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Student Voting Rights

NOTES

STUDENT VOTING RIGHTS

INTRODUCTION

Every year thousands of college students depart from their parental homes to attend institutions of higher learning across the United States. Until recently, many college students were not entitled to cast their votes at the college town because the were: 1) not age-eligible, or 2) had not satisfied the pre-registration waiting period or 3) did not qualify as residents of the college town. However, as a result of recent court decisions[1] and legislative enactments,[2] the first two of these barriers have been practically eliminated. Therefore, the major problem now confronting students who desire to vote in their college town is whether they have acquired the residence necessary to vote.

As a consequence of restrictive state residency requirements, many students are disfranchised or required to vote at their parental homes where they may have neither interest in nor knowledge of the issues. A typical student may reside in the college community nine months each year for four years or longer. During this period the student establishes substantial contacts in the college town. Furthermore, students in a university town are directly affected by electoral decisions. While subject to decisions by local elected officials, many students are without representation in the governments of the state, county and town in which they attend college.

The voting laws of the various states were enacted at times when populations were less mobile[3] and the right to vote was considered less

1. *See, e.g.,* Bufford v. Holton, 319 F. Supp. 843 (E.D. Va. 1970); Affeldt v. Whitcomb, 319 F. Supp. 69 (N.D. Ind. 1970); Hadnott v. Amos, 320 F. Supp. 107 (M.D. Ala. 1970); Burg v. Canniffe, 315 F. Supp. 380 (D. Mass. 1970). For a more thorough discussion see note 52 *infra* and accompanying text.

2. *See, e.g.,* Voting Rights Act of 1970, 42 U.S.C. § 1973 aa-1 (1970), *amending* 42 U.S.C. § 1973 (Supp. I, 1965), *construed in* Oregon v. Mitchell, 400 U.S. 112 (1970) (1970 Voting Rights Act abolishing state durational residency requirements and providing for absentee balloting in presidential elections was within power of Congress to enact); Voting Rights Act of 1970, 42 U.S.C. § 1973 bb-1 (1970), *amending* 42 U.S.C. § 1973 (Supp. I, 1965) *construed in* Oregon v. Mitchell, 400 U.S. 112 (1970) (1970 Voting Rights Act authorizing 18-year-olds to vote in federal elections was within power of Congress to enact; however, the authorization of 18-year-olds to vote in state and local elections was beyond power of Congress to enact).

3. *See* Schmidhauser, *Residency Requirements for Voting and the Tensions of a Mobile Society,* 61 MICH. L. REV. 823, 824 (1963).

basic and universal, both by the courts and the public.[4] Today, antiquated definitions of residence have the effect of denying students the right to vote for local candidates in the town in which they are attending college. While commentators have indicated a concern for those affected by durational residency requirements,[5] little attention has been given to that class of persons adversely affected by residence requirements.

The purpose of this note is to examine the justification, application and constitutionality of residence requirements as they affect that class of persons who reside in more than one community during a given year. More specifically, this analysis will consider whether voter residence requirements, as applied to the student voter, directly serve the interest of the state in maintaining such requirements.

Historical Analysis

The United States Supreme Court has described the right to vote as "the foundation of our representative society,"[6] which is "preservative of other basic civil and political rights."[7] In *Carrington v. Rash,*[8] the Court characterized the electoral franchise as being a right so vital to the maintenance of a democracy that it cannot be "constitutionally obliterated because of a fear of the political views of a particular group of bona fide residents."[9] The language of these cases exemplifies the great strides the Court has taken toward establishing universal adult suffrage.

It is inherent in a fully operative democracy that all citizens have the right to vote. The ballot provides the technique for political expression in our democratic society. The ballot is the most direct link between the electorate and the officials they select. "[T]he right to vote freely for the candidate of one's choice is of the essence of a democratic society,

4. Note, *The Impact and Constitutionality of Voter Residency Requirements as Applied to Certain Intrastate Movers,* 43 Ind. L.J. 901 (1968). Recent judicial decisions have reflected an increasing national concern with infringements upon the right to vote. *See, e.g.,* Kramer v. Union Free School Dist., 395 U.S. 621 (1969); Moore v. Ogilvie, 394 U.S. 814, 818 (1969); McDonald v. Board of Election Comm'rs, 394 U.S. 802 (1969); Harper v. Virginia Board of Elections, 383 U.S. 663 (1966); Carrington v. Rash, 380 U.S. 89 (1965); Baker v. Carr, 396 U.S. 186 (1962).

5. *See, e.g.,* Macleod & Wilderding, *State Voting Residency Requirements and Civil Rights,* 38 Geo. Wash. L. Rev. 93 (1969); Schmidhauser, *Residency Requirements for Voting and the Tensions of a Mobile Society,* 61 Mich. L. Rev. 823 (1963); Note, *The Impact and Constitutionality of Voter Residency Requirements as Applied to Certain Intrastate Movers,* 43 Ind. L.J. 901 (1968); 77 Harv. L. Rev. 574 (1964).

6. Kramer v. Union Free School Dist., 395 U.S. 621, 626 (1969).

7. Reynolds v. Sims, 377 U.S. 533, 562 (1964).

8. 380 U.S. 89 (1965).

9. *Id.* at 94.

and any restrictions on that right strike at the heart of representative government."[10]

Constitutional Provisions

The right to vote is governed by the constitutions and statutes of the respective states bounded by the limitations and grants contained in the Federal Constitution. Clearly, the draftsmen of our Federal Constitution intended that the separate states should have considerable autonomy in choosing between competing norms respecting the grant of suffrage and also in the implementation of that choice. Referring to the election of representatives in the Congress, article one of the Constitution provides that "the Electors in each State shall have the qualifications requisite for Electors of the most numerous Branch of the State Legislature."[11] In order to insure that state legislatures would not usurp the the electoral power, this provision was written in such a manner that the elections for the House of Representatives would be as democratic as the election of the most numerous branch of the state legislature.[12] More than a century later, an analogous provision concerning the election of senators was placed in the seventeenth amendment. In implementing this language, the Supreme Court has ruled that a state could adopt the ideal of a literate electorate and could enforce that ideal by restricting the franchise, even in elections of federal officers, to persons passing a fairly-administered literary test prescribed by state law.[13]

However, the Constitution also definitely entrusts to the federal government certain responsibilities with respect to voting rights. Although the state legislatures may prescribe the "Times, Places and Manner of holding Elections for Senators and Representatives," the Congress may "make or alter such Regulations, except as to the Places of chusing Senators."[14] Moreover, Congress was specifically empowered to "enforce by appropriate legislation" the voting rights protected by the fourteenth and fifteenth amendments.[15]

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10. Reynolds v. Sims, 377 U.S. 533, 555 (1964).
11. U.S. CONST. art. I, § 1.
12. *See* 1 M. FARRAND, THE RECORDS OF THE FEDERAL CONSTITUTION 358-59 (1911).
13. Lassiter v. Northampton County Board of Elections, 360 U.S. 45 (1959). It is interesting to note that although the states may limit the franchise to those meeting certain qualifications, section 2 of the fourteenth amendment provides for the reduction of the basis of the states' representation when the right to vote "is denied to any of the male inhabitants of such State, being twenty-one-years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime . . . ." U.S. CONST. amend. XIV, § 2.
14. U.S. CONST. art. I, § 4.
15. U.S. CONST. amend. XIV, § 5; amend. XV, § 2.

