

MAINE STATE LEGISLATURE

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Election Administration Unit
JOSEPH E. BRENNAN
ATTORNEY GENERAL



1211
RICHARD S. COHEN
JOHN M. R. PATERSON
DONALD G. ALEXANDER
DEPUTY ATTORNEYS GENERAL

STATE OF MAINE
DEPARTMENT OF THE ATTORNEY GENERAL
AUGUSTA, MAINE 04333

January 19, 1977

Honorable Robert J. Carrier
House of Representatives

Dear Representative Carrier:

This responds to your oral request for an opinion of January 5, 1977, when you questioned whether or not the Legislature may constitutionally terminate voter registration in advance of election day. The answer to your question is affirmative: in order to control voter fraud, the Legislature may require that voter registration be terminated for a reasonable period prior to the election day, which period may constitutionally be at least thirty days, and perhaps fifty days. Our reasoning is as follows:

In Dunn v. Burnstein, 405 U.S. 330 (1972), the United States Supreme Court ruled that voting residence requirements of any kind were violative of the Equal Protection Clause of the United States Constitution, whether they were enacted to preserve the purity of the ballot box against voter fraud, or to insure that only knowledgeable voters would appear. In discussing the first of these proposed justifications, however, the Court took notice of the fact that the state in question (Tennessee) did have a statutory provision closing its registration books to would-be voters thirty days in advance of the election, in order to permit the registrars to verify each registrant's residence. In so noting, the Court observed, with regard to the length of the period in such a statute:

"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 administra-

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tive tasks are necessary to prevent fraud - and year, or three months, too much."

Id., at 348

Thus, the Legislature may constitutionally shut off voter registration for at least thirty days prior to election day.

One year after the Dunn v. Burnstein decision, the Supreme Court refined its holding somewhat by sustaining a fifty day registration requirement in Arizona. Marston v. Lewis, 410 U.S. 679 (1973). The basis for this decision was that the Court felt that Arizona had succeeded in justifying, through evidence adduced in the trial court, that it needed fifty days, rather than the thirty days allowed in Dunn, to insure against voter fraud. The conclusion to be drawn from the case, then, is that while thirty days appears clearly constitutional, a state may be able to provide for at least twenty days more if it can prove at trial a practical necessity for such a longer period.

It should be noted that this opinion is not inconsistent with that of the Maine Supreme Judicial Court, Opinion of the Justices, 303 A.2d 452 (me. 1973), in which the court held that a proposed amendment to the Maine Constitution establishing a residency requirement (as distinguished from a registration termination period) of thirty days would violate the federal Equal Protection Clause under Dunn and Marston, because it would exceed the statutory registration requirements established by the Legislature. The Court clearly did not say, however, that the Legislature might not lengthen those registration requirements within the limits set forth in the two federal decisions.

Very truly yours,

JOSEPH E. BRENNAN
Attorney General

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