

ARTICLES

Residence Hopping: Protecting the Principle of One Person, One Vote, One Place

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There are 7.5 million second homes in the U.S. – more than half are in states with significant electoral ramifications: Florida, California, New York, Texas, Michigan, North Carolina, Arizona, Pennsylvania, and Wisconsin. Yet, election laws in these states have manipulable definitions of “residence.” Redundant definition provides owners of multiple homes with a choice unavailable to everyone else—where to vote.

This article discusses the possibility of “residence hopping”—owners of multiple homes strategically choosing residences to vote in the jurisdiction where they vote will have the greatest impact on local, state, and federal elections. Political entities are aware of this possibility, and are already providing guidance to this small, but growing, part of the electorate. After outlining the troubling trend, this article advocates for the principle of “one person, one place, one vote” by detailing possible reforms to reduce the odds and impact of “residence hopping.”

I. Introduction

Voter fraud is not a problem in U.S. elections.¹ Perception and reality, however, do not always align. The importance of transparent and legal voting processes has never been more important, given the perpetuation of dangerous questions around the legitimacy of recent elections.² Doubts, even if unfounded, about the validity of an election can result in violence—as evidenced on January 6th, 2021.³ Doubts of the election validation also ignites distrust in other democratic institutions and democratically-elected individuals,⁴ and the acceleration and accentuation of extreme political beliefs.⁵

Ideally, election officials would only have to grapple with verified and logical reasons to doubt an election. In reality, election officials must proactively search and address reasons why voters may believe an election failed to adhere to the law. This latter approach is required in a world in which lies can spread

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¹ Political science professor Daniel McCool estimates the national rate of fraudulent activity at 0.00006 percent. Alex Sakariassen, *Montana's nine-day election laws trial concludes*, MONT. FREE PRESS (Aug. 26, 2022), <https://montanafreepress.org/2022/08/26/montana-election-trial-wraps/>.

² See, e.g., Reid J. Epstein and Nick Corasaniti, *Republicans Push Crackdown on Crime Wave That Doesn't Exist: Voter Fraud*, N.Y. TIMES (Mar. 17, 2022), <https://www.nytimes.com/2022/03/17/us/politics/republican-voter-fraud.html>.

³ See e.g., Maya Yang, *More than 40% in US do not believe Biden legitimately won election – poll*, GUARDIAN (Jan. 5, 2022), <https://www.theguardian.com/us-news/2022/jan/05/america-biden-election-2020-poll-victory>.

⁴ See *id.*

⁵ See *id.*

like wildfires. If preventative work is not done to limit the spread, then a brush fire can become a conflagration. Election officials can, and should, continue to prepare for all activities that may undermine an election; one activity being “residence hopping,” voters manipulating their residences to choose where to cast their vote.

A voter needs three things to have the option of “residence hopping”: money, mobility, and outdated residency laws. Money, in the form of wealth or income, makes the ownership of homes in multiple jurisdictions possible. Economic inequality has emphasized the group of Americans with abundant monetary resources to make the ownership of multiple homes possible to select geographies⁶ and age groups.⁷ Mobility, made possible by remote work,⁸ retirement,⁹ or a general lack of dependents,¹⁰ allows individuals to remain in several places for extended periods. Privileges of mobility also allow individuals to persuade registration officials of an intent to remain there – in accordance with that jurisdiction’s durational residency requirement for voting. Unfortunately, durational residency requirement laws were not written with Zoom, Airbnbs, and remote work in mind—jurisdictions have been caught flatfooted as the possibility of “residence hopping” has become easier for a small, but powerful group of Americans.

This article does not offer any solutions for reducing income inequality or providing Americans with equal opportunity to move where they see fit. Moreover, even if incomes and mobility rates were equal, the legal possibility of “residence hopping” would remain. Accordingly, this article aims to generate awareness of the democratic imbalance created by “residence hopping,” with the hopes of encouraging reform of durational residency requirement laws.

Homeowners with multiple homes contain a choice unavailable to other voters: where to vote. More than 7.5 million second homes exist throughout the U.S. – more than half of which are in states with significant electoral

6 Coastal, urban locations have attracted and, generally, retained individuals with higher incomes according to analysis conducted by Issi Romem of Census and Zillow data from 2005 to 2016. Issi Romem, *Characteristics of Domestic Cross-Metropolitan Migrants*, BUILDZOOM (accessed Sept. 9, 2022) <https://www.buildzoom.com/blog/characteristics-of-domestic-cross-metropolitan-migrants>.

7 Baby Boomers are far more likely than Millennials to have such resources. According to the Survey of Income and Program Participation, members of the Baby Boomers generation are, on average, nine times wealthier than those in the Millennial generation. Neil Bennett et al., *2019 Data Show Baby Boomers Nearly 9 Times Wealthier Than Millennials*, CENSUS BUREAU (Aug. 1, 2022), <https://www.census.gov/library/stories/2022/08/wealth-inequality-by-household-type.html>.

