the shareholders or association members be licensed practitioners of the profession and that the organization may not practice more than one profession. (NRS 89.050, 89.070 and 89.230.) Applications to organize under these chapters are made to the Secretary of State and it is his office which subsequently regulates such organizations.

The above chapters, of course, would apply to for-profit HMO's which control their own facilities or employ their own physicians. Obviously, this is a case of a corporation or association practicing medicine. An HMO which functions indirectly by contracting with physicians is altogether different. It is not engaged in practicing medicine as it serves solely as a finder. The actual practice of medicine is conducted by other persons or groups. Chapter 89, therefore, would not apply to these organizations. And being for-profit organizations, they are not regulated by the Insurance Code either, by reason of NRS 679A.160. Such HMO's would be regulated only by Chapter 78, the Private Corporation Act; and thus would be under the scrutiny of the Secretary of State.

CONCLUSION

Nonprofit health maintenance organizations are regulated under Chapter 695B of the Insurance Code, and thus are responsible to the Commissioner of Insurance. For-profit health maintenance organizations which control their own facilities and employ their own physicians are regulated by Chapters 78 and 79 of Nevada Revised Statutes. For-profit health maintenance organizations which serve only as finders for health services by contracting with medical groups are regulated only by Chapter 78 of Nevada Revised Statutes. For-profit HMO's are thus responsible to the Secretary of State.

Respectfully submitted,

ROBERT LIST, *Attorney General*

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85 Elections; Voter Registration—Nevada constitutional 6 months state residence requirement for entitlement to vote preempted by the provisions of the 14th Amendment to the U.S. Constitution. Dunn v. Blumstein, 92 S.Ct. 995 (March 21, 1972).

CARSON CITY, June 19, 1972

MR. STANTON B. COLTON, *Registrar of Voters,* County of Clark, 400 Las Vegas Blvd. South, Las Vegas, Nevada 89101

DEAR MR. COLTON:

QUESTION

Your predecessor in office, Mr. Thomas A. Mulroy, asked this office for an opinion regarding the effect of the decision of the U.S. Supreme Court in the case of Dunn v. Blumstein, 92 S.Ct. 995 (March 21, 1972), on the residence for voting requirement contained in Article 2, Section 1 of the Constitution of the State of Nevada. More specifically, Mr. Mulroy had asked whether any election official registering voters in the State of Nevada may require proof of residence within the State of Nevada for 6 months as required by the Constitution and Statutes of the State of Nevada rather than the 30-day voter processing period discussed and apparently established by the U.S. Supreme Court in Dunn v. Blumstein, supra. For the reasons stated below, we believe that the Nevada Constitution has been superseded and that it is incumbent upon registrars of voters to enforce only a 30-day voter processing requirement rather than any residence requirement.

ANALYSIS

In proceeding to advise state officials that the State Constitution has been superseded or overruled by the U.S. Supreme Court's interpretation of the provisions of the federal Constitution, the Attorney General must proceed with great care and must be certain that his advice is based upon clear and compelling case law precedent. This is a difficult task and one which this office has evaluated carefully. Unless it is virtually certain that a court of competent jurisdiction would strike down the provisions of the State Constitution, this office would be reluctant to advise any public official not to adhere to the requirements of that Constitution. We note, however, that Article 1, Section 2 of our State Constitution requires:

> * * * the Paramount Allegiance of every citizen is due to the Federal Government in the exercise of all its Constitutional powers *as the same have been or may be defined by the Supreme Court of the United States* * * *. (Italics added.)

Article 2, Section 1 of the Nevada Constitution provides eligibility for voting as follows:

> * * * All citizens of the United States (not laboring under the disabilities named in this constitution) of the age of eighteen years and upwards, who shall have actually, and not constructively, resided in the state six months, and in district or county thirty days next preceding any election, shall be entitled to vote for all officers that now or hereafter may be elected by the people, and upon all questions submitted to the electors at such election; * * *.

