

Where Can and Should College Students Vote? A Legal and Empirical Perspective

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Abstract

Do students who go away to school have a choice about whether to register and vote in their home town or in their college town? Federal and state laws are ambiguous on the point. As a result, communities vary widely in their approaches to voting by college students, ranging from a nearly complete absence of restrictions (other than attending a college in the state) to obvious efforts to discourage all such registrations. We determine that states *cannot* exclude students as a group from voting in their college town and *cannot* make it more difficult for students than for others to register (including by asking them about residential permanence or “student-directed” questions). Yet, we find that states *do* have a right to require that those who wish to vote in that jurisdiction demonstrate other indicia associated with residence, such as availability for jury duty, paying taxes, and gaining that jurisdiction’s driver’s license. We go on to note ways in which states and localities wrongly apply the laws in what seems to be an effort to prevent students from voting in their college towns.

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Despite greater federal authority over elections as a result of constitutional amendments and civil rights and other laws, cross-state variations still exist with respect to when citizens can register (election day to at least 30 days before the election),¹ where they can register (in motor vehicle offices in most but not all states),² when they can vote (early vs. election day),³ how they vote (mail or in-person, type of equipment, type of ballot),⁴ and increasingly, what identification they need to show at the polls.⁵ Differences in *who* can vote have largely, though not entirely, been eradicated.⁶ The most visible remaining differences in who can vote involve participation in party primaries,⁷ though there are also differences in when, whether, and under what conditions felons and ex-felons can cast ballots.⁸

Questions of where people can vote have also been largely settled. For most people, of course, there is no ambiguity: they register and vote in the voting district in which they live, which means the location of their one and only abode. Yet for one important group—college students who go away to school—uncertainty remains.⁹ Unlike most citizens, students who go away to college might claim to reside in either of two places, often in two different states. Potentially, then, they are presented with the opportunity to choose in which of two jurisdictions to register and vote. But do they have a choice? Nearly four decades after 18-21 year olds were given the vote and nearly two decades after youth voter organizations began major operations,¹⁰ there remains substantial ambiguity regarding federal and state laws as they apply to the registration of college students in their college towns. As a result of this ambiguity, communities vary enormously in their approaches to voting by college students.¹¹ Laws and administrative interpretations range from a nearly complete absence of restrictions (other than attending a college in the state), as in Iowa and Missouri, to not-very-subtle efforts to discourage all such registrations, as in New Hampshire and Idaho.

In addition to its intrinsic interest as one of the last remaining barriers put in the way of straightforward registration,¹² understanding state laws and their implementation for college students is particularly important given continued concern over traditionally low rates of turnout in the U.S.,¹³ the importance of the first vote,¹⁴ the difficulty of turning occasional voters into habitual voters,¹⁵ and the apparent rising tide of youth turnout.¹⁶ More generally, greater attention to the unique circumstances of college students might lead to a better understanding of the causes of youthful engagement or lack thereof.¹⁷ From an applied perspective, clarification of the law might contribute to a better understanding of current and future practices among all interested parties, to increased uniformity in the treatment of students, and to an end to hostility toward students that is apparent in some states and localities.

Our goal in this paper is to clarify these simple but crucial questions faced by college students: Under what conditions can they register to vote in their college towns? What are the implications for students of doing so? In Section I we interpret current federal (including constitutional) regulations pertaining to college students. We begin by describing how changes specific to young people as well as the wider citizenry gave rise to the question of where college students can register to vote. We then turn our attention to the meaning of residency as it applies to college students. We note that, in the context of voting, while the concept of durational residency continues to be articulated, as a legal matter it has been absorbed into the idea of administrative necessity for preparing the voting rolls and ballots; only a brief period of residency may be required; and that, in turn, is justified in terms of administrative purposes. Yet voting is tied to location, meaning that residency is still an applicable concept. This has led to enormous practical confusion, particularly surrounding a commonly-articulated “intent to stay” concept, although we believe that confusion is a consequence of a failure to fully appreciate the

constitutional constraints on rules that limit the right to vote. Thus, in the final part of Section I, we sort out what that means for students, concluding that it is permissible for states to impose “full residency” requirements on students, but not “intent to stay” standards. Having determined insofar as possible what the law is, we go on, in Section II, to note ways in which some states and localities wrongly articulate or apply their laws in a thinly-disguised effort to prevent students from voting in their college towns. The conclusion summarizes our argument and goes on to introduce the new issue of voter identification, which may create new, unforeseen difficulties for college students wishing to exercise the franchise in their college towns.

I. Legal Matters: The Changing Landscape and Ambiguities that Followed

Three major events, all with origins in the early 1970s, moved the issue of college student voting—and particularly, *where* college students vote—from a minor issue to one with significant ramifications. These three events all involve fundamental changes in the legal landscape.

The Emergence of the Issue

First, the 26th Amendment to the Constitution became effective on July 1, 1971. It provided that “[t]he right of citizens of the United States, who are eighteen years of age or older, to vote shall not be denied or abridged by the United States or by any State on account of age.” Prior to this amendment, all but Kentucky, Georgia, Alaska, Hawaii, and New Hampshire limited the voting franchise to citizens 21 years of age or older. Given the academic calendar, this meant that the issue of college student voting, period—and not just *where*, would only arise for those students who turned 21 on or before November of their senior year. With the passage of the 26th Amendment, the disfranchisement of a majority of college students, based on age alone, disappeared in one fell swoop, thus bringing to the fore, in a way it had not before, other issues

on the exercise of the voting franchise by this population, including residency.

Second, because of an action of Congress in the prior year (1970), these newly age-enfranchised voters also found a sharply-changed landscape with respect to the ability of states to impose significant residency requirements. In passing the 1970 amendments to the Voting Rights Act, Congress declared that citizens could not be denied the right to vote for president and vice-president because of any durational residency requirement.¹⁸ While the change was a part of a “legal revolution” that saw “the abolition of nearly all remaining limits on the right to vote,”¹⁹ this particular change made a good deal of sense, as individuals do not necessarily have to know about the state or local area in which they live to vote knowledgeably for president.

Having eliminated the concept of durational residency requirements for elections involving the president and vice-president, Congress continued by requiring that each state should set rules for the registration for such elections of “all duly qualified residents of such State” who apply no later than thirty days immediately prior to a presidential election. While the act did not specify what might constitute a “duly qualified resident” of a state, it is clear that duration in the state prior to an election, or in a particular part of the state, no longer could be a factor in presidential elections beyond that 30-day application period.²⁰

The change occasioned for presidential elections by the Voting Rights Act Amendments of 1970 presaged a third legal landscape change just a few years later. In 1972, in *Dunn v. Blumstein*,²¹ the Supreme Court, using the equal protection clause of the 14th Amendment, struck down a Tennessee law that required for *state and local* elections that a would-be voter needed to be a resident for a year in Tennessee and for three months in the county. The Court identified two fundamental interests involved—voting and travel—and applied the strict scrutiny standard of “necessary to promote a compelling governmental interest.”²² Using that test and relying in

part (but only in part) on what Congress had done in presidential elections in 1970, the Court effectively undermined arguments for a durational residency requirement, including arguments based on the “purity of the ballot box” and ensuring “knowledgeable voters,”²³ although acknowledging that a state could demonstrate a “compelling” need for a period, prior to the election, in which it closed the registration books “to give officials an opportunity to prepare for the election,” and setting that period presumptively at 30 days.²⁴

Thus, by 1972, the old order had been upended, and perhaps no group was more affected by the conflux of these three developments than college students. This was so even though young people—and not just students even then—were the focus of only the first of these changes. But exactly *how* were they affected? The age change—from 21 to 18—was clear and unambiguous: Most students could now vote in several elections during their time in college. Less clear, however, is what it meant to eliminate “durational” residency requirements while continuing to validate the notion that states could restrict the voting franchise to “bona fide residents” (the language of the Supreme Court in *Dunn*) or “duly qualified residents” (the language of Congress in the Voting Rights Act amendments). As long as voting is done by geographical area—by states (as, indeed, mandated by the Constitution) and by local areas within a state—one needs an ability to determine which citizens get to vote in which geographical area—which remains a test of “residency.”

The task, at least since 1972—when the issue was given a constitutional dimension (equal protection in *Dunn*; more recently, perhaps, as a matter of “privileges or immunities” of citizens under the 14th Amendment²⁵)—has been to flesh out how a state can define the residency of citizens for purposes of voting. While a number of these issues have not been fully and explicitly addressed by the legal system, the analysis is reasonably straightforward in light of the

pervasive “compelling government interest” standard articulated by *Dunn*.²⁶

Defining Residency of College Students for the Purpose of Voting

While the Supreme Court has noted that states can require voters to be “bona fide residents of the relevant political subdivision,”²⁷ it is the case, as has been noted in other contexts, that the Supreme Court often grapples with “residency” for a host of citizen rights but rarely explains what makes a person a bona fide resident of one state rather than another.²⁸ The Court’s most elaborate statement (in the context of tuition-free public schools) is essentially circular, starting by noting that the “traditional” requirement is “to live in the district with a bona fide intention of remaining there,” but continuing by observing that “the ‘intention to remain’ component of the traditional residency standard does not imply an intention never to leave,” and concluding that because of “the mobility of people and families in this country, changing a place of residence is commonplace,” and thus the residency standard “accommodates that possibility as long as there is a bona fide present intention to remain.”²⁹

Given this, it is perhaps not a surprise that there is considerable ambiguity and misinformation about the legal status of college student voting.³⁰ Some individuals and organizations conclude that students have an absolute right to vote in their college town. Rock the Vote, for example, makes no mention of any limitations on students’ right to vote where they go to college:

If you are a college student, you have the right to vote where you go to college OR in the town where you grew up. It’s ultimately your choice, but don’t let anyone tell you that you can’t vote in the place where you attend college. It makes sense: If you are a law abiding resident in a college town for four, five, maybe six years, pay taxes, and contribute to the local economy, then you have every right to vote in that town.³¹

Others, however, suggest that students need to demonstrate permanence (in the sense of an intent to remain) in order to claim residency. Thus, Hawaii notes “a resident must...intend to make

Hawaii their permanent residence,”³² and Kentucky answers the question “I live in Kentucky during the school year. Doesn’t that make me a resident?” with the answer “No. Although your physical location is a large factor in determining your residency, your intention of remaining in the area is a large factor as well.”³³

We think neither position is correct. Efforts to use “permanence” or “intent to remain” founder, for two reasons. First, in the context of voting (as distinct from other contexts that articulate what residency means), states can impose only such tests that meet a “compelling government interest” standard, which we will show they do not. Second, these tests are *never* consistently applied to groups other than students—nor (as we will show) could they be—and a bedrock principle is that states *cannot* make it more difficult for students than for others to vote (or ask them questions that they would not ask others who are similarly situated).³⁴ At the same time, however, the concept of residency still has meaning and states *do* have the discretion to require that those who wish to vote in that jurisdiction demonstrate other, reasonable, indicia generally associated with residence, such as availability for jury duty, paying taxes (where applicable), and gaining that jurisdiction’s driver’s license.

