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DISENFRANCHISEMENT OF HOMELESS PERSONS

I. INTRODUCTION

Over a century ago, John Stuart Mill, in his commentary on democracy, wrote that “it is a personal injustice to withhold from any one, unless for the prevention of greater evils, the ordinary privilege of having his voice reckoned in the disposal of affairs in which he has the same interests as other people.”¹ Mill’s theory reflects competing values on suffrage that still exist today: an individual’s fundamental right to vote versus society’s interest in preserving its political community.

The historical concept of preserving the political community is founded upon the belief that only those persons who have sufficient interests in a district have a right to vote in that district.² Indicia for determining which interests are sufficient have included the voter’s wealth, gender, and duration of residence.³

Today, the primary indicia for determining voter qualification is the

1. J.S. MILL, CONSIDERATIONS ON REPRESENTATIVE GOVERNMENT 169 (Gateway ed. 1962). Mill’s treatise is a systematic survey of the chief problems of a representative form of political organization. In chapter seven of his work, he outlines which persons should be entitled to vote. Interestingly, homeless persons fall within one of the few groups of person that he believes are not entitled to suffrage. In Mill’s view, any person receiving “parish relief,” or in modern terms, welfare, should not be permitted to vote. *Id.* at 174. He wrote, “By becoming dependent on the remaining members of the community for actual subsistence, [the homeless person] abdicates his claim to equal rights with them in other respects.” *Id.* Poll and property taxes as preconditions to the right to vote reflect Mill’s concept of disenfranchisement based on wealth qualifications. See *infra* note 3-17 and accompanying text.

2. For a discussion of the concept of political community, see *infra* notes 12-15 and accompanying text.

3. The Supreme Court struck down wealth and durational residency requirements as unconstitutional. See, e.g., *Dunn v. Blumstein*, 405 U.S. 330 (1972) (one year durational residency requirements violate equal protection and the right to travel); *Harper v. Virginia Bd. of Elections*, 383 U.S. 663, 670 (1966) (“[w]ealth or fee paying has . . . no relation to voting qualifications”).

Correspondingly, the Constitution extends the right of suffrage to women through the nineteenth amendment. U.S. CONST. amend XIX. For a complete discussion of voter qualifications and constitutional requirements, see *infra* notes 16-30 and accompanying text.

residency requirement.⁴ In determining residence, state election laws generally require persons to have a traditional home or domicile in the district before they may register to vote.⁵ The requirement of a traditional home, however, effectively disenfranchises an estimated three million American citizens who are homeless.⁶ This Recent Development will provide a brief history of the right to vote and contrast this history with recent decisions and statutory enactments that have extended the right to vote to the homeless.

II. THE RIGHT TO VOTE AND PRESERVATION OF THE POLITICAL COMMUNITY

A. *Fundamental Concerns*

The Supreme Court has repeatedly declared that the right to exercise the franchise in a free and unimpaired manner is a "fundamental political right"⁷ that is necessary to preserve all other rights. Notwithstanding the importance of this right, the right to vote is not specifically defined by the Federal Constitution⁸ or its amendments.⁹

4. The Supreme Court recognized a state's legitimate interest in requiring, for voter qualification, bona fide residency within its boundaries in *Dunn v. Blumenstein*, 405 U.S. 330, 343 (1972). For a discussion of *Dunn*, see *infra* notes 22-32 and accompanying text.

5. Although each state has its own particular election laws that define "residence," New York's provision is a typical definition: "[a] place where a person maintains a fixed, permanent and principle home and to which he, wherever temporarily located, always intends to return." N.Y. ELEC. LAW § 1-104(22) (McKinney 1978). This definition forecloses homeless persons from registering to vote because they have no fixed, permanent home or location.

6. Although estimates of the true number of homeless persons vary greatly, three million is not an unrealistic number. See C. HARTMAN, D. KEATING & R. LEGATES, *DISPLACEMENT: HOW TO FIGHT IT* 3 (1982). This estimate includes all persons displaced from their homes due to revitalization of neighborhoods, eviction, economic developments, and rent inflation.

7. *Reynolds v. Sims*, 377 U.S. 533, 562 (1964) (quoting *Yick Wo v. Hopkins*, 118 U.S. 356, 370 (1886)). See also *Wesberry v. Sanders*, 376 U.S. 1, 17 (1964) (all other rights guaranteed by our nation are illusory if the right to vote is undermined).

8. *Breedlove v. Suttles*, 302 U.S. 277, 283 (1937) (the "[p]rivilege of voting is not derived from United States, but is conferred by the state . . ."). See also *United States v. Cruikshank*, 92 U.S. 542, 555 (1875) (the Constitution does not confer the right of suffrage upon anyone).

