

Comments

CUTTING THE "RESIDENTIAL APRONSTRINGS" OF VOTING MINORS

Undoubtedly, the right of suffrage is a fundamental matter in a free and democratic society. Especially since the right to exercise the franchise in a free and unimpaired manner is preservative of other basic civil and political rights, any alleged infringement of the right of citizens to vote must be carefully and meticulously scrutinized.*

I. INTRODUCTION

The possibility of an infusion of youthful inspiration into our democratic system became a legal reality on June 30, 1971, when the traditional voting age was lowered to eighteen. Congress had previously lowered the voting age for both state and national elections through the Voting Rights Act Amendments of 1970.¹ However, the United States Supreme Court in *Oregon v. Mitchell*,² upheld the lowering of the voting age in presidential and congressional elections but ruled the change unconstitutional as it applied to state and local elections.³

* *Reynolds v. Sims*, 377 U.S. 533, 561-562 (1964).

1. Besides lowering the voting age, the amendments renewed portions of the Voting Rights Act of 1965. 42 U.S.C. §§ 1971, 1973 to 1973p (Supp. IV, 1969).

2. 400 U.S. 112 (1970).

3. The eighteen year old provision, as it applied to state and local elec-

In an effort to enfranchise eighteen to twenty year olds for all elections, the twenty-sixth amendment was passed. As a result, the franchise was extended to eleven million young people.⁴ The decision by the California Supreme Court in *Jolicoeur v. Mihaly*⁵ promotes the fullest possible extension of the franchise pursuant to the twenty-sixth amendment. Justice Peters, speaking for the majority of the court, followed constitutional precedent when he ruled against discrimination on account of minority which impinged the fundamental right to vote.

II. STATEMENT OF FACTS

Nine minors were denied registration when they sought to register in the jurisdiction they claimed as their actual, permanent residence rather than at their parents' residence. For one of the nine petitioners, this meant that he would have to marry before he could vote, for his parents lived in Argentina. Two others would have had to travel to Hawaii and Arizona. The remaining individuals had to register in other California jurisdictions, the furthest being seven-hundred miles away. One of these petitioners had never even resided at his parents' current residence.

The refusal to register these minors was pursuant to a California Attorney General's opinion of February 17, 1971,⁶ which said that an unmarried minor's residence for election purposes is his parents' home.⁷

tions, was held unconstitutional because under article 1, § 2, of the United States Constitution, the states have the power to set qualifications in these elections. Furthermore, the Constitution reserves that power to the states, unless it is limited by a specific constitutional amendment. Since no amendment authorized Congress to lower the voting age in state and local elections, the provision was held unconstitutional. The other provisions of the act, however, were upheld. *Oregon v. Mitchell*, 400 U.S. 112 (1970).

4. "Of the newly enfranchised 18 to 20 year olds, the Census Bureau said 900,000 are in high school, 4 million in college, 4.1 million working full time, 1 million housewives, 800,000 in the armed services, and the rest in hospitals, prisons or other institutions. CONG. Q. WEEKLY REPORT, v. XXIX, no. 27 at 1437. For a discussion of the language of the twenty-sixth amendment and its impact, see text accompanying notes 12-20, *infra*.

5. 5 Cal. 3d 565, 488 P. 2d 1, 96 Cal. Rptr. 997 (1971) [hereinafter cited as *Jolicoeur*].

6. 54 ADV. OPS. CAL. ATTY. GEN. 7, Op. No. 70-312 Feb. 17, 1971.

7. 54 ADV. OPS. CAL. ATTY. GEN. at 12. The decision was pursuant to CAL. GOVT. CODE § 244 (West 1966):

Determination of place of residence. In determining the place of residence the following rules are to be observed . . .

(d) . . . The residence of the father during his life, and after his death the residence of the mother, while she remains unmarried is the residence of the unmarried minor child, provided that when the

The California Supreme Court, taking the case on original jurisdiction,⁸ unanimously held: to treat minors differently from adults for any purpose related to voting violates the twenty-sixth amendment.⁹ The opinion of the court concluded that, after the passage of the twenty-sixth amendment, California law required a minor's emancipation for voting purposes. The court reasoned that Government Code, section 244,¹⁰ was not to be absolutely interpreted since California law permits a minor's emancipation for residential and other purposes and because state policy demands that a minor vote where he resides. Three concurring justices,¹¹ dispensing with any consideration of California law, stated that the twenty-sixth amendment alone *compel[s]* the court's decision once an abridgment solely on account of age has been established. *Jolicoeur v. Mihaly*, 5 Cal. 3d 565, 488 P.2d 1, 96 Cal. Rptr. 967 (1971.)

