

CIVIL DISTRICT COURT FOR THE PARISH OF ORLEANS
STATE OF LOUISIANA

NUMBER: 2023-02177

THE HONORABLE LATOYA CANTRELL, MAYOR, AND REVEREND WILLIE CALHOUN

-versus-

R. KYLE ARDOIN, IN HIS CAPACITY AS SECRETARY OF STATE,
EILEEN CARTER AND BELDEN BATISTE

FILED: _____

DEPUTY CLERK

PETITION TO VACATE, NULLIFY, SET ASIDE, AND/OR OTHERWISE
INVALIDATE THE FINAL JUDGMENT ENTERED INTO BETWEEN
R. KYLE ARDOIN, IN HIS CAPACITY AS SECRETARY OF STATE,
AND EILEEN CARTER AND BELDEN BATISTE

NOW INTO COURT, through undersigned counsel, come Plaintiffs, The
HONORABLE LATOYA CANTRELL and REVEREND WILLIE CALHOUN, who
respectfully represent:

I. PRELIMINARY STATEMENT

On the 1st day of March, 2023, Defendants, R. KYLE ARDOIN("Secretary Ardoin"), in his capacity as Secretary of State, and Eileen Carter and Belden Batiste, individually and as residents and registered voters in the Parish of Orleans, State of Louisiana, entered into a Final Consent Judgment ("Judgment"), settling and compromising a lawsuit filed by Carter and Batiste, challenging the number of active voters on the voting rolls of Orleans Parish. The settlement was, and continues to be, void *ab initio*, *contra bonos mores*, and, consequently, null and void.

Additionally, as further evidence of its invalidity, the Judgment contravenes a prohibitory law, violating, as it does, a law enacted and designed to preserve, protect, and maintain voter confidence in elections, particularly recall elections. In agreeing to and, in fact, executing the Judgment, Secretary Ardoin, was exercising a power not bestowed on him by either the Constitution or laws of the State of Louisiana, and was acting in a manner which was indisputably *ultra vires*. In so doing, he knowingly and intentionally invaded and usurped powers specially reserved to the Louisiana legislature.

Finally, it has been reported that The Honorable Jennifer M Medley, district court judge presiding over the case, and who approved the Judgment, has a vested interest in the outcome of the litigation. According to reports, she was a signatory to the recall petition and failed to disclose that crucial fact to the litigants, and the public at large.

The actions of the parties in entering into and executing a consent judgment, which was patently unlawful on its face, coupled with those of Judge Medley in giving full force and effect to it, mandate that it be vacated, set aside, nullified, and/or otherwise invalidated. The failure to do so would be contrary to law and would perpetuate a gross miscarriage of justice.

II. VENUE

The venue in which the facts arose and the final judgment was entered into and signed by the district judge is Orleans Parish. An action to nullify that final judgment likewise has Orleans Parish as its venue.

III. PARTIES

Plaintiffs here are:

1. The Honorable LaFoya Cantrell, mayor for the Parish of Orleans, State of Louisiana. She is currently the focus of a recall petition. As such, she is a proper party plaintiff.¹
2. Rev. Willie Calhoun is a citizen of the United States of America, and a resident and domiciliary of the Parish of Orleans, State of Louisiana. He is a registered voter in the Parish of Orleans, Ward 9, Pct. 3. As a citizen and a voter, he has standing to challenge the legality of the Judgment executed, signed and rendered in this matter that will determine the number of actual voters required for the recall election to proceed. He has standing to protect his franchise, to make certain that it is not diluted, diminished or negated in any manner, particularly as a result of questionable Judgment that was read, signed and rendered by a presiding judge, who is reported to have a vested, but previously undisclosed, interest in the outcome of the litigation.

