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OHIO RESIDENCY LAW FOR STUDENT VOTERS—ITS IMPLICATIONS AND A PROPOSAL FOR MORE EFFECTIVE IMPLEMENTATION OF RESIDENCY STATUTES

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I. INTRODUCTION

Ohio statutes applying a more stringent residency requirement to students wishing to vote in their college town than that applied to other people were held unconstitutional in Anderson v. Brown.1 In Ohio the case has resulted in virtual abandonment of residency tests for students at the local level. The case was one of several nationwide that had the effect of broadening residency requirements to include nearly all college students, thereby vitiating the very purpose of residency requirements.2 Theories have also been promulgated which would conclusively enfranchise students at their college addresses, although this far exceeds the constitutional mandates of Anderson.3

Yet the underlying philosophical justification for residency requirements is sound: the inhabitants of any given area should have the right to govern that area without dilution of their votes by non-residents. In fact, this tenet is constitutionally required by a system of representative government, with the concurrent requirement of determining the residents of any particular political subdivision.4

The task is to evaluate the traditional common law tests of domicile, many of which are outmoded, and to select those which are compatible with the new constitutional requirements of real fairness and equality in order to lay a firm foundation for the accomplishment of the original purposes of residency law in the modern world. Furthermore, the theoretical problems involved—constitutional exposition, common law analysis, statutory construction, and governmental policy—need to be

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2 See notes 111-26 infra and accompanying text.
3 See notes 80-81, 92-93 infra and accompanying text.
4 U.S. CONST. art. I, § 2, cl. 1 (“The House of Representatives shall be composed of Members chosen . . . by the People of the several States, and the Electors in each State shall have the Qualifications for Electors of the most numerous Branch of the State Legislature.”) (emphasis added); id. art. IV, § 4, cl. 1 (“The United States shall guarantee to every State in this Union a Republican Form of Government . . . .”); id. amend. XVIII, cl. 1 (“The Senate of the United States shall be composed of two Senators from each State . . . . The electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislatures.”) (emphasis added).
synthesized into a system that is easily implemented by the Secretary of State, easily applied by local boards of election, and finally, easily understood by all new registrants for voting in Ohio. This article seeks to solve these problems in the soundest possible manner as a guide to the future and proposes a method of implementing them for boards of election and the general public.

II. THE OHIO SITUATION

Anderson held unconstitutional former sections 3503.02(I) and 3503.05 of the Ohio Revised Code, which had required students to establish or acquire "a home for permanent residence" in their college town in order to vote in local elections. Inasmuch as all other persons needed only to establish residence without necessarily acquiring a home, the district court found that these statutory provisions violated both the equal protection clause of the fourteenth amendment to the United States Constitution and article V, section I of the Ohio Constitution.

If any person attends any institution of learning, his residence and the residence of his spouse, if any, shall be determined according to the place where he resided prior to admission to such institution and not by the place where he resides while attending such institution, unless such person shall establish or acquire a home for permanent residence.

Act of May 24, 1957 § 1, 127 Ohio Laws 83, 84 (1957) (repealed 1971) (formerly codified at OHIO REV. CODE § 3502.02(I)).

If any person attends any institution of learning which is located in a county other than the county in which the voting residence of such person was located immediately preceding the time he commences to attend such institution, and if such person while so attending such institution resides in the county in which such institution is located, his voting residence and the voting residence of his spouse, if any, shall be at that location in the precinct in which it was located immediately preceding the time he commenced attending such institution, and not by his place of residence while attending such institution, unless such person shall establish or acquire a home for permanent residence.

Act of May 24, 1957 § 1, 127 Ohio Laws 83, 84 (1957) (repealed 1971) (formerly codified at OHIO REV. CODE § 3503.05).

Every citizen of the United States who is of the age of twenty-one years or over and who has been a resident of the state six months, of the county thirty days, and the voting precinct thirty days next preceding the election at which he offers to vote shall have the qualifications of an elector and may vote at all elections.

This law has since been modified to change the age limit to eighteen years, Act of Dec. 23, 1971 § 1, 134 Ohio Laws 879 (1975-76 Pt. I), and to reduce the residency requirement to thirty days within the state, Act of June 6, 1975 § 1, 136 Ohio Laws 60 (1975). It is codified in its current form at OHIO REV. CODE ANN. § 3503.01 (Page Supp. 1979).

U.S. CONST. amend. XIV, § 1 provides in part that no state shall "deny to any person within its jurisdiction the equal protection of the laws." The Ohio Constitution provided:

Every citizen of the United States of the age of twenty-one years, who
The practical result of *Anderson* has been to cause problems equally unconstitutional as those which existed prior to that decision. County boards of election have in many cases dispensed with attempting to determine the residence of persons seeking to register, at least where students are concerned.

The *Anderson* decision abolished specific student residency requirements. Subsequently, the 1974 revision of section 3503.14 of the Ohio Revised Code, which simplified the authorized voter registration form, eliminated the discretion of local boards to include statements on the registration form designed to inform the registrant of the meaning of the legal residence with which he was certifying compliance. The change in the permissible content of voter registration forms seems to have come about inadvertently in the course of simplifying previously complex wording and, as far as can be determined, was not related to *Anderson*. Its passage, however, has been interpreted by local boards as preventing them from making the kind of inquiry necessary to deter-

shall have been a resident of the state six months next preceding the election, and of the county township, or ward, in which he resides, such time as may be provided by law, shall have the qualifications of an elector, and be entitled to vote at all elections."

*Ohio Const.* art. V, § 1 (as amended Jan. 1, 1971). The twenty-sixth amendment to the United States Constitution, effective July 5, 1971, changed the age requirement to eighteen years. The United States Supreme Court decision of *Dunn v. Blumstein*, 405 U.S. 330 (1972), struck down state durational residency requirements if they encompassed a period as long as several months. The relevant language in the Ohio Constitution now provides:

Every citizen of the United States, of the age of eighteen years, who has been a resident of the state, county, township, or ward, such time as may be provided by law, and has been registered to vote for thirty days, has the qualifications of an elector, and is entitled to vote at all elections.

*Ohio Const.* art. V, § 1 (as amended Nov. 8, 1977).

* Act of June 28, 1974 § 1, 135 Ohio Laws 784, 801 (1974) eliminated subsection (F) of section 3503.14 of the Ohio Revised Code which had read: "[Registration forms] may contain a space for . . . other information the board deems advisable." *Ohio Rev. Code Ann.* § 3503.14(F) (Page 1972) (repealed 1974). The "other information" had previously been a statement such as that found on the Voter Registration Form, Athens County, Ohio (1972) which read:

I consider the above address as my residence and the place where my habitation is fixed and to which, when I am absent I have the intention of returning  □ Yes  □ No

I have not come into this county for temporary purposes only, and I have the intention of making this county my permanent place of abode  □ Yes  □ No

This is the only voting address that I now assert  □ Yes  □ No

The 1974 version of section 3503.14 included a place for "home address" in the prescribed registration form, whereas Act of May 27, 1977 § 1, [1977] Ohio Laws 5-43 (current version at *Ohio Rev. Code Ann.* § 3503.14(B) (Page Supp. 1979)) substituted the word "residence" for "home address" but still without its legal definition.
mine actual residency of student registrants; in compliance with the statute, they have stopped trying to do so.\(^{10}\)

Section 3503.14 of the code presently requires that voter registration forms be “prescribed by the secretary of state” and that these forms include the following affidavit: “I declare under penalty of election falsification that the statements herein contained [name, exact location of residence, date and place of birth, citizenship status, address given when last registered] are true to the best of my knowledge and belief; and that I am legally qualified to vote.”\(^{11}\) There is included no certification that the registrant’s residence is the statutorily defined “residence . . . in which his habitation is fixed and to which, whenever he is absent, he has the intention of returning;”\(^{12}\) nor need the applicant certify that he is not in the county “for temporary purposes only, without the intention of making such county his permanent place of abode.”\(^{13}\) Thus the registrant is required to certify compliance with stringent, specific residency laws which are not suggested to him in the affidavit he must sign.

It is difficult for a potential registrant to determine what requirements he must fulfill in order to be considered a resident. The 1980 voter information pamphlet authorized by the Secretary of State does contain an explanation in similar wording to the statute,\(^{14}\) but there is no requirement that the registrant read the pamphlet. The standard set forth in the pamphlet that one merely “regard” the place as one’s residence is not adequate to suggest the concepts required by law for legal residency. Even if the statute were fully recited in the registration certificate, it would not help; the statutes contain words of art, and their

\(^{10}\) See notes 24, 27-30 infra and accompanying text.


\(^{12}\) OHIO REV. CODE ANN. § 3503.02(A) (Page 1972). This section on rules for determining residence provides in part:

All registrars and judges of elections, in determining the residence of a person offering to register or vote, shall be governed by the following rules: (A) That place shall be considered the residence of a person in which his habitation is fixed and to which, whenever he is absent, he has the intention of returning.

