North Carolina Central Law Review

Volume 3 | Issue 2 Article 9

4-1-1972

State Durational Residence Requirements as a Violation of the Equal Protection Clause

Mable A. Minor

State Durational Residence Requirements as a Violation of the Equal Protection Clause

INTRODUCTION

As a citizen of the United States of America, one has certain fundamental rights—one of which is the right to vote. This right evolved from the concept of a democratic government. The word "democracy" is derived from two Greek words: "demos," meaning "the people," and "karatein," meaning "to rule." Therefore democratic governments are those which the people rule, either directly, as in small republics of ancient Greece or indirectly, by means of representative institutions as in the states within the United States of America. Since the United States is a representative democracy, the most effective approach for individual citizens to pursue in order for their ideas for improving the cities, the states, and the nation to be implemented is to vote for persons who espouse the same ideas for progress as the citizens.

Of course there are certain requirements that must be met before one can vote. The first step is registering. Generally a person is eligible to register if he is a citizen of the United States, has lived a specified time in his voting precinct, and is deemed an adult by the laws of his state.[1] However, various state constitutions and statutes have more rigid requirements to be met before one can register to vote in state elections. This was especially true in the latter part of the eighteenth century and in the nineteenth century with the majority of states requiring property ownership, payment of taxes, literacy tests in addition to citizenship, age, and residence.[2] Even though the Fourteenth Amendment as follows in pertinent part provides that

> Section 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participa-

[1] U.S. News & World Report, U.S. Politics—Inside and Out 166 (1970).
[2] Phillips, Jewell C., State and Local Government in America 64-67 (1954).

> tion in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.
>
> Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.[3]

and the Nineteenth Amendment as follows provides that

> (1) The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of sex.
>
> (2) Congress shall have power to enforce this article by appropriate legislation.[4]

gave the right to vote to all men and women who were citizens of the United States and who were of the requisite age, usually twenty-one, it was not until the 1960's that this right was exercised by many citizens. This was the result of the passage of The 1965 Civil Rights Act that abolished the requirement of literacy tests and substituted therefor the obligation that a person demonstrate that he had the equivalent of a sixth grade education before being permitted to register.[5]

State residence requirements are prescribed to prevent people from going from state to state voting in local elections and to insure familiarity with the people and conditions in the state and community where an individual seeks to vote.[6] The intent of the requirements is sound, but it presents the problem of denying transient persons the right to vote when the residence requirement of the state into which they move is the only requirement for voting that they fail to meet. Many cases have been and are being adjudicated involving the denial of this fundamental right—the right to vote. The various plaintiffs contend that they are being denied equal protection of the law, being penalized for traveling interstate, and being denied due process of the law. This comment is concerned with the above mentioned contentions in addition to determining whether the "rational relation test" or the "compelling state interest test" should be employed to decide whether the durational state residence requirements violate the Equal Protection Clause of the Fourteenth Amendment which provides

---

[3] U.S. Const. amend. XIV, §§ 2,5.
[4] U.S. Const. amend. XIX.
[5] 42 U.S.C.A. § 1971(c).
[6] Phillips, Jewell C., State and Local Government in America at 65 (1954).

> Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.[7]

Even though some of the cases that are going to be discussed include the issue of the residence requirement being a requisite to vote in elections for the United States Senators and the Representatives of the House, this aspect of the problem will not be emphasized in this writing.

The Rational Relation Test

When a state legislates within areas of its competence, when its legislation is nondiscriminatory on its face and as applied, and when its legislation does not impinge upon the federal constitutional rights of any citizens, any classification created by the legislature survives scrutiny under the Equal Protection Clause so long as the classification is "rationally related" to promoting a legitimate state interest and is reasonable. This general standard for reviewing state legislation challenged under the Equal Protection Clause is known as the "rational relation test" as articulated in *McGowan* v. *Maryland*.[8] Although no precise formula has been developed, the United States Supreme Court has held that the Fourteenth Amendment permits the states a wide scope of discretion in enacting laws which affect some groups of citizens differently than others. The constitutional safeguard is offended only if the classification rests on grounds wholly irrelevant to the achievement of the state's objective. State legislatures are presumed to have acted within their constitutional power despite the fact that, in practice, their laws result in some inequality. A statutory discrimination will not be set aside if any state of facts reasonably may be conceived to justify it.[9] The following discussion of cases will emphasize the application of the "rational relation test" in chosing who will be granted the franchise in the various states.

