IN THE SUPREME COURT OF MISSISSIPPI

No. 2020-M-01199

IN RE INITIATIVE MEASURE NO. 65:

MAYOR MARY HAWKINS BUTLER,
in her individual and official capacities,
and the CITY OF MADISON PETITIONERS

VS.

MICHAEL WATSON, in his official
capacity as Secretary of State for the
State of Mississippi RESPONDENT

THE SECRETARY OF STATE'S ANSWER TO
PETITIONERS' "EMERGENCY PETITION FOR REVIEW
PURSUANT TO ARTICLE 15, SECTION 273(9) AND WRIT
OF MANDAMUS AND/OR OTHER EXTRAORDINARY WRITS"

INTRODUCTION

Section 273 of the Mississippi Constitution of 1890 expressly preserves the people's right to amend the Constitution by ballot initiative. Over two years ago, proponents of Initiative Measure 65 started the process to put it on the November 3, 2020 general election ballot. A few days before election, which has now occurred and where Mississippians overwhelmingly adopted Initiative Measure 65, Mayor Mary Hawkins-Butler and the City of Madison (collectively "petitioners") filed this purported "emergency" lawsuit against Secretary of State Watson challenging part of the initiative process that former-Secretary Hosemann completed over a year ago.

Section 273(3)'s text, together with the State's shift from five congressional districts to four in 2002, created a constitutional interpretation question regarding

whether and how Section 273(3)'s petition signature requirements can be satisfied. In September 2019, former-Secretary Hosemann certified Initiative Measure 65 based on the view that the initiative petitioners supplied sufficient signatures from the State's former five congressional districts. An interpretation of Section 273(3) supports that decision, although petitioners' interpretation that Section 273(3)'s requirements can never be satisfied cuts against it. As the ultimate arbiter of the Constitution's meaning, this Court needs to resolve that question here, and ultimately determine petitioners have failed to prove former-Secretary Hosemann's decision should be overturned.

Even if their interpretative argument is correct, petitioners' action is woefully untimely. They could have asserted their so-called "procedural" challenge years ago, and certainly when former-Secretary of State Hosemann officially filed Initiative Measure 65 in September 2019. Petitioners' inexcusable and unreasonable delay has prejudiced the Secretary of State, the State, and the public-at-large. Laches bars petitioners from their requested relief.

Additionally, and not least important, common law equity principles and clear precedent of this Court prohibits petitioners from obtaining a writ of mandamus or other extraordinary writ against the Secretary of State. The Secretary's ministerial duties of receiving and reporting the results of the November 3, 2020 election, as this Court already held nearly fifty years ago, are not subject to a writ.

This Court should deny petitioners' requested relief and dismiss their petition.

FACTS

Section 273 of the Constitution provides the exclusive process for amendments to provisions of the Constitution. At issue here, Section 273(3) establishes how the Constitution can be amended through citizen-initiated ballot initiatives:

> 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). Other provisions in Section 273 provide various substantive and procedural requirements for ballot initiatives, legislative alternatives to ballot initiatives, and amendments by concurrent resolution of the Legislature. *See generally* MISS. CONST., art. 15, § 273. The Mississippi Code also sets forth various requirements for the process. *See* MISS. CODE ANN. § 23-17-1 *et seq.* All of the mechanisms for amendment ultimately require approval of a majority of the electorate at an election. *See* MISS. CONST., art. 15, § 273(2), (8), (10).

In July 2018, proponents of what has become known as Initiative Measure 65 filed an initiative seeking to amend the Constitution to provide a legalized system for

medical marijuana.[1] After Initiative Measure 65 was finalized in September 2018, pursuant to Section 273(3), the proponents gathered petition signatures and obtained certifications from the 82 county circuit clerks pursuant to Code Section 23-17-21. In September 2019, the proponents submitted the initiative petition and certifications to then-Secretary of State Hosemann for a determination, under Section 273(3), of whether the initiative should be placed on the ballot. On September 4, 2019, the Secretary of State's Office determined that the proponents had provided the requisite number of signatures by qualified electors as required by Section 273(3) to be placed on the ballot for the November 3, 2020 general election, based on an equal division among the five congressional districts existing as of 2000.

