UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

HUMAN RIGHTS PARTY OF ANN ARBOR, DAVID F. BLACK, and MARK DICKMAN,

Plaintiffs

-vs-

CIVIL ACTION

NO. 37852

CITY OF ANN ARBOR and HAROLD R. SAUNDERS, Ann Arbor City Clerk,

Defendants

/

OPINION

This is an action under 28 U.S.C. §1343(3) and (4) to declare unconstitutional, as a violation of the equal protection clause of the Fourteenth Amendment, a provision of the Ann Arbor City Charter which provides that all candidates for City Council be registered electors of the City for one year prior to the election. The matter is before this court on cross-motions for summary judgment.

Plaintiff Black is a candidate for City Council from the Fourth Ward, having been nominated by the Human Rights Party of Ann Arbor at a party caucus on February 6, 1972. He is a citizen of the United States and of the State of Michigan. He has resided in Ann Arbor for 2-1/2 years and has been a registered voter in the City of Ann Arbor since October 28, 1971. He was denied certification for nomination by the City Clerk on February 10, 1972, because he will not have been a registered voter of the City for one year at the time of the election, April 3, 1972.

Plaintiff Dickman is a registered elector of the City of Ann Arbor who wishes to vote for Plaintiff Black as City Councilman from his Ward. Plaintiff Human Rights Party of Ann Arbor is a duly organized statewide political party which has nominated

Plaintiff Black as its candidate for City Council from the Fourth Ward in the City. The Defendant City of Ann Arbor is a home rule city in the State of Michigan. Defendant Saunders is the City Clerk who refused to certify Plaintiff Black's nomination.

The first issue in this suit is the constitutionality of the challenged charter provision, Sec. 12.2, which reads as follows:

> Sec. 12.2 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, . . . and, in the case of councilman, a resident of the ward from which he is elected, for at least one year immediately preceding his election or appointment.

That portion of the charter that requires a councilman to be a resident of the ward from which he is elected for one year prior to election has been held unconstitutional in a previous action by Judge Gubow of this Court in the unreported case of Feld v. City of Ann Arbor, C.A. No. 37342 (E.D.Mich. 1971).

In an action of this kind involving the equal protection clause of the Fourteenth Amendment, the threshold question is whether to apply the rational basis test or the compelling interest test to the challenged charter provision. Kramer v. Union School District, 395 U.S. 621. For the reasons that follow, we find that the compelling interest test is the proper standard.

This court has applied the compelling interest test in another case involving candidate qualifications, Stapleton v. City of Inkster, 311 F.Supp. 1187 (E.D.Mich. 1970). As we pointed out in that case

> It seems clear to this court that a restriction upon who may be a candidate necessarily affects the efficacy of a person's vote. The effectiveness of the franchise can just as certainly be curtailed by restricting the group from whom candidates may be drawn as by restricting those entitled to cast a vote or by malapportioning a legislative body. Id., p. 1190.

Moreover, we followed the law as established by the Supreme Court in Turner v. Fouche, 396 U.S. 346, that a person has "a constitutional right to be considered for public service without the burden of invidiously discriminatory disqualification" and con-

cluded in Stapleton that, under these circumstances, fundamental rights were at stake which required application of the compelling interest test.

Likewise, other judges of this District, including a three-judge court, have applied the compelling interest test to a City Charter provision and a state statute that imposed residency requirements on candidates. Green v. McKeon, 335 F.Supp. 630 (E.D.Mich. 1971); Mogk v. City of Detroit, 335 F.Supp. 698 (E.D. Mich. 1971). In these cases, as in the Stapleton case, the language of Kramer v. Union School District, 395 U.S. 621, in which the Supreme Court applied the compelling interest test, has been a guide. In Kramer, the court said:

> "Since the right to exercise the franchise in a free and unimpaired manner is preservative of other basic civil and political rights, any alleged infringement of the right of citizens to vote must be carefully and meticulously scrutinized. Reynolds v. Sims, 377 U.S. 533, 562 (1964)," at p. 626.

Kramer, of course, involved a direct infringement on the right of a qualified voter to participate in school elections. But, as stated above, restrictions on who may be a candidate necessarily affect the right to vote, as evidenced by the joining of Plaintiff Dickman in this suit.

In addition, we would note the recent opinion of the Supreme Court in Bullock v. Carter, 40 L.W. 4211, decided February 24, 1972, in which the court said that a filing fee system imposed on prospective candidates in Texas could not be sustained merely upon the showing of a rational basis. Instead, the court insisted that the system be closely scrutinized and "found reasonably necessary to the accomplishment of legitimate state objectives in order to pass constitutional muster".

Next, we must determine whether the City has a compelling interest that is furthered by this requirement. The City asserts

that it has an interest in making sure that a candidate has some commitment to the electoral process. Certainly, this is a proper interest. As recently as Bullock v. Carter, supra, the Supreme Court has recognized that a governmental unit "has an interest, if not a duty, to protect the integrity of its political processes from frivolous or fraudulent candidacies". However, those measures which the City takes to further its interest must be carefully fashioned to attain their purpose without unnecessary infringement on the rights of the electorate. Kramer, supra; Bolanowski v. Raich, 330 F.Supp. 724 (E.D.Mich. 1971).

In order for candidates for city office to be qualified electors at the time of their election, they must have resided in the state for six months and in the locality for 30 days prior to the next election. Michigan Constitution of 1963, Art. II, §1, and M.S.A. §6.1010. To go beyond this and require a year of residency as a registered elector seems to this court to impose the same kind of limitation prohibited in Bolanowski, Green, and Mogk, supra.

As pointed out in Mogk, various officials of the state need only be qualified electors to run as candidates. Thus, candidates for Secretary of State and Attorney General need only show that they have resided in the state for six months or that they are registered voters. M.S.A. §6.1071. Only the Governor and the Lieutenant Governor are required, as candidates, to be registered and qualified voters for a period of time prior to their candidacy. M.S.A. §6.1051. Certainly, the state has as great an interest in the qualifications of its candidates as does the city, and yet it has not found it necessary to impose such a limitation on many important offices.

The charter provision, 12.2, requires a candidate to reside in the City for one year prior to the election. To uphold such a

requirement would undercut those decisions previously rendered by courts of this District. We can see some merit in the proposition that registration to vote indicates a belief in, or commitment to, the electoral process, but we do not see that maintaining that status as a registered elector for a period of one year necessarily has any relationship to determining the commitment of the registered voter to that process. As Judge Keith said in Green, supra, at p. 634,

> In our opinion a candidate is not like a fine vintage wine. His years of residency in a particular community do not necessarily make him a better candidate.

The candidate involved in this action is a registered voter who has been nominated by a duly constituted party. The only distinction between the plaintiff and other certified candidates is the length of time they have been registered electors. In Bolanowski, supra, at p. 730, Judge Feikens said

> [A]ssuming the City has the power so to limit the right of its voters, there is the question of whether the classification created by the charter provision is finely enough tailored to meet the demands of the Equal Protection Clause.

See also, Kramer, supra. In our opinion, the plaintiff candidate has been excluded by a classification which does not meet this test. The result is an improper limitation on the equal protection clause of the Fourteenth Amendment.

For these reasons, this court concludes that the City Charter provision in question violates the equal protection clause of the Constitution and must be held invalid.

We find that the defense of laches, as applied to the circumstances of this case, should not bar plaintiffs' right to relief.

An appropriate order may be submitted.

Ralph M. Freeman
Chief United States District Judge

Dated: Detroit, Michigan
March 17, 1972.

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