DUPLICATE
PRIORITY

LOUISIANA SUPREME COURT 23 C 1645

DOCKET NO. _____

JOHN NICKELSON,
Petitioner-Respondent

VERSUS

HENRY WHITEHORN AND R. KYLE ARDOIN, IN HIS OFFICIAL CAPACITY AS LOUISIANA SECRETARY OF STATE,
Defendants-Applicant (Whitehorn)

BEFORE THIS HONORABLE COURT ON COLONEL HENRY WHITEHORN'S APPLICATION AND PETITION FOR THE EMERGENCY ISSUANCE OF A SUPERVISORY WRIT OF CERTIORARI TO REVIEW THE DECEMBER 12, 2023 PLURALITY OPINION OF THE COURT OF APPEAL, SECOND CIRCUIT IN MATTER 55,730-CA

LATELY BEFORE THE FIRST JUDICIAL DISTRICT COURT IN MATTER NO 647,419, CADDO PARISH, HON. E. JOSEPH BLEICH PRESIDING

A CIVIL (*ELECTION CHALLENGE*) PROCEEDING

APPLICATION AND PETITION OF COLONEL HENRY L. WHITEHORN, SR. FOR AN EMERGENCY WRIT OF CERTIORARI TO REVIEW THE DECEMBER 13, 2023 OPINION AND DECISION OF THE COURT OF APPEAL, SECOND CIRCUIT, OVERTURNING THE ELECTION OF COLONEL WHITEHORN

Defendant-Applicant

SUBMITTED BY:

R. Gray Sexton, (Bar Roll#07531)
Blair Naquin, (Bar Roll #35533)
8680 Bluebonnet Blvd, Suite D
Baton Rouge, Louisiana 70810
Telephone: (225) 767-2020
Facsimile: (225) 767-0845
graysexton@sextonlaw.net
blairnaquin@sextonlaw.net

Carl H. Franklin,
Attorney At Law,
Bar # 14974
910 Pierremont Rd. Suite 410
Shreveport, LA 71106
318-429-6822
Fax: 318-409-8050
carl@attorneycarlfranklin.com

Scott R. Bickford (LA. #01165)
Lawrence J. Centola III (LA. #27402)
Spencer R. Doody (LA. #27795)
Martzell, Bickford & Centola
338 Lafayette Street
New Orleans, LA 70130
Phone: 504-581-9065
Fax: 504-581-7635
Sbickford@mbfirm.com
Lcentola@mbfirm.com
Sdoody@mbfirm.com

L. Havard Scott, III (LA. #11881)
Attorney at Law
1049 Southfield Road
Shreveport, LA 71106
Phone: 318-218-4052
Fax: 318-868-0023
Lhavardscott@aol.com

Attorneys for Henry L. Whitehorn, Sr.

WRIT FILING - FILING # SC064989

Print Filing | Inbox

Filing Details | Filing Summary | Notifications | Attachments | Costs | Status History

INTAKE DETAILS

Type of Filing	Application
Filing Date & Time	12/14/2023 10:31:00 AM
Acceptance/Rejection Notes	(BR)

WRIT APPLICATION DETAILS

Type of Writ	Civil Application
Docket #	2023-C-1645
Client Matter #	
Short Case Title	Nickelson v. Whitehorn
Long Case Title	
Have there been any other filings in this Court in this matter?	No
Are you seeking a Stay Order?	No
Filer Notes	

TYPE OF PLEADING

Pleading Type	Civil
Priority Treatment	None
Self-Representing	No

LEAD COUNSEL/PRO SE LITIGANT INFORMATION

Applicants

First Name	Last Name	Bar Number	Address	Phone
Raymond	Sexton	07531	8680 Bluebonnet Blvd Ste D BATON ROUGE, LA 70810	225-767-2020
Scott	Bickford	1165	338 Lafayette Street New Orleans, LA 70301	504-581-9065
Laura Blair	Naquin	35533	8680 Bluebonnet Blvd Ste D Baton Rouge, LA 70810	225-767-2020

Respondents

First Name	Last Name	Bar Number	Address	Phone
Scott	Sternberg	33390	935 Gravier Street, Suite 2020 New Orleans, LA 70113	504-324-4141

Administrative or Municipal Court Information

Tribunal/Court	
Judge Commissioner /Hearing Officer	
Docket Number	
Ruling Date	

District Court Information

Parish and Judicial District Court	1st Judicial District Court
Judge	E. Joseph Bleich
Docket Number	647,419
Date of Ruling/Judgement	12/5/2023

Appellate Court Information

Circuit	2nd Circuit Court of Appeals
Action	Appeal in Election Contest
Filing Date	12/8/2023
Panel of Judges	5
Docket Number	55,730
Applicant in Appellate Court	Henry L. Whitehorn, Sr.
Ruling Date	12/12/2023
En Banc	No

Rehearing Information

Applicant	
Action on Rehearing	
Panel of Judges	
Filing Date	
Ruling Date	
En Banc	No

Present Status

Present Status	Post-Trial
Is there a stay now in effect	No
If so, explain briefly	Election Contest
Hearing/Trial Scheduled Date	
Has this pleading been filed simultaneously in any other court?	No

I. INDEX

II. TABLE OF AUTHORITIES

III. PRELIMINARY STATEMENT

This matter challenges the vacating of a properly conducted election which was won by Applicant, Col. Henry Whitehorn, by a single vote. To legally challenge a Louisiana elector's constitutionally-protected vote, Appellee John Nickelson must have performed basic due diligence before and during the election. For every vote contested Mr. Nickelson failed to prove he exercised that diligence. In fact, the record shows he failed to have representatives at the inspection and counting of absentee ballots and the record is devoid of objections by any poll watchers to any activity at any polling location.

Even were the Court to get past Mr. Nickelson's failure in every instance to timely advance challenges to electors, Mr. Nickelson failed to even allege, much less meet, his statutory burden to prove the challenged votes would have changed the results of the election. Unlike other election challenges where fraudulent voters were identified, as here, no testimony was offered as to which candidate the illegal electors cast their vote. Here, Mr. Nickelson offered no proof that these electors even cast a vote for the sheriff or in fact voted for Colonel Whitehorn.

On November 18, 2023, Colonel Henry Whitehorn was elected Sheriff of Caddo Parish, Louisiana.

This was a great day for the citizens of Caddo Parish. No Black man had ever been elected sheriff. Nor had anyone with the experience and impeccable reputation for character and decency been elected: Colonel Whitehorn is a veteran, a state trooper who rose to the highest rank of Colonel and Superintendent of the Louisiana Department of Public Safety and Corrections. His forty years of law enforcement experience further include service as a United States Marshal and Chief of Police,. He brings strength and honor to our Parish and State.

The Court of Appeal, Second Circuit, in a sharply divided plurality opinion affirmed that this election result was "invalid." 43,241 votes were rejected and a second election required sometime in the spring of next year.

The Court of Appeal focused on six of the 43,241 votes which were identified as "irregular." Four of those six votes were cast prior to the election.

La. R.S. 18:1315 and 18:1434 provide that objections to absentee ballots and voter qualifications are "waived" where a "written challenge" is not filed four days before the election.

