ELECTIONS—STUDENT VOTING—STUDENTS RESIDING IN UNIVERSITY COMMUNITIES MUST BE PERMITTED TO REGISTER TO VOTE WITHOUT REGARD TO FUTURE PLANS—*Worden v. Mercer County Board of Elections*, 61 N.J. 325, 294 A.2d 233 (1972).

Thomas Worden, a Trenton State College freshman[1] and two other students from Mercer County colleges[2] attempted to register to vote in their university communities.[3] They were all told that since they were college students, they could not be registered with local election boards, but should discuss their applications with the Mercer County Board of Elections in Trenton.[4] The general procedure followed by both the local boards and the Mercer County Board of Elections was to deny students permission to register unless they could affirmatively establish a county domicile apart from their campus residence.[5] Relying on a 1927 opinion of the Mercer County Counsel,[6] election officials stated that since students were only in the county for educational purposes, they were "not bona fide residents of the state."[7]

Seeking to establish their right to vote in their college communities, the students brought an action against the Mercer County Board of Elections in the Superior Court, Mercer County.[8] The law division ruled that although a voter-registration applicant must be a bona fide resident for a specified time prior to the registration, resi-

1 Worden v. Mercer County Bd. of Elections, 61 N.J. 325, 327, 294 A.2d 233, 234 (1972).

2 *Id.* at 327-28, 294 A.2d at 234-35.

3 *Id.*

4 *Id.* at 329, 294 A.2d at 235:

> [S]tudents who sought to register prior to the November 1971 election were given written notices which flatly stated that "Students registering at Trenton State College cannot register to vote in Ewing Township" and that if they had "any questions concerning this" they should call the Mercer County Board of Elections.

5 *Id.* at 330, 294 A.2d at 235.

Robert F. Mooney, Princeton Borough Clerk, stated that in his view the "basic precept" was that the university student was only a temporary resident, and "therefore not eligible to vote in the State of New Jersey." Mooney also admitted that his office had adhered to this policy consistently during his twenty-five year tenure as clerk.

John A. Garzio, Clerk of Ewing Township for the past eleven years, recalled that to the best of his knowledge no student whose parents lived outside New Jersey had ever been permitted to register by his office. Garzio also admitted that he normally asked voting applicants only routine questions relating to age, citizenship, and duration of residence. Students, however, were subjected to more extensive inquiries, and were generally referred to the County Board of Elections. *Id.* at 328-29, 294 A.2d at 235.

6 *Id.*

7 *Id.* at 329, 294 A.2d at 235.

8 *Id.* at 330, 294 A.2d at 235.

dence thereafter need not be for any fixed time, but might be for an indefinite period.[9] The trial court further found that college students in Mercer County had been discriminated against as a class in violation of the equal protection clause of the fourteenth amendment to the United States Constitution.[10] The court concluded that those students who planned to remain permanently in their college communities, those who planned to seek employment away from their previous residences, and those who were uncertain about their plans should be allowed to register.[11] Aggrieved by the judgment of the law division, the defendant election board appealed, and the New Jersey Supreme Court certified before argument in the appellate division.[12]

On certification, the New Jersey Supreme Court in *Worden v. Mercer County Board of Elections*[13] held that there could be

> little room for doubt that the individual plaintiffs who were bona fide campus residents in Mercer County, and others similarly situated, were improperly discriminated against by the Mercer County election officials and were improperly denied the right to register to vote . . . .[14]

The court, however, expanded the judgment of the law division and concluded that even those students who planned to return to their previous homes upon termination of their academic careers should be permitted to register in the college community.[15] In a concurring opinion, Chief Justice Weintraub agreed with the result, but expressed his desire to found it on a broader base. In his view, both student and

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9 Although the law division held that "a person seeking to register to vote in this State 'must be a bona fide resident for a specified time prior to registration,'" *Id.* at 330, 294 A.2d at 236, the New Jersey constitutional provision which establishes election qualifications provides that those who satisfy the durational requirements for a specified period before the *election*, shall be entitled to vote. N.J. CONST. art. 2, ¶ 3.

10 U.S. CONST. amend. XIV, § 1 provides in part:

> No state shall . . . deny to any person within its jurisdiction the equal protection of the laws.

11 These categories approximate the four most common student views regarding future plans:

> Students away from home usually have one of four intentions with respect to residency: (1) an intent to return to the parents' community and to maintain involvement with that community while attending school; (2) a desire to go elsewhere after graduation (other than the parental home), but no demonstrable or foreseeable connection with that place yet; (3) an intent to remain in the community in which the school is located; or (4) no definite intent beyond graduation.

Comment, *Student Voting Rights in University Communities*, 6 HARV. CIV. RIGHTS-CIV. LIB. L. REV. 397, 406 (1971).

12 Worden v. Mercer County Bd. of Elections, 61 N.J. 325, 327, 294 A.2d 233, 234 (1972).

13 *Id.* at 348, 294 A.2d at 245.

14 *Id.*

15 *Id.*

non-student alike should be able to vote where they actually reside "without regard to duration of [their] anticipated stay or the existence of another residence elsewhere."[16]

With the passage of the Voting Rights Act Amendments of 1970[17] and the ratification of the twenty-sixth amendment to the Constitution,[18] the nation's local election boards began the task of registering the estimated eleven million[19] newly enfranchised voters. Long a topic of academic debate, the measure ending the traditional voting age of twenty-one[20] passed with unanticipated alacrity in both Congress and the state legislatures. As noted by one commentator:

> After twenty-nine years of debate, the demise of the magic voting age of twenty-one had come with surprising dispatch—the combined vote of Congress was 494-19, and ratification by the requisite thirty-eight state legislatures took only sixty-seven days.[21]

Among the beneficiaries of the new amendment were an estimated two million[22] college and university students between the ages of eighteen and twenty-one who were residing at universities. These students could now, in theory at least, participate not only in national political processes, but also in state and local elections.[23] Since the

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16 *Id.* at 350 (Weintraub, C.J., concurring) (concurring opinion omitted in unofficial report).