\(^{13}\) Id. § 3503.02(C).

\(^{14}\) A. J. CELEBREZZE, JR., 1980 [Ohio] VOTER INFORMATION PAMPHLET:

How is residence determined?

- By law your residence is the place to which, whenever you are absent, you have the intention of returning. Leaving for temporary purposes, such as military service or school attendance, need not result in a change of residence for voting purposes.

Can a student vote from his school address?

- Yes, if he regards that place as his residence. Otherwise, he must vote in his home community.
meaning, which in residency law is critical, is not discernible to the layman. While the oversimplification of the pamphlet might be an improvement, such oversimplification unconsciously contributes to the near uniform public interpretation that residency means nothing more than living locally, regardless of the registrant's particular circumstances. 15

The result of this failure to enforce the residency requirement for student voters is typified by the situation in Athens, Ohio, home of Ohio University, which has a population 16,500 without students. In the 1972 general election, approximately 4,837 16 of the 16,110 students at Ohio University declared "under penalty of election falsification" 17 that they

15 This misinformation has spread to the point that well-meaning civic and political organizations may unwittingly promote improper registration while attempting to "get out the vote." See, e.g., ATHENS COUNTY DEMOCRATIC EXECUTIVE COMMITTEE, REGISTER AND VOTE IN ATHENS COUNTY (1976): "How to Register to Vote in Athens County: It's simple. You can register to vote if you: . . . 3. Have resided in Athens County for 30 days by November 2." There is no indication that "legal residence" is involved. This is not to suggest that students would vote illegally if they were properly informed. See, e.g., letter from Paul Cali to Board of Elections, Silver Springs, Maryland (March 2, 1977) (on file with the author):

During October 1975, I was encouraged to register to vote here in Athens, and was told that all I had to worry about was if I would be living here for at least three months to be able to vote legally. What these people neglected to inform me was that by registering to vote in Ohio I was automatically claiming residence here, for more than just voting privileges, and giving up my residence status in Maryland. A few days ago, I was informed by an Athens policeman that I was driving on dead tags and a dead license because they were from Maryland, and I should have an Ohio driver's license and Ohio tags. Had I known I would lose my Maryland residence, I never would have registered to vote here.

16 The author compared the 1968 general election figures (supplied by Board of Elections, Athens County, Ohio) with those of the 1972 general election, the first presidential election after the passage of the twenty-sixth amendment lowering the voting age to 18. Athens County, with a population essentially static during this period, showed an increase of 4,944 voters. Of this, exactly 4,900 were in Athens City where Ohio University is located. Although precinct lines were redrawn, gains or losses in nonstudent areas approximately cancel each other out, clearly indicating that the increase from 425 votes to 3,214 votes in four of the five wards containing student dormitories or apartment complexes was the result of the student participation. There was virtually no residential construction in these wards from 1968-72. Students, however, are spread in lesser numbers over many other city wards, accounting for most of the overall increase of 2,122 in these other areas. The Office of the Provost, Ohio University, reported that during this period, the faculty increased by 42 persons not formerly living in Athens. Assuming that 75% of these new faculty and their spouses voted, there could be included in the 4,900 city increase 63 faculty family voters. Thus, by deducting an optimistic figure for the only other possible increase in voting in 1972, that of an increased number of faculty, we are left with a conservative figure of 4,837 student voters.

17 Election Registration Form, Athens County, Ohio (1972).
were not in the county "for temporary purposes only" and that they intended to make Athens County their "permanent place of abode." Thus those voting amounted to 30.02% of the then-enrolled student body; upon graduation, however, less than one half of one percent remained in Athens. Those students who had declared themselves permanent residents and voted, however, accounted for 50.9% of the votes cast in Athens City and 22.4% of the votes cast in Athens County.

In addition, boards of elections have been rendered much less powerful in their ability to adequately inform the public and enforce the residency laws. For example, prior to the 1976 general election in Athens, the student newspaper ran an article stating "[a]ll students coming to the University this September will be eligible to register in Athens County, according to [the Director] . . . of the Board of Elections." This is an accurate statement of the law, but while it is intended to mean that students may become residents despite their status as students, it is too often understood by the public as a blanket statement of eligibility. To compound the problem, those persons responsible for registering voters are not instructed to inquire into the residency status of registrants beyond the basics; i.e., the listed local address on

18 See Ohio Rev. Code Ann. § 3503.02(C) (Page 1972).

19 Id. (by reverse implication).

20 In fall, 1972, 4,837 voters out of 16,110 full-time students reported as registered by the Ohio University Office of the Registrar.

21 Interview with Edward R. Beckett, Placement Office, Ohio University, in Athens, Ohio (Aug. 2, 1979). Of the 16,110 full-time students registered in fall, 1972, 80 would be a very generous approximation of those who remained as community residents upon graduation; of those 80, probably more than half were original community residents who moved into family enterprises and thus are not within the context of this analysis. In fact, while 30.02% declared themselves residents in order to vote, only 7.68% listed an Athens City address as their address in the 1972-73 university telephone directory (1,435 out of approximately 17,365 nonforeign entries). Informal declarations such as these are particularly weighty as opposed to formal declarations designed to achieve a purpose. RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 20, Special Note on Evidence for Establishment of a Domicile of Choice (1971). Simply referring to the domicile of origin as 'home' will carry little weight when facts show abandonment and acquisition of a new domicile. See, e.g., Texas v. Florida, 306 U.S. 398 (1939); Lyons v. Egan, 110 Colo. 227, 132 P.2d 794 (1942); In re Dorrance's Estate, 309 Pa. 151, 163 A. 303 (1932).

22 Votes cast, 1972, Athens City, 9,509; Athens County, 21,588. Athens County Board of Elections, Athens, Ohio. The 4,837 student votes are 50.9% and 22.4% of these figures respectively. Even these percentages are conservative estimates because the assumption made here is that all students live in the city and only the city increase represents increased student voting. In reality, a number of students live out of the city and thus increased county voting numbers; similarly, the entire increase in faculty was deducted from the city voting increase whereas a number of faculty also live out of town. Student votes therefore probably represent a slightly higher percentage in both the city and the county.

23 The Post, Sept. 17, 1976, at 1, col. 5-6.

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the registration form and the certification thereon stating that the registrant is "legally qualified to vote."24

This abandonment of any attempt to apply the residency law to student voters has serious implications. It directly conflicts with the Ohio statutory requirement that "[e]ach board of elections shall . . . investigate and determine the residence qualifications of electors . . ."25 under the penalty of fine or imprisonment or both.26 The problem is not that election officials are oblivious to their statutory duties; rather, they may be hesitant to carry them out because under Ohio law election officials must pay their own legal fees if they are sued for alleged wrongful refusal to register a potential candidate.

During the 1972 general election, a potential registrant in Athens County refused to answer the questions on the current duly-authorized registration form. After she was refused registration, she sued the two members of the board of elections who had denied her registration and the Secretary of State, who had backed the denial.27 While the Attorney General's office defended the Secretary of State, the board members had to pay between $1,800 and $1,900 each for their legal defenses before the case was dismissed as moot.28 Although the Ohio Attorney General has ruled that Ohio Revised Code section 3501.17 permits a county board of commissioners to procure insurance to protect members of the board of elections from liability arising from the exercise of their official duties,29 suits against officials in their private capacity seem to have

24 An inquiry by the author at one of the special student registration locations as to whether residency was required and how it was determined elicited this response: "We aren't supposed to look into that." Volunteer Registration Official, Baker Center, Ohio University, Oct. 4, 1976. Election officials confirm this practice. Interview with W. Howe, Director, Athens County Board of Elections, in Athens, Ohio (Sept. 27, 1979) (Ohio University); Interview with H.E. Holdsworth, Director, Franklin County Board of Elections, in Columbus, Ohio (Sept. 7, 1979) (Ohio State University, Capital University and others); Interview with M. O'Hare, Director, Licking County Board of Elections, in Newark, Ohio, Sept. 14, 1979 (Denison University).


26 OHIO REV. CODE ANN. § 3599.16 (Page 1972) provides that: "No member, clerk, or employee of a board of elections shall: (A) Willfully or negligently violate or neglect to perform any duty imposed upon him by law . . ." on pain of a fine of "not less than one hundred nor more than one thousand dollars" or imprisonment "not less than one nor more than five years" or both. It is further provided in section 3599.17 that "[n]o registrar or judge or clerk of elections [shall] . . . fail to perform any duty imposed by law. Whoever violates this section shall be fined not less than twenty-five nor more than one hundred dollars or imprisoned not more than fifteen days or both." Id. § 3599.17.


