The Modern Battle of Suffrage: The Dual Residents Right to Enfranchisement

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With the prevalence of Wi-Fi, cell phones, and BlackBerrys, we have become a completely mobile society; it is a wonder as to why our election laws are stuck in the past. As compared to earlier generations where mobility was not a viable option, coupling voting with residence was a practical policy. Despite being able to be completely mobile, work in one state, and live in another while paying taxes in both locations; most state laws still restrict voting in local or municipal elections to one location. Some state’s laws prohibit Dual Residents such as, senior citizens who split their time between two homes, migrant farm workers who must maintain two residences in order to stay employed year round, and other secondary homeowners from casting a vote in both their locations. These groups are essentially left disenfranchised on localized issues in one location because they have registered to vote in their other city of residence. These homeowners pay taxes in both locations but are prohibited from voting in both; it is the modern day version of taxation without representation. This paper lays out the arguments in favor of voting rights for secondary homeowners and the legal rationale and policy reasons for allowing Dual Residents to vote in two locations in local elections.

Introduction

The Equal Protection Clause of the Fourteenth Amendment provides, “No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor deny to any person within its jurisdiction equal protection of the laws.” This would include laws that create the right to vote. To quote the New York legislature, “the right to vote is the cornerstone of democracy, and voting empowers communities and individuals to elect representatives to speak, and advocate on their behalf in bodies that appropriate and allocate
funds, make laws, and govern them.”\textsuperscript{2} The right to vote is considered a fundamental right.\textsuperscript{3} Several amendments have been made to the United States Constitution to ensure this right is protected and more inclusive. For example, the Fifteenth Amendment prohibits denying the vote because of race, color, or previous condition of servitude.\textsuperscript{4} The Nineteenth Amendment prohibits sex discrimination in setting voter qualifications.\textsuperscript{5} The Twenty-sixth Amendment prevents states from denying the vote to citizens over eighteen years old because of age.\textsuperscript{6} Although state law governs the election process and determines voting qualifications, the basic right to vote is protected by the United States Constitution.

Traditionally voting qualification is based, among other things, primarily on residence. Residence is defined as, “the act of living in a given place for some time.”\textsuperscript{7} The Supreme Court has stated, “[thirty] days appears to be an ample period of time for the State to complete whatever administrative tasks are necessary to prevent fraud.”\textsuperscript{8} Some scholars have argued that the increased mobility of modern society rendered durational residence requirements unreasonable.”\textsuperscript{9} In a majority of states, a second homeowner can register to vote in local elections, in only one of the two locations he/she may reside in. This may seem practical on a national scale; however, at the local level in municipal elections, it creates a group of people that are disenfranchised based on state law. Municipal elections are defined as “the election of municipal officers.”\textsuperscript{10} Secondary homeowners or “Dual Residents” are those “who reside in the community and would be qualified to vote therein if not for their having previously registered to vote in another community.”\textsuperscript{11} Examples of this include “snowbirds,” migrant workers, and second homeowners.

This paper argues that Dual Residents, otherwise qualified voters but for the fact they already qualify in another location, should be allowed to vote in both locations at the municipal
(local) level. The rationale for this proposition is that these homeowners are subject to the burdens of owning property in two locations but do not receive the benefits associated with these burdens, such as electing their local representatives. Essentially, these individuals are being taxed without representation and disenfranchised because they own two homes. Section one of this paper will discuss the history and development of the case law. Section two will discuss the organization of local elections currently in place and section three will discuss groups that are currently disenfranchised by voting restrictions. Section four will discuss the applicable legal standard and section five discusses the policy reasons for expanding voting laws in local elections.