(a) *The Inapplicability of “Permanence” or “Indefinite Intent to Stay” Requirements*

We reach these conclusions based on several simple steps. First, one’s *future* location is *never* sufficient to give one the right to vote in that future jurisdiction. “I am retiring next year and will move to Florida at that time,” does not establish physical presence for voting in Florida today. Second, every citizen, 18 and over, not a felon (or, in some cases, an ex-felon) or mentally incompetent, must be allowed to vote *somewhere* (for issues and elections in which other citizens have a right to vote).³⁵ From these two propositions, it is clear that the choices for voting must come down to either one’s “current” jurisdiction in which one resides, or one’s

“prior” jurisdiction (or jurisdictions), in which one resided in the past.

As a result, jurisdictions cannot apply a rigorous “permanence” test by itself.³⁶ This could be cured by having a *required* “no gain, no loss” rule in every jurisdiction that sits alongside a rigorous permanence test.³⁷ This is probably the (unarticulated) operating premise behind those who believe it should be difficult for students to register to vote in their college town: They should continue to vote in the jurisdiction where they lived before attending college.

This “solution,” however, is both practically unworkable and constitutionally unsound. As a practical matter, it makes little sense in a number of situations, as it creates an enormous “stickiness” problem, as well as a necessary assumption that an individual will automatically always have a “permanent” residence upon turning 18. Consider, as just one example, a career military officer who, under this solution, might be required to vote, throughout his career, in the state where his parents lived when he turned 18, despite having lived for almost all of his adult life in other locations in the U.S. Whatever the reasons for physical presence as a precondition of voting, it makes little, if any, sense to say that this individual’s life has such a relevant connection, for voting purposes, with that original jurisdiction, as to, constitutionally, require the individual to vote there throughout his or her life. While there is a role for “no gain, no loss” rules, it is simply too inflexible, when tied to a rigorous notion of permanence, to achieve sensible results.

Moreover, the use of “intent to stay” in the jurisdiction as a means of disenfranchising students who are present for purposes of education, fails to account for the legal revolution reflected in *Dunn v. Blumstein*. To be sure, *Dunn* only focused on durational residency requirements prior to voting.³⁸ But *Dunn* applied strict scrutiny analysis to restrictions on voting, treating voting as a fundamental constitutional right.³⁹ That strict scrutiny analysis, and

particularly the compelling government interest test, applies to *all* restrictions on the voting franchise, not just those connected with durational residency requirements.

Applying the compelling government interest test to the present issue, and remembering that “residency” itself is the bedrock of voting, we believe that certain requirements, or questions, would pass constitutional muster, because they are ensuring a legitimate state interest in seeing that one is not “in” a jurisdiction simply for voting purposes. Thus, general statements (directed at *all* first-time registrants) to the effect of “registering to vote is a declaration of residency that carries with it certain other consequences, such as car registration, jury duty, and the like,” strike us as unremarkable, as they flesh out the notion of consequences to residency that underlie voting. Similarly, questions (again, directed at *all* first-time registrants) to the effect of “are you in this state primarily for purposes other than voting?” seem likewise permissible in the context of limiting the voting franchise to residents and limiting voting manipulation.

These questions, because they flesh out unobjectionable features of “residency,” on which voting is still based, survive the analysis of *Dunn*. That means that a state (or locality) *may* ask such questions, not that it must. Just as *Dunn* never required a state to take advantage of a 30-day “administrative” period, so, too, are states (and localities, if permitted by their state), free to be more generous towards newcomers. There is nothing constitutionally inappropriate about allowing a student to vote *without* establishing other incidents of residency, if a state so chooses. We describe the constitutional minimum; it is up to a state to decide where it will (or will allow its localities to be) more liberal.

However, what are the state’s justifications for asking about an “intent to stay” (either “indefinitely” or “permanently”)? Under *Dunn*, we know that reasons such as “familiarity” and

“common interest” do not carry sufficient weight so as to meet the compelling government interest test—because they were held insufficiently weighty to justify a durational residency requirement prior to voting.⁴⁰ What other reasons would a state have to justify an “intent to stay” test?

One might think it would be justified on some notion of wanting to make sure that the voter “sticks around” and endures the “consequences” (often local) of voting. But this, almost certainly, cannot pass constitutional muster either.⁴¹ To begin with, because of the unambiguous right to vote *somewhere*, this very notion is undercut by any rigorous (but constitutionally-necessary) “no loss” rule. Peripatetic voters who left a jurisdiction years, even decades, ago, with no intent to return, do not “endure” the consequences of voting in that jurisdiction. Applying the “justification” at one end requires that it be ignored at the other end, which is hardly the justificatory “heft” to meet a compelling government interest test. Moreover, we have no doubt that states do *not* enforce a rigorous “intent to stay” requirement on all first-time registrants. It is thus used, selectively, against targeted groups, such as students and the military—a selective targeting that, in the area of fundamental rights, cannot possibly pass constitutional muster.⁴²

Thus, at bottom, our analysis is simple. While *Dunn* was focused on durational residency, its constitutional rationale goes much further and radically restricts the freedom of states to impose other restrictions on the voting franchise, including “indefinite” (or “permanent”) intent-to-stay requirements.

Thus, a state should not be permitted to say, as noted on the factsheet from the Hawaii Office of Elections, that “For voter registration and election purposes, a resident must...intend to make Hawaii their permanent residence at the time of registration,” if what is meant by this is

any intent of durational “permanence” (as is implied) rather than an intent to make Hawaii the *current* place of *bona fide* residence for general purposes, and not just for voting. Also questionable—even though it does not use any form of the word “permanent”—is a portion of Kentucky’s website: “Although your physical location is a large factor in determining your residency, your intention of remaining in the area is a large factor as well. Before you register to vote in Kentucky, you might want to consider things like: how long you will be a student in Kentucky, your intention to remain in Kentucky....”⁴³ To see this point, just consider how many people, other than students, if asked these questions, might have to say “not much longer,” and yet, as we noted earlier, could not be deprived of the right to vote in Kentucky on that basis.⁴⁴

To be sure, there might be brief periods in which a citizen could vote nowhere—such as where he clearly moved out of State A and into State B within 30 days of an election, and State B had a 30-day “administrative convenience” period. Those brief, finite, interregnums—even assuming they might be constitutional—are vastly different from what would result from any effort to take “permanence” seriously. And even in the case of such a 30-day interregnum, Congress requires that the *old* state continue to allow the citizen to vote for president and vice-president,⁴⁵ so that there is, indeed, no gap at all.

(b) *What Does it Mean to be a “Resident”?*

Putting this together, the conclusion is inescapable: A concept of “duration”—either backwards or, at least in the sense of permanence or indefiniteness, forward—is not a legitimate standard for a jurisdiction to use to determine voting eligibility. And yet, we continue to have—indeed, the geographical nature of voting almost requires us to have—ways of determining who is, and who is not, a *bona fide* resident of a state or locality. Whatever these tests might be, they have the difficult practical problem of distinguishing between “true” transients (such as people

vacationing in a state), who presumably need to vote somewhere else, and those who have enough “ties” to the state to vote there (but not measured in terms of duration).

This problem can be addressed—across a variety of hypothetical situations—by considering the baseline question of “which state do you consider yourself a resident of” and assuming that the question is answered honestly. (This question strikes us as broader—and hence more encompassing—than a more focused (but legitimate) inquiry along the lines of: “is your primary reason for being in this state (or locality) for purposes other than voting”?) The “consider yourself” question, which is neutral and not targeted at any particular population, will take care of, for example, the person on vacation (even the person owning a vacation home). And yet it is significantly different in focus from Hawaii’s statement about an “intent to make Hawaii” a permanent residence, which focuses too heavily on durational intent alone. When coupled with the reality of the rather standard 30-day administrative convenience period, most true transient hypotheticals will be addressed by this alone. Without further guidance, or interpretation, however, this kind of inquiry is oftentimes likely to be inherently ambiguous for college students. For many college students, the honest answer to a question such as “which state do you consider yourself a resident of,” might be along the lines of “well, I don’t really know. I used to live with my parents in State A. But I’m now attending college, and living for most of the year, in State B. And I really don’t know where I’ll end up after I graduate.”

It is that reality that fuels the sense of some that such students cannot truly be considered to be “real” (or “bona fide”) residents of a state. This sense, however, is essentially inconsistent with the underlying constitutional norms at play.

At the same time, given that “bona fide residence” must mean something, it seems fully constitutional for states to impose neutral (non-durational) requirements that seem to inhere in

the nature of being a resident of a state. Thus, for example, a state presumably could require anyone wishing to vote in the state to show that he or she is also complying with other incidents of primary residency in the state, such as treating oneself as a resident of the state for tax purposes, car registration, jury duty, and the like.⁴⁶ That these may “burden” someone’s “right to vote” relative to a world of unfettered free choice is not the issue. The issue, instead, is one of normal incidence of state residence and neutral application. If they meet those twin tests, such requirements would seem to be constitutionally-sufficient incidents of “bona fide residence.”