28 Interview with E. Robe, Member, Athens County Board of Elections, in Athens, Ohio (Mar. 11, 1980).

29 1978 OHIO ATT'Y GEN. OP. 064. It remains within the sound discretion of the board of county commissioners to determine whether such insurance "is a 'necessary and proper' expense of the board of elections." Id.
ended any attempt by them to exercise their statutory authority.39

These officials may be open to liability from another direction. In Lloyd v. Babb31 a suit was brought against members of a North Carolina county board of elections by registered voters charging "(1) a failure . . . to perform their statutory duties by failing to determine whether persons were residents of Orange County before allowing them to register to vote there, and (2) abuse by these officials of whatever discretion the election statutes permit by their failure even to inquire whether persons were residents of Orange County before allowing them to register to vote there."32 The court held that "on remand if evidence adduced at trial shows that the members and officials of the Orange County Board have failed to require students seeking to register to vote to prove their domicile to be in Orange County, the court may enjoin them from further registering students without doing so."33 There is no reason to believe that Ohio practices are not subject to similar attack.

Because the legal definitions of the words "domicile" and "residence" are not self-explanatory to the non-lawyer but do encompass a very precise legal connotation, students themselves may be shocked to find they have unwittingly changed a legal status that goes beyond the scope of where they may vote and may subject them to consequences which they do not intend.34 Before discussing the specific holding and im-

30 The election officials mentioned in note 24 supra stated that volunteer registrars are given no further instruction in residency than that contained in Form No. 10-G, "Duties of Volunteer Registrars," Nov. 1978, issued by the Secretary of State for certification that the volunteer deputy registrars know their duties. The form has no description of residency and only an obscure hint that the signers thereof must read the statutes themselves. Thus much of the current registration procedure, especially where students are concerned, is in the hands of persons who have no inkling of what residency is and a feeling that it is their civic duty to register every person they find living locally.

32 Id. at 421-22, 251 S.E.2d at 848.
33 Id. at 451-52, 251 S.E.2d at 865. The applicable North Carolina statute, N.C. GEN. STAT. § 163-274(10) (1976), provides that it is unlawful:

For any chairman of a county board of elections or other returning officer to fail or neglect, willfully or of malice, to perform any duty, act, matter or thing required or directed in the time, manner and form in which said duty, matter or thing is required to be performed in relation to any primary, general or special election and the returns thereof; . . . Compare the North Carolina statute with OHIO REV. CODE ANN. § 3599.16 (Page 1972): "No member, clerk, or employee of a board of elections shall . . . [w]illfully or negligenty violate or neglect to perform any duty imposed upon him by law, or willfully perform or neglect to perform it in such a way as to hinder the objects of the law . . ." (emphasis added).

34 See, e.g., letter from Paul Cali, supra note 15. See also OHIO REV. CODE ANN. § 3599.11(A) (Page Supp. 1979) ("No person shall knowingly register or make application or attempt to register in a precinct in which he is not a qualified voter. . . . Whoever violates this division is guilty of a felony of the fourth degree."); OHIO REV. CODE ANN. § 3599.12 (Page 1972) ("No person shall vote or
pact of Anderson on Ohio statutory law and its application to student voters, it is necessary to briefly review the common law of residence and domicile.

III. THE LAW OF DOMICILE

It should be noted at the outset that "'[r]esidence' is the favorite term employed by the American legislator to express the connection between person and place, its exact meaning being left to construction, to be determined from the context of the apparent object to be obtained by the enactment."\(^{35}\) It is not unusual, therefore, to see decisions which discuss "residence" in fairly narrow terms of physical presence within a community, with nothing more required than the intent to remain there for the time being.\(^{36}\) It is clear, however, that residency law for the purposes of voting is the common law of domicile.

While domicile is very much a term of art, it may typically be described as

[t]hat place where a man has his true, fixed and permanent home and principal establishment and to which whenever he is absent, he has the intention of returning .... That place in which a man has voluntarily fixed the habitation of himself and family, not for a mere special or temporary purpose but with the intention of making a permanent home for an unlimited period.\(^{37}\)

Domicile "implies a nexus between person and place of such permanence as to control the creation of legal relations and responsibilities of the ut-

\(^{35}\) In re Sheard, 82 Ohio L. Abs. 259, 260, 163 N.E.2d 86, 88 (Juvin. Ct. 1959). See also, e.g., District of Columbia v. Murphy, 314 U.S. 441 (1941); Weible v. United States, 244 F.2d 158 (9th Cir. 1957); Hughes v. Illinois Pub. Aid Comm'n, 2 Ill. 2d 374, 118 N.E.2d 14 (1954).

\(^{36}\) See, e.g., Guessefeldt v. McGrath, 342 U.S. 308 (1952) (the term "resident within" as used in the Trading With The Enemy Act implies something more than mere physical presence and something less than domicile); Owens v. Hunting, 115 F.2d 160 (9th Cir. 1940) (Oregon statute providing that the militia shall consist of United States male citizens "resident within the state" held applicable to students present in Oregon to attend school but domiciled in Washington); Gallagher v. Board of Supervisors of Elections, 219 Md. 192, 148 A.2d 390 (1959) (requirement that governor "reside" at seat of government does not require him to abandon a former legal residence and acquire a new one).

most significance,38 and while a person may have several residences, he may only have one domicile at any given time.39 It is these concepts which are clearly and concisely reflected in the Ohio Revised Code sections dealing with qualifications as an elector.40

This body of common law developed in an era in which people infrequently moved from one location to another. Transportation was poorly developed and travel was dangerous; the economy was basically agrarian and static. Most importantly, the family economic unit provided sustenance and social security in times of hardship as well as the eventual place of retirement. Almost everyone would return to this original home when the reason for the absence was over. The notion arose that one was legally identified with his place of birth and did not lose this domicile until he took affirmative steps to establish a new one, thus protecting one's legal base of identification and security from loss through inadvertence.41 Part of the problem in handling the subject of voter residency is that criteria, once useful in ascertaining a person's domicile, have become outmoded by changes in modern life and when applied no longer accurately accomplish their original purpose.

Ownership of property and payment of real estate taxes may constitute significant evidence of domicile when one is inhabiting the property in question as a personal dwelling.42 Lessees, however, also pay property taxes in the form of higher rents. Some of these people may be domiciliaries of the locale, others mere transients. Thus when evidence of domicile is being applied to qualifications as an elector, the United States Supreme Court has held that it is a violation of the equal protection clause of the fourteenth amendment to deny the franchise to those otherwise qualified to vote because they do not pay tax on real property.43 Likewise, payments of state and local income taxes on income

40 See OHIO REV. CODE ANN. § 3503.02 (Page 1972).
41 At common law military service, attendance at an educational institution located elsewhere, and compulsory confinement in a penal institution were recognized as situations where absence from one's home might be prolonged but which would not occasion loss of domicile. See, e.g., Turner v. Kelley, 411 F. Supp. 1331 (D. Kan. 1976) (inmate of penal institution); Prudential Ins. Co. of America v. Lewis, 306 F. Supp. 1177 (D. Ala. 1969) (serviceman). See also Note, Domicile as Affected by Compulsion, 13 U. PITT. L. REV. 697 (1952).
43 Hill v. Stone, 421 U.S. 289 (1975) (holding unconstitutional a Texas statute requiring a majority of votes cast by property owners in order to pass a general bond issue); City of Phoenix v. Kolodziejski, 399 U.S. 204 (1970) (holding unconstitutional an Arizona law permitting only real property taxpayers to vote at an election on the issuance of general obligation bonds for municipal im-
earned in a municipality, gasoline taxes, sales taxes and use taxes are made by residents and transients alike and are not helpful indicia of domicile. 44

Other physical manifestations traditionally supportive of domicile assume a less persuasive role today. Location of a church membership may once have been important, 46 but it can be argued that the church now occupies a less central role as a social institution and that many memberships are moved only as an afterthought. While a bank account may be indicative of permanent settlement in a locale, 46 many accounts are not transferred because of investment or business considerations, 47 and one may open an account for convenience and check-cashing purposes in a location where he intends to remain temporarily. 48 Being subject to local laws 49 and the jurisdiction of local courts 50 are not relevant factors inasmuch as all persons within a jurisdiction are equally subject to its laws and such jurisdiction is often gained due to the location of the

provements); Cipriano v. City of Houma, 395 U.S. 701 (1969) (holding unconstitutional a Louisiana law permitting only real property taxpayers to vote on revenue bonds issued by a municipal utility system); Kramer v. Union Free School Dist., 395 U.S. 621 (1969) (holding unconstitutional a New York law permitting only people who owned or leased property in the district or parents with children in schools to vote in school district elections). But see Salyer Land Co. v. Tulare Lake Basin Water Storage Dist., 410 U.S. 719 (1973) (upholding a California statute restricting franchise to landowners in water storage district elections). For a discussion of the analysis applied when property ownership is sought to be used as a tool of disenfranchisement, see L. Tribe, American Constitutional Law 763-65 (1978).

