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OVERSEAS ABSENTEE VOTING

HEARING

BEFORE THE

COMMITTEE ON RULES AND ADMINISTRATION UNITED STATES SENATE

NINETY-FIFTH CONGRESS

FIRST SESSION

ON

THE OVERSEAS CITIZENS VOTING RIGHTS ACT OF 1975,
THE FEDERAL VOTING ASSISTANCE ACT OF 1955

AND

S. 703

TO IMPROVE THE ADMINISTRATION AND OPERATION OF THE OVERSEAS CITIZENS VOTING RIGHTS ACT OF 1975, AND FOR OTHER PURPOSES

MARCH 8, 1977

Printed for the use of the Committee on Rules and Administration

U.S. GOVERNMENT PRINTING OFFICE

87-234 O WASHINGTON : 1977

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OVERSEAS ABSENTEE VOTING

TUESDAY, MARCH 8, 1977

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

The committee met, pursuant to notice, in room 301 of the Russell Senate Office Building at 10 a.m., Hon. Claiborne Pell, presiding.

Present: Senators Pell and Clark.

Staff present: Edwin K. Hall, counsel; Jack L. Sapp, professional staff member; Mary G. Daly, secretary; and Rose Reckner, secretary.

OPENING STATEMENT OF HON. CLAIBORNE PELL, RANKING MAJORITY MEMBER OF THE COMMITTEE ON RULES AND ADMINISTRATION

Senator PELL. The hearing of the Rules Committee concerned with the Overseas Citizens Voting Rights Act of 1975 and S. 703 will come to order.

Today we will hear testimony on the operation of the Overseas Citizens Voting Rights Act of 1975 and S. 703, a bill which I introduced with the distinguished senior Senator from Arizona, Mr. Goldwater, and the distinguished senior Senator from Maryland, Mr. Mathias. As the proposals set forth in that bill would vest certain responsibilities in the President's designee under the Federal Voting Assistance Act of 1955, who is at present the Secretary of Defense, we also welcome comments on the operation of that law in past elections.

The Overseas Citizens Voting Rights Act of 1975 marked the culmination of the efforts of many, most significantly Senators Goldwater and Mathias, to assure that over 750,000 U.S. citizens residing abroad would have the right to vote in Federal elections.

The purpose of this hearing today is to review the operation of that law, and those problems which may have prevented American citizens from exercising their right to vote in the 1976 elections.

The proposals set forth in S. 703 are directed at a number of these problems.

First, it would assist in providing much needed information to overseas voters on the absentee voting requirements of the 1975 act and of the various States. This information collection and dissemination function would be coordinated by the Department of Defense with the assistance of other appropriate Federal agencies. The Department of Defense, at present, has the responsibility for providing similar information to military personnel and dependents, and civilians temporarily residing overseas.

Second, the bill would expedite the transportation of balloting materials at election time by providing for free airmail postage of those materials. It would also direct the U.S. Postal Service to provide the most expeditious form of mail delivery available for such materials.

Finally, the Bill would clarify that U.S. citizens who vote in Federal elections under the Overseas Citizens Voting Rights Act will not be subject to Federal, State or local tax solely because they exercised their right to vote. One of the major reasons for not voting in the past elections, as reported by those who have submitted statements to the committee, was the threat of State taxation. The Senate passed such a provision as part of S. 95 in 1975, but it was rejected by the House. I hope we will see it enacted into law during this Congress.

I would like to welcome those of you who are here today to assist the committee in assuring that this legislation is achieving the purpose for which it was intended, and in identifying ways to eliminate impediments to the exercise of their franchise by citizens overseas.

The committee has received a summary of the various State rulings on the tax implications of voting under the Overseas Citizens Voting Rights Act prepared by the Library of Congress from material submitted to the committee by the Bipartisan Committee on Absentee Voting. It has also received from the International Herald Tribune the results of an inquiry they conducted indicating that 559 citizens responding to their inquiry either did not receive their ballots or received them too late to vote in the 1976 election.

Both of these documents will be incorporated as exhibits for the hearing record.

[Exhibits 6 and 10, respectively, of the appendix, pp. 190 and 235.]

I would also submit for the record a copy of S. 703, the Overseas Citizens Voting Rights Act of 1975, and the Federal Voting Assistance Act of 1955, as amended.

[Exhibits 1, 2, and 3, respectively, of the appendix, pp. 159, 169, and 172.]

The committee has received written statements from the Department of State, the U.S. Postal Service, the Federal Election Committee, a number of State Secretaries of State, and a large number of citizens and organizations located both in the United States and overseas.

I ask further that these all be made a part of the hearing record.

This hearing record will remain open until the first week of April 1977, for the receipt of additional witness statements.

Now, it is my pleasure to hear and for the committee to hear the senior Senator from Arizona who has played such a tremendous role in this legislation.

Senator Goldwater?

TESTIMONY OF HON. BARRY GOLDWATER, A U.S. SENATOR FROM THE STATE OF ARIZONA AND COSPONSOR OF S. 703, ACCOMPANIED BY J. TERRY EMERSON, COUNSEL

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

I apologize for being late. Ever since we have streamlined the work of the Senate, I cannot find time to get anything done.

First I would like to present Mr. Terry Emerson, the gentleman with me. He is the gentleman who has done the yoeman work on this and I wanted him to receive the proper credit.

Senator PELL. And an old friend of this Senator who did fine work in the legislative counsel's office.

Senator GOLDWATER. I am pleased to join with you once again in proposing legislation to help remove the last remaining barriers to voting by Americans who are outside the United States.

There have been great advances in extending voting opportunities for Americans who cannot be in the country on election day, starting with the Federal Voting Assistance Act of 1955. One of these laws is the amendment which you and I offered in 1970 to the Federal Voting Rights Act which gave new absentee registration and balloting rights to citizens who wish to vote for President and Vice President.

Then, in 1975, this subcommittee originated legislation guaranteeing the right to vote for citizens of the United States in congressional, as well as Presidential, elections. That law also cleared up a problem which had arisen under the 1970 amendment when some States refused to permit Americans abroad to vote unless they were wealthy enough to maintain two homes, in the United States and abroad.

But these laws were not enough. Even though all citizens now have a technical right to register and vote by absentee ballot, many, many thousands of them are denied the vote by administrative problems.

It can be seen in the survey taken by the Asia-Pacific Council of American Chambers of Commerce which discovered that 66 percent of Americans in that area had difficulties voting in the last election. It also can be seen in the fact that 9 out of 10 States reporting absentee ballots for the 1976 election showed a drop in the percentage of absentee votes compared with the 1972 election.

Mr. Chairman, I can verify these findings. Letter after letter has poured into my office recently documenting the fact that citizens who badly wanted to vote did not even receive an acknowledgment of their request for an absentee ballot.

Other citizens received ballots, but too late to do them any good. In one county alone, Brevard, Florida, 600 absentee ballots arrived too late to be counted in the November 2 election. Most of these ballots arrived only 1 day late and all were returned within a week after the polls closed.

It was not the fault of the citizens. In the Florida situation, their absentee ballots were not mailed until October 18, leaving 2 weeks for distribution overseas and return. Multiply the deprivation of votes in this one county by 3,099 counties and parishes throughout the Nation and you can see that administrative difficulties could become an enormous problem.

Mr. Chairman, I hope your hearings will result in legislation aimed at correcting as many of these problems as possible. Citizens will undoubtedly find it easier to vote from outside the country if States adopt a uniform application for registration and for an absentee ballot. It will clearly help if we speed up the mailing of ballots and balloting material. And, it will encourage voting if we remove the fear of State income tax liability. All of these things are already provided for in the bill now before you.

However, if these hearings are to address all the problems that have been brought to my attention, I suggest you consider the possibility of requiring that overseas ballots be sent in adequate time to be returned and counted.

Now, one approach is to require that no changes in ballots be made within 3 weeks of an election. I suggest 3 weeks, instead of 2, because the Florida case proves that 2 weeks is not adequate for distributing ballots to voters for return by election day. In fact, the supervisor of elections in the county where this problem occurred is attempting to get a provision put in the State law that would prevent any changes in the ballot within 30 days of an election.

Or, your hearings might consider extending the deadline for receipt of absentee ballots until a few days after election day. I know there are practical and legal questions with both of those ideas, but at least we should discuss them.

Mr. Chairman, I have just received a memorandum prepared by the American Law Division at the Library of Congress which concludes we do have authority to enact this type of legislation. I ask that this paper and a similar memorandum of law prepared by my legal counsel be included with your hearings.

[See pp. 88 and 90, respectively, of this hearing.]

Senator PELL. It will be so done.

Senator GOLDWATER. Also, I have requested the Library of Congress to provide me with a summary of the State income tax liability of U.S. citizens residing abroad and as soon as it arrives, I will offer it for your record.

Senator PELL. It will be done.

[See p. 117 of this hearing.]

Senator GOLDWATER. That concludes my testimony, Mr. Chairman.

Senator PELL. Thank you very much, Senator Goldwater, and more importantly for your support of this legislation.

In connection with the Government's authority to perhaps extend for a few days after the election the deadline that a ballot can be received, as you point out, it would mean we would not know the results until the period of that deadline expired. I wonder if the benefit to be accrued by enlarging the franchise to more citizens would be balanced by the harm that might be done by having a national election in question for that period of time.

Senator GOLDWATER. Well, I think that suggestion that I made would be the last one that we probably should entertain, although there are many, many counties or voting districts in this country that do accept absentee ballots, continuing for several days after the election.

I do not like that anymore than you do. I think the answer is to require the voting areas to mail absentee ballots in sufficient time for the receiver to be able to fill them out and send them back. What with the uncertainty of our mail, this may require unified Federal legislation. That might sound strange coming from one who is a professed "States righter." But I believe in the field of presidential and congressional elections there is no constitutional reason why we cannot require the States, the counties, or wherever the ballots originate to be mailed on a date certain and make that date certain far enough in

advance so that the ballots will be received back and require also that they be mailed.

Now, Mr. Emerson and I know of many cases in this country where they sort of laugh and do not bother sending absentee ballots. And we had a long study with the Air Force, helped by the Air Force Times in this, because we found in many, many cases throughout the Air Force where the voting areas just, well, did not refuse, they just did not send an absentee ballot. And I think this is very wrong.

Senator PELL. We found in my State that they send it by sea mail and it takes a long time when it goes from Rhode Island to say, for example, Hong Kong. I think postal airmail would be one solution.

Senator GOLDWATER. Either compulsory airmail or it could be sent by military communications systems which would mean almost instant return if we could develop a proper means of verifying teletyped or radioed returns.

Senator PELL. I have one other very general question that I think the record would benefit by your views because of your national experience and your having been a national candidate for President.

Why do you believe that our participation is so much worse than that of any other democratically ruled nation when it comes to participating in elections?

Senator GOLDWATER. In general?

Senator PELL. In general. You know we do worse than any other nation.

What is the reason for that in your view?

Senator GOLDWATER. I wish I could tell you. I have given this a lot of thought.

I hate to say this but I think that the average American citizen does not care much who runs this country or how it is run as long as he gets his little two bits worth out of whatever is being done. I do not think the average American citizen has any concept of the voting privilege, especially when you look at lesser elections.

When you get down to city elections, like down in my home town where I think less than 40 percent of the people voted in the last election, if you count the 1976 total votes and compare it to those people who would be eligible to vote, had they been registered, I think it probably would be less than 50 percent of the people who determine who our President is going to be.

Again, you find the most interest in voting in "blocks" whether they are conservative, liberal, or middle of the road, or what. Very, very few individuals seem to make up their own minds and go to the ballot booth and cast their vote the way they see it. They are greatly influenced by the leaders of their organization such as the labor unions, Common Cause, League of Women Voters, and so forth and so on.

However, the complaints we get show a lot of people want to vote and try to but cannot for administrative reasons. There is another big reason. There may be some very general and complete shakeups in our voting procedures that a lot of us might basically disagree with. But if we are going to get real complete participation we have to knock down these administrative malpractices, or unpractices, in order to get the people to vote. I do not know what it might be.

I am not in favor of automatic registration such as some of the labor union leaders are. I am not in favor of postal registration, except for absentee reasons, such as some groups are. But on the other hand, I do not know.

Senator PELL. It is a tremendous problem.

I know, I handled the 1956 registration drive for my political party across the country and I sometimes think one of the reasons is that we are one of the few nations where you do have a preregistration requirement. We have very stiff registration requirements or we could consider some kind of identification system which is what most of the other nations do. That might be it. But that in itself would mean a change in our own outlook.

I agree with you about the fact that leaders of groups play an inordinate role in our country. Altough I am compelled to say as a liberal Senator from a labor State, that I remember when I first ran and the labor unions endorsed my opponent, that you can make an end run sometimes. But is is quite a strain and difficult.

Senator GOLDWATER. It is really something so that when you look at democracies that are not as democratic as we are turning out from 85 to 95 percent of the people, then you look at ourselves, and it makes us ashamed.

We do want more participation, so we might come to just a general ability to vote if you can prove that you are a citizen.

But, again, that is hard.

I believe I am safe in saying that there were from 1 to 3 million votes cast in the 1976 election by people who were not even citizens of the United States; Puerto Ricans, or Mexicans, who were in this country illegally. So you have dangers when you throw the door open.

Senator PELL. That is an interesting thought. The thought just goes through my mind, if it were limited to citizens maybe that would be the only requirement. You have your citizen's certificate and stamp the date on it at each voting poll so you could not vote three or four times and it would be an incentive for people to have a paper document. It is a thought I had not had before.

Senator GOLDWATER. Well, that is just a thought that, you know, comes off the top of the head, and I am tossing it out.

I think there is another area that we might consider which I recommended before. That we may make election day a national holiday and keep the polls open say, from 6 o'clock in the morning of election day until 6 o'clock the next morning and we might take it a step further. But this would take study. Put the whole country on central time so that the polls all close at the same time. I do not believe that the little town of Berlin, N.H., has worldwide effect on how California votes because they close 3 hours earlier but just the fact that we would have a general election day and close up all businesses, close up all the bars, and keep the churches open, maybe, but make it an election day and then we may have a day that we really get people out.

Senator PELL. Well, I thought perhaps we ought to go along the route that European countries do and have it on Sunday. But when you suggest Sunday the church groups get upset and feel that we are being sacrilegious and then I would suggest a bill for Saturday but the Jewish groups got upset with me and the fundamentalist Baptist groups.

So far as another holiday, we need that like we need a hole in the head because of productivity.

Senator GOLDWATER. Tuesday is general election day. Then make it a holiday. We have got it so screwed up now nobody works anyway. So one more day is not going to hurt. It is not an easy field, but this is something you can toss over to the academicians who are always short of something to do. I do not know that I would leave it up to the politicians; we have not done much with it. But I think we have got to do something with it. I think it is very serious.

Senator PELL. I would agree.

I thank you very much for your thoughtfulness in coming.

Senator GOLDWATER. It has been a pleasure.

Senator PELL. And your support of this measure and the benefit of your ideas.

Senator GOLDWATER. Thank you.

Senator PELL. Thank you very much, Senator Goldwater.

The next witness is the representative from the Justice Department, Mr. Drew S. Days, Acting Assistant Attorney General for the Civil Rights Division.

Are you one of the lucky officials who has been confirmed or a designate?

Mr. DAYS. Senator Pell, I have been confirmed but I have not reveived my commission. I am in the posture Marbury of *Marbury* v. *Madison.*

Senator PELL. I congratulate you.

So many of your fellow Cabinet people are not yet confirmed. We are waiting impatiently for their papers on the Hill. And I hope you realize the delay is not in our end but in the papers.

Mr. DAYS. Fingers have been pointed in many directions but none in the direction of the Senate as far as I know.

Senator PELL. Thank you.

Would you proceed?

You have a statement of some length but we would be glad to hear it or any portion that you wish to be inserted into the record will be inserted, as you wish.

Mr. DAYS. Thank you.

TESTIMONY OF DREW S. DAYS III, ACTING ASSISTANT ATTORNEY GENERAL FOR THE CIVIL RIGHTS DIVISION OF THE DEPARTMENT OF JUSTICE

Mr. DAYS. With me is Mr. Frank Allen of the Appellate Section of the Civil Rights Division and Mr. Barry Weinberg, who has certain responsibilities with respect to the Overseas Citizens Voting Rights Act, is here from the Civil Rights Division.

I appreciate the opportunity to appear to testify on behalf of the Department of Justice with respect to the proposed amendments to the Overseas Citizens Voting Rights Act.

As you know, responsibility for taking legal action for violations of the act are placed upon the Attorney General. Before discussing possible changes in the present act, I believe it may be useful to describe for the subcommittee our enforcement efforts over the past year since the act was passed, and to report some of the mechani-

cal problems which we found to be impediments to some overseas voters casting ballots. I should state, initially, that we encountered no State or local election officials who were reluctant to allow overseas citizens the opportunity to vote in Federal elections, and there was no undertone of resistance to the exercise of the rights secured by the act in the way in which there was resistance some years back to voting legislation directed against racial discrimination.

On the contrary, most voting officials were cooperative, and readily took steps to institute the procedures necessary to permit registration and voting by overseas citizens.

The problems which were encountered were largely mechanical ones; that is, some citizens did not begin the process soon enough to enable them to comply with procedural requirements, or they received proper information or forms too late to then get their ballot by mail to the proper official given the exigencies of international mail delivery. The problems were not unlike others which periodically occur in any absentee balloting procedure, but they were compounded by the great distances involved and the lack of the kind of voter information which normally circulates to voters residing in their election districts.

Let me illustrate these points by the particulars of our experience. On May 6, 1976, the Civil Rights Division sent a letter to the Governors, secretaries of state and attorneys general, or corresponding officials of the 50 States, the District of Columbia, Puerto Rico, Guam, and the Virgin Islands. This letter, a copy of which I am submitting as an exhibit to this statement, explained the Department's responsibility under the Overseas Citizens Voting Rights Act, and enclosed with the letter, was a memorandum giving the Department's interpretation of the act. A copy of this memorandum is also submitted as an exhibit. [See exhibit 5 of the appendix of this hearing, p. 181.] The Division asked each jurisdiction to explain the steps it would take to comply with the act. After some followup correspondence and telephone calls, we had sufficient information by September 1976 to determine that all jurisdictions were in compliance with the act in the sense that registration and voting procedures provided for the casting of ballots by citizens living abroad and that election officials had received appropriate instructions.

In order to insure that procedures allowed the voting required by the act, 7 States took action through their legislatures, 39 States took administrative action by which election officials were instructed in procedures to comply with the act, and 8 States required no change in law or administrative procedures to comply. Five of the States which took administrative action did so pending action by their legislatures.

Despite the apparent good faith efforts to comply with the act by all affected jurisdictions, we began to receive information, in the form of correspondence from citizens abroad, beginning in early September, that difficulties were being encountered in obtaining absentee ballots, and as election time—November 2—approached, it was apparent that many citizens abroad would not be able to get absentee ballots to the appropriate officials in time to have those ballots counted. We continued to receive mail indicating an inability to cast an absentee ballot on the part of some citizens abroad through January of this year.

One step we took in October before election time which may have eased the problem to some extent was to ask the State Department to instruct all embassies and consulates to direct inquiring citizens to the appropriate State officials for information relative to registration and balloting. These instructions were given. This was an attempt to correct the apparent belief many citizens had that the embassies or consulates, or the Justice Department, were the places to get information about voting, or the places to apply for ballots.

As election time approached it came to our attention that many overseas citizens who were intending to vote in New York would not be able to get their ballots in by closing of the polls on November 2 because the ballots were sent so late. To help remedy this we filed suit in the U.S. district court in New York and obtained an order requiring election officials to accept and count any overseas ballots postmarked by November 2. The delay in sending the absentee ballots resulted largely from the fact that the ballots were printed late. According to New York officials, the ballots could not have been printed earlier because of the short time between the primary and general election.

Let me make two comments at this point. First, as our New York experience indicates, to the extent that there is a receipt of ballots after the election day, there are means of working through the courts to achieve some remedy for citizens whose ballots arrive late. There may be necessity in subsequent elections to take the same type of action that was taken in the New York experience.

And second, in terms of the problem created in New York because of the short time between the primary and the general elections, we were informed that there was a bill before the New York State Legislature designed to move the primary up in New York in order to alleviate any confusion or difficulty that was experienced previously. We have learned since, that that bill was vetoed by Governor Carey and, therefore, there might be some reason to expect that in future elections, because of the short time between the primary and general election that overseas citizens may have some difficulty getting their ballot back in time.

We learned after the election that delay in mailing of ballots kept many overseas citizens from voting in at least two other areas of the country. Because of litigation over the makeup of ballots the final ballot forms were not settled in Florida and Kansas until well into October, and we received complaints about late receipts from voters abroad who voted in both these States. One discovers these examples supporting the statement made by Senator Goldwater about the changes made in ballots which are very close to the election day.

We received a number of complaints from citizens living abroad who claimed that they were unable to vote for various reasons. Not all were voting under the Overseas Voting Rights Act, but all, obviously, were voting by absentee ballot. Since we have no way of knowing how many people voted, and how many persons we did not learn of who could not vote, the numbers do not mean anything. However, the reasons some of these people did not get to vote may be helpful to the subcommittee.

We discovered no one who was denied the franchise because of resistance on the part of officials to the requirements of the act, as I indicated earlier. We found three persons who did not get a ballot be-

cause of clerical or other problems. As I understand, those problems were simply a failure to check the right box on a form that was sent to the election official which threw off the entire mechanism.

Excluding the people who received ballots late from New York, a problem described earlier, the reasons we found for being denied an effective ballot and the numbers of voters for each reason—and I will not go through those—are set out in the text of the prepared statement. However, I did not want to bring them to the attention of the subcommittee, the fact that while we had no complaints from Brevard County, Fla., the situation there may have been similar to elsewhere where litigation was ongoing at the time the election approached and therefore the ballots could not be prepared soon enough to send abroad. There were 30 complaints that we received which fell into that general category.

In addition, the Women's Club of Tehran, Iran, furnished us with a list of 92 persons who it alleged received ballots too late from 22 different States. While we have no way of knowing what the reason was in each case, we did note that 17 of this group were from New York which had the late mailing problem noted earlier and 4 were from Florida where some counties had the ballots printed late because of litigation about candidacies, which most likely included Brevard County which I think includes Fort Lauderdale.

Eleven were from Texas where we were told by one county official that State law prohibited sending absentee ballots more than 20 days before an election. We found, however, that an exception to that rule existed for overseas citizens which allows those ballots to be sent 30 days prior to the election.

While we do not know whether this mistake caused anyone to be denied the opportunity to vote, we do know that ballots sent out by other States in the middle of October were not received by officials until after the general election.

An appropriate comment in light of our experience is that there was no bad faith on the part of election officials. There was this ignorance in some cases of even State procedures that might have made it easier for overseas citizens to receive ballots and send them back in time to be counted in the general election.

Obviously, many problems encountered in the last election would not have occurred if mail delivery could have been expedited. Whether such expedition is a realistic possibility is a matter on which I could not comment, and therefore, I cannot add very much to the subcommittee's consideration of those parts of the amendment relating to mail delivery. We defer to the postal authorities for comment on the efficacy of the proposed amendments relative to mail delivery.

It is my view, however, and that of the Department, that overseas citizens should have easy access to information about procedures, pertinent time limits, voter qualifications, and the names and addresses of responsible election officials. The Department, therefore, supports the idea reflected in section 3 of S. 703 that the presidential designee under the Federal Voting Assistance Act of 1955 be responsible for gathering and disseminating relevant information about each election. The presidential designee, I understand, is the Secretary of Defense, and officials of the Defense Department have been performing this function for military personnel for some time.

We do have some reservations, however, about that portion of the amendments which would direct the Attorney General to "facilitate the transmission of balloting material * * * to and from" overseas voters. The Attorney General has nothing to do with mail delivery, as the committee knows, nor voter registration or the mailing of absentee ballots and could really add nothing to the process. The effort ought to be, we believe, to direct the voter to the proper State official so that the official and the voter can communicate directly, and to put them in touch sufficiently early so that registration and related problems could be ironed out well in advance of election dates.

Before leaving the subject of election information and procedures, I would voice one additional reservation about the proposed amendments relating to the use of the "official postcard" registration form. The amendments propose that these forms be distributed for use by voters overseas, and "recommends" that the States accept them. Many States accept them now, and I doubt that the remaining States will accept them simply because it is recommended. Obviously, those States which do not accept them have good reasons for this refusal. My reservation is that by promoting these cards, or even revised cards, some voters who vote in States which will not accept them will be misled, and delays will result. There were instances in the past election where voters obtained cards from an embassy, filled them out, and subsequently were sent another application to fill out and return before they could be sent their ballot.

This delay was sometimes fatal to the effective exercise of the franchise. If these forms are to be disseminated, I believe the dissemination of the postcards should be at least accompanied by information listing those jurisdictions which accept them, including notice as to any limitations upon their use, and those which do not.

Further, our experience leads us to conclude that the provisions in S. 703 requiring that all necessary forms be sent and returned with the absentee ballot would improve the act's effectiveness. For example, both Chicago and Los Angeles require the submission of their own affidavit with the ballot to be returned with the ballot. Chicago, however, requires that the affidavit be received by the registrar before the ballot is sent. Los Angeles officials told us that they sent approximately 500 ballots and questionnaires abroad and about 450 were returned. Chicago sent 1,166 ballots abroad and only 597 were returned in time to be counted.

Finally, I would like to express the Department's position with regard to section 4 of S. 703 which relates to residence or domicile for tax purposes. As you know, the Department opposed such a provision in testimony before the last Congress, and the House of Representatives dropped such a provision from the act.

We still do not believe that there should be any attempt to override the operation of valid State laws regarding tax liability. States have the authority to tax persons who are genuinely domiciled in the State, and then to the extent that voting and registration to vote are taken, along with other relevant factors, as evidence of a genuine domicile, Federal law should not infringe upon the operation of that State law process.

In addition it may become our responsibility at some future time to defend the constitutionality of the act before the courts, and adding

such a provision would complicate the issue and limit the arguments which we could make in support of the act.

That completes my prepared statement, and I would be pleased to answer any questions the committee may have.

Thank you.

Senator PELL. Thank you very much, Mr. Days.

In connection with this last point you have mentioned related to taxation, I would like to touch on the constitutionality of section 4 of S. 703, the bill we are considering.

I trust you will appreciate the bill does not impose immunity from taxation by the States but rather forbids the exercise of the Federal right to vote to be considered a factor in determining tax liability. That is a different constitutional question. I think the important point is that we found that the great inhibition of people voting is that by voting they increase the liability to be taxed. One effort in being successful to get people to exercise the right to vote from abroad is to exempt them from this fear.

We had a dialogue in the Senate during the passage of Public Law 94–203 on this and we hope you can or could confirm the fact that the mere act of voting does not increase their liability, or should not be used as evidence of their liability for taxes.

Mr. DAYS. Well, to the extent that this amendment does not envision some type of immunity I suppose that does soften the blow from a constitutional standpoint. However, I think if one looks at the other side of the problem it may well be that States will fear that any attempt to tax overseas citizens will be precluded by the language in this provision. That is, in some way the fact that a citizen has voted abroad will serve to complicate any attempt by States to tax persons who in fact have domiciles in their jurisdictions and should be taxed.

One could pose the situation where a citizen abroad has not only voted but retains club memberships in the State, has certain property that's being used for income purposes and has other contacts with the jurisdiction. The State looking at those other contacts, other forms of contacts between the citizen and the State might then propose a tax.

I suppose if I were representing a citizen, I would say, "But that cannot be done because this provision talks about my not being held responsible for taxation in the State merely because I vote." I think there would be a great deal of litigation to try to determine to what extent the fact of voting was in the State process of determining taxation. I suppose our concern is that until there is a strong showing that there is abuse with respect to the taxation of overseas citizens who do nothing more than vote, it might be precipitous to include this type of language in the legislation.

Now to the extent that other groups know of the chilling effect of a State's action or a citizen's having been in fact subject to some type of abuse then perhaps this legislation or this type of amendment is appropriate. But I am sure we all agree that one of the greatest indicias of State sovereignty is the power to impose taxes, so long as the taxation complies with due process.

Senator PELL. There is no argument about the States right to impose taxation. But would you not agree that the evidence on which a

person is required to pay States taxes should not be the fact that he voted in a Federal election?

Mr. DAYS. Well, I think if one assumes the overall constitutionality of the act, this fact alone should not be a basis for taxation by a State, that's correct.

Senator PELL. Thank you very much.

I had better not pursue this any further. I appreciate that answer very much indeed.

The statement submitted to the committee by the Defense and State Departments recommends that the States be required to adopt the absentee balloting procedures contained in the 1955 Federal Voters Assistance Act, and proposed by S. 703 to be part of the Overseas Act. Their testimony indicated that less than half the States have adopted these recommended procedures and that as many as 19 States still do not give the franchise to all the people covered in the 1955 Act.

Do you have any views on their presentation at this time or do you prefer to submit a written statement after the hearing on that point?

Mr. DAYS. I would think we would prefer to prepare a statement. We are not aware of where the State Department got its figures included in the statement and exactly what the thrust of those figures would be. I think we have to examine that a little bit more carefully.

Senator PELL. Well, I thank you very much for your testimony.

I would also add the members of this committee may be submitting written questions in the next few days with respect to your written testimony. Subsequent witnesses also will be receiving questions from the members who are not here with me at this hearing.

Mr. DAYS. One final comment, and that is on the balloting procedures and the uniform procedures.

One of the problems that we envision is that States will have differing requirements for balloting and if there are going to be uniform postcards or some type of form for seeking ballots the form has to be comprehensive so States feel they are getting all the information they legitimately require to determine whether that person is in fact one who is entitled to vote under the terms of the act as it presently reads.

Senator PELL. Thank you.

Mr. DAYS. Thank you.

Senator PELL. Our next witness is Mr. John C. Broger, deputy coordinator for the Federal voting assistance program.

Wecome, Mr. Broger. You have a very good statement here. Any portion that you care not to read will be inserted into the record.

Mr. BROGER. Thank you, Mr. Chairman.

TESTIMONY OF JOHN C. BROGER, DEPUTY COORDINATOR, FEDERAL VOTING ASSISTANCE PROGRAM

Mr. BROGER. I would like to introduce to you Mr. Dave Stewart on my right who is chief of our Federal Voting Assistance Division and behind me is Capt. Richard Hermann of the Army JAG Corps. These are the two professionals who handle the voter assistance program.

I appreciate the opportunity, Mr. Chairman, of testifying before you today. I understand the time constraints placed on the committee so I will limit my remarks to highlights of the Federal voting assist-

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ance program and recommendations for its improvement. More detailed information is contained in the written statement which has been given to you and which I request be included as part of the record of the hearing.

My testimony will consist of two parts. The first part will address the Federal voting assistance program. In the second part we will discuss our observations of the operation of the Overseas Citizens Voting Rights Act of 1975, and we will suggest modifications to existing Federal absentee voting legislation and Senate bill 703.

First, by way of background; the Federal voting assistance program was begun in 1955 as the result of the Federal Voting Assistance Act of 1955 which was enacted to permit and assist members of the Armed Forces, Federal employees overseas, and others associated with the Armed Forces to vote when they were away from their places of residence. Members of the Armed Forces and their families were the largest group affected and it was their voting difficulties which dramatized the need for such legislation. These categories of voters were expanded to include U.S. citizens temporarily residing outside the territorial limits of the United States by amendment in 1968.

This act recommended detailed action for the States to take in order to permit absentee voting by those covered. The States have adopted many of the recommendations of Congress but without uniformity either among the States or within them for various categories of voters.

The Secretary of Defense serves as Presidential designee to administer and facilitate Federal responsibilities under the 1955 act, pursuant to Executive Order 10646, dated November 22, 1955, and has delegated the responsibility for the Federal voting assistance program to the Assistant Secretary of Defense—Public Affairs.

Second, we would like to suggest modifications to existing absentee voting laws, in view of the experience which we have had with absentee voting. S. 703 would authorize balloting material to be mailed from any Armed Forces post office in an overseas area. The Department of Defense urges that this provision be deleted from the legislation. Civilian use of Armed Forces postal facilities will result in a number of difficulties.

The Department of Defense would be required to pay for the overseas transportation of civilian mail in the military mail system and, therefore, would incur additional expenses.

Also the services of military postal facilities are limited to those countries and locations where the military postal system presently operates. Thus, MPS facilities are not accessible to all eligible voters, and persons unable to obtain access to the MPS would still be required to use international postal service.

Use of these facilities may be subject to further restrictions imposed by the host government, since it is customary for most sovereign nations to preserve a monopoly on postal services. Many host countries that heretofore have permitted operation of MPS under the provisions of the Status of Forces agreements might become less cooperative should the use of the MPS system be expanded. This could work to the detriment of the fulltime users of the MPS.

I might further say in some cases this might even be a danger to U.S. personnel residing overseas in some countries where it would be

unwise for the U.S. military mail to be attempted to be put at their disposal.

If the MPS were to be extended for use by such otherwise ineligible patrons, we believe that the Department of Defense would also receive requests for exceptions to use the MPS for other purposes, such as the mailing of balloting materials to the voter, as well as other nonvoting projects.

Access to military installations overseas is, in some cases, restricted.

Finally, the Department of Defense may incur additional liability if a civilian is injured while on a U.S. installation.

As deputy coordinator of the Federal voting assistance program, I would like to comment on the benefits and shortcomings of current absentee voting legislation.

Although the Federal voting assistance program is not required by law to administer the Overseas Citizens Voting Rights Act of 1975, as a result of working with State election officials and voters with respect to the Federal voting assistance act of 1955, we have become familiar with some of the problems experienced by both State election officials and voters under this act.

The 1955 and 1975 acts are so closely related that it is impossible to discuss one without reference to the other.

A major problem evident during the 1976 elections was the confusion caused by the overlap between the 1975 act and the 1955 act. The 1955 act recommends to the States that they permit certain categories of absentees to register and vote in all State and Federal special, primary, and general elections. One category of voters addressed by the 1955 act is U.S. citizens temporarily residing outside the territorial limits of the United States. A significant number of States have adopted some or all of the 1955 act's specific recommendations for the benefit of this category. However, since the 1955 act nowhere defines "temporarily residing," eligibility varies among the States. Since each State has adopted procedural requirements to conform with its overall philosophy of voting, the procedures for registration and voting vary as well.

The 1975 act limits its application to each citizen "residing outside the United States." All overseas citizens covered by the 1955 act are eligible to vote under the 1975 act procedures, although only for Federeral elections. Many local election administrators were confused by this dual eligibility as were many overseas voters. The results were defective and sometimes wrong application forms, improper ballots, failure to respond in time, if at all, to application forms, inadvertent disenfranchisement, and a potential for unanticipated tax consequences for having voted a complete ballot since some States elected to send voters who expressly applied pursuant to the 1975 law a complete ballot.

Another area of confusion to election officials was the question of whether free postage was available for ballot materials. The 1975 act was silent on this question, whereas it is authorized for persons covered by the 1955 act.

The 1975 act mandates voting rights and opportunities for a class of voters whom the Congress has addressed in legislation since 1968. The 1955 act, on the other hand, merely recommends to the States that they take action to enfranchise and accord voting opportunities to

voters whose special situation at election time has been of great concern to the Congress for 35 years. Therefore, the right of overseas citizens to vote now receives greater Federal protection than that of members of the Armed Forces, the merchant marine, and their families.

Every State permits Armed Forces members to register and vote absentee, and all but one "State"—and I put "State" in quotes because it is not one of the 50 States—permit their spouses to do the same. Nineteen jurisdictions have not yet enfranchised all the persons addressed by the 1955 Act. Twenty-six States have not yet adopted all of the essential recommended balloting procedures vital to insure the effective exercise of the right to vote.

Another area of difficulty for all absentee voters has been timely ballot transmission. A substantial number of election jurisdictions were unable to mail absentee ballots in sufficient time for them to be received, voted, witnessed, returned, and counted. This is illustrated by appendix C to this statement and should be before you. While late primaries are being widely blamed as the cause of ballot preparation delays, they are only one of the elements contributing to this problem. Our experience has shown that of greater significance are legally or administratively sanctioned late candidate and question certification dates and suits to enjoin ballot preparation brought by candidates seeking ballot access or contesting the listing of other candidates.

Each act covers a different class or classes of absentee voters, accords the voters a different bundle of voting rights and opportunities, and addresses different elections. Some very important procedures are specifically addressed by the legislation while others of equal importance are not addressed. As a result, there is often unequal and arbitrary treatment of the same category of voters in different States, and of different categories of voters in the same State. The drafting of new legislation onto existing election codes, with no effort to synthesize the entire absentee process, often frustrates the best efforts of both the would-be absentee participant and the election administrator who is charged with interpreting and applying the multitude of unclear, overlapping, and sometimes conflicting absentee provisions.

The combinations and permutations of State absentee registration and voting requirements, procedures, forms, qualifications, deadlines, practices, and categories, are profuse. As a result, many absentee voters are disenfranchised, regardless of their apparent statutory rights. Many more voters are unnecessarily inconvenienced by a too complex system. Finally, a large number of voters are intimidated and discouraged from attempting to participate at all in the electoral process. Clearly, what is needed is a planned systematic reform.

The subcommittee's concern with the administration and implementation of the 1975 act is both timely and well founded. S. 703's recommended balloting procedures would enhance voting opportunities for covered persons if adopted by the States. We concur in these procedures. We would like to suggest, however, that these and several other essential balloting procedures be made mandatory for Federal elections and apply to all persons covered by both the 1975 and 1955 acts.

Our first recommendation is that the right to register and vote absentee in Federal elections be granted to persons addressed by the 1955 act.

Second, we suggest that the following balloting procedures should be mandatory for both 1955 and 1975 act voters:

There should be a single post card application for both registration and absentee ballots for all Federal elections in the remainder of the calendar year in which received.

Each State should provide the registration of covered persons by either waiving registration, accepting the post card application as the registration form, or, if a special registration form is required, provide that the form will be sent and may be returned with the absentee ballot.

Each State should immediately notify an applicant whose application has been denied, the reasons for such denial, and any corrective action available to the applicant.

Post card applications received up to 30 days before any Federal election should be effective.

Ballots should be mailed to qualified applicants not later than 20 days before the election.

The deadline for accepting voted ballots should be extended to 10 days after election day for ballots postmarked no later than election day.

Post cards and ballots should be carried free of postage in the U.S. mails and suitably identified to expedite handling.

We agree with the provisions in 703 and authorizing the presidential designee to revise the current Federal post card application form. The chart before you, I believe it is appendix E, highlights the deficiencies in the current form, and recommends a substitute.

These procedures, if adopted as part of a comprehensive Federal absentee voting rights act, would guarantee that voters now covered by the 1955 and the 1975 acts could effectively participate in the electoral process.

In conclusion, what we recommend is consolidation of the two Federal statutes controlling absentee voting rights, procedures, and recommendations into a single law. This single law would provide a systematic solution to the most difficult problems experienced by absentee voters.

I request that the record of these hearings remain open until April 5, Mr. Chairman. At that time we will supply preliminary data on the postelection survey of U.S. citizens and Government employees overseas and military personnel for inclusion in the written record.

We would also like to present the subcommittee with specific suggestions for legislation embodying our recommendations, pending clearance by appropriate departments and agencies.

I thank you for this opportunity to testify, Mr. Chairman, and if there are any questions I would be glad to answer them.

Senator PELL. Thank you.

Basically your thoughts of a recodification of the two acts and the amendments and the suggestion made today I think have some merit. We are sending this question on to the Justice Department to get a reading from them to see if they go along with it.

I would hope it might be a Governmentwide position in this regard. Although I realize it is early for a Governmentwide position on anything at the present time. But this would help us, I think, from the Senate's viewpoint where we feel very sympathetic to such a thought

although it might postpone for a certain amount of time the enactment of this bill. But the end result would be better than three separate pieces of legislation that people would have to look at.

S. 703 would assign responsibility for implementing both the 1955 and the 1975 act to one agency, yourself. Do you feel that the Department of Defense would be able to carry out those responsibilities or would it be limited by not having installations in many countries where American citizens are located? I realize I am always complaining that you have got too many installations around the globe. But there are a few countries where there are no Defense Department installations. Do you think you would be inhibited in being unable to carry out these responsibilities?

Mr. BROGER. I think we can carry them out, Mr. Chairman. However, we have been considering the possibility that there might be other arrangements made whereby we could perform our normal function for the defense-related personnel, both military and civilian, and perhaps some other agency of Government could carry out the other parts of the responsibilities. I think we are going to make that recommendation through our Department to the Secretary and we hope through him to the President.

Senator PELL. For instance, in a country like Czechoslovakia where you do not have any U.S. Federal installations except for the Embassy. How would it be handled there? By the attaché or how would it be done?

Mr. BROGER. It would be difficult in a situation like that. That is an example of the problem of how we would carry out such a mandate. I think this should be thought through carefully. It does not appear to me that the Department of Defense is the right agency to carry out this responsibility in such areas.

Senator PELL. Well, then, would the Department of Defense delegate it to the State Department or how would it be handled?

Mr. BROGER. Well, we would not have the authority to do that.

Senator PELL. Excuse me, but we could write it into the law that you did have it.

Mr. BROGER. Yes; that is possible.

I am wondering, however, if the President should not keep—and this is my personal view——

Senator PELL. Yes.

Mr. BROGER [continuing]. Should not keep the authority and cause that delegation to be wherever it serves the best interest. We would continue to want to serve the Department of Defense personnel.

I am thinking in terms of the new Federal Election Commission for instance. They will be set up to do a lot of the research and could carry out many of these additional responsibilities. I have some difficulty figuring out just how we would advertise in foreign nations and get to the various U.S. citizens that would be qualified to vote. Many of them who perhaps to not even stay in touch with the State Department. So I think there is a problem there and I am wondering if perhaps the Commission might not be designated to work with us to accomplish that purpose. We would certainly support them in any way we could.

Senator PELL. In your testimony you suggest that many nations that supported the provisions of the Status of Forces Agreements

might become less cooperative should the use of the MPS—(APO)—system be expanded to use by civilians.

Could there be a legal restriction on the use? I always thought that either the APO's were open to the use by our citizens or they were not.

Mr. BROGER. No, sir, they are not open. And as you know many of the postal services are State controlled in other countries and they might see that as an opportunity of bypassing their own postal service and the revenue that would be derived therefrom. Also there are many Americans who are always asking for APO privileges and this might be one more opportunity to open the door of a Pandora's box for us.

In one instance, I understand it is illegal for a citizen to vote in that country because of their nonbelligerent status and use their system to participate in our process.

Senator PELL. Which nation is that?

Mr. BROGER. Switzerland.

Senator PELL. Our citizens are prohibited from voting absentee in Switzerland?

Mr. BROGER. Mr. Stewart says they turn their back on it but it is an improper act.

Senator PELL. That is interesting.

Mr. BROGER. Yes.

Senator PELL. Well, thank you very much. We will submit more questions shortly but I thank you for your willingness to be with us today.

Mr. BROGER. Thank you. It has been a pleasure.

[The statement of Mr. Broger follows:]

STATEMENT OF JOHN C. BROGER, DEPUTY COORDINATOR, FEDERAL VOTING ASSISTANCE PROGRAM

INTRODUCTION

My name is John C. Broger, appearing before you today as Deputy Coordinator of the Federal Voting Assistance Program, Department of Defense. I want to thank you for this opportunity to testify on S. 703 and on absentee voting in general.

THE FEDERAL VOTING ASSISTANCE PROGRAM

The first Federal absentee voting law was passed by Congress in 1942, Act of Sept. 16, 1942, Ch. 561, 56 Stat. 753. This law mandated that States permit members of the Armed Forces to vote absentee in Federal elections in time of war, and established certain required balloting procedures. The 1942 law was amended in 1944, Act of April 1, 1944, Ch. 150, 58 Stat. 136, to provide expanded opportunities to vote and to bring the merchant marine and civilians attached to the Armed Forces within the coverage of the law. The 1942 law was to expire in 1946, so in that year Congress enacted permanent service absentee voting legislation, Act of April 19, 1946, Ch. 142, 60 Stat. 96. These amendments to the 1942 Act eliminated most of the mandatory provisions of the earlier law, replaced them with recommendations to the States that Armed Forces members be allowed to vote absentee, and made 17 specific procedural recommendations to effectuate the absentee process. The standardized postcard ballot application, to be prepared and distributed at Federal expense, provided for in the original law, was continued, as was the authorization for free transportation of ballot mail.

State adoption of these recommendations was not rapidly forthcoming. In addition, the approaching effective date of the peace treaty with Japan would automatically eliminate the "time-of-war" right to vote granted to covered citizens by the 1942 Act, as amended. As a result of these and other deficiencies

in the existing law, President Truman in 1951 requested the American Political Science Association to study the problem of Armed Forces voting and prepare recommendations for his consideration. The Association established a Committee on Soldier Voting, which submitted a report to the President in 1952.

The Federal Voting Assistance Act of 1955

Acting on this report, President Truman requested that Congress enact legislation to remedy the existing obstacles to voting by Armed Forces members and certain other persons. Accordingly, Congress began deliberations which led to the passage of the Federal Voting Assistance Act of 1955, 42 U.S.C. ss1973cc–1973–cc26 (Supp. V 1976) (hereinafter, the 1955 Act) (exhibit 3 of this hearing, p. 172). While this Act again merely recommended that the States take action to authorize and simplify absentee voting, it did present a more detailed plan for the States to enact, and delineated more precisely Federal responsibilities in the area of absentee voting.

The 1955 Act recommended that the States permit the following otherwise eligible persons from their voting residence to vote absentee in any primary, special, or general election:

(1) Active duty Armed Forces members, their spouses and dependents.

(2) United States merchant marine members, their spouses and dependents;

(3) Federally-employed civilians overseas and their spouses and dependents residing with or accompanying them.

(4) Personnel of private organizations officially attached to and assisting Armed Forces members and their dependents.

In 1968, Congress amended the 1955 Act to replace the persons listed in (3) and (4) above with a new category: U.S. ciitzens temporarily residing outside the territorial limits of the United States and the District of Columbia, Act of June 18, 1968, Pub. L. 90–343, s101(3), 82 Stat. 180.

Title II of the 1955 Act authorized the President to designate, with provision for redelegation, the head of any exeutive department or agency to coordinate and facilitate actions required to discharge Federal responsibilities under the Act.

The President, by Executive Order No. 10646, 3 CFR 1954–1958 Comp., pp. 281–82, dated 23 November 1955 designated the Secretary of Defense to administer Federal responsibilities under the 1955 Act, and authorized the Secretary to delegate any or all of his authority to any person or persons within the Department of Defense. The Secretary of Defense has delegated all of his authority and responsibilities under the Act to the Assistant Secretary of Defense for Public Affairs, designating him Coordinator, Federal Voting Assistance Program. In April, 1970, the Coordinator activated a Federal Voting Assistance Task Force to assist in the administration of Federal responsibilities under the Act, as amended. In 1973, the Task Force became the permanent Federal Voting Assistance Division (hereinafter, FVAD).

FVAD administers the Federal Voting Assistance Program under my direction. The 1955 Act directs the Presidential designee to:

(1) Coordinate and facilitate such actions as may be required to discharge Federal responsibilities under the Act;

(2) Request from other executive departments and agencies such assistance as he deems necessary to effectuate the purposes of the Act;

(3) Submit a report to the President and Congress in odd-numbered years, covering administration of Federal responsibilities, progress of the States in carrying out the recommendations of Title I of the Act, statistical data relating to absentee voting, and such other information as he may consider appropriate;

(4) Request each state to furnish him with current absentee voting information, to include election dates, officers to be elected, constitutional amendments, and other proposals to be voted on, absentee registration and voting procedures, and other relevant data;

(5) Furnish this information, as soon as possible after receipt, to the departments and agencies of the executive branch affected by the Act for reprinting and distribution to covered persons; and

(6) Request the Administrator of General Services to print and distribute Federal Post Card Applications of Absentee Ballots (hereinafter, FPCA).

Department of Defense Directive 1000.4 (July 10, 1971) (Appendix B) implements the 1955 Act and Executive Order No. 10646 for Defense Department components.

Current Federal absentee voting legislation

As FVAD is the only Federal agency extensively involved in the absentee voting process, and because of its close contact with State election laws, administration, and practices, we are in a favorable position to assess the operation of both Federal and State absentee election laws and procedures.

We are not involved in any way with Section 202 of the Voting Rights Act Amendments of 1970, 42 U.S.C. § 1973–aa (1970). Consequently, I am going to limit my discussion to the other two Federal absentee voting statutes currently in operation—the 1955 Act and the Overseas Citizens Voting Rights Act of 1975, 42 U.S.C. §§ 1973–dd–1973–dd–5 (Supp. V 1976) (hereinafter, the 1975 Act).

The 1955 act

The scope of the coverage of section 101 of the 1955 Act has been outlined above. Every State (including the District of Columbia, the Commonwealth of Puerto Rico, and the Territories of Guam and the Virgin Islands in the term "State" for the purposes of this statement) now permits Armed Forces members to register and vote absentee, and all but one State permit their spouses to do the same. Nineteen jurisdictions have not yet enfranchised all of the persons addressed by section 101.

Section 102 recommended 12 balloting procedures to the States "To afford ample opportunity for persons covered by section 101 of this title to vote for Federal, State, and local officials and to use the absentee balloting procedures to the greatest extent possible. . . ." Twenty-six States have not yet adopted all of the key provisions of section 102, i.e., those that impact most directly on the opportunity to participate in elections.

Title II of the Act, outlining Federal responsibilities, has already been discussed to some extent. The Congressional design for administration of the Act has, I believe, been achieved, particularly with respect to Armed Forces voters. Section 204 of title II prescribes the form and content of the FPCA. The FPCA has, over the years, gained instant recognition among both absentee voters worldwide, and election officials all over the country.

Title III of the 1955 Act contains general provisions, including authorization in section 302 for official post cards, ballots, voting instructions, and ballot envelopes to be transmitted free of postage, including air mail postage, in the United States mails.

The 1975 act

The 1975 Act creates a substantive right to register and vote absentee in Federal elections for the benefit of persons meeting the requirements of section 3 of the Act, and requires each State to provide, by law, a mechanism, limited by certain specified deadlines, for eligible persons to exercise that right. The 1975 Act also establishes a means for enforcing the statute. States with less restrictive voting practices than those prescribed in the Act are expressly permitted to continue them in effect.

Interaction of the 1955 and 1975 acts

The 1975 Act was first in effect during the 1976 election year. One of the major problems observed by FVAD in 1976 was the confusion caused among both voters and election officials by the overlapping coverage of the 1955 and 1975 Acts. One of the categories of voters addressed by the 1955 Act's recommendations is United States citizens temporarily residing outside the territorial limits of the United States and the District of Columbia. Neither the 1955 Act nor its legislative history clearly define the term "temporarily residing" or the geographic eligibility established by the term "territorial limits of the United States and the District of Columbia." Defining these terms has been left to the 34 States that have adopted the recommendation of the 1955 Act to permit these persons to register and vote absentee. As a result, voter eligibility for these persons varies considerably from State-to-State.

The 1975 Act enfranchises, for Federal elections, all otherwise eligible overseas citizens, regardless of the criteria the States employ to determine eligibility under the 1955 Act. Assuming "overseas" in both Acts to have the same meaning, the 1975 Act apparently enfranchises almost everyone who, by any State's definition of "temporarily residing," would also be covered by the 1955 Act, but only for Federal elections. Many of these citizens are also eligible, under State law adoption of the 1955 Act recommendation, to vote absentee in State and local elections. FVAD observed that many overseas voters as well as many election

officials were confused by this dual eligibility. The result was often materially defective application forms, and sometimes use of the wrong application forms, Federal ballots only where a full ballot was authorized, full ballots where only a Federal ballot was authorized and requested (thereby giving rise to a potential for unanticipated tax consequences), failure to meet deadlines, failure to respond timely to applications, and of course, the inadvertent disenfranchisement of some voters.

The 1975 Act's silence on the question of free postage for balloting materials (authorized for persons covered by the 1955 Act) also confused election officials.

Each Act covers a different class or classes of absentee voters. Each Act accords its voters a different bundle of voting rights and opportunities. Each Act addresses itself to different elections. Each Act prescribes or recommends that the States prescribe absentee registration and voting procedures and deadlines. Some very important procedures are specifically addressed by the legislation while others of equal importance are not addressed.

The 1955 Act merely recommends, on behalf of voters whose special situation at election time has been of great concern to the Congress for 35 years. The 1975 Act mandates voting rights and opportunities for a class of voters whom the Congress has addressed in legislation since 1968. The right of overseas citizens to vote now receives greater Federal protection than that of members of the Armed Forces, the merchant marine, and their families.

The combinations and permutations of absentee registration and voting requirements, procedures, forms, qualifications, deadlines, practices, and categories, are profuse and increasing. As a result, many absentee voters are disenfranchised, regardless of their apparent statutory rights, if any. Many more voters are unnecessarily inconvenienced by a too-complex system. Finally, a large number of voters are intimidated and discouraged from attempting to participate at all in the electoral process. Clearly, some revision of the current absentee voting system is necessary.

Scope of the problem

The Subcommittee's concern with the administration and implementation of the 1975 Act is both timely and well-founded. The chief difficulty with the law is also the major difficulty inherent in all absentee voting legislation, Federal and State. The grafting of new legislation onto existing election codes, with no effort to synthesize the entire absentee process, often frustrates the best efforts of both the would-be absentee participant and the election administrator who is charged with interpreting and applying the multitude of unclear, overlapping, and sometimes conflicting absentee provisions. What is needed is a broadly conceived, systemic approach to absentee voting legislation. Consequently, I shall not limit the remainder of my remarks solely to the problems raised by the 1975 Act as an isolated phenomenon. I would like to discuss, in addition, recommendations designed to resolve the most significant problems associated with the 1955 Act as well.

S. 703

S. 703 attempts to overcome some of the major shortcomings of the 1975 Act.

Clause (2) of section 3 of S. 703 would require the Presidential designee to publicize, in the manner best designed to reach persons meeting the requirements of section 3 of the 1975 Act, the right of such persons to vote in Federal elections and the procedures available to enforce that right.

Section 3 of S.703 also directs the Attorney General and the Federal Election Commission to assist the Presidential designee in collecting voting information from the States, where consistent with their respective duties. Close cooperation between Federal government departments and agencies is vital to the success of a voting assistance program. The Federal Election Commission is potentially a valuable source of information. I do not believe it would be very difficult for the Commission to provide the Presidential designee with such information as election dates and officers to be elected for Federal elections. Both types of information are currently obtained by the Commission in the ordinary course of its duties.

Similarly, the Attorney General obtains some voting information from the States in the course of his duties. It has been the experience of FVAD that obtaining accurate information and preparing information usable by the voter requires much more than simply securing the latest version of the State constitution and election code, administrative regulations, attorney general opinions, and court cases. Quite often, extensive communication with State and local officials is required in order to interpret the law and to obtain a precise reading

of absentee voting procedures. I do not believe the information gathering task of the Presidential designee would be greatly assisted by the information available through the good offices of the Attorney General.

S.703 also addresses itself to another major shortcoming of the 1975 Act—the question of balloting procedures. It does this by adopting some of the procedural language of the 1955 Act. Specifically, it makes four recommendations to the States, provides for free postage for balloting materials, and assigns Federal government departments and agencies certain printing and transmitting responsibilities.

The bill recommends that States accept the official postcard authorized in clause (4) of section 1 as a simultaneous application for registration and for an absentee ballot. The existing official postcard, the FPCA (See page A–4 of Appendix A), is a very poor vehicle to induce the States to adopt this recommendation. It was designed for use by persons covered by the 1955 Act and necessitates considerable creativity on the part of an applicant pursuant to the 1975 Act to provide the State with the information required by the latter statute. S. 703 recognizes this deficiency and in section 7 directs the Presidential designee to design a new comprehensive postcard to replace the FPCA which would be authorized for use by voters under both the 1955 and 1975 Acts. Nevertheless, we perceive the following difficulties with this approach:

(1) There are currently approximately 2.5 million FPCAs in stock, at all levels of distribution.

(2) There is less incentive for the States to adopt this recommendation now than there would have been in 1976. Since the 1975 Act did not mandate or recommend any procedures to implement the law, many, if not most States, devised their own application forms and procedures, adapting these to existing filing systems and administrative idosyncracies.

(3) closely related to (2) above, S.703 does not link free postage for balloting materials to adoption of the postcard recommendation. This leaves the States free to ignore the latter while benefitting from the former. Several States already do this under the 1955 Act with respect to certain categories of voters. Admittedly, the free postage provision is a two-pronged incentive, directed at encouraging both the State and the voter to participate in the electoral process. However, this incentive is reduced considerably for overseas citizens, many of whom reside far from a U.S. postal facility and consequently must pay the foreign postage necessary to transmit their ballots to the United States.

(4) Election officials may be confused by the same application form from persons covered under different laws and for whom there are different deadlines, registration forms, procedures, and ballots.

S. 703 also recommends that each State authorize and instruct its election officials to be diligent in their responses to voter applications for registration or absentee ballots. This same language can also be found in clause (6) of section 102 of the 1955 Act. We believe it has had almost no impact on reducing the very major problem of disenfranchisement due to ballot delay.

The Subcommittee's concern with the administration and implementation of the 1975 Act is both timely and well-founded. S.703's recommended balloting procedures would enhance voting opportunities for covered persons if adopted by the States. We concur in these procedures. We would like to suggest, however, that these and several other essential balloting procedures be made mandatory for Federal elections and apply to all persons covered by both the 1955 and 1975 Acts.

Our first recommendation is that the right to register and vote absentee in Federal elections be granted to persons addressed by the 1955 Act.

Under persent law, all of the States permit Armed Forces members in active service to register (if required) and vote absentee in Federal and State elections. Their spouses and dependents, and members of the merchant marine and their spouses and dependents have not been so universally favored. In addition, some States that permit these latter persons to register or vote absentee have different and often more burdensome balloting procedures for them. This suggestion, in combination with those noted below, will minimize unequal treatment of these voters.

FVAD has discovered that the substantive right to vote is worth little unless accompanied by a procedure ensuring that the right can be easily, effectively, and timely exercised. Such administrative procedures, with the exception of application and ballot receipt deadlines, were unfortunately omitted from the 1975 Act. Although balloting procedures were recommended in the 1955 Act, they have not generally served to expand the opportunity to vote as much as they were

intended. The 1955 Act procedures, being mere recommendations, are not uniformly in effect either among the several States or even within each individual State. The vast array of differences in voter requirements and treatment resulting therefrom has caused substantial confusion on three levels:

(1) Among election officials who often must be aware of and alert to numerous absentee process subsystems in effect in their jurisdictions, each one requiring a different response or responses for a different class of voters.

(2) Among voting assistance officers and counselors (e.g., Armed Forces officers, U.S. Consuls) who must become conversant with the different laws and procedures of 54 jurisdictions and with different procedures within each jurisdiction.

(3) Among voters who frequently are unsure of which procedure applies to them.

Every instance of non-uniformity of basic absentee election procedures, forms, and deadlines increases the potential for mistakes, and consequently for disenfranchisement.

These suggested procedural requirements represent the bare minimum required to ensure the exercise of the right to vote. Many States already have the same or similar procedures in effect for certain categories of absentee voters addressed by existing Federal law.

(1) There should be a single post card application for both registration and absentee ballots for all Federal elections in the remainder of the calendar year in which received. A number of States now require that some categories of absentee voters engage in an extensive correspondence back-and-forth in order to vote in Federal elections. Further complicating the absentee process are many "not-earlier-than" and "not-later-than" deadlines for the voter to comply with. The deadlines within a State may vary, not only with the nature of the voter, but also with the nature of the election (e.g., general, special, primary, presidential primary). Requiring that one post card application serve as both the registration and absentee ballot request reflects the current law as it exists with respect to at least one of the categories of persons addressed by Federal absentee voting laws in 48 of the 54 "States."

(2) Each state should provide for the registration of covered persons by either waiving registration, accepting the post card application as the registration form, or, if a special registration form is required, provide that the form will be sent and may be returned with the absentee ballot. All except six States already have one of these alternatives in effect for at least one category of voters. Therefore, very little revision of State administrative apparatus will be required to implement this clause.

(3) Each State should immediately notify any applicant whose application has been denied, the reasons for each denial, and any corrective action available to the applicant. This suggestion would provide that each state will answer its mail. Under existing law and election administration procedures, applicants are often unaware that their applications for registration or absentee ballots have been rejected, either because the application was received outside the time period within which it may be accepted, or the applicant does not qualify under State law, or there has been some material or non-material defect in the application, or for other reasons. A substantial number of election jurisdictions do not have a procedure for giving such notice to the applicant. As a result, applicants are all too often disenfranchised because they believe they are successfully registered or will receive an absentee ballot, and only find out the contrary too late to correct the deficiency.

(4) Post card applications received up to 30 days before a Federal election should be effective. This suggestion adopts the 30-day application deadline of section 4 of the 1975 Act and would make it uniform for all covered absentees. It is also anticipated that, by implication, it will eliminate the deadlines currently in effect in some States before which election officials will not accept absentee ballot applications. FVAD has observed numerous instances where ballot applications received prior to the time prescribed for their receipt, were rejected for that reason. Some election jurisdictions, by local policy, do retain such applications until the time prescribed for their receipt, whereupon they are processed.

(5) Ballots should be mailed to qualified applicants no later than 20 days before the election. This provision would guarantee that absentee voters would receive their ballots sufficiently in advance of the election to participate and have their ballots counted albeit not for every office if, in fact, the ballot format is altered after the mailing of absentee ballots. The FVAD is aware of very

many examples of persons receiving ballots too late to vote them and return them in time to be tabulated. A survey conducted by FVAD which illustrates the problem of delayed ballots is shown in Appendix C.

(6) The deadline for accepting voted ballots should be extended to 10 days after election for ballots postmarked no later than election day. This suggestion would work hand-in-hand with the previous one (number (5)), to ensure the tabulation of absentee ballots. It is directed at overcoming the severe time restrictions on voting at the other end of the absentee process. It adapts the principles of the law governing ballot receipt deadlines as it currently exists in the State with the least restrictive such deadline—Washington. Section 4 of the 1975 Act mandates that ballots will be counted if received by the time of closing of the polls on election day. Under existing law, 52 States require that ballots be received by the time of closing of the polls on election day or before for voters addressed by the 1955 Act. These deadlines are unrealistic and contribute to the disenfranchisement of large numbers of absentee voters (See Appendix D). This suggestion would authorize voters to "cast" their ballots in accordance with the same deadlines that apply to voters fortunate enough to be present at the polls on election day. Ten days will permit voters farthest away from their election districts to get their ballots returned in time to be counted.

(7) Post cards and ballots for all covered voters should be carried free of postage in the U.S. mails and suitably identified to expedite handling.

We agree with the provision in S.703 authorizing the Presidential designee to revise the current Federal post card application form. The chart at Appendix E highlights the deficiencies in the current form, and recommends a substitute.

These procedures would guarantee that voters now covered by the 1955 and 1975 Acts could effectively participate in the electoral process.

S. 703 would authorize balloting material to be mailed from any Armed Forces post office in an overseas area. The Department of Defense urges that this provision be deleted from the legislation. Civilian use of Armed Forces postal facilities will result in a number of difficulties.

The Department of Defense would be required to pay for the overseas transportation of civilian mail in the military mail system, and therefore, would incur additional expense.

Also, the services of military postal facilities are limited to those countries and locations where the Military Postal System (MPS) presently operates. Thus, MPS facilities are not accessible to all eligible voters, and persons unable to obtain access to the MPS would still be required to use international mail service.

Use of these facilities may be subject to further restrictions imposed by the host Government, since it is customary for most sovereign nations to preserve a monopoly on postal services. Many host countries that heretofore have permitted operation of MPS under the provisions of the Status of Forces Agreements might become less cooperative should the use of the MPS system be expanded. This could work to the detriment of the fulltime users of the MPS.

If the MPS were to be extended for use by such otherwise ineligible patrons, we believe that the Department of Defense would also receive requests for exceptions to use the MPS for other purposes, such as the mailing of balloting materials to the voter, as well as other non-voting projects.

Access to military installations overseas is, in some cases, restricted.

Finally, the Department of Defense may incur additional liability if a civilian is injured while on a U.S. installation.

I shall limit my remarks on S. 703 to the foregoing. We do not feel that we should comment on the responsibilities that the bill would confer upon other departments and agencies. These matters are best left to their expertise. We would like to commend Senator Pell for introducing this bill. S. 703 looks at the problems of absentee voting as more than an isolated difficulty of a narrow class of persons.

SUMMARY

I think that these hearings point out the need for revision of Federal absentee voting laws. I appreciate the opportunity to testify before you and respectfully request that legislation along the lines of our recommendations be considered.

Note.—The material contained in Appendix A of this statement had already been inserted in the hearing record and may be found as exhibit 3 of the Appendix of this hearing, p. 172.

APPENDIX B

July 10, 1971
NUMBER 1000.4

ASD(M&RA)

Department of Defense Directive

SUBJECT: Absentee Voting

References:
(a) Executive Order 10646, November 23, 1955 (20 Federal Register 8681)
(b) Federal Voting Assistance Act, Public Law 296, 84th Congress, as amended by Public Laws 90-343 and 90-344 (50 U.S.C. 1451-1476)
(c) DoD Directive 5120.27, "Assistant Secretary of Defense (Manpower and Reserve Affairs)," October 22, 1968
(d) DoD Directive 1344.10, "Political Activities by Members of the Armed Forces," September 23, 1969
(e) DoD Directive 1000.4, "Absentee Voting," September 25, 1963 (hereby cancelled)
(f) DoD Instruction 1000.5, "Absentee Voting," November 5, 1963 (hereby cancelled)

I. PURPOSE

This Directive implements the provisions of reference (a) wherein the Secretary of Defense was designated the Federal Coordinator for assigning responsibility and prescribing procedures to implement the absentee voting program authorized by reference (b). In accordance with reference (c), it assigns responsibility and delegates authority to the Assistant Secretary of Defense (Manpower and Reserve Affairs) to carry out this program on behalf of the Secretary of Defense.

II. APPLICABILITY AND SCOPE

The provisions of this Directive apply to all Department of Defense components (worldwide). Other Executive departments and agencies will be requested to participate by lending assistance in carrying out the absentee voting program as provided by section 1461

of reference (b). (Participating departments and agencies shall adopt regulations and procedures which conform to this Directive to the extent practicable, consistent with their organizational missions).

III. CANCELLATION

References (e) and (f) are hereby superseded and cancelled.

IV. DEFINITIONS

For the purpose of administering the absentee voting program the following definitions apply:

A. "Voter" means a person in any of the following categories who is eligible to vote in any primary, special or general election, but who is absent from the place of his voting residence.

1. Members of the Armed Forces while in the active service and their spouses and dependents, wherever stationed.

2. Civilian members of the Department of Defense and its components while serving outside the territorial limits of the United States and the District of Columbia, and their spouses and dependents when residing with or accompanying them.

3. Members of all other Federal agencies while serving outside the territorial limits of the United States and the District of Columbia, and their spouses and dependents when residing with or accompanying them.

4. Members of the Merchant Marine of the United States, and their spouses and dependents.

5. Other 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.

B. "Voting residence" is the legal residence, or domicile in which the voter could vote if present.

V.. POLICY

To further the objectives of the Act (reference (b)), Department of Defense components and other participating Federal departments and agencies concerned with the absentee voting program shall encourage voters to avail themselves of the absentee voting privileges provided by the several States. In addition,

A. The absentee voting program shall be administered in such a manner as to ensure that voters are provided all necessary voting information including voting age requirements, election dates, officers to be elected, constitutional amendments and other ballot proposals, absentee registration and voting procedures.

B. Each DoD component and participating Federal department and agency shall facilitate the dissemination of absentee voting information and provide assistance to its own personnel, including the services of an official authorized to administer oaths.

1. In overseas areas, arrangements shall be made with designated departments and agencies to provide absentee voting information and assistance to voters described in section IV.A1, 2 and 3.

2. To the extent practical, information and assistance will also be made available to voters described in section IV.A.4 and 5.

C. Where practicable and compatible with operational conditions, every voter shall be afforded an opportunity to register and vote by absentee process in any election for which the State of his voting residence has established enabling laws and procedures.

D. Generally, absentee voting should be offered whenever local conditions are such that voters are able to prepare, send and receive personal material. However, a determination by those administering the absentee voting program that voting assistance cannot be rendered because it is impractical and incompatible with military or

Federal governmental operations shall be conclusive, if this determination is made in good faith. (See section 1474 of reference (b)).

E. Absentee voting procedures shall be prescribed in such a manner as to safeguard the integrity and secrecy of the ballot. In addition, all necessary steps shall be taken to prevent fraud and to protect voters against coercion of any sort.

1. No commissioned, noncommissioned, warrant, or petty officer in the Armed Forces shall attempt to influence any member of the Armed Forces to vote or not vote for any particular candidate, or to require any member of the Armed Forces to march to any polling place or place of voting. (See section 1475 of reference (b)).

2. However, nothing in paragraph 1 above shall be deemed to prohibit free discussion regarding political issues or candidates for public office. (See enclosure 2 of DoD Directive 1344.10, reference (d)).

3. No person within or without the Armed Forces of the United States shall poll any member of such forces, either within or without the United States, either before or after he shall have executed any State absentee ballot with reference to his choice of or his vote for any candidate for any of the offices authorized to be voted for by the use of the aforesaid ballot. (See enclosure 2 of reference (d)).

4. The provision in 3 above shall not preclude the conducting of surveys for statistical compilations necessary to measure the extent of participation in absentee voting by Department of Defense personnel.

VI. RESPONSIBILITIES

A. The Assistant Secretary of Defense (M&RA), as the Federal Coordinator, will --

1. Arrange for other Federal agencies to administer the absentee voting program in overseas areas, particularly where there

are large concentrations of voters including those described in section IV.A.5.

2. Collect and place requisitions with the General Services Administration for printing absentee voting post cards.

3. Be the sole DoD representative for obtaining from each State current absentee voting information and disseminate it to other Executive departments and agencies concerned. (In this regard, unless directed by ASD(M&RA) DoD components and participating departments and agencies shall not contact State voting officials about absentee voting matters).

4. Insure that informational materials on absentee voting are disseminated throughout DoD components. To the extent practical, informational material prepared by the Department of Defense shall also be made available to other Executive agencies having absentee voting responsibilities.

5. Designate a day in late September of each election year as Armed Forces Voters' Day for the purpose of encouraging military members and their dependents to exercise their prerogative to vote by absentee ballot.

6. Prepare a report to the President and to the Congress on the absentee voting program in odd-numbered years as required by section 1461 of reference (b).

7. Prepare a standard set of sample survey questions to be used by all Military Services in the gathering of past election statistics necessary for the report mentioned in E above.

B. DoD components shall --

1. Assist all members in determining their legal residence.

2. Designate an adequate number of qualified personnel to provide advice and assistance to voters in determining the voting age requirements for a particular election, and in the

registering and casting of absentee ballots. They shall assist in filling out the Federal Post Card Application, and the registration application, if applicable, and administer oaths in accordance with the pertinent voting instructions. (See section 1452 and 1464 of reference (b) for a description of the balloting procedures and the Federal Post Card Application).

