STATE OF TENNESSEE
OFFICE OF THE ATTORNEY GENERAL

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Opinion No. 17-36

Residency and Voter Registration Requirements for Sheriff Candidates

Question

What residency and voter registration requirements does Tenn. Code Ann. § 8-8-102(a)(3) impose on potential candidates for sheriff?

Opinion

Tennessee Code Annotated § 8-8-102(a)(3) imposes two requirements on potential candidates who seek to qualify for election or appointment to the office of sheriff. First, the candidate must be a "qualified voter of the county," which requires the candidate to satisfy the qualifications in Tenn. Code Ann. § 2-2-102, but does not require the candidate to be registered to vote. Second, the candidate must have been a "resident of the county for one (1) full year" prior to the qualification deadline.

ANALYSIS

Article VII, § 1 of the Tennessee Constitution provides that the "qualified voters of each county" shall elect a sheriff and directs that a sheriff's "qualifications and duties" be "prescribed by the General Assembly." See Boyce v. Tenn. Peace Officer Standards & Training Comm'n, 354 S.W.3d 737, 741 (Tenn. Ct. App. 2011). Pursuant to this provision, the General Assembly enacted Tennessee Code Annotated § 8-8-102, subsection (a) of which enumerates the requirements an individual must satisfy "to qualify for election or appointment to the office of sheriff." See Op. Tenn. Att'y Gen. No. 02-58 (May 3, 2002) (noting that a different version of this provision "sets forth the mandatory requirements" a candidate for sheriff must satisfy).

The General Assembly has prescribed that a candidate for sheriff must

> [b]e a qualified voter of the county and a resident of the county for one (1) full year prior to the date of the qualifying deadline for running as a candidate for sheriff.

Tenn. Code Ann. § 8-8-102(a)(3). The text and history[1] of § 8-8-102(a)(3) demonstrate that this provision establishes two separate requirements that a candidate for sheriff must satisfy.

[1] Before 2011, § 8-8-102(a)(3) required only that a candidate for sheriff "[b]e a qualified voter of the county." See Tenn. Code Ann. § 8-8-102(a)(3) (2010). When it replaced the existing § 8-8-102 with a new version in 2011, the Generally Assembly retained this requirement without altering the language. See 2011 Tenn. Pub. Acts ch. 370, § 1.

First, a candidate for sheriff must "[b]e a qualified voter of the county." This mandates that a candidate for sheriff satisfy the criteria in Tenn. Code Ann. § 2-2-102 but does not require a candidate to be registered to vote.

A "qualified voter" is defined in the Tennessee Code as a "citizen of the United States eighteen (18) years or older who is a resident of this state," unless the individual is disqualified by other provisions of the Code. Tenn. Code Ann. § 2-2-102; *see also Halbert v. Shelby Cty. Elec. Comm'n*, 31 S.W.3d 246, 249 n.5 (Tenn. 2000) ("'Qualified voter' is defined as a United States citizen who is 18 or older and who is a resident of Tennessee."). A candidate for sheriff must therefore be a citizen of the United States who is at least 18 years old and who is a resident of Tennessee.

The candidate does not, however, have to be *registered* as a voter in the county to be a "qualified voter of the county" within the meaning of § 8-8-102(a)(3). In *Halbert*, the Tennessee Supreme Court held that the term "resident voter" as used in the charter of the Memphis City School Board required a candidate only "to possess the legal qualifications which would entitle him or her to vote in the election *if registered*" and did not require the candidate to be registered to vote. *Halbert*, 31 S.W.3d at 249 (emphasis added). Relying on its 1918 decision in *Trammel v. Griffin*, 141 Tenn. 139, 207 S.W. 726, the Court explained that "registration laws do not pertain to the 'qualifications' that citizens are required to possess before being 'entitled to vote' but rather to the regulation of the exercise of the right." *Halbert*, 31 S.W.3d at 248. As a result, "[o]ne qualified to vote in [an] election[] is likewise a qualified voter" and "registration is not necessary to make one a 'voter in said city.'" *Trammel*, 141 Tenn. at 144, 207 S.W. at 727. Similarly, this Office has previously opined that a provision in the Lebanon City Charter requiring the "consent of three-fourths majority of the qualified voters of said City" required the approval of three-fourths of all individuals who were qualified to vote, not registered to vote. *See* Op. Tenn. Att'y Gen. No. 99-77 (Apr. 5, 1999); *see also* Op. Att'y Gen. No. 15-72 (Nov. 3, 2015) (concluding that "qualified elector" as used in Tenn. Code Ann. § 7-53-301 refers not to registered voters but to individuals "qualified to vote").