NRS 293.485, subsection 1, provides:

> Except as provided in section 1 of article 2 of the constitution of the State of Nevada, every citizen of the United States, 18 years of age or over, who has continuously resided in this state 6 months and in the county 30 days and in the precinct 10 days next preceding the day of the next succeeding primary or general election, and who has registered in the manner provided in this chapter, shall be entitled to vote at such election.

These are the durational residence requirements which must be examined in light of Dunn v. Blumstein, supra. These durational residence requirements apply only to state elections since the federal Voting Rights Act of 1970, 48 U.S.C. § 1973aa-1 established a 30-day requirement for participation in federal elections for president and vice president.

On March 21, 1972, in Dunn v. Blumstein, supra, the U.S. Supreme Court upheld the decision of a 3-judge federal district court in Tennessee invalidating that state's 1-year durational residence requirement as well as the 3-month county durational residence requirement for eligibility to vote in Tennessee state elections. The court determined that the provisions of the Tennessee Constitution and the Tennessee Code establishing durational residence requirements did not further any compelling state interest and that they violated the equal protection clause of the 14th Amendment of the Untied States Constitution. In his opinion for the majority, Mr. Justice Marshall discussed the impact of durational residence requirements, noting that they impinge on the exercise of the right to travel and can act to deprive citizens' fundamental political rights. The opinion is comprehensive. Arguments made by Tennessee regarding the desirability of an educated populace, the preservation of a common interest in matters pertaining to a community's government and the preservation of the purity of the ballot box by preventing dual voting were all discussed and found to be wanting as an adequate explanation for the use of durational residence requirements.

Mr. Justice Marshall noted that 30 days appear to be "an ample period of time for the state to complete whatever administrative tasks are necessary to prevent fraud * * *." He noted that Tennessee had a registration cutoff point of 30 days before an election and that this reflected the judgment of the Tennessee legislature that election officials can take necessary precautionary measures to insure the purity of the ballot within a 30-day period. Nevada's registration closes on the fifth Saturday preceding any election. (NRS 293.560.) This effectively is 30 days.

Subsequent to the Dunn decision, a number of durational residence cases were decided by the U.S. Supreme Court and disposed of in memorandum form. Three of these cases specifically concerned 6-month state constitutional voter residence provisions similar to those established by Article 2, Section 1 of the Nevada Constitution and NRS 293.485, subsection 1. Each of the decisions was in memorandum form indicating that the U.S. Supreme Court had little question about the interpretation it wanted placed on the Dunn decision. In Amos v. Hadnott, 92 S.Ct. 1304 (1972), the court affirmed a 3-judge federal court's ruling that Alabama's 6-month constitutional durational requirement was unconstitutional. In Donovan v. Keppel, 92 S.Ct. 1304 (1972), the court affirmed a 3-judge federal court's decision that Minnesota's 6-month constitutional and statutory durational residence requirement was unconstitutional. In Whitcomb v. Affeldt, 92 S.Ct. 1304 (1972), the court affirmed a 3-judge federal court's decision that Indiana's 6-month constitutional and statutory durational residence requirement was unconstitutional. In the case of Ferguson v. Williams, 92 S.Ct. 1322 (1972), the court vacated a 3-judge federal court's ruling that the constitutional requirement of 4 months' residence for voting found in the Mississippi Constitution was valid.