Andrews v. *Cody*,[10] *Cocanower* v. *Marston*,[11] and *Howe v. Brown*,[12]

---

[7] U.S. Const. amend. XIV, § 1.
[8] 366 U.S. 420, 81 S. Ct. 1101, 6 L.Ed. 2d 393 (1961).
[9] Howe v. Brown, 319 F.S. 862 (1970).
[10] 327 F.S. 793 (1971).
[11] 318 F.S. 402 (1970).
[12] 319 F.S. 862 (1970).

are cases that involve a one year durational residence requirement in North Carolina, Arizona and Ohio, respectively, before persons are permitted to register to vote in nonpresidential elections, and plaintiffs in *Cocanower* v. *Marston, supra,* seek declaratory and injunctive relief and invoke jurisdiction under 28 U.S.C. § 2201, 28 U.S.C. § 2202, 28 U.S.C. § 2281, 28 U.S.C. § 2284, 28 U.S.C. § 1342 and 42 U.S.C. § 1938.[13]

Plaintiffs in *Andrews* v. *Cody, supra,* moved to Chapel Hill, North Carolina, nine months before seeking permission to register to vote in an

[13] 28 U.S.C. §§ 2201, 2202 (1970) under Declaratory Judgments provides *Creation of remedy.* In a case of actual controversy within its jurisdiction, except with respect to Federal taxes, any court of the United States, upon filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought. Any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such. *Further relief.* Further necessary or proper relief based on a declaratory judgment or decree may be granted, after reasonable notice and hearing, against any adverse party whose rights have been determined by such judgment. 28 U.S.C. § 2281 (1970)—*Injunction against enforcement of State statute; three-judge court required.* An interlocutory or permanent injunction restraining the enforcement, operation or execution of any State statute by restraining the action of any officer of such State in the enforcement or execution of such statute or of an order made by an administrative board or commission acting under State statutes, shall not be granted by any district court or judge thereof upon the ground of the unconstitutionality of such statute unless the application therefor is heard and determined by a district court of three judges under section 2284 of this title which provides in pertinent part: *Three-judge district; court composition; procedure.* In any action or proceeding required by Act of Congress to be heard and determined by a district court of three judges the composition and procedure of the court, except as otherwise provided by law, shall be as follows:

. . . A district court of three judges shall, before final hearing, stay any action pending therein to enjoin, suspend or restrain the enforcement or execution of a State statute or order thereunder, whenever it appears that a State court of competent jurisdiction has stayed proceedings under such statute or order pending the determination in such State court of an action to enforce the same. If the action in the State court is not prosecuted diligently and in good faith, the district court of three judges may vacate its stay after hearing upon the attorney general of the State. 28 U.S.C. § 1342 (1970) provides *Rate orders of State agencies.* The district courts shall not enjoin, suspend or restrain the operation of, or compliance with, any order affecting rates chargeable by a public utility and made by a State administrative agency or a rate-making body of a State political subdivision, where: (1) Jurisdiction is based solely on diversity of citizenship or repugnance of the order to the Federal Constitution; and, (2) The order does not interfere with interstate commerce; and (3) The order has been made after reasonable notice and hearing; and (4) A plain, speedy and efficient remedy may be had in the courts of such State. 42 U.S.C. § 1983 (1970) provides *Civil Action of Deprivation of rights.* Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

election held in the Town of Chapel Hill and in the Chapel Hill-Carrboro City School Administration Unit to select a mayor, an alderman, and members of the Board of Education. Plaintiffs were also to consider a referendum proposition and were refused permission to register because they failed to meet the residence requirement.[14] As evidence of plaintiffs' intent to remain in Chapel Hill are the facts that they (1) had obtained North Carolina motor vehicle operator's licenses, (2) had registered their car in North Carolina, (3) had filed 1970 North Carolina income tax, (4) had listed their personal property for purposes of ad valorem taxes, and (5) Thomas Andrews is under a three year contract of employment with the School of Law at the University of North Carolina as Assistant Professor of Law that expires August, 1973 and his wife is a teacher in the local high school.

