



U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

JAN 02 2018

The Honorable Michael R. Pence
President
United States Senate
Washington, DC 20510

Dear Mr. President:

Pursuant to the Uniformed and Overseas Citizens Absentee Voting Act ("UOCAVA") of 1986, 52 U.S.C. §§ 20301-20311, as amended by the Military and Overseas Voter Empowerment Act ("MOVE Act") of 2009, Pub. L. No. 111-84, Subtitle H, § 587, we are pleased to transmit to you the Attorney General's annual report.

We hope this information is helpful. Please do not hesitate to contact this office if we may provide additional assistance regarding this or any other matter.

Sincerely,

A handwritten signature in blue ink, appearing to read "Stephen E. Boyd". The signature is stylized and somewhat abstract, with a large loop at the end.

Stephen E. Boyd
Assistant Attorney General

Enclosure



U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

JAN 02 2018

The Honorable Orrin G. Hatch
President Pro Tempore
United States Senate
Washington, DC 20510

Dear Mr. President:

Pursuant to the Uniformed and Overseas Citizens Absentee Voting Act ("UOCAVA") of 1986, 52 U.S.C. §§ 20301-20311, as amended by the Military and Overseas Voter Empowerment Act ("MOVE Act") of 2009, Pub. L. No. 111-84, Subtitle H, § 587, we are pleased to transmit to you the Attorney General's annual report.

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Washington, D.C. 20530

JAN 02 2018

The Honorable Mitch McConnell
Majority Leader
United States Senate
Washington, DC 20510

Dear Mr. Leader:

Pursuant to the Uniformed and Overseas Citizens Absentee Voting Act ("UOCAVA") of 1986, 52 U.S.C. §§ 20301-20311, as amended by the Military and Overseas Voter Empowerment Act ("MOVE Act") of 2009, Pub. L. No. 111-84, Subtitle H, § 587, we are pleased to transmit to you the Attorney General's annual report.

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Washington, D.C. 20530

JAN 02 2018

The Honorable Charles E. Schumer
Minority Leader
United States Senate
Washington, DC 20510

Dear Mr. Leader:

Pursuant to the Uniformed and Overseas Citizens Absentee Voting Act ("UOCAVA") of 1986, 52 U.S.C. §§ 20301-20311, as amended by the Military and Overseas Voter Empowerment Act ("MOVE Act") of 2009, Pub. L. No. 111-84, Subtitle H, § 587, we are pleased to transmit to you the Attorney General's annual report.

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Washington, D.C. 20530

JAN 02 2018

The Honorable Charles E. Grassley
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

Pursuant to the Uniformed and Overseas Citizens Absentee Voting Act ("UOCAVA") of 1986, 52 U.S.C. §§ 20301-20311, as amended by the Military and Overseas Voter Empowerment Act ("MOVE Act") of 2009, Pub. L. No. 111-84, Subtitle H, § 587, we are pleased to transmit to you the Attorney General's annual report.

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Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

JAN 02 2018

The Honorable Dianne Feinstein
Ranking Member
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Senator Feinstein:

Pursuant to the Uniformed and Overseas Citizens Absentee Voting Act ("UOCAVA") of 1986, 52 U.S.C. §§ 20301-20311, as amended by the Military and Overseas Voter Empowerment Act ("MOVE Act") of 2009, Pub. L. No. 111-84, Subtitle H, § 587, we are pleased to transmit to you the Attorney General's annual report.

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Stephen E. Boyd
Assistant Attorney General

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Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

JAN 02 2018

The Honorable Paul D. Ryan
Speaker
U.S. House of Representative
Washington, DC 20515

Dear Mr. Speaker:

Pursuant to the Uniformed and Overseas Citizens Absentee Voting Act ("UOCAVA") of 1986, 52 U.S.C. §§ 20301-20311, as amended by the Military and Overseas Voter Empowerment Act ("MOVE Act") of 2009, Pub. L. No. 111-84, Subtitle H, § 587, we are pleased to transmit to you the Attorney General's annual report.

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Office of Legislative Affairs

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Washington, D.C. 20530

JAN 02 2018

The Honorable Kevin McCarthy
Majority Leader
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Leader:

Pursuant to the Uniformed and Overseas Citizens Absentee Voting Act ("UOCAVA") of 1986, 52 U.S.C. §§ 20301-20311, as amended by the Military and Overseas Voter Empowerment Act ("MOVE Act") of 2009, Pub. L. No. 111-84, Subtitle H, § 587, we are pleased to transmit to you the Attorney General's annual report.

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U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

JAN 02 2018

The Honorable Nancy Pelosi
Minority Leader
U.S. House of Representatives
Washington, DC 20515

Dear Madam Leader:

Pursuant to the Uniformed and Overseas Citizens Absentee Voting Act ("UOCAVA") of 1986, 52 U.S.C. §§ 20301-20311, as amended by the Military and Overseas Voter Empowerment Act ("MOVE Act") of 2009, Pub. L. No. 111-84, Subtitle H, § 587, we are pleased to transmit to you the Attorney General's annual report.

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Assistant Attorney General

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Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

JAN 02 2018

The Honorable Robert W. Goodlatte
Chairman
Committee on the Judiciary
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

Pursuant to the Uniformed and Overseas Citizens Absentee Voting Act (“UOCAVA”) of 1986, 52 U.S.C. §§ 20301-20311, as amended by the Military and Overseas Voter Empowerment Act (“MOVE Act”) of 2009, Pub. L. No. 111-84, Subtitle H, § 587, we are pleased to transmit to you the Attorney General’s annual report.

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Stephen E. Boyd
Assistant Attorney General

Enclosure



U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

JAN 02 2018

The Honorable Jerrold Nadler
Ranking Member
Committee on the Judiciary
U.S. House of Representatives
Washington, DC 20515

Dear Congressman Nadler:

Pursuant to the Uniformed and Overseas Citizens Absentee Voting Act ("UOCAVA") of 1986, 52 U.S.C. §§ 20301-20311, as amended by the Military and Overseas Voter Empowerment Act ("MOVE Act") of 2009, Pub. L. No. 111-84, Subtitle H, § 587, we are pleased to transmit to you the Attorney General's annual report.

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Assistant Attorney General

Enclosure

**United States Department of Justice
Uniformed and Overseas Citizens Absentee Voting Act
Annual Report to Congress
2017**

I. Summary

The Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA) of 1986, 52 U.S.C. §§ 20301-20311, as amended by the Military and Overseas Voter Empowerment Act (MOVE Act) of 2009, Pub. L. No. 111-84, Subtitle H, §§ 575-589, 123 Stat. 2190, 2318-35 (2009), requires States to afford military and overseas voters a meaningful opportunity to register and vote absentee in elections for Federal office. Protecting the voting rights of military and overseas voters remains one of the highest priorities of the Department of Justice (“Department”). This report describes the Department’s litigation and compliance monitoring work in 2017 to enforce this important statute.

Although 2017 was an “off-year” in the Federal election cycle, the Department continued significant work to enforce UOCAVA through its ongoing litigation and its monitoring of an unusual number of special elections held in 2017 to fill Congressional vacancies. Seven States¹ held special elections to fill Congressional vacancies this year. The Department closely monitored the scheduling of these elections, and requested that each of the States confirm to the Department that their local election offices timely transmitted their UOCAVA ballots before the special elections, including any primary elections or runoff elections conducted. Our monitoring resulted in additional enforcement work by the Department with two States to ensure that the special election ballots were timely-transmitted to their military and overseas voters.

In our 2010 UOCAVA litigation against the State of New York, the court ordered a schedule for conducting the 2018 Federal elections to ensure continued UOCAVA compliance. The Department also continued its participation in a case on appeal to defend the constitutionality of UOCAVA. Copies of the significant recent court orders and briefs referenced herein are attached to this report.

II. Background

UOCAVA, enacted in 1986, requires that States and Territories allow American citizens who are active duty members of the United States uniformed services and merchant marine, their spouses and dependents, and American citizens residing outside the United States to register and vote absentee in elections for Federal offices. UOCAVA was strengthened significantly in 2009 when Congress passed the MOVE Act to expand the protections for individuals eligible to vote under its terms. One of the key provisions added by the MOVE Act is the requirement that States transmit absentee ballots to military and overseas voters no later than 45 days before an election for Federal office when the request has been received by that date. 52 U.S.C. § 20302(a)(8)(A).

The Secretary of Defense is the Presidential designee with primary responsibility for

¹ Special elections for U.S. House seats were held in Kansas, Montana, California, Georgia, South Carolina, and Utah. A special election for a U.S. Senate seat was held in Alabama.

implementing the Federal functions mandated by UOCAVA, and the Attorney General may bring a civil action in an appropriate district court for such declaratory or injunctive relief as may be necessary to carry out the provisions of UOCAVA. 52 U.S.C. § 20301(a); 52 U.S.C. § 20307(a). The Attorney General has assigned responsibility for enforcement of UOCAVA to the Civil Rights Division. Since UOCAVA was enacted in 1986, the Division has initiated and resolved numerous cases to enforce UOCAVA. A case list and selected documents are available at <http://www.justice.gov/crt/about/vot/litigation/caselist.php>.

