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Qualifications of Governor and Lieutenant-Governor

QUALIFICATIONS OF GOVERNOR AND LIEUTENANT-GOVERNOR

N.Y. CONST. art. IV, § 2:

No person shall be eligible to the office of governor or lieutenant-governor, except a citizen of the United States, of the age of not less than thirty years, and who shall have been five years next preceding his election a resident of this state.

SUPREME COURT, APPELLATE DIVISION

THIRD DEPARTMENT

Galbraith v. New York Conservative Party[881]
(decided March 22, 1990)

Plaintiff, a prospective candidate for governor, claimed that article IV, section 2 of the New York State Constitution,[882] which establishes a residency requirement to be met before a candidate may run for governor, violated the equal protection clause of the United States Constitution.[883] Using a rational relation test, the court held that the requirement that a gubernatorial candidate reside in New York for five years prior to the election, was constitutional.[884]

The New York State Constitution requires a prospective New York gubernatorial candidate to live in the state for five concurrent years immediately preceding the election. The plaintiff lived and worked intermittently in New York since 1957. He lived in Connecticut from 1980 through 1981, at which point he decided to leave his home in Connecticut and move to New York. While

881. 155 A.D.2d 183, 552 N.Y.S.2d 717 (3d Dep't 1990).

882. N.Y. CONST. art. IV, § 2.

883. U.S. CONST. amend. XIV, § 1 ("All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside.").

884. *Galbraith*, 155 A.D.2d at 186, 552 N.Y.S.2d at 719.

looking for a house, the plaintiff accepted a position as Ambassador to France. He moved to France and lived there for four years. In 1985, the plaintiff resigned and returned to Connecticut. Subsequently, he sold his residence in Connecticut and moved to New York. Upon attempting to run for governor of New York in the 1990 election, he was deemed not to have met the state constitutional residency requirement.[885]

The court ultimately rejected the plaintiff's equal protection claim because the objective of the statute[886] was rationally related to the restrictions imposed. Furthermore, the appellate division stated that the tenth amendment of the Federal Constitution empowers states to impose restrictions upon candidates running for public office.[887]

The rational relation test applied was part of a three-tier analysis articulated in *Dunn v. Blumstein*[888] to establish "the validity of an equal protection claim."[889] This analysis requires that the court examine: 1) the character of the classification in question; 2) the individual interests affected by the classification; and 3) the governmental interest asserted in support of the classification.[890]

The *Galbraith* court found that the character of the classification in question was the type to be analyzed under a rational relation standard, as opposed to the type of classification to be analyzed under strict scrutiny.[891] This is because the court found that candidates running for public office are not a suspect class, and the right to run for office, although indirectly linked to the right to vote, was not a fundamental right.[892] Therefore, the individual interest affected, i.e., the right to run for office, did not deserve heightened scrutiny. Finally, the court found that the

885. *Id.* at 185, 552 N.Y.S.2d at 719.

886. The state has an "interest of reciprocal familiarity of a candidate with State-wide interests and the people with the candidate . . . ." *Id.* at 186, 552 N.Y.S.2d at 719.

887. *Id.*

888. 405 U.S. 330, 335 (1972).

889. *Galbraith*, 155 A.D.2d at 185, 552 N.Y.S.2d at 719.

890. *Dunn*, 405 U.S. at 335.

891. *Galbraith*, 155 A.D.2d at 186, 552 N.Y.S.2d at 719.

892. *Id.* at 184-85, 552 N.Y.S.2d at 719.

quality of the state interest that the statute promoted was rationally related to the state's objective, which was to ensure that those running for office would be acquainted with the peculiarities of the New York system, its strengths and weaknesses, and the local needs of the state. Thus, the court held that the state's interests with reciprocal familiarity of a candidate with the people, and the people with a candidate, results in only minimal infringement on any right to participate in the process and does not violate the equal protection clause of the United States Constitution.[893]

The United States District Court for the District of New Hampshire squarely addressed the issue of durational residency requirements imposed upon candidates running for public office on two separate occasions.[894] As in *Galbraith*, the New Hampshire district court began its analysis by referring to the *Dunn v. Blumstein*[895] test for determining whether a law violates the equal protection clause of the United States Constitution. Interestingly, however, the New Hampshire district court, unlike the New York Court of Appeals, analyzed the residency requirement under a strict scrutiny analysis on both occasions. This was done despite the fact that the class of candidates running for public office is not suspect, nor has the Supreme Court characterized the right to run for office as a fundamental right.[896] In *Chimento v. Stark*, the New Hampshire district court stated that "[w]here, as here, the law in question poses a barrier to a candidacy of a not insubstantial segment of the community and, to that degree, limits the voters in their choice of candidates, we hold that the stricter standard of review should be applied."[897]

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893. *Id.* at 186, 552 N.Y.S.2d at 719-20.

894. *See* Sununu v. Stark, 383 F. Supp. 1287 (D.N.H. 1974), *aff'd*, 420 U.S. 958 (1975); Chimento v. Stark, 353 F. Supp. 1211 (D.N.H.), *aff'd*, 414 U.S. 802 (1973).

