

TO: Legal Team

DATE: 6/2/95

FROM: Bernard Zimmerman

SUBJECT: Voter Residency Requirements.

In a trio of cases decided in the early 1970s, the United States Supreme Court ruled that residency requirements for voting in state elections greater than 30-50 days were unconstitutional.

The seminal case is Dunn v. Blumstein, 405 U.S. 330, 31 L.Ed2 274; 92 S.Ct. 995 (1972). In Dunn, the Court declared unconstitutional Tennessee's requirement that a person must reside in the state for one year and in the county for three months as a prerequisite for registering to vote. The Court noted that the residency requirements greatly restricted the right to vote and the right to interstate travel. Because the right to vote was fundamental, the restriction was subject to strict scrutiny.

The State argued in support of the requirement (1) the need to protect against voter fraud and (2) the need for voters to become familiar with the issues. The Court found that the need to protect against fraud was compelling but was satisfied by the State's voter registration system which closed 30 days before election. From this, the Court deduced that voter fraud could be amply protected by a 30-day period and that anything greater was overbroad. The Court was less impressed with the need to educate voters, noting that the reality in modern election campaigns is that most of the campaigning is done in the month before the election closes.

The Court was also impressed by the fact that Congress had enacted a law prohibiting the States from applying residency or voter registration requirements of more than 30 days to presidential elections (42 U.S.C. § 1973aa-1). 31 L.Ed2 at 285.

In Burns v. Fortson, 93 S.Ct. 1209 (1973), the Court upheld Georgia's requirement that voter registration close 50 days prior to state and local elections. The Court noted that Georgia had offered "extensive evidence" of the need for a 50-day cut-off and cautioned that "the 50-day registration period approaches the outer constitutional limits in this area." 93 S.Ct. 1210.

In Marston v. Lewis, 93 S.Ct. 1211, the Supreme Court upheld Arizona's 50-day voter residency and 50-day voter registration requirements, reversing an injunction granted by a three-judge district court which held that any requirement greater than 30 days was unconstitutional. The Supreme Court relied on evidence that

Arizona's antiquated voter registration procedures prohibited the State from processing registrations in less than 50 days. Still, three justices dissented, expressing the view that 30 days was the maximum permissible.

The CNMI requires that a person have resided in the Commonwealth for at least 45 days prior to election to be qualified to vote and further requires the person to register not less than 30 days before the close of election. 1 CMC § 6203(a); 1 CMC § 6205(a). The 30 day registration period appears. IF the 45 day residency requirement is challenged, the CNMI would have to show a compelling interest in requiring voters to reside in the Commonwealth for 15 more days than it takes to process their registration. The Commonwealth will probably be better served if it adopted either a uniform 30 day or uniform 45 day requirement.

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