

DERSERLENE NIXON

*

NO. 2015-CA-1036

VERSUS

*

COURT OF APPEAL

**JASON HUGHES AND THE
HONORABLE ARTHUR A.
MORRELL**

*

FOURTH CIRCUIT

*

STATE OF LOUISIANA

*

*

* * * * *

TOBIAS, J., CONCURS.

I fully and respectfully concur in the majority’s opinion.

I feel compelled to comment about my colleague’s dissent in which he asserts that the district court lacks subject matter jurisdiction to entertain a suit challenging a candidate for a seat in the Louisiana Legislature. La. Const. Art. III, § 4 sets forth the qualifications for a member of the legislature: (a) an elector; (b) at least 18 years of age on the date he qualifies for election; (c) residing in Louisiana for two years preceding his qualifying; and (4) actually being domiciled for one year in the legislative district from which he seeks election. La. Const. art. III, § 7 says that each house of the legislature is the judge of the qualifications and elections of its members. But La. Const. art. XI, § 1 requires the legislature to adopt an election code that provides “for the conduct of all elections.”

Pursuant to the Article XI mandate, the legislature adopted the Louisiana Election Code, La. R.S. 18:1, *et seq.* Without going into a detailed analysis of the Code, suffice it to say that the legislature has set up a framework for qualifying for and conducting all elections, including members of the legislature. Thus, the legislature provided a means for a citizen to question whether an individual possessed the qualifications to run for the office of a member of the legislature. Without that statutory authority, in theory, and by way of example, a 10-year-old, a

non-electors, non-citizens, or Louisiana nonresidents could qualify and run for the office of a Louisiana legislature member and only after such individual's election could it be questioned by a house of the legislature. Such is clearly not the intent.

The La. Const. art. III, § 7 provision (judging of the qualifications and elections) is intended to allow a house of the legislature to eject a member for cause, such as a serious crime. To embrace otherwise would allow a house of the legislature to eject a member because of his religion or his articulation or support of unpopular causes – in other words a supposed “nonconformist.” To think that the third branch of government, the judiciary, cannot provide a check upon the legislature in that regard would be pure bunkum.