

ORIGINAL

FILED
SUPREME COURT
STATE OF OKLAHOMA



CASE NO. 120,945

JAN 17 2023

JOHN D. HADDEN
CLERK

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

CHRISTOPHER COWDEN, Plaintiff/Petitioner

v.

OKLAHOMA COUNTY ELECTION BOARD,
ANITA DETOY, CHAIR, DAVID GLOVER, VICE CHAIR AND
DOUG SANDERSON, SECRETARY, Respondents,

AND

JAMES COOPER, Real Party in Interest,

And

CITY OF OKLAHOMA CITY,
Real Party in Interest/Respondent.

RESPONDENT CITY'S RESPONSE TO
PETITIONER'S WRIT OF PROHIBITION

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Received: 1/17/23
Docketed: _____
Marshal: JIM
BOA/OKC: _____
OBA/TUL: _____

January 17, 2023

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STATEMENT OF THE CASE

Article X, § 1 of the Oklahoma City Charter (Charter) provides that on the second Tuesday in February, in odd numbered years, a general election will be held for the offices of Councilmembers, (also termed “Councilors,”) whose terms are expiring. Four Council offices have incumbents with expiring terms in 2023: Wards 2, 5, 6 and 8.

To provide the legally required notice to the Oklahoma County Election Board of the upcoming elections for Council offices, on October 25, 2022, the Oklahoma City Council approved a Resolution authorizing the calling and holding of a general election on Tuesday, **February 14, 2023**, and if necessary, a **runoff election on Tuesday, April 4, 2023**, for the offices of City Councilors representing Wards 2, 5, 6 and 8 (Resolution, which should be contained in the Record forwarded to this Court by the Oklahoma County Election Board). The Resolution set forth the filing period for such offices as December 5, 6, and 7, 2022, at the Oklahoma County Election Board. The Resolution references the candidacy qualifications for City Councilors, which are set forth in Charter Article II, § 6 and read as follows:

Section 6. - Qualifications for Office of Mayor or Councilmember.

No person shall be eligible to the office of Mayor or Councilmember unless such person meets the following qualifications prior to filing a declaration of candidacy as required by this Charter:

- (a) The person must be a citizen of the United States and of the State of Oklahoma;
- (b) The person must be at least 21 years of age;
- (c) The **person must have been a resident of Oklahoma City** or an area annexed into Oklahoma City **for at least one year**;
- (d) For the office of the Mayor, the person must have been a registered voter at an address within Oklahoma City for at least one year immediately preceding the filing of a declaration of candidacy; and

(e) For a Councilmember position representing a ward, the person must have been a registered voter at an address within the ward for at least one year immediately preceding the filing of a declaration of candidacy.

(Charter, 2-8-1927; am. 4-2-1957; am. 11-4-2008; am. 8-4-2021).

(Emphasis added; *ref.* Charter Article II, § 6, certified copy attached to this Brief as Exhibit A, bolding added for emphasis.)

This version of Charter, Article II, § 6, was approved by majority vote of City voters on November 3, 2020, and then by the Governor on August 4, 2021. The effective date was the date of approval by the Governor, hence the reference to “am. 8-4-2021” in the quote set forth above.

On December 5, 2022, Christopher Cowden (Petitioner) filed his declaration of candidacy for the office of Councilmember for Ward 2, representing that he satisfied the qualifications for that office. Subsequently, James Cooper (Real Party in Interest as a rival candidate for Ward 2 Councilmember) filed a contest to Petitioner’s declaration of candidacy on the basis that Petitioner failed to satisfy the one-year ward-voter registration requirement as provided in Article II, § 6(e) of the Charter, as the Petitioner registered to vote at an address within Ward 2 fewer than six months prior to the filing of his declaration of candidacy.

The Oklahoma County Election Board (Board) sustained Cooper’s contest because the facts showed that Petitioner did not satisfy the voter registration requirement.

