

P U B L I C H E A R I N G

before

SENATE JUDICIARY COMMITTEE

on

SENATE CONCURRENT RESOLUTION NUMBER 84,
proposing to amend the Constitution of
the State of New Jersey, to change the
residency qualifications of a voter from
6 months to 30 days in the State and from
40 days to 30 days in a county

Held:
June 7, 1972
Assembly Chamber
State House
Trenton, New Jersey

MEMBER OF COMMITTEE PRESENT:

Senator Joseph C. Woodcock, Jr. (Chairman)

Also:

Assemblywoman Ann Klein

THE PUBLIC HEARINGS

OF THE

COMMISSION ON THE ORGANIZATION OF THE JUDICIAL BRANCH

ON

THE PROPOSITION TO REORGANIZE THE JUDICIAL BRANCH
OF THE DISTRICT OF COLUMBIA
AND TO CHANGE THE
QUALIFICATIONS OF JUDGES OF A COURT OF
GENERAL JURISDICTION IN THE DISTRICT AND
TO PROVIDE FOR A COURT OF APPEALS

HELD AT
THE U. S. HOUSE
OF REPRESENTATIVES
ON
JANUARY 10, 1912
AND
JANUARY 11, 1912

REPORT OF THE COMMISSIONER OF THE DISTRICT OF COLUMBIA
JUDICIAL BRANCH, AND OF THE JUDICIAL BRANCH

ALSO

AN APPENDIX OF THE REPORT

SENATE CONCURRENT RESOLUTION No. 84

STATE OF NEW JERSEY

INTRODUCED APRIL 20, 1972

By Senators SCHLUTER, WOODCOCK and MERLINO

Referred to Committee on Judiciary

A CONCURRENT RESOLUTION proposing to amend Article II, paragraph 3 of the Constitution of the State of New Jersey.

1 BE IT RESOLVED *by the Senate of the State of New Jersey*
2 *(the General Assembly concurring):*

1 1. The following proposed amendment to the Constitution of the
2 State of New Jersey is hereby agreed to:

PROPOSED AMENDMENT

3 Amend Article II, paragraph 3, to read as follows:

4 3. (a) Every citizen of the United States, of the age of **[21]** 18
5 years, who shall have been a resident of this State **[6 months]** and
6 of the county in which he claims his vote **[40]** 30 days, next before
7 the election, shall be entitled to vote for all officers that now are
8 or hereafter may be elective by the people, and upon all questions
9 which may be submitted to a vote of the people; and

10 (b) **[Every citizen of the United States, of the age of 21 years,**
11 **who shall have been a resident of the State and of the county in**
12 **which he claims his vote 30 days, next before the election and who**
13 **shall not be eligible to vote elsewhere, shall be entitled to qualify**
14 **and to vote for electors for President and Vice President of the**
15 **United States, only, in such manner as the Legislature shall pro-**
16 **vide; and]** *(Deleted by amendment.)*

17 (c) Any person registered as a voter in any election district of
18 this State who has removed or shall remove to another state or to
19 another county within this State and is not able there to qualify to
20 vote by reason of an insufficient period of residence in such state
21 or county, shall, as a citizen of the United States, have the right to
22 vote for electors for President and Vice President of the United
23 States, only, by Presidential Elector Absentee Ballot, in the county

**EXPLANATION—Matter enclosed in bold-faced brackets [thus] in the above bill
is not enacted and is intended to be omitted in the law.**

24 from which he has removed, in such manner as the Legislature
25 shall provide.

1 2. When this proposed amendment to the Constitution is finally
2 agreed to, pursuant to Article IX, paragraph 1 of the Constitution,
3 it shall be submitted to the people at the next general election
4 occurring more than 3 months after such final agreement and shall
5 be published at least once in at least one newspaper of each county
6 designated by the President of the Senate and the Speaker of the
7 General Assembly and the Secretary of State, not less than 3
8 months prior to said general election.

1 3. This proposed amendment to the Constitution shall be sub-
2 mitted to the people at said election in the following manner and
3 form:

4 There shall be printed on each official ballot to be used at such
5 general election, the following:

6 1. In every municipality in which voting machines are not used,
7 a legend which shall immediately precede the question, as follows:

8 If you favor the proposition printed below make a cross (X),
9 plus (+) or check (✓) in the square opposite the word "Yes." If
10 you are opposed thereto make a cross (X), plus (+) or check (✓)
11 in the square opposite the word "No."