The right to vote for members of Congress is sometimes referred to as a federal right to vote, even though article I, § 4 and article II, § 1 of the Federal Constitution authorize the states to exercise their power to regulate elections. Thus, the voter qualifications a state adopts for the purposes of its own elections also apply to elections for members of Congress. For a good discussion of the federal right to vote as opposed to a deriva-

Citizens derive the right to vote from the state and exercise this right as state election laws direct and on the terms the state deems proper.¹⁰

State legislatures can define voter qualifications and regulate election procedures.¹¹ Courts have repeatedly recognized a state's historical right to preserve its political community and insure the purity of the ballot box.¹² The state's primary concern is to prevent nonresidents from temporarily invading a district and fraudulently electing a candidate.¹³

Historically, states defended these requirements as necessary to insure that a voter had become a member of the community and as such had a common interest in issues pertaining to the community. Arguably, this "common interest" factor would also encourage a voter to

tive state right, see *United States v. Classic*, 313 U.S. 299 (1941). See also *Twining v. New Jersey*, 211 U.S. 78 (1908) (the right to vote for members of Congress, although not definitely conferred on any class of persons, is fundamentally based on the Federal Constitution).

9. The Constitution contains three amendments that specifically protect the individual's right to vote. The fifteenth amendment provides that the states shall not abridge the right to vote "on account of race, color, or previous condition of servitude." U.S. CONST. amend. XV. The nineteenth amendment provides for protection of the right to vote from abridgment "on account of sex." U.S. CONST. amend. XIV. The twenty-sixth amendment extends the franchise to all persons eighteen years of age or older. U.S. CONST. amend. XXVI.

10. *Pope v. Williams*, 193 U.S. 621, 633 (1903); *Breedlove v. Suttles*, 302 U.S. 277 (1937). States are, however, subject to certain limitations in establishing voter qualifications under the fourteenth amendment's equal protection and due process provisions. See *infra* notes 16-31 and accompanying text.

11. For a complete discussion of state power to regulate voting qualifications and procedures, see J. NOWAK, R. ROTUNDA & J. YOUNG, *CONSTITUTIONAL LAW* 765-802 (2d ed. 1983).

12. *Dunn v. Blumstein*, 405 U.S. 330, 345 (1971). See also *Evans v. Cornman*, 398 U.S. 419, 422 (1970) (states have broad powers to determine conditions for right of suffrage); *Kramer v. Union Free School Dist.*, 395 U.S. 621, 625 (1969) (states have the power to impose reasonable requirements on the availability of the ballot).

13. In *Dunn* the Court held that prevention of such fraud is a legitimate and compelling state goal. 405 U.S. at 345. The impurities the state fears are often called "dual voting" or "colonization." Dual voting occurs when nonresidents vote in multiple districts during the same election. Colonization occurs when nonresidents invade a single district to flood an election.

The fear of colonization is especially applicable in denying the franchise to homeless persons. Because homeless persons are arguably transient by definition, they are capable of colonizing in one particular district merely to elect a certain candidate. Betty Dolan, an Executive Director of the New York Board of Elections, gave this as a justification for the disenfranchisement of homeless persons in New York. *The Today Show*, (NBC television broadcast, June 14, 1986).

exercise his right more intelligently. The Supreme Court has repeatedly rejected the “common interest” argument as sufficient to justify disenfranchisement.¹⁴

In sum, the Supreme Court has recognized that a state has a compelling interest in preserving its political community.¹⁵ The means of effectuating these interests, however, are subject to court review to insure that persons are not wrongfully disenfranchised.

B. *Constitutional Limitations*

Legislative enactments regulating voter qualifications and voting procedures must meet the general rule that all elections be free and equal. The Supreme Court has repeatedly held that citizens have a “constitutionally protected right to participate in elections on an equal basis with other citizens in the jurisdiction.”¹⁶ If a state grants the right to vote to some persons and denies the franchise to others, the Court requires that the exclusions be “necessary” to promote a “compelling state interest.”¹⁷ Thus, whenever a class of voters is totally disenfranchised, the Court will invoke a strict standard of review regardless of whether a traditionally suspect class is involved.¹⁸

Although the Court has invalidated numerous state voting require-

14. Tennessee asserted the “common interest” justification in *Dunn* to justify its voter durational residency requirement. 405 U.S. at 345. In unequivocal terms, the Court rejected the argument. *Id.* For a discussion of *Dunn*, see *infra* notes 22-32 and accompanying text.

