

AMERICAN CONSTITUTIONALISM
VOLUME II: RIGHTS AND LIBERTIES
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Supplementary Material

Chapter 9: Liberalism Divided – Democratic Rights/Voting/The Right to Vote

Dunn v. Blumstein, 405 U.S. 330 (1972)

James Blumstein moved to Nashville, Tennessee on June 12, 1970. When he attempted to register to vote three weeks later, he was told that he would not be allowed to cast a ballot in state elections until he had lived in the state for a year and Nashville for three months. Blumstein, who had just been hired as an assistant professor at Vanderbilt School of Law,¹ challenged those regulations in federal court. After a three-judge district court panel ruled Tennessee's residency requirements unconstitutional, Tennessee appealed to the Supreme Court of the United States. Blumstein, who argued his own case before the Supreme Court, was supported by Common Cause. The brief for that advocacy group declared,

[t]here are two permissible State interests asserted to justify Tennessee's waiting periods for voting – preventing fraud, and insuring that voters are familiar with the candidates and issues. The first goal is best achieved by voter registration systems; waiting periods add little or nothing to their operation or enforcement. The Tennessee legislature and most others have recognized that 30 days is an adequate time to carry out registration procedures. As for the second state interest, waiting periods longer than the same 30-day period are unnecessary to insure knowledgeable exercise of the franchise. The pace of modern political campaigns is such that the new resident may easily become familiar with the candidates and issues during the month before an election.

Dunn was decided just after Congress, with support from both political parties, had prohibited residency tests for presidential elections. When reading below, consider whether a good principled difference exists between the right to vote in presidential elections and a right to vote in state elections. Might a good case be made that residency requirements were politically doomed after the Voting Rights Act of 1970? At the very least, given the general legislative hostility to residency requirements, is Dunn best thought of as a case in which the Supreme Court imposed national values on regional outliers?

JUSTICE MARSHALL delivered the opinion of the Court.

...

To decide whether a law violates the Equal Protection Clause, we look, in essence, to three things: the character of the classification in question; the individual interests affected by the classification; and the governmental interests asserted in support of the classification. . . . In considering laws challenged under the Equal Protection Clause, this Court has evolved more than one test, depending upon the interest affected or the classification involved. First, then, we must determine what standard of review is appropriate. In the present case, whether we look to the benefit withheld by the classification (the opportunity to vote) or the basis for the classification (recent interstate travel) we conclude that the State must show a substantial and compelling reason for imposing durational residence requirements.

Durational residence requirements completely bar from voting all residents not meeting the fixed durational standards. By denying some citizens the right to vote, such laws deprive them of “a fundamental political right, . . . preservative of all rights.” . . . In decision after decision, this Court has

¹ As of September 2012, Professor Blumstein was still on the faculty at Vanderbilt and is a nationally recognized expert in voting and health law.

made clear that a citizen has a constitutionally protected right to participate in elections on an equal basis with other citizens in the jurisdiction. . . . This “equal right to vote” . . . is not absolute; the States have the power to impose voter qualifications, and to regulate access to the franchise in other ways. . . . But, as a general matter, “before that right [to vote] can be restricted, the purpose of the restriction and the assertedly overriding interests served by it must meet close constitutional scrutiny.” . . .

. . .
This exacting test is appropriate for another reason. . . . Tennessee’s durational residence laws classify bona fide residents on the basis of recent travel, penalizing those persons, and only those persons, who have gone from one jurisdiction to another during the qualifying period. Thus, the durational residence requirement directly impinges on the exercise of a second fundamental personal right, the right to travel.

. . . We considered such a durational residence requirement in *Shapiro v. Thompson* (1969), . . . where the pertinent statutes imposed a one-year waiting period for interstate migrants as a condition to receiving welfare benefits. Although in *Shapiro* we specifically did not decide whether durational residence requirements could be used to determine voting eligibility, . . . we concluded that since the right to travel was a constitutionally protected right, “any classification which serves to penalize the exercise of that right, unless shown to be necessary to promote a compelling governmental interest, is unconstitutional.” . . .

Shapiro and the compelling-state-interest test it articulates control this case. . . . It is irrelevant whether disenfranchisement or denial of welfare is the more potent deterrent to travel. *Shapiro* did not rest upon a finding that denial of welfare actually deterred travel. . . . The right to travel is an “unconditional personal right,” a right whose exercise may not be conditioned. . . . Durational residence laws impermissibly condition and penalize the right to travel by imposing their prohibitions on only those persons who have recently exercised that right. In the present case, such laws force a person who wishes to travel and change residences to choose between travel and the basic right to vote. . . . Absent a compelling state interest, a State may not burden the right to travel in this way.

. . .
It is not sufficient for the State to show that durational residence requirements further a very substantial state interest. In pursuing that important interest, the State cannot choose means that unnecessarily burden or restrict constitutionally protected activity. Statutes affecting constitutional rights must be drawn with “precision,” . . . and must be “tailored” to serve their legitimate objectives. . . . And if there are other, reasonable ways to achieve those goals with a lesser burden on constitutionally protected activity, a State may not choose the way of greater interference. If it acts at all, it must choose “less drastic means.” . . .

. . . We have in the past noted approvingly that the States have the power to require that voters be bona fide residents of the relevant political subdivision. . . . An appropriately defined and uniformly applied requirement of bona fide residence may be necessary to preserve the basic conception of a political community, and therefore could withstand close constitutional scrutiny. But durational residence requirements, representing a separate voting qualification imposed on bona fide residents, must be separately tested by the stringent standard. . . .