This article will first seek to examine the similarity of the language between the twenty-sixth amendment and previous amendments which also prevent the abridgment of the franchise. Next, it will be shown that state statutes, which are contrary to the twenty-sixth amendment and the legislative intent in enacting the amendment, must be invalidated, as was the case in *Jolicoeur*, to ensure the free exercise of the franchise. Furthermore, this article

parents are separated, the residence of the parent with whom an unmarried minor child maintains his place of abode is the residence of such unmarried minor child.

(f) The residence of an unmarried minor who has a parent living cannot be changed by his own act.

8. Petitioners invoked the court's original jurisdiction. CAL. CONST. art. VI, § 10; vice, CAL. RULES OF COURT, rule 56(a) (West 1964).

In this case the last day to register for the November 2, 1971, election was September 9, 1971. The last day to register for the June 6, 1972, election was April 13, 1972. The court noted that it was highly unlikely that petitioners could secure a superior court decision and complete appeals before these deadlines. *Jolicoeur*, 5 Cal. 3d at 570, 488 P.2d at 3, 96 Cal. Rptr. at 699.

9. This article will occasionally refer to students and the residential restrictions confronting them. This is done solely for the sake of comparison, since their situation is often analogous to that of minors. No attempt is made to fully discuss the differential treatment of students. For a good discussion of the differential treatment of students caused by state residence requirements imposed upon them, see: Singer, *Student Power at the Polls*, 31 OHIO ST. L.J. 703 (1970).

10. See note 7 *supra*.

11. C.J. Wright wrote the concurring opinion joined by J. McComb and J. Burke.

will seek to show that other constitutional grounds, unconsidered by the court in *Jolicoeur*, serve equally well to invalidate these statutes.

III. SIMILARITY OF LANGUAGE

The twenty-sixth amendment provides:

The right of citizens of the United States 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.¹²

Similar language is to be found in the fifteenth,¹³ nineteenth,¹⁴ and twenty-fourth¹⁵ amendments to the Constitution which eliminate race, sex, and wealth, respectively, as legitimate qualifications on the right to vote. That the exact phrase, "shall not be denied or abridged", was reiterated with each amendment is significant. It suggests that with each, the objective was the same, to prohibit the abridgment of the right to vote. Referring to this phrase in the twenty-fourth amendment, the court in *Gray v. Johnson*¹⁶ defined the word "abridge" to mean to circumscribe or burden when used in connection with or following the word "deny". This definition should apply to the fifteenth, nineteenth, and twenty-sixth amendments which similarly seek the unburdened exercise of the franchise.

In *Gray*, a Mississippi statute imposed separate procedures on voters exempted by state law from payment of a poll tax and those exempted by a federal constitutional provision. Those in the latter group had the added burden of obtaining a poll tax receipt prior to voting. The court reached the conclusion that the statute was unconstitutional as a violation of the twenty-fourth amendment:

It was the clear intention and purpose of the Twenty-Fourth Amendment to the Federal Constitution that neither the United States, nor any state should impair the vested right of a duly registered voter to vote by reason of his failure to pay a poll tax. No state is thus permitted to circumscribe or burden or impair or impede the right of a voter to the free and effective exercise and

12. U.S. CONST. amend. XXVI, § 1.

13. The right of citizens of the United States shall not be *denied* or *abridged* by the United States or by any State on account of race, color or previous condition of servitude. U.S. CONST. amend. XV, § 1 (emphasis added).

14. 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 sex. U.S. CONST. amend. XIX (emphasis added).

15. The right of citizens of the United States to vote in any primary or other election for President or Vice-President, for electors for Presidential or Vice-Presidential, or for Senator or Representative in Congress shall not be *denied* or *abridged* by the United States by reason or failure to pay any poll tax or other tax. U.S. CONST. amend. XXIV, § 1 (emphasis added).

