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CONSTITUTIONAL LAW—TWENTY-SIXTH AMENDMENT
—RESIDENCY REQUIREMENTS AND
THE RIGHT TO VOTE

On June 30, 1970, Ohio became the 38th state to ratify the twenty-sixth amendment to the United States Constitution. The twenty-sixth amendment has precipitated much litigation focusing on the problem of the voting residence of the newly enfranchised eighteen year old voters. It provides:

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

Section 2. The Congress shall have the power to enforce this article by appropriate legislation.¹

The problem is whether the newly enfranchised young people, residing apart from their parents, should be treated like other voters for purposes of acquiring a voting residence, or should they be presumed to reside with their parents.

The Supreme Court of California exercised its original jurisdiction to hear the petition of nine unmarried minor residents of California who sought to register to vote in a jurisdiction that they claimed to be their actual permanent residence. Pursuant to a published opinion of the Attorney General of California² which established a presumption that unmarried minors reside with their parents, the petitioners were not permitted to register to vote. In reliance on this opinion, the registrars had determined that the petitioners lacked the capacity to establish their own voting residence. The registrars totally disregarded such factors as the self-support of several of the petitioners and the lack of physical presence of one of the applicants at his parents' domicile. The Supreme Court of California, on August 27, 1971, decided that: minors of 18 years of age or older be treated as emancipated and hence as adults for voting purposes in light of the Twenty-Sixth Amendment.³

1. U.S. CONST. amend. XXVI.

2. 54 Adv. Ops. Cal. Atty. Gen. 7, 12 (1971), states in pertinent part that "for voting purposes the residence of an unmarried minor (whether student or not) . . . will normally be his parents' home" regardless of where the minor's present or intended future habitation might be.

3. *Jolicoeur v. Mihaly*, 96 Cal. Rptr. 697, 698, 488 P.2d 1, 2 (1971).

On the same day that the California Supreme Court rendered its decision, the Supreme Court of Michigan made a similar pronouncement. The Michigan Supreme Court granted leave to appeal to eight petitioning students of the University of Michigan. These petitioners were denied registration for voting even though each of them stipulated that: They were citizens of the United States residing in Michigan for more than six months; that each met the minimum voting age of eighteen years; that each of them maintained an apartment as his regular place of abode in Ann Arbor, Michigan, and habitually slept there; and that each of them commonly kept his personal effects in his apartment. The denial of registration was founded on M.C.L.A. Sec. 168.11(b) which provides that: "no elector shall be deemed to have gained or lost a residence . . . while a student at any institution of learning. . . ."⁴ Upon review of these facts, the Supreme Court of Michigan held the above section of the Michigan statutes to be violative of the equal protection clause of the fourteenth amendment of the United States Constitution,⁵ and thus unconstitutional under the United States and Michigan Constitutions.⁶ The Michigan Supreme Court stated that "students must be treated the same as all other registrants."⁷ *Wilkins v. Bentley*, 189 N.W. 2d 423 (1971).

Jointly, these two cases exemplify the problems confronting eighteen year old voters who have severed parental ties or who live on college campuses. The volume of litigation arising from these problems is increasing as election times draw near, especially since college communities are afraid the students will constitute a controlling voting block if allowed to vote at their college residences.

The purpose of this casenote is to examine the suffrage right of student voters when scrutinized under the twenty-sixth amendment and the equal protection clause,⁸ especially in relation to the validity of state laws which presume that students do not establish a voting residence by their mere presence on the college campus.

The authority of the states to legislate on the subject of voting is implied in the Federal Constitution.⁹ The power of state legislatures

4. 5 MICH. STAT. ANN. § 6.1011(b) (Supp. 1971).

5. U.S. CONST. amend. XIV, § 1. "No State shall . . . deny to any person within its jurisdiction the equal protection of the laws."

6. MICH. CONST. art. 1, § 2.

7. *Wilkins v. Bentley*, 385 Mich. 670, 694, 189 N.W.2d 423, 434 (1971).

8. U.S. CONST. amend. XIV.

9. U.S. CONST. art. 1, § 2.

to enact registration laws are recognized as early as 1886 when the constitutionality of an Illinois election law was challenged in *People v. Hoffman*.¹⁰ The Illinois court stated: "The weight of authority in this country is in favor of the power of the (state) legislature to enact registry laws."¹¹ This prerogative conferred upon the states is curtailed by the Federal Constitution¹² and by acts of Congress.¹³

The right of United States citizens to vote in state or federal elections

is not a privilege springing from citizenship of the United States. . . .the privilege to vote in a State is within the jurisdiction of the State itself, to be exercised as the State may direct. . . .¹⁴

The laws of the state where the citizen has his voting residence, determines whether he can register and exercise his right to vote.¹⁵

The term "voting residence" means more than mere residence, which requires only physical¹⁶ presence. Instead, "voting residence" has generally been interpreted to be synonymous with domicile.¹⁷ The Supreme Court of Colorado in *Sharp v. McIntire*¹⁸ stated that domicile: "requires, not only a personal presence . . . but a concurrence therewith of an *intention* to make the place of inhabitancy the true home. . . ."¹⁹ (Emphasis supplied). Accordingly, all of the consequences of a domicile carry over to "voting residence" to-wit: A person must have a domicile or residence somewhere;²⁰ a domicile or residence either of origin or of choice once attained, must be abandoned before a new one can be acquired by the requisite physical presence and intention to remain in the new place;²¹ a "domicile or voting place remains and continues until he has acquired a legal residence or domicile elsewhere;"²² and a person cannot have two or more domiciles or voting

10. 116 Ill. 587, 5 N.E. 596 (1886).

