year(s) on **SUPERVISED PROBATION** under the direct supervision of the Department of Corrections which shall commence upon the Defendant's release from the custody of the Mississippi Department of Corrections. During the term of **SUPERVISED PROBATION** the Defendant shall obey all orders of this Court and all the terms and conditions of probation or post-release supervision as may be imposed by this Court or the Mississippi Department of Corrections ("MDOC"), including but not limited to those conditions set forth by Miss. Code Ann. §47-7-35 (1972, as amended), as well as any modification or alterations thereto made by either this Court or the MDOC. It is further provided that, if the Defendant is adjudicated to be guilty of a material breach, violation or nonobservance of any of the terms, provisions or conditions of probation or post-release supervision, the probationary term may be revoked, the stay of execution and suspension of sentence terminated, and the Defendant's custody may be remanded to the MDOC for incarceration until the unserved portion of his sentence is fully satisfied.

(3) To pay court costs, fees and assessments in the amount of **\$638.50**, a District Attorney investigative fee in the amount of **\$500.00** and a fine to Madison County, Mississippi in the amount of **\$500.00** within **ONE (1)** year(s) at the rate of **\$140.00** per month to begin on the first working day of the first full calendar month after the date of this order and continuing at the same rate each month thereafter until paid in full.

IT IS HEREBY ORDERED that payments for any applicable court costs, fees and

assessments, fine(s) or restitution paid by the Defendant shall be applied as follows: FIRST to court costs, fees and assessments; SECOND to fine(s); THIRD to restitution.

IT IS FURTHER ORDERED that the payment of court costs, fees, assessments, fine(s) and restitution in the manner provided in this Order or by other Orders of the Court be made a special condition of parole or any other form of early release that may be granted to the Defendant.

IT IS FURTHER ORDERED that all time served in pretrial detainment in this cause is credited against this sentence.

SO ORDERED AND ADJUDGED THIS THE 24TH DAY OF JUNE, 2019.



CIRCUIT JUDGE

with complying with the provision of law regarding the registration of voters, did willfully and unlawfully refuse or neglect to perform the duties imposed upon her regarding the registration of voters, in that she signed the voter registration application of Jordan Johnson, attesting it was sworn and subscribed before "her", when the application had not been sworn or subscribed before her, in violation of Miss. Code Ann. §23-15-39, (1972, as amended);

COUNT III

And, based upon a series of acts connected together and constituting parts of a common scheme and plan **VALERIE SMITH**, on or about the 22nd day of March, 2017, in the county aforesaid and within the jurisdiction of this Court, in her official capacity as the Clerk of the Municipality of Canton, Mississippi, charged with complying with the provision of law regarding the registration of voters, did willfully and unlawfully refuse or neglect to perform the duties imposed upon her regarding the registration of voters, in that she signed the voter registration application of Kenneth Brown, attesting it was sworn and subscribed before "her", when the application had not been sworn or subscribed before her, in violation of Miss. Code Ann. §23-15-39, (1972, as amended);

All of the above (Count I through Count III) being against the peace and dignity of the State of Mississippi

Endorsed: A True Bill


FOREPERSON OF THE GRAND JURY


ASSISTANT DISTRICT ATTORNEY

FILED
IN THE CIRCUIT COURT OF
MADISON COUNTY
JUN 26 2019

STATE OF MISSISSIPPI

Cause/Case No. 2019-0063

TO THE MISSISSIPPI DEPARTMENT OF CORRECTIONS:

NOTICE OF CRIMINAL DISPOSITION

You are hereby notified that at the JUNE 2019 term of the Circuit Court, Judge RATCLIFF-8900 presiding, the following disposition was imposed for the crime(s) hereinafter described:

I. A. Disposition(s) Reported: Prisoner Commitment Suspended Sentence/Probation Revocation Acquittal Other Disposition
(Check all that apply)

A-1. Provisional Sentence Non-Adjudication Sentenced under RID Sentenced under Shock Probation
(Compliance/Non-Compliance Order constitutes Final Disposition) Bad Check Diversionary Program Restitution Center in _____ County

B. Conviction as Result of: Guilty Plea Guilty Plea after _____ days of Commencement of trial
 Jury Verdict after _____ days in trial Revocation Hearing

II. Name VALERIE LYNETTA SIMTH Alias _____
SSN 587-98-3662 Race B Sex F Date of Birth 03-28-1964
Last Known Residence 401 NORTHBAY DR MADISON, MS 39110
Place of Birth _____ Country of Citizenship _____
Alien Registration/Immigration # _____ FBI # _____

III. Count I Charge VIOLATION OF VOTER REGISTRATION STATUS
MS Code § 23-15-35 Orig. Case# _____ Agency _____
Count II Charge _____
MS Code § _____ Orig. Case# _____ Agency _____
*Count III Charge _____
MS Code § _____ Orig. Case# _____ Agency _____

IV. Date of Sentence 06-24-2019 Credit for Time Served (ONLY for this/these charge(s)) _____

Sentence(s) Initially Imposed by Order: Count I 1 YR; Count II NP; *Count III NP

<input type="checkbox"/> Check if reporting additional Counts on Reverse Side	Portion of Sentence to be Served (Yrs/Mos)	Portion of Sentence Suspended (Yrs/Mos)	To be served on Probation (Yrs/Mos)	Other Disposition (See Legend on Reverse Side)
	Count I _____	1 YR	1 YR	
	Count II _____			
	*Count III _____			

_____ to run concurrent with _____
_____ to run consecutive with _____

Conditions/Designation of Sentence: Habitual Psychological/Psychiatric Alcohol/Drug Treatment/Testing Other _____

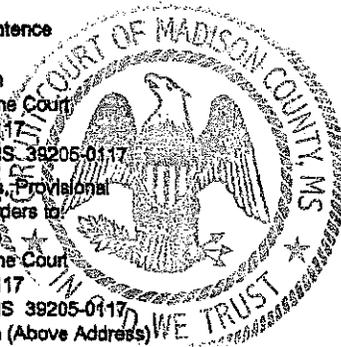
V. Confined in Jail _____ to _____
[On This/These _____ to _____
Charges Only] _____ to _____
_____ to _____

Released on Bond Pending Appeal _____ to _____
Defendant Currently Housed in: _____

VI. Fine \$ _____ Indigent Fee \$ _____ Restitution \$ _____
Court Costs \$ 638.50 Attorney Fees \$ _____ Other Fees \$ 1,000
Conditions of Payment TO BE PD @ \$140/MAR

Send Prisoner Commitments, Provisional Sentence Orders and Revocation Orders to:
Director of Records INS Liaison
MDOC MS Supreme Court
P. O. Box 88550 P. O. Box 117
Pearl, MS 39208-8550 Jackson, MS 39205-0117

Send Suspended Sentence/Probation Notices, Provisional Sentence Orders and Revocation Orders to:
Data Operations INS Liaison
MDOC MS Supreme Court
723 North President St. P. O. Box 117
Jackson, MS 39202-3097 Jackson, MS 39205-0117
Acquittal/Other Notices to: INS Liaison (Above Address)



ANITA WRAY

Circuit Clerk/

By: Anita Wray

Date: 06-26-2019

SCINS Form CRT-7/21/85

MS Code Ann. § _____

FILED
 IN THE CIRCUIT COURT OF MADISON COUNTY, MISSISSIPPI
 STATE OF MISSISSIPPI

JUN 25 2019
 ANITA WRAY, CIRCUIT CLERK
 D.C.

VS. Valerie Smith CAUSE NO. 2019-0065 (R)
 DEFENDANT

MOTION TO NOLLE PROSEQUI INDICTMENT

COMES NOW the State of Mississippi and enters its motion to *nolle prosequi* an Indictment filed against the Defendant referenced above, subject to approval by the Court, and in support of said Motion offers the following:

AS PART OF PLEA AGREEMENT IN
CONSIDERATION OF PLEA ENTERED IN
ANOTHER CASE

WHEREFORE, PREMISES CONSIDERED, the State respectfully moves the Court to *Nolle Prosequi* the Indictment in this cause.

Respectfully submitted, this the 25th day of JUNE, 20 19.

STATE OF MISSISSIPPI
 BY: [Signature]
 ASSISTANT DISTRICT ATTORNEY

ORDER

THIS CAUSE having come on for hearing on the State's *Motion to Nolle Prosequi Indictment* filed herein, and the Court, finding same to be reasonable, approves the entry thereof.

SO ORDERED, this the 25th day of June, 20 19.

[Signature]
 CIRCUIT JUDGE

FILED
MADISON COUNTY

NOV 20 2018

ANITA WRAY, CIRCUIT CLERK
BY AWray D.C.

INDICTMENT

STATE OF MISSISSIPPI

VS.

CAUSE NO. 2018-0519-C

DONNELL ROBINSON

DEFENDANT

Indictment for the offense of:

VOTER FRAUD

(1 Count)

and

VOTING BY UNQUALIFIED PERSON

(1 Count)

AS AN HABITUAL OFFENDER

Miss. Code Ann. §§23-15-753, 23-15-627, 97-13-35 & 91-19-81

STATE OF MISSISSIPPI
COUNTY OF MADISON

IN THE CIRCUIT COURT OF MADISON COUNTY, JULY TERM 2018

Recalled October 17, 2018

The Grand Jurors for the State of Mississippi, taken from the body of good and lawful citizens of Madison County, elected, summoned, impaneled, sworn and charged to inquire in and for the body of the county aforesaid, at the term aforesaid of the Court aforesaid, in the name and by the authority of the State of Mississippi, upon their oaths present that:

COUNT I

DONNELL ROBINSON, on or about the 21st day of April, 2017, in the county aforesaid and within the jurisdiction of this Court, did willfully, unlawfully, knowingly and intentionally swear to an Affidavit on an Absentee Ballot application form, in that he did falsely swear that he was duly and qualified elector of Ward 7 in the City of Canton, Madison County, Mississippi, when he well knew that he was not eligible to vote in Ward 7 election, in that he was previously convicted of Receiving Stolen Goods, a disenfranchising crime on the 6th day of April, 1995, in violation of Miss. Code Ann. §§23-15-753 and 23-15-627, (1972, as amended);

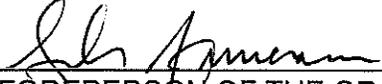
COUNT II

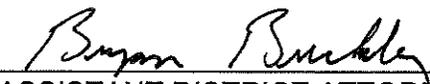
And, based upon a series of acts connected together and constituting parts of a common scheme and plan **DONNELL ROBINSON**, on or about the 21st day of April, 2017, in the county aforesaid and within the jurisdiction of this Court, did willfully, unlawfully, knowingly and intentionally vote in Ward 7 in the Canton Municipal Election, when he well knew that he was not eligible to vote in Ward 7 election, in that he was previously convicted of Receiving Stolen Goods, a disenfranchising crime on the 6th day of April, 1995, in violation of Miss. Code Ann. 97-13-35, (1972, as amended);

The Grand Jury also finds that the said **DONNELL ROBINSON** is an habitual offender, pursuant to Miss. Code Ann. §99-19-81, (1972, as amended). See attached Exhibit "A", Habitual Offender Attachment.

All of the above (Count I and Count II) being against the peace and dignity of the State of Mississippi

Endorsed: A True Bill


FOREPERSON OF THE GRAND JURY


ASSISTANT DISTRICT ATTORNEY

AFFIDAVIT

COMES NOW Josh Ammerman, Foreperson of the October 17, 2018, Madison County Grand Jury, and makes oath that this Indictment presented to this Court was concurred by twelve (12) or more members of the Grand Jury, and that at least fifteen (15) members thereof were present during all deliberations.


FOREPERSON OF THE GRAND JURY

SWORN TO AND SUBSCRIBED before me on this, the 20 day of November, 2018.



**ANITA WRAY CIRCUIT CLERK
OF MADISON COUNTY, MISSISSIPPI**

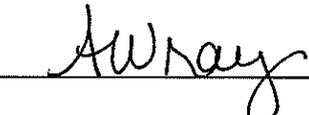
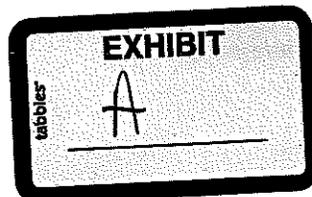
BY:  DC

EXHIBIT "A"
NON-VIOLENT HABITUAL OFFENDER ATTACHMENT
Miss. Code Ann. 99-19-81

He, the said **DONNELL ROBINSON**, having been convicted at least twice of a felony or federal crime upon charges separately brought and arising out of separate incidents at different times and sentenced to and served separate terms of one (1) year or more in any state and/or federal penal institution, as follows:

- (1) Sentenced by *Order of Sentence* filed on or about April 6, 1995, to three (3) years in the custody of the Mississippi Department of Corrections on the charge of *Receiving Stolen Property* in the Circuit Court of Madison County, Mississippi, Cause No.2482; and,
- (2) Sentenced by *Order of Sentence* filed on or about September 18, 1986, to fifteen (15) years in the custody of the Mississippi Department of Corrections on charges of *Grand Larceny (2 counts) and House Burglary (1 count)* in the Circuit Court of Madison County, Mississippi, Cause Nos. 1166, 1167, 1168

Upon conviction, the defendant shall be sentenced to the maximum term of incarceration prescribed under the Statute, which sets the penalty for this felony crime, and such sentence shall be without the possibility of parole, probation or other reduction, pursuant to Miss. Code Ann. §99-19-81 (1972, as amended), against the peace and dignity of the State of Mississippi.



CAPIAS INSTANTER

FILED
MADISON COUNTY

DEC 06 2018

THE STATE OF MISSISSIPPI

ANITA WRAY, CIRCUIT CLERK

To the Sheriff of Madison County - Greetings:

BY MW D.C.

We command you to take the body of **DONNELL ROBINSON** if to be found in your County, and safely keep, so that you have said body before the Honorable, the Circuit Court of Madison County, in said State, to be holden at the Courthouse thereof, in the City of Canton, instanter, then and there to answer unto the State of Mississippi on a charge of **VOTER FRAUD AND VOTING BY UNQUALIFIED PERSON AS AN HABITUAL OFFENDER**

(23-15-753,23-15-627,) by indictment of said Court at the November term, A. D., 2018, thereof, herein fail not, and have then this writ, with the manner you have executed the same.

Given under my hand and seal, and issued the 20th day of November A. D., 2018.



Anita Wray

By:

Anita E. Wray

DC

STATE OF MISSISSIPPI
COUNTY OF MADISON

MADISON COUNTY SHERIFF'S OFFICE

I have this day executed the within writ personally by delivering a true copy of this Capias and a true copy of the indictment to:

You have been served an indictment by the Madison County Sheriff's Office. You must appear in person at the Madison County Court House on The _____ Day of _____, 20____. Failure to appear will result in Warrant issued for your arrest!

RANDY TUCKER, SHERIFF

DONNELL ROBINSON
and placing same in the Madison County jail.

This the 6th day of Dec 18
Randall Tucker

BY

DS

By: [Signature] V-3 DS

(CIRCUIT CLERK)

IN THE CIRCUIT COURT OF MADISON COUNTY, MISSISSIPPI

STATE OF MISSISSIPPI

FILED
MADISON COUNTY

VS

CAUSE NO. 2018-0519; 0520-**C**

DONNELL ROBINSON

DEC 10 2018

ANITA WRAY, CIRCUIT CLERK

BY [Signature] D.C.

ATTORNEY'S ENTRY OF APPEARANCE

In entering my appearance as attorney of record for the defendant, I certify that I have received a copy of the scheduling order, and that:

1. I am required to attend all scheduled court appearances, and to have the defendant present. I will be subject to a fine of not less than fifty (\$50.00) dollars in the event that I fail to do so.

2. If my client has not posted bail and is to appear at the trial in clothing other than that supplied by the jail, it is my personal responsibility to deliver suitable clothing to the proper authorities not later than 7:30 A. M. on the trial date.

3. My name, address and telephone number is: J.M. Ritchey; P.O. Box 284;
Canton, MS 39046; 601-859-4141

This the 10 day of December, 2018.

[Signature] 5369
ATTORNEY FOR DEFENDANT
jakeritchey@comcast.net

300/216

IN THE CIRCUIT COURT OF MADISON COUNTY, MISSISSIPPI

STATE OF MISSISSIPPI

FILED
MADISON COUNTY

VS

DEC 10 2018

CAUSE NO. 2018-0519; 0520-**C**

DONNELL ROBINSON

ANITA WRAY, CIRCUIT CLERK

BY [Signature] D.C.

WAIVER OF ARRAIGNMENT AND ENTRY OF PLEA

Prior to arraignment, Defendant through his counsel reserves the right to object to any defect in the indictment and reserves the right to file pleadings required to be filed prior to arraignment, within 10 days from the date hereof.

Comes now the Defendant, DONNELL ROBINSON , with counsel and acknowledges service of an indictment on a charge of VOTER FRAUD X2 and VOTING BY UNQUALIFIED PERSON AS AN HABITUAL OFFENDER X2. I understand the nature of the charge against me, and I hereby waive formal reading of the indictment to me in open Court. I hereby enter a plea of Not Guilty to the charge set out in the indictment.

WITNESS MY SIGNATURE this the 10 day of December, 2018.

[Signature]

DEFENDANT

[Signature]
Attorney for Defendant

SWORN TO AND SUBSCRIBED before me, this the 10 day of December, 2018



[Signature]
NOTARY PUBLIC

My Commission Expires 01-06-2020

IN THE CIRCUIT COURT OF MADISON COUNTY, MISSISSIPPI

STATE OF MISSISSIPPI

FILED
MADISON COUNTY

VS

DEC 10 2018

CAUSE NO. 2018-0519; 0520-C

DONNELL ROBINSON

ANITA WRAY, CIRCUIT CLERK

BY [Signature] D.C.

**ORDER SETTING TRIAL, PRE-TRIAL CONFERENCE,
GUILTY PLEA DATE AND SETTLEMENT CONFERENCE**

IT APPEARING defendant has been duly arraigned and entered a plea of Not Guilty to the indictment, bail is set at \$ 4,000.00 and returnable to each date set by the Court.

IT IS ORDERED AND ADJUDGED that the defendant appear at the Madison County Courthouse on the following dates and times:

1. SETTLEMENT CONFERENCE is set for 9:00 a.m. on the 25 day of March, 2019 however, defendant's appearance at the SETTLEMENT CONFERENCE is excused if one of the items set forth in paragraph A., B. or C. below is completed before the SETTLEMENT CONFERENCE. The Court will take a guilty plea or enter the Pre-Trial Conference Checklist for a defendant who wishes the Court to do either at the SETTLEMENT CONFERENCE.

The defendant must complete one of the below actions before 5:00 p.m. on the 29 day of March, 2019.

A. File a guilty plea petition with the Circuit Clerk in order to take advantage of the State's recommendation as to sentence (See MRCrP 15.4 (b)), and attach a copy of the recommendation letter thereto; or

B. Provide a pre-trial diversion program application to the State and pay any fees associated therewith; or

C. Provide the Court Administrator a Pre-Trial Conference Checklist fully completed by all parties.

2. GUILTY PLEA DATE is set for 9:00 a.m. on the 1 day of April, 2019, however, defendant's appearance at the GUILTY PLEA DATE

300/214

is excused if a pre-trial diversion program application has been provided to the State, along with any fees associated therewith, or if defendant appeared at the **SETTLEMENT CONFERENCE** and was questioned by the Court in relation to the entry of a Pre-Trial Conference Checklist.

If a guilty plea petition or pre-trial diversion application has not been filed as set forth in paragraph A. or B. above, or if the Court has not questioned defendant and entered a Pre-Trial Conference Checklist, the Court will do so on the **GUILTY PLEA DATE**.

The parties must file all pre-trial motions with the Circuit Clerk and, either personally or electronically, serve counsel opposite, before 5:00 p.m. on the 5 day of April, 2019, or will be deemed abandoned for that reason. See MRCrP 16.1 (a) and 34.2. The response to any motion filed must comply with MRCrP 34.1(b) and be filed and served before 5:00 p.m. the following Wednesday. The reply to any response filed must comply with MRCrP 34.1(c) and be filed and served before 5:00 p.m. the following Friday.

3. **PRETRIAL CONFERENCE** set for 9:00 a.m. on the 15 day of April, 2019, however, the parties appearance at the **PRETRIAL CONFERENCE** is excused if a pre-trial motion has not been filed by either party.

All pre-trial motions will be heard on or before this date, or will be deemed abandoned for that reason. See MRCrP 34.2.

4. **TRIAL** is set for 9:00 a.m. on the 22 day of April, 2019, or commenced on any day thereafter that week or on any day of the following week.

SO ORDERED AND ADJUDGED this the 10 day of December, 20 .

W. E. [Signature]

CIRCUIT JUDGE

[Signature]
DEFENDANT

Defendant's Address and Telephone number:

639 E Fullon St Canton Miss

J. M. Ritchey
ATTORNEY FOR DEFENDANT/BAR #

769-572-2826

J. M. Ritchey
PRINT NAME

Social Security: 426-21-9433

Date of Birth: 9-7-66

IN THE CIRCUIT COURT OF MADISON COUNTY, MISSISSIPPI

STATE OF MISSISSIPPI

FILED
MADISON COUNTY

VS.

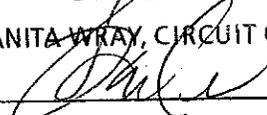
DEC 10 2018

CAUSE NO. 2018-0519; 0520-**C**

ANITA WRAY, CIRCUIT CLERK

DONNELL ROBINSON

BY



D.C.

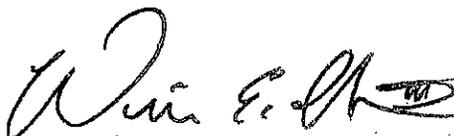
DEFENDANT

ORDER REGARDING RECOMMENDATION LETTER

THIS CAUSE is before the Court *sua sponte* regarding attachment of the State's recommendation letter to the guilty plea petition. Because the Court has experienced many instances in the guilty plea process where the State's recommendation as to sentence announced in open court did not match the recommendation written in a defendant's guilty plea petition, the Court finds that, in order to enter a plea of guilty with a recommendation from the State as to sentence, a copy of the State's recommendation letter should be attached to the guilty plea petition.

IT IS, THEREFORE, ORDERED that, in order to enter a plea of guilty with the State making a recommendation as to sentence, the defendant shall be and hereby is required to attach a copy of the State's recommendation letter to the guilty plea petition at the time the petition is filed with the Circuit Clerk, prior to the guilty plea deadline as set forth in the order setting the case for trial.

SO ORDERED AND ADJUDGED this 10 day of December, 2018.



CIRCUIT JUDGE

300/210

IN THE CIRCUIT COURT OF MADISON COUNTY, MISSISSIPPI

STATE OF MISSISSIPPI

VS.

DONNELL ROBINSON

BY

DEC 26 2018

ANITA WRAY, CIRCUIT CLERK

CRIMINAL CASE, FILE NO: ~~29654~~

D.C.

DEFENDANT

2018-519; 520

WRITTEN REQUEST FOR DISCOVERY

COMES NOW the Defendant, Donnell Robinson, by and through his attorney, and makes this written request, pursuant to *M.R. Cr.P.*, 17.2, to inspect, copy, test and photograph, without the necessity of any court order, the following which are in the possession, custody or control of the State or the existence of which is known or by the exercise of due diligence may become known to the prosecution, to-wit:

1. Names and addresses of all witnesses in chief proposed to be offered by the prosecution at trial, together with a copy of the contents of any statement, written, recorded, or otherwise preserved, of each such witness and the substance of any oral statement by any such witness;
2. All of the voting records of Madison County, Mississippi, that would evidence the defendant's participation as a voter or qualified elector in any municipal, county, state or federal election during the period from September 18, 1986, to April 20, 2017;
3. Copy of any written or recorded statement of the defendant and the substance of any oral statement made by the defendant;
4. Copy of the criminal record of the defendant, if proposed to be used to impeach;
5. Any reports, statements or opinions of experts, written, recorded or otherwise preserved, made in connection with this particular case and the substance of any oral statement by any such expert;



OFFICE OF THE DISTRICT ATTORNEY

JOHN K. BRAMLETT, JR.
DISTRICT ATTORNEY

TWENTIETH JUDICIAL DISTRICT
RANKIN, MADISON COUNTIES

January 15, 2019

FILED
MADISON COUNTY

JAN 20 2019
ANITA WRAY, CIRCUIT CLERK
BY *[Signature]* D.C.

J. M. RITCHEY, ESQ.
POST OFFICE BOX 286
CANTON, MS 39046

**Re: State of Mississippi vs. Donnell Robison; (JA)
In the Circuit Court of Madison County, Mississippi; Criminal Action No. 2018-0519; 2018-0520**

Dear Mr. Ritchey:

I have received your written request for discovery and have enclosed herewith a copy of all written materials contained in our files, with the exclusion of work-product or other privileged matter. The enclosed discovery response is either in the form of a disk containing a copy of discovery in an Adobe format, or a hard copy of the information. If you desire to review our file to compare it to the information you received, please contact the undersigned to schedule an appointment to do so.

Items of physical evidence described in the reports are maintained by the investigative agencies. If you would like to inspect or copy such information, please contact the undersigned to schedule an appointment. Copies of audio and/or video recordings may be provided upon your specific request.

Please be advised that the State intends to call, in our case-in-chief, any and/or all of the witnesses identified in the discovery provided and we expect them to testify in conformity with the information provided herein. Further, the State may seek to introduce any and/or all items of physical evidence described herein. Should you have any questions concerning the identity of witnesses or items of physical evidence which the State intends to introduce at the trial of this matter, please contact the undersigned.

The State hereby requests reciprocal discovery pursuant to Rule 17.3. We demand notice of Alibi pursuant to Rule 17.4 as to the time, date and place of the crime as set forth in discovery. Further, we demand notice of the defendant's intent to rely upon the defense of insanity as required by Rule 17.4.

Should you have any questions or desire to discuss this matter further, please give me a call. With best regards, I am

Very truly yours,

[Signature]
Bryan Buckley, Assistant District Attorney

Attachment, including 0 DVD(s)
c: Court file #2018-0519;0520

Camera Coverage Notice

FILED
MADISON COUNTY
MAR 22 2019
BY ANITA WEBB, CLERK
D.C.

Rule 5 of the Mississippi Rules for Electronic and Photographic Coverage of Judicial Proceedings requires that media representatives give at least 48 hours notice prior to the commencement of a proceeding if they propose to photograph, videotape, make an audio recording of or engage in any other form of electronic coverage.

Notice should be given to the clerk of the court and the court administrator in the court in which the proceeding will occur.

Note: the notice requirement does not apply to reporters who wish to attend a judicial proceeding without taking pictures or making broadcast recordings.

To assist the court, please provide the following information:

Style of case: Docket Call Entry & Appearance - Canton Voter Fraud Case

Cause number: _____

Court: Madison County Circuit Court

Judge: Hon. Dewey Arthur

Date of proceeding: 3-25-19

Media organization: WBST

Name(s) of journalist(s) and contact number(s): _____

Journalist: Ashley Cordina (601-965-7501)

Medium: _____

- still photography
- videotape
- live broadcast or streaming
- audio recording

Type of coverage anticipated:

- spot coverage
- complete coverage
- opening and closing arguments
- specific witnesses, if known _____

A complete copy of the Mississippi Rules for Electronic and Photographic Coverage of Judicial Proceedings is available on the web site of the State of Mississippi Judiciary at http://courts.ms.gov/rules/msrulesofcourt/rules_electronicphotographic_coverage.pdf.

Journalists are expected to be familiar with and comply with the rules.

Date submitted: 3-21-19 Submitted by: [Signature]

Administrative Office of Courts 2013
Signature: _____

B. Provide a pre-trial diversion program application to the State and pay any fees associated therewith; or

C. Provide the Court Administrator a Pre-Trial Conference Checklist fully completed by the parties.

2. **GUILTY PLEA DATE** set for 9:00 a.m. on the 24th day of June, 2019, however, defendant's appearance at the **GUILTY PLEA DATE** is excused if a pre-trial diversion program application has been provided to the State, along with any fees associated therewith, or if defendant appeared at the **SETTLEMENT CONFERENCE** and was questioned by the Court in relation to the entry of a Pre-Trial Conference Checklist.

If a guilty plea petition or pre-trial diversion program application has not been filed as set forth in paragraph A. or B. above, or if the Court has not questioned defendant and entered a Pre-Trial Conference Checklist, the Court will do so on the **GUILTY PLEA DATE**.

The parties must file all pre-trial motions with the Circuit Clerk and, either personally or electronically, serve counsel opposite, before 5:00 p.m. on the 28th day of June, 2019, or will be deemed abandoned for that reason. See MRCrP 16.1 (a) and 34.2. The response to any motion filed must comply with MRCrP 34.1 (b) and be filed and served before 5:00 p.m. the following Wednesday. The reply to any response filed must comply with MRCrP 34.1 (c) and be filed and served before 5:00 p.m. the following Friday.

3. **PRE-TRIAL CONFERENCE** set for 9:00 a.m. on the 22nd day of July, 2019, however, the parties appearance at the **PRE-TRIAL CONFERENCE** is excused if a pre-trial motion has not been filed by either party.

All pre-trial motions will be heard on or before this date, or will be deemed abandoned for that reason. See MRCrP 34.2.

4. TRIAL set for 9:00 a.m. on the 29th day of July, 2019 or
commenced on any day thereafter that week or on any day of the following week.

SO ORDERED AND ADJUDGED this the 28th day of March, 2019.



