

U.S. Policy Debates Concerning the Absentee Voting Rights of Uniformed and Overseas Citizens, 1942-2011

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Introduction

The Uniformed and Overseas Absentee Voting Act (UOCAVA) guarantees the absentee voting rights of members of the armed forces, of their spouses and dependents accompanying them, and of civilian citizens residing abroad either temporarily or permanently.¹ An estimated six million voters are covered by the act, including soldiers stationed in Iraq, students, businessmen and women working for American or “foreign” firms, missionaries, and embassy personnel.² American election campaigns therefore extend beyond U.S. borders, for overseas votes may be significant in close races. The most obvious and extreme example of such a close race is the 2000 presidential election. As Florida’s votes were counted in the evening of November 7 that year, it became clear that the late overseas ballots that would be arriving during the next ten days could determine the winner of Florida’s electoral votes, and could therefore also determine the winner of the Presidency.³ On election night, the Democratic nominee Al Gore was leading in the Florida election by an edge of 202 votes. When the late arriving UOCAVA ballots were finally counted, however, the state swung over to the Republican nominee by an edge of 537 votes, and George W. Bush became president.⁴

The 2000 presidential election revealed problems with UOCAVA voting procedures. One of these problems is caused by transit time, as many voters receive ballots too late for their timely

¹ 42 U.S.C. §1973ff through ff-6.

² For the estimate referenced here, see The Federal Voting Assistance Program, *Eighteenth Report: 2008 Post Election Survey Report*, March 2011: ii, <http://www.fvap.gov/resources/media/18threport.pdf> accessed July 18, 2011. No one claims to have an accurate estimate of the civilian overseas population, and therefore no estimate of the UOCAVA population as a whole. Some estimates run higher than that used by the FVAP, up to seven million. See also Taylor Dark III, “Americans Abroad: The Challenge of a Globalized Electorate,” *PS: Political Science and Politics*, vol. 36, no. 4, October 2003:733, www.jstor.org/stable/3649270 accessed June 7, 2010. See also R. Michael Alvarez, Thad E. Hall and Brian F. Roberts, *Military Voting and the Law: Procedural and Technological solutions to the Ballot Transit Problem* Caltech/MIT Voting Technology Project Working Paper no. 53, California Institute of Technology & Massachusetts Institute of Technology, March 2007 http://www.vote.caltech.edu/drupal/files/working_paper/vtp_wp53.pdf accessed June 3, 2011.

UOCAVA also includes uniformed service personnel on active duty still in the U.S. but absent from the district in which they are eligible to vote. No available material specifies the number of such UOCAVA voters.

³ See for instance Taylor Dark III, 2003: 733-736. Because Florida forwarded ballots too late for overseas voters to be able to return them in time, a consent decree between the Justice Department and Florida required the state to count ballots arriving up to ten days after Election Day. See chapter four for further information.

⁴ The process took over a month, however, because of legal disputes concerning recounts. No recounts were held after the UOCAVA votes had been counted though. Alvarez et al. 2007: 33-34.

return to the various election districts. The election also revealed that in situations like the one in Florida, election fraud, or allegations of election fraud, might result from problems with UOCAVA voting. A study conducted by *The New York Times*, for instance, revealed that the Bush campaign had successfully encouraged the counting of at least 680 late arriving ballots that lacked requirements such as postmarks, signing or dating that would have proved that the ballot had been sent before Election Day. Because many of the overseas Floridian ballots belonged to members of the Armed Forces, Republicans had believed that they would benefit from these ballots (rightfully, as it turned out.) Had the ballots been rejected, Bush's margin of victory might have shrunk.⁵

Congressional efforts to ensure the absentee voting rights of groups now covered by UOCAVA began in the 1940's. The Soldier Voting Act of 1942 was the first legislation passed that required states to provide absentee voting procedures for soldiers fighting in the Second World War. In each passing decade, Congress passed new legislation that extended such absentee voting rights in congressional and presidential elections to new groups. In 1955, the Federal Voting Assistance Act also covered dependents of service members as well as federal employees overseas. The act was amended in 1968 to include other civilians *temporarily* living overseas. In 1975, Congress passed the Overseas Citizens Voting Rights Act that finally guaranteed the absentee voting rights of all citizens living abroad.⁶ UOCAVA (1986) consolidated and updated (and replaced) the existing acts, and still provides the framework for military and overseas voting rights today. But, as already indicated, problems persist. In 2009 the Pew Center on the States released a report that noted that 25 states and the District of Columbia needed to improve their absentee balloting rules by among other things allowing voters more time to request and return their ballots.⁷ The same year, the Overseas Vote Foundation published a report that was based on the survey results of 24,000 UOCAVA voters and 1,000 local election officials. It found that one

⁵ See Dark III, 2003: 738.

⁶ Except for citizens born overseas who have never established residence. Some states allow these citizens to vote in the district in which their parents last resided.

⁷ Pew Center on the States, *No Time To Vote: Challenges Facing America's Overseas Military Voters*, January 2009, http://www.pewcenteronthestates.org/uploadedFiles/NTTV_Report_Web.pdf accessed January 3 2011. See also the report referenced in Kevin J. Coleman, *The Uniformed and Overseas Citizens Voting Act: Overview and Issues* (Washington, D.C.: Congressional Research Service, February 17, 2011) 13-14, http://assets.opencrs.com/rpts/RS20764_20110217.pdf accessed November 5, 2011.

in four respondents did not receive the ballots they had requested (at all.)⁸ As a consequence, UOCAVA voting reform continues. Most recently, Obama amended existing legislation in October 2009 by signing the Military and Overseas Empowerment Act which Kevin J. Coleman describes as a major overhaul of UOCAVA.⁹

1.1 Research Question and Main Arguments

The topic of this thesis is the history of public debates concerning U.S. policy towards the absentee voting rights of the groups now covered by UOCAVA. More precisely, the central research question is: What factors have hindered or encouraged change in U.S. policy concerning the absentee voting rights of members of the uniformed services, their spouses and dependents accompanying them, and overseas citizens, from the 1940's to the present? The thesis also addresses the questions of how policy has changed and how successful these changes have been at enfranchising these groups of citizens.

The thesis discusses a number of factors that have influenced U.S. policy concerning absentee voting rights by UOCAVA voters. It is argued that war encouraged progress in the voting rights of military voters, just as it has encouraged progress in voting rights in general.¹⁰ Furthermore, this thesis argues that the efforts of interest groups of overseas civilians have been vital to the extension of absentee voting rights to include such civilians. Some argue that overseas civilian voters have in the past met problems because the Federal Voting Assistance Program - designated to carry out the federal responsibilities proscribed by UOCAVA - is placed under the Department of Defense.¹¹ This thesis, however, argues that overseas civilian voters have at the same time profited from being linked to military voters. Congress and the American public are in general more concerned with the rights of service people than with the rights of civilians abroad. Election reforms directed at military voters will often also benefit the other UOCAVA voters.

⁸ Overseas Vote Foundation, *2008 OVF Post Election UOCAVA survey report and analysis*, February 2009: 5, https://www.overseasvotefoundation.org/files/OVF_2009_PostElectionSurvey_Report.pdf accessed June 3, 2011.

⁹ Military and Overseas Empowerment Act part of the National Defense Authorization Act for FY2010: P.L. 11-84 (October 28, 2009) The Move Act is available at <http://www.fvap.gov/resources/media/moveact.pdf> see also Coleman 2011: 4.

¹⁰ Alexander Keyssar, *The Right to Vote: The Contested History of Democracy in the United State*, revised edition (New York: Basic Books, 2009) xxiv. See also Pamela S. Karlan, "Ballots and Bullets: The Exceptional History of the Right to Vote", *University of Cincinnati Law Review*, Vol. 71, 2002-2003: 1345-1372.

¹¹ See for instance Alix Christie, "Suppressing the Overseas Vote," *guardian.co.uk*, October 25, 2004, www.guardian.co.uk/world/2004/oct/25/uselections2004.usa2/print accessed May 18, 2010.

This thesis argues that issues of states' rights and civil rights have significantly influenced debates concerning the absentee voting rights of military and overseas citizens. In the 1940's, the absentee voting bills covering members of the military met fierce opposition, partly because the White South feared that their being passed would set a precedent for further federal involvement that might enfranchise African Americans.¹² During the 1960's and 1970's, restrictions to the franchise were removed to such an extent that something close to universal suffrage was achieved,¹³ something that eased the way for new legislation enfranchising absent military and overseas citizens. Today, amendments to UOCAVA pass without much controversy, and are categorized under congressional powers to regulate elections.¹⁴

This thesis also argues that partisan politics have been a significant factor influencing U.S. policy debates concerning absentee voting rights of groups now covered by UOCAVA. In the 1940's, Gallup polls showed that a great majority of soldiers would vote for the Democrats, and for their commander-in-chief, Franklin D. Roosevelt.¹⁵ As a consequence, a great majority of Republicans in Congress joined Southern states' rights Democrats in opposing bills aimed at enfranchising military personnel. However, since at least the 1970's, when Congress extended its commitment to overseas civilians, both Republicans and Democrats have claimed to have an edge in the UOCAVA vote.¹⁶ For no one knows the exact size or "shape" of the overseas civilian population. This thesis argues that this lack of knowledge in voting behavior has helped bills amending UOCAVA avoid problems of partisan splits that have hindered many other election reform initiatives since the 2000 presidential debacle.

1.2 Sources

What makes the thesis original is the fact that the history of U.S. policy debates concerning UOCAVA voting rights is not (properly) covered in the academic literature. Boyd A. Martin has written one article that discusses the relevant policy debates in 1942 to 1944, published in *The*

¹² See for instance Lawson Steven F. Lawson, *Black Ballots: Voting Rights in the South, 1944-1969* (New York: Columbia University Press, 1976) 75.

¹³ Keyssar 2009: 228.

¹⁴ See Anthony H. Gamboa, *The Scope of Congressional Authority in Election Administration*, GOA-01-470 (Washington D.C.: United States General Accounting Office, March 2001)

<http://www.gao.gov/new.items/d01470.pdf> accessed May 2011.

¹⁵ See for instance George Gallup, "Vote of Soldiers Could Decide '44 Election, Gallup Poll Finds," *The New York Times*, December 5, 1943, available at www.nytimes.com accessed November 4 2010.

¹⁶ See for instance Dark III 2003: 733.

American Political Science Review in 1945.¹⁷ However, this article is relatively brief, and due to the fact that it was written in 1945, it only gives information on a fragment of the history covered by this thesis. It also gives an interesting overview of state absentee voting legislation for soldiers prior to the 1940's, including a comment on Lincoln's interest in the issue during the Civil War. Another article written by Kenneth M. Davidson published in 1969 in the *Buffalo Law Review*, discusses overseas civilians voting rights.¹⁸ However, it is limited to presenting the author's own legal arguments in support of the constitutionality of federal legislation guaranteeing such rights.

Scholarly articles concerning the absentee voting rights of UOCAVA citizens began to appear after the scandal-ridden 2000 presidential election. Most of these are limited to discussing problems facing such voters today and how such problems can be solved. They do not discuss policy debates as such, certainly not policy debates in a historical perspective. One exception is *Military Voting and the Law: Procedural and Technological Solutions to the Ballot Transit Problem*, by R. Michael Alvarez, Thad Hall, and Brian F. Roberts.¹⁹ The study is the result of a collaborative research effort between the California Institute of Technology and Massachusetts Institute of Technology, called Caltech/MIT Voting Technology Project. The project was established in December 2000 to provide studies that would help solve problems like those that threatened the 2000 presidential election.²⁰ *Military Voting and the Law* provides a historical perspective on the voting rights of UOCAVA citizens. For instance, it includes a discussion of policy debates in the 1940's and 1950's, however, this discussion is much briefer than the one provided in this thesis. It does not, for instance, discuss the influence that Roosevelt's personal involvement had on debates. The study does not cover policy debates during the 1960's and 1970's concerning overseas voting rights of civilians, or the role of overseas interest groups in influencing Congress. In contrast, the second of this thesis' three main content chapters is devoted to those decades and those efforts. The study by Alvarez, Hall and Roberts, not surprisingly, focuses on the technicalities in voting procedures. The study's presentation of policy debates during the two recent decades in particular, is mostly limited to a discussion of different technology options that have been experimented with. Furthermore, the study was conducted in 2007, and does therefore not cover the Military and Overseas Voter Empowerment (MOVE) Act

¹⁷ Boyd A. Martin, "The Service Vote in the Elections of 1944", *The American Political Science Review*, vol. 39, no. 4, August, 1945: 720-732.

¹⁸ Kenneth M. Davidson, "Voting Rights of Americans Abroad," *Buffalo Law Review*, vol. 18, 1968-1969: 469-488.

¹⁹ Alvarez et al. 2007.

²⁰ For information on the Caltech/MIT project, see <http://vote.caltech.edu/drupal/>

of 2010 that has been described as “a major overhaul” of UOCAVA.²¹ The study has, however, been particularly useful for this thesis in explaining UOCAVA’s relevance to the 2000 election debacle.

Another study that has been written as part of the Caltech/MIT Voting Technology Project is Thad E. Hall’s *UOCAVA: A state of Research*.²² Hall maintains that there is very little quality research on UOCAVA voting. “Understanding the problems that are faced by the UOCAVA population is difficult because these groups have not been a common population to study. Studies of general population voting behavior, turnout, and election administration have typically not included overseas civilians, military personnel, and their dependents.”²³ He criticizes the Federal Voting Assistance Program’s mandated study of UOCAVA voting behavior for not releasing its survey methodology or raw survey data to policy makers or to scholars. Furthermore, it is difficult to know if surveys are based on representative samples, as the size and “shape” of overseas civilians is not known, he argues. Hall finds the Election Commission’s reports on UOCAVA to be more interesting, as they are based on data drawn from the states, not from survey samples from UOCAVA voters. However, even these data are limited, he argues, because not all states collected the data that UOCAVA requires.²⁴ While the situation might have improved since Hall wrote his study in 2008, the amendments passed in 2009 (the MOVE Act) includes a requirement that the Federal Voting Assistance Program, in cooperation with the Election Assistance Commission and the chief state election official of each state, shall develop standards for states to report on UOCAVA ballot data.²⁵ This might indicate that problems remain. In any case, the lack of representative information on absentee voting experience by groups covered by UOCAVA makes it difficult to evaluate exactly how effective federal reforms to improve the absentee voting rights of these groups have been over time. This thesis, however, references reports and surveys available online, but does so to indicate continued problems or improvements, rather than as evidence of progress (as percentage improvements.)

²¹ Kevin J. Coleman, “Voting for the Armed Forces and Citizens Abroad,” unpublished paper from 2005, provided by Coleman through the American Embassy in Oslo, June 4, 2010.

²² Thad E. Hall, *UOCAVA: A State of Research*, Caltech/MIT Voting Technology Project Working Paper no. 69, September 15, 2008 http://vote.caltech.edu/drupal/files/working_paper/WP_69.pdf accessed June 3, 2011.

²³ Hall 2008: ii.

²⁴ Hall 2008: iii, 6.

²⁵ Uniformed and Overseas Citizens Absentee Voting Act, Section 101 (b) 11. Available at www.fvap.gov/resources/media/uocavalaw.pdf accessed July 5, 2010. DAVID: I still don’t understand how to reference laws. “P.L. 99-410, 100 Stat. 924-929 (August 28, 1986)

Kevin J. Coleman, election analyst of the Congressional Research Service, provides a useful report that gives an overview of the relevant acts passed since 1942, with summaries of the most significant provisions of recent amendments to UOCAVA. In addition, the American Embassy in Oslo has provided an unpublished report authored by Coleman. This report provides nearly the same information as the latter one, but contains a more detailed historical outline of congressional action through the decades, including references to hearings and bills introduced in Congress. Neither report provides information on policy discussions, but they have both been very useful as guides indicating what government documents to look for.²⁶

Alexander Keyssar's *The Right to Vote: The Contested History of Democracy in the United States*, does not discuss voting rights of overseas civilians at all, although it does in a few paragraphs discuss federal military voting legislation during the Second World War.²⁷ However, the book is one of the main sources used for background information on the progress in voting rights in general during the decades covered by this thesis, and for information on public policy discussions concerning election reform in general after the 2000 presidential election. It is however important to note that Keyssar is liberal in outlook, and that this might shine through especially in his analysis of the post-2000 election reform debates where he might be slightly biased in favor of Democratic efforts. Steven F. Lawson's *Black Ballots: Voting Rights in the South, 1944-1969* has also been used for information explaining the link between the soldier voting debates and civil rights issues.²⁸

Due to the scarcity of academic writing on the history of UOCAVA policy, the thesis relies heavily on primary sources. These include congressional hearings to which are attached a variety of documents such as the texts of court cases, brochures for overseas voters, and letters written by the Justice Department; congressional records showing House floor debates; congressional reports that accompany bills (which include minority views); and websites of various interest groups (for instance to see what reforms they have lobbied for and to see their evaluation of new UOCAVA reforms.) The thesis also discusses the text of the acts themselves as well as proposed bills. Understanding the law texts and the text of judicial rulings can be difficult for a non-law student. However, the interpretation of law is an issue that will be

²⁶ Coleman 2005, and Coleman 2011.

²⁷ Keyssar 2009: 197.

²⁸ Steven F. Lawson, *Black Ballots: Voting Rights in the South, 1944-1969* (New York: Columbia University Press, 1976).

discussed in its own right. As the 1970 amendments to the Voting Rights were passed, for instance, overseas voting activists believed they had gained the right to vote absentee at least for president, as this was provided for the general population by these amendments. The Justice Department and the states did not interpret the amendments as including overseas citizens, however.²⁹ Thus, when discussing acts and the text of judicial rulings, the focus is placed on how they have been interpreted by the various parties involved. When presenting the more straightforward provisions of the acts, this is done by double checking with sources like Coleman's Congressional Research Service report (that outline the key changes made to the law.)³⁰

The thesis also relies heavily on newspaper articles from all the relevant decades, both as primary and secondary sources. George Gallup, for instance, presented his opinion polls in articles he wrote himself in *The New York Times*, that serve as primary sources since these polls and articles undoubtedly influenced the policy choices of the parties in Congress.³¹ Points of view of different articles have also been included in thesis. As secondary sources, newspaper articles have been helpful for their information on developments in Congress, and have been checked against official documents whenever possible. The newspaper that is most heavily relied on is *The New York Times*, simply because it has an extensive online archive that is "user-friendly" and that covers the 1940's (in addition to the fact that it is a reliable newspaper of record.) Also used is the *Washington Post*. While *The New York Times* articles from the 1940's found during the research for this thesis seem to be in favor of stronger federal legislation, a few of the *Washington Post* articles are quite obviously opposed to federal legislation.³² However, when checked with other sources such as congressional hearings and speeches by members of Congress found elsewhere, the articles, as slant as they might be, do not seem to have left out any of the major issues and arguments used in the congressional debates. Articles in *The Atlanta Constitution* from the 1940's have also been used in attempt to provide alternative perspectives on the soldier voting debates from a Southern newspaper. However, the articles found in the latter

²⁹ See for instance David L. Norman, Assistant Attorney General in the Department of Justice, letter to Eugene Marans dated March 13, 1972, in U.S. Congress, Subcommittee on Elections of the Committee on House Administration, *Voting rights for U.S. citizens residing abroad*, Hearing on H.R. 3211, 94th Cong., 1st sess., February 25, 26, March 11, 1975, (Washington D.C.: Government Printing Office, 1975): 78, available through the University of Michigan/HathiTrust's digitization project at <http://hdl.handle.net/2027/mdp.39015082029532> accessed November 4, 2010.

³⁰ The laws are available through www.heinonline.com. Other official documents such as congressional hearings from past decades can be accessed through the University of Michigan/HathiTrust's digitization project.

³¹ Gallup December 5, 1943.

³² See chapter two.

newspaper raise the same issues, and even seem to be more liberal and more in favor of strong federal legislation than *The New York Times* articles found.³³ Newspapers have been less useful for the chapter that discusses overseas voting rights for civilians in the 1970's, as relevant articles have been scarce. However, that very fact is relevant to the topic of the thesis, as the general lack of interest in the voting rights of overseas private citizens seems to have been one of the factors influencing policy debates. After the 2000 presidential election debacle, media interest seemed to have been raised again, at least for a while.

The *Congressional Digest* serves as a very useful source. Two 1944 issues were devoted to the absentee soldier voting issue. The issues provide speeches and letters by members of Congress in favor of federal legislation and by members opposed to federal legislation. The *Congressional Digest's* stated aim is to give a presentation of the pro's and con's of the most pressing legislative issues in Congress. While it might be hazardous to rely on the *Digest's* selection of "speakers", the *Digest* does in fact seem to give the main opponents and proponents a voice, judging by newspaper articles and congressional hearings.

Another useful primary source is *The Unknown Ambassadors: a Saga of Citizenship* by Phyllis Michaux.³⁴ The book offers a personal account of the efforts of overseas Americans' interest groups which aim at influencing U.S. policy concerning issues that affect overseas citizens, including overseas voting rights. The book covers the period from when she first arrived in France in the 1940's to the year the book was published in 1996. Michaux was a member of, and even the leader of a number of such interest groups. While a personal account of this kind might be a subjective source of information, and Michaux might, for instance, have exaggerated her and her organizations' efforts, the efforts of overseas Americans in attaining voting rights have been recognized by a number of other sources. *The International IDEA Handbook of Voting from Abroad* (2007) by the Institute for Democracy and Electoral Assistance maintains that the U.S. represents "one of those rare cases" where overseas citizens efforts have been the main factor behind gaining such rights.³⁵ Furthermore, judging by the hearings in the 1970's (with accompanying documents that includes letters,) it seems that the sponsors of the bills were in

³³ See for instance Gladstone Williams, "FDR Action on Soldier Vote Bill Significant," *The Atlanta Constitution*, March 9, 1944, available through www.ajc.com accessed July 25, 2011.

³⁴ Phyllis Michaux, *The unknown Ambassadors: A Saga of Citizenship* (Canada: Aletheia Publications, 1996).

³⁵ Dark III 2003; Andrew Ellis, "The history and politics of external voting" in *Voting from Abroad: The International IDEA Handbook* (Stockholm and Mexico City: International Institute for Democracy and Electoral Assistance, and The Federal electoral Institute of Mexico, 2007) 43.

close contact with the interest groups and asked for their help in preparing legal analysis etc.³⁶ Michaux' account of events has been particularly useful for chapter two which deals with policy discussions during the 1960's and 1970's.

This thesis writer was also fortunate to get a personal telephone interview with Eugene Marans.³⁷ Marans was the lawyer who led the lobbying efforts in Washington D.C. He worked pro bono for the overseas Americans' interest groups, preparing legal argumentation in favor of overseas voting rights, testifying in hearings, communicating directly with members of Congress etc.

1.3 Voting Rights and the Constitution: Federal versus State Powers

Curiously, while the U.S. sees itself as the champion of democratic ideals, universal suffrage is not guaranteed by the U.S. Constitution, unlike many other constitutions in western democracies. As the Supreme Court ruling in *Bush v. Gore* in 2000 affirmed, there is “no federal constitutional right to vote.”³⁸ Though the American colonies had fought a revolution in the spirit of “no taxation without representation,” representation did not imply universal suffrage at the time of the Constitutional Convention (1787). At the time, the very word *democracy* gave rise to images of chaos and mob rule.³⁹ But the Founding Fathers pragmatically refrained from listing restrictive voter qualifications, partly to avoid disagreement among the thirteen former colonies that already had their own suffrage rules, and partly to reduce potential opposition to the Constitution.⁴⁰ Instead, the states were left to decide who could vote. At the time, that typically meant that white, property owning men gained the suffrage.

Qualification versus Regulation

The constitutional provisions that the states have relied on to control the franchise are the following. Article One Section Two of the Constitution reads: “The House of Representatives

³⁶ House hearing, *Voting rights for U.S. citizens residing abroad*, 1975; U.S. Congress, Senate, Subcommittee on Privileges and Elections of the Committee on Rules and Administration, *Voting by U.S. citizens residing abroad*, Hearing on S. 2102 & S. 2384, 93rd Cong., 1st sess., September 26, 27, 1973, (Washington D.C.: Government Printing Office, 1973), available through the University of Michigan/HathiTrust's digitization project at <http://hdl.handle.net/2027/mdp.39015078681031> accessed November 4, 2010.

³⁷ Personal telephone interview with Eugene Marans, May 3, 2011.

³⁸ Majority decision in *Bush v. Gore* quoted in Keyssar 2009: 262.

³⁹ Keyssar 2009: 2.

⁴⁰ Keyssar 2009: 329.

shall be composed of members chosen every second year by the people of the several States, and the electors in each state shall have the qualifications requisite for the electors of the most numerous branch of the State Legislature.” Article One Section Three reads “The Senate of the United States shall be composed of two Senators from each state, chosen by the legislatures thereof,” but the latter phrase was in 1913 superseded by Section One of the Seventeenth Amendment reading “elected by the people thereof,” and the “electors in each State shall have the qualifications requisite for the electors of the most numerous branch of the State legislatures.” Finally, Article Two Section One deals with presidential elections, and stipulates that “each state shall appoint, in such a manner as the legislature thereof may direct, a number of electors” who were then to choose the president.⁴¹ In other words, the several states are given the task to organize and conduct federal elections and set voter qualifications.

However, the Constitution proscribes a regulatory role for Congress. The primary provision granting Congress this role is Article One Section Four which reads: “The times, places and manner of holding elections for Senators and Representatives shall be prescribed in each State by the Legislatures thereof; but the Congress may at any time by law make or alter such regulations, except as to the places of choosing Senators.” By the time the federal debates over absentee voting for soldiers began, the power of Congress to regulate elections had already been recognized by the Court. Several cases since *Ex Parte Siebold* (1879) had done so, including the 1941 ruling in *United States v. Classic* when the Supreme Court held that Congress also had the authority to regulate primary elections.⁴² As concerns presidential elections, the text of the Constitution is more limited. Article Two Section One reads: “Congress may determine the Time of chusing [sic] the Electors, and the day on which they shall give their Votes; which Day shall be the same throughout the United States.” However, the Supreme Court and federal courts have later upheld certain federal laws that have gone beyond the mere time and day of choosing electors.⁴³ As concerns state and local elections however, the Constitution does not give any general regulative authority to Congress, though several constitutional amendments give Congress authority to enforce prohibitions against certain specific discriminatory practices in all elections. The states’ constitutional power to set voter qualifications and Congress’ power to

⁴¹ The Twelfth Amendment modified this provision, delineating the manner in which the presidential electors were to choose the president.

⁴² For congressional powers to regulate elections, see Gamboa, 2001.

⁴³ For instance the decision in the *Burroughs v United States* (1934). See Gamboa, 2001.

regulate federal elections has invited conflict as the two powers are not clearly defined. Does for instance absentee voting legislation involve *regulating* elections, altering voter *qualifications*, or both?

Amending and reinterpreting the Constitution

One way the states limited voting eligibility was by requiring that voters be U.S. citizens. In colonial and post-revolutionary America, voting and the concept of citizenship were not linked. Property ownership was the dominating qualification. As the states began eliminating this economic barrier, state after state began explicitly demanding other qualifications, including citizenship. In the 1840's and 1850's nativists tried to lengthen the naturalization process to hinder (new) immigrants from becoming voters, so that they could stay in power. After the Civil War and the passing of the Thirteenth Amendment of 1865 that abolished slavery, Southern states in particular attempted to keep the freed slaves from gaining the same rights and privileges as white people, including gaining political membership. A way of doing this was to exclude African Americans from citizenship. In 1857, in fact, even the Supreme Court had announced in *Dred Scott* that no black person could become a citizen of the U.S. The Fourteenth Amendment (1868) sought to reverse *Dred Scott* and enshrined the concepts of national citizenship and equal protection of the law into the Constitution. Any person born or naturalized in the U.S. were citizens both of the state wherein they resided, and of the U.S.⁴⁴ The Fifteenth Amendment, passed two years later, specifically prohibited discrimination in voting based on race, color, or previous conditions of servitude. The post Civil War amendments offered a breakthrough in legal thinking, not only as they incorporated blacks into society, but previously, most Americans had looked to the states, not the federal government, to protect the rights of citizens. An all-powerful federal government had previously been seen as the one to be feared, not state and local authorities. The Bill of Rights (the first ten amendments to the Constitution passed in 1791) reflected this assumption, as it protects individuals from abuse by Congress, not the states. As the post Civil War amendments were passed, the federal government would protect the "privileges and immunities" of its citizens against the states, though the constitutional amendments did not specify what these terms implied. In fact, discussions concerning how the Constitution should be

⁴⁴ This meant an emphasis on the *jus soli* concept, citizenship linked to the territory, as opposed to *jus sanguini*, citizenship linked to ancestry.

interpreted started almost from the time it was ratified. Different schools of thought have argued whether the Constitution should be interpreted narrowly and merely through its “original intent” or whether it should be interpreted more broadly through the idea of a living Constitution.⁴⁵

The women’s suffrage movement was disappointed that the Fifteenth Amendment had not included a prohibition of discriminating on the basis of sex. However, they became inspired by the idea of national citizenship rights. They began arguing that there was no need for further constitutional amendments, as voting rights were implied in the first section of the Fourteenth Amendment which guaranteed federal protection of “privileges and immunities of citizens of the United States”. At that time, the Supreme Court did not agree however. In a 1875 ruling it announced that voting rights were not an inherent right of citizenship. The women’s suffrage movement redirected their efforts once again, finally achieving their goal in 1920 by the passing of the Nineteenth Amendment which prohibits voting discrimination on account of sex. And so, yet another constitutional limit on state power to set qualifications was achieved.⁴⁶

The late 1950’s through the early 1970’s saw a legal revolution that removed most remaining limits to the right to vote. Federal acts, constitutional amendments (abolishing the poll tax and lowering the voting age to 18), and Supreme Court reinterpretation of the Constitution enabled this. The Warren Court, both reflecting and reinforcing the popular mood, broke grounds when it began seeing democracy as a core constitutional value. The Warren Court began using the Equal Protection Clause of the Fourteenth Amendment, in particular, as a means of justifying breaking down various state barriers to voting. Keyssar writes that these years’ legal revolution constituted a nationalization of the right to vote, which in practice brought an end to state control over the franchise (despite the words written in the Constitution concerning states and voter qualifications.)⁴⁷

Nonetheless, voting rights are still not automatic to citizenship. For instance, while U.S. citizens formally residing in Washington D.C. gained the right to vote in presidential elections by the Twenty-third Amendment (1961), constitutional provisions still prevent them from voting in

⁴⁵ For documentation regarding this paragraph, see Paul Kleppner, “Defining Citizenship: Immigration and the struggle for Voting Rights in Antebellum America;” Eric Foner, “From Slavery to Citizenship: Blacks and the Right to Vote;” and Ellen Carol DuBois, “Taking Law into Their Own Hands: Voting Women during Reconstruction;” in *Voting and the Spirit of American Democracy: Essays on the History of Voting and Voting Rights in America*, edited by Donald W. Rogers (Urbana and Chicago: University of Illinois Press, 1992) 43-55, 55-67, 67-83.

⁴⁶ See previous footnote.

