

IN THE CHANCERY COURT OF HINDS COUNTY, MISSISSIPPI
FIRST JUDICIAL DISTRICT

HARRIETT OPPENHEIM, ET AL.

PLAINTIFFS

VS.

CAUSE NO. G2020-961 0/3

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

DEFENDANTS

SECRETARY OF STATE MICHAEL WATSON'S
TRIAL BRIEF AND EXHIBITS

INTRODUCTION

The instant lawsuit has injected uncertainty into who may vote absentee by mail pursuant to the “temporary physical disability” excuse in Mississippi Code Section 23-15-713(d). Plaintiffs’ lawsuit seeks expansive declaratory relief and requests that the Court interpret Section 23-15-713(d) in accordance with their views regarding the terms “temporary physical disability,” “physician-imposed quarantine,” and “dependent” contained in the statute. While this Court should issue a declaratory judgment because there is indeed uncertainty concerning who may vote absentee by mail in the upcoming November election, that uncertainty stems *not* from state law—but from this lawsuit.

Mississippi statutes must be interpreted based on their plain language. Here, the statutory text in Section 23-15-713(d) is unambiguous and does not present a close case: voters do not have a “temporary physical disability” just because they have a non-disability and concerns about voting in-person due to COVID-19. Moreover, the Legislature’s recent clarification that a voter “under a physician-imposed quarantine”

qualifies to vote absentee, by definition, only extends to a voter who has been compelled to quarantine due to COVID-19 by an authorized physician.

As enacted by the Legislature, Mississippi's Election Code establishes, as a whole, a comprehensive in-person voting system, with a few absentee balloting exceptions. Plaintiffs' reading of Section 23-15-713(d), however, seeks to override that legislative policy choice and allow virtually any Mississippi voter to vote by mail by subjectively claiming a fear of COVID-19 or self-manufacturing a "quarantine" that is not actually "physician-imposed." This would turn the Election Code on its head by turning a narrow and objective absentee excuse into a broad and subjective absentee excuse applicable to virtually anyone. This Court should reject plaintiffs' inventive reading of Mississippi law and enter a declaration in the Secretary of State's favor confirming that plaintiffs in this lawsuit are currently ineligible to cast an absentee ballot under the temporary physical disability excuse contained in Mississippi Code Section 23-15-713(d), as amended by 2020 House Bill 1521.

The Secretary of State's Office and local election officials recognize the unprecedented nature of COVID-19 and the need to ensure all voters are provided with an opportunity to safely cast their ballots in the upcoming November 3, 2020 general election. To that end, state and local officials are taking extensive steps to ensure the safety of voters and working diligently to preserve the integrity of the November general election by safeguarding in-person voting.

FACTS

State and Local Officials' Extensive Preparations for the November General Election

Throughout the past six months, COVID-19 has caused an unprecedented public health crisis in Mississippi, and throughout the country. In light of COVID-19 concerns, the Secretary of State's Office and state and local election officials recognize the pressing need to ensure all voters are provided with an opportunity to safely cast their ballots in the upcoming November 3, 2020 general election. [Robertson Aff. ¶¶13-15, Ex. 1]. In furtherance of that goal, extraordinary measures are already being taken and plans are being made, far beyond steps attendant to usual election preparations. [Robertson Aff. ¶¶14-31, Ex. 1].

The Secretary of State's Office is spearheading plans to implement polling place safety measures consistent with current Centers for Disease Control ("CDC") guidelines, and other public health agency guidance, specific to polling place safety. [Robertson Aff. ¶¶16-17, and CDC Polling Place Guidelines (Aff. Ex. B), Ex.1]. For example, the Legislature recently extended new rule-making authority to the Secretary of State to promulgate administrative rules applicable to polling places throughout the State. [Robertson Aff. ¶¶9, 11, 18-19, Ex. 1]. The new rules will be adapted to current policy guidance, effective for polling places on election day, and address numerous safety measures including, as examples: 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 curbside voting; signage and instructions for voters; and other relevant safety measures. [Robertson Aff. ¶¶18-20, Ex. 1].

Local election officials responsible for administering election day activities will be well-equipped to handle their task of promoting and providing a safe voting environment at the polling places. Enhanced training on safety precautions will be provided. [Robertson Aff. ¶21, Ex. 1]. The Secretary of State's Office has worked (and continues to work) cooperatively with all counties to meet their needs for safety equipment. [Robertson Aff. ¶¶23-30, Ex. 1]. For example, all counties have requested and will be provided with items such as face masks, face shields, hand sanitizer, and disinfecting supplies. [Robertson Aff. ¶23, Ex. 1]. Every poll manager who works at the polling places will have sufficient PPE, and every voter who requests a mask to wear while voting will have one made available to him or her. [Robertson Aff. ¶¶23-24, Ex. 1]. The Secretary of State's Office has also made available through a reimbursement grant to the individual counties a portion of the federal CARES Act funding to purchase shield barriers, additional tables and other supplies. [Robertson Aff. ¶29, Ex. 1].

Voters will not have to worry over shared objects used in voting at their polling place. Counties will be provided hundreds of thousands of single-use writing pens and stylus pens, as well as gloves which will ensure that voters do not have to re-use implements, and gloves will allow poll managers and voters to avoid any need of touching surfaces such as voting machines, poll books, and e-poll books. [Robertson

Aff. ¶¶25-27, Ex. 1]. Additional cleaning supplies and equipment will also be available. [Robertson Aff. ¶28, Ex. 1].

Additional money has been made available to local election officials, through the federal CARES Act and supplemental legislative appropriations, such that additional poll managers and equipment will be available. [Robertson Aff. ¶¶29-30, Ex. 1]. The Secretary of State's Office, and state and local election officials, is implementing plans to make the necessary accommodations to ensure voter safety in November, continuing to monitor developments associated with COVID-19 health risks, and is poised to take the necessary polling place precautions and actions as polling place-specific guidance and recommendations may require. [Robertson Aff. ¶¶13-31, Ex. 1]. Make no mistake, safety is the number one goal for all voters and election officials as Mississippians go to the polls to cast their ballots for the November election. [Robertson Aff. ¶¶13-31, Ex. 1].