I. History and Development of Case Law

This issue regarding non-property owners and non-renters rights to vote has been addressed by the Supreme Court. In *Kramer v. Union Free School District No. 15*, the Supreme Court held, “if a challenged state statute grants the right to vote to some bona fide residents of requisite age and citizenship and denies the franchise to other, the Court must determine whether the exclusions are necessary to promote a compelling state interest.” The plaintiff in *Kramer* was a thirty-one year old college educated stockbroker who lived in his parents’ home in Union Free School District No.15 in New York, but was prohibited from voting in school elections because, he had no children and did not lease or own taxable real property. The issue in *Kramer* was whether the New York statute §2012 was valid. The section cited in *Kramer* states, “in certain school districts residents who are otherwise eligible to vote in state and federal elections may vote in the school district election only if they (1) own (or lease) taxable real property within the district, or (2) are parents (or have custody of) children enrolled in the local public schools.” The Court held that the state’s interest in limiting the franchise to those
primarily interested in the outcome of the election was not sufficiently compelling to justify denying equal protection to the excluded residents.\textsuperscript{16} \textit{Kramer} implies, “…that statutes that grant the right to vote to bona fide residents with only one home, but deny that right to bona fide residents with homes in two communities, must be narrowly tailored to promote a compelling state interest.”\textsuperscript{17} The State interest asserted was to, allow those “most intimately interested in actions taken by the school board” to vote in the election in order to maintain an orderly election process.\textsuperscript{18} The Court rejected this argument stating that it was not, “sufficiently tailored to limiting the franchise to those ‘primarily interested’ in school affairs to justify the denial of the franchise to appellant and members of his class.”\textsuperscript{19} The Court’s decision in \textit{Kramer} expanded the right to vote in local elections to non-property owners and non-renters in New York.

Recently the Second Circuit ignored this 1969 precedent spelled out in \textit{Kramer} in their 2002 decision in \textit{Wit v. Berman}, in which they refused to expand the law.\textsuperscript{20} In \textit{Wit v. Berman}, the plaintiffs were challenging a New York statute that prohibited them from voting in local elections in both the Hamptons and Manhattan.\textsuperscript{21} The Plaintiffs were questioning the constitutionality of New York Election Law, § 17-104 that states, “any person who registers, or an attempt to register as an elector in more than one election district for the same election” is guilty of a felony.\textsuperscript{22} The law also imposed “felony penalties on those who knowingly attempt to register when not qualified and on those who attempt to vote in an election more than once.”\textsuperscript{23}

The Plaintiff is Mr. Harold M. Wit, 72, a managing director of Allen & Company, an investment bank in New York.\textsuperscript{24} He owned his summer spacious weathered-wood house, in the Hamptons, for thirty-two years.\textsuperscript{25} At the time the lawsuit was filed, summer residents of the Hamptons were paying “most of the property, sales, and other taxes that keep the area’s local governments and public schools alive.”\textsuperscript{26} Specifically in Southampton, “about three-quarters of
property taxes are paid by summer residents, and who have no vote in local elections unless they make the village their permanent residence.”27 Additionally “property taxes on mansions in the estate section of Southampton range from $35,000 to $70,000 a year.”28 They support the community financially but have no say in local decision making through ballots. Based on this clear inequality, the Second Circuit should have allowed members of a community to participate in local decisions.

Instead, the Second Circuit upheld the New York state law that prohibited voting in two locations by otherwise qualified residents.29 Specifically the Second Circuit referenced the Court’s assertion that “to subject voting regulation to strict scrutiny and to require regulation[s] be narrowly tailored to advance a compelling state interest . . . would tie the hands of States seeking to assure that elections are operated efficiently.”30 The Wit Court relied heavily on the Supreme Court precedent from Burdick v. Takushi, in which the Court upheld Hawaii’s ban on write-in votes in light of the state’s registration system, which provided sufficient access to the ballot, and the state’s interest in avoiding unrestrained factionalism.31

Conversely, the Tenth Circuit Court of Appeals in May v. Town of Mountain Village, upheld a town Charter that affords secondary homeowners the right to vote in that town.32 The case arose because, “in 1995, full [-] time residents of the Mountain Village, a Colorado ski resort town, sued in federal court after the town’s Charter gave second homeowners the right to vote in local elections.”33 Constitutionally it is permissible to allow voting in more than one location.34 Colorado is not the only state to allow Dual Residents to vote. In fact, several states, including Arizona, Colorado, Indiana, Montana, New Mexico, North Dakota, and Wyoming allow nonresidents to vote in local elections.35 This discussion describes a developing legal landscape with issues varying from state to state and court to court.
II. Organizations of Local Elections

It has generally been held that when dealing with municipal issues, such as bonds, it “may be prescribed by constitutional, statutory, or character provisions, and, in determining such qualifications, a special or local law prevails over an inconsistent general law.” Furthermore, with regard to municipal elections there is no federal oversight. However, “a constitutional provision establishing the qualifications for voting generally may be applicable to municipal elections and to elections conducted by other governmental subdivisions and agencies, and where this is the case, the legislature is not authorized to prescribe any other standard for voters at those elections.” Under these laws, the right to vote is based on a residence requirement.

