IN THE SUPREME COURT OF MISSISSIPPI

NO. 2020-IA-01199-SCT

IN RE INITIATIVE MEASURE NO. 65: MAYOR MARY HAWKINS BUTLER, IN HER INDIVIDUAL AND OFFICIAL CAPACITIES AND THE CITY OF MADISON

v.

MICHAEL WATSON, IN HIS OFFICIAL CAPACITY AS SECRETARY OF STATE FOR THE STATE OF MISSISSIPPI

ATTORNEYS FOR PETITIONERS:	KAYTIE M. PICKETT ADAM STONE ANDREW S. HARRIS CHELSEA H. BRANNON
ATTORNEY FOR RESPONDENT:	OFFICE OF THE ATTORNEY GENERAL BY: JUSTIN L. MATHENY
NATURE OF THE CASE:	CIVIL - OTHER
DISPOSITION:	GRANTED - 05/14/2021
MOTION FOR REHEARING FILED:	
MANDATE ISSUED:	

EN BANC.

COLEMAN, JUSTICE, FOR THE COURT:

¶1. In article 15, section 273(3), of our State's Constitution of 1890, "The people reserve unto themselves the power to propose and enact constitutional amendments by initiative." So important did the drafters of section 273 consider the right of the people to amend their constitution to be that, in section 273(13), the Legislature is forbidden from in any way

restricting or impairing "the provisions of this section or the powers herein reserved to the people."

¶2. The people did not, however, reserve the right unfettered by constitutional prerequisites that must be met before proposed amendments could be included on the ballot. An initiative sponsor must collect a number of signatures equal to twelve percent of all votes cast for Governor in the preceding gubernatorial election. Miss. Const. art. 15, § 273(3). At issue today is the additional requirement that the "signatures of the qualified electors from any congressional district shall not exceed one-fifth (1/5) of the total number of signatures required to qualify an initiative petition for placement upon the ballot." *Id.* Section 273 mandates that any signatures from a given congressional district that exceed twenty percent of the total number of required signatures "shall not be considered" when making the determination that the proposed amendment may be placed on the ballot. *Id.*

¶3. On November 3, 2020, a strong, if not overwhelming, majority of the voters of Mississippi approved Initiative 65, which establishes a legal medical-marijuana program.[1] In the case *sub judice*, the Petitioners challenge the Secretary of State's approval of the initiative for inclusion on the ballot by advancing a straightforward argument. Petitioners point out that Mississippi now has four, not five, congressional districts. They further point out that four (the number of districts) multiplied by twenty (the maximum percentage of signatures that may come from any one congressional district) equals only eighty. Therefore, Petitioners assert, it would have been impossible for the petition seeking to place Initiative

[1] The text of the initiative and the Attorney General's letter summarizing it are attached as Appendixes.

65 on the ballot to be properly certified as meeting the section 273 prerequisites by the Secretary of State. As the petition was certified in error, the Petitioners contend that all subsequent actions are void.

¶4. The Mississippi Constitution of 1890 provides two vehicles for amendment. In addition to the ballot-initiative process at issue today, the Legislature may propose amendments that are then voted upon by the qualified electors of the State. Miss. Const. art. 15, § 273(2). Nowhere therein does the Constitution allow amendment by the Supreme Court. *See* ***McNeal v. State***, 658 So. 2d 1345, 1350 (Miss. 1995) ("[T]he Mississippi Constitution cannot be amended by either case law or rules of court.") The Court has written,

> [The Constitution] should not be changed, expanded or extended beyond its settled intent and meaning by any court to meet daily changes in the mores, manners, habits, or thinking of the people. The power to alter is the power to erase. Such changes should be made by those authorized so to do by the instrument itself-the people.

State v. Hall, 187 So. 2d 861, 863 (Miss. 1966). Accordingly, today's question is simple in the asking, if not in the answering. We must determine whether, as argued by Petitioners, the reduction in Mississippi's congressional districts from five to four broke section 273 such that it must be amended to function again, or whether, as the Secretary of State contends, it continues to function pursuant to the five congressional districts that existed at the time of its enactment.

¶5. Unlike the other two branches of government, the courts may not act proactively to address problems such as the one here. The Mississippi Supreme Court only has jurisdiction, or power, "as properly belongs to a court of appeals and shall exercise no jurisdiction on

matters other than those specifically provided by this Constitution or by general law." Miss. Const. art. 6, § 146. Article 15, section 273(9), specifically vests us with "original and exclusive jurisdiction" over all *cases* in which we are called upon to review the Secretary of State's approval of a ballot-initiative petition. Now, more than twenty years after the census that resulted in the problematic reduction on our congressional representation, after several ballot initiatives have been attempted both successfully and unsuccessfully, and after several unsuccessful attempts in the Legislature to address the problem, we find ourselves presented with the question squarely before us and nowhere to turn but to its answer. "It is our duty to interpret our Constitution when its meaning is put at issue." ***Reeves v. Gunn***, 307 So. 3d 436, 437 (¶ 2) (Miss. 2020) (citing ***Alexander v. State ex rel. Allain***, 441 So. 2d 1329, 1333 (Miss. 1983), *overruled on other grounds by* ***5K Farms, Inc. v. Miss. Dep't of Revenue***, 94 So. 3d 221 (Miss. 2012)). "We will not shirk this duty." ***Id.***

¶6. Remaining mindful of both the November 3, 2020 election results and the clear language in section 273 seeking to preserve the right of the people to enact changes to their Constitution, we nonetheless must hold that the text of section 273 fails to account for the possibility that has become reality in Mississippi, *i.e.*, that our representation in the United States House of Representatives and corresponding congressional districts would be reduced. As more fully set forth below, the intent evidenced by the text was to tie the twenty percent cap to Mississippi's congressional districts, of which there are now four. In other words, the loss of congressional representation did, indeed, break section 273 so that, absent amendment, it no longer functions.

¶7. Justice Chamberlin cites ***Myers v. City of McComb***, for the proposition that, in recognizing that section 273 can no longer function as the people designed it, we have "destroyed th[e] presumption" that the Constitution can order human affairs despite the occurrence of events unforeseen by its drafters. Chamberlin Diss. Op. ¶ 62 (citing ***Myers v. City of McComb***, 943 So. 2d 1, 7 (¶ 22) (Miss. 2006)). Justice Maxwell also writes that we conclude that the reduction in representation unintentionally stopped the ballot-initiative process from working. Maxwell Diss. Op. ¶ 51. We can have no idea what the drafters of section 273 did or did not foresee. It is wholly within the realm of possibility that the drafters foresaw or even hoped for a drop in congressional representation that would render the ballot-initiative process unworkable. The only evidence of the intent of the drafters that passed the amendment process is the intent found in the text of section 273 itself, and, as more fully developed below, that text clearly evidences an intent to cap the signatures at twenty percent of qualified electors of a single congressional district.

BACKGROUND

¶8. On July 30, 2018, Ashley Durval filed a petition for an initiative measure, enrolled as Initiative Measure 65 by the office of the former Secretary of State Delbert Hosemann. On August 7, 2018, the Attorney General's Office acknowledged receipt of the petition and certified that it had reviewed the petition. A week later, the Attorney General's Office sent the ballot title and a seventy-five-word ballot summary of the ten-page measure to the then-Secretary of State. According to the Secretary of State's brief, the initiative supporters

completed and submitted sufficient signatures complying with the constitutional requirements to the Secretary of State's Office on September 4, 2019.

¶9. Sometime in January of 2020, the Secretary of State's Office delivered the initiative measure to the Legislature. The Legislature proposed a legislative alternative to Initiative 65. Both were placed on the ballot approved by the State Board of Election Commissioners, composed of the Governor, the Attorney General, and the Secretary of State in September of 2020. On October 26, 2020, the Petitioners filed an Emergency Petition before the Court seeking review of the sufficiency of the petition for Initiative 65.

ANALYSIS

I. The Mississippi Supreme Court has original and exclusive jurisdiction over the Petitioners' claims.

¶10. Article 15, section 273(9), reads, "The sufficiency of petitions shall be decided in the first instance by the Secretary of State, subject to review by the Supreme Court of the state, which shall have original and exclusive jurisdiction over all such cases." Pursuant to section 273(9), and section 273(9) alone, of the possible sources of jurisdiction raised by the Petitioners, the Court has jurisdiction over the Petitioners' challenge to the sufficiency of the petition that resulted in Initiative 65 being placed on the ballot.

¶11. The Court does not have jurisdiction to review, affirm, or overturn the "will of the people" as evidenced by the results on November 3, 2020. The November 2020 results are not before us. The only matter subject to the Court's review today is the decision of the Secretary of State finding that the Initiative 65 petition was sufficient to be placed on the ballot.

II. The Petitioners have standing.

¶12. Mayor Mary Hawkins Butler of Madison, Mississippi, filed the instant petition in her individual and her official capacities. The City of Madison joined her in filing the petition. Standing is a jurisdictional issue, ***City of Madison v. Bryan***, 763 So. 2d 162, 166 (Miss. 2000); ***Frisby v. City of Gulfport (In re City of Biloxi)***, 113 So. 3d 565, 570 (Miss. 2013), and therefore addresses the fundamental question of the power of courts to act.

> [O]ur view is that the issue of "standing" is a jurisdictional question which can and should be raised by us on our own motion-this is especially true where, as here, a constitutional interpretation is sought. To conclude otherwise would permit the "standing" issue to be resolved with the accompanying possibility that it might be determined adversely to the complainants, thereby leaving this Court in the awkward posture of having interpreted the constitution for complainants who had no legal right to invoke the jurisdiction of the Court.

Williams v. Stevens, 390 So. 2d 1012, 1014 (Miss. 1980). "[S]tanding must exist when litigation is commenced and must continue through all subsequent stages of litigation, or the case will become moot." ***The Hotboxxx, LLC v. City of Gulport***, 154 So. 3d 21, 28 (¶ 24) (Miss. 2015) (alteration in original) (quoting ***In re City of Biloxi***, 113 So. 3d at 572 (¶ 20)). Before proceeding, we must determine that the petitioners have standing to ask the Court for redress.

¶13. It is worth reiterating that the Court recently abandoned the "colorable interest" standard for establishing standing. ***Reeves***, 307 So. 3d at 438-439 (¶ 11) (internal quotation marks omitted) (quoting ***Harrison Cnty. v. City of Gulfport (In re City of Gulfport)***, 557 So. 2d 780 (Miss. 1990)). However, "the traditional articulation of 'adverse impact' to describe

when a party can assert standing to bring a suit" survives. ***Id.*** (quoting ***In re City of Gulfport***, 557 So. 2d at 782). We have described our general law on standing as follows:

> Our general standing requirement is important to our review of standing issues because it appropriately focuses judicial review on a plaintiff's legal interest and a defendant's legal duty. However, it must be recognized that different standing requirements are accorded to different areas of the law, and an individual's legal interest or entitlement to assert a claim against a defendant must be grounded in some legal right recognized by law, whether by statute or by common law. Quite simply, the issue adjudicated in a standing case is whether the particular plaintiff had a right to judicial enforcement of a legal duty of the defendant or, as stated in ***American Book Co. v. Vandiver***, 181 Miss. 518, 178 So. 598 (1938), whether a party plaintiff in an action for legal relief can show in himself a present, existent actionable title or interest, and demonstrate that this right was complete at the time of the institution of the action. ***Id.*** at 599. "Such is the general rule." ***Id.***

City of Picayune v. S. Reg'l Corp., 916 So. 2d 510, 526 (¶ 40) (Miss. 2005).