3. Expedite the transmission, handling, and delivery of absentee voting mail. Subject to overriding military operations, it shall be airmailed, and when originating overseas, it shall be sent by priority airmail.

4. Place requisitions for the Federal Post Card Application with the office designated by the ASD(M&RA), and distribute applications for absentee registration and ballots to military and civilian personnel members of the Department of Defense. (For all Federal elections this material shall be hand-delivered to the voters described in section IV.A.1 and 2 above, not later than August 15 if outside the territorial limits of the United States, and not later than September 15 if inside the territorial limits of the United States).

5. Encourage military bases, posts and installations to observe, to the extent compatible with military operations, special ceremonies and activities to emphasize the responsibility for voting. This special observance will be held in conjunction with Armed Forces Voters' Day.

6. Prescribe procedures for notifying State election officials when any person executing a Federal Post Card Application is serving a prison sentence in order that the State election officials may determine whether the offense for which he has been convicted affects his eligibility to vote.

EFFECTIVE DATE AND IMPLEMENTATION

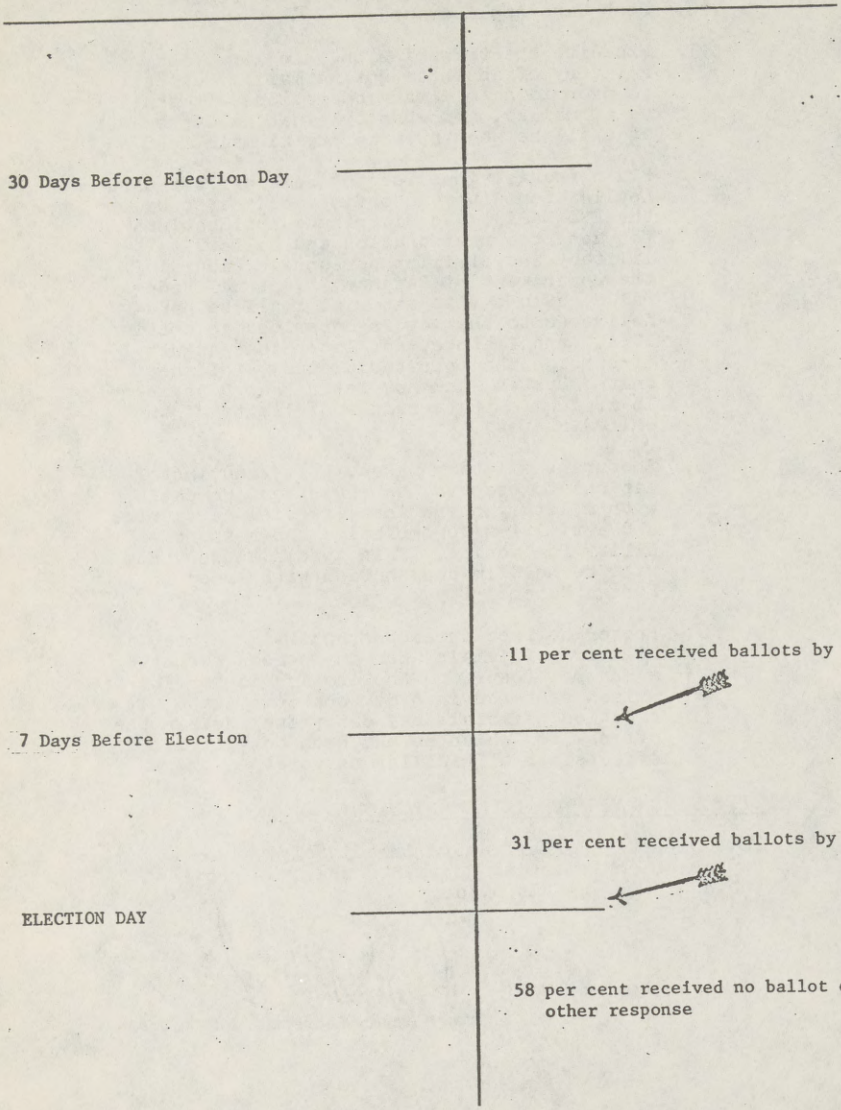
This Directive is effective immediately. Two copies of implementing documents shall be provided the ASD(M&RA) within 60 days.

6

Deputy Secretary of Defense

APPENDIX C

SURVEY OF STATE RESPONSE TO FPCAs FROM U.S. MILITARY PERSONNEL OVERSEAS MAILED MORE THAN 30 DAYS BEFORE THE ELECTION



APPENDIX D

Last Day on Which Absentee Ballots Will be Accepted by Local Election Officials

Alabama	Election Day (E.D.)
Alaska	E.D.
Arizona	E.D.
Arkansas	E.D.
California	E.D.
Colorado	E.D.
Connecticut	E.D.
Delaware	Day Before Election Day (D.B.E.D.) (noon)
D.C.	E.D.
Florida	E.D.
Georgia	E.D.
Guam	E.D.
Hawaii	E.D.
Idaho	E.D.
Illinois	E.D.
Indiana	D.B.E.D.
Iowa	E.D.
Kansas	E.D.
Kentucky	E.D.
Louisiana	E.D.
Maine	E.D.
Maryland	E.D.
Massachusetts	E.D.
Michigan	E.D.
Minnesota	E.D.
Mississippi	D.B.E.D. (noon)
Missouri	D.B.E.D.
Montana	E.D.
Nebraska	Day After E.D. (voted E.D.)
Nevada	E.D.
New Hampshire	E.D.
New Jersey	E.D.
New Mexico	E.D.
New York	D.B.E.D.
North Carolina	D.B.E.D.
North Dakota	E.D.
Ohio	E.D.
Oklahoma	E.D.
Oregon	E.D.
Pennsylvania	3 - D.B.E.D
Puerto Rico	4 - D.B.E.D
Rhode Island	E.D.
South Carolina	E.D.

APPENDIX D

South Dakota	E.D.
Tennessee	E.D.
Texas	E.D.
Utah	E.D.
Vermont	E.D.
Virgin Islands	E.D.
Virginia	E.D.
Washington	15 Days After E.D. (voted E.D.)
West Virginia	E.D.
Wisconsin	E.D.
Wyoming	E.D.

APPENDIX E

CURRENT FPCA

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., Trp., 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

A. Before filling out this form see your voting officer in regard to the voting laws of your State and absentee registration and voting procedure.
B. Type or print all entries except signatures. FILL OUT BOTH SIDES OF CARD.
C. Address card to proper State official. Your voting officer or commanding officer will furnish you his title and address.
D. Mail card as soon as your State will accept your application.
E. NO postage is required for the card.

☆ U.S. GOVERNMENT PRINTING OFFICE : 1968—O-340-457 # 32-2

DEFICIENCIES

No instructions as to type or print.

Instructions below dotted line unnecessary.

Does not provide for persons covered by 1975 Act.

Does not inform election official of applicant's last domicile in U.S.

Information not needed.

Misleads applicants who have no official address.

Redundant language

Does not apprise applicant of consequences of providing false information.

Service number not required; raises Privacy Act questions.

Service number not required.

Does not inform overseas citizen where to get title and address of proper official

Misleading; postage required for international mail.

APPENDIX E

SUGGESTED FPCA

(same size as current post card)

FILL OUT BOTH SIDES OF CARD

POST CARD APPLICATION FOR ABSENTEE BALLOT

(Type or print all entries except signatures)

State of _____

(1) I request registration (if required) and absentee ballots for 19____.

(2) If eligible for primary election ballot, my political party preference is _____.
(If party choice is secret for primary in this State, do not answer)

(3) I am a United States citizen, born on _____ (Day) _____ (Month) (Year), and am:

a. a member of the U.S. armed forces ☐
b. a member of the U.S. merchant marine ☐
c. a U.S. citizen residing outside U.S. ☐
d. a spouse or dependent of a person listed in (a) or (b) above ☐

(4) My home residence -- or for persons marking (3)(c) above, my last domicile immediately prior to my departure from the U.S. -- is:

_____
(Number and street or rural route)

_____
(City, town, or village)

_____
(County or parish)
and I resided there for ____ years.

(5) I do not maintain a domicile and am not voting in this election in any other U.S. State, Territory, or possession.

(6) Remarks: _____

(7) Please mail my ballot to this address:

_____

_____

_____

_____

(8) I affirm, under penalty of perjury, that all of the above statements are true.

(9) _____
(Signature of person requesting ballot)

(10) _____
(Full name, typed or printed)

(11) Subscribed and sworn to before me on _____ (Day) _____ (Month) (Year)

_____
(Signature of official administering oath)

Seal (if required)

_____
(Typed or printed name of official administering oath)

_____
(Title or rank, and organization of official administering oath)

INSTRUCTIONS

A. Address card to proper State official. Your voting officer, commanding officer, or U.S. Consul will furnish you his title and address.

B. Mail card so that it will be received not later than 30 days before the election.

C. No postage is required for this card if mailed in a U.S. postal facility.

APPENDIX E

QUESTIONS

1. Does your application form for registration and/or absentee ballot pursuant to the Overseas Voting Rights Act of 1975 call for the applicant's passport or card of identity and registration (issued by Secretary of State) number?

2. If your answer to Questions #1 is "yes," what do you do with this information?

3. Do you attempt, in any other way, to verify that the applicant is a United States citizen?

ELECTION JURISDICTION	RESPONSES		
	QUESTION #1	QUESTION #2	QUESTION #3*
Baltimore, Maryland	Yes	Nothing	No
Boston, Massachusetts	No		No
Brooklyn, New York	No		No
Chicago, Illinois	No		No
Cincinnati, Ohio	Yes	Nothing	No
Dallas, Texas	No		No
Denver, Colorado	No		No
Detroit, Michigan	No		No
Houston, Texas	No		No
Los Angeles, California	No		No
Miami, Florida	No		No
Milwaukee, Wisconsin	Yes	Nothing	No
Newark, New Jersey	Yes	Nothing	No
New Orleans, Louisiana	No		No
Philadelphia, Pennsylvania	No		No
Pittsburgh, Pennsylvania	No		No
St. Paul, Minnesota	Yes		No

*All jurisdictions said, they do not make any attempt to verify that the applicant is a U.S. citizen, because the person is filling out the form under an oath, stating that he or she is a citizen of the U.S.

Senator PELL. Our next witness representing the Democrats Abroad, Mr. Peter C. Alegi, cochairman of the Voting Rights Subcommittee of the Democratic Party Committee Abroad, along with Mr. Elliott F. Kulick. Both are friends of mine and both of whom I personally welcome as well as officially, and congratulate Mr. Alegi on his great commonsense and good judgment for being a citizen of Rhode Island.

TESTIMONY OF PETER C. ALEGI AND ELLIOTT F. KULICK, COCHAIRMEN OF THE VOTING RIGHTS SUBCOMMITTEE OF THE DEMOCRATIC PARTY COMMITTEE ABROAD

Mr. ALEGI. Thank you, Mr. Chairman.

We are very grateful for the opportunity to be here this morning. We will be submitting our prepared statement to the record but we thought that as two American citizens who are in the field, as it were, we might be able to respond to some of the practical considerations that have been raised. Some are inherent and some of which have been raised this morning.

Without doubt the greatest problem in the voting rights area for thousands of us who are resident abroad in the dissemination of information concerning voting rights. Little specific information has been carried in the American newspapers published overseas. Indeed, some of the leading publications are seeking to change their image from that of an American to that of local English-speaking publications.

I think one of the later speakers this morning will elaborate on that.

Our Government has taken an essentially passive role, apparently convinced that it has no affirmative duty to encourage exercise of voting rights. We believe that our Government does have a duty and obligation to inform its citizens abroad of their rights, and the ways in which those rights can be exercised. There are many steps which can be taken to this end, and we are pleased to see that one of the most important of these, the provision of information under the Federal Voting Assistance Act of 1955, is provided for in your bill, although consideration might be given to specifying times and procedures for State replies to Federal requests for information. There are other provisions which we believe could be added without great cost or difficulty. For instance, many Americans living abroad receive pension and social security checks from U.S. Government offices, generally channeled through the consulates, and many receive Federal income tax forms. We recommend that legislation be adopted to require that Federal election information be provided outlining the procedures for registration and voting.

Likewise, voting rights information should be disseminated by the passport offices overseas, which for years have reminded citizens of their income tax obligations. Surely the right to vote is worthy of as much attention as the obligation to pay taxes.

Traditionally in the United States the political parties, not the government, take the initiative in encouraging citizens to register and vote. Overseas the parties' efforts are hampered by the difficulty in identifying and contacting the potential electorate.

As I believe you learned, Mr. Chairman, during your postelection visit to Europe, it is not possible to obtain through the embassies or consulates lists of Americans residing abroad, not even under the

Freedom of Information Act. The question may be a close one, but we certainly do respect the reasonableness of the State Department's view that the possible desire for anonymity and privacy of citizens resident abroad should be protected. What we suggest, however, is a simple system to enable citizens to establish contact with American political groups:

(a) Permitting overseas citizens who have already enrolled their names and addresses with the local consulate to authorize release of that information to political and civic organizations for voting rights contacts; and

(b) Including a form in overseas pensions, social security, and income tax mailings likewise authorizing release of the citizen's name and address for purposes of voting rights contacts.

A second difficulty encountered by would-be voters during the 1976 election relates to the deterrent effect of State and local taxation. In many States it was and is unclear whether voting would trigger State or local taxation. The laudable attempt several years ago to include legislative history which would help to protect voting rights from imposition of State taxation turned out to be insufficient. The unfortunate—and in my opinion, unfair—retroactive amendment to the Internal Revenue Code further restricting the section 911 exemption, was discussed and approved just before the election.

The Consular Service, while trying to inform citizens of their rights, included a warning that each voter should check out the taxation risk with the appropriate State authorities. In Rome, we found this Embassy form, although issued with the best motives, had a chilling effect on voting.

Senator PELL. Excuse me. Do you have a copy of that form available for the record?

Mr. ALEGI. Certainly.

Senator PELL. Thank you, it will be included in the record.

[The material referred to follows:]

AMERICAN EMBASSY, ROME, ITALY

INCOME TAX AND ABSENTEE VOTING

Federal taxes

The effect of absentee voting on an individual's obligation to pay Federal taxes is discussed in the Internal Revenue Service Publication "Tax Guide for U.S. Citizens Abroad." Anyone who needs further information about his or her Federal tax liability should consult the Rome office of the Internal Revenue Service which is located on the second floor in the Embassy Annex. Tel. 4674, Ext. 560/522.

State taxes

Because each of the 50 States and the District of Columbia has its own tax laws the Embassy is unable to provide information concerning the effect of the 1975 Voting Act on a citizen's obligation to pay taxes in the State where he intends to vote. Only the revenue officials of that State can give an authoritative answer in that regard.

SOME GENERAL GUIDANCE

The following quotations taken from the Senate debate preceding the enactment of the Overseas Citizens Voting Rights Act of 1975 may be helpful in determining the effect of the new law on a voter's Federal and State tax obligation. However, it must be emphasized that only the responsible tax authorities, Federal, State or local, can furnish definitive information on a voter's Federal, State and local tax liability, respectively.

"The amended bill is neutral on the question of taxation and neither restricts the right of a State or locality to attempt to tax an overseas citizen voting in Federal elections under this bill, nor limits the right of an overseas citizen to contest the imposition of such taxation under applicable law.

"Voting in Federal elections should have no effect on the Federal income or estate tax liability of U.S. citizens residing outside the United States.

"All U.S. citizens, whether residing at home or overseas, are subject to Federal income taxation on all of their income, with certain exceptions. For the citizen residing overseas, the Internal Revenue Code currently allows a limited exclusion for income earned in work overseas. The Internal Revenue Service has already issued a ruling, Revenue Ruling 71–101, 1971–1 Cumulative Bulletin 214, stating that the overseas citizen would not lose this exclusion solely by voting in elections back home."

STATE AND LOCAL TAXATION

"As we construe existing applicable law, the overseas citizen would not be subject to State and local income, estate, or inheritance tax liability solely for the privilege of voting in Federal elections under S. 95. In other words, if his sole contact with a State is voting in Federal elections under S. 95, that in itself would not be sufficient to subject him to State or local taxation.

"S. 95 requires that an overseas citizen need retain only a voting domicile in a State in order to continue voting in Federal elections in that State. The bill does not require that he retain a domicile in the State for other purposes. For example, the bill expressly recognizes that such a citizen's intent to return to his State of last domicile may be uncertain.

"There is ample support for our conclusion that under existing applicable law the overseas citizen would not subject to State and local tax liability solely for the privilege of voting in Federal elections under S. 95.

"*Naturally, S. 95 will not preclude a State from seeking to impose taxation on an overseas citizen if the State can reasonably prove that such tax liability has a basis other than voting in Federal elections in that State.* Furthermore, it must be emphasized that S. 95 applies to Federal elections. If an overseas citizen wants to vote in State and local elections, he must still persuade the State to accept him as a full domiciliary of that State for purposes of voting in State and local elections. S. 95 would not change that result in any way."

Mr. ALEGI. Many citizens abroad, facing heavier Federal taxation, were unwilling to run the risk of attracting State and local taxation by registering to vote.

We are, therefore, delighted with the provision of section 4 of your bill, which very properly expresses the desire to protect the right to vote from any indirect poll tax. We believe this to be the key provision of the draft bill and support it most strongly. We would suggest some changes in the proposed subparagraph (b), Mr. Chairman, which I will not read at this point, but the purpose is to make it perfectly clear that the fact of voting in a Federal election may not be considered by any taxing authority.

Mr. KULICK. I might just interject here we were most pleased by your reaction to the question to the representative of the Justice Department.

Senator PELL. I was, too, but let us not push our luck.

Mr. ALEGI. In this connection I do not believe that the constitutional problems are as serious as has been suggested. There are substantial precedents, the most recent being *Oregon* v. *Mitchell*, for the constitutional authority to determine minimum standards for Federal elections. I think, however, that because of this a judicial preference, which I happen to share, for protecting the States' interest in voting matters wherever this can be done without interfering with the exercise of a Federal right, it would be most useful to insert a detailed congressional finding of fact relating to the tax provision.

You have heard a good many references this morning to mechanical problems of overseas voters. We think that there are again some very simple methods which would eliminate a few of these. One would require a Federal time standard, establishing a minimum time by which ballots must be mailed out and providing an extended time within which they must be counted after election day. I am aware of your concern that this might delay election results. I am informed that there are some States which already provide in their own absentee ballots laws for such an extension of deadlines so there would be no new departure.

More importantly, we believe that citizens who have not been registered or who have not received ballots for a Federal election despite having met valid State requirements should be provided with a Federal ballot by the nearest Embassy or Consulate.

We recognize that this proposal is a sharp departure from the methods used to date, but nevertheless we believe it is in keeping with the principle that the States continue to have the maximum control over voting requirements consistent with meeting minimal Federal requirements so as to avoid discrimination or other types of disenfranchisement. The voter's certification would attest to the fact that the State had not met its obligations. Only at that point would the Federal Government intervene.

Senator PELL. Excuse me. Would that mean that the Embassy would have to print 559 ballots because each congressional district would have a different ballot.

Mr. ALEGI. It would indeed mean a great deal of information be supplied to the embassies. The fact is that several nations already provide for voting on a regular basis through their embassies, and it is my belief, Mr. Chairman, that the information here can be readily made available to most embassies and consulates. It is a mechanical problem but admittedly the right to vote for American residents abroad is just beset with these. I do not think the greatest postal goodwill in the world is ever going to really solve our problem. You did allude to the simple solution, if the States themselves had an on-the-spot registration provision. One would then be able to permit the overseas voter having such a registration form to be able to come in and vote, having on his own responsibility obtained the information for the ballot. But I think we are a long way from that.

Just one last comment.

The main reason for supporting this legislation is of course the protection of our most precious of democratic rights, the right to vote. But there is a foreign relations aspect whose importance, I think, should not be lost in this forum.

Before the last Presidential election we Americans were being roundly criticized for apathy as election day drew near. The European press in particular was quite critical. The country in which I reside normally has an 85 to 90 percent turn-out at the polls and in the United States it was predicted that less than 50 percent would turn out. Because of the Overseas Voting Rights Act of 1975 there was an enormous interest generated abroad. Our own bipartisan election vigil was covered on live television by the Italian state network. I understand that the same thing happened in France and in England. This was, I submit, one of the best possible demonstrations of the meaning

of the American democratic system that one could possibly offer to non-Americans. And this should be encouraged and continued.

Thank you, Mr. Chairman.

Senator PELL. I thank you both very much indeed.

I have discussed these problems with each of you individually in countries where you reside. I know how really interested you are in voting rights. I appreciate the suggestions you have made. Each one of them will go down. I am not sure we will be able to follow them all. For instance, I go back to your ballot proposal, which would mean, as you point out, that the Embassy would have to have the information, and if not printed, the typewritten ballot with the congressional candidate in it and the Presidential candidate.

I can see a whole lot of ideas coming from the suggestion of overall codification, and I hope we can come up with a good bill to be used in the next election.

I welcome you both here. Thank you very much.

Mr. KULICK. Just to add one point, Mr. Chairman. That is that we as Americans overseas and Democrats overseas are certainly going to be measured by any provisions and amendments to the 1975 act or conformance of the 1955 and 1975 act that will lead to the increase of numbers of Americans overseas voting. The legislation that you introduced in 1975 led to a great increase in the interest by Americans in the domestic U.S. politics. I think with either the conformance of the act or passage of this act both in the Senate and the House will lead to an increased involvement by Americans in the U.S. democratic process.

Senator PELL. I would hope so. And I hope we would have better participation abroad then we have at home.

Thank you very much.

[The joint statement of Mr. Alegi and Mr. Kulick follows:]

STATEMENT OF PETER C. ALEGI AND ELLIOTT F. KULICK, COCHAIRMEN OF THE VOTING RIGHTS SUBCOMMITEE OF THE DEMOCRATIC PARTY COMMITTEE ABROAD

My name is Peter C. Alegi, partner in the Rome office of the law firm of Baker & McKenzie, appearing before you today as a co-chairman of the Voting Rights Subcommittee of the Democratic Party Committee abroad and as Chairman of Democrats in Italy. Appearing with me is Elliott F. Kulick, co-chairman of our Subcommittee, who is a corporate consultant in London.

We wish to thank you for the opportunity to testify in support of S. 703 introduced by Senators Pell, Mathias and Goldwater to improve the administration and operation of the Overseas Citizens Voting Rights Act of 1975.

Before commenting on the Bill, let me say that our organization and, indeed, all Americans residing abroad are enormously appreciative of the efforts and the interest in our problem which the sponsors of S. 703 have repeatedly demonstrated. Although there are more than 1,000,000 civilian potential voters overseas, we come from all 50 States and our situation is such that it is difficult to obtain a meaningful hearing when matters affecting our interest arise. We are, therefore, deeply dependent upon the responses of a few Senators and Congressmen, of whom the Subcommittee's Chairman is one of the most active, who are willing to devote time and attention to our problems for the simple reason that our claims for equal treatment are meritorious.

As a lawyer in an American law firm in Rome, I am much aware of the problems which hamper the attempt to achieve practical as well as theoretical voting rights equality for Americans resident abroad.

Turning to the Bill at hand, I should like to touch upon four main problems which affect the operation of the overseas absentee voting system.

1. Without doubt, the greatest problem is dissemination of information concerning voting rights. Little specific information has been carried in the Amer-

ican newspapers published overseas. Indeed, some of the leading publications are seeking to change their image from that of "American" publications to that of "local English-speaking" publications. They therefore tend to down play voting rights information which would be particularly aimed at Americans.

Our government has taken an essentially passive role, apparently convinced that it has no affirmative duty to encourage exercise of voting rights. We believe that our Government does have a duty and obligation to inform its citizens abroad of their rights, and the ways in which those rights can be exercised. There are many steps which can be taken to this end, and we are pleased to see that one of the most important of these, the provision of information under the Federal Voting Assistance Act of 1955, is provided for in your Bill, although consideration might be given to specifying times and procedures for State replies to federal requests for information. There are other provisions which we believe could be added without great cost or difficulty. For instance, many Americans abroad receive pension and social security checks from Government offices, generally channeled through the Consulates, and many receive federal income tax forms. We recommend that legislation be adopted to require that Federal election information be enclosed outlining the procedures for registration and voting.

Likewise, voting rights information should be disseminated by the passport offices overseas, which for years have reminded citizens of their income tax obligations. Surely the right to vote is worthy of as much attention as the obligation to pay taxes.

Traditionally in the United States the political parties, not the government take the initiative in encouraging citizens to register and vote. Overseas the parties' efforts are hampered by the difficulty in identifying and contacting the potential electorate.

As I believe you learned, Mr. Chairman, during your post-election visit to Europe, it is not possible to obtain through the Embassies or Consulates lists of Americans residing abroad, not even under the Freedom of Information Act. The question may be a close one, but we certainly do respect the reasonableness of the State Department's view that the possible desire for anonymity and privacy of citizens resident abroad should be protected. What we suggest, however, is a simple system to enable citizens to establish contact with American political groups by: (a) permitting overseas citizens who have already enrolled their names and addresses with the local consulate to authorize release of that information to political and civic organizations for voting rights contacts; and (b) including a form in overseas pension, social security, and income tax mailings likewise authorizing release of the citizen's name and address for purposes of voting rights contacts.

2. A second difficulty encountered by would-be voters during the 1976 election relates to the deterrent effect of State and local taxation. In many States it was and is unclear whether voting would trigger State or local taxation. The laudable attempt several years ago to include legislative history which would protect voting rights from attack through imposition of State taxation turned out to be insufficient. The unfortunate—and in my opinion, unfair—retroactive amendment to the Internal Revenue Code further restricting the section 911 exemption, was discussed and approved just before the election. Many citizens abroad, facing heavier Federal taxation, were unwilling to run the risk of attracting State and local taxation by registering to vote.

We are, therefore, delighted with the provision of Section 4 of your Bill, which very properly expresses the desire to protect the right to vote from any indirect poll tax. We believe this to be the key provision of the draft Bill and support it most strongly. Given the history of similar efforts, however, we would suggest that you consider changing proposed sub-paragraph (b) to read as follows:

"(b) The exercise of any right to register or vote in Federal elections by any citizen outside the United States and the retention by such citizen of any State or district as his voting residence or voting domicile shall not affect the determination of such citizen's place of residence or domicile for purposes of any tax imposed under Federal, State, or local law, nor in any respect be a factor in determining such citizen's liability to any such taxes."

Our suggestion would, we believe, eliminate any risk of a restrictive interpretation of the legislative intention.

The passage of the substance of Section 4 of the Bill is absolutely essential to the completion of the efforts which culminated in last year's Overseas Citizens Voting Rights Act.

3. A third significant difficulty encountered last year was, perhaps, largely mechanical in nature, but no less important because of that. Many, many citizens received no reply to their applications for registration, or did not receive ballots, or did not receive them in time.

Some of the difficulties may have been due to deliberate resistance on the part of local election officials, but there is little that can be done to police this on a case-by-case basis. Purely postal difficulties were more frequent, and here we strongly support the corrective provisions of the Bill under consideration. Still other problems were of an unforeseeable nature, such as the late ballot challenge in New York, which delayed the mailing of the largest single group of absentee ballots involved in any one State. As the Subcommittee may be aware, our organization brought this matter to the attention of the Department of Justice, which successfully filed a suit requiring the count in New York to be held open for a few days to increase the likelihood that at least some New York voters living overseas would not have their franchise denied.

The situation would be improved if federal norms were to establish (a) a time by which ballots must be sent and (b) a time after election within which all ballots timely mailed must be counted. We submit that, even in the absence of uniform federal standards and procedures for voting, these two minimal norms are urgently required.

Another simple improvement would be enabling application for a primary absentee ballot to be considered as application for the general election ballot, thus reducing the risk of postal or other mechanical problems.

We think all of these mechanical problems will continue to exist and to pose an effective limitation on the franchise under the existing rules, and probably under the proposed amendments as well. We, therefore, propose adoption of a new complementary procedure which could be availed of by any voter who does not receive his ballot within a given number of days (perhaps 14) prior to election day. This procedure would entitle a citizen residing abroad, who despite complying with applicable state requirements has not received his ballot or registration form within a fixed deadline, to contact the nearest Consulate or Embassy which would then furnish a ballot for the citizen's voting district listing only Federal officers. This ballot could either be returned to the voting district directly or through the facilities of the Consulate or Embassy.

We recognize that this proposal is a sharp departure from the methods used to date, but we believe it is in keeping with the principle that the States continue to have the maximum control over voting requirements consistent with meeting minimal Federal requirements so as to avoid discrimination or other types of disenfranchisement. The voter's certification (which would be under penalty of perjury in the same fashion as certification on an income tax return) would attest to the fact that the State had not met its obligations. Only at that point would the Federal government intervene.

4. The last difficulty which we would like to bring to your attention is perhaps not as common as the others mentioned, but is worthy of legislative attention, we submit, because the persons discriminated against are young citizens of the United States resident abroad. Although present law requires the registration by the several States of citizens who reach voting age after moving abroad, it does not cover the situation of American citizens born abroad. Just the other evening in Rome we held a meeting to consider suggestions to be offered at this hearing, and two young ladies present advised that their requests for ballots had been rejected on the basis that, having been born abroad, they had never had a residence in the district to which they had applied. Fundamental fairness towards our young citizens would seem to require a provision whereby they can "inherit" the last residence of their citizen-parents in the United States, and thus be entitled to vote.

In summary, we strongly support the provisions of S. 703, but do believe that the time has come to take further strong steps to ensure the right to vote, in particular by creating a federally-administered alternative to guarantee the right to vote to over a million citizens resident abroad.

Senator PELL. Our next witness is Mr. Richard E. Beeman, United Kingdom, representing the Bipartisan Committee on Absentee Voting. You have a fairly long statement so any part you do not care to make also will be inserted into the record.

Mr. BEEMAN. Thank you.

I think perhaps we would like just to summarize the additional suggestions that are made in our testimony and have not been brought up by others today.

Senator PELL. Fine. And your statement will be inserted in full in the record.

TESTIMONY OF RICHARD E. BEEMAN ON BEHALF OF THE BIPARTISAN COMMITTEE ON ABSENTEE VOTING, ACCOMPANIED BY J. EUGENE MARANS, SECRETARY AND COUNSEL

Mr. BEEMAN. Thank you very much.

One thing that Mr. Marans pointed out to me a moment ago was this morning we do not have anybody here testifying for the States, speaking on behalf of what it is like to be a State election official. Perhaps it would be useful for the committee to find some method of consultation with those having State experience on the State side of operating the law we are talking about.

Senator PELL. We have written letters to some secretaries of state and their input will be cranked into our consideration.

Mr. BEEMAN. Good.

Senator PELL. And most important as there were problems in New York State, we have written to their secretary of state.

Mr. BEEMAN. The other point that we wanted to raise was that this committee is in an ideal position to perform an oversight function with respect to the State Department and the Department of Defense functions in this area.

We agree very much with the testimony earlier in the hearing this morning about the chilling effect of potential liability of State taxation. In fact, it is more than chilling. It is freezing people into inaction, particularly our constituency in London and other bipartisan committees around the continent.

Mr. Marans has prepared some comments on the constitutional issue. Would you care to hear from him or would you like to proceed to questions.

Senator PELL. We would be very interested in his comments particularly in light of the dialog between the representative from the Department of Justice and myself earlier.

Mr. MARANS. Mr. Chairman, we think that in a sense the constitutional and tax provision in S. 703 may have an even stronger base than the constitutionality of the 1975 act as a whole. The reason is well stated in the dialog of you and Senator Mathias on the Senate floor December 18, 1975.

Senator PELL. As you know, it was a carefully thought out dialog.

Mr. MARANS. Yes, Mr. Chairman.

As you stated at that time, Mr. Chairman, the touchstone is an analysis of the poll tax amendment. The language of that amendment is very broad. It states that the right of citizens of the United States to vote in any Federal election shall not be denied or abridged by the United States or any other State by reason of failure to pay any poll tax or other tax.

The evidence which is being accumulated by the Chamber of Commerce and which will be referred to by Mr. Whyte today indicates

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that perhaps as many as half of the overseas American citizens who did not vote in the 1976 election under the 1975 act gave as their primary reason the fear of State taxation solely for voting in the Federal election.

It would seem, therefore, that there is evidence sufficient on the record for Congress to utilize section 2 of the poll tax amendment which states that Congress shall have the power to enforce the amendment by appropriate legislation. There is precedent for Congress entering the State tax field. One example is congressional action in the airport head tax field. In that situation a number of States imposed a head tax at various airports, with a chilling effect on the right to travel.

Congress decided that the better course would be to prohibit States from imposing this head tax, and in return Congress gave the states additional money to finance airport construction.

In the case of overseas voting, Congress does not have to give the States additional money. However, Congress can ease the burden on the State election officials in carrying out their responsibilities under the 1975 act by providing free postage and defraying other administrative costs.

Senator PELL. Excuse me.

Is not a requirement to pay $10 for a passport, a tax that also can be held to be unconstitutional, as you are paying $10 for the right to travel?

Mr. MARANS. Yes. But the reason there is that the Government is rendering a service and it is charging what it costs to render that service. And perhaps even charging less than that.

The Supreme Court has distinguished between a head tax which is not for a particular service and a use tax. The Supreme Court will approve a use tax but not a head tax, and we would regard a State tax solely on the privilege of voting and not providing any other State service to overseas citizens to be closer to a head tax.

We know that 35 States already have laws or have issued opinions which could be construed as suggesting that the States would not impose the State income tax solely for the purpose of voting in Federal elections under the 1975 act. But the problem is confusion. Every State law is a little bit different. Many tax counselors abroad, not being familiar with the laws of each State, tend to advise overseas citizens not to take a chance.

So what we are proposing is not just overruling present State practice, not telling the States they should not tax this income. What we are suggesting is a uniform national policy that will help eliminate an unjustifiable chill on the right of overseas citizens to vote in Federal elections.

We have included in our statement a slight amendment to S. 703 which we think would provide a more simple statement of what you want to do. We think it would assure taxation should be a neutral factor in the spirit of the poll tax amendment, and we think it might be helpful in limiting the constitutional concern of the Justice Department.

Senator PELL. Do you know by any chance of any suit that has been brought in connection with this matter after the 1975 act, where somebody has voted and then they have sent a request for tax, coming

shortly thereafter, and sort of establishing a connection? Has this been taken to any court?

Mr. MARANS. We are not aware of any such suit.

Senator PELL. Could you search one out and find out anything, do you think?

Mr. MARANS. We think that even if we were to succeed in finding such a suit in one State, it would not be binding in another State. This is a long drawn out process that might take 5 or 10 years. The right to vote in Federal elections is too important to go through all of this litigation, particularly involving citizens outside the United States. It would be preferable we believe to have a uniform national standard on this issue.

Senator PELL. I completely agree with you.

And I want to see section 4 stay in the bill. If we do not succeed though this may be the course you should go. And I think if you should get a decision your way it would apply nationally under our law and if it was appealed further up it would make it stronger in its application.

Mr. MARANS. Unfortunately, most of these cases involve litigation which would come up through the State courts and would have to go to the U.S. Supreme Court for a national decision.

Senator PELL. The first decision would be at the U.S. Supreme Court then?

Mr. MARANS. I am afraid that would be the case, and one of the problems there is that the laws in each State would be different and the U.S. Supreme Court might decide on a narrow ground affecting only one State.

Mr. BEEMAN. It is difficult to find an individual abroad whose contact with the States is so limited that it can be accurately said his only contact is that he votes. Almost all of us have one form of contact or another, friends that you go and visit, retention of driver's license, club memberships, as mentioned by the Justice Department representative this morning.

And really the purpose of this is to exclude the voting in Federal elections from being considered as part of the evidence toward determining domicile for tax purposes. It is often a very close call—a question of fact under each State's law—and the advisors in the field just do not risk it. If it is a factor that goes against you, it just makes you liable for the full weight of back taxes.

Senator PELL. You better make sure those memberships are nonresident, I guess.

I thank you both very much indeed.

Mr. BEEMAN. Thank you.

[The statement of Mr. Beeman, with an attachment, follows:]

STATEMENT OF RICHARD E. BEEMAN ON BEHALF OF THE BIPARTISAN COMMITTEE ON ABSENTEE VOTING, WITH J. EUGENE MARANS, SECRETARY AND COUNSEL

I. INTRODUCTION

My name is Richard E. Beeman, and I thank you for the opportunity to appear before you today representing the Bipartisan Committee on Absentee Voting. My wife Tricia and I reside in London, England, where I serve as Vice President and European Representative for the National City Bank of Cleveland, Ohio. For the past three years I have enjoyed a close association with the Bipartisan Committee on Absentee Voting, and served during the 1976 election campaign as

Chairman of the European Republican Committee in the United Kingdom. With me today is J. Eugene Marans, Secretary and Counsel to the Bipartisan Committee on Absentee Voting.

I would like to begin by expressing thanks to the distinguished members of this Committee on behalf of the 750,000 overseas Americans who were assured the right to vote in the 1976 federal elections as a result of the Overseas Citizens Voting Rights Act of 1975. I would further extend our appreciation for this Committee's continuing interest in the voting rights of Americans abroad and the concern evidenced by the introduction of S. 703 and the scheduling of these hearings today.

Though tens of thousands more Americans overseas voted in 1976 than in 1972, several practical administrative problems remain to be overcome to assure that all eligible Americans overseas can register and vote absentee in our federal elections. The Bipartisan Committee thinks S. 703 addresses the most important of these problems, and believes it would be useful to discuss each of them in light of our experience during the 1976 election and consider the manner in which S. 703 deals with it along with any suggested changes or additions.

Two major problem areas have arisen under the Overseas Citizens Voting Rights Act of 1975: (1) the deterrent to voting under the Act caused by confusing state and local tax laws; and (2) the difficulties encountered in the actual administration of the Act.

II. TAXATION UNCERTAINTIES

Over 50 percent of the overseas Americans who reported in the U.S. Chamber of Commerce survey that they did not vote in 1976 stated their concern about state tax laws as a primary reason. We are greatly concerned about this deterrent to voting in federal elections caused by the fear of state taxation. Voting in federal elections should be a neutral act with regard to both federal and state taxation.

As regards state taxation, Americans abroad may be considered in two groups:

(1) Americans on a short-term overseas assignment who retain substantial contacts with their state of last domicile and are subject to taxation under state law like other domiciliaries temporarily absent from the state. For these people, tax liability is a question of applicable state law with any exceptions the state might provide for overseas residence. One's state and local tax liability frequently turns on the factual circumstances evidencing his continuing domicile in a state for purposes other than voting in federal elections, such as use of a driving license, use of state schools, use of state courts and ownership of a home.

(2) Americans overseas (such as missionaries) who go overseas for five to ten years and have only minimal contacts with their state of last domicile. This is the type of person for whom uncertainty about state taxation is the greatest deterrent to voting in federal elections under the 1975 Act.

Doubts about taxation, in the absence of specific federal legislation on the question, prompt these Americans to avoid taking a chance, and lead professional advisors to recommend against voting as the most prudent course.

This is especially unfortunate, since the Bipartisan Committee on Absentee Voting found last year that:

(1) Eight states do not even have a general personal income tax: Connecticut, Florida, Nevada, New Hampshire, South Dakota, Texas, Washington, and Wyoming.

(2) In another twelve states, overseas citizens are not subject to state income tax on any income derived outside the state if they are permanently residing outside the state, whether or not they are exercising the right to vote. These states are: Arizona, California, Illinois, Maine, Missouri, New Jersey, New York, Oregon, Pennsylvania, Rhode Island, Vermont and West Virginia.

(3) Officials of another 15 states have issued opinion letters saying those states would not subject U.S. citizens overseas to state income tax solely for the privilege of voting in federal elections in that state: Alabama, Delaware, Idaho, Iowa, Kansas, Kentucky, Louisiana, Maryland, Montana, Nebraska, New Mexico, North Carolina, Ohio, Tennessee and Utah.

Furthermore, in the remaining 15 states, the Poll Tax Amendment to the Constitution should be sufficient to protect Americans abroad from state tax for voting in federal elections. The dialogue between Senators Pell and Mathias on the Senate floor at the time of passage of the Overseas Citizens Voting Rights Act of 1975 sets forth the underlying legal principle in a clear and concise fashion, and we have attached that dialogue to this statement for inclusion in the record of these hearings.

In sum, the overseas citizen should not be subject to state income taxation for voting in federal elections under existing state law or the Poll Tax Amendment. The Bipartisan Committee therefore supports the inclusion in S. 703 of a uniform statutory statement to avoid the need for each overseas citizens to obtain a ruling or judicial opinion confirming this legal result as applied to the individual citizen. Very few overseas Americans, particularly those with limited economic means, are in a position to litigate this state tax question in order to secure the right to vote in federal elections.

We would recommend, however, that the existing tax provision in S. 703 be amended to assure that voting in federal elections will be entirely neutral. We would suggest that the provision read as follows:

"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."

III. ADMINISTRATIVE IMPROVEMENTS

By the time these hearings are completed you will have a comprehensive report on the practical problems faced by American citizens overseas in seeking to register and vote absentee in federal elections last year.

We recognize that many of the problems arose because of the newness of the overseas voting law, and we appreciate the efforts of responsible federal government agencies to deal with these problems.

Nevertheless we think that new legislation is needed to expand and reallocate the responsibilities of these agencies to assure that they will be even more effective in serving the overseas electorate in future years.

A. Allocation of responsibility among U.S. Government agencies

1. *Enforcement.*—The Bipartisan Committee on Absentee Voting believes that enforcement of the Overseas Citizens Voting Rights Act of 1975 should remain with the Department of Justice. However, since the Justice Department has no general overseas responsibility comparable to that of the Departments of State and Defense, we would not consider the Justice Department to be the most appropriate agency to undertake other activities in connection with the administration of the Act—such as dissemination of information to overseas voters.

2. *Voting information.*—The 1975 Act did not assign responsibility to any agency for gathering and distributing voting information overseas to encourage voting by Americans abroad. S. 703 recognizes this need and provides a framework for coordination between the Department of Defense, whose Federal Voting Assistance Division has done a highly commendable job of assembling and circulating information under the Federal Voting Assistance Act of 1955, and the Department of State, whose embassies and consular offices are the logical first points of contact for U.S. civilians overseas desiring to vote.

The Bipartisan Committee wants to emphasize that both the Defense and State Departments will require additional funds to meet the new responsibilities given them under S. 703. The continued leadership of the Senate Committee on Rules and Administration may be necessary to bring into being an effective program. We suggest the Committee consider exercising an oversight function and monitor the progress being made by both agencies on an annual basis.

B. Extent of responsibility for gathering and disseminating information

In 1976, many Americans overseas found out about their new voting rights through the efforts of the Chamber of Commerce, the overseas political committees of both major parties, and the Bipartisan Committee on Absentee Voting, helped by the public-spirited cooperation of newspapers such as the International Herald Tribune. An excellent Guide to Absentee Voting was prepared and distributed by the U.S. Chamber of Commerce, which was particularly useful given the short period of time between passage of the Overseas Citizens Voting Rights Act and the actual election.

The Bipartisan Committee on Absentee Voting believes that S. 703 requires an active and imaginative program of publicity about the Federal election rights of overseas Americans. Information packages should be freely available at consular offices and widely circulated to organizations of Americans abroad, such as Women's Clubs and Parent Teacher Associations. Of particular importance will be detailed information pertaining to state tax laws so that potential voters can properly identify their exposure to tax liability and request ballot forms accordingly. Public notices in the form of advertisements in newspapers read by Americans abroad should be considered, as well as simple question-and-answer

flyers which can be distributed through the mail by interested civic and political organizations.

C. Post card application forms

The Bipartisan Committee on Absentee Voting fully supports the provision of S. 703 providing for a single form of post card application in order to register and request an absentee ballot, as well as the recommendations to State election officials to expedite the return of any special registration materials along with ballots.

D. Postage and mailing procedures

S. 703 would appear to provide free air mail postal service for ballots mailed under the Overseas Citizens Voting Rights Act of 1975. It is important, however, that the availability of this free postage privilege be communicated to State election officials and to U.S. citizens abroad. In this regard, the Bipartisan Committee on Absentee Voting notes that citizens residing abroad already may mail balloting materials authorized under the Federal Voting Assistance Act free of postage by presenting them to any American embassy or depositing them at a U.S. Post Office or an overseas U.S. military post office.[1]

E. Deadlines

One of the most significant problems encountered in the 1976 election was the delay of election officials in mailing out ballots because of late primary results, court contests or administrative problems. The Overseas Citizens Voting Rights Act of 1975 provided that ballots must be returned to the State election officials "not later than the time of closing of the polls in such State on the day of such election." As a result, many U.S. citizens overseas were disenfranchised in 1976 by the late mailing of ballots by State election officials.

S. 703 does not deal with this serious problem. We believe that the bill should be amended to provide a uniform national procedure to avoid disenfranchisement caused by delay in sending out absentee ballots. We propose that the statute—

(1) provide a required date for the posting of ballots by state election officials;

(2) specify that any ballot sent air mail by the overseas voter and postmarked not later than election day be included in the count; and

(3) require States which are late in mailing out ballots to notify the Justice Department which could, if necessary, seek an appropriate form of relief in court and publicize abroad (with the assistance of the State and Defense Departments) any extension for returning those ballots.

The statute could, with respect to the counting of late ballots, fix a uniform date, say 10 days after election day, as the cutoff point for counting ballots postmarked on or before election day. Alternatively, the statute could require States to extend their counting period beyond election day by the same number of days as any delay beyond a particular date in its mailing of the ballots.

F. *Passport or card of identity*

A valid U.S. passport or card of identity and registration issued under the authority of the Secretary of State is required for voting absenteee under the Overseas Citizens Voting Rights Act of 1975. This provision of the Act was originally inserted, not as proof of U.S. citienship, but as a protection against vote fraud by requiring proof of personal identity. It was not foreseen at the time, however, that many Americans who reside in Canada and other locations abroad have no need for either of the two documents specified other than to prove identity for voting under this statute.

The Bipartisan Committee therefore recommends that the passport or identification card requirement be deleted from the statute. Each state already has its own procedures for verifying the identity of absentee voters. There have been no reported cases of overseas voting fraud. The cost of obtaining passport documents imposes a burden and possibly an indirect poll tax upon a group of American voters abroad.

IV. SUPPORT FOR THE LEGISLATION

The Overseas Citizens Voting Rights Act of 1975 generated tremendous enthusiasm and support from American citizens residing in all parts of the world. The active participation by overseas Americans in our country's bicentennial elections

[1] Postal Service Manual § 137.5 Absentee Balloting Materials Post Office Services (Domestic) TL–22, 6–12–73, Issue 58.

gave a stirring firsthand demonstration to freedom-loving people everywhere of the strength and fairness of our democratic institutions. The interest of this Committee in resolving the teething problems encountered in applying the Act is yet another fine example of the responsiveness of our form of government. It is an example in which Americans around the would can justifiably take great pride.

V. SUMMARY

In conclusion, I think we will see from today's hearings that—

(1) The deterrent of confusion over state taxes for voting in federal elections must be eliminated.

(2) We have learned from the experiences of the 1976 elections and can avoid a repeat of the administrative obstacles to voting through the adoption of new legislation such as S. 703.

(3) With a measure of good will and in a spirit of cooperation, the agencies of the United States government can effectively extend the right to vote in federal elections to all eligible Americans overseas as envisaged in the Overseas Citizens Voting Rights Act of 1975.

We are gratified at your concern in holding these early hearings and respectfully urge that legislation along the lines of S. 703 be adopted in time to allow for adequate preparation by all involved, to assure the smooth conduct of the 1978 Congressional and Senatorial elections.

[From the Congressional Record, Dec. 18, 1975]

OVERSEAS CITIZENS VOTING RIGHTS ACT OF 1975

Mr. MANSFIELD. Mr. President, I ask the Chair to lay before the Senate a message from the House of Representatives on S. 95.

The PRESIDING OFFICER (MR. TAFT) laid before the Senate the amendment of the House of Representatives to the bill (S. 95) to guarantee the constitutional right to vote and to provide uniform proceedures for absentee voting in Federal elections in the case of citizens outside the United States.

[The amendment of the House is printed in the Record of December 10. 1975. beginning at page H12219.]

Mr. PELL. S. 95 passed the Senate by unanimous consent May 15, 1975. The House December 10, 1975, by an overwhelming majority, passed the Senate bill with the amendment of the House Administration Committee striking out all after the enacting clause and inserting new language.

We intend to ask the Senate to agree to the House version of S. 95. This would eliminate the need for referring the bill to a time-consuming conference, and would enable the bill to be cleared for the President before the end of this session. As a result, overseas citizens would be able to vote in Federal primary elections in 1976 as well as in the Federal general election next November.

In general, the House changes in S. 95 do not adversely affect the primary purposes of the bill: First, to assure the right of U.S. citizens residing outside the United States to vote in Federal elections in their State of last domicile; and second, to adopt uniform absentee registration and voting procedures covering these citizens in Federal elections.

Mr. President, I must report, however, that the Senate sponsors of S. 95 are troubled by the House deletion of a provision in the Senate bill which would have clarified the Federal and State tax status of the overseas citizen voting in Federal elections under this bill.

Our concern about the House deletion of the tax provision is based upon the evidence in the committee hearings on this bill, as confirmed by our firsthand experience, that one of the primary reasons large numbers of overseas citizens have declined to vote in elections back home in the past was the fear they would as a result be subjected to State taxation.

Mr. MATHIAS. Mr. President, will the Senator yield?

Mr. PELL. I yield to the Senator from Maryland who, I should say, was one of the original sponsors of this bill when it was introduced in the Senate last January, and who has been one of the strongest supporters of our efforts to enfranchise U.S. citizens abroad to vote in Federal elections back home.

Mr. MATHIAS. I thank the Senator from Rhode Island for his kind words, and would mention that, as chairman of the Subcommittee on Privileges and Elections of the Committee on Rules and Administration, he has been at the forefront for a

number of years in seeking legislation to assure the right of overseas citizens to vote in Federal elections.

I want to join the Senator in asking the Senate to agree to the House version of S. 95. As he said, we are not fully satisfied with the House amendment, particularly the deletion of the tax provision in the bill. I have been advised, however, that the House managers of the bill in all likelihood would not be able to agree to reinstatement of the tax provision in S. 95 even if the bill were referred to a conference. The House does not take the position that overseas citizens should be subject to tax liability solely for the privilege of voting in Federal elections under this bill. The House Administration Committee said they deleted the tax provision as simply "inappropriate for this legislation." The chairman of that committee, Wayne Hays, stated the House position succinctly during floor consideration of the bill:

"The amended bill is neutral on the question of taxation and neither restricts the right of a State or locality to attempt to tax an overseas citizen voting in federal elections under this bill, nor limits the right of an overseas citizen to contest the imposition of such taxation under applicable law."

We have been informed that the principal supporters of S. 95 overseas believe that the bill, even without the tax provision, represents a major advance in their efforts to secure the franchise in Federal elections back home. Indeed as a practical matter, the silence of the House amendment on the tax question may not have any significant effect on the imposition of taxation on overseas citizens voting under this bill. As I have noted, the House managers, both in the committee report and on the floor, made clear that the bill does not limit the right of an overseas citizen voting under this bill to contest the imposition of State taxation "under applicable law." The Senate sponsors thought the tax provision would have helped clarify this applicable law, and regret deletion of the provision in the House amendment. An examination of the applicable law will show that the Constitution alone is sufficient to assure that the overseas citizen would not be subject to taxation solely by voting in Federal elections under S. 95.

Mr. PELL. In light of the House deletion of the clear and specific tax provision in the Senate bill, I think it would be useful at this point to summarize our understanding of the tax law—Federal and State—applicable to overseas citizens whose sole continuing contact with a State is voting in Federal elections under S. 95.

The touchstone of this applicable law is the 24th amendment to the Constitution abolishing the poll tax as a qualification to vote in Federal elections. This amendment reads as follows:

"SECTION 1. The right of citizens of the United States to vote in any primary or other election for President or Vice President, for electors for President or Vice President, or for Senator or Representative in Congress, shall not be denied or abridged by the United States or any State by reason of failure to pay any poll tax or other tax.

"SEC. 2. The Congress shall have power to enforce this article by appropriate legislation."

The prohibition in this Amendment applies to U.S. citizens residing overseas as well as those at home.

FEDERAL TAXATION

Voting in Federal elections under S. 95 should have no effect on the Federal income or estate tax liability of U.S. citizens residing outside the United States.

All U.S. citizens, whether residing at home or overseas, are subject to Federal income taxation on all of their income, with certain exceptions. For the citizen residing overseas, the Internal Revenue Code currently allows a limited exclusion for income earned in work overseas. The Internal Revenue Service has already issued a ruling, Revenue Ruling 71–101, 1971–1 Cumulative Bulletin 214, stating that the overseas citizen would not lose this exclusion solely by voting in elections back home. This ruling has been further clarified by a letter, dated August 28, 1972, from the Acting Chief of the Corporation Tax Branch of the Internal Revenue Service to Senator Goldwater, which the Senator kindly inserted, at page 49, in the September 1973 hearings before our Subcommittee on Privileges and Elections on voting by U.S. citizens residing abroad. I should point out that the tax reform bill passed by the House a few weeks ago, and now under consideration in the Senate Finance Committee, would phase out even this limited exclusion from Federal income taxation for foreign-earned income.

The overseas citizen does not enjoy any Federal tax exemption for investment income by reason of residence outside the United States. Investment income of

overseas citizens is subject to Federal income taxation in the same manner as investment income of citizens at home. This includes dividends, interest, rents, royalties—all income other than income earned in work overseas.

The overseas citizen is also fully liable for Federal estate taxation to the same extent as citizens residing in the United States. The Internal Revenue Code provides no exemption from Federal estate taxation for U.S. citizens by virtue of their residence overseas.

STATE AND LOCAL TAXATION

As we construe existing applicable law, the overseas citizen would not be subject to State and local income, estate, or inheritance tax liability solely for the privilege of voting in Federal elections under S. 95. In other words, if his sole contact with a State is voting in Federal elections under S. 95, that in itself would not be sufficient to subject him to State or local taxation.

S. 95 requires that an overseas citizen need retain only a voting domicile in a State in order to continue voting in Federal elections in that State. The bill does not require that he retain a domicile in the State for other purposes. For example, the bill expressly recognizes that such a citizen's intent to return to his State of last domicile may be uncertain.

There is ample support for our conclusion that under existing applicable law the overseas citizen would not subject to State and local tax liability solely for the privilege of voting in Federal elections under S. 95:

First, the 24th amendment, as I have indicated, insures that a State cannot, in effect, inhibit "citizens of the United States" from voting in Federal elections in the State by the imposition of "any poll tax or other tax." Such a State tax would be equally suspect whether it were imposed on the overseas citizen before or after he were to vote in Federal elections.

This bill does not require the overseas citizen to retain full domicile in a State in order to vote in Federal elections in that State. Such a requirement would, in many instances, amount to an unconstitutional poll tax in the same way as if such a tax were imposed directly on the act of voting itself.

Second, compelling an overseas citizen to pay State and local taxes solely for the privilege of voting in a Federal election, without the citizen enjoying any of the rights and privileges incident to domicile in the State, might well be a violation of the due process clauses of the fifth and 14th amendments as well as of the poll tax amendment.

Mr. MATHIAS. Mr. President, will the Senator yield?

Mr. PELL. I yield to the Senator.

Mr. MATHIAS. Naturally, S. 95 will not preclude a State from seeking to impose taxation on an overseas citizen if the State can reasonably prove that such tax liability has a basis other than voting in Federal elections in that State. Furthermore, it must be emphasized that S. 95 applies only to Federal elections. If an overseas citizen wants to vote in State and local elections, he must still persuade the State to accept him as a full domiciliary of that State for purposes of voting in State and local elections. S. 95 would not change that result in any way.

Mr. PELL. The Senator's understanding is correct.

Third, according to Treasury statistics, the Federal tax liability of overseas private citizens runs into the hundreds of millions of dollars.

In 1973, for example, 138,000 Federal income tax returns were filed on behalf of over 200,000 overseas taxpayers in the private sector alone—not counting Federal Government employees. These tax returns of overseas private citizens reflected a total Federal income tax liability, even after allowance of all tax credits, exclusions and exemptions, of nearly $150,000,000. The average Federal income tax per return of $1,058 for these overseas private citizens was greater than or about the same as the average income tax per return for individual taxpayers residing in each of 15 States back home. This amount is greater than for taxpayers in nine States—Arkansas, Idaho, Maine, Mississippi, New Mexico, South Carolina, South Dakota, Utah, and Vermont; and about the same as for taxpayers in six States—Alabama, Kentucky, Minnesota, Montana, North Carolina, and South Dakota.

The House phase-out of the present limited exclusion from income taxation for foreign-earned income would eventually increase the Federal income tax collections from these overseas private citizens by at least another $50,000,000 a year. The phaseout probably will also result in the filing of Federal income tax returns by tens—and possibly hundreds—of thousands of additional overseas private citizens.

It is worth noting, moreover, that in these days of massive Federal grants-in-aid and revenue sharing, the States receive a substantial amount of Federal tax revenue paid in part by overseas private citizens to the U.S. Treasury.

For example, the $150,000,000 in Federal individual income taxes paid by overseas citizens for 1973 would have been sufficient to bear the entire cost of all Federal aid to State and local governments in fiscal year 1973 for each of at least five States, including Delaware, Nevada, New Hampshire, Vermont, and Wyoming. Overseas citizens already pay, and will continue to pay, a fair share of State revenues through the U.S. Treasury, whether or not they vote in Federal elections under this bill.

Fourth, the imposition of State taxes on the overseas citizen solely for the privilege of voting in Federal elections under S. 95 would in many instances constitute double taxation. The overseas citizen generally is subject to substantial income tax and sales tax—or value-added—liability in his foreign country of residence. The foreign income tax is ordinarily creditable against his Federal income tax liability, but not against any State or local tax liability.

The foreign sales—or VAT—tax may run as high as 30 percent on some items, but it is not allowed either as a credit or as a deduction against Federal, State, or local income taxation in the United States.

These foreign taxes paid by the overseas citizen help defray the cost of services actually used by the citizen in his foreign country of residence. He pays for police and other services, schools, sewers, garbage collection, streets and highways, health care, social security, and any other government benefits provided by that country and used by him.

It would be wholly unreasonable, as well as a violation of the due process clauses and the 24th amendment, for a State to impose an additional tax burden on the overseas citizen solely for the purpose of voting in Federal elections if he makes no use of any other service provided by the State, such as police, fire, education, sanitary, transportation, and social services for which he is already paying taxes in his foreign country of residence.

Mr. MATHIAS. Mr. President, would the Senator yield once more.

Mr. PELL. I am pleased to yield to the Senator from Maryland on this bill at any time.

Mr. MATHIAS. I commend the Senator from Rhode Island for his excellent exposition of the tax law applicable to overseas citizens voting in Federal elections under S. 95, and want to confirm that I am in total agreement with every step of his analysis.

For the record, I think we also ought to enumerate the other significant House changes in S. 95, since they were not all described in the House report or floor debate.

FINDINGS AND DECLARATION

The House deleted the findings and declarations in the Senate bill as being unnecessary. The House apparently concluded that adequate justification for the bill, including its constitutionality, was contained in hearings on the bill before the Senate Rules and Administration and House Administration Committees and in the committee reports. The Senate sponsors of S. 95 regard this change as mainly a technical one.

RIGHT OF OVERSEAS CITIZEN TO VOTE IN FEDERAL ELECTIONS

The House recast in a positive form the declaration contained in the Senate bill of the right of a citizen residing outside the United States to vote in Federal elections in his State of last domicile. The House also added the requirement that the overseas citizen must have been able to meet all qualifications—except for the minimum age requirement—to vote in Federal elections in such State under present law prior to departure from the United States. The Senate sponsors of S. 95 believe this change is also essentially technical.

ABSENTEE REGISTRATION AND VOTING PROCEDURES

The House made three changes in the absentee registration and voting procedures enumerated in S. 95.

First, the House version provides that the deadlines for submitting applications to vote and completed ballots must be based on the time of their receipt by the State election official, because it was thought considerable time may elapse between the mailing of such materials by the overseas voter and their receipt by the election official. This also amounts to a technical change in the bill.

Second, the House deleted a detailed description of the obligation of a State election official to mail election materials to the overseas applicant, since it was believed such an obligation is inherent in the absentee registration and voting rights secured by the bill, and generally is now provided by State law. While the Senate sponsors regard this change as also one of a technical nature, we should emphasize it is our intention, in the case of any properly completed application for an absentee ballot received by a State election official under this bill, that he will mail an absentee ballot by air mail to the overseas citizen as promptly as possible.

Third, the House deleted a specific provision for payment of postage in the U.S. mails—including the authorization of an appropriation therefor—for election materials sent to and from the overseas citizen, since it was considered unnecessary to modify existing Federal and State law governing the payment of such postage. The Senate sponsors believe this House change also is a technical one, since the mailing of election materials to and from citizens residing overseas, and the payment of postage on those materials in the U.S. mails, is already covered by the Federal Election Assistance Act of 1955, as amended, and corresponding State law.

In sum, we do not think that any of the House changes I have mentioned in the absentee registration and voting provisions of S. 95 will significantly affect its practical operation.

Mr. PELL. Mr. President, as the Senator from Maryland has stated, while the Senate sponsors of S. 95 are disappointed in the House deletion of the tax provision in the Senate bill, we think it probably would not be productive for the Senate to insist on a conference solely to seek restoration of this provision in the bill. The bill as passed by the House retains the principal substantive provisions of the Senate bill guaranteeing the constitutional right of the overseas citizen to register and vote in Federal elections and providing uniform absentee registration and voting procedures for this purpose. By avoiding a conference, we can clear the bill for the President before Christmas recess, and assure that the overseas citizen will be able to participate in the entire Bicentennial year of Presidential and congressional elections.

Mr. MATHIAS. I wholly agree with the Senator from Rhode Island. I think it is essential that S. 95 be enacted in time for overseas citizens to vote in the Presidential and congressional primaries and the Federal general election of our Bicentennial year. If it should turn out that the fear of State taxation continues to discourage a significant number of overseas citizens from voting in Federal elections under this bill, even with our statement today confirming the protection conferred by the due process clauses and the 24th amendment, I think we would then be in a better position to go back to the House in a future year and seek to add a specific tax provision to the law.

Mr. President, I ask unanimous consent to have printed in the RECORD portions of a letter, dated December 11, 1975, from the Bipartisan Committee on Absentee Voting to the Senate sponsors and supporters of S. 95 urging that the Senate act as promptly as possible to accept the House version of the bill, so as to eliminate the need for referring the bill to a conference. The Bipartisan Committee represents all the major groups, both at home and overseas, which support S. 95.

There being no objection, the excerpts were ordered to be printed in the RECORD, as follows:

BIPARTISAN COMMITTEE
FOR ABSENTEE VOTING,
Washington, D.C., December 11, 1975.

Re S. 95—Overseas Citizens Voting Rights Act of 1975.

Hon. HOWARD W. CANNON, MARK HATFIELD, CLAIBORNE PELL, CHARLES McC. MATHIAS, BARRY GOLDWATER, BIRCH BAYH, WILLIAM E. BROCK, WILLIAM V. ROTH.

DEAR SIRS: As you probably know, the Overseas Citizens Voting Rights Act of 1975 (S. 95), which had passed the Senate by unanimous consent May 15, 1975, was adopted by the House of Representatives December 10, 1975 by 374–43. The House passed the Senate bill with the amendment of the House Administration Committee striking out all after the enacting clause and inserting new language.

We want to confirm to you by this letter that the Bipartisan Committee on Absentee Voting, representing all the major groups which support S. 95, strongly urges that the Senate act as promptly as possible to accept the House version of the bill, so as to eliminate the need for referring the bill to a conference.

We believe that the House changes in S. 95 do not adversely affect the primary purposes of the bill (1) to assure the right of U.S. citizens residing outside the United States to vote in federal elections in their State of last domicile and (2) to adopt uniform absentee registration and voting procedures covering these overseas citizens in federal elections. Except for the House deletion of the taxation provision (see discussion below), the House changes in S. 95 represent essentially technical amendments to the version of the bill passed by the Senate last May.

In the one significant House change, the other Chamber deleted, as is appropriate for this legislation, the provision in the Senate bill which would have expressly provided that the exercise by an overseas citizen of the right to register and vote in federal elections under this bill would not affect the determination of his place of residence or domicile for purposes of any tax imposed under federal, State or local law. The House version is neutral on the question of both federal and State taxation.

The House Administration Committee report on S. 95 noted that the effect of voting in federal elections on the determination of an overseas citizen's liability for federal taxation is already dealt with in the Internal Revenue Code and the regulations and rulings of the Internal Revenue Service.

With respect to State taxation, the report stated that the Committee did not intend either to restrict the right of a State or locality to attempt to tax an overseas citizen voting in federal elections under this bill, or to limit the right of an overseas citizen to contest the imposition of such taxation under applicable law.

While we opposed House deletion of the taxation provision contained in the Senate bill, we have been advised it is highly unlikely the House would agree to reinstatement of his provision in S. 95 even if the bill were referred to a conference. We believe, therefore, that it probably would not be productive for the Senate to insist on a conference solely to seek restoration of the tax provision in the bill.

Since S. 95 carries an effective date of January 1, 1976, we think it would be extremely helpful for the Senate to agree to the House version of the bill before the Christmas recess. This would enable the bill to be cleared for the President before the end of the year, so that overseas citizens would be able to vote in federal primary elections in 1976, as well as in the federal general election next November.

If you should have any questions regarding the foregoing, please do not hesitate to telephone either Mr. Wallace (at 833–1973) or Mr. Marans (at 223–2151).

Very truly years,

CARL S. WALLACE,
Executive Director.
J. EUGENE MARANS,
Secretary and Counsel.

Mr. GOLDWATER. Mr. President, I am delighted that the Senate is about to approve and send to the White House S. 95, legislation to strengthen the voting rights of overseas American citizens. The bill will nail down the absentee voting rights of a law which I introduced in 1970, regarding Presidential elections and extend those rights to all Federal elections.

In short, the 1970 amendments which I authored struck down legal technicalities preventing Americans from voting for President and Vice President solely because they had moved their households before the election. The law also extended absentee registration and balloting rights to American citizens who were away from home on election day.

Although the number of Americans casting Presidential absentee ballots in 1972 increased by 26 percent over the previous Presidential election, it became clear that some States would not extend the full voting rights to Americans who were outside the United States that I and other sponsors of the 1970 law is limited in its application to voting for President and Vice President and does not cover voting for all Federal offices. Thus, it is clear that a new law is now needed to clarify the meaning of the 1970 statute and to extend comparable benefits to citizens who wish to vote in congressional elections as well as for President and Vice President.

Mr. President, there is no question in my mind about congressional power to protect the right of U.S. citizens to vote. In this connection, my counsel has prepared a legal memorandum in support of the constitutionality of S. 95 and I ask unanimous consent that this paper be printed in the RECORD at the conclusion of my statement.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 1.)

Mr. GOLDWATER. In short, I believe it is a firmly established principle of American law that the right to vote for national officers is one of the fundamental, personal rights of national citizenship. Moreover, the right to vote and the freedom to travel are both among the privileges of U.S. citizenship which are directly dependent on and secured by the Constitution.

Also, I would point out that Americans abroad have a distinct and direct interest in Federal elections similar to that of citizens who remain at home. Overseas Americans have a great interest in decisions and policies acted upon by the President and Congress jointly and have a very real stake in being allowed to participate in the political process. In acting to protect the franchise for these citizens, Congress is merely implementing the basic scheme of the Constitution that Americans shall enjoy a representative government whose officers are as responsive as possible to all of the people.

EXHIBIT 1

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

(By J. Terry Emerson, counsel to U.S. Senator Barry Goldwater)

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

It is firmly established in American law 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 . . ." *Twining* 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 but 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 is created by the Constitution alone, and it and the Vice Presidency are the only national offices chosen in a nation-wide election. All doubt of the standing accorded this right is removed by *In re Quarles*, where the Supreme Court 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 later held that Presidential electors exercise Federal functions, a truism which further supports the power of Congress to legislate with respect to Presidential elections *Borroughs* 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 Americans 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; Twining* v. *New York, 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 citizen's liberty," guaranteed in the Due Process Clause of the Fifth Amendment. *Kent, supra* at 127; *Aptheker* 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. *Aptheker, 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 stated by Chief Justice Waite in *United States v. Reese,* 92 U.S. 214, 217 (1875), the "right 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 State, the applicable rule under which Congress may legislate is the classic formulation by Chief Justice Marshall in *McCullough* 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 *McCullough 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. 95 IS APPROPRIATE LEGISLATION

Applying the above principles to the subject legislation, it is clear S. 95 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 that 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 is 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

The recent 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 this class of citizens Congress is concerned 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 bona fide 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 of 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. 95 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 VOTING PURPOSES IN FEDERAL ELECTIONS

A second class of overseas citizens who are covered by S. 95 includes 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 residence of that State for voting purposes, Congress has a rational basis for determining that these persons remain bone 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, 2d, 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. 95. 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 reasons 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 it 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 determinations 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 an obvious interest in preserving the basic conception of their political communities, they have shown themselves able to do 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. 95 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 interest 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. 95.

Nor will enactment of the broad definition of residence required by S. 95 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 absence 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 claim 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 qualified voters.

It is also clear that a State cannot 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 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, 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 vote 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." e.g., *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." *Westberry* v. *Saunders*, 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. 95 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 his found to be guaranteed to each citizen by the Federal Constitution.

Mr. MANSFIELD. Mr. President, I move that the Senate concur in the amendment of the House.

The PRESIDING OFFICER. Without objection, the motion is agreed to.

Senator PELL. The next witness is the chamber of commerce, William G. Whyte, regional vice president and chairman of the public affairs committee.

I notice, Mr. Whyte, you have a fairly long statement. Do you care to summarize it? We would be delighted if you want to read it, fine.

TESTIMONY OF WILLIAM G. WHYTE, CHAIRMAN OF THE PUBLIC AFFAIRS COMMITTEE OF THE CHAMBER OF COMMERCE OF THE UNITED STATES, ACCOMPANIED BY ROBERT T. SNURE OF THE NATIONAL CHAMBER'S PUBLIC AFFAIRS DEPARTMENT

Mr. WHYTE. Thank you, Mr. Chairman.

Senator PELL. Excuse me. Appearing with you is Mr. Robert T. Snure, of the national chamber's public affairs department?

Mr. WHYTE. Excuse me. Perhaps I have summarized to the extent that I had forgotten my friend.

The main points I would like to make are included in our statement which we would like carried in full in the record.

The national chamber, the country's largest business federation, is composed of over 65,000 business firms, plus 3,600 local, State, and regional chambers of commerce and trade and professional associations in the United States. Included in our membership are American chambers of commerce abroad in 40 foreign countries.

It is in behalf of all qualified American citizens now or in the future located outside the United States, particularly those working in or dependent upon the private sector's overseas operations, that we appear today in support of S. 703.

We certainly commend you, Mr. Chairman, and Senators Mathias and Goldwater for your introduction of S. 703 and for the scheduling of these hearings to seek improvements in the administration, operations, and enforcement of the Overseas Citizens Voting Rights Act of 1975.

