

FIFTEENTH JUDICIAL DISTRICT COURT
PARISH OF LAFAYETTE, STATE OF LOUISIANA

Filed
Clerk of Court

NUMBER 2019 2137

DIVISION A

KEITH KISHBAUGH

VERUS

THE CITY OF LAFAYETTE GOVERNMENT,
LAFAYETTE PARISH GOVERNMENT, AND
LAFAYETTE CITY-PARISH CONSOLIDATED
GOVERNMENT

PETITION OF INTERVENTION

The petition of intervention on behalf of Kyle Ardoin, appearing in his official capacity as Secretary of State of the State of Louisiana, ("Secretary") respectfully represents:

1.

Made defendants in intervention are (1) City of Lafayette, (2) Parish of Lafayette, (3) Lafayette Consolidated Government, and (4) the Lafayette City-Parish Consolidated Government, all political subdivisions of the State of Louisiana domiciled in the Parish of Lafayette, State of Louisiana.

2.

Plaintiff in intervention is the Secretary of State for the State of Louisiana, and as such the chief election official under La. Const. art. IV, § 7 and La. R.S. 18:421 responsible for certifying the ballots for all elections, promulgating election returns, and administering the election laws of the State.

3.

The Lafayette city-parish government operates as a consolidated government under a home rule charter first adopted in 1992.

4.

In 2018, the home rule charter was amended to continue consolidated government but with a city council for the City of Lafayette whose five members are to be elected from single member districts within the city limits of Lafayette, and a separate parish council whose five members are to be elected from single member districts within the Parish of Lafayette.

5.

The charter amendment was ratified by the voters in Lafayette Parish on December 8, 2018 and promulgated on December 18, 2018 by the Lafayette City-Parish Council. By its terms, only a portion of the amended charter is presently in effect, those provisions being the provisions that are necessary to carry out the first election of City Council and Parish Council positions in accordance with Section 8-12 of the amended ordinance.

6.

The Secretary is aware that litigation under the above heading challenging the apportionment of city and parish districts and assignment of voters thereto has been filed and respectfully avers that he has an interest and a right related to or connected with the object of the pending action against one or more of the defendants named therein and thus has a right to intervene in the litigation.

7.

The Secretary does adopt by reference and re-allege all of the allegations and averments set forth by the plaintiff in the original Petition and does further allege and aver as follows:

8.

The Secretary of State will be called upon to administer the first election of members of the Lafayette City Council and the Lafayette Parish Council in the Lafayette City-Parish Consolidated Government, which election is, by the terms of the amended charter, to be held concurrent with the primary and the general elections for Governor in 2019, presently set for the dates of October 12, 2019 and November 16, 2019, respectively.

9.

In the charter amendment, the election district boundaries described in Section 8-01 omitted some 329 voters who were not assigned to an election district within the City of Lafayette and therefore would be unable to cast a ballot in the first election for a member of the City Council, whereas all other registered voters similarly situated in the City of Lafayette would be able to vote and elect a member of the City Council.

10.

In an attempt to cure the deficiency in the districts described in the amended charter, the Lafayette Parish Council introduced and adopted Ordinance No. O-042-2019 ("Ordinance")

purporting to amend the newly amend Charter. The Ordinance was not submitted to the voters for approval and ratification.

11.

Although the Ordinance was styled a “reapportionment” of council districts, it was in form and substance no more than an attempt to remedy the omissions in the district boundary descriptions in the amended charter rather than a true reapportionment intended to account for changes in the distribution of population of the City of Lafayette.

12.

The Secretary believes that the Ordinance was styled as a reapportionment ordinance with full knowledge that La. Const. art. VI, § 5 prohibits amendment of a home rule charter except upon a vote of the electors of the subject municipality or parish and was nothing more than an expedient to address errors in the drafting of the amended charter.

13.

By virtue of La. Const. art. VI, § 5, the amended home rule charter for the City and Parish of Lafayette is not subject to amendment by ordinance of the Lafayette City-Parish Council and accordingly, the Ordinance is null and void and without legal effect.

14.