16. 234 F. Supp. 743, 746 (S.D. Miss. 1964).

enjoyment of his franchise in any election for a Federal official "by reason of failure to pay any poll tax" as the amendment expressly provides.¹⁷

In *Lane v. Wilson*,¹⁸ an Oklahoma statute would forever disenfranchise blacks if they did not register within a twelve day period; however, whites, who were previously on registration lists, were entitled to vote. This was held to be contrary to the fifteenth amendment which ". . . secures freedom from discrimination on account of race in matters affecting the franchise."¹⁹

The court in *Jolicoeur* aligned itself with these decisions when it struck down the requirement that a minor, age eighteen to twenty, has a residence appended to that of his parents' for voting purposes. The restriction in *Jolicoeur*, like that found in *Gray* and *Lane*, created two procedures. Adults could register and vote where they resided, but minors had to register and vote at their parents' abode. In *Gray*, a distinction was made between those exempted by state law from payment of a poll tax and those exempted by the federal constitution. The distinction forced those in the latter group to show a poll tax receipt prior to voting. The separate procedures in *Lane* presumed whites to be on registration lists while blacks had to register within a fixed time period. In each case one procedure was clearly more burdensome than the other. The minors in *Jolicoeur* had the more burdensome procedure because they were forced to travel to their parents' home or vote absentee.

The basis of each decision was the inequality of treatment resulting from two procedures, rather than the absolute denial of the right to vote. Even though a different type of abridgment was used in each case to achieve the unequal treatment, each met a similar fate. The court in all three cases invoked an amendment, designed to be a limitation upon the state, and eliminated the discrimination.

The degree of discrimination needed for each of the amendments to operate was irrelevant:

The Twenty-Sixth Amendment, like the Twenty-Fourth, Nineteenth, and Fifteenth before it, "nullifies sophisticated as well as simple-minded discrimination. It hits onerous procedural require-

17. 234 F. Supp. at 746.

18. 307 U.S. 268 (1939).

19. 307 U.S. at 274.

ments which effectively handicap exercise of the franchise . . . although the abstract right to vote may remain unrestricted. . . ."²⁰

As blacks were relieved of procedural burdens by the fifteenth and twenty-fourth amendments in *Lane* and *Gray*, respectively, the twenty-sixth amendment was similarly invoked in *Jolicoeur* to relieve voting minors of their procedural burdens.

IV. STATE PROVISIONS—POTENTIAL IMPEDIMENTS

A Texas statute²¹ demonstrates the potential states have for burdening the right to vote for all practical purposes while abstractly leaving it intact. The statute uses age as one of the criteria to determine a student's ability to establish a residence within the state. Students over twenty-one, who satisfy the other criteria, may be classified as "resident students". But a student, who also happens to be a minor, has a residence attached to that of his family. Thus, if his family does not reside in the state, there is no way he can gain residence there. It is of minimal consolation to minor students that their legal right to vote remains intact:

Compelling young people who live apart from their parents to travel to their parents' district to register and vote or else to register and vote as absentees burdens their right to vote no less than the State of Mississippi burdened its poor people in *Gray*. Such young people would be isolated from local political activity, with a concomitant reduction in their political influence and information.²²

Minors, who are not students, are confronted with similar statutes. In Delaware, a person must be twenty-one before he can

20. 5 Cal. 3d at 571, 488 P.2d at 4, 96 Cal. Rptr. at 700.

21. TEX. CIV. STAT. art. 2654c § 1(e) (Vernon 1965):

(1) A nonresident student is hereby defined to be a student of less than twenty-one (21) years of age, living away from his family and whose family resides in another state, or whose family has not resided in Texas for the twelve (12) months immediately preceding the date of registration; or a student of twenty-one (21) years of age or over who resides out of the state or who has not been a resident of the state twelve (12) months immediately preceding the date of registration.

(2) Individuals twenty-one (21) years of age or over who have come from without the state and who are gainfully employed within the state for a period of twelve (12) months prior to registering in an educational institution shall be classified as "resident students" as long as they continue to maintain such legal residence in the state.

This statute defines resident and non-resident students for purposes of imposing tuition in state colleges and universities. However, because a student is labeled a non-resident by this statute, he may also be labeled a non-resident for voting purposes.

22. 5 Cal. 3d at 571, 488 P.2d at 4, 96 Cal. Rptr. at 700.

acquire a legal domicile within the state.²³ Until a minor has attained that age, his domicile remains and follows that of his father. Similar statutes in Georgia, where eighteen year olds have been allowed to vote since 1943,²⁴ fix the domicile of a minor to be that of his father.²⁵ The statutes allow any person sui juris to change his domicile.²⁶ Minors, however, because their domicile is dependent on that of their father, are not sui juris.²⁷ Therefore, they cannot

23. DEL. CODE ANN. tit. 13, § 1701 (West 1953):

Adult: Any person of the age of 21 years, being a citizen of this or any other State of the United States, and who has lived for two successive years in this State, and for the purpose of determining domicile in any county of the State, has lived for one year in such county, and who has, during that time maintained himself and his family shall be held to have acquired a legal domicile therein.

