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William C. Stone
University of Kentucky

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STATE RESIDENCY REQUIREMENTS AND THE RIGHT
TO VOTE IN PRESIDENTIAL ELECTIONS

I. INTRODUCTION—THE PROBLEM

It is difficult to say what place is taken up in the life of an inhabitant of the United States by his concern for politics. To take a hand in the regulation of society and to discuss it is his biggest concern and, so to speak, the only pleasure an American knows. . . . In some countries the inhabitants seem unwilling to avail themselves of the political privileges which the law gives them; . . . But if an American were condemned to confine his activities to his own affairs, he would be robbed of one-half of his existence . . .¹ Alexis de Tocqueville.

Although de Tocqueville made that observation about Americans more than a hundred years ago, its applicability is still true today. While for most Americans voting is the sole act of participation in politics,² every four years millions of American citizens are denied the right to participate in the election of the President and Vice President of the United States because they have failed to meet state residency requirements.

The right to vote, and have it counted free of discrimination, has been a subject which has frequently occupied an area of prime importance for the Congress and the courts. However, despite the great volume of court decisions, new legislation, and constitutional amendments which have served to greatly expand the right of suffrage, the goal of full accessibility to the voting process has not yet been attained.³

¹ A. DE TOCQUEVILLE, *DEMOCRACY IN AMERICA* 250 (P. Bradley ed. 1960).

² A. CAMPBELL, P. CONVERSE, W. MILLER, D. STOKES, *THE AMERICAN VOTER: AN ABRIDGEMENT* 50 (1964). [Hereinafter cited as *THE AMERICAN VOTER*].

³ Some of the more important factors which have tended to dramatically increase the number of eligible voters in the United States relate directly to the abolishment of restrictions on the right to vote. The fourteenth and fifteenth amendments provided assurance that the right to vote would not be denied because of race or color. Case decisions also served to outlaw other devices designed to prevent Negroes from voting. See *Nixon v. Herndon*, 273 U.S. 536 (1927), and *Smith v. Allwright*, 321 U.S. 649 (1944), which held white primaries to be unconstitutional. The "grandfather clause" was struck down in *Guinn v. United States*, 238 U.S. 347 (1915). In *Harper v. Virginia State Bd. of Education*, 383 U.S. 663 (1966), the Supreme Court held the poll tax to be unconstitutional. The Civil Rights Act of 1964 guaranteed further enforcement for voting rights. 42 USC § 1971 (1964).

While most of the legislation was designed to guarantee the Negro the right to vote, other significant constitutional amendments have also had a significant impact in guaranteeing the right to vote. The nineteenth amendment provided for women's suffrage which served to greatly increase the percentage of eligible voters. Suffrage rights for citizens of the District of Columbia were guaranteed

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Every state in the Union has some form of residency requirement. They vary greatly in the length of residence required, ranging from a high of two years in Mississippi⁴ to a low of 90 days in Pennsylvania and New York,⁵ with some providing for no minimum requirement for voting in Presidential elections.⁶ Most states also provide for a minimum period of residence in the county and precinct so that the right to vote for President and Vice President may be lost by moving from one state to another, moving from one county to another within the same state, or by merely moving from one precinct to another within the same county.⁷

Such requirements would probably cause little concern except for the great internal mobility of the citizens of the United States. This country has become a highly mobile nation, and the movement of the population, whether for personal or business reasons, has become much more common. In fact, the Census Bureau estimates that about one-sixth of our people move their residence from one state to another every decade.⁸

Such freedom of movement among the population is no doubt beneficial to both the individual and the country; ironically however, such movement is penalized by state residency requirements which often result in the disenfranchisement of millions of voters. Such laws frequently penalize those who would be most likely to vote if they could.⁹ One writer has observed that the movers generally, "As a single gross category . . . are men who tend to be somewhat better educated and who have considerably better jobs and higher incomes than the natives of the region they leave."¹⁰

While the exact effect, in terms of the numbers of persons disenfranchised by residency requirements, is not known, some estimates

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by the twenty-third amendment to the Constitution. Finally the twenty-fourth amendment eliminated the poll tax as a qualification for voting.

The abandonment of literacy tests has also been another significant gain towards expanding suffrage in America. The effect which the attempts at expansion of the right to vote have had in greatly increasing the number of eligible voters can be seen by an analysis of Section I in the Appendix.

⁴ MISS CODE ch. 2 § 3235 (1942).

⁵ N.Y. CONST. art. II, § 1.; PENN. CONST. art. VII, § 1.

⁶ See Section II, Appendix.

⁷ See Section II, Appendix. This note will attempt to deal only with requirements relating to residency within the State. The author recognizes however, that county and precinct residence may also place a serious burden on the right to vote, but such discussion, except as it applies in general to the required state residency, is beyond the scope of this note.

⁸ See 115 CONG. REC. 551-78 (daily ed. May 14, 1969).

⁹ See N. PIERCE, THE PEOPLES PRESIDENT (1968); R. LANE, POLITICAL LIFE (1959); THE AMERICAN VOTER, *supra* note 2.

¹⁰ THE AMERICAN VOTER, *supra* note 2, at 233.

have been made. For instance, it is estimated that five million citizens were disenfranchised by residency requirements in 1954,¹¹ between five and eight million were estimated to have lost the right to vote in 1960,¹² and the estimate for 1964 was almost fifteen million.¹³ Tentative estimates show almost two million voters lost the privilege of voting by moving prior to the election date in 1968.¹⁴ These figures, while admittedly not exact, do serve to point out the tremendous effect that state residency requirements may have on a large segment of the population.

It is the purpose of this note to analyze the present status of state residency requirements, their effect on the right to vote in Presidential elections, the constitutionality of such restrictions, and the prospects and proposals for legislative changes at the federal and state levels.

II. HISTORY AND PURPOSE OF RESIDENCY REQUIREMENTS

The requirement that a person be a resident of the area in which he votes is not new. In England the question of residency was treated by statute as early as 1413. This statute provided that,

. . . the knights and esquires and others which shall be *choosers* of these rights of the shires, be also resident within the same shires in manner and form as aforesaid; that is, 'at the day of the date of the writ of the summons of the parliament.'¹⁵

Residency requirements for voting were also common in the American colonies. The warrants or the royal commissions by virtue of which the earliest elections were held, were full of expressions such as the "freeholders of the province," the "freeholders of thy bailiwick," "inhabitant," or "freemen inhabiting" a certain place.¹⁶

¹¹ Goldman, *Move-Lose Your Vote*, 45 NAT'L MUN. REV. 6 (1956). See also A. CAMPBELL, G. GEVISON and V. MILLER, *THE VOTER DECIDES* 57 (1954), a study of the 1952 election which showed that twelve percent of the people who reported that they had not voted said they were disenfranchised because of inability to meet residence requirements.

