



ORIGINAL

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

120945

No. _____

CHRISTOPHER MARK COWDEN,
Candidate for City Council,
for the City of Oklahoma City, Ward Two,

Petitioner,

vs.

OKLAHOMA COUNTY ELECTION BOARD,
ANITA DETOY, Chair, DAVID GLOVER, Vice-Chair,
And DOUG SANDERSON, Secretary,

Respondent(s).

FILED
SUPREME COURT
STATE OF OKLAHOMA

DEC 22 2022

JOHN D. HADDEN
CLERK

**APPLICATION TO ASSUME ORIGINAL JURISDICTION AND
PETITION TO ISSUE WRIT OF PROHIBITION AND MANDAMUS**

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**APPLICATION TO ASSUME ORIGINAL JURISDICTION
AND PETITION FOR WRIT OF PROHIBITION AND
MANDAMUS TO PROHIBIT THE COUNTY ELECTION
BOARD'S REMOVAL OF PETITIONER'S NAME ON THE
BALLOT AS A CANDIDATE FOR CITY COUNCIL, CITY
OF OKLAHOMA CITY, WARD TWO**

Petitioner, **CHRISTOPHER MARK COWDEN**, applies to this Court to assume original jurisdiction and grant his petition for a writ of prohibition and mandamus directing the Respondent(s) to restore Petitioner's name to the ballot identified herein and prohibit the removal of his name therefrom. The Petitioner further requests any remedies deemed just and appropriate.

I. FACTUAL AND PROCEDURAL HISTORY

1. On October 25, 2022, the City of Oklahoma City ("The City"), a Charter City of the State of Oklahoma, called for an election for Ward Two. The period for filing for candidacy was December 5th through 7th, 2022.¹
2. On December 5, 2022, Petitioner **CHRISTOPHER MARK COWDEN**, filed for candidacy for City Council for Ward Two. The Petitioner is a forty-four-year-old, U.S. Citizen who has spent the entirety of his life in the Oklahoma City area. He has resided at 4505 North Utah Avenue,

¹ See *City of Oklahoma City, News List*, available online at <https://www.okc.gov/Home/Components/News/News/4262/18> (last visited Dec. 18, 2022).

Oklahoma City, Oklahoma 73112, since 2017,² but had not updated his voter registration from his elderly parent's home where he would annually take them to vote together. Notably, Petitioner has been a registered voter since he was eighteen years old and updated his registration to the 4505 North Utah Avenue address on June 30, 2022.

3. On December 8, 2022, the incumbent Councilmember for Ward Two, **JAMES COOPER**, and in accordance with 26 Okla. Stat. § 5-118, filed a "Petition for Contest of Candidacy" (Cause No. 2022-01) with the Oklahoma County Election Board alleging"

Cowden fails to meet the requirement of being a registered voter of Ward 2 for at least one year prior to filing a declaration of candidacy as required by Article II, Section 6 of the Oklahoma City Charter.³

See Petition for Contest of Candidacy, Appx., Tab 1.

4. Oddly, while only another candidate can raise a contest in multi-candidate race in accordance with 26 Okla. Stat. § 5-118, the incumbent Ward Two Councilmember **JAMES COOPER** gave a

² This address was not in Ward Two until March of 2022 until it was re-districted. Prior to March, Mr. Cowden was pleased with the City Councilman assigned to his prior Ward.

³ Article II, Section 6 of the Oklahoma City Charter requires for a Councilmember 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.**

public statement that the contest was “not his decision,”⁴ which calls into the question the validity of the contest of candidate **COWDEN**. See Appx, Tab 2.