**Mississippi Law Requires In-person Voting
with Narrowly-Limited Absentee Exceptions**

By our country's constitutional design, the states are authorized to enact laws regulating elections. State legislatures each exercise that policy-making authority in numerous and various permissible ways. Oftentimes, difficult choices must be made by legislators to fulfill their obligation to afford qualified voters an opportunity to vote while also satisfying their legislative duty to safeguard the integrity of elections, which is essential to preserving voter confidence in election outcomes and ultimately maintaining our democratic system.

The Mississippi Legislature has exercised its elections policy-making authority by enacting the State’s Election Code. *See* Miss. Code Ann. § 23-15-1 *et seq.* The Code establishes a comprehensive set of laws and procedures governing all elections in the State. The Code specifically includes several articles and subparts dedicated to the mechanics of casting ballots, including ballot-building, voting systems, absentee balloting, and 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.* When those numerous provisions are viewed as a whole, the Code sets up a voting scheme 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.

Sound policy grounds support the Code’s expressed requirements for in-person voting with only few and limited absentee excuses, and even fewer allowances for voting by mail. As just one example, and as the Mississippi Supreme Court has recognized, the Code’s absentee requirements “are intended to ensure the integrity of absentee ballots” given that “[a]bsentee paper ballots, unlike machine votes, are particularly amenable to fraud; the detailed procedures outlined in the statutes . . . are designed to protect against fraudulent votes and ensure that absentee ballots actually reflect the will of the voters who cast them.” *Rogers v. Holder*, 636 So. 2d 645, 649 (Miss. 1994).

Consistent with the Legislature’s policy preference for in-person voting, the seven excuses that allow a voter to cast an absentee ballot are narrow and objective:

- 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 of those excuses obligate electors to appear in-person at their local clerk's office to apply for and cast their vote by absentee ballot. Miss. Code Ann. § 23-15-715(a). However, the following categories of voters may cast their absentee vote by receiving and returning their applications and ballots in-person at their Clerk's Office or by mail:

- voters temporarily residing 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, and will be with the disabled person on election day.

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.*

See Miss. Code Ann. § 23-15-715(b).

In addition to 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, § 23-15-721.² The Code makes local officials entirely responsible for administering absentee balloting in state and federal elections. For example, local officials (primarily county Circuit Clerks) conduct in-person absentee voting at county courthouses, take absentee application requests from voters, send and receive voters' mail-in absentee ballot materials, and safeguard applications and voted ballots before and after each election. Miss. Code Ann. § 23-15-621 *et seq.*, § 23-15-711 *et seq.* Meanwhile, no provision in the Election Code authorizes the Secretary of State to regulate how local officials carry out their absentee balloting duties, or compel local officials to interpret and apply the Code's absentee provisions in any particular way.³

² Two upcoming deadlines are particularly relevant to this case, due to the timing of plaintiffs' complaint. Prospective absentee voters may begin requesting absentee ballot applications from their county registrars on September 4, sixty days before the upcoming November 3 election. Miss. Code Ann. § 23-15-625. And, actual absentee ballots must be available for distribution by county registrars beginning on September 19, forty-five days before election day, and in-person absentee voting begins on September 21. Miss. Code Ann. § 23-15-715; *see also* [Secretary of State's Official 2020 Elections Calendar, Robertson Aff., Ex. 1 at (Ex. A)].

³ This summer, the Legislature amended Code Sections 23-15-227, by enacting 2020 House Bill 824 ("HB 824"), and 23-15-637, by enacting 2020 House Bill 1521 ("HB 1521"). The amended version of Section 23-15-637 requires the Secretary of State to promulgate rules to ensure that absentee ballots cast by voters before an election are final (*i.e.*, voters may not vote absentee and then vote in-person on election day), and to facilitate local officials' compliance with Code provisions amended by HB 1521 that require voted absentee ballots to remain at county courthouses during the election, as opposed to the prior practice of distributing voted ballots to precincts for tabulation after polls close. [HB 1521, § 1, Ex. 2]. The amended version of Section 23-15-227 authorizes the Secretary to promulgate rules "as are necessary to ensure the safety of poll managers, election commissioners,

The Temporary Physical Disability Excuse and HB 1521

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.

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

On July 8, 2020, by enacting HB 1521, the Legislature 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 now 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.

[HB 1521 § 6, Ex. 2 (underline in original)].⁴

electors and their families at the voting precincts during a COVID-19 health risk.” Miss. Code Ann. § 23-15-227 (Rev. 2020). Neither of those two new narrow provisions authorizes the Secretary to regulate how local officials interpret and apply the Code’s absentee ballot excuse regime, or how they administer the processes of how voters receive and cast their absentee ballots.

⁴ 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. [HB 1521 § 6, Ex. 2]. The Legislature’s additions to Sections 23-15-713(d) and -713(e) are the only substantive alterations that HB 1521, or any other legislation passed during the 2020 Session, made to the Election Code’s absentee excuses.

Plaintiffs' Lawsuit

Nearly a month-and-a-half after HB 1521's enactment, and only a few weeks before county officials must make absentee ballot applications available to qualified electors, a group of seven plaintiffs filed their complaint against the Secretary of State, and the Hinds and Rankin County Circuit Clerks. [Dkt. 2]. On August 26, plaintiffs filed their amended complaint that deleted one of the original plaintiffs' claims. [Dkt. 15]. According to the amended pleading, the remaining six plaintiffs are registered Hinds or Rankin County voters who claim they intend to cast a ballot in the upcoming November election. [Dkt. 15 at ¶8, ¶10, ¶12, ¶14, ¶15, ¶17].