8 Remote work, an option available to only a subset of employees who typically occupy roles requiring higher levels of education, enabled certain people to move to locations out of a desire for “natural beauty and lifestyle.” Erica Pandey, *The wealthy exodus from superstar cities*, AXIOS (May 8, 2021), <https://www.axios.com/2021/05/08/where-americans-are-moving-during-pandemic>. An analysis of 100,000 moves made during the pandemic revealed that 42 percent of movers made more than \$100,000 a year. Peter Haslag and Daniel Weagley, *From L.A. to Boise: How Migration Has Changed During the COVID-19 Pandemic*, SSRN at *4 (Mar. 18, 2022).

9 *Where - and why - did Retirees Move in 2021?*, UNITED VAN LINES (2021), <https://www.unitedvanlines.com/moving-tips/blog/where-and-why-do-retirees-move> (noting that the pandemic caused a number of early retirements and that 54 percent of movers are over the age of 55).

10 See Riordan Frost, *Have More People Moved During The Pandemic?*, JOINT CENTER FOR HOUSING STUDIES (Nov. 29, 2021), <https://www.jchs.harvard.edu/blog/have-more-people-moved-during-pandemic> (reporting that individuals moved much more than households during the pandemic); see also Bryce Ward, *Poverty with a View*, MONT. BUS. Q. (Feb. 5, 2018), <https://www.montanabusinessquarterly.com/poverty-with-a-view/> (“Montana appears to have attracted a growing number of people who have the means to live wherever they choose (e.g., capitalists, retirees and telecommuters)”).

ramifications: Florida, California, New York, Texas, Michigan, North Carolina, Arizona, Pennsylvania, and Wisconsin.¹¹ The number of multiple-home owners (MHOs) surged during the COVID-19 pandemic.¹² In response, *The New York Times* wrote an article for MHOs about where to register to vote in light of relocations and new home purchases.¹³

A review of New York's laws and case law show how residents there (and in states with similar laws) can easily establish two (or more) residences, and therefore possess an undemocratic ability to decide where to cast their vote in local, state, and federal elections. New York, as a state with a substantial impact on the presidential election¹⁴ and a state with a significant number of second homes,¹⁵ is a useful case study of how "residence hopping" can threaten our democracy.

This article argues against "residence hopping" and calls on states to adhere to the principle of "one person, one vote, one place." In part, the article provides an overview of New York law related to residency and voting. The second part discusses the democratic harms posed by allowing privileged voters to choose where to vote. The final part of the article reviews the constitutionality of reforms to prevent "residence hopping."

II. Residence hopping under New York Law

Under current New York law, homeowners may have "two residences and choos[e] one for election purposes provided he or she has legitimate, significant and continuing attachments to that residence."¹⁶ A homeowner may not "create an address solely for the purpose of circumventing residency requirements."¹⁷ More specifically, Election Law § 17-104 [4] criminalizes "false registration" by prohibiting a person from knowingly giving a false residence within the election district when registering as an elector. A person who falsely registers will likely be guilty of "illegal voting," which occurs when a person "votes or offers or attempts to vote at an election... from a place where he does not reside."¹⁸ The government, *not the homeowner*, bears the burden of proof, through clear and convincing evidence, when challenging residence.¹⁹

11 Na Zaho, *Nation's Stock of Second Homes*, NAT'L ASS'N OF HOME BUILDERS (Oct. 16, 2020), <https://eyeonhousing.org/2020/10/nations-stock-of-second-homes-2/>.

12 Brenda Richardson, *Demand For Second Homes Jumps 77% From Pre-Pandemic Levels In December*, FORBES (Jan. 6, 2022), <https://www.forbes.com/sites/brendarichardson/2022/01/06/demand-for-second-homes-jumps-77-from-pre-pandemic-levels-in-december/?sh=5bfb166147e3> (summarizing statistics from Redfin).

13 Bryan Pietsch, *So You Moved During the Pandemic. Now How Do You Vote?*, N.Y. TIMES (Sept. 16, 2020), <https://www.nytimes.com/2020/09/16/us/politics/how-to-vote-moved.html>.

14 See, e.g., *New York, 270toWin* (n.d.), https://www.270towin.com/states/New_York (indicating that New York had 29 electoral college votes in 2020 and will have 28 in 2024).

15 See Zaho, *supra* note 11.

16 *Willkie v. the Delaware County Board of Elections*, 55 A.D.3d 1088, 1089, No. 504004 NYS Sup. Ct. App. 3d, Oct. 23, 2008.

17 *People v. O'Hara*, 96 N.Y.2d 378, 384, 754 N.E.2d 155 (2001).