11. *Id.* at 609, 5 N.E. at 606.

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

13. *United States v. Classic*, 313 U.S. 299 (1941).

14. *Pope v. Williams*, *supra* note 12, at 632.

15. *In re Bocchiaro*, 49 F. Supp. 37 (W.D.N.Y. 1943).

16. *Application of Wooley*, 108 N.Y.S.2d 165 (1951).

17. *Mitchell v. Kinney*, 242 Ala. 196, 5 So. 2d 788 (1942); *Sharp v. McIntire*, 23 Colo. 99, 46 P. 115 (1896).

18. *Sharp v. McIntire*, *supra* note 17.

19. *Sharp v. McIntire*, *supra* note 17, at 102, 46 P. at 116.

20. *Behrensmeier v. Kreitz*, 135 Ill. 591, 26 N.E. 704 (1891).

21. *People v. Turpin*, 49 Colo. 234, 112 P. 539 (1910).

22. *Kay v. Strobeck*, 81 Colo. 144, 149, 254 P. 150, 152 (1927).

residences at the same time.²³ The right to vote is recognized to exist only in the state where a citizen has his voting residence or domicile.²⁴

The acquisition of a domicile or voting residence thus requires concurrence of physical presence and the intent to remain in that place, indefinitely.²⁵ Physical presence does not create a problem since all that is necessary to fulfill this requirement is actual physical presence at the new domicile, "however brief"²⁶ that may be. The requisite intent to establish a domicile is, however, more complex and problematical, since it must be a present intention²⁷ to remain there, indefinitely.²⁸ A temporary presence is not sufficient to establish a new domicile²⁹ nor to abandon the old domicile.³⁰ Furthermore, most jurisdictions presume that certain persons are incapable of choosing or changing their domicile and these persons are given a domicile by operation of law. Domiciles arising by operation of law are created by presumptions such as: The domicile of a wife and *children* follows the domicile of the husband;³¹ a minor child upon reaching the age of discretion can sever parental ties and become emancipated and thus capable of choosing his own domicile;³² and the domicile of a married man is considered to be where his family resides unless such residence is for a temporary purpose.³³ Difficulties also arise when an individual must prove his intent to change or create a domicile. His acts rather than his declarations are considered by the courts to be

23. *Supra* note 20.

24. *Parsons v. People*, 30 Colo. 388, 70 P. 689 (1902).

25. *Supra* note 17.

26. *White v. Tennant*, 31 W. Va. 790, 8 S.E. 596 (1888).

27. *Thompson v. Emmert*, 242 Ky. 415, 46 S.W.2d 502 (1932). The court stated: "A mere floating intention to establish a residence at some future time . . . is not sufficient." *Id.* at 417, 46 S.W.2d at 503.

28. *United States v. Luria*, 184 F. Supp. 643 (S.D.N.Y. 1911). The court stated: "If the person's intention is limited to a period itself determined by some definite event, even though the occurrence of that event may be uncertain, he has not the requisite intention." *Id.* at 650. *Cf. Jansen v. Goos*, 302 F.2d 421 (8th Cir. 1962).

29. *Matney v. Elswick*, 242 Ky. 183, 45 S.W.2d 1046 (1932).

30. *Wilkerson v. Lee*, 236 Ala. 104, 181 So. 296 (1938), where the Supreme Court of Alabama held: "Temporary absence from one's residence for the purposes of his employment and the like, without the intent to abandon the home town and acquire a domicile elsewhere permanently, or for an indefinite time, does not forfeit his right to vote." *Id.* at 107, 181 So. at 298. *Accord, Mitchell v. Kinney, supra* note 17, 242 Ala. at 208, 5 So. 2d at 798.

31. *Hill v. Niblett*, 171 Md. 653, 187 A. 869 (1936).

32. *Spurgeon v. Mission State Bank*, 151 F.2d 702 (8th Cir. 1945), *cert. denied*, 327 U.S. 782 (1946); *Rounds Bros. v. McDaniel*, 133 Ky. 669, 118 S.W. 956 (1909).

33. *Supra* note 29.

the most trustworthy evidence of the voter's residence.³⁴ Once, however, a person capable of choosing a domicile has physically located himself at a place of inhabitation with the intent to remain there indefinitely, that individual has a legal domicile and voting residence and he may vote there.³⁵

A student at an institution of learning, however, has historically been presumed not to have acquired a new domicile and voting residence merely by reason of his presence at such institution, even though he has the capacity to change his domicile and is physically present with the intent to remain there indefinitely. In 1895, the Supreme Court of New York, in *In re Goodman*,³⁶ found that a student in a theological seminary did not change his domicile to the district wherein the seminary was located and thus was not allowed to vote there. In that case, the student had no legal residence elsewhere; his family was dead and he had no intention of changing his residence from the seminary. The court stated: We do not mean to say that a voter may not change his legal residence into a new district in spite of the fact that he becomes a student in an institution of learning therein, but the facts to establish such a change must be wholly independent and outside of his presence in the new district as a student, and should be very clear and convincing to overcome the natural presumption.³⁷

This presumption is based on the theory that students are residents at the institution for a definite period, and thus are temporarily absent from their true domicile.³⁸ In *In re Garvey*,³⁹ the New York Supreme Court allowed a student similarly situated (to the student in the *Goodman* case) to establish a voting residence in the district in which his seminary was located. However, the student was placed under a severe burden to satisfy the court of his change of domicile. To accomplish this change, he first had to notify the registrar of the County of his former domicile of this move, requesting that his name be removed from the voting list. Then, he sent a letter to the registrar of the County of his new residence explaining that his name was no longer on the voting roster at his former residence and requesting that he be placed on the list at the new residence. Finally, he had to show immediately after the election a clear intent to remain at the new residence, indefinitely. These added requirements to establish his residence were necessary solely because he was a student at an institution of learning.