Three plaintiffs describe themselves as persons with various medical issues, which most denominate as "preexisting health conditions," and who believe their medical issues may place them "at a higher risk of severe illness or death" if they contract COVID-19. [Dkt. 15 at ¶9, ¶11, ¶13]. Two plaintiffs describe themselves or their household members as having medical issues, which they denominate as "preexisting health conditions" or "medical vulnerabilities," and who believe those medical issues may place them or their household members "at a higher risk of severe illness or death" if they contract COVID-19. [Dkt. 15 at ¶14, ¶16]. One plaintiff describes herself as having "no underlying conditions," but is nevertheless "concerned about the risk of contracting COVID-19 if she goes to a polling place on Election Day and the risk of unknowingly transmitting it to others if she already unknowingly contracted it." [Dkt. 15 at ¶18]. Each plaintiff is allegedly following "public health guidance," from some unspecified source, advising them "to avoid unnecessary

gatherings.” [Dkt. 15 at ¶9, ¶11, ¶13, ¶14, ¶16, ¶18]. And, according to what they each “understand,” plaintiffs allege they only meet “the statutory excuse for a disability in the context of the COVID-19 pandemic” established in Code Section 23-15-713(d), as amended by HB 1521. [Dkt. 15 at ¶9, ¶11, ¶13, ¶14, ¶16, ¶18].

Plaintiffs’ pleading asserts no claim that Code Section 23-15-713(d), the State’s absentee laws, or any other provisions of the Election Code, are unconstitutional or otherwise invalid. Rather, plaintiffs only ask the Court to interpret state law.

They believe “uncertainties” currently exist regarding: who qualifies to vote absentee under Section 23-15-713(d), as amended (and thus qualifies to vote absentee by mail); and whether “different clerks” will apply the statutory provisions differently for the upcoming election which requires “judicial clarification through a declaratory judgment.” [Dkt. 15 at ¶ 78]. Based on those alleged “uncertainties,” plaintiffs assert three enumerated claims against the defendants requesting that the Court interpret Section 23-15-713(d) in accordance with their views regarding the terms “temporary physical disability,” “physician-imposed quarantine,” and “dependent” contained in the statute. [Dkt. 15 at ¶¶78-92].

As to relief, plaintiffs want an expansive declaratory judgment under Rule 57 establishing that: (1) “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”; and (2) “Mississippi Code § 23-15-713(d) permits 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 (“MDH”), the 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 for or supporting such a voter.” [Dkt. 15 at p. 30]. Plaintiffs further demand a mandatory preliminary and permanent injunction requiring the Secretary of State to “instruct county election officials about the application of Mississippi Code § 23-15-713(d) as declared by this Court” and that “orders the Defendants to take steps to educate the public about their right to vote by absentee ballot under Mississippi Code § 23-15-713(d) as declared by this Court during the COVID-19 pandemic.” [Dkt. 15 at p. 30].

The Secretary of State has filed his answer to plaintiffs’ amended complaint, and the matter has been set for trial on the merits by agreement of the parties, and the trial is currently set to be heard by the Court Friday, August 28, 2020 at 11:30 a.m. This brief and its exhibits constitute the Secretary of State’s trial submissions.

ARGUMENT

I. Section 23-15-713(d) Does Not Extend to Voters with a Pre-existing Health Condition or Concern That, Standing Alone, Is Not a Physical Disability.

Plaintiffs allege that the first sentence of Section 23-15-713(d), which establishes a “temporary or permanent physical disability” absentee excuse, allows “individuals with an underlying condition that places them at a higher risk or severe illness from COVID-19” to vote by mail-in absentee ballot in the November election. [Dkt. 15 at ¶¶81-82]. Plaintiffs’ inventive reading of the statute is misplaced.

A. The plain meaning of “temporary physical disability” does not encompass voters who fear contracting COVID-19.

When interpreting statutes, a “Court’s role is not to decide what a statute should provide, but to determine what it does provide.” *Newsome v. Peoples Bancshares*, 269 So. 3d 19, 26 (¶15) (Miss. 2018) (quotes omitted). “Whatever the Legislature says in the text of the statute is considered the best evidence of the legislative intent.” *Gregory v. Central Life Ins. Co.*, 953 So. 2d 233, 240 (¶30) (Miss. 2007) (quotes omitted). And, when, as here, “the language used by the legislature is *plain and unambiguous* . . . and where the statute conveys a *clear and definite meaning* . . . the Court will have *no* occasion to resort to the rules of *statutory interpretation*.” *Mississippi Ethics Comm’n v. Grisham*, 957 So. 2d 997, 1001 (¶12) (Miss. 2007) (quotes omitted) (emphasis in original).

Section 23-15-713(d) establishes that qualified voters with a “physical disability” may vote absentee in any election. Section 23-15-713(d)’s first sentence specifically provides an absentee excuse for:

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. 2020) (emphasis supplied).⁵

Section 23-15-713(d)’s unambiguous text requires a voter to satisfy two requirements to take advantage of its “physical disability” absentee excuse. First, the

⁵ Voters who qualify under Section 23-15-713(d)’s absentee excuse may vote absentee by mail. See Miss. Code Ann. § 23-15-715(b).

voter must have a “temporary or permanent physical disability.”⁶ Second, “because of such disability,” the voter must be “unable to vote in person without substantial hardship to himself, herself or others” or if the voter’s “attendance at the voting place could reasonably cause danger to himself, herself or others.”

Because the Legislature employed the conjunction “and” to connect Section 23-15-713(d)’s “temporary or permanent physical disability” requirement with its “because of such disability” requirement, a voter must meet *both* requirements for absentee eligibility. As a result, if a voter fails to satisfy one of the requirements, he or she cannot vote absentee under Section 23-15-713(d).

Partially quoting the statute’s text, plaintiffs contend they qualify to vote absentee because “individuals with an underlying condition that places them at a higher risk or severe illness from COVID-19 ‘could reasonably cause danger to himself, herself or others’ at a voting precinct.” [Dkt. 15 at ¶81]. Their argument runs afoul of Section 23-15-713(d)’s text in two related ways.

