In the Missouri Court of Appeals
Eastern District

DIVISION FIVE

ROBIN WRIGHT-JONES,	)	No. ED98456
	)	
Respondent,	)	Appeal from the Circuit Court
	)	of the City of St. Louis
vs.	)	
	)	Honorable Joan L. Moriarty
JAMILAH NASHEED,	)	
	)	
Appellant.	)	FILED: June 13, 2012

Introduction

Missouri State Representative Jamilah Nasheed ("Nasheed") appeals from the trial court's judgment in favor of Missouri State Senator Robin Wright-Jones ("Wright-Jones") on her petition challenging the qualifications of Nasheed to run for election in the Democratic Party primary for state senator for the Fifth State Senate District of Missouri (hereinafter "Fifth District"). The trial court found Nasheed does not satisfy the residency requirements to run in the Fifth District under Missouri Constitution Article III, Section 6. On appeal, Nasheed argues that the trial court erred in finding that she did not meet the residency requirements of Article III, Section 6. We hold that Nasheed is ineligible to run for office in the Democratic primary for the Fifth District because Article III, Section 6 requires Nasheed to live within the boundaries of the reapportioned senate district she seeks to represent, and she does not. We would affirm 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

Wright-Jones was elected as the Missouri State Senator for the Fifth District in November 2008. On February 28, 2012, Wright-Jones filed a declaration as a candidate for nomination as the Democratic Party candidate for re-election in the Fifth District. On March 12, 2012, the Missouri Senate Reapportionment Commission filed a legislative district reapportionment plan. The reapportionment plan changed the boundaries of the prior Fifth District to include areas previously located within the former First, Fourth, and Fifth State Senatorial Districts. At all times relevant, Wright-Jones resided, and continues to reside, in what is now the Fifth District.

Nasheed is a member of the Missouri House of Representatives from the Sixtieth District. Nasheed also filed a declaration as a candidate for nomination as the Democratic Party candidate for election in the Fifth District. Prior to the reapportionment plan, at all times relevant, Nasheed resided in what was then the Fourth State Senate District of Missouri (hereinafter "Fourth District"). Following reapportionment, Nasheed's residence remains within the boundaries of the current Fourth District. It is uncontested that Nasheed does not reside in an area of the former Fourth District that was moved into the Fifth District as a result of reapportionment.

Wright-Jones filed suit under Section 115.526[1] challenging Nasheed's qualifications to seek the nomination of the Democratic Party to run for election for Missouri Senator in the Fifth District. Wright-Jones asserted that Article III, Section 6 requires a candidate for state senate to have resided for one year in the relevant legislative district. Wright-Jones acknowledged that the Fifth District has not been established for one year following reapportionment. However, in her

[1] All statutory references are to RSMo., Cum. Supp. 2012 unless otherwise indicated.

petition, Wright-Jones argued that Article III, Section 6 requires that candidates for state senate must have resided within the district as defined after reapportionment for one year prior to the general election to be eligible to seek election in that district. Because Nasheed does not reside within the boundaries of the current Fifth District, Wright-Jones argues that Nasheed does not satisfy the constitutional residency requirements to be eligible to seek nomination to run for the state senator from the Fifth District. Wright-Jones filed, and the trial court granted, a motion to expedite the proceedings.

In her Answer to Wright-Jones's petition, Nasheed admitted, and thereafter stipulated, that she resides within the boundaries of the former and current Fourth Districts. It is undisputed that Nasheed has never, at any time relevant, resided in any area that is included within the boundaries of the current Fifth District. Nasheed contended that she nevertheless satisfies all constitutional requirements because Article III, Section 6 provides an exception to the requirement of in-district residency when reapportionment occurs less than one year prior to a general election, as is the case here. Nasheed argued that in this circumstance, Article III, Section 6 allows a candidate to seek election in any senate district in which the candidate does not reside when any part of the senate district in which the candidate does reside is reapportioned within the boundaries of the senate district the candidate seeks to represent, provided the candidate has lived anywhere within the senate district in which he or she currently resides for a cumulative total of one year. Nasheed specifically argued that the residency qualifications of Article III, Section 6 do not require a candidate to live in the geographic area of the separate senate district which was reapportioned into the senate district in which the candidate now desires to seek office.

After stipulations of fact were submitted by both parties, the trial court issued findings of fact and conclusions of law related to the interpretation of Article III, Section 6. In its judgment, the trial court noted the parties' opposing constructions of the relevant constitutional provision, and found a portion of Article III, Section 6 ambiguous. In particular, the trial court found ambiguous the one year residency requirement as it relates to legislative districts following reapportionment when the general election is scheduled to take place less than one year after reapportionment. After finding the provision ambiguous, the trial court stated that it would construe the provision to give effect to the legislative intent. Applying this rule of construction, the trial court held that Article III, Section 6 requires that a candidate must have resided for one year within the legislative district the candidate seeks to represent as it is defined following reapportionment.

The trial court reasoned that the intent of Article III, Section 6 supported its construction. The trial court explained that Nasheed's construction:

> [W]ould lead to absurd results where a candidate could run in any number of districts, which are in no way associated with his or her residence, and would promote electoral district shopping. The Court does not believe this was the intent of the legislature in enacting Article III, Section 6 with its residency requirement.[2]

Accordingly, the trial court held that Nasheed did not satisfy the residency requirement to run for the office of Missouri Senator for the Fifth District, and could not seek to run in the Democratic Party primary for nomination to that office. This expedited appeal follows.

