

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Lumber Co.*, 200 U. S. 321, 337.

## SUPREME COURT OF THE UNITED STATES

### Syllabus

#### BURSON, ATTORNEY GENERAL AND REPORTER FOR TENNESSEE *v.* FREEMAN

CERTIORARI TO THE SUPREME COURT OF TENNESSEE  
No. 90-1056. Argued October 8, 1991—Decided May 26, 1992

Respondent Freeman, while the treasurer for a political campaign in Tennessee, filed an action in the Chancery Court, alleging, among other things, that §2-7-111(b) of the Tennessee Code—which prohibits the solicitation of votes and the display or distribution of campaign materials within 100 feet of the entrance to a polling place—limited her ability to communicate with voters in violation of, *inter alia*, the First and Fourteenth Amendments. The court dismissed her suit, but the State Supreme Court reversed, ruling that the State had a compelling interest in banning such activities within the polling place itself but not on the premises around the polling place. Thus, it concluded, the 100-foot limit was not narrowly tailored to protect, and was not the least restrictive means to serve, the State's interests.

*Held:* The judgment is reversed, and the case is remanded.

802 S.W. 2d 210, reversed and remanded.

JUSTICE BLACKMUN, joined by THE CHIEF JUSTICE, JUSTICE WHITE, and JUSTICE KENNEDY, concluded that §2-7-111(b) does not violate the First and Fourteenth Amendments. Pp.4-20.

(a) The section is a facially content-based restriction on political speech in a public forum and, thus, must be subjected to exacting scrutiny: The State must show that the regulation is necessary to serve a compelling state interest and that it is narrowly drawn to achieve that end. This case presents a particularly difficult reconciliation, since it involves a conflict between the exercise of the right to engage in political discourse and the fundamental right to vote, which is at the heart of this country's democracy. Pp.4-7.

(b) Section 2-7-111(b) advances Tennessee's compelling interests in preventing voter intimidation and election fraud. There is a substantial and long-lived consensus among the 50

States that *some* restricted zone around polling places is necessary to serve the interest in protecting the right to vote freely and effectively. The real question then is *how large* a restricted zone is permissible or sufficiently tailored. A State is not required to prove empirically that an election regulation is perfectly tailored to secure such a compelling interest. Rather, legislatures should be permitted to respond to potential deficiencies in the electoral process with foresight, provided that the response is reasonable and does not significantly impinge on constitutionally protected rights. *Munro v. Socialist Workers Party*, 479 U.S. 189, 195-196. Section 2-7-111(b)'s minor geographical limitation does not constitute such a significant impingement. While it is possible that at some measurable distance from the polls governmental regulation of vote solicitation could effectively become an impermissible burden on the First Amendment, Tennessee, in establishing its 100-foot boundary, is on the constitutional side of the line. Pp.7-20.

BURSON v. FREEMAN

Syllabus

JUSTICE SCALIA concluded that §2-7-111 is constitutional because it is a reasonable, viewpoint-neutral regulation of a nonpublic forum. The environs of a polling place, including adjacent streets and sidewalks, have traditionally not been devoted to assembly and debate and therefore do not constitute a traditional public forum. Cf. *Greer v. Spock*, 424 U.S. 828. Thus, speech restrictions such as those in §2-7-111 need not be subjected to "exacting scrutiny" analysis. Pp.1-4.

BLACKMUN, J., announced the judgment of the Court and delivered an opinion, in which, REHNQUIST, C. J., and WHITE and KENNEDY, JJ., joined. KENNEDY, J., filed a concurring opinion. SCALIA, J., filed an opinion concurring in the judgment. STEVENS, J., filed a dissenting opinion, in which O'CONNOR and SOUTER, JJ., joined. THOMAS, J., took no part in the consideration or decision of the case.