Under this *Halbert* principle, a candidate for sheriff is not required to have registered to vote in a county to satisfy the statutory requirement that he "[b]e a qualified voter of the county." A candidate for sheriff who "possess[es] the legal qualifications that would entitle him to vote" in that county is a "qualified voter of the county." *Halbert*, 31 S.W.3d at 249.

Second, § 8-8-102(a)(3) requires that a candidate for sheriff have been a "resident of the county" for one full year before the qualification deadline. This durational residency requirement does not violate any provision of the Constitution and must be satisfied by potential candidates for sheriff.

By requiring a candidate for sheriff to be a "qualified voter *of the county*," § 8-8-102(a)(3) has always imposed a residency requirement on candidates for sheriff. In 2011, however, the General Assembly expanded this requirement by adding a durational component to the residency requirement. *See* 2011 Tenn. Pub. Acts ch. 370, § 1. Now § 8-8-102(a)(3) mandates that a candidate for sheriff be "a resident of the county for one (1) full year prior to the date of the qualifying deadline for running as a candidate for sheriff."

This durational residency requirement is similar to other provisions in the Tennessee Constitution and Code requiring some length of residence in a particular district or county before an individual is eligible for an elected office. *See, e.g.*, Tenn. Const. art. II, § 9 ("No person shall be a Representative unless he . . . shall have been a citizen of this State for three years, and a resident in the county he represents one year, immediately preceding the election."); *id*., art. II, § 10 ("No person shall be a senator unless he . . . shall have resided three years in this State, and one year in the county or district, immediately preceding the election."); *id.* art. VI, § 4 ("Every Judge of [inferior courts] . . . shall before his election, have been a resident of the State for five years and of the circuit or district one year."); Tenn. Code Ann. § 8-14-102(b)(1)(A) ("The district public defender . . . shall have been a resident of the state for five (5) years and of the judicial district for one (1) year."). And the U.S. Constitution imposes similar durational residency requirements on candidates for Representative, *see* U.S. Const. art. I, § 2, cl. 2; Senator, *see id.* art. I, § 3 cl. 3; and President, *see id.* art. II, § 1, cl. 5.

The requirement in § 8-8-102(a)(3) that a candidate for sheriff have been a resident of the county for one year does not raise any constitutional concerns. Similar length durational residency requirements imposed on candidates for elected state office have been consistently upheld by courts against constitutional challenges grounded in the Equal Protection and Due Process Clauses of the Fourteenth Amendment and in the First Amendment. *See, e.g. Sununu v. Stark*, 420 U.S. 958 (1975), *aff'g* 383 F. Supp. 1287 (D.N.H. 1974) (summarily affirming the holding of a three-judge district court that a seven-year residency requirement for state senator was constitutional); *Chimento v. Stark*, 414 U.S. 802, *aff'g* 353 F. Supp. 1211 (D.N.H. 1973) (same for seven-year residency requirement for governor); *City of Akron v. Bell*, 660 F.2d 166 (6th Cir. 1981) (upholding one-year residency requirements for certain elected officials); *Hatcher v. Bell*, 521 S.W.2d 799 (Tenn. 1974) (upholding the five-year residency requirement for inferior court judges); *Lewis v. Gibbons*, 80 S.W.3d 461 (Mo. 2002) (same for a one-year residency requirement for circuit judges); *State ex rel. Brown v. Summit Cty. Bd. of Elec.*, 545 N.E.2d 1256 (Ohio 1989) (same for a two-year residency requirement for city council); *see also Thournir v. Meyer*, 909 F.2d 408 (10th Cir. 1990) (upholding a one-year registration requirement for unaffiliated candidates).

