Judgment rendered August 26, 2026.

No. 57,268-CA

COURT OF APPEAL
SECOND CIRCUIT
STATE OF LOUISIANA

* * * * *

STATE OF LOUISIANA BOARD OF ETHICS	Plaintiff-Appellant

versus

VIRGIL PENN, SR. AND THE HON. TIFANI S. THOMAS, CLERK OF COURT FOR THE PARISH OF MOREHOUSE	Defendants

* * * * *

Appealed from the
Fourth Judicial District Court for the
Parish of Morehouse, Louisiana
Trial Court No. 2026-343

Honorable Robert C. Johnson, Judge

* * * * *

CHARLES E. REEVES, JR.	Counsel for Appellant
VIRGIL PENN, SR.	In Proper Person
RAY LANDRY WOOD	Counsel for Third Party Appellee, Secretary of State

* * * * *

Before STEPHENS, ROBINSON, and MARCOTTE, JJ.

STEPHENS, J.,

This election suit arises out of the Fourth Judicial District Court, Parish of Morehouse, State of Louisiana, the Honorable Robert C. Johnson, Judge, presiding. The Louisiana Board of Ethics ("the Board") appeals the trial court's judgment denying its objection to the candidacy of Virgil Penn, Sr. For the following reasons, we reverse.

FACTS AND PROCEDURAL HISTORY

Penn qualified to run in the November 3, 2026, election for the office of the Mayor of the Village of Bonita by filing a Notice of Candidacy with the Morehouse Parish Clerk of Court on August 6, 2026. In the Notice, Penn certified, among other things, that he did not owe any outstanding fines, fees, or penalties pursuant to the Code of Governmental Ethics.

On August 14, 2026, the Board filed a petition objecting to Penn's candidacy, alleging that the certification on Penn's Notice of Candidacy was false because he had an outstanding a late fee of $500 for failing to file a Tier 3 Personal Financial Disclosure Statement for 2022. Specifically, the Board alleged that on December 8, 2018, Penn was elected to be the Mayor of the Village of Bonita and served in that office from January 1, 2019, until his term ended on December 31, 2022. When Penn failed to timely file a Tier 3 Personal Financial Disclosure Statement for 2022, the Board issued a Notice of Delinquency to Penn on July 21, 2023. That notice, which Penn received via certified mail on August 2, 2023, advised that failure to file the Statement within seven days would subject him to late fees. On June 14, 2024, and again September 27, 2024, the Board issued Late Fee Orders assessing a $500 late fee to Penn based on his failure to file the Statement. However, both of those orders were returned to the Board as "unclaimed."

On November 8, 2024, the Board reissued the Late Fee Order assessing a $500 late fee to Penn and ordering him to file a Tier 3 Personal Financial Disclosure Statement for 2022. The letter accompanying the order informed Penn that he had 20 days to submit payment or dispute the assessment by requesting a waiver or appealing the assessment, and that if he failed to do so, the matter would be forwarded to the Attorney General's Office for collection. Penn was also advised that any unpaid fines, fees, or penalties may have an adverse effect on his ability to run for public office as the Board would object to his candidacy in future elections. Penn received the Late Fee Order via certified mail on November 16, 2024.

On August 15, 2025, the Board sent a demand letter, requesting that Penn pay the $500 late fee and file the Tier 3 Personal Financial Disclosure Statement for 2022 within 15 days, again advising Penn about the adverse effect on his ability to run for future public office. On October 10, 2025, the Board transferred the Late Fee Order to the Attorney General's Office for collection proceedings.

On July 1, 2026, prior to the qualifying period for the November 3, 2026, election, the Board sent an Objection to Candidacy letter to Penn as a courtesy, advising him that he had an outstanding late fee, that all delays to request an appeal had expired, and that the Board would object to his candidacy to any elected office as long as the Late Fee Order remained unsatisfied. Penn was informed that because the matter had been forwarded to the Attorney General's Office for collection, he needed to contact that office to pay the late fee prior to qualifying. In the petition objecting to Penn's candidacy, the Board alleged that Penn had made no payments toward his outstanding late fee and that Penn's false certification to such on his Notice of Candidacy served as grounds for his disqualification as a candidate.

At the hearing on August 18, 2026, the Board introduced, without objection, nine exhibits into evidence: (1) Penn's August 6, 2026, Notice of Candidacy; (2) a Certificate of Elected Service from the Louisiana Secretary of State's Office; (3) the July 21, 2023, Notice of Delinquency, along with proof of service; (4) the unclaimed June 14, 2024, and September 27, 2024, Late Fee Assessments; (5) the November 8, 2024, Late Fee Assessment, along with proof of service; (6) the August 15, 2025, Past Due/Final Notice; (7) the October 15, 2025, Attorney General Transmittal Sheet; (8) the July 1, 2026, Objection to Candidacy letter; and (9) an affidavit from Assistant Attorney General Stacy Landry, stating that Penn owed the $500 late fee on August 6, 2026, at the time of his qualification, and that the fee had still not been paid.