¶14. The Court settled the issue of Butler's standing as in individual decades ago. Pursuant to ***Power v. Robertson***, 130 Miss. 188, 93 So. 769, 773 (1922), "any qualified elector has a right to question the sufficiency and validity of the petition." The Secretary of State accepts that Butler has standing in her individual capacity.

¶15. The City of Madison argues that it "is likely to experience an adverse effect different from any adverse effect suffered by the general public." The City contends that its zoning authority will be adversely affected by Initiative 65. We agree that the adverse impact alleged by the City is different from that likely to be suffered by the general public, a requirement of adverse-impact standing. ***Kinney v. Catholic Diocese of Biloxi, Inc.***, 142 So. 3d 407, 413 (¶ 14) (Miss. 2014). The Secretary of State argues that the City lacks standing because it does not share in the same procedural injury, *i.e.*, the allegedly improperly certified

petition, that gives rise to voter standing. However, the Secretary of State does not address the injury alleged by the City: the curbing of its zoning authority. Because the City alleges a present, actionable interest, *i.e.*, zoning authority, and an adverse effect different from that suffered by the general public from the implementation of Initiative 65, which could be remedied by the Court, we hold it, too, has standing.

III. The equitable doctrine of laches does not apply.

¶16. The Secretary of State raises the doctrine of laches, claiming it bars Butler's claims. Laches is defined as "[u]nreasonable delay in pursuing a right or claim—almost always an equitable one—in a way that prejudices the party against whom relief is sought." *Laches*, Black's Law Dictionary (11th ed. 2019). As such, we have said that the doctrine applies to bar a suit when "the plaintiff's unreasonable delay 'results in injustice or disadvantage to another.'" ***Trigg v. Farese***, 266 So. 3d 611, 626 (¶ 45) (Miss. 2018) (quoting ***Bolden v. Gatewood***, 250 Miss. 93, 119, 164 So. 2d 721, 732 (1964)).

¶17. "Laches, in legal significance, is not mere delay, but delay that works a disadvantage to another." ***Comans v. Tapley***, 101 Miss. 203, 57 So. 567, 573 (1911) (internal quotation mark omitted) (quoting ***Chase et al. v. Chase et al.***, 37 A. 804, 805 (R.I. 1897)). It is enforced when a party delays asserting his rights until "the condition of the other party has, in good faith, become so changed that he cannot be restored to his former state[.]" ***Id.*** (quoting ***Chase***, 37 A. at 805). The Secretary of State offers two arguments regarding disadvantage, one related to the public and the other related to his office.

¶18. The Secretary of State has failed to identify in the record any factual support for his laches argument. Regardless, from the facts provided by Butler, which the Secretary of State universally accepts, Butler acted within a reasonable time to file suit. Based on what the Court has been provided, the ballot was only finalized at some time in September when the State Board of Election Commissioners met. Within sixty days of that decision, Butler filed suit.

¶19. The Secretary of State's arguments that he and the public have been legally disadvantaged fail. Laches is an equitable doctrine preventing inequitable assertion of rights after an unreasonable delay. ***Evanovich v. Hutto***, 204 So. 2d 477, 479 (Miss. 1967) (citing ***Comans***, 57 So. at 567). The argument lacks grounding in republican and democratic principles. Mississippi's government can only validly act in ways in which it has been given power to act by the people of Mississippi. Miss. Const. art. 3, §§ 5–6. Regardless of an erroneous action taken by her government, the state of Mississippi persists in the organic state in which her citizens have formed her. *Id.* Accordingly, it is in our State's interest to have erroneous and void actions declared so. *See generally* ***Power***, 93 So. 769 (holding that a purported constitutional amendment was improperly added to our Constitution).

¶20. The Secretary of State's argument that his office has been disadvantaged by the Petitioners' seeking review is likewise without merit. The litigation is brought pursuant to a specific constitutional right to test the sufficiency of the petition. The Secretary of State has no vested interest beyond the constitutional conduct of his office. In short, holding that the Secretary of State properly passed on the sufficiency of the petition or improperly passed

on the sufficiency of the petition does not change the condition of the Secretary of State's office whatsoever. For the foregoing reasons, we find the Secretary of State's laches arguments to be without merit.

IV. The reduction in Mississippi's congressional representation renders article 15, section 273(3), unworkable and inoperable on its face.

¶21. When faced with a question regarding interpretation of our Constitution, the Court begins by examining the plain text of our Constitution. The Court "must enforce the articles of the Constitution as written." ***Pro-Choice Miss. v. Fordice***, 716 So. 2d 645, 652 (Miss. 1998). We enforce the "plain language" of the Constitution. ***Thompson v. Att'y Gen. of Miss.***, 227 So. 3d 1037, 1041 (¶ 11) (Miss. 2017) (internal quotation mark omitted) (quoting ***Johnson v. Sysco Food Servs.***, 86 So. 3d 242, 244 (¶ 3) (Miss. 2012)).

¶22. When a court is entreated to interpret the terms of a constitution, a court ought to "bow with respectful submission to its provisions[,]" ***Cohens v. Virginia***, 19 U.S. 264, 377, (1821), not "take liberties" with its text, ***National Mutual Insurance Co. v. Tidewater Transfer Co.***, 337 U.S. 582, 647 (1949) (Frankfurter, J., dissenting). Our Constitution's plain language is to be given its "usual and popular signification and meaning[.]" ***Town of Sumner v. Ill. Cent. R.R. Co.***, 236 Miss. 342, 111 So. 2d 230, 233 (1959) (quoting ***State v. Mobile, J. & K.C.R. Co.***, 86 Miss. 172, 38 So. 732, 735 (1905)). If that meaning lacks ambiguity, then there is "no reason for legislative or judicial construction." ***Dunn v. Yager***, 58 So. 3d 1171, 1189 (¶ 46) (Miss. 2011) (internal quotation mark omitted) (quoting ***Ex parte Dennis***, 334 So. 2d 369, 373 (Miss. 1976)).

¶23. Article 15, section 273(3), of the Mississippi Constitution of 1890 provides as follows:

> The people reserve unto themselves the power to propose and enact constitutional amendments by initiative. An initiative to amend the Constitution may be proposed by a petition signed over a twelve-month period by qualified electors equal in number to at least twelve percent (12%) of the votes for all candidates for Governor in the last gubernatorial election. The signatures of the qualified electors from any congressional district shall not exceed one-fifth (1/5) of the total number of signatures required to qualify an initiative petition for placement upon the ballot. If an initiative petition contains signatures from a single congressional district which exceed one-fifth (1/5) of the total number of required signatures, the excess number of signatures from that congressional district shall not be considered by the Secretary of State in determining whether the petition qualifies for placement on the ballot.

Before Mississippi lost a congressional seat following the 2000 census, the above-quoted provision worked well. The effect of the twenty percent cap, tied to congressional districts, was that no more—and no less—than twenty percent of the total number of required signatures must come from each congressional district. The system guaranteed that each congressional district would be equally a part of the process.

¶24. Mississippi's number of representatives did not remain stagnant or increase; it decreased to four. ***Mauldin v. Branch***, 866 So. 2d 429, 431 (¶ 3) (Miss. 2003). Notwithstanding several furtive fits and starts and a 2009 opinion from the Mississippi Attorney General recognizing and suggesting a remedy for the issue before us today, Mississippi Attorney General Opinion, No. 2009-00001, 2009 WL 367638, *Hosemann*, at

*1 (Jan. 9, 2009), the Legislature never made any serious attempt to amend section 273 to conform to the new reality.[2]

¶25. In the tension created by the decrease in representatives and the unchanged text of section 273(3) lies the Petitioners' argument. To be sure, it is not novel. In the aforementioned Attorney General's opinion, and at the request of then-Secretary of State Hosemann, the Attorney General's Office wrote as follows:

> the geographic distribution requirement of Section 273 requires that not more than 20% of the total required number of initiative petition signatures must come from the last five-district congressional district plan which was is [sic] effect prior to the adoption of the current four-district plan.[3] *It would be mathematically impossible to satisfy the requirements of Section 273 using just four districts*.

Miss. Att'y Gen. Op., No. 2009-00001, 2009 WL 367638, *Hosemann*, at *3 (Jan. 9, 2009) (emphasis added). The Petitioners contend that, indeed, the Secretary of State's approval of the Initiative 65 ballot measure was in error because, with four congressional districts, it is impossible that the Secretary of State followed the Constitutional directive to disregard signatures of qualified electors in excess of twenty percent of the total from any one district. In other words, twenty multiplied by four equals only eighty.

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[2] From 2003 to 2015, at least six attempts were made by individual legislators to amend section 273 to reflect the new reality of four congressional district. None made it out of committee.

[3] We note here that the state of Mississippi has not adopted a congressional districting plan since 1991. It has failed, over the last twenty years, to account for the loss of a congressional district and has never adopted a four district plan. The present four-district plan was adopted by a three-judge panel of the federal United States District Court for the Southern District of Mississippi when the Legislature failed to act.

A. The common and constitutional meanings of "congressional district" support the Petitioners' position.

¶26. No party disputes the fact that, in elections for the United States House of Representatives, Mississippians now go to the polls in four distinct congressional districts and vote to send four representatives to Washington, D.C., to represent them. It is important to note that the four districts being used were not created by any state actor. Despite the clear statutory directive to do so found in Mississippi Code Section 5-3-123, no standing joint congressional redistricting committee composed of members of the Mississippi House and Senate has, to date, drawn new congressional districts. *See* Miss. Code Ann. §§ 5-3-121, -123 (Rev. 2019). Mississippians elect their four representatives from districts drawn by federal courts. *See* ***Branch v. Smith***, 538 U.S. 254 (2003); ***Mauldin***, 866 So. 2d at 431 (¶ 3).

¶27. Petitioners argue, and we agree, that the plain language of section 273 ties the congressional districts mentioned therein to the actual, existing congressional districts. Again, we enforce the "plain language" of the Constitution. ***Thompson***, 227 So. 3d at 1041 (¶ 11) (internal quotation mark omitted) (quoting ***Johnson***, 86 So. 3d at 244 (¶ 3)). "The construction of a constitutional section is of course ascertained from the plain meaning of the words and terms used within it." ***Ex parte Dennis***, 334 So. 2d at 373 (citing ***State Teachers' College v. Morris***, 144 So. 374 (Miss. 1932)).