12 2. In every municipality the following question:

	Yes.	Shall Article II, paragraph 3 of the Constitution be amended so as to change the residency qualifications of a voter from 6 months to 30 days in the State and from 40 days to 30 days in a county?
	No.	

SENATE JUDICIARY COMMITTEE
STATEMENT TO
SENATE CONCURRENT RESOLUTION No. 84

STATE OF NEW JERSEY

DATED: MAY 15, 1972

This concurrent resolution would place on the ballot at the next general election a constitutional amendment which, if approved, would change the residency requirement for voting. Instead of requiring a citizen to be a resident of the State for 6 months and the county for 40 days, the residency requirement would be 30 days in both the State and the county.

Section (b) of article 2, paragraph 3, which allows residents of 30 days in the State and county to vote for President and Vice President would be deleted because it would no longer be necessary.

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William E. Schluter	2
Senator, Hunterdon-Mercer, District 6A	

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Also:

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SENATOR JOSEPH C. WOODCOCK, JR. (Chairman):

It is now one minute after 10:00 and I will now call to order this public hearing on SCR-84, proposing an amendment to the State Constitution. This hearing is being held by the Senate Judiciary Committee by direction of the Senate in accordance with procedure for consideration of proposed amendments to the Constitution, directed by the Constitution and the rules of the Senate.

At the outset I would say that we have asked Senator Schluter to attend this morning so that we may have the benefit of his remarks. He is not present at this hour but I will read the statement which is attached to the Concurrent Resolution. The statement is dated May 15, 1972.

"This concurrent resolution would place on the ballot at the next general election a constitutional amendment which, if approved, would change the residency requirement for voting. Instead of requiring a citizen to be a resident of the State for 6 months and the county for 40 days, the residency requirement would be 30 days in both the State and the County."

"Section (b) of article 2, paragraph 3, which allows residents of 30 days in the State and county to vote for President and Vice President would be deleted because it would no longer be necessary."

I might add that I have the pleasure of the attendance of Ann Klein, Assemblywoman from Morris County, District 10B and we now have the arrival of the sponsor of the measure, Senator Schluter.

I have here too a letter from Assemblyman Herbert H. Kiehn of District 14A, Passaic, dated June 3, 1972, addressed to the Honorable Joseph C. Woodcock, 39 Hudson Street, Hackensack, New Jersey, 07601.

"Dear Joe: Thank you for extending an invitation to me

to attend the public hearing on SCR-84. This resolution is essentially the same as ACR-74, which has already passed the Assembly.

"As the principal sponsor of ACR-74, quite naturally I thoroughly support the contents and purposes of the Senate resolution. However, I do believe that the passage of ACR-74 would afford the best chance for this controversial resolution to be adopted by the entire legislature and be presented to the public as a proposed Constitutional Amendment this November.

"Please include this letter as part of the record of the public hearing. Sincerely yours, Herbert H. Kiehn."

At this time I will ask Senator Schluter to give us the benefit of his thoughts and testimony on SCR-84.

SENATOR SCHLUTER: Thank you, Mr. Chairman and Assemblywoman Klein.

I would like to present very brief testimony on Senate Concurrent Resolution 84 this morning, with knowledge of the fact that testimony already has been given in public hearings on a similar proposed constitutional amendment in the Assembly and the proposed amendment which was heard in the Assembly is ACR 74.

Mr. Chairman, I would like to identify myself. In addition to being a State Senator for the Mercer-Hunterdon district, I am a member of the New Jersey Election Law Revision Commission and have been for three or four years.

Over a year ago our Commission realized that the law of the State of New Jersey with regard to length of residency as a qualification for voting was on a collision course with the Federal Law and Federal Court decisions. As a matter of fact, consideration was given by our Commission in 1971 to proposing a

consitutional amendment but we had limitations on time; we could not get it on the ballot for 1971 and it was deferred until this year.

In February of this year our Election Law Revision Commission Counsel, Mr. John Salmon, gave us a five-page memorandum on the question of length of residency and I would like to, Mr. Chairman, submit this to you for your Committee records on this subject and I would hope that you could make a copy and return the original to me. This letter described the various court cases, one in New York State and one in Florida, which had given a sense of urgency to the problem. (See p.14.)

Mr. Salmon recommended, and our Commission determined on February 23rd, to continue under the present structure of Title 19 whereby the shorter residency requirement would apply only to voting for presidential elections and would be covered by the section - I think it is Section 58 - referring to the presidential absentee ballot procedure. I did not concur but the Commission indicated that was the course of action that they wished to take.