895. 405 U.S. 330 (1972).

896. *See* Bullock v. Carter, 405 U.S. 134 (1972).

897. *Chimento*, 353 F. Supp. at 1214. The decision to apply a stricter standard of scrutiny also stemmed from precedent which tends to color state restrictions upon candidacy as somewhat impinging on the right to vote. *Id.* at 1214; *see* Williams v. Rhodes, 393 U.S. 23, 30 (1968) ("the right of individuals to associate for the advancement of political beliefs, and the right

Despite the heightened scrutiny, the court in both cases held that the residency requirements imposed did not violate the equal protection clause of the United States Constitution. In *Chimento*, the court accepted the state's assertion that its justification in imposing a residency requirement on the right to run for governor is twofold.[898] First, the residency requirement would ensure familiarity with the local government. The governor should be the one who is aware of particular needs and problems within the state. Further, it would give the voters "an opportunity to gain by observation and personal contact some firsthand knowledge of the candidates for Governor."[899] Second, the requirement would "prevent frivolous candidacy by persons who have had little previous exposure to the problems and desires of the people of . . . [the state]."[900] Lastly, the *Chimento* court rejected the plaintiff's equal protection argument because the residency requirement did not exclude anyone from running for the office of governor; it only postponed the opportunity. Therefore, there was no complete barrier imposed on the opportunity to run for office.

In *Sununu v. Stark*,[901] the New Hampshire district court simply cited to *Chimento*'s reasoning as to why strict scrutiny was applied.[902] The court listed three principal state interests in a resi-

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of qualified voters, regardless of their political persuasion, to cast their votes effectively") (quoting *Chimento*, 353 F. Supp. at 1214); *see also* Bullock v. Carter, 405 U.S. at 143 ("the rights of voters and the rights of candidates do not lend themselves to neat separation; laws that affect candidates always have at least some theoretical, correlative effect on voters.").

However, the *Chimento* court also noted that the barrier to participate in the race for candidacy affected a "not insubstantial segment of the community." *Chimento*, 353 F. Supp. at 1214. The court cited to a statistical analysis presented by the plaintiff "of the number of people who have not lived in New Hampshire for seven years." *Id.* at 1214 n.6.

898. *Chimento*, 353 F. Supp. at 1215. The court began its discussion by stating, "[a] state's right to impose restrictions on one seeking public office is a power reserved to the states under the Tenth Amendment of the United States Constitution." *Id.*

899. *Id.*

900. *Id.*

901. 383 F. Supp. 1287 (1974), *aff'd*, 420 U.S. 958 (1975).

902. *Id.* at 1290.

dency requirement for a state senatorial position. First, familiarity with needs of the state government; second, exposure to the voters; and third, to "prevent political carpetbagging."[903] Finally, the court noted that if this constitutional provision is to be changed, it should be done through the ballot, not through the judiciary.[904]

The New York Court of Appeals' decision to apply rational basis scrutiny in determining the constitutionality of a state constitutional residency requirement imposed upon candidates running for public office, subsequent to two United States district court decisions that applied heightened scrutiny in analyzing similar requirements appearing in another state constitution, may stem from the inconsistent language appearing in the seminal United States Supreme Court case of *Bullock v. Carter*.[905]

In *Bullock*, the Court first addressed the issue of state imposed restrictions on candidates for public office.[906] The Court decided that the restriction would be "closely scrutinized"[907] although the Court had not previously "attached such fundamental status to candidacy as to invoke a rigorous standard of review."[908] This was because the exclusionary effect of the filing fee affected voters' rights in a way that was "neither incidental nor remote."[909]

However, it is clear that the Supreme Court did not apply strict scrutiny in analyzing the Texas statute despite its call for close scrutinization.[910] For example, the court wrote, "that the laws must be '*closely scrutinized*' and found *reasonably necessary* to the accomplishment of *legitimate state objectives* in order to pass constitutional muster."[911] The Court proceeded to reject the state's claim that the statute be scrutinized under a rational rela-

903. *Id.*

904. *Id.* at 1291.

905. 405 U.S. 134 (1972).

906. *Id.* at 141. A Texas statute imposed a filing fee upon those persons who wished to have their name(s) placed on the ballot in a primary election. *Id.* at 135.

907. *Id.* at 144.

908. *Id.* at 142-43.

909. *Id.* at 143-44.

910. *Id.* at 144.

911. *Id.* (emphasis added).

tion standard,[912] and wrote that, "under the standard of review we consider applicable to this case, there must be a showing of *necessity*."[913] The Court did not use the words traditionally associated with strict scrutiny analysis, that is, "compelling state interest" or "narrowly tailored" objectives. Therefore, Supreme Court commitment to a particular form of scrutiny when analyzing a state constitutional restriction upon candidates running for public office is not entirely clear.

Despite the different standards of review applied in the New York Court of Appeals and the federal courts, all have concluded that such residency requirements do not violate the equal protection clause of the United States Constitution and, at a minimum, survive an analysis under the rational relation standard.

912. *Id.*

913. *Id.* at 147 (emphasis added).