STATE OF MICHIGAN

COURT OF APPEALS

TOM BARROW,

Plaintiff-Appellee,

v

CITY OF DETROIT ELECTION COMMISSION and DETROIT CITY CLERK JANICE WINFREY,

Defendants,

and

MICHAEL DUGGAN and MICHAEL DUGGAN FOR MAYOR COMMITTEE,

Intervening Defendants-Appellants.

FOR PUBLICATION
June 18, 2013
9:20 a.m.

No. 316695
Wayne Circuit Court
LC No. 13-007068-AW

Before: STEPHENS, P.J., and TALBOT and MURRAY, JJ.

MURRAY, J.

Intervening defendants-appellants Michael Duggan and Michael Duggan for Mayor appeal as of right an order granting declaratory relief in plaintiff's complaint for mandamus, declaring that Duggan was ineligible to be a candidate for the position of Mayor of Detroit, and directing that defendants remove his name from the list of eligible names to run in the August 2013 primary election for mayor. We affirm.

I. BACKGROUND

This case concerns whether Michael Duggan is eligible to be placed on the primary ballot for mayor under the City of Detroit's Charter, which requires that a candidate for mayor be a resident and a registered voter for one year "at the time of filing for office." The material facts are undisputed. Duggan, formerly of Livonia, moved to Detroit in March 2012. Duggan registered to vote in Detroit on April 12, 2012. Duggan filed his nominating petitions with the requisite number of signatures for the August mayoral primary on April 2, 2013.

Plaintiff Tom Barrow, himself a candidate for the mayoral election, thereafter contacted Detroit City Clerk Janice Winfrey, challenging whether Duggan met the residency requirements set forth in the Detroit City Charter to be placed on the ballot. At issue was Detroit City Charter

§ 2-101, "Qualifications for Elective Officers and Appointive Officers," which provides in pertinent part:

> A person seeking elective office must be a citizen of the United States, a resident and a qualified and registered voter of the city of Detroit for one (1) year at the time of filing for office, and retain that status through their tenure in any such elective office. . . .

The above provision applies to persons seeking election as mayor pursuant to charter provision § 2-105(A)(13) (defining "elective officers" to include the Mayor of Detroit, among others).

Plaintiff contended that Duggan had not been a registered voter in Detroit for one year before the filing of his petitions on April 2, 2013. Duggan countered that he had been a registered voter in Detroit for one year before the mayoral primary filing deadline, which was May 14, 2013. It is undisputed that had Duggan filed his petitions on or after April 12, 2013, he would have met the voter registration requirement.

The three-member Detroit Election Commission, comprised of Winfrey, Detroit City Council President Charles Pugh, and Acting Corporation Counsel Edward Keelean, met to certify the names of candidates for placement on the ballot for the August 2013 primary election in accordance with their statutory duties under MCL 168.323[1] and MCL 168.719.[2] On May 23, 2013, a divided Commission decided that Duggan fulfilled the charter requirements to file for office. Voting to certify were Winfrey and Keelean, apparently on the basis that Duggan was qualified because he had been a registered voter in Detroit before the filing deadline applicable to all candidates. Pugh dissented.

Plaintiff then brought an action for mandamus in circuit court, seeking a declaratory judgment that Duggan was ineligible to appear on the ballot because he did not comply with the charter. Plaintiff argued that where Duggan had not been a registered voter in Detroit for one year at the time he filed his petitions to run as mayor, his name should not be placed on the August ballot. Plaintiff also moved for injunctive relief.

Duggan answered that mandamus was inappropriate. He contended that in instances of technical defects, access to the ballot should be granted, particularly if absurd results would otherwise occur. He also maintained that the durational residency requirement was unconstitutional.

The city asserted that the circuit court should give deference to the Detroit Election Commission's interpretation of the charter. The city averred that Michigan case law was

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[1] MCL 168.323 provides in relevant part that "[i]t is the duty of the board of city election commissioners to prepare the primary ballots to be used by the electors."

[2] In pertinent part, MCL 168.719 provides that "[t]he election commission of each city, township and village shall perform such duties relative to the preparation, printing and delivery of ballots as are required by law of the boards of election commissioners of counties."

inconclusive regarding residency requirements for candidates. Finally, the city urged the court to apply the doctrine of substantial compliance.