34. *In re Erickson*, 18 N.J. Misc. 5, 10 A.2d 142 (1939).

35. *Supra* note 24.

36. 146 N.Y. 284, 40 N.E. 769 (1895).

37. *Id.* at 287, 40 N.E. at 770.

38. *Supra* note 36.

39. 147 N.Y. 117, 41 N.E. 439 (1895).

In *Welsh v. Shumway*,⁴⁰ the Illinois Supreme Court continued the presumption as established in *Goodman*,⁴¹ that a student in a college town is presumed not to have the right to vote. If he attempts to vote, the burden is upon him to prove his residence at that place, and it must be done by other evidence than his mere presence in the town.⁴²

The Illinois Supreme Court held, however, that a student could vote at his college residence if he: (1) Supported himself entirely by his own efforts; (2) was not subject to parental control; (3) regarded the place where the college is situated as his home, even though he may at some future time intend to move; (4) has the intention of making it his present place of abode; and (5) has no positive and fixed intention as to where he will locate when he leaves. The court went on to say that:

The residence in such college town must be an actual, *bona fide* one, with no intention of returning to the parental home upon the completion of the studies.⁴³

Most of the cases dealing with the ability of students to establish voting residences at their college homes evolve from state statutes or state constitutional provisions. An example is article 8, sec. 6 of the Missouri Constitution.⁴⁴ This article provides that for purposes of voting, no person shall be deemed to have gained a residence by reason of his presence, or to have lost it by reason of his absence, while a student of any institution of learning. Approximately one-half of the states have such provisions either in their constitutions or as statutes.⁴⁵ These laws require that the student must vote at his former domicile unless he can establish a change of voting residence by facts separate and independent of his presence at the institution. "The mere intention to change his residence would not suffice."⁴⁶ A similar law existed in the note cases, *Jolicoeur v. Mihaly*⁴⁷ and *Wilkins v. Bentley*.⁴⁸

The consequence of such statutes, in light of the twenty-sixth amendment, is to force the eighteen year old student, who resides at an institution of learning, to return to the county of his former domicile (or his

40. 232 Ill. 54, 83 N.E. 549 (1907).

41. *Supra* note 36.

42. *Supra* note 40 at 88, 83 N.E. at 562.

43. *Supra* note 40 at 88, 83 N.E. at 563.

44. MO. CONST. art. 8, § 6.

45. Singer, *Student Power At The Polls*, 31 OHIO ST. L.J. 703, 721 (1970). Such provisions exist in 24 states and most are identical in their wording.

46. *In re Barry*, 164 N.Y. 18, 21, 58 N.E. 12, 13 (1900).

47. *Jolicoeur v. Mihaly*, 96 Cal. Rptr. 697, 488 P.2d 1 (1971).

48. *Wilkins v. Bentley*, 385 Mich. 670, 189 N.W.2d 423 (1971).

parents' domicile if he is not emancipated) to vote or he must vote by absentee ballot if such rights exists in the state of his prior domicile.⁴⁹ Otherwise the student will not be entitled to vote. Thus the newly enfranchised eighteen to twenty-one year old voters who live away at college must overcome these obstacles to exercise their right to vote. Furthermore, these students are forced to vote in a jurisdiction from which they have not only been absent, but most likely are unfamiliar and unconcerned with the current affairs of that voting district.

A student living at a college residence in a state having such a statute has no voice in the governing policies of the community in which he is actually present. This is true even though such students are counted as residents of that state for census purposes. The students are denied the right to vote at the place of their abode even though they may pay a variety of taxes.⁵⁰ This is clearly "taxation without representation."

Students are also subject to the state and local laws and are affected by the decisions of the city counsel and various other city and county legislative delegations. Students with children can and do enroll them in the local public school systems and still they have no voting right in spite of a legitimate interest in the educational standards of the community. Finally, as the court stated in *Wilkins v. Bentley*: The Federal government grants deductions on the Federal tax for state and local taxes in lieu of itemized deductions. These deductions vary from state to state. Hence, if a student whose parents are from New York, goes to the University of Michigan and lives in Ann Arbor, he would take a deduction based on Michigan and not New York taxes. Thus, he is implicitly recognized as a Michigan resident for Federal tax purposes. The Federal government further provides community health service grants to the states based on population (which includes students).⁵¹

These statutes also ignore several other problems confronting student voters. For example, a student who is uncertain as to his future plans (*i.e.* will he remain in that community, or return to the parental domi-

49. *Bullington v. Grabow*, 88 Colo. 561, 298 P. 1059 (1931). Also, several states make no provision for absentee ballots, *see*, SMITH, VOTING AND ELECTION LAWS 89-99 (1960).