Mr. Nickelson failed to file such a challenge.[1]

Two additional voters apparently attempted to vote twice. There are disturbing facts concerning their relationship to the Nickelson candidate. There is inconclusive proof that at least one of these two actually voted twice.

There was absolutely no evidence that any of these six votes impacted the election, nor did Nickelson bother to allege in his Petition that he would have been elected but for voting irregularities or errors, even though that such allegations are the *sine qua non* for stating a cause of action under R.S. 18:1401(B).[2] The honorable courts below concluded that no such proof was necessary; that speculation was good enough; that it was good enough to show that the results "could have been changed" or "might have been changed" by these untoward events.

Yet, R.S. 18:1401 affords a cause of action only to those candidates alleging that "they would have been elected" had not the "unlawful activities" occurred. R.S. 18:1432 requires a showing that the irregularities "would have been sufficient to change the result had they not occurred."[3]

---

[1] As recognized by both dissents to the Second Circuit plurality opinion:

> Jurisprudence ... holds that voters who have not properly registered and qualified to vote must be formally challenged either before or at the time they offer to vote. In the absence of a formal challenge according to the statutory procedure, the qualification of a voter cannot be collaterally attacked in an election contest after the election has been completed.

See Appx "A," at pp. 32, 37 (quoting *Veuleman v. O'Con*, 417 So. 2d 131 (La. App. 3 Cir. 1982)).

[2] *See* Appx "A," at pp. 2-4 (denying Col. Whitehorn's exception of no cause of action); *see also* Louisiana Court of Appeal, Second Circuit, Record, at p. 207 (Trial Transcript) (quoting the Court: ... "Mr. Sexton wishes to ... present exceptions at this juncture. And I have already indicated, and I am now ordering that those will be referred to the merits. And Mr. Sexton, you may object to the Court's handling." And quoting Mr. Sexton: "...We do absolutely object to your Honor's ruling because these exceptions go to the heart of what might be admissible as evidence during the course of today's proceedings."). Because the essential element of Mr. Nickelson's election challenge was not alleged and indeed never proven, the case should have been dismissed, as in *Deal v. Haney*, 14-1232, (La.App. 3 Cir. 11/25/14); 158 So.3d 35 ("There are no allegations in the petition which could be construed as showing what number of votes Deal would have received. Therefore, we agree with the trial court that Deal has failed to state a cause of action. Deal has made no concrete allegations of fact tending to support the conclusion that the outcome of the election would have been different.").

[3] *See Walker v. Rinicker*, 29,361 (La.App. 2 Cir. 9/6/96); 681 So.2d 1 ("Although the sheriff and his personnel concede that errors were made, plaintiff neither alleged nor offered any proof that, except for irregularities or fraud in the election, the result would have been different. La. R.S. 18:1401(C)"). R.S. 18:1401(C) provides a right of action to a "person in interest" "contesting any election in which any proposition is submitted to the voters if he alleges that except for irregularities or fraud in the conduct of an election the result would have been different." This provision is analogous to La. R.S. 18:1401(B), providing that, "[a] candidate who alleges that, except for substantial irregularities or error, or except for fraud or other unlawful activities in the conduct of the election, he would have qualified for a general election or would have been elected may bring an action contesting the election." *See also Settle v. Bossier Par. Sch. Bd.*, 47,644, p. 7 (La.App. 2 Cir. 7/3/12); 93 So.3d 1284, 1289, *writ denied*, 2012-1569 (La. 7/11/12); 92 So.3d 347 *("For the reasons stated, the plaintiffs fell short of meeting their burden of proving that because of fraud or irregularities the outcome of the election either would have been different, or would have been impossible to determine.") (citing La. R.S. 18:1401(C)); *Nugent v. Phelps*, 36,366, (La.App. 2 Cir. 4/23/02); 816 So.2d 349, 359, *writ denied*, 2002-1153 (La. 5/10/02); 815 So.2d 850 ("Although we ultimately conclude that there is no manifest error in the trial court's finding that plaintiff failed to carry his burden of proof to annul the election, this does not mean we find no evidence suggesting irregularities and/or fraud in this election.").

These words could not be clearer. As Your Honors noted in *Deal*, and with particular regard to overturning elections, courts "do not make the law, and their fundamental duty is to give effect to the legislature's intent in passing a statute...."[4] "This court cannot manufacture a consequence...when the legislature has not specifically provided for such a consequence."[5] Nothing is more "consequential" than overturning an election.

Courts should not take away from the citizens of Caddo Parish their choice for Sheriff. This is a dangerous and far-reaching decision that warrants immediate attention by this Honorable Court.

IV. STATEMENT OF THE CASE AND RULINGS BELOW

A. Concise Statement of the Case.

On November 18, 2023, in a Caddo Parish runoff election for numerous offices, Col. Henry Whitehorn won, by one vote, the contest for the office of Sheriff. The Sheriff election was but one of 21 elections set forth on the November 18, 2023 ballot. Not all voters voted in all elections.

On November 27, 2023, following a request by the unsuccessful candidate, Mr. Nickelson, a recount of the vote was conducted by the Caddo Parish Commissioner of Elections. This recount occurred under the observation and supervision of representatives of both candidate Nickelson and Sheriff-elect Col. Whitehorn.

This recount of the votes cast confirmed, again, that Col. Whitehorn won the election by one vote.

This was a highly contentious election contest, which attracted national interest and involvement. The electioneering, along with a cursory review of the voting by precincts, warrants the conclusion that cultural, economic, and party affiliation considerations impacted this election result.

Yet, Col. Whitehorn won—with the votes confirmed in his favor. Twice.

Following a brief hearing on November 30, 2023, the Honorable *Ad Hoc* Judge below rendered a decision that vacated the election of Col. Whitehorn and requires a second election, apparently to be scheduled for March 23, 2024.[6] This ruling was affirmed by the Louisiana Court of Appeal, Second Circuit, by a five-judge panel, on December 12, 2023, at 11:46 A.M. We are unaware

---

[4] *Deal v. Perkins*, 22-01212, (La. 8/1/22); 347 So.3d 121, 134.

[5] *Id.*

[6] The December 5, 2023 "Opinion and Judgment" of the Honorable District Court is attached hereto as Appendix "A," at pp. 1-12.

of the reasoning for expanding the initial three-judge panel to a five-judge panel. After filing Whitehorn's Notice of Appeal, there were reports that the Second Circuit would select a panel of three judges, consistent with its usual practice.

Shortly thereafter, yet without explanation, a Notice was received showing the appointment of five honorable members to the hearing panel.

These actions by the honorable courts below are in patent disregard of the statutes controlling election-result challenges. As was developed in court, and as set forth below, the statutory law constrains judicial overturning of election-results only to those grounds prescribed in R.S. 18:1401.

Nickelson did not address—and certainly did not prove—that any of the statutory grounds for overturning the Caddo Parish Sheriff's election occurred. Indeed, Nickelson did not allege in his petition, nor was evidence provided at trial, to support the statutory requirement that any of the "irregularities" pointed out by Nickelson actually altered the result of the election.

