October 5, 2012 The Honorable Don Palmer Secretary State Board of Elections Washington Building 1100 Bank Street, 1<sup>st</sup> Floor Richmond, Virginia 23219

# Secretary Palmer:

The Fair Elections Legal Network (FELN) writes to you to request that the State Board of Elections remove a questionnaire provided on your website regarding the rights of college students to vote. Currently, the information provided to college students inquiring about their right to register to vote in Virginia where they attend school includes a "self guided questionnaire" which lists numerous factors that, as explained in the attached memorandum, are either presented in a misleading or incomplete fashion or are not relevant to the consideration of whether an individual is legally eligible to register to vote in Virginia. We therefore ask for its prompt removal before the upcoming voter registration deadline.

Information currently included on the official State Board of Elections' website under "Voter Info for College Students," implies that numerous factors are of consideration for students when determining their residency for voting purposes which are incorrect. These listed factors include:

- length of residence at their current address despite Virginia law not requiring a minimum residency period to register to vote
- tax dependency status which is determined by income and relationship status and completely unrelated to voter registration status
- whether a student is classified for in state or out of state tuition status with their school, which
  implies a student must meet a one year residency requirement to meet in state tuition
  requirements to register to vote
- financial aid status which is rarely impacted by registering to vote in a specific state

These facts are either not determinative or completely irrelevant to the determination of residency for voting purposes. As your office is aware, a student has a right to register in Virginia if they declare a present intent to make Virginia their residence. By listing other factors to consider without explanation the State Board of Elections is misleading students into the belief that they are ineligible to register in the Commonwealth. This is simply not true. Providing a disclaimer on the website which states that election officials are not experts in these areas of law is insufficient, as the questionnaire is presented as a tool to determine residency. We therefore ask that you promptly remove the questionnaire and reinforce that students have the right to register and vote in Virginia if they so choose.

What the Board should highlight is the 2009 residency regulations that clarifies that out of state students have a right to register and vote in the Commonwealth if they so choose and the new ID law that has expanded the use of student IDs for voting purposes.

We look forward to working with you on this matter and ensuring all students in Virginia are aware of their rights in this election and beyond.

Sincerely,

Robert M. Brandon

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President

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Attachment

## **MEMORANDUM**

To: State Board of Elections From: Fair Elections Legal Network

Re: College Student Voting Questionnaire

Date: October 5, 2012

The law is clear that students who attend college in Virginia are entitled to register to vote in Virginia in the jurisdiction where they live to attend school if they declare Virginia as their legal residence. The Virginia Constitution provides the qualification of voters: each voter shall be a citizen of the United States; shall be eighteen years of age; shall fulfill the residence requirements set forth in this section, and shall be registered to vote. Article II, Section 1, of the Virginia Constitution. The Virginia Constitution states that for all purposes of qualification to vote, residence requires both domicile and a place of abode. *See also*, Virginia Code § 24.2-101 ("residence" and "resident" is also defined in the Virginia Code and is consistent with the Constitution). The Virginia Constitution does not provide a definition for "domicile" or "abode." Pursuant to long standing legal principals regarding residency, domicile is meant to be the place where an individual has a present intent to reside and abode is understood to mean a home or fixed place of residence. The Virginia Code provides a definition of domicile that is consistent with these long standing principals. Students, therefore, are eligible to register to vote in the jurisdiction where they live to attend school if it is their express intent to declare that location as their residence.

While the information provided on the State Board of Elections website does acknowledge that an individual has the right to determine their own residency and that it may change over time, the inclusion of a self guided questionnaire such as the current version posted for use by college students without proper guidance serves to confuse and mislead students as to residency requirements. The questionnaire does not provide any explanation of the purported residency factors, provides no guidance for students who do choose to fill out the questionnaire, and, most concerning, fails to sufficiently address the importance of an individual's express intent in determining their residence.

Unfortunately, what is not included on the website is regulatory language adopted in 2009 that further clarifies a student's right to register and vote in Virginia. (State Board of Election Policy 2009-005)

## These include:

# 2) Required Intent:

.....(e)The duration or expiration date of an individual's lease to occupy a specific place of abode shall not be a factor in the determination of his intent to remain in his current location. For example, a college student does not need specific intent to stay in the college jurisdiction beyond graduation, and...