In a thorough and well written opinion, the circuit court decided that the language of § 2-101 was plain and unambiguous and, utilizing the common meaning of the terms, opined that the phrase "at the time of filing for office" meant the "specific point in time when the candidate has delivered his or her non-partisan nomination petitions and affidavit of identity to the City Clerk." The court ruled that defendants had a clear legal duty to determine whether Duggan met the qualifications for elective office on April 2, 2013, the date he filed his nominating petitions, not the date of the filing deadline.

With regard to Duggan's constitutional arguments, the circuit court ruled that the cases he cited were distinguishable and therefore were not binding. The court cited federal case law and observed that rarely has a one-year residency requirement been struck down. The court ruled that the one-year charter residency requirement was not unconstitutional per se and concluded that there were multiple bases upon which the provision could be construed as constitutional.

On appeal, Duggan argues that the language of the Detroit City Charter, which he claims is poorly drafted, is ambiguous. Thus, the Commission did not have a clear legal duty to conclude that he was not qualified. Duggan calculates his one-year residency requirement from the petitions' filing deadline, May 14, 2013. He contends that he was a resident of Detroit and a registered voter since at least May 14, 2012, such that the Commission was correct in certifying him. Further, any ambiguity on this point should weigh in favor of access to the ballot and letting the electorate decide the issue, particularly where he merely filed his petitions early. Had he waited until the filing deadline, this issue would be moot. He adds that the charter's durational candidacy requirements are unconstitutional under a strict scrutiny standard.

Plaintiff answers that the language of § 2-101 is clear and unambiguous and provides that Duggan must have been a registered voter in Detroit at the time he filed for office. To accept Duggan's reading of § 2-101 would require this Court to substitute "by the filing deadline" for "at the time of filing for office," an unwarranted reading of the plain words of the charter. Further, plaintiff asserts that the circuit court correctly determined that § 2-101 was constitutional.

II. ANALYSIS

A. STANDARD OF REVIEW

The issues presented are subject to de novo review. Courts review questions of law under a de novo standard. *Loweke v Ann Arbor Ceiling & Partition Co, LLC*, 489 Mich 157, 162; 809 NW2d 553 (2011). Specifically, in a mandamus action this Court reviews de novo as questions of law whether a defendant has a clear legal duty to perform and whether a plaintiff has a clear legal right to performance. See *In re MCI Telecommunications Complaint*, 460 Mich 396, 443-

444; 596 NW2d 164 (1999).[3] As in other cases, in a declaratory judgment action this Court reviews de novo a trial court's decision regarding a motion for a summary decision. See *Michigan Education Employees Mut Ins Co v Turow*, 242 Mich App 112, 114; 617 NW2d 725 (2000). The interpretation of a city charter provision is a question of law. *In re Storm*, 204 Mich App 323, 325; 514 NW2d 538 (1994), overruled in part on other grounds *Detroit Police Officers Ass'n v City of Detroit*, 452 Mich 339; 551 NW2d 349 (1996). Constitutional issues also receive de novo review. *Sidun v Wayne Co Treasurer*, 481 Mich 503, 508; 751 NW2d 453 (2008).

B. MANDAMUS

Duggan challenges the grant of mandamus to plaintiff. A plaintiff has the burden of establishing entitlement to the extraordinary remedy of a writ of mandamus. *Lansing Sch Ed Ass'n v Lansing Bd of Ed (On Remand)*, 293 Mich App 506, 519; 810 NW2d 95 (2011). The plaintiff must show that (1) the plaintiff has a clear legal right to the performance of the duty sought to be compelled, (2) the defendant has a clear legal duty to perform, (3) the act is ministerial in nature such that it involves no discretion or judgment, and (4) the plaintiff has no other adequate legal or equitable remedy. *Vorva v Plymouth-Canton Community Sch Dist*, 230 Mich App 651, 655-656; 584 NW2d 743 (1998).

It is undisputed that defendants have the statutory duty to submit the names of the eligible candidates for the primary election, see MCL 168.323 and MCL 168.719. The inclusion or exclusion of a name on a ballot is ministerial in nature. Here, plaintiff himself is a candidate for mayor, as well as a citizen of Detroit. Aside from the instant action, plaintiff has no other adequate legal remedy, particularly given that the election is mere weeks away and the ballot printing deadline is imminent. Plaintiff thus has established that mandamus is the proper method of raising his legal challenge to Duggan's candidacy. See generally *Sullivan v Secretary of State*, 373 Mich 627; 130 NW2d 392 (1964); *Wojcinski v State Bd of Canvassers*, 347 Mich 573; 81 NW2d 390 (1957).

