REL: 09/30/2015

SUPREME COURT OF ALABAMA

SPECIAL TERM, 2015

1130246

Kelly Horwitz

v.

Cason Kirby

Appeal from Tuscaloosa Circuit Court
(CV-13-901093)

PER CURIAM.

Kelly Horwitz appeals from the Tuscaloosa Circuit Court's denial of her contest of an election for the office of Tuscaloosa Board of Education, District 4. We reverse and remand.

Facts and Procedural History

Horwitz and Cason Kirby were both candidates in the August 27, 2013, election for District 4 of the Tuscaloosa Board of Education. Kirby was certified as the winner of the election. The certified vote totals were 416 votes for Kirby and 329 votes for Horwitz.

On September 6, 2013, pursuant to § 11-46-69, Ala. Code 1975,[1] Horwitz filed a statement of contest regarding the

[1]Section 11-46-69, Ala. Code 1975, provides, in pertinent part:

> "(a) The election of any person declared elected to any office of a city or town may be contested by any person who was at the time of the election a qualified elector of such city or town for any of the following causes:
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> > "(1) Misconduct, fraud, or corruption on the part of any election official, any marker, the municipal governing body, or any other person;
> >
> > "(2) The person whose election to office is contested was not eligible thereto at the time of such election;
> >
> > "(3) Illegal votes;
> >
> > "(4) The rejection of legal votes; or
> >
> > "(5) Offers to bribe, bribery, intimidation, or other misconduct calculated to prevent a fair, free, and

August 27, 2013, election. On September 13, 2013, the trial court conducted a hearing to establish dates for trial and further procedures. With the agreement of the parties, the trial court ordered that on October 11, 2013, Horwitz would provide Kirby with notice of the number of alleged illegal voters and the grounds for challenging each voter. The parties agreed that the case would be given priority and that it would be set for trial on October 31, 2013. The trial court also stated:

> "It was further recognized and agreed that no voter would be compelled to testify for whom he or she voted under Section 17-16-42 of the Code of Alabama and Rule 506 of the Alabama Rules of Evidence until his or her vote was determined to be illegal."

On October 11, 2013, Horwitz filed a "Notice of the Nature of the Evidence" and listed 397 allegedly illegal votes, which included votes cast by approximately 375 students and members of Greek organizations on the University of Alabama campus, i.e., fraternities and sororities. Horwitz argued that the votes were illegal based on lack of residency, bribery or misconduct, and ineligibility. In her memorandum of law supporting her notice, Horwitz argued that the primary

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full exercise of the elective franchise."

basis for her claim regarding lack of residency was an assertion that a substantial number of voters had not resided in or had their domicile in District 4 for 30 days prior to the August 27, 2013, election, as required by § 11-46-38(b), Ala. Code 1975. According to the trial court, Horwitz

> "contended that a substantial number of students, particularly members of Greek organizations, moved into sorority and fraternity houses or other dwellings, such as apartments, within thirty days of August 27, 2013, but, prior to that time, did not reside in the district."

Kirby denied Horwitz's allegations and argued that, before moving into the sorority houses, fraternity houses, or other dwellings in August 2013, the students had either resided in other dorms or dwellings in District 4 or had lived in District 4 the previous year but had simply visited their family homes or resided elsewhere during the summer. Kirby also argued that those voters had established their domicile in District 4 and their intent to return to the district before their temporary absence from the district during the summer.

Kirby filed an objection and a motion to dismiss, in which he argued that Horwitz's notice of the evidence was not

sufficient to comply with the requirements set forth in § 17-16-48, Ala. Code 1975.[2]

On October 15, 2013, the trial court conducted a hearing to determine whether Horwitz's notice of the evidence was sufficient and to address Kirby's objection and motion to dismiss. On October 17, 2013, the trial court entered an order denying the motion to dismiss and holding that Horwitz's notice was sufficient and that the election contest would proceed.

On October 21, 2013, the trial court conducted a status conference for the purpose of determining the procedure for the trial of the case. During this status conference, a

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[2]Section 17-16-48, Ala. Code 1975, provides:

> "No testimony must be received of any illegal votes or of the rejection of any legal votes in any contested election commenced under the provisions of this article unless the party complaining thereof has given to the adverse party notice in writing of the number of illegal votes and by whom given and for whom given, and at what precinct or voting place cast, or the number of legal votes rejected, and by whom offered, and at what precinct or voting place cast, which the party expects to prove on the trial. Such notice must be served personally or left at the residence or usual place of business of the adverse party at least 10 days before the taking of testimony in reference to such votes."

procedure was established whereby the evidence of the legality or illegality of the ballots challenged by Horwitz would be presented to the trial court on October 31 and November 6 by way of affidavits to be collected from challenged voters. The purpose of this approach was to avoid the necessity of a weeks-long trial involving live testimony from approximately 400 voters and other witnesses on the variety of factual issues that could bear on such issues as domicile and possible illegal inducements to vote. Moreover, this approach also dovetailed with the trial court's properly announced intention of not requiring any voter to testify as to for whom he or she had voted until it was first determined that his or her vote was illegal. If, based on the affidavit testimony submitted by Horwitz in this first phase of the trial ("Phase I"), at least 87 votes were found to be illegal, the contest would proceed to a second phase or "final hearing" on November 18 ("Phase II"), in which the voters who cast the illegal ballots could be subpoenaed to testify at trial as to for whom they voted. (Also in Phase II, those who cast the allegedly illegal ballots who did not return an affidavit for purposes of Phase I could be subpoenaed to testify regarding issues

relating to the legality of their ballots and, if their votes were found to be illegal, for whom they had voted.)

As recounted in Kirby's brief to this Court:

> "[T]he Court ordered, and the parties agreed, that the trial proceedings would begin on October 31st and would essentially be bifurcated. The Court ordered, and the parties agreed, that Contestant and Contestee would prepare an affidavit form with questions addressing the issues in this contest to be submitted to all challenged voters rather than have a hearing with nearly 400 challenged voters. The parties elected to use these affidavits as trial evidence to establish qualifications of the voters or lack thereof. The affidavit, if possible, would solicit certain information to allow the Court to sufficiently determine the legality of each vote and would be trial evidence. The Court placed no restrictions on the parties as to what questions would be included in the affidavit other than to instruct the parties that, if an agreement could not be reached, the Court itself would develop the questions for the affidavit.
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> "Pursuant to the Order, for all affidavits submitted prior to October 31st, the Court would hold a hearing on October 31, 2013, on evidence and arguments as to whether the testimony contained in the affidavits sufficiently established domicile or inducement to vote. The Court further set a second hearing for November 6, 2013, to determine the same issues for affidavits gathered at or after the October 31st hearing."

(Emphasis added.)[3]

[3]The affidavits were a way to more efficiently determine whether there was a prima facie case in the sense of there being at least 87 illegal ballots, thereby warranting

proceeding to the next phase of compelling the voters who cast those ballots to testify for whom they voted. As the trial court explained at the October 31 hearing:

> "The Court believes I have made it very clear that today was when we are taking testimony by affidavit. That was the vehicle. ... It by nature has to be because there has to be a determination made by the Court as to whether or not a vote is illegal before a question can be compelled to be answered by the Court for whom that person voted. We are in that stage of the trial right now."

Record Vol. 7, p. 127 (emphasis added). Later in the October 31 hearing, the Court stated:

> "It was the Court's intention through our scheduling conference, and the Court is of the opinion that it was the agreement of the parties that we were to proceed with affidavits for evidentiary purposes for determining the legality of a vote and that today would be the day for which the first batch would be argued as to whether or not further testimony would be required of those voters, further testimony required of those voters with regard to for whom they voted, that we would establish legality at this stage. That was the Court's understanding of where we were with regard to our status conference, scheduling conference."

Record Vol. 7, p. 149 (emphasis added). See also Record Vol. 7, pp. 139-40 (statement by court); Record Vol. 7, p. 141 (statement by counsel for Horwitz); Record Vol. 7, p. 129 (statement by counsel for Kirby); Record Vol. 7, pp. 134-35 (statement by counsel for Kirby: "There was no exceptions to go under the affidavits and try to examine these students and try to find something."). Later, the trial court repeated that "[t]he Court intends to have all the evidence it needs by the close of the hearing on November 6 to determine the legality of the votes challenged," Record Vol. 7, p. 156, and that

The parties subsequently submitted an agreed-upon affidavit. The trial court accepted the affidavit and ordered that it be distributed to the challenged voters.

On October 31, 2013, and November 6, 2013, the trial court conducted hearings on the affidavits that had been submitted. On or about November 7, 2013, Horwitz filed a post-hearing memorandum of law. In her memorandum, Horwitz attached exhibits in which she provided a "detailed analysis" regarding various categories of votes that she contended were illegal.

On November 13, 2013, the trial court entered its "Final Order Denying Contest" ("the final order") in which, among other things, it concluded that the affidavits established

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"[i]t was clear to this Court and to, apparently, the contestee that the affidavits were to be determinative of whether or not a vote was legal and further testimony would be taken on the illegal vote." Record Vol. 7, pp. 168-69 (emphasis added).

In the November 6 hearing, the trial court further explained that, if there was to be any live testimony at the Phase II hearing on November 18 from voters for whom no affidavit was received, it too would be limited to the questions on the affidavit: "[T]estimony on legality of votes ... will be restricted to the same questions as the affidavit contains now. That is the method the Court set out and the parties agreed to initially." Record Vol. 7, p. 211.

that no more than 70 illegal votes had been cast in the election. On November 24, 2013, Horwitz filed a motion to alter, amend, or vacate the trial court's judgment; that motion was denied by operation of law on February 24, 2014. Horwitz appealed the trial court's order denying her election contest.