Moreover, there was not one scintilla of evidence that a **single vote** cast for candidate Nickelson was disregarded or not counted, nor that a **single vote** cast for Col. Whitehorn was somehow invalid.

In fact, there was no evidence any of the "questioned" voters **even voted in the election for Sheriff.**[7]

Yet, in a plurality opinion, the Louisiana Court of Appeal, Second Circuit, affirmed the judgment of the trial court, incorrectly applying an "abuse of discretion" standard of review to "the trial court's determination that a new election is warranted in this matter."

Considering the issue of whether Nickelson timely objected to the purported "irregularities" of which he complains in the present election contest, the Court of Appeal disregarded the plain

[7] There were 21 contests on the ballot for the November 18, 2023 election. No evidence was presented that any of the "11" voters catalogued by the District Court or the "6" voters recognized by the Court of Appeal even voted in the Sheriff election.

language of La Rev. Stat. 18:1351[8] and the opinion of *Lipsey v. Dardenne*[9] to find that "it would be illogical to require Nickelson to review and object to the absentee-by-mail and early vote of the two double voters and four ineligible interdicts."[10]

As the Court of Appeal acknowledged, La. R.S. § 18:1434 provides that "an objection to the qualifications of a voter … or to an irregularity in the conduct of the election, 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."[11] The appellate court likewise stated:

> This provision has been read to require the candidate or his representative, rather than the voter, to exercise due diligence. *Janzen v. Stickell*, 29,461 (La. App. 2 Cir. 10/9/96), 691 So. 2d 683. The burden is on the candidate to challenge possibly unqualified voters prior to votes being cast if due diligence would have allowed for the discovery of this information. *Lipsey v. Dardenne, supra.*[12]

The Court of Appeal further noted that Caddo Parish Clerk of Court Mike Spense testified, as to the four interdicted individuals who voted early in the November 18, 2023 election, that:

- "it would take very little time to pull these four records together";
- "the records of interdiction would have been available long before the election"; and
- "neither candidate sought the records of interaction prior to the date they were certified by Spense on November 28, 2023, and received by Nickelson."[13]

The Court of Appeal additionally found that:

> R.J. Johnson, a four-year member of the [Caddo Parish Election Supervisor] Board, testified that Nickelson **chose not to avail himself of the opportunity to be present** at the verification, preparation, and counting process for absentee-by-mail and early voting ballots. Johnson confirmed that **the time and date of that process was posted and that there would be a record of any challenge made by a**

[8] La Rev. Stat. 18:1351 provides, in pertinent part:

> A. (1) A candidate or his representative … may challenge an absentee by mail or early voting ballot for the grounds specified in R.S. 18:565(A), by personally filing his written challenge with the registrar **no later than the fourth day before the election** for which the ballot is challenged.
>
> ….
>
> B. **During the preparation and verification process** for the counting of absentee by mail 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 by mail or early voting ballot for cause….

La Rev. Stat. 18:1351 (emphasis added).

[9] *Lipsey v. Dardenne*, 2007-1487, (La.App. 3 Cir. 11/29/07); 970 So.2d 1237, 1245 ("with due diligence, [an elector's] qualifications to vote on this basis [(interdiction)] could have been challenged prior to the election."), *writ denied*, 2007-2305 (La. 12/14/07); 970 So.2d 539.

[10] *See* Appx. "A," at p. 27.

[11] *See id.* at p. 25.

[12] *See id.* (emphasis added).

[13] *See id.* at p. 17.

candidate or his representative because the challenger would fill out a form stating the challenge.[14]

It is thereby undisputed that Mr. Nickelson did not challenge any ballots or voter qualifications for the November 18, 2023 election either prior to the November 27, 2023 recount or before filing the present suit about an hour after the recount (thereby waiving the right to assert such a challenge). Mr. Nickelson likewise did not request any records of interdiction before November 28, 2023.

These established facts manifestly contradict the determination of the appellate court plurality that "it would be illogical to require Nickelson to review and object to the absentee-by-mail and early vote of the ... four ineligible interdicts."[15]

The decision to nullify the majority vote undermines voters' confidence in the integrity and fairness of elections in Caddo Parish. The Court of Appeal manifestly erred in affirming the trial court ruling in this matter, which vacated the election results and ordered a new election next year for the office of Sheriff of Caddo Parish.

V. WRIT GRANT CONSIDERATIONS

Supreme Court Rule X §1(a) states that this Honorable Court may grant writs in the face of issues including "Conflicting Decisions," or "Erroneous Interpretation or Application of Constitution or Laws." In this application, it is respectfully submitted that the decision of the Second Circuit Court of Appeal implicates these writ grant considerations. Therefore, this Honorable Court should grant writs and set oral argument in this matter.

A. The Second Circuit's Ruling Conflicts with Rulings of the Louisiana Courts of Appeal, Third Circuit and Fourth Circuit

1. Standard of Review

The Second Circuit applied the abuse of discretion standard of review in this matter, citing *Lipsey*. However, the opinion of the Louisiana Court of Appeal, Third Circuit, in *Lipsey* merely applied the abuse of discretion standard to the trial court's decision as to whether to allow amendment of the pleadings under La. R.S. 18:1406 (B), which provides a trial court discretion in stating that a trial court "may allow the filing of amended pleadings..." *Lipsey* does not stand for the proposition that a trial court's legal conclusions in an election contest should be examined

---

[14] *See id.* at p. 18.

[15] *See id.* at p. 27.

under an abuse of discretion standard. As stated in *Suarez v. King*, "[i]n election cases, as in other civil cases, appellate courts review trial courts' factual findings under a manifest error standard and legal findings under a *de novo* standard."[16]

2. Holding as to Interdicted Voters

The Court of Appeal found, "as to all of the interdicted voters, we view it as too onerous a burden to require a candidate to canvass the public records prior to the election for orders of interdiction and can agree with the trial court that due diligence in these matters would not require such."[17] In so holding the appellate court expressly "recognize[d] this holding as being contrary to the view of the court in *Lipsey v. Dardenne, supra.*"[18]

Lipsey involved a challenge to an interdicted voter.[19] The *Lipsey* court found that Lipsey waived the challenge to this voter's qualifications to vote "because he failed to file his challenge prior to or on the date of the election."[20] The court in *Lipsey* further noted that, "with due diligence, her qualifications to vote on this basis [(interdiction)] could have been challenged prior to the election."[21]

The same result is warranted for Mr. Nickelson's untimely challenges to the four interdicted voters, whose records were available with just a few minutes of research into the conveyance records.

B. <u>The Second Circuit's Ruling Constitutes an Erroneous Interpretation or Application of Laws.</u>

The Court of Appeal erred in its interpretation of the plain language of the following statutes:

- La Rev. Stat. § 18:1432(A)(1), which requires a plaintiff in an election contest to introduce compelling evidence that is "sufficient to <u>change the result in the election.</u>" La Rev. Stat. § 18:1432(A)(1) (emphasis added);
- La Rev. Stat. § 18:1315, which requires a plaintiff in an election contest to "challenge an absentee by mail or early voting ballot … <u>no later than the fourth day before the election</u>

---

[16] *Suarez v. King*, 2021-0458, (La.App. 4 Cir. 8/3/21); 366 So.3d 315, 318, *writ denied*, 2021-01145 (La. 8/6/21); 322 So.3d 786 (citing *Ellison v. Romero*, 20-0376, (La. App. 4 Cir. 8/11/20), 365 So.3d 1, 3, *writ denied*, 20-01000 (La. 8/17/20), 300 So.3d 875).