CIRCUIT JUDGE

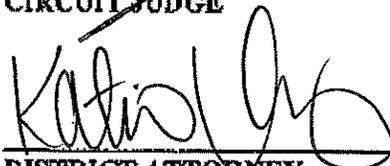
AGREED TO:



ATTORNEY FOR DEFENDANT

J. M. Ritchey

Print Name



Act. DISTRICT ATTORNEY

4. My attorney has advised me as to the possibilities of my acquittal or conviction on the charge against me, and has thoroughly discussed all aspects of my case with me. My attorney has counseled and advised me, and he has made no threats or promises of any type or kind to induce me to enter this plea of guilty. The decision to seek entry of this plea was mine alone, based on my own reasons, and free from any outside influences.

5. I understand that I have the right to plead not guilty to any offense charged against me. If I choose to plead not guilty, the Constitution guarantees me:

- (a) the right to a speedy and public trial by jury;
- (b) the right to see, hear, and cross-examine all witnesses called to testify against me;
- (c) the right to use the power and process of the Court to compel the production of any evidence, including the attendance of any witnesses in my favor;
- (d) the right to have the assistance of an attorney at all critical stages of the proceedings against me;
- (e) the presumption of innocence, that is, the State must prove all of the elements of any charge beyond a reasonable doubt that I am guilty;
- (f) the right to a unanimous jury verdict of all twelve jurors before I could be found guilty;
- (g) the right to take the witness stand and testify in my own behalf if I want to;

I further understand that if I do not wish to take the witness stand and testify, this fact cannot be held against me, and that the jury would be instructed that my refusal to testify may not be held against me; I understand that unless I knowingly, willingly, and voluntarily agree to do so, I cannot be compelled to give testimony against myself in violation of my Fifth Amendment rights.

(h) I further understand that should I be convicted in a jury trial, I have the right to appeal my conviction to the Mississippi Supreme Court, and with the assistance of counsel at no cost to me should I be financially unable to pay for an attorney to represent and assist me.

Knowing and understanding the Constitutional and other legal rights and guarantees set forth in this paragraph, I hereby waive each and every one of them and renew my desire to enter a plea of guilty.

6. I have fully informed my attorney of all the facts and circumstances known to me about the charges against me. My attorney has counseled and advised me on the elements of the charge, on any and all lesser-included charges, and on all possible defenses that I might have in this case. My attorney advises me and I understand that the elements of the charge of Misdemeanor Vote Fraud, to which I am pleading guilty, are as follows:

(a) selling one's vote for money, favor, or reward, or being paid or promised money, a reward, a favor or favors, or any other item of value in exchange for one's vote, or

(b) willfully swearing falsely to any affidavit provided for in Section 23-15-621 through 23-15-735.

7. I wish to plead guilty and request the court to accept my plea of guilty on the basis of the following:

I believe that entering a guilty plea to the offense charged in the indictment in this case is in my best interest, and accordingly I wish to enter an *Alford* plea of guilty to the charged offense, as the evidence against me may be sufficient to convince a jury of my guilt beyond a reasonable doubt. The evidence will show and I admit that on or about April 21, 2017, I executed an affidavit on an absentee ballot application form when I was not eligible to vote

in the election due to the fact that I had previously been convicted on April 6, 1995, of receiving stolen property, a felony and disenfranchising crime. Although I knew that I had been previously convicted of that felony and initially believed that I was ineligible to vote, I was unable to read the affidavit due to my illiteracy, and I only executed the affidavit because I was repeatedly assured by Anthony Grant and others that I was eligible to vote, notwithstanding such conviction. Accordingly, I believe that a jury could find that I did knowingly and intentionally execute the affidavit, and accordingly I believe that it is in my best interest to offer and for the Court to accept my *Alford* plea of guilty to the charged offense.

8. I know that if I plead guilty to the charge of Misdemeanor Vote Fraud, the sentence may be from zero (0) years incarceration in the county jail (minimum) to one (1) year incarceration in the county jail (maximum) or a fine of Zero Dollars (\$0.00) (minimum) to One Thousand Dollars (\$1,000.00) (maximum), or both.

I also have been told by my attorney that any sentence I may receive is up to the Court, that the Court is not required to carry out any understanding made by me and my attorney with the District Attorney; I understand that the Court is not required to follow the recommendation, if any, of the District Attorney. The District Attorney will take no part other than providing to the Court, police reports and other factual information which may be requested by the Court; and the District Attorney shall make no recommendation to the Court concerning my sentence except as follows:
(if none, state "none")

- a. Count I: One (1) year in the Madison County Jail, to be suspended; and placed on non-reporting and misdemeanor probation for a period of Six (6) months;
- b. Count I: Fine of \$250.00;
- c. Count I: All court costs and statutory fees;
- d. Count II: State will move to dismiss Count II; and
- e. State will move to dismiss Case No. 2018-0520-R in its entirety.

f. Defendant will testify truthfully in any voter fraud cases in Madison County.

A true and correct copy of the District Attorney's recommendation letter is attached hereto as Exhibit "A."

9. I have been convicted of two (2) prior felonies under the laws of this State, or any other State, or the United States of America, as follows:

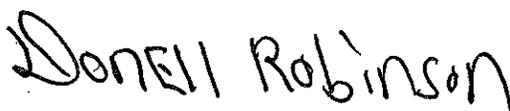
- a. Receiving Stolen Property, in Case No. 2482, Circuit Court of Madison County, MS, convicted on April 4, 1995; and
- b. Grand Larceny – 2 counts and House Burglary in Case No. 1166, 1167 and 1168, Circuit Court of Madison County, MS, convicted on September 18, 1986.

10. I am not presently on probation or parole. I understand that pleading guilty in this case may cause revocation of any probation or parole. I further understand that if any probation or parole is revoked, any sentence in that case may be consecutive to or in addition to any sentence in this case.

11. I understand that no one can assure me of parole or early release from prison. If this conviction is regarded a sex offense, I will likely be required to undergo psychiatric evaluation prior to being paroled, if parole is granted. If I am sentenced as an habitual criminal, I will not be eligible for parole or other early release.

12. I declare that no officer or agent of any branch of government, Federal, State, or Local, has made any promise or suggestion of any kind to me, or within my knowledge, to anyone else, that I will receive a lighter sentence, or probation, or any other form of leniency if I plead guilty, and I have not been threatened, forced, intimidated or coerced in any manner by anyone.

13. I believe that my attorney has done all that anyone could do to counsel and assist me. I AM SATISFIED WITH THE ADVICE AND COUNSEL HE HAS GIVEN ME. I recognize

5 

that if I have been told by my attorney that I might receive probation or a light sentence, this representation is merely his opinion and that it is not binding on the Court or the District Attorney.

14. I understand that my plea of guilty may be withdrawn at any time during a hearing on this petition, prior to the acceptance of my plea by the Court.

15. I OFFER MY PLEA OF GUILTY FREELY AND VOLUNTARILY AND OF MY OWN ACCORD AND WITH FULL UNDERSTANDING OF ALL THE MATTERS SET FORTH IN THE INDICTMENT OR INFORMATION AND IN THIS PETITION AND WITH UNDERSTANDING OF THE CERTIFICATE OF MY ATTORNEY WHICH IS PART OF THIS PETITION.

16. HABITUAL CRIMINAL PARAGRAPH. If applicable, note the statute under which the plea of guilty is to be taken:

_____ MISSISSIPPI CODE ANN. §99-19-81 (1972); or under
_____ MISSISSIPPI CODE ANN. §99-19-83 (1972);
 X Neither

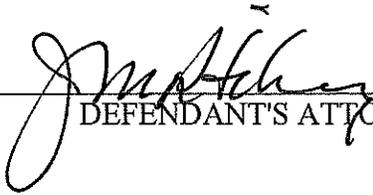
I understand that if my plea is accepted to the charge described in paragraph 3 above, the conviction of said crime may later be used against me for the purposes of enhanced sentencing and/or sentencing as an habitual offender, should I later be convicted of another criminal offense.

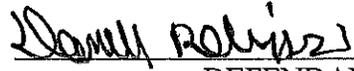
WHEREFORE, PREMISES CONSIDERED, the Defendant prays that this petition will be granted, that the plea of guilty will be accepted and that the Defendant will be convicted and sentenced for the misdemeanor crime of Misdemeanor Vote Fraud, just as if the Defendant had been found guilty of said crime by the verdict of a jury.

SIGNED AND SWORN TO UNDER OATH on this, the 19 day of June, A.D., 2019, with full knowledge that, if I willfully and corruptly swear, testify, or affirm falsely to any material

Dorell Robinson

matter under oath, affirmation or declaration legally administered in this Court, I will, upon conviction, be punished additionally for the crime of perjury.

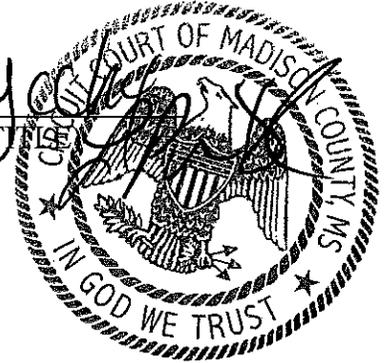

DEFENDANT'S ATTORNEY


DEFENDANT

STATE OF MISSISSIPPI
COUNTY OF MADISON

SWORN TO AND SUBSCRIBED BEFORE ME, on this, the 19th day of November,
A.D., 2018.


(OFFICIAL TEST)



SEAL

CERTIFICATE OF ATTORNEY OF RECORD

The undersigned, as attorney and counselor of record for the Defendant in this cause, hereby certifies:

1. I have read and fully explained to the Defendant the allegations contained in the indictment or bill of information in this case;
2. To the best of my knowledge and belief the statements, representations, and declarations made by the Defendant in the foregoing petition are in all respects accurate and true;
3. I have explained the minimum and maximum penalties for each charge or count to the Defendant, and consider him/her competent to understand the charge against him/her and the effect of his/her plea of guilty;
4. The plea of guilty offered by the Defendant in this petition accords with my understanding of the facts he/she has related to me, and is consistent with my advice to the Defendant;
5. In my opinion, the plea of guilty as offered by the Defendant in this petition is voluntarily and knowingly made. I recommend that the Court accept the plea of guilty;
6. Having discussed this matter carefully with the Defendant, I am satisfied that he/she is mentally competent and physically sound; there is no mental or physical condition of which I am aware which would affect his/her ability to understand these proceedings; further, I have no reason to believe that he/she is under the influence of drugs or intoxicants (any exception should be stated by counsel for the Record).

SIGNED BY ME IN THE PRESENCE OF THE DEFENDANT ABOVE NAMED AFTER FULL DISCUSSION OF THE CONTENTS OF THIS CERTIFICATE WITH THE DEFENDANT ON THIS, THE 19 DAY OF JUNE, A.D. 2019.



ATTORNEY FOR DEFENDANT



DEFENDANT

OFFICE OF THE DISTRICT ATTORNEY

John K. Bramlett, Jr.
DISTRICT ATTORNEY
TWENTIETH JUDICIAL DISTRICT
RANKIN/MADISON COUNTIES

P. O. BOX 121
CANTON, MS 39046
PHONE (601)859-7838
FAX (601)859-8880

P. O. BOX 68
BRANDON, MS 39043
PHONE (601)825-1472
FAX (601)825-9605

June 19, 2019

Hon. Jake Ritchey
P.O. Box 286
Canton, MS 39046-02865

Re: **State v. Donnell Robinson**
Madison County Cause Number(s): 2018-0519(JA) and 2018-0527(JA)

Dear Jake:

Please be advised that the District Attorney's Office, pursuant to rule 15.4(a)(2)(B) of the Mississippi Rules of Criminal Procedure, will make the following recommendation as to sentence in exchange for your client's plea of guilty to the crime(s) charged in the above styled and number cause number(s):

OFFER: Plead guilty in 2018-0519(JA), Count 1 to Vote Fraud. (Vote Fraud is a "swing statute", punishable either as a felony or as a misdemeanor. The State agrees to proceed under the misdemeanor sentencing scheme, as set forth below.) ONE (1) year in the County Jail, suspended, and the Defendant placed on misdemeanor probation for a term of SIX (6) months. Pay a fine in the amount of \$250.00 to Madison County. The Defendant must testify truthfully in the trial of any of the other Defendants charged with Voter Fraud.

Cause Number 2018-0527(JA) and Count 2 of 2018-0519(JA) will be Noile Prossed.

The minimum and maximum sentences for above reference offenses are listed:

Vote Fraud (Misdemeanor) §23-15-753

Minimum Fine – \$0

Maximum Fine – \$1,000

Minimum Sentence – 0 years

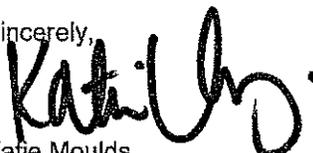
Maximum Sentence – 1 year County Jail

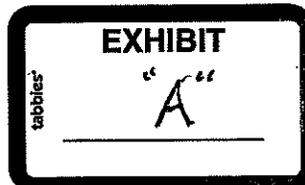
******Please note it is the responsibility of defense counsel to verify that the information listed as to the minimum and maximum sentences is accurate and correct.**

This offer is based on the defendant having 2 or more prior felony conviction(s). If this information is incorrect the above stated plea offer is withdrawn and you will need to contact this office so that we can extend a modified plea recommendation.

Failure to file a written plea petition by the dates set forth by the order of the court will result in the withdrawal of the plea offer and the defendant will be subject to an open plea or trial. If you have any questions, or if you would like to discuss this matter further, please contact the undersigned prior to the above date.

Sincerely,


Katie Moulds
Assistant District Attorney




DONNELL ROBINSON

FILED

IN THE CIRCUIT COURT OF MADISON COUNTY, MISSISSIPPI

JUN 24 2019

ANITA WRAY, CIRCUIT CLERK

STATE OF MISSISSIPPI

BY _____ D.C.

2018-0519

VS.

CRIMINAL CAUSE NO. 2018-0520

Donnell Robinson

WAIVER OF RIGHT TO REQUEST RECUSAL OF CIRCUIT JUDGE

Came on this day to be heard the question of the Disqualification and/or recusal of Circuit Court Judge Dewey K. Arthur from presiding over further proceeding in the above styled and numbered cause. Judge Arthur disclosed the following facts for the consideration of the Defendant, his/her attorney and by the State of Mississippi, by and through the District Attorney:

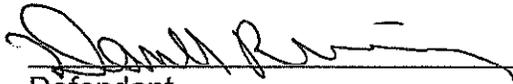
1. Judge Arthur was employed as an Assistant District Attorney for the 20th Circuit Court District when the above styled and numbered cause was presented to the Madison County Grand Jury and/or while this cause was pending on the docket of the Circuit Court of Madison County, Mississippi.
2. As an Assistant District Attorney, Judge Arthur worked in the Rankin County Office and maintained a Rankin County caseload. He participated in a few cases in Madison County, but did not participate in the intake of cases for the grand jury, did not routinely appear before the Madison County Grand Jury and did not carry a Madison County caseload. Judge Arthur was not of counsel in the above styled and numbered cause.
3. However, as a result of his service as an Assistant District Attorney, the Defendant

307/309

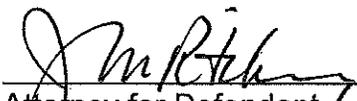
could suggest that Judge Arthur be disqualified from presiding over this matter pursuant to §165 of the Mississippi Constitution of 1890, Miss. Code Ann. §9-1-11 (1972, as amended) and Canon 3 E of the Code of Judicial Conduct.

NOW, THEREFORE, having been fully advised of my right to request that Judge Dewey K. Arthur be disqualified from presiding over my case and after consulting with my attorney concerning this disqualification, I hereby freely and voluntarily waive my right to request that Judge Arthur be disqualified or that he recuse himself in this matter. I have no objection to Judge Arthur presiding over my case as Circuit Court Judge.

By our signatures below, we hereby waive any right to request that Judge Arthur be disqualified in this matter and agree to proceed with Judge Arthur presiding over this cause.


Defendant

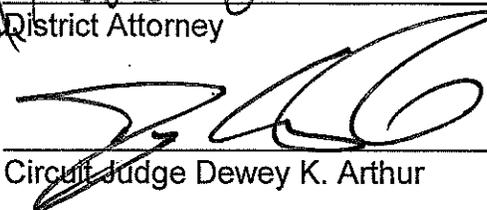
6-17-2019
Date


Attorney for Defendant

6-17-2019
Date


District Attorney

6/17/19
Date


Circuit Judge Dewey K. Arthur

6.17.19
Date

FILED
IN THE CIRCUIT COURT OF MADISON COUNTY, MISSISSIPPI
MADISON COUNTY

STATE OF MISSISSIPPI

JUN 24 2019

VS.

ANITA WRAY, CIRCUIT CLERK CAUSE NO. 2018-0159 (A)
BY [Signature] AS TO COUNT(S) II ONLY
D.C.

0519

Dannell Robinson

DEFENDANT

MOTION TO NOLLE PROSEQUI
SPECIFIC COUNT(S) OF A MULTI-COUNT INDICTMENT

COMES NOW the State of Mississippi and enters its motion to *nolle prosequi* specific Count(s) contained in an Indictment filed against the Defendant referenced above, subject to approval by the Court, and in support of said Motion offers the following:

DEFENDANT PLED GUILTY TO COUNT(S) I ON OR
ABOUT June 24th, 20 19, AND AS A PART OF THE PLEA
AGREEMENT, THE STATE HAS AGREED TO NOLLE-PROSEQUI
COUNT(S) II

WHEREFORE, PREMISES CONSIDERED, the State respectfully moves the Court to *Nolle Prosequi* COUNT(S) II only of the Indictment in this cause.

Respectfully submitted, this the 24th day of June, 20 19.

STATE OF MISSISSIPPI
BY: [Signature]
ASSISTANT DISTRICT ATTORNEY

ORDER

THIS CAUSE having come on for hearing on the State's *Motion to Nolle Prosequi Specific Counts of a Multi-Count Indictment* filed herein, and the Court, finding same to be reasonable, approves the entry thereof.

SO ORDERED, this the 24th day of June, 20 19.

[Signature]
CIRCUIT JUDGE

302/292

IN THE CIRCUIT COURT OF MADISON COUNTY, MISSISSIPPI

STATE OF MISSISSIPPI **FILED**
MADISON COUNTY

VS. JUN 25 2019 CAUSE NO. 2018-0519 COUNT I
DONNELL ROBINSON ANITA WRAY, CIRCUIT CLERK DEFENDANT
BY _____ D.C.

JUDGMENT OF CONVICTION AND SENTENCE INSTANTER

THIS CAUSE came on to be heard on the sworn Petition(s) of the Defendant, whose legal name is **DONNELL ROBINSON**, whose date of birth is **SEPTEMBER 7, 1966**, whose Social Security Number is **426-21-9433** and whose Attorney of Record is **JACOB M. RITCHEY**, to enter a plea(s) of guilty to the crime(s) of **VOTER FRAUD AS A MISDEMEANOR IN COUNT I** as charged in the Indictment(s) and/or Bill(s) of Information; and the Court, having heard the Petition(s) in the presence of the Defendant, the Defendant's Attorney, and the State's Attorney, and having considered the evidence, including the testimony of the Defendant, together with the statements and representations of Counsel, is of the opinion and finds that: 1) the allegations contained in the Petition(s) are supported by the evidence and are true and correct as set forth therein; 2) the Defendant's plea(s) of guilty is/are not induced by force, violence, threats, coercion, fear, deception, promises or misrepresentations; 3) the Defendant is competent to understand and does understand the nature of the criminal offense(s) to which the plea(s) of guilty is/are entered and understands the minimum and maximum punishments prescribed by law; 4) the Defendant understands by entering plea(s) of guilty certain constitutional rights are expressly waived; specifically, the right: a) against self-incrimination, b) to trial by jury, c) to confront and cross-examine the witnesses for the State, d) to testify as a witness, e) to subpoena, call and examine witnesses in defense, f) to appeal, and if indigent, g) to

307/385

a court-appointed attorney to prosecute an appeal; 5) the Defendant's plea(s) of guilty is/are freely, voluntarily and intelligently made; and 6) there is a factual basis for the plea(s) which establishes the Defendant's guilt beyond any reasonable doubt; 7) the Petition(s) should be granted and the Defendant's plea(s) of guilty should be accepted.

IT IS THEREFORE ORDERED AND ADJUDGED that the plea(s) of guilty is/are accepted and entered and the Defendant is found to be guilty of and is convicted for the crime(s) of **VOTER FRAUD AS A MISDEMEANOR IN COUNT I** as charged in the Indictment(s) and/or Bill(s) of Information.

IT IS FURTHER ORDERED that the Defendant's application to waive deferment of sentence and pre-sentence report and to proceed with sentencing instanter is granted and the Court, being fully advised in the premises finds and determines that: a) the victim(s) and the investigating officer(s) were notified in advance of these proceedings; b) the defendant's plea(s) of guilty was/were entered **WITH** a recommendation of sentence from the State which included the State electing to not prosecute the Defendant as an habitual offender; c) questions and comments from all interested parties were invited and those submitted were received and considered; d) the Defendant and Defendant's Attorney were given an opportunity to address the court on all matters relevant to these proceedings including the presentation of circumstances in extenuation and mitigation; e) the recommendation of sentence, if made, by the State is hereby accepted and adopted by the Court as the sentence of the Court; and f) sentence should now be imposed.

IT IS THEREFORE ORDERED AND ADJUDGED that the Defendant is sentenced as follows:

(1) To serve a term of **ONE (1)** year(s) in the custody of the Madison County Sheriff in Cause Number(s) **2018-0519 COUNT I**. **PROVIDED, HOWEVER**, that pursuant to Section

47-7-33 OR Section 47-7-34 of the Mississippi Code of 1972, **THE** execution of the last **ONE (1)** year(s) of the sentence(s) imposed herein is/are hereby stayed and that portion of the sentence(s) is/are suspended **AND** the Defendant shall be released and placed on **SUPERVISED PROBATION** under the direct supervision of the Mississippi Department of Corrections on the terms, provisions and conditions prescribed elsewhere in this Order. The sentence imposed shall run **consecutively** to any and all other sentences.

(2) To serve a term of **SIX (6) month(s)** on **SUPERVISED PROBATION** under the direct supervision of the Department of Corrections which shall commence upon the Defendant's release from the custody of the Mississippi Department of Corrections.

During the term of **SUPERVISED PROBATION** or **POST-RELEASE SUPERVISION** the Defendant shall obey all orders of this Court and all the terms and conditions of probation or post-release supervision as may be imposed by this Court or the Mississippi Department of Corrections ("MDOC"), including but not limited to those conditions set forth by Miss. Code Ann. §47-7-35 (1972, as amended), as well as any modification or alterations thereto made by either this Court or the MDOC. It is further provided that, if the Defendant is adjudicated to be guilty of a material breach, violation or nonobservance of any of the terms, provisions or conditions of probation or post-release supervision, the probationary term may be revoked, the stay of execution and suspension of sentence terminated, and the Defendant's custody may be remanded to the MDOC for incarceration until the unserved portion of his sentence is fully satisfied.

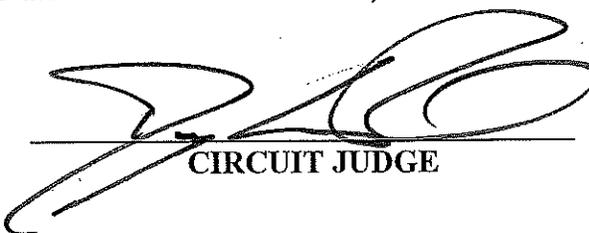
(3) To pay court costs, fees and assessments in the amount of **\$319.75**, and a fine to the Madison County, MS in the amount of **\$250.00**, all shall be paid at the rate of \$75.00 per month within thirty (30) days from today's date and continuing at that same rate of \$75.00 per month until paid in full.

IT IS HEREBY ORDERED that payments for any applicable court costs, fees and assessments, fine(s) or restitution paid by the Defendant shall be applied as follows: **FIRST** to court costs, fees and assessments; **SECOND** to fine(s); **THIRD** to restitution.

IT IS FURTHER ORDERED that the payment of court costs, fees, assessments, fine(s) and restitution in the manner provided in this Order or by other Orders of the Court be made a special condition of parole or any other form of early release that may be granted to the Defendant.

IT IS FURTHER ORDERED that all time served in pretrial detainment in this cause is credited against this sentence.

SO ORDERED AND ADJUDGED THIS THE 24TH DAY OF JUNE, 2019.


CIRCUIT JUDGE

FILED
JUN 28 2019
MADISON COUNTY

STATE OF MISSISSIPPI

In the Circuit Court of MADISON County Cause/Case No. 2018-0519

TO THE MISSISSIPPI DEPARTMENT OF CORRECTIONS:

NOTICE OF CRIMINAL DISPOSITION

You are hereby notified that at the JUNE 2019 term of the Circuit Court, Judge ARTHUR-100747 presiding, the following disposition was imposed for the crime(s) hereinafter described:

BY I. A. Disposition(s) Reported: Prisoner Commitment Suspended Sentence/Probation Revocation Acquittal Other Disposition
(Check all that apply)

A-1. Provisional Sentence Non-Adjudication Sentenced under RID Sentenced under Shock Probation
(Compliance/Non-Compliance Order constitutes Final Disposition) Bad Check Diversionary Program Restitution Center in _____ County

B. Conviction as Result of: Guilty Plea Guilty Plea after _____ days of Commencement of trial
 Jury Verdict after _____ days in trial Revocation Hearing

II. Name DONNELL ROBINSON

SSN 426-21-9433 Race B Sex M Date of Birth 09-07-1966
Last Known Residence 639 E FULTON ST CANTON MS 39046
Place of Birth _____ Country of Citizenship _____
Alien Registration/Immigration # _____ FBI # _____

III. Count I Charge VOTER FRAUD

MS Code § 23-15-753 Orig. Case# _____ Agency _____
Count II Charge _____
MS Code § _____ Orig. Case# _____ Agency _____
*Count III Charge _____
MS Code § _____ Orig. Case# _____ Agency _____

IV. Date of Sentence 06-24-2019 Credit for Time Served (ONLY for this/these charge(s)) _____

Sentence(s) Initially imposed by Order: Count I 1 YR; Count II _____; *Count III _____

<input type="checkbox"/> Check if reporting additional Counts on Reverse Side	Portion of Sentence to be Served (Yrs/Mos)	Portion of Sentence Suspended (Yrs/Mos)	To be served on Probation (Yrs/Mos)	Other Disposition (See Legend on Reverse Side)
Count I	_____	<u>1 YR</u>	<u>6 MONTHS</u>	_____
Count II	_____	_____	_____	_____
*Count III	_____	_____	_____	_____

_____ to run concurrent with _____
SENTENCE IMPOSED to run consecutive with **TO ANY AND ALL OTHER SENTENCES.**

Conditions/Designation of Sentence: Habitual Psychological/Psychiatric Alcohol/Drug Treatment/Testing Other _____

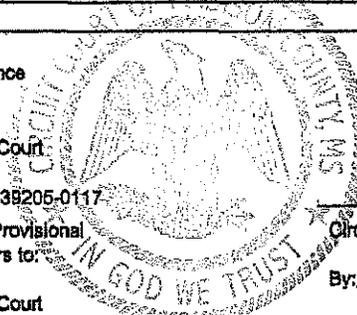
V. Confined in Jail _____ to _____
[On This/These _____ to _____
Charges Only] _____ to _____
_____ to _____

Released on Bond Pending Appeal _____ to _____
Defendant Currently Housed in: _____

VI. Fine \$ _____ **Indigent Fee \$** _____ **Restitution \$** _____
Court Costs \$ 319.75 **Attorney Fees \$** _____ **Other Fees \$** 250.00
Conditions of Payment TO BE PD @ \$75 A MONTH UNTIL PAID OFF

Send Prisoner Commitments, Provisional Sentence Orders and Revocation Orders to:
Director of Records INS Liaison
MDOC MS Supreme Court
P. O. Box 88550 P. O. Box 117
Pearl, MS 39208-8550 Jackson, MS 39205-0117

Send Suspended Sentence/Probation Notices, Provisional Sentence Orders and Revocation Orders to:
Data Operations INS Liaison
MDOC MS Supreme Court
723 North President St. P. O. Box 117
Jackson, MS 39202-3097 Jackson, MS 39205-0117
Acquittal/Other Notices to: INS Liaison (Above Address)



ANITA WRAY

Circuit Clerk
By: Anita Wray

Date: 06-28-2019

IN THE CIRCUIT COURT OF MADISON COUNTY, MISSISSIPPI
MADISON COUNTY

FILED

STATE OF MISSISSIPPI

JUN 24 2019

VS.

ANITA WRAY, CLERK

CAUSE NO. 2018-0520 (A)

DONNEL ROBINSON

BY



D.C.

DEFENDANT

MOTION TO NOLLE PROSEQUI INDICTMENT

COMES NOW the State of Mississippi and enters its motion to *nolle prosequi* an Indictment filed against the Defendant referenced above, subject to approval by the Court, and in support of said Motion offers the following:

AS PART OF PLEA AGREEMENT IN EXCHANGE
FOR GUILTY PLEA IN 2018-0519 (JA), COUNT 1.

WHEREFORE, PREMISES CONSIDERED, the State respectfully moves the Court to *Nolle Prosequi* the Indictment in this cause.

Respectfully submitted, this the 24th day of JUNE, 20 19.

