

**MAYOR-PRESIDENT SHARON  
WESTON BROOME AND  
COUNCILMAN LAMONT COLE**

**SUIT 690,041 SEC. 23  
19th JUDICIAL DISTRICT COURT**

**VERSUS**

**CHRIS RIALS AND NORMAN  
BROWNING, ORGANIZERS OF THE  
PETITION TO INCORPORATE THE  
CITY OF ST. GEORGE**

**PARISH OF EAST BATON ROUGE  
STATE OF LOUISIANA**

**JUDGMENT**

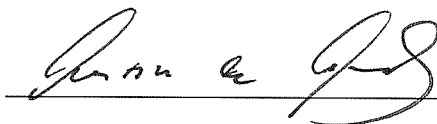
This matter came before the court pursuant to a scheduled bench trial on May 2, 2022. Present in court were Brett P. Furr, John P. Murrill, Mary Olive Pierson and Larry S. Bankston, counsels on behalf of the Plaintiffs, Sharon Weston Broome and Lamont Cole. Christina Bertholot Peck, Sheri M. Morris, D. Stephen Brouillette, Jr., and Evan Fontenot, counsels on behalf of the defendants, Chris Rials and Norman Browning (hereinafter "Incorporators"). The trial concluded on May 11, 2022, and the Court took the matter under advisement.

Having considered the evidence, arguments of counsel, the facts and the law,

**IT IS ORDERED, ADJUDGED, AND DECREED** that the Incorporation of the City of St. George be **DENIED** as the incorporation is unreasonable in accordance with La. R.S. 33:4(E)(2)(a).

**IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that the parties are to bear their own costs.

Baton Rouge, Louisiana, this 31<sup>st</sup> day of May, 2022.



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Judge *pro tem*, Nineteenth Judicial District Court

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**WRITTEN REASONS FOR JUDGMENT**

This matter came before the court pursuant to a scheduled bench trial on May 2, 2022. Present in court were Brett P. Furr, John P. Murrill, Mary Olive Pierson and Larry S. Bankston, counsels on behalf of the Plaintiffs, Sharon Weston Broome and Lamont Cole. Christina Bertholot Peck, Sheri M. Morris, D. Stephen Brouillette, Jr., and Evan Fontenot, counsels on behalf of the defendants, Chris Rials and Norman Browning (hereinafter “Incorporators”). The trial concluded on May 11, 2022, and the Court took the matter under advisement. Now the Court issues the ruling and reasons:

**Background:**

This action arises out of the Incorporators motivation to have a school system in southeast East Baton Rouge Parish. After two failed attempts in the legislature to form its own school district, Incorporators were informed that incorporation of a municipality was necessary for them to support the creation of a school district in southeast East Baton Rouge Parish. Norman Browning and Chris Rials began working with other residents interested in creating a community school district to determine the financial feasibility of incorporating the area of St. George located in southeast Baton Rouge.

In August of 2013, Mr. Browning filed a Petition to Incorporate the City of St. George with the Louisiana Secretary of State, which included the entire area within the St. George Fire Protection District. In August of 2013, the law did not provide a deadline for obtaining signatures on a petition to incorporate a municipality. While the Incorporation Petition was being circulated, the City of Baton Rouge annexed areas within the boundaries of the proposed area to be incorporated as the City of St. George into the City of Baton Rouge, including portions of the LSU campus, the Mall of Louisiana, and the property of L’Auberge Casino.

The 2013 Incorporation Petition was 71 signatures short of the 17,859 signatures required for the governor to call an election on the issue of incorporation. La. R.S. 33:2(B) imposes a two-

year waiting period prior to circulating a “petition for incorporation of all or a part of the area proposed for incorporation.”

During the 2016 Regular Session of the Louisiana Legislature, legislation was passed to impose a deadline of 270 days to collect signatures on petitions to incorporate a municipality with 10,000 or more qualified electors.

In 2018, following the two-year waiting period, Norman Browning and Chris Rials filed a second Petition to Incorporate the City of St. George. Some areas within the proposed area to be incorporated in the 2013 Incorporation Petition were excluded from the 2018 Incorporation Petition.

