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VOTING BY U.S. CITIZENS RESIDING ABROAD

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HEARINGS BEFORE THE SUBCOMMITTEE ON PRIVILEGES AND ELECTIONS OF THE COMMITTEE ON RULES AND ADMINISTRATION UNITED STATES SENATE NINETY-THIRD CONGRESS

FIRST SESSION

ON

S. 2102

TO GUARANTEE THE CONSTITUTIONAL RIGHT TO VOTE
AND TO PROVIDE UNIFORM PROCEDURES FOR ABSENTEE
VOTING IN FEDERAL ELECTIONS IN THE CASE OF CITI-
ZENS WHO ARE RESIDING OR DOMICILED OUTSIDE THE
UNITED STATES

AND

S. 2384

TO PROVIDE UNIFORM PROCEDURES FOR ABSENTEE
VOTING IN FEDERAL ELECTIONS FOR CITIZENS OUTSIDE
THE UNITED STATES

SEPTEMBER 26 AND 27, 1973

Printed for the use of the Committee on Rules and Administration



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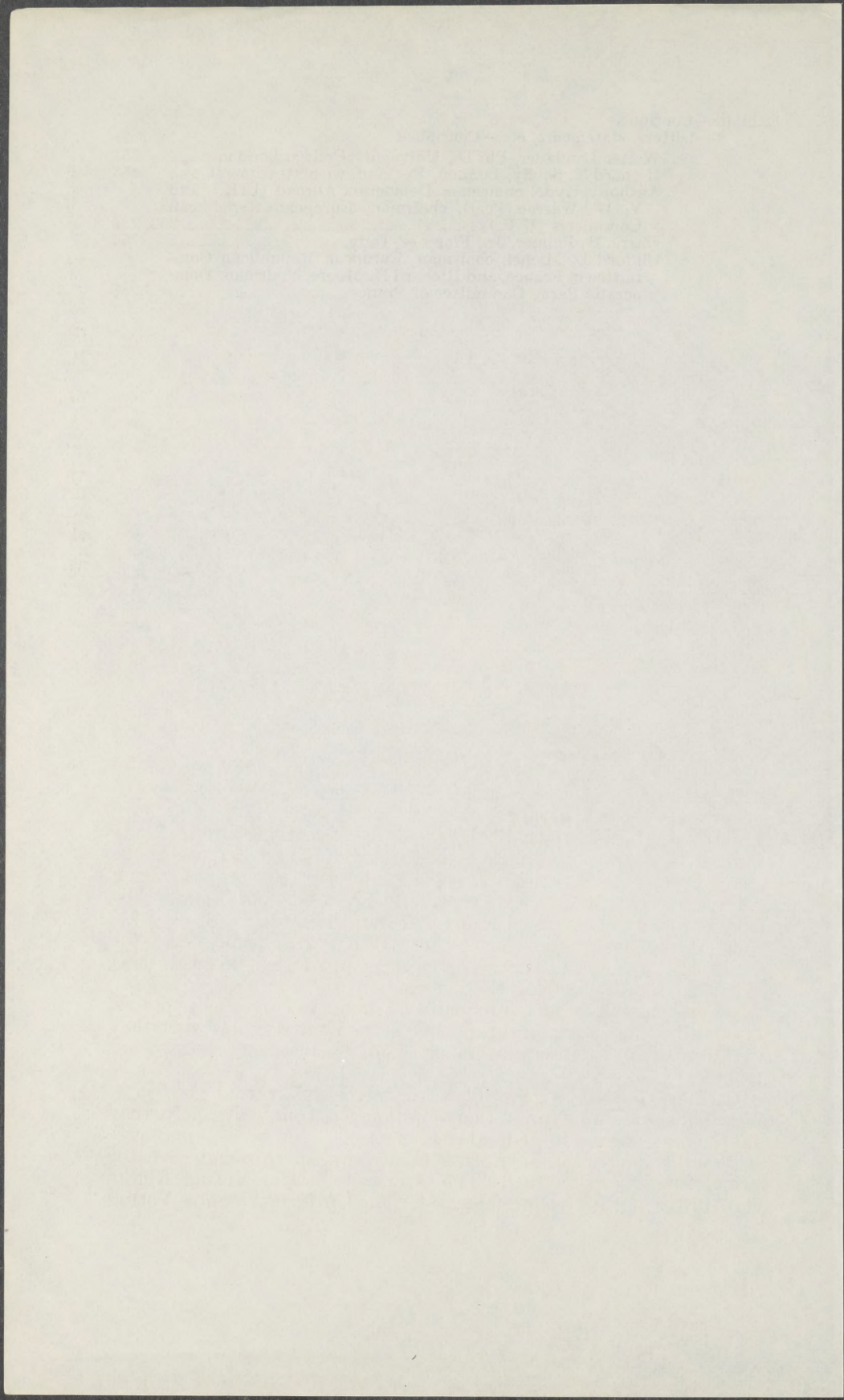
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VOTING BY U.S. CITIZENS RESIDING ABROAD

WEDNESDAY, SEPTEMBER 26, 1973

U.S. SENATE,
SUBCOMMITTEE ON PRIVILEGES AND ELECTIONS
OF THE COMMITTEE ON RULES AND ADMINISTRATION,
Washington, D.C.

The subcommittee met, pursuant to notice, at 10 a.m. in room 301, Russell Senate Office Building, Senator Claiborne Pell (chairman of the subcommittee) presiding.

Present: Senator Pell (presiding).

Also present: Senator Mathias.

Subcommittee staff present: James H. Duffy, chief counsel; James S. Medill, minority counsel; and Mary G. Daly, secretary.

Full committee staff present: William McWhorter Cochrane, staff director; Hugh Q. Alexander, chief counsel; Livingston L. Biddle, Jr., professional staff member; and Jack Sapp, editorial assistant.

OPENING STATEMENT OF HON. CLAIBORNE PELL, CHAIRMAN OF THE SUBCOMMITTEE ON PRIVILEGES AND ELECTIONS

Senator PELL. The Subcommittee on Privileges and Elections will come to order.

The Subcommittee on Privileges and Elections is holding public hearings on legislation to enable U.S. citizens residing overseas to register and vote in Federal elections.

Hundreds of thousands of citizens whose vocations require them to live in foreign countries are denied the right to participate in the elective process because there are no absentee registration and voting procedures in the States where they formerly resided, or because they no longer can claim residence or domicile in such States.

One of the basic requirements for voting in all States and the District of Columbia is that a citizen must prove that he has a bona fide residence or domicile in the jurisdiction where he seeks to vote.

Most citizens cannot afford to maintain homes in two or more places, and therefore, lose a physical residence in the United States when they travel abroad for their employers, or as missionaries, or for any other purpose.

But, they are still citizens. They are interested in what goes on at home. They want to express their opinions, and most urgently, they want to vote—at least in Federal elections.

Two bills have been submitted to accomplish this end. Senator Mathias introduced S. 2102, "The Overseas Citizens Voting Rights Act of 1973," and I introduced S. 2384, "The Uniform Absentee Voting

Act." Those bills are necessarily similar since the procedures to establish absentee registration and voting must follow a certain legal pattern.

Essentially, these bills state that citizens, wherever situated have an inherent constitutional right to vote, and that such a right should not be denied simply because those citizens cannot claim a residence in any State.

Therefore, the central provision of each bill is that which would allow citizens to register and vote in that State where they last resided, or were domiciled, or where they were last registered.

We expect to hear testimony during these hearings on any legal or practical problems involved in these proposals, and to arrive at a satisfactory and workable solution to any problems.

At this point I offer for inclusion in the appendix of the printed hearings the texts of the bills S. 2102 and S. 2384.

[The texts of the bills S. 2102 and S. 2384 appear as exhibits 1A and 1B, respectively, in the appendix of these hearings, pp. 107-117 and 118-127.]

Also, I offer a letter from Senator Aiken, together with accompanying documents from the State of Vermont.

[The letter from Senator Aiken appears on p. 38.]

Additionally, I submit for the appendix of the printed hearings a summary of State election laws relating to absentee voting and a statistical review of voting by citizens residing overseas. The summary and study were submitted to me by John C. Broger, Deputy Coordinator, Federal Voting Assistance Program, Department of Defense.

Finally, I offer for the appendix of the record a study prepared for the subcommittee by the Congressional Research Service of the Library of Congress entitled "Voting Rights of U.S. Citizens Residing Abroad."

[The summary of State election laws relating to absentee voting, and the study entitled "Voting Rights of U.S. Citizens Residing Abroad", referred to above, appear as exhibits 2 and 3, respectively, in the appendix of these hearings, pp. 128-167 and 168-169.]

Senator PELL. The next witness is the distinguished and honorable Senator Charles Mathias.

STATEMENT OF HON. CHARLES McC. MATHIAS, JR., A U.S. SENATOR FROM THE STATE OF MARYLAND

Senator MATHIAS. Thank you very much, Mr. Chairman.

I would like to begin by saluting you for your efforts over a long period of time to prevent the disenfranchisement of many Americans who in the course of the ebb and flow of the fortunes of their individual lives have found themselves living outside the United States.

I was thinking a little philosophically about this problem the other day in trying to compare it with what some other civilizations have done.

In the case of Rome, for example, we found that citizenship was extended further and further into non-Roman areas—the enfranchisement of real people who were not citizens of the Roman Republic.

Here we find ourselves in a situation which is rather the opposite, whereby American citizens are allowed to be disenfranchised by events with which we have been politically unable to cope. It is time we begin to cope with this problem, and therefore, I am here to support not only your bill, S. 2384, but also my own bill, S. 2102, which I have introduced along with our colleagues, Mr. Bayh, Mr. Humphrey, Mr. Roth, and Mr. Brock.

Of course, the purpose of this proposed legislation is to secure the right to vote in Federal elections for over 750,000 American citizens residing overseas.

These American citizens are civilians serving the interests of their country abroad and subject to U.S. tax laws and other obligations of American citizenship.

They include thousands of businessmen and women, who incidentally, are responsible for a very important element of national life today—the effort to redress the balance of payments which is such a troublesome problem, and which would be worse if these people were not overseas generating profits which come back to the United States. American citizens abroad also include church officials, teachers, lawyers, accountants, engineers, and other professional people.

They are disenfranchised because the majority of the States impose rules which require a voter's actual presence or maintenance of a home in the State, or which raise a doubt of voting eligibility of nonresident domiciliaries whose date of return is uncertain or who is unsure he or she will return to the State of last residence, or be assigned to a different State. Some States have confusing absentee registration or voting forms that appear to require the maintenance of a home or other abode in the State.

This committee has always been in the forefront of extending effective voting rights to all American citizens. The Federal Voting Assistance Act of 1955, as amended in 1968, was responsible for encouraging the extension of this basic constitutional right to military and Government personnel, their spouses and dependents in nearly all States, and to civilians temporarily living overseas, in about half the States.

The Federal post card application form has simplified absentee registration and absentee ballot requests in those States allowing these classes of American citizens to exercise their franchise from overseas.

The passage by Congress of title II of the Voting Rights Act Amendments of 1970 sought to extend effective voting rights further by: (1) Abolishing completely the durational residency requirement as a precondition to voting in Presidential elections; and (2) establishing uniform national standards for absentee registration and voting in Presidential elections.

Although the language of title II does not deal specifically with absentee registration and voting rights of American residents abroad, it seems clear from Senator Goldwater's statements on the floor that the intent of the Senate was to extend Federal franchise to "civilian citizens who are temporarily living away from their homes" and to make the intent to return to a particular State sufficient to secure the right to vote for President. And I would say, Mr. Chairman, it is my understanding of the law of Maryland, for example, that if there is an attempt to make or retain Maryland as a home, that should be sufficient basis on which to maintain the right to vote.

But the experience of the 1972 election showed, and later witnesses will document this, that only two of the 25 States not using the Federal post card application for civilian Americans expressly adopted the Goldwater interpretation. It appears, consequently, that nearly half the States still refuse to allow American civilians overseas to vote even for President. And, so clearly there is a need for further congressional action to correct this unhappy situation.

I wish to emphasize, however, that the blame should not be placed on local election officials for this unfortunate situation, because I think these officials generally are dedicated, overworked, underpaid, and understaffed professionals who have been unable to streamline their handling of overseas requests for absentee ballots because they often have been forced to work with archaic State laws packed with confusing language and redtape. These State laws simply fail to take into account the expending mobility of American citizens which moves one out of every five Americans to a different neighborhood every year, and even beyond our national boundaries.

I think we owe to these dedicated election administrators, and to Americans overseas, a clear statutory statement of congressional intent on the rights of these citizens regarding absentee registration and voting.

Both bills before the committee now provide such a clear statement of voting eligibility. These bills would allow the American citizen residing overseas to vote in Federal elections in the State in which the citizen had last voted, or registered to vote, or if the citizen had not so voted or registered, in the last State in which the citizen maintained a domicile before departing from the United States, as long as the individual is otherwise qualified to vote in that State, and complies with the absentee ballot requirements of the State, and provided the citizen does not qualify as a voter in any other State, territory, or possession of the United States.

And that is the crux of the legislation. The present checkerboard pattern of domicile rules among the States should no longer be permitted to deny Americans overseas the franchise in Federal elections.

S. 2384 and S. 2102 recognize that each State must have the freedom to integrate these additional voters with the administrative system existing in the State.

Both bills recommend, but do not mandate, a post card application form modeled after the Federal post card application form which has been used by most States for some class of voters with great success.

I think it is important to emphasize here that the Federal voting assistance task force of the Department of Defense has not reported a single case of overseas voting fraud through the use of the Federal post card application in the entire 18 years that this form has been recommended by Congress.

The legislation would also establish in Federal law, in clear and unequivocal statutory language, the principle that the exercise of the right to register and vote by a U.S. citizen abroad should not constitute an act which would affect the determination of his or her actual residence—as distinguished from his or her place of voting—for Federal, State, or local tax purposes.

The Internal Revenue Code and the laws of all but a handful of the States offer Americans currently residing abroad an income tax

exemption, in whole or in part, for income earned abroad. This legislation would help insure that the exercise of the right to register and vote absentee by such a citizen would not jeopardize any such income tax exemption.

The Internal Revenue Service has already indicated, most recently, in an August 28, 1972, ruling letter to Senator Goldwater, that the exercise of absentee registration and voting rights will not jeopardize the nonresident Federal income tax exclusion available to a U.S. citizen residing abroad. This legislation would enact this administrative interpretation into law for Federal income tax purposes, and would insure that the States would not make an inconsistent interpretation of their own income tax laws.

I support these bills because I strongly believe that the constitutional right to vote is too important a right to be abridged just because a citizen exercises his or her fundamental right to travel overseas.

I respectfully urge the committee to adopt legislation that will expand the franchise now afforded to military and Government personnel and dependents to overseas American civilians so that every American citizen may have the essential rights of his citizenship.

Thank you.

Senator PELL. Thank you very much, Senator Mathias.

To my mind there are basically two categories of Americans abroad—both American citizens. One of these categories contains a great many older people who have gone back to their own native land, or the land of their immediate parents, to utilize social security and live out their days. When I used to be Vice Consul in the Foreign Service, one of my jobs was to see that the social security checks were received. We have asked the Department of State and the Social Security Administration what the number in this category was.

I would think it would be very substantial, indeed, probably more than the category about which you and I are speaking, which include Americans, who because of their way of life or occupation, or for a variety of reasons are living or working abroad, not on a retirement basis.

Now, all Americans have to be treated alike. We cannot have first- and second-class citizens. So the law must be written to help them.

I should mention here my belief that the basic inhibiting factor on Americans in the second category is their concern that they may open themselves up to State income and State tax impositions. I have spent a good deal of my life overseas with many friends, and point out to these people that if they want to vote, usually the State is more than delighted to let them vote in accord with legal procedures, but the question of taxes is a problem.

Then we come to the constitutional problem. Can you pass a law preventing the States from imposing State taxes on such individuals? The basic right to vote can be construed as applying to individual State laws; in this case not primarily as a U.S. citizen, but as a citizen of one of the 50 States. In contrast, you can be an American citizen in the Virgin Islands, Puerto Rico, and you do not have the right to vote.

So these are the difficult quandaries or problems to overcome.

I notice in your testimony you touched on the very important point about income tax, State income tax, and local income tax exemptions.

How do you think we can handle this matter?

Senator MATHIAS. I think, Mr. Chairman, we have faced up to it in our bill.

I do not want to go into any great length on it, because the committee is fortunate in having Mr. Lewin about ready to testify, and he is a more distinguished authority, I think. He is a former Assistant Attorney General, and I think he can deal with this constitutional question.

It does seem to me, however, that we have a very clear mandate in the Constitution to make proper regulations for election of Federal officials. There is not any doubt about that. For example, we can dictate to the States the size of a congressional district—a subject that was left to a State's discretion for many years. When I was a member of the Maryland Legislature, I used to point out that some congressional districts in Maryland were four or five times larger than others, and that this was a situation which if the States did not remedy, the Congress would step in and act.

Well, I was wrong, because while the States did not remedy that situation, the Congress also did not remedy it, and so the courts were finally forced into the political thicket to impose the "one-man, one-vote" rule.

Now, I do not oppose the one-man, one-vote rule. I just regret that the States, No. 1, and the Congress, No. 2, did not step in to provide the remedial action which was obviously necessary when one Congressman represented five times as many constituents as another.

Now, I would say the question now before this subcommittee reflects a very analogous situation. Under the powers of the Constitution to regulate elections, we, the Congress, can correct the situation whereby archaic laws are being allowed to deprive three-quarters of a million Americans of their rights to vote, and we can provide that, all other things being equal, the mere casting of a vote does not, in and of itself, pose a liability for tax, and I think that this is really what the crux of the suggestion in my bill is—that that act alone does not become determinative of State tax liability.

Senator PELL. Would you agree with me that with regard to business people and missionaries who are abroad, for example, that the real inhibiting factor is this question of taxation?

Senator MATHIAS. I think that is true.

Senator PELL. This is the crux of the problem, really.

Senator MATHIAS. You can even find it as a problem right here in the foreign territory known as the District of Columbia, where people who may be from Rhode Island, and living here, are afraid to vote in Rhode Island elections, because they are afraid that somehow or other they are going to get tripped up by tax law.

Now, I think it is even more of a problem for those living overseas. It is a question involving as I said in my statement, the State of mind, as well as the state of law, and I think this is one area that Congress can exercise leadership by making the law perfectly clear.

In many cases the expense of carrying out the jobs Americans are doing overseas are very heavy, and they simply cannot afford to pick up another \$500 or \$700 or, if they can afford it, it can be very, very difficult for them, and therefore they do not take the risk of voting. That is a shocking dilemma that we put Americans in this dilemma, where they are afraid that they cannot bear the cost of voting. It is just like

a poll tax—it transforms the State income tax into a poll tax of frightening proportions.

Senator PELL. To simplify, I am wondering if we could come up with a simple device that would exempt the liability of taxation from people voting overseas.

You could keep the State's registration right, and let the individual get the absentee ballot from his particular State, according to its particular form, and if you get this other provision enacted into the law, you could avoid a constitutional amendment, which would be very difficult to get in my view.

Senator MATHIAS. I hope the committee will look at the suggestion we made in our bill, because I think it addresses itself to this problem, and maybe Mr. Lewin can—

Senator PELL. Which portion are you referring to?

Senator MATHIAS. On page 10, Mr. Chairman, section 8(b) reads:

The exercise of any right to register or vote by any citizen residing overseas shall not affect the determination of his place of residence or domicile for purposes of any tax imposed under Federal, State, or local law.

If this provision were adopted, and were observed by the Federal and State courts, I think it would quiet this question and be very helpful in encouraging citizens to maintain the exercise of all of the responsibilities of citizenship.

Senator PELL. Good. I see the point here, but I also think it advisable to talk to the Department of Justice on this, on whether this is constitutional, with regard to State tax procedures.

Senator MATHIAS. I can think of many analogies—the one I just gave you about the fact that nobody ever questioned the right of Congress to dictate the terms by which Members of the House of Representatives are elected.

Now, this goes to the same general area—that States cannot, by arbitrary action, interfere with the Federal elections by imposing an economic barrier by saying that, just because you vote for a President and Vice President of the United States, a Senator, or a Representative to the House, you have to pay a substantial State tax, and I think expressed in those terms it becomes a constitutional possibility for the Congress to act.

Senator PELL. Thank you very much indeed.

Senator MATHIAS. Thank you, Mr. Chairman.

Senator PELL. We will move as constructively as we can on this.

Our next witness is Mr. Nathan Lewin, former Solicitor General and former Deputy Assistant Attorney General.

STATEMENT OF NATHAN LEWIN, FORMER ASSISTANT SOLICITOR GENERAL AND FORMER DEPUTY ASSISTANT ATTORNEY GENERAL

Mr. LEWIN. Good morning, Mr. Chairman.

Senator PELL. Good morning, Mr. Lewin.

Mr. LEWIN. It is a privilege to be before the Subcommittee on Privileges and Elections to speak about elections and about privileges of American citizens.

I have a prepared statement that I have submitted, but before I even go into that, since I think the chairman was interested in discus-

sion with Senator Mathias about this tax point which is covered briefly in the statement, might I just offhand direct my attention to that particular item.

Senator PELL. Could we agree we will put your statement in full in the record?

Mr. LEWIN. Right. I thought we would do that, and maybe I might summarize the points in it, and also address myself to the problem of alleviating the tax burden on those who vote from a foreign residence.

Let me say my mission, really I think, being here this morning is a limited one. I am here—I am flattered to think—as a constitutional expert, and I direct my attention really to the constitutionality of both Senator Mathias' bill, and the bill that the chairman introduced, and I leave to future witnesses the very compelling practical case that I know can be made for the exercise of Federal constitutional power that is invoked in this proposed legislation.

Let me begin the constitutional analysis where I think any good constitutional lawyer would begin, which is by stating the precise question that is presented by such a proposed bill. The question is occasionally attacked by stating first what this proposed bill does not do—that it does not alter, or in any way affect, what a State may do in imposing evenhanded legitimate qualifications on those who seek to vote in local elections.

Now, I think that this is an important distinction because to the extent that there can be any constitutional question at all about the power of Congress to enact legislation of this kind—and I do not know whether a serious constitutional challenge has been made—but to the extent that some may raise questions, they would be based on statements, essentially dicta in Supreme Court opinions, which are directed really to the authority of the State to impose bona fide residence requirements for all elections conducted within the State, both local and Federal.

But the issue presented by this bill is entirely different. It is really what the Federal Legislature may secure by statute against disenfranchisement in Federal elections of American citizens whose presence overseas keeps them from claiming present residence in any State, and whose State of last residence views them as nonresidents for local election purposes.

Now, until 1970 there might have been an argument that any tampering by Congress in this area was tampering with the authority that only the States had to prescribe qualifications of electors in voting for local and national elections.

And that, indeed, was the view that the late Justice Harlan, for whom I had the honor to clerk many years ago, took in his opinion in *Oregon v. Mitchell*, which considered the constitutionality of the voting rights provisions of the 1970 act. But Justice Harlan was alone in the entire Supreme Court in taking the position that there could be no action of any kind by Congress with respect to matters such as duration-of-residency qualifications even for Federal elections.

All the other Justices of the Court, which includes all those who were on the Court then and who are on it today, essentially sustained congressional power in this area on a variety of grounds.

The principal constitutional hook on which they all relied on was clause 5 of the 14th amendment, and the question, of course, is, with

regard to this legislation, to determine whether the justification for congressional action falls within the provisions of section 5 for the enactment by Congress of "appropriate legislation" to enforce this amendment. In this regard, and I think particularly also in regard to the question of tax liability, it is important to bear in mind that what this legislation deals with is not merely one congressional right, but two.

The second, which is not just the right to vote, but the right to travel—to travel out of the United States, is a right that is protected by the 14th amendment, and that the Supreme Court cases have recognized as being protected.

Subsection 2 of section 202(a) of the 1970 act includes congressional findings regarding durational residency. It states that requiring someone to be in a State for a particular period of time before he could vote denies or abridges the inherent constitutional rights of citizens to enjoy free movement from one State to another, interstate travel. The parallel provisions of this bill provide that any residency requirement of the kind that the bill invalidates denies or abridges the inherent constitutional right of citizens to enjoy their free movement to and from the United States.

Now, this right of international travel has been recognized as an important aspect of a citizen's liberties, as long ago as 1958 in *Kent v. Dulles*, and it was reaffirmed in the *Aptheker* case in 1964.

In *Aptheker* the Court, quoting from the *Kent* case, stated that—

Freedom of movement across frontiers in either direction, and inside frontiers, as well, was a part of our heritage. Travel abroad, like travel within the country, may be as close to the heart of the individual as the choice of what he eats, or wears, or reads. Freedom of movement is basic in our scheme of values.

Well, it is clear to me that Congress could view the disenfranchisement of the foreign traveler in Federal elections as a substantial hindrance of the exercise of this very basic privilege.

The inequity which this bill corrects is, of course, a far greater burden on foreign travel than the durational residence requirement was to interstate travel.

The citizen who moves to Rhode Island from Texas is not permanently deprived of his franchise. Indeed, he may not be deprived of it at all if he moves long enough before the registration date.

But the citizen who has the misfortune of leaving Alabama to live, either temporarily or permanently in London, foregoes forever his right to be heard in the Chambers of Congress, or to cast a vote for the President of the United States.

The privileges of American citizenship include more than the right to carry a green passport with the imprimatur of our Secretary of State, and the right to return, whenever one wishes, to the territorial United States.

The aspect of citizenship that the Supreme Court has characterized as "preservative of all rights"—the right to vote for those who affect one's future—is perhaps the most important and personal privilege.

Surely, if the State were to be so bold as to penalize every person who traveled overseas during the preceding year, by depriving him of his right to vote, the courts would declare that penalty to be an abridgement of both fundamental rights—the right to international travel, and the right to vote.

And when a State declares that its citizens are ineligible because they are out of the country on election day, the consequence of its action is not much different.

At the very least, one can say with confidence that Congress is exercising the power to enact "appropriate legislation" under section 5 of the 14th amendment when it forecloses any State penalties of this kind on travel abroad.

One may argue that all this may be well and good for the man who is just on the move, and happens to be out of his home State on election day, or maybe for an extended period of time around election day. But, of course, the proposed law goes further, and invalidates residency requirements even as applied to the citizen who permanently takes up a home overseas.

But to draw a distinction between these two travelers for purposes of constitutional protection for international movement would be unjustified.

There is no distinction here so far as the right guaranteed by *Kent* and *Aptheker*—both cases. They draw no distinction between those who are always on the move and those who settle abroad.

An American citizen has the same constitutional right to travel and settle abroad as he has to interstate travel and settlement. And that brings me onto the second half of the constitutional analysis, which is whether the State has an interest in preserving residency as a voting requirement for citizens living overseas.

The bill has, in subsection 6, I believe, of section 2 of the proposed legislation, a finding that there is no reasonable relationship to any compelling State interest in the conduct of Federal elections by the requirement that a voter establish a residency within the State.

It will be argued, or it could be argued, that bona fide residency is a legitimate State concern in distributing the franchise, and there are Supreme Court dicta that talk about the legitimacy of bona fide residency requirements. But that argument overlooks the distinction between local and Federal elections.

It makes all the sense in the world to say that no one can vote for the village constable who does not live in the village. But the Federal Congress and the President of the United States deal with matters of legislative and executive concern that transcend not only the boundary lines of an individual congressional district, but the borders of the country.

American citizens residing temporarily or permanently abroad have an immediate and personal interest in every general subject covered by the United States Code, from agriculture and aliens and nationality, to war and national defense, which I think covers the alphabetical scheme.

Laws which Congress passes affect them so long as they retain their citizenship, and they have a right to turn to some Congressmen and Senator somewhere to speak for them.

Why, it may be asked, should the State of last domicile be the one through which the traveler is represented in the Congress?

Well, from the vantage point of a knowledgeable electorate, it is most likely, one supposes, that the voter would be most familiar with candidates from his last district or residency, and best able to cast an intelligent vote in that election.

And, in addition, he is likely to have ties through friends or family with the district so as to be aware of its current needs.

Finally, authorities in that district are probably the ones who are able to make the verification that would be needed to assure that there is no fraud or any other misconduct in such an application—to check if he actually lived there, and voted there, and was recognized as a citizen in that district.

This further sustains the enactment of legislation that says that American citizens residing abroad shall be able to speak in Congress through Senators or Congressmen from that district where they left.

Presidential elections are even clearer. The act of voting for President has great symbolic significance as well as importance to the electoral process. There is very little legitimate State interest—much less a “compelling” one—to justify denying to an American residing abroad the right to cast his vote for President through the State where he last lived.

And there is a very substantial increment in the pride and national esteem felt by American citizens overseas if they are able to exercise this very elemental privilege of national citizenship every four years.

I, too, by the way, Mr. Chairman, was once associated with the Foreign Service, with the Department of State. As a matter of fact, I served in a Bureau that dealt with the problems of American citizens residing abroad—the Bureau that oversees the Passport Office and the Visa Office, and I know that American citizens who lived abroad have a desire affirmatively to express in some way their ties with the United States in ways other than simply receiving Social Security checks from time to time.

There is the controversy, for example, over the oath on the passport application. I think argument was made persuasively, at one time, that the oath of allegiance in the passport was useful because American citizens wanted to make that oath of allegiance to the United States whenever they applied for passports, which they would have to do every 5 years. The same thing goes, I think, for voting in Presidential elections. That is an affirmative act of association with the country.

So in my view it is clear that under the 14th amendment and section 5 thereof, in light of *Katzenbach v. Morgan*, which is the leading case that affects the power of Congress under that provision, this kind of legislation is constitutional.

Now, let me turn very briefly to the matter of the tax provision, which appears in Senator Mathias' bill, and I think also in S. 2384.

I think Congress can enact a provision that overrides State tax law to that extent, and says that tax authorities may not take the vote in a Federal election in the State as proof of residency for local tax purposes, because it may say that this kind of added burden on the act of voting in a Federal election burdens both the privilege of national citizenship of voting in a national election and the right to travel abroad.

When Congress says, as it does or could do in these bills, that States may not impose either special registration requirements or scare off potential voters by threatening them with tax liability, it is saying essentially that the right to travel abroad should remain unfettered by such local restrictions, that such nuisance regulations would inhibit the constitutionally protected freedoms.

I should emphasize in closing, as I did at the outset, that I do not say that courts today would strike down any State law which refused to allow an American citizen residing abroad to vote.

There are cases, *Dunn v. Blumstein*, *Evans v. Cornman*, and *Carrington v. Rash*, where the court said in strong *dicta* that a bona fide residency requirement may be imposed for voting in local elections. But we deal here with Federal elections, and we deal here with the power of Congress to enact legislation in that area.

And I submit that it is clear that Congress may make and implement the regulations that are imposed in this bill, just as Congress could enact the non-English language proviso which was sustained by the Supreme Court in *Katzenbach v. Morgan*. I might just add, in conclusion, that the only way that that question can really ever be tested in the courts is if such legislation is enacted. If Congress does not pass it, no one will ever know whether the views that I and the other supporters of the bill may put forth are or are not correct.

Senator PELL. Thank you very much.

Do you think this should be done by statute, or by constitutional amendment?

Mr. LEWIN. I think it can be done by statute. I think the Chairman stated correctly that the constitutional amendment is unrealistic, and I definitely think the power is in Congress to do this by statute.

Senator PELL. Do you think the same result would be achieved if we simply passed the provision saying that the exercise of any right to register or vote by any citizen outside the United States shall not affect the determination of his place of residence or domicile, as distinguished from his place of voting?

As I have said earlier, I think it is the tax that is inhibiting people from exercising their right to vote overseas. Some States, I agree, make it more difficult than others, but if you really want to, you can usually get an absentee ballot.

Mr. LEWIN. I should just say I do not firsthand know what the situation is with regard to absentee ballots in many of the States.

I do have, and I was given—

Senator PELL. I should point out that absentee privileges are accorded to those in military service, but many of these States do not have absentee provisions otherwise.

Mr. LEVIN. Let me just say that the civilian-military distinction is an interesting one from a constitutional vantage point. There has been some writing in the law journals—I think one article back in 1969, which was quite persuasive—that argued that a distinction between military and civilian was unconstitutional, was a violation of the Equal Protection Clause.

I am not prepared to go out on a limb today and say that, “well, my view is that that would necessarily be sustained—that argument would be sustained by the courts.” But I think it is also an interesting background for legislation of this kind.

As a matter of fact, I think States provide much more liberally for military personnel abroad, and do allow them to vote even though they have gone abroad, and they may never return to the State, and that indicates, at least to some extent, that there is not an overwhelming State interest in making sure everyone who votes in a Federal election from a particular State is someone who will necessarily be returning to that State.

So I think it is a factor, although one that I did not include in my prepared statement, which the Congress can very legitimately consider in deciding whether the present pattern of absentee voting as is applied to American citizens who are abroad for an extended period of time does not really result in denial of constitutional rights of various kinds.

I would propose, really, in that regard, insofar as this legislation is concerned, that it might even be desirable to amplify the introductory congressional finding to some extent, both to state what the chairman and Mr. Mathias indicated and recognized, which is that the imposition of local taxes does have an inhibiting effect both on the right to vote and on the right to international travel. That is not included presently in the congressional findings.

I think it would also be desirable to amplify the congressional findings by stating in them, as another paragraph, that the distinction that is made under the law between military personnel abroad and civilian personnel abroad results in inequities which may be arbitrary, or may violate the Equal Protection Clause.

So I think if those two additional findings are put in, I think that they give the legislation stronger basis if there is ever a court examination of the basis for Congress acting under clause 5 of the 14th amendment.

Senator PELL. I thank you very much indeed, Mr. Lewin, for your excellent, expert testimony, which will be of great help to the subcommittee.

Mr. LEWIN. Thank you.

[The written statement of Mr. Lewin follows:]

STATEMENT OF NATHAN LEWIN, FORMER ASSISTANT SOLICITOR GENERAL, AND
FORMER DEPUTY ASSISTANT ATTORNEY GENERAL

It is a privilege to be before this Subcommittee to testify in support of proposed legislation that would facilitate the right of American citizens, residing temporarily or permanently abroad, to vote in federal elections. I am here for a limited purpose—to give my view on the constitutionality of this proposed federal law—and I leave to future witnesses the very compelling practical case that I know can be made for the exercise of this federal legislative power.

Let me begin the constitutional analysis where any good constitutional lawyer should begin it—with a statement of the precise exercise of power that is at issue. Courts often attack that preliminary question by pointing out what is *not* involved, and one observation along that line is necessary.

The proposed bill does not alter, or in any way affect, what a State may do in imposing evenhanded legitimate qualifications on those who seek to vote in local elections. It is important for the Subcommittee to bear this in mind, because I am sure that if any question is raised as to the constitutionality of this legislation, it would be based on statements contained in Supreme Court opinions that relate to the authority of a State to impose "bona fide residence requirements" for *all* elections conducted in the State—both local and federal. The issue presented here today is entirely different. It is whether the federal legislature may secure, by statute, against the disenfranchisement *in federal elections* of American citizens whose presence overseas keeps them from claiming present residence in any State and whose State of last residence views them as non-residents for local election purposes.

The first question to be answered is whether Congress has any power at all to enact a law that overrides, for federal elections, what the State legislatures fix as qualifications for all elections. A strong argument could once have been made for the proposition espoused by the late Mr. Justice Harlan in *Oregon v. Mitchell*, 400 U.S. 112, 152 (1970), that Congress has no power whatever to prescribe voting standards even for President and the U.S. Congress that vary from what the State prescribes for votes for governor and state legislator. But

all the other Justices of the 1970 Supreme Court felt otherwise—Justice Black because he believed Congress' power was plenary over federal elections (400 U.S. at 134), Justices Brennan, White and Marshall on the ground that Congress could override state qualifications when, in its view, those qualification endanger rights protected by the Fourteenth Amendment (400 U.S. at 237–239), and Chief Justice Burger with Justices Stewart and Blackmun, along with Justice Douglas, reasoning that Congress may protect and facilitate the exercise of privileges and immunities of national citizenship (400 U.S. at 148–49; 385–386).

The next step is to determine whether the justification for Congressional action here falls within the standards set by the various groupings in *Oregon v. Mitchell*. Does the proposed bill constitute "appropriate legislation," within the meaning of Section 5 of the Fourteenth Amendment, for the enforcement of rights protected by that Amendment? Or, to follow the route taken by the Chief Justice and Justices Stewart and Blackmun, as well as Justice Douglas, is it a reasonable means of securing privileges and immunities of national citizenship? No such inquiry need be made according to the Black view because the authority of Congress to deal with "times, places and manner of holding elections for Senators and Representatives" conferred by Article I, § 4 of the Constitution grants, in the late Justice's opinion, the authority to set "age and other qualifications of the voters" in all federal elections.

In *Oregon v. Mitchell*, the constitutionality of various provisions of the Voting Rights Act of 1970 was in issue, and the elimination of durational residency requirements for Presidential voting was sustained because, in the view of Justices Brennan, White and Marshall, local requirements of extended residence in a State might impermissibly burden the constitutionally protected right of "interstate travel and settlement." In the proposed bill, there are Congressional findings that parallel the burden-on-interstate-travel findings of Section 202(a) of the 1970 Voting Rights Act. Subsection (2) of this law declares that the residency requirement imposed by many States as a condition of voting in federal elections "denies or abridges the inherent constitutional right of citizens to enjoy their free movement to and from the United States." The right of international travel has been recognized as "an important aspect of the citizen's 'liberty'" as long ago as *Kent v. Dulles*, 357 U.S. 116, 127 (1958), and was reaffirmed in *Aptheker v. Secretary of State*, 378 U.S. 500, 505 (1964). The *Aptheker* Court quoted the sweeping language that had been used in *Kent* to describe the fundamental nature of the right to international travel:

"Freedom of movement across frontiers in either direction, and inside frontiers as well, was a part of our heritage. Travel abroad, like travel within the country . . . may be as close to the heart of the individual as the choice of what he eats or wears, or reads. Freedom of movement is basic in our scheme of values."

It is clear to me that Congress could view the disenfranchisement of the foreign traveler in federal elections as a substantial hindrance to the exercise of this very "basic" privilege. The inequity which this bill corrects is, of course, a far greater burden on foreign travel than the durational residence requirement was on interstate travel. The citizen who moves to Rhode Island from Texas is not permanently deprived of his franchise; indeed, he may not be deprived of it at all if he moves long enough before the registration date. But the citizen who has the misfortune of leaving Alabama to live, either temporarily or permanently, in London, foregoes forever his right to be heard in the chambers of Congress or to cast a vote for President of the United States. The privileges of American citizenship include more than the right to carry a green passport with the imprimatur of our Secretary of State and the right to return, whenever one wishes, to the territorial United States. The aspect of citizenship that the Supreme Court has characterized as "preservative of all rights" (*Reynolds v. Sims*, 377 U.S. 533, 562 (1964))—the right to vote for those who affect one's future—is perhaps the most important and personal privilege.

Surely, if a State were to be so bold as to penalize every person who traveled overseas during the preceding year by depriving him of his right to vote, the courts would declare that penalty to be an abridgement of both fundamental rights—the right to international travel and the right to vote. When a State declares that its citizens are ineligible because they are out of the country on Election Day, the consequence of its action is not much different. At the very least, one can say with confidence, Congress may secure the right to international travel by foreclosing State penalties of this kind upon such travel.

All this, it may be argued, is well and good as applied to the peripatetic traveler who intends to return to his home State. The proposed law, of course, goes further and invalidates residency requirements even as applied to the citizen who permanently takes up a home overseas. To draw a distinction between these two travelers for purposes of the constitutional protection for international movement would, however, be unjustified. The right guaranteed in cases such as *Kent* and *Aptheker* is not limited to those who are always on the move. An American citizen has, under these decisions, the same right to international "travel and settlement" as he has to interstate "travel and settlement" under decisions such as *Crandall v. Nevada*, 6 Wall. 35 (1868); *Edwards v. California*, 314 U.S. 160 (1941); and *Shapiro v. Thompson*, 394 U.S. 618 (1969).

This brings me to the second half of the constitutional analysis—the interest of a State in preserving residency as a requirement for citizens living overseas. The proposed bill contains a finding that the residency requirement, taken with the lack of opportunity for absentee voting, "does not bear a reasonable relationship to any compelling State interest in the conduct of Federal elections." It will be argued that bona fide residency is a legitimate State concern in distributing the franchise. But that argument overlooks the critical distinction between federal and local elections. It makes all the sense in the world to say that no one can vote for the village constable who does not live in the village. But the federal Congress and the President of the United States deal with matters of legislative and executive concern that transcend not only the boundary lines of individual Congressional district, but the borders of the country. American citizens residing temporarily or permanently abroad have an immediate and personal interest in every general subject covered by the United States Code from Agriculture and Aliens and Nationality to War and National Defense. Laws which Congress passes affect them so long as they retain their citizenship, and they have a right to turn to some Congressman and Senator somewhere to speak for them.

Why, it may be asked, should the State of last domicile be the one through which the traveler is represented in Congress? From the vantage point of a knowledgeable electorate, it is most likely, one supposes, that the voter would be most familiar with candidates from his last district of residence and best able to cast an intelligent vote in that election. In addition, he is likely to have ties—through friends or family—with the district so as to be aware of its current needs. Finally, the authorities in the district of last residence are most likely to have some record of the traveler's existence and an ability to check on the *bona fides* of his claim to voting status. For a variety of reasons that are significant from a constitutional standpoint, it is a solid and reasonable legislative judgment to say that if a traveler is not to be disenfranchised and is to be given a voice in Congress through some Congressional district, the one where he last resided is the most reasonable.

Presidential elections seem to me clearer still. The act of voting for President has great symbolic significance, as well as importance to the electoral process. There is very little legitimate State interest—much less a "compelling" one—to justify denying to an American citizen residing abroad the right to cast his vote for President through the State where he last lived. And there is a very substantial increment in the pride and national esteem felt by American citizens overseas if they are able to exercise this very elemental privilege of national citizenship every four years.

In short, in the language of Justice Stewart's opinion in *Oregon v. Mitchell* (joined by Chief Justice Burger and Justice Blackmun), the Congress "has the power under the Constitution to eradicate political and civil disabilities that arise by operation of state law following a change in residence . . ." Justice Stewart completed that sentence with the words "from one State to another" but his reasoning applies as fully to "from the United States to a foreign country." It is, after all, Congress' job under the concluding clause of the Fourteenth Amendment "to exercise its discretion in determining whether and what legislation is needed to secure the guarantees of the Fourteenth Amendment." *Katzenbach v. Morgan*, 384 U.S. 641 (1966). And the Fourteenth Amendment protects the right to settle abroad no less than the right to move from State to State.

In the same vein, Congress may decide when the burden placed by state law on the rights to travel and to vote becomes too great and may, for this reason, invalidate local nuisances that authorities may attach to the exercise of the rights secured by the law. Section 8 of S. 2102 and S. 2384 is designed to achieve

this result by precluding States from imposing special registration requirements for foreign-resident voters when no registration is required for local voters and from scaring off the potential voter by threatening him with a tax bill. The right to vote should remain unfettered by such local restrictions, and Congress can legitimately conclude that in the absence of such provisions, nuisance regulation might inhibit the constitutionally protected freedoms.

I think it is important to emphasize in closing, as I did at the outset, that I would not, on the present state of constitutional law, for a moment suggest that the requirements of bona fide residency for voting in local elections is unconstitutional, or that the courts would declare it invalid as applied to federal elections. Indeed, strong dicta in cases such as *Dunn v. Blumstein*, 405 U.S. 330 (1972); *Evans v. Cornman*, 398 U.S. 419 (1970); *Carrington v. Rash*, 380 U.S. 89 (1965), establish the contrary. But we deal here with Congress power to find that such restrictions, as applied to federal elections only and in combination with inadequate opportunities for absentee voting, burden the right to international travel as well as permanently deprive certain American citizens of the right to vote. To me it is as clear that Congress may make and implement that finding as it could enact the non-English-language proviso sustained by the Supreme Court in *Katzenbach v. Morgan*, 384 U.S. 641 (1966). And, I might just add in conclusion, if the legislation is not enacted, there will never be an opportunity for the Supreme Court to decide whether I and its other supporters are right.

Senator PELL. Our next witness is Mr. William Whyte, vice president of United States Steel Corp., and Chairman of the Public Affairs Committee of the Board of Directors of the Chamber of Commerce of the United States, accompanied by Robert T. Snure.

STATEMENT OF WILLIAM G. WHYTE, VICE PRESIDENT—WASHINGTON, UNITED STATES STEEL CORP., AND MEMBER, BOARD OF DIRECTORS, CHAMBER OF COMMERCE OF THE UNITED STATES; ACCOMPANIED BY ROBERT T. SNURE, RESEARCH ASSISTANT, PUBLIC AFFAIRS DEPARTMENT

Mr. WHYTE. Mr. Chairman, I am William G. Whyte, vice president, Washington, United States Steel Corp., and I am appearing before your subcommittee as a member of the Board of Directors of the U.S. Chamber of Commerce and chairman of its Public Affairs Committee. With me is Robert T. Snure of the National Chamber's Public Affairs Department.

I would like to read a summary of my statement, Mr. Chairman, if that meets with your approval.

Senator PELL. The full statement will be inserted in the record.

Mr. WHYTE. Thank you.

We fully support the efforts being made by you, Senator Mathias, and others in S. 2384 and S. 2102, to guarantee the right of American citizens outside of the United States to vote in all Federal elections in the State of their last domicile, providing they are 18 and over, and in all other respects are qualified to vote, except for continuing domicile within that State.

We further support your legislative provision that would preclude any State or local jurisdiction from imposing a tax on such a citizen solely by reason of granting him the right to vote.

In urging enactment of this legislation we join with the Bipartisan Committee on Absentee Voting, and fully endorse the testimony to be presented tomorrow by its spokesman, J. Kevin Murphy and J. Eugene Marans.

The full text of my testimony details the efforts of the national chamber in (1) alerting and educating American citizens, especially American businessmen and women, as to their absentee voting rights, and (2) alerting and informing State and local election officials nationally on the Federal Voting Rights Act Amendments of 1970, and the Congressional and Justice Department explanations of its provisions.

These efforts included the publication and distribution of our "Guide to Absentee Voting in Presidential Elections in the United States and Overseas"—a copy of which is submitted for the record.

Senator PELL. I would like to put into the appendix of the record the excellent study that you prepared.

Mr. WYTE. That has been submitted for the record.

[The publication referred to appears as exhibit 4 in the appendix of these hearings, p. 170.]

I would like to tell you just a little bit about that, because much of my testimony is based on our experiences of issuing that particular document.

This publication contains a detailed explanation of the 1970 act, particularly sections 202 to 205, the text of Senator Goldwater's comments on the Senate floor on March 11, 1970, in explaining the statutory language, and the Department of Justice May 1971 interpretation of the act, instructions as to procedure, forms to be filed, and other pertinent information.

As a public service, a copy of our guide was sent to the Governor, the secretary of state, and the attorney general of each State, and to the chief election official of each county in the Nation. At least 4,000 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 around the world, the Commerce Department and its offices here and abroad, and to the Department of Defense in cooperation with the latter's Federal voting assistance program.

While this effort was designed mainly to alert Americans to their new legal rights to register and vote by absentee process in the Presidential election, it was also designed to inform State and county election officials of the new Federal law governing voting rights.

To my knowledge, very few affected by the Federal Voting Rights Act Amendments of 1970 were left uninformed.

However, the results of the combined efforts of the Congress and the national chamber were disappointing.

My testimony reviews the action of election officials in frustrating attempts by Americans overseas to register and vote absentee process in compliance with the act.

It is my understanding that about half of the States complied with the new Federal law.

Samples of letters between Americans abroad and local election officials that came to our attention are being furnished to the committee for its information, and I assume will be made part of the record.

[The letters referred to above may be found in the files of the subcommittee.]

My testimony cites what we regard as discriminatory practices by State, local, and Federal officials in denying Americans overseas their voting rights, or in failing to recognize their existence. As copies of letters will indicate local election officials in New York State, for example grant absentee registration and voting rights to an overseas American only if, one, he has a residence in New York State, or two, he is an employee of the U.S. Government, or three, is in the military service, or a dependent in any of these three categories. Despite the wording and intent of the Federal Voting Rights Act the New York county officials relied on section 151 of the New York election law. A reading of that State statute appears to grant absentee voting privileges to any of the above specified persons, as well as to those residing in a welfare institution or an asylum or a public prison, yet denies such voting rights to upstanding American citizens overseas who meet the requirements of the Federal statute.

Illustrative of the interpretation of election officials in New York of the words "domicile" and "place of residence" is another letter in which a local election commissioner denied an overseas New Yorker the right to vote.

The reason given was that unless the applicant could return to the exact same house he had occupied previously, he could not possibly intend to, nor could he return to the place of domicile in which he once lived, namely, Scarsdale, N.Y.

This interpretation was contrary to the intent of Public Law 91-285 as well as discriminatory between private civilians and Federal civilian employees.

This particular case, Mr. Chairman, though humorous was most unfair, because this individual maintained a listing in the Scarsdale telephone book all the time he was overseas, this being his legal residence and that of his mother; and yet he was denied the right to vote.

Hopefully these examples will aid the subcommittee in enacting corrective legislation, they also serve to underscore two major faults in our electoral process which the enactment of S. 2384 and S. 2102 can correct.

One, the need for uniform standards of voter qualifications in Federal elections so that American citizens at home and abroad may participate equally, and two, assurance that the Attorney General of the United States will institute court action wherever he has reason to believe that any State or election official undertakes improperly to deny anyone the right to register and vote in Federal elections.

Your attention is also called to the discrimination practiced by the Census Bureau in including in apportionment tabulations, used to determine each State's representation in the House of Representatives, Federal civilian employees and members of the armed services, and their dependents overseas, to the exclusion of other Americans overseas, known to the State Department. This is in my formal testimony.

It is our position that either all American citizens 18 or over residing overseas and otherwise qualified, should be allowed to vote in Federal elections within the States, or none should.

It is also our position that all known Americans overseas should be included in the population and apportionment tabulations of the individual States, or that none should.

It is particularly important for all of us, whether in Government or private industry, to encourage more citizens to participate actively in

the electoral process. The apathy of the American voter is at an all-time high. Yet overseas, there are at least 750,000 private citizens anxious to be given the right to vote in Federal elections.

By granting and guaranteeing them this right, backed by enforcement powers of the Attorney General, the Congress can take a giant step forward to encourage and foster greater election participation.

A record poll of the national chamber members in the States shows that 72 percent of those responding favor the granting of absentee voting rights to Americans overseas.

We urge the prompt enactment of this legislation, and we thank you, Mr. Chairman, for this opportunity to testify on this important subject.

Senator PELL. Thank you very much indeed.

And I must thank you, the chairman of the national chamber's public affairs committee, very much for the information on this subject.

Mr. WHYTE. We found we had a lot of information come to us as a result of our absentee voting publications, because people who read our guide overseas, and then tried to vote, came back to us as if we were at fault.

So we do have some very interesting cases involving correspondence on specific examples where people were turned down by their former places of residence.

Senator PELL. Would you agree with me that the question of taxation is one of the biggest inhibiting factors?

Mr. WHYTE. Yes; it is an inhibiting factor, Mr. Chairman, but not the only one. We had cases where, in States which have no income taxes, people were turned down. They tried, and they could not vote.

I think that is very interesting, but I agree: the State tax is a psychological point, and people feel that they may get caught, so they will not bother to vote. The more we can clear that up, the better.

In our document, "Guide to Absentee Voting," on page 31, there is a letter from Senator Barry Goldwater dated August 7, 1970, in which he had asked the Library of Congress to do some research on this subject. Based on that research, and later revisions as footnoted, the Library found—shown here on pages 39 and 40—that 11 States had no broad based income tax; 12 States do not tax those with the vote outside the State, or income earned abroad; 16 States exempt the first \$25,000 earned abroad; and in only 12 States is income earned abroad possibly subject to income tax.

This is only relating to income tax. It would not answer a question raised about the State property taxes.

Senator PELL. I am delighted to say that Senator Goldwater will be with us tomorrow.

Mr. WHYTE. I noticed he is on the program tomorrow.

Senator PELL. Well, I thank you very much indeed for your excellent testimony, and for this document, which will appear in the appendix.

[The written statement, with attachments thereto, of Mr. Whyte follows:]

STATEMENT OF WILLIAM G. WHYTE, VICE PRESIDENT—WASHINGTON, UNITED STATES STEEL CORPORATION AND MEMBER OF THE BOARD OF DIRECTORS, CHAMBER OF COMMERCE OF THE UNITED STATES

Mr. Chairman, I am William G. Whyte, Vice-President—Washington, United States Steel Corporation.

I am appearing before your Subcommittee as a member of the Board of Directors of the Chamber of Commerce of the United States, and Chairman of its Public Affairs Committee.

Appearing with me is Robert T. Snure of the National Chamber's Public Affairs Department.

We support S. 2384 and S. 2102 which would grant to qualified Americans overseas the right to register and vote in their last state of residence or domicile without obligating them to pay state or local taxes.

The National Chamber federation consists of some 2,550 local, state, and regional chambers of commerce in this country and American Chambers of Commerce abroad; about 1,000 trade and professional associations; and more than 46,000 business firms and individuals. Underlying membership of the National Chamber amounts to over 5,000,000.

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.

Thus, we support legislation to clarify and strengthen the Federal Voting Rights Act, particularly to assure the right of absentee registration and voting in Federal elections in his state of last domicile to any American citizen overseas who no longer has a domicile in such state, provided he is otherwise qualified, under said Act, to register and vote in such elections. The right to exercise such absentee registration and voting privileges should not be impaired by any state-imposed restrictions.

The National Chamber Federation has for several years been in the forefront of this effort to enable Americans the world over to participate in the electoral process. Our operations and experience in 1971-1972 under the current law will underscore the need for the legislation now before your Subcommittee so as to guarantee, beyond doubt, the enforcement of the will and intent of Congress to enfranchise qualified American citizens at home and abroad.

With the enactment of the Federal Voting Rights Act Amendments of 1970, the National Chamber sought to inform and educate Americans worldwide on their new voting rights.

Sections 202 through 205 authorized Americans of voting age overseas to register and vote absentee in the Presidential election of 1972 in their last state of residence prior to going abroad. Each state was directed to grant the right to register and vote in such election to any such citizen whose application to register and/or vote absentee conveyed his intent some day to return to that state for resumed residency. Further, the law authorized the Justice Department to take appropriate action to require each state, if necessary, to comply with its provisions.

As part of its informational and educational program, the National Chamber published a 40-page "Guide to Absentee Voting in Presidential Elections: in the United States and Overseas," a copy of which I submit for the record. This publication contained a detailed explanation of the 1970 Act, particularly Sec. 202-205; the text of Senator Goldwater's comments on the Senate floor on March 11, 1970, in explaining the statutory language; the Department of Justice May 1971 interpretation of the Act; instructions as to procedure; forms to be filed, and other pertinent information.

As a public service a copy of our Guide was sent to the Governor, the Secretary of State, and the Attorney General of each state, and to the chief election official of each county in the nation. At least 4,000 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. Department to embassies and consulates the world over, the Commerce Department and its offices here and abroad and to the Department of Defense in cooperation with the latter's Federal Voting Assistance program.

While this effort was designed mainly to alert American citizens to their new legal right to register and vote by absentee process in the Presidential election, it was also designed to inform state and county election officials of the new Federal law governing voting rights. To my knowledge, very few affected by the Federal Voting Rights Act Amendments of 1970 were left uninformed.

The results of the combined efforts of the Congress and the national Chamber were disappointing.

American citizens the world over responded enthusiastically. Many thousands of applications, properly filled out and certified by affidavit, were sent to the appropriate county or state election office. It is my understanding that half of the states fully complied with the Act—some automatically, some by direction of their attorneys general, some by confirming action of state legislatures. Overseas residents previously residing in these states were able, for the first time since going abroad, to vote in a Presidential election.

But, for one reason or another, the remaining states refused to comply. Unfortunately, their non-compliance was not challenged by the Department of Justice, and contrary to Congressional mandate possibly as many as 750,000 voting age Americans overseas were denied to right to vote for President/Vice President in 1972.

In failing to enforce compliance with the Act, the Justice Department, I understand, relied on a March, 1972 interpretation rather than on the Department's original interpretation of May 1971.

Naturally, we at the National Chamber received letters from would-be voters and from business and professional people protesting such state action or inaction. Many people wrote directly to Senator Goldwater to seek correction of state sources of non-compliance. After replying, his office forwarded the correspondence to the Senators from the states in question. Few were successful in convincing state and county officials of the authority of Congress under the Federal Voting Rights Act.

I shall not attempt to cover each of the states where these applications were rejected. Some will be reviewed by representatives of the Bipartisan Committee on Absentee Voting who will be testifying tomorrow.

Of the states refusing to comply with the Act, New York State stands out as particularly adamant both in refusing to honor applications from residents overseas and in refusing to adhere to federally established absentee registration and voting requirements. This is reflected in letters received by applicants from election officials of Monroe, Nassau, and Westchester Counties and the City of New York, copies of which came to us and which we will furnish to the Subcommittee.

Here is one dated September 28, 1972, addressed to an employee of Eastman Kodak Company in Oslo, Norway, who formerly resided in Monroe County:

"Under New York State laws, you are not eligible to register inasmuch as you do not have a bonafide address in Monroe County and only those who are employed by the Federal Government directly or are in the military service are permitted to vote from a previous address in this state." (Signed by Kenneth T. Power and Robert W. Northrup, Commissioners, Board of Elections, Monroe County, N.Y.)

Another one from the same Board of Elections dated August 22, 1972 was sent to a Kodak employee in Singapore. This applicant had resided 19 years in Monroe County, the last 12 of which were at an identified address in Rochester where he had been registered to vote and where he intended to return on completion of his overseas assignment.

"Your application for an absentee ballot must be denied unless you fall in one of the following three categories:

1. You have a residence in Monroe County
2. You are an employee of the United States Government, or
3. You are in the military service of the United States.

"If you fall into one of these categories, please let us know immediately, and we will forward to you an application for an absentee ballot. If we do not hear from you, we will assume that you do not fall into one of these three categories; therefore you would not be eligible to receive an absentee ballot."

Well, this particular applicant did reply to the Election Commissioners in Rochester and quoted from the Voting Rights Act Amendments of 1970 as the basis for his renewed application.

permitted to vote from a previous address in this state." (Signed by Kenneth T. Power, Commissioner:

"I agree with your thoughts that the situation is unbelievable, but, of course, you undoubtedly realize that we do not operate under rules and regulations set up by the Board of Elections of Monroe County, but operate under the law set up by the New York State Legislature. . . .

"Unfortunately, you relied on the 'Guide to Absentee Voting . . .' published by the Chamber of Commerce of the United States. This dissemination of information by the Chamber of Commerce is inaccurate in several respects—one of which is your particular situation. . . . (my previous letter) is what we are mandated by

Albany to follow as a result of New York law and the various Congressional Acts, plus the interpretation placed upon the State by the State and Federal Courts. . . . I am not able to comply with your request. . . ."

Proper applications for absentee ballots for the 1972 Presidential election, notarized by an American Consul and filed in August, 1972 by a man and his wife, both employees of International Paper Co. in Switzerland, who earlier had resided at 23 West 75th Street, were rejected by the Commissioners of Elections of New York City on September 14 on the grounds that—

" . . . we have been informed by the Secretary of State of New York that no provision is seen in the Federal Voting Rights Act Amendments of 1970 which would extend the right of an absentee ballot to civilians residing outside the United States or those, who in fact have given up all claim to residence within the State of New York.

"The only persons living outside of the State . . . who retain their residence in the State of New York for voting purposes are those coming within the purview of Section 151 of the Election Law. . . ."

I believe a reading of Section 151 of the New York State Election law, as amended in 1971, will leave little doubt as to the discrimination that was and can be exercised thereunder in denying an absentee ballot to an American working overseas and yet granting an absentee ballot to a resident of a state asylum or prison. Let me quote from this section, titled "Gaining or Losing a Residence."

"(a) For the purpose of registering and voting no person shall be deemed to have *gained or lost a residence by reason of his presence or absence* while employed in the service of the United States, nor while engaged in the navigation of the waters of this state, or of the United States, or of the high seas; nor while a student of any institution of learning; *nor while kept at any welfare institution, asylum or other institution wholly or partly supported at public expense or by charity; nor while confined in any public prison.* Any person applying for registration who claims to belong to any class of persons mentioned in this section shall file with the board taking his registration a written statement showing where *he actually resides and where he claims to be legally domiciled*, his business or occupation, his business address, and to which class he claims to belong. . . .

"(b) As used in this article, the word 'residence' shall be deemed to mean that place where a person *maintains a fixed, permanent and principal home and to which he, wherever temporarily located, always intends to return.*

"(c) In determining a voter's *qualification to vote* in a particular election district, the board to which such application is made shall consider, in addition to the applicant's expressed intent, his *conduct and all attendant surrounding circumstances relating thereto.* The board taking such registration may consider the applicant's *financial independence, business pursuits, employment, income sources, residence for income tax purposes, age, marital status, residence of parents, spouse and children, if any, leaseholds, situs of personal and real property owned by the applicant, motor vehicle and other personal property registration and such other factors that it may reasonably deem necessary to determine the qualification of an applicant to vote* in an election district within its jurisdiction. The decision of a board to which such application is made shall be deemed presumptive evidence of a person's residence for voting purposes." (Emphasis supplied.)

One final example, that I trust is not typical of election commissioners, illustrates a misunderstanding of the federal law's intent as well as the true meaning of the words "home," "domicile" and "residence."

The application of Jack G. Hardy of Rio de Janeiro was first rejected by one of the election commissioners of Westchester County, in White Plains N.Y. on February 9, 1972. Despite an explanatory letter from the National Chamber, combined with a communication from Senator Goldwater advising that the Federal law, as upheld by the Supreme Court, allowed a citizen abroad to vote for President in his state of former residency "so long as he retained an intent of being domiciled in the place which he had left upon moving overseas." We received the following reply dated March 24, 1972, from not one but two election commissioners in White Plains:

"Mr. Hardy advised us that during December, 1964, he moved from 200 Old Army Road, Scarsdale, New York to Brazil. 200 Old Army Road is a private home which Mr. Hardy sold to one Richard L. Goldman in February, 1965 and is presently occupied by the Goldman family. It is obvious that Mr. Hardy does not intend or could not return to his 'home' or 'domicile.'"

The commissioners rejected Mr. Hardy's application even though he had certified his full intention to return to and live within Westchester County. As further proof, Mr. Hardy called the commissioners' attention to his personal listing in the telephone books of Westchester County and Scarsdale each year since 1964, the location being his mother's residence at 21 Montrose Road. Despite this, his application was not granted.

In enacting legislation proposed by Senators Pell and Mathias, I suggest that the Congress use these examples to prevent such violations or misunderstandings of the federal law in the future.

Contrast this action by the State of New York with that of the State of Maryland, for example. Its chief election official, Willard A. Morris, directed that all overseas applications for registration and voting be honored—if proof were available in Annapolis or the counties that the applicant had live in Maryland in prior years.

Consider the Attorney General of Massachusetts, who held that the Federal law prevailed and that overseas applications to Massachusetts should be likewise honored.

The Attorney General of Illinois issued a similar ruling, followed by confirming action of the Illinois legislature.

Other states, which earlier had changed their laws to permit members of the Armed Forces and federal civilian employees and their families to vote absentee in all elections within their states in keeping with the Defense Department's request under the Federal Voting Assistance Act, extended these rights to other American civilians overseas.

However, some states set, as a condition to voting in the Presidential election, the payment of state income taxes. Naturally, prospective voters were hesitant to file applications in such states, while others did not wish to base their right to vote on an intent to return to a particular state when they might not be able to fulfill that pledge.

We support the effort being made by Senators Pell, Mathias and others in S. 2384 and S. 2102 to guarantee the right of American citizens outside the United States to vote in all federal elections in the state of their last domicile, provided they are 18 and over and in all other respects are qualified to vote except for continuing domicile within that state. We further support the provision that would preclude any state or local jurisdiction from imposing a tax on such a citizen solely by reason of granting him the right to vote.

These examples from New York State serve to underscore at least two major faults in our electoral process that the enactment of S. 2384 or S. 2102 would correct:

- (1) Outright refusal by state authorities to comply with Federal election standards, combined with the failure of the Department of Justice to enforce compliance.

- (2) Granting federal civilian employees and their dependents overseas the right to register and vote absentee, while denying that same right to other Americans overseas.

The latter, we believe, is outright discrimination. In fact, it smacks of favoritism to political appointees and civil service employees and their dependents.

Furthermore, it is our understanding that the 1970 Census, for the first time in history, included Americans overseas in the national population total and in the Census figures for each state. The resulting state totals, including former state residents abroad, were used to apportion among the states the number of Representatives in the House. A different total, comprising only people actually residing or maintaining residences within its borders, was used to set the boundaries of each state's congressional districts. In many cases, only actual residents were allowed to vote.

If true, this also is discriminatory. Any American 18 and over included in the apportionment tabulation should likewise be included among those within each state authorized to vote.

If, on the other hand, American civilians overseas were excluded from the Census figures, it was improper to include federal civilian employees and members of the Armed Forces, and their dependents, in such apportionment tabulations. Either all American citizens overseas should be tabulated and included in such population totals or none should.

In support of these assertions, I call your attention to the attached State Department tabulation, derived from U.S. consular figures, showing the number of U.S. Citizens residing in foreign countries in Fiscal Year 1971. Broken down

as between government employees (37,418) and their dependents (365,814), or a total of 403,232, plus 1,048,925 other American residents, this shows a grand total of 1,452,147 Americans overseas, *excluding* those in the Armed Forces, but including their dependents.

In contrast is the enclosed Commerce Department's 1970 Census which shows Americans overseas as totalling 1,580,998 *including* Members of the Armed Forces, federal civilian employees, and their spouses, children and other relatives living abroad who are citizens of the United States or who have a home state. Excluded, evidently, were other Americans overseas outside these categories. Yet, it was this figure of 1,580,998 which, when added to the resident population in the states, determined the 1972 apportionment of the House of Representatives.

The difference between the 1,048,925 overseas Americans and the number of Armed Service dependents abroad would represent those Americans overseas who were excluded from the apportionment population.

This could affect individual state representation in the House. It is also another example of "forgotten" Americans overseas.

The contrast in these figures would appear to warrant further inquiry by this Subcommittee.

It is particularly important, we believe, for all of us—whether in government or private industry—to encourage more citizens to participate actively in the electoral process. In November, 1972, some 48 million Americans of voting age stayed away from their polling places—a number exceeding the votes cast for any candidate.

The apathy of the American voter is at an all-time high. Yet, overseas there are at least 750,000 private citizens anxious to be given the right to vote and to participate in federal elections.

By granting them that right, and guaranteeing it by the enforcement powers of the Attorney General and the courts, the Congress can take a giant step forward to encourage and foster greater election participation.

You will be interested in the results of our nationwide membership poll taken in July of this year in which 72% of the respondents favor the granting of absentee voting rights to Americans overseas.

Mr. Chairman on behalf of the Chamber of Commerce of the United States and its worldwide membership, I urge your Subcommittee to report this legislation favorably and to strive for its enactment by the 93rd Congress.

We are pleased to join with the Bipartisan Committee on Absentee Voting on an issue so important to the voting public and to the furtherance of our election processes. It is my understanding that J. Kevin Murphy, Chairman, and J. Eugene Marans, Secretary, of that Committee will be appearing before this Subcommittee tomorrow, September 27.

We endorse their testimony fully.

DEPARTMENT OF STATE

U.S. CITIZENS RESIDING IN FOREIGN COUNTRIES, FISCAL YEAR 1971

Countries	U.S. Government agencies		American residents ¹	Total
	Employees	Dependents		
Dependent areas:				
Afghanistan.....	222	399	324	945
Algeria.....	21	26	630	677
Angola.....	5	11	349	365
Argentina.....	127	289	5,200	5,616
Australia.....	108	753	25,275	26,136
Austria.....	92	199	7,022	7,313
Bahamas ²	24	250	5,226	5,500
Bahrain.....	1	173	748	922
Barbados.....	21	161	1,784	1,966
Belgium.....	474	3,148	15,800	19,422
Bermuda.....	248	1,383	7,600	9,231
Bolivia.....	111	304	500	915
Botswana.....	5	6	135	146
Brazil.....	620	1,024	19,958	21,602
British Honduras.....	6	4	378	388
Bulgaria.....	18	28	63	109
Burma.....	47	95	26	168
Burundi.....	11	23	117	151
Cambodia.....	55	22	10	87
Cameroon.....	59	38	356	433
Canada.....	386	4,678	240,500	245,564

See footnotes at end of table.