STATE OF MISSISSIPPI

BY:


ASSISTANT DISTRICT ATTORNEY

ORDER

THIS CAUSE having come on for hearing on the State's *Motion to Nolle Prosequi Indictment* filed herein, and the Court, finding same to be reasonable, approves the entry thereof.

SO ORDERED, this the 24th day of June, 20 19.


CIRCUIT JUDGE

307/293

FILED
MADISON COUNTY

JAN 08 2019

ANITA WRAY, CIRCUIT CLERK

BY Anita Wray D.C.

INDICTMENT

STATE OF MISSISSIPPI

VS.

CAUSE NO. 2019-0053-A

COURTNEY L. RAINEY and
ANDREW GRANT

DEFENDANTS

Indictment for the offense of:

VOTER FRAUD

(1 Count/Rainey Only)

and

CONSPIRACY TO COMMIT VOTER FRAUD

(1 Count/Both Defs)

Miss. Code Ann. §§23-15-753, 23-15-627 & 97-1-1

STATE OF MISSISSIPPI
COUNTY OF MADISON

IN THE CIRCUIT COURT OF MADISON COUNTY, JULY TERM 2018

Recalled November 28, 2018

The Grand Jurors for the State of Mississippi, taken from the body of good and lawful citizens of Madison County, elected, summoned, impaneled, sworn and charged to inquire in and for the body of the county aforesaid, at the term aforesaid of the Court aforesaid, in the name and by the authority of the State of Mississippi, upon their oaths present that:

COUNT I

COURTNEY L. RAINEY, on or about the 2nd day of June, 2017, in the county aforesaid and within the jurisdiction of this Court, did willfully, unlawfully, knowingly and feloniously encourage or cause Eric McCoy to violate a provision of law regarding absentee voting to wit: encouraging and causing Eric McCoy to vote by absentee ballot when she well knew Eric McCoy was ineligible to vote because he no longer lived in Ward, in violation of Miss. Code Ann. §23-15-753, (1972, as amended);

COUNT II

And, based upon a series of acts connected together and constituting parts of a common scheme and plan **COURTNEY L. RAINEY** and **ANDREW GRANT**, on

or about and between the dates of May 22, 2017 and May 31, 2018, in the county aforesaid and within the jurisdiction of this Court, did willfully, feloniously and knowingly conspire with each another to commit voter fraud, in violation of Miss. Code Ann. §23-15-753 and §97-1-1 (1972, as amended);

All of the above (Count I and Count II) being against the peace and dignity of the State of Mississippi

Endorsed: A True Bill

Josh Ammerman
FOREPERSON OF THE GRAND JURY

Benjamin F. Buckley
ASSISTANT DISTRICT ATTORNEY

AFFIDAVIT

COMES NOW Josh Ammerman, Foreperson of the November 28, 2018, Madison County Grand Jury, and makes oath that this Indictment presented to this Court was concurred by twelve (12) or more members of the Grand Jury, and that at least fifteen (15) members thereof were present during all deliberations.

Josh Ammerman
FOREPERSON OF THE GRAND JURY

SWORN TO AND SUBSCRIBED before me on this, the 8th day of January, 2019.



**ANITA WRAY CIRCUIT CLERK
OF MADISON COUNTY, MISSISSIPPI**

BY: *Anita Wray DC*

CAPIAS INSTANTER

FILED
MADISON COUNTY

FEB 01 2019

ANITA WRAY, CIRCUIT CLERK

BY [Signature] D.C.

THE STATE OF MISSISSIPPI

To the Sheriff of Madison County - Greetings:

We command you to take the body of **ANDREW GRANT** if to be found in your County, and safely keep, so that you have said body before the Honorable, the Circuit Court of Madison County, in said State, to be holden at the Courthouse thereof, in the City of Canton, instanter, then and there to answer unto the State of Mississippi on a charge of **VOTER FRAUD; CONSPIRACY TO COMMIT VOTER FRAUD**

(23-15-753) by indictment of said Court at the January term, A. D., 2019, thereof, herein fail not, and have then this writ, with the manner you have executed the same.

Given under my hand and seal, and issued the 8th day of January A. D., 2019.

Anita Wray

By: [Signature] DC

STATE OF MISSISSIPPI
COUNTY OF MADISON

MADISON COUNTY SHERIFF'S OFFICE

You have been served an indictment in the Madison County Sheriff's Office. You must appear in court at the Madison County Court House on The _____ Day of _____, 20____. Failure to appear will result in Warrant issued for your arrest!

RANDY TUCKER, SHERIFF

I have this day executed the within writ personally by delivering a true copy of this Capias and a true copy of the indictment to:

ANDREW GRANT
and placing same in the Madison County jail.

This the 1 day of FEBRUARY 2019
Randall Tucker

BY _____ DS

By: [Signature] DS

(CIRCUIT CLERK)

IN THE CIRCUIT COURT OF MADISON COUNTY, MISSISSIPPI

FILED
MADISON COUNTY

STATE OF MISSISSIPPI

AUG 02 2019

VS.

ANITA WRAY, CIRCUIT CLERK

CAUSE NO. 2019-53-COUNT II

ANDREW GRANT BY _____

[Signature]

D.C.

DEFENDANT

PETITION TO ENTER GUILTY PLEA

COMES NOW YOUR DEFENDANT, and respectfully petitions this Honorable Court to

accept his/her plea of guilty to the crime of CONSPIRACY To COMMIT VOTER FRAUD
IN COUNT II
and in support thereof would show unto the Court the following:

1. My true name is ANDREW DEON GRANT, also known as DREW. I request that all proceedings against me be had in my true name. I am 35 years of age. My date of birth is APRIL 1, 1984, and my Social Security Number is 428 49 0088. I completed 12 years of school and 3 years of college. I (can) (cannot) read and write. There is nothing wrong with me physically or mentally which might impair my ability to read and understand this petition or to impair my ability to knowingly, willingly, and voluntarily enter this plea of guilty. I have never been treated for a mental or nervous condition, disease, or disorder other than: (if none, state "none") NONE

Andrew Grant
DEFENDANT

I am not under the influence of any drugs or intoxicants or any other substance which might impair my ability to understand this petition and these proceedings.

2. I am represented by an attorney who is (court appointed) (retained by me). His name is GERALD MUMFORD. I have either read this petition in the presence of my attorney or had it read to me by him and he has explained it to me in detail and has answered any and all questions I had about it.

3. I wish to plead guilty to the charge of CONSPIRACY TO COMMIT VOTER FRAUD.

4. My attorney has advised me as to the possibilities of my acquittal or conviction on the charge against me, and has thoroughly discussed all aspects of my case with me. My attorney has counseled and advised me, and has made no threats or promises of any type or kind to induce me to enter this plea of guilty. The decision to seek entry of this plea was mine alone, based on my own reasons, and free from any outside influences.

5. I understand that I have the right to plead not guilty to any offense charged against me. If I choose to plead not guilty, the Constitution guarantees me:

- (a) the right to a speedy and public trial by jury;
- (b) the right to see, hear, and cross-examine all witnesses called to testify against me;
- (c) the right to use the power and process of the Court to compel the production of any evidence, including the attendance of any witnesses in my favor;

Andrew Grant
DEFENDANT

(d) the right to have the assistance of an attorney at all critical stages of the proceedings against me;

(e) the presumption of innocence, that is, the State must prove all of the elements of any charge beyond a reasonable doubt that I am guilty;

(f) the right to a unanimous jury verdict of all twelve jurors before I could be found guilty;

(g) the right to take the witness stand and testify in my own behalf if I want to; I further understand that if I do not wish to take the witness stand and testify, this fact cannot be held against me, and that the jury would be instructed that my refusal to testify may not be held against me; I understand that unless I knowingly, willingly, and voluntarily agree to do so, I cannot be compelled to give testimony against myself in violation of my Fifth Amendment rights.

(h) I further understand that should I be convicted in a jury trial, I have the right to appeal my conviction to the Mississippi Supreme Court, and with the assistance of counsel at no cost to me should I be financially unable to pay for an attorney to represent and assist me.

Knowing and understanding the Constitutional and other legal rights and guarantees set forth in this paragraph, I hereby waive each and every one of them and renew my desire to enter a plea of guilty.

6. I have fully informed my attorney of all the facts and circumstances known to me about the charge against me. My attorney has counseled and advised me on the nature and elements



DEFENDANT

of the charge, on any and all lesser-included charges, and on all possible defenses that I might have in this case. My attorney advises me and I understand that the elements of the charge to which I am pleading guilty are as follows: that I did willfully, unlawfully, feloniously, knowingly

CONSPIRE WITH ANOTHER TO COMMIT VOTER FRAUD

7. I wish to plead guilty and request the court to accept my plea of guilty on the basis of the following: On the date(s) as set forth in the indictment or bill of information, I did, in Madison County Mississippi, willfully, unlawfully, feloniously

CONSPIRE WITH ANOTHER TO COMMIT VOTER FRAUD

8. I know that if I plead guilty to this charge, the sentence may be 1 years (minimum) to 5 years (maximum) incarceration, and/or a fine of \$ 500⁰⁰ (minimum) to \$ 5000⁰⁰ (maximum). I also have been told by my attorney that any sentence

I may receive is up to the Court, that the Court is not required to carry out any understanding made by me and my attorney with the District Attorney; I understand that the Court is not required to follow the recommendation of the District Attorney, if any. The District Attorney will take no part other than providing to the Court, police reports and other factual information which may be requested by the Court; and the District Attorney shall make no recommendation to the Court concerning my sentence except as follows: (if none, state "none")

5 YEARS, ALL SUSPENDED
5 YEARS PROBATION, STEP DOWN FROM ELECTED POSITION
FINE OF \$1000⁰⁰ AND \$500⁰⁰ INVESTIGATIVE COSTS

Andrew Grant
DEFENDANT

There are no other criminal prosecutions or charges currently pending against me except: (if none, state "none") DISMISS INDICTMENTS 2019-54 AND 2019-55

The State has made no agreement with me regarding those charges as expressly stated in paragraph 8 above or as stated in a separate guilty plea petition filed by me in that cause(s).

9. I have been convicted of no felonies in this or in any other State of the United States, except as follows: (if none, state "none") NONE

10. I (am) (am not) presently on probation or parole. I understand that pleading guilty in this case may cause revocation of my probation or parole. I further understand that if my probation or parole is revoked, any sentence in that case may be consecutive to or in addition to any sentence in this case.

11. I understand that no one can assure me of parole or early release from prison. If this conviction is regarded a sex offense, I will likely be required to undergo psychiatric evaluation prior to being paroled, if parole is granted. If I am sentenced as an habitual criminal, I will not be eligible for parole or other early release.

12. I declare that no officer or agent of any branch of government, Federal, State, or Local, has made any promise or suggestion of any kind to me, or within my knowledge, to anyone else, that I will receive a lighter sentence, or probation, or any other form of leniency if I plead guilty, and that I have not been threatened, forced, intimidated or coerced in any manner by anyone.

Andrew Grant
DEFENDANT

13. I believe that my attorney has done all that anyone could do to counsel and assist me. I AM SATISFIED WITH THE ADVICE AND COUNSEL HE HAS GIVEN ME. I recognize that if I have been told by my attorney that I might receive probation or a light sentence, this representation is merely his opinion and that it is not binding on the Court or the District Attorney.

14. I understand that my plea of guilty may be withdrawn at any time during a hearing on this petition, prior to the acceptance of my plea by the Court.

15. I OFFER MY PLEA OF GUILTY FREELY AND VOLUNTARILY AND OF MY OWN ACCORD AND WITH FULL UNDERSTANDING OF ALL THE MATTERS SET FORTH IN THE INDICTMENT OR INFORMATION AND IN THIS PETITION AND WITH UNDERSTANDING OF THE CERTIFICATE OF MY ATTORNEY WHICH IS PART OF THIS PETITION.

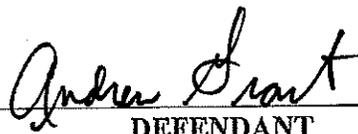
16. HABITUAL CRIMINAL PARAGRAPH. If applicable, note the statute under which the plea of guilty is to be taken:

_____ MS. CODE ANN. §99-19-81 (1972); or under

_____ MS. CODE ANN. §99-19-83 (1972);

_____ Neither

I understand that if my plea is accepted to the charge described in paragraph 3 above, the conviction of said crime may later be used against me for the purposes of enhanced sentencing and/or sentencing as an habitual offender, should I later be convicted of another criminal offense.


_____ DEFENDANT

WHEREFORE, PREMISES CONSIDERED, the Defendant prays that this petition will be granted, that the plea of guilty will be accepted and that the Defendant will be convicted and sentenced for the crime of CONSPIRACY TO COMMIT VOTER FRAUD, just as if the Defendant had been found guilty of that crime by the verdict of a jury.

SIGNED AND SWORN TO UNDER OATH on this, the 5th day of August, A.D., 20019, with full knowledge that if I willfully and corruptly swear, testify, or affirm falsely to any material matter under oath, affirmation or declaration legally administered in this Court I will, upon conviction, be punished additionally for the crime of perjury.

Gerald H. Manfred
DEFENDANT'S ATTORNEY

[Signature]
DEFENDANT

STATE OF MISSISSIPPI
COUNTY OF MADISON

SWORN TO AND SUBSCRIBED before me on this, the 5 day of Aug, A.D., 2019.

SEAL

[Signature]
(OFFICIAL TITLE)

[Signature]
DEFENDANT



CERTIFICATE OF ATTORNEY OF RECORD

The undersigned, as attorney and counselor of record for the Defendant in this cause, hereby certifies:

1. I have read and fully explained to the Defendant the allegations contained in the indictment or bill of information in this case;

2. To the best of my knowledge and belief the statements, representations, and declarations made by the Defendant in the foregoing petition are in all respects accurate and true;

3. I have explained the minimum and maximum penalties for each charge or count to the Defendant, and consider him/her competent to understand the charge against him/her and the effect of his/her plea of guilty;

4. The plea of guilty offered by the Defendant in this petition accords with my understanding of the facts he/she has related to me, and is consistent with my advice to the Defendant;

5. In my opinion, the plea of guilty as offered by the Defendant in this petition is voluntarily and knowingly made. I recommend that the Court accept the plea of guilty;

6. Having discussed this matter carefully with the Defendant, I am satisfied that he/she is mentally competent and physically sound; there is no mental or physical condition of which I am aware which would affect his/her ability to understand these proceedings; further, I have no reason to believe that he/she is under the influence of drugs or intoxicants (any exception should be stated by counsel for the Record).

SIGNED BY ME IN THE PRESENCE OF THE DEFENDANT ABOVE NAMED AFTER FULL DISCUSSION OF THE CONTENTS OF THIS CERTIFICATE WITH THE DEFENDANT ON THIS, THE 2 DAY OF August, A. D., 2019.



ATTORNEY FOR DEFENDANT



DEFENDANT

OFFICE OF THE DISTRICT ATTORNEY

John K. Bramlett, Jr.
DISTRICT ATTORNEY
TWENTIETH JUDICIAL DISTRICT
RANKIN/MADISON COUNTIES

P. O. BOX 121
CANTON, MS 39046
PHONE (601)859-7838
FAX (601)859-8880

P. O. BOX 68
BRANDON, MS 39043
PHONE (601)825-1472
FAX (601)825-9605

August 2, 2019

Hons. Gerald Mumford, Vicki Gilliam, Richard Mitchell
Via email: gerald@themumfordfirm.com, Gilliam@gilliamfirm.com, mitchell@hubbardmitchell.com

Re: **State v. Andrew Grant**
Madison County Cause Number(s): 2019-0053(JA), 2019-0054(JA), 2019-0055(JA)

KJM
GM
A.G.

Dear Attorneys:

Please be advised that the District Attorney's Office, pursuant to rule 15.4(a)(2)(B) of the Mississippi Rules of Criminal Procedure, will make the following recommendation as to sentence in exchange for your client's plea of guilty to the crime(s) charged in the above styled and number cause number(s):

OFFER: Plead guilty to one count of Conspiracy to Commit Voter Fraud (either 2019-0053 or 2019-0055 Count 3). FIVE (5) years MDOC, FIVE (5) years suspended, FIVE (5) years Supervised Probation. Pay a fine to Madison County in the amount of \$1,000.00, pay an investigative fee in the amount of \$500.00 to the District Attorney's Office. Pay all statutory court costs, fees, assessments as imposed by the Court. The remainder of the indicted charges against the Defendant will be dismissed.

Mr. Grant will step down from his position on the Canton Board of Aldermen, effective at the date of his plea, and will not seek political office in the future.

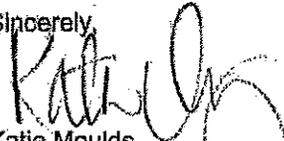
The minimum and maximum sentences for above reference offenses are listed:

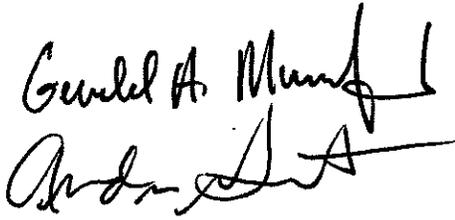
<u>Conspiracy §97-1-1</u>	
Minimum Fine -- \$0	Maximum Fine -- \$5,000
Minimum Sentence -- 0 years	Maximum Sentence -- 5 years

******Please note it is the responsibility of defense counsel to verify that the information listed as to the minimum and maximum sentences is accurate and correct.**

This offer is based on the defendant having 0 prior felony conviction(s). If this information is incorrect the above stated plea offer is withdrawn and you will need to contact this office so that we can extend a modified plea recommendation.

Failure to file a written plea petition by the dates set forth by the order of the court will result in the withdrawal of the plea offer and the defendant will be subject to an open plea or trial. If you have any questions, or if you would like to discuss this matter further, please contact the undersigned prior to the above date.

Sincerely,

Katie Moulds
Assistant District Attorney



indigent, g) to a court-appointed attorney to prosecute an appeal; 5) the Defendant's plea(s) of guilty is/are freely, voluntarily and intelligently made; and 6) there is a factual basis for the plea(s) which establishes the Defendant's guilt beyond any reasonable doubt; 7) the Petition(s) should be granted and the Defendant's plea(s) of guilty should be accepted.

IT IS THEREFORE ORDERED AND ADJUDGED that the plea(s) of guilty is/are accepted and entered and the Defendant is found to be guilty of and is convicted for the crime(s) of **CONSPIRACY TO COMMIT VOTER FRAUD** as charged in the Indictment(s) and/or Bill(s) of Information.

IT IS FURTHER ORDERED that the Defendant's application to waive deferment of sentence and pre-sentence report and to proceed with sentencing instanter is granted and the Court, being fully advised in the premises finds and determines that: a) the victim(s) and the investigating officer(s) were notified in advance of these proceedings; b) the defendant's plea(s) of guilty was/were entered **WITH** a recommendation of sentence from the State; c) questions and comments from all interested parties were invited and those submitted were received and considered; d) the Defendant and Defendant's Attorney were given an opportunity to address the court on all matters relevant to these proceedings including the presentation of circumstances in extenuation and mitigation; e) the recommendation of sentence, if made, by the State is hereby accepted and adopted by the Court as the sentence of the Court; and f) sentence should now be imposed.

IT IS THEREFORE ORDERED AND ADJUDGED that the Defendant is sentenced as follows:

(1) To serve a term of **FIVE (5)** year(s) in the custody of the Mississippi Department of Corrections in Cause Number(s) **2019-0053**. **PROVIDED, HOWEVER**, that pursuant to Section 47-7-33 **OR** Section 47-7-34 of the Mississippi Code of 1972, **THE** execution of the last

FIVE (5) year(s) of the sentence(s) imposed herein is/are hereby stayed and that portion of the sentence(s) is/are suspended **AND** the Defendant shall be released and placed on **SUPERVISED PROBATION** under the direct supervision of the Mississippi Department of Corrections on the terms, provisions and conditions prescribed elsewhere in this Order. The sentence imposed shall run **consecutively** to any and all other sentences.

(2) To serve a term of **FIVE (5)** year(s) on **SUPERVISED PROBATION** under the direct supervision of the Department of Corrections which shall commence upon the Defendant's release from the custody of the Mississippi Department of Corrections.

During the term of **SUPERVISED PROBATION** or **POST-RELEASE SUPERVISION** the Defendant shall obey all orders of this Court and all the terms and conditions of probation or post-release supervision as may be imposed by this Court or the Mississippi Department of Corrections ("MDOC"), including but not limited to those conditions set forth by Miss. Code Ann. §47-7-35 (1972, as amended), as well as any modification or alterations thereto made by either this Court or the MDOC. It is further provided that, if the Defendant is adjudicated to be guilty of a material breach, violation or nonobservance of any of the terms, provisions or conditions of probation or post-release supervision, the probationary term may be revoked, the stay of execution and suspension of sentence terminated, and the Defendant's custody may be remanded to the MDOC for incarceration until the unserved portion of his sentence is fully satisfied.

(3) To pay court costs, fees and assessments in the amount of **\$458.50**, a fine to Madison County, MS in the amount of **\$1,000.00**, and investigative costs to the Madison County District Attorney's Office in the amount of **\$500.00**, all shall be paid within thirty (30) days from today's date.

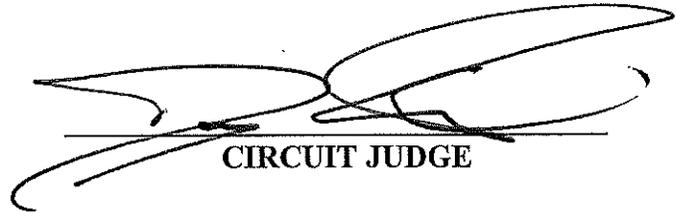
IT IS HEREBY ORDERED that payments for any applicable court costs, fees and assessments, fine(s) or restitution paid by the Defendant shall be applied as follows: **FIRST** to court costs, fees and assessments; **SECOND** to fine(s); **THIRD** to restitution.

IT IS FURTHER ORDERED that the payment of court costs, fees, assessments, fine(s) and restitution in the manner provided in this Order or by other Orders of the Court be made a special condition of parole or any other form of early release that may be granted to the Defendant.

IT IS FURTHER ORDERED that the Defendant shall resign from his position as Canton Board of Alderman effective today and shall not seek election in the future.

IT IS FURTHER ORDERED that all time served in pretrial detainment in this cause is credited against this sentence.

SO ORDERED AND ADJUDGED THIS THE 5TH DAY OF AUGUST, 2019.


CIRCUIT JUDGE

STATE OF MISSISSIPPI

In the Circuit Court of MADISON County Cause/Case No. 2019-0053

TO THE MISSISSIPPI DEPARTMENT OF CORRECTIONS:

NOTICE OF CRIMINAL DISPOSITION

You are hereby notified that at the AUGUST 2019 term of the Circuit Court Judge ARTHUR - 100747 presiding, the following disposition was imposed for the crime(s) hereinafter described:

FILED
MADISON COUNTY

I. A. Disposition(s) Reported: Prisoner Commitment Suspended Sentence/Probation Revocation Acquittal Other Disposition

A-1. Provisional Sentence (Compliance/Non-Compliance Order constitutes Final Disposition) Non-Adjudication Sentenced under RID AUG 09 2019 Sentenced under Shock Probation Bad Check Diversionary Program Restitution Center in _____ County

B. Conviction as Result of: Guilty Plea Guilty Plea after _____ days of Commencement of trial Jury Verdict after _____ days in trial BY _____ Revocation Hearing _____ D.C.

II. Name ANDREW GRANT Alias _____
SSN 428-49-0088 Race B Sex M Date of Birth 4-1-1984
Last Known Residence 121 MCBRIDE DR, CANTON MS 39046
Place of Birth _____ Country of Citizenship _____
Allen Registration/Immigration # _____ FBI # _____

III. Count I Charge CONSPIRACY TO COMMIT VOTER FRAUD
MS Code § 97-1-1 Orig. Case# _____ Agency _____
Count II Charge _____ MS Code § _____ Orig. Case# _____ Agency _____
*Count III Charge _____ MS Code § _____ Orig. Case# _____ Agency _____

IV. Date of Sentence 08-05-2019 Credit for Time Served (ONLY for this/these charge(s)) _____

Sentence(s) Initially Imposed by Order: Count I 5 YRS; Count II _____; *Count III _____

<input type="checkbox"/> Check if reporting additional Counts on Reverse Side	Portion of Sentence to be Served (Yrs/Mos)	Portion of Sentence Suspended (Yrs/Mos)	To be served on Probation (Yrs/Mos)	Other Disposition (See Legend on Reverse Side)
	Count I _____	5 YRS	5 YRS	
	Count II _____			
	*Count III _____			

_____ to run concurrent with _____
_____ to run consecutive with _____

Conditions/Designation of Sentence: Habitual Psychological/Psychiatric Alcohol/Drug Treatment/Testing Other _____

V. Confined In Jail _____ to _____
[On This/These Charges Only] _____ to _____
_____ to _____
Released on Bond Pending Appeal _____ to _____
Defendant Currently Housed In: _____

VI. Fine \$ 1,000.00 Indigent Fee \$ _____ Restitution \$ 500.00
Court Costs \$ 458.50 Attorney Fees \$ _____ Other Fees \$ _____
Conditions of Payment TO BE PD W/IN 30 DAYS

Send Prisoner Commitments, Provisional Sentence Orders and Revocation Orders to:
Director of Records INS Liaison
MDOC MS Supreme Court
P. O. Box 88550 P. O. Box 117
Pearl, MS 39208-8550 Jackson, MS 39205-0117

Send Suspended Sentence/Probation Notices, Provisional Sentence Orders and Revocation Orders to:
Data Operations INS Liaison
MDOC MS Supreme Court
723 North President St. P. O. Box 117
Jackson, MS 39202-3097 Jackson, MS 39205-0117
Acquittal/Other Notices to: INS Liaison (Above Address)



ANITA WRAY

[Handwritten Signature]

Date: 8-09-2019

IN THE CIRCUIT COURT OF MADISON COUNTY, MISSISSIPPI
MADISON COUNTY

STATE OF MISSISSIPPI

AUG 05 2019

VS.

ANITA WRAY, CIRCUIT CAUSE NO. 2019-0054 (JA)

ANDREW GRANT

BY [Signature] D.C.

DEFENDANT

MOTION TO NOLLE PROSEQUI INDICTMENT

COMES NOW the State of Mississippi and enters its motion to *nolle prosequi* an Indictment filed against the Defendant referenced above, subject to approval by the Court, and in support of said Motion offers the following:

BASED ON DEFENDANT'S GUILTY PLEA ENTERED IN 2019-0053 (JA) & IN EXCHANGE FOR HIS STEPPING DOWN AS ALDERMAN & SENTENCE IMP-SED IN 2019-0053 (JA)

WHEREFORE, PREMISES CONSIDERED, the State respectfully moves the Court to *Nolle Prosequi* the Indictment in this cause.

Respectfully submitted, this the 5th day of AUGUST, 20 19.

STATE OF MISSISSIPPI
BY: [Signature]
ASSISTANT DISTRICT ATTORNEY

ORDER

THIS CAUSE having come on for hearing on the State's *Motion to Nolle Prosequi Indictment* filed herein, and the Court, finding same to be reasonable, approves the entry thereof.

SO ORDERED, this the 5th day of August, 20 19.

[Signature]
CIRCUIT JUDGE

308/716

IN THE CIRCUIT COURT OF MADISON COUNTY, MISSISSIPPI
MADISON COUNTY

STATE OF MISSISSIPPI

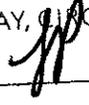
AUG 05 2019

VS.

ANITA WRAY, CIRCUIT CLERK

CAUSE NO. 2019-0055 (JA)

ANDREW GRANT

BY 

D.C.

DEFENDANT

MOTION TO NOLLE PROSEQUI INDICTMENT

COMES NOW the State of Mississippi and enters its motion to *nolle prosequi* an Indictment filed against the Defendant referenced above, subject to approval by the Court, and in support of said Motion offers the following:

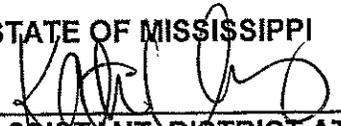
BASED ON DEFENDANT'S GUILTY PLEA ENTERED
IN 2019-0053 (JA) & IN EXCHANGE FOR HIS
STEPPING DOWN AS ALDERMAN & SENTENCE
IMPOSED IN 2019-0053 (JA)

WHEREFORE, PREMISES CONSIDERED, the State respectfully moves the Court to *Nolle Prosequi* the Indictment in this cause.

Respectfully submitted, this the 5th day of AUGUST, 20 19.

STATE OF MISSISSIPPI

BY:


ASSISTANT DISTRICT ATTORNEY

ORDER

THIS CAUSE having come on for hearing on the State's *Motion to Nolle Prosequi Indictment* filed herein, and the Court, finding same to be reasonable, approves the entry thereof.

SO ORDERED, this the 5th day of August, 20 19.


CIRCUIT JUDGE

308/715

FILED
MADISON COUNTY

NOV 20 2018

ANITA WRAY, CIRCUIT CLERK

BY AWray D.C.

INDICTMENT

STATE OF MISSISSIPPI

VS.