Between September 2019 and October 2020, the Secretary of State's Office and other officials performed their required duties and tasks associated with Initiative Measure 65. In March 2020, consistent with Section 273(8), the Legislature passed 2020 House Concurrent Resolution 39 providing for a legislative alternative, Measure 65A, which the electorate voted on at the same time as Initiative Measure 65 in the November 3, 2020 election. On September 8, 2020, the State Board of Elections approved the sample ballot containing the two measures for the ballot initiative election, as well as all other election races appearing on the statewide ballot. A few weeks later, on September 21, 2020, general absentee balloting began.

[1] The relevant facts at issue here are matters of public record, not disputed, and are set out in petitioners' submission, their exhibits, as well as in their cited documents available on the Secretary of State's website.

On October 26, 2020, petitioners in this case filed their "emergency" petition challenging former-Secretary Hosemann's September 4, 2019 certification of Initiative Measure 65's petition signatures, and seeking relief by extraordinary writ to prevent Secretary Watson from declaring the outcome of the ballot initiative following the election. On October 27, 2020, this Court initially ordered Secretary Watson to answer the petition by 5:00 p.m. on October 28, 2020. On the afternoon of October 28, this Court extended the deadline to November 6, 2020.

Meanwhile, on November 3, 2020, county election officials across the State conducted the statewide general election. As of this writing, county officials have not certified the official results from election day. But, it has been widely-publicized that Initiative Measure 65 exceeded the necessary vote thresholds prescribed by Section 273(8). By the evening of November 5, 2020, with nearly all precincts reporting, the vote total "For Either" Initiative Measure 65 or Initiative Measure 65A was 689,840 (68%) to 326,311 (32%), and Initiative Measure 65 prevailed over Initiative Measure 65A by a margin of 660,160 (74%) to 233,483 (26%). *See* Mississippi General Election Results, available at <https://www.wdam.com/politics/election-results/>.

ARGUMENT

I. The Secretary of State's Office Appropriately Interpreted Section 273(3) and Certified Initiative Measure 65 in September 2019.

Petitioners contend that a change in congressional district lines nearly two decades ago created a "mathematical impossibility" of compliance with their reading of Section 273, and thereby rendered Mississippians powerless to propose and enact constitutional amendments. Pet. at 2. They allege that under Section 273(3), because

only four congressional districts currently exist in the State and only 1/5 of the required signatures for a ballot initiative can come from a particular district, the Section's signature requirement can never be satisfied. Pet. at 2. Petitioners' creative theory of nullification by interpretation is misplaced.

"In interpreting the Mississippi Constitution," this Court seeks "the intent of the draftsmen, keeping in mind, the object desired to be accomplished and the evils sought to be prevented or remedied." *Myers v. City of McComb*, 943 So. 2d 1, 7 (¶22) (Miss. 2006) (internal quotes omitted). In performing that task, "constitutional 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). Further, the Constitution "is a document presumed capable of ordering human affairs decades beyond the time of its ratification under circumstances beyond the prescience of the draftsmen." *Id.* (internal citation omitted).

This Court also looks to statutory interpretation principles when analyzing constitutional provisions. *See* Leslie H. Southwick, 8 MS PRAC. ENCYCLOPEDIA MS LAW § 68:107 (2d ed.) ("Almost all rules that apply to interpretation of statutes also apply to the terms of a constitution."). When applying those principles, "the ultimate goal of this Court is to discern the legislative intent." *Matter of Adoption of D.D.H.*, 268 So. 3d 449, 452 (¶12) (Miss. 2018) (internal quotes omitted). "To determine legislative intent, the Court first looks to the language of the statute." *Id.* (internal quotes omitted). However, "[t]he intention and purpose of the Legislature is to be deduced from the whole and every part of the statute taken together—from the words

and context—and such a construction adopted as will best effectuate the intention of the law-giver.…Further, the Court may also look to the statute's historical background, purpose, and objectives." *Id.* (internal quotes and citation omitted).

