

The Case for Student Voting Rights

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I. Introduction: Student voter disenfranchisement in university communities

Section 1. The right of citizens of the United States, who are 18 years of age or older, to vote, shall not be denied or abridged by the United States or any state on account of age.

Section 2. The Congress shall have the power to enforce this article by appropriate legislation.

- Amendment XXVI, United States Constitution (1971).

In recent years, state and political party officials in Texas, Virginia, New York, Arkansas, Arizona, Michigan, Maine, New Hampshire, Delaware, Vermont and Washington, D.C. have attempted to prevent students from registering to vote in their university communities.¹ Viewing students as transients and wary of their influence, voter registrars, empowered with broad discretion, couple restrictive domicile requirements with private and public pressure to keep students off local voter rolls, circumvent the 26th Amendment within many college towns, and curtail youth power in politics.

For example, in 2003, Waller County, Texas, District Attorney Oliver Kitzman threatened to prosecute students for illegal voting, continuing the historically white county's 30-year long effort to bar students at historically black Prairie View A&M from local voter rolls. Then, in 2004, the registrar of Williamsburg, Virginia denied registration to students at the College of William and Mary – comprising 45% of the population of

¹ See generally the news articles, first-hand accounts and organizational reports compiled by the author in the Studentvote list archives, available at <http://lists.riseup.net/www/arc/studentvote/>. Cases of student voter suppression and attempted student voter suppression in each of these states were documented between 2000 and 2005.

Williamsburg –soon after they announced a campaign to run several student candidates for City Council. On Election Day 2004, a Republican vote challenger in New Hampshire systematically challenged the registration of hundreds of student voters in order to slow down voting lines, warning students of felonies associated with voting outside of their proper locale in an apparent effort to intimidate and drive away likely liberal voters. In 2002, residents of Arkadelphia, a liberal county in Arkansas, successfully sued to strike several hundred voters at conservative Ouachita Baptist University from their local rolls.²

The resultant disenfranchisement is two-tiered. First, students' federal voting rights are burdened, as they must either vote absentee (unlikely among inexperienced first-time voters) or travel to a place of previous residence – perhaps hundreds of miles away – on Election Day. Many students instead resign themselves to not voting, depressing youth voter turnout nationwide.³ Second, the local voting rights of affected students are entirely abolished. Students barred from local registration cannot vote on local initiatives, or for city candidates whose decisions – on city planning, taxes, housing, police jurisdiction and more – will directly affect each of their lives for four or more years.

Barriers to student voting represent an effort by entrenched interests to exclude competing political opinions, lifestyles, and in some cases, racial minorities. Rigid barriers to student voting are most common in small “college towns” or in counties where the demographic composition or political opinion of the non-student and student communities

² See also the Arkadelphia political report at <http://www.epodunk.com/cgi-bin/politicalInfo.php?locIndex=11372>.

³ The PACE Institute at Salisbury University issued a report finding a positive but inconclusive correlation between states permitting students to register locally and higher overall youth voter turnout, while states that restricted student voting saw a lower youth voter turnout. Haslup, Michael and O'Loughlin, Michael, “Democracy and College Student Voting,” Institute for Public Affairs and Civic Engagement, Salisbury University (June 2001), available at: <http://www.studentsuffrage.com/downloads/democracy%20and%20college%2032A980.pdf>.

are at odds. Interestingly, from what we know, communities where students represent a comparatively affluent constituency – *e.g.*, elite universities in working class towns, such as Yale University in New Haven, Connecticut – tend not to exclude student participation. Rather, barriers to student voting are most common in towns and counties where locally and historically powerful groups perceive burgeoning political competition from growing student populations.

Traditionally, communities have justified the exclusion of students from local politics on the basis of students’ alleged “transience.” But according to the U.S. Census Bureau, 46% of Americans moved between 1995 and 2000.⁴ Students, who tend to live in university communities for at least four years, are no longer significantly more transient than the American population as a whole. Rather, discrimination against students masks discrimination against youth and youth political opinion. The intimidation campaigns and strict domicile requirements that alternately discourage or prohibit student voting instill cynicism in young citizens at precisely that sensitive point when they are beginning to volunteer their time and thought to democratic politics.⁵

Furthermore, restrictions on student voting alter the outcomes of local elections and could tip the balance in statewide contests. Thus, student disenfranchisement creates an American political landscape, particularly on a local level, that does not accurately reflect the opinions of its citizens. We lose the ingenuity and energy that youth bring to politics,

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U.S. Census Bureau statistics 2000. [The statistics are segregated for moves within counties and beyond county borders,

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This paper employs the term “students” when it means students and “youth” when it means youth. The terms are distinct, but related, for as this paper will demonstrate, discrimination against students is often a convenient and effective proxy for otherwise prohibited discrimination against the young. The shortcoming of relating these terms is that it tends to overlook the sizable older student population. I have accounted for older students in all statistical calculations and arguments, but the unfortunate impression given that students are a uniformly young group is one I have found difficult to avoid.

and the lessons for governance we could draw as a nation from students' experiments in democracy.

For all the complaints of youth apathy, states in fact place many barriers in the path of students and other young people seeking to engage politics for the first time. Where communities cannot prevent youth participation through excessive or irrational residency requirements, they may seek to minimize it through voter intimidation or by publicly disparaging the judgment of young people. But if greater civic responsibility were conferred upon the young - their contributions valued, their participation encouraged rather than prohibited - their involvement in democracy would almost certainly deepen and bloom.⁶

The 26th Amendment guaranteed the right of young people to vote, but provided no framework to guide its application. In the absence of specific requirements, counties have discovered the means to disqualify large groups of young voters which might otherwise alter the power balance of college towns. Courts have thus far set only lenient limits on exclusionary tactics based on residency requirements.

While some students brought suffrage cases prior to 1971,⁷ the present controversy began with the newfound rights of youth voters.⁸ Prior to that time, voting in many states was limited to those 21 and over. With passage of the 26th Amendment, most

⁶ Haslup, Michael and O'Loughlin, Michael, "Democracy and College Student Voting," Institute for Public Affairs and Civic Engagement, Salisbury University (June 2001), available at: <http://www.studentsuffrage.com/downloads/democracy%20and%20college%2032A980.pdf>.

⁷ *E.g.* Thompson, William N., "The Problem of College Student Voting: Proposed Solutions," 7 Wake Forest L. Rev. 398, 399 (1971) (stating that over sixty claims of student disenfranchisement were litigated in the United States between 1813 and 1970); Eshleman, Kenneth L., *WHERE SHOULD STUDENTS VOTE?* University Press of America, Inc. (1989).

⁸ *See, e.g.*, Lal, Rakesh C. "What Johnny Didn't Learn in College: The Conflict Over Where Students May Vote," 26 Beverly Hills B. Ass'n J. 28 (1992); Aloï, Elizabeth, "Thirty-Five Years After the 26th Amendment and Still Disenfranchised: Current Controversies in Student Voting," 18 Nat'l Black L.J. 283 (2004-2005).

college-aged citizens became eligible to vote. Students in college towns, sometimes comprising half the population, were now a potentially powerful electoral bloc.

Legislative history does not reveal a clear intent on the part of Congress concerning where students should vote.⁹ Kenneth Eshleman's review of the Congressional record suggests that many legislators failed to anticipate that some students would desire to vote in their college communities.¹⁰ Many seem to have assumed that students would vote "at home" – a concept already becoming outmoded in 1971 as more students attended school away from their parents' residence. It is noteworthy, however, that several states, including Wisconsin, Illinois and Missouri, opposed the 26th Amendment explicitly on the basis that it might confer power to student voters – and lost.¹¹

Since 1971, many states have limited student participation in elections by subjecting students to "extra questions," or more exacting requirements, in residency inquiries.¹² Other tools have included multi-factor domicile tests that, when coupled with broad voter registrar discretion to interpret applicants' answers, tend to preclude students, but few other potential voters, from registering locally.¹³ This is what happened in Williamsburg, Virginia. Students have challenged residency requirements and registrar questionnaires in court dozens of times, with varying degrees of success. Some victories

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E.g., Kenneth L. Eshleman, "WHERE SHOULD STUDENTS VOTE?" University Press of America (1989), Chapter 1.

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Id.

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Guido, Kenneth J., "Student Voting and Residency Qualifications: The Aftermath of the Twenty-sixth Amendment," 47 N.Y.U. L. Rev. 32, 40-41 (1972). "The proponents of the amendment may have been equivocal whether it might be construed so as to require states to register students where they went to school, but the unsuccessful opponents of the amendment were not. They opposed the twenty-sixth amendment on the grounds that it would entitle students to register to vote in their college towns." *Id.*

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Lal, Rakesh C. "What Johnny Didn't Learn in College: The Conflict Over Where Students May Vote," 26 Beverly Hills B. Ass'n J. 28 (1992).

¹³

See section III, *infra*.

have changed registrar practice in some states, setting valuable precedent.¹⁴ But many judicial remedies have been narrowly tailored to compel only a particular student's registration or strike down a particular questionnaire.¹⁵ Having received little guidance from the Supreme or circuit courts, most states prefer to err on the side of conservatism, and leave it to state legislatures to debate and amend inequity in student voting.