Standard of Review

> "Before we begin our discussion, we first consider the standard of review applicable. At oral argument, the contestee Hale argued that the ore tenus standard of review should apply and that applying that standard would support the dismissal. This Court has stated:
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> > "'In reviewing the trial court's findings of fact in [an] election contest, we apply the same standard used by appellate courts when the trial court in a nonjury case has taken a material part of the evidence through ore tenus testimony; that is, we will not disturb the trial court's findings of fact unless those findings are plainly and palpably wrong and not supported by the evidence.'
>
> "Williams v. Lide, 628 So. 2d 531, 534 (Ala. 1993), citing Mitchell v. Kinney, 242 Ala. 196, 200, 5 So. 2d 788, 797 (1942). That same principle of law is also stated in such cases as Gaston v. Ames, 514 So. 2d 877 (Ala. 1987), and Cougar Mining Co. v. Mineral Land & Mining Consultants, Inc., 392 So. 2d 1177 (Ala. 1981).
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> "Should we apply the ore tenus standard to this case, in which there was no evidence presented ore

tenus that was relevant to the main legal issues before this Court and in which, as to the number of votes cast for the two candidates, the case was decided based upon deposition testimony and a review of documentary evidence, consisting mostly of absentee affidavits and ballots? We think not. Our appellate courts have held on several occasions that, where no testimony is presented ore tenus, a reviewing court will not apply the presumption of correctness to a trial court's findings of fact and that the reviewing court will review the evidence de novo. See Hospital Corp. of America v. Springhill Hospitals, Inc., 472 So. 2d 1059, 1060-61 (Ala. Civ. App. 1985), where the Court of Civil Appeals stated:

> "'The rationale behind the ore tenus rule has historically been that the trial court deserves a presumption of correctness when it is in a position to actually see [the witnesses] and hear the testimony, observing firsthand the demeanor of the witnesses. Christian v. Reed, 265 Ala. 533, 92 So. 2d 881 (1957); Steed v. Bailey, 247 Ala. 407, 24 So. 2d 765 (1946); Barran v. Barran, 431 So. 2d 1278 (Ala. Civ. App. 1983). Considering that the trial court heard only part of the testimony of one witness, including only a partial direct examination and no cross examination, and that the case was otherwise tried exclusively on the basis of numerous depositions and exhibits, we hold that the ore tenus rule does not apply. Consequently, no presumption of correctness will be accorded the trial court's findings on the evidence, and this court will sit in judgment on the evidence as if it had been presented de novo. Smith v. Dalrymple, 275 Ala. 529, 156 So. 2d 622 (1963); Lepeska Leasing Corp. v. State Department of Revenue, 395 So. 2d 82 (Ala. Civ. App.), writ denied, 395 So. 2d 85 (Ala. 1981).'

> "See also, Muscogee Constr. Co. v. Peoples Bank & Trust Co., 286 Ala. 258, 238 So. 2d 883 (1970), and Continental Elec. Co. v. City of Leeds, 473 So. 2d 1056 (Ala. Civ. App. 1984)."

Eubanks v. Hale, 752 So. 2d 1113, 1122 (Ala. 1999).

Similarly, in this case, no ore tenus evidence was presented. Our review of this election contest and the evidence before us therefore is de novo.

Analysis

The duty of a trial court in an election contest is clear:

> "If, on the trial of the contest of any election, either before the judge of probate or the circuit court, it shall appear that any person other than the one whose election is contested, received or would have received, had the ballots intended for the person and illegally rejected been received, the highest number of legal votes, judgment must be given declaring such person duly elected, and such judgment shall have the force and effect of investing the person thereby declared elected, with full right and title to have and to hold the office to which the person is declared elected. If it appears that two or more persons have, or would have had, if the ballots intended for them and illegally rejected had been received, the highest and equal number of votes for such office, judgment must be entered declaring the fact, and such fact must be certified to the officer having authority to fill vacancies in the office the election to which was contested. If the person whose election is contested is found to be ineligible to the office, judgment must be entered declaring the election void and the fact certified to the appointing power. If

> the party whose election is contested is found to have been duly and legally elected, judgment must be entered declaring the party entitled to have and to hold the office to which the party was so elected."

§ 17-16-59, Ala. Code 1975.

I. Voters Challenged Based on Residency

Horwitz first argues that the trial court erroneously found that 108 "University students who indicated no intention to abandon their former domicile prior to registering to vote in Tuscaloosa were retroactively domiciled in District 4 from the first day they lived there."

Section 11-46-38, Ala. Code 1975, provides:

> "(a) At all municipal elections the elector must vote only in the ward or precinct of his or her residence where he or she is registered to vote and at the box or voting machine to which he or she has been assigned.
>
> "(b) No person may vote at any election unless he or she is a registered and qualified elector of the State of Alabama, who has resided in the county 30 days and in the ward 30 days prior to the election, and who has registered not less than 10 days prior to the date of the election at which he or she offers to vote ...."

(Emphasis added.)[4]

[4]Section 11-46-38 continues with a provision for voters who have resided within a given ward but who change their residence from that ward to another in the same city within 30 days of an election. Neither party makes any argument to this

It was undisputed that the challenged voters registered more than 10 days before the date of the election. Therefore, the only question is whether certain voters "resided" in District 4 30 days prior to the election. In order to "reside" for this purpose, one must establish "domicile":

> "The parties correctly assert that 'the terms "legally resides," "inhabitant," "resident," etc., when used in connection with political rights are synonymous with domicile.' Mitchell v. Kinney, 242 Ala. 196 at 203, 5 So. 2d 788 (1942)."

Osborn v. O'Barr, 401 So. 2d 773, 775 (Ala. 1981).

> "The terms ... denote the place where the person is deemed in law to live, which may not always be the place of one's actual dwelling, and are to be contra-distinguished from temporary abode. Caheen v. Caheen, 233 Ala. 494, 172 So. 618 [(1937)]; Allgood v. Williams, 92 Ala. 551, 8 So. 722 [(1891)].
>
> "....
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> "The law is also established that a domicile, once acquired, is presumed to exist until a new one has been gained 'facto et animo [in fact and intent].' Bragg v. State, 69 Ala. 204 [(1881)]; Caheen case, supra. And in order to displace the former, original domicile by the acquisition of one of choice, actual residence and intent to remain at the new one must concur. 'Domicile of choice is entirely a question of residence and intention, or, as it is frequently put, of factum and animus.' 28 C.J.S., Domicile, p. 11, § 9."

Court regarding the potential applicability in this case of that provision.

Ex parte Weissinger, 247 Ala. 113, 117, 22 So. 2d 510, 513-14 (1945) (emphasis added).

> "Thus, a temporary relocation away from one's established domicile does not result in a change of domicile without proof of intent to establish domicile elsewhere."

25 Am. Jur. 2d Domicile § 25 (2014) (footnotes omitted). "'Domicile is "established by physical presence in a place in connection with a certain state of mind concerning one's intent to remain there." Mississippi Bank [Band] of Choctaw Indians v. Holyfield, 490 U.S. 30, 48 (1989).'" In re Kline, 350 B.R. 497, 501 (Bankr. D. Idaho 2005) (quoting In re Halpin, 94 I.B.C.R. 197, 197 (Bankr. D. Idaho 1994)).

> "As a general proposition a person can have but one domicile, and when once acquired is presumed to continue until a new one is gained facto et animo, and what state of facts constitutes a change of domicile is a mixed question of law and fact. Lucky v. Roberts, 211 Ala. 578, 580, 100 So. 878, 879 [(1924)], and cases cited.
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> "One who asserts a change of domicile has the burden of establishing it. Caldwell v. Pollak, 91 Ala. 353, 357, 8 So. 546 [(1890)]. And 'where facts are conflicting, the presumption is strongly in favor of an original, or former, domicile, as against an acquired one,' etc. 28 C.J.S., Domicile, p. 36, § 16."

Ex parte Weissinger, 247 Ala. at 117, 22 So. 2d at 514 (emphasis added).[5]

> "Temporary absence from one's residence for the purposes of his employment and the like, without the intent to abandon the home town and acquire a domicile elsewhere permanently, or for an indefinite time, does not forfeit his right to vote. Pope v. Howle, 227 Ala. 154, 149 So. 222 [(1933)]; Caheen v. Caheen, 233 Ala. 494, 172 So. 618 [(1937)]; 8 Alabama Digest, Elections, 264."

Wilkerson v. Lee, 236 Ala. 104, 107, 181 So. 296, 298 (1938).

In Pope v. Howle, 227 Ala. 154, 156, 149 So. 222, 223 (1933), this Court stated:

> "Domicile of the elector is a mixed question of law and fact, dependent upon the intention and acts of the elector. ... In Holmes v. Holmes, 212 Ala. 597, 599, 103 So. 884, 886 [(1925)], the law of domicile is thus stated: 'A domicile once acquired is presumed to continue until a change, facto et animo, is shown. Bragg v. State, 69 Ala. 204 [(1881)]. If there was a change, there must have been both an abandonment of his former domicile with no present intention to return, and the establishment of another place of residence with intention to remain permanently, or, at least, for

[5]The dissent ultimately concludes that college students have "the option of maintaining their domicile in their hometown and voting by absentee ballot or registering to vote where they attend school." ___ So. 3d at ___. The necessary premise for such a choice by the voter would be antithetical to the "proposition [that] a person can have but one domicile," and that that domicile is a function of certain criteria, or a certain "state of facts." Weissinger, 247 Ala. at 117, 22 So. 2d at 514. It is a "mixed question of law and fact," not of the voter's "option" or choice.

