

SUPREME COURT OF GEORGIA

Cox v. Barber, 275 Ga. 415

568 S.E.2d 478 (2002) · No. S02A1818 · Decided August 14, 2002

SUMMARY

The Supreme Court of Georgia held that a statutory requirement that a Public Service Commission candidate reside in the relevant district for at least 12 months before the general election was constitutional. Because J. Mac Barber had not resided in District Four for the required period, the court concluded that the Secretary of State properly disqualified him from the 2002 election and reversed the trial court.

CASE DETAILS

COURT	Supreme Court of Georgia
WRITING FOR THE COURT	Per Curiam; All the Justices
JURISDICTION	Georgia
DECIDED	August 14, 2002
DOCKET	S02A1818
DISPOSITION	reversed
PROCEDURAL POSTURE	Discretionary appeal from a superior court judgment ordering the Secretary of State to place Barber's name on the primary ballot for the district four seat on the Georgia Public Service Commission.
STANDARD OF REVIEW	De novo review of the statutory interpretation and constitutional challenge; the court applied the flexible Anderson-Burdick framework to the election-law restriction.
PRECEDENTIAL VALUE	Published precedential opinion of the Supreme Court of Georgia.
PARTIES	Cathy Cox, Secretary of State of Georgia v. J. Mac Barber

TOPICS

- ballot access
- election contests
- election law
- equal protection
- statutory interpretation

PRACTICE AREAS

- election law
- constitutional law
- administrative law
- statutory interpretation

QUESTIONS PRESENTED

1. Whether OCGA § 46-2-1(b) requires a Public Service Commission candidate to have resided in the geographic territory comprising the district for twelve months before the general election.
2. Whether applying the twelve-month residency requirement to Barber after reapportionment violated equal protection under the United States Constitution or the Georgia Constitution.

HOLDINGS

1. OCGA § 46-2-1(b) requires a candidate for the Public Service Commission to have resided in the geographic territory within the district for twelve months before the general election. The requirement is not excused because reapportionment changed the district boundaries.
2. Applying the twelve-month residency requirement to Barber did not violate equal protection under the United States Constitution or the Georgia Constitution because the requirement was rationally related to legitimate state interests and did not impose an unreasonable burden on the right to vote or to seek public office.

KEY QUOTATIONS

“Because the statutory requirement is constitutional and Barber has not resided in district four for twelve months prior to the election, we hold that the Secretary of State properly concluded that he was disqualified from being a candidate for that PSC seat.” (275 Ga. at 479)

“Therefore, we hold that requiring Barber to reside in district four for twelve months prior to the general election in November has not denied him equal protection under the United States Constitution or the Georgia Constitution.” (275 Ga. at 482)

FACTUAL BACKGROUND

Georgia law required a candidate for the Public Service Commission to have resided in the relevant district for at least twelve months before the election. Following reapportionment, Jackson County was moved from district four to district two, and Barber, who had been residing in Jackson County in November 2001, became a legal resident of Banks County in district four on January 15, 2002. Barber qualified for the district four race in June 2002, but lacked twelve months of residence in the geographic territory comprising district four before the November 2002 general election.

PROCEDURAL HISTORY

An administrative law judge concluded that Barber did not satisfy the twelve-month residency requirement for a Public Service Commission district candidate. The Secretary of State adopted that decision and disqualified Barber. On judicial review, the superior court held the residency requirement unconstitutional as applied and ordered Barber placed on the ballot. The Supreme Court of Georgia granted discretionary review and reversed.