First, plaintiffs’ argument ignores the statute’s “temporary or permanent physical disability” requirement. They assert an “underlying condition” together with a belief that voting in-person “could reasonably cause danger” to themselves or others

⁶ The Election Code does not define the term “temporary or permanent physical disability.” An undefined term in a statute “must be given its common and ordinary meaning,” *Buffington v. Mississippi State Tax Comm’n*, 43 So. 3d 450, 455 (¶16) (Miss. 2010), and dictionary definitions are authoritative in analyzing undefined statutory terms. *Id.* The noun “disability” means a “physical . . . condition that 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.” *Disability*, Merriam-Webster, <https://www.merriam-webster.com/dictionary/disability> (last visited August 27, 2020).

is a “temporary physical disability.”⁷ But that improperly conflates the statute’s two requirements. Plaintiffs cannot satisfy the statute’s *first* requirement (an actual disability) merely by attempting to satisfy its *second* requirement (a non-disability that causes them concern about voting in-person due to COVID-19).

Second, plaintiffs’ approach also makes a hash of the statute’s “because of such disability” requirement. Section 23-15-713(d)’s express language requires causation—that is, the voter’s concern about voting in-person must be *because of* his or her physical disability. If the voter has no actual physical disability, then the voter lacks the statutorily-required reason that the voter’s “attendance at the voting place could reasonably cause danger to himself, herself or others.”

Either way, the fatal flaw in plaintiffs’ statutory analysis is: voters do not have a “physical disability” just because they do have a non-disability and concerns about COVID-19.

B. Even if Section 23-15-713(d) could be ambiguous, statutory interpretation principles dictate it must be read and applied narrowly.

Mississippi courts only look past a statute’s text to principles of statutory construction if the text is unclear or ambiguous. *Grisham*, 957 So. 2d at 1001 (¶12). Only then may courts apply canons of construction, and its “primary objective” is determining the statute’s “interpretation which will meet the true meaning of the

⁷ Plaintiffs’ complaint partially quotes the Merriam-Webster definition of “disability” to suggest their “underlying conditions” alone constitute a “physical disability.” [Dkt. 15 at ¶83]. But they do not explain how their “physical conditions,” as opposed to their alleged concerns about COVID-19, actually “impair their ability to engage in certain tasks or actions.” Concerns about COVID-19 are a mental state, not a “physical disability” that could ever satisfy Section 23-15-713(d)’s “temporary or permanent physical disability.”

Legislature.” *Anderson v. Lambert*, 494 So. 2d 370, 372 (Miss. 1986); *see also Dawson v. Townsend & Sons, Inc.*, 735 So. 2d 1131, 1137 (¶25) (Miss. Ct. App. 1999). In this case, interpretative principles germane to that inquiry require reading the Code’s “temporary physical disability” provision narrowly.

1. **The purposes and objects of the Election Code demonstrate that a “temporary physical disability” does not encompass voters who fear contracting COVID-19 due to voting in-person.**

“The primary rule of [statutory] construction is to ascertain the intent of the legislature from the statute as a whole.” *Dawson*, 735 So. 2d at 1137. The whole act rule requires that when “construing statutes, all statutes in pari materia are taken into consideration, and a legislative intent deduced from a consideration as a whole.” *Mississippi Gaming Comm’n v. Imperial Palace of Mississippi, Inc.*, 751 So. 2d 1025, 1029 (¶15) (Miss. 1999) (quotes omitted); *Ashcraft v. Board of Sup’rs of Hinds County*, 36 So. 2d 820, 822-23 (Miss. 1948); *Henderson v. Blair*, 59 So. 856, 857 (Miss. 1912).

As a whole, the Election Code establishes a comprehensive in-person voting system, with very few absentee balloting exceptions. The physical disability exception in Section 23-15-713(d) thus must be interpreted narrowly—so as to not allow an exception to swallow the rule. Yet reading the physical disability excuse to apply to virtually anyone who subjectively claims a fear of catching COVID-19, but does not have a physical disability, would turn the Election Code on its head. The excuse would become the rule—not the exception.

2. Plaintiffs’ reading of the “physical disability” excuse is internally inconsistent with the Code’s other mail-in absentee voting excuses.

Plaintiffs’ interpretation of “physical disability” would produce an internal statutory conflict within Section 23-15-713, which falls out of step with “[t]raditional statutory construction requir[ing] that a statute receive such construction as will, if possible, make all its parts harmonize with each other, and render them consistent with its scope and object.” *Legislature of State v. Shipman*, 170 So. 3d 1211, 1217 (¶21) (Miss. 2015) (quotes omitted).

Indeed, the legislatively-established excuses for casting a ballot by mail apply only to certain *objective* classes of voters. *See* Miss. Code Ann. § 23-15-713(d)-(f), § 23-15-715(b), § 23-15-721. A voter either is or is not: age 65 or over; temporarily residing outside the county where he or she is registered; permanently or temporarily physically disabled; or attending to a hospitalized relative who is permanently or temporarily physically disabled. Miss. Code Ann. § 23-15-713(d)-(f), § 23-15-715(b).

Plaintiffs’ version of a “physical disability” could apply to anyone who subjectively, and unverifiably, claims a fear of catching COVID-19. That is inconsistent with the scope and object of the legislatively-established excuses within Section 23-15-713.

3. Legislative history proves the phrase “physical disability” must be read and applied narrowly.

HB 1521. By enacting HB 1521, the Legislature 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.” And when the Legislature amended the disability excuse provision in July 2020, it did *not* expand

the definition of “physical disability” to encompass voters who fear contracting COVID-19 due to voting in-person.

Instead, when specifically addressing the disability excuse provision in light of COVID-19, the Legislature amended HB 1521 to include *only* that a voter “under a physician-imposed quarantine” equates to a voter who has a “temporary physical disability.” This is further evidence that the Legislature did not intend to enact an expansive and subjective definition of “physical disability.” *Cf. Southwest Drug Co. v. Howard Bros. Pharmacy of Jackson, Inc.*, 320 So. 2d 776, 779 (Miss. 1975).

