

MELANIE L. TROSCLAIR

NO. 14-CA-675

VERSUS

FIFTH CIRCUIT

MONA R. JOSEPH, TOM SCHEDLER, IN HIS  
OFFICIAL CAPACITY AS LOUISIANA  
SECRETARY OF STATE, ELIANA  
DEFRANCESCH IN HER OFFICIAL  
CAPACITY AS CLERK OF COURT FOR ST.  
JOHN THE BAPTIST PARISH

COURT OF APPEAL  
STATE OF LOUISIANA

ON APPEAL FROM THE FORTIETH JUDICIAL DISTRICT COURT  
PARISH OF ST. JOHN THE BAPTIST, STATE OF LOUISIANA  
NO. 67,000, DIVISION "C"  
HONORABLE MICHAEL KIRBY, JUDGE AD HOC PRESIDING

SEPTEMBER 9, 2014

**SUSAN M. CHEHARDY**  
**CHIEF JUDGE**

Panel composed of Judges Susan M. Chehardy, Fredericka Homberg Wicker,  
Jude G. Gravois, Marc E. Johnson, Robert A. Chaisson,  
Robert M. Murphy, Stephen J. Windhorst, and Hans J. Liljeberg

**JOHNSON, J. DISSENTS WITH REASONS**

**CHAISSON, J. DISSENTS WITH REASONS**

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FILED FOR RECORD  
2014 SEP -9 PM 1:10  
DEPUTY CLERK  
FIFTH CIRCUIT  
STATE OF LOUISIANA

**AFFIRMED**

SWE  
LNU  
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This is an election suit arising out of the race for a district court judgeship in St. John the Baptist Parish.

#### FACTS AND PROCEDURAL HISTORY

Plaintiff, Melanie Trosclair,<sup>1</sup> a duly-qualified elector in the Parish of St. John the Baptist (hereinafter referred to as “St. John”), filed the instant suit seeking to disqualify Mona Rita Joseph as a candidate for District Court Judge, Division “B” in the election scheduled for November 4, 2014. Pursuant to La. R.S. 18:492, Mrs. Trosclair filed an objection to Ms. Joseph’s candidacy on the basis that Ms. Joseph failed to qualify for the primary election in the manner required by La. R.S. 18:463.<sup>2</sup> Specifically, Mrs. Trosclair challenged, among other things, discrepancies between Ms. Joseph’s voter registration information and her notice of candidacy, or “qualifying,” information.

On September 2, 2014, the trial court held a hearing.<sup>3</sup> At the hearing, evidence and testimony disclosed that, in 1995, Mona Rita Joseph registered to

<sup>1</sup> Mrs. Trosclair is the aunt of the third qualifier for the election for Judge in Division “B,” Robert “Rob” Snyder.

<sup>2</sup> Mrs. Trosclair also filed a petition objecting to the candidacy of the incumbent, Judge Mary Hotard Becnel, which was denied. Mrs. Trosclair’s appeal of that ruling is before this Court in *Trosclair v. Becnel et al*, 14-676.

<sup>3</sup> Judge Michael Kirby was appointed *ad hoc* by the Louisiana Supreme Court to preside over the suits arising out of this election.

vote in St. John the Baptist Parish. When she registered to vote in 1995, she circled “None” with respect to political party affiliation. At trial, when first asked if she had “made an application to the Registrar’s Office to change [her] party affiliation,” Ms. Joseph stated, “I don’t think I have.”

When Ms. Joseph filed her notice of candidacy for this election in 2014, she listed her party affiliation as “Democrat.” Ms. Joseph also attested on that filing that “All the statements contained herein are true and correct.” When questioned about the accuracy of the information on the notice of candidacy form filed in this case, Ms. Joseph stated at trial, “And all the information is true and correct. . . . and I have chosen my Democratic party. I can change my party affiliation at any time.”

Later, when questioned by her attorney, Ms. Joseph stated that she questioned the Registrar about changing her party affiliation and was told that “I could wait until 30 days prior to the election to do so.” Ms. Joseph, when questioned by the trial court as to what affiliation her voter registration card on file with the St. John Registrar of Voters listed on the last day of qualifying for this election, admitted, “it says that I have none.” Ms. Joseph also admitted, “To change my party affiliation, as required, I believe that I’m supposed to go to the Registrar of Voters[sic] Office to do so.” When asked if she had accomplished that, she stated, “Yes, I . . . attempted to.”

