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Constitutional Law--Equal Protection--Minimum Age Requirement for Candidates for Detroit Common Council Violates Equal Protection Clause of Fourteenth Amendment--*Manson v. Edwards**

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RECENT DEVELOPMENTS

CONSTITUTIONAL LAW—EQUAL PROTECTION—Minimum Age Requirement for Candidates for Detroit Common Council Violates Equal Protection Clause of Fourteenth Amendment—*Manson v. Edwards**

Marc Manson desired to be a candidate for a seat on the Detroit Common Council, the City's legislative body. He was a citizen of the United States, a resident of Detroit, and a registered voter. However, he was just twenty-one years old, and, in accordance with the Detroit City Charter provision requiring that candidates for Common Council be twenty-five years of age,[1] the City Clerk refused to accept Manson's nominating petition and declined to place his name on the primary ballot.[2]

Manson brought an action in federal district court to declare unconstitutional the City Charter's age restriction on candidacy. He was joined in his complaint by three Detroit residents who were eighteen, twenty-four, and thirty-five years of age, who were registered voters, and who alleged that they desired to vote for Manson in the Common Council election.[3] Manson and his coplaintiffs contended that the charter provision violated the equal protection clause of the fourteenth amendment because it "den[ied] a citizen who is over 18 years of age elective office simply because he has not reached the age of 25 years."[4] The equal protection challenge was sustained after a significant threshold decision that the law had to be "closely scrutinized for a compelling governmental interest."[5] This initial decision was virtually dispositive of the case since the defendants had conceded their inability to justify the provision's age classification scheme under the "compelling governmental interest" test.[6]

This Recent Development will discuss the validity and potential impact of the court's selection of the compelling interest test to measure the compliance of Detroit's age restriction on candidacy with the fourteenth amendment. It will also explore the possible state goals sought to be achieved by requiring a minimum age for candidates and examine whether these goals can be viewed as "compelling governmental interests."

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* 345 F. Supp. 719 (E.D. Mich. 1972).

1. DETROIT, MICH., CHARTER tit. III, ch. I, § 4 (1963) provides in part: "Any person elected to the office of councilman shall be a citizen of the United States, at least twenty-five years of age and a resident of the city for at least three years."

2. 345 F. Supp. at 720-21.

3. 345 F. Supp. at 720.

4. 345 F. Supp. at 721.

5. 345 F. Supp. at 723.

6. 345 F. Supp. at 721.

Judicial analysis of equal protection questions has evolved two distinct standards for review of governmental classifications. The "rational basis" test[7] requires that a statutory classification bear "some rational relationship to a legitimate state purpose."[8] Stated differently, classifications generally do not constitute constitutional violations unless they rest on "grounds wholly irrelevant to the achievement of the state's objectives."[9] The other standard, the "compelling interest" test,[10] demands a demonstration that the state's restriction is necessary to promote a "*compelling* state interest."[11] This stricter standard eliminates the presumption of constitutionality generally afforded statutory classifications and, in effect, shifts the burden of proof from the plaintiff to the state.[12]

The compelling interest test is applied in cases where the governmental classification is inherently suspect or where it infringes on a fundamental right. Classifications that are clearly "suspect" include those based on race,[13] alienage,[14] or nationality.[15] The classification in *Manson* was predicated on age, which, as the court noted, has not yet been categorized as an inherently suspect criterion for classification.[16] However, while the court acknowledged that the plaintiffs'

7. *See, e.g.*, Jefferson v. Hackney, 406 U.S. 535 (1972); Labine v. Vincent, 401 U.S. 532 (1971); McDonald v. Board of Election Commrs., 394 U.S. 802 (1969). *Cf.* Richardson v. Belcher, 404 U.S. 78 (1971).

8. Weber v. Aetna Cas. & Sur. Co., 406 U.S. 164, 172 (1972).

9. McGowan v. Maryland, 366 U.S. 420, 425 (1961). Dandridge v. Williams, 397 U.S. 471 (1970), illustrates the use of this standard. A Maryland regulation placed a 250-dollar-per-month limit on grants for aid for dependent children regardless of the size of the family or its actual need. The Supreme Court upheld the regulation because the State had a "legitimate interest in encouraging employment and in avoiding discrimination between welfare families and the families of the working poor." 397 U.S. at 486.