To the extent the city-parish charter, as amended, excludes voters from election districts, those portions of the charter are invalid for denial of the election franchise and the unequal treatment of voters, and accordingly, the offending provisions of the amended charter should be removed and severed from it.

15.

The right of qualified citizens to vote and to have their votes counted, inherent in a republican form of government and the democratic process, is a fundamental and constitutionally protected right per *Adkins v. Huckaby*, 99-3605 (La. 02/25/00), 755 So. 2d 206.

16.

Each citizen of the City and Parish of Lafayette has an inalienable right to full and effective participation in the political process, and full and effective participation requires that each citizen has an equally effective voice in the election of members of the city and parish government. See, *Reynolds v. Sims*, 84 S. Ct. 1362 (1964).

17.

In order for the Secretary to perform his duties and hold a valid and lawful election for members of the Lafayette City Council and Lafayette Parish Council, it is necessary that the Ordinance be enjoined and declared null and void and further that the offending portions of the amended charter resulting in the exclusion of and discrimination against certain voters be enjoined and declared invalid and be removed and severed from the amended charter.

18.

Absent further amendment to the charter, any future elections and/or actions of the Lafayette City-Parish Council will be infected with the invalidity of the subject election provisions of the amended charter and amending ordinance leaving such elections and actions exposed to legal challenge.

WHEREFORE, Intervenor, Kyle Ardoin, in his official capacity as Secretary of State of the State of Louisiana, respectfully prays as follows:

- I. That Ordinance No. O-042-2019 of the Lafayette City-Parish Council be declared null and void and without legal effect;
- II. That the infirm provisions of the amended charter and/or the charter amendment in its entirety be declared null and void and without legal effect;
- III. That the defendants, City of Lafayette, Parish of Lafayette, Lafayette Consolidated Government, and the Lafayette City-Parish Consolidated Government, be ordered to show cause on April 11, 2019 at 10:00 o'clock a.m., concurrent with the principal demand, why a preliminary injunction should not issue enjoining the election of members of the City Council of Lafayette and the Parish Council of the Parish of Lafayette pursuant to the amended charter of the Lafayette City-Parish Consolidated Government ratified December 8, 2018 and promulgated December 18, 2018;
- IV. That the defendants, City of Lafayette, Parish of Lafayette, Lafayette Consolidated Government, and the Lafayette City-Parish Consolidated Government, be ordered to show cause on April 11, 2019 at 10:00 o'clock a.m., concurrent with the principal demand, why a preliminary injunction should not issue enjoining the election of members of the City Council of Lafayette and the Parish Council of the Parish of Lafayette pursuant to No. O-042-2019 of the Lafayette City-Parish Council;

V. Intervenor further prays that in due course, the court grant permanent injunctions in the form and substance of the preliminary injunctions and for such further relief as is legal, just, and equitable in the premises.

Respectfully submitted,
JEFF LANDRY
ATTORNEY GENERAL

BY:



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**Counsel for Plaintiff in Intervention, Secretary
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Please serve:

**City of Lafayette, Parish of Lafayette, Lafayette Consolidated Government,
and the Lafayette City-Parish Consolidated Government**

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Joel Robideaux
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**MEMORANDUM IN SUPPORT OF PETITION OF INTERVENTION
BY THE SECRETARY OF STATE**

MAY IT PLEASE THE COURT:

This case arises out of an amendment to the Lafayette City-Parish Consolidated Government charter in 2018. The issue in the case centers around the first elections of city and parish council members under the amended charter. Because the Secretary of State is responsible for conducting the election and has concern about the legality and effect of the election, he has filed a Petition of Intervention to ensure that he is able to carry out his election responsibilities according to existing law.

FACTS AND PROCEDURAL HISTORY

The voters in Lafayette Parish approved a recent amendment to the Home Rule Charter for the Lafayette City-Parish Consolidated Government. The descriptions and boundaries of the Lafayette Parish Council districts and the City of Lafayette Council districts are established in the newly enacted Home Rule Charter, which was ratified by the voters on December 8, 2018 and promulgated by the Council on December 18, 2018. (Amended Charter, Section 8-01). The districts are established in the amended Home Rule Charter by reference to existing precincts within the City of Lafayette and Lafayette Parish.