17 42 U.S.C. § 1973bb-1 (1970) provides:

> Except as required by the Constitution, no citizen of the United States who is otherwise qualified to vote in any State or political subdivision in any primary or in any election shall be denied the right to vote in any such primary or election on account of age if such citizen is eighteen year [sic] of age or older.

18 U.S. CONST. amend. XXVI provides:

> Section 1. The right of citizens of the United States, who are eighteen years of age or older, to vote shall not be denied or abridged by the United States or by any State on account of age.
>
> Sec. 2. The Congress shall have power to enforce this article by appropriate legislation.

19 Comment, *The College Voter and Residency Requirements*, 17 S.D.L. REV. 131 (1972).

20 S. Rep. No. 92-26, Mar. 8, 1971 noted:

> There is no magic to the age of 21. The 21 year age of maturity is derived only from historical accident. In the eleventh century 21 was the age at which most males were physically capable of carrying armor. But the physical ability to carry armor in the eleventh century clearly has no relation to the intellectual and emotional qualifications to vote in twentieth century America.

See also Jolicoeur v. Mihaly, 5 Cal. 3d 565, 573, 488 P.2d 1, 5, 96 Cal. Rptr. 697, 701 (1971).

21 Note, *Student Voting and Apportionment: The "Rotten Boroughs" of Academia*, 81 YALE L.J. 35, 35 (1971) (footnote omitted).

22 *Id.*

23 Title III of the Voting Rights Act of 1970, 42 U.S.C. §§ 1973bb to bb-4 (1970) was intended to lower the voting age to eighteen in all federal, state and local elections. Congress' statutory reduction of the voting age was limited to federal elections by the Supreme Court's decision in Oregon v. Mitchell, 400 U.S. 112 (1970).

enactment made no mention of the peculiar status of students and other transient groups, the question of where these newly enfranchised voters should register soon arose. Should the students vote in their college communities or at their former homes?

A conflict quickly developed between students who desired to participate in local government in the university community and the numerically inferior permanent residents of college towns who feared student "take-overs"[24] of local affairs. This conflict was exacerbated by the law of voting residence, which has traditionally been interpreted to require domicile in the local election district, and by the conventional presumptions against student domicile in the university community.[25]

Historically, "residence" and "domicile" were not interchangeable terms,[26] particularly when used in the context of establishing voting qualifications. In 1814, the United States Supreme Court referred to domicile as residence accompanied by an intention to make that location a permanent home.[27] When confronted by the concept of domicile, most courts agreed that it included both the fact of bodily presence in a particular location and an intent to remain.[28] Some courts have concluded that there must be an intention to remain permanently,[29] but the more pervasive view is that the intent to stay need only be for an indefinite period.[30] This idea has also been expressed

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24 This fear of takeovers by large student populations of college towns is typified by the remarks of Congresswoman Green of Oregon during the debates on the amendment:

> My second question pertains to college towns. I wonder if the committee discussed this. We have many towns in the United States that have populations of a few thousand and have student bodies of 15,000 or 20,000 population or even more. If the vote is extended to the 18-year-olds then it is conceivable that the student body composed largely of 18- to 21-year-olds, could outvote the permanent residents who own the property and are left with the responsibility to pay the taxes and assume all other responsibilities required by the vote. I am not saying they are going to be irresponsible, but there is this possibility, is there not . . . ?

117 CONG. REC. 7547 (1971).

25 *See, e.g.*, Sanders v. Getchell, 76 Me. 158, 165 (1884); Hoffman v. Bachman, 187 Misc. 799, 804, 65 N.Y.S.2d 107, 111 (Sup. Ct. 1946).

26 Stephens v. AAA Lumber Co., 238 Ark. 842, 845, 384 S.W.2d 943, 945 (1964); Collins v. Yancey, 55 N.J. Super. 514, 521, 151 A.2d 68, 72 (L. Div. 1959); Larrick v. Walters, 39 Ohio App. 363, 368-69, 177 N.E. 642, 644 (Ct. App. 1930).

27 The Venus, 12 U.S. (8 Cranch) 253, 277 (1814).

28 City of Hartford v. Champion, 58 Conn. 268, 275, 20 A. 471, 473 (1889); Town of Albion v. Village of Maple Lake, 71 Minn. 503, 506, 74 N.W. 282, 283 (1898); Fulham v. Howe, 62 Vt. 386, 394, 20 A. 101, 103 (1890); Dean v. Cannon, 37 W. Va. 123, 128, 16 S.E. 444, 446 (1892).

29 Fritz v. Fritz, 55 Del. 328, 331, 187 A.2d 348, 349 (1962); Smith v. Deere, 195 Miss. 502, 505, 16 So. 2d 33, 34 (1943); Schwallbach v. Schwallbach, 84 N.Y.S. 2d 345, 347 (Sup. Ct. 1948), *aff'd mem.*, 275 App. Div. 825, 93 N.Y.S.2d 716 (1949).