Furthermore, in a classic example of process failure, structural barriers prevent student groups from effectively petitioning for reform. How can students organize to change a state's residency requirements if they are not permitted to vote in the state? How can they challenge the practice of a county registrar when they are not recognized as residents of the county? Barriers to students' ability to organize in their self-interest are a strong argument for robust judicial redress or federal legislative intervention.¹⁶

This paper will introduce novel theories arguing that restrictions on the student franchise are unconstitutional and should be replaced with basic domicile standards of presence, legitimate community interest, and maintenance of only one residence for voting purposes. Part II includes case studies from Williamsburg, Waller County and Arkadelphia. Part III explores the particular procedures employed to keep students off voter rolls, including extra residency questions, domicile requirements, and registrar discretion. Part IV argues that these procedures are unconstitutional, burdening the fundamental rights to vote and travel without compelling interest or narrow tailoring. It situates student voting

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E.g., *Jolicoeur v. Mihaly*, 5 Cal. 3d 565 (1971); *Wilkins V. Bentley*, 189 N.W.2d 423 (1971). [Need more detailed info on this point.]

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E.g., *Symm v. United States*, 439 U.S. 1105 (1979), *affirmed without opinion*, *United States v. Texas*, 445 F. Supp. 1245 (1978).

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Several commentators have developed model statutes for the consideration of legislatures. *See* Lal, Rakesh C. "What Johnny Didn't Learn in College: The Conflict Over Where Students May Vote," 26 Beverly Hills B. Ass'n J. 28 (1992); Thompson, William N., "The Problem of College Student Voting: Proposed Solutions," 7 Wake Forest L. Rev. 398, 399 (1971).

rights in the context of the 26th Amendment, contending that student disenfranchisement amounts to statistical, *de facto* youth disenfranchisement in many towns. As Part V concludes, burdens on the student franchise undermine valuable dynamism in democracy.

II. Case Studies in Student Disenfranchisement

A. Williamsburg, Virginia

Home to the College of William and Mary, Williamsburg's population in the year 2000 consisted of 5,403 students and 6,595 non-students – a ratio archetypal of the notion of a college town.¹⁷ Williamsburg is governed by a five-seat City Council for which the city holds staggered biannual elections.¹⁸ Each member serves a four-year term. The council itself selects the mayor from among its members; tradition holds that this is the member receiving the greatest number of votes. Council members rarely receive more than 1,000 votes. No student has ever held a seat on the city council.

In 2004, the council announced a resolution to limit the number of non-related individuals who could live inside one house, to be enforced by inspection.¹⁹ Some non-student residents found the habits of student renters, with new people constantly coming and going, objectionable. The resolution came on the heels of a series of initiatives seemingly aimed at pushing rental housing outside the city limits – further from interested non-student residents, and also further away from campus.²⁰

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U.S. Census Bureau statistics 2000 for the City of Williamsburg, available at: <http://www.epodunk.com/cgi-bin/popInfo.php?locIndex=25766>.

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City of Williamsburg official website, <http://www.ci.williamsburg.va.us/dept/council/index.htm>.

¹⁹ On file with author.

²⁰ *Id.*

Students and their allies, already discontented with additional housing and noise ordinances and the perceived overzealous police scrutiny of students, organized for change. A community group calling itself the Williamsburg's Future Campaign, consisting of both students and non-students, decided to run a slate of student and student-friendly candidates for city council (full disclosure: the author is a founding member).²¹ They anticipated their primary difficulty would be persuading sufficient numbers of students to register locally and to vote on Election Day.

Instead, then-voter registrar R. Wythe Davis refused to register any of the three student candidates.²² The reason: only locally registered voters can run for local office. "There is a checklist that we use for anybody we think may have a nonpermanent address," Davis said. "It's not just students, by the way, it's anybody in temporary housing."²³

But it is difficult to say with what consistency the checklist – an example of the multifactor residency tests described in Part III – was applied. News sources reported that, “other W&M students say they encountered relatively little resistance when they attempted to register prior to the candidacy announcements from their fellow students.”²⁴ This author registered to vote one week after moving into a Williamsburg dormitory in 1998, with a city official tabling on the college campus -- no questions asked.²⁵ Perhaps 200 other

²¹ Maybarduk, Peter and Sobel, Gina, “Students want a voice,” Virginia Gazette op-ed, February 25, 2004.

²²

“W&M would-be candidates hit snag: voter-registration rules may keep students off ballot for Williamsburg council seats,” Associated Press/Richmond Times Dispatch, February 18, 2004. *See also* MTV News, “Is Williamsburg Giving College Students The Shaft?” April 6, 2004, available at: <http://lists.riseup.net/www/arc/studentvote/2004-05/msg00002.html>.

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MTV News, *supra* note 12.

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Id. “Peter Park registered with ease in September, though he's from out of town and used his campus address on his voter application.”

²⁵

Registration form on file with author.

students are on the Williamsburg voter rolls.²⁶ What standards, what level of inquiry, applied to them?

The strict review given William and Mary students seems to have coincided with their publicly announced plans to register students *en masse* and run for city council. The Williamsburg Daily Press, ran a news article headlined “Williamsburg changes student voting rules.”²⁷ One student candidate obtained registration, but only after he withdrew from his classes and moved off campus.²⁸ The campaign’s subsequent renewed registration efforts collected 150 registration applications. Only a few were approved.²⁹

In the eventual spring elections, only one student candidate, Robert Forrest, successfully registered and qualified for the ballot. Two other students filed court challenges. Serene Alami’s petition was denied.³⁰ Luther Lowe initially qualified on the basis of his six-year contract with the Virginia National Guard. But Lowe was subsequently disqualified as a candidate, because some of his candidacy signatures were obtained by an unregistered voter – Serene Alami, his prospective, but ultimately disallowed, running mate. Robert Forrest, the surviving student candidate, received about 250 votes. With few students registered and much of the campaign’s resources diverted to fighting the candidate’s registration battles, Forrest was unable to gain enough traction from non-student voters to earn a seat on the council and vote for student interests.

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See section IV.1, *infra*.

²⁷

Sashin, Daphne, “Williamsburg changes student voting rules,” Williamsburg Daily Press, February 17, 2004.

²⁸

“With the dust nearly settled, only Forrest has managed to register and make it onto the election roster — but he had to drop out of school, move off campus and get a local job to make it happen.” MTV News, *supra*.

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[I will need to collect these precise statistics.]

³⁰

Sashin, Daphne. “W&M student sues to vote,” Williamsburg Daily Press, February 27, 2004.

Williamsburg demonstrates the disenfranchisement that can result when multi-factor domicile tests are coupled with broad registrar discretion. Approximately 4,000 of 5,638 non-student potential voters are actually registered to vote in Williamsburg – a 71% registration rate.³¹ By contrast, perhaps 200 of 5,403 student residents are registered to vote locally – just 3.7%.³² The number of student registrants is reduced first by domicile test factors (Part III), then by the registrar’s judgment, and finally, and most pervasively, by the ensuing widespread impression that students cannot register locally, or certainly not in numbers sufficient to elect candidates of their choice. This deters many students from applying and hinders the emergence of a student body invested and engaged in local affairs. In Williamsburg, a student body comprising 45% of the population has been reduced to less than 5% of the electorate.³³

B. Waller County, Texas

Waller County, Texas is 58% white, with much of its 29% African-American population concentrated in or around Prairie View, a city that is 93% black. Many, perhaps most, of Waller County’s African-American residents are students at Prairie View

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Id. Subtracting 5,403 students and 937 persons 15 and under from Williamsburg’s total population, we see that there are approximately 5,638 non-student potential voters in Williamsburg (we will generously discount the unknown number of non-students aged 16-18). Now, subtracting the approximate number of students - 200, but we’ll again be generous and make the math easy by saying 258 – from the total number of registered voters, we find about 4,000 non-students registered to vote in Williamsburg.

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Id. Between 184 and 217 18-21 year olds were registered in 2003, depending on the date applied. Students constitute the vast majority of the age group. Allowing for some college students over the age of 21 and some non-students within the same age group, a registered student population of 200 is probably a safe estimate. A reasonable range of the registration rates above is probably 70-80% for non-students, 3-5% for students.

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[While I do not have the statistics presently, I am confident that these registration rates are significantly lower than those in university towns permitting student choice registration. I will address this in future drafts.]

A&M, a historically black university of about 7,000 students.³⁴ Since 1966, Prairie View students have fought for the right to vote in Waller County. And since 1966, Waller County officials have found the means to prevent most Prairie View students and, hence, most African-Americans in Waller County, from voting. By deeming the individuals comprising this ever-present segment of their community non-residents, Waller County has maintained its electoral status quo against the tide of the civil rights movement.

Initially, Waller County officials opposed to student voting relied on Texas Constitution Article 5.08(k), which effectively maintained a presumption that students were not residents unless they could demonstrate intent to remain in the county indefinitely. In *Whatley v. Clark*, 1972, a U.S. district court struck down this provision as violating equal protection, because it burdened the fundamental right of voting for an identifiable class with no compelling state interest.³⁵

Thereafter, Waller County tax assessor and registrar Leroy Symm instead used a lengthy questionnaire – applied only to applicants with a campus address – to select out students from the voter rolls. The questionnaire asked potential voters about property ownership, automobile registration, intent to remain in the county, and whether the potential voter was a student. In 1976, Prairie View students organized a voter registration drive, submitting over 700 student voter registration forms. Symm mailed back about 540 registration questionnaires. Many students failed to reply; others completed the questionnaire but were eventually disqualified by Symm. Only 27 students successfully

³⁴ U.S. Census Bureau 2000 statistics for Waller County show a total population of 32,088, with 18,889 white residents and 9,553 African-American or black residents.