My testimony is based on the experience of the national chamber and its members in the act's operations in 1976, and on responses from a cross section of overseas Americans to our recent questionnaire.

One major need is the establishment and operation of a central source of information for overseas Americans as to their voting rights and forms and other needed materials to enable them to conveniently apply to the proper election authority in the exercise of such rights. To date, several sources, acting independently, have tried to provide this service, without total success.

In 1976, as in 1973, the national chamber informed many thousands of Americans overseas of their newly won rights to register and vote in all Federal elections, instructed them as to procedures, and supplied them with a chamber-prepared application form that, in our opinion, was the only such form that met the requirements of the law. We published and distributed throughout the world a 90-page "Guide to Absentee Voting in Federal Elections by American Citizens Abroad," which detailed all aspects of the Overseas Voting Rights Act of 1975. Copies of this guide are available to members of this committee and we respectfully request, Mr. Chairman, that a copy of this be made a part of the record.

Senator PELL. How many pages is it?

Mr. WHYTE. Ninety.

Senator PELL. Well, it may be made available and if possible it will be made a part.

Mr. WHYTE. Mainly we wanted the members of the committee to have a copy of it.

Senator PELL. Thank you.

[See exhibit 7 of the appendix for an extract of the guide, p. 197.]

Mr. WHYTE. We endorse the provisions in S. 703 to place the educational responsibility for the Federal Voting Assistance Act and the Overseas Citizens Voting Rights Act in the hands of the President's designee, now the Secretary of Defense. The same designee should have the responsibility for administering both acts, as S. 703 provides. In both operations, as S. 703 provides, he shall be assisted by the Postmaster General, the Federal Elections Commission, the State

Department, the Attorney General, and/or other appropriate agencies of the Federal and State governments. We also urge that the Department of Justice retain enforcement responsibilities and that these responsibilities be more specifically described in the statute.

We support, too, adoption by the States of a standard form, as recommended in your bill, that can be utilized by every American overseas in applying for absentee registration and voting privileges. Would-be voters and election officials are likely to be confused by the current use of the Federal post card application for one group of citizens to vote under the Federal Voting Assistance Act and its amended use by those seeking to register under the Overseas Citizens Voting Rights Act of 1975 for Federal elections only. Furthermore, the use of still another form, as designed by the national chamber, to meet only the requirements of Public Law 94–203, adds more confusion. More importantly, the failure of some States to recognize one form and not the other is detrimental to the act's purpose.

I am not going into further detail about the legislation, Mr. Chairman, as I believe our statement explains our position fully. I think one of the most important things that we have done as a contribution to your subcommittee was conducting a survey among our members overseas, and I would like to just cover that part of my statement in closing, if I may.

Senator PELL. Please.

Mr. WHYTE. We wholeheartedly support the inclusion in S. 703 of the tax provisions passed by the Senate in 1975 to protect overseas Americans from State and local taxes based solely on their enfranchisement in their States or districts of last domicile.

Evidence at hand indicates that the fear of such taxation, based solely on their participation in Federal elections, deterred many eligible citizens from exercising their voting rights in 1976. Such taxation is unreasonable and we urge that the language in section 4(2)(b) of S. 703 be approved by this committee.

While the actual number of overseas Americans participating in the 1976 Federal elections has not been made public by the various States, and may not be revealed in the survey now being undertaken by the Bureau of the Census, we have reason to believe that participation would have been far greater had the provisions of S. 703 been on the statute books.

In fact, Mr. Chairman, early returns from a national chamber questionnaire circulated among a cross section of overseas Americans shows that:

Of respondents in Spain, France, Italy, the Netherlands, Switzerland, Argentina, and Costa Rica—55 percent did not vote in the 1976 Federal elections.

Of those who did not participate, over 47 percent failed to receive needed forms and ballot materials from their last States of domicile in time to permit them to do so. In the vast majority of these cases, delay was not in the filing of applications, but in the late or nonreturn by State or local authorities of needed materials. Local election jurisdictions in New York State were at fault over 30 percent of the time, according to these replies.

Of those who did not vote, according to this survey, 52 percent did not do so because of the uncertainty of their State tax status and

their fear of making themselves subject to such taxation by the mere filing of a request for registration or voting forms.

Nearly 10 percent of those not voting indicated a lack of knowledge of the law and their right to participate in Federal elections.

Suggestions from respondents for improving overseas procedures included the following:

1. Make it easier to obtain required forms and ballots.
2. Have application materials available at embassies, consulates, with qualified personnel on hand to provide needed information and notarization.
3. Provide Americans overseas with simple explanations of the law and how, when, and where to apply.
4. Develop a standard form for use by all applicants.
5. Enclose voter registration information and applications with U.S. tax forms sent overseas.

Answers we have received to date underscore the need to amend Public Law 94–203 in the areas cited.

In the next few weeks, Mr. Chairman, we will supply the committee with our final tabulation, a copy of our questionnaire, and its accompanying letter.

I ask that they be made a part of the record at that time and we will endeavor to get those in to you by April 1.

[See exhibit 8 of the appendix of this hearing, p. 219.]

Augmenting the testimony presented here today by the national chamber are communications sent to the committee by our member American Chambers of Commerce abroad based on the personal experience of many thousands of overseas American citizens who tried against varying odds to participate in the 1976 Federal elections under the provisions of the Overseas Citizens Voting Rights Act.

On behalf of the Chamber of Commerce of the United States and its worldwide membership I urge your subcommittee, Mr. Chairman, to report S. 703 favorably with needed amendments and to strive for enactment of new overseas citizens voting rights legislation in the 95th Congress in plenty of time to permit and promote greater participation by overseas Americans in the 1978 Federal elections.

In closing, we are pleased to join with the Bipartisan Committee on Absentee Voting in support of this amendatory legislation.

Senator PELL. Thank you very much.

Now, Mr. Whyte, for your additional thoughts, do you think that the Defense Department should be the single agency to carry out the absentee voting or how would you like to see it done or where would you like to see this responsibility?

Mr. WHYTE. I heard the testimony this morning by the representative of the Defense Department. I think he had some good points. I am not completely happy with it in the Defense Department but I do not know what other agency would be qualified on a worldwide basis to administer this program and I think this deserves further study by the subcommittee.

Senator PELL. The problem is in the countries where there is no Defense Department. The one I mentioned before, for example, Czechoslovakia. I do not know whether with their small staff they are qualified to handle both Acts.

Thank you both very much indeed for your statement, for your support of the bill itself and the benefit of your ideas.

Mr. WHYTE. Mr. Chairman, I think the results of this questionnaire will be advantageous to you and will be completely tabulated before you close the report. We will submit the questionnaire, the letter that went with the questionnaire and the tabulated results.

Senator PELL. Thank you both very much indeed.

Mr. SNURE. Mr. Chairman, I believe you received under date of February 22 another survey made by the Asia-Pacific Council of American Chambers of Commerce.

Senator PELL. I am informed we did receive that and it will be made an exhibit to the record.

[See exhibit 11 of the appendix of this hearing, p. 238.]

Senator PELL. Thank you both very much indeed.

[The statement of Mr. Whyte follows:]

STATEMENT BY WILLIAM G. WHYTE FOR THE CHAMBER OF COMMERCE OF THE UNITED STATES

Mr. Chairman, I am William G. Whyte, Vice President and Assistant to the Vice Chairman of United States Steel Corporation, headquartered in Washington.

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

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

The National Chamber, the country's largest business federation, is composed of over 65,000 business firms, plus 3,600 local, state and regional chambers of commerce and trade/professional associations in the United States. Included in our membership are American Chambers of Commerce Abroad in 40 foreign countries.

It is in behalf of all qualified American citizens now or in the future located outside the United States, particularly those working in or dependent upon the private sectors overseas operations, that we appear today in support of S. 703.

The National Chamber has long held that maintenance of individual freedom and our political institutions necessitates broad-scale participation by all eligible voters, including business and professional people, in the selection, nomination and election of public office holders.

Thus, we have supported in the past, and will continue to support, legislation to guarantee the right of absentee registration and voting in all Federal elections in his or her last state of domicile to any American citizen located outside the United States who is otherwise qualified to register and vote in such elections; and to guarantee that the retention by that citizen of such state or district of last domicile solely for the purpose of exercising that registration or voting right shall not affect the determination of that citizen's residence or domicile for tax purposes under Federal, state or local law.

Therefore, we commend Senators Pell, Mathias and Goldwater for their introduction of S. 703 and for the scheduling of these hearings to seek needed improvements in the administration, operations and enforcement of the Overseas Citizens Voting Rights Act of 1975.

An important aspect of your legislative efforts will, if successful, allow the Congress and the President to put into operation lawful procedures to make all overseas Americans fully aware of their voting rights in all Federal elections; enable them to participate in the election process free from the threat or imposition of taxes based solely on such enfranchisement; and to otherwise grant to private citizens abroad the same rights of absentee registration and voting, at least in Federal elections, and mailing services connected therewith, that for nearly two decades have belonged only to Federal civilian employees, members of the Armed Forces, and their dependents, overseas.

The Overseas Voting Rights Act was introduced into the Senate to correct discriminatory State practices in granting full voting rights to government employees and their dependents overseas, while at the same time denying such rights

to otherwise qualified Americans employed in private industry abroad. These hearings, we feel certain, will disclose that some discriminatory practices continued during the 1976 election period and that other provisions of the Act, based on last year's experience, need revision.

My testimony is based on the experience of the National Chamber and its members in the Act's operations in 1976, and on responses from a cross-section of overseas Americans to our recent questionnaire.

One major need is the establishment and operation of a central source of information for overseas Americans as to their voting rights, and forms and other needed materials to enable them to conveniently apply to the proper election authority in the exercise of such rights. To date, several sources, acting independently, have tried to provide this service, without total success.

The 1973 hearings by this Subcommittee on S. 2102 and S. 2384 included a description of the worldwide, public service efforts by the National Chamber to alert Americans here and overseas, multi-national firms with overseas personnel, and Federal, state and local election officials to the provisions of the Voting Rights Act Amendments of 1970 under which private Americans abroad were first given the right to vote in the 1972 Presidential election.

In 1976, the National Chamber again informed many thousands of Americans overseas of their newly won rights to register and vote in all Federal elections, instructed them as to procedures, and supplied them with a Chamber-prepared application form that, in our opinion, was the only such form that met the requirements of Public Law 94–203. We published and distributed throughout the world a 90-page "Guide to Absentee Voting in Federal Elections by American Citizens Abroad," which detailed all aspects of the Overseas Voting Rights Act of 1975. Copies of this Guide are available to members of this Subcommittee. We respectfully request, Mr. Chairman, that a copy be made part of the record.

We mailed a copy of this Guide to each Governor, Secretary of State, and Attorney General and to the chief election official of each county and municipality in the 50 states. At least 4,500 copies were thus sent to state and county officials alone.

In addition, free copies were distributed through the State Department to American embassies and consulates worldwide, and through American Chambers of Commerce and other organizations and business firms abroad, to American citizens under their jurisdiction who were working, residing or attending school overseas.

The major purpose of this widespread circulation was to help make state and local election officials aware of the new law and knowledgeable as to the rights of overseas Americans to seek to register and vote in their states and districts of last domicile in all Federal elections. At the same time, we hoped to alert Americans abroad to their new legal rights of participation by absentee process in Federal elections.

Combined with the National Chamber's effort was the circulation to state officials by the Civil Rights Division, Department of Justice, of Assistant Attorney General J. Stanley Pottinger's interpretation of the Act and his request for state compliance. Also circulated to all embassies and consulates by the Special Consular Services Section of the State Department were explanatory materials and instructions for assisting Americans in filing needed applications. Finally, the Defense Department's Federal Voting Assistance staff prepared a detailed 320-page "Guide to Absentee Voting," explaining each state's absentee voting requirements under the Federal Voting Assistance Act, and identifying by states each county seat and zip code to which applications from overseas should be addressed. The Defense Department's Voting Assistance staff not only distributed that Guide to all American military installations abroad but sent copies as well to all American embassies and consulates, and American Chambers of Commerce Abroad for the use of Americans overseas for application to the states under either Act. The Defense Department's publication was a valuable supplement to the National Chamber's Guide.

Even with this broad effort, there were undoubtedly persons overseas who were not informed. More importantly, there obviously was a duplication of effort and cost to each agency and organization involved.

Therefore, we endorse the provisions in S. 703 to place the educational responsibility for the Federal Voting Assistance Act and the Overseas Citizens Voting Rights Act in the hands of the President's designee (now the Secretary of Defense). The same designee should have the responsibility for administering both Acts, as S. 703 provides. In both operations, as S. 703 provides, he shall be

assisted by the Postmaster General, the Federal Elections Commission, the State Department, the Attorney General and/or other appropriate agencies of the Federal and state governments. We also urge that the Department of Justice retain enforcement responsibilities and that these responsibilities be more specifically described in the statute.

The efficiency and capability of the 3-man Federal Voting Assistance Division of the Department of Defense is truly remarkable. For 20 years this Division has carried out its duties and responsibilities under the Federal Voting Assistance Act to military personnel here and abroad and, since 1968, to civilians temporarily residing abroad. As in other branches of the Armed Forces, commanding officers in charge of this Division have been rotated out to other assignments, and new commanding officers have come in and continued to operate this Division with similar efficiency. It seems to us that an element of permanence needs to be introduced to this function.

We support, too, adoption by the states of a standard form, as recommended in S. 703, that can be utilized by every American overseas in applying for absentee registration and voting privileges. Would-be voters and election officials are likely to be confused by the current use of the Federal Post Card Application for one group of citizens to vote under the Federal Voting Assistance Act and its amended use by those seeking to register under the Overseas Citizens Voting Rights Act of 1975 for Federal elections only. Furthermore, the use of still another form, as designed by the National Chamber, to meet only the requirements of Public Law 94–203, adds more confusion. More importantly, the failure of some states to recognize one form and not the other is detrimental to the Act's purposes.

One standard form is required for worldwide use by all American citizens—a form that will be recognized and honored by all state and local jurisdictions. Therefore, we endorse the development, distribution and use by the President's designee of one standard form under both Acts.

We urge, however, that the law provide for Federal action upon a state's refusal to voluntarily comply after a set period of 60 or 90 days.

Speaking of state compliance, the National Chamber provided evidence in its testimony of September 26, 1973, that "of the states (then) refusing to comply with the Act (i.e., the Voting Rights Act Amendments of 1970), New York stands out as particularly adamant in refusing to honor applications from residents overseas and in refusing to adhere to federally established absentee registration and voting requirements."

That New York was again in the forefront of non-compliance, this time in 1975 Act, was evident when in late October, 1976, it had delayed mailing ballot materials that had to be returned to New York by 9 p.m., November 2, to be counted in the election returns. Thanks to the alertness of Americans overseas and with the cooperation of Assistant U. S. Attorney General J. Stanley Pottinger, the deadline for receipt of overseas ballots was extended by the Federal District Court in New York. As a result, we understand, some 7,000 New York ballots were received from overseas and tabulated, compared with only some 700 that had been able to meet the prior deadline.

How many election officials in other states disenfranchised overseas citizens by similar delaying actions, we shall probably never know. Obviously, however, state or county delays in distributing needed ballot material overseas cannot be tolerated. The law should provide sufficiently severe penalties for such laxity to discourage its practice.

An alternative would be a requirement in the law to protect Americans abroad from being disenfranchised through state or local negligence in mailing out ballots. For example, provision could be made, for each day less than 20 days before an election that an election official air mails an absentee ballot to a voter overseas, that the deadline for return thereof via air mail to the proper election district be extended by a like number of days. If the law so provided, Department of Justice and court action would not necessarily be required to enforce such an extension for the overseas votes to be included in election returns.

We favor the provisions of section 5(a) of S. 703 requiring states to supply complete information on absentee registration and voting requirements in Federal elections, together with information on the number of absentee voters in each state who can and do participate in federal elections, particularly those outside U.S. boundaries. Eligible absentee voter information is not available from any other source, to our knowledge.

We likewise favor the "free postage" provision that parallels existing privileges available to Federal civilian and Armed Forces personnel. We urge, however, that clarifying language be included so that any American citizen without access to the mail facilities of a U. S. military station, embassy or consulate, will know that he must affix the required local air mail postage to send the material back to the states. Perhaps this can be handled administratively rather than legislatively.

Your attention is called to Section 3(3) of the Overseas Citizens Voting Rights Act of 1975. This requires that a citizen seeking to register and vote absentee shall have a valid passport or card of identity and registration issued under authority of the Secretary of State, and shall include such identity on his application form.

Information coming to our attention during 1976 is that Canada does not require American citizens living there to have a passport or card of identity. To meet the Act's requirements, each American in Canada would have had to purchase a card of identity or passport at an American embassy or consulate office there in order to seek to register and vote in the 1976 federal elections. This required purchase could be considered the equivalent of a poll tax, violative of the Constitution.

This Section 3(3) requirement was undoubtedly intended to prevent vote fraud. We agree that some form of proof of American citizenship is necessary. But, in those countries where U. S. passports or cards of identity are not required, proof of American citizenship by affidavit or other means should be sufficient.

And finally, Mr. Chairman, we wholeheartedly support the inclusion in S. 703 of the tax provisions passed by the Senate in 1975 (S. 95) to protect overseas Americans from state and local taxes based solely on their enfranchisement in their states or districts of last domicile.

Evidence at hand indicates that the fear of such taxation, based solely on their participation in federal elections, deterred many eligible citizens from exercising their voting rights in 1976. Such taxation is unreasonable and we urge that the language in Section 4(2)(b) of S. 703 be approved by this Subcommittee.

While the actual number of overseas Americans participating in the 1976 Federal elections has not been made public by the various states, and may not be revealed in the survey now being undertaken by the Bureau of the Census, we have reason to believe that participation would have been far greater had the provisions of S. 703 been on the statute books.

In fact, Mr. Chairman, early returns from a National Chamber questionnaire circulated among a cross-section of overseas Americans, show that—

Of respondents in Spain, France, Italy, The Netherlands, Switzerland, Argentina and Costa Rica—55 per cent did not vote in the 1976 Federal elections.

Of those who did not participate, over 47 per cent failed to receive needed forms and ballot materials from their last states of domicile in time to permit them to do so. In the vast majority of these cases, delay was not in the filing of applications, but in the late or non-return by state/local authorities of needed materials. Local election jurisdictions in New York State were at fault over 30 per cent of the time, according to these replies.

Of those who did not vote, according to this survey, 52 per cent did not do so because of the uncertainty of their state tax status and their fear of making themselves subject to such taxation by the mere filing of a request for registration or voting forms.

Nearly 10 per cent of those not voting indicated a lack of knowledge of the law and their right to participate in Federal elections. (Possibility of multiple reasons accounts for total in excess of 100%).

Suggestions from respondents for improving overseas voting procedures included the following:

Make it easier to obtain required forms/ballots.

Have application materials available at embassies/consulates with qualified personnel on hand to provide needed information and notorization.

Provide Americans overseas with simple explanation of the law and how/when/where to apply.

Develop a standard form usable by all applicants.

Enclose voter registration information/applications with U. S. tax forms sent overseas.

Answers to date underscore the need to amend Public Law 94–203 in the areas cited.

In the next few weeks, Mr. Chairman, we will supply the Subcommittee with our final tabulations, a copy of our questionnaire, and its accompanying letter. I ask that they be made a part of the record.

Augmenting the testimony presented here today by the National Chamber are communications sent to the Subcommittee by our member American Chambers of Commerce Abroad based on the personal experiences of many thousands of overseas American Citizens who tried against varying odds to participate in the 1976 Federal elections under the provisions of the Overseas Citizens Voting Rights Act.

On behalf of the Chamber of Commerce of the United States and its worldwide membership, I urge your Subcommittee, Mr. Chairman, to report S. 703 favorably with needed amendments, and to strive for enactment of new Overseas Citizens Voting Rights legislation in the 95th Congress in plenty of time to permit and promote greater participation by overseas Americans in the 1978 Federal elections.

We are pleased to join with the Bipartisan Committee on Absentee Voting in support of this amendatory legislation.

Senator PELL. The next witness is Steven P. Cohen, attorney from Boston.

TESTIMONY OF STEVEN P. COHEN, ATTORNEY, BOSTON, MASS.

Mr. COHEN. Thank you very much, Mr. Chairman, for this opportunity to be here.

I was campaign director of Democrats Abroad this year and charged with the duty of trying to implement the Overseas Voting Rights Act.

Senator PELL. Why did you not coordinate your testimony with the Democrats Abroad if you were speaking for them?

Mr. COHEN. Because there are some viewpoints which have been discussed and not adopted by the group and it seems important to bring them before this committee.

Senator PELL. Then you are not speaking for the Democrats Abroad, but yourself?

Mr. COHEN. Yes.

Senator PELL. I note you have a very long statement. Perhaps you could summarize it for us.

Mr. COHEN. Yes.

First, I would like to wipe some tarnish from the reputation of Switzerland. It does allow foreign citizens to vote but does not allow them to operate political organizations in the country as such. But Americans are allowed to vote.

The questions that American citizens ask regarding their right to vote, register, and so on, require clearer answers than have been given in the past by Federal agencies.

The first point I would like to make is the Defense Department is an improper designee to implement the Overseas Citizens Voting Rights Act throughout the world because the Defense Establishment is thick in some countries and thin in others and because the military installations are distant from where American citizens are found in many cases.

It strikes me as far more sensible that the designee be the Department of State. The Special Consular Services Section of the Department of State, which does look after the interests of American citizens

abroad should be the agency charged with overseas voter assistance for all American citizens. They were very, very helpful this past year. They need beefing up. They need more materials. They need assistance.

When it came to the question of taxation and the like there was a lack of clear answers from the Federal establishment—I suppose I have to use that word—which did make it very difficult for many Americans to decide whether or not to register and vote. I was told, and it was only hearsay, that many American corporations specifically instructed their employees and their families living overseas not to register and not to vote because these American corporations feared that were State taxation to be imposed on these citizens the corporations would be liable for those taxes as part of employment agreements. Clarity at the Federal level and at the State level would be helpful for all practical purposes, the simple fact of registration need not be viewed as a legal act for a person's domicile for taxation purposes. But the fact is the information is likely to get to taxation authorities no matter what the law says.

I would like to focus on one point that was a real concern to our campaign which was the difficulty of getting information out. The International Herald-Tribune was cited in earlier testimony as having been very cooperative. I found the exact opposite to be the case. It refused to print nonpartisan information in the newspaper and as a result one of the most important media that reached American citizens overseas was of no value in helping inform Americans of their right to vote.

I would suggest that a voter registration and information campaign carried on by Federal agencies would offer a legitimate nonpartisan mechanism that could encourage the cooperation of private publications and private media in letting Americans know they do have a right to vote and all they need do is go to the nearest U.S. consulate for information.

I think that the proposal in S. 703 aimed at creating more uniformity in registration and the process of voting is good as it stands but that more needs to be done, particularly in the area of standardizing the postcard registration form for use by civilians and in requiring there be timely acknowledgement of applicant materials received from overseas citizens.

Other people who have testified have mentioned there should be some mechanism to allow people who have received their ballots to vote, if the ballot is postmarked by midnight on election day. I share the desire of all politically interested Americans in getting results as fast as possible. It may well be that saying to States they must count ballots up to 10 days after the election might be an incentive to get the ballots out on time in the first place.

Thank you very much, Mr. Chairman.

Senator PELL. Two specific questions.

One, you mentioned the New York-Paris Herald Tribune. Whom did you talk to?

Mr. COHEN. The editor.

Senator PELL. What was his name?

Mr. COHEN. Buddy Weiss.

Senator PELL. And he refused to——

Mr. COHEN. Well, he did get to the point of saying he would think about it.

Senator PELL. As you know, the New York Herald Tribune in Paris is owned by the New York Times and the Washington Post. I do not think there is any reporter here or any other Senator for that matter. But it should be followed up.

The second thing, you say corporations specifically discouraged employees from voting. Could you give me a specific example?

Mr. COHEN. I am afraid I could not. People called me from Holland, Belgium, and France on different occasions and said they knew about it but nobody who was actually told this by a corporate officer, in most cases counsel would speak to me. So that is all. I am sorry about that.

Senator PELL. All right.

Thank you very much indeed and thank you for your willingness to be with us.

[The statement of Mr. Cohen follows:]

STATEMENT OF STEVEN P. COHEN, FORMER CAMPAIGN DIRECTOR OF DEMOCRATS ABROAD

In early August 1976 I was assigned by the Democratic National Committee to direct the campaign for absentee votes of Americans living overseas. As Campaign Director of Democrats Abroad I was responsible for organizing and implementing a campaign to register voters under the Overseas Citizen Voting Rights Act.

Approximately one million American civilians live more or less permanently outside the United States. Large numbers of them live in major cities in North America, Western Europe and other scattered countries throughout the world. Many other overseas residents are not found in major population centers; but their right to vote is equally clear.

There are major obstacles to the participation of overseas Americans in the political process. In a Stateside election campaign it is possible to research voting and residential lists; campaign through newspaper, radio and television advertising; and to capitalize on the natural publicity that surrounds major political campaigns. Voter registration can be targeted at specific neighborhoods, age groups, ethnic groups, etc. Overseas none of those facilitating factors exist. Occasionally it is possible to pinpoint a newspaper with heavy American readership, and certainly some communities have larger numbers of American residents than others. For the most part, however, Americans are very difficult to find, and their participation as voters requires high motivation.

By extending the right to vote to long-term overseas residents, the Overseas Citizens Voting Rights Act of 1975 opened the door to participation to hundreds of thousands of previously disenfranchised American citizens. Implementation of the Act was difficult. No specifically targeted public resources were made available for voter education, assistance or registration. State Department employees at embassies and consulates were available to facilitate the voter registration process through the distribution of federal postcard registration forms, notarization of forms when required by specific states, and supplying addresses of appropriate Stateside election officials for interested American citizens. The Department of defense guide for overseas residents was made available in embassies and consulates. Generally speaking, consular personnel involved in providing voter assistance had one copy of the guide available. The guide is an exhaustive compendium of Stateside election officials' addresses and congressional district boundaries. It also provides detailed information about certain voting requirements. Copies of the guide were promised to the Democrats Abroad organization, and I would assume to Republican campaigners as well. Democrats Abroad received its copies about October 1, too late for any use in voter registration.

The best educational materials were provided by two private organizations, the League of Women Voters and the Chamber of Commerce. These guides provided concise, up-to-date information about the process. Nonetheless, still more information was needed to assist Americans overseas wanting to exercise their right to vote.

It is very important to note that a considerable portion of the resources made available to the Democratic Campaign in 1976 overseas were used to

provide nonpartisan voting information that was not offered to civilians by any federal agency. More than half the calls for voter registration received in the London headquarters of Democrats Abroad were from people referred by embassy personnel charged with voter information services who did not have sufficient information to provide the answers needed by individual voters. These consular personnel were given no training and almost no guidelines regarding the performance of their duty in the voter registration and information area. Nonetheless, for the most part they worked hard and they were remarkably helpful and thoughtful to individuals needing assistance.

As the Overseas Citizens Voting Rights Act comes up for review with the possibility of amendment, it is important to focus on its underlying goals and on means for their achievement. The basic goal must be to register the maximum possible number of Americans living overseas as voters and to provide eligible Americans with information and assistance to foster their participation.

The designation of the Department of Defense as the federal agency primarily responsible for overseas citizens voting requires careful review. American civilians outnumber American military personnel living overseas by a factor of two to one. That is a misleading figure because in most countries the ratio is even higher. While in Germany four out of five Americans are connected with the military establishment, in France the American military presence is all but nonexistent. It would seem somewhat questionable to focus on military resources for civilian voting throughout the world. In many countries where there is a measurable American military presence, it tends to be located at some distance from American civilian population centers. If the Defense Department is charged with implementing the mandate of the Overseas Citizens Voting Rights Act regarding civilians, it could well mean that funding will be required for the creation and maintenance of a separate instrumentality within the defense establishment to implement civilian voting assistance. Frankly, it would make far more sense to beef up the Special Consular Services staff at the Department of State, because this is the agency that has the responsibility of looking after the interests of American civilians outside the United States.

Fulfillment of the promise of overseas citizens voting rights will require a real public education effort. Even now many Americans residing overseas do not know they have the right to vote. During my work last fall I was told that some American corporations specifically discouraged their employees from registering to vote for fear of additional state income tax vulnerability. Unfortunately, the information was always presented to me as hearsay, so I cannot name the corporations involved. The important point is that with no official source providing information, American citizens did not know who to believe regarding tax liability and other very real questions regarding voter registration and participation. Therefore, an agency of the United States Government is the most credible source of information.

It is difficult to spread the word about voting rights to overseas Americans. English-language publications overseas such as the International Herald Tribune were reluctant to undertake voter information programs. I had more than one conversation with the editor of the Herald Tribune, suggesting that that paper should run small public service boxes saying, "Americans resident overseas, contact your nearest consulate or embassy for voting information." Even this strictly nonpartisan voter information device was rejected by that newspaper. English-language publications in other countries were not quite as reluctant to be helpful, but even they were understandably hesitant to follow the advice of an individual so obviously and openly identified with a political party. Were the same suggestion to have been made by an official representative of a federal department such as State or Defense. I believe the response would have been different. Therefore, it is clear that whatever federal agency or agencies end up charged with the responsibilities for implementing the Overseas Citizens Voting Rights Act, as amended, it should be mandated to oversee, orchestrate or undertake voter information activities making use of available media.

According to the most recent figures available, Americans living overseas had contributed more than $50,000 to the Presidential Campaign check-off fund through their income tax. Clearly, this source of funding should be considered as a possible means for finding resources for a serious voter education effort overseas.

It may well make sense to utilize these sources of funds on a nonpartisan basis to support not only voter information programs but also primary elections for overseas Americans. In 1976 Democrats Abroad financed a primary election

through private donations to elect delegates to the National Convention. While it would be wrong to support the activities of only one party, it may make sense to consider funding for primary campaigns for delegates form overseas if a primary system can be devised for more than just one party.

One of the more difficult aspects of overseas voting stems from the crazy-quilt of laws governing voting in the 50 States. Registration deadlines vary as do the processes of registering and voting themselves. There is a serious question to be raised regarding any imposition of federal guidelines on States regarding voting participation. Nonetheless, it is possible to devise a means allowing for State by State variation yet offering a degree of predictability to make it less confusing for overseas citizens to participate.

To begin with, federal postcard registration forms must be rewritten to allow for civilian registration without confusing civilians with military information requirements. In addition, States should be required to acknowledge the receipt of registration materials to give overseas voters the assurance that their attempt to participate has reached the proper authorities. In this past election some jurisdictions in California did respond to registration applications by sending overseas voters letters saying, "Well, you regisered in time, but it's going to be impossible for you to send in the absentee ballot request in time; so you are registered, but you can't vote." People receiving those letters were enraged and upset and tended to feel that the system did not take them seriously.

There should also be a federal requirement that, for federal elections at least, ballots must be sent to overseas residents with sufficient time to make it possible to return ballots before the elections. In New York State in 1976 several factors made that impossible, and as a result Democrats Abroad initiated a lawsuit which ended up requiring New York State to accept ballots postmarked before midnight Election Day and received up to ten days thereafter. Some such similar safeguard should be included in any new legislation to provide States an incentive for timely response to absentee voter applications.

When I accepted the Democrats Abroad Campaign Director job, to be perfectly honest I anticipated having to try to work with a bunch of expatriates interested in the romance of a political campaign. My assumptions were wrong. I found that Americans living overseas are remarkably patriotic, proud of their nationality and heritage and dedicated to our country. They worked hard as campaign volunteers, often at very real sacrifice because of local anti-American conditions as well as the challenge of finding the resources needed for our campaign. Americans overseas who want to vote face extraordinary obstacles to participation. Voting requires initiative and determination and even patience, and I must say, the people with whom I had the pleasure and honor of working had these qualities and much more.

In a time when all concerned Americans are dismayed at the apparent disinclination of many citizens to vote, it is inspiring and impressive that Americans living thousands of miles away from home go to such extraordinary efforts to exercise their voting rights. I don't live overseas, I don't work for Democrats Abroad any more, I speak to you as someone who has observed the dedication and commitments of literally hundreds of volunteers. They deserve improvements in the Overseas Citizens Voting Rights Act that will enhance their participation in future elections. Like all of us, they have the right to participate as American citizens; it is incumbent on people here, Stateside, to provide them every possible assistance and encouragement.

I have attached a list of several elements that should be contained in amendments to the legislation to correct problems encountered in 1976:

1. The Special Consular Services section of the Department of State should be designated responsible for voter registration, education, information and assistance for American personnel living overseas. This mandate could provide for joint responsibility with the Department of Defense in countries where the American military presence is of a size and is located near enough to American civilian population centers to justify Defense Department participation.

2. The federal agency or agencies designated to implement the Overseas Citizens Voting Rights Act and its amendments should design and undertake an aggressive voter registration program. That design should include a schedule of activities to be undertaken in the years between elections as well as in biennial federal election years. The program should include proposals regarding public information, the design of registration processes, and the design of educational materials for voter assistance personnel and for interested citizens.

3. The federal postcard registration form must be redesigned for civilian use. It should conform to the information requirements of the largest possible number of states.

4. The amended Overseas Citizens Voting Rights Act should include a requirement that state and local election officials acknowledge the receipt of all overseas citizens voter registration and absentee ballot requests and provide them with timely notification of any need to take further actions to fulfill absentee voting requirements. This mandate should also direct that such acknowledgement be sent by air mail and that it be carried free by the U.S. Postal Service.

5. There should be a requirement that absentee ballots be mailed to overseas citizens in a timely manner. Ballots should be in the mail a minimum of three weeks before the election day. Because there are occasional breakdowns in postal service as well as in state and local mechanisms for preparing ballots, the legislation should mandate that ballots postmarked from overseas before midnight on the day of a federal election must be counted if received within ten calendar days after the election.

6. The Federal Election Commission should be mandated to undertake a study regarding the feasibility of public financing for primary elections for overseas delegates to national nominating conventions.

Senator PELL. Is there anybody else? If not, this concludes the hearing although the record will stay open through the first week in April for both the submission of any further questions and also any further statements that are to be submitted.

I thank the witnesses, particularly Mr. Alegi and Mr. Kulick and others who came a long way to be here today. I hope they found the visit here and the testimony to be beneficial on their part.

This concludes the hearing at this time.

[The hearing was concluded at 11:59 a.m.]

[Additional statements, letters, and other materials received by the committee are as follows:]

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, D.C., April 1, 1977.

Hon. CLAIBORNE PELL,
Committee on Rules and Administration,
Russell Senate Office Building, Washington, D.C.

Dear SENATOR PELL: I regret that I was unable to appear before the Senate Rules and Administration Committee on March 8, 1977, to testify on S. 703, a bill to improve the administration and operation of the Overseas Citizens Voting Rights Act of 1975. I greatly appreciate the opportunity to share my views on this legislation with your Committee.

One of the highlights of the 94th Congress was the passage of the Overseas Citizens Voting Rights Act of 1975 (P.L. 94–203). The enactment of this legislation removed many of the impediments to the participation in Federal elections of thousands of Americans living abroad and signalled Congress' intent to end the discrimination against private citizens seeking access to the Federal franchise. The experience of the 1976 Federal elections indicates, however, that passage of P.L. 94–203 was not enough. More legislation is needed to refine the existing law and to eliminate difficulties not addressed by P.L. 94–203. Only by passing legislation such as S. 703 can Congress remove the remaining barriers to broad participation in Federal elections by Americans living abroad.

My review of the testimony heard by the Committee on March 8, 1977, has reinforced my belief that perhaps the single most important Congressional objective in this area is to make certain that American citizens living overseas are free to vote overseas without fear of the imposition of state taxes due to their exercising their right to vote in Federal elections. Section 4 of S. 703 seeks to address this issue by providing that the exercise of one's right to register and vote in Federal elections shall not, standing alone, subject an American citizen living abroad to Federal, State or local tax liability.

Section 4 of S. 703 is similar to a provision contained in the Senate-passed version of the Overseas Citizens Voting Rights Act of 1975, but dropped at the insistence of the House of Representatives. At the time Congress completed action on the 1975 bill, you and I expressed our concern over the deletion of this important provision. And, I indicated that sometime in the future Congress might well want to incorporate this or a similar provision into Federal law.

I recommend that Section 4 be amended to make clear that voting in Federal elections will be entirely neutral with respect to taxation. My proposal is that the provision read as follows:

"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."

My amendment will assure that voting in Federal elections would not be a factor in determining state law liability of an overseas citizen, even if he were to have other contacts with the state. My amendment would not, of course, restrict the state from imposing its tax on the overseas citizen on the basis of factors other than voting in Federal elections. The need for this amendment was amply stated in testimony before the Committee by the overseas citizens voting organizations. The language contained in this amendment is virtually identical to the tax provision in the original Senate overseas voting bill introduced several years ago.

The evidence presented to this Committee clearly demonstrates the need for amending P.L. 94–203 to include a "tax neutrality" provision. Especially disturbing and persuasive was the preliminary study presented by the United States Chamber of Commerce in its testimony on March 8, 1977. According to the Chamber's survey, over one-half of the Americans of voting age living abroad did not vote in the 1976 Federal elections. And, one-half of those did not participate "because of the uncertainty of their state tax status and fear of making themselves subject to such taxation by the mere filing of a request for registration or voting forms."

These statistics—which were confirmed by other witnesses during the hearings—are most discouraging. I believe that the Committee now has before it ample documentation to support the contention that the absence of the tax neutrality provision in the 1975 Act had a substantial "chilling effect" on the American electorate residing overseas. The results of the 1976 Federal election fully warrant the enactment of appropriate, corrective legislation.

I am aware that during the hearings there was some debate concerning the constitutionality of a "tax neutrality" provision. I am convinced that there is ample constitutional authority to support such a provision. In this regard, I would refer the Committee to our discussion of this constitutional issue during the Senate's consideration of the House-passed version of the Overseas Citizens Voting Rights Act of 1975, which may be found on page S 22675–76 of the Congressional Record of December 18, 1975. I request that this material be made part of the hearing record. As indicated in this material, support for the constitutionality of a "tax neutrality" section can be found in several constitutional provisions, including the 24th Amendment and the Due Process Clause of the Fifth and Fourteenth Amendments.

There are several other important issues which the Committee must consider to insure the full participation of Americans living abroad in our electoral process. These include:

Placing the responsibility and authority for collecting and disseminating absentee voting information to overseas citizens in appropriate Federal government agencies having adequate funding and staff to carry out their functions:

Providing that any balloting material sent from the United States to citizens abroad and returned by them shall not be sent by priority air mail or the most expeditious service available; and

Requiring the adoption by the states of a standard form that can be used by all overseas citizens desiring to register or vote.

In addition, there were other important issues raised during the hearings which are not addressed by S. 703, and are also deserving of the Committee's consideration. One of these was addressed by several witnesses during hearings: the possibility of extending the deadline for receipt of absentee ballots for a short period beyond election day. I believe this approach should be carefully reviewed by the Committee, especially in light of the successful experience with such a procedure in the State of Washington and the large number of ballots from Americans residing overseas which were not counted because they arrived too late.

Another such issue is the requirement in P.L. 94–203 of a valid U.S. Passport or card of identity and registration. I would propose that S. 703 be amended to delete this requirement from the statute. Many Americans residing in Canada and other locations abroad are not required by the State Department to have either of these two documents. The cost of obtaining these passport documents

solely for voting purposes imposes an unjustifiable burden and possibly an indirect poll tax on a group of American citizens abroad. Each State already has its own procedures for verifying the identity of absentee voters. There have been no reported cases of overseas voting fraud. Therefore, we should not impose passport requirements on either the States or the overseas voter.

Once again, thank you for providing me with the opportunity to comment on S. 703.

With best wishes,

Sincerely,

CHARLES McC. MATHIAS, Jr.,
U.S. Senator.

DEPARTMENT OF STATE,
Washington, D.C., March 7, 1977.

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

DEAR MR. CHAIRMAN: The Secretary has asked me to thank you for the opportunity to comment on S. 703, the bill which you, Senator Goldwater and Senator Mathias have introduced for the purpose of improving the Overseas Citizens Voting Rights Act of 1975.

Through our posts abroad, we have had direct contact with the U.S. citizens the 1975 Act was designed to help, and it was to the Department of State that these citizens turned when the Act did not do all that they hoped it would. We are therefore in a position to concur in the statement you made in introducing S. 703, namely, that "improvements in the 1975 Act are necessary to assure maximum overseas voter participation."

I believe that S. 703 does much to improve the shortfalls of the Overseas Citizens Voting Rights Act of 1975. However, I urge that it not be adopted as written, because the proposed reforms do not appear to be adequate to remedy many of the problems which we encountered in administering the Act. During and after the 1976 elections the Department received many complaints from overseas voters and there was a great deal of confusion regarding definitions, interpretations, etc., caused to a great extent by the overlap between the Federal Voting Assistance Act of 1955 and the 1975 Act. It is believed the best way to solve these problems is to repeal both of the existing Acts and replace them with a single, comprehensive law which will guarantee all U.S. citizens residing or temporarily abroad the right to be registered and vote in all Federal elections. Such a new statute would mandate to State authorities their duties and responsibilities and provide to the overseas citizen a clear understanding of his rights.

If, on balance, the Subcommittee supports S. 703, it is urged that the precatory provisions of Section 2 be made mandatory. The recommendations contained in Section 2 would go a long way toward alleviating the difficulties encountered by absentee voters in trying to cast their ballots, but only if such recommendations are adopted by the several States and territories. From the history of the Federal Voting Assistance Act of 1955, it should be clear that gentle persuasion has not had the desired effect on State legislatures. In a 1968 amendment to the 1955 Act, Congress expressed itself as "favoring" action on the part of the States to permit citizens temporarily residing abroad to vote by absentee ballot. Today, almost ten years after Congress made its views known, less than half the jurisdictions to which the Act applies have adopted procedures recommended by Congress in Section 102 of the Act (50 U.S.C. 1452). Nineteen States have not yet enfranchised all the persons mentioned in Section 101 of the Act (50 U.S.C. 1451). If the Congress fails to make the provisions of Section 2 of S. 703 mandatory, it can expect the same non-response, which will mean continued frustration to the absentee voter.

To summarize, I hope that the Sub-Committee will resolve the two major sources of the problems of absentee voters, namely the complexity of existing Federal legislation and the absence of a uniform registration and balloting procedure. If the Sub-Committee supports S. 703 it should make mandatory to recommendations of Section 2 to insure that some of the difficulties the Department has experienced will be eliminated.

The Office of Management and Budget advises that from the standpoint of the Administration's program there is no objection to the submission of this report.

Sincerely yours,

KEMPTON B. JENKINS,
Acting Assistant Secretary for Congressional Relations.

U.S. POSTAL SERVICE,
LAW DEPARTMENT,
Washington, D.C., March 7, 1977.

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

DEAR MR. CHAIRMAN: This is in response to your request for the views of the Postal Service on S. 703, a bill to improve the administration and operation of the Overseas Voting Rights Act of 1975 (OVRA), and for other purposes.

The Postal Service has no comment on the merits of this legislation. We note with approval, however, that the bill would amend title 39, United States Code, to authorize appropriations to reimburse the Postal Service for mail carried under OVRA. Our primary concern is with sections 3 and 6 of the bill, which contain, among other things, the following substantially identical provisions: proposed new section 6(d) of OVRA, and proposed new section 203(4) of the Federal Voting Assistance Act of 1955.

Proposed new section 6(d) would require the Postmaster General to "publicize, in the manner best designed to reach persons meeting the requirements in section 3 of this Act, and notify all appropriate State election officials regarding the availability of free postage and expedited mail delivery of balloting material under this Act."

The requirement to publicize in the manner best designed to reach persons meeting the requirements of section 3 of the Act would be impracticable for the Postal Service, inasmuch as the persons who meet the requirements of section 3 reside outside the United States, and the Postal Service generally has no presence outside the United States within the meaning of the Act. Furthermore, such a requirement would be duplicative of the duty placed upon the Presidential designee by section 3 of the bill, which would add to OVRA a new section 5(b) requiring the Presidential designee to "publicize, in the manner best designed to reach the persons meeting the requirements in section 3". The Presidential designee, presently the Secretary of Defense, is clearly in the superior position to carry out such a duty.

Likewise, we believe the duty of contacting the "appropriate" State election officials could be handled most efficiently by the Presidential designee who has already established such contacts and who has the responsibility for administering the Federal Voting Assistance Program. Imposing such a duty on busy local postmasters could distract them from their primary mission. Furthermore, the Postal Service would undoubtedly expend a substantial amount of time and effort notifying local officials in many of the thousands of election districts throughout the country and the bill provides for no reimbursement to the Postal Service for this effort. Accordingly, the Postal Service recommends deletion from the bill of proposed new section 6(d) of OVRA and proposed new section 203(4) of the Federal Voting Assistance Act of 1955.

We also would like to call to the Subcommittee's attention certain minor citation errors in the bill. In sections 1(3), 5, 6, and 7 each time the Federal Voting Assistance Act of 1955 is cited, the former citation to title 50, United States Code, appears. This Act now appears in 42 U.S.C. 1973cc et seq. (Supp. V, 1976).

Sincerely,

W. ALLEN SANDERS,
Assistant General Counsel, Legislative Division.

FEDERAL ELECTION COMMISSION,
Washington, D.C.

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

DEAR MR. CHAIRMAN: On behalf of the Federal Election Commission, I wish to thank you for your invitation to comment on S. 703.

Under the proposed bill, the Federal Election Commission, when consistent with its respective duties, shall assist the Presidential designee in collecting information relevant to Federal elections. Section 5. As you are well aware, the Commission currently serves as a National Clearinghouse for information with respect to the Administration of Elections. 2 U.S.C. § 438(b). The Commission has available, through the Clearinghouse, a report entitled, "An Analysis of Laws and Procedures Governing Absentee Registration and Absentee Voting in

the United States," which provides comprehensive information on the procedures and laws of each state. If this legislation is adopted, the Commission would, of course, cooperate with the Presidential designee in collecting information, as resources permit.

We thank you for this opportunity to comment. In view of the Commission's limited responsibilities under this bill, I do not think that it is necessary for the Commission to give oral testimony.

Sincerely yours,

WILLIAM C. OLDAKER,
General Counsel.

U.S. SENATE,
COMMITTEE ON RULES AND ADMINISTRATION,
Washington, D.C., March 11, 1977.

Hon. HAROLD BROWN,
Secretary of Defense, The Pentagon,
Washington, D.C.

DEAR MR. SECRETARY: I want to commend Mr. John Broger, Deputy Coordinator of the Federal Voting Assistance Program, for his excellent presentation before the Committee on Rules and Administration on March 8 with respect to the Overseas Citizens Voting Rights Act of 1975 and other matters.

As a follow-up to that hearing, we would like to have the views of the Department of Defense with respect to the following questions:

1. Would you please provide the Committee with the expenses incurred by the Defense Department in carrying out its responsibilities under the Federal Voting Assistance Act in Fiscal Year 1977. Also, what is your proposed budget for Fiscal Year 1978, and what would you estimate would be the additional costs of assuming responsibilities under the Overseas Citizens Voting Rights Act, as generally outlined in S. 703, or under the consolidation proposed in the Department's testimony?

2. The Department's testimony indicated that 26 states have not yet adopted all of the essential recommended balloting procedures vital to ensure the effective exercise of the right to vote. Please indicate the states involved, which of the procedures such states have not adopted, and the reasons therefor, if they are known.

3. The Department's testimony referred to 19 jurisdictions which have not enfranchised all persons covered by the 1955 Act. I would like to know the category of persons not covered, the specific jurisdictions involved, and the reasons they are not allowed to vote.

4. On page 5, paragraph 4 of the Department's prepared statement, it was indicated that one jurisdiction covered by the 1955 Act does not permit spouses of Armed Forces personnel to vote. Please identify that jurisdiction.

5. On page 11 (3) of the prepared statement, the Department suggests that it would be useful to connect free postage to the adoption of the Federal post card application. Is it at all likely that many states would elect not to use either and, instead, require state forms, thereby confusing all involved in the process? Are there states which employ the postage-free procedure of the 1955 Act which do not accept the Federal postcard application? Would you recommend the postcard be accepted as both a registration form and an application form for an absentee ballot?

6. On page 15 of the prepared statement, the Department suggests that an individual whose application has been denied should be immediately notified. Do you think it would be useful to draw up a Federal form for this purpose and mandate its use; or alternatively, so design the Federal postcard application as to make it possible to detach and return a portion of it to the sender acknowledging receipt and indicating preliminary acceptance or rejection?

7. On page 16 (5) of the prepared statement, the Department recommends mailing of ballots no later than 20 days prior to an election. I presume you feel 20 days is adequate when considered in conjunction with your recommendation (6) regarding the counting of absentee ballots up to 10 days after the election if postmarked by election day. Are you therefore recommending a minimum turnaround time for absentee ballots of 30 days? Please expand upon this point.

8. With respect to the Department's recommendation (6) on page 16 to permit the counting of absentee ballots received up to 10 days after the election, if they are postmarked on the day of the election, (a) are you aware of situations where the foreign postal procedures are such that it would be impossible to de-

termine the date of posting; and (b) what effects are you aware of that such a requirement would have on existing canvassing procedures etc. of the various states?

9. Does the Department of Defense have any views on the need for the requirement of Section 3 of the 1975 Overseas Citizens Voting Rights Act that a citizen have a valid passport or card of identity and registration issued under the authority of the Secretary of State?

10. On page 3 of the Department's testimony, it was suggested that provisions of the Status of Forces Agreements with host countries might prevent the use of APO mails for balloting materials by civilians. Would you please expand upon this and indicate if there is a legal restriction to permitting such use? What alternative methods would you propose to facilitate the expeditious transport of balloting materials?

11. Are the postcard applications under the 1955 Act distributed to the states for their subsequent distribution upon request? Please explain the present distribution procedures.

12. The 1955 Act and S. 703 which follows it have an August 15 date for making available official postcard applications. Has this been a realistic date in your experience under the 1955 Act?

Your cooperation and assistance in providing the above and any additional information or comments on other testimony presented at the hearing which you feel may be helpful will be appreciated.

Sincerely,

CLAIBORNE PELL.

OFFICE OF THE SECRETARY OF DEFENSE,
Washington, D.C. March 23, 1977.

Hon. CLAIBORNE PELL,
U. S. Senate, Washington, D.C.

Dear SENATOR PELL: Enclosed herewith are the answers to the questions raised in your March 11, 1977, letter to Secretary Brown, in connection with Senate Bill 703.

JOHN C. BROGER,
Deputy Coordinator,
Voting Assistance Program.

Enclosure.

1. The expenses incurred by the Department of Defense in carrying out its responsibilities during fiscal year 1977, other than those attributable to manpower, have been negligible to date. During odd-numbered years the Federal Voting Assistance Division (FVAD) is engaged in gathering information for the Voting Assistance Guide and the Biennial Report to the President and the Congress, and in preparing voting information support material for use during the even-numbered years. Anticipated expenses for this fiscal year are:

Salary of two military personnel and one civilian: $58,000.

Other expenses including printing and travel: $128,000.

These are the expenses to be incurred by the Office of the Secretary of Defense. The military departments expend additional funds for voter assistance programs over and above this amount. During election years these programs include informational programs as well as the services of voting assistance counselors. Since the military departments' programs are conducted on a station-by-station basis no useful cost figures are available.

During fiscal year 1976, including the transition quarter, the overall expenditures by the Department were $175,000. This included publication of the 1976 Voting Assistance Guide and extensive voting information support materials.

Printing of approximately five million Federal Post Card Applications for Absentee Ballot (FPCAs) cost $247,000.00. Approximately 2.5 million FPCAs remain in stock.

The Postal Service estimates the cost of handling absentee balloting material during fiscal year 1976, including the transition quarter, was $244,000.00. The costs for the months of October and November 1976, should be available in May.

The fiscal year 1978 budget of the FVAD is 161 thousand dollars.

In the event the Department of Defense assumed the responsibilities under the Overseas Citizens Voting Rights Act as outlined in S. 703, the minimal increase in expenses would be the cost of publicizing the voting information to overseas citizens and staffing to carry out this responsibility. These duties would not be

performed by members of the military departments. Since the publicity costs are unknown at this time, an accurate estimate of these costs is not possible; however, a minimal publicity campaign would be in excess of $20,000, and the salary for the additional staff member (GS–11) to conduct publicity would be $17,056 per year.

In the event the State Department were to carry out the overseas publicity responsibilities, there would be cost savings resulting from the familiarity of its personnel with the particular foreign countries. The one additional member of the FVAD staff would not be required.

In addition, if the Federal Election Commission conducts research of State absentee voting laws there would be savings to the Department of Defense of one-half man-year during each odd-number year.

2. States that have not adopted all essential procedures (for categories permitted to register and vote absentee) of 1955 act—Essential balloting procedures of section 102 of the 1955 Act:

(1) accept FPCA;
(2) alternative registration methods;
(3) immediate response of voter application; and
(4) timely ballot preparation.

STATE AND PROCEDURE(S) NOT ADOPTED

1. Alabama: (1), (2).
2. Arizona: (1), (4).
3. Colorado: (3).
4. Connecticut: (2).
5. Florida: (2).
6. Georgia: (2).
7. Idaho: (1).
8. Illinois: (1), (2).
9. Indiana: (1), (2).
10. Iowa: (1), (2).
11. Kansas: (3), (4).
12. Kentucky: (2).
13. Missouri: (1), (2), (3), (4).
14. Nevada: (2).
15. New Hampshire: (1),(2), (3),'(4).
16. New Mexico: (3), (4).
17. New York: (1), (2), (3), (4).
18. North Carolina: (1), (2), (3), (4).
19. North Dakota: (3), (4).
20. Ohio: (1), (2).
21. Rhode Island: (1), (2).
22. South Carolina: (1), (2).
23. Utah: (1), (2), (4).
24. Vermont: (1), (2).
25. West Virginia: (2).
26. Wisconsin: (1), (2).
27. Guam: (1), (3), (4).
28. Puerto Rico: (2), (3), (4).

This list is not necessarily inclusive. Some States do not prescribe all ballot preparation and mailing procedures in their election codes. There are, of course, no procedures for persons not enfranchised. We do not know the reasons why these procedures have not been adopted.

3. States not yet enfranchising all persons addressed in 1955 act—

STATE AND CATEGORY (NOT PERMITTED TO REGISTER AND/OR VOTE ABSENTEE; SOME OR ALL PERSONS)

1. Alabama: Armed Forces (AF) dependents; Merchant Marine (MM), spouses and dependents; Temporaries.
2. Arizona: AF spouses and dependents.
3. Connecticut: Temporaries.
4. Florida: Temporaries.
5. Illinois: AF dependents; MM dependents; Temporaries.
6. Indiana: Temporaries.

7. Louisiana: Temporaries.
8. Maine: AF (PHS, C&GS, their spouses and dependents.
9. Missouri: AF dependents; MM dependents; Temporaries.
10. Nevada: Temporaries.
11. New Hampshire: Temporaries.
12. North Carolina: AF (PHS, C&GC); AF dependents; MM, spouses and dependents; Temporaries.
13. Ohio: AF dependents; MM, spouses and dependents; Temporaries.
14. Pennsylvania: Temporaries.
15. Rhode Island: Temporaries.
16. South Carolina: AF spouses and dependents; MM spouses and dependents; Temporaries.
17. Virginia: AF dependents; MM, spouses and dependents; Temporaries.
18. Puerto Rico: AF spouses and dependents; MM, spouses and dependents; Temporaries.
19. Virgin Islands: AF spouses and dependents; MM spouses and dependents; Temporaries.

We do not know the reasons why these States have not yet enfranchised all persons addressed in the 1955 Act.

4. The one jurisdiction covered by the 1955 Act that does not permit spouses of armed forces personnel to register or vote absentee is Puerto Rico. The Virgin Islands permits spouses to vote—but not to register absentee.

5. It is unlikely that the States would not use either the Federal post card application (FPCA) or free postage for balloting material if use of both incentives were connected. Free postage is a strong fiscal incentive to the States. States that currently accept FPCAs would probably not require State forms, as this would incur additional design, printing, distribution, and storage costs, and would also necessitate re-educating election administrators.

Every State takes full advantage of the free postage provision of the 1955 Act. Some States even authorize absent voters not addressed by the 1955 Act to use the FPCA. Some of these States also benefit from the free postage provision with regard to these persons. In addition, some States and election districts employ free postage for, but do not accept the FPCA from, certain 1955 Act voters.

We recommend that the post card application be accepted, by the States that require registration, as either a simultaneous registration and absentee ballot application form or, if a special State registration or information form is required, that this form be sent and returned with the ballot.

6. (*a*). A Federal form to notify the voter of the reason for denying a ballot request would be a benefit to the voter provided it were simple to use, could be distributed to election officials together with instructions for its use, and could be sent to the voter free of U.S. postage.

A Federal form for this purpose should not be required unless there is a companion requirement that the use of a standard Federal form for ballot request also be required.

(*b*). While the use of a Federal post card application with detachable receipt does have merit, its use would be limited. The size of the form would have to be expanded in order to accommodate the additional information, any perforation in the form could result in separation of the attachment from the basic form during mailing. There is no compelling need to increase the number of items carried in the mails for receipt purposes only. In the event such an attachment is adopted, it should include space for notifying the voter of any reason for denial of his/her application.

7. The Department recommends that States be required to mail ballots not later than 20 days prior to an election because we have observed that this period of time generally assures that voters will be able to return their ballots by election day. In addition, if ballot applications are received not later than 30 days prior to an election, this will permit States that need the time 10 days to process and verify applications.

Many States do not prescribe a fixed date by which ballots must be prepared, delivered to election districts, or mailed to absent voters. Our recommendation would overcome this omission. The 1976 elections were classic examples of the results of not prescribing a deadline. Ballot access litigation delayed mailing of ballots and therefore disenfranchised many thousands of absentee voters, both in the primaries and in the general election. While notwithstanding this provision, courts would still be able to enjoin ballot preparation, we believe they would be less likely to do so in the face of a federally-mandated deadline prescribed by law.

Since there may nevertheless be successful injunction suits brought against ballot preparation, it is necessary to devise another mechanism to guarantee the counting of absentee ballots. Our proposals of a 10 day post-election period for accepting ballots voted by election day would accomplish this objective. A 10-day post-election "window" would overcome most delays caused by litigation. It would also preserve the voting rights of persons who reside in remote locations, and persons who experience postal difficulties. It would permit voters who, as election day approaches become concerned about not having received absentee ballots, to contact their election officials directly or through voter assistance channels to obtain ballots.

One of the objections to this proposal is that perhaps it may delay a final determination in a "close" contest. This objection is not valid for the following reasons:

(1) There is, in any case, no final determination until a certificate of election is issued, usually many days after the election.

(2) Some States provide by law for an automatic recount or recanvass of a "close" election (as defined by State law). This is often a time-consuming operation. In other States, losing candidates in close elections may have the right to demand a recount. In Federal elections, losing candidates may pursue one or more of three available procedures in seeking relief: (*a*) administrative appeal; (*b*) judicial appeal; and (*c*) appeal to the Senate or House of Representatives.

(3) Very few Federal elections are, in fact, close. In 1976, for example, only 37 House of Representatives contests were decided by less than five percent of the vote. Furthermore, it is very rare that an election is decided by absentee ballots.

(4) Most ballots would have to be received near the end of the 10-day period for the results of a close election to be delayed. All States maintain a record of absentee ballots sent to voters. Therefore, they could immediately ascertain whether absentee ballots not yet received could affect the outcome. In addition, some States count and canvass absentee ballots for several days after the election.

(5) Possibly delaying a handful of election results for a few days in a small number of jurisdictions is a very small price to pay for having assured the right to vote to a substantial number of citizens.

8. (*a*) The International Mail Division, United States Postal Service, has informed us that they know of no foreign nation that does not postmark mail originating therein.

(*b*) Most States do not complete canvassing ballots until a number of days (varies from State-to-State) after election day. An examination of 12 State election codes indicates that initial counting of absentee ballots continues beyond election day in seven of these States. Therefore, a 10-day "window", after the election, within which ballots may be received and counted, would not impact greatly on existing counting and canvassing procedures.

9. The Department of Defense recommends that the passport/identity card requirement of the 1975 Act be eliminated. The Canadian Government does not require United States citizens residing in that country to have valid passports. It is estimated that these persons represent approximately 20 percent of the total population addressed by the 1975 Act. In addition, we know of no country that requires identity or registration cards issued under the authority of the Secretary of State. Requiring any of these documents as precondition to voting may constitute an unconstitutional poll tax under the Twenty-fourth Amendment.

The States do not use any information deriving from this requirement of the 1975 Act. Appendix E to our testimony indicates that they do not. We surveyed 20 of the largest election jurisdictions in the Nation and asked whether they require any verification that the applicant has one of these documents. Five answered in the affirmative. None of these five, however, attempted to verify the information or even used it for any purpose. Every jurisdiction surveyed responded that it is sufficient for an applicant to complete a form wherein he states under oath that he is a citizen.

10. Host country sovereignty acts as bar to expansion of Military Postal System facilities operated in foreign countries to persons other than members of the armed forces, civilian component, and their dependents.

The use of these facilities is limited to personnel covered in specific Status of Forces Agreements or in tacit understandings with the host governments. Civilians not associated with the armed forces in some manner (i.e., not included in the definition of civilian component or dependents) are not covered in these agreements.

Given that sovereignty resides in the host country, legislation expanding this privilege would not have the effect intended by Congress and would serve only to confuse and ultimately disappoint the voter.

A possible alternative to facilitate expeditious transport of balloting materials would be to make the diplomatic pouch available to civilians to return balloting materials to the United States.

11. Post card applications pursuant to the 1955 Act are not distributed to the States for subsequent distribution to the voters. Rather, with respect to employees of the Federal Government, they are distributed to the employer agency, which in turn distributes them to the employees and their spouses and dependents. Non-U.S. employed civilians may obtain applications from local U.S. Embassies or Consulates or through local organizations: i.e., Chamber of Commerce of the U.S., Americans Abroad, American Association of Retired People, and various missionary groups. The form is also available for sale through the Government Printing Office at the price of $4.50 per hundred.

A limited number of Federal post card applications have been provided to local election officials by the Federal Voting Assistance Division of DoD on request of those officials.

12. The August 15th date which appears in the 1955 Act is a realistic date for making official post card applications available to voters for November general elections.

COMMENTS ON OTHER TESTIMONY

Mr. Alegi recommended to the Committee that embassies and consulates furnish a Federal election ballot to each citizen abroad who has not received a ballot from his election district by a given number of days prior to election day. Such a procedure is unworkable.

The problem would be for a citizen who falls within this definition to prove that he has complied with applicable State requirements, or that he mailed his application in a timely manner. There may be substantial opportunities for fraud, notwithstanding certification under penalty of perjury.

These considerations aside, this suggestion would be fraught with administrative obstacles. The State Department would have to gather an indeterminate number of ballots from over 400 separate election jurisdictions. Ballots would have to be obtained in sufficient time so that they could be distributed to all embassies and consulates to be given to voters.

If ballot preparation is delayed for any reason, it is delayed for everyone, the State Department included. Establishing a middleman to intercept correspondence is counter-productive of the stated objective of alleviating ballot delays.

U.S. SENATE,
COMMITTEE ON RULES AND ADMINISTRATION,
Washington, D.C., March 11, 1977.

Hon. GRIFFIN BELL,
Attorney General of the United States,
Department of Justice, Washington, D.C.

DEAR MR. ATTORNEY GENERAL: I want to commend Assistant Attorney General Drew S. Days III for his excellent presentation before the Committee on Rules and Administration on March 8 with respect to the Overseas Citizens Voting Rights Act of 1975, and other matters.

As a follow-up to that hearing, we would like to have the views of the Department of Justice with respect to the following questions:

1. The statements submitted to the Committee by the Defense and State Departments recommend that the states be required to adopt the absentee balloting procedures contained in the 1955 Voter Assistance Act and those proposed in S. 703 to be part of the 1975 Overseas Citizens Voting Rights Act.

Their testimony indicated that less than half of the states have adopted these recommended procedures and that as many as 19 states have not enfranchised all persons covered by the 1955 Act. We would appreciate the Department's views on these proposals, as well as on the overall recommendation of the Defense Department that existing Federal statutes covering absentee voting procedures be consolidated into one comprehensive law with a central point of administration under the President's Designee, whoever that may be in the future.

2. Would you please provide the Committee with the expenses incurred by the Justice Department in carrying out its responsibilities under the Overseas Citizens Voting Rights Act in Fiscal Year 1977, and what its proposed budget is for Fiscal Year 1978?

3. I would appreciate the views of the Department of Justice on the recommendations (5) and (6) of the Department of Defense, at page 16 of their prepared statement.

4. Does the Department of Justice have any views on the need for the requirement of Section 3 of the 1975 Overseas Citizens Voting Rights Act that a citizen have a valid passport or card of identity and registration issued under the authority of the Secretary of State?

5. On page 3 of your testimony, the Department indicated the number of states by method of compliance with the 1975 Act. Would you please list by name the states in each category?

Your cooperation and assistance in providing the above and any additional information or comments on the other testimony presented at the hearing which you feel may be helpful will be appreciated.

Sincerely,

CLAIBORNE PELL.

DEPARTMENT OF JUSTICE,
Washington, D.C., April 4, 1977.

Hon. CLAIBORNE PELL,
Committee on Rules and Administration,
U.S. Senate, Washington, D.C.

DEAR SENATOR PELL: This is to respond to your letter of March 11, 1977, to the Attorney General asking for comments on several questions.

1. You asked both in your letter and in questions at my testimony on March 8, 1977 about the Department's views on the proposals of the Defense and State Departments that certain absentee voting procedures be made mandatory and that federal absentee voting laws be consolidated into one law with a central point of administration.

Since there is some overlap in the persons covered by the 1955 Act and the 1975 Act, the merging of the two acts and the durational residency requirements of the 1970 amendments to the Voting Rights Act may make the federal voting laws more readable. There would also be an administrative advantage in having the Presidential Designee perform the same informational services with regard to all categories of voters.

We have had no experience with administering the 1955 Act, and, therefore, cannot comment on the significance of the statements made that there has been less than full acceptance of the recommendations of the 1955 Act. Since that Act recommends that states afford three categories of persons the right to vote in both state and federal elections, the committee may wish to inquire which of the persons named, and which type of elections—state or federal—is not covered by the different state laws. According to the testimony of Mr. Broger of the Defense Department, all states have provided for absentee voting by armed forces personnel in state as well as federal elections, and all but one state has provided for servicepersons' dependents. We also know that all states, in accordance with the 1975 Act, have made provisions to permit overseas citizens, which may include some servicepersons, merchant seamen, and their dependents, to vote in federal elections. Thus, while requiring states to adopt procedures for each category of persons for federal elections may add benefits, for example, to merchant seamen who are traveling within the United States, such action would add nothing for many others who already benefit from state and federal laws, and might, if forms suitable only for use in voting for candidates in federal elections are required, confuse voters who have the right to vote in state as well as federal elections.

Nonetheless, we do not believe there would be any constitutional impediments to changes which create procedural requirements for federal elections. Some constitutional argument might be made against such requirements if persons are permitted to vote who do not meet bona fide state residence requirements. But such an objection would be less substantial than that which could be made to existing law, and, therefore, no additional impediments would be presented with regard to Defense Department proposals.

2. The expenses incurred by the Department of Justice in carrying out its responsibilities under the Overseas Citizens Voting Rights Act in Fiscal Year 1977 are largely reflected in the time spent by personnel in our Voting Section. I should note that the major portion of the time spent enforcing this Act was in fiscal year 1976 and during the transitional quarter, during which there was no increment in our appropriations for enforcing this Act. We did, however, receive a supplemental appropriation in fiscal year 1977 which included $125,000

justified on the basis of the Overseas Citizens Voting Rights Act responsibilities. This amount is carried forward in the budget request for fiscal 1978.

Based upon the time involved with this Act by our Voting Section throughout calendar 1976 and up until the present time, it will be readily seen that the cost to the Justice Department of enforcing this Act has exceeded the total $125,000 appropriated. We estimate that there have been fifteen and one-half attorney-weeks and 12¼ para-legal weeks expended to the present time by our Voting Section. This does not include time spent by attorneys in our Appellate Section preparing legal materials and preparing for or gathering materials for the recent hearings.

By grade, we estimate the number of hours contributed by our Voting Section to have been:

A. Attorney time—

Grade:	*Hours*
GS–11	32
GS–13	516
GS–14	32
GS–15 (supervisor)	40

B. Paralegal time—

Grade:	
GS–9	160
GS–5	330

This includes time spent on the one suit filed in New York, but does not include travel expenses and per diem connected with that suit, nor does it include clerical time (also not included are telephone calls and mailing costs, which are minor compared to the overall time spent).

3. You requested the Department's comments on the Defense Department suggestions that there be a requirement that ballots be mailed no later than 20 days before an election and be accepted up to 10 days after an election if postmarked by election day. Clearly, some time limitations would improve the opportunities of voters to have their ballots counted, particularly where ballots must be sent to remote parts of the world. Inevitably, however, there will be jurisdictions where the ballot form will not be settled by 20 days before the election because of litigation, or because of late filing deadlines and late official certification of ballots. One solution to that problem would be to require that where ballots are not sent more than 20 days before election day, the time allowed for returning the ballot shall be extended by one day for every day the ballots are mailed late. However, as noted at page 6 of my March 8, 1977 prepared statement, we found that a 20 day pre-election mailing deadline provided an insufficient amount of time to allow at least some overseas citizens to receive and return their ballots prior to the close of the polls on election day.

We believe it would be inadvisable to require ballots to be sent which are not the final ballot forms. This would mean that voters would not, in some cases, have the range of candidate choices that other voters have, and would be unfair to candidates who were denied a place on the first set of ballots but were later adjudged to be entitled to a place on the final ballot.

4. We have no particular views on the requirement in Section 3 of the 1975 Act that a citizen have a valid passport or card of identity. We do believe, however, that applications for registration, or ballots, should contain sufficient sworn statements so that election officials can ascertain whether persons making applications are United States citizens. For example, statements under oath of date and place of birth, or naturalization number, accompanied by a disclaimer of loss of citizenship, should be sufficient.

5. Compliance with the 1975 Act, by states was accomplished as follows:

Alabama: In compliance with the Overseas Voting Rights Act by virtue of Act No. 604 of the 1969 Session of the Alabama Legislature.

Alaska: State law as applied is in conformity with the Overseas Voting Rights Act. Memorandum of March 22, 1976, from State Attorney General to Director, Division of Election says unenforced portions of AS 15.20.070 and 15.20.130 preempted by the Overseas Voting Rights Act. Legislation contemplated in 1977.

Arizona: Assistant Secretary of State Pat Fabritz issued election procedures and memos instructing each of the 14 county recorders as to registration complying with the Overseas Citizens Voting Rights Act, pending statute revisions.

Arkansas: Memo sent to all County Clerks to bring absentee voting procedures into compliance with the Overseas Citizens Voting Rights Act.

California: By the enactment of Assembly Bill 3615—July 9, 1976—now Ch. 386, Stat. of 1976 the state conforms to the Overseas Citizens Voting Rights Act.

Colorado: Sec. of State Buchanon on May 21, 1976, sent to all county clerks a memo informing them of the Overseas Citizens Voting Rights Act, its requirements, along with sample affidavit form.

