

FRANCIS DEAL

DOCKET 638,663 SECTION B

VERSUS

FIRST JUDICIAL DISTRICT COURT

ADRIAN PERKINS and CADDO PARISH
CLERK OF COURT, MIKE SPENCE, IN HIS
OFFICIAL CAPACITY

CADDO PARISH, LOUISIANA

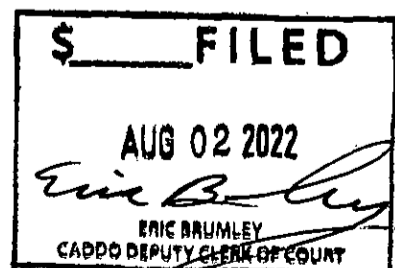
RULING

This matter comes before the court on a petition filed July 29, 2022, challenging the candidacy of Shreveport Mayor Adrian Perkins. The action was filed pursuant to La. R.S. 18:1401 et seq. and set for hearing on August 1, 2022, at 2 p.m. within the statutory time limits. Mayor Perkins filed a peremptory exception of no cause of action and a general denial and response around 12:30 on August 1.¹ Hearing was held before this court, at which petitioner was represented by counsel Jerald Harper and Anne Wilkes. Defendant Mayor Perkins was present and represented by counsel L. Havard Scott and Lawrence Centola. The Clerk of Court was present with his counsel Ben Politz.

The allegations in the original petition and supplemental and amended petition (filed later the same day) seek disqualification of Mayor Perkins for two reasons:

- 1) The qualifying form filed by Mayor Perkins contains false statements about his residency and homestead exemption, and therefore constitutes a failure to qualify "in the manner prescribed by law," a valid ground for objection under La. R.S. 18:492(A)(1).
- 2) The qualifying form filed by Mayor Perkins contains false statements about his filing of federal and/or state income tax returns for the past five years, and therefore constitutes a failure to qualify "in the manner prescribed by law," a valid ground for objection under La. R.S. 18:492(A)(1).

EVIDENCE AND STIPULATIONS AT THE HEARING



¹ Prior to receiving the response of Mayor Perkins, in an abundance of caution, and pursuant to La. R.S. 18:1409(A)(2), the court had arranged for a curator ad hoc to be on standby, attorney Taunton Melville.

After a brief pre-trial conference between counsel for petitioner and defendant Mayor Perkins in which the court did not participate, the following stipulations were entered:

- Mayor Perkins' voter registration and information as alleged in the petition were accurate statements of his legal positions until July 30, 2022; and
- On July 30, 2022, the mayor changed his voter registration to reflect his Marshall Street address; and
- The notice of candidacy attached to the petition and accepted as petitioner's Exhibit "B" is a true and correct copy; and
- The homestead exemption form attached to the petition and introduced and accepted as petitioner's Exhibit "D" is a true and correct copy; and
- All the documents referenced above may be received into evidence (and were); and
- Petitioner Francis Deal resides in and is registered to vote in Precinct 113, and until July 30, 2022, Mayor Perkins was a registered voter in same precinct; and
- Pursuant to his change in registration on July 30, 2022, Mayor Perkins became registered in precinct 5B; and
- Precinct 113 and 5B are different precincts; and
- 5B geographically contains 719 Marshall Street, but does not contain 9605 Stratmore Circle; and
- Defense Exhibits "A" and "B" (various documents pertaining to the tax allegations and detailing the mayor's change in voter registration) in globo are admitted.

The parties further stipulated after the exchange and review of certain documents that the allegations based on the mayor's tax returns no longer had merit and were to be dismissed or withdrawn. This left only the issue of the homestead exemption and voter registration as grounds for disqualification.

Petitioner called as his only witness Mayor Adrian Perkins, over the defendant's objection. After brief questioning about the mayor's background as a Captain Shreve High School, United States Military Academy (West Point), and Harvard Law School graduate,

questioning turned to the qualifying process and his residency. The mayor testified that his qualifying was delayed when he realized, in consultation with advisors and attorney Joshua Williams, that he had unpaid fines to pay before being able to complete the qualifying form and truthfully answer questions 10, 11, and 12 on that form. Once he had addressed those issues, he qualified on the last day in the presence of television cameras and during a busy workday.

The mayor further testified that he did not read the qualifying form in full on that day but agreed that he signed it and understood that he was swearing to the accuracy of the contents. He indicated that any error about the homestead exemption language contained in question 8 was likely based on his misreading of the form by conflating questions 7 and 8, which both contain the same introductory language.² He further indicated that when the suit brought the discrepancy to his attention, he immediately changed his voter registration to comply with La. R.S. 18:101(B).