¶28. When searching for a popular or usual meaning of a term, the Court often turns to dictionaries for guidance. *See* ***Watson v. Oppenheim***, 301 So. 3d 37, 42 (Miss. 2020) (citing ***Lawson v. Honeywell Int'l, Inc.***, 75 So. 3d 1024, 1028 (Miss. 2011)). Our goal is to analyze

and understand the text as an ordinary speaker would understand the language; in short, we analyze the text of our Constitution as the people who ratified it and are governed by it would understand it. Amy Coney Barrett, *Congressional Insiders and Outsiders*, 84 U. Chi. L. Rev. 2193, 2194 (2017). "Congressional district" is defined as "a territorial division of a state from which a member of the U.S. House of Representatives is elected." *Congressional District*, Merriam-Webster's Collegiate Dictionary (11th ed. 2003).

¶29. The definition itself is simple, is unambiguous, and is not open to multiple interpretations. A congressional district is a division of a state that elects a member of the United States House of Representatives. The definition identifies two characteristics: (1) it defines geography of a state, and (2) it refers to the *present-tense act* of electing congressional representatives. An area can be called a congressional district if it is a geographic division of a state that now elects a representative. It follows that some other defined geographical area, such as a former congressional district, that does not elect a member of the House of Representatives does not meet the definition.

¶30. There are only four areas in the state that meet the definition because Mississippi only elects four congressional representatives. The above-described incontrovertible reality has existed since 2002. The number of congressional districts is not directly decided by any of the states of our nation though but rather through the application of the Permanent Reapportionment Act of 1929. 2 U.S.C. § 2a. In 2000, the United States House of Representatives reallocated the statutorily limited 435 seats; Mississippi's allocation was decreased from five seats to four seats. As more fully discussed below, the federal injunction

decried by Justice Maxwell in his dissent came after Mississippi's reduction in congressional representation.

¶31. We are persuaded that, when section 273 ties the twenty percent cap to qualified electors in a congressional district, it necessarily means the congressional districts as they exist at the time a petition is presented for approval as opposed to the congressional districts as they existed in 1992. The Secretary of State argues that the Petitioners are asking the Court to insert the word "current" before the words "congressional district" in section 273(3). Petitioners counter that the ordinary meaning of the phrase includes the understanding that they change over time. Petitioners point to the repeated use of "any county" in the Mississippi Constitution of 1890, *see, e.g.*, Miss. Const. art 5, §§ 135, 139, 140; art. 6, § 171; art. 8, § 206; art. 14, § 260. They point out that Mississippi county lines have changed, and new counties have been created since 1890. We agree that no one interpreting the pertinent sections would interpret them to mean the counties as they existed in 1890. It is the nature of counties and county lines that they can change over time.

¶32. Given the nature of proportional representation that exists in the United States House of Representatives, we find the changing nature of congressional districts is even more a part of the meaning—in both common understanding and law—of the phrase. Article I, section 2, of the United States Constitution, later modified by the Fourteenth Amendment, establishes the apportionment of representation in the United States House of Representatives. It provides for the census, which is to be taken every ten years, and based upon the results of which each state was to be apportioned representation in the House. U.S.

Const. art. II, § 2. Since the beginning of our constitutional republic, the very concept of proportional representation includes change over time. "Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State . . . ." U.S. Const. amend. XIV, § 2. The Fourteenth Amendment was ratified in 1868. *Id.* As shown by the Constitution as a whole, to contend that the Fourteenth Amendment froze representation in place as of 1868 would strain the bounds of credulity and defy the common and legal understandings of how proportional representation works.

¶33. Mississippi law similarly acknowledges the fluid nature of congressional representation. Mississippi Code Section 5-3-121 (Rev. 2019) mandates the creation of a joint congressional redistricting committee that is charged by law to "draw a plan to redistrict, according to constitutional standards, the United States congressional districts for the state of Mississippi" every ten years following census results. Miss. Code Ann. § 5-3-123 (Rev. 2019). In the event of change of representation in Congress, Mississippi Code Section 23-15-1039 (Rev. 2018) provides a stopgap procedure for electing people to Congress until redistricting occurs. When article 8, section 213A, of the Mississippi Constitution was adopted, the drafters acknowledged the fluid nature of districts by including the words "now existing." Mississippi Constitution article 8, section 213A, provided, when it was adopted, "There shall be appointed one (1) member of such board from each congressional district of the state as *now existing* . . . ." (Emphasis added.) It is telling that the drafters of the original version of our section 213A acknowledged the fluid nature of congressional districts and the

need to explicitly provide that, at the time, the section 213A districts would remain static contrary to that nature.

¶34. Pursuant to the foregoing reasoning, we reject the Secretary of State's argument that agreeing with the Petitioners requires the Court to insert the word "current" into the text of section 273, and we reject Justice Chamberlin's argument that section 273(3) mandates by its own terms alone the use of the 1992 congressional districts. The changing, evolving nature of proportional representation is simply too much a part of the common and legal understandings of the phrase "congressional district." Given the acknowledgment elsewhere in Mississippi law that representation and districts change over time combined with the origins of proportional representation in the United States, we would be in far more danger of editing the text of section 273 if, as urged by Justice Chamberlin, we held that it means the congressional districts as they existed in 1992.

¶35. Justice Chamberlin accuses us of disabling the Constitution, the very thing we all agree we have the duty of interpreting. Chamberlin Diss. Op. ¶ 63. We do no such thing. Drafted as it is, section 273(3) disables itself in being unworkable with fewer than five congressional districts in Mississippi. It is the dissents, rather, that would disable part of the constitution by amending it so that the twenty percent cap requirement is tied not to congressional districts but to former congressional districts. The "object to be desired," Chamberlin Diss. Op. ¶ 74 (internal quotation marks omitted) (quoting ***Myers***, 943 So. 2d at 7), as we strive to interpret Section 273, is a constitutional ballot-initiative amendment process that contains prerequisites with which petitions must comply but with which

compliance is no longer possible. The people of Mississippi, when they ratified the ballot-initiative process, ratified all of it including the twenty percent cap. No interpretation of the phrase "congressional district" allows it to include a geographical area that exists for reasons other than electing representatives to Congress, nor is an interpretation of a twenty percent cap per congressional district in a four-district Mississippi expansive enough to allow section 273(3) to continue functioning absent amendment. Chamberlin Diss. Op. ¶ 70.

B. The Secretary of State's proposed interpretation of section 273 would render impossible the requirement that signatures come from qualified electors of a particular congressional district.

¶36. Pursuant to the foregoing reasoning, we do not consider the use of the phrase "congressional district" in section 273 to be ambiguous. Accordingly, we would not normally resort to canons of interpretation. ***Dunn***, 58 So. 3d at 1189 (¶ 46) (internal quotation mark omitted) (quoting ***Ex parte Dennis***, 334 So. 2d at 373). However, it is worth noting that if there were ambiguity, then interpreting it as urged by the Secretary of State would prohibit an interpretation that harmonizes the whole of section 273. "[C]onstitutional provisions should be read so that each is given maximum effect and a meaning in harmony with that of each other." ***Dye v. State ex rel. Hale***, 507 So. 2d 332, 342 (Miss. 1987) (citing ***St. Louis & San Francisco Ry. Co. v. Benton Cnty.***, 96 So. 689 (Miss. 1923)). Pursuant to section 273(3), "The signatures of the qualified electors from any congressional district shall not exceed one-fifth (1/5) of the total number of signatures required to qualify an initiative petition for placement upon the ballot." According to the quoted language, the signatures in

support of a ballot initiative must come from qualified electors of the district in which they are counted.

¶37. Petitioners contend, and we agree, that electors cannot aver to be qualified electors of a nonexistent congressional district. According to a statute that regulates the qualified-elector requirement, signers of a ballot-initiative petition must aver that they are qualified electors of a congressional district. Miss. Code Ann. § 23-17-19 (Rev. 2018). Petitioners point to signatories from Simpson County to make their point. In an exemplar petition page, signers from Simpson County left their congressional district number blank. Petitioners also point out that in 2000, Simpson County would have been in the Fourth Congressional District but that it is now in the Third. Asking Simpson County signers to aver that they remain electors in the Fourth Congressional District would be asking them to aver to, at best, an inaccuracy. Even more damaging to the Secretary of State's interpretation are electors who live in areas of the state that, from 1992-2002, would have been qualified electors of the old Fifth Congressional District. None of those qualified electors vote in the Fifth Congressional District anymore because it does not exist. They cannot truthfully aver to be qualified electors of an extinct congressional district.

¶38. The preceding analysis illustrates the disharmony that results in interpreting the phrase "congressional districts" used in section 273(3) to have any other meaning than the actual congressional district used by Mississippians to select their representatives in Congress. If the Court is to avoid interpretations that fail to harmonize and give effect to the whole provision, then we must reject the Secretary of State's interpretation.

¶39. In resorting to Mississippi Code Section 23-15-1037 (Rev. 2018) in the face of the qualified-elector problem, Justice Chamberlin undermines his own argument that section 273(3) commands the use of the 1992 congressional districts. Justice Chamberlin takes the position that one's status as a qualified elector is conveyed not by what congressional district he lives in for purposes of selecting a representative, but as defined by Section 23-15-1037—even if Section 23-15-1037 ceases to be the law. Chamberlin Diss. Op. ¶ 75. According to Justice Chamberlin, as long as Section 23-15-1037 continues to define congressional districts—or even districts formerly known as congressional—in Mississippi signatories to a ballot-initiative petition may continue to faithfully aver membership on one of the 1992 congressional districts. Chamberlin Diss. Op. ¶ 75. We cannot accept his invitation that would allow the substitution of former, no-longer-existing congressional districts when nothing in the wording of section 273(3) calls for using anything other than now-existing congressional districts to satisfy the qualified-elector requirement.

C. The Secretary of State's statutory arguments fail.

¶40. To reiterate, we base our holding on the wording of section 273(3) and the undeniable reality that Mississippi elects its congressmen from four congressional districts. Accordingly, any foray into the effects of a statute purporting to draw five congressional districts is unnecessary. However, the Secretary of State and Justice Maxwell contend that, for purposes of state law including section 273(3), Mississippi still has five congressional districts. Both cite Section 23-15-1037, wherein the old five Congressional districts are delineated. The Secretary of State argues that, while the federal-court injunction that defines

Mississippi's four congressional districts for purposes of electing representatives prohibits the state from using it to define congressional districts for that purpose, it does nothing to prohibit the state from using it to define congressional districts for other purposes.

¶41. The Secretary of State's and Justice Maxwell's arguments face problems, though. First, we reach the conclusion above, pursuant to our duty to interpret the Constitutional text according to its plain meaning and to harmonize its parts, that the phrase "congressional district" as used in section 273(3) means, well, congressional district. It does not mean "old congressional districts" or "five districts that the Legislature may establish." The statute cannot trump the Constitution. ***Pickering v. Langston Law Firm, P.A.***, 88 So. 3d 1269, 1288 (¶ 100) (Miss. 2012).

