ELIAS LAW GROUP

250 Massachusetts Ave NW, Suite 400 | Washington, DC 20001

November 5, 2026

VIA ELECTRONIC MAIL AND PUBLIC RELEASE

TO: All 82 Mississippi Counties, their Election Commissioners, and their Circuit Clerks

Re: Cindy Hyde-Smith's Unlawful Attack on Voter Privacy

Dear Election Commissioners and Circuit Clerks:

Earlier this afternoon, you received a letter from counsel to Cindy Hyde-Smith for U.S. Senate, demanding that you take unlawful and extraordinary measures in handling affidavit ballots in the U.S. Senate race. Those demands have no basis in Mississippi law, and if you depart from ordinary election procedures as you have been asked to do, you will violate Mississippi voters' rights and Mississippi election law.

In particular, Hyde-Smith cites no legal authority whatsoever in demanding that affidavit ballots, once processed and accepted, be maintained separately from regular and absentee ballots. That is because there is no legal authority for that demand. Mississippi Code § 23-15-573 regulates the affidavit process in detail and says nothing to authorize that counted affidavit ballots be separately maintained from other counted ballots, despite directly addressing other preservation issues. And the 2026 County Election Handbook makes clear that affidavit ballots are just "official Election Day paper ballots which are placed into an Affidavit Ballot envelope," Handbook at 50, and does not provide for counting or maintaining accepted affidavit ballots separately from other paper ballots, *id.* at 61. In contrast, when ballots—such as rejected absentee ballots—are to be kept separate, the Handbook says so. *See id.* at 60.

The Mississippi Supreme Court has specifically cautioned against departures from required counting procedures that would undermine "the secrecy of a voter's ballot" and "violate the fundamental principle of the right to cast a secret ballot." *Clark v. Rankin Cnty. Democratic Exec. Comm.*, 322 So. 2d 753, 756 (Miss. 1975). Segregating accepted affidavit ballots from other ballots would have exactly that effect, directly threatening voter secrecy and raising the danger that a voter's identity could be linked to their ballot. "The secrecy of the ballot is a right personal to the voter and he cannot be deprived of this right." *O'Neal v. Simpson*, 350 So. 2d 998, 1007 (Miss. 1977).

Critically, Hyde-Smith does not even demand that you maintain accepted affidavit ballots together with their envelopes, and doing so would be an obvious violation of the right to a secret ballot. *Id.* at 1007. **There is no basis whatsoever in Mississippi law for creating or maintaining records that would allow any accepted ballot to be linked to any particular voter's identity. Doing so would violate voters' constitutional rights.**

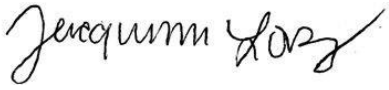
Moreover, counties may not make changes to election procedures in the middle of the count. Doing as Hyde-Smith demands would violate voters' rights under the Equal Protection Clause by creating unlawful inconsistency between the treatment of similarly situated Mississippi voters both within and between counties. Many counties have already concluded their count and did not unlawfully segregate the ballots of affidavit voters as Hyde-Smith demands. Doing so now in select counties would unconstitutionally treat their ballots differently. *See, e.g.*, *Bush v. Gore*, 531 U.S. 98, 107 (2000) ("[A]rbitrary and disparate treatment to voters in its different counties," amounts to "a constitutional violation" of the Equal Protection Clause of the Fourteenth Amendment).

Finally, there is no justification for any of this. Hyde-Smith refers to the possibility of an election contest, but as you know, Mississippi law does not provide for an election contest in an election for federal office like the U.S. Senate race. *See* Mississippi Code § 23-15-951. Hyde-Smith also refers to a statutory provision allowing examination of ballot boxes. *See* Mississippi Code § 23-15-911. But that provision is part of the "Election Contests" Article of the Mississippi Code—it authorizes such examinations for purposes of supporting an election contest—which, again, is unavailable in the U.S. Senate race. Subsection (2) of § 23-15-911 confirms the point, expressly providing that the examination provision "shall apply in the case of an election contest regarding the seat of a member of the state Legislature." *Id.* No similar language makes the examination provision available for an election to federal office.

As the Mississippi Supreme Court has explained, § 23-15-911 is a precursor to an election contest—a "pre-suit, ballot-box examination" in anticipation of an election contest. *Smith v. Webster*, 233 So.3d 242, ¶¶ 1, 15 (Miss. 2017). Without a state-law election contest procedure to support, there will be no basis for such an examination in the U.S. Senate race.

Notwithstanding Hyde-Smith's letter, you should therefore do as you are legally obligated to do: continue conducting this election using ordinary, lawful procedures. Do not segregate accepted affidavit ballots from other paper ballots. **And certainly do not do anything that would allow a particular ballot to be traced to a particular voter, in violation of the "fundamental principle of the right to cast a secret ballot."** *Clark*, 322 So. 2d at 756.

Very truly yours,



JACQUELYN LOPEZ

Counsel to Scott Colom for Senate

cc: Marc E. Elias; David R. Fox; Michael Watson, Mississippi Secretary of State (via email: Michael.Watson@sos.ms.gov; Secretary@sos.ms.gov; ElectionsAnswers@sos.ms.gov).