Under the MOVE Act amendments, UOCAVA requires that the Attorney General submit an annual report to Congress by December 31 of each year on any civil action brought under the Attorney General's enforcement authority under UOCAVA during the preceding year. 52 U.S.C. § 20307(b). As detailed in its prior reports to Congress, the Department has engaged in extensive enforcement of the MOVE Act's requirements since they went into effect for the 2010 general election.

III. UOCAVA Enforcement Activity by the Attorney General in 2017

In 2017, the Department continued to monitor compliance with UOCAVA orders and to advance litigation in cases initiated in previous election cycles. Additional activity occurred in the following cases filed prior to 2017:

A. Litigation to Defend the Constitutionality of UOCAVA

Segovia v. United States: The Department continued its defense of the Federal defendants named in *Segovia v. United States*, No. 16-4240 (7th Cir.), *appealed from Segovia v. Board of Election Commissioners for the City of Chicago*, No. 1:15-CV-10196 (N.D. Ill.), a case that included a challenge to the constitutionality of UOCAVA. In this case, filed in November 2015, plaintiffs who are former Illinois residents now residing in the territories sued local election officials in Illinois as well as the United States and the Department of Defense, asserting an equal protection challenge against UOCAVA and against the Illinois law governing voting by military and overseas voters. In two rulings issued on August 23 and October 28, 2016, the district court rejected the plaintiffs' claims, and dismissed the case. The plaintiffs appealed to the Court of Appeals for the Seventh Circuit, and the Department filed a brief on June 26, 2017, reiterating arguments made to the district court that the plaintiffs lacked standing and that UOCAVA is constitutional. The Department participated in oral argument on September 15, 2017, and as of December 19, 2017, the case remains pending before the Court of Appeals.

B. Activity in Other UOCAVA Litigation

United States v. New York: In *United States v. New York*, No. 1:10-cv-1214 (N.D.N.Y.), the Department's lawsuit against New York for violating UOCAVA in the 2010 Federal general election, the court entered a supplemental remedial order requested by the State of New York setting the election calendar to govern the 2018 Federal elections. The Department did not object to the State's

requested order.

In 2012, after New York failed to enact legislation to modify its election calendar to cure the structural issues that contributed to New York's late transmission of UOCAVA ballots in the 2010 Federal general election, the court granted the Department's motion for supplemental relief to alter the election calendar. The court entered a permanent injunction and ordered a modification of New York's Federal primary election date from September to June, setting the 2012 Federal primary election for June 26, 2012. The court further ordered that future Federal primary elections would be held on the fourth Tuesday in June, unless and until New York enacted legislation resetting the Federal primary date for one that complies fully with UOCAVA and is approved by the court.

The court's November 21, 2017, order superseded provisions of New York law pertaining to the 2018 election calendar to ensure UOCAVA compliance for the June 26, 2018, Federal primary election and November 6, 2018, Federal general election. The State has yet to enact legislation to alter the September Federal primary election date set forth in state law, and the court has entered calendars to govern each of the Federal election cycles since its original remedial order.

C. Other Enforcement Activity in 2017 to Obtain UOCAVA Compliance

South Carolina: The Department engaged in negotiations with the State of South Carolina that achieved UOCAVA compliance without the need for litigation. When a special election was called in 2017 to fill a vacancy in South Carolina's Fifth Congressional District, the Department worked closely with state election officials to address existing state law provisions that could prevent the timely transmission of absentee ballots to uniformed services voters and U.S. citizens overseas in special elections for congressional office. The State's statutorily-imposed calendar for holding special elections provided insufficient time for the State to meet its UOCAVA ballot transmission deadlines when a special primary runoff is held, and in some circumstances when a special primary election is held. After the Department notified South Carolina that litigation had been authorized to enforce UOCAVA, the State passed legislation on an emergency basis to change state law in time to resolve the UOCAVA conflict, both for the imminent 2017 special election and for all future special congressional elections.

Montana: The Department worked closely with Montana election officials to ensure that uniformed services voters and U.S. citizens overseas would have sufficient time to vote in a 2017 special election to fill a vacancy in Montana's at-large congressional seat, and compliance with UOCAVA was achieved without the need for litigation. Shortly before the 45-day deadline for transmitting UOCAVA ballots, private litigants filed suit in federal court seeking access to the special election ballot for additional candidates. Montana advised that it might seek a waiver of the deadline under UOCAVA from the Department of Defense if the court entered relief that would prevent timely transmittal of the ballots. The Department, in consultation with the appropriate Defense Department officials, conferred with state officials as the private litigation proceeded to determine what

actions might be necessary to ensure UOCAVA compliance. Ultimately, in the private litigation, after appellate review, the federal court declined to require changes to the ballot or to enjoin Montana from sending out ballots, and the State was able to transmit its UOCAVA ballots by the 45th day before the special election.

ATTACHMENTS

**I. UOCAVA Enforcement Activity by the Attorney
General in 2017**

**A. Litigation to Defend the Constitutionality of
UOCAVA**

Segovia v. United States

NO. 16-4240

**IN THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT**

LUIS SEGOVIA, et al.,

Plaintiffs-Appellants,

v.

UNITED STATES OF AMERICA, et al.,

Defendants-Appellees.

On Appeal from the United States District Court
for the Northern District of Illinois, No. 1:15-cv-10196
(Hon. Joan B. Gottschall, J.)

CORRECTED BRIEF FOR THE FEDERAL APPELLEES

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INTRODUCTION

Plaintiffs reside in the United States Territories of Puerto Rico, Guam, or the Virgin Islands. They seek to vote absentee in federal elections in Illinois, where they lived before moving to the Territories, even though they no longer live in Illinois and presently have the same voting rights as the other residents of the Territories in which they reside. Plaintiffs challenge as unconstitutional both the Illinois law governing absentee voting and the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA), which generally requires States to accept absentee ballots from former residents who move outside of the United States but not from those who move to the Territories in which plaintiffs now reside. This brief addresses plaintiffs' challenge to UOCAVA.¹

STATEMENT OF JURISDICTION

Plaintiffs' jurisdictional statement is not complete and correct. As discussed below, plaintiffs lack Article III standing with respect to the federal defendants because their claimed harm is traceable to the Illinois legislature, not to federal law. *See infra* pp. 20-22. In other respects, the

¹ Plaintiffs' challenge to Illinois MOVE is addressed separately in the state defendants' brief.

federal defendants agree with plaintiffs' statement of jurisdiction. For their claims against the federal defendants, plaintiffs invoked the jurisdiction of the district court under 28 U.S.C. § 1331 because those claims arise under the Due Process Clause of the Fifth Amendment to the U.S. Constitution. Plaintiffs invoke the jurisdiction of this Court under 28 U.S.C. § 1291.

The district court entered a final order disposing of all plaintiffs' claims on October 28, 2016. The federal defendants agree that the district court's October 28, 2016 order resolved all of the pending claims against all defendants and accordingly constituted a "final decision" under 28 U.S.C. § 1291. *See* Pl. Br. 54-56. Although the state defendants did not formally move for summary judgment on the claims against them, they requested that summary judgment be entered in their favor, and the record leaves no doubt that the district court intended to dismiss those claims. *See generally* *McMillian v. Sheraton Chi. Hotel & Towers*, 567 F.3d 839, 842 (7th Cir. 2009).

Plaintiffs timely filed their notice of appeal on December 27, 2016, within the 60-day period applicable under Fed. R. App. P. 4(a)(1)(B).

STATEMENT OF THE ISSUE

Whether the district court correctly held that UOCAVA's definition of the United States (52 U.S.C. § 20310(8)) as including Puerto Rico, the U.S.

Virgin Islands, Guam, and American Samoa, but not the Northern Mariana Islands, is consistent with the Due Process Clause of the Fifth Amendment of the United States Constitution.

PERTINENT STATUTES AND REGULATIONS

Pertinent statutes and regulations are reproduced in the addendum to this brief.

STATEMENT OF THE CASE

Plaintiffs are residents of Puerto Rico, Guam, and the U.S. Virgin Islands who formerly lived in Illinois, along with two organizations that claim to represent similarly situated individuals. They challenge the federal Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA), which requires States to accept absentee ballots from former residents who move outside “the United States” and expressly defines “‘United States,’ where used in the territorial sense,” to include Puerto Rico, the U.S. Virgin Islands, Guam, and American Samoa. Pub. L. No. 99-410, § 107(8), 100 Stat. 924 (1986). Plaintiffs contend that because the statutory definition of the United States does not include the Commonwealth of the Northern Mariana Islands (CNMI), and thereby treats CNMI as more akin to a foreign nation, it violates equal-protection principles and infringes on a

substantive due process right to travel. Plaintiffs also brought similar challenges to “Illinois MOVE,” the Illinois statute governing absentee voting.

The district court held that neither UOCAVA nor Illinois MOVE violates the Constitution and dismissed plaintiffs’ claims. Plaintiffs appealed.

A. Legal Background

1. Constitutional Provisions Regarding Federal Elections

In general, U.S. citizens who reside in the Territories do not have a constitutional right to participate in federal elections. This is because the Constitution provides that the President, Vice President, Members of the House of Representatives, and Senators are selected by the States or the people of the States.

