2021 HOUSE GOVERNMENT AND VETERANS AFFAIRS

HB 1289

2021 HOUSE STANDING COMMITTEE MINUTES

Government and Veterans Affairs Committee
Pioneer Room, State Capitol

HB 1289
2/12/2021

Relating to increasing the residency requirement to become a qualified elector to one year

Chairman Kasper opened the hearing at 8:00 a.m.

Representatives	Roll Call
Representative Jim Kasper	P
Representative Ben Koppelman	P
Representative Pamela Anderson	P
Representative Jeff A. Hoverson	P
Representative Karen Karls	P
Representative Scott Louser	P
Representative Jeffery J. Magrum	P
Representative Mitch Ostlie	P
Representative Karen M. Rohr	P
Representative Austen Schauer	P
Representative Mary Schneider	P
Representative Vicky Steiner	P
Representative Greg Stemen	P
Representative Steve Vetter	P

Discussion Topics:

- Residency requirement increase
- Violations

Rep. Magrum introduced and testified in favor.

Jim Silrum, Deputy Secretary of State, testified in opposition, #6435.
Nicole Donaghy, Executive Director, ND Native Vote, testified in opposition, #6482, #6481.
Matthew Ternus, UND Student Body President, testified in opposition, #6484, #6485.
Alexander Anderson, Director of Governmental Affairs, UND, testified in opposition, #6486.
Kaelan Reedy, Student Body Vice President, UND, testified in opposition, #6487.
Jacqueline De Leon, Staff Attorney, Native American Rights Fund, testified in opposition, #6490, #6491, #6492, #6493, #6494.
Don Morrison, ND Voters First, testified in opposition, #6499.

Additional written testimony: #6496, 6495, 6473,6472, 6401.

Chairman Kasper: Closed the hearing at 8:44 AM.

Carmen Hart, Committee Clerk

ALVIN A. JAEGER
SECRETARY OF STATE

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SECRETARY OF STATE

STATE OF NORTH DAKOTA
600 EAST BOULEVARD AVENUE DEPT 108
BISMARCK ND 58505-0500

February 12, 2021

TO: Chairman Kasper and Members of the House Government and Veterans Affairs Committee

FR: Jim Silrum, Deputy Secretary of State on behalf of Secretary of State Al Jaeger

RE: HB 1289 – Increasing residency requirement to 1 year

This bill amends the durational requirements necessary for an individual to be a qualified elector of this state from 30 days in the precinct to one year in the state and 90 days in the precinct.

This bill is a violation of the Equal Protection clause of the Fourteenth Amendment to the United States Constitution. In Dunn v. Blumstein, the Supreme Court of the United States in 1972 ruled, “A period of 30 days appears to be ample to complete whatever administrative tasks are needed to prevent fraud and insure the purity of the ballot box.”

As a result of that ruling and the passage of the 26th Amendment to the United States Constitution, the 1973 Legislative Assembly in HB 1079 lowered the voting age in North Dakota from 21 to 18 years of age and reduced the residency requirement to 30 days within a precinct. Before the passage of that bill, North Dakota law required an individual to reside in the state for one year, in the county for 90 days, and the precinct for 30 days to be eligible to vote.

On behalf of the Secretary of State and his election team, we request the committee to vote for a **DO NOT PASS** recommendation.

Testimony HB 1289
House Government and Veterans Affairs Committee
February 12, 2021

Mr. Chairman and members of the House Government and Veterans Affairs Committee, my name is Nicole Donaghy, I live in Lincoln, and am an enrolled citizen of Standing Rock Sioux Tribe. I am the Executive Director for North Dakota Native Vote. North Dakota Native Vote is a non-profit, non-partisan social justice organization that initially formed in response to the 2018 US Supreme Court decision to uphold the voter identification law that had the potential to disenfranchise over 5,000 voters in North Dakota.

Our mission is to create and affect policy to promote equitable representation for the Native people of North Dakota. We do this by fostering sustainable positive social change in our communities through community organizing, mobilization, leadership development, and policy advocacy.

Thank you for the opportunity to speak before the Committee, North Dakota Native Vote submits comments on our concerns about HB 1289.

NDNV is an organization that is representative of the communities that we serve. Our board is composed of a diverse group of tribal citizens from across the state. Many of us were raised on and continue to live on our respective reservations. We have an understanding of the social disparities that affect our communities daily. Which is why North Dakota Native Vote is opposed to HB 1289.

HB 1289 places undue burden on voters that come from communities like ours. HB 1289 will have a disproportionate effect on the Native American right to vote when our communities already face social disparities such as addressing issues, having little to no income, redlining of basic services, and inadequate access to housing that has forced many of our relatives to live a transient lifestyle. Many of these disparities have been magnified by the COVID-19 pandemic.

The durational residency requirements outlined HB 1289 are an unconstitutional restriction on the right to travel and the right to vote. The United States Supreme Court in Dunn v. Blumstein found that state laws requiring voters to have been residents in the State for a year and the county for three months did not further any compelling state interest and violated the equal protection clause of the Fourteenth Amendment. I am providing a copy of the United States Supreme Court case Dunn v. Blumstein, 405 U.S. 330 (1972) for inclusion in the record. This durational residency requirement has been struck down as a violation of the equal protection clause and there for is unconstitutional.

The ability to have free, fair, and accessible elections is the premise that North Dakota Native Vote was founded upon. North Dakota Native vote strongly urges a Do Not Pass recommendation on HB 1298.

Nicole Donaghy

Executive Director, North Dakota Native Vote

ndonaghy@ndnativevote.org

KeyCite Yellow Flag - Negative Treatment
Declined to Extend by Pollack v. Duff, D.C.Cir., July 7, 2015

92 S.Ct. 995
Supreme Court of the United States

Winfield DUNN, Governor of the
State of Tennessee, et al., Appellants,
v.
James F. BLUMSTEIN.

No. 70—13.
|
Argued Nov. 16, 1971.
|
Decided March 21, 1972.

Synopsis
Action was brought challenging state durational residence laws for voter. A three-judge District Court, 337 F.Supp. 323, held the laws invalid and state officials appealed. The Supreme Court, Mr. Justice Marshall, J., held that state laws requiring would-be voter to have been resident for year in state and three months in county do not further any compelling state interest and violate the equal protection clause of the Fourteenth Amendment.

Affirmed.

Mr. Justice Blackmun concurred and filed opinion.

Mr. Chief Justice Burger dissented and filed opinion.

Mr. Justice Powell and Mr. Justice Rehnquist took no part in consideration or decision of case.

Procedural Posture(s): On Appeal.

West Headnotes (13)

[1] **Election Law** Duration of residency

Durational residence laws penalize those persons who have traveled from one place to another to establish new residence during qualifying period. Const.Tenn. art. 4, § 1; T.C.A. §§ 2T.C.A. §§ 2–201, 22–304; U.S.C.A.Const. Amend. 14.

66 Cases that cite this headnote

[2] **Constitutional Law** Rational Basis Standard; Reasonableness

To decide whether law violates equal protection clause, court looks to character of classification in question, individual interests affected by classification, and governmental interests asserted in support of classification. U.S.C.A.Const. Amend. 14.

235 Cases that cite this headnote

[3] **Election Law** Duration of residency

State must show substantial and compelling reason for imposing durational residence requirements on voters. Const.Tenn. art. 4, § 1; T.C.A. §§ 2T.C.A. §§ 2–201, 22–304; U.S.C.A.Const. Amend. 14.

31 Cases that cite this headnote

[4] **Election Law** Duration of residency

By denying some citizens the right to vote, durational residence law deprived such citizens of fundamental political right which is preservative of all rights. Const.Tenn. art. 4, § 1; T.C.A. §§ 2T.C.A. §§ 2–201, 22–304; U.S.C.A.Const. Amend. 14.

68 Cases that cite this headnote

[5] **Election Law** Right to vote effectively

Election Law In general; power to regulate qualifications

Equal right to vote is not absolute and states have power to impose voter qualifications, and to regulate access to franchise in other ways. Const.Tenn. art. 4, § 1; T.C.A. §§ 2T.C.A. §§ 2–201, 22–304; U.S.C.A.Const. Amend. 14.

62 Cases that cite this headnote

[6] **Election Law** Power to Restrict or Extend Suffrage

Before right to vote can be restricted, purpose of restriction and assertedly overriding interests served by it must meet close constitutional scrutiny. Const.Tenn. art. 4, § 1; T.C.A. §§ 2T.C.A. §§ 2–201, 22–304; U.S.C.A.Const. Amend. 14.

49 Cases that cite this headnote

[7] **Constitutional Law** Residency requirements

Election Law Duration of residency

Durational residence requirement directly impinges on exercise of right to travel. Const.Tenn. art. 4, § 1; T.C.A. §§ 2T.C.A. §§ 2–201, 22–304; U.S.C.A.Const. Amend. 14.

136 Cases that cite this headnote

[8] **Election Law** Duration of residency

Durational residence laws are unconstitutional unless state can demonstrate that such laws are necessary to promote compelling governmental interest. Const.Tenn. art. 4, § 1; T.C.A. §§ 2T.C.A. §§ 2–201, 22–304; U.S.C.A.Const. Amend. 14.

152 Cases that cite this headnote

[9] **Election Law** Duration of residency

To uphold durational residence law, it is not sufficient for state to show that requirements further a very substantial state interest.

31 Cases that cite this headnote

[10] **Constitutional Law** Overbreadth in General

In pursuing substantial state interest, state cannot choose means which unnecessarily burden or restrict constitutionally protected activity.

70 Cases that cite this headnote

[11] **Election Law** Duration of residency

Period of 30 days' voters' residence would be ample for state to complete whatever administrative task may be needed to prevent fraud and insure purity of ballot box.

32 Cases that cite this headnote

[12] **Election Law** Duration of residency

State may not conclusively presume nonresidence from failure to satisfy waiting period requirements of durational residency laws. Const.Tenn. art. 4, § 1; T.C.A. §§ 2T.C.A. §§ 2–201, 22–304; U.S.C.A.Const. Amend. 14.

27 Cases that cite this headnote

[13] **Constitutional Law** Qualification of voters

Election Law Duration of residency

State laws requiring would-be voter to have been resident for year in state and three months in county do not further any compelling state interest and violate the equal protection clause of the Fourteenth Amendment. Voting Rights Act of 1965, § 202(a) (2) as amended 42 U.S.C.A. § 1973aa–1(a) (2); T.C.A. §§ 2T.C.A. §§ 2–201, 22–304; U.S.C.A.Const. Amend. 14.

351 Cases that cite this headnote

****996** ***330** Syllabus [*]

Tennessee closes its registration books 30 days before an election, but requires residence in the State for one year and in the county for three months as prerequisites for registration to vote. Appellee challenged the constitutionality of the durational residence requirements, and a three-judge District Court held ****997** them unconstitutional on the grounds that they impermissibly interfered with the right to vote and created a 'suspect' classification penalizing some Tennessee residents because of recent interstate movement. Tennessee asserts that the requirements are needed to insure the purity of the ballot box and to have knowledgeable voters. Held: The durational residence requirements are violative of the Equal Protection Clause of the Fourteenth Amendment, as they are not necessary to further a compelling state interest. Pp. 999—1012.

(a) Since the requirements deny some citizens the right to vote, 'the Court must determine whether the exclusions are necessary to promote a compelling state interest.' Kramer v. Union Free School District No. 15, 395 U.S. 621, 627, 89 S.Ct. 1886, 1890, 23 L.Ed.2d 583 (emphasis added). Pp. 999—1000.

(b) Absent a compelling state interest, Tennessee may not burden the right to travel by penalizing those bona fide residents who have recently traveled from one jurisdiction to another. Pp. 1001—1003.

(c) A period of 30 days appears to be ample to complete whatever administrative tasks are needed to prevent fraud and insure the purity of the ballot box. Pp. 1004—1007.

(d) Since there are adequate means of ascertaining bona fide residence on an individualized basis, the State may not conclusively presume nonresidence from failure to satisfy the waiting-period requirements of durational residence laws. Pp. 1006—1009.

(e) Tennessee has not established a sufficient relationship between its interest in an informed electorate and the fixed durational residence requirements. Pp. 1009—1012.

Affirmed.

Attorneys and Law Firms

***331** Robert H. Roberts, Nashville, Tenn., for appellants.

James F. Blumstein, pro se.

Opinion

Mr. Justice MARSHALL delivered the opinion of the Court.

Various Tennessee public officials (hereinafter Tennessee) appeal from a decision by a three-judge federal court holding that Tennessee's durational residence requirements for voting violate the Equal Protection Clause of the United States Constitution. The issue arises in a class action for declaratory and injunctive relief brought by appellee James Blumstein. Blumstein moved to Tennessee on June 12, 1970, to begin employment as an assistant professor of law at Vanderbilt University in Nashville. With an eye toward voting in the upcoming August and November elections, he attempted to register to vote on July 1, 1970. The county registrar refused to register him, on the ground that Tennessee law authorizes the registration of only those persons who, at the time of the next election, will have been residents of the State for a year and residents of the county for three months.

After exhausting state administrative remedies, Blumstein brought this action challenging these residence requirements ***332** on federal constitutional grounds.[1] A ****998** three-judge court, convened pursuant to 28 U.S.C. ss 2281, 2284, concluded that Tennessee's durational residence ***333** requirements were unconstitutional (1) because they impermissibly interfered with the right to vote and (2) because they created a 'suspect' classification penalizing some Tennessee residents because of recent interstate movement.[2] Blumstein v. Ellington, 337 F.Supp. 323 (MD Tenn.1970). We noted probable jurisdiction, 401 U.S. 934, 91 S.Ct. 920, 28 L.Ed.2d 213 (1971). For the reasons that follow, we affirm the decision below.[3]

****999** ***334** I

The subject of this lawsuit is the durational residence requirement. Appellee does not challenge Tennessee's power to restrict the vote to bona fide Tennessee residents. Nor has Tennessee ever disputed that appellee was a bona fide resident of the State and county when he attempted to register.[4] But Tennessee insists that, in addition to being a resident, a would-be voter must have been a resident for a year in the State and three months in the county. It is this additional durational residence requirement that appellee challenges.

[1] Durational residence laws penalize those persons who have traveled from one place to another to establish a new residence during the qualifying period. Such laws divide residents into two classes, old residents and new residents, and discriminate against the latter to the extent ***335** of totally denying them the opportunity to vote.[5] the constitutional question presented is whether the Equal Protection Clause of the Fourteenth Amendment permits a State to discriminate in this way among its citizens.

[2] **[3]** To decide whether a law violates the Equal Protection Clause, we look, in essence, to three things: the character of the classification in question; the individual interests affected by the classification; and the governmental interests asserted in support of the classification. Cf. Williams v. Rhodes, 393 U.S. 23, 30, 89 S.Ct. 5, 10, 21 L.Ed.2d 24 (1968). In considering laws challenged under

the Equal Protection Clause, this Court has evolved more than one test, depending upon the interest affected or the classification involved. [6] First, then, we must determine what standard of review is appropriate. In the present case, whether we look to the benefit withheld by the classification (the opportunity to vote) or the basis for the classification (recent interstate travel) we conclude that the State must show a substantial and compelling reason for imposing durational residence requirements.

***336** A

[4] **[5]** **[6]** Durational residence requirements completely bar from voting all residents not meeting the fixed durational standards. By denying some citizens the right to vote, such laws deprive them of "a fundamental political right, . . . preservative of all rights." Reynolds v. Sims, 377 U.S. 533, 562, 84 S.Ct. 1362, 1381, 12 L.Ed. 506 (1964). There is no ****1000** need to repeat now the labors undertaken in earlier cases to analyze this right to vote and to explain in detail the judicial role in reviewing state statutes that selectively distribute the franchise. In decision after decision, this Court has made clear that a citizen has a constitutionally protected right to participate in elections on an equal basis with other citizens in the jurisdiction. See, e.g., Evans v. Cornman, 398 U.S. 419, 421—422, 426, 90 S.Ct. 1752, 1754—1755, 1756, 26 L.Ed.2d 370 (1970); Kramer v. Union Free School District No. 15, 395 U.S. 621, 626—628, 89 S.Ct. 1886, 1889—1890, 23 L.Ed.2d 583 (1969); Cipriano v. City of Houma, 395 U.S. 701, 706, 89 S.Ct. 1897, 1900, 23 L.Ed.2d 647 (1969); Harper v. Virginia State Board of Elections, 383 U.S. 663, 667, 86 S.Ct. 1079, 1081, 16 L.Ed.2d 169 (1966); Carrington v. Rash, 380 U.S. 89, 93—94, 85 S.Ct. 775, 778, 779, 13 L.Ed.2d 675 (1965); Reynolds v. Sims, supra. This 'equal right to vote,' Evans v. Cornman, supra, 398 U.S., at 426, 90 S.Ct., at 1756 is not absolute; the States have the power to impose voter qualifications, and to regulate access to the franchise in other ways. See, e.g., Carrington v. Rash, supra, 380 U.S., at 91, 85 S.Ct., at 777, Oregon v. Mitchell, 400 U.S. 112, 144, 91 S.Ct. 260, 274, 27 L.Ed.2d 272 (opinion of Douglas, J.), 241, 91 S.Ct. 323 (separate opinion of Brennan, White, and Marshall, JJ.), 294, 91 S.Ct. 349 (opinion of Stewart, J., concurring and dissenting, with whom Burger, C.J., and Blackmun, J., joined). But, as a general matter, 'before that right (to vote) can be restricted, the purpose of the restriction and the assertedly overriding interests served by it must meet close constitutional scrutiny.' Evans v. Cornman, supra, 398 U.S., at 422, 90 S.Ct., at 1755; see Bullock v. Carter, 405 U.S. 134, at 143, 92 S.Ct. 849, at 855—856, 31 L.Ed.2d 92.

***337** Tennessee urges that this case is controlled by Drueding v. Devlin, 380 U.S. 125, 85 S.Ct. 807, 13 L.Ed.2d 792 (1965). Drueding was a decision upholding Maryland's durational residence requirements. The District Court tested those requirements by the equal protection standard applied to ordinary state regulations: whether the exclusions are reasonably related to a permissible state interest. 234 F.Supp. 721, 724—725 (Md.1964). We summarily affirmed per curiam without the benefit of argument. But if it was not clear then, it is certainly clear now that a more exacting test is required for any statute that 'place(s) a condition on the exercise of the right to vote.' Bullock v. Carter, supra, 405 U.S., at 143, 92 S.Ct., at 856. This development in the law culminated in Kramer v. Union Free School District No. 15. supra. There we canvassed in detail the reasons for strict review of statutes distributing the franchise, 395 U.S., at 626—630, 89 S.Ct., at 1889—1891, noting inter alia that such statutes 'constitute the foundation of our representative society.' We concluded that if a challenged statute grants the right to vote to some citizens and denies the franchise to others, 'the Court must determine whether the exclusions are necessary to promote a compelling state interest.' Id., at 627, 89 S.Ct., at 1890 (emphasis added); Cipriano v. City of Houma, supra, 395 U.S., at 704, 89 S.Ct., at 1899; City of Phoenix v. Kolodziejski, 399 U.S. 204, 205, 209, 90 S.Ct. 1990, 1992, 1994, 26 L.Ed.2d 523 (1970). Cf. Harper v. Virginia State Board of Elections, supra, 383 U.S., at 670, 86 S.Ct., at 1083. This is the test we apply here. [7]

****1001** ***338** B

[7] This exacting test is appropriate for another reason, never considered in Drueding: Tennessee's durational residence laws classify bona fide residents on the basis of recent travel, penalizing those persons, and only those persons, who have gone from one jurisdiction to another during the qualifying

period. Thus, the durational residence requirement directly impinges on the exercise of a second fundamental personal right, the right to travel.

'(F)reedom to travel throughout the United States has long been recognized as a basic right under the Constitution.' United States v. Guest, 383 U.S. 745, 758, 86 S.Ct. 1170, 1178, 16 L.Ed.2d 239 (1966). See Passenger Cases (Smith v. Turner), 7 How. 283, 492, 12 L.Ed. 702 (1849) (Taney, C.J.); Crandall v. Nevada, 6 Wall. 35, 43—44, 18 L.Ed. 744 (1868); Paul v. Virginia, 8 Wall. 168, 180, 19 L.Ed. 357 (1869); Edwards v. California, 314 U.S. 160, 62 S.Ct. 164, 86 L.Ed. 119 (1941); Kent v. Dulles, 357 U.S. 116, 126, 78 S.Ct. 1113, 1118, 2 L.Ed.2d 1204 (1958); Shapiro v. Thompson, 394 U.S. 618, 629—631, 634, 89 S.Ct. 1322, 1328—1330, 1331, 22 L.Ed.2d 600 (1969); Oregon v. Mitchell, 400 U.S., at 237, 91 S.Ct., at 321 (separate opinion of Brennan, White, and Marshall, JJ.), 285—286, 91 S.Ct. 345 (Stewart, J., concurring and dissenting, with whom Burger, C.J., and Blackmun, J., joined). And it is clear that the freedom to travel includes the 'freedom to enter and abide in any State in the Union,' id., at 285, 91 S.Ct., at 345. Obviously, durational residence laws single out the class of bona fide state and county residents who have recently exercised this constitutionally protected right, and penalize such travelers directly. We considered such a durational residence requirement in Shapiro v. Thompson, supra, where the pertinent statutes imposed a one-year waiting period for interstate migrants as a condition to receiving welfare benefits. Although in Shapiro we specifically did not decide whether durational residence requirements could be used to determine voting eligibility, ***339** id., 394 U.S., at 638 n. 21, 89 S.Ct., at 1333, we concluded that since the right to travel was a constitutionally protected right, 'any classification which serves to penalize the exercise of that right, unless shown to be necessary to promote a compelling governmental interest, is unconstitutional.' Id., at 634, 89 S.Ct., at 1331. This compelling-state-interest test was also adopted in the separate concurrence of Mr. Justice Stewart. Preceded by a long line of cases recognizing the constitutional right to travel, and repeatedly reaffirmed in the face of attempts to disregard it, see Wyman v. Bowens, 397 U.S. 49, 90 S.Ct. 813, 25 L.Ed.2d 38 (1970), and Wyman v. Lopez, 404 U.S. 1055, 92 S.Ct. 736, 30 L.Ed.2d 743 (1972), Shapiro and the compelling-state-interest test it articulates control this case.

Tennessee attempts to distinguish Shapiro by urging that 'the vice of the welfare statute in Shapiro . . . was its objective to deter interstate travel.' Brief for Appellants 13. In Tennessee's view, the compelling-state-interest test is appropriate only where there is 'some evidence to indicate a deterrence of or infringement on the right to travel . . ..' Ibid. Thus, Tennessee seeks to avoid the clear command of Shapiro by arguing that durational residence requirements for voting neither seek to nor actually do deter such travel. In essence, Tennessee argues that the right to travel is not abridged here in any constitutionally relevant sense.

This view represents a fundamental misunderstanding of the law.[8] It is irrelevant whether disenfranchisement or ***1002** denial of welfare is the more potent deterrent to travel. Shapiro did not rest upon a finding that denial of welfare actually deterred travel. Nor have other 'right to travel' ***340** cases in this Court always relied on the presence of actual deterrence.[9] In Shapiro we explicitly stated that the compelling state interest test would be triggered by 'any classification which serves to penalize the exercise of that right (to travel) . . ..' Id., at 634, 89 S.Ct., at 1331 (emphasis added); see id., at 638 n. 21, 89 S.Ct., at 1333.[10] While noting the frank legislative purpose to deter migration by the poor, and speculating that '(a)n indigent who desires to migrate . . . will doubtless hesitate if he knows that he must risk' the loss of benefits, id., at 629, 89 S.Ct., at 1328, the majority found no need to dispute the 'evidence that few welfare recipients have in fact been deterred (from moving) by residence requirements.' Id., at 650, 89 S.Ct., at 1340 (Warren, C.J., dissenting); see also id., at 671—672, 89 S.Ct., at 1351 (Harlan, J., dissenting). Indeed, none of the litigants had themselves been deterred. Only last Term, it was specifically noted that because a durational ***341** residence requirement for voting 'operates to penalize those persons, and only those persons, who have exercised their constitutional right of interstate migration . . ., (it) may withstand constitutional scrutiny only upon a clear showing that the burden imposed is necessary to protect a compelling and substantial governmental interest.' Oregon v. Mitchell, 400 U.S., at 238, 91 S.Ct., at 321, 27 L.Ed.2d 272 (separate opinion of Brennan, White, and Marshall, JJ.) (emphasis added).

Of course, it is true that the two individual interests affected by Tennessee's durational residence requirements are affected in different ways. Travel is permitted, but only at a price; voting is prohibited. The right to travel is merely penalized, while the right to vote is absolutely denied. But these differencess are irrelevant for present purposes. Shapiro implicitly realized what this Court has made explicit elsewhere:

'It has long been established that a State may not impose a penalty upon those who exercise a right guaranteed by the Constitution. . . . 'Constitutional rights would be of little value if they could be . . . indirectly denied,' . . ..' Harman v. Forssenius, 380 U.S. 528, 540, 85 S.Ct. 1177, 1185, 14 L.Ed.2d 50 (1965). [11]

**1003 See also Garrity v. New Jersey, 385 U.S. 493, 87 S.Ct. 616, 17 L.Ed.2d 562 (1967), and cases cited therein; Spevack v. Klein, 385 U.S. 511, 515, 87 S.Ct. 625, 628, 17 L.Ed.2d 574 (1967). The right to travel is an 'unconditional personal right,' a right whose exercise may not be conditioned. Shapiro v. Thompson, 394 U.S., at 643, 89 S.Ct., at 1331 (Stewart, J., concurring) (emphasis added); Oregon v. Mitchell, supra, 400 U.S., at 292, 91 S.Ct., at 348 (Stewart, J., concurring and dissenting, *342 Burger, C.J., and Blackmun, J., joined). Durational residence laws impermissibly condition and penalize the right to travel by imposing their prohibitions on only those persons who have recently exercised that right. [12] In the present case, such laws force a person who wishes to travel and change residences to choose between travel and the basic right to vote. Cf. United States v. Jackson, 390 U.S. 570, 582—583, 88 S.Ct. 1209, 1216—1217, 20 L.Ed.2d 138 (1968). Absent a compelling state interest, a State may not burden the right to travel in this way. [13]

[8] In sum, durational residence laws must be measured by a strict equal protection test: they are unconstitutional unless the State can demonstrate that such laws are 'necessary to promote a compelling governmental interest.' Shapiro v. Thompson, 394 U.S., at 634, 89 S.Ct., at 1331 (first emphasis added); Kramer v. Union Free School District No. 15, 395 U.S., at 627, 89 S.Ct., at 1889. Thus phrased, the constitutional question may sound like a mathematical formula. But legal 'tests' do not have the precision of mathematical *343 formulas. The key words emphasize a matter of degree: that a heavy burden of justification is on the State, and that the statute will be closely scrutinized in light of its asserted purposes.

[9] [10] It is not sufficient for the State to show that durational residence requirements further a very substantial state interest. In pursuing that important interest, the State cannot choose means that unnecessarily burden or restrict constitutionally protected activity. Statutes affecting constitutional rights must be drawn with 'precision,' NAACP v. Button, 371 U.S. 415, 438, 83 S.Ct. 328, 340, 9 L.Ed.2d 405 (1963); United States v. Robel, 389 U.S. 258, 265, 88 S.Ct. 419, 424, 19 L.Ed.2d 508 (1967), and must be 'tailored' to serve their legitimate objectives. Shapiro v. Thompson, supra, 394 U.S., at 631, 89 S.Ct., at 1329. And if there are other, reasonable ways to achieve those goals with a lesser burden on constitutionally protected activity, a State may not choose the way of greater interference. If it acts at all, it must choose 'less drastic means.' Shelton v. Tucker, 364 U.S. 479, 488, 81 S.Ct. 247, 252, 5 L.Ed.2d 231 (1960).

II

We turn, then, to the question of whether the State has shown that durational residence requirements are needed to further a sufficiently substantial state interest. We emphasize again the difference between bona fide residence requirements and durational residence requirements. **1004 We have in the past noted approvingly that the States have the power to require that voters be bona fide residents of the relevant political subdivision. E.g., Evans v. Cornman, 398 U.S., at 422, 90 S.Ct., at 1754; Kramer v. Union Free School District No. 15, supra, 395 U.S., at 625, 89 S.Ct., at 1888; Carrington v. Rash, 380 U.S., at 91, 85 S.Ct., at 777; Pope v. Williams, 193 U.S. 621, 24 S.Ct. 573, 48 L.Ed. 817 (1904). [14] An appropriately defined and uniformly applied requirement *344 of bona fide residence may be necessary to preserve the basic conception of a political community, and therefore could withstand close constitutional scrutiny. [15] But Durational residence requirements, representing a separate voting qualification imposed on bona fide residents, must be separately tested by the stringent standard. Cf. Shapiro v. Thompson, supra, 394 U.S., at 636, 89 S.Ct., at 1332.

It is worth noting at the outset that Congress has, in a somewhat different context, addressed the question whether durational residence laws further compelling state interests. In s 202 of the Voting Rights Act of 1965, added by the Voting Rights Act Amendments of 1970, Congress outlawed state durational residence requirements for presidential and vice-presidential elections, and prohibited the States from closing registration more than 30 days before such elections. 42 U.S.C. s 1973aa—1. In doing so, it made a specific finding that durational residence requirements and more restrictive registration practices do 'not bear a reasonable relationship to any compelling State interest in the conduct of presidential elections.' 42 U.S.C. s 1973aa—1(a)(6). We upheld this portion of the Voting Rights Act in Oregon v. Mitchell, supra. In our present case, of course, we deal with congressional, state, and local elections, in which the State's interests are arguably somewhat different; and, in addition, our function is not merely to determine whether there was a reasonable basis for Congress' findings. However, the congressional finding which forms the basis for the Federal Act is a useful background for the discussion that follows.

***345** Tennessee tenders 'two basic purposes' served by its durational residence requirements:
'(1) INSURE PURITY OF BALLOT BOX—Protection against fraud through colonization and inability to identify persons offering to vote, and

'(2) KNOWLEDGEABLE VOTER—Afford some surety that the voter has, in fact, become a member of the community and that as such, he has a common interest in all matters pertaining to its government and is, therefore, more likely to exercise his right more intelligently.' Brief for Appellants 15, citing 18 Am.Jur., Elections, s 56, p. 217.

We consider each in turn.

A

Preservation of the 'purity of the ballot box' is a formidable-sounding state interest. The impurities feared, variously called 'dual voting' and 'colonization,' all involve voting by nonresidents, either singly or in groups. The main concern is that nonresidents will temporarily invade the State or county, falsely swear that they are residents to become eligible to vote, and, by voting, allow a candidate to win by fraud. Surely the prevention of such fraud is a legitimate and compelling government goal. But it is impossible to view durational residence requirements as necessary to achieve that state interest.

Preventing fraud, the asserted evil that justifies state lawmaking, means keeping nonresidents from voting. But, by definition, a durational residence law ****1005** bars newly arrived residents from the franchise along with nonresidents. The State argues that such sweeping laws are necessary to prevent fraud because they are needed to identify bona fide residents. This contention is particularly ***346** unconvincing in light of Tennessee's total statutory scheme for regulating the franchise.