44 But see Wilkins v. Bentley, 385 Mich. 670, 189 N.W.2d 423 (1971). Michigan law provided a rebate of one-eighth of the sales tax revenue to counties and cities on a per capita basis and a rebate of 20% of gasoline tax revenue on a combined population/highway mileage basis. The Michigan Supreme Court found that inasmuch as students were counted as residents for these purposes, the factors were to be considered in a determination of domicile. Id. at 689, 189 N.W.2d at 431.

45 See, e.g., Gilbert v. David, 235 U.S. 561 (1915) (evidence that plaintiff had transferred church membership from Michigan to Connecticut was a factor in establishing that plaintiff was domiciled in Connecticut for purposes of diversity).

46 See Teague v. District Ct. for Salt Lake County, 4 Utah 2d 147, 289 P.2d 331 (1955) (accumulation of bank accounts was a factor in ascertaining whether a soldier stationed in Utah was a resident of the state). See also, e.g., Restatement (Second) of Conflict of Laws § 20, at 82 (1971).


48 Cf. Sloane v. Smith, 351 F. Supp. 1299, 1301 (M.D. Pa. 1972) (holding of local checking or savings accounts were among factors considered by county commissioners in determining residency and right to vote of college students).

49 But see id. at 1304 (indicating that being subject to local laws is a relevant factor in establishing residence and right to vote of college students).

50 But see Worden v. Mercer County Bd. of Elections, 61 N.J. 325, 294 A.2d 233 (1972) (indicating that being subject to local laws and local court jurisdiction are relevant factors in establishing resident students' right to register to vote).
person, res or act regardless of domicile. However, failure to locally register a motor vehicle and obtain a new driver's license within a certain period of acquiring a new residence may be strong evidence against acquisition of a new domicile. This is because a person failing to do so is claiming an exemption from the laws of his new state based on citizenship in another state.

While the foregoing types of evidence are still the key to determining domicile, the light in which they are evaluated has shifted somewhat. It has always been the law that a person does not lose one domicile until he acquires a new one and a new one can be acquired only when it is accompanied by an intent to live in that location, even if only indefinitely. This "non-loss" aspect of domicile was formerly the primary center of focus, and one had to prove acquisition of a new domicile by a cumulation of factors showing, by inference, an abandonment of the old one. Such an evidentiary focus led to the rather facile conclusion that certain factors, alone or in combination, were "requirements" for domicile, although this was never the case. The new trend is to look for the absence of real ties to the old domicile as an indication that domicile may have changed, since it may be easier to ascertain abandonment.

Ohio law also requires all vehicle owners to register their vehicles in the district "in which the owner[s] reside," OHIO REV. CODE ANN. § 4503.10(c)(2) (Page 1972). Nonresidents are excepted. Id. § 4503.37. Only nonresidents may use an out-of-state driver's license. Id. § 4507.04. A new resident must procure a new driver's license and a new car registration within a reasonable time of the new resident's arrival in the state, a reasonable time being presumptively 30 days. Telephone interview with G. Stephen Jupinko, Legal Counsel, Ohio Department of Highway Safety (Jan. 7, 1977).


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than acquisition. Of course, acquisition must be proved because non-loss is still the law. When abandonment is clear, it becomes easier to qualify whatever ties have been established by this particular person to his new community to prove his residence there.

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"To establish domicil it is only necessary to show that one's former domicil has been abandoned and that there exists no intention of returning to it." Bright v. Baesler, 336 F. Supp. 527, 534 (E.D. Ky. 1971). See also Ramey v. Rockefeller, 348 F. Supp. 780, 788 (E.D.N.Y. 1972).

See, e.g., RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 19, comment c (1971), which states: "The burden of proof is on the party who asserts that a change of domicil has taken place."

See, e.g., OHIO REV. CODE ANN. § 3503.02(B) (Page 1972), which provides: "A person shall not be considered to have lost his residence who leaves his home and goes into another state or county of this state, for temporary purposes only, with the intention of returning." See also A.J. Celebrezze, Jr., supra note 14.

A collateral subject requires some mention here. Although the United States Supreme Court has held that durational residency requirements of several months unconstitutionally abridge the right to travel, Sosna v. Iowa, 419 U.S. 393 (1975), it has reaffirmed the proposition that a state or municipality may limit the franchise to bona fide residents. Dunn v. Blumstein, 405 U.S. 330, 343-44 (1972). A requirement that a person may not vote unless he has been a resident for 30 days, as is found in OHIO REV. CODE ANN. § 3503.01 (Page Supp. 1979), is permissible, however, because it serves the state's "important interest in accurate voting lists." Marston v. Lewis, 410 U.S. 679, 681 (1973). Strictly speaking, residence is acquired instantaneously upon the concurrence of the requisite intent and physical presence. Therefore the durational residency requirement is not a residence requirement at all but an administrative device helpful in the identification of bona fide residents.

While the Dunn Court doubted the effectiveness of long durational residency requirements in preventing voter fraud, 405 U.S. at 346, there is no doubt that actual fraud continues to exist where, for example, suburban residents wish to vote in a city election. R. Smolka, ELECTION DAY REGISTRATION 8 (1977). More serious in light of an abbreviated durational residency requirement is the number of illegal votes cast by nonresidents, many of whom may vote in the wrong precinct and most of whom may be unaware of their illegal act. These totals can be substantial: in the November, 1976 elections, 1.8% of all election day registrants in Bloomington, Minnesota and 4% of the same in Minneapolis voted in the wrong precinct. Id. at 25-26.

Many elections, especially on the local level, are very close, and contests decided by less than a hundred votes are common. See Frakes v. Farragut Community School Dist., 255 Iowa 88, 121 N.W.2d 636 (1960); OHIO DEPT OF STATE, PRACTICAL POLITICS 5-6 (no date); R. Smolka, supra this note, at 29. Our casual national attitude towards election propriety means that when there is a crush at the polls during instant registration, it is not unusual for officials to just "herd 'em on through," regardless of registration propriety or even identification, id. at 28, and there is rarely effective followup on alleged improprieties. Id. at 46-49, 57-61.

When there is an extremely close election, as where Albert Wheeler won the mayoral election of Ann Arbor, Michigan, by one vote in April, 1977, prior accurate determination of residency is critical. Twenty nonresidents were discovered to have voted in that election, 17 of whom voted accidentally, and the Michigan Supreme Court ruled that these 17 nonresidents could not be compelled
Insofar as unemancipated persons (traditionally minors) are concerned, they were unable at common law to choose their own domicile and were considered to have the domicile of the custodial parent. Because, historically, mobility was so limited and ties to one's home were strong, the concept that students were mere "visitors" at their school location was in fact a reflection of reality. "Non-loss" statutes and conclusive presumptions such as those struck down in *Anderson v. Brown* arose to codify the retention of domicile during the absence of a student from his home. With the lowering of the voting age to eighteen, however, and the ascendency of voting to the status of a primary constitutional right, courts have held that a minor must be permitted to choose his voting residence according to the same standards of domicile that are applied to others. Thus unemancipated students are now free to choose a residence for voting regardless of other state laws concerning their dependent status. With the exception of those attending community colleges, most students retain their temporary status much as they did when the common law was developing. The reality of their conduct is consistent with the reality of their actual intentions: students do not go to college with the intent of settling in the college community unless they have been residents of that community. They go for the temporary purpose of education, and then they leave. While there, they do not in fact establish the kind of "permanent" residence the law requires, and, as a consequence, in large numbers of cases they are not eligible to vote.

IV. CHANGES IN RESIDENCY LAW ACCOMMODATING STUDENT VOTERS

Three factors caused the twentieth century crisis over student voting. First, mobility of labor has created an increasingly mobile population in which frequent moves by families are common. Given this type of social mobility, requiring an intention to reside permanently, or even indefinitely, would disenfranchise vast numbers of fully employed, to disclose how they voted in the absence of fraudulent intent. Belcher v. Mayor of the City of Ann Arbor, 402 Mich. 132, 262 N.W.2d 1 (1978). Thus it is unknown whom the validly registered voters of Ann Arbor elected. Prior accurate registration and determination of residency would have prevented this situation.

*See*, *e.g.*, Yarborough v. Yarborough, 290 U.S. 202 (1933); *Yale v. West Middle School Dist.*, 59 Conn. 489, 22 A. 295 (1890).

*E.g.*, *Ohio Rev. Code Ann.* §§ 3503.02(A), (B), (G) (Page 1972).


*See*, *e.g.*, Jolicoeur v. Mihaly, 5 Cal. 3d 565, 488 P.2d 1, 96 Cal. Rptr. 697 (1971).