> an unlimited time; the former may be inferred from the latter. Allgood v. Williams, 92 Ala. 551, 8 So. 722 [(1891)]; Caldwell v. Pollak, 91 Ala. 353, 8 So. 546 [(1890)]; Young v. Pollak, 85 Ala. 439, 5 So. 279 [(1888)]; Merrill's [Heirs] v. Morrissett [76 Ala. 433 [(1884)]], supra.'"

(Emphasis added.)

The authorities are in agreement, then, that there must be not only a decided intention to abandon one's former domicile as such, but also a "certain state of mind" as to making a new locale one's home. The application of this general rule to students results in a general rule that their place of domicile does not change simply because they leave home to attend college:

> "[I]t is a settled principle of law, recognized expressly or by implication in virtually every case discussed herein ... that an individual's mere presence in a particular community as a student results neither in his acquisition of a voting residence there nor in the loss of his existing voting residence elsewhere, such presence being regarded as temporary in the absence of independent facts and circumstances indicating a contrary intent."

William H. Danne, Jr., Annotation, Residence of Students for Voting Purposes, 44 A.L.R.3d 797, 818 (1972) (emphasis added). This is no less true "even if [the student] is uncertain as to

his future plans and, therefore, [might] settle in the school community following the completion of his studies." Id.[6]

A relatively recent Illinois case involving a question of venue in a wrongful-death case is instructive as to issues that often arise in domicile cases involving college students:

> "Illinois courts generally construe the term 'resident' to mean the place where an individual intends to live on a permanent basis. The subjective intent of the person whose residence is at issue controls the determination. Webb v. Morgan, 176 Ill. App.3d 378, 386, 125 Ill. Dec. 857, 531 N.E.2d 36, 41 (1988). Obviously, Nick could not have intended to remain in a university fraternity house on a permanent basis. Such housing is, by definition, temporary. Perhaps he enjoyed living in Decatur and hoped to remain there upon graduation; perhaps he hoped to return to Glen Carbon, where he had grown up and still had friends. Perhaps he hoped to move elsewhere. As a practical matter, most 20-year-old university students do not know where they will live

[6]It appears that the trial court and the dissent, as well as many of the students whose votes are in question in this case, equate the idea of an "uncertainty" on the part of student as to his or her plans following graduation with an intent to remain "indefinitely" in the town where his or her college is located. At one juncture, the dissent speaks of students who "may decide to remain in the place[] where they attend school indefinitely and may plan to try to seek employment" there. ___ So. 3d at ___. Until such time as a student actually does decide to remain indefinitely in the place where he or she attends school, he or she does not satisfy the requisite standard. Uncertainty as to whether one will remain in a given place is not the same as actually having formed a present intent to remain in that place indefinitely.

> on a permanent basis after graduation. Fortunately, however, we need not ascertain Nick's subjective intent in order to determine his residence. Once a residence is established, it is presumed to continue, and a person only establishes a new residence if that person physically moves to a new home and lives there intending to make it his permanent home. Webb, 176 Ill. App.3d at 386, 125 Ill. Dec. 857, 531 N.E.2d at 41. Unless such a change of residence has been established, a person does not lose his original residence. Webb, 176 Ill. App.3d at 386, 125 Ill. Dec. 857, 531 N.E.2d at 41. Prior to attending college, Nick unquestionably resided with his mother, Brenda, in Glen Carbon. Thus, he was a Madison County resident at that time. For the reasons discussed, we do not think the record contains any evidence to demonstrate that Nick had acquired a new residence. He was thus a Madison County resident at the time of his death."

Schwalbach v. Millikin Kappa Sigma Corp., 363 Ill. App. 3d 926, 932-33, 300 Ill. Dec. 788, 794, 845 N.E.2d 677, 683 (2005).

In Ptak v. Jameson, 215 Ark. 292, 298-99, 220 S.W.2d 592, 595 (1949), the Arkansas Supreme Court explained:

> "The court announced the rule to be applied in passing upon the eligibility of the student that 'A student who comes to Fayetteville for the sole purpose of securing an education does so without making a change of residence. It is necessary to have a bona fide intention to make Fayetteville his home permanently or for an indefinite period and not to limit it to the time necessary to get an education.' This appears to conform with the weight of authority as shown in the annotation to the case of Anderson v. Pifer, 37 A.L.R. 134."

This Court's decision several years ago in Ex parte Coley, 942 So. 2d 349 (Ala. 2006), follows the foregoing principles and, in addition, makes clear that evidence of a variety of factors, at least where available, must be considered and that the voter's own self-serving statement is not dispositive of the domicile issue. The issue in Coley was where a college student was domiciled when a wrongful-death action was filed against her. The action was filed in Jefferson Circuit Court in January 2005 against Tyne Coley by the personal representatives of the deceased's estate. Jefferson County was the county in which Coley's parents lived and where she lived until she started attending Judson College in Perry County in September 2002. Coley filed a motion to transfer the case to Perry County, arguing that her domicile had changed to Perry County by the time the action was filed. The trial court denied Coley's motion, and she petitioned this Court for a writ of mandamus. This Court explained:

> "[T]he question is whether Coley had, when this action was filed in January 2005, effectively changed her domicile to Perry County. In answering the question, the trial court was to consider whether Coley physically resided in Perry County and whether she had the intention to remain there permanently so that she had abandoned Jefferson County as her domicile."

942 So. 2d at 352 (emphasis added). After quoting the requirements for a change of domicile from Weissinger, supra, quoted above, the Coley Court noted that "Coley has the burden of establishing that she had abandoned Jefferson County as her county of residence and reestablished permanent residence in Perry County; the presumption is against a finding that she had." 942 So. 2d at 353 (emphasis added; citing Weissinger).

In evaluating whether Coley had changed her domicile from Jefferson County to Perry County at the time the action was filed, this Court listed several facts as evidence of Coley's domicile. First, it noted facts that Coley listed in support of her argument that she had changed her domicile to Perry County by the time the action was filed:

> "Coley offered the following facts to the trial court, and argues them to this Court, in order to show that she had the requisite intention to change her county of permanent residence to Perry County. Coley graduated from Pinson High School in Jefferson County in 2002. In September 2002, she began attending Judson College in Perry County. Judson College requires its students to live in on-campus housing. Thus, from September 2002 through June 2005 (which encompasses the date of the accident) Coley lived on the campus of Judson College in Perry County. Coley also contends that she did not return to Jefferson County to visit her parents on weekends, but stayed with her parents at their second home, a farm in Perry County. Coley also contends that she did not return to Jefferson County

> during the summer months of her college years; instead, she either attended summer school at Judson College or worked at a camp in St. Clair County. Coley says that during those summers she spent only a night or two with her parents in Jefferson County. Coley also contends that she spent Thanksgiving and Christmas holidays at her parents' farm in Perry County. Coley stated in her affidavit filed in February 2005 that she does not consider her parents' home in Jefferson County to be her home; that she no longer has a bedroom there; and that she considers her permanent residence to be her parents' farm in Perry County.
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> "Coley further contends that she 'is registered to vote in Perry County.' Coley includes her voter-registration card, which indicates that she was registered to vote in Perry County as of June 27, 2005, the date of her deposition, and also indicates 'last change: 05/05/2005.' Coley does not state that she was registered to vote in Perry County as of January 2005, when this action was filed."

942 So. 2d at 353-54 (footnotes omitted; emphasis added). Next, the Court noted facts the plaintiffs listed in support of their argument that Jefferson County remained Coley's domicile at the time the action was filed:

> "In support of their argument that in January 2005 Coley had not exhibited the intention to reside permanently in Perry County, the Pottses argue: (1) that Coley was registered to vote in Jefferson County when this action was filed;[7] (2) that

[7]In Harris v. McKenzie, 703 So. 2d 309, 311 (Ala. 1997), this Court found "[r]egistration to vote [to be] a 'potent consideration' for a court to take into account when determining one's domicile." (Quoting Ambrose v. Vandeford,

> Coley's bank accounts list her home address as being in Jefferson County; (3) that Coley represented to lenders that she was a resident of Jefferson County; (4) that Coley represented to the Internal Revenue Service and the Alabama Department of Revenue on her tax returns filed in April 2005 that she was a resident of Jefferson County; (5) that Coley represented to health-care providers that she was a resident of Jefferson County; (6) that Coley represented to the driver's license division of the State of Alabama that she resided in Jefferson County when she renewed her driver's license in October 2004; and (7) that Coley is a member of a church in Jefferson County."

942 So. 2d at 354 (footnote omitted).

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277 Ala. 66, 70, 167 So. 2d 149, 153 (1964).) And this may be assumed true for cases in which the question of the right to vote itself is not the issue. In this regard, it is important to note that Ambrose, the case quoted in Harris, involved a challenge to the venue of a probate action and that Harris itself did not involve a challenge to an elector's right to register to vote. Instead, the question in Harris was whether a candidate for the city council of Alabaster who had registered to vote in that city 27 years before the election in question (and who had physically resided in that city for all but 8 of those 27 years) was a resident of the ward for which he was a candidate in 1996.

In contrast, where the propriety of a resident's registering to vote is itself the issue, it obviously makes little sense to consider as particularly "potent" that very act of registration. Were we to embrace such bootstrap or circular reasoning in cases where the right to vote in a given election is the issue, especially where the registration is in anticipation of that particular election, we would greatly weaken, and as a practical matter eliminate in most cases, our law's domiciliary requirement and the presumption set by law for college students and other electors that a domicile for purposes of voting once established continues.