Connecticut: Sec. of State Schaffer by memo dated February 13, 1976, sent instructions to all town clerks and registrars as to the Overseas Citizens Voting Rights applications. Subsequently Connecticut passed Act 76–295 (effective June 1, 1976).

Delaware: All three county administrators contacted by State Election Commissioner Lewis C. Wrightson in order to advise of need to conform with the Overseas Citizens Voting Rights Act. Subsequent Revision of Section 5513 and Section 2012 (new law) passed.

District of Columbia: The District of Columbia Board of Elections adopted Emergency Rules 9(a) and 9(b) under Title 3 in order to comply with the Overseas Citizens Voting Rights Act.

Florida: On June 25, 1976, administrative guidelines were sent to all Supervisors of Elections by Director of the Division of Elections Singleton to facilitate compliance with the Overseas Citizens Voting Rights Act.

Georgia: Secretary of State Fortson sent on September 23, 1976, instructional material re: Overseas Citizens Voting Rights Act to all Boards of Registrars and Supervisors of Elections.

Guam: Existing codes are in compliance with the Overseas Citizens Voting Rights Act.

Hawaii: Information and registration forms forwarded to each County Clerk August 1, 1976. Rule 3.9 was found to be in compliance with the Overseas Citizens Voting Rights Act.

Idaho: The State Code, Sections 34–410A and 34–1002A, were revised in 1976 bringing state into compliance with the Overseas Citizens Voting Rights Act.

Illinois: Regulation 1976–1 was issued by the State Board of Elections on June 17, 1976, and is consistent with the Overseas Citizens Voting Rights Act.

Indiana: Instructions on revised election material were given to all county election and registration officials.

Iowa: Secretary of State Synhorst by memo dated May 20, 1976, instructed all county commissioners as to compliance with the Overseas Citizens Voting Rights Act by virtue of Section 53.49 Code of Iowa.

Kansas: Amend. SB 484 became effective April 16, 1976, bringing Codes of Kansas into compliance with the Overseas Citizens Voting Rights Act.

Kentucky: Memos sent to all county clerks advising that the Overseas Citizens Voting Rights Act overrides KRS 117.325. Temporary measure until 1978 legislature convenes.

Louisiana: Letters of instruction mailed by Paul Hardy, Secretary of State to all Parish Clerks and by Douglas Fowler, Commissioner of Elections to all registrars on October 1, 1976 and September 24, 1976 respecting re: compliance with the Overseas Citizens Voting Rights Act.

Maine: Directives sent to all election officials on September 13, 1976 by Municipal Coordinator Stephen Wright re: compliance with the Overseas Citizens Voting Rights Act.

Maryland: Instructions were sent to each local Board of Supervisors of Elections via memo from Willard Morris, State Administrator of Election Laws, on July 23, 1975 advising compliance with the Overseas Citizens Voting Rights Act.

Massachusetts: Director of Elections, Marcia Molay, on August 4, 1976 sent to all city and town clerks and election Commissioners instructions on compliance with the Overseas Citizens Voting Rights Act.

Michigan: Michigan law 1971 PA 68, MCLA 168.759a, and MSA 6.1759(1) is in compliance with the Overseas Citizens Voting Rights Act.

Minnesota: State passed law, Minnesota Laws 1976 Ch. 224 Sections 8 and 9 approved April 9, 1976. Additionally memos sent July 1976 to all County Auditors restating compliance with the Overseas Citizens Voting Rights Act.

Mississippi: All circuit clerks, registrars, and election commissioners were sent memo dated September 7, 1976 from Attorney General A. F. Summer with instructions and forms for use in complying with the Overseas Citizens Voting Rights Act.

Missouri: Secretary of State, James Kirkpatrick, notified all county clerks and election boards on May 12, 1976 about need for compliance with the Overseas Citizens Voting Rights Act—including sample ballots and forms.

Montana: Memo and forms sent on May 19, 1976 by Secretary of State Murray to all county clerks and recorders advising of methods of compliance with the Overseas Citizens Voting Rights Act.

Nebraska: Nebraska laws 32–216, 32–221, 32–475, 32–803, 32–803.01 32–806, 32–808, and 32–810 comply with the Overseas Citizens Voting Rights Act.

Nevada: By memo dated January 27, 1976 Secretary of State Swarkhamer advised all county clerks and Voter Registrars of the Overseas Citizens Voting Rights Act requirements and the need to confirm with them.

New Hampshire: Instructions given to all city and town clerks on August 27, 1976 advised compliance with the Overseas Citizens Voting Rights Act.

New Mexico: Instructions on the Overseas Citizens Voting Rights Act sent to all county clerks on September 2, 1976 with follow-up meetings on September 16, and September 17, 1976. Legislation is contemplated in 1977.

New York: Legislation enacted on July 24, 1976, State Act, ch. 661.

North Carolina: Rules for implementation of the Overseas Citizens Voting Rights Act adopted by State Board of Elections on May 28, 1976, and disseminated at seminars during the summer of 1976.

North Dakota: Section 16–18–01 of North Dakota Century Code in compliance with the Overseas Citizens Voting Rights Act.

Ohio: Secretary of State Brown on May 10, 1976, sent a directive to all directors of Boards of Elections re: compliance with the Overseas Citizens Voting Rights Act.

Oklahoma: Oklahoma law 26 O. S. Supp. 1974 Section 327.16 in compliance with the Overseas Citizens Voting Rights Act.

Oregon: Secretary of State Myers on April 13, 1976, sent a directive to all election officers re: compliance with the Overseas Citizens Voting Rights Act.

Pennsylvania: Secretary of the Commonwealth of Pennsylvania C. DeLores Tucker, sent on March 18, 1976 the official bulletin to all County Boards of Election explaining provisions of the Overseas Citizens Voting Rights Act and outlining modifications necessary to implement the Act.

Puerto Rico: The Electoral Tribunal on September 30, 1976, passed Resolution S. 4.8 in accordance with the Overseas Citizens Voting Rights Act.

Rhode Island: State Act 258, Ch. 121, S. 977A was signed by Governor Noel on June 1, 1976 complying with the Overseas Citizens Voting Rights Act.

South Carolina: Training seminars on applications and absentee ballots given to county registrars and election officials.

South Dakota: State regulations and an analysis of the Overseas Citizens Voting Rights Act by the Assistant General Counsel Forman was sent to county auditors on May 17, 1976.

Tennessee: Each of the state's election Commissioners were notified of changes in state law effectuated by the Overseas Citizens Voting Rights Act and the necessity to comply with the Overseas Citizens Voting Rights Act.

Texas: Directive was sent to each county clerk by Secretary of State White on May 27, 1976 instructing them on implementation of the Overseas Citizens Voting Rights Act.

Utah: On June 16, 1976 State Assistant Attorney General Michael Deamer sent to all County Clerks and Election Officials a directive informing them that the Overseas Citizens Voting Rights Act superseded state law and discussing the changes.

Vermont: Secretary of State Richard C. Thomas sent on May 20, 1976 to all election and registration officials a bulletin re: implementation of the Overseas Citizens Voting Rights Act.

Virginia: State Attorney General's opinion to State Board of Elections ruled sede local law. Supervisors of Elections Henrita Todman sent to all election supervisors and registration officials materials explaining the Overseas Citizens Voting Rights Act.

Virgin Islands: The Overseas Citizens Voting Rights Act recognized to superstate constitutional provision in conflict with the Overseas Citizens Voting Rights Act suspended. New registration and ballot forms adopted and explained at statewide training seminars. Legislation contemplated in 1977.

Wahington: Washington state laws conform to the Overseas Citizens Voting Rights Act.

West Virginia: Secretary of State McCastney on October 22, 1976 sent to all County Clerks, Circuit Clerks and County Commissioners a directive explaining the Overseas Citizens Voting Rights Act.

Wisconsin: Wisconsin laws are in compliance with the Overseas Citizens Voting Rights Act.

Wyoming: State laws already in compliance with the Overseas Citizens Voting Rights Act. Wyoming Election Code 22.1–33(b) and 22.1–33(b)(iii).

If I, or my staff can be of further assistance to you or the Committee, please feel free to call on us again.

Sincerely,

DREW S. DAYS III,
Assistant Attorney General, Civil Rights Division.

THE LIBRARY OF CONGRESS,
CONGRESSIONAL RESEARCH SERVICE,
Washington, D.C., February 28, 1977.

To: Honorable Barry M. Goldwater.
From: American Law Division.
Subject: Absentee Voting in Federal Elections.

The attached report has been prepared in response to your request for information as to whether Congress has the authority to enact certain amendments to P.L. 94–203, The Overseas Citizens Voting Act of 1975.

Please let us know if additional information is required.

RITA ANN REIMER,
Legislative Attorney.

AUTHORITY OF CONGRESS TO REGULATE OVERSEAS ABSENTEE VOTING IN FEDERAL ELECTIONS, FEBRUARY 28, 1977

Public Law 94–203, "The Overseas Citizens Voting Rights Act of 1975" (89 Stat. 1142), is subtitled, "An Act to guarantee the constitutional right to vote and to provide uniform procedures for absentee voting in Federal elections in the case of citizens outside the United States." Codified a 42 U.S.C. § 1973dd, the Act provides that citizens residing overseas are not to be denied the right to register and vote by absentee ballots in Federal elections in any State where they are domiciled prior to their departure, if (1) they are otherwise qualified to vote by absentee ballot in the State; (2) they do not have a domicile or are not registered to vote elsewhere; and (3) they have a valid passport or identity card (§ 1973dd–1).

H. Rept. 94–649, Part I (to S. 95, 94th Congress), gives the following justification for the Act:

The [House Administration] committee was satisfied that American citizens outside the United States should be assured the right to vote in congressional as well as in presidential elections. It was plain from testimony in the hearings that Americans outside the United States possess both the necessary interest and the requisite information to participate in the selection of Senators and Congressmen back home. (pp. 1–2).

It has now been abandoned that an additional statute should be considered in order to further the ends of this Act. Under this proposal, State and local governments would be required to extend their deadlines for receiving and counting absentee ballots in Federal elections until a week after Election Day in situations where the ballots had not been printed and distributed within 20 days before the election. Alternatively, the statute might provide that no changes could be made in ballots for a Federal election within 20 days of the election. Either step would help insure that those wishing to take advantage of the Overseas Voting Rights Act would not find their votes invalidated by failing to meet State statutory deadlines. This office has been asked to analyze whether Congress has the authority to enact this type of legislation.

Congressional authority over congressional elections is based on Article I, § 4, cl. 1 of the Constitution, which provides:

"The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by law make or alter such Regulations, except as to the Place of Chusing Senators."

Under this provision, in conjunction with the so-called "Necessary and Proper Clause" (Article I, § 8, cl. 18), congress has wide authority to legislate as it sees fit to insure the integrity of its elections, as noted by the Supreme Court in a number of cases construing this provision. Where a primary election is an integral part of the election process, it, too, is subject to congressional regulation.

United States v. *Classic*, 313 U.S. 299 (1941). Congress may also legislate, as a matter of course, to insure that all qualified voters have the opportunity of casting ballots and having them honestly counted, *United States* v. *Mosley*, 238 U.S. 383 (1915) ; *United States* v. *Saylor*, 322 U.S. 385 (1944) ; to protect voters from personal violence and intimidation, *Ex parte Yarbrough*, 110 U.S. 651 (1884) ; to insure that all ballots lawfully cast are properly counted, *United States* v. *Mosley*, *supra;* and to prevent the stuffing of ballot boxes with fraudulent votes, *United States* v. *Saylor*, *supra* (see the discussion in The Constitution of the United States of America—Analysis and Interpretation, S. Doc. 92–82, at 108–111). In recent years courts have begun to concentrate more on the authority of Congress to regulate various aspects of *State* elections, primarily under the 14th and 15th Amendments; its right to regulate Federal elections is now only infrequently challenged.

There was one recent challenge, however, involving that portion of the Voting Rights Act Amendments of 1970 (P.L. 91–285, 84 Stat. 314) which lowered the voting age to eighteen in both State and Federal elections. In *Oregon* v. *Mitchell*, 400 U.S. 112 (1970), the Supreme Court uniformly accepted the right of Congress to take this action with regard to national elections. However, their consensus was that Congress could *not* so legislate with regard to State and local elections (*id.*, cf. 142–131). This situation, of course, is now covered by the 26th Amendment.

There is no constitutional provision comparable to Article I, § 4, cl. 1 with respect to presidential elections. Here, too, however, the recent judicial precedent has routinely held, or even assumed, that Congress has authority in presidential elections comparable to that exerted in congressional elections. In most instances, the term "national election" is used, signifying both presidential and congressional.

In *Oregon* v. *Mitchell*, *supra*, this authority was based on Article II, § 1, of the Constitution (the office of the presidency) and the necessary and proper clause. Justice Black, in an opinion announcing the decision of the Court while giving his own views on the issues, gave the following justification for congressional regulation of the voting age in Federal elections: While the Constitution allots to the States the power to enact laws regulating national elections, it also provides that, if Congress becomes dissatisfied with State laws, it can alter them (400 U.S. 112, 123). Also, Congress has the ultimate supervisory power over congressional elections, and it is the prerogative of Congress to oversee the conduct of presidential and vice-presidential elections (*Id.* at 124). In this instance, Justice Black concluded that Congress can regulate the voting age in Federal elections; however, the reasoning would seem equally applicable to regulating the qualifications of overseas citizens wishing to vote in Federal elections.

Congress also has an obligation to oversee all facets of Federal elections as needed to, in effect, preserve the national government:

If this government is anything more than a mere aggregation of delegated agents of other States and governments, each of which is superior to the general government, it must have the power to protect the elections on which its existence depends from violence and corruption. If it has not this power it is helpless before the two great natural and historical enemies of all republics, open violence and insidious corruption. *Ex parte Yarbrough*, *supra*, at 657–658, quoted in *Burroughs* and *Cannon* v. *United States*, 290 U.S. 534, 546 (1934) (upholding application of the 1925 Federal Corrupt Practices Act to presidential and vice presidential elections).

In *United States* v. *Williams*, 341 U.S. 70 (1951), the Supreme Court listed seven cases "in which the Court held or assumed that the right to vote in federal elections was protected by [civil rights] legislation because it was a right 'granted or secured' by the Constitution or laws of the United States" (*id.* at 79–80). The cases were *Ex parte Yarbrough*, *United States* v. *Mosley*, *United States* v. *Saylor*, *United States* v. *Classic*, all *supra; Guinn* v. *United States*, 238 U.S. 383 (1915) ; *United States* v. *Gradwell*, 243 U.S. 476 (1917) ; and *United States* v. *Bathgate*, 246 U.S. 220 (1918).

Another constitutional right touching on this issue is the right of international travel, first recognized as "an important aspect of a citizen's 'liberty' " in *Kent* v. *Dulles*, 357 U.S. 116, 127 (1958), and reaffirmed in *Aptheker* v. *Secretary of State*, 378 U.S. 500, 505 (1964). In *Aptheker* the Court stated that freedom of travel is a constitutional liberty closely related to the First Amendment rights of free speech and association (*id.* at 517).

As far as can be ascertained, to date the Overseas Citizens Voting Rights Act of 1975 has not been judicially challenged. However, from the precedents discussed above, it appears that a strong argument can be made as to its constitutionality. Overseas citizens are exercising their constitutional right of international travel, and it does not seem that they could be required to give up another constitutional right, voting in national elections, as a result of their doing so. Congress, as the body authorized to regulate national elections, seems clearly the proper source of the statute.

As one aspect of this request, an effort was made to determine in which States lawsuits filed prior to the 1976 general election resulted in the failure of States to print absentee ballots sooner than three weeks before the election. While we have found no general compilation, the Election Administration Reports for October 13 and October 17, 1976, contain information on presidential election cases in several States which seemingly ran past this deadline. (The 1976 general election was held on November 2; the three week cut-off point would have been October 12.)

In the October 27 Report (Volume 6, No. 21), five recently decided ballot access cases are listed: in New York (no citation given), Florida (*LaRoche* v. *Askew*, N.D. Fla., No. 76167), Delaware (*Maddox* v. *Wrightson*, D. Del. No. 76–320), Maryland (*McCarthy* v. *Mandel*, no further citation given), and New Mexico (no citation given). The October 13 Report (Volume 6, No. 20) states that hearings will be held "that week" (presumably October 11–15) on challenges in two additional States, Rhode Island and Idaho. That issue also noted that President Carter was challenging decisions in two States, Maine and South Carolina, which refused to list him as "Jimmy" rather than "James Earl" Carter on the ballot. While it is unclear how many of these cases actually resulted in delays in printing absentee ballots beyond the three-week deadline, each of them had at least the potentiality of doing so.

We could find no similar compilation for congressional ballot challenges. The Justice Department office which administers the Overseas Citizens Voting Rights Act informed us they had no knowledge of any such cases. However, their records are not maintained in such a manner as to permit definite ascertainment of this information.

RITA ANN REIMER,
Legislative Attorney, American Law Division.

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

(By J. Terry Emerson, Counsel to Senator Barry Goldwater)

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 U.S. Supreme Court has clearly stated that "among the rights and privileges of National citizenship recognized by this court are . . . the right to vote for national officers. . . ." *Twining* v. *New Jersey*, 211 U.S. 78, 97 (1908).

The recent case of *Buckley* v. *Valeo*, 424 U.S. 1 (1976), is but the latest of several decisions by the Supreme Court to recognize broad Congressional power to legislate in connection with Federal elections. According to Justice Frankfurter, the Supreme Court had already held or assumed by 1951 in at least seven previous decisions that the right to vote in Federal elections can be protected by Congress it is a right directly dependent on and secured by the Constitution. *U.S.* v. *Williams*, 341 U.S. 70, at 79 (1951).

In parte Yarbrough, 110 U.S. 651, 663, (1884), is the first of these decisions. In *Yarbrough*, the Court expressly rejected the 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 officers are created by the Constitution and by it 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); and *U.S.* v. *N.Y. State Board of Elections*, no. 76–CV–440 (N.D. N.Y. 1976), where the District Court ordered, in the first lawsuit brought under

the Overseas Citizens Votings Rights Act of 1975, that such Act required the State to accept and count all overseas absentee federal ballots postmarked no later than 9 P.M. New York time on election day if received by the local boards of elections up to ten days after election day.

The same doctrine applicable to voting in Congressional elections reaches Presidential elections. That office, too, is created by the Constitution. In fact, the Presidency and the Vice Presidency are the only national offices chosen in a nationwide election.

All doubt of the standing accorded this right was removed by *In re Quarles*, where the Supreme Court 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 elections of the President and Vice President. *Burroughs* v. *United States*, 290 U.S. 534 (1934), cited for this proposition in *Buckley* v. *Valeo*, 424, U.S. 8 (1976), at note 16. Also, see *Oregon v. Mitchell*, which settled all question of Congress' power, in Voting Rights Act Amendments of 1970, to set uniform residence requirements and absentee balloting standards in elections for Presidential and Vice Presidential electors. 400 U.S. 112 (1970).

The concept of a unique right to vote for officers of the National government stems from 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 U.S. citizens shall enjoy a representative-type of government with National officers who are as responsive as possible to the people.

II. VOTING FOR NATIONAL OFFICERS IS A PRIVILEGE OF NATIONAL CITIZENSHIP

Section I of the Fourteenth Amendment provides: "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States." Voting for National officers has not only been recognized as being among the "rights" of National citizenship, but also among the "privileges" so granted or secured by the Constitution. *In re Quarles*, *supra; Twining* 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 citizen's liberty, guaranteed in the Due Process Clause of the Fifth Amendment. *Kent*, *supra*, at 127; *Aptheker* v. *Secretary of State*, 378 U.S. 500, 505 (1964). Indeed freedom of movement is considered to be of such great importance, the Supreme Court 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. *Aptheker*, *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 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).

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 all means which are appropriate to that end.

The rule of *McCulloch* v. *Maryland* is also 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. 702 IS "APPROPRIATE" LEGISLATION

Applying the above principles to the subject legislation, it is clear S. 702 is constitutional. Its object is to facilitate the right to vote in Federal elections of five million United States citizens. These citizens include over two million members of the Armed Forces, 1.2 million military spouses, 35,500 members of the Coast Guard, 55,000 Federal civilians employed overseas, and one million other citizens who are residing outside the United States.

All these citizens have a direct and substantial interest in decisions and policies acted upon by the President and Congress and are affected by decisions made by the Executive and Congress jointly, whether they are within the territorial United States or are outside the country.

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.

A law review article by the author which canvasses the law in this area is attached as Exhibit 1.

EXHIBIT 1.—REPRINTED FROM 49 NOTRE DAME LAWYER (FEBRUARY 1974)

CONGRESS' POWER TO ENHANCE THE CIVIL WAR AMENDMENTS

*J. Terry Emerson**

Introduction

Seven years ago the Supreme Court began a fundamental reexamination of the power of Congress to expand upon the past interpretations of the Court defining what specific situations are covered by the thirteenth, fourteenth, and fifteenth amendments and what remedies Congress can use to enforce those amendments. This development has been accompanied by the related and growing trend of the Supreme Court to test the statutes and practices of state and local governments according to a much stricter standard of constitutionality generally known as the "compelling state interest" test.

Could the meteoric rise of the latter doctrine in the extensive field of equal protection and due process cases, combined with an expanded view of congressional power under the enforcement clauses of the above three Civil War amendments, engulf the very capacity of the states to govern themselves? It is the purpose of this article to test this fear against the actual trend of judicial and statutory developments and to suggest some guidelines by which the basic guarantees of the Civil War amendments can be effectively secured without danger of nullifying the separate political character of the states.

I. Congress Acts, The Court Reacts

A. *Prologue:* Ex parte Virginia

Though it was decided almost a century ago, the Supreme Court decision which enunciates the basic standard of judicial scrutiny called for in a modern case involving the enforcement powers of Congress under the Civil War amendments is *Ex parte Virginia.*[1] This landmark case, decided almost contemporaneously with the adoption of these amendments,[2] treats the specific question of whether an early congressional civil rights statute protecting the right of Negroes to serve as grand or petit jurors was warranted as appropriate legislation by the thirteenth and fourteenth amendments.[3] The Court held that the statute was

* LL.B., Duke University, 1959; Richardson Foundation Congressional Fellow, 1959-1960; Assistant Counsel, U.S. Senate Office of Legislative Counsel, 1960-1969; Legislative Counsel to U.S. Senator Barry Goldwater, 1969 to date.

1 100 U.S. 339 (1879).

2 The thirteenth amendment was certified by Secretary of State Seward on December 18, 1865, the fourteenth amendment was certified without reservation on July 28, 1868, and the fifteenth amendment was certified on March 30, 1870.

3 The statute provided that no citizen, otherwise qualified, shall be barred from service as grand or petit juror because of race, color, or previous condition of servitude. It imposed a penal sanction against any officer or person charged with any duty in the selection or summons of any citizen for such service who violated this mandate. 100 U.S. at 339.

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indeed an appropriate exercise of Congress' enforcement power, saying that the Civil War amendments, "[w]ere intended to be, what they really are, limitations on the power of the states and enlargements of the power of Congress."[4] Redefining for purposes of the case the classic formulation by Chief Justice Marshall of the powers of Congress, as expressed in the necessary and proper clause of article I, § 8,[5] the Court described the reach of congressional power to enforce the Civil War amendments in broad terms:

> Whatever legislation is appropriate, that is adapted to carry out the objects the amendments have in view, whatever tends to enforce submission to the prohibitions they contain, and to secure to all persons the enjoyment of perfect equality of civil rights and the equal protection of the laws against State denial or invasion, if not prohibited, is brought within the domain of congressional power.[6]

Either explicitly or implicitly, this analysis would prevail time and again throughout the Court's determination of a significant line of later cases initiated by the determined attack on racial discimination which Congress launched in the 1960's.

B. *Enforcing the Fifteenth Amendment*

One branch of the rule of *Ex parte Virginia* flows through a group of cases decided over the past decade which sustained an increasing breadth of federal legislation designed to deal with the fifteenth amendment's ban on discrimination in voting on grounds of race or color. The first pair of these cases[7] upheld a fledgling start in this field by Congress, which in a provision of the Civil Rights Act of 1957[8] had authorized the United States to obtain injunctions in the federal district courts against the continuation of disciminatory registration practices by state and local officials. Then, in *Hanah v. Larche*[9] the Court sustained the power of Congress in the same 1957 Act to create a Commission on Civil Rights to investigate alleged Negro voting deprivations.[10]

In *Alabama v. United States*,[11] the Court sustained the enactment by Congress of a totally new approach to its attack on racial discrimination with the Civil Rights Act of 1960.[12] The uniqueness of this law lay in its grant of authority to the United States Attorney General to apply for an order in a federal district court praying that the court should interpose itself in the state voter

4 *Id.* at 345.

5 Let the end be legitimate, let it be within the scope of the Constitution, and all means which are appropriate, which are plainly adapted to that end, which are not prohibited, but consist with the letter and spirit of the Constitution, are constitutional. McCulloch v. Maryland, 17 U.S. (4 Wheat.) 316, 421 (1819).

6 100 U.S. at 345-46.

7 United States v. Raines, 362 U.S. 17 (1960); United States v. Thomas, 362 U.S. 58 (1960).

8 Pub. L. 85-315, 71 Stat. 637 (Act of September 9, 1957), 42 U.S.C. §§ 1971 *et seq.* (1970).

9 363 U.S. 420 (1960).

10 42 U.S.C. § 1975 (1970).

11 371 U.S. 37 (1962).

12 42 U.S.C. §§ 1971 *et seq.* (1970).

qualification process by affirmatively ordering registration of Negro voters.[13] Three years later, in *United States v. Mississippi*,[14] the Court sustained the power of Congress by the same Act to authorize the Attorney General to file proceedings against a state for preventive relief in advance of actual discrimination so long as there are reasonable grounds for belief that any official is about to engage in any act or practice of racial discrimination in voting.[15] Moreover, this provision allows the Attorney General to prevent the application of state laws allegedly used as devices to keep Negroes from voting on account of their race.[16] The Court held that these provisions were passed by Congress under its authority to enforce the fifteenth amendment's guarantee "against any discrimination by a State, its laws, its customs, or its officials, in any way."[17] The Civil Rights Act of 1960 was again upheld in *Louisiana v. United States*,[18] where the Attorney General successfully brought an action striking down a state "citizenship" test which the Court found had been applied as part of a scheme to deprive Negroes of their voting rights.[19]

The landmark of recent fifteenth amendment cases is *South Carolina v. Katzenbach*.[20] Here the Court reviewed legislation more encompassing than any Congress had previously passed in the voting field—the Voting Rights Act of 1965.[21] Disappointed with the pace of human rights progress through individual court cases initiated by the Justice Department, Congress laid down a comprehensive formula applying new and broad remedies to entire states and political subdivisions. One remedy suspended all literacy tests and similar voting qualifications of covered states and localities for a period of five years.[22] A second suspended all new voting regulations pending advance review by federal authorities.[23] A third assigned federal examiners to assume the normally exclusive state function of listing qualified voters.[24] The Court rejected the argument that to allow Congress to so strike down state statutes and procedures would rob the judiciary of its rightful constitutional role. By adding section 2 of the fifteenth amendment, the Court found, "[t]he Framers indicated that Congress was to be chiefly responsible for implementing the rights created in § 1."[25] Thus, the Court reaffirmed the conclusion reached in *Ex parte Virginia* that "[i]t is the power of Congress which has been enlarged."[26] The Court reasoned, "[a]ccordingly, in addition to the courts, Congress has full remedial powers to effectuate the constitutional prohibition against racial discrimination in voting."[27] The Court also

13 42 U.S.C. §§ 1971(e)(f) (1970); *Cf.* Ex parte Siebold, 100 U.S. 371 (1879).
14 380 U.S. 128 (1965).
15 42 U.S.C. § 1971(c) (1970).
16 42 U.S.C. §§ 1971(a)(c) (1970).
17 380 U.S. at 138.
18 380 U.S. 145 (1965).
19 *Id.* at 151-53.
20 383 U.S. 301 (1966).
21 42 U.S.C. §§ 1971 *et seq.* (1970).
22 42 U.S.C. § 1973(b) (1970).
23 42 U.S.C. § 1973(c) (1970).
24 42 U.S.C. §§ 1973(a)(d) (1970).
25 383 U.S. at 326.
26 *Id.*
27 *Id.*

reiterated the fundamental ruling first announced in *Ex parte Virginia* that the basic test to be applied in a case involving the enforcement clause of the fifteenth amendment is the same as in all cases concerning the express powers of Congress with relation to the reserved powers of the states, the analysis of *McCulloch v. Maryland* tailored for the particular context of the fifteenth amendment.[28] Finding that the statutory scheme of Congress conformed to this criteria, the Court upheld the basic constitutionality of the 1965 Act and sustained the power of Congress to fashion specific remedies without any need for prior adjudication of state voting practices and legislation.[29]

The applicability of the 1965 Act to a broad range of state election laws, although not specified in the law itself, was established by the Court in *Allen v. State Bd. of Elections*[30] based on the mass of legislative history articulating the purposes of the Act.[31] The Court next sustained application of the ban on literacy tests against a county where there was no evidence the test had been actually administered in a discriminatory manner, but where it actually operated to disenfranchise racial minorities who had suffered previous governmental discrimination in education.[32]

Then in *Oregon v. Mitchell*,[33] the Court unanimously upheld Congress' latest effort in this field, section 201 of the Voting Rights Act Amendments of 1970.[34] This provision prohibits the use of any test or device resembling a literacy test in all federal, state or local elections across the entire United States, not just effectively in only a few states.

Thus, step-by-step, Congress had encouraged the Court by increasingly more expansive legislation to adopt increasingly broader interpretations of the scope of Congress' power under the enforcement clause of the fifteenth amendment. From the initiation of civil actions by the Attorney General and the utilization of court orders in specific cases and localities, Congress has moved to the supplanting of state laws and procedures on its own and the substitution of federal personnel for state voting officials. For all intents and purposes, Congress has over the past decade effectively caused the Supreme Court to expand its past interpretations of the situations which are covered by the fifteenth amendment, if, in the doing, Congress itself cannot be said to have expanded upon such judicial interpretations.

II. The Court Guides; Congress Follows

A. *The Rule of* Katzenbach v. Morgan

If the Supreme Court has been moved to a more expansive view of congress-

28 *Id.*
29 *Id.* at 327-37.
30 393 U.S. 544 (1969). *Accord,* Perkins v. Matthews, 400 U.S. 379, 387 (1971), deciding that a change in the location of polling places constitutes a "standard, practice, or procedure with respect to voting," covered by the Voting Rights Act of 1965; Georgia v. United States, 411 U.S. 526 (1973), confirming the reach of such Act to state reapportionment statutes.
31 *Id.* at 563-71.
32 Gaston County v. United States, 395 U.S. 285 (1969).
33 400 U.S. 112 (1970).
34 42 U.S.C. § 1973b (1970).

ional enforcement power under the fifteenth amendment by a progression of federal civil rights statutes, each broader than its predecessor, it is the Court who has encouraged Congress to take a view of its powers under the fourteenth amendment going beyond what past decisions have reached in specific factual situations. Congress was stirred into this action primarily by reason of a single decision, *Katzenbach v. Morgan;*[35] it also was influenced by a growing line of other fourteenth amendment cases which, for over a decade, have been steadily eroding the general authority of the states to legislate on subjects historically resting within their separate domain.

Morgan, which was the true catalyst for new departures in congressional protection of civil rights, will be discussed first. On the surface, *Morgan* treated the constitutionality of section 4(e) of the Voting Rights Act of 1965,[36] a provision which prohibits enforcement of the New York State English language literacy test against New York residents from Puerto Rico. It might have been regarded as just one more link in a chain of decisions overturning state practices with racially discriminatory overtones. But the decision was not so limited.[37] The Court repeated the well settled principle that Congress' power to enforce the fourteenth amendment can be measured by reference to its powers under the necessary and proper clause.[38] It then broke new ground of its own by holding: "Correctly viewed, § 5 is a positive grant of legislative power authorizing Congress to exercise its discretion in determining whether and what legislation is needed to secure the guarantees of the Fourteenth Amendment."[39] The Court applied this conclusion to the facts of the case in an equally broad manner. In determining whether the federal statute is "plainly adapted" to furthering the aims of the equal protection clause, as required by the reformulation of Chief Justice Marshall's analysis, the Court declared that it is for Congress to assess and weigh the various conflicting considerations involved in legislating.[40] The Court specifically included, among the considerations so reserved for Congress, an appraisal by it of the risk of discrimination that arose from the state statute and the effectiveness of the various remedies available by which Congress might eliminate this risk.[41] The Court also deferred to the judgment of Congress as to the nature and significance of the state interest that would be affected by the remedy Congress selected, stating, "It is enough that we be able to perceive a basis upon which the Congress might resolve the conflict as it did."[42]

Thus, *Morgan* verges on the brink of holding that Congress can be its own judge of what situations are prohibited by the equal protection clause of the fourteenth amendment and of what remedies are appropriate to enforce these

35 384 U.S. 641 (1966).

36 42 U.S.C. § 1973b (e).

37 *Morgan* has since been described by Justice Stewart, with Chief Justice Burger and Justice Blackmun joining, as giving congressional power under section 5 of the fourteenth amendment "[t]he furthest possible legitimate reach." Oregon v. Mitchell, 400 U.S. 112, 296 (1970).

38 Katzenbach v. Morgan, 384 U.S. 641, 650 (1966).

39 *Id.* at 651.

40 *Id.* at 653-56.

41 *Id.* at 653.

42 *Id.*

prohibitions. In addition, the Court bodes close to saying that Congress can second-guess a state government with respect to the factual determinations which serve as the basis for a state's law and can make its own binding conclusions even as to how substantial a state's interest is in passing the law which Congress would regulate or contravene.

B. *The "Compelling State Interest" Test*

Of equal importance with the scope of its ruling in *Morgan* is that the Court had applied to the New York literacy law a higher standard for review of state determinations than was traditional.[43] This more exacting standard has come to be known as the "compelling state interest" test although it has appeared under different labels. By whatever name it is called, it is directly related to the deference which the Court gives to congressional legislation under the enforcement clauses of the Civil War amendments and thereby to Congress' power to effectively expand the Court's interpretations of those amendments. Under this test Congress can override any state statute which affects important rights unless the state can demonstrate the statute is necessary to promote a compelling governmental interest.[44] In contrast, under traditional analysis a state legislative device or classification will be sustained unless it is patently "arbitrary" or "invidious" and bears no rational relationship to a legitimate governmental interest.[45]

The "compelling interest" test appears to stem from two kinds of cases, one in which the stricter standard is used because a state statute affects "fundamental rights" and the other in which it is used because the statute is based upon "suspect" criteria.[46] But there is a growing effort within the Court to explain its past cases, not on the basis of "two neat categories which dictate the appropriate standard of review-strict scrutiny or mere rationality,"[47] but rather on the basis of the Court's judgment as to the relative importance of the right affected and invidiousness of the state action.[48] Whichever way the standard of review is cast its application will extend the possibilities for congressional intrusion on state interests. Under either test, the presumption of constitutionality normally afforded state statutory schemes is discarded and the burden is shifted to the

43 *Id.* at 654 n.15; 660-61 (dissenting opinion of Harlan, J., with whom Stewart, J., joined).

44 *E.g.*, statement of Justice Brennan that "[o]nce it be determined that a burden has been placed upon a constitutional right, the onus of demonstrating that no less intrusive means will adequately protect compelling state interests is upon the party seeking to justify the burden." Oregon v. Mitchell, 400 U.S. 112, 238 (1970) (dissenting in part and concurring in part).

45 *E.g.*, United States Dept. of Agriculture v. Moreno, — U.S. —, 93 S. Ct. 2821, 2825 (1973); Jefferson v. Hackney, 406 U.S. 535, 546 (1972), both relating to the field of social welfare. The traditional equal protection analysis appears to have its origin in the context of commercial regulation cases which involved state regulation of business and industrial practices. *See, e.g.*, McGowan v. Maryland, 366 U.S. 420, 425-26 (1961); Williamson v. Lee Optical Co., 348 U.S. 483, 487-89 (1955).

46 *See* Shapiro v. Thompson, 394 U.S. 618, 658-62 (1969) (opinion of Harlan, J., dissenting).

47 San Antonio School Dist. v. Rodriguez, 411 U.S. 1, 70 (1973) (opinion of Marshall, J., with whom Douglas, J., concurs, dissenting); *id.* at 62 (opinion of Brennan, J., dissenting).

48 Vlandis v. Kline, 412 U.S. 441, 456 (1973) (opinion of White, J., concurring in the judgment).

state to show that there is no alternative which results in less impact upon the individual interest at stake, be it a "fundamental" constitutional right or an interest of constitutional "importance."

The strict standard of equal protection review appears prominently in the voting rights field. Since 1965 there have been at least seven decisions upsetting state or local election schemes based upon exacting judicial scrutiny under the fourteenth amendment of the state or local governmental objectives and methods.[49] A strict review is also dictated for state statutes providing for federal congressional redistricting, but the rationale of these decisions is founded upon article I, § 2, of the Constitution, not the equal protection clause of the fourteenth amendment.[50]

One may have thought the Court first developed a new formulation of the equal protection test in *Reynolds v. Sims*[51] where it disapproved of an apportionment scheme of Alabama;[52] but this reading has not been accepted by a majority of the Court.[53] Instead, the true forebearer of the new standard occurs not in the legislative redistricting field, where the Court has maintained a dichotomy between the two lines of congressional districting under article I and state legislative reapportionments under the fourteenth amendment,[54] but rather in the area of the selective distribution by a state of the franchise. Here the Court has unequivocally determined that state voter qualification laws which exclude otherwise qualified citizens from the franchise must be tested by the stricter standard.[55] Similarly, state administrative regulations which deny to citizens their right to participate in elections on an equal basis with other citizens must be examined

49 Bullock v. Carter, 405 U.S. 134, 144 (1972); Dunn v. Blumstein, 405 U.S. 330, 337 (1972); Phoenix v. Kolodziejski, 399 U.S. 204, 205 (1970); Cipriano v. City of Houma, 395 U.S. 701, 704 (1969); Kramer v. Union School Dist., 395 U.S. 621, 628 (1969); Harper v. Virginia Bd. of Elections, 383 U.S. 663, 670 (1966); Carrington v. Rash, 380 U.S. 89 (1965).

50 Under the rigid standard of congressional districting cases, only those population variances among districts that are "unavoidable" are permitted. White v. Weiser, 412 U.S. 783 (1973); Wells v. Rockefeller, 394 U.S. 542, 546 (1969); Kirkpatrick v. Preiser, 394 U.S. 526, 531 (1969); Wesberry v. Sanders, 376 U.S. 1, 17-18 (1964).

51 377 U.S. 533 (1964).

52 In striking down Alabama's plan the Court stressed that "the right of suffrage is a fundamental matter in a free and democratic society" and held that "any alleged infringement of the right of citizens to vote must be carefully and meticulously scrutinized." *Id.* at 561-62.

53 The test actually enunciated by the Court in *Reynolds* was the traditional "rational state policy" standard. *Id.* at 579. This more lenient standard has subsequently been applied in other state districting cases apparently on the basis that state legislative districts are so intertwined with strictly local interests that the rigor of the stricter standard is inappropriate to these predominantly state matters. Moreover, there is a significantly larger number of seats in state legislative bodies to be distributed within each state than its congressional seats, and it may be feasible for a state to use political subdivision lines in drawing state districts while still affording adequate statewide representation. White v. Regester, 412 U.S. 755 (1973); Gaffney v. Cummings, 412 U.S. 735 (1973); Mahan v. Howell, 410 U.S. 315 (1973).

54 Mahan v. Howell, 410 U.S. 315, 322 (1973).

55 *E.g.*, Carrington v. Rash, 380 U.S. 89 (1965). In *Carrington*, the Court overturned the use by Texas of an irrebuttable statutory presumption that absolutely excluded servicemen from the vote by classifying them as nonresidents. The Court tested the classification according to its necessity to carrying out a state purpose of substantial importance, rather than its merely serving a convenient state interest.

by strict scrutiny.[56] Exceptions to these generalized rules for voting cases fall into four categories. The stricter "equal protection" standard is not applicable (1) if the Court finds the state statute cannot pass even the lenient traditional test,[57] (2) where the state does not absolutely disenfranchise the members of any definable class,[58] (3) when a state elects functionaries whose duties are far removed from what might be thought of as "normal governmental" authority and whose actions disproportionately affect the delineated class accorded the vote,[59] and (4) in federal congressional redistricting situations which are gov-

56 Harper v. Virginia Bd. of Elections, 383 U.S. 663 (1966). The Court stressed the fundamental nature of the right to vote. *Id.* at 670. Fifteen years earlier, using the traditional "rational basis" test, the Court had upheld the same Virginia poll tax it struck down under the new standard applied in *Harper*. Butler v. Thompson, 341 U.S. 937 (1951).

A parallel situation occurred in Dunn v. Blumstein, 405 U.S. 330 (1972) striking down the Tennessee one-year durational waiting period. Referring to Drueding v. Devlin, 380 U.S. 125 (1965), decided only seven years earlier, which had upheld Maryland's similar one-year residence requirement, the Court commented that "if it was not clear then, it is certainly clear now that a more exacting test is required for any statute that 'place[s] a condition on the exercise of the right to vote.'" 405 U.S. at 337.

57 Included among the first category of exceptions should be Williams v. Rhodes, 393 U.S. 23 (1968). Here the Court struck down as creating an "invidious discrimination" Ohio's election laws which made it virtually impossible to be placed on the state ballot in presidential elections. *Id.* at 34. While the Court's opinion, written by Justice Black, would apply a "compelling interest" standard to the restrictions of Ohio law, five members of the Court, including two concurring and three dissenting, did not agree with this proposition. Thus, *Williams* correctly stands for no more than an application of the "invidious discrimination" test.

The same appears true of Evans v. Cornman, 398 U.S. 419 (1970), where a Maryland statute was overturned which created a presumption that persons living on a federal enclave within the state did not meet the residency requirement for voting in Maryland. The Court found no reasonable basis for accepting the state's contention that these residents were substantially less interested in state affairs than other residents of the state. *Id.* at 426. The Court did not openly reach the question of whether the stricter test should apply because the classification was plainly lacking in any rational justification.

Eisenstadt v. Baird, 405 U.S. 438 (1972), is akin to this principle in the area of personal privacy. In it the Court struck down a Massachusetts statute which denied unmarried persons access to contraceptive devices on the same basis as married persons, finding that the law failed "to satisfy even the more lenient equal protection standard." *Id.* at 447 n.7.

58 McDonald v. Bd. of Election, 394 U.S. 802 (1969); and Jenness v. Fortson, 403 U.S. 431 (1971), are instances of the second reason for declining to use the more rigid test. In *McDonald*, the right to vote in person was not absolutely precluded in fact or by law. 394 U.S. at 807. And in *Jenness*, the Georgia system of placing the names of candidates on the ballot was found not to have insulated a single potential voter from new political voices. 403 U.S. at 442.

A recent application of this rule is Rosario v. Rockefeller, 410 U.S. 752 (1973), where the Court upheld a provision of New York's election law imposing a time deadline on the enrollment of voters for primary elections. The Court concluded the statute did not prohibit any class from voting in any election had they chosen to meet the reasonable deadline established by the law. The complaining persons clearly could have registered and enrolled in the party of their choice before the deadline but chose not to do so by their own failure to take timely steps. *Id.* at 762.

59 The third area in which the Court has declined to apply the strict test in franchise cases appears in Salyer Land Co. v. Tulare Water Dist., 410 U.S. 719. *Salyer* refused to extend the popular election of Kramer v. Union School Dist., 395 U.S. 621 (1969), discussed in notes 61-62 *infra*, to a California statute limiting the vote for directors of a water storage district to landowners. The exception was based on the fact that the water district has relatively limited authority far removed from normal governmental activities and that its actions disproportionately affect landowners as a group. *Id.* at 728. By "affect" the Court appears to refer to the direct costs of district projects since under the state scheme landowners as a class were to bear the entire burden of the district's costs. *Id.* The Court kept its

erned under the special standards applicable to reapportionment of congressional seats.[60]

Perhaps the voting case in which the rule has been most fully articulated is *Kramer v. Union School Dist.*[61] where the Court held that the equal protection clause prohibited New York from limiting the vote in school district elections to parents or guardians of school children and property owners or lessees. The Court took pains to articulate why it was setting aside the normal presumption of constitutionality afforded state statutes:

> The presumption of constitutionality and the approval given "rational" classifications in other types of enactments are based on an assumption that the institutions of state government are structured so as to represent fairly all the people. However, when the challenge to the statute is in effect a challenge of this basic assumption, the assumption can no longer serve as the basis for presuming constitutionality.[62]

A more recent case in which the stricter test appears, but under a different label, is *Bullock v. Carter*.[63] Here the Court openly discussed at length when the stricter standard applies and when it does not. The case arose out of the Texas filing fee scheme which prevented some potential candidates from seeking the nomination of their party due to their inability to pay the fee. Concluding that the Texas laws had a real and appreciable impact on the exercise of the franchise and that this impact was related to the resources of the voters supporting a particular candidate, the Court held "that the laws must be 'closely scrutinized' and found reasonably necessary to the accomplishment of legitimate state objectives in order to pass constitutional muster."[64] Given the exacting standard it required, the Court found the Texas laws unnecessary to pursue even the substantial state interest in financing the cost of its primaries.

Although the stricter equal protection test has most often been applied in the "fundamental right" area to state classifications which limit the franchise, the Court has also used the stricter standard of review in safeguarding other fundamental rights such as the right to travel,[65] freedom of speech,[66] and freedom to procreate.[67] Moreover, it is well settled that under the equal protection clause the basic presumption of the constitutional validity of a state law "disappears when a State has enacted legislation whose purpose or effect is to create classes based upon criteria that, in a constitutional sense, are inherently 'suspect.' "[68] Consistent with the central purpose of the fourteenth amendment to

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decision within the guidelines of its general rule insofar as lessees who farm the land are concerned by noting that this group was not totally disenfranchised. The California law provides for voting by proxy and the lessee has a free opportunity to bargain for the right to vote at the time he negotiates his lease. *Id.* at 733.

60 *See* notes 50 and 53, *supra.*

61 395 U.S. 621 (1969).

62 *Id.* at 628.

63 405 U.S. 134 (1972).

64 *Id.* at 144.

65 Shapiro v. Thompson, 394 U.S. 618, 634 (1969).

66 Police Dep't of Chicago v. Mosley, 408 U.S. 92, 101 (1972).

67 Skinner v. Oklahoma, 316 U.S. 535, 538-42 (1942).

68 San Antonio School Dist. v. Rodriguez, 411 U.S. 1, 59 (1973) (opinion of Stewart, J., concurring).

eliminate official racial discrimination, the Court has decided that a classification based upon race is one such "suspect" category.[69] Other classifications determined to create "suspect" categories include those based upon alienage,[70] national origin,[71] illegitimacy,[72] wealth,[73] and arguably, sex.[74]

The special standard for testing state laws also is found in fourteenth amendment due process cases dating back at least to *Schneider v. State*,[75] which upheld the freedoms of speech and press "as fundamental personal rights and liberties." Subsequent due process cases in which the Court has held that the state interest needed to justify the infringement of fundamental rights must be "compelling," and not merely rationally related, to the accomplishment of a legitimate governmental purpose fall into at least six subject areas:[76] (1) academic liberty and political freedom of the individual,[77] (2) the freedom of association,[78] (3) the

69 Loving v. Virginia, 388 U.S. 1, 9, 11 (1967); McLaughlin v. Florida, 379 U.S. 184, 196 (1964); Bolling v. Sharpe, 347 U.S. 497, 499 (1954).

70 Graham v. Richardson, 403 U.S. 365, 372 (1971).

71 Oyama v. California, 332 U.S. 633, 646 (1948); Korematsu v. United States, 323 U.S. 214, 216 (1944).

72 Gomez v. Perez, 409 U.S. 535 (1973); Weber v. Aetna Casualty & Surety Co., 406 U.S. 164, 173 (1972); Levy v. Louisiana, 391 U.S. 68 (1968).

73 Harper v. Virginia Bd. of Elections, 383 U.S. 663, 668 (1966); Douglas v. California, 372 U.S. 353 (1963); Griffin v. Illinois, 351 U.S. 12, 17 (1956).

But according to the Court's majority opinion in San Antonio School Dist. v. Rodriguez, 411 U.S. 1, 29 (1973), wealth discrimination *alone* does not provide an adequate basis for invoking strict scrutiny. Rather, the precedents of the Court require that two distinguishing characteristics of wealth classification must be found: (1) because of their indigency, the persons discriminated against are completely unable to pay for some desired benefit, and (2) as a consequence, they sustain an absolute deprivation of a meaningful opportunity to enjoy that benefit. Justice Marshall, dissenting in the same case, contends these decisions are actually premised on the fundamental importance of the state service involved, but his analysis is clearly rejected by the Court's majority. *Id.* at 102 n.61.

74 Frontiero v. Richardson, 411 U.S. 677 (1973), struck down the statutory distinction made by Federal law which deprived servicewomen of the right to claim their spouses as a "dependent" for purposes of obtaining certain allowances and benefits. Justice Brennan, joined by Justices Douglas, White, and Marshall, concluded that classifications based on sex are inherently suspect and must be subjected to strict judicial scrutiny. *Id.* at 682. They found at least "implicit support" for this approach in Reed v. Reed, 404 U.S. 71 (1971). Though *Frontiero* presented a question of a violation of the due process clause of the fifth amendment, this characterization is equally applicable to state classifications challenged under the equal protection clause of the fourteenth amendment.

Whether sex is indeed now included as a "suspect" classification is uncertain since Justice Stewart, concurring in the judgment, 411 U.S. at 691, reached only the point of agreeing the discrimination was "invidious," and Justice Powell, joined by Chief Justice Burger and Justice Blackmun, expressly reserved for the future any decision on adding sex to the suspect category. Justice Powell's opinion specifically argued *Reed* "did not add sex to the narrowly limited group of classifications which are inherently suspect." *Id.* Mr. Justice Rehnquist would have sustained the constitutionality of the statutes in question.

75 308 U.S. 147, 161 (1939).

76 The minority in Vlandis v. Kline, 412 U.S. 441 (1973), would argue that the Court has applied the stricter test to a seventh area, the right of obtaining a higher education, but the Court's opinion, written by Justice Stewart, is narrowly drawn along the lines of past traditional due process cases. *Id.* (*Contra*, Burger, C. J., dissenting).

77 Shelton v. Tucker, 364 U.S. 479, 488 (1960); Sweezy v. New Hampshire, 354 U.S. 234, 265 (1957) (opinion of Frankfurter, J.).

78 Bates v. Little Rock, 361 U.S. 516, 524 (1960); NAACP v. Alabama, 357 U.S. 449, 463 (1958).

free exercise of religion,[79] (4) the right of free expression,[80] (5) the right of personal privacy,[81] and (6) the right to vote in both federal and state elections.[82] The extension of the "compelling interest" test to these several classes of fundamental rights, both in the equal protection and due process fields, and to the field of "suspect" classifications could foreshadow the supervention of the states by Congress in virtually every field where a state traditionally governs itself and its people. The question has been raised by members of the Court whether every state statute might not affect some basic human right[83] or create classifications permanent in duration which are less than perfect.[84]

III. The Court Applies a Brake

A. *Congressional Use of the "Compelling Interest" Test*

Oregon v. Mitchell[85] heralds the first strong brake by the Court on the "compelling interest" test and the intrepid slide toward making Congress the judge of its own enforcement powers under the Civil War amendments. In a near unanimous decision, but with no single rationale enjoying a majority, the Court's judgment upheld Congress' power in the Voting Rights Act Amendments of 1970[86] to set uniform residency requirements and absentee balloting standards in elections for presidential and vice presidential electors. In the same decision and again with no single reasoning prevailing, the Court held that Congress cannot interfere with the age set for voters by the states for state and local elections but can control age qualifications in federal elections alone. The only reasoning supported by a majority of the Court was that Congress has ample power under the enforcement clause of the fifteenth amendment to prohibit the use of literacy tests or other devices to discriminate against voters on account of their race in all elections, state and national.

The previously discussed literacy test provision aside, the statutory schemes considered in *Oregon* represent the first legislative enactments by Congress to expressly utilize the "compelling interest" doctrine as a means for expanding Congress' power under the Civil War Amendments. Both section 202 of title II,

79 Sherbert v. Verner, 374 U.S. 398, 406 (1963).

80 NAACP v. Button, 371 U.S. 415, 438 (1963).

81 As to marital privacy, *see* Griswold v. Connecticut, 381 U.S. 479, 497 (1965) (opinion of Goldberg, J., with whom Warren, C. J., and Brennan, J., joined). As to the right of a woman to decide whether or not to terminate her pregnancy by abortion, subject to compelling state interests with respect to protection of health, medical standards and potential life, *see* Roe v. Wade, 410 U.S. 113, 153-55. (1973).

82 United States v. Texas, 252 F. Supp. 234, 251 (W.D. Tex.), *aff'd*, 384 U.S. 155 (1966).

83 Justice Harlan, dissenting from the Court's application of strict scrutiny to a law penalizing the right of interstate travel, complained that "[v]irtually every state statute affects important rights." Shapiro v. Thompson, 394 U.S. 618, 661 (1969).

84 Vlandis v. Kline, 412 U.S. 441, 459 (1973) (opinion of Chief Justice Burger, joined by Justice Rehnquist, dissenting).

85 400 U.S. 112 (1970). For a brief note on the development of the compelling state interest doctrine in voting rights cases and an analysis of *Oregon*, see Weller, *Oregon v. Mitchell and the Compelling State Interest Doctrine — The End of An Era?*, 22 SYRACUSE L. REV. 1123 (1971).

86 42 U.S.C. §§ 1973 *et seq.* (1970).

setting presidential elector regulations,[87] and title III, providing for the 18-year-old vote,[88] include specific findings by Congress that the application of restrictive state laws does not bear a reasonable relationship to any compelling state interest.

B. *Section 202 — Presidential Election Reforms*

Since § 202 was introduced first and literally served as a drafting model for the Congressional findings made in title III, this provision will be examined first. Section 202 clears away a broad range of technical barriers which had previously impeded the right to vote for President of nearly ten million Americans.[89] The incredible mishmash of disorganized state and local regulations that formerly had existed, kept fully-qualified citizens away from the polls for no reason other than their failure to meet some unwarranted and outmoded legal technicality.[90] Some citizens could not vote because they had been residents of

87 42 U.S.C. § 1973aa-1 (1970), which reads in pertinent part:

> 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. (Emphasis added.)

88 42 U.S.C. § 1973bb (1970), which reads in pertinent part:

> (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 right 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.*

For a pre-*Oregon* discussion of the relationship between the compelling interest test and title III, see Engdahl, *Constitutionality of the Voting Age Statute*, 39 GEO. WASH. L. REV. 1 (1970).

89 See detailed explanation cataloguing the numbers of citizens disqualified from voting in presidential elections, at 116 CONG. REC. 6990-91 (1970). A survey by the author supports a high estimate of the prospective absentee voting population. Based on statistics from all states reporting absentee ballot totals, and replies from the office of the Secretary of State in selected states, 4,135,466 presidential absentee votes were cast in 1972. This is an increase of 26% over 1968.

90 See tables of restrictive state laws applicable to registration and balloting procedures and eligibility in presidential elections at 116 CONG. REC. 6994-96 (1970).

the state for only eleven months and could not meet the one year residence requirement. Others were ineligible because they were traveling outside the state on election day and were not allowed to obtain absentee ballots. Another category of disenfranchised citizens included nearly a million visitors, students, civil service employees, and businessmen who were overseas and found themselves among the three out of every five civilian citizens who could not register absentee.[91]

Section 202 made a dramatic overhauling of residency and absentee regulations in presidential elections. Enacted in substantive form exactly as introduced, the legislation abolished the durational residency requirement as a precondition to voting for President and Vice President, both for citizens who move from state-to-state or within the same state;[92] established a uniform national right of registering and voting by absentee process in presidential elections;[93] and

91 A possible setback for overseas citizens seeking the vote under section 202 is Hardy v. Lomenzo, 349 F. Supp. 617 (S.D.N.Y. 1972). Hardy moved from New York to Brazil in 1964 because of business obligations, intending to return at some indefinite time in the future. His request for absentee registration was rejected on the basis of a New York law which requires "a fixed, permanent and principal home" in the state as a condition of "residence." The district court upheld New York's refusal to permit Hardy to register on the basis that each state can determine for itself who is a bona fide resident. *Id.* at 620.

On reargument, the court allowed Senator Goldwater to intervene amicus curiae and agreed that the Senator's purpose as author of section 202 shows "a clear intent to provide the broadest possible opportunity to citizens to register to vote in a Presidential election. . . ." Nevertheless, the Court held that in this case the state was "entitled to stronger evidence of allegiance than that here presented." *Id.* at 621-22.

To the extent the court's opinion means a state can go behind a citizen's application and insist on reasonable supporting evidence of his statements of facts and intent, section 202 permits each state to determine who is among its true residents. But to the extent the court's language leaves open the possibility that a state may require as a precondition of residence the maintenance of a fixed, physical home in the state, the court erred in its construction of the federal law.

Section 202 is intended to prohibit the discriminatory application of state laws against citizens on the basis of their physical presence or absence from a particular state or political subdivision. However, in the words of the Secretary of State of New York, the state "definition of residency demands that there be a claim to a specific physical location *before any* supporting indicia may be considered." (Emphasis added.) Letter from John P. Lomenzo to Barry Goldwater, Nov. 17, 1972. This means that regardless of the citizen's financial inability to maintain two separate physical homes, one abroad and one in the state, at the same time, the state forecloses alternative means of proving his residence. Thus, the test absolutely precludes some actual residents from voting on the basis of their wealth. Moreover, the state penalizes the right to travel by forcing upon a person, who wishes to travel and work abroad, the choice between travel and his basic right to vote, unless he is affluent enough to own or rent two homes. *See* Amicus Curiae Brief in Behalf of Overseas Voters of Senator Barry Goldwater, 118 CONG. REC. 17894-99 (daily ed. Oct. 13, 1972).

The failure of the court in *Hardy* to reach this specific question leaves the matter in doubt and further congressional action will most surely be taken in the near future to erase that doubt. See *Hearings on S. 2102 and S. 2384, Before the Senate Subcomm. on Privileges and Elections of the Senate Comm. on Rules and Administration,* 93d Cong., 1st Sess. (1973).

92 42 U.S.C. § 1973aa-1(c) (1970), reads in pertinent part:

> 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 . . . in such election because of the failure of such citizens to comply with any durational residency requirement of such State or political subdivision. . . .

93 42 U.S.C. § 1973aa-1(c) (1970), lays down the general prohibition:

> [Nor] shall any citizen of the United States be denied the right to vote for electors

mandated that the polls be kept open at reasonable times for registration by both new and long-time residents of a state until at least 30 days before the election.[94]

In making these sweeping changes in state laws and practices, Congress relied upon at least four distinct grounds for the exercise of congressional authority.[95] In *Oregon* the Supreme Court was to seize upon each of these justifications in upholding § 202. First, § 202 rested upon Congress' power to secure the rights inherent in national citizenship,[96] which include the right to vote for federal officers.[97] Since these rights adhere to United States citizenship, rather than citizenship of a state, Congress believed it could give them protection under the

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for President and Vice President . . . 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.

42 U.S.C. § 1973aa-1(d), (f) (1970), prescribes the minimum standards which a state shall put into practice:

> (d) For the purpose of this section . . . each State shall provide by law for the casting of absentee ballots for the choice of electors for President and Vice President . . . by all duly qualified residents 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. . . .
>
> (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 . . . in such election because of any requirement of registration that does not include a provision for absentee registration.

That part of section 202(d) allowing the return of absentee ballots as late as the close of polls was upheld against a contrary provision of New York state law in *Hershcopf v. Lomenzo*, 350 F. Supp. 156 (S.D.N.Y. 1972).

94 42 U.S.C. § 1973aa-1(d) (1970), provides in pertinent part:

> (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 . . . in such election. . . .

This provision has correctly been construed to require that registration be provided at reasonable periods of time during crucial pre-election weeks, although the statute itself does not specify the precise number of days during which registration facilities should be kept open. Acting on the underlying concern of Congress "to provide the broadest possible opportunity to citizens to register to vote in a Presidential election," a three-judge Federal Court held that section 202 must prevail over a related section of the New York Election Act to the extent the latter would prohibit a voter from being afforded the opportunity to register personally at reasonable pre-election times. *Bishop v. Lomenzo*, 350 F. Supp. 576 (E.D.N.Y. 1972).

95 Section 202(a) note 87 *supra*.

96 Rights belonging to national citizenship "arise from the relationship of the individual with the Federal government" and are directly dependent on the Constitution: United States v. Williams, 341 U.S. 70, 77-80 (1951); Slaughter House Cases, 83 U.S. (16 Wall.) 36, 79 (1872); Ward v. Maryland, 79 U.S. (12 Wall.) 418, 430-31 (1870); Paul v. Virginia, 75 U.S. (8 Wall.) 168, 180 (1868).

97 The right to vote for national elective officers, including members of Congress and presidential electors, has been expressly recognized as a right directly secured to citizens by the Constitution: United States v. Classic. 313 U.S. 299, 314, 315 (1941); Twining v. New Jersey, 211 U.S. 78, 97 (1908); Wiley v. Sinkler, 179 U.S. 58, 62 (1900); In Re Quarles, 158 U.S. 532, 538 (1895); Ex parte Yarbrough, 110 U.S. 651, 663 (1884).

necessary and proper clause of article I.[98] A related basis for Congress' action was its design to protect the fundamental and national right or privilege of travel by a citizen, without sacrificing his right to vote.[99]

As an alternative ground, Congress used its reading of the then recent case of *Katzenbach v. Morgan* to assert an exercise of power under the fourteenth amendment.[100] Viewed as a fourteenth amendment matter, § 202 protected against a discriminatory classification in voting between citizens who were new or long-time residents and between those who were physically present or absent at the time of registration or voting.[101] In light of similar state laws which indicated states could satisfy their legitimate interests by the rules it was legislating, Congress saw no compelling reason why a state should condition the right to vote for President on the duration of a citizen's residence or a resident's physical presence or absence at the polls. For example, 40 states then allowed certain classes of their residents to register until 30 days or sooner before each presidential election. State practice itself had demonstrated that the 30-day rule of § 202 would not be administratively impracticable.[102] Moreover, 37 states allowed application for absentee voting by certain persons within a week of the election, and 40 permitted the marked ballot of absentee voters to be returned as late as on election day;[103] both standards were incorporated into § 202 as national criteria.[104] The fact that so many states had been able to satisfy their administrative needs for part of their citizens by providing for these several exceptions from their general regulations demonstrated that more restrictive rules were not necessary to serve any compelling interest.[105]

The fourth basis of Congress' power to adopt legislation creating uniform standards for voting in presidential elections is its authority to enforce the privileges and immunities guaranteed to citizens of all the states. Here it was Congress' purpose of correcting the incredible system of conflicting state and local requirements applicable to presidential elections which created a serious inequality of treatment as among citizens of one state compared with citizens of other states.

Eight members of the Court upheld Congress' power to adopt the uniform regulations of § 202. Justice Brennan, joined by Justices Marshall and White,

98 As 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).

99 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. 618, 629 (1969); United States v. Guest, 383 U.S. 745, 757 (1966); Crandall v. Nevada, 73 U.S. (6 Wall.) 35, 47 (1867). Travel abroad has also been held to be a basic aspect of each citizen's liberty: Kent v. Dulles, 357 U.S. 116, 126 (1958); Aptheker v. Secretary of State, 378 U.S. 500, 505 (1964).

100 It was noted that *Morgan* had upheld a congressional ban against an English language literacy test similar to one which the Court had found constitutional five years earlier in Lassiter v. Northampton Election Bd., 360 U.S. 45 (1959).

101 Oregon v. Mitchell, 400 U.S. 112, 284-89 (1970).

102 *Id.* at 282, 291.

103 *Id.* at 283, 292.

104 Section 202(d) note 94 *supra.*

105 400 U.S. at 238-39.

rested his opinion squarely upon the "compelling interest" doctrine and Congress' power to enforce the fourteenth amendment by "eliminating an unnecessary burden on the right of interstate migration."[106] Justice Douglas also upheld § 202 as a means to enforce the fourteenth amendment, but related his opinion to section 1 of that amendment, the privileges and immunities clause.[107] Justice Stewart, joined by Chief Justice Burger and Justice Blackmun, sustained § 202 on the ground of the authority of Congress to protect and facilitate the exercise of privileges of United States citizenship under the necessary and proper clause of article I without regard to section 5 of the fourteenth amendment.[108] He wrote that the freedom to travel from state to state without loss of the franchise is one of the privileges "that finds its protection in the Federal Government and is national in character."[109] Consequently, as against the reserved power of the states, it was enough for these Justices that the objective of § 202 to guarantee the privilege to travel was a legitimate one and that Congress had chosen a rational means to achieve that end.[110] Justice Black, who announced the judgment of the Court, also rejected the fourteenth amendment as a basis for Congress' action, but agreed that Congress could enact § 202 pursuant to the necessary and proper clause. He based his view on the final authority which Congress has to make laws over federal elections.[111] Only Justice Harlan believed § 202 was invalid on any ground.[112]

The precision with which § 202 was drafted may explain the broader support it received among the Court than did the voting age change. The three Justices who, as shall be discussed, ruled for the authority of Congress to enact the residence provision, but against its power to legislate an age qualification, remarked:

> The power that Congress has exercised in enacting § 202 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.[113]

In this sense, a majority of the Court united on the proposition that the power of the states over matters normally within their general jurisdiction is subject to the power of Congress to vindicate the personal rights or privileges which the Court has determined to be secured to the citizen by the Federal Constitution. If Congress acts with the objective of protecting these rights or privileges in a narrowly drawn manner, rather than with the purpose of passing general legislation over a state-reserved field, congressional power exists to establish specific regulations attacking a particular problem in the field.

But even the application of this conservative rule illustrates that Congress

106 *Id.* at 239.
107 *Id.* at 147-50.
108 *Id.* at 285-92.
109 *Id.* at 287.
110 *Id.* at 286.
111 *Id.* at 120, 134.
112 *Id.* at 213-16.
113 *Id.* at 292 (opinion of Stewart, J., joined by Burger, C. J., and Blackmun, J.).

can "expand" the protection of the Civil War amendments previously defined by Supreme Court decisions. Section 202 abolished the durational waiting period for new residents in presidential elections two years before the Supreme Court narrowed the same practice in state and local elections[114] and six years after it had upheld the same requirements as applied in presidential elections absent an act of Congress.[115]

C. *Title III—The 18-Year-Old Vote*

The major check on congressional power under the enforcement clauses was reached with the Court's consideration of title III of the Voting Rights Act of 1970, which sought to extend the vote to 18-year-olds in all elections. The holding was closely decided with four Justices agreeing that Congress could enforce the right of voting under the equal protection clause of the fourteenth amendment against limitations by state laws which Congress concluded were unfair or unnecessary voting restrictions;[116] but five members of the Court found no such power resting in Congress.[117]

Justices Brennan, Marshall, and White concluded that proper regard for the special function of Congress in making determinations of legislative fact compelled the Court to respect those determinations independent of any state finding argued in support of a given state discrimination. Under the doctrine of the supremacy clause, Congress could make its own determination of whether or not the factual basis necessary to support a state legislative discrimination actually exists. Thus, Congress could conclude on its own that 18-year-olds are not substantially less capable of a responsible exercise of the vote. Once having made this finding, it could remove the age discrimination under the enforcement clause of the fourteenth amendment so long as it could rationally find that the discrimination was unnecessary to promote any legitimate state interest.[118] Justice Douglas' separate opinion on the 18-year-old vote provision conforms with this same analysis.[119]

Three members of the Court, Justices Stewart and Blackmun, and Chief Justice Burger, sharply criticized the view "[t]hat Congress has the power to determine what are and what are not 'compelling state interests' for equal protection purposes."[120] These Justices wrote that the voting age provision:

> is valid only if Congress has the power not only to provide the means of eradicating situations that amount to a violation of the Equal Protection Clause, but also to determine as a matter of substantive constitutional law what situations fall within the ambit of the clause, and what state interests are "compelling."[121]

114 Dunn v. Blumstein, 405 U.S. 330 (1972).
115 Drueding v. Devlin, 380 U.S. 125 (1965).
116 Oregon v. Mitchell, 400 U.S. 112, 134-44 (1970) (opinion of Douglas, J.); *id.* at 239-81 (Part III of opinion of Brennan, J., joined by White and Marshall, J. J.).
117 *Id.* at 119-31 (opinion of Black, J.); *id.* at 212-13 (opinion of Harlan, J.); *id.* at 293-96 (opinion of Stewart, J., joined by Burger, C. J., and Blackmun, J.).
118 *Id.* at 246-50 (opinion by Brennan, J.).
119 *Id.* at 135-44 (opinion by Douglas, J.).
120 *Id.* at 295.
121 *Id.* at 296.

And they wrote, "to test the power to establish an age qualification by the 'compelling interest' standard is really to deny a State any choice at all. . . ."[122] Even so, these members allowed in somewhat ambiguous language

> that Congress could impose on the States a remedy for the denial of equal protection that elaborated upon the direct command of the Constitution, and that it could override state laws on the ground that they were in fact used as instruments of invidious discrimination *even though a court in an individual lawsuit might not have reached that factual conclusion.*[123] (Emphasis added.)

The swing Justice, Mr. Black, upheld the power of Congress to enfranchise 18-year-old citizens in national elections only on the ground that Congress can control voter qualifications in federal elections.[124] Justice Harlan disagreed that title III could be supported on any conceivable ground.[125]

That a conservative could comfortably adopt the stricter test as a means to support Congressional action over the age standard is evident in the position taken by Senator Goldwater in support of the uniform age provision. Arguing on the basis of *Texas v. United States,*[126] which had sustained the power of Congress to prohibit the use of the poll tax as a prerequisite to voting in state elections, the Senator contended the right to vote in both state and federal elections was a fundamental right which can be secured against any state law not promoting a compelling governmental interest.[127] From the outcome of *Oregon,* this view misjudged the Court's position by a single vote. While there is a right to vote in state elections "[o]n an equal basis with other citizens in the jurisdiction,"[128] the right to vote in state elections itself has not become firmed in the law.[129] Nevertheless, it was a fair reading of the Court's past cases and one that may yet prevail.

IV. The Thirteenth Amendment Revisited

Lest it be thought the thirteenth amendment is dormant, the Supreme Court has recently defined a new breadth of authority in Congress under this amendment. In *Jones v. Mayer Co.*[130] the Court held that a century-old act of Congress banning racial discrimination in the rental and sale of property could be enforced against private, as well as public, racial discrimination.[131] Applying

122 *Id.* at 294.

123 *Id.* at 296.

124 *Id.* at 125-26. Justice Black argued that the case cannot properly be decided under the equal protection clause since this clause "was never intended to destroy the State's power to govern themselves. . . ." *Id.* at 126.

125 *Id.* at 200-13 (opinion by Harlan, J.).

126 384 U.S. 155 (1966).

