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Restrictions on Student Voting: An Unconstitutional Anachronism?

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RESTRICTIONS ON STUDENT VOTING: AN UNCONSTITUTIONAL ANACHRONISM?

I. INTRODUCTION

"One man, one vote" is a shorthand phrase for the principle that in a democracy each citizen has the right to participate equally in the electoral process. By its recent extension of the franchise[1] to eleven and a half million new eighteen to twenty-one year old voters,[2] Congress has paid tacit tribute to the political concern and awareness of a large segment of the nation's youth by offering them the ballot box as a vehicle for political action.[3] Although the Supreme Court recently restricted this grant of the franchise to congressional and national elections,[4] many public officials believe that the inconvenience and inevitable confusion of maintaining dual registration and voting procedures will move many states to enact eighteen year old vote laws in the interests of administrative uniformity.[5]

As many as four million of the newly enfranchised group will be potential college student voters in 1972.[6] Many of them will then encounter for the first time a situation that has plagued thousands of their predecessors: the inability to register for or vote in local elections in the county or city where they are residing while attending college. In at least twenty-four states,[7] through a process of judicial interpretation of vague election statutes or through legislative fiat,[8] local officials can and do deny the student an opportunity to vote on the candidates and issues that will substantially affect his daily life.

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[1] Voting Rights Act Amendments of 1970, 42 U.S.C.A. §§ 1973aa-73bb (Supp. 1971), *amending* the Voting Rights Act of 1965, 42 U.S.C. §§ 1973-73p (Supp. V, 1965) *and enacting* subchapter I-C which lowers the voting age to eighteen for all federal, state and local elections.

[2] N.Y. Times, Dec. 22, 1970, at 1, col. 8.

[3] Denno, *Politics, The Constitution and the Eighteen-Year-Old Vote*, 35 ALBANY L. REV. 1 (1970).

[4] United States v. Arizona, 91 S.Ct. 260 (1970).

[5] N.Y. Times, Dec. 22, 1970, at 1, col. 8; 32, col. 2. The Senate has already unanimously approved a proposed constitutional amendment that would lower the voting age to eighteen in all elections. Backers of the amendment believe it can be ratified by the states before the elections of November, 1972. N.Y. Times, Mar. 11, 1971, at 1, col. 6. On March 23, 1971, the House of Representatives approved the amendment by a vote of four hundred to nineteen. N.Y. Times, Mar. 24, 1971, at 1, col. 1.

[6] N.Y. Times, Dec. 22, 1970, at 16, col. 4.

[7] *See* compilation in Singer, *Student Power at the Polls*, 31 OHIO ST. L.J. 703, 721-23 (1970) [hereinafter cited as SINGER].

[8] *See, e.g.*, N.Y. Times, Feb. 10, 1971, at 44, col. 3.

Using Michigan as a vehicle for analysis because it has a student voting process representative of many states,[9] this note seeks to accomplish four purposes: (1) an examination of the case law often underlying the presumption against student registrability; (2) an analysis of recent constitutional developments in the due process and equal protection areas as they relate to the particular problems posed by the student voter; (3) a survey of the competing local and student interests in the student vote issue; and (4) a conclusion regarding the likelihood that thwarted student voters can follow the paths of other disfranchised groups such as black citizens who have successfully achieved the unqualified right to vote.

II. MICHIGAN LAW— A PRESUMPTION AGAINST STUDENT VOTING

State law prohibiting or discouraging student voter registration in college communities traces back to the nineteenth century when colleges were small, cloistered affairs. Typically, such "residency-determinative"[10] statutes provide that no person shall "lose or gain" a residence for voting registration purposes while attending an institution of learning.[11] Ironically, the original purpose of these laws may have been as much to preserve students' voting rights in the city or county of their parents' residence as it was to prevent voting in the college community.[12] In a number of important respects, Michigan is typical of at least twenty-four states[13] where the courts have read into the "gained or lost" provisions various notions of public policy. This has created a virtual de facto exclusion of student registrants from the rolls of college communities[14] or at least made the registration process difficult and uncertain.

Michigan's current statutory provision concerning voting by

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[9] *See* SINGER 721-23.

[10] Residency-determinative statutes as analyzed in this note are to be distinguished from durational residency requirements which set out the length of time an elector must reside in a particular state or locality to be eligible to vote at the next regular or special election, *e.g.*, MICH. COMP. LAWS § 168.492 (Supp. 1970).

[11] *See, e.g.*, N.Y. ELECTION LAW § 151 (McKinney 1964).

[12] "[T]he section was designed for the benefit of and to enlarge and protect the rights of these classes, not to deprive them of privileges common to all." Wolcott v. Holcomb, 97 Mich. 361, 371, 56 N.W. 837, 841 (1893) (dissenting opinion).

[13] *See* SINGER 721-23.

[14] Harris v. Samuels, Civil No. 68-598 (N.D. Ala., Feb. 9, 1970), *rev'd*, Civil No. 29683 (5th Cir., Mar. 16, 1971), discussed *infra* note 51. *Cf.* Wilkins v. Ann Arbor City Clerk, 24 Mich. App. 422, 180 N.W.2d 395 (1970), *motion for leave to appeal granted*, 384 Mich. 782 (1970). Trial and intermediate appellate courts upheld the Michigan statutory presumption with regard to residency for voting purposes (*infra* note 15) as a valid exercise of legislative power in the interest of preserving purity of the ballot box.

students reads: "No elector shall be deemed to have gained or lost a residence . . . while a student at any institute of learning."[15] Voter registration takes place on the local level; thus the effect of this law on student voter registration varies from city to city, since the statute is silent regarding standards for student voter residency at the college town. Moreover, Michigan judicial decisions interpreting the law have not provided local registration officials with the clear guidelines necessary for determining whether individual students have attained voter status at their respective university seats. In sharp contradistinction to the student voting provision, the state law defining voting residence for all other citizens is clear and unequivocal:

> The term 'residence,' as used in this act, for registration and voting purposes shall be construed to mean that place at which a person habitually sleeps, keeps his or her personal effects and has a regular place of lodging. Should a person have more than one residence, or should a wife have a residence separate from that of the husband, that place at which such person resides the greater part of the time shall be his or her official residence for the purposes of this act.[16]

But for the "gained or lost" stipulation,[17] full-time students would be able to vote in their college communities since that is where they reside "the greater part of the time."[18]

Michigan cases reaching the problem of student residence for

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[15] MICH. COMP. LAWS § 168.11(b) (1967).

> 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 engaged in the navigation of the waters of this state or of the United States or of the high seas, nor while a student at any institution of learning, nor while kept at any almshouse or other asylum at public expense, nor while confined in any public prison. Honorably discharged members of the armed forces of the United States or of this state and who reside in the veterans' facility established by this state may acquire a residence were the facility is located.

For sailors, this provision was obviously intended only to save their right to vote at their prior residence. Prisoners and wards of the state clearly contribute nothing and are not concerned with the local laws, taxes, and policies of the locality where they are institutionalized.

[16] MICH. COMP. LAWS § 168.11(a) (1967). The state constitution is the source of the legislative power to define voting residence. "Every citizen of the United States who has attained the age of 21 years, who has resided in this state six months, and who meets the requirements of local residence provided by law, shall be an elector. . . . The legislature shall define residence for voting purposes." MICH. CONST. art. 2, § 1.

[17] *Supra* note 15.

[18] In fact, it appears that full-time students would have to vote at their college residences because the saving aspect of MICH. COMP. LAWS §168.11(b), which allows them to continue voting at their prior residences, would be lost. This is because the students would no longer qualify as residents of their parents' localities as they would no longer reside there "the greater part of the time."

voting purposes have all dealt with whether the student had "gained" residence. The net effect of this litigation has been the creation of a presumption against the student's having a voting residence at the place where he lives while going to school. As is often the case in the absence of clear statutory or judicial standards, considerable discretion now resides in the registration clerks as to the nature and degree of evidence necessary to rebut the presumption.

