

Supreme Court of Louisiana

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FROM: CLERK OF SUPREME COURT OF LOUISIANA

The Opinion handed down on the 22nd day of February, 2023 is as follows:

BY Weimer, J.:

2023-C-00237 YASHA CLARK AND MORGAN WALKER VS. STEPHANIE BRIDGES
AND DARREN LOMBARD, IN HIS OFFICIAL CAPACITY AS CLERK
OF COURT FOR THE PARISH OF ORLEANS, STATE OF LOUISIANA
AND ROBERT KYLE ARDOIN, IN HIS OFFICIAL CAPACITY AS
LOUISIANA SECRETARY OF STATE (Parish of Orleans)

REVERSED; CANDIDACY REINSTATED. SEE OPINION.

Hughes, J., concurs in the result.
Crichton, J., dissents and assigns reasons.
Genovese, J., dissents and assigns reasons.
Crain, J., dissents and assigns reasons.
McCallum, J., concurs in the result and assigns reasons.
Griffin, J., additionally concurs and assigns reasons.

SUPREME COURT OF LOUISIANA

No. 2023-C-00237

YASHA CLARK & MORGAN WALKER

VS.

**STEPHANIE BRIDGES AND DARREN LOMBARD,
IN HIS OFFICIAL CAPACITY AS CLERK OF COURT
FOR THE PARISH OF ORLEANS, STATE OF LOUISIANA AND
ROBERT KYLE ARDOIN, IN HIS CAPACITY AS LOUISIANA
SECRETARY OF STATE**

*On Writ of Certiorari to the Court of Appeal,
Fourth Circuit, Parish of Orleans*

WEIMER, C.J.

This election matter concerns whether a defendant should be disqualified as a candidate for a judgeship. After a review of the law, the judgment sustaining an objection to candidacy and petition for disqualification filed by the plaintiffs is reversed, and the defendant's candidacy is reinstated because, at the time of her candidacy, she complied with the statutory law and administrative regulations related to filing her income tax return.

FACTS AND PROCEDURAL BACKGROUND

Yasha Clark and Morgan Walker (plaintiffs) filed a petition to disqualify Stephanie Bridges (defendant) as a candidate for the upcoming election for the office of Orleans Parish Civil District Court Judge, Division "B." The plaintiffs alleged that Ms. Bridges falsely certified that she had filed her state and federal income taxes for

the past five years, citing La. R.S. 18:492(A)(1) and (7).¹ The specific issue before this court is whether Ms. Bridges' 2021 state tax returns were electronically filed at the time she filed her notice of candidacy.

On the morning of January 25, 2023, Ms. Bridges and her husband visited Mobile Tax, LLC ("Mobile"), a tax preparation business co-owned by Jimmie Brown and Gina Brown, to have their 2021 federal and state tax returns electronically filed. While at Mobile, Mr. Brown informed the couple that their 2021 tax returns had been electronically filed and gave them a letter on Mobile letterhead stating that the tax returns were filed. Approximately an hour later, Ms. Bridges filed a sworn notice of candidacy with the Orleans Parish Clerk of Court, declaring her intent to run for Orleans Parish Civil District Court judge. The notice of candidacy required certification that for each of the previous five tax years, Ms. Bridges "filed [her] federal and state income tax returns, [she] ... filed for an extension of time for filing either [her] federal or state income tax return or both ..., or [she] was not required to file either a federal or state income tax return or both." See La. R.S. 18:463(A)(2); La. R.S. 18:492(A)(7) (quoted below).

The plaintiffs, registered voters in the district wherein Ms. Bridges was running for office, filed a petition objecting to Ms. Bridges' candidacy, asserting that she

¹ In pertinent part, La. R.S. 18:492(A) provides:

An action objecting to the candidacy of a person who qualified as a candidate in a primary election shall be based on one or more of the following grounds:

(1) The defendant failed to qualify for the primary election in the manner prescribed by law.

....