Since that time there have been additional court opinions and court rulings which make this matter more urgent and make it desirable in my view to conform the New Jersey Law and the New Jersey Statute to the Federal Voting Rights Law which indicates a 30 day residency requirement in a state as the only condition for a person not only voting for federal offices in that state election but also for state, county and local offices.

About one week ago, Attorney General George Kugler of New Jersey sent a telegram to all of the County Clerks requiring them to overlook the the 6 month residency requirement and allow anybody to vote in the primary, which took place yesterday, who had 40 days residence in New Jersey and in the county. I believe that it is proper to state that his opinion

was that the 6 months residency would no longer be valid in view of the recent court decisions.

Now in view of Mr. Kugler's action, in view of the requirement which I believe necessitates uniformity in administration of voting qualifications for federal elections as well as state and local elections, because there is much confusion over the present double standard of a 30 day residency requirement for presidential electors, yet there is a 40 day residential requirement for voting in primaries and for voting for other offices in the general election, I think that it is essential that the State of New Jersey have on the ballot this year a referendum to provide uniformity on all elections and reduce the residency period for voting to a standard 30 days across the State.

Mr. Chairman, I would like to comment on the Assembly counterpart for this bill which is ACR-74. ACR-74 had exactly the same wording as SCR-84 until an amendment was added by the Committee and I call your attention to the revised copy, or the official copy reprint, of ACR-74 - which, incidentally, is before your Committee. The amendment which was added to Section (a) is, and I quote - referring to persons who are eligible to vote - "and who shall not have voted elsewhere."

I think if you analyze that particular amendment it would add tremendous confusion to the intent of this constitutional amendment. I understand the reason that the Assembly Judiciary Committee put this amendment into Section 3 (a) of Article 2 of our Constitution was because the amendment contemplated by ACR-74 completely removes Section (b) and Section (b) has in its wording, "and who shall not be eligible to vote elsewhere." If you try and incorporate that concept in Section (a) I think at least you should use the same wording which would be "and

who shall not be eligible to vote elsewhere" but certainly I don't think you should use the wording, "and who shall not have voted elsewhere" because this would open up a number of serious questions as to how this would apply. Would this apply to past elections? Would this apply to an election in another state for somebody who has moved into the state in a primary? Would this apply to a previous election? I think clarity demands that it be given the same wording as in Section (b), namely, by using the word eligible.

However, I would like to suggest that the Committee might want to consider whether this phrase is necessary at all. I think we all are opposed to anyone trying to circumvent the law by having two votes. I think the New Jersey law and the New Jersey Constitution can protect against a resident of this state voting twice in New Jersey. I think that also it would be very remote and very farfetched for persons to vote, for example, in a presidential year in more than one state. I just suggest this for the Committee's consideration. As far as I am concerned if the Committee would like to have that language, I think first it should be changed to "eligible" rather than "who shall not have voted elsewhere" but as far as I am concerned I don't think the bill loses anything by leaving it out.

Now, Mr. Chairman, I realize that a public hearing must be held on a Constitutional Amendment in the form in which it is presented to the voters and if there are further amendments, a further hearing must be held on such amendment. I suggest that your Committee consider a possible amendment to Section (c). I apologize, I was under the impression that a minor amendment did not require another hearing but I am informed this morning that it does.

Section (c) states, essentially, that any

person who shall have moved to another state, or moved within the State of New Jersey to another county and shall not qualify because of the residency requirement in the new location, shall qualify to vote in a presidential election. That person can go back to the county from which he has been removed and vote by the presidential elector absentee ballot process, which is Section 58 in the present Title 19, as provided by law.

The language here is good in several senses. It would allow persons who leave the State to go back and get an absentee ballot if they cannot qualify in their new state of residence and vote for presidential electors from the former county. I think it has to be left that way because the former county has their voting registration and can insure that they qualify in other respects.

You then have another situation and that is where persons move from one county in the State of New Jersey to another and if they have not lived in that second county long enough - in other words, more than 30 days - they could, in a presidential election, go back to their county from which they have been removed and vote by absentee presidential ballot there. However, this provision only refers to general elections; it does not refer to primary elections, number one, and it only refers to presidential contests in the general election.

I might suggest that your Committee consider a possible amendment to the effect that if a person moves from one county in the State of New Jersey to another county less than 30 days before an election, he not only be given an opportunity in a presidential year to vote for presidential electors, in accordance with legislation, but he be given the opportunity to vote for any statewide office that is up at that particular election, in other words, the office of

Governor, the office of United States Senator or any at-large office. Secondly, I think that this section should apply to primaries because we have seen in the recent New York case that primary voting is very important and the courts recognize this; they don't want to limit the eligibility of persons only to vote for presidential electors.

