

## College Student Registration and Voting in the Time of COVID-19

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### ABSTRACT

We investigate options for college students to register and vote in light of the COVID-19 pandemic. The disruptions from COVID-19 have hit individuals across all walks of life. But with regard to elections the pandemic might have an especially large effect on college students who are not able to return to campus because their school has shifted exclusively to online learning or because they are not comfortable being in close contact with large numbers of people. We explain where students can register and vote for five sets of circumstances, focusing on two groups: (1) students who are presently registered to vote in their college town but are temporarily away; and (2) students who are not yet registered but have lived in their college town and are temporarily away. Our overall conclusion is that despite disruptions to their living arrangements, students generally have an option to register and vote in their college town.

**Keywords:** voting, registration, college students, residency

### INTRODUCTION

**I**N 2009, NIEMI, HANMER, AND JACKSON sought to clarify where college students can vote. Though the issue remains contentious, the answer was clear: students have a legal right to vote in their college town or in their “home town,” whichever they regard as their principal residence—so long, of course, as they meet age and other requirements and do not attempt to vote in two places. Here we address college student voting during the COVID-19 pan-

demic. As of August 16, more than 21 million people across the world have been diagnosed with COVID-19. As of August 16, the global death count is over 750,000. As of August 16, U.S. deaths are now over 165,000. As of August 16, the number of U.S. cases is now over five million (Center for Systems Science and Engineering 2020). Elections during the pandemic have been disrupted and postponed with states actively engaged in changing laws and procedures in response to the health crisis. Not surprisingly, the courts have also been involved, and we expect more court battles to come both before and after the November presidential election. Among the groups whose voting behavior could be most affected by COVID-19 are college students who are not able to return to campus because their school has shifted exclusively to online learning or because they are not comfortable being in close contact with large numbers of people.

Niemi and Hanmer (2010) argued that the political behavior of college students was interesting and important to study given the choices students have with regard to where they might register, because they represent our future leaders at a time when they are forming their political identities, and because traditional theories were

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not well suited to understanding their unique circumstances. That remains true. What is new is the increase in efforts by citizen groups working together with coalitions of students, staff, faculty, and administrators across college campuses to encourage student voting along with a dramatic increase in turnout among college students from 19.3% in 2014 to 40.3% 2018 (Thomas et al. 2019).<sup>1</sup> With many campuses moving to online learning for much of the Spring 2020 semester and with some—perhaps many—staying online-only or moving partially online for the Fall 2020 semester, the options for where and how college students can vote are not obvious. Indeed, among the suggested topics in the *Election Law Journal*'s call for papers were: "What legal issues are raised by the possibility that 20 million students may be attending colleges and universities remotely in the fall? Could they claim residence in their college town?"<sup>2</sup>

In this article we seek to clarify where college students can vote in the face of the COVID-19 pandemic.<sup>3</sup> We address where they can register and how they can vote (i.e., whether in person or absentee), insofar as their living on campus is made difficult or impossible. Our analysis begins with a brief review of major case law that establishes the general principles related to college student voting. Next, we identify five groups of student situations and discuss the options for students in each scenario. We focus our attention on two groups of students: (1) those who are presently registered to vote in their college town but are temporarily away; and (2) those who are not yet registered but have lived in their college town and are temporarily away. Our overall conclusion is that students generally have access to registration and voting options in their college town provided they meet state laws regarding residency and can provide the proof of residency required by state law. We also conclude that voting for those already registered in their college town is more straightforward than registering in the college town when not physically present there; this is consistent with a general pattern in the U.S. that requirements for registration are generally higher than requirements for voting. Underlying the entire analysis is that once they have lived in their college town long enough to meet residency requirements students (still) have a choice. The presence of COVID-19 and the disruptions it has brought to higher education have not altered that fact.

The considerable variation across states suggests the need for significant care among students and the college administrators and voting rights groups

seeking to advise them. We end with recommendations that we hope will assist students in exercising their right to vote in the place and manner they are legally entitled to. Chief among our recommendations is that each state issue to all local election officials and post on their websites instructions for student registration and voting that take into account temporary displacement due to COVID-19.