10. *See, e.g.*, Kramer v. Union Free School Dist. No. 15, 395 U.S. 621 (1969); Shapiro v. Thompson, 394 U.S. 618 (1969); Harper v. Virginia Bd. of Elections, 383 U.S. 663 (1966).

11. Shapiro v. Thompson, 394 U.S. 618, 638 (1969) (emphasis original).

12. *E.g.*, Dunn v. Blumstein, 405 U.S. 330, 342-43 (1972).

This discussion of the two-tiered equal protection review may be overly rigid. Professor Gerald Gunther has argued in a recent article that the Court last term was breaking away from the two-tiered model to demand in certain cases more than a rational basis. His proposal is that the Court should retain strict scrutiny of classifications involving fundamental interests or suspect classifications. In other areas, he would have the Court examine whether the means further the legislative ends. This test would be relatively narrow since it would only demand that the means substantially further the ends, not that the means be the least restrictive possible. Gunther, *The Supreme Court, 1971 Term, Foreword: In Search of Evolving Doctrine on a Changing Court: A Model for a Newer Equal Protection*, 86 HARV. L. REV. 1 (1972).

13. *E.g.*, Loving v. Virginia, 388 U.S. 1 (1967).

14. *E.g.*, Graham v. Richardson, 403 U.S. 365 (1971).

15. *E.g.*, Oyama v. California, 332 U.S. 633 (1948).

16. 345 F. Supp. at 722 n.1. The court added that it would be unwise to conclude that age may never be considered a suspect classification. Nevertheless, the possibility that age will be declared suspect seems remote. The current Court is not inclined to

fundamental allegation was a denial of candidacy,[17] it emphasized that the age classification scheme interfered with the plaintiffs' fundamental right to vote for the candidate of their choice.[18] As the Supreme Court had previously stated, "[T]he right of voters and the rights of candidates do not lend themselves to neat separation . . . ."[19]

This blending of the rights of voters and candidates is common in cases in which qualification requirements for candidacy are challenged. Typically, the prospective candidate asserts his right to appear on the ballot, and he and his supporters (if they are coplaintiffs) maintain that the barriers to his candidacy deny his supporters the right to vote for the candidate of their choice.[20] When faced with such challenges, courts focus their attention on the voters' rights,[21] as did the court in *Manson*. The Supreme Court has not recognized a naked fundamental right to run for office,[22] but has firmly established that the right to vote is fundamental and cannot be infringed by a classification that does not meet the compelling state interest test.[23]

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extend the ambit of the compelling interest test. *See* Gunther, *supra* note 12, at 12-15, 24. Also, an implicit holding that age is not a suspect criterion may have been contained in the Court's invalidation of a congressional statute lowering the voting age to 18 in state elections. Oregon v. Mitchell, 400 U.S. 112 (1970).

17. 345 F. Supp. at 722.

18. 345 F. Supp. at 722-23.

19. Bullock v. Carter, 405 U.S. 134, 143 (1972).

20. *E.g.*, Green v. McKeon, 335 F. Supp. 630 (E.D. Mich. 1971); Mogk v. City of Detroit, 335 F. Supp. 698 (E.D. Mich. 1971); Bolanoski v. Raich, 330 F. Supp. 724 (E.D. Mich. 1971); Gonzales v. City of Sinton, 319 F. Supp. 189 (S.D. Tex. 1970). *See also* Stapleton v. Clerk for City of Inkster, 311 F. Supp. 1187 (E.D. Mich. 1970).

21. *See* cases cited in note 20 *supra*. *But see* McKinney v. Kaminsky, 340 F. Supp. 289 (M.D. Ala. 1972); Hayes v. Gill, 52 Hawaii 251, 473 P.2d 872 (1970); Schweitzer v. Clerk for City of Plymouth, 381 Mich. 485, 164 N.W.2d 35 (1969).