Despite the evidence to the contrary, particularly Coley's own testimony, this Court concluded that Coley had not changed her domicile at the time the action was filed, reasoning as follows:

> "The evidence regarding Coley's intention to abandon Jefferson County as her permanent residence and establish permanent residency in Perry County is conflicting. '[W]here facts are conflicting, the presumption is strongly in favor of an original, or former, domicile, as against an acquired one.' Weissinger, 247 Ala. at 117, 22 So. 2d at 514. Because of the presumption against a change of domicile, the conflicting evidence as to domicile, and the fact that the burden rests on Coley to prove the change of domicile, we cannot conclude that the trial court erred in concluding that in January 2005 Coley had not abandoned Jefferson County as her county of permanent residence and established permanent residency in Perry County."

942 So. 2d at 354.

Horwitz argues that information from the submitted affidavits demonstrates that two groups of voters did not meet the 30-day domicile requirement to vote in the August 27, 2013, election.[8]

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[8]In his brief, Kirby argues that, with regard to some of the voters Horwitz challenges on appeal, Horwitz raises arguments she did not present in the trial court; that she challenges voters who had submitted affidavits before the October 31, 2013, hearing, but whom she did not challenge until the November 6, 2013, hearing; that she challenges some voters on different grounds than those provided in her notice of election contest; or that she challenges voters on appeal

First, Horwitz contends that "[t]here are 55 voters who registered to vote in Tuscaloosa County ... at an address in District 4 where they had not resided for 30 days next preceding the election, but who had lived someplace in District 4 the previous spring" before leaving the city for the summer.[9] Concerning those 55 voters, Horwitz noted that in their affidavits all but 2 of them listed an address outside Tuscaloosa on their driver's licenses and listed their

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even though she had previously abandoned her challenge to those voters in the trial court.

Horwitz challenges on appeal the same voters she challenged in the trial court. Further, in its final order, the trial court noted that Kirby had raised some of these same arguments but stated that it had considered all the evidence offered by Kirby; that it had reviewed all the affidavits submitted; and that it had reviewed evidence on all affidavits, regardless of "whether produced at the October 31st hearing, the November 6th hearing, or thereafter." Thus, Kirby's argument in this regard is unavailing.

[9]In his brief, Kirby argues that Horwitz did not challenge 1 of those 55 voters, W.O.K., in the November 6, 2013, hearing and that, thus, he cannot be challenged on appeal. The record indicates, however, that W.O.K. was named in Horwitz's original list of challenged voters submitted in October 2013, that W.O.K.'s affidavit was submitted as a challenged voter, and that W.O.K. was named as a challenged voter in Horwitz's post-hearing brief. Therefore, W.O.K. is not being challenged for the first time on appeal.

vehicles as registered in a different county.[10] Many of these voters had renewed their driver's licenses in their hometowns during the summer of 2013. Sixteen of those 55 voters filed income taxes in 2013, and all of those voters listed their hometown addresses as their residences on those returns. Also, of those 55 voters, 35 of them were registered to vote in a location other than Tuscaloosa in May 2013 (the other 20 apparently not having registered to vote anywhere as of May 2013). In addition, 25 of the 35 voters who had been registered elsewhere in May actually voted in a location outside Tuscaloosa in the last election in which they voted before the August 27, 2013, election.

All 55 voters listed an address outside Tuscaloosa as the address to which they have the University of Alabama send their grades. Thirty of those 55 voters stated that they did their banking with a bank outside Tuscaloosa. Of these 55, all but 42 answered undecided or "indefinite" (or to like effect) when asked about their career plans after graduation. Although many indicated uncertainty or wrote the word

[10]One of the two other voters did not have a driver's license and the other one changed the address on his driver's license during the election contest.

"indefinitely" when asked how long they would remain in Tuscaloosa, 53 of the 55 stated that, "after graduation, I do not have definite plans where I intend to live."

Horwitz described the second category of voters who did not meet the 30-day residency requirement to vote in the August 27, 2013, election as follows:

> "There are 53 voters who registered to vote in August 2013 who moved into District 4 more than 30 days prior to the election (according to their affidavits), but whose affidavits provide strong evidence that they had no intention to 'abandon completely' their former domicile any earlier than the day they at least registered to vote in Tuscaloosa."

(Footnote and emphasis omitted.) Concerning these 53 voters, Horwitz observes that in their affidavits 52 of them listed their former domicile outside Tuscaloosa as the address on their driver's licenses while 1 did not provide a driver's license address but had an out-of-state license. Forty-nine of those voters had cars registered outside Tuscaloosa County. Several of those 53 voters renewed their driver's licenses shortly before the August election, and at least 6 of them renewed their driver's license after the date they provided as their July move-in date into their District 4 address. Twenty-one of those 53 voters still had out-of-state driver's

licenses as of October 2013. Horwitz also notes that 36 of the 53 voters were registered to vote in a city other than Tuscaloosa before they registered for the August 27, 2013, election. Moreover, 25 of those 36 voters actually voted in those other cities in an election before the August 27, 2013, election. Additionally, 19 of those 53 voters filed income taxes in 2013, and all of those voters listed their pre-college addresses outside Tuscaloosa as their residences on those returns.

All 53 voters listed an address outside District 4 as the address to which they have the University of Alabama send their grades. Twelve of those 53 voters stated that they did their banking with a bank outside Tuscaloosa. Thirty-four provided either no answer or answered "undecided" (or similar answer) when asked if they knew their career plans after completing school in Tuscaloosa. Similar to the group of 55 discussed above, although many of the 53 indicated they were uncertain how long they would stay in Tuscaloosa, 50 of the 53 indicated that they did not have definite plans to live in Tuscaloosa "after graduation." The remaining three, F.R.B.,

C.S., and A.C.M., indicated that they did have definite plans to stay in Tuscaloosa.[11]

As noted above, our review of this case is de novo. Based on our review of the affidavits and applying the legal presumptions and principles described above, especially the presumption our law recognizes as to students who attend a college somewhere other than their hometowns, we conclude that all but 3 of the 108 ballots described above were due to be rejected in the District 4 election. As noted, our cases emphasize the principle that a person can have only one domicile and that, once a domicile is acquired, it is presumed to be a person's domicile until a new domicile is gained in fact and intent. See Weissinger, 247 Ala. at 117, 22 So. 2d at 513. When a court seeks to determine if a person has established a new domicile, it must evaluate whether the person "had the intention to remain there permanently so that [the person] had abandoned [the previous] domicile." Coley, 942 So. 2d at 352. As the Court stated more fully in Pope:

> "'A domicile once acquired is presumed to continue until a change, facto et animo, is shown. Bragg v. State, 69 Ala. 204 [(1881)]. If there was a change,

[11]We consider the ballots of these three voters to have been properly counted in the election.

> there must have been both an abandonment of his former domicile with no present intention to return, and the establishment of another place of residence with intention to remain permanently, or, at least, for an unlimited time; the former may be inferred from the latter.'"

227 Ala. at 156, 149 So. at 223 (quoting Holmes v. Holmes, 212 Ala. 597, 599, 103 So. 884, 886 (1925) (emphasis added)). Further still, our cases make it clear that when there is conflicting evidence as to whether a person has changed his or her domicile, "'the presumption is strongly in favor of an original, or former, domicile, as against an acquired one.'" Coley, 942 So. 2d at 354 (quoting Weissinger, 247 Ala. at 117, 22 So. 2d at 514).

As indicated in Coley, as well as in the other authorities previously discussed, these general principles find particular application in the case of students who remove themselves from their "hometowns" for the purpose of attending college in another locale. To reiterate:

> "[I]t is a settled principle of law, recognized expressly or by implication in virtually every case discussed herein ... that an individual's mere presence in a particular community as a student results neither in his acquisition of a voting residence there nor in the loss of his existing voting residence elsewhere, such presence being regarded as temporary in the absence of independent

> facts and circumstances indicating a contrary intent."

Danne, 44 A.L.R.3d at 818 (emphasis added). And again, this is no less true "even if [the student] is uncertain as to his future plans and, therefore, [might] settle in the school community following the completion of his studies." Id.

All but 3 of the 108 students whose votes are at issue stated that they had not formed a definite intent to live in any particular place following graduation. As noted, however, more than the absence of a definite intent to return to one's former domicile is necessary for the law to recognize one's abandonment of that domicile and the adoption of a new one.

The trial court appears to have reached a contrary conclusion by drawing from the decision in District of Columbia v. Murphy, 314 U.S. 441 (1941), in which the United States Supreme Court stated that "persons are domiciled [in the District of Columbia] who live here and have no fixed and definite intent to return and make their homes where they were formerly domiciled." 314 U.S. at 454-55. In Murphy, however, the Court was specifically addressing the issue of domicile for federal employees who come to work in the District of Columbia. In evaluating the issue, the Court specifically

noted that "[t]he District of Columbia is an exceptional community" where "[t]hose in Government service ... are not engaged in local enterprise, although their service may be localized" and, "[b]ecause of its character as a federal city, there is no local political constituency with whose activities those living in it may identify themselves as a symbol of their acceptance of a local domicile." 314 U.S. at 452. The Court further stated that "it is apparent that the present cases are not governed by the tests usually employed in [domicile] cases where the element of federal service in the Federal City is not present." 314 U.S. at 454.

