

SC93194, Chief Charles Coyne v. Bernard Edwards, Jr.

Appeal from St. Louis County Circuit Court

Submitted Mar. 12, 2013; opinion issued Mar. 25, 2013

Attorneys: Edwards was represented by Elbert A. Walton Jr. of Metro Law Firm LLC in St. Louis, (314) 388-3400; Coyne was represented during arguments by Neil J. Bruntrager and Mary L. Bruntrager of Bruntrager & Billings PC in St. Louis, (314) 646-0066; and the attorney general as amicus was represented by Missouri Attorney General Chris Koster and Jonathan M. Hensley of the attorney general's office in Jefferson City, (573) 751-3321.

Overview: The decision is affirmed. A man wishing to run for the position of director of a fire protection district appeals the judgment of the circuit court ordering his removal as a candidate in the election. In a unanimous decision written by Judge Laura Denvir Stith, the Supreme Court of Missouri affirms the disqualification. The fire protection district board of directors had standing to bring this action and it vested the district's fire chief with authority to act on its behalf. Further, the man received specific notice of the date by which Missouri law required him to file his financial interest statement, but he failed to do so. This Court also holds it is not a denial of equal protection for these filing deadlines to apply only to candidates for office, for those already in office already have filed financial interest statements. Further, the notice requirements do not deny him ballot access and are reasonably necessary in order to give the public an opportunity to review his statement prior to voting. The man's claim that he was not afforded due process also fails because he did not properly support this argument.

Facts: Bernard Edwards filed a declaration of candidacy to run for the position of Director of Community Fire Protection District ("Community Fire") in the April 2, 2013, general municipal election. Edwards filed his declaration with Community Fire and, at that time, the assistant fire chief provided him with a "Notice to Candidate" form prepared by the Missouri Election Commission ("MEC"). The form notified Edwards that he was required to file a financial statement no later than Jan. 29, 2013. The MEC did not receive Edwards' financial interest statement until Feb. 7, 2013. MEC notified Community Fire of Edwards' disqualification. Community Fire then authorized Community Fire Chief Coyne to pursue legal action to obtain a court order requiring the St. Louis County board of election commissioners to remove Edwards' name from the ballot. At a hearing, Chief Coyne presented evidence that Edwards' financial interest statement had not been timely filed and that he was testifying in his representative capacity as fire chief of community fire. The trial court overruled the motions to dismiss and for directed verdict alleging lack of capacity and lack of standing, rejected his constitutional claims, and ordered that Edwards be disqualified from running for director of community fire. Edwards appealed.

AFFIRMED

Court en banc holds: (1) Community Fire Chief Coyne, as an official with community fire, authorized to sue on its behalf, possesses the legal capacity to maintain this action

against Edwards on behalf of community fire. Because it was “sufficiently affected” by Edwards’ failure to timely file, community fire is given statutory authority to pursue this action in order to have Edwards’ name removed from the ballot and its chief was authorized to and has capacity to bring the action on its behalf.

(2) Edwards did receive adequate notice of the dates by which the financial interest statement was due. The notice of candidacy form given to Edwards by community fire expressly stated that his financial interest statement was due by Jan. 29, 2013 or he would be assessed a \$10 per day late fee and that if he did not file the statement by Feb. 5, 2013, his name would be removed from the ballot. Edwards both initialed and signed the form, acknowledging that he had been apprised of the filing deadlines. Rather than filing by Feb. 5, 2013, he sent the statement by regular mail on that date. He therefore properly was disqualified. Edwards offers no authority for his suggestion that candidates must be provided with information regarding which mailbox rules, if any, may apply. It was up to him to file by an acceptable method.

(3) Edwards claim that section 105.492, RSMo, violates his right to freely access the ballot in violation the First and Fourteenth amendments to the United States Constitution fails. A candidate's access to the ballot or the right to run for office is not a ‘fundamental right’ and is subject to rational basis, not strict scrutiny, analysis. There are a number of rational reasons why the state legislature may have chosen to enact a statute that mandated a candidate submit a personal financial interest statement within 21 days of the close of the candidacy filing period or else have his or her name removed from the ballot.

In order to raise a valid an equal protection challenge, one first must show that he or she is similarly situated to those who he or she alleges receive different treatment. Edwards contends that section 105.492 treats candidates unfairly because it gives those already elected 30 days in which to correct a failure to file before being subject to removal from office, whereas he and other candidates have only 21 days from the last day for filing for office to file their financial interest statements before being automatically removed from the ballot. But elected officials and those running for office are not similarly situated in all respects – one is seeking office while the other already holds it and already has filed a financial interest statement while a candidate previously.

Finally, Edwards provides no authority supporting his contention that section 105.492 denies him due process of the laws because the statute is “procedurally defective” in that a candidate for office is not afforded notice and hearing prior to being disqualified. Even were this Court to review for plain error under Rule 84.13, his due process claim is without merit because he does not claim he could have shown at the hearing that he did comply with the statute; to the contrary he admits he did not timely file his financial interest statement.