*See* notes 16-21 *supra* and accompanying text.

self-supporting, taxpaying citizens. The conscious-future-intention aspect of the law has therefore been allowed to atrophy, and more emphasis has been placed on looking for the center of gravity of a self-supporting life. Second, the voting age for state and local elections was lowered to eighteen by the twenty-sixth amendment to the United States Constitution, thereby allowing what had been a moot issue to surface in the hands of many new college-age voters. Third, the concepts of "equal protection" and "equal opportunity" took on a new and compelling force during the 1960s so that the obviously unequal treatment of students was ripe for correction by the resulting establishment of new, fair laws of residency applicable to everybody equally.

Faced with the pressure for equal treatment and the intense interest in public policy characterized by the early 1970s, a number of courts and some legislatures moved to enfranchise student voters by changing the universally recognized criteria for domicile. Accommodation of a special group allows the original purposes of a residency law to be easily defeated, but that consequence was unfortunately overlooked in the rush to remedy the very real inequities of the day.

Some jurisdictions seem to have reduced state residency requirements to mere presence, using as justification a number of reasons not properly criteria for domicile. Others establish ephemeral criteria which often are not criteria at all but simply justifications for granting residency. These new criteria are applied across the board and fail to make a distinction between temporary inhabitants and the bona fide

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69 U.S. CONST. amend. XXVI, § 1; see note 8 supra.
71 "If they physically live in [the town where the university is located], are interested in the community, are anxious to vote there and nowhere else, and intend it as their legal residence, then there is no justifiable reason why they should not be allowed to vote." Sloane v. Smith, 351 F. Supp. 1299, 1304 (M.D. Pa. 1972). Accord, Worden v. Mercer County Bd. of Elections, 61 N.J. 325, 294 A.2d 233 (1972).
residents who have the exclusive right to govern their political unit. In effect, these cases abandon domicile as traditionally conceived, but do not deal with the consequent inability to identify the bona fide residents. Under the expanded criteria, the seasonal tourists in a resort town, the newly arrived Army division, or the students at the college could register and vote on local issues if they were American citizens over the age of eighteen and had lived within the district for a minimal time period. There appears to be no requirement that these

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73 See, e.g., Wilkins v. Bentley, 385 Mich. 670, 689, 189 N.W.2d 423, 431-32 ("Students pay State income tax, city income tax (if any), gasoline, sales and use taxes. . . . Students with children can and do enroll them in the public school system . . . ."); Worden v. Mercer County Bd. of Elections, 61 N.J. 325, 325, 294 A.2d 233, 244 (1972) ("[Students] deal with the local courts and local governmental bodies . . . .").

74 Similar problems will occur in states which have changed the requirements for residency for voting from traditional domicile to some new formula. The Michigan statute defines residence as "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 1 residence . . . . 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." MICH. COMP. LAWS ANN. § 168.11(a) (West Supp. 1979-80). This may be appropriate for those attending college in Michigan, but it disenfranchises college students originally resident in Michigan and who consider themselves Michigan residents who attend college out of state, inasmuch as almost all other states require bona fide residence according to the common law of domicile and this provision eliminates the non-loss concept. It thus creates exactly the problem raised by Singer, supra note 55, wherein students have lost their domiciles at home but have not gained ones elsewhere. Furthermore, this "greater part of the time" test will need a whole new body of law to deal with people who are mobile the greater part of the time, a problem easily solved by the traditional non-loss feature of domicile. Note the dilemma of Michigan's elected representatives in Washington who would appear not to be Michigan residents under this law.

Iowa has changed the requirements for voting from domicile to "the place which [the elector] declares is his home . . . ." IOWA CODE ANN. § 47.4(4) (West Supp. 1979-80). The Iowa courts have defined "home" as "one's principal place of residence" and "where a person dwells and which is the center of his domestic, social and civil life." Paulson v. Forest City Community School Dist., 238 N.W.2d 344, 349 (Iowa 1976). The problem is that unless one's declaration as "home" is conclusive, and Paulson states that it is not, 238 N.W.2d at 348, challenges must be adjudicated by reference to indicia which prove intent like those of domicile. Intent is still a qualification under the statute. IOWA CODE ANN. § 47.4(4) (West Supp. 1979-80). Thus it seems impossible to avoid the issues basic to the common law of domicile where one's intent to abandon a former domicile and establish a new one must be proved by an examination of actions and ties to the new community.

78 See, e.g., Worden v. Mercer County Bd. of Elections, 61 N.J. 325, 350, 294 A.2d 233, 928 (1972) (Weintraub, J., concurring). This new position is far in excess of that which is constitutionally required. States can limit the franchise to actual state citizens (domiciliaries), as can local political units. See, e.g., Dunn v. Blumstein, 405 U.S. 330 (1972); Burns v. Richardson, 384 U.S. 73, 91-92 (1966); Carrington v. Rash, 380 U.S. 89 (1965).
persons have some relationship to the locality which would justify their taking part in its governance rather than that of some other locality.

While this may seem just and fair to temporary students, it does not solve the problem. The underlying tension still remains over the concept that there should be a relationship between those voting and those who will remain to pay for an adopted tax levy or do without services because the levy was defeated, for example. The often voiced fears that the local Army post or local college will "take over" are undoubtedly overblown in actuality, but the potential is there. To return to the Athens, Ohio example, while less than one-half of one percent of the students at Ohio University in the fall of 1972 remained upon graduation, the 30.02% who declared themselves permanent residents and voted accounted for 50.9% of the votes cast in Athens City and 22.4% of the votes cast in Athens County. Whatever else one may say, one cannot dispute the fact that very substantial numbers of voters who were in reality temporary substantially affected the issues under consideration.

V. RATIONALE FOR ENFRANCHISING STUDENTS IN THEIR COLLEGE TOWNS

It has been argued that students should be given the right to vote in their college communities regardless of their actual legal residence. One commentator has reasoned that because students may not intend to return to their family homes after graduation, they can no more honestly sign an affidavit of intent to return there and stay permanently or indefinitely than they can in their college towns. Since this absence of

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77 See Worden v. Mercer County Bd. of Elections, 61 N.J. 325, 294 A.2d 233 (1972) for a thorough discussion of this issue. Even if new residents might "take over," it is constitutionally impermissible to "fence them out" as long as they are bona fide residents. Carrington v. Rash, 380 U.S. 89, 93-94 (1965). The real question is whether large, newly arrived groups of people might include substantial numbers of persons who are not actually bona fide residents and whose influence would therefore dilute the votes of the bona fide residents, both old and new.

78 See notes 20-21 supra and accompanying text.

79 Many of these issues were significant. November, 1972 general election issues included two local mental health levies and a school tax levy, which got their highest consistent favorable vote percentage in student wards housing significant numbers of persons who did not remain to pay the taxes they voted. See notes 20-21 supra. On the state level, repeal of the state income tax was defeated, again with comparatively high votes against repeal in the student wards. Athens County Board of Elections, Athens, Ohio. Of course a full slate of county and city officers was also elected, considerably changing the political complexion of the city government.

80 Singer, supra note 55, at 713-14.
future intent in effect disenfranchises students at both locations, it is urged that permitting registration in the college town more accurately reflects the interests of the students during that period of their lives.

This argument misconstrues two points by over-valuing conscious intent. First, a person does not lose his domicile in his hometown merely by intending to settle elsewhere; he loses it only upon the acquisition of a new domicile. Such acquisition is a combination of physical presence and a "legal intent" to make it one's home "for the time at least." This legal intent may be conscious or unconscious, but it is reflected by a person's moving the important activities of a self-sustaining daily life to the new residence and the concurrent relinquishment of such ties to the old. Courts have consistently held that a mere declaration that one considers himself domiciled in a given location is insufficient when external evidence clearly shows that his life is in fact focused elsewhere. Thus, if a person moves all the incidents of his self-sustaining life to a new location where he intends to remain temporarily before returning to his previous home, he may nonetheless become domiciled there because that is the location from which he is in fact carrying on his life. On the other hand, an individual may transfer some indications of residency to a new location and declare that to be his home, yet fail to convince a court that it is his domicile because there is sufficient evidence that his life remains centered in the old location. Consequently a student who has not established a new legal residence in his college town is not precluded from exercising his right to vote in his "home town" even if he does not with certainty intend to return there.

The other misconstruction inherent in this argument results from a literal reading of the terms "permanent" or "indefinite," which are used in most statutes as a description of one's intention to remain in a new location and without which one is merely temporary and cannot become a resident. These words were taken literally for years and used to disenfranchise students. But their meanings have changed—they are words of art, and, properly used, "permanent" and "indefinite" are universally construed in accordance with the Restatement of Conflicts

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82 See, e.g., Texas v. Florida, 306 U.S. 398, 425 (1939) ("While one's statements may supply evidence of the intention requisite to establish domicile at a given place of residence, they cannot supply the fact of residence there. . . . [T]he actual fact as to the place of residence and [one's] real attitude and intention with respect to it as disclosed by his entire course of conduct are the controlling factors in ascertaining his domicile."). Accord, District of Columbia v. Murphy, 314 U.S. 441, 456 (1941).