The application of this to college students attending college outside their old hometown seems reasonably clear (at least, as much as anything in this area). Both factually (in terms of historical patterns and their prediction for future behavior) and as a matter of intent (“I don’t really know where I’m going to be after college”), these college students are in a category of citizens whose residence may not be obvious. Some will go back to their old hometown upon graduation, continuing to think of where mom and dad live as “home.” Others will stay in their new college-town community, or think of it now as “home.” And others will move to yet other communities following graduation—to continue schooling or start careers; some even anticipate doing just that upon starting college.

But they have a right to vote—somewhere. The obvious answer is that once duration and permanence have been removed from the equation, the starting proposition for students—and other similarly-situated individuals (those in the military come to mind)—is that they have a choice: They can choose to vote in the jurisdiction they resided in before attending college (perhaps by absentee ballot) or they can choose to vote in the jurisdiction where their college is located. But they unambiguously have a right to vote. This outcome seems to us to be not just the positive outcome upon application of legal principles, but also the normatively-correct

outcome, in terms of the inherently “transitional” status of college students in terms of where they lived, live, and will live, a point we will say more about in the conclusion.

This answer to the “intent” question—that students can legitimately choose either of these two jurisdictions (because we have no neutral way to determine otherwise)—is not, however, necessarily the end of the matter. While a state cannot impugn a student’s intent by simply relying on the fact (or its close variations) that he came to the state to attend college, and while it may not place special obstacles in the way of a student exercising this choice, a state can, in a neutral fashion, require non-intent-based indicia of “bona fide residence.” Thus, it seems to us that a state can require a student (along with all other first-time registrants) to attest that he or she is, or is in the process of becoming, a resident of the state for other core purposes as well. Thus, in order to exercise the right to vote in State B, State B can require that the person take steps to have State B be the person’s state for “resident-based” tax purposes, for driver’s license and car registration purposes, for jury duty purposes, and the like. These requirements seem unobjectionable parts of an external manifestation that a state has the right to insist on in terms of extending the voting franchise to bona fide residents *of that state*—rather than visitors, those who have opportunistic reasons to want to vote in the state, or whatever.

To say that states can tie voting to other normal incidents of bona fide residency, of course, does not mean that “anything goes.” First, there is the general principle that requires the “neutrality” of any bona fide residency test. A state cannot set up rules that disfavor students, as a group. Thus, if upon learning—or even surmising—that you are a college student, a voting registrar probes further into various attributes of “residency” than otherwise would be the case—into issues such as a “home address,” property ownership, employment status, and the like—this discriminatory focus on students would be unconstitutional.⁴⁷ (It might be different if the state

asks, and could show it does in a nondiscriminatory fashion, such questions of everyone.) Nor can a state conclude that a dorm room can never be a “residence” for voting purposes,⁴⁸ or even place special burdens on students in dorm rooms to prove residency.⁴⁹

This issue goes beyond one of explicit “discrimination,” however. For example, we believe that the questions—on Virginia’s web-site (among others)—of “[a]re you claimed as a dependent on your parents’ income tax return?” or are you “covered under your parents’ insurance policy”—are without any foundation, and, as a consequence, unconstitutional.⁵⁰ Dependency, for Internal Revenue Code purposes, has nothing to do with residency of adults, nor does the issue of who pays for insurance. Incidents of “bona fide residence” of a resident over the age of 18 must be established by looking at what that person says and does, not by what his parents do or where they live. Inquires into the former may be permissible;⁵¹ inquiries into the latter are, on their face, improper.

II. State Laws and the Gap Between Law and Practice

Even though the constitutional requirements emanating out of *Dunn* are not all that hard to discern, the translation to implementation at the state level has been disconcertingly uneven. When we turn our attention to state laws and how these laws are implemented by local officials, we find ambiguity and significant variability in local practice.⁵² These factors, when combined with the fluidity of state laws and local practice, lead us to eschew a state-by-state listing in favor of illustrating the kinds of information and practices faced by college students across the country.⁵³ Any given student may face a very clear and welcoming situation; another may face an ambiguous and ultimately hostile situation. But that is the reality, and it is part of what makes things difficult for students, as we shall show.

Published Information

In portraying the landscape faced by college students, let us begin where they probably would—with information garnered from the Internet. Apart from friends, who might or might not have relevant information and experience, the most likely place for students to turn to is their computer. Here, too, they might seek personal assistance—from Internet friends and acquaintances. But for authoritative, detailed information, they are likely to quickly turn to whatever websites they can find. What they will learn almost immediately, if they don't know it from high school civics lessons, is that rules are state-specific. Even if their first encounter is with public interest group websites, they will be told that laws vary by state.⁵⁴ Though they may be given some guidance, they are likely to be told that details vary across states and localities. Armed with this information, they may continue their Internet search, looking for information specific to their location. What they would find may be discouraging and sometimes misleading or wrong.

Potentially Restrictive Laws/Interpretations. We start with Idaho. It has a small population and relatively few colleges and universities. We begin there, however, because it offers a good example of one kind of answer that students will find. The screen shown in Display 1 is the top-most result returned by Googling “college student vote idaho.” It has the virtue of being part of an official government site. It cites authoritative sources—the state constitution, statutes, and courts. Though it uses some jargon and might be chided for using only masculine references, it is seemingly unambiguous. It is, usefully, addressed directly to college students, and it goes right to the heart of the matter—the question of residency. The message it conveys, about as strongly as possible, is that as a student you ought to vote in your hometown. For example, in paragraph (2) of the section citing the Idaho Code and how it defines residence, it notes that parents' residence may be taken into account. This factor would not be considered

for any group other than college students, and it carries the obvious implication that if you have not completely moved out of your parents' house and ended their financial support, your parents' house may be regarded as your principal home. Later on, in the somewhat redundant list of "relevant factors," it *could* indicate, in neutral and non-threatening language, that if you register to vote in your college town, you need to cancel your registration (if any) at your previous residence. Instead, the first factor suggests that if you registered previously, it will be held against you in establishing a new residence. Consider also the prejudicial language used in describing factor 10. It asks where one spends most of the year. Perhaps recognizing that college students actually live on their college campuses more than in their parents' homes, the question goes on to ask *why* one spends time elsewhere. Answers to such a query are subject to interpretation and call to mind how, in the pre-Civil-Rights-era South, responses to literacy questions were taken to mean whatever the registrar wanted. If all this were not enough, the screen ends by warning students that violations of registration laws "can subject you to criminal penalties." And in apparent response to contentions that students have a right to vote "anywhere"—presumably a reference to the *Symm* case⁵⁵—the document proclaims that state law, not federal law, controls registration. While correct to some extent, this ignores the fact that the U.S. Constitution, through the 14th and 15th amendments, and the Voting Rights Act have, in fact, significantly curtailed state discretion when it comes to the fundamental right to vote.

In Virginia, a State Board of Elections (SBE) site can be reached by Googling a similar phrase as above.⁵⁶ As in Idaho, this page is part of an official state site and is addressed directly to students. What we show in Display 2 is the site as it appeared in May, 2008, and we refer to it in the first instance. As of early September, 2008, the site had been revised (and the length roughly doubled, making it less easily interpreted in our opinion). We comment on the updated

site as appropriate.⁵⁷

The website as it existed in May is somewhat more inclined toward student choice than the Idaho site, at least on the surface. It says that students themselves determine the place of their legal residence and says explicitly that it might be their college town—though on another page in the SBE website, it notes that “registrars in Virginia bear the responsibility of determining if applicants are eligible to vote in their localities.”⁵⁸ In any event, the “college student page” goes on with suggestive questions and statements about what might happen should a student actually claim residence in his or her college town. Thinly veiled threats that you might get into trouble with the IRS, could possibly lose a scholarship, and might have problems with car insurance, are enough to make any student think twice before registering at school. The suggestion that you might want to register at your college address if you “intend to live and work in the same community as your college after you graduate” contains the idea that future intention is a factor in determining where you live currently.⁵⁹ As shown above, this is contrary to our interpretation of constitutional requirements as they relate to any form of durational residency. On another part of the SBE site, Virginia, like Idaho, mentions parents’ residence as a consideration in determining place of residence. This factor is carried over to the September website.⁶⁰

Note that the paragraph following that about determining one’s legal residence was not as helpful as it could have been with respect to actually registering in Virginia. It indicates various places you can obtain an application, but there is no indication that you can obtain one online. In fact, an online form is available, as indicated by a clickable connection on another screen on the SBE website.⁶¹ The student page also notes that “most states” accept the National Mail Voter Registration Form, which is available online, but it does not say whether Virginia accepts the form. Whether these omissions were simple oversights or were a conscious effort to make it less

convenient for students to register is not clear.⁶²

Virginia registrars in fact have a great deal of leeway when it comes to determining whether or not college students can register in their jurisdiction. Their authority follows from the ambiguities found in the definition of residence in Virginia law. According to §24.2-101.

Definitions.:

“Residence” or “resident,” for all purposes of qualification to register and vote, means and requires both domicile and a place of abode. In determining domicile, consideration may be given to a person's expressed intent, conduct, and all attendant circumstances including, but not limited to, financial independence, business pursuits, employment, income sources, residence for income tax purposes, marital status, residence of parents, spouse and children, if any, leasehold, sites of personal and real property owned by the person, motor vehicle and other personal property registration, and other factors reasonably necessary to determine the qualification of a person to register or vote.

That registrars *may* consider a variety of factors, including “expressed intent,” “residence of parents,” and even “other factors reasonably necessary,” leaves open the least restrictive situation in which students need only declare themselves residents, to much more restrictive situations in which students must report where their parents live, their employment status, and so on. One should recall, of course, that our interpretation of federal (including constitutional) requirements indicates that any methods used to determine residency among college students must be applied to all. It strikes us as unlikely that registrars who ask students about their parents’ residence would ask the same of a 28-year old intern “matched” to the local hospital or a 32-year old assistant professor seeking to register in a college town in Virginia, or, even less so, a 48-year old dean upon seeking to register to vote in the jurisdiction for the first time.