(7) The defendant falsely certified on his notice of candidacy that for each of the previous five tax years he has filed his federal and state income tax returns, has filed for an extension of time for filing either his federal or state income tax return or both as provided in R.S. 18:463(A)(2), or was not required to file either a federal or state income tax return or both.

should be disqualified because she did not file one or more of her federal and/or state tax returns for the last five tax years. At the February 7, 2023, trial of the matter, evidence was introduced regarding the status of the filing of Ms. Bridges' 2021 tax returns. The plaintiffs, Ms. Bridges, Ms. Brown, and the Assistant Director of the Policy Services Division for the Louisiana Department of Revenue ("LDR"), Emily Toler, testified. Additionally, letters from the LDR in response to public records requests were introduced at the hearing and admitted into evidence. A fourth letter, issued by Mobile to the Bridges at the conclusion of their visit, was introduced and admitted.

In a letter from the LDR, dated January 27, 2023, the LDR indicated that the department did not have a 2021 tax return on file for Ms. Bridges. Another letter from the LDR, dated February 6, 2023, was addressed to the plaintiffs' counsel and likewise stated that the LDR did not have Ms. Bridges' 2021 tax return on file. A third letter from the LDR, also dated February 6, 2023, was addressed to Ms. Bridges and stated that her 2021 tax return was on file. During her testimony, Ms. Toler explained that responses in the February 6 letters differed from each other because the LDR's system had updated by the time a search was conducted in response to Ms. Bridges' public records request. Ms. Toler further testified that she did not know if the LDR was capable of seeing the mechanism by which the tax returns were filed or how long it takes the LDR to process and record the filing of tax returns that are electronically filed.

Ms. Bridges testified that on the morning of January 25, 2023, she and her husband signed the federal and state tax return forms for submission to the Internal Revenue Service ("IRS") and the LDR at Mobile's office. They remained at the office until approximately 10:30 a.m., when they were informed by Mr. Brown that

their 2021 federal and state tax returns had been electronically filed, and he handed them a folder containing copies of their electronically filed federal and state tax returns. Ms. Bridges further testified that Mr. Brown also gave them a letter dated January 25, 2023, stating that their 2021 state and federal tax returns were filed electronically.² This letter was also admitted into evidence. Ms. Bridges testified that she knew her 2021 state and federal tax returns were filed by Mobile when she left the office.

Ms. Brown testified that she is the co-owner and manager of Mobile and that she handles all the electronic filing for the business. She further testified that her business partner, Mr. Brown, is an accountant and auditor, and that he prepared the 2021 federal and state tax returns for the Bridges. Ms. Brown explained that Mobile's electronic filing system involves submitting the federal and/or state returns through a third-party filing service called TaxWise. She further stated that TaxWise is utilized by Mobile to send the respective tax returns to both the LDR and the IRS and that once TaxWise facilitates the delivery, Ms. Brown receives an acknowledgment that the tax return has been accepted. Ms. Brown testified that the Bridges came into the Mobile office to sign the returns on January 25, 2023, and she electronically filed their returns at approximately 10:30 a.m. Ms. Brown also testified that Mr. Brown provided the Bridges with a letter stating that their 2021 federal and

² The letter stated, in pertinent part:

Enclosed are your 2021 Federal and state income tax returns.

....

Your Federal tax return has been filed electronically. Your refund will be mailed to you by the Internal Revenue Service. Please keep a copy of the return with your records.

Your 2021 LA state tax return is enclosed. ... Your LA state return was filed electronically. Please keep the enclosed copy for your records.

state tax returns were electronically filed. Ms. Brown, however, stated that there is normally a delay between the time TaxWise receives the returns and the time that it transmits the returns to the IRS and/or the LDR. She testified that it was not until the following day, January 26, 2023, that she received an acknowledgment from TaxWise that the Bridges' federal and state tax returns had been electronically transmitted. At trial, Ms. Brown did not produce any documentation of TaxWise's acknowledgment.

