

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

GRIFFIN, J., would grant and docket and assigns reasons.

Based on the plain language of the relevant statutory provisions, I would grant and docket this matter of unquestionable civic importance for the requisite consideration it is due. At issue is the timeliness of objections to election irregularities based on four ballots cast by interdicts, five improperly executed absentee ballots, and two instances of “double voting” where individuals voted on election day after having previously voted in the election – one by early voting, the other by absentee ballot. “An objection to the qualifications of a voter ... which with the exercise of due diligence could have been raised by a challenge of the voter or objections at the polls to the procedure, is deemed waived.” La. R.S. 18:1434.

Of the four interdicts, three voted in-person by early voting with the other voting by absentee ballot. “A candidate ... may challenge an absentee by mail or early voting ballot for the grounds specified in R.S. 18:565(A),¹ *by personally filing his written challenge with the registrar no later than the fourth day before the election for which the ballot is challenged.*” La. R.S. 18:1315(A)(1) (emphasis added). No person shall be permitted to register to vote after being judicially declared to be mentally incompetent resulting from a full interdiction proceeding.

¹ “A commissioner, watcher, or qualified voter may challenge a person applying to vote in a primary or general election on the ground that ... [t]he applicant is not qualified to vote in the election.” La. R.S. 18:565(A)(1).

La. R.S. 18:102(A)(1)(b)(2). Under La. R.S. 18:1311, the registrar of voters is required to keep a list of the names of people who cast their ballots absentee or by early voting. The list is made available for inspection by members of the public at the principal office of the registrar. *Id.* It is undisputed that a list of persons interdicted, and thus ineligible to vote, is readily available through the public records.

Specific procedures are also in place for a candidate to challenge improperly executed absentee ballots. “Candidates, their representatives, and qualified electors may be present during the preparation, verification, counting, and tabulation of absentee by mail and early voting ballots.” La. R.S. 18:1313.1(E). “During the preparation and verification process for the counting of absentee by mail ballots and early voting ballots before the election, as applicable, or the counting of absentee by mail and early voting ballots on election day, any candidate or his representative ... may challenge an absentee voting ballot for cause other than those specified in R.S. 18:565(A).” La. R.S. 18:1315(B).

“A person who has voted either by absentee by mail ballot or during early voting shall not vote in person at the polls on election day.” La. R.S. 18:1305. Challenges to such illegal double votes are deemed waived if, with the exercise of due diligence, they could have been raised at the polls on election day. *See* La. R.S. 18:1434. As with the other irregularities discussed above, the Election Code provides specific procedures to guide a candidate on the exercise of proper due diligence. The registrar is required to keep a list, for public inspection, of all persons who voted by early voting and absentee ballot as of the last day of early voting. La. R.S. 18:1311(A)(1). A supplemental list must also be prepared updating the information to include the names of all persons from whom absentee ballots were received after the last day of early voting and prior to election day. La. R.S. 18:1311(A)(2). The supplemental list is delivered to each precinct and made

available for public inspection and a copy of the supplemental list is retained for use by the parish board of election supervisors on election night. *Id.* These lists are also posted to the Secretary of State’s website. La. R.S. 18:1311(A)(3). The commissioners at the polling place shall use these supplemental lists to ensure that persons who have voted absentee by mail do not vote in person at the polls on election day. La. R.S. 18:1311(E). Importantly, each candidate has the right “to have one watcher at every precinct on election day.” La. R.S. 18:435(A)(1). A watcher “shall call any infraction of the law to the attention of the commissioners” on election day. La. R.S. 18:427(B).

The Election Code provides an extensive framework articulating the requirements for timely challenging election irregularities.² That such procedures may be considered too onerous or burdensome for a candidate is arguably a question of policy best directed to the legislature.

² Notwithstanding the issue of timeliness, this matter further warrants docketing for consideration of the interplay between La. R.S. 18:1432(A)(1) and La. C.E. art. 512 which provides that “[e]very person has a privilege to refuse to disclose the tenor of his vote at a political election conducted by secret ballot *unless the vote was cast illegally*.” [emphasis added.] Is it truly “impossible” to determine the result of an election if those who cast their ballots illegally may be called to testify as to their vote? *See Gaiennie v. Druilhet*, 143 La. 662, 664, 79 So. 212, 213 (observing that if “plaintiff should succeed in showing to the satisfaction of the trial court that the three voters in question were ... not qualified voters at said election, the secrecy protecting legal voters would not stand in the way of the said three voters being required to divulge for whom they voted”).