During her testimony, she also identified a printout from the Louisiana Secretary of State’s website listing her party affiliation as “Democrat.”<sup>4</sup> When asked by the trial court when her affiliation was entered in the Secretary of State’s

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<sup>4</sup> Ms. Joseph introduced as “Joseph Exhibit 2,” a printout from the Louisiana Secretary of State dated September 2, 2014. Over Mrs. Trosclair’s objection, Judge Kirby accepted the document into evidence and indicated that he would give it the evidentiary weight to which he deemed it entitled. This Court has no basis upon which to discern the genesis of the information contained in the document. Since the print date of this document is September 2, 2014, after the close of the applicable qualifying period, it is impossible to determine whether the Secretary of State designated Ms. Joseph as a Democrat based upon her notice of candidacy or some other document.

website, she replied, “I don’t remember when. I don’t really remember when it was changed... . I think when I filed [my notice of candidacy] papers it was changed.”

At the conclusion of the trial, the trial court, based on the testimony and evidence before him, ruled in favor of Mrs. Trosclair finding that Ms. Joseph’s “failure to put the party affiliation on the qualifying form that is shown in the records of the Registrar of Voters disqualifies her from the election.” Ms. Joseph appeals that ruling.

## **DISCUSSION**

On appeal, Ms. Joseph, in numerous assignments of error, essentially contends that the trial court erred in its ruling because party affiliation is not a constitutional or mandated qualification for judicial office and, thus, cannot be used to disqualify a candidate. In her final assignment of error, Ms. Joseph also argues that the “trial court erred in failing to rule on, and effectively denying, Ms. Joseph’s declinatory exception of insufficiency of service of process.”

Turning to her final assignment of error first, Ms. Joseph argues that the trial court erred in failing to rule on her verbal exception of insufficiency of service of process. First, we note that this Court reviews issues which were submitted to the trial court. U.R.C.A 1-3. As there was no ruling, this issue is not properly before this Court on appeal.

La. Const. Art. V, § 24 reads, in pertinent part, “A judge of the ... district court ... shall have been domiciled in the respective ... parish for one year preceding election and shall have been admitted to the practice of law in the state for at least ... eight years. ... [and] shall not practice law.”

In an election contest, the person objecting to the candidacy bears the burden of proving the candidate is disqualified. La. R.S. 18:492; *Russell v. Goldsby*, 00-

2595 (La. 9/22/00), 780 So.2d 1048, 1049-51; *Messer v. London*, 438 So.2d 546 (La. 1983). The laws governing the conduct of elections must be liberally interpreted so as to promote rather than defeat candidacy. *Russell, supra*.

The purpose of the notice of candidacy is to provide sufficient information to show a candidate is qualified to run for the office he seeks. *Senegal v. Obafunwa*, 99-1449, 99-1450 (La.App. 3 Cir. 9/27/99), 745 So.2d 74, 76. Any doubt as to the qualifications of a candidate should be resolved in favor of permitting the candidate to run for public office. *Dixon v. Hughes*, 587 So.2d 679 (La. 1991).

The manner of qualifying for an election is set forth in La. R.S. 18:461(A)(1), which provides in pertinent 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, which shall be accompanied ... by the qualifying fee and any additional fee imposed.” La. R.S. 18:463 provides, in pertinent part, that:

**A.(1)(a)A notice of candidacy shall be in writing and shall state the candidate's name, the office he seeks, the address of his domicile, and the parish, ward, and precinct where he is registered to vote. The candidate shall list on the notice of candidacy the name of the political party if he is registered as being affiliated with a recognized political party, “other” if he is registered as being affiliated with a political party that is not a recognized political party, or “no party” or an abbreviation thereof if he is registered with no political party affiliation. No candidate shall change or add his political party designation, for purposes of printing on the election ballot as required by R.S. 18:551(D), after he has qualified for the election.”**

\* \* \*

(2)(a) The notice of candidacy also shall include a certificate, signed by the candidate, certifying all of the following:

- (i) That he has read the notice of his candidacy.
- (ii) That he meets the qualifications of the office for which he is qualifying.