DEPARTMENT OF STATE—Continued

U.S. CITIZENS RESIDING IN FOREIGN COUNTRIES, FISCAL YEAR 1971—Continued

Countries	U.S. Government agencies		American residents ¹	Total
	Employees	Dependents		
Central Africa Republic.....	10	16	162	188
Ceylon.....	37	51	215	303
Chad.....	58	24	60	142
Chile.....	187	343	2,800	3,330
Colombia.....	370	585	13,337	14,292
Congo, Democratic Republic of.....	164	246	2,886	3,296
Costa Rica.....	76	179	6,093	6,348
Cyprus.....	30	438	756	1,274
Czechoslovakia.....	23	58	600	681
Dahomey.....	61	23	100	184
Denmark.....	48	142	3,483	3,673
Dominican Republic.....	196	342	7,260	7,798
Ecuador.....	287	547	3,700	4,534
El Salvador.....	129	175	1,915	2,219
Equatorial Guinea.....	2	5	2	9
Ethiopia.....	407	1,423	1,574	3,404
Fiji Islands.....	10	6	1,271	1,287
Finland.....	36	86	810	932
France.....	412	840	20,365	21,617
French West Indies.....	3	6	180	189
Gabon.....	8	10	70	88
Gambia ³	2	5	27	34
Ghana.....	97	115	1,000	1,212
Germany.....	6,853	140,416	64,416	211,685
Greece.....	289	3,558	29,650	33,497
Guatemala.....	124	294	9,718	10,136
Guinea.....	27	38	59	124
Guyana.....	27	56	410	493
Haiti.....	39	61	3,204	3,304
Honduras.....	63	137	4,142	4,342
Hong Kong.....	119	320	5,558	5,997
Hungary.....	25	40	450	515
Iceland.....	82	2,311	175	2,568
India.....	443	756	4,921	6,120
Indonesia.....	168	314	3,290	3,772
Iran.....	347	973	7,615	8,935
Ireland.....	13	376	9,000	9,389
Israel.....	64	133	40,000	40,197
Italy.....	621	13,585	73,926	88,132
Ivory Coast.....	128	93	391	612
Jamaica.....	35	76	6,000	6,111
Japan.....	2,778	39,415	23,755	65,948
Ryukyu Islands.....	3,476	29,191		32,667
Jordan.....	31	37	327	395
Kenya.....	561	387	3,005	3,953
Korea.....	1,395	4,957	2,500	8,852
Kuwait.....	36	79	825	940
Laos.....	800	1,186	150	2,136
Lebanon.....	104	243	5,500	5,847
Lesotho.....	5	10	75	90
Liberia.....	197	463	3,758	4,418
Libya.....	36	49	3,266	3,351
Luxembourg.....	30	77	550	657
Madagascar.....	10	11	522	543
Malawi.....	63	52	466	581
Malaysia.....	62	205	1,808	2,075
Mali ³	28	26	110	164
Malta.....	10	132	850	992
Mauritania.....	4	4	10	18
Mauritius.....	9	17	27	53
Mexico.....	299	597	98,381	99,277
Morocco.....	197	1,947	585	3,129
Mozambique.....	5	8	133	146
Nepal.....	130	158	353	641
Netherlands.....	147	3,056	8,800	12,003
Netherlands Antilles.....	6	22	1,400	1,428
New Zealand.....	34	421	3,723	4,178
Nicaragua.....	61	150	2,900	3,111
Niger.....	97	28	123	248
Nigeria.....	278	516	3,490	4,284
Norway.....	47	654	7,500	8,201
Pakistan.....	203	343	1,341	1,887
Panama.....	309	2,745	4,469	7,523
Paraguay.....	72	187	795	1,054
Peru.....	153	349	8,186	8,688
Philippines.....	1,191	24,808	22,337	48,336
Poland.....	57	100	5,273	5,430

See footnotes at end of table.

DEPARTMENT OF STATE—Continued

U.S. CITIZENS RESIDING IN FOREIGN COUNTRIES, FISCAL YEAR 1971—Continued

Countries	U.S. Government agencies		American residents ¹	Total
	Employees	Dependents		
Portugal.....	179	2,908	4,489	7,575
Azores.....	156	456	10,650	11,262
Romania.....	22	63	80	165
Rwanda.....	5	6	63	74
Saudi Arabia.....	113	308	5,876	6,297
Senegal.....	39	58	268	365
Sierra Leone.....	229	62	287	578
Singapore.....	51	115	7,500	7,666
Somali Republic.....	26	44	76	146
South Africa, Republic of.....	56	104	6,832	6,992
Soviet Union.....	70	132	157	359
Spain.....	587	14,691	24,000	39,278
Sudan.....	12	19	23	54
Surinam.....	5	7	175	187
Swaziland.....	11	31	225	267
Sweden.....	45	104	3,800	3,949
Switzerland.....	122	193	19,300	19,615
Taiwan.....	387	6,137	3,420	9,944
Tanzania.....	90	202	1,100	1,392
Thailand.....	1,023	6,059	9,398	16,480
Togo.....	96	21	88	205
Trinidad and Tobago.....	19	39	1,100	1,158
Tunisia.....	83	144	475	702
Turkey.....	394	6,920	2,134	9,448
Uganda.....	42	58	791	891
United Arab Republic.....	24	47	1,196	1,267
United Kingdom.....	933	30,861	44,111	75,905
Upper Volta.....	12	11	144	167
Uruguay.....	91	185	890	1,166
Venezuela.....	164	323	13,191	13,678
Vietnam.....	4,430	277	2,000	6,707
Yemen.....	4	6	20	30
Yugoslavia.....	67	130	2,900	3,097
Zambia.....	18	39	881	938
Other:				
Leeward Islands.....		142		142
Marshall Islands.....	58	35		93
Canary Islands.....		4		4
Cape Verde Islands.....		4		4
Undistributed.....	3	23		26
Grand total.....	37,418	365,814	1,048,925	1,452,157

¹ Peace Corps volunteers are shown under American residents.² This estimate for American residents is based on the latest Bahamian census.³ 1970 figures used because the 1971 figures were not available.

U.S. DEPARTMENT OF COMMERCE, BUREAU OF THE CENSUS

TABLE 1.—1970 POPULATION AND NUMBER OF REPRESENTATIVES, BY STATE

State	Resident population	Population abroad ¹	Population used as basis for apportionment (1)+(2)	Number of Representatives based on 1970 census	Change from 1960 apportionment
	(1)	(2)	(3)	(4)	(5)
United States.....	203,184,772	1,580,998	2,04,002,799	435	-----
Alabama.....	3,444,165	31,720	3,475,885	7	-1
Alaska.....	302,173	1,894	304,067	1	-----
Arizona.....	1,772,482	15,138	1,787,620	4	+1
Arkansas.....	1,923,295	19,008	1,942,303	4	-----
California.....	19,953,134	145,729	20,098,863	43	+5
Colorado.....	2,207,259	19,512	2,226,771	5	+1
Connecticut.....	3,032,217	18,476	3,050,693	6	-----
Delaware.....	548,104	3,824	551,928	1	-----
District of Columbia.....	756,510	6,461	-----	-----	-----
Florida.....	6,789,443	66,259	6,855,702	15	+3
Georgia.....	4,589,575	37,731	4,627,306	10	-----
Hawaii.....	769,913	14,988	784,901	2	-----
Idaho.....	713,008	6,913	719,921	2	-----

U.S. DEPARTMENT OF COMMERCE, BUREAU OF THE CENSUS—Continued

TABLE 1.—1970 POPULATION AND NUMBER OF REPRESENTATIVES, BY STATE—Continued

State	Resident population	Population abroad ¹	Population used as basis for apportion- ment (1)+(2)	Number of Representa- tives based on 1970 census	Change from 1960 apportionment
	(1)	(2)	(3)	(4)	(5)
Illinois.....	11, 113, 976	70, 344	11, 184, 320	24	-----
Indiana.....	5, 193, 669	34, 487	5, 228, 156	11	-----
Iowa.....	2, 825, 041	21, 879	2, 846, 920	6	-1
Kansas.....	2, 249, 071	16, 775	2, 265, 846	5	-----
Kentucky.....	3, 219, 311	27, 170	3, 246, 481	7	-----
Louisiana.....	3, 643, 180	28, 828	3, 672, 008	8	-----
Maine.....	993, 663	12, 657	1, 006, 320	2	-----
Maryland.....	3, 922, 399	31, 299	3, 953, 698	8	-----
Massachusetts.....	5, 689, 170	37, 506	5, 726, 676	12	-----
Michigan.....	8, 875, 083	62, 113	8, 937, 196	19	-----
Minnesota.....	3, 805, 069	28, 104	3, 833, 173	8	-----
Mississippi.....	2, 216, 912	16, 936	2, 233, 848	5	-----
Missouri.....	4, 677, 399	40, 635	4, 718, 034	10	-----
Montana.....	694, 409	7, 164	701, 573	2	-----
Nebraska.....	1, 483, 791	13, 029	1, 496, 820	3	-----
Nevada.....	488, 738	3, 658	492, 396	1	-----
New Hampshire.....	737, 681	8, 603	746, 284	2	-----
New Jersey.....	7, 168, 164	39, 871	7, 208, 035	15	-----
New Mexico.....	1, 016, 000	10, 664	1, 026, 664	2	-----
New York.....	18, 190, 740	96, 789	18, 287, 529	39	-2
North Carolina.....	5, 082, 059	43, 171	5, 125, 230	11	-----
North Dakota.....	617, 761	6, 420	624, 181	1	-1
Ohio.....	10, 652, 017	78, 183	10, 730, 200	23	-1
Oklahoma.....	2, 559, 253	26, 233	2, 585, 486	6	-----
Oregon.....	2, 091, 385	19, 425	2, 110, 810	4	-----
Pennsylvania.....	11, 793, 909	90, 405	11, 884, 314	25	-2
Rhode Island.....	949, 723	8, 075	957, 798	2	-----
South Carolina.....	2, 590, 516	26, 804	2, 617, 320	6	-----
South Dakota.....	666, 257	6, 990	673, 247	2	-----
Tennessee.....	3, 924, 164	36, 896	3, 961, 060	8	-1
Texas.....	11, 196, 730	102, 057	11, 298, 787	24	+1
Utah.....	1, 059, 273	8, 537	1, 067, 810	2	-----
Vermont.....	444, 732	3, 595	448, 327	1	-----
Virginia.....	4, 648, 494	42, 248	4, 690, 742	10	-----
Washington.....	3, 409, 169	34, 318	3, 443, 487	7	-----
West Virginia.....	1, 744, 237	19, 094	1, 763, 331	4	-1
Wisconsin.....	4, 417, 933	29, 080	4, 447, 013	9	-1
Wyoming.....	332, 416	3, 303	335, 719	1	-----

¹ Includes: (a) Members of the Armed Forces; (b) civilian employees of any Federal department or agency who are citizens of the United States or who have a home State; (c) spouses and children who are living abroad with persons classified in groups (a) and (b); (d) other relatives living abroad with persons in groups (a) and (b) who are citizens of the United States or have a home State.

² Excludes the District of Columbia. The total including the District of Columbia is 204,765,770.

Senator PELL. The next witness is Dr. James E. Wood, Jr., executive director, Baptist Joint Committee on Public Affairs.

Dr. Wood.

STATEMENT OF JAMES E. WOOD, JR., EXECUTIVE DIRECTOR, BAPTIST JOINT COMMITTEE ON PUBLIC AFFAIRS

Dr. Wood. Mr. Chairman, let me very sincerely express my appreciation for the opportunity of appearing before you as Chairman of the Senate Subcommittee on Privileges and Elections.

I am James E. Wood, Jr., executive director of the Baptist Joint Committee on Public Affairs.

The Baptist Joint Committee on Public Affairs is composed of representatives from eight cooperating Baptist conventions and conferences in the United States with a combined membership of 23 million.

This morning I am specifically representing the foreign mission boards of six cooperating Baptist groups: American Baptist Churches in the U.S.A., Baptist General Conference, North American Baptist General Conference, Progressive National Baptist Convention, Inc., Seventh Day Baptist General Conference, and Southern Baptist Convention. Almost 3,000 U.S. citizens serve these six boards as missionaries overseas in more than 90 countries throughout the world.

Permit me to add here that I speak also out of a personal experience of having had a residence for 5 years overseas as a missionary-teacher in a Baptist university, during which time I experienced a loss of voting rights as an American solely on the basis of my place of residence.

Convention or conference	Number of missionaries and/or missionary families	Number of countries served
American Baptist Churches in the United States.....	241	18
Baptist general conference.....	115	7
North American Baptist general conference.....	73	4
Progressive National Baptist Convention, Inc.....	3	1
7th Day Baptist general conference.....	10	3
Southern Baptist convention.....	2,515	77

These mission boards through their executive officers express a deep concern that U.S. citizens, including foreign missionaries, who are residing or domiciled outside of the United States not be denied the right to vote in Federal elections.

These Baptist mission boards also hold that the taxing power of the Federal Government and the several States should not be employed in such a manner that it might be construed as an economic sanction against voting by overseas Americans.

On these bases, the foreign mission boards listed above express strong support of S. 2102 and recommend that this subcommittee and the full Committee on Rules and Administration report S. 2102 favorably to the U.S. Senate.

This support of S. 2102 is motivated by our commitment to the following propositions: (1) the right of all citizens to vote in Federal elections is a basic right of U.S. citizenship and integral to American democracy; (2) the right of suffrage should be compatible with basic American concepts of equity and justice as applied to all citizens without discrimination between private citizens and those associated with Government and military service; and (3) the right of a private citizen to movement and travel (as guaranteed by the 14th amendment), including the maintenance of a permanent resident overseas for legitimate purposes, should not be the basis of a citizen's disfranchisement.

In 1942 Congress enacted Public Law 77-712, which established absentee voting machinery for members of the Armed Forces, and in 1944 Public Law 78-277, which provided that servicemen be permitted to vote in that year's Presidential election.

These were constitutional efforts to make State voting laws reflect more closely the democratic ideal of full suffrage.

The Voting Rights Act of 1965—Public Law 89-110—and the 1970 amendments to the act—Public Law 91-285—further expanded suffrage and further limited the rights of States to set standards for vot-

ing if those standards discriminated against citizens of the United States.

Unfortunately, in these acts Congress did not choose to speak to the effective disfranchisement of the thousands of citizens legitimately and productively residing overseas.

We are in agreement with Congress past and present actions in seeking uniformity between the States as they set their standards for absentee voting in Federal elections.

Similarly we endorse the thrust of S. 2102 which broadens the voting base by providing that citizens residing or domiciled abroad be permitted to vote in Federal elections in the State or district as provided in this bill.

There are many legitimate and valid reasons why thousands of our private citizens reside or are domiciled outside of the United States. Most of them are well informed and are concerned citizens who object to disfranchisement based solely on the fact that their employment or their calling requires that they live beyond the territorial borders of the United States.

The fact that many of these people are not affluent enough to maintain a home in a State or district of the United States should not constitute, we believe, a reason to disfranchise them.

By requiring that an overseas voter maintain a physical place of abode within the State, 25 of the States have effectively denied all but the most affluent the right to vote in Federal elections.

The other States and the District of Columbia require that citizens "temporarily residing abroad" show at least an intent to return to that jurisdiction before they are eligible to receive absentee ballots.

In many instances the administrative "redtape" in these States, exacerbated by a limited time frame, makes absentee voting for overseas citizens extremely difficult and often impossible.

The United States is justifiably proud of the strengths of its democratic tradition. One of the basic tenets of democracy is that there be universal suffrage with only those restrictions on voting which reflect an overriding public necessity.

Those citizens residing or domiciled outside of the United States for legitimate purposes are surely not disfranchised because of any overriding public necessity. These are people engaged in business, study abroad, and professional careers, such as physicians, teachers, missionaries, and others. They are engaged in activities which generally reflect favorably upon the United States.

We of the six named Baptist bodies are committed to the principle that all citizens should be free to participate in the political process. To keep private U.S. citizens from participating in congressional and Presidential elections because they are serving overseas seems to us incompatible with basic American concepts of equity and justice.

Because citizens residing or domiciled overseas are generally well informed and have a high degree of motivation for political participation, simple equity, we believe, requires favorable action on S. 2102.

We respectfully urge, therefore, that favorable action be taken to insure the right of absentee voting on the part of all U.S. citizens legitimately employed overseas who otherwise meet legally recognized voting requirements.

Senator PELL. Thank you, Dr. Wood.

Do you have any opinion as to the percentage of missionaries abroad, who are able to vote through absentee ballots?

Mr. WOOD. No, we do not.

And one of the things that we would like to have done, if there were time, with the proposed hearings here, would be to engage in that kind of survey to ascertain that information.

Senator PELL. Would you care to comment on the inhibiting tax factor I have mentioned?

Mr. WOOD. If I may have just a moment here to add a footnote to that, Mr. Chairman, in view of the comments that you have made and the course of the earlier discussion on that point, I do think it is important to recognize that private citizens, such as missionaries, and others who are permanent residents overseas, probably without exception, do have income tax responsibilities in the countries in which they reside.

This rate of tax in these countries overseas is often compared to the U.S. rate, rather high, even excessive.

You think the foreign tax?

Mr. WOOD. The foreign tax.

Senator PELL. It is usually high?

Mr. WOOD. In my own case, the income tax which I had to pay to Japan, the Japanese Government, was substantially above the percentage of U.S. income tax.

The other thing I would like to say in terms of the context of Baptist concern in public affairs is that I think we would view with alarm any attempt even by implication to put taxation and voting in juxtaposition and in some way mutually related.

To begin with, we realize that many people in our society do enjoy the right to vote, even though they may not pay taxes because of their economic privation or status as indigents. Here, we certainly do not think of voting in any way related to taxation.

On the other hand, aliens who do not even enjoy citizenship in this country are faced with a responsibility to pay taxes in the United States.

So it would be very unfortunate to think that at any time we would draw into the discussion the notion that taxation is related in some way to the rights of voting.

Senator PELL. I thank you, and I thank you for a very good statement here, and one which will, I hope, help us move ahead in this legislation.

There is a rollcall vote going on now so I must recess the committee for a few minutes while I go over and vote.

Our next witness will be Mrs. Mitchell Cohen, U.S. Liaison Officer of the Federation of American Women's Club Overseas.

The hearing will be recessed.

[Short recess.]

Senator PELL. The subcommittee will come to order.

The next witness is Mrs. Mitchell Cohen.

**STATEMENT OF MRS. MITCHELL H. COHEN, U.S. LIAISON OFFICER
OF THE FEDERATION OF AMERICAN WOMEN'S CLUB OVERSEAS
(FAWCO); ACCOMPANIED BY GENEVIEVE GARZERO, CITIZEN-
SHIP CHAIRMAN OF THE FEDERATION, 1963-69**

Mrs. COHEN. Mr. Chairman, I am most appreciative of this distinctive opportunity so graciously afforded me to appear before you on behalf of the Federation of American Women's Club Overseas, known as FAWCO, as its liaison officer to the United States, and to urge your support in the passage of proposed Senate Bill 2102, the Overseas Citizens Voting Rights Act of 1973.

With me is Mrs. Genevieve Garzero, citizenship chairman of the Federation, 1963-69, a longtime resident abroad by reason of her husband's employment by TWA.

It seems appropriate at the outset to tell you who we are and who we are not.

We are a federation, organized in 1932, consisting of 16 American Women's Clubs in 13 of the leading capitals of the world. Our network of member clubs in Europe stretches from Scandinavia to Spain, and crosses oceans to include Barbados in the West Indies, Bangkok in Thailand, and Perth "down under" in Australia.

Our membership consists of over 6,000 women.

We are an active affiliate of the prestigious National Council of Women who, I am authorized to say, join me in urging the passage of this bill.

In brief, our federation is nonpartisan, is designed to improve the image of the American overseas, to lend aid to the needy, both American and foreign.

In this capacity, as well as in many others, we believe that we serve as unofficial two-way ambassadors. We provide college scholarships for American children so that they can return to this country for their education and thereby retain their American heritage.

Our objective is to promote better understanding and relations between the United States and other nations, to serve as an essential link, not only among Americans abroad, but also between American and foreign communities.

I do not appear before this honorable committee on behalf of vacationers, tourists or expatriates, nor the extremes ranging from hippy draft dodgers to highly paid executives, but rather for the middle class, hard working employees of American corporations, representing 75 percent of all those abroad whose work compels them to temporarily leave their country. They undergo hardships as a result of their overseas assignments.

We respectfully urge that you do not abandon these people who pay their taxes and are subject to foreign criticism because of their limited constitutional rights. Do not give them second-class citizenship.

To borrow and paraphrase a historical declaration, familiar to us all, do not give them taxation without voice in their representation.

We have long been active in seeking voting rights for Americans living overseas, and Congress has long been involved with this subject.

Hopefully, our goal is almost within reach.

We desperately need to improve our already unfortunate tarnished image abroad, and how better can we accomplish this much-to-be-desired goal than by giving these Americans first-class citizenship.

These Americans do not merely consist of the 6,000 members of FAWCO. According to our latest authoritative information, they number approximately 750,000, more than the population of any one of 12 States of our Union.

A bill, enacted by Congress in 1955, awarded voting rights in Federal elections to merchant marines, employees of the United States and members of the Armed Forces, all temporarily residing in foreign lands. I speak of the only disenfranchised group. Surely, uniformity and fairness seem more than appropriate.

As I understand the argument raised against the passage of this proposed bill, it is that we are uninformed, that we are so unaware of the issues and candidates facing the electorate that we do not possess the knowledge and intelligence to properly exercise our selection.

May I remind you that in this jet age the world is getting smaller and smaller, and the media is stronger and stronger.

Everything that daily occurs in this country is brought to the attention of Americans overseas just as promptly and just as completely as read in your morning newspaper or heard in your evening television or radio newscast.

Additionally, we visit our country. We are in touch with families and friends.

Having lived in Rome for 10 years, I do not bring you hearsay. I speak of my own personal knowledge.

One other point. Americans overseas have no true representation, no Congressman to write to. There exists, unfortunately, a lack of concern by holders and seekers of public office for these Americans—they cannot vote.

In conclusion, I reiterate my gratitude for permitting me to appear before you and earnestly solicit your favorable consideration of this meritorious legislation, so that disenfranchised Americans overseas may be able to enjoy the constitutional rights of all American citizens to participate in Federal elections.

Senator PELL. Thank you very much indeed, Mrs. Cohen, for a strong and compelling statement.

In connection with your reference to the Federal Voting Assistance Act of 1955, I believe that involved more a recommendation to the different States to adopt procedures on voting, procedures which now are having an effect.

I agree with you that action should be taken in this field. And that is why we have called these hearings to hopefully point out this need.

Thank you very much.

[Material submitted for the hearing record by Mrs. Cohen appears as exhibit 5 in the appendix of these hearings, p. 213.]

Senator PELL. Our next witness is Mrs. Marie Garber, administrator, Montgomery County, Md., Board of Elections.

STATEMENT OF MARIE GARBER, ADMINISTRATOR, MONTGOMERY COUNTY, MD., BOARD OF ELECTIONS

Mrs. Garber. Mr. Chairman, for the record my name is Marie Garber.

I am elections administrator for Montgomery County, Md., a community of almost 600,000 people, a suburb of the National Capital.

I appear before you today to support S. 2384 because I believe its enactment would enable a number of Americans to vote who cannot now do so.

In my community, I am charged with day-to-day responsibility for administering the agency of government through which people express their consent as to who shall govern them.

The two steps in this process are voter registration and balloting, and the one we are concerned with today is the firm—the determination of who can be enrolled as a voter.

As a Montgomery County election official, I am fortunately situated to facilitate full participation of qualified citizens in the electoral process.

First, I serve a community where interest in politics is high, and where local government is willing to fund efforts to serve the electorate.

Second, my State has been in the vanguard in enacting legislation to permit and encourage people to vote. Marylanders are proud of the record of our senior U.S. Senator, Mr. Mathias, as a defender and advocate of voting rights. His support of the Pell bill is only the most recent of his efforts in this area.

Maryland is one of the States which, years ago, adopted the Federal post card application for both absentee registration and voting by Marylanders living abroad.

After the enactment and judicial review of the Federal Voting Rights Amendments Act of 1970, Maryland moved promptly to adjust the constitution, statutes, and procedures affecting the electoral process in our State so as to achieve complete compliance with the act. Soon thereafter, the landmark decision in *Dunn v. Blumstein*, which essentially abolished durational residence as a qualification for voting, was properly implemented—first by administrative fiat and then by constitutional and statutory amendment.

Finally, our State makes local elections officials the ultimate judges of a citizen's qualifications for voting, as long as that judgment is exercised within the constraints imposed by Federal and State law.

A Maryland citizen who is overseas and who wants to vote must, like all Maryland voters, be a U.S. citizen, at least 18 years old, and a resident of the Maryland locality in which he seeks the franchise.

No longer—since *Dunn v. Blumstein*—must he have lived in the State a specified length of time. No longer—since the Federal Voting Rights Amendments Act—must he have taken the time to register in person before he left the country. But he must be willing to declare himself a resident of the State, and the Supreme Court, both in the *Federal Voting Rights* cases and in *Dunn v. Blumstein*, affirmed that Maryland is within its rights in limiting the franchise to residents.

Accordingly, the Maryland application for absentee registration and voting includes a statement that the applicant is a resident of the locality in which he seeks to vote.

If an overseas applicant equivocates on the declaration of residence statement—for instance, if he crosses out or alters that sentence on his application—I have no choice but to write to him to inquire as to his residence.

Now I interpret the residence requirement as broadly as possible. I ask him simply to state that he considers himself a resident of Montgomery County, Md., without any question as to whether or when he intends to return here.

But if he is not willing to make the simple positive declaration that he considers himself a resident of Montgomery County, Md., I must refuse him the vote.

Furthermore, unless he started the process of applying for absentee voting well ahead of election day, this additional roundtrip by mail to a foreign location may well make it impossible for him to receive and return the ballot in time for it to be counted in the canvass.

The situation is unfair. These people are U.S. citizens and, as such, they should vote.

But acting with all the discretion, dispatch, and diligence at my command, I am not permitted to let them vote.

I would welcome the kind of legislation you are discussing today. It would be one more tool for me to use to achieve my goal of 100 percent participation in the electoral process in my community.

I am submitting to your subcommittee samples of correspondence I have had with Marylanders living overseas who have sought to vote in my community. In most instances they did vote, because we interpreted the residence requirement simply and broadly, and because these citizens allowed enough time for the clarification of residence declaration to be made.

The fact that these citizens have taken the time to carefully detail their situations to elections officials, to start early in applying for registration and voting, and to persist in the process even when the officials back in the States must have seemed needlessly picayune—is proof to me that there is need for the legislation you are considering.

I will submit those materials to your committee for your perusal.

Senator PELL. Thank you very much.

[The materials referred to appear as exhibit 6 in the appendix of these hearings, p. 215.]

In view of the great distance some of our citizens are residing away from our Nation, do you believe that the application should be received earlier than 30 days, or do you think 30 days is adequate?

Mrs. GARBNER. Our experience suggests that they should start the process 2 months ahead of election day.

The Postal Service is not getting any faster.

Senator PELL. I think you are probably correct.

Mrs. GARBNER. Two full roundtrips overseas are necessary, and that process must be completed by the closing of polls on election day.

Senator PELL. The American postal system seems to be deteriorating, so I am not sure how much difference that makes, once you leave the United States.

Mrs. GARBER. Well, in order to take advantage of free postage, though, their ballots have to be deposited in U.S. Postal Service box outside of the country.

We are fortunate to be located here near the National Capital and the State Department has been very cooperative with us in getting absentee ballots to Americans overseas, whether or not they are there in the Foreign Service.

Senator PELL. Thank you very much indeed for an excellent statement.

The last witness this morning is Dr. Richard G. Smolka.

I have had an opportunity to read his statement. I welcome you here, Dr. Smolka. You may proceed.

STATEMENT OF DR. RICHARD G. SMOLKA, DIRECTOR, INSTITUTE OF ELECTION ADMINISTRATION, AMERICAN UNIVERSITY, WASHINGTON, D.C.

Dr. SMOLKA. Thank you very much, Senator. I am not going to repeat what is in the written statement.

Senator PELL. The statement will appear in the record in full.

Dr. SMOLKA. Thank you.

I would like to make two points that probably were not made by the preceding witnesses.

From the point of view of State law, it seems to me that persons who reside overseas, for purposes of discussion and how they are affected by this legislation, can be divided into three groups.

The first group are those who maintain a residence in the State.

The second group are those who have some kind of legal residence, although they may not have a physical residence or a fixed place of abode.

The third group are those who have no residence and claim none.

Now, this legislation would benefit all three groups. The first group, though, should be protected by State laws as the situation now stands.

Unfortunately, the administrative complications make life difficult for some of them.

The second and third groups run into both legal and administrative problems in attempting to exercise the vote.

It is to those latter two groups that this legislation will be most beneficial.

This legislation, I believe, breaks no new ground and should be no cause for concern by people who are thinking about opening up the process to people who should vote.

Actually, all of the principles which this legislation reflects are already in the law. They are encompassed in the Voting Rights Act and the Federal Voting Assistance Act, so that what this merely does is extend to citizens who do not now have certain rights and benefits the rights and benefits which should be theirs as citizens of this country.

There is one point that I would like to make with respect to the purpose of the legislation, as the bill is drafted. It says that the purpose of the act is to abolish for citizens outside of the United States domicile and residence requirements which precondition voting in Federal elections.

In my point of view, there is no need to put that kind of language in. And I think that that kind of language would unduly alarm some people.

I believe that there is ample precedent in the Voting Rights Act, which indicates that both the National Government, by the Voting Rights Act, and in State government action by their own legislation, are willing to grant to nonresidents the right to vote under certain conditions. And these conditions are primarily that the citizen has left the State and that he does not qualify to vote in any other State.

So that for absentee voting overseas, I do not see any real distinction between this group of citizens and those who vote absentee within the State.

The biggest problem it would appear to me, which is beyond the law, would be that of the ballot turn-around time—how long it takes the voter to get the ballot and how long it takes them to get it back.

This is an administrative problem but it could get a significant boost from this legislation.

I refer to your provision for free absentee ballots mailing, similar to the privilege which the military enjoys. I think this would help a good deal because it means that the citizens can act quickly—as soon as they get it, get it back. As for the election offices, they can mail it without being worried about whether they have the right amount of postage on the particular material that they have.

It would speed things up, and I think that would be very helpful.

All in all, I think that this particular legislation would remedy a wrong. It would help citizens who are now being denied constitutional rights. And it is in keeping with the spirit of voting reform legislation which has been enacted by the Congress for the past 10 years or so. I certainly hope that it is passed.

Senator PELL. I thank you very much indeed, Dr. Smolka, for the suggestions and your testimony.

[The written statement of Dr. Smolka follows:]

STATEMENT OF DR. RICHARD G. SMOLKA, DIRECTOR, INSTITUTE OF ELECTION ADMINISTRATION, AMERICAN UNIVERSITY, WASHINGTON, D.C.

My name is Richard G. Smolka. I am professor of government at American University in Washington, D.C. and have been Director of the Institute of Election Administration at the University since 1971. I am also editor of *ELECTIONews*, a monthly newsletter for election officials at all levels of government, and author of a column on elections, "The Ballot Box"—which is published weekly in *County News*, the official publication of the National Association of Counties.

The Institute of Election Administration was established at American University in March of 1971 to study the entire elections process, to acquaint election officials with a variety of methods of administering elections accurately, economically, and quickly, while protecting against fraud and assisting in the training of election administration personnel.

During the past year, the Institute of Election Administration completed a study for the Office of Federal Elections which identified the causes of election difficulties in several jurisdictions. Some of those findings are relevant to the problem which S. 2384 addresses, and will be discussed where appropriate in this statement.

As many witnesses preceding me have indicated, the right to vote for overseas American citizens has been denied or abridged by the effect or the interpretation of state law or by state or local government failure to provide timely administrative processes by which this right may be exercised.

Persons who reside overseas may be classified into three groups for purposes of discussion. There are those who maintain a residence, a legal address or a mailing address within a state, those who claim residence within a state although they do not maintain a home or any address, and those who do not claim residence within any state nor declare any intention of returning to a specific state within the United States.

State law protects citizens in the first category in more than half the states. Those in the second category may encounter legal complications or administrative difficulties. Citizens in the third category are effectively denied the franchise. These citizens have the right to vote but no place at which to exercise that right.

Even the more fortunate citizens overseas who by law should be entitled to vote not only for president but for all the offices on the ballot, have encountered administrative difficulties when attempting to register absentee.

The legislation before this committee would have the salutary effect of enfranchising voters in the states which require a residence of a fixed address and it would provide a legal basis for voting for those who claim no residence within a state. Further, it could provide the stimulus for administrative reform to ensure that all citizens, not only those overseas, have the maximum opportunity to exercise a constitutional right to vote even though they are temporarily absent from their voting districts.

This legislation breaks no new ground. The use of the post card application ballot as prescribed in S. 2384 is very similar to the one used by servicemen which has proven workable for many years. The provision that such material may be sent free of postage is also similar to the military voting procedure. This factor alone, by reducing "turn around" time, should be instrumental in speeding the ballot on its way overseas and back again, thereby increasing the probability that the ballot will arrive in time to be counted.

The Office of Federal Elections is beginning a study of absentee voting and absentee registration procedures and I think that the study will eventually find that many absentee ballots are rendered invalid or not sent in at all because they were received too late, either by the voter or by the election office.

The provision of free postage for mailing absentee voting materials overseas and back is one which could be extended to all voting materials both home and abroad with great benefit to the electorate. The National Association of Secretaries of State has passed a resolution favoring this concept by a unanimous vote.

The declaration of purpose of this legislation states that "it is the purpose of this Act to *abolish*, for citizens outside the United States, *domicile and residence requirements* which precondition voting in Federal elections and to establish uniform standards for absentee registration and balloting by such citizens in Federal elections." (Sec. 2, Par. 6b; emphasis added).

I believe that this language is unnecessary. It is the objective of this legislation to establish uniform standards for absentee registration and voting for overseas citizens and to secure for them the right to vote in federal elections. It is not necessary to abolish domicile or residence requirements or to declare the intent of so doing. It is necessary only to ensure that those who do not meet the test of state residence as described are not denied the right to vote because they fail to meet that standard.

Residence has long been the basic factor in determining not only eligibility to vote but also *where* a voter may vote and for what officers. All states require voters to be residents even though they do not require a physical presence and the Supreme Court has upheld the concept of residence even while striking down durational residence requirements. The Voting Rights Act Amendments and the laws of some states, nevertheless, permit former residents to vote for president. The legislation being considered by this committee concerns "absent residents" and "former residents."

For this reason, I would recommend that the language of Sec. 4(a) be similarly worded. This language provides that an absentee ballot may be cast in the state or political subdivision in which the voter resided "immediately prior to his removal"—if he does not satisfy the residence requirements of any other state or subdivision. The Voting Rights Act Amendments are intended to enfranchise persons who have moved into a state within the thirty day period just prior to an election and for that reason are unable to vote from their present residence. This is the same principle applied to a different situation.

The other difference between this legislation and the Voting Rights Act as amended is that the legislation now being considered applies to all federal elections and not only presidential elections.

I am unaware of any opposition to the idea of extending the Voting Rights Act to include all federal elections and believe that there would be no objection to such a provision here.

It should be noted however that the passage of legislation is but the first step toward securing the franchise for persons now denied the vote. Unless there is widespread dissemination of this information overseas, many persons will be unaware of these provisions just as many were unaware of the provisions of the Voting Rights Act Amendments of 1970. Unless there is adequate education and training of election officials, lack of knowledge, inadequate procedures or lethargic administrative practices may yet deny citizens overseas their vote.

Without this legislation and the clear mandate of federal law, it is much less likely that all the states and all the subdivisions throughout this country will respond to the needs of voters overseas. This legislation establishes responsibility, the essential element which has been lacking up to now, and makes it clear which state and which subdivision has an obligation to the citizen residing abroad.

Senator PELL. The subcommittee will recess until 10 o'clock tomorrow morning.

[Whereupon, at 11:55 a.m., the subcommittee recessed, to reconvene at 10 a.m., Thursday, September 27, 1973.]

[The letter to Chairman Pell from Senator George Aiken, a written statement by Senator Bill Brock, and letters to Chairman Pell, subsequently received, from Senator Hubert H. Humphrey and former Senator John Sherman Cooper, are as follows:]

U.S. SENATE,
COMMITTEE ON FOREIGN RELATIONS,
Washington, D.C., September 21, 1973.

HON. CLAIBORNE PELL,
Chairman, Subcommittee on Privileges and Elections,
U.S. Senate,
Washington, D.C.

DEAR CLAI: I understand your Privileges and Elections Subcommittee is holding hearings next week on a measure to provide uniform procedures for absentee voting in Federal elections for citizens outside the United States. The Chairman of the Government Operations Committee of the Vermont Senate has studied the proposed legislation and on the whole goes along with it.

He does, however, suggest that the required oath be eliminated or that a provision be added that the Notary or other official administering this oath provide this service without fee. A Vermont couple in Louisiana did not vote Town Meeting Day because a Louisiana Notary would have charged them \$5.00 each to validate their ballots.

Another concern that was raised is not before your Subcommittee at this time and deals with the question of keeping local voting check lists up-to-date to prevent an individual from being listed in more than one municipality. The Vermont Legislature attempted to meet this problem through the use of a card system received when they registered in one community. The card would be mailed to the municipality where they were previously registered giving notice that their name should be removed from that community's check list. This legislative action, however, was vetoed.

Vermont provisions for absentee voting are designed to make it easy for the individual who is away to vote. I was supplied copies of material that is sent to these absentee voters and I am forwarding them to you for your information.

Sincerely yours,

GEORGE D. AIKEN.

(17 V. S. A. § 126)

OFFICIAL APPLICATION

For Absent Voter Ballot

.....
 (Name of Applicant to be written in above by Town Clerk)

WARNING—Penalty for making or assisting in making illegal application—fine of not more than one hundred dollars nor less than ten dollars and loss of voting rights for five years.

STATE OF VERMONT,

County of

I,

do hereby make application for absent voter ballot for use at the election or meeting to be held on
 (Date)

and in support of such application state that I am a resident, a citizen and a legal voter of the (town) (city) of

that this application was solicited by
 (If not solicited write in "No One")

and that I am unable to vote in person by reason of being:

- (1) physically unable to attend in person at the polling place;
 (2) necessarily absent from my residence continuously from the day of, 19
 until after said election (or meeting).

(Cross out
 line or
 lines not
 applicable)

.....
 (Signature of Applicant)

.....
 (Street Address of Applicant)

INSTRUCTIONS FOR ABSENT VOTERS

On receipt of these ballots you will proceed to mark the same in accordance with the instructions printed thereon.

If you are necessarily absent from the town or city continuously from a date more than ten days prior to the election or meeting, make out the affidavit printed upon the envelope, striking out (1) and (3) (or if you are physically unable to mark the ballots, (1), (3a) and (4) should be struck out, and swear to the same before a notary public or an officer authorized by a regulation of the armed forces of the United States, or any other officer qualified to administer oaths. Place the ballots in the envelope upon which is printed the words "Absent Voter Ballots of" address to the town clerk of the town in which you are a legal voter and cause the envelope with ballots therein contained to be delivered to the town clerk. Such ballots in order to be voted, must reach the town clerk to whom they are directed in time to be deposited by him with the proper election officials before the closing of the polls on election day.

If you are to be necessarily absent from the town or city on the day of the election or meeting but not continuously for the ten days preceding, mark the ballots in the town clerk's office and make out the affidavit printed upon the envelope, striking out (1) and (3) (or if you are physically unable to mark the ballots, (1), (3a) and (4) should be struck out) and swear to the same before the town clerk or his assistant. Place the ballots in the envelope upon which is printed the words "Absent Voter Ballots of" and deliver the same with ballots therein contained to the town clerk or his assistant before leaving the office.

If you are physically unable to attend in person at the polling place, mark the ballots in the presence of the justices who bring the ballots to you but without exhibiting the same to any person unless you require assistance, make out the affidavit printed on the envelope, striking out (2) and (3) (or if you are physically unable to mark the ballots, (2) (3b) and (4) should be struck out) and swear to the same before one of the justices of peace. Place the ballots in the envelope upon which is printed the words "Absent Voter Ballots of", and deliver the same with ballots therein contained to the justices of the peace who bring them to you.

Instructions For Members of Armed Forces of the United States Only

If you are physically unable to personally mark ballots they may be marked according to your direction by the person who administers the oath, in which case such fact shall be stated over his signature and rank or title.

PE-6

ABSENT VOTER BALLOTS OF

STATE OF }
 COUNTY OF } SS.

I,, do solemnly swear

that I am a resident of the town (city) of
 State of Vermont
 and am a legal voter in said town (city); and that I am unable to vote in
 person by reason of being

- (1) physically unable to attend in person;
 (2) necessarily absent from said town (or city);
 (3) that being physically unable to mark these ballots,
 they were marked at my direction by

(a), Justice of
 the Peace in the presence of

Justice of the Peace

(b)
 (Official Title)

and by him (them) sealed in this envelope without
 being exhibited to any other person,

- (4) that the ballots enclosed herein were marked by
 me personally and enclosed in this envelope and sealed
 by me without being exhibited to any person.

(Cross
 out line
 or lines
 not
 applicable.)

.....
 (Signature of absent voter)

I,, hereby certify

that at the request of
 an absent voter, I marked the enclosed ballots and sealed the same in this
 envelope without exhibiting them to any person other than the voter and

the justice who accompanied me.

.....
 (Official Title)

Subscribed and sworn to me this.....day of

....., 19.....

.....
 (Signature of Official)

.....
 (Official Title)

(The following to be used only in the case of an absent voter physically
 unable to attend at the polling place and not absent from his residence.)

We, justices of the peace, delegated according to law to call upon the
 above named absent voter and procure the marking of his absent voter ballots
 enclosed herein, hereby certify that we have satisfied ourselves that said
 absent voter is properly qualified to vote as such by reason of being physically
 unable to attend in person at the polling place.

STATEMENT OF HON. BILL BROCK, A U.S. SENATOR FROM THE STATE OF
TENNESSEE

Congress has on numerous occasions expressed an interest in the manner in which states permitted persons to vote by absentee ballot, and, while generally stopping short of actually prescribing procedures, has clearly pointed the way toward easing restrictions which tend to reduce enfranchisement.

In the Federal Voting Assistance Act of 1955, Congress exhorted the states to provide simplified procedures for absentee registration and voting for four categories of persons:

(1) Members of the Armed Forces while on active service and their spouses and dependents.

(2) Members of the Merchant Marine of the U.S. and their spouses and dependents.

(3) Civilian employees of the U.S. serving outside the U.S. and spouses and children.

(4) Members of religious groups or welfare agencies assisting members of the Armed Forces, who were officially attached, and their spouses and dependents.

Amendments to the Federal Voting Assistance Act in 1968 struck out the latter two categories and substituted simply:

"Citizens of the United States temporarily residing outside the territorial limits of the United States and the District of Columbia and their spouses and dependents when residing with or accompanying them."

The Voting Rights Act Amendments of 1970 abolished durational residency requirements for voting in Presidential elections, and required the states to establish procedures whereby persons moving from one State to another less than 30 days prior to a Presidential election could vote by absentee ballot in the State in which they resided immediately prior to their move. Also in the 1970 Act, Congress urged the States to establish nationwide uniform standards relative to absentee registration and absentee balloting in Presidential elections, but they did not go so far as to actually prescribe the procedures.

All of these developments point to the Congressionally recognized need to make it easier for citizens to vote. There remain, however, a number of obstacles in that regard, and these obstacles require the continued attention of legislation.

Despite the fact that Congress urged the states to simplify and provide procedures for absentee voting, if an individual is unable to cite a residence within the State, his chances of receiving an absentee registration application are slim. According to the Bi-partisan Committee on Absentee Voting, "two-thirds of the States effectively disenfranchise or impair the ability of a nonresident domiciliary to vote in congressional elections . . ." and ". . . barely half of the States (26) and the District of Columbia would clearly allow him to register and vote absentee (in elections for President)."

By some estimates, this would affect some $\frac{3}{4}$ million persons, and others have gone as high as 1.5 million, although the Bureau of the Census estimated approximately 150,000 in 1970. Census also admitted that the accuracy of their figure was certainly open to dispute.

In moving to extend the franchise to Americans living abroad, however, we should be careful not to put ourselves in the position of legitimizing certain activities, by expressly conferring voting rights upon persons who have fled the country in order to avoid the responsibilities of citizenship.

Three such types occur to me. They are:

- 1) Persons living abroad so as to avoid the payment of income taxes.
- 2) Persons living abroad so as to avoid U.S. military service.
- 3) Persons living abroad to avoid prosecution under the laws of the nation, or of the states.

However much we may desire to expand the franchise, it would clearly be irresponsible to grant the rights of citizenship to these classes, who by their actions have chosen to abrogate the responsibilities which accompany those rights.

I therefore urge this committee to include within the legislation it reports out, language which will make it clear that we do not condone tax-dodging, draft-dodging, military desertion or unlawful flight from justice.

Failure to amend the legislation in this manner will cripple its chances for passage, and thus cancel the benefits of what is otherwise a good and needed law.

With this single caveat, I strongly support this legislation. Under present laws, hundreds of thousands of good Americans are being disenfranchised. This situation must be corrected.

This bill is a natural extension of the easing of voting requirements and broadening of civil rights which has been underway for two decades. It is, in addition, very much in keeping with my own views with regard to the importance of easing voting restrictions, considerations which led me to strongly support the post card registration bill, recently passed by the Senate.

Furthermore, I consider it likely that the current restrictions may be unconstitutional. The Supreme Court has held that the right to travel freely across state borders is a fundamental constitutional right, striking down both voting welfare residency requirements.

Congressional action will end any constitutional problems which might exist in this area.

It is my earnest hope that this subcommittee will report out a bill, containing the safeguards I have mentioned, guaranteeing once and for all the rights of Americans, wherever they happen to reside.

U.S. SENATE,
COMMITTEE ON AGRICULTURE AND FORESTRY,
Washington, D.C., September 26, 1973.

HON. CLAIBORNE PELL,
Subcommittee on Privileges and Elections, Committee on Rules and Administration, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: I take this opportunity to express my full support for the development of legislation by the subcommittee to extend the voting privilege to United States citizens residing outside the United States regardless of residence or domiciliary requirements imposed by State and local law.

As one who has introduced and worked for the enactment of legislation to simplify registration and voting procedures, I strongly favor these further legislative initiatives toward guaranteeing American citizens the right to vote. I am a cosponsor of an original bill, S. 2102, the Overseas Citizens Voting Rights Act of 1973, introduced by Senator Mathias. And I have been gratified to note your introduction of further legislation, S. 2384, in this highly important area.

When a substantial majority of some one million or more American citizens residing abroad are denied this right due to unclear or restrictive voter registration laws and procedures in over half of the States of this Nation, it is clear that Congressional action is demanded to affirm their voting rights in Federal elections. The franchise privilege is fundamental to the meaning of American citizenship and is crucial in maintaining a strong democracy. It is profoundly wrong that Americans overseas should be relegated to second-class citizenship by the denial of the franchise.

A partial step toward protecting this privilege, and with respect to Presidential elections, was taken with the enactment of the Voting Rights Act Amendments of 1970. But it is clear that further action is required with respect also to Congressional elections, and to simplify registration and absentee ballot procedures and requirements. State requirements of domicile or residence and physical presence at the time of voting can become an anachronism in a time of increasing population mobility, and they must no longer be permitted to deny the exercise of the franchise by Americans overseas in Federal elections.

I urge the subcommittee to expedite legislation on this priority matter. I would appreciate the inclusion of this statement of my views in the subcommittee hearing record.

Sincerely,

HUBERT H. HUMPHREY.

COVINGTON & BURLING,
Washington, D.C., October 17, 1973.

HON. CLAIBORNE PELL,
Chairman, Subcommittee on Privileges and Elections of the Committee on Rules and Administration, U.S. Senate, Washington, D.C.

DEAR SENATOR PELL: I am writing to express my support for the legislation pending before your Subcommittee, S. 2384 introduced by Senator Pell, and S. 2102 introduced by Senator Mathias, which would assure the right of U.S. citizens residing overseas to vote in Presidential and Congressional elections in their state of last voting domicile.

A number of distinguished witnesses appeared before your Subcommittee September 26-27, 1973 to present testimony supporting this legislation, and I have read their statements. Although I was not able to be present for those hearings, I desire to submit my views in support of this legislation.

As you know, I have long been on record as introducing, while in the Congress, and supporting uniform protection of the right to vote for all qualified American citizens residing in this country. I believe it is equally important for Congress to establish in statutory language, as in the bills before your Subcommittee, that the right to vote—at least in Federal elections—should also be assured to U.S. citizens residing overseas.

There is no doubt in my mind from my experience abroad, that American citizens residing overseas are adequately informed about news, issues, and candidates in the United States, and are qualified to vote in Federal elections. In this age of satellite television, worldwide circulation of weekly news magazines, and jet delivery of letters and newspapers from home, one must conclude that Americans residing overseas do have sufficient opportunity to participate fully in the federal election process in their state of last voting domicile. I found that they want very much to participate in the political processes of their country.

I have noted that the Department of Justice submitted a statement in opposition to the proposed overseas voting legislation. While Senator Goldwater and others will submit more detailed legal rebuttals to the Department of Justice statement, I am hopeful that the Attorney General will in due course have occasion to reconsider this position which affects an estimated 750,000 American citizens living abroad.

I want to commend you and Senator Mathias and the other sponsors of the pending bills and your Subcommittee for taking the initiative in securing the franchise for U.S. citizens overseas.

Yours sincerely,

JOHN SHERMAN COOPER.

VOTING BY U.S. CITIZENS RESIDING ABROAD

THURSDAY, SEPTEMBER 27, 1973

U.S. SENATE,
COMMITTEE ON RULES AND ADMINISTRATION,
SUBCOMMITTEE ON PRIVILEGES AND ELECTIONS,
Washington, D.C.

The Subcommittee met, pursuant to recess, at 10 a.m. in room 301, Russell Senate Office Building, Senator Claiborne Pell [chairman of the subcommittee] presiding.

Present: Senator Pell [presiding].

Also present: Senators Goldwater and Roth.

Subcommittee staff present: James H. Duffy, chief counsel; James S. Medill, minority counsel; and Mary G. Daly, secretary.

Full committee staff present: William McWhorter Cochrane, staff director; Joseph E. O'Leary, professional staff member (minority); Livingston L. Biddle, Jr., professional staff member; and Jack Sapp, editorial assistant.

Senator PELL. The Subcommittee on Privileges and Elections will come to order.

Our first witness this morning is the Senator from Arizona, Senator Goldwater, who has long taken an interest in this subject and whose name is mentioned frequently and favorably in these deliberations.

STATEMENT OF HON. BARRY GOLDWATER, A U.S. SENATOR FROM ARIZONA, ACCOMPANIED BY TERRY EMERSON, COUNSEL

Senator GOLDWATER. Thank you, Senator.

Mr. Chairman, 3 years ago there existed an incredible maze of State and local rules that deprived fully qualified citizens from voting for the highest office in the land for no other reason than their inability to meet some unnecessary and outmoded legal technicality. Up to 5 million citizens of voting age were prevented from voting in Presidential elections solely because they had made a change of household during the year preceding the election. Another 5 million citizens were denied the right to vote because they were away from home on election day and were not allowed to obtain absentee ballots. The Supreme Court had put its stamp of approval on these restrictive practices in 1965 by upholding their constitutionality as applied in Presidential elections.

In these circumstances, it appeared nothing could be accomplished by any legislation short of a constitutional amendment. However, we made a fresh study of early court decisions and discovered that there was a consistent principle of law running through these cases which supports the power of Congress to protect rights which are inherent

in national citizenship. Since these rights belong to U.S. citizenship rather than citizenship of a State, Congress can protect them under its general legislative powers. We also learned that the right to vote for Federal offices is one of the rights that is directly secured by the Constitution.

Now, this proposition had never been tested by Congress before, which had limited its work in the voting field to the traditional civil rights area of discrimination against minority groups. In 1970, it was still widely accepted that States retained ultimate authority to set their own election procedures. Therefore, when I decided to make an attempt at correcting the problem, I wanted to present the strongest conceivable case for the exercise of Congress' power.

This explains why the legislation which I introduced in February of 1970, with 29 other Senators, including yourself, Mr. Chairman, proposed to overhaul the residency and absentee voting regulations in Presidential elections only. Treading in uncharted waters, as we were treading, this also explains why I set out in the legislation four separate grounds on which Congress asserted its constitutional power to enact uniform election procedures. With hindsight I can say it is fortunate we did this, because the Supreme Court relied on each of these separate grounds in upholding the law. I am pleased to see you refer to these same grounds in section 2 of your bill.

This case, Mr. Chairman, which is *Oregon versus Mitchell*, clearly lays the constitutional framework for expanding the initial start which we made. In fact, the separate opinion of Justice Stewart, joined by Chief Justice Burger and Justice Blackmun, practically encourages Congress to extend the original law to all Federal elections. In finding that our law was constitutional on the basis of Congress' authority to secure the rights and privileges of U.S. citizenship, Justice Stewart said:

I have concluded that while section 202 applies only to Presidential elections, nothing in the Constitution prevents Congress from protecting those who have moved from one state to another from disenfranchisement in any Federal election, whether Congressional or Presidential.

End of his quote.

Consequently, I believe you are on safe ground today in seeking to expand upon the purposes of our earlier law to cover voting in Congressional as well as Presidential elections.

Mr. Chairman, I applaud the legislation you have introduced to do this, and I am happy to join with you today in this effort. I would only recommend that you broaden your bill to include all the American citizens who were protected in our first legislation and not limit the bill's coverage to citizens outside the United States. If we permit overseas Americans to vote in all Federal elections but do not give this same right to other absentee American citizens who are away from their homes elsewhere within this country, we will be building back into the law the same kind of needless discrimination among citizens that we started out to correct.

Also, free postage should be authorized with respect to all absentee ballots, mailed from within the United States, not as to overseas mail alone.

Mr. Chairman, my office has just completed a survey of State absentee ballot figures, which I offer for the record. We found that 4.1 million citizens cast Presidential absentee ballots in 1972, a jump of 26 percent over 1968. Our new law obviously had a favorable effect. I suggest we build upon this good start by allowing all several million of these voters to participate in Congressional and Presidential elections, not just the ones overseas.

[The information referred to above follows:]

PRESIDENTIAL ABSENTEE VOTING, 1968-72

State	1968			1972		
	Total votes	Total absentee	Percent absentee	Total votes	Total absentee	Percent absentee
Alaska.....	84,902	6,949	8.18	98,581	9,024	9.15
California.....	7,251,587	348,204	4.79	8,367,862	406,459	4.86
Colorado.....				944,437	59,040	6.25
Connecticut.....	1,256,232	75,831	6.04	1,409,221	99,614	7.07
Delaware.....	214,367	5,431	2.53	235,278	7,403	3.44
District of Columbia.....	170,578	3,513	2.05	163,657	5,626	3.43
Hawaii.....				270,274	12,409	4.59
Indiana.....				2,125,529	125,000	5.88
Kansas.....				911,907	45,000	4.93
Missouri.....	1,809,502	92,758	5.12	1,852,589	93,590	5.05
New Hampshire.....	297,298	24,069	8.09	315,993	29,064	9.19
New Jersey.....				2,982,091	121,072	4.05
New Mexico.....	327,350	12,638	3.86	385,457	18,945	4.91
North Carolina.....				1,502,633	50,000	3.32
Pennsylvania.....	4,747,928	¹ 132,413	2.80			
Oklahoma.....				1,029,900	40,932	3.97
Rhode Island.....	384,938	14,201	3.68	411,966	14,876	3.61
South Carolina.....	666,978	16,111	2.42	673,960	36,385	5.40
Vermont.....				185,323	14,928	8.05
Virginia.....	1,361,491	57,890	4.25	1,457,019	65,903	4.66
Washington.....	1,304,281	¹ 106,833	8.20	1,519,771	² 169,731	11.17
Total.....	19,877,432	896,841	4.51	26,807,448	1,425,001	5.32
United States.....	³ 73,211,875	3,301,856	4.51	⁴ 77,734,330	4,135,466	5.32

¹ Feigert, Components of Absentee Voting, 4 J. Northeastern Pol. Sc. Assocs. 491, 495 (1972).

² 188,589 absentee ballots issued, less 10 percent invalidated or not returned.

³ Scammon, 8 America Votes (1968).

⁴ 31 Cong. Q. Weekly Rep. 308 (1973).

Note: The author is particularly indebted to Commander Inman, Federal Voting Assistance Task Force, and Virginia Graham, Congressional Research Service, for providing data included in the above table.

Senator GOLDWATER. Mr. Chairman, I do agree with you that special care must be taken to spell out the voting rights of citizens abroad. I can give you an example of what happened last year as a good reason for nailing these rights down. I am referring to New York State, which interpreted its election code to require that no one could file a valid application for absentee voting unless he first possessed a fixed, permanent, and principal home in the State. This means an absentee citizen had to be rich enough to keep up two homes, one in the State and one overseas. Now, I appeared in a Federal court case in behalf of citizens abroad, but the judge who decided the case never did reach the issue of whether a State could make a wholesale exclusion of citizens on the basis of their wealth. So this remains an undecided question.

Your bill would wisely resolve this question beyond any possibility of a wrong interpretation, and I agree fully with your purpose. I believe you are on solid constitutional ground in securing the vote for any American outside the United States who intends to return to the general area of his last residence, and who considers himself to be a

voting resident of that State. This is the traditional test of residence, which is based on an individual's attitude of mind, and I believe Congress can legislate it into the law for Federal elections in order to avoid the use of 51 different definitions in each of the States and the District of Columbia.

Where I am uncertain about bumping into the Constitution is compelling a State to allow persons to vote who never intend to return. The Constitution provides for the choosing of Presidential electors from each State, and this has been read by the Supreme Court as giving the State an authority to require that its voters shall be bona fide residents. I personally believe the key legal issue is whether or not the American abroad has a distinct and direct interest in Federal elections similar to that of a citizen remaining at home. In my opinion he does. The U.S. citizen overseas has a great interest in Federal social security laws and civil service retirement changes, and is directly affected by national trade laws, the national defense strength, treaties, and many other matters, all of which fall within the responsibility of both the Federal executive and legislature. Consequently, it may be you can protect the vote for these Americans, too, who do not plan to return.

Mr. Chairman, at this point I want to applaud the Department of Defense for its initiative in obtaining the first professional survey of civilian voters abroad. As you know, the study reveals that there are currently residing abroad 1,005,000 American citizens, not including Federal employees and servicemen. Of these, 151,000 voted in the 1972 election. Another 64,300 persons tried to vote but their applications for absentee ballots were not answered in time or not at all. This verifies the importance of a provision such as you have included in section 5 of your bill, calling for the mailing of the printed ballots promptly after they are requested.

The study also shows that there are 368,000 Americans of voting age overseas who are not now eligible to vote. They would all appear to become eligible by the terms of your bill.

Mr. Chairman, I notice you also have addressed your bill to the problem of the mere casting of a ballot by a citizen that might subject him to a State income tax. I share your concern with this problem, and I tried to ease it before the 1972 election, by getting accurate information for the overseas citizens. The Library of Congress canvassed all the States for me, and I learned that the problem was not nearly so great as has been anticipated. Ten States have no income tax at all, 13 States exempt from tax all citizens who are absent for extended periods, and 27 States exempt the first \$25,000 of income earned abroad. The overseas citizen is subject to tax on all his income in only eight States, and one of these grants a tax credit for any foreign tax paid. I have a complete list of these States and I would like this to appear with my statement.

Senator PELL. It will, without objection.

[The information referred to above follows:]

SUMMARY OF STATE TAXATION OF AMERICANS ABROAD
(OTHER THAN FEDERAL EMPLOYEES)

A. States With No Income Tax (10)

Connecticut, Florida, Nevada, New Hampshire, New Jersey, South Dakota, Tennessee, Texas, Washington and Wyoming

*B. States Exempt All Income Earned Abroad by Domiciliary** (13)

Alaska, Arizona, California, Delaware, Illinois, Maine, New York, Oregon, Pennsylvania, Rhode Island, Utah, Vermont, West Virginia

C. States Exempt Income Earned Abroad to Same Extent as Federal Law, Generally \$25,000 (27)

Colorado, Delaware, Georgia, Hawaii, Idaho, Indiana, Illinois, Iowa, Kansas, Kentucky, Maine, Maryland, Michigan, Minnesota, Montana, Missouri, New Mexico, New York, Nebraska, North Dakota, Ohio, Oklahoma, Oregon, Vermont, Virginia, West Virginia, Wisconsin

D. States Granting Tax Credit for Amount of Foreign Income Tax Paid (4)

Hawaii, Iowa, Montana, North Carolina. [Massachusetts allows credit for Canadian income tax only.]

E. States Granting Deduction for Amount of Foreign Income Tax Paid (2)

Colorado, Arkansas

F. States With Broad Income Tax (8)

Alabama, Arkansas, D.C., Louisiana, Massachusetts, Mississippi, North Carolina, South Carolina

Senator GOLDWATER. The question of State tax brings up the matter of Federal tax, and I am happy to tell you that the Internal Revenue Service has issued clear regulations in this regard. Federal law generally allows citizens living abroad to exempt up to \$25,000 of their income earned overseas, and the IRS has assured me, in writing, that no person who casts an absentee ballot from abroad would, in any way, jeopardize this exemption.

Mr. Chairman, I ask that this official letter be printed with my remarks.

Senator PELL. Without objection.

[The letter referred to follows:]

DEPARTMENT OF THE TREASURY,
INTERNAL REVENUE SERVICE,
Washington, D.C., August 28, 1972.

Hon. BARRY GOLDWATER,
U.S. Senate,
Washington, D.C.

DEAR SENATOR GOLDWATER: This is in reply to your letter dated August 16, 1972, regarding the possible effect that voting by absentee ballot by United States citizens residing abroad may have on their claiming the exclusion from gross income provided by section 911(a)(1) of the Internal Revenue Code of 1954.

Section 911(a)(1) of the Code provides, in relevant part, that the following items shall not be included in gross income and shall be exempt from Federal income taxation. In the case of an individual citizen of the United States who establishes to the satisfaction of the Secretary or his delegate that he has been a bona fide resident of a foreign country or countries for an uninterrupted period which includes an entire taxable year, amounts received from sources without the United States (except amounts paid by the United States or any agency thereof) which constitute earned income attributable to services performed during such uninterrupted period.

You forwarded with your letter a copy of a report prepared by the American Chamber of Commerce of Venezuela. That report and your letter indicate concern that if a United States citizen residing abroad signs an application for registration to vote in one of the States and represents in such application no more than that he intends to return to that State as his domicile, he may thereby jeop-

*The length of absence required to qualify a citizen as a domiciliary differs from State to State.

ardize or forfeit his entitlement to the section 911 exclusion from gross income based on his claim of bona fide residence in a foreign country. You are referring in particular to Internal Revenue Service Publication 54(10-71) *Tax Guide for U.S. Citizens Abroad*, 1972 Edition, which provides on page 4:

"A U.S. citizen living abroad may vote by absentee ballot in elections held in the United States (national, State, and local) without jeopardizing his eligibility for tax exemption as a bona fide resident of a foreign country. Such voting will not, of itself, nullify the taxpayer's status.

"However, where a U.S. citizen makes a representation to the local election official regarding the nature and length of his stay abroad that is inconsistent with his representation for purposes of the tax exclusion, the fact that he made the representation in connection with absentee voting will be considered in determining his status for the exclusion, but will not necessarily be conclusive."

You are concerned that the "inconsistent representation" language of the above-quoted material might be interpreted to mean that a representation by a taxpayer of domicile in a State and of an intent to ultimately return there is not compatible with the taxpayer's claim of bona fide residence in a foreign country for purposes of section 911 of the Code. The Service has held in a recently published ruling, Revenue Ruling 71-101, C.B. 1971-1, 214:

"[G]enerally the exercise by a citizen of the United States of his right to vote in National, state, or local elections in the United States by absentee ballot is not an action that would affect the length or nature of his stay outside the United States and consequently would not jeopardize the exemption under section 911(a) (1) of the Code. However, where absentee voting in the United States involves a representation to the local election official regarding the nature and length of the taxpayer's stay abroad that is inconsistent with the taxpayer's representation of intention for purposes of section 911 of the Code, the fact that he made the representation in connection with absentee voting will be taken into account in determining his status under section 911 of the Code, *but will not necessarily be conclusive.*" (Emphasis added.)

It is our conclusion that "inconsistent representation" as referred to in the above cited publications does not refer to a mere statement by a taxpayer that he considers himself a voting resident of a State and ultimately intends to return to that State as his domicile. Such a statement is not incompatible with a taxpayer's claim of bona fide residence in a foreign country. Instead, "inconsistent representations" refer to other representations which the taxpayer may have made to the Service regarding the *specific* nature and length of his stay in a foreign country. If a taxpayer in support of his claim to the section 911 exclusion from gross income makes certain *specific* representations as to the purpose, nature, and intended length of his stay in the foreign country, and in an application for absentee voting makes other statements which appear inconsistent with those specific representations, the Service must take such inconsistent statements into account *in determining the true facts* upon which the taxpayer bases his claim to bona fide residence in a foreign country. Further, as stated in Revenue Ruling 71-101, even such inconsistent statements will not necessarily be conclusive.

However, the mere representation by a taxpayer made in support of an application for absentee voting that he considers himself a voting resident of a particular State and that he intends to ultimately return to that State, will not by itself in any way affect his claim to the section 911 exclusion from gross income based on bona fide residence in a foreign country.

We hope that this letter will clarify any ambiguities that may have existed with respect to this situation. We hope that no United States citizen living abroad will hesitate to exercise his voting right out of concern that this action may jeopardize his claim to the section 911 exclusion from gross income.

Sincerely yours,

F. FEIBEL,

Acting Chief, Corporation Tax Branch.

Senator GOLDWATER. In conclusion, Mr. Chairman, I welcome these hearings and endorse your effort to further the voting rights of Americans abroad.

I have prepared for your consideration a one-sentence amendment that would extend your bill to all 10 million citizens protected by our original law. At the end of S. 2384, add the following:

Voting Rights Act Amendments of 1970.

Section 10. The provisions of Section 202 of the Voting Rights Act Amendment of 1970 shall be applicable to registration and voting in all Federal elections, and any registration and ballot materials provided pursuant to such section and transmitted to or from absentee citizens shall be free of postage to the sender in the United States mail.

Also, I have had prepared for me a legal memorandum which sets forth the reasons why I believe your bill is constitutional and I will be glad to share this with you.

That concludes my testimony, Mr. Chairman.

Senator PELL. Thank you very much indeed, Senator.

The Chair noticed, too, that you are accompanied by Mr. Terry Emerson, for whom it holds a very high regard in his profession.

Senator GOLDWATER. He is the brains behind all this.

Senator PELL. In connection with the amendment you suggest, we have in our bill, as you probably know, a provision for free airmail postage. But the frank would not help a citizen who is overseas because it would not be accepted by the country where he was stationed or where he was living.

Senator GOLDWATER. I didn't realize that. I did not know that.

Senator PELL. So we face a problem there. But I agree with you, that any provision—any mail that goes in accordance with this act, as a whole, the postage should be covered.

Do you think that 30 days or 60 days is enough time, or do you have any feeling about the time frame, about when citizens should be notified about the elections ballot?

Senator GOLDWATER. I don't think you can be as short as 30. Therefore, 60 being a popular number, I think that is a better period of time. I think this has to become uniform, too, because some States make it almost impossible for a person living out of the State to get the absentee ballot in time.

I would say 60 days would be a good period of time.

Senator PELL. And do you have any views as to whether there should be a difference in handling the problem of overseas citizens who have gone back to the land of their birth, and have in some cases left completely our culture and the use of our language, even, to spend the final part of their lives aided by social security benefits, as opposed to our citizens who are over there working for American corporations and coming back?

Senator GOLDWATER. Oh, I think that would take care of itself. I think the person that goes back to the land of his origin, his family's origin, probably would become a citizen of that country, and if he didn't show enough interest to write for an absentee ballot, I think that in itself would take care of it.

Senator PELL. I remember being a vice consul overseas and helping some of these citizens. The social security checks tend to keep them conscientious.

Senator GOLDWATER. Well, they never renounce their citizenship as far as any money is concerned.

Senator PELL. On the other hand, sometimes they do it accidentally by voting in a local election; when they do that they lose their American citizenship automatically.

Senator GOLDWATER. Well, the little bit we have been able to study that in my home State indicates that when a person moves to another State or another country, if it is a permanent move, they have no fur-

ther interest in the purely local elections. Now, they might retain an interest in a Senator or a House Member, but that would be merely a matter of personal interest and if some of these citizens wished to retain their voting residence for this purpose, I believe we should try to help them.

Senator PELL. Thank you very much, Senator Goldwater, and I apologize very much for being a few minutes late.

Senator GOLDWATER. That is perfectly all right; we are all late these days.