DEL. CODE ANN. tit. 13, § 1703 (West 1953):

Legitimate Children: Legitimate children follow and have the domicile of their father, if he has any within the State, until they gain a domicile of their own; but if he has none, they shall, in like manner, follow and have the domicile of their mother, if she has any.

24. GA. CONST. art. II, § 2-702 (Harrison 1948):

Paragraph II. Who shall be an elector entitled to register and vote.—Every citizen of the United States, eighteen years old or upwards, not laboring under any of the disabilities named in this Article, and possessing the qualifications provided by it, shall be an elector and entitled to register and vote at any election by the people: Provided, that no soldier, sailor or marine in the military or naval services of the United States shall acquire the rights of an elector by reason of being stationed on duty in this State.

The above paragraph was ratified August 3, 1943, as an amendment to the Constitution of 1877.

25. GA. ANN. CODE, § 79-404 (Harrison 1964):

Minors.—The domicile of every minor shall be that of his father, if alive, unless such father shall have voluntarily relinquished his parental authority to some other person. In such event the domicile of the minor shall be that of the person to whom parental authority has been relinquished, or, his master, if an apprentice, or his employer; if neither master nor employer, then the place of his own choice; if the father shall be dead, then the domicile of the minor shall be that of his guardian, if he has one in this State; if no guardian, then of his mother, if alive; if no mother, then of his employer; if no employer, then of his own choice. The domicile of an illegitimate child shall be that of his mother.

26. GA. ANN. CODE, § 79-406 (Harrison 1964):

Change of domicile; intention.—The domicile of a person sui juris may be changed by an actual change of residence with the avowed intention of remaining. A declaration of an intention to change the domicile is ineffectual for that purpose until some act is done in execution of the intention.

27. GA. ANN. CODE, § 79-407 (Harrison 1964):

Persons not sui juris.—A person whose domicile for any reason is dependent upon that of another can, by no act of volition of his, effect a change of his own domicile; nor can guardian change the

effect a change of their domicile. These statutes are almost identical to the statute used to discriminate against minors in *Jolicoeur*.²⁸

The consequences of such statutes may prove devastating.²⁹ A minor working full-time, as were two of the petitioners in *Jolicoeur*, while being able to afford a residence of his own, would have to attain the age of majority before he could vote at that residence. In the meantime, he might be subject to property taxes on this residence and yet have no voice in the electoral process which would determine how these funds were to be spent. Taxation without representation is not a remote possibility if these statutes are used to burden a minor's right to vote. Because of their potential for damaging results, state statutes, burdening a minor's right to vote, must necessarily be dealt with in accordance with the decision in *Jolicoeur*.

The California court recognized that the right to vote gives rise to a relation which is inconsistent with parental control. Adhering to a common sense approach, the court initially recognized the "substantial likelihood" that a minor is emancipated for all purposes when he lives apart from his parents.³⁰ It then determined that there was "at least" an emancipation for residential purposes³¹ because a minor may be emancipated for specific purposes under California law.³² Finally, the court in *Jolicoeur* determined that a "mi-

domicile of his ward by a change of his own or otherwise, so as to interfere with the rules of inheritance or succession, or otherwise affect the rights of inheritance of third persons.

28. CAL. GOV'T CODE § 244; see note 7 *supra*.

29. It is difficult to assess the effect of such provisions on the voting of minors in Georgia. It is interesting to note, however, that two-thirds of the enfranchised youths, prior to the passage of the twenty-sixth amendment, resided in this state. Yet Georgia had an embarrassing 42.9% overall turnout in 1968, lower than any other state. "[Moreover], (on the national scene) the percentage of youths not registering was more than double the national rate." The reasons given for failure to register were ". . . inability to register, failure to meet residency requirements, and indifference to the vote." *Hearings on S.J. Res. 7, 19, 32, 34, 38, 73, 87, 102, 105, 141, 147 Relating to Proposed Constitutional Amendments Lowering the Voting Age to 18, Before the Subcommittee on Constitutional Amendments of the Senate Committee on the Judiciary, 91st Cong., 2d Sess. at 64 (1970)* [hereinafter cited as *1970 Hearings*].

30. 5 Cal. 3d at 581, 488 P.2d at 11, 96 Cal. Rptr. at 707.