⁴⁷ For documentation on the information contained in this paragraph, see Keyssar 2009: 216, 228.

congressional elections. Puerto Ricans, although U.S. citizens can not vote in federal elections either, and states may still (and do still) withhold voting rights from felons and even ex-felons. Voting rights of citizens residing abroad who may have no intention of ever returning, are perhaps therefore not completely self evident. In the 1940's, proponents of federal absentee legislation for soldiers did not manage to convince opponents that such legislation involved the regulation of elections. In the end, proponents relied on the argument that in time of war, Congress could pass legislation that it could not normally have passed. Having removed soldiers from their voting districts to have them fight in the World War, Congress also had the power and duty to ensure that those men and women were not disenfranchised merely because of this required absence.⁴⁸ Today, however, federal legislation concerning absentee voting rights for citizens covered by UOCAVA is commonly categorized under congressional regulatory powers over elections.⁴⁹

1.4 Structure

The thesis has a chronological structure. It is divided into five chapters: an introductory chapter (chapter one), three main content chapters, and a concluding chapter. Chapter two discusses policy debates in the 1940's and 1950's. These debates centered on the absentee voting rights of members of the Armed Forces, though by 1955, Congress had begun to extend its commitment to certain other civilian groups. Chapter three discusses policy debates in the 1960's and 1970's. During these decades, debates centered on whether or not to include all civilians residing abroad in the act that covered service people. The chapter includes a discussion of overseas interest groups' influence in gaining overseas voting rights. Chapter three discusses recent policy debates. UOCAVA was passed in the 1980's, but its main purpose was to consolidate existing acts.⁵⁰ Chapter three therefore focuses on debates after the 2000 presidential election scandal, as well as on UOCAVA's significance to that election. Chapter five, the conclusion, finally attempts to bring together the major factors that have influenced debates since the 1940's.

⁴⁸ Geoffrey Miller and Norman Silber, "Toward 'Neutral Principles' in the Law: Selections from the Oral History of Herbert Wechsler", *Columbia Law Review*, vol. 93, 1993: 854-884.

⁴⁹ Gamboa 2001. Gamboa 2001 is also the source relied on by Coleman 2005, Alvarez et al. 2007, and Dark III 2003.

⁵⁰ U.S. Congress, Committee on House Administration, Uniformed and Overseas Citizens Absentee Voting, report to accompany H.R. 4393, 99th Congress, Second Session, H.Rept. 99-765 (Washington: Government Printing Office, 1986) 5.

The 1940's and 1950's: Absentee Voting Rights of Members of the Military

This chapter focuses on federal policy discussions concerning absentee voting rights of servicemen in the 1940's and 1950's. When discussing voting rights of servicemen, it comes perhaps as no surprise that war was an important factor influencing such debates. In the timeframe covered by this chapter, these included the two World Wars, as well as the Korean War. War created a real need for absentee voting procedures, as significant numbers of men and women were sent away from their voting districts (and out of the country) in the line of duty. Furthermore, war made these citizens especially worthy of (voting) rights as they were risking their lives at the battlefield for the good of the nation, and it became increasingly difficult to justify their disenfranchisement.

However, opposition to federal involvement in the issue of soldiers' absentee voting rights remained significant even through the 1950's, and it hampered initiatives to pass strong federal legislation. The cause of this opposition was the fact that federal involvement raised deeper issues than the mere practical aspects of establishing absentee procedures for this limited group of citizens. The debates over military voting began two decades before the groundbreaking Civil Rights Act of 1964 and Voting Rights Act of 1965 were passed.⁵¹ Congressmen representing the white South feared that federal absentee voting legislation for service people would set a precedent for federal "intrusion" in the Jim Crow based arrangements of Southern society, especially in the field of voting rights. Conversely, some supporters of such federal legislation cheered it on exactly because they hoped it would set such a precedent.⁵² The debates also came at a time when opposition the New Deal was mounting, and federal efforts at controlling absentee voting procedures for the military seemed to such opponents as yet another

⁵¹ The term "military voting" as well as "soldier voting" implies absentee voting and voting rights of uniformed service members. These are the terms used by Alvarez et al. and by the acts, and by participants in the discussions in the 1940's and 1950's.

⁵² In addition to its limited potential role in enfranchising those African Americans who served in the armed forces. See for instance Lawson Steven F. Lawson, *Black Ballots: Voting Rights in the South, 1944-1969* (New York: Columbia University Press, 1976) 75.

move to increase federal powers.⁵³ In other words, the soldiers' absentee voting debates involved broader issues of states' rights in general. Partisan politics and presidential involvement (once polls showed that Roosevelt would clearly gain from the military vote,) became other important factors in the policy debates.⁵⁴ Unclear constitutional language concerning federal and state powers over elections became the focus of discussions.

This chapter discusses how these factors influenced federal policy debates concerning absentee military voting, how they affected the legislation that resulted from these debates, and how effective the federal policy was at enfranchising service people. The legislation passed in the 1940's and 1950's might have had a limited effect on actually enabling those in the military to vote,⁵⁵ however, the Soldier Voting Act of 1942 was a starting point for federal involvement in the field of absentee voting rights for service people - the act was the first federal legislation to guarantee voting rights for members of the armed forces.⁵⁶ Furthermore, when Congress passed the Federal Voting Assistance Act in 1955, it extended its commitment to absentee voting rights to include certain overseas civilians.⁵⁷ The Federal Voting Assistance Program that resulted from this act, is still in force for carrying out federal responsibilities for uniformed and overseas voters today.

2.1 Early Beginnings

While absentee voting legislation for soldiers was not seriously considered in Congress until the 1940's, the question of giving soldiers the privilege of voting from the battlefield was considered by all the states during the Civil War. At least eleven of the twenty-five Union states passed such legislation.⁵⁸ Arguments of giving special voting privileges to soldiers as a reward for their

⁵³ See for instance John E. Rankin, U.S. Representative, speech in the House on November 17, 1943, in *Congressional Digest* Vol. 24, January 1944: 26-29

⁵⁴ See for instance "The Soldier Vote," *The New York Times*, editorial, February 5, 1944, available at www.nytimes.com accessed November 4, 2010; and George Gallup, "Vote of Soldiers Could Decide '44 Election, Gallup Poll Finds," *The New York Times*, December 5, 1943, available at www.nytimes.com accessed November 4, 2010.

⁵⁵ See for instance American Political Science Association, "Findings and Recommendations of the Special Committee on Service Voting." *American Political Science Review*. vol. 46, no. 2, June 1952: 512-523.

⁵⁶ P.L. 712, 56 Stat. 753-757 (September 16, 1942); Coleman 2005:1.

⁵⁷ P.L. 84-296, 69 Stat. 584-589 (August 9, 1955).

⁵⁸ Boyd A. Martin, "The Service Vote in the Elections of 1944", *The American Political Science Review*, vol. 39, no. 4, August, 1945: 720. According to Alvarez et al., eighteen states provided absentee procedures to servicemen. R. Michael Alvarez, Thad E. Hall and Brian F. Roberts, *Military Voting and the Law: Procedural and Technological solutions to the Ballot Transit Problem* Caltech/MIT Voting Technology Project Working Paper no. 53, California

sacrifices and contributions to the war effort, had been raised already in connection with the American Revolution. Such principled reasoning for enfranchising soldiers would be present throughout American history.⁵⁹ However, partisan political consideration was equally important for motivating initiatives to enact soldier voting legislation during the Civil War. It was commonly believed that soldiers of the Union states would vote for the Republican Party which was the “pro-war party,” and for Abraham Lincoln in particular, their commander-in-chief. Opposition to absentee soldier voting laws therefore came mainly from the Copperhead Democrats.⁶⁰ Lincoln himself took great interest in the issue, and was so concerned about the outcome of the election that he asked General Sherman to give soldiers from states that did not provide for absentee procedures permission to return home to vote. Lincoln received 78 percent of the soldier vote, but its importance to the outcome of the presidential election is unclear. However, the soldier vote was possibly critical in certain congressional races.⁶¹

At the turn of the century, the states had also begun legislating on absentee voting for civilians. In 1896, Vermont was the first state to extend absentee voting to civilians.⁶² Civilian absentee voting laws were partly a reflection of increased mobility caused by the expansion of the railroad system and partly caused by an extension of the idea of servicemen absentee voting.⁶³ Kansas was in 1901 the next state to introduce civilian absentee voting, but made it apply solely to rail road workers.⁶⁴ For links were being made between the special voting rights of servicemen and those of traveling salesmen and trainmen and others working for the industrial growth of the nation and thus also in the public good though not as impressive as the sacrifices made by soldiers and sailors.⁶⁵ By 1924, only four states did not provide for absentee voting.⁶⁶ In 1924, a few states restricted absentee voting to servicemen, a few states restricted it to civilians, while others covered both servicemen and civilians, explicitly or implicitly. Laws concerning civilian

Institute of Technology & Massachusetts Institute of Technology, March 2007: 12, http://www.vote.caltech.edu/drupal/files/working_paper/vtp_wp53.pdf accessed June 3, 2011.

⁵⁹ Alvarez et al. 2007: 10. During the Revolutionary War, restrictions on the franchise were numerous. State militia associations agitated for instance for the abolition of land owning requirement for voting.

⁶⁰ Martin 1945: 720-721.

⁶¹ Alvarez et al. 2007: 13.

⁶² Martin 1945: 720-721.

⁶³ Pamela S. Karlan, “Ballots and Bullets: The Exceptional History of the Right to Vote”, *University of Cincinnati Law Review*, Vol. 71, 2002-2003: 1352.

⁶⁴ Samuel C. Patterson and Gregory A. Caldeira, “Mailing In the Vote: Correlates and Consequences of Absentee Voting”, *American Journal of Political Science*, vol. 29, no. 4 November, 1985: 768.

⁶⁵ Karlan 2002: 1352.

⁶⁶ P. Orman Ray, “Absent-voting Laws”, *The American Political Science Review*, vol. 18, no. 2 May, 1924: 321.

voters were often restricted to specific groups (such as the handicapped or the elderly) or had geographical limitations. Overseas civilians were excluded from absentee voting laws till at least 1938 in all states but Tennessee and Virginia which specifically included their citizens abroad.⁶⁷

The issue of absentee voting rights for service people was again raised in connection with the First World War, and nearly all states allowed soldiers to vote absentee during the war.⁶⁸ However, neither Congress nor the Wilson Administration took a great interest in the situation. No presidential election was held during the war, something that might account for the president's lack of interest. Two relevant bills were introduced in Congress that were not acted upon, and while the state of New York, for instance, attempted to send a delegation overseas to poll the soldiers, the War Department stopped them. No state was to poll its soldiers in the field, as the department feared it would interfere with the war effort.⁶⁹

2.2 Debates During the Second World War

The Second World War brought the issue of absentee soldier voting to the federal level of government. Popular opinion favored some sort of action to ensure the voting rights of the men and women who were making great sacrifices for the good of the nation. Many argued that servicemen fighting for democracy overseas should have the right to participate in democracy back home. By 1942, most states had absentee voting laws covering servicemen, but the adequacy of such laws varied a great deal from state to state. Servicemen faced a myriad of complex and time consuming absentee voting regulations. During the Second World War, each troop could be made up of servicemen from all of the 48 states, each with different procedures and deadlines. This made matters more complicated than during the Civil War soldiers had been organized into state units. Simply informing each serviceman in each unit of the specific requirements of the various states, became more difficult. During the Civil War, several states had even set up polling stations in the field to poll its soldiers. In 1942, states required individual correspondence between the voter and his or her state via mail. Even if the voter managed to stay informed and followed all instructions, a major obstacle to having one's ballot counted was the

⁶⁷ Paul G. Steinbicker, "Absentee Voting in the United States", *The American Political Science Review*, vol. 32, no. 5, October, 1938: 899; P. Orman Ray, "Absent-voting Laws, 1917", *The American Political Science Review*, vol. 12, no. 2, May, 1918: 257.

⁶⁸ Karlan 2002:1351.

⁶⁹ Martin 1945: 722-721.

fact that many states did not forward ballots early enough for them to be executed and returned in time. Several members of Congress believed that the federal government needed to get involved. A uniform and effective method of voting was needed to guarantee the enfranchisement of members of the Armed Forces. In the view of these Congressmen, this could not be achieved if the matter was left up to the 48 states.⁷⁰

Debates in Congress began only a few months before the 1942 elections, and resulted in the Soldier Voting Act of 1942. The soldier voting issue was brought up again the next year in anticipation of the 1944 elections, and several amendments to the 1942 act were made. The Soldier Voting Act was the first federal legislation guaranteeing voting rights in congressional and presidential elections of members of the armed forces in time of war. It waved in-person registration and poll tax requirements, and contained provisions aimed at streamlining voting procedures.⁷¹

States' Rights, Civil Rights and the Constitution

Absentee soldier voting became one of the most controversial and most fiercely debated topics in 1942 to 1944, and was elaborately covered by the media. A *New York Times* article dated September 6, 1942, for instance, described the soldier voting issue as “the most volatile measure dropped into the hoppers since Pearl Harbor. For the debate on the Soldier’s Vote Bill developed into a dog fight with far-flung ramifications.”⁷² The reason was that these debates involved more than the practical issues of absentee procedures. Discussions concerning soldier voting were initiated at a time when opposition to Roosevelt’s New Deal was mounting, and opponents saw the drive for federal involvement in soldier voting as yet another attempt by New Dealers to centralize power at the federal level. In addition, many Southern Democrats specifically feared that soldier voting legislation would set a precedent for federal involvement in election processes. In other words, they feared that a federal soldier voting act would signal the first step towards enfranchising African-Americans who were being kept from the polls in the Jim Crow based Southern states (in addition to potentially enfranchising African-Americans serving in the Armed

⁷⁰ For documentation of information contained in this paragraph, see Martin 1945: 724-725.

⁷¹ Coleman 2005.

⁷² C. P. Trussell, “Soldier Vote in Jeopardy”, *New York Times*, September 6, 1942, available at www.nytimes.com accessed June 4, 2010. For more documentation on the degree of controversy, see for instance also *Congressional Digest* January 1944: 3; and Martin 1945:720.

Forces.)⁷³ Policy debates therefore turned into theoretical discussions on the constitutional powers of Congress (and the limits thereof). While Congressmen typically proclaimed to be in favor of voting rights for servicemen - a popular group among voters in general - opponents of federal soldier voting legislation claimed it went beyond the constitutional powers of Congress.⁷⁴

Proponents of federal involvement presented the issue as one concerning the *regulation* of elections and pointed therefore to the Election Clause to argue that Congress would be acting in line with the Constitution.⁷⁵ Article One, Section Four, Clause One of the Constitution, reads as follows: “The Times, Places and Manner of holding Elections for Senators and representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, excepts as to the Places of chusing [sic] Senators.” Congressional powers to regulate elections had by then already been confirmed by the Supreme Court,⁷⁶ and proponents therefore argued that federal laws regulating absentee voting for servicemen would supersede state laws.

Opponents of federal involvement, on the other hand, argued that the issue concerned voter *qualifications*, and pointed to another constitutional provision.⁷⁷ Article One, Section Two, Clause One and the Seventeenth Amendment both stipulate that “the electors in each state shall have the qualifications requisite for electors of the most numerous branch of the state legislature.” This passage has been, and still is, interpreted as meaning that only the states can set eligibility requirements for voting, though states are limited by constitutional amendments prohibiting discrimination based on race, color, or previous conditions of servitude (Fifteenth Amendment, 1870), sex (Nineteenth Amendment, 1920), and the constitutional assurance that no state shall “deny to any person within its jurisdiction the equal protection of the laws” (Fourteenth Amendment, 1868).⁷⁸ Proponents rejected the argument that soldier voting legislation dealt with

⁷³ Lawson 1976; Karlan 2002.

⁷⁴ See for instance Karlan 2002, 1354; Geoffrey Miller and Norman Silber, “Toward ‘Neutral Principles’ in the Law: Selections from the Oral History of Herbert Wechsler”, *Columbia Law Review*, vol. 93, 1993: 879; and Alvarez et al. 2007.

⁷⁵ See for instance statements by R. L., Ramsay, U.S. House Representative, speech in the House on July 23, 1942, in *Congressional Digest* vol. 24, January 1944: 16-18; R. S. Springer, U.S. House Representative, speech in House on July 23, 1942, in *Congressional Digest* vol. 24, January 1944: 18; and J. W., Gwynne, U.S. House Representative, speech in House on July 23, 1942, in *Congressional Digest* vol. 24, January 1944: 18-19.

⁷⁶ Gamboa 2001.

⁷⁷ See for instance Millard E., Tydings, U.S. Senator, radio address from Baltimore on December 12, 1943, in *Congressional Digest* Vol. 24, January 1944: 22-23; Rankin 1943; and Frank E. Kent, article in the Washington Star of December 3, 1943, in *Congressional Digest* vol. 24, January 1944: 31.

⁷⁸ Today, the Twenty-sixth Amendment also prohibits discrimination based on age and the payment of a poll tax.

the qualifications of voters, and pointed to the text of bill (that became law) that read “every individual absent from the place of his residence and serving in the land or naval forces” “who is or was eligible to vote at any election *under the law of the State of his residence* [emphasis added] shall be entitled to [...]”⁷⁹ Among other things, the bill that became law in 1942 waived registration requirements. Defending his bill, Representative R. L. Ramsay (D-WV) tried to convince Congress that registration did not have the same meaning as qualification. He argued that whether someone had registered or not did not make that person better equipped or a more qualified voter.⁸⁰

The provision of the Soldier Voting Act (and prior bill) causing particular controversy was the one waiving poll tax requirements. At the time the soldier voting issue was raised, Congress had already begun discussing whether or not it should pass anti-poll tax legislation for the general population. Many of the arguments concerning *qualification* versus *regulation* were therefore repeated in the two parallel discussions. Some of those in favor of the general anti-poll tax legislation hoped to enfranchise the poor, white or black, while other supporters saw it specifically as one step forward in the battle to enfranchise African Americans. Despite the Fourteenth Amendment, the Southern black population was kept from the polls by a variety of means, including poll taxes, literacy tests conducted by subjective voting officers, and downright intimidation. Many Southern Democrats and civil rights supporters alike saw the poll tax waiver in the soldier voting bills as a first step of passing anti-poll tax bills for the general population.⁸¹ The Second World War gave fuel to the civil rights movement. Discrepancies in ideals of equality, liberty and democracy at home became harder to tolerate. Civil rights activist argued that if African-Americans were good enough to die for the country, they were good enough to participate in its politics. The civil rights movement believed that achieving voting rights for African-Americans would be a good place to begin unraveling the Jim Crow system, filling public offices with sympathetic liberals. In 1942, an article in *The New York Times* reported that the National Negro Council was attempting to elect an African-American from Mississippi to Congress, with the help of African-American soldiers under the new Soldier Voting Act.⁸² One of the principal opponents of federal soldier voting legislation was a Southern Democrat

⁷⁹ P.L. 712, 56 Stat. 753-757 (September 16, 1942).

⁸⁰ Ramsay in *Congressional Digest*, January 1944:16-18.

⁸¹ Lawson 1976; Karlan 2002.

⁸² “Seek Soldier Vote for Negro”, *New York Times*, September 11, 1943, available at www.nytimes.com accessed June 4, 2010.

representing Mississippi in the House of Representatives called John E. Rankin. Criticizing federal involvement in the soldier voting issue on constitutional grounds, he said, in a twist to the civil rights movement's line of argument, "We are not fighting to destroy the Constitution; we are not fighting to destroy our State governments, but we are fighting to preserve them."⁸³ Herbert Wechsler, at the time an attorney in the Justice Department helping formulate the Green-Lucas soldier voting bill in 1943-44, described Rankin as "one of the most miserable characters I think I have ever encountered in this life [...] John Rankin was certainly one of the most racist, prejudiced people to come to the Congress, even in those days, from anywhere in the country."⁸⁴

1942: The Soldier Voting Act is Passed and Put to the Test

Despite controversy and fierce debates, the Soldier Voting Act of 1942 passed by a clear majority, though many congressmen were away from Washington for the summer at the time that happened. On July 23, 1942, the original bill that had been introduced by Congressman Ramsay passed in the House by a 139 to 19 vote, with less than a third of the House voting. The Senate amended the bill by adding an anti poll tax provision, and passed the amended bill by a 47 to 5 vote on August 25, with 44 senators not voting. The House later approved by a 248 to 53 vote, 125 not voting, and the bill was signed by the president on September 16, 1942.⁸⁵ The act opened with the following statement:

In time of War, notwithstanding any provision of State law relating to the registration of qualified voters, every individual absent from the place of his residence and serving in the land and naval forces of the United States, including the members of the Army Nurse Corps, the Navy Nurse Corps, the Women's Navy Reserve, and the Women's Army Auxiliary Corps, who is or was eligible to register for or is qualified to vote at any election under the law of the State of his residence, shall be entitled, as provided in this Act, to vote for electors of President, and Vice President of the United States, United States Senators, and Representatives in Congress.⁸⁶

The act required that persons covered by it be exempted from registration and poll tax requirements. Furthermore, it required that the Secretaries of War and Navy print and distribute post cards to be used as ballot applications, and these post cards applications could be sent free of postage in the U.S. mail. Upon receipt of such application cards, the secretary of state of each

⁸³ Rankin in *Congressional Digest* January 1944: 26.

⁸⁴ Herbert Wechsler in Miller and Sibley 1993: 881.

⁸⁵ For votes, see *Congressional Digest*, January 1944: 3.

⁸⁶ "The Soldier Voting Act of 1942," P.L. 712, 56 Stat. 753-757 (September 16, 1942). Available at www.heinonline.com accessed June 4, 2010.

state were to forward an official war ballot to the applicant, as soon as possible. The states were to print their own ballots, but the act outlined what such ballots should look like. While the Soldier Voting Act guaranteed the right to vote in federal elections, states were left with the sole power over state and local elections as even several proponents of strong federal soldier voting legislation believed the Congress' constitutional powers were limited to federal elections. The states could therefore chose if they wanted to add the names of candidates for state, county and other local offices, to the official war ballot. The act also guaranteed that the federal government would reimburse to the states the costs incurred by carrying out its mandatory provisions. Furthermore, the act also stipulated that if members of the land and naval forces wished to disregard the voting procedures proscribed by the federal act, they were free to vote through parallel state mandated procedures (that had been in place prior to the passing of the act.)⁸⁷

Though the act had passed through Congress, no agreement had been reached concerning whether federal absentee voting legislation involved setting voter qualifications (which was a state prerogative) or regulating elections (which was a federal prerogative that superseded state regulations.) In the end, proponents had argued that since the bill only was relevant “in time of war”, one did not need to settle that question. In Wechsler's personal account of the debates, he explains that Congress had passed other bills during wartime that it would not have been able to pass during peacetime, for instance the act that put a moratorium on the foreclosure of mortgages of servicemen. Proponents therefore argued that this “war power” also included protecting the voting rights of servicemen who had been deprived of that right because they had been dislocated as a result of “the legitimate exercise of national powers in the fighting of the war.”⁸⁸ It seems that this reasoning somewhat appeased states' rights oriented members of Congress. Servicemen would not be guaranteed the same rights under the Soldier Voting Act during peacetime. Furthermore, Southern senators had not dared filibuster the bill because it would be difficult to justify to their constituents why they seemed to be depriving servicemen of the vote. Also easing the passage of the bill was the fact that by the time the act would be signed, the Southern states had already held their white primaries. With the strong Democratic hold on the South, these race-based primaries were in fact the only meaningful elections in those states.⁸⁹

⁸⁷ Information used in this paragraph has been retrieved from P.L. 712, 1942, and American Political Science Association report 1952.

⁸⁸ Wechsler in Miller and Silber 1993:880.

⁸⁹ Lawson 1976, 66.

Just like during the First World War, the War Department resisted the polling of overseas servicemen. Again, the department approved of the principle of granting the vote to every soldier and sailor, but was concerned that it would interfere with the war effort by overburdening shipping space and be a window of opportunity for the enemy to gather vital secret information concerning the location and number of troops.⁹⁰ Secretary of War Henry Lewis Stimson had expressed his concerns while the bill was still pending in Congress, and had asked that it be made to apply only to the forces still in the U.S. and Alaska. This request was not met, and by September 24, the War Department had begun shipping post card applications overseas in compliance with the act.⁹¹ However, just as during the last war, the department stopped New York state from sending state ballots overseas, twice, on account of scarce shipping space.⁹² In the end, no servicemen overseas were polled. And in fact, the Soldier Voting Act did not seem to have had any effect on increasing the number of servicemen who were able to vote.⁹³ Of 5,000,000 servicemen (though not all of voting age), fewer than 140,000 applied for federal war ballots, and only 28,051 had their ballots counted. No statistics are available concerning the number of voted cast through state laws.⁹⁴

A contemporary analysis by the Bureau of Census named four reasons for the poor results of the Soldier Voting Act.⁹⁵ First of all, it had been enacted too close to the election (less than two months before the November election,) to be successfully implemented, the Census Bureau explained. Secondly, soldiers could vote under either state or federal law (which probably was a source of confusion, but also might mean that soldiers might have voted under state laws, votes that were not recorded.) Thirdly, the 1942 election were mid-term elections which often attracted fewer voters. And finally, the Census Bureau questioned whether states forwarded ballots early enough. Nonetheless, the act was a move forward. According to Pamela S. Karlan, it was the first federal legislation passed to expand black voting rights since the end of Reconstruction.⁹⁶ According to R. Michael Alvarez et al. , it was one of the first (if not the first) case in which the

⁹⁰ “Stimson for Limiting of Soldier Vote Bill: Against Application Abroad as Military Impediment,” *The New York Times*, September 8, 1942, available at www.nytimes.com accessed June 4, 2009.

⁹¹ “Ballot Cards Sent Soldiers Overseas,” *The New York Times*, September 25, 1942, available at www.nytimes.com accessed June 5, 2010.

⁹² “State Ballot Board Attacks Stimson,” *The New York Times*, October 2, 1942, available at www.nytimes.com accessed June 5, 2010.

⁹³ American Political Science Association report 1952: 513; Martin 1945: 725.

⁹⁴ Martin 1945: 725-726.

⁹⁵ Martin 1945: 756.

⁹⁶ Karlan 2002: 1355.

federal government had subsidized state and local election administration.⁹⁷ And, according to Coleman, it was the first federal legislation to guarantee voting rights of members of the armed forces.⁹⁸

1943-1944: Improvements Still Needed

The issue of soldier voting was again raised in 1943. Hearings were held in both Houses of Congress. In late November 1943, bill S.1285 was introduced in the Senate to amend the Soldier Voting Act of 1942, sponsored by Senators Theodore F. Green (D-Ill) and Scott W. Lucas (D-RI). An identical bill was soon thereafter introduced in the House by Representative Eugene Worley (D-TX).⁹⁹ All but two states, South Carolina and New Mexico, had enacted absentee balloting legislation in 1943.¹⁰⁰ However, the quality of state laws had not improved much, and the mere presence of such laws were of little use if they were of no practical use. The Soldier Voting Act of 1942 had offered an alternative method of voting, but had not erased state laws concerning soldier voting that were left as optional methods of voting for servicemen.¹⁰¹ Defending his bill, Senator Green stated that:

If State legislation on the subject were adequate, there would have been no need for Public Law 712, nor would there be any need for S.1285 which merely seeks to make Public Law 712 more effective. State absentee-balloting procedures, however, are too complicated, time consuming, and far too variable to permit effective administration or to afford a genuine opportunity for members of the armed forces to vote.¹⁰²

Under state procedures, at least three to five steps were necessary to successfully cast a ballot.¹⁰³ First, the serviceman had to send a ballot application to his home state. Then the state would forward him a ballot, and finally the serviceman would have to execute and return the ballot. Some states also required that servicemen first apply for a ballot application, which would add two steps. According to one senator, eight states had poll taxes, and the poll tax would in some cases be between one and two dollars (a soldiers' monthly pay was fifty dollars,) and the poll tax

⁹⁷ Alvarez et al. 2007: 19.

⁹⁸ Coleman 2005.

⁹⁹ Ramsay was no longer a member of Congress.

¹⁰⁰ American Political Science report 1952. According to Ramsay, 6-7 states had been without such legislation in 1942. See Ramsay in *Congressional Digest*, January 1944: 16.

¹⁰¹ As already discusses, the Soldier Voting Act specifically stipulated that servicemen could choose to vote through parallel state procedures, disregarding federally mandated procedures including the federally proscribed ballot.

¹⁰² Green in *Congressional Digest*, January 1944: 11.

¹⁰³ Green in *Congressional Digest*, January 1944: 11.

might also add steps to the voting process.¹⁰⁴ Furthermore, by the 1944 election, many servicemen would have obtained their voting age since joining the Armed Forces. Voting would therefore be nearly impossible for those who came from states that required in-person registration (i.e. physical presence in the state.)¹⁰⁵ The Army found it challenging to keep servicemen informed of the many deadlines and procedures of the forty-two states. One of the biggest problems, however, was transit time. In twenty-seven states, a voter could not apply for a ballot earlier than thirty days before an election, while the Department of War estimated that a minimum of forty-five days was needed, at least for servicemen stationed overseas.¹⁰⁶

While the Soldier Voting Act had offered a simplified and uniform method of voting, three steps were still needed to successfully cast a ballot: a post-card ballot application had to be sent to state officials, state officials had to forward the federal ballot to the applicant, and the applicant had to return the ballot. A November 15 report by the Senate Committee on Privileges and Elections claimed that the main reason for the inadequacy of the act was the inefficiency of having multiple procedural steps to successfully cast a ballot.¹⁰⁷ The Green-Lucas and Worley bills proposed to eliminate two steps by removing the need to apply for ballots. The bills would have created a bipartisan U.S. War Ballot Commission that would produce blank federal ballots, and that would also take over the burden of administration imposed on the Armed Services by the 1942 act. The commission would make lists containing the names of all candidates up for election based on information gathered from all the states. A balloting day was to be chosen in each military and naval unit after the lists had been received. Servicemen would fill in the federal write-in absentee ballots, and place them in special envelopes. Each envelope was placed in an outer envelope, together with the voter's personal data. All envelopes from the military or navy units were then to be transported to the commission, which would forward them to the various Secretaries of State. To prevent fraud, reports were to be made on the number of ballots handled by the Secretaries of War, the Secretary of Navy, the Federal Ballot Commission and the various Secretaries of States. Reports would then be compared. The proposed bills also contained a

¹⁰⁴ Vito Marcantonio, U.S. House Representative, speech in House on December 17, 1943, in *Congressional Digest* vol. 24, January 1944: 20.

¹⁰⁵ The lower age limit for entering the services was 18, while the common state limit for voting was 21. Until the Twenty-sixth Amendment (1971) required states to lower the voting age to 18.

¹⁰⁶ Marcantonio in *Congressional Digest*, January 1944; and American Political Science Association report 1952.

