

Senate Election Law and Internal Affairs Committee

Kelly Flathers 271-3093

SB 3, relative to domicile for voting purposes.

Hearing Date: March 7, 2017

Time Opened: 10:20 a.m.

Time Closed: 2:40 p.m.

Members of the Committee Present: Senators Birdsell, Gray, Sanborn, Soucy and Woodburn

Members of the Committee Absent: None

Bill Analysis: This bill modifies the definition of domicile for voting purposes.

Sponsors:

Sen. Birdsell
Sen. Morse
Sen. Gray
Sen. Giuda
Rep. Hoelzel

Sen. Carson
Sen. Avar
Sen. Innis
Sen. French

Sen. Bradley
Sen. Sanborn
Sen. Gannon
Sen. Reagan

Summary of testimony presented in support:

Senator Regina Birdsell – District 19

- There are two amendments; I made a minor change to the one that was entered into the calendar last week. The basis of this replace-all amendment is “trust but verify”.
- It amends the current definition of domicile.
- It also tightens voter registration requirements.
- The requirements are going to be the same whether you’re registered prior to the election or on the day of the election. You’ll be required to show a verifiable act that you are domiciled here.
- If you’re in a dormitory, you just need to show that that’s where you’re domiciled. You can also bring in a cell phone bill or mortgage information.
- If you don’t have the documents with you, you will be required to come back to the town hall within 10 days of the election to present that documentation.
- After the election, supervisors of the checklist have a few ways to get in touch with the individuals who did not present their documentation: law enforcement or election officials can stop by and verify, or the Secretary of State can send a

letter of verification.

Senator Woodburn

- (Q) How would the law enforcement visit work in places with a limited town government?
 - (A) **Sen. Birdsell:** I presume you have a supervisor of the checklist, who would be responsible. I am willing to work with you to assist communities like this.

Sen. Soucy

- (Q) During the 2016 election, do you know how many people registered on the same day and signed the affidavit?
 - (A) **Sen. Birdsell:** No, I don't have that information right now.
- (Q) How would this be handled in a large city like Manchester?
 - (A) **Sen. Birdsell:** I would be happy to work with you to handle concerns that aren't addressed by this amendment.

Sen. Gray

- (Q) Homeless people can get certification from their shelter. Would that be covered by your amendment?
 - (A) **Sen. Birdsell:** Yes. I understand that shelters are not always willing to do that, but any food pantry can do that as well. The bill is not meant to disenfranchise anyone.

Bill Gardner – Secretary of State

- I am speaking in support.
- NH voter turnout has increased over the years.
- In the general election cycle, 6,033 individuals filled out domicile affidavits and 458 of the letters sent came back undeliverable.
- In the presidential primary cycle, there were 2,657 domicile affidavits and 283 came back. A total of 741 letters came back undeliverable.
- There was at least one prosecuted case of voter fraud. Reputable polling firms found that 55% of people believe that there's voter fraud.
- Many states are trying to come up with new ways to make it easier for people to vote. However, turnout hasn't changed.
- Voter turnout is based on how much value people place on the ballot. In this state, we know that every vote matters. We have a lot of tied races and recounts.
- We chose to enact same day registration, unlike many other states. We don't want anyone showing up at the polls and being sent home.
- I support this bill because I believe that we need to balance ease of voting with creating a system people trust. We're not denying anyone who shows up at the polls to be able to vote. We want everyone to know that the votes are valid,

which helps turnout.

Sen. Woodburn

- (Q) You said that a certain percentage of the public believes there is voter fraud, so we should act accordingly. Shouldn't our first concern be protecting the right to vote?
 - (A) **Bill Gardner:** Yes.
- (Q) The President has made some outrageous claims on voter fraud in NH. If we continue to whittle away at the rights of individuals and create these doubts, doesn't this harm our ability to keep our "first in the nation" status?
 - (A) **Bill Gardner:** Regarding the President's claims, that has not been proven. This bill balances protecting the right to vote with making sure the votes are valid.