The Michigan Supreme Court first considered the "gained or lost" provision with respect to local residence for voting purposes in *Wolcott v. Holcomb.*[19] The court held that a veteran residing in a state soldier's home was absolutely prevented from establishing a voting residence in the county where the home was situated. However bona fide his intent to establish a voting residence, the veteran lacked the requisite degree of community involvement:

> The inmates of the home own no property, pay no local taxes, do no work in or for the benefit of the municipality, and have no pecuniary interest in its local affairs. In fact, they have no connection with, and stand in no relation to, the local municipal government. They occupy State property, and are exclusively under the control and management of the State.[20]

Applying this same standard of a sufficient nexus with the local community, the court in dictum articulated reservations regarding students' right to gain a voting residence in their college towns:

> Furthermore, students in all institutions of learning, although they are in attendance there for the sole purpose of obtaining an education, might, at their own will, become electors in the places where such institutions are located. We think the constitution prohibits a change of residence under such circumstances, and that, when one's presence in any of the institutions named is due to the sole purpose of receiving the benefits conferred, his former residence must be considered his domicile for citizenship.[21]

Nineteen years later the Michigan court, in deciding *People v. Osborn,*[22] modified its position. The court acknowledged the possibility that a student could, in certain circumstances, become a

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[19] 97 Mich. 361, 56 N.W. 837 (1893). The *Wolcott* decision with respect to veterans was overruled by the 1908 Michigan Constitution which established an exception to the "gained or lost" provision for honorably discharged servicemen residing at a state facility. MICH. CONST. art. 3, § 2 (1908).

[20] 97 Mich. at 364-65, 56 N.W. at 838.

[21] *Id.* at 368, 56 N.W. at 839.

[22] 170 Mich. 143, 135, N.W. 921 (1912).

voting resident of the city in which his college was situated. In *Osborn*, a twenty-seven year old college student at Albion, Michigan, who had lived in Albion for several years while working his way through school, was criminally prosecuted and convicted for illegally voting in Albion where he claimed to have gained residence for voting purposes. The court did not consider itself bound by *Wolcott,* which was interpreted to include within the prohibition against students' voting only those students whose "sole purpose" in residing at a particular place was to attend an institution of learning.[23] While reversing on grounds of improper jury instructions, the court nonetheless admitted both the possibility of a student's gaining and losing a residence along with his parents (should they move while he were attending college) and the possibility that Osborn might have become a resident before matriculating. Far from clearing the way for massive student voter registration, the court stated that a student attending college could not, simply by a declaration of intention, become an elector in the community in which the college was located. However, "if respondent, having no domicile, in good faith made a domicile at Albion, entering college as a resident citizen of Albion, he was entitled to vote there. Whether he did so is a question of fact."[24]

In its most recent pronouncement on the "gained or lost" provision with respect to students, the Michigan Supreme Court in *Attorney General ex rel. Miller v. Miller*[25] continued the trend toward cautious flexibility. In dictum, the court quoted with approval from 20 *Corpus Juris* 72:

> The great weight of authority is that, 'a student at college who is free from parental control, regards the place where the college is situated as his home, has no other to which to return in case of sickness or domestic affliction, is as much entitled to vote as any other resident of the place where the college is situated.'[26]

On the other hand, the court reiterated the position taken in *Osborn* that a mere declaration of intent to reside where the student is going to school will not suffice for establishing residency. Thus the court left unclear just what requirements must be met before a student may vote in his college community.

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[23] *Id.* at 147, 135 N.W. at 922.

[24] *Id.* at 148, 135 N.W. at 923.

[25] 266 Mich. 127, 253 N.W. 241 (1934). This case involved an election dispute between two candidates for sheriff. The fifty-eight student votes which were challenged, even if excluded, would not have affected the outcome.

[26] 266 Mich. at 143, 253 N.W. at 247.

Two subsequent opinions by different Michigan Attorneys General deal with the issue,[27] but fail to provide much additional guidance. While both quote *Osborn* to the effect that the student's intention has nothing to do with his residence for voting purposes, both also quote extensively from the more liberal standards posited in an *A.L.R.* citation suggesting that the intention of the student to remain or return home is the critical factor.[28] Finally, both opinions state that the determination of whether the "no elector shall gain" proviso has been overcome is a factual matter to be decided in each case by the registration clerks:

> [I]t is impossible for this office to lay down any general rule applicable to each of the students concerning whom your inquiry relates. The city and township clerks, as registration officers, are given statutory authority[29] to interrogate prospective registrants and must in the first instance determine eligibility for registration.[30]

Therefore, in Michigan, as well as in other states,[31] the standards which students must meet in order to vote in the locality in which their college is located are extremely vague.[32] In Michigan, the guidelines are so vague as to be tantamount to no standards; thus each registration clerk determines himself which factors will overcome the presumption against student registrability in his city.[33]

Factors which various state courts have considered to be relevant include the following: a student's gainful employment in the college community,[34] home ownership with no present intention of pulling up stakes,[35] apartment dwelling as head of a family,[36] holding a teaching and research assistantship,[37] stated intention to make the university town a home upon graduation,[38] year-round residence,[39] financial independence from parents,[40] and payment of local property and income taxes.[41] Since guidelines for identi-

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[27] [1947-1948] MICH. ATT'Y GEN. BIENNIAL REP. 0-5115 at 77; [1955-1956] MICH. ATT'Y GEN. BIENNIAL REP. pt. 1, No. 2178 at 339.

[28] Annot., 37 A.L.R. 138 (1925).

[29] MICH. COMP. LAWS § 168.499 (1967).

[30] 0-5115 *supra* note 27, at 80; No. 2178 at 341.

[31] *See infra* notes 34-41.

[32] *See generally* Note, *Election Laws as Legal Roadblocks to Voting*, 55 IA. L. REV. 616 (1970); Jannson, *The Student Vote*, NEW REPUBLIC, Sept. 19, 1970, at 11.

[33] *See* sample student voter questionaires, Appendix 1.

[34] *E.g.*, People v. Osborn, 170 Mich. 143, 135 N.W. 921 (1912).

[35] *E.g.*, State *ex rel.* May v. Jones, 16 Ohio App. 2d 140, 242 N.E.2d 672 (Ct. App. 1968).

[36] *E.g.*, Robbins v. Chamberlin, 297 N.Y. 108, 75 N.E.2d 617 (1947).

[37] *E.g.*, *In re* Goldhaber, 55 Misc. 2d 111, 285 N.Y.S.2d 747 (1967).

[38] *E.g.*, Kegley v. Johnson, 207 Va. 54, 147 S.E.2d 735 (1966).

[39] *E.g.*, New v. Corrough, 370 S.W.2d 323 (Mo. 1963).

[40] *E.g.*, Swan v. Bowker. 135 Neb. 405, 281 N.W. 891 (1938).