Defendants herein are:

3. R. Kyle Ardoin (“Secretary Ardoin”), the Secretary of State for the State of Louisiana. He is sued in his official capacity.² His duties and responsibilities are

¹ See LSA- R.S. 18:1300.17

² The Secretary of State must be sued at his official domicile, East Baton Rouge Parish, LSA-C.C.P. art. 42(1); *St. Tammany Parish Council v. Brown*, 443 So.2d 1, 2 (1st Cir. 1983). The Secretary of State filed a declinatory exception pursuant to LSA-C.C. art. 925(4), contending that Orleans Parish was an improper venue. See Secretary of State R. Kyle Ardoin Exception and Answer to Plaintiff’s Petition and Writ of Mandamus, at 1 (“Exception”). However, for some inexplicable reason, he chose not to pursue an exception well grounded in fact and law.

set forth in the Louisiana Constitution.³ As secretary of state, he has neither legislative duties or responsibilities.

4. Eileen Carter (“Carter”), is a person of full age of majority and domiciled in the Parish of Orleans, State of Louisiana. She is a named Plaintiff in *Carter, et v. Wilson, et al*, No. 2023-1381, Div. “F-14,” Civil District Court for the Parish of Orleans.

5. Belden Batiste (“Batiste”), is a person of full age of majority and domiciled in the Parish of Orleans, State of Louisiana. He is a named Plaintiff in *Carter, et v. Wilson, et al*, No. 2023-1381, Div. “F-14,” Civil District Court for the Parish of Orleans.

IV. SHORT AND CONCISE STATEMENT OF FACTS

6. On August 26, 2022, Carter and Batiste pursuant to LSA-R.S. 18:1300.2A(1) filed a recall petition with the Secretary Ardoin, seeking to recall Plaintiff Cantrell, the duly elected mayor of the City of New Orleans,⁴ from office.

7. On August 26, 2022, the date of submission of the recall petition, the number of qualified electors “in the voting area subject to the recall petition was 249,876.”⁵

8. Since the petition sought the recall of the mayor for the city of New Orleans, which had more than 100,000 qualified voters, it was mandatory that the recall petition “be signed by at least twenty percent of the electors.”⁶ It is an inflexible number, leaving no room for discretion by either the Secretary of State or the Registrar of Voters.

9. It is statutorily mandated that the recall petition be signed by 49,975 qualified electors within the Parish of Orleans. This number represents twenty percent of 249,876 qualified voters as of August 26, 2022. It is an inflexible number. Any number short of that would be fatal to the recall petition, which is a fact well known to Secretary Ardoin, Carter and Batiste.

10. Since the recall petition was filed with Secretary Ardoin’s office on August 26, 2022, Carter and Batiste, by law, were required to submit a signed and dated petition to the registrar by February 22, 2023, which is 180 days after submission to the Secretary if State.⁷

11. However, realizing at the eleventh hour that they would be woefully, and fatally,

³ La. Const. Art. 4, §7

⁴ See Original Petition

⁵ See Final Consent Judgment, at ¶ 5

⁶ LSA-R.S. 18:1300.2(B)(3)(d)

⁷ LSA-R.S.18: 1300.2(2)

short of meeting their statutorily required inflexible number of qualified electors, or 49,975, Carter and Batiste, on February 16, 2023, which was just 6 days short of the deadline, filed a Petition for Writ of Mandamus, seeking an order from the court compelling Secretary Ardoin and Dr. Sandra Wilson, registrar of voter for Orleans Parish, to do that which they are expressly forbidden from doing, to wit: certify a recall petition based on a substantially reduced, and wholly arbitrary, number of qualified electors.⁸

12. Notwithstanding the fact that the petition was filed in the wrong venue,⁹ and Secretary Ardoin was never served a copy of the petition,¹⁰ he nevertheless entered an appearance

13. Despite Ardoin’s acknowledgment that the case was filed in the wrong venue, that he was never properly served, and he had grave reservations about the merits of the case,¹¹ he nonetheless entered into settlement negotiations to dispose of the litigation, on terms and conditions exceeding his constitutional or statutory authority.

14. Carter, Batiste and the Secretary Ardoin entered into a settlement agreement whereby the Secretary Ardoin agreed to, and did in fact, unlawfully and artificially reduce the number of qualified electors in Orleans Parish, reducing it from 249,876 qualified electors as of August 26, 2022, to 224,876.¹²

15. The Agreement provided that “[p]ursuant to LSA-R.S. 1300:2(2), on August 26, 2022, Secretary Ardoin produced to Orleans Parish Registrar of Voters, Dr. Sandra Wilson (hereinafter Registrar Wilson) a communication asserting that the number of qualified electors as of that same date in the voting area subject to the recall petition was 224,876 electors.”¹³ In so doing, Secretary Ardoin, absent constitutional or legislative authority, reduced the number of qualified voters required to trigger a recall election from 49,975 to 44,952.