30 Valentine v. Powers, 85 F. Supp. 732, 736 (D. Neb. 1948); Bragg v. Bragg, 32 Cal.

as merely the absence of any present intent to move from a given location.[31] In 1944,[32] the former New Jersey Supreme Court summarized the concept of domicile by stating that:

> "Domicile" is the relation which the law creates between an individual and a particular locality or country. In a strict legal sense, the domicile of a person is the place where he has his true, fixed, permanent home and principal establishment, and to which, whenever he is absent, he has the intention of returning, and from which he has no present intention of moving.[33]

Because domicile is a more precise term than residence, and embodies both presence and a particular state of mind with relation to a locality, it has often been observed that one can have several residences but only one domicile at a given time.[34]

It is, of course, the fundamental notion of permanence, central to the concept of domicile, which raises the most serious obstacle to the student's establishment of domicile in the college community. The fact that the student has come to the local area for the purpose of acquiring an education is said to create a presumption that his stay will only be temporary,[35] and that he is, therefore, merely a "resident" of the new locality and not a domiciliary:

> When he [the student] comes from another part of the State or Nation, the presumption is that he has left his home for the time being and is on a temporary sojourn as a student.[36]

Since domicile is largely a matter of intent,[37] it would appear that the student who did not desire to return to his former home could simply state his intention to make the college community his home, at

App. 2d 611, 614, 90 P.2d 329, 330 (Ct. App. 1939); Publicker Estate, 385 Pa. 403, 405, 123 A.2d 655, 658 (1956); Howe v. Howe, 179 Va. 111, 118, 18 S.E.2d 294, 297 (1942).

31 State v. Benny, 20 N.J. 238, 250, 119 A.2d 155, 161 (1955) (citing Putnam v. Johnson, 10 Mass. 488, 501 (1813)).

32 Kurilla v. Roth, 132 N.J.L. 213, 38 A.2d 862 (Sup. Ct. 1944).

33 *Id.* at 215, 38 A.2d at 864.

34 Helm's Trustee v. Commonwealth, 135 Ky. 392, 395, 122 S.W. 196, 197-98 (1909); Mather v. Cunningham, 105 Me. 326, 336, 74 A. 809, 813 (1909); *In re* Daly's Estate, 178 Misc. 943, 949, 36 N.Y.S.2d 954, 960 (Sur. Ct. 1942).

35 Sanders v. Getchell, 76 Me. 158, 165 (1884):

> [T]he intention to remain only so long as a student, or only because a student, is not sufficient. The intention must be, not to make the place a home temporarily, not a mere student's home, a home while a student, but to make an actual, real, permanent home there; such a real and permanent home there as he might have elsewhere. The intention must not be conditioned upon or limited to the duration of the academical course.

36 Hoffman v. Bachman, 187 Misc. 799, 804, 65 N.Y.S.2d 107, 111 (Sup. Ct. 1946). *See also* Welsh v. Shumway, 232 Ill. 54, 88, 83 N.E. 549, 562 (1907).

37 Schultz v. Chicago City Bank & Trust Co., 384 Ill. 148, 156-57, 51 N.E.2d 140, 144 (1943).

least indefinitely, and thus establish a new domicile by renouncing his former one.[38] Unfortunately, however, the student's own statement, even under oath, is often not sufficient to rebut the presumption against his domicile in the university community.[39] The burden is clearly upon the student,[40] not the election official questioning the statement of intent, to offer positive facts proving the requisite intent to remain in the election district.[41]

Although the question of student voting eligibility has been litigated on some sixty occasions[42] since 1813,[43] "[t]he courts have been unclear as to which facts are relevant to prove an intent to remain."[44] Although no court has held that students can never vote in the college community,[45] various criteria have been advanced to establish student voting eligibility. Some courts have looked to the student's financial independence,[46] while others have considered the payment of state and local income taxes significant.[47] Marriage and the status of the head of a household have been considered important by some courts,[48] while others have made decisions on the basis of such factors as obtaining a driver's license,[49] or securing local jobs.[50] Clearly no one standard

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38 *Id. See also In re* Beechwood, 142 Misc. 400, 401, 254 N.Y.S. 473, 475 (Cayuga County Ct. 1931).

39 Siebold v. Wahl, 164 Wis. 82, 85, 159 N.W. 546, 548 (1916); *cf. In re* Blankford, 241 N.Y. 180, 183, 149 N.E. 415, 416 (1925).

40 Sanders v. Getchell, 76 Me. 158, 165 (1884); Shaeffer v. Gilbert, 73 Md. 66, 72, 20 A. 434, 435 (1890); Watermeyer v. Mitchell, 275 N.Y. 73, 76, 9 N.E.2d 783, 784 (1937).

41 *In re* Garvey, 147 N.Y. 117, 120, 41 N.E. 439, 440 (1895); *In re* Goodman, 146 N.Y. 284, 287, 40 N.E. 769, 770 (1895).

42 Thompson, *The Problem of College Student Voting: Proposed Solutions*, 7 WAKE FOREST L. REV. 398, 399 (1971).

43 Putnam v. Johnson, 10 Mass. 488, 496 (1813):

> The students at the seminary in *Andover* are there for a mere temporary purpose . . . . They are in nothing different from students at a college . . . .
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> Not one essential circumstance, that constitutes a man's *home* or *domicile*, appertains to those students. In the language of *Vattel*, they have no "intention of always staying there," no intention of fixing there for life, or for a livelihood . . . . On the contrary, as far as men residing within the limits of a town can be strangers, they are perfectly so.