With respect to the President and Vice President, Article II, Section 1 of the Constitution provides that “[e]ach State shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors, equal to the whole Number of Senators and Representatives to which the State may be entitled in the Congress.” U.S. Const. art. II, § 1, cl. 2. The right to elect the President and Vice President of the United States thus inheres in States, rather than in individual citizens. Accordingly, “those Courts of Appeals

that have decided the issue have all held that the absence of presidential and vice-presidential voting rights for U.S. citizens living in U.S. territories does not violate the Constitution.” *Romeu v. Cohen*, 265 F.3d 118, 123 (2d Cir. 2001) (per curiam) (collecting cases).

With respect to Congress, Article I, Section 2 of the Constitution provides that “[t]he House of Representatives shall be composed of Members chosen every second Year by the People of the several States.” The Seventeenth Amendment specifies that the Senate “shall be composed of two Senators from each State, elected by the people thereof.” U.S. Const. amend. XVII. Each State’s legislature prescribes “[t]he Times, Places and Manner of holding Elections for Senators and Representatives,” but “the Congress may at any time by Law make or alter such Regulations, except as to the Places of ch[oo]sing Senators.” U.S. Const., art. I, § 4, cl. 1. As with the election of the President and Vice President, residents of the Territories do not possess the right to vote for members of the House of Representatives and the Senate. *See, e.g., Igartua v. United States*, 626 F.3d 592, 596 (1st Cir. 2010).

2. The U.S. Territories and CNMI

The Territorial Clause of the Constitution gives Congress the power to “make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States.” U.S. Const. art. 4, § 3, cl. 2. There are at least fourteen territories that Congress governs, directly or indirectly, pursuant to this Clause.² See App. 14-16.³

The United States initially acquired most of these Territories by purchasing them, by annexing them as unoccupied territories, or pursuant to treaties with other nations. For instance, Puerto Rico and Guam were ceded to the United States by Spain as part of the Treaty of Paris after the Spanish-American War, and the United States purchased the U.S. Virgin Islands in 1917. See App. 14-15. A number of smaller unoccupied islands were annexed pursuant to the Guano Islands Act, 48 U.S.C. §§ 1411-1419. App. 16.

² See also Office of Insular Affairs, U.S. Dep’t of the Interior, *Definitions of Insular Area Political Organizations*, <https://www.doi.gov/oia/islands/politicatypes> (last visited June 9, 2017) (describing various insular areas).

³ References to “App.” are to the Federal Defendants’ Supplemental Appendix. References to “SA” are to the Short Appendix. References to “AOB” are to Appellants’ opening brief.

By contrast, the newest territory, the Commonwealth of the Northern Mariana Islands (CNMI), entered into a political union with the United States voluntarily. The Northern Mariana Islands (along with Micronesia, Palau, and the Marshall Islands) were initially part of the United Nations “Trust Territory of the Pacific Islands” that the United States administered in the aftermath of World War II. *See, e.g., Mtoched v. Lynch*, 786 F.3d 1210, 1213 (9th Cir. 2015). In 1969, the United States began negotiations to allow the political subdivisions of the trust territories to “transition to constitutional self-government” and govern “future political relationships.” SA 33. As a result of those negotiations, Micronesia, Palau, and the Marshall Islands chose to become independent states and entered into “compacts of free association” with the United States. *See App. 1-3.*

The people of the Northern Mariana Islands, however, chose to become a “commonwealth” of the United States. After “extensive” negotiations, in 1975 CNMI and the United States executed the “Covenant to Establish a Commonwealth in Political Union with the United States of America,” *reprinted as amended in 48 U.S.C. § 1681 note (1988) (“Covenant”)*, which set forth the parameters for its new relationship with the United States. *App. 1 (Presidential Proclamation of November 3, 1986)*. The covenant was

approved by Congress in 1976, and became fully effective on November 4, 1986.⁴ *Id.* at 3. The CNMI thereby became a Territory of the United States.

Congress allows CNMI and the other four largest Territories – Puerto Rico, Guam, the U.S. Virgin Islands, American Samoa – to operate with varying forms of self-government.⁵ While none of the Territories participates in federal elections for Senators, Members of the House of Representatives, President, or Vice President, Congress has provided these larger Territories with various forms of non-voting representation in Congress. *See* App. 34. Puerto Rico has been represented by a Resident Commissioner since 1904. Guam, the U.S. Virgin Islands, and American Samoa have been represented by delegates to the House of Representatives since the 1970s. *See id.* Before 2008, CNMI was represented by a Resident

⁴ The United Nations Security Council did not officially terminate the U.N. Trusteeship Agreement between the Pacific Trust Territories, the United States, and the UN Security Council until December 22, 1990. *See* App. 5.

⁵ For instance, Puerto Rico has a constitution that has been approved by Congress. The constitution of American Samoa was enacted pursuant to an Executive Order and approved by the Secretary of the Interior of the United States. *See United States v. Lee*, 472 F.3d 638 (9th Cir. 2006). The Virgin Islands and Guam “have not adopted local constitutions and remain under organic acts approved by the Congress.” App. 15.

Representative, who had “no official status” in the Congress. *See* Northern Mariana Islands Delegate Act, H.R. Rep. No. 108-761, at 6 (2004). In 2008, Congress authorized the Resident Representative to act as a non-voting delegate to the House of Representatives. Pub. L. No. 110-229, § 711, 122 Stat. 754 (codified at 48 U.S.C. § 1751 (2008)); *see also* 48 U.S.C. § 1756 (providing that provisions allowing Resident Representative to serve as non-voting delegate do not affect the Covenant).

B. The Federal Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA) and Illinois MOVE

1. Congress enacted UOCAVA in 1986, approximately three months before the Covenant with the CNMI went into full effect. Pub. L. 99-410, 100 Stat. 924 (Aug. 28, 1986). UOCAVA directs that “[e]ach State shall . . . permit absent uniformed services voters and overseas voters to use absentee registration procedures and to vote by absentee ballot in general, special, primary, and runoff elections for Federal office.” 52 U.S.C.

§ 20302(a)(1). The statute defines “overseas voter” as:

(A) an absent uniformed services voter who, by reason of active duty or service is absent from the United States on the date of the election involved;

(B) a person who resides outside the United States and is qualified to vote in the last place in which the person was domiciled before leaving the United States; or

(C) a person who resides outside the United States and (but for such residence) would be qualified to vote in the last place in which the person was domiciled before leaving the United States.

Id. § 20310(5). “Federal office” is defined as “the office of President or Vice President, or of Senator or Representative in, or Delegate or Resident Commissioner to, the Congress.” *Id.* § 20310(3). The statute further defines “State” as “a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, and American Samoa,” *id.* § 20310(6), and it defines “‘United States,’ where used in the territorial sense,” to mean “the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, and American Samoa,” *id.* at § 20310(8).

In sum, under UOCAVA, States (including Puerto Rico, Guam, the U.S. Virgin Islands, and American Samoa) must allow former residents to vote absentee if they reside outside of the territorial United States, defined to include Puerto Rico, Guam, the U.S. Virgin Islands, and American Samoa. The Act does not require States to extend absentee voting rights to civilians

who have moved *within* the United States (including those who move from a State to one of the listed Territories).

The statute does not mention CNMI or the other Territories, and thereby treats those Territories as outside the United States. Accordingly, States (defined to include Puerto Rico, Guam, the U.S. Virgin Islands, and American Samoa) must allow active-service members and other former residents who are stationed or live in CNMI or other Territories to vote absentee.⁶

2. Consistent with UOCAVA, Illinois allows certain “non-resident civilian citizens” to vote absentee. 10 Ill. Comp. Stat. Ann. 5/20-2.2. To qualify as a “non-resident civilian citizen,” a non-military U.S. citizen must “reside outside the territorial limits of the United States,” *id.* at 5/20-1(4)(a); have resided in Illinois immediately before moving overseas, *id.* at 5/20-1(4)(b); and not “maintain a residence” or be “registered to vote in any other State,” *id.* at 5/20-1(4)(c). The Illinois statute defines the “[t]erritorial

⁶ Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, and CNMI are the only Territories with permanent residents. Scientific and military personnel may be stationed in some of the smaller territories. *See, e.g.,* App. 13 (noting that most of the smaller insular areas uninhabited); App. 51 (noting former military use of Baker Island and noting that current use is restricted to scientists and educators).

limits of the United States” to include “each of the several States of the United States and includes 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.” *Id.* at 5/20-1(1). In other words, Illinois law generally tracks UOCAVA in extending absentee voting rights to individuals who reside overseas (including those in the Northern Mariana Islands), and further extends absentee voting rights to former residents who have moved to American Samoa.

B. Prior Proceedings

Plaintiffs are residents of Puerto Rico, Guam, or the Virgin Islands who formerly resided in Illinois, along with two organizations whose members include residents of those same Territories who formerly resided in Illinois. In November 2015, they brought this suit against a group of federal and state defendants, alleging that Illinois MOVE violates the Equal Protection Clause of the Fourteenth Amendment and that UOCAVA violates the Equal Protection component of the Due Process clause of the Fifth Amendment to the U.S. Constitution. *See* Compl. ¶ 3, PageID3. Plaintiffs contend that the federal and state statutes violate the Constitution because

they allow U.S. citizens who move from Illinois to CNMI to retain the right to vote absentee, but deny that opportunity to U.S. citizens who move to Puerto Rico, Guam, or the Virgin Islands.