The District Court for the Middle District of North Carolina concluded that the one year durational residency requirement is violative of the Equal Protection Clause even under the "reasonableness test." It should be noted here that the State of North Carolina is not a party-defendant to this suit. Furthermore, the factual context in which this question has been presented involves a strictly local election. As stipulated by the parties to this action, the only issue concerns the validity of North Carolina's residency requirement for voting *as it relates to a local election such as that held in Chapel Hill on May 4, 1971.* In this situation the "one year in the state" requirement has to be viewed in relation with the "thirty days in the election district" requirement. In a local election the primary concern is whether or not the registrant is a resident of the local election district. No reason was advanced to bring the one year require-

[14] N.C. Gen. Stat. § 163-55—*Qualifications to vote; exclusion from electoral franchise.* Every person born in the United States, and every person who has been naturalized, and who shall have resided in the State of North Carolina for one year and in the precinct in which he offers to register and vote for thirty days next preceding the ensuing election shall, if otherwise qualified as prescribed in this Chapter, be qualified to register and vote in the precinct in which he resides: Provided, that removal from one precinct to another in this State shall not operate to deprive any person of the right to vote in the precinct from which he has removed until 30 days after his removal. . . .

Const. of N.C. Art. VI, § 2(1)—*Qualifications of voter:* (1) *Residence period for State elections.* Any person who has resided in the State of North Carolina for one year and in the precinct, ward, or other election district for 30 days next preceding an election, and possesses the other qualifications set out in this Article, shall be entitled to vote in any election held in this State. Removal from one precinct, ward, or election district to another in this State shall not operate to deprive any person of the right to vote in the precinct, ward, or other election district from which that person has removed until 30 days after removal.

ment within the "reasonableness test"; therefore, the Constitution and statute of North Carolina are void relative to that provision.[15]

Arizona's state statute[16] and constitution[17] also have the one-year durational residence requirement and plaintiff attacks the constitutionality of the requirement for voting in state general elections. Specifically, it is alleged that Arizona is neither promoting a compelling state interest nor maintaining a reasonable classification by imposing the precondition of one year residence on exercise of franchise. Likewise, because it also prevents her from voting for candidates for the offices of United States Senator and United States Representative of the House, plaintiff also argues that the requirement is violative of both the Equal Protection Clause and the Privileges and Immunities Clause, and that her civil right to travel is abridged. It can be asserted that in the context of a constitutional right to travel the Court recognized a distinction between state-imposed residency requirement as a condition to receiving welfare benefits and those durational residency requirements imposed as a qualification to vote. The language of the Court in *Shapiro* v. *United States*[18] involving the rights of welfare recipients in Pennsylvania, Connecticut and the District of Columbia is

> . . . appellants in these cases do not use and have no need to use the one-year requirement for the governmental purposes suggested—as safeguard against fraudulant receipt of benefits, a means of encouraging new residents to join the labor force promptly, an administratively efficient rule of thumb for determining residency, facilitates budget predictability, planning purposes. Thus, even under traditional equal protection tests a classification of welfare applicants according to whether they have lived in the State for one year would seem irrational and unconstitutional. But, of course, the traditional criteria do not apply in these cases. Since the classification here touches on the fundamental right of interstate movement, its constitutionality must be judged by the stricter standard of whether it promotes a *compelling* state interest. Under this standard, the waiting-period requirement clearly violates the Equal Protection Clause.

The Court finds that this distinction is binding and accordingly cannot find Arizona's one-year residency requirement to be an unconstitutional

[15] *Id.*
[16] Ariz. Rev. Stat. Ann. § 16-143, subsecs. A, par. 13B (Supp. 1969-70).
[17] Ariz. Const. Art. 7 § 2 (Supp. 1969-70).
[18] 394 U.S. 618, 89 S.Ct. 1322, 22 L.Ed.2d 600 (1969).

penalty on the right of freedom of travel in violation of the Equal Protection Clause.

Nevertheless, in finding *Drueding* v. *Delvin*[19] and the rationale therein to be still binding as to state elections, the court cannot say that Arizona's durational residency requirement violates the Due Process Clause nor the Fifth[20] and Fourteenth Amendments. The rationale in *Drueding* v. *Delvin, supra,* is

> Where purposes of the residency requirement were to (1) identify the voter and protect against fraud and (2) insure that the voter would in fact become a member of the community and as such have a legitimate interest in its government, the Court could not find that the one-year residency requirement amounted to an irrational or unreasonable discrimination in violation of the Equal Protection Clause.