22. One of the first cases decided by the Supreme Court involving candidate rights was Snowden v. Hughes, 321 U.S. 1 (1944). The complainant claimed a violation of his fourteenth amendment rights when members of a state board refused to certify correctly the results of a primary, thus depriving him of the nomination and election as a representative in the state assembly. The Court in holding no cause of action under the fourteenth amendment stated: "The right to become a candidate for state office . . . is a right or privilege of state citizenship, not of national citizenship which alone is protected by the privileges and immunities clause." 321 U.S. at 7.

Later, in Turner v. Fouche, 396 U.S. 346, 362 (1970), the Court stated that a person has "a federal constitutional right to be considered for public service without the burden of invidiously discriminatory disqualifications." However, the Court declined to consider respondents' argument that the compelling interest test need not be applied to situations that involve exclusions from office rather than from voting, since the freeholder requirement there challenged did not meet even the "rational basis" test. 396 U.S. at 362.

Most recently the Court avoided the question in Bullock v. Carter, 405 U.S. 134, 142-43 (1972), where it said:

> The initial and direct impact of filing fees is felt by aspirants for office, rather than voters, and the Court has not heretofore attached such fundamental status to candidacy as to invoke a rigorous standard of review. However, the rights of voters and the rights of candidates do not lend themselves to neat separation . . . .

23. *E.g.*, Evans v. Cornman, 398 U.S. 419 (1970); Cipriano v. City of Houma, 395 U.S. 701 (1969); Kramer v. Union Free School Dist. No. 15, 395 U.S. 621 (1969).

Consequently, it is not surprising that the lower courts base their decisions upon the established rights of voters rather than resolve the difficult question of the constitutional status of candidate rights.[24]

For the proposition that classifications with respect to candidacy infringe the fundamental right to vote, the court in *Manson* relied upon *Bullock v. Carter*[25] and *Williams v. Rhodes*.[26] *Bullock* questioned the constitutionality of the filing fees required of prospective candidates in Texas. Under the Texas Election Code, the payment of a filing fee, which could range as high as 8,900 dollars,[27] was an absolute prerequisite to a candidate's participation in the primary election. Two prospective candidates who were financially incapable of paying the requisite fees alleged that the Texas system denied them their right to candidacy.[28] Their action was joined by several voters who expressed the desire to cast their ballots for the excluded candidates.[29]

While recognizing that the "initial and direct impact of filing fees is felt by aspirants for office,"[30] the Court focused its attention on the voters' contentions since the Texas system, by creating barriers to candidate access to the primary ballot, tended to limit the field of candidates from whom voters might choose.[31] Once the Court found an infringement of fundamental voting rights, the State's failure to establish a compelling state interest[32] dictated the Court's holding that the filing fee system violated the equal protection clause.[33]

A broad reading of *Bullock* might suggest that any statutory barrier to candidacy, since it necessarily has some effect on the choice of voters, can be justified only by a showing of a compelling state in-

24. *See* cases cited in note 20 *supra*.

25. 405 U.S. 134 (1972).

26. 393 U.S. 23 (1968).

27. 405 U.S. at 138 n.11. Fees for district, county, and precinct offices were assessed by the county executive committee for the party conducting the primary. The committee apportioned the cost of the primary in its county among the various candidates, in part on the basis of the importance of the offices for which the candidates were running. 405 U.S. at 137-38.

28. 405 U.S. at 135-36. A third prospective candidate failed to have his application notarized and to have it accompanied by a statutory loyalty affidavit, and the Court did not consider his case since his participation was not necessary. 405 U.S. at 136 n.2.

29. 405 U.S. at 136.

30. 405 U.S. at 142.

31. 405 U.S. at 143.

32. The State advanced three justifications for its filing fee system. The fees were thought necessary to regulate the number of candidates on the ballot. In addition, filing fees were allegedly required to protect the "integrity of [the] political process" from frivolous or fraudulent candidates. Finally, the State argued that the fees were essential to provide a means for financing primary elections. The Court recognized these as legitimate state interests, but concluded that there was no showing of necessity. 405 U.S. at 144-49. *See also* Note, *The Constitutionality of Candidate Filing Fees*, 70 MICH. L. REV. 558, 578-82 (1972).