[41] *See* student voter questionaires, Appendix 1.

fying and weighing relevant criteria for student voter residency are virtually non-existent, the determination of whether one or more such factors overcomes the presumption against student residency vests almost solely in the uncontrolled discretion of each registrar and his local government superiors.[42]

III. CONSTITUTIONAL ASPECTS OF STUDENT VOTER REGISTRATION RESTRICTIONS

A. Vague Voting Registration Criteria as a Violation of Due Process

The indefiniteness or non-existence of standards for determining residence raises the possibility of a denial of due process of law to those students denied local voting privileges by officials utilizing vague registration standards. In *Louisiana v. United States*[43] and the earlier case of *Schnell v. Davis*,[44] the United States Supreme Court struck down state laws that vested local registration clerks with similar unfettered discretion over voter qualification. In both cases, state literacy tests requiring prospective registrants to qualify on the basis of answers given to constitutional interpretation questions were adjudged constitutionally infirm and enjoined from further use. The Court found particularly reprehensible the fact that under the state laws voting registrars could determine the manner and form of the test and the sufficiency of the answers "without any objective standard to guide them."[45] Although the voter qualification tests involved were used to disfranchise blacks, thus bringing into play the fifteenth as well as the fourteenth amendment, the inherent vagueness of the interpretation test and the imprecise criteria used by the registrars presented prospective black voters with a dilemma analogous to that faced today by students. Although students must demonstrate greater attachment to the university locale than must most other registrants,[46] the quantum of required attachment is quite unclear. As Justice Black wrote for a unanimous Court in *Louisiana v. United States:*

[42] *Supra* note 30.

[43] 380 U.S. 145 (1965).

[44] 336 U.S. 933, *aff'g* 81 F. Supp. 872 (S.D. Ala. 1949). *Compare with* the numerous decisions wherein the Supreme Court has required that statutes regulating the exercise of first amendment freedoms be "precise and narrowly drawn . . . evincing a legislative judgment that certain specific conduct be limited or proscribed." Edwards v. South Carolina, 372 U.S. 229, 236 (1963) (petitioners' breach of the peace convictions were reversed where it was shown that they were arrested for a peaceful demonstration on the state capitol grounds). *See also* Kunz v. New York, 340 U.S. 290 (1951) (issuance of speaking permits must be guided by such exact standards as to be ministerial rather than discretionary).

[45] Louisiana v. United States, 380 U.S. 145, 150 (1965).

[46] *See, e.g.*, Michigan decisions cited *supra* notes 19, 22, and 25.

> The cherished right of people in a country like ours to vote cannot be obliterated by the use of laws like this, which leave the voting fate of a citizen to the passing whim or impulse of an individual registrar. Many of our cases have pointed out the invalidity of laws so completely devoid of standards and restraints.[47]

Clearly, the Court regarded state laws which vested full discretion in voting registrars to determine qualifications, but which failed to set forth definite and objective standards for the registrars' guidance, to be repugnant to traditional notions of fourteenth amendment due process. Similarly, vague and indefinite laws denying the out-of-town or out-of-state student the exercise of his franchise are arguably as susceptible to challenge on due process grounds as were those laws denying the black voter the franchise on the basis of ill-defined voter qualification tests. In both situations, the lack of criteria as to voter qualifications and the resultant unchecked authority of registrars served to deprive potential voters of their right to exercise the franchise. Thus the students seeking to register may have due process grounds on which to challenge state restrictions on student voting.

B. Exclusion of Students from the Local Franchise as a Denial of Equal Protection

1. The Compelling State Interest Test and the Right to Vote— Because the franchise is "close to the core of our constitutional system"[48] and "the essence of a democratic society . . . the heart of representative government,"[49] the Supreme Court has treated the right to vote free of restraints on a constitutional par with the other specially protected fundamental rights.

But Michigan's interpretation of the "gained or lost" provision amounts to a presumption against students achieving voting residency status in their college communities. In effect, this places on students a burden of demonstrating a sufficient nexus with the locality. A similar burden is not placed on older citizens, on young citizens native to that locality, or on nonstudent members of the community. Where students fail to carry the extra burden, they lose the right to vote at their college residences. Although a body

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[47] 380 U.S. at 153.

[48] Carrington v. Rash, 380 U.S. 89, 96 (1965).

[49] Reynolds v. Sims, 377 U.S. 533, 555 (1964). *See also* 561-62 where the Court stated: "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 to vote must be carefully and meticulously scrutinized."

of state case law exists on the issue of student voting,[50] only recently have students challenged voter registration laws on the basis of denial of equal protection.[51]

In cases not involving individual liberties, the customary fourteenth amendment equal protection analysis presumes that a challenged legislative classification is valid, with the plaintiff bearing "the burden of showing that it does not rest upon any rational basis, but is essentially arbitrary."[52] But "[l]ines drawn on the basis of wealth or property, like those of race . . . are traditionally disfavored."[53] When the state classification is based on race or other disfavored criteria, it is presumed to be invalid, with the state then assuming the burden of showing some overriding need for such discrimination.[54]

In recent years, the Supreme Court has denied the presumption of rationality to classification schemes infringing "fundamental rights,"[55] thereby requiring the state to demonstrate an overwhelming state interest in the legislation. For example, in *Bates v. Little Rock*,[56] two license tax ordinances requiring organizations (here the NAACP) to disclose names of members to city officials were found to violate the fundamental right of freedom of association. While admitting that the city's interest in enforcing an occupational license tax was a cogent one, the Court did not find the means chosen for enforcement to be reasonably related to the city's purpose. Thus, "[w]here there is a significant encroachment upon personal liberty, the State may prevail only upon showing a subordinating interest which is compelling."[57] The effect of the

[50] Annot., 98 A.L.R.2d 488 (1964).

[51] In Harris v. Samuels, Civil No. 68-598 (N.D. Ala. Feb. 9, 1970), *rev'd*, Civil No. 29683 (5th Cir., Mar. 16, 1971), students at the University of Alabama enlisted the help of the ACLU in challenging Alabama's presumption of non-residence against college students as a denial of equal protection. They appealed an adverse trial court judgment to the Fifth Circuit Court of Appeals which reversed and remanded with directions to retain jurisdiction pending more authoritative construction of the Alabama law by state courts.

[52] *E.g.*, Lindsley v. Natural Carbonic Gas Co., 220 U.S. 61, 79 (1911). Since New York had a rational basis for prohibiting waste of mineral waters, legislation limiting the amount petitioner could draw from a common source of supply did not deprive him of property without due process of law.

[53] Harper v. Virginia Bd. of Elections, 383 U.S. 663, 668 (1966). The equal protection clause of the fourteenth amendment was held to bar a state from making payment of a poll tax a prerequisite to voting.

[54] *See, e.g.*, Loving v. Virginia, 388 U.S. 1 (1967), holding Virginia's antimiscegenation laws proscribing marriages between white and non-white persons violative of both the due process and equal protection clauses of the fourteenth amendment.

[55] The requirement that the state justify statutes making classifications abridging the fundamental right to vote on the basis of a compelling state interest grew out of the line of cases beginning with Reynolds v. Sims, 377 U.S. 533 (1964). *Accord*, Harper v. Virginia Bd. of Elections, 383 U.S. 663 (1966); Williams v. Rhodes, 393 U.S. 23 (1968).

[56] 361 U.S. 516 (1960).

[57] *Id.* at 524. *Accord*, Gibson v. Florida Legislative Investigation Committee, 372 U.S. 539 (1963); NAACP v. Alabama, 357 U.S. 449 (1958).

"compelling interest" test is to thrust upon the state the burden of proving a major element in an equal protection claim. When a classification affecting fundamental rights is challenged, the state must demonstrate strong reasons for the necessity of the classification in order to have its constitutionality upheld.[58]

In *Williams v. Rhodes*,[59] the Supreme Court for the first time clearly articulated the compelling state interest test in an equal protection, election context. The Court held that the American Independent Party must be placed on the Ohio ballot despite the Party's failure to comply with a complex of election laws making it very difficult for any party other than the Democratic and Republican to be listed there. Since the two major parties were given a decided advantage by the Ohio laws, the Court found that Ohio had placed "substantially unequal burdens on both the right to vote and the right to associate."[60] Because these rights were fundamental to the democratic process, "only a compelling state interest in the regulation of a subject within the State's constitutional power to regulate can justify limiting First Amendment freedoms."[61] Ohio claimed that it had a compelling state interest in ensuring that winning candidates have the support of the majority of voters and in preventing a minority group from winning elections in a multi-party situation with a mere plurality.[62] However, the Court rejected Ohio's claim, and held that the state's interest was insufficient to justify the "severe restrictions in voting and associational rights"[63] which Ohio had imposed. If it requires the state to demonstrate a compelling interest in restricting the ballot, then it would seem to follow that the Court ought to require the same kind of showing where the state has artificially restricted the electorate so as to exclude students.