So, I would suggest, and I don't have any final wording, if a clause similar to something like the following could be added to Section (c) "and if such person has removed to another county within the State, that person shall have the right to vote at any election for candidates for statewide election in the county from which he has removed in a manner as prescribed by the Legislature and that it also apply to primary elections", with those modifications, Mr. Chairman, I would suggest that the time demands that the Constitution of New Jersey be changed. We need it for uniformity of administration and we need it for basic equity for our citizens, as we see in the several court decisions that have come down this year. Thank you very much.

SENATOR WOODCOCK: Thank you, Senator Schluter. Assemblywoman Klein, do you have any questions or comments on SCR-84?

ASSEMBLYWOMAN KLEIN: I was trying to digest it.

SENATOR WOODCOCK: Senator Schluter, If I understand you correctly, when you amend this Section (c) to apply to the general election for statewide offices, you are talking then, I assume, for the position of Governor and U. S. Senator. Would that be the limitation?

SENATOR SCHLUTER: Mr. Chairman, occasionally you would get a statewide office for - if Congressional redistricting, for example, at any time in the future required us to vote for Congressman-at-large - anybody

that runs statewide but basically, now, it would involve Governor and United States Senators.

SENATOR WOODCOCK: Right. And that would mean that if I were to move from Bergen County to Mercer County on the 15th of October that I would have the right to go back to Bergen County and, through the absentee ballot procedure, cast a vote for Governor or Senator or whatever candidate for statewide election would appear on that ballot, is that correct?

SENATOR SCHLUTER: That is correct, Mr. Chairman, in the same sense that the Legislature has prescribed procedures for you in a presidential year to vote from your old Bergen County address for presidential electors, if you had left there at, say, October 15th.

SENATOR WOODCOCK: And this would also apply in the primary elections, as I understand it?

SENATOR SCHLUTER: Yes. However, in the primary it would apply, in addition, to statewide primary contests, to contests for statewide delegates, which are statewide primary contests but they are for presidential delegates as well as in a gubernatorial primary or a United States Senate primary, or any statewide office. The reasoning for this is that the machinery is there for a person who has moved from one county to another within the State to vote for presidential electors and in order to be consistent I think the same privilege should be allowed for other statewide office if we are going to allow it for presidential electors.

SENATOR WOODCOCK: It would seem to me that if you only had this possibility once in four years it would not be a great burden on the county clerks and the boards of election who have to administer it, but is this going to create a greater problem for them when we include -- it would almost seem to me,

if it ran three years in a row, it would become a problem. In other words, where you have a U. S. Senator running in a non-presidential year followed by the Governor running in the odd year election and then followed again by the presidential election, would this make their task too burdensome?

SENATOR SCHLUTER: Mr. Chairman, it would make it more burdensome, there is no question about that, but I think in all of our voting laws we should, in my judgment, be consistent and we have to scrupulously protect a citizen's right to vote for one type of election on the same basis as another type of election.

Now if it were the judgment of the Judiciary Committee not to allow this for other than presidential electors, I think the simplest thing to do would be to eliminate any consideration of a voter voting even for presidential electors if they have changed their residence less than 30 days before the election; then you would be consistent in not allowing anybody to vote and I think there is a good likelihood that that would be upheld. But if the dictates of the court would indicate that people should be allowed to vote for presidential electors if they move from one county to the other, I think the same reasoning would, despite the difficulties and despite the trouble, dictate that they should be allowed to vote for gubernatorial candidates and statewide U. S. Senate candidates.

SENATOR WOODCOCK: Do you have any idea, in terms of numbers of people, how often they move within 30 days of an election within the State?

SENATOR SCHLUTER: Well, Senator, this is a speculative conjecture; I don't have any idea but I think it is a fact that if this basic proposition gets on the ballot this year the procedures are going to be simplified considerably because you will

eliminate the difference between the 40 day and the 30 day registration requirement.

I have no idea how many of these presidential ballots are used now in presidential years. I don't think you could multiply these by the other elections that come up in the other years because, of course, as we know, more people vote and there is more incentive to vote in presidential years. I am suggesting, however, that the way court decisions are going, we might be given a mandate at some future time to allow the same registration requirements to apply for statewide office and for primaries as we do for presidential electors.

SENATOR WOODCOCK: I have nothing further to ask.

