

**CASSANDRA SMITH AND
KEION SMITH**

VERSUS

**ERNEST "FREDDIE"
CHARBONNET AND ARTHUR
MORRELL IN HIS CAPACITY
AS CLERK OF CRIMINAL
DISTRICT COURT FOR THE
PARISH OF ORLEANS**

* **NO. 2017-CA-0634**

* **COURT OF APPEAL**

* **FOURTH CIRCUIT**

* **STATE OF LOUISIANA**

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LOBRANO, J., CONCURS AND ASSIGNS REASONS

I respectfully concur. I agree with the majority opinion that the district court’s judgment, denying the Objection to Candidacy and Petition to Disqualify Candidate Ernest “Freddie” Charbonnet for Orleans Parish City Council District E, should be reversed. I write separately to note that, at the time Charbonnet signed his Notice of Candidacy, Charbonnet lacked sufficient knowledge that his tax returns for the year 2012 had been filed. As such, I find that Charbonnet falsely certified that his tax returns for the year 2012 had been filed.¹

In *Russo v. Burns*, 2014-1963 (La. 9/24/14), 147 So.3d 1111 (“*Burns II*”), the Louisiana Supreme Court held that, without sending tax returns via certified mail or otherwise ensuring their delivery to the Louisiana Department of Revenue, the candidate, Burns, could not have known whether his tax returns were filed in compliance with Louisiana law when he signed his Notice of Candidacy. I do not interpret *Burns II* to reach the question as to whether a court is permitted to consider a candidate’s subjective intent or good faith beliefs in determining if a

¹ I disagree with the majority opinion in that I find that the plaintiffs did not present a prima facie case that Charbonnet did not file an extension of time to file his 2016 taxes. Record evidence proved that only the 2016 income tax return was not filed, and testimony and documentary evidence from the Louisiana Department of Revenue did not include any information regarding the 2016 extension of time form. Thus, the burden of proof did not shift to Charbonnet with respect to the 2016 extension of time.

candidate should be disqualified for making an allegedly false certification.

Instead, I read *Burns II* to hold that it is false certification for a candidate to certify to facts of which the candidate does not have sufficient knowledge. For these reasons, I would reverse the judgment of the lower court denying the petition to disqualify Charbonnet from candidacy, for falsely certifying that his tax returns for the year 2012 had been filed.