83 See, e.g., Ohio Rev. Code Ann. §§ 3503.02(C), (F) (Page 1972).
RESIDENCY LAWS

Thus, a person may establish a residence if he knows he will leave or even plans to leave. Were this not so, huge numbers of mobile Americans who fully intend to go where job opportunities take them would be consistently disenfranchised. Therefore, a student can acquire a domicile despite his lack of intention to remain in Ohio permanently. This modern construction is easily applied to Ohio Revised Code section 3503.02(C), which otherwise prohibits acquisition of a new domicile unless the move is "permanent," and to section 3503.02(B), which conditions non-loss on an intent to return.

A second argument for presumptively considering students residents of the locale where they attend school is premised on the manner in which they are enumerated for census purposes. Consistent with the unchallenged ascendancy of non-loss and other residency provisions applicable to students at the time, prior to 1950 the Census Bureau counted students at their parents' addresses. After considerable study in that year, the bureau decided to count students where they were present, i.e., at their college or school addresses. This action was significant for purposes of apportionment of congressional districts, since the United States Constitution requires congressional apportionment to be determined by the census. The inference has been made that since

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86 Ohio Rev. Code Ann. § 3503.02(C) (Page 1972) provides: "A person shall not be considered to have gained a residence in any county of this state into which he comes for temporary purposes only, without the intention of making such county his permanent place of abode."

87 Id. § 3503.02(B) provides: "A person shall not be considered to have lost his residence who leaves his home and goes into another state or county of this state, for temporary purposes only, with the intention of returning." (Emphasis added).

88 Note, Student Voting and Apportionment: The "Rotten Boroughs" of Academia, 81 Yale L.J. 35 (1971) (providing a thorough analysis of this argument).

89 The change was made because many college students were not being included on their parents' census forms and the method used for fixing "other groups in society with two 'homes'" for census purposes was "the place in which they generally eat, sleep and work . . . ." Borough of Bethel Park v. Stans, 449 F.2d 575, 578-79 (3d Cir. 1971). The change does not reflect any attempt to ascertain domicile. Census standards represent a "photographic picture" of the location of the population taken within a relatively narrow frame of time. Thus, while college students should be counted in this manner, no inference should be drawn as to their actual domicile.

90 U.S. Const. amend. XIV, § 2 provides: "Representatives shall be apportioned among the several States according to their respective numbers, counting the
students are represented where they attend school, they should be conclusively presumed to be able to vote there and nowhere else.\textsuperscript{91} This reasoning has been widely cited to justify granting students domicile at their college addresses.\textsuperscript{92}

The political repercussions of this change have been significant. Counting students wholesale at their university addresses can make a change in the number of congressional seats allotted to states with large migrations of students.\textsuperscript{95} Further, most states, including Ohio, apportion internally according to these same census figures,\textsuperscript{94} producing comparatively greater internal overrepresentations by counties and municipalities with resident colleges and gross local distortions, as students are counted for local apportionment in wards which sometimes have no other population at all. While it may be constitutionally permissible to so count college students locally, it is not required. However, to conclude that they are conclusively residents because they are so counted is a non sequitur.

The argument for granting domicile to students at their college residences because of census procedures has two flaws. First, it is constitutionally impermissible to conclusively \textit{enfranchise} students at school, and conversely disenfranchise them at their original homes, as it was to previously conclusively \textit{disenfranchise} them at school.\textsuperscript{95} An individual determination must be made concerning voting residence regardless of what is done for apportionment. This point, in all its simplicity, is the end-all of the matter. One cannot assert a constitutional right to individual determination in one case and preclude such a determination in another.

The Third Circuit Court of Appeals, in \textit{Borough of Bethel Park v. Stans},\textsuperscript{96} concluded that being counted by the census in no way predeter-

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  \item whole number of persons in each State, excluding Indians not taxed.” \textit{Id}. art. I, § 2 further provides: “The actual Enumeration shall be made within three Years of the first Meeting of the Congress of the United States, and within every subsequent Term of ten Years, in such Manner as they by Law direct.”

  \textsuperscript{91} Note, \textit{supra} note 88, at 35.


  \textsuperscript{93} Note, \textit{supra} note 88, at 48-49.

  \textsuperscript{94} See, \textit{e.g.}, OHIO CONST. art. XI, § 2 (“The apportionment of this state for members of the general assembly shall be made in the following manner: The whole population of the state, as determined by the federal decennial census . . . .”).

  \textsuperscript{95} Anderson v. Brown, 332 F. Supp. 1195, 1197 (S.D. Ohio 1971) states that “[t]he Equal Protection Clause requires . . . that the same test be applied to all alike, students or no.” (Emphasis in original).

  \textsuperscript{96} 449 F.2d 575 (3d Cir. 1971).
\end{itemize}
mines a person's domicile. Because of the enormity of the task of enumeration, the Congress, and the Census Bureau through the Department of Commerce, are constitutionally empowered to adopt certain administrative oversimplifications which "determine the 'whole number of persons in each State' at a particular moment every ten years." Census methods "necessitate the use of a definite, accurate and verifiable standard" which is a one-date fix on the population, broadened to include those persons "who are temporarily absent for days or weeks from such usual place of abode [the place in which they generally eat, sleep and work]." The count includes persons "who have no usual place of residence," thus demonstrating that no inference as to domicile is intended from the fact that a person is counted in a specific place. In fact, the Census Bureau specifically disclaims any inference from its count as to the domicile of any particular person. The Third Circuit summarized its position as follows: "Nor is our view [that the census bureau method of counting is constitutional for purposes of congressional apportionment] altered by the fact that a college student may be designated by the state of his parental home as a resident or domiciliary and permitted to register there for voting purposes."

Counting a student for congressional apportionment one place according to census criteria is constitutionally correct despite the fact that he may be required to vote elsewhere. Neither situation relates to or controls the other, and in 1973 the United States Supreme Court confirmed this position as the correct view. In Gaffney v. Cummings, the Court dealt with the issue of whether the mathematical equivalency required by the Constitution for congressional apportionment is to be followed as precisely for intrastate legislative apportionment. In holding that there were allowable intrastate deviations from the exactitude required for federal apportionment, the Court examined the nature of the census. To illustrate that even exacting compliance with census figures will not produce the equality of a person's vote, the Court said:

The United States census . . . measures population at only a single instant in time . . . [I]f it is the weight of a person's vote that matters, total population—even if stable and accurately taken—may not actually reflect that body of voters whose votes

97 Id. at 580.
98 Id. at 579.
99 Id. at 578.
100 Id.
101 "In determining residence, the Bureau of Census counts each person as an inhabitant of a usual place of residence (i.e., the place where one usually eats and sleeps). While this place is not necessarily a person's legal residence or voting residence, the use of these different bases of classification should produce the same results in the vast majority of cases." U.S. BUREAU OF THE CENSUS, STATISTICAL ABSTRACT OF THE UNITED STATES: 1979 at 3 (100th ed. 1979).
102 449 F.2d at 580.
must be counted and weighed for the purposes of reapportionment, because “census persons” are not voters. . . . The proportion of the census population too young to vote or disqualified by alienage or non-residence varies substantially. . . . [Above enumerated] figures tell us nothing of the other ineligibles making up substantially equal census populations among election districts: aliens, non-resident military personnel, nonresident students, for example.\textsuperscript{104}

A second flaw in the notion that students should be enfranchised at the location where they are counted for congressional apportionment is found in the Supreme Court holding that “the Equal Protection Clause does not require the States to use total population figures derived from the federal census as the standard by which this substantial population equivalency is to be measured.”\textsuperscript{105} In fact, for purposes of internal apportionment, a state may exclude persons who are counted as part of the federal census but who are not residents, as long as it is done by a statewide actual census to determine real residency.\textsuperscript{106}

VI. JUDICIAL TREATMENT OF STUDENT VOTERS

It is now important to consider recent cases nationwide to discover where on the spectrum \textit{Anderson v. Brown} most appropriately fits. It is unquestionably proper for states to establish residence requirements for voting.\textsuperscript{107} Indeed, it is mandatory as long as senators and congressmen are elected by states and as long as local representation within states remains.\textsuperscript{108} \textit{Anderson} held quite simply that “[t]he Equal Protection Clause requires . . . that the \textit{same} test be applied to all alike, students, or no . . . . [This conclusion] require[s] . . . in respect of the ‘residence’ determination of the Board [for students], the exact same tests uniformly applied by the Board to non-students . . . .”\textsuperscript{109} But does

\textsuperscript{104} \textit{Id.} at 746-47. Thus, despite the fact that voting weight equality cannot be produced by adherence to the census, the deviation is not enough to destroy the constitutional mandate to do it in that manner for congressional apportionment. Similarly, the nonvoting students counted by the census in \textit{Borough of Bethel Park} were not considered sufficient in number to invalidate congressional apportionment based on census figures including them.