Durational residence laws may once have been necessary to prevent a fraudulent evasion of state voter standards, but today in Tennessee, as in most other States, [16] this purpose is served by a system of voter registration. Tenn. Code Ann. s 2Tenn. Code Ann. s 2—301 et seq. (1955 and Supp. 1970); see State v. Weaver, 122 Tenn. 198, 122 S.W. 465 (1909). Given this system, the record is totally devoid of any evidence that durational residence requirements are in fact necessary to identify bona fide residents. The qualifications of the would-be voter in Tennessee are determined when he registers to vote, which he may do until 30 days before the election. Tenn. Code Ann. s 2Tenn. Code Ann. s 2—304. His qualifications—including bona fide residence—are established then by oath. Tenn. Code Ann. s 2Tenn. Code Ann. s 2—309. There is no indication in the record that Tennessee routinely goes behind the would-be voter's oath to determine his qualifications. Since false swearing is no obstacle to one intent on fraud, the existence of burdensome voting qualifications like durational residence requirements cannot prevent corrupt nonresidents from fraudulently registering and voting. As long as the State relies on the oath-swearing system to establish qualifications, a durational residence requirement adds nothing to a simple residence requirement in the effort to stop fraud. The nonresident intent on committing election fraud will as quickly and effectively swear that he has been a resident for the requisite period of time as he would swear that he was simply a resident. Indeed, the durational residence requirement becomes an effective voting obstacle ***347** only to residents who tell the truth and have no fraudulent purposes.

Moreover, to the extent that the State makes an enforcement effort after the oath is sworn, it is not clear what role the durational residence requirement could play in protecting against fraud. The State closes the registration books 30 days before an election to give officials an opportunity to prepare for the election. before the books close, anyone

may register who claims that he will meet the durational residence requirement at the time of the next election. Although Tennessee argues that this 30-day period between registration and election does not give the State enough time to verify this claim of bona fide residence, we do not see the relevance of that position to this case. As long as the State permits registration up to 30 days before an election, a lengthy durational residence requirement does not increase the amount of time the State has in which to carry out an investigation into the sworn claim by the would-be voter that he is in fact a resident.

[11] Even if durational residence requirements imposed, in practice, a preelection waiting period that gave voting officials three months or a year in which to confirm the bona fides of residence, Tennessee would not have demonstrated that these waiting periods were necessary. At the outset, the State is faced with the fact that it must defend two separate waiting periods of different lengths. It is impossible to see how both could be 'necessary' to fulfill the pertinent state objective. If the State itself has determined that a three-month period is enough time in which to confirm bona fide residence in the State and county, obviously a one-year period cannot also be justified as 'necessary' to achieve the same purpose.[17] ***348** Beyond ****1006** that, the job of detecting nonresidents from among persons who have registered is a relatively simple one. It hardly justifies prohibiting all newcomers from voting for even three months. To prevent dual voting, state voting officials simply have to cross-check lists of new registrants with their former jurisdictions. See Comment, Residence Requirements for Voting in Presidential Elections, 37 U.Chi.L.Rev. 359, 364 and n. 34, 374 (1970); cf. Shapiro v. Thompson, 394 U.S., at 637, 89 S.Ct., at 1333. Objective information tendered as relevant to the question of bona fide residence under Tennessee law—places of dwelling, occupation, car registration, driver's license, property owned, etc.[18]—is easy to doublecheck, especially in light of modern communications. Tennessee itself concedes that '(i)t might well be that these purpose can be achieved under requirements of shorter duration than that imposed by the State of Tennessee . . ..' Brief for Appellants 10. Fixing a constitutionally acceptable period is surely a matter of degree. It is sufficient to note here that 30 days appears to be an ample period of time for the State to complete whatever administrative tasks are necessary to prevent fraud—and a year, or three months, too much. This was the judgment of Congress in the context of presidential elections.[19] And, on the basis of the statutory ***349** scheme before us, it is almost surely the judgment of the Tennessee lawmakers as well. As the court below concluded, the cutoff point for registration 30 days before an election.

'reflects the judgment of the Tennessee Legislature that thirty days is an adequate period in which Tennessee's election officials can effect whatever measures may be necessary, in each particular case confronting them, to insure purity of the ballot and prevent dual registration and dual voting.' 337 F.Supp., at 330.

[12] It has been argued that durational residence requirements are permissible because a person who has satisfied the waiting-period requirements is conclusively presumed to be a bona fide resident. In other words, durational residence requirements are justified because they create an administratively useful conclusive presumption that recent arrivals are not residents and are ****1007** therefore properly ***350** barred from the franchise.[20] This presumption, so the argument runs, also prevents fraud, for few candidates will be able to induce migration for the purpose of voting if fraudulent voters are required to remain in the false locale for three months or a year in order to vote on election day.[21]

In Carrington v. Rash, 380 U.S. 89, 85 S.Ct. 775, this Court considered and rejected a similar kind of argument in support of a similar kind of conclusive presumption. There, the State argued that it was difficult to tell whether persons moving to Texas while in the military service were in fact bona fide residents. Thus, the State said, the administrative convenience of avoiding difficult factual determinations justified a blanket exclusion of all servicemen stationed in Texas. The presumption created there was conclusive —"incapable of being overcome by proof of the most positive character." Id., at 96, 85 S.Ct., at 780, citing Heiner v. Donnan, 285 U.S. 312, 324, 52 S.Ct. 358, 360, 76 L.Ed. 772 (1932). The ***351** Court rejected this 'conclusive presumption' approach as violative of the Equal Protection Clause. While many servicemen in Texas were not bona fide residents, and therefore properly ineligible to vote, many servicemen clearly were bona fide residents. Since 'more precise tests' were available 'to winnow successfully from the ranks . . . those whose residence in the State is bona fide,' conclusive presumptions were impermissible in light of the individual interests affected. id., 380 U.S., at 95, 85 S.Ct., at 780. 'States may not casually deprive a class of individuals

of the vote because of some remote administrative benefit to the State.' Id., at 96, 85 S.Ct., at 780.

Carrington sufficiently disposes of this defense of durational residence requirements. The State's legitimate purpose is to determine whether certain persons in the community are bona fide residents. A durational residence requirement creates a classification that may, in a crude way, exclude nonresidents from that group. But it also excludes many residents. Given the State's legitimate purpose and the individual interests that are affected, the classification is all too imprecise. See supra, at 1003—1004. In general, it is not very difficult for Tennessee to determine on an individualized basis whether one recently arrived in the community is in fact a resident, although of course there will always be difficult cases. Tennessee has defined a test for bona fide residence, and appears prepared to apply it on an individualized basis in various legal contexts.[22] That test ***352** could easily be ****1008** applied to new arrivals. Furthermore, if it is unlikely that would-be fraudulent voters would remain in a false locale for the lengthy period imposed by durational residence requirements, it is just as unlikely that they would collect such objective indicia of bona fide residence as a dwelling, car registration, or driver's license. In spite of these things, the question of bona fide residence is settled for new arrivals by conclusive presumption, not by individualized inquiry. Cf. Carrington v. Rash, supra, 380 U.S., at 95—96, 85 S.Ct., at 779—780. Thus, it has always been undisputed that appellee Blumstein is himself a bona fide resident of Tennessee within the ordinary state definition of residence. But since Tennessee's presumption from failure to meet the durational residence requirements is conclusive, a showing of actual bona fide residence is irrelevant, even though such a showing would fully serve the State's purposes embodied in the presumption and would achieve those purposes with far less drastic impact on constitutionally protected interests.[23] The Equal Protection Clause places a limit on government by classification, and that limit has been exceeded here. Cf. Shapiro v. Thompson, 394 U.S., at 636, 89 S.Ct., at 1332; Harman v. Forssenius, 380 U.S., at 542—543, 85 S.Ct., at 1186—1187; Carrington v. Rash, supra, 380 U.S., at 95—96, 85 S.Ct., at 779—780; Skinner v. Oklahoma ex rel. Williamson, 316 U.S. 535, 62 S.Ct. 1110, 86 L.Ed. 1655 (1942).

***353** Our conclusion that the waiting period is not the least restrictive means necessary for preventing fraud is bolstered by the recognition that Tennessee has at its disposal a variety of criminal laws that are more than adequate to detect and deter whatever fraud may be feared.[24] At least six separate sections of the Tennessee Code define offenses to deal with voter fraud. For example, Tenn. Code Ann. s 2Tenn. Code Ann. s 2—324 makes it a crime 'for any person to register or to have his name registered as a qualified voter . . . when he is not entitled to be so registered . . . or to procure or induce any other person to register or be registered . . . when such person is not legally qualified to be registered as such . . .'[25] In addition to the various ****1009** criminal penalties, Tennessee permits the bona fides of a voter to be challenged on election day. Tenn. Code Ann. s 2Tenn. Code Ann. s 2—1309 et seq. (1955 and Supp.1970). Where a State has available such remedial action ***354** to supplement its voter registration system, it can hardly argue that broadly imposed political disabilities such as durational residence requirements are needed to deal with the evils of fraud. Now that the Federal Voting Rights Act abolishes those residence requirements as a precondition for voting in presidential and vice-presidential elections, 42 U.S.C. s 1973aa—1, it is clear that the States will have to resort to other devices available to prevent nonresidents from voting. Especially since every State must live with this new federal statute, it is impossible to believe that durational residence requirements are necessary to meet the State's goal of stopping fraud.[26]

B

The argument that durational residence requirements further the goal of having 'knowledgeable voters' appears to involve three separate claims. The first is that such requirements 'afford some surety that the voter has, in fact, become a member of the community.' But here the State appears to confuse a bona fide residence requirement with a durational residence requirement. As already noted, a State does have an interest in limiting the franchise to bona fide members of the community. But this does not justify or explain the exclusion from the franchise of persons, not because their bona fide residence is questioned, but because they are recent rather than longtime residents.

The second branch of the 'knowledgeable voters' justification is that durational residence requirements assure that the voter 'has a common interest in all matters pertaining to (the community's) government . . ..' By this, presumably, the State means that it may require a period of residence sufficiently lengthy to impress upon ***355** its voters the local viewpoint. This is precisely the sort of argument this Court has repeatedly

rejected. In Carrington v. Rash, for example, the State argued that military men newly moved into Texas might not have local interests sufficiently in mind, and therefore could be excluded from voting in state elections. This Court replied: 'But if they are in fact residents, . . . they, as all other qualified residents, have a right to an equal opportunity for political representation. . . . 'Fencing out' from the franchise a sector of the population because of the way they may vote is constitutionally impermissible.' 380 U.S., at 94, 85 S.Ct., at 779.

See 42 U.S.C. s 1973aa—1(a)(4).

Similarly here, Tennessee's hopes for voters with a 'common interest in all matters pertaining to (the community's) government' is impermissible.[27] To paraphrase what we said elsewhere, 'All too often, lack of a ('common interest') might mean no more than a different interest.' Evans v. Cornman, 398 U.S., at 423, 90 S.Ct., at 1755. '(D)ifferences of opinion' may not be the basis for excluding any group or person from the franchise. Cipriano v. City of Houma, 395 U.S., at 705—706, 89 S.Ct., at 1900—1901. '(t)he fact **1010 that newly arrived (Tennesseeans) may have a more national outlook than longtime residents, or even may retain a viewpoint characteristic of the region from which they have come, is a constitutionally impermissible reason for depriving them of their chance to influence the *356 electoral vote of their new home State.' Hall v. Beals, 396 U.S. 45, 53—54, 90 S.Ct. 200, 204, 24 L.Ed. 24 (1969)24 L.Ed. 24 (1969) (dissenting opinion).[28]

Finally, the State urges that a longtime resident is 'more likely to exercise his right (to vote) more intelligently.' To the extent that this is different from the previous argument, the State is apparently asserting an interest in limiting the franchise to voters who are knowledgeable about the issues. In this case, Tennessee argues that people who have been in the State less than a year and the county less than three months are likely to be unaware of the issues involved in the congressional, state, and local elections, and therefore can be barred from the franchise. We note that the criterion of 'intelligent' voting is an elusive one, and susceptible of abuse. But without deciding as a general matter the extent to which a State can bar less knowledgeable or intelligent citizens from the franchise, cf. Evans v. Cornman, 398 U.S., at 422, 90 S.Ct., at 1754; Kramer v. Union Free School District No. 15, 395 U.S., at 632, 89 S.Ct., at 1892; *357 Cipriano v. City of Houma, 395 U.S., at 705, 89 S.Ct., at 1900,[29] we conclude that durational residence requirements cannot be justified on this basis.

In Kramer v. Union Free School District No. 15, supra, we held that the Equal Protection Clause prohibited New York State from limiting the vote in school-district elections to parents of school children and to property owners. The State claimed that since nonparents would be 'less informed' about school affairs than parents, id., at 631, 89 S.Ct., at 1891, the State could properly exclude the class of nonparents in order to limit the franchise to the more 'interested' group of residents. We rejected that position, concluding that a 'close scrutiny of (the classification) demonstrates that (it does) not accomplish this purpose with sufficient precision . . ..' Id., at 632, 89 S.Ct., at 1892. That scrutiny revealed that the classification excluding nonparents from the franchise kept many persons from voting who were **1011 as substantially interested as those allowed to vote; given this, the classification was insufficiently 'tailored' to achieve the articulated state goal. Ibid. See also Cipriano v. City of Houma, supra, 395 U.S., at 706, 89 S.Ct., at 1900.

Similarly, the durational residence requirements in this case founder because of their crudeness as a device for *358 achieving the articulated state goal of assuring the knowledgeable exercise of the franchise. The classifications created by durational residence requirments obviously permit any longtime resident to vote regardless of his knowledge of the issues—and obviously many longtime residents do not have any. On the other hand, the classifications bar from the franchise many other, admittedly new, residents who have become at least minimally, and often fully, informed about the issues. Indeed, recent migrants who take the time to register and vote shortly after moving are likely to be those citizens, such as appellee, who make it a point to be informed and knowledgeable about the issues. Given modern communications, and given the clear indication that compaign spending and voter education occur largely during the month before an election,[30] the State cannot seriously maintain that it is 'necessary' to reside for a year in the State and three months in the county in order to be knowledgeable about congressional, state, or even purely local elections. There is simply nothing in the record to support the conclusive presumption that residents who have lived in the State for less than a year and their county for less than three months are

uninformed about elections. Cf. Shapiro v. Thompson, 394 U.S., at 631, 89 S.Ct., at 1329. These durational residence requirements crudely exclude large numbers of fully qualified people. Especially since Tennessee creates a waiting period by closing registration books 30 days before an election, there can be no basis for arguing that any durational residence requirement is also needed to assure knowledgeability.

It is pertinent to note that Tennessee has never made an attempt to further its alleged interest in an informed electorate in a universally applicable way. Knowledge ***359** or competence has never been a criterion for participation in Tennessee's electoral process for longtime residents. Indeed, the State specifically provides for voting by various type of absentee persons. [31] These provisions permit many longtime residents who leave the county or State to participate in a constituency in which they have only the slighest political interest, and from whose political debates they are likely to be cut off. That the State specifically permits such voting is not consistent with its claimed compelling interest in intelligent, informed use of the ballot. If the State seeks to assure intelligent ****1012** use of the ballot, it may not try to serve this interest only with respect to new arrivals. Cf. Shapiro v. Thompson, supra, at 637—638, 89 S.Ct., at 1333.

It may well be true that new residents as a group know less about state and local issues than older residents; and it is surely true that durational residence requirements will exclude some people from voting who are totally uninformed ***360** about election matters. But as devices to limit the franchise to knowledgeable residents, the conclusive presumptions of durational residence requirements are much too crude. They exclude too many people who should not, and need not, be excluded. They represent a requirement of knowledge unfairly imposed on only some citizens. We are aware that classifications are always imprecise. By requiring classifications to be tailored to their purpose, we do not secretaly require the impossible. Here, there is simply too attenuated a relationship between the state interest in an informed electorate and the fixed requirement that voters must have been residents in the State for a year and the county for three months. Given the exacting standard of precision we require of statutes affecting constitutional rights, we cannot say that durational residence requirements are necessary to further a compelling state interest.

III

[13] Concluding that Tennessee has not offered an adequate justification for its durational residence laws, we affirm the judgment of the court below.

Affirmed.

Mr. Justice POWELL and Mr. Justice REHNQUIST took no part in the consideration or decision of this case.

Mr. Justice BLACKMUN, concurring in the result.

Professor Blumstein obviously could hardly wait to register to vote in his new home State of Tennessee. He arrived in Nashville on June 12, 1970. He moved into his apartment on June 19. He presented himself to the registrar on July 1. He instituted his lawsuit on July 17. Thus, his litigation was begun 35 days after his arrival on Tennessee soil, and less than 30 days after he moved into his apartment. But a primary was coming up on August 6. Usually, such zeal to exercise ***361** the franchise is commendable. The professor, however, encountered—and, I assume, knowingly so—the barrier of the Tennessee durational residence requirement and, because he did, he instituted his test suit.

I have little quarrel with much of the content of the Court's long opinion. I concur in the result, with these few added comments, because I do not wish to be described on a later day as having taken a position broader than I think necessary for the disposition of this case.

1. In Pope v. Williams, 193 U.S. 621, 24 S.Ct. 573, 48 L.Ed. 817 (1904), Mr. Justice Peckham, in speaking for a unanimous Court that included the first Mr. Justice Harlan and Mr. Justice Holmes, said:
'The simple matter to be herein determined is whether, with reference to the exercise of the privilege of voting in Maryland, the legislature of that state had the legal right to provide that a person coming into the state to reside should make the declaration of intent a year before he should have the right to be registered as a voter of the state.

'. . . The right of a state to legislate upon the subject of the elective franchise as to it may seem good, subject to the conditions already stated, being, as we believe, unassailable, we think it plain that the statute in question violates no right protected by the Federal Constitution.

'The reasons which may have impelled the state legislature to enact the statute in question were matters entirely for

its consideration, and this court has no concern with them.' 193 U.S., at 632, 633—634, 24 S.Ct., at 575.

I cannot so blithely explain Pope v. Williams away, as does the Court, **1013 ante, at 1000, n. 7, by asserting that if that *362 opinion is '(c)arefully read,' one sees that the case was concerned simply with a requirement that the new arrival declare his intention. The requirement was that he make the declaration a year before he registered to vote; time as well as intent was involved. For me, therefore, the Court today really overrules the holding in Pope v. Williams and does not restrict itself, as footnote 7 says, to rejecting what it says are mere dicta.

2. The compelling-state-interest test, as applied to a State's denial of the vote, seems to have come into full flower with Kramer v. Union Free School District, 395 U.S. 621, 627, 89 S.Ct. 1886, 1889, 23 L.Ed.2d 583 (1969). The only supporting authority cited is in the 'See' context to Carrington v. Rash, 380 U.S. 89, 96, 85 S.Ct. 775, 780, 13 L.Ed.2d 675 (1965). But as I read Carrington, the standard there employed was that the voting requirements be reasonable. Indeed, in that opinion Mr. Justice Stewart observed, at 91, 85 S.Ct., at 777, that the State has 'unquestioned power to impose reasonable residence restrictions on the availability of the ballot.' A like approach was taken in McDonald v. Board of Election Commissioners, 394 U.S. 802, 809, 89 S.Ct. 1404, 1408, 22 L.Ed.2d 739 (1969), where the Court referred to the necessity of 'some rational relationship to a legitimate state end' and to a statute's being set aside 'only if based on reasons totally unrelated to the pursuit of that goal.' I mention this only to emphasize that Kramer appears to have elevated the standard. And this was only three years ago. Whether Carrington and McDonald are now frowned upon, at least in part, the Court does not say. Cf. Bullock v. Carter, 405 U.S. 134, 92 S.Ct. 849, 31 L.Ed.2d 92.

3. Clearly, for me, the State does have a profound interest in the purity of the ballot box and in an informed electorate and is entitled to take appropriate steps to assure those ends. Except where federal intervention *363 properly prescribes otherwise, see Oregon v. Mitchell, 400 U.S. 112, 91 S.Ct. 260, 27 L.Ed.2d 272 (1970), I see no constitutional imperative that voting requirements be the same in each State, or even that a State's time requirement relate to the 30-day measure imposed by Congress by 42 U.S.C. s 1973aa—1(d) for presidential elections. I assume that the Court by its decision today does not depart from either of these propositions. I cannot be sure of this, however, for much of the opinion seems to be couched in absolute terms.

4. The Tennessee plan, based both in statute and in the State's constitution, is not ideal. I am content that the one-year and three-month requirements be struck down for want of something more closely related to the State's interest. It is, of course, a matter of line drawing, as the Court concedes, ante, at 1006. But if 30 days pass constitutional muster, what of 35 or 45 or 75? The resolution of these longer measures, less than those today struck down, the Court leaves, I suspect, to the future.

Mr. Chief Justice BURGER, dissenting.

The holding of the Court in Pope v. Williams, 193 U.S. 621, 24 S.Ct. 573, 48 L.Ed. 817 (1904), is as valid today as it was at the turn of the century. It is no more a denial of equal protection for a State to require newcomers to be exposed to state and local problems for a reasonable period such as one year before voting, than it is to require children to wait 18 years before voting. Cf. Oregon v. Mitchell, 400 U.S. 112, 91 S.Ct. 260, 27 L.Ed.2d 272 (1970). In both cases some informed and responsible persons are denied the vote, while others less informed and less responsible are permitted to vote. Some lines must be drawn. To challenge such lines by the 'compelling state interest' standard is to condemn them all. So far as I am aware, no state law has ever satisfied this seemingly *364 insurmountable standard, and I doubt one ever will, for it demands nothing less than perfection.

**1014 The existence of a constitutional 'right to travel' does not persuade me to the contrary. If the imposition of a durational residency requirement for voting abridges the right to travel, surely the imposition of an age qualification penalizes the young for being young, a status I assume the Constitution also protects.

All Citations

405 U.S. 330, 92 S.Ct. 995, 31 L.Ed.2d 274

Footnotes

* The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See United States v. Detroit Timber & Lumber Co., 200 U.S. 321, 337, 26 S.Ct. 282, 287, 50 L.Ed. 499.

1 Involved here are provisions of the Tennessee Constitution, as well as portions of the Tennessee Code. Article IV, s 1, of the Tennessee Constitution, provides in pertinent part:

'Right to vote—Election precincts . . .—Every person of the age of twenty-one years, being a citizen of the United States, and a resident of this State for twelve months, and of the county wherein such person may offer to vote for three months, next preceding the day of election, shall be entitled to vote for electors for President and Vice-President of the United States, members of the General Assembly and other civil officers for the county or district in which such person resides; and there shall be no other qualification attached to the right of suffrage.

'The General Assembly shall have power to enact laws requiring voters to vote in the election precincts in which they may reside, and laws to secure the freedom of elections and the purity of the ballot box.'

Section 2—201. Tenn.Code Ann. (Supp.1970) provides:

'Qualifications of voters.—Every person of the age of twenty-one (21) years, being a citizen of the United States and a resident of this state for twelve (12) months, and of the county wherein he may offer his vote for three (3) months next preceding the day of election, shall be entitled to vote for members of the general assembly and other civil officers for the county or district in which he may reside.'

Section 2Section 2—304, Tenn.Code Ann. (Supp.1970) provides:

'Persons entitled to permanently register—Required time for registration to be in effect prior to election.—All persons qualified to vote under existing laws at the date of application for registration, including those who will arrive at the legal voting age by the date of the next succeeding primary or general election established by statute following the date of their application to register (those who become of legal voting age before the date of a general election shall be entitled to register, and vote in a legal primary election selecting nominees for such general electio(), who will have lived in the state for twelve (12) months and in the county for which they applied for registration for three (3) months by the date of the next succeeding election shall be entitled to permanently register as voters under the provisions of this chapter provided, however, that registration or re-registration shall not be permitted within thirty (30) days of any primary or general election provided for by statute. If a registered voter in any county shall have changed his residence to another county, or to another ward, precinct, or district within the same county, or changed his same by marriage or otherwise, within ninety (90) days prior to the date of an election, he shall be entitled to vote in his former ward, precinct or district of registration.'

2 On July 30, the District Court refused to grant a preliminary injunction permitting Blumstein and members of the class he represented to vote in the August 6 election; the court noted that to do so would be 'so obviously disruptive as to constitute an example of judicial improvidence.' The District Court also denied a motion that Blumstein be allowed to cast a sealed provisional ballot for the election.

At the time the opinion below was filed, the next election was to be held in November 1970, at which time Blumstein would have met the three-month part of Tennessee's durational residency requirements. The District Court properly rejected the State's position that the alleged invalidity of the three-month requirement had been rendered moot, and the State does not pursue any mootness argument here. Although appellee now can vote, the problem to voters posed by the Tennessee residence requirements is "capable of repetition, yet evading review." Moore v. Ogilvie, 394 U.S. 814, 816, 89 S.Ct. 1493, 1494, 23 L.Ed.2d 1 (1969); Southern Pacific Terminal Co. v. ICC, 219 U.S. 498, 515, 31 S.Ct. 279, 283, 55 L.Ed. 310 (1911). In this case, unlike Hall v. Beals, 396 U.S. 45, 90 S.Ct. 200, 24 L.Ed.2d 214 (1969), the laws in question remain

on the books, and Blumstein has standing to challenge them as a member of the class of people affected by the presently written statute.

3 The important question in this case has divided the lower courts. Durational residence requirements ranging from three months to one year have been struck down in Burg v. Canniffe, 315 F.Supp. 380 (Mass.1970); Affeldt v. Whitcomb, 319 F.Supp. 69 (ND Ind.1970); Lester v. Board of Elections for District of Columbia, 319 F.Supp. 505 (DC 1970); Bufford v. Holton, 319 F.Supp. 843 (ED Va.1970); Hadnott v. Amos, 320 F.Supp. 107 (MD Ala.1970); Kohn v. Davis, 320 F.Supp. 246 (Vt.1970); Keppel v. Donovan, 326 F.Supp. 15 (Minn.1970); Andrews v. Cody, 327 F.Supp. 793 (MDNC 1971), as well as this case. Other district courts have upheld durational residence requirements of a similar variety. Howe v. Brown, 319 F.Supp. 862 (ND Ohio 1970); Ferguson v. Williams, 330 F.Supp. 1012 (ND Miss.1971); Cocanower v. Marston, 318 F.Supp. 402 (Ariz.1970); Fitzpatrick v. Board of Election Commissioners (ND Ill.1970); Piliavin v. Hoel, 320 F.Supp. 66 (WD Wis.1970); Epps v. Logan (No. 9137, WD Wash.1970); Fontham v. McKeithen, 336 F.Supp. 153 (ED La.1971). In Sirak v. Brown (Civ. 70—164, SD Ohio 1970), the District Judge refused to convene a three-judge court and summarily dismissed the complaint.

4 Noting the lack of dispute on this point, the court below specifically found that Blumstein had no intention of leaving Nashville and was a bona fide resident of Tennessee. 337 F.Supp. 323, 324.

5 While it would be difficult to determine precisely how many would-be voters throughout the country cannot vote because of durational residence requirements, but see Cocanower & Rich, Residency Requirements for Voting, 12 Ariz.L.Rev. 477, 478 and n. 8 (1970), it is worth noting that during the period 1947—1970 an average of approximately 3.3% of the total national population moved interstate each year. (An additional 3.2% of the population moved from one county to another intrastate each year.) U.S. Dept. of Commerce, Bureau of the Census, Current Population Reports, Population Characteristics Series P—20, No. 210, Jan. 15, 1971, Table 1, pp. 7—8.

6 Compare Kramer v. Union Free School District No. 15, 395 U.S. 621, 89 S.Ct. 1886, 23 L.Ed.2d 583 (1969), and Skinner v. Oklahoma, 316 U.S. 535, 62 S.Ct. 1110, 86 L.Ed. 1655 (1942), with Williamson v. Lee Optical Co., 348 U.S. 483, 75 S.Ct. 461, 99 L.Ed. 563 (1955); compare McLaughlin v. Florida, 379 U.S. 184, 85 S.Ct. 283, 13 L.Ed.2d 222 (1964), Harper v. Virginia State Board of Elections, 383 U.S. 663, 86 S.Ct. 1079, 16 L.Ed.2d 169 (1966), and Graham v. Richardson, 403 U.S. 365, 91 S.Ct. 1848, 29 L.Ed.2d 534 (1971), with Morey v. Doud, 354 U.S. 457, 77 S.Ct. 1344, 1 L.Ed.2d 1485 (1957), and Allied Stores of Ohio v. Bowers, 358 U.S. 522, 79 S.Ct. 437, 3 L.Ed.2d 480 (1959).

7 Appellants also rely on Pope v. Williams, 193 U.S. 621, 24 S.Ct. 573, 48 L.Ed. 817 (1904). Carefully read, that case simply holds that federal constitutional rights are not violated by a state provision requiring a person who enters the State to make a 'declaration of his intention to become a citizen before he can have the right to be registered as a voter and to vote in the state.' Id., at 634, 24 S.Ct., at 576. In other words, the case simply stands for the proposition that a State may require voters to be bona fide residents. See, infra, at 1003—1004. To the extent that dicta in that opinion are inconsistent with the test we apply or the result we reach today, those dicta are rejected.

8 We note that in the Voting Rights Act of 1965, as amended, Congress specifically found that a durational residence requirement 'denies or abridges the inherent constitutional right of citizens to enjoy their free movement across State lines . . ..' 84 Stat. 316, 42 U.S.C. s 1073aa—1(a)(2).

9 For example, in Crandall v. Nevada, 6 Wall. 35, 18 L.Ed. 744 (1868), the tax imposed on persons leaving the State by commercial carrier was only $1, certainly a minimal deterrent to travel. But in declaring the tax unconstitutional, the Court reasoned that 'if the State can tax a railroad passenger one dollar, it can tax him one thousand dollars,' id., at 46. In Ward v. Maryland, 12 Wall. 418, 20 L.Ed. 449 (1871), the tax

on nonresident traders was more substantial, but the Court focused on its discriminatory aspects, without anywhere considering the law's effect, if any, on trade or tradesmen's choice of residence. Cf. Chalker v. Birmingham & N.W.R. Co., 249 U.S. 522, 527, 39 S.Ct. 366, 367, 63 L.Ed. 748 (1919); but see Williams v. Fears, 179 U.S. 270, 21 S.Ct. 128, 45 L.Ed. 186 (1900). In Travis v. Yale & Towne Mfg. Co., 252 U.S. 60, 79—80, 40 S.Ct. 228, 231—232, 64 L.Ed.2d 460 (1920), the Court held that New York could not deny nonresidents certain small personal exemptions from the state income tax allowed residents. The amounts were certainly insufficient to influence any employee's choice of residence. Compare Toomer v. Witsell, 334 U.S. 385, 68 S.Ct. 1156, 92 L.Ed. 1460 (1948), with Mullaney v. Anderson, 342 U.S. 415, 72 S.Ct. 428, 96 L.Ed. 458 (1952).

10 Separately concurring, Mr. Justice Stewart concluded that quite apart from any purpose to deter, 'a law that so clearly impinges upon the constitutional right of interstate travel must be shown to reflect a compelling governmental interest.' Id., 394 U.S., at 643—644, 89 S.Ct., at 1336 (first emphasis added). See also Graham v. Richardson, 403 U.S., at 375, 91 S.Ct., at 1854.

11 In Harman, the Court held that a Virginia law which allowed federal voters to qualify either by paying a poll tax or by filing a certificate of residence six months before the election 'handicap(ped) exercise' of the right to participate in federal elections free of poll taxes, guaranteed by the Twenty-fourth Amendment. Id., 380 U.S., at 541, 85 S.Ct., at 1185.

12 Where, for example, an interstate migrant loses his driver's license because the new State has a higher age requirement, a different constitutional question is presented. For in such a case, the new State's age requirement is not a penalty imposed solely because the newcomer is a new resident; instead, all residents, old and new, must be of a prescribed age to drive. See Shapiro v. Thompson, 394 U.S. 618, 638 n. 21, 89 S.Ct. 1322, 1333, 22 L.Ed. 600 (1969).