¹² REPORT OF THE PRESIDENT'S COMMISSION ON REGISTRATION AND VOTING PARTICIPATION 13 (1963); Andrews, *AMERICAN VOTING PARTICIPATING*, (1966) W. POL. SCI. Q. 39 (1966); Schmidhauser, *Residency Requirements for Voting and the Tensions of a Mobile Society*, 61 MICH. L. REV. 823 (1963); Seamonn, *The Electoral Process*, 27 LAW & CONTEMP. PROB. 299, 304 (1962).

¹³ *Hearings on S. 596, S. 1546, S. 1880, and S. 1881 Before the Subcomm. on Privileges and Elections of the Senate Comm. on Rules and Administration*, 90th Cong., 1st Sess., at 21 (1967).

¹⁴ 115 CONG. REC. 5744 (daily ed. May 27, 1969).

¹⁵ C. BISHOP, *HISTORY OF ELECTIONS IN THE AMERICAN COLONIES* 69 (1893).

¹⁶ *Id.* at 66.

In South Carolina, as early as 1693, officials recognized the necessity for a period of residence as a requirement for voting when they dissented from an act giving the privilege of electing representatives to any person worth 10 pounds. One of the reasons given for their action was because the act,

. . . not mentioning how long any person worth ten pounds must have been an inhabitant of the county before he be admitted to vote for members of the Assembly, it is so loose that by this Act all the Pyrates that were in the Shipp that had been plundering in the Red Sea had been qualified to vote for Representatives in Carolina, which being of dangerous consequence to the inhabitants we have thought fit to dissent to that act alone.¹⁷

The development of residency requirements in the Eastern states was aimed primarily at preventing immigrants from voting. One writer has stated,

A certain characterism, plus fears of the political consequences of bloc voting by the ignorant and pliable, led the Eastern states to impose restrictions aimed at newly arrived immigrants. Immigrants were a major source of labor for new industries in these states and, therefore, were likely to congregate in the cities. Inevitably, this created apprehensions about the emergence of a voting proletariat. This combination of attitudes in the Eastern states tended to contribute to their longer retention of property qualifications and to stricter literacy and residence requirements for everyone.¹⁸

The fears of the Eastern States were probably well justified because the political parties often attempted to use the immigrant votes to influence elections. One writer observed,

Incompetent to give an intelligent vote, but soon finding that their vote has a value, they fall into the hands of the party organizations, whose officers enroll them in their lists, and undertake to fetch them to the polls. I was taken to watch the process of citizen making in New York. Drove of squalid men, who looked as if they had just emerged from an immigrant ship, and had perhaps done so only a few weeks before, for the law prescribing a certain period of residence is frequently violated, were brought up to a magistrate by the ward agent of the party which had captured them, declared their allegiance to the United States, and were forthwith placed on the roll.¹⁹

¹⁷ A. MCKINLEY, *THE SUFFRAGE FRANCHISE IN THE THIRTEEN ENGLISH COLONIES IN AMERICA* 133 (1905).

¹⁸ R. LANE, *supra* note 9, at 13.

¹⁹ 2 J. BRYCE, *THE AMERICAN COMMONWEALTH* 99 (1898).

The Midwestern and Western states generally had residence requirements which were very liberal. This was probably due to the fact that these states were largely unsettled and were eager to attract settlers to the land.²⁰

The residence requirements in the South were more like those of the Eastern states and tended to be at least one or two years. It has been stated that "[t]he lengthy residence requirement was expected to bear more heavily on Negroes because of their supposedly peripatetic habits."²¹ The primary objectives which they sought to achieve by enacting residence requirements were to give the new voters an opportunity to acquire information necessary for an intelligent vote, to become identified with the interests of the locality, and also to prevent the colonization of voters.²² They were also expected to prevent strong political organizations from resorting to fraud in their attempts to win elections. One writer has pointed out that Matthew Quay, a notorious "boss" of Pennsylvania Republicans, is reputed to have won the close election of 1888 for Benjamin Harrison by colonizing several thousand Philadelphia hoodlums in New York long enough to swing that state into the Harrison column.²³

The prevention of colonization and fraud, the need to have the new citizen acquire information before voting, to have him identify with the interests of the community, and to identify the voters, were all desired goals which were sought to be accomplished by the enactment of residence requirements.

III. RESIDENCY REQUIREMENTS—THEIR CONSTITUTIONALITY

On June 15, 1968, Mr. and Mrs. Richard Hall moved from California to the state of Colorado. Mr. Hall had recently graduated from law school and was taking a permanent position with a Colorado law firm. Shortly after their arrival in Colorado they purchased a home, registered their car, enrolled their child in a nursery school, and acquired Colorado drivers' licenses. On August 1, 1968, Mr. and Mrs. Hall tried to register to vote in the upcoming Presidential election, but were informed that they had not met the statutory residence

²⁰ K. PORTER, A HISTORY OF SUFFRAGE IN THE UNITED STATES (1918). It is interesting to note that in 1860 seven states had residence requirements of only six months and all of these states were in the Midwest or West.

²¹ V. KEY, SOUTHERN POLITICS IN STATE AND NATION 537 (1949).

²² *People v. Graham*, 267 Ill. 426, 108 N.E. 699 (1915); *Estopinal v. Vogt*, 111 La. 883, 46 So. 908 (1908); *Howard v. Skinner*, 87 Md. 556, 40 A. 379 (1898); *Wright v. Blue Mountain Hosp. Dist.*, 214 Ore. 141, 328 P.2d 314 (1958).

²³ Goldman, *supra* note 11 at 7.

requirement and therefore would not be allowed to vote in the November Presidential election.²⁴

Article II of Section 1 of the United States Constitution provides, "Each state shall appoint in such manner as the legislature thereof may direct, a number of electors. . . ."²⁵ The courts have usually interpreted this provision to grant to the states the power to determine the qualifications of voters. This interpretation is based on the proposition that the right of suffrage is not a privilege and immunity of a citizen of the United States but is rather a right conferred by the states.²⁶ Since the right of suffrage is conferred by the states, the courts have held,

The states have long been held to have broad powers to determine the conditions under which the right of suffrage may be exercised, absent of course the discrimination which the constitution condemns. . . . So while the right of suffrage is established and guaranteed by the Constitution it is subject to the imposition of state standards which are not discriminatory and which do not contravene any restriction that Congress acting pursuant to its Constitutional powers has imposed.²⁷

The court went on to say,

We do not suggest that any standards which a state desires to adopt may be required of voters. But there is wide scope of exercise of its jurisdiction. Residence requirements, age, previous criminal records, are obvious examples indicating factors which a state may take into consideration in determining the qualifications of voters.²⁸

Therefore, assuming that the states have the right to impose requirements on the right to vote, such restrictions must not be forbidden by other constitutional provisions.