1. The federal defendants and plaintiffs filed cross-motions for summary judgment. The government argued that plaintiffs lack standing to press their equal-protection claim and that, in any event, UOCAVA is consistent with the Fifth Amendment. In August 2016, the district court granted the federal defendants' motion, concluding that plaintiffs have standing but that UOCAVA does not violate plaintiffs' right to equal protection.

The district court concluded that plaintiffs' claimed injury (the inability to vote) was traceable to the federal defendants as well as to Illinois MOVE, although it acknowledged that "the federal defendants have no role in accepting or rejecting Illinois absentee ballots." SA 18.

Turning to the merits, the district court began by explaining that rational-basis review applies.⁷ The court rejected plaintiffs' argument that

⁷ Before beginning its analysis of the merits, the district court opined that it viewed the Territories' constitutional status as undesirable, and asserted that "the current voting situation . . . is at least in part grounded on the *Insular* cases," SA 21; *see also* SA 20 at n.9.

this case implicates a fundamental constitutional right triggering strict scrutiny, explaining that the Constitution does not give citizens residing in territories a right to participate in federal elections. SA 24-25. Without a constitutional right to vote at all, the court explained, there can be no fundamental right implicating strict scrutiny. SA 26-27.

The court noted that the Territorial Clause of the Constitution “specifically authorizes Congress to make rules and regulations respecting territories.” SA 31. The court also emphasized that UOCAVA distinguishes between citizens who move overseas and those who move anywhere within the United States, not just between citizens who move overseas and those who move to specific Territories. *Id.* And the court stressed that rational-basis review is appropriate for a statute that, like UOCAVA, *expands* rights, rather than restricting them, explaining that “a legislature need not strike at all evils at the same time.” *Id.* (quoting *Katzenbach v. Morgan*, 384 U.S. 641, 657 (1966)). The district court explained that Congress’s decision to extend voting privileges to former state residents who moved overseas, including to CNMI, “does not mean that it was required to extend absentee voting across the board to all territories.” SA 32. For all these reasons, the court explained, “UOCAVA’s differing

treatment of the NMI versus Puerto Rico, Guam, and the U.S. Virgin Islands does not trigger strict scrutiny.” *Id.*

Applying rational basis review, the district court next explained that the “[C]NMI’s historical relationship with the United States is consistent with the UOCAVA’s treatment of the NMI.” SA 32. The court detailed CNMI’s unique history at length, and noted that the Covenant between CNMI and the United States did not become fully effective until after UOCAVA was enacted. The court explained that “Congress could have reasonably concluded that because the NMI is the only United States Territory that used to be a Pacific Trust Territory and, as of the date of the UOCAVA’s enactment, was not yet a United States Territory, it was more analogous to a foreign country” than Puerto Rico, Guam, and the U.S. Virgin Islands. SA 38. Explaining that CNMI’s unique history “informed its relationship with the United States,” the court concluded that [C]NMI’s status as a commonwealth that entered the United States by mutual consent, “conditioned on terms set forth in a Covenant, distinguishes it from other Territories.” SA 38-39. It also noted that CNMI did not receive a delegate in the House of Representatives until 2008, and also “retained nearly exclusive control over immigration to the Territory” until 2008. SA 39.

Finally, the district court emphasized that plaintiffs' requested relief – allowing residents of Puerto Rico, Guam, and the U.S. Virgin Islands to vote absentee in Illinois – would create a “distinction of questionable fairness.” SA 41 (quoting *Romeu*, 265 F.3d at 125). The court explained that it was rational for Congress “to enact a law that does not differentiate between residents living in a particular United States Territory based on whether they could previously vote in a federal election administered by a state.” SA 41-42.

The court accordingly granted summary judgment against plaintiffs on their claim that UOCAVA violates the equal-protection component of the Due Process clause of the Fifth Amendment. Nevertheless, the court construed plaintiffs' complaint to include a “standalone due process” challenge to UOCAVA that survived the court's equal protection ruling, SA 42; *see also* SA 19 n.9, and ordered further briefing on that claim.

2. Plaintiffs subsequently filed a second motion for summary judgment on their remaining claims (the “standalone due process claim” and their claims involving Illinois MOVE). *See* Dkt. No. 71. With respect to UOCAVA, plaintiffs argued for the first time that the statute violates a substantive-due-process right to travel. Plaintiffs also moved for summary

judgment with respect to Illinois MOVE, contending that it violated equal protection principles and their right to travel. The federal defendants cross-moved for summary judgment on that claim. Dkt. Nos. 77, 78.⁸

3. In October 2016, the district court granted the federal defendants' motion for summary judgment and dismissed all of plaintiffs' remaining claims. The court first addressed plaintiffs' claim that Illinois MOVE violates the Equal Protection clause of the Fourteenth Amendment. It rejected plaintiffs' argument that they are a protected class (an argument that was not raised with respect to UOCAVA, *see* SA 29 n.12; SA 31; SA 50 n.3), concluding that "former Illinois residents currently living in U.S. territories who may not vote by absentee ballot in federal elections do not constitute a suspect class." SA 54. The court then applied rational-basis review and concluded that Illinois MOVE served the legitimate state interest of synchronizing Illinois law with federal laws and that, as with CNMI, there were rational bases for distinguishing American Samoa from

⁸ Although the state defendants did not file a cross-motion for summary judgment, in their responses to plaintiffs' motion for summary judgment all of the state defendants expressly requested that the court grant summary judgment in their favor and dismiss plaintiffs' claims pertaining to Illinois MOVE. *See* Dkt. No. 73, at 1-2; Dkt. No. 74, at 14-15.

the Territories in which plaintiffs reside. SA 54-59. The court stressed that the distinction in Illinois MOVE – between CNMI and American Samoa, on the one hand, and the U.S. Virgin Islands, Guam, and Puerto Rico, on the other – tracked the distinction in UOCAVA’s predecessor statute, and that UOCAVA did not require states to take away voting rights. SA 57-58.

The court also rejected plaintiffs’ argument that UOCAVA violates a substantive-due-process right to travel. SA 59. It concluded that neither UOCAVA nor Illinois MOVE infringes on any of the “three components” of the constitutionally protected right to travel. SA 59; *id.* at 60 (discussing *Saenz v. Roe*, 526 U.S. 489, 500 (1999)). First, neither UOCAVA nor MOVE “infringe[s] upon the plaintiffs’ right to leave Illinois and travel to a U.S. territory.” Rather, plaintiffs “are free to come and go as they please, although their decisions to relocate to Puerto Rico, Guam, or the USVI have come at a cost.” SA 60. The court explained that the second and third components – the rights “to be treated as a welcome visitor” or to be “treated like other citizens” – also do not apply, because plaintiffs have the same rights as other Territorial residents. SA 60-61. The court concluded that plaintiffs are seeking rights not enjoyed by other residents of the Territories in which they live, and that this “denial of special treatment

does not equate with an unconstitutional violation of the right to travel.”

SA 61.

SUMMARY OF ARGUMENT

UOCAVA requires States to accept absentee ballots from former residents who have moved outside of the territorial United States, which is defined to include four Territories. It thereby sets a floor for absentee voting, but places no restrictions on any State’s ability to take an even more expansive approach to absentee voting.

Plaintiffs bring this suit to obtain the right to vote absentee in Illinois, where they previously resided. Although Illinois accepts absentee ballots from some former residents not covered by UOCAVA’s requirement, it does not accept absentee ballots from Puerto Rico, Guam, or the U.S. Virgin Islands, where plaintiffs now reside. Plaintiffs’ claimed harm is thus traceable to the actions of the Illinois legislature, not UOCAVA, and their claims against the federal defendants should be dismissed for lack of standing.

In any event, the district court correctly concluded that UOCAVA satisfies the requirements of equal protection and due process. Plaintiffs contend that UOCAVA violates equal-protection principles because its

definition of the territorial United States includes the Territories in which they reside, but does not include the Commonwealth of the Northern Mariana Islands. But CNMI was not yet a Territory when Congress passed UOCAVA and is the only Territory that joined the United States voluntarily, on terms set forth in a Covenant entered into while it was a United Nations Trust Territory. CNMI's unique relationship with the United States, which is reflected in Congress's decision to treat CNMI uniquely in a number of other respects, provides ample justification for Congress's decision to treat CNMI as more akin to a foreign country for purposes of UOCAVA.

Moreover, as the district court correctly held, Congress's definition of the territorial United States for purposes of UOCAVA does not implicate any fundamental right that would trigger strict scrutiny. The Constitution does not create a fundamental right for a resident of a territory to vote in elections in a State in which they do not live. That result flows not from the *Insular Cases*, as plaintiffs contend, but from the structure of the Constitution. In any event, heightened scrutiny does not apply to a statute like UOCAVA that functions only to expand access to the ballot and imposes no restrictions whatsoever on anyone's right to vote.

Nor does UOCAVA draw classifications based on a suspect class. Former residents of Illinois who move to Guam, Puerto Rico, or the U.S. Virgin Islands do not constitute a suspect class. And UOCAVA treats individuals who move anywhere within the United States – including the States, the District of Columbia, and the four listed Territories – identically.