33. 405 U.S. at 149.

terest. However, the *Bullock* Court explicitly limited the scope of its decision by stating that "not every limitation or incidental burden on the exercise of voting rights is subject to a stringent standard of review," and suggesting that a barrier to candidacy "does not of itself compel close scrutiny."[34] The Court stressed a further factor that led it to apply strict scrutiny to Texas' filing fee system: "Not only are voters substantially limited in their choice of candidates, but there is also the obvious likelihood of this limitation falling more heavily on the less affluent segment of the community, whose favorites may be unable to pay the large costs required by the Texas system."[35] Under this view, Texas' scheme divided voters into two classes, rich and poor, and generally gave more power to the rich.[36] The Court recognized that "[t]his disparity in voting power based on wealth cannot be described by reference to discrete and precisely defined segments of the community as is typical of inequities challenged under the Equal Protection Clause . . . ." but concluded, "[W]e would ignore reality were we not to recognize that this system falls with unequal weight on voters, as well as candidates, according to their economic status."[37] Therefore, the critical aspect of *Bullock* was that the filing fee system might have denied an effective vote to a recognizable group, the poor, by excluding from the ballot candidates who were too poor to pay the fee.[38]

In *Williams v. Rhodes* the plaintiffs challenged Ohio's law regulating the formation of political parties and their acquisition of places on the ballot. The law required a new political party seeking a ballot position in the presidential elections to obtain petitions signed by the number of voters equal to fifteen per cent of the aggregate votes cast in the preceding gubernatorial election and to file the petitions early in the election year.[39] In contrast, any party that had received ten per cent of the votes cast in the prior election automatically retained its ballot position without filing any petitions.[40] The

34. 405 U.S. at 143.

35. 405 U.S. at 144.

36. As the Court put it, the scheme "gives to the affluent the power to place on the ballot their own names or the names of the persons they favor." 405 U.S. at 144.

37. 405 U.S. at 144.

38. However, the Court also said, "This would be a different case if the fees approximated the cost of processing a candidate's application for a place on the ballot, a cost resulting from the candidate's decision to enter a primary." 405 U.S. at 148 n.29. But the amount of fee should be irrelevant if it prevents an otherwise qualified candidate from running for office. *See* Note, *supra* note 32, at 583.

39. 393 U.S. at 24-25. In addition, several other very stringent conditions had to be met. The new party had to elect committeemen for a state central committee and delegates to a national convention, all persons who had not voted in another party's primary in the past four years. Also there was a possible condition that the petitions from 15 per cent of the electorate be signed only by persons who had never voted before. 393 U.S. at 25 n.1.

40. 393 U.S. at 25-26.

American Independent Party and the Socialist Labor Party, as new parties[41] that could not comply with the more stringent requirements imposed on them, joined voters who supported the parties' candidates in contending that these requirements denied them the equal protection of the laws. The Supreme Court stated that the right to vote is heavily burdened if voters can choose only between the two established parties when others are "clamoring for a place on the ballot."[42] After it had strictly scrutinized the challenged statute, the Court directed that the American Independent Party be placed on the ballot.[43]

As in *Bullock*, the reach of *Williams* can be limited by the fact that there was an identifiable group of voters who were harmed by the state's restrictions on ballot access, namely those who supported the new minority parties' views. The Court's invocation of the stricter standard may have rested, then, on the fact that the Ohio election law "treated more harshly a group characterized by its dissident substantive views."[44]

A further limitation on the scope of *Williams* should be noted. The Ohio election law imposed a burden not only on the right to vote, but on the right of association as well.[45] As the Court observed, "The right to form a party for the advancement of political goals means little if a party can be kept off the election ballot and thus denied an equal opportunity to win votes."[46] The Court may have subjected the Ohio law to strict scrutiny because it infringed on both the right to vote *and* the right to associate.[47] In contrast, no organized

41. The Socialist Labor Party was an old party that had lost its position on the ballot as a result of the requirements and had been unable to regain it. 393 U.S. at 27-28.