Prior version of Section 23-15-713. Mississippi’s current Election Code was first enacted in 1986. Before then, the Legislature’s absentee voter excuses were codified in Code Section 23-9-603. At that time, the legislatively-established “disability” excuse for casting a ballot by mail applied, in pertinent part, to: “(4) Any person who is sick or physically unable to go to the polls on election day and vote in person.” *See Murphree v. Winter*, 598 F. Supp. 374, 377 (S.D. Miss. 1984) (quoting Miss. Code Ann. § 23-9-603(4) (Supp. 1983)).⁸

Since 1987, the Election Code’s legislatively-established excuses for casting a ballot by mail have applied only to narrow and objective classes of voters. Specifically, the Election Code no longer provides an excuse for those who are “sick or physically unable to go to the polls.” Instead, the Code’s language, as it reads today, demonstrates that, if a voter does not have an actual physical disability, the voter

⁸ Code Section 23-9-603(4), and the Election Code’s other pre-1986 absentee voters laws were repealed by Mississippi Laws 1986, Chapter 495, Section 343, effective from and after January 1, 1987.

lacks the statutorily-required reason that the voter’s “attendance at the voting place could reasonably cause danger to himself, herself or others.” *See Stidham v. State*, 750 So. 2d 1238, 1245 (¶30) (Miss. 1999) (“[W]here the words or provisions of a statute differ from those of a previous statute on the same subject, they are presumed to have a different construction or meaning, and to denote an intention to change the law.”) (quotes omitted).

In sum, even assuming Section 23-15-713(d)’s “physical disability” excuse is ambiguous and statutory construction is required, the only interpretative canons relevant here demonstrate that voters do not have a “physical disability” just because they have a non-disability and concerns about COVID-19. The Court should enter a declaration in the Secretary of State’s favor confirming that, under Section 23-15-713(d), if the voter has no actual physical disability, then the voter lacks the statutorily-required reason that the voter’s “attendance at the voting place could reasonably cause danger to himself, herself or others.”

II. The Legislature’s Recent Clarification of Section 23-15-713(d) Only Permits Voters Compelled to Quarantine by an Authorized Physician to Vote Absentee Under the Statute’s “Temporary Physical Disability” Excuse.

Plaintiffs’ second claim asserts that if a voter voluntarily “self-quarantines” based on “guidance” from “public health authorities,” the voter may vote by mail utilizing HB 1521’s recent clarification to Section 23-15-713(d), which states that a “temporary physical disability” includes a voter “under a physician-imposed quarantine.” [Dkt. 15 at ¶92]. Plaintiffs’ take on the statute is unavailing.

- A. The plain meaning of “under a physician-imposed quarantine” requires a mandate issued by a duly-authorized physician that compels a voter to quarantine.**

Similar legal principles used above in Section I. A.’s plain meaning analysis of “temporary physical disability” likewise apply when interpreting the phrase “under a physician-imposed quarantine” in Section 23-15-713(d). For purposes of absentee voting in this November’s election, voters with a “temporary physical disability” under Section 23-15-713(d) specifically include “any qualified elector who is under a physician-imposed quarantine due to COVID-19 during the year 2020.” Miss. Code Ann. § 23-15-713(d) (Rev. 2020). Because the application of the Legislature’s clarification turns on the meaning of “under a physician-imposed quarantine,” the Court must interpret that operative phrase.

Fortunately, “under a physician-imposed quarantine” is straightforward. “No citation is needed for the principle that” when a statute’s “words are clear and concise, courts and agencies are bound to apply their usual and ordinary meaning.” *City of Tchula v. Mississippi Public Serv. Comm’n*, 187 So. 3d 597, 600 (¶11) (Miss. 2016). And significantly, when Mississippi courts seek to determine the “common and ordinary meaning” of a phrase, “consulting the phrase’s dictionary definition is appropriate.” *Buffington*, 43 So. 3d at 455 (¶16) (Miss. 2010).

The noun form of “quarantine” means “a restraint upon the activities or communication of persons or the transport of goods designed to prevent the spread of disease” or “a state of enforced isolation.”⁹ The transitive verb “impose” means “to

⁹ *Quarantine*, Merriam-Webster, <<https://www.merriam-webster.com/dictionary/quarantine>> (last visited August 27, 2020).

establish or apply by authority” or “to establish or bring about as if by force.”¹⁰ When those words are used together to form the phrase “under a physician-imposed quarantine,” that term means subject to a mandatory restraint, or state of enforced isolation, established by an authorized physician. Thus, the Legislature’s recent clarification that a voter “under a physician-imposed quarantine” qualifies to vote absentee, by definition, only extends to a voter who has been *compelled to quarantine due to COVID-19 by an authorized physician*.

The Legislature’s clarification applies, for example, if a voter’s personal physician (who has authority over the voter by virtue of their established physician-patient relationship) requires the voter to quarantine, and thus renders the voter eligible to cast an absentee ballot under the “temporary physical disability” excuse in Section 23-15-713(d).

Similarly, a physician authorized by law may compel a particular voter, or specifically defined group of voters, to quarantine and thereby trigger Section 23-15-713(d)’s “temporary physical disability” absentee excuse. On August 4, 2020, in fact, the State Health Officer issued an “Order for the Isolation of Individuals Diagnosed with COVID-19” that meets the statute’s definition precisely. *See* [August 4, 2020 MDH Order, Ex. 8]. Dr. Dobbs’ order requires that all “[p]ersons 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).” [August 4, 2020 MDH Order, Ex. 8].

¹⁰ *Impose*, Merriam-Webster, <<https://www.merriam-webster.com/dictionary/impose>> (last visited August 27, 2020).

Far different from CDC guidance or a random physician's non-binding recommendations to the public, all persons subject to Dr. Dobbs' order must follow it, or face statutorily-established penalties. Miss. Code Ann § 41-3-59, § 41-23-2. Persons ordered to quarantine under the August 4 order are plainly "under a physician-imposed quarantine," in every sense of those terms, for purposes of Code Section 23-15-713(d)'s "temporary physical disability" absentee excuse.

The objectively-determinative factors are that *only* a voter who has been *compelled by an authorized physician to quarantine* qualifies to vote by absentee ballot utilizing the Legislature's recent clarification of the Code's "temporary physical disability" excuse.

Plaintiffs' proffered interpretation of "under a physician-imposed quarantine" contradicts Section 23-15-713(d)'s plain meaning. Their position ignores the fact that unenforceable "guidance" or "recommendations" *do not* mandate that anyone must quarantine. Plaintiffs' skewed reading also sidesteps the fact that only an authorized physician can compel a voter to quarantine. Worse still, adopting plaintiffs' view would effectively qualify all voters to cast absentee ballots by mail based on a subjective, self-manufactured, and unenforceable "quarantine." Section 23-15-713(d), as amended, does not support that ultimate result.