31. *Id.*

32. California has in fact recognized the emancipation of minors even when a fundamental right is not involved. For example, a minor who enlists or is inducted into the armed services is considered emancipated. *Argonaut Ins. Exchange v. Kates*, 137 Cal. App. 2d 158, 289 P.2d 801 (1955). More recently, the California Supreme Court declared that emancipation was not necessary for a minor to sue his father for negligence. *Gibson v. Gibson*, 3 Cal. 3d 914, 479 P.2d 648, 92 Cal. Rptr. 288 (1970). Since emancipation is unnecessary in this instance, a strong argument may be made for

nor is necessarily emancipated for all purposes related to voting when he is given the vote in his own right. . . ."³³

The conclusion reached in *Jolicoeur* was the only solution which would be consonant with the twenty-sixth amendment. Otherwise, what the twenty-sixth amendment gave to minors with one hand, the states would take away with the other. State statutes which place special burdens on minors would discourage them in the exercise of their newly acquired right. After the twenty-sixth amendment, these statutes may even be unconstitutional on their face because of their undue interference with the right to vote.

V. RESIDENTIAL RESTRICTIONS ON MINORS CONTRARY TO LEGISLATIVE INTENT

The courts in both *Gray* and *Lane* rested their decisions solely upon the particular amendment involved to invalidate voting restrictions. The majority of the court in *Jolicoeur*, however, relied upon congressional publications revealing the legislative justification for the twenty-sixth amendment. While adding support to their decision, the majority at the same time indirectly admits that additional support is necessary. The similarity of the twenty-sixth amendment to other voting amendments would seem to suggest that it too can stand alone.

Nevertheless, the testimony before the Senate subcommittee is bulging with statements indicating the expressed theme that minors of this age had attained the requisite maturity to be granted the franchise. As stated by Theodore Sorensen, quoting from the Cox Commission which studied the disorders at Columbia University:

The present generation of young people in our universities is the best informed, the most intelligent, and the most idealistic this country has even known * * * the most sensitive to public issues * * * the most sophisticated in political tactics. * * * [with] a higher level of social conscience than preceding generations.³⁴

All the newly enfranchised minors are not university students. There is evidence, however, that high school students have also more rapidly matured.³⁵

unfastening the apronstrings of minors for all purposes, and certainly for voting purposes.

33. 5 Cal. 3d at 579, 488 P.2d at 10, 96 Cal. Rptr. 706.

34. 1970 *Hearings*, *supra* note 29, at 16.

35. 1970 *Hearings*, *supra* note 29, at 295:

While Congress was aware of the maturity of youth today, it was also aware of their idealism and the need to funnel it into the system:

What better way is there to curb even the more militant young people than to channel their spirits in a constructive direction by allowing them to vote? I believe it is essential that we allow an expression of feelings within the established political framework. If we do not, I fear that even greater numbers of America's young people will become frustrated, disillusioned and alienated from our society.³⁶

The intent of the legislature was to give these young people the right to vote, "[n]ot as a gesture but as a right. . . ."³⁷ In giving full impact to this legislative intention, *Jolicoeur* recognized the necessary existence of a corresponding right to establish a domicile of choice for voting purposes. The majority of the court believed that the California statute, which worked to circumscribe the participation of minors in the electoral process, was not only contrary to the twenty-sixth amendment, but inconsistent with the legislative intent in enacting the amendment.

VI. CONSTITUTIONAL CONSIDERATIONS

Dispensing with any consideration of legislative intent, the concurring justices would likewise invalidate statutes restricting the franchise. They read the twenty-sixth amendment as a mandate which *compels* the result in *Jolicoeur* once an abridgment solely on account of age is established.³⁸ The argument of the concurring justices is uncomplicated and forceful adherence to the supreme law of the land. Whenever there exists a prohibition embodied within the federal Constitution, it alone is decisive. Delving into a consideration of lesser sources, such as legislative intent, which yield the same result, is valueless.³⁹

Today, all authorities agree that high school graduates are better educated than ever before in the history of our country. Scores on tests indicate that the eighteen year olds of today are more concerned and more aware of national and local issues than their elders. On the subjects of government, politics, and the functions of the electoral system time and time again young adults score higher than their parents. The young men and women reaching maturity in the past decade have also shown a greater desire to participate in the political processes of the nation than ever before (statement of U.S. Senator Joseph Montoya).

36. 1970 Hearings, *supra* note 29, at 295.