The circuit court accepted plaintiff's challenges to Duggan's candidacy, thus, plaintiff established his entitlement to a writ of mandamus. Upon review, if we in turn likewise determine that Duggan did not meet the qualifications for elected office under the charter, plaintiff would have a clear legal right to have Duggan's name removed from the list of candidates, the Commission would have a clear legal duty to do, the act would be ministerial because it would not require the exercise of judgment or discretion, and plaintiff would have no other legal or equitable remedy. See *Citizens Protecting Michigan's Constitution v Secretary of State*, 280 Mich App 273, 291-292; 755 NW2d 157 (2008), aff'd in result only 482 Mich 960 (2008). Accordingly, we must consider whether Duggan complied with the charter provisions to establish his qualifications to be among the candidates for mayor.

[3] See also *Rhode v Dep't of Corrections*, 227 Mich App 174, 178; 578 NW2d 320 (1997) (ruling that review of a decision on a writ of mandamus is for an abuse of discretion except where the central issue in the appeal involves statutory interpretation, and that question of law is reviewed de novo).

C. CHARTER LANGUAGE

Michigan statutory law provides that a city's charter governs qualifications for persons running for office, MCL 168.321(1).[4] As noted, the Detroit City Charter sets forth qualifications to be a candidate for elective office in § 2-101, which specifies that a "person seeking elective office must be . . . a . . . registered voter of the City of Detroit for one (1) year ***at the time of filing for office*** . . . ." (Emphasis supplied.) Plaintiff argues, and the circuit court determined, that the emphasized language means that a candidate must be a registered voter one year prior to filing his or her papers for office, while defendant argues that the phrase refers to the filing deadline applicable to all candidates.

To support his position, Duggan argues that the phrase "at the time of filing for office" in § 2-101 is ambiguous. When reviewing the provisions of a home rule charter, we apply the same rules that we apply to the construction of statutes. *Detroit v Walker*, 445 Mich 682, 691; 520 NW2d 135 (1994). Provisions are to be read in context, with the plain and ordinary meaning given to every word. *Driver v Naini*, 490 Mich 239, 247; 802 NW2d 311 (2011). Judicial construction is not permitted when the language is clear and unambiguous. *Id.* Courts apply unambiguous statutes as written. *Id.*

Alternately, when we "interpret" a statute, the primary goal must be to ascertain and give effect to the drafter's intent, and the judiciary should presume that the drafter intended a statute to have the meaning that it clearly expresses. *Klooster v City of Charlevoix*, 488 Mich 289, 296; 795 NW2d 578 (2011). This Court determines intent by examining the language used. *US Fidelity Ins & Guaranty Co v Mich Catastrophic Claims Ass'n (On Rehearing)*, 484 Mich 1, 13; 773 NW2d 243 (2009).

At issue here is the phrase "at the time of filing for office." Notably, the charter employed the term "the," rather than the term "a," to modify the noun "time." As explained by our Supreme Court, the terms "the" and "a" have distinct functions:

> "The" and "a" have different meanings. "The" is defined as "definite article. 1. (used, esp. before a noun, with a specifying or particularizing effect, as opposed to the indefinite or generalizing force of the indefinite article a or an) . . . ." *Random House Webster's College Dictionary*, p 1382. [*Massey v Mandell*, 462 Mich 375, 382 n5; 614 NW2d 70 (2000).]

Where the Legislature wishes to refer to a particular item, not a general item, it uses the word "the," rather than "a" or "an." See *Johnson v Detroit Edison Co*, 288 Mich App 688, 699; 795 NW2d 161 (2010). The charter's use of "the time of filing," with "the" being a definite article and "time" being a singular noun, contemplates only one time. That time is unquestionably the

[4] MCL 168.321(1)provides: "(1) Except as provided in subsection (3) and sections 327, 641, 642, and 644g, the qualifications, nomination, election, appointment, term of office, and removal from office of a city officer shall be in accordance with the charter provisions governing the city."

time a particular candidate files for office. The language of the charter could not be any more clear or unambiguous.[5] And, Duggan does not dispute that he filed his nominating petitions on April 2, 2013, which was less than one year from the date he registered to vote.