Points on Appeal

Nasheed raises three related points on appeal. In her first point, Nasheed argues that the trial court erred in finding that Article III, Section 6 requires that a candidate reside within the

[2] The trial court in its judgment mistakenly refers to "the intent of the legislature in enacting Article III, Section 6". This constitutional provision was enacted by the people of Missouri through a popular election. Despite the mistaken reference, the trial court appropriately considered the "intent" and purpose of Article III, Section 6.

boundaries of the legislative district as defined after reapportionment because subsequent changes to the Missouri Constitution specifically removed this requirement. In her second point on appeal, Nasheed argues the trial court erred in finding that Nasheed could not seek the office of Missouri Senator for the Fifth District because Nasheed satisfies the residency requirements of Article III, Section 6. In her final point on appeal, Nasheed argues that the trial court erred when it impermissibly construed Article III, Section 6 beyond its plain meaning. Given the undisputed facts of this case, we find that Nasheed's separate points are appropriately combined into a single point on appeal: whether Article III, Section 6 requires that, in the case of the reapportionment of legislative districts within one year of a general election, a candidate must have resided for one year within the boundaries of the legislative district as defined after reapportionment to be eligible to run for election of Missouri State Senator in that legislative district.

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 is a case of first impression requiring this Court to interpret Missouri Constitution Article III, Section 6. The trial court found the residency qualifications of this provision require that, upon reapportionment, a candidate for Missouri Senate must have resided for one year within the boundaries of the legislative district following reapportionment. Nasheed contends that Article III, Section 6 relaxes the prior residency requirement when reapportionment occurs less than one year before the next general election. In this situation, Nasheed posits that Article III, Section 6 permits a candidate to seek office in a legislative district in which the candidate does not reside, provided the candidate has resided for one year in any area of a legislative

district, a portion of which has been moved by reapportionment into the legislative district where the candidate desires to seek election. Nasheed avers that she meets the residency requirement of Article III, Section 6 to seek office in the Fifth District even though she resides within the Fourth District, because a portion of the Fourth District in which she does not reside was moved into the current Fifth District through reapportionment less than one year before the next general election.

I. Rules of Constitutional Construction.

"Constitutions are not designed for metaphysical or logical subtleties, for niceties of expression, or for the exercise of philosophical acuteness of judicial research." Akin et al. v. Mo. Gaming Comm'n, 956 S.W.2d 261, 263 (Mo. banc 1997) citing State on Info. of Dalton v. Dearing et al., 263 S.W.2d 381, 385 (Mo. banc 1954) (citation omitted). "They are instruments of a practical nature, founded on the common business of life, adapted to common wants, designed for common use, and fitted for common understandings." Id.

The "fundamental purpose of constitutional construction is to give effect to the intent of the voters who adopted the Amendment." Sch. Dist. of Kansas City v. State, 317 S.W.3d 599, 605 (Mo. banc 2010). Generally, constitutional provisions are subject to the same rules of construction as other laws, with the exception that constitutional provision are construed more broadly due to their more permanent character. StopAquila.org, 208 S.W.3d at 899. The court will not "read into the Constitution words that are not there." Indep.-Nat'l. Educ. Ass'n v. Indep. Sch. Dist., 223 S.W.3d 131, 137 (Mo. banc 2007). When language of a constitutional provision is plain and unambiguous, no construction is required. Concerned Parents et al. v. Caruthersville Sch. Dist. 18 et al., 548 S.W.2d 554, 559 (Mo. banc 1977).

Mindful of these rules of constitutional construction articulated by the Missouri Supreme Court, we will look beyond the plain meaning of the words of a constitutional provisions where

"context furnishes some ground to control, qualify, or enlarge" the common-sense meaning of the words. Akin, 956 S.W.2d at 263, citing Dalton, 263 S.W.2d at 385 (citation omitted); Sch. Dist. of Kansas City, 317 S.W.3d at 605, citing Rathjen et al. v. Reorg. Sch. Dist. R-II of Shelby Cnty., 284 S.W.2d 516, 524 (Mo. banc 1955) (We will broadly construe words "in accordance with their plain and ordinary meaning unless some good reason, consistent with the purpose of the constitutional provision, otherwise appears.").

In construing an individual section of the constitution, the constitution must be read as a whole while considering other sections that may aid in the interpretation of the section at issue. State ex rel. Mathewson et al. v. Bd. of Election Com'rs of St. Louis Cnty, 841 S.W.2d 633, 635 (Mo. banc 1992). This Court must give regard to the primary objectives of constitutional provisions as viewed in harmony with related provisions. State ex rel. Upchurch v. Blunt, 810 S.W.2d 515, 516 (Mo. banc 1991).

II. Article III, Section 6 is ambiguous on the issue of residency requirements when reapportionment occurs less than one year prior to the next general election.

Adhering to the rules of constitutional construction provided by our Supreme Court, we consider whether the trial court erred in finding Article III, Section 6 ambiguous.

The reapportionment of Missouri legislative districts is rooted in the Decennial Census required by the United States Constitution. U.S. Const. art. I, § 2. Following the U.S. Census Bureau's release of the Decennial Census, the Missouri Constitution requires the fair reapportionment of all Missouri legislative districts. Mo. Const. art. III, § 2; Mo. Const. art. III, § 10. Article III, Section 2 ensures that the redrawn districts fairly represent the citizens of Missouri by requiring each district be composed of contiguous and compact territory. Mo. Const. art. III, § 2. The U.S. Constitution also protects the integrity of state legislative districts

by ensuring that they are drawn to fairly and equally represent the residents of all legislative districts. Reynolds v. Sims, 377 U.S. 533, 555 (1964).