50. *Phoenix v. Kolodziejski*, 399 U.S. 204 (1970). The Supreme Court has recognized that property taxes are ultimately paid by renters, such as students. The Court stated: "Property taxes may be paid initially by property owners, but a significant part of the ultimate burden of each year's tax on rental property will very likely be borne by the tenant rather than the landlord since, as the parties also stipulated in this case, the landlord will treat the property tax as a business expense and normally will be able to pass all or a large part of this cost on to the tenants in the form of higher rent." *Id.* at 210.

51. *Supra* note 48, at 690, 189 N.W.2d at 432.

cile, or will he move to a new community) must return to vote at his hometown even though the community affairs there are of little concern to him. Surely, this is an effective disfranchisement of student voters, since they cannot vote where their parents are domiciled. These statutes would also disfranchise a student whose parents have changed their domicile to a foreign country. Thus, even though the twenty-sixth amendment gives the privilege of suffrage to eighteen to twenty-one year old citizens, such voters who are students living at a university and apart from their former domiciles are not only burdened by the state laws discussed above, but some of these voters are effectively disfranchised.

Assuming *arguendo*, that these state statutes are valid it seems logically absurd that Congress and the ratifying states would consider the right to vote important enough to enfranchise a group of citizens and then allow various states to effectively disfranchise a section of these new voters. These statutes appear to be repugnant to the legislative purpose behind the twenty-sixth amendment. The Senate Committee⁵² discussed the legislative purpose underlying the proposed amendment stating:

Although some of the student unrest of recent years has led to deplorable violence and intolerance, much of this unrest reflects the interest and concern of today's youth over the important issues of our day. . . . The Committee believes that we must channel these energies into our political system and give young people the real opportunity to influence our society in a peaceful and constructive manner. . . . Moreover, forcing younger voters to undertake special burdens—obtaining absentee ballots, or traveling to one centralized location in each city, for example—in order to exercise their right to vote might well serve to dissuade them from participating in the election. *This result, and the election procedures that create it, are at least inconsistent with the purpose of the Voting Rights Act, which sought to encourage greater political participation on the part of the young.* . . .⁵³ (Emphasis supplied).

This inconsistency between the legislative purpose and intent underlying the twenty-sixth amendment and state restrictions limiting the exercise of the right to vote seemingly render the state laws invalid. As the Supreme Court of California stated in *Freedland v. Greco*,⁵⁴ "Statutes should . . . promote rather than defeat the legislative purpose and policy."⁵⁵

Furthermore, these state laws defeat one of the objectives often asserted as a basis for prescribing residency qualifications of voters, specif-

52. *Supra* note 47, at 701, 488 P.2d at 5.

53. 1971 U.S. CODE CONG. & ADMIN. NEWS at 365-375.

54. 45 Cal. 2d 462, 289 P.2d 463 (1955).

55. *Id.* at 467, 289 P.2d at 466.

ically "community interest."⁵⁶ In *Shenton v. Abbott*,⁵⁷ the Maryland Appellate Court stated:

The object of the framers of the Constitution (of Maryland) in prescribing residence as a qualification for the exercise of the elective franchise was not only to identify the voters and to prevent fraud but also to assure that each voter would become in fact a member of his community and take an interest in its government.⁵⁸

How can a student residing at an institution of learning become an interested member of another community in which he does not reside? It is only logical, that a student would be more concerned about the college community in which he resides since the governing policies of that community directly affect him.

Finally, state laws specifically restricting student voters from exercising their vote are discriminatory because students are not the most transient group in our society. The United States Census Bureau in the 1960 census indicated that the largest group of transients were "operative and kindred workers" with "craftsmen and foremen" second, and "professional and technical personnel" third.⁵⁹

Even assuming that students are 'professionals' they are not the most mobile group in society, either in terms of profession, or education. There is, in short, no rational basis on which the state can base its presumption that students will move from the university town once their schooling is complete, and deny them the right to vote, while allowing young 'operatives' without a high school education, the most mobile part of our society, to register and vote.⁶⁰

From the prior discussion, the invalidity of those state laws, which create the presumption that student voters do not have their voting residence at their college homes, becomes apparent. Those laws are unfair and are founded on the groundless presumption that student transiency is the highest among all groups of interstate and intrastate movers. Furthermore, the laws place such a heavy burden on a student who wishes to exercise his right to vote that they effectively deny or abridge the right to vote and, therefore, are unconstitutional since they directly conflict with the twenty-sixth amendment and its legislative purpose.

Another line of analysis exists which also exposes the unconstitutionality of state laws that restrict the suffrage right of students who live at college, apart from their parents. An examination of the development

56. *Supra* note 31.

57. 178 Md. 526, 15 A.2d 906 (1940).

58. *Id.* at 531, 15 A.2d at 908.

59. Schmidhauser, *Residency Requirements for Voting and the Tensions of a Mobile Society*, 61 MICH. L. REV. 823, 830 n.10 (1963).

60. Singer, *supra* note 45, at 712.

of the right to vote under the equal protection clause⁶¹ crystallizes the constitutional infirmity of such restraints.