15. *Holt Civic Club v. Tuscaloosa*, 439 U.S. 60, 68-69 (1978); *Carrington v. Rash*, 380 U.S. 89, 91 (1965).

16. *Evans v. Cornman*, 398 U.S. 419, 426 (1970). In addition, the Court has held that “wealth or fee paying has . . . no relation to voting qualifications.” *Harper v. Virginia Bd. of Elections*, 383 U.S. 663, 670 (1966). See also 42 U.S.C. § 1973h(a) (1982) (poll taxes may not deny eligible voters the constitutional right to vote).

17. *Kramer v. Union Free School Dist. No. 15*, 395 U.S. 621, 627 (1969). In *Kramer* the Court stated that “[a]ny unjustified discrimination in determining who may participate in political affairs or in the selection of public officials undermines the legitimacy of representative government” and that “[s]tatutes granting the franchise to residents on a selective basis always pose the danger of denying some citizens any effective voice in the government affairs which substantially affect their lives.” *Id.*

18. See *Dunn v. Blumstein*, 405 U.S. at 345. It has been argued that notwithstanding this rule, homeless persons should fall within a “suspect” class. Homeless persons are a politically powerless group due to their lack of financial resources and their ultimate disenfranchisement. Justice Marshall, in reviewing a case on the right to sleep in District of Columbia parks, expressed these concerns on the plight of the homeless. *Clark v. Community for Creative Nonviolence*, 468 U.S. 288, 304 (1984) (Marshall, J., dissenting).

ments by applying strict scrutiny,¹⁹ it consistently upholds the states' historic power to limit the political community to "bona fide" residents of the community.²⁰ Statutory restrictions that purport to establish a means for distinguishing between bona fide residents and non-residents are subject to strict scrutiny.²¹ In *Dunn v. Blumstein*²² the Court held that Tennessee's one year durational residency requirement was unconstitutional.²³ The Court found that the requirement impermissibly burdened the right to vote²⁴ and the right to travel freely among the states.²⁵

In *Dunn* the state asserted that the durational residency requirement was necessary to prevent fraud,²⁶ to preserve the purity of the ballot,²⁷

19. For a discussion of the various impermissible voting restrictions the Court has struck down, see Note, *The Constitutionality of Differential Voting Schemes for Governments of Limited Purposes: A Moral Problem With Equal Protection Overtones*, 7 *WHITTIER L. REV.* 969 (1985).

20. Although courts are undecided as to what constitutes a bona fide resident, they have established criteria for determining residency in general. Courts interpret the term "resident" as equivalent to "domicile." See Note, *Disenfranchisement of the College Student Vote: When A Resident Is Not A Resident*, 11 *FORDHAM URB. L. J.* 489, 494 (1983). At common law, courts determined domicile or residence by examining a person's express intent, conduct, and surrounding circumstances indicating permanent location. See *RESTATEMENT (SECOND) OF CONFLICT OF LAWS* § 11 (1971).

21. An argument exists that rational basis scrutiny, not strict scrutiny, is the proper analysis of state-imposed residency requirements because these requirements fall within a state's general police power. See Note, *State Restrictions On Municipal Elections: An Equal Protection Analysis*, 93 *HARV. L. REV.* 1491, 1496 (1980). Because the Court has unequivocally established that the right to vote is a fundamental right that must be freely and equally extended to all citizens, courts generally apply the strict scrutiny test. See *Reynolds v. Sims*, 377 U.S. 533, 562 (1964); *Yick Wo v. Hopkins*, 118 U.S. 356, 370 (1886).

22. 405 U.S. 330 (1972).

23. Tennessee law required that a voter be a resident of the state for one year prior to registration. *Id.* at 334.

24. The Court found that the state violated the right to vote under the equal protection clause of the fourteenth amendment because the residency requirement wrongfully discriminated between old and new residents. *Id.* at 335-36.

25. The Court found that strict scrutiny was necessary because the law infringed on the petitioner's fundamental right to travel. *Id.* at 338. The Court, after reviewing several cases, stated that "it is clear that the freedom to travel includes the 'freedom to enter and abide in any state in the Union.'" *Id.* at 338 (quoting *Oregon v. Mitchell*, 400 U.S. 112, 285 (1974)). The Court held that the statute impermissibly infringed upon this right because it penalized persons who wished to travel by withholding their right to vote for one year. 405 U.S. at 338.

Although the courts have not yet faced the issue, a homeless litigant might rely on the fundamental right to travel when challenging state voter residency requirements.