## THE SITUATION ABSENT COVID-19

Before addressing college student voting and the COVID-19 pandemic, it is worth reemphasizing first-principles, as covered in Niemi et al. (2009), that apply here as well as elsewhere. Students, like others, can vote at their "principal residence."<sup>4</sup> This carries with it several corollaries. First, except for possible brief periods for residency requirements, this means that students of voting age who are otherwise legally entitled to vote, can vote *somewhere*.<sup>5</sup> Second, states cannot place hard-and-fast

<sup>1</sup>As Thomas et al. (2019) state, this 21-percentage-point increase far surpasses the overall turnout increase in the nation of just over 13 points.

<sup>2</sup>*Election Law Journal* (2020). We recognize that election lawyers likely have a good grasp of the situation. But prior to starting work on the article (on April 20, 2020), personal communication between the first-listed author and several major nonpartisan voting rights groups indicated that the groups were interested in the issues but were not yet sure what options students had. Given this, it seems reasonable to assume that the options would also not be obvious to many college students. Additionally, once work on the article began, a state official in a large state was not able to specify how students displaced by COVID-19 could register if they were away temporarily (Personal communication with first-listed author).

<sup>3</sup>We do not include those who have graduated or otherwise will not continue their college education, those who are out the country, or those who are in the military. In the latter two cases, the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA) comes into play, which is beyond the scope of this article.

<sup>4</sup>And states cannot make it more difficult for students than others to establish residency for purposes of voting (*Symm v. United States* 1979).

<sup>5</sup>This is a consequence, first, of the 1970 amendments to the Voting Rights Act, Sec. 202, 42 U.S.C. § 1973aa-1(c), (d), (e), and second (and more importantly), *Dunn v. Blumstein* (1972), subjecting durational residency requirements to strict scrutiny because of two fundamental interests involved—voting and travel. See *Walters v. Weed* (1988) ("This case presents the question whether voters who leave their domiciles with no intention of returning to live there lose their right to vote in their former domiciles even though they have not yet established new domiciles. In light of the principle that everyone must have a domicile somewhere, we conclude that such individuals retain their right to vote in the precincts of their former domiciles."). See also Niemi et al. (2009) for more details.

barriers to residency for purposes of voting—such as (in addition to durational residency) rules about “permanence” (*Carrington v. Rash* 1965). Instead, “bona fide residence” for purposes of voting is generally thought of as consisting of “both physical presence and intention to remain” (*Martinez v. Bynum* 1983), with such intention being defined as “an intention to remain permanently, or for an indefinite period of time; or, to speak more accurately . . . , without any present intention to remove therefrom . . . .”<sup>6</sup> For purposes of voting, Niemi et al. (2009, 334) described this as a “consider yourself” question—that is, “of which state do you consider yourself a resident?”<sup>7</sup>

This does not mean that states cannot use (if they choose) certain requirements that are ancillary to residence. As Niemi et al. (2009, 333) wrote:

It follows that a state could make a statement like this to a would-be voter: “Registering to vote is a declaration of residency that carries with it certain other consequences, such as obtaining a driver’s license from this state (if you drive), registering your car here, serving on jury duty, at the like”—provided the statement was made to all first-time registrants who have moved into the state from elsewhere, not only students.

But the “consider yourself” conception behind residency for purposes of voting also means that a student who lived in one state (or jurisdiction) and then attends college in another state (or jurisdiction) has a *choice*: Subject to reasonable state requirements such as those just outlined, such a student can (honestly) consider themselves a resident of either state or jurisdiction.<sup>8</sup>

As summarized above, the main point is that a student’s residence for purposes of voting is determined by their present intent. Where they might go after college is irrelevant. Unfortunately, widespread misconception of this point persists. Some states continue to provide guidance that references an intention to remain in the college town that is confusing or even discouraging. Perhaps the most contentious issue revolves around driver’s licenses as used by states as indicators of residence. Since potential voters are not required to have a driver’s license at all, the questions come down to whether an out-of-state license can be used to establish one’s identity and, if one does register to vote, whether an in-state license must be obtained in order for the person to (legally) drive in the state.<sup>9</sup> However the issue with

driver’s licenses is resolved, it is clear that states cannot say that students are ineligible to vote in their college town because they will likely move away after graduation and are therefore automatically nonresidents (Niemi et al. 2009).