In the early voting apportionment cases, the Court purported to apply the traditional rational basis equal protection test. So long as the institutions of state government are presumed to be structured so as to represent fairly all the people, it might follow that state classification schemes should be presumed rational. When, however, the challenge to the statute is in effect a challenge of the basic assumption, it is no longer reasonable for the assumption to serve as the basis for presuming constitutionality.[64] Thus in *Rey-*

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[58] Note, *California's Two-Thirds Majority Requirement for Local Bond Issues: New Ground for "One Man, One Vote?"*, 4 U. SAN FRANCISCO L. REV. 309, 316 (1970).

[59] 393 U.S. 23 (1968).

[60] *Id.* at 31.

[61] NAACP v. Button, 371 U.S. 415, 438 (1963).

[62] 393 U.S. at 32.

[63] *Id.*

[64] Kramer v. Union Free School District No. 15, 395 U.S. 621, 627-28 (1969). "[W]hen we are reviewing statutes which deny some residents the right to vote, the general presumption of constitutionality afforded state statutes and the traditional approval given state classification if the Court can conceive of a 'rational basis' for the distinctions made are not applicable."

nolds v. Sims,[65] the Court rejected the argument that historical boundaries and economic or other interest groupings were state interests sufficiently compelling to justify diluting the votes of electors in state legislative districts of unequal population. Conceding that the representation of varying political subdivisions might be a rational state purpose, the Court nevertheless held such apportionment to be unconstitutional:

> But if, even as a result of a *clearly rational state policy* of according some legislative representation to political subdivisions, population is submerged as the controlling consideration in the apportionment of seats in the particular legislative body, then the right of all the State's citizens to cast an effective and adequately weighted vote would be unconstitutionally impaired.[66] (Emphasis added).

In a number of voting denial cases decided over the past two years[67] the Court has applied the compelling state interest test in requiring states to demonstrate an overriding necessity for excluding individuals from the polls in local elections. Almost uniformly, statutes denying the franchise to a particular class of citizens have been held to be unconstitutional. Under the logic of these decisions, it is reasonable to conclude that states must justify with compelling reasons their exclusion of students, as a class, from the electorate of those localities where the students are pursuing their educations. In the first of these cases, *Kramer v. Union Free School District No. 15*,[68] a New York statute excluding all non-property owners and non-parents from voting in local school board elections was held unconstitutional. Under the statute, a single adult non-property owner, without children and residing with his parents had been disqualified from voting in his district school board elections. The Supreme Court held that New York had failed to show a *compelling interest* in excluding Kramer from the electorate, and accordingly must allow him to vote. The state argued that limiting the electorate to those citizens "primarily affected by or primarily interested in"[69] the decisions made by the officials to be elected was a sufficiently compelling interest. Expressing no opinion as to whether limitation of the electorate to those "primarily affected" could ever be a compelling state interest, the Court held that the statute did not achieve that goal with sufficient precision, since some persons

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[65] 377 U.S. 533 (1964).
[66] *Id.* at 581.
[67] *See* notes 68, 71, 73 and 76 *infra*.
[68] 395 U.S. 621 (1969).
[69] *Id.* at 632.

who had a direct interest in school board decisions were excluded while some who had remote interests were included.[70]

Like Kramer, the average student, unable to overcome the presumption against registrability, may find himself excluded from local elections no matter how passionate his interest in the outcome and the candidates might be. While the vice of imprecision in *Kramer* served to exclude an informed and affected non-property owner, a similarly imprecise standard permits unchallenged registration of one whose only nexus with the community may be the accident of birth, but excludes interested students. Furthermore, by defining local community interest or substantial local nexus in terms of economic or property criteria, local voter registrars restrict student voting rights through application of financial factors—an analysis specifically rejected in Kramer.

Statutes which exclude non-taxpayers from the electorate have also been held constitutionally invalid for lack of exacting precision and failure to meet the compelling interest requirements. In *Cipriano v. City of Houma*[71] the Supreme Court held a Louisiana statute limiting the electorate in a utility revenue bond authorization contest to property taxpayers to be a violation of equal protection. The Court noted that the legislation had the effect of excluding "otherwise qualified voters who are as substantially affected and directly interested in the matter voted upon as are those who are permitted to vote."[72] Apparently, the Court regarded all the voters in the locality as persons directly concerned and interested in the outcome of the election, although many would be affected only as beneficiaries of the contemplated improvements. Similarly, in the 1970 case of *Phoenix v. Kolodziejski*[73] the Court found insufficiently compelling Arizona's interest in excluding non-property taxpayers from voting in an authorization election for general obligation bonds. The state had grounded its interest in exclusion of non-property taxpayers in the fact that state law required property taxes to be levied in an amount sufficient to service general obligation bonds. The issue of the legitimacy of restricting the franchise to taxpayers was thus before the Court in its clearest form. The majority opinion stated that

> property owners and nonproperty owners alike have a substantial interest in the public facilities and services of the city

[70] 395 U.S. at 632.
[71] 395 U.S. 701 (1969).
[72] *Id.* at 706.
[73] 399 U.S. 204 (1970).

> and will be substantially affected by the ultimate outcome of the bond election at issue in this case. Presumptively, when all citizens are affected in important ways by a governmental decision subject to a referendum, the Constitution does not permit weighted voting or the exclusion of otherwise qualified citizens from the franchise.[74]

Even if other non-property tax revenues were not available to service the bond issue, the decision noted that a significant part of the property tax burden would be shifted to tenants and consumers, whose interest and concern with the community were therefore very real.

The logic of *Cipriano* and *Phoenix* is clearly applicable to the problem presented by the exclusion of student voters. Numerous otherwise qualified prospective student voters fail to carry the burden of establishing a nexus with their college communities because they are unable to adduce such factors as property ownership and payment of property taxes. By rejecting these pocketbook indices as the measure for exclusion of otherwise qualified voters,[75] the Supreme Court has opened up state presumptions and restrictions on student residency for voting purposes to serious equal protection challenge to the extent that they are premised on these factors.

Evans v. Cornman,[76] another voting rights denial case decided in 1970, perhaps comes closest to dealing with the denial of equal protection aspects of the student voter problem. In *Evans,* a unanimous Supreme Court held that Maryland's withholding of voting privileges to residents of a "federal reservation" (National Institutes of Health) unconstitutionally denied them equal protection. Reserving the question of whether citizens not substantially interested in or affected by decisions may be excluded from the electorate, the Court in *Evans* found that the residents of federal reservations were substantially affected by state governmental decisions. Maryland argued that the United States Constitution provides for exclusive federal jurisdiction over federal enclaves where Congress chooses to exercise it[77] and to that extent had removed the National Institutes of Health from the state's jurisdiction. Moreover, since residents of the enclave paid no property taxes, and since numerous state regulatory and licensing provisions were not enforceable on the reservation, the state argued

[74] *Id.* at 209.

[75] As, *e.g.,* those who meet the durational residency requirements for voting eligibility in a particular locality. *See* note 10 *supra.*

[76] 398 U.S. 419 (1970).