After trial of the matter, the district court sustained the objection to the candidacy, thereby disqualifying Ms. Bridges as a candidate for the office she was seeking. The court of appeal thereafter affirmed the district court's determination. Relying on this court's reasoning in **Braggs v. Dickerson**, 22-01227 (La. 8/13/22), 344 So.3d 63, and in **Russo v. Burns**, 14-1963 (La. 9/24/14), 147 So.3d 1111, both the district court and the majority of the court of appeal *en banc* panel found that without ensuring delivery of the 2021 tax return, Ms. Bridges could not have known whether or not her tax returns were filed when she signed her notice of candidacy. Having presented no evidence of confirmation that the LDR was in receipt of the 2021 tax return prior to her certification of her notice of candidacy, they concluded, Ms. Bridges failed to satisfied her burden to rebut the *prima facie* case of the plaintiffs' objection to her candidacy.

Ms. Bridges' writ application was granted to address the question of whether tax returns that have been filed electronically are filed when transmitted. For the reasons that follow, that question is answered in the affirmative.

DISCUSSION

Courts are bound by the language of a statutory provision and must apply the law as written. "When the wording of a Section is clear and free of ambiguity, the letter of it shall not be disregarded under the pretext of pursuing its spirit." La. R.S.

1:4; see La. C.C. art. 9; see also La. C.C.P. art. 5052. As indicated by Professor Alain Levasseur in his treatise LOUISIANA LAW OF OBLIGATIONS IN GENERAL-A COMPARATIVE CIVIL LAW PERSPECTIVE, author's notes, p. xix (2020):

civilian methodology and the civil code instruct that the sources of law are legislation and custom, and that legislation is the superior source of law. LAS-C.C. arts 1, 3. Legislation, which is defined as the solemn expression of legislative will, LSA-C.C. art. 2, is to be interpreted according to the rules set forth in the Civil Code. [arts 9-11] ... In Louisiana, legislation is superior to any source of law[.] LSA-C.C. art. 2. ... Although jurisprudence is persuasive in analyzing statutory law in our civil law system, the courts are not the lawmakers. The sources of law, as stated in the Civil Code, are legislation and custom. Judicial pronouncements are not sources of law. In our civilian jurisdiction, legislation, the solemn expression of the legislative will, is the superior source of law. Jurisprudence constant carries 'considerable persuasive authority,' but is not the law and must yield to legislative pronouncements.^[3]

As is required in Louisiana's civil law system, this court begins, as it must, with the statutory pronouncements of the legislature. See La. R.S. 1:4; La. C.C. art. 9.

An objection to a candidacy may be raised on the grounds that the qualified candidate has falsely certified on his or her notice of candidacy that for each of the previous five tax years, he or she has filed federal and state income tax returns, has filed for an extension of time for filing either federal or state tax returns or both, or was not required to file either a federal or state tax return or both. See La. R.S. 18:492(A)(7) (the relevant portions of which are cited and quoted in footnote 1). Although the statute is lacking in explicit guidance as to what it means to "file" tax returns for the purposes of this provision, the LDR is nonetheless empowered to provide this practical guidance. See La. R.S. 47:1511, which provides:

In addition to specific authority granted to the secretary elsewhere, the secretary is authorized to prescribe rules and regulations to carry out the purposes of this Title and the purposes of any other

³ **Willis-Knighton Medical Center v. Caddo-Shreveport Sales and Use Tax Commission**, 903 So.2d 1071, 1085, 1086, 1092, and 1109, (La. 2005).

statutes or provisions included under the secretary's authority. These rules and regulations shall be promulgated pursuant to the provisions of the Administrative Procedure Act and will have the full force and effect of law.

The legislature's limited and carefully delineated grant of authority recognizes the realities of the constantly changing circumstances which the legislature cannot anticipate, including rapid technological advancements. The grant of this authority by the legislature to an agency reflects the administrative agency's obligation to administer a matter assigned by the legislature and the appreciation of the agency's corresponding institutional knowledge and expertise. Pursuant to this legislative grant of authority, the LDR has prescribed relevant rules and regulations regarding the manner of filing tax returns. See La. Admin. Code Title 61, pt. I, § 4911(B).