. . .
Durational residence laws may once have been necessary to prevent a fraudulent evasion of state voter standards, but today in Tennessee, as in most other States, this purpose is served by a system of voter registration. . . . Given this system, the record is totally devoid of any evidence that durational residence requirements are in fact necessary to identify bona fide residents. The qualifications of the would-be voter in Tennessee are determined when he registers to vote, which he may do until 30 days before the election. . . . His qualifications—including bona fide residence—are established then by oath. . . . There is no indication in the record that Tennessee routinely goes behind the would-be voter’s oath to determine his qualifications. . . . As long as the State relies on the oath-swearing system to establish qualifications, a durational residence requirement adds nothing to a simple residence requirement in the effort to stop fraud. The nonresident intent on committing election fraud will as quickly and effectively swear that he has been a resident for the requisite period of time as he would swear that he was simply a

resident. Indeed, the durational residence requirement becomes an effective voting obstacle only to residents who tell the truth and have no fraudulent purposes.

. . . [T]he job of detecting nonresidents from among persons who have registered is a relatively simple one. It hardly justifies prohibiting all newcomers from voting for even three months. To prevent dual voting, state voting officials simply have to cross-check lists of new registrants with their former jurisdictions. . . . Fixing a constitutionally acceptable period is surely a matter of degree. It is sufficient to note here that 30 days appears to be an ample period of time for the State to complete whatever administrative tasks are necessary to prevent fraud—and a year, or three months, too much. This was the judgment of Congress in the context of presidential elections. And, on the basis of the statutory scheme before us, it is almost surely the judgment of the Tennessee lawmakers as well. . . .

. . . The State's legitimate purpose is to determine whether certain persons in the community are bona fide residents. A durational residence requirement creates a classification that may, in a crude way, exclude nonresidents from that group. But it also excludes many residents. Given the State's legitimate purpose and the individual interests that are affected, the classification is all too imprecise. . . . In general, it is not very difficult for Tennessee to determine on an individualized basis whether one recently arrived in the community is in fact a resident, although of course there will always be difficult cases. . . .

. . . The argument that durational residence requirements further the goal of having "knowledgeable voters" appears to involve three separate claims. The first is that such requirements "afford some surety that the voter has, in fact, become a member of the community." But here the State appears to confuse a bona fide residence requirement with a durational residence requirement. . . .

The second branch of the "knowledgeable voters" justification is that durational residence requirements assure that the voter "has a common interest in all matters pertaining to [the community's] government. . . ." Tennessee's hopes for voters with a "common interest in all matters pertaining to [the community's] government" is impermissible. To paraphrase what we said elsewhere, "All too often, lack of a [common interest] might mean no more than a different interest." . . . "[T]he fact that newly arrived [Tennesseans] may have a more national outlook than longtime residents, or even may retain a viewpoint characteristic of the region from which they have come, is a constitutionally impermissible reason for depriving them of their chance to influence the electoral vote of their new home State." . . .

Finally, the State urges that a longtime resident is "more likely to exercise his right [to vote] more intelligently." . . . [W]ithout deciding as a general matter the extent to which a State can bar less knowledgeable or intelligent citizens from the franchise, . . . we conclude that durational residence requirements cannot be justified on this basis.

[D]urational residence requirements in this case founder because of their crudeness as a device for achieving the articulated state goal of assuring the knowledgeable exercise of the franchise. The classifications created by durational residence requirements obviously permit any longtime resident to vote regardless of his knowledge of the issues—and obviously many longtime residents do not have any. On the other hand, the classifications bar from the franchise many other, admittedly new, residents who have become at least minimally, and often fully, informed about the issues. . . . There is simply nothing in the record to support the conclusive presumption that residents who have lived in the State for less than a year and their county for less than three months are uninformed about elections. . . .

. . . [A]s devices to limit the franchise to knowledgeable residents, the conclusive presumptions of durational residence requirements are much too crude. They exclude too many people who should not, and need not, be excluded. They represent a requirement of knowledge unfairly imposed on only some citizens. We are aware that classifications are always imprecise. By requiring classifications to be tailored to their purpose, we do not secretly require the impossible. Here, there is simply too attenuated a relationship between the state interest in an informed electorate and the fixed requirement that voters must have been residents in the State for a year and the county for three months. Given the exacting

standard of precision we require of statutes affecting constitutional rights, we cannot say that durational residence requirements are necessary to further a compelling state interest.

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JUSTICE POWELL and JUSTICE REHNQUIST took no part in the consideration or decision of this case.

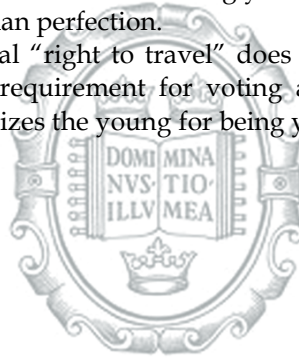
JUSTICE BLACKMUN, concurring in the result.

...

CHIEF JUSTICE BURGER, dissenting.

... It is no more a denial of equal protection for a State to require newcomers to be exposed to state and local problems for a reasonable period such as one year before voting, than it is to require children to wait 18 years before voting. . . . In both cases some informed and responsible persons are denied the vote, while others less informed and less responsible are permitted to vote. Some lines must be drawn. To challenge such lines by the "compelling state interest" standard is to condemn them all. So far as I am aware, no state law has ever satisfied this seemingly insurmountable standard, and I doubt one ever will, for it demands nothing less than perfection.

The existence of a constitutional "right to travel" does not persuade me to the contrary. If the imposition of a durational residency requirement for voting abridges the right to travel, surely the imposition of an age qualification penalizes the young for being young, a status I assume the Constitution also protects.



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