The issue before this Court implicates the residency requirement following reapportionment for a candidate for Missouri Senate as set forth in Article III, Section 6. Specifically, does Article III, Section 6 require a candidate for Missouri State Senate to reside in the senate district the candidate seeks to represent for one year as the senate district is defined after reapportionment; or, alternatively, does a candidate satisfy the constitutional residency requirements of Article III, Section 6 when the candidate resides anywhere within a different senate district, a part of which has been moved by reapportionment into the senate district the candidate seeks to represent.

As a threshold issue, we must first decide whether Article III, Section 6 is ambiguous as to the question on appeal. If the provision is unambiguous, we look no further. Concerned Parents, 548 S.W.2d at 559. Article III, Section 6 states:

> Each senator shall be thirty years of age, and next before the day of his election shall have been a qualified voter of the state for three years and a resident of the district which he is chosen to represent for one year, if such district shall have been so long established, and if not, then of the district or districts from which the same shall have been taken.

Mo. Const. art. III, § 6. The parties agree that reapportionment of the relevant legislative districts occurred within one year of the general election. Therefore, the issue on appeal is the proper interpretation, as it applies to the facts of this case, of the phrase: "if such district shall have been so long established, and if not, then of the district or districts from which the same shall have been taken." Mo. Const. art. III, § 6.

A constitutional provision is ambiguous if the intent of the drafters cannot be determined from the plain meaning of the language due to "duplicity, indistinctness or uncertainty of

meaning of an expression." Johnson v. State, No. SC92351, 2012 WL 1921640, at *10 (Mo. banc May 25, 2012), citing J .B. Vending Co. v. Dir. of Revenue, 54 S.W.3d 183, 187 (Mo. banc 2001) ("The issue is not whether a particular word in a statute, considered in isolation, is ambiguous, but whether the statute itself is ambiguous. This follows from the fact that the goal in interpreting a statute is to determine the legislative intent, and to do that one must consider the meaning of a particular word in the context of the entire statute in which it appears.") (emphasis omitted).

Although no Missouri court has addressed the potential ambiguity of Article III, Section 6 as it applies to reapportionment, the Missouri Supreme Court has found ambiguity elsewhere within Article III of the Missouri Constitution in the context of reapportionment. Mathewson, 841 S.W.2d at 635. In Mathewson, the court considered the ambiguity of Article III, Section 7. Id. Article III, Section 7 states that once an apportionment plan has been properly filed, "thereafter senators shall be elected according to such districts until a reapportionment is made as herein provided." Id., quoting Mo. Const. art. III, § 7. The issue in that case was whether Article III, Section 7 required the use of the district boundaries as drawn following reapportionment in a special election held after reapportionment, but before the first general election after reapportionment; or whether the reapportioned districts could not be used until the next general election following reapportionment. Mathewson, 841 S.W.2d at 635. The Board of Election Commissioners argued that the plain meaning of the provision "shall be elected" did not restrict the first use of reapportioned districts to general elections because that phrase unambiguously stated that after the filing of a reapportionment plan, senatorial elections must be elected from the reapportioned districts. Id. The plain language of Article III, Section 7 did not

condition its application to general elections. Id. Addressing the issue of ambiguity, the court explained:

> The question of ambiguity cannot be viewed in the abstract. A particular word or phrase in any writing is ambiguous only with reference to some specific issue.

Id. (emphasis added). Applying a contextual inquiry, the court found ambiguity in the constitutional provision "shall be elected" by examining other related provisions within the constitution. Id. 635-36. The court's finding of ambiguity stemmed from the express reference to special elections in other sections of the Missouri Constitution, and the absence of such reference in Article III, Section 7. Id. The Mathewson court held that Article III, Section 7 could only be interpreted to refer to special elections by implication. Id. at 636. Inferring from other related constitutional provisions, the court reasoned that if the drafters of Article III, Section 7 had intended the provision to apply to special elections they would have expressly referenced special elections rather than including such elections within Section 7 implicitly. Id. at 635-36. Accordingly, the court held that Article III, Section 7 did not permit the use of newly reapportioned districts in special elections that preceded the first general election following reapportionment. Id. at 636.

Important to our analysis of Article III, Section 6 in this case is that the holding in Mathewson is not supported by the bare words of the sole constitutional provision at issue. Article III, Section 7 states:

> After the [reapportionment] statement is filed senators shall be elected according to such districts until a reapportionment is made as herein provided.

Mo. Const. art. III, § 7 (emphasis added). On its face, the provision mandates that, without exception, every election for state senate must take place within the newly drawn districts after the reapportionment plan is filed with the Secretary of State. The provision does not expressly

exempt special elections from the requirement that they be conducted using the new reapportioned districts, nor does the language expressly limit its application to only general elections. Article III, Section 7 contains no language, the plain meaning of which creates ambiguity as to whether its requirements apply equally to general and special elections. However, in its analysis the court addressed the potential ambiguity of the constitutional provision as a contextual inquiry, and examined other related constitutional provisions in order to determine whether the plain meaning of the provision unambiguously required special elections to occur in reapportioned districts. Mathewson, 841 S.W.2d at 635-36. Only after engaging in this broader contextual inquiry did the court find Article III, Section 7 was ambiguous as to which elections were required to use the reapportioned senate districts. Id.