This election matter involves electronic filing of tax returns, which is specifically governed by La. Admin. Code Title 61, pt. I, § 4911(B)(4).⁴ The regulation provides that a return filed electronically is deemed filed on the date of transmission to the LDR or on the date of transmission to a third party acting as its agent. The standard set forth in the regulation is not determined by the date on which the LDR receives the tax return electronically, but, rather, the date on which the filing party has transmitted the tax return either to the LDR or to the third party acting as the LDR's agent. Transmission by the taxpayer is the operative event for electronic filing.

⁴ In pertinent part, La. Admin. Code Title 61, pt. I, § 4911(B) provides:

File Date of a Return, Report and Other Document

....

4. Electronically Filed. A return, report or other document filed electronically is deemed filed on the date transmitted to the department or to a third party acting as the department's agent.

That TaxWise is a third party acting as the LDR's agent flows logically and rationally from the evidence in the record. The LDR received the tax returns of Ms. Bridges. The LDR's February 6 letter to Ms. Bridges' counsel undisputedly confirms that Ms. Bridges' tax returns were received by the LDR. The only way this receipt and acknowledgment could be accomplished is if TaxWise was in fact a third-party agent of the LDR.

Although the regulations do not define what it means to be a "third party acting as the department's agent," the record testimony establishes that the third party here acted as a mere conduit for the completed tax return. Further, record evidence establishes that, once the tax preparer sent the completed tax return to TaxWise, this third party did nothing more than shuttle the completed tax return from the tax preparer to the LDR.⁵ Ms. Brown testified that she transmitted the tax return on the morning of January 25, 2023.⁶ Ms. Brown further testified that she received confirmation, on January 26, 2023, that the tax return had been transmitted to the LDR. There was no intervening act by Ms. Brown between transmission and receipt: the objective evidence confirms that transmission, the operative event, was successful

⁵ The status of TaxWise as an agent of the LDR would hardly seem in dispute as it is not contested by the evidence in the record that Ms. Bridges' tax return was ultimately received and accepted by the LDR by way of transmission through TaxWise.

⁶ There is notable concern in the categorical exclusion of direct testimony by reasonably reliable third parties, to form the objective basis for candidates' knowledge that they have timely filed their tax returns, in contrast with the continued reliance on the efficacy of the LDR's public records request letters routinely used to establish a prima facie case in candidacy challenges. The facts of this matter establish a significant delay between the transmission time of an electronically filed tax return and the time at which the tax return is recognized by the LDR's internal reporting system. The plaintiffs do not contest the portion of Ms. Brown's testimony that on January 26, 2023, TaxWise sent confirmation of its transmission of the tax return to the LDR. However, the transmission of the tax return was not reflected in the LDR's records until a February 6, 2023, public records request letter issued to Ms. Bridges stating her 2021 tax return was filed. Further confounding is that a letter to the plaintiffs' counsel, dated that same day (but presumably generated hours earlier), reflected Ms. Bridges' 2021 tax return had not been filed. Consequently, it is obvious relying on the statutory language which refers to "filing" and the agency regulations which make "filing" the operative event when income tax returns are submitted electronically, is salutary given the delays that occur after the matter is transmitted to the LDR.

because LDR received the filing. Ms. Bridges has met her burden to establish that her tax returns were filed prior to the filing of her notice of candidacy.

In Louisiana's civil law system, an application of the clear language of the statutory pronouncements and agency regulations establishes that Ms. Bridges satisfied the obligations to qualify as a candidate. Because the statute and regulation are clear, the analysis is concluded.