Sen. Soucy

- (Q) What if someone shows up and is intimidated by the text in the domicile affidavit?
 - (A) **Bill Gardner:** It may be intimidating to someone who has doubts about being able to show that information, but otherwise it depends on the person.
- (Q) Would you believe that, if even one or two people walk away due to intimidation, it violates their right to vote?
 - (A) **Bill Gardner:** I believe that someone who is eligible to vote would not be intimidated by that.

Ray Chadwick – Chairman, Granite State Taxpayers

- I am speaking in support.
- In NH, anyone can show up to the polls on Election Day and vote. This makes fraud almost impossible to find.
- Current law requires the Attorney General to follow up with those voters who signed an affidavit and did not return documentation.
- Valid votes should not be overridden by false votes.
- In 2012, there were about 1,700 individuals who signed affidavits and did not follow up. My organization submitted a right to know request to determine the status of those affidavits and 3 years later those people have not been found.
- In 2014, almost 16,000 people registered to vote using their out-of-state driver's licenses. We filed a right to know request to find out how many people had gotten their NH driver's license within 60 days as required by law. The Attorney General's office refused to provide that data.
- This legislation allows people to vote, but requires them to prove that they live here.
- Although it's not proven that there is widespread voter fraud, the system

should protect against this.

Sen. Woodburn

- (Q) What is your opinion on President Trump's accusations of voter fraud in NH?
 - (A) **Ray Chadwick:** At the Amherst 4th of July parade, a number of campaigners from MA bring in floats. I haven't personally seen anything more than that.

Rep. Dan Itse – Rockingham 10

- I am speaking in support.
- There are some technical problems in this bill, but the concept is sound.
- One of my sons and his wife own property in the lakes region where they plan to retire and consider their domicile, but they live elsewhere in NH most of the time. They registered to vote at the lake house because they want to protect the value of that property.
- Every unqualified voter dilutes the value of the qualified voter.
- Former Rep. Cliff Newton saw somebody vote ahead of him using a deceased individual's name. That is voter fraud.
- Some individuals vote in more than one state, which is easy to do. We have to make sure that the people who vote in our state are qualified. We don't have rampant voter fraud, but there are elections that turn on a handful of votes.
- This bill needs work but it needs to go forward to ensure the integrity of our election process.

Lionel Aubin – Manchester, NH

- I am speaking in support.
- I am concerned about parent's ability to claim students as a dependent if their address is changed.
- I would like the committee to worry less about voter fraud and more about students from NY and MA influencing our state elections.
- Students have the opportunity to get absentee ballots if they're from other states.

Sen. Birdsell

- (Q) The qualified dependent issue is something I had taken into consideration. They are eligible under a qualified relative as a dependency.
 - (A) **Lionel Aubin:** That works for taxes, but not for the FAFSA. Out-of-state students can change their address to NH and take the funds that should go to our kids. As for fraud, I saw busses coming from the south into my ward, but I can't prove anything.

Summary of testimony presented in opposition:

Gilles Bissonnette – ACLU NH

- I am speaking in opposition.
- Under this bill, the criteria to vote isn't just living in NH, there is now the separate obligation to perform a verifiable act.
- If you don't have this documentation, government officials can visit you.
- This effectively criminalizes voters who are unable to produce documentation. It is punishable up to \$5,000.
- This will have an impact on multiple segments of voters who move before an election and don't necessarily have documentation yet. It could also impact people who enter into handshake lease agreements or go to a shelter.
- This also gives landlords veto power, which is problematic.

Sen. Soucy

- (Q) If someone is in a secured apartment building, how would officials get access to the building for verification?
 - **(A) Gilles Bissonnette:** In this scenario, that would be a problem. The problem is not just patrols- it's forced interaction with law enforcement. If you don't produce the documentation, you're subject to a fine.

Leslie Enroth – Sutton, NH

- I am speaking in opposition.
- As a former Selectwoman, I feel that the requirement that the supervisors of the checklist send law enforcement, send municipal officials, or have the Secretary of State send a letter is a lot to ask of the towns.
- The changes to the voter registration form are so long and complicated that it becomes a literacy test.
- People have died for the right to vote; why are we making it harder?