³⁵ *Whatley v. Clark*, 482 F.2d 1230, 1232-34.

registered. Student organizer Sidney Hicks drove 300 miles home to Navarro County in order to vote on Election Day.

The students brought suit, and three years later, in *Symm v. US*, the Supreme Court affirmed a district court opinion stating *Symm* effectively and impermissibly maintained a presumption of nonresidency of students.³⁶ But the judgment was narrow, the Supreme Court's affirmation without opinion, and it remained unclear what registrar practices might be impermissible after *Symm*.

Prairie View's voting troubles were far from over. As recently as 2004, county officials worked to stymie student votes. Waller County District Attorney Oliver Kitzman published a letter in the Waller Times warning Prairie View students who attempted to vote in Waller County that they were committing a felony and could face prosecution. The Lawyers Committee for Civil Rights, ACLU and regional attorneys teamed up to seek affirmation that the District Attorney's actions should be covered by the order enjoining *Symm*, and ultimately succeeded.

But it is still not clear that residency considerations cannot prevent Prairie View students from registering locally. Students have taken their fight for voting rights to court at least five times in Waller County since 1972. Even when they have won, their victories have often been so narrow that Waller County needed only adjust its exclusionary tactics – from a constitutional provision to a targeted questionnaire to more generalized registrar discretion – to keep students off voter rolls. It will take broader legal victories – constitutional arguments that effectively prohibit burdens on the right and travel due to student status – to ensure future classes will have the right to vote in their university towns.

³⁶ *Symm v. US, US v. Texas*, 445 F. Supp.

C. Arkadelphia, Arkansas

In 2002, the son of an Arkansas Democratic candidate for office sued to prevent students at conservative Ouachita Baptist University from voting in liberal Arkadelphia, Arkansas. Polls indicated students at Ouachita favored the GOP four to one over the Democratic Party. Mr. Curry alleged student votes unlawfully diluted the votes of he and other permanent residents. A circuit judge agreed, and struck over 900 students from the rolls. His decision was reversed when the Governor's daughter, a student at Ouachita, sued for the right to vote. But the case of Arkadelphia shows that barriers to student voting do not necessarily favor one political party or another. Rather, the politically advantaged often choose to restrict the student franchise in order to keep opposing, minority political forces at bay.

III. Burdens on the student franchise: Extra questions, domicile requirements and registrar discretion

Opponents of local student voting employ three basic tactics: private and public pressure, "extra questions" in residency inquiries, and multi-factor domicile tests leaving broad interpretive powers to voter registrars.³⁷

Briefly, examples of private and public pressures exerted on students include threats (some accurate, others false) that voting locally could jeopardize their student grants (Pennsylvania 2004),³⁸ ominous warnings from state officials that voting in the wrong

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Other voting regulations may pose a threat to the student franchise, but do not appear to be systematically aimed at preventing students from voting. See, e.g., Aloi, Elizabeth, "Thirty-Five Years After the 26th Amendment and Still Disenfranchised: Current Controversies in Student Voting," 18 Nat'l Black L.J. 283 (2004-2005) (contending that ID requirements under the Help America Vote Act disparately impact students, who are less likely to carry federal ID matching their local address).

³⁸

county is a crime (Arizona 2004),³⁹ and the disparate and extensive vetting of student affidavits on election day, slowing down voting lines (New Hampshire, 2002).⁴⁰ Each approach aims to intimidate or otherwise deter potential voters. This article, however, focuses on structural and systemic, rather than social or sporadic, tools of exclusion.⁴¹

A. The “Extra questions” approach

Under the “extra questions” approach, voter registrars ask questions of students they do not ask of other potential voters.⁴² In Waller County, for example, the voter registrar required most applicants to fill out a single registration form. But he mailed a second form – a lengthy questionnaire – to applicants whose first form showed a campus address. Hundreds of students dropped out of the local registration process between filling out their initial form and turning in the questionnaire.

State courts split as to whether student status may trigger additional inquiry into residency. Proponents of this view claim that it allows for a more accurate assessment of residency, because student status creates a rebuttable presumption of non-residency (as in the Texas state Constitution before the provision was invalidated). Opponents say that asking students extra questions students violates equal protection.⁴³ This is the most

Rubinkam, Michael, “College voters lose Pennsylvania grant money if they vote out of state,” Associated Press, October 22, 2004, *available at*: <http://lists.riseup.net/www/arc/studentvote/2005-01/msg00000.html>.

³⁹

“Fox Affiliate Releases Correction in Response to Voter Suppression Allegations,” Feminist Daily News Wire, September 30, 2004, *available at*: <http://lists.riseup.net/www/arc/studentvote/2004-09/msg00029.html>.

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Sacirbey, Omar, “Student Voters Stalled,” Valley News, November 6, 2002, *available at*: <http://lists.riseup.net/www/arc/studentvote/2004-07/msg00004.html>.

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[I should still expand this section. It adds to the import of the issue and extent of the problem, and most of these instances will not have been described in print except possibly in local newspapers.]

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Lal, Rakesh C. “What Johnny Didn’t Learn in College: The Conflict Over Where Students May Vote,” 26 Beverly Hills B. Ass’n J. 28, 33 (1992); *see also* Issacharoff, Samuel, Karlan, Pamela S., Pildes, Richards H., *THE LAW OF DEMOCRACY*, Foundation Press (2002) at 65.

⁴³

common constitutional challenge to restrictions on the student franchise. Perhaps the pertinent question is whether extra questions discriminate among qualified voters, or are a legitimate and more precise method of determining whether a voter is qualified in the first place. Courts split,⁴⁴ and at present the positions of most jurisdictions on extra questions seems relatively stable. Since the exclusion of students persists, it is prudent to explore new legal grounds for redress.

B. Domicile requirements

Courts agree that residence, for voting purposes, means domicile.⁴⁵ Black's Law Dictionary defines domicile as a person's "true, fixed, permanent and principal home."⁴⁶ It is generally considered to have two elements: 1) actual residence and 2) intent to remain.⁴⁷ The meaning of "intent to remain" is somewhat unclear.⁴⁸ Some statutes employ the phrase "no present intention of leaving," others the more restrictive "affirmative intent to remain indefinitely," or "permanently."⁴⁹ One commentator suggests that the latter phrases

E.g. Guido, Kenneth J., "Student Voting and Residency Qualifications: The Aftermath of the Twenty-sixth Amendment," 47 N.Y.U. L. Rev. 32 (1972); Thompson, William N., "The Problem of College Student Voting: Proposed Solutions," 7 Wake Forest L. Rev. 398 (1971).

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See e.g. Jolicoeur v. Mihaly, 5 Cal.3d 565 (1971) (ruling that registrars may not specially question applicants based on age or occupation); *but see Auerbach v. Rettaliata*, 765 F.2d 350 (2d Cir. 1985) (upholding a statute subjecting members of certain classes, deemed more likely to include transients, to closer scrutiny).

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Reiff, Jonathan D., "Ohio Residency Law for Student Voters – Its Implications and a Proposal for More Effective Implementation of Residency Statutes," 28 Clev. St. L. Rev. 449, 457 (1979). "It is clear, however, that residency law for the purposes of voting is the common law of domicile." *Id.*

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BLACK'S LAW DICTIONARY, Seventh Edition, West Group (1999).

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E.g., "Residence of students for voting purposes," 44 American Law Reports 3d 797, §2[a] (2005).

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See, e.g., Addison, Roger G., "Conflict of Laws: Establishment of Student Voter Domicile in Oklahoma," 30 Oklahoma Law Review 194 (1977).

⁴⁹

E.g. Guido, Kenneth J., "Student Voting and Residency Qualifications: The Aftermath of the Twenty-sixth Amendment," 47 N.Y.U. L. Rev. 32, 33 (1972).

are not to be interpreted literally, but rather as terms of art, indicated under the Restatement of Conflicts to mean “for the time at least.”⁵⁰ But in many jurisdictions, registrars retain the option to interpret the terms as they see fit.

Ascertaining a voter’s intent to remain is not a straightforward matter, either. Registrars may ask for a voter’s expressed intent, but many jurisdictions require that expressed intent be accompanied by what we might call manifest intent – the demonstration of intent to remain through living patterns and affiliations. These often take the form of multi-factor tests provided by state statute. Virginia’s residency guidelines are typical:

Registrars in Virginia bear the responsibility of determining if applicants are eligible to vote in their localities. Under Virginia Code §24.2-101, registrars may give consideration to at least the following factors in determining domicile:

1. A person's "expressed intent", AND
2. A person's "conduct and all attendant circumstances", including, but not limited to:
 - a. financial independence
 - b. business pursuits
 - c. employment
 - d. income sources
 - e. residence for income tax purposes
 - f. marital status and children
 - g. residence of parents

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Reiff, Jonathan D., “Ohio Residency Law for Student Voters – Its Implications and a Proposal for More Effective Implementation of Residency Statutes,” 28 Clev. St. L. Rev. 449, 466-67 (1979).