42. 393 U.S. at 31.

43. Actually, a preliminary order by Justice Stewart, as circuit justice, had placed the American Independent Party on the ballot. The Court's decision allowed it to remain on the ballot. The Socialist Labor Party was denied a similar remedy because of its delay in asking for relief. The Court felt that such relief could not be granted at the time of its decision without serious disruption of the election process. 393 U.S. at 34-35.

44. *The Supreme Court, 1968 Term*, 83 HARV. L. REV. 86, 94-95 (1968).

45. 393 U.S. at 30. After framing the question in mixed terms, the Court concluded its discussion by stating: "But here the totality of the Ohio restrictive laws taken as a whole imposes a burden on voting and associational rights which we hold is an invidious discrimination, in violation of the Equal Protection Clause." 393 U.S. at 34. *See also* Recent Decision, 20 CASE W. RES. L. REV. 892 (1969); Note, *supra* note 32, at 574-76; Recent Decision, 30 OHIO ST. L.J. 202 (1969).

46. 393 U.S. at 31.

47. Another interpretation is that the Court was supplying alternative constitutional grounds, either of which would have been sufficient to support its holding. The Court may have been saying that, in the absence of a compelling state interest, the Ohio law violated the first amendment as applied to the states through the due process clause of the fourteenth amendment by abridging the right of the new parties' members to associate, *see* 393 U.S. at 41-48 (Harlan, J., concurring), *and* that it violated the equal protection clause of the fourteenth amendment by creating a classification that in-

political parties were involved in *Manson*,[48] and the *Manson* plaintiffs apparently alleged no more than that Detroit's age restrictions on candidacy infringed their *individual* voting rights.

Therefore, *Manson*'s application of the "compelling interest" test to the age restrictions on candidacy probably rests primarily upon the authority of *Bullock*. It is clear that age barriers for elective offices ultimately limit voters in their choice of candidates. Manson's exclusion from the primary ballot effectively prevented his supporters from voting for their preferred candidate.[49] But under the narrower reading of *Bullock* and the authority of *Jenness v. Fortson*[50] such a burden on voting alone is not necessarily sufficient to trigger application of the compelling interest test. Additionally, there must be some other factor, perhaps an identifiable group denied its right to a representative candidate by the restriction on candidacy. In *Bullock*, there was the "obvious likelihood" that the filing fee requirement would fall most heavily on the community's less affluent.

Similarly, in *Manson*, as in any controversy involving candidate age restrictions, there was perhaps an "obvious likelihood" that the restriction's primary impact would be felt by those voters whose age was below the statutory minimum for candidacy. Although some candidates who met the age requirements might have represented the underage group's political views, the age restriction was an absolute bar to the candidacy of any of the group's own members.[51] However, while the facts of *Manson* might thus fall within the ambit of *Bul-*

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fringed the fundamental right to vote. Under this interpretation, the Court's independent equal protection holding would be stronger precedent for *Manson* than under the interpretation advanced in the text.

48. Indeed, Detroit's Common Council elections are nonpartisan.

49. Although it could be argued that the right to vote is not infringed since a write-in ballot is possible, the issue is the right to cast an *effective* vote. Even if Manson had won the election with write-in votes, he would have been prevented from assuming office because of his age. As the *Manson* court stated: "It is hardly an effective exercise of the franchise to cast a ballot for a person the government will forbid from taking office." 345 F. Supp. at 722.

50. 403 U.S. 431 (1971). In *Jenness* the Court upheld a Georgia law requiring an independent candidate or political parties that received less than 20 per cent of the vote in the most recent election to file a petition signed by 5 per cent of the electorate in order to gain a place on the ballot. *Williams* was distinguished because the Georgia requirements in their totality did not create a virtual monopoly for the two established parties. Georgia freely allowed write-ins, recognized independent candidates, did not have an unreasonably early deadline for filing, and allowed voters to sign petitions for any number of parties and candidates. In practice, two independent candidates had won recent elections. The requirements furthered the State's interest in requiring some showing of significant support without unnecessarily freezing the status quo. 403 U.S. at 434-42.