18 Election Law § 17-132 [3].

19 See *In re Weiss v. Teachout*, 120 A.D.3d 701, 702, 991 N.Y.S.2d 654 (2014).

Per *Willkie et al.*, a New York State court decision, the homeowner would likely be able to rebut any argument by the government by showing “legitimate, significant and continuing attachments” to a specific residence.²⁰

This test for residency provides election officials with substantial discretion in determining whether a prospective voter is an actual resident. For instance, New York officials can evaluate “an individual’s expressed intent and conduct” to determine a voter’s residency.²¹ They can weigh “a variety of factors and circumstances.”²² The “crucial determination” is whether “the individual can manifest an intent, coupled with physical presence without any aura of sham.”²³ The sorts of actions that produce an “aura of sham” is an essential question. More significantly, the extent New York officials have the time and resources to investigate the existence of such a “sham” is another critical question.

New York courts have only dealt with the question of “false registration” in a handful of cases. The absence of such guidance gives MHOs in New York a greater chance of manipulating the rules. The manipulation reluctantly vests in the local, state, and federal elections despite not having a real intent to reside in that jurisdiction.²⁴

Unsurprisingly, partisan institutions, such as the branch of the Democratic Party in Clinton, New York, have acted on this ambiguous test for residency. Institutions have issued guidance on where second homeowners can vote in order for MHOs to maximize their ability to advocate for candidates and causes that matter most to them.²⁵ Absent a refinement of what constitutes residency and enforcement under the statutory definition, actors – ranging from political parties to individuals with an exceptional election interest – will exploit that ambiguity. The Town of Clinton Democrats actively encourage MHOs to think about their multiple residences as an electoral advantage they can wield to their electoral whims:²⁶

Second homeowners have a major stake in the rural communities where they maintain a home, but most have no say in how their tax dollars are being spent, or in decisions that will affect the

²⁰ *Willkie*, 55 A.D.3d at 1089.

²¹ *O’Hara*, 96 N.Y.2d at 384.

²² *See Teachout*, 120 A.D.3d at 702.

²³ *O’Hara*, 96 N.Y.2d at 385.

²⁴ Note that in neighboring Connecticut, MHOs do not even have to feign residency – state law allows nonresidents to vote in municipal elections. So a New Yorker with a second home in Connecticut could freely vote in the municipal elections of their residence and of the location of their second home. *See Voting by Nonresidents*, NAT’L CONF. OF STATE LEGIS, (Jul. 11, 2022), <https://www.ncsl.org/research/elections-and-campaigns/non-resident-and-non-citizen-voting.aspx> (the same is true in Delaware).

²⁵ *See, e.g., Second Home Owners*, TOWN OF CLINTON DEMOCRATS (n.d.), <https://www.townofclintondemocrats.org/second-home-owners>.

²⁶ *Id.*

future of their community for years to come. In swing districts, dual resident voters can determine the outcome of congressional elections.

The New York Democratic Lawyers Council (NYDLC) advances a similar message. On their website, a page titled “NEW YORKERS HAVE THE RIGHT TO VOTE FROM THEIR COUNTRY/BEACH HOMES!” in which cites case law arguing residences can be established where “a person maintains a permanent . . . home.” and “permanent” merely defines as “an intention to remain for *the time at least*.”²⁷ The NYDLC also cites that courts evaluating residency claims will look to the homeowner’s intent and personal connections more so than the address on tax returns or a driver’s license.²⁸ In actuality, wherever a MHO spends the weekends and holidays, it could serve as the basis for a residency claim, per the NYLDC’s interpretation of case law.²⁹

It is foreseeable that “residence hopping” will become more common as the number of MHOs grows and partisan institutions become more aware of the prevalence of MHOs and the loopholes in residency law. New York is not the only state with thousands of MHOs and outdated residence requirements. Soon, if not already, the Clinton Democrats’ equivalent of states like Wisconsin will share that some voters have a more democratic choice than others, and use it to their advantage. The unchecked spread of “residence hopping” would cause significant damage to our democracy—a topic explored further.

III. Democratic Harms Posed by Residence Hopping

MHOs exercising the undemocratic ability to choose where they vote may not cause potential obstacles if regular voting does not take place. However, according to research by Andrew B. Hall and Jesse Yoder, owning a home “leads individual to participate *substantially* more in local elections, on average.”³⁰ Homeownership is also positively correlated with participation in national elections.³¹ Importantly, these findings may be even more pronounced for MHOs when compared to single homeowners. The study revealed a dosage effect between the cost of a home and the likelihood of participation—in other words, “the effect of homeownership increases with the price of the home purchase.”³² With the mere cost of multiple homes, one can conclude that MHOs are especially likely to pay attention to politics in every jurisdiction of their homes and to exercise their right to vote in every election.