To underscore this point, applying Section 23-15-713(d) consistent with its plain meaning, the following practical examples illustrate when a voter is "under a physician-imposed quarantine," and thus can claim a "temporary physical disability" to vote absentee by mail, and when the voter is not:

“Under a Physician-imposed Quarantine”	Not “Under a Physician-imposed Quarantine”
<p>Voter ordered to quarantine by his or her own physician</p> <p>Voter subject to order issued by a government official-physician, such as the State Health Officer, that compels the voter to quarantine, under authority of law</p>	<p>Voter aware of non-binding CDC or Mississippi Department of Health advice recommending that persons should stay home as much as possible and to avoid community or other public group events</p> <p>Voter reads statements by a physician in a newspaper suggesting people should stay home when possible</p> <p>Voter reads statements in a physician-authored research paper noting the possibility of contracting COVID-19 in public places</p> <p>Voter receives a recommendation to limit public interactions from a family friend, who is a physician</p> <p>Voter watches a cable news program where a guest physician opines that a future spike in COVID-19 cases will occur in the Fall</p> <p>Voter views information on the internet, or social media, which suggests public health authorities have issued guidance to self-quarantine</p>

In sum, “under physician-imposed quarantine” means exactly what it says. Only an order by an authorized physician that compels a voter to quarantine counts as a “temporary physical disability” under HB 1521’s recent amendment. The Court should enter a declaration in the Secretary of State’s favor confirming that is the plain meaning of amended Section 23-15-713(d), without ever having to resort to any statutory construction principles.

B. Mississippi statutory construction principles also thwart plaintiffs' expansive proffered interpretation.

Even if “under a physician-imposed quarantine” could be considered ambiguous, several construction principles prove the Legislature never intended for that phrase to spawn an expansive new absentee excuse for this November’s election.

1. HB 1521’s legislative history proves its phrase “under a physician-imposed quarantine” must be read and applied narrowly.

As Judge Leslie Southwick has explained, in construing statutes, “[a] useful perspective on how to interpret the final enactment is gained by examining the drafting context, i.e., the process of revision that culminated in the statute.” *Dawson*, 735 So. 2d at 1138-39 (¶31) (Southwick, P.J.). By looking at the legislature’s final enactment, “then reviewing what was discarded or appended, [courts] can better understand what the ultimate creation is supposed to be—and not be.” *Id.*

HB 1521’s drafting history conclusively establishes the Legislature did not intend for Section 23-15-713(d)’s amended language to allow absentee mail-in voting due to mere concerns about catching COVID-19 at the polls. HB 1521’s original draft, as introduced in the Legislature and passed by the House on March 10, did not propose to modify Section 23-15-713(d), or any other absentee excuses. *See* [HB 1521 Legislative History Summary, Ex. 3; HB 1521 as Introduced, Ex. 4]. Subsequently, as everyone knows, a rise in Mississippi COVID-19 cases occurred, and the Legislature suspended its Session.

When the Legislature reconvened a few months later, committees studied the need to amend HB 1521 in response to growing concerns of the spread of COVID-19.

On June 8, the Senate Elections Committee adopted a strike-all amended version of the bill, and, a week later, the full Senate passed the amended version, with even further floor amendments. *See* [HB 1521 Senate Comm. Amendments, Ex. 5]. With respect to Section 23-15-713(d), the Senate proposal included the following language:

(d) . . . For purposes of this paragraph (d), “temporary physical disability” shall include any qualified elector unable to appear personally at the polling place of the election district in which he or she is a qualified elector because the elector is under a physician-imposed quarantine due to the concern of a COVID-19 public health risk or is caring for a dependent that is under a physician-imposed quarantine due to the concern of a COVID-19 public health risk, during such time as a State of Emergency is declared by the Governor due to COVID-19.

[HB 1521 Senate Amendment Report, § 6, Ex. 6 (emphasis added)].

On June 19, the full House rejected the Senate version, which resulted in a conference. *See* [HB1521 Legislative History Summary, Ex. 3]. A week later, House and Senate conferees filed the final version. *See* [HB 1521 Legislative History Summary, Ex. 3; HB 1521 Conference Report, Ex. 7]. Then, a few days later, the full House and Senate approved the bill’s final version, which the Governor signed on July 8. *See* [HB 1521, Ex. 2]. The bill, as approved by both houses and the Governor, rejected the terms “under a physician-imposed quarantine due to the concern of a COVID-19 public health risk” in favor of the final enacted version’s operative language: “under a physician-imposed quarantine due to COVID-19.” [HB 1521 § 6, Ex. 2].

By rejecting the terms “due to the concern of a COVID-19 public health risk” in favor of the narrower phrase its final version incorporated in Section 23-15-713(d), the Legislature confirmed that a voter’s subjective COVID-19 concerns do not qualify

him or her as temporarily physically disabled. The bill's drafting history confirms what HB 1521's "under a physician-imposed quarantine" disability excuse, as Judge Southwick put it, actually "is supposed to be—*and not be.*" *Dawson*, 735 So. 2d at 1139 (¶31) (emphasis added). HB 1521 is not a panacea for just anyone who wishes to vote absentee by mail for the November election. Only a voter under an authorized physician's quarantine order can take advantage of HB 1521's new provision.

Plaintiffs lack a direct response to HB 1521's drafting history. But they do have an astonishing legislative history theory, which no Mississippi appellate court has ever endorsed. Plaintiffs mistakenly believe a single legislator's statements concretely-establish the entire Legislature's intent behind the meaning of "under a physician-imposed quarantine." Here is how their theory goes: during a floor debate over HB 1521, Representative Owen "clarified" that the Legislature really intended to allow voters who self-quarantine, based on non-binding guidance, to cast mail-in ballots as "temporarily physically disabled," even though the law says that only voters "under a physician-imposed quarantine" qualify. [Dkt. 15 at ¶75]. Plaintiffs' floor debate theory gets them nowhere fast.

