

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2004 CE 1844

CHARLES N. BRANTON

VERSUS

BRYAN D. HAGGERTY, VINCENT LOBELLO, AND
MALISE PRIETO, CLERK OF COURT, PARISH OF ST.
TAMMANY

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Judgment Rendered: _____

On Appeal from the
22nd Judicial District Court,
in and for the Parish of St. Tammany
State of Louisiana
Trial Court No. 2004-13906E

COURT OF APPEAL
1ST CIRCUIT
FILED

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CHRISTINE L. CROW
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Honorable William J. Burris, Judge Presiding

Charles N. Branton
Slidell, LA

Plaintiff/Appellant,
In Proper Person

Raymond G. Hoffman, Jr.
Metairie, LA

Counsel for Defendant/Appellee,
Bryan D. Haggerty

Patrick J. Berrigan
Slidell, LA

Counsel for Defendant/Appellee,
Vincent J. Lobello

Jeanne M. Roques
Covington, LA

Counsel for Defendant/Appellee,
Malise Prieto, Clerk of Court

BEFORE: PARRO, KUHN, PETTIGREW, DOWNING, AND GAIDRY,
JJ.

EGG - GAIDRY, J - CONCURS
KUHN, J CONCURS + ASSIGNS REASONS
Parro, J., dissents and assigns reasons.
PETTIGREW, J., dissents FOR THE REASONS ASSIGNED BY JUDGE PARRO.
JTP by RHP

DOWNING, J.

Plaintiff, Charles N. Branton, filed suit challenging Bryan D. Haggerty's and Vincent J. Lobello's qualifications as candidates for the office of Judge of Slidell City Court. Plaintiff appeals the trial court's dismissal of his petition. For the following reasons, we affirm.

DISCUSSION

Haggerty and Lobello sought to qualify in the special election called to fill the unexpired term of the Honorable Gary J. Dragon, Judge, Slidell City Court. Both men were admitted to the state bar on October 15, 1999. The primary election is scheduled for September 18, 2004, and the general election is set for November 2, 2004. Plaintiff filed suit challenging Haggerty's and Lobello's qualifications as candidates, as neither man had been admitted to the practice of law for a period of five years at the time he qualified. Plaintiff further alleged that should either candidate win the primary election of September 18, 2004, he would not be qualified to assume the office.

An action objecting to the candidacy of a person who qualified as a candidate in a primary election may be based on the ground that the candidate "does not meet the qualifications for the office he seeks in the primary election." LSA-R.S. 18:492A(3). Louisiana Revised Statute 18:451 states in pertinent part, "*Except as otherwise provided by law, a candidate shall possess the qualifications for the office he seeks at the time he qualifies for that office.*" (emphasis supplied) With respect to the City Court of Slidell, LSA-R.S. 13:2487.2 specifies in pertinent part that the "city judge must be licensed to practice law in the State of Louisiana for at least five years previous to his election."

The trial court concluded that the provisions of LSA-R.S. 13:2487.2 fall into the category of the "except as otherwise provided by law" language of LSA-R.S. 18:451 and held the determinative date of whether a candidate possesses the qualifications for the office he seeks is the date of the general election and

not the date of qualification. We basically adopt the insightful written reasons of the trial judge.

Other circuits have held that the similar phrase “prior to his election” refers to the general election and not the primary election.¹ **Cook v. Campbell**, 360 So.2d 1193, 1197 (La. App. 2 Cir.), writ denied,² 362 So.2d 573 (La. 1978); **Aiple v. Naccari**, 454 So.2d 894, 894 (La. App. 5 Cir.), writ denied, 456 So.2d 151 (La. 1984); see also **Soileau v. Board of Sup'rs, St. Martin Parish**, 361 So.2d 319, 323 (La. App. 3 Cir. 1978). Under the facts of this case, we find the phrase “previous to his election” also refers to the date of the general election and not the primary election. As observed by the second circuit:

The determinative date of a candidate's qualifications should be fixed, certain and ascertainable at the time of qualification for candidacy. The date of the general election is certain and ascertainable in both regular and special elections. The interpretation of “election” urged by plaintiff would leave the determinative date uncertain and dependent on how many candidates qualify and, where there are more than two candidates, on whether one candidate receives a majority of the votes cast in the first primary, matters which cannot be determined until after expiration of the qualifying period or after the primary election.

Cook, 360 So.2d at 1197.

Moreover, in an election contest, the person objecting to the candidacy bears the burden of proving the candidate is not qualified. **Russell v. Goldsby**, 00-2595 (La. 9/22/00), 780 So.2d 1048, 1051. The plaintiff has not carried his burden of establishing that the defendants will be elected prior to the fifth year of their admissions to the Louisiana State Bar Association. See **Soileau**, 361 So.2d at 323. The laws governing the conduct of elections must be liberally interpreted so as to promote rather than defeat candidacy. **Russell**, 780 So.2d at 1051. Any doubt as to the qualifications of a candidate should be resolved in favor of permitting the candidate to run for public office. **Russell**, 780 So.2d at 1051.