LAW AND ANALYSIS

Petitioner cites two main cases for authority, *Sellar v. Nance*, 54,617 (La. 2 Cir. 3/1/22), 336 So.3d 103 and *Percle v. Taylor*, 20-244 (La. 5 Cir. 8/5/20), 301 So.3d 1219. Petitioner argues, consistent with this jurisprudence, that any false statement that correlates to the requirements of La. R.S. 18:463(A)(1) and is subject to certification by a candidate's affidavit is "substantive and/or material information." *Percle, supra*, 301 So.3d at 1227. Therefore, the *Percle* court reasoned,

[a]ny inaccuracies, mistakes or false statements made in the notice of candidacy concerning or regarding this substantive and/or material information are grounds for disqualification under La. R.S. 18:492(A)(1). *Ibid.*

Percle is a Louisiana Fifth Circuit Court of Appeal case and is therefore not controlling authority on this court. However, *Percle* was cited favorably in *Sellar, supra*, including the following language by Judge Cox, writing for the court:

² Question 7 inquires about whether a person is serving a felony sentence. Both questions (and Question 9) begin with the language, "If I am a candidate for any office other than United States senator or representative in congress..."

Considering the integrity necessary to the process of qualifying for public office, we agree with the Fifth Circuit's reasoning and analysis in *Percle v. Taylor, supra*. The manner of qualifying in La. R.S. 18:461 is by filing an accurate notice of candidacy, under oath. We agree with our colleagues of the Fifth Circuit that any information on the notice of candidacy required to be given by oath is substantive and/or material information and that "any inaccuracies, mistakes, or false statements" made under oath regarding this information are grounds for disqualification under La. R.S. 18:492(A), as a failure to qualify in the manner prescribed by law. *Sellar, supra*, 336 So.3d at 112-113.³

Petitioner also referenced *Trosclair v. Joseph*, 14-675 (La. 5 Cir. 9/9/14); 150 So.3d 315, *writ not considered*, 2014-1909 (La. 9/12/14); 148 So.3d 572, and *writ not considered*, 2014-1920 (La. 9/12/14); 148 So.3d 937, in support of the interpretation that it is of no moment whether the error impacts a candidate's eligibility to seek the office. In *Trosclair*, the discrepancy involved a candidate who listed a party affiliation on a qualifying form when her voter registration reflected no such affiliation. Party status is not a precondition for eligibility to seek office, but the Fifth Circuit found that

Ms. Joseph's notice of candidacy was not free from errors and did not satisfy the legal requirements of accuracy when it was filed. Accordingly, we must hold that Ms. Joseph incorrectly listed her party affiliation on her qualifying papers, creating an error in material information that is required by law to be accurate so that balloting can be properly published by the Secretary of State in the voting booth. *Trosclair v. Joseph, supra*, p. 7, 150 So.3d at 318-19.

Defendant Mayor Perkins argues that the Fourth Circuit's interpretation of the applicable statutory law is more appropriate, citing *Kiefer v. Lombard*, 2021-0453 (La. 4 Cir. 7/30/21), 2021 WL 3265334, *writ denied*, 2021-01125 (La. 8/6/21), 322 So.3d 784, an unreported decision mentioned by the Second Circuit in its discussion of *Percle, supra*.

Defendant points out that

There is nothing more fundamental to our society than the ability of our electorate to choose its leaders. The purpose of the election process is to provide the electorate with a wide choice of candidates. Because encouraging qualification is an integral component of the process, laws regulating the process must be interpreted with this purpose in mind. Thus, the interests of the state and its citizens are best served when election laws are interpreted so as to give the electorate the widest possible choice of candidates...The laws governing the conduct of elections must be liberally construed so as to promote rather than defeat candidacy. (internal citations omitted.)
Becker v. Dean, 2003-2493 (La. 9/18/03), 854 So.2d 864.

³ The Second Circuit did note that there is an apparent split in our circuits, with the Louisiana Fourth Circuit Court of Appeal interpreting the grounds for disqualification more narrowly under La. R.S. 18:492. See *Sellar, supra*, at footnote 3.

Mayor Perkins also argues that *Sellar v. Nance, supra*, is distinguishable, since in *Sellar*, the candidate in question not only misrepresented his homestead exemption location, but also his homestead exemption address was outside the city limits and thus disqualified him from the office. Mayor Perkins correctly points out that both addresses at issue in this case qualify him to serve as an "elector" in the race, that he has never been disqualified from voting, and that therefore the admitted error is of no moment in considering his legal qualifications. Following the reasoning of the Fourth Circuit in *Kiefer*, he urges that the grounds for disqualification in La. R.S. 18:492 are exhaustive. Further, since several provisions of that statute specify those false statements that serve as grounds for disqualification, the broader provisions about "qualifying in the manner provided by law" cannot be expanded judicially to include other, non-enumerated misrepresentations.

