

1972 WL 25295 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

April 24, 1972

***1 Re: Effect of Voting Rights Act Amendments of 1970 and Dunn, et al. v. Blumstein upon South Carolina's durational residency requirements for registration and voting and upon absentee registration and voting in presidential elections.**

The Honorable J. Claytor Arrants
Chairman
Election Law Study Committee
State House
Columbia, South Carolina

The Honorable Eugene N. Ziegler
Vice Chairman
Election Law Study Committee
State House
Columbia, South Carolina

The Honorable L. Marion Gressette
Chairman
Senate Judiciary Committee
State House
Columbia, South Carolina

The Honorable H. Fay Bell
Chairman
House Judiciary Committee
State House
Columbia, South Carolina

The Honorable Thomas E. Smith, Jr.
Chairman
House Subcommittee on Elections
State House
Columbia, South Carolina

Gentlemen:

The Voting Rights Act Amendments of 1970 (P.L. 91-285, Section 202; [42 U.S.C., Section 1973](#) aa-1) abolished State durational residency requirements for registration and voting in presidential elections, and the United States Supreme Court in the case of [Oregon v. Mitchell](#), 400 U.S. 112, 27 L.Ed.2d 272, 91 S.Ct. 260 (1970), affirmed the power of Congress to do this. In a case decided by the Supreme Court on March 21, 1972, entitled Dunn, et al. v. Blumstein, the durational residency requirements of Tennessee were declared violative of the Equal Protection Clause of the Fourteenth Amendment. Enclosed is an opinion of the State Attorney General's Office explaining the impact of the March 21 decision; and, as it, ¹ points out, our State's durational residency requirements are no longer valid.

Actually, the Voting Rights Act Amendments did far more than abolish durational residency requirements in presidential elections because, by its terms, absentee registration and absentee voting standards are made uniform throughout the United States in presidential and vice presidential elections. Briefly, the 1970 legislation requires each State:

1. To provide for registering and qualifying to vote for President and Vice President any citizen otherwise qualified, who has resided within the state at least thirty days prior to a presidential election and applies for registration not later than thirty days immediately prior to the election.
2. To provide by law for the casting of absentee ballots for President and Vice President by qualified citizens who will be absent for any reason from their election district (i.e., precinct) on election day so long as such citizen applies for an absentee ballot at least seven days before the election and returns it by the time the polls are closed.
3. To provide for absentee registration in presidential elections.
4. To allow former legal residents who move and establish a new residence in another State or political subdivision less than thirty days prior to a presidential election to vote either in person or by absentee ballot in their old State of residence.

***2** The above requirements are stated to be minimum standards, and States can adopt less restrictive ones if they wish. [Section 1973-aa-1\(g\)](#), Title 42, U.S.C.

Obviously, South Carolina's registration and voting laws must be modified to meet the requirements of Public Law 91-285, and the need for this was pointed out to the State Election Law Study Committee by both the Executive Director of the State Election Commission and the Attorney General in their appearances before the Study Committee in recent months.

Also, the impact of Dunn v. Blumstein needs to be dealt with. The Supreme Court will approve a thirty day closing law such as South Carolina has (Sections 23-66 and 23-72.2, Code of Laws of South Carolina, 1962), and thus, with the abolishment of all durational residency requirements, few problems would be encountered in drafting legislation which would take into account the changes necessitated by the actions of Congress and the Court.

If Legislation is not forthcoming at the current session, extra legal procedures will have to be instituted by the State Election Commission, county registration boards and county election commissions to implement the requirements of the Dunn case and the Voting Rights Act Amendments. This is especially true insofar as registration and absentee registration and voting procedures in presidential elections are concerned. Ad hoc procedures, which your writers have already advised the Justice Department and other concerned parties will be formulated and implemented absent legislative action, could prove less than satisfactory due to possible varying approaches and interpretations by local officials.

Enclosed is a copy of the Voting Rights Act Amendments of 1970. Your writers strongly urge that legislation be enacted as quickly as possible, at this session, which would bring South Carolina into compliance with Dunn v. Blumstein and Public Law 91-285. While superseded by federal mandate, Article II, Section 4 of the State Constitution and Section 23-62 of the Code should be amended to eliminate the durational residency requirements. Section 23-68, which prescribes the registration application forms should be amended along this same line. Provisions should be made for registering new citizens who establish residency in this State and apply for registration at least thirty days before an election. The other requirements set forth in Public Law 91-285 for absentee registration and voting should also be provided for by appropriate legislation.

Enclosed you will find a copy of a letter from the National Municipal League and information submitted by the League concerning the subject matter of this letter, which we feel may be of interest and help to you in considering the recommendations made herein.

We are writing to you in the spirit of trying to be of assistance to the General Assembly, and we hope your reaction is both positive and favorable. These recommendations have both and approval of the State Attorney General and the members of the State Election Commission.

Very truly yours,

*3 Robert W. Brown

Assistant Attorney General

James B. Ellisor

Executive Director

State Election Commission

Footnotes

- 1 Article II, Section 4 of the State Constitution makes residence within the State six months, three months in the county, and thirty days in the precinct, a prerequisite to registration to voting. Durational or fixed residency provisions mean that a citizen must not only establish a legal residence but he must maintain that residence once established for fixed lengths of time before he can register and vote.

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