²⁷ New Yorkers Have The Right to Vote From Their Country/Beach Homes!, NYDLC (n.d.), <https://www.nydcl.org/secondhome>.

²⁸ *Id.*

²⁹ *See id.*

³⁰ Andrew B. Hall and Jesse Yoder, *Does Homeownership Influence Political Behavior? Evidence from Administrative Data*, Abstract, 84 *Journal of Politics* (2021) (emphasis added).

³¹ *Id.* at 3.

³² *Id.* at Abstract.

The additional democratic choice afforded to MHOs exacerbates a democratic power imbalance that homeowners wield over renters. Homeowners are not a representative group—any additional power or leverage they obtain in the democratic process will likely come at a cost to other Americans. They tend to be wealthier,³³ whiter,³⁴ and older.³⁵ At the intersection of those three demographic circles is a set of issues and perspectives that rarely align with the needs of most Americans. For instance, Hall and Yoder reported that homeowners are especially likely to turn out when the ballot includes zoning issues. This coupled demographic typically opposes the development of new housing that could benefit renters and aspiring homeowners.³⁶

Strong arguments have been made that MHOs deserve some additional opportunities to participate in local elections.³⁷ Ashira Ostrow, in her article *Dual Resident Voting: Traditional Disenfranchisement and Prospects for Change*, acknowledges that no voter should have the ability to cast two votes in state or national elections.³⁸ However, she sees denying a homeowner the right to vote in the local elections of the location of that home as democratically problematic.³⁹ A homeowner unable to vote in a local election may effectively be taxed without representation.⁴⁰ Where MHOs are denied a vote in the localities of their homes, may also be singled out by permanent residents for additional taxation.⁴¹ Any concerns that MHOs may not have sufficient ties to the community fail when facing the fact that franchises have been extended to other temporary residents of communities, such as college students.⁴²

Ostrow does overlook one challenge to the extension of franchises to MHOs: votes casted in local elections. For instance, imagine a voter with homes in, both, San Francisco and Los Angeles. Voting in the recall of San Francisco's progressive district attorney and petitioning to recall Los Angeles' progressive attorney on the ballot. Both balloted issues have had national ramifications due to national media attention and raised questions about other similarly-situated prosecutors' policies and political power.⁴³ In other words, because

33 See, e.g., Brett Holzhauser, *Here's the average net worth of homeowners and renters*, CNBC (n.d.), <https://www.cnbc.com/select/average-net-worth-homeowners-renters/> (citing the Survey of Consumer Finances released in September of 2020).

34 See, e.g. Nathalie Jimenez, *America's race gap between black and white homeowners*, BBC (Jul. 10, 2022), <https://www.bbc.com/news/business-61845304>.

35 Jennifer Molinsky, *Ten Insights About Older Households From the 2020 State of the Nation's Housing Report*, Joint Center for Housing Studies (Dec. 17, 2022), <https://www.jchs.harvard.edu/blog/ten-insights-about-older-households-2020-state-nations-housing-report>.

36 Hall & Yoder, *supra* at 30.

37 See generally Ashira Pelman Ostrow, *Dual Resident Voting: Traditional Disenfranchisement and Prospects for Change*, 102 COLUM. L. REV. 1954 (2002).

38 *Id.* at 1959.

39 *Id.* at 1960.

40 *Id.* at 1962.

41 *Id.*

42 *Id.* at 1968-69.

43 See, e.g. Cheryl W. Thompson, *Chesa Boudin's ouster raises questions about the future for progressive prosecutors*, NPR (June 12, 2022), <https://www.npr.org/2022/06/12/1104460706/chesa-boudins-ouster-raises-questions-about-the-future-for-progressive-prosecutors>.

local elections have national ramifications, permitting anyone to vote in local elections in every community where they own a home, may not be as benign or harmless as Ostrow lets on. Nevertheless, this article does not contest the *legality* of municipalities allowing second homeowners the right to vote in local elections. This article will undoubtedly leave the challenge of the democratic legitimacy of the practice for another day.

The Founding Fathers, let alone officials writing and enforcing durational residency requirement laws, did not anticipate an era in which people could exist in two places at once, at least as perceived by voter registration officials. However, the expanding number of MHOs and their existing and growing political influence (measured potential political contributions and the likelihood of voting) necessitates, at a minimum, a conversation about whether our democracy should tolerate some voters having more choice and where to cast their votes in state and federal elections. Through such a conversation, awareness of “residence hopping” will rise and call for reform. The following section analyzes possible reform methods and the legality of those reforms.