Kari Lerner – Chester, NH

- I am speaking in opposition.
- Will there be additional funds to pay for this burden on officials?
- This is another hurdle for young people to become involved.
- This legislation places a burden on voting, which is an assault on this basic right.
- I don't like the idea of requiring police officers and public officials to go to people's doors to demand papers.

Liz Tentarelli – League of Women Voters of NH

- I am speaking in opposition.
- If people are going through tough times and are living with friends, their vote may help them improve their conditions, but they may have a difficult time

exercising that right.

- The word of that person is not worth less than someone with a clear domicile.
- I appreciate that the sponsor has included enrollment in a university as proof of domicile. If you're living in an apartment you have to get a note from the landlord, which is often difficult.
- The reading level of these forms is also problematic. People may not understand that they have to come back later and will be subject to visits from officials, making them feel like a criminal.
- This bill does not address fraud and makes it difficult to vote. In the past we brought in cameras to take pictures of voters and clip it to their ballot; this is similarly ineffective.

Gail Miletell

- I am speaking in opposition.
- The assistant attorney general has said that there have only been four fraud cases and they were all minor. This isn't a huge issue in NH.
- If homeless people or migrant workers can't produce their papers and can't pay the fine, what's going to happen to them?
- In small towns, some policemen are part-timers. Are they going to be trained on how to enforce this?

Sen. Woodburn

- (Q) Are you concerned that we're putting law enforcement officials at risk when they go out to enforce this?
 - (A) **Gail Miletell:** I'm not concerned about the risk, but I am concerned about having enough policemen to enforce this.

Henry Klementowicz

- I am speaking in opposition.
- This bill would suppress voter registration and turnout.
- For someone who registers before Election Day and does not have the documentation, they will have to come back with the documentation or register on Election Day, creating long lines.
- This will put an undue burden on people who recently moved to NH and don't have documentation.
- The homeless and those with physical and mental disabilities will be the most likely to end up with the \$5,000 fines.
- There is no evidence of voter fraud in NH in any statistically significant way.

Donna Maskua - Dover, NH

- I am speaking in opposition.
- This bill creates more complexity; it does not simplify the law.
- 45% of the population moves every five years. In the past 10 years, my husband

and I have moved 8 times to different states. We're often in informal situations in between moves.

- In CA, we both registered to vote at the same time, but he wasn't accepted at the polls due to a clerical error.
- It's hard to determine someone's intent to stay because people don't always know.
- This bill does not encourage voter participation and presumes guilt or fraudulent activity.
- What constitutes sufficient evidence for law enforcement to validate an individual's identity is not clear.

Jim Verschueren – Former State Representative, Dover, NH

- I am speaking in opposition.
- I submitted testimony from several individuals who were unable to make it here today.
- In Section 2 there's a definition of temporary that says it's limitless, which is a contradictory statement.
- Last year, I had a campaign worker stay at my house for 5 ½ months. She did not have proof of domicile in her home state because she went to school and then began work on the campaign. My home was her only domicile and she should be allowed to vote in NH. She's like anyone else who takes a job here, is paid here, and lives here.
- When my spouse moved here from New Jersey on a contract, he had every intention to move back there. This bill would say he is not allowed to vote here, even though he ended up staying.
- The Secretary of State said that we had at least one documented incidence of fraud. In Dover we had numerous investigations, but not one case proven to be voter fraud. This bill is trying to address a problem that doesn't exist.

Bob Perry

- I am speaking in opposition.
- This is another attempt to equate the NH Constitution's use of the word domicile for voting purposes with a different standard of residency.
- Domicile takes into account the transient nature of American life, whereas residence implies long-term commitment.
- Creating an increasing level of bars to voting was not the intention of the framers and should not be the goal of the legislature.
- Requiring a voter to know what's ahead in his or her life is an impossible requirement.
- Why would you place these burdens on voters if the incidence of voter fraud is miniscule?
- Home visits by election officials and law enforcement officers will subject voters

to fear and intimidation.

- This will increase state and local spending, suppress voter turnout, and generate litigation.
- There is no requirement for voter education to understand the text.
- It's incumbent upon the legislature to properly fund the Attorney General's office so the investigations can be completed.
- These rumors get started when someone sees a MA license plate at a polling place, which in my case, was my mother's car.