The sole issue in *Howe* v. *Brown*[21] is whether the additional requirements of the Ohio Revised Code (Page's ed., 1969 Supp.) § 2012—requirements which prohibit some district residents who are otherwise qualified by age and citizenship from participating in district meetings and school board elections—violate the Fourteenth Amendment's command that no State shall deny persons equal protection of the laws. Plaintiff contends that the requirement deprives him of equal protection of the law and that it impinges upon his constitutional right to move freely interstate.

The Nineteenth Amendment was thought necessary for reasons precisely relevant now: nothing in the Constitution or any of its Amendments could be construed to confer the right to vote in state elections on anyone.[22] Until the Constitution is amended or until the United States Supreme Court construes its own precedent otherwise, this court cannot hold that the Equal Protection Clause empowers the federal courts to strike down reasonable conditions of suffrage (i.e., age, citizenship, and residency requirements) enacted by duly-constituted state legislatures for

[19] 380 U.S. 125 (1964).

[20] U.S. Const. amend. V provides: No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

[21] 319 F.S. 862 (1970).

[22] *See* Minor v. Happersett, 21 Wall. 162, 22 L.Ed. 627 (1874).

legitimate state purposes, or empowers this federal court to give persons who have lived in Ohio for less than one year the right to vote in state elections.[23]

As far as impinging on plaintiff's right to freely travel interstate, there is no allegation whatever that the one-year residency requirement is intended to or has the effect of, "fencing out" anyone from the State of Ohio. The Court cannot hold, without clear proof to the contrary, that anyone having the intention of moving to Ohio and living there indefinitely is inhibited by the fact that he would not be granted the franchise until he had lived in the State for a year. Therefore, it cannot be found that the requirement impinges upon the constitutional right to move freely interstate and the Court holds that the "compelling state interest test" is not applicable.

Compelling State Interest Test

The "compelling state interest test" has two branches—(1) that branch which requires classifications based upon "suspect" criteria such as race and wealth, to be supported by a compelling state interest and (2) that branch which requires statutory classifications affecting a fundamental right to be supported by a compelling interest regardless of the basis of the classification.[24]

Affeldt v. *Whitcomb*[25] is a class action brought by plaintiffs challenging the constitutionality of Indiana's six-month durational residence requirement for voting. The class action was based on Rule 23 (a) of the Federal Rules of Civil Procedure which provides in pertinent part

> Prerequisites to a Class Action. One or more members of a class may sue or be sued as representative parties on behalf of all only if (1) the class is so numerous that joinder of all members is impracticable, (2) there are questions of law or fact common to the class, (3) the claims or defenses of the representative parties are typical of all the claims or defenses of the class, and (4) the representative parties will fairly and adequately protect the interest of the class.[26]

---

[23] *See* Pope v. Williams, 193 U.S. 621 (1904).

[24] Affeldt v. Whitcomb, 319 F.S. at 75 (1970). There is a common element present in all cases applying the "compelling state interest" test which makes it clear here that the classification was created by the state for the purpose of, or with the effect of "fencing out" from the franchise a sector of the population because of the way they might vote. *See* Carrington v. Rash, 380 U.S. 89, 94; 85 S.Ct. 775, 779; 13 L.Ed.2d 675 (1965).

[25] 319 F.S. 69 (1970).

[26] Federal Rules of Civil Procedure, Rule 23 (a) (1971 ed.).