13 As note infra, at 1003—1004, States may show an overriding interest in imposing an appropriate bona fide residence requirement on would-be voters. One who travels out of a State may no longer be a bona fide resident, and may not be allowed to vote in the old State. Similarly, one who travels to a new State may, in some cases, not establish bona fide residence and may be ineligible to vote in the new State. Nothing said today is meant to cast doubt on the validity of appropriately defined and uniformly applied bona fide residence requirements.

14 See n. 7, supra.

15 See Fontham v. McKeithen, 336 F.Supp., at 167—168 (Wisdom, J., dissenting); Pope v. Williams, 193 U.S. 621, 24 S.Ct. 573, 48 L.Ed. 817 (1904); and n. 7, supra.

16 See, e.g., Cocanower & Rich, 12 Ariz.L.Rev., at 499; MacLeod & Wilberding, State Voting Residency Requirements and Civil Rights, 38 Geo.Wash.L.Rev. 93, 113 (1969).

17 Obviously, it could not be argued that the three-month waiting period is necessary to confirm residence in the county, and the one-year period necessary to confirm residence in the State. Quite apart from the total implausibility of any suggestion that one task should take four times as long as the other, it is sufficient to note that if a person is found to be a bona fide resident of a county within the State, he is by definition a bona fide resident of the State as well.

18 See, e.g., Brown v. Hows, 163 Tenn. 178, 42 S.W.2d 210 (1930); Sparks v. Sparks, 114 Tenn. 666, 88 S.W. 173 (1905). See generally Tennessee Law Revision Commission, Title 2—Election Laws, Tentative Draft of October 1971, s 222 and Comment. See n. 22, infra.

19 In the Voting Rights Act Amendments of 1970, Congress abolished durational residence requirements as a precondition to voting in presidential and vice-presidential elections, and prohibited the States from cutting off registration more than 30 days prior to those elections. These limits on the waiting period a State may impose prior to an election were made 'with full cognizance of the possibility of fraud and administrative difficulty.'

Oregon v. Mitchell, 400 U.S. 112, 238, 91 S.Ct. 260, 322, 27 L.Ed.2d 272 (separate opinion of Brennan, White, and Marshall, JJ.). With that awareness, Congress concluded that a waiting-period requirement beyond 30 days 'does not bear a reasonable relationship to any compelling State interest in the conduct of presidential elections.' 42 U.S.C. s 1973aa—1(a)(6). And in sustaining s 202 of the Voting Rights Act of 1965, we found 'no explanation why the 30-day period between the closing of new registrations and the date of election would not provide, in light of modern communications, adequate time to insure against . . . frauds.'

Oregon v. Mitchell, supra, at 239, 91 S.Ct., at 322 (separate opinion of Brennan, White, and Marshall, JJ.). There is no reason to think that what Congress thought was unnecessary to prevent fraud in presidential elections shoud not also be unnecessary in the context of other elections. See, infra, at 1009.

20 As a technical matter, it makes no sense to say that one who has been a resident for a fixed duration is presumed to be a resident. In order to meet the durational residence requirement, one must, by definition, first establish that he is a resident. A durational residence requirement is not simply a waiting period after arrival in the State; it is a waiting period after residence is established. Thus it is conceptually impossible to say that a durational residence requirement is an administratively useful device to determine residence. The State's argument must be that residence would be presumed from simple presence in the State or county for the fixed waiting period.

21 It should be clear that this argument assumes that the State will reliably determine whether the sworn claims of duration in the jurisdiction are themselves accurate. We have already noted that this is unlikely. See supra, at 1005. Another recurrent problem for the State's position is the existence of differential durational residence requirements. If the State presumes residence in the county after three months in the county, there is no rational explanation for requiring a full 12 months' presence in the State to presume residence in the State.

22 Tennessee's basic test for bona fide residence is (1) an intention to stay indefinitely in a place (in other words, 'without a present intention of removing therefrom,' Brown v. Hows, 163 Tenn., at 182, 42 S.W.2d at 211), joined with (2) some objective indication consistent with that intent, see n. 18, supra. This basic test has been applied in divorce cases, see, e.g., Sturdavant v. Sturdavant, 28 Tenn.App. 273, 189 S.W.2d 410 (1944); Brown v. Brown, 150 Tenn. 89, 261 S.W. 959 (1924); Sparks v. Sparks, 114 Tenn. 666, 88 S.W. 173 (1905); in tax cases, see, e.g., Denny v. Sumner County, 134 Tenn. 468, 184 S.W. 14 (1916); in estate cases, see, e.g., Caldwell v. Shelton, 32 Tenn.App. 45, 221 S.W.2d 815 (1948); Hascall v. Hafford, 107 Tenn. 355, 65 S.W. 423 (1901); and in voting cases, see, e.g., Brown v. Hows, supra; Tennessee Law Revision Commission, Title 2—Election Laws, supra, n. 18.

23 Indeed, in Blumstein's case, the County Election Commission explicitly rejected his offer to treat the waiting-period requirement as 'a waivable guide to commission action, but rebuttable upon a proper showing of competence to vote intelligently in the primary and general election.' Complaint at App. 8. Cf. Skinner v. Oklahoma ex rel. Williamson, 316 U.S., at 544—545, 62 S.Ct., at 1114—1115 (Stone, C.J., concurring).

24 See Harman v. Forssenius, 380 U.S., at 543, 85 S.Ct., at 1186 (filing of residence certificate six months before election in lieu of poll tax unnecessary to insure that the election is limited to bona fide residents in light of 'numerous devices to enforce valid residence requirements'); cf. Schneider v. State of New Jersey, 308 U.S. 147, 164, 60 S.Ct. 146, 152, 84 L.Ed. 155 (1939) (fear of fraudulent solicitations cannot justify permit requests since '(f)rauds may be denounced as offenses and punished by law').

25 Tenn.Code Ann. s 2Tenn.Code Ann. s 2—1614 (Supp.1970) makes it a felony for any person who 'is not legally entitled to vote at the time and place where he votes or attempts to vote . . ., to vote or offer to do so,' or to aid and abet such illegality. Tenn.Code Ann. s 2Tenn.Code Ann. s 2—2207 (1955) makes it a misdemeanor 'for any person knowingly to vote in any political convention or any election held under the Constitution or laws of this state, not being legally qualified to vote . . .,' and Tenn.Code Ann. s 2Tenn.Code Ann. s 2—2208 (1955) makes it a misdemeanor to aid in such an offense. Tenn.Code Ann. s 2Tenn.Code Ann. s 2—202 (Supp.1970) makes it an offense to vote outside the ward or precinct where one resides and is registered. Finally, Tenn.Code Ann. s 2Tenn.Code Ann. s 2—2209 (1965) makes it unlawful to 'bring or aid

in bringing any fraudulent voters into this state for the purpose of practising a fraud upon or in any primary or final election . . .' See, e.g., State v. Weaver, 122 Tenn. 198, 122 S.W. 465 (1909).

26 We note that in the period since the decision below, several elections have been held in Tennessee. We have been presented with no specific evidence of increased colonization or other fraud.

27 It has been noted elsewhere, and with specific reference to Tennessee law, that '(t)he historical purpose of (durational) residency requirements seems to have been to deny the vote to undesirables, immigrants and outsiders with different ideas.' Cocanower & Rich, 12 Ariz.L.Rev., at 484 and nn. 44, 45, and 46. We do not rely on this alleged original purpose of durational residence requirements in striking them down today.

28 Tennessee may be revealing this impermissible purpose when it observes:
'The fact that the voting privilege has been extended to 18 year old persons . . . increases, rather than diminishes, the need for durational residency requirements. . . . It is so generally known, as to be judicially accepted, that there are many political subdivisions in this state, and other states, wherein there are colleges, universities and military installations with sufficient student body or military personnel over eighteen years of age, as would completely dominate elections in the district, county or municipality so located. This would offer the maximum of opportunity for fraud through colonization, and permit domination by those not knowledgeable or having a common interest in matters of government, as opposed to the interest and the knowledge of permanent members of the community. Upon completion of their schooling, or service tour, they move on, leaving the community bound to a course of political expediency not of its choice and, in fact, one over which its more permanent citizens, who will continue to be affected, had no control.' Brief for Appellants 15—16.

29 In the 1970 Voting Rights Act, which added s 201, 42 U.S.C. s 1973aa, Congress provided that 'no citizen shall be denied, because of his failure to comply with any test or device, the right to vote in any Federal, State, or local election . . ..' The term 'test or device' was defined to include, in part, 'any requirement that a person as a prerequisite for voting or registration for voting (1) demonstrate the ability to read, write, understand, or interpret any matter, (2) demonstrate any educational achievement or his knowledge of any particular subject . . ..' By prohibiting various 'test(s)' and 'device(s)' that would clearly assure knowledgeability on the part of voters in local elections, Congress declared federal policy that people should be allowed to vote even if they were not well informed about the issues. We upheld s 201 in Oregon v. Mitchell, supra.

30 H. Alexander, Financing the 1968 Election 106—113 (1971); Affeldt v. Whitcomb, 319 F.Supp, at 77; Cocanower & Rich, 12 Ariz.L.Rev., at 498.

31 The general provisions for absentee voting apply in part to '(a)ny registered voter otherwise qualified to vote in any election to be held in this state or any county, municipality, or other political subdivision thereof, who by reason of business, occupation, health, education, or travel, is required to be absent from the county of his fixed residence on the day of the election . . ..' Tenn. Code Ann. s 2Tenn. Code Ann. s 2—1602 (Supp.1970). See generally Teen.Code Ann. s 2—1601 et seq. (Supp.1970). An alternative method of absentee voting for armed forces members and federal personnel is detailed in Tenn. Code Ann. s 2Tenn. Code Ann. s 2—1701 et seq. (Supp.1970). Both those provisions allow persons who are still technically 'residents' of the State or county to vote even though they are not physically present, and even though they are likely to be uninformed about the issues. In addition, Tennessee has an unusual provision that permits persons to vote in their prior residence for a period after residence has been changed. This section provides, in pertinent part: 'If a registered voter in any county shall have changed his residence to another county . . . within ninety (90) days prior to the date of an election, he shall be entitled to vote in his former ward, precinct or district of registration.' Tenn.Code Ann. s 2Tenn.Code Ann. s 2—304 (Supp.1970). See also Tenn.Code Ann. s 2Tenn.Code Ann. s 2—204 (1955).

Chairman Kasper, members of the committee, my name is Matthew Ternus, and I have the pleasure of serving as the Student Body President within the University of North Dakota's Student Government this academic year. Unlike my three immediate predecessors, I was not North Dakota born and raised. I'm originally from Rogers, Minnesota, just north of Minneapolis. To be engaged in the democratic process of voting, under current state policies, I'd have to obtain a North Dakota ID and have proof I have resided at my North Dakota address for at least 30 days. Should a policy such as this take place, adding a requirement to live in North Dakota for at least a year, it is the worry of UND Student Government that countless students like myself may face a reality that we may not be able to engage in electoral politics in the community which we may spend four or more years in.

Our student body consists of a total of 13,615 students. 4,571 of those students are originally from the state of North Dakota, meaning roughly 9,000 students, or 66% of our student body, comes from other states. Those students who move to North Dakota in August and wish to partake in a federal, state, or local election that same November may be barred from doing so under this policy as they wouldn't have been here for 365 days. 1,614 beginning freshmen, 956 transfer students. Many of these students, new to campus, come from states other than North Dakota, all may see their right to vote restricted under this suggested change.

Our UND Student Government passed a resolution, which you can view in the attached testimony, in opposition to H.B. 1289 on February 3rd. Our student representatives expressed similar concerns, worried about the potential limitation to a student's right to vote. For more information on the demographics of UND's student body, follow this link: https://und.edu/analytics-and-planning/data-and-reports/student-body-profiles.html

UND Student Senate

SR 2021-15

Senate Resolution

To: The Student Senate of the University of North Dakota

Authors: Alex Anderson – Director of Governmental Affairs, Matthew Ternus – Student Body President

Sponsors: Faith Wahl – Off Campus Senator, Kale Stroup – Off Campus Senator, Lydia Kennelly – Residence Halls Senator

CC: Matthew Ternus - Student Body President, Kaelan Reedy - Student Body Vice President, Cassie Gerhardt - Student Government Advisor, Andrew Frelich - Student Organization Funding Agency Advisor; Dr. Cara Halgren - Vice President for Student Affairs and Diversity,

Date: 02/03/2021

Re: Opposition to HB 1289

Whereas, the current guidelines to vote in North Dakota require and individual to live in North Dakota with proof of address and residence in their voting precinct for 30 days, and

Whereas, HB 1289 seeks to change the definition of a qualified elector in the state to an individual who has lived in the state of North Dakota for a minimum of one year and has resided in the precinct in which they would vote for a minimum of 90 days, and

Whereas, HB 1289 would impact any college students who have moved to North Dakota, and would bar those establishing residency in an election year from voting, and

Whereas, this would prevent those students from exercising their right to vote, and

Whereas, if passed, HB 1289 could prevent new students at NDUS institutions, such as UND, from voting in federal, state, and local elections, and

Whereas, UND Student Government has long promoted the student's right to vote, and

Whereas, HB 1289 would reduce the number of students eligible to vote after moving to an NDUS institution, further reducing voter turnout across the state of North Dakota;

Therefore, be it moved that UND Student Government opposes HB 1289, as it limits a student's right to vote in their given campus community.

Matthew Ternus, Student Body President

Chairman Kasper, members of the committee, my name is Alex Anderson and I serve as the Director of Governmental Affairs for the University of North Dakota's Student Government. I'm North Dakota born and raised, and have moved seven times throughout the state, but as the 2018 midterm elections came around, I reviewed the policies and went through the procedures to guarantee I was registered and set to vote in my precinct in Grand Forks. As a North Dakotan, should this policy be implemented, I worry my fellow North Dakotan classmates, who may be new to their precinct, may not qualify for the 90-day residency requirement. For example, this academic year, freshmen students started moving into their dorms on August 22nd. 73 days later, the November 3rd election occurred. Under current policy, an individual must have proof of residency of at least 30 days. Given the changes this policy would make, those students, and a number of transfer students, would fall outside of the 90-day timeline.

It is the concern of UND Student Government that this bill, if passed, runs the risk of disenfranchising current North Dakota resident students at the University of North Dakota, and potentially across the state of North Dakota. You can reference the resolution passed by UND Student Government, which was submitted alongside the written testimony of Matthew Ternus.

Chairman Kasper, members of the committee, my name is Kaelan Reedy and I currently serve as the Student Body Vice President within the University of North Dakota's Student Government. Engaging in the electoral process is a right to all citizens of our great and good nation. Our student government has long promoted the students' right to vote and student engagement in electoral politics. I think we can all agree, when those that live in our start participate in the democratic process of elections, our state is better represented. UND Student Government worries that, should H.B. 1289 pass, student populations would see a greater impact than other populations, meaning a significant number of our classmates may find themselves ineligible to have a voice in the community which they are planting their roots in.

Such time requirements, residing in the state for a year and within the precinct for 90 days, would remove many students from the pool of qualified electors. Our students are members of our greater North Dakota community, just like everyone else, and shouldn't have to potentially fall victim to timeline policies because of their recent arrival to our state.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA

Richard Brakebill, Deloris Baker, Dorothy Herman, Della Merrick, Elvis Norquay, Ray Norquay, and Lucille Vivier, on behalf of themselves,	)	
Plaintiffs,	)	**ORDER GRANTING PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION**
vs.	)	
Alvin Jaeger, in his official capacity as the North Dakota Secretary of State,	)	
	)	Case No. 1:16-cv-008
Defendants.	)	

Before the Court is the Plaintiffs' motion for a preliminary injunction. See Docket No. 42. The Plaintiffs seeks a preliminary injunction enjoining the Defendant from enforcing, during the pendency of this action, the voter ID requirements codified at N.D.C.C. § 16.1-05-07. The Plaintiffs request the Court grant an injunction requiring the voter ID laws in place during the 2012 election be put in place during the pendency of this action. Namely, the Plaintiffs request the Defendant reinstate certain "fail-safe" provisions that give poll workers the authority to allow Native Americans and others the ability to vote based on their personal knowledge of that person's voting eligibility. Plaintiffs also request Native Americans and others without sufficient ID be allowed to vote by signing an affidavit or declaration under penalty of perjury stating they are qualified to vote. The Defendant filed a response in opposition to the motion on July 5, 2016. See Docket No. 45. The Plaintiffs filed a reply on July 18, 2016. See Docket No. 48. For the reasons set forth below, the Court finds the lack of any "fail-safe" provisions to be dispositive in this matter. Although most voters in North Dakota either possess a qualifying ID or can obtain some form of acceptable identification, a safety net is needed for those voters who

cannot obtain a qualifying ID with reasonable effort. Accordingly, the Court enjoins the Defendant from implementing the current voter ID laws without the existence of some form of a "fail-safe" provision.

I. BACKGROUND

Until recently, North Dakota used a system of small voting precincts, whereby election boards and poll workers generally knew who were and who were not eligible voters in their precincts. If a poll clerk happened not to know a voter, they could ask that voter to produce one of many forms of an acceptable identification ("ID") showing the voter's residential address and birthday. Under the prior law, valid forms of ID included: a North Dakota driver's license or non-driver's license ID card; a U.S. passport; an ID card from a federal agency; an out of state driver's license or non-driver's ID card; an ID card issued by a tribal government; a valid student ID card; a military ID card; a utility bill dated 30 days before Election Day, including cell phone bills and student housing bills (online printouts were acceptable); and a change of address verification letter from the U.S. Postal Service.

If one form of ID did not provide a voter's address and birth date, a voter could use two forms of ID that, in combination, provided address and birth date information. If a voter could not produce the requested ID, he or she could fall back on two "fail-safe" mechanisms to prove their voting eligibility. First, a member of the election board or a poll clerk could simply vouch for the voter. Second, the voter could execute an affidavit swearing under penalty of perjury that he or she was a qualified elector in the precinct. N.D.C.C. § 16.1-05-07(3), amended by H.B. 1332, 63rd Leg. Assembly; Reg. Sess. § 5 (2013).

On April 19, 2013, the Legislative Assembly of North Dakota enacted HB 1332. HB 1332 imposed new voter ID requirements on voting-eligible citizens:

- To be acceptable, any voter ID must provide the voter's residential address (post office box numbers are not sufficient) and his or her date of birth.
- A voter must submit one of these forms of ID (1) a North Dakota driver's license; (2) a North Dakota non-driver's ID card; (3) a tribal government-issued ID card; or (4) an alternative form of ID prescribed by the Secretary of State in a case where the voter did not possess any of the other acceptable forms of ID.

More importantly, the new law also did away with North Dakota's voucher and affidavit "fail-safe" mechanisms. With respect to the fourth category of acceptable ID, the Secretary of State prescribed two forms: (1) a student ID certificate; and (2) a long-term care ID certificate.

Just over two years later, on April 24, 2015, North Dakota adopted HB 1333, which imposed additional restrictions on North Dakota voters:

- The bill removed the ability of the Secretary of State to prescribe new forms of qualifying ID, and denied students the option of using college ID certificates (leaving long-term care certificates as the only acceptable ID prescribed by the Secretary of State and limiting the number of acceptable ID's to four).
- The bill clarified that drive's licenses and non-driver ID cards must be current.
- The bill clarified that military ID is not acceptable, except for service members stationed away from their North Dakota residences
- The bill eliminated a voucher provision for absentee voting (except for disabled absentee voters).

A survey by the National Conference of State Legislatures (NCSL) classified North Dakota as a "strict" non-photo ID state. See Docket No. 43, p. 15. The record reveals that because North Dakota stands alone in not having any "fail-safe" provisions, its current voter ID laws are arguably some of the most restrictive voter ID laws in the nation. The record further reveals that proponents of HB 1332 and HB 1333 asserted the new laws were necessary to curb voter fraud. Given the historical lack of voter fraud in the state, opponents complained that the new laws amounted to "a solution looking for a problem." See Docket No. 44-2, p. 20.

The Plaintiffs are seven Native American voters from North Dakota who brought this action under the Voting Rights Act, and the United States and North Dakota Constitutions, to invalidate North Dakota's new voter ID requirements. Under N.D.C.C. § 16.1-05-07, North Dakota voters must present a state-issued ID that shows both date of birth and a residential address to vote. The following forms of ID are currently required to vote in North Dakota: (1) a current North Dakota driver's license' (2) a current North Dakota non-driver's ID card; (3) a long-term care certificate prescribed by the Secretary of State; or (4) a tribal government issued ID card. N.D.C.C. § 16.1-05-07(1)(a-c). A military ID card is not acceptable, except for service members stationed away from their North Dakota residences. N.D.C.C. § 16.1-05-07(1)(d).

The Plaintiffs argue that, in the absence of any "fail-safe" provisions, North Dakota now has the nation's most restrictive voter ID requirements. The Plaintiffs contend these new ID requirements are needlessly and substantially burdensome for all the people of North Dakota, but impose particularly disproportionate burdens on Native Americans. The Plaintiffs contend that thousands of Native Americans in North Dakota do not have qualifying voter ID's, or the resources to easily obtain qualifying ID's, because they do not have the money to pay the license

fees or for travel, or they do not have the forms of ID required to get a new ID card (e.g. a birth certificate or social security card), and/or they have neither the time nor the means of transportation to track down documents and travel to a state office which issues the required forms of ID.

II. LEGAL DISCUSSION

The Plaintiffs seek a preliminary injunction pursuant to Rule 65(a) of the Federal Rules of Civil Procedure. The primary purpose of a preliminary injunction is to preserve the status quo until a court can grant full, effective relief upon a final hearing. Ferry-Morse Seed Co. v. Food Corn, Inc., 729 F.2d 589, 593 (8th Cir. 1984). A preliminary injunction is an extraordinary remedy, with the burden of establishing the necessity of a preliminary injunction placed on the movant. Watkins Inc. v. Lewis, 346 F.3d 841, 844 (8th Cir. 2003); Baker Elec. Coop., Inc. v. Chaske, 28 F.3d 1466, 1472 (8th Cir. 1994); Modern Computer Sys., Inc. v. Modern Banking Sys., Inc., 871 F.2d 734, 737 (8th Cir. 1989). The court determines whether the movant has met its burden of proof by weighing the factors set forth in Dataphase Systems, Inc., v. C L Systems, Inc., 640 F.2d 109, 114 (8th Cir. 1981). The *Dataphase* factors include "(1) the threat of irreparable harm to the movant; (2) the state of balance between this harm and the injury that granting the injunction will inflict on other parties litigant; (3) the probability that movant will succeed on the merits; and (4) the public interest." Id. "No single factor in itself is dispositive; in each case all of the factors must be considered to determine whether on balance they weigh towards granting the injunction." Baker Elec. Coop., Inc., 28 F.3d at 1472 (quoting Calvin Klein Cosmetics Corp. v. Lenox Labs., Inc., 815 F.2d 500, 503 (8th Cir. 1987)); see CDI Energy

Servs., Inc. v. W. River Pumps, Inc., 567 F.3d 398, 401-03 (8th Cir. 2009). The Court is required under Eighth Circuit case law to analyze each of these four *Dataphase* factors.

A. PROBABILITY OF SUCCESS ON THE MERITS

The Plaintiffs contend in their complaint that North Dakota's voter ID requirements violate Section 2 of the Voting Rights Act and the Equal Protection clauses of both the North Dakota and United States Constitutions. A party challenging a federal or state statute or other government action who seeks a preliminary injunction must demonstrate that it is "likely to prevail on the merits," a higher bar than the more familiar "fair chance of prevailing" test. See Planned Parenthood Minn., N.D., S.D. v. Rounds, 530 F.3d 724, 732-33 (8th Cir. 2008); Johnson v. Minneapolis Park & Recreation Bd., 729 F.3d 1094, 1098 (8th Cir. 2013). When evaluating a movant's "likelihood of success on the merits," the court should "flexibly weigh the case's particular circumstances to determine 'whether the balance of equities so favors the movant that justice requires the court to intervene to preserve the status quo until the merits are determined.'" Calvin Klein Cosmetics Corp., 815 F.2d at 503 (quoting Dataphase, 640 F.2d at 113). The Eighth Circuit has held that of the four factors to be considered by the district court in considering preliminary injunctive relief, the likelihood of success on the merits is "most significant." S & M Constructors, Inc. v. Foley Co., 959 F.2d 97, 98 (8th Cir. 1992).

The Plaintiffs contend North Dakota's voter ID requirements violate the Equal Protection Clause of the 14th Amendment to the United States Constitution. The United States Supreme Court has held:

> A court evaluating a constitutional challenge to an election regulation must weigh the asserted injury to the right to vote against the precise interests put forward by the State as justifications for the burden imposed by its rule.

Crawford v. Marion Cnty. Election Bd., 553 U.S. 181, 190 (2008) (internal citations omitted). There is not a litmus test for measuring the severity of a burden a state law imposes on voters, but any burden must be justified by relevant and legitimate state interests "sufficiently weighty to justify the limitation." Id. (quoting Norman v. Reed, 502 U.S. 279, 288-289 (1992). As required in *Crawford*, the Court will make the "hard judgment" required after evaluating both the burdens placed upon Native American voters by North Dakota voter ID requirements, and North Dakota's justifications for imposing those requirements.

1. BURDENS PLACED UPON NATIVE AMERICANS

The Court will turn first to the burdens the Plaintiffs are alleged to have suffered, or will suffer, if the current voter ID requirements, codified at N.D.C.C. § 16.1-05-07, are not enjoined. It is undisputed that the more severe conditions in which Native Americans live translates to disproportionate burdens when it comes to complying with the new voter ID laws. The Plaintiffs have presented a multitude of affidavits and declarations from lay witnesses and expert witnesses to support their legal arguments. **It is important to note that with respect to the Plaintiffs' request for injunctive relief, none of the affidavits, declarations, surveys, studies, or data submitted by the Plaintiffs in support of their motion have been challenged or refuted by the State of North Dakota**.

The Plaintiffs cite to a statistical survey of North Dakota voters performed by Dr. Matthew A. Barreto and Dr. Gabriel R. Sanchez ("Barreto/Sanchez Survey") which revealed the following:

- 23.5% of Native Americans currently lack valid voter ID, compared to only 12% of non-Native Americans. See Docket No. 44-1, p. 3.
- 15.4% of Native Americans who voted in 2012 currently lack qualifying voter ID, compared to only 6.9% of non-Native Americans. See Docket No. 44-1, p. 19.
- Only 78.2% of Native Americans have a North Dakota driver's license, compared to 94.4% of non-Native Americans. See Docket No. 44-1, p. 3.
- 47.7% of Native Americans who do not currently have a qualifying voter ID lack the underlying documents they need to obtain an acceptable ID. See Docket No. 44-1, p. 21.
- Only 73.9% of Native Americans who lack a qualifying voter ID own or lease a car, compared to 88% of non-Native Americans; and 10.5% of Native Americans lack any access to a motor vehicle, compared to only 4.8% of non-Native Americans. See Docket No. 44-1, p. 22.
- Native Americans, on average, must travel twice as far as non-Native Americans to visit a Driver's License Site in North Dakota. See Docket no. 44-1, p. 22.
- 21.4% of Native Americans are not at all aware of the new voter ID laws, and only 20.8% have heard about the law. See Docket No. 44-1, p. 20.

The Defendant neither disputes nor challenges these findings. As noted, there are no affidavits, declarations, surveys, studies, or exhibits attached to the Defendant's response in

opposition to the request for injunctive relief. The Defendant has provided no legislative testimony or findings to counter the Barreto/Sanchez Survey, nor in any manner challenged any of the evidence the Plaintiffs have submitted. The Defendant seems to rely on Justice Scalia's concurrence in *Crawford*, which argues that individually specific evidence of the burdens placed upon a voter by new election laws and regulations are irrelevant when the statute, on its face, is generally applicable and nondiscriminatory. See Crawford, at 206-206 (Scalia, concurring) ("The Indiana photo-ID law is a generally applicable, nondiscriminatory voting regulation, and our precedents refute the view that individual impacts are relevant to determining the severity of the burden it imposes"). However, this Court is required to follow the standard laid out in the plurality opinion of the Supreme Court in *Crawford* authored by Justice Stevens, which requires a particularized assessment of the burdens levied by an election law. See Obama for America v. Husted, 697 F.3d 423, 441 n.7 (6th Cir. 2012) (supporting the contention that Justice Stevens' opinion is the "controlling" opinion in *Crawford*). Given the thorough and unrefuted record developed by the Plaintiffs in this case, and the lack of any evidence presented by the Defendant to the contrary, the Court gives the findings of the Barreto/Sanchez Survey, and the other studies and data presented by the Plaintiffs, considerable weight.

The undisputed evidence before the Court reveals that Native Americans face substantial and disproportionate burdens in obtaining each form of ID deemed acceptable under the new law. As detailed below, obtaining any one of the approved forms of ID almost always involves a fee or charge, and in nearly all cases requires travel. It also helps to have a computer with Internet access, a credit card, a car, the ability to take time off work, and familiarity with the government and its bureaucracy. Thus, obtaining a qualifying voter ID is much easier to

accomplish for people who live in urban areas, have a good income, are computer-literate, have a computer and printer, have a good car and gas money, have a flexible schedule, and understand how to navigate the state's administrative procedures. The declarations from the Plaintiffs' expert witnesses show that the typical Native American voter living in North Dakota who lacks qualifying ID simply does not have these assets. See Docket No. 44-2, p. 33.

(a) Native Americans Trying to Obtain a Non-Driver's License ID Face Substantial Burdens in Providing Proof of Identification

To obtain a non-driver's ID in North Dakota, "PROOF OF IDENTIFICATION IS REQUIRED." In other words, you need an ID to get an ID. The North Dakota Department of Transportation website lists nine "[a]cceptable forms of identification." The first listed item is a U.S. birth certificate (state certified; Government issued).[1] The Barreto/Sanchez Survey found that 32.9% of Native Americans who presently lack qualifying voter ID do not have a birth certificate. See Docket No. 44-1, pp. 20-21.

One obstacle to obtain a birth certification is money. To obtain a birth certificate, one must pay at least $7. Impoverished Native Americans, such as Plaintiff Lucille Vivier, lack the disposable income necessary to obtain a birth certificate, and make the difficult decision not to spend their limited resources on a birth certificate. See Docket No. 44-2, pp. 43-44.

Another barrier is that to obtain a birth certificate, a person must present "proof of identity." Again, one needs an ID to get an ID. This can be a state-issued photo ID, a driver's license, a Bureau of Indian Affairs tribal ID card, a military ID card, or a U.S. passport or visa. A Native American applicant lacking a qualifying voter ID probably lacks these forms of ID as

[1]North Dakota Department of Transporation, *ID Card Requirements (2015),* http://dot.nd.gov/divisions/driverslicense/idrequirements.htm.

well. Such applicants can still satisfy the ID requirement by presenting **two** of the following: social security card; utility bill with current address; pay stub showing name and social security number; car registration showing current address; and an IRS tax return. The Barreto/Sanchez Survey found that many Native Americans who presently lack a qualifying voter ID cannot provide these documents:

- 21.6% of Native Americans do not have two documents that show their residential address. One reason is that many Native Americans do not have residential addresses and the Post Office delivers their mail to a post office box. See Docket No. 44-1, pp. 3, 20-21. Another reason is that, on many reservations, the residential address system produces conflicting and problematic results. See Docket No. 44-10, pp. 2-3.
- 5.6% of Native Americans in North Dakota do not have a social security card or a W2 evidencing their social security number. See Docket No. 44-1, pp. 20-21.
- Many Native Americans lack access to transportation and have no car registration showing their current address. See Docket No. 44-2, p. 41.