- h. leaseholds and ownership of real property
- i. where automobiles and other personal property are registered and taxed.⁵¹

C. Registrar discretion

Virginia's statute is also typical in that it leaves to registrars "the responsibility of determining if applicants are eligible to vote in their localities."⁵² Local voter registrars assess the evidence and decide whether the balance of factors weighs in favor of affirming local domicile. In most states, the two avenues of appeal are the courts and local election boards.⁵³

This combination of multi-factor tests and registrar discretion is a recipe for disenfranchisement in towns with large, and thus potentially powerful, student populations. To begin, many of the factors listed by state statutes discriminate against students without providing reliable evidence of their residency intentions (*see* section IV.A, 3-5, *infra*). But furthermore, with no precise indicia measuring residency, it is easy for a registrar to set his or her own standards at the precise point where they are likely to disenfranchise students, or to weigh heavily certain factors that students will have a hard time fulfilling, or even to apply different standards to each applicant. This last possibility was the reason the Michigan Supreme Court, in *Wilkins v. Bentley*, held that statutes granting registrars discretion resulting in different standards applied in different parts of the state are

⁵¹ Virginia State Board of Elections residency guidelines, available at: <http://lists.riseup.net/www/arc/studentvote/2004-05/msg00004.html>.

⁵²

Id.

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In Virginia, electoral boards are appointed by the Circuit Courts, which in turn appoint General Registrars to four-year terms. City of Fairfax, Virginia, "Overview of the Electoral Process," available at <http://www.fairfaxva.gov/Registrar/Overview.asp>.

unconstitutionally vague.⁵⁴ This remains a strong legal argument in the student voting rights toolkit. Thus far, many states appear to have resisted its logic.

IV. Challenging the burdens: Equal protection and the 26th Amendment

Students and their advocates often challenge disenfranchisement on a case by case basis by arguing that a particular student does, in fact, satisfy local residence criteria. But advocates can also challenge the constitutionality of domicile requirements, extra questions and registrar discretion under the Equal Protection Clause and the 26th Amendment. To the aforementioned theories of unconstitutional vagueness in registrar discretion and equal protection violations in extra questions, this paper adds novel arguments.

A. Fundamental rights

The Equal Protection Clause guarantees equal laws and equal enforcement of laws.⁵⁵ Government may not treat citizens differently without rational basis. While many government actions survive this rational scrutiny, burdens on certain fundamental rights “must be closely scrutinized and carefully confined,”⁵⁶ and survive only if government demonstrates a compelling interest and narrow tailoring of its classification.

This section contends that registrar discretion, “extra questions” and domicile requirements, as described in Parts II and III, burden the fundamental rights to vote and travel, do not further compelling government interests, and are not narrowly tailored. First, it will cite Supreme Court jurisprudence identifying voting and travel as fundamental rights. Second, it will demonstrate the real and significant burdens these registration

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Wilkins v. Bentley, 189 N.W.2d 423 (1971).

⁵⁵ *See., e.g.*, Barron, Jerome A. and Dienes, C. Thomas, CONSTITUTIONAL LAW (2003) at Chapter VI.

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Harper v. Virginia State Board of Elections, 383 U.S. 663 (1966).

restrictions place on the rights to vote and travel. Third, it will show that the government interests in these restrictions amount to discrimination on the basis of viewpoint and occupation, illegal under the principles of *Carrington v. Rash*.⁵⁷ Illicit interests cannot be compelling. But even if government interest in keeping “transients” off the rolls were deemed compelling, the practices employed to protect this interest are over and under-inclusive. Registration standards could be more narrowly tailored to distinguish between long term and short-term residents, rather than between students and non-students. Hence, the barriers commonly used to disenfranchise students violate equal protection.

1. Voting and travel are fundamental rights

i. Voting

Since 1886, the Supreme Court has considered voting “A fundamental political right...preservative of all rights.”⁵⁸ Indeed, it is the foundational right of fundamental rights jurisprudence. In *Reynolds v. Sims*, the Court wrote, “[A]ny alleged infringement of the right to vote must be carefully and meticulously scrutinized.”⁵⁹ Subsequent voting cases, including *Kramer v. Union Free School District*⁶⁰ and *Dunn v. Blumstein*,⁶¹ which explicitly addressed the constitutionality of residency requirements, have consistently applied fundamental rights analysis. As John Hart Ely and others have explained, courts

⁵⁷ 380 U.S. 89 (1965).

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Yick Wo v. Hopkins, 118 U.S. 356 at 370 (1886).

⁵⁹ *Reynolds v. Sims*, 377 U.S. 533 (1964).

⁶⁰ 395 U.S. 621 (1969).

⁶¹ 405 U.S. 330 (1972). The Court stated that durational residence requirements are unconstitutional “unless the state can demonstrate that [they] are ‘necessary to promote a compelling governmental interest.’”

jealously, and sensibly, guard the right to vote, for burdens on the franchise would all too easily allow those in power to “chok[e] off the channels of political change.”⁶²

ii. Travel

In 1969, the Supreme Court wrote, “the nature of our Federal Union and our constitutional concepts of personal liberty unite to require that all citizens be free to travel throughout the length and breadth of our land uninhibited by statutes, rules or regulations which unreasonably burden or restrict this movement.”⁶³ The Court has cited this fundamental right to travel recurrently since 1868,⁶⁴ and used it to strike down durational residence requirements for voters,⁶⁵ welfare recipients,⁶⁶ and recipients of aggregated state income.⁶⁷ As Justice Marshall wrote in his concurring opinion in *Zobel*, burdens on the right to travel usually mask a belief that “some citizens are more equal than others,” a premise rejected by the Equal Protection clause.

2. Extra questions, domicile requirements and registrar discretion burden the fundamental rights to vote and travel

i. Burdening the right to vote

⁶² J. Ely, *DEMOCRACY AND DISTRUST* 77, 101-103 (1980).

⁶³ *Shapiro v. Thompson*, 394 U.S. 618 (1969).

⁶⁴ *Crandall v. Nevada*, 73 U.S. (6 Wall.) 35 (1868).

⁶⁵ *Dunn v. Blumstein*.

⁶⁶ *Shapiro*; see also *Staenz v. Roe*, 119 S. Ct. 1518 (1999).

⁶⁷ *Zobel v. Williams*, 457 U.S. 55 (1982) (holding Alaska could not condition disbursement of state income from natural resources on the length of a resident’s residence).

Parts II and III, *supra*, explore tactics used to exclude student voters from the polls. This section will demonstrate that these techniques effectively, statistically burden the right to vote, reducing registration rates among those they target.

Domicile requirements, coupled with registrar discretion, disparately exclude students from local registration. As Williamsburg illustrates, when state laws give local voter registrars the unmitigated authority to weigh a wide array of factors in determining residency, they provide registrars the opportunity to apply residency standards differently to each candidate.⁶⁸ This discretion can easily result in the disparate exclusion of students (or other groups) where a particular registrar retains strong opinions or where non-student public opinion considers students to be transients. Additionally, the particular factors chosen by states to test intent to remain—such as property ownership, marital status, employment and financial independence—tend to exclude students regardless of their residency intentions (*see* “occupation discrimination,” *infra*).

Statistics demonstrate the severe extent of this disparate exclusion. Williamsburg has a population of 11,998.⁶⁹ Approximately 4,000 of 5,638 non-student potential voters are actually registered to vote in Williamsburg – a 71% registration rate.⁷⁰ By contrast, perhaps 200 of 5,403 student residents are registered to vote locally – just 3.7%.⁷¹ In

⁶⁸ This itself is likely illegal. Some courts – like the Supreme Court of Michigan in *Wilkins v. Bentley* – may find such a statute itself in violation of equal protection, because it grants the authority to treat voters differently. Others could find it violates due process. A voter so discriminated against would have a cause of action against the registrar, but proof may be difficult to obtain, and the remedy likely narrow and too late for that voter.

⁶⁹ U.S. Census Bureau statistics 2000 for the City of Williamsburg, available at: <http://www.epodunk.com/cgi-bin/popInfo.php?locIndex=25766>.

⁷⁰

Id. Subtracting 5,403 students and 937 persons 15 and under from Williamsburg’s total population, we see that there are approximately 5,638 non-student potential voters in Williamsburg (we will generously discount the unknown number of non-students aged 16-18). Now, subtracting the approximate number of students - 200, but we’ll again be generous and make the math easy by saying 258 – from the total number of registered voters, we find about 4,000 non-students registered to vote in Williamsburg.

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Williamsburg, a student body comprising 45% of the population has been reduced to less than 5% of the electorate.⁷²

It is true that some students would choose to register elsewhere, or not register, were they given the option. But permitting students their choice of registration sites would allow them to develop a culture of local civic engagement, and increase the number of student voters with time. In Williamsburg, and other college towns like it, restrictions on student registration, through domicile requirements, broad registrar discretion and local bias against student political participation, have precluded even the possibility of meaningful student participation at the ballot box. Domicile requirements, extra questions and registrar discretion, self-evidently burdens on the franchise, also drive low student voter turnout.

ii. “Intent to remain” requirements burden the right to interstate travel.

In *Dunn v. Blumstein*,⁷³ the Supreme Court held that a Tennessee county’s durational residence laws infringed two fundamental rights – the right to vote and the right to travel. Specifically, by requiring that residents live in the state for a given period of time before they became eligible to vote, the laws punished those residents who had recently

Id. Between 184 and 217 18-21 year olds were registered in 2003, depending on the date applied. Students constitute the vast majority of the age group. Allowing for some college students over the age of 21 and some non-students within the same age group, a registered student population of 200 is probably a safe estimate. A reasonable range of the registration rates above is probably 70-80% for non-students, 3-5% for students.

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[While I do not have the statistics presently, I am confident that these registration rates are significantly lower than those in university towns permitting student choice registration. I will address this in future drafts.]

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405 U.S. 330 (1972).

traveled from another state. By analogy, intent to remain requirements also burden the right to travel – by punishing residents who plan to travel in the future.