26. 405 U.S. at 345.

and to identify a knowledgeable electorate who were members of the community.²⁸ The Court, relying on prior durational residency cases,²⁹ applied the strict scrutiny test and found the state's requirements unconstitutional.³⁰ The Court noted that although the state had a compelling interest in preserving its political community, the one year residency requirement was too broadly tailored to serve that interest.³¹ Strict scrutiny is not always fatal to residency requirements, for the *Dunn* Court, in dicta, unequivocally noted that "[a]n appropriately defined and uniformly applied requirement of *bona fide residence* may be necessary to preserve the basic concept of a political community, and therefore could withstand close constitutional scrutiny."³²

C. Residency Requirements

Apart from durational residency requirements, the definition of residency also determines a person's ability to vote. State legislatures have carefully defined which persons are *bona fide* residents for voting purposes.³³ States generally employ residency tests that focus on the voter's permanent abode or the location where a voter intends to return after temporary absence.³⁴

State residency provisions represent an attempt to codify common

27. *Id.*

28. The state's primary interest was the historical concern of dual voting and colonization. *Id.* at 345. For an explanation of dual voting and colonization, see *supra* note 13. The Court, however, rejected the state's asserted interest of promoting knowledgeable voters. 405 U.S. at 355.

29. *Id.* at 336. See, e.g., *Evans v. Cornman*, 398 U.S. 419 (1970) (residents of a federal enclave in Maryland are residents for state voting purposes); *Carrington v. Rash*, 380 U.S. 89 (1965) (servicemen must be allowed to rebut presumption of nonresidency imposed by state constitution).

30. The Court in *Dunn* stated the test as whether "the exclusions are *necessary* to promote a *compelling* state interest." 405 U.S. at 337 (citing *Cipriano v. City of Houma*, 395 U.S. 701, 704 (1969)) (emphasis added).

31. The Court found that the state could accomplish its objectives of assuming 'bona fide' residency in a shorter period of time. *Id.* at 353. The Court specifically noted that the Federal Voting Rights Act abolished a durational residency requirement and requires merely a 30 day registration period. 42 U.S.C. § 1973aa-1 (1982). Currently, states have generally adopted the federal 30 day scheme. For a discussion of voter registration, see Stone, *Voter Registration: Context and Results*, 17 URB. LAW. 519 (1985) (special conference on voting rights and the democratic process).

32. 405 U.S. at 343-44 (emphasis added).

33. For a discussion of residency requirements, see A. REITMAN & R. DAVIDSON, *THE ELECTION PROCESS: VOTING LAWS AND PROCEDURES* 7-19 (2d ed. 1980).

34. *Id.* at 12. See also B. BERNARD, *ELECTION LAWS* 10 (1950).

law. Under common law, courts construed residency as synonymous with domicile for voting purposes. Courts define domicile as a physical presence with a present intention to remain at a locale.³⁵

The greatest controversy with respect to voter registration concerns the determination of what constitutes adequate manifestation of intent. Generally, a voter's declarations and acts demonstrate his intent to make a place his domicile.³⁶ Of these two, courts give the greatest weight to a person's acts as an indication of intent.³⁷ Formal declarations of intent, therefore, are usually insufficient to prove domicile.³⁸

Thus, voter registration officials historically focus on whether a person maintains a traditional home within the district.³⁹ The rationale for this focus is that a person who maintains a home in a district manifests an intention to remain in that district.⁴⁰

35. *Dane v. Board of Registrars*, 374 Mass. 152, 371 N.E.2d 1358 (1978) ("reside," as it appears in constitution and statutory provisions, means domicile); see also *Lloyd v. Babb*, 296 N.C. 416, 251 S.E.2d 843 (1979); *Hubbard v. McKey*, 193 So. 2d 129 (Miss. 1966).

Most courts and state statutes use the term "resident" to define voter eligibility. See, e.g., *Carrington v. Rash*, 380 U.S. 89, 95 (1965). This use is inaccurate, however, because a person may have more than one residence, while having only one domicile. For a succinct discussion of domicile and residency for voting purposes, see Note, *supra* note 20, at 498-513.

36. *Booth v. Smith*, 261 Ark. 838, 839, 552 S.W.2d 19, 20 (1977) (in resolving issues of residency, officials correctly consider the voter's intent together with his conduct); *Cesar v. Onondaga Bd. of Election*, 54 A.D.2d 1108, 1109, 389 N.Y.S.2d 58, 59, *appeal dismissed*, 40 N.Y.2d 1079, 360 N.E.2d 964, 392 N.Y.S.2d 1029 (1976) (twin requirements for establishing residency for voting purposes are intent to reside at a fixed place and conduct that manifests that intent).