51. One historian, speaking of our representative government, wrote, "By virtue of the franchise the people were empowered to choose representatives whose virtues and abilities were known to them and whose interest was organically related to their own." Buel, *Democracy and the American Revolution: A Frame of Reference*, in THE ADVANCE OF DEMOCRACY 48, 62 (J. Pole ed. 1967).

lock, the *Manson* opinion is conspicuously devoid of any concern for the impact of the candidacy age requirement on any *particular* group of voters. One of the plaintiffs who desired to vote for Manson was thirty-five years old[52] and thus clearly outside the class of underage voters. But the court found the classification burdensome to "Manson and his supporters" without distinguishing between the younger and older supporters.[53] From this it may be inferred that the court considered it unnecessary to identify a discrete group on which the candidacy restriction weighed most heavily and that it applied the compelling interest test to the restriction solely because it infringed indirectly the rights of individual voters. This reading of *Manson* would represent an extension of *Bullock*, for it could lead to the use of the compelling interest test whenever voters challenge the constitutionality of any statutory or constitutional restriction that denies a place on the ballot to their preferred candidate. Such provisions include those limiting an elected official to a maximum number of terms,[54] prohibiting convicts from running for office,[55] placing maximum ages on the holders of elective offices,[56] and denying candidacy to individuals already employed in a public capacity.[57] Indeed, even such traditional requirements as residency[58] and citizenship[59] might be subjected to close scrutiny to determine if they violate the equal protection clause.

The court in *Manson* had no occasion to consider possible justifications for Detroit's age limitation on candidacy because the defendants conceded their inability to supply the compelling interest that the court demanded.[60] At the outset of an inquiry into possible justifications it should be noted that the authority to prescribe qualifications for candidates to state public offices is among the powers reserved to the states by the tenth amendment.[61] While the Supreme Court in *Bullock* recognized "the breadth of power enjoyed by the States in determining . . . the manner of elections," it stated that "this power must be exercised in a manner consistent with the Equal Protection Clause of the Fourteenth Amendment."[62] Something

52. 345 F. Supp. at 720.

53. 345 F. Supp. at 723.

54. *E.g.*, ALA. CONST. amend. 282.

55. *E.g.*, MICH. CONST. art. 4, § 7.

56. *E.g.*, N.Y. CONST. art. 6, § 25(b).

57. *E.g.*, MICH. CONST. art. 4, § 8.

58. *E.g.*, ALA. CONST. art. 5, § 117.

59. *E.g.*, MICH. COMP. LAWS ANN. § 168.161 (1967).

60. 345 F. Supp. at 721.

61. U.S. CONST. amend. X: "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people." *See also* Gaunt v. Brown, 341 F. Supp. 1187 (S.D. Ohio), *affd. mem.*, 409 U.S. 809 (1972).

62. 405 U.S. at 141.

beyond the reserved power of the states must be offered in an attempt to justify age limitations on candidacy under the compelling interest test.

The basic objective in prescribing an age restriction for public office is probably to ensure that candidates are qualified, and several reasons can be advanced for finding a relationship between the age and the quality of a candidate.[63] One explanation is that an older person is more "experienced" and more likely to be knowledgeable about the problems of his constituency.[64] However, because one has had greater "experience" does not mean in all cases that he has *learned* from his experience or that he can apply it to governmental problems. In addition, some younger persons, who are still engaged in or have just completed the educational process, may be more acutely aware of the events surrounding them than are many older citizens.[65] Since age is therefore not a precise indicator of a person's qualifications for public office, some existing age restrictions may not satisfy the strict equal protection test. Under that test, a classification designed to deny candidacy to unqualified persons must be drawn narrowly enough so that only such persons are excluded from the ballot.[66] While age restrictions may possibly exclude the incompetent, they simultaneously may exclude many well-qualified citizens from the political arena.[67] In addition, they do not ensure that only the qualified will run, for numerous other factors—such as education, mental capacity, and physical stamina—indicate the ability of a candidate. If the state desires to protect its voters from unqualified candidates, age should not be the only criterion for classification. It

63. Some unappealing arguments are that youthful opinions are "too crude and erroneous" and that youth lack a responsible attitude:

> [E]very man carried with him in his own experience a scale for measuring the deficiency of young politicians; since he would if interrogated be obliged to declare that his political opinions at the age of 21 were too crude and erroneous to merit an influence on public measures.