CAUSE NO. 2018-1512-R

COURTNEY L. RAINEY

DEFENDANT

Indictment for the offense of:

VOTER FRAUD

(3 Counts)

and

CONSPIRACY TO COMMIT VOTER FRAUD

(1 Count)

Miss. Code Ann. §§23-15-753, 23-15-627 & 97-1-1

STATE OF MISSISSIPPI
COUNTY OF MADISON

IN THE CIRCUIT COURT OF MADISON COUNTY, JULY TERM 2018

Recalled October 17, 2018

The Grand Jurors for the State of Mississippi, taken from the body of good and lawful citizens of Madison County, elected, summoned, impaneled, sworn and charged to inquire in and for the body of the county aforesaid, at the term aforesaid of the Court aforesaid, in the name and by the authority of the State of Mississippi, upon their oaths present that:

COUNT I

COURTNEY L. RAINEY, on or about the 21st day of April, 2017, in the county aforesaid and within the jurisdiction of this Court, did willfully, unlawfully, knowingly and feloniously encourage or cause Donnell Robinson to violate a provision of law regarding absentee voting to wit: encouraging and causing Donnell Robinson to vote by absentee ballot when Courtney L. Rainey knew Donnell Robinson was ineligible to vote in in the Donnell Robinson was previously convicted of a disenfranchising, in violation of Miss. Code Ann. §23-15-753, (1972, as amended);

COUNT II

And, based upon a series of acts connected together and constituting parts of a common scheme and plan **COURTNEY L. RAINEY**, on or about the 30th day of May, 2017, in the county aforesaid and within the jurisdiction of this Court, did

willfully, unlawfully, knowingly and feloniously encourage or cause Donnell Robinson to violate a provision of law regarding absentee voting to wit: encouraging and causing Donnell Robinson to vote by absentee ballot when she well knew Donnell Robinson was ineligible to vote because he no longer lived in Ward, in violation of Miss. Code Ann. §23-15-753, (1972, as amended);

COUNT III

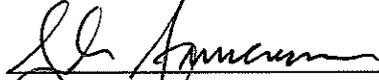
And, based upon a series of acts connected together and constituting parts of a common scheme and plan **COURTNEY L. RAINEY**, on or about the 21st day of April, 2017, in the county aforesaid and within the jurisdiction of this Court, did willfully, unlawfully, knowingly and feloniously seek to procure or influence the vote of Donnell Robinson by payment of money, in exchange for his vote in the Canton Municipal Election in 2017, in violation of Miss. Code Ann. §23-15-753, (1972, as amended);

COUNT IV

And, based upon a series of acts connected together and constituting parts of a common scheme and plan **COURTNEY L. RAINEY**, on or about the 21st day of April, 2017, in the county aforesaid and within the jurisdiction of this Court, did willfully, feloniously and knowingly conspire with another, Andrew Grant, to commit voter fraud, in violation of Miss. Code Ann. §23-15-753 and §97-1-1 (1972, as amended);

All of the above (Count I through Count III) being against the peace and dignity of the State of Mississippi

Endorsed: A True Bill


FOREPERSON OF THE GRAND JURY


ASSISTANT DISTRICT ATTORNEY

AFFIDAVIT

COMES NOW Josh Ammerman, Foreperson of the October 17, 2018, Madison County Grand Jury, and makes oath that this Indictment presented to this Court was concurred by twelve (12) or more members of the Grand Jury, and that at least fifteen (15) members thereof were present during all deliberations.


FOREPERSON OF THE GRAND JURY

SWORN TO AND SUBSCRIBED before me on this, the 20 day of November, 2018.



**ANITA WRAY CIRCUIT CLERK
OF MADISON COUNTY, MISSISSIPPI**

BY: AWray DC

knowingly and intentionally vote in Ward 7 in the Canton Municipal Election, when he well knew that he was not eligible to vote in Ward 7 election, , in that he was previously convicted of Receiving Stolen Goods, a disenfranchising crime on the 6th day of April, 1995 in violation of Miss. Code. Ann. Sections 23-15-753 and 23-15-627, (1972, as amended).

Mr. Robinson appeared in Court on June 24, 2019, and pleaded guilty to these charges of illegal voting after having been convicted of receiving stolen property, the alleged disenfranchising crime. Article 12, Section 241 of the Mississippi Constitution provides that:

Every inhabitant of this state, except idiots and insane persons, who is a citizen of the United States of America, eighteen (18) years old and upward, who has been a resident of this state for one (1) year, and for one (1) year in the county in which he offers to vote, and for six (6) months in the election precinct in this article, and who has never been convicted of murder, rape, bribery, theft, arson, obtaining money or goods under false pretense, perjury, embezzlement or bigamy, is declared to be a qualified elector, except that he shall be qualified to vote for President and Vice President of the United States if he meets the requirements established by Congress therefor and is otherwise a qualified elector.

In Mississippi, a previous conviction of receiving stolen goods does not disqualify an individual from even holding office. *Mauney v. State of Mississippi, ex rel. Moore*, 707 So.2d 1093, 1095 (Miss. 1998). Certainly, neither the framers of the State Constitution, the legislature, nor the voters in this state intended to allow a person to seek election for public office after the person had been convicted of receiving stolen goods while simultaneously preventing the same person from voting because the person had been convicted of receiving stolen goods. If they had, they would have and, frankly, were required to state so in the law.

In the instant case, the indictment charges the Defendant “knew that Robison was not eligible to vote, having been previously convicted of a disenfranchising crime...” However, receiving stolen goods is not an offense that disqualifies an individual from voting, as it is not identified in the State Constitution as a disenfranchising crime.

For the reasons set forth above, the indictment charging Donnell Robinson with voter fraud is deficient because it does not include a disenfranchising crime identified in the Mississippi

As a matter of law, the defendant Donnell Robinson should not have been convicted of voter fraud and voting by an unqualified person because he has not been convicted of a disenfranchising crime, provided that disenfranchising crime is specified as the offense of receiving stolen property.

WHEREFORE, PREMISES CONSIDERED, the defendant respectfully requests this Court dismiss Count I of the indictment and prevent the State from introducing at trial any testimony or other evidence that suggests that receiving stolen goods is a disenfranchising crime as set forth in Article 12 Section 241 of the Mississippi Constitution of 1890.

RESPECTFULLY SUBMITTED, on this, the 28th day of June, 2019.

COURTNEY RAINEY,
DEFENDANT

/s/ E. Carlos Tanner, III
E. Carlos Tanner, III, Esq. (MS Bar No. 102713)
TANNER & ASSOCIATES, LLC
263 East Pearl Street
Jackson, Mississippi 39201
carlos.tanner@thetannerlawfirm.com
601.460.1745 (telephone)
662.796.3509 (facsimile)

ATTORNEY FOR DEFENDANT

CERTIFICATE OF SERVICE

I, E. Carlos Tanner, III, certify that on this date, I have conventionally filed the foregoing Defendant's Motion to Dismiss Count One and First Motion in Limine with the Clerk of Court for the Madison County, Mississippi Circuit Court and mailed a copy of that filing to all counsel of record in this cause.

SO CERTIFIED, on this, the 28th day of June, 2019.

COURTNEY RAINEY
DEFENDANT

/s/ E. Carlos Tanner, III
E. Carlos Tanner, III, Esq. (MS Bar No. 102713)
TANNER & ASSOCIATES, LLC
263 East Pearl Street
Jackson, Mississippi 39201
carlos.tanner@thetannerlawfirm.com
601.460.1745 (telephone)
662.796.3509 (facsimile)

ATTORNEY FOR DEFEDANT

IN THE CIRCUIT COURT OF MADISON COUNTY, MISSISSIPPI



STATE OF MISSISSIPPI

PLAINTIFF

JUN 28 2019

v.

CAUSE NO. 2018cr-0512

ANITA WRAY, CIRCUIT CLERK

COURTNEY RAINEY

BY **JB** D.C.

DEFENDANT

MOTION TO DISMISS BASED ON MULTIPLICITY AND DOUBLE JEOPARDY

COMES NOW, the Accused, Ms. Courtney Rainey, by and through her undersigned counsel, and files this Motion to Dismiss Based on Multiplicity and Double Jeopardy. Ms. Rainey respectfully requests this Court dismiss one of the two conspiracy charges that Ms. Rainey is defending in *State of Mississippi v. Courtney Rainey* [Criminal Cause Number 2018-0512] and *State of Mississippi v. Courtney Rainey* [Criminal Cause Number 2018-0512]. Although dismissal of one of the charges is warranted on multiplicity and double jeopardy grounds, the Court should at the very least require the State of Mississippi to elect between which of the charges it is going to force Ms. Rainey to defend. That should happen without regard to the trial dates for these charges because the defedant's rights against double jeopardy extend to the requirement to defend against multiplicitous charges as well as to potential convictions for such erroneously charged offenses.

I. PERTINENT FACTS AND PROCEDURAL HISTORY

On or about November 20, 2018, Ms. Courtney Rainey was charged with a four-count indictment, *State of Mississippi v. Courtney Rainey* [Criminal Cause Number 2018-0512] ("the 512 case"), in Madison County, Mississippi. Count four of the indictment in the 512 case alleges that Ms. Rainey willfully, feloniously, and knowingly conspired with Andrew Grant to commit voter fraud in Canton, Mississippi on or around the date of April 21, 2017. Importantly, the indictment in the 512 case is open ended. That is, it does not set forth an end date or overt acts to

that Ms. Rainey or her co-defendant allegedly committed those offenses. On January 8, 2019, before a trial could be held to determine Ms. Rainey's culpability in that indictment, the State charged Ms. Rainey in a separate two-count indictment, *State of Mississippi v. Courtney Rainey* [cause number 2019-0059] ("the 59 case") in Madison County, Mississippi. Count Two of the indictment in the 59 case alleges, again, that Ms. Rainey willfully, feloniously, and knowingly conspired with Andrew Grant to commit voter fraud in Canton, Mississippi between the dates of on or about May 22, 2017 and May 31, 2018.

II. ARGUMENTS AND CITATIONS OF AUTHORITY

The State is forcing Ms. Rainey in the above-referenced conspiracy counts of the indictments in the 512 case and the 59 case to defend herself and subjecting her to potential convictions of the same alleged criminal activity. That charging of two separate counts that have the same elements and potential proof is constitutionally offensive in that it endangers Ms. Rainey's rights against double jeopardy. *United States v. Deshaw*, 974 F.2d 667, 670 (5th Cir. 1992) (citing *Blockburger v. United States*, 284 U.S. 299, 52 S. Ct. 180, 76 L. Ed. 306 (1932)) ("If application of [*Blockburger*] reveals that the offenses have identical statutory elements or that one is a lesser included offense of the other ... the subsequent prosecution is barred"). In order for multiple conspiracies to be deemed separate charges, though, this Court must determine whether the alleged conspirators entered into a single agreement or multiple agreements. The test most often used in resolving the question of identity of offenses in double jeopardy analysis is whether proof of the matter set out in a second indictment is admissible as evidence under the first indictment and, if it is, whether a conviction could have been properly sustained on such evidence. *See, e. g., Morgan v. Devine*, 237 U.S. 632, 640, 35 S.Ct. 712, 714, 59 L.Ed. 1153, 1156 (1919); *Gavieres v. United States*, 220 U.S. 338, 343, 31 S.Ct. 421, 422, 55 L.Ed. 489, 490

(1911); *Bacom v. Sullivan*, 200 F.2d 70, 71 (5th Cir. 1952), *cert. denied*, 345 U.S. 910, 73 S.Ct. 651, 97 L.Ed. 1345 (1953). But, because of the nature of conspiracy law, determining whether two charged conspiracies are, in fact, a single conspiracy requires further analysis. *See United States v. Ruigomez*, 576 F.2d 1149 (5th Cir. 1978). *United States v. Marble*, a federal case, is instructive on this point. *United States v. Marble*, 578 F.2d 151, 151-54 (5th Cir. 1978). The *Marable* Court noted five factors that should be considered in determining whether multiple charged conspiracies were actually a single conspiracy that the Government had impermissibly broken up into smaller ones for charging purposes. *Id.* That court looked to (1) the time period of the alleged acts, (2) the identities of the alleged conspirators, (3) the statutory offenses charged in the indictments, (4) the overt acts charged or description of the offense charged to which the government or state intends to punish, and (5) the location in which the alleged acts took place. *Id.* at 154. The Court's analysis led it to conclude that the Government had improperly charged the *Marable* defendant with multiple conspiracies when there was actually only one conspiracy. *Id.* at 156. When similarly analyzed, all of the above-referenced factors demonstrate that the State has improperly charged Ms. Rainey with multiple alleged conspiracies and that this Court should require the State to proceed on only one of those charges.

A. The Time Period of the Alleged Conspiracies are Legally and Factually the Same in Both Counts

The time period for the first alleged conspiracy in the 512 case is that it occurred on or about April 21, 2017. That count, however, is open-ended and gives no conclusion date for the alleged conspiracy and its acts in furtherance of the alleged unlawful agreement. As this Court is aware, the Mississippi Supreme Court has long held that “an allegation as to the time of the indictment is not an essential element of the offense charged in an indictment; ... within reasonable limits, proof of any date before the return of the indictment and within the statute of

limitations is sufficient.” *Madden v. State*, 97 So.3d 1217 at ¶ 69 (Miss. App. 2011) (citing Notably, the charge claims that the object of the supposed conspiracy was to commit voter fraud with respect to the same election. The second conspiracy charge, the one in the 59 case, is said to have begun a month later on May 22, 2017, and lasted until May 31, 2018. In *United States v. Deshaw*, when considering the factor of time, the Court determined that when the time period in one indictment wholly encompasses the time period in the second indictment, those time frames are to be viewed as one. *United States v. Deshaw*, 974 F.2d 667 (5th Cir. 1992). Although the time frames for the alleged crime in Ms. Rainey’s two indictments do not overlap by the expressly stated dates, the dates referenced in those charges when coupled with the object of those conspiracies show that the two alleged crimes would have occurred during the same political election. Moreover, because the first charge is open ended, the State could, over and despite Ms. Rainey’s objection to it, attempt to put forth proof of over acts of the so-called April 2017 conspiracy that overlap with the time period of the May 2017 through May 2018 conspiracy to impact unlawfully the same election. The time period factor, thus, weighs in favor of holding that the conspiracies are the same.

B. The Alleged Conspirators in the Alleged Conspiracies are the Same Two People

Ms. Rainey and Mr. Andrew Grant are the only alleged conspirators named in the conspiracy counts in both of the indictments at issue in this case. Even in conspiracies whose central figures are charged in a far more complex manner than Ms. Rainey and Mr. Grant are charged in the 512 and 59 cases, courts have held that the defendants in those cases were the same conspirators for multiplicity and double jeopardy analysis. *See Deshaw*, 974 F.2d at 674. The court in *Deshaw* ruled that the shuffling or parties involved in the alleged conspiracies and the body count within the conspiracy “does not influence us, especially when the central

characters in both indictments are the same.” *Id.* In *United States v. Ramos* it was established that even a defendant having “differing roles” within a particular conspiracy would not signify multiple conspiracies. *United States v. Ramos-Hernandez*, 178 F. Supp. 2d 713 (W.D. Tex. 2001). Here, the State has not shuffled or even alleged different roles, ranks, or responsibilities among the targets of its two conspiracy charges. It simply states that Ms. Rainey and Mr. Grant conspired with each other to commit voter fraud. The elements of conspiracy and the elements of its alleged aim, voter fraud, have the same elements in both charged counts. And, both counts are directed at the same two actors.

C. The Alleged Conspirators in the Alleged Conspiracies are the Same Two People

The statutory offenses that are charged in the indictment are the next factors sought out to establish whether two or more charged conspiracies are different. In both of Ms. Rainey’s indictments she is charged with being in violation of statute sections 97-1-1 (conspiracy) and 23-15-753 (penalties for voter fraud) of the Mississippi Code Annotated. In both conspiracy counts Ms. Rainey is charged with, section 23-15-627 (distribution of absentee ballot application by registrar) of the Mississippi Code Annotated is listed. This points to the overt acts Ms. Rainey allegedly performed during Madison County political elections. The only difference found in both of Ms. Rainey’s indictments is what time period the alleged acts took place. However, as asserted above, despite that time difference the alleged conspiracy would have taken place during the same political election. Meaning, Ms. Rainey is being charged twice for being in an alleged conspiracy stemming from one event that occurred in a single location.

D. The Alleged Conspirators in the Alleged Conspiracies are the Same Two People

As the defense already stated, *supra*, these objects of these two conspiracies are one and the same—the commission of voter fraud. They are the same for *Blockbuster* analysis and the same for the analysis referenced in *Deshaw*.

E. The Alleged Locations of the Alleged Conspiracies is the Same Place

The alleged conspiracies in both of the subject indictments are alleged to have occurred in Madison County, Mississippi and, the defense anticipates, in and around the City of Canton, Mississippi. That factor very obviously weighs in favor of finding the indictments multiplicitous with respect to the conspiracy charges.

III. CONCLUSION

In totality, when all the above-referenced factors are considered together, the two separately-charged alleged conspiracies are, in fact and as pleaded, one conspiracy. For the foregoing reasons, Counsel for Ms. Rainey respectfully request that the Court dismiss the conspiracy counts found in the above-styled and -numbered criminal causes or, alternatively, ask the State to elect between alleged conspiracies.

RESPECTFULLY SUBMITTED, on this, the 28th day of June, 2019.

s/E. Carlos Tanner, III, Esq.
E. Carlos Tanner, III, Esq. MSB# 102713
TANNER & ASSOCIATES, LLC
263 East Pearl Street
Jackson, Mississippi 39201
carlos.tanner@thetannerlawfirm.com
601.460.1745 (telephone)
662.796.3509 (facsimile)

CERTIFICATE OF SERVICE

I, E. Carlos Tanner, III, certify that on this date, I have conventionally filed the foregoing Motion to Dismiss Based on Multiplicity and Double Jeopardy with the Clerk of Court for the Madison County, Mississippi Circuit Court and mailed a copy of that filing to all counsel of record in this cause.

ON THIS, the 28th day of June, 2019.

s/E. Carlos Tanner, III, Esq.
E. Carlos Tanner, III, Esq. MSB# 102713
TANNER & ASSOCIATES, LLC
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Jackson, Mississippi 39201
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601.460.1745 (telephone)
662.796.3509 (facsimile)

FILED

IN THE CIRCUIT COURT OF MADISON COUNTY, MISSISSIPPI

STATE OF MISSISSIPPI

VS

COURTNEY L. RAINEY

JUL 08 2019

ANITA WRAY, CIRCUIT CLERK

D.C.

CAUSE NO. 2018-0512(JA)

DEFENDANT

**STATE'S RESPONSE TO DEFENDANT'S COMBINED MOTION TO DISMISS
COUNT 1 OF INDICTMENT AND FIRST MOTION IN LIMINE TO EXCLUDE
REFERENCE TO RECEIVING STOLEN GOODS AS A DISENFRANCHISING CRIME**

COMES NOW the State of Mississippi and files its response to Defendant's Combined Motion to Dismiss Count 1 of Indictment and First Motion in Limine to Exclude Reference to Receiving Stolen Goods as a Disenfranchising Crime, and would show unto the Court the following:

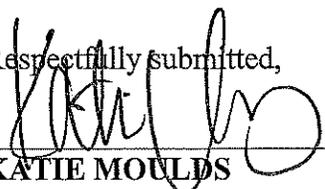
1. That the Defendant cites *Mauney v. State of Mississippi*, ex rel. Moore, 707 So.2d 1093 (Miss. 1998) to support her position that a previous conviction of receiving stolen goods does not disqualify an individual from holding office, and that if someone could hold office having such a previous conviction, then it is not a disenfranchising crime;
2. That *Mauney v. State of Mississippi*, ex rel. Moore, *supra*, involves the removal of the elected Sheriff of Tippah County under Section 44 of the Constitution of the State of Mississippi because he had previously been convicted of Sale of a Controlled Substance (Amphetamines);
3. In *Mauney* the Court held that Section 44 of the Mississippi Constitution disqualified from public office anyone who had been convicted of an "infamous crime", and adopted the definition of "infamous crime" to mean all felonies, therefore, the Court upheld the removal of the Sheriff of Tippah County because his conviction of Sale of a Controlled Substance (Amphetamines) disqualified him from holding the office of Sheriff;
4. *Mauney* does not apply to the issue raised by the Defendant's Motion;
5. In *Cotton v. Fordice*, 157 F.3d 388 (5th Cir. 1998) the Court affirmed the judgement that

the appellant was disenfranchised under §241 of the Mississippi Constitution because the term “theft” in the Mississippi Constitution included the crime of Armed Robbery, and the Court also found that the disenfranchising provision was constitutional;

6. *Cotton v. Fordice*, in discussing the Mississippi Code’s labeling of various theft crimes as “larcenies”, lists the following “larceny” crimes: larceny (§97-17-41 MCA), receiving stolen property (§97-17-70), robbery (§97-3-73), and extortion (§97-3-82), *Id.* at 394;
7. The analysis in *Cotton v. Fordice* stated the following, “As there is no crime labeled ‘theft’ in Mississippi, the term in §241 is only meaningful if it includes the larceny crimes...”, *Id.* at 395;
8. That Donnell Robinson was convicted of the crime of Receiving Stolen Property in Madison County Cause Number 2482: Judgement of Conviction dated April 3, 1995, filed April 6, 1995; Order of Sentence dated April 6, 1995 (see Exhibit 1 and 2 attached);
9. Therefore, the State would show that Donnell Robinson was a disenfranchised person under §241 of the Mississippi Constitution, and the Court should not dismiss Count 1 of the Indictment, nor should the State be prohibited from referring to Receiving Stolen Goods as a disenfranchising crime;

WHEREFORE, PREMISES CONSIDERED, the State of Mississippi respectfully requests the Court to deny Defendant’s Combined Motion to Dismiss Count 1 of Indictment and First Motion in Limine to Exclude Reference to Receiving Stolen Goods as a Disenfranchising Crime.

Respectfully submitted,

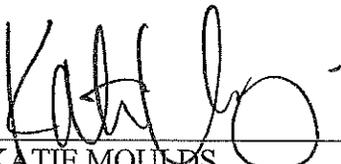

KATIE MOULDS

CERTIFICATE OF SERVICE

I, KATIE MOULDS, do hereby certify, that I have on this day emailed a true and correct copy of the foregoing State's Response to "Defendant's Combined Motion to Dismiss Count 1 of Indictment and First Motion in Limine to Exclude Reference to Receiving Stolen Goods as a Disenfranchising Crime", to the Honorable Carlos Tanner, attorney for Defendant at:

carlos.tanner@thetannerlawfirm.com

This the 8th day of July, 2019.



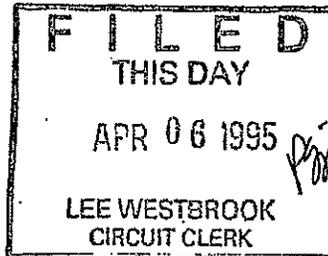
KATIE MOULDS
ASSISTANT DISTRICT ATTORNEY
20TH CIRCUIT COURT DISTRICT

IN THE CIRCUIT COURT OF MADISON COUNTY, MISSISSIPPI

STATE OF MISSISSIPPI

VS

DONNELL ROBINSON



CAUSE NO. 2481

DEFENDANT

JUDGMENT OF CONVICTION

THIS DAY this cause came on to be heard on the sworn petition of Donnell Robinson, the Defendant, a citizen of the United States, to withdraw the previous plea of not guilty and to enter a plea of guilty to the criminal offense of receiving stolen property as charged in the Bill of Information in Cause No. 2481; and the Defendant, the Defendant's attorney, Honorable Walter E. Wood, and the attorney for the State, Honorable Tommy Savant, all being personally present in open court and ready for hearing; and the Court having heard and considered the petition together with the evidence adduced in support of it, including the testimony under oath of the Defendant and the statements of counsel, is of the opinion and finds that the allegations contained in the petition are supported by the evidence and are true and correct as set forth in it; that the Defendant's plea of guilty is not induced by force, violence, threats, coercion, fear, deception, promises or misrepresentations; that the Defendant is competent to understand and does understand the nature of the criminal offenses to which

EXHIBIT
1

the plea of guilty is entered and understands the minimum and maximum punishments prescribed by law for it; that the Defendant understands that by entering a plea of guilty the following are expressly waived: the right against self-incrimination, the right to trial by jury, the right to confront and cross-examine the witnesses for the State, the right to testify as a witness, the right to subpoena, call, and examine witnesses in defense, the right to appeal and if indigent, the right to a court-appointed attorney to prosecute an appeal; that the Defendant's pleas of guilty are freely, voluntarily, and intelligently made, and that there is a factual basis for the plea which establishes the Defendant's guilt beyond any reasonable doubt; that the petition should be granted and the Defendant's plea of guilty should be accepted and entered.

IT IS THEREFORE ORDERED AND ADJUDGED that the plea of guilty of the Defendant is accepted and entered and that based on it the Defendant should be and is found guilty and convicted of the crime of receiving stolen property as charged in the Bill of Information.

IT IS FURTHER ORDERED that sentencing is set for Thursday, the 6th day of April, 1995, at 9:00 o'clock A.M., in the Circuit courtroom at the Madison County courthouse in Canton, Madison County, Mississippi, and that a pre-sentence report be prepared and submitted to the Court before that date and time.

SO ORDERED AND ADJUDGED this the 3rd day of April, 1995.

STATE OF MISSISSIPPI, COUNTY OF MADISON
I, Anita Wray, Clerk of the Circuit Court in and for the said State and County, do hereby certify that the above and foregoing is a true and correct copy of the original [Signature] and the same is of record in this office in Canton
Book no. 49 at page 310
Given under my hand and the seal of the Circuit Court at Canton
This the 7 day of April, 20 11
Anita Wray, Circuit Clerk
BY [Signature] D.C.

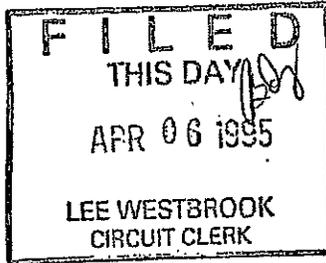
[Signature]
CIRCUIT JUDGE

IN THE CIRCUIT COURT OF MADISON COUNTY, MISSISSIPPI

STATE OF MISSISSIPPI

VS

DONNELL ROBINSON



CAUSE NO. 2482

DEFENDANT

ORDER OF SENTENCE

THIS CAUSE was heard in open court on the matter of sentencing the defendant, Donnell Robinson, under and pursuant to the Judgment of Conviction for the crime of receiving stolen property, made and entered on the 3rd day of April, 1995, and the defendant and his attorney, Honorable Walter Wood, being present and it appearing unto the court that: (a) the defendant and his attorney were given an opportunity to read and comment on the pre-sentence report; (b) the report is correct in all material aspects considered in determining sentence; (c) the investigating officers were notified in advance of the sentencing date; (d) the defendant entered an open plea, and questions, comments or objections from the victims and officers present were invited; (e) there were no objections to the recommendation; (f) the defendant and his attorney were given an opportunity to address the court on matters relevant to these proceedings including the presentation of circumstances in extenuation and mitigation.

IT IS THEREFORE ORDERED AND ADJUDGED, that the defendant, Donnell Robinson, is sentenced as follows:

EXHIBIT
2

(1) To serve a term of three (3) years in the custody of the Mississippi Department of Corrections in cause number 2482.

(2) To pay court cost, fees and assessments in equal, consecutive monthly installments of \$75.00 dollars, beginning on the sixtieth (60th) day following the defendant's release from custody.

IT IS EXPRESSLY PROVIDED that the payment of court costs, fees and assessments be made a special condition of parole or any other form of early release that may be granted to the defendant.

IT IS FURTHER ORDERED AND ADJUDGED that the defendant be given credit against this sentence for one hundred eight one (181) days served in pre-trial.

IT IS FURTHER ORDERED AND ADJUDGED that the defendant's custody is remanded to the Sheriff of Madison County, Mississippi to begin serving the sentence imposed.

SO ORDERED AND ADJUDGED this the 6th day of April, 1995.

R. L. Joyce

CIRCUIT JUDGE

STATE OF MISSISSIPPI, COUNTY OF MADISON
I, Anita Wray, Clerk of the Circuit Court in and for the said State and County, do hereby certify that the above and foregoing is a true and correct copy of the original Order and the same is of record in this office in Canton
Book no. 49 at page 209
Given under my hand and the seal of the Circuit Court at Canton
This the 7 day of Dec, 2017
Anita Wray, Circuit Clerk
BY [Signature] D.C.

IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

COURTNEY RAINEY)

FILED

JUL 30 2019

OFFICE OF THE CLERK
SUPREME COURT
COURT OF APPEALS)

THE STATE OF MISSISSIPPI)

2019-M-1200 SC

CRIMINAL NO: 2018-0512, 2018-0513,
2018-0514, 2018-0515, 2018-0516, 2018-
0517, 2018-0518 and 2019-0059

COURTNEY RAINEY'S PETITION FOR INTERLOCUTORY APPEAL

Pursuant to Miss. R. App. P. 5, Canton County School Board Member Courtney L. Rainey requests that this Court grant an interlocutory appeal from the Madison County Circuit Court's Orders on: (i) Courtney Rainey's motion to have Attorney Michael T. Sterling appear *pro hac vice* on her behalf in her pending criminal cases; (ii) Courtney Rainey's Motion to Dismiss for Double Jeopardy and Multiplicity; (iii) Courtney Rainey's Motion to Dismiss on the grounds that Receiving Stolen Goods is not a disenfranchising crime in Mississippi; and (iv) introduction of 404(b) evidence of pending charges against the accused; and (v) Courtney Rainey's Motion to Continue for Discovery Violations.