5. On December 13, 2022, pursuant to 26 Okla. Stat. § 5-126, the **OKLAHOMA COUNTY ELECTION BOARD**, by and through its members, **ANITA DETOY**, Chair, **DAVID GLOVER**, Vice-Chair, and **DOUG SANDERSON**, Secretary, conducted a hearing on **JAMES COOPER**’s contest with Petitioner responding:

a. The City of Oklahoma City’s Charter language of requiring, in addition to actual residency, the additional requirement of voter registration of at least one year (as opposed to the state’s requirement of six-months⁵) is unconstitutionally overly restrictive and violative of the rights of Petitioner/Candidate **COWDEN** (and to voters’ rights to elect the candidate of their choice) as it imposes a burden on free political expression and

⁴ Brett Dickerson, *OKC Ward 2 City Council race: Cooper contests Cowden’s candidacy*, Oklahoma City Free Press, available online at <https://freepressokc.com/okc-ward-2-city-council-race-cooper-contests-cowdens-candidacy/> (last visited on December 12, 2022).

⁵ With the City Charter being inapplicable as overly restrictive, the City would revert to the State statute which specifically would reopen the filing period to February. Under the State statute and February filing date, Mr. Cowden meets that deadline for voter registration purposes.

association under the First and Fourteenth Amendments to the United States Constitution.

- b. Next, Petitioner/Candidate **COWDEN** is in fact an eligible candidate to run for office under the plain and overly broad language of the City Charter in that he was at all times: (1) A registered voter (although not in the Ward), and (2) He has been a resident of a residence that is within Ward Two for at least a year (actually since 2017). See Footnote 3, *supra*. The poorly worded City Charter can easily be read in two ways (as opposed to the state statute) that must be construed in the Petitioner's (and the voter's) favor so that the Petitioner **COWDEN** to be allowed on the ballot.
 - c. Finally, additional requirement of residency to include "voter registration" does not survive strict scrutiny and is unconstitutional as it unduly burdens a candidate's right to run for office and the voters' rights to elect the candidate of their choice and the rights to free political expression and association under the First and Fourteenth Amendments to the United States Constitution and those contained in the Oklahoma Constitution.
6. The Board did not issue its vote and decision in writing but orally announced the vote and the adverse ruling sustain the Contest and in

accordance with 26 Okla. Stat. § 5-127 directed the Petitioner's name be stricken from the ballot.

7. The Petitioner does not dispute the facts as represented by Contestant but contends the Oklahoma County Election Board clearly violated its duty to follow state and federal Constitutional law and should be directed by the Court to restore Petitioner's name to the ballot by Writ of Mandamus and Prohibition. 12 Okla. Stat. § 1451; *Stover v. Alfalfa County Election Bd.*, 1975 OK 6, ¶ 8 ("Since the facts are undisputed . . . [the Court is] authorized to compel, by mandamus, the specific action that should have been taken).
8. Both the Petitioner and the voters of Ward Two are exceptionally prejudiced by this decision by the Oklahoma County Election Board who are choosing to interpret a poorly worded City Charter, and hereby respectfully requests an expedited oral argument should the Court deem necessary. The Board's ruling has not only unlawfully deprived Petitioner/Candidate and the voters of Ward Two of the opportunity to stand for election but also prejudices him every day as he is denied the opportunity to engage in knocking on doors, listening to concerns of the voters of Ward Two, lost opportunities in advertising, raising funds – the basic activities in which any candidate must engage if they have any hope of being elected to office. Mr. Cowden's opponents are running while

he has been forced to stand still. Petitioner respectfully submits that this honorable Court must not only grant his request but must do so with haste to minimize the prejudice accompanying this fundamentally anti-democratic injustice.

II. JURISDICTIONAL AUTHORITY

The Oklahoma Supreme Court has general superintending control over all inferior courts, agencies, commissions, and boards created by law, and therefore has jurisdiction to issue writs under Okla. Const., Art. 7, § 4. *See, Macy v. Oklahoma City School Dist. No. 89*, 1998 OK 58, ¶ 12 ("No exercise of judicial or quasi-judicial power by a state entity in an election controversy is beyond this Court's superintending jurisdiction to review by the appropriate extraordinary writ."); *see also Sparks v. State Election Board*, 1964 OK 114, ¶¶ 15-18. When a county election board considers a question upon which the outcome is dependent on the construction of statutory provisions, it acts in a judicial capacity and is subject to the original jurisdiction of this Court. *Stover v. Alfalfa County Election Bd.*, 1975 OK 6, ¶ 8. The Board's decision is final and not appealable. 26 Okla. Stat. § 5-126.