On March 2, 2018, the Incorporators filed the 2018 Incorporation Petition with the Louisiana Secretary of State seeking approval to obtain signatures on the 2018 Incorporation Petition to incorporate. On March 2, 2018, the Louisiana Secretary of State determined the 2018 Incorporation Petition met the legal requirements and endorsed that fact and date of filing allowing the Incorporators to begin collecting signatures.

On February 25, 2019, the East Baton Rouge Parish Registrar of Voters (“Registrar”) certified the 2018 Incorporation Petition included signatures of more than 25% of the electors residing in the area proposed for incorporation. Governor John Bel Edwards found the Incorporation Petition met the requirements of law and called a special election to be conducted on October 12, 2019 on the issue of incorporating the City of St. George.

Fifty-four percent (54%) of the over 32,000 electors who voted in the October 12, 2019 special election voted in favor of incorporating St. George. On October 23, 2019, the Incorporators published the results of the election and a notice that St. George would be incorporated within 30 days absent a legal action challenging the incorporation.

On November 4, 2019, Sharon Weston Broome, Mayor of the City of Baton Rouge, Louis Unglesby and M.E. Cormier filed this legal action challenging the St. George incorporation. On November 8, 2019, LaMont Cole, a Council Member for the City of Baton Rouge joined suit as a plaintiff. This Court granted Incorporators’ Exception of No Right of Action finding M.E. Cormier, who neither resides in nor owns any property in the City of Baton Rouge or the proposed area to be incorporated, lacked standing and dismissed her claims. On January 22, 2021, the Court granted the motion of Lewis Unglesby to voluntarily withdraw as a plaintiff.

The instant legal action challenging the election was timely filed and served on the Incorporators after publication of the election results and notice.

**Issues before the Court:**

- Whether the boundaries of the proposed City of St. George were drawn in a discriminatory manner?
- Whether there has been full compliance with the incorporation procedural provisions?
- Whether the municipality can in all probability provide the proposed public services within a reasonable period of time?
- Whether the incorporation of St. George is reasonable?
- Whether the Incorporation may adversely impact other municipalities in the vicinity?

**Law:**

In 1984, the legislature provided for general laws setting forth procedures by which the residents of any unincorporated area with a population in excess of two hundred inhabitants could incorporate the area. Under La. R.S. 33:3, upon finding that there was compliance with La. R.S. 33:1-2, the governor is required to call a special election for the purpose of determining whether the incorporated area shall become a municipality. La. R.S. 33:7(A) makes it clear that the provisions of La. R.S. 33:1-6 shall apply to every municipality incorporated on or after September 1, 1984.

The sole grounds to challenge the corporate existence of a municipality incorporated on or after September 1, 1984 are set forth in La. R.S. 33:4. Pursuant to La. R.S. 33:4(D), in a legal action contesting an incorporation, a court must determine: (1) whether there has been full compliance with the incorporation procedural provisions; (2) whether the municipality can in all probability provide the proposed public services within a reasonable period of time; and (3) whether the incorporation is reasonable. In determining whether the incorporation is reasonable, the court shall consider the possible adverse effects the incorporation may have on the other municipalities in the vicinity.

If it is determined that the statutory requirements for incorporation have been met, including the accuracy of the statements in the petition and of the certification of the registrar of voters, that the municipality has the capacity to provide the proposed public services, and the incorporation is reasonable, a court is required to enter an order declaring the date the municipality shall become incorporated with La. R.S. 33:4(D) and (E).

The legal action filed by Mayor Broome and Councilman Cole prevents St. George from becoming “legally incorporated” until this Court determines whether “the municipality can in all probability provide the proposed public services within a reasonable period of time” and “the incorporation is reasonable” in accordance with La. R.S. 33:4(D).

The statute relied upon by the Incorporators has limited jurisprudence for any guidance in this case. In the City of Central case *Devall, et al. v. Starns*<sup>1</sup>, the litigation involved the constitutionality of incorporating a city. Unlike *Devall*, Plaintiffs here are challenging the sufficiency of the Incorporators plan and implementation.