¹⁰⁷ November 15 report by the Senate Committee on Privileges and Elections, rendered in *Congressional Digest* 1944, January, 5-6.

penalty provision pertaining to fraud and obstruction of the voting procedure under the act. This absentee balloting machinery was to be made available not only to servicemen (stationed in the U.S. and overseas,) but also to members of the merchant marine and to civilian employees of the U.S. stationed overseas. The provisions of the 1942 act waiving registration and poll tax requirements were left unchanged.¹⁰⁸

New and Continued Controversies

From the fall of 1943 until the November 1944 elections, the soldier voting issue caused “extremely bitter controversy in Congress,”¹⁰⁹ just as it had in 1942, perhaps even more so this time. And again, it attracted the corresponding media interest. *Congressional Digest*, a periodical designed to provide a forum for discussing the pro’s and cons’ of the most important bills pending in Congress, devoted two issues to the topic in 1944. The January issue discussed nothing but the soldier voting bills, and the June-July issue more generally discussed federal versus states’ rights in voting, including soldier voting, the poll tax, and the all-white primaries. According to the *Congressional Digest*, the first session of the 78th Congress (1943) had been “the most turbulent session since the inauguration of the New Deal in 1933.”¹¹⁰

Partly, this turbulence was caused by the soldier vote issue itself, and partly, this turbulence was the back-drop to which the soldier issue had to be solved. Opposition to Roosevelt’s New Deal programs was but increasing, and was especially strong in the Southern and border states. There was turbulence between the president and Congress, within Congress, and within the Democratic Party. The general poll tax issue had not been resolved. Democrats were split over the House approved anti-poll tax bill that was still pending in the Senate at the end of 1943. In June, Congress had repassed the Smith-Connelly anti-strike bill over the President’s veto, and later passed a bill that would give the administration only about a third of the tax revenues it had asked for. Nor had the food subsidies controversy been resolved by the end of the session either.¹¹¹ Furthermore, uncertainty about a possible fourth term for Roosevelt put Democrats in an uneasy situation. Democrats were waiting to decide if they should run on a

¹⁰⁸ See previous footnote.

¹⁰⁹ Foreword in *Congressional Digest* January 1944: 3.

¹¹⁰ “The Month in Congress” (prologue) in *Congressional Digest* January 1944: 1.

¹¹¹ For documentation for all information noted above in this paragraph, see for instance Trussell, “Soldier Vote in Jeopardy”, *The New York Times*, September 6, 1942, available at www.nytimes.com accessed June 4, 2010; and “The Month in Congress” (prologue) in *Congressional Digest* January 1944: 1-2.

win-the-war, support the Commander-in-Chief platform in the case of his re-election, or if they should go back to “old Democratic principles, denounce bureaucracy and centralization of power, and try to line up the party votes.”¹¹² The civil rights movement was also stirring things up. Pending in the Supreme Court was a case that would end in a ruling on April 3, 1944 that ultimately abolished the white primary. The 1942 Soldier Voting Act had not settled the states’ rights issues it involved. While one senator had applauded the passage of the Soldier Vote Act for giving assurance that Congress would vote to wipe out the poll tax entirely as a requirement for voting in federal elections, the act had made opponents grow more determined than ever to prevent the complete abolition of the poll tax. An “unreconstructed Southerner” had written to his daughter after the passage of the Soldier Voting Act that “all white people in Alabama are buying pistols and other ammunition in preparation for the race war that is coming.”¹¹³

Raising the stakes of the soldier voting issue in 1944 was the fact that unlike in 1942, there was a presidential election. Furthermore, the number of troops was increasing and thus also the number of votes at stake in an election predicted to be very close. In 1942, Roosevelt’s Secretary of War had been accused of hindering overseas soldiers from voting. In 1944 however, having announced his fourth term candidacy, Roosevelt personally entered the stage in support of a federal plan to ensure that both soldiers at home and abroad would have a real opportunity to vote. Roosevelt had initially supported a general repeal of the poll tax, but had become silent on the issue as he feared losing much needed Southern support for his New Deal programs.¹¹⁴ Supporting soldier voting legislation seemed perhaps less risky to him, though his involvement became quite controversial.

For also raising the stakes this time around was the fact that polls showed that a majority of soldiers would vote Democratic in the 1944 presidential election, adding a new dimension to the controversies. The division on the soldier voting issue was clearly not merely along sectional lines, but also along political lines. In 1942, there had been no time for open speculation about what party would benefit from enfranchising the soldiers. In June 1943, however, surveys executed by the American Institute of Public Opinion indicated that the Democrats would benefit

¹¹² “The Month in Congress” (prologue) in *Congressional Digest* January 1944: 2.

¹¹³ The Senator was George Norris. The “daughter” referred to was the civil rights activist Virginia Durr. See Lawson 1976: 66.

¹¹⁴ Lawson 1976: 70.

from the soldier vote.¹¹⁵ In December, another Gallup Poll indicated that sixty-one percent of servicemen favored the Democrats.¹¹⁶ According to the poll, this meant that sixty-one percent of the 6,000,000 votes that could make a difference in the election would go Democratic (having subtracted 2,000,000 servicemen who would not have reached voting age by the 1944 election, and having subtracted another 2,000,000 voters from the Southern states because Democratic soldier votes would have little effect in Southern states that were already overwhelmingly Democratic). The political aspect made the soldier voting issue especially controversial since the election was expected to be very close, and according to an article in *The New York Times*, it was the first election since 1932 that the “outs” (the Republicans) had a real chance of becoming the “ins”.¹¹⁷ The December Gallup poll cited above estimated that the civilian vote (40,000,000) would go fifty-two percent in favor of the Democrats. Adding the service vote would increase the margin, and give the Democrats an edge of fifty-three percent. With the service vote potentially determining the outcome of the presidential election, the debate became partisan, just as it had been in the Union states during the Civil War, when the Republicans would benefit from the soldier vote. These partisan motives would both encourage and obstruct the passing of stronger soldier voting legislation.

As a result, the camp favoring strong federal legislation was dominated by Northern Democrats, while the camp favoring weak or no federal legislation was dominated by Republicans and Southern states’ rights Democrats, though there were certainly exceptions to the rule. Both camps claimed the other was acting in self interest, not in the interest of the soldiers. One Democratic senator accused the Southerners of his own party of forming “an unholy alliance” with the Republicans to deliberately withhold voting rights from servicemen, “the most unpatriotic unholy alliance that has occurred in the United States Senate since the League of Nations for peace of the world was defeated in 1919.”¹¹⁸ From the other camp, several Southern Democrats and Republicans were accusing Northern Democrats of speaking in a language of “make believe patriotism” when their motives rather were partisan, of once more of attempting to

¹¹⁵ Which the Democrats also had in the 1942 elections, it appeared. George Gallup, “Soldier Voting Seen as Aiding Democrats”, *The New York Times*, June 30, 1943, available at www.nytimes.com June 5, 2009.

¹¹⁶ Gallup December 5, 1943.

¹¹⁷ Luther Huston, “Capital Seething with Controversy”, *The New York Times*, February 6, 1944, available at www.nytimes.com June 5, 2010.

¹¹⁸ Senator Guffey (D-PA) quoted in “Guffey Condemns Soldier-Vote Shift”, *The New York Times*, December 5, 1943, available at www.nytimes.com June 5, 2010.

“substitute New Deal hysteria for sound public thinking, and of concentrating power in the hands of the federal government.”¹¹⁹ Other Republicans accused Northern Democrats of deliberately drawing up an unconstitutional bill that would make the election end up in the House of Representatives where the Democratic majority would choose a Democratic president,¹²⁰ or even worse, the election might end up in the Supreme Court which Roosevelt had stacked with New Deal friendly justices.¹²¹ Still others were judgmentally asking why President Roosevelt had suddenly become so interested in the soldier voting issue.¹²² In private talks, some Southern Democrats were even wondered if a Republican president would be better than a fourth term with Roosevelt as it could give them four years to purge the New Dealers from the party, according to an article in *Time Magazine*.¹²³

At a time when committee leaders were quite influential,¹²⁴ it is interesting to note that the chairmen of the relevant committees in both houses of Congress were in fact two of the main sponsors of the strong federal bills: Senator Green (D-RI) who was chairman of the Senate Committee on Privileges and Elections, and Representative Worley (D-TX) who was Chairman of the House Committee on Elections. Curiously, Worley was a states’ rights Texan, but he insisted that his bills did not involve the issue of states’ rights.¹²⁵ Two other central figures in favor of the federal plan were co-sponsor of the senate bill, Senator Lucas (D-IL), and House majority leader McCormack (D-MA). Democratic National Chairman Frank Walker was also a supporter, and testified in favor of a federal plan at a House hearing in October 1943, though

¹¹⁹ Chas. W. Vursell, U.S. House Representative, speech in House on November 23, 1943, in *Congressional Digest* vol. 24, January 1944: 32; and Rankin in *Congressional Digest* January 1944: 26.

¹²⁰ Reminiscent of the Tilden-Hays contest in 1876. See for instance Senator Styles Bridges (R-NH) quoted in C. P. Trussell, “‘State Rights’ Bill for Soldiers’ Vote Passed by Senate”, *The New York Times*, March 15, 1944, available at www.nytimes.com, June 6, 2010; Rankin in *Congressional Digest* January 1944: 28; and Mark Sullivan, excerpts from articles in the Washington Post of December 6 and 13, in *Congressional Digest* vol. 24, January 1944: 29.

¹²¹ Eastland in *Congressional Record* vol. 89, December 3, 1943: 10290; Kent in *Congressional Digest*, January 1944: 31.

¹²² See for instance House Republican leader Martin quoted in “Dares Roosevelt on the Soldier Vote”, *The New York Times*, February 14, 1944, available at www.nytimes.com June 5, 2010.

¹²³ “The Hate Debate,” *Time* Dec 20, 1943, www.time.com/time/printout/0,8816,932591,00.html May 4, 2011. Fraud was also one of the stated concerns of opponents to the Green-Lucas/Worley bills. Some feared for instance that the proposed Federal Ballot Commission would get too powerful and potentially become a source of fraud because federal control of voting processes might intimidate servicemen to vote for their Commander in Chief. See for instance “Rebukes Chaplin as Letter Writer,” *The New York Times*, March 22, 1944, available at www.nytimes.com accessed June 10, 2010.

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¹²⁵ See for instance Robert C. Albright, “Soldier Vote States’ Right Bypass Drafted,” *Washington Post*, December 11, 1943, available at www.washingtonpost.com accessed June 10, 2010.

appearing in a personal capacity.¹²⁶ The other camp, supporting a state control plan (i.e. supporting a weak or no federal act,) included Representative Rankin (D-MS) and Senator Robert A. Taft (R-OH), the first a fiercely “racist” states’ rights Southerner, and the latter “a republican hopeful in the 1944 election.”¹²⁷ Others included Senator Eastland (D-MS), also a states’ rights adherent, and House Republican leader Martin Jr. (R-MA). Testifying in the same hearing as his counterpart, Chairman of the Republican National Committee, Hon. Spangler, refused to give any opinion on the merits of the bill, despite Rankin’s repetitive efforts at making him denounce it. “I want it understood I am in favor of any practical matter you can work out so that the soldiers can vote. As too the details, I pass no opinion; as to its constitutionality I pass no opinion.”¹²⁸ Neither supporting nor denouncing the specific bill, he was probably trying to avoid making the Republican Party vulnerable to accusations of being against soldiers’ voting rights.

1943-1944: The Line of Events

The Green-Lucas bill was defeated in the senate on December 3, as the senate instead adopted the Eastland-McKellar-McClellan substitute bill by a forty-two to thirty-seven vote.¹²⁹ While the Green-Lucas bill would have strengthened the Soldier Voting Act of 1942 and broadened the federal role, the Eastland-McKellar-McClellan substitute bill would have made the act weaker would have reduced federal involvement. The substitute bill would merely have stated that Congress was in favor of giving service men the opportunity to vote, and would merely have *recommended* that the states take action to achieve that goal. It would have eliminated the poll tax and registration waivers from the Soldier Voting Act of 1942. Supporters of the federal plan called the substitute bill meaningless and claimed it would deprive soldiers of the vote.¹³⁰ Senator Guffey (D-PA) claimed that the supporters of the substitute bill were also out to kill the anti-poll tax bill. Rankin called the passage of the Eastland-McKellar-McClellan bill “one of the greatest

¹²⁶ U.S. Congress, House of Representatives, Committee on Election of President, Vice President, and Representatives in Congress, *Soldier Voting*, Hearings on H.R. 3436, October 19 and November 9, 1943, (Washington D.C.: Government Printing Office, 1944), available through the University of Michigan/HathiTrust’s digitization project at <http://hdl.handle.net/2027/mdp.39015030791860> accessed January 3, 2010.

¹²⁷ Miller and Silber 1993: 881.

¹²⁸ Spangler in House Hearing on H.R. 3436, 1943: 239.

¹²⁹ *Congressional Record* vol. 89, December 3, 1943: 10290.

¹³⁰ McCormack referenced in “Guffey Condemns Soldier-Vote Shift”, *The New York Times*, December 5, 1943, available at www.nytimes.com June 5, 2010.

victories for States' rights and constitutional government in the history of this nation.”¹³¹ In the House of Representatives, two bills were pending: one introduced by Rankin (House Joint Resolution 190) corresponding to the Eastland bill, and one introduced by Worley (H.R. 3436) corresponding to the Green-Lucas bill.¹³² Since the senate had rejected the Green-Lucas bill, the House Committee on Elections started considering the Rankin resolution.

On December 18, Worley introduced a compromise bill, (after conferences with House majority leader McCormack and House majority whip Ramspeck. The compromise bill would have kept the first two sections of the 1942 act concerning the poll tax and registration waiver and the guarantee that service men “*shall* have the right to vote”, but it would have made the other new provisions of the Green-Lucas bill voluntary for the states, for instance whether or not they accept the official Federal Write-in Ballots.¹³³ According to Albright of the Washington Post, only extreme opponents immediately opposed the compromise bill, Rankin being one of them.¹³⁴ Several members of the House Election Committee previously against the original Worley bill were reported to be wavering. Early January, 1944, in the senate, despite renewed efforts of compromise, states' rights proponents moved in the opposite direction as they announced they would form a caucus to solidify opposition to any kind of federal involvement in the election machinery.¹³⁵ Green and Lucas introduced a compromise bill similar to the Worley bill, but senator Eastland, like Rankin in the House of Representatives, showed scant interest in any compromise.

On January 26, President Roosevelt stepped directly into the Congressional controversy.¹³⁶ A new states' rights substitute sponsored by Senator Taft was about to be introduced in the Senate when the president's message was read. In the letter to Congress, Roosevelt called the states' rights measure already passed by the Senate and awaiting action in the House a “fraud on the soldiers and sailors and marines” and “a fraud on the American

¹³¹ Rankin , see previous footnote.

¹³² Foreword in *Congressional Digest*, January 1944: 3.

¹³³ Eugene Worley, U.S. House Representative, speech in Congress on December 18, 1943, in *Congressional Digest* January 1944: 14-16.

¹³⁴ Robert C. Albright, “Soldier Vote States' Right Bypass Drafted,” *Washington Post*, December 11, 1943, available at www.washingtonpost.com accessed June 10, 2010.

¹³⁵ “Senators to Push Soldier Vote Fight,” *The New York Times*, January 7, 1944, available at www.nytimes.com accessed June 10, 2010.

¹³⁶ C.P. Trussell, “President Calls Vote Bill ‘Fraud,’ ‘Insult,’ Says Taft,” *The New York Times*, January 27, 1944, available at www.nytimes.com June 4, 2010.

people.”¹³⁷ He endorsed the Green-Lucas and Worley compromise bills, and claimed there was nothing in the proposed statute that violated states’ rights. He stated that it certainly did not violate states’ rights any more than the 1942 act did, or any more than the Soldiers’ and Sailors’ Civil Relief Act that Congress had passed in 1940. Even if all the states tried their best, they would still not be able to provide voting mechanisms that were as efficient and streamlined as a federal plan would.¹³⁸ Roosevelt asked that the House vote on the Rankin bill be taken by a roll call so that the American People (and the servicemen) could check on their Congressmen. The response in Congress to the President’s message was “white hot.”¹³⁹ Resentment came from both Republicans and Democrats, in both houses of Congress.¹⁴⁰ Not only did Congressmen feel that their executive was meddling in legislative matters, but they were also shocked by his choice of words. Calling the bill a *fraud* seemed to imply that those voting for a state plan were villains and crooks. Especially angered were the members of his own party in the Senate who had voted for the states’ rights plan, several of whom were now considering voting for the compromise bill. Roosevelt’s support of the federal plan to guarantee voting right for soldiers might therefore actually have discouraged Congress from passing Green-Lucas and Worley bills.

On February 3, the House angrily accepted Roosevelt’s challenge and stood up to be counted in a roll call that resulted in the passing of an amended version of the Eastland-Rankin bill. An angered *New York Times* editor argued that the roll call that had essentially amounted to a choice between a federal plan and a states’ rights plan, showed that Republicans were hindering soldiers from voting simply because they feared that soldiers would vote Democratic.¹⁴¹ Of the 131 congressional votes cast by Representatives from the Southern States (including the border states), 69 were cast in favor of the federal plan, while 62 were cast for the states’ rights plan. Of the 193 republicans voting, 175 supported the states’ rights plan, while only 18 supported the federal plan. In other words, had it been only up to the Southern representatives, the federal plan would have been passed (though by a narrow vote,) but had the question been left up to the Republicans, the state rights’ plan would have won (on a ratio of practically 10 to 1.) The editor

¹³⁷ Franklin D. Roosevelt, letter to Congress on January 26, 1944, in *Congressional Digest* vol. 23, June-July 1944: 186-187.

¹³⁸ Roosevelt in previous footnote.

¹³⁹ See for instance Miller and Silber 1993: 881.

¹⁴⁰ Trussell, January 27, 1944; Luther Huston, “Capital Seething with Controversy”, *The New York Times*, February 6, 1944, available at www.nytimes.com June 5, 2010.

¹⁴¹ “The Soldier Vote,” *The New York Times*, editorial, February 5, 1944, available at www.nytimes.com accessed November 4, 2010.

of *The New York Times* concluded that the main force hindering federal soldier voting rights was not states' rights concerns but partisan concerns.¹⁴²

On February 4, a tie vote blocked a motion to bring the House-amended Eastland-Rankin bill to the Senate floor.¹⁴³ Senate concurrence would have completed action on a soldier voting bill. Instead, the Senate passed an amended version of the Green-Lucas compromise bill, on February 8.¹⁴⁴ A House-Senate soldier voting conference was formed to find a compromise between bills passed. On March 7, they came to an agreement. The result was a bill that in the words of a Washington post article was clothed in "a states' rights straight jacket so tight that only a limited number of overseas servicemen and women and a few in this county could cast federal ballots."¹⁴⁵ Supporters of the federal plan were bitterly disappointed. President Roosevelt and several Congressmen including Green, Lucas, and Senate Majority Leader Barkley, questioned whether greater or fewer numbers of servicemen would get the opportunity to vote under the new compromise bill than under existing law.¹⁴⁶ Green said the bill only bore wage resemblance to his original bill. Though he was the Senate Election Chairman, he refused to present the conference report to the Senate, and assigning instead the task to one of the compromise supporters in the committee. Green, Lucas and Barkley voted against the states' rights compromise, and Green urged Roosevelt to veto the bill.¹⁴⁷ Worley and other congressmen in favor of a strong federal plan were disappointed at the outcome of the House-Senate conference, but believed the compromise bill was better than nothing. Worley voted in favor of the bill. The bill was passed in the Senate by 47 to 31 vote on March 14, and in the House by 273 to 111 vote on March 15.¹⁴⁸ In the other camp, Rankin, who had voted in favor of the bill, was enthusiastic and said he had got what he wanted, and senator Overton of Louisiana was delighted

¹⁴² See previous footnote. See also Gladstone Williams, "Republicans Afraid to Let Soldiers Vote," *The Atlanta Constitution*, January 28, 1944, available through www.ajc.com accessed July 25, 2011.

¹⁴³ C. P. Trussell, "States Rights' Bill for Soldier Voting Beaten in Senate," *The New York Times*, February 5, 1944, available at www.nytimes.com June 4, 2010.

¹⁴⁴ C.P. Trussell, "Two Voting Bills Passed by Senate and Sent to House," *The New York Times*, February 9, 1944, available at www.nytimes.com June 4, 2010.

¹⁴⁵ Robert C. Albright, "Vote Bill Gets States Right Straightjacket," *Washington Post*, March 8, 1944, available at www.washingtonpost.com June 5, 2010.

¹⁴⁶ C. P. Trussell, "'State Rights' Bill for Soldiers' Vote Passed by Senate", *The New York Times*, March 15, 1944, available at www.nytimes.com, June 6, 2010. C.P Trussell, "Solier Voting Battle Has a Political Tinge," *The New York Times*, March 19, 1944, available at www.nytimes.com June 4, 2010.

¹⁴⁷ *Congressional Record*, Senate, vol. 90, March 14, 1944: 2573; Albright March 8, 1944.

¹⁴⁸ *Congressional Record*, House, vol. 90, March 15, 1944: 2639. and Trussell March 15, 1944.

that the South could maintain white supremacy.¹⁴⁹ Roosevelt considered vetoing the bill, and telegraphed the various state governors to ask if they would accept the Federal Write-in Ballot. According to the Atlanta Constitution, there was a chance that Roosevelt would veto the bill. The answers he got varied. In the end, Roosevelt did not use his veto powers, and the bill became law on April 1, 1944, though without the President's signature.¹⁵⁰

In the media, articles were written both in favor and in opposition to the newly passed amendments. When the Senate passed the compromise bill, *The New York Times* published an editorial titled "The Soldier Loses."¹⁵¹ The editor wrote that "a better plan, and one thoroughly consistent with constitutional requirements" could have been achieved by passing a version of the early Green-Lucas/Worley bills. One article in the *Washington Post* maintained that "this law is a turning point in the very deeps of government. It is the end of a trend long under way."¹⁵² This trend he, the author of the article argued, was the reversal of the New Deal increase in federal powers (at the expense of the states,) and the author was content. William Gladstone of *The Atlanta Constitution* agreed with Roosevelt that the bill that had passed was a fraud on the members of the military.¹⁵³

The 1944 Amendments

The 1944 amendments repealed all but the first two sections of the 1942 Soldier Voting Act. Several election procedures that had been mandatory for the states in 1942 were turned into recommendations, for instance acceptance of the post-card ballot applications printed and distributed by the Departments of War and Navy.¹⁵⁴ The amendments established the United States War Ballot Commission and proscribed a federal write-in absentee ballot (which would eliminate the need for registration or ballot application,) something that Green, Lucas, and

¹⁴⁹ Lawson 1976: 74.

¹⁵⁰ American Political Science Association report 1952. P.L. 277, 58 Stat. 136-137 (April 1, 1944). "GOP Governors' Replies Waited in Soldiers' Vote Bill Decision," *The Atlanta Constitution*, March 19, 1944, available through www.ajc.com accessed July 25, 2011.

¹⁵¹ "The Soldier's Vote", editorial *The New York Times*, February 5, 1944, available at www.nytimes.com accessed June 10, 2010.

¹⁵² Mark Sullivan, "States Rights' Revival," *Washington Post*, April 3, 1944, available at www.washingtonpost.com, 5 June 2010.

¹⁵³ Gladstone Williams, "FDR Action on Soldier Vote Bill Significant," *The Atlanta Constitution*, March 9, 1944, available through www.ajc.com accessed July 25, 2011.

¹⁵⁴ American Political Science Association 1952. P.L. 277, 58 Stat. 136-137 (April 1, 1944).

Worley had worked for.¹⁵⁵ However, each state would have to certify that it had a need for write-in ballots, before such ballots could be used by soldiers from that state. In addition, the ballot would merely be used if a serviceman had following the rules and regulations of their respective states, but had not received the regular state ballot in time for it to be returned for counting.¹⁵⁶ Originally, Green, Lucas and Worley attempted to expand the list of persons eligible to vote under the Soldier Voting Act, by including civilians working for the United States and not affiliated with the Armed Forces. However, in an attempt to minimize opposition to their bills, they had excluded such civilians already in their proposed compromise bills.¹⁵⁷ To sum up, the opponents of the federal plan had succeeded in assigning ballot distribution to the states who retained control of the absentee voting process, and could create laws and regulations as they wished, or at least that is how Congressmen like Rankin saw it. However, a report by the American Political Science Association later argued that every time a state did not provide enough transit time or in any other way made voting impossible for a serviceman (who was otherwise qualified to vote,) were in fact violating federal law. The two first section of the Soldier Vote were left unchanged, and these sections amounted to a general federal guarantee of the right to vote absentee for covered groups (who were otherwise qualified to vote under state laws.)¹⁵⁸

The Real Test: The 1944 Elections

In the 1944 election, 9,225,000 persons of voting age had served in Armed Forces. Of these, 4,487,540 had been reported as applying for ballots in 1944, and of these, only 2,691,160 had their ballots counted. In other words, while 60 percent of civilians of voting age had voted, 50 percent of voting age servicemen had applied for ballots, and 30 percent of service men had succeeded in voting. The service vote was 5.6 percent of the total popular vote for president

¹⁵⁵ United States War Ballot Commission to serve for the duration of the war. Headed by the Secretary of War, the Secretary of the Navy, and the Administrator of the War Shipping Administration, the Commission was to prepare post card ballot applications, federal write-in ballots, gather information from the states on the name of candidates, election dates, etc.

¹⁵⁶ Exceptions included a few states that had no laws for absentee balloting whatsoever, where the governors might certify that their states would accept the general use of the Federal Write-in Ballot.

¹⁵⁷ *Congressional Digest* January 1944:5.

¹⁵⁸ American Political Science Association report 1952.

(48,025,648.) There is no available revealing how many of the service votes were cast from overseas.¹⁵⁹

The extent and importance of the service vote varied from state to state. According to the 1952 American Political Science Association report, “most of the variation was probably due to differences in the constitutional, legal, administrative, and political situations in the respective States.”¹⁶⁰ The six states with the poorest records of voting were all Southern or border states: Alabama, South Carolina, Delaware, Texas, Arkansas, Mississippi and Louisiana. The service vote was not more than 3 percent of the total vote cast for president in those states, compared to the national average of 5.6 percent. The top four states with the best records of voting were Georgia, Virginia, New Jersey and Wyoming.

While only 30 percent of servicemen had their ballots counted, their votes may have been significant in the very close election. According to *The New York Times*, no statistics are available that reveals exactly how many of the soldiers voted for the Democrats and how many voted for the Republicans, as most states did not canvass the civilian and soldier votes separately.¹⁶¹ However, in the seven states that did make official or “reliable unofficial” canvasses, the soldier vote favored the Democrats, more so than the civilian vote.¹⁶² In total, the 51.5 percent of civilian votes in these seven states went Democratic, compared to 59.3 percent of the soldier vote. In one of these states, New Jersey, the soldier vote overcame a slight lead by Roosevelt’s opponent Governor Dewy in the civilian vote, and turned the states’ electoral votes over to the Democrats. The 1944 election also helped the Democratic Party regain some of its House seats lost in the 1942 mid-term elections, and the soldier vote may have played a role in some of these races as well.¹⁶³

It is difficult to ascertain how much the amended Soldier Voting Act could be thanked for the increase in the (recorded) number of soldiers who were able to vote.¹⁶⁴ As already discussed, the main purpose of the Green-Lucas and Worley bills was to reduce the number of steps needed

¹⁵⁹ The statistics used in this paragraph have been retrieved from the APSA report.

¹⁶⁰ American Political Science Association report 1952: 513.

¹⁶¹ Leo Egan, “Service Ballots,” *The New York Times*, December 10, 1944, available at www.nytime.com June 5, 2010. All other information in this paragraph is also retrieved from this source, unless otherwise stated.

¹⁶² Arkansas, Colorado, Maryland, New Jersey, Oklahoma, Pennsylvania and Rhode Island

¹⁶³ Alvarez et al. 2007: 21.

¹⁶⁴ For instance, none of the sources found for the use in this thesis give any information concerning whether states improved their laws *after* the 1944 amendments were passed, or how many states, during the election period, complied with recommendations such as the forwarding of ballots at least 45 days before the election.

to cast a ballot, by providing for a federal write-in absentee ballot. As also discussed, the final act had only provided for such a ballot as an emergency solution if ballots did not arrive. The 1952 American Political Science Association report stated that the number of federal write-in absentee ballot counted in the 1944 election had been 85,000, an unimportant fraction of the total vote according to the association.¹⁶⁵ Only 20 states had certified the use of the emergency ballot, and most of these states already had good voting laws. Among the seven states where service voting was most difficult, only Texas had approved the its use. The federal write-in ballot therefore seemed to have been a failure. However, American Political Science Association argued that the threat of the federal ballot might have given some states incentive for improving their own laws or administration of existing laws.¹⁶⁶ It is natural to question whether the Soldier Voting Act helped more African Americans to vote. No available material answers this question, but it seems unlikely. As discussed above, among the states with the poorest results of soldier voting were several Southern states, and it was in the Southern states that discrimination against African-Americans was most apparent. Also, as long as states could set their own time limits for forwarding ballots, for instance, a theoretical federal guarantee of the right to vote was of little help.

2.3 Efforts Resulting in the Federal Voting Assistance Act of 1955

Congressional commitment to improving absentee voting for servicemen did not come to a close with 1944 election and the end of the Second World War. It became clear that the U.S. would continue to be a world military power with troops stationed abroad, and that the need for absentee voting for these as well as other groups would continue. *The New York Times*, for instance, continued to report that inadequacies in state absentee laws were deprived large numbers of servicemen of the vote, and several members of Congress as well as President Truman and President Eisenhower believed that Congress needed to take action.¹⁶⁷ Arguments of protecting states' rights and the Constitution continued to hamper federal legislation on the subject.¹⁶⁸ However, judging by articles in *The New York Times* in the period 1945 to 1955, and by the lack

¹⁶⁵ American Political Science Association report 1952.

¹⁶⁶ American Political Science Association report 1952: 514.

¹⁶⁷ See for instance James Reston, "State Absentee Ballot Laws Likely to Halve Troop Vote," March 24, 1952, available at www.nytimes.com accessed June 10, 2010.

¹⁶⁸ Alvarez et al. 2007.

of attention given to the soldier voting debates by the *Congressional Digest* (which had devoted two issues to the topic in 1944,) the relevant congressional policy discussions did not reach the same level of animosity or intensity as during debates in 1942 to 1944.

In 1946, Congress once more amended the Soldier Voting Act in an attempt to incorporate lessons learned from the 1944 election.¹⁶⁹ The amendment was approved by President Truman.¹⁷⁰ It contained 17 recommendations for the states. Two major changes were made to the existing law. First, the recommendations were made to apply in time of peace as well as in time of war, though the war clause was kept for the first two sections regarding the general declaration of rights. Secondly, all provisions concerning the federal write-in absentee ballot were eliminated.¹⁷¹ Secretary Stimson had the year before turned to Congress and questioned whether it was justifiable to continue the federal write-in ballot program when so few servicemen had made use of it in the 1944 election.¹⁷²

In 1950, the Korean War again put soldier voting on the congressional agenda. Several bills were considered. Two Republicans, Senators Bridges and Saltonstall, introduced a bill that would have reinstated the federal write-in ballot. A *New York Times* article dated August 21, 1950 noted that Republicans believed that they would get better than an even break out of the ballots cast by servicemen.¹⁷³ The latter bill was not passed, but two other were. H.R. 9399 required in-hand delivery of post card ballot applications, as opposed to simply making them available, and H.R. 9455 recommended states to reduce the weight of absentee voting material to minimize cost and promote speed of delivery. President Truman signed both bills on September 29, 1950.¹⁷⁴

Truman had voted in favor of the 1942 act. Although away on public business at the time the Senate passed the Eastland states' rights bill, he was reported as being against the latter measure.¹⁷⁵ In 1944, together with Green and Lucas, he had voted against the states' rights compromise bill that eventually became law,¹⁷⁶ not surprising perhaps, being Roosevelt's running

¹⁶⁹ P.L. 348, 60 Stat. 96-103 (April 19, 1946).

¹⁷⁰ American Political Science Association 1952.

¹⁷¹ American Political Science Association 1952.

¹⁷² «Stimson and the Eisenhower Assault: The Federal Soldier Vote Law,» January 31, 1945, available at www.nytimes.com accessed June 10, 2010.