Residency standards gauging intent to remain single out local residents who have not decided to make their current place of residence a permanent home. While we have no statistics indicating whether some students curtail their plans to travel in order to vote locally,⁷⁴ this information is unnecessary. It is enough that laws condition freedom to travel and to plan on mobility on potentially forfeiting the right to vote in local elections.

The *Dunn* court distinguished illicit durational residency requirements from ‘bona fide’ residency requirements. Bona fide residence is partially defined in *Carrington* as the “intention of making [the state one’s] home indefinitely.”⁷⁵ The Court in *Dunn* and *Carrington v. Rash (infra)* left intact states’ rights to maintain bona fide residence requirements, citing the rights of polities to set reasonable voter qualifications and the importance of maintaining a community of interest (see section IV.4, *infra*).⁷⁶

But should a county be able to require that a resident intend to make the county her home for the indefinite future? A present-day resident is a present-day resident, no matter her future intentions. Prohibiting a citizen from voting in a county in which she has a clear, present and daily interest because her future plans suggest that she will one day leave places a serious burden on her rights.

This point is especially salient in light of the transience of the modern American citizenry,⁷⁷ something the *Dunn* court did not consider. But it may deserve the attention of

⁷⁴ It is admittedly unlikely that many students would do so.

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380 U.S. at 94.

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See Reynolds, Christopher J., “State residency Requirements for Purposes of Voting: The Eligibility of Students to Vote in their College Communities,” 21 American University Law Review 774, 787 (1972).

⁷⁷

future courts and legislatures, According to the U.S. Census Bureau, 46% of Americans moved between 1995 and 2000.⁷⁸ Many Americans routinely move to new locations with the intention of a finite stay. This should not mean that they are unable to vote on issues that will affect them while they remain. Consider Americans who move every few years to pursue new job opportunities, or move as a company requires them. Should they be prevented from ever voting in local elections in any of their temporary homes?

Intent to remain requirements are an outmoded means of testing domicile. Retaining them punishes mobile Americans – conceivably up to half the American population – by questioning their right to vote where they live.⁷⁹ These requirements should be replaced by more realistic standards: actual residency and retaining registration in no more than one location. Alternatives to domicile requirements and narrow tailoring will be discussed in greater detail in section (d), *infra*. Because many Americans are now likely not only to have moved *recently* from another state, but also to be aware of their *next* likely move, domicile requirements burden the fundamental right to travel.⁸⁰

3. No compelling interests support barriers to student voting

See generally Reiff, Jonathan D., “Ohio Residency Law for Student Voters – Its Implications and a Proposal for More Effective Implementation of Residency Statutes,” 28 Clev. St. L. Rev. 449, at 458 (1979). “[The common law of domicile] developed in an era in which people infrequently moved from one location to another.” *Id.* at 458. “Given this type of social mobility, requiring an intention to reside permanently, or even indefinitely, would disenfranchise vast numbers of fully employed, self-supporting, taxpaying citizens.” *Id.* at 462-63.

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U.S. Census Bureau statistics 2000. [The statistics are segregated for moves within counties and beyond county borders,

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It is worth noting – though unnecessary to the legal argument – that in practice, students bear a disproportionate burden on their right to travel. Most mobile non-students, at present and despite the letter of the law, are not barred from voting where they presently live. Students, as we have seen, are not so fortunate. But if half the American population moves every five years, why should students, who are generally four-year minimum residents of university communities, be classified as transients?

⁸⁰ For further discussion of the only loosely rational fit between geography, residency, and meaningful political community, *see The Law of Democracy, supra*.

When the state burdens a fundamental right, “the Court must determine whether the exclusions are necessary to promote a compelling state interest.”⁸¹ States must similarly justify their burdens on the fundamental rights to travel and vote.⁸² Far from being compelling, some common state interests served by imposing discretionary domicile requirements constitute unconstitutional discrimination on the basis of viewpoint and occupation. Illicit interests cannot be compelling. But even the constitutionally valid reasons we might discern for domicile requirements and registrar discretion are not sufficiently compelling to withstand the strict scrutiny demanded of burdens on fundamental rights.

i. Constitutionally impermissible interests: viewpoint and occupation discrimination

*Carrington v. Rash*⁸³ held unconstitutional two common motivations for excluding discernible groups of local voters. In *Carrington*, a Texas constitutional provision prohibited members of the Armed Forces who moved to Texas during their tenure from voting in state elections.⁸⁴ Texas argued that the concentrated votes of military personnel could “overwhelm a small local civilian community.”⁸⁵ The Supreme Court struck down this provision as violating equal protection, holding that “‘Fencing out’ from the franchise a sector of the population because of the way they may vote is constitutionally

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Kramer v. Union Free School District No. 15, 395 U.S. 621. See also *Dunn v. Blumstein*, 405 U.S. at 337: “‘It is certainly clear now that a more exacting test [than reasonable relation] is required for any statute that ‘place[s] a condition on the exercise of the right to vote.’”

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

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380 U.S. 89 (1965).

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380 U.S. at 89.

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Id. at 93.

impermissible.”⁸⁶ The *Carrington* Court also recognized disenfranchisement based on occupation as grounds for an equal protection claim, stating, “There is no indication in the Constitution that...occupation affords a permissible basis for distinguishing between qualified voters within the state.”⁸⁷ The Court does not identify the constitutional grounds for this prohibition. But the most likely and logical grounds would be that viewpoint and occupation discrimination are not compelling reasons to burden the fundamental right to vote.

Registrars and state officials today are less likely to state openly that their registration practices intend to “fence out” a part of the population. But intentional discrimination against students would still be illegal under *Carrington v. Rash*. There is little, if any, reason to intentionally exclude student voters apart from the effect of their votes – that is, their political viewpoints. And while some may argue that student status is preparation for an occupation rather than an occupation itself, being a student is a full-time, primary and professional pursuit. The commitment required of students generally excludes the possibility of concurrently pursuing any other primary occupation. Intentional discrimination against students would therefore constitute discrimination on the basis of viewpoint and occupation, illegal under *Carrington* and certainly not compelling reasons to burden the vote.

Demonstrating this illicit discrimination requires proof that domicile requirements and other registration practices intentionally discriminate against students, rather than, for example, transients as a whole.⁸⁸ There are four potential sources of evidence for this

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Id. at 94.

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“There is no indication in the Constitution that...occupation affords a permissible basis for distinguishing between qualified voters within the state.” 380 U.S. at 95-96, quoting *Gray v. Sanders*, 372 U.S. 368, 380.

⁸⁸

intent to discriminate. The first would be state officials openly stating the need to safeguard “local” votes against student votes, or to insulate local ballot resolutions from students’ political opinions. In *Carrington*, a town reasoned similarly that it should be able to insulate “local” votes against military personnel stationed at a local base. The Supreme Court held that this reasoning constituted discriminatory intent, and found the town’s practices in violation of equal protection. But such statements are infrequent today, perhaps due to increased awareness of the unconstitutional risk they run, and may be difficult to discover.⁸⁹

The other sources are secondary, in that they require an inferential step between the evidence and a conclusion of intent. We can infer discriminatory intent from records of public debate, voter registration statistics and voter residency guidelines.⁹⁰ In Texas,

Cases that have failed to bar discrimination against students on equal protection grounds often implicitly assume that discrimination is not usually leveraged against students because of their student status, but rather is incidental to their transience and communities’ legitimate interest in excluding transients. The preceding sections on discriminatory intent and effect demonstrate that discrimination against students is in fact often too precise to be a mere byproduct of attempts to exclude transients.

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Some official statements come close – see letter of Mayor Jeanne Zeidler, City of Williamsburg, to students of the College of William and Mary, fall 2004. On file with author.

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Case law standards governing when statistics will adequately support an inference of discriminatory intent in equal protection cases do not govern this inquiry. The evidence here supports a different sort of analysis – that reasons for the challenged registration practices are not compelling. However, equal protection cases permit inferences of intent in circumstances analogous to our own. This footnote thus analyses these cases for their parallel and persuasive, though not direct or controlling, authority.

Discriminatory intent in an equal protection claim may be inferred from statistics, policies and actions of state officials, when direct evidence is unavailable and secondary evidence is highly suggestive or probative of such discriminatory intent. In *Arlington Heights v. Metropolitan Housing Corp*, the Supreme Court wrote, “Sometimes a clear pattern, unexplainable on grounds other than race, emerges from the effect of the state action even when the governing legislation appears neutral on its face. The evidentiary inquiry is then relatively easy.” 481 U.S. 279 (1987). The *Arlington Heights* Court was unconvinced by statistics of housing discrimination presented. But in *Rogers v. Lodge*, the Court upheld a district court finding that a county government maintained an at-large electoral system for invidious purposes. 458 U.S. 613 (1982). In *Rogers*, similar to students in Waller County and Williamsburg, Burke County’s historically majority black population remained a minority of registered voters. The Court found that the absence of any black elected officials was “important evidence of purposeful exclusion” where it was “sensible to expect that at least some blacks would have been elected.”

Even cases such as *McCleskey v. Kemp*, which denied that Georgia’s racially disparate application of the death penalty evidenced discriminatory intent, turn on whether the specific statistics presented are

Virginia, Washington, D.C. and elsewhere, public controversy engulfed student registration efforts by public controversy and debate over where students should vote. In Washington, DC, homeowners canvassed Georgetown with pamphlets warning of the student threat to their neighborhoods.⁹¹ In historically white Waller County, Texas, racism almost certainly influenced the decisions of state officials to deny registration to students at historically black Prairie View A&M University.⁹² A mailing from the national Republican Party to members in mid-western states during the 2004 election cycle warned of the danger of “liberal east coast students” voting in their towns.⁹³ The Williamsburg Daily Press editorialized that students, in light of their “transience” and distinct interests, should not be able to vote in Williamsburg. This prompted a published reply from the Williamsburg’s Future Campaign, letters to the editor on both sides, and discussion around, if not within, city council meetings.