Assemblywoman Klein?

ASSEMBLYWOMAN KLEIN: As I understand this proposed amendment, Senator, we would have several different classes of absentee ballots; there would be the regular absentee ballot for the regular registered voter, fully qualified to vote, then you would have the absentee ballot for presidential candidates only, for those who had moved out of the State, and you would have absentee ballots for presidential candidates and any other statewide election at the same time.

SENATOR SCHLUTER: No, Assemblywoman, I think you would have the same number of classifications that you have now. In other words, you would have an absentee ballot for military service, you would have an absentee ballot for civilian persons, but those only apply to persons who are voting from an established residence but they cannot be present on election day. This would give us the same procedure that is now used in the presidential elector absentee ballot procedure, or Section 58 of Title 19, but it would apply,

the same procedure would apply, to elections for statewide office and they would apply to elections for statewide offices in primaries.

ASSEMBLYWOMAN KLEIN: But if you moved out of State you wouldn't be eligible to vote for the statewide election for Governor or, let's say, U. S. Senator?

SENATOR SCHLUTER: That is correct and I think there is justification for that.

ASSEMBLYWOMAN KLEIN: In this year, for instance, you would need one kind of ballot for the removed voters who moved out of State and another for the removed voter who moved to another county.

SENATOR SCHLUTER: I stand corrected, I think you are right. You would need a different ballot for those persons who moved out of the State compared to those persons who moved to another county in the State.

ASSEMBLYWOMAN KLEIN: On the primary end of it, they would only be permitted to vote for the statewide slates of candidates but not for the county slates?

SENATOR SCHLUTER: That is correct and I think, if I may, there is good justification for that; it is the same basis as a person not being able to vote for their county freeholders until after they have lived in the county for 30 days, or for their municipal officials, because they haven't been there long enough to establish an understanding of the political situation in that county and I think the Supreme Court has indicated to us that this is completely legitimate.

ASSEMBLYWOMAN KLEIN: Do you feel it would really be a serious thing not to have that 30 day requirement within the county?

SENATOR SCHLUTER: In terms of numbers, Assemblywoman, it is not that many, but in terms of consistency I think it is serious because, as I view all of the voting laws, we have to be consistent. I think the courts have told us so.

ASSEMBLYWOMAN KLEIN: We are going to have to change the laws in regard to registration, aren't we? Right now it is 40 days you have to register before you are eligible to vote?

SENATOR SCHLUTER: Assemblywoman, we have not been ordered to by the courts, as I understand it. We have to change the 6 month provision or, in a sense, the Attorney General has instructed all county clerks to change the 6 months provision.

ASSEMBLYWOMAN KLEIN: To 30 days?

SENATOR SCHLUTER: No, the six month provision to 40 days. He did not alter the 40 days.

As I understand court rulings, 40 days could conceivably be permissible but I think in terms of simplifying administration you should standardize on 30 days. I have discussed this with the Mercer County Superintendent of Elections and he is in complete agreement that this can be done in 30 days and it would be much more helpful to have uniformity in administration; even though 30 days doesn't give him as much time, it is much better from a uniformity standpoint.

ASSEMBLYWOMAN KLEIN: If the Constitutional Amendment goes through to 30 days, we would have to change the registration period.

SENATOR SCHLUTER: This is correct. Title 19 would have to be changed because the present Constitution says "in such manner as the Legislature shall provide" and the Legislature would have to revise a number of sections of Title 19.

ASSEMBLYWOMAN KLEIN: Mr. Chairman, I would like anything that would open up the right to vote to

more people and not deprive people of their right to vote because of circumstances, particularly when they live in such a mobile society. Too bad that this has to be so complicated in terms of different kinds of ballots. You don't have a simpler solution do you?

SENATOR WOODCOCK: I think we can all agree upon the fundamental concept that we would like more of our citizens to participate in the elections that are held not only in the Fall but those that are held in the late Spring because it is only through their participation that we are going to get an effective and active government. I think that that is the thing that is going to be helpful to us all.

If there is nothing else and if there is no one else who wishes to be heard, I will now conclude the public hearing on SCR-84. Thank you.

(Hearing Concluded)

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ELIZABETH OFFICE
29 BROAD STREET
ELIZABETH, N.J. 07201

February 17, 1972

The Honorable William E. Schluter
205 South Main Street
Pennington, New Jersey 08534

Dear Bill:

This will supplement my letter to you, also dated February 17, 1972, and acknowledge a copy of your letter dated February 11, 1972, received today.