[The memorandum referred to follows:]

MEMORANDUM OF LAW IN SUPPORT OF CONGRESS' POWER
TO PROTECT THE VOTE IN FEDERAL ELECTIONS

I. THE RIGHT TO VOTE FOR NATIONAL OFFICERS IS AN INHERENT RIGHT
OF NATIONAL CITIZENSHIP

It is firmly established that the right to vote for National officers is a fundamental, personal right of National citizenship. The Supreme Court has plainly announced that "among the rights and privileges of National citizenship recognized by this court are . . . the right to vote for National officers. . . ." *Twinning v. New Jersey*, 211 U.S. 78, 97 (1908).

According to Justice Frankfurter's opinion in *U.S. v. Williams*, 341 U.S. 70, at 79 (1951), the Supreme Court has held or assumed in at least seven decisions that the right to vote in Federal elections can be protected by Congress because it is a right directly dependent on and secured by the Constitution. *Ex parte Yarbrough*, 110 U.S. 651, 663 (1884), is the first of these decisions. In *Yarbrough*, the Court expressly rejected a claim "that the right to vote for a Member of Congress is not dependent upon the Constitution or laws of the United States, but is governed by the law of each state respectively." Instead, the Court held that these offices are created by the Constitution and by that alone. *Id.*, at 663. See also *United States v. Classic*, 313 U.S. 299, 314, 315 (1941); *Wiley v. Sinkler*, 179 U.S. 58, 62 (1900); *In re Quarles*, 158 U.S. 532, 535 (1895).

The same doctrine applicable to voting in Congressional elections is true of Presidential elections. That office, too, is created by the Constitution and by that alone and indeed the Vice President, are our country's only offices chosen in a nation-wide election. All doubt of the standing accorded this right should be removed by *in re Quarles*, where the Supreme Court has expressly enumerated among the rights secured to citizens by the Constitution "the right to vote for *presidential electors* or members of Congress. . . ." *Id.*, at 535. (Emphasis added.) Moreover, the Supreme Court has held that Presidential electors exercise Federal functions, a truism which further supports the power of Congress to legislate with respect to presidential elections.

Burroughs v. United States, 290 U.S. 534 (1934). The concept from which the right to vote for officers of the National government is derived is the recognition by the Supreme Court that there are certain basic rights of National citizenship which "arise from the relationship of the individual with the Federal government" and "are dependent upon citizenship of the United States, and not citizenship of a state." *U.S. v. Williams*, *supra*; *Slaughter-House Cases*, 16 Wallace 36, 80 (1872).

Thus, the rights belonging to National citizenship arise out of the very nature and existence of the National government. *Ward v. Maryland*, 12 Wallace 418 (1870); *Paul v. Virginia*, 8 Wallace 168, 180 (1868). The right to vote in National elections is among these fundamental rights since it is basic to the scheme of the Constitution that we shall enjoy a representative-type of government with National officers who are as responsive as possible to the people.

II. THE RIGHT TO VOTE FOR NATIONAL OFFICERS
IS A PRIVILEGE OF NATIONAL CITIZENSHIP

Section I of the Fourteenth Amendment provides that "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States." The right to vote for National officers has not only been recognized as being among the "rights" of National citizenship, but also among the "privileges" granted or secured by the Constitution. *In re Quarles*, *supra*; *Twin-*

ing v. New Jersey, *supra*. Accordingly, Congress is free to enforce the privilege of voting pursuant to section 5 of the Fourteenth Amendment, the Enforcement Clause.

III. THE FREEDOM TO TRAVEL IS A PRIVILEGE OF UNITED STATES CITIZENSHIP

The freedom to travel across State lines has long been held to occupy a position fundamental to "the nature of our Federal Union and our Constitutional concepts of personal liberty." *Shapiro v. Thompson*, 394 U.S. 634, 639 (1969); *United States v. Guest*, 383 U.S. 745, 757 (1966); *Crandall v. Nevada*, 6 Wallace 35, 47 (1867).

In *Kent v. Dulles*, 357 U.S. 116, 126 (1958), the Supreme Court clearly equated the right of interstate travel with the right to travel abroad:

"Freedom of movement across frontiers in either direction, and inside frontiers as well, was a part of our heritage. Travel abroad, like travel within the country, may be necessary for a livelihood. It may be as close to the heart of the individual as the choice of what he eats, or wears, or reads. Freedom of movement is basic in our scheme of values." *Id.*, at 126.

Thus, the freedom to travel abroad has been held to be an important aspect of the citizens' liberty," guaranteed in the Due Process Clause of the Fifth Amendment, *Kent*, *supra*, at 127; *Apthecker v. Secretary of State*, 378 U.S. 500, 505 (1964). Indeed freedom of movement is considered of such great importance, the Supreme Court has held that a Federal restriction upon the personal liberty of travel outside the United States was unconstitutional even though a substantial governmental interest was asserted in support of the restriction on grounds of national security. *Apthecker*, *id.*, at 508.

Since it is well settled that the Fourteenth Amendment operates to extend the same protection against State legislation, affecting life, liberty, and property, as is offered by the Fifth Amendment, Congress has full power to secure the liberty of free travel against unnecessary State restraint. *Hibben v. Smith*, 191 U.S. 310, 325 (1903).

IV. CONGRESS HAS POWER TO PROTECT RIGHTS AND PRIVILEGES OF NATIONAL CITIZENSHIP UNDER BOTH THE NECESSARY AND PROPER CLAUSE AND THE FOURTEENTH AMENDMENT

With respect to protection and facilitation of the exercise of rights or privileges of United States citizenship, the Supreme Court has ruled that Congress may act under the Necessary and Proper Clause of Article I of the Constitution. As it was stated by Chief Justice Waite in *United States v. Reese*, 92 U.S. 214, 217 (1875), the "rights and immunities created by or dependent upon the Constitution of the United States can be protected by Congress." See also *Strauder v. West Virginia*, 100 U.S. 303, 310 (1879). As in all cases involving the reserved powers of the States, the applicable rule under which Congress may legislate is the classic formulation by Chief Justice Marshall in *McCulloch v. Maryland*, 4 Wheaton 316, 421 (1819). If the end be legitimate and within the scope of the Constitution, Congress can choose any means which has a rational basis.

This principle was upheld in *United States v. Texas*, 252 Fed. Supp. 234 (1966), striking down the poll tax system in Texas. The case involved an action brought under section 10 of the Voting Rights Act of 1965 in which Congress found that payment of a poll tax as a precondition to voting denies or abridges the Constitutional right of citizens to vote. In holding that the Texas poll tax must fall, the Court placed its decision squarely on the ground that the right to vote is "one of the fundamental rights included within the concept of liberty." *Id.*, at 250. The Supreme Court upheld this ruling in *Texas v. United States*, 384 U.S. 155 (1966).

The same rule of *McCulloch v. Maryland* is applicable to measure the exercise of Congress' power to enforce the guarantees of the Fourteenth Amendment. For example, see *Katzenbach v. Morgan*, 384 U.S. 641, at 650, 651 (1966), upholding the constitutionality of section 4(e) of the Voting Rights Act of 1965 which prohibits enforcement of the New York State English language literacy test against New York residents from Puerto Rico.

V. S. 2384 IS APPROPRIATE LEGISLATION

Applying the above principles to the subject legislation, it is clear S. 2384 is constitutional. Its end is clearly legitimate. Its object is to protect and enhance the right of almost one million United States citizens overseas to exercise the

franchise in Federal elections. These citizens have a direct and great interest in decisions and policies acted upon by the President and Congress' and are substantially affected by decisions made by the Executive and Congress jointly. Federal action is required if these citizens are to be brought within the workings of representative government. No single State can undertake to guarantee the franchise to all these persons. In order to establish a uniform means by which all National citizens can be guaranteed an equal opportunity to vote in National elections, it is necessary for Congress to act.

In acting to facilitate and protect the rights to vote and travel, the record indicates Congress is concerned with at least three categories of overseas citizens, all of whom it seeks to enfranchise in Federal elections. A professional survey of United States citizens abroad, which was recently compiled for the Department of Defense pursuant to the Federal Voting Assistance program, provides the best evidence available as to the characteristics of these citizens. An analysis of applicable principles proves Congress in acting within the scope of the Constitution with respect to each of these categories of citizens.

VI. CONGRESS CAN PROVIDE UNIFORM PROCEDURES FOR ABSENTEE REGISTRATION AND VOTING IN FEDERAL ELECTIONS

First, the Department of Defense survey indicates that there are 630,300 Americans abroad who are presently eligible to vote based on age, citizenship, and legal residence criteria. As to these citizens, Congress is concerned only with removing technical limitations of State and local law which unnecessarily restrict their opportunity to vote and consequently burden the privilege of travel as well. Congress is concerned that these citizens, who are admittedly bonafide residents of the several States shall not be disenfranchised by mere lack of minimal voting processes. For this reason, Congress proposes to enact uniform national standards with respect to the means for absentee registration and voting by such residents in order to provide them with the fullest opportunity for exercising the franchise.

The basic standards which Congress uses in S. 2384 are derived from section 202 of the Voting Rights Act of 1965, which in turn were drawn from the proven practice of the States themselves. Congress has found that these practices were successfully applied by many States with respect to some of their residents without significant fraud or administrative difficulty and has accordingly found there is no compelling reason why the States should not apply the same standards to all of their residents on a national, uniform basis. See testimony of Senator Goldwater, "Amendments to the Voting Rights Act of 1965," Hearings before the Subcomm. on Const. Rights, Senate Comm. on the Judiciary, 91st Cong., 1st and 2d Sess. (1969-1970), at 277-306.

VII. CONGRESS CAN ENACT A UNIFORM DEFINITION OF RESIDENCE FOR VOTING PURPOSES IN FEDERAL ELECTIONS

The second class of overseas citizens who are covered by S. 2384 include persons who are ineligible to vote because of strict residence restrictions, but who plan to return to States that have been their homes before residing abroad. According to the recent survey made for the Department of Defense, there are up to 334,000 Americans of voting age who may be in this category. Giving proper consideration to the interests of the States, Congress can legislate a uniform definition of residence for voting purposes in Federal elections in order to secure the fundamental right to vote and freedom of travel for these citizens. If a person who departs a State for overseas has an intent to return to that State and considers himself still to be a resident of that State for voting purposes, Congress has a rational basis for determining that these persons remain bona fide residents of the State for purposes of voting in Federal elections.

All States now permit absentee servicemen and their accompanying dependents to register and vote from abroad and this has not caused any significant problems of fraud or administrative difficulty. The universal rule applied by States to servicemen and their dependents is one of intent. These persons do not lose or abandon the voting residence they had when the military member entered the service, nor do they acquire one at the place where he or she serves, irrespective of the duration of actual residence at such place. American Jurisprudence, 2nd, Elections, section 75.

Since all States have successfully administered their elections under the liberal test of residence applied to military personnel and since the total numbers of absentee residents so continued on the voting rolls exceeds the combined total

of persons accorded the same rights by S. 2384, Congress may rationally conclude that the setting of a uniform definition of residence for voting purposes based on the same criteria applicable to servicemen and their dependents is an appropriate and workable means for protecting the vote of citizens overseas in Federal elections and their liberty of travel without penalty by reason of loss of the vote.

VIII. THERE IS NO COMPELLING STATE INTEREST IN IMPOSING A STRICT RESIDENCE TEST AGAINST AMERICANS OVERSEAS

Though the general proposition may be accepted that a State may require its voters to be bona fide residents, the Supreme Court has made clear that the States may not use a test of residence as a technical device for sweeping an entire class of citizens off the voting rolls unless the restriction is *necessary* to promote a compelling State interest. For example, State determination that certain classes of citizens were not residents for voting purposes were overturned in at least three recent cases because the residence rules were found not necessary to serve any compelling State interest. *Carrington v. Rash*, 380 U.S. 89, 95, 96 (1965), *Evans v. Cornman*, 398 U.S. 419, 424, 426 (1970); *Dunn v. Blumstein*, 405 U.S. 330, 337 (1972).

Congress has here determined that there is no compelling governmental interest in restricting the right to vote and penalizing the right to travel of Americans overseas who possess a nexus with a particular State. Though the States have a obvious interest in preserving the basic conception of their political communities, they have successfully done this while using a broad standard of residence in the case of servicemen and their accompanying dependents. Thus, a stricter rule than that applied to servicemen and their families cannot be said to be necessary.

Moreover, S. 2384 is applicable only to Federal elections and not to filling local public offices. Federal elections are substantially national and international in scope and to a large extent the issues cut across all areas and regions of our country. Whatever the interests of States in limiting the definition of residence in the case of voters for State, county and municipal offices, there is no compelling need for using a stricter rule in Federal elections than the one which is set forth in S. 2384.

Nor will enactment of the broad definition of residence required by S. 2384 abrogate all State functions with respect to the qualifications of voters in Federal elections. States will retain the power to test whether an applicant for absentee registration or voting (1) is of legal age, (2) is incapacitated by reason of insanity, (3) is disqualified as a convicted felon, (4) meets the prescribed time and manner for making application, and (5) is truthful in statements made on registration or voting forms, such as with respect to a claim to actual past residence in a particular State.

Nor can a State properly argue that it is necessary to exclude all persons overseas from voting in Federal elections in order to guarantee that its voters will be minimally knowledgeable about the elections. It is common knowledge that Americans overseas have wide and immediate access to English language newspapers, journals and news programs circulated and broadcast in foreign areas. These private sources of information are supplemented by the services of the Armed Forces Network, Voice of America, and USIA libraries which are well known to Americans abroad in even the most isolated of places.

The acute interest and awareness of Americans overseas in Federal elections is apparent on the record. In fact, the Department of Defense survey of persons overseas shows that at least 151,000 Americans, not including Federal employees or servicemen, voted in the 1972 election while residing abroad. There is nothing to support an assumption that citizens overseas are uninformed or uninterested in Federal elections and any such argument would crudely and impermissibly exclude large numbers of otherwise fully qualified voters.

Nor can a State claim that it must exclude persons overseas from voting because they might hold a different viewpoint than persons who have not been absent from the State. The Supreme Court has ruled time after time that differences of opinion may not be the basis for excluding any group of persons from the franchise. See the discussion of cases set forth in *Dunn v. Blumstein*, *supra*, at 355-356.

A similar analysis is applicable with respect to the small numbers of citizens overseas who do not intend to return. According to the Department of Defense survey of citizens overseas, this group may include some 26,500 persons. The

critical fact with respect to Congress' power to secure the vote in Federal elections for these persons in that there are numerous and vital ways in which these individuals are affected by the decisions and policies acted on by Federal officers. *Evans v. Cornman*, *supra*, at 424. Although they are outside the country, these persons are subject to the United States Internal Revenue Code, retirees among them may be directly affected by changes in the Civil Service retirement and Social Security programs, and they are greatly affected by trade and tariff measures, export controls, and foreign policy decisions, among many other actions and programs dealt with by the Executive and Congress jointly. These persons have distinct, direct and great interests in the election of Federal officers and Congress may protect their stake in these elections by providing a uniform procedure for implementing the exercise of their vote in these elections so long as such persons have a past nexus with the particular State in which they seek to vote.

IX. SUMMARY

Without regard to whether the judiciary itself would find that State restrictions on the votes of overseas residents are unconstitutional. Congress may act to protect the rights to vote and travel by enacting uniform, national standards for Federal elections. Time and again, the Supreme Court has announced that "the right of suffrage is a fundamental matter in a free and democratic society" and "is preservative of other basic civil and political rights." *Reynolds v. Sims*, 377 U.S. 533, 561, 562 (1964); *Kramer v. Union Free School District*, 395 U.S. 621, 626 (1969). The Court has further indicated that, "No right is more precious in a free country than that of having a voice in the election of those who make the laws under which, as good citizens, we must live." *Wesberry v. Sanders*, 376 U.S. 1, 17 (1964). If this is so, surely Congress can act to protect the right of Americans abroad to participate in the choice of Federal officers whose decisions affect them personally and directly.

In so acting, Congress need not assert a general power to prescribe qualifications for voters in Federal elections. S. 2384 is confined to Federal action against a particular problem clearly within the purview of Congress' powers to facilitate and protect the personal rights and privileges which the Supreme Court has found to be guaranteed to each citizen by the Federal Constitution.

BARRY GOLDWATER, *U.S. Senator*.

Senator PELL. Our next witness is Senator Roth, of Delaware, and would you introduce your associate?

Senator ROTH. Ray Jacobson, who is my assistant.

STATEMENT OF HON. WILLIAM V. ROTH, JR., A U.S. SENATOR FROM THE STATE OF DELAWARE

Senator ROTH. Mr. Chairman, I welcome this opportunity of appearing before your subcommittee to express my support for legislation to guarantee the right of all American citizens residing overseas to vote in Federal elections.

I am a cosponsor of one of the several proposals which are presently pending before this subcommittee: Senate Bill 2102. Rather than focusing on this particular bill, however, I plan to direct my remarks toward the general problems experienced by overseas Americans when they attempt to vote.

As I recall, the day following last November's general election, I was disturbed to learn that just about over one-half of all voting age Americans had exercised their right to vote. The 55 percent of the electorate at the polls that day represented the lowest voter turnout in a Presidential election since 1948.

Undoubtedly, this low turnout of voters can be attributed to several basic factors. I believe, however, that State-imposed restrictions on the right to vote of American citizens residing abroad kept many citizens away from the polls who otherwise would have exercised that right. If

these State-imposed barriers to voting can be removed, I believe our Nation's democratic process would be strengthened.

The history of congressional involvement in the voting rights field has been marked by significant legislative accomplishments. The Voting Rights Act of 1965, the 1970 amendment to that act, and the 26th amendment to the Constitution have been major breakthroughs in providing effective instruments to meet the problem of discrimination against millions of American voters previously disenfranchised by race, age, or residence.

It appears, however, that none of these landmark pieces of legislation has clearly resolved the problem of overseas Americans residing abroad. By one count, only 27 States effectively provided a means by which their oversea citizens can register and vote by absentee ballot. Some States require a voter to be physically present at the time of voting—others require him to maintain a home in the State. Another State allows temporary absentees to vote for 3 years but no longer. Several States disenfranchise civilians by failing to provide for absentee registration or absentee ballot.

In each of these instances, overseas American citizens are effectively rendered ineligible to vote despite the congressional mandate contained in the 1970 Voting Rights Act requiring each State to provide absentee voting procedures for its citizens.

Recognizing the inequity that may exist under present Federal law, the Delaware General Assembly recently amended the laws of my State to insure that civilians temporarily living outside the United States who are otherwise eligible to vote would not be denied suffrage. I think for former residents of Delaware, this statute has been effective. Based on a telephone survey I conducted of multinational firms based as though their employees—who are considered Delaware residents—were also considered Delaware voters and were eligible to vote in the 1972 general election.

However, in conducting this survey, I spoke with an employee of one Delaware-based corporation who, as a result of restrictive voting requirements in two States, had been denied the right to vote in three successive elections. This American citizen was a resident of New Jersey until being transferred to Singapore in 1968. In Singapore, he was told by American Embassy officials that New Jersey election laws required prospective voters to own property in that State. Since he owned no property in New Jersey at that time, he was unable to vote in the 1968 Presidential election.

In the 1970 congressional election, this citizen attempted to register and vote absentee from Michigan, the State of his birth. In each instance, he was told by Embassy officials that State laws prohibited him from exercising his right to vote.

Mr. Chairman, this individual is not unlike 750,000 other U.S. citizens who are being denied their voting simply because they live outside the United States. For the most part, these civilians maintain contact with affairs at home through correspondence, television, radio, and American newspapers and magazines. It seems to me that Congress ought to enact legislation to safeguard the suffrage rights of these citizens.

For that reason, I was happy to join my distinguished colleague, Senator Mathias, in sponsoring S. 2102, which I understand is identical to the bill sponsored by the chairman. It would allow the American

citizen residing overseas to vote in Federal elections in the State in which he last voted or registered to vote. If the citizen has never registered, he would be allowed to vote in the last State in which he maintained a domicile before departing from the United States. Of course, the citizen must still be qualified to vote in that State, and he must meet the State's requirements for absentee voting.

In closing, Mr. Chairman, I want to thank you for calling these hearings. I firmly believe that Congress should take decisive action toward resolving the problems which exist in that area. I hope I might also add that I think that Senator Goldwater's proposal that these provisions should likewise apply to citizens who have been denied the vote within their State deserves careful study on the part of this committee, and I am concerned that we are a mobile community today and that we should take action to guarantee their rights to vote as well.

Senator PELL. Thank you very much, Senator.

In connection with your last point, I think the new post card registration that is now on the books should be a help, at least from the viewpoint of registration of people moving from State to State.

Senator ROTH. Yes, I think that will help. I am not sure whether it solves the problem or not.

Senator PELL. Despite this particular bill, we are still leaving disenfranchised a large number of American citizens overseas, together with citizens of Puerto Rico, the Virgin Islands, the other American Territories where they are citizens but they don't have the right to vote. So that is another problem.

Senator ROTH. That is another problem. Yes, sir; that is correct.

Senator PELL. I thank you very much for your statement, and your support of this legislation. I would hope we can act on this. I would think the administration's viewpoint has to be taken into consideration, too.

Senator ROTH. I hope the committee will be able to vote it out this year.

Senator PELL. The subcommittee will do its best.

Slightly out of order now, but because the mother of the next witness has been taken to the emergency room at the hospital, Miss Mary C. Lawton, deputy assistant attorney general, Office of the Legal Counsel, and in view of the urgency of her own circumstances, I imagine she does not wish to read her entire statement in full. It will be placed in the record.

STATEMENT OF MARY C. LAWTON, DEPUTY ASSISTANT ATTORNEY GENERAL, OFFICE OF LEGAL COUNSEL, DEPARTMENT OF JUSTICE

Senator PELL. The basic question that concerns the subcommittee is contained in the last paragraph, the last sentence in your statement, where you say:

"Accordingly, we oppose their enactment."

Perhaps you would give us a digest of why you oppose this bill, and perhaps you could give us the views of the administration?

Miss LAWTON. Yes, Senator. The basic reason for our opposition is that we think the Congress lacks the constitutional authority to enact these as simple legislation.

Senator PELL. Excuse me; isn't that up to the courts to determine, rather than the executive branch?

Miss LAWTON. Well, the ultimate constitutional issue, of course, is always for the courts to determine. However, both the Congress and the Executive have taken a position consistently that they, because of their own offices, must take into account their views of constitutional issues in actions which they take.

Senator PELL. Right, but our attorneys give us the view that it is constitutional, and you believe it is not constitutional. Then we have a certain problem; would you recommend the President veto a bill of this sort with respect to its constitutionality?

Miss LAWTON. It would depend a great deal, I think, Senator, upon the precise terms of the individual bill. For example, we have less problem with Congress providing that the States furnish absentee ballots, as a matter of the manner of conducting elections, but without saying to the States that they may not insist upon bona fide residency. If a bill of this nature were drafted to say that there would still have to be established bona fide residency, but that States must permit absentee voting, then we would have less difficulty, and I am not sure we would recommend a veto.

But when we come to a bill that extends to people that are legally domiciled abroad, have no domicile in this country, no residency in any State, then I think it has gone beyond the bounds of congressional authority.

Senator PELL. Let me ask you this, then: In connection with the policy questions, what is it that concerns the administration in that area?

Miss LAWTON. As a matter of simply the policy of enfranchising overseas voters, I don't really think there is any particular concern, Senator. Indeed, as you may know, the Assistant Attorney General in charge of our office is testifying before another subcommittee today on the subject of a constitutional amendment dealing with direct popular election, and if provisions such as these were done by constitutional amendment, I am not sure there would be a policy objection.

Senator PELL. In other words, the main objection you have is a constitutional objection?

Miss LAWTON. It is a technical legal objection; yes, sir.

Senator PELL. Right, but not as a general policy. You have no objections of the administration to the enfranchisement of our citizens overseas?

Miss LAWTON. No. I wouldn't go quite so far as to say those permanently domiciled overseas, but putting aside that group, which I think is relatively small, as to the rest of our citizens overseas I don't know of any policy objection.

Senator PELL. What you are really saying is that you believe it should be done by constitutional amendment and not by legislation. Is that correct?

Miss LAWTON. That is correct.

Senator PELL. But as you know, the problems of getting a constitutional amendment through on what is seen by many people as an esoteric question, would be very questionable.

Miss LAWTON. I know that difficulty, certainly. It is a much more elaborate process, it takes a much greater vote, it takes State ratification; but when the Constitution left voter qualifications to the States,

I assume the drafters expected that would be changed only by amendment.

Senator PELL. I wonder if perhaps the wisest course might not be to pass the law and then if it is proven unconstitutional by the courts, and if so, then seek to follow the constitutional amendment route.

Miss LAWTON. Well, of course that was what was done with the 18-year-old vote. It does, however, run the risk of great confusion in the electoral process.

Now, with the 18-year-old vote, that didn't happen. The case got into court and got to the Supreme Court extremely rapidly, but that is unusual, as you well know, and it is possible to throw an election into chaos if somehow you don't reach the Court in time. That is a risk that has to be weighed in the decision.

Senator PELL. I thank you for your testimony, and for being willing to come up today.

Miss LAWTON. Thank you, Senator.

[The written statement of Miss Lawton follows:]

STATEMENT OF MARY C. LAWTON, DEPUTY ASSISTANT ATTORNEY GENERAL, OFFICE OF LEGAL COUNSEL, DEPARTMENT OF JUSTICE

Mr. Chairman, I appreciate the opportunity to appear before this Subcommittee to discuss S. 2384 and S. 2102, bills to extend voting rights in Federal elections to United States citizens residing or domiciled outside the United States, notwithstanding any State or local laws requiring residence or domicile as a condition of voting in Federal elections. We will address ourselves primarily to the question whether Congress has the constitutional authority to enact bills of this nature, rather than to the specifics of the two bills.

I. CONSTITUTIONAL AUTHORITY FOR S. 2102 AND S. 2384

In our view, the constitutional authority of Congress to enact S. 2102 and S. 2384 is extremely doubtful. These bills would abolish completely for citizens residing overseas any State or local domicile or residence requirements as a condition to voting in Federal elections, and would establish nationwide standards relating to absentee registration and absentee balloting by such citizens in Federal elections. Generally, "Federal election" is defined to include primaries and elections for the House, Senate, President, and Vice-President. United States citizens residing overseas would vote in the State and district in which they were last domiciled prior to departure from the United States.

S. 2102 and S. 2384 assert as the constitutional premise for their enactment that they are necessary to protect: (1) the inherent constitutional right of citizens to vote in Federal elections; (2) the inherent constitutional rights of citizens to travel to and from the United States; (3) the constitutional privileges and immunities of United States citizenship; (4) the right of citizens to vote in Federal elections no matter what the method by which they vote; (5) the rights of citizens to due process and equal protection under the Fourteenth Amendment; and (6) the right not to be denied the right to vote in Federal elections absent a compelling State interest. Before discussing the validity of these 6 asserted constitutional bases justifying enactment of these two bills, it will be helpful briefly to analyze two seminal cases in this area: *Oregon v. Mitchell*, 400 U.S. 112 (1970), and *Katzenbach v. Morgan*, 384 U.S. 641 (1966).

The Supreme Court in *Oregon v. Mitchell*, by an 8-1 vote upheld the constitutionality of Section 202 of the Voting Rights Act Amendments of 1970, (42 U.S.C. 1973aa-1), which: (1) abolished all State durational residency requirements as a condition of voting in Presidential and Vice-Presidential elections; (2) provides that otherwise qualified voters who established a residence in a new State within the permitted thirty-day registration period could nevertheless vote in the upcoming elections for President and Vice-President in the State in which they previously resided; and (3) required States to provide absentee ballots to effectuate the rights of voters to vote for the President and Vice-President. The 8 Justices voting to uphold Section 202 wrote 4 separate opinions, each expressing a somewhat different constitutional theory underlying their votes. Mr. Justice

Black, writing solely for himself, concluded that Congress has inherent constitutional power to set voter qualifications in Federal elections including the power to regulate residency requirements in Presidential and Vice-Presidential elections. 400 U.S. at 124, 134. Mr. Justice Douglas, writing solely for himself, concluded that the right to vote for Federal officers was a privilege and immunity of national citizenship under the Fourteenth Amendment and that Congress had power to enact Section 202 by virtue of its enforcement powers under Section 5 of the Fourteenth Amendment, 400 U.S. at 148-150. Mr. Justice Brennan, writing for himself, and Justices White and Marshall, upheld the constitutionality of Section 202 under the theory that it was a reasonable means of eliminating an unnecessary burden on the constitutional right of interstate migration. 400 U.S. at 236-239. Mr. Justice Stewart, writing for himself, Chief Justice Burger, and Justice Blackmun concluded that the right of interstate travel was a constitutional privilege of United States citizenship and that Section 202 was a constitutional means of protecting that right from unnecessary burdens. 400 U.S. at 285-287.

Section 202 did, to a very limited extent, restrict the power of the States to require bona fide residency as a condition to voting in Presidential and Vice-Presidential elections. Under that Section, a citizen moving from one State to another within 30 days of a presidential election who is unable to register at his new residence because the 30-day registration deadline has passed, must be allowed to vote in the place of his former residence. Notably, Section 202 operates to protect the voting rights of citizens exercising their constitutional right of interstate travel but does not apply to citizens establishing a new residence abroad. It also appears that the limited restriction placed upon States to require bona fide residency as a condition to voting under Section 202 was virtually the only way by which Congress could have avoided problems of voter fraud in States to which citizens allege they have recently moved. Additionally, in *Oregon* the only State challenging the constitutionality of Section 202, Idaho, attacked its provisions in toto and did not specifically attack that provision giving certain recently-moved persons the right to vote in a State in which they were no longer domiciled on the ground that States had a compelling interest in insisting on bona fide residency as a condition to voting.¹

None of the 5 Opinions in *Oregon* specifically addressed the latter contention. It thus seems that in *Oregon* none of the Justices focused on the question of whether Congress could prohibit States from requiring a bona fide residency as a condition to voting in Presidential elections in upholding the constitutionality of Section 202. *Oregon* thus may be read as not to have decided that question because it was not raised by the litigants.

In *Katzenbach v. Morgan*, the Supreme Court considered the constitutionality of Section 4(e) of the Voting Rights Act of 1965 which prohibited States from disfranchising persons who failed to pass certain English literacy tests if they successfully completed the sixth grade in certain American-flag schools in which the predominate language used was other than English. By a 7-2 vote, the Court held that Section 4(e) was constitutionally authorized by Section 5 of the Fourteenth Amendment. The Court stated that Congress may prohibit state laws that do not violate the Equal Protection Clause if such prohibition is plainly adapted to the goals of enforcing Equal Protection. Section 4(a) was upheld because the Court concluded that it was "plainly adapted" to secure the twin Equal Protection aims of securing nondiscriminatory delivery of governmental services to Puerto Ricans and of eliminating invidious discrimination in establishing voter qualifications as applied to Puerto Ricans who were intelligently informed in the Spanish rather than the English language.

The *Oregon* and *Morgan* cases have gone further than any others in upholding the power of Congress to regulate voter qualifications. Nevertheless, the two bills under consideration today stretch the constitutional power of Congress to regulate voter qualifications beyond *Oregon*, *Morgan*, and even beyond what Congress itself has heretofore deemed constitutionally proper.

A. Inherent Constitutional Right to Vote in Federal Election

The first asserted justification for S. 2102 and S. 2384 is to protect the inherent constitutional right of citizens to vote in Federal elections. That assertion implicitly acknowledges that the Constitution does not expressly grant citizens the right to vote in Federal elections. Art. I, Sec. 2 and Amendment XVII provide that

¹ See, 3 Records and Briefs in United States Cases, No. 47 Original (October Term 1970).

House and Senate Members shall be elected by persons having "the qualifications for electors of the most numerous branch of the State legislatures." Art. II, Sec. I provides that State electors voting for the President and Vice-President shall be appointed "in such Manner as the Legislature thereof may direct . . ." The Constitution specifically addresses itself to the question of who shall vote in Federal elections and seemingly gives the States power to set voter qualifications in those elections, of course limited by other constitutional mandates.

See also, *The Federalist*, Nos. 52, 54, 60. Thus, to infer an inherent constitutional right to vote in Federal elections when the Constitution, in expressly addressing the question of voter qualification in those elections, gives no such right is shaky constitutional reasoning. Justice Black's opinion in *Oregon* suggests the existence of an inherent constitutional right to vote in Federal elections by concluding that Congress has power to set voter qualifications in those elections. 400 U.S. at 124 and n. 7 thereon. But notably, Justice Black spoke only for himself, and opinions joined by less than a majority of the Court seem not to carry precedential weight.² See *North v. Riverside City Superior Court*, 41 L.W. 2311 (Calif. Sup. Ct. Nov. 16, 1972); *Baker, Whitfield, & Wilson v. State*, 289 A. 2d 348 (Md. App. 1972), cert. denied. Additionally, Justice Black's opinion ignores a line of Supreme Court cases stating that Presidential electors are State officials which may justify an inference that elections for Presidential electors are State rather than Federal elections for constitutional purposes. See, e.g., *Ray v. Blair*, 343 U.S. 214, 224-25 (1952); *Burroughs v. United States*, 290 U.S. 534, 545 (1934). If that latter conclusion is correct, then even an inherent constitutional right to vote in Federal elections would not confer a right to vote in Presidential elections.

In *Oregon*, Justice Black also indicated that Congress had the power to set voter qualifications in Congressional elections by virtue of its authority to regulate the "manner" of those elections under Article I, Section 4. But that conclusion seems in effect to repeal Article I, Section 2 of the Constitution in contradiction to Justice Black's own statement in *Oregon* that "Congress may not by legislation repeal other provisions of the Constitution." Moreover, even assuming the validity of Justice Black's interpretation of Article I, Section 4, it would not justify regulating voter qualifications in Presidential elections because the Constitution contains no comparable provisions concerning Presidential elections.

Other than Justice Black's opinion in *Oregon*, no other Supreme Court opinion that we are aware of indicates the existence of any inherent constitutional right to vote in Federal elections. However, Justice Black's views on that issue probably do not command majority support on the Supreme Court today because of their shaky constitutional basis and because he spoke only for himself in *Oregon*. Thus, the power of Congress to abolish bona fide State residency requirements as a condition to voting in Federal elections in order to secure an asserted inherent constitutional right to vote in Federal elections is highly questionable.

B. Constitutional Authority to Protect the Right of Foreign Travel

The second constitutional theory relied upon to sustain S. 2102 and S. 2384 is that those bills are necessary to protect the inherent constitutional right to travel to and from the United States. In *Oregon*, 6 Justices concluded that Section 202 of the 1970 Voting Rights Act Amendments was justified under a theory that Congress has the constitutional power to remove burdens imposed upon the exercise of the right of interstate travel event to the extent of abolishing bona fide State residency requirements in limited circumstances. But that conclusion does not establish the constitutional authority of Congress to enact S. 2102 and S. 2384 for several reasons.

First of all, as noted above, *Oregon* may be read as not to have decided the question of whether Congress can constitutionally abolish bona fide State residency requirements as a condition to voting under any circumstances because that question was neither specifically raised by the litigants nor discussed by any of the Justices.

Second, Section 202 applied only to Presidential and Vice-Presidential elections. Permitting certain persons to vote for the President and Vice-President in States of which they are no longer residents may be justified because those officers presumably³ represent a national constituency. S. 2102 and S. 2384 permit persons

² Justices Marshall and Douglas have seemingly indicated agreement with Justice Black's views concerning Congressional power to regulate Federal elections in *O'Brien v. Brown*, 409 U.S. 1, 14-15 (1973) (dissenting opinion).

³ However, the President is elected by state electors and thus his constitutional constituency might be deemed the 50 States. The electoral college system has produced 15 Presidents who have received a minority of the popular votes cast and they might not be deemed to represent a "national" constituency. See, *Guide to Congress*, p. 459 (1973).

overseas to vote in States of which they are no longer residents for House and Senate candidates in addition to Presidential and Vice-Presidential candidates. The former two officials are clearly intended to represent local and State interests and there thus appears much less justification for permitting nonresidents to vote for those officials than for the President and Vice-President. Thus, *Oregon* does not establish the constitutional authority of Congress to permit nonresidents to vote in Senate and House elections under any circumstances. Nor, we might add, does *Oregon* establish the authority to abolish residency requirements in primaries.

Third, Section 202 permitted nonresident voting by recent interstate travelers only for a limited time. The nonresidency voting provisions did not apply to persons who had resided thirty days or more in another State. Moreover, those nonresidency voting provisions were considered necessary to permit voting by bona fide State residents for the President and Vice-President in some States without creating a serious potential for fraudulent voting. In contrast, S. 2102 and S. 2384 allow nonresidency voting to unlimited persons for an unlimited duration and are not intended to secure the vote to bona fide State residents. Under State laws, virtually all bona fide State residents who are temporarily residing abroad are not now disqualified from voting. Generally speaking, persons residing within a State do not lose their domicile by residing abroad unless also intend to remain abroad permanently. See, *Voting Rights of Americans Abroad*, 18 Buff. L. Rev. 469, 472-474 (1968-69). Thus, unlike Section 202 of the Voting Rights Act Amendments, neither of these bills is needed to secure the right to vote to citizens who are bona fide State residents. Yet it seems rather clear that bona fide State residents have a stronger claim to vote in Federal elections and primaries than nonresidents because they have a far greater stake in seeing to it that the people elected from their State or District represent their interests.

Fourth, whereas Section 202 protected the constitutional right of interstate travel, S. 2102 and S. 2384 are designed to protect the right of foreign travel. To be sure, the right to travel abroad is guaranteed by the Fifth Amendment. *Aptheker v. Secretary of State*, 378 U.S. 500, 505-506 (1964). But that liberty is seemingly not as absolute as the right of interstate travel. See, *Zemel v. Rusk*, 381 U.S. 1, 14 (1965). Thus, the power of Congress to secure the right to vote to travelers abroad may be narrower than its comparable power concerning interstate travelers.

The decision in *Oregon* upholding the constitutionality of Section 202, then, does not establish the constitutional power or authority of Congress to provide nonresidency voting in all Federal elections to unlimited persons for an unlimited duration under the guise of protecting the right of foreign travel. In fact, subsequent to the *Oregon* decision the Supreme Court has stated that "[A]n appropriately defined and uniformly applied requirement of bona fide residence may be necessary to preserve the basic conception of a political community, and therefore could withstand close constitutional scrutiny." *Dunn v. Blumstein*, 405 U.S. 330, 343-344 (1972).

C. Constitutional Authority to Protect the Privileges and Immunities of United States Citizens

The protection of the privileges and immunities of United States and State citizenship is the third asserted theory justifying S. 2102 and S. 2384. In *Oregon*, only Justice Douglas characterized the right to vote as a constitutional privilege and immunity of United States citizenship, 400 U.S. at 148-150. It is doubtful that his views on this issue command majority support of the Supreme Court. Earlier Supreme Court decisions indicated that the right to vote is not a privilege and immunity of United States citizenship. See, e.g., *Breedlove v. Settles*, 302 U.S. 277, 283 (1937). Thus, the assertion that these two bills, permitting nonresidency voting in Federal elections, are necessary to secure privileges and immunities under the Constitution is apparently invalid and would not sustain their constitutionality.

D. Constitutional Authority to Provide for Absentee Registration and Absentee Balloting

The fourth asserted justification for S. 2102 and S. 2384 seemingly concerns the absentee ballot and absentee registration provisions of those bills and will be discussed subsequently.

E. Constitutional Authority to Secure Due Process and Equal Protection

The fifth and sixth asserted justifications for the bills are interrelated and are apparently based upon the decision in *Morgan* concluding that Congress is author-

ized under Section 5 of the Fourteenth Amendment to override State laws that are not necessarily unconstitutional but whose abolition is "plainly adapted" to the goal of securing Fourteenth Amendment rights. These bills make findings to the effect that State bona fide residency requirements as a condition to voting in Federal elections bear no reasonable relation to any compelling State interest and that abolition of those residency requirements is necessary to protect the equal protection and due process rights of United States citizens who have established residence overseas. However, neither *Morgan* nor any other case of which we are aware would sustain the constitutionality of these bills on the ground that they are necessary to secure equal protection or due process rights.

No serious contention can be made that States lack the constitutional power to require bona fide residency as a condition to voting in Federal elections, see *Dunn v. Blumstein*, *supra*, at 335-36, 344-45; *Evans v. Corman*, 398 U.S. 419, 421 (1970); *Carrington v. Rash*, 380 U.S. 89, 93-94, 96 (1965), although State definitions of residency must fall within constitutional bounds. See, *Ramey v. Rockefeller*, 348 F. Supp. 780, 788-89 (E.D.N.Y. 1972) (Friendly, J.); *Newberger v. Peterson*, 344 F. Supp. 559, 563 (D.N.H. 1972). Moreover, a bona fide residency requirement does not totally deny the franchise to a particular group but is within the power of individuals to satisfy and thus may be constitutional even if it does not serve a compelling State interest, see *Rosario v. Rockefeller*, 410 U.S. 752 (1973). In any case the Supreme Court has indicated that bona fide residency requirements do serve a compelling State interest. *Dunn v. Blumstein*, 405 U.S. at 334-35. A three judge court has concluded that a New York State bona fide residency requirement as a condition to voting in Presidential elections as applied to United States citizens residing abroad is not unconstitutional. *Hardy v. Lomenzo*, 349 F. Supp. 617 (S.D.N.Y. 1972).

Bona fide state residency requirements are not only clearly constitutional, but Congress probably has no power to abolish them under *Morgan* as a means "plainly adapted" to secure constitutional voting rights of United States citizens residing abroad. First of all, *Morgan* may no longer be good law after *Oregon* which held that the 18 year old voting provisions of the 1970 Voting Rights Act Amendments as applied to State elections are unconstitutional. In dissent on this issue, Justices Brennan, White, and Marshall persuasively argued that Congress could rationally have found that lowering the minimum age of voting to 18 in State elections was plainly adapted to secure Equal Protection to those individuals over 18 denied the right to vote on account of age. 400 U.S. at 239-250. Thus, whether *Morgan* has survived *Oregon* is unclear. Justice Black indicated in *Oregon* that *Morgan* only authorizes Congressional action when racial minorities are thereby protected. 400 U.S. at 127-128. Justice Stewart, Chief Justice Burger, and Justice Blackmun indicated in *Oregon* that *Morgan* justifies Congressional action only when Congress intends to protect a "discrete and insular" minority. 400 U.S. at 296. Certainly United States citizens residing abroad cannot be characterized as either a "racial" or "discrete and insular" minority. Thus, even if *Morgan* is still good law a strong argument can be made that it does not justify the two bills in question securing certain voting rights to citizens residing abroad who are neither a racial nor a discrete and insular minority.

Even assuming that the *Morgan* theory of Congressional power would apply to citizens residing abroad, it is doubtful whether abolition of bona fide State residency requirements as a condition to voting in Federal elections is plainly adapted to secure any constitutional rights. Abolition of bona fide residency requirements cannot be deemed constitutionally necessary to protect nonresidents against discriminatory voter qualifications because the Supreme Court has recently reiterated several times that States may constitutionally discriminate between bona fide residents and nonresidents in establishing voter qualifications. Section 2 of the Fourteenth Amendment by negative implication also seems to recognize the constitutional right of a State to limit the franchise to its "inhabitants." Thus, persuasive arguments can be made that even a liberal reading of *Morgan* would not permit Congress to abolish State residency requirements as applied to citizens residing overseas in Federal elections because that abolition is not necessary to protect any constitutional rights.

Congress in the past has recognized its limited constitutional powers in this area when it enacted the Federal Voting Assistance Act of 1955, as amended in 1968, 50 U.S.C. 1451, et. seq. In that Act, Congress encouraged States to provide absentee ballots for certain Government employees who were bona fide residents of States but refrained from interfering with the rights of States to establish voter qualifications. Additionally, Section 202 of the Voting Rights Act Amendments of 1970 did not attempt to extend the franchise to United States citizens residing abroad.

II. ABSENTEE REGISTRATION AND ABSENTEE BALLOTS

S. 2102 and S. 2384 apparently assert constitutional authority to establish uniform standards for absentee registration and ballots in Federal elections in order to prevent States from denying qualified voters the right to vote by means of restrictions on absentee registration and voting. Whether or not substitution of Federal provisions on absentee voting is justified as legislation to protect a constitutional right, it can be argued that Congress has general power to provide absentee registration and voting mechanisms for otherwise qualified voters residing abroad as part of its constitutional authority to regulate the "Manner" of holding congressional elections under Article I, section 4 of the Constitution. With respect to presidential elections, it might be contended that such absentee provisions fall within the power to regulate the "manner" of such elections which the Court found in *Burroughs v. United States*, 290 U.S. at 545, and in *Oregon*. In any case, a factual basis might be laid for asserting that some States do not adequately provide absentee registration and ballots for their bona fide residents located overseas. See *Voting Rights of Americans Abroad*, supra at 475-76.

III. POTENTIAL FOR FRAUD

Whether or not the absentee registration and voting provisions in S. 2102 and S. 2384 would be constitutional, even if applied solely to bona fide State residents, the bills as presently written open the door to possible vote fraud. They provide for absentee registration by postcard at any time prior to 30 days before a Federal election. Absentee ballots could be requested by postcard no later than 7 days before a Federal election. States would be required to send absentee ballots to citizens generally within seven days of an application therefor. Under these time constraints, States would have virtually no time to determine qualifications in order to thwart attempts to cast fraudulent votes from abroad. In some foreign countries the communications links may be so slow that State officials would have no time to check the truthfulness of the information on the postcards. Experience under the existing law indicates that ballots mailed overseas do not arrive in time in a substantial number of cases. Even where fraud could be detected, there may be little a State can do about it. While furnishing false information would be made a crime by these bills, prosecution would be impossible where voting fraud offenses are not covered by an extradition treaty.

IV. CONCLUSION

The constitutional authority of Congress to abolish bona fide State residency requirements as a condition to voting in Federal elections for United States citizens residing overseas is extremely doubtful. Whatever may be the view of the actual constituency of the President and Vice-President under the Electoral College system, it seems clear that Senators and Representatives are intended to represent the interests of those legally residing within the areas they represent. Even when temporarily absent such voters have a distinct stake in the representation of their area. As the Supreme Court stated in *Dunn v. Blumstein*, bona fide residency requirements may be necessary to preserve this basic concept of a "political community."

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 in which he was formerly domiciled to cast votes in that State or district. These two bills pointedly forbid treating a non-resident voting in the district and State as a resident for tax purposes. The effect is to provide certain nonresidents a "right" of representation without taxation—a status not available to bona fide residents.

In addition, consideration should be given to the possible effect of such overseas votes in diluting the votes of those who have a greater stake in the political community. In small States and districts the possibility that nonresidents votes may change a House or Senate primary or election is not wholly speculative. For example, in the 1970 race for the House seat in Wyoming, the victorious candidate won by fewer than 700 votes.⁴

In our view, S. 2102 and S. 2384 exceed the constitutional authority of Congress with respect to elections. Moreover, they present serious policy questions. Accordingly, we oppose their enactment.

⁴ The Almanac of American Politics, p. 911 (1972).

Senator PELL. Our next witness is Sargent Shriver, who has a long and distinguished record at home and abroad.

STATEMENT OF SARGENT SHRIVER, CHAIRMAN, AMBASSADORS COMMITTEE FOR VOTING BY AMERICANS OVERSEAS

Mr. SHRIVER. Thank you very much, Mr. Chairman. I am happy to be here.

Senator PELL. You have a statement?

Mr. SHRIVER. I do have a statement; I have given copies of it to your assistant, and I assume you don't necessarily want me to read through it, though I would like your permission to have it inserted in the record.

Senator PELL. It will be inserted in the record in full, and I see you have a distinguished committee formed of various former Ambassadors who have been active in securing the vote abroad.

I would think Ambassador Angier Duke would be included, because he was overseas chairman for one of the parties.

Mr. SHRIVER. Yes, sir. There are a couple of points I would like to make, without reading the text word for word, one of which concerns this bipartisan committee of former Ambassadors that you just mentioned.

Senator PELL. It doesn't look terribly bipartisan to me.

Mr. SHRIVER. Well, first of all, it was just in the process of formation, and the 10 people who are now on it should not be looked upon as the only 10 who are interested in this question.

Senator PELL. Because most have the good fortune, I notice, to be Democrats.

Mr. SHRIVER. Well, I don't think that George Bush yet qualifies as a Democrat.

Senator PELL. I am sorry.

Mr. SHRIVER. He may be considering becoming a Democrat.

Senator PELL. I only scanned the list briefly.

Mr. SHRIVER. Well, George Bush, and I think George C. Smith, who is President Nixon's Ambassador in charge of the SALT negotiations with the Soviet Union, is a registered Republican.

Senator PELL. Right.

Mr. SHRIVER. And I might just add with respect to this committee first of all, it is in formation. Second, nobody that I asked declined, regardless of party, age, previous condition of servitude, and I would find it rather surprising in view of the experience in inviting these 10 men—I would find it rather surprising if somebody did object.

Second, I would like to say about this committee that nobody who is currently an Ambassador has been asked, so that a large number of people who would otherwise, I believe, have been happy to be listed, are not on here simply because they are still occupying ambassadorial posts abroad, or similar posts.

The second thing I would like to mention is the fact that we are talking about a substantial number of people, almost a million American citizens. There is no precise proof of number, but if you are talking about, let us say three-quarters of a million potential voters, that total number is as much as the total number in some States. So we are not talking about an insignificant problem.

The third point I would like to make is that in my experience, at any rate, many decisions of the U.S. Government affect people living abroad as much or more, and they have as great an interest in those decisions as people here at home, and a very obvious example of that is the devaluation of the dollar, or the question of troop reductions in Western Europe.

A fourth point that I would like to make is that these people not only cannot vote, but in a sense they are excluded from representation. If you are an American citizen living in France, let us say, or Germany or Austria, to whom would you naturally turn if you wanted to write a letter protesting about something? You don't have a Senator or a Congressman, and there is nobody that is really looking to you as one of their supporters. You would be relying almost exclusively just on potential or possible friendships, but there is nobody representing you as such.

There are in addition an extraordinary number of peculiarities which come about because of the fact that these people are at this time subject to various State regulations, so that I have had the experience of seeing a man from Michigan living abroad and able to vote in a Presidential election, and a man, let's say from Pennsylvania, living in the same building in London, unable to vote, simply because of the vagaries of the local legislation in this country.

Another point I would like to emphasize is that this legislation does not confer any special preferential status on people living abroad. It merely equalizes their status with people living here at home.

I would also like to mention briefly, at least, the question about the taxation aspect of this legislation, because with respect to many people living abroad, one of the greatest deterrents to their voting is the danger that they anticipate that they would become subject to the tax laws of the particular State which they would not otherwise be subject to for income tax purposes.

For example, one person whom I know just looked upon it in cold dollars-and-cents terms, that if this person had voted in the last Presidential election, the cost of that person's voting would have been approximately \$6,000. So in effect, what you have here is a veiled form of a poll tax, and I think it is important that we address ourselves to it and face up to the reality of what the tax burden means in terms of disenfranchising these people.

Conversely, I wanted to emphasize that these people are not being taken out of the tax liability. If Congress wants to change the tax laws with respect to people living abroad who now, as you know, do enjoy a tax haven, you might say, with respect to the first \$20,000 they earn, if they have been living abroad for 17 or 18 consecutive months, Congress can do that.

However, it should be realized, of course, that the only kind of tax break they do get is on earned income. Unearned income tax for people living abroad is the same as for people living here in the United States.

So the tax angle means a great deal to people living there. I do not think it means a great deal to the tax revenues of the country, and if it did, those laws could be changed without regard to this legislation.

And finally, I would like to just say a word about the constitutional aspects. Having heard your conversation with the preceding witness, it seems to me that the interpretation that the Justice Department is

taking is about as narrow an interpretation as it is possible to discover, and I don't see why the executive branch has to make a predetermination that something is unconstitutional when we do have a system for finding that out—namely, the courts of the United States.

In addition to that, in the most recent and relevant decision, the language of the number of Justices who have concurred in that decision, including the Chief Justice, would indicate that there is a very good possibility that they would support the constitutionality of this bill.

So rather than take an arbitrary antiposition, which apparently the administration is taking, in the words of the previous witness, it seems to me that it is a matter that can be left without any danger to the Commonwealth or to the country—to the courts of the United States.

Thank you very much.

Senator PELL. Thank you. I would agree with you, particularly in regard to the comments you had regarding constitutionality, because I recall the previous witness' statements, that the reason the administration opposed the legislation was a legal one, and for no other reason, so that should be settled in the courts quickly, and that should resolve their problem.

Do you believe that those citizens who are overseas and wish to vote should declare a definite intent to return to the State in which they were residents?

Mr. SHRIVER. No, I don't, because that might encourage people to make a statement which, in fact, they don't really have too much intention to carry out. It is very difficult for people living abroad to make such a statement honestly.

For example, let us say you are living and working overseas for Westinghouse, or the U.S. Government, or for a law firm or an accounting firm—and I am thinking of large organizations; you don't know, when you are over there, whether General Electric or Westinghouse is going to ask you to come back to the United States and work for the company in New York, California, or Florida, or Texas, or Illinois, or wherever it may be.

So that an expression of your intent might be a totally empty statement, and, therefore, it seems to me to be encouraging people to make statements which do not really have any substantial substance in fact.

Senator PELL. I think you touched upon probably the most important reason why many people don't vote who would like to vote, and that is the tax situation which concerns them now. Not only is it a question of income taxes they may pay, but there is the question of possible estate taxes.

Mr. SHRIVER. Well, that comes up over and over again, and it is probably the most significant factor in cutting down the exercise of the franchise abroad.

I think, in that connection, it ought to be emphasized that this bill does not prevent a State from levying an estate tax, let us say, on an individual living abroad whose record shows that that person would be subject to estate taxes in that State, regardless of his voting situation.

All that this bill does, if I understand it correctly, is to say that the mere act of voting, by itself, should not be weighed in the balance of determining whether a citizen is subject to an estate tax in a given

State. There are many other factors that the State can take into account—and does take into account—aside from this voting thing.

All you are doing is saying: Take the voting right—I believe that is all you are saying—take the question of voting out of that balance for determining whether an estate tax is payable.

Senator PELL. Exactly. As chairman of the subcommittee, and as an individual who has lived a great part of his life outside the United States in a variety of capacities, I very much want to see some legislation of this sort go through.

I think the public support for it is negligible, so a great debt of gratitude would be due to you if you can expand this bipartisan, strong group of ex-ambassadors and inform public opinion, and increase support for this legislation. Quite honestly, with the exception of the people who are directly affected, who presently are disenfranchised, there has been no groundswell of support for this legislation. I thank you, your committee, the witnesses today—Mr. Murphy and Mr. Marans, and any groups who are interested in this—we would be glad to have their help to try to get this legislation through. Because, as of now, I don't think there is enough support for it.

Mr. SHRIVER. I am sorry to say I think there never will be a groundswell for this legislation. That is why the facts that I alluded to before—these people do not have any representation. They don't have any political clout; they are relatively powerless in this area.

But that to me is another reason for this—for being here. It is the equities involved that move me, and since you alluded to the fact that some of these ambassadors are Democrats, I might allude also to the point that I make on the last page of my written statement, to the effect that most people who have lived abroad or most observers of the overseas community believe that a large majority of those living overseas are Republicans, so that if they vote, most of them will be voting Republican.

So it is rather significant that a large number of the people on this committee are Democrats; they are not in it obviously because of the politics of it. They are in it because of the equities involved.

Senator PELL. I would agree with you. I think that is the way the voting pattern would demonstrate itself, if given full play.

I would hope that your committee would play as active a role as possible and make a series of press releases and perhaps its Republican members might try to secure a softening of the administration's opposition to the bill.

Mr. SHRIVER. Well, if there are any other suggestions that you have for this committee to carry out, we will be very grateful to you.

Senator PELL. I have such a profound regard for your own ability and leadership management that I will throw the ball back to you.

Thank you very much, Ambassador Shriver.

[The written statement of Mr. Shriver follows:]

STATEMENT OF SARGENT SHRIVER, CHAIRMAN, AMBASSADORS COMMITTEE FOR VOTING
BY AMERICANS OVERSEAS

Mr. Chairman, I am Sargent Shriver and I am appearing before this Committee as Chairman of a Bipartisan Committee of former American Ambassadors who support legislation to enfranchise Americans living and working abroad to vote in federal—Presidential and Congressional—elections. This committee, which is in the process of formation, already includes these distinguished former Am-

bassadors: William Attwood, William McC. Blair, Charles E. Bohlen, Chester Bowles, George Bush, Arthur Goldberg, Averell Harriman, James Loeb and Gerard C. Smith.

As Ambassadors, we knew and worked closely with Americans residing in the countries in which we served. Each U.S. citizen living abroad is—whether by choice or circumstance—a representative of his country—called upon to explain our policy, culture, experience, attitudes, and politics. Yet, because of archaic, sometimes arbitrary, and always inconsistent state laws, many of these unofficial but most important ambassadors—an estimated 750,000 plus—are denied the right to vote for President and for members of the Congress. My fellow Ambassadors and I share the conviction that this situation is wrong and indefensible.

During my years as Ambassador to France, I met often with the large—more than 20,000—American community in France. I found these Americans keenly interested in, and knowledgeable about, what their country was doing at home as well as abroad. The experience of living abroad—even for a short period—gives one an enriched understanding of one's own country—its political processes, constitutional system and democratic values. Comparison—an irresistible propensity of the citizen abroad—is a powerful stimulus to a deepened understanding of America and, with that understanding, an intensified desire for participation—even if from a distance.

As many of you know from your own experience, Americans abroad are eager for news of their country. They read—in impressive numbers—the many U.S. publications available overseas—for example, *Time* has an off-shore readership of 1,370,000, and the International Herald Tribune has a daily readership of 125,000. While not all of these readers are Americans residing abroad, it is reasonable to assume that they comprise no small portion of the total.

Perhaps more than any other single group of Americans, Americans overseas are concerned by—and knowledgeable about—American foreign policy. And, in many cases—from the devaluation of the dollar, to the maintenance of U.S. troops in Europe—they are directly affected by it. These Americans are subject to federal taxation, national service and the other obligations of citizenship which apply irrespective of residence. Yet, unlike other citizens, they are denied—whether by design or default—the right to help shape these policies and laws which may determine their destiny.

Americans abroad not only lack opportunity to participate—they are excluded from representation. To whom can or should an American living in France or England or Japan—because of governmental, private business or for other reasons—express his views about governmental policy or legislation? Who will respond to that concern? Many of us were confronted by questions such as these while serving as Ambassadors of this country. There is no satisfactory answer under the current law. It is time Congress provided a clear and responsible response by enfranchising these citizens.

The need for federal legislation is overwhelming. How can one justify a system which allows a former resident of Michigan now living in Paris to vote in the 1972 Presidential election but denies his fellow citizen and neighbor that fundamental privilege of citizenship merely because Rhode Island or West Virginia was his last state of residence before moving to France? What warrant is there for a regime which allows military personnel and civil servants to vote but denies that opportunity to Americans living abroad in similar circumstances except that their employer is a private company rather than the U.S. government? How can one explain why some citizens of this country should be subjected to state income taxes which would not otherwise apply merely because of voting in a federal election? Only federal legislation will eliminate these inexplicable inequities.

Mr. Chairman, Americans living in foreign countries rightly regard themselves as citizens of these United States—not Texans, New Yorkers, Californians or New Englanders. They are so treated by the people amongst whom they live and work. That citizenship should entitle them, *prima facie*, to vote in federal elections.

The Pell and Mathias bills would allow Americans resident abroad to vote in federal elections in the state in which they last voted or were domiciled prior to departure from the United States. These legislative proposals would create no special status for U.S. citizens who happen to live in a foreign country. They would still have to comply with other applicable state requirements and would be prohibited from registering and voting in one state if they were doing so in

another. Rather than preferring overseas Americans, these bills seek to eliminate the discrimination which, unfortunately, presently obtains.

Let me conclude with this observation. This is truly a bipartisan effort. Many hold that the majority of persons who will be enfranchised by this proposed legislation are Republicans. This may well be true, but it's irrelevant. The real point is that no American citizen who would otherwise qualify to vote should be disenfranchised merely because he or she is working, studying or living abroad. These Americans are truly ambassadors of our country. It is wrong and foolish to exclude them, or to allow them to be excluded, from exercising one of democracy's most precious rights—the right to vote.

On behalf of the members of our committee, I would like to commend Senator Mathias, Senator Pell, Senator Goldwater, Senator Roth and the others who have taken the lead in supporting this cause without a constituency. With your leadership, I am hopeful that hundreds of thousands of Americans—now unjustly denied the franchise—will be able to vote in the next federal election.

Thank you for your consideration.

Senator PELL. Our next witness is Mrs. Donna Dreschel, former Deputy Administrator of the District of Columbia Board of Elections.

STATEMENT OF DONNA DRESCHER, FORMER DEPUTY ADMINISTRATOR, DISTRICT OF COLUMBIA BOARD OF ELECTIONS

Mrs. DRESCHER. Thank you, Mr. Chairman. I would like to point out that I am an administrator, not a constitutional lawyer, and my concerns are with process.

I certainly hope this bill becomes law, and I would like to see it provide the most efficient absentee balloting process possible, and that this is the sort of thing to which I testify to today. I am pleased to see this interest in the plight of the absentee voter, who has for too long been a citizen without a voice. I applaud this committee's efforts to ease the complex procedures through which these citizens must pass in order to exercise this most basic right of citizenship.

I support the aims of S. 2384, particularly the standard post card application and the free postage provisions. I plan to make some recommendations in my testimony concerning the postal regulations, and possible voter information services. First, however, I would like to bring to your attention the fact that as far as I can understand it, certain provisions contained in S. 2384 are already on the books.

As we are all aware, a major problem for overseas voters during 1972 had to do with local boards requiring voters to provide air-mail postage before the ballot would be mailed, or local boards sending ballots by surface mail when air-mail postage was not provided.

Sadly enough, none of this was necessary. A careful reading of the postal regulations attached to my testimony, and based on the Federal Voting Assistance Act of 1955, as amended, revealed that all absentee ballots, voting instructions and return envelopes may be mailed U.S. postage-free, including air mail, to members of the Armed Forces, members of the merchant marine, and citizens of the United States temporarily residing outside the territory of the United States and the District of Columbia.

Although we all agree on the issue of free postage for ballots, I am still concerned about the other correspondence which passes between the absentee voter and the local election office. This may include the voter's request for absentee registration, the registration forms over and return, and the ballot request in those States where the standard post card is not immediately accepted.

Problems can arise at any point in this process and may not always be related to the cost of postage. In some cases the problem is one of identity. An example of what I mean occurred in the District of Columbia last year; the Washington, D.C., Post Office disenfranchised 229 citizens in last November's Presidential election. The official District of Columbia absentee request post cards for these 229 citizens were not delivered to the District of Columbia Board until December 8, 1972. The apparent explanation for this delay was that the Board did not have enough money in their postal permit fund.

What actually happened, however, was that the District of Columbia post cards did not have the easily recognizable red stripes, as required by the postal regulations. Consequently, no one at the post office recognized the post cards for what they were. There is nothing in any law which says that the District of Columbia may print the red stripe on these ballot request forms; if, however, some easily identifiable absentee mark were printed on all absentee voting matter, this identity problem would not occur.

Obviously, in the best of all possible worlds, all absentee voting matter would be mailed postage-free in the United States and overseas. However, this legislation deals only with overseas voters; thus, I would like to recommend that:

All local election offices be allowed to use the postage-free absentee envelope for all absentee correspondence with overseas voters.

Absentee postage-free envelopes be available at all U.S. Embassies and military installations for use by overseas voters in their correspondence with their local election offices.

And that postal regulations relating to absentee ballot materials be disseminated to the 50 States and to all the approximately 8,000 local election offices.

Finally, in order to provide the absentee voter with the information he needs to successfully work his way through the maze of State requirements, I would like to suggest that the U.S. Government compile and publish an overseas voters' guide similar to the document now published by the Defense Department. A number of organizations such as the Chamber of Commerce and the League of Women Voters publish summaries of State absentee voting requirements; these documents have been very helpful, but they lack the detail that I envision and which is characteristic of the Defense Department document.

Ideally, I would like to see this voters' guide available in all U.S. Embassies, along with the postage-free envelopes and a voting officer from the Embassy staffs available to assist all absentee citizens with their voting problems.

As you may be aware, the Office of Federal Elections has recently issued a request for bids for an in-depth study of the absentee voting requirements of the 50 States. By next July, this office will be in possession of all the information required to publish a document such as I have suggested.

I wish to thank this committee for the opportunity to appear before you today.

Senator PELL. Thank you very much.

In connection with your thought that all local election offices should be allowed to use postage-free mailing for all absentee correspondence and for overseas voters, as you know, you can't use the frank. Our

frank is not recognized in foreign countries, nor can you use American postage with the American frank mail from foreign countries back to here.

Mrs. DRESCHER. I have been unsure of that, but what does happen to this official envelope?

Senator PELL. If that was mailed in France or England, it would be returned to the sender.

Mrs. DRESCHER. It would be returned?

Senator PELL. It would be returned to the sender and the only way you can get around that would be if it was deposited with the American Embassy, but of course, many people live hundreds of miles from the nearest consulate, so how would they get it there?

This envelope, for example, would be absolutely no good if put in the mail in a village in Czechoslovakia.

Mrs. DRESCHER. Well, what is the solution to that?

Senator PELL. I think the individual has to pay the postage, which is the only way of getting around it. He or she is going to have to pay the 21 cents equivalent.

Mrs. DRESCHER. And if this was mailed from the local election office overseas?

Senator PELL. It would not be recognized.

Mrs. DRESCHER. Would they collect postage from the voter? Because that is what is done now, if it is used for overseas voters.

Senator PELL. Every time you do it, the person has to pay the postage on the other end. You ought to put an airmail stamp on it before it goes.

Mrs. DRESCHER. At least they wouldn't delay the voter by requesting postage for it.

Senator PELL. This could take several days before you would receive the postage due.

Mrs. DRESCHER. Well, there is no way around it, then?

Senator PELL. No, none, except for a postage stamp, but foreign governments do not recognize our frank, just as we don't recognize foreign franks either.

Mrs. DRESCHER. I know the D.C. Board has been sending these.

Senator PELL. It is a small price to pay. When you do that the letter lays over a couple of days while they find the receiver, who has to pay the 21 cents postage.

Mrs. DRESCHER. Well, what too many voting boards have been doing, instead, is writing an airmail letter over, saying: "Send us the postage for your ballot or we won't send it to you." So it is an over and back process and time is lost that way.

Senator PELL. I think basically, if people want to vote, they should be willing to spend the money on the postage, but I think in your work you should check your regulations out, because you have an obligation to send these and to put the proper airmail stamp and postage on them.

Mrs. DRESCHER. I think they are probably not doing that then.

Senator PELL. Well, you had better check it out.

Mrs. DRESCHER. Yes, I will. I will check on it.

Senator PELL. It will be all right within the country, you see.

Mrs. DRESCHER. But this is illegal in the country, you see, except for military.

Senator PELL. Except for what?

Mrs. DRESCHER. The postal regulations—where this is legal, it is only for military and overseas voters.

Senator PELL. Isn't that franked? Isn't that legal?

Mrs. DRESCHER. Oh, it is legal, but the regulations under which this is printed only deal with the Federal Voting Assistance Act.

It would certainly go through the mails, but according to law, it is not supposed to be used within the United States.

Senator PELL. I think you will find that your procedure that you are using now is incorrect. You ought to check this out with the Post Office here, and maybe they would be instructive.

Mrs. DRESCHER. That is what we have been trying to do, and they are as confused as we are.

Senator PELL. I think these regulations are logical, if we consider them. Obviously the Government of France pays no attention to this, just as we would not pay any attention to a similar envelope that arrived here with no postage stamps on it and said: "Free of French postage including airmail."

We would make the recipient pay the postage due.

Mrs. DRESCHER. Well, then, what we should be able to do if the local board is going to require postage, is to have this information in a booklet available to the voter so he knows ahead of time to buy the postage.

Senator PELL. Right. Thank you very much, indeed.

[The Postal Regulations referred to follow:]

POSTAL REGULATIONS RELATING TO ABSENTEE BALLOTING MATERIALS

137.6 ABSENTEE BALLOTING MATERIALS

.61 PURPOSE

Balloting materials consisting of post card applications, ballots, voting instructions, and envelopes, are sent through the mail without prepayment of postage, including airmail postage, for the purpose of enabling every person in any of the following categories to vote by absentee ballot when he is absent from the place of his voting residence and is otherwise eligible to vote:

- a. Members of the Armed Forces while in the active service and their spouses and dependents.
- b. Members of the merchant marine of the United States and their spouses and dependents.
- c. Citizens of the United States temporarily residing outside the territorial limits of the United States and the District of Columbia and their spouses and dependents when residing or accompanying them. To be mailable free of postage, the balloting materials must be deposited at a United States post office, an overseas United States military post office, or presented to an American embassy.