The states have contended that they have absolute power to put any burden they please on the selection of electors because of Article II, Section 1.²⁹ The Supreme Court has recently however disapproved of this contention:

²⁴ The Supreme Court recently decided that the case presented was moot because the election had already taken place and Colorado had since reduced its residency period to two months. Justice Marshall and Justice Brennan dissented asserting that the case was not moot because the residency requirements will continue to disenfranchise future residents, who will find it all but impossible to reach the Supreme Court with a test case before election day. 90 S.Ct 200 (1969).

²⁵ U.S. Const. art II, § 9.

²⁶ *Pope v. Williams*, 193 U.S. 621 (1904).

²⁷ *Lassiter v. Northampton County Bd. of Elections*, 360 U.S. 45, 50 (1958).

²⁸ *Id.* at 50-51.

²⁹ *Williams v. Rhodes*, 393 U.S. 23 (1968).

. . . [t]he Constitution is filled with provisions that grant Congress or the States specific power to legislate in certain areas; these granted powers are always subject to the limitation that they may not be exercised in a way that violated other specific provisions of the Constitution.³⁰

The Court went on to say specifically that "We therefore hold that no State can pass a law regulating elections that violated the Fourteenth Amendment's command that 'No state shall . . . deny to any person . . . the equal protection of the laws.'"³¹

In *Katzenback v. Morgan*, the Court had held:

. . . [t]he States have no power to grant or withhold the franchise on conditions that are forbidden by the Fourteenth Amendment, or any other provision of the Constitution. Such exercises of state power are no more immune to the limitations of the Fourteenth Amendment than any other state action.³²

These decisions seem to indicate clearly that while states have the power to impose restrictions on the right to vote, such restrictions must not violate other constitutional provisions. To determine the validity of state residency requirements it is therefore necessary to see if they violate any other rights guaranteed under other constitutional provisions.

A. THE RIGHT TO TRAVEL ARGUMENT

The Articles of Confederation provided that "the people of each state shall have free ingress and regress to and from any other state."³³ This right is not specifically set forth in the United States Constitution, but at least one writer has suggested that the reason for not making it an express right was that it was already an implied right.³⁴ Despite the fact that the right to travel is not specifically mentioned the courts have considered it to be a fundamental right protected by the Constitution.³⁵ Chief Justice Taney recognized this right in the *Passenger Cases* when he states:

³⁰ *Id.* at 29.

³¹ *Id.*

³² 384 U.S. 641, 647 (1966).

³³ Articles of Confederation, art. IV.

³⁴ Z. CHAFEE, *THREE HUMAN RIGHTS IN THE CONSTITUTION OF 1787*, 185 (1956).

³⁵ In *Corfield v. Coryell*, 6 F. Cas. 546 (No. 3230) (C.C.E.D. Pa. 1823), *Paul v. Virginia* 75 U.S. (8 Wall.) 168 (1868), and *Ward v. Maryland*, 79 U.S. (12 Wall.) 418 (1870), the right to travel interstate was grounded on the privileges and immunities clause of Art. IV, § 2. See also *Slaughter-House Cases*, 83 U.S. (16 Wall.) 36 (1872) and *Twining v. New Jersey*, 211 U.S. 78 (1908). In *Edwards v. California*, 314 U.S. 160 (1941) and *Twining v. New Jersey*,

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For all the great purposes for which the Federal government was formed, we are one people, with one common country. We are all citizens of the United States; and, as members of the same community, must have the right to pass and repass through every part of it without interruption, as freely as in our own states.³⁶

Later in *United States v. Guest*, the Court held, "[t]he right to travel from one state to another . . . occupies a position fundamental to the concept of our Federal Union. It is a right that has been firmly established and repeatedly recognized."³⁷

If the freedom to travel is clearly a right protected by the Constitution, then any regulation or penalization because of the exercise of that right will then be unconstitutional unless the state can show some compelling state interest served by such regulation. The test for the determination of the constitutionality of residency requirements was clearly stated by the court in *Shapiro v. Thompson* where the Court said, ". . . any classification which serves to penalize the exercise of that right, unless shown to be necessary to promote a compelling governmental interest, is unconstitutional."³⁸

The Court also noted that,

traditional criteria do not apply in these cases. Since the classification here touches on the fundamental right of interstate movement its constitutionality must be judged by the stricter standard of whether it promotes a compelling state interest.³⁹

Therefore, to determine the constitutionality of state residence requirements for voting in Presidential elections it is necessary to examine the justifications and reasons given for the requirement in order to determine if any compelling state interest is actually served. The justifications which are usually advanced for required residence for a designated term before being allowed to vote are (1) that the voter should be resident in the community long enough to acquire information necessary for an intelligent vote, (2) to become identified with the interests of the locality, and (3) to prevent fraud and the

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supra, reliance was placed on the privileges and immunities clause of the fourteenth amendment. *See also* *Crandall v. Nevada*, 73 U.S. (6 Wall.) 35 (1868). In *Edwards v. California*, *supra*, and the *Passenger Cases*, 48 U.S. (7 How.) 283 (1849), a commerce clause approach was used. *See also* *Kent v. Dulles*, 357 U.S. 116 (1958), *Apthecher v. Rusk*, 378 U.S. 500 (1964), and *Zemel v. Rusk*, U.S. 1 (1966), where the freedom of Americans to travel abroad was grounded upon the due process clause of the fifth amendment.

³⁶ 48 U.S. (7 How.) 283 (1849).

³⁷ 383 U.S. 745 (1966).

³⁸ 89 S. Ct. 1322, 1331 (1969).

³⁹ *Id.* at 1333.

colonization of voters.⁴⁰ An additional justification which may be advanced is that such requirements are necessary for the administrative functions involved in registering voters.

While all of these may be considered areas of legitimate concern and interest to the states, that alone will not meet the more exacting test set forth by the Supreme Court. It is imperative therefore, that each justification be analyzed to see whether it does serve a compelling state interest. Before such an analysis is undertaken, however, it is important to point out that some restrictions may be much more applicable to state and local elections while almost no such applicability can be shown for national elections.