¹⁷³ «Overseas Ballots Asked for Korea,» August 21, 1950, available at www.nytimes.com accessed June 10, 2010.

¹⁷⁴ Coleman 2005: 2.

¹⁷⁵ *Congressional Record*, Senate, December 3, 1943: 10290.

¹⁷⁶ *Congressional Record*, Senate, vol. 90, March 14, 1944: 2573

mate in the 1944 election (and as discussed, Roosevelt even considered vetoing the act.) In 1951, Truman asked the American Political Science Association (APSA) to conduct a study of the military voting issue and make recommendations for improving the situation. APSA created a Special Committee on Service Voting, and in 1952 it presented its findings in a report to the president. The report concluded that since 1944, the situation had become worse rather than better. In many states, legislation providing for service voting expired with the end of the Second World War, and over half the states had disregarded or overlooked the 1946 congressional recommendations for permanent legislation. Known deficiencies in state laws that would impede service voting in the 1952 general elections existed in 24 states, not counting an additional five states that had unclear laws.¹⁷⁷ South Carolina and New Mexico for instance, had no provisions for absentee voting at all, and Texas did not allow members of the regular Armed Forces to vote. Some states did not accept the federal post card application for ballots, insisting on hand written letters or other special forms. Other states required in-person registration, a requirement difficult or impossible to meet for servicemen in training camps or overseas. Still others did not send ballots to the soldiers until 21 days or less before the last date of ballot counting, though based on experience, the Department of Defense recommended a time frame of no less than 45 days.¹⁷⁸

The APSA commission made a series of recommendations for improving the military voting situation. It recommended that states enact legislation that would allow servicemen to vote without in-person registration, payment of poll taxes, or unreasonable literacy tests. Furthermore, servicemen should receive ballots in time, in other words no later than 45 days prior to the last date of ballot counting, receive all essential information concerning voting procedures, and all states should accept the federal post card application for ballots. These were recommendations already incorporated in the 1946 law (but that had been ignored by many states). The report did not seem to discuss or take sides on the matter of Congress' constitutional powers in the area of (soldier) voting and the limits thereof. However, the report noted that many states seemed to be breaking federal law. After all, the first two sections that had been kept since 1942 guaranteed servicemen the right to vote. When a state did not provide sufficient time for the return of a ballot, for instance, the state was in practice disenfranchising servicemen. Since no

¹⁷⁷ American Political Science Association report 1952. The 24 states: Alabama, Arizona, Arkansas, Delaware, Colorado, Florida, Idaho, Indiana, Iowa, Kansas, Louisiana, Maine, Michigan, Minnesota, Montana, New Jersey, New Hampshire, New Mexico, Oklahoma, South Carolina, Texas, Utah, Vermont, Wisconsin. The other five states: Massachusetts, Mississippi, Missouri, Tennessee, Wyoming

¹⁷⁸ See American Political Science Association report 1952: 515.

disenfranchised serviceman had brought a lawsuit against his state on the grounds of those two provisions, Congress' constitutional limits on soldier voting were unknown, as were the exact legal implications of the act itself.¹⁷⁹ Some of the members on the APSA commission urged Congress to require the full use of the federal write-in absentee ballot on the assumption that a case would be brought to court where the constitutional issue involved would be settled once and for all. Meanwhile, the APSA report also maintained that the best solution for soldier voting in the long run would be to leave the responsibility for election administration to the states, as had been “the tradition and accepted practice” (as opposed to saying: as dictated by the Constitution.)¹⁸⁰

While the APSA commission believed soldier voting would be best resolved by state procedures, they still prescribed a role for the federal government. They recommended removing the words “in time of war” from the first two sections making the general statement concerning voting rights apply to peace time conditions.¹⁸¹ Furthermore, federal legislation should recommend that states extend servicemen's absentee voting laws to include their spouses and dependants, as well as civilians serving abroad who were either working for the Armed Forces or as civilians employed by the federal government, and the spouses and dependants of such civilians. The commission reported that no federal agency had been directed to remind the states of the Soldier Voting Act (and its amendments).¹⁸² The commission recommended that federal statute should require the secretary of defense, in cooperation with the attorney general, to bring to the attention of the states the federal recommendations and explain the need for action. Furthermore, the secretary of defense should report biennially to Congress on the extent to which states applied the recommendations. No statistics on the service vote were available from the 1946, 1948 and 1950 elections, and it was therefore recommended that the secretary of defense in cooperation with the Bureau of Census be required to gather data to keep such records. The secretary of defense should also be required to maintain an effective information and educational program to acquaint servicemen with their rights. The commission also urged political parties and

¹⁷⁹ See American Political Science Association report 1952: 516, 522.

¹⁸⁰ See American Political Science Association report 1952: 517, 522.

¹⁸¹ See American Political Science Association report 1952: 518.

¹⁸² See previous footnote.

other organizations interested in citizen participation in government to help encourage the states to take action.¹⁸³

While the above recommendations were unanimously adopted, a majority of the APSA commission also recommended that the federal write-in absentee ballot be revived and used in the same manner as it had been in 1944, because the commission feared the states would not have time to change their laws in time for the 1952 election. However, such legislation should expire by the end of the year, so that states would get a chance to fix their own voting procedures in time of the 1954 elections. Finally, the commission agreed that the insufficiencies in soldier voting were merely symptomatic of greater problems in elections laws and practices. They therefore recommended the creation of a national bipartisan commission on voting to promote election reform in general.¹⁸⁴

President Truman endorsed APSA commission's recommendations and delivered the report to Congress on March 29 (1952), together with his own comments. In his message he urged immediate action by both Congress and the states. He warned that many of the 2.500.000 men and women of voting age now in the Armed Forces, many of whom were stationed overseas in Korea, Japan and Europe, would not have the opportunity to vote. As for the federal write-in absentee ballot he stated that: "in spite of the obvious difficulties in the use of the Federal ballot, the Congress should not shrink from accepting its responsibility and exercising its Constitutional powers to give the soldiers the right to vote where the states fail to do so."¹⁸⁵ While expressing his belief in the constitutionality of the federal write-in ballot, he also agreed with the commission that provisions for its use should expire before the general elections of 1954 as "the best and most effective way to assure our service people of their right to vote is through state action."¹⁸⁶ This was a somewhat milder approach to the federal government's involvement in soldier voting than that of his predecessor who had declared that no matter how hard the states tried, they still would not be able to provide as good a system of soldier voting as a federal plan with the general use of the federal write-in absentee ballot could.¹⁸⁷

¹⁸³ American Political Science Association report 1952: 514.

¹⁸⁴ See American Political Science Association report 1952: 514, 519.

¹⁸⁵ "Text of Roosevelt's Message on Voting," *The New York Times*, March 29, 1952. available at www.nytimes.com accessed June 10, 2010.

¹⁸⁶ See previous footnote.

¹⁸⁷ Franklin D. Roosevelt, letter to Congress on January 26, 1944, in *Congressional Digest* vol. 23, June-July 1944: 186-187.

Companion bills were introduced in the House and Senate, sponsored by two of the federal plan supporters of the 1940's: Senator Green (D-RI) and House Majority Leader McCormack (D-MA). All of the APSA commission's recommendations were included in the bills.¹⁸⁸ On June 20, 1952, the Senate passed the bill. Green had attempted to make the federal government responsible for determining which states needed the federal write-in ballot, and make it mandatory for such states to accept it. However, the coalition of Republicans and Southern Democrats from 1940's continued their opposition. They succeeded in letting the governors of the various states certify as to the adequacy or inadequacy of their soldier voting laws, as they had in 1944.¹⁸⁹ The bill was passed over to the House where hearings were convened. Truman again encouraged Congress to take action, and submitted his comments for the hearing records.¹⁹⁰ Despite the president's support, the House Subcommittee on Elections voted on July 3 to postpone any further action. The states also failed to take steps to facilitate soldier voting. According to the Armed Forces, only two states had made certain efforts: Michigan and Utah. However, at least by now all states had waived the poll tax for servicemen, except New Mexico and South Carolina that had laws prohibiting soldier voting. Defense officials estimated that of the 2,500,000 servicemen of voting age, about 1,000,000 would be deprived of their voting rights.¹⁹¹

Eisenhower took over the presidency in 1953. A general during the Second World War, Eisenhower was one of the men who were been credited for their major contributions in aiding soldier voting in the 1944 elections, pushing the voting program set by the act of that year among his troops in Europe. Prior to the 1954 elections, he too addressed Congress to urge action on the soldier voting issue, his State of the Union Address being one of those occasions.¹⁹² More congressional hearings followed, but without any legislative results.¹⁹³ Eisenhower followed up the next year, sending letters to the 48 state governors asking that they adopt uniform laws for servicemen overseas.¹⁹⁴ The president noted that there would be an estimated 500,000 to

¹⁸⁸ Coleman 2005.

¹⁸⁹ C. P. Trussell, "G.I. Vote Bill Sped Through Senate," June 21, 1952, available at www.nytimes.com accessed June 10, 2010.

¹⁹⁰ Coleman 2005.

¹⁹¹ Austin Stevens, "G.I. Balloting on; Curbs to Cut Vote," October 12, 1952, available at www.nytimes.com June 4, 2010.

¹⁹² "Bill Asks Spread of Absentee Vote," *The New York Times* April 11, 1954, available at www.nytimes.com June 4, 2010.

¹⁹³ Coleman 2005.

¹⁹⁴ "State Laws Urged for Services Vote," *The New York Times* February 7, 1955, available at www.nytimes.com June 4, 2010.

1,000,000 military personnel overseas in the 1956 elections, and that three quarters of the states did now not live up to the criteria established in World War Two deemed necessary for effective soldier voting. In other words, the situation seemed to be getting even worse than at the time the APSA commission had released its report three years earlier.¹⁹⁵

Results finally came on August 9, as President Eisenhower signed the Federal Voting Assistance Act of 1955 which repealed the Soldier Voting Act.¹⁹⁶ It was perhaps not coincidental that progress finally took place a time the White House was occupied by a Republican president and during peace time. Perhaps Eisenhower's commitment to the cause had eased Republican opposition, not immediately being associated with New Deal federal big government. Easing the passage of the act, however, was the fact that unlike the Soldier Voting Act, it did not contain any provision giving a general guarantee of absentee voting rights for soldiers (who were otherwise qualified to vote.) Furthermore, all provisions of the new act were *recommendations* as concerned the states. The repeal of the federal guarantee had no practical effect, however, since soldiers were dependent on effective procedures, not a theoretical right. In line with the APSA commission's recommendations, the Federal Voting Assistance Act established permanent federal responsibilities for ensuring the progress and maintenance of servicemen's right to vote. The act authorized the president to assign the head of any executive department or agency to coordinate and facilitate the federal responsibilities that the act would require, and the designee was authorized to request assistance from any of the other Departments or agencies. The presidential designee was required to report biennially to Congress on the federal administration of the act, on the progress of the states in carrying out the recommendations contained in the act, and provide statistical data relating to absentee voting. The designee was to annually request information from the states pertaining to election dates, officers to be elected, absentee registration and voting procedures etc. Agencies and departments affected by the act were to be given this information, and would in turn reprint and distribute such information to the extent necessary. The attorney general was to cooperate and advice with the Council of State Governments on the formulation of state laws implementing the act's recommendations, and the administrator of general services was to print and distribute post card ballot applications. Furthermore, following up on the APSA recommendations, the list of persons covered by the act

¹⁹⁵ See previous footnote.

¹⁹⁶ The Federal Voting Assistance Act of 1955: P.L. 84-296, 69 Stat. 584-589 (August 9, 1955); and Coleman 2005.

was extended to spouses and dependants of servicemen and civilians officially attached to the Armed Forces or working for the federal government overseas, and their spouses and dependents residing with or accompanying them. The act continued the recommendations pertaining to the post card ballot application, waiving registration for those who had been deprived of an opportunity to do so, delivery of ballots in time to be returned before last day of counting, free U.S. Postage etc.¹⁹⁷ Though states' rights congressmen had managed to leave out any provision for a federal ballot, and though the provisions concerning state action were still recommendations as opposed to requirements, the act set the framework for further federal voting reforms.¹⁹⁸ Eisenhower appointed the secretary of defense to be responsible for the administration of the act, and the Federal Voting Assistance Program that was established as a result of the act, has been based in the Pentagon ever since.

In 1955, Defense Department officials believed that a greater proportion of absentee servicemen would vote in the 1956 elections than ever before, according to *The New York Times*.¹⁹⁹ The potential service vote was estimated to be 2,000,000 with an added 1,000,000 counting the civilian vote overseas. Department officials expected that voting by servicemen would exceed the civilian national average which had been 62.7percent in the 1952 Presidential election. In 1952, only 15percent of servicemen of voting age had their ballots counted. The Defense Department's optimism of 1956 was based on improvements in state laws. Apart from New Mexico that still prohibited service voting (due to state constitutional provisions that were difficult to alter), all states accepted the federal post card ballot application. The federal post card was considered the most important single step for facilitating voting, as it promoted uniformity of data and procedure. Registration had been simplified in many states, some even automatically registering service personnel who qualified for a ballot, thus reducing the time factor. Improvements in state laws were accredited to the bi-partisan team that had been delegated the responsibility for operating the Federal Voting Assistance Program by the secretary of defense. The team delegates had traveled to the several states and urged the Governors and state

¹⁹⁷ See previous footnote.

¹⁹⁸ Alvarez et al. 2007: 24.

¹⁹⁹ Anthony Leviero, "Record Forecast in Absentee Vote," *The New York Times* April 11, 1954, available at www.nytimes.com June 4, 2010.

governments to implement the recommendations contained in the Federal Voting Assistance Act.²⁰⁰

Despite Defense Department optimism, only 35.2 percent of service men of voting age successfully cast a ballot in the 1956, according to *The New York Times*.²⁰¹ This figure showed an improvement compared to the 1952 elections' 15percent, but not a significant improvement compared to the 1945 elections' 35percent which was the highest service vote so far. As will be discussed in the next chapters, state laws were still not adequate, and the transit time problem continued to be a major source of disenfranchisement.

2.4 Conclusion

In the 1940's and 1950's, states' rights concerns, fears of enfranchising African Americans, and partisan politics were all factors that prevented strong federal legislation to ensure that citizens would not be deprived of their voting rights because of military service. Roosevelt's outspoken support strengthened critics' belief that soldier voting bills represented new attempts by New Deal supporters to centralize power at the federal level. Many Southern members of Congress feared that federal soldier voting legislation would set a precedent for federal efforts at unraveling systematic discrimination of African Americans in election processes. Gallup polls indicating that the Democratic Party would gain from the service vote seem to have made many Republicans oppose efforts to help servicemen have their ballots counted.

Despite the federal guarantee of absentee voting rights for servicemen provided in the Soldier Voting Act (1942), problems persisted. A theoretical right to vote was of little use when procedures in many states made voting impossible to carry out in practice. Federal standards concerning ballot transit time, for instance, were merely recommendations, and several states continued to disenfranchise servicemen by forwarding ballots too late for their return in time for the election. It seems therefore that the repeal of the federal guarantee in 1955 when the Federal Voting Assistance Act was passed, did not represent a major setback. While merely recommending states to follow procedural standards provided in the act, Congress had extended its commitment to absentee voting rights to include certain groups of civilian citizens, in time of

²⁰⁰ See previous footnote.

²⁰¹ Jack Raymond, "Overseas ballots may set a record," *The New York Times* October 20, 1960, available at www.nytimes.com June 4, 2010.

peace as well as in time of war. The act recommended that states provide absentee voting procedures not only for servicemen in active duty, but to members of the merchant marine, federal employees overseas, members of religious groups and welfare organizations officially assisting the armed Forces, and to the spouses and dependent accompanying all those included in these groups.

The Federal Voting Assistance Act furthermore set the framework for future reform. The act resulted in the establishment of the Federal Voting Assistance Program, which would be a permanent body that would promote reform and come to the aid of absentee voters covered by the act. Among the factors that had encouraged congressional involvement in absentee voting rights for servicemen (and later civilians) was war (which had created the real need for such legislation,) popular opinion (that viewed soldiers as especially worthy of democratic rights) and the continued presence of peace time troops abroad. Support by Truman and Eisenhower, the first requiring a thorough study of the soldier voting situation, and the latter a Republican urging congressional action probably also served as factors encouraging change in policy.

The 1960's and 1970's: Voting Rights of Overseas Civilians

The 1940's and 1950's saw the struggle to enfranchise servicemen by granting them absentee voting rights guaranteed by the federal government. However, the United States was not quite ready for federal control within the sphere of voting. In the 1950's, the Federal Voting Assistance Act (FVAA) revoked the federal guarantee, and made instead a list of recommendations. Most states did adopt procedures to enfranchise their servicemen, though as discussed in chapter three and five, these procedures were in many states not adequate. This chapter discusses the change in policy during the 1960's and 1970's as concerned the enfranchisement of groups today covered by the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA). These two decades saw little change at the federal level in laws concerning servicemen. However, the FVAA had recommended that states also allow for absentee voting by federal government employees overseas as well as their spouses and dependents accompanying them, and in the late 1960's and the 1970's, Congress' new focus turned to civilians not employed by the U.S. government.

This chapter explores how the context had changed dramatically from the time of the discussions concerning servicemen's absentee voting rights during the two previous decades. By the early 1970's, voting rights had become recognized as a core part of citizenship.²⁰² Spurred in part by the civil rights movement and debates on black voting rights, limits to voting were being removed one by one through congressional legislation, constitutional amendments, and a sympathetic Supreme Court. This process resulted not only in something close to universal suffrage, but also constituted a nationalization of the franchise. This chapter explains how this new context eased the way for finally achieving federally guaranteed absentee voting rights for civilians overseas. Furthermore, this chapter discusses the substantial impact that overseas interest groups had in attaining absentee voting rights. Last but not least, a portion of this chapter is devoted to the constitutional debates concerning legislation specific to the voting rights this

²⁰² Alexander Keyssar, *The Right to Vote: The Contested History of Democracy in the United States* (New York: Basic Books, 2009).

group. Although debates were subdued compared to the ones concerning servicemen in 1940's and 50's, constitutional issues still threatened the passing of new legislation.

3.1 A different Setting Promoting Change

First of all, the expansion of absentee voting rights to overseas civilians was spurred by the actual need for such legislation. After the Second World War, a stream of Americans began crossing the Atlantic for residence in Europe. These Americans were different from the iconic expatriates of the 1920's that Ernest Hemingway and Gertrude Stein depicted in popular literature. The latter were replaced by middle-class Americans attracted by the Marshall Plan reconstruction of Europe. Early arrivals included federal employees, but businessmen soon followed. Commercial ties that had existed before the war were rekindled and expanded, and U.S. exports to Europe became important for the American post-war economy. Safe under the NATO umbrella, all kinds of professionals followed suit: engineers, bankers, lawyers, accountants, advertisers, among others. Following the business community were students, teachers, artists, musicians, writers, missionaries, scientists, and fashion models. These were soon joined by an increasing number of retirees.²⁰³

In addition to all these civilians, a large number of troops were stationed overseas. However, by 1968, as Congress directed its attention to the voting problems of civilian American citizens overseas not employed by the federal government (from hereon also referred to as private citizens,) every state and the District of Columbia provided for absentee voting by military personnel.²⁰⁴ Although two states still required in-person registration by members of the Armed Forces (and thus made it impossible for many service people to exercise this right,) most states had simplified procedures for registration and voting covering servicemen and their families. Half the states had met all recommendations of the Federal Voting Assistance Act of 1955. In contrast, 23 states still required personal registration as a prerequisite for voting, absentee or otherwise, for citizens not covered by the act. Three states, for instance, that provided for absentee voting for

²⁰³ Phyllis Michaux, *The Unknown Ambassadors: A saga of Citizenship* (New York: Aletheia Publications, 1996)1-2.

²⁰⁴ For this whole paragraph, see: U.S. Congress, Committee on House Administration, *Amending the Federal Voting Assistance Act so as to Recommend to the Several States that its Absentee Registration and Voting Procedures Be Extended to All Citizens Temporarily Residing Abroad*, report to accompany H.R. 8176, 90th Cong., 2nd sess., H. Rept. 1384 (Washington: GPO, 1968) 2.

certain categories of their citizens did not include civilians living abroad as one of them.²⁰⁵ In 1968, a House report stated that a significant number of Americans temporarily residing abroad, an estimated 750,000 to 3 million, were deprived of their franchise.²⁰⁶

The domain of voting had been seen as one of the most important states' rights, when federal legislation guaranteeing soldier's (absentee) voting rights had first been brought up in the 1940's. Many had feared that the latter legislation would set a precedent for federal intrusion into a prerogative of the states, and the White South in particular had feared it would set a precedent for the enfranchisement of African Americans.²⁰⁷ From the late 1950's till the early 1970's, however, both racial barriers and other kinds of limits to the franchise were dismantled. Keyssar writes that in this period, "the legal underpinnings of the right to vote were transformed more dramatically than they had been at any earlier point in the nation's history."²⁰⁸ Federal acts, constitutional amendments, and Supreme Court decisions, all contributing to the end of the era of state control of the franchise.²⁰⁹ When the debates concerning voting rights bills aimed at overseas private citizens got going in Congress, such legislation no longer threaten the enfranchisement of blacks as they were already being enfranchised by other efforts, in fact something approaching universal suffrage ha been established. Voting rights were now regarded as a national concern. However, issues of states' rights had not disappeared, and they were still present in debates concerning private citizens' overseas voting rights, as is discussed later in this chapter.²¹⁰

The Legal Revolution

What Keyssar calls "the legal revolution", was in part kicked off by the civil rights movement. "[Black] citizens marched, rallied, boycotted buses, wrote petitions and filed law suits to challenge the Jim Crow laws that had kept them in their place for more than half a century."²¹¹ Voting rights was one of the issues that had always been at the heart of the civil rights movement.

²⁰⁵ Louisiana, Mississippi, and South Carolina.

²⁰⁶ Report to accompany H.R. 8176 (1968) 3. The report does not indicate how many states provided absentee voting procedures for federal employees, but since they are included in the Federal Voting Assistance Act, at least half the states must have provided for it, since the report stated that over half the states had met all FVAP recommendations.

²⁰⁷ See chapter two for documentation.

²⁰⁸ Keyssar 2009.

²⁰⁹ Keyssar 2009.

²¹⁰ For documentation concerning the change in the general situation of voting rights, see Keyssar 2009.

²¹¹ Keyssar 2009: 206.

Electing friendly minded people to fill post from everything to local sheriff to Congressmen, Senators and President would in turn help remove discrimination in other arenas as well. The civil rights movement soon realized that they needed the backing of the federal government, for it was near to impossible for the blacks to compel bigoted city and state officials to cease discrimination. The federal government was at first careful at getting involved. Democratic Presidents were for instance balancing their actions to try and keep both black and white voters in the South that had been the bastion of the Democratic Party. But in 1960 the pace of government activity began to speed up, in large part because the situation in the South was becoming increasingly intense. While the Civil Rights Act of 1957 had little effect in it self apart from getting the ball rolling, the Civil Rights Act of 1964 did, and especially interesting for this thesis, the Voting Rights Act of 1965 was a milestone in American political history.²¹² Among other things, the Voting Rights Act suspended literacy tests and other “devices” in states and counties where fewer than 50 percent of all adults had gone to the polls in 1964, a suspension that would have to be renewed after five years; authorized the attorney general to send federal examiners into the South to enroll voters; prohibit the governments of affected areas from changing their electoral procedures without approval (“preclearance”) from the Department of Justice or a federal court in Washington. It was a milestone not only because a million more African Americans were registered within a few years of the bill. But also because it meant that Congress was no longer succumbing to opposition against federal involvement in what had for so long been seen as a prerogative of the states, though in fact, the act was in essence an attempt at enforcing Fifteenth Amendment passed a century earlier. The act was regularly renewed and revamped and is still operative today.

Debates on black voting rights had a positive effect on efforts to eradicate other types of restrictions to the franchise. If it was wrong to discriminate against African Americans, other types of restrictions should also fall. Some broadenings of the franchise were enabled by constitutional amendments. Washington D.C. was awarded electoral votes by the Twenty-third Amendment in 1961, and in 1973, the city was given home rule by a federal act.²¹³ The city, with an African American majority, had been governed by a federal commission until it in 1973 got an elected major and city council. The Soldier Voting Act had been the first federal act to restrict the

²¹² Keyssar 2009: 212.

²¹³ Though D.C. inhabitants have thus far been unsuccessful in obtaining seats in Congress.

use of poll taxes, part of what made the Soldier Voting debates so controversial, dealt with in chapter two. Meanwhile, further constitutional discussions did not manage to kill the opposition claiming federal acts banning poll taxes in general were outside the limits of Congress' powers. In 1964 however, the poll tax was finally banned in federal elections by the Twenty-fourth Amendment. Another restriction that would be changed was the voting age. Every time there had been a war, including the Second World War, there had been calls to reduce the lower voting age limit from 21 to 18, the draft age. The argument was that if a man was old enough to give their life in battle, he was old enough to vote for the government they are most satisfied to fight for. None of the attempts had succeeded. But the continued presence of a cold war peace time army, the Korean War, and most importantly the unpopular Vietnam War, forced the issue to become a high priority. The lack of political rights of a large portion of the troops served to underscore the lack of democratic support to the Vietnam War. The voting age was reduced to 18 as part of the renewed Voting Rights Act package of 1970. While the Supreme Court upheld Congress' setting the voting age in federal elections, it maintained that the states could set the voting age in state and local elections. To avoid problems of having to register voters separately for federal and state elections, Congress passed the Twenty-sixth Amendment in 1971, fixing the voting age for all elections.

Another way in which the franchise was broadened, was the removal of lengthy residency requirements in presidential elections, as well as requiring the states to allow all citizens to vote absentee in presidential elections, who were "otherwise qualified." This was achieved without much controversy through section 202 of the 1970 amendments to the Voting Rights Act. It had a direct impact on the discussions concerning voting rights for overseas private citizens, as is discussed in greater detail in the next subchapter. One year residency in a state was at the time the amendments were passed the norm before a person could qualify to vote in that state, with shorter timeframes required in precincts and counties. According to one estimate, as many as 15 million people were kept from voting in the 1962 election because of such laws.²¹⁴ Section 202 prohibited states from imposing more than thirty-days of residency in presidential elections, and required that anyone who had moved less than thirty days prior to a presidential election be allowed to vote in their previous state of residence. Keyssar lists several reasons for the success

²¹⁴ Keyssar 2009: 223.

passing of this part of the amendment.²¹⁵ In addition to simply being the right thing to do, abolishing lengthy residency requirements that were unjust and undemocratic, it was a safe and uncontroversial measure to respond to rising concerns of low voter turnout. As part of the Nixon administration's package of amendments to the Voting Rights Act, it was perhaps also a deliberate measure to present the Republican Party as actively pursuing universal suffrage and national reforms. Finally, the passing of the bill might also have been eased by the fact that while mobile voters had previously been overrepresented by workers, the middle and upper classes had begun to take over that role. In other words, the class of citizens that residency rules had previously been designed to screen out had now been replaced by a more respectable one. Section 202 was upheld in *Oregon v. Mitchell* (1970) (along with the two other sections of the amendment suspending literacy tests nationwide and establishing a voting age of eighteen in all federal elections). Section 202 was upheld based on several parts of the Constitution, in short pointing both to such legislation being a discretionary power of Congress and that the restrictions that section 202 aimed at eliminating were unconstitutional. Two years later, in *Dunn v. Blumstein*, the Court even took an additional step by maintaining that Tennessee's residency rules for *state* elections were also unconstitutional. And this was not the first time the Court had scrutinized residency rules. In fact already in 1965, in *Carrington v. Rash*, the Court had overturned a Texas law that prohibited servicemen from establishing voting residence unless they had been registered in that state before entering into service. The Court ruled that it was unconstitutional to rule out a segment of the population from voting based on occupation.

Goldwater, the senator essentially responsible for section 202 of the amendments, had intended that the provisions concerning absentee voting would also cover private citizens living abroad. He had argued on the Senate floor that

millions of Americans are denied a voice in choosing their President and Vice President merely because they are exercising their constitutional right to interstate commerce. This category of citizens not only includes those Americans who travel within the United States for various reasons, but it also encompasses a great many Americans who are temporarily outside the United States. They may be serving overseas as Foreign Service officers or other government civil

²¹⁵ Keyssar 2009: 223.

servants. They might be students who are attending foreign colleges. They include Americans who are working for U.S. businesses that have branches abroad.²¹⁶

Goldwater's statement gave hope to those who were struggling to enfranchise Americans overseas. But while Goldwater had expressly included overseas civilians as a target group for section 202 when he was defending his bill in Congress, the bill itself did not expressly name them. Section 202 by would be a disappointment to this group of citizens. However, the Voting Rights amendment of 1970 and the court rulings that ensued as a result of the amendment, served as a basis for the discussions concerning overseas civilians voting rights.²¹⁷

As already mentioned, the Supreme Court played an important role in the general broadening of the franchise in the period between the late 1950's and early 1970's. The Court, both "reflecting and reinforcing the popular mood, broke new doctrinal ground through its embrace of democracy as a core constitutional value."²¹⁸ The Warren Court took on the role as the guardian of formal democratic rights. While the Court had previously interpreted the Constitution in a more narrow fashion, it was now finding bits and parts throughout the Constitution that could be interpreted in a way that would benefit attempts at democratizing voting in the U.S., and it found the Equal Protection Clause of the Fourteenth Amendment to be a particularly useful weapon.²¹⁹

Easing the efforts at broadening the franchise in general was the fact that they took place during a time when the ideological climate made it hard to deny them. The U.S. presented it self as the front bearer of democratic ideals, fighting communism and oppression, and limits on the franchise therefor became harder to justify. The television also helped shape public opinion. It brought for instance the violence of the White South against African American into the homes of people in the entire nation. Both major political parties saw more to gain than to loose from extending the franchise. The Voting Rights Act for instance, had in 1965 been passed by a great

²¹⁶ Goldwater in in *U.S. Congressional Records*, Senate, March 11, 1970 "Enhancing the Right of All Americans to Choose Their President" Chamber of Commerce, *Guide to Absentee Voting in Presidential Elections: in the United States and Overseas*, (Washington D.C.: Chamber of Commerce, January 1972), in U.S. Congress, Senate, Subcommittee on Privileges and Elections of the Committee on Rules and Administration, *Voting by U.S. citizens residing abroad*, Hearing on S. 2102 & S. 2384, 93rd Cong., 1st sess., September 26, 27, 1973, (Washington D.C.: Government Printing Office, 1973) 192-196, available through the University of Michigan/HathiTrust's digitization project at <http://hdl.handle.net/2027/mdp.39015078681031> accessed November 4, 2010.

²¹⁷ This is discussed in greater detail further on in the chapter. For documentation, see for instance Chamber of Commerce guide, see previous footnote.

