

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 11-3401

Frederick Carlton Lewis,  
Appellant

v.

Kim Guadagno, Secretary of State; Paula Dow, Attorney General;  
Joseph Ripa, Camden County Clerk; Timothy Tyler, Burlington County Clerk;  
Edward P. McGettigan, Atlantic County Clerk; John Does I-X (fictitious names), jointly  
and severally and in the alternative,  
Appellees

William Layton; Ted Costa,  
Intervenors/Appellees

(D.N.J. No. 11-cv-02381)

Present: SCIRICA\*, AMBRO and VANASKIE, Circuit Judges

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ORDER

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The judgment of the District Court, entered September 7, 2011, is hereby reversed. The District Court, *inter alia*, incorrectly applied a rational basis standard of review of this as-applied challenge, rather than the stricter compelling state interest standard. See Wellford v. Battaglia, 343 F.Supp. 143 (D. Del. 1972), aff'd, 485 F.2d 1151 (3d Cir. 1973). The State has failed to demonstrate a compelling state interest in the application of this durational residency requirement to this particular candidate. Accordingly, it is hereby ordered that the ballots at issue in this appeal include the name of Appellant. Opinion of the Court to follow.

By the Court,

/s/ Thomas L. Ambro  
Circuit Judge

\* Judge Scirica dissents.

Dated: September 13, 2011

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