37. Hearings on S.J. Res. 8, 14, 78, *Relating to Lowering the Voting Age to 18, Before the Subcommittee on Constitutional Amendments of the Senate Committee on the Judiciary*, 90th Cong., 2d Sess. at 36 (1968) (statement of U.S. Senator William Proxmire).

38. 5 Cal. 3d at 583, 488 P.2d at 12, 96 Cal. Rptr. at 708.

39. *Id.*

Other than the twenty-sixth amendment, two constitutional bases—the equal protection and the due process clauses of the fourteenth amendment⁴⁰—afford protection to voting minors. Both were invoked by the Michigan Supreme Court in a recent student voting case, *Wilkins v. Bentley*,⁴¹ to invalidate a statute used to deny registration to students.⁴² The Michigan court found that students were denied due process, for one city official required that elaborate questionnaires be filled out prior to allowing a student to register, while in another city, a clerk asked no special questions of students seeking registration. The court also stated that the statute, as it applied to students, violated the equal protection clause because a burden was placed on their right to vote. The court reasoned that “. . . the Equal Protection Clause likewise guards against subtle restraints on the right to vote, as well as outright denial.”⁴³ That the appellants in this case were all students over twenty-one, is of little significance. The attempt to disqualify students on grounds of residency is analogous to the situation in *Jolicoeur* where registrars attempted the same thing with regard to minors.

Since *Jolicoeur* recognizes, as does *Wilkins*, that the right to meaningful franchise includes the right to vote where a person resides, a similar argument may also be made for resting the *Jolicoeur* decision within the equal protection clause. As Justice Douglas noted in *Harper v. Virginia*,⁴⁴ “Notions of what constitutes equal treatment for purposes of the Equal Protection Clause *do change*.”⁴⁵ With the extension of the franchise to minors eighteen to twenty,

40. . . . No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws. U.S. CONST. amend, XIV, § 1.

41. — Mich. —, 189 N.W.2d 423 (1971) [hereinafter cited as *Wilkins*].

42. 189 N.W.2d at 425. The statute in question provides that “no elector shall be deemed to have gained or lost a residence by reason of his being employed in the service of the United States or of this state, . . . nor while a student at any institution of learning. . . .” MCLA, § 168.11(b). The statute had been earlier defined by the court to mean that a student must overcome a rebuttable presumption that he is not a resident in the locale of the his institution of learning. *Id.*

43. 189 N.W.2d at 429.

44. 383 U.S. 663 (1966) [hereinafter cited as *Harper*].

45. 383 U.S. at 669.

it is not inappropriate that the flexible frontier of the equal protection clause should expand to protect this newly acquired voting right when states seek to impede its exercise by imposing residential restrictions.

In *Castro v. State of California*,⁴⁶ persons of Spanish ancestry were denied registration pursuant to California Constitution, article II, section 1,⁴⁷ which conditioned the right to vote on the ability to read English. Because these persons could prove access to materials in Spanish which sufficiently informed them of political events, this provision was held to violate the equal protection clause of the fourteenth amendment.⁴⁸ The court in *Jolicoeur*, incorporating the *Castro* decision, pointed out “. . . that all bona fide residents substantially affected by the outcome of an election and capable of voting intelligently and responsibly in it should be allowed to vote.”⁴⁹ Thus, the use of the equal protection clause is proper to guarantee equal participation by all qualified to vote. Consequently, whenever state action is taken to regulate suffrage, “. . . it is not immune from the impact of the Equal Protection Clause.”⁵⁰

In *Louisiana v. United States*,⁵¹ twenty-one parish registrars were given unlimited discretion in administering an interpretation test where an applicant was asked to interpret a section of the state or federal Constitution. The result was that blacks were stymied in their efforts to register while all white applicants were registered under less rigorous procedures. Furthermore, it was not necessary for those already registered, mostly whites, to reregister. The Court reasoned that the test was not being applied alike to all potential voters but was solely a restraint to bar registration by blacks. Finding the test contrary to 42 U.S.C. 1971(a),⁵² and also in violation of the fourteenth and fifteenth amendments, the Court enjoined its future use.

46. 2 Cal. 3d 223, 466 P.2d 244, 85 Cal. Rptr. 20 (1970) [hereinafter cited as *Castro*].

47. [N]o person who shall not be able to read the Constitution in the English language and write his or her name, shall ever exercise the privilege of an elector in this State. . . .

48. 2 Cal. 3d at 242, 466 P.2d at 258, 85 Cal. Rptr. at 34.

49. 5 Cal. 3d at 576, 488 P.2d at 7, 96 Cal. Rptr. at 703.