This argument begins with the case of *Yick Wo v. Hopkins*,⁶² wherein the Supreme Court stated that the right to vote "is regarded as a fundamental political right, because it is preservative of all rights."⁶³ Since that case, the right to vote has been described as: The most basic civil right in a democracy;⁶⁴ "the very essence of our democratic process—that is to be liberally and not strictly construed to promote and not to defeat or impede the essential design of the organic law;"⁶⁵ the most precious right in a free country;⁶⁶ so fundamental that "any alleged infringement of the right of citizens to vote must be carefully and meticulously scrutinized;"⁶⁷ and being "close to the core of our constitutional system and a fundamental right of every citizen."⁶⁸

An examination of the history and development of the interpretation and scope of the application of the equal protection clause discloses the significance of the judicial recognition of the right to vote as a fundamental right. In *Yick Wo v. Hopkins*,⁶⁹ the Supreme Court held that local officials had arbitrarily applied several San Francisco ordinances, so unequally and oppressively, as to amount to a practical denial by the State of the equal protection of the laws which is secured to the petitioners through the fourteenth amendment.⁷⁰ The Court thus intimated that a law valid on its face, is unconstitutional, if, by granting unlimited discretionary powers to the enforcing authorities, the law results in arbitrary and discriminatory application.⁷¹

61. U.S. CONST. amend. XIV.

62. 118 U.S. 356 (1886).

63. *Id.* at 370.

64. *Harrison v. Laveen*, 67 Ariz. 337, 196 P.2d 456 (1948). The Supreme Court of Arizona held: "In a democracy suffrage is the most basic civil right, since its exercise is the chief means whereby other rights may be safeguarded. To deny the right to vote, where one is legally entitled to do so, is to do violence to the principles of freedom and equality." *Id.* at 342, 196 P.2d at 459.

65. *Gangemi v. Berry*, 25 N.J. 1, 12, 134 A.2d 1, 7 (1957).

66. *Wesberry v. Sanders*, 376 U.S. 1, 17 (1963).

67. *Reynolds v. Sims*, 377 U.S. 533, 561-62 (1964).

68. *Affeldt v. Whitcomb*, 319 F. Supp. 69, 73 (N.D. Ind. 1970).

69. *Supra* note 62.

70. U.S. CONST. amend. XIV.

71. *Supra* note 62, at 373, 374. The Court stated: "Though the law itself be fair on its face and impartial in appearance, yet, if it is applied and administered by public authority with an evil eye and an unequal hand, so as practically to make unjust and illegal discriminations between persons in similar circumstances,

As the application of the fourteenth amendment has developed since *Yick Wo*, at least two standards have emerged for testing the constitutional validity of a state statute on equal protection grounds. The first and original standard of review, looks to the reasonableness of the classification in light of its legislative purpose.⁷² The Supreme Court articulately described this formula in *McGowan v. Maryland*⁷³ when it held that: "a statutory discrimination will not be set aside if any state facts reasonably may be conceived to justify it."⁷⁴

The second standard imposes a more active judicial policy, and under it, a discriminatory classification can be upheld only when the state has shown it necessary in the service of some "compelling state interest."⁷⁵ This standard is applicable only when a fundamental and constitutionally protected right is involved.⁷⁶ In the absence of a controversy involving such right, the Court has refused to apply the more stringent "compelling state interest" test.⁷⁷ Thus whenever the Supreme Court has characterized a right as being fundamental, any state law limiting that right is carefully scrutinized under the "compelling state interest" standard. Accordingly, the Court has applied this test in controversies concerning the right of procreation,⁷⁸ rights involving criminal procedure,⁷⁹ the right to travel,⁸⁰ and, most important for this article, the right to

material to their rights, the denial of equal justice is still within the prohibition of the constitution." *Accord*, *Snowden v. Hughes*, 321 U.S. 1 (1944).

72. *Lindsley v. Natural Carbonic Gas Co.*, 220 U.S. 61 (1911). The Court held: "The equal protection clause of the fourteenth amendment does not take from the State the power to classify in the adoption of police laws, but admits of the exercise of a wide scope of discretion in that regard, and avoids what is done only when it is without any reasonable basis and therefore is purely arbitrary." *Id.* at 78. See also, *Flemming v. Nestor*, 363 U.S. 603 (1960); *Lisco v. Love*, 219 F. Supp. 922 (D. Colo. 1963); *State v. Ducey*, 25 Ohio App. 2d 50, 266 N.E.2d 233 (1970).

73. 366 U.S. 420 (1961).

74. *Id.* at 426. The Court also stated: "The standards under which this proposition is to be evaluated have been set forth many times by this Court. Although no precise formula has been developed, the Court has held that the Fourteenth Amendment permits the States a wide scope of discretion in enacting laws which affect some groups of citizens differently than others. The constitutional safeguard is offended only if the classification rests on grounds wholly irrelevant to the achievement of the State's objective." *Id.* at 425.

75. *Kohn v. Davis*, 320 F. Supp. 246, 250 (D.Vt. 1970). See *Williams v. Rhodes*, 393 U.S. 23 (1968).

76. *Id.*

77. *McDonald v. Bd. of Elections*, 394 U.S. 802 (1969).

78. *Skinner v. Oklahoma*, 316 U.S. 535 (1942).

79. *Griffin v. Illinois*, 351 U.S. 12 (1956).

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

vote.⁸¹ Any infringement imposed on suffrage rights is therefore subject to the most careful and meticulous inquiry by the court.