Section 273(3) contains three component provisions. The first provision expressly provides: "The people reserve unto themselves the power to propose and enact constitutional amendments by initiative." MISS. CONST., art. 15, § 273(3). The second provision establishes the time limitations and requisite total number of petition signatures to achieve placement on the ballot. *Id.* And the third provision requires that the total number of signatures be divided equally among five geographical areas designated by congressional districts. *Id.* The second and third requirements, as this Court has recognized, are intended to "discourage regionalism by requiring broad-based support for any proposed initiative." *In re Proposed Initiative Measure No. 20*, 774 So. 397, 402 (¶21) (Miss. 2000), *overruled on other grounds*, *Speed v. Hosemann*, 68 So. 3d 1278 (Miss. 2011). When read together as a whole, the intent and purpose of the three provisions is to preserve the people of the State's substantive right to enact ballot initiatives, and provide a manner to do so that ensures proposed initiatives have support from electors all over the State.

Consistent with that view of Section 273(3)'s text and original intent, former-Secretary of State Hosemann interpreted and applied the third provision to Initiative Measure 65 as requiring "'signatures from each of the five congressional districts as they existed in the year 2000.'" Pet at. 6 (quoting Initiative Measure 65's publication, available at https://www.sos.ms.gov/elections/initiatives/InitiativeInfo.aspx?IId=65).

Petitioners do not dispute that the initiative's proponents satisfied that criterion. Instead, they complain that the initiative was improperly certified because only four congressional districts currently exist, and Section 273(3)'s "phrase 'qualified electors from any congressional district' can mean only the current congressional districts." Pet. at 15. Petitioners' arguments lack merit for numerous reasons.

First, petitioners' literalism actually cuts against them. They assert "[t]here is no textual support for replacing 'any congressional district' to 'from each of the five congressional districts as they existed in the year 2000.'" Pet. at 15. But, using that test, there is also "no textual support" for petitioners' reading either. To reach their desired outcome, petitioners read "any congressional district" as "any *current* congressional district" and "single congressional district" as "single *current* congressional district." There is no textual reason that "any" district or a "single" district cannot reasonably be interpreted to mean a past or present district. And there is no logical reason "any" district or "single" district cannot be interpreted as the former five congressional districts to harmonize the provisions with the "one-fifth" requirements in Section 273(3). *See Dye*, 507 So. 2d at 342 ("constitutional provisions should be read so that each is given maximum effect and a meaning in harmony with that of each other").

It is true, as petitioners argue, that if the drafters of Section 273(3) "wanted to bind the congressional districts to a particular redistricting plan, [they] could have explicitly done so." Pet. at 16. But they did not. The drafters also did not explicitly "bind" the congressional districts to the current plan either. The drafters' failure to

do so does not make former-Secretary Hosemann's application of Section 273(3) improper.

Second, petitioners' interpretation of Section 273(3) effectively eliminates the most important sentence of the section: "The people reserve unto themselves the power to propose and enact constitutional amendments by initiative." MISS. CONST., art. 15, § 273(3). Petitioners' 33-page brief conveniently omits any mention of that penultimate sentence of Section 273.

When interpreting the Constitution, this Court "will look to the dominant object to be accomplished by the constitutional provisions rather than to a literal or technical interpretation." *W. Horace Williams Co. v. Federal Credit Co.*, 21 So. 2d 582, 583 (Miss. 1945); *see also Owens Corning v. Mississippi Ins. Guar. Ass'n*, 947 So. 2d 944, 946 (¶7) (Miss. 2007) ("In determining the proper construction of a statute, the entire legislation on the subject matter, its policy, reason, as well as the text, must be considered."). Petitioners' reading of Section 273(3)'s third provision violates that principle. In contending that the geographical division provision can only mean it could never be procedurally satisfied, petitioners' view eliminates Mississippians' substantive constitutional right to propose and enact petition initiatives established in the section.