In argument before the court, counsel for Mayor Perkins also argued that *Perdle* was similarly distinguishable, since the judicial districts in question in that case were separate, one on the East Bank of Jefferson Parish and one on the West Bank, and that the error in completing the qualifying form therefore directly impacted the eligibility of the candidate to seek the desired office. Counsel conceded that those facts were not part of the written opinion, and that only familiarity with the trial court record could reveal that part of the Court of Appeal's rationale. When confronted by the court about the language from both *Sellar* and *Perdle* stating that "any inaccuracies, mistakes, or false statements' made under oath regarding this information are grounds for disqualification counsel" (*Sellar, supra*), counsel argued that this language was dicta, and did not constitute part of either court's holding.

Both interpretations have merit. This court cannot agree that the mayor's error is of no moment—it allowed him the ability to vote in a precinct in which he no longer resided, which could have affected the outcome of elections for City Council, various judicial offices, and other matters in which eligibility to vote varied between the two locations. Attention to these details matters, and the *Perdle* opinion sets forth the case that because of the high

standard of integrity the public requires of our elected officials and the clear language on the qualifying form, the error is so profound that it essentially makes a nullity of the qualification.

The court also believes that the Supreme Court has consistently held that election laws should be interpreted in favor of candidacy, and that the statutory interpretation argument raised by the mayor comports with the legal maxim of *inclusio unius est exclusio alterius*, to include one is to exclude others. Nothing adduced at the trial on the merits suggested that the mayor had any nefarious purpose in making the error, nor that he sought any personal or political advantage from the inaccuracy. His testimony established, rather, that it was simply an oversight attendant upon changing residence while serving in public office. The court found that the urgency of addressing the fines issue likely distracted from a more careful review of the precise contents of the form.

As the trial court, this court is charged with following statutory law and the precedents of higher courts with jurisdiction over it, and should only fashion new rules of law when there is no binding guidance. The court therefore finds that the fundamental issue is not its own *de novo* interpretation of La. R.S. 18:492. The issue is whether the language in *Sellar* quoted above in this ruling constitutes dicta, as argued by the mayor, or a holding of the case binding on this court, as argued by petitioner. The court must disregard legal research services' interpretations and summaries and focus particularly on the language of the opinions themselves.

After careful review of the opinion in *Sellar*, the court finds that while the facts are distinguishable, the precedent contains two separate holdings. If *Sellar* was decided solely because of the residency issue with the candidate therein, the language of the court discussing *Perclé* and emphasizing the importance of an **accurate** qualifying form to comply with La. R.S. 18:461 would not only be dicta, but also completely superfluous to the analysis. The Second Circuit predicated its adoption of the *Perclé* interpretation by referencing the "integrity necessary to the process" and stating categorically, as quoted above,

any information on the notice of candidacy required to be given by oath is substantive and/or material information and that "any inaccuracies, **mistakes**, or false statements" made under oath regarding this information are grounds for disqualification under La. R.S. 18:492(A), as a failure to qualify in the manner prescribed by law. *Sellar, supra*. (Emphasis added)

The inclusion of mistakes in this language cited favorably from *Percle* comprises errors that are not malicious and that do not necessarily bear upon the eligibility of the candidate.


Similarly, the court cannot accept, based on the published opinion in *Percle* that completely disregards the question of the candidate's eligibility, that the broad language about inaccuracies is dicta. The scope of inaccuracy may be problematic, since this court cannot imagine that a typographical error, for example, could or should constitute grounds for disqualification under this interpretation, but the parameters are not for this court to decide.

The court therefore finds that in listing a voting address inconsistent with his homestead exemption, that Mayor Perkins submitted information under oath that was mistaken or inaccurate, and therefore is disqualified under La. R.S. 18:492(A)(1). Pursuant to La. R.S. 18:494(A),

When an objection to candidacy is sustained on the ground that the defendant failed to qualify for the primary election in the manner prescribed by law, that the defendant failed to qualify for the primary election within the time prescribed by law, or that the defendant does not meet the qualifications for the office he seeks, the final judgment shall disqualify the defendant as a candidate in the primary election for the office for which he failed to qualify properly.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Mayor Adrian Perkins is disqualified as a candidate in the primary election for the office of the Mayor of the City of Shreveport.

This signed in Shreveport, Louisiana on the 2nd day of August, 2022. at 11⁵⁹ a.m.


Judge Brady D. O'Callaghan

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