[77] U.S. CONST. art. 1, § 8, cl. 17.

that the residents lacked sufficient interest to be entitled to voting rights. The state's contention that residents of federal enclaves had less of a nexus with the state than did other residents is analogous to the argument that students are presumed to lack a nexus with the university locales in Michigan and other states. The Court's response to this argument was that "these differences, along with whatever others may exist, do not come close to establishing that degree of disinterest in electoral decisions that might justify a total exclusion from the franchise."[78]

The Court detailed a number of factors, most of them as applicable to students as to federal enclave residents, which established the basis for a finding of substantial interest on the part of residents in state and local political decisions. These factors point up the kind of nexus naturally arising between a locality and an outside group which makes the exclusion of the group from the local franchise for disinterest in its electoral decisions constitutionally infirm. The *Evans* analysis applies equally as well to students as to federal employees living on a reservation. The factors deemed relevant by the Court serve to highlight student attachment to those local communities where they spend anywhere from eight to twelve months of the year living and attending college.[79]

First, the Court noted, enclave residents (like university students) were included in the census determination of the state's congressional apportionment.[80] Second, Congress had provided that state criminal laws, which went beyond the federal criminal laws in designating new crimes or greater sanctions, applied to residents of federal reservations. Similarly, state criminal laws apply to college students who also come under local court jurisdiction when they are accused of transgression of state and local statutes. Third, the enclave residents, as do students, paid income tax on their earnings, and gasoline, sales and use taxes on their purchases, and these sources accounted for a major share of state revenue—some of which returns to the localities in the form of state grants based on population.[81] Fourth, enclave residents, as is the case with students, enjoyed no immunity from state judicial process, and had recourse to the state and local courts. Fifth, the

[78] 398 U.S. at 426.

[79] *See* discussion of the nature and extent of students' interests in voting at their college residences in subsection 2 of text *infra*.

[80] U.S. BUREAU OF THE CENSUS, DEPARTMENT OF COMMERCE, COUNTY AND CITY DATA BOOK xix (1967); *See also* Jannson, *supra* note 32, at 11.

[81] MICH. COMP. LAWS § 205.75 (1967) provides that the state shall remit 1/8 of the net sales tax revenue to counties and cities on a per capita basis. MICH. COMP. LAWS § 247.660 (Supp. 1970) similarly provides that twenty percent of gasoline tax revenue shall be remitted on a combined population-highway mileage basis.

children of reservation residents, as do those of resident students, attended the local schools. Similarly, often students or their wives take advantage of local adult educational or recreational programs. In short, under the *Evans* rationale, students would seem to have the requisite interest in state affairs to entitle them to participate in the state, and by inference, the local, political processes in the most uniformly meaningful way – by voting.

One recent Supreme Court case that seemingly contradicts the *Evans* logic is *McDonald v. Board of Commissioners*[82] in which the Court denied in-county inmates of Cook County jails being held pending trial an asserted right to vote. The inmates claimed that their right to vote was denied because the Illinois absentee voting law failed to provide for them. The Court declined to apply the compelling state interest test on the ground that since it was possible that Illinois provided for their vote in some other manner, the denial of absentee ballots did not in itself deny the prisoners' right to vote. Thus it could conceivably be argued that only where a class has been *totally* disfranchised will the Court require a state to justify its action on the basis of some compelling state interest.

However, two factors distinguish this case from the other Supreme Court cases denying the state's power to exclude a class from the electorate. First, the Court was of opinion that "[i]t is thus not the right to vote that is at stake but a claimed right to receive absentee ballots."[83] Therefore the Court seemed constrained to take an approach less exacting than the compelling state interest test since the state had *not* excluded the prisoners from the franchise. Second, although students residing in a college community and wishing to vote there may have the option of voting elsewhere, *McDonald* does not dispose of the equal protection question involved in student voter exclusion from the franchise of the college residences. For those students who have severed their ties to the family residence and whose parents' state does not have a "gained or lost" statute, the only alternative to voting at the seat of their university is to not vote at all.[84] In addition, the *Williams* case [85] clearly upholds the voter's right not to have his ballot artificially restricted by limiting his choice of candidates to those of the two major parties. The constitutional

[82] 394 U.S. 802 (1969).

[83] *Id.* at 807.

[84] Those students who have truly broken from home and are making their own ways would no longer satisfy the requirements of the general statutes defining residency for voting purposes, *e.g.*, MICH. COMP. LAWS § 168.11(a) (1967) set out at text accompanying note 16 *supra*.

[85] Williams v. Rhodes, 393 U.S. 23 (1968).

logic of *Williams* is clear: the right to participate in the electoral process is essentially denied where the field of candidates, from which the voter must choose those who will govern him, is artificially restricted.

The absentee ballot of the student who votes at his parents' home for candidates too far away, too remote from his daily life in the college town to concern him, is similarly restricted. The "gained or lost" statute often grants only a right to cast a meaningless ballot. If statutes which prevent students from voting at their college residences are held unconstitutional, the student who resides the greater part of his time in the college community would lose the option of voting at his parents' residence. Like other citizens, students then would have to establish voting residences at the places where they live and participate in the selection of those officeholders who in fact govern them.

Another difficulty with the equal protection argument against exclusion of student voters is strong dictum in the case of *Carrington v. Rash*[86] suggesting that a state may validly entertain a rebuttable presumption against the voting residency of members of mobile groups such as servicemen, students at colleges and universities, patients in hospitals and civilian employees of the Federal Government.[87] *Carrington* held unconstitutional as violative of rights secured by the equal protection clause a Texas constitutional provision absolutely barring servicemen from gaining residency for voting purposes in any county other than the one from which they entered military service. For military men who had given up residence elsewhere and were for other purposes Texas residents, this provision resulted in complete disfranchisement. But in striking down what was in effect an absolute presumption against a serviceman's registrability, the opinion appears to approve of voting residency tests which go beyond actual residence plus intent, to a consideration of other factors which establish the elusive nexus between state and prospective voter:

> But only where military personnel are involved has Texas been unwilling to develop more precise tests to determine the bona fides of an individual claiming to have actually made his home in the State long enough to vote. The State's law reports disclose that there have been many cases where the local election officials have determined the issue of bona fide

[86] 380 U.S. 89 (1965).

[87] *Id.* at 95. "Students at colleges and universities in Texas, patients at hospitals and other institutions within the State, and civilian employees of the United States Government may be as transient as military personnel. But all of them are given at least an opportunity to show the election officials that they are bona fide residents."

> residence. . . . The declarations of voters concerning their intent to reside in the State and in a particular county is often not conclusive; the election officials may look to the actual facts and circumstances.[88]

However, this pronouncement may have lost some of its force due to several historical and sociological factors. First, Justice Stewart wrote the majority opinion in *Carrington* early in 1965. Although the compelling state interest test had its genesis in the reapportionment cases beginning with *Reynolds* in 1964, its emergence as the basic device for gauging denial of equal protection in the voter exclusion setting is a recent phenomenon which has reached its full development in the post-*Carrington* years.[89] Moreover, as his dissents in *Williams*,[90] *Kramer*,[91] and *Phoenix*[92] attest, Justice Stewart has yet to join the majority in applying the compelling state interest test in the franchise denial cases. Furthermore, students tend to be less mobile than military personnel. A soldier's assignment at any given time is fortuitous; he stands ready to move at any time pursuant to new orders taking little cognizance of his residential preference. An average student, on the other hand, chooses his college or university (and by inference its seat) with reasonable care, and may spend anywhere from four to eight years to the rest of his life in that community, depending upon the degree(s) he seeks, his vocational objectives and the state of the job market, to name a few of the relevant variables. Available data indicate that college-trained persons as a group tend to fall far behind groups such as migrant workers, operatives, craftsmen and foremen in frequency of movement.[93] In any event, proof of bona fide residency theoretically aims at assuring an electorate that has a real interest in local community affairs.[94] Students without particular local "causes" but interested enough to register and vote have ample opportunity to familiarize themselves with the local issues through information generated during the last weeks of intense campaigning before an election. Finally, the issue of systematic exclusion of prospective student registrants by application of a presumption against their status as

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[88] 380 U.S. at 95.

