

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION**

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ROBERT DASCOLA,

Plaintiff,

vs.

Case No. 2:14-cv-11296-LPZ-RSW

Hon. Lawrence P. Zatkoff

Magistrate Judge R. Steven Whalen

CITY OF ANN ARBOR and JACQUELINE  
BEAUDRY, ANN ARBOR CITY CLERK,

Defendants.

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**PLAINTIFF'S MOTION FOR LEAVE TO FILE  
FIRST AMENDED COMPLAINT**

For his Motion, Plaintiff states:

1. Plaintiff seeks leave of the Court to file a First Amended Complaint to clarify the precise sources of rights he is seeking to enforce in this action and to clarify the basis of his claim for attorney fees, if he prevails.

2. The changes to the Complaint are minimal and raise no new legal or factual issues.

3. Allowing the Amended Complaint will not prejudice Defendants in any way.
4. A copy of the proposed First Amended Complaint is attached hereto.
5. Concurrence in the relief requested was sought but not obtained.

WHEREFORE, Plaintiff respectfully asks the Court to grant his Motion for Leave to File a First Amended Complaint.

/s/ Thomas F. Wieder  
Thomas F. Wieder (P33228)  
Attorney for Plaintiff

Dated: May 8, 2014

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION**

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ROBERT DASCOLA,

Plaintiff,

Case No. 5:14-cv-11296-LPZ-RSW

vs.

Hon. Lawrence P. Zatkoff

CITY OF ANN ARBOR and JACQUELINE  
BEAUDRY, ANN ARBOR CITY CLERK,

Defendants.

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**FIRST AMENDED COMPLAINT FOR WRIT OF MANDAMUS  
AND FOR PRELIMINARY AND PERMANENT INJUNCTIVE RELIEF**

For his Complaint, Plaintiff states:

1. Plaintiff is a resident of the Third Ward of Defendant City of Ann Arbor, having resided there since on or about September 15, 2012.
2. Plaintiff has been a registered elector of the Third Ward of Defendant City of Ann Arbor since on or about January 15, 2014.

3. On or about March 11, 2014, Plaintiff obtained nominating petition forms from Defendant City's Office of the City Clerk to run as a Democratic candidate for the position of City Council Member representing the City's Third Ward.

4. On March 12, 2014, Plaintiff received an email from Dena C. Waddell, identified as Administrative Assistant/City of Ann Arbor/City Clerk Office stating:

Mr. Dascola,

You recently pulled petitions to run for a city council position with the City of Ann Arbor. Unfortunately, you do not meet the residency requirement to run at this time. A person is eligible to hold a city office if the person has been a resident of the ward from which elected, for at least one year immediately preceding election or appointment. It appears that you became a registered (Ann Arbor) voter earlier this calendar year. My apologies for not noticing this while you were at the office. If you have any questions feel free to contact our office at 734-794-6140.

5. The language of Ann Arbor's current City Charter, published by the City without annotation, sets forth the eligibility requirements for city offices, both elective and appointive, as follows:

#### Eligibility for City Office—General Qualifications

SECTION 12.2 Except as otherwise provided in this charter, a person is eligible to hold a City office if the person has been a registered elector of the City, or of territory annexed to the City or both, and, in the case of a Council Member, a resident of the ward from which elected, for at least one year immediately preceding election or appointment. This requirement may be waived as to appointive officers by resolution concurred in by not less than seven members of the Council.

6. As to elective officers (Mayor and City Council Member), the Charter sets forth two separate and distinct requirements: 1) That a candidate for either office have been a registered voter of the City for a year prior to election (or appointment); and 2) A candidate for Council Member has been a resident of the Ward from which elected for a year prior to election (or appointment).

7. Subsequent communications with the Ann Arbor City Attorney have indicated that the City believes that Plaintiff does not meet either the voter registration requirement or the ward durational residency requirement.

8. In any event, the Clerk's determination that Mr. Dascola fails to meet one or both of the requirements is illegal and improper, because each of the requirements has been found to violative of the Equal Protection Clause of the 14<sup>th</sup> Amendment to the United States Constitution and declared void by decisions of this Court.

9. In 1971, the validity of the cited language of the Charter regarding the one-year ward residency requirement for the position of Council Member was challenged in the case of Daniel J. Feld, et al v. City of Ann Arbor and Harold Saunders, File No. 37342 (E.D. Mich. 1972), in which the Plaintiffs alleged that the provision violated the Equal Protection Clause of the 14<sup>th</sup> Amendment to the United States Constitution.