Following this decision, Petitioner filed an Application with this Court to accept original jurisdiction to review the Board’s decision. In his filing with this Court, Petitioner alleges that the Charter requirement of one-year voter registration in the ward prior to filing a declaration of candidacy for the ward office is effectively preempted by State law and the requirement is also unconstitutional, thus only the State law requirement of six-months ward-voter registration requirement applies to his candidacy. For the specific State law requirements

that Petitioner says must apply to the exclusion of Charter Art. II, § 6(e), please refer to the following:

- 11 O.S. § 16-102.A, last sentence, stating that the “...requirements of Sections 16-109 and 16-110 of this title **shall apply to all municipalities except to the extent that such residency requirements are governed by municipal charter.**”; (emphasis added); and
- 11 O.S. § 16-110, for nonpartisan municipal offices,¹ stating: “A **candidate must also be a registered voter at an address within** the municipality, or of **the ward where the office is from a ward for at least six (6) months prior to filing a declaration of candidacy.**” (emphasis added).

So, in summary, Petitioner in effect alleges that:

(1) The Oklahoma City Charter requirement of one-year voter registration in the ward prior to filing a declaration of candidacy is effectively preempted by State law and is also unconstitutional; and

(2) Only the State law requirement of six-months voter registration in the ward prior to filing a declaration of candidacy applies to Petitioner; and

(3) Therefore, despite not meeting the City Charter requirement of one-year voter registration in Ward 2, he is eligible to be a candidate for Council in Ward 2.²

¹ Oklahoma City’s elections are nonpartisan, per City Charter.

² Petitioner’s claim of eligibility by attacking the Charter’s one-year registration qualification overlooks the record below. The record shows that he only became a registered voter in Ward 2 as of June 30, 2022, meaning that, notwithstanding Charter Art. II, § 6(e), Petitioner did not meet the six-months ward-voter registration requirement in 11 O.S. § 16-110—the requirement Petitioner claims does apply. The City submits that, since Petitioner does not meet the six-months ward-voter registration requirement under State law, it is unnecessary for the Court to even consider Petitioner’s constitutional challenge to the one-year registration requirement set forth in the Charter. Even were the Charter held

ARGUMENTS AND AUTHORITIES

- I. **TITLE 11, SECTION 16-102.A OF THE OKLAHOMA STATUTES SPECIFICALLY CONTEMPLATES CHARTER MUNICIPALITIES ADOPTING THEIR OWN RESIDENCY/VOTER REGISTRATION QUALIFICATIONS FOR MUNICIPAL OFFICE. THE ONE-YEAR WARD-VOTER REGISTRATION REQUIREMENT IN CHARTER ART. II, § 6(e) HAS NOT BEEN PREEMPTED BY STATE LAW. THE STATE LAW ALLOWS A MUNICIPALITY TO HAVE EITHER A LONGER OR SHORTER VOTER-REGISTRATION REQUIREMENT FOR PERSONS WISHING TO FILE AS CANDIDATES FOR ELECTION TO CITY OFFICES.**

Petitioner attempts to argue that the City has effectively been preempted by State law from establishing its own residency/voter registration qualifications to hold municipal office, a claim that is directly contrary to 11 O.S. § 16-102.A. Subpart A reads in part (*ref.* last sentence):

A. *****. The residency requirements of Sections 16-109 and 16-110 of this title shall apply to all municipalities except to the extent that such residency requirements are governed by municipal charter.** (Emphasis added).

The Oklahoma Supreme Court has repeatedly held that it is the Court's "fundamental duty to ascertain and give effect to, or enforce, the Legislature's intent expressed in any statute the Legislature creates." *Torres v. Seaboard Foods, LLC*, 2016 OK 20, ¶ 11, 373 P.3d 1057, 1065 (citing *In re T. H.*, 2015 OK 26, ¶ 9, 348 P.3d 1089, 1092, *Rogers v. Quiktrip Corp.*, 2010 OK 3, ¶ 11, 230 P.3d 853, 859, *State ex rel. Okla. State Dep't of Health v. Robertson*, 2006 OK 99, ¶ 6, 152 P.3d 875, 877-878, and *In re Abrams' Will*, 1938 OK 162, 182 Okla. 215, 77 P.2d 101, 103).