\* \* \*

- (viii) That all of the statements contained in it are true and correct.
- (b) The certificate shall be executed before a notary public or shall be witnessed by two persons who are registered to vote on the office the candidate seeks.

\* \* \*

E. (1) A candidate who has filed a notice of candidacy may change the information contained therein by filing a new notice of candidacy and paying the qualifying fee required by R.S. 18:464 during the qualifying period; however, a candidate who is serving in the armed forces of the United States who is stationed or deployed outside of the United States shall not be required to pay the qualifying fee.

(2) No changes to the information contained in a notice of candidacy shall be made after the close of qualifying, except to correct an error made by the qualifying official who entered the information contained in the notice of candidacy into the database of the Department of State. [Emphasis added.]

La. R.S. 18:551(D) provides:

The political party designation of a candidate who is registered as being affiliated with a recognized political party shall be listed on the primary or general election ballot on the same line and immediately after or below the candidate's name. If a candidate is not affiliated with a political party, the space after his name shall be left blank.

“Moreover, Section 551(D) requires the Secretary of State to prepare election ballots that properly reflect a candidate's political party affiliation, as stated in his latest, timely, and accurate notice of candidacy.” *LaCombe v. McKeithen*, 04-1880 (La.App. 1 Cir. 8/30/04), 887 So.2d 48, 51-53, *writ denied*, 04-2240 (La. 9/2/04); 882 So.2d 588.

“The intent of the law, as we understand the language which it uses, is to require that the qualification of a candidate shall be complete at the time he files his application, or, at any rate, before the expiration of the time for filing applications.” *Smith v. Parish Democratic Executive Comm. for Parish of Jefferson*, 164 La. 981, 985, 115 So. 54, 56 (1927). *See also Edwards v. Patterson*, 94-1672 (La.App. 1 Cir. 8/18/94), 641 So.2d 219, 220-21 (once qualifying is closed, if there is no legal basis for reopening the qualifying period then the candidate cannot amend her notice of candidacy).

There is no dispute that, according to the Registrar of Voters for St. John the Baptist Parish, Ms. Joseph was not affiliated with a political party on the date that

she filed her notice of candidacy in this election. Further, there is no dispute that Ms. Joseph listed her party affiliation on her notice of candidacy as Democrat.

Here, as in *Edwards*, 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. Because this error cannot be corrected after the fact, Ms. Joseph's failure to properly declare her party affiliation on her notice of candidacy has disqualified her from candidacy.

Moreover, La. R.S. 18:1410 mandates that a court rendering a judgment in an action objecting to candidacy transmit the judgment to the Secretary of State who shall remove that candidate's name from the ballot. Thus, the only legislative remedy for a successful challenge to candidacy is the removal of the unsuccessful litigant's name from the ballot.

#### **DECREE**

For the foregoing reasons, we find that the ruling of the trial court was correct and hereby affirm that ruling. Costs of appeal are assessed against appellant, Mona Rita Joseph.

**AFFIRMED**

MELANIE L. TROSCLAIR

NO. 14-CA-675

VERSUS

FIFTH CIRCUIT

MONA R. JOSEPH, TOM SCHEDLER,  
IN HIS OFFICIAL CAPACITY AS  
LOUISIANA SECRETARY OF STATE,  
ELIANA DEFRANCESCH IN HER  
OFFICIAL CAPACITY AS CLERK OF  
COURT FOR ST. JOHN THE BAPTIST  
PARISH

COURT OF APPEAL  
STATE OF LOUISIANA

**JOHNSON, J., DISSENTS WITH REASONS**

I, respectfully, dissent from the majority opinion that Mona R. Joseph failed to properly declare her party affiliation on her notice of candidacy, which required her disqualification from the election for district court judge for Division “B” in St. John the Baptist Parish, for the following reasons.

It is my position that the majority opinion is incorrect in holding 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 booths.” According to the evidence presented at trial, Ms. Joseph certified as to the same party affiliation, Democrat, that the databases for the Louisiana Secretary of State and local registrar of voters indicated as her registered political party.