Plaintiffs define the class they seek to represent as "those residents of the State of Indiana who will have lived in the State for less than six months on the day of the next following general or city election." Plaintiffs, Don and Cordall, moved to Valparaiso, Indiana on May 29, 1970, to work under contracts of employment executed in April, 1970. Don went to the Election Board September 18, 1970 and requested permission to register to vote in the coming general election on November 3, 1970. He was refused because he did not meet the six-month durational residence period required by Ind. Stat. Ann § 29-3426 (Burns' Repl. 1969)[27] and Ind. Const. art. 2, § 2[28] in order for an Indiana resident to be qualified to vote. The Porter County Election Board held that it had no jurisdiction to review the decision of the Clerk of the Circuit Court and the Board would not allow plaintiffs to vote except under court order. Plaintiffs contend that the six-month durational residence requirement violates their freedom to travel and their freedom of political association. Therefore, they seek (1) a preliminary injunction requiring that the offices of all Indiana county voter registration boards and their registration books remain open until October 25, 1970, or for any other reasonable period deemed appropriate to enable plaintiffs and those in the class to register, (2) a declaratory injunction invalidating the six-month waiting requirement for voter registration in Indiana, and (3) a permanent injunction restraining enforcement of Indiana's six-month waiting requirement. These injunctions were sought under provisions of 28 U.S.C. § 2202, 28 U.S.C. § 2201, 28 U.S.C. § 1343(3), and 42 U.S.C. § 1983 cited in footnote number thirteen (13).

Defendants' motion to dismiss on ground that complaint failed to state a claim upon which relief may be granted and that the court lacked subject matter jurisdiction is denied and the court answered the question of whether Indiana's six-month durational residence requirement for voting in the upcoming general election as applied to interstate movers is constitutional under the Equal Protection Clause thusly—although Indiana

[27] Every person who will be at least twenty-one (21) years of age at the next ensuing general or city election, who is a citizen of the United States, who, if he continues to reside in the precinct until the next following general or city election, will at that time, have resided in the state of Indiana six (6) months, in the township, sixty (60) days and the precinct thirty (30) days, shall be entitled, upon proper application, to be registered in such precinct.

[28] In all elections not otherwise provided for by this Constitution, every citizen of the United States, of the age of twenty-one years and upwards, who shall have resided in the State during the six months, and in the township sixty days, and in the ward or precinct thirty days immediately preceding such election shall be entitled to vote. . . .

unquestionably has the power to impose reasonable restrictions on the availability of the ballot, that power does not encompass the imposition of standards which are discriminatory and inconsistent with the Equal Protection Clause of the Fourteenth Amendment, *supra.* The present action goes in the second branch of the "compelling state interest" test since the right to vote is fundamental in that it preserves other civil and political rights. To apply the "compelling state interest" test to this case, one must ask (1) whether Indiana's interests underlying the six-month durational residence requirement are compelling and (2) whether the means chosen by Indiana to achieve those interests are necessary. In answer to the former question, the interests include the preservation of the purity of elections and the orderly administration of elections and promotion of an "enlightened electorate." Even if these interests are compelling, the means by which Indiana attempts to protect that interest cannot be deemed "necessary" so as to satisfy the "compelling state interest" test. The right to vote may not be deprived casually by Indiana to a class merely because the deprivation will remotely benefit the administration of election procedures. The effect of the six-month requirement is to create two classes of residents—those who have resided in the state for more than six months and those who have not. The class of barred newcomers in this action is all-inclusive, that is bona fide residents are lumped together with those who might have come to Indiana only to vote and to work fraud on the election.

In addition, the residence requirement is really no guarantee of a "pure" election since the qualifications of an Indiana voter are established by oath at the time of registration which may take place up to and including the twenty-ninth day before the election.[29] A non-resident who wants to vote can falsely swear that he is an Indiana resident, therefore the six-month residency requirement as presently administered in Indiana adds no real protection against dual voting. Fraud could be prevented by other means less drastic than the denial of the right to vote due to failure to meet the six-months' durational residence requirement. For example, a certification from a new resident's former election district to insure that the new voter has not retained registration in his former district may be all that is "necessary" under the "compelling state interest" test[30] to answer the latter question.

With regard to the state's interest in an "enlightened electorate," the

[29] Ind. Stat. Ann. §§ 29-3407, 29-3412 (Burns' Supp. 1970).
[30] *See* Hall v. Beals, 396 U.S. 45, 90 S.Ct. 200, 24 L.Ed.2d 214 (1969).

state does have a greater interest in attempting to have an electorate which is knowledgeable of local and state issues in a general election. On the other hand, it is not sufficient to justify the six-month requirement by an alleged need on the part of the state to indoctrinate or impress upon newcomers the local viewpoint. Nor is it permissible for a state to "fence out" from the franchise a sector of the population on the basis of the way it may vote.[31] The very foundation of the interest itself—the assumption that residents who have lived in the state for more than six months are better informed about the issues and candidates in the upcoming election than a person who has lived in the state for a shorter period of time—is subject to criticism in light of modern communication methods. The court sees no merit in the claim that a six-months' residence requirement is a *sine qua non*[32] for enlightenment of voters.