In considering the issue of ambiguity, we are instructed by Mathewson not to consider the words of Article III, Section 6 in the abstract, but to analyze these words with reference to a specific issue. See id. Applying the rules of constitutional construction articulated by the Mathewson Court, we must determine whether Article III, Section 6 is ambiguous with respect to the issue presented on appeal. Specifically, we must determine whether the plain and ordinary meaning of the language of the Article III, Section 6 states whether, in the context of reapportionment, a candidate for a senate district must reside and have resided for one year in an area within the geographic boundaries of the post-apportionment district the candidate seeks to represent; or whether a candidate satisfies the residency requirement of Article III, Section 6 through one year residency in any part of a senate district of which some part has been moved by reapportionment into the senate district the candidate seeks to represent. Whether Article III,

Section 6 unambiguously answers this question, and the query itself, are both issues of first impression.[3]

As previously noted, Article III, Section 6 is ambiguous if the plain meaning of the provision is susceptible to two different contextual definitions. Johnson, 2012 WL 1921640, at *10; Rathjen, 284 S.W.2d at 523. Two such varying interpretations have been presented on appeal. Nasheed asserts that her broad reading of Article III, Section 6 is the correct constitutional interpretation because it adheres to the plain meaning of the provision, and further asserts that the drafters intended for this provision to prevent potential candidates from being gerrymandered out of a district during reapportionment. Notably, Nasheed's application of Article III, Section 6 would allow some potential candidates to simultaneously satisfy the prior residency requirements for multiple legislative districts, including some within whose geographic borders the candidate does not and has never lived. The narrower interpretation of Article III, Section 6 adopted by the trial court and advanced by Wright-Jones allows a candidate to meet the residency requirements only in a single reapportioned legislative district that includes the geographic area where the candidate has resided for one year..

Applying the contextual discussion utilized in Mathewson, we hold that the plain language of Article III, Section 6 is ambiguous as it applies to the issue presented on appeal. Article III, Section 6 requires a senator to be a resident of the district which he or she is chosen

[3] We note that two past Missouri Attorneys General have issued opinions that the language of Article III, Section 6 is unambiguous, and further note the Amicus Brief of the current Attorney General reasserting the same conclusion. Appellant argues that the opinions, dating back 45 years, reflect the traditional approach to which Article III has guided legislative races throughout Missouri. Appellant further suggests that the failure to adhere to this traditional approach will bring chaos to the legislative electoral process. While mindful of the reliance individual candidates may have placed in past Attorney General Opinions, it is the role of this Court, not Attorneys General, Secretaries of State, or Boards of Election to finally resolve constitutional issues. While an opinion of the Attorney General may be persuasive, an Attorney General's Opinion is not binding on this Court, Brady v. Curators of Univ. of Missouri, 213 S.W.3d 101, 108 (Mo. App. E.D. 2006), and is entitled to no more weight "than that given the opinion of any other competent attorney." State ex rel. Stewart v. King, 562 S.W.2d 704, 709 (Mo. App. K.C. 1978), citing Gershman Inv. Corp. v. Danforth, 517 S.W.2d 33, 36 (Mo. banc 1974). We further note that both of the Attorney General opinions were issued prior to the Missouri Supreme Court's 1992 decision in Mathewson, and neither opinion addresses the issue of contextual ambiguity as discussed in Mathewson.

to represent for one year, if such district "shall have been so long established", and if not, then of "the district or districts from which the same shall have been taken". Mo. Const. art. III, § 6. In the matter before us, because the Fifth District has not been established for a year prior to the general election, the pertinent phrase of Article III, Section 6 is "then of the district or districts from which the same shall have been taken." Mo. Const. art. III, § 6. As we consider these words in the overall context of Article III, we find the phrase "from which the same shall have been taken" unclear as to whether the provision allows eligibility for persons who reside in any location within any of the districts combined; or for only those persons who reside within the geographic location of a former district which, upon reapportionment, was drawn into the district the candidate now seeks to represent.

Both Nasheed and Wright-Jones agree that the phrase "the same" refers to the newly reapportioned senate district in which the candidate desires to seek election, here, the Fifth District. We agree. However, the parties then offer differing suggestions as to which words or phrases are operative and controlling when interpreting this provision. The language at issue includes the words "of", "the district or districts", "from which", and "taken". Mo. Const. art. III, § 6. During oral argument, Nasheed asserted the meaning of the provision was found within the words "the same" and "taken." The Attorney General, although concurring with Nasheed regarding the ultimate meaning of Article III, Section 6 as applied to the facts of this case, nevertheless argued that the key word in defining that provision was "of." In a third interpretation, Wright-Jones alternatively argued that the word "taken" deserves the strongest emphasis as a reference to the geographic area "taken" from the former district to create the newly reapportioned district.

We consider the plain meaning of words used within Article III, Section 6 in the overall context of electoral residency requirements of the constitution. Only by considering these words in such context are we able to better understand the meaning of the words as used by the drafters of this constitutional provision. Applying a contextual analysis, we find conflict between the bare words of Article III, Section 6 and the constitutional framework for residency found within Article III. Our inability to reconcile the friction between Article III, Section 6 and other constitutional residency requirements renders Section 6 ambiguous.

The residency requirements for state senators and those seeking to run for state senate are encompassed within Sections 6 and 13 of Article III. Article III, Section 6 deals with prior residency, while Article III, Section 13 addresses residency of a legislator following his or her election to office. Mo. Const. art. III, § 6; Mo. Const. art. III, § 13. As such, we consider these provisions together and construe them in harmony with each other. Upchurch, 810 S.W.2d at 516.

