The Burger Court Opinion Writing Database

Dunn v. Blumstein

405 U.S. 330 (1972)

Paul J. Wahlbeck, George Washington University
James F. Spriggs, II, Washington University
Forrest Maltzman, George Washington University

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

March 10, 1972

Re: No. 70-13 -- Dunn v. Blumstein

Dear Harry:

I am dissenting so much this month I am reluctant to add another.

However, I think the proposed opinion overlooks the right of a state to deny voting votes (a) to transients or (b) until new residents have "been around" for one year and have some knowledge of issues, candidates and problems.

If you should decide to dissent on these or comparable grounds I would be happy to join.

Regards,

WEB

Mr. Justice Blackmun

cc: The Conference

To: Mr. Justice Douglas
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 70-13

Circulated: MAR 17 1972

Recirculated: _____

Winfield Dunn, Governor of the State of Tennessee, et al., Appellants, *v.* James F. Blumstein.

On Appeal from the United States District Court for the Middle District of Tennessee.

[March —, 1972]

MR. CHIEF JUSTICE BURGER, dissenting.

The holding of the Court in *Pope* v. *Williams, supra,* is as valid today as it was at the turn of the century. 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. Cf. *Oregon* v. *Mitchell,* 400 U. S. 112 (1970). In both cases some informed and responsible persons are denied the vote, while other less informed and less responsible persons 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.

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WILLIAM O. DOUGLAS

March third
1972

Dear Thurgood:

Re: No. 70-13 - Dunn v. Blumstein

Please join me in your opinion in this case. I am particularly joyous over it because it contains statements I can use to undermine you elsewhere!

William O. Douglas

Mr. Justice Marshall

CC: The Conference

Supreme Court of the United States
Washington, D. C. 20543

March 6, 1972

CHAMBERS OF
JUSTICE WILLIAM O. DOUGLAS

Dear Thurgood:

I am still with you in No. 70-13, Dunn v. Blumstein, and am particularly happy that you left in all of the material which I will use to demolish you very shortly in another case.

W. O. D.

Mr. Justice Marshall

You said the reason I do not get any assignments is that I work too slowly. Would you put in a word for me, saying that with practice I might speed up?

WOD

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

March 2, 1972

RE: No. 70-13 - Dunn v. Blumstein

Dear Thurgood:

I agree.

Sincerely,

Mr. Justice Marshall

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE POTTER STEWART

March 6, 1972

70-13 - Dunn v. Blumstein

Dear Thurgood,

I am glad to join your opinion for the Court in this case.

Sincerely yours,

P.S.

Mr. Justice Marshall

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE BYRON R. WHITE

March 6, 1972

Re: No. 70-13 - Dunn v. Blumstein

Dear Thurgood:

Please join me.

Sincerely,

Mr. Justice Marshall

Copies to Conference

To: The Chief Justice
Mr. Justice Douglas
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist

From: Marshall, J.

1st DRAFT

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Recirculated: _____

SUPREME COURT OF THE UNITED STATES

No. 70–13

Winfield Dunn, Governor of the State of Tennessee, et al., Appellants, *v.* James F. Blumstein.	On Appeal from the United States District Court for the Middle District of Tennessee.

[March —, 1972]

MR. JUSTICE MARSHALL delivered the opinion of the Court.

Various public officials in Tennessee (hereinafter "Tennessee") appeal from a decision by a three-judge federal court holding that Tennessee's durational residency requirements for voting violate the Equal Protection Clause of the United States Constitution. The issue arises in a class action for declaratory and injunctive relief brought by appellee James Blumstein. Blumstein moved to Tennessee on June 12, 1970, to begin employment as an assistant professor of law at Vanderbilt University in Nashville. With an eye towards voting in the upcoming August and November elections, he attempted to register to vote on July 1, 1970. The county registrar refused to register him, on the ground that Tennessee law authorizes the registration of only those persons who, at the time of the next election, will have been residents of the State for a year and residents of the county for three months.

After exhausting state administrative remedies, Blumstein brought this action challenging these residency re-

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 70–13

Winfield Dunn, Governor of the State of Tennessee, et al., Appellants, *v.* James F. Blumstein.	On Appeal from the United States District Court for the Middle District of Tennessee.

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3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 70–13

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70-13

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

March 28, 1972

MEMORANDUM TO THE CONFERENCE

I have gone over the eleven cases held for Dunn v. Blumstein, 70-13. They appear on pages 10-11 of the Conference List for March 31.

In Cocanower v. Marston, 70-16, the court below upheld Arizona's one-year residence requirement. I would vacate and remand.