As required by the Miss. R. App. P. 5, Ms. Rainey provides the following information:

1. The current status of the cases is that Courtney Rainey is set to being trial on July 30, 2019.
2. This Court has authority to consider this Petition because the Petition is filed within twenty-one days from the orders upon which review is sought.
3. The questions of law to be presented in this interlocutory appeal upon which there exists a basis for a difference of opinion that will: (i) protect a party from substantial and irreparable injury; (ii) materially advance the termination of litigation and avoid

MOTION#

2019 2990

exceptional expenses to the party; and (iii) resolve an issue of general importance to the administration of justice are:

- a. Whether the United States Constitution protects Ms. Rainey's 6th Amendment right to her *pro hac vice* Counsel where the State elected to charge her in separate indictments, but conceded and argued in open court that the charges were related;
- b. Whether the double jeopardy clause of the United States Constitution and the rule against multiplicity requires that a charge against Ms. Rainey should be dismissed;
- c. Whether receiving stolen goods is included as a crime of "theft," and thus, it is disenfranchising crime and whether the trial court is bound by a 5th Circuit Opinion that never certified that question to the Mississippi Supreme Court;
- d. Whether permitting the state to present 404(b) evidence of other current indicted charges is admissible when the presumption of innocence is still applicable; and
- e. Whether the State's late produced discovery, however unintentional, entitles the Defense to a continuance to investigate the new potential witnesses.

FACTS

Courtney L. Rainey was indicted on November 20, 2017 in eight separate indictments in Madison County, Criminal Cause Nos: 2018-0512; 0513; 0514; 0515; 0516; 0517; and 0518 and later indicted in January on Cause No: 2019-0059.

The indictment cases have procedurally moved forward together with Courtney Rainey making appearances to handle issues related to all cases in single settings, including pre-trial motions held by the trial court on July 22, 2019 in which matters were handled as to all pending indictments. The State of Mississippi filed a motion to consolidate the cases and argued in open

Court that they could have indicted the cases together and that the cases had substantial relationships to one another. In fact, the State argued that several of the cases were so similar that there was a common scheme or plan and moved to admit bad acts alleged in several of the indictments against Ms. Rainey as 404(b) evidence.

During pre-trial motions, Ms. Rainey filed a Motion for the *pro hac vice* admission of Michael T. Sterling, an attorney admitted to practice in Georgia and Illinois courts. The motion was filed after consultation with the State and trial court who agreed that the cases should be related for the purpose of allowing Ms. Rainey to have Mr. Sterling appear in the cases. Mr. Sterling has only appeared in three matters in Mississippi in the preceding twelve months and, thus, would be qualified under Rule 46(b) of the Mississippi Rules of Appellate Procedure to represent Ms. Rainey in the matters. The Trial court, however, did an about-face during pre-trial motions and ruled that Mr. Sterling could only be admitted in two cases. The court made no legal finding and conducted no analysis as to whether the cases were related for the purposes of *pro hac vice* admission.

During pre-trial motions, Courtney Rainey moved to dismiss one of the conspiracy charges related to Cause No 2018-0512, or alternatively Cause No. 2019-0059, due to significant constitutional concerns of double jeopardy and multiplicity.¹ Ms. Rainey is Charged in Cause No. 2018-0512 alleging that she willfully, feloniously and knowingly conspired with Andrew Grant to commit voter fraud in Canton, Mississippi on or around the date of April 21, 2017. The case in that indictment does not set forth an end date to the alleged conspiracy nor does it put forth any over acts that Ms. Rainey or her alleged co-conspirator committed in furtherance of that offense. On January 8, 2019, Ms. Rainey was indicted on an additional charge of conspiracy in

¹ As previously mentioned, the trial court handled all motions related to all indictments at the same time in the same hearing.

indictment 2019-0059 alleging that she willfully, feloniously, and knowingly conspired with Andrew Grant to commit voter fraud in Caton, MS between the dates of May 22, 2017 and May 31, 2018. The trial court denied Ms. Rainey's argument regarding multiplicity and double jeopardy.

In indictment Cause No. 2018-0512, Count I – Ms. Rainey is accused of willfully, unlawfully, knowingly and feloniously encouraging or causing Donnell Robinson to vote by absentee ballot when she knew Donnell Robinson was ineligible to vote because Donnell Robinson was previously convicted of a disenfranchising [crime]; to wit- receipt of stolen goods. Ms. Rainey moved to dismiss the charges in this case because the State of Mississippi has never defined receipt of stolen goods as a disenfranchising crime in the Mississippi Constitution. Furthermore, the question of what constitutes “theft” under the MS Statute of disenfranchising crimes and whether receipt of stolen goods falls under that category has never been a certified question answered by the Mississippi Supreme Court.

Finally, after Ms. Rainey was not permitted to have the counsel of her choice represent her in all of the charged cases against her, the trial court ruled that pending allegations against Ms. Rainey in separately charge indictments were so similar that the State could introduce evidence to demonstrate a common scheme or plan as 404(b) material in several of the cases. These are all charged cases that are pending where Ms. Rainey is entitled to a presumption of innocence.

REASONS WHY THIS COURT SHOULD GRANT AN INTERLOCUTORY APPEAL

ARGUMENT I.

THE INTERLOCUTORY APPEAL SHOULD BE ALLOWED BECAUSE COURTNEY RAINEY'S 6TH AMENDMENT RIGHT TO THE COUNSEL OF HER

CHOICE CANNOT BE PROTECTED IF THE ATTORNEY SHE HIRED CANNOT REPRESENT HER ON ALL PENDING CHARGES AGAINST HER.

Justice Antonin Scalia penned in *United States v. Gonzalez-Lopez*, 548 U.S. 140 that the right to counsel of one's choice has never been derived from the Sixth Amendment's purpose of ensuring a fair trial. *Gonzalez-Lopez* 548 U.S. at 147; (citing *Wheat v. United States*, 486 U. S. 153, 159 (1988)). Rather, the right to choose the lawyer you want to have represent you in Court has always been regarded as the root meaning of the constitutional guarantee. *Id.* (citing *Wheat*, 486 U.S. at 159). Deprivation of the right is "complete" when the defendant is erroneously prevented from being represented by the lawyer, he [or she] wants, regardless of the quality of the representation he [or she] received. To argue otherwise is to confuse the right to counsel of choice—which is the right to a particular lawyer regardless of comparative effectiveness—with the right to effective counsel—which imposes a baseline requirement of competence on whatever lawyer is chosen or appointed. *Id.* at 148. The constitutional right to have the lawyer that one desires has always been balanced with the trial court's authority to establish criteria for admitting lawyers before them. *Id.* at 151. The Supreme Court also recognized a trial court's wide latitude in balancing the right to counsel of choice against the needs of fairness. *Id.* The trial court has an "independent interest in ensuring that criminal trials are conducted within the ethical standards of the profession and that legal proceedings appear fair to all who observe them." *Wheat, supra*, at 160.

Ms. Rainey moved for *pro hac* admission of Attorney Michael T. Sterling with all requirements fulfilled under Rule 46 of the Mississippi Rules of Appellate Procedure 46(b). Mr. Sterling had appearances in three separate and unrelated matters as a *pro hac vice* attorney in Mississippi during the preceding 12 months. Under Mississippi law, a foreign lawyer may not

“appear” in more than five unrelated matters during the previous 12 months. Miss. R. App. Proc. 46(b). Mr. Sterling was under that threshold, having appeared in only three matters in the preceding 12 months.

Ms. Rainey, after speaking with the State and Court to admit Michael Sterling for a single purpose for all the cases, then moved for Mr. Sterling’s *pro hac* admission. The Court and State, initially, agreed that Mr. Sterling could be admitted in those related causes for a single *pro hac* purpose and the defendant stated so in the Motion for Admission. (See Attached Exhibit A.) The Trial Court never disputed that fact.

After that agreement was settled, the Ms. Rainey filed the *pro hac* admission motion promptly and all requisite documents for Mr. Sterling to be admitted for her matters. However, at the pre-trial conference, the trial court did an about-face. The court begin the hearing by questioning Ms. Rainey’s local counsel on whether they were prepared to represent that the causes were all “related.” Counsel declined to make that determination considering it could impact other motions and arguments on behalf of Ms. Rainey throughout the hearing. After all that is not the defense counsel’s determination to make, the State makes charging decisions. *Allen v. State*, 212 So.3d 98, 102 (Miss. App. 2016) (prosecutors and grand juries make the charging decisions). Moreover, the cases could be considered “related” for *pro hac* purposes, but unrelated for purposes of 404(b) or a Motion to Consolidate.

The court ruled that Mr. Sterling could only be admitted for two of the indicted cases against Ms. Rainey. The court would later rule that several of the cases were so related that the State could introduce 404(b) evidence as a common scheme or plan against the accused. In other words, the State court ruled that the cases were common enough for 404(b) purposes, a higher

burden, but were not so related that Ms. Rainey should have her lawyer of choice defend her against the allegations.

The ruling sets a precedent and provide the State a tactical and technical maneuver that they can now utilize to deny a defendant their constitutional right to the counsel of their choice. They can simply charge separate indictments and run the clock out on the *pro hac* appearances of a foreign attorney that would otherwise be qualified to represent the client. There was no factual analysis conducted by the trial court to conclude that the charges were not related. The Supreme Court used exact language for a reason. The Supreme Court did not make a rule that a foreign lawyer was entitled to 5 separate indicted cases; the rule is 5 unrelated matters. Even if the cases aren't charged in the same indictment, it does not mean the matters are unrelated for *pro hac vice* purposes and there was no factual finding in this case that the charges are not related.

In fact, evidence overwhelmingly leans in the direction that the charges are related : (i) the attorney would represent a single defendant in the charged counts; (ii) the cases have proceeded together and been handled together at every stage of pre-trial litigation; (iii) discovery has been provided to all cases together by the State; (iv) the charges, save for one, were all indicted on the same day by the same grand jury; (v) the charges all relate to the subject matter of voting irregularities; (vi) the charges all come from the same county; (vii) the charges are all being prosecuted by the same District Attorney's Office; (viii) the charges all arise out of issues in Canton, MS; (ix) the charges all stem from the same investigation by the same investigator; and (x) the charges are all proceeding in front of the same judge.

Local counsel's opinion on the relatedness of the charges, while instructive, is not binding. If the charges are related, Ms. Rainey should not be denied her constitutional right to

have the attorney of her choice. See *Harman v. Forssenius*, 380 U.S. 528, 540 (1965) (“constitutional rights would be of little value if they could be indirectly denied”).

ARGUMENT II

THE INTERLOCUTORY APPEAL SHOULD BE ALLOWED SO AS TO AVOID AN ISSUE OF MULTIPLICITY AND DOUBLE JEOPARDY.

During pre-trial motions, the trial court entered an order denying Ms. Rainey’s Motion to Dismiss for Double Jeopardy and Multiplicity. In the case of *United States v. Marable*, 578 F.2d 1149 (5th Cir. 1978), the court noted five factors that should be considered in determining whether multiple charged conspiracies were actually a single conspiracy that the Government had impermissibly broken up into smaller ones for charging purposes. The court looked to: (i) the time period of the alleged acts; (ii) the identities of the alleged conspirators; (iii) the statutory offenses charged in the indictments; (iv) the overt acts charged or description of the offense charged to which the government or state intends to punish; and (v) the locations in which the alleged acts took place. *Id.* at 154.

In this case, the time period for the first alleged conspiracy in Cause No. 2018-0512 occurred on or about April 21, 2017. That count, however, provides no end date for the alleged conspiracy and provides no acts in furtherance of the alleged unlawful agreement. The second alleged conspiracy in Cause No. 2019-0059 is charged as beginning on May 22, 2017 and ending on May 31, 2018. The time period in the 2018-0512 indictment wholly encompasses the time period in the 2019-0059 indictment. Thus, those time frames must be viewed as one. *United States v. Deshaw*, 974 F.2d 667 (5th Cir. 1992). The conspirators in those two indictments are the exact same individuals. The State’s charged conduct have the same elements. *United States*

v. Ramos-Hernandez, 178 F.Supp 2d 713 (W.D. Tex. 2001) (even if a defendant had separate roles within a particular conspiracy would not signify multiple conspiracies).

The statutory offenses charged in both indictments are identical. Ms. Rainey is being charged with a violation of 23-15-753 and 97-1-1 of the Mississippi Code Annotated in both indictments. The objective of these alleged conspiracies is the same – voter fraud. Thus, they are the same for the *Blockbuster* and *Deshaw* analysis. The alleged conspiracies are charged as having happened in the same location and same place in each indictment.

Accordingly, although the State charged these two cases as separate indictments and separate conspiracies, there is not question that they are in fact one conspiracy for multiplicity and double jeopardy analysis. The State should elect between the alleged conspiracies or the charges should be dismissed, lest Courtney's constitutional rights would be violated.

ARGUMENT III

THE INTERLOCUTORY APPEAL SHOLD BE GRANTED BECAUSE RECEIVING STOLEN GOODS IS NOT A DISENFRANCHISING CRIME UNDER MISSISSIPPI LAW.

In the State of Mississippi, a previous conviction for receiving stolen goods does not disqualify and individual from holding an elected office. *Mauney v. State of Mississippi, ex rel. Moore*, 707 So.2d 1093, 1095 (Miss. 1998). It is the most instructive that our Courts have been about whether receiving stolen goods is a disenfranchising crime. The State in this case has charged Courtney Rainey in Cause No. 2018-0512 with registering Donnell Robinson to vote on or about April 21, 2017 when she knew he was not qualified to vote because he was previously convicted of Receiving Stolen Goods, a disenfranchising crime.

Certainly, the State of Mississippi did not intend to allow someone to hold an elected office, represent significant and important matters of public interest on behalf of their constituents, have the right to vote on those matters as legislators, city councilmembers, Mayors, alderman, and more on behalf of those who elected them. The court recognized that allowing an individual with that previous offense to hold office would mean that could cast votes on issues that could impact thousands of Mississippians. Certainly, the Court did not mean to allow them to handle such important matters, but simultaneously, disenfranchise them from voting for themselves in the same election. That flies in the face of common sense. The Mississippi constitution does not identify the crime of receiving stolen goods as a disenfranchising crime in Miss. Const. Art XII, §241. The trial court relies on an opinion by a federal court that never certified the question of what constitutes "theft" in the Mississippi Constitution. That opinion cannot be binding because the Supreme Court of Mississippi has never ruled on the matter.

Moreover, the larceny crimes that comprise theft and the crime of stolen goods cannot exist in the same charges against the same defendant. Theft and receiving stolen good are not elements of the same offense. Thus, it would have been legally impossible for Ms. Rainey or anyone else to have been on notice that the crime of receiving stolen goods is a disenfranchising crime that would deprive someone permanently of their right to vote in Mississippi. The trial court entered an order on July 22, 2019 denying the Defendant's Motion to Dismiss on this important issue of Mississippi law.

ARGUMENT 4

THIS INTERLOCUTORY APPEAL SHOULD BE GRANTED BECAUSE THE ACCUSED'S RIGHT WOULD BE SIGNIFICANTLY PREJUDICED IF THE STATE IS ALLOWED TO ADMIT 404(b) EVIDENCE ON CHARGES WHERE THE ACCUSED IS PRESUMED INNOCENT.

The trial court issued an order on July 23, 2019 that the State could introduce evidence of other bad acts and alleged crimes against Courtney Rainey. The only other crimes and bad acts that the State wants to introduce are pending indictments it has brought against Courtney Rainey where she has pleaded not guilty and continues to await trial. As a general rule, evidence of a crime other than the one for which the accused is being tried is not admissible. *Ballenger v. State*, 667 So.2d 1242 (Miss. 1995) (citing *Duplantis v. State*, 644 So. 2d 1235, 1246 (Miss. 1994); *Ladner v. State*, 584 So. 2d 743, 758 (Miss. 1991), *cert. denied*, 502 U.S. 1015, 112 S. Ct. 663, 116 L. Ed. 2d 754 (Miss. 1991); *Rose v. State*, 556 So. 2d 728 (Miss. 1990)).

The State elected to charge Ms. Rainey in eight separate indictments. As previously mentioned herein, the State has argued that they could have tried the cases all together. In other words, if the State had indicted each case together, they would have been at liberty to prove and discuss each charged count against Ms. Rainey. But the State elected not to do so. Now, the State seeks to introduce evidence of the other indicted acts against Ms. Rainey in the separate trials, providing themselves with opportunities to bring in the evidence over and over again, despite the fact that Ms. Rainey is presumed innocent and despite the fact that the prosecution elected to bring the cases separately.

This is exactly why the 404(b) rule exists – to forbid prosecutors from using other “alleged” acts to buttress their case against the Defendant. You cannot prove motive, intent, purpose, plan or design when Ms. Rainey is presumed innocent of the pending charges. It isn’t a conviction and Ms. Rainey hasn’t even had her day in Court on the other pending charges. Based on the trial Court’s ruling, the State would be allowed to admit charged crimes from other indictments that are still pending against Ms. Rainey. Such latitude for the State would be an

impermissible violation of the constitutional presumption of innocence and Ms. Rainey's right to a fair trial.

Suppose Ms. Rainey wants to take the stand in her defense in some cases, but not other cases where she has an absolute 5th Amendment Right. The prosecution could, then undermine Ms. Rainey's 5th Amendment Rights by asking her questions about the indictments for which she has pled not guilty and for which she has not waived her 5th Amendment protections. Tellingly, is the fact that on the one hand Ms. Rainey's pro hac counsel is not being permitted to practice in the cases because they were determined "unrelated," but the trial court has ruled that the case bare enough resemblance to one another that the State can introduce 404(b) evidence. This could not be a more fundamental affront to constitutional right to fundamental fairness at the trial court.

The rule is there for a reason – to protect the accused from having other bad crimes presented simply so that the State can use to show character in conformity therewith. If the rule is permitted to expand to charged and pending crimes, it would constitute a complete erosion of the rule itself and invite abuse by State prosecutors.

Accordingly, to protect Ms. Rainey from the irreparable injury and prejudice that would result at trial if the State is permitted to introduce charged offense for which she is presumed innocent, we respectfully ask this Court to take up the interlocutory appeal.

ARGUMENT 5

THE INTERLOCUTORY APPEAL SHOULD BE GRANTED BECAUSE THE TRIAL COURT'S DENIAL OF THE ACCUSED'S MOTION TO CONTINUE WOULD SIGNIFICANTLY PREJUDICE THE DEFENSE BY DENYING THE ACCUSED A REASONABLE OPPORTUNITY TO BECOME FAMILIAR WITH THE EVIDENCE AND INTERVIEW WITNESSES

In this case, it is undisputed that the State turned over several documents after Court-imposed deadlines had passed. However, this Honorable Court has ruled that Rule 4.06 (c) mandates respect for constitutional limitations. *Houston v. State*, 531 So.2d 598, 612 (Miss. 1998). In this case, several important and relevant information was provided to the defense counsel after the court-imposed deadline had passed. Accordingly, the defense requested a Motion to Continue so that they would have a reasonable opportunity to become familiar with the undisclosed evidence by interviewing witnesses and conducting due diligence on behalf of the accused. The Court denied Defendant's Orr tenus motion on July 30, 2019.

First, the defendant received notes and billing statements from the State's privately contracted lead investigator who handled all matters of investigation on July 23, 2019, a day after the pre-trial conference had concluded. On July 25, 2019, the State produced new information from its key witness that would include an additional allegation of illegality against the accused. That information had not been previously disclosed to the investigator or the State. The State appropriately supplemented the new information. On July 26, 2019, the State produced yet another set of documents prepared by the State's lead investigator that had been in the State's possession. The additional reports of the investigator were approximately 73 pages. The additional written notes of the investigator were approximately 33 pages. The billing statement provided by the State, included a detailed description of interviews undertaken by the privately contracted lead investigator. There were more than 30 people who were interviewed by the investigator where there were not summary reports of those interviews, what those individuals said, and what the investigator learned turned over to defense counsel. In fact, if not for the

billing records, counsel for the accused would have never known of the additional individuals who spoke with the State's lead investigator.

"Recognizing that the problems of fairness occur when there is late production of evidence, exhibits, or witnesses who ought to have been disclosed much earlier; we have evolved a procedure which we believe is consistent with, and in fact, promotes our twin goals of (1) utilization of all relevant and otherwise admissible evidence; and (2) fairness to the opposing party. That procedure was originally stated in *Box v. State*, 437 So.2d, 19, 23-24 (Miss. 1983) and has been applied in a number of cases." *Houston v. State*, 531 So.2d 598, 611 (Miss. 1988) (citing *Box v. State* 437 So.2d, 19, 23-24 (Miss. 1983)).

First, upon objection by a party, the party should be given a reasonable opportunity to become familiar with the undisclosed evidence by interviewing the witnesses, inspecting the physical evidence, etc. *Id.* In this case, while it was requested by defense counsel, the Court has not provided the accused a reasonable opportunity to interview the previously undisclosed witnesses from the billing statements provided by the State and their lead investigator. The first step of the *Box* analysis was not met by the Court. The State provided discovery that included the names of several witnesses for which there are no summary investigative reports or statements whatsoever. The number of previously undisclosed witnesses exceeded, at least, thirty. Because the trial court has not even met the first obligation under the *Box* analysis, the Defense would be significantly prejudiced.

Accordingly, this Court should grant an interlocutory appeal because the Trial Court is in direct violation of the Supreme Court's requirement that the objecting party be provided a reasonable opportunity to become familiar with the previously undisclosed evidence, including interviewing witnesses. *Id.*

CONCLUSION

For the reasons so state above, Ms. Rainey respectfully requests that the Court grant the interlocutory appeal in the interest of justice and to prevent the irreparable injury that would occur if the case were to move forward without these important issues and significant legal disagreements being resolved.

RESPECTFULLY SUBMITTED, this the 30th day of July, 2019.

s/Michael T. Sterling, Esq.

Michael T. Sterling, (*Pro Hac Vice* Counsel)

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CERTIFICATE OF SERVICE

I, Michael T. Sterling, do hereby certify that on this date, I have filed the foregoing Petition For Interlocutory Appeal with the Clerk of Court for the Supreme Court of Mississippi, which caused notification of that filing to be sent to all counsel of record in this cause.

ON THIS, the 30th day of July, 2019.

s/Michael T. Sterling, Esq.

Michael T. Sterling, (*Pro Hac Vice* Counsel)

Dreyer Sterling, LLC

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F I L E D
IN THE CIRCUIT COURT OF MADISON COUNTY, MISSISSIPPI
MADISON COUNTY

STATE OF MISSISSIPPI

AUG 05 2019

VS.

ANITA WRAY, CIRCUIT CLERK

CAUSE NO. 2018-0512 (JA)

COURTNEY L. RAYNE

BY

[Signature]

D.C.

DEFENDANT

MOTION TO NOLLE PROSEQUI INDICTMENT

COMES NOW the State of Mississippi and enters its motion to *nolle prosequi* an Indictment filed against the Defendant referenced above, subject to approval by the Court, and in support of said Motion offers the following:

IN THE INTERESTS OF JUSTICE & JUDICIAL
ECONOMY & BASED ON JURY QUESTIONS IN
THE TRIAL OF #2018-0512 (JA)

WHEREFORE, PREMISES CONSIDERED, the State respectfully moves the Court to *Nolle Prosequi* the Indictment in this cause.

Respectfully submitted, this the 5th day of AUGUST, 20 19.

STATE OF MISSISSIPPI

BY: [Signature]
ASSISTANT DISTRICT ATTORNEY

ORDER

THIS CAUSE having come on for hearing on the State's *Motion to Nolle Prosequi Indictment* filed herein, and the Court, finding same to be reasonable, approves the entry thereof.

SO ORDERED, this the 5th day of August, 20 19.

[Signature]
CIRCUIT JUDGE

308/714

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION

CYNTHIA PARHAM, ET AL.

PLAINTIFFS

v.

CIVIL ACTION NO. 3:20cv572-DPJ-FKB

MICHAEL WATSON, in his official capacity as
Secretary of State of Mississippi; and
LYNN FITCH, in her official capacity as
Attorney General of the State of Mississippi

DEFENDANTS

AFFIDAVIT OF THOMAS E. DOBBS, M.D., M.P.H.

STATE OF MISSISSIPPI
COUNTY OF HINDS

Personally appeared before me, Thomas E. Dobbs, an adult resident citizen of the State of Mississippi over the age of twenty-one, who after first having been duly sworn, deposed, and stated on oath, hereby makes this affidavit upon personal knowledge, and states:

1. I, Thomas E. Dobbs, M.D., M.P.H., do hereby attest that I am a physician licensed to practice medicine in the State of Mississippi, and I am Board Certified in Internal Medicine and Infectious Diseases. I currently serve as the State Health Officer for the Mississippi State Department of Health ("MSDH"), and I have served in that role since 2018. Prior to serving as the State Health Officer, I served at MSDH for many years in the roles of District Health Officer and State Epidemiologist. Prior to joining MSDH, I worked as an Internal Medicine and Infectious Diseases physician in Laurel and Hattiesburg, Mississippi. I am a member

of the Mississippi State Medical Association and the Infectious Diseases Society of America, and I am an Associate Professor at the University of Mississippi Medical Center School of Population Health.

2. A copy of my CV is attached hereto as Exhibit A.

OVERVIEW OF SARS-COV-2

3. SARS-CoV-2 is the causative agent of a world-wide viral pandemic leading to the illness that is now called Coronavirus Disease 2019 (“COVID-19”). The transmission of SARS-CoV-2 is mainly person-to-person, through respiratory secretions, aerosols, and saliva. Infected droplets of fluid from the nose or mouth can be generated and emitted during coughing, sneezing, and talking. Respiratory droplets can land in the mouths or noses of people who are nearby, and infection can occur after close-range contact, if these respiratory droplets come into contact with a person’s mucus membranes.¹ Indirect infection, through touching of an infected surface then touching one’s eyes, nose or mouth, also may be possible, but it is not the main way that the virus is spread. These are the only two known and undisputed ways for the virus to spread.²

4. Symptoms of COVID-19 resemble flu-like illness and range from mild to severe, with symptoms of fever, coughing, fatigue, and difficulty breathing.

¹ Centers for Disease Control and Prevention, *Coronavirus Disease 2019 (COVID-19)*, available at <https://www.cdc.gov/coronavirus/2019-ncov/faq.html> (last visited Oct. 5, 2020).

² Mississippi State Department of Health, *General Information* (“Like the flu, COVID-19 spreads person-to-person by close contact (within 6 feet) and by coughing or sneezing. COVID-19 may also spread by touching surfaces contaminated by the virus.”), available at <https://msdh.ms.gov/msdhsite/static/14,21866,420.html#overview> (last visited Oct. 5, 2020).

5. MSDH updates the State of Mississippi's COVID-19 case totals each day based on test results from the previous day.³ As of October 5, 2020, the total of all reported COVID-19 cases in the State of Mississippi for 2020 is 100,703, which has led to 3,013 deaths. The non-long term care mortality rate in Mississippi is 1.9%.

A. Are there mitigation measures that Mississippi voters can take that would make it safer to vote in-person in Mississippi in the Fall?

6. Mitigation measures, including adherence to federal and state guidelines, can be implemented to make voting in-person safer for voters. Individual voters are now more practiced in maneuvering in a protective mode of operation, which would add to the overall safety of the voting experience. By wearing a mask, using hand sanitizer, keeping a safe distance from others, and refraining from touching their nose, mouth, and face at the polling station, the methods of transmission can be greatly reduced.

7. The spread of respiratory viruses can be lessened through several interventions. Basic hand hygiene is of paramount importance and hand washing with soap and water or using alcohol-based gels are effective in decreasing disease transmission. Practicing social distancing, that is maintaining at least 6 feet of distance from other people, limits opportunities to encounter infected people. The use of face masks as a preventive measure is recommended by the World Health

³ Mississippi State Department of Health, *Coronavirus Disease 2019 (COVID-19)*, available at <https://msdh.ms.gov/msdhsite/static/14,0,420.html> (last visited Oct. 5, 2020).

Organization) (“WHO”) to help mitigate the transmission of SARS-CoV-2.⁴ MSDH also recommends that all Mississippi residents wear non-medical grade masks or homemade cloth face coverings when shopping, running errands, or otherwise away from home, including in-person voting.⁵ MSDH will make surgical facemasks with eye protection available to all Mississippi voters with an increased risk of adverse outcomes from COVID-19.

8. Essential businesses, such as grocery and hardware stores, remained open during the stay-at-home/safer-at-home executive orders, utilizing safety restrictions that protected the public from further infection. As states began the process of reopening, these same restrictions became a condition of operation for non-essential businesses, such as outdoor dining, as further evidence of their effectiveness in keeping the public safe. Therefore, voters must follow the protocols recommended by MSDH to minimize the risk of COVID-19 transmission.

9. From a poll management standpoint, there can be safety strategies implemented similar to those of essential businesses, such that the risk to both the voter and the poll workers is minimized. In-person voting protocols published by Election Infrastructure Government Coordinating Council and Subsector Coordinating Council’s Joint COVID Working Group and the Centers for Disease Control and Prevention’s Considerations for Election Polling Locations and Voters

⁴ WHO, *Advice on the Use of Masks in the Context of COVID-19*, (June 5, 2020), available at https://www.who.int/publications/i/item/WHO-2019-nCoV-IPC_Masks-Children-2020.1 (last visited Oct. 5, 2020).

⁵ Mississippi State Department of Health, *COVID-19 Guidance and Prevention for Individuals and the Community*, available at <https://msdh.ms.gov/msdhsite/ static/14,21866,420.html#overview> (last visited Oct. 5, 2020).

establish a clear roadmap of procedures and roles necessary to make it safer to vote in-person in the Fall.⁶ The Secretary of State's Office also has adopted Polling Place Safety and COVID-19 Rules. *See* Polling Place Safety and COVID-19 Rules, Exhibit B.

