STATE OF MICHIGAN

IN THE WASHTENAW COUNTY TRIAL COURT

SCOTT K. WOJACK,

Plaintiff,

vs.

CITY OF ANN ARBOR and YVONNE CARL, ACTING CITY CLERK,

Defendants.
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Case No. 01 1142 CZ

Hon. Donald E. Shelton

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OPINION AND ORDER

At a session of this Court held in the Washtenaw County Courthouse in the City of Ann Arbor on the 17th day of July, 2002.

PRESENT: HONORABLE TIMOTHY P. CONNORS, Circuit Court Judge

This matter is before the Court on Plaintiff Scott Wojack's complaint for injunctive relief and writ of mandamus, and Defendant City of Ann Arbor's counter-complaint for declaratory judgment. The parties argued their positions before the Hon. Timothy P. Connors on October 12, 2001. At that time, the parties presented this Court with an agreement regarding the injunctive relief and the writ of mandamus, leaving solely the complaint for declaratory judgment at issue. For the reasons stated in this Opinion, Defendant's counter-complaint for declaratory judgment GRANTED.

OPINION

FINDINGS OF FACT

Plaintiff Scott Wojack became a registered elector in the First Ward of the City of Ann Arbor on June 15, 2001. On June 25, 2001, Mr. Wojack filed nominating petitions with Defendant the City of Ann Arbor's Office of the City Clerk to run as a Republican candidate for the position of City Council Member representing the First Ward. If it had been necessary, a primary election would have been held on August 7, 2001. As such a primary election was not necessary, the City's general election was held on November 6, 2001. The City Clerk reviewed Mr. Wojack's nominating petition and determined that it contained a sufficient number of valid signatures of registered voters to qualify him as a candidate for the First Ward City Council seat. However, on June 29, 2001 Defendant Acting City Clerk Yvonne Carl sent Mr. Wojack a letter in which she informed him that he was not eligible to be placed on the ballot as a candidate for the First Ward City Council seat for the reason that he would not have been a resident of the City's First Ward for at least one year by the time the general election would be held. In rejecting his nominating petition, Ms. Carl relied upon Section 12.2 of the Charter of the City of Ann Arbor, which was adopted on April 9, 1956 and states:

> Except as otherwise provided in this charter, a person is eligible to hold a city office if he has been a registered elector of the City, or of territory annexed to the City or both, and, in the case of a Councilman, a resident of the ward from which he is elected, for at least one year immediately preceding his election or appointment.

Mr. Wojack filed this action on October 3, 2001 seeking a temporary and permanent injunction against enforcement of this durational residency requirement in the City's Charter on the basis that such a requirement violates the constitutional provisions of equal protection and seeking a writ of mandamus from this Court requiring the City Clerk to place Mr. Wojack on the ballot for the general election. In response, the City filed a counter-complaint seeking a declaration from this Court that section 12.2 of the City' Charter is constitutional.

ANALYSIS

In arguing that section 12.2 is unconstitutional, Mr. Wojack relies upon two opinions from the United States District Court for the Eastern District of Michigan from 1971 and 1972. In the first of those cases, U.S. District Court Judge Lawrence Gubow declared that the durational residency requirement of section 12.2 relating to seats on city council violated the equal protection clause of the Fourteenth Amendment.[1] In the later case, the Federal District Court held that the durational residency requirement of section 12.2 relating to registered electors was unconstitutional.[2] Essentially, Mr. Wojack argues that, irrespective of what jurisprudence may have evolved on the issue of durational residency requirements for elected officials, the holdings by the *Feld* and the *Human Rights Party* courts are binding precedent on this Court and that this Court must find that section 12.2 is unconstitutional. Supporting Mr. Wojack's argument is what appears to be the only published opinion by a Michigan court on the issue of durational residency requirements, in which the Michigan Court of Appeals found in 1979 that a two-year durational residency requirement for municipal judges was unconstitutional as violative of equal protection[3].