Ms. Joseph testified that she changed her party affiliation to the Democratic party with the registrar of voters; however, she did not know exactly when it was done. She further testified that she has always voted as a Democrat. Ms. Joseph also submitted a printout from the Louisiana Secretary of State’s website indicating that she is a Democrat. After



reviewing the evidence, I conclude that the change to Ms. Joseph's party affiliation occurred prior to the submission of her notice of candidacy qualifying form on August 22, 2014 at 4:27p.m. through the corroborations of the testimonies of Janet Kavanaugh, the Elections Supervisor for the Clerk of Court for the 40<sup>th</sup> Judicial District Court, and Brandie Williams, a deputy clerk of court for the same district.

Ms. Kavanaugh testified the clerks use a system called ERIN<sup>1</sup>, which contains information supplied directly by the registrar of voters, to transmit a candidate's information to the Louisiana Secretary of State for qualifying purposes upon completion of the digital notice of candidacy form. She stated that, when a candidate's name is entered into ERIN, the system auto-populates fields for the form with information provided from his or her voter's registration. Ms. Kavanaugh also testified that, if an automatically populated field in ERIN does not match a field on the handwritten notice of candidacy form submitted by the candidate, then the candidate would be required to correct the discrepancy with the registrar of voters before a change could be reflected in ERIN. In addition, Ms. Williams testified that ERIN auto-populates fields for the digital notice of candidacy form. When directly questioned by the trial court as to whether the political party designation is auto-populated, Ms. Williams replied, "Yes."

Ms. Joseph's certified notice of candidacy printed from ERIN indicates that her party affiliation is with the Democratic party. By way of the procedure attested to by Ms. Kavanaugh and Ms. Williams, Ms. Joseph's party affiliation listed on her notice of candidacy had to have been her registered party affiliation with the registrar of voters because the

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<sup>1</sup> The clerk did not testify as to the what the acronym "ERIN" means.

registrar of voters is the source of the voter information for ERIN. There was no argument or controverting evidence presented at trial to refute that the information automatically populated in ERIN or the testimony of Ms. Kavanaugh as to the procedure for discrepancies between ERIN and the handwritten notice of candidacy form was correct. Thus, Ms. Joseph certified her political affiliation on the notice of candidacy as to the same information reflected in the registrar of voters' system at the time she qualified as a candidate. The voters' registration card, which was signed in 1995, was not indicative of Ms. Joseph's party affiliation at the time she certified her notice of candidacy and should not be given any weight. Therefore, there was no error on Ms. Joseph's certified notice of candidacy form regarding her political affiliation that required correction, which means that she timely complied with the qualifications of the candidacy for district court judge.

In addition, I find that Ms. Joseph's testimony concerning her change in party affiliation and voting history sufficient to find that she was registered as a Democrat. In *Montegut v. St. John the Baptist Parish Democratic Executive Comm.*, 265 So.2d 258, 260 (La. Ct. App. 1972), *writ refused*, 262 La. 971, 265 So.2d 616 (1972), the court found that the formality of filing a written request to change party affiliations does not necessitate the disqualification of the candidate. In refusing to adopt the position of the appellee, which is similar to the position set forth by Melanie Trosclair, the court held,

Further we find we cannot consider appellee's attempt to have Edwards disqualified on the grounds that the application for a change of party affiliation made by Edwards from Republic to Democrat on August 8, 1971, was fatally defective because of his failure to file a request in writing seeking the change as

required in LSA-R.S. 18:270.204<sup>2</sup>. In this court, as he did in the trial court, one of the grounds on which appellee attempts to have Edwards disqualified is that an application for a change of party affiliation from Republican to Democrat made by Edwards on August 8, 1971 was fatally defective because of his failure to file a request in writing seeking the change as required by LSA-R.S. 18:270.204.

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The record reflects that subsequent to the change of party affiliation, Edwards voted in two separate democratic primary elections and in one general election. While no written request for the change was made by Edwards, **we fail to understand how the appellant can be penalized for the possible error of the registrar.** It is reasonable that a registrant or voter be permitted to rely on the registrar of voters to properly carry out the functions of his office.