Judicial Developments

Although the framers left the *qualifications* of electors to be determined by the states, the federal government has intervened on numerous occasions to promote and preserve the right to vote. In recent years, much precedent concerning the extent to which the equal protection clause of the fourteenth amendment protects the right to vote has evolved.

In 1965, the Supreme Court struck down a Texas residency requirement in *Carrington v. Rash*.[16] The plaintiff was a member of the armed forces who moved to Texas. Although he met all the other qualifications for voting, he was nevertheless denied the right to vote by a statute which prevented any member of the armed forces living in the state from becoming a resident and a voter.[17] The Court, while recognizing that the state had a right to restrict the vote to bona fide residents,[18] held that such a conclusive presumption against bona fide residency was impermissible, and that "States may not casually deprive a class of individuals the vote because of some remote administrative benefit to the State."[19] While a state has a legitimate interest in protecting the "purity" of its elections, it may not adopt a conclusive presumption, such as Texas did, that all new residents are not bona fide residents.[20]

The Supreme Court has also been vigilant in making the vote meaningful—to have it counted,[21] and not to have it diluted by ballot-box stuffing.[22] In *Reynolds v. Sims*,[23] the Supreme Court held that each person's vote should have equal effect. More specifically, the Court held that geographical representation should not dilute any voter's influence on the electoral process by allowing some districts to represent fewer persons than others.

After passage of the 1970 Voting Rights Act,[24] prompt Supreme Court tests of the constitutionality of the Act were sought by the Department of Justice, several states and interested private parties. In *Oregon v. Mitchell*,[25] the Court ruled that all persons 18 years of age or older who are otherwise qualified may vote in federal elections for President, Vice-

16. 380 U.S. 89 (1965).
17. *Id.*
18. *Id.* at 91.
19. *Id.* at 96.
20. *See* Hall v. Beals, 396 U.S. 45, 51 (1969) (Marshall & Brennan, JJ., dissenting).
21. United States v. Mosley, 238 U.S. 383 (1915).
22. United States v. Saylor, 322 U.S. 385 (1944).
23. 377 U.S. 533 (1964).
24. Voting Rights Act of 1970, 42 U.S.C. §§ 1973 aa-1, bb-1 (1970), *amending* 42 U.S.C. §§ 1971, 1973 to 1973p (Supp. I, 1965).
25. 400 U.S. 112 (1970).

President, U.S. Senators and Congressmen. Furthermore, the Court upheld section 1973 aa-1 of the 1970 Voting Rights Act which abolished state durational residency requirements for voting in presidential elections.[26]

Protection of the Right to Vote

Lack of discrimination in and the protection of the electoral process are the constitutional concerns of the federal government. It is the duty and prerogative of the states to decide when a person is qualified.[27] The state's power to define the qualifications of their voters is limited only by the Federal Constitution.[28] However, if the states should set the voting age at 65 or otherwise discriminate unreasonably against a group, the federal government, through the Congress, the Supreme Court and the Executive Branch, has both the right and duty to intervene.[29]

The constitutional authorizations of congressional action to enforce voting rights[30] might be construed as an indication of an intention that legislative action, rather than judicial decree, should be primarily relied on to formulte the norms for voting entitlement and to provide remedies for departures from those norms. Under this view, the courts would not be required to enter a "political thicket." On the other hand, leaving the responsibility for orderly change in the hands of legislators, whether state or federal, makes the accomplishment of change dependent to a considerable extent on the altruism of those persons who benefit from the status quo.

Dissatisfied with the well-demonstrated lack of any such altruism, the Supreme Court in *Baker v. Carr*[31] committed the courts to judicial

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26. *Id.*

27. United States v. Cruikshank, 92 U.S. 555 (1876). *See also,* Guinn v. United States, 238 U.S. 347 (1915).

28. Guinn v. United States, 238 U.S. 347 (1915); Pope v. Williams, 193 U.S. 621 (1904). *See also,* Election Comm'rs v. Knight, 187 Ind. 108, 117 N.E. 665 (1917); Kenneam v. Wells, 144 Mass. 497, 11 N.E. 916 (1887).

29. The privilege to vote in any state is not given by the Federal Constitution, or by any of its amendments. . . . [I]t does not follow from mere citizenship of the United States. In other words, the privilege to vote in a State is within the jurisdiction of the State itself, to be exercised as the State may direct, and upon such terms as it may deem proper, provided, of course, no discrimination is made between individuals in violation of the Federal Constitution.

Pope v. Williams, 193 U.S. 621, 632 (1904).

30. Although the state legislatures may prescribe the "Times, Places and Manner of holding Elections for Senators and Representatives," the Congress may "make or alter such Regulations, except as to the Places of chusing Senators." U.S. CONST. art. I, § 4. Moreover, Congress was specifically empowered to "enforce by appropriate legislation" the voting rights protected by the fourteenth and fifteenth amendments. U.S. CONST. amend. XIV, § 5; amend. XV, § 2.

31. 369 U.S. 186 (1962).

activism in the protection of the right to vote. This case has induced legislative action intended to obviate the occasion for further judicial intervention in the electoral process; but the legislatures, like the courts, are constantly faced with making basic choices between competing norms.

General Qualifications of Electors

Since the source of the right to vote rests with the states,[32] it is important to examine how they have determined whom shall vote. The states have attained this end by prescribing certain qualifications which a citizen must have in order to attain the privilege of voting. Generally, this has been accomplished by constitutional provisions. In some states only the general qualifications are provided for by the constitutions, and the specific prerequisites are left to the legislatures to work out.

Under the present constitutional structure, the states usually accord the right to vote to persons who 1) are citizens of the United States, 2) have attained the age of 18 and 3) have resided within the state's borders for a requisite period of time immediately preceding the election.[33] These three classifications, although not universal,[34] provide the general framework of the election laws. They have little in common except that they all involve personal qualifications.

Membership in the Political Entity

Aliens cannot vote because they are not members of the political entity. At the very foundation of all independent popular governments lie the principles that the government is instituted by the citizens and that its powers and functions are to be exercised only by them. Viewed in light of these principles, it is obvious that an alien is ineligible to vote unless specifically authorized by statute. The general structure of voting laws requires membership in the political entity, capacity and presence within the geographic borders of the political entity. The two latter

32. 193 U.S. 621 (1903).

33. *See, e.g.,* Calif. Const. art. II, § 1; Ind. Const. art. 2, § 2; Mich. Const. art. II, § 1; N.Y. Const. art. II, § 1.