Upon review of the Supreme Court's utilization of the second equal protection standard for testing the constitutionality of state laws, a trend has evolved favoring the right to vote over state restraints. State attempts to dilute the votes of certain groups of citizens, have been held invalid.⁸² Malapportionment of voting districts has been declared unconstitutional because it denied equal protection of the laws.⁸³ The Court invalidated state laws, which excluded non-property owners and non-property taxpayers from voting in bond issue elections.⁸⁴ Poll taxes⁸⁵ and literacy tests which give local officials broad discretionary powers have been struck down under the equal protection clause.⁸⁶ This trend was broadened to include the right to run for public office. This occurred when the Supreme Court held unconstitutional a state law requiring that the race of a candidate be designated on voting ballots and nominating petitions.⁸⁷

Several of the more recent cases which favor the fundamental right to vote, are particularly relevant to the issue of the voting residence of students. In the case of *Carrington v. Rash*,⁸⁸ the Supreme Court applied this more exacting standard of equal protection to a provision of the Texas Constitution. Under that provision no military man who became a Texas resident after entry into the service could acquire a voting residence in that state so long as he remained in the armed forces. Thus, the voting ban lasted throughout the individual's membership in the service. The plaintiff was a serviceman who became a Texas resident after his entry into the military. He was stationed in New Mexico but lived across the border in Texas with his family. He

81. *Cipriano v. City of Houma*, 395 U.S. 701 (1969); *Kramer v. Union Free School Dist.*, 395 U.S. 621 (1969); *Harper v. Virginia Bd. of Elections*, 383 U.S. 663 (1966); and *Reynolds v. Sims*, 377 U.S. 533 (1964).

82. *Wesberry v. Sanders*, 376 U.S. 1 (1964); *Gray v. Sanders*, 372 U.S. 368 (1963).

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

84. *Phoenix v. Kolodziejcki*, *supra* note 50; *Cipriano v. Houma*, *supra* note 81; *Kramer v. Union Free School Dist.*, *supra* note 81; *cf.*, *Turner v. Fouche*, 396 U.S. 346 (1970).

85. *Harper v. Virginia Bd. of Elections*, *supra* note 81; *Gray v. Johnson*, 234 F. Supp. 743 (S.D. Miss. 1964).

86. *Katzenbach v. Morgan*, 384 U.S. 641 (1966); *Louisiana v. United States*, 380 U.S. 145 (1965).

87. *Anderson v. Martin*, 375 U.S. 399 (1964).

88. 380 U.S. 89 (1965).

intended to make Texas his permanent residence and he even had a business in Texas. However, he was not permitted to vote in Texas pursuant to that state's constitutional provision. The Court recognized that states have the authority to impose reasonable residence restrictions on the availability of voting ballots and that Texas treated all members of the military equally. But this was a restraint on the fundamental right to vote, therefore, the state also had to show a compelling and legitimate state interest in order to satisfy the equal protection clause. The following two purposes were asserted by the court:

First, the State says it has a legitimate interest in immunizing its elections from the concentrated balloting of military personnel, whose collective voice may overwhelm a small local civilian community. Secondly, the State says it has a valid interest in protecting the franchise from infiltration by transients, and it can reasonably assume that those servicemen who fall within the constitutional exclusion will be within the State for only a short period of time.⁸⁹

Rejecting the state's contention that the first purpose (stated above) was a compelling interest, the court held that residents of a state who intend to make that place their home indefinitely may not be denied the right to vote merely because of the way they may vote.⁹⁰ The second purpose asserted by the state was also denied because the conclusive presumption that servicemen are not Texas residents, could not be overcome by proof of the most positive character.⁹¹ Since Texas did not show a "compelling state interest" sufficient to deny the plaintiff the right to vote, the court held that state's aforementioned constitutional provision invalid under the equal protection clause.

The continuing trend of the Supreme Court to liberally construe the right to vote was further exemplified in *Oregon v. Mitchell*.⁹² In that case, the constitutionality of the Voting Rights Act of 1970⁹³ was challenged. The act provided for a five year suspension of all literacy tests,⁹⁴ uniform rules for absentee voting, the elimination of state resi-

89. *Id.* at 93.

90. *Supra* note 88, at 94, where the Court stated: "But if they are in fact residents, with the intention of making Texas their home indefinitely, they, as all other qualified residents, have a right to an equal opportunity for political representation. . . . 'Fencing out' from the franchise a sector of the population because of the way they may vote is constitutionally impermissible."

91. *Supra* note 88, at 94.

92. 400 U.S. 112 (1970).

93. Act of June 22, 1970, Pub. L. No. 91-285, 84 Stat. 314 also referred to as the Voting Rights Act Amendments of 1970. See generally, Note, *Constitutional Bases For Upholding The Voting Rights Act Amendments of 1970*, 20 DE PAUL L. REV. 1002 (1971).

94. Act of June 22, 1970, Pub. L. No. 91-285, 84 Stat. 314 Title II sec. 201.

dency requirements as a method of disqualifying voters in presidential and vice-presidential elections,⁹⁵ and finally an eighteen year old minimum voting age requirement for all federal and state elections.⁹⁶ The court decided that the residency, absentee balloting, and literacy test provisions were valid but that the eighteen year old minimum voting age requirement was only valid for national elections (and not state or local elections).⁹⁷ Thus the Court not only affirmed its proclivity towards broadly interpreting suffrage rights, but also approved Congressional intent and authority to extend the right to vote.