10. Mississippi Code Section 23-15-227, as amended, authorizes the Secretary of State to promulgate rules and regulations "as are necessary to ensure the safety of poll managers, election commissioners, electors and their families at the voting precincts during a COVID-19 public health risk." Among other things, the new polling place administrative rules include provisions addressing: requirements for election officials to wear personal protective equipment ("PPE") while performing their duties; mask recommendations for voters; social distancing measures to be enforced inside and adjacent to polling places; steps that will reduce the number of voters who congregate at indoor polling precincts at the same time; voters believing they may have had exposure to COVID-19 or are exhibiting symptoms will be directed to vote through curbside or open air voting; and posted signage to inform voters about social distancing, masks recommendations for voters, curbside voting, limiting nonessential visitors, and other relevant safety measures and procedures.

11. Additionally, on August 4, 2020, MSDH issued a COVID-19 Isolation Order, and that Order is still in effect. The Isolation Order requires that all persons residing in Mississippi must immediately home-isolate on first knowledge of infection

⁶ CISA, *Health and Safety at the Polling Place* (May 28, 2020), available at <https://nj.gov/state/elections/assets/pdf/covid/health-safety-at-the-polling-place.pdf> (last visited Oct. 5, 2020); *see* CDC, Coronavirus Disease 2019 (COVID-19), *Considerations for Election Polling Locations and Voters*, <https://www.cdc.gov/coronavirus/2019-ncov/community/election-polling-locations.html> (last visited Oct. 5, 2020).

with COVID-19. *See* MSDH August 4, 2020 Isolation Order, Exhibit C. There are potential criminal penalties for failure or refusal to obey the lawful order of a health officer. Under the Isolation Order, persons infected with COVID-19, and not hospitalized, must remain in the home or other appropriate residential location for 10 days from onset of illness (or from the date of a positive test for those who are asymptomatic). Because persons infected with COVID-19 are required to quarantine and isolate per the Isolation Order, persons known to be infected with COVID-19 should not be voting in-person and instead may vote absentee by mail because they have a “temporary physical disability” under Mississippi Code Section 23-15-713(d).

12. The actual risk of an infection spreading at a polling location cannot be determined with any degree of accuracy. However, there are mitigation measures that can make voting in-person in Mississippi in the Fall safer. Importantly, these mitigation strategies can be implemented by individuals themselves. Voters should wear masks, avoid crowds, bring hand sanitizer with them, practice frequent hand hygiene, and avoid touching their face. All of this is in addition to the polling place safety measures implemented by state and local officials.

B. Can individuals vote safely through an absentee ballot process that requires notarization or attestation from an official authorized to administer oaths to apply for an absentee ballot and to vote absentee?

13. Mississippi’s Election Code establishes an in-person voting system but has certain absentee balloting exceptions. Under Mississippi Code Section 23-15-715(b), voters who are permanently or temporarily physically disabled, age 65 or over, temporarily residing outside of their home county, and persons tending to certain

hospitalized physically disabled persons qualify to vote absentee by mail. If an absentee voter is eligible to vote absentee because of a physical disability, a person age 18 or older may witness the voter's signature on the voter's application and back of the absentee ballot envelope. For other voters eligible to vote absentee by mail, Mississippi law requires notarization or attestation from an official authorized to administer oaths to apply for an absentee ballot and to vote absentee.

14. Standard precautions, as indicated earlier, can mitigate the threat of contagion. The CDC's only suggestion for the workers handling mail-in ballots is that they should practice hand hygiene frequently.⁷ Voters required to obtain notarization or attestation from an official authorized to administer oaths can practice social distancing, wear a mask, and practice hand hygiene. The notarial services can be provided quickly and in a safe manner, and businesses, such as banks, offering notarial services are taking precautions and implementing mitigation measures. For example, many banks offer notary services through drive-through services, curbside services, and inside branch offices with common precautionary measures consistent with public health guidance. Additionally, voters may vote at county courthouses and complete the absentee voting transaction at the same time. Any or all of these variations of the notarization or attestation exchange can reduce risk of infection so that such risk is negligible.

⁷ CDC, Coronavirus Disease 2019 (COVID-19), *supra* n.5.

CONCLUSION

15. Federal and State COVID-19 guidelines have proven effective during the height of the outbreak and continue to have a mitigating effect as the infection rate wanes and diagnostic, treatment, and therapeutic remedies advance. U.S. Citizens have safely carried out essential activities (e.g., food shopping) throughout this crisis under these guidelines and are now better educated and trained on how to protect themselves from COVID-19 and other contagious diseases that are endemic in our society. If individual voters take the necessary precautions as when they carry out essential activities, it will make voting in-person in Mississippi in the Fall safer.

16. Further, efforts have been made to protect those over the age of sixty-five and the physically disabled, such as absentee balloting for such individuals. The required notarization or attestation exchange to apply for an absentee ballot and to vote absentee by mail is a low-risk exchange, especially when mitigation measures are implemented to make the exchange safe for voters.

17. I hold all my opinions with a reasonable degree of medical probability.

18. This affidavit is not intended to be a complete or final statement of my opinions, and I reserve the right to expand, modify, or otherwise amend my opinions as may be necessary.

DATED: October 7th, 2020.



THOMAS E. DOBBS, M.D., M.P.H.
State Health Officer
Mississippi State Department of Health

Sworn to and subscribed before me, this the 7th day of October, 2020.

Gwen Wood Blair
Notary Public



My Commission Expires:

10-27-2020

Thomas E Dobbs, MD, MPH

Thomas E Dobbs, MD, MPH

1245 N 6th Avenue

Laurel, MS 39440

Employment	Dates
State Health Officer, Mississippi State Department of Health	December 2018 – Present
Deputy State Health Officer, Mississippi State Department of Health	July 2018 – December 2018
Chief Medical Officer and Vice President for Quality, South Central Regional Medical Center	September 2016 – June 2018
State Epidemiologist, Mississippi State Department of Health	August 2012 – September 2016
Infectious Diseases Consultant, St. Dominic Hospital Jackson, MS	June 2015 – July 2016
Districts 7 & 8 Health Officer, Mississippi State Department of Health	July 2008 – July 2012
Internal Medicine / Infectious Diseases, Jefferson Medical Associates	June 2001 – July 2005 July 2006 – July 2008
Instructor General Internal Medicine, University of Alabama at Birmingham	January 2000 – June 2000

Other Professional Positions	
Associate Professor, UMMC School of Population Health	October 2017 – Present
Assistant Professor, UMMC School of Health Related Professions	December 2016 – October 2017
Infectious Diseases Consultant, Mississippi State Department of Health	September 2016 – Present
Medical Director, AIDS Healthcare Foundation, Jackson, MS Clinic	June 2012 – March 2015
Adjunct Faculty, College of Health Sciences, University of Southern Mississippi	August 2011 – December 2012
Clinical Consultant, Southeastern National TB Center, University of Florida	June 2010 – Present
Medical Director, Crossroad Clinic South (HIV), McComb, MS	December 2010 – September 2016
State TB Consultant, Mississippi State Department of Health	March 2009 – September 2009
Infectious Diseases Consultant / HIV Care, South East Mississippi Rural Health Initiative Hattiesburg, MS	September 2005 – October 2014

Education	Degree	Dates
Emory University, Atlanta GA	B.S. Applied Physics	May 1992
University of Alabama School of Medicine, Birmingham, AL	M.D.	May 1996



Thomas E Dobbs, MD, MPH

Internal Medicine Residency Program, University of Alabama at Birmingham	Internal Medicine	June 2000
Infectious Diseases Fellowship Program, Wake Forest University Medical Center	Infectious Diseases	July 2000 – June 2001
Infectious Diseases Fellowship Program, University of Alabama at Birmingham		July 2004 – June 2005
University of Alabama at Birmingham School of Public Health	Master's in Public Health, Epidemiology	May 2000

Board Certification	Date
Internal Medicine	2010 – 2020
Infectious Diseases	2015 – 2025
MS Medical License # 17250	

Professional Society Memberships:

Mississippi Public Health Association
Mississippi State Medical Association
National TB Controllers Association
Association of State and Territorial Officials

Committee Memberships:

Milbank Memorial Foundation Steering Committee (2019 – Present)
Association of State and Territorial Officials Infectious Diseases Committee Vice-Chair (2019 – Present)
Editorial Advisory Board, Journal of the Mississippi State Medical Association (2011 – Present)
Alabama State Department of Health TB Advisory Board (2010 – Present)
Board of Directors, AIDS Services Coalition, Hattiesburg, MS (2010 – 2014)
University of Southern Mississippi, College of Health Advisory Council (2010 – 2014)
Mississippi State Medical Association Medical Education Committee (2009 – Present)
Clinical Advisory Committee to the National HIVQUAL (2008 – 2012)
President, Southeast Region, Mississippi State Medical Association 2011
Executive Committee, Jefferson Medical Associates, Laurel, MS (2003 – 2007)

Numerous Scientific and Educational Presentations as a Representative of: (Details available on request)

Southeastern National Tuberculosis Center
Delta Region AIDS Education and Training Center
Gorgas International TB Initiative
Mississippi State Department of Health
Alabama State Department of Health
Mississippi Public Health Institute

Thomas E Dobbs, MD, MPH

PUBLICATIONS:

Peer Reviewed Publications:

Zhang WQ, Tang SJ, Dobbs TE, Zhang L. Factors Associated with Colorectal Cancer Screening among Mississippi Adults: Findings from the Behavioral Risk Factor Surveillance System. *South Med J*. 2020 Jul;113(7):360-365.

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Thomas E Dobbs, MD, MPH

Kasper AM, Ridpath AD, Arnold JK, Chatham-Stephens K, Morrison M, Olayinka O, Parker C, Galli R, Cox R, Preacely N, Anderson J, Kyle PB, Gerona R, Martin C, Schier J, Wolkin A, Dobbs T. Severe Illness Associated with Reported Use of Synthetic Cannabinoids - Mississippi, April 2015. *MMWR Morb Mortal Wkly Rep.* 2015;64(39):1121-2

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Thomas E Dobbs, MD, MPH

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Title 1: Secretary of State

Part 18: Polling Place Safety

Rule: Polling Place Safety and COVID-19

Part 18 Chapter 1: Definitions

Rule 1.1 Definitions. For the purposes of these rules the below terms mean the following:

- A. "Absentee Ballot" means a ballot provided to a voter, prior to Election Day, who has submitted an absentee ballot application pursuant to Miss. Code Ann. Section 23-15-627 and Section 23-15-715.
- B. "Candidate" means an individual, who has qualified through the appropriate office, and whose name is printed on the official ballot.
- C. "Credentialed Poll Watcher" means a poll watcher of good conduct and behavior, that is authorized in writing to act as the representative of a candidate on the ballot, a political party that has a candidate on the ballot, or an election official authorized to have a poll observer such as the Secretary of State, Attorney General, or Department of Justice.
- D. "Officials in charge of the election" means either a County or Municipal Election Commissioner, who was elected or appointed pursuant to applicable laws, or a Party Executive Committee Member conducting a primary election, or the County or Municipal Registrar, and is responsible for the conduct of an election within their jurisdiction.
- E. "Facemask" means a surgical mask or any other kind of securely fastened cloth covering that covers the mouth and nose.
- F. "Personal Protective Equipment" means equipment worn to minimize exposures to hazards that cause workplace injuries and illness.
- G. "Poll Manager" means an official appointed by Election Commissioners, pursuant to applicable laws, to operate the polling place and aid in conducting an election by performing duties prescribed by applicable law.
- H. "Polling Place" means a location designated by the county board of supervisors for each county, or the local governing authority for each municipality, serving as the location at which voters assigned to said precinct may appear and cast their ballot, including the Circuit Clerk's Office for absentee voting.
- I. "Resolution Board Member" means an individual appointed to the Resolution Board pursuant to Miss. Code Ann. § 23-15-523 to process absentee ballots and review any blank, damaged, defective or over-voted ballots.

Source: *Miss. Code Ann.* §§ 23-15-637(3); 23-15-227(6).

Rule 2.1 Election Officials Must Wear Personal Protective Equipment in the performance of duties. Poll Managers, Resolution Board Members, officials in charge of the election, and other election officials, must wear personal protective equipment, including a facemask, when performing their duties within a jurisdiction that is under a public health emergency relating to



COVID-19. A voter, who is not wearing personal protective equipment, **must not be barred entry** into the polling place due to his/her failure to wear personal protective equipment.

Source: *Miss. Code Ann.* § 23-15-227(6).

Rule 2.2 Candidates and credentialed poll watchers must wear masks when observing. A candidate or credentialed poll watcher must wear a facemask, as defined in this Part, when observing a polling place, processing absentee ballots, and/or the canvassing of results, or any other election process open to the public that also allows observers.

Source: *Miss. Code Ann.* § 23-15-227(6).

Rule 2.3 Effect of other orders, ordinances, resolutions, and other legal directives on Rule 2.1 and Rule 2.2. If any jurisdiction in which a precinct is located falls under the jurisdiction of any order, resolution, ordinance, or any other legal directive (whether federal, state, county, or municipal) which requires stricter measures regarding the use of personal protective equipment than those in these rules, the Poll Managers, Resolution Board Members, Election Commissioners, candidates, credentialed poll watchers, and other election officials will be required to abide by those rules when performing their duties on Election Day, and in the case of candidates and credentialed poll watchers, when observing any election process open to the public.

Source: *Miss. Code Ann.* § 23-15-227(6).

Rule 2.4 Polling places serving more than one purpose on the date of the election. If a location hosting a polling place is used for an additional purpose on Election Day, and entry to the location is conditioned upon wearing a facemask or temperature check, a person wishing to vote shall not be denied entry to the location for failure to wear a facemask or failure to submit to a temperature check upon entry to cast his/her ballot. However, after the individual has casted his/her ballot at the polling place, he/she may be required to exit the building and conform to any rules required for entry to the building.

Source: *Miss. Code Ann.* § 23-15-227(6).

Rule 2.5 Lowering of facemask when presenting photo identification required under Miss. Code Ann. Section 23-15-563. When a voter wearing a facemask is presenting acceptable photo identification pursuant to Miss. Code Ann. Section 23-15-563 and the poll manager is unable to identify the voter, the poll manager may ask the voter to step back six (6) feet, in accordance to social distancing guidelines, to briefly lower his/her face mask so the poll manager may identify that the picture on the acceptable photo identification fairly depicts the elector. If a physical barrier (sneeze guard) is located between the poll manager and the voter, the voter is not required to step back six (6) feet, but still shall lower his/her face mask for identification purposes.

Source: *Miss. Code Ann.* §§ 23-15-227(6); 23-15-563.

Rule 2.6 Entering and Exiting polling place. If the physical structure of the polling place allows it, the polling place must have a separate entrance and exit for voters.

Source: *Miss. Code Ann.* § 23-15-227(6).

Rule 2.7 Social Distancing. The polling place must be set up to allow for social distancing between voters. The polling place must have clearly visible markings six (6) feet apart to indicate where voters should stand to practice social distancing. Voters who fail to practice social distancing shall be asked by the bailiff of the polling place to practice social distancing as marked in the polling place. If the voter repeatedly fails to follow social distancing guidelines, the voter may be asked to vote by curbside voting pursuant to Rule 2.8 of these Rules.

Source: *Miss. Code Ann.* § 23-15-227(6).

Rule 2.8 Curbside Voting and Open-Air Voting.

- (a) When a voter states he/she has had significant exposure to COVID-19, or is exhibiting symptoms of COVID-19 (including, but not limited to coughing, vomiting, headaches, fever, sore throat, congestion, or loss of taste and/or smell), poll managers may direct the voter to an open-air voting option outside the physical structure of the polling place and away from other voters entering or exiting the polling place, or to vote by curbside voting from the voter's motor vehicle.
- (b) When poll managers have directed a voter to vote by curbside voting or open-air voting, two (2) poll managers must carry the pollbook, the receipt book, and a ballot or voting device to the voter's motor vehicle or an area outside the polling place that is away from any voters entering or exiting the polling place. After determining the person is a qualified elector, as provided by law, by locating the person's name in the pollbook, the poll managers shall identify the voter by requiring the elector to submit acceptable photo identification, as required by *Miss. Code Ann.* Section 23-15-563. The elector shall then be allowed to sign his/her name in the receipt book and cast his/her ballot in secret. To ensure the secrecy of the vote, other passengers in the motor vehicle, except those persons who are disabled, shall exit the motor vehicle until the elector has completed casting his/her ballot. After the voter casts his/her ballot, the poll managers must mark "VOTED" by the voter's name and in the appropriate column in the pollbook.
 - a. If the ballot provided to the voter is a paper ballot, the initialing poll manager shall initial the ballot as provide by law, and the elector, after marking the ballot must fold the ballot or place it in a ballot sleeve. After the voter marks the ballot, the initialing poll manager or alternate initialing poll manager must determine whether the initials on the ballot are genuine, and upon a determination that the initials are genuine, shall without delay place the ballot in the ballot box.
- (c) If there are less than three (3) poll managers immediately present within the polling place conducting an election, and a voter wishing to curbside vote arrives, all voting at the polls shall stop until the poll managers conducting the curbside voting return to the polls.

When voting is occurring within the polling place, there shall be at least three (3) poll managers immediately present to conduct the election. Until a minimum of three (3) poll managers are present, the remaining poll manager or poll managers shall ensure the security of the ballot box, the voting devices, and any ballots and election materials.

Source: *Miss. Code Ann.* §§ 23-15-227(6); 23-15-541.

Rule 2.9 Required Signage in the Polling Place. When constructing the polling place, poll managers must place the below listed signs at their assigned locations. Each is provided, in full, in the Appendix of this Part.

1. “Health Alert” Sign – Must be posted at the entrance to the polling place.
2. “Social Distancing” Sign – Must be posted where poll managers expect lines to form at the voting location to remind voters of social distancing standards
3. “Pollbook Table” Sign – Must be posted where poll managers have placed the pollbook so voters are aware of the six-foot line and expected procedures.
4. “Safety Procedures” – Must be posted at the entrance to the polling place.
5. “Facemasks Strongly Suggested” – Must be posted at the entrance to the polling place.

Source: *Miss. Code Ann.* § 23-15-227(6).

APPENDIX A
"Health Alert/Curbside" Sign

HEALTH ALERT



Do not enter this building if you are experiencing any of these symptoms or have been in contact with anyone with these symptoms:

- Shortness of Breath
- Cough
- Fever (100.4F)
- Nasal congestion
- Sore Throat
- Achiness

Please call () _____ - _____ to vote curbside.

Appendix B
"Social Distancing" Sign

HELP PREVENT
THE SPREAD OF

COVID-19

SOCIAL DISTANCE

PLEASE MAINTAIN A SAFE DISTANCE
FROM THOSE AROUND YOU.



Appendix C
"Poll Book" Sign

STOP!



Photo ID & Poll Book Procedures

Please Follow Poll Workers Instructions:

Step 1 – Place photo ID face up on table

Step 2 – Step back to 6 feet from table

Step 3 – Poll Worker will review ID and find your record

Step 4 – Step up and sign poll book and take ID

Appendix 4
"Safety Procedures" Sign

HELP PREVENT THE SPREAD OF

COVID-19



WASH YOUR
HANDS OFTEN



AVOID CLOSE
CONTACT



COVER COUGHS
AND SNEEZES



CLEAN AND
DISINFECT



AVOID TOUCHING
YOUR FACE



VOTE CURBSIDE
IF YOU ARE SICK



Appendix 5
"Mask Suggested" Sign

ATTENTION



**FACE MASKS ARE
STRONGLY ENCOURAGED
BEYOND THIS POINT**

As Recommended by the CDC and
Mississippi Department of Health.





MISSISSIPPI STATE DEPARTMENT OF HEALTH

**This is an official
MS Health Alert Network (HAN) Alert**

MESSAGE ID: MSHAN-20200804-00461-ALT (Health Alert)
RECIPIENTS: All Physicians, Hospitals, ERs, ICPs, NPs, and
Healthcare Providers – Statewide
Tuesday, August 4, 2020
SUBJECT: COVID-19 Isolation Order

Pursuant to Mississippi Code Ann. §§ 41-3-51, 41-3-15 et. seq., 41-23-1 et. seq. and the State of Emergency Declaration by the Governor of the State of Mississippi related to the coronavirus COVID- 19 issued on March 14, 2020, I, Thomas Dobbs, MD, MPH, State Health Officer, Executive Director of the Mississippi State Department of Health, hereby issue this statewide **Order for the Isolation of Individuals Diagnosed with COVID-19.**

All persons residing in Mississippi must immediately home-isolate on first knowledge of infection with COVID-19.

Persons infected with COVID-19, and not hospitalized, **must** remain in the home or other appropriate residential location for 14 days from onset of illness (or from the date of a positive test for those who are asymptomatic).

If your employer approves and says you are critical, you may return to work 10 days from the day your symptoms started (or from the day you were tested if you had no symptoms) and you have been fever free for at least 24 hours, and you have no other symptoms.

The failure or refusal to obey the lawful order of a health officer is, at a minimum, a misdemeanor punishable by a fine of \$500.00 (41-3-59) or imprisonment for six months or both. If a life-threatening disease is involved, failure or refusal to obey the lawful order of a health officer is a felony, punishable by a fine of up to \$5,000.00 or imprisonment for up to five years or both (41-23-2).

Persons infected with COVID-19 should limit exposure to household contacts. No visitors should be allowed in the home. Please stay in a specific room away from others in your home. Use a separate bathroom if available. If you need to be around others in your home, you should wear a facemask. Please see <https://www.cdc.gov/coronavirus/2019-ncov/hcp/guidance-prevent-spread.html> for guidance on preventing transmission in the home.

Effective this 4th day of August 2020.

Thomas Dobbs, MD, MPH
State Health Officer





MISSISSIPPI STATE DEPARTMENT OF HEALTH

Alerting Message Specification Settings

Originating Agency: Mississippi State Department of Health
Alerting Program: MS Health Alert Network (MS HAN)
Message Identifier: MSHAN-20200804-00461-ALT
Program (HAN) Type: Health Alert
Status (Type): Actual ()
Message Type: Alert
Reference: MSHAN-00461
Severity: Unknown
Acknowledgement: No
Sensitive: Not Sensitive
Message Expiration: Undetermined
Urgency: Undetermined
Delivery Time: 600 minutes

Definition of Alerting Vocabulary and Message Specification Settings

Originating Agency: A unique identifier for the agency originating the alert.

Alerting Program: The program sending the alert or engaging in alerts and communications using PHIN Communication and Alerting (PCA) as a vehicle for their delivery.

Message Identifier: A unique alert identifier that is generated upon alert activation (MSHAN-yyymmdd-hhmm-TTT (**ALT=Health Alert**, **ADV=Health Advisory**, **UPD=Health Update**, **MSG/INFO=Message/Info Service**)).

Program (HAN) Type: Categories of Health Alert Messages.

Health Alert: Conveys the highest level of importance; warrants immediate action or attention.

Health Advisory: Provides important information for a specific incident or situation; may not require immediate action.

Health Update: Provides updated information regarding an incident or situation; unlikely to require immediate action.

Health Info Service: Provides Message / Notification of general public health information; unlikely to require immediate action.

Status (Type):

Actual:	Communication or alert refers to a live event
Exercise:	Designated recipients must respond to the communication or alert
Test:	Communication or alert is related to a technical, system test and should be disregarded



MISSISSIPPI STATE DEPARTMENT OF HEALTH

Message Type:

Alert: Indicates an original Alert
Update: Indicates prior alert has been Updated and/or superseded
Cancel: Indicates prior alert has been cancelled
Error: Indicates prior alert has been retracted

Reference: For a communication or alert with a Message Type of “Update” or “Cancel”, this attribute contains the unique Message Identifier of the original communication or alert being updated or cancelled. “n/a” = Not Applicable.

Severity:

Extreme: Extraordinary threat to life or property
Severe: Significant threat to life or property
Moderate: Possible threat to life or property
Minor: Minimal threat to life or property
Unknown: Unknown threat to life or property

Acknowledgement: Indicates whether an acknowledgement on the part of the recipient is required to confirm that the alert was received, and the timeframe in which a response is required (Yes or No).

Sensitive:

Sensitive: Indicates the alert contains sensitive content
Not Sensitive: Indicates non-sensitive content

Message Expiration: Undetermined.

Urgency: Undetermined. Responsive action should be taken immediately.

Delivery Time: Indicates the timeframe for delivery of the alert (15, 60, 1440, 4320 minutes (.25, 1, 24, 72 hours)).



MISSISSIPPI STATE DEPARTMENT OF HEALTH

**This is an official
MS Health Alert Network (HAN) Alert**

MESSAGE ID: MSHAN-20200908-00467-**ALT (Health Alert)**

RECIPIENTS: All Physicians, Hospitals, ERs, ICPs, NPs, and
Healthcare Providers – Statewide

Tuesday, September 8, 2020

SUBJECT: COVID-19 SHO Isolation Order

Pursuant to Mississippi Code Ann. §§ 41-3-51, 41-3-15 et. seq., 41-23-1 et. seq. and the State of Emergency Declaration by the Governor of the State of Mississippi related to the coronavirus COVID- 19 issued on March 14, 2020, I, Thomas Dobbs, MD, MPH, State Health Officer, Executive Director of the Mississippi State Department of Health, hereby issue this statewide **Order for the Isolation of Individuals Diagnosed with COVID-19.**

All persons residing in Mississippi must immediately home-isolate on first knowledge of infection with COVID-19.

Persons infected with COVID-19, and not hospitalized, **must** remain in the home or other appropriate residential location for 10 days from onset of illness (or from the date of a positive test for those who are asymptomatic).

The failure or refusal to obey the lawful order of a health officer is, at a minimum, a misdemeanor punishable by a fine of \$500.00 (41-3-59) or imprisonment for six months or both. If a life-threatening disease is involved, failure or refusal to obey the lawful order of a health officer is a felony, punishable by a fine of up to \$5,000.00 or imprisonment for up to five years or both (41-23-2).

Persons infected with COVID-19 should limit exposure to household contacts. No visitors should be allowed in the home. Please stay in a specific room away from others in your home. Use a separate bathroom if available. If you need to be around others in your home, you should wear a facemask. Please see <https://www.cdc.gov/coronavirus/2019-ncov/hcp/guidance-prevent-spread.html> for guidance on preventing transmission in the home.

Effective this 8th day of September 2020.

A handwritten signature in blue ink, appearing to read "Thomas Dobbs".

Thomas Dobbs, MD, MPH
State Health Officer



MISSISSIPPI STATE DEPARTMENT OF HEALTH

Alerting Message Specification Settings

Originating Agency: Mississippi State Department of Health
Alerting Program: MS Health Alert Network (MS HAN)
Message Identifier: MSHAN-2020908-00467-ALT
Program (HAN) Type: Health Alert
Status (Type): Actual ()
Message Type: Alert
Reference: MSHAN-00467
Severity: Unknown
Acknowledgement: No
Sensitive: Not Sensitive
Message Expiration: Undetermined
Urgency: Undetermined
Delivery Time: 600 minutes

Definition of Alerting Vocabulary and Message Specification Settings

Originating Agency: A unique identifier for the agency originating the alert.

Alerting Program: The program sending the alert or engaging in alerts and communications using PHIN Communication and Alerting (PCA) as a vehicle for their delivery.

Message Identifier: A unique alert identifier that is generated upon alert activation (MSHAN-yyymmdd-hhmm-TTT (**ALT=Health Alert**, **ADV=Health Advisory**, **UPD=Health Update**, **MSG/INFO=Message/Info Service**)).

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Health Update: Provides updated information regarding an incident or situation; unlikely to require immediate action.

Health Info Service: Provides Message / Notification of general public health information; unlikely to require immediate action.

Status (Type):

Actual:	Communication or alert refers to a live event
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MISSISSIPPI STATE DEPARTMENT OF HEALTH

Message Type:

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Update: Indicates prior alert has been Updated and/or superseded
Cancel: Indicates prior alert has been cancelled
Error: Indicates prior alert has been retracted

Reference: For a communication or alert with a Message Type of “Update” or “Cancel”, this attribute contains the unique Message Identifier of the original communication or alert being updated or cancelled. “n/a” = Not Applicable.

Severity:

Extreme: Extraordinary threat to life or property
Severe: Significant threat to life or property
Moderate: Possible threat to life or property
Minor: Minimal threat to life or property
Unknown: Unknown threat to life or property

Acknowledgement: Indicates whether an acknowledgement on the part of the recipient is required to confirm that the alert was received, and the timeframe in which a response is required (Yes or No).

Sensitive:

Sensitive: Indicates the alert contains sensitive content
Not Sensitive: Indicates non-sensitive content

Message Expiration: Undetermined.

Urgency: Undetermined. Responsive action should be taken immediately.

Delivery Time: Indicates the timeframe for delivery of the alert (15, 60, 1440, 4320 minutes (.25, 1, 24, 72 hours)).

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION

CYNTHIA PARHAM, ET AL.

PLAINTIFFS

VS.

CIVIL ACTION NO. 3:20cv572-DPJ-FKB

MICHAEL WATSON, in his official capacity
as Secretary of State of Mississippi, ET AL.