For example, New Jersey law states that a person is a qualified voter if they meet the following three criteria are (1) United States citizen, (2) at least 18 years old by the next election, and (3) a resident of the county for 30 days before the election. Although New Jersey does not explicitly state that residency is limited to one location, it implicitly defines residency to one location by only allowing its residents to register and vote in one county. Other states like, New York expressly state, any nonresident may not vote even though they own property in the municipality and pay taxes within the locale. A consequence of leaving municipal elections in the hands of State government has been that several groups of individuals are disenfranchised at the local level.

The Supreme Court held in City of Phoenix, Arizona v. Kolodziejski that the Arizona Constitution and statutes, as applied to exclude non-property owners from voting in election to approve issuance of general obligation bonds, violated the Equal Protection Clause of the Fourteenth Amendment. Justice White asserted, “that all residents of Phoenix, property owners
and non[-] property owners alike, have a substantial interest in the public facilities and the service available in the city and will be substantially affected by the ultimate outcome of the bond election. . .”

This begs the question, if it is essential to allow the non-property owners to vote in these localized elections, is it not also essential to allow Dual Residents (including homeowners and renters), who are just as affected by the results of these elections, to vote in the localized elections? If anything, people paying property taxes have just as much at stake as other residents of the town. In City of Phoenix, the Court expanded their holding in Cipriano v. City of Houma stating, “the denial of the franchise to nonproperty owners in elections on revenue bonds was held to be a denial of the Fourteenth Amendment.” The Cipriano court relied on the fact that nonproperty owners were still substantially affected by the issuance of revenue bonds.

If non-property owners are deemed eligible, then it clearly follows that Dual Resident are substantially affected by municipal governments’ actions and should be allowed to vote.

III. Groups Affected by Disenfranchisement

Allowing Dual Residents the right to vote in both locations would not be a substantial change in the voting system. Currently, states that do not allow Dual Residents to vote, argue that Dual Residents only have a ‘temporary’ interest in the local elections; this argument loses its persuasion when two distinct groups have been allowed to vote in the communities they temporarily reside—military personnel and students. Historically, military personnel and students have been granted the right to vote in communities where they temporarily reside, even though many have “only a transitory stake in local or state affairs.” In Carrington v. Rash, the Supreme Court held it was unconstitutional to discriminate against residents of a jurisdiction whose residence began after they had joined the military. Despite the fact that a majority of students, who often remain in a community for only four years and have less of an interest in the

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community than Dual Residents—students are considered part of the relevant political community, while Dual Residents are often excluded.\textsuperscript{49}

Unlike military personnel and students, two groups that have been traditionally disenfranchised in most locations are convicted felons and nursing home residents. However, both of these groups are allowed to vote in some locations depending on state laws. Although restrictions against convicted felons are linked to a legitimate state interest, it is hard to apply the same argument to nursing home residents and Dual Residents. These two groups, nursing home residents and Dual Residents, did not engage in illegal activity that would jeopardize their liberty where the convicted felon, arguably, chose his path to disenfranchisement.

\textbf{Convicted Felons}

State laws disenfranchising convicted felons have generally been upheld. Generally, states prohibit convicted felons from voting during their incarceration. New Jersey explicitly states on its election website that, “you are not eligible to register to vote if: you are serving a sentence or on parole or probation, as a result of a conviction of an indictable offense under state or federal law.”\textsuperscript{50} However, some states do allow voting via absentee ballots; however, they are not mandated to do so under the federal constitution, but may be mandated under their state constitution. Vermont for example informs voters that they “have the right to vote if [they] have been convicted of a felony, even while [they] are incarcerated.”\textsuperscript{51} Specifically, “statutes disenfranchising felony prisoners from participating in elections have generally been upheld, as not violating the right to equal protection.”\textsuperscript{52} Other states allow voting by convicted felons after a designated amount of time has passed, sometimes up to ten years.\textsuperscript{53} Yet other states prohibit a convicted felon from voting in another election.\textsuperscript{54} Prohibiting convicted felons from voting is not seen as a form of cruel and unusual punishment because several states have this restriction in
place. However, a state law that appears on its face as racially neutral will not be upheld if the original enactment was motivated by, a desire to discriminate based on race, and the statute has a racially discriminatory impact.