[Emphasis added]. [Footnote added to original].

Here, Ms. Joseph testified that she changed her party affiliation with the registrar of voters. This evidence, coupled with the uncontroverted testimony that she has always voted as a Democratic, leads me to the same conclusion as the *Montegut* court that Ms. Joseph should not be penalized for the possible error (failure to change Ms. Joseph's party affiliation upon request) of the registrar of voters.

Even assuming *arguendo* that Ms. Joseph had not changed her party affiliation prior to certifying her notice of candidacy form, I would still be of the opinion that she met the qualifications of the election.

La. R.S. 18:463(A)(1)(a) provides,

A notice of candidacy shall be in writing and shall state the candidate's name, the office he seeks, the address of his domicile, and the parish, ward, and precinct where he is registered to vote. The candidate shall list on the notice of candidacy the name of the political party if he is registered as being affiliated with a recognized political part, "other" if he is registered as being affiliated with a political party that is not a recognized political party, or "no party" or an abbreviation thereof if he is registered with no political party affiliation. **No candidate shall change or add his political party designation,** for purposes of printing on the election ballot as

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<sup>2</sup> La. R.S. 18:270.204 is the former statute concerning the change to a party affiliation. The current law is found in La. R.S. 18:107. However, the finding in *Montegut* can also be applied to La. R.S. 18:107.

required by R.S. 18:551(D), **after he has qualified for the election.**

[Emphasis added].

According to La. R.S. 18:18(A)(2), the Louisiana Secretary of State has the authority to assist the registrars of voters of the state with respect to matters pertaining to the registration of voters.

Ms. Joseph filed a notice of candidacy form that was transmitted by the Clerk of Court to the Louisiana Secretary of State's office through ERIN. That form listed Ms. Joseph's political affiliation with the Democratic party. I find that Ms. Joseph's submission of her notice of candidacy was her written declaration of a change from no party affiliation to the Democratic party. Her change in party affiliation was simultaneously submitted to the Secretary of State with her notice of candidacy. La. R.S. 18:463 prohibits a change to the party affiliation after a candidate has qualified for an election; however, it does not prohibit a change made prior to or simultaneously with the qualification. Since the registrar of voters is not given the authority to deny a request to change party affiliation, I conclude that Ms. Joseph's change in party affiliation occurred when her intent to change was submitted through her notice of candidacy.

Since the laws governing the conduct of elections must be liberally interpreted so as to promote rather than defeat candidacy and any doubt as to the qualifications of a candidate should be resolved in favor of permitting the candidate to run for public office, I am of the opinion that Ms. Joseph should be allowed to run in the election. *See, Russell v. Goldsby*, 00-2595 (La. 9/22/00); 780 So.2d 1048, 1051. I find that

disqualifying Ms. Joseph on the basis of a change in her political party is an absurd result.

For the foregoing reasons, I would reverse the trial court's ruling disqualifying Mona R. Joseph from the November 4, 2014 election for district court judge for St. John the Baptist Parish.

MELANIE L. TROSCLAIR

NO. 14-CA-675

VERSUS

FIFTH CIRCUIT

MONA R. JOSEPH, TOM SCHEDLER,  
IN HIS OFFICIAL CAPACITY AS  
LOUISIANA SECRETARY OF STATE,  
ELIANA DEFRANCESCH IN HER  
OFFICIAL CAPACITY AS CLERK OF  
COURT FOR ST. JOHN THE BAPTIST  
PARISH

COURT OF APPEAL  
STATE OF LOUISIANA

RAC

**CHAISSON, J., DISSENTS WITH REASONS**

I respectfully dissent from the majority opinion for the following reasons.

The trial judge disqualified Ms. Joseph from this election based solely on the fact that he found that she failed to qualify for the election in the manner prescribed by law. Specifically, he found that the party affiliation stated by Ms. Joseph on her Notice of Candidacy was not the same as her designated party affiliation on her official voter registration, a violation of La. R.S. 18:463(A)(1)(a). The question for this Court therefore is whether the trial court was manifestly erroneous in determining that the party affiliation stated by Ms. Joseph (i.e., “Democrat”) was not the same as her designated party affiliation on her official voter registration *at the time that she qualified*.