The matter of ID requirements has also vexed college students in recent years. Requiring a photo ID to register or vote has become the law in many states for students and non-students alike. One can debate the merits of such laws, what they were intended to accomplish (see, e.g., Biggers and Hanmer 2017), and the kinds of individuals they were most likely to affect (Barreto et al. 2009; Hood and Bullock 2012; Hajnal et al. 2017, 2018; Grimmer et al. 2018; Burden 2018). But a requirement that seems most likely aimed at college students is one that requires a state-issued ID. In the face of such a requirement, students at a public college or university in the state could use their school ID as proof of identity but students at a private institution could not.<sup>10</sup> Complicated and sometimes confusing ID requirements are of considerable

<sup>6</sup>*Inhabitants of Warren v. Inhabitants of Thomaston* (1857), cited and described by *Martinez v. Bynum* (1983), as a “classic two-part definition of residence.” Because of the first corollary—that students get to vote *somewhere*—it follows that the concept of residence for purposes of voting is “sticky.” That is, a student (a senior, perhaps), like anyone else, does not lose the right to vote in their current residence location because of an announced decision to take a job in another state six months or a year in the future. Until physical presence in the new state, the student cannot vote there, and thus, once having established residency in the current state, the “without present intention to remove” concept cannot anticipatorily be used by that state to deprive the student the ability to vote anywhere.

<sup>7</sup>This excludes, for example, vacationers or people simply passing through a state. It would also exclude individuals in a state solely for the purpose of voting. But in the general case, and in the case of college students, they can (honestly) say that they are in a state for purposes of receiving an education and, for voting, that is a sufficient “consider yourself” response. (It might be different if the question was residency for purposes of receiving an in-state tuition, *Vlandis v. Kline* (1973).)

<sup>8</sup>As we discuss in the next section, there are separate issues involved in *registering* to vote, such as IDs and, for voting for federal office if registering by mail, the identification provisions of the Help America Vote Act of 2002 (HAVA), 52 U.S.C. § 21083(b)(2)(A).

<sup>9</sup>New Hampshire has been especially aggressive in this regard. In May 2020 the State Supreme Court ruled that a student who registers to vote in New Hampshire must also obtain a New Hampshire driver’s license within six months (if they have a car used primarily in connection with living in the state). See DiStaso (2020).

<sup>10</sup>Indiana’s photo ID law is an example. Indiana requires the ID to contain one’s photo, name, expiration date, and be issued by the state or U.S. government. See Indiana Secretary of State (2020).

importance overall, and in some instances are especially problematic for college students, but they do not change the fundamental right of students to vote in their college towns. Nonetheless, with COVID-19 leading some colleges and universities to shut their campuses in full or in part in the fall, the question will arise as to whether students can in fact vote in their college towns. That is what we address here.

As a prelude, we note that in most states, students and non-students alike have the opportunity to register to vote online. The process is often straightforward, though in some states it is only available to those with an in-state driver's license or state identification card; in some states, the address on the license and the registration address must match. We expect many students will find online registration attractive but caution that students should plan ahead in case they do not have the necessary information to complete the online registration process in their state.

Beyond state laws that regulate registration and voting, federal law could also play a role. Across the U.S., those who register by mail and have not previously voted for a federal office in the state will have to comply with the identification provisions of the Help America Vote Act of 2002 (HAVA).<sup>11</sup> In the time of COVID-19 it is reasonable to expect more citizens, including students, to register for the first time by mail. Keeping the identification requirements under HAVA in mind will be crucial for ensuring an absentee ballot is counted, which could be more challenging for those who are not used to making copies of documents or using postal mail.

### THE SITUATION WITH CORONAVIRUS-FORCED CAMPUS CLOSURES

To understand voting for college students during the pandemic, we identify five circumstances college students may face in the fall of 2020 and suggest how they should be interpreted by students and election officials. We start with a simple case as it brings up general principles that will apply across the other cases, allowing us to focus on the nuances of the more complicated scenarios. As a preview, Table 1 summarizes the cases and shows that in two of the five scenarios there are special considerations that students, their advocates, and the campaigns seeking to mobilize them should take into account.

