

7/03/2019 “See News Release 030 for any Concurrences and/or Dissents.”

SUPREME COURT OF LOUISIANA

NO. 2019-C-1059

KEITH KISHBAUGH

VERSUS

THE CITY OF LAFAYETTE GOVERNMENT, ET AL.

**ON WRIT OF CERTIORARI TO THE COURT OF APPEAL,
THIRD CIRCUIT, PARISH OF LAFAYETTE**

GENOVESE, J., would grant and assigns the following reasons therefor.

After twenty-two years of existence and operation (1996-2018), the Lafayette City-Parish Consolidated Government, by a vote of 53% to 47%, approved an amendment to its Home Rule Charter (the “Charter”), thereby abolishing the Lafayette City-Parish Council (the “Council”) and replacing it with a Lafayette City Council and a Lafayette Parish Council. It is undisputed that there were errors in the district descriptions included in the amended Charter wherein some portions of an existing precinct were inadvertently omitted, which disenfranchised 330 voters, while some voters were included in more than one district and would be able to vote twice. The Council felt it could fix this morass by ordinance in lieu of a vote.

The lower courts opined that this quagmire was only a “clerical error,” a mere violation of a ministerial duty, and that there was a reasonable relationship between the ordinance and the “public good,” which upheld the intent of the drafters and the people. What about the “elephant in the room” in this scenario? What about the right to vote, which is a fundamental cornerstone of our country and this state’s democracy? There were 330 voters disenfranchised as a result of this error, and now, some voters can vote twice. What about the jurisprudential concept and legal requirement of “one man, one vote”?

Here, the Council attempted to implement a shortcut by circumventing voting rights with an ordinance. The lower courts opined that the plaintiffs failed to carry their burden of proving by clear and convincing evidence that the ordinance was an unconstitutional amendment to the Charter. I totally disagree. What more proof of unconstitutionality is needed than 330 voters being disenfranchised, certain persons being allowed to vote twice, and one's fundamental and constitutional right of suffrage being compromised and negated? This is no clerical error. This is an impingement on suffrage and patently unconstitutional on both the state and federal level.

I fully agree with the dissenting judge that a home rule charter (such as the case herein) is the supreme law of home rule charter jurisdiction and clearly can only be amended in accordance with La.Const. art. 6, §5 (C) which states: "A home rule charter shall be adopted, amended, or repealed when approved by a majority of the electors voting thereon at an election held for that purpose." How much clearer can it be? Our state constitution requires a vote to amend the Charter. There was no vote here to amend the Charter, but an ordinance to circumvent suffrage. If it takes a vote to make it, it takes a vote to break it. It is indeed a slippery slope when an ordinance is allowed to quash the vote of the people.

I would grant this writ, reverse the lower courts, and rule this ordinance unconstitutional.