34. Many states have employed some form of literacy tests to decide which voters are qualified. 115 Cong. Rec. 3991, 3995 (daily ed. May 15, 1969) (remarks of Fletcher Thompson). Many states disfranchise those persons convicted of serious crimes, infamous crimes or some other designation of major criminal conduct. 21 Rutgers L. Rev. 297, 298-99 (1967). It should be noted that because of constitutional enactments and rulings, poll taxes are no longer in use. Poll taxes in any primary or election for President or Vice-President were eliminated by U.S. Const. amend. XXIV, § 1. Poll taxes were ruled unconstitutional for state elections in *Harper v. Virginia Board of Elections,* 383 U.S. 663, 670 (1966).

requirements present the most serious stumbling blocks to many students desirous of casting a meaningful ballot.

Capacity to Vote

Traditionally, most states have provided that citizens must be 21 years of age before they are able to exercise the right to vote. One court found that in most instances this represents an arbitrary age line drawn by state constitution.[35] The exceptions to this general rule were Alaska,[36] Georgia,[37] Hawaii[38] and Kentucky.[39] In almost all the states, it would have taken a state constitutional amendment to lower the voting age since the age has been established by the states' constitutions. Very few of these states considered it possible to complete action on a state constitutional amendment in time for the 1972 elections.[40] On March 23, 1971, the United States Congress passed a joint resolution proposing an amendmnt to the Federal Constitution extending the right to vote in general elections to ciitzens 18 years of age or older.[41] Those who favored lowering the voting age argued that the 18-to-21-year-old group contributes many services to society and should therefore be allowed to vote, that a large portion of the public favors lowering the voting age and that young people are showing an increased awareness of and interest in the ballot.[42] On December 21, 1970, the Supreme Court in *Oregon v. Mitchell*[43] ruled that Title III of the Voting Rights Act of 1970 is constitutional insofar as it applies to federal elections, but that Congress lacks the power under the Constitution to lower the voting age by federal statute in state and local elections. Therefore, the 18-19-and 20-year-old citizens gained the right to participate in the choice of federal officers but were precluded from taking any meaningful part in the selection of state and local officials under Title III of the Voting Rights Act of 1970. As a result of this decision, special separate facilities and procedures would have been required for younger voters who were eligible to vote only in federal elections. This was not a small or isolated difficulty since in most states the number of younger voters is close to ten percent of the state's previous voting

35. Dorsey v. Brigham, 177 Ill. 250, 52 N.E. 303 (1898).
36. ALASKA STAT. § 15.05.010(2) (1964) (may vote at 19).
37. GA. CONST. art. 2, § 1-2 (may vote at 19).
38. HAWAII CONST. art. II, § 1 (may vote at 20).
39. KY. CONST. § 145 (may vote at 20).
40. 117 CONG. REC. S 2671 (daily ed. March 9, 1971).
41. S.J. Res. 7, 92d Cong., 1st Sess., 117 CONG. REC. S 1857 (daily ed. March 23, 1971).
42. 117 CONG. REC. S 2663-67 (daily ed. March 9, 1971).
43. 400 U.S. 112 (1970).

age population.[44] The estimates of actual cost resulting from dual-age voting varied widely among the states, but the information and estimates available from election officials suggested that the nationwide cost involved would have been no less than 10 million to 20 million dollars—and could have amounted to substantially more.[45] Therefore, the problems of dual-age voting presented a strong justification for lowering the voting age to eighteen for all elections.

On June 30, 1971, the 26th Amendment to the Constitution was ratified by the requisite number of states.[46] This Amendment franchised the 18-to-20-year-olds for state and local as well as national elections.[47] The passage and ratification of the 26th Amendment, combined with the Court's decision in *Oregon v. Mitchell*,[48] struck down the "age barrier" which had previously confronted the college student desiring to vote.

Residency in the Political Entity

Generally, residence requirements take two forms. Durational residency requirements require that the voters live in the community a requisite length of time before voting. The prospective voter must also be a bona fide resident of the state during this period.

Durational residency requirements for voting in elections for the President and Vice-President, or their electors, have been limited to thirty days by Title II of the 1970 Voting Rights Act.[49] This provision of the Act was subsequently found constitutional by the Supreme Court in *Oregon v. Mitchell*.[50] State, local and national congressional elections may still be subject to durational residency requirements which act to disfranchise the student voter since many are regulated by restrictive state laws. However, at least two justices of the Supreme Court[51] and a number of lower courts[52] have found them suspect. In *Affeldt v.*

44. 117 CONG. REC. S 2669 (daily ed. March 9, 1971).
45. *Id.* at 2670.
46. 117 CONG. REC. E 6907 (daily ed. July 1, 1971).
47. U.S. CONST. amend. XXVI.
48. 400 U.S. 112 (1970).
49. Voting Rights Act of 1970, 42 U.S.C. § 1973 aa-1 (1970), *amending* 42 U.S.C. § 1973 (Supp. I, 1965).
50. 400 U.S. 112 (1970).
51. *See* Hall v. Beals, 396 U.S. 45, 51 (1969) (Marshall & Brennan, JJ., dissenting).
52. Lester v. Board of Elections for District of Columbia, 319 F. Supp. 505 (D.D.C. 1970); Bufford v. Holton, 319 F. Supp. 843 (E.D. Va. 1970); Kohn v. Davis, 320 F. Supp. 246 (D. Vt. 1970); Affeldt v. Whitcomb, 319 F. Supp. 69 (N.D. Ind. 1970); Hadnott v. Amos, 320 F. Supp. 107 (M.D. Ala. 1970); Burg v. Canniffe, 315 F. Supp. 380 (D. Mass. 1970); Keane v. Mihaly, 11 Cal. App. 3d 1037, 90 Cal. Rptr. 263 (1970). *Contra,* Howe v. Brown, 319 F. Supp. 862 (N.D. Ohio 1970); Piliavin v. Hoel, 320 F. Supp. 66 (W.D. Wis. 1970); Cocanower v. Marston, 318 F. Supp. 402 (D. Ariz. 1970).

Whitcomb,[53] a federal district court invalidated a requirement that a voter be a resident of Indiana for six months preceding the election in order to be qualified to vote. Indiana contended that such a requirement was necessary to accomplish the state's interest in preserving the purity of elections and promoting an "enlightened electorate." Notwithstanding these contentions, the court held that such a requirement infringed upon the right to vote and constituted a denial of equal protection. The court stated:

> Although Indiana unquestionably has the power to impose reasonable restrictions on the availability of the ballot, *Pope v. Williams,* 193 U.S. 621, 624 (1904), that power does not encompass the imposition of standards which are discriminatory and inconsistent with the equal protection clause of the Fourteenth Amendment.[54]

As a result of these decisions, a greater number of students will qualify to vote in national or general elections since they will have met the durational residency requirements. However, in order to exercise the franchise in the college town, the students must be bona fide state residents during this period. The major problem now confronting student voters is whether they have acquired the necessary residence to entitle them to vote for local candidates in the town in which they are attending college.