1 THE RECORDS OF THE FEDERAL CONVENTION OF 1787, at 375 (M. Farrand ed. 1937) (remarks of Colonel Mason, after moving to require a 25-year-age requirement as a qualification for representatives).

While it is argued that responsibility comes with age, several states, including Michigan, have voiced a vote of confidence in the responsibility of their younger citizens by lowering the age of majority to 18 years. MICH. COMP. LAWS ANN. §§ 722.51-.55 (Supp. 1972).

64. *E.g.*, THE MICHIGAN CONSTITUTIONAL CONVENTION OF 1835-36, at 305 (H. Dorr ed. 1940) (remarks of Mr. Moody on the question of adopting a requirement that the governor be 25 years old): "[The Committee on the Executive] thought it reasonable to suppose, that whatever might be the talents of a young man, yet his experience, if he pursued a proper course, would make him more competent, at the age of 25, to fill the office of Governor."

65. J. DOLAN, REPORT TO THE PRESIDENT'S COMMISSION ON REGISTRATION AND VOTING PARTICIPATION ON LOWERING THE VOTING AGE TO 18, at 8-9 (1964).

66. *See, e.g.*, Kramer v. Union Free School Dist. No. 15, 395 U.S. 621 (1969).

67. Texas in *Bullock* argued that filing fees served the legitimate purpose of limiting the ballot to serious candidates. The Court in rejecting this argument noted that filing fees also excluded legitimate candidates unable to pay the fees. 405 U.S. at 145-46.

would probably be just as sensible, if not more so, to restrict candidacy to those of a certain intelligence rating, or those with a high school education, or even those who have had a college economics course.

Another possible justification for minimum-age requirements is that they enjoy wide application and general acceptance. The United States Constitution establishes age qualifications for senators, representatives, and for the President and Vice President.[68] Similar provisions requiring minimum ages for state governors, lieutenant governors, senators, and representatives exist in most state constitutions.[69] City charters typically specify ages at which the mayor and councilmen may run for office.[70] History and the status quo thus provide persuasive support for age and other candidate restrictions,[71] but it would be difficult to conclude that such factors rise to the dignity of compelling governmental interests.[72]

Given the decision to apply the strict equal protection test, the *Manson* court's invalidation of the twenty-five-year-old minimum-age requirement seems correct. However, common sense dictates that the state must show a compelling interest in a candidacy age restriction at some point; no one would suggest that a five-year-old child is capable of handling the duties of a city councilman or state legislator. In an analogous context, the Ninth Circuit stated in *United States v. Duncan*:[73]

> At some point on the age scale, all would agree that those below it should not be jurors because of immaturity and lack of education. Opinions may differ as to where the line should be drawn, but not as to whether it should be drawn at all.[74]

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68. U.S. CONST. art. 1, §§ 2-3 (a senator must be 30 and a representative must be 25 years old); art. II, § 2 (the President must be 35); amend. XII (the Vice President must be 35).

69. For example, under the Michigan constitution the Governor and Lieutenant Governor must be 30, art. 5, § 7, and the state senators and representatives must be 21, art. 4, § 6.

70. *E.g.*, DETROIT, MICH., CHARTER tit. IV., ch. III, § 2; tit. III, ch. I, § 4 (1963).

71. The Missouri supreme court in State *ex rel.* Gralike v. Walsh, 483 S.W.2d 70, 76 (1972), upheld a residency requirement with this justification: "Durational residency, citizenship, and age requirements as conditions to holding office, both federal and state, have been provided throughout the history of the country." But, in a strong dissent to the majority opinion, Judge Seiler argued that a historical justification is not persuasive or relevant. He said, "Historically, it used to be that 21 was the age for voting. Now it is 18. Historically, only men had the right to vote. Now, both men and women can vote. . . . Times are changing." 483 S.W.2d at 77.