Perhaps reflecting sophistication on the part of state agents, including an evolving understanding of the reach of discrimination claims, the public discourse of student voting rarely makes it way into official statements or policy.⁹⁴ But the question of where students

convincing. 481 U.S. 279 (1987). *McCleskey* contrasts the capital sentencing context with Title VII and jury venire cases in which statistics had previously been used to prove discriminatory intent. But *McCleskey* does not suggest that there are categories of cases for which statistics may never be used to prove intent. Instead, *McCleskey* states, “For this claim to prevail, petitioner would have to prove that the Georgia Legislature enacted or maintained the death penalty statute because of an anticipated racially discriminatory effect.” *Id.* Notably, student voting cases are more similar to *Rogers* and its ready acceptance of statistics in voting systems than *McCleskey*’s skepticism of discrimination in capital sentencing.

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Posting from Scott Beale, student leader in the Georgetown campaign, to the Studentvote listserve, available at: <http://lists.riseup.net/www/arc/studentvote/2004-07/msg00018.html>.

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“Campus Campaign: Prairie View Report,” Rock the Vote, February 23, 2004, available at: http://www.rockthevote.com/rtv_campuscamp_pvreport.php.

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The “student threat” was the sole topic of the mailing, and included ominous photos of students with malcontent, unfeeling facial expressions. On file with author.

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Within official chambers, student voting is the proverbial elephant in the room – a subject likely to be on everyone’s mind, but no official will address directly.

should vote frames the public debate on residency standards when students mount registration campaigns. As such, it is highly unlikely that the prospect of student voting does not influence registrars' domicile classifications or the design of voting codes.

The second source from which we may infer discriminatory intent is voter registration statistics. In *Rogers v. Lodge*, the Supreme Court upheld a district court finding that a county government maintained an at-large electoral system for invidious purposes.⁹⁵ In *Rogers*, similar to students in Waller County and Williamsburg, Burke County's historically majority black population remained a minority of registered voters.⁹⁶ The Court found that the absence of any black elected officials was "important evidence of purposeful exclusion" where it was "sensible to expect that at least some blacks would have been elected."

Statistical evidence of discrimination is particularly strong in towns such as Williamsburg (*see* part IV.A.2.i., "Burdening the Right to Vote," *supra*) discriminatory effect," *supra*) when we consider the low number of non-student residents apparently refused registration. The disparities in registration rates for students (3.7%) and non-students (71%) significantly exceed the differences we might expect if students were

⁹⁵ 458 U.S. 613 (1982).

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"Burke County, Ga., a large, predominately rural county, has an at-large system for electing members of its governing Board of Commissioners. No Negro has ever been elected to the Board. Appellee black citizens of the county filed a class action in Federal District Court, alleging that the at-large system of elections violated, inter alia, appellees' Fourteenth and Fifteenth Amendment rights by diluting the voting power of black citizens. Finding that blacks have always made up a substantial majority of the county's population but that they are a minority of the registered voters, that there had been bloc voting along racial lines, and that past discrimination had restricted the present opportunity of blacks to participate effectively in the political process, the District Court held that although the state policy behind the at-large electoral system was "neutral in origin," the policy was being maintained for invidious purposes in violation of appellees' Fourteenth and Fifteenth Amendment rights." *Rogers, supra*.

offered their choice of registration site.⁹⁷ These together allow a reasonable inference that either the guidelines or the registrar's practice intentionally prevent student voting.

Finally, some voter qualification statutes may provide a third basis for inferring intentional discrimination. While domicile tests do not usually ban students explicitly for their student status, they may 1) refuse to count on-campus dormitories as domiciles,⁹⁸ or 2) evaluate a combination of factors that students are unlikely to satisfy despite residing locally.

Statutory refusals to count dormitories as residences are particularly stark examples of occupation discrimination. Most students will reside in a dormitory for at least part of their tenure in a college town. Indeed, many colleges require first-year students to reside in a dormitory as part of their integration into the college community.⁹⁹ By definition, no non-students will reside in dormitories.¹⁰⁰ Thus, discounting dormitories for residence purposes is more likely to select out students than transients as a whole.

The discrimination implicit in multi-factor residency tests is subtle, yet still pervasive. Consider again the factors listed in Virginia's residency guidelines: financial independence, business pursuits, employment, income sources, residence for income tax purposes, marital status and children, residence of parents, leaseholds and ownership of real property, and where automobiles and other personal property are registered and taxed.¹⁰¹

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[Data forthcoming.]

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See, e.g., the defeated New York statute cited in Issacharoff, Samuel, Karlan, Pamela S., Pildes, Richards H., *THE LAW OF DEMOCRACY*, Foundation Press (2002) at 65.

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William and Mary is one such school [cite to school policy].

¹⁰⁰ With the exception of occasional extraordinary circumstances or perhaps staff members housed on campus.

¹⁰¹

Virginia State Board of Elections residency guidelines, *supra* ("domicile requirements").

Students are more likely than other voters, including adult, non-student “transients,” to remain financially dependent on their parents, to be claimed as dependents for tax purposes and to receive income from their families residing outside the jurisdiction, not to mention being single. Students are unlikely to own property, as most have yet to begin their careers and earn their own income.¹⁰² Yet none of these factors is a consequence of future intentions or non-resident status so much as it is a consequence of being a student. Students devote time to their studies. As such, they are unable to work full-time and support themselves. They must borrow resources from others, who will often reside beyond a county’s borders. Indeed, financial dependence and extra-jurisdictional sources of income may be more persuasive evidence of student status than of non-residence. Such statutes that eliminate student registrants in equal or greater numbers than they do transients permit an inference of intentional discrimination.

Though states are unlikely to make official their objections to concentrated student votes, the statistically stark disenfranchisement of student voters suggests, *prima facie*, a discriminatory intent. The content of public debate supports this view, indicating pressure on state officials to exclude students based on their likely voting patterns. Meanwhile, some voter residency statutes seem better designed to screen out students than they do short-term residents as a group.

In court, voter registrars and other state officers would have the opportunity to rebut Equal Protection cases built on inferences of discrimination.¹⁰³ It is possible that some of

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Any properties they may own are likely an inheritance, and would probably be located elsewhere and hence weigh against them in a residency evaluation, despite the student having exercised no choice in their acquisition.

¹⁰³ *Cf., McCleskey:*

these effective barriers to student voting earnestly aim to eliminate a broader group, such as transients, who would not be defended by *Carrington*'s ban on viewpoint discrimination. But there is little evidence that non-student short-term residents are systematically identified or challenged. Even if there were, targeting transients in a college town, where most shorter-term residents may be students, might only beg the question whether students were intentionally targeted. That is to say, systematically targeting transients may still be merely a cloaked manner of ridding a community of student voters. Were no students present, the votes of a few alleged transients might raise no concerns at the registrar's office. The state defense that domicile requirements prevent transient votes will also be discussed in sections addressing the right to travel and narrow tailoring, *infra*.¹⁰⁴

The factors above demonstrate in at least some cases of student voter disenfranchisement, the exclusion is intentional. This intentional exclusion on the basis of viewpoint and occupation is illegal under *Carrington v. Rash*. Clearly, viewpoint and occupation discrimination are not compelling reasons to burden the rights to travel and vote.

Another important difference between the cases in which we have accepted statistics as proof of discriminatory intent and this case is that, in the venire-selection and Title VII contexts, the decisionmaker has an opportunity to explain the statistical disparity. See *Whitus v. Georgia*, [385 U.S. at 552](#); *Texas Dept. of Community Affairs v. Burdine*, [450 U.S. 248, 254](#) (1981); *McDonnell Douglas Corp. v. Green*, [411 U.S. 792, 802](#) (1973). Here, the State has no practical opportunity to rebut the Baldus study. "[C]ontrolling considerations of . . . public policy," *McDonald v. Pless*, [238 U.S. 264, 267](#) (1915), dictate that jurors "cannot be called . . . to testify to the motives and influences that led to their verdict." *Chicago, B. & Q. R. Co. v. Babcock*, [204 U.S. 585, 593](#) (1907). Similarly, the policy considerations behind a prosecutor's traditionally "wide discretion" suggest the impropriety of our requiring prosecutors to defend their decisions to seek death penalties, "often years after they were made." See *Imbler v. Pachtman*, [424 U.S. 409, 425-426](#) (1976). Moreover, absent far stronger proof, it is unnecessary [481 U.S. 279, 297] to seek such a rebuttal, because a legitimate and unchallenged explanation for the decision is apparent from the record: McCleskey committed an act for which the United States Constitution and Georgia laws permit imposition of the death penalty.

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ii. Constitutionally permissible, but not compelling, interests: stakes in community affairs and long-term vision

While registration practices sometimes mask impermissible discrimination, polities may also offer reasons for them that do not offend any constitutional principle. The most persuasive reasons proffered for imposing domicile requirements, asking extra questions and permitting registrar discretion are 1) ensuring that eligible voters have a legitimate interest in community affairs, and 2) ensuring that these voters will keep the long-term concerns of the polity in mind.¹⁰⁵

Students easily satisfy the first criteria. Spending at least four years of their lives in their university towns, students have a daily interest in the well being of the community. They are uniquely affected by many local regulations, including housing ordinances, police jurisdiction, taxes, development plans, recreational space and more.¹⁰⁶ Barring students for lack of community interest is likely viewpoint discrimination in disguise; writing off the daily needs and concerns of students as illegitimate. It is therefore not a compelling interest.