#### *Case 1: Never lived in the college town*

With regard to registration, this is in a sense a null case, and we include it mainly for completeness. But as we note below, all citizens wishing to vote with an absentee ballot due to COVID-19 need to consider the law in their state.

A first-year or transfer student who has never lived in their college town cannot register to vote in the college town (see Niemi et al. 2009). Such students can register where they live, subject to the jurisdiction's length of residency rule, which can require up to 30 days residence prior to the next election. Of course, a student does not lose their right to register and vote where they currently live simply because they intend to move onto campus when their school opens up. This has long been true for college entrants and is not affected by COVID-19. Practically speaking, many more first-year students may be living with their parents in the fall of 2020 than in other election years because their chosen campus will be closed to on-campus learning in the fall. However, this does not affect the legal situation.

Another practical difference is that more students may choose to move out of their parents' home while waiting for their college to open up for on-campus living. A summer and fall location might become their residence for the November election even if they intend to move on campus when it opens.<sup>12</sup> In this respect their situation would be no different from that of students who choose to defer college admission for a semester or year.

Once registered, voting can often be done by absentee ballot without an excuse, making it easy for students and others to vote by mail.<sup>13</sup> Five states have vote by mail (VBM), which

<sup>11</sup>Section 303(b)(2)(A) of HAVA requires first time registrants-by-mail, who have not already done so, to provide identification with their absentee ballot. The identification can be: "(I) a copy of a current and valid photo identification; or (II) a copy of a current utility bill, bank statement, government check, paycheck, or other government document that shows the name and address of the voter" (52 U.S.C. § 21083(b)(2)(A)(ii)). Similar provisions apply to first time registrants-by-mail who vote in person.

<sup>12</sup>As with other citizens, a student who is merely vacationing or otherwise living in an area temporarily with no intent to consider it their residence cannot register to vote in that location.

<sup>13</sup>As noted above, first-time mail registrants will also have to comply with HAVA by including with their absentee ballot a copy of one of the acceptable forms of identification.

TABLE 1. SUMMARY OF STUDENT SCENARIOS AND OPTIONS FOR REGISTERING AND VOTING

<i>Registered or not; whether lives/ lived in college town</i>	<i>Can choose to vote in college town?</i>	<i>Can choose to vote at (non-college) current or previous address?</i>	<i>Special considerations</i>
<i>Case 1: Never lived in college town</i>	No	Yes	None
<i>Case 2: Not registered, lives in college town in Fall 2020</i>	Yes	Yes	None
<i>Case 3: Not registered before, previously lived in college town, temporarily away</i>	Yes, conditionally	Yes	(1) Must fulfill state-specific documentation requirements to register in college town (2) Must fulfill state-specific absentee excuse requirements to vote in college town
<i>Case 4: Registered in college town, will be in college town in Fall 2020</i>	Yes	Yes	None
<i>Case 5: Registered in college town, temporarily away</i>	Yes	Yes	Must fulfill state-specific absentee excuse requirements to vote in college town

*Notes:* While multiple options might be available, individuals can only choose one for a given election. The table does not deal with additional documentary proof requirements that may be imposed by the Help America Vote Act (HAVA), see footnote 11.

means everyone who is registered will receive a ballot at the mailing address on file.<sup>14</sup> But things are more complicated in the 16 states that require those wishing to vote absentee to provide an excuse.<sup>15</sup> Surprisingly, perhaps, being sick is not included as a legitimate reason in every state. More significantly in this year of COVID-19, *fear* of contracting an illness is not, in some states, listed or considered as a legitimate reason.<sup>16</sup> In those states, no one, college students or otherwise, can ask to vote absentee because they wish to avoid close contact with polling officials and other voters while voting in person. Texas is extreme in this regard, where one must be over 65, out of the county on Election Day, disabled, or in jail in order to vote absentee (Vote.org 2020). Recently, the Texas Supreme Court was asked whether concern over being infected by the coronavirus allowed one to vote absentee. The court said no, ruling that “a voter’s lack of immunity to COVID-19, without more, is not a ‘disability’ as defined by the Election Code” (*In re State of Texas* 2020).