127 *Hearings on S. J. Res. 7 and Others Before the Subcomm. on Constitutional Amendments of the Senate Comm. on the Judiciary,* 91st Cong., 2d Sess. 136-38 (1970).

128 Dunn v. Blumstein, 405 U.S. 330, 336 (1972).

129 Oregon v. Mitchell, 400 U.S. 112 (1970).

130 392 U.S. 409 (1968).

131 *Id.* at 437-44. Another recent decision imbuing new vigor into the thirteenth amendment is Griffin v. Breckenridge, 403 U.S. 88 (1971). Here Negro citizens filed a damages action under a century-old statute, 42 U.S.C. § 1985(3) (1970), charging a private conspiracy

the now standard reformulation of the analysis of *McCulloch v. Maryland* to the question of the appropriateness of the measure, the Court ruled that the authority of Congress to enforce the thirteenth amendment "by appropriate legislation" includes the power to eliminate *all* racial barriers to the acquisition of real and personal property.[132] Heralding a vast and rejuvenated scope for independent judgment by Congress under the original Civil War amendment, the Court emphasized that Congress itself can determine what are the badges and incidents of slavery and can translate that determination into effective legislation.[133] The Court added that the badges and incidents of slavery which Congress may attack encompass restraints on all the fundamental rights which make up "the essence of civil freedom."[134] This language appears to foretell a broad area for future legislative enhancement of the Court's prior interpretations of what kinds of discrimination are reached by the thirteenth amendment, should Congress choose to act.[135]

V. Postscript: Congress May Not Dilute Rights

The same standard of review which bodes an expanding role for Congress does not signal a like authority for Congress to weaken constitutional rights. The Supreme Court has not only forewarned Congress that the "compelling interest" doctrine in no way supports restrictions on human rights, but the Court has applied this very rule against the validity of congressional enactments which have infringed on personal freedoms. For example, in *Aptheker v. Secretary of State*[136] the Court was called upon for the first time to directly consider the constitutionality of a federal restriction upon the right to travel abroad. The Court held that the law, which effectively prohibited travel outside the Western Hemisphere by members of the Communist party, failed to satisfy the strict rule of necessity which was applicable to such restrictions. Even though the governmental interest asserted might be legitimate and substantial, the Court indicated, that purpose cannot be achieved by means which stifle fundamental

to interfere with their rights as citizens. The Court held that the statute encompasses the conduct of private persons as well as conspiracies under color of state law and ruled that Congress may, by the thirteenth amendment, create a statutory cause of action for Negro citizens who have been the victims of conspiratorial, racially discriminatory private action aimed at depriving them of the basic rights of free men.

132 392 U.S. at 443-44.

Almost simultaneously with the Court's decision of *Jones*, Congress enacted title VIII of the Civil Rights Act of 1968, 42 U.S.C. §§ 3601 *et seq.* (1970), providing detailed means for securing fair housing throughout the United States. These provisions, applicable to a broad range of discriminatory practices, have been sustained under the thirteenth amendment by lower courts. *E.g.*, United States v. Mintzes, 304 F. Supp. 1305 (D. Md. 1969); United States v. Real Estate Dev. Corp., 347 F. Supp. 776 (N.D. Miss. 1972).

133 392 U.S. at 440.

134 *Id.* at 441.

135 *See also* United States v. Jefferson County Bd. of Educ., 372 F.2d 836 (5th Cir. 1966), *decree modified*, 380 F.2d 385 (1967, *cert. denied*, 389 U.S. 840 (1967). Title VI of the Civil Rights Act of 1964 was upheld as appropriate legislation under the thirteenth amendment in circumstances where the law constituted a plain congressional alternative to court desegregation remedies and in fact accelerated school desegregation beyond the pace theretofore set by the judicial branch itself.

136 378 U.S. 500 (1964).

personal liberties when the end can be more narrowly achieved.[137] Similarly, in *United States v. Jackson*[138] a provision of the Federal Kidnaping Act was invalidated because the element of necessity was absent.[139] And, in *Shapiro v. Thompson*[140] the Court held that it would be unconstitutional for Congress to permit the states to impose a one-year waiting period which denied public assistance to poor persons otherwise eligible. Rejecting the dissent by Chief Justice Warren and Justice Black, the Court's majority stated, "Congress may not authorize the States to violate the Equal Protection Clause."[141] *Shapiro* squarely presented a situation where the Court used the "compelling interest" standard to invalidate a state regulation and yet in the identical case refused to give a federal statute any broader scope under that standard where to do so would have meant allowing Congress to infringe on human rights.

Thus, the Court has proven in practice the admonishment it gave by dictum in *Katzenbach v. Morgan*: the fourteenth amendment "does not grant Congress power to exercise discretion in the other direction and to enact 'statutes so as in effect to dilute equal protection and due process decisions of this court.' "[142] From this, it may be said that the Court will use the stricter standard and its more expansive view of Congressional power under the enforcement clauses only to protect personal rights and liberties, not in any way to restrict, abridge, or weaken these guarantees.[143]

VI. Some Proposed Limits on Congressional Action

The limits on Congressional sallies under the enforcement clauses of the three Civil War amendments must stem from the good sense of Congress and a healthy respect by both Congress and the judiciary for the maintenance of the federal system as a viable feature of the unique American political experiment. Before venturing into new situations which abrogate long-standing state procedures which the judiciary itself has not been ready to judge improper, Congress should consciously and conscientiously examine the precedence for what it is proposing among the usage of the states themselves. Congress should ask itself whether a sizable body of states had ever put into practice the requirements Congress is about to ask all states to implement. Were these same rules proven feasible in the complex realities of everyday administration? Did the new rules actually achieve the remedies sought by Congress when they were tried among the states already living with them? Congress also should make a deliberate appraisal of the nature and significance of the interests which states may have in retaining their present procedures. This is not to say that Congress has power to make a constitutionally superior judgment on the matter, but that Congress ought to explore the subject out of a respect and fairness toward state governments as important institutions in their own right.

137 *Id.* at 508.
138 390 U.S. 570 (1968).
139 *Id.* at 582.
140 394 U.S. 618 (1969).
141 *Id.* at 641.
142 384 U.S. 641, 651 n.10 (1966).
143 *See* Oregon v. Mitchell, 400 U.S. 112, 249 n.31 (1970) (opinion of Brennan, J.).

For its part, the Court should plainly recognize when it is applying the "compelling interest" standard to test a state statute and when it is not. It should not be sloppy in using the exacting test and should develop clearcut precedents for the guidance of Congress in this relatively new dimension of enforcement legislation. Merely by closely observing the difference between the standard test and the rigid one, as was done in *Bullock v. Carter*,[144] the Court may place some self-restraint on its exercise of the unusually stringent rule. Even more necessary, the Court, prodded by a lively discussion within the legal profession and in the public forum, must shape its own delimiting boundaries on using the stricter standard. In carrying on this review, it is suggested that the Court should pay more than lip service to the prominent theme which runs through all of these cases, the element of necessity. By examining whether a state law really is necessary—whether there truly is any other reasonable and practical means of accomplishing the goal of the statute under attack without infringing a protected freedom—the Court can guard against totally abrogating the authority of a state over a particular subject. Obviously, the states would retain a far greater scope for governing their own affairs if they were to be actually left with the choice of using an alternative means of pursuing their valid interests, instead of being left with no choice at all. More basically, the Court should make an effort to explain why the strict scrutiny test is applicable in the particular setting and to provide an analytic basis for the result reached. This is the prescription of Chief Justice Burger, joined by Justice Rehnquist, in the former's dissent in *Vlandis v. Kline*,[145] and it offers much food for thought. The Court's task, according to the Chief Justice, is not routinely to see whether there is some conceivably "less restrictive" alternative to the state statute under review, but to explain why the statute impairs a genuine constitutional interest truly worthy of the standard of close judicial scrutiny.

Though it did not involve an act of Congress and the distinct matter of congressional prerogative under the enforcement clauses, the recent case of *San Antonio School District v. Rodriguez*[146] provides exactly the kind of narrowed analysis advanced by the Chief Justice. This case involved the Texas system of financing public elementary and secondary education significantly out of locally assessed property taxes.[147] A majority of the Court rejected a class action brought by Mexican-American parents on behalf of members of minority groups and poor persons who reside in school districts with a low property tax base. For several reasons given in a lengthy analysis,[148] the Court's majority was unpersuaded that the case could be fitted into previous decisions in which strict scrutiny was required. The five member majority concluded that the Texas system does not discriminate against a "suspect" class[149] nor does it interfere with a "funda-

144 405 U.S. 134 (1972).
145 412 U.S. 441, 459 (1973).
146 411 U.S. 1 (1973).
147 For the 1970-1971 school year local taxation contributed 41.1% of all public school funds.
148 *San Antonio School Dist. v. Rodriguez*, 411 U.S. 1, 17-44 (1973) (Part II of opinion of Powell, J., joined by Burger, C. J., and Stewart, Blackmun, and Rehnquist, J. J.).
149 *Id.* at 28.

mental" constitutional right.[150] Probing the hard threshold questions which it indicated must be focused on before a state's laws are subjected to strict judicial scrutiny, the Court found that children in the poorer property districts were not denied an adequate education and could not be fairly defined as suffering the loss of such an education because of their indigency.[151] Therefore, the two distinguishing characteristics of wealth discrimination found in the Court's previous cases were not present. First, the Texas school financing system did not operate to the peculiar disadvantage of any definable category of "poor" people; and second, the lack of wealth did not result in an *absolute* deprivation of public education.[152]

Even if the case were to be examined from the standpoint of "district" wealth discrimination, rather than on the basis of "individual income characteristics," the Court declined to extend its most exacting scrutiny with respect to such "a large, diverse, and amorphous class," which had none of the traditional indicia of suspectness.[153] Justice Powell's opinion for the Court reasoned that:

> The system of alleged discrimination and the class it defines have none of the traditional indicia of suspectness: the class is not saddled with such disabilities, or subjected to such a history of purposeful unequal treatment, or relegated to such a position of political powerlessness as to command extraordinary protection from the majoritarian political process.[154]

Thus, the Court formulated an important guide for defining what nature of groups could claim the special protection accorded "suspect" classes and charted a new limit on the difficult "compelling interest" doctrine. Further, the Court refined its analysis of what constitutes a "fundamental" right and thereby sought to underline the limits of this part of the rationale employed in the Court's strict scrutiny decisions. Justice Powell's majority opinion expressly rejected the idea that the "importance" of a service or benefit provided by the state should determine whether it must be regarded as fundamental.[155] His statement argued that if the Court picked out particular human activities and characterized them as fundamental depending on a majority's view of the importance of the interest affected, it would indeed be assuming a legislative role and one for which it lacks both authority and competence.[156] On the contrary, all the Court had done in its earlier decisions was to recognize as being fundamental those rights which were already established constitutional rights, such as the right to interstate travel.[157]

The majority position held that the Court did not in its other strict scrutiny

150 *Id.* at 37-38.
151 *Id.* at 24. The Court found there was no basis on the record for assuming that the poorest people are concentrated in the poorest districts. In fact, it observed that the poor may be found to be clustered around commercial and industrial centers which provide the most attractive tax bases. *Id.*
152 *Id.* at 25.
153 *Id.* at 28.
154 *Id.*
155 *Id.* at 30.
156 *Id.* at 31.
157 *Id.* at 32.

cases invoke an ad hoc determination as to the social or economic importance of human rights.[158] The lesson of its prior cases, stated Justice Powell, plainly revealed that "it is not the province of this Court to create substantive constitutional rights in the name of guaranteeing equal protection of the laws."[159] Rather, the key to discovering whether a service or interest is "fundamental" lies in assessing whether it is among the rights "explicitly or implicitly guaranteed by the Constitution."[160] Applying this principle to the Texas property tax situation, the Court held that there is no guarantee of a right to obtain more than a basic education.[161] Where the state law does not cause an absolute denial of educational opportunities to any of its children, the mere fact that education may be related to the effective exercise of first amendment freedoms and to the intelligent exercise of the vote does not mean that education is itself a fundamental personal right.[162] Justice Powell concluded that the Court does not possess "[t]he ability or the authority to guarantee to the citizenry the most effective speech or the most informed electoral choice."[163] These are goals to be pursued by legislatures, not by judicial intrusion.

Moreover, Justice Powell indicated the strict scrutiny rule was inappropriate to the property tax scheme because it differed in one further respect from the earlier fundamental right line of cases. Texas was not endeavoring to deprive anyone of a right to an education. Its system was utilized in an effort to *extend* public education and to improve its qualities. Since the thrust of the Texas system is affirmative, it "should be scrutinized under judicial principles sensitive to the nature of the State's efforts and to the rights reserved to the States under the Constitution."[164] Consistent with this theme, the Court also revealed that for once it was granting more than a rote genuflection to the principles of federalism. Justice Powell's admonition for judicial restraint against circumscribing or handicapping continued research and experimentation by the states in the educational financing area proves that a true respect for federalism contributed to the Court's

158 *Id.*

159 *Id.* at 33.

160 *Id.* The Court found support for its holding that social importance is not the critical determinant for subjecting state legislation to strict scrutiny in two of its recent decisions. In Lindsey v. Normet, 405 U.S. 56 (1972), the Court had decided against the claim by tenants in suits by landlords that the statute should be examined under "a more stringent standard than mere rationality." *Id.* at 73. While recognizing the importance of "decent, safe, and sanitary housing," the Court stated it was "unable to perceive any Constitutional guarantee of access to dwellings of a particular quality" or any recognition of the right of the poor to occupy housing beyond the term of their lease, without the payment of rent. *Id.* at 74.

Similarly, in Dandridge v. Williams, 397 U.S. 471 (1970), the Court had reversed the application by a federal district court of the stricter standard of review to Maryland's maximum family grant provision under its Aid to Families with Dependent Children program. Though the Court explicitly recognized that public welfare assistance "involves the most basic economic needs of impoverished human beings," *id.* at 485, it held this central importance of welfare benefits was *not* an adequate foundation for requiring the state to support its law by a compelling state interest. *See also* Jefferson v. Hackney, 406 U.S. 535 (1972); Richardson v. Belcher, 404 U.S. 78 (1971).

161 411 U.S. at 35.

162 *Id.* at 36.

163 *Id.*

164 *Id.* at 39.

determination not to apply the strict test.[165] In Justice Powell's words, "it would be difficult to imagine a case having a greater potential impact on our federal system than the one now before us, in which we are urged to abrogate systems of financing public education presently in existence in virtually every State."[166] Here is a strong indication the Court will pay more attention in the future to the actual degree to which feasible alternatives may exist and the extent to which precedents comparable to the practice being hoisted by Congress may have been successfully tested among the states before the Court applies the stricter judicial test.

Conclusion

A view is beginning to take shape among the Court which sets some rough but recognizable boundaries on the application of the strict test. Inherent in this trend is a distinct and serious concern for the survivability of the federal system. Both developments have an important nexus with the Court's disposition to uphold congressional enforcement legislation under the Civil War amendments and indicate that the pause in this area which the Court began with *Oregon v. Mitchell* is still very much alive. If, as seems likely,[167] the Court continues its recent inclination to consider questions of federalism closely and to draw a clearer analysis for its application of the stricter test, reliance on this test by the national Congress should not have the dire effects upon state power feared by some. The "compelling state interest" standard is a legitimate and useful tool which Congress may properly use in advancement of personal rights and liberties. Used wisely, Congress can, by tying this doctrine to its broad discretion for action under the Civil War amendments, further enhance the lives of millions of the nation's citizens, be they members of racial minority groups striving to achieve a more equal position in society or part of "middle America" seeking relief from archaic election disabilities. Bound by the strictures of a newly developing majority on the Court, the twin doctrines of stricter scrutiny and enforcement clause legislation raise hope and opportunity for disadvantaged Americans without doing violence to the fundamental division of power between state and national governments.

165 *Id.* at 40.

166 *Id.* at 44.

167 Predictions as to how the Court's present membership would view future congressional enactments buttressed by the "compelling interest" principle are clouded by the fact that all Justices except for Mr. Rehnquist have endorsed the stricter standard in one or more settings.

STATE INCOME TAX LIABILITY OF U.S. CITIZENS RESIDING ABROAD

I. States having a broad tax on income earned outside the United States

State	State income tax coverage	Tax base	Probable tax obligation
Alabama	Domicile, maintaining a permanent place of abode within the State, or spending in the aggregate more than seven months of the year within the State. Ala. Code tit. 51, §373 (1958). Voting in Alabama is a factor considered by the courts in determining whether an individual is domiciled in Alabama for tax purposes. State ex rel. Rabren v. Baxter, 46 Ala. App. 134, 239 So.2d 206 (1970).	The entire net income of domiciliaries and residents as defined by the statute. Ala. Code titl. 51, §373 (1958). Nonresidents taxable on income from property owned or business transacted in Alabama. Ala. Code tit. 51 §373	Residents--subject to state income tax on all income. Nonresidents--taxable on income from property owned or business transacted in Alabama.
Arkansas	Residents and nonresidents--The term resident is defined to include any natural person domiciled in the State and any natural person who maintains a permanent place of abode in the State and spends in the aggregate more than 6 months of the taxable year within the State. 7B Ark. Stat. Ann. §84-2002 (1960) The Arkansas Tax Regulations state that a domicile does not end by physical absence alone and is presumed to continue until a new domicile is legally established. The regulations contain a fact sheet listing the various factors to be taken into consideration in determining whether a new domicile has been established. The elements of a new domicile on the fact sheet include: voter registration and exercise of	The entire income of every resident and domiciliary as defined by the statute. 7B Ark. Stat. Ann. §84-2003(a). The entire net income of nonresidents from all property owned, and from every business, trade or occupation carried on in Arkansas. 7B Ark. Stat. Ann. §84-2003(c).	Residents--Subject to State income tax on all income. Nonresidents--Subject to State income tax on all net income from sources within the State as previously defined.

State	State income tax coverage	Tax base	Probable tax obligation
Arkansas (cont'd)	suffrage during the last three elections, domicile of birth, physical presence, expressed intentions, family residence, duty causing absence from Arkansas, State licenses, location of substantial real and property holdings, community affiliations, business interests, bulk or necessary purchases, utility or telephone deposits, and local taxes and licenses. Ark. Tax. Reg., Art. 7.84-2002(10).		
California	Residence--The term resident for income tax purposes includes: (a) every individual who is in the State for other than a temporary or transitory purpose, and (b) every individual domiciled in the State who is outside the State for a temporary or transitory purpose. Any individual who is a resident of the State continues to be a resident even though temporarily absent from the State. An individual domiciled in California is absent from the State for a temporary purpose if such absence is by reason of (1) holding an elected or appointed office in the Federal government or working on the staff of an elected officer of the legislative branch of the U.S. government. Cal. Rev. & Tax Code §17014 (1974). Every individual who spends in the aggregate more than nine months of the taxable year within the State is presumed to be a	The entire taxable incomes of a resident of the State. Cal. Rev. & Tax. Code §17041(a) (1974). The entire taxable income of a nonresident of the State which is derived from sources within the State.	Residents--Subject to State income tax on all taxable income. Nonresidents--Subject to State income tax on all taxable income derived from sources within the State.

State	State income tax coverage	Tax base	Probable tax obligation
California (cont'd)	resident. Cal. Rev. & Tax Code §17016 (1970).		
District of Columbia	Residents--The word resident is defined as every individual domiciled within the District on the last day of the taxable year, and every other individual who maintains a place of abode within the District for more than seven months of the taxable year, whether domiciled in the District or not. D.C. Code. Tit. 47, §1551c(s) (1973). Under an earlier District of Columbia tax law, the Supreme Court held that domicile is a question of fact settled by an examination of all of the factors showing a person's intention, such as political rights, physical presence, and social and business contacts. The Court found that whether or not a person votes where he claims domicile is highly relevant, but by no means controlling on the question whether he is domiciled in the District of Columbia, nor is failure to vote elsewhere conclusive that domicile is in the District. District of Columbia v. Murphy, 314 U.S. 441 (1941).	The net taxable income of residents. D.C. Code §47-1567, 47-1567b. The District of Columbia is precluded from levying a nonresident income tax by Public Law 93-198 §602(a).	Residents--Subject to D.C. income tax on net taxable income. Nonresidents--Not subject to the income tax.

State	State income tax coverage	Tax base	Probable tax obligation
Louisiana	Residents and nonresidents--The term resident is defined as every natural person domiciled in the State, and every other natural person who maintains a permanent place of abode within the State or who spends in the aggregate more than six months of the taxable year within the State. La. Rev. Stat. §47-31 (1970). The Louisiana Tax Regulations state that domicile is a factual determination of intent to remain in or return to Louisiana. Examples in the Regulations indicate that an individual may spend large portions of his or her time outside of Louisiana without relinquishing domicile. La. Inc. Tax Regs. §31.2.	1) The net income of residents defined generally as gross income of whatever kind minus the deductions allowed. La. Rev. Stat. §§47-31, 32, 41, 293(5)(a)(1970). 2) The net income of nonresidents earned or derived from sources within the state without reduction for federal income taxes paid. La. Rev. Stat. §47-241, 47-293(5)(b) (1974).	Residents--subject to tax on all income reportable for federal purposes with certain exceptions. Nonresidents--subject to tax on net income derived from sources within Louisiana without reduction for federal income tax paid. La. Rev. Stat. §47-293(5)(b).
Mississippi	Residents and nonresidents--The term resident is defined as any person domiciled in the State and any other person who maintains a legal or actual residence within the State. Miss. Code §27-7-3(e) (1972). The term nonresident is defined as any natural person whose domicile and place of abode is without the State. Miss. Code §27-7-3(f).	The entire net income of residents. Miss. Code §27-7-5. The entire net income of nonresidents from sources within Mississippi. Miss. Code §27-7-5.	Residents--Subject to tax on their entire net income. Nonresident--Subject to tax on their entire net income from sources within Mississippi.

State	State income tax coverage	Tax base	Probable tax obligation
Mississippi (cont'd)	The Mississippi Tax Regulations defined legal resident as one who maintains a place of abode in Mississippi or who exercises legal rights such as voting. One can be a legal resident though domiciled elsewhere. Miss. Tax Reg. §1.27-7-3(5)(c).		
New Jersey	Residents--Residents means (1) domiciliaries unless they maintain no permanent place of abode in the state, maintain a permanent place of abode elsewhere, and spend an aggregate of not more than 30 days in the State and (2) persons not domiciled in New Jersey who maintain a permanent place of abode in the state and spend an aggregate of more than 183 days in the State. N.J. Stat. Ann. 54A:1-2(m) (1976).	Residents--New Jersey gross income as defined by statute. N.J. Stat. Ann. 54A:2-1, 54A:5-1 (1976). Credit allowed for tax paid other state on income subject to New Jersey income tax. N.J. Stat. Ann. 54A:4-1. Nonresidents--Specified categories of New Jersey gross income to the extent they are earned, received or acquired from New Jersey sources. N.J. Stat. Ann. 54A:5-8 (1976).	Residents--Subject to tax on their entire New Jersey gross income. Nonresidents--Subject to tax on the specified categories of New Jersey gross income from New Jersey sources.

State	State income tax coverage	Tax base	Probable tax obligation
South Carolina	Residents and nonresidents. The term resident is not defined in the South Carolina tax code. In the case of Phillip v. South Carolina Tax Commissioner, 195 S.C. 472, 12 S.E.2d 13 (1940), the South Carolina Court of Appeals ruled that the term resident for tax purposes is the equivalent of domicile.	1) The taxable income of residents as defined by the South Carolina tax Code. S. Car. Code §65-221 (1959). 2) Nonresidents--subject to tax on the net income from property owned or business carried on in South Carolina. S. Car. Code §65-221.	Residents--Subject to tax on their entire net income. Nonresidents--Subject to tax on taxable income derived from sources within South Carolina.
Tennessee	Persons in the state--The term person is defined as every natural person, inhabitant, resident ... any person who has a legal domicile in Tennessee ... every person who maintains a place of residence for more than six months in the tax year ... regardless of what place such person may claim as legal domicile. Tenn. Code. §67-2601 (1967).	1) The income of persons in the State from dividends on stock and interest on bonds. Tenn. Code Ann. §67-2602 (1967).	Persons in the State--Subject to tax on dividends from stock and interest on bonds.

II. States granting an income tax credit for foreign income tax paid

State	State income tax coverage	Tax base	Probable tax obligation
Arizona	Residents and certain nonresidents. The term resident includes: (1) every individual who is in the State for other than a temporary purpose, and (2) every individual domiciled in the State who is outside the State for a temporary or transitory purpose. §43-101(p) Ariz. Stat. Ann. (1973). Every individual who spends in the aggregate more than nine months of the taxable year within the State is presumed to be a resident. §43-101(r) Ariz. Stat. Ann (1973).	The entire net income of every resident and the entire net income of every nonresident which is derived from sources within the State. §43-102(a) Ariz. Stat. Ann. (1973). Residents are allowed a credit only for taxes paid to the other state or country on income derived from sources within that state or country which is taxable under the foreign laws without regard to the residence or domicile of the recipient. No credit is allowed if the other state or country allows residents of Arizona a credit against taxes imposed by that state or country for taxes paid to Arizona. Ariz. Stat. Ann. §43-128(a) (1965). Nonresidents are allowed a credit against Arizona taxes on income derived from sources within	Residents--Subject to tax on entire net income with the possibility of receiving a credit for foreign taxes paid. Nonresidents--Subject to tax on net income derived from sources within Arizona with the possibility of receiving a credit for foreign taxes paid on such income.

State	State income tax coverage	Tax base	Probable tax obligation
Arizona (cont'd)		Arizona only if (1) the foreign country does not tax income of residents of Arizona derived from sources within that country or (2) allows residents of Arizona credit against taxes imposed by that country on such income for taxes paid to Arizona.	
Hawaii	Residents and certain nonresidents. A resident is defined as every individual domiciled in the State, and every other individual who resides in the State for other than a temporary or transitory purpose. Every individual who is in the State more than 200 days of the taxable year in the aggregate is presumed to be a resident. This presumption may be overcome by evidence satisfactory to the department of taxation that the individual maintains a permanent place of abode outside of the State and is in the State for a temporary or transitory purpose. Haw. Rev. Stat. §235-1.	The entire income of all residents. The income received or derived from property owned, personal services performed, trade or business carried on, and any and every other source in the State by a nonresident. Haw. Rev. Stat. §235-4 (1975). The State gives taxpayers a credit against Hawaii income tax for taxes paid a foreign country on income taxable in both jurisdictions. Haw. Rev. Stat. §235-55 (1968).	Residents--Subject to tax on all income, with the possibility of a credit for foreign taxes paid. Nonresidents--Subject to tax on income derived from sources within Hawaii, with the possibility of a credit for foreign taxes paid.

State	State income tax coverage	Tax base	Probable tax obligation
Massachusetts	Residents and certain nonresidents-- The term resident or inhabitant is defined as any natural person domiciled in the Commonwealth. The term nonresident is defined as any natural person whose domicile is outside the Commonwealth. Mass. Gen. L. Ann. ch. 62, §1(f) (1973). The Massachusetts Board of Tax Appeals has ruled that change of domicile from the Commonwealth to a foreign country requires greater proof of intent to abandon domicile than a change of domicile between states of the United States. Farr v. Commissioner, 1 Mass. B.T.A. 467 (1937).	1) The taxable income of residents defined as federal adjusted gross income. However, Massachusetts does not allow the exclusion of income from sources without the United States in the computation of Massachusetts taxable income. Mass. Gen. L. Ann. ch. 62, §§2(a)(1)(c), 3 (1973). Massachusetts allows a credit for taxes paid to other States or the Dominion of Canada or any of its provinces, with certain limitations. Mass. Gen. L. Ann. ch.62 §6 (1973). 2) The portion of federal adjusted gross income of nonresidents derived from sources within Massachusetts. Mass. Gen. L. Ann. ch. 62 §5A (1973).	Residents--Subject to tax on federal adjusted gross income without the exclusion under §911 of the Internal Revenue Code for income derived from sources without the United States. A credit for taxes paid to Canada or its provinces is allowed. Nonresidents--Subject to tax on the portion of federal adjusted gross income derived from sources within Massachusetts.

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State	State income tax coverage	Tax base	Probable tax obligation
North Carolina	Residents and nonresidents--The term resident is defined as an individual who is domiciled in the State and other individuals who reside within the State for other than a temporary or transitory purpose. Absent other evidence, residence in the State for over six months of the taxable year raises a presumption of permanent residence; but absence from the State for more than six months raises no presumption that the individual is not a resident. N.C. Gen. Stat. §105-135(13) (1972).	1) The net income of residents as defined under N.C. Gen. Stat. §105-140 (1939). N.C. Gen. Stat. §105-136 (1972). 2) The net income of nonresidents for income derived from source within North Carolina. N.C. Gen. Stat. §105-136 (1972). North Carolina allows its residents a credit against taxes paid to foreign countries in certain instances. N.C. Gen. Stat. §105-151 (1972).	Residents--Subject to tax on net income with the possibility of a tax credit for taxes paid to a foreign country. Nonresidents--Subject to tax on net income derived from sources within North Carolina.

State	State income tax coverage	Tax base	Probable tax obligation
Pennsylvania	Residents and nonresidents--The term resident is defined to include both (1) domiciliaries, unless the domiciliary maintains no permanent place of abode within the Commonwealth, maintains a permanent place of abode outside the Commonwealth and resides within the Commonwealth for less than thirty days of the taxable year, and (2) non-domiciliaries maintaining a permanent place of abode within the Commonwealth and residing within the Commonwealth for more than 183 days of the taxable year. Pa. Stat. tit. 72 §7301(p) (1974).	1) The entire income of residents defined under Pa. Stat. tit. 72 §7303. 2) The income of nonresidents derived from sources within Pennsylvania. Pa. Stat. tit. 72 §7303. Pennsylvania allows residents a credit for taxes paid to a foreign country on income also subject to tax in Pennsylvania. Pa. Stat. tit. 72 §§7301(t), 7314 (1974).	Residents--Subject to tax on income with a credit for taxes paid to a foreign country on income also subject to tax in Pennsylvania. Nonresidents--Subject to tax on income from sources within Pennsylvania.

III. States exempting income earned abroad to the same extent as Federal law
(§911 of the Internal Revenue Code)

State	State income tax coverage	Tax base	Probable tax obligation
Alaska	Residents and part-year residents. A resident is an individual who during the taxable year has been domiciled in the State or has resided in the State for the entire taxable year; an individual does not lose his status as a resident simply by reason of attending an educational institution or by serving in the armed forces. §43.20.340(17) Alaska Stat. (1975). On the other hand, residence means actual physical presence in the State and is determined without regard to a person's domicile §43.20.340(16). Domicile is defined as the place where an individual has his true, fixed, permanent home and principal establishment and to which place he has the intention of returning whenever he is absent for a temporary or transitory purpose. §43.20.340(13) Alaska Stat. (1975). A part-year resident is an individual who enters or leaves the State during the taxable year and who has resided or was domiciled in the State for a period of less than 12 months during the taxable year. §43.20.340(15) Alaska Stat. (1975).	1) The taxable income of a resident of the State as defined by §63 of the Internal Revenue Code. §43.20.031 Alaska Stat (1975). 2) The taxable income of nonresidents or part-year residents of the State attributable to sources within the State. §43.20.031 Alaska Stat. (1975). The Alaska Statutes incorporate by reference the exemption from income from sources without the United States under §911 of the Internal Revenue Code. §43.20.021(a) Alaska Stat. (1975).	Residents--Subject to tax on taxable income in excess of the exclusion from income under §911 of the Internal Revenue Code. Part-year residents and nonresidents--The entire taxable income attributable to sources within Alaska.

State	State income tax coverage	Tax base	Probable tax obligation
Colorado	Resident individuals and nonresidents--The term resident individual means a natural person who is domiciled in the State and a natural person who maintains a permanent place of abode within the State and who spends in the aggregate more than six months of the taxable year within the State. A nonresident individual means an individual other than a resident individual. 16 Colo. Rev. Stat. §39.22.103(10) (1973). The Colorado Tax Regulations state that domicile is a factual matter and that the individual's intent controls. The Regulations also state that domicile, once established, is not lost until a new domicile is established. A voting residence is prima facie evidence of domicile. Colo. Tax. Reg. §138-1-2-(3).	The entire federal adjusted gross income of resident individuals, with certain modifications not herein relevant. Since Colorado computes its own taxable income from federal adjusted gross income, the exclusion under §911 of the Internal Revenue Code for income from sources without the United States is apparently adopted by reference into the computation of Colorado taxable income. 16 Colo. Rev. Stat. §39-22-110 (1973). The entire federal adjusted gross income of nonresident individuals derived from sources within Colorado. 16 Colo. Rev. Stat. §39-22-115(2) (1973).	Resident individuals--Subject to State income taxation on federal adjusted gross income (above the exclusion under §911 of the Internal Revenue Code). Nonresident individuals--Subject to State income tax on federal adjusted gross income attributable to sources within Colorado.

State	State income tax coverage	Tax base	Probable tax obligation
Connecticut	Residents--Resident means (1) domiciliaries unless they maintain no permanent place of abode in the state, maintain a permanent place of abode elsewhere and spend in the aggregate not more than 30 days of the taxable year in the state and (2) non-domiciliaries who maintain a permanent place of abode in the state and are in the state for an aggregate of more than 183 days. Conn. Gen. Stat. Ann. 12-505 (1976).	Tax on all resident individuals on all net gains from the sale or exchange of capital assets as determined for federal income tax purposes, and if the taxpayer's federal adjusted gross income equals or exceeds $20,000 on all dividend income. Conn. Gen. Stat. Ann. 12-505, 506 (1975). Credit allowed for tax paid other state on gain from sale of real estate located in that State, §12-506(d).	Residents--Subject to tax on certain dividends and capital gains income.
Delaware	Resident individuals and nonresident individuals. A resident individual is defined as one who is domiciled in the State for any part of the taxable year to the extent of the period of such domicile; or maintains a place of abode in the State and spends more than 183 days of the taxable year in the State. 15 Del. Code Ann. tit. 30, §1103 (1974).	The entire taxable income of every resident individual defined as such individual's federal adjusted gross income with certain modifications not herein relevant. 15 Del. Code Ann. tit. 30, §§1102,05 (1974). Since Delaware computes its	Resident individuals--Subject to State income taxation on federal adjusted gross income (above the exclusion under §911 of the Internal Revenue Code). Nonresident individuals--Subject to State income tax on federal adjusted gross income attributable to sources within Delaware.

State	State income tax coverage	Tax base	Probable tax obligation
Delaware (cont'd)	A nonresident individual is defined as one who is not a resident individual of the State. 15 Del. Code Ann. tit. 30, §1104 (1974). The Delaware Superior Court has held that an individual who had moved to Washington, D.C. to take employment, but who continued to vote in Delaware, had, nevertheless, abandoned his Delaware domicile. The court found that the voting, which it termed "illegal," did not prove Delaware domicile. Mitchell v. Delaware State Tax Commissioner, 42 A.2d 19 (Del. Supr. Ct. 1945).	own taxable income from federal adjusted gross income, the exclusion under §911 of the Internal Revenue Code for income from sources without the United States is apparently adopted by reference into the computation of Delaware taxable income. The taxable income of a nonresident individual defined as that part of his federal adjusted gross income derived from sources within the State. Tit. 30 §1102.	
Georgia	Residents and taxable nonresidents. The term resident is defined to include "legal residents" of the State on December 31 of the taxable year in question, persons residing in the State on a "more or less regular basis" on December 31 of the taxable year under consideration, and persons residing in the State in the aggregate for 183 days or part-days for the taxable year. Ga. Code §92-3002(i) (1975).	1) The taxable net income of all residents defined as federal adjusted gross income less items not herein relevant. Since Georgia computes its own taxable net income on the basis of federal adjusted gross income, the exclusion under §911 of the Internal Revenue Code for income from	Residents--Subject to tax on federal adjusted gross income (above the exclusion under §911 of the Internal Revenue Code). Taxable nonresidents--Subject to tax on net taxable income derived from certain specified activities within Georgia.

State	State income tax coverage	Tax base	Probable tax obligation
Georgia (cont'd)	Taxable nonresidents are defined to include the following: (1) every natural person who is not otherwise a resident of Georgia for income tax purposes and who regularly, and not casually or intermittently, engages within Georgia, himself or by means of employees, agents or partners, in employment, trade, business, professional, or other activity for financial gain or profit, including the rental of real or personal property located within Georgia or for use within Georgia: Provided, however, that the term "taxable nonresidents" as defined herein shall not include a legal resident of another State whose only activity for financial gain or profit in Georgia consists of performing services in Georgia for an employer where the remuneration for such services does not exceed five percent of the income received by such person for performing services in all places during any taxable year; and (2) every natural person who is not otherwise a resident of Georgia for income tax purposes and who sells, exchanges or otherwise disposes of tangible property which at that time has a taxable situs within Georgia, or of intangible property which has acquired at the time a business or commercial situs within Georgia. Ga. Code §92-3002(j) (1975).	sources without the United States is apparently adopted by reference into the computation of Georgia taxable net income. Ga. Code 92-$$3101,07 (1975). 2) The taxable net income of taxable nonresidents of Georgia defined as the entire net income from certain specified activities carried on within Georgia. Ga. Code §92-3112 (1975).	

State	State income tax coverage	Tax base	Probable tax obligation
Idaho	Residents, part-year residents, and nonresidents. The term resident is defined as any individual who during the taxable year has been domiciled in Idaho or has resided within the State of Idaho for the entire taxable year. Ida. Code §63-3013 (1976). The term part-year resident is defined as an individual who enters or leaves the State during the taxable year and has resided or was domiciled within the State for a period of less than twelve months during the taxable year. Ida. Code §63-3013A (1976). The term nonresident is defined as any individual who is not a resident or part-year resident. Ida. Code §63-3014 (1976).	1) Taxable income of residents defined as taxable income under §63 of the Internal Revenue Code. Since Idaho computes its taxable income from federal taxable income, the exclusion under §911 of the Internal Revenue Code for income from sources without the United States is apparently adopted by reference into the computation of Idaho taxable income. Ida. Code §§63-3022, 24 (1959). 2) The taxable income of nonresidents and part-year residents to the extent it is attributable to certain specified activities within Idaho. Ida. Code §63-3027A (1976). The Idaho Code provides for a credit for income taxes paid another state or territory. Ida. Code §63-3029 (1959). Under §63-3027, the term "state" includes a foreign country. While this definition of state	Residents--Subject to tax on federal taxable income (above the exclusion under §911 of Internal Revenue Code). Nonresidents and part-year residents--Subject to tax on federal taxable income attributable to certain sources within Idaho.

State	State income tax coverage	Tax base	Probable tax obligation
Idaho (cont'd)		is not specifically made applicable to the credit under §63-3029, it is arguable that §63-3029 includes a credit for taxes paid to a foreign country.	
Illinois	Residents, part-year residents, and nonresidents--The term resident is defined as any individual who is in the State for other than a temporary or transitory purpose during the taxable year or who is domiciled in the State but is absent from the State for a temporary or transitory purpose during the taxable year. Ill. Stat. Ann. ch. 120, §15-1501(20) (1974). The term part-year resident is defined as an individual who became a resident during the taxable year or ceased to become a resident during the taxable year. Ill. Stat. Ann. ch. 120 §15-1501(17) (1974). The term nonresident is defined as a person who is not a resident. Ill. Stat. Ann. ch. 120 §15-1501(14) (1974).	The entire federal adjusted gross income of residents, with certain modifications not herein relevant. Since Illinois computes its own base income from federal adjusted gross income, the exclusion under §911 of the Internal Revenue Code for income from sources without the United States is apparently adopted by reference into the computation of Illinois base income. Ill. Stat. Ann. ch. 120 §2-203(a)(1), (d)(1). (1974). All income of part-year residents and nonresidents attributable to certain activities within Illinois. Ill. Stat. Ann. ch. 120 §§3-301-04 (1974).	Residents--Subject to tax on federal adjusted gross income (above the exclusion under §911 of the Internal Revenue Code). Nonresidents and part-year resident --Subject to tax on all income attributable to certain activities within Illinois.

State	State income tax coverage	Tax base	Probable tax obligation
Indiana	Residents and nonresidents--The term resident is defined as any individual who was domiciled in the State during the taxable year, or any individual who maintains a permanent place of residence in the state and spends more than 183 days of the taxable year within the State. Ind. Stat. §6-3-1-12 (1972). The term nonresident is defined as any person who is not a resident of Indiana. Ind. Stat. §6-3-1-13 (1972).	The entire federal adjusted gross income of residents, with adjustments not herein relevant. Ind. Stat. §6-3-2-1 (1972). Since Indiana computes its own taxable income from federal adjusted gross income, the exclusion under §911 of the Internal Revenue Code for income from sources without the United States is apparently adopted by reference into the computation of Indiana taxable income. Ind. Stat. §6-3-1-17 (1972). The federal adjusted gross income of nonresidents derived from sources within Indiana. Ind. Stat. §6-3-2-1 (1972). Indiana also gives its residents and nonresidents a credit against Indiana income tax for taxes paid to a foreign country on income subject to tax in Indiana. Ind. Stat. §§6-3-3, 6-3-1-25 (1972).	Residents--Subject to tax on federal adjusted gross income (above the exclusion under §911 of the Internal Revenue Code) with the possibility of a credit for foreign taxes paid. Nonresidents--Subject to tax on federal adjusted gross income derived from sources within Indiana, with the possibility of a credit for foreign taxes paid.

State	State income tax coverage	Tax base	Probable tax obligation
Iowa	Residents and nonresidents--The term resident is defined as any individual domiciled in the State, and any other individual who maintains a permanent place of abode within the State. Iowa Code §422.4(8) (1971). The term nonresident includes all individuals who are not residents. Iowa Code §422.4(12) (1971). The Iowa tax regulations state that unless there is evidence to the contrary, one will be presumed to be domiciled in the State if he or she exercises the right to vote, uses homestead credit or military exemption, or otherwise exercises his or her rights to suffrage. Iowa Tax Regs. subrule 38.1(9).	The entire net income of residents, defined as federal adjusted gross income, with certain adjustments not herein relevant. Since Iowa computes its own net income from federal adjusted gross income, the exclusion under §911 of the Internal Revenue Code for income from sources without the United States is apparently adopted by reference into the computation of Iowa net income. Iowa Code §§422.5, 6 (1971). The net income of nonresidents derived from sources within Iowa. Iowa Code §§422.5, 6 (1971). Iowa also provides a credit against Iowa tax for taxes paid to a foreign country on income subject to tax in Iowa and the foreign country. Iowa Code §422.8(1971).	Residents--Subject to tax on federal adjusted gross income (above the exclusion under §911 of the Internal Revenue Code) with the possibility of a credit for foreign taxes paid. Nonresidents--Subject to tax on federal adjusted gross income derived from sources within Iowa, with the possibility of a credit for foreign taxes paid.

State	State income tax coverage	Tax base	Probable tax obligation
Kansas	Resident individuals and nonresidents--A resident individual is defined as a natural person who is domiciled in the State. A natural person who spends in the aggregate more than six months of the taxable year within the State is presumed to be a resident. Kan. Stat. §79-32,109 (1976). The Kansas tax regulations state that voting residence is prima facie evidence of domicile in Kansas. Kan. Tax Reg. §92-12-4.	1) The taxable income of a resident individual defined as such individual's federal adjusted gross income for the taxable year, with certain modifications not herein relevant. Kan. Stat. §§79-32,110,117 (1976). 2) The taxable income of nonresident individuals defined as that portion of federal adjusted gross income derived from sources within Kansas. Kan. Stat. §79-32,123 (1976). Since Kansas computes its own taxable income from federal adjusted gross income, the exclusion under §911 of the Internal Revenue Code for income from sources without the United States is apparently adopted by reference into the computation of Kansas taxable income.	Residents--Subject to tax on federal adjusted gross income above the exclusion under §911 of the Internal Revenue Code. Nonresidents--Subject to tax on that portion of federal adjusted gross income derived from sources within Kansas.

State	State income tax coverage	Tax base	Probable tax obligation
Kentucky	Residents and nonresidents--The term resident is defined as an individual domiciled within the State or an individual who is not domiciled in the State, but maintains a place of abode in the State and spends in the aggregate more than 183 days of the taxable year within the State. Ky. Rev. Stat. §141.010(17) (1976). The term nonresident is defined as any individual who is not a resident of the State. Ky. Rev. Stat. §141.010(18) (1976). The Kentucky tax regulations specify that an individual who is permitted to file a Federal income tax return as a nonresident citizen, and who immediately prior to residing in a foreign country was domiciled in Kentucky, is considered a Kentucky resident and must file a resident individual income tax return. Ky. Tax. Reg. 103 KAR 17:010. See also, the following two opinions of the Kentucky Attorney General relating to this subject: Op. Atty. Gen. Ky. (July 12, 1939); Op. Atty. Gen. Ky. (May 12, 1960).	1) The entire net income of every resident individual defined as such individual's federal adjusted gross income with certain modifications not herein relevant. Ky. Rev. Stat. §141.020(1) (1976). 2) That portion of federal adjusted gross income of nonresidents derived from sources within Kentucky. Ky. Rev. Stat. §141.020(4) (1976).	Residents--Subject to tax on federal adjusted gross income (above the exclusion under §911 of the Internal Revenue Code). Nonresidents--Subject to tax on federal adjusted gross income derived from sources within Kentucky.

State	State income tax coverage	Tax base	Probable tax obligation
Maine	Residents and nonresidents--The term resident is defined as an individual who is domiciled in Maine, unless he maintains no permanent place of abode in this State and does maintain a permanent place of abode elsewhere and spends in the aggregate not more than 30 days of the taxable year in this State; or who is not domiciled in Maine, but maintains a permanent place of abode in this State and spends in the aggregate more than 183 days of the taxable year in this State. 16 Me. Rev. Stat. tit. 36 §5102 (1976). The term nonresident is defined as an individual who is not a resident. 16 Me. Rev. Stat. tit. 36 §5102 (1976).	1) The taxable income of residents defined as federal adjusted gross income allocated to State sources with certain modifications not herein relevant. Since Maine computes its own taxable income from federal adjusted gross income, the exclusion under §911 of the Internal Revenue Code for income from sources without the United States is apparently adopted by reference into the computation of Maine taxable income. 16 Me. Rev. Stat. tit. 36 §5111,5121,5122 (1975). 2) The portion of federal adjusted gross income on nonresidents derived from sources within the State. 16 Me. Rev. Stat. tit. 36 §5140,5142 (1969) If a taxpayer is regarded as a resident of Maine and another jurisdiction for the purposes of personal income taxation, the tax assessor shall reduce the tax on that portion of the taxpayer's income which is subjected	Residents--Subject to tax on taxable income in excess of the exclusion under §911 of the Internal Revenue Code with the possibility of a reduction of taxes for taxes paid to another jurisdiction. Nonresidents--Subject to tax on the portion of federal adjusted gross income derived from sources within Maine with the possibility of a reduction in taxes for taxes paid to another jurisdiction.

State	State income tax coverage	Tax base	Probable tax obligation
Maine (cont'd)		to tax in both jurisdictions, provided that the other taxing jurisdiction allows a similar reduction. 16 Me. Rev. Stat. tit. 36 §5128(1969).	
Maryland	Residents and nonresidents--The term resident is defined as any individual domiciled in the State on the last day of the taxable year, and every other individual who, for more than six months of the taxable year, maintains a place of abode within the State, whether domiciled in the State or not. Md. Code. Art. 81 §279(i) (1975). Evidence that a person has registered to vote in Maryland is ordinarily persuasive evidence that such person is domiciled in Maryland. Comptroller of the Treasury v. Lenderking, 268 Md. 613, 303 A.2d 402 (1973).	1) The taxable net income of residents defined as federal adjusted gross income with certain modifications not herein relevant. Since Maryland defines its taxable net income in terms of federal adjusted gross income, the exclusion under §911 of the Internal Revenue Code for income from sources without the United States is apparently adopted by reference into Maryland taxable income. Md. Code Art. 81 §280 (1975). 2) The portion of a nonresident's federal adjusted gross income derived from sources within the State. Md. Code Art. 81 §287 (1975).	Residents--Subject to tax on federal adjusted gross income above the exclusion under §911 of the Internal Revenue Code. Nonresidents--Subject to tax on the portion of federal adjusted gross income derived from sources within Maryland.

State	State income tax coverage	Tax base	Probable tax obligation
Michigan	Residents and nonresidents--The term resident is defined as an individual domiciled in the State. Domicile is defined as the place where a person has his true, fixed, and permanent home and principal establishment to which, whenever absent therefrom, he intends to return, and domicile continues until another permanent establishment is established. If an individual lives in the State for at least 183 days during the taxable year or more than 1/2 the days during the taxable year of less than 12 months he is deemed a resident individual domiciled in the State. Mich. Comp. L. Ann. §206.18 (1968).	1) The taxable income of residents defined as taxable income for federal income tax purposes. However, Michigan generally taxes only income allocable to certain activities and sources within Michigan. Since Michigan defines its taxable income as taxable income for federal income tax purposes, the exclusion for income earned without the United States under §911 would apply. Mich. Comp. L. Ann. 206.30 §206.110 (1969). 2) The taxable income of nonresidents to the extent allocable to sources within Michigan. Mich. Comp. L. Ann. 206.51 §206.110 (1969).	Residents--Subject to tax on federal adjusted gross income allocable to sources within Michigan above the exclusion of §911 of the Internal Revenue Code. Nonresidents--Subject to tax on taxable income allocable to sources within Michigan.

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State	State income tax coverage	Tax base	Probable tax obligation
Minnesota	Residents and nonresidents--The term resident is defined as an individual domiciled in the State or any individual maintaining a place of abode within the State during the taxable year. Minn. Stat. §290.01(7) (1962). The Minnesota Tax Regulations state that voting in Minnesota is presumptive evidence of residence, but may be overcome by facts contrary to the presumption of residence. Minn. Tax. Reg. §2001(7).	1) The gross income of residents defined as federal adjusted gross income with certain modifications not herein relevant. Since Minnesota defines its gross income in terms of federal adjusted gross income, the exclusion under §911 of the Internal Revenue Code for income from sources without the United States is apparently adopted by reference into the computation of Minnesota gross income. Min. Stat. §290.01(20) (1976). 2) The federal adjusted gross income of nonresidents allocable to sources within Minnesota. Min. Stat. §290.01 (1976).	Residents--Subject to tax on federal adjusted gross income above the exclusion under §911 of the Internal Revenue Code. Nonresidents--Subject to tax on federal adjusted gross income allocable to sources within Minnesota.

State	State income tax coverage	Tax base	Probable tax obligation
Missouri	Residents and nonresidents--The term resident is defined as an individual who is domiciled in this State, unless he (1) maintains no permanent place of abode in this State, (2) does maintain a permanent place of abode elsewhere, and (3) spends in the aggregate not more than thirty days of the taxable year in this State; or who is not domiciled in this State but maintains a permanent place of abode in this State and spends in the aggregate more than 183 days of the taxable year in this State. The term nonresident is defined as an individual who is not a resident of this State. Mo. Stat. §143.101 (1972).	1) The Missouri taxable income of residents which is calculated on the basis of federal adjusted gross income with modifications. Since Missouri computes its taxable income from federal adjusted gross income, the exclusion under §911 of the Internal Revenue Code for income from sources without the United States is apparently adopted by reference into the computation of Missouri taxable income. Mo. Stat. §143.121 (1972). 2) The income of nonresidents which is derived from sources within Missouri. Mo. Stat. §143.041 (1972).	Residents--Subject to tax on Missouri taxable income which excludes income from sources without the United States in the same manner as §911 of the Internal Revenue Code. Nonresidents--Subject to tax on income derived from sources within Missouri.

State	State income tax coverage	Tax base	Probable tax obligation
Montana	Residents and nonresidents--The term resident is defined as any natural person domiciled in the State or who maintains a permanent place of abode within the state even though temporarily absent from the state and who has not established a residence elsewhere. Mont. Rev. Code §84-4901(6).	1) The entire adjusted gross income of residents defined as federal adjusted gross income with certain modifications not herein relevant. Since Montana defines its adjusted gross income in terms of federal adjusted gross income, the exclusion under §911 of the Internal Revenue Code for income from sources without the United States is apparently adopted by reference into the computation of Montana adjusted gross income. Mont. Stat. §§84-4901,05 (1975). 2) The entire net income of nonresidents derived from sources within Montana. Mont. Stat. §84-4903 (1975).	Residents--Subject to tax on federal adjusted gross income above the exclusion of §911 of the Internal Revenue Code. Nonresidents--Subject to tax on net income derived from sources within Montana.

State	State income tax coverage	Tax base	Probable tax obligation
Nebraska	Residents and nonresidents--The term resident is defined as an individual who is domiciled in the State or who maintains a permanent place of abode within the State and spends in the aggregate more than six months of the taxable year within the State. Neb. Rev. Stat. §77-2715(2) (1971).	1) The federal adjusted gross income of residents with certain modifications not herein relevant. Neb. Rev. Stat. §§77-2714,15 (1967). Since Nebraska computes its tax base in terms of federal adjusted gross income, the exclusion under §911 of Internal Revenue Code is apparently adopted by reference. 2) The federal adjusted gross income of residents derived from sources within Nebraska. Neb. Rev. Stat. §§72-2714,15 (1973).	Residents--Subject to tax on federal adjusted gross income above the exclusion under §911 of the Internal Revenue Code. Nonresidents--Subject to tax on federal adjusted gross income derived from sources within Nebraska.
New Mexico	Residents and nonresidents--The term resident is defined as an individual who is domiciled in the State during any part of the taxable year. Any person who, on or before the last day of the taxable year, changes his place of abode to a place without the State with the bona fide intention of continuing actually to abide permanently without the State is not a resident. N. Mex. Stat. §72-15A-2P (1973).	1) The net income of every resident defined in terms of federal adjusted gross income with certain modifications not herein relevant. Since New Mexico defines its tax base in terms of federal adjusted gross income, the exclusion under §911 of the Internal Revenue Code for	Residents--Subject to tax on net income above the exclusion under §911 of the Internal Revenue Code with the possibility of a credit for taxes paid to a political subdivision of a foreign country.

State	State income tax coverage	Tax base	Probable tax obligation
New Mexico (cont'd)	The term nonresident is defined as every individual not a resident of the State. N. Mex. Stat. §72-15A-2Q (1973).	income derived from sources without the United States is apparently adopted by reference. N. Mex. Stat. §§72-15A-2S,3 (1966). The net income of every nonresident derived from sources within New Mexico. N. Mex. Stat. §72-15A-3 (1966). New Mexico also allows residents and nonresidents a credit for taxes paid to political subdivisions of foreign countries in certain circumstances. N. Mex. Stat. §§72-15A-2R,11,12 (1966).	Nonresidents--Subject to tax on net income derived from sources within New Mexico with the possibility of a credit for taxes paid to a political subdivision of a foreign country.
New York	Residents and nonresidents--The term resident is defined as: (1) an individual who is domiciled in the State unless he maintains no permanent place of abode within the State, maintains a permanent place of abode outside the State and spends not over 30 days of the taxable year within the State, and (2) an individual who is not domiciled in the State but maintains a permanent place of abode within the State and spends in the aggregate more than 183 days of the taxable year within the State. N.Y. Tax Law §605(a) (1975).	1) The adjusted gross income of residents defined as federal adjusted gross income with certain modifications not herein relevant. Since New York defines its own adjusted gross income in terms of federal adjusted gross income, the exclusion for income earned from sources without the	Residents--Subject to tax on federal adjusted gross income above the exclusion under §911 of the Internal Revenue Code. Nonresidents--Subject to tax on federal adjusted gross income derived from sources within New York.

State	State income tax coverage	Tax base	Probable tax obligation
New York (cont'd)	The term nonresident is defined as an individual who is not a resident. N. Y. Tax Law §605(b) (1975). The New York Tax Regulations state that a United States citizen will not ordinarily be deemed to have changed his domicile by going to a foreign country unless it is clearly shown that he intends to remain there permanently. For example, a United States citizen domiciled in New York, who goes abroad because of an assignment by his employer or for study, research or recreation, does not lose his New York domicile unless it is clearly shown that he intends to remain abroad permanently. N.Y. Tax Regs. §102.2(b)(3).	United States is apparently adopted by reference into the computation of New York adjusted gross income. N. Y. Tax Law §612 (1975). 2) The federal adjusted gross income of nonresidents derived from sources within New York. N.Y. Tax Law §632 (1975).	
North Dakota	Residents and nonresidents--The term resident is defined as any natural person domiciled in the State and any other natural person who maintains a permanent place of abode within the State and spends in the aggregate more than seven months of the income year within the State. N.D. Code §57-38-01(10) (1972).	1) The taxable income of residents defined in terms of federal taxable income with certain modifications not herein relevant. Since North Dakota defines its own taxable income in terms of federal taxable income, the exclusion under §911 of the Internal Revenue Code for income from sources without the United States is apparently adopted by reference into the computation of North Dakota taxable income. N.D. Code §57-38-01.2, 02 (1972).	Residents--Subject to tax on federal taxable income above the exclusion under §911 of the Internal Revenue Code. Nonresidents--Subject to tax on net income from sources within North Dakota.

State	State income tax coverage	Tax base	Probable tax obligation
North Dakota (cont'd)		2) The net income of nonresidents derived from Sources within North Dakota. N.D. Code §57-38-03 (1972).	
Ohio	Residents and nonresidents--The term resident is defined as an individual who is domiciled in this State or an individual who lives in the State and who does not maintain a permanent place of abode elsewhere, unless such individual in the aggregate lives more than 335 days outside the State. Ohio Code tit. 57 §5747.01(I) (1974).	1) The adjusted gross income of residents defined as federal adjusted gross income with certain modifications not herein relevant. Since Ohio defines its own adjusted gross income in terms of federal adjusted gross income, the exclusion under §911 of the Internal Revenue Code for income from sources without the United States is apparently adopted by reference into the computation of Ohio adjusted gross income. Ohio Code tit. 57 §§5747.01(A), 5747.02 (1974). 2) The adjusted gross income of nonresidents derived from sources within Ohio. Ohio Code tit. 57 §5747.02 (1974).	Residents--Subject to tax on federal adjusted gross income above the exclusion under §911 of the Internal Revenue Code. Nonresidents--Subject to tax on adjusted gross income derived from sources within Ohio.

State	State income tax coverage	Tax base	Probable tax obligation
Oklahoma	Residents and nonresidents--The term resident is defined as any individual who is domiciled in the State. Any individual who spends in the aggregate more than seven months of the taxable year within the State shall be presumed a resident. Okla. Stat. tit. 68 §2353(4) (1974).	1) The taxable income of residents defined on the basis of federal adjusted gross income with certain modifications not herein relevant. Since Oklahoma bases its taxable income on federal adjusted gross income, the exclusion under §911 of the Internal Revenue Code for income from sources without the United States as apparently adopted by reference into the computation of Oklahoma taxable income. Okla. Stat. tit. 68 §§2353(10), (11),(12),(13), 2355 (1974). 2) The federal adjusted gross income of nonresidents derived from sources within Oklahoma. Okla. Stat. tit. 68 §2362 (1974).	Residents--Subject to tax on taxable income above the exclusion under §911 of the Internal Revenue Code. Nonresidents--Subject to tax on taxable income derived from sources within Oklahoma.

State	State income tax coverage	Tax base	Probable tax obligation
Oregon	Residents and nonresidents--The term resident is defined as: (1) an individual who is domiciled in this State unless he (A) maintains no permanent place of abode in this State, and (B) does maintain a permanent place of abode elsewhere, and (C) spends in the aggregate not more than 30 days in the taxable year in this State; or (2) an individual who is not domiciled in this State but maintains a permanent place of abode in this State and spends in the aggregate more than 200 days of the taxable year in this State is presumed to be a resident unless he proves that he is in the State only for a temporary or transitory purpose. Ore. Rev. Stat. §316.027(1)(a), (b) (1969).	1) The entire taxable income of residents defined as federal taxable income with certain modifications not herein relevant. Since Oregon defines its own taxable income in terms of federal taxable income, the exclusion under §911 of the Internal Revenue Code for income from sources without the United States is apparently incorporated by reference into the computation of Oregon taxable income. Ore. Rev. Stat. §§316.007, 316.022(5), 316.037, 316.062 (1969). 2) The taxable income of nonresidents derived from sources within Oregon. Ore. Rev. Stat. §§316.117, 316.127 (1969). Oregon also gives to residents a credit against Oregon income taxes for taxes imposed on the taxpayer by foreign countries on income also subject to tax in Oregon. Ore. Rev. Stat. §316.082 (1969).	Residents--Subject to tax on federal taxable income above the exclusion under §911 and with the possibility of a credit for foreign taxes paid. Nonresidents--Subject to tax on federal taxable income derived from sources within Oregon.

State	State income tax coverage	Tax base	Probable tax obligation
Rhode Island	Residents and nonresidents--The term resident is defined to include both (1) domiciliaries, unless they maintain no permanent place of abode within the State, maintain a permanent place of abode outside the State, and spend in the aggregate less than 30 days of the taxable year within the State, and (2) nondomiciliaries who both maintain a permanent place of abode within the State and also reside in the State for more than 183 days of the taxable year. R.I. Gen. Laws §44-30-5(a) (1971).	1) The Rhode Island income of residents is defined as federal adjusted income with certain modifications not herein relevant. Since Rhode Island defines its own taxable income in terms of federal adjusted gross income, the exclusion under §911 of the Internal Revenue Code is apparently adopted by reference into the computation of Rhode Island taxable income. R.I. Gen Laws §44-30-12 (1971). 2) The taxable income of nonresidents derived from sources within Rhode Island. R.I. Gen. Laws §44-30-32.	Residents--Subject to tax on taxable income above the exclusion under §911 of the Internal Revenue Code. Nonresidents--Subject to tax on taxable income derived from sources within Rhode Island.
Utah	Residents and nonresidents--The term resident is defined to include both domiciliaries, and individuals not domiciled in the State but maintaining a permanent place of abode within the State and residing within the State in the aggregate for over 183 days of the taxable year. year. Utah Code §59-14A-4(g) (1973).	1) The taxable income of residents defined in terms of federal adjusted gross income with certain modifications not herein relevant. Since Utah defines its own taxable income in terms of federal adjusted gross income, the exclusion under §911 of the Internal Revenue Code for	Residents--Subject to tax on taxable income above the exclusion under §911 of the Internal Revenue Code. Nonresidents--Subject to tax on taxable income derived from sources within Utah.

State	State income tax coverage	Tax base	Probable tax obligation
Utah (cont'd)	The Utah Tax Regulations specify that domicile, once acquired, is not lost until a new and distinct domicile is established. Utah Tax. Regs. §14A-1.	income from sources without the United States is apparently adopted by reference into Utah taxable income. Utah Code §59-14A-11 (1973). 2) The taxable income of nonresidents derived from sources within the State. Utah Code §59-14A-15 (1973).	
Vermont	Residents--The term residents is defined to include both (1) domiciliaries, unless they maintain no permanent place of abode within the State, maintain a permanent place of abode outside the State, and reside less than 30 days of the taxable year in the State, and (2) non-domiciliaries who maintain a permanent place of abode within the State and reside within the State for more than 183 days of the taxable year. Vt. Stat. tit. 32, §5811(11)(A)(i), (ii) (1971).	1) The adjusted gross income of residents defined as federal adjusted gross income. Since Vermont defines its adjusted gross income in terms of federal adjusted gross income, the exclusion under §911 of the Internal Revenue Code for income from sources without the United States is apparently adopted by reference into the computation of Vermont adjusted gross income. Vt. Stat. tit. 32, §5811(1), 5822, 5823, (1971). 2) The adjusted gross income of nonresidents derived from sources within Vermont. Vt. Stat. tit. 32, §5823 (1971).	Residents--Subject to tax on federal adjusted gross income above the exclusion under §911 of the Internal Revenue Code. Nonresidents--Subject to tax on federal adjusted gross income derived from sources within Vermont.

State	State income tax coverage	Tax base	Probable tax obligation
Virginia	Residents and nonresidents--The term resident is defined as an individual domiciled in the Commonwealth or any individual who resides within the Commonwealth for more than 183 days of the taxable year. Va. Code §58.151.02(e) (1971).	1) The taxable income of residents defined in terms of federal adjusted gross income with certain modifications not herein relevant. Since Virginia defines its taxable income in terms of federal adjusted gross income, the exclusion under §911 of the Internal Revenue Code is apparently adopted by reference into the computation of Virginia taxable income. Va. Code §58-151.013 (1971). 2) The taxable income of residents derived from sources within the State. Va. Code §58-151.013(F) (1971).	Residents--Subject to tax on federal adjusted gross income above the exclusion under §911 of the Internal Revenue Code. Nonresidents--Subject to tax on taxable income derived from sources within the State.
Wisconsin	Residents and nonresidents--The term resident is defined as a domiciliary. Wis. Stat. §71.01(1) (1969).	1) The taxable income of residents defined in terms of federal adjusted gross income with certain modifications not herein relevant. Since Wisconsin defines its own taxable income in terms of federal adjusted gross income, the exclusion under §911 of the Internal Revenue Code for income from sources	Residents--Subject to tax on taxable income above the exclusion under §911 of the Internal Revenue Code. Nonresidents--Subject to tax on taxable income derived from sources within Wisconsin.

State	State income tax coverage	Tax base	Probable tax obligation
Wisconsin (cont'd)		without the United States is apparently adopted by reference into the computation of Wisconsin taxable income. Wis. Stat. §§71.02(2)(e), 71.05 (1969). 2) The taxable income of nonresidents derived from sources within Wisconsin. Wis. Stat. §71.01 (1969).	
West Virginia	Residents and nonresidents--The term resident is defined to include (1) domiciliaries, unless they maintain no permanent place of abode within the State, maintain a permanent place of abode outside the State, and spend not more than 30 days of the taxable year in the State, and (2) non-domiciliaries who maintain a permanent place of abode within the State and reside within the State for more than 183 days of the taxable year. W. Va. Code §11-21-7(a) (1974).	1) The taxable income of residents defined in terms of federal adjusted gross income with modifications not herein relevant. Since West Virginia defines its own taxable income in terms of federal adjusted gross income, the exclusion under §911 of the Internal Revenue Code for income from sources without the United States is apparently incorporated by reference into the definition of West Virginia taxable income. W. Va. Code §11-21-11(a), 12 (1974).	Residents--Subject to tax on taxable income above the exclusion under §911 of the Internal Revenue Code. Nonresidents--Subject to tax on taxable income derived from sources within West Virginia.

State	State income tax coverage	Tax base	Probable tax obligation
West Virginia (cont'd)	The West Virginia Tax Regulations specify that: a United States citizen will not ordinary be deemed to have changed his domicile by going to a foreign country unless it is clearly shown that he intends to remain there permanently. For example, a United States citizen domiciled in West Virginia, who goes abroad because of an assignment by his employer or for study, research or recreation, does not lose his West Virginia domicile unless it is clearly shown that he intends to remain abroad permanently and not to return. W. Va. Tax Regs., I.T.1.7 (4).	2) The taxable income of nonresidents derived from sources within West Virginia. W. Va. Code §11-21-31,32 (1974).	

IV: States having no income tax

State	State income tax coverage	Tax base	Probable tax obligation
Florida			
Nevada			
New Hampshire			
South Dakota			
Texas			
Washington			
Wyoming			

MICHIGAN DEPARTMENT OF STATE,
Lansing, Mich., February 8, 1977.

Hon. CLAIBORNE PELL,
Chairman, Subcommittee on Privileges and Elections.
Hon. ROBERT P. GRIFFIN,
Ranking Minority Member, U.S. Senate Committee on Rules and Administration, Washington, D.C.

GENTLEMEN: The State of Michigan, in 1971, enacted specific legislation dealing with the subject of overseas voting. The law goes beyond the Overseas Voting Rights Act of 1975 in that overseas registered voters may vote in any state or local election. Because this law has been in effect for many years, Michigan has noticed no significant impact with regard to the 1975 Voting Rights Act other than increased overseas voting in connection with presidential elections.

We feel the more liberal Michigan statute is covered by Section 7(2) of the Overseas Voting Rights Act which states, "Nothing in this Act shall . . . prevent any state or election district from adopting or following any voting practice which is less restrictive than the practices prescribed by this Act."

Only one area of concern surfaces, then very infrequently. Specifically, what course of action should be followed when a voluntary statement is made by an overseas voter indicating no intent to ever return to the United States? Additional Clarification could be included relative to this subject.

Enclosed for your information is a copy of the applicable Michigan statute. The portion designated by a line at the right margin is the new language added by Act 68 of 1971.

If our office may be of further assistance, please advise.

Sincerely,

RICHARD H. AUSTIN;
Secretary of State.

Enclosure.

(759a. ARMED SERVICES MEMBERS AND EMPLOYEES OUTSIDE UNITED STATES; REGISTRATION, AFFIDAVIT; ABSENT VOTERS' BALLOTS

Sec. 759a. Any civilian employee of the armed services of the United States outside of the United States or any members of his immediate family outside of the United States, or any member of the armed services of the United States or member of his immediate family or any citizen of the United States temporarily residing outside the territorial limits of the United States and the District of Columbia and a spouse or dependent residing with or accompanying such person, who is a qualified elector of any city or township of this state but is not registered for voting, may apply at the time of making application to register by mail, as provided in section 504 of this act, for absent voters' ballots. A citizen temporarily residing outside the territorial limits of the United States and the District of Columbia shall include with any application for absent voters' ballots or registration, an affidavit in a form and manner approved by the state director of elections stating his qualifications as an elector at the time he departed from the United States and affirming that he has not relinquished his citizenship or established residence for voting in any other place. Upon receipt of the application, the city or township clerk to whom it is directed if such application complies with the requirements of this act, shall forward to the applicant both the absent voters' ballots requested and the forms necessary for registration, together with instructions for completing the forms. If the ballots are not yet available at the time of receipt of the application, the clerk shall immediately forward the registration forms and instructions and shall send the ballots as soon thereafter as they are available. If the ballots and registrations are received before the close of the polls on election day and if the registration complies with the requirements of this act, then the absent voters' ballots shall be delivered to the proper election board to be voted. If the registration does not comply with the requirements of this act, the ballots shall be retained by the clerk until the expiration of the time that the voted ballots must be kept and shall then be destroyed without opening the envelope. All registrations provided for in this section may be kept by the clerk in a separate file. The address in this state shown on the registration shall be deemed the residence of the registrant. These registrations shall not be considered in determining the size of precincts.

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS,
DEPARTMENT OF STATE,
Providence, R.I., March 29, 1977.

Hon. CLAIBORNE DEB. PELL,
325 Russell Senate Office Building,
Washington, D.C.

DEAR SENATOR PELL: I am replying to your letter of request concerning the number of persons from Rhode Island who applied for a ballot under the authority of the Overseas Voting Rights Act of 1975.

I regret that it has taken this much time to reply but we attempted, in vain, to find out how many of the five (5) absentee ballots which this office sent out were actually returned by the voter to the State Board of Elections.

Warm regards.

Sincerely,

ROBERT F. BURNS,
Secretary of State.

STATE OF NEW YORK,
STATE BOARD OF ELECTIONS,
Albany, N.Y., March 3, 1977.

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

DEAR SENATOR PELL: Thank you for the opportunity to submit a written statement presenting the views of this office on the impact of the Overseas Voting Rights Act of 1975 during the 1976 elections.