¶42. Second, by operation of state law itself, Section 23-15-1037 no longer establishes Mississippi's congressional districts. The next code section provides as follows:

> Should an election of representatives in Congress occur after the number of representatives to which the state is entitled changes, and before the districts have changed to conform to the new apportionment, representatives shall be chosen as follows: If the number of representatives is increased, then one (1) member shall be chosen in each district as organized, and the additional member or members shall be chosen by the electors of the state at large; and if the number of representatives is decreased, then the whole number shall be chosen by the electors of the state at large.

Miss. Code Ann. § 23-15-1039 (Rev. 2018). In the above-quoted statute, the law anticipates the possibility that Mississippi's congressional representation can increase or decrease. The moment Mississippi lost a representative following the 2000 census, Section 23-15-1039, in the event of a congressional election without redistricting, would have activated to provide an alternative, at-large method for electing the remaining four representatives. Accordingly,

for a reason wholly separate from the federal injunction so severely decried by Justice Maxwell, Section 23-15-1037 no longer described Mississippi's congressional districts, to which the twenty percent requirement of section 273(3) is explicitly tied. Yet the demise of Section 23-15-1037 at the hands of Section 23-15-1039 is not yet complete. Section 23-15-1039 contains language explicitly providing that it would only be in effect "before the districts have changed to conform to the new apportionment." The statute does not require that the districts be changed by the Mississippi Legislature; it requires only that they be changed. Unarguably, as we sit in consideration of the case before us today, they have been changed. ***Mauldin***, 866 So. 2d at 436. Accordingly, as a matter of Mississippi law, Section 23-15-1037 is not just once removed from effect in setting Mississippi's congressional districts, it is twice removed.

¶43. The unworkable nature of the Secretary of State's argument can be illustrated with a hypothetical. Consider the following hypothetical statute that the Legislature might have enacted to conform Mississippi to the 2000 census results:

> (a) The State of Mississippi is hereby divided into four (4) congressional districts below:
>
> > FIRST DISTRICT. The First Congressional District shall be composed of the following counties and portions of counties . . . .
> >
> > SECOND DISTRICT. The Second Congressional District shall be composed of the following counties and portions of counties . . . .
> >
> > THIRD DISTRICT: The Third Congressional District shall be composed of the following counties and portions of counties . . . .

> FOURTH DISTRICT: The Fourth Congressional District shall be composed of the following counties and portions of counties . . . .
>
> (b) For purposes of article 15, section 273(3), of the Mississippi Constitution, the State of Mississippi is hereby divided into five (5) Congressional Districts below:
>
> . . . .

To consider having one set of congressional districts for the purpose of electing representatives to Congress and a different set of congressional districts for another purpose other than electing members of Congress illustrates the semantic mountain the Secretary of State must climb to prevail. The Legislature cannot legislate away reality, and the Court cannot decree away reality. The text of section 273(3) ties the twenty percent signature cap to Mississippi's congressional districts—not preexisting congressional districts or five districts as otherwise set by the Legislature. The Secretary of State argues that the five congressional districts once established by Section 23-15-1037 "may be used for anything but congressional elections." We conclude that when congressional districts no longer delineate the borders that determine where qualified electors who vote for a particular congressional seat reside, they become, well, just districts. To hold that the old five congressional districts remain congressional districts even though they no longer function to define the districts from which the voters of Mississippi elect their congressional representatives is a bridge too far.

¶44. In writing, "The reason the five congressional districts set forth in Section 23-15-1037 have not been used for twenty years to elect representatives to Congress is because

Mississippi has been enjoined by a panel of three federal district judges from doing so[,]" Justice Maxwell's dissent is simply wrong. Maxwell Diss. Op. ¶ 56 (citing ***Smith v. Clark***, 189 F. Supp, 2d 548, 559 (S.D. Miss. 2002)). Mississippi lost a representative due to the results of the 2000 census and the Permanent Reapportionment Act of 1929 before the federal panel drew new districts for Mississippi in the face of Mississippi's failure to do so. ***Mauldin***, 866 So. 2d at 432 (¶ 5). As set forth above, Section 23-15-1039 then activated to replace the five Section 1037 districts with one statewide, at-large district that until such time as redistricting occurred. Justice Maxwell expresses puzzlement as to how we reach that conclusion, Maxwell Diss. Op. ¶ 59, but it comes from the plain language of the statute quoted above. The mystery is not in how we reach the conclusion that Section 23-15-1039 changed Mississippi's congressional map when the state lost a representative, but it lies instead in how it can be denied that it did so. Following the loss of our fifth representative, under no circumstances short of regaining the fifth seat would Mississippians ever again go to the polls to elect representatives to Congress from the five Section 23-15-1037 districts. Miss. Code Ann. § 23-15-1039 ("[I]f the number of representatives is decreased, then the whole number shall be chosen by the electors of the state at large.") Even if the federal court had not issued the injunction, Mississippi by operation of state law would no longer have five congressional districts. It would have one statewide, at-large district. In addition, and as also noted above, Section 23-15-1039's wording does not attempt the setting of new congressional districts to acts of the Mississippi Legislature, and it is broad enough to

acknowledge, in State law, redistricting by federal injunction. Miss. Code Ann. § 23-15-1039 ("and before the districts have changed to conform to the new apportionment . . . .").

¶45. It would be interesting to know what the Secretary of State would conclude about the continued functioning of section 273(3) had Mississippi drawn its own new four-district map. Justice Maxwell goes as far as agreeing that section 273(3) would "no longer be in harmony" with a new four-district map. Maxwell Diss. Op. ¶ 58 n.6. If one concludes that Section 23-15-1037 saves section 273(3) but that a new statute that draws a new four-district map for Mississippi would render it inoperable, then the disagreement is not with our interpretation of section 273(3). It is instead with the proposition that Mississippi's representation in the United States House of Representatives can be set by federal law and that the federal injunction in absence of state action can draw the lines. Those are bones one must pick with Article I, Section 2, of and the Fourteenth Amendment to the United States Constitution, the Permanent Reapportionment Act of 1929, and a unanimous United States Supreme Court. ***Branch***, 538 U.S. at 254.

¶46. Although Justice Maxwell sees the issue before us as one purely of state law, Maxwell Diss. Op. ¶ 51, federal law decides how many representatives Mississippi sends to Congress. As long as Mississippi has fewer than five congressional districts, it can draw for itself no map of congressional districts that complies with both the federal apportionment of representation that requires four districts and section 273(3) that requires five for all of its provisions to function.

CONCLUSION

¶47. In the end, to agree with Justice Chamberlin's conclusion that the text of section 273(3) mandates proceeding pursuant to Mississippi's five congressional districts as they existed when section 273(3) was ratified in 1992 would require agreement with two ideas that cannot be sustained. First, we would have to be able to conclude that, in an alternate world where Mississippi retained five congressional districts but the district lines had changed, the ballot-initiative process would continue nonetheless to proceed under the 1992 district lines. The Secretary of State does not attempt to so argue in its brief. At oral argument, counsel for the Secretary of State declined to agree with such a conclusion. Nothing in the text of section 273 or anywhere else supports such a conclusion. Justice Chamberlin does not explain why the cap he reads as requiring the provision to be enforced pursuant to the 1992 districts would not work just as well with five different districts or, for that matter, more than five districts. Chamberlin Diss. Op. ¶ 72. Most importantly, pursuant to its own argument regarding the qualified-elector requirement, Justice Chamberlin's interpretation of section 273(3) can only give effect to the whole of section 237(3) if Section 23-15-1037 never changes. Second, as detailed in the preceding paragraph, we would have to be able to conclude that Mississippi has two separate sets of congressional districts—one for electing representatives to Congress and one set of congressional districts that would exist for purposes other than electing representatives. The latter faulty conclusion would also apply to Justice Maxwell's position that Mississippi continues to have five congressional districts pursuant to Section 23-15-1037. Both defy reason and reality; we can agree with neither.

¶48. Pursuant to the duty imposed on us by article 15, section 273(9), of the Mississippi Constitution, we hold that the petition submitted to the Secretary of State seeking to place Initiative 65 on the ballot for the November 3, 2020, general election was insufficient. Because Initiative 65 was placed on the ballot without meeting the section 273(3) prerequisites for doing so, it was placed on the ballot in violation of the Mississippi Constitution. Whether with intent, by oversight, or for some other reason, the drafters of section 273(3) wrote a ballot-initiative process that cannot work in a world where Mississippi has fewer than five representatives in Congress. To work in today's reality, it will need amending—something that lies beyond the power of the Supreme Court.

¶49. We grant the petition, reverse the Secretary of State's certification of Initiative 65, and hold that any subsequent proceedings on it are void.

¶50. **GRANTED.**

RANDOLPH, C.J., KING, P.J., BEAM, ISHEE AND GRIFFIS, JJ., CONCUR. MAXWELL, J., DISSENTS WITH SEPARATE WRITTEN OPINION JOINED IN PART BY CHAMBERLIN, J. CHAMBERLIN, J., DISSENTS WITH SEPARATE WRITTEN OPINION JOINED BY KITCHENS, P.J.; MAXWELL, J. JOINS IN PART.

MAXWELL, JUSTICE, DISSENTING:

¶51. With respect to the majority, this case involves a pure question of Mississippi law—interpretation of Mississippi's Constitution. And I strongly disagree that the Secretary of State acted in an unconstitutional manner by following Mississippi law. I am also hard pressed to see how a federal court's almost twenty-year-old injunction, aimed solely at federal congressional elections, has now somehow *unintentionally* destroyed Mississippi's

constitutional citizen-based ballot-initiative process. But that is exactly what the majority is saying.

¶52. The majority confidently and correctly points out that "[n]owhere therein does the Constitution allow amendment by the Supreme Court." Maj. Op. ¶ 4 (citing ***McNeal v. State***, 658 So. 2d 1345, 1350 (Miss. 1995)). Yet the majority does just that—stepping completely outside of Mississippi law—to employ an interpretation that not only amends but judicially kills Mississippi's citizen initiative process. While the majority admits that our Constitution should not be "expanded or extended beyond its settled intent and meaning *by any court*[,]" it actively injects a federal court's injunction into our Constitution—an injunction that was in no shape, form, or fashion aimed at the initiative process. Maj. Op. ¶ 4 (emphasis added) (quoting ***State v. Hall***, 187 So. 2d 861, 863 (Miss. 1966)). And in doing so, the majority rejects the existing harmony between our Constitution's plain text and current Mississippi statutory law. I suggest the majority should have heeded its own words that constitutional changes should not be made by courts but "by those authorized so to do by the instrument itself—the people." Maj. Op. ¶ 4 (quoting ***Hall***, 187 So. 2d at 863). But it has not. And through its actions, not only is this particular initiative dead, but so is Mississippi's citizen-initiative process.[4]

¶53. Now, based on the majority's holding, this constitutional ballot-initiative process may only be revived, or more accurately, be proposed by a legislative push. Because I do not join in the majority's stance, I dissent. Based on the Constitution's plain text and Mississippi's

[4] This opinion does not speak to the merits of the current initiative or the wisdom or folly of having a citizen-based initiative process.

unchanged statutory law, I disagree that the Secretary of State unconstitutionally placed Initiative 65 on the ballot.