The bare words of Article III, Section 6 as interpreted by Nasheed chafe against the language of Article III, Section 13, which provides that legislators vacate their offices if they "remove" their residences from their districts during their term. Mo. Const. art. III, § 13. In the absence of a contrary intent, the same meaning attaches to a word or phrase wherever it is used within the constitution. Rathjen, 284 S.W.2d at 531. Article III, Section 13 refers to the area of residence as "the district or county for which [the legislator] was elected." Mo. Const. art. III, § 13. When read together, Sections 6 and 13 of Article III are reasonably interpreted to require residency within the district a legislator represents prior to and upon election, and throughout the legislator's term in office. A contrary reading of the provisions leads to the illogical result of allowing a legislator to live outside the district he or she represents, but forfeit the office if

during the same period of time the legislator moved into and then back out of the same district. Such an interpretation also leads to an unequal and disparate application of Article III, Section 13 between legislators elected in districts that were reapportioned within one year of the general elections and all other legislators. We are unable to reconcile the meaning of the "bare words" used in Article III, Section 6 with the plain language of Section 13. Because of this contextual ambiguity, we find Article III, Section 6 is ambiguous as it relates to the residency issue on appeal.

III. The manifest intent of the residency requirements of Article III, Section 6 was to require residency for one year prior to general election within the boundaries of the legislative district as defined after reapportionment.

Having found Article III, Section 6 ambiguous as to the question on appeal, we will construe the constitutional provision broadly in order to effectuate its intended purpose. Sch. Dist. of Kansas, 317 S.W.3d at 605, citing Rathjen, 284 S.W.2d at 524.

A. The focus of legislative district reapportionment is the people of the district, not the legislative office holder.

Our construction of the Missouri Constitution requires an appreciation for the purpose of the relevant section. The constitutional provision at issue in this case balances two separate constitutional principles: preserving a truly representative form of government through reapportionment; and fairness to the individuals who aspire to serve the people of those districts as elected legislators. It is within the context of the balance of these constitutional principles that we interpret Article III, Section 6.

The focus of reapportionment is not the office holder, but the constituents of the district represented by the office holder. Reapportionment is undertaken to ensure constituents are fairly represented in our state legislature by creating and maintaining legislative districts equal in population. Gaffney v. Cummings, 412 U.S. 735, 748 (1973), citing Reynolds, 377 U.S. at 555

("the achieving of fair and effective representation for all citizens is … the basic aim of legislative apportionment"). This process is designed to promote fairness in the representative form of government embraced by our country and state. Id. (reapportionment involves "fundamental choices about the nature of representation") (citation omitted). Constitutional provisions and statutes have been enacted over the many years since statehood to safeguard the underlying principles upon which our representative form of government is founded. One such principle is to ensure that elected officials are sufficiently connected to their constituents to serve them with sensitivity and understanding. See Lewis v. Gibbons, 80 S.W.3d 461, 466 (Mo. banc 2002). Requirements relating to residency qualifications promote and safeguard this long cherished principle of representative government. See State ex rel. Gralike v. Walsh, 483 S.W.2d 70, 76 (Mo. banc 1972) (explaining durational residency requirements have a long history and apply to both federal and state offices).

Although the focus of reapportionment is not the office holder, our chosen system of government, embodied in our state constitution, recognizes the rights of office holders when they are impacted by a realignment of the boundaries of the legislative districts they represent. Similarly, our constitution recognizes the rights of those who aspire to attain the privilege of representing the constituents in a realigned district, and of the voters to freely choose among those candidates for office who wish to represent them. Reynolds, 377 U.S. at 562 ("Legislators represent people, not trees or acres. Legislators are elected by voters, not farms or cities or economic interests. As long as ours is a representative form of government, and our legislatures are those instruments of government elected directly by and directly representative of the people, the right to elect legislators in a free and unimpaired fashion is a bedrock of our political system.").

The issues presented on this appeal require this Court to analyze the pertinent constitutional provisions and balance the rights of persons seeking office in a legislative district that has undergone constitutionally sanctioned reapportionment with the residency requirements designed to ensure the constituents receive meaningful and sensitive representation. After careful analysis, we conclude that the right of an individual to run for office, while deserving of constitutional protection, is subservient to constitutional residency qualifications. Accordingly, we construe Article III, Section 6 to safeguard the connection between legislative representatives and the people they serve.

B. The purpose of the residency requirements of Article III, Section 6 is to ensure a sufficient connection between the people of an electoral district and their legislative representatives.

The Missouri Supreme Court addressed a related issue in Lewis v. Gibbon, 80 S.W.3d 461 (Mo. banc 2002). Lewis concerned the residency requirement to be eligible for election as an associate circuit judge. Id. at 463. The candidate in that case lived in the relevant county from infancy until he left for college. Id. The candidate returned many years later and asserted that he satisfied the one year residency requirement because, even though he had not lived in the county for over a decade, he lived in the county for one year at some point in his life. Id. at 464. The candidate cited Section 478.320.6, RSMo., 2000 (hereinafter "Section 478.320.6"), which stated: "No person shall be elected as an associate circuit judge unless he has resided in the county for which he is to be elected at least one year prior to the date of his election … ." Id. at 463. The candidate argued that the plain and ordinary meaning of Section 478.320.6 required only that a candidate have lived in the county for a year at some point in his or her life, and did not require that the year of residence immediately precede the election. Id. at 464. The

candidate argued that his previous residency within the county satisfied the application of the plain language of Section 478.320.6. Id.

In a divided opinion, the Missouri Supreme Court, rejected the candidate's literal interpretation of the residency requirement of Section 478.320.6 and held that the relevant period of residency was the one year period immediately preceding the election. Id. at 465-66. In so holding, the court noted that the statute did not expressly state that the period of time of residency must be one year "immediately" prior to the election because the language used in the statute read only "prior to the date of his election". Id. Although the court's interpretation of Section 478.320.6 went beyond the plain language of the statute, the court held that the residency requirements for a multitude of other statutory offices did not use the word "prior" when intending "immediately prior" as the actual residency requirement. See id. The court also noted that its interpretation was consistent with the court's jurisprudence interpreting the word "prior" to mean "immediately prior". Id. Pertinent to this case, the Missouri Supreme Court noted that its interpretation of the phrase "prior to" as "immediately prior to" reflected the legislative intent of the provision, stating:

> The purpose of residence statutes is to ensure that government officials are sufficiently connected to their constituents to serve them with sensitivity and understanding. To adopt the reading of this statute proposed by [the candidate] would permit a person to live in a county between the age of birth and 18 months, to leave the county and to return 50 or 60 years later and be eligible to run.