It appears that Senator McDermott's bill (Senate #489) is a step toward the goals recommended in my letter. I agree that an amendment with respect to primary elections in presidential years, in conformity with the New York and Florida court decisions, would be worthwhile. Also, perhaps Senate President Bateman and Senator McDermott could be asked to consider further amendments (for instance, the bill refers to removal to a "foreign country", but doesn't mention territories of the United States-many of our citizens take temporary posts in overseas American possessions).

Sincerely yours,


John F. Salmon

il

cc: Mr. William J. Dorgan
Theodore J. Lebreque, Esq.
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February 17, 1972

ELIZABETH OFFICE
20 BROAD STREET
ELIZABETH, N. J. 07201

The Honorable William E. Schluter
205 South Main Street
Pennington, New Jersey 08534

Dear Bill:

In reference to your letter of February 3, 1972, Ted Labrecque and I have conferred on and researched the questions raised.

As you know, this is a changing area in the law. Attached are articles from the Newark Star Ledger, dated February 13, 1972, and the New York Times, dated February 11, 1972 in reference to two recent Federal Court decisions. We have ordered a copy of Judge Mishler's decision in the New York case.

It would appear that the law at present is as follows.

Sec. 202. (d) of the Federal Voting Rights Act Amendments of 1970, Pub. L. 91-285, 84 Stat 314, provides as follows:

"(d) For the purposes of this section, each State shall provide by law for the registration or other means of qualification of all duly qualified residents of such State who apply, not later than thirty days immediately prior to any presidential election, for registration or qualification to vote for the choice of electors for President and Vice President or for President and Vice President in such election; and each State shall provide by law for the casting of absentee ballots for the choice of electors for President and Vice President, or for President and Vice President, by all duly qualified residents of such State who may be absent from their election district or unit in such State on the day such election is held and who have applied therefor

February 17, 1972

not later than seven days immediately prior to such election and have returned such ballots to the appropriate election official of such State not later than the time of closing of the polls in such State on the day of such election." (emphasis added).

You will note that the language of the federal statute does not refer to all federal elections, but is confined to "registration or qualification to vote for the choice of electors for President and Vice President or for President and Vice President in such election".

On August 4, 1971, as a result of the decision in Stephens v. Yeomans, 327 Fed. Supp. 1182, the Legislature amended N.J.S. 19:4-1. The pertinent parts of the amended section are as follows:

"Except as provided in sections 19:4-2 and 19:4-3 of this Title, every person possessing the qualifications required by Article II, paragraph 3, of the Constitution of the State of New Jersey and having none of the disqualifications hereinafter stated and being duly registered as required by this Title, shall have the right of suffrage and shall be entitled to vote in the polling place assigned to the election district in which he actually resides, and not elsewhere....

....A person who will have on the day of the next general election the qualifications to entitle him to vote shall have the right to be registered for and vote at such general election and register for and vote at any election, intervening between such date of registration and such general election, if he shall be a citizen of the United States and shall meet the age and residence requirements prescribed by the Constitution of this State and the laws of the United States, when such intervening election is held, as though such qualifications were met before registration".

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Article 2, Section 3 of the New Jersey Constitution states as follows:

"3. Elections; qualifications

3. (a) Every citizen of the United States, of the age of 21 years, who shall have been a resident of this State 6 months and of the county in which he claims his vote 40 days, next before the election, shall be entitled to vote for all officers that now are or hereafter may be elective by the people, and upon all questions which may be submitted to a vote of the people; and

(b) Every citizen of the United States, of the age of 21 years, who shall have been a resident of the State and of the county in which he claims his vote 40 days, next before the election and who shall not be eligible to vote elsewhere, shall be entitled to qualify and to vote for electors for President and Vice President of the United States, only, in such manner as the Legislature shall provide; and

(c) Any person registered as a voter in any election district of this State who has removed or shall remove to another State or to another county within this State and is not able there to qualify to vote by reason of an insufficient period of residence in such State or county, shall, as a citizen of the United States, have the right to vote for electors for President and Vice President of the United States, only, by Presidential Elector Absentee Ballot, in the county from which he has removed, in such manner as the Legislature shall provide. Adopted general election Nov. 5, 1957, eff. Dec. 5, 1957; amended general election Nov. 5, 1963, eff. Dec. 5, 1963".

