SUPREME COURT OF LOUISIANA

Russo v. Burns

147 So. 3d 1111 (La. 2014) · Decided September 24, 2014

SUMMARY

The Louisiana Supreme Court held that Lionel Burns falsely certified that he had filed his Louisiana income tax returns for 2010 through 2013 when he qualified as a candidate for Orleans Parish District Attorney. Interpreting Louisiana Department of Revenue regulations, the court concluded that the returns were not filed because Burns failed to establish their delivery to the Department of Revenue. The court reversed the lower courts and disqualified Burns from candidacy.

CASE DETAILS

COURT	Supreme Court of Louisiana
JURISDICTION	Louisiana
DECIDED	September 24, 2014
DISPOSITION	reversed
PROCEDURAL POSTURE	Russo brought an expedited action objecting to Burns's candidacy for Orleans Parish District Attorney. After the trial court initially disqualified Burns, the Fourth Circuit remanded for additional testimony, and the trial court reinstated Burns's qualification. The Fourth Circuit affirmed, and the Louisiana Supreme Court reversed on writ application.
STANDARD OF REVIEW	Legal interpretation of the Louisiana Department of Revenue filing regulation and the candidacy-disqualification provisions was reviewed for legal error; the court independently applied the governing law to the undisputed filing evidence.
PRECEDENTIAL VALUE	Published precedential opinion
PARTIES	Lionel Burns, Jr. v. Anthony J. Russo

TOPICS

election contests · election law · income tax · statutory interpretation · plain meaning rule

PRACTICE AREAS

Election law · State and local taxation · Statutory interpretation

QUESTIONS PRESENTED

1. Whether Burns falsely certified on his Notice of Candidacy that he had filed his Louisiana individual income tax returns for 2010 through 2013.
2. Whether tax returns mailed through the United States Postal Service were filed under Louisiana Administrative Code title 61, part I, section 4911(B)(1), absent proof of delivery to the Louisiana Department of Revenue.
3. Whether Burns rebutted Russo's prima facie showing that he was disqualified from candidacy.

HOLDINGS

1. A Louisiana income tax return is deemed filed under the regulation only when it is delivered by the United States Postal Service in a properly addressed envelope with sufficient postage and bears a United States Postal Service postmark; returns not delivered to the Louisiana Department of Revenue have not been filed under the regulation.
2. Russo established a prima facie case that Burns had not filed his Louisiana income tax returns for 2010 through 2013, and Burns failed to rebut that showing; therefore, Burns falsely certified the filing of those returns and was disqualified from candidacy for Orleans Parish District Attorney.

KEY QUOTATIONS

> *"“Filing” of tax returns is clearly defined under regulation: “A return, report or other document in a properly addressed envelope with sufficient postage delivered by the United States Postal Service is deemed filed on the date postmarked by the United States Postal Service.”"* (1114)

> *"Accordingly, we hereby reverse the trial court and disqualify Burns from candidacy for the office of Orleans Parish District Attorney for falsely certifying the filing of these tax returns."* (1114)

FACTUAL BACKGROUND

Burns signed a Notice of Candidacy on August 20, 2014, certifying that he had filed his federal and state income tax returns for the preceding five tax years. Louisiana Department of Revenue records and testimony showed no state income tax returns on file for Burns for 2010 through 2013. Burns later produced returns prepared by a tax preparer and evidence suggesting they had been mailed on August 15, 2014, but there was no proof that the returns had been delivered to the Department of Revenue or otherwise filed under the applicable regulation.

PROCEDURAL HISTORY

Russo filed an objection to Burns's candidacy, alleging that Burns falsely certified he had filed Louisiana individual income tax returns for 2010 through 2013. The trial court initially disqualified Burns, but after a remand allowing tax preparer Melissa Jackson to testify, it found Burns had rebutted Russo's prima facie case and overruled the objection. The Fourth Circuit affirmed in a split decision. The Louisiana Supreme Court reversed and disqualified Burns.

DISPOSITION

reversed

CASES CITED

- Landiak v. Richmond, 899 So. 2d 535, 541-42 (La. 2005)
- Anthony Russo v. Lionel Burns, Jr., et al., 2014-CA-0952 (La. App. 4 Cir. 9/9/14)
- Louisiana Board of Ethics v. Wilson, 2014-C-1908