Duggan argues, however, that the phrase could be interpreted as referring to the deadline for filing nominating petitions. The difficulty with that argument is the actual language of the charter, which does not contain the term deadline. To accept Duggan's argument would require this Court to add the word "deadline" to the charter, but we must instead adhere to our limited constitutional role and refrain from adding language that the drafters neither included nor intended. *Burise v City of Pontiac*, 282 Mich App 646, 654; 766 NW2d 311 (2009). We may not assume that the drafters inadvertently made use of one word or phrase instead of another. *Detroit v Redford Twp*, 253 Mich 453, 456; 235 NW 217 (1931).

The "substantial compliance" doctrine as enunciated in *Meridian Charter Twp v East Lansing*, 101 Mich App 805, 810; 300 NW2d 703 (1980) does not affect our analysis of the charter provision. Under the substantial compliance doctrine, "'[a]s a general principle, all doubts as to technical deficiencies or failure to comply with the exact letter of procedural requirements are resolved in favor of permitting the people to vote and express their will on any proposal subject to election.'" *Bloomfield Charter Twp v Oakland Co Clerk*, 253 Mich App 1, 21; 654 NW2d 610 (2002), quoting *Meridian*, 101 Mich App at 810. However, in *Stand Up for Democracy v Secretary of State*, 492 Mich 588, 594; 822 NW2d 159 (2012), our Supreme Court overruled *Bloomfield Charter Twp.* In *Stand Up*, the Court reviewed the certification of petitions under a statute that used the mandatory term "shall." The Court decided that, where the statute did not, by its plain terms, permit the certification of deficient petitions, the doctrine of substantial compliance did not apply. Here, the charter provision's use of the term "must," like the term "shall," denotes that the conditions following it are mandatory. See *In re Estate of Kostin*, 278 Mich App 47, 57; 748 NW2d 583 (2008). There is also no language within the charter provision at issue that allows for substantial compliance with the time period. We therefore are precluded from applying the doctrine of substantial compliance in this matter.

We reject the notion that a plain reading of the charter language leads to an absurd result. Under the absurd-results rule, "a statute should be construed to avoid absurd results that are manifestly inconsistent with the legislative intent. . . ." *Detroit Int'l Bridge Co v Commodities Export Co*, 279 Mich App 662, 674; 760 NW2d 565 (2008). Our Supreme Court, however, has commented that the absurd results "rule" of construction typically is merely "'an invitation to judicial lawmaking.'" *Twp of Casco v Secretary of State*, 472 Mich 566, 603; 701 NW2d 102

[5] In other contexts this Court has held that an individual becomes a candidate on the date he or she files for election to office. *Okros v Myslakowski*, 67 Mich App 397, 401; 241 NW2d 223 (1976), citing *City of Grand Rapids v Harper*, 32 Mich App 324, 329-330; 188 NW2d 668 (1971). This Court more recently adopted that precept in *Gallagher v Keefe*, 232 Mich App 363, 373-374; 591 NW2d 297 (1998), when ruling that the defendant's eligibility for county commissioner was "determined as of the date that the candidate files for election to the office. . . ."

(2005) (Young, J, concurring in part) (citation omitted). The Court added that its role was not to rewrite the law to obtain a more "logical" or "palatable" result, but instead was to give effect to the Legislature's intent by enforcing the provision as it was written. *Id.* Enforcing the charter provision as it was drafted does not end in an absurd result. Rather, it is the logical outcome expected from application of the clear, straightforward charter language, and is much like enforcing a statute of limitation when a party has missed the statutory deadline by ten days. It is done not infrequently in Michigan courts because there is no "wiggle room" when applying a clear and definite time period to an undisputed set of facts. Consequently, to be eligible to be placed on the ballot, a candidate must have been a registered voter in Detroit for one year before filing his or her petitions.

Duggan also raises charter provision § 3-111, "Residency Requirement for Elective Officers," which requires that candidates must have resided in the city for one year at the time of filing:

> 1. Elected Officials Generally.
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> All candidates for elective office and elected officials shall be bona fide residents of the City of Detroit and must maintain their principal residence in the City of Detroit for one (1) year at the time of filing for office or appointment to office, and throughout their tenure in office. . . .