[17] *See* Appx. "A," at p. 27.

[18] *Seeid.*.

[19] *Lipsey v. Dardenne*, 07-1487 (La. App. 3 Cir. 11/29/07, 5–6); 970 So.2d 1237, at 1244.

[20] *See id.*

[21] *See id.*

for which the ballot is challenged" or "on election day." La Rev. Stat. § 18:1315 (emphasis added).

- La Rev. Stat. § 18:1434, which provides that, "[a]n 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 Rev. Stat. § 18:1434 (emphasis added); and
- Louisiana Code of Evidence 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." La Code Evid. Art. 512 (emphasis added).

The well-reasoned dissent of Judge Stone correctly found that, "this case turns on the issue of whether Nickelson timely objected to the irregularities at issue or waived his right to challenge them under the provision of La. R.S. 18:1434."[22] Judge Stone's dissent also properly noted that "[t]he jurisprudence has also placed the burden of proving due diligence on the challenger."[23] Judge Stone further found that "La. R.S. 13:15 *requires* that challenges to absentee by mail votes be made four days before the election or at the time of tabulation and counting of those votes."[24]

As aptly determined by Judge Stone, "[t]e trial court abused its discretion in resolving the issue of due diligence in favor of Nickelson."[25] "Rather, it was the trial court who supplied and resolved the due diligence inquiry in his written judgment, with no affirmative proof, as the majority now does in its opinion."[26] As correctly concluded by Judge Stone, "[t]he judgment of the trial court should be reversed and the November 18, 2023, election results should be reinstated."[27]

The soundly reasoned dissent of Judge Hunter likewise, and properly found "the trial court abused its discretion in finding Nickelson exercised extreme due diligence and promptness in challenging the 11 voters at issue and in ordering a new election."[28] Judge Hunter aptly determined that "this case turns on the issue of whether Nickelson timely objected to the irregularities at issue or waived his right to challenge them under the provisions of La. R.S. 18:1434."[29] As Judge Hunter

---

[22] *See* Appx. "A," at p. 31

[23] *See id.* at p. 32 (citing *Lipsey* and *Meyer v. Keller*, 376 So. 2d 636 (La. App. 3 Cir. 1979)).

[24] *See id.* at p. 33 (emphasis in original).

[25] *See id.*

[26] *See id.*

[27] *See id.*

[28] *See id.*

[29] *See id.* at p. 37.

sagely concluded, "Nickelson did absolutely nothing to challenge the early voting process until he lost the election"; [t]herefore, he has failed to satisfy his burden to show that the challenges were not waived under La. R.S. 18:1434."[30]

The sound reasoning of the dissents by Judge Stone and Judge Hunter comports with the plain language of the foregoing statutes, along with the prevailing interpretative jurisprudence. Based on the erroneous interpretation of the above-listed laws, the exercise of this Honorable Court's supervisory jurisdiction is warranted.

VI. ASSIGNMENTS OF ERROR

1. The Court of Appeal erred as a matter of law in failing to properly apply La Rev. Stat. § 18:1432(A)(1), which requires a plaintiff in an election contest to introduce compelling evidence that is "sufficient to change the result in the election." La Rev. Stat. § 18:1432(A)(1) (emphasis added).
2. The Court of Appeal erred as a matter of law in failing to properly apply La Rev. Stat. § 18:1315, which requires a plaintiff in an election contest to "challenge an absentee by mail or early voting ballot ... no later than the fourth day before the election for which the ballot is challenged" or "on election day." La Rev. Stat. § 18:1315 (emphasis added).
3. The Court of Appeal erred as a matter of law in failing to properly apply La Rev. Stat. § 18:1434, which provides that, "[a]n 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 Rev. Stat. § 18:1434 (emphasis added).
4. The Court of Appeal erred in its finding that the voting qualifications of the four interdicted individuals who voted early could not have reasonably been ascertained by Nickelson earlier than November 28, 2023, the day after this suit was filed and ten days after the election.
5. The Court of Appeal erred in failing to find that (at least these four) such ballots could have been challenged prior to or during the election, under La Rev. Stat. §§ 18:1315, and *Lipsey v. Dardenne*, 970 So. 2d at 1241–42.
6. The Court of Appeal erred in failing to find that Mr. Nickelson's untimely challenge to these nine ballots had been waived under La Rev. Stat. §§ 18:1315, 18:1434, and *Lipsey v. Dardenne*, 970 So. 2d at 1241–42.

[30] *See id.* at p. 39.

7. The Court of Appeal erred in ignoring the fact that Mr. Nickelson **did not present any evidence** that the six voters addressed by the plurality opinion **even voted in the Sheriff's election**, much less how they voted.

8. The Court of Appeal erred in its conclusion that the six challenged voters—particularly the two who allegedly voted twice—could not be asked how they voted under La. Code Evid. art. 512 ("Every 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.") and *Gaiennie v. Druilhet*, 143 La. 662, 664; 79 So. 212, 213 (1918) ("If … the 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.").

9. The Court of Appeal erred in failing to find that Nickelson had the burden of proving that at least one of the untimely challenged votes "changed the result" of the election.

10. The Court of Appeal erred in failing to apply an adverse presumption to Mr. Nickelson's failure to introduce evidence regarding whether any of the challenged voters even voted in the contest for the election of Sheriff. *See Driscoll v. Stucker*, 04-0589 (La. 1/19/05); 893 So.2d 32 ("An adverse presumption exists when a party having control of a favorable witness fails to call him or her to testify, even though the presumption is rebuttable and is tempered by the fact that a party need only put on enough evidence to prove the case.") (citing *Safety Ass'n of Timbermen Self Insurers Fund v. Malone Lumber, Inc.*, 34,646 (La. App. 2 Cir. 6/20/01), 793 So.2d 218, writ den., 01–2557 (La.12/07/01), 803 So.2d 973).

VII. LAW AND ARGUMENT

A. Summary of the Argument

The plurality opinion of the Court of Appeal (and the judgment of the District Court) are manifestly erroneous, should be reversed and the Nickelson Petition dismissed because:

- Mr. Nickelson waived his right to challenge four of the six "irregular" votes by failing to file a written challenge four days before the November 18, 2023 election. La. R.S. 18:1315.
- With regard to the remaining two voters, and setting aside the highly suspicious manner in which this partisan issue has developed, there is absolutely no evidence that they even

voted in the Sheriff's election or that Nickelson "would have been elected" in the absence of these votes.

- Mr. Nickelson failed to prove that he "would have been elected" had not these irregularities occurred (La. R.S. 18:1401) and that the irregularities have been "sufficient to change the result had they not occurred." La. R.S. 18:1432.