²¹⁸ Keyssar 2009: 217

²¹⁹ Keyssar 2209: 217.

majority. Though a few conservative Republicans and Southern Democrats had voted against it, most realized that the bill would pass sooner or later, and that it would be politically wise to have supported it.²²⁰

3.2 The Condition of Voting Rights for Overseas Private Citizens

The Federal Voting Assistance Act of 1955 had extended Congress' commitment to voting rights of absentee military personnel to include overseas federal employees and their spouses and dependents.²²¹ In 1968, Congress extended this commitment even further. On June 18, President Lyndon B. Johnson signed two bills amending FVAA into law, S. 2884 and S. 1581.²²² S. 2884 recommended the states to provide absentee registration and voting procedures to all citizens temporarily residing abroad. S. 1581 was aimed at improving voting procedures.²²³ Because the FVAA and its 1968 amendments continued to merely provide recommendations for the states, not all states followed up. Furthermore, several states interpreted the new amendments as a recommendation to exclude overseas citizens who did not know when or if they would return to the district in which he or she had been eligible to vote. Many overseas private citizens continued to find it difficult, confusing, or impossible to vote in federal elections. Problem arose not merely because states did not provide procedures for registering or voting absentee. Hypothetically speaking, even if a state had no absentee voting procedures, a member of the military in the 1940's could have traveled from the battlefield to the home state, first one time to register, and then on Election Day to cast a ballot (if that person was otherwise qualified to vote.) However, such "voting vacations" would in most cases not have enfranchised the private overseas citizen (in the 1960's and 1970's.) Problems arose because states had strict laws concerning the definition of residency and which determined who could be allowed to register in a particular state. Causing confusion was also the fact that there were fifty-one different such interpretations of residence.²²⁴ Many states required the maintenance of a home or other abode in a state, and some required that voters physically lived in the state, or had confusing laws that appeared to

²²⁰ Keyssar 2009: 205, 211

²²¹ And as discussed, to certain other groups of civilians. Commitment to soldiers' voting rights also included those still within the U.S.

²²² See Coleman 2005, and P.L. 90-343, 82 Stat. 180 (June 18, 1968); P.L. 90-344, 82 Stat. 181 (June 18, 1968).

²²³ Among other things it set a time limit for when federal post card applications should be in the hands of the voter, and it made it easier to obtain oaths that many states required to approve ballots and registration forms sent by the voter.

²²⁴ Including D.C.

have such requirements. In 1975, all states and the District of Columbia, required that all private citizens abroad declared, and in many cases provided proof, that they intended to return to the state, in order to register and vote in federal elections. Persons who could not honestly declare so, would risk committing perjury. In other words, the assumption was that the private citizen abroad did not retain a state as his or her voting domicile unless he or she could prove otherwise. By 1973, in contrast, a voter who was a serviceman, dependent of a serviceman, federal employee overseas, or a dependent of the latter, would in most states retain the state they last resided in as their voting domicile, even if it was highly unlikely that such persons would return to that state.²²⁵

By 1975, 28 states and the District of Columbia had heeded to the 1968 amendment by passing legislation explicitly providing for absentee registration and voting for overseas private citizens who could honestly declare that their absence was merely temporary.²²⁶ But even in some of these states and D.C., absentee registration for such citizens seemed ambiguous. Twelve other states, had general statutes allowing for absentee registration and balloting, but did not have explicit provisions for the overseas private citizen.²²⁷ Many of these twelve states had particularly stringent residency requirements. Another eight states seemed to allow for absentee balloting, but required in-person registration, by such citizens.²²⁸ Many of these eight states also had burdensome residency requirements. Finally, two states required in-person registration and balloting by overseas private citizens. Although the two latter states were Alabama and Louisiana, the other Southern states were spread across the other three categories described above.²²⁹ It is difficult to draw any other conclusions as to which areas of the country had the best laws based on the above information, as other factors influenced the quality of state overseas voting laws, such as how long before an election the state would forward ballots. In addition, variations did not merely exist between states but within the states. Local election boards were

²²⁵See Federal Voting Assistance Program report in Senate Hearing, *Voting by U.S. citizens residing abroad*, 1973: 128-130.

²²⁶ Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, District of Columbia, Florida, Georgia, Hawaii, Idaho, Iowa, Kansas, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Montana, Nebraska, New Mexico, North Dakota, Oklahoma, Oregon, Tennessee, Texas, Washington and Wyoming. Statement by Carl S. Wallace's Senate Hearing, *Voting by U.S. citizens residing abroad*, 1973:70.

²²⁷ Indiana, Kentucky, Main, Missouri, Nevada, New Hampshire, New York, South Dakota, Utah, Vermont, West Virginia and Wisconsin.

²²⁸ Illinois, New Jersey, North Carolina, Ohio, Rhode Island, South Carolina, Pennsylvania and Virginia.

²²⁹ For documentation on information contained above, see statement by Carl S. Wallace's House hearing, *Voting rights for U.S. citizens residing abroad*, 1975:70.

the ones who interpreted the state laws, and were the ones who accepted or dismissed the individual registration and ballot applications. One *New York Times* article, for instance, gave voice to a group of New Yorkers living in Mexico who were angry because some upstate counties were honoring registration request while New York City election boards were not.²³⁰ This situation was unfair and unpredictable, they argued. In fact, New York State seemed to be one of the more troublesome of the states as concerns determining residency for voting purposes.²³¹

As noted earlier, the 1970 amendments to the Voting Rights Act had included a provision that required states to provide all voters with absentee procedures for doing so in presidential elections. Overseas citizens hoped that they would too be covered by this law. Prior to the 1972 election, the U.S. Chamber of Commerce printed and distributed *Guide to Absentee Voting in Presidential Elections: in the United States and Overseas*.²³² The guide maintained that all overseas citizens had finally been enfranchised, at least in presidential elections. It based this belief on the statement of Senator Goldwater on the Senate floor in 1970 defending the bill that would become section 202 (the statement that has been quoted earlier in the chapter,) as well as on a Justice Department interpretation of the 1970 amendments from May 1971. The Justice Department document (included in the brochure) stated that

Under section 202, each state must provide that any otherwise qualified person who expects to be away from his election district on election day (and who complies with the applicable time requirements) may vote by absentee ballot. Accordingly, state laws which restrict availability of absentee ballots to certain classes of citizens or persons absent for particular reasons may not be enforced with respect to voting for President and Vice President. [...] Anyone otherwise qualified to vote by absentee ballot for President and Vice President must be given the opportunity, if necessary, to register absentee.²³³

The guide prepared by the Chamber of Commerce, which also gave detailed information regarding state deadlines and absentee procedures, was distributed to “the Governor, the Secretary of State, and the Attorney General of each state, and to the chief election official of

²³⁰ Richard Severo, “Americans Overseas Face Denial of Vote Under Law,” *The New York Times* 10 Sept. 1972.

²³¹ See for instance also the statement of Carl S. Wallace House hearing, *Voting rights for U.S. citizens residing abroad*, 1975: 71.

²³² Chamber of Commerce, *Guide to Absentee Voting in Presidential Elections: in the United States and Overseas*, (Washington D.C.: Chamber of Commerce, January 1972) in Senate Hearing, *Voting by U.S. citizens residing abroad*, 1973:119-159.

²³³ Department of Justice Interpretation of the Voting Rights Act Amendments of 1970, May 1971, in House hearing, *Voting rights for U.S. citizens residing abroad*, 1975: 146-147.

each county in the nation. At least 4000 copies were distributed to state and county officials alone. Many additional thousands of copies were sent to all American Chambers of Commerce abroad, to all U.S. based corporations and organizations with representatives overseas, and to countless citizens here and abroad. Copies were likewise distributed through the U.S. State Department to embassies and consulates the world over, the Commerce Department, and its offices here and abroad and to the Department of Defense.²³⁴

Senators Goldwater and Pell supported the view presented by the Chamber of Commerce. The states, however, continued to decline overseas voters' registration applications. The overwhelming majority of states declined to accept the legislative history of 1970's amendments as sufficient for overruling their own state laws, and maintained that they were entitled to determine what an "otherwise qualified person" implied. Confusion followed, and newspapers did not seem to agree on whether overseas voters had been enfranchised in presidential elections or not.²³⁵ In a letter dated March 13, 1972, the Justice Department supported the states in their view, which, at least in the eyes of the overseas interest groups, meant that the department was reversing its May 1971 statement.²³⁶ Furthermore, the U.S. District Court for the Southern District of New York also considered the question of whether the 1970 amendments could limit a state's power to define bona fide residency, in *Hardy v. Lomenzo*.²³⁷ The court did not accept Senators Goldwater and Pell's legislative history to interpret the 1970 amendments, and said the question should be dealt with by the legislature and not by the court. In the end then, the 1970 amendments did in the end little to enfranchise overseas Americans in the 1972 election.

3.3 Congressional Response

In 1973, hearings were held in the Senate to evaluate two similar bills that would guarantee all Americans living overseas the right to register and vote in federal elections even if such citizens were not "domiciled or otherwise residing in such state or district and [did] not have a place of

²³⁴ Statement by William Whyte in House hearing, *Voting rights for U.S. citizens residing abroad*, 1975: 110.

²³⁵ See for instance: Linda Abrams, "The Voteless America Abroad," *The Washington Post*, April 16, 1972; Richard Severo, "Americans Overseas Face Denial of Vote Under Law," *The New York Times* 10 Dec. 1972; "American Notes: The Vote Abroad," *TIME* 25 Sept. 1972.

²³⁶ David L. Norman, Assistant Attorney General in the Department of Justice, letter to Eugene Marans dated March 13, 1972, in House hearing, *Voting rights for U.S. citizens residing abroad*, 1975:78.

²³⁷ U.S. Congress, Committee on House Administration, *Overseas Citizens Voting Rights Act of 1975*, report to accompany S. 95, 94th Congress, 1st Session, H.Rept. 94-649 (Washington D.C.: Government Printing Office, 1955).

abode or other address in such a state or district”.²³⁸ Overseas citizens would be allowed to vote in the state in which they were last registered to vote, or if they had not been registered, in the last state in which they resided prior to moving abroad. But the bills were not passed, and new hearings were held in the House in 1975.²³⁹ While the general broadening of the franchise had removed many of the obstacles to passing such legislation, overseas civilians’ voting right bills still met opposition. Too be sure, this opposition seems to have been relatively mild, at least compared to that against the soldier voting bills in the 1940’s and 1950’s.²⁴⁰ Opposition was mainly based on constitutional arguments insisting that it was the states’ prerogative to determine who qualified as a resident of the state, or even that the constitution itself explicitly stated that a bona fide resident of a state was someone who physically lived in that state (see discussions concerning the constitutional arguments in a later subchapter.) Some opponents also argued that absentee registration and voting would cause problems of fraud and be detrimental to the election process.

However, one of the biggest challenges in getting these bills passed was simply raising enough interest for them in Congress. First of all, disenfranchised overseas Americans were for the time being not part of any constituency, and so interest in helping them would be based on their potentiality as future voters. Furthermore, overseas Americans were not a visibly oppressed group of society that raised sympathy among the general public, and so members of Congress would probably not gain in popularity among the general public by helping the group. (In contrast, members of Congress who had opposed federal absentee voting legislation covering military voters during the Second World War had been in an uneasy position since popular opinion favored giving this group voting rights.) In fact, some views of overseas Americans included the image of them being “mink swathed tax evaders living it up at the French Riviera” who had abandoned the U.S.²⁴¹ A representative of the Justice Department testifying in the 1973 hearings, stated that “Regardless of the constitutional considerations with respect to S. 2102 and S. 2384, it seems basically unfair to permit a person residing abroad, who in many cases pays no federal, state or local taxes and who may have no knowledge of or interest in the state or district

²³⁸ S. 2102 and S. 2384 rendered in Senate Hearing, *Voting by U.S. citizens residing abroad*, 1973.

²³⁹ House hearing, *Voting rights for U.S. citizens residing abroad*, 1975

²⁴⁰ Based on personal telephone interview with Eugene Marans, May 3, 2011; and Phyllis Michaux, *The unknown Ambassadors: A Saga of Citizenship* (Canada: Aletheia Publications, 1996).

²⁴¹ Proxmire in Phyllis Michaux, *The unknown Ambassadors: A Saga of Citizenship* (Canada: Aletheia Publications, 1996).

in which he was formerly domiciled to cast votes in that State or district.”²⁴² While the congressional debates centered around issues of constitutionality (and fraud,) one can perhaps not rule out the possibility that such policy views hid behind the constitutional concerns.

On the other hand, one factor that probably made policy discussions concerning overseas citizens’ absentee voting rights less acrimonious than the discussions concerning military voting rights in the 1940’s, was the fact that no one seemed to know the size or political leaning of the overseas civilian vote.²⁴³ As noted in chapter two, polls in 1943 indicated that the service vote would be clearly Democratic and that it could potentially determine the close 1944 elections. One delegate representing overseas Americans at the 1974 National Democratic (midterm) Convention said he believed that the large American business contingent living abroad was mostly Republican, while the students, artists and others were mostly Democratic.²⁴⁴ But there was no reliable data as to exactly how many private citizens (of voting age) lived overseas, where they lived, and what they were doing abroad. The Department of Defense could keep track of servicemen and their dependents living abroad, and the State Department could keep track of its employees and their dependents, but how could one keep track of other Americans overseas? American citizens were recommended but not required to register at embassies in the countries they had moved to. Attempts at surveying overseas private citizens were made by the Federal Voting Assistance Program within the Department of Defense, by the Department of State, and by the Census Bureau within the Department of Commerce. However, such attempts were highly unscientific.²⁴⁵ When, for instance, the Census Bureau attempted to count overseas private citizens in 1970, they relied on such citizens to make voluntary trips to embassies or consulates to fill out census forms. Although the Bureau asked Foreign Service personnel to use all means possible to contact all overseas Americans, reports showed that few citizens abroad ever heard of the census and that even fewer attempted to complete the forms. As census numbers are used for apportionment, overseas private citizens were therefore left out of the official Census Bureau statistics, whereas servicemen, federal employees, and the dependents of both groups were

²⁴² Mary Lawton, Deputy Assistant Attorney General, Office of Legal Council, Department of Justice, statement in Senate Hearing, *Voting by U.S. citizens residing abroad*, 1973: 65.

²⁴³ See for instance B. Drummond Ayres Jr., “Democrats Abroad Seek Voting Law,” *The New York Times* 9 Dec. 1974.

²⁴⁴ Mr. More in B. Drummond Ayres Jr., “Democrats Abroad Seek Voting Law,” *The New York Times* 9 Dec. 1974.

²⁴⁵ Taylor E. Dark, “Americans Abroad: The Challenge of a global Electorate”, *PS: Political Science and Politics*, Vol. 36, No. 4 (Oct., 2003), 743.

included in the apportionment calculations.²⁴⁶ However, 750,000 was the estimated number of American citizens abroad in a nongovernmental capacity, and of voting age, that figured in the 1970 congressional discussions.²⁴⁷ In any case, the lack of adequate information on the size and political tendencies of the overseas civilian vote must have removed some of the Republican fears that had hindered stronger federal military voting bills from passing in the 1940's.

Overseas American's voting rights bills in the 1970's were clearly bipartisan in sponsorship, but the opposition was still made up of Republicans and Southern Democrats.²⁴⁸ Charles E. Wiggins (R-CA) seems to have been the most vociferous opponent, along with three other House Republicans.²⁴⁹ As already mentioned, opponents were backed up by the Department of Justice that testified against the constitutionality of the bills, and they were even backed by the Congressional Research Service.²⁵⁰ Proponents in Congress included Rep. Wayne L. Hays (D-OH), Chairman of the Committee on House Administration that was responsible for handling the bill, who was considered as one of the most powerful men in Congress at the time. Also a proponent was Barry Goldwater (R-AZ) (who had been the Republican candidate in the 1964 presidential election, and House minority leader John Rhodes (R-AZ).²⁵¹ Proponents in Congress were supported by former Assistant Solicitor General and former Deputy Attorney General Nathan Lewin who testified in favor of the constitutionality of the bill, and by interest groups of overseas Americans, including future president and former chairman of the Republican National Committee, George W. H. Bush.²⁵² According to Eugene Marans, the lawyer leading the overseas

²⁴⁶ In William Whyte, statement in Senate Hearing, *Voting by U.S. citizens residing abroad*, 1973: 27.

²⁴⁷ See for instance U.S. Congress, Committee on House Administration, Uniformed and Overseas Citizens Absentee Voting, report to accompany H.R. 4393, 99th Congress, Second Session, H.Rept. 99-765 (Washington: Government Printing Office, 1986): 2.

²⁴⁸ For vote, see *Congressional Quarterly Almanac*, "S. 95. Overseas Citizens' Voting Rights," at 559, vol. XXXI, 1975: 172.

²⁴⁹ See Wiggins in minority statement in U.S. Congress, Committee on House Administration, Overseas Citizens Voting Rights Act of 1975, report to accompany S. 95, 94th Congress, 1st Session, H.Rept. 94-649 (Washington D.C.: Government Printing Office, 1975); minority statement by Wiggins in U.S. Congress, Committee on House Administration, *Improving the Administration and Operation of the Overseas Citizens Voting Rights Act of 1975, and for Other Purposes*, report to accompany S. 703, 95th Congress, 2nd Session, H. Rept. 95-1568 (Washington D.C.: Government Printing Office, 1978); and Wiggins in House hearing, *Voting rights for U.S. citizens residing abroad*, 1975.

²⁵⁰ See Jack H. Maskell of the Congressional Research Service, Memorandum to Committee on Rules and Administration September 5, 1973, in Senate Hearing, *Voting by U.S. citizens residing abroad*, 1973: 168.

²⁵¹ See Senate Hearing, *Voting by U.S. citizens residing abroad*, 1973; and House hearing, *Voting rights for U.S. citizens residing abroad*, 1975.

²⁵² He was Honorary chairman of the Bipartisan Committee on Absentee Voting

interest groups' lobbying in Washington, the main reason for supporting overseas voting legislation was that it seemed like the right thing to do.²⁵³

While Roosevelt, Truman and Eisenhower had personally got involved in the issue of absentee voting rights for servicemen, there is no available material that shows direct personal involvement by Lyndon B. Johnson or Nixon (or Ford.) In a letter to the chairman of the house committee that was considering amending the FVAA to recommend that states also provide absentee voting procedures for non-governmental overseas citizens, dated April 2, 1968, the Justice Department stated that it would have no objection to such a bill. However, it believed that such an amendment would have very little effect.²⁵⁵ Under Nixon, the Justice Department opposed the federal guarantee of voting rights of citizens residing abroad, and it very likely that the department reflected the views of Nixon. However, according to Eugene Marans, Nixon had not personally involved himself in the issue, and that it was in fact the Justice Department, and in the end Antonin Scalia, in particular, who was trying to advise Nixon to veto what became the Overseas Citizens Voting Rights Act.²⁵⁶

3.4 The Influence of Interest Groups

One factor promoting change in policy concerning the voting rights of overseas Americans was the efforts of overseas Americans themselves. Interest groups of overseas Americans included the Bipartisan Committee for Absentee Voting (for overseas Americans), Democrats Abroad, Republicans Abroad, the Ambassadors Committee on Voting by Americans Overseas, Federation of American Women's Clubs Overseas (FAWCO), National Council of Churches of Christ in the United States (who had missionaries etc. overseas), the Baptist Joint Committee on Public Affairs Department (who also had missionaries etc. overseas), and the Chamber of Commerce of the United States.²⁵⁷ These interest groups were well organized, backed by the U.S. business community, they were bi-partisan or non-partisan, memberships overlapped, and they seem to have worked very much in unison. Efforts at raising the issue of voting rights for overseas private citizens had already started in the 1950's by, among others, FAWCO and by the Council of

²⁵³ Personal telephone interview with Eugene Marans, May 3, 2011

²⁵⁵ letter in report 1968. The letter was written in connection with the bills proposed in Congress that would amend FVAP to include such a recommendation.

²⁵⁶ Personal telephone interview with Eugene Marans, May 3, 2011

²⁵⁷ Democrats Abroad and Republicans Abroad were actually called Democratic Committee Europe, and Republican Committee Europe at this time.

Americans Resident Abroad, an organization established in Mexico. But it was from the mid-1960's (and especially from the early 1970's) and onwards, that efforts gained momentum and met success, and these efforts were mainly organized by Americans in Europe.²⁵⁸

The arguments for granting overseas citizens the right to vote in federal elections made by the different groups were much the same.²⁵⁹ They argued that overseas Americans were an asset to the U.S., and that they deserved to be treated as such. They argued that many overseas Americans were employed by U.S. firms and that they helped increase exports. Furthermore, all overseas citizens acted as unofficial ambassadors spreading American ideas and values during a cold war in which the U.S. was attempting to win the hearts and minds of the world's populations, the interest groups argued.²⁶⁰ They attempted to convince Congress that they were "real" Americans, that they had not *abandoned* the U.S. simply by moving abroad, that they were indeed well informed of U.S. affairs by reading American newspapers available overseas and by keeping in touch with family and friends still in the U.S. One representative of the National Council of Churches of Christ in the United States pointed out that their missionaries overseas had an average level of education well above the U.S. average, and that they thus were probably equally more likely to take an interest in keeping themselves informed of U.S. politics.²⁶¹ Furthermore, while they were not interested in voting in state and local elections to choose the local sheriff or dog catcher, they were still interested in and affected by national issues like Social Security, trade and tariff measures, export controls, foreign policy decisions, taxation, citizenship issues etc. They explained how not only were they deprived of the right to vote, but they were in essence also deprived of representation. Who would they turn to if they wanted to send letters of protest on some issue when no member of Congress could look at them as supporters or part of their constituency? In other words, who would represent their interest in Congress? They pointed out that it seemed unfair to discriminate in voting based on occupation, as states did by allowing persons employed by the federal government but not by private businesses register and vote

²⁵⁸ For this whole paragraph is based on testimonies given by organizations representing overseas Americans in House hearing, *Voting rights for U.S. citizens residing abroad*, 1975; and Senate Hearing, *Voting by U.S. citizens residing abroad*, 1973; and Michaux 1996; and articles in the *The New York Times* and *Washington Post* from the 1960's and 1970's.

²⁵⁹ See previous footnote.

²⁶⁰ Michaux 1996; statement by Sargent Shriver of the Ambassadors Committee for Voting by Americans Overseas in Senate Hearing, *Voting by U.S. citizens residing abroad*, 1973: 66-71.

²⁶¹ Statement by Eugene E. Stockwell of the National Council of Churches of Christ in the U.S.A. in Senate Hearing, *Voting by U.S. citizens residing abroad*, 1973:78-81.

absentee. They insisted they had a democratic and constitutional right to vote, and reminded Congress that they were taxpayers with no representation. Furthermore, they pointed out that the number of private citizens of voting age overseas equaled the number of voting age citizens in some states, and that the overseas voting problem therefore was not insignificant. At a time when there was much talk of doing something about low voter turnout, they argued, it was ironic that one group of citizens who were actively demonstrating a desire to vote should be prevented from doing so.²⁶²

The Bipartisan Committee on Absentee Voting seems to have been one of the most significant organizations that successfully lobbied Congress and the Justice Department. It had been founded in Paris in 1965 by the overseas leaders of the European Democratic and Republican party committees, Alfred A. Davidson and Harvey S. Gerry. By 1975, it had included the Ambassadors Committee for Voting by Americans Overseas, which was made up of former ambassadors like Hon. Sargent Shriver, Hon. Gerard C. Smith (Nixon's ambassador in charge of the SALT negotiations) and George H.W. Bush, former chairman of the Republican Party and future president.²⁶³ In 1969, the Bipartisan Committee contacted American firms in France to cover the \$6000 cost of an *amicus curiae* brief in a Supreme Court case.²⁶⁴ The case in question was *Hall v. Beals*. It did not deal directly with overseas voters, but it dealt with the issue of residency requirements for voting. By the time it reached the Supreme Court, however, the case was rendered moot.²⁶⁵

In 1973, the Bipartisan Committee opened an office in Washington D.C. under the leadership of J. Kevin Murphy, then president of Purolator Services, and later president of the

²⁶² For this whole paragraph is based on testimonies given by organizations representing overseas Americans in House hearing, *Voting rights for U.S. citizens residing abroad*, 1975; and Senate Hearing, *Voting by U.S. citizens residing abroad*, 1973; and Michaux 1996; and articles in the *The New York Times* and *Washington Post* from the 1960's and 1970's.

²⁶³ House hearing, *Voting rights for U.S. citizens residing abroad*, 1975: 75; Senate Hearing, *Voting by U.S. citizens residing abroad*, 1973: 66. Bush was member of the Ambassadors' Committee, but in 1975 he became "honorary Chairman" of the Bipartisan Committee on Absentee Voting.

²⁶⁴ Michaux 1996; and see cases at <http://supreme.justicia.com/us/396/45/> accessed June 22, 2011.

²⁶⁵ See previous footnote. The appellants in *Hall v. Beals* had moved to Colorado in June, 1968, and had been prevented from voting in the November presidential election because a state statute required six-months of residency. By the time the *Hall v. Beals* had reached the Supreme Court, Colorado had reduced its residency period to two months, but the appellants also challenged that requirement. The Supreme Court rendered the case moot, as appellants could not represent a class (in this case Colorado voters disqualified by the two-month requirement) to which they had never belonged. In any case Congress passed the Voting Rights Act amendments in 1970 that seemed to allow all American citizens to vote in presidential elections by removing lengthy residency requirements and mandated the states to provide for no-excuse absentee voting. As already discussed, this still did not include overseas non-governmental citizens.

U.S. Chamber of Commerce. The Committee asked Eugene Marans of Cleary, Gottlieb, Steen & Hamilton, a lawyer who himself had lived and worked abroad, to take the lead in their efforts to get a bill through Congress. For two years, Marans worked pro bono, preparing statements for congressional hearings, contacting members of Congress and the Department of Justice, etc. By 1975, the Bipartisan Committee had got corporate sponsors, and was affiliated to many other organizations, including the U.S. Chamber of Commerce.²⁶⁶ The backing of the Chamber of Commerce was probably important, being one of the most important lobbying groups in U.S., representing the interests of American businesses of all sizes, abroad and in the U.S., as well as state, local and overseas chambers of commerce, and industry associations. Testifying in the congressional hearings in the 1970's, William G. Whyte, a representative for the Chamber of Commerce (and vice president of the United States Steel Corporation), expressed that "The National Chamber has long held that maintenance of individual freedom and our political institutions necessitates *broad-scale participation* by citizens, including business and professional people, in the selection, nomination, and election of public officeholders."²⁶⁷ As already noted, the Chamber of Commerce published in 1972 a 40-page *Guide to Absentee Voting in Presidential Elections: in the United States and Overseas*.

Another organization that was affiliated to the Bipartisan Committee on Absentee Voting, and that worked closely with it, was the Association of American Residents Overseas (AARO). Americans Overseas did not only face problems when it came to voting. Other problems included the loss of citizenship (especially by American women marrying men of other nationalities and living abroad), difficulties in passing on American citizenship to children born abroad, exclusion of overseas Americans from MEDICARE, and double taxation. In 1993, Jean Archbold, Sonja Mincbere and Helen Raoul-Duval, and later joined by Phyllis Michaux, returned to Paris from Federation of American Women's Clubs Overseas (FAWCO) conference and decided the time was ripe to create a new organization that would deal with issues like the ones just described, and AARO was born. The four women agreed that the first issue that should be dealt with was voting rights. If overseas Americans were enfranchised, it would be much easier to persuade members of

²⁶⁶ Sponsors included: Atlantic Richfield Company (L.A., Calif.), General Electric (N.Y., N.Y.), International Telephone & Telegraph Company, Inc. (Rahway, NJ), Minnesota Mining and Manufacturing (St. Paul, Minn.), Purolator Services, Inc. (Lake Success, N.Y.), and Unifast, S.A. (Brussels, Belgium). See Carl S. Wallace in House hearing, *Voting rights for U.S. citizens residing abroad*, 1975:75.

²⁶⁷ Statement by William Whyte of the Chamber of Commerce in House hearing, *Voting rights for U.S. citizens residing abroad*, 1975: 110-117.

Congress to follow through with the rest. The founders choose a man to head the organization, so that it would not be perceived as being limited to “women’s issues.”²⁶⁸

AARO staged a letter writing campaign to influence members of Congress. AARO had put together a mailing list of American social clubs, churches, press correspondents, veterans’ clubs etc. Marans, working for the Bipartisan Committee in Washington, would fax information on congressional action on the relevant bills to his law firm’s branch in Paris. The Paris branch would call Michaux at the Chamber of Commerce which was lending its administrative facilities to AARO. Within a couple of hours, Michaux would type up and send a news flash to key persons around Europe who would in turn inform others. Michaux comments that in the days before the Internet, this would qualify as a fast information flow. Adds in the *International Herald Tribune* would supplement the news flashes titled: “More Letters to Mathias,” “Focus on Frenzel,” “Calling All Californians,” Wiggins is Wavering,” and “Your Letters Are Working.”²⁶⁹ In 1975, ARRO also came up with a gimmick to make the letter writing easier. The following cover letter was prepared: “In 1973, there was a Tea Party because of no Representation. In 1975, we mail you this tea bag because of the Overseas Citizen’s Voting Rights Act. So that in 1976, we will be able to vote for you. Support H.R.-3211 and S.-95.” ARRO sent a copy to everyone on the mailing list and urged them to send such a letter with a tea bag stapled to it, to their potential Congressmen. As the bill passed later that year, Representative Hays (D-OH), chairman of the House Administration Committee, pointed out that the committee had received a great number of letters from persons supporting the overseas citizens’ voting rights bills, in fact a substantially greater number of letters than on any other issue that year.²⁷⁰

Overseas party committees had throughout the 1960’s held election campaigns directed at servicemen, people working for aid organizations, federal employees, the dependents of the latter groups, as well as private citizens (some of whom had been enfranchised by the states after the 1968 amendments to the FVAA.) During the 1972 presidential campaign, one could read in the news of Nixon dinners in Rome and McGovern picnics in Berlin, and distribution of leaflets for both candidates outside the University College in Dublin. One *New York Times* article read “If the Nixon campaign is muted – and largely restricted to fund raising dinners and half-page ads in

²⁶⁸ Michaux 1996.

²⁶⁹ Michaux 1996: 60.

²⁷⁰ Hays in *U.S. Congressional Record*, House, vol. 121, December 10, 1975: 39731.

The International Herald Tribune – the McGovern overseas drive is a clutter of noisy rock parties as well as luncheons, auctions and concerts. Lee Remick, James Jones, Tony Curtis, Mary McCarthy, Irvin Shaw and Patricia Kennedy Lawford have helped the campaign overseas together with students, lawyers, some businessmen and young tourists.²⁷² While competing for votes, the Democratic Party Committee Europe and its Republican counterpart had joined forces and worked through the Bipartisan Committee to enfranchise all civilian Americans abroad, as described above. But they also lobbied their respective parties directly.²⁷³ In 1972, a delegation of overseas Americans was allowed to participate at that year's Democratic National Convention as non-voting observers. Two years later, a delegation of six under the banner of "Democrats Abroad" was given official participant status with two votes, the same number of votes given to the Canal Zone delegation. (Two years later the Democrats Abroad was given three votes.) The delegation paid its own way to the convention. Officially, the overseas delegates were there to help the Democratic Party find unity and a new charter, but they spent a good part of their time lobbying for federal legislation that would enfranchise all Americans living abroad. The Republican Party was not as welcoming to their overseas members, and it would take till well after the passage of the Overseas Voting Rights Act before an overseas delegation was allowed to participate in Republican National Conventions.²⁷⁴

While one could find newspaper articles dealing with congressional action on overseas voting rights bills and with party campaigning abroad, the media coverage was muted compared to the 1940's. Chairman of the Senate Subcommittee on Privileges and Elections, Claiborne Pell, urged the interest groups testifying in the congressional hearings to inform the public and raise awareness of the overseas voting rights problem, as few other than those affected were even aware of it, and complained that the domestic press did too little to highlight the problem.²⁷⁵ The overseas press, on the other hand, was more helpful. Michaux argues that the campaign staged by the overseas interest groups owed a great deal to the space given to the issue in the *International Herald Tribune* by its helpful editor Murray Weiss. According to Michaux, the articles in the

²⁷² "The 1972 Campaign: Americans Abroad Also Waging Campaign: Buttons Handed Out and Funds Raised in Many Nations," *The New York Times* 14 Oct. 1972.