37. *In re Falcher*, 107 Misc. 2d 296, 433 N.Y.S.2d 981 (1980) (determination of voting residence is factual, based upon actual conduct of person); *Gordon v. Blackburn*, 618 P.2d 668, 671 (Colo. 1980) (test for legal residence is objective); *Pike County School Dist. v. Pike County Bd. of Educ.*, 247 Ark. 9, 444 S.W.2d 72 (1969) (voter's conduct must be consistent with his assertions of residency).

38. The test for domicile requires a subjective intent to establish residency, coupled with an objective manifestation of this intent. See Note, *supra* note 20, at 498. As a matter of proof, election officials usually require fulfillment of the objective prong of the test because of its inherent reliability. *Id.*

39. Although election officials do not expressly acknowledge this primary focus, the lack of a traditional home address prevents a person from establishing his residency. See *infra* notes 46-48 and accompanying text.

40. *Pitts v. Blacks*, 608 F. Supp. 696, 700 (S.D. N.Y. 1984) (election board asserted that requirement of a fixed premise is the only way to ascertain the validity of a person's residence). For a discussion of *Pitts*, see *infra* notes 43-58 and accompanying text.

III. RECENT DEVELOPMENTS: THE RIGHT OF HOMELESS PERSONS TO VOTE

Today, millions of persons are without traditional homes, forced to live in shelters, parks, streets, and alleys.⁴¹ Until recently, these people were also without the right to vote due to their inability to satisfy state residence or domicile requirements. Homeless persons, by definition, do not possess the physical manifestation of permanence that is a prerequisite to voter registration.

In 1984 election boards in Philadelphia, Pennsylvania, and the District of Columbia enacted registration procedures that permit homeless persons to vote.⁴² Following these examples, the Federal District Court for the Southern District of New York, in *Pitts v. Black*,⁴³ held that New York's traditional voter residence requirement unconstitutionally disenfranchised the homeless.

A. *Constitutional Requirements*—*Pitts v. Black*

In *Pitts* a group of homeless individuals brought a class action against New York City and state election officials to enjoin the officials from applying state law to completely disenfranchise the plaintiff class.⁴⁴ The court limited its review to petitioners' equal protection claims and the interpretation of "residence" as a voting requirement under section 1-104(22) of the state election law.⁴⁵ Section 1-104(22) defined residence as "that place where a person maintains a fixed, permanent and principal home to which he, wherever temporarily located, always intends to return."⁴⁶

Plaintiffs alleged that they were homeless persons who resided in the State of New York, but were without traditional homes.⁴⁷ They further alleged that election officials refused to let them register to vote because they lacked an acceptable "residential address."⁴⁸

41. See *supra* note 6.

42. For a discussion of the specifics of these statutory schemes, see *infra* notes 60-66 and accompanying text.

43. 608 F. Supp. 696 (S.D.N.Y. 1984).

44. *Id.* at 697.

45. *Id.* at 698. Petitioners, in addition to their federal claim, sought relief on state constitutional grounds. *Id.*

46. N.Y. ELEC. LAW § 1-104(22) (McKinney 1978).

47. 608 F. Supp. at 697.

48. Plaintiffs received a form letter stating that under state law, a shelter was not a residence. Each of the named plaintiffs met all other state voter eligibility requirements.

Plaintiffs asserted that the state's traditional definition of residence violated the equal protection clause of the fourteenth amendment because it disenfranchised homeless persons.⁴⁹ They argued that the state could less restrictively define "residence" not as a traditional home, but as a "geographic locale, where one performs the usual functions of sleeping, eating and living in accordance with one's lifestyle. . . ."⁵⁰ The state, in response, argued that a permanent residential address was necessary to protect the political community and to efficiently administer the registration system.⁵¹

Judge Lowe, writing for the court, found that the election law, as applied by the state, discriminated between classes of voters.⁵² The court stated that because the state's actions placed restrictions on the fundamental right to vote, the strict scrutiny test applied.⁵³ Applying this standard, the court relied heavily on plaintiffs' evidence concerning voting plans permitting the homeless to vote in Philadelphia, Pennsylvania, and the District of Columbia.⁵⁴ Based on the existence of

Each plaintiff was a U.S. citizen, over 18 years of age, and never adjudged incompetent or convicted of a felony. Finally, none of the named plaintiffs claimed residency for voting purposes in any other jurisdiction. See Plaintiffs Memorandum of Law in Support of Their Motions for a Preliminary Injunction and Class Certification at 6, *Pitts v. Black*, 608 F. Supp. 696 (S.D.N.Y. 1984) (No. 84 Div. 5270) [hereinafter Plaintiffs Memorandum]; see also 608 F. Supp. at 704.