IV. Suggested Reforms to Limit Residence Hopping and the Legality of Those Reforms

States have the authority to develop and impose residency requirements on prospective voters.⁴⁴ Courts will apply a strict scrutiny analysis when reviewing residency requirements: determining if the requirement is narrowly tailored to advance a compelling state interest.⁴⁵ This standard reflects that “[t]he right to vote is a fundamental right preservative of other basic rights.”⁴⁶ The Equal Protection Clause prevents any limitation of such a right, unless it can be shown that the burden survives a strict scrutiny analysis.⁴⁷ “[M]ere classification” of prospective voters is not dispositive in this inquiry.⁴⁸ However, courts must go the extra effort in determining if the classifications are “reasonable in light of its purpose . . .”⁴⁹

Courts have found violations in many laws imposing overly burdensome residency requirements on specific groups. Presumptions of non-residence must be applied or risk being found unconstitutional. In *Symm v. United States*, 439 U.S. 1105, 99 S. Ct. 1006, the U.S. Supreme Court affirmed the unconstitutionality of a registrar’s presumption that students at a local university were not residents with respect to voting. A Fifth Circuit court addressing a related presumption specified the unconstitutionality arose from the fact that “[o]ther prospective voters [were] not subject to this presumption

⁴⁴ See *Pope v. Williams*, 193 U.S. 621 (1904).

⁴⁵ See, e.g., *Whatley v. Clark*, 482 F.2d 1230, 1233 (5th Cir. 1973).

⁴⁶ *Id.* (internal citations omitted).

⁴⁷ *Id.*

⁴⁸ *Carrington v. Rash*, 380 U.S. 89, 92 (internal citation omitted).

⁴⁹ *Id.* at 93 (internal citations omitted).

of nonresidency or to the attendant burden of overcoming it.”⁵⁰ Consequently, a voting jurisdiction could not pass a law declaring MHOs to be presumptively nonresidents and, therefore, unable to vote in that jurisdiction.

The law would also prohibit any presumption against remote workers with respect to residency. Occupation-specific residency requirements have yet to survive judicial scrutiny. The U.S. Supreme Court, in *Carrington v. Rash*, reversed a lower court ruling that upheld a Texas law, preventing any member of the Armed Services from “ever acquir[ing] a voting residence in the State so long as he remains in service.”⁵¹ Texas attempted to defend the law by portraying an illustration of where democracy goes wrong: service members soon outnumbering the pre-existing residents, while following the directions of their commanding officer (attaching an alleged bias) rather than investing in the surrounding community because of the temporary military postings. Unintentionally, the service members fundamentally alter the political character of the community.⁵² This depiction did not persuade the Court; it insinuated that a state could not “fenc[e] out” a group of the population from the franchise because of concerns about how they might vote.⁵³ However, the Court stressed that a state has every right to inquire whether a prospective voter has indicated a sufficient “freely exercised intention of remaining within the State” before granting them the franchise.⁵⁴

Courts apply a lower standard of review when states impose residency requirements on a nondiscriminatory basis.⁵⁵ States can exercise their “unquestioned power to impose reasonable residence restrictions on the availability of the ballot.”⁵⁶ A permissible use of this power is to grant election officials the authority to “look to the facts and circumstances” of prospective voters’ residency claims.⁵⁷ In fact, those officials do not have to accept the “declarations of voters concerning their intent to reside in a State” as conclusive.⁵⁸ However, “States may no casually deprive a class of individuals of the vote because of some remote administrative benefit to the State,” such as reducing the need to investigate claims of residency made by any individuals of that class.⁵⁹

⁵⁰ *Whatley*, 482 F.2d at 1233.

⁵¹ *Carrington*, 380 U.S. at 91-92.

⁵² *Id.* at 93-94.

⁵³ *Id.* at 94.

⁵⁴ *Id.* at 95.

⁵⁵ *See id.* at 91.

⁵⁶ *Id.* (internal citations omitted).

⁵⁷ *Id.* at 95.

⁵⁸ *Id.*

⁵⁹ *Id.* at 96.

So, while “the right to choose” one’s representatives is a right the U.S. Supreme Court has been “zealous to protect,”⁶⁰ states can take “reasonable and adequate steps . . . to see that all applicants for the vote actually fulfill requirements of bona fide residence.”⁶¹

Extending the length of durational residency requirements before one can register to vote is one solution to protect the political power of non-MHOs. The U.S. Supreme Court has accepted the requirement that new residents wait at least 30 days prior to registering to vote.⁶² The waiting period will reduce the odds of new residents voting on local and state issues with little or no familiarity with the issues; therefore, voting the party line. Similarly, a month-long waiting period will reduce the odds of calculated moves by partisan individuals with the intent of altering the outcome of an election.⁶³

Durational residency requirements for candidates provide further evidence of the democratic legitimacy through meaningful connections to the community. Courts have cited three rationales for having durational residency requirements for candidates – aspects of each of the rationales support the need for durational residency requirements.⁶⁴ Firstly, such requirements increase the odds of residents gaining a true understanding of their community and its needs.⁶⁵ Secondly, voters need sufficient time to see candidates in the community to evaluate them properly.⁶⁶ Thirdly, such requirements impede political carpetbagging.⁶⁷ Conversely, the rationales coincide with opposition: voters can only know the extent to which a candidate understands the community’s issue if the voter has been present in the community; voters not present in a community have fewer means to observe a candidate there; lastly, only voters that reside in a community have an interest in outsiders representing that district.