A single legislator's statements obviously cannot establish the true meaning of a phrase, much less the collective intent of the entire Legislature in enacting it. Under longstanding Mississippi law, a legislator's testimony is irrelevant hearsay in a statutory interpretation dispute. *Imperial Palace*, 751 So. 2d at 1028 (¶14). As Justice Fred Banks succinctly explained in *Imperial Palace*, "[w]hile examination of legislative intent is necessary to determine the meaning of ambiguous or

contradictory statutes . . . Testimony to explain the motives which operated upon the law-makers, or to point out the objects they had in view, is wholly inadmissible.” *Id.* at 1028 (¶14) (quotes omitted). And the reason for that rule makes great sense: crediting what individual legislators might say about the meaning of a statute “would take from the statute every semblance of certainty, and make its character depend upon the varying and conflicting statements of witnesses.” *Id.* at 1028-29 (¶14) (quotes omitted).

Assuming Representative Owen’s alleged statements could ever prove what the Legislature intended HB 1521 to mean (which they do not), in this Court proceeding, his statements do not prove anything.¹² Meanwhile, HB 1521’s relevant legislative history, and specifically its drafting history, reinforces the only meaning of the bill’s phrase “under a physician-imposed quarantine” and its import here—a voter must be actually subject to an authorized physician’s order to quarantine to rely on HB 1521’s recent amendment for voting absentee by mail in the November election.

2. Narrowly construing “under a physician-imposed quarantine” comports with the Election Code’s policy preference for in-person voting.

As discussed, the whole act rule requires that when “construing statutes, all statutes *in pari materia* are taken into consideration, and a legislative intent deduced from a consideration as a whole.” *Imperial Palace*, 751 So. 2d at 1029 (¶15) (quotes

¹² Even if Representative Owen’s floor debate could be considered in a statutory interpretation inquiry (which they cannot), his statements are vague and inconclusive, at best. *See N.L.R.B. v. SW General, Inc.*, 137 S.Ct. 929, 943 (2017) (“floor statements by individual legislators rank among the least illuminating forms of legislative history”).

omitted). The Election Code establishes, as a whole, a comprehensive in-person voting system, with a few absentee balloting exceptions. HB 1521's recent modification of Section 23-15-713(d) must be read in that context. And, when it is, the whole act rule dictates that "under a physician-imposed quarantine" can only mean that an authorized physician's order compelling a voter to quarantine is required to vote absentee under a "temporary physical disability excuse. Any other reading would turn the Election Code's voting system inside-out.

3. Plaintiffs' broad reading of "under a physician-imposed quarantine" is inconsistent with the Code's mail-in absentee voting excuses.

Like the Election Code's overarching requirement of in-person voting with few limited absentee excuses, the legislatively-established excuses for casting a ballot by mail apply only to narrow and objective classes of voters. *See* Miss. Code Ann. § 23-15-713(d)-(f), § 23-15-715(b), § 23-15-721. As noted, a voter either is or is not: age 65 or over; temporarily residing outside the county where he or she is registered; permanently or temporarily physically disabled; or attending to a hospitalized relative who is permanently or temporarily physically disabled. Miss. Code Ann. § 23-15-713(d)-(f), § 23-15-715(b). And whether or not a particular voter falls within those classes can be proved or disproved.

Plaintiffs' version of Section 23-15-713(d) would establish a subjective and unverifiable absentee excuse. If non-binding, general public health "guidance" qualifies as placing a voter "under a physician-imposed quarantine" and thereby "temporarily physically disabled," then every voter currently has the option to deem himself or herself eligible to vote by mail. Contrary to plaintiffs' proposed meaning of

the amended statute, its other provisions show the Legislature never intended to tack a wide-open excuse on to the statute.

In sum, even assuming “under physician-imposed quarantine” is ambiguous and statutory construction is required, the only interpretative canons relevant here demonstrate the Legislature never intended for HB 1521 to create anything more than an opportunity for voters ordered to quarantine by an authorized physician to vote absentee by mail in the upcoming election. The Court should enter a declaration in the Secretary of State’s favor confirming that is what HB 1521’s amendment to Section 23-15-713(d) means.

III. Section 23-15-713(d)’s “Dependent” Provision Permits Voters Caring For Someone Compelled to Quarantine by an Authorized Physician, and Who Relies on the Voter for Support, to Vote Absentee.

Plaintiffs’ third and final claim piggybacks on their second. They assert that HB 1521’s modification to Section 23-15-713(d) allows a voter to cast an absentee ballot by mail “if he or she provides care or support to any other individual who is avoiding unnecessary public gatherings during the COVID-19 pandemic.” [Dkt. 15 at ¶97]. Their belief in how the amended statute’s “dependent” provision should be applied relies on the same errors as their approach to its phrase “under a physician-imposed quarantine.”

The statute’s phrase “under a physician-imposed quarantine” in its “dependent” provision must be interpreted narrowly the same way as its predecessor provision pertaining to any voter who is “under a physician-imposed quarantine.” *See Millsaps College v. City of Jackson*, 101 So. 574, 575 (Miss. 1924) (absent proof of a

contrary intention, “where the same word or phrase is used in different parts of a statute, it will be presumed to be used in the same sense throughout; and where its meaning in one instance is clear this meaning will be attached to it elsewhere”). For all the reasons stated above, the same phrase in both provisions means the same thing: only persons subject to an order by an authorized physician compelling them to quarantine counts as being “under a physician-imposed quarantine.”

With that important qualification regarding the “dependent” provision’s proper construction, the Secretary of State agrees with plaintiffs that the noun “dependent” means “one that is dependent: especially one who relies on another for support.”¹³ Thus, by virtue of construing together that definition of “dependent” and the appropriate construction of “under a physician-imposed quarantine,” as established in Section II., above, the “dependent” provision means: any voter who is caring for a person who is subject to an order by an authorized physician compelling him or her to quarantine, and relies on the voter for support, qualifies to vote by absentee ballot under Section 23-15-713(d), as amended.