But the right of communities to maintain a polity of long-term vision voters is expressly cited as valid in *Carrington*.¹⁰⁷ According to the Court, the dangers of abridging this right include that, “Local bond issues may fail, and property taxes stagnate at low levels because [short-term residents] are unwilling to invest in the future of the area.”¹⁰⁸

¹⁰⁵ See e.g., *Carrington*, 380 U.S. at 93. In *Dunn v. Blumstein*, the Supreme Court persuasively discounted as reasons for durational residence requirements fears of fraud and the need to ensure ‘intelligent voters.’ 405 U.S. 330 (1972) at 345-60.

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See section II, *supra*, for an example from Williamsburg.

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380 U.S. at 94.

¹⁰⁸

Id.

There may admittedly be some trade-off between the goals of sustaining long-term vision and enfranchising all citizens with an immediate and direct stake in local elections. It may be impossible to satisfy both objectives. But it is better to enfranchise, and leave responsibility to political actors to persuade voters of the need for long-term vision, than to bar many legitimately interested citizens from voting at all. This is especially true when one considers that, though any particular student could be a resident for only four years, students as a class are ever present in college communities. Present day students will always have common interests with the students who precede and supercede them. But until they are given voting rights, the entire class will go consistently unrepresented.

Students as a class also have long-term interests: interests in affordable rental housing, interests in preventing police misconduct, in securing recreational space and in attracting youth-oriented businesses. They are likely to advocate for a long-term vision in community politics. It will, of course, be a different vision than that which other voting blocs favor. Non-student residents might prefer all-owner neighborhoods, enforced noise ordinances, and very different planning of commercial space. But this is precisely the sort of viewpoint discrimination *Carrington* warns against. State interests in retaining discretionary domicile requirements are not compelling when weighed against the danger of excluding an entire class of citizens from local political participation.

4. Residency requirements are not narrowly tailored

Even if a state's goals are sufficiently compelling to justify the burden they exact on a fundamental right, a state must seek to achieve them by the less burdensome of available

alternatives.¹⁰⁹ But domicile requirements, extra questions and registrar discretion prevent the enfranchisement of student voters who indeed intend to remain indefinitely. Domicile standards should be narrowed such that they select out transients while allowing students who intend to remain to register in their university communities.

As shown under “viewpoint and occupation discrimination,” section IV.3 *supra*, domicile requirements are both under and over-inclusive. Students are caught in a discriminatory net because multi-factor tests single out individuals who receive extrajurisdictional financial support. Meanwhile, many adult transients are allowed to register locally so long as their finances follow them to their new residence. Registrar discretion exacerbates both effects, allowing anti-student prejudices to color interpretations of manifest intent.¹¹⁰

Domicile requirements could track intent to remain more accurately if multi-factor tests were limited to factors over which voters had effective control. For example, in the Virginia guidelines, *supra* section III, item (g), residence of parents, should be eliminated entirely. Some students will return to their parents’ communities, but some will attend school away from the residence of their parents, and adopt their college community as their own. Parents’ residence serves no accurate evidentiary role. Similarly, item (a), financial independence, should be stricken. Financial independence is entirely immaterial to a voter’s domicile decision, and is a clear sign of anti-youth prejudice in the code. Further, any consideration of property ownership, income tax residence or income sources should assess whether the voter had any effective control over the matter, or if a) a guardian made the choice for her, or b) the decision was necessary due to practical constraints. In other

¹⁰⁹ See, e.g., *Dunn*, 405 U.S. at 343: “And if there are other, reasonable ways to achieve those goals with a lesser burden on constitutionally protected activity, a State may not choose the way of greater interference.”

¹¹⁰ See “Domicile requirements,” *supra* page 18.

words, a student needs money. If it comes from out of town gifts, so be it; this is not indicative of a desire to leave town following graduation.

The elimination of irrelevant factors and consideration of mitigating factors such as agency will help reduce the overbroad exclusionary reach of domicile guidelines. But it will also allow the guidelines to more effectively identify non-student transients. In a multi-factor test, when some factors diminish in relevance, others will weigh comparatively more heavily. Thus, eliminating “residence of parents” and “financial independence” will result in heavier weight given to factors such as vehicle registration, or the ownership of extrajurisdictional properties in which the applicant exercised full agency acquiring. These factors are arguably more relevant to the determination of long-term domiciliary intent, because they can highlight conflicting loyalties, with no explanation save geography.

Registrar discretion could be curbed by maintaining a file of registrar actions. In some jurisdictions, when an applicant is denied registration, they receive written notification with reasons for the registrar’s action.¹¹¹ These records could be kept in files accessible, with names removed, to denied applicants who wish to appeal their decision to election boards and in court. Registrars suspected of discriminatory practice would be subject to sanction by the election board.

If courts find that domicile requirements serve a compelling interest in maintaining a polity of long-term vision, their discriminatory impact must be reduced by providing greater registrar accountability and tailoring domicile standards to accurately assess intent to remain.

5. Standards of actual residence, legitimate interest and single-location registration should replace current residency requirements.

¹¹¹ Rejection notifications for one of the Williamsburg students is on file with author.

Apart from the constitutional inquiry, legislatures should consider abolishing domicile requirements because they disparately exclude students and burden the right of all Americans to travel. The state's strongest legitimate interest with respect to residency is ensuring that those voting on initiatives are the same who are likely to bear their cost and live with their consequences.¹¹² But intent to remain requirements eliminate many deserving residents from the voter rolls (*see* section IV.4.ii, *supra*). Instead, residency requirements for voting purposes should be tailored to ensure that all legitimately interested, actual residents registered in only one site are able to vote.

Three basic standards could guide residency qualifications to more precise, less discriminatory results. The first, and most critical, is actual residence. This is the same standard currently comprising half of most domicile tests. It means, simply, that the voter physically lives within the boundaries of the town in question. Often, actual residence implies "primary residence." That is, a vacation home is not an actual residence. A nine-month dormitory, however, being a student's home for most of the year, should be considered an actual residence.¹¹³

The second standard is legitimate interest. This requires that voters register in a location because they are likely to directly bear the burdens and reap the rewards of

¹¹²

Consonant with principles of self-determination and concepts of geographic communities of interest, residency is the system our political community has chosen to approximate this relationship. And yet the geographic nexus is sometimes a highly imperfect proxy: building a new power plant, for example, may pollute the air of the next town over, yet citizens of the affected town are unlikely to have a vote in the matter. Additionally, the drawing of political boundaries may or may not correspond to group identity. For example, why should one citizen be burdened with a certain new tax when his neighbor is not, simply because the county line falls between their houses? Indeed, in this period of mobility, rapid communication, and group identities bound by political ideology across geographic borders, there is a strong argument that geographic location is, as the exclusive unit of political subdivision, inadequate. But it is not the purpose of this paper to debate entirely new methods of political subdivision. For the present, we will focus on the narrow question of, assuming we are to subdivide geographically, what sort of residency guidelines should we apply?

¹¹³

For a homeless person, actual residence is usually where he "lays his head at night." *E.g.*, Virginia residency guidelines, *supra*.

political decisions made within that jurisdiction. An illegitimate motive would be registering in a locale in order to influence the results of a coming election, the results of which would be primarily symbolic to the voter. Thus, for example, a voter could not register in a town in which she rarely stays (despite renting out a room or owning property there) because it is a political testing-ground for school vouchers, or because she hopes to bolster representation of a political party within the jurisdiction.

Legitimate interest is not presently, to the author's knowledge, an explicit requirement of most states residency laws. Arguably, this has some impact. Many mobile residents, for example, retain registration in the states in which they grew up.¹¹⁴ While this has important symbolic value to some voters, it contradicts the principles of geographic representation on which our political system is based. It allows voters, for example, to consider in their registration calculus which states are swing states in federal elections. There may be valid reasons to support such strategic or identity-based registration, but it is antithetical to principles that voters be bound to the effects of their votes.

Actual residence would serve as a proxy for demonstrating legitimate interest. That is, a citizen's demonstration that she lived in a jurisdiction for most of the year, or more precisely, for a period roughly equal to or greater than that in which she lived in any other jurisdiction, would suffice as implying a legitimate interest in county affairs. However, evidence that a voter's primary intention in registering were symbolic could trigger a challenge to her local registration status if her claim to actual residence were less than clear (*i.e.*, someone who lived in town a fraction of the year, yet due to consistent mobility, could not initially be said to live primarily elsewhere).

¹¹⁴

The author's parents are two such individuals.

Finally, a voter must be permitted to register in one location and one location only. While double voting is already a crime, many registration lists are poorly vetted for residents who have moved away and registered elsewhere. According to the recent Carter-Baker report on federal election reform, “Voter registration lists often are riddled with inaccuracies because Americans are highly mobile, and local authorities, who have maintained most lists, are poorly positioned to add and delete names of voters who move within and between states.”¹¹⁵ I, for example, left Williamsburg, Virginia in June of 2002, but discovered five years later I was still listed as a registered voter there. In the interim I cast ballots in Washington, D.C. and California. The failure to eliminate residents who have left a county increases the chances of double voting and voter fraud. It allows conditions such as that listed above, where voters retain registration due to symbolic political values. It also creates inaccurate counts on voter rolls, making the statistical evaluation of voting patterns more difficult.