Another acceptable form of ID is a "valid, unexpired U.S. Passport." A passport application currently costs $110, which is a significant amount for a person with few resources. See Docket No. 44-2, p. 30. The other seven forms of acceptable ID– "Report of a Birth Abroad issued by the United States Department of State," "Certificate of Naturalization," "Certificate of Citizenship," "Valid unexpired Permanent Resident Card," "Unexpired Employment Authorization Card," "Unexpired Foreign Passport with I-94," and "I-94 Card Stamped Refugee

or Asylee"–are all irrelevant and unobtainable to Native Americans born in the United States. See Docket No. 44-2, pp. 30-31.

(b) Native Americans Trying Obtain a Non-Driver's ID Face Substantial Cost Burdens

Cost presents another barrier to obtaining a non-driver ID. According to the North Dakota Department of Transportation website, it costs $8 to get a non-driver's ID card if you have a driver's license or need to replace a lost or stolen ID.[2] Native Americans who currently lack a qualifying voter ID may not be able to afford that.

(c) Native Americans Trying to Obtain a Non-Driver's ID Face Substantial Travel/Time Burdens

The record shows that having the ID documents needed to obtain a non-driver's ID is not enough. A person must also personally "visit one of the ND Driver's License Sites." The record reveals there are no Driver's License Sites on any of North Dakota's reservations. Further, a successful visit to a site requires knowledge and experience dealing with bureaucratic institutions, a means of transportation, money to pay for transportation, and the free time to travel the often significant distances to such sites. The undisputed evidence before the Court reveals that overcoming these obstacles can be difficult, particularly for an impoverished Native American. The declarations of the Plaintiffs' expert witnesses, which have not been disputed by the State, disclose the following:

- **Many Native Americans do not know where Driver's License Sites are located.** According to the Barreto/Sanchez Survey, only 64.9% of Native Americans in North Dakota who lack a qualifying voter ID know the location of

[2]See North Dakota Department of Transportation, *ID Card Requirements* (2015), http://dot.nd.gov/divisions/driverslicense/idrequirements.htm

the nearest Driver's License Site (as compared to 85.2% of non-Native Americans). See Docket No. 44-1, pp. 23-24.

- **Many lack means of transportation.** According to the Barreto/Sanchez Survey, only 73.9% of Native Americans in North Dakota lacking a qualifying voter ID own or lease a car (as compared to 88% of non-Native Americans); and 47.3% of Native Americans in North Dakota believe it would be a hardship if they had to rely on public transportation to get to a Driver's License Site (as compared to 23.1% of non-Native Americans). See Docket No. 44-1, pp. 22-24.
- **Travel distances to a Driver's License Site are significant.** For the average voting-eligible Native American in North Dakota, the average travel distance to the closest site is nearly 20 miles (as compared to appx. 11 miles for non-Native Americans). This translates to more than 70 minutes of travel time for a round trip. For Native Americans in North Dakota living on a reservation, the travel distance can be as great as 60 miles one way.
- **Drivers License Sites are not easily accessible.** There are no sites on any of the reservations in North Dakota. Because there are no Driver's License Sites on any reservations in North Dakota, access for Native Americans is severely limited. North Dakota only has 27 Driver's License Sites in the entire state – just one site per 2,600 square miles. Only four of these sites are open five days a week (excepting holidays). Twelve of the sites are open less than six hours on one day a month (or even less than that). One office is open for a total of 28 hours per calendar year. See Docket No. 44-4, pp. 5, 14-16.

The undisputed evidence in this case has established that travel to a Driver's License Site to obtain a non-driver's ID card (or a driver's license) is substantially burdensome for Native Americans. The Barreto/Sanchez Survey found that 44.1% of Native Americans lacking a qualifying voter ID reported they would have difficulty taking time off from work to travel to a Driver's License Site (compared to 26.2% of non-Native Americans), and 36.7% of Native Americans said it would be a problem to travel even six miles each way to a site (compared to 17.3% of non-Native Americans). The personal experiences of Plaintiffs' declarants Richard Brakebill, Lucille Vivier, Dorothy Herman, and LaDonna Allard further confirm the substantial burdens Native Americans encounter in obtaining qualifying voter ID's. See Docket Nos. 44-9, 44-10, 44-11, and 44-12.

(d) Native Americans Who Currently Lack Qualifying Voter ID's Face Substantial Burdens in Obtaining a New Driver's License

One finding from the Barreto/Sanchez Survey is that only 78.2% of voting-age Native Americans have a driver's license. As with non-driver's ID's, acquiring a new driver's license also requires a personal visit to a Driver's License Site. As previously discussed, such a visit can be burdensome for Native Americans who currently lack a qualifying voter ID. Further, getting a new driver's license also requires proof of ID–the same forms of ID required to obtain a non-driver's ID, which is problematic for Native Americans.

According to the North Dakota Department of Transportation website, a new license can cost as much as $25 ($5 to take the written test, $5 to take a road test, and $15 for the license

fee).[3] Many impoverished Native Americans do not have the disposable income to pay for these fees.

(e) Native Americans Who Currently Lack a Qualifying Voter ID Face Substantial Burdens in Updating Their Current Non-Driver ID or Driver's License

Many existing non-driver's ID's and driver's licenses do not suffice as a qualifying voter ID because they do not reflect the person's current residential address. For voters who do have a residential address, North Dakota provides three ways for a person to update their license to show their current address, and each way presents burdens for Native Americans:

- The first way is to update the address online. This requires the person to have access to a computer and an Internet connection which is a problem. A survey of Native Americans in the Bismarck/Mandan area found that only 61% had their own computers, and only about half had access to the Internet. The record reveals that those figures are likely much lower for Native Americans living in rural areas and on reservations given the higher levels of poverty. See Docket No. 44-2, pp. 41-42.
- The second way is to visit a Driver's License Site and personally update the information, which as previously discussed can be burdensome.
- The third way to update a license (or non-driver ID) is to travel to a Driver's License Site and get a new one, which also poses a burden.

[3]North Dakot Department of Transportation, *Driver's License Requirements* (2015), http://dot.nd.gov/divisions/driverslicense/dlrequirement.htm.

(f) Many Tribal Government Issued ID Cards Do Not Satisfy the New Law Because They Do Not Show a Residential Address and Are Substantially Burdensome to Obtain

It in undisputed that many tribal ID's do not satisfy North Dakota's requirement of showing the "applicant's current or most recent North Dakota residential address" under the new law. The record reveals that many homes on the reservations either do not have residential addresses (the Post Office delivers their mail to post office boxes), or there is no clear address, so tribal ID's do not reflect any residential addresses. See Docket No. 44-2, pp. 36-38. In addition, obtaining new tribal ID's can be burdensome because they cost money, and one must travel to tribal headquarters to obtain one. Further, many Native Americans (including all those living on the Standing Rock Reservation) only have ID's issued by the federal Bureau of Indian Affairs; they do not have ID's issued by tribal governments. Thus, these forms of ID's also do not satisfy the voter ID laws' definition of "tribal government issued" ID card.

(g) North Dakota's New Voter ID Laws Have Disenfranchised Native American Voters

The Plaintiffs have presented evidence of disenfranchisement of voting-eligible Native Americans in the elections that have taken place since the amendments to N.D.C.C. § 16.1-05-07 in 2013 and 2015. The Plaintiffs have shown that North Dakota officials have admitted the new laws resulted in poll workers turning away voters because they did not have a qualifying ID. See Docket No. 44-2, p. 34. The record reveals that North Dakota poll workers turned away many Native Americans because their driver's licenses, non-driver ID, or tribal ID's did not disclose their current residential addresses. See Docket No. 44-2, pp. 35-36.

The difficulties cited above in obtaining a valid ID for the purposes of satisfying N.D.C.C. § 16.1-05-07, manifest themselves in the experiences of several of the named Plaintiffs

in this case. Lucille Vivier attested that her tribal ID was rejected at her polling place and she was not able to vote in 2014 because her tribal ID did not have a current residential address listed. See Docket No. 1, pp. 4-5. Plaintiff Richard Brakebill was denied the right to vote in November 2014 because he had an expired driver's license. When he sought to remedy this problem at a North Dakota Driver's License Site, he was denied a new form of ID because he did not have a copy of his Arkansas birth certificate. See Docket No. 1, p. 3. Nevertheless, Brakebill attempted to vote on election day in 2014 and presented his expired driver's license and his tribal ID. He was denied a ballot because his license had expired and his tribal ID did not reveal a current residential address.

Dorothy Herman was similarly unsuccessful in obtaining a new form of ID after two trips to a North Dakota Driver's License Site before the 2014 general election. Her first trip was unsuccessful because the Driver's License Site was closed, and her second trip was unsuccessful because her expired state card, with her current residential address, was insufficient to obtain a new state ID without a birth certificate. See Docket No. 1, p. 6. Herman presumed her tribal ID would be sufficient to vote in 2014, but she was ultimately denied a ballot because her tribal ID did not contain a current residential address. The record reveals these Plaintiffs and others were denied the right to vote in November 2014 (even though the poll workers knew them personally and knew they were qualified to vote) because they had invalid ID's under the new laws.

The undisputed evidence reveals that Native Americans living in North Dakota disproportionally live in severe poverty. According to an American Community Survey (ACS) covering the years 2009-2013, 21.7% of voting-age Native Americans had incomes below the poverty line, compared to only 7.6% of non-Native Americans. See Docket no. 44-4, pp. 6-7.

Another ACS study reported that 37.7% of all Native Americans live in poverty, compared to 5.3% of Anglo families. See Docket No. 44-2, p. 40.

The undisputed evidence and statistical data demonstrate the following, which reflects the disparate living conditions for Native Americans:

- The ACS study reported a median household income for non-Native Americans at $56,566, compared to only $29,909 for Native Americans.
- The ACS study found that the average income for non-Native Americans living in North Dakota is $73,313, compared to $48,763 for Native Americans.
- The Barreto/Sanchez Survey found that 22.3% of Native Americans who lack voter ID's have household incomes less than $10,000.
- The unemployment rates on reservations are staggering. For example, unemployment at the Standing Rock and Turtle Mountain reservations is nearly 70%.

These undisputed statistics and studies support the finding that, given the disparities in living conditions, it is not surprising that North Dakota's new voter ID laws are having and will continue to have a disproportionately negative impact on Native American voting-eligible citizens.

The undisputed declarations of the Plaintiffs' expert witnesses also established the following:

- 23.5% of Native American eligible voters do not currently possess a qualifying voter ID. In contrast, only 12% of non-Native Americans do not possess a valid ID. See Docket No. 44-1, pp. 3-4.

- 15.4% of Native Americans who voted in the 2012 presidential election currently lack a valid voter ID, compared to only 6.9% of non-Native Americans who voted in the 2012 presidential election.
- Only 78.2% of Native Americans have a driver's license that they could potentially use as a qualifying voter ID. In contrast, 94.4% of non-Native Americans have a driver's license.
- Native Americans are disproportionately more likely to lack the formal educational background that could help them obtain qualifying forms of voter ID. For example, 34.5% of Native Americans who lack voter ID never finished high school, compared to only 5.7% of non-Native Americans.
- Native Americans who currently lack a qualifying voter ID disproportionally face logistical and financial burdens in obtaining a qualifying ID. For example, only 64.9% of Native Americans lacking voter ID know the location of the nearest Driver's License Site, compared to 85.2% on non-Native Americans; only 73.9% of Native Americans who lack voter ID own or lease a car, compared to 88% of non-Native Americans; 10.5% of Native Americans lack access to a motor vehicle, compared to only 4.8% of white households' 44.1% of Native Americans who lack a qualifying voter ID would have a problem getting time off work to go to a Driver's License Site to obtain qualifying ID, compared to only 26.2% of non-Native Americans. On the average, Native Americans in North Dakota must travel twice as far as non-Natives to visit a Driver's License Site.

The Defendant contends the requirements of N.D.C.C. § 16.1-05-07 are reasonable and that, at some point, each citizen has to take responsibility for his or her vote, including obtaining

the proper documentation necessary in order to cast that vote. See Docket No. 45, p. 6. The Defendant asserts the Plaintiffs have not shown that any burdens associated with obtaining a valid ID are any more restrictive on Native Americans in North Dakotan than upon hundreds of thousands of similarly-situated non-Native Americans living in rural North Dakota. The Court finds the record clearly belies that contention, given the socio-economic disparities between Native American and non-Native American populations in North Dakota as demonstrated in the numerous studies and statistics presented by the Plaintiffs. Again, none of the studies have been challenged or refuted by the State. The Court will now weigh the burdens placed upon the Native American population in North Dakota with the Defendant's justifications for the voter ID requirements in N.D.C.C. § 16.1-05-07.

2. NORTH DAKOTA'S INTEREST

The Defendant relies heavily upon the United States Supreme Court's *Crawford* decision to support the contention that "[t]here is no question about the legitimacy or importance of the State's interest in counting only the votes of eligible voters." Crawford, 553 U.S. at 195. The Court agrees with the Defendant and the Supreme Court when it said that "the electoral system cannot inspire public confidence if no safeguards exist to deter or detect fraud or to confirm the identity of voters." Id. at 194. The Defendant has cited *Crawford* for the contention that "for most voters who need them [photo ID], the inconvenience of making a trip to the [North Dakota Driver's License Site], gathering the required documents, and posing for a photograph surely does not qualify as a substantial burden on the right to vote, or even represent a significant increase over the usual burdens of voting." Id. at 198. However, what is ignored is that the United States Supreme Court in *Crawford* expressly recognized that "[b]oth evidence in the

record and facts of which we may take judicial notice, however, indicate that a somewhat heavier burden may be placed on a limited number of persons." Id. at 199. The Indiana law that was challenged in *Crawford* allowed indigent voters, religious objectors, and voters who did not have the required photo ID when they went to vote, to cast provisional ballots which the state would count if the voter signed an affidavit. In contrast, North Dakota's new voter ID laws completely eliminated the affidavit and voucher "fail-safe" mechanisms designated to protect those voters who do not possess an ID and who cannot obtain one with reasonable effort.

The undisputed evidence in the record clearly establishes that the Native American population in North Dakota bears a severe burden under the current version of N.D.C.C. § 16.1-05-07. The plurality of the Supreme Court in *Crawford* upheld the voter ID laws at issue in Indiana primarily because of a poorly developed record by the Plaintiffs. The record in *Crawford* did not provide "the number of registered voters without photo ID;" did not "provide any concrete evidence of the burden imposed on voters" who lacked photo ID; and the record said "virtually nothing" about the difficulties indigent voters faced. Id. at 200-201. To the contrary, the record before this Court does not suffer the same lack of support present in *Crawford*. The Plaintiffs here have developed a very thorough record that clearly apprises the Court of the significant number of voting-age Native Americans who reside in North Dakota whom lack a qualifying voter ID under N.D.C.C. § 16.1-05-07. The record is replete with concrete evidence of significant burdens imposed on Native American voters attempting to exercise their right to vote in North Dakota.

The Court finds that the undisputed evidence in the record reveals that N.D.C.C. § 16.1-05-07 imposes "excessively burdensome requirements" on Native American voters in North Dakota that far outweighs the interests put forth by the State of North Dakota. Further, the Court

finds the lack of any current "fail-safe" provisions in the North Dakota Century Code to be unacceptable and violative of the Equal Protection Clause of the 14th Amendment.

It appears from the record that North Dakota may be the only state in the country that does not allow for some type of a provisional ballot casting if a voting-age citizen does not have the requisite ID on election day. The new voter ID laws totally eliminated the previous "fail-safe" provisions that existed in the past in North Dakota. Although the majority of voters in North Dakota either possess a qualifying voter ID or can easily obtain one, it is clear that a safety net is needed for those voters who simply cannot obtain a qualifying voter ID with reasonable effort. The Court cannot envision a compelling reason or a governmental interest which supports not providing such an avenue of relief for potentially disenfranchised voters.

The Defendant has not offered any purported compelling state interest as to why North Dakota no longer provides any "fail-safe" mechanisms which would enable a person who could not produce a required voter ID to nevertheless be able to vote - just as North Dakota voters were allowed to do prior to 2013. The Defendant has failed to present any evidence showing that "fail-safe" provisions or provisional have resulted in voter fraud in the past, or are particularly susceptible to voter fraud in the future. To the contrary, the record before the Court reveals that the Secretary of State acknowledged in 2006 that he was unaware of any voter fraud in North Dakota. See Docket No. 44-2, pp. 18-21. There is a total lack of any evidence to show voter fraud has ever been a problem in North Dakota. Accordingly, the Court finds that the Plaintiffs are likely to succeed on the merits of their claim against the Defendant under the Equal Protection Clause of the 14th Amendment to the United States Constitution. Thus, this *Dataphase* factor weighs strongly in favor of the issuance of a preliminary injunction.

Having determined the Plaintiffs are likely to succeed on their claim under the 14th Amendment to the United States Constitution, the Court need not address their claims under the Voting Rights Act or the North Dakota Constitution. See Child Evangelism Fellowship of Minn. v. Minneapolis Special Sch. Dist. No. 1, 690 F.3d 996, 1004 n. 4 (8th Cir. 2012) (concluding that if one claim for relief satisfies the requirements for a preliminary injunction, other claims need not be considered).

B. IRREPARABLE HARM

The Plaintiffs contend they will suffer irreparable harm if N.D.C.C. § 16.1-05-07 is fully implemented without any "fail-safe" provisions. "The basis for injunctive relief in the federal courts has always been irreparable harm and inadequacy of legal remedies." Bandag, Inc. v. Jack's Tire & Oil, Inc., 190 F.3d 924, 926 (8th Cir. 1999). It is well-established that when there is an adequate remedy at law, a preliminary injunction is not appropriate. Modern Computer Sys., Inc., 871 F.2d at 738. To demonstrate irreparable harm, a plaintiff must show the harm is not compensable through an award of monetary damages. Glenwood Bridge, Inc. v. City of Minneapolis, 940 F.2d 367, 371 (8th Cir. 1991); Doe v. LaDue, 514 F. Supp. 2d 1131, 1135 (D. Minn. 2007) (citing Northland Ins. Co. v. Blaylock, 115 F. Supp. 2d 1108, 1116 (D. Minn. 2000)). The Eighth Circuit has explained that a district court can presume irreparable harm if the movant is likely to succeed on the merits. Calvin Klein Cosmetics Corp., 815 F.2d at 505 (citing Black Hills Jewelry Mfg. Co. v. Gold Rush, Inc., 633 F.2d 746, 753 (8th Cir. 1980)).

The irreparable harm the Plaintiffs will suffer if N.D.C.C. § 16.1-05-07 is implemented without any form of a "fail-safe" provision as had previously existed under state law is easy to understand. The right to vote holds a special place in our republic:

> No right is more precious in a free country than that of having a voice in the election of those who make the laws under which as good citizens, we must live. Other rights, even the most basic, are illusory if the right to vote is undermined. Our Constitution leaves no room for classification of people in a way that unnecessarily abridges this right.

Wesberry v. Sanders, 376 U.S. 1, 17 (1964).

It is clear that no legal remedy other than enjoining the State of North Dakota from implementing N.D.C.C. § 16.1-05-07 without any "fail-safe" provisions will be sufficient to ensure Native Americans, and any other citizens struggling to comply with the new voter ID requirements, have a clear and unequivocal opportunity to have their voice heard in future elections. The Plaintiffs have presented undisputed evidence that more than **3,800** Native Americans may likely be denied the right to vote in the upcoming general election in November 2016 absent injunctive relief. See Docket no. 44, p. 12. Thus, this *Dataphase* factor weighs in favor of the issuance of a preliminary injunction at this stage

C. BALANCE OF HARMS AND THE PUBLIC INTEREST

The balance of harm factor analysis examines the harm to all parties involved in the dispute and other interested parties, including the public. Dataphase, 640 F.2d at 114; Glenwood Bridge, Inc. v. City of Minneapolis, 940 F.2d 367, 372 (8th Cir. 1991). "In exercising their sound discretion, courts of equity should pay particular regard for the public consequences in employing the extraordinary remedy of injunction." Weinberger v. Romero-Barcelo, 456 U.S. 305, 312 (1982) (citation omitted). "In each case, a court must balance the competing claims of injury and must consider the effect on each party of the granting or withholding of the requested relief." Amoco Prod. Co. v. Village of Gambell, 480 U.S.531, 542 (1987). These factors—the balance of harms and the public interest—"merge when the Government is the opposing party."

Nken v. Holder, 556 U.S. 418, 435 (2009). Moreover, granting preliminary injunctive relief is only proper if the moving party establishes that entry of an injunction would serve the public interest. Dataphase, 640 F.2d at 113.

The undisputed evidence in the record clearly demonstrates there are likely thousands of eligible voters in North Dakota who lack a qualifying ID. The undisputed evidence produced to date supports the conclusion that some of those voters will simply be unable to obtain the necessary ID, no matter how hard they try.

The State of North Dakota's interests must be measured against the specific remedy the Plaintiffs' seek, which is an injunction requiring the Defendant to implement a "fail-safe" measure as a part of its voter ID laws. The State's interests in requiring a voter ID are to prevent voter fraud and promote voter confidence. However, those interests would not be undermined by allowing Native American voters, or any other voters who cannot obtain an ID, to present an affidavit or declaration in lieu of one of the four (4) forms of permissible voter ID's. The undisputed evidence before the Court reveals that voter fraud in North Dakota has been virtually non-existent. In addition, the Defendant has produced no evidence suggesting the public's confidence in the electoral process would be undermined by excusing those voters who cannot reasonably obtain an ID from actually presenting an ID at the polls on election day.

The Court notes that many states that have voter photo-identification requirements allow those who lack ID's to vote by signing an affidavit or other statement or declaration to that effect, rather than being required to present an ID. The Defendant has never suggested the laws of those states fail to prevent fraud and promote voter confidence. See Idaho Code § 34-1114; Ind. Code § 3-11.7-5-2.(c); La. Rev. Stat § 18:562; Mich. Comp. Laws § 168.523(2); N.C. Gen. Stat. § 163-166.13(c)(2); S.C. Code § 7-13-710(D)(1)(b). Some of the states that accept

affidavits or statements in lieu of an ID require the use of provisional ballots as well as other procedures for challenging the ballots cast by those who do not present an ID. However, some states do not. See Idaho Code § 34-1114; La. Rev. Stat. § 18:562. The State of North Dakota has not argued that the use of provisional ballots is necessary to protect the state's interests.

Furthermore, the State has not shown it would be difficult to implement a remedy in time for the general election on November 8, 2016. To implement a "fail-safe" remedy, the State need only look to the law it repealed in 2013. The State need only direct election officials to print an affidavit form or a declaration form to be made available at the polls, and to accept a properly completed affidavit or declaration from voters in lieu of an ID – precisely what had been done in North Dakota prior to 2013 when the "fail-safe" provisions existed under North Dakota law.[4] The Defendant may have to revise its voting materials relating to the voter ID requirements to include information about an affidavit option, but it is certainly practical to complete such tasks in time for the November 2016 election. There is no need to reinvent the wheel because prior to 2013, North Dakota had "fail-safe" provisions in place to ensure that all voters without an appropriate ID could nevertheless vote at the poll, rather than be denied the right to vote.

More importantly, the undersigned was informed by both parties during a status conference on May 12, 2016, that the State would be able to implement any injunction order if it was issued by early September 2016. Thereafter, the parties jointly agreed to a briefing schedule, which the Court approved, based on the Defendant's representations that the State could comply with any Order if issued by early September 2016.

[4]For an example of the affidavit or declaration form that was ordered on July 27, 2016, in Wisconsin, see Docket No. 49-1, p. 44.

The Court has carefully considered the balance of harms and the public interest *Dataphase* factors and finds that the right of voting-age Native Americans to cast a ballot outweighs any interest North Dakota may have in refusing to implement certain "fail-safe" provisions. The Defendant argues that the timing between the date of this order and election day is insufficient to train poll workers and implement new procedures at polling places across the state to reflect the nature of the injunction. The Court finds these arguments unpersuasive, particularly after the Court was informed by the State that it could comply with any order so long as an order was issued by early September 2016. The Court relied on those assurances and has issued this Order more than one month earlier than the parties requested.

The State of North Dakota conducted elections with "fail-safe" provisions in the North Dakota Century Code during numerous election cycles before 2013 and 2015. It is a minimal burden for the State to conduct this year's election in the same manner it successfully administered elections for decades before the enactment of the new voter ID laws. The State can easily reinstate the "fail-safe" provisions that were repealed in 2013, and/or implement other "fail-safe" provisions utilized in many other states. It is difficult to believe it would be unduly burdensome to revert to a system that was in place just one election cycle ago.

The State also argues there is no viable way to authenticate affidavits signed pursuant to a "fail-safe" provision and, without authentication, voters will be deprived of the assurance that only qualified voters were allowed to cast ballots. The Court finds that the State of North Dakota has produced no evidence suggesting that the public's confidence in the electoral process will be undermined by allowing voters disenfranchised by N.D.C.C. § 16.1-05-07 to vote under a "fail-safe" provision, as has been done in the past. The record reveals that North Dakota is apparently the only state without any "fail-safe" provisions in its election laws. There is no

evidence before the Court that every other state in the nation has been unable to prevent fraud and promote voter confidence by simply allowing the casting of provisional ballots or the implementation of other recognized "fail-safe" provisions as previously existed in this state. In balancing the equities and the public interest, the Court finds these *Dataphase* factors also weigh in favor of the issuance of a preliminary injunction.

III. CONCLUSION

After a careful review of the entire record, and careful consideration of all of the *Dataphase* factors, the Court finds the *Dataphase* factors, when viewed in their totality, weigh in favor of the issuance of a preliminary injunction. The Plaintiffs have met their burden of establishing the necessity of a preliminary injunction at this early stage. The public interest in protecting the most cherished right to vote for thousands of Native Americans who currently lack a qualifying ID and cannot obtain one, outweighs the purported interest and arguments of the State. It is critical the State of North Dakota provide Native Americans an equal and meaningful opportunity to vote in the 2016 election. No eligible voter, regardless of their station in life, should be denied the opportunity to vote. Accordingly, the Plaintiffs' motion for a preliminary injunction (Docket No. 42) is **GRANTED** until further order of the Court. The North Dakota Secretary of State is enjoined from enforcing N.D.C.C. § 16.1-05-07 without any adequate "fail-safe" provisions as had previously been provided to all voters in North Dakota prior to 2013. In the past, North Dakota allowed all citizens who were unable to provide acceptable ID's to cast their vote under two types of "fail-safe" provisions - which were repealed in 2013. The ill-advised repeal of all such "fail-safe" provisions has resulted in an undue burden

on Native American voters and others who attempt to exercise their right to vote. There are a multitude of easy remedies that most states have adopted in some form to alleviate this burden.

IT IS SO ORDERED.

Dated this 1st day of August, 2016.

/s/ Daniel L. Hovland
Daniel L. Hovland, District Judge
United States District Court

Statement of Jacqueline De León Regarding H.B. 1289
Lobbyist Registration SOS Control ID #: 0005437920
Staff Attorney for the Native American Rights Fund
Before the House Government and Veterans Affairs Committee
February 12, 2021

Chairman Kasper and Members of the House Government and Veterans Affairs Committee, thank you for allowing me to testify today. My name is Jacqueline De León, and I am a staff attorney with the Native American Rights Fund ("NARF"). I am here to oppose the extended durational residency requirements of H.B. 1289 and to urge the Committee to vote for a DO NOT PASS recommendation. Since 1970, NARF has provided legal assistance to Indian tribes, organizations, and individuals nationwide who might otherwise have gone without adequate representation. NARF has successfully asserted and defended the most important rights of Indians and tribes in hundreds of major cases, and has achieved significant results in such critical areas as tribal sovereignty, treaty rights, natural resource protection, and Indian education. NARF is a non-profit 501(c)(3) organization that focuses on applying existing laws and treaties to guarantee that national and state governments live up to their legal obligations. NARF is a leader in protecting voting rights and fostering voter engagement in Native communities nationwide, including securing voting rights for tribes in Nevada, Montana, and Alaska just last year.

In 2014, NARF received a request for assistance regarding Native Americans in North Dakota that were being turned away from the polls. NARF began its investigation and was appalled to learn that veterans, school teachers, elders, and other life-long voters were being rejected by poll workers that had known these individuals their entire lives. Following NARF's investigation, in 2016, NARF filed suit on behalf of seven Turtle Mountain plaintiffs that were disenfranchised by the laws. NARF showed that North Dakota's 2013 and 2015 voter ID laws disenfranchised Native American voters and violated both the U.S. and North Dakota Constitutions as well as the Voting Rights Act. The U.S. District Court in North Dakota granted an injunction in favor of the Native American plaintiffs. The Court found that the law violated the U.S. Constitution and required that North Dakota provide a fail-safe mechanism for the 2016 general election. In his decision, Judge Hovland stated, "it is clear that a safety net is needed for those voters who simply cannot obtain a qualifying ID with reasonable effort." *Brakebill v. Jaeger*, No. 1:16-cv-008, 2016 WL 7118548 (D.N.D. Aug. 1, 2016) (order granting preliminary injunction).

This legislature again passed a voter ID law in 2018 that was also challenged on behalf of many of the same plaintiffs as well as in a lawsuit brought by the Spirit Lake Nation and Standing Rock Sioux Tribe. Those lawsuits were settled in May of last year when the Plaintiffs agreed to a Consent Decree with the State that increased access to IDs and established a process for Native

American voters that do not have proof of an address to vote. A copy of the Consent Decree is attached to our testimony.

Upon review of H.B. 1289, it was immediately evident that this proposed bill is likewise unconstitutional and discriminatory. **We oppose H.B. 1289**.

The proposed durational residency requirements for voting in H.B. 1289 are unconstitutional. The requirement infringes on two fundamental rights: the right to vote and the right to travel. The United States Supreme Court long ago heard a case in which another state, Tennessee, attempted to impose durational residency requirements of the exact same length proposed by H.B. 1289. In that case, *Dunn v. Blumstein*, 405 U.S. 330 (1972), the Supreme Court unequivocally held that Tennessee's requirement that a voter have lived in the state for a year and in the county for ninety days was an unconstitutional violation of the Equal Protection Clause of the 14th Amendment. NARF believes H.B. 1289 will meet this same fate if the Legislative Assembly passes it into law. I have attached *Dunn v. Blumstein*, for the record and for your review.

Because the right to vote and travel are so fundamental, any State imposing durational residency requirements must demonstrate that the restriction is necessary to further a compelling government interest. Any limitation on these rights must be "drawn with precision." This is important because any purported justification, such as fraud, must be supported by evidence. There has been no voter fraud in North Dakota that would have been prevented by H.B. 1289. The Heritage Foundation, a conservative think-tank, maintains a running account of all cases of voter fraud across the country dating back to the early 1980's. That database, available here: https://www.heritage.org/voterfraud/search?state=ND, includes just three cases from North Dakota – two where a person voted twice and one where someone collected petition signatures incorrectly. There is no evidence of the integrity of elections being at risk in North Dakota. There are also numerous other voting requirements that make it illegal to engage in voter fraud. These provisions already in place are sufficient to detect and deter fraud. And, again, even if there was a concern about fraud in North Dakota, which the Heritage Foundation proves there is not, extended residency requirements like the ones in H.B. 1289 will not effectively prevent it.

Since *Dunn*, many states have done away with durational residency requirements altogether. In other instances, courts have been accepting of durational residency requirements of about thirty days, which is the residency requirement currently in North Dakota law. There is no need to change the law. The proposed limitations in H.B. 1289 go far beyond what has been allowed by the courts and infringes on Americans' fundamental rights. As Justice Marshall wrote in *Dunn*, these laws "penalize those persons who have traveled from one place to another to establish a new residence." Many North Dakotans, even long-time residents of the state, may fall in to this category. Likewise, Native Americans may choose to live part of the year on the reservation and part of the year in search of economic opportunity. Moving frequently is not a crime. The ability to move frequently is in fact, a right. There is no justification for infringing upon this right.

