

# CAN I VOTE?

A VOTER'S GUIDE TO DOMICILE REQUIREMENTS AND THEIR EFFECTS ON STUDENT VOTERS IN ALABAMA

# INTRODUCTION

Over 6% of Alabama's population is enrolled in an institution of higher learning. Too often they find themselves asking a crucial question: "**Can I vote?**"

Voter suppression can take many forms. It can look like policies that restrict access to the ballot box because of lack of resources, like voter ID laws. It can look like drawing district lines to pack and crack the influence of voters of color. But, just as dangerously, it can take on the form of misinformation, attempting to pass itself off with specialized language, often legal in nature.

Voter registration, especially in Alabama, can be a harrowing process for voters, activists, and campaigns, many of whom have little or no knowledge about the kind of legal language found on a voter registration form - nor should they be expected to.

For students, one of the most malicious pieces of misinformation surrounds the concept of **domicile**. Students are often told, in Alabama, that their domicile - and thus the only place where they can cast their vote - is at the home of their parents. Sometimes this is paired with misinformation about financial aid, or tax dependency; students are told that their voter registration at their college address can change their status as an

in-state or out-of-state resident, or could strip them of dependency status and change their tax calculations.

## **All of that is wrong.**

But, because local campaigns, activists, and community volunteers don't have the training, the time, or the access to the right information they often react to this misinformation with a perfectly reasonable response: they stop engaging with students, stop turning them out to the polls, and thus handicap the process of building civic attitudes and habits that will shape how students interact with their democracy long after they leave school.

This report aims to change that response. It aims to explain what domicile is, how it interacts with voter registration law for students, and to offer the expertise necessary to combat this insidious voter suppression tactic. This is a report for laypeople who know little or nothing about election law. This is a report for students with questions about their ability to register to vote, for local volunteers, and for all Alabamians.

# WHAT DOMICILE IS.

## TWO DEFINITIONS:

In everyday language, when we say the word **domicile**, we mean a **home**. Though it sounds a bit old-fashioned, it can be used interchangeably with words like "dwelling," "abode," or "residence."

When a lawyer uses the word **domicile**, it means something slightly more specific: **the place you call home for legal purposes**. This is useful for making distinctions for someone who might own two or more homes, or for someone who might spend most of their time on the road.

**Domicile** is an important legal concept for all kinds of reasons. The United States is a nation where state, county, and municipal governments are hugely important to the way we live our lives.

Most people, most of the time, only live in one place. They own a home, rent an apartment, or live with a loved one, and much of their life takes place in one community. Think of all the local rules, like a sales tax, a zoning regulation, or a leash law that impact your daily life. Think of the interactions with mayors, city councilors, members of the school board, and county commissioners that make up your interactions with the government.

But for those who move around frequently or who own homes and properties in multiple communities, it might get confusing where they belong, and which local rules and regulations apply to them.

That's why we have **domicile**, to make sure that everybody belongs somewhere. And it is crucial for making sure that **everyone has a voice in our democracy**. Think, for example, of someone in the Air Force, deployed overseas, or just to a different part of the country, for a time. We want to make sure that person still gets to vote at home, and help make decisions for the place they consider theirs. For that reason, Alabama voters must establish domicile to register to vote - but the way that process works is a little complicated. We'll address how that works on the next page.

# WHAT DOMICILE ISN'T.

**Domicile**, for political purposes, is **distinct** from other ways we think about legal residence.

For instance, domicile isn't the same as one's dependency status for tax purposes. It is entirely possible to call one place home and to rely on someone who lives somewhere else for financial support.

**Domicile** also isn't the same as one's in-state or out-of-state status for students. Universities and colleges define **domicile** and **residency** differently than the State of Alabama, and for different purposes when billing tuition. Those definitions are designed to rely more heavily on the status of a parent than the definition used by Alabama for the purpose of establishing voter registration. Though the two processes use similar words and deal with similar topics, they are **distinct** from each other and broadly allow - and even encourage - the possibility that an out-of-state student pays out-of-state tuition while voting in Alabama.

# WHO CAN VOTE?

The state of Alabama requires voters to be domiciled before they can register to vote.

When Alabamians register to vote, they do it through their local **Board of Registrars (BOR)**. Whether you are filling out the voter registration application online or mailing in a form, it is going to an office, most likely in your county's courthouse or courthouse complex, where the Board of Registrars is located.

Every BOR uses the same Voter Registration form to collect voter information. When you register to vote **the information you provide on that form** is what is collected, and what is used to verify your registration. The only requirements that must be met before you can register to vote are located in the blue box on the right of this page.

The Alabama Voter Registration Form **doesn't ask about domicile**. In fact, it is exceedingly rare for a voter to **ever** be asked about their domicile. It really only happens in very rare court cases challenging election outcomes.

So how do voters know if they **are** domiciled? Why do we even require domiciliation before registration if it isn't enforced?

**The answer is simple:** registering to vote is the single most important aspect of how we determine someone's domicile. If a voter follows the rules laid out in the voter registration form, is truthful on the form about where they live, and demonstrates their commitment to a community by registering and voting in that community, they are **nearly always determined to be domiciled in that place**.

**It has long been settled law that a student has the ability to choose their place of voter registration. They can make the decision to be registered at their parents home or at their campus address - in effect, a student gets to decide their domicile through registering to vote.**

# SO WHAT?

If students have the right to choose where they register to vote, and when they register they provide ample evidence for the location of their domicile, why does anyone care about domicile at all?