This residency provision of the charter is not dispositive to our analysis or conclusion, though we note that it reinforces the plain language of 2-101 that a candidate be a Detroit resident for one year at the time of filing for office.

For the reasons expressed, the plain and unambiguous language of the charter requires a candidate to be a registered voter of Detroit one year prior to filing for office. As noted, it is undisputed that Duggan was not. Hence, unless there is some independent impediment to enforcing this charter against Duggan, he is ineligible to be placed on the ballot for Mayor in the August 2013 primary.

D. CONSTITUTIONAL ISSUES

Duggan argues that the durational voter registration requirement of the charter provision violates his equal protection rights under our state constitution. Const 1963, art 1, § 2. However, the equal protection clauses of the United States and Michigan Constitutions are coextensive. *Harvey v Michigan*, 469 Mich 1, 6; 664 NW2d 767 (2003). The right to *intra*state travel under the Michigan Constitution was abruptly declared in *Musto v Redford Twp*, 137 Mich App 30, 34 n1; 357 NW2d 791 (1984), which cited our State's parallel provision to the United States Constitution: "No person shall be denied the equal protection of the laws; nor shall any person be denied the enjoyment of his civil or political rights or be discriminated against in the exercise

thereof because of religion, race, color or national origin. The legislature shall implement this section by appropriate legislation." Const 1963, art 1, § 2.[6]

At the outset, we observe that the United States Supreme Court has noted that it has "expressly disclaimed" the idea that States cannot impose durational residency requirements. *Sosna v Iowa*, 419 US 393, 406; 95 S Ct 553; 42 L Ed 2d 532 (1974). Indeed, the United States Constitution imposes residency requirements on representatives (seven years), senators (nine years) and Presidents (fourteen years), US Const, art I, § 2, cl 2; art I, § 3, cl 3; and art II, § 1, cl 4. Our own state constitution requires that the governor be "a registered elector in this state for four years." Const 1963, art 5, § 22. Accordingly, all durational requirements are not unconstitutional, a proposition that was not clear at the time we decided *Grano v Ortisi*, 86 Mich App 482; 272 NW2d 693 (1978).

In undertaking constitutional analysis, we are mindful--as was the circuit court--that legislation challenged on equal protection grounds is presumed constitutional and the challenger has the burden to rebut that presumption. *Boulton v Fenton Twp*, 272 Mich App 456, 467; 726 NW2d 733 (2006). Courts examine three factors when determining whether a law violates the Equal Protection Clause: "the character of the classification in question; the individual interests affected by the classification; and the governmental interests asserted in support of the classification." *Dunn v Blumstein*, 405 US 330, 335; 92 S Ct 995; 31 L Ed 2d 274 (1972).

When evaluating an equal protection challenge to a provision, courts apply one of three traditional levels of review.[7] *Heidelberg Bldg, LLC v Dept of Treasury*, 270 Mich App 12, 18; 714 NW2d 664 (2006). Traditionally, the rational basis test applies where no suspect factors are present or where no fundamental right is implicated. *Kyser v Kasson Twp*, 486 Mich 514, 522 n2; 786 NW2d 543 (2010). Under this test, a statute is constitutional if it furthers a legitimate governmental interest and if the challenged statute is rationally related to achieving that interest. *Boulton*, 272 Mich App at 467. Thus, restrictions are set aside only if they are based on reasons unrelated to the State's goals and no grounds can be conceived to justify them.

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[6] Duggan also discusses, in passing, infringement on the right to vote and the First Amendment rights of freedom of speech and association. However, he merely mentions those rights in a single footnote. Appellants may not give cursory treatment to issues, *VanderWerp v Plainfield Charter Twp*, 278 Mich App 624, 633; 752 NW2d 479 (2008), and by doing so, Duggan has abandoned a constitutional challenge under the First Amendment or the right to vote. *Yee v Shiawassee Co Bd of Comm'rs*, 251 Mich App 379, 406; 651 NW2d 756 (2002).

[7] Those standards include strict scrutiny, intermediate scrutiny and rational basis. To pass intermediate scrutiny, a law must be substantially related to an important governmental interest. *Clark v Jeter*, 486 US 456, 461; 108 S Ct 1910; 100 L Ed 2d 465 (1988); *Phillips v Mirac, Inc*, 470 Mich 415, 433; 685 NW2d 174 (2004). In other words, the challenged law must be found reasonably necessary to the accomplishment of the State's legitimate election interests." *Lubin v Panish*, 415 US 709, 718; 94 S Ct 1315; 39 L Ed 2d 702 (1974).