²⁷³ These committees were informal to begin with, but would later turn into Democrats Abroad and Republicans Abroad. See chapter four.

²⁷⁴ Taylor Dark III 2003; Drummond Ayres Jr., "Democrats Abroad Seek Voting Law," *The New York Times* 9 Dec. 1974; A.O. Sulzberger Jr., "G.O.P Unit Votes to Bar All 4 Overseas Delegates," *The New York Times* 15 July 1980.

²⁷⁵ Senator Pell in Senate Hearing, *Voting by U.S. citizens residing abroad*, 1973: see for instance pages 86-90.

Tribune were important both because they kept overseas Americans all over the world informed of interest groups' efforts (and how to contribute to such efforts,) and because they gave legitimacy to the campaign.²⁷⁶

It is difficult to ascertain exactly how important the interest groups' campaigning was for getting an overseas voting rights bill through Congress. However, judging by available material, their efforts seem to have been quite important. The backing of the Chamber of Commerce, for instance, can not have gone unnoticed. The extent of involvement by overseas groups and individuals in writing letters to the relevant committees and members of Congress, testifying in congressional hearings, etc., must at least have convinced Congress of the difficulties of overseas voting, and of the interest of overseas Americans in the staying a part of the U.S. while living abroad. The House report accompanying the bill that passed and enfranchised overseas civilians read "It was plain from testimony in the hearings that Americans outside the United States possesses both the necessary interest and the requisite information to participate in the selection of Senators and Congressmen back home."²⁷⁷ The interest groups themselves do not doubt that it was thanks to their efforts that Congress finally enfranchised overseas Americans in 1975.²⁷⁸ This view is in fact backed by political scientist Taylor E. Dark III, as well as by Andrew Ellis writing for the Institute for Democracy and Electoral Assistance's handbook for external voting: "The United States provides an example of those rare cases where external voting was finally enacted in response to the demands of citizens residing overseas (in 1975)."²⁷⁹

3.5 The Constitutional Debate

Discussions concerning the constitutionality of the bills aimed at enfranchising overseas Americans in the 1970's (which were in essence identical,) were different from the discussions concerning voting rights bills for servicemen introduced in the 1940's and 1950's. First of all, the new debates were not as fiercely antagonistic and did not raise the same amount of interest as earlier, for reasons described in the above subchapters. But the debates also differed in what parts

²⁷⁶ Michaux 1996.

²⁷⁷ U.S. Congress, Committee on House Administration, *Overseas Citizens Voting Rights Act of 1975*, report to accompany S. 95, 94th Congress, 1st Session, H.Rept. 94-649 (Washington D.C.: Government Printing Office, 1975).

²⁷⁸ See for instance Michaux 1996; and www.fawco.org

²⁷⁹ Dark III 2003; Andrew Ellis, "The history and politics of external voting" in *Voting from Abroad: The International IDEA Handbook* (Stockholm and Mexico City: International Institute for Democracy and Electoral Assistance, and The Federal electoral Institute of Mexico, 2007) 43.

of the Constitution were deemed as most relevant to evaluate the constitutionality of the bills. In the previous decades, proponents of federal legislation guaranteeing voting rights for servicemen based themselves on the Election Clause in Article One, Section Four of the Constitution, which stipulates that Congress has the power to “make or alter” election regulations. Opponents based themselves on Article One, Section Two of the Constitution which stipulates that states have the power to set voter qualifications. By the 1970’s, the Supreme Court had begun using various parts of the Constitution, notably the Fourteenth Amendment, to justify federal involvement in the field of voting. The overseas voting rights discussions reflected this. Proponents of the voting rights bills for overseas Americans viewed section 202 of the 1970 amendments to the Voting Rights Act and the Supreme Court ruling in *Oregon v. Mitchell* as relevant to their bills.²⁸¹ In *Oregon*, the Court had in essence upheld a federal act modifying how states could define bona fide residency. *Oregon* upheld section 202 of the (amendments to the) Voting Rights Act which required a state to include as voters a specific group of citizens who were no longer residents of that state, namely citizens who established residence in a new state less than thirty days before a presidential election. Proponents of overseas Americans voting rights therefore believed that a federal law modifying the definition of bona fide residency to include another group, overseas Americans who were disenfranchised by strict residency rules, would be upheld by the court. While *Oregon* had only dealt with presidential election, the court had stated that similar legislation covering congressional elections would probably be upheld as well. Proponents of voting rights for overseas citizens therefore based themselves on the same constitutional arguments that had been used to support section 202 of the 1970 amendments to the Voting Rights Act, and on the arguments of the 8 to 1 Supreme Court decision in *Oregon v. Mitchell* upholding section 202. In fact, the congressional findings that had been inserted in the text of section 202 to justify the act were, with minor changes, inserted into the bills covering overseas citizens. The findings stated that state laws excluding overseas Americans from voting:

²⁸¹ In this discussion different proponents have been lumped together as “proponents” in plural, if not otherwise indicated, even though different proponents emphasized different points. Judging by the hearings, proponents endorsed each others statements. Senator Charles McC. Mathias Jr., for instance, only discussed the good policy decision of providing voting rights for overseas Americans, and referred to the other testimonies in favor of such bills for the constitutional backing of passing such legislation (by other congressmen as well as by external witnesses) (1975 hearing p. 14). On the Senate floor debates, Mathias also asked that statements from Marans of the Bipartisan Committee on Absentee Voting be inserted in the records. See Mathias in *U.S. Congressional Record*, Senate, vol. 121, December 18, 1975: 41520. Opponents are specified.

deny or abridge the inherent constitutional right of citizens to vote in Federal election;

deny or abridge the inherent constitutional right of citizens to enjoy their free movement to and from the United States;

deny or abridge the privileges and immunities guaranteed under the Constitution to citizens of the United States and to citizens of each State;

in some instances have the impermissible purpose or effect of denying citizens the right to vote in Federal elections because of the method in which they may vote;

have the effect of denying to citizens the equality of civil rights and due process and equal protection of the laws that are guaranteed to them under the fourteenth amendment to the Constitution; and

do not bear a reasonable relationship to any compelling State interest in the conduct of Federal elections.²⁸³

In sum, and as the House majority report accompanying the bill that was finally passed explained, proponents argued that the right to vote for national officers was an inherent constitutional right and privilege of national citizenship, a right also implied in the right to freedom of travel, (all proscribed in the Fourteenth Amendment,) and that Congress had the power to protect these right and privilege under both the Necessary and Proper Clause of Article One, Section Eight, and the enforcement clause of the fourteenth amendment.²⁸⁴ These were the same arguments that had been used by the court to uphold section 202 in *Oregon*. (The justices had, however, rendered different opinions, each opinion using different combinations of the above constitutional provisions.) Furthermore, though not emphasized in the majority Senate or House report accompanying the bill that became law, the equal protection of laws (also proscribed by the Fourteenth Amendment) was also at issue when it came to securing voting rights for overseas Americans, according to some proponents.²⁸⁵

The overseas Americans' voting rights bills dealt with in the 1973 and 1975 congressional hearings opened with a statement announcing that the purpose of the act was to guarantee the

²⁸³ See section 202 of the Voting Rights Act, and bills in the congressional hearings in 1973 and 1975. Used here is H.R. 3211, see *Voting rights for U.S. citizens residing abroad*, 1975: 2. But all the overseas Americans' voting rights bills, at least in 1973-5 were basically the same, including S. 95 which became law and was identical to H.R. 3211 according to Senator Mathias, one of the sponsors of S. 95.

²⁸⁴ U.S. Senate, Committee on Rules and Administration, *Overseas Voting Rights Act of 1975*, report to accompany S.95, 94th Congress, 1st session, S. Rept. 94-121 (Washington D.C.: Government Printing Office, 1975).

²⁸⁵ For all paragraphs above up to the subchapter title, see House hearing, *Voting rights for U.S. citizens residing abroad*, 1975; and Senate Hearing, *Voting by U.S. citizens residing abroad*, 1973.

constitutional right to vote to this group.²⁸⁶ The Supreme Court had several times announced that “among the rights and privileges of National citizenship recognized by this court are...the right to vote for National officers,” and that this right was “preservative of other basic civil and political rights.”²⁸⁷ However, the Supreme Court had also noted that the equal right to vote was not absolute, and that states had the power to impose voter qualifications and to regulate the access to the franchise in other ways.²⁸⁸ However, such restrictions needed to be strictly scrutinized and needed to show they were necessary to preserve a compelling state interest. Proponents pointed to the Supreme Court ruling in *Dunn v. Blumstein* (1972).²⁸⁹ The decision in *Dunn v. Blumstein* had argued that a state could set an appropriately defined and uniformly applied bona fide residency requirement for voting, but the court struck down Tennessee’s lengthy residency requirements because there was no evidence that such a requirement served a compelling state interest. According to proponents of overseas Americans’ voting rights, there was no compelling state interest in excluding overseas Americans from bona fide residence (for voting purposes) either. Proponents argued that overseas Americans had ample opportunities to keep informed and familiarized with U.S. politics, the bills in question would only allow them to vote in presidential and congressional elections (and not state or local elections),²⁹⁰ and even if overseas Americans had different policy interests than citizens living in the U.S., excluding voters because of their political opinions would violate the Constitution. Senator Goldwater argued that even if the constitutional right to vote was not absolute, and even if Congress did not have a general mandate to set voter qualifications, the overseas citizens’ voting rights bills aimed at correcting a specific problem faced by a specific group of citizens (as Congress had done in section 202 of the Voting Rights Act). Such legislation was therefore within Congress’ powers to protect and facilitate the personal right and privilege of voting which the Supreme Court had found to be granted to citizens under the Constitution.²⁹²

²⁸⁶ See for instance H.R. 3211, S. 95, S. 2102, S. 2384 in the Senate and House hearings of 1973 and 1975.

²⁸⁷ *Twining v. New Jersey*, 211 U.S. 78, 97 (1908) and *Kramer v. Union Free School District*, 395 U.S. 621, 626 (1969). Quotes retrieved from Goldwater’s statement House hearing, *Voting rights for U.S. citizens residing abroad*, 1975: 23-29.

²⁸⁸ Goldwater in hearing 1975, references *Carrington v. Rash*, supra, at 380 U.S. 91.

²⁸⁹ See for instance *Dunn v. Blumstein*, 405 U.S. 330, 343-44 (1972).

²⁹⁰ The 1968 amendment to FVAA had recommended that states allow all citizens temporarily residing abroad to register and vote, absentee, in state, local and federal elections. See P.L. 90-343, 82 Stat. 180 (June 18, 1968).

²⁹² Goldwater in hearing 1975.

Freedom to travel had long been viewed as part of a person's "liberty" (protected from infringement by the federal government in the Fifth Amendment and from the states in the Fourteenth Amendment.) In cases like *Aptheker v. Secretary of State* (1964), the Supreme Court had specified that that liberty included the freedom to travel *abroad*, and under cases like *Crandall v. Nevada* (1968), this liberty did not restrict itself to those who were always on the move, but included freedom to *settle* abroad.²⁹³ States punishing citizens for settling abroad by disenfranchising them was thus, according to proponents, an infringement on the right to travel. Marans of the Bipartisan Committee on Absentee Voting and Nathan Lewin, former assistant solicitor general and former deputy assistant attorney general, (who both assisted proponents in Congress) held in fact that the strongest constitutional argument backing federal bills guaranteeing the voting rights of overseas citizens was that such rights were linked to the constitutional right to the international travel and settlement.²⁹⁴

It was also argued that disenfranchising overseas Americans also discarded the Equal Protection Clause of the Fourteenth Amendment, for all states allowed by now military personnel and federal employees to vote and register absentee (at least formally.) Discriminating on the basis of occupation did not seem constitutional.²⁹⁵ Furthermore, the fact that states had functioning procedures for federal employees and servicemen (and their dependents) proved that overseas voting was doable, and judging by the attempts at counting these groups, private citizens abroad were outnumbered by servicemen, federal government employees, and their dependents. This fact should appease opposition to enfranchising overseas Americans out of concerns of fraud, since fears of fraud did not stop states from enfranchising those other groups. Furthermore, moving abroad to work at an American firm's overseas branch for instance, was no more voluntary than joining the army or getting a job as a diplomat, and could therefore not be used as an argument for justifying a distinction between private citizens and servicemen, federal employees, and their dependents.²⁹⁶

²⁹³ *Crandall v. Nevada*, 6 Wall. 35 (1968), *Aptheker v. Secretary of State*, 378 U.S. 500, 505 (1964), See for instance Levin ; Goldwater and House and Senate reports to accompany OCVRA, pages 5

²⁹⁴ Marans in House hearing, *Voting rights for U.S. citizens residing abroad*, 1975: 69-75 ; Nathan Lewin in House hearing, *Voting rights for U.S. citizens residing abroad*, 1975: 84-86.

²⁹⁵ See for instance Nathan Lewin explain the relevance of the Equal Protection Clause in his statement in the Senate Hearing, *Voting by U.S. citizens residing abroad*, 1973: 12-13.

²⁹⁶ Countering opponents' arguments in for instance the minority view in House report to accompany S.95, 1975: 16.

Opponents believed that Congress could not, consistent with the Constitution, extend the right to vote to all Americans residing abroad. A minority view was included in the House report accompanying the bill that became law, written by four Republicans.²⁹⁷ It did not focus on the argument used by opponents in the 1940's and 1950's maintaining that providing for absentee registration and balloting procedures involved the setting of voting qualifications (which was a state prerogative.) The minority report recognized that the Supreme Court had in several decisions upheld both Congress' power to regulate the times, places and manner of holding federal elections, and congressional powers to fix voter qualifications in federal elections if appropriate to enforce rights guaranteed by the Constitution. The report even recognized that at least one case, *Oregon v. Mitchell*, suggested that Congress could fix voter qualifications even without any justification of protecting other constitutional rights (argued in the separate opinion of Justice Black.) However, these congressional powers to make or alter voter qualification in federal elections, the minority view contended, had one limit. The limit was based on the fact, according to the minority view, that the Constitution itself set one minimum voter qualification: the voter had to be a resident of a state. The minority report pointed to Article One, Section Two of the Constitution: "The House of Representatives shall be composed of Members chosen every second year by *the people of the several States* and the electors *in each state* shall have the qualifications requisite for electors of the most numerous branch of the State Legislature" (emphasis added.) The minority report pointed to the Seventeenth Amendment: "The Senate of the United States shall be composed of two Senators from each State, *elected by the people thereof*, for six years; and each Senator shall have one vote. The electors *in each State* shall have the qualifications requisite for electors of the most numerous branch of the State legislatures" (emphasis added.) In other words, the minority report pointed to same parts of the Constitution as opponents had in the 1940's and 1950's, but instead of arguing that these provisions gave the states the power to determine if overseas Americans qualified as voters, they maintained that the Constitution itself set the that qualification. For a person residing overseas who could not prove an intent to return could not qualify as "the people" of a state, according to the minority view. While there was no such constitutionally proscribed qualification as concerned presidential elections, a constitutional amendment had been needed to allow D.C. residents to vote in

²⁹⁷ Signed Charles E. Wiggins (R-CA), Samuel L. Devine (R-OH), Marjorie S. Holt (R-MD), W. Henson Moore (R-LA).

presidential elections, it maintained.²⁹⁸ Opponents argued that the voting rights bills for overseas Americans in effect abolished bona fide residence in a state as a qualification of voting.²⁹⁹ Proponents countered this by arguing that the bills merely moderated the definition of bona fide residency and did not eradicate it. Persons who had moved abroad could be included as residents for voting purposes in the state they last resided in, as long as they did not established residency in any other state, proponents argued. Opponents answered the latter argument by stating that it was not possible to create such an unnatural new type of state citizenship. You were either a state citizens or you were not. Opponents furthermore argued that *Oregon v. Mitchell* had no relevance to the voting rights of overseas Americans, insisting that *Oregon* only dealt with durational residency and remedies for it, not the question of congressional powers to define bona fide residency per se.³⁰⁰

Congressional opponents were in the 1973 Senate hearings supported by the Congressional Research Service of the Library of Congress in their conclusion that the relevant bills were unconstitutional.³⁰¹ The Congressional Research Service had been asked to provide the Senate Rules and Administration Committee with information concerning federal legislation which would enfranchise overseas Americans. While including both sources supporting and opposing the constitutionality of federal legislation, legislative attorney Jack H. Maskell of the Congressional Research Service concluded that the federal government had no constitutional power to enact such legislation, emphasizing that the states had a compelling interest in excluding overseas Americans due to their “lack of familiarity with, and lack of direct interest in, the affairs of a state from which such person may have abandoned physical residence for numerous years.”³⁰² It is perhaps a bit curious that the research service which is supposed to be neutral should reach that conclusion, when in the end, a great majority of Congress did accepted a federal bill and as no Supreme Court ever agreed with the research service’s position.

²⁹⁸ Minority view in House report to accompany S.95, 1975

²⁹⁹ See Mary Lawton, Deputy Assistant Attorney General, Office of Legal Council, Department of justice, statement in Senate Hearing, *Voting by U.S. citizens residing abroad*, 1973: 65; and minority view in House report to accompany S.95, 1975

³⁰⁰ The argument that the constitution determined a minimum qualification of voting (that could not include overseas Americans) seem perhaps like neither the federal government nor the state can enfranchise overseas Americans.

³⁰¹ See Congressional Research Service memorandum in Senate Hearing, *Voting by U.S. citizens residing abroad*, 1973

³⁰² Congressional Research Service memorandum in Senate Hearing, *Voting by U.S. citizens residing abroad*, 1973: 129.

As already mentioned, the Justice Department also supported the congressional opponents' view. Deputy Assistant Attorney General of the Office of Legal Council Mary C. Lawton prepared statements for both the 1973 and the 1975 hearings, in which she explained in detail why the department believed the bills were unconstitutional. Her arguments were very similar to those presented in the minority House report. One additional point she made was to counter the overseas citizens' gimmick "no taxation without representation." Lawton argued that not *all* overseas Americans actually paid taxes to the U.S.³⁰³ This point was countered by proponents who argued that requiring taxes for the right to cast ballots had long been banned (for instance by the Twenty-fourth Amendment (1964) to the Constitution, abolishing poll taxes,) and that no one was disenfranchising housewives, students, or the unemployed physically residing in the U.S.³⁰⁴ Representative Hays (R-OH) also pointed out that in 1974, 150 million dollars had been retrieved in federal taxes from overseas private citizens.³⁰⁵

One difference between the Justice Department's written statement in the 1973 Senate hearings and the minority report was concerned the issue of whether or not enfranchising overseas Americans was good policy (versus in keeping with the Constitution.) Lawton wrote in 1973 that "it seems basically unfair" to enfranchise overseas Americans because they had no interest or knowledge of the states in which they formerly lived, and that the bills presented "serious policy questions."³⁰⁶ She did not develop further on the issue. In contrast, the minority report stated that as a policy matter, federal legislation enfranchising all Americans overseas might be wise, but that good policy had to yield to constitutional concerns. On the House floor, Wiggins repeated this view: "Mr. Chairman, this bill requires that we rise above our natural instincts to be supportive of the right of U.S. citizens residing abroad to vote. It requires that we place on a higher order our loyalty to the Constitution of the United States. Unfortunately these citizens are not constitutionally eligible to vote in a state in which they are not residents."³⁰⁷ Whether opponents in Congress agreed with the Justice Department that it was unfair to enfranchise citizens abroad or whether, as they officially stated, they only opposed it on

³⁰³ Mary Lawton, Deputy Assistant Attorney General, Office of Legal Council, Department of Justice, statement in Senate Hearing, *Voting by U.S. citizens residing abroad*, 1973

³⁰⁴ See for instance Marans statement in Senate Hearing, *Voting by U.S. citizens residing abroad*, 1973: 239-240.

³⁰⁵ Hays in Congressional Records House, 10 Dec. 1975, 39734

³⁰⁶ Mary Lawton, Deputy Assistant Attorney General, Office of Legal Council, Department of Justice, statement in Senate Hearing, *Voting by U.S. citizens residing abroad*, 1973: 65.

³⁰⁷ *U.S. Congressional Record, House, vol. 121, December 10, 1975*: 39733; for minority view see House report to accompany S. 95:19.

constitutional grounds, is up for speculation. An attempt at guarding themselves against critique from overseas voters if (and when) they would be enfranchised might have influenced quotes like the one above. In any case, Lawton left out the argument that enfranchising overseas Americans was a bad policy decision when she again testified in the 1975 hearings.³⁰⁸

Proponents finally argued that there was no need to be concerned with the constitutional question because the Supreme Court could take care of it. If one had been equally afraid of passing “groundbreaking” legislation, there would not have been any Civil Rights Act in 1964, no Voting Rights Act in 1965.³⁰⁹

3.6 The Overseas Citizens Voting Rights Act

On December 10, 1975, the House passed bill S. 95 by a 374 to 43 vote, and the Senate concurred on December 18. Interestingly, of those who had voted negatively in the House, 28 were Republicans, 14 were Southern Democrats, and only one was a Northern Democrat.³¹⁰ In other words, in contrast to the 1940’s and 1950’s, sponsorship of absentee voting for overseas Americans was clearly bipartisan, but the old coalition of opponents persisted. The House had in the end deleted the findings that gave the constitutional base of the bill for being “unnecessary”.³¹¹ Adequate justification of the bill could be found in hearings and congressional reports, according to the House. Deleting these findings might have made the bill easier to swallow for many members of Congress, as it removed disagreement on exactly what parts of the constitution authorized such congressional legislation. After all, even the 8 to 1 Supreme Court decision in *Oregon v. Mitchell* provided several separate opinions relying on different parts of the Constitution. The findings seem to have concluded not only that Congress had authority to enfranchise overseas Americans for instance under the power to regulate elections as they had in the 1940’s and 1950’s, but they also seemed to imply that overseas Americans’ right to vote was

³⁰⁸ See testimony of Lawton in House hearing, *Voting rights for U.S. citizens residing abroad*, 1975.

³⁰⁹ Dent House hearing, *Voting rights for U.S. citizens residing abroad*, 1975: 257; Hays in *U.S. Congressional Record*, House, vol. 121, December 10, 1975: 39734; Danielson in *U.S. Congressional Record*, House, vol. 121, December 10, 1975: 39735.

³¹⁰ *Congressional Quarterly Almanac*, “S. 95. Overseas Citizens’ Voting Rights,” at 559, vol. XXXI, 1975: 172.

³¹¹ U.S. Congress, Committee on House Administration, *Overseas Citizens Voting Rights Act of 1975*, report to accompany S. 95, 94th Congress, 1st Session, H.Rept. 94-649 (Washington D.C.: Government Printing Office, 1975).

derived directly from the Constitution, which was probably extra difficult to swallow.³¹² The Senate agreed to the deletion of the findings, as the sponsors of S. 95 regarded the change as mainly a technical one.³¹³

As both houses of Congress had passed S. 95, a new threat lingered. In fact, Marans (the attorney working for the Bipartisan Committee on Absentee Voting) says that the biggest opposition and the biggest threat to the passing of federal legislation enfranchising overseas Americans came from one person in particular: Antony Scalia of the Justice Department.³¹⁴ Scalia, at the time S. 95 was passed an Assistant Attorney General for the Office of Legal Counsel (and later Supreme Court Justice,) continued to oppose the bill. He persuaded the attorney general to oppose the president's signature. Marans asked Senator Goldwater to go over the head of the Justice Department and call President Ford's legal council. Goldwater is to have said: "Listen, you damned fools, there are more Republicans in Paris than there are in Detroit, and Ford doesn't want to be the first president to veto a voting rights bill since the Reconstruction."³¹⁵ The bill was signed by Ford on January 2, 1976, and became the Overseas Citizens Voting Rights Act of 1975.³¹⁶ It guaranteed all Americans living overseas the right to register and vote absentee in all federal elections in the state in which they last resided, even though they did not "have a place of abode or other address in such State or district, and his intent to return to such State may be uncertain," if they complied with all other applicable State or district qualifications and requirements consistent with the act.³¹⁷ The act contained few requirements concerning the manner in which the actual registration and balloting procedures should be executed by the states.

One other important provision in S. 95 that the House had deleted, would have made it illegal for states to tax overseas citizens solely on the basis of being registered to vote in that state. Overseas Americans faced the possibility of being taxed both by the U.S. government and by the country of residence (despite bilateral tax treaties,) but also by some states taxed overseas Americans even if such citizens were not otherwise connected to the state. Several members of

³¹² Wiggins said for instance: "My problem in adopting these findings is almost as great as with the basic legislation, may be even greater." In House hearing, *Voting rights for U.S. citizens residing abroad*, 1975: 93. But the deletion of the findings did not make him vote in favor of S. 95.

³¹³ Senator Mathias *U.S. Congressional Record*, Senate, vol. 121, December 18, 1975: 41519.

³¹⁴ Personal interview with Eugene Marans, May 3, 2011.

³¹⁵ Quoted in Michaux 1996: 63.

³¹⁶ P.L. 94-203, 89 Stat. 1142-1144 (Jan. 2, 1976). See also Coleman 2005.

³¹⁷ P.L. 94-203, 89 Stat. 1142-1144 (Jan. 2, 1976).

Congress believed that the risk of being taxed by the states discouraged overseas Americans from attempting to register to vote.³¹⁸ Senator Pell had in 1975 argued that such state taxation could be viewed as a poll tax which had been banned by the Twenty-fourth Amendment, and that requiring an overseas citizen to pay taxes when that citizens enjoyed none of the rights or privileges associated to being domiciled in a state, presented a possible violation of the Due Process Clauses of the Fifth and Fourteenth Amendments.³¹⁹ In 1978, Congress revisited the issue. According to one U.S. Chamber of Commerce survey of overseas citizens, 50 percent of those who had not voted in the 1976 elections had named fear of state taxation as the main reason for it.³²⁰ In addition to the tax issue, the survey report also noted that half the states had not enfranchised their overseas citizens despite the Overseas Citizens Voting Rights Act, and that inconsistencies in states' voting laws still remained. On November 4, 1978, President Carter signed S. 703 into law.³²¹ First of all, it amended the existing law by stating that overseas citizens were not liable to state taxation solely on the basis registering and voting absentee in federal election. Secondly, S. 703 included many of the recommendations for absentee voting procedures that were found in the Federal Voting Assistance Act of 1955, and required the presidential designee to design a federal post card that would serve as an application both for registration and for an absentee ballot. Thirdly, it amended Federal Voting Assistance Act by requiring, in stead of merely recommending, the states to enfranchise the groups covered by the act. For the Overseas Citizens Voting Rights Act had unintentionally left out one group, namely the members of the armed forces while in active duty, members of the Merchant Marine, and their spouses and dependents, who were away from their voting districts though not outside U.S. territory. The House report accompanying S. 704, did not discuss the constitutionality of the bill in the majority statement, but it contained a minority statement maintaining that the bill was unconstitutional, again authored by Wiggins.³²²

³¹⁸ Michaux 1996: 90; Senator Pell *U.S. Congressional Record*, Senate, vol. 121, December 18, 1975: 41518-19

³¹⁹ See previous footnote.

³²⁰ Coleman 2005: 6.

³²¹ P.L. 95-593, 92 Stat. 2535-2539 (Nov. 4, 1978).

³²² For documentation on the information relating to S. 703, see U.S. Congress, Committee on House Administration, *Improving the Administration and Operation of the Overseas Citizens Voting Rights Act of 1975, and for Other Purposes*, report to accompany S. 703, 95th Congress, 2nd Session, H. Rept. 95-1568 (Washington D.C.: Government Printing Office, 1978).

3.7 Conclusion

The “voting rights revolution” between the late 1950’s and early 1970’s removed many of the obstacles to passing federal legislation that would guarantee absentee voting rights of private citizens residing abroad that had restricted similar legislation covering military voters in the 1940’s and 1950’s.³²³ Nonetheless, disagreements over constitutionally proscribed federal and state powers still influenced policy debates concerning voting rights legislation (aimed at overseas citizens.) Several members in Congress, backed by the Justice Department, opposed a federal guarantee of absentee voting rights for private citizens, officially focusing on the argument that the most essential qualification to voting (in a state) was state residency. This was a qualification proscribed by the Constitution, and it was up to the states to determine the exact definition of “residency,” they argued. Proponents, however, inspired by the successful argumentation in favor of other voting rights bills, maintained that voting rights had by now been recognized as a vital aspect of citizenship. Restrictions to the franchise therefore had to be justified by proof of a compelling state interest, as the Supreme Court had argued in several rulings. States had no compelling interest in excluding overseas citizens from a definition of residency for voting purposes, proponents argued. Overseas citizens would only be guaranteed the right to vote in congressional and presidential elections, and Congress and the president dealt with issues of national concern, issues that also affected overseas citizens.

It seems that interest groups of overseas citizens had a significant influence on policy debates, raising awareness of their voting problems, convincing Congress that they were interested in and well informed of U.S. politics, and that they were good, taxpaying Americans who deserved representation in Congress. Efforts by both Congress and interest groups were bipartisan. Meanwhile, judging by the House vote on the bill that became the Overseas Citizens Voting Rights Act of 1975, the opposition was made up of Republicans and Southern Democrats (much like the opposition to voting rights bills in general.)³²⁴

³²³ “Voting rights revolution” quote of Keyssar 2009: 205, 228.

³²⁴ For documentation on the Voting Rights Act of 1965, see for instance Keyssar 2009: 211. For documentation on the House vote on S. 95 see *Congressional Quarterly Almanac*, “S. 95. Overseas Citizens’ Voting Rights,” at 559, vol. XXXI, 1975: 172.

Recent Developments

In the 1970's, Congress had passed legislation that guaranteed the absentee voting rights of servicemen, their spouses and dependents, and overseas citizens. In 1986, existing legislation was replaced by the Uniformed and Overseas Citizens Voting Rights Act (UOCAVA). This act still provides the framework for overseas and military voting today. However, UOCAVA has been substantially amended since the 1980's, for theoretical voting rights and voting in practice are two different things. The states are still in charge of arranging elections, and states have had different success rates in making the voting process easy or even possible. The patchwork of different state regulations has furthermore caused confusion for voters abroad, as has lack of adequate information (especially during the days before the internet.)

This chapter deals with the relevant policy discussion during the period from the 1980's to the present. These discussions evolved around making state laws covering servicemen, their spouses and dependents, and overseas citizens, more uniform and effective. Judging by available material, it does not seem like there have been any noteworthy discussions regarding the constitutionality of a federal guarantee of the absentee voting rights of these groups since the 1970's, nor any noteworthy discussions regarding the policy merits of enfranchising these groups (though there have been such discussions about other issues that affect overseas citizens, including discussions regarding taxation and Medicare.)³²⁵ Nevertheless, the presence of states' rights concerns has continued to temper federal efforts to *improve* state laws. Another important factor that influenced federal policy towards enfranchising these groups was the 2000 presidential election scandal. It put election reform in general on the national agenda, and it also specifically highlighted problems with state laws regulating voting by groups covered by UOCAVA. Importantly, the fact that many Republicans believe that the majority of the UOCAVA population vote for their party may have diminished the Republican opposition that has made other voting reforms aimed at easing access to the polls difficult. Another factor that has pushed Congress to move forward has been the continued efforts by military and overseas American

³²⁵ For information on debates concerning other issues that affect overseas civilians, see Michaux Phyllis Michaux, *The unknown Ambassadors: A Saga of Citizenship* (Canada: Aletheia Publications, 1996).

advocacy groups. Furthermore, easing the passage of new legislation has been the fact that one of the UOCAVA groups in particular, members of the uniformed services, is a popular and uncontroversial group to support. In the long run, overseas civilian voters probably benefit from being linked to the military voters, though the focus on the latter voters has also been problematic for them. These are issues that will be discussed below.