**Whether the boundaries of the proposed City of St. George were drawn in a discriminatory manner:**

The Court disagrees with the Plaintiffs assertion that the proposed area of incorporation was intentionally drawn to systematically exclude minorities from inclusion in the proposed city. Plaintiffs argued that the Incorporators intentionally eliminated a portion of the population of minority voters in a blighted community. Plaintiffs failed to offer compelling evidence in support of their claim that the boundaries of St. George were purposefully drawn in a racially discriminatory fashion.

The 2013 map of the area proposed to be incorporated included the 71,436 registered voters. The 2018 incorporation petition contained an area of 51,984 or 20% less of registered voters. A significant area of the reduction came from low income and racial mix of African American and Hispanic communities.

Incorporators offered the reason the area was reduced was to obtain the signatures of 25% of the registered voters within 270 days. At the time of the 2013 petition, there was no time limit. In 2016, an amendment to La. R.S. 33:1(C) was enacted which established a 270 day time period. They excluded the area in which precincts had a low signature count in support of the 2013 petition because of time constraints in gathering signatures. The redrawn map also excluded more affluent areas.

John Engquist, who established H &E Equipment Services a publically traded company with headquarters in Baton Rouge employing an excess of 270 local employees, stated that the perception of racism would negatively impact his company as well as the city of Baton Rouge.

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<sup>1</sup> *Devall v. Starns*, 960 So.2d. 75, (La.App. 1 Cir. 3/21/2007)

The perception that racism played a role in establishing of the boundaries is a reasonable impression. The perception may exist, but the Incorporators have provided a racially neutral reason why certain areas were excluded and not purposely drawn in a racially discriminatory fashion.

**Whether there has been full compliance with the incorporation procedural provisions:**

The plaintiffs have challenged the incorporation of St. George on whether the petition was in compliance with La. R.S. 33:1,

(1) A legal description of the area proposed for incorporation, a map of the area proposed for incorporation, and the statement that all lands included in the area constitute a contiguous area. The description shall also include a list of every parish in which the proposed area of incorporation is wholly or partially situated.

(2) A statement of the number of inhabitants residing in the unincorporated area of the proposed incorporation. Such statement shall be based on the latest federal decennial census or another current population report or count which is verifiable.

(3) A statement of the assessed value of the immovable property located in the unincorporated area.

(4) A listing of the public services the municipal corporation proposes to render to the area and a plan for the provision of these services.

(5) A statement of the corporate name desired for the new municipality.

(6) The names of two persons, who shall be designated as chairperson and vice chairperson, for the petition for incorporation who shall serve as agents for the petitioners in all legal matters, including the receipt of notices. Notice will be sufficient if served on the chairperson or vice chairperson. If the chairperson is unable to carry out the duties required in this Section, the vice chairperson shall carry out such duties.

The Incorporators' petition on the Secretary of State form regarding La. R.S. 33:1 included the following:

(1) Public Safety services through the continuation of series provided by St. George Fire Protection District, East Side Fire District, and the East Baton Rouge Sheriff's Office.

(2) Sanitation and garbage collection through the continuation of series provided by the consolidated garbage service district.

(3) Sewerage by continuation of comprehensive sewerage system fund.

- (4) Emergency Medical Services through continuation of series provided by the East Baton Rouge Parish Department of EMS.
- (5) 911 services through continuation of services provided by the East Baton Rouge Parish 911 District.
- (6) The City will provide the following services through third party contractor(s):
  - a. Regulation of property use by adoption of planning and zoning ordinance.
  - b. Building Inspections.
  - c. Traffic signs and signals.
  - d. Maintenance and improvement of municipal public streets and roads.
  - e. Maintenance of right of ways.
  - f. Maintenance and improvements to drainage system.
  - g. Regulation of alcohol beverages as authorized by Louisiana Law.

The Secretary of State form included a full page attachment to list the services and plan for provision of services, which was not utilized by the incorporators. They used the same format as the one utilized by the incorporators of Central. Central incorporators successfully formed their municipality after weathering some legal challenges; however, the sufficiency of their petition was never an issue so therefore offers no guidance as to the sufficiency of the petition in this regard. Obviously, the legislature intended the voters within the proposed area of incorporation be informed of the public services and plan for implementation to make an informed choice whether to participate in the proposal to incorporate. Regarding the mandated disclosure required by the statute, the Court finds the petition disclosure minimally satisfies the requirement of the statute. The terse description did place citizens on notice of what services would be provided and what may be provided.