44 Note, *supra* note 21, at 41.

45 Thompson, *supra* note 21, at 400.

46 Seibold v. Wahl, 164 Wis. 82, 86, 159 N.W. 546, 548 (1916); Gross v. Wahl, 164 Wis. 91, 159 N.W. 549 (1916).

47 Frakes v. Farragut Community School Dist., 255 Iowa 88, 93, 121 N.W.2d 636, 638 (1963).

48 Robbins v. Chamberlain, 297 N.Y. 108, 75 N.E.2d 617 (1947); Reiner v. Board of Elections, 54 Misc. 2d 1030, 283 N.Y.S.2d 963 (Sup. Ct.), *aff'd*, 28 App. Div. 2d 1095, 285 N.Y.S.2d 584, *aff'd*, 20 N.Y.2d 865, 231 N.E.2d 785, 285 N.Y.S.2d 95 (1967).

49 Ptak v. Jameson, 215 Ark. 292, 299, 220 S.W.2d 592, 596 (1949); *In re* Goldhaber, 55 Misc. 2d 111, 112, 285 N.Y.S.2d 747, 748 (Sup. Ct. 1967), aff'd mem., 31 App. Div. 2d 891, 299 N.Y.S.2d 814 (1969).

50 *Id.* at 112, 285 N.Y.S.2d at 748.

emerges as an absolute index of student domicile,[51] and since each case must be considered in light of its own facts, the result is the vesting of wide discretion in the hands of local registrars.[52] When confronted with a dispute, moreover, many courts conclude that since students generally live in the college community only long enough to complete their studies, while they may be "residents" of the local district, they remain "domiciliaries" of their former homes.[53]

The prevailing attitude toward student voters in the last century is perhaps best expressed in the forceful opinion of Judge Agnew of the Pennsylvania Supreme Court in the famous *Fry's Election Case*:[54]

> On no proper principle of a true residence should the student vote to-day and fasten on the community officers whom the majority do not desire, then graduate to-morrow and be gone.
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> . . . .
>
> The rights of all men, the peace of society, and the good government of the state, require that the elector should vote at home, in his proper district where he is known, and among those with whom he has cast his lot . . . .[55]

Although this is perhaps an extreme position, it is significant not only in its articulation of popular distrust of student voting power, but also because it evinces the belief that residence for voting purposes is not established by merely living in the local election district for the requisite period of time. Something more is necessary: the student must consider the university community his "fixed and permanent home and principal establishment, and to which whenever he is absent, he has the intention of returning."[56]

The defendant election board in *Worden* appealed from the whole of the law division's judgment,[57] and the Attorney General, on behalf of the board, urged that " 'there should be no significant departure from existing New Jersey law with respect to the voting residence of students.' "[58] Relying principally on New Jersey precedents such as *Cadwalader v. Howell*[59] and *Schweitzer v. Buser*,[60] the Attorney General took the position that since students were not domiciled in the

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51 Note, *supra* note 21, at 41.

52 *Id.* at 42.

53 *See, e.g.*, Cadwalader v. Howell, 18 N.J.L. 138, 144 (Sup. Ct. 1840).

54 Fry's Election Case, 71 Pa. 302 (1872).

55 *Id.* at 311.

56 Cadwalader v. Howell, 18 N.J.L. 138, 144 (Sup. Ct. 1840).

57 61 N.J. at 331, 294 A.2d at 236.

58 *Id.*

59 18 N.J.L. 138 (Sup. Ct. 1840).

60 Schweitzer v. Buser, 15 N.J. Misc. 217, 225, 190 A. 89, 94 (Passaic County Cir. Ct. 1936). The Attorney General also relied on Perri v. Kisselbach, 34 N.J. 84, 167 A.2d 377

college community they should not be registered there.[61]

Although most jurisdictions do not define residence in their voting statutes,[62] courts when construing the term have generally concluded that for purposes of suffrage, residence means domicile.[63] After an examination of nearly all the state provisions, one writer concluded that:

> Though only two states qualify the word "resident" in their suffrage statutes, almost all courts nevertheless begin their decisions on student residence by concluding that for voting purposes "residence" means far more than actual physical presence for the statutory period of time. Some hold that "resident" is a statutory shorthand for "bona fide resident," one who has the intention of making a permanent home in the new area. Others rely on ancient common law, state constitutions, or ambiguous legislative enactments in holding that "residence" requires an intent to make a new home. Through one doctrinal route or another, courts have taken intention to remain as a crucial ingredient of voting residence.[64]

The New Jersey Constitutions of 1844 and 1947 both contain provisions for resident voting, but neither version mentions the unique situation of students or a domicile requirement.[65] Similarly, the statutes which enumerate suffrage disqualifications are also silent about domicile.[66] As early as 1840, however, counts in New Jersey have concluded that for voting purposes, residence means domicile,[67] and in one case

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(1961); State v. Benny, 20 N.J. 238, 119 A.2d 155 (1955); Michaud v. Yeomans, 115 N.J. Super. 200, 278 A.2d 537 (L. Div. 1971).

61 61 N.J. at 332, 294 A.2d at 238.

62 Note, *supra* note 21, at 39.

63 *See, e.g.*, Ptak v. Jameson, 215 Ark. 292, 298, 220 S.W.2d 592, 595 (1949); Parsons v. People, 30 Colo. 388, 391, 70 P. 689, 690-91 (1902); Anderson v. Pifer, 315 Ill. 164, 167, 146 N.E. 171, 173 (1924) ("permanent abode" is necessary to constitute a residence for voting); Everman v. Thomas, 303 Ky. 156, 168-69, 197 S.W.2d 58, 66 (1946).