One way to verify single-location registration would be through interoperable, state-managed voter databases, as suggested in the Carter-Baker report.¹¹⁶ All names and registration locations could be maintained in state databases that would, for privacy’s sake, be available only to election officials, independent election auditors charged to ensure integrity of the system, and others deemed necessary to prevent abuse. When a voter selects a new registration site, she could be required to affirm her intention to withdraw her previous registration.

¹¹⁵ “Building Confidence in U.S. Elections: Report of the Commission on Federal Election Reform,” chaired by Jimmy Carter and James A. Baker, III (September 2005) at 9.

¹¹⁶

The Help America Vote Act requires states to create computerized registration lists by 2006. The Carter-Baker commission recommends that states employ “unified databases” allowing local officials to upload information which the database would then automatically compare to information on file. “Building Confidence in U.S. Elections: Report of the Commission on Federal Election Reform,” chaired by Jimmy Carter and James A. Baker, III (September 2005) at 9-15.

B.) The 26th Amendment

Having analyzed the discriminatory effect of domicile requirements, the fundamental rights of voting and travel, state interests in residency and recommended narrow tailoring of residency requirements, it is appropriate that the thirty-five year old controversy of student voting, and our analysis of it, end where it began: with the 26th Amendment.

Burdens on the student franchise in college towns abridge the voting rights of local citizens aged 18-21 in violation of the 26th Amendment. In college towns, by colloquial definition, students make up a large percentage of the local population. As we will see, they also tend to make up the great majority of citizens between 18 and 21. Where this is true, registration policies that prohibit or greatly and disparately diminish student suffrage also dramatically reduce the number and proportion of young voters in a district. While these young voters are not explicitly barred from the polls “on account of age,”¹¹⁷ disenfranchisement of otherwise qualified youth in some of these districts is so severe that it constitutes a *de facto* abridgement of the right of 18-21 year olds to vote.¹¹⁸ In other words, so few members of a large resident group of 18-21 year olds are able to register that the county has effectively disabled the 26th Amendment within its jurisdiction.

Consider, once more, Williamsburg, Virginia, population 11,998.¹¹⁹ Fully 47% of Williamsburg residents are between the ages of 16 and 24 – 5,735 residents, at last count.¹²⁰

¹¹⁷ U.S. CONST. AMEND. XXVI

¹¹⁸ *Abridge*: to reduce in scope. Merriam-Webster online dictionary, <http://www.m-w.com/>. While students could still vote in a jurisdiction of previous residence, their exercise of the franchise is clearly burdened. The 26th Amendment prohibits not only the denial of the franchise, but also its abridgement.

¹¹⁹

U.S. Census Bureau statistics 2000, available at: <http://www.epodunk.com/cgi-bin/popInfo.php?locIndex=25766>

¹²⁰

5,403 residents – 94% of local youth - are college students.¹²¹ Of the remaining 332 Williamsburg youths, some are between 16 and 18, others between 21 and 24. Thus, the number of non-student youth in Williamsburg protected by the 26th Amendment is significantly less than 332, or 5.79% of the total Williamsburg youth population.

With students constituting nearly the entirety of Williamsburg youth, and the vast majority of students barred from local registration - *see* sections III and IV.1, *supra* - Williamsburg has reduced a youth population of 5,735, constituting half the town, to fewer than 445 eligible voters, or ten percent of the electorate.¹²² Only about 200 18-21 year olds are registered to vote in Williamsburg¹²³ – less than five percent of the electorate - despite the fact that the three-year age group comprises at least one-third, and perhaps forty percent, of local residents.¹²⁴

Restrictions on student registration, through domicile requirements, broad registrar discretion and local bias against student political participation, can thus preclude even the possibility of meaningful youth participation at the ballot box. The 26th Amendment barely reaches Williamsburg at all. Students and their advocates could challenge this deprivation

Id.

¹²¹

Id. 94.21% would be the precise calculation, but we must also account for the small number of college students are older than 24.

¹²²

Official Williamsburg City voter roll, fall 2003, on file with author. I counted the number of voters 24 and under and under by sorting the list by birth year. There are 4,258 total voters on the rolls. As many as 445 were 24 and under, depending on the date applied (no date of issue is on the list, but it was obtained in the fall of 2003).

¹²³

Id.

¹²⁴

There are no demographic figures available on the more limited 18-21 age group (as opposed to 16-24), but given typical ages of college students and the comparably small number of non-college youths in Williamsburg, it stands to reason that a significant majority of the 5,735 youth residents are 18-21.

through § 1983 actions, which allows citizens to sue state actors in civil court for enforcement of federal rights.¹²⁵

V. Conclusion: The Case for Student Voting Rights

Some 14,375,764 million Americans are enrolled in undergraduate education,¹²⁶ including roughly half of Americans aged 18-21.¹²⁷ In the past five years alone, advocates have identified cases of systematic student voter disenfranchisement in at least eleven states. While we do not know the full scope of the problem, we do know that it has continued unchecked in many – perhaps a majority – of jurisdictions since ratification of the 26th Amendment in 1971.

Laws forcing students to vote outside their counties of residence burden the franchise, thus abridging the federal voting rights of affected students. Meanwhile, domicile requirements, coupled with registrar discretion, greatly reduce the electoral power of youth in precisely those locales where youth are sufficiently concentrated to influence politics – which is, due to anti-student prejudices, the point. The local voting rights of

¹²⁵ 42 U.S.C. § 1983.

Every person who under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, Suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

¹²⁶

U.S. Census Bureau American FactFinder, Census 2000 summary file 3: QT-P19: school Enrollment 2000, available at: http://factfinder.census.gov/servlet/QTTable?_bm=y&-geo_id=01000US&-qr_name=DEC_2000_SF3_U_QTP19&-ds_name=DEC_2000_SF3_U&-lang=en&-sse=on.

¹²⁷

See Id. 66.6% of 18 and 19 year olds 35% of 20-24 year olds are enrolled in school.

affected students are entirely abolished; they are unable to vote in the elections that have the most direct impact on their lives.

This mass disenfranchisement is of course costly to students and their interests. But it also costs democracy. What little statistical evidence we have suggests that restrictive residency requirements dampen young voter turnout in federal elections, even for those in which all agree they are qualified to vote.¹²⁸ Young Americans are discouraged from political participation just as they begin to express an interest in it. This is likely to create not only apathy but resentment of the state.¹²⁹

Some commentators argue against restrictions on the student franchise on the basis that fear of student takeover is exaggerated. I would argue, instead, that we miss a significant opportunity by precluding the possibility of student influence. To begin, we shortchange the communities of which students are a part by depending on the views of an abridged segment of the population. Under standard theories of democracy, this is likely to result in governance out of touch with the needs of its populace. It also reduces the number of creative minds seeking solutions to public problems. Students, engaged as they are in a profession of critical and creative thinking, working collaboratively on projects and possessing energy and idealism, are uniquely suited to this task. Their experiments in democracy could yield beneficial lessons, and perhaps some policy models, for communities throughout the United States.

¹²⁸ The PACE Institute at Salisbury University issued a report finding a positive but inconclusive correlation between “student choice” states and higher youth voter turnout, while states that restricted student voting saw a lower youth voter turnout. Haslup, Michael and O’Loughlin, Michael, “Democracy and College Student Voting,” Institute for Public Affairs and Civic Engagement, Salisbury University (June 2001), available at: <http://www.studentsuffrage.com/downloads/democracy%20and%20college%2032A980.pdf>.

¹²⁹ Not to mention the literal expense of “administering intentions” – that is, the administrative costs of assessing intent to remain. See Olivas, Michael A., “Storytelling Out of School: Undocumented College Residency, Race and Reaction,” 22 *Hastings Const. L. Q.* 1019, 1031 (1995).

If a municipality is 50% students, there is nothing identifiably wrong with students retaining 50% voting power. If our concern is the alleged irresponsibility of the young, then we should, logically, consider repealing the 26th Amendment. So long as 18 is the age at which we deem members of our political community ready to exercise their judgment, we cannot restrict how they do so by strategically maneuvering to eliminate their spheres of potential influence.

The hypocrisy of excluding students is magnified by the methods elected to give it effect. The primary effect of domicile requirements is not to remove short-term residents from voter rolls. Rather it is to exclude the young from political power. Even the contention that students are transients constitutes naked discrimination in light of the near equal mobility of the American populace as a whole.¹³⁰

Discrimination against students, and more generally, the young, employs seemingly subtle methods. But racial discrimination did the same for over a century following passage of the 14th Amendment.¹³¹ It took not only a hundred-year civil rights movement to root out the legal safe-havens of discrimination, but also meticulous, persistent legal advocacy. This is not to place student voter disenfranchisement on a plane with America's grave racial injustices. Rather it is to say that it should be a primary object of democracy to identify those recesses of the law where discrimination persists, and to force suspect policies to either defend themselves against logic or fade away. Student voter disenfranchisement is but one more form of illogical discrimination. We have the tools to remove it from the books.

¹³⁰ "During the last decade, on average, about 41.5 million Americans moved each year." "Building Confidence in U.S. Elections: Report of the Commission on Federal Election Reform," chaired by Jimmy Carter and James A. Baker, III (September 2005) at 9.

¹³¹ See Issacharoff, Samuel, Karlan, Pamela S., Pildes, Richards H., *THE LAW OF DEMOCRACY*, Foundation Press (2002), Chapter 2, section D: "The Struggle for Black Enfranchisement," pages 90-128.