Alarmingly, however, H.B. 1289 will also disproportionately discriminate against Native Americans. For many of the same reasons as the voter ID law, the extended residency requirements in HB 1289 will directly result in Native Americans in North Dakota having less opportunity to

vote. The unique burdens faced by Native Americans in North Dakota – including a severe housing shortage – mean that tribal members are much more likely to have moved, or to be homeless, or precariously housed. These Native Americans have no choice but to move frequently. They should not be disenfranchised because of instable housing.

Additionally, this bill does not address how these residency requirements will be enforced. Because of the state's broken addressing system, some Native Americans living on reservations do not have residential addresses. The Department of Transportation (DOT) website does not recognize some addresses coming from Native communities. Native Americans also lack access to broadband and cannot always access the DOT online system. Therefore, there is no place for the State to check the residency of all Native Americans.

Indeed, any suggestion that an ID could or should be used to check residency requirements will directly implicate the litigation that has just recently concluded. Native Americans disproportionately lack access to ID, and in some instances it is impossible for them to get an ID with an accurate address on it. In North Dakota, Native Americans travel an average of an hour each way to reach drivers' license sites. Some on the Standing Rock Sioux travel over 60 miles to reach the nearest drivers' license site which is over an hour and a half each way. Evidence, including exhibits and testimony proving these facts, was provided to the court in the voter ID case and is attached to my written testimony for inclusion in the record here.

The settlement reached with the State requires the State to provide new IDs on reservations 30 days prior to the election. This agreement would be undermined if those IDs also had to show residency of a year in North Dakota and 90 days in a precinct since those IDs would not have been issued in time to meet those requirements. Further, the Consent Decree requires that any amendments to Chapter 72-06-03 of the North Dakota Administrative Code, entitled Tribal Identification for Voting, such as an amendment to require proof of durational residency, will require tribal consultations.

In conclusion, proof of durational residency may be impossible for many Native Americans and they could therefore be excluded from voting through no fault of their own. Given the extensive legislation around the voter ID laws, this legislature should be well aware of the limitations in Native communities. I implore you to begin crafting laws that take into account the hardships faced by Native communities. Ignoring those hardships to the detriment of Native voters is unconstitutional and fails the obligations each of you have to serve all of your constituents fairly and equitably.

We strongly oppose adoption of H.B. 1289. Thank you.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA

Richard Brakebill, Dorothy Herman, Della Merrick, Elvis Norquay, Ray Norquay, and Lucille Vivier, on behalf of themselves, Plaintiffs, vs. Alvin Jaeger, in his official capacity as Secretary of State, Defendant.	)	**ORDER, CONSENT DECREE, AND JUDGMENT** Case No. 1:16-cv-008
Spirit Lake Tribe, on its own behalf and on behalf of its members, et al., Plaintiffs, vs. Alvin Jaeger, in his official capacity as Secretary of State, Defendant..	)	Case No. 1:18-cv-222

Before the Court is an uncontested motion for the entry of a Consent Decree filed on April 24, 2020. See Doc. No. 96. The Plaintiffs in the *Brakebill* case alleged that North Dakota's voter ID law, N.D.C.C. § 16.1-01-04.1 as amended, violates Section 2 of the Voting Rights Act (42 U.S.C.§1973), the 14th and 15th Amendments to the United States Constitution, and Article I and Article II of the North Dakota Constitution. In the *Spirit Lake* case, the Plaintiffs alleged the Secretary of State violated the voting rights guaranteed by Section 2 of the Voting Rights Act (42 U.S.C. §1973), and the 1st, 14th and 15th Amendments to the United States Constitution. The Plaintiffs alleged that the North Dakota Legislative Assembly's

enactment of N.D.C.C. § 16.1-01-04,1 and the Secretary's implementation of the statute violated their voting rights and the rights of their members. The Secretary denied the allegations. The cases have been consolidated. In order to avoid prolonged, expensive, and potentially divisive litigation, all of the parties agreed to a compromise settlement and to entry of a Consent Decree. The settlement encompasses all issues save for the pending motion for attorneys fees and costs in the *Brakebill* case which the Court will address in a separate order.

Approval of a consent decree is within the informed discretion of the Court. United States v. Union Elec. Co., 132 F.3d 422, 430 (8th Cir. 1997). That discretion generally should be exercised in favor of the settlement of litigation. Donovan v. Robbins, 752 F.2d 1170, 1177 (7th Cir. 1985). In reviewing a consent decree, the court must determine whether it is fair, adequate, reasonable, and consistent with the goals of the underlying legislation. Union Elec. Co., 132 F.3d at 430; see also United States v. Hercules, Inc., 961 F.2d 796, 800 (8th Cir. 1992); United States v. Metro. St. Louis Sewer District, 952 F.2d 1040, 1044 (8th Cir. 1992). The role of the court is to ensure that the settlement "is not illegal, a product of collusion, or against the public interest." United States v. Colorado, 937 F.2d 505, 509 (10th Cir. 1991).

The Court has carefully reviewed the entire record, the parties' filings, the Consent Decree and the relevant law. The Court finds the Consent Decree is fair, reasonable, and consistent with the law and the public interest. For good cause shown, the motion (Doc. No. 96) is **GRANTED.** It is therefore **ORDERED**, **ADJUDGED**, and **DECREED** that the terms of the Consent Decree are approved as set forth herein:

1. As used throughout this document, the term "Tribal Government" shall have the definition established in N.D.A.C. § 72-06-03-01(3) as defined on the date the Consent Decree is entered. The terms "tribal identification" and "supplemental documentation"

shall include the documentation described in N.D.A.C. §§ 72-06-03-02, 72-06-03-04, on the date the Consent Decree is entered. Nothing in the Consent Decree shall preclude the Secretary of State from recognizing additional forms of tribal ID and supplemental documentation pursuant to a) future agreement of the Parties or b) future administrative or legislative enactment.

2. This Court has jurisdiction over these actions pursuant to 28 U.S.C. §§ 1331,1343, 1362,1367, and 52 U.S.C. § 10308(f).

3. Entry of this Consent Decree shall constitute final judgment in the Brakebill and Spirit Lake cases, notwithstanding the pending Plaintiffs' Motion for Attorneys' Fees and Costs in the Brakebill Case (Case No. Doc. 1:16-cv-008, Doc. No. 107). However, after final judgment is entered, the Court will retain jurisdiction over the Global Settlement Agreement and this Consent Decree for the purpose of enforcing both the Settlement Agreement and the Consent Decree. If a dispute arises between the Parties relating to the implementation of the terms of this Consent Decree, the Parties shall confer in good faith in an attempt to resolve the dispute without Court involvement. If the Parties are unable to resolve the dispute through good faith conferral, the dispute may be presented to the Court by motion for resolution by the Court. The dispute resolution process described in this paragraph is intended to enforce the overall implementation of this Consent Decree with respect to voter ID related processes and procedures in North Dakota. The Court only has the jurisdiction to enforce the Consent Decree, not garden-variety election administration errors. It will be up to the Court to make a determination about when complaints constitute a violation of the Consent Decree.

4. The Secretary of State recently promulgated administrative rules, Chapter 72-06- 03 of the North Dakota Administrative Code, entitled Tribal Identification for Voting, which were approved by the Governor on February 4, 2020 for immediate emergency effectiveness (hereinafter "Rules"). Should the Secretary of State seek to amend the Rules, the Secretary of State shall confer in good faith with the tribal councils of the tribes located in North Dakota about such amendments before the amendments are promulgated.

5. Plaintiffs waive any rights they may have to the recovery of attorney's fees and costs from the Secretary of State or from any other North Dakota official or entity in both the Brakebill and Spirit Lake cases, except the amount already sought by motion in the Pending Brakebill Attorney's Fees Claim. The excepted amount is not resolved by the Consent Decree; it remains in dispute and shall be decided by the Court. This waiver is limited to the recovery of fees and costs Plaintiffs would be entitled as prevailing parties in these matters. This waiver does not extend to any future litigation that may arise regarding the enforcement of this Global Settlement and Consent Decree or any future controversy among the parties.

6. The Secretary of State shall recognize tribal IDs and supplemental documentation issued to tribal members and to non-member residents who are qualified electors living within the Tribal Government's jurisdiction.

7. The designation by a Tribal Government of a voter's current residential street address within the Tribal Government's jurisdiction, is valid and conclusive for purposes of voting. The Secretary of State shall also work with county 911 coordinators to encourage the coordinators and the Tribal Governments to assist one another and cooperate to

identify the 911 street addresses for the physical location of residences within the Tribal Government's jurisdiction and share information about any addresses designated by the Tribal Government.

8. The Secretary of State shall ensure that Tribal Governments are provided with county-approved precinct maps for the precincts that include land within the Tribal Government's jurisdiction at least 50 days prior to a statewide election.

9. The Secretary of State shall incorporate the information addressed by this Consent Decree and the Rules, as applicable, into state materials for public education, pollworker training, the absentee ballot application form, and guidance to county auditors, including the election manual.

10. The Secretary of State shall create and distribute sample forms for the Tribal Governments to use as templates for tribal ID or supplemental documentation forms and keep these templates available on the Secretary of State's website. At the request of any Tribal Government, the Secretary of State shall make available, free-of-charge, tribal ID forms and supplemental documentation forms, for use by Tribal Governments.

11. The Secretary of State shall work in good faith with the Indian Affairs Commission and the Department of Transportation ("DOT") to develop and implement a program of distributing free nondriver photo identification cards on all North Dakota reservations within 30 days in advance of statewide elections, arranged in consultation with the Tribal Governments.

12. The Secretary of State shall work in good faith with the Office of Management and Budget and the Governor's Office to identify existing appropriations to reimburse Tribal Governments in North Dakota for the administrative costs of issuing addresses and IDs

for voting purposes for the 2020 election cycle in the amount up to $5,000 for actual costs incurred per Tribal Government. The Secretary of State will work in good faith with the Plaintiffs to seek an ongoing legislative appropriation to reimburse Tribal Governments for the administrative costs of issuing addresses and IDs for voting purposes in the next legislative assembly for the amount up to $5,000 for actual costs incurred per Tribal Government for each statewide election cycle.

13. After each statewide election, the Secretary of State shall issue a report containing data regarding set aside ballots and verification of set aside ballots in counties that have tribal reservation land within their boundaries. Except as prohibited by state or federal law or a court order, the county report shall detail the reason each ballot was marked and set-aside, the means by which each set aside ballot was verified, and how many set-aside ballots were counted due to verification and how many set-aside ballots were not counted due to failure to verify. For set aside ballots that were marked set aside because of an insufficient ID, missing or invalid address, or address marked with a map, except as prohibited by state or federal law or a court order, the report will indicate whether the voter was assigned an address (if applicable), whether the voter's address was verified (if applicable), and the methods used to communicate the residential street address to the relevant Tribe and verified voters.

14. The State shall accept as valid for voting purposes, a tribal ID or supplemental document issued by a Tribal Government, that locates a person's residence within a voting precinct by marking it on a map, or by another method agreed upon by the Parties, identifying the location of residence other than a numbered street address. All addresses provided in this manner will be assigned a 911 residential street address by the county 911 coordinator

who shall also be required to communicate that address to the voter. If the location indicated by the voter has already been assigned a residential street address, that address shall be verified and provided to the voter. A ballot marked pursuant to this paragraph will not be discarded solely due to failure to reach the individual and communicate the assigned or verified address. Any set-aside ballot marked pursuant to this paragraph with a verified or assigned address will be counted unless the ballot is invalid for a non-address related issue (e.g., wrong ballot cast).

15. If a voter utilizes the method identified in paragraph 14 on election day, the individual shall be allowed to vote a set aside ballot. If an applicant utilizes the method identified in paragraph 14 on an absentee or mail ballot application, or if an address provided by the applicant is determined to be "invalid," the 911 coordinator will verify or assign an address as required by paragraph 14, and the Secretary shall direct the county auditors to provide supplemental documentation of that address along with the absentee or mail ballot to the applicant. This process shall be completed in a timely manner to ensure that the assignment or verification process does not cause the voter to miss their opportunity to vote. If necessary to determine the correct residential street address, the Secretary of State shall direct county auditors to contact the applicant and, if necessary, the Tribal Government.

16. For purposes of this Consent Decree, a residential street address is "verified" by identifying and providing the correct address for the location of the voter's residence indicated by the voter, where such an address has already been assigned to that location of residence. An address is "assigned" to such a voter when no such address has previously been assigned to that location of residence under the county addressing

system. For purposes of this Consent Decree, "residence" shall be defined by the North Dakota Century Code (see N.D. Cent. Code § 16.1-01-04.2).

17. The Secretary of State, in consultation with county auditors and 911 coordinators in counties containing tribal reservation land, shall develop a system to verify or assign residential street addresses within the time frame permitted for verifying a set aside ballot for voters who vote a set aside ballot pursuant to paragraph 15. Once the residential street address for set aside ballots cast pursuant to paragraph 15 is verified or assigned by the 911 coordinator, the set aside ballot will be counted during the meeting of the county canvassing board.

18. In addition to the procedures outlined for set-aside ballots above, the Secretary of State shall communicate with the Tribal Governments immediately after a statewide election regarding issues that might reasonably be cured by the Tribal Government on behalf of a tribal member or on behalf of a non-member resident who is a qualified elector living within the Tribal Government's jurisdiction. Nothing herein will prevent alterations to the specific procedures outlined in 72-06-03-05 of the North Dakota Administrative Code so long as they comply with this Consent Decree.

19. The Secretary of State and the Plaintiff Tribes shall designate a set number of regularly scheduled meetings between tribal leaders and representatives of the Secretary of State's office, Including in advance of statewide election cycles.

20. The Secretary of State and the Plaintiff Tribes shall develop a memorandum of understanding with intent to improve communications and relationships between the Secretary of State and Spirit Lake Nation and Standing Rock Sioux Tribe, respectively.

Any other Tribal Government may request such a memorandum of understanding be implemented between the Tribal Government and the Secretary of State.

21. Nothing contained in this Consent Decree is intended to, nor shall be construed to, violate current state or federal law.

22. The Secretary of State shall pay the full fee of the mediator used by the parties on February 6, 2020.

IT IS SO ORDERED.

Dated this 27th day of April, 2020.

/s/ Daniel L. Hovland
Daniel L. Hovland, District Judge
United States District Court

Exhibit 9

UNITED STATES DISTRICT COURT
DISTRICT OF NORTH DAKOTA
SOUTHWESTERN DIVISION

Richard Brakebill, Deloris Baker, Dorothy Herman, Della Merrick, Elvis Norquay, Ray Norquay, and Lucille Vivier, on behalf of themselves, Plaintiffs, vs. Alvin Jaeger, in his official capacity as the North Dakota Secretary of State, Defendants.	Civil No. 1:16-cv-8

Addendum to Declaration of Daniel McCool, Ph.D.

I, Daniel McCool, Ph.D., declare as follows:

I am a professor of Political Science at the University of Utah. I have personal knowledge of the facts set forth in this addendum and could and would competently testify to those facts if asked to do so.

I. Introduction

This report is an addendum to the Declaration I filed in *Brakebill v. Jaeger* on June 20, 2016. That report focused on the impact of two voter ID laws passed by North Dakota: HB 1332 in 2013, and HB 1333 in 2015. After my report was submitted, the state of North Dakota passed another voter ID bill, HB 1369, in 2017. That law created additional changes in the requirements for identification in order to cast a ballot. Thus, this report is an update that covers the new law and

additional developments that have occurred in the state since my last report was filed.

II. The Research Question and Methodology

The essential question regarding HB 1369 is whether it has a differential and discriminatory impact on American Indian voters in North Dakota. In my previous Declaration, I relied upon three sources to guide my analysis: The "Jingles factors," the "Senate factors," and the "Arlington Heights factors" (pp. 3-4). I have broadly used them again for this analysis, but in abbreviated form. And again I will employ the standard techniques of qualitative analysis that I described in my first Declaration (4-6).

III. Six Factors that Answer the Research Question

In reviewing the available evidence from the past year, there are six factors that were obviously a significant part of the socio-political milieu that surrounded the passage of HB 1369:

1. Voting Related Discrimination/Discriminatory Voting Practices
2. The Effects of Discrimination/Racial Hostility
3. Departure from Normal Practice
4. The Tenuousness of the Policy
5. Bloc Voting/Racially Polarized Elections
6. Sequence of Events/Impact

1. Voting Related Discrimination/Discriminatory Voting Practices:

HB 1369 made several fundamental changes in the voter ID law. First, it continued the requirement that all voters have a state-recognized ID, but if the voter's ID did not have a street address, they could supplement it with five alternative documents. Second, it abandoned the requirement established by this Court for a "fail-safe" affidavit option for those who did not have an approved ID. And third, it allowed a voter who arrived at the polls without an approved ID to cast a provisional ballot which is then set aside until that individual returns with a valid ID, either to the poll or to an election administrator prior to the meeting of the canvassing board.

The previous two voter ID laws clearly had a discriminatory impact; that was established by my report and the Barreto/Sanchez report, and the holding of this Court. The sponsors of the new voter ID bill claimed they passed 1369 in response to this Court's decision and in recognition that a significant portion of American Indians did not have the requisite ID. The Deputy Secretary of State made this point in a letter: "This portion of the bill [the new ID requirements] is valuable to the Native Americans of our state since it will make all tribal ID cards valid when supplemented" (Silrum to Kasper 27 Jan. 2017). The problem with the previous law was that it required a street address on the ID for it to be valid for the purpose of voting. But, as even the state recognizes now, many tribal IDs do not have a street address; they have a PO Box or a non-residential address.

The "solution" to this problem as presented by HB 1369 was to allow five types of supplementary ID to be used to verify an ID without a street address, which thus "provide the missing or outdated information" (Sec. 2,3b, HB 1369). In other words, a street address must appear on one of the following: a current utility bill, a current bank statement, a check from a government entity, a paycheck, or a document issued by a government. The glaring problem with this "solution" is that for many tribal members all of these types of supplemental IDs may also have only a PO Box or non-residential address. The only difference between the old law and the new law is that the former law—the one that violated the Constitution—required the street address on the tribal ID, and the new voter ID law requires the street address on a supplemental ID (North Dakota Memorandum 2018: 10).

Many areas of reservations simply lack street addresses; in some areas the streets do not even have names. Russ McDonald, the President of United Tribes Technical College, explained that on his reservation (Spirit Lake), in many places there are no street addresses, no names on the roads, and the only way to navigate is to "know the land" (McDonald 5 Feb. 2018). Nancy Greene-Robertson, the former Secretary-Treasurer of the Spirit Lake Tribe, confirmed this: "It's huge that people don't have a street address; I can't even get a package here. There's no street signs, no numbers on houses unless it's a housing unit" (Greene-Robertson 5 Feb. 2018). Two members of the Turtle Mt. Band of Chippewas explained to me that, until recently, the BIA issued tribal IDs at Turtle Mountain, and virtually none of them had street addresses (C. Davis and L. Davis 2018).

Furthermore, the PO Box may be in a different location than the actual residence of the voter; it may even be in a different precinct. If a Native American voter does not have a street address, then all forms of the "supplemental ID" listed in the new law would also not have a street address. Given the heavy emphasis on requiring a street address (the phrase "residential address" or some variation thereof appears in the new legislation five times), tribal members who have a PO box rather than a street address would be turned away despite being eligible to vote.

Deputy Secretary of State Silrum, during the development of HB 1369, again emphasized the importance of having a street address: "Time and time again it has been pointed out to us that not all tribal IDs have a residential address on them. They have mailing addresses instead and we have always said that people don't reside in PO boxes. This means that a native [sic] American would be able to use their tribal ID and supplement it with another document" (Silrum to Montplaisir 18 Jan. 2017). Thus, the street address must appear on the "supplemental" form of ID; otherwise it would not solve the problem Mr. Silrum perceives with people using PO Boxes. He alludes to this in another email: "the bill offers legitimate options for voters to supplement their ID if it is out-of-date or to provide any missing requirements as is the case with some tribal IDs that only have a mailing address as opposed to a residential address" [emphasis mine] (Silrum to Jackson 13 Jan 2017).

His strong conviction that a street address is essential for all forms of voter ID is evident in his comments regarding other forms of ID. For a military ID, "they need something that shows their address here—the passport and military ID normally

would not." As for absentee ballot applications, a military ID should "include both their residential address and mailing address." When that ID is processed, that residential address must be matched with the one on record (Silrum to Montplaisir Jan. 18 2017). Two weeks later Mr. Silrum again expressed his strong belief that a residential address, and not a PO Box, must be a prerequisite to the right to vote: "And, in a rural state like ND, many people have mailing addresses that do not reflect their residential address. It is entirely possible for anyone to have a mailing address in a different county from the one in which they reside" (Silrum to von Spakovsky and Palmer 3 Feb. 2017). Clearly, Mr. Silrum expects each individual to have a residential address under the new law—a clear disadvantage to many Native Americans living on reservations.

This requirement in the new ID law—that a street address is required for every voter—was reiterated by the Director of the Driver's License Division in an email to Mr. Silrum: "Section 2 [of HB 1369]—requiring validation of a residential address….this appears to imply that a validation process of a residential address for all citizens through documentary evidence is required, but it is directed at the voting citizen and not the department [The ND Department of Transportation] to validate such address" [emphasis mine] (Jackson to Silrum 17 Jan. 2017).

The lack of a street address has a disproportionate impact on Native Americans because they are more likely to not have an address. The 2016 Barreto/Sanchez report found that 21.6 percent of Native Americans in their sample do not have two documents that have a street address (p. 3, 21), and they are twice as likely to lack a valid ID as Anglos (19). They estimated that 7,984 Native

Americans in North Dakota do not have a qualifying ID (i.e. an ID with a street address) (19). Obviously some of these individuals lack such an ID because they do not have a street address. Thus, the "supplemental ID" option in the new ID law does not solve the problem faced by so many Native people under the prior voter ID laws.

The second reform in HB 1369 was to allow someone who shows up at the polls without a valid ID to go home, find a valid ID, and then show it to a poll worker or an election administrator. But this option suffers from the same liability; if an individual does not have a street address, they cannot go home and produce a valid form of ID or supplemental form of ID; they still cannot meet the dictates of the law, even though they are eligible to vote. The only alternative for such individuals is to exercise the "fail-safe" affidavit option, but that was eliminated by HB 1369.

It is also evident that the state did not expect, or desire, that this option would actually be useful to a significant number of voters. The Deputy Secretary of State wrote to a county clerk and assured him that he did not expect this option would be of much use to voters: "As for the set-aside ballots, I hope the fact that many individuals who cast them will not likely come into your office later to verify their qualifications will put some of the fears to rest about long lines outside of your office in the six days after the election" (Silrum to Montplaisir 18 Jan. 2017). In another email exchange, Mr. Silrum again makes the point that he does not expect this option to be utilized by many voters: "My colleagues [other state SOSs] say that since these voters don't return to verify their registration status, the cost for a ballot and an envelope is a small price to pay to remove the conflict from the polling place" (Silrum to Montplaisir 18 Jan. 2017).

Of course, this entire discussion is based on the assumption that every Native American voter has a tribal ID—with or without a residential address, and can supplement it if necessary. None of the new options are available without a tribal ID or some other form of ID. In my last report, I detailed the difficulties Native Americans face when they attempt to obtain a state ID. But it is important to note that not all tribal members have a tribal ID. In an interview, Russ McDonald, the President of United Tribes Technical College, made that point: "There are tribal members who have no form of ID, including a tribal ID. I was one of them at one time. I just didn't have the need for one" (McDonald 5 Feb. 2018). His claim was corroborated by the former Secretary-Treasurer of the tribe: "Yes, people do not have any kind of ID, even a tribal ID. No ID at all, and it's a big number" (Greene-Robertson 5 Feb. 2018). On the Turtle Mountain Reservation, two tribal members explained to me that the tribal ID, which costs $10, expires after three years. Many members do not re-new their ID, given the expense and the need to renew so often (C. Davis and L. Davis 9 Feb. 2018).

In sum, the new voter ID law has precisely the same set of liabilities as the previous ID law. Native Americans without an ID, or without a residential street address, will be turned away at the polls, even though they are eligible to vote.

2. The Effects of Discrimination/Racial Hostility:

To say that the relationship between the Indian community and the Anglo community in North Dakota is currently strained would be a significant understatement. The voter ID bill, and the bitter conflict over the Dakota Access Pipeline (DAPL), combined with the long history of discrimination I documented in

my previous report, have created an atmosphere of tension and racial polarization—precisely the situation described in both the Senate and Jingles factors.

This hostility was expressed in the state legislature by several bills that were interpreted by some as "anti-Indian" or punitive legislation. As one legislator put it, "these bills are really coming at us really out of anger" (Representative Vetter 6 Feb. 2017: 1). Several of the bills were aimed at the DAPL protesters. Strong language was used on the floor of the House to describe them: "riots" and "ecoterrorism" (Representative Porter 6 Feb. 2017); "thugs" and "ecoterrorists" (Representative R. C. Becker 6 Feb. 2017); "If we want to protect our society and continue to have a free country, we better get these protesters taken care of" (Representative R. S. Becker 6 Feb. 2017). My point is not to agree or disagree with these characterizations, but to point out just how hostile and polarized the situation in North Dakota was in 2017—the year that HB 1369 was passed.

The following eight bills were a direct response to the DAPL protests:

- HB 1193 would make it a felony to cause economic harm while committing disorderly conduct. It did not pass.
- HB 1383 would criminalize loitering; "An individual may not loiter and prowl in a place at a time or in an unusual manner that warrants justifiable or reasonable alarm or immediate concern for the safety of other individuals or property in the vicinity." It did not pass.

- HB 1426 increased the penalties for riot offenses for riots that involve 100 or more people. This bill passed both houses by wide margins and became law.
- HB 1281 requested that the federal government return lands and mineral rights under Lake Oahe to cover "the costs borne by the state to ensure public safety in relation to protests against the placement of an oil pipeline under the Missouri River." It did not become law.
- HB 1203 was aimed at protesters who blocked traffic, and held: "Notwithstanding any other provision of law, a driver of a motor vehicle who, while exercising reasonable care, causes injury or death to an individual who is intentionally obstructing vehicular traffic on a public road, street, or highway may not be held liable for any damages." This bill did not become law.
- HB 1332 (not the same bill as the first voter ID bill) provided that anyone convicted of trespass had to pay an additional $1,000 to the county sheriff. It did not pass.
- HB 1304 made it illegal to wear a mask on public property. This bill was introduced by Representative Carlson—the same legislator who introduced HB 1369. It became law after passing both the House and Senate by wide margins.
- HB 1293 increased penalties for trespassing. It passed.

- SB 2246 made it unlawful not to vacate an area, even on public property, if ordered to do so by police; the fine was set at $5,000. This bill did not pass.

This raft of bills provoked strong reactions on both sides. The legislator who introduced the bill to waive liability for someone running over a protester in the road saw it this way: "...what we are dealing with was terrorism out there" (Wootson 17 Jan. 2017). Ladonna Brave Bull Allard, a protester and member of the Standing Rock Sioux Tribe, had a different view: "I have never seen so many people frightened in all my life. My recommendation for the legislature would be to pray harder. I think people are living on rumor and gossip more than they do the truth" (Wootson 17 Jan. 2017). Nancy Greene-Robertson described the tension this way: "It's not peaceful. There's a lot of rebuilding that needs to take place" (Greene-Robertson 5 Feb. 2018). Carol Davis at the Turtle Mountain Reservation also made reference to the high level of hostility: "The people who are in leadership don't have a good attitude toward tribal members" (C. Davis 2018).

These bills were a direct response to the DAPL protests, which were clearly polarizing and confrontational. But another bill appeared to be aimed squarely at Native American tribes in the state. HB 3033 proposed to build six state-regulated private casinos; this was a transparent bid to run Indian casinos out of business (MacPherson 2 Mar. 2017). This bill was introduced by Representative Carlson—the same legislator who sponsored the voter ID bill. Tribal leaders considered it "retaliatory" (McDonald 5 Feb. 2018). One of the legislators who considered this bill in committee noted "...there were concerns among the committee members that the

introduction of the resolution has the appearance of being a response to the recent issues being faced by the state with regard to the protest" (Roer Jones, Representative 23 Mar. 2017). One of the few Native American legislators, Senator Richard Marcellais, had a much more adamant response to Representative Carlson's casino bill: "It's racist. I feel like going over there and knocking him through the window" (MacPherson 2 Mar. 2017).

The intensity and depth of the racial polarization that is evident in this legislative activity was summarized by Senator Dever: "I think that... there have been damages done to the relationships between our general population and the population south of here through recent events. But it needs to be made clear that that is a two-sided thing. That we're going to have to work together to repair some of those things that have come together over the last 30, 40, 50 years to the positive and now have been challenged" (Dever 14 Feb. 2017).

It was within this atmosphere of heightened racial tensions that HB 1369 was introduced. The bill that was largely written by Mr. Silrum was assigned to the House Government and Veterans Affairs Committee. The chair of that committee, Representative Jim Kasper, sent out an email to select colleagues informing them of the hearing date and then wrote in all capitals: "I WANT A HUGE CROWD OF ELECTION OFFICIALS AND DISTRICT CHAIRS THERE TO TESTIFY" (Kasper to legislators 16 Jan. 2017). Knowing that this bill would be of enormous interest to tribes, and was a response to the lawsuit filed by tribal members, I cannot determine if he also invited them to be a part of the "huge crowd."

3. Departure from Normal Practice:

HB 1369 was essentially "ghost" written by the Deputy Secretary of State: "HB 1369 ... is a bill I wrote" (Silrum to von Spakovsky and Palmer 3 Feb. 2017). He then wrote to certain legislators and asked them to introduce it as though it originated with them. He alludes to this unusual departure from normal practice: "We think it is best that election officials would not be the ones to request this amendment because it should be a good change for all reasons and not just for voting purposes. If election officials were to propose this amendment, it would be in the legislative history and would be another reason the SOS [Secretary of State] could have another lawsuit brought against us" (Silrum to Montplaisir 18 Jan. 2017). In an email to a select group of legislators, the Deputy Secretary of State suggested which legislators he would like to introduce the legislation and then urged all the recipient legislators to sign on to the bill. Interestingly, the subject line of the email is: "Potential Legislative Response to the Voter ID Lawsuit—Attempt to Avoid a Trial" (Silrum to legislators 4 Jan. 2017). In that email, he suggested that the bill be introduced by "Rep. Al Carlson or Senator Rich Warder [sic]," both of whom were among the recipients. He got his wish; both men became prime sponsors.

In another example of departure from normal practice, the Deputy Secretary of State, in an email to legislators, noted that "I know that I have never worked on a bill that has gotten to version 5 before its introduction" (Silrum to Kasper and Louser 13 Jan. 2017).

A final departure from normal practice is the passage of three different voter ID laws in the space of just four years. This makes it difficult for anyone to

understand the latest requirements to vote in North Dakota. A county auditor lamented how the constant changes have taken a toll on election workers: "Every election they [election workers] have new things to learn. The hardest part of elections today is finding, training, and retaining election workers. And this [HB 1369] will add to the duties, responsibilities and will make it more difficult to find election workers" (quoted in Hageman 27 Jan. 2017).