B. Mr. Nickelson waived his right to later object when he failed to challenge the four "interdict" absentee ballots or voter qualifications by the fourth day prior to the election or election day, as required under La. Rev. Stat. § 18:1315.

La. Rev. Stat. § 18:1315 governs the "[c]hallenge of absentee by mail or early voting ballot[s]" and unequivocally requires any such challenge to be made either by the "fourth day before the election for which the ballot is challenged" or, for certain limited challenges, "on election day." This statute provides, in pertinent part, as follows:

> A. (1) A candidate or his representative...**may challenge an absentee by mail or early voting ballot**...by personally filing his written challenge with the registrar **no later than the fourth day before the election for which the ballot is challenged**....
> ....
> B. During the preparation and verification process for the counting of absentee by mail and early voting ballots **before the election**,... or the counting of absentee by mail and early voting ballots **on election day**, any candidate or his representative ... may challenge **an absentee by mail or early voting ballot for cause**[31] ...

It is of paramount importance that no testimony was offered suggesting that Mr. Nickelson complied with this requirement; to the contrary, substantial evidence was presented by the Commissioner of Elections, Board of Election Supervisors, and other governmental officials that such a timely written challenge did not, to their knowledge, occur in this election. The significance of this cannot be overlooked. Had Mr. Nickelson complied with this inviolate requirement at an unsuspicious time, a written challenge would have been offered to the Board of Election Supervisors, allowing the issues raised by Mr. Nickelson in this lawsuit to be resolved before the election results were announced. Indeed, the stated purpose of La. Rev. Stat. § 18:1313.1(E), according to the uncontradicted trial testimony, is to provide to candidates, at a time when the issue could have been resolved, an opportunity to address challenges before the election, rather than as a subsequent judicial challenge.

La. Rev. Stat. § 18:1313.1(E) provides as follows:

> Candidates, their representatives, and qualified electors may be present during the preparation and verification process for the counting and tabulation of absentee by mail and early voting ballots **before the election and** the counting and tabulation of

[31] *See* La. Rev. Stat. § 18:1432(A)(1) (emphasis added).

absentee by mail and early voting ballots **on election day**. . . .[32]

As confirmed by the compelling and uncontroverted trial testimony of Mr. R.J. Johnson, a four-year member of the Caddo Parish Board of Election Supervisors, Mr. Nickelson chose not to avail himself of this opportunity, either personally or through a representative, to be present "during the preparation and verification process for the counting and tabulation of absentee by mail and early voting ballots before the election" or "on election day."[33] The evidence introduced at trial demonstrates that Mr. Nickelson similarly failed to have poll watchers at the polls on election day, as permitted by La. Rev. Stat. Ann. § 18:427. Mr. Johnson's unchallenged testimony also confirmed that the dates and times of "the preparation and verification process for the counting and tabulation of absentee by mail and early voting ballots before the election" were publicly posted and that other candidates have recently taken such an opportunity.[34]

Mr. Johnson further testified that no challenges were submitted by or on behalf of Mr. Nickelson before the November 18, 2023 election results were certified. In this scenario, La. Rev. Stat. § 18:1434 controls: "**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.**"[35] Mr. Nickelson could not have cared less about the election process—until he lost. Twice. The issue of these "irregularities" would have been available had Mr. Nickelson followed the law. He now seeks the benefit of such failure.

Caddo Parish Clerk of Court Mike Spence testified that the listing of residents subject to interdiction orders was readily available in the conveyance records and that it would have taken "about five minutes" to research these records.[36] Mr. Nickelson provided absolutely no evidence that these interdicts even voted in the contest for sheriff and certainly no evidence that the election "results" would have been different. The purpose and reason for La. Rev. Stat. § 18:1434 is to require this sort of challenge to votes before the election, when these matters can be addressed and resolved, and not after the election.[37]

---

[32] La. Rev. Stat. § 18:1313.1(E) (emphasis added).

[33] *See id.* at pp. 102-105; 166-167.

[34] *See id.* at pp. 102-105; 166-167.

[35] La. Rev. Stat. § 18:1434 (emphasis added).

[36] *See* Appx. "A," at p. 17; *see also* Second Circuit Record, at pp. 261-262 (trial transcript at p. 61).

[37] *See Lipsey v. Dardenne*, 07-1487 (La. App. 3 Cir. 11/29/07, 5–6); 970 So.2d 1237, 1241–42 (emphasis added) (rejecting as untimely challenges to voter qualifications, including a post-election challenge to the vote of an interdicted voter because the challenger "he failed to file his challenge prior to or on the date of the

By failing to have poll watchers stationed at the polls on election day, as permitted by La. Rev. Stat. Ann. § 18:427, or to otherwise timely monitor and challenge the voting on election day, Mr. Nickelson waived his right to challenge all six votes considered by the Court of Appeal, pursuant to La. Rev. Stat. § 18:1434. As properly found by both dissenting Second Circuit Judges, Mr. Nickelson has failed to offer any evidence regarding his due diligence inquiry, either prior to the elections or at the polls.[38] "Rather, it was the trial court who supplied and resolved the due diligence inquiry in his written judgment, with no affirmative proof, as the majority now does in its opinion."[39] "The trial court abused its discretion in resolving the issue of due diligence in favor of Nickelson," as "Nickelson has failed to satisfy his burden to show that the challengers were not waived under La. R.S. 18:1434."[40]

As Louisiana courts of appeal have uniformly recognized, "[a] candidate is **not allowed to await the outcome** of an election and, **if unsuccessful, then object** to voter qualifications."[41]

> . . . [T]**he Election Code requires that challenges** to voter qualifications or to irregularities in the conduct of an election **be made either before or during an election**. *See* La. R.S. 18:1434 **The only exception** to this is for objections to voters who should have been removed from the voter registration rolls due to death. *Id.*; La. R.S. 18:173. **The burden is on the candidate to challenge possibly unqualified voters prior to votes being cast** if due diligence would have allowed for the discovery of this information. *See Dawsey v. Boone*, 94–2388 (La. App. 1 Cir. 12/1/94), 647 So.2d 1188, *writ granted*, 94–2938 (La. 12/9/94, 648 So.2d 906); *Davis v. McGlothin*, 524 So.2d 1320 (La. App. 3 Cir.), *writ denied*, 525 So.2d 1046 (La.1988).[42]

Of course, this is what Mr. Nickelson did: he assumed that he won (as he had a substantial lead in the primary). Even after he lost, rather than attack the process, he chose to demand a re-count. Again, Mr. Nickelson found no criticism with the process when he presumed he might yet win.

It is noteworthy that, although Col. Whitehorn has more than forty years of qualifying law enforcement experience, he is not an attorney. The challenger, however, is an experienced and, by reputation, skilled and capable attorney. Further, he has successfully sought election to other elected offices and thus has experience with the application of the Title 18 Election Code. Yet, much like the challenger in *Lipsey*, Mr. Nickelson chose to wait and see if he won the vote, and indeed the

---

election" and noting that, with due diligence, the qualifications of the interdicted voter to vote in the election could have been challenged prior to the election), *writ den.*, 2007-2305 (La. 12/14/07); 970 So.2d 539.

