

**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

**CRICHTON, J., concurs and assigns reasons.**

The results of the November 18, 2023, election for Caddo Parish Sheriff showed the candidates were separated by the slimmest possible margin—one vote. In a race as close as this, an irregularity affecting even a single vote cannot be disregarded. The trial record in this case proves at least one illegality that renders the results of the election impossible to determine. Thus, I join the four other justices in denying the writ application in this matter because, in my view, the courts below reached the correct result in declaring the election void and ordering a new election pursuant to La. R.S. 18:1432. *See Stobart v. State through Dep't of Transp. & Dev.*, 617 So.2d 880, 882 (La. 1993) (Reviewing courts are limited to the trial record and “may not set aside a trial court’s or a jury’s finding of fact in the absence of ‘manifest error’ or unless it is ‘clearly wrong.’”) (*quoting Rosell v. ESCO*, 549 So.2d 840 (La. 1989)). I write separately to express my grave concerns about the integrity of the election process which was laid bare in the trial contesting these results.

Election officials’ testimony at trial revealed a substantial gap in compliance with statutory election code procedures. The Registrar of Voters testified that absentee ballots lacking signatures by either the voter or a witness, as required by law, *see* La. R.S. 18:1306; 18:1310, “slipped through the cracks” and were nevertheless counted. Signatures by the voter and witness can never be—and are not—mere ornaments. By verifying the identity of the elector, their purpose is to

prevent abuses and assure accuracy in absentee voting. The signatures are “sacramental to the reasonable objectives of the absentee voting law.” *Adkins v. Huckabay*, 1999-3605, p. 22, n. 14 (La. 2/25/00), 755 So.2d 206, 219. Ballots failing to comply with the signature requirements should have been disqualified, yet the trial court found five that were not. In an election separated by a single vote, this cannot be deemed harmless.

As set forth in La. R.S. 18:1315, candidates “may” challenge absentee ballots with these deficiencies before or on election day. However, the trial record indicates that such challenges were not contemplated by the officials overseeing this election. The Registrar of Voters testified he was “not sure” such a procedure was “allowed.” As far as he was aware, “the only people who can see those ballots or deal with those ballots, other than the voter himself [] are the people on [his] staff.” Similarly, the President of the Parish Board of Election Supervisors testified that she did not think there was an opportunity for the public to view the absentee ballots before election day. Accordingly, while plaintiff did not challenge these ballots before the election, based on the election officials’ testimony, it is unlikely he would have been permitted to do so.

Additionally, the trial court found four votes that were illegally cast by interdicted citizens. The Election Code provides that “[n]o person shall be permitted to register or vote who is: Interdicted after being judicially declared to be mentally incompetent as a result of a full interdiction proceeding.” La. R.S. 18:102(A)(2). It is the responsibility of the Clerk of Court to record each judgment of interdiction and, by the tenth day of each calendar month, transmit a certified copy of any judgment to the Registrar of Voters. La. R.S. 18:172. The Registrar then suspends the voter registration of the interdict. La. R.S. 18:176 (B). The judgments of interdiction involved here were made in 2021, 2014, 2013, and 2012. However, the

Clerk of Court's Office did not transmit these judgments and the Registrar of Voters testified that while in this position, he "hasn't seen a single interdiction."

Under these circumstances, it is my view that plaintiff did not run afoul of his due diligence requirement to challenge votes on or before election day. Nevertheless, even if one could reasonably conclude that plaintiff waived objection to all the aforementioned illegal votes, there remains an improperly cast vote that plaintiff could not have challenged on election day.

The record shows that M.F.G. illegally voted twice: by absentee ballot and in person on election day. *See* La. R.S. 18:1305. According to the Notation of Irregularities<sup>1</sup> from his precinct, M.F.G. was permitted to vote in person on election day because the voter register did not show that his absentee ballot had been received. Later that day, the supplemental list of absentee ballots arrived at the precinct. A commissioner noted M.F.G.'s name on the supplemental list and contacted the office of the Registrar of Voters to report the issue. An employee of that office told the commissioner she would pull M.F.G.'s absentee ballot. However, at trial, evidence showed that M.F.G.'s absentee ballot was never pulled and, instead, was counted. If election officials were aware of but unable to prevent M.F.G.'s double-vote, I do not believe plaintiff, with the exercise of due diligence, could have objected to this irregularity on election day. Therefore, plaintiff's objection in this regard cannot be deemed waived under La. R.S. 18:1434.

In short, the double-vote cast by M.F.G. is an illegality that plaintiff could not have challenged at the polls and that makes the result of this election, separated by a single vote, impossible to determine. Thus, the lower courts correctly declared the results void and ordered a new election as permitted by La. R.S. 18:1432(A)(1). Finally, I note that in this case, neither candidate is to blame. When a court is

<sup>1</sup> The Notation of Irregularities is a form prepared by the secretary of state to document irregularities observed by members of the board of election supervisors. *See* La. R.S. 18:574.

presented with proven errors, *even when no candidate is responsible for those errors*, it is compelled to act and uphold our Election Code. *Adkins*, 99-3605, p. 26, 755 So.2d at 221 (“A tolerance of [] deviations from legal requirements could lead to a manipulation of elections, and affect the integrity of an election and the sanctity of the ballot.”). In this case, a new election will ensure confidence in the final outcome.