While we do not intend to submit a formal statement at this time, I thought you may be interested to know that after checking with the Election Commissioners of several of the counties in this State, we have concluded that there were no major problems arising from the requirements of the Overseas Voting Rights Act.

Very sincerely yours,

STEPHEN MAY, *Chairman.*

RESPONSES FROM THE SECRETARIES OF STATE OF ARIZONA AND CALIFORNIA

The Secretaries of State of Arizona and California reported to the Committee on Rules and Administration in response to an inquiry of Senator Claiborne Pell they had not encountered any substantial problems with respect to the impact of the Overseas Citizens Voting Rights Act of 1975.

APPENDIX

EXHIBIT 1

95TH CONGRESS
1ST SESSION

S. 703

IN THE SENATE OF THE UNITED STATES

FEBRUARY 10 (legislative day, FEBRUARY 1), 1977

Mr. PELL (for himself, Mr. GOLDWATER, and Mr. MATHIAS) introduced the following bill; which was read twice and referred to the Committee on Rules and Administration

A BILL

To improve the administration and operation of the Overseas Citizens Voting Rights Act of 1975, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 2 of the Overseas Citizens Voting Rights Act of 1975 (42 U.S.C. 1973dd) is amended—

(1) by striking out "and" at the end of paragraph (2);

(2) by striking out the period at the end of paragraph (3) and inserting in lieu thereof a semicolon and "and"; and

(3) by adding at the end thereof the following new paragraph:

"(4) 'official postcard' means a postcard application for registration to vote and for an absentee ballot in the form provided in section 204(c) of the Federal Voting Assistance Act of 1955 (50 U.S.C. 1464(c))."

SEC. 2. Section 4 of the Overseas Citizens Voting Rights Act of 1975 (42 U.S.C. 1973dd-2) is amended by adding at the end thereof the following new subsection:

"(c) In carrying out the provisions of this section, it is recommended that each State—

"(1) accept any official postcard which is duly executed by any person who meets the requirements in section 3 of this Act as a simultaneous application for registration under such State's election laws and for an absentee ballot under such State's absentee balloting laws;

"(2) if a special application is required for registration by mail, provide that the necessary forms will be sent with the absentee ballot and may be returned with it;

"(3) authorize and instruct the State or local election officials, upon receipt of any official postcard application or any other application for registration to vote or for an absentee ballot, to mail immediately to the applicant a ballot, instructions for voting and returning the ballot, and a self-addressed envelope; and

"(4) provide that there be printed across the face of each envelope in which a ballot is sent two parallel horizontal red bars, each one-quarter inch wide, extending from one side of the envelope to the other side, with an intervening space of one-quarter inch, the top bar to be one and one-quarter inches from the top of the envelope, and with the words 'Official Election Balloting Material—via Air Mail', or similar language, between the bars; that there be printed in the upper right corner of each such envelope in a box, the words 'Free of United States Postage, Including Air Mail'; that all printing on the face of each such envelope be in red; and that there be printed in red in the upper left corner of each State ballot envelope an appropriate inscription or blanks for return address of sender.".

SEC. 3. The Overseas Citizens Voting Rights Act of 1975 (42 U.S.C. 1973dd) is amended—

(1) by redesignating sections 5, 6, 7, and 8 as sections 7, 8, 9, and 10, respectively; and

(2) by inserting immediately after section 4 the following new sections:

"CURRENT ABSENTEE VOTING INFORMATION

"SEC. 5. (a) The Presidential designee under section 201 of the Federal Voting Assistance Act of 1955 (hereafter in this Act referred to as the 'Presidential designee')

shall request, annually or more often when appropriate, each State to furnish him with information on the current absentee registration and voting procedures of each State pertaining to citizens entitled to vote in Federal elections under this Act. Such information shall include election dates, officers to be elected, other matters to be voted on, any provisions under such State's law requiring the removal of the name of any person from such State's voter registration roll (for whatever reason), information related to the number of absentee voters in a State, and any other information relevant to Federal elections. Where consistent with their respective duties, the Attorney General and the Federal Election Commission shall assist the Presidential designee in collecting such information. The Presidential designee shall make available such information to any person who meets the requirements in section 3 of this Act, the Department of Justice, the Department of State, and any other appropriate department or agency of the Federal Government in a position to assist in the dissemination of such information. The Attorney General, the Secretary of State, and the head of any such department or agency are authorized to reprint such information and are directed to assist and cooperate with the Presidential designee in distributing such information to such persons.

"(b) The Presidential designee shall publicize, in the

manner best designed to reach the persons meeting the requirements in section 3 of this Act, the right of such persons to vote in Federal elections and the procedures available to such persons to enforce that right, as provided in this Act.

"PRINTING AND TRANSMITTING OF POSTCARDS; FREE POSTAGE; PUBLICITY

"SEC. 6. (a) The Administrator of General Services shall cause to be printed and distributed to the Department of Justice, the Department of State, and any other appropriate department or agency of the Federal Government official postcards for use in accordance with the provisions of this Act as directed by the Presidential designee. Such departments or agencies shall deliver or make available such postcards to persons meeting the requirements in section 3 of this Act not later than August 15 immediately before any general Federal election for use in such election. To the extent practicable, such postcards shall also be made available at appropriate times to such persons for use in special or primary Federal elections.

"(b) (1) The Postmaster General, the Attorney General, the Secretary of State, and the head of any other appropriate department or agency of the executive branch shall facilitate the transmission of balloting material, including official postcards, absentee ballots, voting instructions,

and envelopes for the return of such ballots, to and from persons meeting the requirements of section 3 of this Act.

"(2) Any balloting material sent from the United States to any person meeting the requirements of section 3 of this Act shall be sent by priority airmail or by the most expedited postal service available.

"(3) Any balloting material sent to the United States by any person meeting the requirements of section 3 of this Act shall be returned by priority airmail or by the most expedited service available, wherever practicable. Such material may be mailed from any Armed Forces post office in an overseas area established as provided in section 406 of title 39, United States Code. In the case of ballots executed outside the United States by any person, such ballots may be segregated from other forms of mail and placed in special bags marked with special tags printed and distributed by the Postmaster General for this purpose.

"(c) Official postcards, ballots, voting instructions, and envelopes for the return of such ballots, whether transmitted individually or in bulk, shall be free of postage, including airmail postage, in the United States mails.

"(d) In order to encourage the maximum use of the procedures set forth in this Act, the Postmaster General shall publicize, in the manner best designed to reach persons meeting the requirements in section 3 of this Act,

and notify all appropriate State election officials regarding the availability of free postage and expedited mail delivery of balloting material under this Act.".

SEC. 4. Section 9 of the Overseas Citizens Voting Rights Act of 1975 (42 U.S.C. 1973dd–5), as redesignated by this Act, is amended—

(1) by inserting "(a)" immediately before "Nothing";

(2) by adding at the end thereof the following:

"(b) The exercise of any right to register or vote in Federal elections by any citizen outside the United States and the retention by such citizen of any State or district as his voting residence or voting domicile solely for the purpose of exercising such right shall not affect the determination of such citizen's place of residence or domicile for purposes of any tax imposed under Federal, State, or local law.".

SEC. 5. Section 202 of The Federal Voting Assistance Act of 1955 (50 U.S.C. 1462) is amended by inserting immediately after "voting procedures," the following: "any provisions under such State's law requiring the removal of the name of any person from such State's voter registration roll (for whatever reason), information related to the number of absentee voters in a State,".

SEC. 6. Section 203 of the Federal Voting Assistance Act of 1955 (50 U.S.C. 1463) is amended—

(1) by striking out "and" at the end of paragraph (2); and

(2) by striking out paragraph (3) and inserting in lieu thereof the following new paragraph:

"(3) the Postmaster General and the heads of the departments and agencies concerned to facilitate the transmission of balloting materials to and from persons to whom this Act is applicable. Any balloting material sent from the United States to such persons shall be sent by priority airmail or by the most expedited postal service available. Any balloting material sent to the United States by such persons shall be returned by priority airmail or by the most expedited service available, wherever practicable. In the case of ballots executed outside the United States by any such person, such ballots may be segregated from other forms of mail and placed in special bags marked with special tags printed and distributed for this purpose; and

"(4) the Postmaster General, in order to encourage the maximum use of the procedure set forth in this Act, to publicize, in the manner best designed to reach per-

sons to whom this Act is applicable, and to notify all appropriate State election officials regarding the availability of free postage and expedited mail delivery of balloting material under this Act.".

SEC. 7. Section 204 of the Federal Voting Assistance Act of 1955 (50 U.S.C. 1464) is amended by adding at the end thereof the following new subsection:

"(c) Notwithstanding the provisions of subsections (a) and (b), the Presidential designee shall design for purposes of carrying out the provisions of this Act and the Overseas Citizens Voting Rights Act of 1975, a single form of postcard application for registration to vote and for an absentee ballot. The Presidential designee is empowered to promulgate such form by regulation and upon adoption of such form, subsections (a) and (b) of this section shall have no effect."

SEC. 8. (a) Section 2401 (c) of title 39, United States Code, is amended—

(1) by inserting after "title" a comma and the following: "the Overseas Citizens Voting Rights Act of 1975,"; and

(2) by sriking out "Act" immediately before the period and inserting in lieu thereof "Acts".

(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 Overseas Citizens Voting Rights Act of 1975.".

EXHIBIT 2

Public Law 94-203
94th Congress, S. 95
January 2, 1976

An Act

To guarantee the constitutional right to vote and to provide uniform procedures for absentee voting in Federal elections in the case of citizens outside the United States.

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 "Overseas Citizens Voting Rights Act of 1975". Overseas Citizens Voting Rights Act of 1975.

DEFINITIONS

SEC. 2. For the purposes of this Act, the term— 42 USC 1973dd note.

(1) "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, Resident Commissioner of the Commonwealth of Puerto Rico, Delegate from Guam, or Delegate from the Virgin Islands; 42 USC 1973dd.

(2) "State" means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, and the Virgin Islands; and

(3) "United States" includes the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, and the Virgin Islands, but does not include American Samoa, the Canal Zone, the Trust Territory of the Pacific Islands, or any other territory or possession of the United States.

RIGHT OF CITIZENS RESIDING OVERSEAS TO VOTE IN FEDERAL ELECTIONS

SEC. 3. Each citizen residing outside the United States shall have the right to register absentee for, and to vote by, an absentee ballot in any Federal election in the State, or any election district of such State, in which he was last domiciled immediately prior to his departure from the United States and in which he could have met all qualifications (except any qualification relating to minimum voting age) to vote in Federal elections under any present law, even though while residing outside the United States 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— 42 USC 1973dd-1.

(1) he has complied with all applicable State or district qualifications and requirements, which are consistent with this Act, concerning absentee registration for, and voting by, absentee ballots;

(2) he does not maintain a domicile, is not registered to vote, and is not voting in any other State or election district of a State or territory or in any territory or possession of the United States; and

(3) he has a valid passport or card of identity and registration issued under the authority of the Secretary of State.

ABSENTEE REGISTRATION AND BALLOTS FOR FEDERAL ELECTIONS

42 USC 1973dd-2.

SEC. 4. (a) Each State shall provide by law for the absentee registration or other means of absentee qualification of all citizens residing outside the United States and entitled to vote in a Federal election in such State pursuant to section 3 whose application to vote in such election is received by the appropriate election official of such State not later than thirty days immediately prior to any such election.

(b) Each State shall provide by law for the casting of absentee ballots for Federal elections by all citizens residing outside the United States who—

(1) are entitled to vote in such State pursuant to section 3;

(2) have registered or otherwise qualified to vote under subsection (a); and

(3) have returned such ballots to the appropriate election official of such State in sufficient time so that such ballot is received by such election official not later than the time of closing of the polls in such State on the day of such election.

ENFORCEMENT

42 USC 1973dd-3.

SEC. 5. (a) Whenever the Attorney General has reason to believe that a State or election district undertakes to deny the right to register or vote in any election in violation of section 3 or fails to take any action required by section 4, 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.

Penalty.

(b) Whoever knowingly or willfully shall deprive or attempt to deprive any person of any right secured by this Act shall be fined not more than $5,000, or imprisoned not more than five years, or both.

(c) Whoever knowingly or willfully gives false information as to his name, address, or period of residence for the purpose of establishing his eligibility to register, qualify, or vote under this Act, or conspires with another individual for the purpose of encouraging the giving of false information in order to establish the eligibility of any individual to register, qualify, or vote under this Act, or pays, or offers to pay, or accepts payment either for registration to vote or for voting shall be fined not more than $5,000, or imprisoned not more than five years, or both.

SEVERABILITY

42 USC 1973dd-4.

SEC. 6. If any provision of this Act is held invalid, the validity of the remainder of the Act shall not be affected.

EFFECT ON CERTAIN OTHER LAWS

SEC. 7. Nothing in this Act shall— 42 USC 1973dd-5.

(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.

EFFECTIVE DATE

SEC. 8. The provisions of the Act shall apply with respect to any Federal election held on or after January 1, 1976. 42 USC 1973dd note.

Approved January 2, 1976.

LEGISLATIVE HISTORY:

HOUSE REPORT No. 94-649 (Comm. on House Administration).
SENATE REPORT No. 94-121 (Comm. on Rules and Administration).
CONGRESSIONAL RECORD, Vol. 121 (1975):
May 15, considered and passed Senate.
Dec. 10, considered and passed House, amended.
Dec. 18, Senate concurred in House amendment.

EXHIBIT 3

SUBCHAPTER I-D.—FEDERAL ABSENTEE VOTING ASSISTANCE

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in title 22, section 2504; title 39, sections 2401, 3627, 3684.

PART I.—RECOMMENDATION TO STATES

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in section 1973cc–11 of this title.

§ 1973cc. State enactment of absentee voting legislation.

The Congress expresses itself as favoring, and recommends that the several States take, immediate legislative or administrative action to enable every person in any of the following categories who is absent from the place of his voting residence to vote by absentee ballot in any primary, special, or general election held in his election district or precinct, if he is otherwise eligible to vote in that election:

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

(2) Members of the merchant marine of the United States, and their spouses and dependents.

(3) 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.

(Aug. 9, 1955, ch. 656, title I, § 101, 69 Stat. 584, amended June 18, 1968, Pub. L. 90–343, § 1, 82 Stat. 180.)

CODIFICATION

Section was formerly classified to section 1451 of Title 50, War and National Defense.

AMENDMENTS

1968—Pub. L. 90–343 consolidated into par. (3) the provisions of former pars. (3) and (4) and, in such consolidated par. (3), substituted provisions which served to extend the recommendations to the states as to absentee voter registration so as to include 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 for former provisions of par. (3) which served to include civilian employees of the United States in all categories serving outside the United States and the District of Columbia and their spouses and dependents when residing with or accompanying them, whether or not subject to the civil service laws and the Classification Act of 1949, and whether or not paid from funds appropriated by Congress, and provisions of former par. (4), which served to include members of religious groups and welfare agencies assisting mmebers of the Armed Forces, who are officially attached to and serving with the Armed Forces and their spouses and dependents.

SHORT TITLE

Section 1 of act Aug. 9, 1955, provided that: "This Act [which enacted this subchapter and repealed sections 201–303, 321–331, 341, and 351–355 of Title 50] may be cited as 'The Federal Voting Assistance Act of 1955'."

SEPARABILITY OF PROVISIONS

Section 306 of act Aug. 9, 1955, provided that: "If any provision of this Act [this subchapter] or the application of such provision to any person or circumstance shall be held invalid, the validity of the remainder of the Act [this subchapter] and the applicability of such provision to other persons or circumstances shall not be affected thereby."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1973cc–1, 1973cc–3 of this title.

SECTION REFERRED TO IN D.C. CODE

This section is referred to in section 1–1105 of the District of Columbia Code.

§ 1973cc–1. Balloting procedures.

To afford ample opportunity for persons covered by section 1973cc of this title to vote for Federal, State and local officials and to use the absentee balloting procedures to the greatest extent possible, it is recommended that each of the several States—

(1) accept as applications for absentee ballots under such States' absentee balloting laws, as applications for registration under such States' election laws, and as sources of information to implement State absentee balloting laws, the form of post card (when duly executed by a person covered by section 1973cc of this title) provided pursuant to this subchapter;

(2) waive registration of persons covered by section 1973cc of this title, who, by reason of their service, have been deprived of an opportunity to register;

(3) accept the post card application provided pursuant to this subchapter as a simultaneous application for registration and for ballot;

(4) if a special application is required for registration by mail, provide that the necessary forms will be sent with the absentee ballot and may be returned with it;

(5) make provision for persons eligible to register and qualified to vote, who have been honorably discharged from the Armed Forces, or have terminated their service or employment, too late to register at the time when, and at the place where, registration is required, to vote at the election next ensuing after such discharge or termination;

(6) authorize and instruct the State or local election officials, upon receipt of the post card application provided pursuant to this subchapter, to mail immediately to the applicant a ballot, instructions for voting and returning the ballot, and a self-addressed envelope;

(7) provide that there be printed across the face of each envelope in which a ballot is sent two parallel horizontal red bars, each one-quarter inch wide, extending from one side of the envelope to the other side, with an intervening space of one-quarter inch, the top bar to be one and one-quarter inches from the top of the envelope, and with the words "Official Election Balloting Material—via Air Mail", or similar language, between the bars; that there be printed in the upper right corner of each such envelope, in a box, the words "Free of U.S. Postage, Including Air Mail"; that all printing on the face of each such envelope be in red; and that there be printed in red in the upper left corner of each State ballot envelope an appropriate inscription or blanks for return address of sender;

(8) provide that the gummed flap of the State envelope supplied for the return of the ballot be separated by a wax paper or other appropriate protective insert from the remaining balloting material and that there be included in State voting instructions a procedure to be followed by absentee voters, such as notation of the facts on the back of envelope duly signed by the voter and witnessing officer, in instances of adhesion of the balloting material;

(9) reduce in size and weight of paper, as much as possible, envelopes, ballots, and instructions for voting procedure;

(10) for the purposes of this subchapter, authorize oaths required by State law to be administered and attested by any commissioned officer in the active service of the Armed Forces, any member of the merchant marine of the United States designated for this purpose by the Secretary of Commerce, the head of any department or agency of the United States, any civilian official empowered by State or Federal law to administer oaths, or any civilian employee designated by the head of any department or agency of the United States;

(11) include in State voting instructions express information concerning the type or types of writing instruments which may be used to mark the absentee ballot, preferably pen or indelible pencil; and

(12) provide that absentee ballots will be available for mailing to the applicant as soon as practicable before the last date on which such ballot will be counted.

(Aug. 9, 1955, ch. 656, title I, § 102, 69 Stat. 584, amended June 18, 1968, Pub. L. 90–344, § 1(1), 82 Stat. 181.)

CODIFICATION

Section was formerly classified to section 1452 of Title 50, War and National Defense.

AMENDMENTS

1968—Cl. (10). Pub. L. 90–344 added heads of departments or agencies of the United States and civilian employees designated by the head of any department or agency of the United States to the recommended list of persons authorized to administer and attest to oaths as required by state law.

§ 1973cc–2. Statistical data.

It is recommended that each of the several States make available to the officer designated by the President under section 1973cc–11 of this title appropriate statistical data to assist him in compiling comprehensive information of operations under this subchapter. (Aug. 9, 1955, ch. 656, title I, § 103, 69 Stat. 585.)

CODIFICATION

Section was formerly classified to section 1453 of Title 50, War and National Defense.

§ 1973cc–3. Personnel residing on military installations; acquisition of legal residence for voting purposes.

It is recommended that each of the several States permit any person covered by section 1973cc(1) of this title who is otherwise fully qualified to register and vote in the State to acquire legal residence in that State, notwithstanding his residence on a military installation, and to register and vote in local, State, and national elections. (Aug. 9, 1955, ch. 656, title I, § 104, as added June 18, 1968, Pub. L. 90–344, § 1(2), 82 Stat. 181.)

CODIFICATION

Section was formerly classified to section 1454 of Title 50, War and National Defense.

87-234 O - 77 - 12

PART II.—RESPONSIBILITIES OF FEDERAL GOVERNMENT

§ 1973cc–11. Presidential designee to coordinate and facilitate actions to discharge Federal responsibilities; report.

The President is authorized to designate, with provision for redelegation, the head (hereinafter referred to as the Presidential designee) of any executive department or agency to coordinate and facilitate such actions as may be required to discharge Federal responsibilities under this subchapter. The Presidential designee is authorized to request from other executive departments and agencies such assistance as he deems necessary to effectuate the purposes of this subchapter, and shall submit a report to the President and to the Congress in odd-numbered years. Such report shall cover the administration of Federal responsibilities authorized under this part, the progress of the States in carrying out the recommendations contained in part I of this subchapter, statistical data relating to absentee voting, and such other information as the Presidential designee may consider appropriate. (Aug. 9, 1955, ch. 656, title II, § 201, 69 Stat. 585.)

CODIFICATION

Section was formerly classified to section 1451 of Title 50, War and National Defense.

EX. ORD. NO. 10646. DESIGNATION OF SECRETARY OF DEFENSE AS COORDINATOR

Ex. Ord. No. 10646, Nov. 22, 1955, 20 F.R. 8681, provided:

1. The Secretary of Defense is hereby designated as the official to coordinate and facilitate such actions as may be required to discharge Federal responsibilities under the Federal Voting Assistance Act of 1955 [this subchapter].

2. In order to effectuate the purposes of the said act, the Secretary of Defense is hereby authorized to delegate any or all of the functions, responsibilities, powers, authority, or discretion devolving upon him in consequence of this order to any person or persons within the Department of Defense.

DWIGHT D. EISENHOWER.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1973cc–2 of this title.

§ 1973cc–12. Current absentee voting information.

The Presidential designee shall request, annually or more often when appropriate, each State to furnish him with current absentee voting information for such State. Such information shall include election dates, officers to be elected, constitutional amendments, and other proposals to be voted on, absentee registration and voting procedures, and other relevant data. As soon as possible after receipt of such information, he shall furnish it to the departments and agencies of the executive branch affected by this subchapter. Such departments and agencies are authorized to reprint and distribute such information to the extent necessary. (Aug. 9, 1955, ch. 656, title II, §202, 69 Stat. 586.)

CODIFICATION

Section was formerly classified to section 1452 of Title 50, War and National Defense.

§ 1973cc–13. Cooperation of Government officials; drafts of state legislation; printing and transmitting of post cards.

All Government officials shall, to the extent practicable and compatible with their primary responsibilities, cooperate with the Presidential designee in carrying out the purposes of this subchapter. All such officials shall, as far as practicable, take all reasonable measures to expedite, transmit, deliver, and return post cards, ballots, envelopes, and instructions for voting procedures mailed to or by persons to whom this subchapter is applicable. In addition, and as requested by the Presidential designee, it shall be the duty of—

(1) the Attorney General to cooperate and advise with the Council of State Governments in the formulation of drafts of State legislation designed to implement the recommendations for State action contained in this subchapter;

(2) the Administrator of General Services to cause to be printed and distributed post cards for use in accordance with the provisions of this subchapter. Such post cards shall be delivered by the department or agency concerned to persons to whom this subchapter is applicable for use at any general election at which electors for President and Vice President or Senators and Representatives are to be voted for. For use in such elections, post cards shall be in the hands of the persons concerned not later than August 15 before the election if they are outside the territorial limits of the United States and not later than September 15 before the election if they are inside the territorial limits of the United States. To the extent practicable and compatible with other operations, post cards shall also be made available at appropriate times to such persons for use in other general, primary, and special elections; and

(3) the Postmaster General and the heads of the departments and agencies concerned, where practicable and compatible with their operations, to facilitate the transmission of balloting material to and from persons to whom this subchapter is applicable. Ballots executed outside the United States by persons to whom this subchapter is applicable shall be returned by priority airmail wherever practicable, and such mail may be segregated from other forms of mail and placed in special bags marked with special tags printed and distributed by the Postmaster General for this purpose.

(Aug. 9, 1955, ch. 656, title II, § 203, 69 Stat. 586, amended June 18, 1968, Pub. L. 90–344, § 1(3), 82 Stat. 181.)

CODIFICATION

Section was formerly classified to section 1463 of Title 50, War and National Defense.

AMENDMENTS

1968—C1. (2). Pub. L. 90–344 substituted provisions that post cards shall be delivered and in the hands of the persons concerned not later than August 15 if they are without the territorial limits of the United States and not later than September 15 if they are within the territorial limits of the United States for provisions that such post cards shall, wherever practicable and compatible with other operations, be made available to the persons concerned by the specified dates.

§ 1973cc–14. Form and content of post card application.

The form of the Federal post card application shall be as follows:

(a) The cards shall be approximately nine and one-half by four and one-eighth inches in size.

(b) Upon one side, perpendicular to the long dimension of the card, there shall be printed in black type the following:

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 ☐
e. 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., Trp., Bn., etc.), Govt. 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 or 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

A. Before filling out this form see your voting officer in regard to the voting laws of your State and absentee registration and voting procedure.
B. Type or print all entries except signatures. FILL OUT BOTH SIDES OF CARD.
C. Address card to proper State official. Your voting officer or commanding officer will furnish you his title and address.
D. Mail card as soon as your State will accept your application.
E. NO postage is required for the card.

(c) Upon the other side of the card there shall be printed in red 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)

(Aug. 9, 1955, ch. 656, title II, § 204, 69 Stat. 586, amended June 18, 1968, Pub. L. 90–343, § 2, 82 Stat. 181; June 18, 1968, Pub. L. 90–344, § 1(4)–(6), 82 Stat. 182.)

CODIFICATION

Section was formerly classified to section 1464 of Title 50, War and National Defense.

AMENDMENTS

1968—Subsec. (b)(3)(c). Pub. L. 90-343, § 2, substituted "A citizen of the United States temporarily residing outside of the territorial limits of the United

States and the District of Columbia" for "A member of a religious or welfare organization assisting servicemen".

Subsec. (b)(3)(d). Pub. L. 90–343, § 2, substituted "A spouse or a dependent of a person listed in (a) or (b) above" for "A civilian employed by the United States Government outside the United States (continental)".

Subsec. (b)(3)(e). Pub. L. 90–343, § 2, substituted "A spouse or dependent residing with or accompanying a person described in (c) above" for "A spouse or dependent of a person listed in (a), (b), or (c) above."

Subsec. (b)(3)(f). Pub. L. 90–343, § 2, struck out subsec. (b)(3)(f) which made provision for a spouse or dependent residing with a civilian employed by the United States Government outside of the (continental) United States.

Subsec. (b)(5). Pub. L. 90–344, § 1(4), added the provision for insertion of the applicant's county or parish.

Subsec. (b)(7). Pub. L. 90–344, § 1(5), substituted provisions differentiating between the style of address for persons assigned in the United States and persons assigned elsewhere for provisions setting out a single style of address for all applicants.

Subsec. (c). Pub. L. 90–344, § 1(6), substituted provisions for the official mailing address of the applicant for provisions for the name, unit, government agency, or office, military base, station, ship, or office, street number, APO or FPO number, and city, postal zone, and state of the applicant.

§ 1973cc–15. Post card for election for Members of Congress.

The previously authorized Federal post card form shall be utilized prior to and in connection with the election for Members of Congress next ensuing after August 9, 1955, and the Presidential designee shall initiate action to make such forms available to departments and agencies having a need therefor. Thereafter only the post card form authorized in this subchapter shall be utilized. (Aug. 9, 1955, ch. 656, title II, § 205, 69 Stat. 588.)

CODIFICATION

Section was formerly classified to section 1465 of Title 50, War and National Defense.

PART III.—GENERAL PROVISIONS

§ 1973cc–21. Definitions.

As used in this subchapter—

(1) The term "Armed Forces" means the uniformed services as defined in section 231 of Title 37.

(2) The term "members of the merchant marine of the United States" means persons (other than members of the Armed Forces) employed as officers or members of crews of vessels documented under the laws of the United States, or of vessels owned by the United States, or of vessels of foreign-flag registry under charter to or control of the United States, and persons (other than members of the Armed Forces) enrolled with the United States for employment, or for training for employment, or maintained by the United States for emergency relief service, as officers or members of crews of any such vessels; but does not include persons so employed, or enrolled for such employment or for training for such employment, or maintained for such emergency relief service, on the Great Lakes or the inland waterways.

(3) The term "dependent" means any person who is in fact a dependent.

(Aug. 9, 1955, ch. 656, title III, § 301, 69 Stat. 588.)

REFERENCES IN TEXT

Section 231 of Title 37, referred to in subd. (1), was repealed by Pub. L. 87–649, § 14, Sept. 7, 1962, 76 Stat. 499, and is now covered by sections 101, 401, and 420 of Title 37, Pay and Allowances of the Uniformed Services.

CODIFICATION

Section was formerly classified to section 1471 of Title 50, War and National Defense.

DISTRICT OF COLUMBIA

Section 2(c) of Pub. L. 87–389, Oct. 4, 1961, 75 Stat. 820, provided that: "For the purposes of the Federal Voting Assistance Act of 1955 (69 Stat. 584) [this subchapter] the word 'State' shall be deemed to include the District of Columbia."

§ 1973cc–22. Free postage.

Official post cards, ballots, voting instructions, and envelopes referred to in this subchapter, whether transmitted individually or in bulk, shall be free of postage, including air-mail postage, in the United States mails. (Aug. 9, 1955, ch. 656, title III, § 302, 69 Stat. 588.)

CODIFICATION

Section was formerly classified to section 1472 of Title 50, War and National Defense.

§ 1973cc–23. Prevention of fraud and coercion.

Every individual concerned with the administration of this subchapter shall take all necessary steps to prevent fraud, to protect voters against coercion of any sort, and to safeguard the integrity and secrecy of ballots cast. (Aug. 9, 1955, ch. 656, title III, § 303, 69 Stat. 588.)

CODIFICATION

Section was formerly classified to section 1472 of Title 50, War and National Defense.

§ 1973cc–24. Acts done in good faith.

No act done in good faith under this subchapter by a person serving in or with the Federal or military service of the United States in the exercise of his judgment as to what was practicable and compatible with military, merchant marine, or other Federal governmental operations, shall constitute a violation of any provision of law relating to the elective franchise. (Aug. 9, 1955, ch. 656, title III, § 304, 69 Stat. 589.)

CODIFICATION

Section was formerly classified to section 1472 of Title 50, War and National Defense.

§ 1973cc–25. Undue influence; free discussion.

It shall be unlawful for any commissioned, noncommissioned, warrant, or petty officer in the Armed Forces (1) to attempt to influence any member of the Armed Forces to vote or not to vote for any particular candidate, or (2) to require any member of the Armed Forces to march to any polling place or place of voting, but nothing in this subchapter shall be deemed to prohibit free discussion regarding political issues or candidates for public office. (Aug. 9, 1955, ch. 656, title III, § 305, 69 Stat. 589.)

CODIFICATION

Section was formerly classified to section 1473 of Title 50, War and National Defense.

§ 1973cc–26. Appropriations.

There are authorized to be appropriated such funds as may be necessary to carry out the purposes of this subchapter. (Aug. 9, 1955, ch. 656, title III, § 308, 69 Stat. 589.)

CODIFICATION

Section was formerly classified to section 1476 of Title 50, War and National Defense.

SUBCHAPTER I–E.—VOTING RIGHTS OF OVERSEAS CITIZENS [NEW]

§ 1973dd. Definitions.

For the purposes of this subchapter, the term—

(1) "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, Resident Commissioner of the Commonwealth of Puerto Rico, Delegate from Guam, or Delegate from the Virgin Islands;

(2) "State" means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, and the Virgin Islands; and

(3) "United States" includes the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, and the Virgin Islands, but does not include American Samoa, the Canal Zone, the Trust Territory of the Pacific Islands, or any other territory or possession of the United States.

(Pub. L. 94–203, § 2, Jan. 2, 1976, 89 Stat. 1142.)

EFFECTIVE DATE

Section 8 of Pub. L. 94–203 provided that: "The provisions of the Act [this subchapter] shall apply with respect to any Federal election held on or after January 1, 1976."

SHORT TITLE

Section 1 of Pub. L. 94–203 provided: "That this Act [amending this subchapter and enacting the provisions set out as a note under this section] may be cited as the 'Overseas Citizens Voting Rights Act of 1975'."

§ 1973dd–1. Qualifications for registration and vote by absentee ballot.

Each citizen residing outside the United States shall have the right to register absentee for, and to vote by, an absentee ballot in any Federal election in the State, or any election district of such State, in which he was last domiciled immediately prior to his departure from the United States and in which he could have met all qualifications (except any qualification relating to minimum voting age) to vote in Federal elections under any present law, even though while residing outside the United States 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—

(1) he has complied with all applicable State or district qualifications and requirements, which are consistent with this subchapter, concerning absentee registration for, and voting by, absentee ballots;

(2) he does not maintain a domicile, is not registered to vote, and is not voting in any other State or election district of a State or territory or in any territory or possession of the United States; and

(3) he has a valid passport or card of identity and registration issued under the authority of the Secretary of State.

(Pub. L. 94–203, § 3, Jan. 2, 1976, 89 Stat. 1142.)

EFFECTIVE DATE

Section applicable to any Federal election held on or after Jan. 1, 1976, see section 8 of Pub. L. 94–203, set out as a note under section 1973dd of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1973dd–2, 1973dd–3 of this title.

§ 1973dd–2. State provisions for registration and vote by absentee ballot.

(a) Each State shall provide by law for the absentee registration or other means of absentee qualification of all citizens residing outside the United States and entitled to vote in a Federal election in such State pursuant to section 1973dd–1 of this title whose application to vote in such election is received by the appropriate election official of such State not later than thirty days immediately prior to any such election.

(b) Each State shall provide by law for the casting of absentee ballots for Federal elections by all citizens residing outside the United States who—

(1) are entitled to vote in such State pursuant to section 1973dd–1 of this title;

(2) have registered or otherwise qualified to vote under subsection (a) of this section; and

(3) have returned such ballots to the appropriate election official of such State in sufficient time so that such ballot is received by such election official not later than the time of closing of the polls in such State on the day of such election.

(Pub. L. 94–203, § 4, Jan. 2, 1976, 89 Stat. 1143.)

EFFECTIVE DATE

Section applicable to any Federal election held on or after Jan. 1, 1976, see section 8 of Pub. L. 94–203, set out as a note under section 1973dd of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1973dd–3 of this title.

§ 1973dd–3. Enforcement by Attorney General.

(a) Jurisdiction of courts.

Whenever the Attorney General has reason to believe that a State or election district undertakes to deny the right to register or vote in any election in violation of section 1973dd–1 of this title or fails to take any action required by section 1973dd–2 of this title, 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, for a restraining order, a preliminary or permanent injunction, or such other order as he deems appropriate.

(b) Depriving or attempting to deprive persons of secured rights; penalties.

Whoever knowingly or willfully shall deprive or attempt to deprive any person of any right secured by this subchapter shall be fined not more than $5,000, or imprisoned not more than five years, or both.

(c) Giving or conspiring to give false information; payment or acceptance of money; penalties.

Whoever knowingly or willfully gives false information as to his name, address, or period of residence for the purpose of establishing his eligibility to register, qualify, or vote under this subchapter, or conspires with another individual for the purpose

EXHIBIT 4

.32 IMMIGRATION AND NATURALIZATION SERVICE MAIL

All mail of whatever class, relating to naturalization, including duplicate papers required by law or regulation to be sent to the Service by clerks of courts, addressed to the Department of Justice or the Immigration and Naturalization Service, or any official of either, and endorsed *Official Business,* will be transmitted without prepayment of postage and marked *Naturalization Papers.* Mail relating to naturalization may not exceed 4 pounds. (See 137.21 regarding postage reimbursement.)

137.4 STATE EMPLOYMENT SECURITY MAILINGS

All mail of State employment security offices cooperating with the Department of Labor that bears, in the upper left corner of the address side, the words *Official Business* printed immediately below the name and address of the State employment agency and, in the upper right corner, the words *Postage and Fees Paid, Employment Security Mail* will be accepted without prepayment of postage or fees. Postage and fees chargeable are collected periodically under a special arrangement with the Postal Service. Such matter will be given the service indicated on the cover.

137.5 ABSENTEE BALLOTING MATERIALS

.51 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:

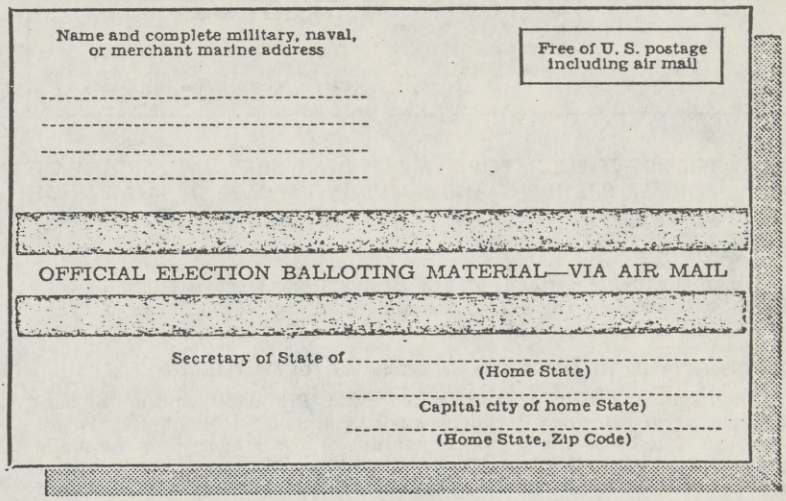
a. Members of the Armed Forces while in the active service and their spouses and dependents.
b. Members of the merchant marine of the United States and their spouses and dependents.
c. Citizens of the United States temporarily residing outside the territorial limits of the United States and the District 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.

.52 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.

.53 MARKINGS REQUIRED ON BALLOT ENVELOPES AND POST CARD APPLICATIONS

.531 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 ¼ inch wide, extending from one side of the envelope to the other side, with an intervening space of ¼ inch, the top bar to be 1¼ 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.



.532 The Federal post card application shall be approximately 9½ x 4⅛ 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)

137.6 PRESIDENT-ELECT, FORMER PRESIDENT, SURVIVING SPOUSE OF FORMER PRESIDENT AND SURVIVING SPOUSE OF MEMBER OF CONGRESS

.61 PRESIDENT-ELECT

All mail, including airmail, of any President-elect sent by him in connection with his preparations for the assumption of official duties as President may be accepted subject to the provisions of 137.233.

.62 FORMER PRESIDENT AND SURVIVING SPOUSE OF FORMER PRESIDENT

All nonpolitical mail of former United States Presidents, and of the surviving spouse of a former President, shall be accepted without prepayment of postage if it bears the written signature of the sender, or a facsimile signature and the words Postage and Fees Paid in the upper right corner of the address side. Such matter may be dispatched by air if it bears the word *Airmail* on the address side.

.63 SURVIVING SPOUSE OF MEMBER OF CONGRESS

Upon the death of a Member of Congress during his term of office the surviving spouse of such Member may send, without prepayment of postage for a period not to exceed one hundred and eighty days after the death of the Member, correspondence relating to the death of the Member, provided it bears the written signature of the sender, or a facsimile signature in the upper right corner of the address side.

EXHIBIT 5

ASSISTANT ATTORNEY GENERAL

Department of Justice
Washington, D.C. 20530

On January 2, 1976, the President signed into law the Overseas Citizens Voting Rights Act of 1975, Public Law 94-203, "to guarantee the constitutional right to vote and to provide uniform procedures for absentee voting in Federal elections in the case of citizens outside the United States." The Attorney General is charged with enforcement of the Act and is responsible for assuring implementation by States and local election districts. The Act became effective immediately.

As far as we are aware, no court has yet been called upon to interpret the provisions of this Act. The Department of Justice has already received several inquiries regarding its meaning and acceptable methods of implementation. To provide guidance to states and local election districts in this regard, we have prepared the enclosed interpretation, which will guide the Department in its enforcement of the Act. This is being distributed to the Governor, the Secretary of State and the Attorney General of each state and to corresponding officials of the District of Columbia, Puerto Rico, Guam, and the Virgin Islands. Please feel free to distribute this material to local election district officials or other persons you wish to receive it.

The new law and the imminence of federal elections mandate a prompt determination by each state of the registration and voting procedures it will follow for these elections. Accordingly, you may wish to review the enclosed analysis with the appropriate officials in your state to determine what, if any, revisions need be made in your registration and voting procedures or laws to conform them to the requirements of Public Law 94-203.

To assist the Department in discharging its responsibilities under the Act, I would appreciate your informing us, within 20 days, of the steps you have taken - or will take - to comply with Public Law 94-203. In this connection, it would be most helpful if you would advise us of any instructions regarding implementation which you will distribute to registrars and election officials to ensure that all qualified overseas citizens, formerly resident in your state, will be given the opportunity to register and vote absentee in the upcoming federal elections, notwithstanding any contrary provision of state law. We would appreciate it if you will refer to DJ 166-012-4 in your reply to this letter.

Sincerely,

J. Stanley Pottinger

J. Stanley Pottinger
Assistant Attorney General
Civil Rights Division

Department of Justice Interpretation of the Overseas Citizens Voting Rights Act of 1975 P.L. 94-203

A. Scope of the Act (Section 2) - where applicable - what elections covered:

1. The provisions of the Act apply to Federal elections held in any "state," defined to include the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, Guam, and the Virgin Islands. Only these "states" are included in "United States" for purposes of the Act. Thus, if a citizen from a "state" moves to another U.S. territory or possession, e.g. the Canal Zone, he is considered "residing outside the United States" and would qualify as an overseas citizen. If, however, he moves from one of the 50 states to Puerto Rico or Guam, for example, he would not be an overseas citizen for the purposes of this Act.

2. The Act applies to all Federal elections:

a. of any nature, including primary elections, general elections, and special elections.

b. to select, nominate, or elect candidates for the following Federal offices: President, Vice President, presidential elector, member of Congress, including delegates from the District of Columbia, Guam, and the Virgin Islands, and the resident commissioner of Puerto Rico.

Although not specifically mentioned, the election of delegates to party nominating conventions and to caucuses held to select delegates to such conventions would be included within the definition of "Federal election" as an "election held solely or in part for the purpose of . . . nominating" a candidate for any of the specified offices. The Department is cognizant of the great variation from state to state not only in the methods of nominating candidates for federal offices but also in the selection of convention delegates.

From the standpoint of the Department's law enforcement policy, a distinction will be made between those elections for which ballots are printed in advance and for which absentee registration and voting procedures are now available to certain segments of the electorate, as, for example, members of the Armed Forces, and those less formalized selection processes not readily adaptable to absentee voting procedures. Public Law 94-203 applies to the former. Absent judicial authority to the contrary, the Department will not treat the latter as covered by the Act.

3. The Act applies solely to elections for Federal offices and would not include elections for state or local offices even if normally included on the same ballot.

Although the Act, defining "Federal election" to include "any . . . election held solely or in part for the purpose . . . " might be interpreted to include elections for all such offices appearing on the same ballot, the legislative history is clear on this point. The intent was to include only elections for federal offices. The mechanical problem of providing separate and distinct ballots when an election covers both federal and local offices is left to the states. Some states may choose, even though Public Law 94-203 does not require it, to extend the benefits of the Act to state and local elections as well in order to avoid printing separate ballots. Other states, utilizing the experience gained from implementing sections 202 and 302 of the Voting Rights Act Amendments of 1970 (P.L. 91-285), may have already devised alternative methods of compliance.

B. Effect of the Act

The Act contains two basic substantive provisions. First, in Section 3, it defines "voting residence" or "domicile" for the purpose of qualifying to register and vote absentee in Federal elections.1/ Second, it re-

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1/ When used in the Act, the term "domicile" means "voting residence."

quires, in Section 4, that states provide the machinery necessary to enable such newly qualified voters to register and vote absentee. Section 3 is phrased in terms of the rights granted by the Act to overseas citizens. Section 4, on the other hand, explicitly directs the states to provide, by law, certain minimum absentee voting procedures.

1. Section 3

a. Rights granted by the Act:

Any otherwise qualified overseas citizen is granted the right to register and vote absentee in federal elections in the state and election district in which he last resided even though he no longer maintains a place of abode in that state and district and has not expressed a definite intent to return thereto. To establish his voting residence in that state and election district, the overseas citizen need show only: 1) that that was his last permanent residence or domicile before leaving the United States, and 2) that he has not adopted a new domicile or voting residence since that time. Underlying Section 3 is the presumption of an intent to retain one's last state of residence as one's domicile or voting residence unless and until one specifically adopts another domicile or voting residence. This presumption is presently applied by many states in determining the voting residence of members of the Armed Forces and the Merchant Marine and of Federal government employees and their respective dependents residing outside the United States.

Pursuant to Article VI of the United States Constitution (the Supremacy Clause), Section 3 of P.L. 94-203, defining qualifications for absentee voting in federal elections, automatically supersedes conflicting provisions of state constitutions and statutes. Thus, state laws which require an expressed intent to return to that state or the maintenance of a fixed address in

the state to establish voting residence or those laws which restrict the availability of absentee ballots to persons who are absent for particular reasons are no longer applicable to voting by protected overseas citizens in federal elections. Although states may choose to consider amending or repealing conflicting provisions of their laws, such provisions have been nullified by the new Act, insofar as federal elections are concerned, as effectively as if repealed.

b. Who is made eligible to vote:

(1) only United States citizens holding valid passports or cards of identity and registration issued under the authority of the Secretary of State;

(2) only persons residing outside the United States, as defined in Section 2 of the Act;

(3) only persons who would have been qualified to vote, under present state law, if still physically present within the state - thus, states or election districts may continue to disqualify persons because of age, mental incapacity, or past felony conviction, or because they were not residents of the state or election district immediately prior to leaving the United States; and

(4) only persons who have complied with the applicable time requirements for absentee registration and voting, as prescribed in Section 4 of the Act.

c. Where an overseas citizen may vote:

Although the language of Section 3 may be somewhat ambiguous, the legislative history of Public Law 94-203 clearly establishes that the overseas voter must claim his last actual residence within the state as his voting residence unless, of course, he has since adopted a new voting residence or domicile. Thus, in the absence of redistricting since his departure, the overseas citizen must vote in the same election district

in which he resided immediately prior to leaving the United States.

(1) If he has not specifically adopted a new domicile or a new voting residence in any other state or election district or in any territory or possession of the United States since leaving the United States, he may vote only in the election district in which he resided immediately prior to his departure from the United States.

(2) If he has specifically adopted a new domicile or has registered to vote or has voted in any other state or in another election district since leaving the United States, he will no longer be considered a bona fide resident of the state or election district in which he was last domiciled and will not be qualified to vote there under Section 3 of the Act. He must, instead, vote in the state and election district which he has since adopted as his domicile.

2. Section 4 - Uniform procedures for absentee registration and balloting:

a. Registration: Each state must provide "by law" for the absentee registration or absentee qualification of overseas citizens entitled to vote in federal elections pursuant to Section 3 of the Act. Applications must be received no later than 30 days prior to the election.

b. Balloting: Each state must provide "by law" for the casting of absentee ballots in federal elections by registered or otherwise qualified overseas citizens absent on election day whose ballots are received before the closing of the polls on election day.

Most states, in implementing the Voting Rights Act Amendments of 1970 (P.L. 91-285), have already provided by law for absentee registration and voting in general, special, and primary elections, in accordance with the requirements of Section 4, for "qualified" electors.

States which already provide such machinery must make this machinery available to those voters now "qualified" or enfranchised by Section 3 of the Act.

Those states which have not made such provision or which prescribe registration or balloting procedures more restrictive than those set forth in Section 4 must now provide "by law" the machinery required by Section 4. Methods of providing "by law" will be determined by applicable state laws. In some states, changes in voting procedures may be effected by rule or regulation. In others, legislative action may be required.

C. Enforcement and Implementation (Sections 5 and 7)

In addition to any private right of action deriving from the Act, Section 5 provides for three enforcement procedures, the first two designed to secure rights granted by the Act and the third directed toward voting fraud. The Department of Justice, Civil Rights Division, in carrying out its enforcement responsibilities, will monitor state and election district compliance with the Act and, where indicated, may resort to any or all of the following:

1. seek injunctive relief against any state or election district or official thereof failing to comply;

2. institute criminal proceedings (with penalties of up to $5,000 fine and five years' imprisonment) against anyone knowingly or willfully depriving a person of his rights under the Act;

3. institute criminal proceedings (with penalties of up to $5,000 fine and five years' imprisonment) against anyone giving, or conspiring to give, false information in order to vote or paying or accepting payment for voting.

Section 7 of the Act makes it clear that the Act sets forth only minimum standards concerning registration and voting procedures. Any state may elect to continue or to institute less restrictive standards. Similarly, although the Act applies only to federal elections, states may choose to extend its coverage to elections for state and local offices as well.

As with the Voting Rights Act Amendments of 1970, states may need to institute special procedures to ensure compliance with the Act and to guard against voter fraud. States may also need to design special forms to be used for absentee registration and voting. Several questions relating to the implementation of this new legislation have been left unresolved - such as the method of proving past domicile, the requirement of notarizing applications to register or vote, and the provision of free postage. These are, in essence, questions of a procedural nature which can best be determined by state officials. In general, the mechanics of implementing the Act will be a matter for each state to determine in the light of its elections system as a whole.

D. Effective Date (Section 8)

The Act applies to all federal elections held on or after January 1, 1976.

E. Tax Consequences

The Act is silent on this. Earlier bills did contain a specific provision that the exercise by an overseas citizen of his right to register or vote would not affect the determination of his residence or domicile for tax purposes. This provision was removed prior to passage, however, to avoid Congressional interference with state and local law governing the determination of tax liability. It should be noted, however, that the Act prescribes a uniform standard for determining domicile for only one specific purpose - that of determining eligibility to vote in federal elections, and makes no attempt to define domicile for any other purpose.

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EXHIBIT 6

THE LIBRARY OF CONGRESS

Congressional Research Service

WASHINGTON, D.C. 20540

February 16, 1977

To: Subcommittee on Privileges and Elections
Attention: Edwin K. Hall, Chief Counsel

From: American Law Division

Subject: State Income Taxation of Americans Domiciled Abroad but Voting in Presidential Election

This memorandum and chart are prepared pursuant to your inquiry of February 15, 1977, requesting a chart showing the positions taken by each State on the question of imposition of income taxes on an otherwise untaxed individual who singularly votes in a presidential election under the Overseas Citizens Voting Rights Act of 1975. The responses submitted by the States were gathered by the Bipartisan Committee on Absentee Voting, and provided to the American Law Division along with your above-mentioned inquiry.

As noted on the first page of the chart, a column is designated for the name of the State involved, for the imposition by a State of an income tax, and for the response by that State as to the imposition of its income tax on an otherwise untaxed person simply because he or she votes in a presidential election under the aforementioned Act. The response by the State will note reasoning, where such was given.

Howard Zaritsky
Legislative Attorney

CRS-1

STATE INCOME TAXATION OF AMERICANS LIVING ABROAD AND VOTING IN A PRESIDENTIAL ELECTION PURSUANT TO THE OVERSEAS CITIZENS VOTING RIGHTS ACT OF 1975

This chart denotes the responses provided by various States to the Bipartisan Committee on Absentee Voting, respecting whether the State would impose its income tax on an American citizen residing abroad who would otherwise not be taxed but who had voted in a presidential election pursuant to the Overseas Citizens Voting Rights Act of 1975. Pub. L. 94-203, 94th Cong., 1st Sess. (1975); 89 Stat. 1142. The chart is broken into three columns.

Column one denotes the State in question.

Column two denotes whether or not the State imposes an individual income tax.

Column three contains the response and rationale given by the various States to the aboveformulated inquiry. Where no response was given, a notation will be made "NO RESPONSE." Where the State does not levy an individual income tax, the notation will be made "NOT APPLICABLE."

CRS-2

STATE	IMPOSES INCOME TAX	TAX IMPOSED ON CITIZENS RESIDING ABROAD: RESPONSE TO INQUIRY
1. ALABAMA	YES	No. Lacking other indicia of domicile, the single act of voting in a presidential election would not create domicile.
2. ALASKA	YES	NO RESPONSE
3. ARIZONA	YES	Responded to inquiry but refused to give advisory opinion.
4. ARKANSAS	YES	NO RESPONSE
5. CALIFORNIA	YES	NO RESPONSE
6. COLORADO	YES	No definite answer. Colorado tax regulations make voting a prima facie evidence of taxable domicile, but not conclusive. Regulations may be revised in light of the Overseas Voting Rights Act of 1975.
7. CONNECTICUT	YES	NO RESPONSE
8. DELAWARE	YES	No. Individuals residing abroad and not otherwise subject to Delaware income taxation would still be classified non-residents and exempted from Delaware income tax, though voting in a presidential election.
9. DISTRICT OF COLUMBIA	YES	NO RESPONSE. NOTE, however, that the District of Columbia does not impose an income tax on non-residents.
10. FLORIDA	NO	NOT APPLICABLE
11. GEORGIA	YES	Responded to inquiry but refused to give advisory opinion because of pending litigation.
12. HAWAII	YES	Yes. The registration form proposed for the Federal Election Absentee Ballot, statements 12 and 13, create sufficient indications of legal residence in Hawaii to support imposition of income tax.
13. IDAHO	YES	No. While voting residence and taxable residence are normally alike, a statutory exception permits overseas citizens of the United States to vote for candidates for Federal office only

CRS-3

STATE	IMPOSES INCOME TAX	TAX IMPOSED ON CITIZENS RESIDING ABROAD: RESPONSE TO INQUIRY
13. IDAHO (continued)		without becoming Idaho residents for tax purposes. Idaho Code, sec. 34-410A.
14. ILLINOIS	YES	No.
15. INDIANA	YES	NO RESPONSE.
16. IOWA	YES	No. The bases utilized for Federal income tax purposes are adopted by reference for Iowa income tax purposes. Therefore, individuals otherwise exempt from income taxes in Iowa are not subject to tax merely because they vote in a presidential election under the Overseas Citizens Voting Rights Act of 1975.
17. KANSAS	YES	No.
18. KENTUCKY	YES	No.
19. LOUISIANA	YES	No. Voting alone does not establish taxable domicile and, additionally, the adoption of the Federal tax base for Louisiana income tax purposes adopts the Federal determination that an individual not otherwise subject to income taxes is not taxed merely because he or she votes in a presidential election under the Overseas Citizens Voting Rights Act of 1975.
20. MAINE	YES	Responded but refused to give advisory opinion because of potential individual misconstruction.
21. MARYLAND	YES	No definite answer possible. However, voting and registration to vote is strong evidence of domicile in Maryland for income tax purposes, though not conclusive evidence. Absent other evidence of domicile, a possible tax-free status might exist, but no definite answer.
22. MASSACHUSETTS	YES	NO RESPONSE
23. MICHIGAN	YES	No. This is an unofficial response of the Department of the Attorney General of the State of Michigan, reflecting information provided by its Revenue and Collection Division.
24. MINNESOTA	YES	No.

CRS-4

STATE	IMPOSES INCOME TAX	TAX IMPOSED ON CITIZENS RESIDING ABROAD: RESPONSE TO INQUIRY
25. MISSISSIPPI	YES	Responded but declined to give advisory opinion under provisions of Mississippi law.
26. MISSOURI	YES	NO RESPONSE
27. MONTANA	YES	No.
28. NEBRASKA	YES	No, because of adoption of the Federal income tax base and, consequently, the Federal interpretation that an individual who is otherwise not taxable will not be taxed merely because of voting under the Overseas Citizens Voting Rights Act of 1975.
29. NEVADA	NO	NOT APPLICABLE
30. NEW HAMPSHIRE	YES (Only on income from intangibles)	Responded but declined to give advisory opinion under provisions of New Hampshire State law.
31. NEW JERSEY	YES	No. An individual is not taxable if he or she maintains no permanent place of abode in the State, maintains a permanent place of abode elsewhere, and spends less than an aggregate of 30 days in New Jersey. Meeting these three requirements, an individual voting in a presidential election under the Overseas Citizens Voting Rights Act of 1975 would not be taxable.
32. NEW MEXICO	YES	No.
33. NEW YORK	YES	No. No single item determines taxable domicile.
34. NORTH CAROLINA	YES	No. A single act of voting would not establish taxable domicile but would be strong evidence and would give a basis for the Department of Revenue of the State of North Carolina to examine the facts and circumstances for other indicia of domicile.
35. NORTH DAKOTA	YES	No. No tax imposed because voting is only strong but not conclusive, evidence of taxable domicile and because North Dakota adopts the Federal tax base and standards of taxability, thereby not taxing an otherwise exempt person merely because he or she votes in a presidential election under the Overseas Citizens Voting Rights Act of 1975. A return may be required, however.

CRS-5

STATE	IMPOSES INCOME TAX	TAX IMPOSED ON CITIZENS RESIDING ABROAD: RESPONSE TO INQUIRY
36. OHIO	YES	No. Responded that the single act of voting in a presidential election under the Overseas Citizens Voting Rights Act of 1975 neither establishes nor denies taxable status.
37. OKLAHOMA	YES	NO RESPONSE
38. OREGON	YES	Responded but denied to give advisory opinion under provisions of Oregon State law.
39. PENNSYLVANIA	YES	No. Three tests of tax-free status in Pennsylvania are that the individual maintain no permanent place of abode within the Commonwealth, that the individual maintain a permanent place of abode outside the Commonwealth, and that the individual spend not more than an aggregate 30 day within the Commonwealth annually. Voting is not relevant to these tests.
40. RHODE ISLAND	YES	No. Voting would not, alone, alter domicile status and adoption of Federal tax base also adopts Federal interpretation that voting alone under the Overseas Citizens Voting Rights Act of 1975 does not change tax status.
41. SOUTH CAROLINA	YES	Yes. Voting and taxation have similar "if not identical" residency requirements and "an individual who indicates that he is a qualified resident of South Carolina for voting purposes would be subject to the South Carolina income tax."
42. SOUTH DAKOTA	NO	NOT APPLICABLE
43. TENNESSEE	YES (Only on income from intangibles)	No.
44. TEXAS	NO	NOT APPLICABLE
45. UTAH	YES	No. Federal interpretations adopted for tax purposes and, consequently, a single act of voting in a presidential election under the Overseas Citizens Voting Rights Act of 1975 would not render taxable an otherwise taxable individual.

CRS-6

STATE	IMPOSES INCOME TAX	TAX IMPOSED ON CITIZENS RESIDING ABROAD: RESPONSE TO INQUIRY
46. VERMONT	YES	No. Adoption of the Federal tax base also adopts the Federal interpretation that the mere act of voting in a presidential election under the Overseas Citizens Voting Rights Act of 1975 will not render taxable an otherwise tax-free individual.
47. VIRGINIA	YES	NO RESPONSE
48. WASHINGTON	NO	NOT APPLICABLE
49. WEST VIRGINIA	YES	NO RESPONSE
50. WYOMING	NO	NOT APPLICABLE

EXHIBIT 7

GUIDE TO ABSENTEE VOTING IN FEDERAL ELECTIONS BY AMERICAN CITIZENS ABROAD

VIA AIR MAIL • PAR AVION • CORREO AEREO

Chamber of Commerce of the United States • 1615 H Street, N.W. • Washington, D.C. 20062 • U.S.A.

5369

A GUIDE TO ABSENTEE VOTING
IN FEDERAL ELECTIONS
BY AMERICAN CITIZENS ABROAD (5369)

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Published by:
Public Affairs Department
Editor: Robert T. Snure, assisted by J. Eugene Marans, Esq.

Library of Congress Catalogue Card No. 76-27584

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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 now belongs to 150 million Americans. In fact more American citizens will be eligible to vote in the 1976 Presidential and Congressional elections than at any time in our 200 year history.

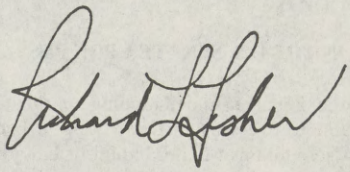
Legislative and judicial actions at Federal and State levels have been major factors in the rise in voter eligibility coupled, of course, with our increased population. Supreme Court decisions upholding the constitutional authority of the Congress to set uniform national standards in Federal elections have contributed materially.

The latest Act of Congress to increase voter eligibility is the long-sought Overseas Citizens Voting Rights Act of 1975 (Public Law 94-203, effective January 1, 1976). Under its provisions, nearly one million American men and women, working in the private sector or temporarily residing outside U. S. boundaries and overseas, are now eligible for the first time to register and vote absentee in *all* Federal elections in their State of last domicile immediately prior to going abroad. These elections involve the candidacies of all persons seeking the office of President, Vice President, Senator and Representative of the United States.

To assist ALL Americans located outside our national boundaries to qualify under this Act, the National Chamber has prepared this Guide. Sample application forms for absentee registration and voting, and complete instructions on where they may be obtained, how to fill them out, and where they should be sent are included in this document.

Under our democratic system of government, however, it is well to remember that neither the Congress nor the courts, nor any other person can register and vote for anyone else. Recognition and implementation of the responsibility to take steps necessary to first register—and then vote for the candidates of one's choice—rests solely with each individual.

We hope this publication will help point the way for greater citizen participation in the political process that is a mainstay of our American heritage.



RICHARD L. LESHER
President
Chamber of Commerce of the United States of America

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INTRODUCTION

BUSINESS/PROFESSIONAL COMMUNITY SHOULD ASSIST

All business and professional firms and organizations in the States should alert their personnel abroad to the contents of this publication and should energize programs in their branch offices outside the United States that will generate absentee registration and voting in Federal, State and local elections.

Executives of American Chambers of Commerce Abroad, and other organizations with the cooperation of the diplomatic staffs, are likewise alerting American citizens within their jurisdiction of their right to now register and vote absentee in Federal elections and urging complete participation.

WHAT THIS BOOKLET CONTAINS

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 residing abroad certain basic information to help them in promptly exercising their newly expanded right to register and vote absentee in all States for President, Senator and Representative, and in many States for State and local offices as well.

Section I describes the newly established right of Americans abroad to register and vote absentee in Federal elections under the Overseas Citizens Voting Rights Act of 1975 (Public Law 94-203).

Section II reviews the right of Americans abroad to vote in State and local elections, in addition to Federal elections, by use of the Federal Post Card Application (FPCA) in at least 35 States.

Section III tells where, how and when to apply for absentee registration and voting privileges, and how to address such applications.

Section IV contains samples of forms that can be utilized, in lieu of a personal letter, in applying for absentee registration and voting privileges for the 1976 elections and where such forms may be obtained.

Section V discusses the effect of voting on the Federal and State tax liability of Americans abroad.

In the Appendix section of this publication are several important documents setting forth the legislative and legal background governing the right of American citizens the world over to register and vote absentee in 1976.

Appendix A contains the text of the Overseas Citizens Voting Rights Act of 1975, Public Law 94-203, and a section-by-section analysis.

Appendix B contains excerpts from the Report of the House Administration Committee in support of the enactment of Public Law 94-203.

Appendix C contains a colloquy between Senator Charles McC. Mathias (R.-Md.) and Claiborne Pell (D.-R.I.) on the floor of the U. S. Senate, summarizing the Senate understanding of the tax law—Federal, State and local—applicable to overseas citizens voting in Federal elections under Public Law 94-203. Appendix C also contains a Memorandum of Law by Senator Goldwater (R.-Ariz.) on the Act's constitutionality.

Appendix D contains the text of the letter sent by J. Stanley Pottinger, Assistant Attorney General for Civil Rights of the U. S. Department of Justice, to the Governor, Secretary of State and Attorney General of each of the 50 States, and corresponding officials of the District of Columbia, Puerto Rico, Guam and the Virgin Islands, urging their implementation of and compliance with Public Law 94-203, accompanied by the Justice Department's interpretation of the statute which will guide the Department in its enforcement.

Appendix E contains a study by the Library of Congress of the State income tax liability of U. S. citizens residing abroad.

Appendix F contains an interpretive tabulation of this study by the United States Chamber to show the apparent State income tax liability of domiciliaries and non-domiciliaries voting in each State.

AMERICANS RESIDING OUTSIDE THE UNITED STATES CAN REGISTER AND VOTE ABSENTEE IN ALL FEDERAL ELECTIONS

AMERICANS RESIDING OUTSIDE THE UNITED STATES CAN REGISTER AND VOTE ABSENTEE IN ALL FEDERAL ELECTIONS

Every qualified American citizen residing outside the United States can now register and vote absentee in all FEDERAL ELECTIONS under the provisions of the Overseas Citizens Voting Rights Act of 1975 (Public Law 94-203). This law became effective January 1, 1976.

The Federal elections in which an overseas American may participate by absentee process are the Presidential and Congressional (Senate and House) primaries and general elections conducted in the State and election district where he or she was last domiciled immediately prior to departure from the United States.

This right to register and vote absentee under Public Law 94-203 is assured even though the overseas citizen does not maintain a place of abode or other address in the State or district, and his or her intent to return to the State or district is uncertain. (See Sec. 3, Public Law 94-203.)

To register and vote absentee under the new Act, the overseas citizen MUST—

(i) meet other applicable absentee registration and voting qualifications and requirements of the State or district consistent with the Act;

(ii) have a valid U. S. passport or Card of Identity; and

(iii) NOT maintain a domicile and NOT be registered to vote or be voting in any other State or election district or U. S. territory or possession.

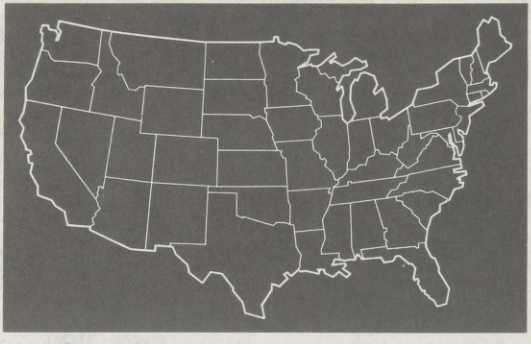
The Act requires each State to provide by law for the absentee registration and absentee voting of each qualified citizen residing outside the United States, whose application to register in a Federal election is received by the proper election official at least 30 days immediately prior to any such election, and whose application for an absentee ballot is timely received by the election official under State law.

Section III of this booklet describes where, when and how to send applications for absentee registration and voting in Federal elections under Public Law 94-203.

Section IV of this Guide contains a form of Application for Absentee Registration and Ballot for Federal Elections under Public Law 94-203 which was prepared by the Chamber of Commerce of the United States for the convenience of its affiliates and other Americans abroad. Extra copies of this form may be obtained from the Chamber's office in Washington, D. C. by using the order form on the last page of the Guide.

Section IV also contains a reproduction of both sides of the Federal Post Card Application for Absentee Ballot (FPCA) which is distributed by the Federal Government. Overseas citizens can try to use the FPCA to request absentee registration and ballots solely in Federal elections in the approximately 35 States which generally accept the FPCA from private citizens temporarily residing abroad. The National Chamber believes, however, that its own special form may be somewhat more protective of the State tax status of overseas citizens who are not domiciliaries of a State for purposes other than participating in Federal elections under Public Law 94-203.

TO PARTICIPATE IN STATE AND LOCAL (AS WELL AS FEDERAL) ELECTIONS AMERICANS TEMPORARILY RESIDING OUTSIDE THE UNITED STATES CAN REGISTER AND VOTE ABSENTEE BY FEDERAL POST CARD APPLICATION IN AT LEAST 35 STATES



TO PARTICIPATE IN STATE AND LOCAL (AS WELL AS FEDERAL) ELECTIONS AMERICANS TEMPORARILY RESIDING OUTSIDE THE UNITED STATES CAN REGISTER AND VOTE ABSENTEE BY FEDERAL POST CARD APPLICATION IN AT LEAST 35 STATES

Under the laws of at least 35 States and the District of Columbia, a private American citizen temporarily residing outside the United States can apply to register and vote absentee in state and local elections (as well as Federal elections) by Federal Post Card Application (FPCA). These 36 jurisdictions are classified by letter code in Section III of this Guide.

These State laws are based upon the Congressional recommendations in the Federal Voting Assistance Act of 1955, as amended, and have been adopted through the efforts of the Federal Voting Assistance Task Force of the Department of Defense.

The elections in which an overseas private citizen may register and vote absentee by FPCA are the Federal, State and local elections in his or her State and election district of retained domicile in the 35 States and the District of Columbia accepting the form. Although the requirements for retention of domicile vary from State to State, most of these 35 States require that an overseas citizen at least manifest an intent to return eventually to the State.

As indicated in Section V of this Guide, however, the retention of full State domicile to vote in State and local, as well as Federal, elections may subject the overseas citizen to State taxation in many States.

Each of the 35 States and the District of Columbia provides its own deadline for submitting applications for absentee registration and voting by FPCA. For these application deadlines and other detailed procedures in each State, one should consult the Defense Department Federal Voting Assistance Task Force's excellent *Voting Assistance Guide,* which is available for use at every U. S. embassy, consulate, USIA office, and military installation outside the United States, as well as at all American Chambers of Commerce abroad.

In Section III of this booklet, one will find information on where, when and how to send applications for absentee registration and voting in State and local (as well as Federal) elections under State law, using the FPCA.

Section IV of this booklet contains a sample FPCA. Additional FPCA forms are available from American Chambers of Commerce Abroad and U. S. Government offices overseas, as well as from the Government Printing Office in Washington, D. C.

As indicated in Section I of this Guide, overseas citizens can also try to use the FPCA in approximately 35 States for absentee registration and voting solely in Federal elections under the Overseas Citizens Voting Rights Act of 1975 (Public Law 94-203) without retention of full domicile in the State. If the FPCA is used for this purpose, however, the form should be specially marked to cover only Federal elections so as to reduce the chance of any adverse State tax consequences for a nondomiciliary of the State. See also the discussion in Sections III and V of this Guide.

