In the Missouri Court of Appeals
Eastern District
DIVISION FIVE

ROCHELLE WALTON GRAY,	)	No. ED98426
	)	
Appellant,	)	Appeal from the Circuit Court
	)	of St. Louis County
vs.	)	
	)	Honorable Steven H. Goldman
SYLVESTER TAYLOR, II,	)	
	)	
Respondent.	)	FILED: June 14, 2012

Introduction

Missouri State Representative Rochelle Walton Gray ("Gray") appeals from the judgment of the trial court in favor of Missouri State Representative Sylvester Taylor II ("Taylor") on Gray's petition challenging the qualifications of Taylor to run for election in the Democratic Party primary for Missouri State Representative for the 75th District. The trial court held that Article III, Section 4 does not require a candidate for Missouri State Representative to reside inside the geographic boundaries of a legislative district following a reapportionment which occurs within a year of the general election. We find that Article III, Section 4 requires that, in the context of reapportionment within a year of general election, a candidate for Missouri State Representative must have resided for one year within the legislative district he or she seeks to represent as that district is defined after apportionment. Accordingly, we find that Taylor is not qualified to seek the office of State Representative for the 75th District. We would reverse the judgment of the trial court, however, because of the general interest and importance of the issues

presented, this case is transferred to the Missouri Supreme Court under Mo. R. Civ. P. 83.02, 2012.

Factual and Procedural History

The facts of this case are not in dispute. In November 2010, Gray was re-elected as the Missouri State Representative for the 81st District. In the same election, Taylor was elected as the Missouri State Representative for the 80th District. On November 30, 2011, the judicial commission charged with reapportioning the 163 districts of the Missouri House of Representatives delivered a reapportionment plan to the Missouri Secretary of State. According to the reapportionment plan, the former 81st District was reapportioned into current Districts 66, 67, and 75. The reapportionment plan also reapportioned the former 80th District into current Districts 67, 68, 73, 74, and 75. The parties agree that the reapportionment of the relevant legislative districts occurred within one year of the next scheduled general election for the offices of Missouri State Representative from those districts.

On February 28, 2012, Gray and Taylor both filed for nomination as the candidate for the Democratic Party for the office of State Representative for the 75th District. Gray's residence is in a physical location that was within the former 81st District prior to reapportionment, and is located in the current 75th District as defined after reapportionment. Taylor's residence is in a physical location that was within the former 80th District prior to reapportionment, and is located in the current 67th District as defined after reapportionment.

Gray filed suit under Section 115.526, RSMo., Cum. Supp. 2012, challenging Taylor's qualifications to seek the office of Missouri State Representative for the 75th District. Gray asserted that Article III, Section 4 of the Missouri Constitution requires that a candidate for that office must reside for one year prior to general election within the district where the candidate seeks to run for office. Gray argued that Taylor resides within the geographic boundaries of the

67th District after reapportionment, and, therefore, does not satisfy the residency requirements of Article III, Section 4 to seek office in the 75th District. Taylor contended that, because reapportionment occurred within one year of the general election, Article III, Section 4 requires only that he have resided for one year in the county or any of the districts from which the current 75th District was created during reapportionment. Importantly, Taylor argued that, under his construction of Article III, Section 4, it is immaterial that he does not reside, and has never resided, in a location within the geographic boundaries of the 75th District as it is defined post-apportionment.

The parties entered stipulations to all the relevant facts. After a hearing, the trial court entered judgment in favor of Taylor. The trial court found that Taylor "has not resided within the boundaries that make up the 75th [District]. Const. Art. III, Section 4 does not so require." This appeal follows.

Point on Appeal

In her sole point on appeal, Gray argues that the trial court erred in finding, where legislative districts are reapportioned within one year of general election, Article III, Section 4 does not require that candidates for the office of Missouri State Representative must reside for one year within the boundaries of the district, as defined after reapportionment.

Standard of Review

We review the trial court's interpretation of the Missouri Constitution *de novo*. StopAquila.org v. Peculiar, 208 S.W.3d 895, 899 (Mo. banc 2006) (citation omitted).

Discussion

This case concerns the proper construction of Article III, Section 4, in the context of legislative district reapportionment within one year of a general election. Article III, Section 4 states:

> Each representative shall be twenty-four years of age, and next before the day of his election shall have been a qualified voter for two years and a resident of the county or district which he is chosen to represent for one year, if such county or district shall have been so long established, and if not, then of the county or district from which the same shall have been taken.