Currently in some states, like Pennsylvania, prisoners do not have the right to be transported to their regular polling places to register and vote, nor to compel a state to provide them with registration and polling places within the confines of the correctional institutions. In Massachusetts, a prisoner may vote from the prison if their domicile is in the municipality where the prison is located, but a prisoner domiciled elsewhere may not automatically change his or her domicile to the site of the prison. Additionally, election officials may require some independent corroboration of a prisoner's assertions of domiciliary intent. Disenfranchisement of prisoners and convicted felons is a much contested and debated area of election law.

**Nursing Home Residents**

Unlike convicted felons, residents in public or charitable institutions do not necessarily lose their right to vote at their former residences. A statute or state constitution, like Colorado state law, may provide that no person confined as prisoner in correctional facility or jail is eligible to vote. Yet, according to Colorado law, persons supported in institutions maintained wholly or partly at public expense or by charity, neither lose their right to vote at the places of their former residence nor acquire the right to vote in the districts in which the institutions are located.

In *Perri v. Kisselbach*, the New Jersey Supreme Court held that residents of a county tuberculosis sanatorium did not actually reside within the district and were ineligible to vote, despite their claim that they had no other home. The lynchpin of the court’s decision was, that in order to “actually reside in a certain place, he is required to maintain such a relationship with
the place or premises so selected as will entitle him at his will to occupy that place or premises whenever his necessities or pleasures require without having to ask the permission of someone else.”64 This rule distills down the fact that the residents of the institution could not choose to stay or leave at will but rather when the director allowed them to leave. As a result the court found the residents did not “actually reside” at the institution because they could not leave at their will, thus making them ineligible to vote.65

This type of disenfranchisement is a clear violation of the Equal Protection Clause. It may be construed that a convicted felon chose his route and one of the many consequences for his actions is disenfranchisement. However, this argument does not hold water when it comes to the nursing home residents who are left disenfranchised through no fault of their own. These individuals should not be left without the power of the vote, simply because they could not afford to maintain a “residences” outside the nursing home. Similarly, the second homeowner should not be left disenfranchised because they own two homes.

**Dual Residents**

People tend to think that only the “wealthy elite” fall into the category of having dual residences. However, according to the US Census data, in 2007 approximately eighteen percent of American households owned more than one residence.66 This is an eight percent increase from 1995 to 2007.67 Additionally, the median household income of those with a second home, in 2007, is about $58,000.00 and the median household income is approximately $48,000.00 for all American homeowners.68 These statistics do not include renters of more than one unit. The increase in dual ownership can be attributed to many factors. Specifically, improved highways and air transportation make it easier for people to travel between places.69 Modern
communications technology and information systems make it easier to work in a wider network or away from a central business location.70

Yet, “for others like migrant farm workers, the transitory and seasonal nature of their work requires that they maintain two homes.”71 Migrant farm workers tend to have residency in two locations given the nature of their seasonal work. Unlike the wealthy, these workers represent “a clearly disadvantaged class which is generally illiterate and poorly informed of its legal rights.”72 Many of these workers move from their southern homes for part of the year to find work and return to the same town and schools.73 Moreover, they “are employed, pay taxes, educate their children, belong to congregations, and otherwise contribute to the communities in which they live.”74 This group of disenfranchised voters is equally as affected as any other single homeowner or renter by the decisions made by the local government.

Another subset of affected voters is retired senior citizens who divide their time between two residences. These individuals equally divide their time between two locales based on seasonal weather.75 However, they are also limited to voting in one area despite the impact on their retirement benefits and Medicare benefits that may be affected. It has long been established that “residence provides a useful predictor of the frequency with which an individual will be affected by the actions of a given government and ensures that members of the community have sufficient interest in the community.”76 However, this notion falls short because residence is not a good predicator of affect when Dual Residents are left disenfranchised because they reside in two locations.