It will be observed that paragraph three permits voting for electors for President and Vice President by citizens of the United States who are residents of the State of New Jersey for 40 days and not eligible to vote elsewhere. It also permits such voting by registered

February 17, 1972

voters who removed to another state or to another county, but who do not, in the new residence, qualify to vote there because of an insufficient period of residency. The mechanics of such voting, as provided for by the Legislature, are set forth in N.J.S. 19:58-1 through 33.

It is obvious that paragraphs 3(b) and 3(c) of Article 2 of the New Jersey Constitution collide with the 30 day requirement in the Voting Rights Act. As such, they have been in effect nullified by the United States Supreme Court in the decision of Oregon v. Mitchell, 27 L Ed 2nd 272 (1970), which declared constitutional the provisions in the federal voting rights act pertaining to residency requirements and absentee registration for voting in presidential and vice presidential elections. And the New Jersey Constitution may not be amended before the general election of 1972 (See Article 9, Section 4).

As a practical matter, although Article 2, Sections 3 (b) and 3 (c) of the New Jersey Constitution are in conflict with the Federal Voting Rights Act of 1970, it would be my recommendation that the Legislature nevertheless amend Chapter 58 so as to bring it into as much conformity with the Federal law as possible. Besides the obvious desirability of conforming Chapter 58 to overriding Federal law, several practical results would be achieved. In the first place, Title 19, which is a guide used by both election officials and prospective voters, would be further clarified. Moreover, Chapter 58 as it now stands contains certain inequities (for example, "removed resident" as defined in N.J.S. 19:58-2 does not appear to permit a vote by a registered voter who moves to a foreign country or to a territory of the United States), and amendments to it now could alleviate some of these inequities.

As for the question of whether some proceeding can be held to allow the New Jersey provisions to conform to the federal requirements, it may be that some are already pending in the federal courts here in New Jersey; it would be difficult to ascertain this with any degree of accuracy. But we do not think that such would be necessary, particularly in view of the clear conflict between our Constitution and the prevailing law. In short, the Legislature could proceed with revising Chapter 58 now, and begin work on an amendment to the New Jersey Constitution to be voted upon in the 1972 general election.

February 17, 1972

As you can appreciate, the opinions set forth herein may be subject to further qualification by virtue of the precise holdings in both the New York and Florida court decisions.

Sincerely yours,



John F. Salmon

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encl.

cc: Mr. William Dorgan
Theodore J. Lebreque, Esq.
Mr. Donald E. Chafey
Mr. Samuel Alito

NEW YORK, FRIDAY, FEBRUARY 11, 1973

U.S. COURT EASES RULES FOR VOTING IN PRIMARIES HERE

Declares Party Enrollment
in the Previous Year
Is Not Required

By MORRIS KAPLAN

A Federal District Court judge in Brooklyn yesterday declared unconstitutional New York State's requirement that prospective voters in a primary election must have been registered in the preceding general election.

Chief Judge Jacob Mishler, in a 34-page decision, invalidated Section 186 of the 73-year-old Election Law, which provided that a voter must enroll in a political party before the general election to qualify for the primary in the following year. He held that the right to vote was "inextricably tied to the right of free expression."

The judge also ruled that Section 186 violated the Voting Rights Act of 1970, which sets only a 30-day residential requirement as a precondition to voting for President. The court said, in effect, that the seven months' additional residence required was invalid.

New Voters Affected

As a result, the Presidential primary on June 20 could attract millions of new voters, including some of the estimated total of 750,000 young people who failed to register last November and millions from minority groups.

The immediate impact of the decision was unclear. A spokesman for Attorney General Louis J. Lefkowitz said he would not comment until he had studied it.

The impact of the ruling on other states' election laws was not believed to be significant. Followers of election procedures said that differences in residency requirements and other local statutes probably would limit the decision's applicability to New York State.

Decision Praised

Burt Neuborne, the New York Civil Liberties Union staff counsel who handled the case, hailed the decision and said it would open the Presidential primary to previously unregistered black constituents of Representative Shirley Chisholm.

Mrs. Chisholm, whose constituency embraces the Bedford-Stuyvesant section of Brooklyn, has announced her candidacy for the Democratic Presidential nomination.

Terming the existing statute an unconstitutional infringement of rights guaranteed by the First and 14th Amendments, Judge Mishler said the effect of current enrollment laws was

RULES FOR VOTING IN PRIMARY EASED

Continued From Page 1, Col. 5

associate with members of a political party of their choice.

The right to vote is meaningless, he said, unless accompanied by the opportunity to exchange ideas and opinions. He agreed with the plaintiffs that the "enrollment box system" violated the First Amendment.