.62 ELECTIONS AFFECTED

The materials may be sent for any general election of electors for President and Vice President or of Senators and Representatives in Congress and for other general, primary, and special elections.

.63 MARKINGS REQUIRED ON BALLOT ENVELOPES AND POST CARD APPLICATIONS

.631 Envelopes used to send balloting material and envelopes supplied for return of the ballot must have printed across the face two parallel horizontal red bars, each $\frac{1}{4}$ inch wide, extending from one side of the envelope to the other side, with an intervening space of $\frac{1}{4}$ inch, the top bar to be $1\frac{1}{4}$ inches from the top of the envelope, and the words *Official Election Balloting Material—Airmail*, or similar language as prescribed by State law, between the bars. There must be printed in the upper right corner of each envelope in a rectangular box the words *Free of U.S. Postage Including Airmail*. All printing on the face must be in red with an appropriate inscription or blanks for return address of sender in the upper left corner.

Name and complete military, naval, or merchant marine address ----- ----- ----- -----	Free of U. S. postage including air mail
OFFICIAL ELECTION BALLOTING MATERIAL—VIA AIR MAIL	
Secretary of State of ----- (Home State) Capital city of home State) ----- (Home State, Zip Code)	

.632 The Federal post card application shall be approximately $9\frac{1}{2}$ x $4\frac{1}{8}$ inches in size. On the address side of the card shall be printed in red ink the following:

FILL OUT BOTH SIDES OF THE CARD	
(Name) (Unit, Gov. Agency, or Office) (Mil. Base, Station, Ship or Office) (Street No., APO, or FPO No.) (City, State, Zip Code)	FREE OF U. S. Postage Including Air Mail
OFFICIAL ELECTION BALLOTING MATERIAL—VIA AIR MAIL	
To: (Title of Election Official) (County or Township) (City or Town, State, Zip Code)	

Post Office Services (Domestic) TL-1, 10-1-70—Issue 1

Senator PELL. Our next witness is Dr. Eugene Stockwell, associate general secretary, National Council of Churches.

STATEMENT OF DR. EUGENE L. STOCKWELL, ASSOCIATE GENERAL SECRETARY FOR OVERSEAS MINISTRIES, NATIONAL COUNCIL OF CHURCHES OF CHRIST IN THE UNITED STATES OF AMERICA

Dr. STOCKWELL. Thank you, Mr. Chairman. Since I understand my statement will be printed in full in the record, I will not read it all, but would like to read just portions of it.

I testify today on behalf of the National Council of Churches, which represents some 31 denominations in this country which are extensively involved around the world in ministry and mission service, and thus have in their constituency many missionaries, agency representatives, and volunteers around the world.

I testify in hearty support of Senate bill 2102 and Senate bill 2384, designed to guarantee the constitutional right to vote and to provide uniform procedures for absentee voting in Federal elections in the case of citizens who are residing or domiciled outside the United States. We are heartened that such legislation is before you to correct the inequities experienced by disenfranchised citizens overseas. American citizens—though we admit to some sense of frustration that it should be necessary to plead on behalf of missionaries and other U.S. citizens abroad for the elemental right to vote.

I will not read the statements which I have quoted from policy statements of the National Council of Churches, regarding equal representation as a right of citizenship, and appended to my statement is the text of that policy statement in full.

Senator PELL. It will be printed in full in the record.

Dr. STOCKWELL. Thank you, sir.

We believe that this bill is the proper and necessary step in the direction of legal representation to a segment of our population that currently faces great difficulty and confusion in exercising the right to vote.

I would like to address myself just to the problems that church representatives experience overseas, even though they continue to be subject to the obligations and responsibilities of American citizenship.

Surveys indicated that absentee ballots which were solicited were received too late or not at all, sometimes delayed by transmittal by sea rather than by air. Many have been unable to register because the overseas representative no longer has a permanent U.S. address or owns no property in the United States. Regulations differ so widely from State to State that it is difficult to discover the exact regulations which apply to individuals within a community as mobile as that which missionaries and other church representatives represent.

A recent questionnaire issued by the United Methodist Board of Global Ministries' World Division indicated that about 50 percent of the respondents did vote in 1972 in the Presidential election with little or no difficulty, which was far more than the 24 percent which was able to vote in 1968, and most of those who succeeded in this voting were from States that complied with the Federal Voting Rights Act Amendments of 1970. This indicates that the difficulties in accommodating overseas voters are not insurmountable, and as in the case of military and Government personnel, can be handled with dispatch. The fact remains, however, that only approximately half our States have clear and simplified absentee registration and voter procedures, while in the other half, complicated procedures hamper thousands of citizens from exercising their franchise.

One question that is sometimes asked is whether missionaries and other overseas church representatives are interested in voting. We believe there is no question on this point; they do wish to vote if at all possible. Missionaries have repeatedly made known their difficulties in trying to vote, and much frustration is expressed.

One couple—Mr. and Mrs. William E. Roy—missionaries to Japan, sent 10 letters to their county registrar in their unsuccessful attempt to vote in 1972.

If I may use my own experience as illustrative, though I voted regularly in U.S. elections from 1944 to 1952, I was unable to vote at all from 1953 until mid-1962 while serving as a missionary in Uruguay. I was unable to vote in any election for 10 years, though I was consistently interested in my Nation's policies and subject to U.S. citizenship obligations.

One reason among many why missionaries are highly interested in voting is that they frequently experience first-hand the effects of U.S. foreign policy and are drastically affected economically when the U.S. dollar is devalued; issues of war and peace concern them deeply, decisions of our Government in relation to the countries where these mis-

sionaries serve are of special importance to them. Beyond that, they also continue to be concerned about domestic affairs, being aware that domestic and foreign affairs are integrally related.

A related question is whether overseas church representatives are sufficiently informed to vote intelligently. By far, the majority of missionaries sent by denominations related to the National Council of Churches are college graduates, many with master's and doctorate degrees. A recent United Methodist survey indicated that of 395 respondents, 85 percent regularly read *Time* or *Newsweek*, plus a great variety of other journals of opinion, U.S. newspapers, and a wide spread of church magazines full of comment about current political and community issues.

The point is that this large community of U.S. citizens, most of them professionally trained, is both interested in and prepared to make the kind of citizenship judgments which they are called on to make in Federal elections.

The bill before you provides a uniform solution which would be applicable for absentee registration and voting from abroad. We believe this uniformity is necessary for the sake of clarity and simplicity. The post card application for absentee ballot for Federal elections which is provided by the bill is clear and provides for notarization before designated U.S. officials to avoid fraudulent false registration and voting. Penalties for false registration and illegal voting are severe, further reducing the danger of possible fraud.

In summary, Mr. Chairman, we would urge that this bill be strongly supported and that this subcommittee urge your colleagues to enfranchise American citizens overseas.

I might say also that the National Council of Churches will do everything it can in relation to its constituency to secure support for this measure. Americans overseas are acutely aware of decisions made by the Government and want to be involved in that process.

We thank you for your efforts in this direction and for the opportunity we have been provided to bring before you the concerns of American missionaries and overseas church representatives.

Senator PELL. Thank you very much, indeed, Dr. Stockwell, for a good statement representing the problems of people whose lives take them outside our Nation, and who are unable to participate in our Nation's decisions as they should, though obviously well qualified to. Thank you very much.

[The written statement of Dr. Stockwell follows:]

STATEMENT OF DR. EUGENE L. STOCKWELL, ASSOCIATE GENERAL SECRETARY FOR OVERSEAS MINISTRIES, NATIONAL COUNCIL OF CHURCHES OF CHRIST IN THE U.S.A.

Mr. Chairman and members of the Senate Subcommittee on Privileges and Elections, I am Eugene L. Stockwell, Associate General Secretary for Overseas Ministries of the National Council of the Churches of Christ in the U.S.A., with headquarters at 475 Riverside Drive, New York City.

The National Council of Churches brings together in cooperative relationships 31 constituent denominations, most of which are extensively involved throughout the world in denominational and ecumenical ministries of mission and service, involving the participation of thousands of United States citizens who as missionaries, agency representatives or volunteers work in many countries throughout Asia, the Middle East, Africa, Latin America and Europe.

I testify today in hearty support of S. 2102 which is designed to guarantee the constitutional right to vote and to provide uniform procedures for absentee voting in Federal elections in the case of citizens who are residing or domiciled outside

the United States. We are heartened that such legislation is before you to correct the inequities experienced by disenfranchised overseas American citizens, though we admit to some sense of frustration that it should be necessary to plead on behalf of missionaries and other U.S. citizens abroad for the elemental right to vote.

On June 3, 1965 the General Board of the National Council of Churches adopted a policy statement entitled "Equal Representation is a Right of Citizenship." (P. 80.) It affirms "our Christian conviction that one of the fundamental rights of citizenship is the right of every citizen to representation substantially equal to that of other citizens, regardless of where he lives or what may be his wealth or learning." Recognizing that our national history has been in part a story of extending the franchise to all adult citizens the statement affirms "equal representation is every person's fundamental right and a necessary adjunct to full political personhood."

Though the General Board of the National Council of Churches does not speak for all members of its member churches, it does express the considered judgment of the representatives of those churches officially sitting on that General Board. The member communions of the National Council of Churches have authorized the Council "to speak and act on conditions and issues in the nation and the world which involve moral, ethical and spiritual principles inherent in the Christian Gospel." (NCC Constitution, Article II, 9.)

We believe that S. 2102 is a proper and necessary step in the direction of the provision of equal representation to a segment of our population that currently faces great difficulty and confusion in exercising the right to vote.

What problems do church representatives overseas experience in trying to register and vote, even though they continue to be subject to the obligations and responsibilities of American citizenship? Surveys indicate that absentee ballots which were solicited were received too late or not at all, sometimes delayed by transmittal by sea rather than by air. Many have been unable to register because the overseas representative no longer has a permanent U.S. address or owns no property in the U.S. Regulations differ so widely from state to state that it is difficult to discover the exact regulations which apply to individuals within a community as mobile as that which missionaries and other church representatives represent.

A recent questionnaire issued by the United Methodist Board of Global Ministries' World Division indicated that about 50% of the respondents did vote in 1972 with little or no difficulty compared with only 24% who voted in 1968, and most of those who succeeded in thus voting were from states that complied with the Federal Voting Rights Act Amendments of 1970. This indicates that the difficulties in accommodating overseas voters are not insurmountable and, as in the case of military and government personnel, can be handled with dispatch. The fact remains, however, that only approximately half our states have clear and simplified absentee registration and voting procedures while in the other half complicated procedures hamper thousands of citizens from exercising the franchise.

Are missionaries and other overseas church representatives interested in voting? We believe there is no question on this point—they do wish to vote if at all possible. Missionaries have repeatedly made known their difficulties in trying to vote. Much frustration is expressed. One couple, Mr. and Mrs. William E. Roy, missionaries to Japan, sent ten letters to their county registrar in their unsuccessful attempt to vote in 1972. If I may use my own experience as illustrative, though I voted regularly in U.S. elections from 1944 to 1952, I was unable to vote at all from 1953 until mid-1962 while serving as a missionary in Uruguay. I was unable to vote in any election for ten years though I was consistently interested in my nation's policies and subject to U.S. citizenship obligations. One reason among many why missionaries are highly interested in voting is that they frequently experience first hand the effects of U.S. foreign policy. They are affected drastically economically when the U.S. dollar is devalued. Issues of war and peace concern them deeply. Decisions of our government in relation to the countries where these missionaries serve are of special importance to them. Beyond that, they also continue to be concerned about domestic affairs, aware that domestic and foreign affairs are integrally related.

A related question is whether church representatives are sufficiently informed to vote intelligently. By far the majority of missionaries sent by denominations related to the National Council of Churches are college graduates, many with master's and doctorate degrees. A recent United Methodist survey indicated that of 395 respondents 85% regularly read *Time* or *Newsweek*, plus a great

variety of other journals of opinion, U.S. newspapers, and a wide spread of church magazines full of comment about current political and community issues. The point is that this large community of U.S. citizens, most of them professionally trained, is both interested in, and prepared to make, the kind of citizenship judgments which we are called to make in federal elections.

S. 2102 provides a uniform solution which would be applicable for absentee registration and voting from abroad. We believe this uniformity is necessary for the sake of clarity and simplicity. The Post Card Application for Absentee Ballot for Federal Elections which is mandated by S. 2102 is clear and provides for notarization before designated U.S. officials to avoid fraudulent false registration and voting. Penalties for false registration and illegal voting are severe, further reducing the danger of possible fraud.

In summary, Mr. Chairman, we would urge that S. 2102 be strongly supported and that this Subcommittee urge your colleagues to enfranchise American citizens overseas. Americans overseas are acutely aware of decisions made by their government and want to be involved in that process. We thank you for your efforts in this direction and for the opportunity we have been provided to bring before you the concerns of American missionaries and overseas church representatives.

EQUAL REPRESENTATION IS A RIGHT OF CITIZENSHIP

A POLICY STATEMENT OF THE NATIONAL COUNCIL OF THE CHURCHES OF CHRIST IN THE UNITED STATES OF AMERICA

Adopted by the General Board, June 3, 1965

The General Board of the National Council of Churches of Christ in the U.S.A. has repeatedly expressed its Christian concern for the maintenance and enhancement of human rights and liberties, most recently for "the right to full participation of the person in political and civil life."¹ The General Board has an equal concern for the ever full attainment of a just and open society. Both of these concerns have come to focus in the right to vote.

As our understanding of the God-given dignity of man has developed and matured, most of our fellow-citizens have now realized the urgency of giving all adult members of our society equal access to the ballot. What has not been as widely realized is the necessity of protecting the quality of the ballot. We welcome the action of our Commission on Religion and Race within its special mandate witnessing to the conviction that "every American citizen has, as his inalienable right, not only an equal right to vote, but also to an equal vote."²

The condition has arisen in our country that many legislatures have refused to reapportion themselves according to the shifting of population, thus permitting the representatives of less populous areas to continue to outnumber the representatives of the growing cities and suburbs, and so to maintain their dominance over the affairs of the several states.

In recent years, the courts have sought to rectify this condition by insisting that the legislatures be reapportioned in proportion to the current distribution of population, so that the votes of all citizens for their legislators would be substantially equal in effect. The Supreme Court's interpretation of the equal protection clause of the Constitution guarantees this personal right of representation for individual voters. This right must not be abrogated by any constitutional revision. But the Supreme Court's decisions have been met by moves to amend the United States Constitution to withdraw these issues from the jurisdiction of the courts and to permit the states by referendum of their present voters or by other means to apportion the membership of one house of a bicameral legislature on factors other than population.

In the light of these circumstances, the General Board concludes that many of the causes of civil rights and liberties we have long supported are at stake in the question of equal representation, and now affirms our Christian conviction that one of the fundamental rights of citizenship is the right of every citizen to representation substantially equal to that of other citizens, regardless of where he lives or what may be his wealth or learning.

¹ Policy Statement on *Human Rights*, unanimously adopted by the General Assembly, December 6, 1963.

² Resolution on Reapportionment, by the Commission on Religion and Race, April 14, 1965.

We do not find in the nature of men as children of God any distinction of kind such that one man should cast a vote worth more than another's. Neither race nor religious adherence, neither property nor education, neither rural residence nor urban, nor appeal to states rights, entitles one man or group of men to a disproportionate share in the *basic franchise* by which their civic affairs are governed. The structures of government erected upon this base may vary in design and operation according to the development of the techniques of political science, but the right of every person to say his full "Yea" or "Nay" in periodic elections is more than a technical question.

If the right to vote is denied, or if the vote itself is diluted, then to that extent the membership of the voter in civil society is diminished and his political personhood is impaired. He becomes less of a "man" than his fellows, and loses to them some portion of his right to help determine his civic destiny. This is a moral question and ultimately a theological one, concerning which the National Council of the Churches of Christ may not remain silent.

When the founders of our nation declared, "All men are created equal and are endowed by their Creator with certain inalienable rights," they perceived and expressed a profound truth about the nature of man, which earlier generations had not had the social experience or political opportunity to discover. In the Christian view man is a child of God who is loved by His Heavenly Father, and who is called to love his brother as a member of God's family. As such he is also a son of God who is of infinite value in God's sight and who, in obedient response to His will, values all other human beings as sons of God with the dignity and the freedom of action of such sonship.

Believing, then, that "all men are created equal"—not in their abilities but in their rights among the rest of humankind—we do not know of any proper basis on which that equality can be reduced or the rights which God has given alienated, not even by the majority vote of the electorate. Individuals may refrain from exercising their franchise, but it ought not to be kept or taken from them—in whole or in part—by those who presently possess political power in order to perpetuate their possession of that power. Rights guaranteed to persons by the Constitution are not "rights" if they depend on the outcome of elections.

The story of this nation is in part the story of the extension of the franchise to all adult citizens. The founders of our nation failed to apply fully their daring insight that all men are created equal. They failed to give women the right to vote, and for the purpose of allocating representatives to the states counted Negro slaves as three-fifths persons and even then denied them the right to cast these votes themselves.

Ever since that time, we have been striving as a nation toward a goal which could not then be, and has not yet been, fully attained. For over a century we have suffered as a nation the continuing consequences of undervaluing the personhood of some of our fellowmen. Recently we have begun to perform a national penance for this injustice. But having striven thus far toward achieving a genuine and effective political equality, we should not now change our Constitution in any way that would take our nation back toward fractional citizenship. Rather we should move in the opposite direction: toward the integrity and equality of every citizen's full belonging to the civic commonwealth of God's children. If our democracy is to function properly those who are eligible to vote should be encouraged to exercise their franchise and to prepare themselves to vote intelligently on candidates and issues.

We believe that equal representation is every person's fundamental right and a necessary adjunct to full political personhood. Therefore, the National Council of Churches records its opposition to the proposals for an amendment to the Constitution or any other moves which would restrict the right of every person to substantially equal representation.

For, 77—Against, 16—Abstained, 7.

Senator PELL. Our next witness is Mr. Floyd Robertson, of the National Association of Evangelicals.

STATEMENT OF FLOYD ROBERTSON, ASSISTANT TO THE GENERAL DIRECTOR, NATIONAL ASSOCIATION OF EVANGELICALS

Mr. ROBERTSON. Thank you, Mister Chairman, I represent the National Association of Evangelicals, which is composed of some 39,000

churches from 64 denominations, and four affiliate organizations serving several million Christians.

It is a pleasure to appear before your meeting today in support of the Overseas Citizens Voting Rights Act of 1973. In our opinion this legislation is long overdue and should be enacted without delay.

The people in our constituency who may be affected by this legislation will number several thousand. The Evangelical Foreign Missions Association is an affiliation of the National Association of Evangelicals, the parent body, and represents 65 mission boards with over 8,000 missionaries in some 100 countries around the world. In addition, we work in close coordination with the Interdenominational Foreign Missions Association, which is comprised of some 50 mission organizations and has about 7,000 missionaries.

As you will recognize, all of these people are well educated, and because of their work are keenly interested in those who are elected to public office through our Federal elections. It should not be necessary to labor the point of how many difficulties they may encounter when they attempt to vote under the current diversified regulations governing elections. With virtually no two States providing the same system, and many having no feasible way by which certain missionaries could vote at all, many of them simply do not make the effort to cast an absentee ballot.

When I was on active duty in the Armed Forces, we were furnished timely information about election and helpful assistance which enabled most of us to vote. However, this required a mammoth effort on the part of the Secretary of Defense to initiate this action, and each military unit had to designate a voting officer to insure that each person could exercise his franchise to vote if he so desired. As far as we know, no other segment of society representing U.S. citizens overseas has had this type of service available to them. It appears however that the Overseas Citizens Voting Rights Act of 1973 will go a long way toward making it possible for all citizens overseas to exercise their right to vote with a minimum of effort. We believe they are entitled to such service and strongly support S. 2102 on behalf of our missionaries and others in similar categories.

Senator PELL. Thank you for your statement.

I have always been very impressed with the job you do, and the debt you are owed. At one time I made a survey of the chiefs of governments in Africa, and something like 90 percent had been educated in missionary schools of one sort or another. The impact of missionaries for good around the world, I think, is very much underestimated, and these statistics show where the various leaders of the emerging nations received their early educations.

Mr. ROBERTSON. We appreciate that, Mr. Chairman.

Senator PELL. Thank you very much, indeed.

Our next witness, and actually, I guess, the final witness, is Mr. J. Kevin Murphy and—who is chairman of the Bipartisan Committee for American Voters Overseas; he is accompanied by Mr. Eugene Marans, counsel to the Bipartisan Committee.

I happened to be overseas when I read about the setting up of your operation, and have been the recipient of a good deal of the mail that has been sent to the Congress on this subject.

As you know, one of the problems we face is airmail postage which is not provided, and the franks on all the letters that you accept—we have to buy that. You have done a good job; I may have to interrupt because there may be a rollcall vote, and then we will go through some questions, afterwards.

STATEMENT OF J. KEVIN MURPHY, CHAIRMAN OF THE BIPARTISAN COMMITTEE ON ABSENTEE VOTING, INC.; ACCOMPANIED BY J. EUGENE MARANS, COUNSEL TO THE BIPARTISAN COMMITTEE

Mr. MURPHY. Thank you, Mr. Chairman, for this opportunity to appear before the subcommittee on the overseas voting bills.

My name is Kevin Murphy, and I am appearing before you today as a chairman of the Bipartisan Committee on Absentee Voting, Inc., Mr. Marans, as counsel of the bipartisan committee, would like to briefly address this committee with respect to the principal legal issues upon completion of my statement.

I want to thank you for this opportunity to testify in respect to the overseas voting bills introduced by yourself and by Senators Mathias, Bayh, Brock, Humphrey, and Roth. The bipartisan committee wholeheartedly supports both of these bills and commends this subcommittee for expediting consideration of this important legislation.

We have submitted a statement and three appendices to the subcommittee today, and I respectfully ask permission to have these documents included in the hearing record.

Senator PELL. They will be included in full in the record, and I must now recess the committee, since there is a rollcall vote in process. I will be back in about a quarter of an hour or 20 minutes.

[A short recess.]

Senator PELL. The subcommittee will come to order. There were two rollcall, which accounts for the delay. We had just finished putting your statement in full into the record, and the three appendixes that you were summarizing.

Mr. MURPHY. Yes; if I may continue, Mr. Chairman, the company which I am president of has a number of employees overseas, and we are keenly aware of some of the difficulties faced by American citizens residing overseas in seeking to vote in U.S. elections.

The Bipartisan Committee on Absentee Voting is an organization including members of both parties. Its leadership includes chairmen from the Democratic Party, chairmen from the Republican Party; the principal objective of our committee is to assure the right of absentee registration and voting for U.S. citizens overseas.

As others have stated in these hearings, reliable Government estimates indicate there are probably more than 750,000 private American citizens of voting age residing overseas. Others have already testified that nearly all of these citizens, in one way or another, are strongly discouraged or are even barred by the rules of the States of their last domicile from participating in Presidential and congressional elections.

At present the typical American citizen residing overseas in a non-governmental capacity finds it difficult and confusing, if not impossi-

ble, to vote in Federal elections in his prior State of domicile. We have found that this confusion in the law—not fear of State taxation—appears to be one of the principal reasons so few Americans residing overseas actually do vote in U.S. elections.

This confusion takes many forms. Many States impose rules which require a private citizen's actual presence or maintenance of a home in order to vote in the State, or which raise doubts of voting eligibility of the overseas citizen when the date of his return is uncertain, or which have confusing absentee registration and voting forms that appear to require maintenance of a home or other abode in the State.

It appears that in every State and the District of Columbia the typical private American citizen overseas would not be able to register and vote absentee in Federal elections unless he specifically declared and could prove an intent to return to the State. If the citizen did not have such an intent to return to the State, he could not make this declaration without committing perjury. There is, in effect, a legal presumption that such a citizen does not retain the State as a voting domicile unless he can prove otherwise.

On the other hand, if a private citizen residing overseas could honestly declare an intent to return to the State of his last residence, his chances for voting in Federal elections would be improved somewhat in the 27 States and the District of Columbia which have statutes expressly allowing absentee registration and voting in Federal elections for citizens temporarily residing overseas. The remaining 23 States do not have specific provisions governing private citizens residing overseas. All 50 States and the District of Columbia, however, impose residency requirements and other requirements which private citizens overseas for more extended periods cannot meet.

As noted in the U.S. Chamber's statement, the situation with respect to Presidential elections has been ameliorated somewhat as a result of the efforts of Senators Goldwater and Pell during the debate on the Voting Rights Amendments of 1970. However, it appears that in the 1972 election, only a few States such as Connecticut and Illinois specifically allowed a private citizen residing overseas to register and vote for President absentee solely on the basis of the Goldwater-Pell legislative history.

It should be noted that virtually all States have statutes expressly allowing military personnel and often other U.S. Government employees and their dependents to register and vote absentee from overseas. In the case of these Government personnel, however, the legal presumption is that the voter does intend to retain his prior State of residence and his voting domicile unless he specifically adopts another State residence for that purpose. This presumption in favor of the Government employee operates even where the chances that the employee will be reassigned back to his prior State of residence are remote.

The result of course, is, discrimination in favor of Government personnel against private citizens overseas in seeking access to the Federal franchise. Such discrimination certainly appears questionable as a matter of public policy, and might be suspect under the Equal protection clause of the 14th amendment.

The U.S. District Court for the Southern District of New York, in a case called *Hardy v. Lomenzo*, October 1972, considered the question of whether the Voting Rights Act Amendments of 1970 could limit a

State's statutory standards of bona fide residence. The court rejected the legislative history developed by Senators Goldwater and Pell, and held that the remedy lies with the legislature and not in judicial statements.

We respectfully ask, Mr. Chairman, that a copy of this court opinion be included in the record of these hearings.

Senator PELL. Without objection, so ordered.

[The court opinion referred to appears as appendix D to Mr. Murphy's written statement, p. 102.]

Mr. MURPHY. As I said at the outset, the bipartisan committee strongly favors both of the bills pending before the subcommittee. The first priority for Americans overseas is to require in clear and unmistakable statutory language that the States allow private citizens residing overseas to vote for President and Congress in the State of their last voting domicile, even though the citizens may not be able to prove that they intend to retain that State as their domicile for other purposes.

Both of the pending bills would satisfy this legislative need, and we believe this is the heart of the matter. The present checkerboard pattern of domicile rules among the States should no longer be permitted to deny private American citizens overseas their franchise in Federal elections.

Unless Congress paints with a broad brush, these citizens may continue year after year to be denied the right to register and vote absentee in elections for President and the Congress.

The pending bills also deal effectively with the second legislative need of private voters overseas, which is the adoption of uniform absentee registration and voting procedures covering these voters in Federal elections.

We also fully support the provision in the bills assuring that Federal and State Governments would not seek to impose local income or inheritance taxes on an overseas citizen solely on the basis of the citizen's exercise of the right to register and vote absentee in Federal elections. This provision is not meant to create any new tax exemption; it is designed only to assure that the citizen overseas will not lose any Federal or State tax exemption which would otherwise be available to him by virtue of his residence overseas.

You asked, Mr. Chairman, about the effect of the tax provision of the bills on State inheritance taxes. I would like to emphasize that the tax provision of the pending bills does not create a new exemption from inheritance taxes any more than it creates one for State income tax. If an American citizen overseas is subject to State inheritance taxes by virtue of continuing domicile in a State, or failure to establish domicile in another State, this provision will not exempt him from the inheritance tax of his prior State.

The bills simply provide that the overseas citizen would not be subject to inheritance taxes solely because he voted or registered to vote in a Federal election.

As others have pointed out, there are only about a dozen States that do not provide an American citizen residing overseas a partial exclusion or even a complete exemption from State income taxes for his overseas earned income. It is plain that fear of losing these exemptions has played some role in inhibiting Americans overseas from exercising

their franchise. We are hopeful that the uniform provisions of the pending bills will eliminate this inhibition.

I would like to emphasize, however, that the tax exemption question is subsidiary to the central objective of these bills, which is to secure substantive absentee registration and voting rights for American citizens overseas.

The question might be asked as to why the pending bills contain provisions assuring the right to vote in congressional elections and also as to whether the bills are constitutional. I think I might, in the interest of time, pass these matters to our counsel, Mr. Marans.

In summary, I would like to emphasize that there is a definite need for the pending legislation. We believe it is constitutional. It has the overwhelming support of American citizens around the world, whether they are business, civic organizations, professional, and religious communities, whether they are young Americans, housewives, or whatever. They have been denied this right too long. We believe it is time now, when our U.S. democratic system is held out to both the free and the nonfree worlds as a model of freedom, to assure that our Americans overseas are able to exercise the fundamental right to vote in Federal elections.

And, secondly, we recognize that the International trade bill being discussed by the House and shortly by the Senate would further open up areas for free trade in the world to bring about peace and international commerce. It would not make much sense if the emissaries we send abroad representing American industry in the attempt to bring about better international trade, if they were to lose one of their most valued rights: namely, the right to vote.

So the pending bills would not just apply, Mr. Chairman, to the people living overseas today, but they would also apply to the people who may have to go overseas tomorrow. This legislation has not only historical value, but also great value for the future.

Thank you very much for this opportunity to speak to you today.

Senator PELL. Thank you very much indeed, Mr. Murphy. As you know, this subcommittee is very interested in this subject, and as its chairman, I want to do all I can to move in this direction. As I have said, that is partly because of the part of my own life that I have lived overseas; I think we should insure this franchise.

The points you made are all excellent. One problem we face is the mustering of enough support for the people who are disenfranchised; it is a little difficult, because I don't think this is a very burning question in Congress. I think you have done an excellent job with your group in stimulating public opinion around the world; I was wondering if you could tell me a little more of your own plans as to how your group plans to proceed.

Mr. MURPHY. Yes. We have already contacted almost every major organization which might be expected to have an interest in this legislation—civil, business, religious, political. We expect to have formal endorsements from these groups, and more important, vigorous action on their part in the form of communication to the Congress of the United States as well as to the President of the United States urging support of the legislation which you have introduced. We are also contacting all major corporations at the top level, asking them to have their executives in America as well as overseas contact the mem-

bers of this subcommittee and all other Members of the House and Senate.

We have the great support of many women's groups, and as we all know, they are very effective and hard working, and very aggressively at work.

We are setting up committees in every major European city, as well as in a number of the principal cities of Southeast Asia and Latin America.

So we believe, Mr. Chairman, that over the next 30 to 45 days, we ought to have some aggressive action. We are suggesting that on election day in oversea locations, like Paris and London, some of our committees might seek an audience with the U.S. Ambassador as a way of practicing what they are preaching, and also asking the committees to communicate back home that they have been able to see the Ambassador on that day.

Senator PELL. And I would hope that there would be a good relationship with the individual Members of Congress, and that that is being pursued, because I feel if I were not chairman of the subcommittee, I would not be as aware of your work.

Mr. MURPHY. Yes, sir. We are certainly going to contact all Congressman, all Senators, and if you would like to suggest any other area, we would be delighted to hear it.

Senator PELL. I think we have received probably 200 or 300 letters, but I would like to see that same number of letters arriving to each individual Member of Congress; it would probably have an effect, because in getting this through, we have to get a majority to support it.

Would Mr. Marans like to add something?

Mr. MARANS. Yes, a few points.

First, Mr. Murphy indicated I would say a few words about why congressional elections appeared to be included in the pending bills.

Some people say if a person is not residing in a congressional district, he does not have any real interest in voting in that district for Senator or Representative. There is no doubt, however, that Congress is concerned with the collective legislative problems of the entire Nation, along with the specific legislative interests of each district. It is conceded that the local inhabitants of a district may not have the same bundle of Federal interests as a citizen residing overseas. Yet the Federal interests of the citizen overseas may also be of vital importance to the country. Consider, for example, the exchange rate of the dollar, social security benefits, or immigration policies.

It is plain also that the local citizen and the overseas citizen share a number of common national interests such as taxation, defense expenditures, U.S. troops stationed overseas, and the integrity and confidence of our National Government.

In addition, Mr. Chairman, you know that legislative representation is a two-way street. If private citizens overseas have no vote for Congress, they have no representation in Congress. No legislator is directly responsible at the ballot box for their welfare.

American Senators and Congressmen long ago became our national ombudsmen. The American citizen wants to learn in the newspapers about the actions actually taken by his Congressman; but he also wants to be able to make the Congressman aware of the citizen's own interests, concerns, and problems.

Mr. Chairman, our statement also discusses the fraud provisions in the bills, and the reasons we think that the potential of voting fraud in the implementation of the pending legislation is remote and speculative, and I will not go into detail about these reasons on this occasion.

However, I would like to say a few words about the statement of the Justice Department today. We are disappointed in the Justice Department's statement, especially since it couched its opposition to the pending bills primarily on the constitutional ground that neither Congress nor the Supreme Court has yet passed on the precise rule of law involved.

If Congress had never gone beyond the bounds of the present law, we would never have had a single important piece of voting rights legislation over the past 15 years. We would not have had the benefit of the Voting Rights Acts of 1957, 1960, the Civil Rights Act of 1964, the Voting Rights Act of 1965, and even the Amendments of 1970, each of which has been an important part of the revolution in voting rights in America, and each of which eventually was passed upon in the U.S. Supreme Court.

Nathan Lewin, a noted constitutional scholar, said yesterday, we think there is a strong constitutional basis for the pending legislation. As in the case of prior congressional enactments in the voting area, if the legislation never gets to the U.S. Supreme Court, we will never know what the Court would have said, and 750,000 citizens overseas will still be disenfranchised.

Further, we think there is no more risk of confusion in interpretation of the pending legislation prior to a Supreme Court decision than in any of the other major pieces of voting legislation we have had over the past few years. The Supreme Court knows how to vote such an important piece of legislation up or down in short order without creating such confusion.

We were also disappointed in the Justice Department's policy objections to this legislation. The Department states on page 23 that it is "basically unfair" to allow persons residing overseas to vote because Congress or the States have said that some of these citizens may be exempt from some portions of taxes. The principle asserted by the Department seems to be "no representation without taxation."

We think this is a wrong-headed view. The right to vote in Federal elections is a fundamental right of American citizenship. No one would think of denying this right to retired Americans on social security, students, working poor, or other persons with tax-exempt income.

Moreover, we believe that such an important policy position as is taken in the Justice Department statement should be given more balanced and thoughtful consideration than in its cryptic policy judgment before this subcommittee. We think that it might be useful to explore further with the Department a balanced policy judgment on this important issue.

Mister Chairman, you previously expressed some interest in the postal regulations which are involved in voting from overseas. I am pleased to report that Congress has been somewhat more generous with the overseas voter than with itself. The Federal Voting Assistance Act cited in the chamber of commerce booklet already authorizes the Post Office Department—now the Postal Service—to absorb the cost of the additional airmail postage for mailing from the United States election materials marked in accordance with the act.

You are right that the man who is 200 or 300 miles out in the country, away from a U.S. Consulate or Embassy, can not walk down to the Embassy and drop his ballot into a U.S. postal facility there. However, in my personal experience, he can mail his voting materials to the nearest U.S. Consulate and in most cases that does take more than 2 or 3 days, except in truly remote areas, and then the U.S. Consulate will forward the ballot material back to the United States, often by pouch, APO or other expedited service. The result of that is that the ballots sometimes arrive more quickly in the United States than if the voter had dropped the ballot into the mail in the foreign country in which he was living.

Senator PELL. I would disagree with you on that point, having served some time in the Foreign Service. In my experience the pouch is usually slower than the regular commercial airmail. This has been my experience when I traveled, and I have sent some material back to my office. It goes much more slowly than airmail.

There are few places in the world where a regular airmail letter takes more than a week between countries these days, although sometimes it takes a week to get from New York to Chicago.

Mr. MARANS. I recently had an experience in sending some material both ways. The material sent from Moscow in the local mail took about 2 weeks; that which I deposited at the Embassy took about 3 days.

Senator PELL. We obviously have had different experience there.

Mr. MARANS. Another approach that could be followed, which was not referred to today, is further use of international postal coupons. As you know, a person in the United States who wants to hear more from his relatives in a foreign country can send them international postal coupons which generally the foreign resident can exchange at a foreign post office for stamps to send mail back to the United States.

Senator PELL. But I really think we shouldn't quibble on the postage, because if it means enough to a person to vote, he will pay the 21 cents airmail.

Mr. MARANS. I agree that the Government should be able to find adequate resolution of that problem within the present statutory framework.

Senator PELL. One other question. What do you think should be the time frame? Do you believe that applications for absentee ballots should be received earlier than 30 days before the elections, or 60 days, or 45 days?

Mr. MURPHY. That is a question I think that Mr. Marans has probably looked into more thoroughly than I, Mr. Chairman. The question arises, however, whether even 30 days is enough time to send the application over and get the ballot back, if you have, as you have just pointed out, the possibility of a 2-week delay each way.

Senator PELL. I think maybe we ought to stretch it out a bit to 45 or 60 days.

Mr. MARANS. Mr. Chairman, your bill, as you know, provides both a 30-day rule and a 7-day rule. The 30-day rule is for absentee registration; the 7-day rule is for requesting an absentee ballot. We understand that both time limits were set this low in order to conform to the Voting Rights Act Amendments of 1970. It was felt, at least initially, that the citizen overseas should not be denied the same time frame as enjoyed by the citizen residing in, or close to, the United States.

One considers, for example, of citizens residing in Canada, Mexico or other countries which are close geographically to the United States. These citizens might still benefit from the 30- and 7-day rules.

Senator PELL. Don't forget, when you use the word "citizens," be careful, because you have about 6 million citizens who don't have the legal right to vote because they are from the territories; citizens with American passports who do not enjoy the franchise.

The problem we face, as I say, is to continue to get public opinion to push along action of this sort. As you can see from the void at the press table, the press is not following this as they might. I noticed many references in the American press abroad to your committee but the coverage is not nearly as full in the domestic press. The problem is to pass the legislation domestically, so anything you can do or your committee can do, or Sargent Shriver and his committee of Ambassadors can do, would be very helpful to this committee in securing support for this legislation. I can assure you of my best efforts in this regard, but I can not assure you of success.

Mr. MURPHY. We thank you for your help and we will do our best in that direction, Mr. Chairman.

Senator PELL. Thank you. We need the help. I thank you both for the sterling work that you have done in spearheading this important task.

[The written statement, with appendixes thereto, of Mr. Murphy follows:]

STATEMENT OF J. KEVIN MURPHY, PRESIDENT OF PUROLATOR SERVICES, INC., AND CHAIRMAN OF THE BIPARTISAN COMMITTEE ON ABSENTEE VOTING, ACCOMPANIED BY J. EUGENE MARANS, COUNSEL TO THE BIPARTISAN COMMITTEE

INTRODUCTION

My name is J. Kevin Murphy, appearing before you today as a Chairman of the Bipartisan Committee on Absentee Voting. I want to thank you for this opportunity to testify on the overseas voting bills introduced by Senator Pell, the distinguished chairman of this subcommittee (S. 2384), and by Senators Mathias, Bayh, Brock, Humphrey and Roth (S. 2102). As president of a large corporation with American employees overseas, I am keenly aware of the difficulties faced by American citizens residing overseas in seeking to vote in U.S. elections.

The Bipartisan Committee wholeheartedly supports both of these bills and commends this subcommittee for expediting consideration of this important legislation. As the name implies, the Bipartisan Committee is an organization including members of both parties; the leadership of the organization is made up jointly of Democrats and Republicans. You have already heard this morning from Sargent Shriver who is the Democratic Co-chairman of the Bipartisan Committee of Former American Ambassadors.

THE BIPARTISAN COMMITTEE

The Bipartisan Committee on Absentee Voting was formed in 1965 by overseas leaders for the Democratic and Republican parties. These leaders took this initiative when it appeared that, year after year, very few overseas civilians could meet the complex and restrictive voting requirements applicable to nonresidents. After a recent merger with the Bipartisan Committee on Education for Absentee Voters, the group includes Americans at home and overseas and now maintains its office in Washington.

The Bipartisan Committee and its affiliated organizations represent, directly or indirectly, tens of thousands of disenfranchised American citizens overseas. The Committee is active throughout Europe, particularly in France, Italy, Spain and the United Kingdom. We have affiliates in Mexico, Brazil and other Latin American countries, as well as in such faraway places as South Korea and Thailand.

AMERICANS SERVING THEIR NATION ABROAD

Reliable estimates indicate that there are probably more than 750,000 American civilians of voting age residing overseas.¹ This overseas community of some 750,000 voting-age American civilians is larger than the 1970 population of each of a dozen States, including Delaware, Nevada and New Hampshire. Our studies have shown that nearly all of these overseas citizens in one way or another are strongly discouraged, or are even barred, by the rules of the states of their last domicile from participation in Presidential and Congressional elections. These civilians include thousands of businessmen, as well as missionaries, teachers, lawyers, accountants, engineers, and other professional personnel serving the interests of their country abroad and subject to U.S. tax laws and the other obligations of American citizenship. As Mr. Shriver noted, these civilians in the Nation's service abroad keep in close touch with the affairs at home, through correspondence, television and radio, and American newspapers and magazines.

FORMS OF DISENFRANCHISEMENT

At present, a typical American citizen residing overseas in a non-governmental capacity finds it difficult and confusing, if not impossible, to vote in federal elections in his prior state of domicile; that is, the state in which he last resided. The reason is that many of the states impose rules which require a voter's actual presence, or maintenance of a home or other abode in the state, or raise doubts of voting eligibility of the overseas citizen when the date of his return is uncertain; or which have confusing absentee registration and voting forms that appear to require maintenance of a home or other abode in the state.

Let me give you an illustration of this typical disenfranchised American residing overseas:

A qualified voting resident left the state a number of years ago to work overseas in a business or professional capacity. His former home in the state has been sold and he now only has a physical residence in a foreign country. He looks upon this as temporary and intends eventually to return to the United States, although he does not know to which state he will return. He may be working overseas for as many as five or ten years. He considers that his last residence before his departure from the state remains his bona fide residence for voting in national elections, even though he has no present place of abode within the state and is unable to state an intent to return to the state.

What are his chances for voting in federal elections back home?

It would appear that, in every state and the District of Columbia, the typical American citizen overseas would not be able to register and vote absentee in federal elections unless he specifically declared, and could prove, an intent to return to the state. If the citizen did not have such an intent to return to the state, he could not make this declaration without committing perjury. There is, in effect, a legal presumption that such a citizen does not retain the state as his voting domicile unless he can prove otherwise.

However, if such a citizen could honestly declare an intent to return to the state of his last residence, his chances for voting in federal elections would be improved somewhat in about half of the states:

1. The following 28 states appear to have statutes which expressly allow absentee registration and voting in federal elections for "citizens temporarily residing abroad," *e.g.*, citizens residing overseas for a short time who can state an intent to return to the state:

¹ We have included as Appendix A to this statement the State Department's tabulation of U.S. citizens residing in foreign countries for the fiscal year 1972. This tabulation, which is based on the number of overseas citizens registering with U.S. consulates, shows that there were at least 1.14 million American citizens residing overseas exclusive of U.S. government employees and their dependents. The Bureau of the Census estimates that in 1970 approximately 66% of the American population was of voting age, *i.e.*, 18 years or older. *Statistical Abstract of the United States 1972* at 8 (1972). We think it is reasonable to conclude, therefore, that at least 750,000 of the American civilians overseas ($66\% \times 1.14 \text{ million} = 752,400$) are of voting age. Civilian in this context means non-governmental.

The most important fact, in any event, is that the number of voting-age American civilians overseas is substantial and continues to grow each year.

Alaska
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
Wyoming

Even in some of these 28 states, however, the absentee registration for such citizens may be ambiguous, as in the State of Michigan.

2. The following 13 states appear to have statutes which generally allow absentee registration and voting in federal elections, but which do not have specific provisions governing non-governmental overseas voters. Many of these 13 states impose burdensome residency requirements, including in some cases maintenance of a home or abode in the state. As others have noted in these hearings, the New York statute is one of the most burdensome in this regard :

Arizona
Indiana
Kentucky
Maine
Missouri
Nevada
New Hampshire

New York
South Dakota
Utah
Vermont
West Virginia
Wisconsin

3. The following 8 states appear to have statutes which allow absentee voting, but not absentee registration, by non-governmental overseas voters in federal elections. Many of these states also have burdensome residency requirements :

Illinois
New Jersey
North Carolina
Ohio

Rhode Island
South Carolina
Pennsylvania
Virginia

4. Two states—Alabama and Louisiana—require that all non-governmental overseas voters register and vote in person.

The situation with respect to Presidential elections has been ameliorated somewhat as the result of the efforts of Senators Goldwater and Pell, during the debate on the Voting Rights Act Amendments of 1970 (sometimes referred to herein as the "1970 Amendments"). However, it appears that, in the 1972 election, only a few states—such as Connecticut and Illinois—specifically allowed an overseas citizen to vote for President solely on the basis of the Goldwater-Pell legislative history. Even these few states required the voter to be able to prove a definite intent to return to the state. The statement of the U.S. Chamber of Commerce, which we fully support, explains the keen disappointment of thousands of private American citizens overseas in seeking to vote in the 1972 Presidential election.

It should be noted that virtually all states have statutes expressly allowing military personnel, and often other U.S. Government employees, and their dependents, to register and vote absentee from overseas. In the case of these government personnel, however, the legal presumption is that voter does intend to retain his prior state of residence as his voting domicile unless he specifically adopts another state residence for that purpose. This presumption in favor of the government employee operates even where the chances that the employee will be reassigned back to his prior state of residence are remote. The result is continuing discrimination in favor of government personnel and against private citizens overseas in seeking access to the federal franchise. Such discrimination certainly appears questionable as a matter of public policy, and may very well be suspect under the Equal Protection Clause of the Fourteenth Amendment.

INITIAL EFFORTS TO ENFRANCHISE AMERICANS OVERSEAS

The Voting Rights Act of 1965, the 1970 Amendments and the 26th Amendment to the Constitution have been major breakthroughs in providing effective instruments to meet the problem of discrimination against millions of American voters previously disenfranchised either by race, age or residence. As I have mentioned, the U.S. citizen abroad may have been an unexpected beneficiary of the 1970 Amendments, but in general, none of these landmark pieces of legislation has clearly resolved the problem of American citizens residing abroad.

The enfranchisement of Americans residing abroad in a nongovernmental capacity has received serious Congressional consideration only in the last few years. The first important development was the adoption of the 1968 amendments to the Federal Voting Assistance Act of 1955. Under these amendments, Congress recommended to the states that they adopt simplified absentee voting and registration procedures for all citizens "temporarily residing outside the territorial limits of the United States and the District of Columbia." However, according to the Federal Voting Assistance Task Force appointed by the Secretary of Defense to help implement the Act, only 27 states and the District of Columbia have so far heeded that recommendation; and even more important, the simplified absentee procedures adopted by the states do not resolve in some cases the serious legal questions referred to earlier concerning the voting eligibility of citizens residing abroad. Confusion regarding the definition of "residence" under the law of each State remains a major obstacle to the re-enfranchisement of citizens residing abroad, even in those states which have adopted the legislation recommended in the Federal Voting Assistance Act, as amended. Moreover, some states have interpreted the meaning of the word "temporarily" in this Act to exclude otherwise eligible persons who do not maintain an abode or other address in the state, or who for some other reason are not considered as having retained their state domicile.

The second important development was the adoption of Title II of the Federal Voting Rights Act Amendments of 1970. In the legislative history, Senator Barry M. Goldwater took the position that Title II should be interpreted as providing for the enfranchisement of all "civilian citizens who are temporarily living away from their regular homes," even if they are working or studying abroad. 116 Cong. Rec. 3539 (daily ed. March 11, 1970). The Senator viewed Title II as obliging the states to provide absentee registration and voting in Presidential elections for Americans abroad who satisfied a domicile test (*i.e.*, intent to return). While this interpretation received favorable consideration by a few states, the majority of states have declined to rule that this legislative history is sufficient to assure that absentee registration and voting would be available for U.S. citizens residing abroad. The point generally made by the states is that the 1970 Amendments dealt only with the issue of durational residency requirements and not with the question of domicile of a U.S. citizen overseas.

The Justice Department also expressed the view, in a March 13, 1972 letter to the Bipartisan Committee, that the legislative history of Title II may not be sufficient to reach the domicile or bona fide residency question for such a citizen. The Justice Department letter stated, in pertinent part, that:

In light of the general reservation of power to the states to determine voting qualifications, we do not consider it appropriate to assume Congressional intent to preclude the states from having a requirement of bona fide residency, or to enact a federal standard for measuring bona fide residency, in the absence of clear and unequivocal language.

We have attached the Justice Department letter as Appendix B to this statement.

The United States District Court for the Southern District of New York also considered the question, in *Hardy v. Lomenzo* (Oct. 2, 1972), whether the 1970 Amendments could limit a state's statutory standards of bona fide residence, such as the New York State requirement that the overseas non-governmental voter maintain a fixed, permanent and principal home in the state. The court rejected the legislative history developed by Senators Goldwater and Pell and held that "the remedy lies with the legislature and not in judicial elision."

The *Hardy* decision was not appealed, in large part because there was an indication that the case would have been dismissed as moot on appeal. Even if the case had reached the Supreme Court, it was expected that the Justice Department would support the District Court decision for the reasons stated in the March 13, 1972 Justice Department letter attached as Appendix B hereto.

In sum, during the period in which Congress has gone to great lengths, including a constitutional amendment, to enfranchise millions of Americans—the black, the young, those in official government service—American citizens residing overseas, who are in the private sector, continue to be excluded from the democratic process of their own country.

TWO-FOLD PROPOSAL: PRESERVATION OF VOTING DOMICILE AND DEVELOPMENT OF ABSENTEE REGISTRATION AND VOTING PROCEDURES

As I said at the outset, the Bipartisan Committee on Absentee Voting strongly favors both of the overseas voting bills pending before this subcommittee. The first priority for American civilian voters overseas is to require, in clear and unmistakable statutory language, that the states allow private American citizens overseas to vote for President and the Congress in their state of last voting domicile even though these citizens may not be able to prove that they intend to retain that state as their domicile for other purposes. Both of the pending bills would satisfy this legislative need.

This is the heart of the matter. The checkerboard pattern of domicile rules among the states should no longer be permitted to deny American citizens overseas the franchise in federal elections. Unless Congress paints with a broad brush, these citizens may continue, year after year, to be denied the right to register and vote absentee in elections for President and for the Congress.

The pending bills also deal effectively with the second legislative need of private American voters overseas, which is the adoption of uniform absentee registration and voting procedures covering these voters in federal elections. The bills would, in effect, require the states to provide the same absentee registration and balloting procedures for these citizens in federal elections as the states provide in Presidential elections under the 1970 Amendments for citizens residing in this country. One of the most important of these provisions is section 4(a)(2) of the bills requiring election officials to mail out balloting material as promptly as possible after receipt of a properly completed application.

We also were pleased to note that the pending bills would recommend, although would not require, that the states adopt an alternate version of the Federal Post Card Application which would be applicable only to federal elections. As you know, virtually all of the states have adopted the FPCA recommended by the Federal Voting Assistance Act of 1955, as amended in 1968, with respect to certain classes of voters. The present FPCA has greatly simplified absentee registration and voting for overseas citizens, and we think that the alternate federal election version contained in the pending bills would also serve a useful purpose in implementing the substantive provisions of the proposed legislation.

We also fully support the provision in the bills assuring that federal and state governments would not seek to impose income or inheritance taxes on an overseas citizen *solely* on the basis of the citizen's exercise of the right to register and vote absentee in federal elections.

The tax provisions is modeled on an Internal Revenue Service ruling interpreting the federal income tax exemption in section 911 of the Internal Revenue Code. See Rev. Rul. 71-101, 1971-1 C.B. 214.

The provision is not meant to create any new tax exemption for the overseas citizen. It is designed only to assure that he will not lose any federal or state tax exemption which would otherwise be available to him by virtue of his residence overseas.

We have attached as Appendix C to this statement a detailed summary of the purposes and provisions of the overseas citizens voting bills pending before this subcommittee.

WHY CONGRESSIONAL ELECTIONS?

We strongly support the provisions of the pending bills assuring the right of American citizens residing overseas to vote in Congressional elections as well as in Presidential elections. It is plain from other testimony before this subcommittee that Americans residing overseas possess both the necessary interest and the requisite information to participate in the selection of Senators and Congressmen back home.

First, one must recognize that Congress is concerned with the common legislative question of the entire nation, along with the specific legislative interests of each district. It is conceded that the local inhabitants of the district may not have the same bundle of interests as citizens residing overseas. The local citizen may be more interested in regional farm prices, the closing of a naval base, the

construction of a new highway. Yet the citizen overseas also has his bundle of Congressional interests. The overseas citizen may be more interested, for example, in the exchange rate of the dollar, social security benefits, or immigration policy.

It is plain, moreover, that the local citizen and the overseas citizen share a number of common national interests, such as federal taxation, defense expenditures (*e.g.*, U.S. troops stationed overseas), inflation, and the integrity and competence of our national government.

We believe that U.S. citizens residing overseas should not be denied access to the ballot for Congress, and that Congress should not be deprived of the votes of American citizens residing overseas.

Second, ample evidence has been presented in these hearings that the U.S. citizen overseas can and does keep up with political developments in his own state, and would be encouraged to do so even more if he were unequivocally given the right to vote in federal elections. Americans overseas are by and large a well-educated and highly literate group, and from my own experience, I would venture to say that they are generally as well informed about important issues back home as the average citizen residing in the United States.

This subcommittee knows that legislative representation is a two-way street. If private citizens overseas have no vote for Congress, they have no representation in Congress. No legislator is directly responsible at the ballot box for their welfare. The American Senators and Congressmen, as you well know, long ago became our national ombudsmen. The American citizen not only wants to learn about the actions taken by his Congressman, but also wants to be able to make the Congressman aware of the citizen's interests, concerns and problems.

FRAUD PROVISIONS

The Bipartisan Committee believes that the potential of voting fraud in the implementation of the pending legislation is remote and speculative. You are aware, of course, that both of the pending bills provide \$10,000 fine and five years' imprisonment for willfully giving false information for purposes of absentee registration and voting under the mechanisms set forth in the legislation.

As noted by Senator Mathias, the Federal Voting Assistance Task Force of the Department of Defense has not reported a single case of overseas voting fraud through the use of the Federal Post Card Application in the entire 18 years that this form has been recommended by Congress.

It is evident, I think, that if someone wanted to commit voting fraud, the mechanisms provided by these bills would hardly be the way to do it. Many of the states require notarization by a U.S. official of at least one of the voting documents. The voter generally must go down to the U.S. consulate or other local American official with his passport and have his application for registration notarized. If the state does not also treat the registration request as an application for an absentee ballot, the voter may be obliged to have another form notarized requesting the ballot. And if the state also requires notarization on the ballot, the voter may have to trek down the U.S. consulate once again for this purpose.

One can be confident that a U.S. citizen who has any continuing contacts with the United States, even without a stated intent to return to this country, is not casually going to risk an indictment for voting fraud. Extradition treaties do not generally cover voting fraud. However, if a citizen under indictment did not want to stand trial in the United States, he might well be obliged to remain a lifelong international fugitive, forever inhibited from entering the United States. There are of course constitutional problems in denying a U.S. citizen residing abroad his passport, social security or certain other benefits prior to a conviction. But I think it is evident that a citizen indicted on voting fraud charges could be subject to significant administrative sanctions by U.S. consular officials and various other federal agencies even before conviction.

CONSTITUTIONALITY

The distinguished constitutional lawyer, Nathan Lewin, has already given this subcommittee his opinion that if the pending legislation were subjected to constitutional challenge after enactment, the Supreme Court would have an appropriate constitutional basis on which to uphold the legislation.

We would second Mr. Lewin's recommendation that the bill reported by this subcommittee be amended to contain appropriate findings manifesting the intent of Congress (i) to end the unreasonable discrimination under state election laws

between government personnel overseas and private citizens overseas; and (ii) to assure that an overseas voter will not be subject to federal, state and local taxation solely by registering and voting absentee in a federal election in his last state of domicile.

SUPPORT FOR THE LEGISLATION

The bills pending before this subcommittee have generated tremendous enthusiasm and support from American citizens residing in all parts of the world. Hundreds of these citizens have sent letters and returned questionnaires stating their support of the legislation and detailing their individual voting problems. The large number of business, civic, professional and religious organizations represented at these hearings gives further indication of the desire for this legislation.

We are now tabulating the results of over a thousand questionnaires from American citizens overseas, and we respectfully ask permission of this subcommittee to include this tabulation and examples of these questionnaires in the Appendix to these hearings.

SUMMARY

In sum, I think we have seen from these two days of hearings that—

1. There is a need for the pending legislation.
2. The legislation is constitutional.
3. The legislation has the overwhelming support of American citizens around the world, and in American business, civic, professional and religious communities, as well as from the election officials who have had an opportunity to review the bills.

American citizens overseas have been denied the vote too long. They suffered great disappointment in seeking to vote in the 1972 Presidential election. Their hope for future participation in the national political process rides on favorable action on the bills pending before this subcommittee.

We are gratified at your concern in holding these hearings and respectfully urge that legislation along the lines of the Pell and Mathias bills will be adopted in time to allow all 750,000 U.S. private citizens overseas of voting age to participate fully in the 1974 Congressional elections.

APPENDIX A

DEPARTMENT OF STATE—U.S. CITIZENS RESIDING IN FOREIGN COUNTRIES, FISCAL YEAR 1972

Countries dependent areas	U.S. Government agencies		American residents ¹	Total
	Employees	Dependents		
Afghanistan.....	182	307	296	785
Algeria.....	22	28	650	700
Angola.....	4	4	361	369
Arab Republic of Egypt.....	20	49	1,218	1,287
Argentina.....	128	266	4,880	5,274
Australia.....	102	975	35,464	36,541
Austria.....	157	274	8,095	8,526
Bahamas.....	27	200	5,000	5,227
Bahrain ²	1	173	748	922
Barbados.....	36	162	1,610	1,808
Belgium.....	410	3,596	14,250	18,256
Bermuda.....	217	1,204	7,900	9,321
Bolivia.....	92	218	560	870
Botswana.....	10	11	250	271
Brazil.....	534	803	22,735	24,072
British Honduras.....	6	6	410	422
Bulgaria.....	22	26	100	148
Burma.....	47	60	36	143
Burundi.....	11	17	94	122
Cambodia (see Khmer Republic).....				
Cameroon.....	43	61	369	473
Canada.....	384	5,556	267,000	272,940
Central Africa Republic.....	9	15	185	209
Ceylon.....	36	54	195	285
Chad.....	69	21	88	178
Chile.....	93	267	2,866	3,226
Colombia.....	228	495	13,096	13,819
Congo (see Zaire).....				
Costa Rica.....	58	151	6,488	6,697
Cyprus.....	76	416	619	1,111
Czechoslovakia.....	24	43	635	702
Dahomey.....	65	27	70	162
Denmark.....	47	121	4,179	4,347
Dominican Republic.....	196	336	7,300	7,822
Ecuador ²	287	547	3,700	4,534
El Salvador.....	77	161	1,705	1,943
Equatorial Guinea.....				
Ethiopia.....	338	2,034	1,850	4,222
Fiji Islands.....	10	22	1,177	1,209
Finland.....	41	98	760	899
France.....	467	797	23,106	24,370
French West Indies.....	3	7	150	160
Gabon.....	8	10	79	97
Gambia.....	4	5	76	85
Germany.....	6,762	156,349	63,732	226,843
Ghana.....	84	135	950	1,169
Greece.....	295	3,587	34,920	38,802
Guatemala.....	136	294	9,505	9,935
Guinea.....	16	11	70	97
Guyana.....	29	49	401	479
Haiti.....	43	61	3,209	3,313
Honduras.....	183	244	5,150	5,577
Hong Kong.....	118	274	5,500	5,892
Hungary.....	24	37	510	571
Iceland.....	82	1,733	400	2,215
India.....	347	709	4,209	5,265
Indonesia ²	168	314	3,290	3,772
Iran.....	299	1,128	7,660	9,087
Ireland.....	14	434	10,235	10,683
Israel.....	67	134	50,000	50,201
Italy.....	692	14,241	65,515	80,628
Ivory Coast.....	53	80	537	670
Jamaica.....	38	69	6,000	6,107
Japan ¹	3,847	32,950	23,091	59,888
Ryukyu Islands.....		27,493		27,493
Jordan.....	30	36	156	222
Kenya.....	441	299	3,724	4,464
Khmer Republic (Cambodia).....	62	22	10	94
Korea.....	1,470	2,566	5,165	9,201
Kuwait.....	26	45	925	996
Laos.....	725	936	166	1,827
Lebanon.....	110	302	4,937	5,349
Lesotho.....	7	10	149	166
Liberia ²	197	463	3,758	4,418
Libya.....	32	42	2,928	3,002
Luxembourg.....	34	75	640	749
Madagascar.....	11	12	478	501
Malawi.....	35	39	520	594

See footnotes at end of table.

APPENDIX A—Continued

DEPARTMENT OF STATE—U.S. CITIZENS RESIDING IN FOREIGN COUNTRIES, FISCAL YEAR 1972—Continued

Countries dependent areas	U.S. Government agencies		American residents ¹	Total
	Employees	Dependents		
Malaysia.....	58	215	2,055	2,328
Malta.....	40	24	105	169
Mauritania.....	18	26	700	744
Mauritius.....	5	7	5	17
Mexico.....	9	15	38	62
Morocco.....	311	645	97,985	98,941
Mozambique.....	243	1,956	796	2,986
Nepal.....	5	11	92	108
Netherlands.....	99	163	422	684
Netherlands Antilles.....	131	3,050	9,050	12,231
New Zealand.....	6	13	1,450	1,469
Nicaragua.....	35	333	4,500	4,868
Niger.....	73	171	2,900	3,144
Nigeria.....	106	32	128	266
Norway.....	185	380	3,418	3,983
Pakistan ²	70	603	9,000	9,673
Panama.....	203	343	1,341	1,887
Paraguay.....	116	2,616	4,513	7,245
Peru.....	68	173	730	971
Philippines.....	276	319	9,000	9,595
Poland.....	1,273	20,051	20,273	41,597
Portugal.....	52	96	5,800	5,948
Azores.....	181	2,976	5,438	8,595
Romania.....	152	190	10,800	11,142
Rwanda.....	23	59	134	216
Saudi Arabia.....	5	11	80	96
Senegal.....	82	234	6,032	6,348
Sierra Leone.....	49	71	207	327
Singapore.....	200	17	328	545
Somali Republic.....	50	118	7,300	7,468
South Africa, Republic of.....	16	23	93	132
Soviet Union.....	52	118	7,360	7,530
Spain.....	79	162	160	401
Sudan.....	53	15,778	27,700	44,013
Surinam.....	11	17	48	76
Swaziland.....	5	7	229	241
Sweden.....	12	25	262	299
Switzerland.....	46	117	3,900	4,063
Taiwan.....	109	198	21,600	21,907
Tanzania.....	369	7,009	3,603	10,981
Thailand.....	46	84	1,300	1,430
Togo.....	920	6,185	8,645	15,750
Trinidad and Tobago.....	82	17	78	177
Tunisia.....	9	44	1,326	1,379
Turkey.....	72	148	393	613
Uganda ³	350	7,219	2,389	9,958
United Kingdom.....	42	58	791	891
Upper Volta.....	1,054	31,190	67,460	99,704
Uruguay.....	14	24	156	194
Venezuela.....	67	179	902	1,148
Vietnam.....	111	392	15,183	15,686
Yemen ²	2,054	242	7,500	9,796
Yugoslavia.....	4	6	20	30
Zambia.....	64	136	3,246	3,446
Zaire.....	16	33	1,000	1,049
Other:	218	318	2,852	3,388
Leeward Islands.....		117		117
Marshall Islands.....	64	40		104
Undistributed.....	8	40		48
Grand total.....	31,612	369,820	1,141,606	1,543,038

¹ Includes employees at Ryukyu.² 1971 figures used because the 1972 figures were not available.³ 1970 figures used because new figures unavailable.

APPENDIX B

DEPARTMENT OF JUSTICE,
Washington, D.C., March 13, 1972.

J. EUGENE MARANS, Esq.,
CLEARY, GOTTlieb, STEEN & HAMILTON,
Washington, D.C.

DEAR MR. MARANS: This is in response to your discussion with members of my staff on February 1, 1972, and your letter of February 3, 1972, concerning the Voting Rights Act Amendments of 1970, 42 U.S.C. 1973aa-1, particularly the provisions of Sections 202(d) and (f) pertaining to absentee registration and absentee balloting in presidential elections. As counsel for the Bipartisan Committee on Absentee Voting, you have asked whether, in our judgment, the 1970 Amendments require a state to provide absentee registration procedures and absentee ballots to former residents of that state now temporarily residing abroad.

In brief, our conclusions are (1) that the 1970 Amendments do not *per se* preclude a state from applying a requirement of residency to those seeking to register within that state and (2) that the question of whether a person outside a state is a resident of that state for voting purposes is, at least in the first instance, a question of that state's law.

The United States Constitution reserves to the federal government the power to regulate the time and manner of federal elections (Article I, section 2; Article I, section 4; Article II, section 1) while reserving to the states the power to determine voter qualification. (*Beachman v. Brateman*, 300 F. Supp. 182 (S.D. Fla.), affirmed 396 U.S. 12 (1969); *Lassiter v. Northampton County Board of Elections*, 360 U.S. 45, 50-51 (1959)). Traditionally, this right has included the power to determine bona fide residency. (*Hall v. Beals*, 396 U.S. 45, 53 (1969) (Marshall, J., dissenting); *Carrington v. Rash*, 380 U.S. 89 (1965)). The Congress and the states acting together have, through amendment process, placed additional restrictions on the powers of the states so that they may not now establish procedures violative of the equal protection clause nor deny or abridge the right to vote on account of race, color, or sex or age if the age is eighteen or more. Legislation passed by Congress to implement the equal protection clause and voting amendments, such as the suspension of literacy tests, has placed additional limitations on the powers of the state. It is with this constitutional scheme in mind that we must look to the 1970 Amendments to determine what, if any, limitations Congress placed upon the traditional right of the states to determine voter qualifications.

At the beginning, it is necessary to distinguish between two general types of voter qualifications, durational residency requirements and bona fide residency. The former require an individual to have resided in a certain state or political subdivision for a specified length of time before he can be qualified to vote, while the latter is a determination of whether an individual is a bona fide resident of the state or political subdivision regardless of the length of his residency.

Congress expressly dealt with durational residency requirements in Section 202(c) of the 1970 Amendments (hereafter cited by section only) by prohibiting a state from imposing such a requirement to deny or abridge the right of a citizen otherwise qualified to vote in a presidential election. The Amendments provide that applications for registration or other means of qualification must be accepted up to the 30th day before the presidential election. (Section (d)). The limitation of this section, however, does not supersede the power of the states to require a citizen to be a bona fide resident of that particular state as a qualification for registration and voting in that particular state.

Section (e) is, to a limited extent, a restriction on the power of the states to require bona fide residency as a condition to obtaining a ballot. Under that Section, when a citizen moves from one state or political subdivision to a new state or political subdivision within 30 days of a presidential election and is unable to register at his new residence because the registration deadline has passed, he must be allowed to vote, either in person or absentee, in the place of his former residence. Section (e) did not expand or qualify the concept of bona fide residency in any other manner.

With regard to the absentee provisions, Section (c) provides that if a citizen of the United States has complied with the requirements of state law providing for the casting of absentee ballots, no state may deny such citizen the right to vote in a presidential election because of his failure to be physically present in such state or political subdivision at the time of such election. A state is, accordingly, prohibited from restricting the availability of absentee ballots to persons or classes absent for particular purposes, but this language does not appear to preclude a state from establishing bona fide residency as a requirement for obtaining an absentee ballot in that state.

Sections (d) and (f) establish standards for absentee registration and the casting of absentee ballots. Under Section (f), each citizen "who is otherwise qualified to vote by absentee ballot in any State or political subdivision" in an election for electors for President or Vice-President must be given the opportunity, if registration or other qualification is necessary, to register or qualify absentee. The provision applicable to absentee balloting, Section (d), requires each state to provide procedures for the casting of absentee ballots by "all duly qualified residents of such state" who will be absent from the state on election day and who have applied for an absentee ballot not later than seven days prior to a presidential election and return the ballot up to the time of the closing of the polls.¹

Since anyone who is qualified to vote absentee may also register absentee, we must look to Section (d) to determine which citizens are covered by the absentee provisions of the Amendments. This Section requires the state to provide absentee ballots to each "duly qualified resident of such state." While Sections (c) and (e), by prohibiting durational residency requirements, as discussed above, expressly limit the power of the states in certain situations, there is no language in Section (d) placing additional limitations on the right of the states to ascertain the residency of an individual. Since there is no language in Section (d) restricting the states' right to determine bona fide residency, we must, under this Section, follow the constitutional scheme of reserving to the states the power to determine which citizens are "duly qualified residents" according to state law.