IV. Legal Standard

The legal standard applied is particularly important because, state statutes grant the right to vote to some bona fide residents of requisite age and citizenship.77 However, these state
statutes deny Dual Residents the right to vote even though they are otherwise qualified to vote in the district.\textsuperscript{78} However, the Supreme Court and Circuit courts have not set out a clear standard to apply to these cases. In fact, the case law is inconsistent in applying a standard.

Strict scrutiny is a standard applied by courts when reviewing a law that affects a fundamental right. The test used to determine if a law violates the Equal Protection Clause under strict scrutiny is that a law must be narrowly tailored and serve a compelling governmental interest.\textsuperscript{79} Rational basis is a lower standard in which the law challenged under equal protection clause will be upheld as long as the distinctions drawn bear some rational relationship to a legitimate State interest.\textsuperscript{80} In \textit{Reynolds v. Sims}, the Supreme Court stated, “since the right to exercise the franchise in a free and unimpaired manner is preservative of other basic civil and political rights, any alleged infringement of the right of citizens to vote must be carefully and meticulously scrutinized.”\textsuperscript{81} This is to say that a law that narrows or restricts the right to vote should be reviewed under strict scrutiny. It has been argued, “statutes that prevent those who satisfy the requirements of bona fide residence from voting should be subject to strict scrutiny review, and thus, will be found to violate the Equal Protection Clause unless they are necessary to promote a compelling state interest.”\textsuperscript{82} Distinct from statutes that restrict the right to vote which are subject to strict scrutiny, statutes that expand the right to vote are reviewed using a rational basis standard.\textsuperscript{83}

Although it is unclear as to which standard should apply for Dual Residents, traditionally for ballot access cases the Court applies a balancing standard, as it did in \textit{Burdick}. The Court balances “the character and magnitude of the asserted injury to the rights protected by the First and Fourteenth Amendments” against, the precise interest of the state as justification for the burden imposed by its rule.\textsuperscript{84} Moreover, “the court must not only determine the legitimacy and
strength of each of those interests, it also must consider the extent to which those interests make it necessary to burden the plaintiff’s rights.” Although this is a legitimate standard with write-in ballots, the Second Circuit misapplied the standard in the Equal Protection claim in Wit because, according to the precedent set by Kramer, the Second Circuit should have applied the heightened standard to their analysis.

A governmental interest has been found where nonresidents are affected by the outcome of the election because they use services provided by the municipality. In Holt Civic Club v. City of Tuscaloosa, the plaintiffs lived on land three miles out of town but within the police jurisdiction of Tuscaloosa, Alabama. Under the state law, the plaintiffs were prohibited from voting in Tuscaloosa election because they did not “reside” within the city lines. The Supreme Court, under the rational basis standard, rejected the plaintiffs claim that this scheme violated their equal protection.

However, the dissent in Holt asserted that the majority opinion “irrationally distinguishes between two classes of citizen, each with equal claim to residency.” Even under a rational basis standard, it can be argued that Dual Residents also have a claim to residency. Therefore, distinguishing between single homeowners and secondary homeowners is irrational since they both have an equal claim to residency within the voting district.

The Court distinguished the Holt case from the Kramer case, asserting that in Kramer the franchise was judicially extended to an excluded group, “the challenged statute…denied the franchise to individuals who were physically residing within the geographic boundaries of the governmental entity concerned.” According to the Court, “a governmental unit may legitimately restrict the right to participate in its political process to those who reside within its borders.” The Court refused to expand the definition of bona fide residents to include those not
physically residing within the city but subject to its laws. However, the Court flip-flopped back in *Evans v. Cormman*, when they compelled Maryland to enfranchise residents of a federal enclave who have chosen to reside beyond the borders of the state. Since the Court has failed to establish a clear standard, it is likely that other courts will apply a rational basis standard of review for law that expands the right to vote and make it more inclusive. Essentially, a law that allows Dual Residents to vote and thereby expanding the right to vote should be reviewed under a rational basis approach.