Paul Twomey – Chichester, NH

- I am speaking in opposition.
- This bill requires a person to show three things: qualifications, domicile, and a verifiable act. The first two are allowable under the US Constitution, but the third is not.
- The NH Supreme Court has determined that any fine over the civil limit is a criminal penalty, which is too severe for someone who forgets to bring in a bill 10 days after the election.
- The form for same day registration is much longer than the present form. To require someone to say they've both read and understood it is a literacy test.
- It took me 4 minutes to read the form, which is problematic in polling places with long lines. That dissuades others from voting. Long lines drop turnout by 10%.
- I suggest that you talk to your local clerks; we keep making their job harder.

Sen. Woodburn

- (Q) Presently, are people with cognitive disabilities permitted to vote in NH?
 - (A) **Paul Twomey:** Sure, as long as they can understand what's going on. They can bring someone in to read the ballot for them and reflect their choices on the ballot. I don't think it's reasonable to ask someone to read two pages of legal text and verify that they understand it.

Gwen Friend – Nottingham, NH

- I am speaking in opposition.
- This bill creates major hurdles for voters and headaches for town and municipal governments.
- I agree that we need balance between making voting easy and preventing fraud, but I don't think that we should be legislating based on polls of public perception.
- Voter fraud is well covered by current laws and is not a problem in this state.
- If they had asked me my intent when I registered to vote years ago, I wouldn't have known.
- This bill makes voting especially hard for poor people, students, and workers

who live here for short periods of time.

Wayne L. Fuller

- I am speaking in opposition.
- NH has a tradition of voting integrity; we don't need a bill claiming that we have a problem with fraud.
- When I was young, I was living with friends for a few months at a time and moved a lot. I would have been one of the people who didn't return the affidavit. Similarly, my son has moved between my house and different apartments.
- There is no evidence to prove that voter fraud is an issue.
- Making voting onerous will steer people away and essentially makes our elections fixed.
- The right to vote is a pillar of our democracy. If that is whittled away, it affects the foundation of our country.

Michelle Sanborn – NH Community Rights Network

- I am speaking in opposition.
- In full disclosure, I am employed with the Community Environmental Legal Defense Fund, which does partner with the NH Community Rights Network.
- This bill does not protect or expand voting rights. It brings us back to a time when the right to vote was reserved for the privileged. It redefines who has the right to vote and under which circumstances.
- It is clear today that the public does not consider this bill to be for the public good.
- There is a difference between voter fraud and election fraud. Voter fraud is non-existent in NH. The legislature should be focusing on election integrity.

Darryl Perry – Liberty Lobby, LLC

- I am speaking in opposition.
- Regarding areas that have limited governments, the supervisor of the checklist is the only official who can only request that local officials assist them, which would be problematic in these areas.
- This legislation references passports, which do not list one's address.
- The amendment also uses the word "reside", but this term has different meanings in different statutes. There could be a lawfully domiciled college student that lives on campus but does not have residency on campus.
- A homeless individual would need mail delivered to the homeless shelter for their documentation.
- My mail because it goes to a private mailbox, which would not be accepted.
- I don't have a cell phone bill and I have a pre-paid cell phone. I don't have utilities or a lease. I could possibly be convicted under this bill because I don't have the proper documentation.

- I provided a Washington Post article where they did not find any widespread evidence of voter fraud.

Nancy Marashio – Town Moderator of Newbury, NH

- I am speaking in opposition.
- Supervisors of the checklist have no interest in requirements for more paperwork.
- As Town Moderator, I'm concerned with the equal treatment of every voter.
- This bill has a more stringent review of voters who moved within 30 days or voters who register on Election Day than other voters. Such voters have done nothing wrong; their registration process shouldn't be any different.
- I urge you to consult with other NH election officials regarding this issue.

Joanna Sharf – Cornish, NH

- I am speaking in opposition.
- It seems that the implications of this legislation have not been thought through. How does someone at a food pantry verify an individual's domicile when the individual doesn't have a regular address?
- The Secretary of State said that out of about 7,000 registrations there were about 700 letters returned, but those were not followed up. Some of those could have been a result of minor typos. It would be helpful to have more information on these statistics.
- There has been one prosecutable case each year, but that doesn't necessarily mean that there were convictions.
- This bill seems to put a burden on municipalities, towns, and voters, to address a non-existent problem.