It is not only state-sponsored websites that can make students wonder about whether or not they can register in their college town. Local websites with information for college students are rare, insofar as we can tell. But suppose a student from South Carolina came across the one from Greenwood, shown in Display 3. The message for students is clear, if contrary to law: future

intention is crucial, and if you do not intend to remain “permanently” in Greenwood, you cannot register there. This “dis-invitation,” despite the fact that the office is “dedicated to the principle and the importance of each citizen's right to register....”

The information from Greenwood, SC conflicts with §7-1-25 of the state code (see Display 4), which refers to one’s “present intention” not to leave one’s declared home. An even less restrictive statement can be found on the South Carolina State Election Commission website. This website states simply: “Students may register to vote where they reside while attending college.”⁶³

Choice Laws/Interpretations. Websites from some other states are in sharp contrast to those from Idaho, Virginia, and Greenwood, SC. Consider those from Iowa and Missouri, shown in Displays 5 and 6, respectively. Like that in Idaho, both the Iowa and Missouri websites are official, authoritative, and go right to the heart of the matter. They also contain a strong message—but it could hardly be more different from that found in Idaho. Students are told simply and straightforwardly that they may register either in their hometown or in their college town. Both websites are neatly divided into three sections to deal with students who are from the state but go to a school in a county different from the one with their hometown, students who are from the state but go to school in another state, and students who are from out of state. There is no mention of extra questions, additional factors, or special considerations, and there are no threats of fines or other penalties. The Iowa web page, beyond what is shown in Display 5, even contains a special tip for out-of-state students. In describing the information that needs to be provided on the voter registration form, it suggests: “If your driver's license is from another state, use the last 4 digits of your SS.”

Practice

With election-related statutes as in other areas of the law, ambiguity leads to practices that are seemingly at variance with the written code. Previous researchers have dealt with this mismatch of law and practice by distinguishing between “statutory” language and “local/administrative” practice.⁶⁴ While not attempting to catalogue the differences, for reasons noted above, we wished to gain further insight into the actual practice of local registrars. We did so primarily by calling registrars in counties or municipalities in which there was a significant concentration of college students relative to the size of the county; that is, for the most part we called places in which the registrars could not help knowing about the matter of student registration. The registrars were from a dozen states, primarily those in which the laws or newspaper stories suggested that there was some resistance to college-town registrations. We asked them whether a student “who’s from [name of state] but who went to high school in a different town or city than where they’re going to college” could register “here” (i.e., in the county or municipality where they were the registrar). After questions about what was needed to registrar, we asked about “a student who comes to your county/municipality from another state,” and asked especially about whether an out-of-state driver’s license and a college ID were acceptable for identification purposes. Insofar as possible, we used a standard script, though at times the registrars sped up the interview—for example, by telling us that students were treated the same, regardless of whether they were from inside or outside their state.

The answers we received from registrars—and their added comments—were enlightening on several grounds. First, none of the registrars said that students from elsewhere simply could not be registered in their jurisdiction. But more than that, most registrars seemed reasonably or genuinely welcoming of students who wished to register. For example, the registrar from Spokane County, Washington, home to several colleges, including Gonzaga University, said

cheerfully, “Students can vote wherever their residence is. If their residence is where they go to school, they can vote there.”

At the same time, it was clear that some registrars did not think that registering locally was a good idea and said they “recommended” that students register in their hometowns. For example, in Idaho, a registrar said that students could register in their college town, “but the Election’s Office recommends that students vote at home and vote by absentee ballot when at school.... Residence is defined as a person’s primary home. If a person is away temporarily, they should register and vote at home.” As to students from out of state, “Such students should be registering at home and voting by absentee ballot when at school. But, they would be allowed to register according to the same provisions as students from other places in Idaho.” What was less clear, however, is what prompted this attitude on the part of registrars. In some instances, it seemed to reflect a genuine concern for students’ interests. A registrar would observe that students move almost every year, and if they registered at college they would have to remember to update their address every year. On a similar note, in Ohio, a registrar in Portage County (with Kent State University and smaller schools) appeared to be genuinely concerned for student welfare in saying “Yes [they can register], but registering in Ohio may interfere with things like their loans.”

These practices reveal two kinds of problems. First, some of the information provided is just wrong.⁶⁵ There is no evidence that the IRS’s concern with “dependency” has *ever* led to the denial of dependency based on where a student, who otherwise qualifies as a “child” or “relative” dependent, registers to vote.”⁶⁶ Other information is not wrong, per se, but is likely to be highly discouraging and misleading. Thus, it is proper to note that some residence-based scholarships might be affected by declaring residency for purposes of voting in one’s college

town, but it should be done in a context of noting that few scholarships are residency-based.⁶⁷ A blanket statement to the effect that “your scholarships might be affected,” just is not nuanced enough to convey appropriate information without simultaneously unnecessarily discouraging individuals.

A closer examination of registration practices from several jurisdictions in Virginia reflects the variety of attitudes and practices that students might encounter. This sort of variation is arguably more significant than variation across states, but in light of the ambiguity in the Virginia state law, it isn’t surprising that in some communities students are given expansive opportunity to register in their college town while in others they face a variety of barriers.

The registrar from Williamsburg, Virginia, home to the College of William and Mary, said that students are treated just like anyone else. She was enthusiastic about college student voting, using words to the effect of “I am pro-college student registration” and that she wants to make sure that voting at college, which is also the first time for many students, is not an “ordeal.” Nonetheless, in a variant on the above-mentioned concern with the students’ other interests, she said she was concerned about how registering in her county might affect things like car insurance and scholarships. She encourages students to talk with their parents about these issues before registering to vote in Williamsburg and added that, while she is not required or bound by the duties of her job to inform students of these possible consequences of registering in their college town, she plans to do so anyway by distributing fliers to students about these concerns.

In Fairfax County, Virginia, the location of the second largest college in the state, George Mason University, the registrar used the least restrictive interpretation of state law. He stated that college students, regardless of whether they were from in-state or out-of-state, can register there “if they declare Fairfax to be home. All they have to do to prove this is sign the

registration form because there is a declaration at the bottom that all information provided is correct.”

Some Virginia registrars were found on the opposite side of the spectrum, establishing practices hostile to college students, while recognizing that some of them would ultimately be registered. In Hampton County, Virginia (Hampton University), the registrar observed that “self-supporting students are allowed to register to vote in Hampton County; students not dependent on their parents are allowed to register in Hampton County,” but she went on to say that “to determine student independence, the office uses guidelines from the state Board of Elections, including:

- “Does the student file her own income taxes?
- Do the student’s parents claim her?
- Intent: is the student’s car registered here?
- Working is not a requirement to prove independence (lots of students are there on grants, etc.)
- Look at things a ‘regular resident’ would do and see if the student does them.

Overall, if a student’s parents claim her, she is not a resident in Hampton County.” Essentially, this registrar seems to be looking for a way not to allow students to register there.

The response was similar in Lynchburg, Virginia (Lynchburg College), where the issue of dependence on one’s parents and durational residency came up. There the registrar said “If your parents are still carrying you on their taxes, you are not a resident, you are not independent.” She went on to provide the following “general principle: you need to reside here. This is decided on an ‘individual basis.’ If the residence question is unclear, the office will ask other questions on an ‘individual basis’ to determine if the person is eligible.” When asked if a

student living in a dorm could register, she declared that a dorm “is not a residence. This is not allowed. They are not a resident. They are not here all year.”

A registrar in Lexington County (Washington and Lee University) seemed to put a slight onus on the students, saying that she “asks the student[s] to decide if they have left their home and established residency where they attend school, or if they still consider home their residence and regard their residence at school as temporary”; she added that she “does not require students to prove intent, because that would mean that she would be asking more of students than any other voter attempting to register in [county], and that would be ‘discriminatory.’” This is an interesting case as it is consistent with our earlier conclusion that a question of this sort can be applied neutrally to determine where one should register; still, it is hard to believe that all potential registrants, such as the dean we earlier mentioned, are asked about their former residence.

Within-state variations were also uncovered in South Carolina. The first person we spoke to in Richland County (University of South Carolina) said somewhat hesitantly that students could register there. As the interview progressed, he realized that he was uncertain of the answers to some questions about identification needed, and asked us to speak to another person in the office. That person gave a decidedly more restrictive picture of whether students could register there. Thus, in the extreme, the “rules” might even depend on when you showed up in the registrar’s office and whom you spoke to.

Finally, of course, there is variation over time within local areas, some of them quite recent. Registrars in two locales in New York (Oneida County and Onondaga County) and one in Virginia (Williamsburg) that have been cited for their resistance to student registrants were now open to it.⁶⁸ The registrar in Oneida County alluded to past practices, explaining that “New

York State has ruled that registrars have to accept college student's choice and Oneida County is in compliance." Another said straightforwardly that before he became commissioner, college students had to provide much more information, but now they are treated like everyone else.

III. Conclusion

While there are relatively few reported instances of college students being barred from registering in their college towns, the variation across states, across local jurisdictions, and even across officials in the same place (presently and across time) suggests the need for greater clarity in the applicable laws. This is particularly so where ambiguity in terms (such as intent to stay) can be shaded depending on circumstance, leading to discretion in an area where there should be little local right to make voting more difficult for some than for others.

Our assessment of the legal landscape and implementation of federal (including constitutional) and state laws leads us to the following conclusions. Current federal law, we contend, establishes a number of important ground rules that apply to students nationwide: 1) students cannot be stopped from voting in their college towns simply because of their status as students or because they may live in dormitories; 2) students cannot be asked to meet residency requirements that are greater than those imposed on other adult citizens; and 3) residency periods (for all persons) cannot typically be more than 30-days and are for "administrative convenience" rather than to ensure familiarity with the local area. At the same time, we also contend that states, if they wish, may ask students to meet "full residency" requirements. These are requirements imposed on all who are or ask to become state residents. They include such things as obtaining an in-state driver's license, registering one's car in the state, paying state income taxes (where applicable), and responding to calls to jury duty.

