

IN THE DISTRICT COURT OF SHAWNEE COUNTY, KANSAS

STATE OF KANSAS, *ex rel.*)
DEREK SCHMIDT, Attorney General,)
)
Plaintiff)
)
v.) Case No. _____
)
KRIS KOBACH, Secretary of State,)
)
)
Defendant.)

Pursuant to K.S.A. Chapter 60

PETITION FOR DECLARATORY JUDGMENT

Plaintiff State of Kansas *ex rel.* Derek Schmidt, Attorney General, alleges and states the following for its cause of action:

NATURE OF ACTION

1. This is an action under K.S.A. 60-1701 seeking a judgment declaring that only Kansas residents are eligible to run for Governor and Lieutenant Governor in this State. The Kansas Constitution allows the Legislature to establish qualifications for Governor and Lieutenant Governor. The Legislature has enacted several statutes that plainly and expressly establish residency requirements for certain methods of becoming a candidate for Governor and Lieutenant Governor with no indication of (or logical reason for) an intent to have different qualifications for certain candidates than for others, other statutes that presuppose such candidates must be State residents, and still others that establish public policies that necessarily would be frustrated if nonresidents were qualified for Governor and

Lieutenant Governor. Taken together, these statutes demonstrate legislative intent to exercise its constitutional authority to establish qualifications by requiring candidates for Governor and Lieutenant Governor to be residents of Kansas. It is clear beyond peradventure that the Legislature would not and did not intend persons who are not Kansas citizens and do not reside in Kansas to be candidates for Governor and Lieutenant Governor in this state. *Cf. United States v. Armstrong*, 517 U.S. 456, 462 (1996) (construing multiple provisions of a rule together can reveal statutory meaning “beyond peradventure” despite possibility of other constructions when considered separately).

PARTIES, JURISDICTION, AND VENUE

2. Derek Schmidt is the duly elected, qualified, and acting Attorney General for the State of Kansas.

3. The Attorney General has standing under the common law of the State of Kansas to bring this action in the name of the State. *See State v. Finch*, 128 Kan. 665, 280 P. 910, 911-13 (1929)

4. Pursuant to K.S.A. 60-2005, the State of Kansas is not required to pay a filing fee.

5. Defendant Kris Kobach, Secretary of State, may be served with process by serving the Kansas Attorney General, 120 S.W. 10th Ave., 2nd Floor, Topeka, Kansas 66612.

6. This Court has subject matter jurisdiction over this case and the power to issue a declaratory judgment pursuant to K.S.A. 60-1701.

7. Venue is proper in Shawnee County, Kansas, because the Office of the Secretary of State is located within this judicial district and because Shawnee County is the place where the election filings at issue are received. K.S.A. 60-603.

ALLEGATIONS

A. Kansas law requires candidates for Governor and Lieutenant Governor to be residents of Kansas.

8. Article 1, Section 1, of the Kansas Constitution provides that the Governor, Lieutenant Governor, Secretary of State, and Attorney General “shall have such qualifications as are provided by law.”

9. No single Kansas statute plainly and unambiguously commands that candidates for Governor and Lieutenant Governor be Kansas residents; thus, statutory construction is required to “divine the legislature’s intent.” *Ambrosier v. Brownback*, 304 Kan. 907, 911 (2016). Several Kansas statutes, when taken together, demonstrate “clues of legislative intent,” *State v. Keel*, 302 Kan. 560, 573 (2015), to require candidates for Governor and Lieutenant Governor to be residents of Kansas. “The most fundamental rule of statutory construction is that the intent of the legislature governs if that intent can be ascertained.” *Id.* at 572.

- i. **Statutes plainly and expressly establish residency requirements for at least some candidates, and there is no reason to believe the Legislature did not intend a similar residency requirement for all such candidates.**

10. K.S.A. 25-4004 specifies two methods by which candidates for governor and lieutenant government may qualify to be printed on the official primary ballot:

(1) nomination petitions, as provided in K.S.A. 25-4005, or (2) a declaration of intention to become candidates accompanied by a fee, as provided in K.S.A. 25-4006.