**V. Policy**

States tend to argue that allowing Dual Residents to vote in two locations will create a burden on the state. In *Wit* the Second Circuit stated, “while one may mount ethereal arguments against the single-domicile-registration rule, the administrative problems that interests-based rules would cause for thousands of registrars of voters render those rules virtually unthinkable.” However, the Supreme Court has also expressed the view that “states may not causally deprive a class of individuals of the vote because of some remote administrative benefit to the state.” Moreover, the Constitution forbids distinguishing between newly arrived and long-term residents, therefore distinguishing between residents who have no other home and residents who have a second home in another location should also be prohibited.

Some full-time residents in states like New York and New Jersey have asserted they are concerned with allowing Dual Residents to vote in their local elections because these non-residents will not have the same agenda as the full time residents. This may result in legislation that is harmful to the year round community. Dr. Amitai Etzioni argues that these Dual Residents or the “super wealthy” as he refers to them, threaten the culture and tradition of a community and “do not care that Starbucks has driven out the neighborhood diner or that a
Mercedes showroom has replaced the local used truck dealership.” However, arguments like these miss the point that regardless if Dual Residents are wealthy or not, they are restricted from having a voice in the administration of one of their communities because they are residents of two communities. Moreover, the argument of the “super wealthy” is misinformed because the Dual Resident is more than a homeowner; renters are also Dual Residents, many of whom are forced to rent two homes because of their seasonal work. Additionally, these concerns are diluted since several states already, successfully, allow non-residents to vote in their local elections.

The current systems that have blanket restrictions against allowing nonresidents to vote are not rationally related to a legitimate state interest. The state legislatures’ purpose in enacting these restrictions is usually to avoid fraud. However preventing an otherwise qualified voter from voting, simply because they are a bona fide voter in another district, does not advance a states interest in preventing fraud. Instead, it creates a biased representation within local governments and leaves a group of legitimate voters disenfranchised. Since the passing of the Fifteenth Amendment, voting laws have been moving in a direction to be more inclusive and broaden enfranchisement. However, Dual Residents have yet to be afforded this right in a majority of states. Currently only a handful of states, actually allow Dual Residents to vote.  

Those against extending voting rights to Dual Residents assert that Dual Residents are not likely to be as concerned with local issue and will not take the time to become informed voters. In Rehoboth Beach Delaware, where Dual Residents are allowed to vote, they are actively involved in local elections, and some hold elected positions. According to the City Manager, these Dual Residents are “a powerful and active constituency, coming mainly from Baltimore and Philadelphia in addition to Washington and Virginia.” In fact, some non-
residents, like Mr. Barbour a dual resident in Washington and Rehoboth beach, have petitioned for zoning ordinances that protect the aesthetic value of the community. Mr. Barbour later made a successful bid for city commissioner. Looking at this one example among many indicates a strong desire by voters to be able to vote in both their locales and a strong commitment to making a difference in the community.

The states that recognize Dual Residents or nonresident owners right to vote, allow voters to vote in specialized and narrow elections. For example, Arizona law currently allows nonresident owners to vote in pest control districts. The law states, “Only those electors who make affidavit at the time of voting that they are of record the owner of one or more acres of the crop enumerated in the petition shall be entitled to vote or to hold office as director. Nonresident owners may vote and hold office as director.” Colorado allows nonresident owners to vote in their conservation and irrigation districts. Even more favorable, Tennessee allows nonresident owners to vote in all municipal elections. Specifically, the Tennessee statute states, “a registered voter who resides outside the boundaries of the city, but who owns at least eight thousand square feet of real property located within the boundaries of the city, shall be entitled to vote in all municipal elections and municipal referenda held in the city.” Expanding the right to vote to Dual Residents in localized elections would not be a great departure from precedent but rather a small step to continue to update election laws in favor of broadening enfranchisement to those with a legitimate interest in the community.

In May v. Town of Mountain Village, the Colorado town of Mountain Village created a town Charter that allowed any property owner in the town to vote in local elections. However, only those that were residents of the town could vote on the Charter, with forty votes in favor of the Charter and only thirteen against it; therefore, the Charter was incorporated. In May, the
The Tenth Circuit affirmed the District Court’s decision. The Charter grants Dual Residents the right to vote if they have property located within the town, and “(a) have been owners of record for at least 180 consecutive days immediately prior to the date of the election; [and] (b) owned a minimum of 50% of the fee title interest in certain real property…” Thus, Colorado joined a handful of other states that allow Dual Residents to vote.