[38] *See* Appx. "A," at pp. 33 and 38.

[39] *See* Appx. "A," at p. 33.

[40] *Id.*

[41] *Lipsey v. Dardenne*, at 970 So.2d at 1241–42 (emphasis added) (citing *Dawsey v. Boone*, 94–2388 (La. App. 1 Cir. 12/1/94), 647 So.2d 1188, *writ granted*, 94–2938 (La. 12/9/94, 648 So.2d 906).

[42] *Id.* (emphasis added).

recount, before complaining about the process. *See Lipsey*, 970 So. 2d at 1242 (rejecting Lipsey's challenge as untimely and finding "prior experience of running for office" as a factor that "should have put Lipsey on notice that voter qualifications should be investigated prior to the election.").

C. Mr. Nickelson's "reporting" that two voters voted twice presents a challenging—and disturbing—story.

The gravamen of the plurality opinion is that "these two voters voted twice." The apparent suspicious conduct of these two voters suggests untoward conduct developing under remarkable circumstances. Both of these voters are registered Republicans. Both vote at predominately Republican precincts. One of these two voters, M.F.G., is a former Republican member of the Louisiana Legislature of District 7 from 2008 to 2012. M.F.G. also held office in the Caddo Parish Republican Party from 2012 to 2016. Both apparently chose to "report" their misconduct to the Nickelson team—certainly not to Col. Whitehorn. There is no evidence of how this information was drawn to the attention of Nickelson's team. These two "duplicative" voters did not report their misconduct to any election official or to any court. It was apparently reported only through challenger Nickelson.

"R.S. 18:427 allowed candidate Nickelson to have "poll watchers." Yet, and without explanation, Nickelson waived his right to do so.

Finally, Nickelson claims entitlement to a new election because of the criminal conduct reported to him by two illegal voters. Nickelson argues that he—not Sheriff-elect Whitehorn—should benefit from this aberrant conduct that Nickelson could have prevented had he not waived his right to secure poll-watchers to prevent this type of occurrence.

And, with respect, can the Court take seriously Nickelson's inference that both of these ardent Republicans actually voted for Whitehorn?"

Neither voter was called by Nickelson to testify. These voters also were not called to explain why they engaged in this misconduct. Neither was called to testify why they reported this consequence to the Nickelson team, nor was either called to testify that they even voted in the Sheriff's election. And, certainly, neither was called to testify who they voted for.

Further, it is significant to know that in each of these events, election officials attempted to prevent these two aberrant voters from engaging in their duplicitous conduct:

Mr. Nickelson's evidence regarding at least one of these two voters (identified as "M.F.G.")

is conflicted, as the Notation of Irregularities in the Conduct of the Election ("Notation of Irregularities") for Precinct 109, introduced by Mr. Nickelson, confirms that "ROV ... will pull [M.F.G.'s] absentee mail-in ballot."[43] This Notation of Irregularities constitutes the best evidence of what happened with respect to the ballot of M.F.G.

Sheriff-elect Whitehorn had nothing whatsoever to do with the bizarre and untoward circumstances involving these two voters. He is totally innocent. Yet, Nickelson makes the effort to invalidate Col. Whitehorn's success at winning the election by presenting a tale of manifest misconduct reported only to Nickelson and under unexplained reasons why they were not called by Nickelson to testify.

Further, although the District Court and Court of Appeal characterize these voters as "illegal" (in fact, voting twice was criminal),[44] the court mistakenly alleged that these voters were entitled to secrecy as to the votes cast.[45] However, as noted in Judge Stone's Dissent, this finding conflicts with Louisiana Code of Evidence article 512, which "confirms the privilege to refuse to disclose the tenor of a vote by secret ballot, unless the vote was cast illegally."[46]

The determination that these voters were entitled to secrecy likewise violates the uncontradicted, longstanding jurisprudence of the Louisiana Supreme Court. In *Gaiennie v. Druilhet*, the Supreme Court noted that, "[a] legal voter cannot be required to divulge, on or off the witness stand, for whom he voted."[47] "But the same is not true of an illegal voter."[48] Therefore, the *Gaiennie* concluded that, if an election contest 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."[49]

---

[43] The Notation of Irregularities in the Conduct of Election for Precinct 109 is contained in Exhibit 'A" to Nickelson's Petition, appearing at page 68 of the Record. (emphasis added).

[44] *See* Appx. "A," at p. 3 (quoting *Arvie v. Skinner*, 98-1769 (La. App. 3 Cir. 11/24/98), 722 So. 2d 90, *writ denied*, 98-2935 (La. 12/3/98), 731 So. 2d 270. (citing *Davis v. McGlothin*, 524 So. 2d 1320 (La. App. 3 Cir.1988); *writ denied*, 525 So. 2d 1046 (La. 1988))).

[45] *See id.* at p. 10.

[46] *See id.* at p. 34 (citing La. C.E. art. 512); *see also Cloud v. Schedler*, 14-1261 (La. App. 3 Cir. 12/3/14); 161 So.3d 831, 832 (After considering voters' testimony as to how they voted in election, trial court found that the voters were bribed to vote in the election).

[47] *Gaiennie v. Druilhet*, 143 La. 662, 664; 79 So. 212, 213 (1918) (citing *Tullos v. Lane*, 45 La. Ann. 333, 12 South. 508; 15 Cyc. 423; 9 R. C. L. 142).

[48] *See id.* (citing 15 Cyc. 424; 9 R. C. L. 142).

[49] *See id.*

As purportedly "illegal voters" are not entitled to secrecy of their votes and, unquestionably, are not entitled to secrecy in terms of whether or not they voted in a particular contest, the District Court legally erred in failing to impose an adverse presumption due to Mr. Nickelson's failure to call these voters—at a minimum, to determine whether they actually voted in the Sheriff's contest.[50] Your Honors will note this issue was a key component of the Nickelson petition. *See, e.g., Driscoll v. Stucker* (recognizing the existence of "[a]n adverse presumption [] when a party having control of a favorable witness fails to call him or her to testify."[51]

D. Mr. Nickelson did not meet the burden of proof required by the Louisiana Election Code to nullify an election.

La. Rev. Stat. § 18:1432(A)(1) provides:

> A. (1) 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 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 would have been sufficient to change the result had they not occurred**, the judge may render a final judgment declaring the election void . . .[52]

Not to belabor this cardinal requirement, but it is settled law that pre-election "irregularities" are of consequence only if "sufficient to change the result had they not occurred." Mr. Nickelson has introduced no evidence that the result (twice confirmed) would have changed "had they not occurred." The statutory standard for judicially overturning an election result is narrow. Because Mr. Nickelson has introduced no evidence suggesting that the issues of which he complains "would have been sufficient to change the result had they not occurred," he cannot establish that the November 18, 2023 election should be nullified.[53]

The honorable court below failed to recognize this cardinal requirement. In a partial quote of La. Rev. Stat. § 18:1432(A), the Court omitted the stated requirement that only those irregularities sufficient to change the result are cognizable in an election contest. The Second Circuit thereby failed to consider this paramount requirement.