III. REASONS FOR ACCEPTING JURISDICTION

The OKLAHOMA COUNTY ELECTION BOARD, by and through its members, erred in removing Petitioner COWDEN's name from the ballot as a candidate for City Council. Petitioner met the requirements under the duplicitous wording of the charter as he is a registered voter and a resident at the same address since 2017. The Petitioner has no adequate remedy at law and an "Election Code must . . . be liberally construed in order to protect a candidate's right to run for office and the voters' rights to elect the candidate of their choice." *In re Nomination of Flaherty*, 770 A.2d 327 (2001). Next, the City Charter's year-long "voter registration" is arbitrarily overly restrictive that exceeds the six-month requirement of the state statute. See 11 Okla. Stat. § 16-110 and 26 Okla. Stat. § 5-105B.⁶ Finally, any voter registration requirement as a residency requirement to run for office does not survive strict scrutiny as overly burdensome and arbitrary on a citizen's right to run for office and a voter's right to vote for this candidate.

⁶ The state statute at 11 Okla. Stat. § 16-110, as opposed to the unduly restrictive City Charter of Oklahoma City, 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." Under Title 26, section 5-105 provides for a partisan (or as an independent candidate), a person must be registered to vote for six-months preceding the first day of the filing period.

Petitioner and Candidate for City Council **CHRISTOPHER MARK COWDEN** meets the qualifications under the duplicitous reading of the City Charter to seek election for City Council, City of Oklahoma City, Ward Two, and that the Oklahoma County Election Board should be mandated to return his name to the election ballot. The unwritten findings and conclusions of the Oklahoma County Election Board are contrary to the broad reading of the City Charter and the Constitutions of Oklahoma and the United States.

IV. REMEDY AND RELIEF REQUESTED

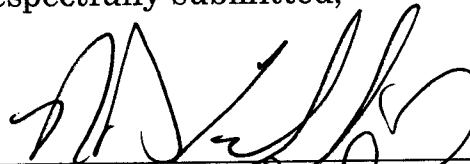
Petitioner **CHRISTOPHER MARK COWDEN** requests this Court to assume original jurisdiction and issue a writ of mandamus directing the Respondents, the **OKLAHOMA COUNTY ELECTION BOARD, ANITA DETOY**, Chair, **DAVID GLOVER**, Vice-Chair, and **DOUG SANDERSON**, Secretary to return the Petitioner on the ballot as a candidate for Ward Two, City Council, City of Oklahoma City as his constitutional right to run for office and the voters' rights to elect the candidate of their choice.

V. CONCLUSION AND PRAYER FOR RELIEF

WHEREFORE, above premises considered, the Petitioner respectfully requests that the Oklahoma Supreme Court assume and exercise original jurisdiction of this matter, and issue writs for prohibition and mandate the Oklahoma County Election Board return **CHRISTOPHER MARK COWDEN** as a candidate for City Council, City of Oklahoma City, Ward Two to the election ballot. Finally, the Petitioner requests any remedies deemed just.

Dated: December 22, 2022

Respectfully submitted,



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ATTORNEY FOR PETITIONER

CERTIFICATE OF SERVICE

I hereby certify that on the 22nd day of December, 2022, a true and correct copy of the above and foregoing document was served to the Respondent(s) at the address below by hand delivery, first class mailing, and/or facsimile.

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Oklahoma City, OK 73105

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David Glover, Vice-Chair, Okla. County Election Board
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Notice provided due to question on constitutionality of statute

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***ATTORNEYS FOR REAL PARTY IN INTEREST
JAMES COOPER, INCUMBENT WARD 2 COUNCIL MEMBER***



ROBERT D. GIFFORD