The town of Mountain Village advanced its interest in allowing the non-residents to vote based on several factors. First, the town, like many resort towns, is dependant on some of its property owners to maintain their primary residences outside the town while maintaining second-home residences in the town, because it allowed the town to collect taxes year round but only having to provide limited amount of services in the “off-seasons.” Second, the right to vote for these nonresidents would be limited to town matters. Moreover, the nonresidents paid over eight times more in property taxes than the residents did. Essentially the town’s rationale is that, “by granting nonresident property owners the right to vote on issues limited to town matters, the Charter gives those nonresidents a voice in the affairs of the town, including taxes to be paid and how tax dollars will be spent.” In upholding the town Charter, both the District Court and Tenth Circuit applied the rational basis standard because the law “expands the right to vote causing voting dilution.”

In the *May v. Town of Mountain Village*, the Tenth Circuit looked to previous case out of Georgia in which a resort town out of Chatham County allowed non-residents of the town, who resided in the county and owned real property in the town, were permitted to vote in the town elections. The Tenth Circuit also looked to a case out of Bernalillo County, New Mexico that
“provided the right to vote on creation of municipal debts to any person who owned property
within the city limits who had paid a property tax during the preceding year. . . “123 The
classification was upheld by the court because the law was “rationally limited the extension of
the vote to those who were directly affected by the outcome of the election.” Since the
nonresidents had a substantial interest in the elections within the Town of Mountain Village, the
court upheld the Charter.124

It has been argued that the court system is a better method to enfranchise Dual
Residents.125 One of the many reasons for taking this out of the hands of the legislature is
because the legislature is fallible and subject to the will of electorate.126 Moreover, “incumbents
in communities with Dual Residents have little incentive to risk a loss of their continued control
by extending the ballot to these potential challengers.”127 The argument being that leaving it to
the legislature requires the majority to implement the will of the minority.128 Increasing the need
for judicial intervention because the “political market systematically malfunctions, leaving the
democratic process itself undeserving of trust.”129 Additionally this group argues that, an
effective appeal of the legislature’s action is unlikely.130

The argument to leave this change to the courts is undermined by two clear examples.
First, Congress passed the amendments to the United States Constitution that afforded the right
to vote to African-Americans, women, and citizens that are over the age of eighteen. Second,
based on the Colorado town Charter, and the other states discussed above, it is clear that
allowing municipal governments to create the appropriate legislation to enact this policy is
feasible. Moreover, leaving this ability to the legislature will ensure the legislation is not overly
broad and limited to local elections. As well, it will diminish the need for judicial activism. It is
true that courts are a great tool to usher new legislation forward, like the civil rights cases.
However, since the purpose of this legislation primarily affects municipal elections and is clearly a state issue, it should be left to the state legislature.

**Conclusion**

Historically it made sense to limit voting to one location because communication and travel were difficult. However, having these archaic restrictions in modern times is an unjustified restriction on the rights of Dual Residents to vote [in the location] in communities where they own property and spend their time. Many individuals across a wide spectrum of socioeconomic statuses and backgrounds stand to benefit from the enfranchisement of Dual Residents. It is time that the state legislatures pull out their election law statutes and update them to allow Dual Residents to vote in local elections. This paper does not propose to give Dual Residents “two-votes” in federal elections, but rather allow them to have “one vote” in a local community in which they reside.

With the Supreme Court’s historic decisions passed down during the anti-slavery and civil rights movements, it prevented laws that created class-based voting restrictions. Current laws that prohibit otherwise bona fide voters from exercising their right to vote should be seen as a clear violation of the Equal Protection Clause of the Fourteenth Amendment and subject to a rational basis standard review. It remains up to courts and state legislatures to help usher outdated election laws into the twenty-first century.

