

NO PROPERTY OWNERSHIP REQUIREMENT TO HOLD LOCAL ELECTED OR APPOINTIVE OFFICE

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House Bill 5127 without amendment

Sponsor: Rep. Tory Rocca

Committee: Ethics and Elections

First Analysis (4-7-08)

BRIEF SUMMARY: The bill would prohibit a local unit of government from requiring the ownership of real property as a qualification for holding elective or appointive public office.

FISCAL IMPACT: The bill does not appear to have any significant fiscal impact.

THE APPARENT PROBLEM:

During the summer of 2007 a candidate for city council in the city of Plymouth was advised by the city clerk that he must suspend his election campaign because he did not own property in the city. As a rationale, the clerk referred the candidate to a provision in the city charter that required property ownership for those seeking or holding elected office. The candidate went to court to challenge the ruling in order to gain access to the ballot. The local court ruled in favor of the candidate, drawing on 35 years of case law that prohibits property ownership provisions as violations of the Equal Protection Clause of the 14th Amendment to the U.S. Constitution.

The Equal Protection Clause, enacted in 1865 following the U. S. Civil War, protects individuals' rights from abridgement by state governments, in order to advance the proposition that "all men are created equal." Throughout the last century, the clause was used to challenge the Black Codes adopted in many Southern States that were intended to deny African-American people their right to serve on juries and on school boards, or to vote unless they owned property. In many cases, poor plaintiffs argued against local property requirements designed to limit their political participation. They noted, as for example did Justice Harlan dissenting in *Plessey v. Ferguson* (1896), that "in the view of the Constitution, in the eye of the law, there is in this country no superior, dominant, ruling class of citizens. There is no caste here. Our Constitution is color-blind, and neither knows nor tolerates classes among citizens." By the 1970s, the courts agreed with this viewpoint, noting that a property requirement did not pass constitutional muster because it created a qualification based on wealth.

On February 28, 1973, Michigan's attorney general issued an unnumbered opinion noting that the qualification of property ownership for appointive township office (in this instance, a township planning commission) violated the Equal Protection Clause of the 14th Amendment to the U.S. Constitution. [See "Report of the Attorney General of Michigan 1973-1974 Biennial Period," pages 225-228.] The attorney general's opinion

rests on cases decided by the U.S. Supreme Court [for example, *Turner v. Fouche*, 396 US 346,362; 34 L Ed 2d 567, 580 (1970) which overturned a Georgia statute that members of a school board be landowners saying that there exists a "constitutionally protected right to stand for election without the burden of invidious discrimination"]; and five additional cases decided in U. S. District Courts serving Texas, Maryland, Alabama, and Michigan [for example, *Stapleton v Clerk for the City of Inkster*, 311 F Supp 1187, 1191, 1193 (ED Michigan, 1970), which overturned a property requirement in the city charter aimed at those seeking election to the city council].

Courts have repeatedly ruled that a property ownership requirement creates a "qualification based on wealth," and "an invidious discrimination upon the federal constitutional right to be considered for public service." Consequently, they have ruled that property requirements violate the Equal Protection Clause of the 14th Amendment. Nonetheless, out-of-date city and township charters across Michigan contain property ownership requirements for those seeking office. According to committee testimony, candidates have recently challenged such requirements in Brighton and Howell, as well as in Plymouth.

Legislation has been introduced that would prohibit local officials from denying access to the ballot for those candidates who do not own property.

THE CONTENT OF THE BILL:

House Bill 5127 would create a new act to be known as the Open Access to Local Ballot Act. The bill would prohibit a local unit of government from requiring the ownership of real property as a qualification for holding elective or appointive public office.

Under the bill, a person who was denied (or threatened with denial of) access to the ballot could bring an action for equitable relief, and recover damages, in a court of proper jurisdiction.

The bill would define "unit of local government" to mean a city, county, township, village, school district, authority, or other political subdivision of this state and includes an entity jointly created by two or more units of local government.

ARGUMENTS:

For:

Proponents of this bill argue that a statute is needed to make clear, once and for all, that property ownership requirements are unconstitutional if imposed on those seeking elective or appointive office. They point-out that the unconstitutionality of the requirements is well established in case law, and that the prohibition has been in effect in Michigan for more than 35 years, clarified by an unnumbered Attorney General's opinion issued on February 28, 1973. Despite the prohibition, candidates who meet residency requirements, but who do not own property, continue to be denied access to the ballot when they seek elective and appointive office.

Against:

Some argue that while the legislation is needed, the bill should be amended to remove its punitive provisions, and to more clearly reference the Equal Protection Clause of the 14th Amendment to the U. S. Constitution, as well as the case-law upon which the property ownership prohibition rests. Currently under the bill, a person who is denied (or who is threatened with denial of) access to the ballot could sue election officials and recover damages in court. Opponents of this provision observe that local election officials who deny candidates access to the ballot are simply enforcing their outdated charters' property ownership requirements, without knowing those provisions are unconstitutional. They should not be punished for their ignorance of constitutional law.

POSITIONS:

The Michigan Township Association would support the bill with amendments. (3-18-08)

The Michigan Municipal League is neutral on the bill. (3-18-08)

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.