Following ratification and promulgation of the charter amendment, it was discovered that some existing precincts were inadvertently omitted from the amended Home Rule Charter with the result that voters within the precincts that were omitted will not be permitted to vote in any elections called for the City Council, Parish Council, and/or consolidated City/Parish government.

The Lafayette City-Parish Council attempted to rectify the errors in the precinct descriptions by adopting Ordinance No. O-042-2019, which alters the precinct descriptions

contained in the amended Home Rule Charter purportedly to include the previously omitted precincts and voters residing in those precincts. The Ordinance was adopted on March 26, 2019.

However, pursuant to Section 8-12, those provisions of the amended Charter that are necessary to carry out the election of City Council positions and Parish Council positions become effective upon promulgation, which occurred on December 18, 2018.

Section 8-01 of the amended Home Rule Charter provides with respect to City and Parish Council Districts:

Council districts for the election of the first City Council members and Parish Council members for the elections authorized by Section 8-13(D) of this charter shall be as follows, and shall remain as follows until changed by reapportionment:

[City and Parish Council Districts are then described in Section 8-01 by precinct]

Section 8-13(D) of the charter amendment provides that the first election for City Council members and Parish Council members whose positions are established by the amendments to this Charter shall be held at the same time as the primary and general elections for the election of governor in 2019.

Thus, the Charter provides that the election of City and Parish council members **shall** be held concurrently with the gubernatorial election in 2019 and **shall** be held in those districts established and described in Section 8-01 of the amended Home Rule Charter. City and Parish Council member districts may thereafter [after the first election] be reapportioned by ordinance.

The plaintiff in the principal demand filed suit to challenge the amended charter provisions relating to the first election of council members and to invalidate the Ordinance as an ordinal amendment to a home rule charter prohibited by La. Const. art. VI, § 5(C). Further, plaintiff alleges that the Ordinance is not a reapportionment to re-distribute voters among districts by reason of a change in population of the districts since December 2018 when the districts were created. Rather, the plaintiff contends that the Ordinance is nothing more than an attempt to amend the charter styled as a reapportionment in order to skirt legal requirements.

The Secretary of State has filed a Petition of Intervention pursuant to La. Code Civ. P. art. 1091 as the chief election official under La. Const. art. IV, § 7 and La. R.S. 18:421 responsible for certifying the ballots for all elections, promulgating election returns, and administering the election laws of the State. The Secretary submits that the election provisions of the amended charter in Section 8-01 are invalid as a disenfranchisement of voters and denial of equal protection as to voters similarly situated without a compelling state interest. The Secretary further submits that the

Ordinance is invalid as a prohibited attempt to amend a home rule charter by ordinance under La. Const. art. VI, § 5(C).

The Secretary submits that an injunction and/or declaratory judgment should issue to prevent the charter amendment and the Ordinance from going into effect in order to allow the voters an opportunity to vote on any changes to the charter. In the interim and until a vote can be held, the existing charter adopted in 1992 will remain in force and effect, and the Lafayette City-Parish Government will continue to operate as before.

ARGUMENT

The election provisions of the amended charter and the Ordinance should be declared invalid and enjoined.

A. The election provisions of the amended charter disenfranchise voters and deny equal protection to those voters omitted from election districts in the City of Lafayette.

The election provisions in the newly adopted charter amendment describe council election districts by precinct number. Unfortunately, one or more of the precincts in the City of Lafayette were omitted from the district descriptions, and that omission left voters out of any election called by the City.

Little is better established in the law than the principle that voters cannot be disenfranchised or treated unequally with respect to their right to vote. The right of qualified citizens to vote and to have their votes counted, inherent in a republican form of government and the democratic process, is a fundamental and constitutionally protected right. *Adkins v. Huckaby*, 99-3605 (La. 02/25/00), 755 So. 2d 206. Each and every citizen of the City and Parish of Lafayette has an inalienable right to full and effective participation in the political process, and full and effective participation requires that each citizen has an equally effective voice in the election of members of the city and parish government. See, *Reynolds v. Sims*, 84 S. Ct. 1362 (1964).