Since the Presidential elections involves national political figures and national campaigning and advertising, the first justification would seem inapplicable and any statute limiting the right to vote solely on the basis of such an argument would seem to fall short of meeting the compelling interest standard.

The second justification usually advanced would also seem to be more applicable to elections on the state or local levels rather than in a national Presidential election. The "interest of the locality" argument is basically unsound because of the fact that in a Presidential election the territory or locality is in reality the entire United States and not some local political subdivision thereof. Both justifications seem to fail because of the very nature of the Presidential election and the campaign involved. As long as the campaigns continue to be carried on primarily by national television, magazines, and newspapers, and as long as it involved national figures and national and international issues, the mere factor of length of residence in a particular state should in no way affect a person's ability to cast an intelligent vote.

The third justification usually given by the states is that of the prevention of fraudulent voting practices through either double voting or the colonization of voters.⁴¹ This objective is admittedly much more persuasive than the two previously mentioned. However, even this justification seems to lack that necessary element of a compelling governmental interest. The Supreme Court recently decided a claim very much analogous to this problem. In a welfare residency case,⁴² the Court was faced with the question of whether a one year

⁴⁰ See *People v. Graham*, 267 Ill. 426, 108 N.E. 699 (1915); *Estopinal v. Vogt*, 111, 883, 46 So. 908 (1908); *Howard v. Skinner*, 87 Md. 556, 40 A. 379 (1898); *Wright v. Blue Mountain Hosp. Dist.*, 214 Ore. 141, 328 P.2d 314 (1958).

⁴¹ *Hall v. Beals*, 292 F. Supp. 610, 614 (D. Colo. 1968); *Drueding v. Devlin*, 234 F. Supp. 721 (D. Md. 1964), *aff'd mem.*, 380 U.S. 125 (1965).

⁴² *Shapiro v. Thompson*, 89 S. Ct. 1322 (1969).

residency period was justified in order to prevent fraud in the application for, and receipt of, money grants for public assistance. The Supreme Court held that the justification was insufficient because less drastic means were available. The Court noted,

Since double payments can be prevented by a letter or a telephone call, it is unreasonable to accomplish this objective by the blunderbuss method of denying assistance to all indigent newcomers for an entire year.

A similar argument could well be made with regard to residency requirements for voting in a Presidential election. Recognizing that the state has a valid interest in the prevention of fraud and double voting it cannot accomplish this goal by standards which are unreasonable and essentially unnecessary. A broad declaration that residency is required for this purpose must be analyzed to see if in fact the same goal could be accomplished by much less drastic means. Other factors, however, would tend to make the increased possibility of fraud unlikely. Most states have statutes which punish fraudulent voting practices,⁴³ and the crime of perjury.⁴⁴ Besides these technical statutory provisions which serve to prevent fraud there is the very practical fact that it would be highly unlikely that any political organization would attempt or could succeed in swaying an election which involved the entire nation. The influence on a Presidential election through either double voting or the colonization of voters would be minimal.

However, regardless of the likelihood of fraud, it is evident that the states cannot achieve these goals by a method such as residency requirement which serves as a blanket disenfranchisement of voters without attempting to evaluate whether they are true residents.⁴⁵

B. THE EQUAL PROTECTION ARGUMENT

The Supreme Court has long recognized that the states have power to impose reasonable residency requirements as a condition for voting.⁴⁶ In fact, the Court has noted, ". . . the states have long been held to have broad powers to determine the conditions under which the right of suffrage may be exercised."⁴⁷

The states have attempted, in the voting area, to create a classification between those who have resided in the state for one year, or

⁴³ See e.g., KY. REV. STAT. ch. 124 (1969).

⁴⁴ *Id.*

⁴⁵ *Carrington v. Rash*, 380 U.S. 89, 96 (1965).

⁴⁶ *Pope v. Williams*, 193 U.S. 621 (1904).

⁴⁷ *Lassiter v. Northampton County Election Bd.*, 360 U.S. 45, 50 (1959).

whatever the statutory requirement may be, and those who, although they may be residents for other purposes, have not been a resident for the required period. The Supreme Court has made it clear that mere classification alone will not deprive a group of equal protection nor will minor differences in the application of laws to different groups.⁴⁸ The Court has frequently held, however, that invidious distinctions do violate the Equal Protection Clause.⁴⁹

Therefore, the Court will look beyond the mere classification to determine whether the classification is reasonable in light of its purpose. The Supreme Court has recently stated the approach it would take in determining whether or not a state law violates the Equal Protection Clause:

. . . we must consider the facts and circumstances of the law, the interests which the State claims to be protecting, and interests of those who are disadvantaged by the classification.⁵⁰

⁵⁰ *Williams v. Rhodes*, 89 S. Ct. 5, 10 (1968).

The Court has also said that it will give the statute a close and exacting examination, . . . “[s]ince 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.”⁵¹

In order to properly analyze the constitutionality of state residence requirements it will therefore be necessary to determine the interests of the state and the interests of those who are disadvantaged by the law. The justifications which have been given by the states for the continuation of these laws were discussed under the right to travel argument and will be only briefly mentioned now. Those justifications are that such laws are necessary to identify the voter, to prevent colonization and fraud, to insure that the new citizen acquires information before voting, and to have him identify with the interests of the community. The issue then becomes one of whether or not those interests can justify the severe restrictions on voting which the states have imposed. As previously mentioned, most of the interests are irrelevant to national elections. The only interest which would be equally important for all elections is that of prevention of fraud, and, as shown earlier, that goal can be achieved by a simple letter or phone call, which many states have recognized as sufficient.

⁴⁸ *Williamson v. Lee Optical Co.*, 348 U.S. 483 (1954).

⁴⁹ *Loving v. Virginia*, 388 U.S. 1 (1966), *Cox v. Louisiana*, 379 U.S. 536 (1965); *Brown v. Bd. of Education*, 347 U.S. 483 (1954); *Skinner v. Oklahoma*, 316 U.S. 535 (1942); and *Yick Wo v. Hopkins*, 118 U.S. 356 (1886).

⁵¹ *Kramer v. Union Free School Dist.*, 89 S. Ct. 1886 (1969); *See Reynolds v. Sims*, 377 U.S. 533, 562 (1964); *Wesberry v. Sanders*, 376 U.S. 1 (1964).

The interests of those who are disadvantaged by the laws are more readily seen. Their sole interest is in being able to exercise the right to vote. Their interest is enhanced by the fact that it is a Presidential election in which they seek to vote. No other election can have as great an influence on the individual, on the country or on the course of world events as that of the election of a President of the United States. The interests of the citizenry in being allowed to participate in that choice is one of fundamental importance in a democratic society.