Plaintiffs' class originally included persons who lived in shelters, streets, or parks. The state, however, stipulated at a preliminary hearing that a shelter was a residence under § 1-104(22). *Id.* at n.29. Plaintiffs Pitts and Carter, who were severed out of the action due to the stipulation, both resided in a municipal shelter run by the Human Resources Administration for New York City. Plaintiffs Memorandum, *supra*, at 6. Both individuals received regular mail at the shelter. *Id.*

The remaining named plaintiff, Dyer, is a homeless New Yorker who, since 1981, has lived in Grand Central Terminal and city parks. Dyer received mail at a friend's house and at the Homeless Coalition office. 608 F. Supp. at 706. The court's decision, therefore, applies solely to the rights of prospective voters living on the streets or other public places. *Id.*

49. *Id.* at 697.

50. *Id.* at 698.

51. *Id.* at 699. The state's interests in protecting the political community were to ensure that the voter has a verifiable nexus to the voting community, to prevent fraudulent voting, and to effect administrative feasibility. *Id.* Traditionally, states raise these issues in voter qualification cases. See *supra* notes 13-15 and accompanying text.

52. 608 F. Supp. at 708.

53. *Id.* Plaintiffs' claim deserved the "strictest constitutional protection." *Id.* The court relied primarily on *Dunn v. Blumstein* in its analysis. For a discussion of *Dunn*, see *supra* notes 22-32 and accompanying text.

54. For a detailed discussion of these plans, see *infra* notes 59-71 and accompanying text.

these plans, which redefine the traditional notion of residency to include homeless persons, the court found that the state failed to establish that its traditional definition of residence was narrowly tailored to promote a compelling interest.⁵⁵

The court, upon rejecting the state's definition, turned to state common law to adopt a less restrictive test for residency.⁵⁶ The court suggesting a new "home base" definition that permits homeless persons to identify a specific location within a political community as a residence.⁵⁷ The court defined a person's "home base" as a location "[to] which they return regularly, manifest an intent to remain for the present, and a place from which they can receive messages and be contacted."⁵⁸

B. *Administrative Standards: The Philadelphia and District of Columbia Plans*

1. The Philadelphia Plan

Another recent federal district court action upheld the right of the homeless to vote. In *Committee for the Dignity and Fairness for the Homeless v. Tartaglione*⁵⁹ the court entered a consent decree holding, for voter registration purposes, that homeless persons in Philadelphia satisfied state residency requirements.⁶⁰ Under the decree, homeless applicants can list the address of the shelter where they have an established relationship and which accepts first class mail for the applicant.⁶¹ Only public or private non-profit shelters that operate residential programs for the homeless qualify under the decree.⁶² Ac-

55. 608 F. Supp. at 709-10.

56. Interestingly, the federal court, in rejecting the state's interpretation of its own statute, looked to New York's common law definition of domicile. The court found that the test for domicile is generally more stringent than the test for residency because a person may have several residences, but can have only one domicile. *Id.* at 710.

57. Because a federal court is powerless to force states to interpret their statutes in a particular fashion, the court could only find that the "home base" definition of residence was less restrictive. The new test, therefore, was merely a suggestion to the state and not a binding interpretation.

58. *Id.* at 710.

59. No. 84-3447 (E.D. Pa. Sept. 14, 1984) (unreported order).

60. See PA. STAT. ANN. tit. 25, §§ 623-1 to -45 (Purdon Supp. 1985).

61. Although the consent decree in *Tartaglione* is not published, the court in *Pitts* provided a good summary of the Philadelphia plan. See *Pitts v. Black*, 608 F. Supp. 696, 708 (S.D.N.Y. 1984).

62. *Id.*

ording to the Philadelphia plan, a homeless person is not required to live in a shelter as long as he can establish a sufficient relationship with that shelter.⁶³ The location of the shelter, not where the person actually lives, determines the election district.⁶⁴

2. The District of Columbia Plan

The District of Columbia Board of Elections and Ethics recently adopted regulations permitting the registration of homeless persons if these persons are able to identify a specific location where they presently intend to remain.⁶⁵ The board's regulations interpreted the District of Columbia Code to permit a homeless person to register by specifying both a fixed residence location and an address where they can receive mail.⁶⁶