The court held that only the named plaintiffs may register because the election date was too close to attempt to ascertain who the would-be voters were in Porter County particularly since no records were kept of those who were not permitted to register the class could not be recognized. Furthermore, Indiana's six-month durational residence requirement was held to infringe plaintiffs' fundamental right to vote and to violate the Equal Protection Clause of the Fourteenth Amendment.

Plaintiffs in *Lester* v. *Board of Elections for the District of Columbia,*[33] in *Bufford* v. *Holton,*[34] and in *Kohn* v. *Davis*[35] bring their suits as a class action under Rule 23 of the Federal Rules of Civil Procedure, *supra,* to challenge the constitutionality of the one-year durational residence requirement of their respective states as a condition precedent to their being permitted to vote in state elections. Th plaintiffs in *Lester, supra,* are two married couples who moved to the District of Columbia in June of 1970, purchased homes in the area, acquired car registration and operators' permits there in addition to each husband being employed in the Office of Budget and Executive Management of the District of Columbia Government. Both couples are also bona fide residents of the District of Columbia (hereinafter referred to as the District) and plan to remain indefinitely. Plaintiffs were refused permission to register to vote in the January 12, 1971, primary election and the March, 1971 general election

[31] *See* Carrington v. Rash, 380 U.S. 89 (1965).
[32] An indispensable requisite or condition taken from *Black's Law Dictionary* (Rev. 4th ed. 1968).
[33] 319 F.S. 505 (1970).
[34] 319 F.S. 843 (1970).
[35] 320 F.S. 246 (1970).

for a non-voting delegate to the House of Representatives on the grounds that they will not have been residents of the District for one year continuously prior to the election as provided in the Election Law of the District.[36] It is the contention of the plaintiffs that the residency requirement creates an arbitrary classification which restricts the exercise of the fundamental right of franchise, without a showing of a compelling governmental interest in violation of the Equal Protection Clause of the Fourteenth Amendment as it is made applicable to the District through the Due Process Clause of the Fifth Amendment.[37]

The District Court concedes that the District may require that "all" applicants for the vote actually fulfill the requirements of bona fide residents. However, it is clear that "if they are in fact residents, with the intention of making the District their home indefinitely, they, as all other qualified residents, have a right to an equal opportunity for political representation."[38] Though the court concluded that the "compelling state interest" test is the standard to apply, it must now decide whether the District has shown the requisite compelling state interest for a one-year durational residence requirement. The District argues that as the seat of the national government a large portion of its population is transient, that this election is local in nature and a certain period of time is necessary for a voter to acquaint himself with local issues, problems and candidates and that a one-year period is not unreasonable. Nevertheless, these arguments are still insufficient to deprive a citizen of his only chance to participate in the choosing of his governmental spokesman. The election is to choose a delegate to a national body where issues local to the District are tied up with national issues. The delegate's responsibility, among other things, is to participate in national affairs while representing the views of all the citizens of the District. This aspect of the election likens it to the state election for a state representative who voices the opinions of the citizens through his office. The court must take notice of the advancement of mass communication which facilitates the familiarization of the issues and candidates relevant to the election.

Therefore, the Court concludes that there has been shown no compelling governmental interest in a durational residency requirement of one year and accordingly strikes that requirement as violative of the Equal

[36] 1 D.C. Code § 1102(2)(a) (1967 ed., amended by Pub. L. No. 91-405, Sept. 22, 1970).

[37] *See* footnote 20.

[38] Carrington v. Rash, 380 U.S. at 94 (1965).

Protection Clause. This decision did not affect the provision prohibiting registration thirty days prior to the election.