From our reading of the legislative history of the 1970 Amendments, it appears that Senator Goldwater was, among other things, concerned with instances in which states did not accord civilians the same absentee registration and voting privileges they gave military personnel. However, in light of the general reservation of power to the states to determine voting qualifications, we do not consider it appropriate to assume Congressional intent to preclude the states from having a requirement of bona fide residency, or to enact a federal standard for measuring bona fide residency, in the absence of clear and unequivocal language. While a state may not conclusively presume that a certain class of citizens may never be considered bona fide residents, each state must determine, on a case-by-case basis, the true intent and residency of the individual requesting to register absentee or obtain an absentee ballot. (See *Carrington v. Rash*, *supra*). Under Sections (c), (d) and (f) a state may not deny absentee registration procedures and absentee ballots to individuals outside the country if such person has been determined by the state or local officials to be a "duly qualified resident of such state."

Sincerely,

DAVID L. NORMAN,
Assistant Attorney General, Civil Rights Division.

APPENDIX C

SUMMARY OF PURPOSES AND PROVISIONS OF OVERSEAS CITIZENS VOTING BILLS (S. 2102, S. 2384 AND H.R. 9023)

Purposes

The primary purpose of each of the overseas citizens voting bills (the "Act") is to assure the franchise in Federal elections to U.S. citizens residing overseas. It is estimated that at least 750,000 American citizens of voting age are now residing overseas and could benefit from the enactment of this legislation.

In about half of the states a U.S. citizen residing overseas is effectively barred from voting in any election, and in the other half of the states such a citizen is

¹ Section (g) provides generally that any state or political subdivision may adopt voting procedures which are less restrictive than those contained in Section 202.

denied the right to vote unless he can prove that the state continues to be his domicile, a burden which becomes increasingly difficult to sustain the longer the citizen resides overseas.

Further, a substantial number of U.S. citizens residing overseas have declined to vote in U.S. elections because of fear that the casting of an absentee ballot might cause them to lose state and local tax exemptions which otherwise would be available to them by virtue of their residence abroad. The Act contains a provision designed to assure that such exemptions would not be lost solely because the citizen voted in a Federal election.

Summary of Provisions

The Act was introduced in the Senate by Senator Pell (S. 2384) and by Senators Mathias, Bayh, Brock, Humphrey and Roth (S. 2102) and in the House by Representatives Rodino and Railsback. The bills were referred to the Senate Rules and Administration Committee and the House Administration Committee.

The principal provisions of the Act, as introduced in the Senate,¹ are as follows:

1. No U.S. citizen residing overseas could be denied the right to register and vote absentee in Presidential and Congressional elections (both primary and general) in the state in which he last voted or was last registered to vote, or if he were a first-time voter, then in his state of last domicile solely because such a citizen is domiciled or is otherwise residing outside the United States and is without a place of abode or other address in the state.

This provision would protect U.S. citizens who have been residing overseas for a long period of time and have no intention to return to a particular state, as well as those citizens residing overseas on a temporary basis with a definite intent to return to a particular state.

The overseas citizen could utilize this provision only if he has not registered to vote and is not voting in any other State or territory or possession of the United States.

2. Each state would have to provide by law (*e.g.*, statute, regulation, ruling) for the registration or other means of qualification of all U.S. citizens residing overseas who are entitled to vote in Federal elections in the state pursuant to the provision described in paragraph 1 above, and who apply not later than *thirty days* immediately prior to any such election.

The purpose of this provision is to assure that the 30-day absentee registration rule for Presidential elections in Title II of the Voting Rights Act Amendments of 1970 would apply to U.S. citizens residing overseas in all Federal elections.

3. Each state would have to provide by law for the casting of absentee ballots for Federal elections by all U.S. citizens residing overseas who are entitled to vote in Federal elections in the state pursuant to the provision described in paragraph 1 above, and who have submitted properly completed applications for such ballots not later than *seven days* immediately prior to such election and have returned such ballots to the appropriate election official of the state not later than the time of the closing of the polls in the state on the day of the election.

The purpose of this provision is to assure that the seven-day absentee ballot rule for Presidential elections in Title II of the Voting Rights Act Amendments of 1970 would apply to U.S. citizens residing overseas in all Federal elections.

4. Each state or local election official, upon receipt of a properly completed application for absentee ballot from a U.S. citizen residing overseas, and entitled to vote in a Federal election as described above, would be required to airmail to the applicant (a) an absentee ballot, (b) voting instructions, and (c) an airmail return envelope.

These materials would have to be mailed by the election official to the overseas citizen as soon as possible, and in any event, no later than (i) *seven days* after receipt of the application for ballot, or (ii) *five days* after the date the absentee ballots for such an election have become available to the election official, whichever date is later.

The purpose of this provision is to assure that the absentee ballot will be promptly mailed out to a U.S. citizen residing overseas after receipt of a properly completed application by a state or local election official. The provision recognizes, however, that the local election official would not be able to mail out the ballots until they have been printed and made available to the official.

5. Each state may (but is not required to) accept as an application for ab-

¹ The House bill contains a relatively minor variation in the procedures to be followed by the states in implementing the Act.

sente registration and/or an absentee ballot to vote in a Federal election a properly executed Federal election post card form, the text of which is included in the Act.

The post card form in the Act is similar to the Federal Post Card Application now used by virtually all the states for absentee registration and voting by military personnel and certain civilians from the state, except that the new form could be used only for Federal elections. The front of the new form is red and blue, to distinguish it from the present Federal Post Card Application which is red.

The purpose of the new form is to give the states the option to accept a uniform national application form which is printed and distributed by the Federal Government and closely tracks the language in the Act assuring the right of overseas citizens to register and vote absentee in Federal elections.

6. The exercise of the right to register or vote by any U.S. citizen residing overseas could not affect the determination of his place of residence or domicile (as distinguished from his place of voting) for purposes of any tax imposed under Federal, state, or local law.

The purpose of this provision is to assure that the Federal and state governments would not seek to impose income or inheritance taxes on an overseas citizen *solely* on the basis of the citizen's exercise of the right to register and vote absentee in Federal elections.

The tax provision is modeled on an Internal Revenue Service ruling interpreting the federal income tax exemption in section 911 of the Internal Revenue Code. See Rev. Rul. 71-101, 1971-1 C.B. 214.

The provision is not meant to create any new tax exemption for the overseas citizen. It is designed only to assure that he will not lose any Federal or state tax exemption which would otherwise be available to him by virtue of his residence overseas.

APPENDIX D

HARDY v. LOMENZO

Cite as 349 F.Supp. 617 (1972)

JACK G. HARDY AND RALPH S. VON KOHORN ON BEHALF OF EACH AND ON BEHALF OF ALL OTHERS SIMILARLY SITUATED, PLAINTIFFS,

v.

JOHN P. LOMENZO, SECRETARY OF STATE OF THE STATE OF NEW YORK, ET AL.,
DEFENDANTS

No. 72 Civ. 3965

UNITED STATES DISTRICT COURT, S.D. NEW YORK, OCT. 2, 1972

ON REARGUMENT OCT. 18, 1972

Action was brought for declaratory relief in regard to the plaintiffs' right to participate in the presidential election. The District Court, Cannella, J., held that the Voting Rights Act of 1970 while abolishing durational residency requirements in no sense abrogates the rights of the several states to enact bona fide residence requirements, that the word "deemed," in the New York Election Law provision relating to qualifications of voters and requiring state residency creates a presumption only, which is effective only on presentation of suitable evidence of continued residence, and that the statute did not abridge the plaintiffs' constitutional rights.

Complaint dismissed.

New York Civil Liberties Union, by Burt Neuborne, New York City, for plaintiffs.

Louis J. Lefkowitz, Atty. Gen., of the State of New York, by A. Seth Greenwald, Asst. Atty. Gen., New York City, for defendants Rockefeller and Lomenzo and pro se.

John J. S. Mead, Westchester County Atty., by John J. Sherlock, Senior Asst. County Atty., White Plains, N.Y., for defendants Van Wart and Hayduk, Commissioners of the Westchester County Board of Elections.

CANNELLA, District Judge.

This matter came originally before the Court on motion of plaintiffs for an order, pursuant to Title 28 U.S. Code Section 2281 and 2284, convening a statutory three judge court to hear and determine this action or in the alternative for appropriate relief declaring plaintiffs' rights and the defendants' responsibilities

herein. On the hearing plaintiffs withdrew the request for a three judge court, and submitted the case to this court with the stipulation that declaratory as opposed to injunctive relief is sought.

The plaintiff's claims are that defendants' refusal, under color of Sections 150 and 151(b) of the New York Election Law, McKinney's Consol. Laws, c. 100, to permit plaintiffs to participate in the November 7, 1972 Presidential election is violative of plaintiffs' rights under the First and Fourteenth Amendments to the Constitution of the United States; and that defendants' refusal, under color of Section 151(b) of the New York Election Law to permit plaintiffs to participate in the Presidential election abridges their right to participate in the electoral process in violation of the Voting Rights Act of 1970 (42 U.S.C. § 1973aa-1).

Defendants Rockefeller and Lomenzo and the New York Attorney General, on their part, move for an order pursuant to Rules 12(b) (1) and (6) of the Federal Rules of Civil Procedure, dismissing the complaint upon the grounds that the court lacks jurisdiction, and further that the complaint fails to state a claim upon which relief may be granted and that the complaint is banned by laches.

The motion addressed to the court's jurisdiction is without substantiation and is denied. The motion based on laches although of some merit also is denied. That part of the defendants' motion which is addressed to the sufficiency of the complaint is granted for reasons hereafter discussed.

The facts as taken from the submitted papers are as follows: Plaintiff, Von Kohorn resided in Westchester County, New York, from 1938 to 1963 when he moved from Westchester County to New Zealand where apparently he has since remained, except for a visit to the Westchester County Board of Elections on or about April 11, 1972 where he submitted an application for absentee registration which was on the same day rejected. He abides in New Zealand and his future domiciliary plans are uncertain but he does wish to vote in the 1972 Presidential election.

Plaintiff, Hardy, resided in Scarsdale, Westchester County, New York, until December 1964 when he moved to Brazil because of business obligations. He intends to return to Westchester County upon completion of his business obligations but has no nexus with New York or the county except that he maintains a telephone listing at his mother's home in Westchester. His request for absentee registration to vote in the 1972 Presidential election was rejected by the Westchester County Board of Elections early in 1972.

[1] The claim of Von Kohorn may be disposed of summarily. After a temporary residence in Westchester County, New York, he moved to Wellington, New Zealand. The reason for his move is not assigned and he evinces no intention ever to return to New York, or, indeed, to the United States. His expressed desire to vote in the 1972 Presidential election gives him no grievance against the defendants or any of them. He is for the purposes of the present record a resident in Wellington and so far as known intends so to remain.

Hardy's claim requires an examination of the statutes here involved. New York Election Law Section 151(b) provides as to residence for the purpose of registering and voting:

"(b) As used in this article, the word 'residence' shall be deemed to mean that place where a person maintains a fixed, permanent and principal home and to which he, wherever temporarily located, always intends to return."

[2] The question first to be considered is whether or not the Voting Rights Act of 1970, 42 U.S.C. § 1973aa-1, is preemptive of that definition. The avowed purpose of the Voting Rights Act is to abolish durational residency requirements as a precondition to voting for the offices of President and Vice President and to prescribe uniform opportunities for absentee registration and absentee balloting in presidential elections. 42 U.S.C. § 1973aa-1(a), (b); *Oregon v. Mitchell*, 400 U.S. 112, 134, 236, 286, 287 (1970). The rationale is that the imposition of parochial durational residency requirements unreasonably burdens the privilege of taking up residence in another state. It seems clear, however, that the Voting Rights Act did not intend to abrogate the power of the several states to define residence so as to insure that voting be limited to bona fide residents. The sole exception is found in 42 U.S.C. § 1973aa-1, Subd. (e) which permits persons moving within 30 days prior to election to vote in the State of prior residence.

Thus, with particular reference to the present case the Voting Rights Act, 42 U.S.C. § 1973aa-1(c), provides:

"... nor shall any citizen of the United States be denied the right to vote for electors for President and Vice President, or for President and Vice President, in such election because of the failure of such citizen to be

physically present in such State or political subdivision at the time of such election, *if such citizen shall have complied with the requirements prescribed by the law of such State or political subdivision providing for the casting of absentee ballots in such election.* (Emphasis supplied).

Similarly, subdivision (d) provides:

"For the purposes of this section, each State shall provide by law for the registration or other means of qualification of *all duly qualified residents of such State . . .* ; and each State shall provide by law for the casting of absentee ballots . . . *by all duly qualified residents of such State* who may be absent . . .". (Emphasis supplied).

Plaintiffs urge that the emphasized phrases of the Act should be ignored in its construction, but the court cannot take the view that this recurrent language was inserted into the Act without meaning. If, as suggested the language is inadvertent, the remedy lies with the legislature and not in judicial elision.

The court finds that the Voting Rights Act of 1970 while abolishing durational residency requirements, in no sense abrogates the rights of the several states to enact bona fide residence requirements. The distinction is clearly recognized in *Dunn v. Blumstein*, 405 U.S. 330 at 343, 92 S.Ct. 995 at 1003-1004, 31 L.Ed.2d 274 (1972).

" . . . We emphasize again the difference between bona fide residence requirements and durational residence requirements. We have in the past noted approvingly that the States have the power to require that voters be bona fide residents of the relevant political subdivision. E.g., *Evans v. Corman*, 398 U.S. 419, at 422, 90 S.Ct. 1752, 26 L.Ed.2d 370; *Karmer v. Union Free School District*, *supra*, 395 U.S. 621, at 625, 89 S.Ct. 1886, 23 L.Ed.2d 583; *Carrington v. Rash*, 380 U.S. 89, at 91, 85 S.Ct. 775, 13 L.Ed.2d 675; *Pope v. Williams*, 193 U.S. 621, 24 S.Ct. 573, 48 L.Ed. 817 (1904). An appropriately defined and uniformly applied requirement of bona fide residence may be necessary to preserve the basic conception of a political community, and therefore could withstand close constitutional scrutiny. But *durational* residence requirements, representing a separate voting qualification imposed on bona fide residents, must be separately tested by the stringent standard. Cf. *Shapiro v. Thompson*, *supra*, 394 U.S. 618, at 636, 89 S.Ct. 1322, 22 L.Ed.2d 600. (Emphasis in original).

[3] The court finds that the defendants' refusal under Section 151(b) of the New York Election Law, to permit plaintiffs to participate in the 1972 Presidential election does not abridge the plaintiffs' rights under the Voting Rights Act of 1970.

This conclusion requires consideration of plaintiffs' remaining claims namely, that defendants' refusal under color of Sections 150 and 151(b) of New York Election Law, to permit plaintiffs to participate in the November 7, 1972 Presidential election denies them equal protection of the laws and abridge their privileges and immunities in violation of the Fourteenth Amendment of the United States Constitution and abridges their right to participate in the electoral process in violation of the First Amendment.

New York Election Law, Section 150, relates to qualifications of voters requiring among other things residency of the State. The definition of "residence" is set forth in Section 151(b) and is quoted above. Plaintiffs' memorandum makes clear, however, that the claim of unconstitutionality derives from New York Election Law, Section 151(b), which provides, in part, as follows:

"(a) For the purpose of registering and voting no person shall be *deemed* to have gained or lost a residence by reason of his presence or absence while employed in the service of the United States, nor while engaged in the navigation of the waters of this state, or of the United States, or of the high seas; nor while a student of any institution of learning; nor while kept at any welfare institution, asylum or other institution wholly or partly supported at public expense or by charity; nor while confined in any public prison . . .". (Emphasis Supplied).

[4, 5] The argument in that "no rational basis exists for such an arbitrary discrimination which acts to disenfranchise Americans residing abroad simply because they are employed in a private rather than a governmental capacity". In the opinion of the court, however, no such arbitrary discrimination is made. The word "deemed", given proper cognizance, creates a presumption only and the further provisions of the quoted subdivision make it clear that the presumption is effective only upon presentation of suitable evidence of continued residence. Thus:

"... Any person applying for registration who claims to belong to any class of persons mentioned in this section shall file with the board taking his registration a written statement showing where he actually resides and where he claims to be legally domiciled, his business or occupation, his business address, and to which class he claims to belong . . .".

The court finds that the New York statutory requirements serve a legitimate purpose in seeking to ensure that voters be bona fide residents and do not discriminate against or abridge the plaintiffs' rights under the Constitution of the United States. The complaint, accordingly is dismissed.

So ordered.

ON REARGUMENT

The motion to reargue is granted and on reargument the court adheres to its opinion of October 2, 1972. For the purposes of reargument, the court by order of October 12, 1972, on consent granted the application of United States Senator Barry Goldwater to intervene *amicus curiae* in behalf of plaintiffs and has considered the brief submitted in his behalf, as well as the brief and affidavits of plaintiffs and the opposing brief of defendants Lomenzo and Rockefeller.

The basis of submission of this action to the court is set forth in the court's original opinion. On reargument plaintiffs address themselves specifically to the Equal Protection clause of the Fourteenth Amendment. (Petitioner's memorandum of law, p. 2). The intervenor asks review of all aspects of the case as originally submitted.

[6] It is noted that with plaintiffs' memorandum plaintiff, Von Kohorn, has submitted an affidavit stating, among other things, "I intend to reestablish a domicile in White Plains although my future domiciliary plans are still uncertain." This differs little from Von Kohorn's original position and is utterly lacking of that element of present intent required to establish voting residence. See *Ramey v. Rockefeller*, 348 F.Supp. 80 (E.D.N.Y. 1972).

[7] Recognizing fully the intervenor's position that the legislative history of the Voting Rights Act Amendments of 1970, and his personal purpose show a clear intent to provide the broadest possible opportunity to citizens to register to vote in a Presidential election, the court finds no reason to alter its original opinion that this objective, by the terms of the Act, does not transcend the power of the States to require that voters be bona fide residents. See *Dunn v. Blumstein*, 405 U.S. 330, 343, 92 S.Ct. 995, 31 L.Ed.2d 274 (1972).

On October 3, 1972, the day following this court's opinion of October 2, 1972, a statutory three judge court convened for the United States District Court for the Eastern District of New York, handed down an opinion in which Sections 151(a) and 151(b) of the New York Election Law are considered learnedly and at length. *Ramey v. Rockefeller*, 348 F.Supp. 780 (E.D.N.Y. 1972). These are the sections of the New York Law here under assault on constitutional grounds. The case arose in different context (dormitory students physically present in New York), but it is noted the court found no inconsistency between the sections and no reason to declare the New York statutes unconstitutional.

Relevant to the claim of the plaintiff Hardy is the following, taken from *Ramey*: "The objective is to determine the place which is the center of the individual's life now, the locus of his primary concern. The determination must be based on all relevant factors; . . . *the state may insist on other indicia . . .*". (Emphasis supplied). Hardy moved from New York to Brazil in 1964. In the years intervening, until his present application never has he offered to vote in New York. His professed intention to return at some indeterminate time is bolstered only by a telephone listing at his mother's home. The court is of the opinion that under section 151(b), even as modified in *Ramey*, New York is entitled to stronger evidence of allegiance than that here presented.

The court does not consider this a class action. For evident reasons each application to register to vote is distinct and requires separate consideration.

The court having granted and considered the motion to reargue adheres to its opinion of October 2, 1972.

[Additional material submitted by the Bipartisan Committee on Absentee Voting, Inc., for the hearing record appears as exhibit 7 in the appendix of these hearings, p. 235.]

Senator PELL. The record will be kept open until October 10 for submission of statements or other pertinent material by persons or organizations that were unable to attend the hearings.

This series of the subcommittee's hearings are adjourned.

[Whereupon, at 12:17 p.m., the subcommittee was adjourned, subject to call of the Chair.]

[Letters and statements received for the hearing record appear as exhibit 8 in the appendix of these hearings, pp. 247-256.]

APPENDIX

The texts of the bills S. 2102 and S. 2384, relating to voting by U.S. citizens residing abroad and the subject of these hearings, are as follows:

EXHIBIT 1A

93^d CONGRESS
1st SESSION

S. 2102

IN THE SENATE OF THE UNITED STATES

JUNE 28 (legislative day, JUNE 25), 1973

Mr. MATHIAS (for himself, Mr. BAYH, Mr. BROCK, Mr. HUMPHREY, and Mr. ROTH) introduced the following bill; which was read twice and referred to the Committee on Rules and Administration

A BILL

To guarantee the constitutional right to vote and to provide uniform procedures for absentee voting in Federal elections in the case of citizens who are residing or domiciled outside the United States.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That this Act may be cited as the "Overseas Citizens Voting
4 Rights Act of 1973".

5 CONGRESSIONAL FINDINGS AND DECLARATIONS

6 SEC. 2. (a) The Congress hereby finds that in the case
7 of United States citizens domiciled or otherwise residing out-
8 side the United States, the imposition and application of a
9 State or local residency or domicile requirement as a pre-

1 condition to voting in Federal elections and the lack of suffi-
2 cient opportunities for absentee registration and balloting in
3 such elections—

4 (1) denies or abridges the inherent constitutional
5 right of citizens to vote in Federal elections;

6 (2) denies or abridges the inherent constitutional
7 right of citizens to enjoy their free movement to and from
8 the United States;

9 (3) denies or abridges the privileges and immuni-
10 ties guaranteed under the Constitution to citizens of the
11 United States and to the citizens of each State;

12 (4) in some instances has the impermissible purpose
13 or effect of denying citizens the right to vote in Federal
14 elections because of the method in which they may vote;

15 (5) has the effect of denying to citizens the equal-
16 ity of civil rights and due process and equal protection
17 of the laws that are guaranteed to them under the four-
18 teenth amendment to the Constitution; and

19 (6) does not bear a reasonable relationship to any
20 compelling State interest in the conduct of Federal
21 elections.

22 (b) Upon the basis of these findings, Congress declares
23 that in order to secure, protect, and enforce the constitu-
24 tional rights of citizens residing overseas and to enable

1 such citizens to better obtain the enjoyment of such rights,
2 it is necessary—

3 (1) to abolish completely for citizens residing over-
4 seas the domicile and residence requirements as precon-
5 ditions to voting in Federal elections, and

6 (2) to establish nationwide uniform standards re-
7 lating to absentee registration and absentee balloting by
8 such citizens in Federal elections.

9 DEFINITIONS

10 SEC. 3. For the purposes of this Act, the term—

11 (1) "Federal election" means any general, special,
12 or primary election held solely or in part for the purpose
13 of selecting, nominating, or electing any candidate for the
14 office of President, Vice President, Presidential elector,
15 Member of the United States Senate, Member of the
16 United States House of Representatives, Delegate from
17 the District of Columbia, or Resident Commissioner of
18 the Commonwealth of Puerto Rico;

19 (2) "State" means each of the several States, the
20 District of Columbia, and the Commonwealth of Puerto
21 Rico;

22 (3) "United States" includes the several States,
23 the District of Columbia, the Commonwealth of Puerto
24 Rico but does not include American Samoa, the Canal

1 Zone, Guam, the Virgin Islands, the Trust Territory
2 of the Pacific Islands, or any other territory or posses-
3 sion of the United States; and

4 (4) "citizen residing overseas" means a citizen of
5 the United States who is domiciled, or otherwise residing
6 outside the United States.

7 RIGHT OF CITIZENS RESIDING OVERSEAS TO VOTE IN
8 FEDERAL ELECTIONS

9 SEC. 4. (a) No citizen residing overseas shall be denied
10 the right to register for, and to vote by an absentee ballot
11 in any State or election district in any Federal election
12 solely because at the time of such election he is not domiciled
13 or otherwise residing in such State or district and does not
14 have a place of abode or other address in such State or
15 district if—

16 (1) he last voted or last registered to vote in such
17 State or district, or if he did not so register or vote, was
18 last domiciled in, such State or district prior to his de-
19 parture from the United States;

20 (2) he has complied with the requirements concern-
21 ing the casting of absentee ballots applicable in such
22 State or district (other than any requirement which is
23 inconsistent with this Act) ; and

24 (3) he is qualified to vote in such State or district

1 but for his failure to maintain residence, domicile, or
2 place of abode in such State or district; and

3 (4) has not registered to vote and is not voting in
4 any other State or election district or territory or posses-
5 sion of the United States.

6 ABSENTEE BALLOTS FOR FEDERAL ELECTIONS

7 SEC. 5. (a) (1) Each State shall provide by law for the
8 registration or other means of qualification of all citizens re-
9 siding overseas and entitled to vote in a Federal election in
10 such State pursuant to section 4 (a) who apply, not later
11 than thirty days immediately prior to any such election, to
12 vote in such election.

13 (2) Each State shall provide by law for the casting of
14 absentee ballots for Federal elections by all citizens residing
15 overseas who are entitled to vote in such State pursuant to
16 section 4 (a), and if required by State law have registered
17 or otherwise qualified to vote under section 5 (a) (1), and
18 who have submitted properly completed applications for such
19 ballots not later than seven days immediately prior to such
20 election and have returned such ballots to the appropriate
21 election official of such State not later than the time of closing
22 of the polls in such State on the day of such election. In the
23 case of any such properly completed application for an ab-
24 sentee ballot received by a State or election district, the

1 appropriate election official of such State or district shall as
2 promptly as possible in any event, no later than (i) seven
3 days after receipt of such a properly completed application,
4 or (ii) five days after the date the absentee ballots for such
5 election have become available to such official, whichever
6 date is later, mail the following by airmail to such citizen:

7 (A) an absentee ballot,

8 (B) instructions concerning voting procedures, and

9 (C) an airmail envelope for the mailing of such
10 ballot free of United States postage.

11 (b) (1) In the case of a citizen residing overseas, a
12 State or election district may accept as an application for an
13 absentee ballot to vote in a Federal election (and as an
14 application for registration to vote in such election, if regis-
15 tration is required by such State or district) a duly executed
16 overseas citizen Federal election postcard in the form pre-
17 scribed by paragraph (2).

18 (2) The form of the overseas citizen Federal election
19 postcard referred to in paragraph (1) shall be as follows:

20 (A) The card shall be nine and one-half inches by
21 four and one-eighth inches in size.

22 (B) Upon one side, perpendicular to the long di-
23 mension of the card there shall be printed in black type
24 the following:

FILL OUT BOTH SIDES OF CARD

POST CARD APPLICATION FOR ABSENTEE BALLOT FOR FEDERAL ELECTIONS

State or Commonwealth of _____

(Fill in name of State or Commonwealth)

- (1) I hereby request an absentee ballot to vote in the coming election:

(PRESIDENTIAL) (CONGRESSIONAL)
 (GENERAL) (PRIMARY)* (SPECIAL) ELECTION.
 (Strike out inapplicable words)

- (2) *If a ballot is requested for a primary election, print your political party affiliation or preference in this box:

(If primary election is secret in your State, do not answer)

- (3) I am a citizen of the United States, and am qualified to register and vote in the above State in Presidential and Congressional elections, even though I am presently residing outside the above State and the United States (defined not to include the Territories and Possessions of the United States) and such State may not be my current domicile, and—

a. I last voted or was registered to vote in the above State

b. The above State was my last _____ domicile even though such State may not be my current domicile

- (4) I was born on _____
-
- (Day) (Month) (Year)

- (5) Until _____, my home (not military) residence in the
-
- (Month) (Year)
-
- above State was _____

(Street and number or rural route, etc.)

in the county or parish of _____

The voting precinct or election district for this residence is _____

(Enter if known)

- (6) Remarks: _____

- (7) Mail my ballot to the following address: _____

- (8) I am NOT requesting a ballot from any other State, Territory or Possession of the United States, and am not voting in any other manner in this election, except by absentee process, and have not voted and do not intend to vote in this election at any other address.

- (9) _____
-
- (Signature of person requesting ballot)

- (10) _____
-
- (Full name, typed or printed)

- (11) Subscribed and sworn to before me on _____
-
- (Day, month, and year)

(Signature of official
 administering oath)(Typed or printed name of official
 administering oath)

(Title or rank, service number (if any), and organization of administering official)

INSTRUCTIONS

- A. Type or print all entries except signatures. FILL OUT BOTH SIDES OF CARD.
- B. Address card to proper State official.
- C. Mail card as soon as your State will accept your application.
- D. NO postage is required for the card if deposited with a U.S. Embassy, consulate, legation or other office of a U.S. Government agency, either within or outside the United States.
- E. This card is an application to vote only in FEDERAL ELECTIONS. If you wish to request a ballot for State and local elections, as well as Federal elections, and are qualified to do so in your State, you can use the Standard Federal Post Card Application or other form accepted by your State for this purpose.

- 1 (C) Upon the other side of the card there shall be
- 2 printed in red and blue type the following:

FILL OUT BOTH SIDES OF THE CARD

-----	FREE of U.S. Postage Including Air Mail

-----	Official Mailing Address

=====	
OFFICIAL ELECTION BALLOTING MATERIAL—VIA AIR MAIL	
=====	
To: -----	
(Title of Election Official)	

(County or Township)	

(City or Town, State)	

- 3 (c) Overseas citizen Federal election post cards and the
- 4 absentee ballots, envelopes, and voting instructions provided
- 5 pursuant to this Act and transmitted to or from citizens resid-
- 6 ing overseas, whether individually or in bulk, shall be free of
- 7 postage, including airmail postage, in the United States mail.
- 8 (d) The Administrator of General Services shall cause
- 9 overseas citizen Federal election post cards to be printed and
- 10 distributed to carry out the purposes of this Act, and he may

1 enter into agreements with the Postmaster General, with
2 heads of appropriate departments and agencies of the Fed-
3 eral Government, and with State and local officials for the
4 distribution of such cards.

5 (e) Ballots executed outside the United States by citi-
6 zens residing overseas shall be returned by priority airmail
7 wherever practicable, and such mail may be segregated from
8 other forms of mail and placed in special bags marked with
9 special tags printed and distributed by the Postmaster Gen-
10 eral for this purpose.

11 ENFORCEMENT

12 SEC. 6. (a) Whenever the Attorney General has reason
13 to believe that a State or political subdivision undertakes to
14 deny the right to register or vote in any election in violation
15 if section 4 or fails to take any action required by section 5,
16 he may institute for the United States, or in the name of the
17 United States, an action in a district court of the United
18 States, in accordance with sections 1391 through 1393 of
19 title 28, United States Code, for a restraining order, a pre-
20 liminary or permanent injunction, or such other order as he
21 deems appropriate.

22 (b) Whoever shall deprive or attempt to deprive any
23 person of any right secured by this Act shall be fined not
24 more than \$5,000, or imprisoned not more than five years,
25 or both.

10

1 (c) Whoever knowingly or willfully gives false infor-
2 mation as to his name, address, or period of residence in the
3 voting district for the purpose of establishing his eligibility
4 to register or vote, or conspires with another individual for
5 the purpose of encouraging his false registration to vote or
6 illegal voting, or pays or offers to pay or accepts payment
7 either for registration to vote or for voting shall be fined not
8 more than \$10,000, or imprisoned not more than five years,
9 or both.

10

SEVERABILITY

11 SEC. 7. If any provision of this Act, or the application
12 thereof to any person or circumstance, is held invalid, the
13 validity of the remainder of the Act, and the application
14 of such provisions to other persons or circumstances, shall
15 not be affected.

16

EFFECT ON CERTAIN OTHER LAWS

17 SEC. 8. (a) Nothing in this Act shall—

18 (1) be deemed to require registration in any State
19 or election district in which registration is not required
20 as a precondition to voting in any Federal election, or

21 (2) prevent any State or election district from
22 adopting or following any voting practice which is less
23 restrictive than the practices prescribed by this Act.

24 (b) The exercise of any right to register or vote by
25 any citizen residing overseas shall not affect the determina-

1 tion of his place of residence or domicile (as distinguished
2 from his place of voting) for purposes of any tax imposed
3 under Federal, State, or local law.

4 EFFECTIVE DATE

5 SEC. 9. The provisions of this Act shall take effect with
6 respect to any Federal election held on or after January 1,
7 1974.

EXHIBIT 1B

93^d CONGRESS
1st SESSION**S. 2384**

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 6, 1973

Mr. PELL introduced the following bill; which was read twice and referred
to the Committee on Rules and Administration

A BILL

To provide uniform procedures for absentee voting in Federal
elections for citizens outside the United States.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That this Act may be cited as the "Uniform Absentee Vot-
4 ing Act".

5 FINDINGS AND DECLARATIONS OF PURPOSE

6 SEC. 2. (a) The Congress finds that for United States
7 citizens outside the United States, State and local residency
8 or domicile requirements which precondition the right to vote
9 in Federal elections, and the lack of sufficient opportunities
10 for absentee registration and balloting in such elections—

2

1 (1) deny or abridge the inherent constitutional
2 right of citizens to vote in Federal elections;

3 (2) deny or abridge the inherent constitutional
4 right of citizens to enjoy their free movement to and
5 from the United States;

6 (3) deny or abridge the privileges and immunities
7 guaranteed under the Constitution to citizens of the
8 United States and to the citizens of each State;

9 (4) in some instances have the impermissible effect
10 of denying citizens the right to vote in Federal elections
11 because of the method in which they may vote;

12 (5) have the effect of denying to citizens the
13 equality of civil rights, due process, and equal protection
14 of the laws guaranteed under the fourteenth amendment
15 to the Constitution; and

16 (6) do not bear a reasonable relationship to any
17 compelling State interest in the conduct of Federal
18 elections.

19 (b) The Congress declares that in order to secure,
20 protect, and enforce the constitutional rights of citizens out-
21 side the United States, it is the purpose of this Act to abolish,
22 for citizens outside the United States, domicile and residence
23 requirements which precondition voting in Federal elections,
24 and to establish uniform standards for absentee registration
25 and balloting by such citizens in Federal elections.

DEFINITIONS

SEC. 3. For the purposes of this Act—

(1) “citizens outside the United States” means citizens of the United States who are domiciled or otherwise residing outside the United States;

(2) "Federal election" means any general, special, or primary election held solely or in part for the purpose of selecting, nominating, or electing any candidate for the office of President, Vice President, Presidential elector, Member of the United States Senate, Member of the United States House of Representatives, Delegate from the District of Columbia, the Virgin Islands, or Guam, or Resident Commissioner of the Commonwealth of Puerto Rico; and

(3) “State” and “United States” include the several States, the District of Columbia, the Virgin Islands, Guam, and the Commonwealth of Puerto Rico.

ABSENTEE VOTING IN FEDERAL ELECTIONS

SEC. 4. (a) No citizen outside the United States shall be denied the right to register and vote by absentee ballot in any State, or election district of a State, in any Federal election solely because at the time of such election he is not domiciled or otherwise residing in such State or district and does not have a place of abode or other address in such State or district if he—

4

1 (1) last voted or last registered to vote in such
2 State or district, or, if he did not so register or vote,
3 was last domiciled in such State or district prior to his
4 departure from the United States;

5 (2) has complied with any applicable State or dis-
6 trict requirement concerning voting by absentee ballot
7 (other than any requirement which is inconsistent with
8 this Act) ;

9 (3) is qualified to vote in such State or district but
10 for his failure to maintain residence, domicile, or place
11 of abode in such State or district; and

12 (4) has not registered to vote and is not voting in
13 any other State or election district of a State.

14 ABSENTEE BALLOTS

15 SEC. 5. (a) (1) Each State shall provide by law for
16 the registration or other means of qualification of all citizens
17 outside the United States and entitled to vote in a Federal
18 election in such State pursuant to section 4 (a) who apply,
19 not later than thirty days immediately prior to any such
20 election, to vote in such election.

21 (2) Each State shall provide by law for the casting of
22 absentee ballots for Federal elections by all citizens outside
23 the United States who—

24 (A) are entitled to vote in such State pursuant to
25 section 4 (a) ;

5

1 (B) have registered or otherwise qualified to vote
2 under paragraph (1) of this subsection;

3 (C) have submitted properly completed applica-
4 tions for such ballots not later than seven days imme-
5 diately prior to such election; and

6 (D) have returned such ballots to the appropriate
7 election official of such State not later than the time
8 of closing of the polls in such State on the day of such
9 election.

10 (3) In the case of any such properly completed applica-
11 tion for an absentee ballot received by a State or election
12 district, the appropriate election official of such State or dis-
13 trict shall as promptly as possible in any event, no later than
14 (A) seven days after receipt of such a properly completed
15 application, or (B) five days after the date the absentee
16 ballots for such election have become available to such offi-
17 cial, whichever date is later, mail the following by airmail
18 to such citizen:

19 (i) an absentee ballot;

20 (ii) instructions concerning voting procedures; and

21 (iii) an airmail envelope for the mailing of such
22 ballot free of United States postage to the sender.

23 (b) (1) In the case of a citizen outside the United
24 States, a State or election district may accept as an applica-
25 tion for an absentee ballot to vote in a Federal election (and

1 as an application for registration to vote in such election,
 2 if registration is required by such State or district) an exe-
 3 cuted postcard application for absentee ballot for Federal
 4 elections, in the form prescribed by paragraph (2) of this
 5 subsection.

6 (2) The postcard referred to in paragraph (1) of this
 7 subsection shall be as follows:

8 (A) The postcard shall be nine and one-half inches
 9 by four and one-eighth inches in size.

10 (B) Upon one side, perpendicular to the long
 11 dimension of the postcard there shall be printed in black
 12 type the following:

FILL OUT BOTH SIDES OF CARD

POSTCARD APPLICATION FOR ABSENTEE BALLOT FOR FEDERAL ELECTIONS

State or Commonwealth of _____
 (Fill in name of State or Commonwealth)

(1) I hereby request an absentee ballot to vote in the coming election:

(PRESIDENTIAL) (CONGRESSIONAL)
 (GENERAL) (PRIMARY)* (SPECIAL) ELECTION.
 (Strike out inapplicable words)

(2) *If a ballot is requested for a primary election, print your political party affiliation or preference in this box:

(If primary election is secret in your State, do not answer.)

(3) I am a citizen of the United States, and am qualified to register and vote in the above State in Presidential and Congressional elections, even though I am presently residing outside the above State and the United States

and such State may not be my current domicile, and—

a. I last voted or was registered to vote in the above State

b. The above State was my last _____ domicile even though such State may not be my current domicile

(4) I was born on _____
 (Day) (Month) (Year)

(5) Until _____, my home (not military) residence in the
 (Month) (Year)

above State was _____
 (Street and number or rural route, etc.)

in the county or parish of _____

The voting precinct or election district for this residence is _____

 (Enter if known)

- (6) Remarks: -----

- (7) Mail my ballot to the following address: -----

- (8) I am NOT requesting a ballot from any other State, Territory or Possession of the United States, and am not voting in any other manner in this election, except by absentee process, and have not voted and do not intend to vote in this election at any other address.
- (9) -----
(Signature of person requesting ballot)
- (10) -----
(Full name, typed or printed)
- (11) Subscribed and sworn to before me on -----
(Day, month, and year)
- (Signature of official administering oath) (Typed or printed name of official administering oath)
- (Title or rank, service number (if any), and organization of administering official)

INSTRUCTIONS

- A. Type or print all entries except signatures. FILL OUT BOTH SIDES OF CARD.
- B. Address card to proper State official.
- C. Mail card as soon as your State will accept your application.
- D. NO postage is required for the card if deposited with a U.S. Embassy, consulate, legation or other office of a U.S. Government agency, either within or outside the United States.
- E. This card is an application to vote only in FEDERAL ELECTIONS. If you wish to request a ballot for State and local elections, as well as Federal elections, and are qualified to do so in your State, you can use the Standard Federal Post Card Application or other form accepted by your State for this purpose.

- 1 (C) Upon the other side of the card there shall be
- 2 printed in red and blue type the following:

FILL OUT BOTH SIDES OF THE CARD

----- ----- ----- ----- ----- -----	FREE of U.S. Postage Including Air Mail
----- ----- ----- ----- ----- -----	Official Mailing Address
=====	
OFFICIAL ELECTION BALLOTING MATERIAL—VIA AIR MAIL	
=====	
To: -----	(Title of Election Official)
-----	(County or Township)
-----	(City or Town, State)

1 (c) Such postcards and the absentee ballots, envelopes,
2 and voting instructions provided pursuant to this Act and
3 transmitted to or from citizens outside the United States,
4 whether individually or in bulk, shall be free of postage to
5 the sender, including airmail postage, in the United States
6 mail.

7 (d) The Administrator of General Services shall cause
8 such postcards to be printed and distributed to carry out
9 the purposes of this Act, and he may enter into agreements
10 with the United States Postal Service, heads of appropriate
11 departments and agencies of the Federal Government, and
12 with State and local officials for the distribution of such cards.

13 (e) Ballots executed by citizens outside the United
14 States shall be returned by priority airmail wherever prac-
15 ticable, and such mail may be segregated from other forms
16 of mail and placed in special bags marked with special tags
17 printed and distributed by the Postal Service for this
18 purpose.

19 ENFORCEMENT

20 SEC. 6. (a) Whenever the Attorney General has rea-
21 son to believe that a State or election district undertakes to
22 deny the right to register or vote in any election in viola-
23 tion of section 4 or fails to take any action required by
24 section 5, he may institute for the United States, or in the
25 name of the United States, an action in a district court of

1 the United States, in accordance with sections 1391 through
2 1393 of title 28, United States Code, for a restraining order,
3 a preliminary or permanent injunction, or such other order
4 as he deems appropriate.

5 (b) Whoever shall deprive or attempt to deprive any
6 person of any right secured by this Act shall be fined not
7 more than \$5,000, or imprisoned not more than five years,
8 or both.

9 (c) Whoever knowingly or willfully gives false infor-
10 mation as to his name, address, or period of residence for
11 the purpose of establishing his eligibility to register, qual-
12 ify, or vote under this Act, or conspires with another person
13 for the purpose of encouraging the giving of false informa-
14 tion in order to establish the eligibility of any person to
15 register, qualify, or vote under this Act, or pays or offers
16 to pay or accepts payment either for registration to vote or
17 for voting shall be fined not more than \$10,000, or im-
18 prisoned not more than five years, or both.

19 SEVERABILITY

20 SEC. 7. If any provision of this Act, or the application
21 thereof to any person or circumstance, is held invalid, the
22 validity of the remainder of the Act, and the application of
23 such provisions to other persons or circumstances, shall not
24 be affected.

EFFECT ON STATE LAWS

SEC. 8. (a) Nothing in this Act shall—

(1) be deemed to require registration in any State or election district in which registration is not required as a precondition to voting in any Federal election; or

(2) prevent any State or election district from adopting or following any voting practice which is less restrictive than the practices prescribed by this Act.

(b) The exercise of any right to register or vote by any citizen outside the United States shall not affect the determination of his place of residence or domicile (as distinguished from his place of voting) for purposes of any tax imposed under Federal, State, or local law.

EFFECTIVE DATE

SEC. 9. The provisions of this Act shall take effect with respect to any Federal election held on or after January 1, 1974.

EXHIBIT 2



OFFICE OF THE SECRETARY OF DEFENSE
WASHINGTON, D.C. 20301

SEP 21 1977

Senator Claiborne Pell
Chairman, Subcommittee on
Privileges and Elections
United States Senate
Washington, D. C. 20510

Dear Mr. Chairman:

Thank you for your letter of 7 September concerning absentee voting for United States citizens residing outside the United States. It is a pleasure to cooperate with the Senate Subcommittee on Privileges and Elections on this matter.

As you know, the Department of Defense coordinates the activities required under the Federal Voting Assistance Act of 1955. Because this Act was amended in 1968 to cover all U.S. citizens abroad in addition to members of the Armed Forces, civilian Federal Government employees, and others, we compile and distribute voting information for these non-Federally employed persons. This information is enclosed for the Subcommittee's use.

The enclosed voting information includes a summary of the extent to which the States permit absentee voting for citizens residing outside the United States. It also contains data from a survey done for the Department of Defense pursuant to the Act of 1955 in cooperation with the Department of State.

We believe that this information will be of some benefit to the Subcommittee in its consideration of Senate Bills 2384 and 2102. However, the Department of Defense defers to other interested Departments and Agencies of the Executive Branch as to the merits of these bills.

Sincerely,

John C. Broger
JOHN C. BROGER
Deputy Coordinator, Federal
Voting Assistance Program

Enclosure

ABSENTEE VOTING

UNITED STATES CITIZENS TEMPORARILY RESIDING
OUTSIDE THE TERRITORIAL LIMITS OF THE UNITED
STATES AND THE DISTRICT OF COLUMBIA

SUMMARY OF STATE ELECTION LAW

The Federal Voting Assistance Act of 1955 recommends that the States allow eligible U. S. citizens temporarily residing outside the territorial limits of the United States and the District of Columbia to vote by absentee ballot when they are away from their place of voting. This summary outlines the extent to which the States have adopted that recommendation of the Act.

This summary was compiled from information available at this time from State election codes and State election officials. It does not reflect the extent to which States may allow U. S. citizens outside the United States to vote absentee in compliance with the "1970 Amendments to the Voting Rights Act of 1965."

STATE ADOPTION

1. The election laws of the States listed below contain statutory provisions relating to citizens temporarily residing outside the United States and the District of Columbia. Each of these States permits such eligible persons to register and vote absentee.

Alaska	Massachusetts
Arkansas	Michigan
California	Minnesota
Colorado	Mississippi
Connecticut	Montana
Delaware	Nebraska
District of Columbia	New Mexico
Florida	North Dakota
Georgia	Oklahoma
Hawaii	Oregon
Idaho	Tennessee
Iowa	Texas
Kansas	Washington
Maryland	Wyoming

2. The election laws of the States below do not contain specific statutory provisions relating to all U.S. citizens abroad.¹ However, these States do have what may be labeled "general" absentee voting and absentee registration statutes. These statutes allow any eligible voter, who will be or expects to be absent from his or her place for voting or registration, to register and vote absentee.

Arizona	New York
Indiana	South Dakota
Kentucky	Utah
Maine	Vermont
Missouri	West Virginia
Nevada	Wisconsin
New Hampshire	

3. The States below are like those in paragraph 2 above, except that these States do not have "general" absentee registration statutes. Their election law, as a rule, requires that eligible voters must register in person unless the election code provides otherwise.²

Illinois	Ohio
	Rhode Island
	South Carolina
New Jersey	Pennsylvania
North Carolina	Virginia

4. The laws of Alabama and Louisiana require that eligible voters register and vote in person unless provided otherwise. Louisiana permits all the pre-1968 persons covered by the Act of 1955 to register and vote absentee. Alabama permits members of the Armed Forces, members of the Merchant Marine, persons employed outside the United States, and spouses and dependents of such persons, to register and vote absentee.

1. The laws of most of these States do contain statutory provisions related to all the persons covered by the Federal Voting Assistance Act of 1955 prior to its amendment in 1968. These pre-1968 covered persons were members of the Armed Forces, members of the Merchant Marine and civilian employees of the Federal Government outside the United States, religious or welfare workers attached to or serving with the Armed Forces, and spouses and dependents of such persons.

2. The laws of most of these States enable all the pre-1968 persons covered by the Act of 1955 to register absentee.

ELECTION SURVEY

OMB #221
Expires: 11/80

1. Check which of the following categories fits your current age and citizenship status.

	U.S. Citizen	Not U.S. Citizen
Under 18 years	☐ 6-1	☐ 7-1
18-20	☐ -2	☐ -2
21-24	☐ -3	☐ -3
25-34	☐ -4	☐ -4
35-44	☐ -5	☐ -5
45-54	☐ -6	☐ -6
55-64	☐ -7	☐ -7
65 or older	☐ -8	☐ -8

IF YOU ARE NOT A CITIZEN OR ARE UNDER 18 YEARS OF AGE, SKIP TO QUESTIONS 9 and 10.

2. Please indicate which of the following categories fits your current voter registration status.

Registered to vote prior to leaving United States	☐ 8-1
Registered to vote after leaving United States, through absentee process, but prior to 1972 election	☐ -2
Not presently registered to vote	☐ -3

3. Did you vote in the 1972 General Election?

Yes	☐ 9-1
No - wanted to vote but didn't	☐ -2
No - did not want to vote	☐ -3

4. Please indicate whether you requested an absentee ballot for the 1972 General Election.

Did not request absentee ballot	☐ 10-1
Requested absentee ballot:	☐ -2
For full slate of candidates	☐ 11-1
For President and Vice-President only	☐ -2

IF YOU DID REQUEST AN ABSENTEE BALLOT FOR THE 1972 GENERAL ELECTION, WHAT RESULTED FROM YOUR REQUEST?

Used ballot to vote in 1972 election	☐ 12-1
Received ballot, but did not vote	☐ -2
Did not receive ballot in time to vote	☐ -3
Did not receive absentee ballot	☐ -4
Was refused absentee ballot	☐ -5

5. Please indicate whether or not you used a Federal "Post Card Application for Absentee Ballot" (Standard Form 76) in a request for registration to vote and/or a request for an absentee ballot in the 1972 election.

Did not use Post Card Application	☐ 13-1 (SKIP TO QUESTION 6)
Used Post Card Application	☐ -2

IF YOU DID USE A FPCA IN A REQUEST FOR REGISTRATION TO VOTE AND/OR A REQUEST FOR AN ABSENTEE BALLOT, WHERE DID YOU OBTAIN THE FPCA?

Embassy or Consulate	☐ 14-1
U.S. Military Installation	☐ -2
Your Employer	☐ -3
Another Source	☐ -4

6. If you did not vote in the 1972 election, please check as many of the following reasons for not voting as apply to you.

- Not registered to vote in state of legal residence ☐ 16-1
 Do not meet residency requirements in state of legal residence ☐ 17-1
 State of legal residence does not allow absentee registration ☐ 18-1
 Have no legal residence for voting within any state ☐ 19-1
 Possible effect of voting on Federal or State income tax obligation ☐ 20-1

Lacked information on:

- Obtaining Federal Post Card Application ☐ 21-1
 Registration procedures ☐ 22-1
 Applying for absentee ballot ☐ 23-1
 Voting procedures ☐ 24-1
 Application deadlines ☐ 25-1
 Election dates ☐ 26-1
 Candidates and/or issues ☐ 27-1
 Other reasons (please list) ☐ 28-1

7. Are you:

male ☐

29-1

female ☐

29-2

8. Which state do you consider your legal residence for voting?

30-

31-

(Please Write in)

Have no state which is legal residence for voting ☐ 32-1

Please check the appropriate reason which indicates why you have no state which is your legal residence for voting.

Have never lived in the United States ☐ 33-1

Do not intend to return to the U.S. ☐ -2

Other reasons (please list) ☐ 34-

9. How long have you lived abroad, and what is the country in which you are currently residing?

Length of time abroad _____

35-

36-

Country of Residence _____

37-

38-

39-

10. Please indicate if you belonged to any of the following categories of persons at the time of the 1972 General Election.

- a. Member of the Armed Forces on active duty outside the territorial limits of the U.S. ☐ 40-1
 b. Spouse or dependent accompanying a member of Armed Forces on active duty outside the territorial limits of the U.S. ☐ -2
 c. U.S. Government employee assigned outside the territorial limits of the U.S. ☐ -3
 d. Spouse or dependent accompanying a U.S. Government employee assigned outside territorial limits of U.S. ☐ -4
 e. Member of U.S. Merchant Marine ☐ -5
 f. Spouse or dependent of a member of U.S. Merchant Marines ☐ -6
 g. U.S. citizen residing overseas other than above ☐ -7
 h. Not a U.S. citizen, but a spouse or dependent residing with or accompanying a person ☐ -8

VOTING STATISTICS

NON-FEDERALLY EMPLOYED UNITED STATES

CITIZENS RESIDING OUTSIDE THE UNITED STATES

STATISTICAL RESULTS

- Number and percent of persons who were eligible to vote (based on age, citizenship, and legal residence for voting) and number and percent of persons who were not eligible to vote.

Voting Status	Number	Percent
Eligible to Vote	630,300	62.7
Not eligible to Vote	374,700	37.3
Total	1,005,000	100.0

- Age distributions of persons who were eligible to vote and of persons not eligible to vote.

Age	Eligible to Vote		Not Eligible to Vote	
	Number	Percent	Number	Percent
Under 18	-	-	6,800	1.8
18-20	23,400	3.7	14,200	3.8
21-24	37,100	5.9	9,400	2.5
25-34	132,700	21.1	44,400	11.8
35-44	151,100	24.0	83,800	22.4
45-54	122,900	19.5	97,400	26.0
55-64	89,100	14.1	63,200	16.9
Over 64	74,000	11.7	55,500	14.8
No Answer	-	-	-	-
Total	630,300	100.0	374,700	100.0

- Sex distribution of those who were eligible to vote.

Eligible to Vote	Number	Percent
Male	369,400	58.6
Female	255,600	40.6
No Answer	5,300	0.8
Total	630,300	100.0

- Number and Percent of eligibles who voted.

Eligible to Vote	Number	Percent
Voted	151,000	24.0
Did not vote	471,400	74.8
No Answer	7,900	1.2
Total	630,300	100.0

- Age distribution of persons who were eligible to vote and voted, and of persons who were eligible to vote and didn't.

Age	Eligible to Vote-Voted		Eligible to Vote-Didn't Vote	
	Number	Percent	Number	Percent
18-20	9,600	6.4	13,200	2.8
21-24	17,400	11.5	20,700	4.4
25-34	33,800	22.4	98,400	20.8
35-44	37,000	24.5	112,400	23.7
45-54	26,000	17.2	95,600	20.2
55-64	18,900	12.5	69,300	14.7
Over 64	8,300	5.5	63,100	13.4
No Answer	-	-	-	-
Total	151,000	100.0	471,400	100.0

- Sex distribution of persons who were eligible to vote and voted and of persons who were eligible to vote and didn't.

Sex	Eligible to Vote-Voted		Eligible to Vote-Didn't Vote	
	Number	Percent	Number	Percent
Male	95,900	63.5	270,100	57.3
Female	56,700	35.6	197,800	41.9
No Answer	1,400	0.9	3,500	0.8
Total	154,000	100.0	471,400	100.0

- Number and Percent of eligibles who did not vote for one of the four reasons:
 - (1) They were not sure of the proper procedure to follow in order to register and vote.
 - (2) They lacked pro-and-con views and information concerning candidates and/or issues.
 - (3) They lacked information concerning election dates.
 - (4) They lacked information concerning application deadlines.

Reasons for Not Voting	Number	Percent
(1) Proper Procedures-Registration	197,200	41.8
(2) Pro-Con Views	36,000	7.6
(3) Election Dates	28,800	6.1
(4) Application Deadlines	142,900	30.3
Base: Eligible to Vote-Didn't Vote	471,400	---

- Age distributions of eligibles who didn't vote, by each of the reasons for not voting.

Age	Eligible to Vote - Didn't Vote							
	(1) Registration Procedures		(2) Pro-Con Views		(3) Election Dates		(4) Application Deadlines	
	Number	Percent	Number	Percent	Number	Percent	Number	Percent
18-20	4,200	2.1	3,000	8.3	2,100	7.3	5,000	3.5
21-24	8,900	4.5	2,000	5.6	1,400	4.9	7,800	5.5
25-34	44,100	22.4	9,200	25.6	8,700	30.2	34,200	23.9
35-44	47,400	24.0	6,500	18.1	5,500	19.1	35,900	25.1
45-54	40,200	20.4	5,500	15.3	4,700	16.3	31,400	22.0
55-64	29,800	15.1	6,700	18.6	3,900	13.5	18,400	12.9
Over 64	22,700	11.5	3,000	8.3	2,500	8.7	10,300	7.2
No Answer	-	-	-	-	-	-	-	-
Total	197,200	100.0	36,000	99.8	28,800	100.0	142,900	100.1

- Sex distributions of eligibles who didn't vote, by each of the reasons for not voting.

Sex	Eligible to Vote - Didn't Vote							
	(1) Registration Procedures		(2) Pro-Con Views		(3) Election Dates		(4) Application Deadlines	
	Number	Percent	Number	Percent	Number	Percent	Number	Percent
Male	114,100	57.9	18,500	51.2	12,900	44.8	78,300	54.8
Female	82,600	41.9	17,600	48.8	15,900	55.2	64,000	44.8
No Answer	500	0.2	-	-	-	-	600	.4
Total	197,200	100.0	36,100	100.0	28,800	100.0	142,900	100.0

- Number and Percent of persons who used the FPCA.

Eligible to Vote	Number	Percent
Used FPCA	71,900	11.4
Did not use FPCA	442,600	70.2
No Answer	115,800	18.4
Total	630,300	100.0

- Age distribution of persons who used the FPCA and of those who didn't use the FPCA.

Age	Eligible to Vote - Used FPCA		Eligible to Vote - Didn't Use FPCA	
	Number	Percent	Number	Percent
18-20	2,400	3.3	17,600	4.0
21-24	7,600	10.6	26,600	6.0
25-34	18,000	25.0	98,200	22.0
35-44	18,800	26.1	106,600	24.1
45-54	11,500	16.0	93,400	21.1
55-64	9,700	13.5	57,900	13.1
Over 64	3,800	5.3	42,400	9.6
No Answer	-	-	-	-
Total	71,900	99.8	442,600	99.9

- Sex distribution of persons who used the FPCA and of those who didn't use the FPCA

Sex	Eligible to Vote - Used FPCA		Eligible to Vote - Didn't Use the FPCA	
	Number	Percent	Number	Percent
Male	47,200	65.6	262,000	59.2
Female	24,000	33.4	176,400	39.9
No Answer	700	1.0	4,200	0.9
Total	71,900	100.0	442,600	100.0

- Number and Percent of persons requesting absentee ballot.

Eligible to Vote	Number	Percent
Requested Ballot	216,400	34.3
Did not request Ballot	402,000	63.8
No Answer	11,900	1.9
Total	630,300	100.0

- Age distribution of eligibles who requested absentee ballots and of those who did not request absentee ballots.

Age	Eligible to Vote - Request Ballot		Eligible to Vote - Not Request Ballot	
	Number	Percent	Number	Percent
18-20	11,700	5.2	11,600	2.9
21-24	22,700	10.5	14,400	3.6
25-34	52,400	24.2	79,600	19.8
35-44	52,800	24.2	96,200	23.9
45-54	37,300	17.2	84,200	20.9
55-64	28,100	13.0	59,500	14.8
Over 64	12,400	5.7	56,500	14.1
No Answer	-	-	-	-
Total	216,400	100.0	402,000	100.0

- Sex distribution of eligibles who requested absentee ballots and of those who did not request absentee ballots.

Sex	Eligible to Vote - Request Ballot		Eligible to Vote - Not Request Ballot	
	Number	Percent	Number	Percent
Male	133,700	61.8	228,700	56.9
Female	81,600	37.7	169,100	42.1
No Answer	1,100	.5	4,200	1.0
Total	216,400	100.0	402,000	100.0

- Number and Percent of eligibles who requested an absentee ballot and;
 - (1) Received it, but not in time to complete and return it for the election;
 - (2) Received it in time to return it for the election; but chose not to do so;
 - (3) Did not receive the requested ballot.

Requested Absentee Ballot	Number	Percent
(1) Received it - not in time	27,400	12.7
(2) Received it in time - didn't vote	8,300	3.8
(3) Did not receive ballot	36,900	17.1
Total Requesting Ballot	216,400	-

- Number and Percent of eligibles who requested an absentee ballot and did not receive the requested ballot, by "home" state.

State	Number Requested Ballots	Number Not Received Ballot	Percent
Alabama	400	0	0.0
Alaska	500	0	0.0
Arizona	2,900	900	31.0
Arkansas	800	400	50.0
California	30,600	4,100	13.4
Colorado	2,800	500	17.9
Connecticut	6,600	800	12.1
Delaware	1,300	0	0.0
D. C.	1,400	300	21.4
Florida	7,400	1,800	24.3
Georgia	1,100	800	72.7
Hawaii	400	0	0.0
Idaho	0	0	0.0
Illinois	13,100	4,100	31.3
Indiana	1,500	0	0.0
Iowa	1,800	700	38.9
Kansas	800	0	0.0
Kentucky	900	0	0.0
Louisiana	900	700	77.8
Maine	2,500	0	0.0
Maryland	4,800	0	0.0
Massachusetts	7,700	600	7.8
Michigan	8,800	900	10.2
Minnesota	5,600	500	8.9
Mississippi	0	0	0.0
Missouri	5,600	200	3.6
Montana	0	0	0.0
Nebraska	1,300	0	0.0
Nevada	0	0	0.0
New Hampshire	900	0	0.0

State	Number Requested Ballots	Number Not Received Ballot	Percent
New Jersey	11,400	2,800	24.6
New Mexico	3,400	1,600	47.1
New York	35,700	17,600	49.3
North Carolina	200	0	0.0
North Dakota	0	0	0.0
Ohio	11,100	1,500	13.5
Oklahoma	1,100 ¹	0	0.0
Oregon	2,800	0	0.0
Pennsylvania	7,700	1,500	19.5
Rhode Island	2,000	0	0.0
South Carolina	1,400	1,000	71.4
South Dakota	700	0	0.0
Tennessee	2,000	200	10.0
Texas	10,400	0	0.0
Utah	2,800	0	0.0
Vermont	500	0	0.0
Virginia	3,200	700	21.0
Washington	9,300	500	5.4
West Virginia	0	0	0.0
Wisconsin	2,000	0	0.0
Wyoming	800	0	0.0

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TABLE 2

C. 2 VOTER REGISTRATION STATUS

	A G E							SEX		A B S E N T									
	UNDER TOTAL 18	18-20	21-24	25-34	35-44	45-54	55-64	OVER 64		MALE	FEMALE	RE- CUEST	VO- TED	DI- VOT	IN- VIVE	SAL- LOT	BAL- LOT		
TOTAL ANSWERING	6223	234	371	1314	1453	1215	378	719	3646	2525	3967	1392	85	279	393	129			
	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0
	100.0	5.8	6.0	21.1	24.0	19.5	14.1	11.6	58.6	40.6	63.7	22.4	1.4	4.5	5.0	4.1			
REGISTERED PRIOR TO LEAVING U.S.	2759	113	220	660	605	477	344	335	1632	1095	1442	83	59	157	141	43			
	44.3	48.3	59.3	50.2	40.5	39.3	39.2	47.1	44.8	43.4	36.3	63.4	68.6	59.9	45.6	33.3			
	100.0	4.1	8.0	23.9	21.9	17.3	12.5	12.3	59.2	35.7	52.3	32.0	2.1	6.1	5.1	1.6			
REGISTERED AFTER LEAVING, ABSENTEE,	708	18	18	134	240	140	104	54	497	204	54	476	15	43	54	11			
	11.4	7.7	4.9	10.2	16.1	11.5	11.8	7.5	13.6	8.1	2.4	34.2	17.4	17.6	17.5	8.5			
	100.0	2.5	2.5	18.9	33.9	19.8	14.7	7.6	70.2	28.8	13.3	67.2	2.1	6.5	7.6	1.8			
BUT BEFORE '72 ELECTION																			
NOT PRESENTLY REGISTERED	2756	103	133	519	647	589	429	326	1517	1226	2431	34	12	63	114	75			
	44.3	44.0	35.8	39.5	43.3	43.3	48.9	45.3	47.6	46.6	61.3	2.6	14.0	22.6	36.9	58.1			
	100.0	3.7	4.8	18.6	23.5	21.7	15.0	11.8	55.0	44.5	88.2	1.2	.4	2.3	4.1	2.7			
NO ANSWER	80			13	16	14	13	22	49	31	53	13			7	10			

TABLE 3

(NEAREST HUNDRED) ELECTION SURVEY

		A G E										S E X		A B S E N T E E B A L L O T								
		U N D E R		18 - 20	21 - 24	25 - 34	35 - 44	45 - 54	55 - 64	64	O V E R		M A L E		F E M A L E		D I D N O T R E - Q U E S T	V O T E D	D I D N ' T I N T I M E	R E - C E I V E D B A L L O T	D I D N ' T R E - C E I V E	S A S P O S E D
		T O T A L	18								64											
T O T A L		18	18	20	21 - 24	25 - 34	35 - 44	45 - 54	55 - 64	64												
T O T A L		18	18	20	21 - 24	25 - 34	35 - 44	45 - 54	55 - 64	64												
T O T A L		18	18	20	21 - 24	25 - 34	35 - 44	45 - 54	55 - 64	64												
T O T A L		18	18	20	21 - 24	25 - 34	35 - 44	45 - 54	55 - 64	64												
T O T A L		18	18	20	21 - 24	25 - 34	35 - 44	45 - 54	55 - 64	64												
T O T A L		18	18	20	21 - 24	25 - 34	35 - 44	45 - 54	55 - 64	64												
T O T A L		18	18	20	21 - 24	25 - 34	35 - 44	45 - 54	55 - 64	64												
T O T A L		18	18	20	21 - 24	25 - 34	35 - 44	45 - 54	55 - 64	64												
T O T A L		18	18	20	21 - 24	25 - 34	35 - 44	45 - 54	55 - 64	64												
T O T A L		18	18	20	21 - 24	25 - 34	35 - 44	45 - 54	55 - 64	64												
T O T A L		18	18	20	21 - 24	25 - 34	35 - 44	45 - 54	55 - 64	64												
T O T A L		18	18	20	21 - 24	25 - 34	35 - 44	45 - 54	55 - 64	64												
T O T A L		18	18	20	21 - 24	25 - 34	35 - 44	45 - 54	55 - 64	64												
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T O T A L		18	18	20	21 - 24	25 - 34	35 - 44	45 - 54	55 - 64	64												
T O T A L		18	18	20	21 - 24	25 - 34	35 - 44	45 - 54	55 - 64	64												
T O T A L		18	18	20	21 - 24	25 - 34	35 - 44	45 - 54	55 - 64	64												
T O T A L		18	18	20	21 - 24	25 - 34	35 - 44	45 - 54	55 - 64	64												
T O T A L		18	18	20	21 - 24	25 - 34	35 - 44	45 - 54	55 - 64	64												
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T O T A L		18	18	20	21 - 24	25 - 34	35 - 44	45 - 54	55 - 64	64												
T O T A L		18	18	20	21 - 24	25 - 34	35 - 44	45 - 54	55 - 64	64												
T O T A L		18	18	20	21 - 24	25 - 34	35 - 44	45 - 54	55 - 64	64												
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T O T A L		18	18	20	21 - 24	25 - 34	35 - 44	45 - 54	55 - 64	64												
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T O T A L		18	18	20	21 - 24	25 - 34	35 - 44	45 - 54	55 - 64	64												
T O T A L		18	18	20	21 - 24	25 - 34	35 - 44	45 - 54	55 - 64	64												

TABLE 4
WHAT WERE THE REASONS FOR NOT VOTING OF THOSE ELIGIBLE?

AGE															SEX		ABSENTEE BALLOT									

ELECTION SURVEY

(NEAREST HUNDRED)

TABLE 5

6. DID YOU USE THE FEDERAL POST CARD APPLICATION?

A G E										SEX		ABSENTEE BALLOT									

TABLE 6
.. 32 OF THOSE WHO USED THE FPCA, WHERE WAS IT OBTAINED?

	AGE										SEX	ABSENTEE BALLOT										
	UNDER		18-20		21-24		25-34		35-44			45-54		55-64		OVER		DTC NOT RE-QUESTED		VO-DICTAT IN-TRAIL-LOI		RECEIVED BAL-LOI
TOTAL	16	18	20	21	24	25	34	35	44	45	54	55	64	64	64	64	MALE	FEMALE	QUEST	REQ	LOI	LOI
TOTAL ANSWERING																						
712	24	76	180	184	115	54	38	472	233	12	448	27	100	65	61							
100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0							
100.0	3.4	10.7	25.3	25.8	16.2	13.2	5.3	66.3	32.7	1.7	62.9	3.8	14.0	5.1	8.6							
MEXASSY CONSULATE																						
517	9	58	131	142	74	80	22	327	189	8	308	13	78	53	58							
72.6	37.5	76.3	72.8	77.2	64.3	85.1	57.9	69.3	81.1	66.7	68.8	48.1	78.0	81.5	95.1							
100.0	1.7	11.2	25.3	27.5	14.3	15.5	4.3	63.2	36.6	1.5	59.6	2.5	15.1	10.3	11.2							
U.S. MILITARY INSTALLATION																						
63			17	11	29	6																
8.8			9.4	6.0	25.2	6.4																
100.0			27.0	17.5	46.0	9.5																
CLR EMPLOYER																						
33			10	14	4	4																
4.6			5.6	7.6	3.5	4.3																
100.0			30.3	42.4	12.1	12.1																
COUNTY COURTHOUSE																						
36	6	7	16			4	4	23	13	4	25			7								
5.1	25.0	5.2	8.9			4.3	10.5	4.9	5.0	33.3	5.6			7.0								
100.0	16.7	19.4	44.4			11.1	11.1	69.9	36.1	11.1	69.4			19.4								
MUNICIPAL BUILDING																						
29	5	12	2	6	3																	
4.1	20.8	15.8	1.1	3.3	2.6																	
100.0	17.2	41.4	6.9	20.7	10.3																	
LLC																						
18																						
2.5																						
100.0																						
MERICAN FRIEND																						
4																						
6																						
100.0																						
ALL OTHER																						
13	4																					
1.8	16.7																					
100.0	30.8																					
Q ANSWER																						
8																						
BT APPLICABLE																						
5584	210	294	1147	1323	1113	794	703	3222	2316	4008	954	59	186	254	64							

TABLE 7

DID YOU REQUEST AN ABSENTEE BALLOT?

