

Dunn v. Blumstein (1972)

405 U.S. 330

Tennessee law required a one-year residence in the state and a three-month residence in the county as a condition of voting. James Blumstein, a newly appointed faculty member at Vanderbilt University Law School, brought an action in federal district court against Governor Winfield Dunn and various other Tennessee public officials, challenging the constitutionality of this durational residency requirement. A three-judge court, in finding for Blumstein, concluded that the Tennessee law impermissibly interfered with the right to vote and created a “suspect” classification, penalizing some Tennessee residents because of recent interstate travel. Tennessee appealed to the U.S. Supreme Court.

Opinion of the Court: Marshall, Douglas, Brennan, Stewart, White.

Concurring in the judgment: Blackmun.

Dissenting opinion: Burger.

Not participating: Powell, Rehnquist.

MR. JUSTICE MARSHALL delivered the opinion of the Court.

Durational residence laws penalize those persons who have traveled from one place to another to establish a new residence during the qualifying period. Such laws divide residents into two classes, old residents and new residents, and discriminate against the latter to the extent of totally denying them the opportunity to vote. The constitutional question presented is whether the Equal Protection Clause of the Fourteenth Amendment permits a State to discriminate in this way among its citizens.

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 interests affected and 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 classifications (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.” ... If a challenged statute grants the right to vote to some citizens and denies the franchise to others, “the Court must determine whether the exclusions are *necessary* to promote a *compelling* state interest.” ... This is the test we apply here.

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.

... Durational residence laws must be measured by a strict equal protection test: they are unconstitutional unless the State can demonstrate that such laws are “*necessary* to promote a *compelling* governmental interest.” ...

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 which 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 turn, then, to the question of whether the State has shown that durational residence requirements are needed to further a sufficiently substantial state interest. We emphasize again the difference between bona fide residence requirements and durational residence requirements. 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....

Tennessee tenders “two basic purposes” served by its durational residence requirements: “(1) INSURE PURITY OF BALLOT BOX—Protection against fraud through colonization and inability to identify persons offering to vote, and (2) KNOWLEDGEABLE VOTER—Afford some surety that the voter has, in fact, become a member of the community and that as such, he has a common interest in all matters pertaining to its government and is, therefore, more likely to exercise his right more intelligently.” ...

Preservation of the “purity of the ballot box” is a formidable sounding state interest. The impurities feared, variously called “dual voting” and “colonization,” all involve voting by nonresidents, either singly or in groups. The main concern is that nonresidents will temporarily invade the State or county, falsely swear that they are residents to become eligible to vote, and, by voting, allow a candidate to win by fraud. Surely the prevention of such fraud is a legitimate and compelling government goal. But it is impossible to view durational residence requirements as necessary to achieve that state interest.

Preventing fraud, the asserted evil which justifies state lawmaking, means keeping nonresidents from voting. But, by definition, a durational residence law bars *newly arrived* residents from the franchise along with nonresidents....

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....

Our conclusion that the waiting period is not the least restrictive means necessary for preventing fraud is bolstered by the recognition that Tennessee has at its disposal a variety of criminal laws which are more than adequate to detect and deter whatever fraud may be feared....

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. As already noted, a State does have an interest in limiting the franchise to bona fide members of the community. But this does not justify or explain the exclusion from the franchise of persons, not because their bona fide residence is questioned, but because they are recent rather than long-time residents.

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....” By this, presumably, the State means that it may require a period of residence sufficiently lengthy to impress upon its voters the local viewpoint. This is precisely the sort of argument this court has repeatedly rejected....

... Tennessee’s hopes for voters with a “common interest in all matters pertaining to [the community’s) government” is impermissible....

Finally, the State urges that a long-time resident is “more likely to exercise his right to vote more intelligently.” To the extent that this is different from the previous argument, the State is apparently asserting an interest in limiting the franchise to voters who are minimally knowledgeable about the issues. In this case, Tennessee argues that people who have been in the State less than a year and the county less than three months are likely to be unaware of the issues involved in the congressional, state, and local elections, and therefore can be barred from the franchise. We note that the criterion of “intelligent” voting is an elusive one, and susceptible to abuse. But without 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.

The durational 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 long-time resident to vote regardless of his knowledge of the issues—and obviously many long-time residents do not have any. On the other hand, the classifications bar from the franchise many other, admittedly new, residents who have become minimally, and often fully, informed about the issues. Indeed, recent migrants who take the time to register and vote shortly after moving are likely to be those citizens, such as appellee, who make it a point to be informed and knowledgeable about the issues. Given modern communications, and given the clear indication that campaign spending and voter education occur largely during the month before an election, the State cannot seriously maintain that it is “necessary” to reside for a year in the State and three months in the county in order to be minimally knowledgeable about congressional, state or even purely local elections. 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....

It is pertinent to note that Tennessee has never made an attempt to further its alleged interest in an informed electorate in a universally applicable way. Knowledge or competence has never been a criterion for participation in Tennessee’s electoral process for long-time residents. Indeed, the State specifically provides for voting by various types of absentee persons. These provisions

permit many long-time residents who leave the county or State to participate in a constituency in which they have only the slightest political interest, and from whose political debates they are likely to be cut off. That the State specifically permits such voting is not consistent with its claimed compelling interest in intelligent, informed use of the ballot. If the State seeks to assure intelligent use of the ballot, it may not try to serve this interest only with respect to new arrivals....

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....

THE CHIEF JUSTICE 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....