However, a secondary source, the jurisprudence related to qualifying for public office, which is only applicable if the statutes related to qualifying are ambiguous, further corroborates the decision of this court. See Landiak v. Richmond, 05-0758, p. 6 (La. 3/24/05), 899 So.2d 535, 541 (Election laws must be interpreted to give the electorate the widest possible choice of candidates.). A court determining whether the person objecting to candidacy has carried the burden of proof must liberally construe the laws governing the conduct of elections with an eye toward promoting, rather than defeating, candidacy. See Landiak, 05-0758 at 6-7, 899 So.2d at 541. The evidence establishes Ms. Bridges' tax preparer electronically transmitted her completed tax return. Ms. Bridges thereafter certified that her tax returns were filed as of that date. As indicated, the evidence establishes that the tax return at issue was filed, transmitted, and received.⁷ The law does not require anything more than this. Ms. Bridges sufficiently rebutted the *prima facie* case of the plaintiffs who are

⁷ The district court indicated:

This Court notes Ms. Bridges' testimony [i]s authentic and truthful. There is no doubt to this trier of fact that Ms. Bridges took [the] steps that she believed would be sufficient to execute her Notice of Candidacy [T]his Court finds her reliance on the assertions of her tax preparer to be reasonable.

objecting to her candidacy. Accordingly, Ms. Bridges is deemed a qualified candidate.⁸

In an effort to be thorough, as evaluation of the cases cited by the majority of our learned colleagues on the court of appeal demonstrates that these cases are distinguishable.⁹ This court's rulings in **Braggs** and **Russo** involved filing of tax returns by mail, which is separately governed by La. Admin. Code Title 61, pt. I, § 4911(B)(1). As **Braggs** and **Russo** indicate, filing by mail requires its own specific form of proof of transmittal, generally limited to confirmation from the post office that the tax returns were delivered. To comport with the regulations for electronic filing, proof of transmittal does not necessitate proof that the tax returns were delivered.

CONCLUSION

The secondary source of jurisprudence provides oft-cited persuasive authority when the law enacted by the legislature is unclear. Because the primary source of statutory law enacted by the legislature and the regulation promulgated pursuant to legislative authority is clear, resort to jurisprudence is unnecessary. In Louisiana's civil law system, when proper deference is afforded to the legislative acts, courts avoid acting extrajudicial by "legislating from the bench."

Based on the law applicable to the facts in this matter, the judgment disqualifying Ms. Bridges is reversed, and Ms. Bridges' candidacy is reinstated.

REVERSED; CANDIDACY REINSTATED.

⁸ As an aside, and not determinative, the 2021 tax return demonstrated Ms. Bridges was owed a refund.

⁹ The dissents of Judges Lobrano and Dysart properly analyzed the applicable statutory and regulatory language.

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On Writ of Certiorari to the Court of Appeal, Fourth Circuit,
Parish of Orleans Civil

Hughes, J., concurs in the result.

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OFFICIAL CAPACITY AS LOUISIANA SECRETARY OF STATE**

**On Writ of Certiorari to the Court of Appeal, Fourth Circuit,
Parish of Orleans Civil**

Crichton, J., dissents and assigns reasons.

I agree with the majority of the court of appeal that the candidate did not meet her burden of proof in this matter, and therefore I dissent from the plurality.¹ As I noted in *Deal v. Perkins*, what is at stake in election cases such as this one is the fundamental integrity of the process of qualifying for elected public office. 2022-1212 (La. 8/1/22), 347 So. 3d 121, 140 (Crichton, J., dissenting) (citing *Percle v. Taylor*, 2020-0244, p. 12 (La. App. 5 Cir. 8/5/20), 301 So. 3d 1219, 1228, writ denied, 2020-0983 (La. 8/10/20), 300 So. 3d 878). In my view, allowing a candidate to provide inaccurate information under oath, without allowing the corresponding