	A G E										SEX		ABSENTEE BALLOT				
	UNDER	18-20	21-24	25-34	35-44	45-54	55-64	65+	OVER		MALE	FEMALE	DID NOT REQUEST BALLOT	RECEIVED BALLOT	RECEIVED BALLOT	RECEIVED BALLOT	RECEIVED BALLOT
TOTAL ANSWERING	6184	228	371	1320	1485	1215	876	689	689	3625	2507	4320	4320	1422	86	281	312
	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0
	100.0	3.7	6.0	21.3	24.0	19.8	14.2	11.1	58.6	40.5	65.3	22.7	1.4	4.9	4.9	5.0	2.1
DID NOT REQUEST BALLOT	4020	116	144	796	962	842	595	565	565	2287	1691	4020	4020	13	4	7	70
	65.0	50.9	38.8	60.3	64.8	69.3	67.9	82.0	63.1	67.5	100.0	100.0	100.0	19	4.7	2.5	22.4
	100.0	2.9	3.6	19.8	23.9	25.9	14.8	14.1	56.9	42.1	100.0	100.0	100.0	3	1.1	1.2	1.7
REQUESTED BALLOT	2164	112	227	524	523	373	281	124	1337	816				1350	83	274	242
	35.0	49.1	61.2	38.7	35.2	30.7	32.1	18.0	36.9	32.5				59.1	96.5	97.5	77.6
	100.0	5.2	10.5	24.2	24.2	17.2	13.0	5.7	61.8	37.7				64.2	3.8	12.7	11.2
NO ANSWER	119	7		6	26	14	16	51	70	45				4		5	7

TABLE 9 - 2
WHICH STATE IS YOUR RESIDENCE FOR VOTING?

AGE										SEX		ABSENTEE BALLOT									

Q. 8A WHICH STATE IS YOUR RESIDENCE FOR VCTING?

[illegible]

NOT INCLUDED IN TABLE PERCENTAGES

ELECTION SURVEY

(NEAREST HUNDRED)

TABLE 11

.. 34 FOR 1953-1954 YCL LIVED AVERAGE

A G E										SEX		ABSENTEE BALLOT									

ELECTRIC SURVEY

(NEAREST HUNDRED)

TABLE 12

* 50 COUNTRY OF RESIDENCE

		A G E										SEX		ABSENTEE BALLOT									

Table 12 - 1

58 COUNTRY OF RESIDENCE

	AGE										SEX	ABSENTEE BALLOT										

TABLE 12 - 2

BY COUNTRY OF RESIDENCE

A G E

SEX

ABSENTEE BALLOT

	UNDER 18	18-20	21-24	25-34	35-44	45-54	55-64	OVER 64	MALE	FEMALE	QUEST	RE- BALLOT	VC- BALLOT	TEC VOTE	TIME	LOT	LUT
ETHIOPIA	16			4	9			2	11	4	11	4					
	3			3	6			3	3	2	3						
100.0				25.0	56.3			12.5	68.8	25.0	68.8	25.0					
FIJI ISLANDS	8																
	1			4	3			3	2	6	6						
100.0				50.0	50.0			75.0	75.0		75.0						
FINLAND	5							3	5		3						
	1				2			2	1		1						
100.0					66.0			66.0	100.0		60.0						
FRANCE	95			6	17	23	27	10	63	36	50	36					
	1			1.7	1.3	1.5	2.2	1.1	1.4	1.7	1.4	1.2					
100.0				4.0	6.1	17.2	23.2	27.3	10.1	63.6	36.4	50.5					
GERMANY	480			25	35	105	45	60	105	245	235	340	100				
	7			10.7	9.4	7.9	3.0	8.5	6.7	14.2	6.6	9.2	8.5				
100.0				5.2	7.5	21.5	5.4	21.5	12.5	21.9	51.0	49.0	70.8				
GRANA	8			4					8		4						
	1			3	3			2	1		1						
100.0				50.0	50.0			100.0	100.0		60.0						
GREECE	178			5	20	35	30	49	40	84	124	25					
	2			1.3	1.5	2.2	2.4	5.5	5.4	3.3	3.1	1.8					
100.0				2.8	11.2	19.7	16.9	27.5	22.5	52.8	47.2	69.7					
GUATEMALA	53			29	15	5	5	5	44	10	44						
	8			2.2	1.0			6	1.2	4	1.1						
100.0				54.7	28.5	9.4	9.4	83.0	18.9	83.0							
HAITI	26			13	13				19	6	13	13					
	4			1.0	1.0			5	5	2	3	9					
100.0				50.0	50.0			73.1	23.1	50.0	50.0						
HONDURAS	28			7	7	7	7	7	28		7						
	4			5	5	5	5	9	8		5						
100.0				25.0	25.0	25.0	25.0	25.0	100.0		25.0						
HONG KONG	44			6	39				39	6	33	6					
	7			5	2.6			1.1	2	8	4						
100.0				13.6	88.6			88.6	13.6	75.0	13.6						

ELECTION SURVEY

(NEAREST HUNDRED)

TABLE 11 - 3

COUNTRY OF RESIDENCE

		AGE										SEX		ABSENTEE BALLOT									

COUNTRY OF RESIDENCE

[illegible]

EXHIBIT 3

MEMORANDUM TO SENATE RULES AND ADMINISTRATION COMMITTEE FROM AMERICAN LAW DIVISION, CONGRESSIONAL RESEARCH SERVICE, THE LIBRARY OF CONGRESS, RELATING TO VOTING RIGHTS OF U.S. CITIZENS RESIDING ABROAD

This is in response to your request for information concerning Federal legislation which would allow United States citizens residing abroad to vote in Federal elections. For your information, please find enclosed an American Law Division memorandum of May 22, 1973 which analyzes S. 4082, 92d Congress, and discusses the constitutional issues involved in such a proposal. Also enclosed is a law review article by Fenneth M. Davidson from the *Buffalo Law Review*, 18:469, 1968-1969, entitled "Voting Rights of Americans Abroad"; and excerpts from the Congressional Record upon the introduction of S. 1202, 119 Cong. Record S. 12313 6/28/73, which contains a survey of state absentee voting and registration procedures prepared by the Bipartisan Committee on Absentee Voting; an article from the *New York Times*, September 10, 1972, entitled "Americans Overseas Face Denial of Vote Under Law"; a letter from the Internal Revenue Service to Senator Goldwater concerning residency and the exclusion of income earned abroad under sec. 911(a) (1) of the Revenue Code; and a memorandum from the Justice Department concerning the interpretation of certain provisions regarding absentee registration and voting in the Voting Rights Act Amendments of 1970, 42 U.S.C. sec. 1973 aa-1.

In summary, the constitutional issues involved in such legislation primarily concern the Congressional authority to establish certain qualifications for voting in Federal elections. Historically, the authority to establish qualifications for voting within a state, including the determination of bona fide residence, has been reserved to the States. In *Carrington v. Rash*, 380 U.S. 89 (1964), the Supreme Court, citing *Pope v. Williams*, 193 U.S. 621, 632, explained that: "... the privilege to vote in a State is within the jurisdiction of the State itself, to be exercised as the State may direct, and upon such terms as to it may seem proper, provided, of course, no discrimination is made between individuals in violation of the Federal Constitution."

It is contended that a State, in declaring that certain United States citizens who are residing abroad are not bona fide residents of the state, is abridging a fundamental constitutional right, the right to vote, of a certain class of individuals. The Supreme Court has in the past upheld the Congressional authority to legislate as to qualifications of voters within a state when fundamental constitutional rights were a issue. Thus, in *Smiley v. Holm*, 285 U.S. 355 (1932), in a case dealing with reapportionment of Congressional districts, the Court commented that the Constitution gives Congress "general supervisory powers over the whole subject of congressional elections," and recently, in *Oregon v. Mitchell*, 400 U.S. 112 (1970), the Court, in upholding a Federal statute abolishing durational residency requirements for voting in Presidential elections, commented that: "... it is the prerogative of Congress to oversee the conduct of presidential and vice presidential elections and to set the qualifications of voters for those offices." The constitutional authority for Congress to establish qualifications for voting in Federal elections to protect a fundamental constitutional right may arguably be extended to the primaries of such elections (*U.S. v. Classics*, 313 U.S. 399 [1941]; *Smith v. All right*, 321 U.S. 649 [1944]) although this argument is less persuasive as to presidential primaries to elect delegates to a party convention, the "national" character of which has been in issue. It is noted that Congressional regulation of certain aspects of Federal elections has been upheld in the past even for reasons other than specifically protecting individual constitutional rights as, for example, to protect the purity of presidential elections from corruption or undue influence. (*Burroughs and Cannon v. U.S.*, 290 U.S. 534 [1933]).

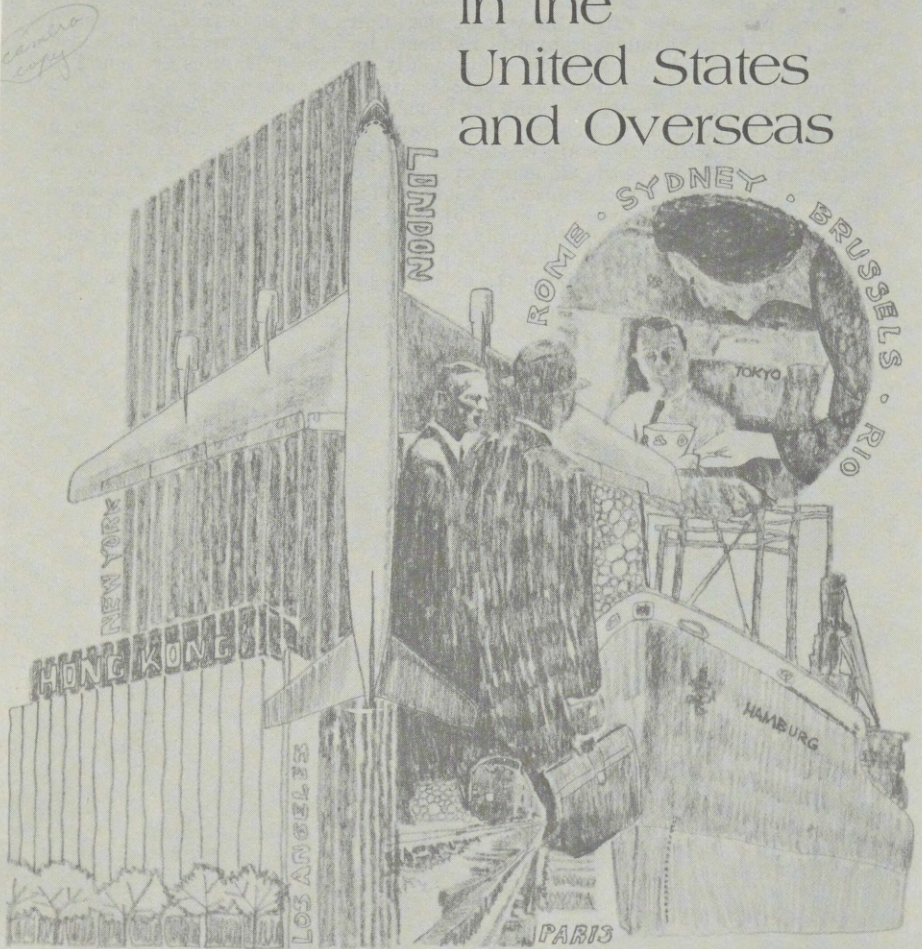
It is contended, however, that a State definition of bona fide residence which does not include a citizen living abroad as a resident of that state is not "invidious discrimination" and so is not an unconstitutional abridgment of the right

to vote. In *Dunn v. Blumstein*, 405 U.S. 330, (1972), where the Court struck down a State durational residency requirement of one year, the Court noted that: "This 'equal right to vote' is not absolute; the States have the power to impose voter qualifications, and to regulate access to the franchise in other ways." It was held in that case that the State must show that the exclusions were necessary to promote a compelling state interest. It is contended here that the states have a legitimate and compelling interest in narrowly defining those who may have no place of residence within the state, and who may have been physically absent from the state for numerous years, as persons who are not bona fide residents of that state and so are not entitled to vote for Federal officials representing the state, or a certain district within the state. The lack of familiarity with, and the lack of a direct interest in, the affairs of a state from which such persons may have abandoned physical residence for numerous years is advanced as a reason for such an exclusion. Additionally, serious difficulties are noted in any procedure to determine one's "mental intent" to return to a state, which may establish domicile and so voting residency within the state. There is further concern over the opportunities for voting fraud if one is not required to give a specific address within the state when registering and voting absentee. As to the contention that denial of the franchise to citizens residing overseas is paramount to "taxation without representation," it has been noted that the income of many U.S. citizens residing abroad is not subject to income taxation by the United States or the states; and additionally, even if such citizens residing overseas were to establish voting residency within a state, the I.R.S. may not use this factor as conclusively determining the actual residency, and so the taxability of income, of one residing abroad.

JACK H. MASKELL, *Legislative Attorney.*

EXHIBIT 4

Guide to Absentee Voting in Presidential Elections: in the United States and Overseas



Chamber of Commerce of the United States
1615 H Street, N.W. / Washington, D.C. 20006 U. S. A.

**A Guide to Absentee Voting
In Presidential Elections:
In the United States and Overseas** 2604

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Published by:
Public Affairs Department
EDITOR: Robert T. Snure

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January 1972

FOREWORD

Too few people in the world today have the privilege of voting in free elections for candidates of their choice.

In marked contrast, this right belongs to 140 million Americans. In fact, on November 7, 1972, more Americans will be eligible to vote for President and Vice President of the United States than ever before in our 200-year history.

The Voting Rights Act Amendments of 1970—Public Law 91-285—has been enacted by the Congress to increase voter eligibility in the Presidential election, if each adult American *will only make the effort* to qualify. Here's all he needs to do:

- As an American citizen working or residing overseas, he can now register and vote, absentee, in his state of last residence before going abroad.
- If he moves to a new state and lives there at least 30 days prior to November 7, 1972, he can register and vote in his new community, or if there less than 30 days, he can vote in person or absentee in his former state of residence.
- As a registered voter, for any reason away from home on election day, he can vote absentee if application is made within seven (7) days of the Presidential election.
- If he is 18, 19 or 20, he can register and vote in person in all 50 states, or if overseas, or working or in college out of state, he can register and vote, absentee, in his home community.

These Federal provisions take precedence over more restrictive state laws. They will be enforced by the Department of Justice—and the Federal courts.

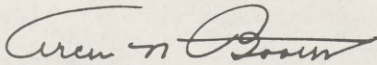
To assist ALL Americans to register and vote for the Presidential and Vice Presidential candidates of their choice on November 7, 1972, the National Chamber has prepared this publication. In addition to the enabling legislation and other legal documents, it includes information on where to send absentee applications for registration and voting and what to include in such applications.

With these newly established voting privileges and this information, there can be but one reason for any qualified American to fail to register and vote for the candidates of his choice in the 1972 Presidential election. That reason? Citizen apathy.

Remember: No one can register and vote for you. Each individual must make a personal effort to take the steps necessary to register and vote in person, or to register and vote absentee.

This publication will help pave your way.

Your follow through—in '72—is up to you!



ARCH N. BOOTH
Executive Vice President
Chamber of Commerce of the United States

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ALL AMERICANS OVERSEAS
CAN REGISTER AND VOTE
FOR PRESIDENT, SAYS
JUSTICE DEPARTMENT



ALL AMERICANS OVERSEAS CAN REGISTER AND VOTE FOR PRESIDENT, SAYS JUSTICE DEPARTMENT¹

American citizens working or visiting overseas are entitled to register absentee in their state of last residence and to vote absentee in Presidential elections, according to the Department of Justice. No longer is this right confined to members of the Armed Forces and Federal civilian employees, and their dependents, overseas.

This determination is based on the Attorney General's clarification of the Voting Rights Act Amendments of 1970 (42 U.S.C.A. 1973aa), as upheld by the Supreme Court in *Oregon v. Mitchell* 400 U.S. 112. It is also based on the "Congressional intent" expressed by Senator Barry Goldwater (R-Ariz.) on the Senate floor when he proposed the absentee voting provisions of the new law, "to secure the right to vote for President and Vice President for every citizen of the United States without regard to lengthy residence requirements or where he may be in the world on election day."

STATES MUST GRANT ABSENTEE VOTING PRIVILEGES

The effect is to enfranchise hundreds of thousands of citizens, many for the first time. Persons living abroad will be able to vote absentee in the Presidential election of November 7, 1972 without the prior necessity of maintaining a stateside abode. Likewise entitled to vote in that Presidential election will be all persons attending college outside their home state, as well as other persons who expect to be away from home on election day. Under the Justice Department's directive, and regardless of local election laws to the contrary, *a state must grant absentee ballot privileges to any citizen who otherwise qualifies to vote. For a citizen overseas, his absentee registration and voting privilege must come from his state of last residence prior to his going abroad.*

MORE RESTRICTIVE STATE LAWS UNENFORCEABLE

According to the Justice Department, under section 202 of the Act, "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.*"

Also, "anyone otherwise qualified to vote by absentee ballot for President and Vice President must be given the opportunity, if necessary, to register absentee," the Department of Justice says.

CIVILIANS GRANTED SAME PRIVILEGES AS SERVICEMEN

By his amendment, which became part of section 202, Senator Goldwater disclosed on the Senate floor his intention "that civilians should be granted the very same privileges of absentee registration and voting that are extended to members of our military service." He took formal notice of the general rule applicable to servicemen which holds a person "does not lose or abandon the domicile he had when he entered the service, nor does he acquire one at the place he serves, irrespective of the duration of his actual residence at such place. His residence or domicile is a question of intent." (American Jurisprudence 2nd, Elections, Section 75)

By quoting this statement from American jurisprudence, Senator Goldwater intended to guarantee that the new law would be interpreted to benefit Americans living away from their homes for any lengthy periods whether their absence ran into months or into years, we are told. He specifically focused his sights on citizens away from home who are "visiting relatives or friends abroad, attending college outside their own state, *working for a United States firm overseas*, or serving as Federal employees away from their normal home."

"HOME" OR "DOMICILE" DEPENDS ON INTENT TO RETURN

As Senator Goldwater views it, "A person's 'home' or 'domicile' should depend on his *true intent to return* to that home." Accordingly, based on his construction, *a citizen residing abroad should be entitled to apply for a presidential ballot in the State of his last residence so long as the citizen states his intention to maintain a present voting residence or domicile in that State and to return and be domiciled there some time in the future.*

30-DAYS RESIDENCY MAXIMUM REQUIRED. LONGER PERIOD UNENFORCEABLE

In general, in order to vote in a state or political subdivision in a presidential election, a person must be a bona fide resident or domiciliary of that state or political subdivision. "The only exception to this rule," the Justice Department says, "is that in certain limited circumstances, *former residents of a state or a political*

¹From "Public Affairs News-Views-Ideas," Third Quarter 1971, published by Public Affairs Department, Chamber of Commerce of the United States, Washington, D.C.

subdivision are *to be permitted to vote for President.*" Here the Justice Department is referring to established residents of one state who have moved to a new state shortly before an election and who are precluded by state law from voting there. In this connection, durational residency requirements such as one year in the state, six months in the county, "*are rendered unenforceable with respect to presidential elections. . . . Applications must be accepted up to the 30th day before*" such elections, says the Justice Department. Should a person, by moving, be unable to meet the 30-day residency requirement, he may vote in the Presidential general election at his former location in person or by absentee ballot.

The Justice Department's clarification of the Voting Rights Act has been sent to the Governor of each state at Senator Goldwater's request. While any state may elect to continue or institute less restrictive standards, the failure of any state to comply with the Act's requirements will result in appropriate enforcement action by the Attorney General.

In addition to absentee registration and voting requirements, this clarification concerns the Act's provisions on the suspension of literacy and other tests which may seek to bar persons from registering or voting; implementation and voting age.

EACH AMERICAN MUST TAKE INITIATIVE TO REGISTER AND VOTE

A word of caution is in order. Despite this action by the Justice Department and Senator Goldwater, absentee registration and voting privileges do *not* come automatically.

Instead, each American overseas must take the initiative in getting registered to vote. A personal letter or form application is necessary to the County Clerk or Registrar of Voters of the county where he formerly resided, in which the applicant should provide the full address (street, city, county and state) where he formerly resided and he should advise of his intention to return to that area at some time in the future. The applicant should also request to be mailed to his current address a form of absentee voter registration, in accordance with the provisions of the Voting Rights Act Amendments of 1970, to allow him to become eligible to vote in the 1972 presidential elections.

Should any American citizen overseas, applying for absentee registration and voting privileges, be denied

that right by the county or state of his former residence, or should he fail, within a reasonable time, to receive a reply to his request, he should advise the Attorney General's office, Department of Justice, Washington, D.C., 20530, with a copy sent to Senator Barry Goldwater, Senate Office Bldg., Washington, D.C. 20515.

BUSINESS/PROFESSIONAL COMMUNITY SHOULD ASSIST

All business and professional firms and organizations in the states should alert their executives abroad to the contents of this article and should energize programs in their branch offices overseas that will generate now-permitted absentee registration and voting in presidential elections.

Executives of American Chambers of Commerce overseas, with the cooperation of the diplomatic staffs, should likewise alert American citizens within their jurisdictions of their right to *now* register and vote absentee in presidential elections, and urge complete participation.

To assist in this effort, the Chamber of Commerce of the United States is combining into this one publication, for the convenience of ALL Americans affected by the Voting Rights Act Amendments of 1970, certain basic information to help them in promptly exercising their newly established right to register NOW in the States so as to be able to vote for candidates of their choice for the office of President and Vice President in the general election of November 7, 1972.

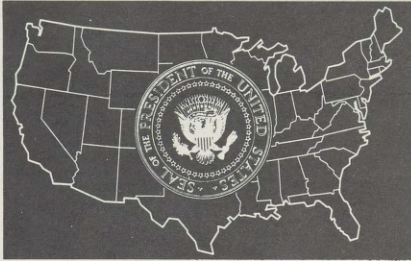
Section II tells where, how and when to apply for absentee registration privileges, how to address such applications, and the postal regulations applicable to the FPCA form and other related election materials to and from overseas.

Section III contains samples of forms that can be utilized, in lieu of a personal letter, in applying for absentee registration and voting privileges for the 1972 Presidential election, and where such forms may be obtained.

In the *Appendix* section of this publication are assorted documents setting forth the legislative and legal background governing the right of American citizens the world over to register and vote absentee for President and Vice President in the November, 1972, election, together with a Library of Congress study of the likely state income tax obligations of U.S. businessmen living abroad to their states of domicile.

SECTION II

WHERE, WHEN AND
HOW TO SEND
APPLICATIONS FOR
REGISTRATION AND
VOTING ABSENTEE



TO VOTE IN PRESIDENTIAL ELECTIONS OF NOVEMBER 7, 1972
WHERE TO APPLY FOR

STATE	ABSENTEE VOTER REGISTRATION	ABSENTEE BALLOTS
ALABAMA	County Board of Registrars	Register of the County Civil Circuit Court
ALASKA	Local Election Board	Lt. Governor—Pouch AA—Juneau 99801
ARIZONA	County Recorder	County Recorder
ARKANSAS*	County Clerk	County Clerk
CALIFORNIA**	County Clerk	County Clerk
COLORADO*	County Clerk (Denver—Election Commission)	County Clerk (Denver—Election Commissioner)
CONNECTICUT	Town Clerk or Registrar of Voters	Town Clerk
DELAWARE	County Department of Elections	County Department of Elections
FLORIDA	County Supervisor of Registration	County Supervisor of Elections
GEORGIA**	County Board of Registrars	County Board of Registrars
HAWAII*	County Clerk (Honolulu—City Clerk)	County Clerk (Honolulu—City Clerk)
IDAHO	County Clerk	County Clerk
ILLINOIS	County Clerk	County Clerk (Chicago Election District—Board of Election Commissioners)
INDIANA	County Clerk of Circuit Court	County Election Board or County Clerk, Circuit Court
IOWA*	City or Town Clerk or Commissioner of Registration	County Auditor or Commissioner of Registration
KANSAS*	City Clerk (In Johnson, Sedgwick, Shawnee and Wyandotte Counties with Election Commissioners)	City Clerk or County Election Commissioner
KENTUCKY	County Clerk (Louisville—Board of Registration Commissioners)	County Court Clerk
LOUISIANA	Registrar of Parish	Clerk of Parish Court (New Orleans—Civil Sheriff of Parish)
MAINE	Board of Selectmen in Towns; Board of Registration in Cities	Town or City Clerk
MARYLAND*	Board of Supervisors of Election—County	Board of Supervisors of Elections—County
MASSACHUSETTS*	Town or City Clerk	City or Town Clerk
MICHIGAN	City or Township Clerk	City or Township Clerk
MINNESOTA*	City Clerk or County Commissioner of Registration	City Clerk or County Commissioner of Registration
MISSISSIPPI	Circuit Clerk (County Registrar)	County or City Registrar
MISSOURI	County Clerk (Kansas City—St. Louis City and County Board of Election Commissioners)	County Clerk or Board of Election Commissioners
MONTANA*	County Clerk and Recorder	County Clerk and Recorder
NEBRASKA**	County Clerk (Douglas, Lancaster, and Sarpy Counties—Election Commissioner)	County Clerk (Douglas, Lancaster, and Sarpy Counties—Election Commissioner)
NEVADA	County Clerk	County Clerk
NEW HAMPSHIRE	Board of Supervisors of Check-List of Town or City	Town or City Clerk
NEW JERSEY	County Clerk	County Clerk
NEW MEXICO*	County Clerk	County Clerk or Secy. of State
NEW YORK	Board of Elections in County Seat	Board of Elections of County or Borough
NORTH CAROLINA	County Chairman of Board of Elections or Local Registrar	Chairman of County Board of Elections
NORTH DAKOTA*	(Registration Unnecessary)	County Auditor
OHIO	County Election Board	County Election Board
OKLAHOMA	County Election Board or Deputy Registrar	County Election Board
OREGON*	County Clerk (Portland—Registrar of Elections)	County Clerk (Multnomah County—Department of Records and Elections)
PENNSYLVANIA	County Board of Elections (Philadelphia—Registration Division)	County Board of Elections
RHODE ISLAND	Local Board of Canvassers and Registration	Local Board of Canvassers or Secy. of State
SOUTH CAROLINA	County Registration Board	County Board of Registration
SOUTH DAKOTA	County Auditor	County Auditor
TENNESSEE	County Election Commission	County Election Commission
TEXAS*	County Tax Assessor—Collector	County Clerk
UTAH	County Clerk	County Clerk
VERMONT	Town or City Clerk	Town or City Clerk or Secy. of State
VIRGINIA	General Registrar of County or City	County or City Electoral Board
WASHINGTON*	County Auditor or City Clerk	County Auditor
WEST VIRGINIA	County Clerk	Clerk of Circuit Court or County Clerk
WISCONSIN	City, Town or Village Clerk (Milwaukee—Board of Election Commissioners)	Town or City Clerk (Milwaukee—Board of Election Commissioners)
WYOMING	County Clerk	County Clerk
DIST. OF COL.*	Board of D.C. Elections	Board of D.C. Elections

Seventeen (17) states and the District of Columbia (identified by * and ** on page 6) allow all U.S. citizens residing outside the territorial limits of the United States, and their spouses and dependents when residing with them, to register and vote by absentee process, using the Federal Post Card Application (Standard Form No. 76, issued under 5 USCA 2184), a sample copy of which is shown in Section III of this publication.

In addition, those states marked with a double asterisk (**) require a special state form for registration, which may be included with an absentee ballot from the state.

The following states have broad absentee registration provisions which allow all absent citizens to register by absentee process: Alaska, Arizona, Idaho, Indiana, Michigan, New Hampshire, New York, South Dakota, Tennessee, Utah, Vermont, West Virginia, Wisconsin and Wyoming. Persons making application to register in these and other states may do so by letter, incorporating the information requested in the FPCA form (Federal Post Card Application) shown in Section III.

For the convenience of affiliates unable to utilize the FPCA form, Form B, also shown in Section III, is offered by the Chamber of Commerce of the United States of America.

HOW TO ADDRESS APPLICATION

In whatever form an application for absentee registration is made, it must be addressed to the County or local official or body shown in the Section II table; and to the County seat (city or town), County and State where the applicant last resided before going overseas. For example:

Board of Supervisors of Election
of Montgomery County, Maryland
Rockville, Maryland 20850
U.S.A.

If in doubt as to whom or where a letter or application for absentee registration should be addressed, send your request to the Secretary of State in the capital city of your state of last residence.

HOW TO DETERMINE COUNTY SEAT AND ZIP CODE

In the *World Almanac*, a copy of which should be available for examination in a library or in the offices of the American Chamber of Commerce or American embassy or legation in your community overseas, lists are shown of counties by states and the county seat of each with its principal zip code. Use of this information will assure prompt delivery and handling. To identify a town or

city with its county location, consult a *Road Atlas* of the United States and its index of cities, towns and counties.

POSTAGE

In the exchange of election materials between the States and persons overseas, free postage is authorized under the Federal Voting Assistance Act of 1955, as amended. The following is quoted from an August 5, 1971, memorandum for Members of the Federal Voting Assistance Task Force:

"1. The Free Postage Provision as it applies to the States:

"a. To whom may the States mail official election material free of postage? State election officials may send official election material to: (1) Members of the Armed Forces, and their spouses and dependents wherever they may be; (2) members of the Merchant Marine, and their spouses and dependents wherever they may be; (3) U.S. citizens temporarily residing overseas, and their spouses and dependents when residing with or accompanying them.

"b. What material falls within the meaning of official election material? The following items, ballots, voting instructions, special State forms for requesting applications for registration and/or absentee ballots, and the applications themselves, and all other necessary and proper material essential to the election process are included within the meaning of official election material.

"c. What envelope design must be used to take advantage of the Free Postage Provision? The envelope design should meet the design features outlined in recommendation number 7 (section 1452 (7)). Upon compliance with this Provision the envelope will look substantially like the Federal Post Card Application.

"2. The Free Postage Provision as it applies to the categories of persons covered in the Act (section 1451, also see subparagraph 1 (a) above).

"a. Where should the categories of persons mentioned above mail their FPCA or other election material so as to take advantage of the Free Postage Provision? The FPCA and official election material should be deposited in a U.S. Postal Service depository (U.S. mail box). While this is no problem for those persons in the U.S. or its territories, those persons overseas should mail their FPCA or official election material at an Armed Forces Postal Facility (APO or FPO) or at a U.S. Embassy. If not mailed at such designated places the material

may not be allowed to be sent free of postage. A foreign government may not mail the material, or it may exact a fee from the addressee.

"b. What material may the above mentioned persons (see subparagraph 1 (a)) send to State election officials? The same material outlined in subparagraph 1 (b) above can be sent to election officials."

In mailing letters or other requests for absentee registration or voting applications, other than FPCA forms, the applicant should adhere to the postal requirements covering the exchange of mail between his country of location and the United States.

WHEN TO SEND ABSENTEE REGISTRATION AND VOTING APPLICATIONS?

Everyone entitled to register and vote absentee is urged to file the necessary application promptly. *Allow plenty of time for any delay that may be encountered.*

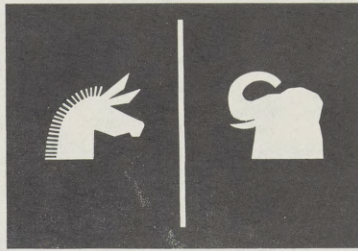
Those who can register in person should do so as soon as possible in their respective communities.

While the law directs the States to honor registration applications received not later than 30 days prior to the presidential election, and to likewise honor absentee ballot applications received not later than 7 days prior to such election, *care should be taken to avoid such delays. Utilize these legal limitations only in cases of extreme emergency.*

Be prompt. Register now so that you will be prepared to vote on November 7, 1972.

SECTION III

FORMS TO FILE
FOR ABSENTEE
REGISTRATION
AND VOTING



FILL OUT BOTH SIDES OF CARD
POST CARD APPLICATION FOR ABSENTEE BALLOT

State or Commonwealth of
 (Fill in name of State or Commonwealth)

(1) I hereby request an absentee ballot to vote in the coming election:
 (GENERAL) (PRIMARY)* (SPECIAL) ELECTION.
 (Strike out inapplicable words)

(2) *If a ballot is requested for a primary election,
 print your political party affiliation or preference
 in this box:
 (If primary election is secret in your State, do not answer)

(3) I am a citizen of the United States, eligible to vote in above State,
 and am:

a. A member of the Armed Forces of the United States

b. A member of the merchant marine of the United States

c. A citizen of the United States temporarily residing outside of the territorial limits of the United States and the District of Columbia

d. A spouse or dependent of a person listed in (a), or (b) above

A spouse or dependent residing with or accompanying a person described in (c) above

(4) I was born on (Day) (Month) (Year)

(5) For years preceding the above election my home (not military residence in the above State has been
 (Street and number or rural route, etc.)

in the county or parish of.....

The voting precinct or election district for this residence is

(Enter if known)

(6) Remarks:

(7) Mail my ballot to the following official address:

For those assigned in the U.S.:

(Unit (Co., Sq., Tpt., Bn., etc.), Governmental Agency, or Office)

(Military Base, Station, Camp, Fort, Ship, Airfield, etc.)

For those assigned elsewhere:

(APO, or FPO number)

(8) I am NOT requesting a ballot from any other State and am not voting in any other manner in this election, except by absentee process, and have not voted and do not intend to vote in this election at any other address.

(9)
 (Signature of person requesting ballot)

(10)
 (Full name, typed or printed, with rank or grade, and service number)

(11) Subscribed and sworn to before me on
 (Day, month, and year)

(Signature of official administering oath)

(Typed or printed name of official administering oath)

(Title or rank, service number, and organization of administering official)

INSTRUCTIONS

- Before filling out this form see your voting officer in regard to the voting laws of your State and absentee registration and voting procedure.
- Type or print all entries except signatures. **FILL OUT BOTH SIDES OF CARD.**
- Address card to proper State official. Your voting officer or commanding officer will furnish you his title and address.
- Mail card as soon as your State will accept your application.
- NO postage is required for the card.

* U.S. GOVERNMENT PRINTING OFFICE: 1968-O-340-457 # 32-3

Standard Form 76
 Issued under 5 U.S.C. A. 2184
 76-105

OFFICIAL ELECTION BALLOTING MATERIAL—VIA AIR MAIL

FILL OUT BOTH SIDES OF THE CARD

OFFICIAL
 ADDRESS

FREE OF U.S. POSTAGE
 INCLUDING AIR MAIL



TO:

(TITLE OF ELECTION OFFICIAL)

(COUNTY OR TOWNSHIP)

(CITY OR TOWN, STATE, ZIP CODE)

NOTE:

The address to be entered at Item 5 of the FPCA form should be the applicant's last home address in the United States, even though he may not still maintain a home or other abode at that address.

(Type or print information requested, except signature.)

(FORM B)

APPLICATION

for

AN ABSENTEE REGISTRATION FORM AND AN ABSENTEE ELECTION BALLOT

to enable applicant to vote on November 7, 1972, for the candidates and party of choice for President and Vice President of the United States, pursuant to the Voting Rights Act Amendments of 1970 (Public Law 91-285).

TO: _____
(title of County Official(s)) (fill in city or town, county and state of last residency)

Sir: I am a citizen of the United States and hereby request the following material to enable me to participate in the Presidential election of November 7, 1972 in the state of _____; pursuant to the Voting Rights Act Amendments of 1970. (Public Law 91-285).

- ☐ An absentee registration form
☐ An absentee voter's ballot

1. My date of birth: _____ month _____ date _____ year _____ Place of birth: _____ (city - state)
 2. I am ☐, I am not ☐ presently registered to vote in the State of _____
 3. For _____ years preceding 19____, my home residence or domicile in the United States has been

(street address)

(city-town) (county) (State) (Zip Code)

4. I intend to maintain my voting residence or domicile in the State of _____ and return and be domiciled there in the future.
 5. I have been absent for _____ (number) years, and at present, I am:
☐ an employee of _____ (name of firm, organization, or agency)
☐ the spouse of an employee of the above.
☐ a retiree. ☐ a visitor. ☐ other _____ (specify)
☐ a student at _____

6. I am presently located and should receive mail at: _____

7. If I am authorized to vote by absentee process in the State of _____, I shall NOT request or exercise voting privileges in any other state or the District of Columbia.

8. _____
(Signature of person requesting information/material)

9. _____
(Type or print full name to match signature above)

Subscribed and sworn to before me this _____ day of _____, 197____.

(NOTARY SEAL)

(NOTARY PUBLIC)

This unofficial form prepared by Chamber of Commerce of the United States of America for convenience of affiliates.

WHERE TO OBTAIN COPIES OF FORMS?

The unofficial form on the reverse side has been prepared by the Chamber of Commerce of the United States for the convenience of its affiliates in applying for information or materials on registration and voting by absentee process under Public Law 91-285 (42 USCA 1973aa) from those states which have not authorized for such purpose the use of Federal Post Card Applications (Standard Form No. 76, 5 USCA 2184).

Copies of this form are available from the Chamber of Commerce of the United States, 1615 H Street, N.W., Washington, D.C. 20006, U.S.A., in quantity lots of \$2.00 per 100 copies; less in bulk orders. Also available through American Chambers of Commerce overseas and other affiliates of the Chamber of Commerce of the United States both overseas and within the states.

NOTE:

The address to be entered at Item 3 of this form should be the applicant's last home address in the United States, even though he may not still maintain a home or other abode at that address.

The FPCA form is available to persons overseas through American embassies or consulates or from the commanding officer of any U.S. Armed Service facility. It is likewise available for purchase at the U.S. Government Printing Office, Washington, D.C. 20401, U.S.A.

With regard to the **FPCA form**, the following states have authorized its use by overseas Americans applying for registration and voting privileges by absentee process, as of December 1, 1971:

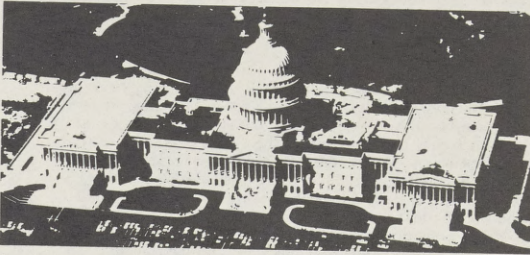
Arkansas	Massachusetts
California	Minnesota
Colorado	Montana
District of Columbia	Nebraska
Georgia	New Mexico
Hawaii	North Dakota
Iowa	Oregon
Kansas	Texas
Maryland	Washington

NOTE:

The address to be entered at Item 5 of the FPCA form should be the applicant's last home address in the United States, even though he may not still maintain a home or other abode at that address.

APPENDIX A

THE VOTING
RIGHTS ACT
AMENDMENTS
OF 1970





Public Law 91-285
91st Congress, H. R. 4249
June 22, 1970

An Act

To extend the Voting Rights Act of 1965 with respect to the discriminatory use of tests, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Voting Rights Act Amendments of 1970".

SEC. 2. The Voting Rights Act of 1965 (79 Stat. 437; 42 U.S.C. 1973 et seq.) is amended by inserting therein, immediately after the first section thereof, the following title caption:

Voting Rights
Act Amendments
of 1970.

84 STAT. 314
84 STAT. 315

"TITLE I—VOTING RIGHTS".

SEC. 3. Section 4(a) of the Voting Rights Act of 1965 (79 Stat. 438; 42 U.S.C. 1973b) is amended by striking out the words "five years" wherever they appear in the first and third paragraphs thereof, and inserting in lieu thereof the words "ten years".

Use of tests or
devices, prohi-
bition.

SEC. 4. Section 4(b) of the Voting Rights Act of 1965 (79 Stat. 438; 42 U.S.C. 1973b) is amended by adding at the end of the first paragraph thereof the following new sentence: "On and after August 6, 1970, in addition to any State or political subdivision of a State determined to be subject to subsection (a) pursuant to the previous sentence, the provisions of subsection (a) shall apply in any State or any political subdivision of a State which (i) the Attorney General determines maintained on November 1, 1968, any test or device, and with respect to which (ii) the Director of the Census determines that less than 50 per centum of the persons of voting age residing therein were registered on November 1, 1968, or that less than 50 per centum of such persons voted in the presidential election of November 1968."

SEC. 5. Section 5 of the Voting Rights Act of 1965 (79 Stat. 439; 42 U.S.C. 1973c) is amended by (1) inserting after "section 4(a)" the following: "based upon determinations made under the first sentence of section 4(b)", and (2) inserting after "1964," the following: "or whenever a State or political subdivision with respect to which the prohibitions set forth in section 4(a) based upon determinations made under the second sentence of section 4(b) are in effect shall enact or seek to administer any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1968."

SEC. 6. The Voting Rights Act of 1965 (79 Stat. 437; 42 U.S.C. 1973 et seq.) is amended by adding at the end thereof the following new titles:

"TITLE II—SUPPLEMENTAL PROVISIONS

"APPLICATION OF PROHIBITION TO OTHER STATES

"SEC. 201. (a) Prior to August 6, 1975, no citizen shall be denied, because of his failure to comply with any test or device, the right to vote in any Federal, State, or local election conducted in any State or political subdivision of a State as to which the provisions of section 4(a) of this Act are not in effect by reason of determinations made under section 4(b) of this Act.

Supra.

"(b) As used in this section, the term 'test or device' means any requirement that a person as a prerequisite for voting or registration for voting (1) demonstrate the ability to read, write, understand, or

"Test or de-
vice."

interpret any matter, (2) demonstrate any educational achievement or his knowledge of any particular subject, (3) possess good moral character, or (4) prove his qualifications by the voucher of registered voters or members of any other class.

84 STAT. 315

84 STAT. 316

"RESIDENCE REQUIREMENTS FOR VOTING"

"SEC. 202. (a) The Congress hereby finds that the imposition and application of the durational residency requirement as a precondition to voting for the offices of President and Vice President, and the lack of sufficient opportunities for absentee registration and absentee balloting in presidential elections—

"(1) denies or abridges the inherent constitutional right of citizens to vote for their President and Vice President;

"(2) denies or abridges the inherent constitutional right of citizens to enjoy their free movement across State lines;

"(3) denies or abridges the privileges and immunities guaranteed to the citizens of each State under article IV, section 2, clause 1, of the Constitution;

"(4) in some instances has the impermissible purpose or effect of denying citizens the right to vote for such officers because of the way they may vote;

"(5) has 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; and

"(6) does not bear a reasonable relationship to any compelling State interest in the conduct of presidential elections.

"(b) Upon the basis of these findings, Congress declares that in order to secure and protect the above-stated rights of citizens under the Constitution, to enable citizens to better obtain the enjoyment of such rights, and to enforce the guarantees of the fourteenth amendment, it is necessary (1) to completely abolish the durational residency requirement as a precondition to voting for President and Vice President, and (2) to establish nationwide, uniform standards relative to absentee registration and absentee balloting in presidential elections.

"(c) No citizen of the United States who is otherwise qualified to vote in any election for President and Vice President shall be denied the right to vote for electors for President and Vice President, or for President and Vice President, in such election because of the failure of such citizen to comply with any durational residency requirement of such State or political subdivision; nor shall any citizen of the United States be denied the right to vote for electors for President and Vice President, or for President and Vice President, in such election because of the failure of such citizen to be physically present in such State or political subdivision at the time of such election, if such citizen shall have complied with the requirements prescribed by the law of such State or political subdivision providing for the casting of absentee ballots in such election.

"(d) For the purposes of this section, each State shall provide by law for the registration or other means of qualification of all duly qualified residents of such State who apply, not later than thirty days immediately prior to any presidential election, for registration or qualification to vote for the choice of electors for President and Vice President or for President and Vice President in such election; and each State shall provide by law for the casting of absentee ballots for the choice of electors for President and Vice President, or for President and Vice President, by all duly qualified residents

USC prec.
title 1.

Durational
residency
requirement,
abolishment.

Absentee
registration
and balloting
standards,
establishment.

Registration.

June 22, 1970

- 3 -

Pub. Law 91-285

84 STAT. 317

of such State who may be absent from their election district or unit in such State on the day such election is held and who have applied therefor not later than seven days immediately prior to such election and have returned such ballots to the appropriate election official of such State not later than the time of closing of the polls in such State on the day of such election.

"(e) If any citizen of the United States who is otherwise qualified to vote in any State or political subdivision in any election for President and Vice President has begun residence in such State or political subdivision after the thirtieth day next preceding such election and, for that reason, does not satisfy the registration requirements of such State or political subdivision he shall be allowed to vote for the choice of electors for President and Vice President, or for President and Vice President, in such election, (1) in person in the State or political subdivision in which he resided immediately prior to his removal if he had satisfied, as of the date of his change of residence, the requirements to vote in that State or political subdivision, or (2) by absentee ballot in the State or political subdivision in which he resided immediately prior to his removal if he satisfies, but for his nonresident status and the reason for his absence, the requirements for absentee voting in that State or political subdivision.

"(f) No citizen of the United States who is otherwise qualified to vote by absentee ballot in any State or political subdivision in any election for President and Vice President shall be denied the right to vote for the choice of electors for President and Vice President, or for President and Vice President, in such election because of any requirement of registration that does not include a provision for absentee registration.

"(g) Nothing in this section shall prevent any State or political subdivision from adopting less restrictive voting practices than those that are prescribed herein.

"(h) The term 'State' as used in this section includes each of the several States and the District of Columbia.

"State."

"(i) The provisions of section 11(c) shall apply to false registration, and other fraudulent acts and conspiracies, committed under this section.

"JUDICIAL RELIEF

"Sec. 203. Whenever the Attorney General has reason to believe that a State or political subdivision (a) has enacted or is seeking to administer any test or device as a prerequisite to voting in violation of the prohibition contained in section 201, or (b) undertakes to deny the right to vote in any election in violation of section 202, he may institute for the United States, or in the name of the United States, an action in a district court of the United States, in accordance with sections 1391 through 1393 of title 28, United States Code, for a restraining order, a preliminary or permanent injunction, or such other order as he deems appropriate. An action under this subsection shall be heard and determined by a court of three judges in accordance with the provisions of section 2282 of title 28 of the United States Code and any appeal shall be to the Supreme Court.

62 Stat. 935.

62 Stat. 968.

"PENALTY

"Sec. 204. Whoever shall deprive or attempt to deprive any person of any right secured by section 201 or 202 of this title shall be fined not more than \$5,000, or imprisoned not more than five years, or both.

"SEPARABILITY

"SEC. 205. If any provision of this Act or the application of any provision thereof to any person or circumstance is judicially determined to be invalid, the remainder of this Act or the application of such provision to other persons or circumstances shall not be affected by such determination.

"TITLE III—REDUCING VOTING AGE TO EIGHTEEN IN FEDERAL, STATE, AND LOCAL ELECTIONS

"DECLARATION AND FINDINGS

"SEC. 301. (a) The Congress finds and declares that the imposition and application of the requirement that a citizen be twenty-one years of age as a precondition to voting in any primary or in any election—

"(1) denies and abridges the inherent constitutional rights of citizens eighteen years of age but not yet twenty-one years of age to vote—a particularly unfair treatment of such citizens in view of the national defense responsibilities imposed upon such citizens;

"(2) has the effect of denying to citizens eighteen years of age but not yet twenty-one years of age the due process and equal protection of the laws that are guaranteed to them under the fourteenth amendment of the Constitution; and

"(3) does not bear a reasonable relationship to any compelling State interest.

"(b) In order to secure the constitutional rights set forth in subsection (a), the Congress declares that it is necessary to prohibit the denial of the right to vote to citizens of the United States eighteen years of age or over.

"PROHIBITION

"SEC. 302. Except as required by the Constitution, no citizen of the United States who is otherwise qualified to vote in any State or political subdivision in any primary or in any election shall be denied the right to vote in any such primary or election on account of age if such citizen is eighteen years of age or older.

"ENFORCEMENT

"SEC. 303. (a) (1) In the exercise of the powers of the Congress under the necessary and proper clause of section 8, article I of the Constitution, and section 5 of the fourteenth amendment of the Constitution, the Attorney General is authorized and directed to institute in the name of the United States such actions against States or political subdivisions, including actions for injunctive relief, as he may determine to be necessary to implement the purposes of this title.

"(2) The district courts of the United States shall have jurisdiction of proceedings instituted pursuant to this title, which shall be heard and determined by a court of three judges in accordance with the provisions of section 2284 of title 28 of the United States Code, and any appeal shall lie to the Supreme Court. It shall be the duty of the judges designated to hear the case to assign the case for hearing and determination thereof, and to cause the case to be in every way expedited.

"(b) Whoever shall deny or attempt to deny any person of any right secured by this title shall be fined not more than \$5,000 or imprisoned not more than five years, or both.

USC prec.
title 1.

Denial of
right to vote,
prohibition.

Jurisdiction.

62 Stat. 968.

Penalty.

June 22, 1970

- 5 -

Pub. Law 91-285

84 STAT. 319

"DEFINITION

"Sec. 304. As used in this title the term 'State' includes the District of Columbia.

"EFFECTIVE DATE

"Sec. 305. The provisions of title III shall take effect with respect to any primary or election held on or after January 1, 1971."

Approved June 22, 1970.

LEGISLATIVE HISTORY:

HOUSE REPORT No. 91-397 (Comm. on the Judiciary).

CONGRESSIONAL RECORD:

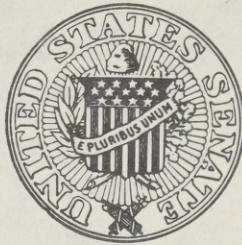
Vol. 115 (1969): Dec. 10, 11, considered and passed House.

Vol. 116 (1970): Mar. 2-6, 9-13, considered and passed Senate,
amended.

Apr. 8, considered in House.

June 17, House agreed to Senate amendments.

ENHANCING THE
RIGHT OF ALL
AMERICANS TO
CHOOSE THEIR
PRESIDENT



Senate



United States
of America

Congressional Record

ENHANCING THE RIGHT OF ALL AMERICANS TO CHOOSE THEIR PRESIDENT

Mr. GOLDWATER. Mr. President, the substitute amendment that is pending before us has been modified to include the amendment on presidential voting that I have offered for myself and 29 other Senators. This was a very gracious move on the part of the 10 Senators who have sponsored the substitute measure. It was a particularly happy moment for me because it signifies that there is a broad range of support for my amendment among Senators of all persuasions.

Frankly, this is the way I had hoped it would be. When I first presented my suggestion, I thought they should cut across party lines and political labels. Everyone, it seemed to me, would be in favor of letting people vote.

And this—in a nutshell—is exactly what my amendment is designed to do. With one fell swoop it will clear away a barrier of outmoded legal technicalities that now deprive nearly 10 million American citizens of the basic rights to vote for the leaders who will guide their country.

PURPOSES

Mr. President, I would like to explain today, in a layman's terms, just what the purposes of our amendment are and how our proposal differs from the House-passed language.

In short, my amendment will secure the right to vote for President and Vice President for every citizen of the United States without regard to lengthy residence requirements or where he may be in the world on election day.

In order to do this, my amendment will provide for the following reforms to be made in the Nation's election machinery.

First, it will completely abolish the durational residence requirement as a precondition to voting for President and Vice President. The provision will benefit both new residents and longtime residents of a State.

Second, it will permit new residents of a State who move after the voting rolls are closed to vote for such officers by absentee ballot or in person in their former State.

Third, it spells out the right of all citizens, both new residents and longtime residents of a State, to register absentee and to vote by absentee ballot for President and Vice President. One important facet of this provision is the fact that once the voting age is reduced to 18, the

benefits of my amendment will be immediately available to all our young Americans who are attending college away from their homes.

Fourth, it will allow longtime residents of a State to register as voters for presidential elections at least up to 30 days before the election, whether or not they have moved their homes.

Fifth, it will expressly preserve the power of the States to adopt voting practices which are even more generous than those provided by the new law.

Sixth, it will authorize the Attorney General to institute court actions to insure compliance with the law.

Seventh, it will specifically prohibit double voting and false registration.

Eighth, it clearly sets out a congressional finding of the powers that Congress is exercising under the Constitution.

Ninth, it plainly is applicable to voting for the offices of President and Vice President alone.

HOUSE VERSION

Out of the nine features which I have listed, only the second one and half of the first one were contained in the House-passed bill.

The earlier version, as it was explained by its sponsors, would solely have benefited new residents of a State who moved across State lines.

Put in more tangible terms, the House provision would have helped approximately 5.5 million citizens gain the right to ballot for their President. My amendment will almost double that number of citizens.

Mr. President, I do not in any way mean to cast criticism on the approach used in the House version. It would be a major step forward in extending the right to vote. However, the suggestions which I had proposed in Senate Joint Resolution 59—which was introduced months before the House bill—would build upon the features set out in the House measure so that the broadest possible meaning could be given to the right to vote in presidential elections.

My present amendment, which is a refinement of our first proposal, goes even further in nailing down the objectives which I and 32 other Senators had in mind when we offered Senate Joint Resolution 59.

Mr. President, this is an appropriate place to express my deep appreciation to the many Senators who have joined with me in this effort, first in connection with the joint resolution and now in regard to the amendment. Without their assistance and endorsement, the idea would not have gotten as far as it has.

So, I want to say, in truth, that whatever credit is due for the contribution which the proposal might eventually

make, should be shared by all of my colleagues who have kindly supported the election reforms I have suggested.

It is easy to explain my own great interest in improving the machinery by which the Chief Executive is selected. Having been my party's nominee for President in 1964, I perhaps have had more reason than most persons to examine the workings of that machinery.

REFORMS NEEDED

Mr. President, the more I have studied our national election system the more I have been convinced that it is in need of a major overhauling. To put it bluntly, the election system of the world's greatest republic and democracy is not geared to insuring that the maximum number of citizens will be eligible to vote. In many ways it even discourages or makes it impossible for citizens to register or to obtain ballots or to cast those ballots.

It is my belief that these restrictions are particularly arbitrary and injurious when they result in the denial of the fundamental right of an American citizen to choose the officers who will run the National Government.

Mr. President, I have outlined what the problems are when I described the primary features of my amendment. At this time I would like to develop the story at greater length so that there may be a solid legislative history of the problems which our amendment is designed to overcome.

STATE RESIDENCE REQUIREMENTS

The worst offender is the burden on voting imposed by lengthy residency requirements. Sixteen of our States require a full year's residence within their boundaries before they will allow a citizen to vote for President and Vice President. One of these States actually requires residence for as long as 2 years before a citizen can vote. Standing alone, the laws of these few States disqualify more than 620,000 Americans of voting age who move from State to State in an election year.

In addition, three States, to which over 150,000 adult citizens move each year, impose a 6-month waiting period as a precondition to voting for President.

Thirty-two other States require waiting periods for new residents ranging from 3 months down to zero. Even these shortened periods result in the disqualification of nearly half a million otherwise eligible voters.

Mr. President, the combined effect of the various State residence laws is the denial of the right to vote for President in the case of over 1,120,000 Americans. This total can be readily established on the basis of a table which I shall insert later in the Record.

LOCAL REQUIREMENTS

But this is only part of the story. Added to this obstruction to the free exercise of a citizen's franchise were numerous local rules that imposed a separate waiting period on persons who moved about inside a State. These laws affect both longtime residents of a State and newly arrived residents who may move after entering the State.

For example, if a citizen living in any one of 10 States changed his address to a different county or city in that same State as much as 6 months before the 1968 election, he would have lost his right to vote in that election. One might think that the cumulative effect of these strictly local rules would be small, but to the contrary they actually cause the disfranchisement of at least an additional 855,000 citizens.

CITIZENS DISQUALIFIED BY WAITING PERIODS

Mr. President, I have prepared a table which details the numbers of citizens who are disqualified from balloting in presidential elections and I request that it be inserted at the end of my remarks. It shows, State by State, a listing of the current residence periods applied by the several counties, cities, towns, precincts, and wards within each State, and identifies the number of citizens of voting age who moved to each State and within each State during the last election year.

Mr. President, it is clear from reading the table that no less than 2 million Americans are being denied a voice in the selection of their President solely because they have changed their residence. But let me emphasize that this figure is the bare bones minimum which can be proven.

Actually, the Gallup poll's in-depth analysis of the 1968 election claims that the true number of citizens who were disfranchised by restrictive residence laws exceeded 5 million persons. What is more, one estimate made by the Census Bureau indicates that 5.5 million Americans were caught by these restrictions.

Since there were more than 21 million citizens of voting age who in fact made a change of households during the year preceding the 1968 election, it is my feeling that 5 million is much closer to the truth.

ABSENTEE VOTING

But these are not all of the unfortunate citizens who find themselves without the vote because of out-of-date legal technicalities. Approximately 3 to 5 million more fully qualified American citizens were denied the right to vote for President because they were away from home on election day and were not allowed to obtain absentee ballots.

This gap in the law is often overlooked because most States do permit some form of absentee voting. But the catch is that some of these same States impose unrealistic cutoff dates on the time when persons can apply for absentee ballots. This results in the disqualification of great numbers of citizens who do not know early enough that they will be away at the time of voting. Another bur-

densome feature about these laws is the fact that in 10 States a person's absentee ballot will not be counted unless it is returned to the voting officials before election day.

But this is not all. For in three out of every five States civilians cannot register absentee. Only 20 States now allow civilians generally to register to vote if they are away from home.

This means that millions of Americans are denied a voice in choosing their President and Vice President merely because they are exercising their constitutional right to travel in interstate commerce.

This category of citizens not only includes those Americans who travel within the United States for various reasons at election time, 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 governmental civil servants. They might be students who are attending foreign colleges. They include Americans who are working for U.S. businesses that have branches abroad. Or they may be plain tourists who are visiting friends or seeing new places overseas.

In any event, they are all fully qualified American citizens who find themselves without the right to vote solely because of outmoded legal technicalities.

UNFAIR LEGAL TECHNICALITIES

Mr. President, I want to state as firmly as I can that this hodgepodge of restrictive devices is unfair, outmoded, and unnecessary when applied to presidential elections.

In my opinion, every qualified citizen of the several States should be entitled to participate in the choice of his President. A citizen should be able to exercise this right regardless of where he is in the world on election day and regardless of how long he has been a resident of any particular State.

As Chief Justice Taney put it over a century ago:

We are one people, with one common country *Passenger Cases*, 7 Howard 293; 492 (1849).

Being members of the same political community, it is my view that all citizens possess the same inherent right to have a voice in the selection of the leaders who will guide their Government.

Mr. President, I wish to emphasize that my comments are not aimed at the election of State and municipal officers. My amendment is specifically worded so as to apply only to the choosing of the President. Here there is no need to insure that new residents have had time to learn about local issues. Here the issues are national and cut across all areas and regions of our country.

It is true that all States limit the right to cast presidential ballots to bona fide residents or recent former residents. It is also true that most States require voters to register to vote within a few days before an election.

When these requirements are applied

in a reasonable way, they can serve a valid purpose by protecting against fraudulent voting and allowing the election officials to carry out the paperwork and mechanics of holding an election.

But whatever the reasons for permitting a State to set a closeout date for registering to vote for President, there is no compelling reason for imposing a separate and additional requirement that voters also must have been residents of the State for a particular length of time. If a State can satisfy its logistical needs by keeping its voting lists open up to 30 days before an election—as 40 States now do—what is the justification for barring citizens from balloting for President unless they have been residents of that State for 6 months or 1 year?

So long as a citizen is a good-faith resident of a State and the State has adequate time to check on his qualifications, the duration of his residency should have no bearing on his right to participate in the election of the President.

REMEDIES PROVIDED

This is why my proposal provides for the complete abolishment of the durational residence requirement as a separate qualification for voting for President and Vice President. My amendment will, however, permit a State to require that its voters shall be bona fide residents who shall register or otherwise qualify for voting no later than 30 days preceding the election. Thereby the legitimate interests of the States will be protected at the same time that the fundamental right of citizens to vote will be given its broadest possible meaning.

This does not mean that most States will be left with rules which amount to the same thing as a 30-day waiting period. For example, 19 States now permit a new resident to apply for a presidential ballot as late as 2 weeks before the election. Fourteen States allow their new voters to register as late as 5 days before election day.

Now, under my amendment, new citizens who move into one of these States will be allowed to vote there with merely 2 weeks or 5 days of residence, as the case may be. But under the House-passed bill the same citizen will be denied the franchise in his new State unless he has more than 60 days' residence. So the terms of my proposal are really much more generous than a mere 30-day residency law would be.

Mr. President, the record should show that there is another important group of citizens who will benefit from the requirement that States shall keep their voting lists open until at least 30 days before a presidential election.

The point must be made absolutely clear that my amendment is intended to remove all the insidious effects which these archaic statutory limitations may have on a citizen's free exercise of his right to choose the President.

LONGTIME RESIDENTS

To this end, my proposal is expressly designed to help not only new residents

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of a State but also citizens who have lived for along time in a State.

Mr. President, one of the most bizarre features now included in some State election laws is the fact that citizens who have just moved into a State may register to vote as late as 30 days or even 5 days before a presidential election, but longtime residents of that same State are required to apply for registration as much as 9 months before the election.

What nonsense. Nine months prior to the election few people may be thinking about that event. But by 30 days before the polls open, political interest will have reached a fever pitch.

So, I want to make it very clear that my proposal is intended to mean that all citizens, both new residents and longtime residents, shall be permitted to register or otherwise qualify to vote for their President at least until 30 days before the election.

Mr. President, returning to the problems of the new residents for a moment, I want to add that my amendment will completely close the gap for those persons among this group who would still be unable to qualify as voters because they have moved into a State after the voting rolls have closed. To do this, the amendment provides that former residents of a State who fail for this reason to become electors in their new State must be allowed to vote for President in their former State.

My proposal draws on the excellent example set by the States themselves. Ten States—including Arizona—now permit former residents to vote in presidential elections.

ABSENTEE VOTING

Next, in order to provide the greatest possible encouragement and meaning to the right to vote, my amendment will permit all categories of citizens, both civilian and military, to register absentee and to vote by absentee ballot.

Specifically, the amendment provides that citizens may apply for absentee ballots for President and Vice President up to 7 days before the election and may return their marked ballots as late as the close of the polls on election day. Once again, the features of my measure are drawn from the proven practice of the States themselves. At present 37 States allow certain voters to make application for absentee ballots up to a week before the election and 40 States provide that the marked ballots need not be returned until election day itself.

ABSENTEE REGISTRATION

My amendment will also allow citizens who are away from their homes to register absentee. Forty-nine States now permit servicemen to register absentee or do not even require them to register at all, and I believe this privilege should be extended nationwide to all citizens, both civilians and servicemen.

Mr. President, allow me to describe the full scope of this provision. What I intend is that civilians should be granted the very same privileges of absentee registration and voting that are extended to members of our military services.

As I have indicated, absentee registration is nothing novel in the case of servicemen. The general rule is as follows:

The domicile of a person is not affected or changed by the mere fact that he has entered the military or naval service of his country. He does not thereby lose or abandon the domicile he had when he entered the service, nor does he acquire one at the place where he serves, irrespective of the duration of his actual residence at such place. His residence or domicile is a question of intent. (American Jurisprudence 2nd, Elections, section 75)

Thus, it seems entirely appropriate to ask that the same rule shall be applied on behalf of civilian citizens who are temporarily living away from their regular homes, whether they are visiting relatives or friends abroad, attending college outside their own State, working for a U.S. firm overseas, or serving as Federal employees away from their normal homes.

Thus, it is my purpose that the same standards that are applied to servicemen shall be applied to civilians. A person's "home" or "domicile" should depend upon his true intent to return to that home.

Mr. President, I should note in connection with this feature that, if Congress should eventually lower the voting age to 18, my amendment would be available to assist all of these young Americans who may be attending college away from their home States.

SPECIAL BALLOTS

Mr. President, I would also like to mention that the basic practice that a State will have to establish once my amendment takes effect is one which most States already have put into operation. To date, 31 of our States have created a special method for voting in presidential elections in the case of new residents who cannot meet the usual residence requirements. These citizens are allowed to vote for presidential electors, but not for other offices.

This proves beyond any doubt that the States can set up the separate system for voting that is required under my amendment.

In short, every standard set forth in the amendment has been modeled after practices that are used by the States themselves and are proven to be workable. Therefore, I can safely say to those of my colleagues who share with me a special respect and concern for the strength and diversity of our State and local governments that their interests were fully taken into account in the preparation of this measure. Mr. President, I ask that tables identifying the States whose practices I have followed be inserted at the end of my statement.

OTHER FEATURES

Mr. President, there are two remaining features of my amendment that should be discussed. One is the provision which authorizes the Attorney General to institute court actions to enforce compliance with the law. There is no general authority that permits the

United States to seek injunctive relief and I wanted to see this power spelled out in the bill. Otherwise, the only way the section could be enforced would be through individual, private law suits. This point is handled in section 203 of the substitute amendment.

Finally, it is my belief that it should not leave any doubt as to whether there are sanctions in the case of double voting and false registration. Therefore, I have expressly provided that such conduct will be a Federal offense. What I have done is to utilize the existing provisions of section 11(c) of the original voting rights law.

Mr. President, up to here I have sought to identify the problem and to describe the ways in which I believe we can solve it. Now it is my purpose to state the grounds on which I think Congress can act in this field.

CONSTITUTIONAL AMENDMENT

In doing so, I wish to note that I have also considered the route of a constitutional amendment. Early last year I introduced a joint resolution, on behalf of myself and 32 other Senators, proposing an amendment to the Constitution which would have carried out the same purposes as my present measure. But even though our resolution was joined in by a third of the Senate's membership, we were unable to get any action on it.

Now we are a year closer to the next presidential election. In view of the fact that the time left before that election is fast running out, I have decided to pursue the alternative path of seeking a Federal statute.

By passing a law before the end of this year, we can give the States a full 2-year period during which they can bring their local laws into conformity with the national standards. This opportunity is very important to many States because their legislative chambers meet only in alternate years.

LEGAL ARGUMENTS

Mr. President, once the policy decision is made to cure the problem by means of a statute, rather than an amendment to the Constitution, I have no difficulty in finding that it is well within the authority of Congress to pass such a statute.

There are at least four distinct grounds for the exercise of congressional authority in this field, and I shall discuss each of them in turn. First, there is the power of Congress to secure the rights guaranteed by the 14th amendment.

FOURTEENTH AMENDMENT

The question here is parallel to the one before the Supreme Court in the recent case of *Katzbach v. Morgan*, 384 U.S. 641 (1966). There the Court was faced with deciding whether Congress could prohibit the enforcement of New York's English language literacy test as applied to Puerto Rican residents of that State. The Court was also faced with its decision in *Lassiter v. Northampton Election Board*, 360 U.S. 45 (1959), in which it had rejected a challenge to the English literacy test of North Carolina.

Nevertheless the Court held that Congress could override the New York law. In writing the Court's opinion, Justice Brennan said that the true question was: "without regard to whether the judiciary would find that the equal protection clause itself nullifies New York's English literacy requirement as so argued, could Congress prohibit the enforcement of the State law by legislating under section 5 of the 14th amendment?"—384 U.S. 649.

Justice Brennan proceeded by saying:

In answering this question, our task is limited to determining whether such legislation is, as required by section 5, appropriate legislation to enforce the Equal Protection Clause. (384 U.S. 649-650.)

The basic test of what constitutes "appropriate legislation," according to the Morgan decision, is the same as the one formulated by Chief Justice Marshall in *McCulloch v. Maryland*, 4 Wheaton 316, 420 (1819), when he defined the powers of Congress under the necessary and proper clause.

In applying this test to legislation passed under section 5, the Court held that three questions must be asked: First, is the statute designed to enforce the 14th amendment? Second, is it "plainly adapted" to that end? and third, is it consistent with "the letter and spirit of the Constitution?"—384 U.S. 651.

In deciding the answers to these questions, the Court said "it is enough that we are able to perceive a basis upon which the Congress might predicate a judgment" for acting as it did—384 U.S. 653.

Thus the Court upheld the power of Congress to preclude the enforcement of the New York literacy requirement. And so, I believe it would uphold the power of Congress to preclude the enforcement of State voting requirements which fall short of the standards created in my proposal.

It may be granted that the States have broad powers to determine the conditions under which the right of suffrage may be exercised. *Carrington v. Rash*, 380 U.S. 89, 91 (1965).

It may also be noted that the Supreme Court has affirmed, without opinion, a district court decision which upheld a 1-year residence requirement Maryland had imposed for voting in presidential elections. *Druding v. Devlin*, 380 U.S. 125 (1965).

But, is this not the same situation that the facts presented in the Morgan case? There, too, the issue involved the power of Congress to preclude the enforcement of a State voting requirement. There, too, the Court was faced with an earlier decision that the requirement was permissible.