DEFENDANTS

MEMORANDUM OF AUTHORITIES SUPPORTING
DEFENDANTS' RESPONSE IN OPPOSITION TO
PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION

INTRODUCTION

The Constitution grants States broad policy-making authority to regulate elections. Exercising that authority, the Mississippi Legislature has chosen a voting system favoring in-person voting, with limited provision for mail-in absentee voting. This year, considering COVID-19 public health risks and other factors, the Legislature elected not to significantly expand mail-in voting as much as plaintiffs, or some other states, might want. That was the Legislature's policy choice to make.

As of this writing, only 26 days remain until election day for the November 3, 2020 general election (the "November election"), and the State's absentee voting process and other election machinery are already in full motion. The plaintiffs nevertheless now demand changes to the ongoing absentee voting process by way of preliminary injunctive relief, including the implementation of virtually universal mail-in voting and elimination of the safeguards that protect the absentee process against fraud.

For several reasons, the Court should reject plaintiffs' bid to revolutionarily alter the status quo. Plaintiffs lack a substantial likelihood of success on the merits. Some of the plaintiffs lack standing. Those that do have failed to prove any chance of success on their claims, all of which are tied to an alleged constitutional right to vote by mail-in ballot and misplaced contentions that the State's absentee laws unlawfully burden their ability to vote.

Even worse, plaintiffs have failed to prove any of the equitable elements necessary to justify ordering up a new absentee voting system in the middle of absentee voting for the November election. The potential harm to the public and the State, including the state and local election officials and other public servants currently working overtime to administer absentee voting and make election day safe for everyone, overwhelmingly cuts against preliminary injunctive relief.

Not least important, the Supreme Court and the Fifth Circuit have clearly instructed that federal courts should not radically change state election rules just before an election. Here, we are not about to start the November election. Absentee voting for the November election is already well-underway. It is simply too late for plaintiffs to obtain a new court-ordered set of absentee laws now. The Court should deny plaintiffs' motion for preliminary injunction.

FACTS

Voting in the November Election is Well-underway

The November election includes federal Presidential, Senate, and Congressional elections, Mississippi Supreme Court elections, proposed

constitutional amendments, several local elections, and a statewide referendum on a new state flag. [Doc. 24-1 at 3 (¶6), 32-34].* Although in-person voting on election day is 26 days away (as of this writing), absentee voting began several weeks ago. Absentee ballot applications became available upon request starting September 4. *See* MISS. CODE ANN. § 23-15-625. Absentee balloting began on September 19 for military and overseas voters, and on September 21 for everyone else. *See* MISS. CODE ANN. § 23-15-683, § 23-15-715; *see also* [Doc. 24-1 at 35-48]. In all 82 counties, the State's election machinery is in full motion.

State and Local Officials' Election Day Safety Preparations

Not only are county circuit clerk's offices now busy administering absentee voting, in light of COVID-19 public health concerns, the Secretary of State's Office and local election officials all over the state are taking extensive steps to ensure that in-person voting is safe and secure for everyone before and during election day.

The Secretary of State's Office has developed and implemented polling place safety rules consistent with relevant information and guidance from public health authorities, such as the Centers for Disease Control and Prevention ("CDC") and the Mississippi Department of Health. [Doc. 24-1 at 4-5 (¶¶11-13), 49-58]. Enhanced safety precautions in place at polling places will include: personal protective equipment ("PPE") for poll officials; mask recommendations for voters; social distancing measures; steps to reduce the numbers of voters congregating in indoor places; additional curb-side voting; signage and instructions for voters; and other

* Citations to docket entries in this brief refer to the docket number and page number appearing in the top right hand corner of the docket entry, and paragraph number where applicable.

relevant safety measures. [Doc. 24-1 at 5 (¶ 14), 50-53]. Polling place officials are taking safety training courses. [Doc. 24-1 at 5-6 (¶ 15)]. Local officials will be well-equipped for election day. For example, face masks, face shields, hand sanitizer, and disinfecting supplies are already set to be used at all polling places. [Doc. 24-1 at 6 (¶17)]. Hundreds of thousands of pens, stylus pens, and gloves will be on hand to ensure that no voter will have to touch surfaces or implements used by other voters or officials. [Doc. 24-1 at 6-7 (¶¶18-19)]. And, additional funding for extra poll workers and equipment has been made available. [Doc. 24-1 at 7 (¶21)].

Officials are also closely monitoring trends and developments associated with COVID-19 health risks as they make final preparations for election day. [Doc. 24-1 at 7 (¶22)]. There have been no indications that significant problems will arise such as poll manager shortages or polling place consolidations. [Doc. 24-1 at 7 (¶22)]. Election officials are prepared, and all mitigation measures that can be taken will be in place to make election day safe for everyone involved.

The State's Absentee Voting Laws

Mississippi's modern Election Code, originally enacted in 1986, governs all elections in the State, including the mechanics of voting, such as ballot-building, voting systems, absentee balloting, and the conduct of elections. *See* MISS. CODE ANN. § 23-15-1 *et seq.* § 23-15-331 *et seq.*, § 23-15-391 *et seq.*, § 23-15-541 *et seq.*, § 23-15-621 *et seq.* When viewed as a whole, the Code sets a process requiring all voters to cast their ballots in-person on election day, unless a voter meets one of the narrow statutory excuses for casting an absentee ballot.

The Code's absentee excuses extend to:

- students, teachers, or their spouses who will be absent from their home county on election day;
- members of Mississippi's congressional delegation, their spouses, and employees;
- anyone who will be away from their home county on election day;
- anyone who must be at work during polling hours on election day;
- anyone age 65 or over;
- anyone who has a qualifying permanent or temporary physical disability; and/or
- anyone who is a parent, spouse, or dependent of a person with a qualifying permanent or temporary disability who is hospitalized (within certain geographical parameters), and will be with that disabled person on election day.

See MISS. CODE ANN. § 23-15-713.¹ Several excuses obligate electors to appear in-person to vote absentee. MISS. CODE ANN. § 23-15-715(a). Only the following categories of voters may cast their absentee ballots in-person or by mail:

- voters temporarily residing outside of their home county;
- voters age 65 or over;
- voters who with a permanent or temporary physical disability; and
- voters who are parents, spouses, or dependents of persons who are hospitalized with a qualifying permanent or temporary physical disability, and will be with the disabled person on election day.

See MISS. CODE ANN. § 23-15-715(b).

¹ Separate unique state and federal laws govern balloting and procedures for absentee voting by military and overseas voters. *See* 52 U.S.C. § 20301 *et seq.*; MISS. CODE ANN. § 23-15-671 *et seq.*

In addition to its limited absentee excuses, the Election Code also establishes the processes, time lines, deadlines, and other requirements associated with obtaining, casting, returning, and counting absentee ballots. *See, e.g.*, MISS. CODE ANN. § 23-15-621 *et seq.*, § 23-15-717, § 23-15-719, § 23-15-721.

The Legislature’s Limited Extension of Mail-in Absentee Voting

On July 2, 2020, the Mississippi Legislature passed 2020 House Bill 1521 (“HB 1521”), which amended the physical disability absentee excuse in Code Section 23-15-713(d) to provide:

(d) Any person who has a temporary or permanent physical disability and who, because of such disability, is unable to vote in person without substantial hardship to himself, herself or others, or whose attendance at the polling place could reasonably cause danger to himself, herself or others. For purposes of this paragraph (d), “temporary physical disability” shall include any qualified elector who is under a physician-imposed quarantine due to COVID-19 during the year 2020 or is caring for a dependent who is under a physician-imposed quarantine due to COVID-19 beginning with the effective date of this act and the same being repealed on December 31, 2020.

MISS. CODE ANN. § 23-15-713(d) (Rev. 2020); *see also* [Doc. 24-1 at 69-71].² Voters qualifying under Section 23-15-713(d) may vote absentee in-person or by mail. *See* MISS. CODE ANN. § 23-15-715(b). However, HB 1521 and other laws passed by the Legislature did not expand mail-in voting for the November election any further.

On August 11, several individuals filed a lawsuit in Hinds County Chancery Court against the Secretary of State, and the Hinds and Rankin County Circuit Clerks. *See generally Watson v. Oppenheim*, 2020 WL 5627095 (Miss. 2020). The

² HB 1521 also amended Code Section 23-15-713(e) to include the same additional operative language with respect to the parent, spouse, or dependent of hospitalized persons.

plaintiffs sought declaratory relief concerning who may vote by absentee ballot under Section 23-15-713(d).

In pertinent part, the plaintiffs asked the state court to declare: (i) that Section 23-15-713(d) permits any voter with pre-existing conditions that cause COVID-19 to present a greater risk of severe illness or death to vote by absentee ballot during the COVID-19 pandemic; and (ii) that Section 23-15-713(d) permits any voter to vote absentee if he or she wishes to avoid voting in-person at a polling place due to generalized guidance from public health authorities or other physicians to avoid unnecessary public gatherings during the COVID-19 pandemic or if he or she is caring or supporting a voter. *See id.* at *1.

On September 18, the Mississippi Supreme Court rejected the state-court plaintiffs' interpretation of state law. The Supreme Court held:

We find that the chancery court's order erred to the extent it declared that Section 25-15-713(d) "permits any voter with pre-existing conditions that cause COVID-19 to present a greater risk of severe illness or death to vote by absentee ballot during the COVID-19 pandemic." Having a preexisting condition that puts a voter at a higher risk does not automatically create a temporary disability for absentee-voting purposes.

Oppenheim, 2020 WL 5627095, at *3. Additionally, as to the statutory language concerning who may vote by absentee ballot because they are under a "physician-imposed quarantine," the Court held that "the plain meaning of 'physician-imposed quarantine' requires a directive issued by a duly authorized physician that orders a voter to quarantine, not mere 'guidance' or a 'recommendation.'" *Id.*

Plaintiffs' Lawsuit and Preliminary Injunction Motion

On August 27, while the *Oppenheim* litigation was ongoing, three individuals and two organizations filed the instant federal lawsuit against the Secretary of State and the Attorney General, in their official capacities. [Doc. 1].

Plaintiffs' complaint asserts six counts that essentially challenge three components of Mississippi's election laws "in the context of the COVID-19 pandemic." [Doc. 1 at 3 (¶8)]. First, plaintiffs allege the Election Code's limited absentee excuses violate their fundamental right to vote because they "unconstitutionally burden[] the right to vote by denying voters who reasonably fear that voting in-person will increase their risk of exposure to COVID-19." [Doc. 1 at 49 (¶133)]. Second, plaintiffs contend the Code's notarization requirement applicable to certain categories of mail-in voters unconstitutionally burdens their fundamental right to vote because it forces them to engage in "face-to-face contact, putting them in danger of contracting and potentially dying from the coronavirus." [Doc. 1 at 52 (¶149)]. Third, plaintiffs assert the defendants' "failure to provide absentee voters with notice and an opportunity to cure perceived signature-related deficiencies with their absentee ballot" violates their right to vote and procedural due process rights. [Doc. 1 at 53-54 (¶153)].

On September 4, plaintiffs served defendants with process. [Doc. 5, 6]. On September 17, plaintiffs moved for preliminary injunctive relief. [Doc. 10]. On September 24, plaintiffs served defendants with the motion. [Doc. 11].

Based on the three primary theories asserted in their complaint, plaintiffs seek a preliminary injunction effectively: requiring defendants to allow anyone to vote

absentee by mail “if they reasonably believe voting in person risks their contracting coronavirus and exposure to COVID-19 or the health of others” or “if they are quarantined pursuant to the advice of public health officials”; prohibiting defendants from enforcing the notarization requirements applicable to some mail-in absentee voters; and requiring defendants to provide adequate notice and opportunity to cure perceived signature mismatches on absentee ballot materials. [Doc. 10 at 1-2].

ARGUMENT

Preliminary injunctive relief is extraordinary, and even more so when it would alter the status quo. *Exhibitors Poster Exch. Inc. v. National Screen Serv. Corp.*, 441 F.2d 560, 561-62 (5th Cir. 1971). Plaintiffs must prove each of the following elements:

(1) a substantial likelihood they will prevail on the merits; (2) a substantial threat that they will suffer irreparable injury if the injunction is not granted; (3) their substantial injury outweighs the threatened harm to the party to be enjoined; and (4) granting the preliminary injunction will not disserve the public interest.

Texas Med. Providers Performing Abortion Servs. v. Lakey, 667 F.3d 570, 574 (5th Cir. 2012) (internal citation omitted).

I. Plaintiffs Lack a Substantial Likelihood of Success on the Merits.

A. The organizational plaintiffs lack standing, and none of the plaintiffs is entitled to preliminary injunctive relief against the Attorney General.

A moving party who lacks standing cannot obtain preliminary injunctive relief. *See Prestage Farms, Inc. v. Bd. of Sup'rs of Noxubee County, Miss.*, 205 F.3d 265, 267-68 (5th Cir. 2000). Similarly, preliminary injunctive relief barred by the Eleventh Amendment is inappropriate. *See Moore v. Louisiana Bd. of Elementary and Secondary Educ.*, 743 F.3d 959, 962-64 (5th Cir. 2014). Aspects of the preliminary

injunction plaintiffs seek suffer from one or both of those threshold jurisdictional problems.

Plaintiffs' motion papers include claims invoked by three individuals, plaintiffs Parham, Oppenheim, and Goggin, and two plaintiff organizations, the Mississippi State Conference of the NAACP ("MS NAACP") and the League of Women Voters Mississippi ("LWVMS") (collectively "organizational plaintiffs").³ Defendants have separately moved for dismissal of some of the claims and contend that, based on plaintiffs' complaint and submitted declarations, the organizational plaintiffs lack standing. [Doc. 23, 23]. Defendants also assert none of the plaintiffs has standing to sue the Attorney General, and the Eleventh Amendment likewise bars their claims against her. [Doc. 22, 23].

On both defendants' dismissal motion and plaintiffs' preliminary injunction motion, plaintiffs have the burden to establish their standing. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561 (1992). The only substantive distinction in analyzing the two motions is that plaintiffs must make a higher "clear showing" to establish their standing for preliminary injunctive relief. *Barber v. Bryant*, 860 F.3d 345, 352 (5th Cir. 2017). No matter what burden applies, the same standing and Eleventh Amendment arguments in defendants' dismissal motion apply here. The proof before the Court on both motions is also the same. Defendants therefore incorporate the arguments asserted in their dismissal motion briefing here by reference. [Doc. 23].

³ Plaintiffs' motion seeks relief predicated on Counts 2, 4, 5, and 6 of their complaint. *Compare* [Doc. 1 at 49-55] *with* [Doc. 14 at 18-30]. Parham and Oppenheim assert Count 2, *i.e.*, the "excuse" claim. [Doc. 1 at 49-50]. Goggin asserts Counts 4, 5, and 6, *i.e.*, the "notarization" and "cure prohibition" claims. [Doc. 1 at 50-55]. The organizational plaintiffs press all four claims. [Doc. 1 49-55].

The organizational plaintiffs' claims for preliminary injunctive relief should be denied on standing grounds, and all plaintiffs' claims for injunctive relief against the Attorney General should be denied on standing and Eleventh Amendment immunity grounds.

B. The State is not constitutionally required to grant all voters the privilege of voting absentee by mail or otherwise.

The Constitution grants the States authority to regulate how their federal and state elections are conducted. U.S. CONST., art. I, § 4, cl. 1; *Clingman v. Beaver*, 544 U.S. 581, 586 (2005). Legislatures indeed “have broad powers to determine the conditions under which the right of suffrage may be exercised,” *Lassiter v. Northampton Cty. Bd. Of Elections*, 360 U.S. 45, 50 (1959), and when they set those conditions, “the right to vote *as the legislature has prescribed* is fundamental.” *Bush v. Gore*, 531 U.S. 98, 104 (2000) (emphasis added). But there is no fundamental right to vote whenever, or in whatever manner, an individual voter prefers.

For decades, the Election Code has limited absentee voting to a few designated categories of voters. *See* MISS. CODE ANN. § 23-15-713. Of those eligible absentee voters, only voters who are temporarily residing outside their home county, age 65 or older, temporarily or permanently physically disabled, or tending to a hospitalized physically disabled relative may vote absentee by mail. MISS. CODE ANN. § 23-15-715(b). Three months ago, in HB 1521, the Mississippi Legislature further extended absentee voting options to voters either “under a physician-imposed quarantine,” or caring for a dependent so quarantined. MISS. CODE ANN. § 23-15-713(d) (Rev. 2020). But lawmakers extended absentee voting no further.

Count 2 of plaintiffs' complaint contends the Election Code's "Excuse Requirement," *i.e.*, its limited absentee excuses, "unconstitutionally burdens the right to vote by denying voters who reasonably fear that voting in-person will increase their risk of exposure to COVID-19." [Doc. 1 49 (¶133)]. Like Count 2, plaintiffs' motion argues the absentee laws burden "[p]laintiffs' right to vote," and the "substantial burden outweighs any possible discernible state interest." [Doc. 14 at 14].

It does not matter how creatively plaintiffs frame their argument. They have no likelihood, much less a substantial likelihood of success on the merits of their "Excuse Requirement" claim.

1. Plaintiffs lack a constitutional right to vote absentee, by mail or otherwise.

Plaintiffs' attack on the State's absentee voting system ultimately fails for this straightforward reason: unless a state absentee voting law "absolutely prohibit[s]" someone from voting, no constitutional right to vote is implicated. *McDonald v. Bd. of Election Comm'rs of Chicago*, 394 U.S. 802, 807 (1969); *see also Texas Democratic Party v. Abbott*, 961 F.3d 389, 403-06 (5th Cir. 2020) ("*TDP I*"). Neither plaintiffs, nor any unidentified voters they purport to represent, are absolutely prohibited from voting in the November election. Their claim fails under *McDonald*.

In *McDonald*, prison inmates in Illinois claimed a right to vote absentee by mail, but none of the state's absentee voting excuses afforded them that privilege. *Id.* at 803-04. The Supreme Court drew a clear distinction between the right to vote and the inmates' asserted right to an absentee ballot. *Id.* at 807. The Court determined that the inmates failed to prove they were "in fact absolutely prohibited from voting

by the State,” *id.* at 807, 807 n.7, and found the absentee statutes at issue “did not themselves deny [the inmates] the exercise of the franchise; nor, indeed, d[id] Illinois’ Election Code so operate as a whole[.]” *Id.* at 807-08. Based on those findings, *McDonald* applied rational-basis review applied to the inmates’ challenge, as opposed to any heightened level of scrutiny, and Illinois’ absentee laws passed that test easily. *Id.* at 808-11.

McDonald unambiguously established that there is no constitutional right to vote by absentee ballot. Several federal courts have recognized *McDonald* is still good law.⁴ Moreover, earlier this year, a Fifth Circuit stay panel applied *McDonald* in rejecting a COVID-19-based challenge to Texas’ mail-in balloting laws. *TDP I*, 961 F.3d at 404-08.

The district court in *TDP I* preliminarily enjoined the defendants to allow virtually anyone to vote absentee by mail for several reasons. *Id.* at 395-96. On appeal, the plaintiffs defended the district court’s decision on a theory that a Texas absentee statute, which allows persons aged 65 and over to vote by mail, was subject

⁴ See, e.g., *Tully v. Okeson*, --- F.3d ---, 2020 WL 5905325, at *3 (7th Cir. Oct. 6, 2020) (explaining *McDonald* held “the fundamental right to vote means the ability to cast a ballot, but not the right to do so in a voter’s preferred manner, such as by mail”); *Mays v. LaRose*, 951 F.3d 775, 792 (6th Cir. 2020) (“[T]here is no constitutional right to an absentee ballot.” (citing *McDonald*, 394 U.S. at 807-09)); *Tully v. Okeson*, --- F. Supp. 3d ---, No. 1:20cv01271, 2020 WL 4926439, at *3 (S.D. Ind. Aug. 21, 2020) (“[U]nless a restriction on absentee voting ‘absolutely prohibit[s]’ someone from voting, the right to vote is not at stake.” (quoting *McDonald*, 394 U.S. at 807)), *aff’d*, --- F.3d ---, 2020 WL 5905325 (7th Cir. Oct. 6, 2020); *Martin v. Kemp*, 341 F. Supp. 3d 1326, 1338 (N.D. Ga. 2018) (“Defendants correctly note that there is no federal constitutional right to vote by absentee ballot.” (citing *McDonald*, 394 U.S. at 807-08)); *Zessar v. Helander*, No. 05 C 1917, 2006 WL 642646, at *6 (N.D. Ill. Mar. 13, 2006) (“The right to receive an absentee ballot is not the same as the right to vote, and will not receive the same constitutional protection.” (citing *McDonald*, 394 U.S. 802)). Further, to the extent plaintiffs may attempt to diminish *McDonald*’s present viability, or distinguish its holding based on subsequent Supreme Court decisions or otherwise, the Fifth Circuit stay panel in *TDP I* recently and thoroughly rejected those lines of argument. *TDP I*, 961 F.3d at 403-06; see also *Tully*, 2020 WL 5905325, at *3 n.3.

to strict scrutiny because the statute discriminates on the basis of age and “unlawfully burdens their fundamental right to exercise the franchise.” *Id.* at 402. In staying the district court’s preliminary injunction, *TDP I* held that, under *McDonald*, Texas’s absentee law was only subject to rational basis review, and the state defendants made a strong showing they were likely to prevail on the merits. *Id.* at 403-08.⁵

The stay panel’s rationale in *TDP I* equally applies to plaintiffs’ claim here. In just a few weeks from now, plaintiffs can vote in-person on election day. They do not, and cannot, contend that the State’s absentee statutes (or any other provisions of the Election Code) absolutely prohibit them from exercising their opportunity to vote. *McDonald* therefore forecloses plaintiffs’ argument, unless the State’s absentee laws lack any conceivable rational basis. Plaintiffs have failed to make any such showing.

Under rational basis review, the State’s absentee voting laws must only “bear some rational relationship to a legitimate state end.” *McDonald*, 394 U.S. at 809; *see also F.C.C. v. Beach Communications, Inc.*, 508 U.S. 307, 315 (1993) (“[T]hose

⁵ A Fifth Circuit merits panel subsequently reversed the district court’s preliminary injunction. *Texas Democratic Party v. Abbott*, --- F.3d ---, 2020 WL 5422917 (5th Cir. Sept. 10, 2020) (“*TDP II*”). The Court rejected the plaintiffs’ Twenty-Sixth Amendment age discrimination challenge but did not resolve their Fourteenth Amendment equal protection argument that the Texas law unlawfully burdens their (allegedly) fundamental right to vote absentee. *Id.* at *16-18. The Court noted the plaintiffs had shifted away from their COVID-19-based unlawful burden theory on appeal, *id.* at *3-4, and the district court had to determine the appropriate level of scrutiny for that claim on remand. *Id.* at *17. *TDP II* further explained that *TDP I*’s *McDonald* analysis is not binding precedent, but also expressly declined to establish what level of scrutiny applied to the plaintiffs’ unlawful burden argument. *Id.* at *17-18. The upshot of *TDP I* and *TDP II* for present purposes here is that, although *TDP I* is not directly binding precedent, it is the Fifth Circuit’s most recent assessment of a claimed right to vote absentee on a preliminary injunction inquiry. Nothing in *TDP II* undercuts the *TDP I* stay panel’s key point that undermines plaintiffs’ arguments here: a state absentee law does not implicate any excluded voters’ allegedly fundamental constitutional right to vote, unless the voters “are in fact absolutely prohibited from voting *by the State*.” *TDP I*, 961 F.3d at 404 (quoting *McDonald*, 394 U.S. at 807 n.7 (emphasis in original)).

attacking the rationality of the legislative classification have the burden to negate every conceivable basis which might support it[.]” (quotations omitted)). The absentee laws easily pass that test.

The Election Code generally allows every registered voter an opportunity to vote in-person on election day while giving certain voters an option to vote absentee. *See* MISS. CODE ANN. § 23-15-713. Some absentee-eligible voters, including those aged 65 and over, physically disabled, or temporarily residing outside their home county, may vote absentee in-person or by mail. MISS. CODE ANN. § 23-15-715(b). The longstanding system (in-person voting with limited absentee voting) is a rational means to promote legitimate state interests.

For example, the State’s system effectively reduces administrative burdens on local election officials and promotes the orderly administration of elections by limiting the volume of mail-in voting and associated costs. As another example, in-person voting takes place in public, in front of election officials, observers, and other voters. Absentee voting occurs in private where there are greater risks of improper influence and voter fraud. The State’s system minimizes those risks and thereby promotes the prevention of illegitimate voting practices and ensures public confidence in election outcomes. These legitimate bases satisfy rational basis review. *See TDP I*, 961 F.3d at 406-08; *see also Griffin v. Roupas*, 385 F.3d 1128, 1129-31 (7th Cir. 2004) (explaining numerous legitimate policies served by limiting mail-in absentee voting).⁶

⁶ The day before this brief was due, sixteen states and the District of Columbia filed a proposed amicus brief touting the steps they and other states have taken to modify voting laws in response to COVID-19 concerns. [Doc. 19-1]. Defendants disagree with the amici states’ policy argument that the Mississippi Legislature has failed to take appropriate steps in response to COVID-19 with respect to

The result is no different when focusing on the Code's absentee excuses. The State has legitimate interests in permitting elderly and physically disabled voters, who may be more likely to face difficulties in physically getting to the polls on election day, to vote absentee by mail. The State also has legitimate interests in allowing certain voters—such as elderly voters, physically disabled voters, and voters who have been ordered to quarantine—to vote by mail if they could face risks, or place others at risk, due to COVID-19. *See TDP I*, 961 F.3d at 406. The Code's absentee system is a rational means to meet those ends. And the notion that other individuals or groups may also have particularized concerns about voting in-person on election

the State's election laws, or otherwise. Only two specific points are worth noting about the states' late submission. First, the varied and different responses to COVID-19 reflected in the amici states' and others' voting laws only further underscore Judge Posner's apt observations in *Griffin* regarding states' authority to regulate voting sixteen years ago, which apply equally here today:

the striking of the balance between discouraging fraud and other abuses and encouraging turnout is quintessentially a legislative judgment with which we judges should not interfere unless strongly convinced that the legislative judgment is grossly awry. Some states have decided, as the plaintiffs urge us to decide, that the drawbacks of absentee voting are so far outweighed by the interest in increasing voter turnout that every registered voter should be allowed to vote by absentee ballot....Oregon has gone the farthest in this direction by making *all* voting by mail....In Oregon, all ballots are absentee....Other states, including Illinois, have struck a compromise between concern with fraud and concern with turnout by allowing only certain classes of voters to cast an absentee ballot....The plaintiffs say this is not good enough; that the Constitution requires Illinois to go farther. But the states that have more liberal provisions for absentee voting may well have different political cultures from Illinois, cultures less hospitable to electoral fraud. One size need not fit all.

Griffin, 385 F.3d at 1131 (internal citations omitted). Second, the amici states' arguments are virtually the same arguments that essentially the same group of states (plus Michigan) filed at the Supreme Court this week, arguing against South Carolina's bid for a stay of a district court's order changing its election rules. *See* Motion for Leave to File and Brief of D.C. and Eighteen States, No. 20A55, available on-line at: <https://www.supremecourt.gov/DocketPDF/20/20A55/156706/20201003132855322_Andino%20v.%20Middleton%20%20Motion%20for%20Leave%20to%20File%20and%20Brief.pdf> (accessed Oct. 8, 2020). The Supreme Court was not persuaded by the amici states' policy arguments, and stayed the district court's order. *See Andino v. Middleton*, No. 20A55, --- S.Ct. ---, 2020 WL 5887393 (Mem) (Oct. 5, 2020).

day does not render the Legislature's policy choice irrational. The Legislature can "take one step at a time, addressing itself to the phase of the problem which seems most acute." *F.C.C.*, 508 U.S. at 316; *see also* *Box v. Planned Parenthood of Ind. & Ky., Inc.*, 139 S.Ct. 1780, 1782 (2019) (rational basis review does not require legislatures to draw "perfectly tailored" lines).

In short, plaintiffs are not absolutely prohibited from voting in the November election, and the State's voting system and absentee statutes are rationally related to legitimate state interests. Plaintiffs accordingly lack a substantial likelihood of success on their so-called "Excuse Requirement" claim.

2. The "*Anderson/Burdick*" balancing test does not improve plaintiffs' meritless position.

Plaintiffs' brief fails to mention they have no constitutional right to vote absentee, by mail or otherwise. To paper over that defect, they contend the *Anderson/Burdick* balancing test governs the analysis of their claim to no-excuse absentee voting. [Doc. 14 at 12-15]. Whether or not *Anderson/Burdick* applies, plaintiffs' claim still fails.

When applicable, the *Anderson/Burdick* test requires balancing the burdens a state statute imposes on the right to vote against the state's interests which justify those burdens. *See Burdick v. Takushi*, 504 U.S. 428 (1992); *Anderson v. Celebrezze*, 460 U.S. 780 (1983). Federal courts use the test to weigh the "character and magnitude of the burden the State's rule imposes" on the right to vote "against the interests the State contends justify that burden, and consider the extent to which the State's concerns make the burden necessary." *Timmons v. Twin Cities Area New*

Party, 520 U.S. 351, 358 (1997) (internal quotes omitted). If a State’s rule imposes a “severe burden” on the right to vote, then it may only be upheld if it is “narrowly tailored” and advances a “compelling interest.” *Id.* If the rule imposes only “reasonable, nondiscriminatory restrictions,” then “a State’s important regulatory interests will usually be enough” to justify it. *Id.* (internal quotes omitted). Further, as the Supreme Court explained in *Burdick*, election laws “invariably impose some burden on individual voters.” *Burdick*, 504 U.S. at 433. A voting regulation that imposes some sort of burden is not automatically subject to strict scrutiny. Instead, the level of scrutiny applied “depends upon the extent to which a challenged regulation burdens First and Fourteenth Amendment rights.” *Id.* at 434.