COVID-19 clearly adds another layer of variation to the highly variable set of election laws across the states. But for students who have never lived in their college town, student status is not relevant since they do not have the option of registering in their college town. That is, their choices and requirements are identical to those of all other citizens.

*Case 2: Not registered at all or registered elsewhere; lives in the college town during Fall 2020*

Despite COVID-19, it appears that many campuses will be open in the fall. In addition, some students are likely to be on all, even nominally, closed campuses. The Cal State chancellor, in announcing plans for the fall, noted that there would be some exceptions that would permit campus residency: nursing students working with mannequins, students in certain lab courses, agricultural students, and so on (California State University 2020). Additionally, students who might be in danger at home or who are homeless might also be housed in campus facilities.

For these students, the situation is no different than in other years. That is, they have full choice to register at their previous home or in their college town, whichever they then regard as their place of residence (again, as long as they meet length of residency and other requirements). This point applies

<sup>14</sup>The five states that have vote by mail (VBM) are Colorado, Hawaii, Oregon, Utah, and Washington (see National Conference of State Legislatures 2020a).

<sup>15</sup>The 16 states that require an excuse are Alabama, Arkansas, Connecticut, Delaware, Indiana, Kentucky, Louisiana, Massachusetts, Mississippi, Missouri, New Hampshire, New York, South Carolina, Tennessee, Texas, and West Virginia (see National Conference of State Legislatures 2020b).

<sup>16</sup>In some instances, however, officials have said that fear of illness would be accepted as sufficient reason to ask for an absentee ballot. See, for example, Feldman et al. (2020).

equally to students who live in university housing and off-campus and to first-year and returning students. Of course, those who are registered elsewhere and change their registration to the college town should include their previous registration information on the form so that their registration will be properly cancelled in the previous jurisdiction.<sup>17</sup>

Having registered, the same voting options discussed in *Case 1* apply. The only twist is their student status might be relevant. That is, students who go to college outside their pre-college state might choose where they register based on how difficult voting will be in each state. For example, consider a student from Oklahoma who goes to college in Texas, is living in Texas, and does not want to vote in person due to fear of getting ill due to COVID-19. Such a student might decide to register and vote in Oklahoma because getting an absentee ballot in Texas will require them to be out of the county on Election Day, to be disabled, or in jail (certainly not an attractive option).

*Case 3: Not registered in the college town but has lived there; temporarily away*

This is perhaps the most challenging case. Save for COVID-19 and the closing of the campus to most students, the student would be back on campus and be able to register and vote in the college town if they wished. The student has lived in the college town previously and might well have come to regard it as their primary residence. Under ordinary circumstances—i.e., that the student could move back in the fall as planned—there would be no question that they would be able to register there, just like *Case 2*. But the times are not ordinary, and the student is remaining elsewhere as the fall semester begins and Election Day looms. Can this student register in their college town?

The answer depends on whether students can provide documents to prove residency where necessary, and how election laws are interpreted. As a general matter, once one has established a residence, they do not lose it until they have established a residence elsewhere.<sup>18</sup> Thus, a student who has lived in their college town but is away temporarily does not forfeit that residence while displaced elsewhere. This should apply to students regardless of whether they know they will return to that address or plan to return to a different address in the college town. Some examples will help illustrate the issues.

The situation in Maryland might be described as student-friendly, with some caveats. Documentary proof of residency is specified in the code only for those who register during the early voting period (Maryland Code, Election Law § 3-305) or on Election Day (Maryland Code, Election Law § 3-306). For students who are displaced from the college town, early voting and Election Day registration in their college town are not likely to be attractive options. Those who register online or by mailing in the registration form (Maryland State Board of Elections 2020) do not need any documents to prove their residency, but they must sign under penalty of perjury that the information, including registration address, on the form is correct. Provided students list their college town residence along with a mailing address to receive their notification card, they can register in their college town. A concern, however, if a campus is closed for in-person learning, is whether clerks will raise objections and either recommend students register elsewhere or fail to complete the registration transaction.<sup>19</sup>

To vote absentee in Maryland one does not need to provide an excuse (see National Conference of State Legislatures 2020c). However, as noted earlier those who register by mail will have to comply with HAVA.