50. *Oregon v. Mitchell*, 400 U.S. at 294.

51. 380 U.S. 145 (1965) [hereinafter cited as *Louisiana*].

52. All citizens of the United States who are otherwise qualified by law to vote at any election by the people in any State, Territory, district, county, city, parish, township, school district, municipality, or other territorial subdivision, shall be entitled and allowed to vote at all such elections, without distinction of race, color, or previous condition of servitude; any constitution, law, custom, usage or regulation of any State or Territory, or by or under its authority, to the contrary notwithstanding. 42 U.S.C. § 1971(a) (1958).

The decision in *Louisiana* is significant because the state regulation was invalidated on more than one constitutional ground. It suggests that the right to vote is to be afforded greater protection. The Court has long recognized the right to vote as a fundamental political right, because preservative of all other rights.⁵³ Therefore, the right to exercise the franchise, because it is basic to our representative government, must necessarily be given additional protection.

However, prior to invoking the equal protection clause to furnish the added protection to the franchise, the pertinent question arising is whether an absolute denial of the franchise by the state is necessary. A showing of absolute denial before invoking the clause, was found to be unnecessary in the Texas case of *Carrington v. Rash*.⁵⁴ There, a provision in the Texas Constitution provided that a serviceman could only vote in the county he resided in at the time he entered the service. The fact that he had since established a permanent residence elsewhere meant nothing. The Court held that this constituted an invidious discrimination in violation of equal protection, there being no permissible basis for a distinction between servicemen and other voters.⁵⁵

Although the language of the opinion is in terms of an absolute denial to servicemen of the right to vote, the soldier in *Carrington* is not totally disenfranchised. The soldier may vote if he goes to his residence at the time of entry into the military. Likewise, the minor in *Jolicoeur* is not completely denied the right to vote, for he may vote by going to his parents' residence. Both may vote by absentee ballots. Just as there is no permissible basis for distinguishing between servicemen and other voters, there is no permissible basis for distinguishing between minors and other qualified voters. It is not surprising that the court in *Jolicoeur* held that ". . . *Carrington* obviously applies to minors as well as soldiers."⁵⁶

Likewise, the Michigan Supreme Court in *Wilkins* agree that absolute denial of the franchise is unnecessary when they held that a mere burden placed upon a student's right to vote is sufficient infringement to invoke the fourteenth amendment.⁵⁷ There, students

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

54. 380 U.S. 89 (1965) [hereinafter cited as *Carrington*].

55. 380 U.S. at 96.

56. 5 Cal. 3d at 572, 488 P.2d at 5, 96 Cal. Rptr. at 700-701.

57. 189 N.W.2d at 429.

were forced to overcome the rebuttable presumption that they were not residents at their educational institution. This statute could have effectively disenfranchised students where they lived and planned to make their home indefinitely. The minors contesting in *Jolicoeur* were not even afforded a rebuttable presumption to overcome. Instead, their residence was conclusively presumed to be that of their parents. Since the decision in *Wilkins* is in terms of burdening the right to vote, once having established a burden on the minor's right to vote, there is no need to search for evidence of total disenfranchisement.⁵⁸

But the inquiry as to the applicability of the equal protection clause does not end here. Pursuant to the established tenet that a state may impose reasonable residency requirements for voting, non-discriminatory classifications of voters are upheld where necessary to promote a compelling state interest.⁵⁹ However, in deciding which classifications are sustainable, it has been suggested that a classification which restricts a fundamental right asserted under the equal protection clause ". . . must be closely scrutinized and carefully confined."⁶⁰

In *Harper* the Court held that the right to vote was too precious to be burdened by payment of a poll tax.⁶¹ The state justified the tax by the fact that it was placed on all residents over twenty-one years of age. Even though the restriction, applying to all alike, was rational, it could not be sustained, for there existed no substantial justification for it. The Court reasoned that there existed no relation between wealth and the ability to vote intelligently. Because wealth was an irrelevant factor, the requirement of a poll tax caused "invidious" discrimination and denied equal protection.⁶²

Similarly, the restriction in *Jolicoeur* cannot withstand present scrutiny under the equal protection clause. It is highly unlikely

58. Another case couched in terms of burdening the right to vote rather than complete denial is *Williams v. Rhodes*, 393 U.S. 23 (1968). There Ohio election laws required that a new party seeking ballot position for a presidential election had to obtain signatures of fifteen percent of the electors voting in the last gubernatorial election. The Court said that this law gave the two older parties a decided advantage over any new party. When there are a number of parties attempting to secure ballot positions, limiting the choice to two, unequally burdens the right to vote. The imposition of such a burden on the voting right was held to be an invidious discrimination which violated the equal protection clause. It cannot be doubted that the right to vote is likewise heavily burdened when a minor cannot register and vote where he resides.