On this point, the plaintiff submitted a certified copy of Ms. Joseph’s original voter registration from the local Registrar of Voter’s office. This original voter registration shows that at the time that Ms. Joseph registered to vote in 1995, that she selected no party affiliation. In response to this evidence, Ms. Joseph submitted a computer printout from the state’s voter registration computer system, which is maintained by the

Secretary of State and available for viewing online.<sup>1</sup> This state database is established pursuant to La. R.S. 18:31. La. R.S. 18:115.1 provides that a voter may make application electronically through the Secretary of State's website to make changes to her voter registration; however, it specifically provides that when application for a change is made, the "applicant shall be immediately informed that his application has been electronically forwarded to the appropriate registrar of voters, but that . . . changes to his existing registration *will not be made* until his application is received and approved by the registrar of voters." (emphasis added). La. R.S. 18:112 provides that "[w]henver any change is made with respect to the registration of any person, the date of the change and all pertinent information concerning the change shall be entered *by the registrar* in the registrant's information on the state voter registration computer system." (emphasis added). Therefore, it is clear that the only way that Ms. Joseph's party affiliation could have been changed on the state voter registration computer system is if a request for the change was received and approved by the local Registrar of Voters and then entered into the state database by the local Registrar. The trial judge, later in his oral reasons for judgment, acknowledged the discrepancy between the printout from the state database and Ms. Joseph's original voter registration from 1995, and resolved this discrepancy by determining that he would give less weight to the uncertified computer printout. However, if at a minimum he did not accept that at some point in time prior to September 1, 2014, the St. John Registrar of Voters did in fact change Ms. Joseph's official designation to "Democrat", then in effect he gave no weight to the

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<sup>1</sup> The plaintiff attached a copy of this same document, printed from the Secretary of State's website on September 1, 2014, to her Pre-trial Memorandum, which she filed with the Court on the morning of the hearing, September 2, 2014, at 8:50 a.m. When Ms. Joseph's counsel moved to introduce the same document during the hearing, not only did counsel for plaintiff not object on any ground, she stipulated to the document. The trial judge allowed the document to be introduced.

computer printout and completely disregarded it, despite the fact that it was also attached to the plaintiff's Pre-trial Memorandum, it was not objected to, it was stipulated to by plaintiff, it was admitted by the trial judge, and it came from an official state computer database established by our Election Code. Accepting at a bare minimum that the printout established that at some point in time Ms. Joseph changed her party affiliation on her official registration to "Democrat", the pertinent question for the trial judge to resolve was *when* this change took place, not whether it took place.

In an election contest, the person objecting to the candidacy bears the burden of proving the candidate is disqualified. La. R.S. 18:492; *Russell v. Goldsby*, 00-2595 (La. 9/22/00), 780 So.2d 1048, 1049-51; *Messer v. London*, 438 So.2d 546 (La. 1983). The laws governing the conduct of elections must be liberally interpreted so as to promote rather than defeat candidacy. *Russell, supra*.

It was plaintiff's burden to show that Ms. Joseph's party designation on her official registration at the time that she qualified for the election was not "Democrat", as stated on the Notice of Candidacy. The certified copy of Ms. Joseph's original voter registration does not contain a date on which it was certified. Therefore, this copy of Ms. Joseph's voter registration only establishes that at the time of her initial registration in 1995, she had selected no party affiliation, and that there was no change made to this designation up to the date of the certification, a date which is unknown.<sup>2</sup> Although plaintiff subpoenaed Rita Jarrow, the St. John Registrar of Voters, who could have established the date of certification and the date on which Ms. Joseph's party

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<sup>2</sup> Although plaintiff's petition makes the allegation that this certification was obtained on August 25, 2014, this allegation is not evidence and absolutely no evidence was admitted to substantiate this allegation on the key crucial question which is the crux of this case.



designation on her official voter registration was changed, plaintiff chose not to call Ms. Jarrow as a witness. On the other hand, Ms. Joseph submitted evidence, by way of the computer printout, that her party designation had been changed at least as of September 1, 2014.<sup>3</sup> In my opinion, if the trial judge completely disregarded the printout, even only for the proposition that Ms. Joseph's party affiliation had in fact been changed, despite the fact that there was no objection to the printout and it was stipulated to, then he committed legal error. If on the other hand, he accepted the printout as establishing that Ms. Joseph's party affiliation had in fact changed, but found that Ms. Joseph did not establish when it had been changed, then he impermissibly shifted the burden of proof to Ms. Joseph, which, in my opinion, would also be legal error. Under either scenario, this legal error led the trial judge to conclude that the evidence established that Ms. Joseph's party affiliation on her official voter registration at the time that she qualified was not "Democrat", a finding that I find to be manifestly erroneous.