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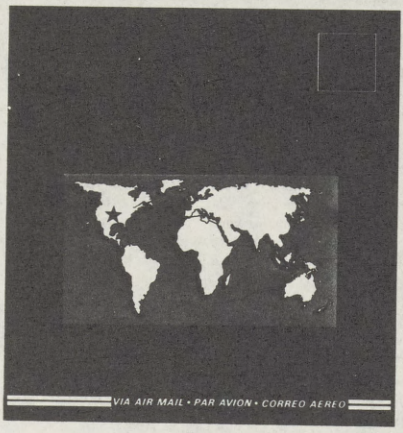
SECTION III

WHERE, WHEN AND HOW TO SEND APPLICATIONS FOR REGISTRATION AND VOTING ABSENTEE



WHERE OVERSEAS PRIVATE CITIZENS SHOULD APPLY TO REGISTER AND VOTE ABSENTEE IN FEDERAL, STATE AND LOCAL ELECTIONS IN THE UNITED STATES

STATE	ABSENTEE VOTER REGISTRATION	ABSENTEE BALLOTS
ALABAMA	County Board of Registrars	Registrar of the County Civil Circuit Court
ALASKA (B)	Local Election Board	Lt. Governor—Pouch AA—Juneau 99801
ARIZONA (C)	County Recorder	County Recorder
ARKANSAS (A)	County Clerk	County Clerk
CALIFORNIA (C)	County Clerk	County Clerk
COLORADO (B)	County Clerk (Denver—Election Commission)	County Clerk (Denver—Election Commissioner)
CONNECTICUT (C)	Town Clerk or Registrar of Voters	Town Clerk
DELAWARE (C)	County Department of Elections	County Department of Elections
FLORIDA (C)	County Supervisor of Registration	County Supervisor of Elections
GEORGIA (D)	County Board of Registrars	County Board of Registrars
HAWAII (B)	County Clerk (Honolulu—City Clerk)	County Clerk (Honolulu—City Clerk)
IDAHO (B)	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 (C)	City or Town Clerk or Commissioner of Registration	County Auditor or Commissioner of Registration
KANSAS (A)	City Clerk (In Johnson, Sedgwick, Shawnee and Wyandotte Counties with Election Commissioners)	City Clerk or County Election Commissioner
KENTUCKY (D)	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 (C)	Board of Supervisors of Election—County	Board of Supervisors of Elections—County
MASSACHUSETTS (A)	Town or City Clerk	City or Town Clerk
MICHIGAN (C)	City or Township Clerk	City or Township Clerk
MINNESOTA (C)	City Clerk or County Commissioner of Registration	City Clerk or County Commissioner of Registration
MISSISSIPPI (B)	Circuit Clerk (County Registrar)	County or City Registrar
MISSOURI (A)	County Clerk (Kansas City—St. Louis City and County Board of Election Commissioners)	County Clerk or Board of Election Commissioners
MONTANA (B)	County Clerk and Recorder	County Clerk and Recorder
NEBRASKA (C)	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 (B)	Board of Supervisors of Check-List of Town or City	Town or City Clerk
NEW JERSEY	County Clerk	County Clerk
NEW MEXICO (B)	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 (A)	(Registration Unnecessary)	County Auditor
OHIO	County Election Board	County Election Board
OKLAHOMA	County Election Board or Deputy Registrar	County Election Board
OREGON (C)	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 (B)	County Registration Board	County Board of Registration
SOUTH DAKOTA (B)	County Auditor	County Auditor
TENNESSEE (B)	County Election Commission	County Election Commission
TEXAS (B)	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 (B)	County Auditor or City Clerk	County Auditor
WEST VIRGINIA (D)	County Clerk	Clerk of Circuit Court or County Clerk
WISCONSIN (A)	City, Town or Village Clerk (Milwaukee—Board of Election Commissioners)	Town or City Clerk (Milwaukee—Board of Election Commissioners)
WYOMING (C)	County Clerk	County Clerk
DIST. OF COL. (B)	Board of D.C. Elections	Board of D.C. Elections

(A) FPCA accepted as request for absentee ballot. Separate registration waived or not required.
(B) FPCA accepted as simultaneous form of registration and request for absentee ballot.
(C) FPCA accepted as simultaneous request for special State registration form and for absentee ballot (which will be sent with registration form and may be returned with it).
(D) FPCA accepted as request for special State registration form which must be returned with separate request for absentee ballot.

APPLICATIONS FOR ABSENTEE REGISTRATION AND VOTING

NATIONAL CHAMBER FORM (FEDERAL ELECTIONS ONLY)

The Chamber of Commerce of the United States, in consultation with the Bipartisan Committee on Absentee Voting, has prepared a special form of Application for Absentee Registration and Ballot for Federal Elections for use by overseas citizens in exercising their franchise under the Overseas Citizens Voting Rights Act of 1975 (Public Law 94-203). This special form is reproduced in Section IV of the Guide.

Public Law 94-203 does not mandate any particular application form, but allows each State to accept whatever form may be consistent with the Act and the State's own laws. The National Chamber's special form, when completed by the overseas citizen, would provide a State with all of the information required by Public Law 94-203 to apply for absentee registration and voting in Federal elections.

If an overseas citizen uses the National Chamber's special form, he or she should carefully follow all instructions printed on the back of the form.

Observe that Item 5 of the special form calls for one's last domicile immediately prior to his or her departure from the United States. Item 6 makes clear, however, that the overseas citizen may not still have any place of abode or other address in his or her State and election district of last domicile, and that his or her intent to return to such State and district may be uncertain. Item 6 is important because, as described in Section V of this Guide (on State taxation), the question of the overseas citizen's intent to return to his or her State of last domicile may be a factor in the determination whether the overseas citizen retains State domicile for purposes (such as State tax liability) other than solely for voting in a Federal election under Public Law 94-203.

If desired, the National Chamber's special form in Section IV may be removed from the Guide. Extra copies of this form are available, singly or in quantity, at all American Chambers of Commerce abroad, and at U. S. embassies and consulates, or may be ordered from the Chamber of Commerce of the United States, 1615 H Street, N. W., Washington, D. C. 20062. One should ask for "Application for Absentee Registration and Ballot for Federal Elections (5293)". There is an order form on the last page of this Guide.

FEDERAL POST CARD APPLICATION (STATE AND LOCAL AS WELL AS FEDERAL ELECTIONS)

At least 35 States and the District of Columbia, listed on page 12 of this Guide, allow U. S. citizens temporarily residing outside the territorial limits of the United States to use the Federal Post Card Application (FPCA). The FPCA may be used in those States to apply for absentee registration and ballots for participation in all State and local (as well as Federal) elections in the overseas citizen's State and election district of retained domicile in the United States.

For these 35 States and the District of Columbia, the overseas citizen can also try to use the FPCA to apply for absentee registration and ballots solely in Federal elections in his or her State and election district of last domicile (even though he or she may not retain that domicile) pursuant to Public Law 94-203. If the FPCA is used for this purpose, however, the form should be specially marked to cover only Federal elections so as to reduce the chance of any adverse State tax consequences for a nondomiciliary of the State. See the discussion below in this Section and in Section V of the Guide.

The FPCA is printed and distributed by the Federal Government. Section IV of this Guide includes a copy of the FPCA. The list on page 12 of this Guide categorizes the manner in which the FPCA is accepted in each of the 35 States and the District of Columbia allowing use of the FPCA for absentee registration or voting.

FPCA forms are available (generally at no charge singly or in small quantities) at nearly all U. S. Government offices abroad (embassies, consulates, USIA offices, military installations, etc.) and at American Chambers of Commerce overseas.

State and Local (as well as Federal) Elections

If an FPCA is used to request absentee registration and voting materials in State and local as well as Federal elections, the overseas citizen should carefully follow the instructions set forth on the post card itself. The following hints on how to fill out each item of the FPCA have been adapted from the Defense Department's *Voting Assistance Guide:*

Top Line Fill in the State of legal residence (retained domicile) after "State or Commonwealth of _____."

Item 1. As a rule, an FPCA must be sent for every election in which a person desires to vote. Some State and local election officials will, however, mail all the ballots in an election year or the primary and general election ballots with the submission of only one FPCA. If a ballot is being requested for an election other than a primary or general election, it might be helpful to identify the election by its date or other descriptive words or phrase.

Item 5. This address should be the overseas voter's last address in his State and election district of retained domicile.

Item 6. This space may be used for any information that would be helpful to an election official. For example, persons who are using the FPCA to register absentee should write in "request registration; send ballot" (in a "B" State) or "Send registration forms" (in a "D" State), as appropriate. See letter categories on page 12 of the Guide.

Items 9-11. The FPCA should be signed at Item 9 in the presence of an attesting officer if required by State law.

Federal Elections Only

If an FPCA is used to request absentee registration and voting materials solely in Federal elections under Public Law 94-203, the overseas citizen should carefully follow the instructions set forth above and on the post card itself, with the following suggested changes:

Top Line Fill in the State of last domicile immediately prior to departure from the United States, even though one may not still have an abode or address in the State and his or her intent to return to the State may be uncertain.

Item 1. Insert the word "FEDERAL" before "ELECTION" and "UNDER P.L. 94-203" after "ELECTION."

Item 3. Place an "X" in Box (c) but strike the word "temporarily" unless one wants to signify retention of full domicile in the State with the attendant State tax consequences described in Section V of this Guide.

Item 5. This address should be the overseas citizen's last address in his State of last domicile immediately prior to departure from the United States.

Item 6. In addition to any other information, print "FEDERAL ELECTIONS ONLY."

Overseas citizens using the FPCA form to apply for absentee registration or ballots solely in Federal elections under Public Law 94-203 probably will have more success if they accompany the FPCA with a separate letter containing additional information of the type called for on the National Chamber's special Federal elections form.

HOW TO ADDRESS APPLICATION

In whatever form an application for absentee registration or ballot is made, it must be addressed to the County or local official or body shown in the Section III table on page 12; and to the County seat (city or town), County, State and Zip Code where the applicant was last domiciled before going overseas. For example:

Board of Supervisors of Election
of _____ County, _____ (State)
_____, _____, _____
(city or town) (state) (zip)
U. S. A.

If in doubt as to whom or where a letter or application for absentee registration should be addressed, send the request to the Secretary of State in the capital city of the State.

HOW TO DETERMINE COUNTY SEAT AND ZIP CODE

The *World Almanac* and the Defense Department's *Voting Assistance Guide* (a copy of which is available for examination in the offices of each American Chamber of Commerce, American embassy or legation, or Federal Government agency overseas) contain lists of States showing counties and county seats with principal Zip Codes. Use of this information will assure prompt delivery and handling. To identify a town or city with its county location, consult the Defense Department's *Voting Assistance Guide* or a road atlas of the United States and its index of cities, towns and counties.

POSTAGE

In mailing any application form or any request for absentee registration and voting materials, the applicant should affix the required Air Mail (Par Avion) postage of the country from which it is being mailed to the United States. This assures prompt delivery.

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.** The Overseas Citizens Voting Rights Act of 1975 (Public Law 94-203) requires each State to honor registration

applications received not later than 30 days prior to a Federal election, and to honor timely received absentee ballot applications. Each State has its own deadlines for receiving absentee registration and ballot applications for State and local elections.

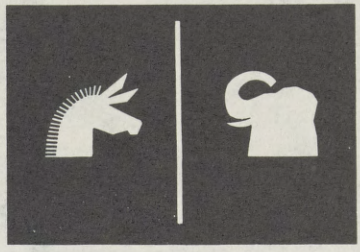
Care should be taken, however, to submit absentee registration and ballot applications well ahead of these statutory deadlines. The Senate Report on Public Law 94-203, for example, puts the overseas citizen on notice that if he or she makes application to register at the last minute, the chances are lessened that the local election official will have sufficient time to confirm the applicant's claim of last domicile in the State and compliance with other requirements of the Act.

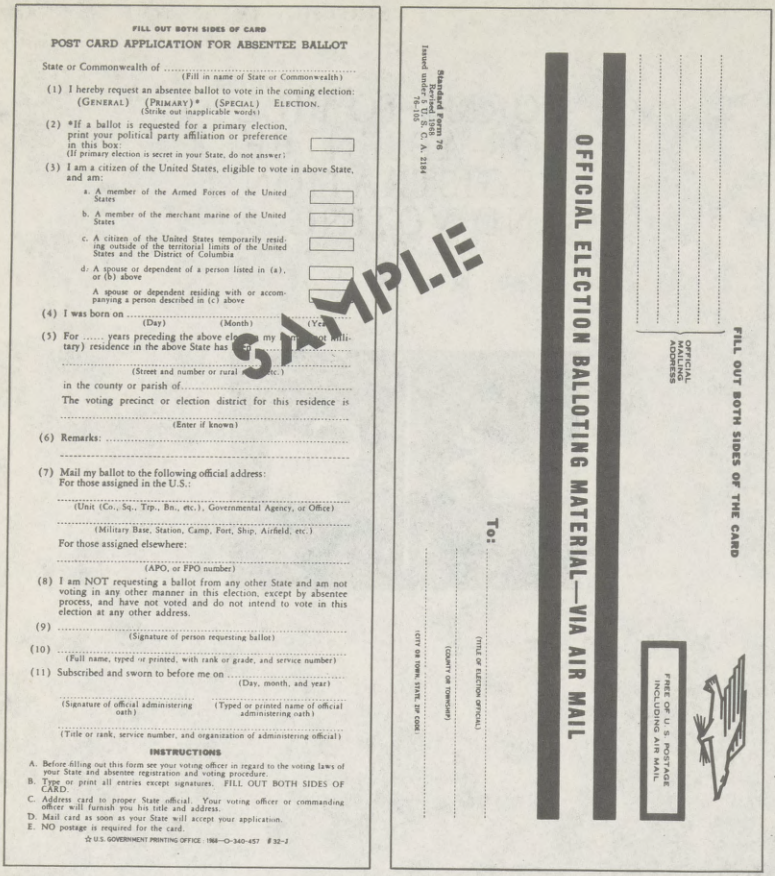
Similarly, the Report stresses that if the overseas citizen makes application for absentee ballot at the last minute, the chances are lessened that the local election official will have sufficient time to confirm the applicant's registration or other qualifications to vote under the Act.

Therefore, be prompt. Register now so that you will be prepared to vote, if not in your State's primary election, then at least in the general election in November.

SECTION IV

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 [illegible] of military) residence in the above State has been .....
(Street and number or rural [illegible] 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., Trp., 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

A. Before filling out this form see your voting officer in regard to the voting laws of your State and absentee registration and voting procedure.
B. Type or print all entries except signatures. FILL OUT BOTH SIDES OF CARD.
C. Address card to proper State official. Your voting officer or commanding officer will furnish you his title and address.
D. Mail card as soon as your State will accept your application.
E. NO postage is required for the card.

☆ U.S. GOVERNMENT PRINTING OFFICE: 1968—O-340-457 # 32-J

Standard Form 76
Revised Oct. 1968
Issued under P.L. 90-486
76-105

SAMPLE

FILL OUT BOTH SIDES OF THE CARD

OFFICIAL MAILING ADDRESS

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)

APPLICATION FOR ABSENTEE REGISTRATION AND BALLOT FOR FEDERAL ELECTIONS

Overseas Citizens Voting Rights Act of 1975 (P.L. 94-203)

(TYPE OR PRINT all entries except signatures)

TO: Election official in State of _____ County _____ City _____

1. To vote in Federal elections under P.L. 94-203 (42 U.S.C. § 1973dd), I hereby –
   - ☐ Register or request absentee registration form (if necessary).
   - ☐ Request absentee ballot for _____ (Month) (Day) (Year) Presidential ☐ Congressional ☐ election.
2. If a ballot is requested for a primary election, my political party affiliation or preference is _____ (If party choice is secret for primary election in this State, do not answer)
3. I am a United States citizen who has been residing outside the United States since _____ (Month), _____ (Year)
4. I hold a valid Passport or Card of Identity with Registration No. _____ issued by the United States Secretary of State.
5. My last domicile immediately prior to my departure from the United States was as follows:

   Street and Number or Rural Route, etc. _____
   City or Town _____
   County or Parish _____
   The voting precinct or election district for my last domicile is _____
   _____ (Enter if known)

   I was ☐ was not ☐ registered to vote in this precinct or election district.
6. Prior to my departure from the United States, I could have met all qualifications (except any qualification relating to minimum age) to vote in Federal elections in the above State and district under any present law, even though I may not have any place of abode or other address in the State and district, and my intent to return to the State and district may be uncertain.
7. I was born on _____ (Month) (Day), _____ (Year).
8. I have complied with all applicable qualifications and requirements of the above State and district, consistent with P.L. 94-203, concerning absentee registration for, and voting by, absentee ballot.
9. I do NOT maintain a domicile, am NOT registered to vote, and am NOT voting in, any other State or election district of a State or territory or in any other territory or possession of the United States.
10. Remarks _____
11. Please mail my ballot and other election materials to the following address:

    _____
    _____
    My permanent address outside the United States (if different) is _____
    _____
12. My full name is _____ (Type or print)
13. _____ (Signature of person requesting ballot) _____ (Month) (Day), _____ (Year)
14. Attestation (if required):
    Subscribed and sworn to before me on _____ (Month) (Day), _____ (Year)

    _____ (Signature of official administering oath)

    SEAL (if required)

    _____ (Typed or printed name of official administering oath)

    _____ (Title and organization of administering official)

This unofficial form was prepared by the Chamber of Commerce of the United States of America for the convenience of its affiliates.

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INSTRUCTIONS

A. TYPE OR PRINT all entries except signatures.
B. Mail form to proper State official as soon as your State will accept your application.
C. If you are not currently registered to vote in the State, you may want to attach additional information or copies of documentation to prove that the State was in fact your last domicile immediately prior to your departure from the United States (such as evidence of prior employment, school attendance, driver's license, property tax payment, memberships). Reference to any such additional information may be made at Paragraph 10 of the form.
D. "United States", under P.L. 94-203, includes the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, and the Virgin Islands but does not include American Samoa, the Canal Zone, the Trust Territory of the Pacific Islands, or any other territory or possession of the United States.
E. This form is an application to register and vote only in FEDERAL ELECTIONS. If you wish to request a ballot for State and local 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.
F. P.L. 94-203 provides that your application to register and vote must be received by the local election official not later than 30 days immediately prior to the election. Apply early to allow ample time for processing of your application and mailing of election materials.

WHO CAN VOTE UNDER P.L. 94-203

Every qualified U.S. citizen residing outside the United States can register and vote absentee in all FEDERAL ELECTIONS under P.L. 94-203 in his or her State and election district of last domicile immediately prior to departure from the United States.

This right to register and vote absentee under P.L. 94-203 is assured even though the overseas citizen does not maintain a place of abode or other address in the State or district, and his or her intent to return to the State or district may be uncertain.

To register and vote absentee under P.L. 94-203, the overseas citizen MUST –

(i) meet the other absentee registration and voting qualifications of the State or District;
(ii) have a valid U. S. Passport or Card of Identity; and
(iii) NOT maintain a domicile and NOT be registered to vote or be voting in any other State or election district or U. S. territory or possession.

Federal elections covered under P.L. 94-203 include primary, special and general elections for all federal offices– President, Vice President, Senator and Representative.

HOW AND WHERE TO ADDRESS YOUR APPLICATION

Nearly all U. S. Government offices abroad (e.g., embassies, consulates, military installations and USIA offices) and American Chambers of Commerce Abroad can advise you as to the proper official (supervisor, board of elections, town or county clerk, etc.) to whom and the county, city and zip code to which your application should be addressed.

If in doubt as to the county where you were last domiciled, address your application to the Secretary of State and mail it to the capital city of the State where you were last domiciled prior to going overseas.

Be sure to affix on the envelope the required airmail postage of the country from which it is being mailed.

SHOULD YOUR APPLICATION BE REJECTED–

And you believe you have been wrongfully denied the right to register and vote under P.L. 94-203, you may write the Department of Justice, Civil Rights Division, Washington, D. C. 20530, U. S. A., sending a copy of your letter to the Public Affairs Department, Chamber of Commerce of the United States, 1615 H St., N.W., Washington, D. C. 20062.

WARNING: Whoever knowingly or willfully gives false information as to his name, address, or period of residence for the purpose of establishing his eligibility to register, qualify or vote under this Act, or conspires with another individual for the purpose of encouraging the giving of false information in order to establish the eligibility of any individual to register, qualify, or vote under this Act, or pays, or offers to pay, or accepts payment either for registration to vote or for voting shall be fined not more than $5,000, or imprisoned not more than five years, or both.

– 42 U.S.C. § 1973dd-3
Overseas Citizens Voting Rights Act of 1975

SECTION V

EFFECT OF VOTING ON THE FEDERAL AND STATE TAX LIABILITY OF AMERICANS ABROAD

EFFECT OF VOTING ON THE FEDERAL AND STATE TAX LIABILITY OF AMERICANS ABROAD

The Chamber of Commerce of the United States has prepared the following general outline of the effect of voting on the Federal and State tax liability of Americans abroad. **Since the legal situations of various individuals may differ, however, the Chamber recommends that each overseas citizen obtain independent advice on his or her own tax status.**

FEDERAL TAXATION

Voting in any U. S. elections—Federal, State or local—should have no effect on the Federal income or estate tax liability of U. S. citizens residing abroad.

Income Taxation

All U. S. citizens, whether residing at home or overseas, are subject to Federal income taxation on all of their income, subject to certain exclusions and credits. For the citizen residing abroad, the Internal Revenue Code currently allows an exclusion of $20,000 to $25,000 for income earned in private employment outside the United States. The Internal Revenue Service has issued a ruling (Revenue Ruling 71-101, 1971-1 Cumulative Bulletin 214) stating that the overseas citizen would not lose this exclusion solely by voting in U. S. elections. This ruling has been further clarified by a letter, dated August 28, 1972, from the Acting Chief of the Corporation Tax Branch of the Internal Revenue Service to Senator Goldwater.

The overseas citizen does not enjoy any Federal income tax exemption for investment income by reason of residence outside the United States. Investment income of overseas citizens is subject to Federal income taxation in the same manner as investment income of citizens at home. This includes dividends, interest, rent, royalties—all income other than income earned in private work overseas. Federal taxation of an overseas citizen's investment income, therefore, is not affected in any way by voting in U. S. elections.

Voting in U. S. elections also does not affect in any manner the overseas American citizen's eligibility for the foreign income tax credit allowed by the Internal Revenue Code on certain of his foreign source income.

Estate Taxation

The overseas American citizen is fully liable for Federal estate tax to the same extent as citizens residing in the United States. The Internal Revenue Code provides no exemption from Federal estate tax for U. S. citizens by virtue of their residence overseas. Consequently, voting in U. S. elections would have no effect whatever on the Federal estate tax liability of overseas citizens.

STATE TAXATION

The effect of voting in U. S. elections on the State income tax or inheritance tax liability of overseas American citizens will vary from State to State. In many States, it may depend on whether the overseas citizen votes only in Federal elections, or votes in both Federal and State elections.

FEDERAL ELECTIONS

"Applicable Law"

The House Administration Committee deleted a provision in the Overseas Citizens Voting Rights Act of 1975 which would have clarified the State tax status of the overseas citizen voting only in Federal elections. The House Committee did not take the position that overseas citizens should necessarily be subject to state tax liability solely for the privilege of voting in Federal elections under the Act. The Committee Report said they deleted the tax provisions as simply "inappropriate for this legislation."

The Chairman of the House Administration Committee summarized the Committee's position during consideration of the legislation on the House floor:

> The amended bill is neutral on the question of taxation and neither restricts the right of a State or locality to attempt to tax an overseas citizen voting in federal elections under this bill, nor limits the right of an overseas citizen to contest the imposition of such taxation under *applicable law*. (Emphasis added.)

What is the "applicable law" under which an overseas citizen could contest the imposition of state and local taxation solely for voting in Federal elections?

Senators Pell and Mathias outlined their views of the "applicable law" in the Senate debate on the Act (reproduced as Appendix C to this Guide). As to state and local taxes, the Senators said:

> First, the 24th amendment [the Poll Tax Amendment] insures that a State cannot, in effect, inhibit "citizens of the United States" from voting in Federal elections in the State by imposition of "any poll tax or other tax." Such a State tax would be equally suspect whether it were imposed on the overseas citizen before or after he were to vote in Federal elections.
>
> * * * * *
>
> Second, compelling an overseas citizen to pay State and local taxes solely for the privilege of voting in a Federal election, without the citizen enjoying any of the rights and privileges incident to domicile in the State, might well be a violation of the due process clauses of the fifth and 14th amendments as well as of the poll tax amendment.

The Senators emphasized, however that the Act "will not preclude a State from seeking to impose taxation on an overseas citizen if the State can reasonably prove that such tax liability has a basis *other than voting in Federal elections in that State.*" (Emphasis added.)

Income Tax

The Library of Congress state-by-state study of income tax liability of U. S. citizens residing abroad and the National Chamber's interpretive tabulation of this study (discussed below and included as Appendixes E and F to this Guide) indicate that many States grant partial or complete State income tax exemptions to private citizens residing abroad even for voting in State and local elections, as well as in Federal elections. These exemptions do not necessarily depend on the Poll Tax Amendment (which applies only to Federal elections), but they are consistent with the guarantees in the Due Process Clauses of the Constitution.

The National Chamber's interpretive tabulation shows, nevertheless, that a nondomiciliary may have to rely on the Poll Tax Amendment in at least 31 States in order not to be subject to State income tax on income derived outside the State solely for voting in Federal elections under Public Law 94-203. To the National Chamber's knowledge, however, none of these 31 States has yet ruled on the application of the Poll Tax Amendment in the case of a nondomiciliary voting only in Federal elections under the new Act. The National Chamber understands that several organizations are requesting rulings from State tax authorities on the effect of voting solely in Federal elections under Public Law 94-203 on State tax liability.

If any overseas citizen believes that a State is unjustifiably seeking to impose State tax liability solely for voting in Federal elections under Public Law 94-203, the National Chamber would appreciate receiving information about any such action.

Inheritance Tax

State inheritance or estate tax is generally imposed on overseas citizens on the basis of State domicile. Although the Library of Congress and the National Chamber have not made detailed studies of the overseas citizen's potential State inheritance tax liability for voting solely in Federal elections, it would appear that the overseas citizen's executors would also have the Poll Tax Amendment and Due Process Clause arguments available to protect imposition of inheritance tax solely for voting in Federal elections.

STATE ELECTIONS

Income Taxation

The Library of Congress study in Appendix E to this Guide indicates that virtually all States having income taxes impose them upon the entire income of residents and upon the income of nonresidents derived from sources within the State. The study shows that the vast majority of States define the term residence to include individuals domiciled in the State, but that an individual does not necessarily have to live in a State during the year in order to be considered domiciled there, and thus, subject to the State's income tax.

Consequently, the Library of Congress study concludes, determining whether an individual residing abroad is domiciled in a particular State is "generally the crucial factor as to whether or not the individual is subject to that State's income tax laws."

The Library's study observes that "no uniform test of domicile exists among the States and the meaning of domicile may be different for tax purposes than for others." It notes that American courts often consider a wide variety of facts and circumstances in considering an individual's domicile, which may include voter registration and exercise of suffrage. Indeed, the study shows that voting in the State is prima facie evidence or gives rise to a presumption of domicile in a number of States.

The Library of Congress study (Appendix E) and the National Chamber tabulation (Appendix F) disclose, however, that the State income tax liability of overseas private citizens domiciled in a State and voting in State elections may be reduced or eliminated in many instances through the availability of exclusions or credits, such as the exclusion for income earned abroad (as in Federal law); the exclusions for income derived outside the State if the citizen is residing abroad other than temporarily, or meets certain presence and abode tests; and the credit for foreign income taxes paid.

Inheritance Tax

As noted above, State inheritance or estate tax is generally imposed on overseas citizens on the basis of State domicile. This Guide does not include studies of the overseas citizen's potential State inheritance tax liability for voting in state and local elections. If the overseas citizen does plan to vote in State elections, and is concerned about potential inheritance tax liability, it is recommended he or she seek independent legal advice.

LIBRARY OF CONGRESS STUDY/ NATIONAL CHAMBER TABULATION

Because of the variations in State law, Senator Barry Goldwater (R.-Ariz.) commissioned the Congressional Research Service of the Library of Congress to prepare a detailed study of the State income tax liability of U. S. citizens residing abroad (included as Appendix E to this Guide). The Chamber of Commerce of the United States has prepared an interpretive tabulation of the Library of Congress study (included as Appendix F to this Guide) to show the effect, if any, of voting in Federal and State elections on the State income tax liability of private citizens residing abroad.

As noted above, the Library of Congress study and the National Chamber tabulation indicate that many States grant partial or complete State income tax exclusions or credits to private citizens residing abroad

even for voting in State and local elections.

Set forth below is a partial breakdown of the National Chamber's interpretive tabulation for the 50 States and the District of Columbia:

1. **Applicable criteria for State income tax coverage:**
   - 31 States—Domicile (general rule with voting often a factor)
   - 8 States—Domicile unless certain presence and foreign abode tests satisfied
   - 3 States—Domicile unless residency abroad other than temporary
   - 9 States—No general personal income tax
2. **Relevant exclusion from State income tax base for foreign-earned income:**
   - 29 States—Exclusion for income earned abroad (as in Federal law)
   - 13 States—No exclusion
   - 9 States—Not applicable (no general personal income tax)
3. **Availability of credit for foreign income taxes paid**
   - 11 States—Credit available in whole or in part
   - 31 States—No credit available
   - 9 States—Not applicable (no general personal income tax)
4. **Apparent tax obligation of domiciliary voting in both Federal and State elections***
   - 10 States—Subject to State income tax on all income (only stock dividends and bond interest in Tennessee)
   - 3 States—Not subject to State income tax on any income derived outside State if residing abroad other than temporarily
   - 8 States—Not subject to State income tax on any income derived outside State if certain presence and foreign abode tests satisfied
   - 22 States—Not subject to State income tax on income earned abroad to same extent as in Federal law, generally $20,000-$25,000 (nor on any non-Michigan source income in Michigan)
   - 9 States—None (no general personal income tax)
5. **Apparent tax obligation of nondomiciliary solely for voting in Federal elections under Public Law 94-203**
   - 31 States—Not subject to State income tax on any income derived outside State if exemption granted under Poll Tax Amendment or otherwise
   - 3 States—Not subject to State income tax on any income derived outside State if residing abroad other than temporarily
   - 8 States—Not subject to State income tax on any income derived outside State if certain presence and foreign abode tests satisfied
   - 9 States—None (no general personal income tax)

*Illinois is counted among both the States with the $20,000-$25,000 exclusion for income earned abroad and also the States not taxing domiciliaries residing abroad other than temporarily.

EXHIBIT 8

Chamber of Commerce of the United States

1615 H STREET, N.W.
WASHINGTON, D.C. 20062

PUBLIC AFFAIRS DEPARTMENT
JOHN A. KOCHEVAR, *Manager*
■ Fred Radewagen, *Director, Political Participation Programs*
■ Robert T. Snure, *Staff Associate, Legislative/Political Research*
■ Karen J. Bauer, *Director of Promotion*

(202) 659-6152

January 21, 1977

URGENT REQUEST

TO: CHIEF EXECUTIVE OFFICERS OF AMERICAN CHAMBERS OF COMMERCE ABROAD AND OTHER MEMBERS OF THE BIPARTISAN COMMITTEE ON ABSENTEE VOTING

FROM: ROBERT T. SNURE

Senator Claiborne Pell, Chairman, and Senator Robert Griffin, Ranking Minority Member, of the Subcommittee on Privileges and Elections of the Senate Rules and Administration Committee, have expressed interest in holding hearings early this year (perhaps in March) to determine whether changes are needed in the Overseas Citizens Voting Rights Act of 1975 (P.L. 94-203).

Such changes, for example, could seek to correct overseas Americans' adverse experiences under the Act during the 1976 election period and difficulties encountered in the Act's administration at state and Federal levels. Efforts could also be made to strengthen the Act's provisions to conform with Congressional intent to guarantee equal voting rights in Federal elections for all overseas Americans.

To assist in this effort, the Chamber of Commerce of the United States has been asked to canvass, with the assistance of AmChams and the organizational members of the Bipartisan Committee on Absentee Voting, a representative cross-section of nongovernmental adult American citizens located outside the United States to determine what problems, if any, they encountered in seeking to register and/or vote in the 1976 Federal elections. Information collected through the attached questionnaire will be tabulated and utilized by the Chamber and the Bipartisan Committee in testimony before Congressional committees, recommending needed improvements in the Act prior to the 1978 Federal elections.

We need your assistance in distributing copies of the questionnaire to a representative cross-section of nongovernmental Americans in your country. Your assistance is also needed to collect and return the completed questionnaires to us in Washington.

Please insert, prior to distributing the questionnaire, the name and address of your organization to assure the questionnaires are returned to you.

A suggested cover letter for your use on your organization's letterhead to accompany each questionnaire to each overseas American is also enclosed.

-over-

As batches of completed questionnaires are returned to you, please Air Mail them back to me for prompt processing. All information should be back in my hands no later than March 1. However, if it is impossible to meet this deadline, please send the completed information to me as soon as possible thereafter.

Such tabulations as are derived from these answers will be supplied to you, as will any Chamber and Bipartisan Committee testimony.

For the supply of cover letters and questionnaires each of you will need, we would suggest—in the interest of time—that each AmCham and other organization reproduce in quantity the copies needed. If necessary, copies may be ordered from the U. S. Chamber at cost. However, the latter process may retard the project because of the time required to reproduce needed copies and because of possible mailing delays.

Our joint cooperation in this project and in working with key members of the Senate and House should pave the way for appropriate amendments to and improved administration of the Overseas Citizens Voting Rights Act of 1975. J. Eugene Marans, Counsel to the Bipartisan Committee, and staff members of the U. S. Chamber's Center for International Business Relations, are jointly assisting me in this project here in Washington.

Please advise me promptly by return mail or telex (RCA No. 248302) your reaction to this memorandum, whether and how you will assist in this effort, and in what manner we can be of assistance.

Only with your help from abroad can the success of this major legislative effort be assured.

Enclosures (2)
cc: Mrs. E. M. Kay Vest
John L. Caldwell
J. Eugene Marans, Esq.

(Suggested letter to be prepared and sent by each AmCham and other organizations over signature of appropriate official)

Dear Overseas American:

The ___(name of organization)___ and the Chamber of Commerce of the United States have been asked to cooperate with the Privileges and Elections Subcommittee of the Senate Rules and Administration Committee in surveying the problems faced by Americans abroad in trying to register and vote absentee in Federal elections under the Overseas Citizens Voting Rights Act of 1975.

Senator Claiborne Pell, Chairman, and Senator Robert Griffin, Ranking Minority Member, of the Subcommittee have indicated they would like to hold hearings early this year (perhaps in March) to determine what changes in the law or procedures could be adopted to solve these problems.

If you would like to assist in recommending improvements in the Act for the next Federal elections to be held in 1978, you can—as an American citizen—make an important contribution by completing the attached brief questionnaire and returning it to us at the above address no later than ___(date)___.

Your cooperation will be greatly appreciated.

Sincerely,

Enclosure

87-234 O - 77 - 15

(In filling out, please type or print)

CONFIDENTIAL QUESTIONNAIRE

If you would like to help assist the Chamber of Commerce of the United States in recommending improvements in the implementation of the Overseas Citizens Voting Rights Act (P.L.94-203), you can make an important contribution by completing the following brief questionnaire and returning it to us immediately. If more space is needed to answer questions, please attach an additional page or pages.

I. OVERSEAS VOTING

A. In the November, 1976, elections did you vote
for President/Vice President? ( ) yes ( ) no
for Senator and/or Congressman? ( ) yes ( ) no

B. If you did not vote, please check one or more of the answers below as may be appropriate:

1. Did not know I could vote. ( )
2. Did not want to vote. ( )
3. Concerned that state tax liability might be imposed by my last state of domicile. ( )
4. Did not obtain absentee ballot in time. ( )
5. Could not obtain absentee voting materials from state or county officials at all. ( )
   a. Which state or county? _____
   b. Approximate date of your initial request. _____
   c. What form did you use to request absentee registration or voting materials——FPCA? ( )
      U. S. Chamber? ( )
      Other? ( )

   If "other," please specify_____
6. Could not obtain notarization of ballot application in foreign country. ( )
7. Other reason(s) for not voting (please specify)_____

C. If you did vote, did you experience any difficulty in obtaining forms for absentee registration and voting? ( ) yes ( ) no
( ) not applicable.

D. Did you try to vote in any Presidential/Congressional primary election in 1976? ( ) yes ( ) no

If "yes," did you encounter any problems? Please explain_____

E. Did you try to vote in State/local elections in 1976? ( ) yes ( ) no

If "No," did election official send state/local election ballot with Federal ballot nevertheless? ( ) yes ( ) no

(Questionnaire continued on reverse side)

F. 1. What sources of voting assistance, if any, did you use in your country of foreign residence -
U. S. Embassy or consulate? ( ) American Chamber of Commerce? ( )
Armed Forces? ( ) Other? ( ), please specify _____

2. What voting assistance improvements would you recommend, if any?

G. Did you find any aspects of the new Federal overseas voting law especially confusing or cumbersome (e.g., filing dates, how to mail, taxes, identification)? ( ) yes ( ) no

If "yes," please explain: _____

II. DOMICILE AND STATE TAXES

A. 1. In what city, county and state were you last domiciled in the United States? (see Note immediately below)

_____ _____ _____
(city) (county) (state)

2. Do you still consider yourself to be domiciled in this state for purposes other than voting in federal elections (such as voting in state and local elections, driver's license, liability for state income or inheritance taxes)?
( ) yes ( ) no

3. If you do not retain a domicile in this state for purposes other than voting in Federal elections, do you consider yourself a domiciliary of the country in which you now reside? ( ) yes ( ) no

4. If your answers to questions 2 and 3 above are "no," what country or state do you now regard as your domicile (if any) for income and inheritance tax purposes?
Country or State: _____ ( ) None at present
(please specify)

(Note: Domicile generally means the fixed and permanent location to which a person has the intention of returning even though he or she may be absent for an extended period. Residence means the person's current place of abode without regard to making it a fixed and permanent home.)

B. In what foreign country do you now reside? _____
C. How long have you resided in that country? _____
D. What is your present occupation? _____

III. OPTIONAL INFORMATION

Your name _____

Your present address _____

NOTE: The aggregate information furnished on this form and others returned to the Chamber of Commerce of the United States will be provided to the appropriate Senate and House committees. The U. S. Chamber will not, however, submit a copy of any individual completed questionnaire to any such committee nor disclose to any such committee or other government body the names of the person submitting these forms.

RETURN ADDRESS FOR THIS FORM IS: _____

NCING VOLUNTARY LEADERSHIP IN A CHANGING WORLD

Chamber of Commerce of the United States

PUBLIC AFFAIRS DEPARTMENT
JOHN A. KOCHEVAR, Manager
■ Karen J. Bauer, *Director of Promotion*
■ Fred Radewagen, *Director of Governmental and Political Participation Programs*
■ Dorann H. Gunderson, *Associate Director of Governmental and Political Participation Programs*
■ Robert T. Snure, *Staff Associate, Legislative/Political Research*
■ John D. Sullivan, *Director for Interpreting Business and Economic Education Activities*

(202) 659-6152

1615 H STREET, N.W.
WASHINGTON, D.C. 20062

April 6, 1977

The Honorable Claiborne Pell, Chairman
Subcommittee on Privileges and Elections
Senate Rules and Administration Committee
Room 310 Russell Senate Office Building
Washington, D. C. 20510

Dear Senator Pell:

In cooperation with you and the Committee, the National Chamber sought through a questionnaire, distributed by a number of American Chambers of Commerce Abroad, to determine difficulties encountered by overseas Americans in attempting to participate in the 1976 Federal elections under the Overseas Citizens Voting Rights Act of 1975 (Public Law 94-203).

It was our joint hope that the information developed from responses to such a questionnaire would be of value to the Senate and House in determining those changes that should be adopted in the Act or procedures thereunder in time for the 1978 Federal elections.

In his testimony of March 8, in support of the enactment of the Pell-Mathias-Goldwater bill, S. 703, with amendments, William G. Whyte, Chairman of the National Chamber's Public Affairs Committee cited preliminary findings based on early returns from this questionnaire. Final tabulations have now been completed of the 573 respondents from Switzerland, Mexico, The Netherlands, France, Italy, Argentina, Belgium, Costa Rica, and miscellaneous locations.

It is my pleasure to enclose twelve copies of these tabulations for the Committee's use. Combined with these, for the Committee's consideration should be 1,323 returns from Australia, Hong Kong, Japan, Taiwan, and Thailand, tabulated in a similar survey made by the Asian-Pacific Council of American Chambers of Commerce and sent to you on February 22 by J. Roger O'Neil, Vice Chairman of APCAC, of Singapore.

I am also enclosing, as promised in our testimony, a copy of our questionnaire and the suggested letter to accompany each to overseas Americans.

If we can be of further assistance in your effort to gain enactment of S. 703, please let us know.

Sincerely,

Robert T. Snure

Enclosure

-over-

P.S. I am taking the liberty of sending copies of this letter, along with the tabulation, to:

Senator Charles McC. Mathias

Senator Barry Goldwater

All AmCham Chief Executive Officers

J. Roger O'Neil of APCAC

J. Eugene Marans, Esq., of the Bipartisan Committee on Absentee Voting

William G. Whyte

Robert T. Snure

Chamber of Commerce of the United States of America

Washington

April 1, 1977

ANSWERS TO QUESTIONNAIRE

Re: Voting in 1976 Federal Elections-U.S.A.

TOTAL RESPONDENTS—573

FROM: SWITZERLAND (156); MEXICO (122); NETHERLANDS (106); FRANCE (68); ITALY (50); ARGENTINA (19); BELGIUM (18); COSTA RICA (17); MISC. (17).

I. OVERSEAS VOTING - NOVEMBER 1976

		Yes	% Total	No	% Total
A.	Did you vote for President/Vice President?	260	45.4	313	54.6
	Did you vote for Senator/Congressman?	190		322	

B. If you did not vote, check one or more of answers as may be appropriate:

		Number	% of Non-voters*
1.	Did not know I could vote	22	7.0
2.	Did not want to vote	21	6.6
3.	Concerned that state tax liability might be imposed	137	43.8
4.	Did not obtain absentee ballot in time	97	31.0
5.	Could not obtain absentee voting material at all from state/county officials	52	16.6
	Which state or county? (Specified the most.) New York	47	
	Texas	11	
	New Jersey	10	
	Illinois	9	
	Calif.	6	
6.	Could not obtain notarization of ballot	7	
7.	Other reasons (See Attachment A)	71	

4 + 5 = 149 — 47.6

C.	If you did vote, did you experience any difficulty in obtaining forms for absentee registration/voting?	65 Yes; 172 No
D.	Did you try to vote in Presidential/ Congressional primary?	75 Yes; 307 No

E. Did you try to vote in State/local elections in 1976? 62 Yes; 426 No

If "No," did election official send state/local election ballot with Federal ballot nevertheless? 73 Yes; 224 No

F. 1. What sources of voting assistance, if any, did you use in your country of foreign residence - U. S. Embassy or consulate? 256, American Chamber of Commerce? 50, Armed Forces? 0, Other? 35.

2. What voting assistance improvements would you recommend, if any? (See Attachment B)

G. Did you find any aspects of the new Federal overseas voting law especially confusing or cumbersome (e.g., filing dates, how to mail, taxes, identification)? 133 Yes; 170 No

If "Yes," please explain: (See Attachment C)

II. DOMICILE AND STATE TAXES

A. 1. In what city, county and state were you last domiciled in the United States? Answered: 534

2. Do you still consider yourself to be domiciled in this state for purposes other than voting in federal elections (such as voting in state and local elections, driver's license, liability for state income or inheritance taxes)? 205 Yes; 328 No

3. If you do not retain a domicile in this state for purposes other than voting in Federal elections, do you consider yourself a domiciliary of the country in which you now reside? 254 Yes; 177 No

4. If your answers to questions 2 and 3 above are "no," what country or state do you now regard as your domicile (if any) for income and inheritance tax purposes? Different than A.1.—117; Same as A.1.—69; No Response—342

B. In what foreign country do you now reside? Identified - 529

C. How long have you resided in that country?

Less than 1 yr.	- 55
1 - 3 yrs.	- 168
3 - 5 yrs.	- 69
5 - 10 yrs.	- 104
10 - 15 yrs.	- 58
Over 15 yrs.	- 58
Born There	- 3

(Note: Not all questions were answered; thus accounting for varying totals.)

* Percentages exceed 100% as same respondent might have checked more than one answer.

Answers to Chamber Questionnaire -- Samples ATTACHMENT A, Page 1

OTHER REASONS FOR NOT VOTING:

-- I have no residence any longer at previous U. S. Address.
-- General lack of instructions, clear and precise.
-- Have no domicile in U.S.A.
-- I thought I could not vote for Congressional candidates.
-- Did not undertake to obtain absentee ballot in time.
-- Rejected by county officials because of no passport number; appealed to Secretary of State but local decision sustained.
-- Extremely difficult to get absentee information even through U. S. contacts.
-- Am not domiciled anywhere in the USA.
-- Made application for absentee ballot per instructions in Tico Times through U. S. consulate. Received applications from County Board of Elections; both were submitted. No ballot ever received.
-- Requested Federal election forms but instead received city voting forms.
-- Lack of information from any source.
-- Didn't really know where to ask. Then time fell too short.
-- Absentee ballot received from New Hampshire only ten days before election. Unreliability of international air mail prevented return on time.
-- Ballots did not arrive on time.
-- Ballots received from Massachusetts only 1 week before they had to be returned and mail from Italy to U.S. often takes over 1 week. Besides it was required that ballot be marked in presence of a consular official, but there is no consulate in this vicinity.
-- Ohio did not accept U. S. embassy voter registration form (notarized). Delays resulted in my receiving Ohio voter ballot on day before election, too late to vote.
-- Notarization formalities, paper work, etc. are not worth the effort.
-- Procedure to obtain ballot unknown.
-- Impossible to find anyone knowledgeable enough to instruct me where to apply.
-- Could not get absentee ballot notarized at Embassy. Service only available one afternoon a week.
-- Considered the procedure too complex and time-consuming.
-- Ballot was not sent me despite timely request.
-- California form required me to affirm residing in state. Crossed this out so feel certain my ballot was not counted.
-- Called U.S. Embassy and found it too late to have ballot notarized, etc.
-- Travelling.
-- I wrote request 8 months ahead of election; answer arrived too late.
-- I did not know the address to which I should write.
-- When I called personnally for my forms, the Clerk of Registry made known his personal hostility to absentee voters.
-- Delayed too long in writing to a friend in California to send me necessary forms and information.
-- The whole process is too long, drawn out and complicated.
-- I have no property or residence in USA. Without an address I do not know how I could become registered for voting.
-- I have never received from consulate any information pertaining to my voting rights abroad. Where are these forms available? Where and how can I vote?
-- Did not know address in U.S. to obtain absentee ballot from.
-- Too complicated, difficult and time consuming.
-- In California, I was told I could not register because of my foreign address.
-- We live in small village where there is no one to notarize.
-- Did not have Overseas Citizens Voting Rights law so didn't know what was involved if I vote.
-- Procedure seemed too complicated.
-- Lack of readily available information.

--Could not get proper information for requesting ballots.
-- Trouble obtaining a ballot.
--Did not know where to apply for absentee ballot.
--Form used by Armed Forces not accepted by Bergen County, N.J. Sent own form which could not be returned in time.
--Registered with County Clerk who had no idea what this was all about. Upon his inquiry was advised to request absentee ballots 6 weeks prior to election from the office in Cook County, Illinois.
--voting materials arrived on Nov.4, 1976, via regular mail(from New Jersey) although an Air Mail reply was duly requested.
-- I am still uncertain whether I should consider myself a resident of State of New York; I am not certain whether I shall again take up residence there when I return to US. I heard from a number of sources that the Swiss laws do not permit aliens temporarily residing here to vote in elections taking place outside Switzerland.I have lived here 5 years.
--My board of elections in New York City failed to even answer my request and follow up.
--I did not know where to register and get voting materials.
--I voted in 1972 elections at much expense of time and money in Netherlands and didn't have so much time in 1976 -- two small children.
--I understand that as a U.S.citizen without a legal address in the U.S. I cannot vote. Being domiciled in Switzerland, not having a legal address in the U.S., does not permit me to vote.
--Feel very strongly I should be able to vote in country of domicile.
--Ballot needed witness and I didn't want to have Swiss husband or children sign.
--Felt it was too late to apply since my husband who applied in July had heard nothing.
--Telephoned D. C. election board while visiting Washington in July 1976, to ask now to get absentee ballot. Never got precise information on that, but was asked many questions about taxpayer status. (We left District in 1971). Decided to abandon idea of voting.
--U. S. embassy could not supply ballot without proof of prior Texas residency.
--The New York absentee ballot which finally arrived was to be sealed in an envelope with the voter's name, voting district, etc. I believe this contradicts the concept of the secret ballot and could be unconstitutional.
--Received ballot the Saturday before election. Not certain that my ballot would count.
--Did not know how to obtain ballot.
--Did not know who to write, how to do it or what the process was.
--Ballot mailed from Illinois Oct. 15; received Mexico Oct. 28; no way to return by Nov.2.
-- County clerk (New Jersey) advised that too much time elapsed since my last registration (15 years).
-- Too much red tape to get into U. S. embassy to notarize.
--Procedure too cumbersome and time consuming.
--I have never resided in the U.S. outside of military service and so have no state of residence where I can register.
--Ballot notarization cost us $35 in Australia.
--Election forms were only for people in military; could not use them if we'd wanted to.
--Lived only 3 years in Illinois and do not intend to return there. All business,bank accounts now in Texas; would like to consider that home and for voting. How?
--Although born in California, I have never resided there, so I have no last state of domicile.
--I have not been a resident of U.S. as citizen of voting age. I have no state from which to request a ballot.
--Left U.S.A. 1960, name removed from voting list. It was listed again in 1972.Thought absentee ballot would be sent automatically in future. My error!

VOTING ASSISTANCE IMPROVEMENTS RECOMMENDED: ATTACHMENT B, page 1

Sample answers -

--That embassy have sufficient forms; I had to use Armed Service form which caused such delay I received my ballot two days late.
--An earlier return of the ballot to allow time to have signatures notarized. We had to make at least two trips of 200 miles each way for notary service.
--Standardized ballot available at embassy.
--Send the voting form in ample time and check the signature against the one you have in California.
--Each state has different voting procedures. These should be more available through the U. S. embassy.
--A provision of lifetime foreign residents to be able to register at their nearest U. S. consulate as they have no state in U.S.where they can claim prior residence.
--Send information direct to registered American citizens in overseas communities.
--Do not insist embassy personnel notarize.
--Simplify the process by a single registration at the embassy and a mailed ballot after that.
--More precise activity and specific knowledge on the part of the American embassy.
--There was some confusion at the Embassy as to what was required. This should be resolved by the time of the next election.
--Eliminate notarization requirement.
--More accessible information on the various state requirements for absentee voting.
--Clear definition of manner in which U. S. citizens abroad can vote.
--That we have the name and telephone number of someone in each state to call.
--A department in foreign residence able to facilitate receiving ballot in adequate time to return in time before election.
--Change in the state law which now prohibit mailing of absentee ballot applications until an impossibly late date.
--Eliminate necessity of passport as identification. Require only normal means of identification to satisfy voting authority.
--Send ballot in time to use.
--Send ballot at least three weeks before election.
--Send ballot faster. Do not wait until almost the election. Use Air Mail only.
--Haste. No red tape.
--Should not be necessary to have notarization. Notary facilities not available in foreign countries as in U.S.A.
--More information available at the embassy and consulate.
--Simplify obtaining forms. Advise states of law and specify departments to handle requests for forms.
--Do not rely on U.S. or Mexican mail. After requesting absentee ballot at embassy, one should do actual voting there.
--Information on voting should be sent to all citizens registered at the embassies. Hundreds, possibly thousands of us are far removed from consulates.
--Mail information news letters to U.S. citizens from U. S. Chamber.
--Improvement of U. S. mail service.
--Embassy personnel should have knowledge of individual state election laws.
--Due to slowness of mail, more time should be provided for registration and sending of ballot.
--There should be one person at embassy/consulate who knows requirements and can advise.
-- That local election boards be required to deliver ballots at least a month in advance.
--Increased publicity in English language publications.
--U. S. embassy should be better versed on requirements and inform U. S. citizens of "A.B.C's" on how to obtain a ballot.
--Information as to where to apply for forms and notice of deadline for returning.
--Clarification of how one goes about becoming registered when one has no U.S.address though formerly lived in Ohio. Having married a Swiss, according to Swiss law I am also considered a Swiss, although I will always be an American.
--instructions on how to apply to register and vote.
--There should be a separate Federal voting ballot, not to be confused with state elections.

VOTING ASSISTANCE IMPROVEMENTS RECOMMENDED:

--A general federal office in USA where all citizens regardless of last residence can obtain an absentee ballot.
--Application forms applicable to private citizens not members of Armed Forces.
--A bit more punctuality by home election districts in mailing absentee ballots.
--Procedures too lengthy.
--Having to pay an attorney for the right to vote is a nuisance.
--Clear and simple statement of eligibility requirements and consequences.
--Printed information in short, clear form.
--Standardize application forms.
--Send voting information with U. S. income tax forms.
--Eliminate need for embassy notarization.
--Send to all overseas Americans registered at a consulate detailed voting leaflet.
--Distribute information and ballots earlier.
--Improved information services at U.S. missions.Incorrect information given at Geneva.
--Standardized form for requesting ballot.
--Receive written instructions from embassy or American Chamber on how, where to apply absentee ballot.
--All overseas residents should vote in Federal election in Wash., D.C. Why in state of former residence?
--That consular officials be more informed about local state elections.
--Clear knowledge of dates to register and where to file.
--Clarification of state tax laws concerning Americans abroad.
--Ballot should be obtainable without need to notarize request.
--Federal registration and representation of overseas taxpayers.
--A checklist of "how to proceed" information.
--No need to have notarization; just witnessed.
--U.S. consulate in Zurich most unsatisfactory. Difficult to get information on how and when to apply.
--Explanation of current law.
--Proper education on new law for U.S. consulates and U.S.local election officials.
--Local consulate unable to furnish specific notarization information; took three attempts on my part. Uniformity of registration in all states.
--Automatic mailing of voting information by authorities where registered. IRS can do it, why not voting authorities?
--More direct assistance and involvement by consulate.
--Some recourse when problem occurs with local election board.
--Instruct states to provide required forms for primary/election registration and voting without need to file numerous letters/requests.
--Better orientation of state authorities on Federal law.
--Local voting officers must be more responsive to absentee voters.
--Voting material should be sent to each registered U.S.citizen's home.
--Simplify system.
--Pre-election information on how, when and where techniques.
--Eliminate necessity for visiting embassy for verification.
--Embassy is too far to go for information/assistance. Open only during working hours.
--Confirmation that my vote was processed.
--Due to distance from consulate, would like to have system of registration via mail.
--To be able to vote at Embassy or Consulate.
--Direct telephone line to U.S. embassy for voting/registration information.
--Confirmation from local election board that ballot received and vote tabulated.
--Need timely and coordinate briefing between voting authorities and foreign residents.
--Prompt mailing of ballots from home board of elections.
--Education of foreign domiciled U. S. citizens through consulates and home town election officials.
--Do away with notarization requirement. Expensive and time-consuming.
--Speed. Timing.
--Notarization was difficult. Two extra trips were required.
--Why doesn't Govt. mail out necessary forms to all taxpayers. IRS finds us quickly.

SAMPLE ANSWERS --

CONFUSING/CUMBERSOME ASPECTS OF FEDERAL LAW:

--Still vague on tax liabilities, but believe problem is with states' interpretation.
--Having to write a place where one has not lived for years to officials who could care less and who have no way of checking whether one was a resident or not.
--New law not made available.
--Notarization requirements.
--New York registration form confusing.
-- How does one find out about Overseas Citizens Voting Rights Law. Could Embassy send information to all U. S. citizens registered in that country?
-- Questions on residence and domicile in California forms are troublesome, especially insistence on street addresses. These appear in conflict with requirements.
--Registering for each election -- time required.
--Tax status for N.Y. state and city was not 100% clear.
--Afraid of tax liabilities at home. Clarification needed.
--Generally cumbersome procedures.
--Was told I could only register for ballot in Berne, but I live in Geneva.
--Consulate and some local officials do not distinguish between U. S. residents seeking absentee ballot and non-U.S. residents seeking absentee ballot.
--Have not been able to get exact information on law from any source.
--How to obtain ballot.
--Clarification needed on exposure to state/local tax liability.
--Have no source of information available.
--Form available from consulate was more applicable to service men than expatriots.
--Filing dates, how to mail, notarization.
--Had to send everything twice because my local authorities did not respond.
--Not enough information.
--Lack of information from any source.
--Nothing written was automatically sent to overseas residents. You had to find out for yourself.
--Only received absentee ballot 7 days before deadline which made notarization and mailing in time difficult. Consulate not open at very convenient hours for working person.
--Confusing regarding state taxes.
--Sleeper was 30-day pre-election registration requirement in California.
--Filing dates.
--For Arizona, I had to send 3 different applications and ballot came very late.
--Confusion re: procedures. U.S. groups do not use airmail overseas. Earlier notice required.
--I experienced no difficulty with consulate. However, I was obliged to wait 2 months for my ballot from home only to receive it 6 days before November 2.
--Everything was disorganized. Was mailed a ballot used by Armed Forces without instructions or form that could have made it useable by me.
--Confusion as to my status as an American and former resident of Ohio under voting rights law when according to Swiss law, I am Swiss by marriage.
--The fact that the return envelope had 63¢ of American stamps was idiotic. What good do they do me to mail out of Mexico?
--Information available was totally confusing and employees at American embassy knew as little as I did.
--Card form difficult to understand.
--non-listing of specific mailing addresses by districts as forms requested.
--Exact location was confusing and difficult to locate in N.Y. pamphlets provided.
--Tax liability confusing.
--Am not acquainted with the law.
--In 1976 ballots arrived within 10 days of election and a weekend cuts down the usable time. The Texas ballot mentions "others" who are authorized to accept oaths. How is this to be interpreted?

Sample Answers - ATTACHMENT C, Page 2

CONFUSING/CUMBERSOME ASPECTS OF LAW:

--Complete mumble-jumble of embassy information supplied. Two inquiries - two sets of confusing replies.
--Utah requires preliminary request, followed by their official form requesting absentee ballot.
--Impossibly ridiculously complicated form from California and late. If there was a plot to keep us from voting it couldn't have been more effective.
--Armed Forces form lacked my birthplace and California required additional information.
--My state (California) is good in all respects except timing. No awareness of how slow foreign mail can be. Much advanced mailing dates required.
--Too much paperwork.
--Filing dates.
--Different state requirements/interpretations.
--Lack of adequate information from any source.
--How/where to mail.
--Don't understand them at all.
--Believe voting right and taxes should not be connected.
--Taxes are the very reason I am living in a foreign country.
--No provision in California ballot for overseas residence address; only for U.S. residence address that I do not have.
--Residence requirements confusing.
--Determination of proper voting location and consequences of taxes.
--Don't know law.
--Filing dates.
--Filing dates for many states were unrealistic considering the time it took for election material to be mailed.
--Instructions from Texas contradicted each other on two envelopes received.
--All of the Federal government's tradition goal seems to be confusion. It is as hopeless as Federal tax law interpretation.
--Forms at consulate are designed only for use of military personnel.
--Varying requirements of individual jurisdictions.
--No information was made available to persons even though registered at embassy. Nobody cared.
--Filing dates for different areas confusing.
--Necessity to have notarization was costly and confusing.
--Application of state taxes was confusing.
--Too many forms and mailing procedures. Should have one procedure for all 50 states.
--Form at U.S. embassy was only application for an application for absentee ballot.
--Obtaining proper ballots impossible. State officials obviously unaware of law.
--Absentee forms and other materials should be sent to each overseas citizen along with Federal income tax forms.
--Excellent assistance of local consulate staff circumvented confusion.
--Need concise summary of whole law.
--Normal bureaucratic procedure.
--Many voters feel they will incur state tax liability by voting. Explanation needed.

- - - - -

EXHIBIT 9

[Department of State Telegram]

Subject: Overseas voting procedures.

1. Embassy noted recent newspaper report that hearings on bill to amend 1975 Overseas Citizens Voting Rights Act scheduled to begin March 8. According to article proposed legislation would give Secretary of Defense responsibility for collecting and disseminating absentee voting information to all citizens overseas and would recommend development of standardized absentee registration and ballot application forms.

2. Based on our experience last fall there is great need to improve electoral process for overseas voters. Approximately 3,000 Americans came to the embassy to have FPCA's or State absentee ballot applications notarized by consular officer. In addition to time devoted to notarial services, much time was devoted to personal and telephone inquiries, most of which had to be referred to State voting and tax officials.

3. Although a few States, notably New York, took 1975 act into account in preparing registration forms sent to overseas voters, other States typically mailed material obviously intended for either military or domestic absentee voters which was largely irrelevant for individuals enfranchised under the new law. For example, many States required voters to sign an affidavit on envelope in which ballot was returned which stated that the voter currently maintained a residence in the State. As a residence per se is not required in order to vote under 1975 act, much confusion resulted. Voters were reluctant to make an untrue statement but were also fearful that failure to sign the affidavit would mean that their ballot might not be counted. Consequently, large numbers of voters made handwritten changes in the affidavits thus further slowing voting process.

4. In considering use by the States of uniform absentee registration and ballot application forms we hope that the relatively few States that now require notarization of the ballot envelope itself could be persuaded to drop this requirement in future elections. We see desirability of verifying identity and citizenship of all individuals initially applying for absentee registration and/or ballots, but we fail to see need to require voter to return to embassy second time with ballot in hand for still another notarial service as some States do. Some simple device such as serial numbers for overseas ballots could discourage any cheating if that is primary State concern. In any case, it seems highly unlikely that any overseas voter would be tempted to travel to big-city embassy like Paris, struggle to find parking place and stand in line for notarial service just to stuff a ballot box with one or two extra ballots that he might be able to obtain if there were no checks via notarial service.

5. We noted that some States did not require notarization of ballot envelope but asked voter to have his signature on envelope witnessed by another American citizen. This is fine and dandy but some voters still came to embassy and insisted that consular officer witness their signature.

6. In particular, even though Defense Department involved in process, we hope that Federal postcard application form (FPCA) can be produced in civilian format as well as military format. Many people completing present FPCA are confused by military terminology and ask unnecessary questions on how to fill it out.

7. Finally we hope department has input into hearings with view to achieving most efficient and simple voting process that will put least burden both on voter and consular officer.

Exhibit 10

Summary of Response to Notice in International Herald Tribune in November 1976

ABSENTEE BALLOT SURVEY

Included are number of persons who did not receive ballots at all, or who received ballots too late to participate in the elections.

State and county	*Number*
Alabama: Etowah	1
Alaska	3
Arizona: Cocomino	2
Arkansas: Prairie	1
California:	
Not mentioned	4
Alameda	6
Contra Costa	5
Lassen	2
Los Angeles	13
Marin	3
Orange	9
Sacramento	1
San Diego	3
San Francisco	3
San Mateo	1
Santa Barbara	2
Stanislaus	2
Ventura	3
Total	57
Colorado:	
Not mentioned	1
Boulder	1
Pitkin	1
Total	3
Connecticut:	
Not mentioned	1
Fairfield	2
New Haven	3
New London	2
Tolland	5
Total	13
District of Columbia	8
Florida:	
Alachua	2
Brevard	8
Dade	5
Hillsboro	6
Indian River	1
Leon	5
Okaloosa	2
Palm Beach	1
Polk	1
Sarasota	4
Total	35
Georgia:	
Bibb	2
DeKalb	3
Fulton	2
Total	7
Illinois:	
Cook	20
DeKalb	4
DuPage	5
Madison	1
Lake	1
Sangamon	1
Winnebago	1
Total	33
Indiana:	
Lipton	2
Marin	2
Putnam	2
Total	6
Kansas:	
Sedgwick	2
Kentucky:	
Graves	1
Louisiana:	
Calcassieu	1
East Baton Rouge	1
Jefferson	2
Livingston	1
West Feliciana	1
Total	6
Maine:	
Not mentioned	2
Cumberland	1
Total	3
Maryland:	
Baltimore	1
Massachusetts:	
Bristol	3
Fall River	1
Hampden	2
Middlesex	5

State and county	Number
Nantucket	1
Plymouth	1
Worcester	1
Total	14
Michigan:	
Berrier	2
Monroe	1
Mustegon	1
Oakland	6
Wayne	3
Total	13
Minnesota:	
Anoka	1
Hennepin	4
Meeker	1
Sherburne	1
Stearns	3
Waseca	2
Washington	1
Total	13
Missouri:	
Columbia	2
Jackson	2
St. Louis	2
Total	6
New Jersey:	
Not mentioned	2
Bergen	3
Burlington	3
Camden	4
Cape May	2
Essex	5
Hunterdon	1
Middlesex	2
Monmouth	1
Morris	2
Ocean	2
Passaic	3
Union	2
Total	32
Nevada:	
Lander	1
New Hampshire:	
Rockingham	2
Sullivan	1
Total	3
New Mexico:	
Bernalillo	2
Santa Fe	2
Total	4
New York:	
Bronx	2
Broome	1
Dutchess	3
Erie	2
Franklin	1
Kings	12
Manhattan	33
Nassau	7
New York	81
Onondaga	2
Ontario	1
Orange	1
Oswego	1
Putnam	2
Queens	11
Richmond	1
St. Lawrence	6
Saratoga	3
Suffolk	2
Ulster	1
Westchester	14
Not mentioned	6
Total	193
North Carolina:	
Buncombe	2
Wake	1
Total	3
North Dakota: Ward	1
Ohio:	
Clinton	1
Cuyahoga	4
Franklin	2
Hamilton	4
Summit	2
Total	13
Oklahoma:	
Oklahoma	2
Seminole	1
Total	3
Pennsylvania:	
Allegheny	2
Centre	1
Chester	1
Dauphin	1
Delaware	1
Erie	3
Lawrence	2
Lehigh	1
Luzerne	2
Montgomery	4
Monroe	1
Total	19
Rhode Island: Providence	1

State and county	*Number*
South Carolina: Richland	1
Tennessee:	
Madison	1
Roane	1
Total	2
Texas:	
Aransas	2
Brazaria	1
Dallas	2
El Paso	2
Harris	2
Montgomery	1
Nacogdoches	1
Taylor	2
Tipton	1
Walker	3
Total	17
Utah:	
Salt Lake City	3
Virginia:	
Not mentioned	1
Albemarle	1
Arlington	1
Fairfax	3
Grayson	1
James City	2
Norfolk	2
Prince William	2
Spotsylvania	2
Total	15
Vermont:	
West Dover	3
Washington:	
Kittitas	2
Snohomish	1
Stevens	2
Total	5
West Virginia:	
Not mentioned	1
Wisconsin:	
Green Lake	2
Milwaukee	1
Oneida	2
Sauk	1
Washington	1
Total	7
Total, all States	555
Total, no State mentioned	4
Grand total	559

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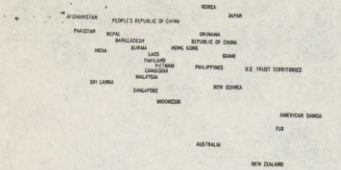
EXHIBIT 11



APCAC

THE ASIA-PACIFIC COUNCIL OF AMERICAN CHAMBERS OF COMMERCE

701 TOSHO BLDG., 2-2 MARUNOUCHI, 3-CHOME, CHIYODA-KU, TOKYO 100, JAPAN TELEX: WEMCOEX J24226

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Suzanne Kelsey

February 22, 1977

The Honorable Clairborne Pell
Senate Sub-Committee on Privileges & Elections
U.S. Senate
Washington D.C. 20510

Dear Senator Pell,

You are embarking on hearings to discuss potential amendments to the Overseas Voting Rights Act of 1975. We Americans overseas are indeed grateful to you for the support you have lent to our cause in the past, and for the very fact that Public Law 94-203 now exists. Our gratitude to Senators Mathias and Goldwater is also profound.

Unfortunately, the end you and your colleagues so ably sought still eludes us. Americans overseas voted in very small numbers in November 1976. The report I enclose indicates this, and we would like to respectfully submit some suggestions for legislative amendment in order to rectify the situation.

APCAC is the collective voice of American Businessmen in the Asia Pacific area. Because we are concerned that Americans exercise their constitutional right to vote per Public Law 94-203, we undertook a survey of behavior among overseas Americans in the November 1976 federal election. From our understanding, this survey is the most detailed one done for the Asia Pacific area.

For reasons of distance, it is not possible for us to appear before your sub-committee. Nevertheless, we hope you will give our report full consideration in your proceedings.

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The report itself is enclosed, although for your convenience, we have summarized the coverage, methodology, results and recommendations in the following pages. The recommendations call for legislative amendment. We believe that, if enacted, our proposed amendments will go a long way towards the end both you and Senators Mathias and Goldwater as well as we seek - the full participation of Americans abroad in our federal election process.

With gratitude for your efforts, and hope for speedy legislative amendment to Public Law 94-203.

Respectfully yours,

J. R. O'Neil
Vice Chairman

JRO:ic
Encl:

cc Senator Charles McC. Mathias
U.S. Senate, Washington D.C. 20510

Senator Barry Goldwater
U.S. Senate, Washington D.C. 20510

Mr. Robert Snure, COCUSA

APCAC

THE ASIA-PACIFIC COUNCIL OF AMERICAN CHAMBERS OF COMMERCE

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SUMMARY OF REPORT

OVERSEAS VOTERS RIGHTS

BANGKOK, FEBRUARY 25, 1977

Subject: This is a report on a survey done in certain Asia-Pacific countries on the degree of participation of overseas Americans in the November 1976 elections. The report summarizes the key problems encountered by overseas Americans, and makes recommendations for possible legislative action.

Background: In October 1976, APCAC instructed that a survey of overseas Americans be made following the November election, so that a reliable understanding of registration/voting behavior could be traced in the Asia-Pacific Area.

A survey form has been designed and circulated, and the results compiled. The work is summarized in the attached report to me by Mr. Fred Brandt of the American Business Council, Singapore, who is responsible for a good part of the burdensome work which has gone into this report.

The Survey: Questions were asked to inquire about problems of obtaining information, registration, receiving ballots, and voting. Individuals were not asked to identify themselves, but it was necessary for them to designate their home state.

Returns were received from American Business Groups in Australia, Hong Kong, Japan, Republic of China, Thailand and Singapore. The results have been compiled to indicate statistical data; equally valuable are the

sample of essay responses received, which give a good indication of problems and successes as perceived by individual Americans in the Asia-Pacific Area.

Results:

It is estimated that roughly 1.5 million Americans live abroad, making the overseas population of Americans vie with Nebraska as the 34th largest state in the Union. Of this population, perhaps one out of 3 is of eligible voting age.

In the countries of Asia-Pacific, it is difficult to estimate the number of potential American voters resident. In Singapore, where the total population of Americans is about 6,500 (of which perhaps 1/3 are potential voters), we received 578 responses. This would indicate that over 25% have been surveyed. In other countries, the sample is probably a smaller proportion of the total. Nevertheless, with over 1320 responses for all of the countries covered, this survey has a high statistical credibility.

The key notable results are:

1. The "expatriate" does not fit a sterotype. He is just as liable to be a long term resident abroad married to a non-American as associated with a large American firm working in some remote area. By and large, he is out of touch with the U.S., but vitally affected by U.S. legislation and increasingly aware of his rights to representation.

2. Of those who responded, 41% actually mailed ballots and intended to vote. How many of these ballots were received and counted is unclear. The 41% appears to be well below the intent of the proponents of the Overseas Voters Rights Law.

3. 59% of respondents did not intend to vote. To these must be added a further 7% who voted but encountered administrative problems. Altogether 66%, or two-thirds of those surveyed had difficulties of some sort with the process. On a state by state basis, no trend is clear. All states seem to share in creating hindrances for overseas voters.

4. The main problems encountered can be classified as:

a) Overwhelmingly, a fear of State Income Tax Liability

b) Lack of clear, reliable, uniform information to potential overseas voters on registration and voting procedures.

c) Bureaucratic lack of understanding of the needs/problems of overseas voters at the state administrative level.

d) Cumbersome and complex procedures for certification at overseas locations.

Recommendations: The U.S. Congress should amend the Overseas Voting Rights act of 1975 to specifically provide the following:

1. States have their own criteria as to whether overseas U.S. citizens should be deemed to retain state domicile for purposes of assessing state tax liability. However, it should be made clear that registering and voting in Federal Elections by Americans resident overseas may not be a factor in this determination.