**Whether the Municipality can provide the proposed public services within a reasonable period of time:**

The Court finds that Incorporators, if properly funded, could in all probability provide some of the proposed public services within a reasonable period of time. Services 1-5 could continue without interruption upon the incorporation using a continuation of the existing mechanisms for the provision of those services within the St. George boundaries. Evidence shows that the seamless transition of services from East Baton Rouge Parish to the City of Central was due in part to the cooperation of East Baton Rouge Parish. With the same type of cooperation from East Baton

Rouge Parish, the transition of service from the Parish to St. George should also be seamless. Funding for sewerage services would not be affected by the St. George Incorporation. Funding for the collection and disposal of garbage, trash and recyclable material would not be affected by the St. George Incorporation.

Although testimony showed the listing of services 1 – 5 could, in all probability, be provided within a reasonable time, there was a caveat contained in the petition which conditioned this assertion upon availability of funds derived from taxes and fees as authorized by law, which provides:

All services will be provided based upon the availability of funds derived from taxes, license fees, permits and other revenue which becomes available to the municipality and are authorized by law.

The City, if approved, would need to go through a transitional period and go to the voters for passage of a sales tax.

Incorporators followed the model of Central, a successful endeavor, which relied on the privatization of services, and a continuation of public services in which they experienced a successful transition. Central had a surplus of \$1 million and continued to build on that surplus and established their school district, so it is understandable that Incorporators used Central as a model. Witnesses from Central established beyond a reasonable doubt that in their case the municipality did provide the proposed public services within a reasonable period of time. The funding was accomplished through a combination of continuation of the 2% sales tax and user fees. The services were provided through a combination of privatization together with public services provided by the parish. Incorporators attempted to show they can achieve this for St. George in the same fashion.

It has already been shown that items 1-5 can be provided. However, it is doubtful that the services listed under 6 items a-g of the Incorporators' petition can be provided without increasing taxes.

Incorporators did offer evidence demonstrating that public services are being provided to the citizens in the unincorporated area and indicated that such services would be provided in the future. Again, this depends on whether they would have sufficient funds for the operation of the new city of St. George. Their petition did condition the providing of some services if funds were available.



### **Whether the incorporation of St. George is reasonable?**

Although Incorporators did not obtain an estimate of costs for obtaining services, the Court finds testimony from opposing experts which compared operational costs to similar size cities to be helpful. The cost of running St. George would be approximately \$42 million per year.

Parish wide taxes that were passed providing funding for road projects and sewerage will remain in effect whether St. George is incorporated or not. If St. George is incorporated, the sewer user fees would continue to be collected from owners of properties connected to the system within the boundaries of St. George, and the one-half cent sales tax would continue to be collected within the boundaries of St. George. The same is true for the collection of garbage, recycling, and trash.

East Baton Rouge Sheriff Sid Gautreaux testified there is no agreement with the Incorporators to pay for public safety services nor what the associated cost would be. The agreement between the previous Sheriff and Central wherein the Sheriff would provide services to Central with no extra cost for a period of five years would not apply to the City of St. George; thus, some monetary contribution would be required by the City of St. George to provide additional public safety services. At this time, there is no such agreement and the cost is unknown.

In addition to the Sheriff, Incorporators' expert Jean-Paul Tujague testified that his first year-end budget excluded the obligation of pension liability, which leaves a hole in the Incorporators budget and may impact their ability to budget for themselves. The evidence shows that unfunded pension liability or Unfunded Accrued Liabilities (hereafter "UAL") amounts to \$650 million for CPERS (City Parish Employees' Retirement System). Other postemployment benefits known as OPEB (Office of Public Employee Benefits) amounts to \$1.2 billion dollars in unfunded liabilities. The evidence shows that if St. George were to incorporate the City would pay around \$9-\$10 million per year for 30 years towards these unfunded liabilities.