Third, petitioners' interpretation creates a currently insurmountable hurdle for the Initiative Measure 65 proponents (and a problem for past and future initiative petitioners). This Court does not read impossible requirements into constitutional provisions. *See Gulf Refining Co. v. Stone*, 21 So. 2d 19, 21 (Miss. 1945)

("Constitutional and statutory provisions do not require to be done that which is impossible or thoroughly impracticable,…which is another way of saying that what is impossible or thoroughly impracticable is not within a constitutional or statutory requirement." (internal citation omitted)). Petitioners' proposed procedural obstacle which could never be satisfied is a reason to reject their argument, not credit it.

Fourth, the Legislature's "repeated failures to amend Section 273(3)" does not improve petitioners' position. Pet. at 18. Over the past several years, members of the Legislature have proposed resolutions to amend Section 273(3)'s language to account for the State's current four congressional district configuration. In fact, when he was a Senator, Secretary of State Watson introduced a resolution during the 2015 Session that would have changed the words "one-fifth (1/5)" appearing in Section 273(3) to "pro rata share." 2015 S.C.R. 549. The resolution did not pass.

Secretary Watson still believes an amendment is necessary. Making a "pro rata share" or similar alteration to Section 273(3) would sensibly clarify its text, be consistent with its purpose of ensuring that proposed initiatives have sufficient support from electors throughout the State, and eliminate any possibility that the 2002 reduction of congressional districts prevents a proposed initiative from ever satisfying Section 273(3)'s signature requirements. A divergence of viewpoints regarding Section 273(3)'s text shows there is room for a good faith interpretative dispute, not that the section can only be interpreted to effectively bar any initiative from ever making it on the ballot, as petitioners erroneously contend.

Finally, petitioners' attacks on prior Attorney General opinions do not improve their argument. In 2009, the Attorney General's Office opined that "the geographic distribution requirement of Section 273 requires that not more than 20% of the total 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." *Hosemann*, 2009 WL 367638, at *3 (MS AG Jan. 9, 2009). Petitioners attempt to discredit the opinion for not "citing any constitutional text, precedent, canons of constitutional construction, or other law" in arriving at that conclusion. Pet. at 20. Contrary to petitioners' rhetoric, Section 273 is quoted in the opinion at length. *See Hosemann*, 2009 WL 367638, at *2.

In any event, it is unsurprising that *Hosemann* did not directly refute petitioners' argument. The question presented in *Hosemann* was: "Should the Secretary of State require that a minimum of 20% of the initiative petition signatures come from each of the five 'old' congressional districts, or should he require that 25% of the initiative petition signatures come from each of the 'new' congressional districts?" *Hosemann* concluded that the purpose of Section 273(3)'s geographical distribution provision, and the Section's silence as to which congressional district plan must be used, proved that a twenty-percent/five-district requirement was the better reading of Section 273(3). *Hosemann*, 2009 WL 367638, at *3. If, as petitioners contend here, the issue had been whether nobody can ever presently satisfy Section 273(3), then *Hosemann* would have analyzed that issue and cited all the "constitutional text, precedent, cannons of constitutional construction, or other law"

discussed above. Bashing *Hosemann* for failing to address an unasked question gets petitioners nowhere.

