

Alcorn, James (SBE)

From: Embarq Customer [topengineer@embarqmail.com]
Sent: Wednesday, August 05, 2009 8:12 PM
To: Alcorn, James (SBE)
Cc: floyd artrip
Subject: Residency Requirements Comments for Residency Task Force

Mr. Alcorn,

Jake Washburne (Albemarle County General Registrar)) just contacted me to advise me of the current activity regarding the Task Force which is addressing the residency requirements for voting in Virginia. I sent several correspondences to the SBE during last fall's campaign regarding out of state students being permitted to register and vote in Virginia in what I saw to be an illegal fashion.

There were thousands of students registered to vote in the last election who should not have been permitted to vote. The net result was as predicted on the web site

<http://www.countmore.org>

These students shopped their vote to a location where they would have the maximum effect, a purple state, instead of a blue state which was their home. Their vote would not have affected the outcome of the election had they voted by absentee ballot at home. In Virginia the margins were close enough that they swung the election results for Obama and Perriello plus possibly other candidates.

I want everyone to have the opportunity to vote, but they must follow the rules and the rules must be logical. The code of Virginia says a person is only permitted to register and vote in the location where he has his domicile. During the last election this definition was muddled to allow registering in the person's abode. The dictionary definition of domicile is clear.

1: a dwelling place : place of residence : [home](#)2 a: a person's fixed, permanent, and principal home for legal purposes

Domicile differs from abode in several ways , the most important being that a person can have ONLY ONE DOMICILE.

I would like to point out that the Virginia Voter Registration Application Form asks for the applicant's Permanent Home Address. The SBE three page questionnaire addresses the applicant's Place of Abode. The Code of Virginia 24.2-101 defines a residence as the applicant's domicile, not their Place of Abode. The local head of the election board in Charlottesville, Rick Sincere, also had this issue confused in a recent conversation.

Students coming to Virginia for the purpose of receiving an education in a state supported college have already established their domicile when they register for admission at the college or university.

Remember, a person can have only one domicile. With this in mind, the SBE must establish a definition of domicile which will be consistent and compatible with all the other uses for the residence must be established, including for in-state tuition.

The State Council for Higher Education for Virginia has the following rules:

General Description and Purpose

Virginia domicile is important for students at Virginia public and private institutions. Generally, state financial aid programs and in-state tuition are reserved for Virginia domiciliaries. This publication is designed to introduce students and parents to key concepts concerning domicile. Specific inquiries about domiciliary determination should be directed to the institution a student plans to attend.

Basic Requirements

An individual must demonstrate residence in Virginia and an intent to remain in Virginia indefinitely to establish domicile in Virginia. After meeting the requirements to establish domicile, a person must continue to be domiciled in Virginia for at least 12 months preceding the first day of classes.

Domiciliary Intent

Several factors are used to determine if a person demonstrates intent to remain in Virginia indefinitely. A college or university may ask for information from you or your parents about the following factors:

- Continuous residence in Virginia
- Social and economic ties
- Ownership of real property
- Sources of financial support
- Current employment in Virginia
- Employment in Virginia postgraduation
- Military records
- State to which income taxes are paid
- Voter registration and actual voting
- Driver's license
- Motor vehicle registration

Dependent and Independent Students

A dependent student is a student who receives substantial financial support from his or her parents or legal guardian. A college or university in Virginia looks at the supporting parents' domicile to determine if a dependent student is eligible for in-state tuition or state financial aid programs.

If you are under age 24 on the first day of classes, an institution will classify you as a dependent student unless you: are married; are a veteran or active-duty member of the U.S. armed forces; are a graduate or first-professional student; are a ward of the court or were a ward of the court until age 18; have no adoptive or legal guardian when both parents are deceased; or have legal dependents other than a

spouse. If a student under the age of 24 who wishes to be considered independent but does not meet one of these exceptions, then he must be able to demonstrate, via clear and convincing evidence to the institution, that his parents have surrendered the right to his care, custody, and earnings, do not claim him as a dependent on federal or state income tax returns, and have ceased to provide him substantial financial support.

If you are not classified as a dependent student, you may establish your own Virginia domicile.

Married Students

A married person may establish domicile like any other student. A person's domicile is not automatically altered by marriage. However, if a student receives substantial financial support from his or her spouse, the student may claim domicile through the spouse. In such cases, the college or university will look at the spouse's domicile to determine if the student is eligible for in-state tuition or state financial aid programs. You must inform the institution if you wish to claim domicile through your spouse.