64 Note, *supra* note 21, at 39-40 (footnotes omitted).

65 The New Jersey Constitution of 1844 provided in part:

> Every male citizen of the United States, of the age of twenty-one years, who shall have been a resident of this state one year, and of the county in which he claims his vote five months, next before the election, shall be entitled to vote for all officers that now are, or hereafter may be elective by the people . . . .

N.J. CONST. art. II, § 1 (1844). The present New Jersey Constitution provides in part:

> Every citizen of the United States, of the age of 21 years, who shall have been a resident of this State 6 months, and of the county in which he claims his vote 40 days, next before the election, shall be entitled to vote for all officers that now are or hereafter may be elective by the people . . . .

N.J. CONST. art. II, ¶ 3(a).

66 N.J. STAT. ANN. § 19:4-1 (1964). *See also* N.J. STAT. ANN. § 19:4-2 to -3 (1964) (residence in second and fourth class cities). *But see* N.J. STAT. ANN. §§ 19:4-4.2 to -4.4 (1964) (domicile of persons having more than one residence).

67 Cadwalader v. Howell, 18 N.J.L. 138, 144 (Sup. Ct. 1840):

> It is important therefore, that we understand what the law means by *residence*.

the court declared emphatically that "[a] student does not change his domicile by residence at college."[68] As recently as 1971, moreover, some New Jersey courts had continued to hold that a student is generally presumed not to have the right to vote in his college town, and that the student must rebut that presumption by a preponderance of the evidence.[69] As the *Worden* court conceded:

> In 1927 the Mercer County Counsel could properly cite *Cadwalader* and the cases which followed it, for his opinion which barred students resident at their colleges from voting there, absent some highly exceptional showing.[70]

The fundamental inquiry, however, was whether the legal and social considerations upon which *Cadwalader* and its progeny were founded retained any current vitality. Since the defendants admitted treating students differently by exposing them to more detailed questioning than other applicants, and by refusing their registration in almost all cases,[71] the controversy raised a fundamental constitutional issue. Was the plaintiffs' right to equal protection of the laws under the fourteenth amendment to the United States Constitution[72] offended by the unique treatment of student applicants and the almost universal denial of their right to vote?

In considering *Worden*, the court manifested great sensitivity to recent developments "constitutionally, legislatively and judicially,"[73] on the subject of student voting rights. The court examined the Civil Rights Act of 1964,[74] the Voting Rights Act of 1970,[75] and the legisla-

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> The word residence, (fixed residence I mean,) is generally used as tantamount to, domicile; though I am not prepared to say whether they are or are not in all respects, convertible terms.

68 Schweitzer v. Buser, 15 N.J. Misc. 217, 225, 190 A. 89, 94 (Passaic County Cir. Ct. 1936).

69 Michaud v. Yeomans, 115 N.J. Super. 200, 202, 278 A.2d 537, 538 (L. Div. 1971).

70 61 N.J. at 345, 294 A.2d at 243.

71 *Id.* at 348, 294 A.2d at 244.

72 U.S. CONST. amend. XIV.

73 61 N.J. at 332, 294 A.2d at 237.

74 The Voting Rights Act of 1964, 42 U.S.C. § 1971 (a)(2) (1970), provides in part:

> No person acting under color of law shall—
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> (A) in determining whether any individual is qualified under State law or laws to vote in any election, apply any standard, practice, or procedure different from the standards, practices, or procedures applied under such law or laws to other individuals within the same county, parish, or similar political subdivision who have been found by State officials to be qualified to vote . . . .

The court in *Worden* noted that, although this act has generally been applied in racial contexts, its "sweeping terminology suggests application to discriminations in student . . . contexts." 61 N.J. at 333, 294 A.2d at 237.

75 42 U.S.C. §§ 1973bb-1 *et seq.* (1970).

tive history which preceded the adoption of the twenty-sixth amendment,[76] and concluded that the amendment

> clearly evidences the purposes not only of extending the voting right to younger voters but also of encouraging their participation by the elimination of all unnecessary burdens and barriers.[77]

The court also found that the twenty-sixth amendment prohibited infringement upon, as well as the outright denial of, the voting rights of those eighteen or older.[78]

Consideration of what is an "unnecessary burden" on an individual's right to vote prompts an examination of the right itself. Any notion that the right to vote can be granted or withheld by the states acting without regard to constitutional safeguards collides with nearly one hundred years of federal judicial history.[79] In 1886 the United States Supreme Court characterized the right to vote as a "fundamental political right, because [it is] preservative of all rights,"[80] and as recently as 1965, Justice Black, writing for a unanimous Court, declared:

> The cherished right of people in a country like ours to vote cannot be obliterated by the use of laws . . . which leave the voting fate of a citizen to the passing whim or impulse of an individual registrar.[81]

In addition to characterizing the right to vote as fundamental, the Supreme Court has traditionally taken a keen interest in any measure which abridges the individual's exercise of his right of suffrage. Any such infringement, the Court has said, "must be carefully and meticulously scrutinized."[82]

Although it would appear that since the right to vote is considered fundamental, restrictions on that right must promote a compelling state interest,[83] any doubt concerning the degree of state interest neces-

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76 See note 18 *supra*.

77 61 N.J. at 333, 294 A.2d at 237:

> "[F]orcing young voters to undertake special burdens—obtaining absentee ballots, or traveling to one centralized location in each city, for example—in order to exercise their right to vote might well serve to dissuade them from participating in the election."

(Quoting from S. Rep. No. 26, 92nd Cong., 1st Sess. 14 (1971)).

78 61 N.J. at 334, 294 A.2d at 237.

