

M E M O R A N D U M

TO: Legal Team

DATE: May 26, 1995

FROM: Bernard Zimmerman

SUBJECT: Residency Requirements for Elected Office.

I have reviewed a fairly comprehensive annotation entitled "Validity of Requirement that Candidate or Public Officer Have Been Resident of Governmental Unit for Specified Period," 65 ALR 3d 1048, together with its July 1994 update. Coupled with a review of the annotations to the Equal Protection Clause dealing with residency requirements, my conclusion is that the analysis of residency requirements contained in Howard and Deanne's Georgetown Law Review article (at pages 1430 through 1434) is still valid. However, the trend in the more recent cases has been to apply a strict scrutiny test and find no compelling state interest for long (more than two years) requirements. A minority of courts continue to use the rational relationship to a state interest test.

The longest residency requirement I could find was a Missouri ten-year residency requirement for statewide public office, declared unconstitutional using the rational relationship test in Antonio v. Kirkpatrick, 579 F.2d 1147 (8th Cir. 1978).

Courts have held unconstitutional the following residency requirements:

1. Five years for county commissioner. Lucas v. Woodworth, 243 SE.2d 28;
2. Five years for city board or commission. Bay Area Women's Coalition v. San Francisco, 78 Cal.App.3d 961 (1978);
3. Two years for municipal judge. Stener v. Clerk of Grosse Point Park, 272 NW.2d 693 (Mich.App. 1978);
4. Four years for county council. Brill v. Carter, 455 F.Supp. 172 (Dist. Maryland, 1978).

One case upheld a five-year residency requirement for circuit judge, Thatcher v. Bell, 521 SW.2d 799 (Tenn.) A number of cases upheld two-year residency requirements while other cases found two

years to be unconstitutional. Most one-year requirements were upheld; some were not, such as the California one-year residency requirement for candidates for city office. Johnston v. Hamilton, 15 Cal.3d 461.

Review of the cases by type of office disclosed the following:

1. For governor, lieutenant governor or similar statewide office, the longest term upheld was New Hampshire's seven-year requirement. The ten-year requirement was found unconstitutional. A one-year requirement was found constitutional.
2. For State senate or assembly, four cases have upheld three-year requirements and several cases have upheld one-year requirements.
3. At the county level, a two-year requirement has been upheld, while several five and four-year requirements have been stricken.
4. At the city level, one older case upheld a three-year requirement, several cases have upheld two-year requirements and many cases have upheld one-year requirements. At the same time, numerous cases have struck five, four, three, and two year requirements and one case struck a one-year requirement.
5. For judge, one case, noted above, upheld a five-year requirement, whereas another case struck a two-year requirement and a third struck a six-month requirement.

More research can be done, if necessary, and the cases cited in the annotations checked to see if they were accurately reported. Since CNMI can make an even more compelling case than New Hampshire, long residency requirements for statewide office should be upheld. However, the New Hampshire case is an early one, and I am not certain that seven years would have been upheld if the case had been decided in 1995. For the legislature, three years seems to be defensible; while for local positions, two years appears defensible. Longer periods may invite challenges and will have to be defended less on existing caselaw and more on CNMI's unique circumstances. My sense is that the longer the CNMI is in union with the United States, the more difficult it will be for federal courts, at least, to accept the uniqueness argument.

I suggest that we defer further research until we see exactly what residency requirements are being proposed for what positions.