States could try to ‘push the envelope’ by enforcing a durational residency requirement greater than 30 days. Twenty-six states have some durational residency requirement (a few have it set at 30 days), which means that twenty-

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² *See, e.g.,* Dunn v. Blumstein, 405 U.S. 330, 348 (1972) (noting “that 30 days appears to be an ample period of time for the State to complete whatever administrative tasks are necessary to prevent fraud—and a year, or three months, too much”).

⁶³ If this idea sounds far-fetched, go review “Bleeding Kansas” during which residents of Missouri jumped over the border into Kansas to vote for a proslavery congressional delegate. *See Bleeding Kansas*, PBS (n.d.) (accessed Aug. 27, 2022), <https://www.pbs.org/wgbh/aia/part4/4p2952.html>. Americans are not above moving to a state solely to realize their political aims. Here’s a [Reddit thread](https://www.reddit.com/r/politics/comments/ag5g2/liberals_should_move_en_masse_to_red_states_so_we/) advocating for that very idea. *Liberals should move en masse to red states so we can take control of the US Senate*, Reddit (2009), https://www.reddit.com/r/politics/comments/ag5g2/liberals_should_move_en_masse_to_red_states_so_we/.

⁶⁴ *See, e.g.,* Sununu v. Stark, 383 F. Supp. 1287, 1290 (D.N.H. 1974).

⁶⁵ *See id.*

⁶⁶ *See id.*

⁶⁷ *See id.*

four states have no durational residency requirement at all.⁶⁸ Therefore, all fifty states should consider durational requirements more than their current threshold (or lack thereof).

Though the Supreme Court has only upheld a 50-day requirement in a case with very particular facts, the precedent invites the argument that they have sufficient justification for a longer waiting period.⁶⁹ Nonetheless, it will be a tough argument to make. In cases regarding durational requirements, courts have applied a strict scrutiny analysis: if the state can demonstrate that the requirement serves a compelling government interest and is narrowly tailored to advance that interest, it will be enforced.

However, if a state has been particularly affected by an influx of MHOs, the Supreme Court may then regard actions to limit that colonization as serving a compelling interest. Such a state could also easily show that the durational requirement is the least intrusive means because requiring new residents to demonstrate knowledge of local issues would be more intrusive (not to mention assuredly unconstitutional).

Another means to combat the accumulation of political power by MHOs is a more stringent enforcement of residency requirements. Generally, someone who moves to a state only becomes a resident of that state if they move there with the intent to remain indefinitely. A review of the residence laws in another state, Montana⁷⁰, demonstrates the need for such residency laws based on the sheer number of MHOs. Montana defines residence as the place “where the individual’s habitation is fixed and to which, whenever the individual is absent, the individual has the intention of returning.”⁷¹ Montana law further states that “[i]f an individual moves to another state” with the intent to remain, “the individual loses residence in [Montana].”⁷² Finally, Montana law presumes that the location of an individual’s family is their residence unless that individual takes up residence in another location and intends to remain there.⁷³

When applying Montana law, it is easy to invalidate the topic of residency. As is shown, what does it mean for habitation to be “fixed”? What actions suffice to demonstrate an intent to stay in a state? Who constitutes a person’s family, and perhaps an individual has immediate family in numerous locations? While

68 See *Voter Registration List Maintenance*, NCSL (Oct. 7, 2021), <https://www.ncsl.org/research/elections-and-campaigns/voter-list-accuracy.aspx>.

69 See *Marston v. Lewis*, 410 U.S. 679, 680 (1973).

70 See Wendy Knight, *A Place in the Still-Wild West*, N.Y. TIMES (n.d.), <https://archive.nytimes.com/www.nytimes.com/ref/realestate/greathomes/GH-MtnStates.html?ref=mountainstates>; Ward, *supra* note 10 (“Montana has a larger-than-typical share of second homes and the number of second homes has grown at a relatively fast rate. In 1990, the census classified 5.8 percent of Montana homes as seasonal, recreational or occasional use. This was nearly double the U.S. share (3 percent). By 2010, the share of second homes in Montana grew to 8 percent, while the U.S. share grew to only 3.5 percent.”)