¹ A plurality opinion (consisting of less than four votes at the Louisiana Supreme Court) “lack[s] precedential authority.” See *Warren v. La. Med. Mutual Ins. Co.*, 2007-0492 (La. 12/2/08), 21 So.3d 186, 210 (Knoll, J., concurring). For the United States Supreme Court, “[w]hen a fragmented Court decides a case and no single rationale explaining the result enjoys the assent of five Justices, the holding of the Court may be viewed as that position taken by those Members who concurred in the judgments on the narrowest grounds.” *Marks v. United States*, 430 U.S. 188, 193, 97 S.Ct. 990, 51 L.Ed.2d 260 (1977) (internal quotations omitted). See also generally *State v. Thompson*, 15-0886 (La. 9/18/17), 233 So. 3d 529, 568 (Crichton, J., concurring in part and dissenting in part); *Cox, Cox, Filo, Camel & Wilson, LLC v. Louisiana Workers’ Comp. Corp.*, 2021-00566 (La. 3/25/22), 338 So. 3d 1148, 1159 (Crichton, J., concurring in the result) (“[B]ecause there is no clear majority in agreement with the reasoning utilized herein, the matter is considered a plurality opinion and not a majority.”).

remedy of disqualification for making those inaccurate statements, renders the Notice of Candidacy meaningless. Finally, also as in *Perkins*, this case again highlights the necessity of legislative intervention in the context of notices of candidacy. This is particularly true in cases that involve electronic filing of necessary documentation; it is essential that our laws keep pace with ever-changing technology. *See Clark v. Bridges*, 2023-CA-0093 (La. App. 4 Cir. 2/15/23), --- So. 3d --- (Chase, J., concurring).

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On Writ of Certiorari to the Court of Appeal, Fourth Circuit, Parish of Orleans
Civil

Genovese, J., dissents and assigns the following reasons:

“Tax returns that have not been delivered to the Louisiana Department of Revenue have not been filed.” *Braggs v. Dickerson*, 22-01227, p. 1 (La. 8/13/22), 344 So.3d 63 (citing *Russo v. Burns*, 14-1963, p. 4 (La. 9/24/14), 147 So.3d 1111, 1114). When e-filing a state income tax return, which is the undisputed method of filing used in this case, “[a] return . . . filed electronically is deemed filed on the date transmitted to the department or to a third party acting as the department’s agent.” La. Admin. Code tit. 61, pt. I, ch. 49, § 4911(B)(4). The facts in this case are not in dispute. The issue is pure and simple—whether a state income tax return filed electronically can be considered “transmitted” to the Louisiana Department of Revenue (the “LDR”) or to a “third party as the department’s agent” by a potential candidate filing her notice of candidacy without proof of transmission of said return to the legally required state agency? The answer is no.

This case hinges on the burden of proof. The party contesting a potential candidate’s qualifications in an election bears the burden of proof to show that the potential candidate should be disqualified. *See* La. R.S. 18:1401 (which provides that “[a] qualified elector” may bring an action objecting to a candidacy); La. R.S. 18:492 (which sets forth grounds for an objection to a candidacy); *Landiak v.*

Richmond, 05-0758, pp. 6-7 (La. 3/24/05), 899 So.2d 535, 541. Once that burden of proof is met, then the burden of proof shifts to the potential candidate to prove she is duly qualified to seek office. *Id.*, 05-0758, p. 8, 899 So.2d at 542. In the case at bar, Plaintiffs proved that Mrs. Bridges' state income tax return for the year 2021 had not been received prior to Mrs. Bridges filing her notice of candidacy. Mrs. Bridges' state income tax return was allegedly filed by her tax preparers, Mr. Brown and Ms. Brown, the morning of her qualifying. Mr. Brown gave Mrs. Bridges a letter and copy of her alleged filing of her federal and state income tax returns and assured her that her returns had been electronically filed. Ms. Brown allegedly electronically filed Mrs. Bridges state income tax return with a third party state agent, TaxWise, who in turn allegedly transferred said filing to the LDR. That is the extent of what Mrs. Bridges is relying on as meeting her burden of proving that she had filed her state income tax return prior to her notice of candidacy—nothing more.