DISPOSITION

reversed

CASES CITED

- Mayor &c. of Hapeville v. Anderson, 246 Ga. 786, 787, 272 S.E.2d 713 (1980)
- Griggers v. Moye, 246 Ga. 578, 272 S.E.2d 262 (1980)
- Lubin v. Panish, 415 U.S. 709, 715-716, 94 S. Ct. 1315, 39 L. Ed. 2d 702 (1974)
- Bullock v. Carter, 405 U.S. 134, 143, 92 S. Ct. 849, 31 L. Ed. 2d 92 (1971)
- Sununu v. Stark, 420 U.S. 958, 95 S. Ct. 1346, 43 L. Ed. 2d 435 (1975)
- Chimento v. Stark, 414 U.S. 802, 94 S. Ct. 125, 38 L. Ed. 2d 39 (1973)
- Robertson v. Bartels, 150 F. Supp. 2d 691 (D.N.J. 2001)
- McKinney v. Kaminsky, 340 F. Supp. 289 (M.D. Ala. 1972)
- Woodward v. City of Deerfield Beach, 538 F.2d 1081, 1082 n.1 (1976)
- Burdick v. Takushi, 504 U.S. 428, 434, 112 S. Ct. 2059, 119 L. Ed. 2d 245 (1992)
- Anderson v. Celebrezze, 460 U.S. 780, 788, 103 S. Ct. 1564, 119 L. Ed. 2d 547 (1983)
- Headlee v. Franklin County Board of Elections, 368 F. Supp. 999 (S.D. Ohio 1973)
- La Porte County Republican Central Committee v. Board of Commissioners, 43 F.3d 1126 (7th Cir. 1994)

OPINION

PER CURIAM.

568 S.E.2d 478 (2002) 275 Ga. 415 COX v. BARBER. No. S02A1818. Supreme Court of Georgia. August 14, 2002. *479 Thurbert E. Baker, Atty. Gen., Dennis R. Dunn, Deputy Atty. Gen., for appellant. Chilivis, Cochran, Larkins & Bever, Nickolas P. Chilivis, John K. Larkins, Jr., Charles S. Baker, Harold S. Gulliver, Atlanta, for appellee. PER CURIAM.

In this election contest, the trial court ordered Secretary of State Cathy Cox to place candidate J. Mac Barber's name on the primary ballot for the district four seat on the Georgia Public Service Commission. We granted the Secretary of State's application for discretionary appeal to consider whether the trial court correctly held that the one-year residency requirement in OCGA § 46-2-1(b) is unconstitutional as applied to Barber.

Because the statutory requirement is constitutional and Barber has not resided in district four for twelve months prior to the election, we hold that the Secretary of State properly concluded that he was disqualified from being a candidate for that PSC seat.

Therefore, we reverse the trial court. The Georgia Public Service Commission is a five-member body created under the Constitution of the State of Georgia.[1] OCGA § 46-2-1(a) provides that commissioners are elected statewide for six-year terms.

In 1998, the Georgia General Assembly amended OCGA § 46-2-1 to establish that new members elected to the commission must reside within specific districts. Subsection (b) now provides: "In order to be elected as a member of the commission from a Public Service Commission District, a person must have resided in that district for at least 12 months prior to election thereto." [2] The

legislature made this residency requirement effective for elections for districts three and five in 2000, districts one and four in 2002, and district two in 2004.[3] Following the 2000 decennial census, the Georgia General Assembly amended the statute to change the boundaries of the PSC districts, effective April 2002.[4] As part of the reapportionment process, the legislature moved Jackson County from district four to district two.

In 1999 Barber moved to DeKalb County to run for the district three seat on the PSC. After his defeat, he returned to Jackson County where he was residing in November 2001. The trial court found that Barber became a legal resident of Banks County on January 15, 2002.

In June 2002, Barber qualified to run for the district four seat on the PSC. His opponent challenged his eligibility on the grounds that Barber did not reside in district four and had not resided within the district for the required twelve months.

After a hearing, an administrative law judge concluded that Barber did not meet the one-year residency requirement in OCGA § 46-2-1(b). The Secretary of State adopted the ALJ's *480 initial decision as the final agency decision and disqualified Barber as a candidate for the PSC seat in district four. Barber filed a petition for judicial review in superior court.

The trial court concluded that OCGA 46-2-1(b) was unconstitutional as applied to Barber because it disqualified him from seeking the PSC seat on the grounds that he would not reside within the district for one year prior to the general election in November 2002.

The trial court ordered the Secretary of State to place Barber's name on the ballots for the August 20 primary election. Because the primary will be held next week, we agreed to give expedited review of this appeal. 1.