4. The Tenuousness of the Policy

HB 1369 eliminated the affidavit option because of alleged voter fraud during the 2016 elections. A record number of people—16,215--chose to rely on affidavits in that election (Silrum Affidavit 2018: 8). That was up from 10,519 in 2012 (no one used it in 2014 because it had been eliminated) (SOS000700). The increase in affidavits may be explained by the implementation of the strict ID laws, although that cannot be confirmed without a thorough analysis. Of the 16,215 voters who filed affidavits in 2016, there were some that resulted in claims that voter fraud occurred—hence the name of the new voter ID law as the "Voter Integrity Act." But a close analysis of the affidavits indicates that North Dakota, which has long been known as a state free of voter fraud, continues to be virtually fraud-free.

A total of 349,945 people voted in the 2016 election in North Dakota. Of those, the Assistant Attorney General initially indicated that they might have four (she was not actually sure) potential cases of voter fraud (Fischer to Jaeger 26 Jan. 2017). However, nearly three months after the election she admitted that no one had even been referred for prosecution, much less convicted (Fischer to Jaeger 26

Jan. 2017). The state was acutely aware that claims of voter fraud had important implications for this lawsuit. The Deputy Secretary of State noted that "the answer we give to this letter could ultimately be used by the attorneys for the plaintiffs in our pending lawsuit" (Silrum to Jaeger, Arnold, Fischer 25 Jan. 2017). "The letter" to which he refers is the state's claim that voting fraud might have occurred. Thus, he carefully crafted language that stressed that "No cases of voter fraud have been prosecuted to this point because the counties are still conducting their investigations" (Id.). Then, in an artfully balanced sentence, he tried to keep alive the idea that voter fraud may be a problem "We are therefore unwilling to say that voter fraud did occur to the same degree we would say that it did not occur" (Id.). That was over a year ago. By last summer, the state had apparently identified two possible cases of double-voting; one was due to some confusion by a man with both medical and legal problems, and the other by a man who possibly voted in two states (Schramm 11 Sept. 2017; Hageman). Also, a case from 2014 involved a father who had helped his 18-year old daughter, who was a college student, cast an absentee ballot, but then she also voted where she attended college (Schramm 11 Sept. 2017).

The most recent statement by the Secretary of State's office on alleged voter fraud was made by Mr. Silrum in his 2018 affidavit: "Prior to 2016, the SOS is not aware of any convictions for voter fraud being obtained in North Dakota" (Silrum 2018: 5). For the 2016 election, Mr. Silrum found three possible cases of double-voting (Silrum Affidavit 2018: 16). These are the cases alluded to earlier; two possible cases involved men who voted in two states, a man who voted in two

counties but was given neuropsychological testing rather than a prison sentence (Silrum Affidavit 2018: 16). It does not appear to me that any of these three cases involved the fraudulent use of affidavits.

Rather than admit that voter fraud simply isn't occurring, Mr. Silrum instead claimed that state attorneys don't pursue vote fraud cases because they have "cases of greater consequences upon which to focus" (Silrum 2018: 4). Thus, "voter fraud" is not sufficiently important to pursue convictions, but is sufficiently important that the state has passed three voter ID bills in the last four years. Also it does not appear that any of the three possible cases of fraud involved affidavits. Thus, the rationale for passing HB 1369 is based on a slight possibility that some people who used the affidavit process were not legally entitled to vote in North Dakota, but there is no evidence to substantiate that claim.

The highly speculative nature of the state's voter fraud claims is evident in the language of Mr. Silrum's 2018 Affidavit in this case: "There were concerns about the validity" (p. 4); "The SOS cannot confirm" (p. 4); "it is still unknown" (p. 4); "nine suspected cases" (p. 5); "Questions remain" (p. 14): "Questions also remain" (p. 14); "investigations are still ongoing" (p. 15); "one probable case" (p. 16); "This raises suspicion" (p. 17); "raises questions" (p. 18). Similar conditional and unsubstantiated language is also found in the State's 2018 Memorandum in this case:

- "In response to concerns that the validity of an extremely close 2012 United States Senate race could not be verified… [the state passed its first voter ID law]" (p. 7).
- "A special interest group … could cast fraudulent votes…" (p. 7).

- "The practice of using self-authenticating Voter's Affidavits has been a potential problem…" (p. 12).
- "…purposeful fraud was likely required…" (p. 13).
- "[Goldwater's] belief that voter fraud…" (p. 14).
- "…an election some believe was impacted by voter fraud…" (p. 14).
- "…leaving open the possibility that some of them…" (p. 15).
- "…the continued use of this 'fail-safe' raises the possibility…" (p. 16).
- "North Dakota's small population, coupled with the use of self-authenticating Voter's Affidavits, make it a potential target…" (p. 16).
- "Because of the unanswered questions raised about the qualifications of the voters…" (p. 17).
- "…fraud could be happening…" (p. 18).
- "…the State identified at least nine suspected cases of fraudulent votes…" (p. 19)

[all italic emphases are mine]

This is not the language of evidentiary documentation, but rather an expression of suspicion of what might have occurred if a whole series of assumptions turn out to be true if they are ever verified. The focus in these documents is on raising questions, not answering them.

To be sure, there are legitimate questions about a small percentage of the affidavits. According to Mr. Silrum, 3,719 of them could not be verified (Silrum Affidavit 2018: 12), but he presents no evidence that any of them were actually cast by people who were not eligible to vote. Lack of verification means that a lot of people didn't bother to return the post card sent to them after the election—postcards that had a virtually impossible deadline of six days after the election (Silrum Affidavit 2018: 9).

There were also claims that 86 affidavits had a Minnesota address (Hageman 3 Feb. 2017). The state simply assumed these were all cases of voter fraud with a pernicious design to throw the election. But there are several explanations for the "Minnesota ballots." They could have been filed by students who kept their

residence in North Dakota but temporarily live on a college campus in Minnesota (a lot of North Dakotans attend school in Minnesota). As long as these students don't vote in Minnesota and their permanent residence remains in North Dakota, then it appears to me that they would not be violating the law. Also, some times people make honest mistakes, such as the case alluded to above when the father helped his 18-year old college-student daughter vote for the first time, unaware that she also voted in-person (Schramm 11 Sept. 2017). That hardly sounds like a conscious criminal act with a view to destroying the integrity of the electoral process. And some times the state makes mistakes. Amid claims that seven "non-citizens" committed fraud by voting, the state discovered that six of the seven were actually naturalized citizens and entitled to vote, and the seventh person could not be found (Schramm 11 Sept. 2017; Silrum Affidavit 2018: 17).

The rationale for passing HB 1369 rests on the assumption that the 86 ballots with Minnesota addresses were a result of individuals consciously breaking the law and committing a serious crime (now a felony) in the hope that somehow their vote might swing a race to their favored candidate. That begs the question; if an individual was intent on committing the crime of voter fraud, it would be foolish to use an out-of-state address—a dead giveaway that something is askew. That is a bit like casing a neighborhood with the word "Burglar" painted on your back.

However, let us assume that all 86 affidavits were indeed illegal votes from out-of-staters who were not just making a clerical error but were consciously violating the law; that would mean that 0.02 percent of the votes cast in the 2016 election in North Dakota were fraudulent. Whether that is a sufficient rationale to

throw out a voting option—the affidavit—that allowed 16,215 to exercise the fundamental right to vote is a question that goes directly to the issue of vote denial.

5. Bloc Voting/Racially Polarized Elections:

Another potential driver of the new voter ID law may be partisan advantage. The effort to implement one of the strictest voter ID laws in the country began after Heidi Heitkamp narrowly defeated Rick Berg for the U. S. Senate in 2012 (the first ID bill was enacted the following year). There is considerable evidence that such laws have a partisan rationale and are part of an effort by legislators of one party to suppress voters of another party (See pp. 23-28 of my first report). The margin of Heitkamp's victory was exceedingly slim, and could be attributed to her strong showing in predominantly Native precincts (Barreto/Sanchez Report: 25; Lone Chief 2012; Raven 2012; Blades 2012; Trahant 2012). Thus, there was a clear partisan motivation—and advantage—for the legislature to enact a voter ID law that would prevent some Native Americans from voting.

There is also evidence of partisan bias that drove the effort to pass HB 1369. Todd Fuchs, District 13 Republican co-chair, emailed certain legislators and demanded that something be done to eliminate the affidavit process that was so popular in the 2016 election: "Just a quick note to find out where we are in the process of fixing the train wreck that was the last election in regards to the over 8,000 affidavits. We work too hard and spend far too much money to have our votes stolen by people who are not eligible to vote in ND nor the District. Are we going to lose our District 45/27/13 Republicans as well the next time? (Fuchs to legislators 16 Jan. 2016).

6. Sequence of Events/Impact:

In 2016, a record number of people relied upon the affidavit process to exercise their right to vote. A lot of those people were Native American. In three counties with large Native American population, the affidavit was used extensively:

Benson County (55% Native) filed 47 affidavits; Rolette County (77% Native) filed 209; and Sioux County (84% Native) filed 134 affidavits. Mountrail County also has a sizeable population of Native Americans; 342 people in that county relied on affidavits to vote. These are counties with fairly small populations, so those numbers indicate a significant percentage of the voters. We do not know how many total Native Americans used the affidavit in 2016. However, Mr. Silrum indicated that 37 percent of the affiants had no record of an ID with state Department of Transportation (Affidavit 2018: 12). The reports filed in this case earlier by myself and Professors Barrett and Sanchez established that Native Americans are more likely not to possess a state ID. So, the large number of people filing affidavits without a state ID could be an indicator that it was used by a significant number of Native Americans who have a tribal ID or no ID of any form.

Without the affidavit option, these people would have been denied the right to vote. For Native Americans without a street address, their only hope to continue voting is to exercise the one option that the state of North Dakota has taken away from them. In North Dakota, this "most fundamental right," the right from which all other rights are derivative, is dependent on the kind of street you live on and whether there is a four-digit number tacked to the front of your house.

Another impact of the new voter ID law is directly tied to who wins elections. Mr. Silrum notes in his affidavit that several elections in North Dakota have been won by narrow margins (Affidavit 2018: 13-14). He used the 2012 election of Senator Heitkamp as an example; she won by only 2,936 votes (2018: 4). He then asserts that 97 percent of the voters in that election had a verified state ID. That means that 3 percent did not, which was 9,775 voters. In other words, people without state IDs were sufficiently numerous to change the results of elections. Thus, excluding those people from elections also changes the results of elections.

Another consideration regarding the impact of the new ID law is that it is least needed on an Indian reservation where nearly everyone knows everyone else. Voter ID laws only prevent one kind of fraud, usually referred to as voter impersonation or in-person voter fraud. That particular type of voter fraud is exceedingly rare regardless of the jurisdiction; a 2014 study by the Government Accountability Office reviewed the existing literature on alleged voter impersonation and concluded: "The studies we reviewed identified few instances of in-person voter fraud" (GAO 2014: 64).

It would be exceedingly difficult to pretend to be someone you are not when the poll officials are people you have known all your life. Carol Davis, of Turtle Mountain, explained that on her reservation, "everybody knows everybody. We have two precincts, and we have about 8 or 9 local people who work the polls; they know everybody. If someone was trying to vote illegally, they would not get to vote" (C. Davis 9 Feb. 2018). I note that Mrs. Davis tried to vote in the 2015 school board election. She arrived at the poll just before it closed, and realized she had forgotten

her purse. The poll worker was her niece; they both grew up on the reservation and knew each other since childhood. But her niece informed Mrs. Davis that she could not vote because she did not have an ID, and there was insufficient time for her to drive back to her house and retrieve her ID. She did not vote, even though she was eligible. The new voter ID law would not have helped her; she lacked an ID and the "supplemental forms" of ID.

And finally, the impact of the voter ID law directly relates to the social and economic status of Native Americans. In 2016, the punishment for illegally filing an affidavit was a maximum of one year in prison and a fine of $3,000 (Silrum Affidavit 2018: 8). It is likely that the poorest people in the state—and the most over-represented in the prison population—would be very reluctant to risk such a punishment. With the new voter ID law, fraud is now a felony—even more reason for Native Americans to studiously avoid voter fraud.

IV. Conclusion

The foundational rationale for HB 1369 is that the elimination of the affidavit option was necessary to prevent voter fraud—fraud that allegedly "tainted" the 2016 elections (North Dakota Memorandum 2018: 9). But, there is no evidence that voter fraud is a problem beyond a very few isolated cases, and no direct evidence that any of the affidavits filed in 2016 were cast by people who were ineligible to vote. There is simply a presumption that affidavits lead to fraud. For example, Mr. Silrum, in his 2018 affidavit, claims that the low rate of voter fraud (a single case) in 2014 "was partly due to the removal of the Voter's Affidavit as a form of voter ID" (2018: 6). But a near-total absence of voter fraud in North Dakota has

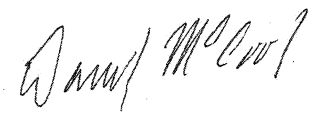
been the norm since statehood; there was no decrease in 2014--a trend line with virtually zero variation. So it is impossible to attribute the absence of voter fraud in 2014 to abolishing affidavits. Also, none of the handful of fraud cases that occurred in recent years involved affidavits. In short, HB 1369 is a law based on a highly presumptuous conditional possibility, suspected to be true by a group of legislators with a vested interest in making assumptions in the absence of data.

Under the previous voter ID bill, there was a catch; the tribal ID was useless if it did not have a street address. Under the new law, the catch is still there, it was just moved to a new location in the voting law. Without an affidavit, the catch is absolute; there is no way for an eligible voter to meet the dictates of the new law if they do not have a street address or some form of ID. That simple fact denies the right to vote to a significant number of Native Americans. Mr. Silrum, in his Affidavit, concluded that "each vote is important" (2018: 18). That is true, even for tribal members who do not have an ID, or who have a tribal ID but no street address.

In my previous expert witness report in this case I came to the conclusion that "voter ID requirements have placed an especially difficult burden on American Indian people living in North Dakota" (p. 54). HB 1369 did not solve that problem. The same set of limitations I described in the previous report—the poverty, lack of computer access, unfamiliarity with administrative processes, distance from government offices, poor transportation, etc.—all still operate to disadvantage Native Americans in the political process. Establishing a state voter ID requirement dependent on having a street address and an ID, without the option of an affidavit, deprives some tribal members of an opportunity to vote.

Executed at Ogden, Utah, on Feb. 10, 2018.

I declare under penalty of perjury that the foregoing is true and correct.



Dr. Daniel McCool

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92 S.Ct. 995
Supreme Court of the United States

Winfield DUNN, Governor of the
State of Tennessee, et al., Appellants,
v.
James F. BLUMSTEIN.

No. 70—13.
|
Argued Nov. 16, 1971.
|
Decided March 21, 1972.

Synopsis
Action was brought challenging state durational residence laws for voter. A three-judge District Court, 337 F.Supp. 323, held the laws invalid and state officials appealed. The Supreme Court, Mr. Justice Marshall, J., held that state laws requiring would-be voter to have been resident for year in state and three months in county do not further any compelling state interest and violate the equal protection clause of the Fourteenth Amendment.

Affirmed.

Mr. Justice Blackmun concurred and filed opinion.

Mr. Chief Justice Burger dissented and filed opinion.

Mr. Justice Powell and Mr. Justice Rehnquist took no part in consideration or decision of case.

Procedural Posture(s): On Appeal.

West Headnotes (13)

[1] **Election Law** Duration of residency

Durational residence laws penalize those persons who have traveled from one place to another to establish new residence during qualifying period. Const.Tenn. art. 4, § 1; T.C.A. §§ 2T.C.A. §§ 2–201, 22–304; U.S.C.A.Const. Amend. 14.

66 Cases that cite this headnote

[2] **Constitutional Law** Rational Basis Standard; Reasonableness

To decide whether law violates equal protection clause, court looks to character of classification in question, individual interests affected by classification, and governmental interests asserted in support of classification. U.S.C.A.Const. Amend. 14.

235 Cases that cite this headnote

[3] **Election Law** Duration of residency

State must show substantial and compelling reason for imposing durational residence requirements on voters. Const.Tenn. art. 4, § 1; T.C.A. §§ 2T.C.A. §§ 2–201, 22–304; U.S.C.A.Const. Amend. 14.

31 Cases that cite this headnote

[4] **Election Law** Duration of residency

By denying some citizens the right to vote, durational residence law deprived such citizens of fundamental political right which is preservative of all rights. Const.Tenn. art. 4, § 1; T.C.A. §§ 2T.C.A. §§ 2–201, 22–304; U.S.C.A.Const. Amend. 14.

68 Cases that cite this headnote

[5] **Election Law** Right to vote effectively

Election Law In general; power to regulate qualifications

Equal right to vote is not absolute and states have power to impose voter qualifications, and to regulate access to franchise in other ways. Const.Tenn. art. 4, § 1; T.C.A. §§ 2T.C.A. §§ 2–201, 22–304; U.S.C.A.Const. Amend. 14.

62 Cases that cite this headnote

[6] **Election Law** Power to Restrict or Extend Suffrage

Before right to vote can be restricted, purpose of restriction and assertedly overriding interests served by it must meet close constitutional scrutiny. Const.Tenn. art. 4, § 1; T.C.A. §§ 2T.C.A. §§ 2–201, 22–304; U.S.C.A.Const. Amend. 14.

49 Cases that cite this headnote

[7] **Constitutional Law** Residency requirements

Election Law Duration of residency

Durational residence requirement directly impinges on exercise of right to travel. Const.Tenn. art. 4, § 1; T.C.A. §§ 2T.C.A. §§ 2–201, 22–304; U.S.C.A.Const. Amend. 14.

136 Cases that cite this headnote

[8] **Election Law** Duration of residency

Durational residence laws are unconstitutional unless state can demonstrate that such laws are necessary to promote compelling governmental interest. Const.Tenn. art. 4, § 1; T.C.A. §§ 2T.C.A. §§ 2–201, 22–304; U.S.C.A.Const. Amend. 14.

152 Cases that cite this headnote

[9] **Election Law** Duration of residency

To uphold durational residence law, it is not sufficient for state to show that requirements further a very substantial state interest.

31 Cases that cite this headnote

[10] **Constitutional Law** Overbreadth in General

In pursuing substantial state interest, state cannot choose means which unnecessarily burden or restrict constitutionally protected activity.

70 Cases that cite this headnote

[11] **Election Law** Duration of residency

Period of 30 days' voters' residence would be ample for state to complete whatever administrative task may be needed to prevent fraud and insure purity of ballot box.

32 Cases that cite this headnote

[12] **Election Law** Duration of residency

State may not conclusively presume nonresidence from failure to satisfy waiting period requirements of durational residency laws. Const.Tenn. art. 4, § 1; T.C.A. §§ 2T.C.A. §§ 2–201, 22–304; U.S.C.A.Const. Amend. 14.

27 Cases that cite this headnote

[13] **Constitutional Law** Qualification of voters

Election Law Duration of residency

State laws requiring would-be voter to have been resident for year in state and three months in county do not further any compelling state interest and violate the equal protection clause of the Fourteenth Amendment. Voting Rights Act of 1965, § 202(a) (2) as amended 42 U.S.C.A. § 1973aa–1(a) (2); T.C.A. §§ 2T.C.A. §§ 2–201, 22–304; U.S.C.A.Const. Amend. 14.

351 Cases that cite this headnote

****996** ***330** Syllabus [*]

Tennessee closes its registration books 30 days before an election, but requires residence in the State for one year and in the county for three months as prerequisites for registration to vote. Appellee challenged the constitutionality of the durational residence requirements, and a three-judge District Court held ****997** them unconstitutional on the grounds that they impermissibly interfered with the right to vote and created a 'suspect' classification penalizing some Tennessee residents because of recent interstate movement. Tennessee asserts that the requirements are needed to insure the purity of the ballot box and to have knowledgeable voters. Held: The durational residence requirements are violative of the Equal Protection Clause of the Fourteenth Amendment, as they are not necessary to further a compelling state interest. Pp. 999—1012.

(a) Since the requirements deny some citizens the right to vote, 'the Court must determine whether the exclusions are necessary to promote a compelling state interest.' Kramer v. Union Free School District No. 15, 395 U.S. 621, 627, 89 S.Ct. 1886, 1890, 23 L.Ed.2d 583 (emphasis added). Pp. 999—1000.

(b) Absent a compelling state interest, Tennessee may not burden the right to travel by penalizing those bona fide residents who have recently traveled from one jurisdiction to another. Pp. 1001—1003.

(c) A period of 30 days appears to be ample to complete whatever administrative tasks are needed to prevent fraud and insure the purity of the ballot box. Pp. 1004—1007.

(d) Since there are adequate means of ascertaining bona fide residence on an individualized basis, the State may not conclusively presume nonresidence from failure to satisfy the waiting-period requirements of durational residence laws. Pp. 1006—1009.

(e) Tennessee has not established a sufficient relationship between its interest in an informed electorate and the fixed durational residence requirements. Pp. 1009—1012.

Affirmed.

Attorneys and Law Firms

***331** Robert H. Roberts, Nashville, Tenn., for appellants.

James F. Blumstein, pro se.

Opinion

Mr. Justice MARSHALL delivered the opinion of the Court.

Various Tennessee public officials (hereinafter Tennessee) appeal from a decision by a three-judge federal court holding that Tennessee's durational residence requirements for voting violate the Equal Protection Clause of the United States Constitution. The issue arises in a class action for declaratory and injunctive relief brought by appellee James Blumstein. Blumstein moved to Tennessee on June 12, 1970, to begin employment as an assistant professor of law at Vanderbilt University in Nashville. With an eye toward voting in the upcoming August and November elections, he attempted to register to vote on July 1, 1970. The county registrar refused to register him, on the ground that Tennessee law authorizes the registration of only those persons who, at the time of the next election, will have been residents of the State for a year and residents of the county for three months.

After exhausting state administrative remedies, Blumstein brought this action challenging these residence requirements ***332** on federal constitutional grounds.[1] A ****998** three-judge court, convened pursuant to 28 U.S.C. ss 2281, 2284, concluded that Tennessee's durational residence ***333** requirements were unconstitutional (1) because they impermissibly interfered with the right to vote and (2) because they created a 'suspect' classification penalizing some Tennessee residents because of recent interstate movement.[2] Blumstein v. Ellington, 337 F.Supp. 323 (MD Tenn.1970). We noted probable jurisdiction, 401 U.S. 934, 91 S.Ct. 920, 28 L.Ed.2d 213 (1971). For the reasons that follow, we affirm the decision below.[3]

****999** ***334** I

The subject of this lawsuit is the durational residence requirement. Appellee does not challenge Tennessee's power to restrict the vote to bona fide Tennessee residents. Nor has Tennessee ever disputed that appellee was a bona fide resident of the State and county when he attempted to register.[4] But Tennessee insists that, in addition to being a resident, a would-be voter must have been a resident for a year in the State and three months in the county. It is this additional durational residence requirement that appellee challenges.

[1] Durational residence laws penalize those persons who have traveled from one place to another to establish a new residence during the qualifying period. Such laws divide residents into two classes, old residents and new residents, and discriminate against the latter to the extent ***335** of totally denying them the opportunity to vote.[5] the constitutional question presented is whether the Equal Protection Clause of the Fourteenth Amendment permits a State to discriminate in this way among its citizens.

[2] **[3]** To decide whether a law violates the Equal Protection Clause, we look, in essence, to three things: the character of the classification in question; the individual interests affected by the classification; and the governmental interests asserted in support of the classification. Cf. Williams v. Rhodes, 393 U.S. 23, 30, 89 S.Ct. 5, 10, 21 L.Ed.2d 24 (1968). In considering laws challenged under

the Equal Protection Clause, this Court has evolved more than one test, depending upon the interest affected or the classification involved. [6] First, then, we must determine what standard of review is appropriate. In the present case, whether we look to the benefit withheld by the classification (the opportunity to vote) or the basis for the classification (recent interstate travel) we conclude that the State must show a substantial and compelling reason for imposing durational residence requirements.

***336** A

[4] **[5]** **[6]** Durational residence requirements completely bar from voting all residents not meeting the fixed durational standards. By denying some citizens the right to vote, such laws deprive them of "a fundamental political right, . . . preservative of all rights." Reynolds v. Sims, 377 U.S. 533, 562, 84 S.Ct. 1362, 1381, 12 L.Ed. 506 (1964). There is no ****1000** need to repeat now the labors undertaken in earlier cases to analyze this right to vote and to explain in detail the judicial role in reviewing state statutes that selectively distribute the franchise. In decision after decision, this Court has made clear that a citizen has a constitutionally protected right to participate in elections on an equal basis with other citizens in the jurisdiction. See, e.g., Evans v. Cornman, 398 U.S. 419, 421—422, 426, 90 S.Ct. 1752, 1754—1755, 1756, 26 L.Ed.2d 370 (1970); Kramer v. Union Free School District No. 15, 395 U.S. 621, 626—628, 89 S.Ct. 1886, 1889—1890, 23 L.Ed.2d 583 (1969); Cipriano v. City of Houma, 395 U.S. 701, 706, 89 S.Ct. 1897, 1900, 23 L.Ed.2d 647 (1969); Harper v. Virginia State Board of Elections, 383 U.S. 663, 667, 86 S.Ct. 1079, 1081, 16 L.Ed.2d 169 (1966); Carrington v. Rash, 380 U.S. 89, 93—94, 85 S.Ct. 775, 778, 779, 13 L.Ed.2d 675 (1965); Reynolds v. Sims, supra. This 'equal right to vote,' Evans v. Cornman, supra, 398 U.S., at 426, 90 S.Ct., at 1756 is not absolute; the States have the power to impose voter qualifications, and to regulate access to the franchise in other ways. See, e.g., Carrington v. Rash, supra, 380 U.S., at 91, 85 S.Ct., at 777, Oregon v. Mitchell, 400 U.S. 112, 144, 91 S.Ct. 260, 274, 27 L.Ed.2d 272 (opinion of Douglas, J.), 241, 91 S.Ct. 323 (separate opinion of Brennan, White, and Marshall, JJ.), 294, 91 S.Ct. 349 (opinion of Stewart, J., concurring and dissenting, with whom Burger, C.J., and Blackmun, J., joined). But, as a general matter, 'before that right (to vote) can be restricted, the purpose of the restriction and the assertedly overriding interests served by it must meet close constitutional scrutiny.' Evans v. Cornman, supra, 398 U.S., at 422, 90 S.Ct., at 1755; see Bullock v. Carter, 405 U.S. 134, at 143, 92 S.Ct. 849, at 855—856, 31 L.Ed.2d 92.

***337** Tennessee urges that this case is controlled by Drueding v. Devlin, 380 U.S. 125, 85 S.Ct. 807, 13 L.Ed.2d 792 (1965). Drueding was a decision upholding Maryland's durational residence requirements. The District Court tested those requirements by the equal protection standard applied to ordinary state regulations: whether the exclusions are reasonably related to a permissible state interest. 234 F.Supp. 721, 724—725 (Md.1964). We summarily affirmed per curiam without the benefit of argument. But if it was not clear then, it is certainly clear now that a more exacting test is required for any statute that 'place(s) a condition on the exercise of the right to vote.' Bullock v. Carter, supra, 405 U.S., at 143, 92 S.Ct., at 856. This development in the law culminated in Kramer v. Union Free School District No. 15. supra. There we canvassed in detail the reasons for strict review of statutes distributing the franchise, 395 U.S., at 626—630, 89 S.Ct., at 1889—1891, noting inter alia that such statutes 'constitute the foundation of our representative society.' We concluded that if a challenged statute grants the right to vote to some citizens and denies the franchise to others, 'the Court must determine whether the exclusions are necessary to promote a compelling state interest.' Id., at 627, 89 S.Ct., at 1890 (emphasis added); Cipriano v. City of Houma, supra, 395 U.S., at 704, 89 S.Ct., at 1899; City of Phoenix v. Kolodziejski, 399 U.S. 204, 205, 209, 90 S.Ct. 1990, 1992, 1994, 26 L.Ed.2d 523 (1970). Cf. Harper v. Virginia State Board of Elections, supra, 383 U.S., at 670, 86 S.Ct., at 1083. This is the test we apply here. [7]

****1001** ***338** B

[7] This exacting test is appropriate for another reason, never considered in Drueding: Tennessee's durational residence laws classify bona fide residents on the basis of recent travel, penalizing those persons, and only those persons, who have gone from one jurisdiction to another during the qualifying

period. Thus, the durational residence requirement directly impinges on the exercise of a second fundamental personal right, the right to travel.

'(F)reedom to travel throughout the United States has long been recognized as a basic right under the Constitution.' United States v. Guest, 383 U.S. 745, 758, 86 S.Ct. 1170, 1178, 16 L.Ed.2d 239 (1966). See Passenger Cases (Smith v. Turner), 7 How. 283, 492, 12 L.Ed. 702 (1849) (Taney, C.J.); Crandall v. Nevada, 6 Wall. 35, 43—44, 18 L.Ed. 744 (1868); Paul v. Virginia, 8 Wall. 168, 180, 19 L.Ed. 357 (1869); Edwards v. California, 314 U.S. 160, 62 S.Ct. 164, 86 L.Ed. 119 (1941); Kent v. Dulles, 357 U.S. 116, 126, 78 S.Ct. 1113, 1118, 2 L.Ed.2d 1204 (1958); Shapiro v. Thompson, 394 U.S. 618, 629—631, 634, 89 S.Ct. 1322, 1328—1330, 1331, 22 L.Ed.2d 600 (1969); Oregon v. Mitchell, 400 U.S., at 237, 91 S.Ct., at 321 (separate opinion of Brennan, White, and Marshall, JJ.), 285—286, 91 S.Ct. 345 (Stewart, J., concurring and dissenting, with whom Burger, C.J., and Blackmun, J., joined). And it is clear that the freedom to travel includes the 'freedom to enter and abide in any State in the Union,' id., at 285, 91 S.Ct., at 345. Obviously, durational residence laws single out the class of bona fide state and county residents who have recently exercised this constitutionally protected right, and penalize such travelers directly. We considered such a durational residence requirement in Shapiro v. Thompson, supra, where the pertinent statutes imposed a one-year waiting period for interstate migrants as a condition to receiving welfare benefits. Although in Shapiro we specifically did not decide whether durational residence requirements could be used to determine voting eligibility, ***339** id., 394 U.S., at 638 n. 21, 89 S.Ct., at 1333, we concluded that since the right to travel was a constitutionally protected right, 'any classification which serves to penalize the exercise of that right, unless shown to be necessary to promote a compelling governmental interest, is unconstitutional.' Id., at 634, 89 S.Ct., at 1331. This compelling-state-interest test was also adopted in the separate concurrence of Mr. Justice Stewart. Preceded by a long line of cases recognizing the constitutional right to travel, and repeatedly reaffirmed in the face of attempts to disregard it, see Wyman v. Bowens, 397 U.S. 49, 90 S.Ct. 813, 25 L.Ed.2d 38 (1970), and Wyman v. Lopez, 404 U.S. 1055, 92 S.Ct. 736, 30 L.Ed.2d 743 (1972), Shapiro and the compelling-state-interest test it articulates control this case.

Tennessee attempts to distinguish Shapiro by urging that 'the vice of the welfare statute in Shapiro . . . was its objective to deter interstate travel.' Brief for Appellants 13. In Tennessee's view, the compelling-state-interest test is appropriate only where there is 'some evidence to indicate a deterrence of or infringement on the right to travel . . ..' Ibid. Thus, Tennessee seeks to avoid the clear command of Shapiro by arguing that durational residence requirements for voting neither seek to nor actually do deter such travel. In essence, Tennessee argues that the right to travel is not abridged here in any constitutionally relevant sense.