A voter wishing to enroll has been required to fill out a form noting his party preference. The form is placed in an enrollment box and kept sealed until the Tuesday following the day of the general election in that year.

At that time, the enrollment form is removed and the voter is qualified to cast his ballot in the next primary election.

Politicians generally have referred to the system as "the deferred-enrollment process."

As a result of Judge Mishler's decision, any qualified voter may at any time go to the Board of Elections in his district and obtain immediate party enrollment.

The election preceding the Presidential election year is ordinarily the quietest in the four-year cycle, and a large percentage of voters did not cast their ballots in that election. Consequently, they were not eligible to vote in the June primary.

Apathy Observed

In the 1968 Presidential race, 40.9 per cent of the state's voting population of 11,773,000 did not vote. Politicians have remarked, too, that there seems to be apathy even among the 18-to-21-year-olds, who became eligible to vote in their first general election last year.

Judge Mishler's decision enables those who failed to vote in the last general election to sign designating petitions for primary candidates. This had been barred by the section struck down.

The court noted that the defendants, including Governor Rockefeller and the city's Board of Elections, supported the enrollment-box system as insuring the integrity of its political parties and in preventing the crossing of party lines in primaries.

They had argued that voters not in sympathy with the principles of a specific party could find it easy to organize and enroll in that party in large numbers before a primary "and subvert its basic interests."

The suit was filed last Dec. 13 by the New York Civil Liberties Union on behalf of Steven Eisner of Great Neck, L.I., a 21-year-old senior at the University of Buffalo, and by Seymour Friedman, a lawyer representing three individuals.

They are Pedro J. Rosario, 18, of Brooklyn; William J. Freedman, 20, of Ozone Park, Queens, and Karen Lee Gottesman of Brooklyn.

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for

NOW SHE CAN VOTE IN FLORIDA

Ex-Jerseyan upsets residency law

By LOUIS MOGELEVER

A former New Jersey resident who moved to Florida last December has been credited with overturning Florida's residency requirements for voting in the state's Presidential primary election on March 13.

A three-judge federal panel declared unconstitutional the Florida law requiring voters to establish a one-year minimum residency in the state and six months in the county.

The ruling was issued in response to a suit filed by the American Civil Liberties Union on behalf of Mrs. Barbara Woodsum, a 25-year-old computer operator who moved to Melbourne, Fla. from Morristown.

The decision opened the door for an estimated 146,000 persons who have recently moved into the state to vote in the upcoming primary.

Yesterday, registration centers throughout the 67 Florida counties reported long lines of persons attempting to beat the deadline to register.

The deadline had been set at 5 p.m. yesterday, just two days after the ruling opening up the registration to new state residents was issued.

Yesterday, however, the same federal panel which overturned the residency law, refused to extend the voter registration period.

Meanwhile, late yesterday it was announced that the Florida State Legislature will

act tomorrow on a bill to institute a new, shorter residency requirement for voters.

Election officials in Tampa, St. Petersburg and Orlando yesterday reported long lines of people waiting to vote. At one point 200 people were waiting in Orlando to be processed by election personnel.

Voter registration rallies were held in both St. Petersburg and Miami with all-day sign-up facilities being offered at parking lots, shopping centers and a park.

A petition requesting a 10-day extension of the registration period was filed by the American Civil Liberties Union on behalf of Mrs. Woodsum and an Orlando radio station news commentator, Gene Burns.

The petition was heard by

Judge Bryan Simpson of the Fifth Circuit Court of Appeals and U.S. District Court Judges Ben Krentzman and George Young.

Four Florida election supervisors told the panel yesterday that an extension of the 5 p.m. deadline would place an extreme hardship on their offices and personnel.

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The ACLU contended that the newly-enfranchised voters would not be given a sufficient amount of time to register because of mass confusion among election officials.

Burns said that Seminole County did not begin obeying the judges' order until 2:30 p.m. Friday and hundreds of people had been turned away. Secretary of State Rich-

ard Stone warned Friday that the abolition of residency requirements could result in an invasion on out-of-state voters, particularly from Alabama, who would only have to take an oath saying they were Florida residents at that moment to be eligible to vote in the primary.

But Judge Simpson said yesterday that any person who made a false statement that he was a Florida resident could be charged with perjury.

The class action which led to the scrapping of the residency requirements was filed by the ACLU for Mrs. Woodsum.

Named as defendants in the suit were Brevard County Registrar James Boyd, Stone, Atty. Gen. Robert Shevin and Gov. Reubin Askew.

JUN 27 1985