¹ “A judge of the supreme court, a court of appeal, district court, family court, parish court, or court having solely juvenile jurisdiction shall have been admitted to the practice of law in this state for at least five years **prior to his election**, and shall have been domiciled in the respective district, circuit, or parish for the two years preceding election. He shall not practice law.” La. Const. art. V, §24. (emphasis supplied)

² The Louisiana Supreme Court stated: “Writ denied. We find no error of law in the reasons stated by the Court of Appeal.”

Considering the foregoing, the judgment appealed from is affirmed. Costs of this appeal are assessed to the plaintiff/appellant, Charles N. Branton.

AFFIRMED.

CHARLES N. BRANTON


2004 CE 1844

VERSUS

FIRST CIRCUIT

BRYAN D. HAGGERTY,
VINCENT LOBELLO and
MALISE PRIETO, Clerk of Court,
Parish of St. Tammany

COURT OF APPEAL
STATE OF LOUISIANA



Before: Parro, Kuhn, Pettigrew, Downing, and Gaidry, JJ.

Kuhn, J., concurring.

I concur to amplify a proposition established in the jurisprudence, i.e., the applicable legislation should be liberally interpreted to favor and promote candidacy.

The legal positions assumed by the parties in this appeal allow both sides to rely on statutes addressing the subject of qualifications for, or challenges to qualifications for, the office of Slidell City Court Judge. While the Election Code provides for challenging the qualifications of a candidate, it does not specifically address the qualifications of a judge of the Slidell City Court. Conversely, La. R.S. 13:2487.2, in establishing the office, states in pertinent part that "[t]he city judge must be licensed to practice law in [the state] for at least five years previous to his **election**"

While one may argue, with some persuasion, that one statute or another should be used to determine the issue in this case, well-established jurisprudence resolves the ultimate issue of whether the candidate possesses the relevant qualification for office. In *Pattan vs. Fields*, 95-2375 (La. 9/28/95), 661 So.2d 1320, the Supreme Court reinstated the candidacy of a candidate for election to the state senate and set forth the following pertinent principles of law:

The laws governing the conduct of elections must be liberally interpreted so as to promote rather than defeat candidacy. Any

doubt as to the qualifications of a candidate should be resolved in favor of permitting the candidate to run for public office.

These legal principals are sufficient to decide this case. The candidacy of these two office seekers should be allowed.

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VERSUS

**BRYAN D. HAGGERTY, VINCENT LOBELLO, AND MALISE PRIETO,
CLERK OF COURT, PARISH OF ST. TAMMANY**

BEFORE: PARRO, KUHN, PETTIGREW, DOWNING, AND GAIDRY, JJ.

 **PARRO, J., dissenting.**

As the majority opinion correctly notes, LSA-R.S. 18:451 requires that a candidate possess the qualifications for the office he seeks at the time he qualifies for that office, "except as otherwise provided by law." Such an exception is provided by LSA-R.S. 13:2487.2, which states that a judge for the City Court of Slidell must be licensed to practice law in the State of Louisiana for at least five years "previous to his election." Thus, the precise question before the court is whether the "election" date as of which the candidates in this case must possess the qualifications for the office is the date of the primary election on September 18, 2004, or the general election on November 2, 2004. Louisiana Revised Statute 18:451 does not answer this question, as it refers to both elections when it states that a person who meets the qualifications for the office he seeks may become a candidate and be voted on in a primary or general election if he qualifies as a candidate in "the election."

However, I believe the answer to this question can be found in another provision of the election code. According to LSA-R.S. 18:492(A), an action objecting to the candidacy of a person must be based on certain stated grounds, one of which is set out in subparagraph (3) and states that the defendant "does not meet the qualifications for

the office he seeks **in the primary election.**" (Emphasis added.) In fact, subparagraphs (1) and (2) of that statute also indicate that the election upon which a challenge to candidacy must be based is the primary election, either because the candidate did not qualify "for the primary election" in the manner prescribed by law or within the time prescribed by law. Given this clear and unambiguous statement, which has not been interpreted in any jurisprudence,¹ I would find the plaintiff carried his burden of proof that neither of the challenged candidates meets the qualifications for the office he seeks "in the primary election," as neither will have been licensed to practice law in the State of Louisiana for at least five years "previous to his election," as that term is defined in the statute governing objections to candidacy.

For that reason, I respectfully dissent.

¹ The majority opinion relies primarily on the Cook case for the conclusion that the "election" means the general election. However, the Cook case involved a candidate for district court judge, which is a court established by the Louisiana Constitution, and the case therefore interpreted constitutional provisions, some of which were applicable only to district court judges. In contrast, our case involves the City Court of Slidell, which was established by statute. Therefore, the principles of law applied by the court in Cook differ from those in this case.