¶54. The question before us concerns the constitutional requirement that "[t]he signatures of the qualified electors from any congressional district shall not exceed one-fifth (1/5) of the total number of signatures required to qualify an initiative petition for placement upon the ballot." Miss. Const. art. 15, § 273(3). In answering whether then-Secretary of State Delbert Hosemann properly certified the ballot initiative, the majority looks to two sources—(1) the dictionary definition of "congressional district" and (2) a federal injunction from a three-judge court. From these sources, it concludes Mississippi's Constitution *must* use the four federally drawn congressional districts for ballot-initiative purposes. Thus, in the majority's view, the amendment mechanism in section 273 "no longer functions." Maj. Op. ¶ 6.

¶55. But this case does not involve a federal election, much less a federal question. Nor is the Supremacy Clause or federal preemption at hand. We are called solely to interpret Mississippi's Constitution. So instead of citing dictionaries and federal panels, I respectfully suggest we look to *Mississippi* law. With this novel approach in mind, I point out that under current Mississippi law—whether we like it or not—there are five congressional districts. Miss. Code Ann. § 23-15-1037 (Rev. 2018). This much is irrefutable.

¶56. Section 23-15-1037, which lays out the *five districts*, has not changed since section 273 was added to Mississippi's Constitution. And there have been zero changes to the five districts listed in Section 23-15-1037, even after the number of seats in the United States

House of Representatives allocated to Mississippi was reduced from five to four following the 2000 United States census.

¶57. The reason the five congressional districts set forth in Section 23-15-1037 have not been used for twenty years to elect representatives to Congress is because Mississippi has been enjoined by a panel of three federal judges from doing so. ***Smith v. Clark***, 189 F. Supp. 2d 548, 559 (S.D. Miss. 2002), *aff'd sub nom.* ***Branch v. Smith***, 538 U.S. 254, 123 S. Ct. 1429, 155 L. Ed. 2d 407 (2003), *and amended sub nom.* ***Smith v. Hosemann***, 852 F. Supp. 2d 757 (S.D. Miss. 2011).[5] And while I have no reason to disagree with or decry this federal order, I do have to point out that this federal injunction deals only with federal congressional elections. ***Id.*** It does not consider, speak to, or in any way preclude Mississippi's ability to continue to use the five statutory congressional districts for *other purposes*—including the Secretary of State's use of these five districts to determine if section 273(3)'s signature requirement has been met.

¶58. Indeed, the continued functionality of section 273 was not even remotely on the federal judges' radar back in 2002 when they looked at federal-election districts. And these judges would not have touched it with a ten-foot pole even if it had been. That is because "[a] federal court may not interpret the State Constitution." ***Pro-Choice Miss. v. Fordice***, 716 So. 2d 645, 665 (Miss. 1998). Instead, it is this Court that "reserve[s] the 'sole and absolute right' to interpret the Mississippi Constitution." ***Id.*** at 665-66 (quoting ***Penick v.***

[5] Under this injunction, Mississippi must "use the congressional redistricting plan adopted by this [federal] court in its order of February 4, 2002, in all succeeding congressional primary and general elections for the State of Mississippi thereafter, until the State of Mississippi produces a constitutional congressional redistricting plan . . . ." ***Id.***

State, 440 So. 2d 547, 551 (Miss. 1983)); *see also, e.g.*, ***Learmonth v. Sears, Roebuck & Co.***, 631 F.3d 724, 739 (5th Cir. 2011) (certifying a question of Mississippi constitutional law to this Court). And after reviewing our Constitution's text and Mississippi's current statutory law—Section 23-15-1037—it is obvious and beyond debate that both contemplate five congressional districts.[6]

¶59. I also do not follow the majority's logic that Mississippi Code Section 23-15-1039 (Rev. 2018) somehow erases these five geographical districts. Like the federal injunction, this section obviously addresses what to do *until* the Legislature redraws Mississippi's congressional districts. Again, while the majority wrongly insists these statutory districts *have changed* by virtue of the federal injunction, *under Mississippi law*, it is the Legislature that draws Mississippi's congressional districts. Miss. Code Ann. § 5-3-123 (Rev. 2019). And it has been widely documented that the Legislature—which is statutorily tasked with redrawing these districts—has failed to do so for nearly two decades. Because this case involves absolutely no question of federal law, we need look no further than Mississippi law. And under Mississippi law—including section 273—the Legislature has yet to change Mississippi's congressional districts from five to four. Just crack open the Mississippi Code.

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[6] The majority poses a "what if" question, expressing particular interest in my "hypothetical" view of the continued functionality of section 273(3) had the Legislature redrawn the districts in Section 23-15-1037 to reflect four, instead of five, districts. Maj. Op. ¶ 43. Of course, this is not the scenario this court is facing. Let's be clear—we are facing five statutory districts. But if the Legislature had acted and amended Section 23-15-1037 but not pushed a successful amendment of section 273(3), that section would no longer be in harmony with the statutory congressional districts in Section 23-15-1037. But again, that is not the situation we face. Instead, we are looking squarely at a Mississippi constitutional provision and a Mississippi statutory law that both involve five districts.

Section 23-15-1037 is still right there on the books, and the five districts remain unchanged. *See* Appendix C (containing the full and current text of Miss. Code Ann. § 23-15-1037).

¶60. Even so, the majority finds this view "unworkable." Maj. Op. ¶ 43. But the Attorney General, the Secretary of State, and the majority of voters who passed Initiative 65 and two prior initiatives believe that it works just fine. Indeed, the five-district view is the only one in which section 273(3) *works* post-2000 census. Instead of looking outside of Mississippi law to bury section 273(3), I agree with Justice Chamberlin[7] that the proper course is to interpret "any congressional district" consistent with the one-fifth requirement of section 273(3) and Mississippi Code Section 23-15-1037. For the reasons addressed above, the Petitioners simply cannot show the Secretary of State acted unconstitutionally by relying on Mississippi law when he greenlighted Initiative 65's placement on the ballot.

¶61. Therefore, I dissent.

CHAMBERLIN, J., JOINS THIS OPINION IN PART.

CHAMBERLIN, JUSTICE, DISSENTING:

¶62. This Court has stated that "the constitution is presumed capable of ordering human affairs decades beyond the time of ratification, under circumstances beyond the prescience of the draftsmen." ***Myers v. City of McComb***, 943 So. 2d 1,7 (Miss. 2006) (internal quotation marks omitted) (quoting ***Alexander v. State ex rel. Allain***, 441 So. 2d 1329, 1334 (Miss. 1983), *overruled on other grounds by* ***5K Farms, Inc. v. Miss. Dep't of Revenue***, 94 So. 3d

[7] I agree with the gist of Justice Chamberlin's opinion that Mississippi's ballot initiative is not broken, particularly not by the federal judicial panel's injunction. But I do not join footnote 8 of his opinion.

221 (Miss. 2012)). The majority, holding that article 15, section 273(3), of the Mississippi Constitution is unworkable, has destroyed this presumption and has rendered a provision of the constitution incapable of ordering any affair, human or otherwise, beyond a time not long after its ratification. Therefore, as to the majority's holdings regarding article 15, section 273(3), of our constitution, I must respectfully dissent.

¶63. The people of Mississippi empowered the judiciary with interpretation of the state constitution. *See* ***Myers***, 943 So. 2d at 5 (Miss. 2006) ("It is universally accepted that the highest judicial tribunal of a state is the paramount authority for the interpretation of that state's constitution, subject only to the Constitution of the United States." (quoting ***Alexander***, 441 So. 2d at 1333)). In attempting to exercise this responsibility, however, the majority disables the very thing it was designed to interpret and enforce.

¶64. As indicated by the majority, in 1992, the Legislature adopted a resolution that proposed to establish the people's right to propose and enact initiatives to amend the constitution. S. Con. Res. 516, 1992 Miss. Laws ch. 715. This measure was approved by the voters in the November 1992 election and was then enshrined in article 15, section 273(3), of the Mississippi Constitution. As enacted in 1992, section 273(3) reflects the state's present-day initiative framework.

¶65. At issue here is the third subsection within section 273. It defines the initiative process and the signature requirements for placing initiatives on the ballot during a statewide election:

> The people reserve unto themselves the power to propose and enact constitutional amendments by initiative. An initiative to amend the

> Constitution may be proposed by a petition signed over a twelve-month period by qualified electors equal in number to at least twelve percent (12%) of the votes for all candidates for Governor in the last gubernatorial election. The signatures of the qualified electors from any congressional district shall not exceed one-fifth (1/5) of the total number of signatures required to qualify an initiative petition for placement upon the ballot. If an initiative petition contains signatures from a single congressional district which exceed one-fifth (1/5) of the total number of required signatures, the excess number of signatures from that congressional district shall not be considered by the Secretary of State in determining whether the petition qualifies for placement on the ballot.

Miss. Const. art. 15, § 273(3). The majority recognizes the sound principle that "[o]ur Constitution's plain language is to be given its 'usual and popular signification and meaning.'" Maj. Op. ¶ 22 (quoting ***Town of Sumner v. Ill. Cent. R. Co.***, 236 Miss. 342, 111 So. 2d 230, 233 (1959)). The plain language of section 273 when viewed as a whole, however, supports only a reading or interpretation that recognizes Mississippi's congressional districts as they existed in 1992. *See* 16 C.J.S. *Constitutional Law* § 83 ("Constitutional rights are enshrined with the scope they were understood to have when the people adopted them whether or not future legislatures or future judges think that scope too broad." (citing ***District of Columbia v. Heller***, 554 U.S. 570, 128 S. Ct. 2783, 171 L. Ed. 2d 637 (2008)).

¶66. The majority ultimately concludes that section 273 is unworkable. As support for its holding, it announces that the term "congressional district" found within section 273(3) can only refer to the four congressional districts that Mississippi has used since 2002 to elect members to the United States House of Representatives. To achieve this definition, the Court rightly looks to the dictionary meaning of "congressional district" to find that "congressional

district" means a place where citizens of a state elect members to serve in the United States House of Representatives to ultimately represent the will of those citizens in Congress. *See* Maj. Op. ¶ 28. Thus, as understood by the majority, section 273(3)'s use of "congressional district" can only be the congressional districts Mississippi uses to elect, and has used to elect since 2002 pursuant to the federal injunction issued in ***Smith v. Clark***, 189 F. Supp. 2d 548 (S.D. Miss. 2002), its representatives to Congress.