Mrs. Bridges contends that she has satisfied her burden of proof as to the filing of her return with her testimony and that of Ms. Brown. Though Mrs. Bridges does not have to prove receipt of her filing by the LDR, she does have to prove the transmission of her filing. Ms. Bridges cannot merely rely on her self-serving testimony and that of Ms. Brown in meeting her burden of proving an electronic filing. She must prove the transmission of her state income tax return to either the LDR or its acknowledged agent before the filing of her notice of candidacy. In order to do so, all Mrs. Bridges had to do was submit corroborating proof of her said electronic filing by objective documentation such as a transmittal email, an electronic acknowledgement, receipt, or refund that reflected her state income tax return had been transmitted prior to her qualifying. That was not done. The majority's failure to require such objective proof in this case opens Pandora's Box such that anyone can simply sign an affidavit that they filed electronically with their

tax preparer and that would be considered satisfactory proof of having timely done so.

Mrs. Bridges has failed to meet her burden of proving that she timely transmitted her electronic filing to either TaxWise or the LDR, prior to the filing of her notice of candidacy. Because Mrs. Bridges failed to meet and satisfy her burden of proof after that burden shifted to her to do so, her notice of candidacy is invalid, and she must be disqualified as the trial court and the court of appeal have so ruled. Consequently, I dissent from the majority and would affirm the lower courts' rulings.

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Parish of Orleans Civil

CRAIN, J., dissents and assigns reasons.

A candidate's false certification in a notice of candidacy regarding the filing of federal and state income tax returns is a mandatory ground for disqualification. *See* La. R.S. 18:492A(7). Finding defendant's certification accurate, the plurality concludes she timely transmitted the return to "a third party acting as the department's agent." *See* La. Admin. Code Title 61, pt. I, §4911(B)(4). The record does not establish this critical fact. At best, defendant proved her tax preparer electronically delivered the return to a filing service, "TaxWise." Counsel for the defendant concedes in her writ application that "the trial court record is completely devoid of any testimony or evidence regarding whether TaxWise is an authorized/approved software or vendor." The plurality nevertheless *infers* that TaxWise is the department's agent because, at some undetermined point, a tax return was delivered to the department. According to the plurality, an entity that "did nothing more than shuttle the completed tax return from the tax preparer to the LDR" must be "the department's agent." I cannot make that factual leap. At best, this may establish that TaxWise acted as an agent *for the tax preparer*.

While I agree with the primacy of legislation, what is interpreted here is an administrative rule adopted by the executive, not legislative, branch. The references by the plurality to statutory authority lend nothing in support of its conclusion. In fact, they raise serious questions about the legislative power to delegate such authority. I dissent.

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Civil

McCallum, J., concurs in the result and assigns reasons.

I agree that the lower courts' judgments must be reversed. I write separately to underscore that no change in law has occurred as a result of this decision and our decision is not inconsistent with our recent decisions in *Braggs v. Dickerson*, 22-1227 (La. 8/13/22), 344 So.3d 63 and *Russo v. Burns*, 14-1963 (La. 9/24/14), 147 So. 3d 1111. My concern for the integrity of our system of elections is well documented as seen by my dissent to the majority opinion in *Deal v. Perkins*, 2022-01212 (La. 8/1/22), 347 So. 3d (McCallum, J. *dissenting.*). However, this case does not invoke questions concerning the integrity of the procedure for qualifying as a candidate; concluding otherwise misses the mark.

At worst, this matter considers the efficacy of our electronic tax filing process, and possibly some concerns that new technological means of submitting tax returns may lead to inconsistent jurisprudential decrees. To that point, it must be noted that both *Braggs* and *Russo* involved the submission of tax returns by mail, via the United States Postal Service, whereas this matter involves electronically submitted tax returns. In *Russo*, this Court hinged its opinion heavily on the fact that La. Admin. Code tit. 61, pt. I, § 4911 B (1) included the terms "delivery" and "delivered." The Court found that proof of "delivery" or receipt of the mailed tax return was required

for a candidate to properly certify their filing of state and federal income taxes.¹

Russo and *Braggs* are still good law.

As in *Russo*, we apply the appropriate, but different, provision of the Louisiana Administrative Code. That provision, La. Admin. Code tit. 61, pt. I, § 4911 B (4), provides:²

Electronically Filed. A return, report or other document filed electronically is deemed filed on the date transmitted to the department or to a third party acting as the department's agent. (Emphasis added).