59. *Carrington v. Rash*, 380 U.S. at 91.

60. *Harper v. Virginia*, 383 U.S. at 670.

61. *Id.*

62. 383 U.S. at 668.

that forcing minors to vote where their parents reside fosters intelligent voting. To the contrary, having voters travel to their parents' district undermines the principles of a representative government. The substantial state justification for the restriction is completely lacking.

Cases involving the classification of property and nonproperty owners have followed the *Harper* precedent in determining the presence of a compelling state interest. In *Kramer v. Union Free School District*,⁶³ appellant, because he had no children and neither owned nor leased property, was ineligible to vote in a school district election. For the state, it was argued that the purpose of the classification was to allow only those directly affected to vote.⁶⁴ The Court, in applying the "close scrutiny" test of *Harper*, determined that the classification did not accomplish the state's purpose with sufficient precision to justify the restriction.⁶⁵ Precision was lacking, for the limitation to property owners did not prevent those substantially interested from nevertheless being excluded. Though the restriction was rational, this was not at issue, for the restriction must further a compelling state interest to justify denial of the franchise.⁶⁶

Similarly, in *Cipriano v. City of Houma*,⁶⁷ a restriction limiting the franchise to property taxpayers in revenue bond elections, violated the equal protection clause. The state's justification for the restriction was that the classification provided a "rational basis" for limiting the franchise to voters having a "special interest".⁶⁸ But the Court held nonproperty owners to be substantially affected by the issuance of revenue bonds to finance public utilities. The Court reasoned that the issuance of a revenue bond is not connected with the status of a property taxpayer. It noted that ". . . the benefits and burdens of the bond issue fall indiscriminately on property owner and nonproperty owner alike."⁶⁹ The restriction did not meet the "exacting standard of precision" announced in *Kramer* because those affected by the election might nevertheless have been

63. 395 U.S. 621 (1969) [hereinafter cited as *Kramer*].

64. 395 U.S. at 631.

65. 395 U.S. at 632.

66. 395 U.S. at 633.

67. 395 U.S. 701 (1969).

68. 395 U.S. at 706.

69. 395 U.S. at 705.

excluded.⁷⁰ Therefore, their exclusion did not promote a compelling state interest.⁷¹

Minors, like nonproperty owners, students, and servicemen are substantially affected and interested by the outcome of an election where they reside:

The minor would thus be incapable of voting in the jurisdiction where he permanently and legally resides, while the adult is free not only to vote in such jurisdiction but to change the place where he votes when he changes his residence. No basis for justifying such an abridgment or discrimination on the right to vote, other than the minor's age or distinctions dependent thereon, has been suggested in the instant case.⁷²

Previous classifications of nonproperty owners, students and servicemen were abolished by the Court as repugnant to the equal protection clause. It is not contrary to today's notions of equality that *Jolicoeur* should rightly be among these cases. In *Jolicoeur*, there existed a classification, which singled out a specific group, minors, for differential treatment, which resulted in impairing a fundamental right. Absent a countervailing, compelling state interest to justify such treatment, there is reason to invoke the clause. Equal Protection requires no less.

VII. CONCLUSION

With the twenty-sixth amendment our political processes became susceptible to revitalization by voting minors expressing themselves at the polls of our nation. Yet, the possibility of this happening is slim when the right to vote is so procedurally hampered that it cannot be exercised freely. The decision in *Jolicoeur* sought to maximize participation by voting minors by freeing them from fictional residences. In so doing, it marks the initial step in transforming a minor's newly acquired right to vote from a legal fiction to an actual reality. The twenty-sixth amendment, as does due process and equal protection, demands this result, for the unburdened exercise of the franchise is a primary consideration in a democratic society.

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70. 395 U.S. at 706.

71. The Court went a step further in *Phoenix v. Kolodziecki*, 399 U.S. 204 (1970). Even though a tax burden would have been imposed upon property owners if the issuance of the general obligation bonds were approved, the Court held nonproperty owners could not be excluded because they are substantially affected by the ultimate outcome of the election.

72. 5 Cal. 3d at 583, 488 P.2d at 12, 96 Cal. Rptr. at 708.