

SUPREME COURT OF LOUISIANA

No. 2023-C-01645

JOHN NICKELSON

VS.

**HENRY WHITEHORN AND R. KYLE ARDOIN, IN HIS OFFICIAL
CAPACITY AS LOUISIANA SECRETARY OF STATE**

**On Writ of Certiorari to the Court of Appeal, Second Circuit,
Parish of Caddo**

GENOVESE, J., concurs in the denial of this writ and assigns the following reasons:

This Court has engaged in an intense study and discussion relative to this extremely important and perplexing case. After a thorough review of this matter, I concur in the majority's denial of this writ; however, I feel compelled to elaborate on my vote to deny this writ.

In a two-candidate race, the mere fact that one candidate ends up with one or more votes than his opponent, without regard or consideration given to proven fraud and unqualified voters casting ballots, does not equate to a just and fair election under our law and jurisprudence. A just and fair election can only be had when one candidate wins by a majority vote of qualified electors. In this case, the following pertinent facts were clearly and factually established by the evidence at the trial court level:

- a. Initially and after recount, this runoff election was decided by a one-vote margin; and
- b. There were eleven illegal votes cast.

Upon consideration of these critical facts, the trial court then made a finding of fact that it is virtually impossible for there to be an accurate tabulation of the votes received by either candidate. Louisiana Revised Statutes 18:1432(A)(1) specifically addresses such an occurrence and states in pertinent part:

If the trial judge in an action contesting an election determines that: it is impossible to determine the result of election, or the number of qualified voters who were denied the right to vote by the election officials was sufficient to change the result in the election, if they had been allowed to vote, or the number of unqualified voters who were allowed to vote by the election officials was sufficient to change the result of the election if they had not been allowed to vote, or a combination of these factors would have been sufficient to change the result had they not occurred, the judge may render a final judgment declaring the election void and ordering a new primary or general election for all the candidates. . . .

After making those findings of fact, the trial court proceeded to implement the remedy set forth in La.R.S. 18:1432(A)(1) and rendered a final judgment declaring the election void and ordering a new runoff election be held. The court of appeal, in a split decision, affirmed the trial court decision.

The filings in this Court and the content of the court of appeal opinion do not reveal any evidence that the trial court was clearly wrong or manifestly erroneous in its findings of fact that eleven unqualified and therefore illegal votes were cast resulting in a one-vote margin of victory. There being no manifest error proven, I find no error in the lower courts' rulings.

Additionally, based on the above findings of fact and the trial court's decision to implement the remedy set forth in La.R.S. 18:1432(A)(1) by declaring the election void and ordering a new runoff election, I find no abuse of the trial court's discretion in doing so.

Judge Stone, in her dissent, stated: "There can be no democracy without free and fair elections." I agree; however, this election was not a free and fair election. A one-vote margin of victory supported by clearly established eleven unqualified voters cannot be said to constitute a fair election.

What is fair and essential to the candidates and the electorate, and to preserve election integrity, is to have a new runoff election with a winner decided by qualified voters. This is precisely what the trial court ordered and what was affirmed by the

court of appeal. It is upon this rationale, and this rationale only, that I cast my vote to concur in the denial of this writ and assign these reasons.