The estimated cost of \$42 million and the \$9 million in UALs amount to \$51 million dollars. The estimated revenue for the City of St. George is \$48 million dollars from the 2% sales tax. Based on the evidence, the City of St. George would run a deficit of approximately \$3 million dollars on day one and this excludes the additional cost of the Sheriff. This deficit will be a huge negative on the City of St. George. St. George is required to run a balanced budget and because of this deficit there would be layoffs and a reduction in public services.

**Whether the Incorporation may adversely impact the City of Baton Rouge?**

The 2% sales tax cut from Baton Rouge Municipal budget amounts to \$48 million dollars. This amount is not in dispute. The City of Baton Rouge will not receive \$48 million in revenue if the incorporated area was to be severed from Baton Rouge. This will have a significant decrease in services to citizens of Baton Rouge including the Sheriff and the operation of the city government. Incorporators' expert Dr. Will C. Heath admitted on cross examination that if Incorporators take the 2% sales tax revenue totaling \$48 million from the City Parish budget this may have an adverse effect on the city of Baton Rouge for several years to come.

Plaintiffs' witnesses, Mayor-President Sharon Weston Broom, Councilman Lamont Cole, Finance Director for City Parish Linda Hunt and expert Dr. James Richardson, among others, testified regarding the East Baton Rouge Parish budget. The general funds within the budget total \$320 million dollars, which can be broken down into three categories: mandated expenditures, difficult to reduce, and discretionary, which can be reduced. The mandated expenditures are set by law and are not subject to reduction. These Constitutional Offices include the District Attorney, East Baton Rouge Parish Prison, the courts and the coroner. These legally mandated items total \$45 million dollars. The difficult to reduce items include public safety and the fire department. These difficult to reduce items total \$169 million dollars. Taking the total amount of \$320 million and subtracting \$45 million and \$169 million leaves \$106 million that can be reduced. If St. George were to incorporate, the general fund would further be reduced by \$48 million dollars leaving the City of Baton Rouge with a 45% cut in its budget. This reduction would include public services such as roads, traffic control, the River Front, the River Center, the State Capitol and overall the quality of life in Baton Rouge. Incorporators proposed contributing \$6.6 million dollars annually towards the Constitutional Offices. This results in a reduction of approximately 35% from the general fund.

Clearly, the loss of revenue will have a substantial adverse effect on Baton Rouge.

**Conclusion:**

Incorporators of St. George desired to establish a city primarily to establish a new school district in their area. They looked to the tremendous success of the City of Central and modeled their plan very closely.

At trial, Incorporators brought forth numerous witnesses illustrating the successful path which led to the creation of the City of Central. Central utilizes the parish services together with privatization of many other services of the City's operation to a great degree.

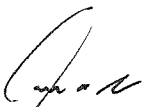

The two areas differ in significant ways. St. George abuts the City of Baton Rouge and is an urban area while Central is in a rural environment. The population of central was in the low 20,000 compared to St. George with 88,000. Roadways and infrastructure by nature are quite different. Central received Sheriff's law enforcement at no additional cost at the time of its incorporation. They were also not saddled with UAL projected to be approximately \$9-\$10 million annually for 30 years. It would appear the City of St. George would not be able to operate with a balanced budget.

It is uncontroverted that the City of St. George if incorporated would result in Baton Rouge losing \$48 million annually in sales tax revenue. Numerous witnesses within departments including department heads in city of Baton Rouge testified that this would have a substantial adverse effect on the city of Baton Rouge. This loss of revenue would certainly result in the reduction in public works, building maintenance, transportation, drainage, and street maintenance. Public safety would also be adversely affected by the reduction of personnel and this could possibly bring increased taxes because the City of Baton Rouge must also run on a balanced budget.

Incorporators' motive to establish a new school district is certainly an admirable goal. From the testimony, it appears this still may be accomplished by other means despite the misinformation they earlier had received, which gave them the impression that a municipality was required to initiate the formation of a new school district.

For all the above reasons, the Court finds that the Incorporation of the City of St. George is unreasonable.

Baton Rouge, Louisiana, this 31 day of May, 2022.

   
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Judge *pro tem*, Nineteenth Judicial District Court