In construing statutes, courts shall look diligently for the intention of the General Assembly.[5] The words of a statute should be given a reasonable and sensible interpretation to carry out the legislative intent and render the statute valid.[6] Applying these rules, we interpret the residency provision in OCGA § 46-2-1 as requiring a candidate for the PSC to be a resident of the territory within the district for 12 months prior to the general election.

This interpretation is consistent with similar residency requirements in the Georgia Constitution for other state and county offices.[7] The 1983 Georgia Constitution requires members of the Georgia General Assembly to "have been legal residents of the territory embraced within the district from which elected for at least one year." [8] As the State Attorney General noted in interpreting the comparable provision in the 1976 Constitution, our Constitution does not create any exception to the one-year residency requirement due to reapportionment of the district.[9] In this case, Barber admits that he was a resident of Jackson County, which is now in district two, in November 2001 and did not attempt to become a resident of Banks County in district four until January 2002.

Because Barber was not a resident of the geographic territory in district four during the twelve months prior to the November 2002 general election, he is not eligible to run for the PSC seat in that district in this year's election. 2.

In invalidating the residency requirement, the trial court concluded that OCGA § 46-2-1 violated equal protection by disqualifying Barber because he "will not have resided within District 4 as it has been reconfigured since reapportionment (April 11, 2002) for one year prior to the November 5, 2002, General Election." Barber contends that the trial court was correct because district four did not exist for the minimum twelve months specified by the residency requirements of OCGA § 46-2-1(b).

The United States Supreme Court has never considered directly the validity of durational residency requirements for candidates for public office. In considering the filing-fee requirement for candidates, the Court stated: "The right of a party or an individual to a place on a ballot is entitled to protection and is intertwined with the rights of voters." [10] Moreover, the Court noted that in evaluating candidate restrictions "it is essential to examine in a realistic light the extent and nature of their impact on voters." [11] Lower court opinions are inconsistent on the validity of requirements that a candidate must reside within a district for a specific time. [12] The Supreme Court has summarily *481 affirmed decisions of three-judge panels upholding the seven-year residency requirement in the New Hampshire Constitution for candidates for governor and state senator. [13] Other decisions have struck down much shorter residency requirements imposed on candidates, including a recent federal district court decision that invalidated New Jersey's one-year residency requirement for candidates for the state senate and general assembly. [14] In addition, there is no single standard to apply in evaluating equal protection challenges to residency requirements for candidates. [15] Instead, the Supreme Court has adopted a flexible standard depending on the extent to which the challenged regulation imposes a burden on First and Fourteenth Amendment rights. [16] "[W]hen a state election law provision imposes only 'reasonable, nondiscriminatory restrictions' upon the First and Fourteenth Amendment rights of voters, 'the State's important regulatory interests are generally sufficient to justify' the restrictions." [17] Residency requirements for candidates serve the important state interest of supporting our representative form of government.

Requiring candidates to live in a district for a reasonable period of time before the election encourages them to become familiar with the problems, needs, and concerns of the people they seek to represent; it also exposes voters to the character, experience, and views of the individuals who seek to represent them.

In addition, it ensures voters that their elected representatives will have at least a minimum amount of ties to the community. Arrayed against the state's legitimate interest in having informed voters and candidates is the individual voter's interest in having a choice at the ballot and the candidate's

interest in the continued availability of political opportunity.[18] Our state's residency requirement for the state Public Service Commission is of relatively short duration and applies to a limited number of potential candidates: the persons who moved into the relevant district since last November.

Under our interpretation of the PSC statute, it does not disqualify long-time residents of counties that were placed in district four during the reapportionment process. Thus, unlike the case cited by Barber in which almost one half the residents were disqualified from running for village elections due to the village's residency requirement,[19] this case does not involve a substantial number of residents excluded from seeking office or place a severe limitation on the voters' right to choose among candidates running for the PSC.