Penn appeared at the hearing in proper person and denied that he had any knowledge of having been assessed a late fee by the Board at the time he filed his Notice of Candidacy on Thursday, August 6, 2026. However, Penn acknowledged that he had received an unspecified notice regarding the Tier 3 Personal Financial Disclosure Statement for 2022, but claimed that because he was no longer the Mayor at that time, he thought he could "just do away with it." Penn testified that on Friday, August 7, 2026, the last day of qualifying, he received a voicemail message from the Board, advising that he owed a late fee. Penn was able to locate that message in his phone, which he shared with counsel for the Board and the trial court, but the contents of that message were not set forth on the record. Penn testified that after he received that message, he called the Board. Penn provided contradictory testimony as to whether he called the Board on Friday, August 7, 2026 (before qualifying ended), or Monday, August 10, 2026 (after qualifying ended). Penn claimed that during that phone call, the Board employee advised him that he could pay the fee, but he would not be able to run because qualifying had ended. After searching through the call log on his phone, Penn was only able to locate two calls to the Board on Monday, August 10, 2026. Although Penn was unable to find a record of him calling the Board on Friday, August 7, 2026, he was adamant that the conversation referred to occurred on Friday, August 7, 2026. Further, Penn confirmed that he had still not paid the outstanding late fee.

Tracy Barker, the Deputy General Counsel for the Board, explained that during the qualifying period, the Board reviews the names of the qualified candidates against their records to determine if any fines, fees, or penalties are outstanding. When she discovered that Penn had qualified and owed a $500 late fee, she sent him an email at 12:44 p.m. on Friday, August 7, 2026, advising him that he could pay the late fee and then ***requalify*** by filing a new notice of candidacy before the close of qualifying at 4:30 p.m. that day. Barker testified that Board staff members are trained to advise candidates that they can pay the fines or fees and requalify; however, if an inquiry is made after the close of qualifying, staff members trained to advise candidates that the payments of fines or fees will not avoid an objection to candidacy.

Following arguments, the trial court took the matter under advisement and subsequently issued a written judgment incorporating reasons on August

19, 2026.[1] The trial court found Penn's testimony to be credible and stated that it was persuaded that Penn made a sincere, good faith effort to comply with the Code of Governmental Ethics before the close of the qualifying period. The trial court stated that although Penn had an outstanding ethics board fee at the time he qualified, he attempted to satisfy that obligation and requalify, but was told by a Board employee that he could not requalify. Because Penn reasonably relied on this incorrect information, he was unable to timely cure the defect and requalify. Therefore, the trial court concluded that disqualification was not warranted under these unique facts and denied the Board's objection to Penn's candidacy. The trial court further ordered that Penn "may complete the requalification process in accordance with applicable law" by satisfying any outstanding obligations owed to the Board and completing all steps necessary to requalify as a candidate within the "statutorily allowed time." The trial court ordered that upon timely compliance, Penn's "candidacy shall be recognized as valid, and the appropriate election officials shall process such requalification in accordance with applicable law."

DISCUSSION

On appeal, the Board contends that it presented a *prima facie* case for disqualification based on the false certification in Penn's Notice of Candidacy and that the trial court's ruling allowing Penn to remain in the race is manifestly erroneous. The Board argues that Penn's good faith and any alleged misinformation Penn received from Board employees after he

[1] The judgment and reasons were not separate, notwithstanding the mandatory language of La. C.C.P. art. 1918(B) which provides that when written reasons for judgment are assigned, they shall be set out in an opinion separate from the judgment.

executed the Notice of Candidacy are irrelevant and cannot retroactively cure his false certification. In addition, the Board asserts that the trial court exceeded its authority by allowing Penn to satisfy his outstanding late fee and requalify as a candidate as there is no legal authority for such relief.

The Louisiana Secretary of State, Nancy Landry, has also filed an amicus curiae brief, arguing that the "requalification process" ordered by the trial court is an "extraordinary remedy" in contravention of the Louisiana Election Code.[2]

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; *Russell v. Goldsby*, 00-2595 (La. 9/22/00), 780 So. 2d 1048. Once the party bearing the burden of proof in an objection to candidacy case has established a *prima facie* case that the candidate is disqualified, the burden shifts to the party opposing the disqualification to rebut the showing. *Crouch v. Collier*, 56,064 (La. App. 2 Cir. 8/13/24), 403 So. 3d 1, *writ denied*, 24-1024 (La. 8/16/24), 390 So. 3d 1289.

In election cases as in other matters, the manifest error-clearly wrong standard demands great deference to the trier of fact's findings when such findings are based on determinations regarding the credibility of witnesses. *Williams v. Harrison*, 54,891 (La. App. 2 Cir. 8/5/22), 346 So. 3d 370, *writ denied*, 22-1207 (La. 8/9/22), 343 So. 3d 703.

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[2] La. R.S. 18:1402(C) provides that the secretary of state shall have standing to intervene in an action objecting to candidacy in which the secretary of state was not the qualifying official.

