

BARRIERS TO STUDENT VOTING

Background

Research dating back to the 1940s has consistently shown that young citizens vote at lower rates than older citizens and are less likely to feel connected to the electoral process. Low voter turnout among young citizens has grown more acute since 1972, when 18-to-21 year olds were first permitted to vote. According to the Center for Information and Research on Civic Learning and Engagement (CIRCLE) at the University of Maryland, voter turnout of 18-24 year olds dropped by at least 13 percent (from 55% in 1972 to 42% in 2000), a much higher rate of decline than that of their elders. This lack of representation at the polls means that young people's issues are being virtually ignored by political candidates.

The reality is that younger citizens are not voting in large numbers. But the problem is not as clear-cut as it initially seems. Too often, the low voter turnout is taken as conclusive evidence that young people are not engaged in social or political change or don't care about their communities. Yet, young people are volunteering and protesting at higher numbers today than in previous generations. For a large number of young people, refraining from voting is a conscious decision for various reasons, such as rejection of the system or a belief that their vote will not make a difference. However, a great many young people, particularly students, who want to vote are unable to do so because of legal or administrative barriers that make it extremely difficult or impossible to vote in their college communities.

Law on Student Voting

College students, like all individuals, are entitled to register and vote in the community that they regard as their principal residence. Under most states' laws, voting residence is synonymous with domicile, which is determined by physical presence and intent to make that place home. Thus, if a student considers her college community to be her primary residence and has no present intent to leave, she is entitled to register to vote in that community. The student need not be certain as to her residence after graduation, so long as she has no present intention of returning to her parents' home. The fact that a student resides in a dormitory is irrelevant to her intent to make her school address home.

In several jurisdictions, constitutional or statutory provisions provide that no person shall be deemed to have gained or lost a residence for voting purposes by reason of her presence or absence while a student at an institution of learning. These "gain or loss" provisions mean that a student's voting residence cannot be determined by physical presence alone; voting residence depends on the student's connections to the community in which she desires to vote.

States have established varying standards and tests for determining a person's intent with respect to voting residence. In New York, for example, the standard is whether the place is the "center of the individual's life now, the locus of primary concern." If this standard were fairly and uniformly applied by election officials, most college students seeking to vote as residents of their colleges would be permitted to do so because most students live principally in their college communities. They eat, sleep and carry out the daily activities of their lives in those communities; they are often deeply involved in part-time employment and community activities within the college community; and they are far more affected by the acts and omissions of local officials in their college community than they are by the acts of local officials in some distant parental community.

In the 1970's and 80's, many states incorrectly presumed that students were residents of their parents' communities unless they could prove otherwise. To

overcome the presumption of non-residency, the burden was on students to present evidence of their intent to make the college address their new residence. Such presumptions against student voting generally have been invalidated by courts under the equal protection clause. For example, in *Williams v. Salerno*, the Second Circuit held that a letter sent by the Westchester County Board of Elections to student applicants, which stated that "[a] college dorm cannot be considered a fixed, permanent or principal home," created an unconstitutional rule or presumption against student residency.

The equal protection clause precludes states from subjecting students to more rigorous registration requirements than are generally applied to other citizens. A few courts have held that a state may make an additional inquiry in a good faith attempt to determine residency, so long as it does not require students to meet a different standard from any other person seeking to register to vote. However, if the inquiry is designed to elicit irrelevant information that is unnecessary to assess fairly whether the student considers the college community to be her primary residence (e.g., where the student's car is registered), it creates a *per se* rule against residence in the college community, which violates the equal protection clause.

Barriers to Student Voting

College students across the country are facing barriers to voting in their college communities. In the last six months, there have been several incidents in which local officials have attempted to impede the ability of students to register to vote in their college or university towns through intimidation, refusal to process registration forms, or local ordinances establishing next-to-impossible residency standards. For example, the district attorney of Waller County, Texas, threatened to prosecute students at Prairie View A&M University who attempted to register in the local March 9, 2004 primary, claiming erroneously that college students cannot establish permanent residency at school. The registrar of the town of Williamsburg, Virginia, adopted a policy that made it almost impossible for William and Mary students to demonstrate residency to vote in local elections. Until June 2004, the Oneida County Board of Elections in Utica, New York, was sending college students a form letter encouraging them to register to vote as residents of the communities in which their parents live and automatically rejecting their registration applications. All of these incidents have required the intervention of lawyers in order to safeguard student voting rights. While some cases of local voter suppression can be attributed to misinformation due to a lack of guidance from the state, most are the result of concerted efforts to prevent students from affecting local politics.

The problems with student voting are not just local. A new federal law, the Help America Vote Act ("HAVA"), requires first-time voters who register by mail to provide identification. Unless a state specifies that a student identification card is an acceptable form of ID, students (particularly, those who live in dormitories) may be unable to meet HAVA's ID requirement. One way to avoid disenfranchising students who do not have identification that reflects their school address is to encourage, as Minnesota does, schools to provide local elections officials with a list of matriculated students, which can be used to verify students' residence.

Many states also have in-person voting or address matching requirements that disproportionately burden students. For example, Michigan state law requires that citizens' voter registration address match the address on their drivers' license. Students who do not wish to change their drivers' license to reflect their school address, which is common, will be unable to vote in Michigan unless they travel to their parents' home because state law also requires first-time voters to vote in person, rather than by absentee ballot.

At a time when voter turnout for young people has reached catastrophically low rates, it is critically important to remove all legal and administrative barriers to student voting. State and local elections officials must make clear

that students have the right to register to vote in their college communities, if they consider that to be their primary residence. If students cannot register the first time they attempt to vote, they will be less likely to participate in elections in the future and politicians will continue to be unresponsive to their interests. The health of American democracy requires that our young voters become engaged in electoral politics.

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