In Canniffe v. Burg, 70-20, Massachusetts moves to vacate as moot the judgment below striking down Massachusetts' requirement of one year's residence in the State. Massachusetts' constitution has now been amended to remove this requirement. However, by order of the Chief Justice, ballots cast in the 1970 election by newly enfranchised residents were impounded and have not yet been counted. Appellee's claim that this creates a live controversy is countered by the State's representation that the number of ballots cast could not have affected any election race. Appellee moves to affirm the judgment below. I would affirm so that the impounded votes may be counted, although the matter is of little or no significance.

In Whitcomb v. Affeldt, 70-51, Indiana appeals from a judgment striking down Indiana's requirement of six months' residence in the State. Relief was limited to the individual plaintiffs, who have apparently now voted. I could affirm or dismiss as moot.

Amos v. Hadnott, 70-59, an appeal by Alabama, raises only the question of whether a bona fide resident in the State for one year must also reside in the county and precinct for six months and three months respectively. I would affirm.

Oct 71 WM Taylor 70-13

In Virginia State Board of Elections v. Bufford, 70-68, the District Court struck down a one year residence requirement. The State has now changed its constitution and now requires only six months. Since appellees would have met the six month requirement when their suit was instituted, this case is probably moot under Hall v. Beals, 396 U.S. 45.

In Donovan v. Keppel, 70-76, the District Court struck down Minnesota's six months durational residence requirement. Affirm.

In Davis v. Kohn, 70-80, the District Court struck down Vermont's one year residence requirement. Affirm.

Fitzpatrick v. Williams. 70-81, upheld Illinois' one year in the State, 90 day in the county requirements. In the interim, the 90 day in the county requirement has been eliminated, and the one year requirement has been reduced to six months. Under the presently written statute, at least some appellants would still have been ineligible to vote at the time the suit was brought. This, I think, distinguishes Hall v. Beals, supra. I would vacate and remand rather than dismiss as moot.

In Lester v. Board of Elections for the District of Columbia, 70-507[illegible], the District Court struck down the District of Columbia's one year durational residence requirement "when applied to elections for non-voting delegate to the House of Representatives." Appellants challenge the limited character of this order, contending that the one year requirement is unconstitutional for any election in the District. Although the complaint itself is not attached to the papers, it apparently describes the class both as (1) "all" District residents "who satisfy all requirements for registration as voters in the District of Columbia except the one-year residence or domicile provisions," and also as (2) all citizens

"who are disqualified from voting in the District of Columbia in the March, 1971, election of a non-voting delegate to the Congress of the United States or in the primary or primary runoff elections which may precede it," by reason of the durational residence requirement. In light of the clear unconstitutionality of the one year requirement, a stingy interpretation of this complaint serves no purpose and would only produce needless and repetitious litigation. I would vacate and remand, although the question here involves only an interpretation of the pleadings.

Cody v. Andrews, 71-628, struck down North Carolina's one year residence requirement. Affirm.

In Ferguson v. Williams, 71-5690, appellants claimed that it is unconstitutional for Mississippi to prohibit registration to vote within four months of an election. While this is not, strictly speaking, a durational residence requirement of the kind struck down in Dunn, it is virtually the same in practical effect. I would vacate and remand.

T.M.

B
1st

To: The Chief Justice
Mr. Justice Douglas
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Powell
Mr. Justice Rehnquist

From: Blackmun, J.

1st DRAFT

Circulated: 3/15/72

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SUPREME COURT OF THE UNITED STATES

No. 70–13

Winfield Dunn, Governor of the State of Tennessee, et al., Appellants, *v.* James F. Blumstein. | On Appeal from the United States District Court for the Middle District of Tennessee.

[March —, 1972]

MR. JUSTICE BLACKMUN, concurring in the result.

Professor Blumstein obviously could hardly wait to register to vote in his new home State of Tennessee. He arrived in Nashville on June 12, 1970. He moved into his apartment on June 19. He presented himself to the registrar on July 1. He instituted his lawsuit on July 17. Thus, his litigation was begun 35 days after his arrival on Tennessee soil, and less than 30 days after he moved into his apartment. But a primary was coming up on August 6. Usually, such zeal to exercise the franchise is commendable. The professor, however, encountered—and, I assume, knowingly so—the barrier of the Tennessee durational residence requirement and, because he did, he instituted his test suit.

I have little quarrel with much of the content of the Court's long opinion. I concur in the result, with these few added comments, because I do not wish to be described on a later day as having taken a position broader than I think necessary for the disposition of this case.

1. In *Pope* v. *Williams*, 193 U. S. 621 (1904), Mr. Justice Peckham, in speaking for a unanimous Court that included the first Harlan and Mr. Justice Holmes, said:

> ". . . The simple matter to be herein determined is whether, with reference to the exercise of the privilege of voting in Maryland, the legislature of