4.1 The Uniformed and Overseas Citizens Voting Rights Act (UOCAVA)

The federal law that currently (fall 2011) provides for absentee voting by servicemen, their spouses and dependents, and overseas voters, was signed by President Ronald Reagan on August 28, 1986.³²⁶ It had been passed by the House and the Senate by voice vote a few weeks earlier, and guaranteed the voting rights of the covered groups in general, special, primary, and run-off elections for federal office.³²⁷ The report accompanying H.R. 4393 that became the Uniformed and Overseas Citizens Voting Rights Act stated that its primary purpose was to consolidate and update provisions of current federal law, and provide for a federal write-in absentee ballot.³²⁸ It thus repealed the existing law, which by now included the Federal Voting Assistance Act of 1955 and the Overseas Citizens Voting Rights Act of 1975. The federal write-in absentee ballot had not been used since the 1944 elections, when the Soldier Voting Act had been amended to include such a provision (as discussed in chapter two.) The provision had been repealed in the 1946 amendment to the Soldier Voting Act because few servicemen had taken advantage of it, and because many of the states in which there was a real need for the emergency write-in ballot did not accept its use (since the provision merely recommended that states accept it.) The sponsors of UOCAVA had hoped that the write-in ballot would help solve the single largest reason for continued disenfranchisement of the covered groups: state failure to provide adequate ballot transit time. The write-in ballot would be used only by voters who had followed the state deadlines for absentee registration and ballot application, but had not received a regular ballot in time to return it to the state before election day. As suggested by its name, the write-in ballot was

³²⁶ P.L. 99-410 Stat. 924-929 (Aug. 28, 1986).

³²⁷ “Federal office” was defined as the office of President and Vice President, Senator, Representative in, or Delegate or Resident Commissioner to, the Congress. Included in the definition of “state” in the Act were also the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, and American Samoa. See section 107 of the UOCAVA, P.L. 99-410 Stat. 924-929 (Aug. 28, 1986).

³²⁸ See U.S. Congress, Committee on House Administration, *Uniformed and Overseas Citizens Absentee Voting Act*, report to accompany H.R. 4393, 99th Cong. 2nd session, H. Rept. 99-765 (Washington: GPO, 1986): 5.

a blank ballot in which the voter could fill in the names of candidates or party of his or her choice, and it would be made available on “military bases and ships, at American embassies and consulates, and at other locations overseas.”³²⁹ Unlike the 1944 amendment to the Soldier Voting Act, UOCAVA required states to accept this emergency ballot.

Except for reintroducing the write-in ballot, UOCAVA made few changes to the laws it replaced. UOCAVA contained few state procedural requirements, but included a list of recommendations such as state acceptance of the federal post card application for simultaneous registration and ballot request, and the sending of ballots to voters at “the earliest opportunity.” The Federal Voting Assistance Program that had been established by the 1955 Federal Voting Assistance Act was continued through a provision requiring a presidential designee to carry out the acts’ federal responsibilities such as prescribing a federal post card application and a federal write-in absentee ballot, and compiling and distributing information on state absentee registration and balloting procedures including, to the extent possible, facts relating to specific elections, including dates and offices involved. Like Eisenhower, Reagan chose the Secretary of Defense who continues to be responsible for the Federal Voting Assistance Program today (fall 2011.)³³⁰ Finally, UOCAVA authorizes the Attorney General to bring civil action in appropriate district courts to enforce the act (as had the Overseas Citizens Voting Rights Act.)³³¹

4.2 UOCAVA Voting and the 2000 Presidential Election Scandal

While problems with state laws or execution of laws continued to disenfranchise many UOCAVA voters, it seems that little congressional attention was given to the issue for a decade and a half.³³² However, the 2000 presidential election brought the issue of voting rights to

³²⁹ See report to accompany H.R. 4393: 5.

³³⁰ Executive order No. 12,642 53 Fed. Reg. 21,975 (June 8, 1988), referenced in Hans A. von Sparkovsky, “Voting by Military Personnel and Overseas Citizens: the Uniformed and Overseas Citizens Absentee Voting Rights Act,” The Federalist Society for Law and Public Policy.

³³¹ For this information on the act and the comparison with previous acts, see U.S. Congress, Committee on House Administration, *Uniformed and Overseas Citizens Absentee Voting*, report to accompany H.R. 4393, 99th Congress, Second Session, H.Rept. 99-765 (Washington: Government Printing Office, 1986) 5; Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA), P.L. 99-410, 100 Stat. 924-929 (August 28, 1986) ; the Overseas Citizens Voting Rights Act of 1975, P.L. 94-203, 89 Stat. 1142-1144 (Jan. 2, 1976); and the Federal Voting Assistance Act, P.L. 84-296, 69 Stat. 584-589 (Aug. 9, 1955).

³³² See Kevin J. Coleman, *The Uniformed and Overseas Citizens Voting Act: Overview and Issues* (Washington, D.C.: Congressional Research Service, February 17, 2011) http://assets.opencrs.com/rpts/RS20764_20110217.pdf accessed November 5, 2011.

national attention in a way it had not been since the 1960's,³³³ and it also specifically shed light on UOCAVA voting. Usually the winner of a presidential election is named on election night when new networks project winners based on early returns and exit polls. In 2000, however, election "night" lasted for over a month. The morning after election day, it became clear that Al Gore was so far (in the counting and recounting process) leading in the popular vote by a mere 200,000 votes nationally over George W. Bush. Gore had won, or was ahead, in states that would give him 267 electoral votes, while Bush had 246. To win the election, 270 electoral votes were needed, and the focus turned to the state that would determine the election by giving either candidate its 25 electoral votes: Florida. For in Florida, the election was so close that no winner had yet been named. Bush was leading by less than 2000 votes in a state where six million votes had been cast. After an automatic recount a few days later, mandated by Florida law in close elections, Bush' lead was narrowed to a few hundred votes. This qualified as a statistical tie: the margin of victory was smaller than the margin of error of the vote-counting apparatus. But somehow, the state had to find a winner, and decisions had to be made concerning whether or not, where, and how recounts by hand should be done. These decisions became the topic of legal and partisan conflict between the two major parties and the campaign organizations. The conflict ran its course in state and federal courts, as well as in the media. Light was shed on many problems in Floridian election procedures and laws. Confusing and ineffective voting machinery was in the spot light, as was a poorly designed "butterfly ballot" that had made many voters in Palm Beach county to mistakenly mark their ballot for conservative Patrick Buchanan instead of Al Gore, and groups of Floridian citizens protested that they had been deprived of their voting rights due to inaccurate registration records, flawed lists of convicted felons, racial discrimination and biased Republican election officials.³³⁴

Among the many problems causing the month long election debacle, was late arriving UOCAVA votes that could be crucial to the election outcome. Florida had received 2,411 overseas ballots after the election deadline on November 7. If they were counted, Bush would lead the election in Florida by 537 votes, and if they were rejected, Gore would lead by 202 votes. The question was which standard for counting votes should be used: the Floridian statutory law requiring ballots received after a 7 p.m. election day deadline to be rejected, or the

³³³ Alexander Keyssar, *The Right to Vote: The Contested History of Democracy in the United State*, revised edition (New York: Basic Books, 2009).

³³⁴ Keyssar 2009: 259-262.

administrative rule that gave an extended deadline for overseas votes. In 1980, the U.S. had sued the State of Florida for violating the Overseas Citizens Voting Rights Act of 1975 by sending out overseas ballots too late for them to be returned in time for counting (and thus in practice disenfranchising overseas citizens.) The judge in the case provided injunctive relief by ordering ballots received within ten days of election day to be counted. As Florida later failed to take measures for sorting out the situation for overseas voters for future elections that would satisfy the court, a consent decree between the U.S. and Florida requiring the ten day extension as well as requiring ballot to be mailed 35 days before an election became permanent and delineated as Florida Administrative Code § 1S-2.013. The administrative rule directly contradicting a state statute would regulate elections as concerned overseas voters for the next 16 years with little attention given to the situation. In 2000, however, when overseas votes suddenly could sway the entire U.S. election, the issue was brought to the U.S. District Court for the Northern District of Florida.³³⁵ It ruled that because the administrative rule was mandated by a federal court as part of the enforcement of a federal act, the administrative rule superseded the state's statute. The late arriving overseas votes were counted.

The Florida Supreme Court had ordered a recount of votes in the state. The Supreme Court overruled this decision, however. On December 12, the election debacle was ended by *Bush v. Gore*, in which the 5-4 Supreme Court ruling halted the Florida recount because it argued that the method of the recount violated the Equal Protection Clause of the Fourteenth Amendment and that no other recount method could be established by the time limit set by the state of Florida. The ruling ultimately gave Florida and thus the election to Bush.³³⁶ More lenient laws enfranchising ex-felons, correct registration lists, understandable and well functioning voter technology, impartiality in the handling of the voting process, and potentially, allowing a recount, were factors that probably would have made more of a difference to the election outcome than the UOCAVA votes (since for instance ex-felons are often presumed to be more likely to vote Democratic, see next subchapter). However, given the situation, it seems that the 2,411

³³⁵ *Harris v. Florida Elections Canvassing Comm'n* (December 11, 2000) referenced in R. Michael Alvarez, Thad E. Hall and Brian F. Roberts, *Military Voting and the Law: Procedural and Technological solutions to the Ballot Transit Problem* Caltech/MIT Voting Technology Project Working Paper no. 53, California Institute of Technology & Massachusetts Institute of Technology, March 2007: 33, http://www.vote.caltech.edu/drupal/files/working_paper/vtp_wp53.pdf accessed June 3, 2011.

³³⁶ The recount had been preliminarily halted a few days before, but the December 12 ruling made it final. *Bush v. Gore* 531 U.S. 98 (2000).

UOCAVA votes arriving after election day ended up determining the winner of the Presidency. Bush had won Florida by 537 votes over Gore.³³⁷

4.3 Reactions to the 2000 Election Scandal

The General Climate of Election Reform

While the problems with Florida's election laws and regulations might have had particularly significant consequences for the entire 2000 presidential election, such problems were not unique to that state.³³⁸ The scandal ridden election brought forth a wave of interest in reforming numerous aspects of U.S. elections. Teams of experts founded by universities and foundations attempted to evaluate new technology and look for ways to improve voting, as did a Carter-Ford commission, and numerous old and new advocacy groups. Local, state and federal officials, both elected and appointed, urged the passage of new legislation to avoid another "Florida-2000" situation. However, despite all this attention given to the need for improvement, the political climate was not entirely receptive to election reform. While new legislation was eventually passed both at the federal and state level, Keyssar maintains that federal efforts such as the Help American Vote Act (HAVA) of 2002 had limited results.

Among the factors that made election reform difficult, was the fact that Congress had become more strongly split along partisan lines since the fight over the Presidency in 2000, and the partisan passions continued throughout Bush's two terms and continues still. Election reform often became an issue that pitted Democrats who wanted to maximize access to the polls against Republicans who were reluctant to such efforts for fear of fraud. The Democratic party would often gain the most from efforts to enroll new voters and make access to the polls easier (by for instance not requiring photo ID's at the polling stations,) because such efforts were aimed at the poor and at minority voters, who tended to vote Democratic. Democrats often claimed that Republicans were trying to suppress the votes of these groups for partisan reasons, pointing for instance to the purging of registration lists in Florida in 2000 as an example of such behavior. Republicans on the other hand claimed they were only trying to keep elections free from fraud,

³³⁷ For more information on the role of late arriving UOCAVA votes in the 2000 Florida election, see for instance David Barstow and Don Van Natta Jr. "How Bush Took Florida: Mining the Overseas Absentee Vote," The New York Times July 15, 2001; Kosuke Imai and Gary King, "Did Illegally Counted Overseas Absentee Ballots Decide the 2000 U.S. Presidential Election?" Perspectives on Politics, vol. 2, nr.3, September 2004: 537-549.

³³⁸For this paragraph, see Keyssar 2009: 262-94, unless otherwise stated.

and some reversed the accusations and claimed that it was the Democrats' initiatives that had partisan motives. Through the years that passed, many Republicans, including Karl Rove (President Bush' top political advisor), believed that election fraud was indeed a major problem, caused largely by Democratic efforts at enrolling new voters, despite the fact that no evidence has yet been materialized proving "any large-scale, organized efforts to affect the outcome of either federal or state elections through fraudulent voting," according to Keyssar.³³⁹ In any case, close elections exacerbated tensions between the two parties when it came to election reform. Reforms passed after the 2000 debacle were compromises between the fear of fraud and increasing access to the polls, and between fears of loosing or gaining votes.

Concerns about states' rights were also an obstacle to federal reform initiatives. In February 2001, a task force of the National Association of Secretaries of States met in Washington to discuss election reform in states.³⁴⁰ It maintained that election administration was a state and not a federal matter, and that what the states needed was federal funds, not federal interference. In Congress, Democrats tended to support mandatory national standards, while Republicans tended to prefer voluntary compliance with national standards. The issue of disenfranchisement of felons or ex-felons had been raised in the Florida scandal. Florida was one of less than a dozen states that imposed lifetime disenfranchisement for persons convicted of a felony, and according to some estimates, 30 percent of Floridian African American males were kept away from the polls because of it. Both major political parties assumed that such voters would disproportionately vote Democratic, and the issue thus became a partisan one. But in Congress, it also met states' rights concerns. A 2002 proposal for the mandatory restoration of voting rights for ex-felons was overwhelmingly defeated in the Senate. A similar measure sponsored by among others Hilary Clinton three years later failed as well, as did later attempts.

In 2002 Congress passed Help American Vote Act (HAVA). HAVA contained a list of federal requirements to the states, including requirements concerning voting machines, and a requirement that states assemble computerized statewide registration lists. It also provided funds for the states to comply with these requirements. The Election Assistance Commission was also established by the act, which was to serve as a clearinghouse of information about voting systems and to distribute a total of \$ 3 billion in grants to the states. Keyssar argues that HAVA was "a

³³⁹ Keyssar 2009: 282.

³⁴⁰ For this paragraph see Keyssar 2009: 260, 265-267, 276.

limited, even pale, achievement,” and that election administration remained decentralized. For while HAVA did signal increased federal involvement in the conduct of American elections, it left room for considerable interpretation of its provisions to the states, and did not address a great number of important issues such as administrative control of state elections by partisan officials, the disenfranchisement of ex-felons, problems with the Electoral College or the lack of a clear constitutional right to vote.³⁴¹

In the 1970’s, many of the advocates of overseas voting rights had argued that they had a constitutional right to vote.³⁴² However, the 2000 election was a reminder that there is no clear language in the constitution guaranteeing the individual right to vote. The *Bush v. Gore* ruling contained a few little noticed sentences stating just that. In 2001, Representative Jesse Jackson, Jr. (D-Ill) introduced in the House the text of a proposed constitutional amendment that would give every adult citizens an affirmative right to vote. He argued that every vote would have had to be counted in the 2000 election if there had been a clear constitutional right to vote. He believed such an amendment would overcome continued discrimination capsuled in states’ rights, and would ensure that each vote counted the same. Jackson reintroduced his amendment in the consecutive years, and it gradually gained support. By 2003 he had forty-five co-sponsors, and by 2005 he had fifty-five. The amendment gained attention from outside Congress as well. In 2003 it was in focus in a national conference that included representatives of nearly all voting rights organizations in the nation. While the American-sponsored Iraqi constitution of 2005 contained a right to vote, as did the majority of the constitutions of democratic nations, the U.S. was not ready to incorporate such a right into theirs. No Republican members of Congress agreed to co-sponsor Jackson’s amendment, and Republicans were simply silent on the issue. Some Democrats thought such an amendment was unnecessary as they believed it was already implicit in the Constitution, some believed it would jeopardize the renewal of the Voting Rights Act, and some wanted to keep away from constitutional amendments all together because they feared Republican initiatives on issues such as gay marriage. No companion bill was ever introduced in the Senate, and the House as a whole never debated or voted on Jackson’s amendment.³⁴³

³⁴¹ Keyssar 2009.

³⁴² See chapter three, for instance the text of the “congressional findings” in U.S. Congress, Committee on House Administration, *Overseas Citizens Voting Rights Act of 1975*, report to accompany S. 95, 94th Congress, 1st Session, H.Rept. 94-649 (Washington D.C.: Government Printing Office, 1975).

³⁴³ Keyssar 2009: 262, 291-293. *Bush v. Gore* stated that “the individual citizen had no constitutional right to vote for electors for President of the United States...” Quoted in Keyssar 2009: 262. For discussion of the lack of a

Furthermore, the 2000 election was a reminder that every vote did not count equally: because of the system of the Electoral College, George Bush would become the first president since the late nineteenth century to be elected who had not also gained the majority of the popular vote. Gore had got half a million more popular votes. But the Electoral Collage also remained untouched.

Reform Specific to UOCAVA

The accurate number of UOCAVA citizens is not known, but as UOCAVA was passed in 1986, Congress estimated that there were around 6 million Active Duty members, military dependents, and overseas civilians. A report released in 2011 by the Federal Voting Assistance Program still used the same estimate of 6 million, of which 1.51 million were military, 1 million military dependents.³⁴⁴ For a decade and a half after 1986, Congress had paid little attention to the voting rights of these citizens. But the 2000 election seems to have made UOCAVA voters more interesting group, a group that could potentially determine the outcome of close elections. The election also revealed problems with UOCAVA voting processes. In Florida-2000, discussions concerning UOCAVA votes had not only concerned ballots arriving late, it had concerned a number of details like whether to count overseas ballots that did not contain postmarks, signatures or other statutory required characteristics.³⁴⁵ It was clear that Floridian laws and regulations concerning UOCAVA voting, as well as those in other states, were confusing, inadequate, and risked disenfranchising overseas citizens. Around every federal election since 2000, newspaper headlines have read, for instance “Both parties try to get out the vote of expat

constitutional right to vote and the *Bush v. Gore* decision, see also Jamin B. Raskin, “A Right to Vote: Amazingly, the Constitution fails to guarantee the most basic of Democratic rights,” *The American Prospect Magazine*, August 2001, www.thirdworldtraveler.com/Democracy/A_Right_to_Vote.html accessed March 25, 2011.

³⁴⁴ U.S. Congress, Committee on House Administration, *Uniformed and Overseas Citizens Absentee Voting*, report to accompany H.R. 4393, 99th Congress, Second Session, H.Rept. 99-765 (Washington: Government Printing Office, 1986) 8; and The Federal Voting Assistance Program, *Eighteenth Report: 2008 Post Election Survey Report*, March 2011: ii, <http://www.fvap.gov/resources/media/18threport.pdf> accessed July 18, 2011. The FVAP report does not specify the number of government, and explains that the number 6 million is clearly an estimate, in fact, their estimate of non-governmental overseas citizens ranges from 2-4 million. Other estimates also run higher. Taylor Dark III (2003) estimates that the size of the total overseas population is 3-7 million, the highest number based on the number of passports issued by the State Department to citizens located abroad. The problem of counting overseas citizens is that registering with a local American consulate or embassy is voluntary, and the U.S. Census Bureau gave up trying to count them after failed attempts in 1960 and 1970. See Taylor Dark III 2003: 733-734.

³⁴⁵ For this paragraph, see Alvarez et al. 2007: 1-2, 33-34.

citizens,” “Campaigns Look Overseas For Votes,” “Efforts increase to enfranchise U.S. citizens abroad,” and “Forget Iowa. How About That Antarctica Vote?”³⁴⁶

During the years that followed the 2000 fiasco, UOCAVA was amended by HAVA and by the National Defense Authorization Act of 2002, by the Defense Authorization Act for Fiscal Year 2005, and by the Defense Authorization Act for FY 2007.³⁴⁷ The amendments included a number of procedural requirements to states. HAVA, for instance, prohibited states from refusing to accept a valid voter registration application on the grounds that it was submitted too early, required states to designate a single office to inform UOCAVA voters on how to register and apply for ballots, and required the states to report the number of ballots sent to UOCAVA voters and the number returned and cast in the election (UOCAVA already required the Secretary of Defense to collect such data, but did not require states to provide such data.) The amendments that were achieved through HAVA also included new federal responsibilities. For instance, the Secretary of Defense was required to establish procedures to ensure a postmark or proof of mailing date on absentee ballots, and was required to ensure that state officials were aware of the requirements of relevant federal law, and one provision required that each person who enlists receive the national voter registration form.³⁴⁸

Despite reforms, problems persisted. The Overseas Vote Foundation published in 2009 a post election report based on survey responses from about 24,000 UOCAVA voters and 1,000 local election officials.³⁴⁹ The report found that one in four of respondents, twenty-two percent, did not receive the ballot they had requested. Eight percent of the total pool of respondents went on to use the federal emergency ballot, the federal write-in absentee ballot, when ballots did not arrive from the states. Fourteen percent of respondents gave up trying to vote when their state ballots did not arrive. Nearly one-quarter of experienced voters still had questions or problems when registering to vote. In 2009, the Pew Center on the States published a report that examined

³⁴⁶ Meg Bortin, “Both Parties try to get out the vote of expat citizens,” *The New York Times*, September 26, 2002, available at www.nytimes.com accessed July 7, 2011; Joel Roberts, “Campaigns Look Overseas For Votes,” *CBS News*, May 17, 2004, available at www.cbsnews.com accessed July 7, 2011; Brian Knowlton, “Efforts increase to enfranchise U.S. citizens abroad,” *International Herald Tribune*, November 28, 2007, available at www.ith.com July 7, 2011; Leslie Wayne, “Forget Iowa. How About That Antarctica Vote?” *The New York Times*, March 16, 2008, available at www.nytimes.com, accessed July 7, 2011.

³⁴⁷ In order of appearance: P.L. 107-252; P.L. 107-107; P.L. 108-375; P.L. 109-364.

³⁴⁸ Coleman 2011.

³⁴⁹ Overseas Vote Foundation, *2008 OVF Post Election UOCAVA Survey Report And Analysis*, February 2009: 5, https://www.overseasvotefoundation.org/files/OVF_2009_PostElectionSurvey_Report.pdf accessed June 3, 2011.

state practices when it came to UOCAVA voting.³⁵⁰ As the title of the report indicated, a major problem for UOCAVA voters was that there was *No Time to Vote*. 25 states did not provide enough time for overseas military citizens to vote, or ran a high risk of not doing so. Finally, the Federal Voting Assistance Program's *2008 Post Election Survey Report* concluded that "The State-by-State absentee voting system produces a set of rules that are overly complex and difficult to administer for Voting Assistance Officers," and recommended that states standardize and simplify UOCAVA voting processes.³⁵¹

To a certain degree, reform discussion concerning UOCAVA voting followed the same pattern as post-2000 election reform discussions in general. Concerns about fraud and states' rights seemed to have been present in UOCAVA discussions as well, and probably slowed federal initiatives. Fear of fraud had already been one of the arguments against the passage of the Overseas Citizens Voting Rights Act in the 1970's, but had been countered with arguments that the threat of fraud had not prevented states from enfranchising members of the armed forces and overseas federal employees in the preceding years (see chapter three.) In the post-2000 discussions, the fear of fraud argument was in particular raised against initiatives involving electronic voting. The Federal Voting Assistance Program (FVAP) had, even before the 2000 election, been studying ways to use new technology to enfranchise UOCAVA voters, and the Defense Authorization Act for FY 2002 had included provisions that continued an FVAP online voting pilot project. The project was called the Secure Electronic Registration and Voting Experiment, and was to be tested in the 2004 elections. However, it was later cancelled due to fears of cyber attacks.³⁵² Even members of Congress who are committed to passing legislation aimed at improving UOCAVA voting have shown skepticism internet voting.³⁵³

Similar to discussions concerning election reform in general, Democrats and Republicans disagreed on how far Congress should go to make UOCAVA procedures uniform across the

³⁵⁰ The Pew Center on the States, *No Time to Vote: Challenges Facing America's Overseas Military Voters*, January 2009: preface, http://www.pewcenteronthestates.org/uploadedFiles/NTTV_Report_Web.pdf accessed January 3 2011. The report studied only military UOCAVA voters, as Pew did not find reliable data for other overseas voters.

³⁵¹ Federal Voting Assistance Program, *2008 Post Election Survey Report*, 18th report, March 2011: vii, There are 239 Department of State Voting Assistance Officers, one for each embassy and consulate. There is at least one Unit Voting Assistance Officer for each of the approximately 9,500 military units of 25 or more active duty member. A Voting Assistance Officer aids voters from the various states to register and vote.

³⁵² See for instance Coleman 2011.

³⁵³ For instance Carolyn Maloney, New York Democrat and member of the Americans Abroad Caucus. See Ian Urbina, "States Moe to Allow Overseas and Military Voters to Cast Ballots by Internet," *The New York Times* May 7 2010.

states.³⁵⁴ In 2002, even the executive director of Republicans Abroad argued against mandatory requirements: “We’re a states-rights party,” “We believe in the right of each state to determine how they want to conduct their election.”³⁵⁵ As a number of bills were introduced in Congress in 2007 that included several state requirements (that were later incorporated in the Defense Authorization Act for FY 2010 and passed, see below), the *International Herald Tribune* noted that several nonpartisan overseas American advocacy groups as well as Democrats Abroad were quick to endorse the proposals. Yet the new executive director of Republicans Abroad, on the other hand, had no comment.³⁵⁶

While post-2000 federal discussions concerning UOCAVA voting reform in have several ways resembled the federal discussions concerning election reform in general, there has been at least one important difference. As previously discussed, election reform proposals aimed at increasing voter participation will often benefit Democrats, and might therefore diminish Republican incentive to support such legislation. When it comes to increasing UOCAVA turnout on the other hand, Republicans do not have the same reason to worry. As already noted, though the number of military and civilian employees can be found, no one knows the number or composition of perhaps the largest of the UOCAVA populations: non-governmental civilians abroad. Nor does anyone know how UOCAVA citizens vote. While amendments to UOCAVA have required states to collect statistical data such as the number of UOCAVA ballots sent and returned, and required the FVAP to gather such data from all states, UOCAVA ballots are usually not recorded separately. One exception was the late arriving Floridian UOCAVA votes in the 2000 presidential election. The majority of these proved to be Republican. However, these 2411 ballots did not include the 14,415 ballots arriving before the election deadline, and can not be seen as representative for UOCAVA voting behavior in all the states.³⁵⁷

This lack of knowledge has lead both Democrats and Republicans to claim they have a leading edge in the UOCAVA vote.³⁵⁸ *The Guardian* wrote in 2004 that Democrats were pointing to a Zogby study which concluded that Americans with passports tended to vote liberal, while

³⁵⁴ Meg Bortin September 26, 2002.

³⁵⁵ Michael Jones in Bortin September 26, 2002.

³⁵⁶ Knowlton November 28, 2007.

³⁵⁷ See Taylor Dark III 2003: 735-736. MOVE require that FVAP find a standard way of reporting UOCAVA statistics. UOCAVA already required that the states gather statistics, but states have not properly followed through. See Coleman 2011 for MOVE Act.

³⁵⁸ Taylor Dark III 2003: 733; Alex Christie the Guardian....

Republicans claimed they had an edge due to a conservative international business community and conservative Pentagon civilian and military employees. *The Guardian* article commented, however, that the Republicans' faith in overwhelming support from the military might be overly optimistic. According to the article, many observers said the "strong pro-Republican culture that emerged in the military in the wake of Vietnam has begun to splinter," partly because of the controversial war in Iraq. While polls of high ranking officers had shown staunch support for Bush, such polls did not necessarily reflect the views of rank-and-file soldiers who were disproportionately non-white, working-class and increasingly female. In any case, whether Republicans would benefit from increased turnout among UOCAVA citizens or not, what matters is that Republicans might believe they would. It seems likely that this belief had a positive effect on UOCAVA reform discussions and the successful the passage of the Military and Overseas Voter Empowerment (MOVE) Act in Congress in 2009, an act that the Congressional Research Service describes as a "major overhaul" of UOCAVA.³⁵⁹ Noteworthy, the act had bipartisan sponsorship: Senators Charles Schumer (D-NY), Robert Bennett (R-UT), John Cornyn (R-TX), and a diverse mix of 56 other cosponsors.³⁶⁰

The MOVE Act was part of the National Defense Authorization Act for FY 2010 signed by Obama on October 28, 2009, (it was first introduced as a separate bill in the Senate, but was never voted on separately.) There is little available information on Obama's role concerning the MOVE Act. However, according to *The New York Times*, Obama supported election reform when he was senator. Also, the Association of American Residents Overseas has on their website a page long campaign statement for the 2008 presidential election which outlines Obama's support for overseas citizens on a number of issues that are of concern to them, including support for vigorous efforts to ensure that all overseas Americans are able to vote. This campaign statement, however, is unsigned.³⁶¹

The MOVE Act requires that states establish procedures to permit military and overseas voters to request registration and ballot applications electronically (and by mail should the voter

³⁵⁹ For quote, see Coleman 2011: summary page, 4-5.

³⁶⁰ Eliza Newlin Carney, "Rules of the Game: A Bipartisan Victory," *National Journal*, November 30, 2009, www.nationaljournal.com/njonline/print_friendly.php?ID=rg_20091130_6404 accessed August 11, 2010.

³⁶¹ The new provisions provided by the MOVE Act can be found at the FVAP's webpages (as highlighted sections of the text of the UOCAVA): www.fvap.gov/resources/media/uocavalaw.pdf accessed July 5, 2010. Other sources used in this paragraph: "Still Broken," editorial in *The New York Times*, March 18, 2009; Association of American Residents Abroad, Barack Obama: Supporting Americans Living Overseas, <http://aaro.org/lobbying/overseas-americans-week>, April 20, 2011.

prefer so.) It also requires that states send registration applications, ballot applications and blank ballots to these voters electronically (and by mail). What the act does not require, however, is that states accept executed ballots returned electronically, because of the possibility of fraud. While UOCAVA already recommended that the states mail absentee ballots to voters at the earliest opportunity, the MOVE Act specifically requires that ballots be sent no later than 45 days before an election if a request is received at least 45 days before the election. The MOVE Act lists a number of other requirements including prohibiting the states from refusing to count an otherwise valid ballot on the basis of notarization requirements (which had caused problems in the Florida debacle) or restrictions on paper or envelope type, including size and weight. It requires that the use of the emergency ballot, the federal write-in absentee ballot, be expanded to include special, primary, and runoff elections. In short, the MOVE Act aims to use electronic technology, mandatory deadlines, and the emergency ballot to reduce the transit time problem, and aims at removing certain confusing detailed procedural requirement.³⁶²

The MOVE Act was embraced by UOCAVA advocacy groups. The Pew Center on the States and the Brennan Center for Justice applauded the bipartisan act for getting around the disputes over voter rights versus voter fraud, and for setting an example for further legislation providing for the use of electronic voter registration for the general population.³⁶³ A *National Journal* article also praised the act:

At a time when the rest of Washington can't seem to stop bickering, voting rights advocates have quietly scored a bipartisan victory to help military and overseas voters participate in elections...The law's enactment is an object lesson in how framing an issue along non-ideological lines can transcend partisan splits so lawmakers actually get something done. It also offers a template for how to fix the bigger, systemic problems that plague U.S. elections, most notably the nation's error-ridden, paper-based registration system.³⁶⁴

A report by the Overseas Vote Foundation showed that by August 2010, 24 states had enacted new laws to comply with the MOVE Act, and by the end of the year, that number had risen to 32. The report also included results of a survey based on 5,257 overseas and military respondents. Comparing the findings to those in its 2008 election survey, the Overseas Vote Foundation suggested that improvements in the UOCAVA voting experience were still mild in

³⁶² See Coleman 2010 and UOCAVA as amended by the MOVE Act (see the previous footnote.)