For reference and comparison, *Russo* relied on and considered the following language in La. Admin. Code tit. 61, pt. I, § 4911 B (1):

Delivery by the United States Postal Service. 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.

The difference is undeniable. One provision specifies and uses the terms “delivery” and “delivered;” the other does not.³ Furthermore, the electronic filing provision allows for a method of transmission and filing that does not involve the Department itself. A taxpayer may be deemed to have filed his or her return by simply transmitting the return to an approved third party agent of the Department. The record before us reflects the candidate in question, Stephanie Bridges,

¹ *Braggs* relied solely on *Russo* as authority for disqualifying the candidate.

² As noted by Chief Justice Weimer, La. R.S. 47:1511 authorizes the secretary to prescribe such rules and regulations.

³ Additionally, in looking to the other provisions of La. Admin. Code tit. 61, pt. I, § 4911 B, one can see the use of the terms “delivery” and “delivered” have been specific and intentional. Provision B (2) provides, “Delivery by Courier. A return, report or other document delivered by courier is deemed filed on the date it is delivered to the department’s headquarters or a regional office.” Provision B (3) provides, “Delivery by the Taxpayer. A return, report or other document delivered by the taxpayer or a representative of the taxpayer is deemed filed on the date it is delivered to the department’s headquarters or a regional office.” These provisions are clear; “delivery” and receipt of the tax return is required when one chooses that form of submitting a tax return. Even more on point, Provision B (5), which does not include “delivery” or “delivered,” shows that when such terms are not used, the Department may still specify other terms mandating actual receipt. Provision B (5) provides, “Electronic Payment as a Substitute. In the case where a taxpayer is allowed to and has elected to have an electronic payment represent his return, the return shall be considered filed on the date the transmitted funds are *posted* to the state of Louisiana’s bank account.” (Emphasis added). In the provision at hand, not only are the terms “delivery” and “delivered” absent, but no substitute or any other mandate of receipt is used in their absence.

transmitted her return to an approved agent and in fact had a letter confirming the transmission at the time she certified that she had filed her state and federal income taxes for the past five years. She thereby rebutted the petitioners' prima facie case.

This case is decided not by any change in jurisprudential law, but by the mere reading of the applicable provisions of the Louisiana Administrative Code. If anything, this case affirms the prior jurisprudence and reasoning in *Braggs* and *Russo*. This Court simply reads the applicable administrative code, as promulgated, and applies its plain language; a very civilian approach.

SUPREME COURT OF LOUISIANA

No. 2023-C-00237

YASHA CLARK AND MORGAN WALKER

VS.

**STEPHANIE BRIDGES AND DARREN LOMBARD, IN HIS OFFICIAL
CAPACITY AS CLERK OF COURT FOR THE PARISH OF ORLEANS,
STATE OF LOUISIANA AND ROBERT KYLE ARDOIN, IN HIS
OFFICIAL CAPACITY AS LOUISIANA SECRETARY OF STATE**

*On Writ of Certiorari to the Court of Appeal, Fourth Circuit,
Parish of Orleans Civil*

GRIFFIN, J., additionally concurs and assigns reasons.

Testimonial evidence of a professional tax preparer may be used to meet the evidentiary burden that a candidate had the requisite knowledge of the transmission of their tax returns under La. Admin Code. tit. 61, pt. I, § 4911(B)(4). The testimony of Ms. Bridges' tax preparer, Gina Brown, established the 2021 tax return was transmitted to TaxWise on the morning of January 25, 2023, prior to Ms. Bridges' completion of her Notice of Candidacy form.

Although distinguishable, I maintain my position that *Braggs v. Dickerson*, 22-1227 (La. 8/13/22), 344 So.3d 63, was wrongly decided and that the same evidentiary standard articulated above should apply to tax returns submitted by mail. There is no requirement in La. Admin. Code tit. 61, pt. I, § 4911(B)(1) that a candidate mail their tax returns via certified mail.