I would also note that Ms. Joseph's candidacy is not being challenged because she lacks one of the constitutionally mandated qualifications to run for the office of judge. She is being challenged on the basis that she did not qualify to run for the office in the manner prescribed by law, i.e., she did not follow the proper procedure or made errors in her qualifying papers. The specific error being that her stated party affiliation did not match her official party designation with the Registrar of Voters at the time of qualifying. There are no special qualifications that one must possess to designate a political party; all that is required is the subjective intent of the voter

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<sup>3</sup> Ms. Joseph was also questioned at trial regarding when this change took place. Admittedly, it appears from her testimony that it was not clear in her mind as to when the change had actually taken place. However, it is clear that at the time of her qualifying she was in the Registrar of Voters' office discussing the change, and she ultimately testified that she thought that the change took place "... when I filed [my notice of candidacy] papers it was changed," in which case the change would have been timely.

expressed in writing to the Registrar of Voters. Clearly, by her written declaration on her Notice of Candidacy, Ms. Joseph has expressed her written intent to be affiliated with the Democratic Party, and to run as a Democrat. The only question is whether procedurally she accomplished this stated intention by the time that she qualified to run for this office. The burden was on the plaintiff to prove that she had not, and in my opinion, the plaintiff did not carry her burden. Under these circumstances, I find that to disqualify Ms. Joseph from running, and to deprive the electorate of the opportunity to vote for the candidate of their choice, is a particularly harsh result, and I therefore respectfully dissent.



SUSAN M. CHEHARDY  
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**NOTICE OF JUDGMENT AND  
CERTIFICATE OF DELIVERY**

I CERTIFY THAT A COPY OF THE OPINION IN THE BELOW-NUMBERED MATTER HAS BEEN DELIVERED IN ACCORDANCE WITH **Uniform Rules - Court of Appeal, Rule 2-20** THIS DAY **SEPTEMBER 9, 2014** TO THE TRIAL JUDGE, COUNSEL OF RECORD AND ALL PARTIES NOT REPRESENTED BY COUNSEL, AS LISTED BELOW:

  
CHERYL Q. LANDRIEU  
CLERK OF COURT

**14-CA-675**

**E-NOTIFIED AND MAILED**

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# NOTICE

EFFECTIVE AUGUST 1, 2013

The Fifth Circuit Court of Appeal is advancing technologically with the introduction of its eCourt System.

Effective August 1, 2013 you can visit us at <https://ecourt.fifthcircuit.org>.

**PHASE 1 of eCourt** is **ELECTRONIC NOTIFICATION** (eNotification). Effective August 1, 2013, members of the Louisiana State Bar who are authorized to practice law in Louisiana can voluntarily sign-up to receive email notification of court notices/filings/dockets/decisions. Enrolled counsel will have the ability to view through a web portal notices/filings/dockets/decisions in a case management-like environment.

Counsel of record who enroll in eNotification voluntarily agree to receive notification of court notices/filings/dockets/decisions by electronic means only. The Court will continue to mail court notices/filings/dockets/decisions to those attorneys who have not registered with eCourt.

**PHASE 2 of eCourt** will be **ELECTRONIC FILING** (eFiling), downloading of files and electronic payment services by attorneys. This phase is in the development stage and will be announced at a later date of its availability.

Technical assistance will be provided by the Clerk of Court's Office during regular business hours. An on-line tutorial is also available to users.

For more information about eCourt or technical assistance, contact the Fifth Circuit Court of Appeal at 504-376-1400, Monday through Friday, 8:30 AM - 4:30 PM.