However, the jurisprudence of durational residency requirements is anything but clear and the holdings of cases with precedential value has evolved since 1979. United States District Judge Philip Pratt, in a thorough review of the status of case law on durational residency requirements in the Sixth Circuit in 1981 concluded:

> On the one hand, the cases, especially the authoritative cases from this Circuit, clearly subject durational residency requirements to the most rigorous sort of strict scrutiny. The Sixth Circuit has emphatically nullified a two year requirement for city commissioner candidates, and apparently no case from this Circuit has upheld any durational residency requirement for candidates. On the other hand, there is no doubt that some candidate residency period is constitutional; and the courts have almost unanimously agreed that a one year requirement for municipal office is constitutionally acceptable.[4]

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[1] *Feld v City of Ann Arbor*, C.A. No. 37342 (ED Mich; January 12, 1971). The parties have only supplied a copy of the order in that matter. No opinion which articulates that court's reasoning has been supplied to this Court, and that order has not been published in any reporter.

[2] *Human Rights Party v City of Ann Arbor*, C.A. No. 37852 (ED Mich, 1972). No portion of that opinion or order has been supplied to this Court, and like the *Feld* order, the ruling in that matter has not been published in any reporter.

[3] *Castner v Clerk of the City of Grosse Pointe Park*, 86 Mich App 482 (1979).

[4] *Joseph v City of Birmingham*, 510 F Supp 1319, 1327 (ED Mich 1981).

Since Judge Pratt determined that Birmingham's one-year residency requirement for city council candidate was constitutional[5], various other courts have held as constitutional one-year durational residency requirements for city council positions[6], two-year residency requirements for city council positions[7], and seven-year residency requirements for state senator and for governor[8]. For this Court, with the weight of precedential cases having shifted from finding durational residential requirements unconstitutional to finding such requirements constitutional under the same analyses, the question whether a one-year durations residency requirement for a elected municipal official is constitutional appears to have been answered by those several federal or sister-state courts identified above. Thus, despite the existence of the Michigan Court of Appeals decision in *Castner*, this Court finds that the analysis of the constitutionality of a one-year durational residency requirement for a city council position that Judge Pratt so thoroughly and thoughtfully articulated in the *Joseph, supra*, is persuasive. In fact, as Judge Pratt articulates in his decision, *Castner* is distinguishable from the case at bar, and from *Joseph*, because *Castner* weighed the constitutionality of a two-year durational residency requirement, whereas *Joseph* and the case at bar review a one-year durational residency requirement. Thus, this Court adopts reasoning and the holding of *Joseph* in finding that section 12.2 is constitutional.

ORDER

For the reasons stated in the Opinion above, this Court finds that the City of Ann Arbor's one-year durational residency requirement for city council positions articulated in section 12.2 of the City's Charter is constitutional. Defendant City's motion for declaratory judgment is GRANTED.

IT IS SO ORDERED.

Hon. Timothy P. Connors
Circuit Court Judge

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[5] *Id.*

[6] *City of Akron v Beil*, 660 F2d 166 (6th Cir 1981) which overruled *Green v McKeon*, 468 F2d 883 (6th Cir 1972) (two-year durational residency requirement in Plymouth, Michigan).

[7] *State ex rel Brown v Summit County Board of Elections*, 46 NE2d 1256 (Ohio 1989).

[8] *Sununu v Stark*, 383 F Supp 1287 (DNH 1974) *aff'd* 420 US 958, 95 SCt 1346, 43 LEd2d 434 (1975); *Chikmento v Stark*, 353 Fsupp 1211 (DNH 1973) *aff'd* 414 US 802, 94 SCt 125, 38 LEd2d 39 (1973).

PROOF OF SERVICE

I certify that I mailed a copy of the above Opinion and Order upon all attorneys of record or parties by placing said copy in the first class mail with postage prepaid from Ann Arbor, Michigan on this 18th day of July, 2002.

Cheryl Lee Atkinson
Judicial Coordinator

cc: Thomas Wieder
Abigail Elias