In view of this analysis, it is clear that the residency statutes for voting in Presidential elections, even under the traditional equal protection tests, creates a classification which is irrational and unreasonable.⁵² But the denial of equal protection does not have to rest on the traditional standard because the classification here infringes on the fundamental right to vote. Its constitutionality must be judged by the stricter standard of whether it promotes a compelling state interest.⁵³ Under this standard, the residence requirements imposed by the states clearly violate the Equal Protection Clause.

IV. STATUTORY CHANGES—STATE LEVEL

When a nation begins to modify the elective qualification, it may easily be foreseen that, sooner or later, that qualification will be entirely abolished. There is no more invariable rule in the history of society; the further electoral rights are extended, the greater is the need for extending them; for after each concession the strength of the democracy increases, and its demands increase with its strength . . . concession follows concession, and no stop can be made short of universal suffrage.⁵⁴

During the last ten years there has been a trend among the states to liberalize residence requirements. This trend has not involved all the states, and the methods have at times been conflicting, but nevertheless, progress has been made. Essentially, there are two methods by which this reform has been undertaken. The first method is that of reducing the duration of the required residency. This approach has been followed by at least two states. Louisiana has reduced its residence requirements from two years to one, and New Jersey has reduced its residence demand from one year to six months.⁵⁵

⁵² Under the traditional test, equal protection is denied only if the classification is "without any reasonable basis." *Lindsley v. National Carbonic Gas Co.*, 220 U.S. 61, 78 (1911).

⁵³ *Shapiro v. Thompson*, 89 S. Ct. 1322, 1333 (1969).

⁵⁴ A. DE TOCQUEVILLE, *supra* note 1, at 57.

⁵⁵ LA. CONST. art. 8, § 1; N.J. CONST. art. 2, § 3.

The second method, and the approach which seems to be the most popular among the states, is to adopt special requirements for voting in Presidential elections. Today, twenty-nine states have adopted such a framework.⁵⁶

The first really significant movement to provide special procedures for allowing new residents to vote in Presidential elections was begun in Connecticut in 1953, when that state adopted a statute which extended absentee voting to a person who left Connecticut to take up residence in another state.⁵⁷ This statute permitted such a person to cast an absentee ballot in Connecticut for President and Vice President for a period of fifteen months, unless he has met the voting residence requirement in the new state. In 1957, Vermont adopted a similar statute which allows a fifteen month retention period. It also requires that those who wish to vote, ". . . must file with their town or city clerk a written declaration of intention to retain such Vermont residence for the purpose of casting a vote for Presidential and Vice Presidential electors."⁵⁸

Another approach was taken by Wisconsin in 1954 when it adopted a method which permits a new resident of Wisconsin having less than one year of legal residence to vote for President and Vice President if he was a qualified voter in the state of prior residence, or if he would have been eligible had he remained there until the election date.⁵⁹

Specifically the Wisconsin statute provides,

A person who has been a resident of this state for less than 1 year prior to the date of a Presidential election shall be entitled to vote for Presidential and Vice Presidential electors in such elections but for no other officers, providing he was either a qualified elector in another state immediately prior to his removal to this state or would have been eligible to vote in such other state had he remained there until such election, and provided further that he would be a qualified elector under Section 601 except that he has not resided in the state for 1 year.⁶⁰

⁵⁶ See Section I, Appendix.

⁵⁷ CONN. GEN. STAT. ch. 145, § 9-158 (1958).

⁵⁸ VT. STAT. ANN. ch. 3, § 67 (1958).

⁵⁹ WIS. STAT. ANN. ch. 9, § 9.045 (1955).

⁶⁰ WIS. STAT. ch. 9, § 9.045 (1955). Now § 6.15 *as amended* (Supp. Vol. 2, 1969) reflects the change in the required length of residence which has changed from one year to 6 months. The statute in full provides that:

"Any person who was or would have been a qualified elector on the day of the Presidential election had he remained in the state from which he moved and who is a qualified elector under §§ 6.02 and 6.03, except he has been a resident of this state for less than 6 months prior to the date of the presidential election, is entitled to vote for the president and vice president but for no other offices."

The Wisconsin approach has been followed by at least three states. In 1958 California amended its constitution to grant new residents the right to vote in Presidential elections. The amendment essentially authorized the state legislature to extend the right to otherwise qualified voters as long as they have resided in California for at least 54 days.⁶¹ Missouri also amended its constitution to permit new residents to vote for President and Vice President if they have resided within the state at least sixty days.⁶² Ohio followed in 1957 by amending its constitution so as to authorize its legislature to extend the right to vote to new residents of the state. In 1959 the legislature acted on this authority and provided that otherwise qualified persons could vote for President and Vice President if they met a forty day residence requirement.⁶³

Therefore, at present, at least two states, Connecticut and Vermont have adopted the method of allowing former residents to cast absentee ballots for President and Vice President, while at least four states, Wisconsin, California, Missouri and Ohio, have adopted reforms which allow new residents to vote without meeting lengthy residence requirements. Both of these approaches have therefore been utilized in an effort to deal with the problems created by lengthy residence requirements.

Recognizing the need for a uniform approach to the problem, in 1955 the Council of State Governments recommended the adoption of a statute following the Connecticut plan.⁶⁴ In 1962, the National Conference of Commissioners on Uniform State Laws promulgated the Uniform Act for Voting by New Residents in Presidential Elections.⁶⁵ The Uniform Act generally follows the Wisconsin approach and waives the requirement of residence so that new residents will be allowed to vote, if otherwise qualified, so long as they apply for a ballot within a specific number of days prior to the election. It has also provided for a safeguard against fraud by making the application for a presidential ballot appear in the form of an affidavit. The Uniform Act also requires that a duplicate of the application be mailed to the applicant's state of last residence, which is to insure against the possibility of double voting.⁶⁶

⁶¹ CAL. ELEC. CODE § 751 (West 1961).

⁶² MO. CONST. art. 8, § 2.

⁶³ OHIO REV. CODE § 3504.01 (1960).

⁶⁴ COUNCIL OF STATE GOVERNMENTS, SUGGESTED STATE LEGISLATION 77 (1955).

⁶⁵ HANDBOOK OF THE NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS 261 (1962). For full text of the Uniform Act see Section II, Appendix.

⁶⁶ See Section II, Appendix.

The adoption of a uniform law would serve to eliminate the disenfranchising effect of many state residence laws and would, at the same time, provide for a uniform method of preventing fraud and double voting.