2. A specific, simple and uniform application for voter registration should be prescribed in the Federal Law for use by all states.

3. U.S. Embassies and Consulate offices abroad should be charged with providing registration information for all states.

4. Administration should be by U.S. Embassies and Consulates abroad, who will also certify by sworn affidavit that the American voter is truly a resident overseas.

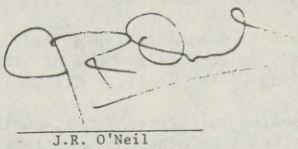
5. An overseas ballot with a list of candidates for Federal office only should be provided, not an absentee ballot with state and local candidates and issues included.

6. These overseas ballots should be sent via air mail in adequate time, say receipt by no later than October 20, in the case of November general elections.

7. For primary elections, a similar procedure can be used, with the obligation clearly spelled out for the state authorities to mail primary ballots five weeks in advance, with voters to return ballots by seven days prior to the election date.

8. Penalties for non-compliance by state authorities should be increased from Public Law 94-203 to ensure compliance.

Submitted by:



J.R. O'Neil
Vice-Chairman

FINAL REPORT

OVERSEAS VOTERS SURVEY COMMITTEE

AMERICAN BUSINESS COUNCIL
SINGAPORE

February 11, 1977

I - SINGAPORE - INFORMATION

The Committee was authorised in October 1976. The objective was to determine what U.S. citizens did about voting in the last election and what their experiences were in trying to vote.

Method used was by questionnaire distributed with appropriate cover letters by mail to Company members of ABC and by inclusion in the December mailing of the American Club.

Publicity appeared in Straits Times, Business Times, ABC Newsletter, Singapore American and other publications.

Questionnaire, cover letters, and rationale are attached.

II - APCAC - INFORMATION

Singapore ABC is APCAC coordinator. Copies of questionnaire were sent to each AmCham for their action. All apparently used the questionnaire and generally mailed to their own membership.

III - RESULTS

Results are in 4 sections, i.e.

Explanation of data
Data tabulation
Analysis and Comments
Conclusions and Recommendations
Sampling of remarks in returns

Not all data quantities add up for exact verification. The cause is that some AmChams sent summaries only while others sent the replies as received. Also some questionnaires were only partially answered. This is probably not serious as the totals pro and con generally are not so close there is room for difference of opinion.

The term 'voted' is used. 'Mailed ballots' may be more accurate as there is no verification that the ballots were received in time or even received.

EXPLANATION OF DATA

Column headings are in 3 groups:

TOTAL	- A	- Total questionnaires received
VOTED	- B,C,D,	- Data relating to those who voted
DID NOT VOTE	- E thru K	- Data relating to those who did not vote.

Individual Columns are:

B	- Total who voted
C, D	- Breakdown of A into those having problems and no problems voting
E	- Total who did not vote
F, G	- Breakdown of E into those who were 'not registered and didn't try' and those who were 'registered or tried to register'.
H, I	- Breakdown of G into those who 'did not send for ballot' and those who 'sent for ballots'
J, K	- Breakdown of I into those who 'received ballots in time' to vote and 'not received in time to vote'.

Both quantities and percentages are given. The data can be referenced by line number and column, e.g. the total number of Taiwan people not voting is 82 or 61.7% of the total responding which is 133. These are references:

Total not voting	= 82	line 9 col. E
% not voting	= 61.7	line 10 col. E
Total responding	= 133	line 9 col A

		TOTAL	VOTED			DID NOT VOTE						
		A	B	C	D	E	F	G	H	I	J	K
		TOTAL RETURNS	TOTAL	PROBLEMS VOTING YES	PROBLEMS VOTING NO	TOTAL	NOT REG. NOT TRY	REGD OR TRY REG.	DID NOT SEND FOR BALLOT	SENT FOR BALLOT	RECD IN TIME	NOT RECD IN TIME
1	AUSTRALIA	66	29	6	23	37	14	23	5	16	-	16
2	" %		43.9	20.7		56.1		62.2		69.6		100.0
3	HONG KONG	290	137	39	96	153	112	50	8	32	1	31
4	" %		47.2	28.5		52.8		32.7		64.0		96.8
5	JAPAN	198	94	10	93	104	60	81	26	55	40	25
6	" %		47.4	10.6		52.6		77.9		67.9		45.5
7	SINGAPORE	578	197	25	172	381	222	159	57	98	24	77
8	" %		34.1	12.7		65.9		41.7		61.6		78.6
9	TAIWAN	133	51	5	46	82	62	20	5	15	1	14
10	" %		38.3	9.8		61.7		24.4		75.0		93.3
11	THAILAND	58	32	11	21	26	15	11	2	5	-	7
12	" %		55.2	34.3		44.8		42.3		45.5		?
13	TOTAL	1323	540	96	451	783	485	344	103	221	66	170
14	" %		40.8	17.8		59.2		43.9		64.2		76.9

ANALYSIS

1. A good letter of explanation of purpose (or 'sell'), using more than one mailing list, and local publicity results in more returns.

2. The questionnaire format with the cover letter of explanation seemed clear to most responders. Favourable comments (voluntary) equalled or exceeded complaints.

3. In total (line 14) 40.8% (540) of those responding (1323) mailed ballots and, hopefully, thereby voted. This is less than the National average.

4. Of those voting (540), 451 (13D) had no problems doing so while 96 (13C) did have problems but evidently were able to resolve them. Most frequently given problems are (in order):

   - Ballots received late (due to sea mail and errors or ignorance in issuing office).
   - Procedure complex, cumbersome, time consuming
   - Information on registration hard to get and confusing.

5. There were 221 (line 13 col. I) who sent for ballots but did not vote. If these had voted, the voting total would be 761 or 57.5% of responders (1323). This is closer to the National average.

6. Why did 221 who sent for ballots not vote? Line 13K shows 170 of these or 76.9% did not receive ballots in time to vote and in a few cases, had not received them at questionnaire time.
   Causes, where identifiable, most frequently given were:

   - Ballots sent sea mail
   - Ballots mailed with insufficient postage, returned to sender, then sent sea mail
   - Ballots received late (no info given)

   If all 170 had received ballots in time, would they have voted? See 7 following.

7. Why did 66 (13J) people who received ballots in time not vote? Reasons most frequently given are (in order):

   - Concern re state tax (over whelmingly)
   - Lost interest - couldn't make choice
   - Out of city

8. Of 344 (13G) 'registered or tried to register', why did 103 (13H) not send for ballots?
   Reasons most frequently given are (in order):

   - State tax liability
   - Procedure unclear
   - Not interested (in election or candidate)

9. Of the 783 (13E) who did not vote, 485 (13F) either were 'not registered or did not try to register'. Why not? Reasons most frequently given are (in order):

   - State tax liability (over whelmingly)
   - Procedure unclear (many)
   - Not interested

CONCLUSIONS AND RECOMMENDATIONS

Your Committee has read these questionnaires in detail. While data supports the following comments and recommendations, only by reading the voluntary comments (some not fully printable) can some better understanding of expatriates (not 'the expatriate') be gained and the frustration and exasperation of many be felt.

For example, there is no 'typical' expatriate. Some people have been overseas for long and unbroken periods, so long they have no 'place' ties in the U.S. Many of these have moved and lived in many countries. Many have property in foreign countries but no property in the U.S.A. Some (men and women) are married to nationals of their country of residence and may never return. Many do not work for multinational or other large companies but work for national companies, non American companies or have their own business or professional offices. A number are retired, some drawing Social Security,

Some live in well populated cities with good mail service and other communications. Some live in countries where the communication systems are neither good nor dependable. Some live in remote areas, such as a group on a remote island in Indonesia where their mail is held in a 'lock bag' in Singapore, picked up once or twice a week and finally, by boat reaches it's destination. Can you imagine the time to get a reply?

And some are employed by multinational companies, are overseas for up to five years to get some international experience, and to have a different and hopefully more interesting period of their lives.

Expatriates Americans would spread across the spectrum of the categories above, and would be well represented in all. There is no 'typical' expatriate and any regulations and requirements should recognize this.

If there are any common denominators, one is that most want to retain their American citizenship, although not at all costs. For example, some with foreign property are considering changing their citizenship. While there are no doubt other factors, in many cases the Tax Reform Act of 1976 has triggered serious consideration of this move.

Another possible common denominator is that expatriates look to their American Government Offices for information and assistance, and the standard of service and attention they 'remember' (although perhaps not perfectly) getting 'back home'. Following the Government offices as sources of information, are AmChams, American Clubs, other American publications and organizations, etc. (not in order). The non government organizations are not 'expected' to have such information though.

The data shows a significant number had problems in voting and trying to vote, yet it also shows that a significant number voted without problems. No hard conclusions can be drawn about the latter. However, those who did not experience problems appeared to be "experienced" (i.e. had voted absentee before), were in some cases able to clear up things while on home leave, started early (very important), are meticulous (followed questionnaire instructions correctly), and perhaps, were not among those who moved frequently.

Those experiencing problems gave information about these areas:

Lack of clear, reliable, uniform information on registration and voting procedures the would be voter must follow. Among sources of information are friends, and often,voters can't understand why Illinios procedures should be vastly different from Oregon, etc.. There is even a lack of info as to where to send in the U.S. for information.

Lack of understanding about how to handle absentee voting requests by the U.S. registration and voting offices.

Lack of understanding of times and postage requirements for mail to reach overseas addressees. Little seems to have been done in most registration and voting offices to train the people or to anticipate absentee voting.

Some requirements are important to meet. For example, some States require a residence address, non existent for those who have sold their home or for those who may have forgotten it. Another is prohibition to accepting registration more than so many days before election, then requiring absentee voters to apply for ballots by a conflicting time period before election. This requirement, even where non conflicting, may also be practically impossible when mailing times are added.

Procedures are cumbersome and complex. In many cases an affidavit or other certification - securable only at a U.S. Embassy or Consulate in person is required. Few are conveniently located to such an office, and some have experienced long waits (more than one hour) in line for such certification.

The above problems experienced both by those who mailed ballots and those who did not are a deterrent to voting and became a practical disenfranchisement of many citizens. If unchanged, they will become even more of a disenfranchisement in the future.

However, it is the Committee's opinion that without doubt the greatest single deterrent to voting is the liability to State Income Taxes. While some of those voting even expressed concern at this liability, an overwhelming number of those who did not vote were motivated by or expressed concern at the possible tax liability.

With the hope some discussions will be initiated to effectively enfranchise overseas voters, the following would ease the aforementioned problems:

1. Simplify registration and voting procedures and make them more uniform among States.

2. Modify local residence requirements to permit overseas citizens not owning property to register and vote.

3. Clarify liability to State Income Tax. Voting should not expose a citizen to more taxes than if he had not voted.

4. Publish registration and voting procedures early.

5. Train registration and voting procedures early.

6. Equip overseas Government Offices to handle questions. At a minimum, there should be available a list of "where to write in your State" offices. Clarify what responsibilities the overseas Government office has.

7. Send all communications by air mail, or better registered air mail.

8. Would be voters should start early, even looking into requirements on home leaves, asking friends, relatives, etc.. at home to aid.

9. American organizations overseas should cooperate to aid in securing and distributing information, using their regular publications as well as local publicity, etc..

10. Create or assign a Department in the U.S. to work in conjunction with interested Am Chams to install more acceptable requirements and procedures. Overseas citizens seem to be increasingly subjected to U.S. legislation aimed specifically at them as a group (eg. section 911 changes in the Tax Reform Act of 1976). Overseas citizens must organize to make their opinions effective. On the other hand, if they are the ones affected, they should be given an opportunity to be heard before such legislation is made law.

11. Continue or set up for future elections - similar Survey Committees to measure the effectiveness of changes in registration and voting procedures and requirements.

This Committee acknowledges the assistance of the American Club of Singapore who included a questionnaire in their December mailing to each American member, and the work of our Fellow AmChams in other Asian-Pacific countries.

In conclusion, the Committee expresses appreciation to Miss Padhma Naidu, Secretary in the A.B.C. office, and Mrs. Florence Oh of Honeywell, for their great and accurate assistance in the work leading to and the preparation of this report.

Respectfully submitted,

APCAC OVERSEAS VOTERS SURVEY COMMITTEE
AMERICAN BUSINESS COUNCIL
SINGAPORE

by F C Brandt

F.C. Brandt - Chairman

APPENDIX 1

Sample letter per survey questionnaire

To: AMERICAN CITIZENS IN SINGAPORE

The recent U.S. election was the first in which all overseas - Americans had a clear right to vote. This was secured through legislation recommended and supported by all foreign American Chambers of Commerce and affiliated organizations (in Singapore, the American Business Council).

As a number of complaints have been voiced, the same organizations would now like to know whether or not overseas Americans have voted, and if not, what the reasons may be. Such information will be an important guide to any desirable further action by American organizations in the Asia-Pacific Area.

Your help - by filling out the attached questionnaire - will be appreciated. Here's how to do it!

First read the question.

Second put your answer in the "ANSWER" column, or circle the "YES" or "NO" whichever is your answer.

Third go to the question numbered in the "INSTRUCTION" column.

For example, if you voted in the recent election you answer questions, 1, 2, 3, 4 and if you had no trouble in doing so, go to question 13. If you had some problems, go to 12 and briefly describe them. Then go to 13.

On you go - and please return promptly to American Business Council, 9th Floor, Shaw House, Orchard Road, Singapore 9.

For additional info if required, phone me at 379240.

Thank you.

F. C. Brandt

F.C. Brandt
Chairman, Overseas Voting Committee

ABC SURVEY OF OVERSEAS AMERICAN CITIZENS

QUESTION	ANSWER	INSTRUCTION
1. What is state of your last residence?	_____	go to 2
2. Did you vote in Nov. 1976 U.S. Federal Election?	No Yes	go to 5 go to 3
3. In what state did you vote?	_____	go to 4
4. Any unusual problems in voting?	No Yes	go to 13 go to 12
5. Were you registered to vote?	No Don't know Yes	go to 6 go to 6 go to 7
6. Did you try to register?	No Yes	go to 10 go to 7
7. In what state did you try to register?	_____	go to 8
8. Did you send for a ballot?	No Yes	go to 12 go to 9
9. Did you receive the ballot in time to vote?	No Yes	go to 12 go to 11

10. Why didn't you register?
circle answer below, then go to 13

Procedure unclear or complicated? Concern on possible State tax liability? No interested? Others - please list below.

_____

_____

11. Why didn't you vote? Circle answer below then go to 13. Out of City? Concern at State tax liability? Lost interest? Couldn't make choice? Others - please list below.

_____

_____

12. Please list below the problems you encountered and your reasons or your experience in the action you took or didn't take, then go to 13.

_____

_____

13. How many eligible voters are included in your reply.

One
Two
More? _____

14. Thank you. Use rest of this side for additional comments. Please return to American Business Council, 9th Floor, Shaw House, Orchard Road, Singapore 9.

APPENDIX 2

Miscellaneous Comments From Respondents

Louisiana - It would be extremely helpful if the American Embassy or the Business Council could produce a guide for the overseas voter outlining procedure and giving due dates etc.

N. Carolina - Wrote to board of elections giving details of registration and requesting ballot - received form to fill in. By then it was too late. Form required same information provided in my letter.

New York - I registered in New York City and sent for ballot in June through the American Embassy. As of today's date, Dec. 17, ballot still not received. I understand New York City had some trouble in getting ballots out in time.

New York - Did not receive ballot, request sent too late.

- Wife's request for ballot was not even acknowledged.

Oklahoma - By the time I was ready to send for a ballot, it was too late.

Oklahoma - Only problem was that I started too late, when I went to the Embassy there was none available to witness my signature (noontime) and by the time I returned, it was too late to send it in.

Pennsylvania - Did not send for ballot since we were unsure if it would mean additional taxes in the form of state, county and/or local U.S. taxes which we do not presently pay.

Texas - Received ballot on date it was supposed to be in Texas.

Washington - We left Washington State October 16, 1976. I sent our absentee ballots request to the county auditor and asked that they be airmailed. His office sent them by seamail and they arrived on December 8, 1976.

Wisconsin - Ballot sent with insufficient postage and held up at post office, so it arrived late.

Alaska - Alaska absentee ballot has an oath you must sign swearing you are a resident of the state. I called American Embassy - they recommended we sign it, as it was probably written without the present situation in mind.

Alaska - I have lived overseas since 1955 and this has been the first election I have been able to vote in since that time without having residency problems on income taxes.

California - To begin with we are upset that when you move overseas, you have no way of knowing when an election is except by writing a letter. We feel they should inform all registered voters overseas of local as well as nationwide elections.

Our first vote overseas was in the June California primary in which we received our absentee ballot just 7 days before the election date, and 7 days is the minimum time a letter can make it from our previous home to San Diego, California. Then since there is no notification usually sent out to know if your ballot makes it in time, I had to request my sisters in San Diego to call and verify that our ballot arrived in time which it did.

We then had to write another letter to request our November ballot which is a pain in the neck. And again we received the ballot almost too late only this time we had 10 days to get it back in. And as of this point in time I have no idea if our absentee ballots made it back in time to qualify to vote in the next election whenever it is!

Illinois - Time consuming and very inconvenient to apply for ballot. I question if my vote received in Illinois in time to be counted although I returned ballot promptly.

Ohio - The original application filled out was inadequate or incorrect. When we were in Ohio on home leave, we received the correct application and applied there.

Texas - Ballot was received 2 weeks prior to deadline. Next mail leaving was 3 days later. Very doubtful our ballot was received in Texas in time to be counted as mail generally required 10 days. (We requested absentee ballots by mail 1st week of September).

Washington - We received our absentee ballots 1 day before the November election in U.S. We voted and had to go by boat to nearest town and had to post mark them by midnite of election day. We still don't know if they got over to U.S. in time for counting. Something should be done to get ballots to people in plenty of time.

Wisconsin - Ballots sent included state offices also, city clerk registered me for stardard absentee ballot, not as non-resident. Voting federal only.

I am concerned about effect of voting on state income taxes but I decided to vote anyway.

California - (i) Delay in getting absentee ballot through incorrectly signing request (wrong combination of names initials), Thus, almost missed mailing date.

(ii) Minnesota requested a resident address. As we own no home we have no USA resident address.

California - Information issued for voting and ballot requests too late for primary election. Made sure November ballot arrived in time by sending in request in mid-September. If had waited for embassy directions would have been unable to vote.

California - I registered to vote in California though I do not know to this day if I was entitled to as I never truly resided there. This was a residence I had between separating from active duty in the Air Force and taking foreign employment and only temporary in nature. Luckily, they accepted the registration as I never did find out what the overseas American could do to effect registration, and still don't.

There needs to be more publicity to the proper registration for voting. Possibly this could be done in conjunction with the filing of the federal income tax return, or through vote drives supported by the American companies registered with the U.S. Embassy.

Colorado - Having to take the ballot to the consulate was a pain in the ass - but any time one goes to the consulate its a pain in the ass.

Pennsylvania - Encountered no difficulty in obtaining absentee ballot, although it took approximately 5 weeks from mailing of request.

Rhode Island - Just managed to vote by 1 day. Registration in July for absentee ballots and received ballots actually 9 days (October 25) before election. Sent ballots next day registered with return receipt requested because ballot instructions specified they must be received on or before November 2 to be counted as valid.

Receipt returned indicated received November 1. Three months delay in receiving ballots almost lost our votes.

S. Carolina - Ballot received only 10 days before the election although the application was sent on September 20.

Texas - We filed application to vote in June, the ballots were received 10 days prior to election day. They were filled out and returned that same day, but with mail conditions the way they are we have no idea if our ballots were received in time to count.

Texas - My husband and I registered through the American Club. The gentleman there from the embassy was most helpful.

My son registered through the embassy. The Embassy people there were most uncourteous and rude including the American. I find the Embassy here the least helpful of any I've been to. The Embassy here could take lessons from the Embassy in [illegible] and should.

If my husband hadn't known how to go about it my son never would have gotten to vote as the Embassy was no help at all to him which may be why you received complaints.

Illinois - Illinois was very well organized for absentee voting.

Oklahoma - My daughter recently married did not vote - she said she believed it was too complicated to try to write for her absentee ballot with her new name. She was registered in Oklahoma under her maiden name.

Some of my friends did not vote because they could not remember their address at their last place of residence in the States. They had been foreign for over 10 years.

It should be possible for foreign citizens to register at their local embassies and vote if they maintain no stateside address or residence particularly as now they must pay taxes.

Oklahoma - We received our ballots on Thursday, October 21. American Embassy was closed on Friday. I called on Saturday and someone told me that 'Embassy' was open and I made a special trip down to find doors open but that's all - Monday Embassy was closed - Veterans Day. On Tuesday I made another trip to Embassy and stood in line one hour and 15 minutes - while the locals pushed ahead of me and had their business tended to finish (the Embassy should have a number system).

Florida - We did not receive ballot until four days before the election. We voted immediately and returned the ballot but I doubt if it arrived in time to be counted.

Iowa - The ballot which had to be witnessed arrived on a late date. While I did mail it in one week prior to the election, I am not sure it was received in time to be counted.

Washington	-	We arranged to have our absentee ballots mailed to us by a phone call and letter to the Voters' Registration office of King Company in Seattle when we were home in August.
Connecticut	-	No one could tell me whether I would be subject to Connecticut capital gains tax or dividend tax, hence I stopped trying.
Kentucky	-	Ballot material was received December 30. Prior to that, inquiries regarding Kentucky State income tax resulted in our being informed in writing by the Kentucky Internal Revenue Department that desire to vote in Kentucky indicated we considered ourselves still residents of that state and such liable to pay state taxes since we left there in 1970.
California	-	Concern on possible state tax liability. Concern above realised after receipt of registration form which was not completed or submitted to state of California.
California	-	Deadline for application was not clear. Application form was ambiguous. Embassy personnel in charge of procedure was not knowledgeable. I found the procedure obscure and confusing for California and the required form ambiguous and difficult to fill out.
Hawaii	-	Inspite of the law's intent to enfranchise all overseas Americans, procedures remain complex in certain states and tax liability is a major question and worry. I believe that many overseas Americans will remain effectively disenfranchised until the Supreme Court has a test case on tax liability and decides it unequivocally in favour of the individual.
Massachusetts	-	Basically I felt that the possibility of state taxation out weighed the benefits of voting.
Florida	-	Fortunately Florida has a liberal voting law and absentee ballots can be certified by 2 witnesses and sent in directly. Otherwise, we would have been very late in getting our votes in. Many states require notarizing which is difficult in many foreign assignments.
New Mexico	-	Encounter no problems.
Ohio	-	It was much easier for my husband and me to vote this year. We lived in Singapore in 1968 and found the procedures for absentee voting more complicated and time consuming then.
Florida	-	Ballot received after election.
Minnesota	-	The ballot did not reach us in time to be returned for the vote to be recorded. Our ballots were sent out only allowing 2 weeks time for arrival and then return. This would be adequate in U.S. - just barely - but actually not for overseas mail. In addition the men here are often out of the city travelling and require even longer allowance for the ballots return. Also ballots must be witnessed at Embassy requiring further time allowance.

Ohio - My wife got a ballot and I thought I would but I didn't. It got too late to try to do anything useful. I will give my support in any way I can to fight this rotten deal. We both registered at the same time.

Texas - I did not feel that either candidate was worthy of our presidential office.

Virginia - Voter's oath required stating residence for the past 3 years in Virginia, giving address. I have no address in Virginia, having sold my house and was concerned that claiming residence would subject me to state tax.

Illinois - I requested a friend to pick up applications for an absentee ballot - which the election board refused to do. Only upon my written request would they send an application and applications would not be mailed until late September. Thus there would be trouble in returning applications receiving ballot and returning ballot by deadline. I never even received ballot after submitting my application.

N. Carolina - Ballot was sent by surface mail arrived November 18 even though specifically requested to send via air mail. This is the second time for this to happen in five years. I have complained strongly to the Chairman of the Board of Elections in Durham County, N. Carolina.

New Jersey - Registration no problem as I was in New Jersey last summer. However, I had to positively affirm that I have been residing in New Jersey for the past x days, when I have really been a resident of a foreign country for the past 10 years. New Jersey is the home of my parents, whose address, I use for U.S. driver's licence, permanent residence on passport etc. There ought to be away to vote (registered on federal ballot only; if one only gets one local/federal ballot he can be said to have voted on state/local matters, and therefore be subject to state income tax matters.

My wife's registration was not allowed as she had amended the date appearing beside her signature in her application. For some reason this invalidated her registration.

New York - American Embassy is not very helpful to connections in general. Nonchalant attitude on part of staff.

Not enough information on tax liability.

Texas - Non-residence U.S.A. creates difficulties with state authority who insists on bonafide residence of some sort in Texas.

Texas - Form complicated. Embassy personnel could not explain, we decided to forego.

Would appear to me that either of the following ideas would make voting less complicated, both for overseas residents and county or other local personnel in the U.S.

(i) Special form with clear instructions - rather than normal absentee request or

(ii) Ability to register and vote using U.S. Embassy or similiar facilities in areas where present or

(iii) Both of the above

Oklahoma - Please advise procedure and/or addresses to write for obtaining requests to receive ballots for future Oklahoma (Tulsa) County and City, as well as state and federal elections.

Pennsylvania - Thank you very much for helping in securing votes from us expatriates.

Wisconsin - In response to my several requests for overseas voting forms, Wisconsin kept erroneously sending me absentee voter ballots which are not applicable. It was fortunate I had to visit the U.S. in early October and was able on that occasion to visit the voter registration office to set matters right. Otherwise, I am convinced I would never have received the proper forms, and the clerks handling the registration seemed uninformed completely about the new law granting rights of voting in Presidential elections to overseas Americans. When I did get the ballot in the mail (by air), it was tight timewise, but I believe I was able to get it back in time.

California - Registration, need to get notarized at Embassy, long wait in line etc. consumed nearly ½ day. California ballot with little blue 'stick on dots' to mark choices was very poor method. Dots were easily removed with fingernail and therefore ballot was subject to tampering by anyone who subsequently handled the ballot.

California - I did vote - ballot arrived in ample time - but I wrote two letters to make certain I got them.

California - Ballot and registering form arrived 15 days before elections. Rules stated that it must be received 30 days before elections. I was also concerned about possibility of subjecting myself to California income tax. We could not get a clear answer from the U.S. Embassy.

California - Procedure unclear and inconvenient due to remote job location.

California - In addition to all of the above, my decision not to pursue additional voting information, which could have led to my voting, was tampered by the lousy choice of candidates.

California - Registered through American consular office, Received notice from California that they would soon forward my ballot but it never showed.

My wife who is a long time resident of California got her ballot in time.

Louisiana - Louisiana Law required a citizen to register and vote in local primary immediately preceding general elections. If voter fails to vote primary then he is de-registered for general elections . Taxation is major reason.

New Jersey - Was unclear as to registration procedures, ramifications etc. Have lived in several states.

New Jersey - Couldn't get any credible information from Embassy on tax liability.

New Jersey - I worked hard and wrote letters supporting the voting rights law. BUT:

The impact of the recent modifications to the U.S. Income Tax Law, which were enacted in disregard of overseas taxpayers was symbolic of the contempt with which this minority group is viewed by the U.S. Congress.

Sadly enough, the effect of the new law will be to decimate their ranks and eliminate them as a political entity.

Worse, the long run result will be to hand over most of the world's overseas markets to foreign business and foreign technology. This, of course, will destroy the balance of payments and create further pressures to raise revenues. I guess I'm ready to give up!

Oklahoma - We received the ballot 2 weeks before the election yet on the ballot it said it had to be marked returned and received in the Washington County Election Board 30 days before the election. I wrote for the ballot in August.

Pennsylvania - I was advised that since I have lived outside of USA for 10 years Pennsylvania would not consider me a resident and my voting registration 'rights' expired at least 7 years ago. Consequently I must personally register which was a physical impossibility. I also feel the registration people involved being insolar, don't know how to handle the situation as it is a departure from their normal routine.

Possibly voting should be done through the USA Embassies upon presentation of passport with U.S. Government placing in the hands of the designated state without qualification for registration, taxes, etc.

Texas - Since we owned no property in Texas, we used our employer's address, but were told that we must list a residential (not business) address before we could receive a ballot. This is obviously aimed at preparing for property tax. We could not give a residential address since we do not have one.

Ohio - State Tax liability. Luke warm on both candidates.

Oregon - Could not obtain clear cut answers to my enquiry.

Texas - Procedure unclear and complicated. Tried a few years ago and procedures were so complicated and time consuming - just don't have time.

Due to the size of the American community in Singapore - I believe that the American Embassy should have a polling place open on elections for national elections. They should be required to do this and provide this service to American tax payers.

Connecticut - Wrote letter to County Clerk concerning the tax liability - answer was late and inclusive. Answer arrived approximately three weeks to time of balloting.

Connecticut	-	My wife and I obtained voter registration forms from U.S. Embassy duly signed and forwarded to Town Clerk in Westport, Connecticut. The forms were returned to me to make a minor correction, then we re-submitted the forms to Westport, Connecticut. The forms were then again returned to us because they had not been authenticated at U.S. Embassy. Amazing! By this time it was too late! We got the very distinct impression that attempts had been made to obstruct my voting rights by Westport, Connecticut Town Clerk, as I had precisely followed all submittal instructions given to me by the U.S. Embassy. Please let me know the results of your findings.
Illinois	-	Advise regarding absentee ballot arrived too late.
Louisiana	-	I was advised by American consulate that registering in Louisiana could be used as proof of residence and could be a basis for state income tax claims. I first enquired about registration by a telephone call to the American consulate here and was advised that registration should be through my last state of residence. When I told them it was Louisiana, they warned me that registration could make me liable for state tax. Later I went to the registration booth at the American Club and received the same warning there.
Texas	-	The difficulties in the registering process coupled with my own procrastination delayed my attempt to register probably past the safe time allowance to receive ballot.
California	-	We have both voted in every local, state and federal election from 1942 (including the war years by absentee ballots) until this assignment beginning July 1974 - the best advice we've had is that we would be subject to California state income tax if we opted to exercise our franchise, and frankly I simply cannot afford the expenses.
Florida	-	Wife and I registered to vote in Florida in August 1976 they said they would send ballots to us but they never arrived.
Georgia	-	I simply waited too late to get started. Informed by U.S. Embassy that I had delayed too long when I started process in September.
Hawaii	-	Previously had trouble with New York state claiming income tax liability on earlier overseas assignment. If they had passed the tax liability extention clause of the Bill, I would have registered to vote.
Idaho	-	Sent my application with husband - he got reply-I did not not receive reply.
Louisiana	-	Ballots post mark October 12, 1976 - received November 18, 1976.
Minnesota	-	Minnesota requested resident address. Own no property in USA hence no resident address.

New Jersey - I registered with the County Board of Elections last April to vote in the 1976 Presidential election. By November 2, I had received no ballot. But the ballot finally arrived on November 10. I might add that the ballot was posted on October 12 but per the USOAL Government procedures, it was sent by surface mail.

New York - I applied for an absentee ballot 6 months in advance and with much confusion and correspondence my district finally agreed to send the ballot. It arrived the day after the election in the U.S.

Ohio - Ballot came via sea mail because insufficient postage was attached. Arrived too late.

Louisiana - Why can't American Embassies or some other officially designated place be used as overseas polling places? Votes could still be designated to last state of residence.

Becoming liable for taxes in a state where you haven't resided for a year or more is absolutely unfair if not unconstitutional - it's as if states are empowered to levy a severe 'poll tax' to vote in a federal election.

The recent close election has disappointed and angered many overseas eligible voters; antiquated tax laws prevented them from participating.

New York - We now consider New Mexico our state of residence since we do not intend to return to New York - but my husband seems to think I cannot decide myself (where I may register and vote).

When I go home this summer I am going to look into the possibility of registering in New Mexico so in the future there will be no question as to which state I belong to.

Texas - My instructions were to apply to the county tax assessor. I did, but instructions were in error - should have been County Clerk. Even though both people are in the same building in Nacogdoches, the County Clerk refused to mail the ballots.

Wisconsin - Absentee ballot received too late to be returned by November 2, 1976.

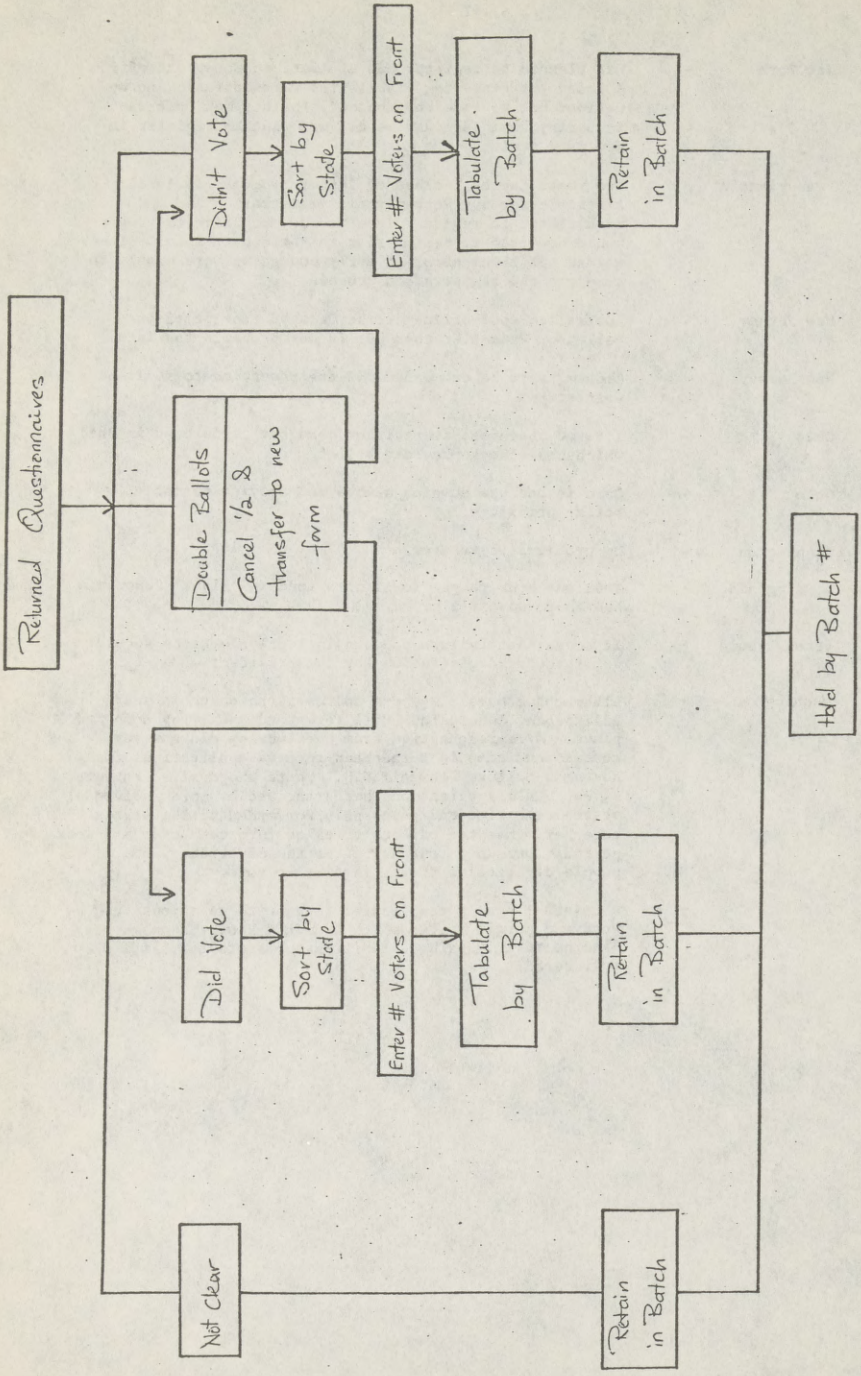
I experienced extreme difficulty in registering as an absentee voter (expatriate) due to my town clerks staff's ignorance of absentee registrations. Only after repeated attempts and verifications on my part was I able to confirm my status as an expatriate absentee voter.

After registered, my ballot arrived too late to meet the election deadline.

California - While on home leave in California in August, neither the Registrar of Voters in Los Angeles nor Democratic Party Hq. were able to advise how I could be sure that I am registered. They were completely unfamiliar with the new LAW. The Registrar responded to my request for ballot by indicating I was not registered to vote, while sending a ballot to my wife who was registered. I sent a letter to the Registrar indicating that the status of my wife and I should be identical and filled out the forms sent to obtain a ballot. The ballot arrived in December.

New York	-	Registration ballot request mailed in, no reply ever received.
New York	-	Procedure unclear or complicated. Did not know where registration could be completed etc. Lack of knowledge.
Illinois	-	Difficult to get information on how to register. Often information was contradictory and confusing. Grateful to Chamber for help.
Michigan	-	The ballot did not require an affidavit to accompany it. However, after I mailed the ballot, I received a letter notifying me that I was required to include an affidavit, which was enclosed with the subsequent letter. I wasn't sure what to do then. I did not send back the affidavit and am uncertain as to validity of my ballot.
Pennsylvania	-	Just enough time. However, I was in Pennsylvania on business and could expedite matters. Otherwise I don't think I would have received information in time.
Pennsylvania	-	Problem of notarization was difficult.
Texas	-	Having ballot application validated by American Embassy Counselor Section, waited 3 hours.
Colorado	-	My wife received her ballot on election day, I received mine the day after election.
Colorado	-	We tried but I think (a) the ballots were not sent soon enough and (b) we had a local mail strike going on.
New York	-	(i) Concern about state tax liability, particularly with New York financial troubles; (ii) Ballot did not arrive in time to return by deadline.
New York	-	The subject married couple, U.S. citizens and taxpayers have resided without the United States for twenty years during which time both U.S. and local income taxes have been paid. Until recent years we did not vote because we were unable to do so for the reason with which you are familiar. When recently the vote became available, the question arose as to possible state tax becoming applicable on the part of the state of our last residence in the United States. While we have no present intention of again taking up residence in the state of New York, the future is uncertain and in the event we indeed did return to New York we would not wish to run the uncertain risk of having New York State tax assessed upon our income for the past twenty or more years.
Pennsylvania	-	Ballot received too late, sent for registration forms in plenty of time, but mail delays plus requirement for registration and ballot to be applied for separately caused our votes to be too late.

New York	-	Had planned to register but at American Consulate office I found out state tax liabilities were confused and we decided not to take any chance. Besides New York was temporary residence and we did not want to register in New York state.
Pennsylvania	-	Two years lapsed because of failure to vote in local elections for our Pennsylvania registration had the requirement to register involved so much time that we would have had to begin prior to the conventions. Since we did not think about it early enough we were unable to complete the registration process.
New Jersey	-	Australian Post office strike delayed receipt of our ballots. We mailed them but it was probable too late.
New Jersey	-	AmCham is to be commended for their service to would-be voters.
Ohio	-	I voted absentee; am resident here but registered in Ohio which has always provided ballot.
Ohio	-	Ohio is one state which always did provide absentee voting privilege.
Washington	-	No problems whatsoever.
W. Virginia	-	Took one hour to get forms notarized in 'Blank' Conculate and there wasn't a crowd.
Pennsylvania	-	It seems that failure to vote in local elections should not force re-registration for the presidential election.
Washington	-	Although we have Singapore address, residence is near Balikpapen, Indonesia. Mail forwarded weekly by company plane. A representative from the Embassy did however come to our camp in Borneo and receive applications for absentee ballots from all U.S. expats who desired to vote. Although all applications were received by this individual at the same time and supposedly forwarded to the states together, absentee ballots trickled into camp over a 3-week period. Ours came one day after the election. Some people did receive theirs in time to vote.
Florida	-	Received long and complicated form, with questions such as word and permit no. to which I didn't know the answers. Also heard of possible liability for state tax, if I registered.


Returned Questionnaires
Double Ballots
Cancel 1/2 & transfer to new form
Didn't Vote
Sort by State
Enter # Voters on Front
Tabulate by Batch
Retain in Batch
Did Vote
Sort by State
Enter # Voters on Front
Tabulate by Batch
Retain in Batch
Not Clear
Retain in Batch
Hold by Batch #

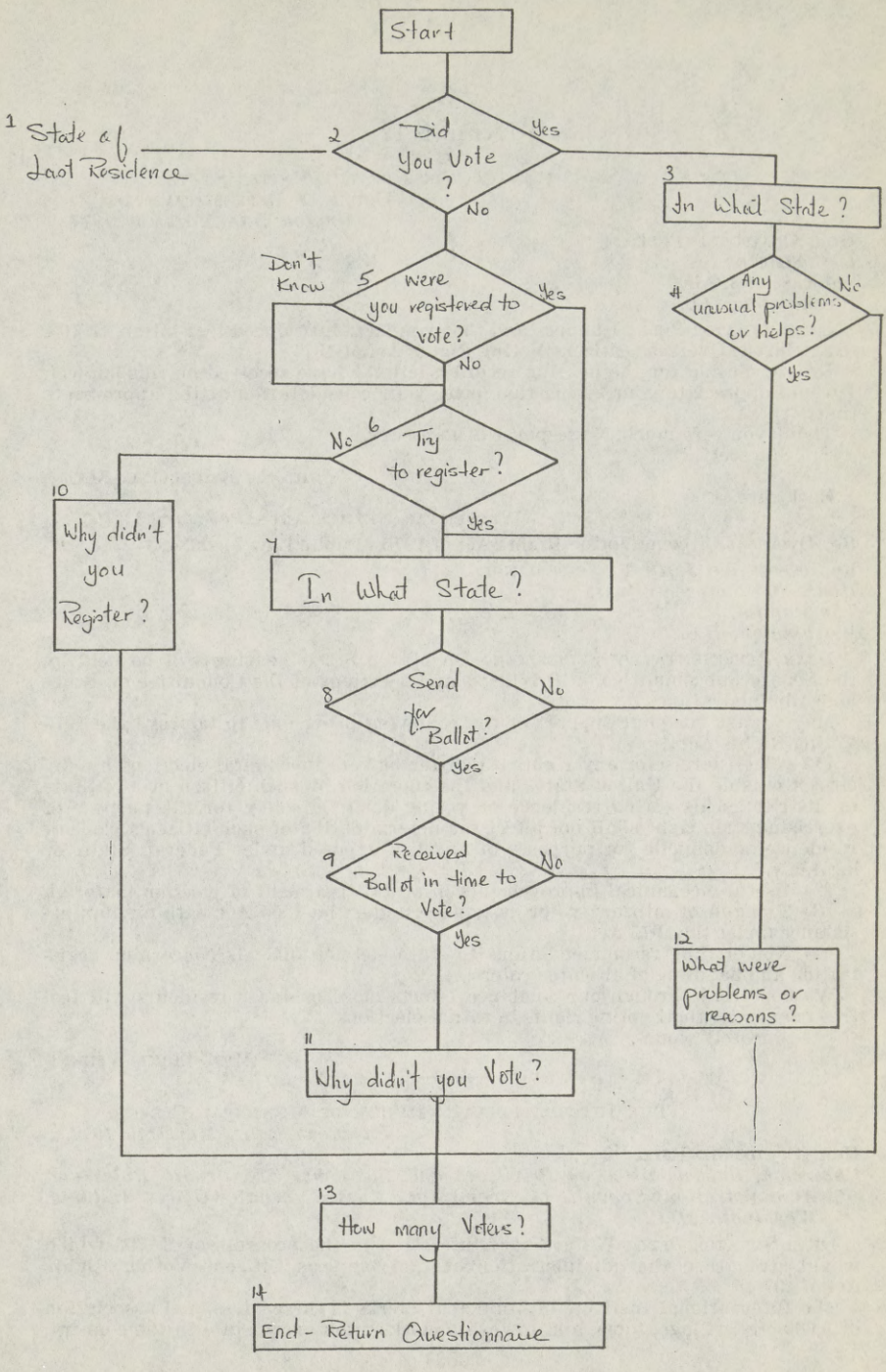

Start
1 State of Last Residence
2 Did You Vote ?
Yes
No
3 In What State ?
4 Any unusual problems or helps?
No
Yes
Don't Know
5 Were you registered to vote?
Yes
No
No
6 Try to register ?
Yes
10 Why didn't you Register ?
7 In What State ?
8 Send for Ballot ?
No
Yes
9 Received Ballot in time to Vote ?
No
Yes
12 What were problems or reasons ?
11 Why didn't you Vote ?
13 How many Voters ?
14 End - Return Questionnaire

EXHIBIT 12

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
Washington, D.C., March 30, 1977.

Hon. CLAIBORNE PELL,
U.S. Senate,
310 Russell S.O.B.,
Washington, D.C.

DEAR SENATOR PELL: I understand that you have introduced legislation, S. 703, to amend the Overseas Citizens Voting Rights Act of 1975.

I am enclosing for the hearing record a letter I have received on this subject. I would appreciate your giving this letter your consideration at the appropriate time.

Thank you very much. No response is necessary.

Sincerely,

JOHN F. SEIBERLING, M.C.

Enclosure.

WASSENAAR, NETHERLANDS, *February 23, 1977.*

Re: Overseas Citizens Voting Rights Act of 1975 (Public Law 94–203).

Representative JOHN F. SEIBERLING.
House of Representatives,
The Capitol,
Washington, D.C.

DEAR REPRESENTATIVE SEIBERLING: On March 8th a hearing will be held by the Senate Subcommittee on Privileges and Elections of the Committee on Rules and Administration.

May we ask for your support of the following provisions to improve the 1975 Voting Rights Act:

(1) "The exercise of any right to register or vote in Federal elections by any citizen outside the United States and the retention by such citizen of any State or district as his voting residence or voting domicile solely for the purpose of exercising such right shall not affect the determination of such citizen's place of residence or domicile for purposes of any tax imposed under Federal, State, or local law."

(2) Useful mechanical improvements in postal treatment of election material.

(3) Tying-in of military voter assistance under the 1955 Act with civilian assistance under the 1975 Act.

(4) Non-binding recommendations to state election officials concerning registration and handling of absentee voters.

We hope that through our combined efforts more overseas residents will feel free to exercise their voting rights in future elections.

Sincerely yours,

Mrs. VICKY VLEK.

THE INTERNATIONAL INSTITUTE OF MUNICIPAL CLERKS,
Pasadena, Calif., March 15, 1977.

Hon. CLAIBORNE PELL,
Chairman, Subcommittee on Privileges and Elections, U.S. Senate Rules and Administration Committee, Room 310, Russell Senate Office Building, Washington, D.C.

DEAR SENATOR PELL: We are very interested in the progress of S. 703 which would strengthen the administration of the Overseas Citizens Voting Rights Act of 1975.

The International Institute of Municipal Clerks is the professional association of 3,600 city, village, town, and township clerks from every state in the country.

Many of our members serve as the local election administrator and consequently are concerned with the orderly and efficient operation of the election procedures.

We recently sampled the experiences of our members on the administration of the Overseas Voting Rights Act. They made several points which your committee may find useful in your deliberations.

In our survey there were these areas which appeared to present problems:

(a) *Slowness of the Mails between Applicant and Election Administrator.*—Often the delay was caused by the applicant using the wrong postage (e.g. U.S. stamps on letters mailed from a foreign country, or insufficient postage). Delivery delay for the mails to reach their destination from overseas was another complaint.

(b) *Conflict of Federal Time Periods and Deadlines with State Election Laws.*—Questions were raised such as: Once a person registers and votes in a federal election is it permanent or must re-registrations be made for each election? How do you protect privacy of ballot if the vote is not cast by precinct?

How do you resolve conflict with state statute which permits absentee vote for President and Vice President for transient between states who cannot yet meet the residency requirement in their new state residency when the Federal law permits voting for all federal offices? How do you handle conflict of closing dates for filing between Federal and State laws? How do you handle the conflict of the last filing date with state statutes which permit election day registration?

(c) *Lack of Public Information on the Overseas Voting Rights Act.*—Many local election administrators, because of the very limited requests and the newness of the Federal law, were not familiar with the law. Persons residing overseas were not familiar with the procedures of the Act and the details regarding deadlines, forms, and application procedure. A good public relations program is needed to inform all parties of the Act and its details.

We would like to further suggest that the education responsibility for the Federal Voting Overseas Act as it applies to civilians and to local election administrators be placed in the jurisdiction of the Federal Election Commission. This agency has been very diligent in informing local election administrators about operations and procedures affecting Federal elections. This centralization of information on Federal election procedure will strengthen the relationship between the Federal branch and state and local election administrators.

We appreciate the effort that you and your committee have made to strengthen the opportunity which will allow fuller participation by all citizens in the election process. If our association can be of assistance to your committee in any way please let us know.

Sincerely yours,

JOHN J. HUNNEWELL,
Executive Director.

TOWN OF WETHERSFIELD,
Wethersfield, Conn., March 4, 1977.

Senator CLAIBORNE PELL,
Senate Office Building,
Washington, D.C.

DEAR SENATOR PELL: I am writing you in regard to S. 703 which you have introduced amending the Overseas Voting Rights Act.

While I am Chairman of the Federal Legislative Committee of the International Institute of Municipal Clerks, I write you purely as an individual, at this point in time. We are in process of polling some of our membership to ascertain our collective thinking as an organization and will perhaps forward a further communication soon in that regard.

May I respectfully suggest that your proposal S. 703 place the responsibility of Overseas Absentee Balloting in the Federal Elections Commission. This to me is the proper agency. The Federal Elections Commission should definitely start to assume far more responsibilities in the area of elections and registration and less on spending aspects. Its title alone suggests that function as a primary one. and balloting in any form falls under elections. The Secretary of Defense should continue to handle voting methods for members of the Armed Forces, as I feel the services presently have a well maintained and ably functioning system for these individuals. I do not feel, however, that the Defense Department should handle anything in the way of civilian ballots!

One small matter, I would draw to your attention, is concerning the free postage aspect. You have carefully designed the card to be returned by free or air

mail means, yet one must realize that perhaps there will be thousands of individuals around the globe, who must use the current foreign air mail postage rate wherever they are located, for return of the card to the U.S. Perhaps some wording should be made on the card itself, stressing that air mail should be used to ensure prompt delivery. Item E. under Instructions should be removed or modified, due to the reason just mentioned.

Thanking you for your consideration, I am,

Sincerely,

W. DUDLEY BIRMINGHAM,
Town Clerk.

THE AMERICAN CHAMBER OF COMMERCE IN ARGENTINA,
Buenos Aires, February 23, 1977.

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

DEAR SIR: With respect to new legislation to amend the Overseas Citizens Voting Rights Act of 1975 (Public Law 94–203) and initiative, identified as S. 703, proposed by yourself and Senators Mathias and Goldwater, with the idea of overcoming problems encountered by Americans abroad who set out to vote in 1976, we, The American Chamber of Commerce in Argentina, and its members, wholly endorse the text of S. 703.

For years American Citizens living abroad, taxed on earnings abroad and denied the right to vote, have been incensed at the attitude of various States, over the years, in refusing voting rights.

As a case in point, the writer—from an old Rhode Island family, brought up in New York State and a Reserve Officer in the United States Air Force which he held until a few years ago—was denied voting rights by the State of New York. This was based on the argument that New York State taxes were never levied as the writer went into World War II and then abroad, where he has lived for some 31 odd years; although U.S. taxes have been paid throughout these years. Over the years the writer has worked exclusively for American Companies who have heavy investments throughout different parts of the world.

It is with pleasure that the writer, as President of the Board of The American Chamber of Commerce in Argentina and in the name of many of the members of the Board and Chamber, wishes to take this opportunity of assuring you of our fullest support for your endeavors with respect to Public Law 94–203 and amendment S. 703.

Very truly yours,

ALEXANDER PERRY JR.

AMERICAN CHAMBER OF COMMERCE IN AUSTRALIA,
Sydney N.S.W., March 8, 1977.

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

DEAR SENATOR PELL: On behalf of the 1,400 members of the American Chamber of Commerce in Australia, please accept our warmest thanks and deep appreciation for your continuing concern with the voting rights of Americans resident abroad.

These international salesmen, who contribute so much to the United States balance of trade, looked forward with eager anticipation to the possibility of voting at the Presidential Elections last November. However, an overwhelming percentage of Americans surveyed by the Chamber failed to register, primarily because of concern that they would attract state taxes merely on the basis of their having applied to register. Of the others, a number received either their registration papers or their vote by surface mail which arrived too late to enable them to exercise their voting rights.

It would appear to us that your bill, S. 703, will strengthen administration of the provisions of the Overseas Citizens Voting Rights and will do much to correct the anomalies that became apparent in the November Presidential Elections.

It would be appreciated if you could arrange to include this letter in the hearing record.

You have our unstinting support in your efforts.

Sincerely,

KEVIN BANNON,
Executive Director.

AMERICAN CHAMBER OF COMMERCE OF COSTA RICA,
San José, March 3, 1977.

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

DEAR SENATOR PELL: During the past few years our Chamber has taken great interest in promoting the voting rights of American citizens residing abroad.

Through the enactment of the Overseas Citizens Voting Rights Act of 1975 (Public Law 94–203) our Chamber was able to provide voting registration assistance to many Americans residing in Costa Rica. However, there was apprehension on the part of some Americans and others experienced difficulties in voting in the last elections.

It is therefore rewarding to note that action has been taken to refine the provisions of the Act.

We support this initiative and urge passage of the new bill, S. 703, amending the overseas Citizens Voting Rights Act.

We respectfully request that this letter of support be included in the hearings record.

Sincerely,

CRAIG DAMSTRON, *President.*

AMERICAN CHAMBER OF COMMERCE IN ITALY, INC.,
Milan, March 28, 1977.

Hon. CLAIBORNE PELL,
U.S. Senate,
Washington, D.C.

DEAR SENATOR PELL: I again have reason to write to you, after my recent letter of March 10, 1977, but on a different subject. My present letter is in reference to Bill S. 703 which you recently introduced (for yourself, Mr. Goldwater and Mr. Mathias) to amend the Overseas Citizens Voting Rights Act of 1975 and to overcome the problems encountered by Americans abroad who voted or tried to vote in the 1975 Federal Elections.

We wanted to express our appreciation to you for introduction of this Bill which is a necessary piece of legislation inasmuch as problems did arise for the Americans who tried to vote overseas and your Bill would help resolve these problems. We would appreciate if you could include our letter in the records of the hearing that will be held on this Bill.

Sincerely yours,

HERMAN H. BURDICK,
General Secretary.

UNITED KINGDOM CHAPTER,
THE RETIRED OFFICERS ASSOCIATION,
London W2, 3NS, February 25, 1977.

Senator CLAIBORNE PELL,
Chairman, Subcommittee on Privileges and Elections, Committee on Rules and Administration, Senate Office Building, Washington, D.C.

DEAR SENATOR PELL: On behalf of the U.K. Chapter of the Retired Officers Association, I would like to express its appreciation to you and Senators Mathias and Goldwater for introducing legislation to improve the administration of the Overseas Citizens Voting Rights Act of 1975.

As former military men and women and now retired officers residing in the U.K., we are especially aware of the help that all overseas U.S. citizens could obtain from the efficient absentee ballot system of the Department of Defense. Arguably, such a method might possibly impose a small addition to the administrative burden carried by the services, but our members consider that its obvious and undeniable advantages far outweigh any extra effort required. In addition to this provision of your Bill, we are particularly encouraged and pleased by that portion relating to exemption of registration for tax purposes.

The other one hundred-and-fifteen members of our young Chapter join me in wishing you and your colleagues success in this important endeavor to insure the most fundamental democratic right of all. Whatever the outcome, you may be assured of our lasting gratitude.

Sincerely yours,

PHILIP S. TALKIN, LCDR USN (ret.),
President.

87-234 O - 77 - 18

AMOCO CHEMICALS PTY. LIMITED,
Liverpool, N.S.W., Australia, March 9, 1977.

Senator CLAIBORNE PELL,
U.S. Senate,
Washington, D.C.

DEAR SENATOR PELL: With reference to the Bill (S. 703) which you have recently introduced, which is designed to amend the Overseas Citizens Voting Rights Act of 1975, I would like to support your position.

During the last Presidential Election we received our Ballot on the 1st of November and were, therefore, unable to return it in time to the State of New Jersey, which was our former State of residency.

I look forward to hearing the outcome of this Bill.

Yours sincerely,

M. K. TEDSTROM,
Managing Director.

CAMARA DE COMERCIO AMERICANA EM PORTUGAL,
(CÂMARÁ DE COMÉRICO LUSO-AMERICANA),
Lisboa–1, February 23, 1977.

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

DEAR SIR: Please be informed that the Amcham in Portugal supports the new legislation to amend the Overseas Citizens Voting Rights Act of 1975, identified as S. 703. We would appreciate very much if you could include this letter in the hearing record.

Sincerely,

H. M. BRITO DO RIO.

DIPL.-ING. HORST H. SCHNEIDER P.E.,
c/o AMOCO TRINIDAD OIL CO.,
Port-of-Spain, Trinidad, W.I., March 11, 1977.

Re: Overseas citizens voting rights (S. 703).

Senator CLAIBORNE PELL,
U.S. Senate, Washington, D.C.

DEAR SENATOR PELL: I was pleased to see that you have introduced new legislation to amend the Overseas Citizens Voting Rights Act of 1975. Strong legislation on this matter is of great necessity to avoid the present confusion, misinterpretation and deprivation of rights of overseas citizens.

I became a victim of this poorly written Act during the last presidential election. I exercised my right to vote as an absentee by obtaining from my former voting precinct in Munster, Indiana, all the necessary documents. I had the ballot sealed in Port of Spain and my signature notarized by Mr. Harkness, an official of the U.S. Embassy in Port of Spain. Later I learned from Mr. C. Hott, my former neighbor in Munster, Indiana, that my ballot was thrown out by the election judges of my former precinct on the basis that I presently do not have a legal residence in the precinct, and therefore I am not carried on the poll books. I had lived in this precinct eleven years, have been a registered voter and in 1973 when I was transferred to Trinidad as an engineer of Amoco International Oil Company, I apparently ceased to be a privileged citizen with the right to vote.

In view of this, I wholeheartedly support your attempts to rectify these apparent areas of discrimination against U.S. citizens living abroad and I offer my assistance in testifying before your committee at your pleasure.

Very truly yours,

H. H. SCHNEIDER.

O'HAIRE, FIORE & DALY,
Frankfurt/Main 1, March 9, 1977.

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

DEAR SENATOR PELL: I understand that your Sub Committee is now considering legislation to amend the Overseas Citizens Voting Rights Act of 1975. This new legislation which is titled S. 703, would introduce a number of improvements in the voting procedures for Overseas Americans.

I have reviewed the text of S. 703, and heartily endorse this proposed legislation. I was active in the Bipartisan Committee for Absentee Voting, and have had contact with many Americans residing here in Germany. Through this contact and the experience of my own law practice, I know that there are a number of problems associated with the exercise of voting rights by us Americans living abroad, and this new legislation would go a long way to resolving some of the difficulties. I am particularly impressed by the fact that S. 703 would prohibit any Federal, State or local jurisdictions from imposing income or other taxes on U.S. citizens outside of the U.S. solely because they exercise their right to register and vote in Federal elections. Furthermore, I know of many Americans living here in Germany who experience difficulty in obtaining absentee ballots and this legislation's proposal to create a single form of post card application for absentee registration would certainly help facilitate the obtaining of absentee ballots.

Please include this letter in the hearing record of your Committee.

Sincerely yours,

ROBERT V. DALY, Jr.

SINGAPORE, *March 11, 1977.*

Senator CLAIBORNE PELL,
U.S. Senate,
Washington, D.C.

DEAR SIR: I wholeheartedly support Bill S. 703 which you recently introduced in Senate. I am in my second tour of duty overseas and have found that it is extremely difficult to register and vote in U.S. Elections while overseas. In addition to registering and voting, we expatriates find that very often our ballots do not count because of the problems in receiving absentee voter ballots and returning them to voting precincts. Voting procedures were recently improved; however, we find that we may expose ourselves to substantial income tax liabilities if we vote in these recently revised procedures.

I strongly encourage your efforts to further revise voting procedures for overseas expatriate citizens.

Very truly yours,

J. P. SODERBERG.

[Telegram]

VERSAILLES, *March 12, 1977.*

Senator PELL,
U.S. Congress,
Washington, D.C.

AARO fully supports S. 703 and additional provision proposed by bipartisan committee.

———— ————,
Vice Presidente Association of
American Residence Overseas.

TECHNISCHE HODGESCHOOL DELFT,
GEBOUW VOOR ANALYTISCHE SCHEIKUNDE,
Delft, The Netherlands, February 25, 1977.

Re: Overseas Citizens Voting Rights Act of 1975.

Senator CLAIBORNE PELL,
The Senate,
Executive Office Building,
Washington, D.C.

DEAR SENATOR PELL: As chairman of the American Democratic Party of the Netherlands, and member of the Executive of Democrats Abroad, I wish to express my strong support for the proposed improvements of the Overseas Citizens Voting Rights Act of 1975.

It is imperative that improvements be made. Last fall's Elections have shown ever so clearly how easily our fellow-citizens may become disenfranchized. One may not ignore the deep emotional impact of such a situation on the outlook and feelings of these people. In addition it is important to remember, as we at home often discuss, that we, U.S. citizens abroad are all ambassadors of good-will and are seen by our foreign contacts and friends as representative of the U.S.A.

We are championing for human rights and the acceptance of democracy as we practice it all over the world. The improvements of the existing laws give us a chance to carry another candle of inspiration amongst our foreign neighbors who are more and more experiencing the diminishing of their freedoms and encroachment on their personal rights.

My sincere thanks for your efforts on behalf of this bill.

With my best wishes,

Prof. J. H. VAN DEN HENDE.

TOKYO, JAPAN, *February 28, 1977.*

Hon. CLAIBORNE PELL,
U.S. Senate,
Washington, D.C.

DEAR SENATOR PELL: I was very pleased to learn recently that Senators Mathias, Goldwater and yourself had introduced legislation to amend the Overseas Citizens Voting Rights Act of 1975. I was particularly pleased to note that the new legislation provides for development of a single form of postcard application for absentee registration and balloting and prohibits States or localities from imposing income or other taxes on citizens residing outside of the United States solely for exercising their rights to register and vote in Federal elections. In a recent survey of Americans living in Japan conducted by the American Chamber of Commerce in Japan in which I participated, more than half of the respondents indicated that they did not vote in the 1976 Federal Election and a substantial majority (over 75%) of those who did not attempt to register indicated concern about possible state tax liability as the prime reason for not doing so. As a former New York resident, I personally did not exercise my rights under the Voting Rights Act because of concern about state tax liability. Therefore I heartily support S. 703.

I very much hope to have an opportunity to meet you again when I am next in Washington, D.C. I am currently working as General Counsel of Mobil's Japanese affiliate, Mobil Sekiyu K. K., and hope you will contact me if you are ever in Tokyo.

Very truly yours,

WILLIAM A. NITZE.

CAMP PENDLETON, CALIF., *February 26, 1977.*

DEAR SENATOR PELL, I am a Major in the United States Marine Corps stationed in California. I am a tax-paying resident of the State of Rhode Island. This letter is in response to an article that I saw in *Navy Times* about your bill regarding improvement of absentee voting.

I have enclosed several letters and a newspaper article to provide you with some background on my case, in particular, which can be applied, in general, to many military and civilian personnel who serve their country and live outside the bounds of their home state.

Recent legislation has given the states authority to ask the military to withhold the state tax of personnel on active duty. That legislation *did not* require the states to provide assistance to military personnel in fulfilling their civic responsibilities. I refer specifically to voting information on state level elections and referendums that frequently occur outside the time-frame of national elections. We (the military) now must pay taxes monthly, yet we are deprived of the right of knowing what is going on in our home state. Did the drafters of the legislation take this into consideration before enacting the law? Just how do we find out what is going on? It appears the "military citizen" has been relegated to a "second class" citizen status. How can we fulfill our obligation as citizens with the burden that has been placed on us? The enclosed letters will provide you with an example of part of the difficulties that we must endure. I refer specifically to the Feb. 18, 1974 letter from the Office of the Governor of R.I. in which a member of his staff suggested I have a friend or relative keep me informed. The response is ludicrous, yet it is sad to think that in reality I must rely on this source to fulfill my obligations as a citizen.

I was deprived of voting in a state election (see letter dated 6 Jan. 1974) because I did not know about it yet I was required to pay my tax that year. How do I get satisfaction? I am still upset about that situation and the possibility exists that it could happen again.

I have never had any difficulty obtaining information and forms to get a "War Ballot" for my wife or myself either in the U.S. or while serving abroad. My wife and I chuckle at the title "War Ballot" which appears on the R.I. editions of absentee ballots. It seems to sum up well the outdated legislation that governs military personnel in that state. These laws were enacted to apply to short-duration military obligations of a bygone era and not to career servicemen and their families.

I refuse to take the suggestions of some individuals and run from the problem by establishing residence in a state that is more progressive and has no tax for servicemen who serve outside the state. There are military personnel who care about their civic responsibilities and I feel I am one of them. I pay a high price in dollars because I want to maintain a place that I can call "home".

The solution may be in the development of a program of state taxes for all military personnel. A standard fee could be paid by all military personnel and collected by the federal government. Then a percentage given to each state based on the number of military serving in that state. Those serving outside the U.S. would have their share given to their "home" state. All personnel then would receive all the benefits from the state that they are stationed in. This would provide a more informed citizen who could participate fully in local issues. The only absentee ballots would be for those actually outside the U.S. It would eliminate the problems that were described in this letter. A system such as the one I suggest would provide an equal basis for tax, a fair share for each state and a citizen that can function as he should be able to even when away from "home".

Mr. Pell, a problem does exist and I have not been able to find anyone who will do anything about it. I can't speak for a unified voting block only as an individual, please consider the situation. I called your office last week but was not able to discuss the problem, when someone called back I was not available. I will be deployed for a short while but my wife can be contacted and will get a message to me. I look forward to hearing from you.

Sincerely,

A. D. NASTRI, *Major, USMC.*

BONN-BEUEL, GERMANY, *March 21, 1977.*

Hon. CLAIBORNE DEB. PELL,
U.S. Senate,
Washington, D.C.

MY DEAR SENATOR: Through The Association of Americans Resident Overseas, Paris, France, of which I am a member, I have learned that you are planning to consider legislation improving absentees procedures, and amongst them state taxation for absentees which according to AARO is apparently one of the great problems.

I would kindly ask you to exercise your voting power in this matter and see to it that Section 8(b) of S. 95 which was eliminated by the House last year, when the absentee voting law was passed, be reinstated.

I thank you warmly for any effort you may undertake concerning the above request.

Sincerely yours,

ALWINE H. GORGUS.
Retired DA Civilian.

BIPARTISAN COMMITTEE ON ABSENTEE VOTING,
PARIS, *February 23, 1977.*

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

DEAR SENATOR PELL: We understand other spokesmen in Washington will present statements at your hearings on S. 703 but we wish to emphasize the importance of its approval at an early date. The need for early action arises because the various States will need time to incorporate in their systems the

proposed postcard application for absentee registration and the proposed absentee ballots. In addition, the difficulties in the House of Representatives of obtaining passage of the original law last year suggests that the perfection of that legislation is likely to receive extended consideration.

The only suggestions we would make for change is that free postage should apply to the ballots as well as the postcards and that ballots postmarked before election day be counted up to a stated day.

Sincerely yours,

HARVEY S. GERRY,
ALFRED E. DAVIDSON.

AMERICAN DEMOCRATIC PARTY IN THE NETHERLANDS

Postbus 313 Wassenaar Netherlands

February 23,1977

Senator Claiborne Pell
The Senate
Executive Office Building
Washington, D.C. 20515

Re: March 8th Hearings of Senate Subcommittee on Privileges and Elections of the Committee on Rules and Administration

Dear Senator Pell:

We are pleased and encouraged to know of the March 8th hearings concerning the revisions of the Overseas Citizens Voting Rights Act of 1975 (PL 94-203).

We appreciate your work in the interest of overseas Americans, and wish to inform you that we support the following provisions to improve the 1975 Act:

1) "The exercise of any right to register or vote in Federal elections by any citizen outside the United States and the retention by such citizen of any State or district as his voting residence or voting domicile solely for the purpose of exercising such right shall not affect the determination of such citizen's place of residence or domicile for purposes of any tax imposed under Federal, State, or local law."

2) Useful mechanical improvements in postal treatment of election material.

3) Tying-in of military voter assistance under the 1955 Act with civilian assistance under the 1975 Act.

4) Non-binding recommendations to state election officials concerning registration and handling of absentee voters.

We hope that through your efforts more overseas residents will feel free to exercise their voting rights in future elections.

Sincerely yours,

Shirley van Ooijen

S. van Ooijen-Chanes
Bevelandselaan 113
Amstelveen
The Netherlands

AMERICAN DEMOCRATIC PARTY IN THE NETHERLANDS

Postbus 313 Wassenaar Netherlands

February 23,1977

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The Senate
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We hope that through your efforts more overseas residents will feel free to exercise their voting rights in future elections.

Sincerely yours,
Mr. and Mrs. Steve Bruin

AMERICAN DEMOCRATIC PARTY IN THE NETHERLANDS

Postbus 313 Wassenaar Netherlands

February 23,1977

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The Senate
Executive Office Building
Washington, D.C. 20515

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4) Non-binding recommendations to state election officials concerning registration and handling of absentee voters.

We hope that through your efforts more overseas residents will feel free to exercise their voting rights in future elections.

Sincerely yours,

Mrs. Karen Carter

AMERICAN DEMOCRATIC PARTY IN THE NETHERLANDS

Postbus 313 Wassenaar Netherlands

February 23,1977

Senator Claiborne Pell
The Senate
Executive Office Building
Washington, D.C. 20515

Re: March 8th Hearings of Senate Subcommittee on Privileges and Elections of the Committee on Rules and Administration

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Sincerely yours,

Margaret Phillips Christman

AMERICAN DEMOCRATIC PARTY IN THE NETHERLANDS

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Sincerely yours,

Mrs. Rahusta Enschedé

SPEENKRUIDSTR. 7

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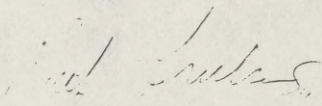

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Susan W. Gillespie

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Sincerely yours,

Helen M. Hootsman
FAWCO Education Facilities
Deputy
Amersfoort, the Netherlands

P.S. The New Haven Town Clerk did not forward an absentee ballot in time for the 1976 election.

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(Mrs.) Jeanne R. Kerkhoven
Rigolettolaan 55

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Sincerely yours,

Patricia Krunt
Sevingerstraat 25
Monster 2.H

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Sincerely yours,
Elisabeth Rouché Krijgsman
Elisabeth Rouché Krijgsman
Kloosterstraat 19
Naarden, The Netherlands

Last address in the U.S.:
104 Indian Spring Drive
Silver Spring, Maryland 20901

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R. Bruce McCormick

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J.F. Kennedylaan 53
Rijswijk 2105
The Netherlands

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Mr. + Mrs. C. Maly

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Nancy A. Novick

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's Gravesandeplein 1III
Amsterdam 1005
THE NETHERLANDS

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Joanne M. van Sambeek

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Julianna L. Schmidt

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Louise Tolbert

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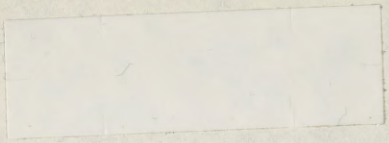
Secretary, ADPN

○