STANDARD OF REVIEW

The district court's grant of summary judgment is subject to *de novo*. See *Madison Mut. Ins. Co. v. Diamond State Ins. Co.*, 851 F.3d 749 (7th Cir. 2017).

ARGUMENT

I. Plaintiffs Lack Standing To Challenge UOCAVA

Plaintiffs' alleged injury is that they cannot vote absentee in Illinois. But nothing about UOCAVA prevents them from doing so or prevents Illinois from accepting their ballots. Instead, UOCAVA creates a statutory floor for absentee voting, requiring States to accept absentee ballots from former residents who move overseas. Each State remains free to choose to accept absentee ballots from individuals, like plaintiffs, who move from States to other places within the United States (as defined by the statute). See, e.g., H.R. Rep. No. 99-765, at 19 (1986), *reprinted in* 1986 U.S.C.C.A.N.

2009, 2023 (noting that nothing in UOCAVA “prevent[s] any State from adopting any voting practice which is less restrictive than the practices prescribed by this Act.”).

Consistent with UOCAVA, Illinois could have chosen to accept absentee ballots from former Illinois residents, like plaintiffs, who now reside in Puerto Rico, Guam, or the Virgin Islands. Illinois has chosen not to do so, but that was the State’s choice. That UOCAVA does not prevent Illinois from accepting plaintiffs’ absentee ballots is underscored by the fact that Illinois MOVE already extends absentee voting privileges to former residents in American Samoa, even though UOCAVA does not require that result. The differential treatment of which plaintiffs complain thus flows not from UOCAVA, but from a legislative judgment made by their former State of residence.

The district court accordingly should have dismissed plaintiffs’ challenge to UOCAVA for lack of standing. As the district court acknowledged (SA 18), the federal government plays no role in accepting absentee ballots in Illinois. Its conclusion that “Illinois’ ability to provide redress does not insulate” the federal defendants misses the point: Plaintiffs’ claimed injury is traceable to state, not federal, law. *See, e.g.,*

Simon v. Eastern Ky. Welfare Rights Org., 426 U.S. 26, 42-43 (1976) (holding that plaintiffs lacked standing to sue for injuries traceable to independent action of third party); *DH2, Inc. v. SEC*, 422 F.3d 591, 597 (7th Cir. 2005) (similar). Nothing in federal law prohibits Illinois from accepting plaintiffs' absentee ballots. That the State chose not to do so is not a constitutional defect in UOCAVA.

II. UOCAVA's Definition Of The 'United States' Comports With Equal Protection Principles

As the district court correctly concluded, Congress's decision to treat CNMI as more akin to a foreign nation than the Territories in which plaintiffs reside was consistent with CNMI's unique historic, legal, and political relationship with the United States. CNMI—which was not yet formally a Territory when UOCAVA was passed—is the only Territory to have joined the United States voluntarily, on negotiated terms set forth in its Covenant. Many aspects of federal law do not apply in CNMI, and Congress has in other respects treated it as more like a foreign country than other Territories. CNMI's exclusion from the territorial limits of the United States for purposes of UOCAVA was the rational result of CNMI's unique, and continually evolving, relationship with the United States.

A. The District Court Properly Applied Rational-Basis Review

The district court correctly concluded that UOCAVA's definition of "United States, where used in the territorial sense" to include "the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, and American Samoa," 52 U.S.C. § 20310(8), is subject only to rational-basis review, and must be upheld "if a plausible rational explanation supports it." SA 24.

Absent a fundamental right or discrimination against a suspect class, Congress's legislative judgments will not be set aside under the equal-protection component of the Fifth Amendment as long as there is a rational basis to support it. *See, e.g., San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1, 17, 30 (1973); *Johnson v. Daley*, 339 F.3d 582, 585-86 (7th Cir. 2003). Congress's legislative discretion, moreover, is especially broad when it legislates pursuant to the Territorial Clause. *See, e.g., Examining Bd. of Eng'rs, Architects & Surveyors v. Flores de Otero*, 426 U.S. 572, 586 n.16 (1976) ("The powers vested in Congress by Const. Art. IV, s 3, cl. 2, to govern Territories are broad."). Congress may ordinarily treat a Territory differently from States so long as there is some rational basis for that

distinction. *See, e.g., Harris v. Rosario*, 446 U.S. 651, 651-52 (1980) (per curiam) (applying rational basis standard and rejecting equal protection challenge).

1. UOCAVA Does Not Burden A Fundamental Right

Contrary to plaintiffs' arguments, this case does not implicate a restriction on a fundamental right triggering strict scrutiny. Citizens do not have a constitutionally protected right to vote in a State in which they do not reside. And, as the district court explained, absent a constitutional right to vote in the first place, UOCAVA cannot burden a "fundamental right" triggering strict scrutiny. SA 30.

The right of citizens residing in a State to vote in their State's federal elections flows from the role of the States under the Constitution. *See Romeu v. Cohen*, 265 F.3d 118, 123 (2d Cir. 2001) (rejecting equal protection challenge to UOCAVA). But Territories "are not States, and therefore those Courts of Appeals that have decided the issue have all held that the absence of presidential and vice-presidential voting rights for U.S. citizens living in U.S. territories does not violate the Constitution." *Id.* (collecting cases). Similarly, because the Constitution provides that Members of Congress represent and are selected by the States, residents of Territories

lack a constitutionally protected right to vote for them. *See, e.g., Igartua v. United States*, 626 F.3d 592, 596 (1st Cir. 2010).

By statute, Congress has accorded residents of the Territories some level of representation through non-voting delegates, and it is undisputed that plaintiffs may vote in federal elections for their respective Territories' delegates to Congress in the same manner as every other eligible U.S. citizen residing in those Territories. What plaintiffs seek here is something else entirely: the right to participate in federal elections in a State where they *formerly* lived, even though they now reside in a different part of the United States.

The Supreme Court has expressly recognized that the core of the right to vote is applicable only "to individuals who were physically resident within the geographic boundaries of the governmental entity concerned." *Holt Civic Club v. City of Tuscaloosa*, 439 U.S. 60, 68 (1978); *see also id.* ("No decision of this Court has extended the 'one man, one vote' principle to individuals residing beyond the geographic confines of the governmental entity concerned."). The cases on which plaintiffs rely make this limitation clear. In *Dunn v. Blumstein*, for instance, the Supreme Court explained that citizens have a "constitutionally protected right to participate in elections

on an equal basis with other citizens *in the jurisdiction.*" 405 U.S. 330, 336 (1972) (emphasis added). And in *Evans v. Cornman*, 398 U.S. 419 (1970), the Court held that Maryland could not exclude Maryland residents who lived on federal land from voting because the State treated them as state residents for most purposes.

The constitutional right to vote does not include a right for residents of a Territory to vote absentee in a state in which they do not reside, simply because they at some earlier point resided in that state. As amici explain, this conclusion does not require an extension, or even an application, of the so-called *Insular Cases*, which distinguish between "incorporated" and "unincorporated" territories and hold that certain parts of the Constitution do not apply in unincorporated territories. *See generally* Scholars of Const. Law & Legal History Amicus Br. 6-8, ECF No. 37-2. Rather, it flows from the structure of the Constitution itself, which provides that the right to elect the President, Vice President, and Members of Congress inheres in States and their residents, and not in Territories. The right to vote absentee in Illinois is no more a fundamental right for someone who moves from Illinois to Puerto Rico than for someone who moves from Illinois to another State or Territory.

Plaintiffs' attempt to characterize this case as an "unprecedented expansion" (AOB 2) of the *Insular Cases* is thus incorrect. The district court opined on the *Insular Cases* and noted the public criticism that has attached to the current political status of the Territories before engaging in its substantive legal analysis. SA 20-22. But those observations have no connection to the merits of the court's conclusion that, under the structure of the Constitution, plaintiffs do not have a fundamental right to vote absentee in Illinois federal elections. SA 31.

Even with respect to the constitutional right of state residents to vote in their State's elections, "legislatures may without transgressing the Constitution impose extensive restrictions on voting," and "[a]ny such restriction is going to exclude, either de jure or de facto, some people from voting." *Griffin v. Roupas*, 385 F.3d 1128, 1130 (7th Cir. 2004). To require States to extend absentee voting rights to overseas civilians, Congress had no choice but to define what counts as "overseas." This type of line-drawing exercise is not the type of direct burden on the franchise that triggers heightened scrutiny, especially in the context of a statute that serves to *expand* voting rights and imposes no burden on anyone's access to the franchise.

As the Supreme Court has explained, when Congress seeks to expand the franchise, “the principle that calls for the closest scrutiny of distinctions in laws denying fundamental rights is inapplicable.” *Katzenbach v. Morgan*, 384 U.S. 641, 657 (1966). In *Katzenbach*, the Court declined to apply heightened scrutiny to a statute that barred States from applying English literacy requirements to voters educated in American-flag schools in which English was not the predominant classroom language, but did not enact a similar prohibition for voters educated in other schools. The Court stressed that a statute does not violate equal protection simply because “it might have gone farther than it did.” *Id.* For the same reason, a statute like UOCAVA that functions solely to expand access to the franchise is not subject to strict scrutiny.