This view represents a fundamental misunderstanding of the law.[8] It is irrelevant whether disenfranchisement or ***1002** denial of welfare is the more potent deterrent to travel. Shapiro did not rest upon a finding that denial of welfare actually deterred travel. Nor have other 'right to travel' ***340** cases in this Court always relied on the presence of actual deterrence.[9] In Shapiro we explicitly stated that the compelling state interest test would be triggered by 'any classification which serves to penalize the exercise of that right (to travel) . . ..' Id., at 634, 89 S.Ct., at 1331 (emphasis added); see id., at 638 n. 21, 89 S.Ct., at 1333.[10] While noting the frank legislative purpose to deter migration by the poor, and speculating that '(a)n indigent who desires to migrate . . . will doubtless hesitate if he knows that he must risk' the loss of benefits, id., at 629, 89 S.Ct., at 1328, the majority found no need to dispute the 'evidence that few welfare recipients have in fact been deterred (from moving) by residence requirements.' Id., at 650, 89 S.Ct., at 1340 (Warren, C.J., dissenting); see also id., at 671—672, 89 S.Ct., at 1351 (Harlan, J., dissenting). Indeed, none of the litigants had themselves been deterred. Only last Term, it was specifically noted that because a durational ***341** residence requirement for voting 'operates to penalize those persons, and only those persons, who have exercised their constitutional right of interstate migration . . ., (it) may withstand constitutional scrutiny only upon a clear showing that the burden imposed is necessary to protect a compelling and substantial governmental interest.' Oregon v. Mitchell, 400 U.S., at 238, 91 S.Ct., at 321, 27 L.Ed.2d 272 (separate opinion of Brennan, White, and Marshall, JJ.) (emphasis added).

Of course, it is true that the two individual interests affected by Tennessee's durational residence requirements are affected in different ways. Travel is permitted, but only at a price; voting is prohibited. The right to travel is merely penalized, while the right to vote is absolutely denied. But these differencess are irrelevant for present purposes. Shapiro implicitly realized what this Court has made explicit elsewhere:

'It has long been established that a State may not impose a penalty upon those who exercise a right guaranteed by the Constitution. . . . 'Constitutional rights would be of little value if they could be . . . indirectly denied,' . . ..' Harman v. Forssenius, 380 U.S. 528, 540, 85 S.Ct. 1177, 1185, 14 L.Ed.2d 50 (1965). [11]

**1003 See also Garrity v. New Jersey, 385 U.S. 493, 87 S.Ct. 616, 17 L.Ed.2d 562 (1967), and cases cited therein; Spevack v. Klein, 385 U.S. 511, 515, 87 S.Ct. 625, 628, 17 L.Ed.2d 574 (1967). The right to travel is an 'unconditional personal right,' a right whose exercise may not be conditioned. Shapiro v. Thompson, 394 U.S., at 643, 89 S.Ct., at 1331 (Stewart, J., concurring) (emphasis added); Oregon v. Mitchell, supra, 400 U.S., at 292, 91 S.Ct., at 348 (Stewart, J., concurring and dissenting, *342 Burger, C.J., and Blackmun, J., joined). Durational residence laws impermissibly condition and penalize the right to travel by imposing their prohibitions on only those persons who have recently exercised that right. [12] In the present case, such laws force a person who wishes to travel and change residences to choose between travel and the basic right to vote. Cf. United States v. Jackson, 390 U.S. 570, 582—583, 88 S.Ct. 1209, 1216—1217, 20 L.Ed.2d 138 (1968). Absent a compelling state interest, a State may not burden the right to travel in this way. [13]

[8] In sum, durational residence laws must be measured by a strict equal protection test: they are unconstitutional unless the State can demonstrate that such laws are 'necessary to promote a compelling governmental interest.' Shapiro v. Thompson, 394 U.S., at 634, 89 S.Ct., at 1331 (first emphasis added); Kramer v. Union Free School District No. 15, 395 U.S., at 627, 89 S.Ct., at 1889. Thus phrased, the constitutional question may sound like a mathematical formula. But legal 'tests' do not have the precision of mathematical *343 formulas. The key words emphasize a matter of degree: that a heavy burden of justification is on the State, and that the statute will be closely scrutinized in light of its asserted purposes.

[9] [10] It is not sufficient for the State to show that durational residence requirements further a very substantial state interest. In pursuing that important interest, the State cannot choose means that unnecessarily burden or restrict constitutionally protected activity. Statutes affecting constitutional rights must be drawn with 'precision,' NAACP v. Button, 371 U.S. 415, 438, 83 S.Ct. 328, 340, 9 L.Ed.2d 405 (1963); United States v. Robel, 389 U.S. 258, 265, 88 S.Ct. 419, 424, 19 L.Ed.2d 508 (1967), and must be 'tailored' to serve their legitimate objectives. Shapiro v. Thompson, supra, 394 U.S., at 631, 89 S.Ct., at 1329. And if there are other, reasonable ways to achieve those goals with a lesser burden on constitutionally protected activity, a State may not choose the way of greater interference. If it acts at all, it must choose 'less drastic means.' Shelton v. Tucker, 364 U.S. 479, 488, 81 S.Ct. 247, 252, 5 L.Ed.2d 231 (1960).

II

We turn, then, to the question of whether the State has shown that durational residence requirements are needed to further a sufficiently substantial state interest. We emphasize again the difference between bona fide residence requirements and durational residence requirements. **1004 We have in the past noted approvingly that the States have the power to require that voters be bona fide residents of the relevant political subdivision. E.g., Evans v. Cornman, 398 U.S., at 422, 90 S.Ct., at 1754; Kramer v. Union Free School District No. 15, supra, 395 U.S., at 625, 89 S.Ct., at 1888; Carrington v. Rash, 380 U.S., at 91, 85 S.Ct., at 777; Pope v. Williams, 193 U.S. 621, 24 S.Ct. 573, 48 L.Ed. 817 (1904). [14] An appropriately defined and uniformly applied requirement *344 of bona fide residence may be necessary to preserve the basic conception of a political community, and therefore could withstand close constitutional scrutiny. [15] But Durational residence requirements, representing a separate voting qualification imposed on bona fide residents, must be separately tested by the stringent standard. Cf. Shapiro v. Thompson, supra, 394 U.S., at 636, 89 S.Ct., at 1332.

It is worth noting at the outset that Congress has, in a somewhat different context, addressed the question whether durational residence laws further compelling state interests. In s 202 of the Voting Rights Act of 1965, added by the Voting Rights Act Amendments of 1970, Congress outlawed state durational residence requirements for presidential and vice-presidential elections, and prohibited the States from closing registration more than 30 days before such elections. 42 U.S.C. s 1973aa—1. In doing so, it made a specific finding that durational residence requirements and more restrictive registration practices do 'not bear a reasonable relationship to any compelling State interest in the conduct of presidential elections.' 42 U.S.C. s 1973aa—1(a)(6). We upheld this portion of the Voting Rights Act in Oregon v. Mitchell, supra. In our present case, of course, we deal with congressional, state, and local elections, in which the State's interests are arguably somewhat different; and, in addition, our function is not merely to determine whether there was a reasonable basis for Congress' findings. However, the congressional finding which forms the basis for the Federal Act is a useful background for the discussion that follows.

***345** Tennessee tenders 'two basic purposes' served by its durational residence requirements:
'(1) INSURE PURITY OF BALLOT BOX—Protection against fraud through colonization and inability to identify persons offering to vote, and

'(2) KNOWLEDGEABLE VOTER—Afford some surety that the voter has, in fact, become a member of the community and that as such, he has a common interest in all matters pertaining to its government and is, therefore, more likely to exercise his right more intelligently.' Brief for Appellants 15, citing 18 Am.Jur., Elections, s 56, p. 217.

We consider each in turn.

A

Preservation of the 'purity of the ballot box' is a formidable-sounding state interest. The impurities feared, variously called 'dual voting' and 'colonization,' all involve voting by nonresidents, either singly or in groups. The main concern is that nonresidents will temporarily invade the State or county, falsely swear that they are residents to become eligible to vote, and, by voting, allow a candidate to win by fraud. Surely the prevention of such fraud is a legitimate and compelling government goal. But it is impossible to view durational residence requirements as necessary to achieve that state interest.

Preventing fraud, the asserted evil that justifies state lawmaking, means keeping nonresidents from voting. But, by definition, a durational residence law ****1005** bars newly arrived residents from the franchise along with nonresidents. The State argues that such sweeping laws are necessary to prevent fraud because they are needed to identify bona fide residents. This contention is particularly ***346** unconvincing in light of Tennessee's total statutory scheme for regulating the franchise.

Durational residence laws may once have been necessary to prevent a fraudulent evasion of state voter standards, but today in Tennessee, as in most other States, [16] this purpose is served by a system of voter registration. Tenn. Code Ann. s 2Tenn. Code Ann. s 2—301 et seq. (1955 and Supp. 1970); see State v. Weaver, 122 Tenn. 198, 122 S.W. 465 (1909). Given this system, the record is totally devoid of any evidence that durational residence requirements are in fact necessary to identify bona fide residents. The qualifications of the would-be voter in Tennessee are determined when he registers to vote, which he may do until 30 days before the election. Tenn. Code Ann. s 2Tenn. Code Ann. s 2—304. His qualifications—including bona fide residence—are established then by oath. Tenn. Code Ann. s 2Tenn. Code Ann. s 2—309. There is no indication in the record that Tennessee routinely goes behind the would-be voter's oath to determine his qualifications. Since false swearing is no obstacle to one intent on fraud, the existence of burdensome voting qualifications like durational residence requirements cannot prevent corrupt nonresidents from fraudulently registering and voting. As long as the State relies on the oath-swearing system to establish qualifications, a durational residence requirement adds nothing to a simple residence requirement in the effort to stop fraud. The nonresident intent on committing election fraud will as quickly and effectively swear that he has been a resident for the requisite period of time as he would swear that he was simply a resident. Indeed, the durational residence requirement becomes an effective voting obstacle ***347** only to residents who tell the truth and have no fraudulent purposes.

Moreover, to the extent that the State makes an enforcement effort after the oath is sworn, it is not clear what role the durational residence requirement could play in protecting against fraud. The State closes the registration books 30 days before an election to give officials an opportunity to prepare for the election. before the books close, anyone

may register who claims that he will meet the durational residence requirement at the time of the next election. Although Tennessee argues that this 30-day period between registration and election does not give the State enough time to verify this claim of bona fide residence, we do not see the relevance of that position to this case. As long as the State permits registration up to 30 days before an election, a lengthy durational residence requirement does not increase the amount of time the State has in which to carry out an investigation into the sworn claim by the would-be voter that he is in fact a resident.

[11] Even if durational residence requirements imposed, in practice, a preelection waiting period that gave voting officials three months or a year in which to confirm the bona fides of residence, Tennessee would not have demonstrated that these waiting periods were necessary. At the outset, the State is faced with the fact that it must defend two separate waiting periods of different lengths. It is impossible to see how both could be 'necessary' to fulfill the pertinent state objective. If the State itself has determined that a three-month period is enough time in which to confirm bona fide residence in the State and county, obviously a one-year period cannot also be justified as 'necessary' to achieve the same purpose.[17] ***348** Beyond ****1006** that, the job of detecting nonresidents from among persons who have registered is a relatively simple one. It hardly justifies prohibiting all newcomers from voting for even three months. To prevent dual voting, state voting officials simply have to cross-check lists of new registrants with their former jurisdictions. See Comment, Residence Requirements for Voting in Presidential Elections, 37 U.Chi.L.Rev. 359, 364 and n. 34, 374 (1970); cf. Shapiro v. Thompson, 394 U.S., at 637, 89 S.Ct., at 1333. Objective information tendered as relevant to the question of bona fide residence under Tennessee law—places of dwelling, occupation, car registration, driver's license, property owned, etc.[18]—is easy to doublecheck, especially in light of modern communications. Tennessee itself concedes that '(i)t might well be that these purpose can be achieved under requirements of shorter duration than that imposed by the State of Tennessee . . ..' Brief for Appellants 10. Fixing a constitutionally acceptable period is surely a matter of degree. It is sufficient to note here that 30 days appears to be an ample period of time for the State to complete whatever administrative tasks are necessary to prevent fraud—and a year, or three months, too much. This was the judgment of Congress in the context of presidential elections.[19] And, on the basis of the statutory ***349** scheme before us, it is almost surely the judgment of the Tennessee lawmakers as well. As the court below concluded, the cutoff point for registration 30 days before an election.

'reflects the judgment of the Tennessee Legislature that thirty days is an adequate period in which Tennessee's election officials can effect whatever measures may be necessary, in each particular case confronting them, to insure purity of the ballot and prevent dual registration and dual voting.' 337 F.Supp., at 330.

[12] It has been argued that durational residence requirements are permissible because a person who has satisfied the waiting-period requirements is conclusively presumed to be a bona fide resident. In other words, durational residence requirements are justified because they create an administratively useful conclusive presumption that recent arrivals are not residents and are ****1007** therefore properly ***350** barred from the franchise.[20] This presumption, so the argument runs, also prevents fraud, for few candidates will be able to induce migration for the purpose of voting if fraudulent voters are required to remain in the false locale for three months or a year in order to vote on election day.[21]

In Carrington v. Rash, 380 U.S. 89, 85 S.Ct. 775, this Court considered and rejected a similar kind of argument in support of a similar kind of conclusive presumption. There, the State argued that it was difficult to tell whether persons moving to Texas while in the military service were in fact bona fide residents. Thus, the State said, the administrative convenience of avoiding difficult factual determinations justified a blanket exclusion of all servicemen stationed in Texas. The presumption created there was conclusive —"incapable of being overcome by proof of the most positive character." Id., at 96, 85 S.Ct., at 780, citing Heiner v. Donnan, 285 U.S. 312, 324, 52 S.Ct. 358, 360, 76 L.Ed. 772 (1932). The ***351** Court rejected this 'conclusive presumption' approach as violative of the Equal Protection Clause. While many servicemen in Texas were not bona fide residents, and therefore properly ineligible to vote, many servicemen clearly were bona fide residents. Since 'more precise tests' were available 'to winnow successfully from the ranks . . . those whose residence in the State is bona fide,' conclusive presumptions were impermissible in light of the individual interests affected. id., 380 U.S., at 95, 85 S.Ct., at 780. 'States may not casually deprive a class of individuals

of the vote because of some remote administrative benefit to the State.' Id., at 96, 85 S.Ct., at 780.

Carrington sufficiently disposes of this defense of durational residence requirements. The State's legitimate purpose is to determine whether certain persons in the community are bona fide residents. A durational residence requirement creates a classification that may, in a crude way, exclude nonresidents from that group. But it also excludes many residents. Given the State's legitimate purpose and the individual interests that are affected, the classification is all too imprecise. See supra, at 1003—1004. In general, it is not very difficult for Tennessee to determine on an individualized basis whether one recently arrived in the community is in fact a resident, although of course there will always be difficult cases. Tennessee has defined a test for bona fide residence, and appears prepared to apply it on an individualized basis in various legal contexts.[22] That test ***352** could easily be ****1008** applied to new arrivals. Furthermore, if it is unlikely that would-be fraudulent voters would remain in a false locale for the lengthy period imposed by durational residence requirements, it is just as unlikely that they would collect such objective indicia of bona fide residence as a dwelling, car registration, or driver's license. In spite of these things, the question of bona fide residence is settled for new arrivals by conclusive presumption, not by individualized inquiry. Cf. Carrington v. Rash, supra, 380 U.S., at 95—96, 85 S.Ct., at 779—780. Thus, it has always been undisputed that appellee Blumstein is himself a bona fide resident of Tennessee within the ordinary state definition of residence. But since Tennessee's presumption from failure to meet the durational residence requirements is conclusive, a showing of actual bona fide residence is irrelevant, even though such a showing would fully serve the State's purposes embodied in the presumption and would achieve those purposes with far less drastic impact on constitutionally protected interests.[23] The Equal Protection Clause places a limit on government by classification, and that limit has been exceeded here. Cf. Shapiro v. Thompson, 394 U.S., at 636, 89 S.Ct., at 1332; Harman v. Forssenius, 380 U.S., at 542—543, 85 S.Ct., at 1186—1187; Carrington v. Rash, supra, 380 U.S., at 95—96, 85 S.Ct., at 779—780; Skinner v. Oklahoma ex rel. Williamson, 316 U.S. 535, 62 S.Ct. 1110, 86 L.Ed. 1655 (1942).

***353** Our conclusion that the waiting period is not the least restrictive means necessary for preventing fraud is bolstered by the recognition that Tennessee has at its disposal a variety of criminal laws that are more than adequate to detect and deter whatever fraud may be feared.[24] At least six separate sections of the Tennessee Code define offenses to deal with voter fraud. For example, Tenn. Code Ann. s 2Tenn. Code Ann. s 2—324 makes it a crime 'for any person to register or to have his name registered as a qualified voter . . . when he is not entitled to be so registered . . . or to procure or induce any other person to register or be registered . . . when such person is not legally qualified to be registered as such . . .'[25] In addition to the various ****1009** criminal penalties, Tennessee permits the bona fides of a voter to be challenged on election day. Tenn. Code Ann. s 2Tenn. Code Ann. s 2—1309 et seq. (1955 and Supp.1970). Where a State has available such remedial action ***354** to supplement its voter registration system, it can hardly argue that broadly imposed political disabilities such as durational residence requirements are needed to deal with the evils of fraud. Now that the Federal Voting Rights Act abolishes those residence requirements as a precondition for voting in presidential and vice-presidential elections, 42 U.S.C. s 1973aa—1, it is clear that the States will have to resort to other devices available to prevent nonresidents from voting. Especially since every State must live with this new federal statute, it is impossible to believe that durational residence requirements are necessary to meet the State's goal of stopping fraud.[26]

B

The argument that durational residence requirements further the goal of having 'knowledgeable voters' appears to involve three separate claims. The first is that such requirements 'afford some surety that the voter has, in fact, become a member of the community.' But here the State appears to confuse a bona fide residence requirement with a durational residence requirement. As already noted, a State does have an interest in limiting the franchise to bona fide members of the community. But this does not justify or explain the exclusion from the franchise of persons, not because their bona fide residence is questioned, but because they are recent rather than longtime residents.

The second branch of the 'knowledgeable voters' justification is that durational residence requirements assure that the voter 'has a common interest in all matters pertaining to (the community's) government . . ..' By this, presumably, the State means that it may require a period of residence sufficiently lengthy to impress upon ***355** its voters the local viewpoint. This is precisely the sort of argument this Court has repeatedly

rejected. In Carrington v. Rash, for example, the State argued that military men newly moved into Texas might not have local interests sufficiently in mind, and therefore could be excluded from voting in state elections. This Court replied: 'But if they are in fact residents, . . . they, as all other qualified residents, have a right to an equal opportunity for political representation. . . . 'Fencing out' from the franchise a sector of the population because of the way they may vote is constitutionally impermissible.' 380 U.S., at 94, 85 S.Ct., at 779.

See 42 U.S.C. s 1973aa—1(a)(4).

Similarly here, Tennessee's hopes for voters with a 'common interest in all matters pertaining to (the community's) government' is impermissible.[27] To paraphrase what we said elsewhere, 'All too often, lack of a ('common interest') might mean no more than a different interest.' Evans v. Cornman, 398 U.S., at 423, 90 S.Ct., at 1755. '(D)ifferences of opinion' may not be the basis for excluding any group or person from the franchise. Cipriano v. City of Houma, 395 U.S., at 705—706, 89 S.Ct., at 1900—1901. '(t)he fact **1010 that newly arrived (Tennesseeans) may have a more national outlook than longtime residents, or even may retain a viewpoint characteristic of the region from which they have come, is a constitutionally impermissible reason for depriving them of their chance to influence the *356 electoral vote of their new home State.' Hall v. Beals, 396 U.S. 45, 53—54, 90 S.Ct. 200, 204, 24 L.Ed. 24 (1969)24 L.Ed. 24 (1969) (dissenting opinion).[28]

Finally, the State urges that a longtime resident is 'more likely to exercise his right (to vote) more intelligently.' To the extent that this is different from the previous argument, the State is apparently asserting an interest in limiting the franchise to voters who are knowledgeable about the issues. In this case, Tennessee argues that people who have been in the State less than a year and the county less than three months are likely to be unaware of the issues involved in the congressional, state, and local elections, and therefore can be barred from the franchise. We note that the criterion of 'intelligent' voting is an elusive one, and susceptible of abuse. But without deciding as a general matter the extent to which a State can bar less knowledgeable or intelligent citizens from the franchise, cf. Evans v. Cornman, 398 U.S., at 422, 90 S.Ct., at 1754; Kramer v. Union Free School District No. 15, 395 U.S., at 632, 89 S.Ct., at 1892; *357 Cipriano v. City of Houma, 395 U.S., at 705, 89 S.Ct., at 1900,[29] we conclude that durational residence requirements cannot be justified on this basis.

In Kramer v. Union Free School District No. 15, supra, we held that the Equal Protection Clause prohibited New York State from limiting the vote in school-district elections to parents of school children and to property owners. The State claimed that since nonparents would be 'less informed' about school affairs than parents, id., at 631, 89 S.Ct., at 1891, the State could properly exclude the class of nonparents in order to limit the franchise to the more 'interested' group of residents. We rejected that position, concluding that a 'close scrutiny of (the classification) demonstrates that (it does) not accomplish this purpose with sufficient precision . . ..' Id., at 632, 89 S.Ct., at 1892. That scrutiny revealed that the classification excluding nonparents from the franchise kept many persons from voting who were **1011 as substantially interested as those allowed to vote; given this, the classification was insufficiently 'tailored' to achieve the articulated state goal. Ibid. See also Cipriano v. City of Houma, supra, 395 U.S., at 706, 89 S.Ct., at 1900.

Similarly, the durational residence requirements in this case founder because of their crudeness as a device for *358 achieving the articulated state goal of assuring the knowledgeable exercise of the franchise. The classifications created by durational residence requirments obviously permit any longtime resident to vote regardless of his knowledge of the issues—and obviously many longtime residents do not have any. On the other hand, the classifications bar from the franchise many other, admittedly new, residents who have become at least minimally, and often fully, informed about the issues. Indeed, recent migrants who take the time to register and vote shortly after moving are likely to be those citizens, such as appellee, who make it a point to be informed and knowledgeable about the issues. Given modern communications, and given the clear indication that compaign spending and voter education occur largely during the month before an election,[30] the State cannot seriously maintain that it is 'necessary' to reside for a year in the State and three months in the county in order to be knowledgeable about congressional, state, or even purely local elections. There is simply nothing in the record to support the conclusive presumption that residents who have lived in the State for less than a year and their county for less than three months are

uninformed about elections. Cf. Shapiro v. Thompson, 394 U.S., at 631, 89 S.Ct., at 1329. These durational residence requirements crudely exclude large numbers of fully qualified people. Especially since Tennessee creates a waiting period by closing registration books 30 days before an election, there can be no basis for arguing that any durational residence requirement is also needed to assure knowledgeability.

It is pertinent to note that Tennessee has never made an attempt to further its alleged interest in an informed electorate in a universally applicable way. Knowledge ***359** or competence has never been a criterion for participation in Tennessee's electoral process for longtime residents. Indeed, the State specifically provides for voting by various type of absentee persons. [31] These provisions permit many longtime residents who leave the county or State to participate in a constituency in which they have only the slighest political interest, and from whose political debates they are likely to be cut off. That the State specifically permits such voting is not consistent with its claimed compelling interest in intelligent, informed use of the ballot. If the State seeks to assure intelligent ****1012** use of the ballot, it may not try to serve this interest only with respect to new arrivals. Cf. Shapiro v. Thompson, supra, at 637—638, 89 S.Ct., at 1333.

It may well be true that new residents as a group know less about state and local issues than older residents; and it is surely true that durational residence requirements will exclude some people from voting who are totally uninformed ***360** about election matters. But as devices to limit the franchise to knowledgeable residents, the conclusive presumptions of durational residence requirements are much too crude. They exclude too many people who should not, and need not, be excluded. They represent a requirement of knowledge unfairly imposed on only some citizens. We are aware that classifications are always imprecise. By requiring classifications to be tailored to their purpose, we do not secretaly require the impossible. Here, there is simply too attenuated a relationship between the state interest in an informed electorate and the fixed requirement that voters must have been residents in the State for a year and the county for three months. Given the exacting standard of precision we require of statutes affecting constitutional rights, we cannot say that durational residence requirements are necessary to further a compelling state interest.

III

[13] Concluding that Tennessee has not offered an adequate justification for its durational residence laws, we affirm the judgment of the court below.

Affirmed.

Mr. Justice POWELL and Mr. Justice REHNQUIST took no part in the consideration or decision of this case.

Mr. Justice BLACKMUN, concurring in the result.

Professor Blumstein obviously could hardly wait to register to vote in his new home State of Tennessee. He arrived in Nashville on June 12, 1970. He moved into his apartment on June 19. He presented himself to the registrar on July 1. He instituted his lawsuit on July 17. Thus, his litigation was begun 35 days after his arrival on Tennessee soil, and less than 30 days after he moved into his apartment. But a primary was coming up on August 6. Usually, such zeal to exercise ***361** the franchise is commendable. The professor, however, encountered—and, I assume, knowingly so—the barrier of the Tennessee durational residence requirement and, because he did, he instituted his test suit.

I have little quarrel with much of the content of the Court's long opinion. I concur in the result, with these few added comments, because I do not wish to be described on a later day as having taken a position broader than I think necessary for the disposition of this case.

1. In Pope v. Williams, 193 U.S. 621, 24 S.Ct. 573, 48 L.Ed. 817 (1904), Mr. Justice Peckham, in speaking for a unanimous Court that included the first Mr. Justice Harlan and Mr. Justice Holmes, said:
'The simple matter to be herein determined is whether, with reference to the exercise of the privilege of voting in Maryland, the legislature of that state had the legal right to provide that a person coming into the state to reside should make the declaration of intent a year before he should have the right to be registered as a voter of the state.

'. . . The right of a state to legislate upon the subject of the elective franchise as to it may seem good, subject to the conditions already stated, being, as we believe, unassailable, we think it plain that the statute in question violates no right protected by the Federal Constitution.

'The reasons which may have impelled the state legislature to enact the statute in question were matters entirely for

its consideration, and this court has no concern with them.' 193 U.S., at 632, 633—634, 24 S.Ct., at 575.

I cannot so blithely explain Pope v. Williams away, as does the Court, **1013 ante, at 1000, n. 7, by asserting that if that *362 opinion is '(c)arefully read,' one sees that the case was concerned simply with a requirement that the new arrival declare his intention. The requirement was that he make the declaration a year before he registered to vote; time as well as intent was involved. For me, therefore, the Court today really overrules the holding in Pope v. Williams and does not restrict itself, as footnote 7 says, to rejecting what it says are mere dicta.

2. The compelling-state-interest test, as applied to a State's denial of the vote, seems to have come into full flower with Kramer v. Union Free School District, 395 U.S. 621, 627, 89 S.Ct. 1886, 1889, 23 L.Ed.2d 583 (1969). The only supporting authority cited is in the 'See' context to Carrington v. Rash, 380 U.S. 89, 96, 85 S.Ct. 775, 780, 13 L.Ed.2d 675 (1965). But as I read Carrington, the standard there employed was that the voting requirements be reasonable. Indeed, in that opinion Mr. Justice Stewart observed, at 91, 85 S.Ct., at 777, that the State has 'unquestioned power to impose reasonable residence restrictions on the availability of the ballot.' A like approach was taken in McDonald v. Board of Election Commissioners, 394 U.S. 802, 809, 89 S.Ct. 1404, 1408, 22 L.Ed.2d 739 (1969), where the Court referred to the necessity of 'some rational relationship to a legitimate state end' and to a statute's being set aside 'only if based on reasons totally unrelated to the pursuit of that goal.' I mention this only to emphasize that Kramer appears to have elevated the standard. And this was only three years ago. Whether Carrington and McDonald are now frowned upon, at least in part, the Court does not say. Cf. Bullock v. Carter, 405 U.S. 134, 92 S.Ct. 849, 31 L.Ed.2d 92.

3. Clearly, for me, the State does have a profound interest in the purity of the ballot box and in an informed electorate and is entitled to take appropriate steps to assure those ends. Except where federal intervention *363 properly prescribes otherwise, see Oregon v. Mitchell, 400 U.S. 112, 91 S.Ct. 260, 27 L.Ed.2d 272 (1970), I see no constitutional imperative that voting requirements be the same in each State, or even that a State's time requirement relate to the 30-day measure imposed by Congress by 42 U.S.C. s 1973aa—1(d) for presidential elections. I assume that the Court by its decision today does not depart from either of these propositions. I cannot be sure of this, however, for much of the opinion seems to be couched in absolute terms.

4. The Tennessee plan, based both in statute and in the State's constitution, is not ideal. I am content that the one-year and three-month requirements be struck down for want of something more closely related to the State's interest. It is, of course, a matter of line drawing, as the Court concedes, ante, at 1006. But if 30 days pass constitutional muster, what of 35 or 45 or 75? The resolution of these longer measures, less than those today struck down, the Court leaves, I suspect, to the future.

Mr. Chief Justice BURGER, dissenting.

The holding of the Court in Pope v. Williams, 193 U.S. 621, 24 S.Ct. 573, 48 L.Ed. 817 (1904), is as valid today as it was at the turn of the century. It is no more a denial of equal protection for a State to require newcomers to be exposed to state and local problems for a reasonable period such as one year before voting, than it is to require children to wait 18 years before voting. Cf. Oregon v. Mitchell, 400 U.S. 112, 91 S.Ct. 260, 27 L.Ed.2d 272 (1970). In both cases some informed and responsible persons are denied the vote, while others less informed and less responsible are permitted to vote. Some lines must be drawn. To challenge such lines by the 'compelling state interest' standard is to condemn them all. So far as I am aware, no state law has ever satisfied this seemingly *364 insurmountable standard, and I doubt one ever will, for it demands nothing less than perfection.

**1014 The existence of a constitutional 'right to travel' does not persuade me to the contrary. If the imposition of a durational residency requirement for voting abridges the right to travel, surely the imposition of an age qualification penalizes the young for being young, a status I assume the Constitution also protects.

All Citations

405 U.S. 330, 92 S.Ct. 995, 31 L.Ed.2d 274

Footnotes

* The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See United States v. Detroit Timber & Lumber Co., 200 U.S. 321, 337, 26 S.Ct. 282, 287, 50 L.Ed. 499.

1 Involved here are provisions of the Tennessee Constitution, as well as portions of the Tennessee Code. Article IV, s 1, of the Tennessee Constitution, provides in pertinent part:

'Right to vote—Election precincts . . .—Every person of the age of twenty-one years, being a citizen of the United States, and a resident of this State for twelve months, and of the county wherein such person may offer to vote for three months, next preceding the day of election, shall be entitled to vote for electors for President and Vice-President of the United States, members of the General Assembly and other civil officers for the county or district in which such person resides; and there shall be no other qualification attached to the right of suffrage.

'The General Assembly shall have power to enact laws requiring voters to vote in the election precincts in which they may reside, and laws to secure the freedom of elections and the purity of the ballot box.'

Section 2—201. Tenn.Code Ann. (Supp.1970) provides:

'Qualifications of voters.—Every person of the age of twenty-one (21) years, being a citizen of the United States and a resident of this state for twelve (12) months, and of the county wherein he may offer his vote for three (3) months next preceding the day of election, shall be entitled to vote for members of the general assembly and other civil officers for the county or district in which he may reside.'