71 MONT. CODE ANN. § 13-1-112(1) (2021).

72 MONT. CODE ANN. § 13-1-112(6) (2021).

73 MONT. CODE ANN. § 13-1-112(7) (2021).

there may be case law from the Montana courts interpreting these questions, a better way to resolve the meaning of residency is to strengthen and clarify the relevant definitions in law.

For instance, the North Dakota Code further gives a more precise definition of residency: “the place where one remains when not called elsewhere for labor or other special or temporary purposes and to which the person returns in seasons of repose.”⁷⁴ Rhode Island law clarifies what intent means: “one’s domicile is that person’s factual physical presence in the voting district regularly incorporating an intention to reside for an indefinite period.”⁷⁵ Finally, Alaska law outlines how a residence can be changed and limits such a change to “the act of removal joined with the intent to remain in another place.”⁷⁶

After states incorporate, and clarify, these definitions for residency requirements, they must effectuate those requirements. Including the voter registration lists that may contain inaccurate voter information or ineligible voter information absent proactive steps to maintain and update those lists. The National Conference of State Legislatures (NCSL) urges election officials to put systems in place to detect changes in voter information.⁷⁷ When conducting such maintenance, election officials must comply with the National Voter Registration Act, a federal law, but state legislators could impose additional guidance.⁷⁸

The NVRA acts as a regulatory floor for states to build upon, according to the NCSL.⁷⁹ For instance, due to NVRA’s permission to remove voters who have exited the jurisdiction, state legislators could maintain more accurate voter registration rolls by providing more resources for monitoring when residents move away.

Beyond increasing resources to identify and remove inactive and ineligible voters, twenty states have passed laws specifying that voters who do not sufficiently engage with election officials, by voting or alike, can be removed from the rolls;⁸⁰ the remaining thirty states should adopt similar measures.⁸¹

⁷⁴ N.D. CENT. CODE § 54-01-26 (2021).

⁷⁵ R.I. GEN. LAWS § 17-1-3.1 (2022).

⁷⁶ ALASKA STAT. § 15.05.010 (2021).

⁷⁷ See NCSL, *supra* note 68.

⁷⁸ See *id.*

⁷⁹ *Id.*

⁸⁰ *Id.*

⁸¹ *Id.*

Some states find it necessary to cancel a registration upon notice from another state that an individual has registered outside their jurisdiction.⁸² All states should comply and ensure to accurately and expeditiously share voter registration information with other states.

Finally, states take a variety of approaches in considering what sources of information to examine to review their registration lists. That said, States should, certainly, consult as many accurate sources as possible.⁸³ Thirty states have taken efforts by requiring the use of the National Change of Address (NCOA) program offered by the U.S. Postal Service.⁸⁴ More than half of the states also use the Election Registration Information Center (ERIC) database to verify addresses.⁸⁵ That database, which consists of NCOA and Social Security death index information, among other sources, allows member states to share voter roll information with one another seamlessly.⁸⁶ A few states, such as Colorado, use both ERIC and the NCOA as well as additional information to increase the odds of maintaining the most accurate list possible.⁸⁷ More states should follow Colorado's lead.

It is important to distinguish durational residency requirements and voter registration validity from concerns about election fraud. Political science professor Daniel McCool estimates the national rate of fraudulent activity at 0.00006 percent.⁸⁸ Even if Professor McCool erred in some way, voting fraud preventative measures would not diminish the participation of eligible voters. In the same breath as MHO prevention, durational residency requirements and resident verification statutes help maintain the political power of individuals who genuinely resonate with the community and have a relevant stake in the election.

As demonstrated by the Town of Clinton Democrats,⁸⁹ political interests are increasingly aware of the law's ambiguities that allow voters with multiple residences to strategically opt into certain elections by claiming residency. These efforts, and alike, expand as homeowners retain greater freedom to move to new communities through remote work proliferation and income inequality that has benefited homeowners. Moreover, homeowners are traditionally among the most reliable and active voters. Thus, the odds of impact in any jurisdiction they maintain are high.⁹⁰

⁸² *Id.*

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ Alex Sakariassen, *Montana's nine-day election laws trial concludes*, MONT. FREE PRESS (Aug. 26, 2022), <https://montanafreepress.org/2022/08/26/montana-election-trial-wraps/>.

⁸⁹ See TOWN OF CLINTON, *supra* note 25.

⁹⁰ See generally Hall & Yoder, *supra* note 30.

V. Conclusion

“Residence hopping” is not democratic. Tools such as durational residency requirements can help prevent voters with few, or nonexistent, ties to a jurisdiction from moving there and imposing misguided views. Opponents of durational residency requirements, such as Professor Eugene D. Mazo, argue that Americans’ “high degree of mobility” renders such requirements “difficult to justify.”⁹¹ However, evidence suggests Americans may not be as mobile as expected by Mazo—according to Apartment List, the annual rate of Americans changing residences has declined since the mid-1980s.⁹² If Americans are not as mobile, many voters may prioritize remaining in their community, which would justify incorporating this priority into voting requirements.