Dan Vallone – Concord, NH

- I am speaking in opposition.
- Every citizen has the right to shape his or her government. This will make citizens question whether or not they can participate.
- Russia wants us to question the validity of our elections and doubt our free press. What happens here in NH will have consequences on a much larger stage.
- This bill does not seem catastrophic in isolation but will add to the erosion of faith in our democracy.

Joe Magruder – Self / Open Democracy

- I am speaking in opposition.
- This bill is a solution in search of a problem.
- If there is voter fraud, we should vigorously investigate and prosecute it, if warranted.
- We have to strike a balance. Voting should be as accessible as possible.

- I want to endorse the testimony of others as to how mobile our society is. I was the same way when I was younger. It's a reality we have to deal with.

Robin Mower - Durham, NH

- I am speaking in opposition.
- We have a lot of voters who are UNH students. One of the most important things we can do is encourage young people to vote. I'm very concerned about the intimidation aspect of this bill.
- I'm dismayed that the legislature would push the accusation of voter fraud. There is no evidence to suggest that this is a problem.
- We need to act on the basis of facts, not perception.

Pat Wallace – Concord, NH

- I am speaking in opposition.
- This bill is a monster in response to fear.
- We're turning our town election officials into crime fighters.
- Are we asking our police to do something unconstitutional, to search out evidence of fraud without probable cause?
- This bill was thrown together quickly and is addressing a very small problem.

Margaret Merrett – Sandwich, NH

- I am speaking in opposition.
- The right to vote is the foundation of our democracy. Anything to make voting easier is what we should be pursuing.
- In my 20s, I was either a student or taking temporary jobs. I always registered to vote in the various places I lived. I was never asked for the type of evidence required by this bill.
- We need young people in this state. Creating these barriers will deter students at universities from staying here after graduation.

Olivia Zink – Open Democracy

- I am reading Niambi Mercado's testimony in opposition to this bill.
- Niambi is a graduate student in Keene. Her family was a military family so she grew up in different states across the US. Her parents now live in New Jersey, but she went to college in Maine and now lives in NH.
- If she were to apply for an absentee ballot for New Jersey, she would be ineligible because she hasn't lived there in the past five years.
- She is concerned about how this bill would impact her eligibility to vote.

John Friede – Peterborough, NH

- I am speaking in opposition.
- I am happy with the current same day registration system. I view this bill as unwarranted and unconstitutional.

- I dispute the Attorney General's claim that this would be favorably received by the court. This law appears to violate the same constitutional rights as the Rivers and Guare cases, which the state lost.
- The Attorney General's office is already strapped for resources.
- We just completed Black History Month and have begun Women's History Month. The nation is celebrating the Suffragette and Civil Rights Movements, both associated with proud moments in American history to expand voting rights.
- The "first in the nation" status of NH is very important to us. This bill is a threat to that.

Elena Ryan – Student at UNH

- I am speaking in opposition.
- I moved to the U.S. three years ago. I am a citizen and have been voting in NH since 2014.
- With the new proposed amendment, I don't know if I would have been able to register to vote. My passport does not have my address on it and would not be accepted as a valid way to register my domicile.
- For students like myself who do not live in university housing, this is disenfranchising.
- Students at UNH unanimously passed a resolution on Sunday calling for this body to recognize students attending higher education in the state as their constituents.
- The potential for law enforcement to be knocking on people's doors is disturbing.

Sen. Gray

- (Q) With a student ID and a slip from whoever you're living with, you would be able to vote, correct?
 - (A) **Elena Ryan:** With the language of intimidation, I would question if I would be able to register properly and wouldn't understand the steps to take. The populations that will be hit hardest by these extra provisions are out-of-state students.

Sen. Birdsell

- (Q) Did you know that you can register with your driver's license?
 - (A) **Elena Ryan:** I don't have a driver's license.