But this list is limited. As a result, state (and local) discretion is likewise limited. In a

world in which language and delivery can be variable, as we have found, in states that decide to impose “full residency” requirements, we favor the development of a standardized list of information, and questions, that can be asked of *all* first-time registrants, including (but not limited to) students. This needs to be done in a way that is sensitive to legitimate concerns—do you have a “residence-specific” scholarship—without creating concern where none should exist (as the vast majority of scholarships do not have such residency restrictions that would be lost upon declaring residency in order to vote). Since the legitimate field of inquiry is narrow, and the issue of discriminatory application large, we would favor the development of uniform standards for information and questions to be given to first-time registrants that would get at legitimate “residency” issues and concerns without tilting the scale in the direction of discouraging registration.

A Complication on the Road Ahead?

While the revolution that began in the early 1970s leads, we believe, to the notion that, *as a matter of residency*, college students have a choice (subject to fulfilling other bona fide residency requirements a state might neutrally impose)—and thus to our questioning of the obvious obstacles, misinformation, and confusion surrounding the ability of college students to vote in their college town—a new issue has emerged that has, ironically, some potential to roll the ball back down the hill, at least somewhat.

We speak here of the recent “anti-voting-fraud” requirements, started by the “Help America Vote Act” (“HAVA”) of 2002 and further implemented by states, that impose ID requirements on voting. Among the provisions of HAVA are requirements that applications for voter registration for an election for Federal office may not be accepted unless the application includes “(I) in the case of an application who has been issued a current and valid driver’s

license, the applicant's driver's license number; or (II) in the case of any other applicant...the last 4 digits of the applicant's social security number."⁶⁹ And, for voters who register by mail, a state must, "in a uniform and nondiscriminatory manner," require the individual to present either "a current and valid photo identification" or "a copy of a current utility bill, bank statement, government check, paycheck, or other government document that shows the name and address of the voter."⁷⁰ HAVA further goes on to describe these requirements as "minimum requirements," and that nothing in HAVA "shall be construed to prevent a State from establishing election technology and administration requirements that are more strict than the requirements established" in HAVA.⁷¹

States have, in fact, gone further than this, by requiring either government-issued photo IDs, or by requiring IDs (or utility bills, bank statements, and the like) with a current address. The constitutionality of at least some of these requirements was addressed by the 2008 decision of the Supreme Court in *Crawford v. Marion County Election Board*, with the Court upholding the Indiana ID law.⁷² These requirements, while directed at voter fraud, may—without flexibility in the system or creative work by colleges and universities⁷³—create new burdens for college students.

Although these requirements are "neutral," as they are not focused on college students, and are not tied to any notion of durational residency *per se*, they create challenges and barriers that impact college students as a class more than most, and, in particular, newly-arrived college freshmen.⁷⁴ College students arrive at various times between August and October, and in many cases might have a little over a month to first decide that they want to vote in the college town, and then figure out when and where to register. Given the short window, it is unlikely that they will have received a photo ID, utility bill, bank statement or the like—especially those who live

in dorms (which may not have a street address), receive mail at the student union or a post-office box, live in groups, and so on.⁷⁵

Unless these voter ID rules are going to disenfranchise students—or, at a minimum, preclude student “choice” in terms of where they vote—they need to accommodate the realities of student life, which include both the reality that semesters often don’t start until after Labor Day and the reality that dorm rooms often don’t have “street addresses.” Some of this may be accomplished at the college-level. Colleges could designate street addresses for their dorms, and colleges could quickly issue student photo IDs with addresses upon registration. (The latter solution, without more, might only work for state higher educational institutions, if the state’s voting requirement is for a “government issued photo ID,” as it was in *Crawford*. Private institutions can’t issue “government” photo IDs.)

Since these appear to be unintended consequences of HAVA and more restrictive state rules given license by HAVA, we hope that states would recognize this and create a sensible system that implements student choice and voting. But, realistically, given the continuing, and oftentimes obvious, resistance to students voting in their college towns—as not “really” local and “tied” to the community—despite the passage of more than 35 years since the revolution of the early 1970s, there is no particular reason to be optimistic that such remedies will be forthcoming in anything like a systematic fashion. In our view, and unless Congress re-enters the fray, this is likely to provoke yet another round of constitutionally-based litigation to reestablish for students the choice they theoretically won in the 1970s, but which has been painfully slow to be implemented in any practical fashion, and which is now threatened, not by foot-dragging by state officials, but by well-meaning, but unintended, consequences of a solution to another problem—that of voting fraud.

Display 1: Website with Information on Registration and Voting for College Students in Idaho

Students and Voting Residency

The advent of election day registration in Idaho and how it interacts with the concept of “voting residence” has been a source of controversy in various college towns throughout Idaho.

The crux of the student registration and voting controversy is the question of whether you, as a student, can establish a residence for voting purposes, and if so, how can this be determined by registration officials.

In Idaho Constitutional (Article VI, Sec. 5) and statutory provisions (34-405, I.C.) provide that no person is deemed to have gained or lost a residence for voting purposes by reason of his presence or absence while a student at any institution of learning. These provisions have the effect of treating physical presence as a neutral factor in determining voting residence and therefore other factors must be looked at.

Section 34-107, Idaho Code, defines residence for voting purposes:

- (1) “Residence,” for voting purposes, shall be the principal or primary home or place of abode of a person. Principal or primary home or place of abode is that home or place in which his habitation is fixed and to which a person, whenever he is absent, has the present intention of returning after a departure or absence therefrom, regardless of the duration of absence.
- (2) In determining what is a principal or primary place of abode of a person the following circumstances relating to such person may be taken into account business pursuits, employment, income sources, residence for income or other tax pursuits, residence of parents, spouse, and children, if any, leaseholds, situs of personal and real property, situs of residence for which the exemption in section 63-602G, Idaho Code, is filed, and motor vehicle registration.
- (3) A qualified elector who has left his home and gone into another state or territory or county of this state for a temporary purpose only shall not be considered to have lost his residence.
- (4) A qualified elector shall not be considered to have gained a residence in any county or city of this state into which he comes for temporary purposes only, without the intention of making it his home but with the intention of leaving it when he has accomplished the purpose that brought him there.
- (5) If a qualified elector moves to another state, or to any of the other territories, with the intention of making it his permanent home, he shall be considered to have lost his residence in this state.

This section in essence sets forth the concept of domicile ie. principal or primary home or place of abode of a person.

Idaho courts have held that “for a change of domicile to occur, the fact of physical presence at a dwelling place and the intention to make it a home must concur and when such domicile is established, it persists until another is legally acquired. *Kirkpatrick v. Transtector Systems* 114 Id. 559.

The rules of the State Board of Education (IDAVA 08.01.04.005.08) define domicile as follows:

“Domicile” means an individual’s true, fixed, and permanent home and place of habitation; the place where the individual intends to remain and to which the individual expects to return when he leaves without intending to establish a new domicile elsewhere. The establishment of domicile in Idaho occurs when a person is physically present in Idaho primarily for purposes other than educational and can show satisfactory proof that such person is without a present intention to return to another state or acquire a domicile at some other place outside the state and the person has met any other applicable requirements of this chapter.

The above mentioned materials require that college students must establish, as with all other voter registration applicants, that the locale within which they seek to register and vote is their domicile i.e. that they are living in the college community with the intention of abandoning their former domicile and with the intention of remaining permanently, or for an indefinite length of time, in the new location.

Some of the factors which may be relevant in determining whether domicile has been established for voting purposes by a student as well as any other applicant, are as follows:

- (1.) Has the applicant registered to vote elsewhere?
- (2) If married, where does his or her spouse reside?
- (3) Where does the applicant keep his personal property?
- (4) Does the applicant have any community ties to the locale he claims as his domicile – membership in church, social or service clubs, etc?
- (5) Where does the applicant maintain his checking and saving accounts, if any?
- (6) Where does the applicant pay taxes, and what address did he list as his residence on his last income tax return?
- (7) What is the residence listed on the applicant’s driver’s license?
- (8) If the applicant owns an automobile, where is it registered?
- (9) If the applicant is employed, where is his job located?
- (10) Does the applicant live year round at his claimed domicile, or does he divide it elsewhere? If it is divided, how much time is spent elsewhere and for what reason?

(11) What residence does the applicant list on his selective service registration, hunting or fishing licenses, insurance policies, or other official papers and documents which required a statement of residence or address.

As a student, you should not be registering and voting in your college locale simply because you failed to register and vote at your true domicile. Registering to vote is a serious matter which, if abused, can subject you to criminal penalties. It should be noted that there is no federal right to vote anywhere in the United States for the office of President. State laws control registration and voting and State residency requirements must be met.

We need and want all students to vote at their legal domicile.

Note: Text is taken directly from the website. Not shown are other headings that are part of the overall “IdahoVotes” website.

Source: http://www.idahovotes.gov/VoterReg/Students_Voting%20Residency.htm.

Display 2: Website with Information on Registration and Voting for College Students in Virginia (as of May, 2008)

Registration & Voting Information for College Students

Where should I register to vote?

Register to vote in the city or county in which you are a legal resident.

What is my legal residence?

You are the one to determine and declare the city, county and state in which you claim your legal residence. This may be the residence where your family lives, or the city or county and state where your school is located. Consider the following questions to determine which to declare:

- ◆ Are you claimed as a dependent on your parents' income tax return? If you are, then their address is probably your legal residence.
- ◆ Do you have a scholarship that would be affected if you changed your legal residence? Some scholarships require that the student be a resident of a particular town, city or state. Contact the provider of your scholarship to determine if a change in your legal residence will affect your scholarship.
- ◆ Would your health, automobile or other insurance coverage be affected by a change in your legal residence? If you are covered under your parents' insurance policy, your protection could be affected by a change in your legal residence.
- ◆ Are you close to graduation and intend to live and work in the same community as your college after you graduate? If you do, then you may want to use your college address as your legal residence if you will not be affected by the issues listed above.
- ◆ Also consider that many students move frequently while in college and after graduation. You must update your address with the registrar each time you move to keep your voter registration valid, regardless of the address you use as your legal residence.

How do I register to vote?

If you declare your legal residence in Virginia, you may obtain a Voter Registration Application online or request an application from your local Voter Registrar or obtain an application at any Virginia Department of Motor Vehicles. Several other agencies in Virginia can supply voter registration applications, such as transportation providers for the disabled and social services agencies.

- ◆ Fill out the application completely.