In Wisconsin, documentary proof that ties the student to a residence in the college town is necessary. There are a number of items students might use such as a driver's license with the college town address or various state-issued ID cards (Wisconsin Admin. Code § 6.34); but we suspect most students will not have these items. Perhaps more readily available would be a student ID with a photo and receipt for fee payments in the student's name that

<sup>17</sup>Voter registration forms include space to report one's former voter registration address. See also U.S. Election Assistance Commission (2019).

<sup>18</sup>See *Walters v. Weed* (1988) as discussed in footnote 5. See also footnote 6.

<sup>19</sup>Since elections are administered locally, we expect that this issue will be a localized one, though issues could rise to the state level. We know from Niemi et al. (2009) that local officials, even within the same state, might deal differently with college students seeking to register. With COVID-19 and/or competitive races, local clerks may feel added pressure, including perhaps from campaigns that might question their actions or even engage in a formal challenge of registration activity at addresses that have not re-opened. As we discuss below, guidance from the state to students, local election officials, and campus administrators can help alleviate concerns.

was issued by the college within the nine months prior to the election. Another option is the student ID and a list of students who live in college-sponsored housing that the college provides to the local clerk. While seemingly straightforward, Wisconsin officials reported that some colleges do not provide the lists due to privacy concerns.<sup>20</sup>

To vote absentee in Wisconsin, students, like other residents, have to provide a copy of their photo identification with their ballot and obtain a witness signature. These requirements are not influenced by COVID-19, but they do make things more challenging.<sup>21</sup>

The details for each state are beyond the scope of the present article. Students whose colleges or universities are in other states need to check the state's election laws. State election officials, national get-out-the-votes groups, comparable groups on individual campuses, or individual college offices may also be of help (more below). In all cases, students need to ensure that a mailing address reflects their current location so that the registration notification gets to them, as they are not forwardable. Similarly, students need to ensure that they provide the appropriate mailing address when applying for an absentee ballot.<sup>22</sup>

In order to register, one has to have a physical place that one thinks of as their "home base" or the place they regularly return to. In some places the best option for students could come down to the existence of a housing agreement with an actual address listed. In the extreme—i.e., cases of homelessness—this can be a shelter, a park, or intersection; it cannot be a post-office box or a vague reference to "the town" (FindLaw Staff 2020). Similarly, a student could not say only that they lived "at the University" or "on campus."

Thus students in this category, having lived in the town previously and having made a commitment to move back when the campus opens, can register in their college town even though they have not yet moved back into the town in the fall. And once registered they can vote, presumably by absentee ballot; but they will be subject to state absentee ballot laws and any HAVA requirements for those who registered to vote by mail and have not previously voted in a federal election.

#### *Case 4: Registered in the college town; will live in the college town during Fall 2020*

As we noted earlier, some students will live in the college town during the fall of 2020 even if the cam-

pus is largely closed. In the earlier case (*Case 2*), however, the student was not registered at all or was registered elsewhere. Here we consider the case of a student who previously registered in the college town.

There are three scenarios that might arise: (1) the student is living at their registration address; (2) the student has moved to a new address within their college town; or (3) the student decides to change their registration address to their pre-college home. Scenario 1 is the simplest within *Case 4*—a student just needs to decide how and when they will vote. Before voting, a student in *Case 4*, scenario 2 will need to update their address. A change of exact location may mean a change in their polling place (if voting in person). Updating the address can be done in person or by mail, or in some states, online and/or on Election Day.<sup>23</sup> Students can change the place of their registration to their pre-college home if they changed their mind about what they regard as their primary residence (*Case 4*, scenario 3). In most cases this would mean a change back to their

<sup>20</sup>Personal communication between first-listed author and staff member at the Wisconsin Elections Commission. In *Luft v. Evers* (2020), the U.S. Court of Appeals for the Seventh Circuit ruled that federal law prohibits adding things such as citizenship status on enrollment lists, limiting any information to basic directory information.