¶67. Further, the majority looks to a 2009 Attorney General opinion that it, presumably, believes provides persuasive support for its theory that section 273(3) is broken. Maj. Op. ¶ 24. Indeed, the Attorney General did note that "[i]t would be mathematically impossible to satisfy the requirements of Section 273 using just four districts." Miss. Att'y Gen. Op., No. 2009-00001, 2009 WL 367638, *Hosemann*, at *3 (Jan. 9, 2009). While this Court is certainly not bound by the Attorney General's interpretation of section 273(3), it is curious that the majority, when turning to the opinion, fails to mention the Attorney General's other (and ultimate) conclusion in the same opinion: "[i]t is likewise our opinion that the geographic distribution requirement of Section 273 requires that not more than 20% of the total required number of initiative petition signatures must come from the last five-district congressional district plan which was in effect prior to the adoption of the current four-district plan." *Id.* Thus, while not binding, the Attorney General's actual position supports the reading of section 273(3) discussed in this separate opinion that utilizes the five congressional districts as they existed in 1992 rather than a reading that unnecessarily "breaks" section 273(3).

¶68. Though the majority's method of defining "congressional district" is not unreasonable, its reliance on the definition of "congressional district" in complete isolation and to the exclusion of the historical and textual context surrounding the adoption of section 273(3) is cause for concern.[8] When words within the constitution are considered independently and strictly, those words "do not of themselves immovably fetter the sense or intention" of the constitution. ***Moore v. Gen. Motors Acceptance Corp.***, 155 Miss. 818, 125 So. 411, 413 (1930). Instead, when we interpret the Mississippi Constitution, "we seek the intent of the draftsmen, keeping in mind, *'the object desired* to be accomplished and the evils sought to be prevented or remedied.'" ***Myers***, 943 So. 2d at 7 (Miss. 2006) (emphasis added) (internal quotation marks omitted) (quoting ***Alexander***, 441 So. 2d at 1334)). The Court must also "read and enforce the Constitution in the manner which best fits its language and best serves our state today." ***Dye v. State ex rel. Hale***, 507 So. 2d 332, 342 (Miss. 1987) (citing ***Alexander***, 441 So. 2d at 1334, 1339). And "constitutional provisions should be read so that each is given maximum effect and a meaning in harmony with that of each other." ***Id.*** (citing ***St. Louis & San Francisco Ry. Co. v. Benton Cnty.***, 132 Miss. 325, 330, 96 So. 689, 690 (1923)).

[8] The majority's interpretation is like a well-manicured lawn whose caretaker focuses on one isolated blade of grass—here, the term "congressional district"—while ignoring the weed that is context. Interpretation should involve a joint effort between reading the actual words and the context in which they are found. The majority's reading thrusts a constitutional provision into chronic limbo, creating a transient or temporary constitutional right. To be blunt, it effectively slams the lid on the initiative process. This surely cannot be the intent of the Legislature and the people. As a court, we should nip this interpretation in the bud.

¶69. First, section 273(3) includes a one-fifth (1/5) qualifier within the text following "congressional district." Miss. Const. art. 15, § 273(3). Section 273(3) prohibits the Secretary of State from considering in the sufficiency determination the number of submitted petition signatures received from any congressional district that exceeds one-fifth of the total number of required signatures needed, i.e., at least twelve percent of the total votes cast in the last gubernatorial election. *Id*. ("The signatures of the qualified electors from any congressional district shall not exceed one-fifth (1/5) of the total number of signatures required to qualify an initiative petition for placement upon the ballot."). In 1992, when the current framework of section 273(3) was established, Mississippi consisted of five congressional districts. *See* Miss. Code Ann. § 23-15-1037 (Rev. 2018). Section 273(3) reflects this reality in the denominator of the fraction it uses to cut off consideration of petition signatures. Therefore, one-fifth in section 273(3) qualifies section 273(3)'s other term, "congressional district," to reflect section 273(3)'s framework that, as was clearly intended, utilizes five congressional districts. Thus, contrary to the majority's conclusion that section "273(3) ties the twenty percent signature cap to Mississippi's congressional districts—not preexisting congressional districts or five districts as otherwise set by the Legislature[,]" the one-fifth cap ties section 273(3)'s use of the term "congressional district" to the five that existed in 1992. Maj. Op. ¶ 43.

¶70. As Justice Scalia once wrote, "[i]n textual interpretation, context is everything, and the context of the Constitution tells us not to expect nit-picking detail, and to give words and phrases an expansive rather than narrow interpretation—though not an interpretation that the

language will not bear." Antonin Scalia, *Common-Law Courts in a Civil-Law System: The Role of United States Federal Courts in Interpreting the Constitution and Laws*, *in A Matter of Interpretation: Federal Courts and the Law* 3, 37 (Amy Gutmann ed., 1997). Today the majority chooses a narrow, transitory interpretation of the Legislature's use of "congressional district" as set out in section 273. However, the context in which section 273(3) was passed, along with its purpose of providing the people with a means to amend the constitution by initiative, should not be ignored and indeed supports an expansive reading of section 273(3) that results in its continued validity rather than its demise and honors the intent of both the Legislature and the voters of the state of Mississippi who adopted the amendment.

¶71. Second, it is undisputed that the initiative-petition process has resulted in multiple successful amendments to our constitution since redistricting at the turn of the century. Moreover, "[t]hough constitutional issues should be avoided, if one is nonetheless squarely presented it is the court's 'duty to adopt a construction of the statutes which purges the legislative purpose of any constitutional invalidity, absurdity, or unjust equality.'" Jeffrey Jackson, Mary Miller, Donald Campbell, et al., *Mississippi Practice Series: Encyclopedia of Mississippi Law* § 68:75 (2d ed.), Westlaw (database updated Oct. 2020) (quoting ***Univ. of Miss. Med. Ctr. v. Robinson***, 876 So. 2d 337, 340 (Miss. 2004)). Today, the majority opts instead for a construction that purges section 273(3) of any validity rather than choosing the interpretation that leaves the amendment in force and allows the people to exercise the right reserved unto them—to amend our constitution by initiative. Further, it stretches the bounds of reason to conclude that the Legislature in 1992, when drafting section 273(3), would have

placed a poison pill within the language of the provision that would allow the provision and the right of the people to amend the constitution through initiative to be eviscerated at the whim of a federal injunction of such limited scope.

¶72. The majority also discusses the perceived significance of the Legislature not placing a "now existing" clause within section 273(3) to explicitly tie the congressional districts to the five that Mississippi used prior to the ***Smith*** injunction. Maj. Op. ¶ 33. The plain language of section 273(3), however, reveals that this point is a red herring since no such clause is necessary to tie "congressional district" to the five that existed in 1992 when the provision also clearly contemplates section 273(3)'s use of five districts in its cap on consideration of signatures from any one district. *See* ***Cellular S., Inc. v. BellSouth Telecomms., LLC***, 214 So. 3d 208, 212 (Miss. 2017) ("It is our job to determine legislative intent from the language of the act as a whole, and not to separate from the statutory herd one part alone." (citing ***Wilson v. State***, 194 So. 3d 855, 872 (Miss. 2016)). Indeed, it is curious that the majority recognizes via hypothetical that the term "congressional district" as used in section 273(3) could be qualified by a "now existing" clause while, at the same time, it ignores the one-fifth language qualifying "congressional district" that is explicitly mentioned in section 273(3). Maj. Op. ¶ 33.

¶73. To be clear, I have no quarrel with how the dictionary defines terms or that the majority looks to a common, dictionary definition of "congressional district." Upon further review, however, it is apparent that this conclusion is drawn without regard to either the

immediate surrounding text of section 273(3) or the circumstances of the provision's history.[9] I therefore submit that section 273(3) is workable because it commands the use of the five congressional districts as they existed in 1992. This reading is the only way to interpret section 273(3) that gives effect to every word of section 273(3)—not just the isolated and limited phrase "congressional district"—and gives credence to the purpose of section 273(3), which is to reserve in the citizens of this state the ability to amend our constitution by a clear initiative process. *See* ***Dye***, 507 So. 2d at 342 (citing ***Alexander***, 441 So. 2d at 1334, 1339).

¶74. Indeed, the "object desired," ***Myers***, 943 So. 2d at 7 (quoting ***Alexander***, 441 So. 2d at 1334), in section 273(3) is to provide the people of Mississippi an avenue to amend their state's constitution. *See* Miss. Const. art. 15, § 273(3) ("The people reserve unto themselves the power to propose and enact constitutional amendments by initiative."). Today, this object only survives if section 273(3) is read to require the use of the five congressional districts as they existed in 1992. Furthermore, utilizing the five districts as they existed in 1992 allows to be recognized the will of both the Legislature and the people, each of which acted to have Initiative Measures 65 and 65A placed on the ballot, as well as the citizens of Mississippi who later voted to adopt Initiative 65 as a constitutional amendment. *See* Maj. Op. ¶ 3 ("On

[9] The majority, while focusing almost exclusively on the term "congressional district" in section 273(3), mentions that "the plain language of section 273 ties the congressional districts mentioned therein to the actual, existing congressional districts." Maj. Op. ¶ 27; *see generally* Maj. Op. ¶¶ 27-35. However, while the majority may be right in giving great weight to the text of section 273(3), the term "congressional district" when viewed in isolation is neither the best evidence of the legislative intent behind section 273(3) nor is it the only evidence, especially in light of other qualifying language and the facts surrounding section 273(3)'s adoption.

November 3, 2020, a strong, if not overwhelming, majority of the voters of Mississippi approved Initiative 65, which establishes a legal medical-marijuana program.").[10]

¶75. Additionally, the majority discusses a perceived logical inability of qualified electors to aver that they are in fact qualified electors of a congressional district (as that district existed at the time section 273(3) was adopted), as required by Mississippi Code Section 23-17-19 (Rev. 2018). Maj. Op. ¶¶ 36-37. The majority misses the mark, however, because Section 23-15-1037 explicitly defines, by county and precinct, the boundaries of each of the five congressional districts as they existed at the time section 273(3) was adopted. Miss. Code Ann. § 23-15-1037 (Rev. 2018). Therefore, contrary to the majority's conclusion, a person signing an initiative petition and the county clerk receiving the petition need only know their county and precinct to determine the congressional district of which they are a qualified elector. Thus, electors can indeed aver to be qualified electors of the congressional districts for the purposes of signing an initiative petition. In responding to the mere mention of Section 23-15-1037, the majority proceeds to both invent and then destroy an argument that we never made nor that we now make. Our mention of Section 23-15-1037 is for one singular purpose—to note that the definition of the congressional districts as they existed in 1992 is readily accessible in the text of the statute as it *currently* exists. To have knowledge of the district in which an elector would have been qualified in 1992 simply requires that the clerk keep a copy of the statute in his/her office. This definition could certainly come from

[10] This opinion does not speak to the merits of either the initiative process as a means to amend the constitution nor Initiative 65 itself. In both instances, the Legislature and the people have spoken, and we would be best served to stay in our lane.

any number of sources including, for example, maps, journals, prior election results, etc. However, the language as it currently exists in Section 23-15-1037 seems simplest and provides but one of many options at the disposal of the electors of this state. Whether the statute remains static or changes in the future does not in any way change this premise, as its current language defines the districts as they existed in 1992.