Petitioners also mistakenly contend that a conflict exists between *Hosemann* and the analysis in *Turner*, 2015 WL 4394179 (MS AG Jun. 5, 2015). In *Turner*, the issue was whether a presidential preference primary candidate could satisfy Code Section 23-15-1093 by filing "petitions signed by not less than one hundred (100) qualified electors of the 'old' five congressional districts as the same existed prior to the adoption of the four current congressional districts." *Turner*, 2015 4394179, at *1. The opinion provided: "a candidate may file a petition or petitions signed by a total of not less than five hundred (500) qualified electors of the state, or petitions signed by not less than one hundred (100) qualified electors of each congressional district of the state, in which case there shall be a separate petition for each congressional district." MISS. CODE ANN. § 23-15-1093. Unremarkably, because the statute used the conjunction "or," *Turner* concluded that a candidate could qualify with either 500 signatures (100 from each former congressional district) or 400 signatures (100 from each congressional district). *Turner*, 2015 4394179, at *1-2.

Turner and *Hosemann* are different opinions about different issues involving different statutory and constitutional schemes. *Turner* does not prove *Hosemann* was wrong. *Turner*, more importantly, does not prove petitioners are right. There were no competing constructions of the statutory language in *Turner*—and certainly not an alternative interpretation, like petitioners', that would have undermined the plain and original intent of the statute.

For all these reasons, this Court should dismiss the petition.

II. Laches Bars Petitioners' Claim.

Even wrongfully crediting petitioners' interpretation of Section 273(3), this Court should still reject their petition. Laches independently defeats petitioners' claim.

Laches applies when a party "(1) delay[s] in asserting a right or claim; (2) the delay was not excusable; and (3) there was undue prejudice to the party against whom the claim was asserted." *Allen v. Mayer*, 587 So. 2d 255, 260 (Miss. 1991); *see also Tucker v Hosemann*, No. 2:10cv178-P-S, 2010 WL 4384223, at *4 (N.D. Miss. Oct. 28, 2010) (applying laches in elections matter when all three elements are met).

As to the first two elements, petitioners have inexcusably delayed in asserting their claim. To measure delay, similar to a statute of limitations inquiry, courts look to when plaintiffs objectively knew or reasonably should have known of their cause of action. *Armco, Inc. v. Armco Burglar Alarm Co.*, 693 F.2d 1155, 1161-62 (5th Cir. 1982); *see also White v. Daniel*, 909 F.2d 99, 102 (4th Cir. 1990) (applying laches in voting rights lawsuit). However, unlike a limitations analysis, laches does not turn on the time elapsed between a claim's accrual date and when a lawsuit is filed. *See Barrios v. Faye*, 597 F.2d 881, 884 (5th Cir. 1979) (laches "is not, like limitations, a mere matter of time; but principally a question of the equity or inequity of permitting the claim to be enforced").

Petitioners' inexcusable delay is obvious. Their theory is that an alleged defect in Section 273(3)'s procedural requirements has existed since a federal court redrew

the State's congressional districts in 2002, such that no initiative petition could ever satisfy the requirements. Petitioners did not need to develop any facts to attack Initiative Measure 65 under their theory. They knew or should have known of their claim for years now.

The process which led to Initiative Measure 65 started over two years ago. As a matter of public record, all of the following steps (and others) in the process required pursuant to Section 273, Code Sections 23-17-1 *et seq.*, and other provisions of the Election Code, have occurred:

- July 30, 2018 – Initiative Measure 65 filed;
- August 8, 2018 – Certificate of Review received from Attorney General's Office;
- August 9, 2018 – Serial number assigned;
- August 17, 2018 – Ballot Title/Summary received from Attorney General's Office;
- August 27, 2018 – Notice of Initiative published by newspaper;
- September 6, 2018 – Initiative Petition final for signature collection;
- September 4, 2019 – Initiative Petition filed with Secretary of State's Office;
- January 7, 2020 – Initiative Petition delivered to the Legislature;
- March 17, 2020 – House Concurrent Resolution for Initiative Measure 65A enrolled;
- September 8, 2020 – State Board of Elections approved ballot;
- September 19, 2020 – Absentee voting by military and overseas voters began;
- September 21, 2020 – General absentee voting began;
- September 30 – October 13, 2020 – Public Hearings held; and
- November 3, 2020 – Election day.