Unlike an individual's right to vote, the "right of candidacy is not a fundamental right." *Molina-Crespo v. U.S. Merit Sys. Prot. Bd.*, 547 F.3d 651, 659 (6th Cir. 2008); *see also Civil Serv. Merit Bd. v. Burson*, 816 S.W.2d 725, 733 (Tenn. 1991) ("The United States Supreme Court has held . . . that there is no fundamental right to run as a candidate for elective public office.") (citing *Bullock v. Carter*, 405 U.S. 134, 142-43 (1972)). As a result, the "existence of barriers to a candidate's access to the ballot 'does not of itself compel close scrutiny.'" *Clements v. Fashing*, 457 U.S. 957, 963 (1982) (plurality) (quoting *Bullock*, 405 U.S. at 143). Instead, candidate restrictions must be "examine[d] in a realistic light" to determine "the extent and nature of their impact on voters." *Bullock*, 405 U.S. at 143.

Accordingly, to evaluate the constitutionality of a particular candidate-eligibility requirement, a court "must weigh 'the character and magnitude of the asserted injury to the rights protected by the First and Fourteenth Amendments' against 'the precise interests put forward by the State as justifications for the burden imposed by its rule.'" *Citizens for Legis. Choice v. Miller*, 144 F.3d 916, 920 (6th Cir. 1998) (quoting *Anderson v. Celebrezze*, 460 U.S. 780, 789 (1983)). Durational residency requirements only "minimally infringe[] upon the rights of voters to participate in the election process" because they "do[] not unfairly burden a discrete minority group

of voters" and are "totally unrelated to the status of voters." *Antonio v. Kirkpatrick*, 579 F.2d 1147, 1149 (8th Cir. 1978). Nor do they foreclose an individual from ever being a candidate; the "candidacy is only delayed -- not barred." *Howlett v. Salish & Kootenai Tribes*, 529 F.2d 233, 244 (9th Cir. 1976).

Durational residency requirements are thus "reasonable, nondiscriminatory restrictions" that are subject only to rational basis review under the balancing test. *Citizens for Legis. Choice*, 144 F.3d at 921 (quoting *Anderson*, 460 U.S. at 788); *see Antonio*, 579 F.2d at 1149 (applying "the traditional reasonable basis test" to a durational residency requirement). Indeed, state provisions requiring a particular period of residency warrant particular deference because they "establish a qualification" for the officers of a state, a "decision of the most fundamental sort for a sovereign entity." *Gregory v. Ashcroft*, 501 U.S. 452, 460 (1991); *see id.* ("Through the structure of its government, and the character of those who exercise government authority, a State defines itself as a sovereign."). A state's "power to prescribe the qualification of [its] own officers . . . should be exclusive and free from external interference, except as so far as plainly provided by the Constitution of the United States." *Id.* (alterations in original) (quoting *Taylor v. Beckham*, 178 U.S. 548, 570-71 (1900)).

Here, the State's interests in imposing a durational residency requirement on candidates for sheriff are sufficient to justify any incidental impact the requirement may have on voters' rights. The requirement that an individual be a resident of the county for one year before being eligible to be elected as its sheriff furthers the State's important interests in providing "the voters the opportunity to become acquainted with the candidate's ability, character, personality and reputation" and in "ensur[ing] that the candidate have the opportunity to know the customs and the mores of the people." *Hatcher*, 521 S.W.2d at 805; *see also Lewis*, 80 S.W.3d at 466 ("The purpose of residency statutes is to ensure that government officials are sufficiently connected to their constituents to serve them with sensitivity and understanding."); *Zobel v. Williams*, 457 U.S. 55, 70 (1982) (Brennan, J., concurring) ("[A]llegiance and attachment may be rationally measured by length of residence."). The requirement represents the State's sovereign choice about the qualifications its sheriffs must possess to best serve their county and imposes no significant burdens on voters' fundamental rights. Accordingly, the one-year requirement is consistent with the dictates of the Constitution, and candidates for sheriff must satisfy it before being eligible for election or appointment to the office.

In sum, Tenn. Code Ann. § 8-8-102(a)(3) imposes two requirements on potential candidates who seek to qualify for election or appointment to the office of sheriff. First, the candidate must be a "qualified voter of the county," which requires the candidate to satisfy the qualifications in Tenn. Code Ann. § 2-2-102, but does not require the candidate to be registered to vote. Second, the candidate must have been a "resident of the county for one (1) full year" prior to the qualification deadline.

HERBERT H. SLATERY III
Attorney General and Reporter

ANDRÉE SOPHIA BLUMSTEIN
Solicitor General

JONATHAN DAVID SHAUB
Assistant Solicitor General

Requested by:

The Honorable Judd Matheny
State Representative
215 War Memorial Building
Nashville, Tennessee 37243