10. In finding for the Plaintiffs, U.S. District Court Judge Lawrence Gubow, in an Order dated January 12, 1972, stated:

IT IS ORDERED that the Plaintiff's Motion for Summary Judgment be, and it hereby is, granted and

IT IS FURTHER ORDERED and declared that the portion of Section 12.2 of the Ann Arbor City Charter which requires all candidates for the office of councilman to have been residents of the ward from which they are elected for at least one year immediately preceding their election violates the equal protection clause of the 14<sup>th</sup> Amendment to the U.S. Constitution and is, therefore, unconstitutional and void.

11. At about the same time as the Feld case, a second case was filed, Human Rights Party, David F. Black and Mark Dickman v. City of Ann Arbor and Harold Saunders, City Clerk of Ann Arbor, File No. 37852 (E.D. Mich. 1972). This second case

challenged the constitutionality of the one-year city voter registration requirement contained in Charter Section 12.2.

12. In finding for the Plaintiffs, U.S. District Court Judge Ralph Freeman, in an Order dated March 29, 1972, stated:

IT IS ORDERED that the plaintiffs' Motion for Summary Judgment be, and it hereby is, granted and that defendants Motion for Summary Judgment be denied.

IT IS FURTHER ORDERED and declared that the portion of Section 12.2 of the Ann Arbor City Charter which requires all candidates for the office of councilman to have been registered electors of the City of Ann Arbor for at least one year immediately preceding their election violates the equal protection clause of the Fourteenth Amendment to the U.S. Constitution and is, therefore, unconstitutional and void.

13. Neither the Feld, nor the Human Rights Party, decision was appealed, nor has either been overruled, vacated or modified in any way.

14. Defendant City states that "we believe that they are no longer void in light of subsequent changes in federal and Michigan jurisprudence." (Email from Ann Arbor City Attorney Stephen Postema to Plaintiff's attorney, March 24, 2014.)

15. The Defendants are improperly and illegally relying and acting upon one or more former provisions of the City Charter which are void and of no effect and, in so doing, are depriving Plaintiff of his constitutional right to seek elective office, as well as depriving the electors of the Third Ward of their right to vote for Plaintiff.

16. Plaintiff alleges that Defendants' actions violate his rights under the Equal Protection Clause of the 14<sup>th</sup> Amendment and his rights under 42 U.S.C. §1983.

WHEREFORE, Plaintiff respectfully asks the Court to do the following:

- A. Preliminarily and permanently enjoin the Defendants from taking any action to enforce the former provisions of Section 12.2 of the Charter of the City of Ann Arbor which were declared unconstitutional and void in Feld and Human Rights Party, supra, in determining Plaintiff's eligibility for the office of Council Member of the City of Ann Arbor.
- B. Issue a Writ of Mandamus requiring Defendant Beaudry to accept and process any nominating petitions submitted by Plaintiff and determine his eligibility without regard to the voided provisions of Section 12.2.
- C. Order that Defendants pay Plaintiff's costs and actual attorney fees, pursuant to 42 U.S.C. §1988.
- D. Grant such other relief as the Court deems just and equitable.

/s/ Thomas F. Wieder  
Thomas F. Wieder (P33228)  
Attorney for Plaintiff

Dated: May 8, 2014

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vs.

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**BRIEF IN SUPPORT OF  
PLAINTIFF'S MOTION FOR LEAVE  
TO FILE FIRST AMENDED COMPLAINT**

## ARGUMENT

Plaintiff seeks leave of the Court to file a First Amended Complaint to clarify the precise sources of rights he is seeking to enforce in this action and to clarify the basis of his claim for attorney fees, if he prevails.

Specifically, although the sources of the rights Plaintiff seeks to enforce are implicit in the nature of the action, no explicit citation of those sources is found in the Complaint. The First Amended Complaint would clarify this issue by the addition of the following allegation:

16. Plaintiff alleges that Defendants' actions violate his rights under the Equal Protection Clause of the 14<sup>th</sup> Amendment and his rights under 42 U.S.C. §1983.

In the original Complaint, Plaintiff seeks an award of costs and attorney fees pursuant to the "applicable statute." The First Amended Complaint clarifies that the statute referred to as 42 U.S.C. §1988.

The changes to the Complaint are minimal and raise no new legal or factual issues that would require further briefing or delay these proceedings.

Allowing the First Amended Complaint will not prejudice Defendants in any way.

FRCP Rule 15(2) provides that "The court should freely grant leave when justice so requires." Plaintiff asserts that this is such a situation.

WHEREFORE, Plaintiff respectfully asks the Court to grant his Motion for Leave to File a First Amended Complaint.

/s/ Thomas F. Wieder  
Thomas F. Wieder (P33228)  
Attorney for Plaintiff

Dated: May 8, 2014

**CERTIFICATE OF SERVICE**

I hereby certify that on May 8, 2014, I electronically filed the foregoing document with the Clerk of the Court using the ECF System which will send notice of such filing to the following: Stephen K. Postema and Abigail Elias.

/s/ Thomas F. Wieder  
Attorney for Plaintiff