Petitioners could have elected to sue at any point in the process. But they sat idle and failed to file their challenge until a few days before election day. Now, election day has come-and-gone, and hundreds of thousands of Mississippians have approved Initiative Measure 65. Petitioners' inexcusable delay in asserting their claim establishes the first two elements of laches.

As to the third laches element, petitioners' inexcusable delay has already caused undue prejudice in many ways. First, petitioners' delay prejudiced the Secretary's ability to defend against their claim. While petitioners had months to prepare their 106-page filing, Secretary Watson has only been afforded days to respond to their arguments leveled against a decision made by his predecessor. Petitioners' delay has also prejudiced the Secretary, and the Court, by leaving insufficient time for the parties to litigate petitioners' procedural objections to Initiative Measure 65, and leaving no time for the Court to review the parties' submissions and act on petitioners' claim before the November 3, 2020 general election took place.

Second, the Secretary of State expended significant funds and resources related to the processing, publication, and public notice requirements associated with Initiative Measure 65. The Secretary of State's Office produced and distributed pamphlets, held public hearings across the State, and spent resources in taking other required actions associated with the initiative process. If petitioners had timely asserted their claim, it could have been resolved before the Secretary of State's Office expended all those resources.

Third, the undue prejudice caused by petitioners' delay obviously extends to the State, the proponents of Initiative Measure 65, and the public-at-large. Petitioners delayed filing their purported procedural challenge until the last second before the November 3, 2020 election, and even then, failed to demand relief before election day. Due to petitioners' inexcusable delay, and how they framed their belated challenge, to this point, proponents of Initiative Measure 65 and other interested parties have not had an opportunity to appear and defend the petition. Moreover, because of petitioners' dilatory tactics, hundreds of thousands of citizens have now approved Initiative Measure 65. All that obvious prejudice to everyone could have been avoided if petitioners had timely asserted their claim.

Fourth, petitioners want what amounts to a judicial declaration that not only directly affects Initiative Measure 65 but also could threaten past, present, and future measures. Crediting petitioners' theory could mean that all ballot initiatives enacted since the 2002 redistricting are "void ab initio" because of a signature deficiency, including Initiative Measure 31 (Eminent Domain) and Initiative Measure 27 (Voter Identification). Effectively backdoor litigating the procedural validity of those long-settled enactments in a belated fashion, without all interested parties involved, would unduly prejudice the Secretary, the State, and the public-at-large.

As explained above, there are numerous reasons that petitioners' challenge to Initiative Measure 65's September 2019 certification is wrong on the merits. But, even if their contentions could prevail, the Court should apply laches and hold the doctrine independently requires dismissing petitioners' action.

III. Petitioners Are Not Entitled to a Writ of Mandamus or Any Other Extraordinary Writ Against the Secretary of State.

The last page of petitioners' submission asks this Court "to issue whatever extraordinary writs appropriate, including but not limited to mandamus, to prohibit the Secretary of State's declaration of the votes under MISS. CODE ANN. § 23-17-41 and MISS. CONST. art. 15, § 273(10) on Initiative Measure No. 65 and 65-A." For the reasons explained above, petitioners are not entitled to any relief whatsoever. But even wrongfully assuming that their claim has merit, any writ against the Secretary of State designed to prevent him from declaring the results of the upcoming election is barred.

Mississippi courts cannot issue extraordinary writs that would prevent an executive officer from performing their ministerial acts and duties imposed by law in regard to an election. *Barnes v. Ladner*, 131 So. 2d 458, 463 (Miss. 1961). In *Barnes*, just like in this instance, a group of petitioners sued for a writ prohibiting Secretary of State Heber Ladner "from taking any steps or other proceedings in connection with the issuance of a proclamation certifying the results of the special election held on June 7, 1960, at which there was submitted to the qualified electors of the state for ratification or rejection the 'right to work' amendment to the State Constitution." *Id.* at 459. This Court rejected the petitioners' procedural and substantive arguments attacking the validity of the proposed constitutional amendment. *Id.* at 461-62.