¶76. And as the Secretary of State aptly phrased it, "former-Secretary Hosemann interpreted and applied section 273(3)'s signature requirements to Measure 65 consistent with existing state law instead of a federal injunction geared only at congressional elections." Again, the majority's holding to the contrary implies that the drafters of section 273(3), while able to recognize that the number of seats in the House may change for a state every ten years, inserted a poison pill into section 273(3) that would strip the provision of its efficacy if Mississippi ever lost a seat in Congress. This holding does not avoid absurdity; rather, it invites it.

¶77. The constitution is presumed capable of ordering human affairs decades beyond the time of ratification under circumstances beyond the prescience of the draftsmen. The majority's holding destroys such an ordering less than a decade after adoption, presumably finding legislative incompetence or malevolence and/or a desire of the people to put a self-destruct sequence into the initiative process they granted unto themselves. The interpretation set forth in this separate opinion, as well as allowing the ordering of human affairs well into the future, brings harmony to the provision, accords with the plain meaning of the section,

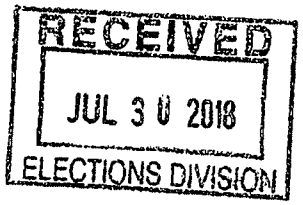
and recognizes a proper legislative act followed by a knowing adoption by the electorate.

Therefore, I must dissent.

KITCHENS, P.J., JOINS THIS OPINION. MAXWELL, J., JOINS THIS OPINION IN PART.

APPENDIX A

PROPOSED AMENDMENT



Section 1.

The purpose of this article is to ensure the availability of and safe access to medical marijuana for qualified persons with debilitating medical conditions.

Section 2.

(1) Except as otherwise provided for in this article, a qualified patient or caregiver shall not be subject to criminal or civil sanctions for the use of medical marijuana, obtained from a medical marijuana treatment center, for a debilitating medical condition.

(2) Except as otherwise provided for in this article, a physician shall not be subject to criminal or civil sanctions solely for issuing a physician certification to a person diagnosed with a debilitating medical condition.

(3) Except as otherwise provided for in this article, a medical marijuana treatment center and its officers, owners, operators, employees, contractors, and agents shall not be subject to criminal or civil sanctions for processing medical marijuana in compliance with regulations prescribed by the department.

Section 3.

(1) Except as otherwise provided for in this article, nothing in this article shall:

(a) Affect or repeal laws relating to the use of marijuana that is not intended for use for a debilitating medical condition.

(b) Authorize the use of medical marijuana for anyone other than a qualified patient, and, where authorized by this chapter, for caregivers and officers, owners, operators, employees, contractors, and agents of treatment centers.

(c) Permit a person to operate any motor vehicle, aircraft, train, or boat while consuming or impaired by medical marijuana.

(d) Require accommodation for the use of medical marijuana or require any on-site use of medical marijuana in any public or private correctional institution, detention facility, or place of education, or employment.

(e) Require any health insurance provider or any government agency or authority to reimburse any person for expenses related to the use of medical marijuana.

(f) Override any public laws, ordinances, regulations, or rules or any private rules, regulations, or provisions related to smoking in or on public or private places.

(g) Affect any existing drug testing laws, regulations, or rules.

(2) It is unlawful for any person to smoke medical marijuana in a public place. Any person who violates this subsection may, upon conviction, be punished by a fine of not more than One Hundred Dollars ($100.00).

Section 4.

For purposes of this article, the following terms shall have the following meanings:

(1) "Caregiver" shall mean a person who is at least twenty one (21) years of age, who complies with the regulations prescribed by the department, and who assists with a qualified patient's use of medical marijuana. The department may limit the number of qualified patients a caregiver may assist at any one time. A qualified patient may have more than one caregiver. A caregiver is prohibited from consuming medical marijuana provided for use by a qualified patient.

(2) "Criminal or civil sanctions" shall mean arrest; incarceration; prosecution; penalty; fine; sanction; the denial of any right, privilege, license, certification; and/or to be subject to disciplinary action by a licensing board or commission; and/or to be subject to seizure and/or forfeiture of assets pursuant to any Mississippi law, local ordinance, or board, commission, or agency regulation or rule.

(3) "Debilitating medical condition" shall mean cancer, epilepsy or other seizures, Parkinson's disease, Huntington's disease, muscular dystrophy, multiple sclerosis, cachexia, post-traumatic stress disorder, positive status for human immunodeficiency virus, acquired immune deficiency syndrome, chronic or debilitating pain, amyotrophic lateral sclerosis, glaucoma, agitation of dementias, Crohn's disease, ulcerative colitis, sickle-cell anemia, autism with aggressive or self-injurious behaviors, pain refractory to appropriate opioid management, spinal cord disease or severe injury, intractable nausea, severe muscle spasticity, or another medical condition of the same kind or class to those herein enumerated and for which a physician believes the benefits of using medical marijuana would reasonably outweigh potential health risks.

(4) "Department" shall mean the Mississippi State Department of Health or its successor agency.

(5) "Medical marijuana" shall have the meanings given as of July 1, 2018 in Section 41-29-105(r) and/or Section 41-29-105(o), of the Mississippi Code of 1972, and which is used to treat the symptoms and/or effects of a debilitating medical condition as provided for in this article.

(6) "Medical marijuana identification card" shall mean a document, prescribed by and issued by the department, which identifies a person as a qualified patient or caregiver or officer, owner, operator, employee, contractor, or agent of a medical marijuana treatment center.

(7) "Medical marijuana treatment center" shall mean an entity that is registered with and licensed and regulated by the department and that processes medical marijuana, related supplies, and/or educational materials. A treatment center may engage in one or more of the activities involved in the processing of medical marijuana.

(8) "Physician" shall mean a person with a valid Doctor of Medicine or Doctor of Osteopathic Medicine degree and who holds an unrestricted license to practice medicine in the state of Mississippi by the Mississippi Board of Medical Licensure, or its successor agency.

(9) "Physician certification" shall mean a form approved by the department, signed and dated by a physician, certifying that a person suffers from a debilitating medical condition for which the use of medical marijuana may mitigate the symptoms and/or effects. The certification shall remain current for twelve months, unless the physician specifies a shorter period of time, and shall be issued only after an in-person examination of the patient in Mississippi. A certification shall only be issued on behalf of a minor

when the minor's parent or guardian is present and provides signed consent. Nothing herein shall require a physician to issue a certification.

(10) "Process" shall mean to acquire, administer, compound, convert, cultivate, deliver, develop, disburse, dispense, distribute, grow, harvest, manufacture, package, possess, prepare, process, produce, propagate, research, sell, test, transport, or transfer medical marijuana or any related products such as foods, tinctures, aerosols, oils, or ointments.

(11) "Qualified patient" shall mean a person who has been diagnosed with a debilitating medical condition and who has been issued a physician certification.

(12) "Use" shall mean the acquisition, possession, preparation, use or use with an accessory, delivery, transfer, or administration of medical marijuana by a qualified patient or caregiver. For purposes of this chapter, "accessory" shall have the meaning given in Section 41-29-105(v) of the Mississippi Code of 1972, as of July 1, 2018.

Section 5.

(1) The department shall implement, administer, and enforce the provisions of this article and shall issue reasonable rules and regulations, pursuant to the Mississippi Administrative Procedures Act, in the discharge of its responsibilities.

(2) The department shall prescribe reasonable rules and regulations pursuant to this section that shall include, but not be limited to, tracking and labelling of medical marijuana; qualifications for and safe and secure processing of medical marijuana by medical marijuana treatment centers; restrictions on advertising and marketing; issuance of medical marijuana identification cards; standards for testing facilities; use of medical marijuana in nursing homes, hospices, and assisted living facilities; reciprocal agreements with other states for patients registered in medical marijuana programs; qualifications of and limitations on caregivers and officers, owners, operators, employees, contractors, and agents of treatment centers; implementation and operation of a statewide data base system to support the utilization of identification cards; and penalties for violations of this article.

(3) The rules and regulations may include a reasonable fee of up to Fifty Dollars ($50.00) for issuing an identification card and reasonable fees for licensing treatment centers, which shall be fixed by and paid to the department, pursuant to Section 6.

(4) The rules and regulations shall not limit the number of licensed medical marijuana treatment centers nor set the price of medical marijuana.

(5) The rules and regulations shall require the department to issue an identification card or a license for a treatment center within a reasonable time following an application for a card or license.

(6) The department shall issue a qualified patient a medical marijuana identification card upon presentation of a physician certification. Such card shall be renewed, as applicable, upon presentation of a new physician certification, but in no case shall a card have an expiration term longer than twelve (12) months. A qualified patient is authorized to receive medical marijuana from a treatment center upon presentation of his or her identification card.

(7) The department and medical marijuana treatment centers shall protect the confidentiality of all qualified patients. All records containing the identity of qualified patients, caregivers, and physicians shall be confidential and exempt from disclosure

under the Mississippi Public Records Act or any related statute, regulation, or rule pertaining to the public disclosure of records.

(8) The department may establish an advisory committee to assist the department in the promulgation of rules and regulations and the regulation and enforcement of the provisions of this article.

(9) The department shall adopt final rules and regulations pursuant to this article no later than July 1, 2021. The department shall begin issuing identification cards and treatment center licenses no later than August 15, 2021.

(10) To ensure timely implementation of this chapter for qualified patients, and only for activities associated with implementation and operation, the department is exempt from the Mississippi Department of Information Technology Services laws, rules, and regulations for any information technology procurements made up to Two Hundred Fifty Thousand Dollars ($250,000) for two years from the effective date of this chapter. This exemption shall not apply to any reporting requirements.

(11) The department is authorized to adopt and levy administrative fines to enforce the provisions of this article. Payment of any fines shall be deposited in the special fund created by Section 6 of this article.

(12) The department is authorized to adopt and levy the following sanctions, singly or in combination, when it finds an applicant or licensee has committed any violation of this article or department rules or regulations: revoke or suspend a license, censure a licensee, impose a fine in an amount not to exceed Five Thousand Dollars ($5,000) for the first violation and an amount not to exceed Twenty Five Thousand Dollars ($25,000) for each subsequent violation, place a licensee on a probationary status, require the licensee to file regular reports and submit to reasonable requirements and restrictions, revoke probationary status of a licensee and impose other authorized sanctions, and refuse to issue or renew a license, restrict a license, or accept a voluntary surrendering of a license. The department is authorized to deny, suspend or revoke a license in any case in which it finds that there has been a substantial failure to comply with the requirements of a licensee. The notice and hearing requirements and judicial review provisions contained in Section 43-11-11 of the Mississippi Code of 1972, as of July 1, 2018, shall apply to the denial, suspension, or revocation of a license.

