

The Supreme Court of the State of Louisiana

ALLISON NOCITO

No.2020-C-00986

VERSUS

KENDALL BUSSEY, SR. AND JON
GEGENHEIMER, IN HIS OFFICIAL
CAPACITY AS CLERK OF COURT FOR
THE PARISH OF JEFFERSON, STATE OF
LOUISIANA

IN RE: Kendall Bussey, Sr. - Applicant Defendant; Election, Parish of Jefferson,
24th Judicial District Court Number(s) 808-704, Court of Appeal, Fifth Circuit,
Number(s) 20-CA-243;

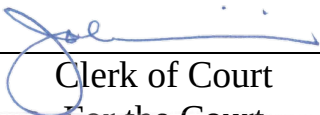
August 15, 2020

Writ application granted. See per curiam.

JHB
BJJ
SJC
JTG
WJC

Weimer, J., would deny.
Hughes, J., would deny.

Supreme Court of Louisiana
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Clerk of Court
For the Court

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STATE OF LOUISIANA

ON WRIT OF CERTIORARI TO THE COURT OF APPEAL,
FIFTH CIRCUIT, PARISH OF JEFFERSON

PER CURIAM

WRIT GRANTED. Because election laws must be interpreted to give the electorate the widest possible choice of candidates, a person objecting to a candidacy bears the burden of proving that the candidate is disqualified. *Landiak v. Richmond*, 2005-0758, pp. 6-7 (La. 3/24/05), 899 So. 2d 535, 541. As this Court explained in *Landiak*:

Generally, the legal term “burden of proof” “denotes the duty of establishing by a fair preponderance of the evidence the truth of the operative facts upon which the issue at hand is made to turn by substantive law.” *Black’s Law Dictionary* (8th ed). Under Louisiana’s civil law, the “burden of proof” may shift back and forth between the parties as the trial progresses. Therefore, when the burden of proof has been specifically assigned to a particular party, that party must present sufficient evidence to establish the facts necessary to convince the trier of fact of the existence of the contested fact. ***Stated another way, the party on which the burden of proof rests must establish a prima facie case. If that party fails to carry his burden of proof, the opposing party is not required to present any countervailing evidence.*** On the other hand, once the party bearing the burden of proof has established a *prima facie* case, the burden then shifts to the opposing party to present sufficient evidence to overcome the other party's *prima facie* case. Louisiana courts commonly apply this “shifting burden of proof” in numerous specific instances, such as trial on motions for summary judgment and exceptions, and in workers’ compensation cases.

2005-0758 at 8, 899 So. 2d at 542 (emphasis added). Any doubt as to the qualifications of a candidate to run for public office should be resolved in favor of permitting the candidate to run for public office. *Dixon v. Hughes*, 587 So. 2d 679 (La. 1991).

The plaintiff here offered into evidence only Mr. Bussey's stipulation that he did not file a tax return in 2019 to establish her *prima facie* case. That evidence, with nothing more, was insufficient to establish a *prima facie* case that Mr. Bussey falsely certified on his Notice of Candidacy that "for each of the previous five tax years, I have filed my federal and state income tax returns, have filed for an extension of time for filing either my federal or state income tax returns, or both, or was not required to file either a federal or state income tax return, or both." Thus, the trial court erred as a matter of law in shifting the burden of proof to Mr. Bussey to prove the plaintiff's unsupported allegation. Furthermore, the other evidence offered by the plaintiff on rebuttal - the documentary evidence from Mr. Bussey's Facebook page and the Southern Charm Bar and Bistro website, as well as the documentary evidence from the NOLA Auto Group and 2KB's LLC, is not evidence of income and does not contradict Mr. Bussey's testimony that he did not have taxable income and was not required to file a tax return in 2019.

Accordingly, the judgments of the court of appeal and trial court disqualifying Mr. Bussey as a candidate for the office of Constable of Second Justice Court for the Parish of Jefferson are reversed. Mr. Bussey is hereby reinstated as a candidate in that race.

REVERSED