K.S.A. 25-4005 provides that nomination petitions shall include the following language: “I . . . hereby nominate _____ (Here insert name and city) and *state of Kansas* a candidate for the office of governor, and running with such candidate _____ (Here insert name and city) and *state of Kansas* as a candidate for the office of lieutenant governor”

(Emphasis added). Thus, it is clear that residency in the State of Kansas is required at least for candidates filing nomination petitions. And there is no reason to think the Legislature intended to impose a residency requirement for candidates who file using a nomination petition but not for those who file by submitting a declaration of intention to become a candidate accompanied by a fee.

11. K.S.A. 25-303(b) provides that independent nominations for Governor and Lieutenant Governor may be made by nomination petitions. Construing these statutes *in pari materia* requires that nomination petitions for independent nominations, like those for party nominations, include a statement that the candidates reside in the State of Kansas.

12. K.S.A. 25-305(c) establishes deadlines for the filing of affidavits of write-in candidacy for Governor and Lieutenant Governor, and K.S.A. 25-3002(b)(4) provides that write-in votes for individuals who have not filed an affidavit of write-in candidacy shall not be counted. Because there is no reason to think the Legislature intended to impose different residency requirements for write-in candidates than for those candidates whose names appear on the ballot, only Kansas residents may file an affidavit of write-in candidacy and run a write-in campaign for Governor and Lieutenant Governor.

- ii. **Other statutes obviously presuppose candidates for Governor and Lieutenant Governor must be State residents, demonstrating that the Legislature intended a residency qualification.**

13. The Kansas Campaign Finance Act requires candidates for Governor and Lieutenant Governor to appoint a treasurer or campaign committee and file certain campaign finance reports, among other things. *See* K.S.A. 25-4144; 25-4148. K.S.A. 25-4152 prescribes civil penalties for the failure to file these statements or reports and provides that “[i]f a person fails to pay a civil penalty provided for by this section, it shall be the duty of the [Governmental Ethics Commission] to bring an action to recover such civil penalty *in the district court of the county in which such person resides.*” (Emphasis added.) This language contemplates that candidates for Governor and Lieutenant Governor must reside in a Kansas county.

14. K.S.A. 25-613, which addresses the form of ballots, provides: “To the names of pairs of candidates running for governor and lieutenant governor shall be

added the name of the city in which or near which each resides.” The fact that the ballot must include the city, but not the state, where the candidates reside indicates that the Legislature intended that candidates for Governor and Lieutenant Governor would reside in Kansas. In addition, throughout the Kansas statutes, the term “city” is understood to mean a city *in Kansas*, unless the context clearly demonstrates otherwise, just as the term “legislature” is used to refer to the Kansas legislature (the same is true for “governor,” “attorney general,” etc.). Interpreting the word “city” in K.S.A. 25-613 as referring to a city in Kansas is further supported by the fact that nomination petitions must list the candidate’s city in the “state of Kansas.” K.S.A. 25-205(b); 25-4005. This interpretation also is consistent with the use of the term “cit[y]” in the Kansas Constitution, which provides that “*all* cities” are subject to certain laws enacted by the Legislature, which of course would be a legal impossibility if the term “city” meant cities outside Kansas. Kan. Const. Art. 12, Sec. 5(a) and (c)(1) (emphasis added). *See also Buffington v. Grosvenor*, 46 Kan. 730, 27 P. 137, 138 (1891) (construing the word “citizen” as used in the original Kansas Constitution to mean “citizens of the state of Kansas”).

15. K.S.A. 25-306b specifies two situations in which a person’s name may be withdrawn from nomination after the primary election, including if “the nominee certifies to the secretary of state that the nominee does not reside in the State of Kansas.” This indicates that Kansas residency is a qualification for running for office.

16. The Governors of Kansas Hometown Heritage Act, K.S.A. 75-5071 *et seq.*, authorizes the Secretary of the Kansas Department of Transportation (KDOT) to install signs at the hometowns of Kansas Governors. The Act defines “governor’s hometown” to mean “the city or unincorporated community listed in the election records of the secretary of state as the residence of a successful candidate for governor at the state of Kansas the first time such candidate was elected governor.” K.S.A. 75-5072(a)(2). Because KDOT cannot install signs in other states, the Legislature must have contemplated that the residence of a candidate for Governor would be in this State.

iii. History and tradition, along with the practice in other states, suggest the Legislature must have intended a residency requirement.