Further, and based on the partial quote provided in the Opinion and Judgment, with respect,

---

[50] Notably, Nickelson had trial subpoenas issued to and served on multiple witnesses, but there is no evidence that Nickelson attempted to have subpoenas issued to these voters, even though their full names and voting precincts are clearly listed in Exhibit "A" to Nickelson's Petition.

[51] *Driscoll v. Stucker*, 04-0589 (La. 1/19/05); 893 So.2d 32 (citing *Safety Ass'n of Timbermen Self Insurers Fund v. Malone Lumber, Inc.*, 34,646 (La. App. 2 Cir. 6/20/01), 793 So.2d 218, *writ den.*, 01–2557 (La.12/07/01), 803 So.2d 973).

[52] La. Rev. Stat. § 18:1432(A)(1) (emphasis added).

[53] *See id.*

the District Court appears to have confused (1) the inability to "determine the result of the election" with (2) the stated grounds for challenging and disqualifying votes. These latter remedies require a showing that—even a successful challenge to a voter qualification (as was the case here with respect to 9 of the 11 perceived "irregularities")—requires evidence that the discounted vote "would have been sufficient to change the result had [it] not occurred."

The first sentence of § 1432(A)(1)—as referenced by the Court—addresses only an inability to determine how many votes were cast—not which votes are discarded. There is no dispute as to the count. Col. Whitehorn won the election, as certified. The vote was determined.

Like the unsuccessful election contest plaintiff in *Lipsey v. Dardenne*, Mr. Nickelson "failed to produce any evidence establishing that the irregularities" of which Nickelson complains "made the outcome of the election impossible to determine."[54]

As found in *Meyer v. Keller*, 376 So.2d 636, 637 (La. App. 3 Cir. 1979), "[t]he trial court committed error in calling for a new election" because "[t]he only legal basis for calling a new election is stated in R.S. 18:1432."[55] In *Meyer*, the appellate court properly determined that the district court erred in ordering "a new election because of the closeness of the vote" in an election with a four-vote margin.[56] Although the district court in *Meyer* also "expressed concern about fourteen (14) ballots" with alleged irregularities, the appellate court found that, "it was error to call a new election because of the closeness of the election."[57] The *Meyer* court further determined that "[i]t was the trial judge's duty to examine the validity of the votes in dispute and determine the result of the election."

As was the case in *Meyer*, R.S. 18:1432 "is not applicable in the case that is before" this Honorable Court, and "[i]t is not 'impossible' to determine the result of this election." The results of this election were determined and certified and should not now be disturbed.

As noted by Judge Hunter in his dissent from the Second Circuit plurality opinion in this matter:

> It is virtually impossible to conduct an election without some irregularities and illegalities taking place, but where conducted in good faith, free of fraud or intention of wrongdoing, full faith and credit will be given the result. Therefore, before a candidate, defeated on the face of the returns, has the right to judicially

---

[54] *See Lipsey*, 970 So. 2d at 1246 (finding that election contest plaintiff had "failed to carry his burden of proof as required by La. R.S. 18:1432(A) in order to nullify the election").

[55] *Meyer v. Keller*, 376 So.2d 636, 637 (La. App. 3 Cir. 1979).

[56] *See id.*

[57] *See id.*

challenge the declared result of the election, he must allege irregularities of such character and/or fraud in connection therewith, which, if true, encompassed his defeat.

Beard v. Henry, 199 So. 468 (La. App. 2 Cir. 1940).[58]

Because Mr. Nickelson has failed to meet his burden of proof regarding the purported "irregularities" he alleges, the Second Circuit manifestly erred in affirming the District Court decision to nullify the election.

E. *Adkins v. Huckabay* involved timely challenges to ballots.

The lower courts' reliance on *Adkins v. Huckabay* is entirely misplaced, as the decision fully supports Sheriff-Elect Whitehorn's argument that "irregularity" challenges must be timely preserved.[59] *Adkins* involved challenges to absentee ballots in a runoff election for Sheriff of Red River Parish that were, in fact, timely raised by a candidate's representative "[w]hen the parish Board of Election Supervisors **met to begin** tabulating and counting the absentee ballots."[60] Unlike Mr. Nickelson, the unsuccessful Sheriff candidate and plaintiff in *Adkins* had a representative present for the counting of absentee ballots on election day.[61] During the election day tabulation of absentee ballots, Adkins' representative categorically challenged "all ballots not properly executed."[62]

Notably, *Adkins* also included challenges to four ballots that "do not qualify as either in-person or mail-in absentee ballots under the Election Code" because those absentee ballots were impermissibly hand-delivered by the Registrar of Voters to the electors. *See id.* Additionally, one of the members of the Board of Election Supervisors was the wife of defendant Sheriff Huckabay, the winner of the election at issue.[63] Further, during the tabulation of the ballots in *Adkins*, Mrs. Huckabay—the candidate's wife—denied the request of Mr. Adkins's representative to individually review the absentee ballots.[64]

Although the Supreme Court in *Adkins* ultimately concluded that a new election was warranted, that decision did not turn on the mere consideration that the number of "irregular" votes

---

[58] *See* Appx. "A," at p. 35.

[59] *See Adkins v. Huckabay*, 99-3605, (La. 2/25/00); 755 So.2d 206, 210-222.

[60] *Adkins*, 755 So.2d at 210-222 (emphasis added).

[61] *See id.* at 208.

[62] *See id.* (emphasis added).

[63] *See id.*

[64] *See id.*

exceeded the margin.[65] Instead, the Court carefully analyzed the issues in light of the foregoing circumstances, including the timely categorical challenge to absentee ballots not meeting the statutory requirements, the participation of the successful candidate's wife as a member of the Board of Election Supervisors, and the hand-delivery of absentee ballots by the Registrar of Voters. *See id.* None of those issues are present in the matter at hand.

The opinion rendered by the Second Circuit in *Nugent v. Phelps* might be helpful to Your Honors: two years after the decision of *Adkins* the Second Circuit opinion in *Nugent* negates the contention that an election must be nullified any time the allegedly irregular votes equal or exceed the margin of victory.[66] *Nugent* involved an election contest brought by "the incumbent Police Chief who lost the election by a margin of four votes," who "asserted numerous irregularities and unlawful activities by defendant, Benji Phelps, and his supporters."[67] In *Nugent*, evidence was presented demonstrating that at least four voters had accepted something of value in exchange for votes and that four vocal supporters of the unsuccessful candidate had been issued subpoenas "ordering them to appear before a grand jury during the week of the election, thus preventing them from campaigning."[68]

Citing *Adkins v. Huckabay* for the proposition that "a party contesting an election no longer must show that 'but for' the irregularity he would have won the election," this Court opined in *Nugent*:

> **it is the EFFECT of the irregularity on determining the outcome, rather than the FACT of an irregularity by itself, that guides us in these matters.** Accordingly, **we conclude that a vote should not be cast out simply because a voter was offered a bribe, or even because a voter accepted something of value for the vote, provided that voter still voted the way he originally intended.** Regardless of criminal implications, **our focus is on whether the alleged activities ACTUALLY CHANGED the result of the election by changing the vote totals, or at least made the election result impossible to determine.**[69]

VIII. CONCLUSION

R.S. 18:1315 and 18:1434 are clear, lucid, and unambiguous. These statutes present only one reasonable interpretation: a candidate challenging the results of an election waives the right to complain about early voting eligibility – and qualifications – if the candidate fails to timely file a

---

[65] *See id.* at 207-226.