V. PROPOSED FEDERAL ACTION

There have been numerous proposals before both the House and Senate to provide relief for the millions of voters who are disenfranchised by state residence requirements. As early as 1954, Representative Curtis of Massachusetts introduced a proposal recommending to the states that they immediately enact legislation "to enable a person to vote for Federal officials, when such persons would be eligible to vote for such Federal officials, but for the resident requirements of the State in which he is residing."⁶⁷ Although the proposal was, with a few amendments, passed by the House, it failed in the Senate.⁶⁸

Representative Curtis reintroduced his proposal in the form of House Concurrent Resolution 94 in the next session of Congress. This time it met with success and was passed by the House on June 30, 1955⁶⁹ and by the Senate on January 16, 1956.⁷⁰ In its final form the resolution provided,

Whereas many citizens are deprived of the right to vote—because they have recently moved from one state to another and have not subsequent to such move complied with the residence requirements of the State to which they have moved; and

Whereas it is desirable that citizens should be entitled to vote for the office of President and Vice-President whether or not they have moved from one state to another; and

Whereas such disenfranchisement could be avoided by reciprocal arrangements between the several states which would recognize the right of a citizen to vote in the state from which he had moved for such reasonable period of time as would enable him to fulfill the residence requirements in the state to which he had moved: Therefore be it

Resolved by the House of Representatives (the Senate concurring), That the Congress express itself as favoring, and recommends to the several states the consideration of appropriate legislation to enable a person to vote for President and Vice-President when such person would be eligible to vote but for the fact that he had moved from one state to another and had not yet ful-

⁶⁷ 100 CONG. REC. 13468 (1954).

⁶⁸ *Id.* at 13817.

⁶⁹ H.R. Con. Res. 94, 84th Cong., 1st Sess. 101 CONG. REC. 12395 (1955).

⁷⁰ 102 CONG. REC. 533 (1956).

filled the residence requirements of such state to which he had moved.⁷¹

Another early activist at the federal level was Senator Kefauver who introduced S. J. Res. 14, which called for voting by absentee ballot in the state from which a voter moved for a period of two years, provided he would not qualify to vote in another state during that period.⁷² Senators Kefauver and Keating introduced S. J. Res. 128 on August 28, 1961, which would have limited residence requirements for voting in Presidential elections to a period not to exceed ninety days.⁷³

Recently there has been a renewed interest in federal legislation in this area. Senator Goldwater has introduced a constitutional amendment which would enable citizens to qualify for voting in a Presidential election with only thirty days residence in any state.⁷⁴

A different approach has been taken by Senator Edward Kennedy with his introduction of a bill on May 14, 1969, which would amend the Voting Rights Act of 1965 to permit those who change their residence to vote in Presidential elections.⁷⁵ Kennedy's bill differs from the Goldwater proposal in that it is in the form of a legislative enactment rather than a constitutional amendment. Senator Kennedy urged that the objective of full voting privileges should be accomplished by statute rather than by amending the Constitution.⁷⁶

The primary question arising under Senator Kennedy's proposal would be the constitutionality of the Congress legislating in this area. Under the terms of Article I, section 2, the people are guaranteed the right to vote for Representatives and Senators. But the Constitution also provides that "the electors in each state shall have the qualifications requisite for electors of the most numerous branch of the State legislature." Therefore, the qualifications established by the state are adopted by the Constitution as appropriate for federal elections. This method has been explained in *Ex Parte Yarborough*⁷⁷ where the court stated, ". . . Congress may not legislate as to the qualifications of the voters since this power is given by the Constitution

⁷¹ H.R. Con. Res. 94, 84th Cong., 1st Sess., 101 CONG. REC. 12395 (1955).

⁷² S.J. Res. 14, 87th Cong., 1st Sess. (1961); S.J. Res. 90, 87th Cong., 1st Sess. (1961); 19 CONG. Q. 1408 (1961).

⁷³ S.J. Res. 128, 107 CONG. REC. 17139 (1961).

⁷⁴ S.J. Res. 59, 91 Cong., 1st Sess., 115 CONG. REC. 4541 (daily ed. May 5, 1969).

⁷⁵ S. 2165, 91st Cong., 1st Sess., 115 CONG. REC. 5176 (daily ed. May 14, 1969).

⁷⁶ 115 CONG. REC. 5177 (daily ed. May 14, 1969).

⁷⁷ 110 U.S. 651 (1884).

to the States."⁷⁸ The qualifications would therefore appear to be the responsibility of the states and reserved to them by the Constitution.

The recent decision by the Supreme Court in *Katzenback v. Morgan*,⁷⁹ would, however seem to give strong support for the proposition that Congress possesses the power to enact legislation in this area. In *Katzenback*, the court upheld the validity of section 4(e) of the Voting Rights Act of 1965, which provided that no person who had a sixth grade education and who met certain other requirements could be denied the right to vote in any federal, state or local election because of his failure to pass a literary test in English. This decision would seem to give Congress great power to legislate in the area of state voter qualifications. The Court, in essence, held that Congress had broad powers in this area even though the effect of the statute was to override certain provisions of state law.

The fact that Congress enacts a statute rather than seeking a constitutional amendment would seem, therefore, to make no difference as far as its constitutionality is concerned.

VI. SUMMARY AND RECOMMENDATIONS

The current state residency requirements which disenfranchise millions of citizens every year need to be changed. The reasons and the goals originally put forward by the states are no longer sufficient or necessary justifications for denying new residents the right to vote in Presidential elections. The changes needed can be achieved in one of three ways. First, the Supreme Court may declare such statutes to be unconstitutional by holding that they violate the right to free travel and the Equal Protection Clause of the Constitution. Such a decision would not be unexpected in the light of the recent decision declaring the one year residency requirement for welfare unconstitutional. Secondly, the states may continue the movement towards greater liberalization of residency requirements.

Finally, the Congress may adopt national legislation along the lines proposed by Senator Kennedy. The author feels that this method is preferable to the others for several reasons. It is to be favored over the first possible solution because the Supreme Court may never reach the constitutional issue in a case coming before it. A decision may not be reached because the case will be considered moot or the court may dispose of the case by means other than on the constitutional issues.

⁷⁸ *Id.* at 651.

⁷⁹ 384 U.S. 641 (1966).

Federal legislation is preferable over continued state action because the states are developing different approaches which still leave some voters disenfranchised, and some states may never enact such legislation on their own, or if they do, it may be insufficient.