Military Members, Spouses, and Dependents

To encourage members of the U.S. military to establish Virginia domicile, the one year of continuous domicile is not required for military members and for dependent spouses and children claiming domicile through the military member. To initiate payment of Virginia income taxes, military members should contact their military pay offices. The spouse of a military member may qualify for in-state tuition by establishing Virginia domicile, by claiming dependency on the military member who has established Virginia domicile, or through the military provision [Section 23-7.4 (E) of the Code of Virginia]. Non-resident military members may be considered for a reduced tuition rate. If you, your spouse, or parent is a member of the military, contact the institution you are interested in attending for more information.

Aliens

The fact that an individual is a citizen of another country does not automatically disqualify that person from establishing domicile in Virginia. If you are not a U.S. Citizen you will need to present your immigration documentation to the institution. Students unable to present valid, current INS documentation of their alien status cannot demonstrate domicile.

Other Ways to Qualify for In-State Tuition

If you are a student at a public institution and you do not establish domicile in

Virginia, you might still qualify for in-state tuition if you are: a student who lives outside Virginia but who works or whose parent works in Virginia; a student participating in a degree program included in the Academic Common Market; a high school student who is in a dual-enrollment program at a community college; a University of Virginia's College at Wise student who resides in Kentucky and who lives within 50 miles of the University of Virginia's College at Wise; or a student attending college through a special arrangement contract entered by your employer and the institution you plan to attend. The institution may charge eligible students a contract rate higher than the actual in-state tuition rate but lower than the out-of-state tuition rate. To learn more about how your circumstances affect your eligibility to establish domicile, please contact the college or university you plan to attend.

In other words, these students have already had their residency status decided prior to filing the voter registration application.

The rules for being classified as an in-state student generally mirror the previous rules for the SBE and the three page questionnaire which was supposed to be used to assist an applicant in determining whether they qualify. Unfortunately the rules were watered down and the questionnaire was rarely or never used. In fact, I wrote to Martha Brissette prior to the November election asking what the possible answers to the three page questionnaire were, which would help an applicant determine their eligibility. Her response was

From: Brissette, Martha (SBE) [mailto:Martha.Brisette@sbe.virginia.gov]

Sent: Saturday, November 01, 2008 11:50 AM

To: floyd@a-systems.com

Cc: lachetta, Sheri

Subject: RE: Request for Clarification on Residency Requirements for out of state college students

Thank you for your inquiry expressing concern about student voter registration issues in Charlottesville. You ask for any specific guidance the State Board of Elections may have provided to the General Registrar concerning the questions in the self-guided questionnaire on our website, such as whether the applicant is claimed as a dependent on any individual's income tax return.

The purpose of the questionnaire is to place responsibility for such issues with the student and any advisors the student may wish to consult such as a parent. General registrars do not have the legal authority or expertise necessary to provide guidance on tax and financial issues. The State Board of Elections Policy Division likewise cannot provide guidance to general registrars on responses to these questions. Rather, it is the student who must take responsibility for determining their legal residence for voting purposes and any consequences that may follow. General registrars do have a responsibility to obtain the information necessary to complete registration applications as required under Virginia's Constitution and laws, but they cannot discriminate against students or subject them to different standards. Virginia's 1971 Constitution deleted a provision dealing with college students. *See* attached Attorney General Opinion. The statute referenced in the opinion was also amended in 1972 to delete the student provision. The 26th Amendment to the United States Constitution granting eighteen year olds the right to vote was ratified in 1971.

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Essentially, she stated that the SBE has formulated no answers to the questions. How can a questionnaire be useful if the applicant does not have guidance in what qualifies them and what disqualifies them? If this questionnaire is to be useful to the applicant, you should publish possible answers along with a score which totals the answers like that for a survey test which determines your susceptibility to a disease. For example, if an applicant answers that they are paying out of state tuition, they are a dependent on their parent's income tax return, they have an out of state drivers license and car tag and they do not pay personal property taxes in Virginia then they would have enough total points to disqualify them for registering locally. That would be equivalent to your "pattern of answers". A questionnaire without answers or guidance is worthless!

It is interesting to note that the draft rules currently being considered include paragraph 3

- 3) Nothing in this regulation shall be construed to confer upon any person any additional privileges or benefits other than the right to register to vote and to be qualified to vote in an election.

If you don't establish a universal definition of residency and apply it consistently across the board to every application from voting, to tuition, to custody cases, you will be open to a lawsuit which will result in chaos, including all students paying in-state tuition regardless of their actual domicile.

In summary, I don't see that the current draft does anything to answer the issues I have raised. If it is accepted without major revisions the out of state students who should not be registered will continue to register and subvert the will of our local citizens. Most of these students don't pay taxes here. They don't have children in school. They don't care about land use issues or replacing aging sewer pipes. They just want to vote and have their vote count more than it would at their lawful home domicile! This must be stopped with rules which follow the intent of the code.

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