³⁶³ National Journal and "Pew Applauds Congress for Military Overseas Voting Solutions"

http://www.pewcenteronthestates.org/news_room_detail.aspx?id=55426, accessed February 11, 2011. See also FAWCO...and ARRO...

³⁶⁴ National Journal

the midterm elections. For instance, one in five respondents who had applied for a ballot stated they did not receive the ballot they had requested, compared to one in four in the 2008 survey. Reforms needed time to be fully implemented before the full potential impact of the MOVE Act could be assessed, the survey report concluded.³⁶⁵

The federal government was not the only source of election reform aimed at UOCAVA voters. The National Conference of Commissioners on Uniform State Laws, also known as the Uniform Law Commission, consists of commissioners appointed by the 50 states, the District of Columbia, Puerto Rico and the Virgin Islands. Its task is to draft and promote proposals for uniform laws aimed at solving problems common to all the states. Even before the MOVE Act was passed, the commission had begun working on the text of a bill proposal that would ensure the voting rights of military personnel and overseas Americans. The commission hoped the text could serve as the blueprint for bills to be passed by the several state legislatures. According to the Federation of American Women's Clubs Overseas, the commission listened to a wide range of stakeholders including the Federal Voting Assistance Program, the State Department, the political parties, state and local election officials, and a number of non-profit organizations such as the Pew Center on the States, Overseas Vote Foundation, and federation of women's clubs itself (see subchapter 4.5 for info on the latter organizations.)³⁶⁶ After more than two years of study and drafting, the commission adopted a proposal dubbed the Uniform Military and Overseas Voters Act (UMOVA) at its annual meeting in July 2010. UMOVA contains all requirements of the 2009 amended UOCAVA, but goes even further. For instance, it extends UOCAVA voting rights to a group of overseas voters not enfranchised by UOCAVA: American

³⁶⁵ Overseas Vote Foundation, *Moving Forward: 2010 OVF Post Election UOCAVA Survey Report and Analysis*, February 2011:2,4, Overseas Vote Foundation, *Moving Forward: 2010 OVF Post Election UOCAVA Survey Report and Analysis*, February 2011,

https://www.overseasvotefoundation.org/files/OVF_2010_Post_Election_Survey_Report.pdf accessed June 3, 2011. The OVF survey may indicate the size and type of problems, but it is unclear to this thesis writer whether the findings can be statistically representative of the UOCAVA voters in general. In the election report for the 2008 election, the OVF acknowledged the difficulty of gathering a representative random sample of respondents, though they still believed their findings were representative of the targeted group. See *2008 OVF Post Election UOCAVA survey report and Analysis*, February 2009: 13. For critique of surveys conducted by the Federal Voting Assistance Program, see Thadd E. Hall, Caltech/MIT Voting Technology Project, "UOCAVA: A State of the Research," VTP Working Paper, September 15, 2008. http://vote.caltech.edu/drupal/files/working_paper/WP_69.pdf accessed June 3, 2011. Neither the FVAP nor the EAC have released 2010 elections reports.

³⁶⁶ Federation of American Women's Clubs Overseas, "Landmark Uniform Military and Overseas Voters Act (UMOVA) approved by Uniform Law Commission," available at www.fawco.org, accessed July 4, 2011.

citizens born abroad who have not yet established residence in any state.³⁶⁷ Under UMOVA, these citizens would be allowed to vote in the place where their parent or legal guardian is (or was) eligible to vote. UMOVA also extends absentee voting rights of the covered groups to state and local elections. The Uniform Law Commission website, updated October 15, 2011, reports that six states have passed an “UMOVA bill”, and in seven other state and the District of Columbia legislatures, “UMOVA bills” have been introduced and are under consideration.³⁶⁸

4.4 Focus on the Military

It seems that federal efforts to improve UOCAVA voting rights often focus on one of the UOCAVA groups, namely the military. This is not new. As discussed in the preceding chapters, servicemen were the first of the groups to get federal attention when it came to voting rights. UOCAVA reform, including the MOVE Act, is usually baked into defense authorization acts (the Help America Vote Act of 2002 being one exception). The senate hearing that lead up to the MOVE Act was titled *Hearing on Problems for Military and Overseas Voters: Why many Soldier and their Families Can't Vote*.³⁶⁹ Most notably, the Federal Voting Assistance Program (FVAP) has been accused of being inefficient and biased in favor of service voter. As previously discussed, the FVAP was established by the Federal Voting Assistance Act in 1955, and is continued through UOCAVA. As indicated in its mission statement, its tasks includes assisting members of the uniformed services and overseas voters to vote, assisting the states in complying with federal law and advising them of how to best comply with UOCAVA, advocating on behalf of UOCAVA voters, collecting statistics and identifying problems faced by UOCAVA voters, and proposing methods to overcome such problems.³⁷⁰ The FVAP has since 1955 been housed within the Pentagon, and has been the responsibility of the Secretary of Defense. FVAP faced particular criticism during the 2004 elections for spending the bulk of its recourses on aiding

³⁶⁷ Section 2 E, in Uniform Law Commission, “Uniform and Military Overseas Voting Act”, (September 30, 2010) available at www.umova.org accessed July 4, 2011.

³⁶⁸ Uniform Law Commission, www.uniformlaws.org, accessed October 15, 2011. States that have enacted UMOVA: Colorado, Nevada, North Carolina, North Dakota, Oklahoma, and Utah. States that are presently considering UMOVA: Connecticut, District of Columbia, Hawaii, Illinois, Maine, South Dakota, and Tennessee. The Uniform Law Commission webpage does not clarify whether these states have enacted or proposed bills that contain the exact same text as UMOVA, or whether they have used UMOVA as “inspiration”.

³⁶⁹ U.S. Senate, Committee on Rules and Administration, *Hearing on Problems for Military and Overseas Voters: Why many Soldier and their Families Can't Vote* Wednesday, May 13, 2009. Can be accessed at www.senate.gov accessed February 16, 2011.

³⁷⁰ See www.fvap.gov and UOCAVA.

military voters, and for using a contractor headed by a former Republican Party donor in one of its pilot email voting system.³⁷¹ Bush had become a controversial figure during his first term, and as a result, overseas registration for both parties drastically increased during his campaign for a second term. Before the election, FVAP was therefore overwhelmed by a flood of telephone calls, faxes and emails, which ended in the FVAP blocking its website to civilian overseas voters. Late primaries and legal challenges to Ralph Nader's appearance on the ballot delayed ballot mailing from a number of the battleground states and military and overseas civilians alike faced disenfranchisement. The difference was that while a million hard copies of the federal emergency write-in ballot had been sent to military based in Germany and Asia and the troops in Iraq and Afghanistan, two for every member of the military, embassies were turning down requests for the ballot from civilians because the stocks were empty. FVAP was further criticized for not providing an online version of the emergency ballot. In despair, Overseas Americans for Kerry posted their own online version on their websites with a disclaimer that no one knew if the ballot would be accepted or not. Republicans Abroad then took the form and put it on their on website without the disclaimer. It later became clear, though, that no one could use that version. Overseas Americans for Kerry then sent 25,000 hardcopies of the emergency ballot to civilian voters in swing states, at their own expense, before the FVAP finally posted an official online version of it on its website.

Despite such problems facing civilian UOCAVA voters during the 2004 election, being associated with military voters might perhaps serve them well in the long run. The military is an uncontroversial group to support, and most voting reform initiatives in Congress have at least formally included civilian overseas voters. One might for instance wonder if there had been a MOVE Act if there had been no military voters overseas and only overseas civilians would benefit from it. In addition, since 2006, Congress has had its own Americans Abroad Caucus.³⁷² The Americans Abroad Caucus is a bi-partisan caucus designed at representing the interests of Americans living overseas, including voting rights. It has so far been chaired by Representative Carolyn Maloney (D-NY) and co-chaired by Joe Wilson (R-SC), and includes 27 other members,

³⁷¹ See the Alix Christie, "Suppressing the Overseas Vote," *guardian.co.uk*, October 25, 2004, www.guardian.co.uk/world/2004/oct/25/uselections2004.usa2/print accessed May 18, 2010.

³⁷² See for instance "Overseas Americans Week" the Association of American Residents Overseas. <http://aaro.org/lobbying/overseas-americans-week>, accessed April 20, 2011.

so far, only from the House.³⁷³ Maloney explained to *The New York Times* that she represents a very international district, and that many of her constituents are part of the global economy.³⁷⁴ South Carolina, in which Wilsons district lies, is also home to several fast-growing international businesses, as well as having a large number active and retired military people, many with overseas ties, according to *The New York Times* in 2007. In a letter to their colleagues on Capitol Hill, the two Representatives wrote that overseas Americans are “unofficial ambassadors” of the United States, playing an important role in “strengthening the U.S. economy, creating jobs in the United States, and extending American influence around the globe.”³⁷⁵ Maloney in particular, has introduced several bills to improve UOCAVA voting, and both have for instance actively attempted to correct problems faced by overseas citizens who keep bank accounts in the U.S., problems caused by stringent new banking regulations.³⁷⁶

4.5 Continued Influence by New and Established Advocacy Groups

Advocates outside Congress have continued to push for improved UOCAVA voting since the successful overseas Americans campaign in the late sixties to mid-seventies. While the Bipartisan Committee for Absentee Voting was dissolved when they reached their goal of achieving formal overseas voting rights in 1975, organizations such the Association of American Residents Overseas and the Federation of American Women’s Clubs Overseas continued to lobby Congress for further improvements in voting rights. In 2011, the two latter organizations, the American Citizens Abroad, and a coalition of American Chambers of Commerce in North-Africa and the Middle-East (AmCham) organized the tenth annual Overseas Americans Week.³⁷⁷ Overseas Americans Week is a week-long “door-knocking” campaign where representatives of overseas Americans meet with legislators, their staffers and key government agencies and departments to discuss a variety of issues of interest to overseas Americans. The focus of the week varies from year to year. For instance, in 2006 and 2007, the Overseas Americans Week successfully worked to get an Americans Abroad Caucus established in Congress (see the previous subchapter), in

³⁷³ Association of American Residents Overseas, “Americans Abroad Caucus,” <http://aaro.org/lobbying/americasn-abroad-caucus>, accessed October 15, 2011.

³⁷⁴ Brian Knowlton, “Americans Abroad Get an Advocacy Group in Congress,” *The New York Times*, March 11, 2007.

³⁷⁵ See previous footnote.

³⁷⁶ Brian Knowlton, “More American Expatriates Give Up Citizenship,” *The New York Times*, April 25, 2010.

³⁷⁷ See www.overseasamericansweek.com, accessed November 1, 2011.

2009, the focus was the need for new voting rights legislation (this was before the MOVE Act), and in 2011 the focus was tax and banking problems.

In 2008, more than 30 organizations representing military and overseas advocacy groups, elected officials, students and voting rights advocates formed the Alliance for Military and Overseas Voting Rights, which lobbies Congress.³⁷⁸ Included in the membership list is the Pew Center on the States, a non-profit organization that “identifies and advances effective solution to critical issues facing states.” The center conducts studies of states’ UOCAVA voting practices and of UOCAVA citizens’ voting problems. Also a member of the alliance is the Overseas Voting Foundation. It was founded after the 2004 FVAP failure to provide effective help to overseas civilians (as well as to members of the Uniformed Services.) It is a non-partisan, non-profit organization that provides interactive, user-friendly voting assistance to UOCAVA voters. In 2007, even the National Defense Committee, a grass-root pro-military organization, urged the troops to use the Overseas Voting Foundation website to register in stead of the FVAP one, as they were not impressed by FVAP’s track record.³⁷⁹ As previously discussed, the Overseas Voting Foundation also conducts UOCAVA election surveys, and tries to identify specific problems faced by overseas voters. Many of the reforms advocated by the Alliance for Military and Overseas Voting Rights, as well as reforms advocated by the FVAP, were included in the MOVE Act (including the use of internet technology in the voting process, allowing for a minimum of 45 days of ballot transit time, broaden the use of the federal write-in ballot, and eliminate notarization requirements.)³⁸⁰

Though the Bipartisan Committee on Absentee Voting ceased to exist after the passage of the Overseas Voting Rights Act of 1975, Democrats Abroad and Republicans Abroad have continued to work to help overseas Americans vote. Democrats Abroad is the more active of the two, however, and as previously discussed, Republicans Abroad have been unclear about whether they supported the new federal legislation or not. Democrats Abroad has its own voter-assistance website called votefromabroad.org, applauded by Barack Obama.³⁸¹ Also, in 2008, the Democratic

³⁷⁸ www.amovr.org; Eliza Newlin Carney, “Rules of the Game: A Bipartisan Victory,” *National Journal*, November 30, 2009, www.nationaljournal.com/njonline/print_friendly.php?ID=rg_20091130_6404 accessed August 11, 2010.

³⁷⁹ Brian Knowlton, “Efforts increase to enfranchise U.S. citizens abroad,” *International Herald Tribune*, November 28, 2007, available at www.ith.com July 7, 2011.

³⁸⁰ See for instance Alliance for Military and Overseas Voting Rights, “Our Work,” available at www.amovr.org accessed February 11, 2011.

³⁸¹ According to the campaign statement posted at AARO. Association of American Residents Abroad, Barack Obama: Supporting Americans Living Overseas, <http://aaro.org/lobbying/overseas-americans-week>, April 20, 2011.

National Committee held its first global primary, in which overseas citizens, unlike other U.S. citizens, could vote over the internet. Earlier, overseas delegates have been chosen through caucuses. The Democrats Abroad delegation has eleven delegate votes at the party's national convention, and overseas voters can either vote for these delegates, or for their state's delegates. Democrats Abroad believe overseas interests are best promoted through having delegates specifically representing overseas interests at the convention. The Republicans Abroad have no similar system.

4.6 Conclusion

As this chapter has argued, the 2000 election raised awareness and interest in the problems of the states' election procedures for military and overseas voters. Academic literature dealing with these problems have begun to appear, and the Election Assistance Commission, the Pew Center on the States, and the Overseas Vote Foundation have since 2000 contributed with election surveys and reports examining UOCAVA voting in federal elections, thus adding to such efforts required of the Federal Voting Assistance Program by UOCAVA. Interest groups have been influential in the establishment of the Americans Abroad Caucus in Congress which is to give attention to a variety of areas of interest to overseas citizens, among which is the issue of voting rights. But it is perhaps the general support of the troops that has been most influential in persuading Congress to pass the Military and Overseas Voter Empowerment Act in 2009, part of the defense authorization act for the following fiscal year. The MOVE Act requires that states use electronic means in the registration and ballot application process (though it does not require states to accept executed ballots over the internet.) There is still no reliable estimate of the size and "shape" of the overseas civilian vote, which might be a factor contributing to a relaxation in partisan tensions when it comes to amending UOCAVA (compared to tensions often present in other election reform discussions.) Because the MOVE Act was passed so recently, time is needed before its effect can be fully evaluated (and thus far, only the Overseas Vote Foundation has made available to the general public its survey of the 2010 congressional elections.)

Conclusion

The Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA) is the present legal framework for absentee voting by military and overseas voters. It was passed in 1986, and merged legislation that had been in place since the 1950's and 1970's. Since 2000, interest in election regulations of voting by absentee military and overseas citizens has considerably increased among scholars and Congress alike. Studies have for instance shown that a significant number of military and overseas voters are disenfranchised because they receive their ballots too late. A study of absentee procedures and federal attempts at improving them therefore implies a study of voting rights. Academic literature relating to UOCAVA focus mostly on analyzing in detail the current problems facing voters covered by the act, and on technical solutions to such problems. Little attention has been given to the factors that have influenced U.S. policy discussions concerning the voting rights of military and overseas citizens (other than the fact that procedural improvements are needed,) and certainly, little attention has been given to such factors in a historical perspective.³⁸² This thesis has attempted to fill that gap by answering the following question: What factors have hindered or encouraged change in U.S. policy concerning the absentee voting rights of members of the uniformed services, their spouses and dependents accompanying them, and overseas citizens, from the 1940's to the present? The thesis also addresses the questions of how policy has changed and how successful these changes have been at enfranchising these groups of citizens.

One factor that has had a significant influence on U.S. policy debates concerning the (absentee) voting rights of military and overseas citizens is the issue of states' rights. In the 1940's, when Congress first began discussing how to help members of the military vote absentee, state control of the franchise was regarded as one of the most important rights of the states. Or, as

³⁸² As explained in the introductory chapter, one exception is the study by Alvarez, Hall and Roberts (2007) which pays attention to the broader policy debates. It includes an interesting discussion of policy debates during the 1940's and 1950's, but that discussion is not as elaborate as the one this thesis attempts to provide, and among other things, it does not cover the policy debates during the 1960's and 1970's, and it is not up-to-date. For a discussion of the fact that there is even "not enough" research on present problems with UOCAVA voting, see Thad E. Hall, *UOCAVA: A State of Research*, Caltech/MIT Voting Technology Project Working Paper no. 69, September 15, 2008 http://vote.caltech.edu/drupal/files/working_paper/WP_69.pdf accessed June 3, 2011.

Herbert Wechsler puts it, it was a “period when state control of the electoral franchise was felt to be a first principle in American law and politics.”³⁸³ Many feared that federal legislation guaranteeing the voting rights of soldiers would set a precedent for further federal “intrusion” into the affairs of the states. In particular, Democrats representing the white South feared that such action would represent the first step to unraveling the systemic discrimination of African Americans in voting processes (and in other arenas.) The bills that resulted in the Soldier Voting Act of 1942 not only guaranteed the right to vote absentee, but also waived poll tax requirements. The debates relating to the bills therefore contained many of the same arguments over state and federal powers used in the general poll tax repeal debates. Both issues centered on whether the relevant federal legislation involved election regulation, a power designated to Congress by the Constitution, or the setting of voter qualifications, a power designated to the states by the Constitution. The Soldier Voting Act waived the poll tax for members of the military, but the general public had to wait for the Twenty-fourth Amendment of 1964. Proponents of the act had in the end relied on the argument that in time of war, Congress had the obligation to prevent that voters were disenfranchised because of military service in time of war. The act would not be valid in time of peace, and opponents managed in 1944 to water down proposed amendments to the act to such an extent that there was uncertainty about whether the amended act had become less effective than before. In the 1944 election, 50 percent of members of the uniformed services (of voting age) applied for ballots, but only 30 percent had their ballots counted.

States’ rights concerns continued to temper federal efforts at enfranchising service personnel in the next two decades. The Federal Voting Assistance Act of 1955 actually withdrew the federal guarantee and instead listed a number of state recommendations, though the withdrawal had little significance since the state procedures were inadequate. Theoretical voting rights had then little meaning to someone trying to cast a ballot. In the 1970’s, states’ rights concerns were still present in the debates regarding the voting rights of overseas civilians. By then, however, restrictions to the franchise had been removed one after the other, by the Voting Rights Act and its amendments, by court rulings, and by constitutional amendments. Federal legislation regarding the absentee voting rights of service personnel or overseas civilians no longer posed the threat of setting a precedent for the enfranchisement of African Americans or for

³⁸³ Wechsler in Geoffrey Miller and Norman Silber, “Toward ‘Neutral Principles’ in the Law: Selections from the Oral History of Herbert Wechsler”, *Columbia Law Review*, vol. 93, 1993: 880.

federal involvement in election processes. Renewed commitment to democratic ideals after the war against Nazism and the ongoing Cold War against communism had made restrictions to the franchise harder to tolerate, and voting rights had become a national concern. As the polls became open to more and more Americans, overseas civilians seized the opportunity to demand to not be treated as “second class citizens” and to demand the rights that the Supreme Court had in the past decades found to represent a core constitutional value.³⁸⁴ The Overseas Citizens Voting Rights Act of 1975 and its 1978 amendment guaranteed the absentee voting rights of overseas citizens and of members of the uniformed services (overseas and in the U.S.) The Justice Department has filed a number of law suits against states that violated the Overseas Citizens Voting Rights Act and that violate the Uniformed and Overseas Citizens Absentee Voting Act which replaced it. One of those states was Florida which did not allow overseas voters enough time to return ballots to the state in time for Election Day. Because Florida did not introduce appropriate measures to allow more time, the state entered into a consent decree with the Justice Department that would allow UOCAVA votes that arrived up to ten days after the election to be counted. This situation continued and put its stamp on the 2000 election, as discussed in chapter four.

States’ rights continue to color election reform debates in Congress. The discussion over qualification versus regulation is still omnipresent. After 2000, for instance, bills introduced to enfranchise ex-felons have not passed, as opponents argue that it would be an infringement on state powers to set voter qualifications (whatever their ulterior motives are.) However, the General Accounting Office categorizes UOCAVA under federal powers to regulate elections, as does the Congressional Research Service (which had testified to the unconstitutionality of the Overseas Citizens Voting Rights Act in the 1970’s.) UOCAVA has furthermore been upheld by federal courts, and no case seems to have reached the Supreme Court.³⁸⁵ Congress continues to

³⁸⁴ For quote on use of “second class citizens” see for instance Michaux Phyllis Michaux, *The unknown Ambassadors: A Saga of Citizenship* (Canada: Aletheia Publications, 1996). For quote “core constitutional value”, see Keyssar Alexander Keyssar, *The Right to Vote: The Contested History of Democracy in the United State*, revised edition (New York: Basic Books, 2009) 217.

³⁸⁵ See Anthony H. Gamboa, *The Scope of Congressional Authority in Election Administration*, GOA-01-470 (Washington D.C.: United States General Accounting Office, March 2001) 14, <http://www.gao.gov/new.items/d01470.pdf> accessed May 2011. In the federal courts, it has been challenged for violating the Equal Protection Clause, among other things, for distinguishing between citizens who move from a state or U.S. territory to another and citizens who move abroad. There are still those who believe UOCAVA is unconstitutional because they consider it to be an infringement on a state’s right to set physical residence in a state as

amend UOCAVA by setting new state requirements. The Military and Overseas Empowerment Act which requires that states provide electronic means in the registration and ballot request process (except for requiring that states accept executed ballots by electronic means,) passed with little controversy in 2009.³⁸⁶ Election reports on voting by UOCAVA citizens in the 2008 election indicated that procedural problems still remain, including the problem that voters receive their ballots too late. Time will tell if the MOVE Act will help solve such problems.

Partisan politics and presidential involvement have also been important factors influencing policy debates concerning absentee voting rights of military and overseas citizens. In 1943, Gallup polls indicated that the military vote in the 1944 federal elections would favor the Democrats and the sitting president, the commander-in-chief. This prognosis became especially significant as the presidential election was suspected to be very close, and the military vote could potentially determine that election. The policy debates became divided between Republicans and Southern states' rights Democrats who favored weak or no federal absentee legislation at all, and Northern Democrats who wanted strong federal legislation. *The New York Times* argued, however, that the Republican opposition was stronger than the opposition of Southern states' rights Democrats.³⁸⁷ Roosevelt addressed Congress and said that voting for the states' rights plan (the weak federal legislation) would deprive members of the military of the vote and that the states' rights plan was even "a fraud on the American people."³⁸⁸ Roosevelt's motivation for involving himself in the issue was undoubtedly (at least partly) due to his ambition of winning the close election, just like Lincoln's motivation for encouraging the Union states to pass absentee voting legislation for servicemen during the Civil War. Roosevelt's message to Congress caused a great deal of controversy. It made opponents of the federal plan, including opponents who seemed to be wavering, even more convinced that the federal plan bills were simply new attempts by New Deal and Roosevelt supporters to concentrate power at the federal level and to get Roosevelt reelected. On the other hand, Roosevelt's message signaled to the

a voter qualifications. See for instance Alan Gura "Ex-Patriates and Patriots: A Constitutional Examination of the Uniformed and Overseas Citizens Absentee Voting Act," *Texas Review of Law and Politics*, vol. 6, 2001: 179.

³⁸⁶ For documentation on the lack of controversy, see for instance Eliza Newlin Carney, "Rules of the Game: A Bipartisan Victory," *National Journal*, November 30, 2009, www.nationaljournal.com/njonline/print_friendly.php?ID=rg_20091130_6404 accessed August 11, 2010.

³⁸⁷ "The Soldier Vote," *The New York Times*, editorial, February 5, 1944, available at www.nytimes.com accessed November 4, 2010.

³⁸⁸ Franklin D. Roosevelt, letter to Congress on January 26, 1944, in *Congressional Digest* vol. 23, June-July 1944: 186-187.

American electorate that opponents of federal legislation were punishing the soldiers, something that made justifying opposing federal legislation even harder. It is therefore unclear whether Roosevelt's involvement encouraged or discouraged the passing of a federal plan. In any case, the compromise bill that was passed in the end seems to have weakened the Soldier Voting Act, and newspapers believed there was a real chance the president would veto it. He did not, but the bill became law without his signature.

In the debates during the 1950's, partisan tensions seem to have eased, probably because a Republican president was encouraging Congress to act on the problem of disenfranchised absentee members of the armed services. When Congress passed the Federal Voting Assistance Act in 1955, the commander-in-chief (who often benefit from the military vote) was Republican, and in any case, fewer military votes were at stake. Though states' rights concerns prevented the act of 1955 to set mandatory state requirements, it did set the stage for further federal action, as it established permanent federal responsibilities for encouraging states to change their laws, and for helping military voters navigate through complex state absentee voting processes, and for lobbying Congress for new legislation.

Since the debates concerning the voting rights of overseas civilian started in the late 1960's, absentee voting legislation covering the groups now included in UOCAVA do not seem to have been hindered by partisan politics. In fact, partisan considerations might even have encouraged federal action. For the size and political leaning of the overseas vote is not known. This has lead both Democrats and Republicans to claim they have an edge in the overseas vote. As for presidential involvement sine Eisenhower, it has at least not been as public. While Nixon does not seem to have given any personal comments on the federal bills proposed to enfranchise overseas civilians, his Department of Justice was very much opposed to it, and it is likely that the department reflected Nixon's views. According to Eugene Marans, Antonin Scalia of the Justice Department, in particular, posed a real threat to the success of the Overseas Citizens Voting Rights Act.³⁸⁹ According to the Association of American Residents Abroad, Barack Obama is in general in favor of federal initiatives to improve the voting situation for UOCAVA citizens, but

³⁸⁹ Personal telephone interview with Eugene Marans, May 3, 2011.

no evidence is available that suggest that he has been directly involved in the efforts to amend UOCAVA.³⁹⁰

Fear of fraud has always been present in debates over military and overseas voting. In the 1940's, for instance, there were arguments that the proposed federal ballot commission could become too powerful and political and that this might reflect in their handling of ballots. In the 1970's, some argued that enfranchising overseas civilians would involve dangers of fraud because it was difficult for states to check if a voter who no longer had an address in a particular voting district did not also vote in other states. In the 1940's, the ballot commission only got limited responsibilities and would be dissolved once the war ended. But in the 1970's, the fear of fraud did not stop the bill that guaranteed overseas citizens the right to vote even if they did not maintain a place of abode in any state. In 2009, fear of fraud set its marks on the Military and Overseas Voter Empowerment (MOVE) Act, but not to the same degree that the fear of fraud and partisan tensions have been obstacles to other election reforms since the 2000 presidential election debacle, it seems. In fact, the *National Journal*, for instance, wrote in 2009 that "The law's advocates overcame the partisan splits that typically bog down election reform by stepping back from disputes over states' rights versus voter fraud and taking what Chaplin [the director of the election initiatives for the Pew Center on the States] calls "the 90-degree walk around the problem"." The 90-degree walk that Chaplin referred to was the fact that the MOVE Act, as already mentioned, requires that states use electronic methods in the registration and election process except for accepting executed ballots.

Popular opinion has also influenced the policy debates relevant to this thesis, as already indicated. In the 1940's, popular support of the troops made opposing federal legislation difficult. In the 1970's, the lack of interest in the voting rights of overseas civilians by both the general public and by members of Congress seems to have been one of the most important factors hindering legislation covering overseas civilians from passing. Interest in UOCAVA voters was significantly increased among scholars and in Congress after the 2000 elections. A 2008 opinion poll ordered by the Pew Center on the States suggests that "the vast majority of Americans support having a uniform set of rules for military and overseas voter."³⁹¹ However, improving

³⁹⁰ Association of American Residents Abroad, Barack Obama: Supporting Americans Living Overseas, <http://aaro.org/lobbying/overseas-americans-week>, April 20, 2011.

³⁹¹ Lake Research Partners and The Tarrance Group, Memorandum on Military and Overseas Voting, available at www.pewcenteronthestates.org accessed June 10, 2011.

UOCAVA is easy more because of the military component associated with the act than the civilian component. Nonetheless, since 2006, Congress houses an Americans Abroad Caucus dedicated to issues of concern to overseas citizens.

The efforts of overseas Americans seem to have been critical to getting a bill passed through Congress in the 1970's. Such efforts raised awareness of the voting problems faced by overseas citizens and convinced Congress the overseas Americans were interested in and affected by American politics. According to the Andrew Ellis, the U.S. stands out as one of few countries in which overseas voting rights have been granted in response to demands by Americans residing abroad.³⁹² Military and overseas interest groups continue to lobby for the improvement of election processes that affect such voters.

There is still no constitutional right to vote in the U.S. Though the franchise is linked to citizenship, this link is not absolute. Therefore, the voting rights of overseas citizens, especially civilians who might have no intention of ever returning, is perhaps not self evident. Looking to other democracies, not all have as liberal laws covering overseas civilians as the U.S. While voting from abroad is allowed by 115 countries (in 2007,) limits to overseas voting rights include restrictions relating to time spent abroad, and restrictions relating to reasons for residing abroad.³⁹³ Canada restricts voting from abroad to five years after leaving the country, Germany sets the limit to twenty-five years, and Australia sets the limit to six years.³⁹⁴ In the past decade, the United Kingdom even reduced its time limit from twenty years to fifteen years.³⁹⁵ Denmark (at least in 2003) restricts voting from abroad to employees of Danish companies and the Danish government, students, and those who live abroad for health reasons.³⁹⁶ One strong argument for not limiting the time period for voting for American residents abroad is perhaps the fact that they are liable to (federal) taxation, unlike the overseas nationals of many other countries. In any case, judging by the recent amendments to UOCAVA, the voting rights of American overseas citizens, regardless of their length of absence, are here to stay.

³⁹² Andrew Ellis, "The history and politics of external voting" in *Voting from Abroad: The International IDEA Handbook* (Stockholm and Mexico City: International Institute for Democracy and Electoral Assistance, and The Federal electoral Institute of Mexico, 2007) 43.

³⁹³ IDEA handbook 2007: 3,4.

³⁹⁴ IDEA handbook 2007: 99. Norway allows all citizens who have been registered in the population registry to vote from abroad without any time limit.

³⁹⁵ IDEA 2007:100 ; Select Committee on Home Affairs Fourth Report, section F: The Franchise, «British Citizens overseas» www.publications.parliament.uk/pa/cm199798/cmhaff/768/76808.htm accessed May 14, 2010.

³⁹⁶ Taylor Dark 2003, 738.

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