- ◆ Do not leave any questions blank.
- ◆ Be sure to sign the application.

Return your completed and signed application to the DMV, transportation provider or other agency where you obtained the application, or mail it to your Voter Registrar in the city or county of your legal Virginia residence. You will receive your Voter Registration Card by return mail to the address you listed on the application.

If you declare your legal residence in another state, do not register to vote in Virginia! Contact the voter registrar in the county or city of your home state for information on how to register and vote, or check the home page of your state government's web site.

Most states also accept the National Mail Voter Registration Form available online at www.fec.gov/votregis/vr.htm. Print, complete and mail this form to your home state.

How do I vote in Virginia if I go to college away from home?

If you have declared Virginia as your legal residence, are registered to vote in Virginia and attend school away from the city or county of your legal residence, you are entitled to vote by absentee ballot if you cannot return home to vote. Click [here](#) to read about and request an Absentee Ballot Application.

Note: You must vote either in person at the precinct shown on your voter registration card, or by absentee ballot. Online voting is not available in Virginia.

How do I vote in Virginia if I go to college and live at home?

Vote at the polling place printed on your Voter Registration Card.

Virginia State Board of Elections

Suite 101, 200 North 9th Street, Richmond, Virginia 23219-3485
Telephone: 804 864-8901 Toll Free: 800 552-9745 FAX: 804 371-0194

Note: Text is taken directly from the website. Not shown are other headings that are part of the overall "Virginia State Board of Elections" website.

Source:

http://www.sbe.state.va.us/cms/Voter_Information/Registering_to_Vote/College_Student.html.

Display 3: Website with Information on Registration and Voting for College Students in Greenwood SC

Voter Registration & Elections

Voter Registration & Election Office
600 Monument Street, Suite 113
Park Plaza, Box P-117
Greenwood, South Carolina 29646

Telephone: 864-942-8585

The Greenwood County Voter Registration and Elections Office processes and updates all information related for our voters. The County's files are part of an internal interactive statewide computerized voter registration database. This database serves as one source for selection of jurors in the city and county; it further provides the information used for all elections.

The department trains all election personnel, provides election materials, and performs all technical functions on the electronic voting machines for Greenwood County elections. These elections include federal, state, county-wide offices, school district trustees, municipal and special elections. The department educates the public about the election process and encourages the public to participate in all elections.

We also coordinate the activities of the County Board of Voter Registration and Election Commission members. Our office is dedicated to the principle and the importance of each citizen's right to register, and once registered, their right to vote in a fair and unbiased process.

VOTER REGISTRATION INFORMATION



You are qualified to vote in Greenwood County if you meet the following requirements:

- You are a US citizen.
- You are eighteen (18) years old.
- You are a legal resident of Greenwood County.
- You have not been declared mentally incompetent by a court of law.
- You are not currently serving a sentence for a felony conviction.
- You have not been convicted of a felony or offense against the election laws, or if previously convicted, have served the entire sentence, including probation or parole, or have received a pardon for the conviction.

YOU MAY REGISTER TO VOTE AT THE FOLLOWING LOCATIONS:

- The Greenwood Voter Registration Office, Suite 113, Park Plaza, 600 Monument Street.

- Department of Motor Vehicles
- Department of Social Services
- Department of Public Health
- A mail form can be obtained at the following link : [Click here.](#)
- You may also call the Voter Registration Office at 864-942-8585 and we will mail you the proper form .

You can register at any time. You must be registered at least thirty (30) days prior to any election in order to vote in that election. Mail applications must be postmarked at least thirty (30) days prior to an election to qualify to vote in that election.

Once a person has registered to vote, they do not have to re-register. However, if you fail to vote in two (2) general election cycles, the state may make your registration inactive.

Should you lose, misplace, or accidentally destroy your voter registration card, a duplicate card is available upon request at no charge.

STUDENT REGISTRATION

Students should register to vote in their home county - county of origin. Students may register to vote where they attend college *only*, if they intend to remain in the community permanently after graduation.

[Screen continues.]

Note: Text is taken directly from the website. Not shown are links go additional information.

Source: <http://www.co.greenwood.sc.us/voter.aspx>.

Display 4: Definition of Domicile in the South Carolina Code of Laws**SECTION 7-1-25.** "Domicile" defined.

(A) A person's residence is his domicile. "Domicile" means a person's fixed home where he has an intention of returning when he is absent. A person has only one domicile.

(B) For voting purposes, a person has changed his domicile if he (1) has abandoned his prior home and (2) has established a new home, has a present intention to make that place his home, and has no present intention to leave that place.

Source: South Carolina Code of Laws, at <http://www.scstatehouse.net/code/t07c001.htm>.

Display 5: Iowa Secretary of State Website “College Student Vote.”**Iowa Resident Attending College in Iowa**

If you are an Iowa resident attending college at an Iowa school (i.e. University of Iowa-Johnson County) that is in a different county than your hometown (Des Moines-Polk County), you may register to vote in:

- your hometown or
- your college town

(You cannot register to vote in both locations)

Absentee Voting

Whether you decide to register in your Iowa hometown or your Iowa college town, you may request an absentee ballot. You must request an absentee ballot by completing an [Official Absentee Ballot](#) Request form and returning it the county auditor in the county where you are registered to vote.

Iowa Resident Attending College Outside Iowa

If you are an Iowa resident (i.e. Council Bluffs) attending college in another state (i.e. University of Nebraska), you may register to vote in:

- your Iowa hometown or
- your college town - subject to the laws of the state you go to college in

(You cannot register to vote in both locations)

Absentee Voting

If you are registered to vote in Iowa and attending school in another state, you may request an absentee ballot for an election taking place while you are away at school. You must request an absentee ballot by completing an [Official Absentee Ballot Request](#) form and returning it the county auditor for your hometown.

Non-Iowa Resident Attending College in Iowa

If you are from another state (i.e. Missouri) and are attending college in Iowa (i.e. Iowa State University), you may register to vote in:

- your Iowa college town or
- your home state (hometown) and vote absentee - subject to the laws of your home state

(You cannot register to vote in both locations)

Non-Iowa Resident Attending College in Iowa

If you are from another state (i.e. Missouri) and are attending college in Iowa (i.e. Iowa State University), you may register to vote in:

- your Iowa college town or
- your home state (hometown) and vote absentee - subject to the laws of your home state

(You cannot register to vote in both locations)

Your decision of where to register to vote will determine which candidates and what issues appear on your ballot.

For more information about registering to vote and elections, contact your [county auditor](#) or the [Iowa Secretary of State's Office](#).

Note: Text is taken directly from the website. Not shown are headings indicating where to get further information.

Source: <http://www.sos.state.ia.us/elections/VoterInformation/CollegeStudents.html>

Display 6: Missouri Secretary of State Website “Voting in College.”

Voting In College

Any citizen of the United States who is a resident of the state of Missouri and seventeen years and six months of age or older is entitled to register for and vote in any election held after their eighteenth birthday.

Residency in the state of Missouri is a requirement to register to vote as a Missouri voter. College students have the option of declaring their residency from their home residence, their parents home for example, or from their college residence.

Different registration and voting options may be available to you depending on where you register to vote and where you are attending college. Please select one of the options below for information on registration and voting.

- [Missouri resident attending college in Missouri](#)
- [Missouri resident attending college in another state](#)
- [Non-Missouri resident attending college in Missouri](#)

Note: Text is taken directly from the website. Not shown are other clickable headings that are part of the website.

Source: <http://www.sos.mo.gov/firstvote/college/>.

Endnotes

¹ State registration deadlines are shown at <http://www.infoplease.com/ipa/A0781452.html>.

² All but a few states are subject to the “motor-voter” law. North Dakota does not require voter registration.

³ See <http://earlyvoting.net/states/abslaws.php>

⁴ On voting by mail, see Patricia L. Southwell, “Five Years Later: A Re-Assessment of Oregon’s Vote by Mail Electoral Process,” 37 *PS: Pol. Sci. & Politics* 89 (2004). On voting equipment, see Kimball W. Brace, “Almost 55 Million, or One-Third of the Nation’s Voters, Will Face new Voting Equipment in 2006 Election,” Election Data Services, Inc, 2006, at http://www.edssurvey.com/images/File/ve2006_nrpt.pdf. On different types of ballots, see Richard G. Niemi and Paul S. Herrnsen, “Beyond the Butterfly: The Complexity of U.S. Ballots,” 1 *Perspectives on Politics* 317 (2003).

⁵ Roughly two dozen states require some form of identification. In *Crawford v. Marion County Election Board* 553 U.S. ___ (2008), the Supreme Court rejected a challenge to Indiana’s strict voter ID law.

⁶ “Between the late 1950s and early 1970s...virtually all formal restrictions on the suffrage rights of adult citizens were swept away....” Alexander Keyssar, *The Right to Vote: The Contested History of Democracy in the United States* (New York: Basic Books, 2000), 256.

⁷ Most of these differences related to party affiliation; see Marjorie Randon Hershey, *Party Politics in America*, 12th ed. (New York: Pearson Longman, 2007), 159-61. However, there are also differences in whether 17 year-olds who will be 18 by the time of the general election can participate. See http://journalism.nyu.edu/pubzone/livewire/politics_society/on_the_cusp/.

⁸ See Jeff Manza and Christopher Uggen, *Locked Out: Felon Disenfranchisement and American Democracy* (New York: Oxford University Press, 2006), and http://www.sentencingproject.org/Admin/Documents/publications/fd_bs_fdlawsinus.pdf.

⁹ Other ambiguous cases include homeless people without residential addresses and people who are constantly on the move. With respect to the homeless, see <http://www.nationalhomeless.org/getinvolved/projects/vote/index.html>. On “RVers,” see various (changing) online stories about particular individuals and states. Military personnel on temporary assignments once faced problems similar to those faced today by college students; but few such issues seem to have arisen since the decision in *Carrington v. Rash*, 380 U.S. 93 (1965).

¹⁰ Rock the Vote was formed in 1990. See www.rockthevote.org.