Plaintiffs attempt (at AOB 37) to distinguish *Katzenbach* on the mistaken theory that UOCAVA and Illinois MOVE constitute “limited exclusions” of the right to vote, as opposed to the “limited expansion” in *Katzenbach*. The text of UOCAVA contradicts that characterization. The statute operates solely to expand voting rights by requiring that, at a minimum, States accept absentee ballots from former residents who are overseas. It treats all individuals who move within the United States – including between and

among States, the listed Territories, and the District of Columbia--
identically.

Plaintiffs also attempt to distinguish *Katzenbach* on the theory that it implicated Congress's unique relationship with Puerto Rico (AOB 37). But Congress also has a unique relationship with CNMI. *See infra* pp. 32-39. Because UOCAVA expands the franchise and does not impair any constitutionally protected right to vote, it does not burden any fundamental right.

2. UOCAVA Does Not Discriminate Against A Protected Class

To the extent that plaintiffs contend that UOCAVA draws distinctions based on a protected class, that argument is waived. *See* SA 50 n.3. In any event, it lacks merit. UOCAVA simply defines the territorial United States to include the States, the District of Columbia, and four Territories. The statute thereby treats citizens who move from a State to Puerto Rico, Guam, or the Virgin Islands (as the individual plaintiffs did here) no differently from citizens who move from one State to another State or to the District of Columbia. Plaintiffs' claim is not based on their status as territorial residents, but rather on their status as former Illinois residents who moved

to particular Territories. What plaintiffs seek is an advantage – the right to vote absentee in federal elections – that their neighbors who have never resided in a State would not have.

Regardless whether territorial residents could constitute a protected class for some purposes, former Illinois residents who have moved to Puerto Rico, Guam, and the Virgin Islands do not. Plaintiffs provide no reason to think that arguments about alleged racism towards or historical mistreatment of the inhabitants of the Territories have any application to a group composed entirely of persons who resided in a State and then chose to move to one of three Territories. As the district court explained, SA 52, to the extent plaintiffs claim they are a suspect class because they have fewer rights to participate in federal elections, that is a function of the constitutional status of the Territories, not their membership in any suspect class.

More generally, plaintiffs' suggestion that Territorial residents constitute a protected class is at odds with the Supreme Court's repeated application of rational-basis review to legislation bearing only on Territories. *See, e.g., Harris*, 446 U.S. at 651-52 (1980); *Califano v. Gautier Torres*, 435 U.S. 1, 4 (1978) (applying rational-basis review to exclusion of

Puerto Rico from Social Security benefits); *see also, e.g., Quiban v. Veterans Admin.*, 928 F.2d 1154, 1156 (D.C. Cir. 1991). A conclusion that strict scrutiny applies whenever Congress enacts legislation specific to a Territory would be sharply at odds with Congress's plenary powers under the Territorial Clause and with Congress's long history of independently managing its varied relationships with each Territory.

B. UOCAVA's Definition Of The 'United States' Serves Rational Government Interests

In defining the boundaries of the United States for purposes of UOCAVA, Congress included the four major Territories then existing as part of the United States, and treated the remaining outlying territories and the Pacific Trust territories (including CNMI) as "overseas." That legislative judgment readily withstands rational-basis review.

1. In UOCAVA, Congress specified its intended treatment for the four then-existing Territories by defining "'United States,' where used in the territorial sense," to mean "the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, and American Samoa." 52 U.S.C. § 20310(8). The statute thus treats individuals who

move from Illinois to one of those Territories just like individuals who move from Illinois to another State or the District of Columbia.

Congress's decision to include these four Territories within its definition of "United States" serves an obvious purpose: it generally places individuals who move from a State to a Territory on equal footing with the other residents of that Territory for purposes of participation in federal elections. In *Romeu*, the Second Circuit explained why this makes sense from a policy perspective: if the territories were *not* included in the definition of the United States, whether citizens who reside in a Territory could vote for President would turn on whether they had previously lived in a State—a state of affairs that would be “arguably unfair” and “potential[ly] divisive[,]” especially because it might, in practice, mean that voting rights would “effectively turn on wealth.” 265 F.3d at 124-25 (rejecting equal protection challenge to Puerto Rico's inclusion in UOCAVA's definition of the United States). Those “voters who could establish a residence for a time in a State would retain the right to vote for the President after their return,” while “voters who could not arrange to reside for a time in a State would be permanently excluded.” *Id.*; see SA 41. Congress's decision to avoid creating this sort of distinction in its four

largest Territories directly serves an important governmental interest in avoiding that outcome.

Plaintiffs do not contest that avoiding this type of distinction is a legitimate congressional purpose. Instead, they argue (AOB 36) that Congress could not have been seeking to serve that legitimate interest in Puerto Rico, Guam, or the U.S. Virgin Islands – which are expressly addressed in the statute – because it did not provide identical treatment for CNMI. But the fact that Congress did not mention CNMI, which was not yet even a Territory when UOCAVA was enacted, does not suggest that Congress had no rational purpose when it specified its intended treatment of the four largest, most heavily populated Territories.

2. In any event, plaintiffs' equal-protection argument is meritless without regard to the timing of UOCAVA's enactment. The crux of plaintiffs' equal-protection argument is that Congress was required to exclude all of the Territories from UOCAVA's definition of "United States" because it failed to include CNMI in that definition. That argument ignores the *sui generis* nature of the relationship between the United States and each Territory, and flies in the face of Congress's long history of managing its relationship with each Territory independently.

Federal law has long distinguished between and among Territories in myriad ways, in matters small and large. For instance, Congress has enacted legislation ensuring that Puerto Rico is treated like a state for most statutory purposes, *see* 48 U.S.C. § 734, but has not passed analogous legislation for other territories. Benefits programs routinely distinguish among territories. *See, e.g.*, 42 U.S.C. §§ 602, 619 (extending Temporary Assistance for Needy Families program to “States,” defined to include Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, but not CNMI); 7 U.S.C. § 2014 (Guam and the U.S. Virgin Islands, but no other Territories, treated akin to States for purposes of the federal Supplemental Nutrition Assistance Program (*i.e.*, food stamps)). And Congress has extended birthright citizenship to individuals born in some territories,⁹ but not to those born in “outlying possessions” (including American Samoa). *See* 8 U.S.C. § 1408 (individuals born in outlying possessions are “nationals . . . of the United States”); *see generally* *Tuaua v. United States*, 788 F.3d 300

⁹ *See* 8 U.S.C. § 1402 (Puerto Rico); 8 U.S.C. § 1406 (Virgin Islands); 8 U.S.C. § 1407 (Guam). The Covenant established that CNMI residents would be entitled to citizenship, although some residents were permitted to opt out of citizenship and maintain U.S. national status instead. Covenant, art. III.

(D.C. Cir. 2015) (holding that Constitution does not require that American Samoans be granted citizenship). Plaintiffs do not identify any case suggesting that Congress is constrained to extend federal legislation to the Territories uniformly.

CNMI's cultural, political, and legal history provides ample basis for Congress to have treated it as more akin to a foreign country than the other Territories for purposes of UOCAVA. The Northern Mariana Islands is the most recent addition to the United States' Territories, and its relationship with the United States is, as the district court correctly explained, unique in American law.

When Congress passed UOCAVA in 1985, CNMI was still a U.N. Trust Territory. The NMI's "status as a former Trust Territory informed its relationship with the United States," SA 38, because that relationship did not begin as one of sovereignty; rather, the United States served as a trustee. Unlike every other Territory, CNMI entered the United States voluntarily, on terms negotiated and set forth in the Covenant. *See generally Wabot v. Villacrusis*, 958 F.2d 1450 (9th Cir. 1990); *United States v. Lebron-Caceres*, No. 15-cr-279, 2016 WL 204447, at *14 (D.P.R. Jan. 15, 2016) (describing unique nature of CNMI Covenant). Among other things, the

Covenant specified provisions of United States statutory and constitutional law that would, and would not, apply to CNMI. *See generally* Covenant art. V. With respect to federal laws not expressly addressed, the Covenant required the United States to establish a Commission to make recommendations about which laws should be extended to CNMI. *See* Covenant § 504. That Commission remained active when Congress enacted UOCAVA. *See id.* (requiring final report of Commission within one year after termination of Trusteeship Agreement).¹⁰

Consistent with CNMI's unique history and status, Congress has historically treated CNMI as more akin to a sovereign country. For instance, CNMI maintained essentially full control over its immigration laws until 2008, when Congress extended federal immigration laws to CNMI in part because population changes had undermined Congress's intent to ensure that the indigenous populations maintained local control.

¹⁰ The Commission's final report emphasized that CNMI is "the first truly consensual political union involving the United States since the Republic of Texas joined the United States as a state," and stressed that Congress should be especially careful not to extend laws to CNMI that would infringe on CNMI's right to self-government. Northern Mariana Islands Commission on Federal Laws, Final Report, at 54 (undated); *see also id.*, introductory letter (indicating that Report was submitted within one year of November 3, 1986 Presidential Proclamation).