Origin and Justification of Residency Requirements

The laws of virtually every state prescribe state, county, township and precinct residence requirements for voting. Most residence requirements were enacted in the mid-nineteenth century, a time when populations were less mobile[55] and the right to vote was considered less basic and universal, both by the courts and the public.[56] Prior to that time, the ownership of property was deemed by most states to be the necessary qualification for voting since real estate records provided a facile means of identifying voters.[57] But it became apparent that more than identification was needed to insure a fair and intelligent vote, and these qualifica-

53. 319 F. Supp. 69 (N.D. Ind. 1970).
54. *Id.* at 73.
55. *See* Schmidhauser, *Residency Requirements for Voting and the Tensions of a Mobile Society,* 61 Mich. L. Rev. 823, 824 (1963).
56. *See* note 4 *supra* and accompanying text.
57. Note, *Federal Elections—The Disfranchising Residence Requirement,* 1962 U. Ill. L.F. 101, 102.

tions gave way to the residency requirement which fulfilled other needs as well.[58]

As the nation grew and governments began to stabilize, the early legislatures recognized that familiarity with the candidates and issues involved in an election would promote a more intelligent vote.[59] The residence requirement was thought to provide the requisite familiarity. Another reason commonly given for adopting residence requirements is that they help prevent election fraud.[60] In the mid-nineteenth century the danger of election fraud was very real. From 1868 through 1871, the Tweed Ring in New York was so adept at "colonizing" votes that the votes case were eight percent in excess of the total voting population.[61] These traditional justifications for voter residence requirements are still generally accepted as valid and have been reaffirmed by the courts.[62]

Definition of Residence

Historically, the definition of residence evolved through case law. In Indiana, for example, as in most states, the terms "domicile" and "residence" are used synonymously in voting cases.[63] For one to become a resident within the voting requirements, there should be bodily presence

58. *Id.*

59. *See* Note, *The Impact and Constitutionality of Voter Residence Requirements as Applied to Certain Intrastate Movers,* 43 Ind. L.J. 901 (1968); Note, *Federal Elections—the Disfranchising Residence Requirement,* 1962 U. Ill. L.F. 101, 102.

60. *See* Schmidhauser, *Residency Requirements for Voting and the Tensions of a Mobile Society,* 61 Mich. L. Rev. 823, 828 (1963).

61. Note, *Federal Elections—The Disfranchising Residence Requirement,* 1962 U. Ill. L.F. 101, 103 n.17. "Colonization" of voters is the act of transporting voters who do not reside within the election district into the district for the purpose of voting only. Ramsey v. Howard, 148 Ore. 542, 36 P.2d 602 (1934).

62. *See, e.g.,* Carrington v. Rash, 380 U.S. 89 (1965); Lassiter v. Northampton County Board of Elections, 360 U.S. 45 (1959); Hall v. Beals, 292 F. Supp. 610 (D. Colo. 1968); Drueding v. Devlin, 234 F. Supp. 721 (D. Md. 1964), *aff'd per curiam,* 380 U.S. 125 (1965); Howard v. Skinner, 87 Md. 556, 40 A. 379 (1898).

63. *See* Pedigo v. Grimes, 113 Ind. 148, 13 N.E. 700 (1887); Quinn v. State, 35 Ind. 458 (1871); Maddox v. State, 32 Ind. 111 (1869) (the court used the term "residence" throughout the opinion as meaning "domicile"); French v. Lighty, 9 Ind. 475, 477 n.1 (1857).

In many areas of the law, the words "domicile" and "residence" are not always convertible terms, they have two distinct meanings. Generally, the term "residence" means living in a particular locality and simply requires bodily presence as an inhabitant in a given place. "Domicile" means living in a particular locality with the *intent* to make it a fixed and permanent home. A man can have but one domicile at a given time, though he may have numerous places of residence. *See* Beale, *Proof of Domicile,* 74 U. Pa. L. Rev. 552 (1926); Reese, *Does Domicile Bear a Single Meaning?,* 55 Colum. L. Rev. 589 (1955).

For purposes of the present discussion concerning residency, Indiana case law will be relied upon. Although there are minor variations in the law from state to state, it is not the purpose of this note to make an exhaustive survey of the definition of residency for voting purposes.

in the community concurrent with an intention to make such place a home.[64] It is not completely clear how intent is determined. It has been stated that intent must be found in the conduct and statements of the individual prior to the time it is questioned.[65] Although intention is the controlling element in determining the residence of an elector, his own statement of mental resolution as to any such intent is not conclusive.[66] Courts have not been concerned with where the elector intends to vote, but rather where he intends to make his home.[67] The mere fact an elector is willing to swear, and does swear, that he considers a certain place his home, is not sufficient to entitle him to vote if the facts and circumstances show that his home and domicile are elsewhere.[68] Therefore, "intent" as viewed by the courts is not a mere whimsical or arbitrary declaration on the part of an individual, but must be gathered from conduct as evidenced by his daily life style. The trend seems to be to allow factual considerations to control, and to consider subjective intention *only* when the facts are neutral in indicating intent.[69]

To effect a change of residence in respect to voting requirements there must be an abandonment of the former residence and the acquisition of a new residence with the intent to make the new residence a permanent home.[70] Persons leaving their residence temporarily with no intention to change it do not lose the right to vote in the precinct where they resided before such removal.[71] If a person actually moves to another place with an intention of remaining there for an indefinite time, the new location is deemed to be his residence.[72] Thus, if a voter having a residence in one district abandons that residence and moves to another voting district in which he is not qualified to vote, he will not be entitled to vote in the former district.[73]

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64. Croop v. Walton, 199 Ind. 262, 271, 157 N.E. 275, 278 (1927); French v. Lighty, 9 Ind. 475, 477 n.3 (1875); Brownlee v. Duguid, 93 Ind. App. 266, 268, 178 N.E. 700, 703 (1931).

65. Pedigo v. Grimes, 113 Ind. 148, 153, 13 N.E. 700, 703 (1887); Brownlee v. Duguid, 93 Ind. App. 266, 270, 178 N.E. 174, 175 (1931); Brittenham v. Robinson, 18 Ind. App. 502, 504, 48 N.E. 616, 618 (1897).

66. State v. Scott, 171 Ind. 349, 358, 86 N.E. 409, 412 (1908); Pedigo v. Grimes, 113 Ind. 148, 153, 13 N.E. 700, 703 (1887).

67. Brownlee v. Duguid, 93 Ind. App. 266, 270, 178 N.E. 174, 175 (1931).

68. *Id.*

69. State v. Scott, 171 Ind. 349, 86 N.E. 409 (1908); Pedigo v. Grimes, 113 Ind. 148, 13 N.E. 700 (1887); Brownlee v. Duguid, 93 Ind. App. 266, 178 N.E. 700 (1931); Brittenham v. Robinson, 18 Ind. App. 502, 48 N.E. 616 (1897).