72. In fact, the *Manson* court expressly rejected an attempt to analogize the present restriction to the age restrictions in the Federal Constitution. 345 F. Supp. at 724 n.2. Furthermore, by the criterion of "one person, one vote" the United States Senate is malapportioned. Nevertheless, the Supreme Court imposed that standard on both houses of state legislatures. Reynolds v. Sims, 377 U.S. 553 (1964).

73. 456 F.2d 1401 (1972).

74. 456 F.2d at 1405.

The question of the point at which age should become a criterion for granting responsibility has been argued in many areas,[75] most notably in debates concerning the minimum voting age. The Supreme Court upheld the congressionally approved minimum age for federal elections at eighteen years,[76] and this standard was subsequently adopted as the national voting age in the twenty-sixth amendment. Given the intimate relation between the validity of candidacy restrictions and the rights of voters, this standard is a logical and convenient stopping point.[77] Thus, *Manson* should not be read to suggest that an eighteen-year-old minimum-age requirement is constitutionally invalid.[78] Even a narrow reading of *Manson*, however, could have a profound effect on age requirements for elective offices. For example, *Manson*'s interpretation of the compelling interest test could be applied to invalidate age requirements for the offices of mayor, county commissioner, state legislator, and even governor.

The *Manson* opinion thus foreshadows the wholesale invalidation of existing age restrictions on candidacy. Its conclusions represent an extension of existing law. Yet, when viewed within the context of our democratic, representative form of government, the decision may not appear so aberrational. The court's elimination of statutory prohibitions against an eighteen-year old seeking a seat on the Detroit Common Council means not that age is irrelevant to qualifications but only that the weighing of a candidate's age as a factor in assessing his qualifications is reserved ultimately and exclusively to the voters, along with all of the other factors that they inevitably consider in casting their ballots. It may be assumed that a young candidate's knowledge and experience will be questioned by opponents, and he will have the burden to prove to the electorate that his youth will not adversely affect his capacity to represent them adequately.[79]

The fundamental question raised by a case like *Manson* may be

75. For example, the minimum drinking age, the minimum driving age, and the age of majority have probably been considered in all state legislatures.

76. Oregon v. Mitchell, 400 U.S. 112 (1970).

77. *Cf.* Oregon v. Mitchell, 400 U.S. 112, 294 (Stewart, J., concurring and dissenting):

> Yet to test the power to establish an age qualification by the "compelling interest" standard is really to deny a State any choice at all, because no State could demonstrate a "compelling interest" in drawing the line with respect to age at one point rather than another.

78. The issue in *Manson* was apparently limited to whether one who is 18 years old can be denied a place on the ballot solely because he is under 25. *See* 345 F. Supp. at 721.

79. As the court in Mogk v. City of Detroit, 335 F. Supp. 698, 701 (E.D. Mich. 1971), stated:

> It is a matter of common knowledge that those who seek public office go to considerable effort and expense to secure exposure, and it may be safely assumed that opponents in an election race will seek out and make known the shortcomings of their opposition and assert their own superior qualifications for a particular post.

not whether age restrictions are sufficiently related to the state goal of ensuring that only qualified candidates run for office, but rather whether the government's imposition on the electorate of its definition of "qualified" is proper in a democracy. The state's assertion that its criteria for candidacy advance some compelling state interest may represent nothing more than a paternalistic distrust of voter judgment.[80] Perhaps, then, *Manson's* underlying message is that the electoral process can and indeed should be the best safeguard against unqualified individuals assuming elective office. The voting citizenry, not the state, should be the ultimate judge of the competency or incompetency of those who desire to represent them in public office.

80. Of course, this argument taken to an extreme would render illegitimate any attempt by a state to draw an age-based restriction. Under this logic the voters are capable of judging for themselves whether, for example, a five-year old is qualified. However, it is unlikely that a court would declare that the state's interest in protecting its electoral system is not compelling. Common sense would seem to indicate that a state could draw lines to prevent such obviously frivolous candidacies. As suggested above, 18, the voting age, is a likely stopping point. With this line, all the electorate can vote for candidates of their age group.