Id. at 466. The court found that adopting a literal interpretation and allowing one year residency at any point in a candidate's life would be "obviously inconsistent with the intention of the legislature, unreasonable and absurd." Id.

In this case, Nasheed advances an interpretation of Article III, Section 6, similar to the interpretation of Section 478.320.6 rejected by the Lewis Court. Article III, Section 6 provides

that, after legislative reapportionment, a candidate for Missouri Senate in a given district must have been a one year resident "of the district or districts from which the same shall have been taken." Mo. Const. art. III, § 6. Nasheed argues that the plain and ordinary meaning of the language used in this provision allows a candidate to satisfy the one year residency requirement despite the fact the candidate does not live and has never lived within the legislative district, no matter how remote the candidate's physical presence from the district may be. Nasheed avers that this highly technical construction best represents the purpose of Article III, Section 6. After careful review, we reject Nasheed's interpretation of Article III, Section 6.

As the Missouri Supreme Court instructed in Lewis, we are guided by the purpose of the constitutional residency requirements: to ensure a connection between the citizens of a district and the candidates who hope to represent them. Lewis, 80 S.W.3d at 465-66. As noted above, the preservation of the representative bond between elected legislators and their constituents is also the purpose of well regulated legislative district reapportionment. The Lewis Court recognized that this relationship has always been a fundamental premise underlying durational residency requirements for seeking public office. See id. The Missouri Supreme Court in Lewis recognized the importance of this bond as sufficiently important to justify reading the word "immediately" into the statutory requirement that a candidate reside "at least one year [immediately] prior to the date of his election" in a representative district. Id. at 465-66.

The court in Lewis also explained that it would be antithetical to the concept of residential requirements to interpret the provision to permit a candidate to run for office with only a remote connection to the district. Id. Residency requirements "give some assurance that candidates are acquainted with the problems of the State and that voters have had some

opportunity to observe the candidates as fellow citizens in their local areas." Antonio v. Kirkpatrick, 579 F.2d 1147, 1150 (8th. Cir. 1978). The same logic applies to the present case.

Our construction of the relevant phrase within Article III, Section 6 is also supported by its context, particularly the immediate context of the entirety of Article III, Section 6. See Mathewson, 841 S.W.2d at 635. The entire section establishes an age requirement, the requirement of three year prior qualification as a Missouri voter, and a one year residency within the relevant legislative district or districts. Mo. Const. art. III, § 6. It is clear to this Court that the purpose of the residency requirements of Article III, Section 6 is to ensure a connection between a candidate and the legislative district the candidate desires to represent. See Lewis, 80 S.W.3d at 466; Gralike, 483 S.W.2d at 76 (upholding Article III, Section 6 against an equal protection challenge and acknowledging the historical tradition of residency requirements); see also State ex rel. Burke v. Campbell, 542 S.W.2d 355, 358 (Mo. App. St.L. 1976) ("We do not believe the framers of Article III, Section 4, intended that one not qualified to vote in his own election might serve as State Representative and no such strained construction will be placed on this provision.").

Nasheed's construction of Article III, Section 6, however, allows the opposite of the result intended by the drafters of Article III, Section 6, specifically with respect to requiring prior residency. Under Nasheed's interpretation, a candidate would be eligible to seek election in a legislative district without having any connection to the people of that district, other than that the candidate lives in a completely different electoral district, a former portion of which previously was drawn into a separate electoral district. Nasheed suggests that her interpretation provides the constitutional nexus between the candidate and the populace that is intended by Article III, Section 6. Under Nasheed's construction, candidates would not be required to have ever lived in

a geographic area that at any point was, or became, within the district they seek to represent. Candidates would be permitted to seek election to an office in a district in which the candidate is not qualified to vote.[4] Under Nasheed's interpretation, a legislator elected within one year of reapportionment can hold office without ever moving into the district he or she represents.[5] We are not persuaded that such interpretation provides the constitutional nexus required.

The reapportionment process is safeguarded by the Missouri and United States Constitutions and is undertaken to promote better and more equal representation by legislators to their constituents. Residency requirements have the exact same goal: to promote conscientious representation by requiring that legislators are chosen from among their constituents. Lewis, 80 S.W.3d at 466. To interpret Article III, Section 6 as Nasheed suggests would allow legislators to represent constituencies of which they are not a part, and with whom they may have only a regional geographic connection. We do not believe that this construction holds fidelity to the

[4] In her brief and oral argument, Nasheed emphasizes the close proximity of her current residence to the boundaries of the newly drawn Fifth District, the presence of much of her state representative district in the newly drawn Fifth District, and her intent to relocate within the newly drawn Fifth District. Our construction of the Constitution cannot be guided by such facts, but is limited by the parameters of the constitutional mandate of Article III, Section 6. Regardless of Nasheed's stated intentions, her interpretation of Article III, Section 6 does not require her to reside within the newly drawn Fifth District. Our consideration of the legal arguments raised by the parties must be based solely upon the mandates of the Missouri Constitution. We consider the facts attendant to an individual candidate only to the extent such facts bear on the constitutional analysis before us. Nasheed's intent to relocate in the future does not bear upon the constitutional requirements of prior residency. Neither can the peculiar facts and demographics of Nasheed's state representative district influence our decision. Should our analysis lead us to conclude that a candidate must reside within the boundaries of the newly drawn legislative district, we will apply our holding equally to all candidates seeking to represent that district, and cannot be swayed by the fact that a candidate lives one block outside of the newly drawn legislative district or miles outside of the newly drawn legislative district.