The last sentence of 11 O.S. § 16-102.A clearly contemplates and intends that a municipal charter can provide some other requirement than the residency/voter registration

invalid, Petitioner still cannot meet the municipal candidacy ward-registration requirement of 11 O.S. §16-110.

requirements set forth in 11 O.S. § 16-109 (for partisan elections) or § 16-110 (for nonpartisan elections, as in OKC). Furthermore, and importantly, the last sentence of § 16-102.A does **not** say that the requirements of § 16-110 apply “unless such residency requirements are **less** than what is provided by statute.” Title 11, Section 16-109 of the Oklahoma Statutes, pertaining to nonpartisan municipal elections, requires that municipal candidates be registered voters within the ward for a period of not less than six (6) months prior to the filing of the declaration of candidacy. Here, however, as specifically contemplated by statute, the City and City voters have by Charter adopted a ward-voter registration requirement that is longer than the requirement set forth in State law.

The City submits that State law is clear that the City is not obligated to follow the statutory requirement of **six-month** ward-voter registration at an address in a ward prior to filing a declaration of candidacy, but the City can provide, and here has provided, some other time period for the requirement—i.e., the City’s ward-voter registration requirement is one year, not six months. State law has not effectively preempted the City Charter voter-registration requirement and such requirement is valid notwithstanding that it varies from the State law requirement in 11 O.S. § 16-110.

II. THE CHARTER IS UNAMBIGUOUS AND CLEAR AND MUST BE INTERPRETED ACCORDINGLY. IT PLAINLY REQUIRES THAT CANDIDATES FOR WARD OFFICES MUST BE REGISTERED VOTERS “AT AN ADDRESS WITHIN THE WARD” FOR AT LEAST ONE YEAR IMMEDIATELY PRECEDING THE FILING OF A DECLARATION OF CANDIDACY.

Petitioner argues that in approving the amendment to Charter Art. II, § 6 in 2020, Oklahoma City voters intended only to require candidates for Council position representing a ward to be registered voters somewhere, not that they must be registered voters “at an address

within the ward” for which they wish to run. Such an interpretation renders the latter half of Article II, § 6(e) meaningless and nullifies the specific wording that registration status must be “at an address within the ward.”

The language in Article II, § 6(e) of the Charter is clear. It reads:

(e) For a Councilmember position representing a ward, the person must have been a registered voter at an address within the ward for at least one year immediately preceding the filing of a declaration of candidacy. (Emphasis added).

The principles that apply to interpreting statutes, as cited above, must also apply to interpreting charter provisions. *See Walton v. Donnelly*, 1921 OK 258, ¶ 7, 201 P. 367, 369. Unambiguous laws must be given their plain meaning. Conversely, Petitioner’s construction of the Charter provision is clearly strained. In essence, his interpretation is at odds with Oklahoma statutes concerning voter registration, which provide that voters are only eligible to register “in the precinct of his or her residence,” not prior residences, as Petitioner would ask this Court to accept (*see* 26 O.S. § 4-101 *et seq.*).³ Furthermore, Petitioner’s interpretation with the Charter provision based on the present facts would disregard Oklahoma statutes specific to registration for candidate filing purposes. 26 O.S. § 4-110.1(D) states in relevant part “Registration for candidate filing or party affiliation purposes occurs **at the earliest time the completed voter registration application is received...**” (emphasis added).

The Charter language parallels the statutory requirement but has enlarged the required period of ward-voter registration to one-year instead of six months. Yet the fundamental requirement remains the same, i.e., the ward candidate must be a registered voter at an address in a ward for at least one year prior to filing his/her declaration of candidacy.

³ *See also* 26 O.S. § 4-112, which requires an oath for voter registration purposes. Notably, this oath includes the swearing or affirming of the following: “I reside at the address given.”