79 *See, e.g., Ex parte* Yarbrough, 110 U.S. 651, 662-63 (1884); *Ex parte* Siebold, 100 U.S. 371, 388 (1880) (right to vote cannot be diluted by ballot box stuffing).

80 Yick Wo v. Hopkins, 118 U.S. 356, 370 (1886). *See also* Harper v. Virginia Bd. of Elections, 383 U.S. 663, 667 (1966); Reynolds v. Sims, 377 U.S. 533, 562 (1964).

81 Louisiana v. United States, 380 U.S. 145, 153 (1965).

82 Reynolds v. Sims, 377 U.S. 533, 562 (1964).

83 61 N.J. at 334, 294 A.2d at 237.

sary to justify such limitations has been dispelled[84] by the posture of the United States Supreme Court in a recent series of voting rights cases. In *Kramer v. Union Free School District No. 15*,[85] the Court examined a New York education law[86] providing that residents who were eligible to vote in state and federal elections could only vote in school district elections if they owned taxable real estate within the district, or were the parents or guardians of pupils enrolled in district schools. A three-judge district court upheld the measure,[87] but the Supreme Court reversed, holding that when the right to vote is granted to some citizens and denied to others, the state's interest must be compelling:

> Therefore, if a challenged state statute grants the right to vote to some bona fide residents of requisite age and citizenship and denies the franchise to others, the Court must determine whether the exclusions are necessary to promote a compelling state interest.[88]

Not long after *Kramer*, the Court considered the issue of suffrage classifications in the context of the relationship between property taxpayers and the right to vote in municipal bond elections.[89] A Louisiana statute[90] provided that only property taxpayers could vote in elections

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84 *See, e.g.*, Newburger v. Peterson, 344 F. Supp. 559 (D.N.H. 1972):

> [R]ecent decisions have at least clarified our standard of review and have illuminated the application of that standard. Ambiguities remain. As for the standard, Kramer v. Union Free School District . . . made clear the exacting test that must be applied to the review of state legislation denying the franchise to some otherwise qualified citizens.

344 F. Supp. at 560-61.

85 395 U.S. 621 (1969).

86 N.Y. Educ. Law § 2012 (McKinney 1969), *as amended*, N.Y. EDUC. LAW § 2012 (McKinney Supp. 1972-73), provided:

> A person shall be entitled to vote at any school meeting for the election of school district officers, and upon all other matters which may be brought before such meeting, who is:
>
> 1. A citizen of the United States.
>
> 2. Twenty-one years of age.
>
> 3. A resident within the district for a period of thirty days next preceding the meeting at which he offers to vote; and who in addition thereto possesses one of the following three qualifications:
>
> a. Owns or is the spouse of an owner, leases, hires, or is in the possession . . . of, real property in such district liable to taxation for school purposes . . . or
>
> b. Is the parent of a child of school age . . . or
>
> c. . . . [H]as permanently residing with him a child of school age who shall have attended the district school . . . .

87 Kramer v. Union School Dist., 282 F. Supp. 70 (E.D.N.Y. 1968).

88 395 U.S. at 627.

89 Cipriano v. City of Houma, 395 U.S. 701 (1969).

90 LA. REV. STAT. § 39:501 (1950) provides:

> Except as otherwise provided in special cases, no subdivision may incur any debt, issue any bonds, levy any special tax, or assume any indebtedness unless it has been authorized by vote of a majority in number and amount of the property

to approve the issue of revenue bonds by a municipal utility system. The bond issue was approved at a special election; and the appellant, a non-property taxpayer otherwise qualified to vote, filed suit seeking to enjoin the bond issue and to obtain a declaratory judgment that such a limitation of the franchise was unconstitutional.[91] After a three-judge federal court upheld the statute, the Supreme Court reversed, underscoring the *Kramer* requirement that the state show a compelling interest:

> As we noted in *Kramer* . . . if a challenged state statute grants the right to vote in a limited purpose election to some otherwise qualified voters and denies it to others, "the Court must determine whether the exclusions are necessary to promote a compelling state interest."[92]

Because it was "so patently sound and so just in its consequences,"[93] the *Worden* court adopted the compelling interest test in its "broadest aspects."[94]

Although the defendants in *Worden* did not offer any state interests sufficient to justify encroachment on students' right to vote in their university communities, various arguments have been traditionally advanced to buttress both the state residency requirement and presumptions against student domicile. Generally voter residence requirements are defended on the ground that they serve three legitimate purposes:

(1) Promotion of a more intelligent vote by insuring that the voters have had some opportunity to acquaint themselves with local issues;
(2) Prevention of fraudulent or double voting; and
(3) Identification of the prospective voter in advance of the election.[95]

Additionally, some courts have recognized a fourth goal, related to the first, which stresses the effect that a residence requirement has on the voter's membership in the community.[96] According to this theory, a

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taxpayers qualified to vote under the constitution and laws of this state who vote at an election hereunder.

91 Cipriano v. City of Houma, 286 F. Supp. 823, 824 (E.D.La. 1968).

92 Cipriano v. City of Houma, 395 U.S. 701, 704 (1969) (footnote omitted). *See also* City of Phoenix v. Kolodziejski, 399 U.S. 204 (1970).

93 61 N.J. at 346, 294 A.2d at 244.

94 *Id.*

95 MacLeod & Wilberding, *State Voting Residency Requirements and Civil Rights*, 38 GEO. WASH. L. REV. 93, 94-95 (1969). *See also* Guido, *Student Voting and Residency Qualifications: The Aftermath of the Twenty-Sixth Amendment*, 47 N.Y.U.L. REV. 32, 47-53 (1972).