Plaintiffs in *Bufford* v. *Holton, supra,* were confronted with the same problem as in *Lester, supra,* failure to meet the residence requirement of one year as a prerequisite to registering in Virginia.[39] They charge Virginia with discriminatorily granting the ballot to the longer residents while begrudging it to later entrants into the State without proving a reasonable relationship between the requirement of twelve months and the right to vote as well as a governmental interest for the distinction. Plaintiffs moved to Virginia in January, 1970, and were refused registration to vote in the November 3, 1970, general election for United States Senators and Representatives. Defendants say that the privilege of a resident to vote roots from his State citizenship, not from his United States citizenship. Furthermore, Virginia is vested by the Federal Constitution with the power to regulate the conduct of elections for Senators and Representatives and thus the State may frame and declare the qualifications of electors.

Plaintiffs' contentions must carry and any constriction placed by the State on the right of suffrage must be tested against the Equal Protection Clause, which is delicately sensitive to any actual or possible strangling of the vote.[40] The difference in treatment of residents, regardless of the State's intendment, is clearly an arbitrary discrimination. To begin with, this call for residence can without more be seen as an obstruction or deterrent to uninhibited interstate travel, admittedly a Constitutional prerogative. A person might well be unduly postponed in the enjoyment of his vote for an extortionate period, possibly as much as two years if he came into Virginia after November in a general election year.

Again the one year stipulation loses strength through analogy. As recent as January, 1970 the Virginia General Assembly approved the adoption of the newly proposed State Constitution which provided for six months' state residence to vote. Therefore the one year rule is constitutionally impermissible. Moreover the laws of Virginia are declared invalid and their enforcement is enjoined.

Kohn v. *Davis, supra,* can be distinguished from the two previously discussed cases in that Vermont has a statute concerning the right of a one time resident of Vermont who moved away and returned. The statute provides that

[39] Code of Virginia, State Constitution Article II, §§ 18, 20 as amended (1950). Code of Virginia §§ 24-17, 24-17.1, 24-67, 24-74, 24-75, 24-76, 24-82 and 24-83.

[40] *See* Williams v. Rhodes, 383 U.S. 23, 30; 89 S.Ct. 5; 21 L.Ed.2d 24 (1968).

> A citizen, after removing from and residing without the state, shall not vote at such election, until he has resided in this state one year preceding the day of such election and taken the oath of allegiance to the state, the oath to support the Constitution of the United States and the freeman's oath.[41]

Plaintiff's wife was affected by the above statute because she was a native of Vermont but moved to Rhode Island, then back to Vermont. The court held that the one year durational residency required by Chapter II, § 34 of the Vt. Const. and 17 V. S.A. §§ 62-63 as a condition precedent to the right to vote in Vermont is an unconstitutional limitation on two fundamental rights, the right to vote and the right to travel interstate. Further, the standard of review applicable to the classification mandated by these Vermont laws is that of compelling state interest. Lastly, the court held that the burden of establishing justification by compelling state interest is on the defendants and this burden has not been sustained. Defendants' attempted justification is administrative hardship as testified to by the Vermont Assistant Secretary of State in charge of voting procedures, when in fact, a cushion of at least ten per cent is provided for all offices which would easily accommodate two more votes cast by plaintiffs.

Therefore the court ordered that Chapter II, § 34 of the Vermont Constitution and 17 V.S.A. § 62-63 are unconstitutional, only in so far as they require a one year durational residency as a condition precedent to the right to vote in Vermont. Plaintiffs were found to be bona fide residents of Vermont, therefore their names are to be added to the eligible checklist for the next general election.

Conclusion

Th passage of The Voting Rights Act of 1965 and The Voting Rights Act Amendment of 1970[42] has smoothed the path to impartial franchise. As a result of these Acts, the citizens of the United States of America are exercising their fundamental right to vote, as well as challenging state statutory and constitutional provisions which they believe are hindering them from exercising their right to vote. Even with the less rigid stipulations for voting in state elections, there is still a segment of the population which has no knowledge that it has the right to vote nor that its vote could effectuate change in elections. (These statements are verified by the attached charts.)

---

[41] 17 V.S.A. § 63.
[42] P.L. 91-285, Sec. 202(a), 84 Stat. 314.

What can be done to eliminate this problem—possibly education of the masses to their constitutional rights.