A uniform national policy would serve to insure that all citizens have the right to vote for President and Vice President of the United States. The time for a change has been long overdue and the Congress must act soon to prevent the continued and increasing disenfranchisement caused by our mobile society.

APPENDIX

I. MINIMUM LENGTH OF RESIDENCE REQUIREMENTS FOR 1968 GENERAL ELECTION BY STATE

| State | <i>Federal, State and Local Offices</i> | | | <i>President and Vice President only (for recent movers to the state)</i> |
|--------------------------------|---|-----------------------------|---|---|
| | <i>In State</i> | <i>In County</i> | <i>In Precinct</i> | |
| Alabama | 1 year | 6 months | 3 months ² | Not applicable |
| Alaska | 1 year | None | 30 days | No Minimum |
| Arizona ¹ | 1 year | 30 days | 30 days | 60 days |
| Arkansas | 1 year | 6 months | 30 days | Not applicable |
| California | 1 year | 90 days | 54 days | 54 days |
| Colorado | 1 year | 90 days ² | 20 days | 6 months in State, 90 days in county, 15 days in precinct |
| Connecticut ¹ | 6 months | 6 months in town | None | 60 days |
| Delaware | 1 year | 3 months | 30 days | 3 months |
| District of Columbia .. | 1 year | None | None | Not Applicable |
| Florida | 1 year | 6 months | 45 days | 30 days |
| Georgia | 1 year | 6 months | None | 30 days |
| Hawaii | 1 year | 3 months | 3 months | Not Applicable |
| Idaho | 6 months | 30 days | 90 days for county seat | 60 days |
| Illinois | 1 year | 90 days | 30 days | 60 days in election district |
| Indiana | 6 months | 60 days in township | 30 days | Not Applicable |
| Iowa | 6 months | 60 days | 10 days for municipal and special elections | Not Applicable |
| Kansas | 6 months | None | 30 days | 45 days in township or precinct |
| Kentucky | 1 year | 6 months | 60 days | Not Applicable |
| Louisiana | 1 year | 6 months | 3 months | Not Applicable |
| Maine | 6 months | 3 months in city or town | None | 30 days |

| State | Federal, State and Local Offices | | | President and Vice President only (for recent movers to the state) |
|-------------------------------|----------------------------------|--------------------------------------|----------------------|---|
| | In State | In County | In Precinct | |
| Maryland | 1 year | 6 months | 6 months | 45 days in ward or election district |
| Massachusetts | 1 year | None | 6 months | 31 days in city or town |
| Michigan | 6 months | 30 days in city or town ² | None | No Minimum |
| Minnesota | 6 months | None | 30 days | 30 days |
| Mississippi | 2 years | None | 1 year | Not Applicable |
| Missouri | 1 year | 60 days | None | 60 days |
| Montana | 1 year | 30 days | None | Not Applicable |
| Nebraska | 6 months | 40 days | 10 days | No Minimum |
| Nevada | 6 months | 30 days | 10 days | Not Applicable |
| New Hampshire | 6 months | 6 months in town ² | None | 30 days |
| New Jersey ¹ | 6 months | 40 days | None | 40 days in county |
| New Mexico | 1 year | 90 days | 30 days | 30 days in county |
| New York ¹ | 3 months | 3 months | 3 months | 30 days in election district |
| North Carolina | 1 year | None | 30 days | 60 days |
| North Dakota | 1 year | 90 days | 30 days | No Minimum |
| Ohio | 1 year | 40 days | 40 days | No Minimum |
| Oklahoma | 6 months | 2 months | 20 days | No Minimum |
| Oregon | 6 months | 30 days | 30 days | No Minimum |
| Pennsylvania | 90 days | None | 60 days in district | Not Applicable |
| Rhode Island | 1 year | 6 months in town or city | None | Not Applicable |
| South Carolina | 1 year | 6 months | 3 months | Not Applicable |
| South Dakota | 1 year | 90 days | 30 days ² | Not Applicable |
| Tennessee | 1 year | 3 months | None | Not Applicable |
| Texas | 1 year | 6 months | None | 60 days |
| Utah | 1 year | 4 months | 60 days | Not Applicable |
| Vermont | 1 year | 90 days in town ² | None | Not Applicable |
| Virginia | 1 year | 6 months | 30 days | Not Applicable |
| Washington | 1 year | 90 days | 30 days | 60 days |
| West Virginia | 1 year | 60 days | None | Not Applicable |
| Wisconsin ¹ | 6 months | None | 10 days ² | No Minimum |
| Wyoming ¹ | 1 year | 60 days | 10 days ² | Not Applicable |

¹ State permits former residents to vote for President and Vice President where not qualified in new state of residence.

² If less may vote in old precinct.

³ If less may vote in old precinct if in same municipality.

Source: U.S. Senate, Office of the Secretary, *Nomination and Election of the President and Vice President of the United States*, U.S. Government Printing Office, January, 1968. Corrected to September 18, 1968.

APPENDIX

II. UNIFORM ACT FOR VOTING

BY NEW RESIDENTS IN PRESIDENTIAL ELECTIONS

SECTION 1. [Eligibility of New Residents to Vote.] Each citizen of the United States who, immediately prior to his removal to this state, was a citizen of another state and who has been a resident of this state for less than [insert period of required residence for voting] prior to a presidential election is entitled to vote for presidential and vice-presidential electors at that election, but for no other offices, if

(1) he otherwise possesses the substantive qualifications to vote in this state, except the requirement of residence (and registration), and

(2) he complies with the provisions of this Act.

Comment

Derived in part from Sec. 9.045, Ch. 9, Wisc. Stat. (1959), Sec. 3504.01, Ohio Rev. Code (Baldwin, 1960), and Calif. Election Code Ann. (1961), Ch. 4, § 751, and Sec. 111.063, Mo. Rev. Stat. (1960). As in the Missouri Statute but unlike the other statutes no reference is made to qualifications for voting in the former state of residence.

SECTION 2. [Application for Presidential Ballot by New Residents]. A person desiring to qualify under this Act in order to vote for presidential and vice presidential electors [is not required to register but] on or before [insert last date for registration or some other date sufficiently in advance of the election] shall make an application in the form of an affidavit executed in duplicate in the presence of [appropriate official] substantially as follows:

State of

ss.

County of

I,, do solemnly swear that:

1. I am a citizen of the United States.

2. Before becoming a resident of this state, I resided at street, in [town] [township] [village] [city] of, [county] of the state of

3. On the day of the next presidential election, I shall be at least [21] years of age. I have been a resident of this state since 19....., now residing at Street, in the [precinct] of the [ward] of the [town]

[township] [village] [city] of
..... [county].