63. *Id.*

64. *Id.* The Philadelphia plan's allocation of voting districts caused the defendants in *Pitts* considerable concern. In *Pitts* the state argued that dividing the registration districts into roughly equivalent population districts was not administratively feasible if the state allowed transient voters to live in one district and vote in another. *Id.* at 702-03. The court rejected this argument. *Id.*

65. *In re Jenkins*, slip op. at 6 (District of Columbia Bd. of Elections and Ethics, June 7, 1984). In *Jenkins* the Board reversed the decisions of the Registrar of Voters and held that a traditional home is not a prerequisite to voter eligibility. The Board focused on the District of Columbia Code, which defines a residence as "the principal or primary home or place of abode of a person . . ." D.C. CODE ANN. § 1-1302(16)(A) (Supp. 1986). The Board noted that the registrar wrongly focused on an "abode" as a "thing" instead of the person's intent. *Jenkins*, slip op. at 4. The Board found that individuals establish residency by "declarations . . . that he or she resides at the identified structure . . . a possessory interest in one's 'residence' is simply not required." *Id.* at 5. The Board concluded that it was sufficient for prospective registrants to identify any specific location in the District and to display a present intention to remain at that location. *Id.* at 6.

66. The District of Columbia municipal regulations specifically provide:

- 500.6 An applicant for voter registration must provide on the Mail Registration Application (MRA) a registration address, which address is the applicant's fixed residence location in the District.
- 500.7 The information provided to the Board by the voter shall be sufficiently precise to enable the Board to assign to the voter the appropriate Ward, Precinct, and Advisory Neighborhood Commission/Single Member District for voting purposes. Where the registration address information is insufficient to facilitate this procedure, the application shall be rejected by the Board.
- 500.8 Any applicant who provides on the MRA a registration address to which mail cannot be delivered by the U.S. Postal Service shall additionally provide to the Board a designated mailing address, to facilitate the administrative communications required by law. Failure to provide the designated

The District of Columbia plan permits a person to use the place where he sleeps as his residence, even if it is a nontraditional location, such as a park bench.⁶⁷ The plan requires that this person provide a designated mailing address and submit a signed statement that the location constitutes the voter's fixed residence.⁶⁸

The regulations further provide that the board must conduct an annual "voter residency verification mail canvass."⁶⁹ The board mails nonforwardable cards to the addresses provided by the registrants. The voter must sign and return the card within thirty days, or lose voting privileges. The purpose of the census is to insure that the registered voter provided correct residence information.

The only substantive difference between the Philadelphia and District of Columbia plans is the determination of the appropriate voting

mailing address as required shall result in the rejection of the registration application by the Board.

500.9 Any applicant designating a mailing address on the MRA for official communications shall submit a signed statement, on a form provided by the Board, specifying that the registration address indicated on the MRA constitutes the voter's fixed residence in the District.

500.10 Any applicant utilizing these procedures shall be subject to the same criminal sanctions pursuant to § 1-1318(a), D.C. Code, 1981 ed., for fraudulently attempting to register to vote that apply to all applicants.

* * *

510.5 In order to maintain the voter registry and keep it accurate and current, the Board shall annually conduct a voter residency verification mail canvass of all registered voters in the District.

510.6 In conducting the annual canvass, the Board shall mail a nonforwardable notification to the voter's registration address as it appears in the Board's voter record's [sic]. In any instance where this nonforwardable notification is returned by the U.S. Postal Service, the Board shall initiate removal procedures pursuant to § 1-1311(f)(3), D.C. Code, 1981 ed.

510.7 In conducting the annual residency canvass for voters who have provided designated mailing addresses to the Board, the Board shall mail nonforwardable confirmation of the registration address to the voter at the designated mailing address as it appears in the voter records. Failure of the voter to complete, sign and return to the Board the residence confirmation form within thirty (30) days of the date of mailing shall initiate removal procedures pursuant to § 1-1311(f)(3), D.C. Code 1981 ed.

510.8 Any applicant utilizing these procedures shall be subject to the same criminal sanctions pursuant to § 1-1318(a), D.C. Code, 1981 ed., for fraudulently attempting to register to vote that apply to all applicants.

D.C. Mun. Regs. tit. 3, §§ 500.6-10, 510.5-.8 (1984).

67. See *Jenkins*, slip op. at 6.

68. *Id.*

69. D.C. Mun. Regs. tit. 3, § 510.5 (1984).

district. Under the Philadelphia plan, the location of the shelter where the person receives mail determines the voting district.⁷⁰ The District of Columbia plan determines voting districts by the location the voter identifies as an actual residence.⁷¹ Irrespective of this difference, both plans represent a substantial departure from traditional bona-fide residence requirements. These plans allow homeless persons, whether living in shelters or on streets, a chance to exercise their fundamental right to vote.