In another recent case, the Supreme Court enjoined the Board of Registry of Montgomery County, Maryland, from removing the names of residents of the National Institute of Health from the voter rolls of that county. This institute was a federal enclave located within the geographical boundaries of Montgomery County, Maryland. In that case, *Evans v. Cornman*,⁹⁸ the board of registry, appellants, relied on an earlier Maryland Appellate Court decision. The court determined therein that a resident of a federal reservation was not a resident of Maryland.⁹⁹ The Supreme Court applied *Carrington v. Rash*¹⁰⁰ and repudiated appellants' contention, stating that "if they are in fact residents, with the intention of making (the State) their home indefinitely, they, as all other qualified residents, have a right to an equal opportunity for political representation."¹⁰¹ The Court further acknowledged that the NIH inhabitants were treated as state residents in the census and in determining congressional apportionment. Being aware that they were required to establish a compelling state interest, the appellants asserted that their purpose was to insure that only those citizens who were primarily or substantially interested in, or affected by, electoral decisions have a voice in making them. Moreover the appellants claimed that NIH residents were substantially less interested in Maryland affairs than other citizens of the state because Congress was vested with "exclusive Legislation in all cases whatsoever . . ."¹⁰² over federal enclaves. The Court again did not accept this argument inasmuch

95. *Id.* sec. 202.

96. *Id.* sec. 301.

97. *Supra* note 92.

98. 398 U.S. 419 (1970).

99. *Royer v. Bd. of Election Supervisors*, 231 Md. 561, 191 A.2d 446 (1963).

100. *Supra* note 88.

101. *Evans v. Cornman*, *supra* note 98, at 421; and *Carrington v. Rash*, *supra* note 88, at 94.

102. U.S. CONST. art. 1, § 8, cl. 17.

as the NIH residents were not shown to be sufficiently disinterested in electoral decisions. On the contrary, NIH residents as well as other Maryland citizens were equally affected by the state's criminal laws, spending and taxing decisions, unemployment laws and workmen's compensation laws. The appellees were required to register their automobiles in that state and obtain Maryland drivers' permits and license plates. They were subject to process and jurisdiction of state courts and could resort to those courts in divorce and child adoption proceedings. Also, persons on NIH grounds sent their children to Maryland public schools. All these factors led the federal district court to conclude that the NIH residents were treated as state residents to such an extent that it was repugnant to the equal protection clause for the state to deny them the right to vote. The Supreme Court thus affirmed the district court's decision, that the appellees were entitled to vote in state elections by virtue of the fourteenth amendment.¹⁰³

The Supreme Court's propensity to invalidate state laws that restrict the right of its residents to vote has permeated the federal district courts. Several districts have held unconstitutional state voting residency requirements of six months or more as a prerequisite for exercising the right to vote. The one year residency requirement for eligibility to vote in the State of Virginia was held unconstitutional in *Bufford v. Holton*.¹⁰⁴ Upon finding that Virginia did not satisfy the "compelling governmental interest test," the district court made the following comment:

On the contrary the difference in treatment of residents, regardless of the State's intentment, is clearly an arbitrary discrimination. . . . [T]his call for residence (of one year) can without more be seen as an obstruction or deterrent to uninhibited interstate travel, admittedly a Constitutional prerogative.¹⁰⁵

In *Keppel v. Donovan*,¹⁰⁶ Minnesota's six month durational residency re-

103. *Evans v. Cornman*, *supra* note 98, at 426 where the Court concluded: "In their day-to-day affairs, residents of the NIH grounds are just as interested in and connected with electoral decisions as they were prior to 1953 when the area came under federal jurisdiction and as are their neighbors who live off the enclave. In nearly every election, federal, state, and local, for offices from the Presidency to the school board, and on the entire variety of other ballot propositions, appellees have a stake equal to that of other Maryland residents. As the District Court concluded, they are entitled under the Fourteenth Amendment to protect that stake by exercising the equal right to vote."

104. 319 F. Supp. 843 (E.D. Va. 1970). *Accord*, *Kohn v. Davis*, 320 F. Supp. 246 (D. Vt. 1970).

105. *Id.* at 846. *Accord*, *Shapiro v. Thompson*, 394 U.S. 618 (1969); *Kohn v. Davis*, *supra* note 104.

106. 326 F. Supp. 15 (D. Minn. 1970).

quirement was held unconstitutional. The court therein recognized that although this requirement may have been valid at one time, it could no longer be considered constitutional because the "[n]otions of what constitutes equal treatment for [the] purpose of the equal protection clause do change."¹⁰⁷ Furthermore, other district courts have recently held invalid similar six month voting residency requirements under the equal protection clause.¹⁰⁸

The two note cases, *Jolicoeur* and *Wilkins*, are a logical continuance of the judicial tendency of extending suffrage rights and invalidating state restraints of such rights under the equal protection clause. It requires no stretch of the imagination to apply to the issue of student voting residence, the courts' reasoning behind the decisions which found unconstitutional, six month durational residency requirements. Furthermore, many of the arguments asserted by the states in the *Carrington*, *Evans*, and six month or one year residency requirement cases, which were denied "compelling state interest" status, were also unsuccessfully used by the states in the note cases. In both *Jolicoeur* and *Wilkins*,¹⁰⁹ the states attempted to sustain their voting residency restrictions upon the presumption that students are uninterested, non-permanent residents of the college community, and that as a voting block they could control the outcome of an election in a college town. This contention, however, was not accepted by the Supreme Court in *Carrington v. Rash*,¹¹⁰ and the respective state supreme courts followed the *Carrington* rationale. Moreover, in the *Wilkins* case, the State of Michigan advanced as grounds to validate its statute, other state interests which had previously been found to be constitutionally impermissible. Accordingly, the Michigan Supreme Court in *Wilkins* rejected as "compelling state interests" the preservation of purity of elections by insuring that students will not vote twice;¹¹¹ the prevention of transients from voting;¹¹² and the promotion of a concerned and interested electorate. All this

107. *Id.* at 18.