[5] The concurring opinion suggests our concern that Nasheed's construction of Article III, Section 6 would allow legislators to represent districts throughout their entire first term in office without ever living within those districts is unfounded because the relevant legislative body has the authority under Article III, Section 18 to govern the qualification of its members and remove from office such legislators who fail to meet the criteria set by the General Assembly. This position has merit only if the legislative body interprets the relevant constitutional authority to prohibit a legislator from residing outside his or her district, an interpretation not shared by the concurring opinion. Nor does the plain language of Article III, Section 13 require legislators to affirmatively move into their legislative districts if they do not currently reside within the district. While we agree that the General Assembly has authority to govern the qualifications of its members, under the interpretation proposed by Nasheed and embraced by the concurring opinion, the General Assembly would have no reason based in Article III to find that such legislators are not qualified to hold office. We further posit that, if the principle of residency is embodied anywhere in our electoral system of governance, such principle is derived from our construction of Article III, Section 6 of the Missouri Constitution, and not from an internal rule promulgated by the General Assembly.

purposes of either reapportionment or residency requirements, let alone to their intersection. As the court found in Lewis under analogous circumstances, we hold that such an interpretation of Article III, Section 6 contravenes the intent of the drafters of Article III, Section 6.[6] Rather, we hold the intent of Article III, Section 6 mandates that, where legislative reapportionment occurred within one year of the general election, a candidate seeking to run for state senate must have achieved one year residency in the senate district as it is defined post-apportionment.

This principle of residency that flows through our constitution is accomplished only by reading Article III, Section 6 to include the words "the part of" immediately preceding the words "district or district from which the same shall have been taken." Mo. Const. art. III, § 6. Accordingly, Article III, Section 6 allows a person to seek office in a legislative district which has not been established for one year prior to the general election if that person has resided within the reapportioned district for one year, or has resided in **"the part of the district or districts from which the same shall have been taken."** Mo. Const. art. III, § 6. We recognize the importance of citizens having the opportunity to vote and run for public office. This holding does not negatively impact Nasheed's right to run for public office. Nasheed remains eligible to seek election within those districts in which she satisfies the residency requirement imposed on all candidates.

IV. Construction of Article III, Section 6 with Article III, Section 13.

We do not interpret Article III, Section 6 in isolation. Rather, the canons of constitutional construction require that we consider other relevant provisions to ascertain the purpose of Article III, Section 6 as it applies to this case. Mathewson, 841 S.W.2d at 635. The language of Article

[6] We acknowledge that Lewis construed a statute, whereas we interpret a provision of the Missouri Constitution. However, constitutional provisions are interpreted using the same rules as statutes, but are construed more broadly. StopAquila.org, 208 S.W.3d at 899. The rules of construction therefore support the applicability of the court's rationale in Lewis to the facts of this case, and to our holding.

III, Section 13 not only provides a basis for analyzing the threshold question of ambiguity, but also is instructive in our subsequent construction and interpretation of Article III, Section 6. Important to our interpretation is our recognition that Article III, Section 13 again calls attention to the importance of the connection between an elected representative and his or her legislative district, and declares residency as the vehicle by which that connection is maintained.

Article III, Section 13 states:

> If any senator or representative remove his residence from the district or county for which he was elected, his office shall thereby be vacated.

Mo. Const. art. III, § 13 (emphasis added). Article III, Section 13 defines "district" as the area actually represented by the senator or representative, here, the Fifth District. Article III, Section 13 does not define "district" to include a still-foreign portion of a separate legislative district from which a part was reapportioned into the newly drawn represented district, here, the Fourth District. See Mo. Const. art. III, § 13. The absence of any language lessening the requirement of concurrent residency during a legislator's term in the context of reapportionment demonstrates the clear intent of the drafters of Article III, and the voters who adopted Article III, that legislators be chosen from the district within which they reside and continue their residency during their term of office.

Article III, Section 13 provides guidance as to the resolution of the issue on appeal because it establishes the requirement of concurrent residency by a legislator. Article III, Section 13 imposes the strict penalty that any state legislator will forfeit his or her office by the act of moving their residence beyond the boundaries of the district. Mo. Const. art. III, § 13; see also State on Information of Danforth v. Hickey, 475 S.W.2d 617, (Mo. banc 1972) ("There is no question but that the people intended [in adopting Article III, Section 13] that the office of a representative (or senator) is vacated by him if in fact he moves his residence from his district.").

Section 13 contains no language lessening or eliminating this requirement when an election takes place within one year of legislative district reapportionment. See Mo. Const. art. III, § 13.

Because Nasheed does not reside within the Fifth District, her interpretation of Article III, Section 6, would render Article III, Section 13 meaningless as to her because Section 13 would have no consequence on her residency while serving her term as senator. The literal construction of Article III, Section 6 posited by Nasheed exempts her from the requirement that would apply to Wright-Jones if she were elected senator for the Fifth District because Section 13 vacates the offices of only those senators who "remove" their residence from the district or county. Mo. Const. art. III, § 13 (emphasis added). Nasheed cannot remove her residence from the Fifth District because her residence in not located in the Fifth District. This interpretation contradicts the significant purpose of residency requirements "to ensure that government officials are sufficiently connected to their constituents to serve them with sensitivity and understanding." Lewis, 80 S.W.3d at 466.

