

BRENNAN
CENTER
FOR JUSTICE

Brennan Center for Justice
at New York University School of Law

August 16, 2011

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VIA FAX and U.S. MAIL

Charles E. Summers, Jr., Secretary of State
Office of the Secretary
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RE: Investigation of Student Voters

Dear Secretary Summers,

We write on behalf of the Brennan Center for Justice at New York University School of Law¹ to express concern about your office's reported investigation into student voting. It has been widely reported that you have been presented with a list of students who both paid out-of-state tuition at Maine's universities and voted as Maine residents.² You then announced that evidence of potential student voter fraud would be folded into an existing fraud investigation.³ We are concerned that media reports about this investigation have focused largely on the fact that students paying out-of-state tuition voted in Maine elections. While your office should investigate credible evidence of voter fraud, it should also make clear that there is nothing fraudulent about a student who pays out-of-state tuition establishing residency in Maine for voting purposes. As you are certainly aware, the standards for establishing residency for tuition purposes are distinct from and far more restrictive than those for voter

¹The Brennan Center is a non-partisan public policy think tank and public interest law firm that advocates for a more inclusive and effective democracy. To that end, the Center's Democracy Program seeks to eliminate barriers to full and equal political participation by eligible citizens, including students.

² The evidence of voter fraud was widely reported as consisting of a list comparing those who paid out-of-state tuition and voted in Maine. See, e.g., A.J. Higgins, *Maine Secretary of State to Probe Identity and Voter Fraud*, MAINE PUBLIC BROADCASTING NETWORK, July 28, 2011, <http://www.mpbn.net/Home/tabid/36/ctl/ViewItem/mid/3478/ItemId/17419/Default.aspx>; Ryan J. Reilly, *Maine GOP Chair: Students Who Vote And Pay Out-of-State Tuition Are Committing Voter Fraud*, TALKING POINTS MEMO, July 27, 2011, http://tpmmuckraker.talkingpointsmemo.com/2011/07/mass_gop_chair_students_who_vote_and_pay_out-of-st.php.

³ Press Release, Maine Secretary of State, Secretary of State Charles E. Summers, Jr.'s Remarks Concerning Possible Voter and Identity Fraud, (July 28, 2011), *available at* <http://www.maine.gov/sos/news/2011/possible-voter-fraud-.html>.

residency. We believe it is your duty as Maine’s chief election official to make certain that voters receive accurate information about voter registration and voting. We respectfully call on you to clarify this point publicly, to ensure that the publicity around this investigation does not dissuade eligible student voters from exercising their protected right to vote in their communities.

In order to establish Maine residency for voting purposes, an individual must affirm that his or her residence “is that place where the person has established a fixed and principal home to which the person, whenever temporarily absent, intends to return.”⁴ These residency rules are applied to students as they are to all other Maine voters.⁵ Student residency for voting purposes, unlike for in-state tuition purposes, is protected by the federal constitution and case law. It is unconstitutional for a state to apply differential residency requirements to particular group of eligible voters – particularly students⁶ – for the purposes of establishing a voting residence. So long as a student considers a campus address to be a fixed residence and has no immediate intention to leave, he or she may lawfully register to vote at a school residence.⁷ There is no specific length of time that an individual must reside at a particular address in order to establish this fixed residence.⁸

The receipt of in-state tuition, on the other hand, is governed by a completely different and more restrictive set of rules. The University of Maine System’s residency guidelines require a student to have lived in Maine for a full year to be considered for in-state tuition.⁹ The rules also specify that students who are financially dependent on their parents are judged to reside at the family home for

⁴ M.R.S. 21-A §112 (residence for voting purposes).

⁵ Indeed, as the information on the Secretary of State’s own website explains, citing state law: “A person does not gain or lose a residence solely because of the person’s presence or absence while a student in any institution of learning. This may not be construed to prevent a student at any institution of learning from qualifying as a voter in the municipality where the student resides while attending that institution [Title 21-A, §112.7].” Maine Secretary of State, “Information on Voter Eligibility in Maine,” at <http://www.maine.gov/sos/cec/elec/resident.htm> (last visited August 11, 2011).

⁶ See, e.g., *Newberger v. Peterson*, 344 F. Supp. 559, 563 (D.N.H. 1972) (ruling in favor of a student who was denied voter registration solely because he stated to registration officials that he intended to leave New Hampshire upon graduation, holding that such an “indefinite intention” requirement “offends the equal protection clause”); *Whatley v. Clark*, 482 F.2d 1230, 1234 (5th Cir. 1973) (relying on *Newberger* and *Dunn* to hold a similar “indefinite intention” statute unconstitutional because it presumed students to be non-residents); *Williams v. Salerno*, 792 F.2d 323, 327-28 (2d Cir. 1986) (“The equal protection clause of the fourteenth amendment does not... permit a state to discriminate against students by denying them the right to vote or by subjecting them to more vigorous registration requirements than are generally applied”); *Wilkins v. Bentley*, 385 Mich. 670, 678 (1971) (holding that even a rebuttable presumption of student non-residence at school is unconstitutional because it deprives them of due process and equal protection).

⁷ M.R.S. 21-A §112.

⁸ In fact, the Maine Supreme Judicial Court has ruled that requiring an individual to reside in a place for 30 days in order to establish voting residency would be unlawful. See Opinion of Justices of Supreme Judicial Court, 303 A.2d 452 (Me. 1973)

⁹ University of Maine System Administrative Practice Letter: Residency Guidelines, (Feb. 25, 2005), available at <http://www.maine.edu/pdf/APL34.pdf>.

tuition purposes.¹⁰ Either of these guidelines, if applied as voting residency requirements, would be plainly unconstitutional. As such, the fact that students may meet one requirement but not the other is not unusual, and without additional evidence of fraud, should not form the basis for a criminal investigation.

We are extremely concerned that a public perception exists that your investigation is based upon tuition status alone. This could lead to fewer students exercising their protected right to register and vote in their school communities. Your office can play a crucial role by specifying that student voters paying out-of-state tuition are not subject to criminal scrutiny simply for casting a ballot in Maine. Indeed, we believe it is incumbent upon you as the state's chief election official to ensure that accurate info is provided to the public concerning the state's voting laws. You have stated that you will "continue to provide updates" about the investigation's progress,¹¹ a promise that creates a perfect forum for making such a clarification.

We therefore request that as the state's chief elections officer, you reaffirm Maine's commitment to full and fair voting rights by publicly announcing that tuition status does not determine a student's right to vote in Maine.

Please do not hesitate to contact us if you have questions or concerns about this letter. Thank you for your time and attention to this critical voting rights issue.

Very truly yours,



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¹⁰ *Id.*

¹¹ Press Release, Maine Secretary of State, Secretary of State Charles E. Summers, Jr.'s Remarks Concerning Possible Voter and Identity Fraud, (July 28, 2011), *available at* <http://www.maine.gov/sos/news/2011/possible-voter-fraud-.html>.