In the case of Cocanower v. Marston, 92 S.Ct. 1303 (1972), the Supreme Court vacated the judgment of a 3-judge federal court upholding Arizona's 1-year durational requirement for voting ordering the district court to reconsider the case in light of the Supreme Court's decision in Dunn v. Blumstein, supra. The United States Supreme Court took a similar action in the case of Fitzpatrick v. Board of Election Commissioners for the City of Chicago, 92 S.Ct. 1305 (1972), and in Lester v. Board of Elections for the District of Columbia, 92 S.Ct. 1318 (1972). Both district courts were advised to reconsider their prior decisions in light of Dunn v. Blumstein, supra. In Davis v. Kohn, 92 S.Ct. 1305 (1972); Virginia State Board of Elections v. Bufford, 92 S.Ct. 1304 (1972); Canniffee v. Burg, 92 S.Ct. 1303 (1972); and Cody v. Andrews, 92 S.Ct. 1306 (1972), the Supreme Court affirmed the action of lower federal courts in overturning the durational residency requirements of Vermont, Virginia, Massachusetts, and North Carolina, respectively. In the 11 memorandum decisions issued by the U.S. Supreme Court as a result of Dunn v. Blumstein, supra, constitutional and statutory provisions for durational residency requirements as long as 1 year and as short as 4 months have been directly or indirectly struck down by the court in summary fashion. We would also note the decision of the Supreme Court of California on May 4, 1972, in the case of Young v. Gnoss, …… P.2d …… (1972), in which the 90-day durational residency requirement within a California county and a 54-day durational residency requirement in a precinct were struck down as violative of the equal protection clause of the 14th Amendment as applied in Dunn v. Blumstein, supra.

Attorneys General in 14 states have advised appropriate state officials that the standards of Dunn v. Blumstein, supra, must be met. We particularly note the opinion of Attorney General Scott of Illinois specifically advising a state's attorney that the 6-month durational residency requirement of the Illinois Constitution is violative of the equal protection clause of the 14th Amendment to the U.S. Constitution.

Given the language of Dunn v. Blumstein, supra, the actions of the U.S. Supreme Court subsequent to its rendering of the Dunn decision, the actions of various Attorneys General and the language of the Nevada Constitution, it appears that there is little alternative but to declare that it is the opinion of this office that any court examining the durational residency requirements of Article 2, Section 1 of the Nevada Constitution and

NRS 293.485, subsection 1, would find that the Nevada Constitution and Statutes violate the 14th Amendment to the U.S. Constitution.

CONCLUSION

The mandate of the U.S. Supreme Court is clear. The Nevada durational residency requirement violates the 14th Amendment to the U.S. Constitution. We therefore advise your office to allow all persons to register to vote if they attempt to register within the time established by NRS 293.560 for the close of registration. We would also note that the provisions of NRS 298.090 to 298.240 regarding "new residents" voting in presidential elections would not longer be applicable.

Respectfully submitted,

ROBERT LIST, *Attorney General*

By MICHAEL L. MELNER, *Deputy Attorney General*

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86 Effect of a Change of Party Registration on a Candidacy in a Primary Election—NRS 293.176 forbids a person from being a candidate for a party's nomination in a primary election when he has changed his party registration since September 1 prior to the closing filing date for such election. But NRS 293.176 does not apply to a new resident who delays changing party registration beyond the permissible date by reason of the 6-month residency requirement of NRS 293.485.

CARSON CITY, July 10, 1972

THE HONORABLE DARREL H. DREYER, 5309 Masters Avenue, Las Vegas, Nevada 89109

DEAR MR. DREYER:

You have requested this office for a clarification of NRS 293.176 as it may apply to the following facts which have come to your attention:

FACTS

In June 1971, a California resident, a registered Republican in that state, moved to Nevada. He waited the 6 months required by Article 2, Section 1 of the Nevada Constitution and by NRS 293.485 for residency before registering as a voter in Nevada. In December 1971, after the 6-month period ended, he registered in Nevada as a Democrat. He now wishes to contend for the Democratic Party nomination for an elective state office in the September 5, 1972 primary election.

NRS 293.176 provides, however, that:

> No person may be a candidate for a party nomination in any primary election if he has changed the designation of his political party affiliation on an official affidavit of registration in the State of Nevada or in any other state since September 1 prior to the closing filing date for such election.

The person involved here obviously changed his party registration after the effective September 1 date, but was compelled by NRS 293.485 to wait until after September 1 to do so.

QUESTION