MABLE A. MINOR

Minimum Residence Requirements
For voting in State and Local Elections

	In State	*In County*	*In Precinct*
Alabama	1 year	6 months	3 months[1]
Alaska	1 year	None	30 days
Arizona	1 year	30 days	30 days
Arkansas	1 year	6 months	30 days
California	1 year	90 days	54 days
Colorado	1 year	90 days[1]	20 days
Connecticut	6 months	6 months in town	None
Delaware	1 year	3 months	30 days
Dist. of Col	1 year	None	None
Florida	1 year	6 months	45 days
Georgia	1 year	6 months	None
Hawaii	1 year	3 months	3 months
Idaho	6 months	30 days	90 days for county seat election
Illinois	1 year	90 days	30 days
Indiana	6 months	60 days in township	30 days
Iowa	6 months	60 days	10 days for municipal and special elections
Kansas	6 months	None	30 days
Kentucky	1 year	6 months	60 days
Louisiana	1 year	6 months	3 months[1]
Maine	6 months	3 months in city or town	None
Maryland	1 year	6 months	6 months[1]
Massachusetts	1 year	None	6 months
Michigan	6 months	30 days in city or township[1]	None
Minnesota	6 months	None	30 days[2]

Minimum Residence Requirements
(continued)

	In State	*In County*	*In Precinct*
Mississippi	2 years	None	1 year
Missouri	1 year	60 days	None
Montana	1 year	30 days	None
Nebraska	6 months	40 days	10 days
Nevada	6 months	30 days	10 days
New Hampshire	6 months	6 months in town[1]	None
New Jersey	6 months	40 days	None
New Mexico	1 year	90 days	30 days
New York	3 months	3 months	3 months
North Carolina	1 year	None	30 days[1]
North Dakota	1 year	90 days	30 days
Ohio	1 year	40 days	40 days
Oklahoma	6 months	2 months	20 days
Oregon	6 months	30 days	30 days
Pennsylvania	90 days	None	60 days in district
Rhode Island	1 year	6 months in town or city	None
South Carolina	1 year	6 months	3 months
South Dakota	1 year	90 days	30 days[1]
Tennessee	1 year	3 months	None
Texas	1 year	6 months	None
Utah	1 year	4 months	60 days
Vermont	1 year	90 days in town[1]	None
Virginia	1 year	6 months	30 days
Washington	1 year	90 days	30 days
West Virginia	1 year	60 days	None
Wisconsin	6 months	None	10 days[1]
Wyoming	1 year	60 days	10 days[1]

[1] If less may vote in old precinct.
[2] If less may vote in old precinct if in same municipality.
Source: U.S. Senate, Office of the Secretary, *Nomination and Election of the President and Vice President of the United States.* U.S. Government Printing Office. January 1968. Corrected to September 18, 1968.

States With Best
and Worst Voting Records
(Voters as percentage of voting age population)

THE BEST

States	*1968*	*1964*	*1960*
Delaware	70.0	70.2	73.6
Idaho	72.6	76.5	80.7
Indiana	71.8	73.9	76.9
Iowa	70.8	72.4	76.5
Minnesota	76.0	76.9	77.0
New Hampshire	70.0	72.4	79.4
South Dakota	72.8	74.4	78.3
Utah	76.1	78.9	80.1
Washington	71.0	71.8	72.3

THE WORST

States	*1968*	*1964*	*1960*
Alabama	50.3	35.9	31.1
District of Columbia	33.5	39.4	—
Georgia	42.9	43.0	30.4
Mississippi	50.6	33.2	25.5
South Carolina	45.9	38.7	30.5
Virginia	50.4	41.1	33.4

Source: Census Bureau.

Lots for Sale—Discrimination in Site Selection

Several cases in the area of low and middle income housing site selection represent the trend of today. They are *Gautraux v. Chicago Housing Authority*,[1] *Hicks v. Weaver*,[2] *El Cortez Heights Residents and Property Owners Association v. Tucson Housing Authority*,[3] and *Shannon v. United States Dept. of Housing and Urban Development*.[4] There exists a significant trend whereby the courts have (1) scrutinized the various methods of site selection utilized by housing authorities, and (2) strongly prohibited racial and economic discrimination in said selection.

[1] 265 F. Supp. 582 (1967), 296 F. Supp. 907 (1969), 304 F. Supp. 736 (1969).
[2] 302 F. Supp. 619 (1969).
[3] 457 P. 294 (1969).
[4] 436 F. 2d 809 (1970).