Despite the fact that the Murphy Court made it clear that it was applying a different test for domicile because of the unique situation of federal employees working in the District of Columbia, that Court still observed that "[a]ll facts which go to show the relations retained to one's former place of abode are relevant in determining domicile." Murphy, 314 U.S. at 457. It listed among those facts the place where the person has voted, the type of job the person holds, i.e., whether the job is "continuous or emergency, special or war-time in character; whether requiring fixed residence in

the District or only intermittent stays," and "[w]hat relations has he to churches, clubs, lodges, and investments that identify him with the District." Id. Perhaps most notably for present purposes, the Murphy Court emphasized that "[o]ne's testimony with regard to his intention is of course to be given full and fair consideration, but is subject to the infirmity of any self-serving declaration, and may frequently lack persuasiveness or even be contradicted or negatived by other declarations and inconsistent acts." 314 U.S. at 456.

Therefore, just as in Coley, "[b]ecause of the presumption against a change of domicile [and] the conflicting evidence as to domicile," we cannot conclude that 105 of the 108 voters Horwitz challenged for failure to meet the residency requirement had established Tuscaloosa as their new domicile before they voted in the August 27, 2013, election.

Before turning to another set of voters at issue in the election contest, it is important to address two other ideas cited by the trial court as bases for its judgment. First, the trial court based its judgment in part on its holding that "Alabama [has] codified a presumption that student voters are domiciled in the district where they are residing and

attending college" by enacting § 17-3-11, [Ala. Code 1975,] which provides for boards of registrars annually to go to certain college campuses to register qualified voters.[12] The issue of domiciliary status is not mentioned in the statute, however. Neither the text nor the history of § 17-3-11, Ala. Code 1975, indicate that it creates any such presumption.

The Coley Court gave no indication that a presumption exists that a college student is domiciled where he or she is attending college. To the contrary, the Court specifically stated that "Coley has the burden of establishing that she had abandoned Jefferson County as her county of residence and

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[12]Section § 17-3-11(a) states:

> "The board of registrars in each county shall visit each college or university, whether public or private, having an enrollment of 500 or more, which is located therein, at least once during the school year for the purpose of registering voters, and shall remain there for one full working day, weekends and holidays excepted. They shall give at least 12 days' notice of the time and place where they will attend to register applicants for registration, by bills posted at three or more public places and by advertisement once a week for three consecutive weeks in a campus newspaper, if there is one published on the campus. Each college or university affected by the provisions of this section shall provide space and accommodations for said board of registrars on their campus."

reestablished permanent residence in Perry County [where she attended college]; the presumption is against a finding that she had." Coley, 942 So. 2d at 353 (emphasis added). Further still, as Horwitz correctly notes, § 17-11-3, Ala. Code 1975, contains a specific provision making clear that a student may vote absentee if he or she "is enrolled as a student at an educational institution located outside the county of his or her personal residence attendance at which prevents his or her attendance at the polls." § 17-11-3(a)(4), Ala. Code 1975. If anything, § 17-11-3(a)(4) says as much or more about where the legislature anticipated college students would vote as does § 17-3-11.

Finally, the trial court cited § 17-3-32, Ala. Code 1975, in support of its conclusion that the students' presence in Tuscaloosa to attend college established a presumption that they were domiciled there. Section 17-3-32 provides:

> "No person shall lose or acquire a domicile either by temporary absence from his or her domicile without the intention of remaining or by navigating any of the waters of this state, the United States, or the high seas, without having acquired any other lawful domicile, or by being absent from his or her domicile in the civil or military service of the state or the United States."

Beyond ensuring the right to vote to members of our armed forces stationed in Alabama, § 17-3-32 does nothing more than codify the presumption in favor a domicile once established. The trial court employed § 17-3-32 to conclude that students who left Tuscaloosa for the summer of 2013 did not cease to reside in Tuscaloosa because of that temporary absence. But employing the statute in this way skips over the simple fact that the students in question had acquired a domicile before ever arriving in Tuscaloosa to attend college. Especially because we are dealing here with college students, the statute must first be applied to the individual's absence from the hometown he or she left for the purpose of attending college.

Again, based on the applicable presumption as to the continuance of domicile, especially as it relates to students who attend college in a city other than their "hometown," and on our careful review of the evidence introduced as to the 108 students in question, we find that 105 of those students did not overcome that presumption. The ballots of those students therefore must be rejected.

II. Other Potentially Illegal Votes Based on Residency-Related Issues

In addition to the 108 votes discussed above, Horwitz contends that the affidavits establish the illegality of another 62 votes.[13] Based on the presumptions and legal principles discussed above, we find the actual number of ballots within this group of 62 that are in fact illegal to be 54.[14]

A.

Horwitz argued that there were three newly registered voters who did not live in District 4 on the day of the election: A.B.J., S.H.M., and Z.G.S. Horwitz submitted an affidavit from Paula Marques, in which Marques stated:

> "On November 5-6, 2013, I viewed the Interactive District Map on the website of the City of Tuscaloosa, the specific address of which is tuscaloosa.maps.arcgis.com. In the inquiry box I entered the below addresses. A true and accurate screenshot of these inquiries is attached as Exhibit A."

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[13]The trial court found there to be "no more than 70" potentially illegal ballots, although this number included the ballots of 25 voters from whom no affidavit was received.

[14]These voters are discussed below in the same lettered categories used by Horwitz in Exhibit A to her postjudgment motion.

The screenshot of the district map thus introduced by Horwitz appears to support her allegations regarding S.M.H. and Z.G.S. The same cannot be said of A.B.J., whose address actually appears to be in District 4. Accordingly, only two of those three votes appear to be illegal.

B.

Horwitz argued that 23 voters were not eligible to vote in the District 4 election because they did not live in District 4 during the 30 days preceding the election and because their previous residence in Tuscaloosa was not in District 4. Based on the affidavit evidence and an examination of the maps introduced into evidence by Horwitz, we agree that the addresses for 22 of these voters were located outside District 4. The evidence did not, however, support her allegations as to one of those voters.[15]

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[15]With regard to G.M.A., Horwitz stated:

> "This voter moved into District 4 after July 28. She spent the summer in New York, and prior to that, she lived at 800 31st Avenue, which is outside District 4."

In her affidavit, G.M.A. indicated that, from August 2012 through May 2013, she lived at 800 31st Avenue in Tuscaloosa. However, Marques's affidavit did not indicate the district for 800 31st Avenue. Rather, Marques's affidavit indicated that

C.

Horwitz also argues that there were six voters who cast provisional ballots that were counted but that should be excluded as illegal. Horwitz presented evidence indicating that the address of one of these voters, A.F., as written on her provisional ballot, was not in District 4. Additionally, with regard to four voters -- S.J., S.N., R.S., and A.L.T. -- Horwitz introduced evidence indicating that the Tuscaloosa addresses at which they resided before August 2013 were located outside District 4. Finally, as to the sixth of these voters, C.P., Horwitz correctly points out that, in her affidavit, C.P. stated that, on July 28, 2013, her address was in Robinson, Texas, and that C.P. did not provide any other Tuscaloosa address prior to that. Accordingly, all 6 of those votes are due to be rejected as illegal.

D.

Horwitz identifies another group of 17 voters who had registered to vote in Tuscaloosa in anticipation of the 2012

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800 31st Street was in District 7. Further, the screenshot of the district map also shows the district for 800 31st Street not 800 31st Avenue. Thus, Horwitz did not present any evidence to establish that 800 31st Avenue was not in District 4.

presidential election but who had moved out of District 4 before the August 27, 2013, election. We agree that 16 of those voters failed to meet the residency requirement, and their votes must be rejected as illegal. As to the 17th voter, V.L.H., Horwitz asserted: "This voter's affidavit states that she live[d] at 205 20th Street East on the day of the election." Horwitz presented evidence indicating that 205 20th Street East is not in District 4. But in her affidavit V.L.H. actually stated that on the day of the election she lived at 405 20th Street East. Horwitz did not present any evidence to specifically show that 405 20th Street East is not in District 4.

E.

Horwitz also argued that the registrations of 12 voters were void because they provided incorrect addresses on their voter-registration forms. Two of those voters -- Z.S.B. and A.H. -- did not return affidavits. Therefore, those voters would have been included in the 25 votes the trial court separately assumed could be proven to be illegal votes. With regard to the remaining 10 of these voters, we note as follows.

1.

Two of the 10 voters in this category -- M.B.B. and C.A.L. -- indicated in their affidavits that they did not live at the addresses listed on their registration forms. Therefore, their votes were illegal and should not be counted.

2.

Horwitz also contends that, with regard to seven of those voters, the addresses they listed on their voter registrations did not correspond to any of the locations they stated under oath in their affidavits to be the places they had lived. Her argument regarding two of those voters -- K.A.J. and V.L.M. -- is incorrect. The respective addresses listed for their voter registrations were the same as the addresses they provided as their current address and their address as of August 27, 2013. Therefore, it appears that Horwitz proved illegality only as to five of those seven voters.

3.

Horwitz also argues that the registration of J.H.A. was void. Specifically, she contends:

> "At no point in time did this voter live where he registered to vote. The address he provided when he registered to vote is 902 University Blvd. That address appears no place on his affidavit as a place

> he has ever lived. Further, that address is Graves Hall, College of Education, which is not a residence. Thus, his voter registration is void and his vote does not count. As noted below, his newly registered fraternity brother, A.H., provided the same fictitious residence when he registered to vote. Both young men are members of Phi Gamma Delta."

