

SUPREME COURT OF LOUISIANA

No. 2014-C-1963

ANTHONY RUSSO

VS.

LIONEL "LON" BURNS, JR. AND THE HONORABLE ARTHUR A.

MORRELL

ON WRIT OF CERTIORARI TO THE COURT OF APPEAL,
FOURTH CIRCUIT, PARISH OF ORLEANS

JOHNSON, Chief Justice, dissents and assigns reasons.

I would deny the writ application, finding the lower courts correctly concluded that the candidate met the requirements of his candidacy.

Because election laws must be interpreted to give the electorate the widest possible choice of candidates, a person objecting to candidacy bears the burden of proving that the candidate is disqualified. *Landiak v. Richmond*, 05-0758 (La. 3/24/05), 899 So.2d 535, 541. Further, a court determining whether the person objecting to candidacy has carried his burden of proof must liberally construe the laws governing the conduct of elections "so as to promote rather than defeat candidacy." *Id.* Any doubt concerning the qualifications of a candidate should be resolved in favor of allowing the candidate to run for public office. *Id.* Once the objector makes a *prima facie* case, the burden shifts to the candidate to present sufficient evidence to overcome the *prima facie* case. *Id.* at 542. I disagree with the majority's finding that the candidate did not sufficiently rebut the plaintiff's *prima facie* case. When the defendant executed his affidavit he believed that his tax returns had been deposited in the U.S. mail. Thus, when he qualified for office, he certified to the best of his knowledge he had filed his taxes. I note in a similar case,

Louisiana Board of Ethics vs. Wilson, 2014-C-1908, this court found that Mr. Wilson was a qualified candidate because he *believed* his fines were paid.

Additionally, I disagree with the majority's interpretation of La. Admin. Code tit. 61, pt. I, § 4911, (B)(1). When using U.S. mail, the standard is not determined by the date on which the Louisiana Department of Revenue gains physical possession of the tax return; but, rather, when the filing party postmarked the returns. The majority's interpretation of this provision would mean that Mr. Burns must ensure delivery and essentially perform the job of the U.S. Postal Service. Mr. Burns clearly exercised his reasonable best efforts to file his tax returns prior to qualifying for office.

Therefore, the defendant here should be deemed as a qualified candidate for district attorney.