70. Pedigo v. Grimes, 113 Ind. 143, 13 N.E. 700 (1887).

71. Lugar v. Burns, 197 Ind. 646, 150 N.E. 774 (1926).

72. Nelson v. Gass, 27 N.D. 357, 146 N.W. 537 (1914).

73. Kreitz v. Behrensmeyer, 125 Ill. 141, 17 N.E. 232 (1888); Woods v. Blair, 222 Ky. 201, 300 S.W. 597 (1927); Nelson v. Gass, 27 N.D. 357, 146 N.W. 537 (1914).

STUDENT VOTER RESIDENCE

In considering state residency statutes, a multitude of problems arise in the case of college students seeking residence for voting purposes in the places where their schools are located. Although the problem of student voting ordinarily arises in the election district in which the student is attending school, it may also be presented in the place where the student lived prior to attending college due to a lack of continuous presence.[74] The courts have held that the same rules for determining residence apply to students as to other persons.[75] Therefore, the question of whether a student has a voting residence in the college town or in the place where he lived prior to attending college will depend upon the facts and circumstances of each particular case. The fact that one is a student at a university does not in itself entitle him to vote where the university is located.[76] He may vote in the university town only if his residence is located there.[77] However, if a student does acquire a domicile in the college town, it is not retroactive to his entrance into the school.[78]

In determining residence, one of the awkward factors the courts must consider is anticipated length of stay at the university town. When the evidence shows that a student who has gone away to college intends to return to his former home, the courts have uniformly held that residence has not been acquired in the college town for voting purposes.[79] Students manifesting such intent do not forfeit their home town voting residence by pursuing studies at another city.[80] At the other end of the spectrum, courts have held that the student who gives up his former residence and goes to college with the intention of remaining in that county after his studies are completed acquires a voting residence in that

74. In *Frakes v. Farragut Community School District,* 225 Iowa 88, 121 N.W.2d 636 (1963), the court held that a husband and wife who had previously resided within a certain school district were not disqualified from voting in a school bond election because they maintained a home outside the state for the sole purpose of enabling the husband to attend college. The court found a lack of intention to substitute the home located at the college town as their permanent residence, and concluded that the parties intended to keep their legal residence within the district.

75. *See* Pedigo v. Grimes, 113 Ind. 148, 13 N.E. 700 (1887); Frakes v. Farragut Community School Dist., 225 Iowa 88, 121 N.W.2d 636 (1963); Anderson v. Pifer, 315 Ill. 164, 146 N.E. 171 (1924); Wickham v. Coyner, 30 Ohio C.C. 765 (1902).

76. Wickham v. Coyner, 30 Ohio C.C. 765 (1902).

77. *Id.*

78. *In re* Foster, 123 Misc. 852, 206 N.Y.S. 853 (Dutchess County Ct. 1923).

79. Pedigo v. Grimes, 113 Ind. 148, 13 N.E. 700 (1887); Frakes v. Farragut Community School Dist., 225 Iowa 88, 121 N.W.2d 636 (1963); Anderson v. Pifer, 315 Ill. 164, 146 N.E. 171 (1924); Welch v. Shumway, 232 Ill. 54, 83 N.E. 549 (1907).

80. Ptak v. Jameson, 215 Ark. 292, 220 S.W.2d 592 (1949); Clark v. Stubbs, 131 S.W.2d 663 (Tex. Civ. App. 1939).

county.[81]

The most difficult problem the courts have faced concerns those students who have not formed any definite intent concerning their future. This category of students considers the college town their home for the present, but has uncertain plans for their future residence. The majority of courts faced with this problem has permitted the student to vote in the college town.[82] In a few cases, however, the courts have taken a narrow view of residence for voting purposes when a student is uncertain about his future plans.[83]

At least two conclusions concerning the voting residence of students are justified. First, there is considerable language in the definitions of residence or domicile to indicate that a domicile for voting purposes is not lost until a new domicile is gained.[84] Therefore, the student who is attending college with the intent to return home will still be given the electoral franchise in his home town. However, if a student abandons the residence in his home town and moves to the college town formally declaring his intention to reside there, but for some reason is unqualified to vote in the latter, the student will not be entitled to vote in either district.[85] Secondly, a domicile is gained only by actual removal and intent to make the new residence a permanent home.[86] Thus, the student attending college who possesses the requisite intent can make a substantial claim that he is entitled to vote in the college town.

VOTING RIGHTS

Many persons who reside in two locations during a given year encounter serious problems in casting meaningful ballots. Furthermore, the residency requirements imposed by the states raise the question of the

81. People v. Osborne, 170 Mich. 143, 135 N.W. 921 (1912); Swan v. Bowker, 135 Neb. 405, 281 N.W. 891 (1938); Brueckman v. Frignoca, 9 N.J. Misc. 128, 152 A. 780 (Cir. Ct. 1930).

82. Welch v. Shumway, 232 Ill. 54, 83 N.E. 549 (1907); Pedigo v. Grimes, 113 Ind. 148, 13 N.E. 700 (1887); Chomeau v. Roth, 72 S.W.2d 997 (Mo. App. 1934); Swan v. Bowker, 135 Neb. 405, 281 N.W. 891 (1935); Application of Goldhaber, 55 Misc.2d 111, 285 N.Y.S.2d 747 (Sup. Ct. 1967); Gross v. Wahl, 164 Wis. 91, 159 N.W. 549 (1916).

83. Courts taking this approach have generally held that the student attending college who did not know whether he would make the college town his home after his studies were completed, or whether he would return to his former home, could not vote in the college town. People *ex rel.* Singer, 118 N.Y.S.2d 91 (Sup. Ct. 1952); *In re* Hoffman v. Bachman, 187 Misc. 799, 65 N.Y.S.2d 107 (Sup. Ct. 1946).

84. *See* State v. Savre, 129 Iowa 122, 105 N.W. 387 (1905); Everman v. Thomas, 303 Ky. 156, 167 S.W.2d 58 (1946); Seibold v. Wahl, 164 Wis. 82, 159 N.W. 546 (1916).

85. Kreitz v. Behrensmeyer, 125 Ill. 141, 17 N.E. 232 (1888); Woods v. Blair, 222 Ky. 201, 300 S.W. 597 (1927); Nelson v. Gass, 27 N.D. 357, 146 N.W. 537 (1914).

