

BRENNAN
CENTER
FOR JUSTICE

Brennan Center for Justice
at New York University School of Law

161 Avenue of the Americas
12th Floor
New York, New York 10013
212.998.6730 Fax 212.995.4550
www.brennancenter.org

October 29, 2008

Tracy Howard
Registrar, City of Radford
106 A Arlington Avenue
Radford, Virginia 24141

Dear Mr. Howard:

Thank you for speaking with us yesterday and clarifying the procedures your office is following with regarding college students and other eligible voters who have attempted to register to vote within your jurisdiction. We believe that the procedures that your office is following are unlawful and potentially discriminatory and we respectfully insist that you remedy these procedures following the steps that we outline below.

Specifically, you have told us that your office has refused to register students who have filled out voter registration applications with addresses that your office deems “questionable.” You have informed us that such “questionable” applications include all students who gave a university address as their “residency address.” Under the law, however, a university address is not in any way “questionable”; students living on campus have the same right to vote as any other resident of the community. Moreover, students who registered using dormitory addresses have provided sufficient information to be assigned a voting precinct under Virginia law. We are also aware that at least some of these student applications list specific dormitory room numbers.

For the addresses you deemed “questionable,” you have informed us that you have not added these registrations to the voter rolls unless you obtained additional, post-registration confirmation from the registrants that they consider their dormitory to be their “home address.” You have informed us that your reason for doing this was twofold. First, you presume that students who gave such addresses did so without a full appreciation of the legal ramifications of claiming domicile in Virginia – namely that registering to vote in Virginia may constitute an abandonment of their previous legal domicile. Second, you are concerned that some of these students may have been “coerced” or persuaded to register under fraudulent pretenses provided by third party voter registration drives. As more fully discussed below, neither of these reasons is an appropriate or legal ground for refusing to register students or requiring them to provide additional information not required of other registrants in order to have their applications processed.

You have informed us that your office initially called students to ask them to verify that they considered their school address to be their “home,” and then when the number of applications

became voluminous, you resorted to sending them letters and postcards asking for confirmation of this issue. You informed us that your office sent “lots and lots” – potentially hundreds – of these letters and at least 200 postcards to students listing a Radford University residency address.

We have obtained a copy of the home address confirmation postcard. The postcard tells voters that their registration application will not be deemed complete unless they write on the card “the address [they] consider [their] home address” and mail it back within ten days. You have informed us that individuals who did not return this card either were never added to the voter rolls or are removed from the voter rolls, as were individuals who returned cards with information that did not precisely match the residency address listed on their initial registration application. You have informed us that you have sent letters notifying such voters that their attempted registrations were rejected.

If this is the case, your practices create a presumption of ineligibility for all students, single them out for heightened scrutiny, and impose special steps on them in order to register in a manner that violates Virginia and federal law. The confirmation postcard cites Va. Code Ann. § 24.2-101, which states that consideration may be given to a voter’s “expressed intent” among other factors in determining residency. However, the Virginia State Board of Elections website makes clear that “College students in Virginia are treated the same as any other applicant who registers to vote. The fact that an individual is a student is and should be treated as a ‘neutral factor.’”¹ More specifically, the website points out that under Virginia law, “a dorm or college address can be an acceptable residential address and does not disqualify [students] from voting.”²

We also believe that reasonable applicants are very likely to find the card misleading and harmful because it implies to the recipients that the addresses they initially provided for their “residence” were unacceptable. The card therefore is likely to cause the recipients either to abandon their applications under the mistaken impression that they are ineligible, or to respond by providing an alternative address, which you then use as a basis for rejecting the application. Perhaps more importantly, the very act of registering to vote in Virginia itself constitutes a clear expression of a voter’s intent to treat their Virginia address as their “home,” and thus their initial submission of a voter registration form should have been accepted as *prima facie* evidence of this intent.

With respect to federal law, your practices are likely unconstitutional under the Fourteenth Amendment’s Equal Protection Clause, the Twenty-Sixth Amendment, and Supreme Court precedent establishing that students must be held to the same neutral standards applied to other voters.³ It also likely violates Section 5 of the Voting Rights Act, which requires Radford to get preclearance prior to implementing any new procedures affecting voting.

¹ Citing, *inter alia*, 72-73 Op. Att’y. Gen 168 and available at http://www.sbe.virginia.gov/cms/Voter_Information/Registering_to_Vote/College_Student.html.

² *See id.*

³ *See* Symm v. United States, 439 U.S. 1105 (1979) (ruling that students can vote in their college communities regardless of any plans to continue living there after graduating, and that they must be held to the same neutral residency standards as other voters).

We strongly urge you to preempt the need for any litigation on this issue by ceasing to apply a presumption that voter registration applications providing college dormitory addresses are invalid and subjecting such applications to additional registration requirements, and by taking immediate steps to ensure that all voters who have been rejected due to this presumption are added to the registration rolls and permitted to cast regular ballots on Election Day.

Specifically, we urge you to take the following steps to remedy this situation:

- Reinstatement of the registrations of any voters who were removed from the rolls or who were never registered due to failure to return either the home address confirmation postcard or a similar letter.
- Compile a list of all voters whose registrations were designated 'incomplete,' cancelled, or never entered into the database in the first instance due to failure to return a confirmation letter or postcard. Circulate this list to all polling stations and direct poll workers to check the names of all voters whose names do not appear in the standard poll books against this secondary list. If the individual's name appears on the secondary list, she should be permitted to affirm her residency and cast a regular ballot.
- Inform registrants who inquire about the address confirmation postcard that returning it is unnecessary and that their voter registration form will be accepted as evidence of their intent to become legal residents of Radford for voting purposes.
- Take steps to notify those whose applications were incorrectly rejected that they are, in fact, eligible to vote on Election Day. First, we understand that you have a list of all students whose registrations were denied because they listed university addresses on their applications. This list should be made publicly available so that voting rights groups can conduct outreach to individuals who are under the erroneous impression that their registrations were appropriately rejected. Second, you should post announcements around the university informing students that if they initially listed a university address on a registration application and subsequently received a rejection notice, they may still be eligible to cast ballots on Election Day. Third, individualized mailings should be sent to all affected students informing them of the same.

Lastly, during our telephone conversation we discussed the proper procedure regarding Election Day voter challenges at the polls. While we believe we cleared up any previous misconceptions, we ask you to confirm in writing that under Va. Code Ann. § 24.2-651, challenged voters who are listed on the poll books may sign an affidavit affirming their eligibility and cast a regular ballot, as opposed to a provisional ballot.

If your office moves quickly, these actions can be completed without creating any problems on Election Day. Please provide us with immediate assurances that you will take steps to ensure both that no student will be kept off the rolls for failure to return a postcard, phone call, email or letter asking them to restate their "home address," and that all students who

submitted registration applications using university residency addresses will have the opportunity to cast regular ballots. Please reply to this letter by 9:30 a.m. tomorrow so that we can take timely action. Do not hesitate to contact us if you have questions regarding this letter or would like further advice as to how to best take corrective action.

Sincerely,

Monica Youn and Jennifer S. Rosenberg
Counsel, Brennan Center for Justice at NYU School of Law

Robert A. Kengle
Senior Litigation Counsel, Lawyers' Committee for Civil Rights Under Law

Rebecca Glenberg
Legal Director, ACLU of Virginia

cc: Jean Cunningham
Chair, Virginia State Board of Elections

.

.