The most heightened review, strict scrutiny, applies when the provision interferes with a fundamental right or classifies based on factors that are suspect, such as race, national origin or ethnicity. *Rose v Stokley,* 258 Mich App 283, 300; 673 NW2d 413 (2003). Under a strict scrutiny analysis, the government may not infringe upon a fundamental liberty interest unless the infringement is narrowly tailored to serve a compelling state interest. *In re B & J,* 279 Mich App 12, 22; 756 NW2d 234 (2008).

In *Grano* we held that strict scrutiny applied to an equal protection challenge to a two year durational residency requirement. The decision to employ strict scrutiny was largely premised upon federal case law, in particular *Green v Mckeon*, 468 F2d 883 (CA 6, 1972). We are not bound by *Grano*, a pre-1990 decision, and we conclude it improperly employed the strict scrutiny standard of review.[8] *Green* was disavowed by the Sixth Circuit long ago, and is no longer considered controlling precedent, see *Biel v City of Akron,* 660 F2d 166, 169 (CA 6, 1981).[9] Additionally, for reasons the Court did not explain, *Grano* chose not to follow the two decisions issued by the United States Supreme Court summarily affirming durational residency requirements, *Chimento v Stark*, 353 F Supp 1211 (D NH 1973), aff'd 414 US 802; 94 S Ct 125; 38 L Ed 2d 39 (1973) and *Sununu v Stark*, 383 F Supp 1287 (D NH 1974); aff'd 420 US 958; 95 S Ct 1346; 43 L Ed 2d 435 (1975). Yet it was in large part those Supreme Court decisions, along with *Bullock v Carter*, 405 US 134; 92 S Ct 849; 31 L Ed 2d 92 (1972), that the federal courts took as signifying a change in the legal landscape for these durational residing challenges. See, e.g., *Biel*, 660 F2d at 168-169; *Joseph v Birmingham*, 510 F Supp 1319, 1329-1330 (ED Mich, 1981); *In re Contest of November 8, 2011 General Election*, 210 NJ 29, 53; 40 A3d 684 (2012). For those reasons, we do not follow *Grano*. Duggan also relies on *Musto v Redford Twp*, 137 Mich App 30, 34; 357 NW2d 791 (1984), but that case is distinguishable where it did not involve a durational residency requirement for candidates for elective office.

Case law since *Grano* compels a conclusion that strict scrutiny does not apply to this case.[10] Notably, questions related to ballot access restrictions do not automatically require

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[8] Under MCR 7.215(J)(1), panels must follow this Court's published decisions issued on or after November 1, 1990.

[9] Additionally, *Green* relied on *Dunn* for its conclusion that the right to travel was penalized, but *Dunn* involved the right to travel of the voting populace, not a perspective candidate's right to travel, and, as we have observed, there is no constitutional right to candidacy. The difference between what was involved in *Dunn* and what was involved in *Green* is constitutionally significant.

[10] Our decision to overrule *Grano's* use of a strict scrutiny test under these circumstances does not require prospective application. Court decisions are almost always applied retroactively. *In re Hill,* 221 Mich App 683, 690; 562 NW2d 254 (1997). Additionally, when they are not-or when cases that are wrongly decided are not reversed-it is typically because of reliance factors that are not at issue here. *Joseph v Auto Club Insurance Assoc,* 491 Mich 200, 219-220; 815 NW2d 412 (2012). For one, the charter provision has never been declared unconstitutional, and thus there could be no reliance that the provision would not be applied. Second, the charter provision is crystal clear, and it is the consistency of enforcing that clear language that reinforces

"heightened" equal protection scrutiny. *Erard v Johnson*, 905 F Supp 2d 782, 798 (ED Mich 2012). Residency is also not one of the suspect classifications, *Crego v Coleman*, 463 Mich 248, 259; 615 NW2d 218 (2000), so our review is confined to whether the charter provision impedes a fundamental right.[11] With regard to the character of the classification and the individual interests affected, the alleged right to travel infringement in this case relates to Duggan's move from Livonia to Detroit.[12] A state law implicates the right to travel when it actually deters travel, when impeding travel is its primary objective, or when it uses a classification that serves to penalize the exercise of the right. *Attorney General of New York v Soto–Lopez*, 476 US 898, 903; 106 S Ct 2317; 90 L Ed 2d 899 (1986).