<sup>21</sup>Prior to *Luft v. Evers* (2020), the photo ID requirement could be met with a copy of the student ID card that is current, has the student's name, photo, signature, date it was issued, and expiration date if used in conjunction with documentation that shows the student is currently enrolled (Wisconsin Administrative Rules EL-10). In *Luft v. Evers* the U.S. Court of Appeals for the Seventh Circuit struck down the need for an enrollment list along with a student ID as it treated students differently than others. According to a recent report, Wisconsin was the only state that, prior to *Luft v. Evers* striking it down, also required proof of enrollment when using a student ID (Huynh 2020). Other forms of ID that have the student's name and a photo are also allowed; among the other forms of valid ID are a driver's license (does not need to have the same address as the registration address) and a U.S. passport (Wiscon Admin. Code §§ 5.02(6m) and 5.02(16c)). In meeting the photo ID requirement students will also satisfy any HAVA requirements that might apply.

<sup>22</sup>As a general matter for both registration and absentee ballot applications, where the student is temporarily is not relevant—the student can be temporarily displaced either in-state or out-of-state.

<sup>23</sup>An updated address will also ensure that their name has not been purged—removed—from the registration list. Purging can happen if a registered individual has not voted over some number of elections. Before names are purged, a letter is usually sent to the voter at the address on the roll. Such letters are not forwarded, and if returned as undeliverable by the post office, the voter's name may be dropped.

parents' home. We presume, however, that virtually all students who came to think of the college town as their primary residence will continue to do so when they return in the fall. If changing their registration, students should report their previous registration address to facilitate removal from the registration rolls in their college town.<sup>24</sup>

The next step is to decide how and when to vote. Some may choose to vote in person on Election Day. In many states, students will also have the choice of voting early. The details of when and where to vote early vary widely from state to state. A student may also choose to vote by absentee ballot, especially with COVID-19 in mind. As noted above, the process is often easy because no excuse is required. However, students need to be aware that in the 16 states that require an excuse, fear of contracting the virus may not be regarded as a valid reason. In states with VBM the ballot will be sent to their registration address or address they have listed as their mailing address. Finally, HAVA requirements will have to be met for those who registered by mail and did not previously vote for a federal office.

#### *Case 5: Registered in the college town; temporarily away*

Our final scenario covers students who have registered in their college town and are temporarily living elsewhere, most likely due to COVID-19 campus closures or related concerns. There are also three scenarios that describe student circumstances in this case: (1) the student wishes to vote at their registration address; (2) the student wishes to change their registration to where they are currently located; or (3) the student wishes to change their registration to their pre-college residence, if not currently located there.

The first scenario is the most interesting (and likely the most common) one. But having already established that even those who are not registered can become so and vote in their college town (*Case 3*), there is not much that is new. If students wish to vote in person, they can do so on Election Day or at an early voting site in states that allow early in-person voting. Due to COVID-19, we expect most will want to vote absentee. Once they navigate eligibility and any state or HAVA identification requirements the key issue will be updating their mailing address to ensure they receive the bal-

lot where they are located. Similarly, in VBM states, students will have to ensure they provide election officials with their mailing address since the ballots will not be forwarded.

Provided that they are able to meet the residency requirements, students have the option to register to vote where they are located and vote subject to the laws there (*Case 5*, scenario 2). As noted earlier, in changing their registration students should report their previous registration in their college town so that it can be cancelled, and they might face constraints based on the laws that regulate absentee voting (U.S. Election Assistance Commission 2019).

It is possible that some students will not want to vote in either their college town or a temporary location that they do not consider their primary residence. That is, some might decide to change their registration to their pre-college home, even if they are located elsewhere temporarily (*Case 5*, scenario 3). This situation then becomes akin to our discussion of students who are registered in their college town and live there but wish to make their pre-college home their primary residence (*Case 4*, scenario 3).

## CONCLUSION

The turmoil of COVID-19 and the closure or partial-closure of numerous college campuses during the 2020 election season raises the issue of whether, and where, college students unable, or unwilling, to return to campus for the fall semester will vote (or register to vote). While the situation, and particularly the likely magnitude of the situation, is new, the principles for examining and deciding it are, for the most part, not new.