Specifically, the relevant statutory language in 11 O.S. § 16-110, as already quoted above, provides

A candidate must also be a registered voter at an address within the municipality, or of the ward where the office is from a ward for at least six (6) months prior to filing a declaration of candidacy.” (Emphasis added).

Clearly then, both the State Legislature in enacting 11 O.S. § 16-110, and the voters of Oklahoma City in approving Charter Art. II, § 6(e), intended not just that ward candidate be a registered voter anywhere in the municipality, but the candidate must have been registered to vote within the ward for a specific time period before seeking office.

Petitioner’s argument that the Charter—and hence also the statute—require voter registration anywhere in the municipality to run for an office in a ward is plainly incorrect. For Oklahoma City Ward 2, or any other ward, the candidate must be registered to vote “at an address within...the ward where the office is from a ward....” This candidate qualification requirement is the same for both Charter and statute; the variance is the amount of time for which registration is required (*see* Argument I above).

III. PETITIONER SUGGESTS THAT THE CITY CANDIDATE FILING PERIOD SET AS DECEMBER 5, 6, AND 7, 2022, FOR THE CITY’S FEBRUARY 14, 2023, GENERAL ELECTION WAS INCORRECT, AND THAT, INSTEAD, THE FILING PERIOD SHOULD HAVE BEEN SET AS FEBRUARY 6, 7, AND 8, 2023. THIS SUGGESTION IS LEGALLY ERRONEOUS.

The following numbered points, supported by State law citations and four exhibits certified by the Oklahoma City Clerk, will demonstrate why Petitioner’s suggestion that the filing period for the February 14, 2023, City General Election should have been in the first full week of February is legally incorrect. The filing period of December 5, 6, and 7, 2022, was legally correct, to wit:

1. Petitioner’s mistaken belief that the filing period should have been set in February 2023, instead of on December 5, 6, and 7, 2022, is likely based on **the second**

sentence of 11 O.S. § 16-110, stating: “To become a candidate, a declaration of candidacy must be filed with the county election board no earlier than 8:00 a.m. on the first Monday in February and no later than 5:00 p.m. on the next succeeding Wednesday.”

2. However, the **second sentence** of 11 O.S. § 16-110 does **not** apply to OKC Council elections because of 11 O.S. § 16-102.A, coupled with the OKC Charter provisions.
3. Title 11 O.S. § 16-102.A explicitly states:

A. The provisions of Section 16-101 et seq. of this title shall not apply to any municipality which is governed by charter; provided, that elections for such municipalities which shall be conducted by the county election board shall be scheduled only on an election date identified by subsection B of Section 3-101 of Title 26 of the Oklahoma Statutes. **However, such a municipality may, by indicating in its resolution calling an election, choose to follow any provision of state law governing elections conducted by a county election board when the municipality's charter or ordinances are silent on the matter addressed by such provision.** * * *. The residency requirements of Sections 16-109 and 16-110 of this title shall apply to all municipalities except to the extent that such residency requirements are governed by municipal charter.⁴ (Emphasis added.)

4. So, based on 11 O.S. § 16-102.A, the second sentence of Section 16-110 *et seq.* of Title 11 does **not** apply to charter municipalities **unless the charter is silent** on the matter **and the municipality chooses to follow one of those specific sections.**
5. The City Charter is not silent and sets the OKC Council General Election as the second Tuesday in February of odd-numbered years. The Oklahoma County Election Board sets the filing period dates to coincide with that election date and to allow compliance with State election notice provisions. We now turn to what the Charter

⁴ The significance of last sentence of § 16-102.A is covered in arguments I and II of this Brief.

and related State election notice statutes provide and to the Oklahoma County Election Board directives to the City Clerk.