See Eche v. Holder, 694 F.3d 1026 (9th Cir. 2012) (explaining that Consolidated Natural Resources Act of 2008 made federal immigration law applicable to the CNMI beginning in 2009); S. Rep. No. 110-324 (2008) (explaining that Congress's intent to protect indigenous populations was not being served). The full implementation of federal immigration law in CNMI will not be complete until December 31, 2019. 48 U.S.C. § 1806(a)(2). And while Puerto Rico, Guam, the U.S. Virgin Islands, and American Samoa have all had non-voting delegates to Congress with the right to participate in certain legislative activities since at least the 1970s, CNMI was not afforded a delegate with analogous rights until 2008. Consolidated Natural Resources Act of 2008, Pub. L. No. 110-229, § 711, 122 Stat. 754, 868 (codified at 48 U.S.C. § 1751).

Against this background, it was rational for Congress to determine that moving from a State to CNMI is more akin to moving "overseas" for purposes of UOCAVA, and that requiring States to accept absentee ballots from former residents who move to CNMI furthers UOCAVA's general purpose of expanding overseas access to federal elections. By declining to include CNMI within UOCAVA's definition of a State, moreover, Congress avoided imposing requirements on CNMI's electoral process that it

imposed on the other Territories.¹¹ Congress's decision to take a more hands-off approach concerning CNMI respected its unique relationship to the United States.

The question is not, as plaintiffs insist, whether CNMI "is a Territory," (AOB 19) (emphasis omitted). Rather, the question is whether, acting under its plenary power to provide rules for the Territories, Congress had a rational basis for treating CNMI differently from other Territories. As the district court recognized, it did: practically, historically, and politically, the United States' relationship with CNMI remains unique.

III. UOCAVA Does Not Infringe On Any Right To Travel

Plaintiffs also argue that UOCAVA and Illinois MOVE violate a right to travel protected by substantive-due-process principles. As the district court explained, that contention lacks merit. UOCAVA requires States to

¹¹ For instance, UOCAVA requires Puerto Rico, Guam, the U.S. Virgin Islands, and American Samoa – like States and the District of Columbia – to accept absentee ballots from former residents who move overseas, and requires them to establish detailed procedures related to absentee voting. It imposes no similar requirements on CNMI. *See generally* 52 U.S.C. § 20302; *id.* § 20310(6) (defining "State" to include listed Territories). Thus, if plaintiffs moved from the Territories in which they live to another country, UOCAVA would require those Territories to accept absentee ballots for them in federal elections, whereas it does not impose a similar requirement on CNMI.

accept absentee ballots from voters who move outside of the United States. It does not impose any restriction on anyone's ability to vote absentee, let alone any restriction affecting any person's right to travel. Although plaintiffs assert that "UOCAVA and [Illinois] MOVE" somehow infringe that right, at no point do they explain how any alleged limitation on their right to travel could be attributable to UOCAVA.

As the district court correctly explained (and plaintiffs do not contest), the right that plaintiffs claim does not fall within any of the components of the right to travel that have been recognized by the Supreme Court. SA 59-62 (discussing *Saenz v. Roe*, 526 U.S. 489, 500 (1999)). UOCAVA imposes no restriction on plaintiffs' ability to leave one State (or Territory) and enter another. SA 60. It does not infringe on a right to be "treated as welcome visitors in their respective territories." SA 61. And it does not place plaintiffs on unequal footing with others in the jurisdictions where they now live. *Id.* Indeed, plaintiffs' complaint is precisely that UOCAVA treats them the *same* as their neighbors. As the district court explained, "[i]n truth, it is the denial of special treatment – the ability to vote by absentee ballot in federal elections (because of their former nexus to Illinois) despite the fact that citizens of Puerto Rico, Guam, and the USVI do not have the

right to vote in federal elections – that the plaintiffs now try to convert into a due process violation based on their right to travel.” SA 61.

In *Gautier Torres*, the Supreme Court held that the Social Security Act’s exclusion of Puerto Rico from Supplemental Security Income benefits did not impact any protected right to travel, even though in practice that exclusion means that citizens who move from a State to Puerto Rico lose substantial benefits. 435 U.S. at 4. The Court explained that the right to travel does not encompass a right for a person who travels to Puerto Rico to be given “benefits superior to those enjoyed by other residents of Puerto Rico” by virtue of having received greater benefits in his former state of residence. *Id.* In reaching that conclusion, the Court stressed that “[s]uch a doctrine would apply with equal force to any benefits a State might provide for its residents, and would require a State to continue to pay those benefits indefinitely to any persons who had once resided there.” *Id.*

While *Gautier Torres* involved monetary benefits, the concerns about fairness among residents of a single Territory apply with at least as much force to the politically charged question of territorial representation in federal elections. *See, e.g., Romeu*, 265 F.3d at 127 (citing *Gautier Torres* and rejecting claim that UOCAVA impinges on a protected right to travel).

At bottom, plaintiffs' argument that UOCAVA violates a right to travel is simply a repackaging of their equal protection argument. There is no serious argument that the "fundamental right to interstate travel" (SA 59) requires States to forever accept absentee ballots from all former residents. Instead, the crux of plaintiffs' argument is that because Congress by statute required States to extend absentee voting privileges to some former State residents who reside in a Territory, it must impose a similar requirement with respect to former state residents who move to the Territories in which they now reside. *See, e.g.*, AOB 53-54 (distinguishing *Romeu* because it did not involve a challenge to distinctions between territories). That is an argument about equal protection, not about a right to travel, and it fails for the reasons described above.

CONCLUSION

For the foregoing reasons, the judgment of the district court should be affirmed.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limit of Federal Rule of Appellate Procedure 32(a)(7)(B) because it contains 8,552 words. This brief also complies with the typeface and type-style requirements of Federal Rule of Appellate Procedure 32(a)(5)-(6) because it was prepared using Microsoft Word 2013 in Book Antiqua 14-point font, a proportionally spaced typeface.

s/ Carleen M. Zubrzycki

Carleen M. Zubrzycki

CERTIFICATE OF SERVICE

I hereby certify that on June 26, 2017 I electronically filed the foregoing brief with the Clerk of the Court for the United States Court of Appeals for the Seventh Circuit by using the appellate CM/ECF system. I further certify that I will cause 15 paper copies of this brief to be received by the Clerk within seven days of the Notice of Docket Activity generated upon acceptance of the brief, in compliance with 7th Circuit Rule 31(b) and ECF Procedure (h)(2).

Participants in the case are registered CM/ECF users, and service will be accomplished by the appellate CM/ECF system.

s/ Carleen M. Zubrzycki
Carleen M. Zubrzycki

ADDENDUM

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52 U.S.C. § 20302**§ 20302. State Responsibilities**

(a) In general

Each State shall —

(1) permit absent uniformed services voters and overseas voters to use absentee registration procedures and to vote by absentee ballot in general, special, primary, and runoff elections for Federal office;

(2) accept and process, with respect to any election for Federal office, any otherwise valid voter registration application and absentee ballot application from an absent uniformed services voter or overseas voter, if the application is received by the appropriate State election official not less than 30 days before the election;

(3) permit absent uniformed services voters and overseas voters to use Federal write-in absentee ballots (in accordance with section 20303 of this title) in general elections for Federal office;

(4) use the official post card form (prescribed under section 20301 of this title) for simultaneous voter registration application and absentee ballot application;

(5) if the State requires an oath or affirmation to accompany any document under this chapter, use the standard oath prescribed by the Presidential designee under section 20301(b)(7) of this title;

(6) in addition to any other method of registering to vote or applying for an absentee ballot in the State, establish procedures —

(A) for absent uniformed services voters and overseas voters to request by mail and electronically voter registration applications and absentee ballot applications with respect to general, special, primary, and runoff elections for Federal office in accordance with subsection (e);

(B) for States to send by mail and electronically (in accordance with the preferred method of transmission designated by the absent uniformed services voter or overseas voter under subparagraph (C)) voter registration applications and absentee

ballot applications requested under subparagraph (A) in accordance with subsection (e); and

(C) by which the absent uniformed services voter or overseas voter can designate whether the voter prefers that such voter registration application or absentee ballot application be transmitted by mail or electronically;

(7) in addition to any other method of transmitting blank absentee ballots in the State, establish procedures for transmitting by mail and electronically blank absentee ballots to absent uniformed services voters and overseas voters with respect to general, special, primary, and runoff elections for Federal office in accordance with subsection (f);

(8) transmit a validly requested absentee ballot to an absent uniformed services voter or overseas voter —

(A) except as provided in subsection (g), in the case in which the request is received at least 45 days before an election for Federal office, not later than 45 days before the election; and

(B) in the case in which the request is received less than 45 days before an election for Federal office —

(i) in accordance with State law; and

(ii) if practicable and as determined appropriate by the State, in a manner that expedites the transmission of such absentee ballot;

(9) if the State declares or otherwise holds a runoff election for Federal office, establish a written plan that provides absentee ballots are made available to absent uniformed services voters and overseas voters in manner¹ that gives them sufficient time to vote in the runoff election;

(10) carry out section 20304(b)(1) of this title with respect to the processing and acceptance of marked absentee ballots of absent overseas uniformed services voters; and

(11) report data on the number of absentee ballots transmitted and received under subsection (c) and such other data as the Presidential

designee determines appropriate in accordance with the standards developed by the Presidential designee under section 20301(b)(11) of this title.

(b) Designation of single State office to provide information on registration and absentee ballot procedures for all voters in State

(1) In general

Each State shall designate a single office which shall be responsible for providing information regarding voter registration procedures and absentee ballot procedures to be used by absent uniformed services voters and overseas voters with respect to elections for Federal office (including procedures relating to the use of the Federal write-in absentee ballot) to all absent uniformed services voters and overseas voters who wish to register to vote or vote in any jurisdiction in the State.

