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August 5, 2009

The Honorable Jean Cunningham, Chair  
Virginia Voter Residency Task Force  
State Board of Elections  
Washington Building, First Floor  
1100 Bank Street  
Richmond, VA 23219

Re: Further Comments re: Voter Residency Task Force

Dear Chairwoman Cunningham:

We write today to provide further comment on draft rules being considered by the State Board of Elections Voter Residency Task force (VRTF) for voter registration in the Commonwealth of Virginia. We commend the VRTF for its efforts to promulgate rules that promote, instead of obstruct, opportunities for all eligible persons in Virginia to register to vote and vote, regardless of the status.

During the last legislative session the General Assembly significantly altered the Virginia residency statute by eliminating a list of factors that made it difficult, if not impossible, for students attending colleges and universities in the Commonwealth to register to vote. Thus, the definition of residence now in effect provides that “[t]o establish domicile a person must live in a particular locality with the intention to remain.”<sup>1</sup> The intent of the individual is the primary and conclusive issue in determining the residence of an otherwise eligible person for voting purposes.

With this in mind, we would first and foremost:

**1. Oppose any requirement that voter registration applicants furnish income tax, motor vehicle registration, employment, receipt of public benefits, ownership in real estate or lease information.** These factors were explicated rejected by the General Assembly as being unrelated to voter registration. Any rule designed to elicit information about these factors would countermand the legislature’s express determination that the only relevant inquiry for purposes of ascertaining residency is whether a person lives in a particular locality with a present intent to remain and that the person have a physical abode – a physical place where that person dwells.

**2. Oppose any rule that goes beyond the statutory definition of a present intent to remain in a particular locality to include such proof as intent to remain for**

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<sup>1</sup> Va. Code Ann. § 24.2-101 (2008).

**any specified future time.** In today's mobile society very few people would be able to attest to a present intent to remain in a particular locality indefinitely and requiring otherwise eligible voters to do so would erect an unnecessary and unreasonable barrier to voting. In particular, any rule that would require students to prove facts demonstrating an intent to remain in a particular locale for a specified period of time would result in impermissible disparate treatment based on an individual's status as a student.

**3. Oppose any grant of authority to local registrars permitting them to subject students, on the basis of their status as such, to a more vigorous inquiry on intent than generally applied.** Under well established legal principles, officials may not subject student registrants to different treatment from other registrants.<sup>2</sup> Any proposal that sanctions non-uniform application of § 24.2-404 by permitting a more searching or vigorous inquiry of persons suspected of being students violates these principles and carries with it the risk of litigation.

**4. Oppose any requirement that registrants attest to anything beyond the veracity of the information provided on the registration application.** Box 11 of the Virginia Voter Registration Application Form currently available on the State Board of Elections website asks voters to affirm by their signature a "voter registration statement" indicating "I swear/affirm under felony penalty for willfully making false material statements or entries that...I am a resident of Virginia. The information I have provided on this form is true...." This affirmation includes attesting to the veracity of information provided about residency and is very similar in substance to the affirmation contained on the federal voter registration form.<sup>3</sup> Accordingly, any rule that would require registrants to attest to additional facts about duration of residency is unnecessarily burdensome.

We appreciate this opportunity to submit further comments to the Task Force and remain available to answer any questions you may have.

Respectfully submitted,



Karen L. Neuman, Legal Director  
Fair Elections Legal Network

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<sup>2</sup> See, e.g., *SYMM v. U.S.*, 439 U.S. 1105 (1979)

<sup>3</sup> U.S. Election Assistance Comm'n, National Voter Registration Form (2006), [http://www.eac.gov/files/voter/nvra\\_update.pdf](http://www.eac.gov/files/voter/nvra_update.pdf).