[89] *E.g.*, Kramer v. Union Free School Dist. No. 15, 395 U.S. 621 (1969).

[90] 393 U.S. at 48.

[91] 395 U.S. at 634.

[92] 399 U.S. at 215.

[93] Schmidhauser, *Residency Requirements for Voting and the Tensions of a Mobile Society*, 61 MICH. L. REV. 823, 830 n.10 (1963). For purposes of analogy, students are considered with the "professional" group.

[94] 77 HARV. L. REV. 574 (1964); *Election Laws as Legal Roadblocks to Voting*, *supra* note 32, at 623.

resident voters was not before the Court in *Carrington,* and the dicta making specific reference to students was purely gratuitous.

One further analytical problem of some complexity confronts the student challenging the local clerk's refusal to register him on grounds of denial of equal protection. Every voting denial case applying the compelling state interest test involved either exclusion of certain classes from special purpose elections or total exclusion from the franchise. For example, the enclave residents in *Evans* could not vote anywhere, because having been denied registration in Maryland, they were effectively disfranchised not only from local and state elections, but from national elections as well. In contrast, Michigan's "gained or lost" provision creates only a presumption against students' gaining a voting residence.[95] It does not either conceptually or in fact work a total exclusion of students from the franchise, but rather it requires students to vote at their prior residences, generally their parents' homes.

Whereas instate students face formal disfranchisement only from local elections, out-of-state students, whose parents move while they are away at college, may find that the state residency laws at their parents' new home prevent their registration since they will not have been residents of that state for the three months to a year normally required of voters in state and local elections.[96] Such persons may thus find themselves excluded from voting in any state. As discussed above, the same result is reached where a student severs his residency ties from his parents' state when that state does not have the "gained or lost" saving provision. Although only a small percentage of servicemen were totally denied the right to vote anywhere, the Supreme Court treated *Carrington* as a total disfranchisement problem. In its brief, Texas called the Court's attention to the fact that every state and territory of the United States permits its citizens to maintain residence during absence in military service, and every state has laws providing for absentee voting by citizens in the armed forces.[97] Thus, for most servicemen, only denial of the vote in Texas was at stake in *Carrington.*

Most students are faced only with a presumption against the sufficiency of their residency for registration purposes. Yet, as the

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[95] *See* discussion in Part II of text *supra.*

[96] *E.g.,* N.Y. ELECTION LAW § 150 (McKinney Supp. 1970) (three months); MICH. COMP. LAWS § 168.492 (Supp. 1970) (six months); ALA. CODE tit. 17, § 12 (1959) (one year). Title II of the Voting Rights Act Amendments of 1970, 42 U.S.C.A. §§ 1973aa-73bb (Supp. 1971), abolishes such durational residency requirements as a precondition for voting for President and Vice President. Its constitutionality was upheld by the Supreme Court in United States v. Arizona, 91 S. Ct. 260 (1970).

[97] U.S. DEPARTMENT OF DEFENSE, VOTING INFORMATION, Gen-6 (1964).

discussion of *McDonald* and *Williams* above points out, any attempt to justify student exclusion from the local franchise on the ground they can vote elsewhere emphasizes form over substance. To deny an individual the right to vote on those issues and for those officeholders that most directly affect his daily life would seem to sever from the franchise its most meaningful element.

2. The Student's Interest in Voting at His College Residence—The relationship between "town and gown" has changed dramatically since 1893 when *Wolcott*[98] was decided. Changes in the numbers and life styles of today's university students contribute greatly to the more substantial nexus between the scholar and the community, and to the scholar's enhanced interest in local government affairs. Today there are over 5.8 million college students.[99] Two out of five students live in rental or private housing of their own choosing.[100] Between 1965 and 1969, while the number of college students grew by thirty-two percent, the number of full-time students working part-time grew by sixty-four percent to 2.1 million.[101] The burgeoning student populations and the increased complexity of administration have resulted in a drastic de-emphasis of the college's role *in loco parentis*.

Students have always been subject to local manifestations of the police power such as traffic and parking regulations and liquor control ordinances. Today's more independent students are also likely to be concerned with such matters as health and building code enforcement as it pertains to restaurants and rental housing, and protection of individual liberties in the police procedure context. These matters comprise an area over which locally elected officials also exercise significant control. Although few students own property in the locality, many pay local property taxes as a part of their rents—an economic fact implicitly recognized by a recent Michigan tax credit provision.[102]

Furthermore, the U.S. Census includes college students as "residents of the communities in which they were residing while attending college."[103] Since the Michigan Constitution[104] requires

[98] 97 Mich. 361, 56 N.W. 837 (1893).

[99] Parker, *Statistics of Attendance in American Universities and Colleges*, SCHOOL & SOCIETY, Jan. 1970, at 41.

[100] U.S. BUREAU OF THE CENSUS, DEPARTMENT OF COMMERCE, CURRENT POPULATION REPORTS, Series P-20, No. 183, at 4.

[101] N.Y. Times, Dec. 26, 1970, at 1, col. 4.

[102] MICH. COMP. LAWS § 206.258(2) (Supp. 1970) allows renters a credit against their state income tax liabilities equal to a percentage of seventeen percent of gross rent paid. This reflects a legislative determination as to the amount of the landlord's property tax burden that is passed on to his tenants.

[103] U.S. BUREAU OF THE CENSUS, DEPARTMENT OF COMMERCE, COUNTY AND CITY DATA BOOK xix (1967).

[104] MICH. CONST. art. 4, §§ 2, 3, 6.

that the Federal Census be used as the basis for apportioning state legislative districts, the state thus constitutionally recognizes, albeit indirectly, that students reside in the various college communities for voting apportionment purposes.

One man, one vote is, of course, the rule both in congressional district apportionment[105] and in local government representation apportionment, such as city council and county commissioner districts.[106] "Apportionment . . . which contracts the value of some votes and expands the value of others is unconstitutional."[107] In its latest congressional district apportionment opinion, *Kirkpatrick v. Preisler,*[108] the Supreme Court reiterated its "as nearly as practicable" equality of population standard for all districts within a state.[109] In *Kirkpatrick* the Court rejected the Missouri Attorney General's contention that variances of up to three percent took into account pockets of students and military personnel. Instead, the Court found the variances haphazard in that Missouri took these classes into account on an arbitrary basis while in fact seeking to achieve geographical compactness of districts. The Court left open the question whether the eligible voter population, rather than the total census population, would be a constitutionally acceptable basis for apportionment. Three years earlier, in *Burns v. Richardson,*[110] the Court had approved for interim use an Hawaii apportionment scheme based on registered voters. Hawaii census figures are particularly subject to distortion owing to the large and fluctuating military presence there. Citing *Carrington,* the opinion cautioned that any restrictions on otherwise qualified service personnel as such would be impermissible.[111]

Barring extenuating circumstances, apportionment based on the latest census figures is the preferred and usual method. Because of laws making student registration more difficult, numerous students are denied the right to vote in districts where they are included in the apportionment, and the value of other residents' votes in those districts is increased. Correspondingly, the value of votes in districts where large numbers of students no longer reside will de-

[105] Wesberry v. Sanders, 376 U.S. 1 (1964).

[106] Avery v. Midland County, 390 U.S. 474 (1968). In this case involving county commissioner districts, the Court held that the Constitution permits no substantial variation from equal population in drawing districts for units of local government having general governmental powers over the entire geographic area served by such a body.

[107] Reynolds v. Sims, 377 U.S. 533, 559 (1964).

[108] 394 U.S. 526 (1969).

[109] *Id.* at 530.