All concerned recognize that the election provisions of the amended charter cannot be given effect. The Secretary of State believes that the omission of precincts and thus voters was inadvertent, and had the errors been discovered, the charter amendment would never have been submitted to the voters. Nonetheless, now that the charter amendment has been submitted to and ratified by the voters, a declaration of invalidity by the court and entry of an injunction to prevent the implementation of the election provisions of the charter is necessary.

B. Nor can Ordinance No. O-042-2019 be deemed to be a valid amendment to the election provisions of the amended charter.

Ordinance No. O-042-2019 is styled as a “reapportionment,” but is actually a thinly disguised amendment to the election provisions of the amended charter. The amended charter expressly provides that the first election of council members **shall** be held in the election districts set forth in the charter. A home rule charter can be amended on upon a majority vote of the electors, and any contrary method of amending a home rule charter is without legal effect. La. Const. art. VI, § 5(C); *Montgomery v. St. Tammany Parish Gov’t*, 2017-1811 (La. 06/27/18), ___ So. 3d ___, 2018 WL 3151290, 2018 La. LEXIS 1707.

Undoubtedly, the parish council’s effort to remedy the errors in the amended charter are laudable, but the law simply does not permit a public entity to amend its home rule charter by ordinance. Amendment of the charter is the exclusive province of the voters.

C. A Preliminary Injunction by this Court is Essential to Continue the Valid Operation of Lafayette City-Parish Government.

A preliminary injunction from this Court will help ensure that future actions taken by the Lafayette City-Parish Council are valid and legal. If elections proceed on October 12, 2019 and November 16, 2019 for the election of Lafayette City Council and the Lafayette Parish Council members, future actions of the Lafayette City-Parish Council will be tainted by the invalid election and subject to legal challenge. However, a preliminary injunction will allow the Lafayette City-Parish Council to continue to validly exist and function in a legal manner.

If this Court were to find that Section 8-01 and FN23 of the charter amendment ratified December 8, 2018 and promulgated December 18, 2018, which relate to the first elections of City and Parish Council members, are null and void, such a finding would not affect the validity of the remaining charter amendment. Instead, the City-Parish Government would continue to exist, function and operate under the Charter as it existed before the December 8, 2018 amendments.

This eventuality is specifically provided for in the Charter Amendments. Section 8-12. of the Charter Amendments sets forth the Schedule of Transition and states:

If approved by the voters, the amendments to this charter shall not take effect until the date that a majority of the newly elected City Council members and a majority of the newly elected Parish Council members officially take office, except for only those amendments to this charter that are necessary to carry out the election of City Council positions and Parish Council positions created by said amendments.

Since a preliminary injunction from this court would effectively enjoin the elections of City Council Members and Parish Council Members, the Charter Amendments would not take effect

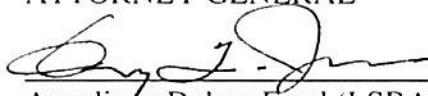
because no new city or parish council members would take office. Hence the Lafayette City-Parish Council will continue to operate under the Charter as it existed before the amendment.

In the interim, the City-Parish need only to resubmit to the voters an amendment to remedy the legal defects of Section 8-01 and FN23 of the charter amendments. This can easily be accomplished through a variety of means. One such cure could be a charter amendment that, instead of containing the district descriptions and precincts *within the Charter*, will set forth the number of districts in the Charter and specifically provide that the Council by ordinance can set forth the initial boundaries of the districts until such time as they are reapportioned.

Once the Charter is properly amended through a vote of the electors then a valid election can take place, and the previous charter amendment will take effect on the date that a majority of the newly elected City Council members and a majority of the newly elected Parish Council members officially take office.

Respectfully submitted,
JEFF LANDRY
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**Counsel for Plaintiff in Intervention, Secretary
of State Kyle Ardoin**

Please serve with the Petition of Intervention:

**City of Lafayette, Parish of Lafayette, Lafayette Consolidated Government,
and the Lafayette City-Parish Consolidated Government**

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