16. Secretary Ardoin did not have the power to make that change and make it retroactive to the date of submission of the recall petition. He unlawfully exercised a legislative

⁸ See *Original and Amending Petitions*

⁹ See n. 1, *infra*.

¹⁰ See Exception, at p. 9

¹¹ See Memorandum, at pp. 8-9

¹² See Final Consent Judgment, at ¶ 3 [Also, the parties agree to dismiss Registrar Wilson from the lawsuit]

¹³ *Id.*,

function – only the legislature could amend the statute.

17. The parties were well aware of the limits of the Secretary Ardoin’s powers, for they are specifically set forth in the Louisiana constitution.¹⁴ He is not authorized to make changes *ex proprio motu* to LSA-R.S. 18:1300.2. That is a function unequivocally reserved to the Louisiana legislature. They knew that he did not have the power to retroactively change the law. Nonetheless, they knowingly entered into an agreement that was not only patently flawed, but also, unlawful on its face.

18. A mere cursory reading of the Judgment confected and signed by the parties clearly reflects their misgiving as to its validity:

- a. It provides that: “Consent to this judgment shall not be construed as an admission by Secretary Ardoin to any of the allegations set forth in Plaintiffs’ Petition for Writ of Mandamus of First Amended Petition for Writ of Mandamus.”¹⁵ **HOWEVER**, Secretary Ardoin’s actions belie that statement. In their Amending Petition, the Plaintiffs contend that **at least 32,788** voters should have been removed from the active rolls and not included in the number of voters to trigger a recall.¹⁶ Absent proof, Secretary Ardoin gave substantial credence to their number and retroactively, and unlawfully, removed 25,000 voters from the active rolls.¹⁷
- b. Secretary Ardoin repeatedly states, to the point of being redundant, that he is acting pursuant to, and not in violation of, any federal or state laws. Why was it necessary to make that point if everything were legal, and aboveboard?¹⁸
- c. Although, as previously stated, the Judgment was not be construed as an admission to any of the allegations in the original and amending complaints, Secretary Ardoin agreed to remove 25,000 individuals from the active voting rolls devoid of any evidence justifying their removal, merely stating that “Plaintiffs agree to produce to Secretary Ardoin a copy of all evidence and studies supporting their claim in this case.”¹⁹ Most disturbingly, no deadline was set for the production of the evidence.²⁰
- d. The parties sought the approval of the judge, a judge who is reported to be a signatory of the recall petition.

¹⁴ LSA-Const. Art. 4, §7

¹⁵ See Final Consent Judgment, ¶ 4

¹⁶ See First Amended Petition for Writ of Mandamus, ¶¶ 14, 15 and 16

¹⁷ He consented to retroactively reduce the number of active voters on the rolls as of August 26, 2022, from 249,876 to 224,876. In lieu of being required produce signatures of 49,975 qualified voters, they are only required to produce 44,975.

¹⁸ See Final Consent Judgment, ¶¶ 2, 4 and 7. Ardoin “doth protest too much . . .” A line by Queen Gertrude in Hamlet, Act 2, Scene 3.

¹⁹ *Id.*, at ¶6.

²⁰ *Id.*

19. Notwithstanding the fatal defects and the outright illegality patently obvious on the face of the Judgment, the parties executed it, and the judge signed it. The Judgment should never have been entered into by the parties or signed by the judge, for it was in express violation of settled law and LSA-R.S. 18:1300:2(2), which mandate the number of signatures required to commence a recall petition.²¹

III. STATEMENT OF CLAIMS

A. FIRST CLAIM

20. The starting point for the interpretation of any statute is the language of the statute itself.²² When a statute is clear and unambiguous and its application does not lead to absurd consequences, the provision must be applied as written, with no further interpretation made in search of the legislature’s intent.²³