Regarding mobility, the pandemic uncovered a specific subset of the population exercising that mobility: remote workers. They were 53 percent more likely to move between April 2020 and April 2021 compared to on-site workers.⁹³ Remote workers are not a representative sample of the American population. For instance, in Massachusetts, at the onset of the pandemic, 83 percent of individuals with jobs and advanced degrees could work remotely, but only 35 percent of individuals with a high school degree or less could do so.⁹⁴ Individuals with greater levels of formal education tend to find themselves on the left side of the political spectrum, and as they relocate, local politics may shift dramatically.⁹⁵

Mobile Americans also tend to be wealthier in the COVID-19 era. Apartment List reported that 16 percent of workers in households making more than \$150,000 annually moved in the year following the onset of COVID; that marked a thirty-nine percent increase over the Census Bureau’s 2019 estimate.⁹⁶ Prior to the pandemic, more highly educated, and wealthier, Americans moved compared to those with fewer years of education. As reported by Pew in 2010, Seventy-seven percent of college graduates changed communities at least once, whereas just fifty-six percent of those with a high diploma or less did the same.⁹⁷ The statistics read that it is easier to vote upon

⁹¹ Eugene D. Mazo, *Residency and Democracy: Durational Requirements From the Framers to the Present*, 43 Fla. St. U. L. Rev. 611, 673 (2017).

⁹² Les Shaver, *Suddenly, Wealthy Americans Are on the Move Too*, *GlobeSt.com* (May 12, 2021), <https://www.globest.com/2021/05/12/suddenly-wealthy-americans-are-on-the-move-too/?slreturn=20220726155931>; see Alvin Chang, *Those who leave home, and those who stay*, *Vox* (July 25, 2018), available at: <https://www.vox.com/policy-and-politics/2017/6/15/15757708/hometown-stay-leave> (“As a nation, the United States is at an inflection point: After 100 years of Americans moving more and more, we’re now moving less.”).

⁹³ Shaver, *supra* note 92.

⁹⁴ Rich Parr, *Coronavirus Highlights Stark Divides Between Those Who Can Work From Home And Those Who Can’t*, *wbur.org* (April 10, 2020), <https://www.wbur.org/news/2020/04/10/coronavirus-working-from-home-economic-divides-income-disparity>.

⁹⁵ Carroll Doherty et al., *In Changing U.S. Electorate, Race and Education Remain Stark Dividing Lines*, PEW RESEARCH CENTER (June 2, 2020), <https://www.pewresearch.org/politics/2020/06/02/in-changing-u-s-electorate-race-and-education-remain-stark-dividing-lines/>.

⁹⁶ Shaver, *supra* note 92.

⁹⁷ Paul Taylor et al., *Who Moves? Who Stays Put? Where’s Home?*, Pew Research Center (Dec. 17, 2008), <https://www.pewresearch.org/wp-content/uploads/sites/3/2010/10/Movers-and-Stayers.pdf>.

moving to a new place when it generally favors wealthier, more educated voters who may not share many, if any, values with the community members living in their new community.

An influx of remote workers into a community may carry few beneficial effects. It is unnecessary for remote workers to engage with their new communities, or commute, so they cannot accurately assess the needs for public transit and other infrastructure improvements. They have little motivation to meet new community members, but may retain substantial ties to friends in their prior home. Consequently, there is little interest in meeting very many new people. Overall, migration generally leads to less politically diverse and democratically healthy communities. Jaya Mantovani's study determined that "counties experiencing above average net emigration will see a decrease in House of Representative election competitiveness by 20 %, as well as a significant decrease in voter turnout and voters shares for the Republican Party."⁹⁸ Such negative results on competitiveness and turnout justify fears that allowing MHOs to exploit additional democratic options may not benefit their second, or third, community.

One person, one vote, one place is how our democracy was designed and how it should remain. MHOs represent a small, but powerful, fraction of voters that can influence ambiguous legislation to exercise options unavailable to the rest of the electorate. Empirically, our current approach to residency has resulted in an unhealthy democracy.⁹⁹ Plainly, residency laws do not account for a nation where a select few can "intend" to reside in multiple places simultaneously. Politically, it seems inevitable that the ability of MHOs to select their voting jurisdiction will become; yet, another scapegoat for another part of the electorate to challenge election results. For these reasons, "residence hopping" needs to come to an end.



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⁹⁸ Jaya Mantovani, *How Internal Migration is Reshaping the Political Landscape of the United States: An Empirical Study*, UNIV. OF CAL. AT BERKELEY, Abstract (May 10, 2019).

⁹⁹ See *id.*