17. Historical practice provides further support for reading these various statutes, taken together, to require that candidates for Governor and Lieutenant Governor be Kansas residents. Candidates for Governor and Lieutenant Governor have traditionally been Kansas residents; in fact, the State is aware of no nonresident who has ever previously attempted to run for such offices. This longstanding practice reflects an understanding that Kansas residency is required. *See, e.g., Southwestern Bell Telephone Co. v. Miller*, 2 Kan. App. 2d 558, 564 (1978) (recognizing role of “[c]ustom and tradition” in interpreting statutes).

18. The Kansas-Nebraska Act required the territorial governor of the Territory of Kansas to be a resident of the territory. 10 Stat. 277, § 20. There is no

reason to think the people of Kansas intended to drop this residency requirement when they adopted the Kansas Constitution. Indeed, during the Wyandotte Constitutional Convention, Mr. William Hutchinson referred without dispute to a statewide elected officer as “having a permanent residence at the capital,” *Kansas Constitutional Convention: A Reprint of the Proceedings and Debates of the Convention which Framed the Constitution of Kansas at Wyandotte in July, 1859*, at p. 354 (Kansas State Printing Plant, 1920), and there is no reason to think the delegates intended the Secretary of State to reside in Kansas but not the Governor.

19. Other states routinely require their candidates for governor and lieutenant governor to be residents of their states, often for a period of years before the election. *See Chimento v. Stark*, 353 F. Supp. 1211, 1216 (D.N.H. 1973) (“From the very beginning of this Nation, residency requirements have been thought to be necessary means of achieving the goal of having knowledgeable and qualified people in high public office.”). In fact, it appears that *every* other state requires candidates for governor to be state residents. Thus, there should be a presumption that residency is required, and the Kansas statutes cited above must be interpreted in light of that background presumption.

iv. Allowing nonresidents to run for Governor and Lieutenant Governor would lead to absurd results and frustrate public policies expressed in other statutes.

20. Residency within a state is the basis for citizenship of that state. *See Saenz v. Roe*, 526 U.S. 489, 506 (1999) (“[T]he Citizenship Clause of the Fourteenth

Amendment expressly equates [state] citizenship with residence”) (citing 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.”)). It is implausible that the Legislature intended to allow *noncitizens* of the State to run and serve as Governor and Lieutenant Governor of the State. In addition, K.S.A. 25-108 provides that “no person who is in the employment of this state . . . shall be deemed to have gained or lost a residence by reason of such employment, but all such officers or employees shall be considered as residents of the place from whence they were elected or appointed.” Thus, a resident of another state who is elected to Governor and Lieutenant Governor in Kansas would remain a resident of that other state—and thus a noncitizen of Kansas—while serving in office. That would be an absurd result. *See, e.g., State v. Fowler*, 41 La. Ann. 380, 382, 6 So. 602 (1889) (allowing a noncitizen of a state to serve as a state elected official would be a “strange anomaly”).

21. Allowing nonresidents to run for Governor and Lieutenant Governor would produce other absurd results. For instance, if a nonresident could run for Kansas Governor, could the governor of another state run and serve as governor of two states at once? What about a foreign national who lives abroad? Also, Kansas law generally prohibits a person’s name from being printed more than once on official primary election ballots, *see* K.S.A. 25-213(c), thus preventing candidates from running for more than one office, but this policy would be undermined if

nonresidents could run for two offices, one in Kansas and one in the state where they live. The Legislature must have intended that candidates for Governor and Lieutenant Governor be residents of Kansas, and the statutes cited above should be interpreted as imposing such a requirement.