4. I have resided in [enacting state] less than [.....
.....]. I believe I am entitled under the laws of this
state to vote at the presidential election to be held November
....., 19.....

5. I hereby make application for a presidential and vice presi-
dential ballot. I have not voted and will not vote otherwise than
by this ballot at that election.

Signed
(Applicant)

Subscribed and sworn to before me this day of
....., 19.....

Signed
(Title and name of officer authorized to administer oaths)

Comment

Derived in part from Sec. 111.065, Mo. Rev. Stat. (1960), and
Sec. 9.046, Wisc. Stat. (1959), but unlike the Wisconsin statute no
certificate is required to be sent to former state of residence for
verification of applicant's qualification in that state. It will be noted
that the time for filing the application is bracketed so that the period
specified will fit in with the election laws of each state. Likewise the
clause negating requirement for registration is bracketed as it will
not be needed where registration is not required.

SECTION 3. [Mailing Duplicate Application]. The [appropriate
official] shall immediately mail to the appropriate official of the state
in which the applicant last resided the duplicate of the application.

Comment

This provision is inserted as a safeguard against voting by the
applicant in the former state of residence.

SECTION 4. [Filing and Indexing Information from Other States].
The [appropriate official] shall file each duplicate application or other
official information received by him from another state indicating
that a former resident of this state has made application to vote at a
presidential election in another state and shall maintain an alpha-
betical index thereof, for a period of [.....]
after the election.

Comment

This provision is new. If the Uniform Act is widely adopted it will be valuable as a safeguard against voting by a former resident of one state who might endeavor to vote as a new resident of another state.

SECTION 5. [Delivery of Ballot to Applicant]. If satisfied that the application is proper and that the applicant is qualified to vote under this Act the [appropriate official] shall deliver to the applicant a ballot for presidential and vice presidential electors not sooner than [.....] days nor later than [.....] days prior to the next presidential election.

Comment

Derived from Sec. 9.046, Wisc. Stat. (1959), except that the time fixed for delivery of the ballot is bracketed.

SECTION 6. [Voting by New Residents].

(a) The applicant, upon receiving the ballot for presidential and vice presidential electors shall mark forthwith the ballot in the presence of the [appropriate official] but in a manner that the official cannot know how the ballot is marked. He shall then fold the ballot in the [appropriate official] presence so as to conceal the markings, and deposit and seal it in an envelope furnished by the [appropriate official].

(b) The voter shall enclose the envelope containing the ballot in a carrier envelope which shall be securely sealed. There shall be imprinted on the outside of the carrier envelope a statement substantially as follows:

Certification of New Resident Voter

I have qualified as a new resident voter in this state to vote for presidential and vice presidential electors. I have not applied nor do I intend to apply for an absentee voter's ballot from the state from which I have removed. I have not voted and I will not vote otherwise than by this ballot.

Date:

(Signature of Voter)

Witness

(Appropriate Officer)

The voter shall sign the certification upon the carrier envelope as set forth above, and shall then deliver the sealed carrier envelope

to the [appropriate official], who shall keep the carrier envelope in his office until delivered by him to the [appropriate election official].

Comment

Derived in part from Sec. 9.046, Wisc. Stat. (1959) and Sec. 111.065, Mo. Rev. Stat. (1960).

SECTION 7. [List of Applicants Open for Public Inspection]. The [appropriate official] shall keep open to public inspection a list of all persons who have applied under this Act to vote as new residents with their names, addresses and application dates.

Comment

Provision for public inspection of the names of new resident voters is contained in Sec. 9.046, Wisc. Stat. (1959); Calif. Election Laws Ann. (1961), C. 4. § 761; Sec. 3504.06, Ohio Rev. Code (Baldwin, 1960); Sec. 111.065, Mo. Rev. Stat. (1960).

SECTION 8. [Delivery and Deposit of Ballots].

(a) [Appropriate Officials] shall prepare and deliver the ballots for new residents to the [appropriate election officials] in the manner prescribed by law for absentee ballots. The ballots shall be processed in accordance therewith.

(b) The [appropriate election officials] shall record the new resident voter's name with a notation designating him as a new resident voting for presidential and vice presidential electors only.

Comment

These provisions are substantially the same as subsection (4), Sec. 9.046, Wisc. Stat. (1959) and are similar to the procedure specified in other states.

SECTION 9. [Challenge of New Resident's Vote]. The vote of any new resident may be challenged for cause. The [appropriate election officials] have all the powers and authority conferred upon them by law in respect to hearing and determining the legality of challenged votes.

Comment

All of the statutes considered have provisions for challenging votes and the above provision is substantially the same as subsection (5), Sec. 9.046, Wisc. Stat. (1959).

SECTION 10. [Penalties]. Any person wilfully making a false statement or affidavit under this Act shall be fined not less than [\$.....] nor more than [\$.....] or punished by imprisonment for a period of not less than [.....] nor more than [.....] or both. Any public official who wilfully refuses or neglects to perform any of the duties prescribed by this Act or violates any of its provisions shall be fined not less than [\$.....] nor more than [\$.....] or punished by imprisonment for a period not less than [.....] nor more than [.....] or both.

Comment

All of the statutes considered provide for penalties, some incorporating by reference provisions of other statutes. This section is patterned on the Missouri statute which sets forth the penalties without reference to other legislation (Sec. 111.067, Mo. Rev. Stat. (1960), but is bracketed in case provisions of other statutes are adequate.

SECTION 11. [Application of Other Statutes]. Except as provided in this Act, the provisions of law relating to absentee ballots apply also to the casting and counting of ballots and challenging of votes by new residents, the furnishing of election supplies, ballots, canvassing of ballots, and making proper returns of the results of the election.

Comment

This provision is new and is designed to deal with problems not expressly covered in the Act.

SECTION 12. [Definition of State]. As used in this Act "State" includes the District of Columbia.

Comment

The definition of "state" was extended to include the District of Columbia because of the adoption of the 23rd Amendment in 1961 allowing residents of the District of Columbia to vote in presidential elections.

SECTION 13. [Uniformity of Interpretation]. This Act shall be so construed as to effectuate its general purpose to make uniform the law of those states which enact it.

SECTION 14. [Severability]. If any provision of this Act or the application thereof to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

SECTION 15. [Short Title]. This Act may be cited as the Uniform Act for Voting by New Residents in Presidential Elections.

SECTION 16. [Repeal]. [The following acts and parts of acts are repealed:

- 1.
- 2.
- 3.]

SECTION 17. [Time of Taking Effect]. This act shall take effect

.....