

**THE MAYOR AND COUNCIL
UNIVERSITY PARK, MARYLAND**

IN RE BRENDAN MURRAY

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Appeal from the decision of the
Supervisors of Elections

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MEMORANDUM ORDER AND OPINION

This matter comes before the Mayor and Council for the Town of University Park (“Town”) on appeal from the decision of the Town’s Supervisors of Elections (“Supervisors”), which deemed Petitioner, Brendan Murray, ineligible to run as a candidate for Town Council for Ward 4. The Supervisors determined that Mr. Murray was currently ineligible to run for office based upon his not having resided in the Town for at least two years immediately preceding the election, which is scheduled for May 4, 2021. For the reasons set forth below, the Mayor and Council shall affirm the decision of the Supervisors.

BACKGROUND

In early April of 2021, Petitioner filed as a candidate to run for the position of Councilmember for Ward 4. As part of the filing for candidacy process, Mr. Murray was required to demonstrate that he satisfied the eligibility requirements as set forth in Section 302 of the Town Charter, which provides:

The Mayor and Council members shall be at least twenty-five (25) years of age, shall have resided in the Town at least two years prior to the election, and shall be qualified and registered voters of the Town. The Mayor must reside continuously in the Town during his term of office. Each Council member shall reside continuously in his respective ward during his term of office.

It is undisputed that Mr. Murray grew up in the Town and lived with his family at 4302 Van Buren Street, University Park, Maryland, 20782 between 1964 and 1985. After having since been domiciled elsewhere, Mr. Murray and his family returned to the Town on June 29, 2019, and currently reside at 4301 Woodberry Street, University Park, Maryland 20782.¹

In response to the inquiry, the Supervisors informed Mr. Murray that they could not verify his qualifications as a candidate at this time because, based on the Town's longstanding interpretation of Section 302 of the Charter, prospective candidates were first required to demonstrate that they resided in the Town for at least two years immediately preceding the election in which they sought office. Mr. Murray is unable to make such a showing and does not otherwise dispute the fact that he will not have continuously resided in the Town for at least two years directly prior to the election. Mr. Murray elected to challenge the decision of the Supervisors; a hearing on the matter by the Town Mayor and Council followed.

DISCUSSION

The primary question before us is one of statutory construction and does not involve any questions of fact. There is no dispute that, as of May 4, 2021, Mr. Murray will not have accrued two years of continuous residency in the Town immediately preceding the election in which he wishes to participate as a candidate.

Mr. Murray posits that the relevant Charter provision requires only that a candidate have lived in the Town for at least, in the aggregate, two years at some point during his or her lifetime prior to running for office, not the two years that immediately precede the election. Accordingly, he contends, the Supervisors erroneously have read an additional term of qualification into the Charter, which resulted in the instant unfavorable eligibility determination. Specifically, Mr.

¹ Mr. Murray is at least twenty-five (25) years of age.

Murray argues that the Supervisors have inserted the word “the” in between “at least” and “two years,” such that Section 302 now reads: “The Mayor and Council members . . . shall have resided in the Town at least [the] two years prior to the election[.]” It is his position that this interpretation contravenes traditional canons of statutory interpretation. Furthermore, he posits that the second clause of Section 302, which requires present officeholders to “reside continuously” in the Town indicates that the intentional omission of the term “continuously” from the former clause should result in his preferred interpretation. Lastly, he avers that, where core values of democracy are involved, statutory provisions governing candidate qualifications should be read broadly to favor eligibility.

In essence, Petitioner argues that the residency requirement prescribed by Section 302 of the Charter does not, by its terms, require that the residency immediately precede the election. Consequently, he asserts that this provision permits any and all periods of residency in the Town be considered to satisfy the eligibility requirement.

The Court of Appeals has had the occasion to address a similar question in Rasin v. Leavertown, 181 Md. 91, 28 A.2d 612 (1942). In that case, the Court interpreted Article V, § 10 of the Constitution of Maryland, titled “Qualifications of State’s Attorneys,” which provides that “[n]o person shall be eligible to the office of the State’s Attorney who has not been admitted to practice law in this State, and who has not resided, for at least two years, in the county, or city, in which he may be elected.” Md. Const., Art. V, § 10 (emphasis added). There, Rasin, a hopeful candidate for the office of State’s Attorney of Kent County, was born in the county, but in 1932, had gone to Baltimore City and lived there, primarily to for the purposes of employment and education. Id. at 93, 28 A.2d 612. In 1941, Mr. Rasin desired to be considered for candidacy for the State’s Attorney of Kent County but was ultimately denied because he did not satisfy the

current residency requirements, as delineated by the State Constitution. Id. He appealed that decision to the Court of Appeals, requesting that the County be compelled to place his name on the ballot. Id. Although Rasin primarily contended that his desire to return to Kent County and ability to later fulfill the residency requirements, ancillary to his argument was the fact that his previous period of residency in Kent County, which amounted to greater than two years, satisfied the eligibility requirement. Id.