[110] 384 U.S. 73 (1966).

[111] *Id.* at 95 n.25. "Such a restriction, [across the board exclusion of servicemen per se from the franchise] if imposed by a State, would violate the Equal Protection Clause."

crease. Such a situation patently violates the one man, one vote principle. The voting system itself thus has an interest in avoiding the unconstitutional result, by allowing qualified students to vote where they in fact live.

Finally, two other interests, shared in theory by both students and the political system itself, arise from the fact that at any given time students constitute a fairly stable percentage of a college town or county's population. Democratic theory seems to imply that student political judgments, even if antithetical to permanent residents, should enjoy political expression roughly equivalent to the number of adherents. Secondly, the local jury array often derives from the rolls of registered voters.[112] A true cross-section of veniremen thus becomes difficult or impossible to achieve where most students are unable to register. Especially where a student is on trial, the desirability of a cross-section of townspeople is evident.[113] Both the students and the system therefore have cogent interests in allowing eligible students to vote at their college residences.

3. The State's Interest in the Exclusion of Student Voters— Fear that student voters may try to vote both at their parents' residence and at their college locale is one justification for refusal to register students in their college communities.[114] Prevention of plural voting and guaranteeing purity of the ballot box are important state and local concerns, and in an earlier era the danger of election fraud was real indeed.[115] Today, however, the voter registration system probably has the capacity to minimize the danger of double voting should students be enrolled en masse by the various college locales. For example, the Michigan voter registration law provides a thirty day moratorium before an election during which time registrations are not valid for that elec-

[112] *See, e.g.*, MICH. COMP. LAWS § 600.1202 (1968).

[113] In Glasser v. United States, 315 U.S. 60 (1942), the Court stated that the jury should be truly representative of the community. Exclusion of women from federal jury arrays was held improper in Ballard v. United States, 329 U.S. 187 (1946). Exclusion of day laborers was likewise prohibited in Thiel v. Southern Pacific Co., 328 U.S. 217 (1946). However, in two five to four decisions, the Supreme Court upheld disproportionate representation of the wealthy in state cases. Fay v. New York, 332 U.S. 261 (1947); Moore v. New York, 333 U.S. 565 (1948). The majority contended that the sixth amendment right to jury trial was not applicable to the states. The dissent argued that it was and that "there is a constitutional right to a jury drawn from a group which represents a cross-section of the community." 332 U.S. at 299. Finally, in Duncan v. Louisiana, 391 U.S. 145 (1968), the Court held that the sixth amendment right to a jury trial applied to the states. At least one circuit held that the "cross-section" standard applied to the states' juries even before *Duncan* was decided. *See* Labat v. Bennett, 365 F.2d 698, 719-20 (5th Cir. 1966).

[114] Wilkins v. Ann Arbor City Clerk, 24 Mich. App. 422, 427, 180 N.W.2d 395, 397 (1970).

[115] Goldman, *Move—Lose Your Vote*, 45 NAT'L. MUN. REV. 6, 7 (1956).

tion.[116] Additionally, existing registration forms could be constructed so as to elicit pertinent facts suitable for verifying the legitimacy of a particular registration, *e.g.*, by cross-checking with the home town or other registrars.[117]

A second rationale for exclusion of potential student voters is the perceived threat of political takeover by a bloc of voters not indigenous to the community nor sympathetic to its long-term needs. While understandable, this justification is both constitutionally and factually untenable. The State of Texas argued vigorously in *Carrington* that its prohibition was necessary to prevent "military takeover" by commanding officers who would influence or control their men's votes.[118] The Court rejected this contention:

> 'Fencing out' from the franchise a sector of the population because of the way they may vote is constitutionally impermissible. '[T]he exercise of rights so vital to the maintenance of democratic institutions,' . . . cannot constitutionally be obliterated because of a fear of the political views of a particular group of bona fide residents. Yet, that is what Texas claims to have done here.[119]

Even apart from the constitutional question, the possibility of student bloc voting has not been proven where a college community actually facilitated student voting.[120] A recent American Council on Education survey of college freshmen showing that forty-four percent considered themselves liberal and twenty percent moderate conservative demonstrates that students would not vote as a solid unit but in fact fairly approximate the voting patterns of the national electorate.[121]

A more substantial local interest in excluding students may be to assure an informed electorate. The argument is that if students

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[116] MICH. COMP. LAWS ANN. § 168.497 (Supp. 1970). The possibility that a large number of young people will move into that community in order to swing a close election in a college town is obviated since those wishing to register must have satisfied the local durational residency requirement approximately a month before the election.

[117] Each state could provide, albeit at great expense, a central data bank where information set down by registrants on a standard form could be stored and cross-checked electronically. Each central bank would in turn have to be linked with its counterparts in the other states.

[118] 380 U.S. at 93.

[119] *Id.* at 94.

[120] Since 1967, Iowa City registration officials have not challenged students seeking to register. As a result, students at the University of Iowa voted in the presidential election of 1968 and are eligible to vote in all local elections. "There have not as yet been any proven harmful effects on the community from freely allowing the students to vote." *Election Laws as Legal Roadblocks to Voting, supra* note 32, at 634.

[121] N.Y. Times, Dec. 22, 1970, at 16, col. 4.

are permitted to vote in local elections only when they can show a greater interest in the community than that evidenced simply by attendance at a local university, then the community can guarantee itself concerned electors. However, as discussed above in *Kramer*,[122] *Cipriano*,[123] *Phoenix*,[124] and *Evans*,[125] the Supreme Court has repeatedly found insufficiently compelling the state interest in excluding classes of otherwise qualified voters allegedly having a lesser stake in the outcome than others. Moreover, as indicated in the discussion of the above four cases, most student voters have as substantial an interest in voting as did the particular class excluded from the electorate in each case.

Where qualifications for voting and instate university tuition rates are the same, the state has a large practical stake in restricting the numbers of those enjoying the very favorable instate rates. This type of interest, however, is undoubtedly an insufficient basis for denying the franchise. In any event, an answer to this potential dilemma may be to create a statutory distinction between residency for voting purposes and residency for tuition assessment purposes, something Colorado has already done.[126]

IV. CONCLUSION

Students who desire to participate in the government of their college communities must first be able to register and vote. Challenging the constitutionality of the presumption against student residency involves several difficult though not insuperable problems. With respect to the due process issue, students will be hard-pressed to prove that state law vests uncontrolled discretion in local registrars. In Michigan, case law will probably have formulated just enough judicial guidance to make the matter of the clerk's unfettered discretion a very close question. Here the presumption of validity attaching to state legislation looms large.

Also, where the students do in fact have the option of absentee voting in local elections "back home" they cannot claim absolute disfranchisement as did the blacks in *Louisiana* and *Schnell*. Thus students must argue that the registrars, by denying them the

[122] 395 U.S. 621 (1969).
[123] 395 U.S. 701 (1969).
[124] 399 U.S. 204 (1970).
[125] 398 U.S. 419 (1970).
[126] COLO. REV. STAT. ANN. § 49-3-4 (1963) provides:
"(3) No provision in this section [(2) of which deals with student voter qualifications] shall apply in the determination of residence or non-residence status of students for any college or university purpose." *See generally* Comment, *Nonresident Tuition Charged by State Universities in Review*, 38 U.M.K.C.L. REV. 341 (1970).

electoral opportunity to determine the issues and officeholders that affect them most, are denying them the right to vote in any meaningful sense. However, should the students succeed in convincing the courts of this, two factors begin to work in their favor. First, the burden of justifying the exclusion of this class of potential electors is with the state which, secondly, must show a compelling interest underlying the discrimination. By any criteria which the Supreme Court has thus far suggested,[127] most if not all students have the requisite amount of attachment to, or interest in, their college communities. The state's interests in excluding the student vote, though once viable, seem no longer compelling, especially when the state's interests are weighed against the significant student interests in voting at their place of residence. As analyzed above, the state's objections to student voting are either no longer tenable, or can be effectively remedied through means other than the crude device of excluding students as a class.