In addition to the lack of merit in petitioners' claim, this Court also denied relief because "the petition sought to restrain [Secretary Ladner] from doing the very acts and performing the specific duties imposed on him by law." *Id.* at 463.

Particularly, at that stage of the process, Secretary Ladner was charged by constitutional and statutory law to perform two duties. *Id.* First, by statute, Secretary Ladner was required to receive the results of the election on the constitutional amendment from county election commissioners, tabulate the results, and submit them to the legislature at its next regular session. *Id.* Second, if the constitutional amendment received a majority of the vote at the election, the provisions of Section 273 then in place provided the amendment "shall be inserted as a part of the Constitution by proclamation of the secretary of state certifying that it received the majority vote required by the Constitution." *Id.* (quoting MISS. CONST., art. 15 § 273 (Rev. 1959)).

Relying on the common law purpose of extraordinary writs and its prior precedents, this Court recognized that writs may only be employed to control the exercise of judicial or quasi-judicial powers by an inferior court or tribunal. *Id.* at 463-64.[2] This Court recognized that "the Secretary of State under our statutes has multiple duties to perform and is vested with quasi-judicial powers under some statutes." *Id.* at 464. However, the Secretary's "functions in receiving and tabulating the election returns sent in by the election commissioners of the 82 counties, and in issuing his proclamation certifying the result of the election on a proposed constitutional amendment are not in our opinion judicial or quasi-judicial." *Id.* As a result, courts lacked authority "to restrain or prohibit the Secretary of State from

[2] This Court's rules mirror the common law practice. *See* MISS. R. APP. P. 15 (Mandamus to Require Trial Court Decision); MISS. R. APP. P. 21 (Writs of Mandamus and Prohibition Directed to a Judge or Judges and Other Extraordinary Writs).

performing the acts mandatorily required of him" to tabulate and proclaim the results of the election under the constitutional provision and statute. *Id.*; *see also In re Wilbourn*, 590 So. 2d 1381, 1385 (Miss. 1991) (recognizing *Barnes* "declared that a court by writ of prohibition could not prohibit the Secretary of State from receiving and tabulating election returns and issuing a proclamation certifying the results of an election on a proposed constitutional mandate as he was constitutionally mandated to do").

In this case, Secretary of State Watson is identically situated as Secretary of State Ladner in 1961. The Secretary of State's Office has already performed each of the acts and duties with respect to Initiative Measure 65 and the November 3, 2020 general election that could arguably be considered judicial or quasi-judicial. *See* MISS. CONST., art. 15, § 273(3), (9); MISS. CODE ANN. § 23-17-19, § 23-17-23, § 23-17-25, § 23-17-27. The only remaining acts for the Secretary of State to perform with respect to the initiative following the general election include the ministerial duties to receive election results from the counties and issue an official declaration of the results. *See* MISS. CONST., art. 15, § 273(10); MISS. CODE ANN. § 23-15-603, § 23-15-605, § 23-17-41.

Because there is no *future* judicial or quasi-judicial act for the Secretary to perform regarding Initiative Measure 65, there is no basis for a writ compelling or prohibiting the Secretary from declaring the results of the November 3, 2020 general election regarding the initiative. Even if petitioners' substantive arguments could

have merit, which they do not, then no writ should issue from this Court, or any other court, against the Secretary.

CONCLUSION

This Court should dismiss petitioners' claim for lack of merit, and/or on laches grounds. Further, regardless of any determination regarding the merits of petitioners' claim, this Court should reject petitioners' request for a writ of mandamus or other extraordinary writ preventing the Secretary of State from declaring the results of the vote on Initiative Measure 65 at the November 3, 2020 general election.

THIS the 6th day of November, 2020.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing document has been filed using the Court's MEC system and thereby served on all counsel of record and other persons entitled to receive service in this action.

THIS the 6th day of November, 2020.

S/Justin L. Matheny
Justin L. Matheny