108. *Beare v. Smith*, 321 F. Supp. 1100 (S.D. Tex. 1971); *Hadnott v. Amos*, 320 F. Supp. 107 (N.D. Ala. 1970); *Affeldt v. Whitcomb*, 319 F. Supp. 69 (N.D. Ind. 1970).

109. *Jolicoeur v. Mihaly*, 96 Cal. Rptr. 697, 700, 488 P.2d 1, 4 (1971); *Wilkins v. Bentley*, 385 Mich. 670, 691, 189 N.W.2d 423, 432 (1971).

110. *Supra* note 88.

111. *Wilkins v. Bentley*, *supra* note 109, at 685-86, 189 N.W.2d at 430; *see also United Mine Workers of America, Dist. 12 v. Illinois State Bar Ass'n*, 389 U.S. 217 (1967).

112. *Wilkins v. Bentley*, *supra* note 109, at 685-86, 189 N.W.2d at 430; *Carrington v. Rash*, *supra* note 88.

was under the presumption that students were unconcerned and uninterested non-residents of the district wherein the university was located.¹¹³

There is an apparent trend by courts to disaffirm state restraints on the right to vote under the equal protection clause. Thus, courts now favor upholding suffrage rights of interested *bona fide* residents. It is only a simple and logical extension of this trend to apply the rationale to students residing at college, apart from their parents, and thereby allow these students to exercise their right to vote at their college home. Reinforcing this deduction is the inability of the states to show the "compelling state interest" which is necessary to sustain limitations on the fundamental right to vote, under the equal protection clause.

Comparison of the fifteenth and twenty-sixth amendments reveals a striking similarity. The fifteenth amendment provides that:

The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of *race, color, or previous condition of servitude*.¹¹⁴ (Emphasis supplied).

As stated at the outset of this article, the twenty-sixth amendment provides that:

The right of citizens of the United States, *who are eighteen years of age or older*, to vote shall not be denied or abridged by the United States or by any State on account of *age*.¹¹⁵ (Emphasis supplied).

It is apparent that the twenty-sixth amendment is written in the exact language of the earlier fifteenth amendment. The twenty-sixth substitutes the word "age" for the words "race, color, or previous condition of servitude" as found in the fifteenth. The twenty-sixth also adds the phrase "who are eighteen years of age or older." The similar wording found in the twenty-sixth and the fifteenth amendments leads to the presumption that Congress wished the twenty-sixth amendment to have the same liberal interpretation now given to the fifteenth, and thus avoid a similar volume of litigation that arose from the enactment of the fifteenth amendment.¹¹⁶ Congress became aware of these prob-

113. *Evans v. Cornman*, *supra* note 98. The circumstances and reasoning the Supreme Court used to determine that NIH residents were entitled to vote in Maryland are strikingly similar to circumstances and reasoning in *Wilkins*. *Accord*, *Phoenix v. Kolodziejewski*, *supra* note 50; *Cipriano v. Houma*, *supra* note 81.

114. U.S. CONST. amend. XV, § 1.

115. U.S. CONST. amend. XXVI, § 1.

116. *Louisiana v. United States*, 380 U.S. 145 (1965); *Gomillion v. Lightfoot*, 364 U.S. 339 (1960); *Terry v. Adams*, 345 U.S. 461 (1953); *Smith v. Allwright*, 321 U.S. 649 (1944); *Guinn v. United States*, 238 U.S. 347 (1915); *Ex parte Yarbrough*, 110 U.S. 651 (1884); *United States v. Reese*, 92 U.S. 214 (1875).

lems confronting Negro voters and passed the Voting Rights Act of 1965,¹¹⁷ which the Supreme Court upheld in *South Carolina v. Katzenbach*.¹¹⁸

Since the fifteenth amendment resulted in almost continuous litigation throughout which the Supreme Court showed a definite propensity to invalidate state restraints on the rights of blacks to vote, the Congressional purpose, in using similar language in the twenty-sixth amendment, may have been to deter similar state restrictions on the right of enfranchised minors which encompasses student voters residing on college campuses, apart from their parents. If, however, this was not the Congressional intent in the enactment of the twenty-sixth amendment, then the Supreme Court's liberal interpretation and extension of the fifteenth amendment is indicative of why student residency requirements should be invalidated.

The statement of the Court in *Jolicoeur v. Mihaly*¹¹⁹ dictates that students' attendance on the college campus is sufficient to establish the residency requirement pursuant to the twenty-sixth amendment. In that case, the Court stated:

Obviously, in giving the minor the right to vote, it was never contemplated that the parent or guardian should be able to control whether or not the minor should be permitted to vote or how he should exercise the franchise. It was necessarily the intention to accept him as a responsible member of the community, capable of participating in its political affairs, directing its policies, and choosing its leaders. For these purposes, he must be free entirely of parental control, and unless he is, the right to vote granted to him would be meaningless.¹²⁰

This statement as well as the foregoing arguments is what the United States Supreme Court should consider in making a determination concerning the validity of state laws restricting the franchise right of student voters.

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Accord, *Alabama v. United States*, 371 U.S. 37 (1962); *Schnell v. Davis*, 336 U.S. 933 (1949).

117. 42 U.S.C. § 1973 (1970).

118. 383 U.S. 301 (1966).

119. *Supra* note 47.

120. *Jolicoeur v. Mihaly*, *supra* note 47, at 707, 488 P.2d at 11.