¹¹ Logically, the issues for graduate students, students in post-degree professional programs (e.g., law and medicine), and even medical interns and residents are identical. Practically, we suspect these cases are less contentious because these individuals are: (a) fewer in number; (b) (usually) older; and (c) more likely to be married or have other things that look like “roots.” The same concerns would also apply to non-military personnel on temporary assignment from their employer—although the issue may be sidestepped in this case because they are not concentrated in certain locations.

¹² The student case is different, to a degree, from most other historical cases in that no one is saying that students should be prevented from voting altogether. The argument is “only” whether students should be prevented from voting here, where here refers to their college town. Of course, there have been cases where that is tantamount to disenfranchising a student altogether, such as when the student goes away to school and the parents die, leaving no “home” to which the student might ever return.

¹³ Martin P. Wattenberg, *Is Voting for Young People? With a Postscript of Citizen Engagement* (New York: Pearson Longman, 2008).

¹⁴ Eric Plutzer, “Becoming a Habitual Voter: Inertia, Resources, and Growth in Young Adulthood,” 96 *Am. Pol. Sci. Rev.* 41 (2002); Mark N. Franklin, *Voter Turnout and the Dynamics of Electoral Competition in Established Democracies since 1945* (Cambridge: Cambridge University Press, 2004).

¹⁵ Wattenberg, *Is Voting Young People*, 115-9.

¹⁶ Mark Hugo Lopez, Emily Kirby, and Jared Sagoff, “The Youth Vote 2004,” College Park, MD: Center for Information and Research on Civic Learning and Engagement, 2005, at http://www.civicyouth.org/PopUps/FactSheets/FS_Youth_Voting_72-04.pdf; Emily Hoban Kirby and Karlo Barrios Marcelo, “Young Voters in the 2006 Elections,” College Park, MD: Center for Information and Research on Civic Learning and Engagement, 2006, at <http://www.civicyouth.org/PopUps/FactSheets/FS-Midterm06.pdf>.

¹⁷ Richard G. Niemi and Michael J. Hanmer, “Voter Turnout among College Students,” unpublished paper, University of Rochester, 2008.

¹⁸ Sec. 202, 42 U.S.C. §1973aa-1(e); upheld in *Oregon v. Mitchell*, 400 U.S. 112 (1970).

¹⁹ Keyssar, *The Right to Vote*, 281-2.

²⁰ Given the burdens that would be associated with holding separate elections for other offices under a different set of rules, as a practical matter, over time this congressional mandate would almost certainly have effectively changed

the voting rules for *all* offices and issues, or at least those arising in presidential-election years. That process, however, got caught up in the constitutional changes we describe next.

²¹ *Dunn v. Blumstein*, 405 U.S. 330 (1972).

²² *Dunn v. Blumstein*, 405 U.S. 330, at 342 (quoting *Shapiro v. Thompson*, 394 U.S. 618, at 634 (1969)).

²³ Within the category of ensuring knowledgeable voters, the Court rejected “three separate claims”: (1) “afford[ing] some surety that the voter has, in fact, become a member of the community,” (2) “assur[ing] that the voter ‘has a common interest in all matters pertaining to [the community’s] government,’” and (3) a longtime resident is “more likely to exercise his right [to vote] more intelligently.” *Dunn v. Blumstein*, 405 U.S. 330, at 354-356 (1972).

²⁴ *Dunn v. Blumstein*, 405 U.S. 330, at 347 (1972). The Court noted, relying on what Congress had done, that “30 days appears to be an ample period of time for the State to complete whatever administrative tasks are necessary to prevent fraud—and a year, or three months, too much” (348). And while the Court, the following year, upheld a 50-day registration requirement in Arizona, *Marston v. Lewis*, 410 U.S. 679 (1973), and Georgia, *Burns v. Fortson*, 410 U.S. 686 (1973), for voting in state and local elections, relying on the argument of “administrative necessity” of obtaining accurate voting rolls in time for the election, the focus was entirely on the period in which books could be closed before an election for compelling administrative purposes, not on durational residency requirements themselves. True to the idea that it did not make long-term sense to have a 50-day rule for local elections and a 30-day rule for presidential elections, both Arizona and Georgia now have registration requirements of 29 days (more for runoff elections in Georgia); see

<http://www.azleg.state.az.us/FormatDocument.asp?inDoc=/ars/16/00120.htm&Title=16&DocType=ARS> and

http://sos.georgia.gov/elections/elections_events.htm.

²⁵ See *Saenz v. Roe*, 526 U.S. 489 (1999).

²⁶ The confusion—or inattention—manifests itself elsewhere. Consider, for example, the current requirement in Utah of a 15-day registration requirement but a 30-day residency requirement;

<http://elections.utah.gov/voterregistrationnewwhat.html>. While Utah *could* have had a 30-day registration requirement, under *Dunn*’s safe-harbor, it chose to have a 15-day requirement alone. Nothing in *Dunn*, and its rejection of reasons for “duration” for the sake of duration, similarly justifies an additional residency requirement beyond those 15 days. See also Minnesota (election day registration, but a requirement that one “must maintain

residence in Minnesota for 20 days immediately preceding the election”); Minnesota Election Statutes, Chapter 201.014 Subdivision 1(c) at <http://www.sos.state.mn.us/home/index.asp?page=224>. See also North Dakota (no registration, but a requirement that one “has resided in the precinct at least thirty days next preceding any election”); North Dakota Election Laws, Title 16.1-01-04 #1 at <http://www.nd.gov/sos/electvote/law.html>. Under the reasoning of *Dunn*, all of those residency requirements, albeit slight, are constitutionally inappropriate.

²⁷ *Dunn v. Blumstein*, 405 U.S. 330, at 343 (1972).

²⁸ Roderick Hills, Jr., “Poverty, Residency, and Federalism: States’ Duty of Impartiality toward Newcomers,” 6 *Supreme Court Rev.* 278, 288-89 (1999).

²⁹ *Martinez v. Bynum*, 461 U.S. 321 (1983), at 332, note 13.

³⁰ See David Canupp, “College Student Voting: A New Prescription for an Old Ailment,” 56 *Syracuse L. Rev.* 145 (2005) (discussing ambiguities of residency tests).

³¹ See <http://www.rockthevote.com/voting-is-easy/voting-rights/student-rights/>. In commentary in *Inside Higher Education*, John K. Wilson writes “Here’s the law nationwide: Anyone can register to vote where they live. College students typically “live” in two places, their campus address where they spend most of the year, and the home address of their parents. Students can choose where they wish to register. There’s nothing illegal at all so long as you don’t vote twice in the same election.” See Wilson, “The Attack on Student Voting Rights,” at <http://www.insidehighered.com/views/2007/12/31/wilson>. The group FairVote notes on its website that “despite the fact that every college student is entitled to register to vote at the residence he or she considers ‘home,’ including a campus residence, many college communities actively prevent college students from registering to vote where they attend school.” See <http://www.fairvote.org/?page=163>.

³² <http://www.hawaii.gov/elections/factsheets/fsvs517.pdf>.

³³ <http://vote.ky.gov/about/college.htm>. See also Elizabeth Aloi, “Thirty-Five Years After the 26th Amendment and Still Disenfranchised: Current Controversies in Student Voting,” 18 *Nat’l Black L.J.* 283, at 293-296 (noting states that use “intention to remain”).

³⁴ *Symm v. United States*, 439 U.S. 1105 (1979).

³⁵ Note that citizens who have never resided in the U.S. are not given the right to vote. While there is no “federal constitutional right to vote” for president, *Bush v. Gore*, 531 U.S. 98 (2000), there are other places where there is such a right—see, e.g., Article I, sections 2 and 3 (for members of Congress), Article IV, Section 4 (guarantee of a

“republican” form of government for states). And, wherever there is a right to vote, a whole host of protections exists to ensure that the franchise is broadly construed. See, e.g., *Baker v. Carr*, 369 U.S. 186 (1962); see also Keyssar, *The Right to Vote*, 256-84.

³⁶ To see this, consider a simple case where Jones is in Ohio, having come from Pennsylvania. Jones declares that he has no intention of going back to Pennsylvania, but also has no clear intention of remaining in Ohio (after being a student, on military duty, a temporary job assignment, or other such status). If both Ohio and Pennsylvania have a rigorous “permanence” test—by itself—Jones has no place where he can vote, which violates one of our two starting premises.

³⁷ In the example in the prior footnote, Jones could continue to vote in Pennsylvania, which remains his “location” for purposes of voting unless and until he meets the permanence requirement of another jurisdiction.

³⁸ *Dunn v. Blumstein*, 405 U.S. 330, at 334 (1972).

³⁹ *Dunn v. Blumstein*, 405 U.S. 330, at 336 (“before that right [to vote] can be restricted, the purpose of the restriction and the assertedly overriding interests served by it must meet close constitutional scrutiny,” quoting *Evans v. Cornman*, 398 U.S. 419, at 422 (1970)); at 337 (“We concluded [in *Kramer v. Union Free School District*, 395 U.S. 621 (1969)] that if a challenged statute grants the right to vote to some citizens and denies the franchise to others, ‘the Court must determine whether the exclusions are necessary to promote a compelling state interest.’ . . . This is the test we apply here.”); at 342 (“In sum, durational residence laws must be measured by a strict equal protection test: they are unconstitutional unless the State can demonstrate that such laws are ‘necessary to promote a compelling governmental interest’” (citing *Shapiro v. Thompson*, 394 U.S. 618 (1969)); at 360 (“Given the exacting standard of precision we require of statutes affecting constitutional rights, we cannot say that durational residence requirements are necessary to further a compelling state interest”).

⁴⁰ *Dunn v. Blumstein*, 405 U.S. 330 (1972).

⁴¹ Indeed, it may be—directly—precluded by *Dunn*’s rejection of a “common interest” justification, *Dunn v. Blumstein*, 405 U.S. 330, at 355 (1972).

⁴² A similar observation was made in *Dunn*. In responding to an “informed electorate” justification, the Court commented it “has never been a criterion for participation in Tennessee’s electoral process for longtime residents,” and went on to note that Tennessee’s absentee ballot provisions “permit many longtime residents who leave the county or State to participate in a constituency in which they have only the slightest political interest, and from

whose political debates they are likely to be cut off.” *Dunn v. Blumstein*, 405 U.S. 330, at 359 (1972). This reasoning applies equally to voters “protected” by a “no loss” rule.