Contrary to Horwitz's assertion, however, the residential address listed for J.H.A. on Kirby's charts is not 902 University Boulevard. Rather, it is 976 University Boulevard, which is the same address J.H.A. listed on his affidavit. Further, Horwitz has not presented any other evidence to indicate that the address listed on J.H.A.'s voter registration was 902 University Boulevard. Additionally, Horwitz did not present any evidence indicating that 976 University Boulevard is not a residence. Therefore, she has not presented any evidence to establish that J.H.A.'s registration was void and that his vote was illegal.

4.

In sum, of the 12 voters discussed in this subsection E, only 7 cast illegal votes.

F.

Finally, Horwitz identifies one voter, K.B.J., who "moved her registration to Montgomery prior to the August 27th

election, but still voted in Tuscaloosa on that date." This ballot is due to be rejected.

G.

Based on the foregoing, it appears that there were 54, rather than 62, additional votes that were illegal. Additionally, we determined in Part I of our analysis that, under applicable presumptions and legal principles, 105 students had not established a change of domicile to Tuscaloosa at least 30 days prior to the August 27, 2013, election. In sum, Phase I of the contest yielded a total of 159 illegal votes based on domicile and other eligibility issues discussed in Parts I and II of this opinion. This number, of course, is in excess of the 87 illegal votes Horwitz was required to show before she could proceed to Phase II of the election contest.[16]

III. Votes Horwitz Contends were Illegal Based on Misconduct

Horwitz also argues that the trial court erroneously denied her claim that certain votes were due to be excluded on

[16]As previously noted, 25 additional voters did not return an affidavit. Under the protocol established by the trial court, those voters may be subpoenaed to testify in Phase II, i.e., in the "final hearing."

the ground of voter misconduct. Specifically, she contends that the trial court erred when it concluded "that an inducement offered to a person to vote must be expressly conditioned on voting for a specific candidate to constitute misconduct under Alabama's elections laws."

Section 11-46-69, Ala. Code 1975, provides that one of the causes for which an election may be contested is when there are "[o]ffers to bribe, bribery, intimidation, or other misconduct calculated to prevent a fair, free, and full exercise of the elective franchise." § 11-46-69(a)(5). Although the trial court found that "the law is not clear as to whether an offer to bribe must be contingent on voting for a particular candidate, the offer must be communicated to a voter, or whether the offer must be communicated to and accepted by a voter in order to invalidate that voter's vote," it ultimately concluded that "there must be an offer of inducement to vote for a specific candidate that is at least communicated to a voter before a vote can be invalidated."

Horwitz counters that Code sections that define specific offenses for interfering with an election indicate that a specific inducement for a particular candidate is not

necessary in order to determine that a vote is illegal as a result of bribery. For example, Horwitz cites certain subsections of § 11-46-68, Ala. Code 1975, which she says criminalize any attempt in a municipal election to influence a vote through bribery, regardless of whether the attempt involves an inducement to vote for a particular candidate:

> "(e) Any person who buys or offers to buy any vote of any qualified elector at any municipal election by the payment of money or the promise to pay the same at any future time or by the gift of intoxicating liquors or other valuable thing shall be guilty of a misdemeanor and, on conviction thereof, shall be fined not less than $50.00 nor more than $100.00.
>
> "(f) Any person who by bribery or offering to bribe or by any other corrupt means attempts to influence any elector in giving his vote in a municipal election or to deter him from giving the same or to disturb or to hinder him in the full exercise of the right of suffrage at any municipal election must, on conviction, be fined not less than $50.00 nor more than $500.00.
>
> "(g) Any person who, by the offer of money or the gift of money or by the gift of intoxicating liquor or other valuable thing to any qualified elector at any municipal election or by the loan of money to such elector with the intent that the same shall not be repaid, attempts to influence the vote of such elector at such election, shall be guilty of a misdemeanor and, on conviction, shall be fined not less than $50.00 nor more than $500.00."

Horwitz also cites § 17-17-34, Ala. Code 1975, which provides:

> "It shall be unlawful for any person to pay or offer to pay, or for any person to accept such payment, either to vote or withhold his or her vote, or to vote for or against any candidate. Any person who violates this section shall be guilty, upon conviction, of a Class C misdemeanor."

Even assuming for present purposes that Horwitz is correct and that the law does not require that an otherwise improper inducement to vote in a municipal election be tied to a vote for a particular candidate in order to be illegal, she still did not provide any admissible evidence indicating that any such bribery occurred. As the trial court correctly observed:

> "At the October 15th hearing on the sufficiency of Contestant's Notice, Contestant submitted Facebook [social-media] messages, emails, and tweets [social-media messages] as evidence of inducement. However, these submissions are inadmissible hearsay. Courts are not permitted to base findings on allegations but rather only on admissible evidence."

Additionally, Horwitz did not present evidence indicating that the challenged voters actually saw any of the e-mails or social-media messages or that any of the challenged voters received the wristbands that were allegedly being handed out in exchange for an "I Voted" sticker.[17] Although Horwitz did

[17]The wristbands allegedly would have entitled the voters to a free drink at certain participating establishments that served liquor.

present some evidence indicating that members of a certain sorority had tickets to and/or attended a Backstreet Boys concert, she did not present any evidence to support her allegation that members of that sorority were told that if they registered to vote but did not vote they would not receive a ticket to the concert.

Horwitz does not dispute that she failed to present admissible evidence of voter misconduct in the form of bribery. She argues, however, that she was precluded from presenting admissible evidence because, she says, the trial court did not allow her to depose any of the voters who were allegedly tied to the bribery schemes.

Horwitz's argument is unavailing because of the format of the bifurcated trial. As previously noted, the determination of the illegality of votes resulting from both residency and inducement issues was, for those voters who returned affidavits, to be made based on those affidavits and any other evidence introduced at the October 31 and November 6 hearings. See discussion supra.[18]

[18]Because Horwitz agreed to the format of Phase I in which contested votes would be screened through the affidavit process, we likewise find no substance to her more general

The affidavit form distributed to the voters contained questions as to whether the voter had been asked by another to vote or had been pressured to vote, and whether the voter had cast his or her ballot voluntarily. This line of questions stopped short of inquiring into whether the voter had been induced to vote by an offer of something of value. Nor were there any questions as to whether those voters were even aware of the e-mails or social-media messages upon which Horwitz relied to attempt to establish voter misconduct. Horwitz did not call any witnesses to establish a connection between the votes she challenged for misconduct and the schemes she alleged induced those votes. Instead, Horwitz relied entirely on the affidavits and evidence she concedes was inadmissible hearsay. Therefore, the trial court did not err in concluding that Horwitz failed to prove the illegality of votes based on misconduct in the form of bribery.

Conclusion

Based on the applicable law and facts, we conclude that Phase I of the election contest yielded a total of 159 ballots

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argument that the trial court erred when it limited her to presenting testimony by means of affidavits of the challenged voters rather than by live testimony.

due to be rejected. Accordingly, the judgment of the trial court is reversed and the cause is remanded to the trial court for the conduct by the trial court of Phase II of the contest in accordance with this opinion.

REVERSED AND REMANDED.

Bolin, Parker, Murdock, and Main, JJ., concur.

Moore, C.J., and Shaw and Bryan, JJ., concur in the result.

Stuart and Wise, JJ., dissent.

WISE, Justice (dissenting).

I respectfully dissent from the holding in the main opinion regarding the domicile of students for purposes of registering to vote in the places where those students attend school. I believe the reasoning in the main opinion would place an unnecessary burden on students who wish to vote and could potentially have a chilling effect on future voter participation.

In Ex parte Phillips, 275 Ala. 80, 152 So. 2d 144 (1963), this Court stated:

> "Since every person must have a domicile, the law assigns to persons incapable of acquiring a domicile through choice, a domicile by operation of law. This first domicile so assigned is the domicile of origin. Beale, Conflict of Laws, Vol. 1, page 210. The place of the birth of a person is considered as his domicile of origin, if at the time of his birth it is the domicile of his parents. Daniel v. Hill, 52 Ala. 430 [(1875)]. A domicile of origin, as in the case of domicile of choice, when once established is continuing until another domicile is acquired. Daniel v. Hill, supra; Merrill's Heirs v. Morrissett, 76 Ala. 433 [(1884)]; Ex parte Bullen, 236 Ala. 56, 181 So. 498 [(1938)]; Ex parte State ex rel. Altman, 237 Ala. 642, 188 So. 685 [(1939)].
>
> "....
>
> "In order to acquire a domicile of choice there must be both an abandonment of the former domicile with no present intention of return, and the establishment of another place of residence with the

> intention to remain permanently, or at least for an unlimited time; and the intent to remain permanently may be inferred from the intent to remain for an unlimited time. Holmes v. Holmes, 212 Ala. 597, 103 So. 884 ([1925)]; Merrill's Heirs v. Morrissett, supra; Allgood v. Williams, 92 Ala. 551, 8 So. 722 [(1891)].
>
> "It is also well settled by our decisions that a domicile once acquired continues until a new domicile is effectuated. Holmes v. Holmes, supra; Pope v. Howle, 227 Ala. 154, 149 So. 222 ([1933)]; Glover v. Glover, 18 Ala. 367 [(1850)]; Mitchell v. Kinney, 242 Ala. 196, 5 So. 2d 788 [(1942)]."