In Morgan, one crucial factor was present that changed the whole issue before the Court. That same factor is present here. According to the rule of Morgan, where the case involves an enactment of Congress designed to enforce the guarantees of the 14th amendment, the question is not whether the judicial branch itself would decide that the State law is prohibited by that amendment. Rather the question is whether or not the con-

gressional measure is appropriate legislation under section 5 of the 14th amendment.

The thrust of the Morgan decision is that section 5 is a positive grant of legislative power authorizing Congress to use its discretion in determining what laws are needed to secure the guarantees of the 14th amendment. Under this doctrine, I have no difficulty in believing that the enactment of a uniform residence law is constitutional.

APPLYING TEST

First, there can be no doubt that the measure is intended to enforce the guarantees of the 14th amendment. It is designed to protect the right to vote for citizens who travel or move their households prior to a presidential election. The legislation clearly is meant to secure for this group of citizens freedom from a discriminatory classification in the imposition of voting qualifications that Congress has found to be unnecessary and unfair.

Second, the proposal is "plainly adapted" to furthering the purposes of the 14th amendment. By passing this law, Congress will effectively enhance the opportunities of millions of Americans to vote for President.

Third, the measure is not "prohibited by but is consistent with" the Constitution.

ELECTORAL VOTE

It may be argued that because the Constitution creates the electoral vote system of choosing the President, the Federal Government may not prevent a State from requiring that persons who vote for its electors shall be citizens of that State. This is true, in general, and my amendment will allow a State to provide that its voters be bona fide residents.

But this reasoning does not mean that a State can deprive citizens of their right to vote for electors merely because they are so newly arrived in the State that they might have a different outlook than longtime residents. This kind of effort at excluding a part of the population from the electorate because of the way they may vote is precisely the kind of thing the Supreme Court said was unconstitutional in *Carrington v. Rash*, 380 U.S. 89, 94 (1965).

STATE AUTHORITY NOT ABSOLUTE

It might also be argued that since the States possess authority to impose reasonable voting practices, a Federal statute that interferes with these local regulations is not consistent with "the letter and spirit of the Constitution." However, I believe that the rule of *United States v. State of Texas*, 252 Federal Supplement 234 (1966), settles the question.

In this case, a three-judge District Court, convened under section 10 of the Voting Rights Act of 1965, sustained the power of Congress to prohibit the use of the poll tax as a prerequisite to voting in State elections.

While the Court recognized that the poll tax system in Texas had the function of serving "as a substitute for a registration system," it held that payment of the tax as a precondition to vot-

ing must fall because it restricted "one of the fundamental rights included within the concept of liberty"—252 Federal Supplement 250.

In reaching its decision, the Court said it was following the rule announced by the Supreme Court:

Where there is a significant encroachment upon personal liberty, the State may prevail only upon showing a subordinating interest which is compelling. *Dates v. City of Little Rock*, 361 U.S. 516, 524 (1959).

Also, the lower Court cited the principle of *McLaughlin v. State of Florida*, 379 U.S. 184, 196 (1964), that such a State law "will be upheld only if it is necessary, and not merely rationally related, to the accomplishment of a permissible State policy."

Since the judgment of the District Court was affirmed by the Supreme Court, 384 U.S. 155 (1966), I believe it offers the controlling principle which the courts will apply to other cases involving a conflict between the assertion of an individual's constitutional right and a State law that touches on that right but serves a permissible State objective.

Another recent case that follows the same rule is *Shapiro against Thompson*, April 21, 1969. This case holds particular interest because it concerns the validity of waiting periods imposed by the States to deny welfare assistance to new residents of the States.

The Court specifically rejected the argument that a mere showing of a rational relationship between the waiting period and a permissible State purpose is enough to justify the denial of welfare benefits to otherwise eligible applicants.

The Court held that "in moving from State to State or to the District of Columbia appellees were exercising a constitutional right, and any classification which serves to penalize the exercise of that right, unless shown to be necessary to promote a compelling governmental interest, is unconstitutional"—394 U.S. 634.

Since the State regulations involved here also touch on the fundamental right to vote, and other rights which I shall discuss in a moment, it is my belief that the same rule will be applied. Congress may clearly limit the use of such requirements, in order to protect these rights, unless the State laws are shown to promote a "compelling" State interest.

Under this standard, I must conclude that Congress may, consistent with the Constitution, establish the uniform practices that I have suggested. There simply is no compelling reason why a State should condition the right to vote for President on the duration of a citizen's residence or his actual presence on election day. The mere fact that 40 States have been able to satisfy their administrative needs by providing for only a 15- to 30-day period between the close of their voting rolls and election day demonstrates that the legitimate interests of the States can be met by other means. In similar fashion, the fact that 37 States permit some voters to apply for absentee ballots 7 days before an election and that 40 States allow the marked

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ballots to be returned as late as election day indicates that more restrictive rules are not necessary.

Mr. President, this completes my analysis of the authority conferred on Congress by section 5 of the 14th amendment. But it by no means exhausts the grounds upon which Congress may act. For the interesting thing about this field is that Congress is not limited to action under the 14th amendment.

RIGHTS OF NATIONAL CITIZENSHIP

This leads to my discussion of the second ground upon which Congress can act—its power to secure the rights inherent in national citizenship.

Mr. President, one of the most firmly embedded concepts of constitutional law is the premise that there are certain fundamental rights of citizenship which arise out of the very nature and existence of the Federal Government. Without these basic rights there would be no National Government and no meaning to U.S. citizenship.

Thus, in the case of *Ward v. Maryland*, 12 Wallace 418 (1870), the rights of national citizenship were held to embrace "nearly every civil right for the establishment and protection of which organized government is instituted."

The Supreme Court has consistently interpreted these rights as belonging to U.S. citizenship, as distinguished from citizenship of a State. In *Paul v. Virginia*, 8 Wallace 168, 180 (1868), Justice Field declared that the inherent rights secured to citizens of the several States are those which are common to the citizens "by virtue of their being citizens."

And in the *Slaughter-House Cases*, 16 Wallace 36, 79 (1872), the Court remarked that these fundamental rights "are dependent upon citizenship of the United States, and not citizenship of a State."

Perhaps the best exposition of the scope of National citizenship is found in the opinion written by Justice Frankfurter in *United States v. Williams*, 341 U.S. 70 (1951). At pages 79 and 80, the learned Justice presents a history of the broad recognition accorded to what he calls the "rights which arise from the relationship of the individual with the Federal Government."

Consequently, the existence of a separate category of implied rights that are based upon the nature and character of the National Government has been confirmed in case after case throughout the history of the Nation.

INHERENT RIGHT TO VOTE

Furthermore, it is well settled that these rights include the right to vote in Federal elections. *Ez parte Yarborough*, 110 U.S. 651, 663 (1884), is one of many decisions by the Court in which the right to vote for Federal officers has been held to be a right granted or secured by the Constitution and not one that is dependent upon State law.

The rule has been expanded recently in the case of *Texas v. United States*, 384 U.S. 155 (1966), in which the

Supreme Court affirmed the holding of a three-judge district court that the right to vote in all elections, State or Federal, "clearly constitutes one of the most basic elements of our freedom—the 'core of our constitutional system.'"

It is clear that Congress may act to protect a national right under the necessary and proper clause. As it was said by Chief Justice Waite in *United States v. Reese*, 92 U.S. 214, 217 (1875):

Rights and immunities created by or dependent upon the Constitution of the United States can be protected by Congress. The form and manner of the protection may be such as Congress in its legitimate exercise of its legislative discretion shall provide.

The doctrine was also defined in *Strawder v. West Virginia*, 100 U.S. 303, 310 (1879), where the Court held that:

A right or an immunity, whether created by the Constitution or only guaranteed by it, even without any express delegation of power, may be protected by Congress.

RIGHT TO TRAVEL IN INTERSTATE COMMERCE

Mr. President, the third ground upon which I believe Congress may act is its power to protect the freedom of movement by citizens across State lines.

The right dates back to *Crandall v. Nevada*, 6 Wallace 35, 47 (1867), where the Court first held that "the right of passing through a State by a citizen of the United States is one guaranteed to him by the Constitution."

All decisions of the Supreme Court which are on point agree that the right exists. In delivering the opinion of the Court in *United States v. Guest*, 383 U.S. 745, 757 (1966), Justice Stewart wrote that the freedom to travel throughout the United States "occupies a position fundamental to the concept of our Federal Union. It is a right that has been firmly established and repeatedly recognized."

And in *Shapiro against Thompson*, cited above, the Court declared that it "long ago recognized that the nature of our Federal union and our constitutional concepts of personal liberty unite to require that all citizens be free to travel throughout the length and breadth of our land uninhibited by statutes, rules, or regulations which unreasonably burden or restrict this movement"—394 U.S. 629.

The connection between the enjoyment of this right and the enactment of a uniform law on voting in presidential elections is immediately apparent when one looks at the date available for the 1968 election. According to the Census Bureau almost 4 million citizens of voting age moved from one State to another in 1968. An additional 3 to 4 million citizens were engaged in visits and travel across State borders at the time of the 1968 election.

It seems entirely legitimate for Congress to decide upon these facts that the lack of uniformity among residence requirements and absentee balloting imposes a substantial burden on the free

movement in interstate commerce of millions of Americans who will be disqualified from voting in presidential elections solely because they move or travel during a year when such elections are held. Congress might well conclude that by framing uniform voting practices, it can effectively protect the right of these citizens to travel interstate without sacrificing the right to vote for their President.

RIGHT TO ENJOY PRIVILEGES AND IMMUNITIES

Mr. President, the fourth basis of the power of Congress to adopt legislation in this field is its authority to enforce the privileges and immunities guaranteed to citizens of all the States.

Here I refer to the basic concept underlying the entire privileges and immunities clause which, in the words of the Supreme Court, is "to place the citizens of each State upon the same footing with citizens of other States, so far as the advantages resulting from citizenship in those States are concerned." *Paul v. Virginia*, 8 Wallace 168, 180 (1868).

The doctrine was also followed by the Court in *Ward v. Maryland*, 12 Wallace 418, 431 (1870), where it was said that the supreme law of the land "requires equality of burden."

Applying this principle to the facts at hand, I believe it is reasonable for Congress to determine that the hodgepodge of State and local requirements applicable to presidential elections creates exactly that kind of unequal treatment among citizens that the privileges and immunities clause was designed to prevent. I further believe that, in order to enable the citizens of one State to better have the same opportunity to choose the President that is enjoyed by citizens of most States, Congress may properly act under the necessary and proper clause to set uniform voting standards for presidential elections.

Mr. President, this completes my analysis of the constitutional issues involved.

SUMMARY

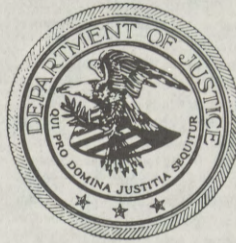
In summary, I can only say that the entire thrust of my proposal is to provide for the widest possible participation by our citizens in the election of their President. All our talk and labors about reforming the method of selecting the President will be for naught if the American citizens themselves cannot participate in such elections.

For this reason, I invite all my colleagues to join with me in this effort to advance the freedom of many millions of Americans by giving them a voice in the selection of the officers who will govern their country.

Mr. President, I ask unanimous consent that the tables which I have prepared be printed at this point in the Record, which is the end of my statement.

(Emphasis supplied)

DEPARTMENT OF
JUSTICE
INTERPRETATION
OF THE VOTING
RIGHTS ACT
AMENDMENTS
OF 1970



NOTE:

Since the Justice Department's writing of "Sec. C—Voting Age" of this memorandum, the 26th Amendment to the U.S. Constitution has been ratified by the required three-fourths of the States (at least 38), thereby establishing 18 as the minimum voting age in *all* federal, state and local elections throughout the 50 States. Also, all provisions of this memorandum, as well as the Voting Rights Act Amendments of 1970, would apply to citizens 18 and over.

Department of Justice
Washington, D.C.
May 1971

The Voting Rights Act Amendments of 1970 amended the Voting Rights Act of 1965 in a number of respects. Suits involving the constitutionality of certain of the new provisions—that is, section 201 which suspended the use of literacy and similar tests in all states or counties not subject to suspension under the 1965 Act; section 202 which dealt with residency, absentee registration and absentee voting in presidential elections; and section 302 which prescribed minimum voting age—were brought in the Supreme Court and were decided by the Court in December 1970. *Oregon v. Mitchell*, 400 U.S. 112.

This memorandum discusses the above statutory provisions, with primary emphasis on sections 202 and 302, in light of the Court's decision.

A. NATIONWIDE SUSPENSION OF LITERACY AND OTHER TESTS

The Supreme Court was unanimous in upholding section 201 (42 U.S.C.A. 1973aa) which suspends until August 6, 1975, the use of literacy or similar tests in any state or county not subject to suspension by virtue of section 4(a) of the Act as amended. The prohibition applies to all federal, state and local elections.

It should be noted that, in addition to suspending any "test or device" as such, section 201 may extend to other provisions and practices which have the effect of preventing illiterates from voting although the effect may be indirect (e.g., failure to permit assistance to illiterate voters or registrants). Thus, to the extent that it has not already been done, it would seem proper for registration and election officials even in states which do not maintain a "test or device" to review their laws and to cease applying any provision whose practical effect is to prevent registration or voting by persons unable to read and write.

B. DURATIONAL RESIDENCY REQUIREMENTS AND ABSENTEE VOTING IN PRESIDENTIAL ELECTIONS

The Supreme Court also upheld the constitutionality of section 202 (42 U.S.C.A. 1973aa-1) which eliminates durational residency requirements as a precondition for voting for presidential electors and prescribes standards for absentee registration and absentee voting in such presidential elections.

The provisions of section 202 are intended to broaden the opportunity of otherwise qualified residents of a state to vote for President and Vice President (that is, presidential electors). The terms of the statute and its legislative history indicate that it does not apply to presidential primaries or to such processes as selection of

national convention delegates. Nor does it apply to election of members of Congress.

Since any otherwise qualified resident of a state, who is at least 18 years of age, is eligible to vote in any federal election, such persons are entitled to the benefits of section 202 insofar as voting for President and Vice President is concerned.

The provisions of section 202, as explained below, pertain not only to (1) persons who move from one state to another but also to (2) persons who move within a state and (3) residents of long standing who have not complied with the state's general requirements for voter registration.

In general, in order to vote in a state or political subdivision in a presidential election, a person must be a bona fide resident of that state or political subdivision; the only exception to this rule is that in certain limited circumstances, former residents of a state or a political subdivision are to be permitted to vote for President and Vice President.

ELIMINATION OF DURATIONAL RESIDENCY REQUIREMENTS

The statute in effect distinguishes between durational residency requirements (e.g., one year in the state, 6 months in the county) and provisions concerning the time that registration books are open. Requirements of the former type *are rendered unenforceable with respect to presidential elections.* See § 202(c), 42 U.S.C.A. 1973aa-1(c). In regard to the period when registration (or other means of qualification) is to be permitted, the statute provides that *applications must be accepted up to the 30th day before the presidential election.* See § 202(d), 42 U.S.C.A. 1973aa-1(d).

Thus, any otherwise qualified person who establishes residence in a new state at least 30 days before a presidential election and who applies for registration by that time is eligible to vote there for presidential electors. Similarly, any otherwise qualified resident of a state who moves to a different city, county or precinct (or other political subdivision) within the state at least 30 days before such an election is eligible to vote at his new location for presidential electors. Finally, any resident of a state who meets the qualifications for voting except that he has not complied with a general registration deadline (which falls more than 30 days before a presidential election) must be permitted to register to vote for presidential electors up until the 30th day before the election.

A different provision deals with persons who change their residence after the 30th day before a presidential election. See § 202(e), 42 U.S.C.A. 1973aa-1(e). *When an individual moves to a new state or politi-*

cal subdivision within 30 days of such an election, the place where he will be eligible to vote depends upon the registration deadline applicable to voting for President and Vice President in the new location. If that deadline permits registration within the 30-day period and the individual is able to meet the deadline, he must vote at the new location.

However, if he is unable to register in his new residence because of the time of his move, *the place in which he formerly resided* (whether his move was to a new state or within the same state) *must permit him to vote for presidential electors*, as long as he had satisfied the qualifications to vote in his former location as of the time of his move. He may *return to vote in person at the polling place where he would have voted if he had not changed his residence or, if he meets the absentee voting requirements of that place* (other than requirements regarding current residency and the reason for absence) *he may vote by absentee ballot in the election unit of his former residence.*

ABSENTEE BALLOTING AND ABSENTEE REGISTRATION IN REGARD TO PRESIDENTIAL ELECTIONS

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.* See § 202(d), 42 U.S.C.A. 1973aa-1 (d). *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.*

Section 202 requires that each state provide that an application for an absentee ballot in a presidential election *may be made as late as the 7th day before the election and that such a ballot may be returned up to the time the polls are closed.* Any state law which is less restrictive than the standards required by section 202 may be implemented, *but no law which is more restrictive may be enforced with regard to presidential elections.*

Anyone otherwise qualified to vote by absentee ballot for President and Vice President must be given the opportunity, if necessary, to register absentee. See § 202(f), 42 U.S.C.A. 1973aa-1 (f). The absentee voting and absentee registration provisions, as well as provisions setting a maximum of 30 days before an election for registration deadlines, *apply to all voters*, whether they have moved to a new state, moved within a state or simply remain at the same address and

wish to take advantage of the special procedures for presidential elections.

IMPLEMENTATION

Implementation of the new law may create a need for special procedures to prevent fraud or other improper voting practices. For example, a system of cross-checking with other registration units within the state and in other states could provide a means of guarding against double registration. In general, the mechanics of implementing the federal law will be a matter for each state to determine in the light of its elections system as a whole.

As noted previously, section 202 relates only to election for President and Vice President and its provisions set forth minimum standards concerning registration and voting procedures. Any state may elect to continue or institute less restrictive standards.

C. VOTING AGE

With regard to the constitutionality of the provision reducing voting age to 18 (section 302, 42 U.S.C.A. 1973bb-1), the members of the Supreme Court differed. The result of the several opinions was to uphold the statute with respect to "federal elections," but to hold it invalid with respect to state and local elections.

It seems clear from the pertinent opinion that otherwise qualified persons, 18 years of age or older, must be permitted to vote for presidential electors and for members of Congress. Also, it would appear that such persons are eligible to vote in primaries which select candidates for the Senate or House of Representatives. (It should be noted that, as adopted by Congress, section 302 applied to voting "in any primary or in any election.")

Somewhat different issues are presented by presidential primaries and nomination of presidential candidates, matters not dealt with expressly by the Court. In view of such factors as the great variation from state to state regarding presidential nomination and selection of national convention delegates, the Department of Justice will not attempt to issue any definitive guideline concerning participation by 18-year-olds. From the standpoint of the Department's law enforcement policy, a distinction will be made between presidential primaries in the traditional sense and other processes such as party conventions and caucuses. Regarding the primaries, it would appear that in general section 302 as sustained by the Court is applicable. As to the other processes, we believe that the matter can most appropriately be resolved at the state level.

Other questions have been raised concerning the procedural or mechanical aspects of voting by 18-year-olds in "federal" elections and primaries. These are questions which we feel can best be determined by state officials.

(Emphasis supplied)

LIKELY STATE INCOME
TAX OBLIGATIONS OF
U.S. BUSINESSMEN
LIVING ABROAD AND
OF SERVICEMEN
STATIONED ABROAD
TO THEIR STATES
OF DOMICILE

LIBRARY OF CONGRESS

Congressional Research Service
Washington, D.C. 20540

GEORGE J. LEIBOWITZ
Senior Specialist in Taxation and Fiscal Policy
September 8, 1971



BARRY GOLDWATER
ARIZONA

United States Senate

WASHINGTON, D.C. 20510

COMMITTEES:
AERONAUTICAL AND SPACE SCIENCES
ARMED SERVICES
PREPAREDNESS INVESTIGATING SUBCOMMITTEE
TACTICAL AIR POWER SUBCOMMITTEE
NATIONAL STOCKPILE AND NAVAL PETROLEUM
RESERVES SUBCOMMITTEE

August 7, 1970

Mr. Joseph J. Panelli, Manager
Public Affairs Department
Chamber of Commerce of the United States
1615 H Street, N.W.
Washington, D. C. 20006

Dear Mr. Panelli:

The State income tax issue is turning out to be much less of a problem than some people had feared.

After first discussing this question with you, I asked the Library of Congress to compile a summary of State tax laws and regulations which might affect United States businessmen living abroad who ballot for President and Vice President as provided under the 1970 Voting Rights Law. I am delighted to tell you that this landmark report is now in, and that the results clearly show that the majority of businessmen and other citizens residing overseas will not be subject to the payment of State income tax when they exercise their newly granted voting right.

For example, most of the large population States either do not have any State income tax at all or provide a specific statutory exemption for income earned by persons residing outside the State. This list includes California, Illinois, New York, Ohio, and Pennsylvania. In all, there are 13 States that do not impose any income tax, and there are 10 more States that do not tax citizens who vote in, but who do not reside in, those States.

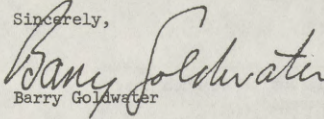
Also, there are 14 States which exclude the first \$25,000 of income earned abroad, thereby fully exempting many additional citizens. This leaves only 14 States in which there is a broad tax challenge to businessmen living overseas. Even here, I am

Mr. Joseph J. Fanelli
August 7, 1970
Page Two

hopeful that most, if not all, of these States will agree not to tax Americans living overseas solely because those citizens exercise their Constitutional right of voting for President. Since there is no State office involved, I believe that the right to vote should not be burdened by the threat of taxation by a State.

The participation by the National Chamber in the voting rights effort deserves the highest commendation, and I shall be glad to continue working with you in assisting all our citizens to enjoy the full benefits of the new law.

Sincerely,


Barry Goldwater

EDITOR'S NOTE: Since Sen. Goldwater's letter of August 7, the Library of Congress has revised its report on State Income Tax Obligations of U. S. Businessmen Living Abroad . . . , as of Sept. 8, 1971. Based on this revision, the Library finds, as shown here on pages 39 and 40 that:

- 11 states have no broad based income tax;
 - 12 states do not tax those with abode outside state or income earned abroad;
 - 16 states exempt first \$25,000 earned abroad;
- In only 12 states is income earned abroad possibly subject to income tax.

LIKELY STATE INCOME TAX OBLIGATIONS OF UNITED STATES BUSINESSMEN LIVING ABROAD AND OF SERVICEMEN STATIONED ABROAD TO THEIR STATES OF DOMICILE

(To illustrate effect of absentee voting by a businessman living abroad under the Voting Rights Act Amendments of 1970)

STATE	BUSINESSMAN			SERVICEMAN	
	Applicable criterion for State Income Tax coverage	Relevant exclusion from State Income Tax base	Probable tax obligation	Exclusion for Serviceman domiciled in State	Probable tax obligation
ALABAMA	Domicile	None	Subject to State income tax on all income	Exclusion of combat pay	Subject to State income tax on some service pay
ALASKA	Domicile	Exclusion of all income from sources outside the State, other than income from intangible personal property	Not subject to State income tax on any income earned abroad	Exclusion of all service pay and all income earned outside the State	Not subject to State income tax on service pay or any other income earned outside the State. Subject to State income tax on income from intangible personal property
ARIZONA	Domicile, unless outside the State for other than temporary or transient reasons	None	Not subject to state income tax on any income earned abroad	Exclusion of first \$1000 of active duty pay. Exclusion of mustering out pay or rental and subsistence allowance to same extent as Federal	Subject to State income tax on some service pay (but may be relieved entirely if considered outside State for other than temporary or transient reason)
ARKANSAS	Domicile	None	Subject to State income tax on all income	Exclusion of armed ¹ /forces compensation up to \$5000	Subject to State income tax on some service pay ¹
CALIFORNIA	Domicile unless outside the State for other than temporary or transient purposes	None	Not subject to State income tax on any income earned abroad	Exclusion of armed forces compensation up to \$1000. Exclusion of mustering out pay and rental and subsistence allowance to same extent as Federal	Subject to State income tax on some service pay (but may be relieved if regarded as outside State for other than a temporary or transient purpose)
COLORADO	Domicile (a voting residence is prima facie evidence of domicile—Reg.)	Exclusion for income earned abroad (as in Federal law)	Not subject to State income tax on income earned abroad to same extent as in Federal law, generally \$25,000	Exclusion of combat pay, mustering out pay, and rental and subsistence allowance to same extent as Federal	Subject to State income tax on some service pay

DELAWARE	Domicile unless he (1) maintains a permanent place of abode elsewhere, (2) maintains no permanent place of abode in the State, and (3) spends no more than 30 days in the State	None	Not subject to State income tax on any income earned abroad	Exclusion of combat pay to same extent as Federal	Subject to State income tax on some service pay (but may be relieved if qualified under the 3 tests in col. 2)
DISTRICT OF COLUMBIA	Domicile	None	Subject to State income tax on all income	Exclusion of amounts received as allowance for injury in action to same extent as Federal	Subject to State income tax on some service pay
GEORGIA ^{2/}	Domicile	Exclusion for income earned abroad (as in Federal law).	Not subject to State income tax on income earned abroad to same extent as Federal law, generally \$25,000	Exclusion of combat pay (up to \$500 a month for commissioned officers). Exclusion of mustering out pay and subsistence and rental allowance to same extent as Federal	Subject to State income tax on some service pay
HAWAII	Domicile	Exclusion for income earned abroad (as in Federal law)	Not subject to State income tax on income earned abroad to same extent as in Federal law, generally \$25,000	Exclusion of combat pay, mustering out pay and subsistence and rental allowance to same extent as Federal	Subject to State income tax on some service pay
IDAHO	Domicile	Exclusion for income earned abroad (as in Federal law)	Not subject to State income tax on income earned abroad to same extent as in Federal law, \$25,000 generally	Exclusion of all ^{3/} service pay	Not subject to State ^{4/} income tax on service pay
ILLINOIS	Domicile, unless he (1) maintains a permanent place of abode elsewhere, (2) maintains no permanent place of abode in the State, and (3) spends no more than 30 days in the State	Exclusion for income earned abroad (as in Federal law)	Not subject to State income tax on any income earned abroad	Exclusion of all ^{3/} service pay.	Not subject to State ^{4/} income tax on service pay

^{1/} Effective March 4, 1971. Former law excluded all service pay.

^{2/} Effective April 8, 1971. Former law provided no exclusion for income earned abroad and no exclusion for mustering out pay and rental and subsistence allowance for servicemen.

^{3/} Effective January 1, 1970. Former law provided exclusion of combat pay, mustering out pay, subsistence and rental allowance to same extent as Federal.

^{4/} Effective January 1, 1970. Former law provided exclusion of combat pay, mustering out pay, subsistence and rental allowance to same extent as Federal.

BUSINESSMAN			SERVICEMAN		
STATE	Applicable criterion for State Income Tax coverage	Relevant exclusion from State Income Tax base	Probable tax obligation	Exclusion for Serviceman domiciled in State	Probable tax obligation
INDIANA	Domicile	Exclusion for income earned abroad (as in Federal law)	Not subject to State income tax on income earned abroad to same extent as Federal law, \$25,000 generally	Exclusion of military pay or \$2000 whichever is less; mustering out pay, subsistence and rental allowance to same extent as Federal	Subject to State income tax on some service pay
IOWA	Domicile (where resident removes and retains voting privilege in Iowa, he is held not to have abandoned Iowa domicile—Regulation)	Exclusion for income earned abroad (as in Federal law)	Not subject to State income tax on income earned abroad to same extent as Federal law, generally \$25,000	All military pay when ^{5/} on active duty for six continuous months; combat pay, mustering out pay, and rental and subsistence allowance to same extent as Federal	Subject to State income tax on some service pay
KANSAS	Domicile (Voting residence is prima facie evidence of domicile—Regulation)	None	Subject to State income tax on all income	Exclusion of \$1500 of military pay for servicemen in Viet Nam	Subject to State income tax on some service pay
KENTUCKY	Domicile (Place of voting is evidence of domicile—Att. Gen. Opinion)	Exclusion for income earned abroad (as in Federal law)	Not subject to State income tax on income earned abroad to same extent as in Federal law, generally \$25,000	Exclusion of all combat pay for enlisted men and \$200 per month for commissioned officers	Subject to State income tax on some service pay
LOUISIANA	Domicile	None	Subject to State income tax on all income	Exclusion of all military pay outside U.S. and its possessions and territories	Not subject to State income tax on service pay
MAINE	Domicile unless (1) he maintains a permanent place of abode elsewhere, (2) maintains no permanent place of abode in the State, and (3) spends no more than 30 days in the State	Exclusion for income earned abroad (as in Federal law)	Not subject to State income tax on any income earned abroad	None (probably excludes combat pay, mustering out pay and rental and subsistence allowances to same extent as Federal new law)	Subject to State income tax on some service pay (but may be relieved if he qualifies under the 3 tests in column 2)

MARYLAND	Domicile	None	Subject to State income tax on all income	Exclusion of combat pay to same extent as Federal	Subject to State income tax on some service pay
MASSACHUSETTS	Domicile	No tax on rents, royalties, capital gains	Subject to State income tax on all income earned abroad (except e.g. rents, royalties and capital gains)	Exclusion of combat pay to same extent as Federal	Subject to State income tax on some service pay
MICHIGAN	Domicile	Exclusion for income earned abroad (as in Federal law)	Not subject to State income tax on income earned abroad to same extent as in Federal law, generally \$25,000	Exclusion of all military pay	Not subject to State income tax on service pay
MINNESOTA	Domicile	Exclusion for income earned abroad (as in Federal law)	Not subject to State income tax on income earned abroad to same extent as in Federal law, generally \$25,000	Exclusion of first \$3000 of military pay plus additional \$2000 for compensation outside Minnesota, in addition to exclusion of combat pay to same extent as Federal	Subject to State income tax on some service pay
MISSISSIPPI	Domicile	None	Subject to State income tax on all income	None (pay for injury and disability excluded)	Subject to State income tax on some service pay
MISSOURI	Domicile	None	Subject to State income tax on all income	Exclusion of first \$3000 of active duty pay	Subject to State income tax on some service pay
MONTANA	Domicile	Exclusion for income earned abroad (as in Federal law)	Not subject to State income tax on income earned abroad to same extent as in Federal law, generally \$25,000	Exclusion of combat pay, mustering out pay, and rental and subsistence allowance to same extent as Federal	Subject to State income tax on some service pay
NEBRASKA	Domicile	Exclusion for income earned abroad (as in Federal law)	Not subject to State income tax on income earned abroad to same extent as in Federal law, generally \$25,000	Exclusion of combat pay, mustering out pay, and rental and subsistence allowance to same extent as Federal	Subject to State income tax on some service pay

^{5/} Effective March 20, 1970. Former law excluded all military pay when in armed forces for more than 6 months of the year.

STATE	BUSINESSMAN			SERVICEMAN	
	Applicable criterion for State Income Tax coverage	Relevant exclusion from State Income Tax base	Probable tax obligation	Exclusion for Serviceman domiciled in State	Probable tax obligation
NEW MEXICO	Domicile	Exclusion for income earned abroad (as in Federal law)	Not subject to State income tax on income earned abroad to same extent as in Federal law, generally \$25,000	Exclusion of combat pay, mustering out pay, and rental and subsistence allowance to same extent as Federal	Subject to State income tax on some service pay
NEW YORK	Domicile, unless he (1) maintains a permanent place of abode elsewhere, (2) maintains no permanent place of abode in the State, and (3) spends no more than 30 days in the State	Exclusion for income earned abroad (as in Federal law)	Not subject to State income tax on any income earned abroad	Exclusion of combat pay, mustering out pay, and rental and subsistence allowance to same extent as Federal	Subject to State income tax on some service pay (but may be relieved if he qualifies under the 3 rests in col. 2)
NORTH CAROLINA	Domicile	None	Subject to State income tax on all income	Exclusion of hostile fire and combat pay; mustering out and rental and subsistence allowance to same extent as Federal	Subject to State income tax on some service pay
NORTH DAKOTA	Domicile (Maintenance of voting residence sufficient to make an individual liable for North Dakota income tax (Att. Gen. Opinion)	Exclusion for income earned abroad (as in Federal law)	Not subject to State income tax on income earned abroad to same extent as in Federal law, generally \$25,000	All active duty pay exempt	Not subject to State income tax on service pay
OKLAHOMA	Domicile	Exclusion for income earned abroad (as in Federal law)	Not subject to State income tax on income earned abroad to same extent as in Federal law, generally \$25,000	First \$1500 of active duty pay exempt; subsistence and rental allowance to same extent as Federal	Subject to State income tax on some service pay
OREGON	Domicile	None	Subject to State income tax on all income	First \$3000 of active duty pay exempt; subsistence and rental allowance to same extent as Federal	Subject to State income tax on some service pay

PENNSYLVANIA ^{§/}	Domicile unless he (1) maintains a permanent place of abode elsewhere, (2) maintains no permanent place of abode in the State, and (3) spends no more than 30 days in the State.	None	Not subject to State income tax on any income earned abroad.	None	Subject to income tax on service pay (but may be relieved if qualified under the three tests in col. 2)
RHODE ISLAND ^{2/}	Domicile unless he (1) maintains a permanent place of abode elsewhere, (2) maintains no permanent place of abode in the State, and (3) spends no more than 30 days in the State.	Exclusion of all income not earned in Rhode Island	Not subject to State income tax on any income earned abroad	Exclusion of all income not earned in Rhode Island. Exclusion of combat pay, mustering out pay and rental and subsistence allowance to same extent as Federal	Not subject to State income tax on service pay, unless serving in Rhode Island
SOUTH CAROLINA	Domicile	None	Subject to State income tax on all income	Exclusion of combat pay, mustering out pay and rental and subsistence allowance to same extent as Federal	Subject to State income tax on some service pay
UTAH	Domicile (Resident employed in foreign country for 510 days in 18 consecutive months will be considered nonresident except for those years in which they are absent for less than 3 months)	None	Not subject to State income tax on any income earned abroad	Exclusion of combat pay, mustering out pay, rental and subsistence allowance to same extent as Federal	Subject to State income tax for some service pay (but may be relieved if qualifying under the tests of foreign residence in col. 2)
VERMONT	Domicile, unless he (1) maintains a permanent place of abode elsewhere, (2) maintains no permanent place of abode in the State, and (3) spends no more than 30 days in the State	Exclusion for income earned abroad (as in Federal law)	Not subject to State income tax on any income earned abroad	Exclusion of all military active duty pay	Not subject to State income tax on service pay

^{§/} Effective July 1, 1971. Tax on privilege of receiving income. Pennsylvania had previously enacted a state income tax which was declared unconstitutional by the State Supreme Court on May 20, 1971.

^{2/} Reinstatement on July 14, 1971 of temporary 6-month tax which had expired on June 30, 1971. Effective July 1, 1971.

BUSINESSMAN				SERVICEMAN	
STATE	Applicable criterion for State Income Tax coverage	Relevant exclusion from State Income Tax base	Probable tax obligation	Exclusion for Serviceman domiciled in State	Probable tax obligation
VIRGINIA ^{8/}	Domicile	Exclusion for income earned abroad (as in Federal law)	Not subject to State income tax on income earned abroad to same extent as in Federal law, generally \$25,000	Exclusion of combat pay, mustering out pay, rental and subsistence allowance to same extent as Federal.	Subject to State income tax on some service pay
WEST VIRGINIA	Domicile, unless he (1) maintains a permanent place of abode elsewhere, (2) maintains no permanent place of abode in the State, and (3) spends no more than 30 days in the State	Exclusion for income earned abroad (as in Federal law)	Not subject to State income tax on any income earned abroad	Exclusion of combat pay, mustering out pay, and rental and subsistence allowance to same extent as Federal	Subject to State income tax on some service pay (but may be relieved if qualified under the 3 tests in col. 2)
WISCONSIN	Domicile. (The exercise of one's franchise to vote is presumptive evidence of residence—Tax Commission Decision)	Exclusion for income earned abroad (as in Federal law)	Not subject to State income tax on income earned abroad to same extent as in Federal law, generally \$25,000	Exclusion of combat pay, mustering out pay, rental and subsistence allowance to same extent as Federal; first \$1000 of compensation excluded	Subject to State income tax on some service pay

^{8/} Effective January 1, 1972. Former law provided no exclusion for income earned abroad and no exclusion for mustering out pay and rental and subsistence allowance for serviceman.

SUMMARY

STATE

Summaries of income tax obligations to State of Domicile in 40 States having State income tax. (Other States without broad income tax are: Connecticut, Florida, Nevada, New Hampshire, New Jersey, Ohio, South Dakota, Tennessee, Texas, Washington and Wyoming (11 States). See appendix for status of consideration of income tax in these States)

BUSINESSMAN ABROAD

Subject to State income tax on all income in: Alabama, Arkansas, D.C., Kansas, Louisiana, Maryland, Massachusetts (except rents, royalties, and capital gains), Mississippi, Missouri, North Carolina, Oregon, South Carolina (12 States).

Not subject to State income tax on income earned abroad to same extent as Federal law, generally \$25,000, in: Colorado, Georgia, Hawaii, Idaho, Indiana, Iowa, Kentucky, Michigan, Minnesota, Montana, New Mexico, Nebraska, North Dakota, Oklahoma, Virginia, Wisconsin (16 States).

Not subject to State income tax on any income earned abroad (because considered domiciliary not required to file) in: Alaska, Arizona, California, Delaware, Illinois, Maine, New York, Pennsylvania, Rhode Island, Utah, Vermont, West Virginia (12 States).

SERVICEMAN ABROAD

Subject to State income tax on at least some service pay, in: Alabama, Arkansas, Colorado, D.C., Georgia, Hawaii, Indiana, Iowa, Kansas, Kentucky, Maryland, Massachusetts, Minnesota, Mississippi, Missouri, Montana, Nebraska, New Mexico, North Carolina, Oklahoma, Oregon, South Carolina, Virginia, Wisconsin (24 States).

Subject to State income tax on some service pay (but may be relieved as domiciliaries not required to file) in: Arizona, California, Delaware, Maine, New York, Pennsylvania, Utah, West Virginia (8 States).

Not subject to State income tax on service pay in: Alaska, Idaho, Illinois, Louisiana, Michigan, North Dakota, Rhode Island, Vermont (8 States).

States Without a Broad Based Income Tax as of September 8, 1971

Connecticut

State income tax effective July 1, 1971 was repealed August 23, 1971. Substitute tax legislation provided for tax on dividends and capital gains.

Florida

Constitutional prohibition against estate, inheritance and income taxes. No action at present to change constitution to allow for personal income tax, although an amendment has been proposed to allow a corporation income tax.

Nevada

No tax on income and none proposed.

New Hampshire

Tax on specified interest and dividends in excess of \$600, commuter tax, and business profits tax. Governor Peterson recommended a personal income tax as a substitute for these taxes; state legislature took no action but increased the business profits tax rate.

New Jersey

Tax on income and capital gains derived by New York residents in New Jersey. A similar commuter tax was planned for Pennsylvania residents but not put into effect after the first Pennsylvania income tax was found unconstitutional; such a tax was awaiting passage of a second Pennsylvania income tax.

Ohio

Proposed personal income tax passed one house of the legislature on July 14, 1971.

South Dakota

Governor recommended a personal income tax in February, 1971 but no action has been taken by the legislature.

Tennessee

Tax on income from stocks and bonds.

Texas

No tax on income and none proposed.

Washington

No tax on income and none proposed.

Wyoming

No tax on income and none proposed.

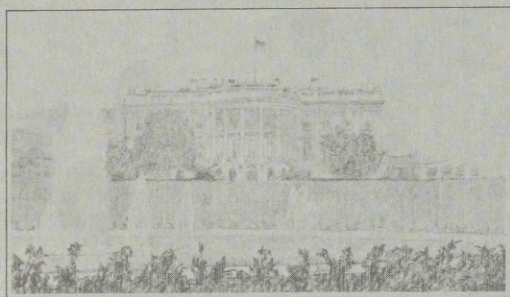


EXHIBIT 5

REPORT OF THE VOTING RIGHTS COMMITTEE, AMERICAN WOMEN'S CLUB OF AMSTERDAM, TO THE 21ST BIENNIAL FAWCO CONFERENCE, 1973

In November 1972, Americans living in Holland participated in a Presidential Election for the first time since they have been overseas, many for the first time ever. Having been informed by the Chamber of Commerce that the Voting Rights Act Amendments of 1970 granting American citizens the right to vote regardless of residence was applicable to Americans overseas, we immediately formed a Voter Services Committee. In order to facilitate requests and to assure the enclosure of all required information, the Committee issued "Application for Absentee Registration" forms to all members of the American Women's Club of Amsterdam. Through the cooperation of the American Consulate in Amsterdam, the American Women's Club of the Hague and the American Community Council of the Hague, we were able to extend our registration campaign to almost all Americans residing in Holland.

In April 1972, the International Herald Tribune caused consternation in printing that the Americans overseas were not officially enfranchised by the 1970 amendments. In order to obtain a clarification of the situation, the author of this report wrote to Senator Barry Goldwater who originated the Congressional bill to eliminate residence requirements as a means of disqualifying voters; to the Department of Justice whose interpretation of the 1970 Amendments was in question, and to the Department of Defense who issued the guidelines to absentee balloting.

From these sources we were able to glean the information and explanation that:

1. Senator Goldwater's purpose . . . (was) to gain the right to vote for President for citizens overseas . . .

2. The Justice Department decided that while the 1970 Amendments did require all states to offer absentee ballots to residents temporarily absent from the state, "the question of whether a person outside a state is a resident of that state for voting purposes is . . . a question of that state's law."

3. The Department of Defense explained that the Federal Government may set special rules for Presidential Elections which are "applicable in all the states regardless of what a particular law may presently provide." These rules apply for every citizen of the United States without regard to where the citizen may be in the world on election day.

Thus, the situation at the time of the 1972 election was basically one of confusion. Every state was required to provide absentee registration and absentee ballots to persons who had resided in the state for at least 30 days prior to the election and was "otherwise qualified to vote." Each state was permitted to use its own discretion in setting the criterion to be met to be "otherwise qualified to vote."

Although 43 states either already had or then instituted provisions for absentee balloting, and 16 of these states actually stated that American citizens temporarily living outside the United States were to be granted absentee ballots, our after-election survey showed that only 11 states consistently accepted overseas Americans as qualified voters.

Our survey also revealed that a large percentage of Americans were discouraged from applying for absentee ballots because of the risk of incurring state taxes whether temporarily abroad or not. Using the information we gained from our survey, some of which is outlined in the accompanying table, our committee plans to continue its work and efforts towards enfranchisement. Our aim is to see all states adopt a uniform rule for presidential elections granting American citizens residing outside the United States absentee voter status as enjoyed by servicemen, U.S. Government employees and their families under the Federal Voting Assistance Act of 1955. Hopefully, by the 1976 Presidential Election, we shall be permitted to discard our status of 'second class citizen'.

This survey only reflects results of states represented within the American Women's Clubs of Amsterdam and the Hague.

TABLE OF STATES ACTION IN 1972 ELECTION

Granted	Granted by law	Residence refusal	Ballot denied by no reply	Inconsistent
California, Delaware, Georgia, Louisiana, Michigan, Missouri, North Carolina, Oklahoma, Oregon, Texas, Virginia.	Arkansas, California, Colorado, Connecticut, Washington, D.C., Florida, Hawaii, Iowa, Kansas, Minnesota, Nebraska, New Mexico, Oregon, Texas, Washington.	Connecticut, New York, Ohio, Washington, D.C., Maine.	Florida, Illinois, Indiana, Iowa, Kansas, Kentucky, New York, Ohio, Pennsylvania, Rhode Island, West Virginia, Wisconsin.	Connecticut, Maryland, Massachusetts, New Jersey, New York, Ohio, Pennsylvania, West Virginia, Wisconsin.

EXHIBIT 6

New
page

MRS. MARIE M. GARBER
ELECTIONS ADMINISTRATOR

JOHN C. EISELE
ELECTIONS ADMINISTRATOR

JOHN P. DIUGUID
COUNSEL

BOARD of SUPERVISORS of ELECTIONS

for

MONTGOMERY COUNTY, MARYLAND
Post Office Box 333
ROCKVILLE, MARYLAND 20850

Telephone 279-1507
September 25, 1972

Mr. H. Parkman Homans
c/o M. K. Homans
Office of the Comptroller
Hq. 8th U. S. Army
APO San Francisco, California 96301

Dear Mr. Homans:

We have received your completed application for absentee registration and voting and the accompanying explanatory letter.

In your application and letter you seem to indicate that you have terminated your residence in Maryland. We are unable to enroll you as a voter in this state unless you are a resident since the Constitution of Maryland explicitly lists residence in the state as a qualification for voting. Absentee voting, like voting in person, is limited to qualified state residents -- although they might be temporarily away and therefore unable to appear in person.

The Supreme Court of the United States, both in its review of the Federal Voting Rights Amendments Law of 1970 (Oregon vs. Mitchell and related cases, December, 1970) and in the case of Dunn vs. Blumstein which dealt with length of residence as a requirement for voting (March 21, 1972), affirmed the right of the state to limit the franchise to bona fide residents of the state.

If we have misinterpreted your communications to us and you do consider yourself a resident of Maryland, temporarily absent, please make that fact explicit in a letter to us and your ballot will be forwarded to you promptly. In that instance we would carry you on the registry at 11500 South Glen Road, Rockville, Maryland, 20854, the address at which you lived at the time you left the state.

Sincerely,

(Mrs.) Marie M. Garber

FELIX M. PUTTERMAN
PRESIDENT

MRS. MARION L. CLARK
FREDERICK E. SHAND

MRS. MARY T. SCOTT
JAMES HENRY MURDOCK
SUBSTITUTE MEMBERS



MRS. MARIE M. GARBER
ELECTIONS ADMINISTRATOR

JOHN C. EISELE
ELECTIONS ADMINISTRATOR

JOHN P. DIUGUID
COUNSEL

BOARD of SUPERVISORS of ELECTIONS

for

MONTGOMERY COUNTY, MARYLAND
POST OFFICE BOX 333
ROCKVILLE, MARYLAND 20850
Telephone 279-1507

October 24, 1972

MEMORANDUM TO: Willard A. Morris, Administrator,
State Administrative Board of Election Laws

FROM: Marie Garber

SUBJECT: H. Parkman Homans; see my letter to you dated
September 25, 1972

Enclosed is a response received a few days ago from Mr. Homans to the letter I wrote him on September 25 indicating that we questioned whether he qualified for voting in Maryland since he seemed to say he was not a Maryland resident.

His response is not as explicit as I wish it would have been; but it does say he is not a resident of any state other than Maryland and it does say he may return to Maryland when he finishes his overseas tour.

I decided, therefore, to send him a ballot and that has been done.

This notification is just to complete your record of the case.

October 13, 1972
 c/o M. K. Homans
 Office of the Comptroller
 Hq. 8th U.S. Army
 APO San Francisco 96301

Board of Supervisors of Elections
 for Montgomery County, Maryland
 Post Office Box 333
 Rockville, Maryland 20850

Attn: Mrs. Marie M. Garber

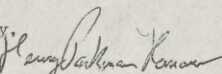
Dear Sirs:

Thank you for your letter of September 25, 1972 pertaining to my absentee ballot application. I wish to state the following with the request that you review your decision not to grant me an absentee ballot:

- (1) I do not claim residence in any state other than Maryland. I have no real estate and pay no taxes in any other state. I have no plans to reside in any other state.
- (2) Maryland is the last state where I had real estate and paid taxes. It is very possible that I may return to Maryland and live there after I finish my sojourn abroad.

I very much wish to vote in the upcoming elections and it is only you who can make this possible. I hope therefore you will reconsider your decision and will send me an absentee ballot.

Yours very truly,


 Henry Parkman Homans

P.S. I have no objection if you carry me on the registry at
 11500 South Glen Road, Rockville, Maryland 20854

FELIX M. PUTTERMAN
PRESIDENT

MRS. MARION L. CLARK
FREDERICK E. SHAND

MRS. MARY T. SCOTT
JAMES HENRY MURDOCK
SUBSTITUTE MEMBERS



MRS. MARIE M. GARBER
ELECTIONS ADMINISTRATOR

JOHN C. EISELE
ELECTIONS ADMINISTRATOR

JOHN P. DIUGUID
COUNSEL

BOARD of SUPERVISORS of ELECTIONS

for

MONTGOMERY COUNTY, MARYLAND
POST OFFICE BOX 333
ROCKVILLE, MARYLAND 20850
Telephone 279-1507

September 25, 1972

Mr. Willard A. Morris, Administrator
State Administrative Board of Election Laws
140 Main Street
Annapolis, Maryland 21401

Dear Willard:

Enclosed are copies of correspondence and documents relating to H. Parkman Homans who seeks to register and vote in Montgomery County although he seems to indicate that he does not consider himself a Maryland resident. I have responded to him in the same way as I responded in other similar cases.

The unusual aspect of this case is that Martha K. Homans (apparently the wife of H. Parkman Homans) separately and previously had applied for absentee registration and voting using the Federal postcard form, on which she answered affirmatively the question "I am a citizen of the United States, eligible to vote in above State . . ." this eligibility includes residence although Martha K. Homans may not realize that implication of her statement. Her ballot was sent out on September 20, 1972.

I am keeping you informed in these matters because our disposition of them may well be questioned. It does seem inconsistent to give a ballot to the wife and refuse one to the husband, except that examination of all the documents shows that the wife stated herself qualified to vote and the husband failed to establish one element of qualification, namely residence in the state.

If you or Steve believe that our handling of this matter is incorrect, let me know and we'll be glad to rectify the situation.

Sincerely,

(Mrs.) Marie M. Garber

September 10, 1964

Board of Supervisors of Elections for
Montgomery County, Maryland
Box 333, Rockville
Maryland 20850

Dear Sirs:

The purpose of this letter is to amplify the information contained in the application form you sent me.

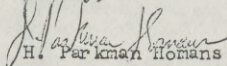
The last house we owned and resided in when living in the United States was located at 11500 South Glen Rd., Rockville. From April 27, 1961 until the present time, with the exception of vacation trips, we have been living in Korea. We paid taxes on the property until 1966 when we sold the house at South Glen Rd. We have not paid taxes to any other State nor have we resided in any other state since going overseas. I stopped paying the Maryland income tax in either 1964 or 1966 (my records are in Korea).

I am returning to Korea for two weeks and will be remaining there for at least two more years. My principal interest is in the presidential elections.

I do not know what state I will be returning to when I permanently resettle in the United States. My current address is:

c/o M. K. Homans
Office of the Comptroller
Hq. 8th U.S. Army
APO San Francisco 96301

Sincerely,


H. Parkman Homans

September 8, 1972

Board of Supervisors of Elections
Montgomery County
Rockville, Md. 20850

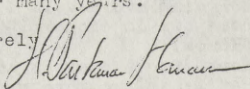
Dear Sirs:

I will be residing overseas in Korea
at Election time and would appreciate your sending
me an absentee ballot application to the
following address:

H.P. Homans
c/o W.C. Burges
1506 Josephine St.
Berkeley, Ca. 94703

I formerly resided at 11500 S. Glen Rd
but have been overseas for many years.

Sincerely,



H. Parkman Homans

P.S. I am really only interested in the
presidential election.

FELIX M. PUTTERMAN
PRESIDENT

MRS. MARION L. CLARK
FREDERICK E. SHAND

MRS. MARY T. SCOTT
JAMES HENRY MURDOCK
SUBSTITUTE MEMBERS



MRS. MARIE M. GARBER
ELECTIONS ADMINISTRATOR

JOHN C. EISELE
ELECTIONS ADMINISTRATOR

JOHN P. DIUGUID
COUNSEL

BOARD of SUPERVISORS of ELECTIONS

for

MONTGOMERY COUNTY, MARYLAND
POST OFFICE BOX 333
ROCKVILLE, MARYLAND 20850
Telephone 279-1507

August 9, 1972

Dr. and Mrs. J. D. H. Donnay
320 Cote Saint-Antoine
Montreal 217, Quebec Canada

Dear Dr. and Mrs. Donnay:

This is in response to your letter of July 30 which was enclosed with your completed applications for absentee registration and voting in Maryland.

The information given you by the consulate in Montreal was not entirely accurate. This information was that you are "... allowed to vote only in presidential and vice presidential elections, according to a new law which will be in force for the first time in the next November election ..."

The reference, I surmise, is to the Federal Voting Rights Amendments Law of 1970 which requires, among other things,

- ... that no citizen of the United States shall be deprived of the right to vote for President and Vice President because he cannot register and/or vote in person, and
- ... that each State shall provide by law for absentee registration and voting of all qualified residents of such State (emphasis supplied).

(Maryland law is more liberal than the Federal law; it permits registration and voting for all offices, not only President and Vice President, by U. S. citizens who are Maryland residents and who cannot register and vote in person. In the case of people like you, who have left the State for an extended period, we use your last Montgomery County residence address for your registration address of record.)

In no instance does the Federal law require that a State provide a franchise for one who is not a resident of that State -- only that the State's provisions for absentee registration and voting must permit registration and voting by residents who are temporarily absent from the State. By voting in

- 2 -

Maryland you declare yourself a resident of the State and of the county in which you vote. If you are unwilling to declare yourselves Maryland residents -- in this instance temporarily absent -- then we cannot enroll you as voters.

We are holding your applications for absentee registration and voting in which you seem to declare that you are not Maryland residents, temporarily residing outside the State. If we hear from you to the effect that you are willing to consider yourselves Maryland residents, then we will send ballots to you when they are printed (expected about mid--September) and if those ballots are executed and returned in time to be included in the canvass you will then be registered voters in Montgomery County. Such registration is permanent as long as you remain residents of the County, keep your address current with the elections office, and do not let five years go by without voting.

I am sorry to require this further information of you in order that you be able to vote in Maryland, but your explicit statements on your applications which indicate that your Maryland residence has terminated necessitate such clarification. The Constitution of Maryland explicitly lists residence in the State as a qualification for voting (Article I, Section 1.), and nothing in the Federal law denies the State the right to set such a qualification for voting.

I enclose a copy of the Federal Voting Rights Amendment Law of 1970 for your information.

Sincerely,

Marie M. Garber

(Mrs.) Marie M. Garber

Mr X MRS. J. D. H. DONNAY

8204 STONE TRAIL DRIVE

BETHESDA, MARYLAND 20034

old address:

J. D. H. DONNAY

320 COTE SAINT-ANTOINE

MONTREAL 217, QUE. CANADA

new address:

July 13, 1972

Board of Elections
Montgomery County
Rockville, Maryland, U.S.A.

Dear Madam or Sir:

In 1970, when we left Bethesda, I wrote you to inquire about my voting rights as a US citizen in Canada. Your answer, at that time, was that I could no longer vote in USA if I was not employed by the US Government in Canada (which I am not).

Today, we learned from the US Consulate General that the law has been changed and that we must apply to you for re-listing on the list of voters and for getting our absentee ballots in the next elections. Will you please be kind enough to take care of this request at your early convenience: we would hate to be disfranchized come next November!

With many thanks,

yours sincerely,

*Joseph Desire Hubert Donnay
and Gabrielle Wonnay.*



MCGILL UNIVERSITY
MONTREAL

320 Cote Saint-Antoine
Montreal 217, Quebec, Canada
October 7, 1972

Board of Supervisors of Elections
for Montgomery County, Maryland
P.O. Box 333, Rockville, Maryland 20850, U.S.A.

Dear Mrs. Marie M. Garber:

My wife and I have made an extended trip to Japan, and this is why we have not answered your letter of August 9 any sooner.

Please accept our thanks for the detailed and helpful way in which you have explained the implications of the 1970 Federal Voting Rights Amendments Law. After studying it carefully, we conclude that we are indeed qualified residents of Maryland in the sense of this law, even though we are not physically present in the state, and that our last Bethesda address is the one that applies in this case, as you indicate. We have not applied for Canadian citizenship and can always hope to return to our country U.S.A. in the future, even though no exact date can be fixed at this time.

In view of the foregoing we therefore declare that we are willing to consider ourselves Maryland residents, and we request that you proceed with our registration by sending us our absentee ballots.

Thanking you once more for your courtesy,

Sincerely,

J.D.H. Donnay Gabrielle Donnay

J.D.H. Donnay Gabrielle Donnay
Professor, Professor,
Univ. Montréal McGill Univ.

FELIX M. PUTTERMAN
PRESIDENT
MRS. MARION L. CLARK
FREDERICK E. SHAND

MRS. MARY T. SCOTT
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ELECTIONS ADMINISTRATOR

JOHN P. DIUGUID
COUNSEL

BOARD of SUPERVISORS of ELECTIONS

for

MONTGOMERY COUNTY, MARYLAND
POST OFFICE BOX 333
ROCKVILLE, MARYLAND 20850
Telephone 279-1507

August 30, 1972

Mr. R. W. Charles
68 Crestwood Avenue
Montreal West 264, PQ.
Canada

Dear Mr. Charles:

We have received your letter of August 23, 1972, in which you request forms for voter registration for yourself, your wife, and your four sons. Your letter states that you are former residents of Montgomery County, Maryland; that you now live in Canada as landed immigrants; and that you are United States citizens.

The Constitution of Maryland requires that one be a resident of the state in order to vote in the state. Your letter seems to indicate you are not residents of Maryland. If, however, we have misinterpreted your letter and you are residents of Maryland -- although temporarily absent from the state -- please make that fact explicit in a letter to us and the necessary application forms for absentee registration and voting will be sent. We will also need to know the names of the other five individuals in order that applications can be directed to them.

The Federal Voting Rights Amendments law of 1970 requires that each state provide by law for absentee registration and voting of all qualified residents of such state (emphasis supplied). The Federal law does not require a state to provide a franchise for one who is not a resident of that state -- only that the state's provisions for absentee registration and voting must permit registration by residents who are temporarily absent from the state. More recently, in the case of Dunn vs. Blumstein, March 21, 1972, the United States Supreme Court affirmed the right of the state to limit the franchise to bona fide residents of the state.

I am sorry to require this further information of you and your family in order that you be able to vote in Maryland, but the statements in your letter indicate that your Maryland residence has terminated and therefore require such clarification.

Sincerely,

(Mrs.) Marie M. Garber

R. W. CHARLES

68 Crestwood Ave.,
Montreal West 264, PQ.
Canada

August 23, 1972

The Clerk,
Board of Elections for Montgomery County,
Rockville, Maryland.
U. S. A.

Dear Sir:

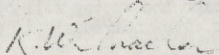
My family desires to vote in the upcoming Presidential Elections. We have been living in Canada for ten years as landed immigrants and are still U.S. citizens.

The last time I voted was in the 1960 Presidential Elections, when we were living at 5508 Ridgefield Road, Springfield, Maryland. I believe the voting polls were at the Western Junior High School.

I desire 6 forms in order to register for the right to vote for my four sons, my wife and I. I would also appreciate any instructions as to how to properly proceed in this particular election and in future elections.

Thank you very much.

Yours sincerely,


R. W. Charles

FELIX M. PUTTERMAN
PRESIDENT

MRS. MARION L. CLARK

FREDERICK E. SHAND



SUPERVISORS of ELECTIONS

for

MONTGOMERY COUNTY, MARYLAND

POST OFFICE BOX 333

ROCKVILLE, MARYLAND 20850

Telephone 279-1507

MRS. MARIE M. GARBER
MAJORITY CLERK

JOHN C. EISELE
MINORITY CLERK

JOHN P. DIUGUID
COUNSEL

March 12, 1971

Mr. & Mrs. William W. Dorsey
Violierenweg 23
Wassenaar, Holland

Dear Mr. & Mrs. Dorsey:

This is in response to your letter of December 29, 1970, inquiring about your eligibility to vote in Maryland while you are temporarily living in Holland.

Since you are American citizens and were registered voters in Montgomery County until you left for Holland, we are retaining your names on the voters registry at 7612 Wheat Fall Court, Derwood, Maryland 20855. That location is now in the 9th District, 4th Precinct, with the polling place at Mill Creek Towne Elementary School, 17700 Park Mill Drive, Gaithersburg.

You may vote by absentee ballot while you are away. Please write to us about two months prior to any election and request an absentee voting application; when that application is completed by the voter and returned to this office, the ballot is dispatched. The 1972 elections will be held on May 16 (Presidential Preference Primary, Delegates to national conventions, nominations for Congressman and for Board of Education) and on November 7 (President/Vice President, Congressman, Board of Education.) A separate absentee request and application must be made for each election.

Your registration records in our files are flagged to indicate you are temporarily living in Holland. When you return to this country, please notify us so that we may remove the flag if you resume residence in Montgomery County or may cancel the registrations if you decide to live elsewhere in the United States.

Sincerely,

(Mrs.) Marie M. Garber

Wassenaarweg 25
Wassenaar, Holland

Dec. 29 1970

Supervisors of Elections
Rockville, Maryland

Dear Sirs.

I am writing to ask whether I and my wife are eligible to vote in Maryland while we are living in Holland. I still own my house at 7612 Wheat Fall Ct., Denwood, ²⁰⁸¹ but will be living in Holland for about two more years. I and my wife, Loreane S. Dowsey, are registered in the 9th District, 1st Precinct.

If we are qualified to vote please forward to the above address two absentee ballots for the next election.

Thank you.

Sincerely
William W Dowsey

FELIX M. PUTTERMAN
PRESIDENT

MRS. MARION L. CLARK

FREDERICK E. SHAND



SUPERVISORS of ELECTIONS

for

MONTGOMERY COUNTY, MARYLAND
POST OFFICE BOX 333
ROCKVILLE, MARYLAND 20850
Telephone 279-1507

MRS. MARIE M. GARBER
MAJORITY CLERK

JOHN C. EISELE
MINORITY CLERK

JOHN P. DIUGUID
COUNSEL

March 12, 1971

Mr. & Mrs. Theodore G. Barto
Fairhaven
Deer Island
New Brunswick, Canada

Dear Mr. & Mrs. Barto:

We have received your letter of March 1, 1971, indicating that you are temporarily living in Canada.

Since you are American citizens and were registered voters in Montgomery County until you left for Canada, we are retaining your names on the voters registry at your last known address -- 1401 Blair Mill Road, Silver Spring, Maryland.

You may vote by absentee ballot. Please write to us about six weeks prior to any election and request an absentee voting application; when that application is completed by the voter and returned to this office, the ballot is dispatched. The 1972 elections will be held on May 16 (Presidential Preference Primary, Delegates to national conventions, nominations for Congressman and for Board of Education) and on November 7 (President/Vice President, Congressman, Board of Education.) A separate absentee request and application must be made for each election.

Your registration records in our files are flagged to indicate you are temporarily living in Canada. When you return to this country, please notify us so that we may remove the flag if you resume residence in Montgomery County or may cancel the registrations if you decide to live elsewhere in the United States.

Sincerely,

(Mrs.) Marie M. Garber

~~Dear Sir,~~
 Dear Island
 New Brunswick
 Canada
 March 1, 1921

Dear Sir,

We are now living
 in Canada, and are Americans.

How do we vote in a
 national election in the
 United States?

I am writing you because
 we are registered voters in
 Montgomery County

May I have a reply please.

Yours truly,
 Mrs Theodore G Barto
 (Martha Ford Barto)

AL. POTTERMAN
PRESIDENT
MRS. MARION L. CLARK
FREDERICK E. SHAND
MRS. MARY T. SCOTT
JAMES HENRY MURDOCK
SUBSTITUTE MEMBERS



MRS. MARIE M. GAUBER
ELECTIONS ADMINISTRATOR
JOHN C. EISELE
ELECTIONS ADMINISTRATOR
JOHN P. DRUGUD
COUNSEL

BOARD of SUPERVISORS of ELECTIONS

for

MONTGOMERY COUNTY, MARYLAND
POST OFFICE BOX 333
ROCKVILLE, MARYLAND 20850
Telephone 279-1507

November 15, 1972

Mr. Harry Keith
American Embassy, Argentina
c/o Department of State
Washington, D. C. 20521

Dear Mr. Keith:

A communication from the Board of Elections of Dade County, Florida, arrived in this office on November 3, 1972, relating to absentee voting for you.

The deadline for receipt of absentee voting applications in Maryland, in accordance with the provisions of the Federal Voting Rights Amendments Law, is 7 days prior to election -- in this instance, October 31. If we had received the application in time, we would have sent you a ballot -- simply on basis of your former Maryland residence -- and after election would have clarified your domicile/intent. Practically speaking, however, a ballot request from Argentina should be received here at least 15 days before election in order that there be time for it to make the round trip and returned here by the deadline for acceptance of absentee ballots -- 8 p. m. on election day.

There has been misunderstanding this year among Americans outside the United States as to the implications and applications of the Federal Voting Rights Law as it related to absentee voting and registration. The law requires that each state provide for absentee registration and voting of all qualified residents of such state (emphasis supplied). The Federal law does not require a state to provide a franchise for one who is not a resident of that state -- only that the state's provisions for absentee registration and voting must permit registration by residents who are temporarily absent from the state. More recently, in the case of *Dunn vs. Blumstein*, March 21, 1972, which focused on durational residence, the United States Supreme Court affirmed the right of the state to limit the franchise to bona fide residents of the state.

-2-

It is my feeling that Dade County officials refused your request for a ballot because they felt one who had never lived in Florida could not claim residence there (see copy of their note to us.)

I am sorry that because of delays and misunderstandings you were unable to vote in this year's election. I hope that this communication explains why you did not receive a ballot, and that in the future -- bearing this background in mind -- you will initiate the absentee voting process much sooner than you did this year.

Enclosed is a bulletin on absentee registration and voting in Maryland, in the event you should decide to consider this state your residence (a declaration of that sort is part of our application form for absentee registration and voting). The next scheduled election in this state is the September 10, 1974, primary to be followed by the November 5, 1972, general election. All state and local offices are on the ballot that year, as well as Congressman and a U. S. Senator.

Sincerely,

(Mrs.) Marie M. Garber

Memo

Date 10/27/72From: Blade County ElectionsTo: Montgomery County Elections

Since Mr. Keith never
lived here we cannot
send him a ballot so
perhaps you can under
the Fed. Voting Rights Act.

REPUBLIC OF ARGENTINA
CITY OF BUENOS AIRES) SS
EMBASSY OF THE UNITED
STATES OF AMERICA)

APPLICATION

for AN ABSENTEE REGISTRATION FORM AND AN ABSENTEE ELECTION BALLOT

to enable applicant to vote on November 7, 1972, for the candidates and party of choice for President and Vice President of the United States, pursuant to the Voting Rights Act Amendments of 1970 (Public Law 91-285).
County Supervisor of Elections

TO: County Supervisor of Registration Miami, Dade County, Florida

(title of County Official(s)) (fill in city, county and state of last residency)
Sir: I am a citizen of the United States and hereby request the following material to enable me to participate in the Presidential election of November 7, 1972 in the state of Florida; pursuant to the Voting Rights Act Amendments of 1970. (Public Law 91-285).

- ☒ An Absentee registration form
☒ An Absentee voter's ballot

- My date of birth: 8/22/23 Place of birth: New York, N.Y.
(month, date, year) (city and state)
- I am ☐; I am not ☒ presently registered to vote in the State of Florida
- For 12 years preceding 1972, my home residence or domicile in the United States has been 6101 Plainview Road
(street address)
Bethesda Montgomery Maryland 20034
(city or town) (county) (state) (zip code)
- I intend to maintain my voting residence or domicile in the State of Florida and return and be domiciled there in the future.
- I have been absent for 1/2 years, and at present, I am:
(number)
☒ an employee of UNITED STATES INFORMATION AGENCY
(name of firm, organization, or agency)
☐ the spouse of an employee of the above.
☐ a retiree. ☐ a visitor ☐ other (specify)
☐ a student at
- I am presently located and should receive mail at: Dept. of State
Buenos Aires, Washington D.C. 20521
- If I am authorized to vote by absentee process in the State of Florida
I shall not request or exercise voting privileges in any other state or the District of Columbia.
- (Signature of person requesting information/material)
Harry Keith
- (Type or print full name to match signature above)

Subscribed and sworn to before me this 18th day of October, 1972

(NOTARY SEAL)

Teodor J. Lopatnicki (NOTARY PUBLIC)
Consul of the United States of
America

EXHIBIT 7

BIPARTISAN COMMITTEE ON ABSENTEE VOTING, INC.,
Washington, D.C., October 15, 1973.

HON. CLAIBORNE PELL,

Chairman, Subcommittee on Privileges and Elections of the Committee on Rules
and Administration, U.S. Senate, Washington, D.C.

DEAR SENATOR PELL: As requested by counsel to the Subcommittee, we are pleased to submit this statement of additional views in support of the legislation pending before your Subcommittee, S. 2102 and S. 2384, which would assure the right of American citizens residing overseas to vote in presidential and congressional elections in their state of last domicile.