⁴³ <http://vote.ky.gov/about/college.htm>.

⁴⁴ See also Patrick Troy, “No Place to Call Home: A Current Perspective on the Troubling Disenfranchisement of College Voters,” 22 *J. of Law & Policy* 591, at 605-607 (2006) (describing Virginia Circuit Court opinion denying student registration in Williamsburg because the court “was not convinced that she intended to remain in Williamsburg indefinitely”).

⁴⁵ See note 18.

⁴⁶ This is the case with registration of members of the military. For example, an article aimed at servicemen and women recently noted that “military members may vote in the state or territory where stationed if they change their legal residence to that state or territory, even if they live on a military installation. There are legal obligations that may be incurred, such as taxation, if they change their state or territory of residence.” See Lisa Spilinek, “Exercise Right to Vote When Living Outside of Legal Residence,” <http://www.hanscom.af.mil/news/story.asp?id=123077219> November 27, 2007. Even here, however, there seems to be some confusion. For example, Rod Powers, “Military Legal Residence and Home of Record,” <http://usmilitary.about.com/cs/militarylaw1/a/homeofrecord.htm>, states that “legal residence” (required for voting) “is the place that the military member intends to live after they separate or retire from the military. It’s the place that they consider their ‘permanent home.’” The article goes on, however, to state that “easiest proof that one considers a new state to be one’s “permanent home” is “physical presence in the state.’ If you are currently stationed in a state, and wish to make it your permanent home, it’s generally pretty easy,” point to factors such as “registering to vote in the new state, by titling and registering your car in the new state, . . . by getting a driver’s license in the new state, or by preparing a new last will and testament (indicating your new state as your legal residence).” See also <http://navmedmpte.med.navy.mil/accessions/forms/DD2058.pdf>. (While this, perhaps ironically (given that it is meant to apply to the military) starts by focusing on “permanence,” each of the items it then uses to determine residency for purposes of voting are essentially the items we note are considered normal incidents of residency, having nothing to do with any rigid notion of permanence.) While the thrust of this is the same as ours (albeit, we are uncomfortable with even referencing permanence), the effectiveness of its implementation may depend on the constitutional argument we develop in this paper. Under *Oregon v. Mitchell*,

400 U.S. 112 (1970), the federal government is severely limited in its ability to determine who may vote in non-federal elections.

⁴⁷ *Symm v. United States*, 439 U.S. 1105 (1979).

⁴⁸ *Williams v. Salerno*, 792 F.2d 323 (2d Cir. 1986).

⁴⁹ *Whatley v. Clark*, 482 F.2d 1230 (5th Cir. 1973).

⁵⁰ State websites, including the one from which this quotation is taken, are displayed below.

⁵¹ Again, if the jurisdiction makes such inquiries of all first-time registrants.

⁵² See Elizabeth Aloï, “Thirty-Five Years After the 26th Amendment and Still Disenfranchised: Current Controversies in Student Voting,” 18 *Nat’l Black L.J.* 283, at 289 (2005) (noting “outright confusion about voting eligibility”).

⁵³ The first systematic work on college student voting categorized states largely on the basis of their laws. A more recent effort takes greater account of how the laws are applied. See Kenneth L. Eshleman, *Where Should Students Vote? The Courts, the States and Local Officials* (Lanham, MD: University Press of America, 1989); Michael O’Loughlin and Corey Unangst, “Democracy and College Student Voting,” 3rd ed., Institute for Public Affairs and Civic Engagement, Salisbury University, 2006.

⁵⁴ See, for example, the New Voters Project website, <http://www.newvotersproject.org>, where one enters a state before being given rules about eligibility; readers are also told that states have different laws about voter identification. Or see <http://www.declareyourself.com>, which begins its questions and answers about registration by noting that each state has a different deadline for voter registration.

⁵⁵ *Symm v. U.S.*, 439 U.S. 1105 (1979).

⁵⁶ Because of a controversy over student registrations raised in September, 2008, the State Board of Elections website was no longer the first site returned by a Google search. It was, however, readily apparent (on the first screen). On the controversy, see Tamar Lewin, “Voter Registration by Students Raises Cloud of Consequences,” *New York Times*, September 7, 2008.

⁵⁷ See http://www.sbe.virginia.gov/cms/Voter_Information/Registering_to_Vote/College_Student.html. The May website, which used the same url, can no longer be reached.

⁵⁸ This phase is part of the September website

⁵⁹ The September website does not contain the suggestion quoted in the text, but it says that “in order to establish

‘residency,’ a prospective voter must...intend to stay for an unlimited time.” As a legal authority, it cites *Sachs v. Horan*, 252 Va. 247 (1996).

⁶⁰ Whether one can be claimed as a dependent on someone else’s income tax return is not on the new website, but it remains on a “self-guided questionnaire” intended to “assist applicants as they determine where their legal residence is.” The questionnaire also asks explicitly whether you are a college student and whether you intend to return to your parent’s home, or move elsewhere, upon graduation.

⁶¹ http://www.sbe.state.va.us/cms/Voter_Information/Registering_to_Vote/Index.html.

⁶² The September website is perhaps even worse in this regard. The online form is still reachable, but the only mention of a form on the college student page is a clickable mail-in form.

⁶³ http://www.scvotes.org/south_carolina_voter_registration_information.

⁶⁴ See Eshleman, *Where Should Students Vote?*, ch. 3; O’Loughlin and Unangst, “Democracy and College Student Voting.”

⁶⁵ See Elizabeth Aloï, “Thirty-Five Years After the 26th Amendment and Still Disenfranchised: Current Controversies in Student Voting,” 18 *Nat’l Black L.J.* 283, at 296 (12005) (noting “reports of students being told by both official and non-official sources that they would lose their financial aid or car insurance if they changed their voter registration to their school jurisdictions. Almost across the board, this information was incorrect.”)

⁶⁶ “‘We have been registering young voters for 25 years,’ she said. ‘We registered 500,000 young voters in 2004, the majority on college campuses, and we’ve never heard of a single one who lost health insurance, scholarship or tax status because of where they registered to vote.’”

http://www.nytimes.com/2008/09/08/education/08students.html?_r=1&oref=login. See also

<http://www.statesboroherald.com/news/archive/6330/> (“Mark Green, a media relations specialist for the Internal Revenue Service in Georgia, said state rules have no bearing on federal tax guidelines. ‘The IRS requirements for a person to be counted as a dependent on a taxpayer’s return and the notion of a dependent for voting registration status are not the same,’ Green said.”).

⁶⁷ There are, of course, many state scholarships, but they overwhelmingly apply not just to residents but to schools in the state. A student who went to school outside the state would lose eligibility for such a scholarship whether or not he chose to vote in the new jurisdiction, not because he was ineligible but because his school was. Thus, they are *not* the kind of scholarship that would be affected by a declaration for purposes of voting. A few states permit

their residents to use state scholarships at schools in a limited number of “reciprocal” states. Even here, however, where the student registers to vote is almost never a factor in the continuation of the scholarship. See

http://www.brennancenter.org/content/pages/svg_faq/ for a discussion of those states and their connection with student voting.

⁶⁸ On upstate New York, see, for example, “Hamilton Student Battles to Register to Vote Locally,” *The Post Standard*, Syracuse, NY, April 30, 2004, Madison edition, B1; interview with Onondaga commissioner. See also Ronald Hayduk, *Gatekeepers to the Franchise: Shaping Election Administration in New York* (DeKalb: Northern Illinois University Press, 2005), 60-2, 67-8. On Virginia, see, for example, Andrew Petkofsky, “Students’ Voting Suit Is Dropped/But Lawyer Says System Could Still Deny Others Right to Register to Vote,” *Richmond Times Dispatch*, October 15, 2005, B7.

⁶⁹ 42 U.S.C. 15483(a)(5)(A)(i).

⁷⁰ 42 U.S.C. 15483(b)(2)(A).

⁷¹ 42 U.S.C. 15484.

⁷² 553 U.S. ____ (April 28, 2008).

⁷³ Oberlin College has, for example, worked with the Ohio Secretary of State so that colleges “can issue utility bills to their students, enabling them to fulfill the state’s voter residency requirements.” Marvin Krislov, “Laying a Foundation for Voting,” *Washington Post*, April 12, 2008, A15, at <http://www.washingtonpost.com/wp-dyn/content/article/2008/04/11/AR2008041102822.html>.

⁷⁴ One estimate—from a poll conducted by Rock the Vote—is that 19 percent of 18-29 year olds do not have a government-issued photo ID with their current address. See “Supremely Wrong,” April 28, 2008, at http://www.blog.rockthevote.com/2008_04_01_archive.html.

⁷⁵ The process of obtaining a new driver’s license—at least quickly—may be a daunting one for college students. Here is a list of the steps required to obtain a New York driver’s license—assuming one has a license from another state:

- Appear in person at a [local DMV office](#).
- Complete [Form MV-44](#) (Application for Driver License).
- Pass a vision test.
- Surrender your out-of-state license.
- Show your Social Security card.
- Provide two points of [identification and proof of birth](#) in addition to your out-of-state license and SS card.

- Pay a \$10 application fee and the [driver license fee](#) with cash, check, money order, or credit card.

See <http://www.dmv.org/ny-new-york/drivers-license.php>. If a student has no car, it may be difficult even to get to a DMV office, and if the student hasn't brought sufficient ID to school, the process could be slowed significantly.

Of course, obtaining a license has the advantage that, due to the motor voter law, one can register to vote at the same time. Virginia law is especially interesting in that if you are a full-time student and employed (does part-time work at a college mean you are employed?), you must apply for a Virginia driver's license, as you are considered a resident of the state—but only for the purpose of motor vehicle laws. If you are a “non-resident temporarily living in Virginia” (do students fall under this rule?), you may drive with your home state driver's license, but only for six months. Yet no matter what you do, you may not be allowed to register to vote in the state. See

<http://www.dmv.state.va.us/webdoc/citizen/drivers/eligibility.asp>.