

IN THE CHANCERY COURT FOR THE STATE OF TENNESSEE
TWENTIETH JUDICIAL DISTRICT, DAVIDSON COUNTY, PART III

HUNTER DEMSTER, EARLE J.)
FISHER, JULIA HILTONSMITH,)
GINGER BULLARD, JEFF BULLARD,)
ALLISON DONALD, and)
#UPTHEVOTE901,)

Plaintiffs,)

vs.)

No. 20-435-I(III)

TRE HARGETT, MARK GOINS,)
WILLIAM LEE, and HERBERT)
SLATERY III, each in his official)
capacity of the State of Tennessee,)

Defendants.)

**MEMORANDUM AND ORDER GRANTING PLAINTIFFS’
MOTION TO ENFORCE SUPREME COURT ORDER**

Defendant Goins is not honoring the concessions and representations his attorney made to the Tennessee Supreme Court.

Accordingly, based upon the authority given to this Court by the August 5, 2020 Supreme Court Order of remand, it is ORDERED that Plaintiffs’ September 17, 2020 *Motion To Enforce Supreme Court Order* is granted, and the following is ORDERED.

1. By noon on Monday September 28, 2020, the Coordinator of Elections shall amend the language of the Absentee Application Form to include the following specific wording to correspond to “Box 4” of the list of eligibility conditions:

I am a caretaker of a hospitalized, ill or physically disabled person (this includes voters who care for or reside with persons who have underlying

medical or health conditions which in their determination render them more susceptible to contracting COVID-19 or at greater risk should they contract it).

2. Defendant Goins shall direct the County Election Commissions across the State to use the specific wording above on any materials listing the excuses for absentee voting by mail that the County Election Commissions disseminate to voters.

3 Defendant Goins shall file a Declaration with this Court by noon, October 1, 2020, that the orders in paragraphs 1 and 2 above have been complied with.

The above orders are based upon the reasoning and authorities stated in the Plaintiffs' briefing on this matter, which is incorporated herein by reference, and in particular the following.

1. The State conceded and represented during oral argument before the Tennessee Supreme Court that voters residing with someone with an underlying COVID-susceptible condition are eligible to vote by mail. *See* Pls.' Joint Reply Supp. Pls.' Joint Stmt. of Issues, at 3-4 (citing Hearing Transcript, Ex. A. to Declaration of Jacob Webster Brown):

JUSTICE LEE: Is it the state's position that Tennessee voters who have underlying health conditions that make them more susceptible to COVID-19 complications and *those who live with people in that condition*, are they able to— are they allowed to vote absentee? Is that the state's position under this statute? [emphasis added]

MS. KLEINFELTER: Under this statute, it is the voter that makes that determination. And if the voter—

JUSTICE LEE: What is the State’s position on a voter who has the underlying health condition *or lives* with someone with an underlying health condition? Can they vote absentee? [emphasis added]

MS. KLEINFELTER: If the voter makes that determination—

JUSTICE LEE: If the voter makes that decision, can they vote absentee?

MS. KLEINFELTER: If the voter has made that decision then yes, they may vote absentee.

and

JUSTICE KIRBY: The real question then is at issue is the plaintiffs with no underlying medical condition, and you don’t *live with* anybody with underlying medical [conditions] as we analyze it, if we segment those two groups? [emphasis added]

MS. KLEINFELTER: Yes. And I believe that is—is part of the argument that we made.

There was no ambiguity: the State told the Justices that anyone residing with a COVID-vulnerable voter would be eligible to vote absentee in November.

In addition, the August 5 Supreme Court Order required the State to make its concession clear to voters.

We instruct the State to ensure that appropriate guidance, *consistent with the State’s acknowledged interpretation*, is provided to Tennessee registered voters with respect to the eligibility of such persons to vote absentee by mail in advance of the November 2020 election [emphasis added].

2. Tennessee law provides with respect to Coordinator Goins that it is his statutory duty to assure that County Election Commissions and their Administrators comply with the Tennessee election law, which of course includes decisions of the Tennessee Supreme Court, quoting the statute as follows.

(a) The coordinator of elections shall:

- (1) Generally supervise all elections;
- (2) Prepare instructions for the conduct of registration;
- (3) Advise election commissions, primary boards, and administrators of elections as to the proper methods of performing their duties;

* * *

- (7) Publish in accordance with the rules, regulations, policies and procedures of the state publications committee, and keep up to date an election laws manual, including this title, rules and regulations under this title, and such other material as the coordinator of elections may determine to be useful to persons administering the election laws, and prepare condensed materials for the use of election officials;
- (8) Furnish instructions for election officials as to their duties in the conduct of elections and copies of election laws manual and updating materials to the election commissions, primary boards, and administrators. Any interested citizen may purchase a copy of the election laws through the coordinator of elections office at a price to be established by the coordinator. The price charged may not exceed the actual cost involved

TENN. CODE ANN. § 2-11-202 (West 2020).

3. In the August 20, 2020 hearing before this Court, Defendants' Counsel stated that if a person determines for him/herself they are COVID-19 eligible to vote absentee they cannot be prosecuted for perjury.

s/ Ellen Hobbs Lyle
ELLEN HOBBS LYLE
CHANCELLOR

cc: Due to the pandemic, and as authorized by the COVID-19 Plan of the Twentieth Judicial District of the State of Tennessee, as approved by the Tennessee Supreme Court, this Court shall send copies solely by means of email to those whose email addresses are on file with the Court. If you fit into this category but nevertheless require a mailed copy, call 615-862-5719 to request a copy by mail.

For those who do not have an email address on file with the Court, your envelope will be hand-addressed and mailed with the court document enclosed, but if you have an email address it would be very helpful if you would provide that to the Docket Clerk by calling 615-862-5719.

Jacob Webster Brown
Melody Dernocoeur
Bruce S. Kramer
Steven J. Mulroy
Attorneys for the Plaintiffs

Alexander S. Rieger
Janet M. Kleinfelter
Steven A. Hart
Matthew D. Cloutier
Kelley L. Groover
Attorneys for the Defendants