6. Charter Art. II, § 2 states that the “Mayor and Councilmembers shall be nominated and elected as provided in Article X of this Charter.” (*Ref.* attached Exhibit B, certified copy of Art. II, § 2.)
7. Charter Art. X, § 1(a), provides:

On the second Tuesday of February of each odd-numbered year, a general election shall be held in the City for the nomination of candidates for the office of Councilmember from each ward for which the term of the incumbent Councilmember expires in that year.” (Emphasis added.) (*Ref.* attached Exhibit C, certified copy of Art. X, § 1.)

In 2023, the second Tuesday of February is February 14, 2023, the date which the Resolution sets as the General Election in Wards 2, 5, 6, and 8.

8. Charter Art. X, § 2(a), provides:
 - (a) Any **person qualified to hold the office** of Mayor or Councilmember under this Charter **may become a candidate for such office by filing a declaration of candidacy with the Oklahoma County Election Board during the time period provided by State law and designated by the Oklahoma County Election Board.** (Emphasis added.) (*Ref.* attached Exhibit D, certified copy of Art. X, § 2.)
9. The filing period for the City’s February 14, 2023, General Election must meet State election laws, which requires that it meet all municipal election notice requirements set by State law, **and that is why the Oklahoma County Election Board tells the City Clerk in writing when the City filing period will be set.** (*Ref.* attached Exhibit E, Notice Letter from Oklahoma County Election Board Secretary to City Clerk Amy Simpson, telling Ms. Simpson that the City Council Election filing period must be set

for December 5, 6, and 7, 2023. The Resolution sets the Council Election filing period for those dates as mandated by the Oklahoma County Election Board.)

10. Why were December 5, 6, and 7, 2023, designated by the Oklahoma County Election Board as the City Council Election filing period? Because of the date of the City's General Election, February 14, 2023 and because of 11 O.S. §16-102.D, quoted immediately below.

11. Title 11, Section 16-102.D of the Oklahoma Statutes provides:

D. After January 1, 2016, no county election board shall be required to conduct a regular or special election for any elective municipal office in any municipality governed by charter **unless the resolution calling the election shall set a candidate filing period of three (3) days to begin not more than twenty (20) days from the date the resolution is required to be submitted to the county election board. In no case shall a resolution calling a regular or special election be submitted to the county election board less than sixty (60) days preceding the election date.** (Emphasis added).

12. Attention is also directed to 26 O.S. §§ 3-101.F and 13-102.B regarding the setting of filing periods for elections for municipalities governed by charter.

13. Pursuant to these various State statutes, the Oklahoma County Election Board told the City Clerk the deadline for the submission of the 2023 Council Election Notice Resolution—this is the Resolution that is in the Election Board record submitted to this Court. The deadline set by the Election Board for submission of the Notice Resolution in 2022 was November 18, 2022. (*Ref.* attached Exhibit E, Notice Letter from Oklahoma County Election Board Secretary to City Clerk Amy Simpson.) **This same letter designates the filing period as December 5, 6, and 7, 2022, per the mandate of Charter Art. X, § 2(a).**

The City submits that the dates of December 5, 6 and 7, 2022, as designated by the Oklahoma County Election Board in its directive to the City Clerk were set as the dates for the legally correct filing period, for the reasons stated above. The February filing period suggested by Petitioner is not legally correct, and practically it would be impossible for the Oklahoma County Election Board to receive candidate declarations six days before the Election Date and still hold the election on the date set. The dates for the filing period suggested by Petitioner are neither workable in practice, nor are they the legally correct process under the City Charter coupled with State law. Petitioner is simply wrong.

IV. THE REGISTRATION REQUIREMENT IN THE CHARTER IS A REASONABLE RESTRICTION TO ADVANCE THE CITY'S COMPELLING INTEREST IN PREVENTING FRIVOLOUS CANDIDACIES

Petitioner alleges that the City's Charter requirement of one year of voter registration in the ward violates the rights to free political expression and association under both the Oklahoma and United States Constitutions. In support of this allegation, Petitioner fails to cite to a single case relating to candidate qualifications.