96 *See, e.g.*, Hall v. Beals, 292 F. Supp. 610, 614 (D. Colo. 1968), *aff'd* 396 U.S. 45

durational requirement will assure that the voter has a sufficient attachment to the district to cast a meaningful ballot.[97] Freedom from police power, immunity from local taxation, undue parental control, and lack of permanence have also been used to support the traditional law of voting residence.[98]

In analyzing *Worden*, the court observed that many of the statements found in the cases relied on by the defendants enjoyed "no current validity."[99] In recent years the compelling interest test has been employed to invalidate presumptions against students' domicile in the university community,[100] special questioning of student registrants,[101] and perhaps most significantly, unnecessary state durational requirements.[102]

Although the court assumed that the plaintiffs in *Worden* satisfied the New Jersey durational requirement,[103] many of the same assumptions upon which the domicile requirement is founded have been questioned in the context of state durational statutes for voting purposes.[104] In 1970 the Supreme Court upheld the validity of a federal act which limited durational requirements for presidential elections,[105] and shortly thereafter considered state durational requirements for voter

(1969) (pecuniary interest); Drueding v. Devlin, 234 F. Supp. 721, 724 (D. Md. 1964), *aff'd*, 380 U.S. 125 (1965) (common interest in governing of community); Howard v. Skinner, 87 Md. 556, 559, 40 A. 379, 381 (1898) (common interest in the community).

97 *See, e.g.*, Shaeffer v. Gilbert, 73 Md. 66, 71-72, 20 A. 434, 435 (1890); Goben v. Murrell, 195 Mo. App. 104, 110, 190 S.W. 986, 988 (Kansas City Ct. App. 1916); Silvey v. Lindsay, 107 N.Y. 55, 60, 13 N.E. 444, 446 (1887).

98 *See generally* Note, *supra* note 21, at 53-58.

99 61 N.J. at 332, 294 A.2d at 236-37:

> These statements were made in relatively immobile eras when it was generally assumed that the college student would lead a semicloistered life with little or no interest in noncollege community affairs and with the intent of returning, on graduation, to his parents' home and way of living.

100 Bright v. Baesler, 336 F. Supp. 527 (E.D. Ky. 1971).

101 Jolicoeur v. Mihaly, 5 Cal. 3d 565, 488 P.2d 1, 96 Cal. Rptr. 697 (1971); Wilkins v. Bentley, 385 Mich. 670, 189 N.W.2d 423 (1971).

102 Dunn v. Blumstein, 405 U.S. 330 (1972).

103 61 N.J. at 336 n.1, 294 A.2d at 239.

> We are not here concerned with the validity of New Jersey's durational requirement since the issue has not been raised and it is assumed that the plaintiffs have satisfied it.

104 *See, e.g.*, Andrews v. Cody, 327 F. Supp. 793 (M.D.N.C. 1971), *aff'd*, 408 U.S. — (1972); Hadnott v. Amos, 320 F. Supp. 107 (M.D. Ala.), *aff'd*, 401 U.S. 968 (1970); Affeldt v. Whitcomb, 319 F. Supp. 69 (N.D. Ind.), *aff'd*, 401 U.S. 971 (1970); Bufford v. Holton, 319 F. Supp. 843 (E.D. Va. 1970), *aff'd*, 408 U.S. — (1972); Burg v. Canniffe, 315 F. Supp. 380 (D. Mass. 1970), *aff'd*, 408 U.S. — (1972).

105 Oregon v. Mitchell, 400 U.S. 112, 118 (1970). *See also* 42 U.S.C. § 1973aa-1(a)(6) (1970).

registration. In *Dunn v. Blumstein*,[106] the Court ruled that Tennessee's one year residence requirement for voting[107] was unconstitutional.[108] The Court was careful to note the difference between a bona fide residence requirement and a durational requirement: the state may require all voters to be residents,[109] but it is impermissible to require that in addition, the "would-be voter must *have been* a resident for a year."[110]

One of the significant ramifications of *Dunn* was its rejection of some of the arguments which have also been used to support the domicile interpretation of residence and the presumption against students. In *Dunn* the state contended that the durational requirement served two purposes: protection against fraud through the inability to identify voters, and assurance of knowledgeable voters by insuring that the voter has become a member of the community.[111] In discounting both of these arguments, the Court concluded that the state's registration and criminal laws were sufficient protection against fraudulent or double voting.[112] Addressing itself to the second argument, the state's interest in knowledgeable voters, the Court ruled that "[t]his is precisely the sort of argument this Court has repeatedly rejected."[113] Often, the Court observed, " 'lack of a ["common interest"] might mean no more than a different interest,' "[114] and provides an impermissible reason for denying the right of suffrage to groups of people.[115] These arguments may enjoy some relevance when applied to students and other transient groups, but they are simply not compelling[116] in view of the rights they seek to eclipse.

Closely allied with the concept of maintaining an "interested" electorate, which the *Dunn* Court rejected as a constitutionally impermissible basis for limiting the right to vote, is the not uncommon fear that so-called transient voters will overwhelm local elections against

106 405 U.S. 330 (1972).

107 TENN. CODE ANN. § 2-201 (Supp. 1971) provides in part:

> 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 . . . for three (3) months . . . shall be entitled to vote . . . .

108 405 U.S. at 360.

109 *Id.* at 354.

110 *Id.* at 334.

111 *Id.* at 345.

112 *Id.* at 346, 353.

113 *Id.* at 355.