Section 6.

In addition to the fees applied to issuing identification cards and licensing medical marijuana treatment centers, the department may assess up to the equivalent of the state's sales tax rate to the final sale of medical marijuana. Revenue generated under this section or through the issuance of identification cards or the licensing of medical marijuana treatment centers shall pay for the costs incurred by the department in implementing and enforcing the provisions of this article and shall be deposited into a special fund in the state treasury to be expended by the department without prior appropriation or authorization. The department shall administer the fund and make expenditures from the fund for costs or other services or programs associated with this article. Fund balances shall not revert to the General Fund. The department shall have the authority to utilize these special funds to escalate personnel positions in the department where needed, as non-state-service, to administer and enforce the provisions of this article. Upon request of the department, the State Treasurer shall provide a line of credit from the Working Cash Stabilization Fund or any other available special source

funds maintained in the state treasury in an amount not to exceed Two Million Five Hundred Thousand Dollars ($2,500,000), for deposit to this special fund to provide sufficient working cash to implement the provisions of this article. Any such loans shall be repaid from the available funds received by the department under this article.

Section 7.

A medical marijuana identification card issued pursuant to this article shall serve to identify a person as a qualified patient or caregiver or officer, owner, operator, employee, contractor, or agent of a medical marijuana treatment center and thus exempt such person from criminal or civil sanctions for the conduct authorized by this article.

Section 8.

(1) Medical marijuana treatment centers shall not provide to a qualified patient, during any one fourteen-day period, an amount of medical marijuana that exceeds 2.5 ounces by weight. At no one time shall a qualified patient possess more than 2.5 ounces of medical marijuana. The weight limitation herein shall not include any ingredients combined with medical marijuana to prepare edible products, topical products, ointments, oils, tinctures, or other products.

(2) Medical marijuana shall only be dispensed to a qualified patient or caregiver with a current medical marijuana identification card by a medical marijuana treatment center.

(3) All contracts under this article and related to the operation of medical marijuana treatment centers shall be enforceable and rules applicable to other similar businesses by the Department of Revenue shall apply to medical marijuana treatment centers created pursuant to this article, except that the processing and use of medical marijuana shall be exempt from the application of any state and/or local sales tax or other fee, other than that authorized by this article.

(4) No medical marijuana treatment center shall be located within five hundred (500) feet of a pre-existing school, church, or licensed child care center.

(5) Except as otherwise provided in this article, any zoning ordinances, regulations and/or provisions of a municipality or county shall be consistent with Section 1 of this article and shall not impair the availability of and reasonable access to medical marijuana. Zoning provisions applicable to retail dispensaries shall be no more restrictive than those for a licensed retail pharmacy and zoning provisions applicable to other businesses that fall within the definition of medical marijuana treatment centers shall be no more restrictive than other comparably sized and staffed lawful commercial or industrial businesses.

Section 9.
No later than two years from the implementation of this article, and every two years thereafter, the department shall provide to the Legislature a comprehensive public report of the operation of this article.

Section 10.
The provisions of this article are declared to be severable, and if any provision, word, phrase, or clause of this article or the application thereof shall be held invalid, such invalidity shall not affect the validity of the remaining portions of this article.

AMOUNT AND SOURCE OF REVENUE

The amendment is required to pay for itself and would require no general fund appropriation. The amendment creates three sources of operating revenue for the State Department of Health to use in implementing and enforcing the provisions of the amendment: fee for identification cards, fee for treatment center licenses, and a charge that the Department of Health may assess at the point of retail sale of medical marijuana. The revenue generated by the medical marijuana program in Arizona was used as a basis for a projection in Mississippi. Based on those calculations, implementation of this amendment would generate an estimated $6 million in special fund revenue on an annual basis.

APPENDIX B

STATE OF MISSISSIPPI

JIM HOOD
ATTORNEY GENERAL

CERTIFICATE OF REVIEW

IN THE MATTER OF PROPOSED INITIATIVE TO AMEND THE MISSISSIPPI CONSTITUTION OF 1890 RELATING TO MEDICAL MARIJUANA

PETITIONER: Ashley Ann Durval

I hereby certify that the petitioner's proposal was received in this office on August 1, 2018; and that I have reviewed the proposal for form and style and that any recommendations thereon have been communicated to the petitioner in accordance with Section 23-17-5 of the Mississippi Code of 1972.

This Certificate of Review does not constitute an endorsement of the Constitutional, statutory, or substantive validity of the proposed initiative, and does not purport to validate the fiscal effect, if any, of the proposed amendment.

August 7, 2018

Beebe Garrard
Special Assistant Attorney General

WALTER SILLERS BUILDING • POST OFFICE BOX 220 • JACKSON, MISSISSIPPI 39205-0220
TELEPHONE (601) 359-3680 • FACSIMILE (601) 359-5025

STATE OF MISSISSIPPI

JIM HOOD
ATTORNEY GENERAL

August 15, 2018

The Honorable Delbert Hosemann
Secretary of State
Post Office Box 136
Jackson, Mississippi 39205-0136

Re: Ballot Title for Initiative Measure No. 65

Dear Secretary Hosemann:

Pursuant to Miss. Code Ann. Sections 23-17-1 *et seq.* (1972), we supply to you the ballot title and ballot summary for Initiative Measure No. 65.

Ballot Title

Should Mississippi allow qualified patients with debilitating medical conditions, as certified by Mississippi licensed physicians, to use medical marijuana?

Ballot Summary

Initiative Measure No. 65 proposes to amend the Mississippi Constitution to allow qualified patients with debilitating medical conditions, as certified by Mississippi licensed physicians, to use medical marijuana. This amendment would allow medical marijuana to be provided only by licensed treatment centers. The Mississippi State Department of Health would regulate and enforce the provisions of this amendment.

Please contact me if you have any questions.

WALTER SILLERS BUILDING • POST OFFICE BOX 220 •JACKSON, MISSISSIPPI 39205-0220
TELEPHONE (601) 359-3680 • FACSIMILE (601) 359-5025

Sincerely,

Beebe Garrard
Special Assistant Attorney General

cc: Kimberly P. Turner
Assistant Secretary of State, Elections

Ms. Ashley Ann Durval
Petitioner

Spence Flatgard, Esq. (via email only)

WALTER SILLERS BUILDING • POST OFFICE BOX 220 •JACKSON, MISSISSIPPI 39205-0220
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APPENDIX C

Miss. Code Ann. § 23-15-1037

§ 23-15-1037. Districts established

(1) The State of Mississippi is hereby divided into five (5) congressional districts below:

FIRST DISTRICT. The First Congressional District shall be composed of the following counties and portions of counties: Alcorn, Benton, Calhoun, Chickasaw, Choctaw, DeSoto, Itawamba, Lafayette, Lee, Marshall, Monroe, Pontotoc, Prentiss, Tate, Tippah, Tishomingo, Union, Webster, Yalobusha; in Grenada County the precincts of Providence, Mt. Nebo, Hardy and Pea Ridge; in Montgomery County the precincts of North Winona, Lodi, Stewart, Nations and Poplar Creek; in Oktibbeha County, the precincts of Double Springs, Maben and Sturgis; in Panola County the precincts of East Sardis, South Curtis, Tocowa, Pope, Courtland, Cole's Point, North Springport, South Springport, Eureka, Williamson, East Batesville 4, West Batesville 4, Fern Hill, North Batesville A, East Batesville 5 and West Batesville 5; and in Tallahatchie County the precincts of Teasdale, Enid, Springhill, Charleston Beat 1, Charleston Beat 2, Charleston Beat 3, Paynes, Leverette, Cascilla, Murphreesboro and Rosebloom.

SECOND DISTRICT. The Second Congressional District shall be composed of the following counties and portions of counties: Bolivar, Carroll, Claiborne, Coahoma, Holmes, Humphreys, Issaquena, Jefferson, Leflore, Quitman, Sharkey, Sunflower, Tunica, Warren, Washington, Yazoo; in Attala County the precincts of Northeast, Hesterville, Possomneck, North Central, McAdams, Newport, Sallis and Southwest; that portion of Grenada County not included in the First Congressional District; in Hinds County Precincts 11, 12, 13, 22, 23, 27, 28, 29, 30, 40, 41, 83, 84 and 85, and the precincts of Bolton, Brownsville, Cayuga, Chapel Hill, Cynthia, Edwards, Learned, Pine Haven, Pocahontas, St. Thomas, Tinnin, Utica 1 and Utica 2; in Leake County the precincts of Conway, West Carthage, Wiggins, Thomastown and Ofahoma; in Madison County the precincts of Farmhaven, Canton Precinct 2, Canton Precinct 3, Cameron Street, Canton Precinct 6, Bear Creek, Gluckstadt, Smith School, Magnolia Heights, Flora, Virlilia, Canton Precinct 5, Cameron, Couparle, Camden, Sharon, Canton Precinct 1 and Canton Precinct 4; that portion of Montgomery County not included in the First Congressional District; that portion of Panola County not included in the First Congressional District; and that portion of Tallahatchie County not included in the First Congressional District.

THIRD DISTRICT. The Third Congressional District shall be composed of the following counties and portions of counties: Clarke, Clay, Jasper, Kemper, Lauderdale, Lowndes, Neshoba, Newton, Noxubee, Rankin, Scott, Smith, Winston; that portion of Attala County

not included in the Second Congressional District; in Jones County the precincts of Northwest High School, Shady Grove, Sharon, Erata, Glade, Myrick School, Northeast High School, Rustin, Sandersville Civic Center, Tuckers, Antioch and Landrum; that portion of Leake County not included in the Second Congressional District; that portion of Madison County not included in the Second Congressional District; that portion of Oktibbeha County not included in the First Congressional District; and in Wayne County the precincts of Big Rock, Yellow Creek, Hiwannee, Diamond, Chaparral, Matherville, Coit and Eucutta.

FOURTH DISTRICT. The Fourth Congressional District shall be composed of the following counties and portions of counties: Adams, Amite, Copiah, Covington, Franklin, Jefferson Davis, Lawrence, Lincoln, Marion, Pike, Simpson, Walthall, Wilkinson; that portion of Hinds County not included in the Second Congressional District; and that portion of Jones county not included in the Third Congressional District.

FIFTH DISTRICT. The Fifth Congressional District shall be composed of the following counties and portions of counties: Forrest, George, Greene, Hancock, Harrison, Jackson, Lamar, Pearl River, Perry, Stone; and that portion of Wayne County not included in the Third Congressional District.

(2) The boundaries of the congressional districts described in subsection (1) of this section shall be the boundaries of the counties and precincts listed in subsection (1) as such boundaries existed on October 1, 1990.

Credits
Laws 1986, Ch. 495, § 307; Laws 1991, 1st Ex. Sess., Ch. 2, § 1, eff. February 21, 1992.