Should the Court adopt this analysis, it would probably conclude that the state interest in exclusion of student voters is insufficiently compelling, hence violative of the equal protection clause of the fourteenth amendment. Unless and until the Court so decides, the promises and prospects of student political power inherent in title III of the Voting Rights Act cannot be put to the test, and the unanswered question of whether students will ever amount to a viable force in our scheme of self-government will remain largely unanswered.

W. Perry Bullard
and
James A. Rice

[127] Such criteria emerges from *Kramer, Evans, Cipriano* and *Phoenix* in which cases the Court found that the state's interest in excluding a particular class of otherwise qualified voters was insufficiently compelling or the method used was unconstitutionally imprecise.

APPENDIX I

SAMPLE STUDENT VOTER REGISTRATION QUESTIONNAIRES

A. Form employed by the registration clerks at Ann Arbor, Michigan—seat of the University of Michigan.

IF YOU ARE A STUDENT PLEASE ANSWER THE FOLLOWING QUESTIONS WHICH BEAR UPON YOUR QUALIFICATIONS TO REGISTER

1. Do you have a fixed intent to return to the home of your parents or guardian upon completion of your studies here? __
2. Are you married and living with your spouse in Ann Arbor? __
3. What percentage of your total support as a student is derived from:
   A. Scholarships, Fellowships, employment, savings or loans in your name _____
   _____
   B. Parents _____
   C. Other (specify) _____
4. A. Are you employed in the Ann Arbor Area? _____
   B. How many hours per week do you work? _____
5. Do you own any property in Ann Arbor upon which you pay real or personal property tax? _____
6. A. Do you intend during the current academic year to spend the off term at the address of your parents? _____
   B. If you do not intend to spend the off term at the address of your parents, will you be living in Ann Arbor during the off term? _____
7. Are there any other facts which you wish to state in support of your qualifications to vote? _____
   _____
   _____
   _____

AFFIDAVIT

I hereby swear or affirm that the statements made herein in support of my qualifications to register as an elector in the City of Ann Arbor are true and correct to the best of my knowledge, and that I believe I am qualified under State Law to be a registered elector.

_____
Signature

_____
Date

_____
Signature of Registration Officer

B. Form employed by the registration clerks at Kalamazoo, Michigan – seat of Western Michigan University and Kalamazoo College.

If you are a student, please answer the following questions which bear upon your qualifications to register for voting purposes in Kalamazoo:

1. Are you married and living with your spouse in Kalamazoo?
2. Do you own any real estate property in the City of Kalamazoo? _____
3. Are you self-supporting? _____
   (Note: Fellowships, scholarships, and loans taken out in your name which you are legally obligated to pay are regarded as evidences of self-support).
4. Are you employed in the Kalamazoo Area? _____
   If "yes," how many hours per week do you work? _____
5. What home address is shown on the records at the University or College you attend? _____
6. Do you intend during the current academic year to continue your residence in Kalamazoo during the off term? _____
   If not, where will you reside? _____
7. Are there any other facts which you wish to state in support of your qualifications to vote in this City? _____
   _____
   _____

If you do not agree with the interpretation given on your qualifications to vote, you have the right to speak with the City Clerk and/or State Elections Director for further interpretation of your qualifications.

AFFIDAVIT

I hereby swear or affirm that the statements made herein in support of my qualifications to register as an elector in the City of Kalamazoo are true and correct to the best of my knowledge, and that I believe I am qualified under State law to be a registered elector.

_____
Signature

_____
Date

_____ _____
Signature of Registration Officer

C. Affidavit prepared by the Michigan Director of Elections for use by the registration clerks at Ypsilanti, Michigan—seat of Eastern Michigan University. Also letter from the Director of Elections to the city clerk outlining the purposes to be served through use of such affidavit.

DECLARATION OF RESIDENCE.

620

STATE OF MICHIGAN,)
) SS.
County of_____)

DECLARATION OF RESIDENCE

I,_____, hereby declare that I am a bonafide resident of the State of Michigan and of the City—Township of_____
(Strike One)
and that I have no other home with my parents or elsewhere.

_____

(The above spaces may be used for additional information as needed.)

I make this declaration for the purpose of securing registration for voting in the aforesaid City—Township.
(Strike One)
I understand that a false declaration made for this purpose constitutes perjury. (Section 933, Michigan Election Law)

_____
(Signature)

Subscribed and sworn before me, this____ day of_____ 19_____

_____
Clerk.

August 5, 1965

Hon. Betty E. Fenker
Ypsilanti City Clerk
304 N. Huron Street
Ypsilanti, Michigan 48197

Dear Miss Fenker:
Your problem in a college city as to the registration of students is

one with which I am somewhat familiar, as we continually have the problem in East Lansing and Ann Arbor.

Actually, I think you are entirely justified in requiring the applicant to sign and swear to an affidavit as to their circumstances. While many of them are probably qualified to register and vote, I am perfectly aware that out-of-state students wish to register in the hopes they may avoid paying the additional tuition. I think the only clear statement of the rule is the one which you refer to in your third listing in which the courts said that if it is their home and they have no other to which to return in case of marital difficulty, sickness or distress, they are as much qualified to acquire residence and vote as any other person. There probably is no one, including you and I, who does not have a relative that would take us in, in case of extreme sickness but a general application of this rule is the one that I believe applies.

I am considering preparing an affidavit form that might be used by you and other clerks in similar circumstances with a copy of the law found on page 251 in Compiler's Section 795, indicating that a false statement would be a felony. I believe this would automatically eliminate quite a few students.

I am sorry there is not a really simple rule.

Sincerely,

Robert M. Montgomery
Director of Elections

RMM/yh

D. Form employed by the registration clerks at East Lansing, Michigan – seat of Michigan State University

CITY OF EAST LANSING
VOTER REGISTRATION AFFIDAVIT

I hereby swear or affirm that the statements made herein in support of my qualifications to register as an elector in the City of East Lansing are true and correct to the best of my knowledge:

That I am a citizen of the United States

I am at least 21 years of age or will be on _____
19__ Month Day

I have lived in the State at least six months, and I have lived in

the City of East Lansing for at least 30 days or will have before
__ __ __ __ __ 19__ __.
Month Day

I have, at the time of applying for registration "on or before the 5th Friday preceding the election," established the City of East Lansing as my residence as defined by the following criteria:

a. This is the location at which I habitually sleep and keep my personal belongings,
b. This is the place at which I reside the greater portion of the time,
c. I have no other legal residence, as evidenced by such documents as my drivers license or automobile certification,
d. I have no intention to return to a prior residence or location which I consider my home or residence,
e. I have not voted by absentee ballot in any other State election within the last six months.

PLEASE NOTE: Michigan Election Law provides as follows:

> "Any person who makes a false affidavit or swears falsely while under oath for the purpose of securing registration or for the purpose of voting at any election or primary election shall be deemed guilty of perjury."

The penalty for perjury is a fine not to exceed $1,000, or imprisonment for a term not to exceed 5 years, or both.

Signature of Applicant __ __ __ __ __ __ __
Date __ __ __ __ __ __ __ __

__ __

Signature of Registration Officer

NOTE: Michigan Election Law provides that the Registration Clerk may, if he chooses require the applicant to answer under oath any questions relating to the truth of the statements contained in the affidavit.

E. Detroit, Michigan, seat of the University of Detroit, Wayne State University and various other colleges requires no special information of student registrants. If a person has a sleeping residence in the city more than half of the year, he is entitled to register and vote.