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To: The Residency Task Force
Virginia State Board of Elections

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We appreciate being given the opportunity to comment on your proposed regulations regarding “Voter Residency” in Virginia (Public Comment Draft, July 6, 2009).

We applaud the idea of specific regulations. One of our great concerns in this field has been the subjective application of vague notions of “residency” that lead to the potential of widely disparate results in various voting districts. The proposed regulations go far towards reducing that concern.

We do think, however, that the focus of the current draft on “an unlimited period of time” going forward, §2(a), or a “specific intent to abandon his current location at a fixed date in the future,” §2(c), causes as many problems as it solves.

First, this focus requires (correctly in our view) the creation of a caveat—if not exception—for college students, §2(c)(i). It also requires a complex distinction between “an unlimited period of time” and “the happening of a future contingency,” §2(d). In turn, the need for this distinction is awkward for college students: students who have no “specific intent to return to his former home after leaving school or graduating,” §14, seem to be treated differently from students who have a “specific intent” to return to a former home, even though that former home was not a place of voting (since, for most college-age students, their “former home” was pre-voting age).

This focus creates other insurmountable problems as well. While others (in letters to the Task Force) have commented on this, we’d like to provide an example as to why the “specific intent to abandon his current location at a fixed date in the future,”

§2(c), *cannot* work. Consider this: I may say I'm living in Virginia because of my job, but when I retire in five (or 10 or 20) years I have a "specific intent" to move to Florida. To be sure, if I make this determination *after* I've already established the right to vote in Virginia, I will probably be protected under §1(c)(iii). But what if I have just moved, at age 50, to Virginia to take up a job, with the same intent to move to Florida upon retirement at age 70? According to §2(c), I cannot vote in Virginia. Not only does this make no practical sense, but, as we outline in our forthcoming article,¹ it runs afoul of the constitutional commands that come out of the Supreme Court's seminal opinion in *Dunn v. Blumstein*.

We would suggest, instead, a focus on: (a) bona fide reasons to be in a voting district; and (b) if the Commonwealth so desires, a willingness to comply with other normal incidents of residency, (such as jury duty, drivers' license, and the like). With respect to (b), we note that the Commonwealth does not have to impose any such requirements. In states such as Iowa, Missouri, and Louisiana, students are given the right to vote in their college towns without regard to additional requirements.

Thus, we recommend eliminating or fundamentally altering §2(a). If retained and if the Commonwealth wishes (see paragraph immediately above), it could say "...must intend to make that place his primary home for bona fide purposes other than voting."

We also suggest, in a replacement for the "intent to remain" and "unlimited period of time" provisions, that the Task Force consider a reworking of 2(d) along the lines of: "A person who intends to remain in his current location for a period of time related to a legitimate reason for being in the Commonwealth (such as is illustrated in §14) and may leave in the future, upon the happening of a future contingency, has established the requisite intent for the purposes of establishing domicile." Then, depending on the Task Force's conclusions regarding what the Commonwealth wants to consider as requirements of bona fide residence (other than "unlimited intent"), this provision regarding "legitimate reason" could be buttressed by other external indicia of bona fide residence, such as (as noted above) jury duty and drivers' license.

Replacing the "intent to remain" provisions would include deleting the first sentence of §14.

We also suggest deleting §17(b), consistent with our recommendation to do away with the idea of "intent to remain" and "unlimited period of time."

¹ Richard G. Niemi, Michael J. Hanmer, and Thomas H. Jackson, "Where Can College Students Vote? A Legal and Empirical Perspective," *Election Law Journal* forthcoming, 2009.

Finally, we note that the State Board of Elections must exercise considerable caution in implementing §19. We like the idea of having an information sheet that provides students with clear, straightforward answers to questions they may have. But if not done carefully, such a page could misguide students. We have seen examples of misinformation on various state websites—incorrectly informing students, for example, that their tax status (whether a dependent on their parents' tax returns) is a relevant consideration in determining their residence.

Again, we applaud the Commonwealth's effort to bring a degree of explicit codification to this area, and hope our suggestions are helpful in advancing that goal.