86. *See, e.g.*, Brownlee v. Duguid, 93 Ind. App. 266, 178 N.E. 700 (1931); Brittenham v. Robinson, 18 Ind. App. 502, 48 N.E. 616 (1897).

voting rights of college students. Too often the student takes no steps to establish a definite, provable *domicile* in the college town. Under current residency requirements, if these students are to vote, they must vote in their home towns. This presents the question whether voter residency requirements, as applied to this class of persons, are valid criteria in determining who should be permitted to vote.[87]

Although the states unquestionably have the power to impose reasonable restrictions on the availability of the ballot,[88] that power does not encompass the imposition of standards which are discriminatory and inconsistent with the Constitution.[89] The central issue in analyzing the constitutionality of residence requirements for voting is whether such restrictions on the electorate are valid under the equal protection clause. The states have attempted, in the voting area, to create a classification between those who have resided in the state for one year, or whatever the statutory requirement may be, and those who, although they may be residents for other purposes, have not been residents for the period required. The Supreme Court has clearly stated that mere classification of citizens into groups or minor differences in the application of laws will not necessarily constitute a denial of equal protection under the law.[90] The Court has frequently held, however, that invidious distinctions do violate the equal protection clause.[91]

The standard which the Supreme Court has applied in determining whether a state classification violates the equal protection clause is the so-called "compelling interest" test.[92] The compelling interest test which the Court has applied in voting cases can be stated as follows: whether the exclusion is necessary to promote a compelling state need.[93] Therefore, to analyze the constitutionality of state residence requirements for voting, it is necessary to examine the justifications and reasons given for the requirements to determine if any compelling state interest is actually served. As noted above, the basic purposes underlying the residency requirements are these: identification of voters as a prevention against fraud, promotion of a more intelligent vote and assurance of the

87. Ptak v. Jameson, 215 Ark. 292, 200 S.W.2d 592 (1949); Clark v. Stubbs, 131 S.W.2d 663 (Tex. Civ. App. 1939).

88. Pope v. Williams, 193 U.S. 621 (1904).

89. Harper v. Virginia State Board of Elections, 383 U.S. 663, 666 (1966); Carrington v. Rash, 380 U.S. 89, 91 (1965).

90. Williamson v. Lee Optical Co., 348 U.S. 483 (1954).

91. Loving v. Virginia, 388 U.S. 1 (1966); Cox v. Louisiana, 379 U.S. 536 (1965).

92. City of Phoenix v. Kolodziejski, 399 U.S. 204 (1970); Cipriano v. City of Houma, 395 U.S. 701 (1969); Kramer v. Union Free School Dist., 395 U.S. 621 (1969); Shapiro v. Thompson, 394 U.S. 618 (1969).

93. Kramer v. Union Free School Dist., 395 U.S. 621 (1969).

voter's membership and interest in the community.[94] While all of these may be considered areas of legitimate concern and interest to the states, that alone will not meet the more exacting tests set forth by the Supreme Court.[95] It is imperative, therefore, that each justification be analyzed to see whether it does serve a compelling state interest.

Protection Against Fraud

The states have a legitimate and perhaps compelling interest in identifying the voter and protecting against "double-voting," "colonization"[96] and other forms of voting fraud. However, in order to satisfy the compelling interest standard, not only must the interest be compelling, but the means adopted to promote that interest must be necessary. In *Shapiro v. Thompson,*[97] the Court ruled that the use of residence requirements to determine eligibility for welfare payments as a safeguard against fraud was not necessary to promote a compelling state interest because "less drastic means are available, and are employed, to minimize that hazard."[98] Other and less drastic means are also available to protect against voting fraud by students who desire to vote in the college town but who have not acquired residence at such location. For example, voter identification can be facilitated by the use of social security cards, drivers' licenses, photographs and fingerprints. States could also eliminate the requirement that students be actual residents of the college town and yet protect themselves against "double-voting" and "colonization" by requiring certificates from the voter's prior election district. This would insure local officials that the new resident had not retained his registration in the prior district. Moreover, the imposition of a residence requirement does not effectively prevent fraud. Under most state statutes a voter's qualifications, including residence, are established by oath.[99] The nonresident seeking to vote can easily swear falsely that he is presently a resident.

Fraud could be prevented by other means less drastic than the denial of the right to vote due to failure to meet the state's residency requirements. For example, a certification from a new resident's former election district to insure that the new voter has not retained registration

94. *See* notes 61-62 *supra* and accompanying text.

95. *See, e.g.,* City of Phoenix v. Kolodziejski, 399 U.S. 204 (1970); Cipriano v. City of Houma, 395 U.S. 701 (1969); Kramer v. Union Free School Dist., 395 U.S. 621 (1969); Shapiro v. Thompson, 394 U.S. 618 (1969).

96. *See* note 61 *supra.*

97. 394 U.S. 618 (1969).

98. *Id.* at 637.

99. *See, e.g.,* IDAHO CODE ANN. § 34-807 (1963); KAN. STAT. ANN. § 25-410 (1964); VA. CODE ANN. § 24-74 (1969).

in his former district may be "necessary" under the compelling interest test.[100] State qualifications requiring residence (defined as domicile) impose an "overbroad" burden on the right to vote.[101]

Promotion of a More Intelligent Vote

The second asserted purpose of granting the franchise only to bona fide residents is the promotion of a more intelligent vote. This purpose seemingly would pass the constitutional reasonableness test when applied to elections involving local candidates and local issues, for knowledge comes only through acquaintance. As in *Kramer v. Union Free School District,*[102] it may be assumed, *arguendo,* that this state interest is sufficiently compelling to be considered, but nevertheless reach the conclusion that the requirements "do not accomplish this purpose with sufficient precision."[103] By attempting to justify the imposition of residence requirements on the basis of the state's interest in insuring that all voters possess knowledge of local issues, for instance, the state creates two presumptions: 1) most long-time residents possess such knowledge and 2) most persons who have not acquired domicile do not possess such knowledge.

A state may not exclude a segment of its citizenry from the franchise because of some remote administrative benefit to the state.[104] If a state wishes to allow only those citizens who are informed of local issues to vote, it may do so by administering tests to all potential voters.[105] It may not, however, avoid the administrative problems inherent in the adoption of such tests simply by presuming that those residents who have not acquired domicile would fail and that most domiciliaries would pass.[106] The anomalous situation which denies the vote to college students and others who reside in a community nine months per year while extending it freely in the form of absentee ballot to servicemen[107]—no matter how long they have been away—undermines the rationale used to support this second "purpose."

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100. *See* Hall v. Beals, 396 U.S. 45, 51 (1969) (Marshall & Brennan, JJ., dissenting); Carrington v. Rash, 380 U.S. 89, 91 (1965).

101. *See* note 100 *supra.*

102. 395 U.S. 621 (1969).

103. *Id.* at 632.

104. Carrington v. Rash, 380 U.S. 89 (1965).

105. In *Lassiter v. Northampton County Board of Elections,* 360 U.S. 45 (1959), the Court upheld a literacy test applied in a non-discriminatory manner, finding entirely reasonable a state recognition of the importance of literacy in a society where campaign issues are so extensively canvassed and debated in various news media.

106. Carrington v. Rash, 380 U.S. 89 (1965).

107. State courts have uniformly upheld legislation allowing servicemen to vote by absentee ballot. *See, e.g.,* Commonwealth *ex rel.* Dummitt v. O'Connell, 298 Ky. 44, 181 S.W.2d 691 (1944); Opinion of the Justices, 80 N.H. 595, 113 A. 293 (1921).

Promotion of an "Enlightened Electorate"

Assurance of the voter's membership and interest in the community is the third argument for upholding the state residency requirement. The Supreme Court, utilizing this interest, has held that the states have a right to require their voters to be bona fide residents.[108] One may well question whether there are any compelling state interests founded in this doctrine which necessitate the imposition of residence requirements.