## ALABAMA'S VOTER REGISTRATION REQUIREMENTS.

1. Be a citizen of the US.
2. Live where you are registered to vote for 30 days before the election.
3. Not be someone convicted of a "disqualifying felony."
4. "Not have been declared 'mentally incompetent' by a court. "

## **CASE LAW: HORWITZ V. KIRBY (2015)**

Most of the misinformation about domicile in Alabama relies on the findings of a 2015 Alabama Supreme Court Case called Horwitz v. Kirby. In that case, 104 students at the University of Alabama were found to be improperly domiciled in dorms, Greek houses, and other student housing. Some of their votes were thrown out.

In that case, a separate test for domicile was created for students, and would have required local Board of Registrars to create a special class of voter registration, in which students would be made to go above and beyond the typical voter in proving their intention to be domiciled in a college community.

Since 2015, it has become common to cite Horwitz v. Kirby, and domicile in general, especially on social media, when arguing that college students should not vote in college towns.

Horwitz v. Kirby did establish a new and separate **domicile** test for college students. But the problem with that decision is that the new standard for college students is unenforceable.

## **CASE LAW: SYMM V. UNITED STATES (1978)**

In 1978, a case strikingly similar to Horwitz v. Kirby was decided in Texas, where a local Board of Registrars was requiring college student to fill out an additional questionnaire in order to establish their domicile before they could register to vote.

That additional requirement was found unconstitutional, which ruled it could not stand under the **26th Amendment**. In short, to establish any separate set of rules that apply only to college students in the establishment of domicile is illegal. That's exactly what Horwitz v. Kirby does.

## **CONSTITUTIONAL LAW: THE 26TH AMENDMENT.**

The 26th Amendment was adopted in 1971, and lowered the voting age to eighteen. It also makes illegal to enforce voter discrimination against anyone on account of their age, and that includes any discrimination against proxy groups like college students.

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## REMEMBER THESE?

At the end of the day, despite all the talk on social media about how **domicile requirements** after Horwitz v. Kirby mean students can't pick where they want to vote, the voter registration requirements remain the same. Alabama can't enforce the rule established in 2015, because that rule is clearly unconstitutional. It is law - but it isn't a law that means very much.

No court has followed up on Horwitz, and, since 2015, **no students have been turned away by their Board of Registrars for not being domiciled in their college community**. No organizations have gone to court for registering student voters who weren't domiciled, no vote has been challenged, and many students continue to register on campus.

The real result of Horwitz has been fuel for the misinformation flame.

## HOW TO DEAL WITH DOMICILE

**Domicile** is an important part of how we make sure that everyone's voice is heard in our democracy. But **domicile standards** for college students are no higher than for anyone else, and college students who register to vote won't have to face problems with tuition or taxes based on their domicile.

It is unconstitutional, under the 26th Amendment, to require college students to demonstrate an "intent" to stay in a place "indefinitely," which the decision in Horwitz v. Kirby would require. To do so would require an additional test for college students in voter registration, which would clearly be age discrimination. As such, the state of Alabama **does not require** the demonstration of **domicile**, nor can they.

If a college student feels so compelled as to register to vote in their college town, and they meet Alabama's few other requirements, they can and should be allowed to register to vote, even if they aren't sure they'll live in that town for the rest of their lives. All those eligible to vote can vote if they want to, and we should encourage them to make their voices heard.

The best way to deal with domicile is to register students to vote, dismiss misinformation, and work to make voter access in Alabama more equitable and accessible for all.

# FAQ: FOR STUDENTS

**Q: Can I register to vote at my college address (dorm room, rental property, etc.) ?**

**A: Yes!** As long as you meet Alabama's other requirements - being a citizen, living at your address for thirty days before the election and not having had a court take away your right to vote - you can register to vote there.

**Q: I don't know if I'm going to stay in my college town after graduation - should I really be making decisions for this town?**

**A: You can make the choice to retain - or register for the first time - at your parent's address, if you don't feel like your college town is home. If you feel like your college town is the place you'd like to vote go ahead - if it doesn't feel right, there's nothing forcing you to vote there. Each student must make that decision for themselves, and neither is right or wrong.**

**Q: I'm an out-of-state student. If I register in Alabama, will that change how my tuition is calculated?**

**A: No.** Colleges care more about where your parents live and don't take voter registration into consideration when thinking about in-state and out-of-state calculations.

**Q: If I register to vote at an address different from that of my parents, will it keep them from filing their taxes and listing me as a dependent?**

**A: No.** Physical location has nothing to do with where your money comes from - as long as you rely on your parents, they can file with you as a dependent.

**Q: I've been told I have to be domiciled before I register to vote. How do I do that?**

**A: There's no form to fill out to establish domicile. If you register to vote, you are asserting your domicile in a place for political purposes. It is that simple, and the only requirements you need to worry about are on the voter registration form.**

# FAQ: FOR VOLUNTEERS

**Q: I volunteer on a political campaign doing voter registration in a college town. Could I, or the campaign, get in trouble for registering college students to vote here?**

**A:** This is not legal advice - but college students can and should be treated like any other voter. They can register to vote if they meet Alabama's requirements, and their votes are just as valid as any other voter's.

**Q: Students our organization works with are asking if registering to vote in our town will change their tax or tuition status. Will it?**

**A:** No. Colleges care more about where a student's parents live and don't take voter registration into consideration when thinking about in-state and out-of-state calculations, and physical location doesn't affect tax dependency status.

**Q: Our organization has been accused of inviting students who aren't "real" members of our community to vote improperly. Have we done something wrong?**

**A:** Each college student is a different person, and each college student makes the decision for themselves where they feel is home. There's no enforceable legal requirement that means college students have to "prove" they belong in a college community - like any American, they get to choose where they live and what they do. Reaching out to people who **live** in a community is just good politics.



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## **THIS PROJECT IS ONGOING.**

**This report only scratches the surface of the complexities of domicile law. If you have further questions or would like to request a presentation on domicile, please contact me by email at:**

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