Section 2Section 2—304, Tenn.Code Ann. (Supp.1970) provides:

'Persons entitled to permanently register—Required time for registration to be in effect prior to election.—All persons qualified to vote under existing laws at the date of application for registration, including those who will arrive at the legal voting age by the date of the next succeeding primary or general election established by statute following the date of their application to register (those who become of legal voting age before the date of a general election shall be entitled to register, and vote in a legal primary election selecting nominees for such general electio(), who will have lived in the state for twelve (12) months and in the county for which they applied for registration for three (3) months by the date of the next succeeding election shall be entitled to permanently register as voters under the provisions of this chapter provided, however, that registration or re-registration shall not be permitted within thirty (30) days of any primary or general election provided for by statute. If a registered voter in any county shall have changed his residence to another county, or to another ward, precinct, or district within the same county, or changed his same by marriage or otherwise, within ninety (90) days prior to the date of an election, he shall be entitled to vote in his former ward, precinct or district of registration.'

2 On July 30, the District Court refused to grant a preliminary injunction permitting Blumstein and members of the class he represented to vote in the August 6 election; the court noted that to do so would be 'so obviously disruptive as to constitute an example of judicial improvidence.' The District Court also denied a motion that Blumstein be allowed to cast a sealed provisional ballot for the election.

At the time the opinion below was filed, the next election was to be held in November 1970, at which time Blumstein would have met the three-month part of Tennessee's durational residency requirements. The District Court properly rejected the State's position that the alleged invalidity of the three-month requirement had been rendered moot, and the State does not pursue any mootness argument here. Although appellee now can vote, the problem to voters posed by the Tennessee residence requirements is "capable of repetition, yet evading review." Moore v. Ogilvie, 394 U.S. 814, 816, 89 S.Ct. 1493, 1494, 23 L.Ed.2d 1 (1969); Southern Pacific Terminal Co. v. ICC, 219 U.S. 498, 515, 31 S.Ct. 279, 283, 55 L.Ed. 310 (1911). In this case, unlike Hall v. Beals, 396 U.S. 45, 90 S.Ct. 200, 24 L.Ed.2d 214 (1969), the laws in question remain

on the books, and Blumstein has standing to challenge them as a member of the class of people affected by the presently written statute.

3 The important question in this case has divided the lower courts. Durational residence requirements ranging from three months to one year have been struck down in Burg v. Canniffe, 315 F.Supp. 380 (Mass.1970); Affeldt v. Whitcomb, 319 F.Supp. 69 (ND Ind.1970); Lester v. Board of Elections for District of Columbia, 319 F.Supp. 505 (DC 1970); Bufford v. Holton, 319 F.Supp. 843 (ED Va.1970); Hadnott v. Amos, 320 F.Supp. 107 (MD Ala.1970); Kohn v. Davis, 320 F.Supp. 246 (Vt.1970); Keppel v. Donovan, 326 F.Supp. 15 (Minn.1970); Andrews v. Cody, 327 F.Supp. 793 (MDNC 1971), as well as this case. Other district courts have upheld durational residence requirements of a similar variety. Howe v. Brown, 319 F.Supp. 862 (ND Ohio 1970); Ferguson v. Williams, 330 F.Supp. 1012 (ND Miss.1971); Cocanower v. Marston, 318 F.Supp. 402 (Ariz.1970); Fitzpatrick v. Board of Election Commissioners (ND Ill.1970); Piliavin v. Hoel, 320 F.Supp. 66 (WD Wis.1970); Epps v. Logan (No. 9137, WD Wash.1970); Fontham v. McKeithen, 336 F.Supp. 153 (ED La.1971). In Sirak v. Brown (Civ. 70—164, SD Ohio 1970), the District Judge refused to convene a three-judge court and summarily dismissed the complaint.

4 Noting the lack of dispute on this point, the court below specifically found that Blumstein had no intention of leaving Nashville and was a bona fide resident of Tennessee. 337 F.Supp. 323, 324.

5 While it would be difficult to determine precisely how many would-be voters throughout the country cannot vote because of durational residence requirements, but see Cocanower & Rich, Residency Requirements for Voting, 12 Ariz.L.Rev. 477, 478 and n. 8 (1970), it is worth noting that during the period 1947—1970 an average of approximately 3.3% of the total national population moved interstate each year. (An additional 3.2% of the population moved from one county to another intrastate each year.) U.S. Dept. of Commerce, Bureau of the Census, Current Population Reports, Population Characteristics Series P—20, No. 210, Jan. 15, 1971, Table 1, pp. 7—8.

6 Compare Kramer v. Union Free School District No. 15, 395 U.S. 621, 89 S.Ct. 1886, 23 L.Ed.2d 583 (1969), and Skinner v. Oklahoma, 316 U.S. 535, 62 S.Ct. 1110, 86 L.Ed. 1655 (1942), with Williamson v. Lee Optical Co., 348 U.S. 483, 75 S.Ct. 461, 99 L.Ed. 563 (1955); compare McLaughlin v. Florida, 379 U.S. 184, 85 S.Ct. 283, 13 L.Ed.2d 222 (1964), Harper v. Virginia State Board of Elections, 383 U.S. 663, 86 S.Ct. 1079, 16 L.Ed.2d 169 (1966), and Graham v. Richardson, 403 U.S. 365, 91 S.Ct. 1848, 29 L.Ed.2d 534 (1971), with Morey v. Doud, 354 U.S. 457, 77 S.Ct. 1344, 1 L.Ed.2d 1485 (1957), and Allied Stores of Ohio v. Bowers, 358 U.S. 522, 79 S.Ct. 437, 3 L.Ed.2d 480 (1959).

7 Appellants also rely on Pope v. Williams, 193 U.S. 621, 24 S.Ct. 573, 48 L.Ed. 817 (1904). Carefully read, that case simply holds that federal constitutional rights are not violated by a state provision requiring a person who enters the State to make a 'declaration of his intention to become a citizen before he can have the right to be registered as a voter and to vote in the state.' Id., at 634, 24 S.Ct., at 576. In other words, the case simply stands for the proposition that a State may require voters to be bona fide residents. See, infra, at 1003—1004. To the extent that dicta in that opinion are inconsistent with the test we apply or the result we reach today, those dicta are rejected.

8 We note that in the Voting Rights Act of 1965, as amended, Congress specifically found that a durational residence requirement 'denies or abridges the inherent constitutional right of citizens to enjoy their free movement across State lines . . ..' 84 Stat. 316, 42 U.S.C. s 1073aa—1(a)(2).

9 For example, in Crandall v. Nevada, 6 Wall. 35, 18 L.Ed. 744 (1868), the tax imposed on persons leaving the State by commercial carrier was only $1, certainly a minimal deterrent to travel. But in declaring the tax unconstitutional, the Court reasoned that 'if the State can tax a railroad passenger one dollar, it can tax him one thousand dollars,' id., at 46. In Ward v. Maryland, 12 Wall. 418, 20 L.Ed. 449 (1871), the tax

on nonresident traders was more substantial, but the Court focused on its discriminatory aspects, without anywhere considering the law's effect, if any, on trade or tradesmen's choice of residence. Cf. Chalker v. Birmingham & N.W.R. Co., 249 U.S. 522, 527, 39 S.Ct. 366, 367, 63 L.Ed. 748 (1919); but see Williams v. Fears, 179 U.S. 270, 21 S.Ct. 128, 45 L.Ed. 186 (1900). In Travis v. Yale & Towne Mfg. Co., 252 U.S. 60, 79—80, 40 S.Ct. 228, 231—232, 64 L.Ed.2d 460 (1920), the Court held that New York could not deny nonresidents certain small personal exemptions from the state income tax allowed residents. The amounts were certainly insufficient to influence any employee's choice of residence. Compare Toomer v. Witsell, 334 U.S. 385, 68 S.Ct. 1156, 92 L.Ed. 1460 (1948), with Mullaney v. Anderson, 342 U.S. 415, 72 S.Ct. 428, 96 L.Ed. 458 (1952).

10 Separately concurring, Mr. Justice Stewart concluded that quite apart from any purpose to deter, 'a law that so clearly impinges upon the constitutional right of interstate travel must be shown to reflect a compelling governmental interest.' Id., 394 U.S., at 643—644, 89 S.Ct., at 1336 (first emphasis added). See also Graham v. Richardson, 403 U.S., at 375, 91 S.Ct., at 1854.

11 In Harman, the Court held that a Virginia law which allowed federal voters to qualify either by paying a poll tax or by filing a certificate of residence six months before the election 'handicap(ped) exercise' of the right to participate in federal elections free of poll taxes, guaranteed by the Twenty-fourth Amendment. Id., 380 U.S., at 541, 85 S.Ct., at 1185.

12 Where, for example, an interstate migrant loses his driver's license because the new State has a higher age requirement, a different constitutional question is presented. For in such a case, the new State's age requirement is not a penalty imposed solely because the newcomer is a new resident; instead, all residents, old and new, must be of a prescribed age to drive. See Shapiro v. Thompson, 394 U.S. 618, 638 n. 21, 89 S.Ct. 1322, 1333, 22 L.Ed. 600 (1969).

13 As note infra, at 1003—1004, States may show an overriding interest in imposing an appropriate bona fide residence requirement on would-be voters. One who travels out of a State may no longer be a bona fide resident, and may not be allowed to vote in the old State. Similarly, one who travels to a new State may, in some cases, not establish bona fide residence and may be ineligible to vote in the new State. Nothing said today is meant to cast doubt on the validity of appropriately defined and uniformly applied bona fide residence requirements.

14 See n. 7, supra.

15 See Fontham v. McKeithen, 336 F.Supp., at 167—168 (Wisdom, J., dissenting); Pope v. Williams, 193 U.S. 621, 24 S.Ct. 573, 48 L.Ed. 817 (1904); and n. 7, supra.

16 See, e.g., Cocanower & Rich, 12 Ariz.L.Rev., at 499; MacLeod & Wilberding, State Voting Residency Requirements and Civil Rights, 38 Geo.Wash.L.Rev. 93, 113 (1969).

17 Obviously, it could not be argued that the three-month waiting period is necessary to confirm residence in the county, and the one-year period necessary to confirm residence in the State. Quite apart from the total implausibility of any suggestion that one task should take four times as long as the other, it is sufficient to note that if a person is found to be a bona fide resident of a county within the State, he is by definition a bona fide resident of the State as well.

18 See, e.g., Brown v. Hows, 163 Tenn. 178, 42 S.W.2d 210 (1930); Sparks v. Sparks, 114 Tenn. 666, 88 S.W. 173 (1905). See generally Tennessee Law Revision Commission, Title 2—Election Laws, Tentative Draft of October 1971, s 222 and Comment. See n. 22, infra.

19 In the Voting Rights Act Amendments of 1970, Congress abolished durational residence requirements as a precondition to voting in presidential and vice-presidential elections, and prohibited the States from cutting off registration more than 30 days prior to those elections. These limits on the waiting period a State may impose prior to an election were made 'with full cognizance of the possibility of fraud and administrative difficulty.'

Oregon v. Mitchell, 400 U.S. 112, 238, 91 S.Ct. 260, 322, 27 L.Ed.2d 272 (separate opinion of Brennan, White, and Marshall, JJ.). With that awareness, Congress concluded that a waiting-period requirement beyond 30 days 'does not bear a reasonable relationship to any compelling State interest in the conduct of presidential elections.' 42 U.S.C. s 1973aa—1(a)(6). And in sustaining s 202 of the Voting Rights Act of 1965, we found 'no explanation why the 30-day period between the closing of new registrations and the date of election would not provide, in light of modern communications, adequate time to insure against . . . frauds.'

Oregon v. Mitchell, supra, at 239, 91 S.Ct., at 322 (separate opinion of Brennan, White, and Marshall, JJ.). There is no reason to think that what Congress thought was unnecessary to prevent fraud in presidential elections shoud not also be unnecessary in the context of other elections. See, infra, at 1009.

20 As a technical matter, it makes no sense to say that one who has been a resident for a fixed duration is presumed to be a resident. In order to meet the durational residence requirement, one must, by definition, first establish that he is a resident. A durational residence requirement is not simply a waiting period after arrival in the State; it is a waiting period after residence is established. Thus it is conceptually impossible to say that a durational residence requirement is an administratively useful device to determine residence. The State's argument must be that residence would be presumed from simple presence in the State or county for the fixed waiting period.

21 It should be clear that this argument assumes that the State will reliably determine whether the sworn claims of duration in the jurisdiction are themselves accurate. We have already noted that this is unlikely. See supra, at 1005. Another recurrent problem for the State's position is the existence of differential durational residence requirements. If the State presumes residence in the county after three months in the county, there is no rational explanation for requiring a full 12 months' presence in the State to presume residence in the State.

22 Tennessee's basic test for bona fide residence is (1) an intention to stay indefinitely in a place (in other words, 'without a present intention of removing therefrom,' Brown v. Hows, 163 Tenn., at 182, 42 S.W.2d at 211), joined with (2) some objective indication consistent with that intent, see n. 18, supra. This basic test has been applied in divorce cases, see, e.g., Sturdavant v. Sturdavant, 28 Tenn.App. 273, 189 S.W.2d 410 (1944); Brown v. Brown, 150 Tenn. 89, 261 S.W. 959 (1924); Sparks v. Sparks, 114 Tenn. 666, 88 S.W. 173 (1905); in tax cases, see, e.g., Denny v. Sumner County, 134 Tenn. 468, 184 S.W. 14 (1916); in estate cases, see, e.g., Caldwell v. Shelton, 32 Tenn.App. 45, 221 S.W.2d 815 (1948); Hascall v. Hafford, 107 Tenn. 355, 65 S.W. 423 (1901); and in voting cases, see, e.g., Brown v. Hows, supra; Tennessee Law Revision Commission, Title 2—Election Laws, supra, n. 18.

23 Indeed, in Blumstein's case, the County Election Commission explicitly rejected his offer to treat the waiting-period requirement as 'a waivable guide to commission action, but rebuttable upon a proper showing of competence to vote intelligently in the primary and general election.' Complaint at App. 8. Cf. Skinner v. Oklahoma ex rel. Williamson, 316 U.S., at 544—545, 62 S.Ct., at 1114—1115 (Stone, C.J., concurring).

24 See Harman v. Forssenius, 380 U.S., at 543, 85 S.Ct., at 1186 (filing of residence certificate six months before election in lieu of poll tax unnecessary to insure that the election is limited to bona fide residents in light of 'numerous devices to enforce valid residence requirements'); cf. Schneider v. State of New Jersey, 308 U.S. 147, 164, 60 S.Ct. 146, 152, 84 L.Ed. 155 (1939) (fear of fraudulent solicitations cannot justify permit requests since '(f)rauds may be denounced as offenses and punished by law').

25 Tenn.Code Ann. s 2Tenn.Code Ann. s 2—1614 (Supp.1970) makes it a felony for any person who 'is not legally entitled to vote at the time and place where he votes or attempts to vote . . ., to vote or offer to do so,' or to aid and abet such illegality. Tenn.Code Ann. s 2Tenn.Code Ann. s 2—2207 (1955) makes it a misdemeanor 'for any person knowingly to vote in any political convention or any election held under the Constitution or laws of this state, not being legally qualified to vote . . .,' and Tenn.Code Ann. s 2Tenn.Code Ann. s 2—2208 (1955) makes it a misdemeanor to aid in such an offense. Tenn.Code Ann. s 2Tenn.Code Ann. s 2—202 (Supp.1970) makes it an offense to vote outside the ward or precinct where one resides and is registered. Finally, Tenn.Code Ann. s 2Tenn.Code Ann. s 2—2209 (1965) makes it unlawful to 'bring or aid

in bringing any fraudulent voters into this state for the purpose of practising a fraud upon or in any primary or final election . . .' See, e.g., State v. Weaver, 122 Tenn. 198, 122 S.W. 465 (1909).

26 We note that in the period since the decision below, several elections have been held in Tennessee. We have been presented with no specific evidence of increased colonization or other fraud.

27 It has been noted elsewhere, and with specific reference to Tennessee law, that '(t)he historical purpose of (durational) residency requirements seems to have been to deny the vote to undesirables, immigrants and outsiders with different ideas.' Cocanower & Rich, 12 Ariz.L.Rev., at 484 and nn. 44, 45, and 46. We do not rely on this alleged original purpose of durational residence requirements in striking them down today.

28 Tennessee may be revealing this impermissible purpose when it observes:
'The fact that the voting privilege has been extended to 18 year old persons . . . increases, rather than diminishes, the need for durational residency requirements. . . . It is so generally known, as to be judicially accepted, that there are many political subdivisions in this state, and other states, wherein there are colleges, universities and military installations with sufficient student body or military personnel over eighteen years of age, as would completely dominate elections in the district, county or municipality so located. This would offer the maximum of opportunity for fraud through colonization, and permit domination by those not knowledgeable or having a common interest in matters of government, as opposed to the interest and the knowledge of permanent members of the community. Upon completion of their schooling, or service tour, they move on, leaving the community bound to a course of political expediency not of its choice and, in fact, one over which its more permanent citizens, who will continue to be affected, had no control.' Brief for Appellants 15—16.

29 In the 1970 Voting Rights Act, which added s 201, 42 U.S.C. s 1973aa, Congress provided that 'no citizen shall be denied, because of his failure to comply with any test or device, the right to vote in any Federal, State, or local election . . ..' The term 'test or device' was defined to include, in part, 'any requirement that a person as a prerequisite for voting or registration for voting (1) demonstrate the ability to read, write, understand, or interpret any matter, (2) demonstrate any educational achievement or his knowledge of any particular subject . . ..' By prohibiting various 'test(s)' and 'device(s)' that would clearly assure knowledgeability on the part of voters in local elections, Congress declared federal policy that people should be allowed to vote even if they were not well informed about the issues. We upheld s 201 in Oregon v. Mitchell, supra.

30 H. Alexander, Financing the 1968 Election 106—113 (1971); Affeldt v. Whitcomb, 319 F.Supp, at 77; Cocanower & Rich, 12 Ariz.L.Rev., at 498.

31 The general provisions for absentee voting apply in part to '(a)ny registered voter otherwise qualified to vote in any election to be held in this state or any county, municipality, or other political subdivision thereof, who by reason of business, occupation, health, education, or travel, is required to be absent from the county of his fixed residence on the day of the election . . ..' Tenn. Code Ann. s 2Tenn. Code Ann. s 2—1602 (Supp.1970). See generally Teen.Code Ann. s 2—1601 et seq. (Supp.1970). An alternative method of absentee voting for armed forces members and federal personnel is detailed in Tenn. Code Ann. s 2Tenn. Code Ann. s 2—1701 et seq. (Supp.1970). Both those provisions allow persons who are still technically 'residents' of the State or county to vote even though they are not physically present, and even though they are likely to be uninformed about the issues. In addition, Tennessee has an unusual provision that permits persons to vote in their prior residence for a period after residence has been changed. This section provides, in pertinent part: 'If a registered voter in any county shall have changed his residence to another county . . . within ninety (90) days prior to the date of an election, he shall be entitled to vote in his former ward, precinct or district of registration.' Tenn.Code Ann. s 2Tenn.Code Ann. s 2—304 (Supp.1970). See also Tenn.Code Ann. s 2Tenn.Code Ann. s 2—204 (1955).

Testimony HB 1289
House Government and Veterans Affairs Committee
February 12, 2021

Mr. Chairman and members of the House Government and Veterans Affairs Committee, good morning. My name is Don Morrison and I live in Bismarck. I am providing testimony as a volunteer for North Dakota Voters First. We are a non-partisan group of North Dakotans working to strengthen our democracy, help make our elections and public policy more open, ethical, and accountable to the people of our state.

I would assume that, as legislators, you often find yourself asking how does this or that bill impact the lives of North Dakota citizens or my constituents. Here are some examples of how this bill might impact the lives of people in North Dakota.

If you decide to move to North Dakota, you would lose your right to vote in the community you are living in for a year. If you move outside your current precinct, but in the same district you might not be able to vote for the legislator you have voted many times for in the past if you move in August, September or October of an election year. If your business is doing really well and you have the opportunity to buy and move to a new house, you could lose your right to vote unless you time your move 90 days before an election. Primary and General Elections happen in June and November. Other elections are held at other times during the year.

All sorts of people would be impacted: New residents are, or have been, moving to North Dakota to work in the oil fields, work at our Air Bases, be doctors at our hospitals, and give their talents at businesses, schools, and other workplaces. People move. Some people find it necessary to move more often. Life happens. You should not lose your right to vote because of it.

This bill would appear to negate the reason behind HB 1447 which would have the state's colleges and universities issue their students an ID that would be valid for voting. The school year starts in August or September so unless you already lived in the same precinct as before, that new ID would do you little good in election years.

As for legal issues, this bill limits people's right to vote, right to travel. That is why the U.S. Supreme Court has held that such extreme requirements are unconstitutional.

If freedom and opportunity are important to us, then HB 1289 should be defeated. North Dakota Voters First urges the committee to recommend a Do Not Pass. Thank you for the opportunity to talk with you this morning.

NORTH DAKOTA STUDENT ASSOCIATION | THE VOICE OF THE STUDENTS

#6496

February 12th, 2021

Dear Chairman Kasper and Members of the House Government and Veterans Affairs Committee:

The North Dakota Student Association (NDSA) strongly opposes HB 1289, which would change North Dakota's definition of a qualified elector and require citizens to have resided in the state of North Dakota for at least one year and in their respective precinct for ninety days.

The NDSA represents North Dakota's 45,000 public college and university students, spread across all eleven of the North Dakota University System's institutions. Our organization meets once a month and is comprised of voting representatives from all eleven institutions. I am providing this testimony in opposition of HB 1289 on the behalf of our General Assembly. If enacted, during each election cycle this legislation would potentially disenfranchise thousands of higher education students in the State of North Dakota.

We discussed this bill at length during our most recent meeting and concluded it would detrimentally impact the ability of students to vote in the state of North Dakota in federal, state, and local elections. Our decision and arguments are outlined in our approved resolution "NDSA-10-2021: A Resolution in Opposition of Changing Residency Requirements for Eligible Voters in North Dakota," which is attached as part of our testimony.

The nature of higher education is that students often move across city, county, and state lines in order to attain a degree in the field of their choice. A large majority of those students move to their college communities in August, before the new academic year begins, and many of these students go on to claim residency in North Dakota or reside in the state for at least nine months of the year. These students have the right to vote in the community and state where they will be investing years of their lives, and as an organization we have historically worked diligently to encourage student voting and civic participation.

On the behalf of the North Dakota Student Association and the 45,000 higher education students in North Dakota, we urge the committee to vote **do not pass** on HB 1289.

Sincerely,
Gracie Lian
President
North Dakota Student Association
gracie.lian@und.edu | 701.213.7097

NDSA

NORTH DAKOTA STUDENT ASSOCIATION | THE VOICE OF THE STUDENTS

NDSA-10-2021

A Resolution in Opposition of HB 1289

WHEREAS, the North Dakota Student Association (NDSA) represents the voice of North Dakota's 45,000 public college and university students; and,

WHEREAS, the purpose of NDSA is to represent all students enrolled in the North Dakota University System (NDUS) and advocate on issues of higher education in support of access, affordability, quality, and the student experience; and,

WHEREAS, the right of all eligible voters to vote in federal, state, and local elections is an integral aspect of fulfilling one's civic duties as an American citizen, and as a citizen of their state and local governments; and,

WHEREAS, HB 1289[1] proposes changing the definition of a qualified elector in North Dakota to an individual who has lived in the state for a year and who has resided in the precinct they would be voting in for 90 days; and,

WHEREAS, the current guidelines for voting require an individual to live in North Dakota with proof of address and to have resided in their voting precinct for 30 days; and,

WHEREAS, this bill would disproportionately and negatively impact any college students who have moved to North Dakota to pursue their education, and bar many who are establishing residency during an election year, by preventing them from being able to exercise their right to vote; and,

WHEREAS, students in higher education are citizens of their state and local communities, and their participation in the voting process is integral in their voices being heard; and,

WHEREAS, according to the North Dakota University System's (NDUS) Fall 2020 Enrollment[2] report, only 54.45% of our higher education students are from North Dakota; and,

WHEREAS, implementation of this bill could potentially prevent 45% of new NDUS higher education students who no longer live in another state nor hold an address in that previous state from voting in federal elections, in addition to state and local elections; and,

WHEREAS, this bill disenfranchises students and creates barriers to voting within our state and nation, where we pride ourselves on "free and fair" elections; and,

WHEREAS, North Dakota's voter turnout has increased in the past two elections cycles, a trend that would be inhibited if HB1289 were to be implemented; and,

[1] https://www.legis.nd.gov/assembly/67-2021/documents/21-0401-03000.pdf
[2] https://ndus.edu/wp-content/uploads/sites/6/2020/11/2020-Fall-Enrollment.pdf

NORTH DAKOTA STUDENT ASSOCIATION | THE VOICE OF THE STUDENTS

WHEREAS, The North Dakota Student Association seeks to encourage all students to use their voices on campus and in their communities to promote better student life and to teach them skills beyond the classroom such as practicing civic engagement; and,

WHEREAS, HB 1289 would reduce the number of students that would be eligible to vote after moving to attend a University in North Dakota; so,

THEREFORE, BE IT RESOLVED, that the North Dakota Students Association opposes HB 1289 as it unfairly disenfranchises the student population and their right to engage in their civic duty of voting in federal, state, and local elections.

Approved by the NDSA General Assembly on Saturday, January 30th, 2021.

To the North Dakota State Legislature:

As we have all seen, the 2020 presidential election was a disaster. For someone to be an elector a residency requirement of one year AND 90 days residency prior to the election date proves enough personal investment in North Dakota for that person to be a qualified elector. I think it takes about one year of residency to fully understand the issues North Dakota residents face.

We can't have people moving here for short periods of time attempting to:

Change our laws while not having to fully experience life in North Dakota.

While not having to experience the results of our laws or changes in our laws.

Avoid subjection to the people who are elected.

People should not find it easy or convenient to be here only a short time while attempting to promote a political agenda that is foreign to North Dakota residents' wishes.

Vote YES on 1289.

Thank you, Dwayne McDevitt

Greetings Chairman Kasper and Distinguished Members of the Committee,

I am a lifelong resident of North Dakota. In my 11 years as a qualified elector, I have never missed an opportunity to vote whether in a general, primary, or special election. I have enjoyed though not taken for granted the ease of showing up at the polls and being relatively assured that I would be able to fulfill my civic duty that day without hassle. I am a happy homeowner now and don't worry much about changing addresses or ID requirements. However, as an NDSU alumna and former renter, I understand the transience that can mark the early years of adulthood. HB 1289 would severely restrict the ability of young adults and new residents to exercise their constitutional right to vote. This bill is undemocratic and I urge you to stand up for freedom and representation by recommending Do Not Pass. Thank you for your consideration.

Respectfully submitted,
Courtney Schaff
Fargo

February 12, 2021

Dear Chairman Kasper and Members of the House Government and Veterans Affairs Committee:

The ACLU of North Dakota strongly opposes HB 1289, legislation that would significantly extend the amount of time a person must reside in the state and their precinct before becoming eligible to vote. This proposed change to the well-established voting procedures in North Dakota would result in confusion and disenfranchisement for countless people in this state who have a right to cast a ballot.

We urge a **do not pass** recommendation for HB 1289.

ACLU
AMERICAN CIVIL LIBERTIES UNION
North Dakota

P.O. Box 1190
Fargo, ND 58107
aclund.org

Under current North Dakota law, to meet the definition of a "qualified elector" an individual must to be at least 18 years old, a citizen of the United States, and have resided in their precinct for 30 days prior to an election. This provision is sensible and ensures that voters reside in the districts in which they are voting without imposing substantial burdens on voters. Yet under the proposed legislation, qualified electors would be required to live in North Dakota for an entire year and their precincts for 90 full days before they become eligible to vote. Thus, HB 1289 would turn a sensible restriction into an insidious mechanism to suppress the voting rights of new North Dakotans as well as people who have moved fewer than 90 days pre-election.

North Dakota has long prided itself on its lack of voter registration, a fact that makes the state unique and eliminates unnecessary barriers to voting. Yet bills like HB 1289 undermine the state's low-regulation approach to voting and do so without reason or need.

Further, a regulation such as that proposed in HB 1289 will have a disproportionate effect on already marginalized voting populations. Specifically, this bill will place additional hurdles in the way of young voters – particularly college students – and low-income voters. These populations move more frequently than other households. Low-income voters, in particular, are more likely to experience negative mobility in the form of evictions and homeless episodes. Additionally, low-income populations are disproportionately comprised of people of color – a disparity that has likely been exacerbated by the COVID-19 pandemic.

Simply put, North Dakotans deserve a say in their representation regardless of how much money they make or whether they're students. In light of the particular burden HB 1289 would place on these populations, the ACLU of North Dakota does not believe there is justification for moving HB 1289 forward.

Voting is a fundamental right and it is incumbent upon elected officials to find solutions that make voting easier and more accessible for all North Dakotans.

We respectfully urge you to vote **do not pass** on HB 1289.

Sincerely,

Elizabeth Skarin
Campaigns Director
ACLU of North Dakota
northdakota@aclu.org

2021 HOUSE STANDING COMMITTEE MINUTES

Government and Veterans Affairs Committee
Pioneer Room, State Capitol

HB 1289
2/18/2021

Relating to increasing the residency requirement to become a qualified elector to one year

Chairman Kasper opened the committee work meeting at 6:36 p.m.

Representatives	Roll Call
Representative Jim Kasper	P
Representative Ben Koppelman	P
Representative Pamela Anderson	P
Representative Jeff A. Hoverson	P
Representative Karen Karls	P
Representative Scott Louser	P
Representative Jeffery J. Magrum	P
Representative Mitch Ostlie	P
Representative Karen M. Rohr	P
Representative Austen Schauer	P
Representative Mary Schneider	P
Representative Vicky Steiner	P
Representative Greg Stemen	P
Representative Steve Vetter	P

Discussion Topics:

- Residency requirement
- Amendment

Rep. Magrum explained his amendment with word change “shall study”, #6984, and moved to **adopt. Rep. Schauer** seconded the motion. **Voice vote. Motion fails.**

Rep. Karls moved **Do Not Pass** on the original bill. **Rep. Rohr** seconded the motion.

Rep. Magrum will **withdraw this bill. (The bill was withdrawn on 2/19/21.)**

Chairman Kasper adjourned at 6:44 p.m.

Carmen Hart, Committee Clerk

21.0401.03002
Title.

Prepared by the Legislative Council staff for
Representative Magrum
February 16, 2021

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1289

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to provide for a legislative managment study of voter registration.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. LEGISLATIVE MANAGEMENT STUDY - VOTER REGISTRATION. During the 2021-22 interim, the legislative management shall consider studying implementation of a voter registration system in North Dakota. The study must include consideration of other states' voter registration laws, the requirements of the National Voter Registration Act for state voter registration systems, and enforcement of the National Voter Registration Act by the United States department of justice. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-eighth legislative assembly."

Renumber accordingly

Bill Actions for HB 1289

Introduced by Rep. Magrum, Christensen, Jones, Kasper

A BILL for an Act to amend and reenact subsection 7 of section 4.1-20-02, subsection 1 of section 16.1-01-04, subsection 4 of section 16.1-01-04.2, subsection 2 of section 16.1-01-09, subsection 2 of section 16.1-01-09.1, subdivision b of subsection 1 of section 16.1-05-02, subdivision g of subsection 1 of section 16.1-07-06, and sections 16.1-14-18 and 16.1-14-20 of the North Dakota Century Code, relating to increasing the residency requirement to become a qualified elector to one year.

Date	Chamber	Meeting Description	Journal
01/11	House	Introduced, first reading, referred Government and Veterans Affairs Committee	HJ 203
02/12	House	Committee Hearing 08:00	
02/19	House	Request return from committee	HJ 786
		Withdrawn from further consideration	HJ 786