

Memo

To: Mayor and Town Council
From: John C. Randolph
Date: May 24, 2021

Recommendation

It is recommended that the Mayor and Town Council give consideration as to whether you wish to impose a residency requirement of one year in order to qualify to run for elected office in the Town.

Discussion

The Mayor and Town Council have requested that I research this matter and bring it back to you for your consideration and discussion at the June meeting of the Town Council. I have looked at the possibility of imposing a residency requirement as long as two years. My research indicates a two year residency requirement would not withstand judicial scrutiny; however, a one year residency requirement would.

In *Board of County Commission of Sarasota County v. Gustafson*, the Second District Court of Appeals considered whether a durational residency requirement for candidates seeking elected office affected fundamental rights. Sarasota County had enacted a two year residency requirement for any candidate that wanted to run for an elected county office, explaining that due to the transient nature of the community, voters were not able to adequately familiarize themselves with the candidates, and some candidates did not have sufficient knowledge of or commitment to Sarasota County to properly serve the county. *Id.* at 1167. The court held that the residency requirement would either need to pass rational basis or strict scrutiny based on the length of the residency requirement. *Id.* at 1167. The court explained that while not all action affecting fundamental rights is subject to the strict scrutiny standard when considering an equal protection standard, the magnitude of the impact upon fundamental rights must be considered:

[A] candidate durational residency requirement that is deemed reasonable is not considered to seriously infringe using the traditional equal protection analysis. While this method of considering an equal protection challenge would appear, at first blush to be putting the cart before the horse, in actually, it places the emphasis where it should be, on the magnitude of the legislation's effect on the fundamental right or suspect class.

Id. at 1167. The court concluded that a two-year candidate residency requirement was unreasonable:

The evolution of communication and transportation that allows individuals to move

easily between communities and states renders such a two-year residency requirement particularly onerous. Appellants could identify no reason for setting the period at two years. There was no evidence that candidates would be any more familiar with county issues for having lived in the county for the preceding two years. In fact, in explaining how the Charter Review Board arrived at the two-year term, as opposed to a three-year or a five-year term, one of its members testified on cross-examination that it was a “judgmental [sic] call.

Id. at 1168. The Court ultimately determined that a two-year residency requirement significantly impacted fundamental rights and was therefore subject to a strict scrutiny analysis, and Sarasota County was unable to show that the two year residency requirement was necessary to fulfil a compelling state interest:

It has become an established part of public life that residency is not a requirement in those situations where government entities rely on nationwide talent searches to fill key government executive positions. Appellants have not only failed to show why two years is necessarily better than one year or even one day, they have failed to show the inadequacy of alternative or less restrictive methods that would accomplish their stated objective.

Id.; *see also* Fl. AGO 2005-67 (recommending that a three year requirement would likely not be upheld).

However, in *Nichols v. State ex rel. Bolon*, 177 So. 2d 467 (Fla. 1965), the Court upheld a one year residency requirement for the election of the City of Melbourne’s City Commissioner. In upholding the one year requirement, the Court stated: “The chancellor was correct in holding that the legislature has the power to impose qualifications for municipal office. The qualification in question is not unreasonable.” *Id.* at 469; *see also Daves v. City of Longwood*, 423 F. Supp. 503 (M.D. Fla. 1976) (upholding special act imposing one-year residency requirement to run for city council).

As such, the length of the residency requirement will determine what standard of scrutiny is used. A two year residency requirement is likely to trigger strict scrutiny and reasons such as having a small or transient town have not been found to be compelling interests that survive the strict scrutiny test. Whereas a one year residency restriction has been upheld under the rational basis standard.

Language from Other Municipalities’ Codes

Article 3 section 3.01(b) of the City of Longwood’s code states the following regarding qualifications of Commissioners:

Qualifications of commissioners. Any qualified elector of the City of Longwood, Florida, who has been a resident of the city for a period of one (1) year next preceding date of qualification, is registered to vote in City election at the time of qualification, and has resided at the time of qualification in the commission district for which he or she qualifies for six (6) months prior to qualification, and who is

otherwise qualified to be a member of the City Commission may be a candidate for election to the City Commission.

Article 2 section 2.02(1)(a) of the City of Melbourne's code states:

The council shall consist of seven (7) members, including the mayor, elected by the qualified voters of the city at large, as hereinafter provided. Members of the city council shall be residents of the city and shall have been residents for at least one (1) year prior to the date of qualifications for office. Additionally, members of the city council other than the mayor shall be residents of and maintain their principal place of domicile in the district for which they seek to qualify and shall have been residents of said district for at least six (6) months prior to the date of qualification for office. All city council members shall be at least eighteen (18) years of age and shall have the qualifications of a city elector. The office of a council member shall be forfeited whenever a member ceases to possess the foregoing qualifications, or when a member accepts any other elective public office.

In Article 2 section 2-1(c), the Town of South Palm Beach requires "Any resident of the Town of South Palm Beach who is a duly registered voter, will be eligible to hold office of Town Council member, provided, however, that he/she will have resided in the Town for a period of at least one year."

Based upon the above, in the event the Council wishes to impose a residency requirement, I would recommend the Council adopt the one year residency requirement.