4 U.S. Const. amend. XIV
5 U.S. Const. amend. XIX, §1.
6 U.S. Const. amend. XXIV, XXVI.
7 Black’s Law Dictionary 8th Edition (2004) “residence.” See also Penn Mut. Life Ins. Co. v. Fields 81 F.Supp. 54 (Cal. 1948). Defining “residence” as “The definition more suited to modern conditions is that place in which a person has fixed his habitation without any present intention of removing from it.”
8 Dunn v. Blumstein, 405 U.S. 330, 348 (1972)
9 Ostrow, supra note 2, at 1989
11 Ostrow, supra note 2, at 1977.
14 Id. (statute as cited in Kramer).
15 Id. at 622.
16 Id. at 632.
17 Ostrow, supra note 2, at 1974.
18 Kramer, 395 U.S. at 633.
19 Id.
20 306 F.3d 1256, 1259 (2d Cir.2002).
21 Id. at 1256
22 Id at 1258; N.Y. Election Law §17-104(2), (5).
23 Id at 1258 (internal quotes omitted); N.Y. Election Law §17-132(1), (3), (9).
24 Blaine Hareden, Summer Owner Wants A Vote in Both Houses; Suit Says People Can Be Residents Of More Than One Place, N.Y. TIMES, June 1, 2001, at B1.
25 Id.
26 Id.
27 Blaine Hareden, Summer Owner Wants A Vote in Both Houses; Suit Says People Can Be Residents Of More Than One Place, N.Y. TIMES, June 1, 2001, at B1.
28 Id.
29 Id.
32 May v. Town of Mountain Village, 132 F.3d 576, 576-77 (10th Cir. 1997).
33 Id.
34 Ostrow, supra note 2, 1964.
35 Ostrow, supra note 2, at 1964.
36 Mays v. City of Jackson, 147 Ga. 556, 94 S.E. 1006 (1918); State ex rel. Davis v. Ryan, 118 Fla. 42 (1934).
38 State ex rel. Webster Groves Sanitary Sewer Dist. v. Smith, 342 Mo. 365, 115 S.W.2d 816 (1938).
40 Supra note 19, at 1259.
42 Id at 209.
44 399 U.S. at 207.
45 399 U.S. at 207.
46 Ostrow, supra note 2, 1968.
47 Ostrow, supra note 2, 1968.
49 Ostrow, supra note 2, at 1968.
51 17 V.S.A.§2122(a); available at http://vermont-elections.org/elections1/voter_rights.html
53 Supra note 50.
59 Tate v. Collins, 622 F. Supp. 1409 (Tenn. 1985)
61 Id.
64 Id. at 88.
65 Id.
69 Ostrow, supra note 2, at 1970
70 Id.
71 Id.
72 Mid-Hudson Legal Servs., Inc. v. G. & U., Inc., 578 F.2d 34, 37 (2d Cir. 1978).
74 Id. at *5.
75 Ostrow, supra note 2, at 1977.
76 Id.


Id.

Ostrow, supra note 2, at 1965.


Ostrow, supra note 2, 1974.

Ostrow, supra note 2, at 1975.

Ostrow, supra note 2, at 1966.


Id.

Id.

Id. at 87

Id. at 68

Id. at 68-69

Ostrow, supra note 2, at 1978

Id.

Id. at 1261.

Id. Ostrow, supra note 2, at 1983.

Id. Ostrow, supra note 2, at 1982.

Id. Amitai Etzioni, Summer-Share Citizenship?, N.Y. TIMES, June 1, 2000, at A29.

Id.

Supra notes 106-110.


Id.

Id.

Id.

Id.

Supra notes 106-110.


Town of Mountain Village, at 578

Id.

Id. at 583

Id. at 578

Id. at 579

Id.

Id.

Id. at 579-80

Id. at 580
Town of Mountain Village, at 581 (citing Spahos v. Mayor & Councilmen of Savannah Beach, Tybee Island, Ga., 207 F.Supp. 688 (S.D.Ga.), aff’d per curiam, 371 U.S. 206, 83 S.Ct. 304, 9 L.Ed.2d 269 (1962), and Glisson v. Mayor and Councilmen of Town of Savannah Beach, 346 F.2d 135 (1965)).

Town of Mountain Village, at 581

Id. at 583

See e.g. Ostrow, supra note 2.

Ostrow, supra note 2, at 1989.

Id.

Id.

Ostrow, supra note 2, at 1989.

Id.