BOULDER CITY BALLOT QUESTION NO. 5

A Question Proposing to Amend the Boulder City Charter

Shall Article II, Section 5 of the Boulder City Charter be amended to change the 2-year minimum residency requirement for candidates for Mayor and Council member, to a 30-day minimum residency requirement?

Yes . . . . . .❑
No . . . . . .❑

EXPLANATION

Article II, Section 5 of the Boulder City Charter sets the minimum residency requirement for candidates for Mayor and Council member at not less than two (2) years. NRS 293C.200 sets the minimum residency requirement for candidates for Mayor and Council member at not less than thirty (30) days.

There are valid arguments that can be made for and against both durational residency requirements.

A "YES" vote would cause this question to be placed upon the next general election ballot for ratification of an amendment to change the durational residency requirement in Boulder City from two (2) years to thirty (30) days.

A "NO" vote would leave the durational residency requirement of not less than two years undisturbed.

ARGUMENT FOR PASSAGE

Vote "YES" to amend the Charter to change the residency qualifications for Mayor and Council member. Currently, the City Charter requires a candidate for the office of Mayor or Council member to have been a resident of the City for at least two years prior to the election in which he is a candidate. Nevada Revised Statute (NRS) 293C.200 pertaining to city elections states the residency requirements for candidates for a city office are at least 30 days immediately preceding the date of the close of filing.

The residency requirement has been an ongoing problem faced during each election cycle. There have been potential candidates who have not met the residency requirement of the City Charter and have not been allowed to file for candidacy. If a person were to challenge the City Charter, it is the opinion of the current City Attorney the City Charter residency requirement would not survive judicial scrutiny. Furthermore, the City Attorney has stated case law was clear that any durational residency requirement beyond one year was suspect and had the potential to be overturned by the courts.

Voters have the ability to determine the most qualified candidate for the office of Mayor or Council member. By narrowing the qualifications for candidates, the voters are potentially eliminating a candidate who could serve the City very well. The election process should be inclusive and permissive rather than restrictive.

Leaving the two year durational residency requirement in place subjects the City to a potential violation of the Equal Protection Clause; the right, guaranteed by the Fourteenth Amendment to the U.S. Constitution to be treated the same, legally, as others in the same situation.

Vote "YES" to amend the Charter to change the residency requirement for Mayor and City Council member, and let the voters decide who they prefer to represent their interests in office.

Submitted by Ballot Question Committee as provided for in NRS 295.217

REBUTTAL TO ARGUMENT FOR PASSAGE

In the opinion of this committee, the existing residency requirement cited in the Boulder City Charter does not present a problem. Once a resident meets the existing criterion, that resident can file for candidacy for the office of Mayor or City Council member. Case law originally cited by the City Attorney during the Charter Commission meeting, again, pointed to voter registration, not candidate registration. The "potential to be overturned by the courts" is not, in the opinion of this committee, a valid basis to arbitrarily change the City Charter until the residency requirement is challenged.

It is the opinion of this committee the current durational residency requirement is not in violation of the Equal Protection Clause of the U.S. Constitution because the Constitution itself contains longer durational residency requirements for various elected federal positions. Since all residents are treated the same by the two-year residency requirement, violation of the Equal Protection Clause does not exist.

Submitted by Ballot Question Committee as provided for in NRS 295.217

ARGUMENT AGAINST PASSAGE

The following two arguments are used to support changing Article II, Section 5 of the Boulder City Charter from a two-year minimum residency requirement for Mayor and City Council candidate to a 30-day minimum residency requirement: 1) this section must comply with NRS minimum candidate residency of 30 days; 2) this section is unconstitutional with respect to the equal protection argument. This committee believes point one is moot, and point two is invalid.

The U.S. Constitution has durational residency requirements of seven, nine, and fourteen years for representatives, senators, and the U. S. President. Boulder City's residency requirement is less than those of the U.S. Constitution. Having a shorter durational requirement negates, in this committee's opinion, the argument of being inconsistent with a document that contains greater durational requirements.

The argument supporting a shorter residency requirement to comply with state law was made using the U.S. Supreme Court ruling in Dunn V. Blumenstein (1972) and pertains to voter registration rather than candidate residency requirements. This case does not support the argument for shorter residency requirements. The U.S. Court of Appeals case Antonio V. Kirkpatrick (1978) addresses the issue of candidacy durational requirements, strongly affirming the Federal government has no right to be involved in states' determination of durational requirements.

Nevada law requires a municipal candidate to reside in that municipality for "at least 30 days." Boulder City's requirement of "at least two years" meets this state requirement. Two years falls within the concept of "at least" 30 days.

This committee believes candidates for office in Boulder City should be long-residing residents of the community in order to be an elected official. The potential danger arises when candidates without a vested interest in the City by virtue of long-time residency bring in outside influence to possibly make changes that benefit the candidate's interests and not the City. The original Charter Commission intended for a minimum residency of two years to create a balanced Council comprised of members who understand the needs of the citizens. Lowering the durational residency requirement opens the door for candidates who have no vested interest in Boulder City.

Boulder City is a unique community with needs very different from the Las Vegas valley. Thirty days is not enough time to fully understand the needs of the City and residents or to make educated decisions. Furthermore, our Charter's residency requirement is already in compliance with state law.

Submitted by Ballot Question Committee as provided for in NRS 295.217

REBUTTAL TO ARGUMENT AGAINST PASSAGE

Comparing the residency requirements for representatives, senators, and the U. S. President is a far stretch to comparing residency requirements for a local municipal office. The residency requirement for federal offices does not mean the requirement is appropriate for all government offices.

The opposing committee suggests candidates should be long-term residents who understand the needs of citizens. This notion is illogical. The length of residency does not equate to understanding the needs of citizens or the ability to make an educated decision.

The City Attorney has researched the matter and determined cities must have a compelling reason to require a longer residency requirement for candidates. The rationale that Boulder City is unique is not a compelling reason.

This matter should not be ignored until the City is legally challenged on its candidate residency requirement or until the state legislature amends the Boulder City Charter without voter approval. Vote "YES" to amend the City Charter and let the voters decide who is the most qualified candidate to represent Boulder City.

Submitted by Ballot Question Committee as provided for in NRS 295.217

FISCAL NOTE

Description of Anticipated Financial Effect: This question does not require any expense that will require the levy or imposition of a new tax or fee or the increase of an existing tax or fee.