
FAIR · ELECTIONS · LEGAL · NETWORK

August 26, 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: Virginia Voter Residency Task Force Proposed Residency Regulation

Dear Chairwoman Cunningham:

The Fair Elections Legal Network (FELN)¹ submits these comments to the State Board of Elections (SBE) on the proposed voter residency regulation adopted by the Voter Residency Task Force on August 10, 2009. With the exception of specific concerns discussed below, we generally support the proposed rule.

We commend the work of the Task Force in crafting a rule that implements the explicit intent of the General Assembly to remove barriers to voter registration and voting for residents of Virginia regardless of their status as students, military personnel or homeless individuals.²

We believe the proposed rule reflects two key tensions underlying voter registration regulatory schemes: the mobility of individuals and the need for registrars to have enough information to confirm an individual's location (and residency) and then assign that location to the appropriate precinct.

These comments, like our previous submissions, are limited to our views on the impact of the proposed regulation on students seeking to register to vote and vote within their college communities in the Commonwealth.³

We support provisions in the regulation that would:

¹ The Fair Elections Legal Network is a national nonpartisan advocacy organization working with its network of state election attorneys and voter reform, registration and mobilization groups to improve election administration and increase voter participation among traditionally under participating constituencies, including students.

² Va. Code Ann. § 24.2-101 (2008).

³ Letter from Karen L. Neuman, Legal Director, Fair Elections Legal Network, & Reece Dameron, Staff Attorney, Fair Elections Legal Network, to Jean Cunningham, Chair, Virginia Voter Residency Task Force (June 19, 2009); Letter from Karen L. Neuman, Legal Director, Fair Elections Legal Network, to Jean Cunningham, Chair, Virginia Voter Residency Task Force (August 5, 2009).

1. Provide that a person who intends to remain in a location for an unlimited time has established the required intent even if he may leave in the future upon the occurrence of a future contingency, including graduation from school.⁴ Significantly, the regulation recognizes that voter registration occurs at a specific moment in time so that all that is and can be relevant is an applicant's present intent. By example, the regulation makes abundantly clear that "unlimited time" does not mean "forever" -- the requisite intent does not require a college student to remain in the jurisdiction beyond graduation.⁵ If approved, the regulation would prohibit a registrar from rejecting a student's application based on assumptions about matters not included in the voter registration form, including whether the student intends to remain in the jurisdiction following graduation.

2. Affirm that residency shall be broadly construed to provide the greatest opportunity to register and to vote.⁶ By including this unambiguous mandate, the regulation will ensure that the new residency statute will be implemented with uniformity, thereby minimizing inconsistencies in ascertaining residency arising from the personal views of officials and the influence of those views on their decisions concerning residency.

3. Grant local registrars the authority to, in the event of a registration application that contains all legally required information but contains other discrepancies, "promptly resolve the discrepancies through informal means if the result of the general registrar's efforts is registration of the voter" through such means as "VERIS, the Division of Motor Vehicles, and direct communications with the applicant."⁷ This provision unmistakably favors registration over rejection by encouraging officials to utilize database tools readily available to them for the purpose of confirming registration eligibility, including residency, or to attempt to communicate directly with the applicant.

As indicated, we are generally supportive of the proposed regulation and urge its adoption by the SBE. At the same time, however, we have concerns about provisions that could cause confusion or lead to improper voter disenfranchisement and ask that the SBE consider the following:

1. Section 6) provides:

[if] a person resides in an area lacking a specific mailing address, the person shall be asked to provide [one] along with a description indicating where the person resides. The description must identify the location with sufficient specificity to allow the general registrar to assign the location to a precinct... .

In its current form, Section 6) fails to take into account that a mailing address may, in the case of students, differ from the physical location where the student resides and, in the process, unnecessarily burdens the student and the registrar by requiring the former to

⁴ Voter Residency Regulation § 2)a-c) (proposed August 10, 2009).

⁵ *Id.* § 2)c).

⁶ *Id.* § 4).

⁷ *Id.* § 12).

seek more information and the latter to provide it. Many student mailing addresses consist of P.O. Boxes, but their geographic address for residency purposes will be the dormitory room. In order to minimize the burden to officials and students alike, we suggest substituting the following language in place of the current language in Section 6):

Applications that provide both (i) a residence location (either a street address or physical location) that is sufficient for the registrar to assign the registrant to a precinct and (ii) a mailing address to ensure receipt of election-related mail from the registrar shall not be denied by reason of an inadequate or incomplete address.

Utilizing this language narrows the scenarios under which registrars would be required to seek additional information from students and removes an unnecessary second step for student applicants.

2. Section 13 provides that in the event of specified circumstances a registrar is unable to establish an applicant's residency through the informal means set forth in Section 12, the registrar shall ask the applicant to provide additional information. The registrar is prohibited from denying the application in one sentence and in another is instructed that the application shall not be accepted or denied while the registrar awaits the applicant's response. The registrar is also authorized to deny the application if the applicant fails to provide the requested information "by the time of the next election" or if residency cannot be determined through other means.

We believe that, as currently written, Section 13 provides for some type of hold status through the end of the registration period. Accordingly, we ask that SBE clarify the status of these applicants by offering guidance on by what date and by what method the applicant may provide the requested information. We also ask that the SBE include information defining "by the time of the next election" for purposes of cancellation and the circumstances under which a voter may provide the information online or in person.

3. Section 14) authorizes registrars "when warranted" to ask applicants supplemental questions that they must answer under oath. In particular, Section 14)b) asks:

Do you have a specific plan to move away from this county or city at a fixed date in the future?

We believe this question is inconsistent with the specific admonition in Section 2)b) that the requisite intent is not defeated by the occurrence of a future contingency, such as graduation, and that a student does not need specific intent to remain in the college jurisdiction beyond graduation. This question also improperly ignores the fact that by signing the voter registration form under "felony penalty," the applicant has attested to his intent to remain in the jurisdiction for the requisite period of time. Accordingly, we would ask that this question be eliminated from Section 14.

We appreciate this opportunity to share our views with the SBE regarding the Voter Residency Task Force's proposed regulation and remain available to answer any questions you may have.

Respectfully submitted,

A handwritten signature in black ink, appearing to be 'K. Neuman', with a long horizontal flourish extending to the right.

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