\textsuperscript{105} Burns v. Richardson, 384 U.S. 73, 91 (1966).


\textsuperscript{108} \textit{See} notes 111-26 \textit{infra} and accompanying text.

\textsuperscript{109} \textit{Anderson v. Brown}, 332 F. Supp. 1195, 1197 (S.D. Ohio 1971) (emphasis in
this mean that a state may not vary its inquiry as the circumstances of a particular person appear, as long as it seeks to reach the truth of his residence as measured by one single standard? While courts have employed differing analyses in resolving this issue, all would agree that "[n]othing may be presumed or implied from the fact that a registrant is a student."

One line of cases holds that registration officials must ask the exact same questions of all applicants, regardless of any apparent differences in their living situations. Yet neither Bright v. Baesler nor Sloane v. Smith, the two cases most representative of this position, seeks to dilute the authority of states to determine actual residence nor to weaken the substantive requirements of residence in their particular states. In fact, Bright suggests modern, precise questions which would

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110 Bright v. Baesler, 336 F. Supp. 527, 534 (E.D. Ky. 1971). Accord, Whatley v. Clark, 482 F.2d 1230 (5th Cir. 1973); Lloyd v. Babb, 296 N.C. 416, 251 S.E.2d 843 (1979), modifying Hall v. Wake County Bd. of Elections, 280 N.C. 600, 187 S.E.2d 52 (1972). The reason for a person's sojourn in the community is the one factor which must remain moot or practically so, else the reality of our transient population's moving on would act as a powerful bar to the acquisition of residence by the members of numerous professions compared to which students are actually much more stable. But cf. Dane v. Board of Registrars, 371 N.E.2d 1358 (Mass. 1978) (the reason for inmates of prisons being in the locality is significant because it involves loss of ability to choose that location, whereas job location or schooling do not). Today even members of the military, except for first term draftees, are considered to be in their location voluntarily, a change in the common law. See Newburger v. Peterson, 344 F. Supp. 559, 563 (D.N.H. 1972).

113 "The defendants may ask each applicant a series of questions directed at proving domicil, but each applicant should be asked the same questions, and the questions should reasonably relate to proof of domicil." Bright, 336 F. Supp. at 534. "It cannot be disputed that a State has the power to require that voters be bona fide residents of the relevant political subdivisions and an appropriately defined and uniformly applied requirement of bona fide residence may be necessary to preserve the basic conception of a political community, and therefore could withstand close constitutional scrutiny." Sloane, 351 F. Supp. at 1308. Where it appears that a registrar is using a unique form which is applied only to students, the Secretary of State, under emergency statutory authority, has power to prohibit use of such a form. United States v. Texas, 445 F. Supp. 1245, 1259 (S.D. Tex. 1978), aff'd mem. sub nom. Symm v. United States, 439 U.S. 1105 (1979).
114 Wilkins v. Bentley, 385 Mich. 670, 189 N.W.2d 423 (1971) can be appropriately categorized with Sloane and Bright for the purposes of this analysis, but it represents a different factual situation. The Michigan statute defined residence for voting purposes as,

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 1 residence . . . 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.

Mich. Comp. Laws Ann. § 8.6811 (West Supp. 1979-80). This standard is much dif-

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actually elicit more clearly the true intention of the registrant concerning his domicile. \textsuperscript{115} Neither represents the almost total abandonment in Ohio of the attempt to determine student residence that has followed \textit{Anderson}.

Another line of cases may be characterized as more traditional than \textit{Anderson} and is best typified by \textit{Palla v. Suffolk County Board of Elections}.\textsuperscript{116} New York state's voter registration statute, originally enacted in 1846, identified certain classes of persons whose location in the state might well be transient. But the statute did not establish a presumption of nonresidency; indeed, it was specifically neutral:

> For the purpose of registering and voting no person shall be deemed to have gained or lost a residence by reason of his presence or absence while employed in the service of the United States . . . nor while a student of any institution of learning [within or without the state] nor while kept at any welfare institution . . . .\textsuperscript{117}

Any person falling within such a classification was required to file certain statements designed to elicit his actual domicile. The statute was attacked as a denial of equal protection because it provided for inquiry which was different from and additional to that made of all other classes of citizens.

Rather than requiring that the "exact same test" be applied to all voters, as was done in \textit{Anderson},\textsuperscript{118} the New York Supreme Court of Appeals in \textit{Palla} found that

> [the statute] requires that students along with other transients point to facts extrinsic of their residence at an institution in support of their declarations of domicile, but that requirement is consonant with the natural inference that their stay is for limited purposes only. The classification itself represents no more than a reasonable effort at assuring that applicants for the vote actually fulfill the requirements of bona fide residence . . . .\textsuperscript{119}

The court recognized that as a practical matter, "[t]he issue ultimately must be resolved with respect to each individual applicant on the facts different than traditional domicile, but its substance is not in issue. The Wilkins court merely seeks to apply it to all people equally: "No special questions, forms, identification, etc., may be required of students." 385 Mich. at 694, 189 N.W.2d at 434.

\textsuperscript{115} 336 F. Supp. at 534.


\textsuperscript{117} N.Y. ELEC. LAW § 151(a) (McKinney 1964) (current version codified at N.Y. ELEC. LAWS § 5-104(1) (McKinney 1978)).

\textsuperscript{118} 332 F. Supp. at 1197.

\textsuperscript{119} 31 N.Y.2d at 50, 286 N.E.2d at 254, 334 N.Y.S.2d at 869-70.
peculiar to his or her case tending to establish the college community as an adopted home.”

Other courts following this analysis have held that the “natural inference that [a college student’s] stay is for limited purposes only” may provoke further inquiry but may not be of substantive weight in the determination of residency and that “[it] is not a violation of equal protection to select for individual inquiry categories of citizens presenting the most obvious problems . . . as long as the ultimate standard is the same for all, as it is here.”

Why have these two lines of cases developed? It is submitted that the former cases can best be explained as an example of the simple, time-honored effort of jurists to arrive at the truth by drawing up a better, clearer, more definitive set of forms or definitions and then administering them without deviation. This solution is adopted when invidious, capricious abuse of discretion appears, as it had in Bright and Sloane.

The contrary view is that no perfectly drawn instruments take care of all situations but have their own brand of error built in. Courts following this approach find that what is needed, therefore, is the discretion to search after the subjective truth, guided by, but not limited to, the use of carefully stated ultimate objectives, procedural guidelines and examples. The second group of cases, typified by Palla, takes this approach, allowing discretion; actually, the common statutory definitions of domicile, like those in Ohio, are the carefully drawn, all-encompassing definitions sought by the courts in Sloane and Bright. They have, however, become words of art to such an extent that new developments in both social mobility and constitutional perspective have rendered them practically useless and thus have led to their abandonment.

The points worth noting are that students may be identified, as may

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122 Ramey v. Rockefeller, 348 F. Supp. 780, 786 (E.D.N.Y. 1972) (a case which was deferred until the decision in Palla had been rendered). Accord, Ballas v. Symm, 494 F.2d 1167 (5th Cir. 1974). See also Dane v. Board of Registrars, 371 N.E.2d 1355 (Mass. 1978).
other categories of persons, "consonant with the natural inference that their stay is for limited purposes only." 123 Then appropriate questions may be asked in order to apply the single constitutionally required standard. As the United States District Court for South Carolina, affirmed by the Fourth Circuit Court of Appeals, stated, "[t]he [Elections] Board would be derelict in its duty to blindly accept a statement of residency by each applicant. There is nothing wrong with or even suspect in registration officials asking college boarding students, whose permanent addresses are outside the county, certain questions to determine residency and their qualifications." 124 In this line of cases the courts are simply permitting adequate inquiry into the truth of the registrant's domicile. To apply the "exact same tests," 125 were it defined as forbidding any further inquiry as a person's situation might warrant, would prohibit registrars and courts from fulfilling their statutory duty to discover the truth. 126

VII. CONCLUSION

Since the purpose of voter residency requirements is to determine residency-in-fact, it is submitted that the mandate given to Ohio boards of election by Anderson v. Brown should be interpreted in a manner consistent with the body of case law exemplified by Palla. It is one thing, however, to propose a new test and quite another to implement it in a manner that is fully in accord with statutory law, convenient for boards of elections, and easily understood by registrants.