The Tenth Circuit, in hearing a challenge to a Colorado statute found that there is no recognized fundamental right to candidacy and that a "one-year requirement is not an unreasonable restriction. *Cf. City of Akron*, 660 F.2d at 169 (one-year durational residency requirement does not impair a candidate's First Amendment rights)." *Thournir v. Meyer*, 909 F.2d 408, 411 (10th Cir. 1990). The case involved a challenge to Colorado's statutory requirement that candidates for office not affiliated with a political party be both residents and

registered to vote as “unaffiliated” for one year prior to filing a declaration of candidacy. In upholding the statute, the Court further explained that the purpose of the State’s “durational requirement is to protect the integrity of the party system and to prohibit ‘frivolous’ candidacies. Reasonable restrictions on candidacy to accomplish these ends are sufficient to uphold the statute.” *Id.* (citing *Storer v. Brown*, 415 U.S. 724, 733, 39 L. Ed. 2d 714, 94 S. Ct. 1274 (1974); *Rosario v. Rockefeller*, 410 U.S. 752, 761, 36 L. Ed. 2d 1, 93 S. Ct. 1245 (1973); *Lubin v. Panish*, 415 U.S. 709, 715, 39 L. Ed. 2d 702, 94 S. Ct. 1315 (1974); *Andress v. Reed*, 880 F.2d 239, 242 (9th Cir. 1989). *See also* *Curry v. Bueshcer*, 394 F. App’x 438 (10th Cir. 2010).

Likewise, federal courts in Oklahoma have acknowledged that the government has a compelling interest in “preventing frivolous and fraudulent candidacy” *Fleak v. Allman*, 420 F. Supp. 822, 825 (W.D. Okla. 1976) (citing *Draper v. Phelps*, 351 F. Supp 677, 683 (W.D. Okla. 1972) (internal citations omitted). Further, these courts have upheld the validity of voter registration requirements finding that voter registration is “not only indicative of the seriousness of his candidacy, but also of his willingness to accept the new community as his home and involve himself meaningfully in its affairs” *Id.* Courts in Florida and Alaska have reached similar conclusions in determining that one-year voter registration requirements satisfy the government’s burden:

We conclude that while objective tests for candidacy unavoidably place a burden upon the privilege of running for political office, the burden is both temporary and slight and is necessary to promote governmental interests which are compelling.

Castner v. Homer, 598 P.2d 953, 957 (Alaska 1979) (citing *Gilbert v. State*, 526 P.2d 1131, 1136 (Alaska 1974), 526 P.2d 1131). *See also Nichols v. State*, 177 So. 2d 467, 469 (Fla. 1965).

Accordingly, the Charter's voter registration requirement does not violate the Petitioner's constitutional rights but is instead an objective means of furthering the governmental interest in preventing frivolous candidacies.

CONCLUSION

The City's Charter requirements for one-year residency and one-year voter registration prior to filing a declaration of candidacy are fully consistent with state statutes governing municipal elections, and consistent with both Oklahoma case law and case law around the United States. While visiting the Election Board or local tag agency or simply visiting the Election Board's website to update one's voter registration is a burden, such inconvenience is slight in comparison to the City's compelling-interests in ensuring that elected representatives are engaged in and familiar with the issues facing the residents of the ward.

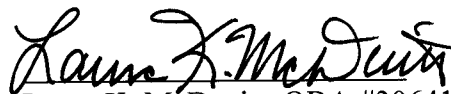
For the foregoing reasons, the City respectfully requests that this Court decline original jurisdiction or in the alternative, if the Court accepts jurisdiction:

1. That the Court rule in the City's favor on the validity of the Charter provision requiring candidates for ward office to be registered voters at an address within the ward for one year prior to filing a declaration of candidacy; and

2. That the Court rule that the candidate filing period was correctly set for December 5, 6, and 7, 2022.

Respectfully submitted,

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CERTIFICATE OF SERVICE

This is to certify that on the 17th of January, 2023, a true and correct copy of the above and foregoing Response To Petitioner's Writ Of Prohibition was delivered electronically to:

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