At the outset, we want to express our gratitude to you and your Subcommittee for conducting these hearings on absentee registration and voting by overseas residents. We recognize the need to build support for this legislation, both at home and overseas, and have commenced a vigorous drive to achieve this end.

As you know, we are greatly disappointed in the statement submitted by the Justice Department to your Subcommittee in opposition to the pending overseas voting legislation. We were particularly dismayed that the Department based its opposition in large part on the ground that the legislation would "stretch the constitutional power of Congress" beyond present congressional legislation and Supreme Court cases. The Justice statement also suggests that it seems "basically unfair" to permit a U.S. citizen residing overseas to vote in U.S. federal elections, since the citizen in many cases may pay no federal, state or local taxes and "may have no knowledge of or interest in" his former state of domicile.

We strongly believe that the Justice Department position is unjustified either in law or policy. We are hopeful that the Attorney General will in due course have occasion to reconsider this position and to present a more balanced expression of views to the Subcommittee than was contained in the statement submitted in the hearings.

I. LEGAL ISSUES

The Subcommittee has already had the benefit of the opinion of Nathan Lewin, a distinguished constitutional authority, that both of the pending bills would be upheld if subjected to constitutional challenge in the United States Supreme Court. Professor Lewin rested his opinion primarily on the congressional findings in the pending bills that the present application of state residency and domicile rules in federal elections denies or abridges the inherent constitutional right of American citizens overseas to enjoy their free movement to and from the United States.

The Subcommittee has also had the benefit of a careful memorandum of law submitted by Senator Barry M. Goldwater and his counsel which asserts that the pending bills are clearly constitutional. The Senator, like Professor Lewin, bases his conclusion in part on the principle that freedom to travel from state to state and outside the United States is a privilege of United States citizenship. The Senator's memorandum also sets forth, in scholarly detail, other bases of constitutional support for the bills, including the principles that the right to vote for national officers is an inherent right and privilege of national citizenship, and that the Congress retains the power to protect this right and privilege under both the Necessary and Proper Clause and the Fourteenth Amendment.

We will not in this letter review the analyses of Professor Lewin or Senator Goldwater. We would, however, like to make several observations about the legal analysis of the Justice Department:

First, one of the key elements of the Justice Department's legal analysis is that each of the Justices, or group of Justices, writing opinions in *Oregon v. Mitchell*, 400 U.S. 112 (1970) had a different basis for upholding by an 8-to-1 vote the provision (hereinafter the "change-of-residence provision") in the Voting Rights Act Amendments of 1970 permitting a U.S. citizen who moved from one state to another within 30 days before a presidential election to vote in such election in

his prior state even though he no longer retained the prior state as his residence or domicile. We think that the pending overseas voting bills could be held constitutional under any one, or a combination, of the grounds used by the eight Justices upholding the 1970 Amendments. There never has been a rule that all the Justices might agree on a single ground for a decision of the Supreme Court. It is the result that counts.

Second, it is apparent also that every major piece of voting rights legislation in the last 16 years has been subject to constitutional challenge in the Supreme Court. Congress has chosen to "stretch" its constitutional power to regulate voting qualifications in each of these cases. We might never have had the historic advances of the voting rights legislation of 1957, 1960, 1964, 1965, or 1970 if Congress had been deterred by fear of constitutional challenge. We think that the pending bills present an appropriate opportunity for a further step in the direction of expanding voting rights for U.S. citizens.

Third, the Justice Department observes that the change-of-residence provision in the 1970 Amendments was upheld by the Court without the issue of bona fide residence in the prior state being raised by the litigants "nor discussed by any of the Justices." The Department suggests that, for this reason, *Oregon v. Mitchell* should not be regarded as a precedent in approving a further extension of the bona fide residence concept.

This observation rests on a rather curious interpretation of *Oregon v. Mitchell*. As we read the decision, at least three of the Justices (Stewart, Burger and Blackmun) in that case gave detailed attention to the question of congressional power to regulate voter qualifications in adopting the change-of-residence provision. And at least three other Justices (Brennan, White and Marshall) also recognized the significance of this issue, although they did not discuss it in detail.¹

For example, Justice Stewart (speaking for himself and Justices Burger and Blackmun) devoted several pages of his opinion to the issue—

"whether, despite the intentional withholding from the Federal Government of a general authority to establish qualifications to vote in either congressional or presidential elections, there exists congressional power to do so when Congress acts with the objective of protecting a citizen's privilege to move his residence from one State to another." 400 U.S. at 291-92.

In that opinion, Justice Stewart specifically stated that "the power to facilitate the citizen's exercise of his constitutional privilege to change residence is one that cannot be left for exercise by the individual States without seriously diminishing the level of protection available." 400 U.S. at 292. Further, the opinion explicitly stated what he believed to be the permissible scope of congressional power to make an exception to state voter qualifications:

"The power that Congress has exercised in enacting [the change-of-residence provision] is not a general power to prescribe qualifications for voters in either federal or state elections. It is confined to federal action against a particular problem clearly within the purview of congressional authority." *Ibid.*

Justices Brennan, White and Marshall, in their opinion, did not discuss Congress' power to regulate qualifications for voters in the same detail as Justice Stewart. They did recognize, however, that the change-of-residence provision in the 1970 Amendments operated to modify such State qualifications to some extent, and they concluded, as had Justice Stewart, that such a modification was justified to protect the right of free interstate migration. See 400 U.S. at 237-38.

In *Oregon v. Mitchell*, as noted above, the Supreme Court explicitly affirmed Congress' decision in the 1970 Amendments that the protection of the voting rights of a specific group of citizens with a particular problem—those moving from state to state—does justify a reasonable extension of the bona fide residence concept. Under the 1970 Amendments, the citizen moving to a new state may still retain a bona fide voting residence in his prior state even though he may not have retained bona fide residence in the prior state for other purposes. This retention of bona fide voting residence in the prior state constitutes an accommodation by the prior state to assure preservation of the citizen's voting rights. It is our view, as discussed below, that Congress may constitutionally require the states to make a similar accommodation to permit the private U.S. citizen overseas to

¹The two remaining Justices (Black and Douglas) approved the durational residency provisions of the 1970 Amendments on broad constitutional grounds (which are discussed by Professor Lewin) and were the only ones in the majority who therefore did not specifically address themselves to the scope of congressional power to enact the change-of-residence provision. See 400 U.S. at 134 (Black, J.), 147-50 (Douglas, J.).

vote in his last state of bona fide voting residence even though that state may not remain his bona fide residence for other purposes.

Fourth, the Justice Department suggests that *Oregon v. Mitchell* does not establish the constitutional authority of Congress to permit nonresidents to vote in Senate and House elections "under any circumstances." This suggestion seems to be only partially correct. It is true that the change-of-residence provision upheld in that case dealt only with presidential elections. However, each of the majority opinions dealing with the change-of-residence provision suggested in dictum that the provision probably would also have been upheld if it applied to congressional, as well as to presidential, elections.²

Fifth, the Justice Department makes the statement that "virtually all" bona fide state residents who are temporarily residing overseas are not now disqualified from voting. The statement asserts that, generally speaking, persons residing "within a state" do not lose their domicile by residing overseas unless they also intend to remain overseas permanently.

We believe that this statement is not adequately supported by the available facts. Based on information provided by the Federal Voting Assistance Task Force of the Department of Defense, we have found that at least 23 states impose restrictions on absentee registration and voting which make it difficult, if not impossible, for private U.S. citizens who are residing overseas more than a short time to register and vote absentee in federal elections.

In principle, the other 27 states and the District of Columbia do allow a private U.S. citizen who is "temporarily" residing overseas to retain a bona fide voting residence in his prior state. However, even these jurisdictions often do not allow the private U.S. citizen overseas to retain bona fide voting residence in his prior state if the citizen has been overseas for an extended period.

In sum, even if a private U.S. citizen does not establish a domicile overseas, the prior state will in many cases still reject his claim of continuing bona fide residence for voting or any other purposes. As a result, hundreds of thousands of private U.S. citizens fall into the limbo of not having established a foreign domicile, yet not being able to prove bona fide residence in their prior state for voting purposes.

This conclusion is supported by the results of a Federal Voting Assistance Task Force survey already submitted to your Subcommittee. This survey indicates that at least $\frac{1}{3}$ (375,000) of what was estimated to be over one million private U.S. citizens residing overseas do not consider themselves eligible to vote in any elections in their last state of bona fide residence. And of the approximately $\frac{2}{3}$ (630,000) that do consider themselves eligible, only about $\frac{1}{4}$ (151,000) actually voted in the 1972 election. The remaining $\frac{3}{4}$ (some 470,000) of the 630,000 citizens who considered themselves eligible to vote but who did not vote gave reasons for not voting, such as their uncertainty about proper voting procedures, that cast some doubt on whether many of them would in fact be considered eligible by the states.³

Sixth, the Justice Department asserts that it is "rather clear" that bona fide state residents (however defined by the states) "have a far greater stake" in voting in federal elections than do citizens residing overseas. The Department refers to the principle in *Dunn v. Blumstein*, 405 U.S. 330, 343-44 (1972) that a state may impose an appropriately defined and uniformly applied requirement of bona fide residence to preserve the "basic conception of a political community."

There is no doubt that private U.S. citizens overseas may have a different stake in voting in federal elections than do their fellow citizens residing in this country. As noted in our principal statement, however, American citizens overseas do have their own federal stake—their own U.S. legislative and administrative

² See opinions of Justice Black referring to "federal elections" (at 134); Justice Douglas referring to the right to vote for Senators and Representatives as "national officers" (at 148-50); Justices Brennan, White and Marshall referring to "federal elections" in the broad context of the right of interstate migration (at 237-38); and Justices Stewart, Burger and Blackmun, whose opinion states that—

"[W]hile [the change-of-residence provision] applies only to presidential elections, nothing in the Constitution prevents Congress from protecting those who have moved from one state to another, from disenfranchisement in any federal election, whether congressional or presidential." 400 U.S. at 287 (emphasis added).

³ The Task Force survey further indicates that nearly $\frac{2}{3}$ of the private U.S. citizens of voting age residing overseas have lived outside the United States for over 5 years. Nearly $\frac{1}{2}$ of such citizens have resided outside this country for over 10 years, and approximately $\frac{1}{3}$ have resided overseas for over 15 years. Although the survey does not discuss the possibility, there may well be some correlation between the $\frac{1}{3}$ of private U.S. citizens of voting age residing overseas who regard themselves as ineligible to vote and the $\frac{1}{3}$ of such citizens who have resided overseas for over 15 years.

interests—which may be protected only through representation in Congress and in the Executive Branch. The fact that these interests may not completely overlap with those of citizens residing within the state does not make them any less deserving of constitutional protection. The President and Congress are concerned with the common interests of the entire nation, along with the specific concerns of each state and district.

It is our conviction that the most appropriate way of providing representation in the Executive Branch and the Congress to private U.S. citizens residing overseas would be to assure their right to vote for President and for Congress in their state of last domicile. It seems difficult to believe that the Supreme Court would not approve such a specific congressional extension of the bona fide residence concept if it were confined to the particular problem of U.S. citizens residing overseas who have no place to vote other than their state of last domicile.

The extension of the bona fide residence concept in this manner already has a basis in the election laws and practices of many states. As noted above, at least 27 states and the District of Columbia already do allow private U.S. citizens who are “temporarily” residing overseas to retain a bona fide residence in the state for voting purposes. And virtually all states permit U.S. Government employees, and their dependents, who are residing overseas, even for an extended period, to retain a bona fide voting residence in the state. It is evident, therefore, that a majority of the states themselves have already extended their “political community” to include substantial numbers of U.S. citizens residing overseas.

The state election laws and procedures providing this extension of bona fide voting residence, however, have imposed a checkerboard of residency and domicile rules that make it difficult for many private U.S. citizens overseas to take advantage of this extension and to cast their absentee ballots in a federal election. As noted above, only about 25% of the private U.S. citizens residing overseas who considered themselves eligible to vote actually cast a ballot in the 1972 election.

Seventh, the Justice Department states that Congress “probably has no power to abolish” bona fide state residency requirements as a means “plainly adapted” to secure constitutional voting rights of U.S. citizens residing overseas under the Equal Protection Clause of the Fourteenth Amendment. The Department cites *Katzenbach v. Morgan*, 384 U.S. 641 (1966), in which the Supreme Court held that Congress may prohibit state laws that do not violate the Equal Protection Clause only if such prohibition is “plainly adapted” to the goals of enforcing equal protection.⁴

At the outset, the Department suggests that *Morgan* may no longer be good law after the statements in *Oregon v. Mitchell* that the Equal Protection Clause could not be relied upon to sustain the constitutionality of the 18-year-old voting provisions in the Voting Rights Act Amendments of 1970 as applied to state elections. The Department observes that at least three Justices said in *Oregon v. Mitchell* that the “plainly adapted” rule enunciated in *Morgan* justifies congressional action only when Congress intends to protect a “racial” or a “discrete and insular” minority.

It is plain that the pending bills are not designed to protect a “racial” minority. However, we do not share the Justice Department’s certainty that U.S. citizens residing overseas could not be characterized as a “discrete and insular” minority. The case law in this area is undoubtedly very thin. Perhaps it is sufficient to say that we have found no Supreme Court case since *Oregon v. Mitchell* which would appear to preclude one or more members of the Court from concluding that the group of private U.S. citizens residing overseas does represent a minority whose voting rights in federal elections are entitled to protection under the Equal Protection Clause upon proper congressional findings.

The Justice Department further argues that, even assuming the *Morgan* theory of congressional power would apply to citizens residing overseas, it is doubtful whether “abolition of bona fide State residency requirements as a condition to voting in Federal elections is plainly adapted to secure any Constitutional rights.” The Department notes that the Supreme Court has reiterated several

⁴ In *Morgan* the Court upheld a federal sixth-grade literacy standard for voters in federal and state elections even though the English-language literacy test previously being used by the state was not held to be a violation of the Equal Protection Clause. The Court held in *Morgan* that the sixth-grade standard was “plainly adapted” to securing non-discriminatory delivery of governmental services to Puerto Ricans and of eliminating individual discrimination.

times recently that states may constitutionally discriminate between bona fide residents and nonresidents in establishing voter qualifications.

There are several problems with this Justice Department position. One is that the underlying theory of the pending bills is to achieve a uniform extension of the concept of bona fide residence to U.S. citizens overseas, and not to abolish the bona fide residence requirement. We have proposed below certain changes in the findings and other language of the bills to provide further clarification of this point.

Furthermore, the Supreme Court cases relied upon by the Justice Department dealt only with the establishment of a new bona fide residence in a state. These cases, so far as we can see, did not rule on the continuing nexus that a state may require of a citizen who had already established a bona fide residence in the state in order for the citizen to retain a bona fide residence therein for voting purposes after his departure from the state. See, e.g., *Dunn v. Blumstein*, 405 U.S. 330 (1972); *Rosario v. Rockefeller*, 410 U.S. 752 (1973).

Finally, none of the recent Supreme Court cases cited by the Justice Department as affirming a state's bona fide residency requirement for voting has invalidated any new federal legislation which expands the bona fide residency concept. The *Oregon v. Mitchell* opinions upholding the change-of-residence provision in the 1970 Amendments, as noted above, rely on grounds other than the Equal Protection Clause to support the extension of the bona fide residency concept inherent in that provision.⁵

In sum, the issue before the Supreme Court in passing upon the pending bills would not be whether to permit congressional abolition of bona fide state residency requirements for voting purposes. The proper question would be whether the Court could approve a limited congressional extension of the bona fide residency concept in order to protect the constitutional rights of private U.S. citizens residing overseas.

II. POLICY ISSUES

We have set out in our principal statement the detailed policy considerations favoring adoption of the pending bills and would add only a few points in this letter.

The Justice Department stated that, regardless of the constitutional considerations with respect to the pending bills, it seems "basically unfair" to permit a citizen residing overseas to vote in U.S. federal elections, since the citizen in many cases may currently pay no federal, state or local taxes and "may have no knowledge of or interest in" his former state of domicile.

The Department asserts that the effect would be to provide U.S. citizens overseas a "right" of representation without taxation—a status which the Department says is "not available to bona fide residents". We seriously question this assertion. It is well known that substantial numbers of American citizens of voting age who reside within state borders pay little or no federal, state or local taxes. The articulation of a "no taxation, no representation" principle seems to suggest that it might also be appropriate to eliminate the voting rights of all retired persons living solely on Social Security, of the working poor, of students, and of those citizens having large tax-sheltered incomes. There is no indication that Congress, or the states, in providing tax relief to these citizens at home, or to American citizens residing overseas,⁶ intended at the same time to deny these citizens the fundamental rights to vote in federal elections.

⁵ The Justice Department also cited a lower court case holding that a New York State bona fide residence requirement as a condition to voting in presidential elections, when applied to private U.S. citizens residing overseas, is not unconstitutional. *Hardy v. Lomenzo*, 349 F. Supp. 617 (S.D.N.Y. 1972) (decided by a single District Judge, and not by a three-judge court as has been indicated by the Department). The judge in *Hardy* did not have before him, however, a clear and unequivocal federal statute with congressional findings that it was "plainly adapted" to assure the voting rights of private U.S. citizens overseas. Indeed, the judge in *Hardy* suggested that if Congress were to extend the bona fide residence concept to encompass such citizens, the court might well have been obliged to respect the congressional determination. The judge said that if the failure of Congress to extend the bona fide residence concept to such citizens in the 1970 Amendments was inadvertent, "the remedy lies with the legislature and not in judicial elision." 349 F. Supp. at 620.

⁶ Tax relief for private U.S. citizens overseas has been adopted by Congress, and all but about eight states, to serve specific national or state interests. These interests include alleviation of double taxation, and in some cases, the granting of indirect financial incentives for private U.S. citizens to undertake overseas assignments in furtherance of American trade and commerce.

To the contrary, this country has historically expanded access to the federal franchise to an increasingly broadened base of American citizens. The Justice Department's reversion to earlier concepts of the federal franchise as a privilege only of those U.S. citizens with taxable property or income has even in our time faded into history.

The Justice Department further warns of the possible effect of overseas votes in diluting the votes of citizens within the borders of the state, who are said to have a "greater stake in the political community" of the state. As noted above, we respectfully suggest that U.S. citizens residing overseas often may have a different stake in the political community of a state, but not necessarily a lesser one. The proper question is whether the continuing federal interests of private U.S. citizens overseas in the political community of their last state of bona fide residence remain sufficient to justify counting their votes in federal elections conducted in that state. We have already indicated that, even under present law, a majority of the states consider the interests of citizens who are "temporarily" residing abroad to be worthy of continuing representation in the political communities of these states. If the voting rights of overseas citizens in federal elections should be protected, as we believe would be desirable, the dilution of the voting rights of citizens residing within the borders of the state represents only a natural consequence of a policy decision justifiable on other grounds, and does not constitute an independent policy question.

III. PROPOSED CHANGES IN THE BILLS

A. Findings and Declarations of Purpose

Several proposed changes in the congressional findings and declarations of purpose in the bills were suggested in the course of the hearings before the Subcommittee. These changes, which are described below, would clarify the bills and would further strengthen their constitutional basis. The changes would also, we believe, help alleviate the concern of the Justice Department that the bills might be read as eliminating the bona fide residence qualification requirement, rather than only assuring uniform extension of the bona fide residence concept to private U.S. citizens residing or domiciled overseas.

We would propose that Section 2 of the bills (findings and declarations of purpose) be amended to read as follows:

FINDINGS AND DECLARATIONS OF PURPOSE

SEC. 2. (a) The Congress finds that for citizens outside the United States—

(1) State and local residency and domicile requirements are applied so as to restrict or precondition the right of such citizens to vote in Federal elections;

(2) State and local election laws are applied to such citizens so as to deny them sufficient opportunities for absentee registration and balloting in Federal elections;

(3) State and local election laws are applied in Federal elections so as to discriminate against such citizens who are not employees of a Federal or State Government agency, or who are not dependents of such employees; and

(4) Federal, State and local tax laws are applied in some cases so as to give rise to Federal, State and local tax liability for such citizens solely on the basis of their voting in Federal elections in a State, thereby discouraging such citizens from exercising the right to vote in Federal elections;

(b) The Congress further finds that the foregoing conditions—

(1) deny or abridge the inherent constitutional right of citizens to vote in Federal elections;

(2) deny or abridge the inherent constitutional right of citizens to enjoy their free movement to and from the United States, and their free settlement outside the United States;

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

(4) In some instances have the impermissible effect of denying citizens the right to vote in Federal elections because of the method in which they may vote;

(5) have the effect of denying to citizens the equality of civil rights, due process, and equal protection of the laws guaranteed under the fourteenth amendment to the Constitution; and

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

(c) The Congress declares that in order to secure, protect, and enforce the constitutional rights of citizens outside the United States, it is the purpose of this Act—

(1) to require the uniform application of State and local residency and domicile requirements in a manner that is plainly adapted to secure, protect, and enforce the right of such citizens to vote in Federal elections;

(2) to establish uniform standards for absentee registration and ballot-ing by such citizens in Federal elections;

(3) to eliminate discrimination, in voting in Federal elections, against such citizens who are not employees of a Federal or State Government agency, and who are not dependents of such employees; and

(4) to require that Federal, State and local tax laws be applied so as not to give rise to Federal, State and local tax liability for such citizens solely on the basis of their voting in Federal elections in a State.

B. Definitions

1. "Citizen outside the United States"

We would also propose a change in the definition of "citizen outside the United States" in section 3(1) of S. 2384 (and "citizen residing overseas" in S. 2102) to conform with the above-suggested changes in the findings and declarations of purpose. The changed definition would be as follows:

(1) "citizen outside the United States" means a citizen of the United States residing or domiciled outside the United States whose intent to return to his State and election district of last domicile may be uncertain, but who does intend to retain such State and election district as his voting residence and domicile for purposes of voting in Federal elections and has not established a domicile in any other State;

2. "Federal election," "State" and "United States"

We have been asked by counsel to the Subcommittee to provide a comparison of the definitions of "Federal election", "State" and "United States" in S. 2102 and S. 2384 to show the functional differences between the sets of such definitions in each bill. As we read the two bills, the functional differences in these definitions would be as follows:

	S. 2102	S. 2384
Federal election.....	All States, District of Columbia, Puerto Rico.	All States, District of Columbia, Puerto Rico, Guam, Virgin Islands.
State.....	All States, District of Columbia, Puerto Rico.	All States, District of Columbia, Puerto Rico, Guam, Virgin Islands.
United States.....	All States, District of Columbia, Puerto Rico.	All States, District of Columbia, Puerto Rico, Guam, Virgin Islands.

As a practical matter, the only difference between the two sets of these definitions relates to citizens of the United States residing or domiciled in Guam or the Virgin Islands. Under S. 2102, such citizens are regarded as residing or domiciled outside the United States and could continue to vote in federal elections in their last state of domicile if they did not choose to vote in Guam or the Virgin Islands. Under S. 2384, such citizens are regarded as residing or domiciled inside the United States and could not continue voting in federal elections in their last state of domicile unless otherwise provided by state law.

The definitions in the two bills give identical treatment, however, to citizens of the United States residing or domiciled in American Samoa, the Canal Zone, the Trust Territory of the Pacific Islands, or any other territory or possession of the United States (excepting Puerto Rico, Guam and the Virgin Islands). Since none of these territories and possessions has a Delegate to Congress, and none therefore has any federal election, citizens of the United States residing or domiciled in these territories or possessions could continue to vote for President and Congress in their state of last domicile, if any, under both bills.

As between the two sets of definitions, we have a preference for the set in S. 2102. Under S. 2102, the private U.S. citizens residing in Guam or the Virgin Islands who once had established a domicile in a state would still be able to vote for President, as well as Congress, in their state of last domicile if they

have not established a domicile, and have not voted, in either of these two possessions.

C. Absentee Voting in Federal Elections

We would further propose changes in the substantive provisions of section 4(a) of the bills to conform with the above-suggested changes in the findings and declaration of purpose, as follows:

ABSENTEE VOTING IN FEDERAL ELECTIONS

SEC. 4. No citizen outside the United States shall be denied the right to register and vote by absentee ballot in any State, or election district of a State, in any Federal election solely because at the time of such election he does not have a place of abode or other address in such State or district, and his intent to return to such State or district may be uncertain if he—

(1) last voted or registered to vote in such State or district, or, if he did not so register or vote, was last domiciled in such State or district prior to his departure from the United States;

(2) has complied with any applicable State or district requirement concerning voting by absentee ballot (other than any requirement which is inconsistent with this Act);

(3) intends to retain such State or district as his voting residence and domicile for purposes of voting in Federal elections; and

(4) has not established a domicile, and has not registered to vote and is not voting, in any other State or election district of a State or in any territory or possession of the United States;⁷

D. Absentee Ballots

1. 30-day registration rule

Some question was raised during the hearing whether the 30-day absentee registration deadline in section 5(a)(1) of the bills allows local election officials sufficient time to determine whether the applicant would qualify for registration in their State or election district. We understand that the 30-day rule was placed in the bills to conform to the 30-day rule in the durational residency provisions of the 1970 Amendments with regard to presidential elections, and to a similar rule set forth in *Dunn v. Blumstein* with regard to congressional and other elections.

The policy question before the Subcommittee is whether the local election official needs more time than 30 days to verify the qualifications of the citizen seeking to register from outside the United States. Our suggestion would be to leave the 30-day rule intact in the bills, with the recognition that some registrants will be residing in countries fairly close geographically to the United States, such as Canada or Mexico. However, the registrant should be on notice that if he makes his application at the last minute, the chances are lessened that the local election official will have had sufficient time to confirm the registrant's claim of last domicile in the State, and the other qualifications provided in section 4 of the bills. In this way, the citizen residing outside the United States could register absentee under the same time limitation as citizens residing inside the United States, but the citizen registering from outside the United States would bear a greater risk that his application would not be approved prior to the election if there is any difficulty in verifying his qualifications under section 4.

2. 7-day ballot application rule

Similarly, a question was raised in the hearing whether the 7- and 5-day absentee ballot deadlines in section 5(a)(3) of the bills allow local election officials sufficient time to process applications for absentee ballots from citizens residing outside the United States. We understand that the 7-day rule was placed in the bills to conform to the 7-day rule in the durational residency provisions

⁷ Section 4(a)(4) of S. 2102 states that a citizen residing overseas would not be able to register and vote in a Federal election under the provisions of the bill if he had registered to vote or voted in any other State or territory or possession of the United States. The similar section 4(a)(4) of S. 2384 omits the reference to any territory or possession, but the definition of "State" in S. 2384, as noted above, has already been broadened to include the two U.S. possessions, Guam and the Virgin Islands, which do have Federal elections.

of the 1970 Amendments with regard to presidential elections. The policy question in this situation, as with absentee registration, is whether the total election official needs more time than seven days to verify the registration or other qualification of the applicant residing outside the United States.

As with the absentee registration provision, our suggestion would be to leave the 7-day rule intact in the bills, with the understanding that some applicants will be residing in neighboring countries. Nevertheless, the applicant would again be on notice that if he makes his application at the last minute, the chances are lessened that the local election official will have had sufficient time to confirm the applicant's registration or other qualifications as provided in section 5(a) (2) of the bills. In effect, the citizen residing outside the United States would be able to apply for an absentee ballot under the same time limitation as citizens residing inside the United States, but the citizen applying from outside the United States would again bear a greater risk that his application would not be approved prior to the election if there is any delay in verifying his qualifications under section 5(a) (2).

In sum, our recommendation would be to keep the deadlines for absentee registration and application for absentee ballot down to the 30- and 7-day limitations, but place the risk on the applicant for any unusual delay in processing last-minute applications.⁸

3. Post Card Application

We would also suggest that two paragraphs of the post card application in section 5(b) (2) be changed to conform to the above changes in the findings and declarations of purpose, and to the related changes in the absentee voting provisions:

Paragraph 3 of the form would be changed to provide—

(3) I am a citizen of the United States, and am qualified to register and vote in the above State in Presidential and Congressional elections. I intend to retain such State as my voting residence for Federal elections, even though I am presently residing or domiciled outside the above State and the United States and my intent to return to such State may be uncertain, and—

(circle one or both)

- a. I last voted or was registered to vote in the above State; or
- b. The above State was my last domicile.

Paragraph 8 of the form would be changed to provide—

(8) I have NOT established a domicile in any other State, Territory or Possession of the United States, and I am NOT requesting a ballot from any other State, Territory or Possession of the United States, and am not voting in any other manner in this election, except by absentee process, and have not voted and do not intend to vote in this election at any other address.

E. Effect on State Laws

We would propose that section 8(b), relating to preservation of existing tax exemptions of citizens outside the United States, also be changed to conform to the findings and declarations of purpose, as follows:

(b) The exercise of any right to register or vote in Federal elections by any citizen outside the United States shall not affect the determination of his place of residence or domicile for purposes of any tax imposed under Federal, State, or local law (as distinguished from his residence or domicile for voting purposes).

Please do not hesitate to let us know if you have any further questions about the analysis or suggestions described in this letter.

Sincerely yours,

J. EUGENE MARANS, *Counsel.*

⁸ To limit confusion, we would also suggest that the 7-day and 5-day rules in section 5(a) (3) of the bills for sending out absentee ballots after receipt of a properly completed application, or after the date the absentee ballots have become available, respectively, be changed to be a 7-day rule in each case.

BIPARTISAN COMMITTEE FOR ABSENTEE VOTING,
Washington, D.C., September 25, 1973.

SENATOR CLAIBORNE PELL,
Chairman, Senate Subcommittee on Privileges and Elections, U.S. Senate, Washington, D.C.

DEAR SENATOR PELL: I have been asked by the Association of Americans Resident Overseas (A.A.R.O.) an affiliated organization of the Bipartisan Committee on Absentee Voting, to forward to your committee the results of a questionnaire on absentee voting mailed during July and August of this year to overseas American civilians as well as a short summary of the results. Both are attached.

I respectfully submit that the summary and questionnaires be made part of the official record of your hearings on overseas absentee voting problems and further, that the Association of Americans Resident Overseas be given leave to update the results of the attached questionnaire before the final report of the Hearings are published.

Thank you for your consideration of this matter.

Sincerely,

CHRISTINE TOPPING, *Executive Director.*

The Association of Americans Resident Overseas was founded in May of this year in Paris, France. The purpose of the organization is to obtain rights and privileges now denied to many Americans resident overseas, among them, the Vote, Medicare Benefits and the Revision of certain clauses in citizenship laws.

Those Americans who are effectively disenfranchised by archaic State voting regulations have no representation in Congress. They are powerless to influence the enactment of legislation which may effect them adversely. They have no effective way of initiating legislation to amend laws which inflict undue hardship upon themselves and their families.

The first project of the A.A.R.O. is to support the OVERSEAS CITIZENS VOTING RIGHTS ACT OF 1973. To this effect over 2000 questionnaires were mailed during June and July 1973 to Americans resident abroad. 319 of these questionnaires have been returned to date. They came in from Americans living in 26 countries. In Europe from France, England, Belgium, Denmark, Germany, Italy, North Ireland, Netherlands, Norway, Poland, Spain, Sweden, and Switzerland—and from Hong Kong, Iran, Malta, New Zealand, Japan, Nigeria, Thailand, Turkey, Republic of Zaire, Sudan, Morocco and Haiti.

Only 21 of these Americans were able to vote absentee in the 1972 elections. The others did not, because 1—ballots were not received in time; 2—the absentee ballots incurs State tax obligations; 3—the residence requirements were impossible to fulfill; 4—many note a real discouragement because information on voting procedures is so difficult to obtain abroad.

Some Remarks: "The State of Michigan considers me a resident because I have real estate in Detroit. I therefore pay Detroit City and the State of Michigan individual income taxes. Yet for voting purposes they do not recognize me as a resident because of my physical absence from the State. This is absurd and unfair."

"Absentee ballot arrived after the election. Name subsequently taken off the voting rolls when inquiry was made in 1973. Nothing further would be done."

"Since entering the U.S. Diplomatic Service in September 1941 until retirement in Haiti in 1970, I have had no real residence in the U.S. Unable to vote in the District of Columbia when stationed in Washington. In 1964 was able to vote on absentee vote because then owned a small lake side cottage in Connecticut. After sale of cottage, unable to vote from any State."

"We applied for absentee ballots when home last summer. They were mailed to us here and we filled them out and returned them. The Ballots were thick, thus costly to mail. May be that is a factor in the failure of some States to approve of absentee voting."

"Applied to Akron, Ohio and received letter acknowledging our right to vote. This was about April 1972. Akron indicated ballots would be mailed as soon as they were printed. We never received them."

"We sent forms from Embassy to Louisiana requesting absentee ballots and by return mail were told we could vote absentee only if we were students, employed by U.S. Government or military personnel residing abroad. We do not fit into any of these categories." (Employed by the O.E.C.D. Paris.)

"Only difficulty was receiving absentee ballot in Uganda on the day it was due back in Hawaii."

"Ohio does not register foreign residents—even now."

"We fought a war concerning taxation without representation."

"I have not voted since joining the Foreign Service in 1945, since I was abroad or in Washington and could not be in New Jersey at the time needed to for personally registering."

"The Suffolk Board of Elections in Yaphank, L.I. simply did not send us the ballots in spite of a follow up letter and a telegram and no communication was received."

"Much too complicated a process, by the time I received all necessary papers it was too late."

"Americans abroad should bring pressure to bear on States requiring payment of State income and (where applicable) municipal income taxes by those registered voters who earn their income abroad. The law as currently applied by some States makes *the payment of taxes for which the resident abroad receives a minimum of services* in return tantamount to a condition to register and vote."

35 States of the Union are noted as being the last place of residence or native State. New York heads the list with 95, follows California with 35, Illinois and Massachusetts 19, Connecticut 22, Virginia, Pennsylvania, New Jersey and Ohio nearly 15 each. The following States have under 10: Washington, Rhode Island, Minnesota, Louisiana, Hawaii, Texas, Michigan, Kansas, Wisconsin, Maryland, Oklahoma, Florida, North Carolina and the District of Columbia. There was one respondent from the following States: Wyoming, Alabama, Maine, Utah, Wisconsin, Nebraska, Oregon, Delaware and Tennessee.

PHYLLIS MITCHELL-MICHAUX,
Association of Americans Resident Overseas.

BIPARTISAN COMMITTEE FOR ABSENTEE VOTING,
Washington, D.C., October 15, 1973.

Senator CLAIRBORNE PELL,
*Chairman, Subcommittee on Privileges and Elections,
Old Senate Office Building, Washington, D.C.*

DEAR SENATOR PELL: Through the cooperative effort of volunteer organizations and private individuals overseas, the Bipartisan Committee for Absentee voting has initiated a questionnaire on overseas absentee voting.

Attached to this letter is the early result of this survey. Overwhelmingly (257 to 1) these U.S. citizens favor legislation to extend the federal franchise to overseas Americans and many respondents (346 to 4) favored legislation to provide adequate assurance that a person voting would not solely because of voting in federal elections, lose any federal, state or local tax exemptions otherwise available to them. In fact, over $\frac{1}{4}$ of all those responding gave the fear of being subject to additional taxes as the reason they did not attempt to vote in 1972.

The questionnaire also shows that these citizens are well informed and subscribe or have access to a wide variety of news and cultural publications.

We respectfully submit that the results of this survey be made part of the hearing record.

Sincerely,

CHRISTINE TOPPING, *Executive Director.*

The results of voter information questionnaires are as follows. It should be noted, however, that all persons responding to questionnaires *did not necessarily answer each and every question.*

Question	Yes	No
1. If you voted, did you vote by absentee ballot?	142	29
2. Did you register to vote before this election?	123	¹ 10
3. If so, did you register in person while still in the United States rather than register absentee while abroad?	64	² 70
4. If you registered absentee while abroad, did you use a special application form? (Absentee ballot request form, Fed post card applications, nonresident forms)	52	24
5. To which State did you apply to register and/or vote? ³		

See footnotes at end of table.

Question	Yes	No
7. How long have you been/were you a resident of the State in which you voted?:		
(a) Less than 2 yr.....	11	
(b) 2 to 3 yr.....	16	
(c) 3 to 5 yr.....	18	
(d) 6 to 10 yr.....	23	
(e) Over 10 yr.....	73	
8. How long have you been abroad?:		
(a) Less than 2 yr.....	27	
(b) 2 to 3 yr.....	34	
(c) 3 to 5 yr.....	10	
(d) 6 to 10 yr.....	11	
(e) Over 10 yr.....	35	
9. Have you maintained a physical residence in that State?.....	52	101
10. Do you intend to return to your prior State?.....	73	4 57
11. Did you declare this intention or lack of intention on your application?.....	26	5 85
12. If you voted, did you receive a Presidential ballot only or a general election ballot? (30 never received ballot; numerous others never received their ballot in time).....	77	29
13. If you voted, on that date was your application for an absentee ballot submitted and when was your ballot received?		
Submitted:		
August.....		
September.....		
4 weeks before election.....		
July.....		
Do.....		
September.....		
May.....		
April.....		
February.....		
October.....		
Do.....		
June.....		
August.....		
September.....		
Do.....		
May.....		
November.....		
January.....		
August.....		
June.....		
2 to 3 mo in advance.....		
Received:		
October.....	2	
Never received.....	8	
Do.....		
October.....	7	
July.....	1	
October.....	20	
November.....	2	
October.....	1	
Do.....	1	
Do.....	3	
September.....	2	
October.....	3	
September.....	1	
November.....	1	
Do.....	1	
Do.....	1	
Do.....	1	
Do.....	1	
Never received.....	3	
Do.....		
Several.....		
14. If your attempt to vote failed, was an explanation given? (Explanations: Not registered in State, wrong ballot received, lateness, given up residence, lack of physical residence, new Arizona law required "reregister" in person, etc.).....	10	19
15. If you voted or attempted to vote, did you require assistance?		
(a) In determining if you could register or vote?.....	20	51
(b) In filling out application forms?.....	21	33
(c) Other?.....	10	45
16. What is the purpose of your overseas residency?		
Job connected.....	285	
Missionary.....	7	
Retired.....	14	
Other.....	(*)	
17. Which of the following publications do you read or look at regularly? ⁷ (Based on response of 252 questionnaires.)		
18. If you did not attempt to vote in the 1972 U.S. election, was your decision based on:		
(a) Prior failure to qualify as a voter?.....	68	
(b) Lack of appropriate forms?.....	64	
(c) Fear of being subject to additional taxes?.....	93	
19. Do you think overseas American citizens should be allowed to register and vote absentee in all Federal elections?.....	257	1
20. Would you favor legislation assuring that American citizens residing abroad would not, solely because of voting in Federal elections, lose any Federal, State or local tax exemptions otherwise available to them?.....	346	4

¹ Tried to.² 10 tried to.³ Ohio 4, Missouri 3, Connecticut 7, Illinois 6, New Jersey 14, Massachusetts 2, California 12, Michigan 3, New York 15, Louisiana 3, Florida 14, Texas 8, Pennsylvania 3, West Virginia 1, Kansas 2, Washington 1, Idaho 1, New Mexico 1, Delaware 1, Arizona 1, Nevada 1, Maryland 1, Colorado 2, Minnesota 2, South Carolina 2, Mississippi 1, Vermont 1, Rhode Island 1, Virginia 1, Iowa 3, Kentucky 1, Tennessee 1.⁴ 7 uncertain.⁵ Several uncertain.⁶ 8 (student), 25 (dependent), 2 (military).⁷ Newsweek 132, The Economist 38, International Herald Tribune 190, Times of London 18, Financial Times 24, Business Week 53, U.S. News & World Report 19, National Geographic 3, International Management 3, American Management Review 11, Sunset Magazine 1, Forbes 9, Sports Illustrated 6, The New Yorker 15, National Business 3, Fortune 62, Foreign Affairs 2, The Rome Daily American 9, Stars & Stripes 11, Miami Herald 16, Wall St. Journal 12, Good Housekeeping 3, Time 195, Design 1, Space Technology 1, Aviation Week 1, World Wide Projects 1, Opera News 1, Women's Wear Daily 1, House & Garden 1, Christianity Today 1, Christian Century 1, Atlantic 3, Barron's 4, L.A. Times 1, The Nation 2, Bangkok Post 3, Harpers 1, Chemical Eng. 1, Chemical News 3, Hydrocarbon Processing 1, Readers Digest 5, American Legion Mag. 1, Oil & Gas Journal 7, Modern Business Reports 1, Art in America 1, Punch 1, Vogue 1, Agricultural Age 1, Journal of Marketing 1, Amsterdam Newspaper 1, Quarterly Review 1, Saturday Review 1, Adv. Age 1, Indianapolis News 1, Human Events in D.C. 1, Esquire, Playboy 2, Educ. Review 2, Harvard Bus. Review 6, Christian Science Monitor 1, Engineering News 1.

EXHIBIT 8

U.S. POSTAL SERVICE,
LAW DEPARTMENT,
Washington, D.C., October 5, 1973.

Hon. HOWARD W. CANNON,
Chairman, Committee on Rules and Administration,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: This is in reference to S. 2384, a bill to grant to a United States citizen domiciled or otherwise residing outside the United States the right to vote in a Federal election by absentee ballot transmitted through the United States mail free of postage. Although we have not been requested to report on this legislation, we believe we should advise you of the position of the Postal Service concerning it.

The Postal Service has no comment on the merits of the legislation. Our concern is with section 5 of the bill, which sets out a procedure for voting by United States citizens residing overseas in which post card application cards, absentee ballots, envelopes and voting instructions would be mailed free of postage. This procedure is substantially identical with that prescribed by the Federal Voting Assistance Act of 1955.

Under section 2401(c) of title 39, United States Code, the Postal Service is authorized to be reimbursed through annual appropriations for the cost of carrying mail free of postage in accordance with the Federal Voting Assistance Act of 1955. Under section 3627 of title 39 the rate for a class of free or reduced rate mail may be adjusted if Congress fails to appropriate the amount authorized under section 2401(c). We recommend that the present legislation, which fails to provide similar reimbursement to the Postal Service, or adjustment, be appropriately amended as follows:

SEC. _____

(a) Section 2401(c) of title 39, United States Code, is amended by striking out "title and the Federal Voting Assistance Act of 1955" and inserting in lieu thereof "title, the Federal Voting Assistance Act of 1955, and the Uniform Absentee Voting Act".

(b) Section 3627 of title 39, United States Code, is amended by striking out "or under the Federal Voting Assistance Act of 1955" and inserting in lieu thereof "under the Federal Voting Assistance Act of 1955, or under the Uniform Absentee Voting Act".

Sincerely,

ROGER P. CRAIG, *Deputy General Counsel.*

STATEMENT OF GLORIA SCHAFFER, SECRETARY OF STATE OF CONNECTICUT

I favor allowing qualified United States citizens residing abroad who do not have a residence or domicile in the United States to vote for President and Vice President in federal elections. However, I do have some objections to the proposed legislation which are as follows:

1. I think U.S. citizens residing abroad should have their vote limited to President and Vice President only. The legislation before this committee would permit U.S. citizens living abroad to vote for members of Congress as well. Under the Federal Voting Rights Act, non-registered citizens residing in the U.S. are restricted to voting for President and Vice President only. It does not seem logical or fair to allow Americans living abroad to have a broader franchise than those living within the U.S.

2. In my judgment, the mechanics involved in the proposed legislation regarding protection against fraud are not adequate despite the fact that the post card application option which appears in both bills before the committee requires that such application be notarized. The person applying for an absentee ballot must apply to the town of his last voting residence or his last residence. I believe

many objections will be raised because of difficulty in checking the validity of the information on the application. This is especially true in view of the fact that properly completed applications for absentee ballots need not be submitted until seven days prior to such election.

3. This legislation also requires that all states by law provide all citizens residing overseas with the means for registering or otherwise qualifying to vote not later than thirty days immediately prior to any federal election (i.e. absentee registration).

Prior to the 1972 presidential election, my office received numerous inquiries from United States citizens residing abroad who could not truthfully state that they were bona fide residents of Connecticut and therefore could not vote. I believe that most of these people should have had the right to vote for President and Vice President, but I feel it would be overly burdensome to the states if the task of administering this legislation were imposed on them. By administering this provision from a central federal office, the question of citizenship could be more easily ascertained, and greater insurance could be provided against dual voting and other types of voter fraud.

WASEY CAMPBELL-EWALD LIMITED,
London, England, October 4, 1973.

Senator CLAIBORNE PELL,
Subcommittee on Privileges and Elections,
U.S. Senate,
Washington, D.C., U.S.A.

DEAR SENATOR PELL, This letter is being written in support of your Bill (S. 2384) to provide all Americans of voting age, living outside the United States with the right to vote in Federal elections.

The last national election gave me my first opportunity to vote by absentee ballot. Accordingly, I wrote to my local Election Board in New York City, since that was my last domicile in the United States.

I received a sheaf of papers and was rather surprised to find that I did not fall into any of the established categories for casting a ballot. I filled in the form as best I could and sent it with a covering letter giving my last address in New York.

Accordingly, I was sent an absentee ballot, not on the basis of being an American living outside the country, but because I could prove that I had previously lived at a specific address within the Board of Election's jurisdiction.

Therefore, I was able to and did vote.

Other people have not fared so well.

One of the things that I had to do in order to vote was to turn up at the American Embassy in Grosvenor Square, to get my absentee ballot request notarized. There I found a long line of extremely upset people, and the American Embassy personnel doing their best to cope.

I discovered, by eavesdropping, that the right to vote is in effect "granted" by the local governments and jurisdictions of the various states. And, there seemed to be as many sets of conditions as there are jurisdictions.

A woman immediately ahead of me in the line was from California, and found to her surprise, that she was unable to vote because she no longer had a domicile, according to the rules set down by the town Board of Elections in the town in which she lived.

Similarly, the other 30 or 40 people there present had their own specific problems. The Embassy people were being as helpful as they could, but they did not have exact information on all the possibilities and permutations.

It is my understanding that under the Goldwater Amendment, any American citizen of voting age has the right to vote, regardless of where he is in the world.

Anything that you and your sub-committee can do to establish a clear and simple procedure for the exercise of this right would receive my wholehearted support.

Further, you are free to make use of this statement as part of your committee's hearings.

Yours sincerely,

RICHARD W. THOMAS.

NEW ENGLAND COLLEGE,
Arundel, Sussex, England, October 3, 1973.

Senator CLAIBORNE PELL,
Chairman, Subcommittee on Privileges and Elections,
U.S. Senate Office Building,
Washington, D.C., U.S.A.

Dear SENATOR PELL, I am writing to you at the request of the Bipartisan Committee for Absentee Voting (U.K.).

In New England College we have approximately 250 students, most of whom are eligible to vote. It is my opinion that the students had no difficulty in registering to vote. I personally am registered to vote in the State of Vermont and no difficulty has been placed in my way as long as I paid my annual poll tax.

I have shared with students the common difficulty of having ballots notarized. In last year's presidential election only a small percentage of our students voted because, we were informed, it would be necessary to travel to London to the U.S. Embassy to have the ballots notarized. I did not vote in last year's election because at the time I was too busy to take off half a day to travel to London. It should be noted that the rail fare from Arundel to London is £1.51, or approximately \$4.

To the best of my knowledge most absentee ballots must be notarized. I should think it would be fair to simplify the system for U.S. citizens living abroad. I should appreciate my statement being made a part of the Hearings of the Senate Subcommittee on Privileges and Elections.

Sincerely,

PATRICK SOWLE, *Dean of Faculty.*

LONDON, ENGLAND, February 10, 1973.

Senator CLAIBORNE PELL,
Chairman, Subcommittee on Privileges and Elections,
U.S. Senate,
Washington, D.C., U.S.A.

DEAR SENATOR: As an American, who has lived abroad for twenty-three years. I am overjoyed that you are sponsoring Bill S. 2384, which may restore to myself and others like me the franchise which is our Constitutional right.

The fact that I live abroad is owing to a successful boycotting of my right to work during the so-called "McCarthy Period". Having made a new life in middle-age in England, despite the slight change of climate in the USA (which now seems to be changing again for the worse), there seems to be no reason to jettison my English life and to return once again, to begin all over again, in the United States, although I have returned from time to time to lecture and visit and I have at all times retained my sense of origin (Wisconsin) and my American nationality and passport.

Over the years I have made repeated efforts to establish my right to vote particularly in these recent crucial presidential elections, but since I have not been a resident of the United States for twenty-three years, the obstacles have in every instance proved impossible. I strongly support your admirable effort to correct this abuse of Americans abroad and ask that you include this statement in the Committee's hearings.

Yours faithfully,

JOSEPH LOSEY.

LONDON, ENGLAND, October 3, 1973.

Hon. CLAIBORNE PELL,
Chairman, Subcommittee on Privileges and Elections,
U.S. Senate, Washington, D.C.

DEAR SENATOR PELL: As an American temporarily abroad, I should like to have the opportunity of testifying to your subcommittee on S. 2384 to give all Americans of voting age living outside the U.S.A. the right to vote in federal elections whether they have a residence or domicile in a State or not.

The basic principle of no taxation without representation, and that every citizen should enjoy equal protection of the laws, requires that U.S. citizens carry with them, wherever they may be, the right to participate in a meaningful way in the democratic process.

It is sometimes alleged that Americans abroad do not know enough about federal and national issues to vote in federal elections. But this is a false argument, because in many countries like the United Kingdom the serious press carries a great deal of news about American political developments. American news magazines are widely distributed overseas, and many Americans subscribe to newsletters and hometown papers. It may well be that Americans abroad are better informed than those of their fellow countrymen who read the funnies and the sports page and pay scant attention to public affairs, at home. Ignorance or knowledge has never been a qualification or disqualification for the right to vote, except in the fundamental ability to read. The right to vote should stem from the citizenship of the individual, and the fact that Americans wherever they are are subject to U.S. laws and reap the benefits of the wisdom of their elected officials, and the disasters that flow from their follies. So they have the same incentives as Americans at home to vote in elections, and should have the same rights to do so.

The mere fact that an American is temporarily abroad should not vitiate his rights as a citizen. The right to vote in federal elections is fundamental. More than a million Americans abroad should not be deprived of this right.

Please make this statement a part of the committee's hearings.

Sincerely,

H. T. BERNSTEIN.

MANCHESTER 14 6AH, LANCASHIRE, ENGLAND.

Senator CLAIBORNE PELL,
Chairman, Subcommittee on Privileges and Elections,
U.S. Senate, Washington, D.C.

DEAR SENATOR PELL:

Statement Regarding Absentee Voting Abroad

(A) In trying to register for absentee voting during my residence abroad, I have been invariably stonewalled by the authorities in the United States to whom I sent inquiries. I was unable to secure an absentee ballot either in New Mexico where I was born, or in California, where I was resident at the time I left the United States in 1952 to live abroad.

(B) In these times no country in the world is a hermetically sealed entity. But a nation of the size, power, and interests of the United States of America must and does extend a strong influence into the lives of its citizens who have chosen to reside abroad—not only indirectly in terms of foreign policy which materially and in other ways may affect the country or countries in which they reside as aliens, but directly in such matters as taxes, claims on citizens which involve government or military service, and whatever control the government may choose to exercise over the movement of the citizen through passport regulations. These are the most immediately obvious examples, but there are others, including particularly the effect of government policies and actions on members of the citizen's immediate family who have remained behind, some of whom may be under voting age still.

That such a citizen, through the accident of geographical location, should be robbed of the right to participate as a voter in the government of his country, when it retains so many lines of direct and indirect influence over his life, is (to put it very mildly) undemocratic. In more accurate and candid terms, the situation is an abominable injustice. One would have preferred that the individual states corrected it—but since they have not done so, there would seem to be no other choice but to appeal to the Federal government to rectify the matter.

May I request that the above statement be made a part of your hearings?

Yours sincerely,

HERB GREER.

SAN FRANCISCO, CALIF., October 2, 1972.

Hon. CLAIBORNE PELL,
Chairman, Senate Subcommittee on Elections,
U.S. Senate Office Building, Washington, D.C.

DEAR SENATOR PELL: Relative to election reform, I'm convinced that any proposed legislation which deals primarily with campaign financing will constitute only an indirect solution to a problem of considerably wider magnitude—and maybe an *unnecessarily restrictive* one.

Instead, by effecting some key changes in the political procedure itself, there now is an opportunity to remedy several related shortcomings in the American electoral system—including the provocative cause of many financial excesses.

I cite these deteriorating factors, all of which have been of particular concern to you:

(1) Apart from the fact that election campaigns have grown prohibitively expensive—much of the money spent on them is simply wasted in the saturated competition for public advertising attention.

(2) The process now isn't conducive to an equitable distribution of public funds to candidates (although recent new legislation will illuminate the source and broaden the base of future campaign contributions).

(3) Incumbent officeholders have acquired a virtually insurmountable advantage over challenging candidates.

(4) The wildly varying pattern and significance of State primary elections can produce an almost capricious choice of Presidential nominees.

(5) The rhetorical demands imposed by successively campaigning in separate primaries is both exhausting to the candidates and uselessly destructive to their public credibility.

(6) Most important, citizens are exhibiting a growing disinterest in political party affiliation (according to Gallup poll, such membership dropped nationally 4% last year), as the reasons for active party participation diminish.

These faults can be corrected, I believe, largely through some key action by the political parties themselves—which in turn would trigger further moves by other public bodies involved in the election process. Such a course is certain to be more desirable and effective than merely injecting new public funds into the process.

My proposals, which might appear unresponsive to the primary need, are designed to take advantage of various existing forces—notably natural public interest tendencies, and the media's established criteria for enhanced and meaningful news coverage. The proposals derive from my experience as a metropolitan newspaper reporter, and an interest and college education in political science.

Specifically, I recommend:

(A) That the political parties at their respective future National Conventions select *three* endorsed Presidential candidates for entry in the various State primary elections.

(B) That the official selections be made after due deliberation of the convention delegates, and following individual presentations by *all* the aspiring candidates.

(C) That equal funds be given by the Party to assist each candidate in his primary election races.

(D) That soon enough before the General election, the Party officially designate its Presidential nominee, based on the aggregate results of the various primaries (the action to be taken either by the reconvened delegates or National Committee).

* * * * *

Various automatic reforms are certain to result from this alteration in the election procedure. Among them are:

The need for campaign funds should be sharply reduced due to a compressed primary election period, and the increase in publicity that would naturally flow from a well-defined primary race (eliminating the need for much paid party advertising).

Similarly, candidates would no longer be required to conduct an expensive, and often futile, exploratory campaign before the National party convention—when a simple oral presentation would be technically sufficient to establish the election potential of every candidate.

The convention delegates also would be spared the compulsion of consistently re-nominating *only* the Incumbent. Two other candidates would enjoy equally official endorsement in the State primaries.

Primary voters, too, would always be guaranteed a choice of candidates in both political parties.

The procedure would inject a new meaning, spontaneity and news interest value into the proceedings of every National Convention.

Greater importance would be given to political party participation at the State and local levels—for members indeed could exert a direct influence on the choice of the Presidential finalists.

Prospective candidates in both parties would be encouraged to campaign more subtly and responsibly in attempting to gain a national image among the delegates prior to the convention.

The process would provide a basis for future allocation of public funds (as well as party campaign funds) equitably to candidates.

There are similar possibilities with respect to the equal time provisions for radio and television.

All State primary elections henceforth would be endowed with national political significance.

The process would allow an easy solution to the problem of reducing the length of the general election campaign. (The National Conventions should be scheduled early enough to encompass the first primaries, but the formal dates at which the parties designate their official Presidential nominees could be set late enough to ensure a brief general election campaign.)

Concerning the latter point, I would think that both parties might work gradually and informally with the various States to reschedule the separate primaries into a more condensed time period—perhaps in this way slowly achieving a national primary. The initial attractions of a more meaningful primary system ought to assure the general cooperation of all the States.

The selection of each party's Vice Presidential candidate could be done in various ways to harmonize with the new procedure—either at the early National Convention, or at the subsequent ratification session.

I would think, as well, that the three-candidate procedure could be incorporated at the State level into the selection of the party's Senatorial and Gubernatorial nominees—thus making those races more equitable and interesting.

However, I have probably begun to overstate the case, so I will conclude at this point.

Very respectfully,

STANTON W. THIES.

LONDON, ENGLAND, October 3, 1973.

Senator CLAIBORNE PELL,
Chairman, Subcommittee on Privileges and Elections,
U.S. Senate,
Washington, D.C.

MY DEAR SENATOR PELL: I am most enthusiastic about the news of your proposed bill S. 2384, to give all Americans of voting age the right to vote in Federal elections without affecting the determination of his place of residence or domicile for tax purposes. Please make this letter part of your information in the Committee's hearings.

I have been living in England for eight years, my wife for three (we are both U.S. citizens). In the 1972 election we both made our first effort to vote abroad, since the recent voting rights act seemed to make that possible and easy. We applied for ballots to our previous home state of New York, giving our families' addresses in that state, and previous home addresses there, and stating our intention to eventually return to the USA.

In due course my wife received her registration form and ballot, after paying about \$5 in miscellaneous air mail charge requests and sending about four letters. She voted. I heard nothing until a week before the election, when I was advised that the New York Secretary of State had determined that I did not seem eligible. I protested and appealed, but the question was then academic as election day had passed. I gather that many others who tried to vote with absentee ballots through New York State were dealt with likewise.

If you desire, I would be very glad to supply you with complete details (my wife's experience didn't seem ideal either). Why not registration and absentee voting through U.S. embassies abroad? Citizens of other countries may do this. But whatever form your bill finally takes, we wholeheartedly support it as I'm sure that any improvements will be a great democratic advantage.

Yours very sincerely,

NATHAN SILVER.

DEPARTMENT OF ANIMAL GENETICS,
UNIVERSITY COLLEGE LONDON,
London, England, October 3, 1973.

Senator CLAIBORNE PELL,
*Chairman, Subcommittee on Privileges and Elections,
U.S. Senate,
Washington, D.C.*

DEAR SENATOR: AS a citizen of the United States of America, I am greatly interested in and wish to give every support to the intentions of bill S-2384 which would provide all U.S. citizen of voting age, and living outside the U.S.A., with the right to vote in Federal Elections.

I spent 40 years of my life on the staff of the University of Connecticut. Upon retirement, I decided in 1964 to establish myself in Britain and have been living in London since then. When on one occasion I applied for an absentee ballot, I was informed by the Registrar of Voters of the Town of Mansfield, within which the University of Connecticut is located and where I had lived for 40 years, that ballots could only be sent to residents of the town. When on a subsequent occasion I made inquiries at the State government in Hartford, I was told that I had been away from the State too long to be eligible for an absentee ballot. In both instances my sole interest was in the Federal Elections.

The disfranchisement under present conditions is obviously an atrocious injustice to all who believe in the democratic ideals established in the U.S. Constitution and who on the basis of that great document feel that they have a right to be considered full-rate citizens.

I shall appreciate your making this statement a part of your Committee's hearings.

Yours sincerely,

WALTER LANDAUER,
*Ph. D. (Professor of Genetics and
Professor Emeritus, University of Connecticut).*

BIPARTISAN COMMITTEE FOR ABSENTEE VOTING (UK),
London, England, October 4, 1973.

For the attention of:

Mr. ANTHONY HYDE,
Mr. V. W. WARREN PEARL.

DEAR SIR: I have your letter of 19 September 1973 regarding Senator Claiborne Pell's bill to give Americans living outside the United States the right to vote.

I am one of a number of Americans living abroad who do not agree with the aims of this bill. I find your statement most naive that such a bill, if enacted, will not result in any adverse tax consequences. You are surely aware of the recurring proposals to eliminate the foreign earned income exemption of Americans living abroad. Section 911 of the Internal Revenue Code has not been repealed to date because it is pointed out in opposition to bills to repeal it that Americans abroad do not obtain the benefit of Government services provided with tax receipts. You apparently want both: the tax relief and the opportunity for political participation. I think this will help a great deal with the persons who wish to repeal Section 911 i.e. the motto will then be "if they want to vote let them pay taxes".

One of the incentives of living abroad is this financial incentive and I don't feel that I am being unpatriotic in taking this stand but merely apolitical.

Yours sincerely,

RICHARD T. SCULLY.

BIPARTISAN COMMITTEE FOR ABSENTEE VOTING (UK),
London, England, September 19, 1973.

To: All Americans living in Great Britain.

Good News! We now have a real chance to secure a vote in Federal elections. Please read the attached Fact and Action sheet and do two things:

- (1) Send a letter to Senator Claiborne Pell who is opening hearings on Sept. 26th on S. 2384 which if passed will give a vote to all Americans living abroad—without any adverse tax consequences.

(2) Send us your contribution so that we can continue our campaign to get the bill passed in both the Senate and the House.

Yours sincerely,

V. W. WARREN PEARL,
Co-Chairman.
ANTHONY HYDE,
Co-Chairman.

FACT AND ACTION SHEET FOR ABSENTEE VOTING FROM BIPARTISAN COMMITTEE FOR
ABSENTEE VOTING (UK)

(1) Senator Claiborne Pell (D.-R.I.) has introduced a bill (S. 2384) to provide all Americans of voting age living outside the U.S.A. the right to vote in Federal Elections (in the words of Senator Pell) "whether they have a residence or domicile in a State or not."

(2) The Bill specifically provides that the exercise of the right to register or vote "shall not affect the determination of his place of residence or domicile, for the purposes of any tax imposed under Federal, State or local law."

(3) Hearings will be held by the Senate Subcommittee on Privileges and Elections, of which Senator Pell is Chairman. Other members of the Subcommittee are: Robert C. Byrd (D.-W. Va.); Robert P. Griffin (R.-Mich.). The full Committee (Rules and Administration) has on it Marlow W. Cook (R.-Ky.); James B. Allen (D.-Ala.); Harrison A. Williams Jr. (D.-N.J.); Hugh Scott (R.-Pa.); and Mark O. Hatfield (R.-Ore.). All should be addressed to the Committee or Subcommittee, U.S. Senate, Washington, D.C.

(4) The Bipartisan Committee for Absentee Voting, whose London affiliate is the Bipartisan Committee for Absentee Voting (UK), has now set up an effective Washington H.Q. The Executive Director is Ms. Chris Topping. In London the Co-chairmen are: Anthony Hyde (Dem) and V. W. Warren Pearl (Rep)—mailing address: 20 Chester Square, London SW1W 9HS.

(5) One page statements are urgently required as soon as possible giving:

(a) Your own experience in trying to register and vote in previous Presidential elections.

(b) Why you feel that you and every American living abroad should have the right to vote.

(c) Requesting your statement be made a part of the Committee's hearings. Send this to Senator Claiborne Pell, Chairman, Subcommittee on Privileges and Elections, U.S. Senate, Washington, D.C.

(6) Contributions are urgently needed to finance the campaign to get the legislation passed. Please make out cheques to Bipartisan Committee (UK) and send to 20 Chester Square, London SW1W 9HS. Dollar cheques will not be deposited in the U.K. and will *not* incur U.K. income tax.

FLORENCE, ITALY, *September 30, 1973.*

Senator CLAIBORNE PELL,
Senate Office Building,
Washington, D.C., U.S.A.

DEAR SENATOR: My attention has recently been drawn to a bill you have introduced that in substance would enfranchise Americans living abroad. As I understand the situation many states now have voting requirements that in essence also subject persons living abroad to income and/or inheritance taxes despite the fact that they may never again receive services by that particular state, much less that they are not currently receiving any benefit.

Really, it seems to me, the issues are two but interrelated. First is the voting rights question. Without the right to vote in U.S. federal elections employees of international companies and, I imagine, members of the military would be totally disenfranchised unless they chose to give up their American citizenship and become naturalized citizens in their country of residence. This, I am sure you can appreciate, in most cases is highly impractical since usually these people move from country to country or do not remain abroad long enough to become a citizen of any country. I also doubt that the Congress, if given the opportunity to express itself on the matter, would encourage Americans to give up their citizenship only because they are temporarily, or even permanently, living abroad. One of my colleagues has lived for varying periods during the past 10 years in the U.S., the

U.K., Cyprus, Australia, France, and Japan. He was born, raised, and educated in America. Where should he be able to vote?

One might say that if a person is living abroad he does not have a personal interest in American affairs and therefore should not be permitted to vote. Or, it could be argued, since he is abroad he is less informed about current events and therefore less qualified or even unqualified to have a voice in American government.

On the first point I would argue that the American living abroad is likely to have relatives at home who need and deserve his support. Secondly, since he is likely to be paid in U.S. dollars or a local equivalent he has a direct interest in the course of U.S. economic affairs as they are reflected in the purchasing power of the dollar abroad. Thirdly, the American abroad is subject to U.S. taxes, usually including Social Security and must have a voice in how the funds are spent.

As for the expatriates' qualifications as a voter, I think you would find they are generally quite well informed because American media are quite well distributed throughout the world and because major events in the U.S. are widely covered by local media as well. In the area of foreign policy I expect Americans living outside the country are better informed than those who do not.

The second issue concerns taxes and whether American citizens should be subject to U.S. federal, state, and local income levies. Speaking of my own situation, I enjoy Italian police and fire protection and my children, if I had any, could enjoy local schools. I pay taxes in Italy. Why should I pay for the same services again? I also enjoy representation by the local American consulate and I feel that there is a remote, but very real protection afforded by the American armed forces. But I get no support or benefit from a host of other federal programs and I am contributing to analogous programs run by the Italian state in many cases. Therefore I should pay U.S. federal income taxes, but in a reduced measure as is justly the case today under present law.

The problem, then, is local and state taxes. Trying to think of a sound reason for paying state taxes, I find none. Why should myself and my fellow foreign residents pay for strictly local services when we receive absolutely no part of them whatsoever? I understand that American military personnel are under an obligation to pay states taxes. Why should a G.I. stationed in Germany pay taxes to the state of Wisconsin when it is most likely his next station will be Texas or California?

Following a similar argument, I would also say that there seems to be little justification for insisting that an American foreign resident be able to vote in state and local elections. The same logic in no way applies to federal elections, however, for the essential fact that they are citizens of the United States of America and not "citizens" of New York, Alabama, or Oregon.

Uniting the voting rights question and the tax issue is the matter of qualifications of voters, which is reserved to the states under the Constitution. It has been clearly established, however, by the Supreme Court that the states are not reserved the right to establish voter qualifications in a manner that discriminates against a particular group or groups. That would seem to disqualify any requirement for a federal election that a voter maintain a home in the state in question as that would virtually place the vote on a property qualification basis. Basing voter qualification on payment of state income taxes, other than having been shown to be inequitable from the tax standpoint, seems to also suffer from the same defect.

This is not an easy question. Perhaps foreign residents should have their own senators, congressmen, and voice in selecting national officers such as the President and Vice President. In effect, they would constitute a 51st state, and perhaps not the smallest state at that. To me this has tremendous theoretical appeal, but it fails for practical reasons. Presumably the national representatives of foreign residents would under such a system be elected from among their own ranks. But as soon as the U.S. Representative from Paris arrived in Washington to assume his post he would no longer be a foreign resident! No, I do not believe this would be a practical solution.

Possibly for the want of a better alternative, then, an American foreign resident should be allowed to vote in the state where he last qualified to vote until such time as he qualifies to vote in another state.

I sincerely support your effort to enable us Americans living outside the country to have a voice in our country's Government.

If the state and local tax requirements cannot be eliminated in the same legislation on their own account they should then be abolished through tax reform legislation.

Very truly yours,

HARRIS H. PALMER, JR.

CLEARGOLAW, WASH., September 26, 1973.

HON. CLAIBORNE PELL,
*Chairman, Subcommittee on Privileges and Elections,
Senate Committee on Rules and Administration,
Washington, D.C.*

DEAR SENATOR PELL: As the chairmen of the United Kingdom Democratic and Republican parties respectively, we witnessed first hand the frustrations and difficulties many Americans overseas had in attempting to register and vote absentee in the 1972 Presidential Election. We are in full support of the overseas voting bills, S. 2384 and S. 2102, now pending before your subcommittee. We commend your subcommittee for its attention to this matter.

(S) ANTHONY HYDE,
Chairman, Democrats Abroad (U.K).

(S) V. W. WARREN PEARL,
Chairman, European Republican Committee (UK).

CLEARGOLAW, WASH., September 26, 1973.

HON. CLAIBORNE PELL,
*Chairman, Subcommittee on Privileges and Elections,
Senate Committee on Rules and Administration,
U.S. Capitol, Washington, D.C.*

DEAR SENATOR PELL: We want to express our wholehearted support for the overseas voting bills introduced by you (S. 2384) and by Senators Mathias, Bayh, Brock, and Roth (S. 2102) which are being considered in hearings before your subcommittee September 26-27, 1973.

We stand fully behind the testimony being presented to your subcommittee in support of these bills by Messrs. J. Kevin Murphy and J. Eugene Marans on behalf of the bipartisan committee on absentee voting. Their testimony may be regarded by you as testimony by our committees as well.

We respectfully request that this statement be made part of the record for your subcommittee's hearings on these bills.

Respectfully submitted.

CLIFFORD L. MITCHEL,
Chairman, European Republican Committee in France.
RICHARD H. MOORE,
Chairman, Democratic Party Committee of France.

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