The Court, however, disagreed despite Rasin's frequent visits to Kent County in the intervening years and stated intention "to retain residence there," where he continued to pay taxes, keep possessions, and had the title to his automobile issued. Id. In denying the relief sought, the Court noted that the "requirement in the Constitution of residence for political or voting purposes is one of a place of fixed, present domicile." Id. Although Mr. Rasin had not resumed his Kent County residency prior to the petitioning for candidacy, the Court concluded that he ultimately did not satisfy the qualification requirements necessary to run for office there.

Mr. Rasin, nonetheless, as Mr. Murray does here, argued also "that the absence of the words 'preceding the election,' from the requirement" contained in the Constitution, "and the presence of those words in statements of qualifications for other officers under the same constitution, evidence[d] an intention that previous residence is not required of candidates for State's Attorney." Id. at 96, 28 A.2d 612. Rasin additionally averred that a candidate could fulfill the residency requirement of the office sought post-election and before taking office. Id. As such, Rasin contended, he was entitled to have his name placed on the ballot. Id. The Court disagreed. In noting that the Constitution, as adopted in 1867, "does not always possess the consistency that [Rasin's] argument supposes," the Court concluded that the constitutional requirement of two years "residence" to be eligible for office therein meant residence for the two years before the election,

not for any time before taking office, notwithstanding the absence of the words “preceding the election” from such requirement.² Id.

Although the Rasin Court did not expressly address Rasin’s prior periods of residency in Kent County when determining his eligibility as a candidate, the Court of Appeals dealt with the issue in Oglesby v. Williams, 372 Md. 360, 812 A.2d 1061 (2002). There, the Court held that a candidate for Worcester County State’s Attorney could not “tack” together periods of residency in the County for the purpose of satisfying the constitutional requirement and, thus, periods of residency in the County were irrelevant to the issue of whether the candidate satisfied the residency requirement. Id. at 380–84, 812 A.2d 1061. Importantly, the Court commented on its holding in Rasin, noting that, if the theory of tacking on non-continuous residences was a reasonable proposition, Rasin would have been “eminently qualified to run for State’s Attorney of Kent County in 1942,” id. at 384, 812 A.2d 1061, which the Court concluded he was not. While not necessary to the holding in Oglesby, the Court necessarily concluded that prior periods of residency exceeding two years which do not immediately precede the election could not satisfy the eligibility requirements.

Read in conjunction, Rasin and Oglesby support the Town’s longstanding interpretation of Section 302, which requires that candidates for Mayor or Council must establish residency in the

² We do not find persuasive Mr. Murray’s reliance on the provision of the New York State Constitution, which provides that “[n]o person shall serve as a member of the legislature unless he or she . . . has been a resident of the state of New York for five years, and, except as hereinafter otherwise prescribed, of the assembly or senate district for the twelve months immediately preceding his or her election.” NY Const., art III, § 7. The Court of Appeals has expressly concluded that the Maryland analogue produces the same result despite the absence of the language “immediately preceding.” See Rasin v. Leavertown, 181 Md. 91, 28 A.2d 612 (1942).

Town for no less than two years immediately preceding the election, a showing Mr. Murray is unable to make at this time.

Mr. Murray, nevertheless, argues that he has had close personal relationships with the Town since 1964, which should result in his name being included on the ballot. Such a proposition, however, does not make up for the fact that he is undoubtedly unfamiliar with the current climate of the locale in which he seeks office, as he had not resided in the Town for nearly thirty-four (34) years between 1985 and June 29, 2019. The Town has a valid interest in ensuring candidate familiarity with the needs and the problems of the community which the candidate is to serve, and this goal is aided by the imposition of durational residency requirements. See Chimento v. Stark, 353 F. Supp. 1211 (D. NH), aff'd, 414 U.S. 802, 94 S. Ct. 125, 38 L.Ed.2d 39 (1973).

There is no doubt that Mr. Murray has an interest in the well-being of the residents of the Town of University Park, an interest that will surely continue to grow. Aside from having resided in the Town since June 29, 2019, however, Mr. Murray has not been domiciled here since 1985. Certainly, in the past thirty-four (34) years, a lot has changed in the Town with respect to its residents as well as the issues that are important to them. Considerations of policy aside, Mr. Murray simply does not satisfy the eligibility requirements based upon the longstanding interpretation of the Town Charter, an interpretation which is supported by the jurisprudence of this State's highest court.

Therefore, for the reasons stated herein, we conclude that the Supervisors lawfully determined that Mr. Murray's eligibility to run for office at this time cannot be verified. As such, his name shall not be added to the ballot for the upcoming election taking place on May 4, 2021.

FOR THE MAYOR AND COUNCIL OF THE TOWN OF UNIVERSITY PARK:

April 12, 2021
Date

Lenford C. Carey
Mayor Lenford C. Carey