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- 5) No presumption in favor of or against residence may arise merely on the basis of a person's presence or absence in the following circumstances: ......
- ......(c) while employed by, or enrolled as a student in, any educational institution, or residing in any housing commonly occupied by students or faculty;

Most troubling, the questionnaire lists several factors that it suggests should be considered when evaluating residency. As explained, these factors are presented in a misleading or incomplete fashion or are not relevant to the consideration of whether an individual is legally eligible to register to vote in Virginia:

- 1) Length of residency at the student's current address is not relevant in determining residence. The main factor to consider for domicile purposes is the intent to remain. The length of time a student has lived at their current address should not factor in to residency calculations. The questionnaire implies that students must meet some form of minimum residency in Virginia to register to vote. This is simply not true. Being a new resident to the Commonwealth, something the questionnaire suggests, does not factor into the ability of the student to register. The only requirement is that extended to all Virginia residents: that the registrant must be a resident of the jurisdiction to register.
- 2) Neither a student's in-state or out-of-state tuition status nor their intention to remain in the Commonwealth after graduation are relevant factors in determining voting domicile as suggested by the fourth questionnaire item.. Neither of these factors should have an impact on a student's ability to register and vote in Virginia. As the main factor to consider in determining residency is the intent to remain, unknown future plans or how a school categorizes students for tuition purposes should be of no consideration for students who wish to register to vote Virginia Code §23-7.4 clearly establishes a standard for in state tuition at Virginia institutes of higher learning as requiring at least one year of continual domicile in the Commonwealth prior to receiving in state tuition privileges. To imply that a student must meet this standard implies a one year residency period for students to be eligible to vote, a residency requirement expressly prohibited by the Supreme Court in *Dunn v. Blumstein.* 405 U.S. 330 (1972). Implying otherwise is misleading to students who are often first time registrants.
- 3) Tax dependency status is not related to voting residence, as suggested by the fifth questionnaire item. While financial dependency is a factor that can be considered in determining a person's residence, this inquiry as presented implies that students who are considered dependants of their parents for tax purposes are residents where their parents live and if they chose to declare residency elsewhere they would lose their right to be declared a dependant for tax purposes. Legal residence and voter registration are not factors in determining dependency for tax purposes. Pursuant to Sections 151 and 152 of the Federal Tax Code, a dependent may be any individual whose gross income is less than the exemption amount (scholarships for study are not including in this gross income) and who is a child (this includes all stepchildren) of the taxpayer, has not attained the age of 24 and is a student. The tax code further defines student as any individual who during five calendar months of the taxable year is a full-time student at an educational organization or training program. The relevant factors, therefore, are the relationship between the individuals and the income involved, not residency.

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4) In the vast majority of situations residency is unrelated to qualification for financial aid. The section of the SBE website titled "Voter Info for College Students," which houses the questionnaire at issue, also mentions a link between voter registration and financial aid. Whether an individual is receiving financial aid, and from what source, is completely irrelevant to whether they are a resident in Virginia where they attend school and can register to vote. Financial aid is not a factor of residency listed by the Virginia Code. Therefore, it is not appropriate for elections officials to imply that it may be a factor for consideration of registration. While it is true that a few students may receive scholarship or grant money linked to their residency in a different state, this is a concern of the students seeking to register to vote...

There are some students attending school in Virginia who are receiving financial aid from state other than Virginia, and those students should be made aware that their financial aid from that other state, if dependent on residency in that state, might be affected if they declare residency in Virginia. This category is a very small number of students at best and it is extremely misleading to raise the issue of financial aid potentially being affected by declaring residency in Virginia. A 2011 study by the College Board noted that only 5% of all student aid comes from state grants with the vast majority of that consisting of state scholarship programs supporting in-state students going to in-state schools, which would not affect out of state students going to school in Virginia

While providing misleading information that could have the effect of discouraging students who wish to register to vote, the Board misses an opportunity to provide correct information which may lead to more student voting. The most glaring omission from the student voter information webpage would be the fact that a student ID from any institute of higher learning in Virginia is now considered valid voter ID. The State Board of Elections has a duty to educate the public regarding this new law and yet they have failed to include this vital information on the one webpage specifically meant to address student questions. The State Board should utilize the "Info for College Students" webpage to educate Virginia students on their rights, which includes registering to vote in Virginia and using their student ID as voter ID.

## Conclusion

It is the responsibility of election officials to determine whether an individual is eligible to vote within the jurisdiction where they have applied to vote. It is not their responsibility to conjecture about how voter registration within the Commonwealth of Virginia might affect other issues outside that area of responsibilities, such as financial aid or tax status. The State Board of Elections' website fails to provide sufficient guidance on the basic principle's of eligibility to register to vote, but also inappropriately identifies factors which have no bearing on a student's ability to register and vote in the Commonwealth. By including in the questionnaire topics which are of no consequence to eligibility, the State Board of Elections website currently misleads and intimidates students into the mistaken belief that they are foreclosed of the right to register and vote at their Virginia address. This is incorrect and should be remedied immediately.

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