Mo. Const. art. III, § 4. The issue before this Court is whether, in the context of reapportionment within one year of general election, Article III, Section 4 requires a candidate for Missouri State Representative to reside for one year within the district as defined after reapportionment; or whether a candidate satisfies the prior residency requirement by residing for one year in any district of which some portion where the candidate does not reside was reapportioned into the district in which the candidate desires to seeks office.

For the same reasons articulated in our opinion in the companion case Wright-Jones v. Nasheed (ED 98456), we find Article III, Section 4 is ambiguous as it relates to the issue on appeal. After broadly construing the section to give effect to its intent, again, for the reasons we set forth in Wright-Jones, we also hold that to satisfy the residency requirements of Article III, Section 4 when reapportionment occurs within one year of the relevant general election, a candidate is eligible to seek office in a legislative district only if the candidate resided for one year in the district as it is defined after reapportionment. A candidate does not satisfy the requirements of Article III, Section 4 by residing for one year in a portion of another district which was not incorporated through reapportionment into the district which the candidate now seeks to represent.

This case varies slightly from Wright-Jones because Article III, Section 4, unlike Article III, Section 6, states that a candidate must have resided in the county, district or districts from which the relevant electoral district was established through reapportionment. Mo. Const. art. III, § 4. Construing Article III, Section 4 in the manner advanced by Taylor would allow him to seek election in any house representative district across the span of St. Louis County, including

legislative districts within which the candidate has no discernable connection. We find no support in the Missouri Constitution for such a construction.[1]

Conclusion

We hold that to satisfy the residency requirements of Article III, Section 4 when reapportionment occurs within one year of the relevant general election, a candidate who did not reside in the legislative district for one year prior to apportionment is eligible to seek office in the newly reapportioned district only if the candidate resided for one year in the part of the district or districts from which the reapportioned district shall have been taken. A candidate does not satisfy this requirement of Article III, Section 4 by having resided for one year in a portion of a district which was not incorporated through reapportionment into the district which the candidate now seeks to represent. Accordingly, we find that Taylor does not meet the residency requirements to seek election as State Representative for the 75th District. We would reverse the judgment of the trial court, however, because of the general interest and importance of the issues presented, this case is transferred to the Missouri Supreme Court under Mo. R. Civ. P. 83.02, 2012.

Kurt S. Odenwald

Kurt S. Odenwald, Chief Judge

Sherri B. Sullivan, J., Concurs
Clifford H. Ahrens, J., Concurs in result in separate opinion

[1] The current language of Article III, Section 4 has its genesis in the 1820 Missouri Constitution and was operative at a time when the county was the electoral unit for the house of representatives. Mo. Const. art. III, § 3 (1820). The present language of Article III, Section 4 was incorporated into the Missouri Constitution after some counties were subdivided into multiple electoral units, or "districts". Mo. Const. art. IV, § 4 (1875). Following the U.S. Supreme decision of Reynolds v. Sims 377 U.S. 533 (1964) requiring the "one-man, one-vote" apportionment of electoral districts, Missouri abandoned the use of the "county" as an electoral unit, and instituted 163 defined representative districts as the electoral unit for the house of representatives. Mo. Const. art. III, § 2 (amended January 14, 1966).

In the Missouri Court of Appeals
Eastern District

DIVISION FIVE

ROCHELLE WALTON GRAY,	)	No. ED98426
	)	
Appellant,	)	Appeal from the Circuit Court
	)	of St. Louis County
vs.	)	
	)	
SLYVESTER TAYLOR, II,	)	Hon. Steven H. Goldman
	)	
Respondent.	)	FILED: June 14, 2012

OPINION CONCURRING IN RESULT

I concur in the result reached by the majority insofar as it orders this case to be transferred to the Supreme Court of Missouri due to the general interest and importance of the question. However, I disagree with the majority opinion on the merits. In my view, the language of article III section 4 is clear and unambiguous and thus precludes judicial construction. I would affirm the circuit court's judgment.