Sue Russell – Supervisor of the Checklist in Newbury, NH

- I am speaking in opposition.
- I already submitted by testimony via email, but I just got the amendments.
- The word "intention" is very subjective. In my case, I got my degree in TX and my intention was to come back to NH, which didn't happen right away. I was a

college student and I did get to vote.

- My brother's job takes him to other states. His intention isn't to stay there. I have a problem with asking people what their intentions are.
- There is some wording in the text about verification. If someone comes to vote in our town and they show me their tax statement for a home on Lake Sunapee, it may be their second home. It doesn't prove that it's their domicile.
- Hunting and fishing licenses are another option for verification, which is fine, but people move.
- As a supervisor of the checklist, I would feel uncomfortable going to someone's home to enforce this. I'm also part of the Newbury Conservation Commission. If I do a site review, I cannot go on that property without a code enforcement officer or a selectman, or else it's trespassing.
- Passports don't have an address because it needs to remain valid for 10 years.
- Under this bill, people will come in with their tax statements and tell me that the law says they can use that for domicile verification, when I know it might be their summer home.
- We want to make sure people get the chance to vote. We will walk them through the whole process if they have questions.

Rep. Wayne Burton – Strafford 6

- I am speaking in opposition.
- There is some information circulating in Durham that this bill would disqualify students from voting, which you've clarified as untrue.
- I rent my house to two students, but only one student's name is on the lease. If they don't have another form of ID, this could be an issue.
- Last year, I attended the Supreme Court session on the Guare case. When Assistant Attorney General Levant made the case to the state that they should have driver's licenses, Supreme Court Justice Dalianis said "what don't you understand about not putting obstacles in front of voters?", and that was the end of the case.

Elise Spencer – Concord, NH

- I am speaking in opposition.
- The word "disenfranchisement" has been used in the wrong context. I agree that no one should be committing voter fraud; it is a crime.
- However, fraud doesn't disenfranchise people. What disenfranchises people is when they aren't able to cast their vote, which happens when obstacles are put in their way.
- People who haven't voted before find it an extremely intimidating process. They have the sense that they somehow are not welcome at the polls.
- If they have to sign an affidavit that says police may come to your door or that you'll get a \$5,000 fine, they won't even try to get involved.

Neutral Information Presented:

Brian Buonamano – Attorney General’s Office

- I am speaking neutrally on the bill.
- The 30 day waiting period in this bill may be subject to legal challenges.
- The reference in the bill to voters being subject to penalties is in the wrongful voting statute, which does contain civil and criminal penalties. It is important to clarify which penalties are being referenced.
- Where a month-to-month lease arrangement falls on “intent to be domiciled” is unclear.
- Listing an address on an “Election Day registration government form”—what that might constitute?

Sen. Woodburn

- (Q) Would the enforcement of this legislation jeopardize the safety of our law enforcement officials? Who would be responsible for doing these visits in towns with limited governments?
 - (A) **Brian Buonamano:** I imagine that the Sherriff’s department would handle this in small towns. There is discretion in the statute as to whether the request to do a home visit is granted. I would agree that the statute would potentially increase the number of police interactions with the public.

Sen. Sanborn

- (Q) Would you be willing to articulate your concerns in writing and meet with the prime sponsor to find some resolution?
 - (A) **Brian Buonamano:** Yes. I recommend seeking an advisory opinion from the Supreme Court in light of the 30 day waiting period and the potential for challenge on a durational requirement.

Cordell Johnston – NH Municipal Association

- I am speaking neutrally on the bill.
- We are concerned about the requirement for supervisors of the checklist to send law enforcement to people’s homes. I would suggest limiting it to a letter from the Secretary of State’s office.
- The length and complexity of the same day voter registration form is a concern for both the voter and local officials, who must determine whether someone satisfies the criteria. It seems likely to result in longer lines at the polls.
- If my daughter turns 18 this year and her name is not on the deed to my house, she would need to get a letter from me. Situations like this are problematic.
- There are some internal inconsistencies in the bill that I covered in my letter.
- We don’t have a position on the underlying intent of the bill, but there are a

number of problems that need to be corrected before this would be ready for passage.

Future Action: Pending

KEF

Date Hearing Report completed: March 10, 2017