Although the assurance of the voter's membership and interest in the community has been stated as a traditional justification, one writer has contended that the real interest of the state is that the voters be those who will be affected by the outcome.[109] Utilizing this as the interest which the state is trying to protect, one must ask whether the domicile requirements as applied to the student, and others who reside in two locations during any given year, effectively achieve this goal.

The classification of students has probably developed because college communities fear the political power of a large number of students who desire to vote but have not grown up in that community. The local residents undoubtedly feel that unless they protect themselves, the students will control local elections. This purported state interest may rest upon the assumption that a voter's "primary" community is the state in which he is domiciled. It has been argued that a state may deprive "residents" of the vote until they have become familiar with local attitudes and their interests are the same as those of "longtime" residents. In *Carrington v. Rash,*[110] the Court rejected this argument because " '[f]encing out' from the franchise a sector of the population because of the way they may vote is constitutionally impermissible."[111] Therefore, it would be impermissible for a state to exclude students from the franchise merely because their political attitudes and probable voting habits differ from those of "long-time" residents.

College students are directly affected by the electoral decisions of the city, county and state in which they are attending college. Students living in a university town must pay state sales tax. They are subject to the process and jurisdiction of the state courts. Furthermore, those married students having children may utilize the local public schools. These students are directly affected by the local officials who govern them. As our universities grow larger, more and more students cease to live

108. *See* Kramer v. Union Free School Dist., 395 U.S. 621, 625-26 (1969); Carrington v. Rash, 380 U.S. 89, 93-94 (1965).

109. Singer, *Student Power at the Polls,* 31 OHIO ST. L.J. 703, 707 (1970).

110. 380 U.S. 89 (1965).

111. *Id.* at 94.

in university housing. These students typically live in houses and apartments which are located off campus in the university town. They are influenced by the decisions of local officials to the same degree as persons not attending the schools. Yet, since these students do not possess the requisite intent to become residents, they have no voice in the government of the college town. Residency requirements which force this class of students to vote in their home towns frustrate the state's interest in granting the electoral franchise to those who have membership and interest in the community in which they vote. To require students, who spend nine months per year in the college town, to vote in their home towns actually undermines the objective of any state's residency laws.

The state has a valid interest in determining whether a voter has membership and interest in the community. However, through the imposition of a domicile requirement, the state avoids making this determination by assuming that mere residents are not members of the community and have no interest in the town in which they are residing. The Supreme Court has held that a state may not exclude persons from the franchise merely because of some remote administrative benefit to the state.[112] Thus, a state may not deprive all new residents of the vote in order to avoid making factual determinations as to whether some of these residents have membership and interest in the community.

The "Compelling State Interest" Test and the Right to Travel

The right to travel has been "firmly established and repeatedly recognized" as constitutionally protected.[113] Since the freedom to travel is clearly protected by the Constitution, any penalization of the exercise of that right will be unconstitutional unless the state can show some compelling state interest served by such regulation.[114] Because it has been concluded previously that residence requirements as applied to that class of persons who reside in two locations during a given year are not necessary to promote compelling state interests, the only question remaining is whether these requirements are penalities upon the right to travel.

Since the Court has never expressly defined the concept of "penalty"

112. Carrington v. Rash, 380 U.S. 89, 91 (1965).

113. United States v. Guest, 383 U.S. 745, 757 (1966); *accord*, Shapiro v. Thompson, 394 U.S. 618, 630 (1969).

114. See *Shapiro v. Thompson*, 394 U.S. 618 (1969), in which the Court stated that "in moving from State to State or to the District of Columbia" a person is exercising his constitutional right to travel, "and any classification which serves to penalize the exercise of that right, unless shown to be necessary to promote a compelling governmental interest, is unconstitutional." *Id.* at 634.

in this context, a discussion of whether residence requirements for voting infringe upon the right to travel must be essentially speculative in nature. In each of the cases where the Court has upheld the right-to-travel argument,[115] there was some degree of deterrence in that the "penalty" discouraged persons from exercising their constitutionally protected rights. It is doubtful that the loss of the right to vote because of the existence of residence requirements deters the right to travel. On the other hand, it would seem that the deprivation of the right to vote is a more fundamental constitutional infringement than the deprivation of welfare benefits. If the Court looks to the nature of the deprivation as a determining factor, it is quite possible that the imposition of residence requirements does constitute a penalty on the right to travel.

STUDENTS AND THE "MEANINGFUL VOTE"

As one writer has commented, "the right to vote is not a right *in vacuo*;"[116] it must be meaningful. Requiring college students to vote in the local elections in their home towns, in effect, renders their ballots meaningless. Students should be allowed to vote in the community where their real interests lie. The student who is required to vote in his home town is effectively disfranchised whether or not he technically casts a ballot, because the vote he casts is meaningless.

Residence requirements which send large numbers of uninformed and disinterested students back to their home towns to vote not only undermine the state's interest in imposing such requirements, but may have an adverse effect on the voters of those communities. For purposes of enumerating population, the United States Census Bureau considers students to be residents of the university town.[117] The information compiled by the Census Bureau is then utilized in the allocation of Congressional seats.[118] To allow students to be counted for purposes of electing the officials from that district might well contravene the "one-man, one vote" thesis of the Supreme Court.[119] In *Reynolds v. Sims*,[120] the Supreme Court held that the equal protection clause requires that the seats in both houses of a bicameral state legislature be apportioned substantially on a population basis. Assume, as one writer has,

115. *See, e.g.*, Shapiro v. Thompson, 394 U.S. 618 (1969) (the loss of the right to welfare benefits infringes upon the right to travel).
116. Singer, *Student Power at the Polls*, 31 OHIO ST. L.J. 703, 707 (1970).
117. *Id.* at 720 n.54.
118. CLAUDE, THE SUPREME COURT AND THE ELECTORAL PROCESS 202 (1970).
119. Reynolds v. Sims, 377 U.S. 533 (1964).
120. *Id.*

> that the Census Bureau finds 10,000 [voting age] students and 40,000 [voting age] non-students in town A, and 50,000 [voting age] non-students in town B. Now, assuming that all students are "non-native," this means that Congressman B is being elected by 60,000 people, whereas Congressman A is being elected by 40,000. Townspeople in B, therefore, are having their votes diluted by 20%.[121]

Such a gross disparity in apportionment may contravene the reapportionment cases which make it clear that the right to vote may not be diluted.[122] The Census Bureau's policy of counting students as residents of the university town has other implications. In Indiana, for example, state funds are appropriated to the cities on the basis of census figures.[123] Thus, college towns are able to acquire larger sums of money because of the Census Bureau's policy. On election day, however, many students are not permitted to vote in the college town. In effect, these students do not have a voice in the governmental utilization of funds which are attributable to them to some extent.