We find that the charter provision will have a minor effect, if any, on intrastate travel, as it applies only to individuals who wish to run for elected office as described in charter provision 2-105(A)(13). It does not prohibit anyone from moving into or out of Detroit, and was not designed to discourage intrastate travel. Rather, according to the charter's commentary to § 2-101, it was meant to "make[] it more likely that elected officials will be intimately familiar with the unique issues impacting their communities." We also consider that "the benefit denied is not itself a fundamental right (such as voting) and not a basic necessity of life (such as welfare benefits for the poor)." *Biel*, 660 F2d at 169. The charter provision thus does not "penalize" the exercise of the right to travel, it merely places an insignificant impediment to *running for office* once moving into the city. The charter provision does not sufficiently infringe upon the right to travel such that strict scrutiny must be applied. See *Memorial Hospital v Maricopa County*, 415 US 250, 256-262; 94 S Ct 1076, 39 L Ed 2d 306 (1974) (considering the right to travel in the context of "vital" government benefits).

Accordingly, the compelling state interest test is inappropriate here. See *In re Contest of November 8, 2011 General Election*, 210 NJ at 53 ("Since the Supreme Court's decision in *Bullock*, there has been a general consensus that strict scrutiny should not apply to requirements that candidates live in a district or municipality for a particular duration."). Indeed, since *Bullock* "courts that have applied strict scrutiny to durational residency requirements have done so only when those requirements imposed a burden on the right to interstate travel and have based the strict scrutiny analysis on that interference, not on the requirement's asserted interference with the right to run for office." *Id*., at 54. As such, strict scrutiny does not apply and we must apply either intermediate or rational basis review to the durational voter registration requirement.[13] In

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reliance on the laws established by the law-making branches of government. *Robinson v Detroit*, 462 Mich 439, 467-468; 613 NW2d 307 (2000). Third, Duggan relied on the charter provisions when filing for office; he did not make a blanket challenge to the provision's constitutionality.

[11] Note that there is no fundamental right to candidacy. *Bullock v Carter*, 405 US 134; 92 S Ct 849; 31 L Ed 2d 92 (1972); *Carver v Dennis*, 104 F3d 847, 850-851 (CA 6, 1997).

[12] Interstate travel is not involved in this case.

[13] This conclusion finds support from the United States Supreme Court, which specifically stated that "insignificant interference" with ballot access need have only a rational predicate to survive an equal protection challenge. *Clements v Fashing*, 457 US 957, 968; 102 S Ct 2836, 2846; 73 L Ed 2d 508 (1982) (plurality opinion) (the Court referencing its upholding of a seven-year

the end, however, it does not matter which is utilized, for under intermediate scrutiny (and thus rational basis as well) the charter provision survives constitutional scrutiny. See *Biel*, 660 F2d at 169 (upholding one year durational provision under intermediate scrutiny); *Joseph*, 510 F Supp at 1333 (upholding one year durational provision under rational basis); *In re Contest of November 8, 2011 General Election*, 210 NJ at 53 (collecting cases and upholding a one-year provision under intermediate scrutiny).[14]

We now turn to the governmental interests asserted in support. Aside from the language in the charter commentary, we consider that durational residency requirements serve three principal state interests: "first, to ensure that the candidate is familiar with his constituency; second, to ensure that the voters have been thoroughly exposed to the candidate; and third, to prevent political carpet bagging." *Lewis v Guadagno*, 837 F Supp 2d 404, 414 (D NJ 2011) (citation omitted). Stated differently, the significant governmental interests include:

> (1) the interest in exposing candidates to the scrutiny of the electorate, so voters may make informed choices; (2) the interest in protecting the community from outsiders who are interested only in their own selfish ends and not seriously committed to the community; and (3) the interest in having officeholders who are familiar with the problems, interests and feelings of the community. [*Joseph v City of Birmingham*, 510 F Supp at 1336 (footnotes omitted)].