As the majority opinion describes, the parties call upon this court to interpret the state representative residency requirement contained in article III, section 4, of the Missouri Constitution:

> Each representative shall be twenty-four years of age, and next before the day of his election shall have been a qualified voter for two years and a resident of the county or district which he is chosen to represent for one year, if such county or district shall have been so long established, and if not, then *of the county or district from which the same shall have been taken.*

Art. III, §4, Mo. Const. (emphasis added)

Appellant does not dispute that Respondent is at least twenty-four years of age and that he has been a qualified voter for at least two years. Appellant asserts, however, that Respondent does not meet the residency requirement as it applies to newly-established districts (language italicized above). Our task, then, is simply to determine whether Respondent is "a resident of the county or district from which the same [*i.e.*, "the district which he is chosen to represent"] shall have been taken." Simply put, is Respondent a resident of the county or district from which the new 75th district was created? Yes. Respondent is a resident of the 80th district, from which the new 75th district was created. As such, Respondent satisfies the constitutional residency requirement for the 2012 election cycle.

Despite the broad and general language of the phrase "the county or district from which the same shall have been taken," the majority insists that this constitutional provision should be construed to mean that Respondent must reside within the particular portion of the old district that was re-drawn into the new district. But the plain language of the clause imposes no such requirement, and this court must not infer one. The phrase necessitates only that a candidate reside in "the county or district" from which the new one was created. Words used in constitutional provisions are interpreted to give effect to their plain, ordinary, and natural meaning. Buechner v. Bond, 650 S.W.2d 611, 613 (Mo. banc 1983). The plain and ordinary meaning of the words "the county or district" is broad and unrestrictive and hence includes any part of such county or district. Had the drafters of the constitution wished to limit eligibility to candidates residing only in those parts of an old district that were absorbed into the new one, they could have crafted narrowing language to that effect. But they didn't, and, given the clear and unambiguous language of the clause, we need not speculate as to their intent. However, it does seem reasonable to allow candidates some latitude in re-districting years, when boundary lines become moving goal-posts. This interpretation prevents gerrymandering, while the

majority's interpretation invites it. Additionally, though not authoritative, it is nonetheless noteworthy that interpretations by the Attorney General historically and currently support Respondent's position. Mo. Atty. Gen. Ops. 104-67 (Anderson, 1967) and 56-82 (Ashcroft, 1982); *Amicus Curiae* Br. 4 (Koster, 2012). And, we are informed by the Solicitor General, the Secretary of State has always advised potential candidates accordingly.

Finally, the majority worries that a literal interpretation would produce the unintended result that a candidate could seek election in any district in St. Louis County without having any connection to the chosen district. This concern is wholly unfounded. As a practical matter, no serious candidate ignores the strategic political benefit of residing in the area he seeks to represent. And even if a non-resident candidate were to achieve victory in a new district, he still would be subject to the one-year residency requirement in a subsequent election cycle and thus, prior to the next primary, must have resided in the new district for at least one year. Additionally, the house and senate have authority to determine a representative's qualifications to hold or assume office and may oust a member who fails to satisfy the criteria. Art. III, §13, §18, Mo. Const.; State on Information of Danforth v. Banks, 454 S.W.3d 498 (Mo. banc 1970).

My paramount concern is that the majority's interpretation obliges this court to read words into the clause that aren't there. The phrase is susceptible to a clear and unambiguous interpretation based only on the plain and ordinary meaning of the words, but the majority rejects this option – the one preferred and prescribed by well-established precedent - and instead undertakes a protracted exercise in judicial construction necessitating qualifying language not existing in the original text. A court may not add words by implication when the plain language is clear and unambiguous. State ex rel. Young v. Wood, 254 S.W.3d 871, 873 (Mo. banc 2008).[1]

[1] Although State ex rel. Young v. Wood cited this rule as it applies to interpretation of a statute, the same rules of construction apply when examining a constitutional provision. Thompson v. Committee on Legislative Research, 932 S.W.2d 392, 395 n. 4 (Mo. banc 1996).

In my view, the plain and ordinary meaning of the text provides a clear and unambiguous directive, and this court should not construe it otherwise. I would affirm the circuit court's judgment and declare Respondent eligible to seek the democratic nomination in the August primary election. However, due to the general interest and importance of the question, I concur in the result of the majority opinion ordering transfer of the case to the Supreme Court of Missouri pursuant to Rule 83.02.

CLIFFORD H. AHRENS, Judge