The Court should enter a declaration in the Secretary of State’s favor confirming that is the proper construction of the “dependent” provision that HB 1521 added to Section 23-15-713(d).

¹³ *Dependent*, Merriam-Webster, <<https://www.merriam-webster.com/dictionary/dependent>> (last visited August 27, 2020).; [Dkt. 15 at ¶96].

IV. The Court Should Deny and Dismiss Plaintiffs' Requested Injunctive Relief.

In addition to declaratory relief, plaintiffs' complaint seeks a mandatory injunction ordering the Secretary of State to "instruct county elections officials about the application of Mississippi Code § 23-15-713(d)" and require the "Defendants to take steps to educate the public about their right to vote by absentee ballot under Mississippi Code by absentee ballot under Mississippi Code 23-15-713(d) as declared by this Court during the COVID-19 pandemic." [Dkt. 15 at p. 30]. The Court should deny and dismiss plaintiffs' claims for injunctive relief.

A "mandatory injunction" compelling a party to take some affirmative action is "a harsh remedy that is not favored by courts, and should be used only in cases of great necessity." *Ruff v. Estate of Ruff*, 989 So. 2d 366, 370 (¶13) (Miss. 2008). Similar to when a party is seeking preliminary injunctive relief, plaintiffs seeking permanent injunctive relief must demonstrate: (1) success on the merits; (2) the requested injunctive relief is necessary to prevent irreparable injury; (3) plaintiffs' injury outweighs harm the injunction will cause the defendants; and (4) entry of an injunction is consistent with the public interest. *A-1 Pallet Co. v. City of Jackson*, 40 So. 3d 563, 568-69 (¶19-¶20) (Miss. 2010); *see also id.* ("[F]or a permanent injunction to be granted, a party must show an imminent threat of irreparable harm for which there is no adequate remedy at law.") (internal quotations omitted).

Here, plaintiffs fail at each step. Plaintiffs' claims fail on the merits, for all the reasons explained above. Yet, whether or not plaintiffs succeed on the merits, they have no irreparable injury to support their requested injunctive relief. If they lose on

the merits, then they would have no injury. But, even if they win, no impending irreparable injury would exist. To be sure, if plaintiffs prevail, they will possess a declaratory judgment against their local circuit clerks that allows them to vote absentee by mail in the November election.

Plaintiffs' balance of harm argument fails for the same reasons. They have no harm to balance if they lose on the merits. If they win, they will have no threatened harm because they will have obtained a declaration giving them all the relief to which they could be entitled, absent proof that their local Circuit Clerks will not abide by the Court's declaration. At the same time, the harms inherent in requiring defendants to take actions which are not authorized by law,¹⁴ and to expend public funds and other election resources on a court-ordered publicity campaign, would plainly outweigh any impending harm.

Finally, the public interest factor also weighs against injunctive relief no matter what the Court does with the merits of plaintiffs' claims. If plaintiffs lose, there is no reason to compel defendants to "instruct" non-parties about anything at all. Should plaintiffs somehow win any declaratory relief, the Court must presume election officials will abide by the law.¹⁵

¹⁴ Additionally, the Secretary of State has no authority under state law to "instruct" all Circuit Clerks how to interpret and administer the Legislature's laws governing the process of issuing and accepting absentee applications and ballots. The Court cannot order the Secretary to undertake actions he is not legally authorized to perform. *See Punzo v. Jackson County*, 247 So. 2d 861, (Miss. 2003).

¹⁵ *See M.T. Reed Constr. Co. v. Jackson Municipal Airport*, 227 So. 2d 466, 469 (Miss. 1969) ("the presumption of law is that public officials will perform their duties in accord with law"); *Trotter v. Frank P. Gates & Co.*, 139 So. 843, 845 (Miss. 1932) (same).

In sum, the Court should deny and dismiss plaintiffs' claims for injunctive relief because, no matter how the Court resolves their claims for declaratory relief, plaintiffs have failed to prove any of the required elements for injunctive relief.

CONCLUSION

For the foregoing reasons, the Secretary of State requests that the Court enter a final judgment in his favor rejecting plaintiffs' claim¹⁶ and specifying that:

(1) The plaintiffs in this lawsuit are currently ineligible to cast an absentee ballot under the temporary physical disability excuse contained in Mississippi Code Section 23-15-713(d), as amended by 2020 House Bill 1521.

(2) Qualified Mississippi electors with pre-existing physical conditions or other infirmities, and qualified Mississippi electors caring for a person with preexisting physical conditions or infirmities, and who relies on the elector for support, are not eligible to vote by absentee ballot under the temporary physical disability excuse set forth in Mississippi Code Section § 23-15-713(d), as amended by 2020 House Bill 1521, merely based upon a fear or concern of contracting COVID-19 through voting in-person at their designated polling place on election day.

(3) Qualified Mississippi electors are only eligible to vote by absentee ballot by virtue of being under a physician-imposed quarantine as set forth in the temporary physical disability absentee excuse set forth in Mississippi Code Section 23-15-713(d),

¹⁶ In the alternative only, should the Court grant plaintiffs any injunctive relief, or any other declaratory relief explicitly or implicitly compelling the Secretary of State to take any action, or restraining the Secretary from taking any action, the Secretary hereby requests that this Court stay any order it enters granting plaintiffs' relief pending appeal, pursuant to Mississippi Rule of Civil Procedure 62, such that the Secretary may seek any further relief necessary from the Mississippi Supreme Court.

as amended by 2020 House Bill 1521, if that qualified elector, or a person who the elector is caring for and relies on the elector for support, has been ordered to quarantine by a physician with whom he or she has established a physician-patient relationship, or other physician duly authorized by law to order the qualified elector to quarantine, and thus cannot appear at his or her polling place to cast a ballot in-person.

(4) Denying and dismissing plaintiffs' claim for mandatory injunctive relief with prejudice.

THIS the 27th day of August, 2020

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing document has been filed with the Clerk of Court using the Court's MEC system, and thereby served on all counsel of record who have entered their appearance in this action.

THIS the 27th day of August, 2020

S/Justin L. Matheny
Justin L. Matheny