

Concord Monitor

My Turn: Secretary of state wants to make voting harder, and he's wrong

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For the Monitor

Sunday, October 5, 2014

(Published in print: Sunday, October 5, 2014)

Last week, Secretary of State William Gardner made public comments that threaten the fundamental right to vote held by citizens who live in New Hampshire and call this state home. In his comments, the secretary suggested that only citizens who meet the legal definition of “resident” under state law should be able to vote. He added that the Granite State permits “drive-by” voter fraud.

Respectfully, he's wrong.

Gardner's view that voting should be reserved for those who meet the definition of “resident” under state law would, if enacted, deprive the right to vote to thousands of citizens who call New Hampshire home. His position also violates Part I, Article 11 of the state constitution and has repeatedly been rejected by courts for more than 40 years.

Just recently, the secretary's view was rejected by two separate judges in a case challenging a controversial 2012 law that changed the state's voter registration form to deliberately suppress voting rights. In striking down the registration form that the secretary supported, the superior court ruled in July that the form's equating of legal “residency” with the right to vote is an “unreasonable description of the law” that would cause a chilling effect on voting rights.

Here's why the secretary is wrong and the courts are right.

To vote in New Hampshire under Part I, Article 11 of the state constitution, one needs to be “domiciled” here. To be “domiciled,” a voter must have “established a physical presence” in New Hampshire more than any other place, and manifest “an intent to maintain a single continuous presence” here “for domestic, social, and civil purposes.” This rigorous constitutional standard does not allow, as the secretary suggests, anyone to vote in New Hampshire simply if they are here momentarily on election day. Rather, a voter is required to reside continuously in New Hampshire and to act as if this state is home.

Legal “residency” is a different concept. To satisfy the definition of “resident” under state law, one has to both live in New Hampshire and have an intention to stay in the state “for the

indefinite future.” Put another way, “residency” is premised on one’s mental state to remain here indefinitely. But if legal “residency” was the criteria to vote, thousands of people who live in New Hampshire would be disenfranchised simply because they may have plans – perhaps years in the future – to leave the state.

These disenfranchised groups would include not only some college students who live in New Hampshire year-round, but also: a 55-year-old executive who has lived in New Hampshire his whole life but has a firm intention to retire to his Florida cottage at age 65; a Navy officer who lives in Portsmouth but knows that he will be transferred elsewhere in 4 years; and a hospital resident in Lebanon who plans on moving after she completes her 3 years of medical training. These individuals live in New Hampshire and have nowhere else to vote.

This is why “domicile” – not “residency” – is the criteria to vote under the state constitution. This is also why a New Hampshire federal court ruled in 1972 that requiring legal “residency” in order to vote is unconstitutional. The court concluded: “(W)e cannot see that a requirement of permanent or indefinite intention to stay in one place (under the ‘residency’ definition) is relevant to responsible citizenship.” To sum up, you have the right under the state and federal constitutions to vote where you live and call home, regardless of your mental state concerning future plans. The secretary shouldn’t misstate the law.

Gardner’s claim that “drive by” voting fraud is rampant is also wrong. The state acknowledged in the voter registration form case (with the secretary in the courtroom) that there’s no evidence to support this claim. The secretary was also unable to present any evidence of actual fraud in the case.

In his public remarks, Gardner pointed only to one anecdote concerning a woman he encountered at the polls who previously lived in Washington, but was living in New Hampshire at the time of the 2008 election. The woman ultimately decided not to vote after the secretary insinuated that she couldn’t vote because she planned on moving back to Washington in the future. However, the secretary acknowledged in the voter registration form case that, despite his insinuation, he didn’t actually know whether she was domiciled in New Hampshire at the time. An incident is not “voter fraud” just because the secretary says so, especially when he doesn’t know whether the potential voter is even eligible to vote.

Rather than trying to discourage potential voters, we hope the secretary encourages greater participation in our democratic process. As the U.S. Supreme Court has explained, “(t)he right to vote freely for the candidate of one’s choice is of the essence of a democratic society.”

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