We hold that the accurate construction of Article III, Section 13 presumes that legislators reside within their districts at the time they take office. To find otherwise would be to reason that the drafters of the provision had a greater concern should a legislator physically remove his residence from the district, than whether a legislator ever lived in the district he or she chose to represent in the first place. We fail to see any rationale in constitutional provisions that allow legislators to serve their time in office without ever residing among their constituents, but strip other legislators of their offices should they move out of their district prior to completing their terms. The more logical and consistent approach is that, applying the broad interpretation required, Article III, Section 13 presupposes that a senator lives within his or her legislative district at the time the senator takes office. This assumption of prior residency implicit within

Article III, Section 13 can only be derived from Article III, Section 6. These two constitutional provisions only exist in harmony if Section 6 requires that candidates seeking office reside within the district they seek to represent. This construction necessarily eliminates the eligibility of a candidate under Article III, Section 6 who resides in an area which is not located within the reapportioned legislative district the candidate seeks to represent.

Lastly, we note that Nasheed's interpretation of Article III, Section 6 undermines the valued principle of ensuring government officials are sufficiently connected to their constituents to serve them with sensitivity and understanding by allowing candidates, like her, to run for office simultaneously in two or more separate districts. Nasheed resides in a geographic location within what was the Fourth District prior to reapportionment, and what is now the current Fourth District after reapportionment. Wright-Jones asserts that the former Fourth District was reapportioned into the current First, Fourth, Fifth, and Twenty-Fourth Districts.[7] Assuming Wright-Jones is correct regarding which current districts contain portions of the former Fourth District, applying Nasheed's interpretation of Article III, Section 6, Nasheed would satisfy the residency requirement to seek office in the First, Fourth, Fifth and Twenty-Fourth Senate Districts because portions of the former Fourth District were moved into each of those reapportioned senate districts. As the trial court reasoned, we are not persuaded that the drafters of Article III, Section 6, or the voters who approved the provision, intended that reapportionment would provide a district-shopping windfall for legislative candidates.

Nasheed argues that a "district shopping" scenario is statutorily precluded by Section 115.351 which prevents any person from filing their candidacy in the same election for two

[7] The record on appeal does not clearly indicate which current districts contain portions of the former Fourth District. However, the parties agree that the former Fourth District was reapportioned into two or more current senate districts. Therefore, our analysis of Nasheed's interpretation of Article III, Section 6 as it applies to the possibility of running in multiple senate districts is unchanged by the failure of the record to identify the specific current districts which contain portions of the former Fourth District.

separate offices. Her argument fails for the obvious reason that the General Assembly cannot statutorily prohibit what Article III, Section 6 allows. If Nasheed's proffered interpretation of Article III, Section 6 is correct, Section 115.351 may not constitutionally prevent her, or other candidates similarly affected by reapportionment, from simultaneously running for offices in multiple districts. We agree with Nasheed that such a scenario is prohibited under Missouri law, but we can only reach that conclusion by rejecting Nasheed's interpretation of Article III, Section 6. We find no provision in the Missouri constitution, other than our construction of Article III, Section 6, that bars a candidate from being eligible to seek legislative office simultaneously in multiple districts. The question, then, is whether the intent of the relevant constitutional provisions was to allow candidates to be eligible to simultaneously seek legislative offices in multiple districts. We find no support in the constitution for any such intent.

Conclusion

We hold that to satisfy the residency requirements of Article III, Section 6 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 6 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, Nasheed does not meet the residency requirements to seek election in the Fifth District.

Legislative reapportionment does not deprive Nasheed or other candidates in her situation from seeking legislative office following reapportionment. Nasheed may seek to represent any

district provided she has lived within any portion of that district for one year. Prior residency requirements have always been the law in Missouri under our constitution, and remain the law in Missouri. Legislative reapportionment does not change this fundamental requirement, which is a bedrock of our representative electoral system of government. Reynolds, 377 U.S. at 562.

We would affirm 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, Chief Judge

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

In the Missouri Court of Appeals
Eastern District
DIVISION FIVE

ROBIN WRIGHT-JONES,	)	No. ED98456
	)	
Respondent,	)	
	)	Appeal from the Circuit Court of
v.	)	the City of St. Louis
	)	
JAMILAH NASHEED	)	Hon. Joan Moriarty
	)	
Appellant.	)	FILED: June 13, 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 6 is clear and unambiguous and thus precludes judicial construction. I would reverse the circuit court's judgment.

As the majority opinion describes in apt detail, the parties call upon this court to interpret the senatorial residency requirement of article III, section 6, of the Missouri Constitution:

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

Art. III, §6, Mo. Const. (emphasis added)

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

Despite the broad and general language of the phrase "the district or districts from which the same shall have been taken," the majority insists that this constitutional provision should be construed to mean that a candidate 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 the candidate reside in "the district or districts" 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 district or districts" is broad and unrestrictive and hence includes any part of such district(s). Had the drafters of the constitution wished to limit eligibility to candidates residing only in those parts of the old districts 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 Appellant's position. Mo. Atty. Gen. Ops. 104-67 (Anderson, 1967) and 56-82 (Ashcroft, 1982); *Amicus Curiae* Br. 5 (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 continue to reside outside the district she represents for the duration of her term. This concern is wholly unfounded. If victorious, Appellant 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). As if the foregoing did not suffice, as a practical matter, surely any serious candidate would be aware of the potential political benefits of residency in the new district.

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]

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 reverse the circuit court's judgment and declare Appellant 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

[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).