A New Perspective

If domicile has any relevance to voting qualifications, it is because the domiciliary intends to return to his "home town" in the future and thus will be subject to the abuses or benefits of the matters voted upon. However, this justification is not always valid when applied to that class of persons who reside in two or more cities each year. Most college students do not know where they will make their homes after they leave the university. They may or may not have a preference for staying where they are, going back where they came from or going somewhere else. The domicile of many students remains at their parental home because they have not taken the necessary steps to transfer their domicile to the college town. However, merely because their domicile remains at their home town is not a sufficient basis for concluding that these students will be subject to the control of the officials elected in their home town, county or state.

The states should impose requirements which give rise to a rebuttable

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121. Singer, *Student Power at the Polls*, 31 Ohio St. L.J. 703, 707 (1970).

122. *See* Reynolds v. Sims, 377 U.S. 533 (1964); W.M.C.A. Inc. v. Lomenzo, 377 U.S. 633 (1964); Davis v. Mann, 377 U.S. 678 (1964); Roman v. Sincock, 377 U.S. 695 (1964); Lucas v. Forty-fourth General Assembly of Colorado, 377 U.S. 713 (1964).

123. 6 Ind. Code art. 2, ch. 1, § 53 (1971), Ind. Ann. Stat. § 64-2268 (Supp. 1970) (distribution scheme of Indiana sales tax); 8 Ind. Code art. 14, ch. 1, § 3 (1971), Ind. Ann. Stat. § 36-2817 (Supp. 1970) (distribution scheme of Indiana motor vehicle highway account fund).

presumption that one intends to be governed by the officials of the locality where he is physically present the majority of each year. This statutory scheme, as applied to that class of persons who reside in several cities during a given year, would be more effective in accomplishing the goals the states seek by imposing the traditional residency requirements. Such a framework would provide a rebuttable presumption that those students who were physically present at the college town a majority of the year *intended* to be governed by the elected officials of that locality. If the student does not intend to be governed by the elected officials in the college town he has the burden of proving where his voting interests lie. Likewise, if the state has reason to believe that a student's voting interests do not lie in the college town, the state election officials carry the burden of proving that the student does not intend to be governed by the elected officials of the college town.

Concededly, such a classification will not solve the problems of all student voters. It will require those students who intend to be governed by their home town officials to rebut the statutory presumption. However, it will end the latent discrimination exercised by election officials against that class of persons who live in two or more cities each year. This proposal is not a drastic departure from the present residency requirements for voting. It differs from the current provisions in two respects. First, in order to be franchised, the student must demonstrate an intent to be governed by the jurisdiction in which he will vote irrespective of what locality he calls "home." Secondly, the prospective voter is not burdened with proving that he intends to be governed by the elected officials of the community where he is present a majority of each year. The student is presumed to have voting interests in such community. The burden to rebut this presumption is placed on the state or the individual who does not possess this intent. Consequently, this differs from the present requirements in that the burden of establishing intent is shifted from the individual to the state.

There are a multitude of factors which should be considered by election officials and the courts in determining whether the prospective voter intends to be affected by the outcome of the election. The location of bank accounts and safety deposit boxes and the location where auto registration and driver's licenses have been obtained are evidence of the individual's intent. Church affiliation, ownership of real estate, place of employment and where taxes are filed are all factors which should be considered. The "intent" of an individual is a state of mind. Thus, determining an individual's state of mind by use of subjective factors is necessarily an ethereal task. In arriving at a final determination

of "intent," the election boards and the courts must weigh all relevant criteria which tend to establish whether the individual will be affected by the electoral decisions in the town where he attempts to vote. The individual cannot intend to be governed by the elected officials of two communities. Viewed in this perspective, the courts must weigh all criteria indicating intent in order to make a final determination. The weight to be given to the various factors will depend upon each particular factual situation. Thus, it is incumbent upon our public officials to review all relevant considerations before making a final determination. The determination of intent as viewed in this context does not lend itself to a simple formula. Therefore, whether an individual intends to be governed by the elected officials of a particular community must be decided on a case by case basis.

These proposals may be justified on the basis of several criteria: 1) the voter would be under the jurisdiction of the elected officials; 2) the voter would enjoy the benefits or suffer abuses of the matters voted upon; 3) the voter would have familiarity with the local situation and its aspirations; 4) the voter would interact with candidates and other voters; and 5) such a scheme would help to eliminate much of the apathy now surrounding the student voters.

The paucity of cases determining the right of students to vote in the college town, absent domicile there, should not be interpreted as a lack of interest by this class. The failure of students to bring suits is more the result of a failure to understand the basis of their rights and an inability to comprehend the nature of residency laws. In addition, many students may be discouraged from bringing suits of a novel issue solely because of the expenses involved. Students attending colleges and universities have only recently joined together to raise the issue of their voting rights. Thus far their efforts have mainly centered around securing the vote for 18 year-olds and eliminating durational residency requirements which are unnecessarily long.

CONCLUSION

Students attending colleges and universities throughout the United States play a vital role in the development of our country. One recent case has expressed the necessity for affording students equal benefits in our constitutional system.[124] The right to travel and live where one wishes is guaranteed to every citizen of the United States.[125] The exercise of this

124. Tinker v. Des Moines Independent Community School Dist., 393 U.S. 503 (1969).

125. Aptheker v. Secretary of State, 378 U.S. 500 (1964); Edwards v. California,

right cannot be used as a basis for punishment,[126] and it must not be used as a deprivation of a democracy's most precious attribute—the meaningful vote.

The underlying reason why many college students have been denied the vote in the college town may be attributed to local residents' fear of the political impact of the student vote. Local residents are not concerned with the effect of the student vote on national elections. However, these residents are fearful that unless they protect themselves students will control local elections. Simply stated, this is a political problem analogous to the political problems inherent in reapportionment.

Although the courts have not faced the issues raised in this note, there is ample precedent in the voting rights cases[127] and the reapportionment cases[128] to indicate their power to force state legislatures to restructure the voting system in order to grant each citizen an equal voice in *his* government. However, it would not be necessary for the courts to intervene. The Constitution gives primary responsibility for the establishment of voting laws to the state legislatures and Congress.[129] The states should redraft their laws to make explicit the right of all their citizens to have a meaningful vote.[130] Finally, Congress should use its powers under section 5 of the fourteenth amendment, as it did in the Voting Rights Act of 1965,[131] to eliminate the arbitrary discrimination against certain classes of student voters.

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314 U.S. 160 (1941).

126. *See* note 125 *supra.*

127. *See, e.g.,* Kramer v. Union Free School Dist., 395 U.S. 621, 625 (1965); Carrington v. Rash, 380 U.S. 89 (1965).

128. Reynolds v. Sims, 377 U.S. 533 (1964). For a discussion of some of the cases applying *Reynolds,* see Note, *Reapportionment,* 79 HARV. L. REV. 1226, 1252 *et seq.* (1966).

129. U.S. CONST. art. I, § 2; U.S. CONST. art. I, § 4.

130. U.S. CONST. art. I, § 4.

131. Voting Rights Act of 1965, 42 U.S.C. §§ 1971, 1973 to 1973p (Supp. I, 1965) *as amended,* 42 U.S.C. §§ 1973 aa-1, bb-1 (1970).