275 Ala. at 82-83, 152 So. 2d at 146-47 (emphasis added). Also, in Wilkerson v. Lee, 236 Ala. 104, 106-07, 181 So. 296, 298 (1938), this Court stated:

> "A voter having acquired a legal residence, been duly registered as a voter of the county and precinct or ward, ... may retain such residence until he has abandoned and removed therefrom with the intent to become a resident elsewhere. Temporary absence from one's residence for the purposes of his employment and the like, without the intent to abandon the home town and acquire a domicile elsewhere permanently, or for an indefinite time, does not forfeit his right to vote. Pope v. Howle, 227 Ala. 154, 149 So. 222 [(1933)]; Caheen v. Caheen, 233 Ala. 494, 172 So. 618 [(1937)]; 8 Alabama Digest, Elections, 264."

(Emphasis added.) Thus, when determining whether a student attending school away from his or her hometown has acquired a new domicile for voting purposes, this Court must look at whether the person (a) had an intent to abandon his or her

hometown and (b) intended to acquire a domicile elsewhere permanently or for an indefinite time. However, the main opinion goes further and imposes a requirement applicable only to students -- that the students have definite plans to reside in the city in which they are attending school after they graduate. This appears to go further than our previous caselaw regarding the establishment of a new domicile.

In this case, most of those students whose votes are challenged and who are addressed in Part I of the main opinion indicated that they intended to remain in Tuscaloosa indefinitely; all but a handful of those students indicated that they did not have definite plans after graduation. Additionally, nothing in the affidavits submitted by those students indicated that they had any intent to return to their parents' home after they graduated. Rather, most indicated that they had no clear intent to return to their parents' home after graduation. Thus, this was not a situation where the evidence supported a finding that the students were temporarily absent from their parents' home with an intent to return after they completed their schooling. This fact, coupled with the students' stated intention of remaining in

Tuscaloosa indefinitely and with the fact that these students took the affirmative action of registering to vote in Tuscaloosa, seems to satisfy the requirements of Wilkerson for establishing a change in domicile for voting purposes.

Note 7 of the main opinion reads:

> "In Harris v. McKenzie, 703 So. 2d 309, 311 (Ala. 1997), this Court found '[r]egistration to vote [to be] a "potent consideration" for a court to take into account when determining one's domicile.' (Quoting Ambrose v. Vandeford, 277 Ala. 66, 70, 167 So. 2d 149, 153 (1964).)"

___ So. 3d at ___ n. 7. After noting that Harris relied on Ambrose v. Vandeford, 277 Ala. 66, 70, 167 So. 2d 149, 153 (1964), which involved a challenge to venue, the main opinion goes on to state:

> "In contrast, where the propriety of a resident's registering to vote is itself the issue, it obviously makes little sense to consider as particularly 'potent' that very act of registration."

___ So. 3d at ___ n. 7. However, when determining whether a student has decided to change his or her domicile for voting purposes, what can be more demonstrative of the student's intent than the act of registering to vote in the city and county of his or her new domicile? By registering to vote in the city and county in which the student is attending school,

the student is relinquishing the right to vote in his or her previous domicile, i.e., his or her hometown. The student is also expressing a desire to become involved in the political process of the city, county, and state in which the student is actually living and where the student spends the majority of his or her time, rather than in the community in which the student's parents live or in a political community with which the student may maintain little to no contact.[19] Moreover, these students play an important role in the financial, social, and religious fabric of the community where they attend school. College students certainly contribute to the financial base of the area; they frequent area retail shops, service stations, grocery stores, and restaurants, just to name a few of the places college students spend money. Many

[19]I note that two of the cases relied on in the main opinion -- Ex parte Weissinger, 247 Ala. 113, 22 So. 2d 510 (1945), and Ex parte Coley, 942 So. 2d 349 (Ala. 2006) -- also involved a determination of domicile for purposes of venue in civil litigation rather than a determination of domicile for voting purposes. Some of the general principles in those cases might be relevant to determining a person's domicile for voting purposes. However, I believe that a determination of domicile for purposes of deciding whether a person is even qualified to register to vote in a county raises considerations vastly different from a determination of whether a party in a civil action has established his or her domicile for purposes establishing proper venue for the action.

students rent apartments and obtain employment while attending school. Students attend churches and synagogues, become involved in charitable work, and volunteer in political campaigns within these communities. Because these students have such a significant impact on the community in which they live and attend school, they should rightly enjoy all the privileges other citizens in that community enjoy. To deny these student citizens the right to vote in the community of their chosen domicile, i.e., where they live and attend school, is, in my opinion, nonsensical.

The main opinion also focuses on various other factors in determining whether the students were domiciled in Tuscaloosa for purposes of registering to vote. Specifically, it looks at such factors as whether the students have previously registered to vote and/or voted elsewhere; the addresses listed on the students' driver's licenses and the dates those licenses were renewed; the county and state where the automobiles the students "own or drive" are registered; the addresses listed on the students' federal and state income tax returns; the addresses to which their school registration information is sent; the addresses to which their grades are

sent; and the location of the banks with which they have checking or savings accounts. I do not believe that this Court should focus on these factors, which, at times, shed very little light on the students' actual intent regarding their domicile. Although the factors evaluated in the main opinion might be relevant in determining whether the students in question intended to change their domicile at some time before they actually registered to vote, these factors should not be determinative of whether students even have a right to register to vote in the city in which they attend school. Rather, I believe that the main opinion's reliance on these factors ignores the reality of student life today.

College students leave home to attend school when they are young and have little life experience. Some students may initially plan to return home after they complete their education. However, as they adjust to life at school, become part of the community in which their school is located, and mature, those plans frequently change. Thus, plans change and the students change, and they no longer intend to return to their hometown after they leave school. Other students leave their parents' homes to attend school with no intention of

ever returning to their parents' homes after they complete school. These two groups of students may decide to remain in the places where they attend school indefinitely and may plan to try to seek employment or to attend graduate school there. These students might not have any definite postgraduation plans because they do not know where they will actually find employment after graduation; they do not know if they will attend graduate school or where they will be accepted if they do; and they do not know what opportunities will be available to them when they graduate. If a student does not intend to return to his or her parents' home and decides to remain indefinitely in the city in which the student attends school, why should that student be considered domiciled in his or her hometown and required to vote absentee merely because the student has not formulated definite plans after graduation?

Additionally, the main opinion looks at the fact that some of the students in this category had previously registered and/or voted elsewhere to indicate that those students did not intend to change their domicile. This category included some students who had registered to vote before they ever became students at the University of Alabama;

some students who registered to vote after they became students at the University of Alabama; and others who provided information that was not clear as to whether they had registered to vote before or after they became students at the University of Alabama. Of those who had previously registered to vote elsewhere, some never voted in those other locations; some voted in the other location before they became students at the University of Alabama, while others voted after they became students at the University of Alabama. Some of those students indicated that they had voted by absentee ballot. However, the fact that students had previously registered and/or voted elsewhere but then changed their voter registration to Tuscaloosa County is, in my opinion, equally suggestive that it was the intention of those students to change their domicile.

The main opinion also focuses on the addresses the students had listed on income-tax returns, had provided to the University of Alabama for registration purposes, and to which they had their grades sent. Although some students remain in the city in which they attend school year round, many students are temporarily absent during holidays, school breaks, and the

summer. Although some students return to their parents' home for the summer, others travel or visit with friends and other relatives. Other students temporarily live in other locations while they work or complete internships. Some students participate in study-abroad programs during the summer. Thus, for practical purposes, many students might use their parents' address for important matters such as tax returns, school registration, and semester grades. Also, with regard to grades and school-registration materials, many of the students whose votes are being challenged indicated that their grades and/or registration materials were sent not by conventional mail, but to e-mail addresses or were obtained online, and they did not provide any address to which that information had been mailed.[20] Further, some students have their grades and

[20]When discussing the 108 students in Part I, the main opinion indicates that all of those voters listed an address outside Tuscaloosa as the address to which the University sends their grades. It is true that many students indicated that their grades were sent to their parents' addresses. However, there were also many students who indicated that their grades were sent to an e-mail address or were obtained online and who did not provide any mailing address, much less an address outside Tuscaloosa, to which grades were sent. Other students did not provide any information regarding where their grades were sent. Additionally, one student indicated that her grades were sent only to her Tuscaloosa address. Two other students indicated that their grades were sent both to an address outside Tuscaloosa and to those students' addresses

registration information sent to their parents because their parents provide financial support.[21]

The main opinion also looks to the location of the banks at which the students had checking or savings accounts. Initially, I note that, in Ex parte Coley, 942 So. 2d 349 (Ala. 2006), when determining whether Coley had established that she had changed her domicile for venue purposes, this Court looked at the fact that Coley's bank accounts listed her home address as being in the county in which her parents resided. However, the affidavits in this case do not elicit any specific information regarding the addresses listed on the students' bank accounts. Rather, the affidavits included the following language:

> "I have a checking or saving account with _____ located in _____."

Moreover, many of the students indicated that the banks at which they did business were located in Tuscaloosa. Others indicated that their banks were located in other cities.

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in Tuscaloosa. Therefore, the assertion that all the voters listed an address outside Tuscaloosa to which their grades were to be sent is not accurate.

[21]In fact, one student stated in his affidavit that his grades were sent to his parents' address "cause my parents pay for my education."

However, relying on the location of the banks at which the students did business to determine their intent to maintain a domicile ignores three separate considerations. First, some students open bank accounts before they leave for school and do not change their established bank accounts once they are living in the city where they attend school. In fact, one student indicated on her affidavit that her father had opened the account in another town but that she used the local branch of that bank in Tuscaloosa. Second, heavy reliance on the location of the bank also ignores the reality of banking today. Even if a student's home bank might technically be located in the city or town where he or she lived before starting school, many banks have branches throughout the state and the country. Also, even if the bank did not have a branch in Tuscaloosa, with the advent of electronic banking, debit cards, and automatic-teller machines, people can access their funds, deposit checks, make transfers, open accounts, apply for loans, and handle other banking needs without ever going to a physical bank building. Thus, a student may not transfer an account to another bank located in the town where the student is attending school, even though he or she intends to

change his or her domicile. Finally, for some students who are receiving financial support from their parents, having an account in the town or city in which their parents live might make it more convenient for their parents to deposit money into their accounts.