While college students, as we analyze above, fall into a number of different categories, the two most salient ones, for purposes of this article, are: (1) college students, already registered to vote in their college town, who, because of campus actions, do not return to the college town in the fall (our *Case 5*); and (2) college students, otherwise similarly situated, who have not yet registered to vote (our *Case 3*).

In both situations, while individual state law is determinative, some guideposts can be identified. For students already registered to vote, as discussed

<sup>24</sup>See footnote 17.



in *Case 5*, the situation is most comparable to being temporarily displaced from one's residence with an intention to return. The issues that arise are identical to other absentee voters, and one should look to the relevant state law governing temporary absences (as well as ensuring that ballot material is mailed to one's current address). For example, while Mike Pence has served as vice president, both he and Karen Pence have voted absentee using the Indiana governor's mansion as their address.<sup>25</sup> For students who have not yet registered to vote and wish to vote "in" their college town, as discussed in *Case 3*, the situation is somewhat more complicated because both state law and federal HAVA requirements are likely to increase the documentary requirements necessary to register in the first place. (As we demonstrated with our Maryland and Wisconsin examples, state laws will vary significantly in terms of the required documentation, and thus it is the first place to turn to.) Once registered, those in *Case 3* transform into students in *Case 5*, and the issue becomes navigating state absentee ballot requirements.

In pursuing this, there are other, important, resources available. The National Study of Student Learning, Voting, and Engagement (NSLVE) is a core component of the efforts to engage students in the electoral process. NSLVE was founded in 2013 at Tufts University to study voter registration and voting among college students. More than 1,100 colleges and universities of all types participate, with members in all 50 states and the District of Columbia, covering 10 million students (Institute for Democracy and Higher Education 2020a). Member institutions provide NSLVE with access to student data through the National Student Clearinghouse that is then matched with registration and voting information from Catalist, a leading voter file vendor, to produce reports on registration and turnout for each institution (Institute for Democracy and Higher Education 2020b). The diverse sets of institutions in NSLVE are supported by efforts from the broad-based Students Learn Students Vote (SLSV) coalition and the ALL IN Campus Democracy Challenge that leverage NSLVE data to increase registration and voting rates (see SLSV Coalition 2018a; ALL IN Campus Democracy Challenge 2020a). Sub-challenges across athletic conferences, such as the Big 10, have provided further incentive for students to register and vote (ALL IN Campus Democracy Challenge 2020b).

Central to activities supported by SLSV and ALL IN are the formation of campus-level coalitions to develop and implement an action plan to inform students about registration and voting and to engage them to participate (see SLSV Coalition 2018b; ALL IN Campus Democracy Challenge 2020a). With COVID-19, many of the standard activities, such as registration tabling at the student union and the distribution of voter registration applications, will be limited or impossible. But much can still be done.

We believe the most efficient and effective way to serve students and avoid chaos and confusion is for each state to provide specific guidance for student registration and voting during the pandemic. On their websites states should include the following information: (1) what students need to do in order to provide proof of residency; (2) the steps needed to update their mailing address, with links to the forms to do so; and (3) a statement making it clear that students who are away temporarily do not have to have an on-going lease or even know the exact address where they will live when they return.<sup>26</sup> To minimize the risk of poor and varied implementation states should also provide guidance to the local clerks who will process voter registration and absentee ballot applications.

We also urge voting rights groups to assemble this information about the rules that govern registration and voting in each state. Many of the groups already have general information on their websites (see e.g., Campus Vote Project 2019), but especially relevant now is information on proof of residency. After a thorough review, including multiple Internet searches, contact with the National Conference of State Legislatures and multiple voting rights groups, we determined that a comprehensive review of each state's rules of proof of residency does not currently appear to exist. This information should be widely publicized, and campus coalitions should disseminate it widely to their students.

<sup>25</sup>While the Indiana constitution has a category for being away on U.S. business (Article 2, Section 4 of the Indiana Constitution), the law is clear that any Indiana resident does not give up residence for voting in the state until one is established elsewhere (Indiana Code § 3-5-5-4). See LoBianco (2020). The Pences do not currently own a home in Indiana but intend to return to the state (Pitofsky 2020).

<sup>26</sup>An example of language to this effect, though not about COVID-19, can be found in the *Wisconsin Election Commission's Guide to Student Residency* (2019).

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