

MEMORANDUM

DATE: June 12, 2020

TO: Lynn Gelin, City Attorney

FROM: Kelly Brandon, Assistant City Attorney

SUBJECT: Residency Requirements to Qualify as Candidate

Issue: Can the City include a residency restriction in its qualifications for Candidates to the City Commission?

Brief Answer: Yes, if reasonable or if unreasonable, then could be upheld if passes strict scrutiny test—that it is necessary to a compelling state interest

Delray Beach: The City's Charter and Ordinances do not currently place any residency restrictions on Candidates for City Commission.

Florida Case Law:

Florida Courts have found residency restrictions constitutional if reasonable. See Nichols v. State ex rel. Bolon, 177 So.2d 467 (Fla. 1965); Woodward v. City of Deerfield Beach, 538 F.2d 1081, (Fla. 1976); Daves v. City of Longwood, 423 F. Supp. 503, 504 (M.D. Fla. 1976). Marina v. Leahy, 578 So.2d 382, (Fla. 3rd DCA 1991).

In Nichols v State, the Supreme Court of Florida upheld a Special Act, which required that City Commissioner Candidates of the City of Melbourne be "freeholder electors of the city for at least one year immediately preceding their qualifying for office." The Court held that the legislature has the power to impose qualifications for municipal office and found that the qualification presented was not unreasonable.

In Woodward v. City of Deerfield Beach, the charter of the City of Deerfield Beach required that candidates be freeholders and residents of the city for six months prior to the election. On Appeal to the Southern District of Florida, the Court enjoined the City from omitting Mr. Woodward's name from the ballot finding that the two charter provisions unconstitutionally denied him equal protection of the law. The City appealed to the Supreme Court. The Supreme Court took a different stance than it did in Nichols on the reasonableness of "freeholder" requirements and affirmed the lower Court's decision as it related to the unconstitutionality of "freeholder" requirements. However, it reversed the Court's ruling that the residency requirement was unconstitutional. It determined that a six month residency requirement was reasonable. The Court reasoned that it is certainly difficult to argue that the all durational residency requirements are unconstitutional when the Constitution itself has provided that members of the House of Representatives must be residents of the United States for 7 years; senators must be residents for 9 years, and the President must be a resident for 14 years. Further, Courts have upheld gubernatorial residential requirements of 7 years and upheld a challenge to the state senator 7 year residence requirement. Based on same, the Florida Supreme Court determined that a durational residency

requirement of 6 months for the office of City Commissioner was not a violation of the equal protection clause of the 14th Amendment.

In Daves v. City of Longwood, the plaintiff sought a declaratory judgment that the **one-year** residency requirement for candidacy for the Longwood City Council was unconstitutional. The Middle District Court analyzed the appropriate standard of review that should be applied with regard to the Equal Protection Clause. The Court reasoned that the imposition of a reasonable residency requirement as a qualification for candidacy to a significant office does not interfere with fundamental rights. Thus, the Court determined that the appropriate standard is “the statute should be upheld if it bears a reasonable relationship to a legitimate governmental interest.” It determined that a residency requirement serves reasonably to assure that the candidate will be a bona fide resident of the city he seeks to represent, will have been there long enough to know the issues confronting the city, and will be known by the voters. To promote these qualities in a candidate is a legitimate objective of the state. The residency requirement reasonably tends to secure their attainment. As such, the Court determined that the residency requirement was constitutional.

In Marina v. Leahy, Marina appealed the trial court’s decision deleting his name from the ballot for the mayoral election for the City of Sweetwater. The City has a six month residency requirement in its Code. The Third District Court upheld the trial court’s decision. The Court reasoned that “the right to seek public office is not absolute, and reasonable conditions and restraints may lawfully be imposed upon individual candidates for public office in order to protect the integrity of the political processes. Further, citing to Daves, the Court reiterated that reasonable residency requirement as a qualification for candidacy to public office are a valid means of regulating the election of public officials.

In the Board of Com’rs of Sarasota County v. Gustafson, the Second District held that a two-year durational residency requirement violated the equal protection clause. The Court analyzed whether a durational requirement infringes on a fundamental right to travel. The Court analyzed which standard should be applied as follows: “it is not the existence of the candidate durational residency requirement, by itself, that seriously infringes on a fundamental right so as to require application of strict scrutiny, rather, it is the length of the durational residency requirement that determines which equal protection analysis will be applied. Accordingly, a fundamental right is not considered seriously infringed so as to require a strict scrutiny analysis unless the candidate durational requirement is excessive.” The Court agreed with the trial court’s findings that the county did not put forward any proof that the two-year requirement was better than a one year or better than six months or that a two-year restriction was effective at all. As a result, it determined that the two year restriction was unreasonable. Then, it applied the strict scrutiny test and found that the requirement was not necessary to a compelling state interest as the County could not show the inadequacy of alternative or less restrictive methods that would accomplish the stated objectives.

Conclusion: Residency restrictions will likely be found constitutional if reasonable. At this point, the Florida Supreme Court and the Third DCA approved a 6-month residency requirement and the Southern District approved a 1 year residency requirement. However, the Second District determined that a two-year restriction was unreasonable and did not serve a compelling state interest. While the decision is only persuasive to the 4th, a 6 month or one-year requirement seems most likely to be found reasonable by the Courts.