[66] *Nugent v. Phelps*, 36,366, p. 13 (La. App. 2 Cir. 4/23/02); 816 So.2d 349, 357, *writ denied*, 2002-1153 (La. 5/10/02); 815 So.2d 850)).

[67] 816 So. 2d at 351.

[68] *See id.* at 351-356.

[69] *See id.* at 357 (emphasis added).

written challenge under R.S. 18:1315. The time to challenge, and throw out, the four interdict votes was before the election.

There was nothing difficult about complying with this requirement—had Nickelson wanted to do so. Caddo Parish Election Commissioner Johnson testified that notices were published and calendars were provided to the candidates to ensure that they knew when absentee and early voting ballots would be reviewed. Nor is there anything difficult about determining who the illegal voters might have been. In the case of "interdicts," according to the Clerk of Court's testimony, it was easy to locate these names because they were carefully indexed in the conveyance records. It certainly did not take Nickelson long to identify these four votes, as his challenging petition was filed less than two hours after the November 27, 2023 recount vote.

The Second Circuit acknowledges that its plurality opinion regarding interdicts runs afoul of the decision of the Third Circuit in *Lipsey*. Further, and in all events, there is absolutely no evidence that any of these four apparent interdicts even voted in the Sheriff's election, and certainly not that their disqualification would have "changed the result." Minimal diligence with poll watchers would have prevented this misconduct, for which Nickelson seeks reward.

The report of the two persons who purportedly voted twice was alleged in Nickelson's Petition, which was filed less than two hours after the election recount was concluded. Apparently, these two voters reported to Nickelson. Nickelson provides no reason why these two aberrant voters were not called to testify. Nickelson provides no explanation why they voted twice. And certainly, there is no evidence that these two even voted in the Sheriff's election; or that had they not voted twice, this would have "changed the result."

In a broader sense, there is no good reason why Colonel Whitehorn's remarkable election victory should be overturned for reasons that have nothing to do with him, his team, or his supporters.

After all, it was Nickelson who chose not to monitor the opening and counting of the mailed ballots. It was Nickelson that chose not to complain about the election process until it was over on November 18. Even then, Nickelson withheld his complaints about the process until after the recount confirmed the election of Colonel Whitehorn.

Certainly, Colonel Whitehorn had nothing to do with the bizarre events involving the two voters who may have voted twice. It is reasonable to assume that these two individuals supported the candidacy of Mr. Nickelson. It is reasonable to assume they attempted to vote twice for him. It is certainly unreasonable—with respect, ridiculous—to assume that their machinations were designed

to advance to candidacy of Colonel Whitehorn. Nickelson should not profit from his waiver of the right to provide poll watchers to prevent this sort of misconduct.

IX. PRAYER

The 43,241 votes cast in the Caddo Parish Sheriff's election are of great significance. Each vote counted. There is no statutory margin for error—no requirement that a candidate win by more than one vote. These votes should not be discarded. The result should not be disregarded.

WHEREFORE, Defendant, Col. Henry L. Whitehorn, Sr. prays that, after due proceedings, the Petition of John Nickelson be dismissed with prejudice and that Col. Whitehorn be recognized as the Sheriff-elect of Caddo Parish, and, as such, installed and be sworn in as Sheriff, as provided by law. The lower courts' decision should be overturned, Nickleson's Petition dismissed, and Colonel Whitehorn recognized as the Sheriff-elect for Caddo Parish, Louisiana.

Respectfully Submitted:

R. Gray Sexton (Bar Roll #07531)
Blair Naquin (Bar Roll # 35533)
Law Offices of R. Gray Sexton
8680 Bluebonnet Blvd. Suite D
Baton Rouge, Louisiana 70810
Telephone: (225) 767-2020
Facsimile: (225) 767-0845
graysexton@sextonlaw.net
blairnaquin@sextonlaw.net

Carl H. Franklin, Attorney At Law,
Bar # 14974
910 Pierremont Rd. Suite 410
Shreveport, LA 71106
318-429-6822
Fax 318-409-8050
Carl@attorneycarlfranklin.com

Scott R. Bickford (LA. #01165)
Lawrence J. Centola III (LA. #27402)
Spencer R. Doody (LA. #27795)
Martzell, Bickford & Centola
338 Lafayette Street
New Orleans, LA 70130
Phone: 504-581-9065
Fax: 504-581-7635
Sbickford@mbfirm.com
Lcentola@mbfirm.com
Sdoody@mbfirm.com

L. Havard Scott, III (LA. #11881)
Attorney at Law
1049 Southfield Road
Shreveport, LA 71106
Phone: 318-218-4052
Fax: 318-868-0023
Lhavardscott@aol.com

Attorneys for Henry L. Whitehorn, Sr.

LOUISIANA SUPREME COURT RULE 2(D) VERIFICATION

I hereby verify the allegations of the Application and certify that a copy of the above and forgoing Writ Application has been sent this day, via email and properly addressed to:

John Nickelson Through Counsel
Scott Sternberg
Sternberg, Naccari & White, LLC
935 Gravier Street, Suite 2020
New Orleans, Louisiana 70112

And

Brian Homza
David Hemken
Cook, Yancey, King & Galloway
A Professional Law Corporation
333 Texas Street, Suite 1700
Shreveport, LA 71101

Secretary of State R. Kyle Ardoin
Through General Counsel
Charlton McGinley
8585 Archives Ave.
Baton Rouge, LA 70809

The Hon. E. Joseph Bleich
Judge "Ad Hoc"
1st Judicial District Court
501 Texas St.
Shreveport, LA 71101

Through

Mike Spence
Caddo Parish Clerk of Court
First Judicial District Court
Mike.spence@caddoclerk.com

Louisiana Court of Appeal, Second Circuit
Through Brian J. Walls
Chief Deputy Clerk
Certified Deputy Clerk
Second Circuit, Court of Appeal
430 Fannin Street
Shreveport, LA 71101
(318) 227-3703

Baton Rouge, Louisiana, this 14th day of December, 2023.

Gray Sexton

Sworn to and subscribed, this 14th day of December, 2023.

Notary Public
Blair Naquin
Bar No. 35533
Commission expires at death

OFFICIAL SEAL
LAURA BLAIR NAQUIN
NOTARY ID # 35533
STATE OF LOUISIANA
PARISH OF EAST BATON ROUGE
My Commission is for Life

WRIT FILING - FILING # SC064989

Print Filing | Inbox

Filing Details | Filing Summary | Notifications | Attachments | Costs | Status History

Status	Status Date/Time
Accepted	12/14/2023 10:40:22 AM
Reviewing	12/14/2023 10:33:09 AM
Pending	12/14/2023 10:31:43 AM
Submitted	12/14/2023 10:31:00 AM
Draft	12/13/2023 11:23:55 PM