B. Nonresidents of Kansas are currently running for Governor and Lieutenant Governor.

22. According to the Kansas Governmental Ethics Commission's website, ten nonresidents have appointed a treasurer to run for Governor during the 2018 election cycle. These nonresident candidates for Governor, and their state of residence as reflected on their appointment of treasurer forms, are: Ilan Cohen (Maryland), Ethan Goldmeer (New York), Matan Kogen (New Jersey), Ezra Kone (Colorado), Victor Redko (Arkansas), Jared Rogers (New York), Nicholas Schrieber (Delaware), Conner Shelton (Pennsylvania), Jonathan Silverman (New Jersey), and Gebrielle Zwi (Maryland). Many have little to no connection with the State of Kansas, appearing to have joined the fray only for entertainment or other purposes counter to the important business of governing Kansas.

23. This field of nonresident candidates is only likely to grow. For instance, Andy Maskin of New York has established a website and is raising money for a run for Kansas Governor, despite not having filed an appointment of treasurer form. See <http://andyforks.com>; https://www.indiegogo.com/projects/andy-for-kansas-governor#/. And two men from Oregon have told the media they intend to run for Governor and Lieutenant Governor, despite not yet having filed any paperwork. See

Associated Press, *2 men from Oregon say they plan to run for Kansas governor, lieutenant governor*, Lawrence Journal-World (Feb. 23, 2018), available at <http://www2.ljworld.com/news/2018/feb/23/2-men-oregon-say-they-plan-run-kansas-governor-lie/>.

24. There is a real probability one or more of these candidates will attempt to file with the Secretary of State a nomination petition, declaration of intention, or notice of write-in candidacy to become a candidate .

25. In a close race, if these candidates were to receive even a small portion of the vote, it could affect the outcome of the election.

C. The Secretary of State is responsible for accepting election filings and has indicated that the office will accept election filings from nonresidents.

26. K.S.A. 25-4144 requires candidates, not later than 10 days after becoming a candidate, to appoint a treasurer or candidate committee. This information must be reported to the Secretary of State within 10 days of the appointment.

27. According to news reports, the Office of the Secretary of State recently rejected paperwork appointing a candidate committee for a dog,¹ but the Office has not taken similar action when presented with election filings from the nonresidents

¹ See Hunter Woodall, *Angus the dog tries to run for Kansas governor. Kobach's office: Down, boy!*, The Kansas City Star (Feb. 13, 2018), available at <http://www.kansascity.com/news/local/news-columns-blogs/the-buzz/article199806359.html>.

currently running for Governor and Lieutenant Governor, leaving uncertain the Secretary of State's position concerning whether Kansas residency is a requirement to run for Governor and Lieutenant Governor.

28. Nomination petitions and declarations of intention to become a candidate for Governor and Lieutenant Governor are also required to be filed with the Secretary of State. K.S.A. 25-4004; K.S.A. 25-208.

29. "Within 10 days, Saturdays, Sundays and holidays not included, from the date of the filing of nomination petitions or a declaration of intention to become a candidate for . . . state office, the secretary of state shall determine the validity of such petitions or declaration." K.S.A. 25-208a.

30. Given the Secretary of State's acceptance of appointment of treasurer forms from nonresidents, the State is concerned that the Secretary of State would determine nomination petitions or declarations of intention to become candidates for Governor and Lieutenant Governor filed by nonresidents to be valid.

REQUEST FOR DECLARATORY JUDGMENT

31. Plaintiff State of Kansas *ex rel.* Derek Schmidt, Attorney General, incorporates paragraphs 1 through 30, above, as if fully set forth herein.

32. K.S.A. 60-1701 provides that this Court has the power to declare rights, status, and other legal relations and such declarations have the force and effect of a final judgment.

33. By construing multiple statutes *in para materia*, it is clear that the Kansas Legislature did not intend for nonresidents to run for or hold office as Governor and Lieutenant Governor in Kansas but instead has exercised its constitutional power to establish a residency qualification for such candidates.

34. A declaratory judgment will afford relief from the uncertainty and controversy concerning whether nonresidents are eligible to run for Governor and Lieutenant Governor in this State and provide guidance to public officials in the administration of their duties.

WHEREFORE, Plaintiff seeks a declaration from this Court that only residents of Kansas are eligible to run for Governor and Lieutenant Governor in this State, and additionally seeks such other and further relief, pursuant to K.S.A. 60-1703, as the Court deems necessary and proper upon satisfactory showing by the Plaintiff.

Respectfully submitted,

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