That these justifications – which were in part cited by the city in establishing the provision – support the charter requirement that candidates must be registered voters for one year when filing for office. We further observe that the people of Detroit recently considered the residency requirement when adopting the latest version of the charter in the November of 2011 election and chose to include it.[15] The interests of the people in adopting the charter must be balanced with the interest of voters to have their choice of candidates. In this instance, the former need not give way to the latter where Duggan asserts that he may be a write-in candidate

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durational requirement in *Chimento v Stark*, 414 US 802; 94 S Ct 125; 38 L Ed 2d 39 (1973), summarily affirming 353 F Supp 1211 (D NH, 1973)).

[14] We offer a couple of points to the dissent. First, we do not doubt that there is a right to travel protected by the state constitution, as was declared in *Musto*. But, that does not automatically result in a strict scrutiny analysis, as the question to answer is whether the charter penalizes Duggan from exercising a fundamental right, and seeking public office is not one. See *Hankins v Hawaii*, 639 F Supp 1552, 1555 (D Hawaii, 1986); *Carver v Dennis*, 104 F3d at 850-851. Thus, the fact that strict scrutiny was applied in cases like *Gilson v Department of Treasury*, 215 Mich App 43; 544 NW2d 673 (1996), which did not involve a durational provision for public office, does not help an analysis of this case. Second, we are not the only court to conclude that the *Green* decision, though not reversed, is no longer persuasive or valid precedent on which to rely. See *Biel*, 660 F2d at 168 (Sixth Circuit called its own decision in *Green* "no longer controlling precedent") and *Joseph*, 510 F Supp at 1327.

[15] No durational residency requirement was contained in the 1997 Detroit City Charter.

under state law, citing MCL 168.737a,[16] and there is no constitutional right to vote for an individual who did not meet the eligibility requirements to run for office. Indeed, voters have the right to expect that the candidates appearing on ballot have met the requirements set by the citizens in the charter.

The substantial interest of the city in prescribing candidate eligibility requirements also weighs in favor of the charter provision. The United States Supreme Court indicated that the interests of the State of Texas in a durational requirement for elected officials were sufficient to warrant the "de minimis" interference with the individual's interests in candidacy. *Clements*, 457 US at 971. The charter does not require a citizen to "choose between travel and the basic right to vote," see *Dunn*, 405 US at 342, because no analogous basic right to candidacy exists. Therefore, although Duggan is "penalized" in that he may not run for mayor for a year after registering to vote, his right to travel was not and his candidacy is not a fundamental right.[17] See *Hankins v State of Hawaii*, 639 F Supp 1552, 1555 (D Hawaii 1986). Duggan points to no specific text in the parallel provisions of the Michigan Constitution to warrant a different result than in the federal cases.[18] He has not provided sufficient justification for this Court's intrusion into the charter adopted by the people of Detroit.

IV. CONCLUSION

We hold that Duggan has not met the qualifications for elected office by the plain terms contained in the charter. We also hold that the durational residency requirement neither implicates, nor violates, the constitutionally based right to travel. Consequently, where Duggan has failed to meet the charter requirements for elective office, his name may not appear on the ballot. Plaintiff thus has a clear legal right to have Duggan's name removed from the list of candidates and the Commission has a clear legal duty to perform this ministerial act.

Affirmed. This opinion is given immediate effect pursuant to MCR 7.215(F)(2).

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[16] MCL 168.737a(1) provides in pertinent part: "The write-in candidate shall file the declaration of intent to be a write-in candidate with the filing official for that elective office on or before 4 p.m. on the second Friday immediately before the election." Section 3-106 of the charter allows for state law to apply to the filing for office by candidates except as otherwise provided in the charter. Thus, the voters remain free to "cast their votes effectively." *Williams v Rhodes*, 393 US 23, 31; 89 S Ct 5; 21 L Ed 2d 24 (1968).

[17] The *Hankins* Court concluded: "The fact that, under the Constitution of the State of Hawaii, an individual must set aside his plans to become Governor for five years after moving to the State cannot seriously be said to constrict the freedom of interstate travel. This court finds that the relationship between the requirement at issue and the right to travel is "too attenuated to warrant invocation of the strict standard of scrutiny." *Id*. at 1555-1556 (citation omitted). The same is true in this case.

[18] We thus decline to adopt a more stringent standard than that adopted by the United States Supreme Court.

No costs, a public question being involved. MCR 7.219(A). We do not retain jurisdiction.

/s/ Christopher M. Murray
/s/ Michael J. Talbot