114 *Id.* (quoting from Evans v. Cornman, 398 U.S. 419 (1970)).

115 405 U.S. at 355.

116 *Id.* at 342 (quoting from Shapiro v. Thompson, 394 U.S. 618, 634 (1969)):

> 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."

the wishes of the permanent residents.[117] In deciding *Worden*, the court examined several cases in which this concern was manifested, and concluded that:

> Many college towns have already adopted the practice of honoring requests for local registration by students who assert bona fide residences at their colleges; all indications point to the absence of any adverse effects or any consequences incompatible with modern democratic principles.[118]

In *Carrington v. Rash*,[119] the Supreme Court rejected the argument that a "take-over" would result because of concentrated voting by large numbers of military personnel stationed near communities in Texas.[120] " 'Fencing out' from the franchise a sector of the population because of the way they may vote,"[121] the Court said, "is constitutionally impermissible."[122] Additionally, in *Jolicoeur v. Mihaly*,[123] the California Supreme Court found that the fear of student take-overs was "more theoretical than real."[124] The Supreme Court of Michigan also considered the question of student voting rights,[125] and concluded that the threat of take-overs was "largely unfounded."[126]

The *Worden* court was not totally insensitive to the interest of the state in promoting an informed, interested electorate, but found that there had been "no suggestion that the registration and criminal laws are not adequate in this connection . . . ."[127] The court also believed that college students in general had already demonstrated a "special awareness in the political sphere, . . . and have kept themselves thoroughly informed through public as well as college news coverage."[128]

Although the court decided *Worden* without discarding the domicile requirement,[129] the court's disposition of the case resulted in a novel view of the concept of domicile as applied to voting rights. By holding that even those students who definitely planned to return to their previous residences upon the completion of their studies should be registered in the college community, the court rejected what was

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117 See note 24 *supra*.

118 61 N.J. at 337, 294 A.2d at 239.

119 380 U.S. 89 (1965).

120 *Id.* at 93.

121 *Id.* at 94.

122 *Id.*

123 5 Cal. 3d 565, 488 P.2d 1, 96 Cal. Rptr. 697 (1971).

124 *Id.* at 577 n.7, 488 P.2d at 8, 96 Cal. Rptr. at 704.

125 Wilkins v. Bentley, 385 Mich. 670, 189 N.W.2d 423 (1971).

126 *Id.* at 693, 189 N.W.2d at 433.

127 61 N.J. at 346, 294 A.2d at 244.

128 *Id.* at 347, 294 A.2d at 244.

129 *Id.* at 343, 294 A.2d at 242.

traditionally a basic ingredient in fulfilling a domicile requirement: at least an indefinite intent to remain in the area.[130] The court suggested that domicile may not be a "unitary concept and that its application may vary in different contexts."[131] Since the court specifically addressed itself to retention of domicile as the basis for establishing voter qualifications, the *Worden* decision may be viewed as a significant step in the direction of redefining the meaning of domicile in the context of voting rights.

In this respect the distinction between the majority's opinion and Chief Justice Weintraub's concurrence may be more apparent than real. Articulating his desire to broaden the court's holding, the Chief Justice stated his belief that residence in fact for the prescribed period of time is all that should be required of any voter, "no matter what may be the individual's attachments elsewhere, past, present, or prospective."[132] If there is any real difference in the two opinions, it can only lie in the emphasis placed by the majority on the student's present attachment to his college community. The majority spoke of applying the decision only to "those resident students who have a sufficient subjective attachment to choose the college communities as their sole places for voting . . . ."[133] In the situation in which the voter has plural interests involving multiple residences, the Chief Justice would discard any "State-made decision,"[134] and allow the voter to choose where he desired to vote. These differences aside, however, the court was unanimous in concluding that the concept of domicile is subjective, and reliance on an outmoded construction of the term cannot justify denying the right to vote to substantial groups of people, students included, who in fact have a real attachment to, and interest in, the community.

In the wake of the recent widespread campus disorder, much of which perhaps can be attributed to a feeling of hopelessness and exclusion from political processes,[135] much rhetoric was heard stressing the

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130 *See, e.g.*, Newburger v. Peterson, 344 F. Supp. 559, 563 (D.N.H. 1972).

131 61 N.J. at 343, 294 A.2d at 242. *See generally* Reese, *Does Domicil Bear A Single Meaning?* 55 COLUM. L. REV. 589 (1955); Weintraub, *An Inquiry into the Utility of "Domicile" as a Concept in Conflicts Analysis*, 63 MICH. L. REV. 961 (1965).

132 61 N.J. at 349 (Weintraub, C.J., concurring) (concurring opinion omitted in unofficial report).

133 *Id.* at 347.

134 *Id.* at 349.

135 Representative Matsunga testified that the report of the President's Commission on the Causes and Prevention of Violence was eloquent demonstration of the need for a lowered voting age:

> The anachronistic voting-age limitation tends to alienate them from systematic political processes and to drive them into a search for an alternative, sometimes violent, means to express their frustrations over the gap between the

need for students to find peaceful alternatives to violence and protest. Decisions such as *Worden*, particularly if viewed as persuasive by other courts, will contribute significantly to students' sense of participation, and hopefully keep them "within the system."

John D. Clemen

Nation's ideals and actions. Lowering the voting age will provide them with a direct, constructive, and democratic channel for making their views felt and for giving them a responsible stake in the future of the Nation.

117 CONG. REC. 7543 (1971) (quoting from THE NATIONAL COMMISSION ON THE CAUSES AND PREVENTION OF VIOLENCE, FINAL REPORT 225 (1969)).