The manner of qualifying for an election is set forth in La. R.S. 18:461(A)(1), which provides in part that a person who desires to become a candidate in a primary election shall qualify as a candidate by timely filing notice of his candidacy. La. R.S. 18:463(A) contains the requirements for a notice of candidacy, and provides in pertinent part:

> (2)(a) The notice of candidacy also shall include a certificate, signed by the candidate, certifying all of the following:
>
> …
>
> (vii) That he does not owe any outstanding fines, fees, or penalties pursuant to the Code of Governmental Ethics.
>
> …
>
> (ix) That all of the statements contained in it are true and correct.
>
> …
>
> (c) For the purposes of this Paragraph:
>
> …
>
> (ii) "Outstanding fines, fees, or penalties pursuant to the Code of Governmental Ethics" shall mean a fine, fee, or penalty equal to an amount of two hundred fifty dollars or more imposed by the Board of Ethics or by final decision of an adjudicatory panel of the Ethics Adjudicatory Board pursuant to the Code of Governmental Ethics for which all appeals have been exhausted.
>
> (iii) "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.

La. R.S. 18:492(A)(6) permits an action objecting to the candidacy of a person who qualified as a candidate in a primary election where the defendant falsely certified on his notice of candidacy that he does not owe any outstanding fines, fees, or penalties pursuant to the Code of Governmental Ethics as provided in R.S. 18:463(A)(2). La. R.S.

18:491(C)(2) provides that the Board of Ethics shall bring or join in an action objecting to the candidacy of a person who qualified as a candidate in a primary election for an office on the grounds provided in La. R.S. 18:492(A)(6).

The effect of sustaining an objection to candidacy is set forth in La. R.S. 18:494 as follows:

> A. **Disqualification.** Except as provided in Subsection B of this Section, when an objection to candidacy is sustained on any of the grounds provided for in R.S. 18:492, the final judgment shall disqualify the defendant as a candidate in the primary election for that office.
>
> B. **Withdrawal.** When an objection to candidacy is sustained on the ground that the defendant is prohibited by law from becoming a candidate for one or more of the offices for which he qualified in the primary election, the final judgment shall order the defendant to remove the grounds for the objection by withdrawing from the primary election for one or more of the offices. If the defendant fails to comply with this judgment within twenty-four hours after it becomes definitive, the court shall render judgment disqualifying the defendant as a candidate for all of the offices for which he qualified in the primary election.

The evidence and testimony presented by the Board establishes it notified Penn numerous times of the $500 late fee assessment and that at the time Penn filed his Notice of Candidacy, the late fee remained outstanding. This evidence was sufficient to establish a *prima facie* case that Penn made a false certification on his Notice of Candidacy. The burden of proof then shifted to Penn, and he attempted to rebut this evidence with self-serving testimony that that he did not know he owed a late fee, and that when he attempted to pay the fee prior to the end of the qualification period, he was misinformed that even if he paid the late fee, he would not be able to requalify. This testimony conflicts with the objective evidence that Penn received the Late Fee Order and the lack of any documentation of Penn's claim that he called the Board on August 7, 2026, before qualifying ended. Further, there was no evidence presented that Penn did not actually owe the late fee at the time of his qualification.

The trial court's ruling refusing to disqualify Penn was based on a finding that Penn's good faith efforts to comply with the applicable requirements were thwarted by incorrect information provided by the Board. However, we note that Penn's testimony, argument, and any alleged credibility were facilitated by the trial court at the hearing. We agree with the Board that Penn's alleged good faith and lack of intent to make a false certification are not relevant to the determination of whether the certification was false. Further, any conversations and information provided at the courtesy of the Board which occurred after Penn's Notice of Candidacy was filed, whether accurate or not, cannot negate the false certification. *See State Bd. of Ethics v. Arnold*, 50,553 (La. App. 2 Cir. 9/28/15), 184 So. 3d 60, *rev'd*, 15-1795 (La. 10/9/15), 176 So. 3d 1029; *State, Bd. of Ethics v. Garriga*, 50,559 (La. App. 2 Cir. 9/30/15), 182 So. 3d 194, *writ granted, judgment rev'd*, 15-1800 (La. 10/9/15), 178 So. 3d 994; *State v. Saunders*, 15-1171 (La. App. 3 Cir. 12/21/15), 215 So. 3d 785. We note that Penn neither filed a brief with this Court nor appeared to argue before the panel, but he did pay the outstanding late fee of $500 at 3:45 p.m. on Tuesday, August 25, 2026. Penn did not present sufficient evidence to overcome the Board's *prima facie* case of a false certification requiring disqualification. Accordingly, we find that the trial court was manifestly erroneous in denying the Board's objection to Penn's candidacy and that La. R.S. 18:494 mandates disqualification in this case.

While we find that disqualification is appropriate, we also point out that there is no mechanism in the Election Code for the alleged "requalification process" referenced in the trial court's judgment.[3]

CONCLUSION

For the reasons set forth above, the judgment of the trial court is reversed and the Board's objection to the candidacy of Virgil Penn, Sr. is sustained. Virgil Penn, Sr. is disqualified as a candidate for the office of the Mayor of the Village of Bonita.

REVERSED.

[3] While La. R.S. 18:469 provides for the reopening of the qualifying period in the event of the death of a candidate, that provision is not applicable in this case.