The main opinion also looks at the state and county in which the automobiles the students owned or drove were registered. However, this factor should not weigh heavily in a determination as to a student's domicile. The affidavits asked about the automobile that the student "own[s] or drive[s]," but never asked about who actually owned the automobile. If the student does not actually own the automobile the student is driving, how can where that automobile is registered shed any light on whether the student is actually domiciled in Tuscaloosa or elsewhere? Thus, the affidavits do not provide this Court with enough information regarding the registration of the automobiles to use in determining whether the students were domiciled in Tuscaloosa for voting purposes.

Finally, the main opinion looks at the states where the students' driver's licenses were issued, the addresses listed

on those driver's licenses, and the dates the licenses were renewed. Many of those students who had licenses issued by other states or Alabama licenses that listed an address for somewhere other than Tuscaloosa had been renewed in 2012 or before. For those students, this information does not shed any light on their intent regarding domicile at the time they registered to vote. With regard to those students who renewed their licenses in 2013, that information could be relevant in determining whether those students intended to change their domicile before they actually registered to vote in Tuscaloosa. However, it should not be used in determining whether students who were living in Tuscaloosa and who subsequently took the affirmative action of registering to vote in Tuscaloosa were actually domiciled there for purposes registering to vote.

Moreover, I believe that the holding in the main opinion regarding the domicile of a student is contrary to legislative intent.

Section 17-11-3, Ala. Code 1975, provides, in pertinent part:

> "(a) Any qualified elector of this state may apply for and vote an absentee ballot by mail or by

> hand delivery, as provided in Sections 17-11-5 and 17-11-9,[Ala. Code 1975,] in any primary, general, special, or municipal election, if he or she makes application in writing therefor not less than five days prior to the election in which he or she desires to vote and meets one of the following requirements:
>
> "....
>
> "(4) The person is enrolled as a student at an educational institution located outside the county of his or her personal residence attendance at which prevents his or her attendance at the polls."

(Emphasis added.) This statute merely provides that a student may vote by absentee ballot in the county in which he or she resided before leaving to attend school. This would be appropriate for students who intend to return to their hometowns after school and who wish to maintain their domiciles at their previous residences while they are attending school. Additionally, this provision is consistent with § 17-3-32, Ala. Code 1975, which provides, in pertinent part, that "[n]o person shall lose or acquire a domicile ... by temporary absence from his or her domicile without the intention of remaining."

Also, nothing in these statutes suggests that a student who has left home to attend school must vote by absentee

ballot or that the student cannot register to vote in the county where he or she attends school. Further, the statutes do not suggest that students must maintain their previous domicile based on the fact that they do not have definite plans after they graduate. Rather, these statutes merely allow a student who wishes to maintain his or her domicile at his or her parents' residence to do so. These statutes do not create a presumption that a student's domicile automatically remains at the parents' residence. This seems specifically clear when reading these statutes in conjunction with § 17-3-11, Ala. Code 1975.

Section 17-3-11(a) provides:

> "The board of registrars in each county shall visit each college or university, whether public or private, having an enrollment of 500 or more, which is located therein, at least once during the school year for the purpose of registering voters, and shall remain there for one full working day, weekends and holidays excepted. They shall give at least 12 days' notice of the time and place where they will attend to register applicants for registration, by bills posted at three or more public places and by advertisement once a week for three consecutive weeks in a campus newspaper, if there is one published on the campus. Each college or university receiving state funds that is affected by the provisions of this section shall provide space and accommodations for the board of registrars on their campus."

(Emphasis added.) It is true that this statute does not actually speak to domicile. Further, I agree with the main opinion that the trial court was incorrect in finding that § 17-3-11 creates a presumption that a student is automatically domiciled in the city in which he or she attends school. However, I believe that, when this statute is read in conjunction with § 17-11-3, Ala. Code 1975, it sheds light on the legislature's intent regarding voting by students who leave their parents' homes to attend school. I read these statutes, together, as providing an avenue by which any student who wishes to retain his or her former domicile while attending school may do so, but, if a student intends to change his or her domicile to the place where he or she attends school, the student has a right to register to vote in that county. In both situations, it is the student's intent regarding domicile that should be the controlling factor.

Additionally, § 17-3-52, Ala. Code 1975,[22] provides, in pertinent part:

> "The board of registrars shall have power to examine, under oath or affirmation, all applicants for registration, and to take testimony touching the qualifications of such applicants, but no applicant shall be required to answer any question, written or oral, not related to his or her qualifications to register. In order to aid the registrars to judicially determine if applicants to register have the qualifications to register to vote, each applicant shall be furnished by the board a written application, which shall be uniform in all cases with no discrimination as between applicants, the form and contents of which application shall be promulgated by rule by the Secretary of State of the State of Alabama. The application shall be so worded that there will be placed before the registrars information necessary or proper to aid them to pass upon the qualifications of each applicant."[23]

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[22]The 2014 Cumulative Supplement pocket part to the Alabama Code contains only what appear to be updated voter-registration forms, which previously were appended to the statute by a Code Commissioner's note. There is no text and no description of how these forms became part of the Code. I assume it was not the intention of the Code Commissioner to delete the text.

[23]Prior to January 1, 2007, this statute provided that the form would be prescribed by this Court and that this Court would file the form with the Secretary of State.

The approved voter-registration forms[24] provide, in pertinent part:

> "To register to vote in the State of Alabama, you must:
>
> "● Be a citizen of the United States.
> "● Reside in Alabama.
> "● Be at least 18 years old on or before election day.
> "● Have not been convicted of a disqualifying felony, or if you have been convicted, you must have had your civil rights restored.
> "● Not have been declared 'mentally incompetent' by a court."

The form then asks for the following information:

> 1) "Address where you live: (Do not use post office box)";
>
> 2) "Address where you receive your mail";
>
> 3) "Address where you were last registered to vote (Do not use post office box)."

Finally the form includes the following voter declaration:

> "● I am a U.S. citizen
> "● I live in the State of Alabama
> "● I will be at least 18 years old on or before election day
> "● I am not barred from voting by reasons of a disqualifying felony conviction

[24]The Code Commissioner's Notes to § 17-3-52 indicate that the original two voter-registration forms had been approved by this Court on October 22, 1999. As to the language quoted, the new forms are substantially the same as the original forms.

> "● I have not been judged 'mentally incompetent' in a court of law"

The form specifically asks where the applicant lives and requires the applicant to verify that he or she lives in Alabama. It also asks for the previous address at which the applicant had last registered to vote but does not attempt to elicit any information regarding whether the applicant had any intent to abandon his or her previous domicile and does not elicit any information regarding whether the applicant has any intent to remain at the new address permanently or indefinitely. However, this form is supposed to provide a registrar with all the information necessary to aid in passing upon an applicant's qualifications.

The main opinion holds that a student cannot vote in the place where he or she is living and attending school unless the student has formed definite plans to remain in that place after completing his or her education. This holding seems inconsistent with the fact that the voter-registration forms merely ask for information regarding where the applicant lives, coupled with a statute that requires registrars to visit local campuses having an enrollment of 500 or more, for the sole purpose of registering students to vote. Under the

holding of the main opinion, it appears that these forms and the registrars' presence on campus would lead students astray and actually encourage the students to register to vote in places where they are not qualified to vote based on their presumed domicile.

Further, the definition in the main opinion of domicile for a student would also impose additional fact-finding measures upon the registrars who are required to register students on college campuses. Because students would be presumed to maintain their previous domicile in their hometowns absent an intent to remain in the city in which they are attending school after graduation and some affirmative actions to establish that intent, registrars would be required to go beyond the written applications and to question each student applicant as to: (1) his or her previous domicile, regardless of whether he or she had previously registered elsewhere; (2) his or her definite plans for the future; and (3) whether he or she had undertaken any affirmative actions to establish a new domicile in the place in which he or she attends school. This seems inconsistent with the legislature's stated intent that applicants will be provided

with uniform, written applications that will aid registrars in determining whether an applicant is qualified to vote and its intent that the application will provide registrars with the information they need to determine a voter's qualifications.

When reading all of these statutes in conjunction with one another, it appears that the legislature intended to give students the option of maintaining their domicile in their hometown and voting by absentee ballot or registering to vote where they attend school. It also appears that § 17-3-11 was an attempt to facilitate students' ability to vote where they attend school by having registrars come to school campuses and register any interested students to vote. However, the main opinion in this case would have the opposite effect. It appears that it would prevent many, if not most, students from voting in the cities in which they live and attend school. Rather, it would force students to comply with a more burdensome absentee-ballot process. I believe that such a holding places undue obstacles in the path of students who wish to vote. Additionally, I believe that the decision could potentially discourage students from any political involvement in the city in which they live, spend money, and have

developed significant ties during their time as students. Therefore, I must respectfully dissent from the holding of main opinion that a student cannot be domiciled in the city in which he or she attends school unless that student has indicated that he or she has definite plans to remain there after he or she graduates and has taken affirmative steps, other than registering to vote, to demonstrate that he or she intends to make that place his or her domicile.

Stuart, J., concurs.