



Office of the Secretary of the State
165 Capitol Avenue
Hartford, CT 06106

MEMORANDUM OF OPINION

To: All Town Clerks and Registrars of Voters

From: Office of the Secretary of the State

Date: May 6, 2020

Re: Absentee Balloting Voting During a State of Health Emergency

We are writing this opinion to ensure that voters are able to participate in the upcoming August 11, 2020 Republican and Democratic Primaries in the safest manner possible. More specifically, we are clarifying the definition of "Illness" for Absentee Balloting at a time when the Governor has declared a public health and civil preparedness emergency throughout the State of Connecticut.

This opinion is issued pursuant to Connecticut General Statutes §9-3 which states, "(a) The Secretary of the State, by virtue of the office, shall be the Commissioner of Elections of the state, with such powers and duties relating to the conduct of elections as are prescribed by law and, unless otherwise provided by state statute, the secretary's regulations, declaratory rulings, instructions and opinions, if in written form, and any order issued under subsection (b) of this section, shall be presumed as correctly interpreting and effectuating the administration of elections and primaries under this title, except for chapters 155 to 158, inclusive, and shall be executed, carried out or implemented, as the case may be, provided nothing in this section shall be construed to alter the right of appeal provided under the provisions of chapter 54. Any such written instruction or opinion shall be labeled as an instruction or opinion issued pursuant to this section, as applicable, and any such instruction or opinion shall cite any authority that is discussed in such instruction or opinion...."

Connecticut General Statutes §9-135 permits a voter to receive an absentee ballot if they cannot appear at their assigned polling place because of "(1) His or her active service with the armed forces of the United States; (2) his or her absence from the town of his or her voting residence during all of the hours of voting; (3) his or her illness; (4) his or her physical disability; (5) the tenets of his or her religion forbid secular activity on the day of the primary, election or referendum; or (6) the required performance of his or her duties as a primary, election or referendum

official, including as a town clerk or registrar of voters or as staff of the clerk or registrar, at a polling place other than his or her own during all of the hours of voting at such primary, election or referendum.”

Webster’s dictionary defines “illness” as “an unhealthy condition of body or mind or sickness.” “*Illness.*” *Merriam-Webster.com Dictionary, Merriam-Webster, <https://www.merriam-webster.com/dictionary/illness>. Accessed 2 May, 2020.* It is clear that this definition as well as the statutory section referenced above, does not limit the term illness to an individual who has limited mobile function or is hospitalized or confined to a bed.

In fact, the Centers for Disease Control have identified numerous **pre-existing illnesses** that put certain individuals at increased risk when exposed to the COVID-19 virus. These include, but are not limited to: (1) People of all ages with underlying medical conditions, particularly if not well controlled, including: People with chronic lung disease or moderate to severe asthma, People who have serious heart conditions, People who are immunocompromised (Many conditions can cause a person to be immunocompromised, including cancer treatment, smoking, bone marrow or organ transplantation, immune deficiencies, poorly controlled HIV or AIDS, and prolonged use of corticosteroids or other immune weakening medications); (2) People with severe obesity (body mass index [BMI] of 40 or higher); (3) People with diabetes; (4) People with chronic kidney disease undergoing dialysis; (5) People with liver disease; and (6) Pregnant women.

Pursuant to Connecticut General Statutes §1-2z, “The meaning of a statute shall, in the first instance, be ascertained from the text of the statute itself and its relationship to other statutes. If, after examining such text and considering such relationship, the meaning of such text is plain and unambiguous and does not yield absurd or unworkable results, extratextual evidence of the meaning of the statute shall not be considered.”

Looking first at the statutory language and the relationship to other statutes, “illness” cannot be limited to some affliction that leaves an individual debilitated or bed ridden. First, the statutory section itself does not define “illness” in such a way. Second, the statutory section at issue also uses the term “physical disability” which in and of itself identifies an individual with mobility issues that can be described as both an “illness” as well as a limitation on mobility. As such, it would be contrary to statutory construction to place the same or similar meaning to both phrases.

In addition, Connecticut General Statutes also provides additional methods of absentee balloting such as Supervised Absentee Balloting *see section 9-159q*, Emergency Absentee Balloting *see section 9-150c*, Permanent Absentee Balloting *see section 9-140e*, and Voting In Person After Voting By Absentee Ballot *see section 9-158n*. Given the additional meanings of “illness” or “physical disability” when used in the other sections of the General Statutes, it stands to reason that “illness” as used in Connecticut General Statutes §9-135 must have a broad definition, one that gives meaning to the special circumstances by which voters can vote using an absentee ballot.

Given the reasoning set forth above and the guidance provided by the Centers of Disease Control, the Office of the Secretary of the State has determined that any registered voter who has a **pre-existing illness** can vote by absentee ballot because that voter’s illness would prevent them from appearing at their designed polling place safely because of the COVID 19 virus.

In addition, individuals who may have been in contact with a COVID-19 infected individual such as healthcare workers, first responders, individuals who are caring for someone at increased risk, as well as those that feel ill or think they are ill because of the possibility of contact with the COVID-19 virus should also be included in the category of voters that would qualify as “ill” for the purposes of absentee voting.