Moreover, Barber has not been deprived of the opportunity to qualify and run for a seat on the PSC; voters in district three had the opportunity to vote for him in the 2000 elections, and he can again present himself to the voters as a candidate for the PSC in the 2004 elections. It is only because of the staggered terms for the five seats on the PSC that he was not able to run from his residence in Jackson County in this year's elections.

Finally, there is no evidence in the record that the district lines were redrawn to *482 exclude Barber specifically from being a candidate.[20] For these reasons, we conclude that the residency requirement for the PSC is rationally related to the state's legitimate interests in fostering informed voters and promoting knowledgeable and responsive candidates with ties to the community.

The requirement does not place an unreasonable burden on the right of voters to choose a candidate or the right of Barber to run for public office. Therefore, we hold that requiring Barber to reside in district four for twelve months prior to the general election in November has not denied him equal protection under the United States Constitution or the Georgia Constitution.

Judgment reversed. All the Justices concur. NOTES [1] Ga. Const. of 1983, art. IV, § I, para. I(a). [2] OCGA § 46-2-1(b) (Supp.2001). [3] See OCGA § 46-2-1(d) (Supp.2001). [4] 2002 Ga. Laws 360. [5] OCGA § 1-3-1(a) & (b).

[6] See *Mayor &c. of Hapeville v. Anderson*, 246 Ga. 786, 787, 272 S.E.2d 713 (1980). [7] See, e.g., *Griggers v. Moye*, 246 Ga. 578, 272 S.E.2d 262 (1980) (upholding constitutional and statutory provisions requiring county officers to be a citizen of the county for at least two years immediately preceding the election or appointment).

[8] See Ga. Const. art. III, § II, para. III. [9] See 1981 Op. Att'y Gen. 306 (U81-28). [10] See *Lubin v. Panish*, 415 U.S. 709, 716, 94 S.Ct. 1315, 39 L.Ed.2d 702 (1974). [11] See *Bullock v. Carter*, 405 U.S. 134, 143, 92 S.Ct. 849, 31 L.Ed.2d 92 (1971).

[12] See generally John D. Perovich, Annotation, Validity of Requirement that Candidate or Public Officer Have Been Resident of Governmental Unit for Specified Period, 65 ALR3d 1048 (1975).

[13] See *Sununu v. Stark*, 420 U.S. 958, 95 S.Ct. 1346, 43 L.Ed.2d 435 (1975), *aff'g*, 383 F.Supp. 1287 (D.N.H.1974) (three-judge panel); *Chimento v. Stark*, 414 U.S. 802, 94 S.Ct.

125, 38 L.Ed.2d 39 (1973), *aff'g*, 353 F.Supp. 1211 (D.N.H.1973) (three-judge panel). [14] See *Robertson v. Bartels*, 150 F.Supp.2d 691 (D.N.J.2001); see also *McKinney v. Kaminsky*, 340 F.Supp. 289 (M.D.Ala.1972) (invalidating five-year residency requirement for county commissioner).

[15] See *Woodward v. City of Deerfield Beach*, 538 F.2d 1081, 1082 n. 1 (1976) (discussing different standards of review that the United States Supreme Court has applied to equal protection cases involving candidates).

[16] See *Burdick v. Takushi*, 504 U.S. 428, 434, 112 S.Ct. 2059, 119 L.Ed.2d 245 (1992). [17] See *id.* (quoting *Anderson v. Celebrezze*, 460 U.S. 780, 788, 103 S.Ct. 1564, 75 L.Ed.2d 547 (1983)). [18] See *Lubin*, 415 U.S. at 715, 94 S.Ct. 1315 (state's legitimate interest in keeping ballots within manageable limits may not unnecessarily burden an individual candidate's equally important interest in the continued availability of political opportunity and the voters' interest in asserting their preferences).

[19] See *Headlee v. Franklin County Board of Elections*, 368 F.Supp. 999 (S.D.Ohio 1973) (three-judge panel). [20] Cf. *La Porte County Republican Cent. Comm. v. Board of Comm'rs*, 43 F.3d 1126 (7th Cir.1994) (reversing dismissal of complaint based on claim that residential districts were redrawn for the sole purpose of preventing three individuals from standing for election).