IV. IMPACT

Undoubtedly, the right to vote is a fundamental right that courts must vigorously protect.⁷² Equally important is the compelling state concern that only bona fide residents are granted the franchise.⁷³ These competing concerns are especially acute when deciding whether and how homeless persons may vote.

Whether the state determines residence under a traditional permanent address test, under the *Pitts* "home base" test, or under the "administrative intent" test, each definition rests upon the ideal of identifying the place "which is the center of the individual's life now, the focus of his primary concern."⁷⁴

The Philadelphia and District of Columbia plans are more concerned with discovering an individual's true intentions than is the traditional residency test. The traditional test wrongly focuses on the material manifestation of intent to reside in a traditional abode. The home base test and the administrative test both circumvent the material manifestation test by examining the individual's intent and requiring written declaration of this intent.⁷⁵ The District of Columbia regulations require the prospective voter to both declare his intention and provide factual substantiation of this intent by designating a mailing address.⁷⁶ The District ensures the truthfulness of a registrant's

70. See *supra* note 64 and accompanying text.

71. Statement of Edward W. Norton, Chairman, District of Columbia Board of Elections and Ethics (June 7, 1984). See also D.C. Mun. Regs. tit. 3, § 500.7 (1984).

72. See *supra* notes 7, 16-19 and accompanying texts.

73. See *supra* note 33 and accompanying text.

74. *Ramey v. Rockefeller*, 348 F. Supp. 780, 788 (E.D.N.Y. 1972) (Friendly, J.).

75. See, e.g., D.C. Mun. Regs. tit. 3, § 500.9 (1984).

76. *Id.* §§ 500.6-8. See also *supra* text accompanying note 61 (Philadelphia plan allows the homeless to designate as their address shelters at which they have established a sufficient relationship).

declaration of intent through criminal sanctions for perjury⁷⁷ and verifies the declaration by annual mail canvass to the registrant's designated address.⁷⁸ This written declaration of intent, coupled with the act of receiving mail at a designated address, is clearly sufficient to satisfy voter residence or domicile requirements.

These registration plans effectively serve the state's interest in preventing colonization or dual voting.⁷⁹ The mail verification process removes the possibility of transients flooding a district for election purposes, because persons seeking to vote in an election must remain in the district until the district verifies their residency.⁸⁰ In addition, the plans' provisions for criminal sanctions provide a major deterrence to persons attempting fraudulent vote registration.⁸¹ This combination of administrative control and individual deterrence provides the election board ample means of preserving the political community. Moreover, as is evident from *Pitts*, homeless persons residing in shelters satisfy existing traditional residency voting requirements.⁸² These persons manifest the requisite intent to establish residency because they reside in a permanent structure to which they intend to return.

Notwithstanding the future effectiveness of the Philadelphia and the District of Columbia plans, their current implementation creates a new problem. Homeless litigants challenging traditional voting residency requirements may rely on these plans as proof of a less restrictive alternative to disenfranchisement. Courts applying strict scrutiny to traditional requirements, as in *Pitts*,⁸³ will find it difficult to uphold them in light of these less restrictive plans.⁸⁴

77. D.C. Mun. Regs. tit. 3, § 500.10 (1984).

78. *Id.* § 510.5.

79. *See supra* note 13.

80. *See* D.C. Mun. Regs. tit. 3, § 510.5-7 (1984).

81. *See e.g., id.* § 500.10.

82. Persons residing in a shelter have the requisite intent and physical presence to satisfy the traditional residency test. *See supra* notes 33-39 and accompanying text for a discussion of the residence test. The strength of this argument was possibly a reason supporting the New York Election Board's stipulation in *Pitts* that persons living in shelters could register to vote. *See supra* note 48 and accompanying text.

83. *See supra* notes 44-45 and accompanying text for discussion of *Pitts*.

84. In *Collier v. Menzel*, 176 Cal. App. 3d 24, 36, 221 Cal. Rptr. 110, 117 (1985), the California Court of Appeal followed the *Pitts* decision and held that denying the right to vote to applicants who listed a city park as a residence violated the equal protection clause.

V. CONCLUSION

The word "election" in our nation connotes an embodiment of the popular will; the expression of the citizens' sovereign power. This right should not exist solely for individuals capable of identifying a possessory interest sufficient to meet the "traditional home" residency requirement. The Philadelphia and District of Columbia plans are the beginning of necessary procedures designed to insure that all citizens of the United States, whether living in a traditional home or on a park bench, have the fundamental right to vote.

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