

Candidacy Contestation in Louisiana

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1. Substantive Bases to Challenge a Candidate – La. R.S. 18:461, 463

a. Failure to File an Income Tax Return

i. La. R.S. 18:463(A)(2)(a)(iv)

“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, or was not required to file either a federal or state income tax return or both”

ii. La. R.S. 18:492(A)(7)

b. Failure to Pay Ethics Fine

i. La. R.S. 18:463(A)(2)(a)(v)

“he does not owe any outstanding fines, fees, or penalties pursuant to the Campaign Finance Disclosure Act.”

ii. La. R.S. 18:463(A)(2)(a)(vii)

“he does not owe any outstanding fines, fees, or penalties pursuant to the Code of Governmental Ethics.”

iii. La. R.S. 18:463(A)(2)(c)(3)

“‘Outstanding fine, fee, or penalty’ shall not mean any fine, fee, or penalty that has been paid in full as of the time of the filing of the notice of candidacy.”

iv. La. R.S. 18:492(A)(5)&(6)

v. La. R.S. 18:1505.2(O)(1)

“[a] fine, fee, or penalty assessed for a violation of [the Campaign Finance Disclosure Act] shall be paid only by the person against whom the fine, fee, or penalty was assessed. All such fines, fees or penalties may be paid only with the personal funds of such person or with contributions ...”

vi. La. R.S. 18:1505.2(I)(4)

“[n]o candidate, political committee, person required to file reports under this Chapter, nor any other person shall use a contribution, loan, or transfer of funds to pay a fine, fee, or penalty imposed [for Code of Governmental Ethics violations.]”

vii. campaign finance fines may be paid personally *or* with campaign contributions; ethics fines can only be paid using personal funds.

c. Failure to Meet Residency or Domicile Requirements

i. La. R.S. 18:463(A)(2)(a)(viii)

“if he claims a homestead exemption on a residence pursuant to Article VII, Section 20 of the Constitution of Louisiana, he is registered and votes in the precinct in which that residence is located.”

ii. La. R.S. 18:492(A)(3)

“[a]n action objecting to the candidacy of a person who qualified as a candidate in a primary election shall be based on,” ... “[t]he defendant does not meet the qualifications for the office he seeks.”

iii. requirement may be in multiple sources of law depending on office

iv. residency v. domicile

v. numerous factual factors:

- intent to remain
- where sleep
- where eat
- where received mail
- where registered to vote
- where file tax returns
- where had homestead exemption
- factors not unique to election law

d. Felon – La. R.S. 18:495

2. Procedure for Challenging a Candidate

a. Filing Lawsuit

i. Standing - La. R.S. 18:491

“(A) A registered voter may bring an action objecting to the candidacy of a person who qualified as a candidate in a primary election for an office for which the plaintiff is qualified to vote.”

(C) Board of Ethics for failure to pay fines

ii. Venue La. R.S. 18:1404

“An action objecting to a candidate or contesting an election shall be instituted in the district court for the parish where the state capitol is situated if the action involves an office filled by statewide election and shall be instituted in the district court for any parish included, in whole or part, in the district for the office the action involves.”

iii. Timing

La. R.S. 18:493 - “within seven days after the close of qualifications”

La. R.S. 18:1405 -

“not later than 4:30 p.m. of the seventh day after the close of qualifications”

b. Trial –

i. La. R.S. 18:1409

“Actions ... objecting to candidacy ... shall be tried summarily, without a jury, and in open court. The trial shall begin no later than 10:00 a.m. on the fourth day after suit was filed.”

ii. La. RS. 18:1401-1414

“No application for a new trial or a rehearing shall be entertained by any court, but a court, upon its own motion, may correct manifest error to which its attention is called.”

iii. La R.S. 18:1409(C)

“The trial judge shall render judgment within 24 hours after the case is submitted”

c. Appeal

i. La. R.S. 18:1409(D) “within 24 hours after rendition of judgment”

ii. La. R.S. 18:1409(F) “heard by the court of appeal within 48 hours after the record is lodged there; and judgment shall be rendered within 24 hours after the case is argued”

iii. La. R.S. 18: 1409(G) “application to the Supreme Court for a writ of certiorari shall be made within 48 hours after judgment is rendered by the court of appeal”

d. Deadlines are quick to allow the Secretary of State time to complete the ballots in time for a primary election

3. Practical and Logistical Issues

a. Obtaining Evidence for Prima Facie Case

i. Notice of Candidacy

ii. Failure to File an Income Tax Return

ii. Failure to Pay Ethics Fine

iii. Failure to Meet Residency or Domicile Requirements

b. Little to No Discovery

i. Interrogatories, Requests for Production, Requests for Admissions

ii. Subpoenas

iii. Public Records Requests

c. Potential Witnesses

i. Calling Candidate First to Testify

ii. Government Officials

4. Recent Jurisprudence

5. Potential Legislation

6. What to Check Before Qualifying