The author proposes that an "Explanation to Registrants" 127 be printed in a short pamphlet which would be handed or mailed to first-time registrants. 128 The registrant could then make an informed decision

127 See Appendix, infra page 476.
128 This would be particularly valuable where a potential registrant requests registration forms by telephone or by mail as is provided by statute, OHIO REV. CODE ANN. § 3503.11(B)(1) (Page Supp. 1979), since he could read it prior to making a decision to register. It would also be very helpful where an individual other than one employed by a board of election is empowered to register persons for voting. See, e.g., id. § 3503.11(D) (empowering registrar of motor vehicles to register for the vote those applying for an Ohio driver's license). This is not too great a burden to insure that registrants are guided in making the correct decision and that a complex constitutional problem with potentially significant political ramifications is forestalled.
for himself. By statute local boards of elections have the authority to initiate this practice on their own, and certainly a specific reference to it by the Secretary of State would aid in the matter. The pamphlet brings the reality of registrants' situations into clear focus by giving typical examples at each end of the scale. Registrants may then compare the situations to their own to decide whether they are within or without the limits. They thus take the responsibility upon themselves should they violate the law. Further challenge or inquiry is left to the discretion of local boards as directed or guided by the statutes of the state of Ohio and the Secretary of State.

129 Id. § 3501.11(E) gives local boards authority to "[m]ake and issue such rules and instructions, not inconsistent with law or the rules established by the secretary of state, as it considers necessary for the guidance of election officers and voters . . . ." A local board's authority to distribute exactly this type of information on residency has been confirmed specifically. Telephone interview with James R. Marsh, Assistant Secretary of State, State of Ohio (Aug. 4, 1976). In fact, such a pamphlet is currently in use in Delaware. DELAWARE COUNTY BOARD OF ELECTIONS, RULES FOR DETERMINING RESIDENCY (1979). Prepared initially by the League of Women Voters, the two page handout has been adopted for general use, as revised, by the board. It is well received by all and in particular enhances the seriousness with which students undertake registration. Interview with D. Woldorf, Director, Delaware County Board of Elections in Delaware, Ohio (Sept. 7, 1979) (Ohio Wesleyan University).
APPENDIX

EXPLANATION TO REGISTRANTS

This is an informal supplement to the current Ohio Voter Information Pamphlet explaining the requirements for voting. It is provided by your board of elections under the authority of Ohio Revised Code section 3501.11(E) and is not legal advice. You are likely to find that you are clearly eligible or clearly ineligible. If you have questions, you should consult an election official or an attorney.

I. Under Ohio Revised Code section 3503.01, to vote in Ohio, you must be
   A. a United States citizen
   B. 18 years of age or older by election day
   C. a resident of the state for 30 days by election day and a resident of the county and precinct in which you wish to vote. You must also register to vote not less than 30 days prior to the election.

II. You must be a resident as defined in section 3503.02 of the Ohio Revised Code. Residency for the purposes of voting is sometimes called “domicile” and involves more than just living here. It may be explained as follows:

   Every person gets a legal residence, or domicile, when he is born. It is the residence of his parents or legal guardian and is usually that place where they live. When they move, the child's residence moves with them until he moves out and becomes self-supporting.

   You do not lose your last legal residence until you establish a new one. You may be away from your domicile to be in the military, to attend school, or to work or live abroad for a long time and still be entitled to vote there. You lose your legal residence only when you establish a new one, which implies that you have abandoned your old one. If you are over 18, you are free to choose a new residence for voting purposes even if you are not self-supporting but meet all other requirements.

III. To establish a new legal residence, you must intend to abandon your previous one and establish a new one; you must be present physically in the new place.

   Once you have moved into this county, you must ask yourself: Am I here for a temporary purpose only, and do I want to retain my previous legal residence even though I do not necessarily intend to return to it? Or do I want to have this county as my “permanent place of abode”—my real home or “legal” residence? In this situation, when the law says “permanent” it means “at least for now.”

   You cannot have two legal residences; you must abandon the former to establish a new one here. You must abandon the daily and monthly relationships which are part of running a self-sufficient daily life. Your conduct will prove this abandonment of one residence and the establishment of a new one. The required evidence is a showing that your main, permanent (for now) self-sufficient headquarters are here.
THE FOLLOWING EXAMPLES CAN HELP YOU DETERMINE YOUR LEGAL RESIDENCE

I. A single nurse moves here for her first job from another county in Ohio. She rents an apartment and moves in her clothes. She opens a local checking account and, when the time comes, registers her car here. She leaves seldom-used personal possessions at her parents' home and maintains a church membership and a savings account in that town. Her driver's license was issued there, and she visits there on some holidays. When asked if she intends to make this county her "permanent place of abode," she says that she doesn't know; it depends on whether her contract is renewed.

THIS PERSON IS A RESIDENT AND CAN VOTE AFTER SHE HAS BEEN HERE 30 DAYS. Why?

A. Has she established all the important items of a self-sustaining daily life here? YES. She lives here and has a self-supporting job here. All the possessions that she needs and uses are here. She has a checking account and a check-cashing privileges here. Her car is registered here.

B. Does she intend to have her home here? YES. She does not return to her former town anytime she is not working. For now, this is the place that she intends as her residence.

C. Has she abandoned her former residence? YES. She does not intend to return there to live, at least for now. Those possessions she has left behind are "in storage" and are not important for carrying on her daily life. She is inactive in her church except when visiting her parents and maintains her savings account only as an investment. Her Ohio driver's license is irrelevant because the law does not require it to be changed prior to its expiration date.

NOTE: Even if she were on welfare and living in a hotel, she would establish a legal residence if she had moved her possessions here and intended this to be her "home" for now.

II. A single student moves here from out of state to attend a university. He lives in a dormitory or furnished apartment and has many of his clothes and other possessions with him. He opens a local checking account and works part-time to help with expenses. On the other hand, he must pay out-of-state tuition, and he does not change his car registration and driver's license from his hometown. During vacations he does not remain in his college town, and after graduation he intends to go where he can get the best job. He has never thought about where he wants his legal residence to be.

THIS PERSON IS TREATED JUST THE SAME AS THE NURSE AND MAY BE QUALIFIED TO VOTE HERE. HE MUST MEET THE SAME STANDARDS ALTHOUGH THE ANSWER MAY NOT BE AS CLEAR.
A. Has he established all the important items of a daily self-sustaining life here? If he keeps many clothes and possessions at his former home and returns to pick them up frequently, he may not have moved his "life support system" here. The fact that he is not self-supporting is NOT a consideration, and neither is the fact that he must pay out-of-state tuition. On the other hand, his failure to change his car registration and driver's license to Ohio is a strong factor against voting here because he is asserting freedom not to comply with Ohio law because of residency in another state.

B. Does he intend his college town to be his home? This may be evidenced by declarations of "home address" on school records, loan applications, driver's license and income tax forms. He will be absolutely disqualified from getting legal residency here if he votes at his former residence or if he is the recipient of a scholarship issued only to residents of another state.

C. Has he abandoned his former residence? Does he live there when school is not in session or does he visit only during some vacations? If he maintains a year-round dwelling and stays here after school is out and during some vacations, he probably has moved here and abandoned his former residence. If he maintains his college dwelling only during the academic year and returns to a former home almost immediately when school is out, he probably has not abandoned the former residence. It would seem that his purpose for being here is only to attend school while it is in session; since his stay is temporary, he is disqualified from voting by Ohio Revised Code section 3503.02(C).

III. Two students, formerly not residents, get married and move into an apartment. Their parents continue to support them so they can finish school. Previously each voted in the locale where their parents reside, and they specifically intend to leave this place after graduation for wherever the opportunities are better. They visit one set of parents and then the other during most vacations.

These people are residents and can register and vote. The Ohio Revised Code, section 3503.02(D) provides that the place where the family of a married man or woman resides shall be considered his or her place of residence because they abandoned their residences with their parents when they set up a household for themselves. They are not married "temporarily," since they have a household, their life support system is here. If they have out-of-state license plates and driver's licenses, they will be in violation of Ohio law since they are now residents of Ohio. If they vote elsewhere, they will violate the election laws there since they are Ohio residents.

NOTE: Under Ohio Revised Code section 3503.02(D), married persons living apart can have separate domiciles.

FINAL NOTE: IF YOU WISH FURTHER EXPLANATION, YOU
MAY WISH TO LOOK AT TITLE 35 OF THE OHIO REVISED CODE, WHICH CONTAINS THE ELECTION LAWS, OR TO CONSULT AN ELECTION OFFICIAL OR AN ATTORNEY.

A comprehensive discussion on which this pamphlet is based may be found in Reiff, *Ohio Residency Law*, CLEVELAND STATE LAW REVIEW, volume 28, page 449 (1979).