Anderson/Burdick does not help plaintiffs here for at least two reasons. First, as discussed above, it is well-established that the privilege of absentee voting, by mail or otherwise, does not implicate a constitutional right to vote. Because they have no constitutional right to vote at stake, there is no burden on a constitutional right at play here. There is nothing to weigh against the State’s obvious legitimate interests in its absentee laws under *Anderson/Burdick*. Thus, *Anderson/Burdick* is a nonstarter for plaintiffs’ “Excuse Requirement” claim. *See Tully*, 2020 WL 5905325, at *4-5; *see also Voting for America, Inc. v. Steen*, 732 F.3d 382, 389-93 (5th Cir. 2013) (plaintiffs’ challenge to state election regulations failed where their conduct failed to qualify for First Amendment protection).

To be sure, in the present COVID-19 context, several federal courts have applied *Anderson/Burdick* to state absentee and mail-in voting laws. In those

absentee process disputes, however, the regulations at issue imposed allegedly burdened voters allowed to vote by mail under state law in the first instance.⁷ Plaintiffs are situated differently here. They are attacking state laws that benefit others, but not them. The fact that the Legislature has made it *easier* for other voters to vote does not make it *more difficult* for plaintiffs to vote. Putting the State's absentee laws through the *Anderson/Burdick* ringer therefore quickly gets plaintiffs nowhere.

Second, plaintiffs' argument fails under the *Anderson/Burdick* balancing test, even wrongfully assuming it applies here and plaintiffs have a constitutional right to absentee vote. Outside the context of COVID-19, unquestionably, any burden imposed by in-person voting is miniscule, if anything. The COVID-19 context does not up that slight burden to "substantial."

Plaintiffs' burden-boosting argument relies on two consent decree decisions to demonstrate that social-distancing measures are "impractical" when individuals

⁷ A few such cases are cited at pages 12-13 of plaintiffs' brief. All involved applications of *Anderson/Burdick* to laws governing mail-in voting processes in challenges presented by eligible mail-in voters—not challenges by ineligible voters claiming a constitutional right that could be analyzed by applying *Anderson/Burdick's* balancing test. *See Lewis v. Hughes*, No. 5:20-cv-00577-OLG, 2020 WL 4344432, at *11-14 (W.D. Tex. July 28, 2020) (denying motion to dismiss and analyzing eligible mail-in voters' challenges to mail-in ballot receipt deadline, signature matching process, and postage requirements under *Anderson/Burdick* framework, while recognizing the plaintiffs were "not seeking to litigate their right to vote by mail" and state law "already provides Plaintiffs the right to vote by mail"); *Thomas v. Andino*, --- F. Supp. 3d ---, No. 3:20cv01552-JMC, 2020 WL 2617329, at *21 (D. S.C. May 25, 2020) (applying *Anderson/Burdick* to eligible mail-in voters' challenge to witness requirement); *League of Women Voters of Va. v. Va. State Bd. of Elections*, --- F. Supp. 3d ---, No. 6:20cv00024, 2020 WL 2158249, at *7 (W.D. Va. May 5, 2020) (discussing application of *Anderson/Burdick* to eligible mail-in voters' challenge to witness requirement in evaluating consent decree). In another inapposite case not cited by plaintiffs, a Louisiana district court applied *Anderson/Burdick* in a challenge by voters to Louisiana's absentee voting scheme, and granted relief primarily because the voters had been eligible earlier in August to vote by mail for state primaries. *Harding v. Edwards*, --- F. Supp. 3d ---, No. 20-495, 2020 WL 5543769, at *3-14 (M.D. La. Sept. 16, 2020).

“vote at over-crowded polling sites on Election Day.” [Doc. 14 at 19]. Yet there is no proof that Mississippi polling places will be overcrowded or unsafe on November 3rd. To the contrary, officials are taking extensive measures to ensure a safe environment for everyone at the polls on election day. [Doc. 24-1 at 4-8 (¶¶9-24), 49-59, Doc. 24-4 at 6 (¶¶9-12)]. In the abstract, in-person voting on election day anywhere could impose some burden due to COVID-19. But, in fact, the burden on Mississippi voters on election day will remain slight, especially given officials’ extensive mitigation efforts at hand.

The Court must weigh that slight burden “against the interests the State contends justify that burden, and consider the extent to which the State’s concerns make the burden necessary.” *Timmons*, 520 U.S. at 358 (internal quotes omitted). The State has legitimate interests in its voting system, which heavily favors in-person voting over mail-in voting. For example, as mentioned already, the system advances the obvious state interest in the orderly and efficient administration of elections. *See id.* at 364 (“States certainly have an interest in protecting the integrity, fairness, and efficiency of their ballots and election processes as a means for electing public officials.”). The system provides a more transparent process, and reduces administrative burdens on local election officials by limiting the volume of mail-in voting, and the expenditures of costs and resources associated with absentee voting.

Limited mail-in voting also advances the State’s compelling interests in preventing voter fraud and promoting public confidence in election outcomes. *See Crawford v. Marion Cnty. Election Bd.*, 553 U.S. 181, 196 (2008); *Purcell v. Gonzalez*,

549 U.S. 1, 4 (2006); *Tully*, 2020 WL 5905325, at *6; *TDP I*, 961 F.3d at 413-14 (Ho, J., concurring). Decreased mail-in voting decreases the risks of fraud and improper influence perpetrated through mail-in voting. Even with limited absentee voting, the State has experienced those problems in the recent past. [Doc. 24-1 at 16-19 (¶¶47-53, Doc. 24-3 at 4-5 (¶¶11-12)]. Maintaining a limited absentee system is a reasonable means to contain those problems which undermine public confidence, and hopefully eliminate them in the future. Under *Anderson/Burdick*, these interests outweigh the slight burden that voting might arguably impose on November 3rd.

No matter whether *Anderson/Burdick* applies or not, plaintiffs lack a substantial likelihood of success on their “Excuse Requirement” claim.

C. The State reasonably requires notaries or other officials authorized to administer oaths to witness absentee balloting materials to prevent voter fraud and protect voters from undue influence.

Count 4 of the complaint argues that the Election Code’s “Notarization Requirement” forces plaintiff Goggin, and unidentified members of the organizational plaintiffs, “to enter businesses or public establishments and engage in face-to-face contact, putting them in danger of contracting and potentially dying from the coronavirus.” [Doc. 1 at 52 (¶149)]. Building from that contention, plaintiffs’ motion papers assert that notarization imposes a “substantial burden” on their First and Fourteenth Amendment rights, in the context of COVID-19, and thus fails under *Anderson-Burdick*. [Doc. 14 at 15-16].

Unlike their absentee excuse-based contentions, the Election Code’s requirement that absentee voters have their ballot materials notarized (or witnessed

by an official authorized to administer oaths) regulates a voting option afforded eligible voters such as plaintiff Goggin. *Anderson/Burdick* thus provides the appropriate means to analyze plaintiffs' claim. The State's notary requirement easily passes that test.

There are thousands more active notaries in Mississippi (35,567) than voters who requested mail-in absentee ballots for any reason (28,716) in the 2016 general election. [Doc. 24-1 at 21 (¶58), Doc. 24-2 at 2 (¶3)]. Plaintiffs' brief does not complain that notaries are inaccessible, costly, or burdensome when COVID-19 is out-of-the-picture. Rather, they contend that notarizing absentee materials puts people at risk of contracting COVID-19, which they say proves notarizations impose a "substantial burden" on absentee voting. [Doc. 14 at 15]. Their burden assessment misses the mark.

Although obtaining a notary's services requires interacting with someone, it does not follow that those brief interactions pose a grave danger to plaintiff Goggin or anyone else. Observing appropriate mitigation measures can reduce the alleged risk of contracting COVID-19 during a notarial transaction such that any risk is negligible. [Doc. 24-4 at 7 (¶14)]. Banks and other businesses offering notary services are taking such appropriate mitigation measures to prevent the spread of COVID-19. [Doc. 24-2 at 3 (¶¶8-9)]. Most banks, for example, are providing notarial services while implementing now common COVID-19 precautions inside branches, and also providing notary services through their drive-thru and/or curbside services. [Doc. 24-

2 at 3-4 (¶¶9-13)].⁸ At most, in light of COVID-19, the notarization requirement may constitute some burden, but certainly not a “substantial” one for *Anderson/Burdick* purposes.

Whatever the burden, the State has a compelling and nondiscriminatory interest in combatting voter fraud and improper influence, which undermine the integrity of its elections and damage voter confidence in election outcomes. *See Crawford*, 553 U.S. at 196. The State is not required to show “specific local evidence” of voter fraud to justify the State’s preventative measures. *Voting for America*, 732 F.3d at 394. Even if evidence were required here, incidents of voter fraud and improper voter influence have unfortunately occurred in Mississippi—including cases involving mail-in balloting. [Doc. 24-1 at 16-19 (¶¶47-53, Doc. 24-3 at 4-5 (¶¶10-12)].

In several ways, the notarization requirement advances the State’s interest by providing a means for deterring, detecting, and prosecuting voter fraud, and preventing individuals (and groups) from improperly influencing absentee voters. As the Mississippi Supreme Court has recognized, Code Section 23-15-635’s notarization requirement for absentee balloting is “intended to provide the absentee process with a comparable level of protection as exists at the polls” and the “oaths of the voter and the witness are the only devices that ensure the integrity of the process.” *McFarland v. State*, 707 So. 2d 166, 179 (Miss. 1997). Consistent with its purpose, real world law enforcement experience shows the notary requirement is effective in combatting

⁸ Moreover, any eligible absentee voter may always vote absentee at their county courthouse (and complete the entire application and balloting transaction at the same time), *see* MISS. CODE ANN. § 23-15-715(a), § 23-15-719, where officials are obviously taking appropriate measures to mitigate risks imposed by COVID-19. [Doc. 24-4 at 7 (¶14)].

fraud and protecting older voters who are more vulnerable to improper influence. [Doc. 24-3 at 3 (¶8)]. The requirement also provides assurance that voters who sign absentee ballot materials are in fact the voter because notaries are required to confirm the identity of a signatory before performing a notarial act. [Doc. 24-2 at 14].⁹ Notaries also must keep records that can assist in confirming and investigating possible voter fraud or undue influence which may lead to criminal prosecution. [Doc. 24-2 at 18-19, 24-3 at 3-4 (¶9)].

Under *Anderson/Burdick*, the notarization requirement advances a compelling state interest, while imposing no significant burden on absentee voters, even in light of COVID-19. Plaintiffs thus have no likelihood, much less a substantial likelihood of success on the merits on their notarization challenge claim.

D. The Secretary has already implemented a notice and cure process for signature mismatches on absentee ballots.

Counts 5 and 6 of plaintiffs' complaint each turn on the argument that the State must "provide absentee voters with notice and an opportunity to cure perceived signature-related deficiencies with their absentee ballot." [Doc. 1 at 53 (¶153)]. Premised on counts 5 and 6, plaintiffs' motion papers contend the State's "Cure Prohibition" violates their procedural due process and First and Fourteenth Amendment rights. [Doc. 14 at 23-30]. As for relief, plaintiffs request an order

⁹ Page 16 of plaintiffs' brief points out that physically disabled voters may have any adult witness sign their ballot materials (Code Sections 23-15-631(c) and 23-15-715(b)), as opposed to a notary or other official, and speculates that the notarization requirement "is not necessary for identification purposes given that absentee voters eligible under the temporary or permanent physical disability excuse are not required to secure notarization." That may be debatable. But actual Mississippi law enforcement experience shows the notary requirement has more value than the witness requirement as an effective means in preventing voter fraud and improper influence of older voters. [Doc. 24-3 at 3 (¶8)].

requiring defendants “to issue guidance instructing all local and county election officials to provide adequate notice and an opportunity to cure rejections of absentee ballots on the basis of perceived signature mismatch.” [Doc. 10 at 2].

It is questionable whether plaintiffs have a constitutionally-protected due process interest in how votes are evaluated and tabulated. *See League of Women Voters of Ohio v. Brunner*, 548 F.3d 463, 479 (6th Cir. 2008); *Johnson v. Hood*, 430 F.3d 610, 612 (5th Cir. 1970). It is also unlikely (given that signature mismatches in evaluating ballots in Mississippi elections are exceedingly rare),¹⁰ that plaintiffs would face any imminent injury without a process to cure possible signature mismatches. *See City of Los Angeles v. Lyons*, 461 U.S. 95, 111 (1983).

In any event, plaintiffs have no likelihood of success on their notice-cure claim because the Secretary of State has already cured it. This Summer, HB 1521 provided the Secretary of State with authority to promulgate administrative rules regarding the absentee ballot processing procedures when local officials count ballots. [Doc. 24-1 at 14-15 (¶¶41-44)]. The Secretary has implemented and published the new formal administrative rules addressing the process. [Doc. 24-1 at 16 (¶46), 117-19]. The rules include a process that local officials must follow when they evaluate and tabulate absentee ballots. [Doc. 24-1 at 117-19]. Local officials must provide notice to voters whose absentee applications and ballot envelopes reveal possible signature mismatches, and allow an opportunity to cure the defect before rejecting their ballots.

¹⁰ The Secretary of State’s Office estimates that no more than a few hundred ballots have ever been rejected for a signature mismatch in a high turnout election. [Doc. 24-1 at 29 (¶77)].

[Doc. 24-1 at 117-19]. The rules are permanent, and are in effect for the November election. [Doc. 24-1 at 16 (¶46), 117-19].

The Secretary's new formal administrative rules moot plaintiffs' requested preliminary injunctive relief. *Yarls v. Bunton*, 905 F.3d 905, 909 (5th Cir. 2018); *Fontenot v. McCraw*, 777 F.3d 741, 748 (5th Cir. 2015). Plaintiffs have exactly what they want, and thus lack a substantial likelihood of success on their notice-cure claim.¹¹

II. None of the Equitable Factors Support Enjoining the State's Absentee Laws in the Middle of the Ongoing Absentee Process.

In addition to evaluating plaintiffs' preliminary showing on the merits, the Court must examine their asserted threat of irreparable injury, balance the harms, and evaluate the public interest at stake. *Benisek v. Lamone*, 138 S.Ct. 1942, 1943-44 (2018). All those factors show plaintiffs are not entitled to any injunctive relief, particularly now that the absentee process is ongoing, and election day is only 26 days away (and counting).

¹¹ The Secretary's new rules are formal and permanent, and a necessary result of HB 1521—which required the Secretary to implement new rules governing the absentee ballot evaluation and tabulation process. HB 1521 was enacted in July 2020 and designed to have the Secretary make rules governing how county resolution boards process absentee ballots due to a change from the past practice of requiring poll managers to process absentee ballots at polling precincts. [Doc. 24-1 at 61-62, 87-88].

After HB 1521's passage, the Secretary of State's Office had been developing new rules to implement it for several weeks before plaintiffs filed this lawsuit in late August. A presumption of good faith applies to the Secretary's actions. *See Yarls*, 905 F.3d at 910-11 ("Government officials in their sovereign capacity and in the exercise of their official duties are accorded a presumption of good faith because they are public servants, not self-interested private parties....So without evidence to the contrary, we assume that formally announced changes to official governmental policy are not mere litigation posturing." (internal quotes and footnote omitted)). And, as mentioned, the new rules are formal and permanent, so there is no risk that they can be simply withdrawn after the dispute in this lawsuit subsides.

A. Voting in the November election will not expose plaintiffs to a substantial threat of irreparable injury.

Plaintiffs' characterize their possibility of harm as the "quintessential irreparable injury" of the "violation of a citizen's right to vote," and a forced choice "between the right to vote and their health." [Doc. 14 at 24]. Their position is overstated. To obtain preliminary injunctive relief, plaintiffs must prove a "likelihood" of irreparable injury, not a "possibility." *Winter v. Natural Resources Defense Council, Inc.*, 555 U.S. 7, 21 (2008).

Whether or not the Court enters a preliminary injunction essentially allowing no-excuse voting by mail, state and local election officials are taking extensive measures to ensure plaintiffs Parham and Oppenheim (and all other voters) will have a safe opportunity to vote in-person on election day. [Doc. 24-1 at 4-8 (¶¶9-24)]. Consistent with CDC guidelines, safety rules will govern every polling place on November 3rd. [Doc. 24-1 at 4-8 (¶¶9-24), 49-58]. Extensive use of personal protective equipment, social distancing measures, sanitation, and many other protective measures will all be in place. [Doc. 24-1 at 4-8 (¶¶9-24), 49-58]. Furthermore, expert testimony from the State Health Officer shows that those measures will mitigate COVID-19 risks at polling places. [Doc. 24-4 at 4-6 (¶¶9-12)].

Nobody can completely eliminate the risks that COVID-19 could present for voters on election day. However, that is an untenable and unrealistic standard. State and local election officials have done, and will do, everything they can to ensure that plaintiffs, and all voters, face no greater risks on election day than when undertaking day-to-day activities plaintiffs already routinely perform in spite of COVID-19, such

as running essential errands, attending medical appointments, interacting with clients, singing in church, and grocery shopping. [Doc. 10-5 at 3, Doc. 10-6 at 3-4].

Plaintiffs' asserted threat of irreparable injury associated with having absentee ballot materials notarized or attested is even further out-of-line. Plaintiff Goggin and all other absentee voters have multiple options to safely procure notarial services. [Doc. 24-2 at 3 (¶9)]. Banks, for example, are providing notarial services while mitigating against COVID-19 risks, such as drive-thru or curbside service, and inside service with appropriate precautionary measures. [Doc. 24-2 at 3-4 (¶¶9-13)].

Additionally, anyone eligible to vote absentee may always do so at county courthouses—where they may complete all their absentee paperwork at once in front of an appropriate official. *See* MISS. CODE ANN. § 23-15-715(a), § 23-15-719. Like the Court, and all other essential governmental operations, county courthouses are taking appropriate measures to ensure citizens conduct their business in a safe environment. There is no reason to believe that the options available for absentee balloting are significantly less safe than grocery shopping, and utilizing drive-thru banking or curbside services at the library. [Doc. 10-2 at 3].

Plaintiffs have failed to establish they are likely to suffer irreparable injury absent their belatedly requested preliminary injunctive relief.

B. The balance of harms weighs in the State's favor, and granting plaintiffs' requested relief at this stage would undermine the public's interest.

Plaintiffs' brief mistakenly states they are seeking "injunctive relief approximately two months in advance of the November election, giving Defendants time to address administrative issues (if any) and communicate to citizens and

election officials.” [Doc. 14 at 25]. They also contend, without support, that expanding mail-in absentee voting to everyone will cause “little if any harm.” [Doc. 14 at 25]. To cap it off, they argue there “is no evidence” the Election Code’s notarization provision “will advance the State’s interest in protecting against fraud.” [Doc. 14 at 25-26]. Plaintiffs are wrong on each front.

We are not “approximately two months” away from the November election. Plaintiffs did not serve their preliminary injunction motion until September 24. [Doc. 11]. As of this writing, there are only 26 days before election day, and the Court has not even had a chance to consider defendants’ submissions yet.

More importantly, the few days remaining before election day is largely irrelevant. Plaintiffs are not challenging election laws that operate only on November 3rd. They want a preliminary injunction turning the State’s absentee voting process inside-out while that process is well-underway. There is no “time to address administrative issues (if any) and communicate to citizens and election officials,” and it is certainly not the time to revolutionarily modify the State’s ongoing absentee balloting process.

The truth is that granting plaintiffs’ requested relief will work far more than “little if any harm” on the State. Whenever “a statute is enjoined, the State necessarily suffers the irreparable harm of denying the public interest in the enforcement of its laws.” *Planned Parenthood of Greater Texas Surgical Health Services v. Abbott*, 734 F.3d 406, 419 (5th Cir. 2013). In this case, that palpable irreparable harm is just the tip of the iceberg.

As of this writing, the absentee request and balloting process has been ongoing all over the State for nearly five weeks. *See* MISS. CODE ANN. § 23-15-625, § 23-15-715. A preliminary injunction requiring local election officials to shift to no-excuse mail-in voting at this stage would blindside election officials and threaten to blow up the absentee voting process.

The current absentee balloting system has been in place for decades, and has already been utilized successfully, and without significant changes, in presidential preference primaries, runoffs, and special elections this year. In past high turnout elections, mail-in absentee balloting has only accounted for a small fraction of the total votes cast. [Doc. 24-1 at 21 (¶58)]. The Legislature did not significantly expand absentee voting options for this November. Thus, local officials planned and prepared to operate under the existing system, and already accounted for an anticipated increased demand that COVID-19 concerns have put on the November election. [Doc. 24-1 at 21-24 (¶¶59-62)].

An abrupt change to virtually universal mail-in balloting would cause a drastically increased demand—compressed into the very short timeframe that remains before election day. A dramatic shift now runs significant risks of overburdening local officials, exceeding available resources, and causing delays in providing absentee materials to voters. [Doc. 24-1 at 23-24 (¶¶63-64)]. County officials have already purchased their absentee balloting supplies, which are costly, and made staffing plans to accommodate voters while also maintaining all the other services that local circuit clerks' offices provide. [Doc. 24-1 at 21-24 (¶¶59-62)].

Further, forcing counties to unexpectedly expend funds and resources to accommodate a late spike in mail-in absentee voting risks depleting county funds and resources that are necessary for running the election. [Doc. 24-1 at 24 (¶63)].

Eliminating the notarization requirement at this late date will likewise harm the State in several ways. For example, election officials have years of training and experience operating elections in an orderly manner under the current system, as do many voters. [Doc. 24-1 at 26 (¶68)]. Even assuming local officials and voters could immediately adapt to a completely different method (which is dubious), forms for applications, ballot envelopes, and instructions would be inconsistent with any last minute court-ordered directive to change the process. [Doc. 24-1 at 26 (¶69)].

In addition to timing concerns, eliminating the Election Code's notarization requirement at any time would also hamstring the State's unquestionably legitimate interest in preventing and detecting voter fraud. The notarization requirement's purposes include reducing the opportunity for voter fraud and improper influence by requiring protections for mail-in voting akin to those existing at the polls. *See McFarland*, 707 So. 2d at 179. Plaintiffs' demanded relief would knock those safeguards down to nothing. Absentee voters (or others) would only need to print a name and sign applications and ballot envelopes. [Doc. 24-1 at 27-28 (¶¶71-73)]. Plaintiffs' desired naked ballot material scenario means no personal identifying information, or even the signature of a witness, would exist on returned ballot

envelopes to deter voter fraud and improper influence, or to assist officials in confirming voters' identities.¹²

Not only would granting plaintiffs' preliminary injunctive relief inflict the foregoing examples of harm on the State, it would likewise harm the public interest. Abruptly changing the absentee process while it is already in motion risks confusion and the spread of misinformation amongst local officials, voters, the media, organizations, and the general public. Suddenly modifying the system now would cut against local officials' training and experience. [Doc. 24-1 at 27 (¶70)].¹³ Pre-prepared absentee ballot materials and instructions would conflict with any court-ordered relief, and could not be modified without substantial cost and effort. [Doc. 24-1 at 26-27 (¶¶69-70)]. The drastic changes plaintiffs propose would also run counter to voters' experiences, the expectations of political parties, campaigns, and candidates, and the extensive media coverage and information already out in the public domain regarding the State's ongoing absentee voting process. [Doc. 24-1 at 24-25(¶64), 27(¶70)].

¹² Relying solely on their retained political science expert and fact findings in a South Carolina case, plaintiffs contend there is "no evidence" that the State's notarization procedures protect the mail-in absentee process from voter fraud. [Doc. 14 at 26]. The un rebutted affidavit testimony of Chief PID Investigator Larry Ware unfortunately proves plaintiffs wrong. [Doc. 24-3 at 3-4 (¶¶8-9)]. In any event, their argument belies the fact that their requested name-and-signature-only relief would eliminate any means to identify voters who submit mail-in absentee ballot materials. Plaintiffs' own expert suggests, while citing no specific evidence, that other states' use of other methods to "verify the identity of mail-ballot voters without using an in-person witness or who allow a broader set of people to act as an in-person witness" diminishes voter fraud concerns. [Doc. 10-7 at 47]. Yet plaintiffs' eleventh hour relief would not afford even those questionable protections their own retained expert touts as effective for preventing voter fraud.

¹³ Plaintiffs might believe the Secretary's implementation of new rules providing a notice and cure process for signature matches cuts against prior practice, or shows changing an election process at this point is doable for local officials. They would be wrong. The notice-cure rules do not change a past or ongoing process by means that could flood county courthouses with tens of thousands of unexpected absentee requests and ballots. The notice-cure rules merely provide a new means for the very few voters who turn in a possible signature mismatch in an election (53 in the 2016 general election) to fix that discreet problem, and will not burden local officials. *See* [Doc. 24-1 at 28-31 (¶¶74-81)].

Moreover, as discussed more below, enjoining the implementation of the current absentee system would create a potential on-again-off-again scenario, if any injunction is later modified.

All of the foregoing points, and likely several other unpredictable problems associated with plaintiffs' requested eleventh hour injunction, demonstrate the balance of harms and public interest factors alone prove the Court should deny plaintiffs' requested preliminary injunctive relief.

- C. The well-established "*Purcell* principle," at a bare minimum, bars plaintiffs' attempt to change the status quo of absentee voting in the middle of the voting process, and with the election just 26 days away (as of this writing).**

Beyond "the harms attendant upon issuance or nonissuance of an injunction," when state election laws are challenged close to an election, the Supreme Court requires lower courts to weigh "considerations specific to elections cases." *Purcell*, 549 U.S. at 4. Those "*Purcell* principle" considerations include the problem that "[c]ourt orders affecting elections, especially conflicting orders, can themselves result in voter confusion and consequent incentive to remain away from the polls. And as an election draws closer, that risk will increase." *Id.* at 4-5.

Pointing to *Purcell* and other decisions, the Fifth Circuit has recognized that the "Supreme Court has repeatedly instructed courts to carefully consider the importance of preserving the status quo on the eve of an election." *Veasey v. Abbott*, 769 F.3d 890, 892 (5th Cir. 2014). Already numerous times this year, the Supreme Court has signaled that COVID-19-related challenges to state election laws must not

be treated any differently.¹⁴ And just last week, the Fifth Circuit relied on *Purcell* to stay a district court’s preliminary injunction targeting a Texas “straight ticket” balloting law on the “eve” of an election—*i.e.*, eighteen days before early voting started. *Texas Alliance for Retired Americans v. Hughs*, --- F.3d ---, 2020 WL 5816887, at *1-2 (5th Cir. Sept. 30, 2020).

The timing of plaintiffs’ requested relief in this case is even worse than the foregoing examples. Plaintiffs are not seeking an injunction that would change the status quo on the “eve” of an election. They really want an injunction overturning the status quo *in the middle of an election*.

Absentee applications became available almost five weeks ago and balloting started nearly three weeks ago. As of this writing, only a little over three weeks are left to go. Many voters have thus already voted their absentee ballots. Other voters will continue to vote absentee, before a decision on plaintiffs’ preliminary injunction and any appeals, if necessary, can run their course.

¹⁴ See, e.g., *Andino*, 2020 WL 5887393 (granting prospective stay of district court’s injunction enjoining South Carolina witness requirement for absentee balloting on October 5, 2020); *Clarno v. People Not Politicians*, No. 20A21, --- S. Ct. ---, 2020 WL 4589742 (Mem) (Aug. 11, 2020) (granting stay of district court’s injunction relaxing Oregon’s election procedures); *Little v. Reclaim Idaho*, No. 20A18, -- S. Ct. --, 2020 WL 4360897 (Mem) (Jul. 30, 2020) (granting stay of district court’s injunction relaxing Idaho’s rule for ballot initiatives); *Merrill v. People First of Ala.*, No. 19A1063, -- S. Ct. --, 2020 WL 360409 (Mem) (Jul. 2, 2020) (granting stay where district court enjoined Alabama’s photo identification and witness requirements for absentee voting); *Thompson v. DeWine*, No. 19A1054, -- S. Ct. --, 2020 WL 3456705 (Mem) (June 25, 2020) (denying application to vacate Sixth Circuit’s stay of district court’s order suspending Ohio’s enforcement of in-person signature requirements, where stay was entered “months away” from election day); *Tex. Democratic Party v. Abbott*, 140 S. Ct. 2015 (2020) (denying application to vacate Fifth Circuit’s stay of district court’s injunction requiring Texas to implement no-excuse absentee voting); *Republican Nat’l Comm. v. Democratic Nat’l Comm.*, 140 S. Ct. 1205, 1208 (2020) (granting stay of district court’s injunction requiring Wisconsin to count late postmarked absentee ballots for primary election).

An injunction changing the State’s absentee balloting rules would effectively cram a revolutionary change into an ongoing process, which would be subject to further review while the window for absentee voting gets smaller-and-smaller by the day. Court-ordered relief would void longstanding state laws and existing absentee balloting instructions, potentially create mixed messages and chaos among local election officials, voters, media outlets, organizations, internet resources, campaigns, and raise questions in voters’ minds about what the absentee laws really are—and all while everyone is already working overtime to make the November election safe for everyone involved. Those potential problems flowing from granting plaintiffs’ requested relief are solid reasons, standing alone, to deny their motion.

CONCLUSION

For the reasons set forth above, and those presented in their previously filed motion to dismiss, the defendants request an order denying the plaintiffs’ motion for preliminary injunction.

THIS the 8th day of October, 2020

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