21. The clear and unambiguous language of LSA-R.S. 18:1300:(2)(B)(d) provides that “[i]f one hundred thousand or more qualified electors reside within the voting area, the [recall] petition shall be signed by at least twenty percent of the electorate.” The word shall is mandatory.²⁴

22. Under well-established rules of interpretation, the word “shall” excludes the possibility of being “optional” or even subject to “discretion,” but instead means “imperative, of similar effect and import with the word “must.”²⁵

23. The harsh remedy provided by the recall election statutes must be strictly construed.²⁶

24. The Judgment entered into by and between Secretary Ardoin and Carter and Batiste was void *ab initio*, for it was entered into in contravention of the mandatory provision of La. R.S. 18:1300:(2)(B)(d), requiring the recall petition to be signed by twenty percent of the

²¹ Subsequent to the signing of the Judgment, it was reported that Judge Medley, the presiding judge, signed the recall petition, calling for the removal of the mayor. There should have been a full disclosure on the record, whereas there was not. The signing of a Judgment, which was flawed on its face, by a jurist who had a vested interest in the outcome, calls the entire process into question.

²² *Dejoie v. Medley*, 2008-2223 (La.5/5/09), 9 So. 3d 826, 829.

²³ *Id.*, La. Civ. Code art. 9; LSA- R.S. 1:4

²⁴ LSA- R.S. 1:3

²⁵ *Louisiana Fed’n of Tchrs*, 2013-1020 (La. 5/7/13), 118 So. 3d 1033, 1051.

²⁶ *Ponds v. Treen*, 407 So.2d 671, 672 (1981)

qualified voters of Orleans Parish as of the day of filing with the Secretary of State. On August 26, 2022, the actual number of active voters on the rolls of Orleans Parish was 249,876, but Ardoin unlawfully entered into a settlement, unlawfully and artificially reducing that number to 224,876.

B. SECOND CLAIM

25. Plaintiffs adopt and incorporate by reference Paragraphs 1 through 24.
26. The purpose of the recall laws is to protect the sanctity of the election process, which requires strict adherence to them. Any attempt to circumvent those laws by reducing the threshold required for a recall petition, particularly *ex post facto*, is *contra bonos mores* and null and void. The Judgment is *contra bonos mores*, and unlawful, for it erodes public confidence in the recall process.

B. THIRD CLAIM

27. Plaintiffs adopt and incorporate by reference Paragraphs 1 through 26.
28. The Judgment is violative of a prohibitive law. The statute was designed to protect the integrity of the election process and any agreement in contravention of a prohibitory law is void and unenforceable.

C. FOURTH CLAIM

29. Plaintiff adopt and incorporate by reference Paragraphs 1 through 28.
30. Secretary Ardoin's duties and responsibilities relating to recall elections are strictly set forth in the constitution and statutes. Those duties do not include the *ex post facto* reduction of statutorily established threshold requirements for recall petitions.
31. In unlawfully entering into and executing an agreement reducing that threshold requirement, Secretary Ardoin flagrantly usurped a function specifically reserved to the legislature. He was exercising powers he does not possess; he was acting *ultra vires*. Any actions taken outside of or exceeding his constitutionally and statutorily granted authority is null and void and unenforceable.

IV. PRAYER

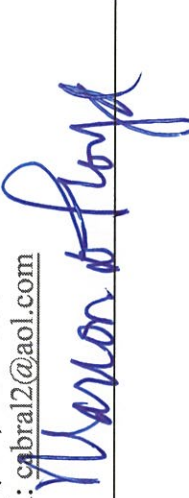
32. Plaintiffs herein pray that after due delays and legal proceedings had, there be judgment herein in favor of Plaintiffs, and against Defendants, decreeing that the Final Consent Judgment entered into between Eileen Carter and Belden Batiste and Secretary Kyle Ardoin be

vacated, nullified, set aside and/or otherwise declared null and void. Further, Plaintiffs pray that due to Defendants' blatant disregard for the requirements of LSA-R.S. 18:1300.2, there be an order awarding the attorneys' fees and cost, together with any and all other relief deemed appropriate.

Respectfully submitted:

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