(2) Recommendation regarding use of office to accept and process materials

Congress recommends that the State office designated under paragraph (1) be responsible for carrying out the State's duties under this Act, including accepting valid voter registration applications, absentee ballot applications, and absentee ballots (including Federal write-in absentee ballots) from all absent uniformed services voters and overseas voters who wish to register to vote or vote in any jurisdiction in the State.

(c) Report on number of absentee ballots transmitted and received

Not later than 90 days after the date of each regularly scheduled general election for Federal office, each State and unit of local government which administered the election shall (through the State, in the case of a unit of local government) submit a report to the Election Assistance Commission (established under the Help America Vote Act of 2002) on the combined number of absentee ballots transmitted to absent uniformed services voters and overseas voters for the election and the combined number of such ballots which were returned by such voters and cast in the election, and shall make such report available to the general public.

(d) Registration notification

With respect to each absent uniformed services voter and each overseas voter who submits a voter registration application or an absentee ballot request, if the State rejects the application or request, the State shall provide the voter with the reasons for the rejection.

(e) Designation of means of electronic communication for absent uniformed services voters and overseas voters to request and for States to send voter registration applications and absentee ballot applications, and for other purposes related to voting information

(1) In general

Each State shall, in addition to the designation of a single State office under subsection (b), designate not less than 1 means of electronic communication—

(A) for use by absent uniformed services voters and overseas voters who wish to register to vote or vote in any jurisdiction in the State to request voter registration applications and absentee ballot applications under subsection (a)(6);

(B) for use by States to send voter registration applications and absentee ballot applications requested under such subsection; and

(C) for the purpose of providing related voting, balloting, and election information to absent uniformed services voters and overseas voters.

(2) Clarification regarding provision of multiple means of electronic communication

A State may, in addition to the means of electronic communication so designated, provide multiple means of electronic communication to absent uniformed services voters and overseas voters, including a means of electronic communication for the appropriate jurisdiction of the State.

(3) Inclusion of designated means of electronic communication with informational and instructional materials that accompany balloting materials

Each State shall include a means of electronic communication so designated with all informational and instructional materials that accompany balloting materials sent by the State to absent uniformed services voters and overseas voters.

(4) Availability and maintenance of online repository of State contact information

The Federal Voting Assistance Program of the Department of Defense shall maintain and make available to the public an online repository of State contact information with respect to elections for Federal office, including the single State office designated under subsection (b) and the means of electronic communication designated under paragraph (1), to be used by absent uniformed services voters and overseas voters as a resource to send voter registration applications and absentee ballot applications to the appropriate jurisdiction in the State.

(5) Transmission if no preference indicated

In the case where an absent uniformed services voter or overseas voter does not designate a preference under subsection (a)(6)(C), the State shall transmit the voter registration application or absentee ballot application by any delivery method allowable in accordance with applicable State law, or if there is no applicable State law, by mail.

(6) Security and privacy protections

(A) Security protections

To the extent practicable, States shall ensure that the procedures established under subsection (a)(6) protect the security and integrity of the voter registration and absentee ballot application request processes.

(B) Privacy protections

To the extent practicable, the procedures established under subsection (a)(6) shall ensure that the privacy of the identity and other personal data of an absent uniformed services voter or overseas voter who requests or is sent a voter registration application or absentee ballot application under such subsection is protected

throughout the process of making such request or being sent such application.

(f) Transmission of blank absentee ballots by mail and electronically

(1) In general

Each State shall establish procedures--(A) to transmit blank absentee ballots by mail and electronically (in accordance with the preferred method of transmission designated by the absent uniformed services voter or overseas voter under subparagraph (B)) to absent uniformed services voters and overseas voters for an election for Federal office; and(B) by which the absent uniformed services voter or overseas voter can designate whether the voter prefers that such blank absentee ballot be transmitted by mail or electronically.

(2) Transmission if no preference indicated

In the case where an absent uniformed services voter or overseas voter does not designate a preference under paragraph (1)(B), the State shall transmit the ballot by any delivery method allowable in accordance with applicable State law, or if there is no applicable State law, by mail.

(3) Security and privacy protections

(A) Security protections

To the extent practicable, States shall ensure that the procedures established under subsection (a)(7) protect the security and integrity of absentee ballots.

(B) Privacy protections

To the extent practicable, the procedures established under subsection (a)(7) shall ensure that the privacy of the identity and other personal data of an absent uniformed services voter or overseas voter to whom a blank absentee ballot is transmitted under such subsection is protected throughout the process of such transmission.

(g) Hardship exemption

(1) In general

If the chief State election official determines that the State is unable to meet the requirement under subsection (a)(8)(A) with respect to an

election for Federal office due to an undue hardship described in paragraph (2)(B), the chief State election official shall request that the Presidential designee grant a waiver to the State of the application of such subsection. Such request shall include –

(A) a recognition that the purpose of such subsection is to allow absent uniformed services voters and overseas voters enough time to vote in an election for Federal office;

(B) an explanation of the hardship that indicates why the State is unable to transmit absent uniformed services voters and overseas voters an absentee ballot in accordance with such subsection;

(C) the number of days prior to the election for Federal office that the State requires absentee ballots be transmitted to absent uniformed services voters and overseas voters; and

(D) a comprehensive plan to ensure that absent uniformed services voters and overseas voters are able to receive absentee ballots which they have requested and submit marked absentee ballots to the appropriate State election official in time to have that ballot counted in the election for Federal office, which includes –

(i) the steps the State will undertake to ensure that absent uniformed services voters and overseas voters have time to receive, mark, and submit their ballots in time to have those ballots counted in the election;

(ii) why the plan provides absent uniformed services voters and overseas voters sufficient time to vote as a substitute for the requirements under such subsection; and

(iii) the underlying factual information which explains how the plan provides such sufficient time to vote as a substitute for such requirements.

(2) Approval of waiver request After consulting with the Attorney General, the Presidential designee shall approve a waiver request under paragraph (1) if the Presidential designee determines each of the following requirements are met:

(A) The comprehensive plan under subparagraph (D) of such paragraph provides absent uniformed services voters and overseas voters sufficient time to receive absentee ballots they have requested and submit marked absentee ballots to the appropriate State election official in time to have that ballot counted in the election for Federal office.

(B) One or more of the following issues creates an undue hardship for the State:

- (i) The State's primary election date prohibits the State from complying with subsection (a)(8)(A).
- (ii) The State has suffered a delay in generating ballots due to a legal contest.
- (iii) The State Constitution prohibits the State from complying with such subsection.

(3) Timing of waiver

(A) In general

Except as provided under subparagraph (B), a State that requests a waiver under paragraph (1) shall submit to the Presidential designee the written waiver request not later than 90 days before the election for Federal office with respect to which the request is submitted. The Presidential designee shall approve or deny the waiver request not later than 65 days before such election.

(B) Exception

If a State requests a waiver under paragraph (1) as the result of an undue hardship described in paragraph (2)(B)(ii), the State shall submit to the Presidential designee the written waiver request as soon as practicable. The Presidential designee shall approve or deny the waiver request not later than 5 business days after the date on which the request is received.

(4) Application of waiver

A waiver approved under paragraph (2) shall only apply with respect to the election for Federal office for which the request was submitted. For each subsequent election for Federal office, the Presidential designee shall only approve a waiver if the State has

submitted a request under paragraph (1) with respect to such election.

(h) Tracking marked ballots

The chief State election official, in coordination with local election jurisdictions, shall develop a free access system by which an absent uniformed services voter or overseas voter may determine whether the absentee ballot of the absent uniformed services voter or overseas voter has been received by the appropriate State election official.

(i) Prohibiting refusal to accept applications for failure to meet certain requirements

A State shall not refuse to accept and process any otherwise valid voter registration application or absentee ballot application (including the official post card form prescribed under section 20301 of this title) or marked absentee ballot submitted in any manner by an absent uniformed services voter or overseas voter solely on the basis of the following:

- (1) Notarization requirements.
- (2) Restrictions on paper type, including weight and size.
- (3) Restrictions on envelope type, including weight and size.

52 U.S.C. § 20310

§ 20310. Definitions

(a) As used in this chapter, the term—

(1) “absent uniformed services voter” means—

(A) a member of a uniformed service on active duty who, by reason of such active duty, is absent from the place of residence where the member is otherwise qualified to vote;

(B) a member of the merchant marine who, by reason of service in the merchant marine, is absent from the place of residence where the member is otherwise qualified to vote; and

(C) a spouse or dependent of a member referred to in subparagraph (A) or (B) who, by reason of the active duty or service of the member, is absent from the place of residence where the spouse or dependent is otherwise qualified to vote;

(2) “balloting materials” means official post card forms (prescribed under section 20301 of this title), Federal write-in absentee ballots (prescribed under section 20303 of this title), and any State balloting materials that, as determined by the Presidential designee, are essential to the carrying out of this chapter;

(3) “Federal office” means the office of President or Vice President, or of Senator or Representative in, or Delegate or Resident Commissioner to, the Congress;

(4) “member of the merchant marine” means an individual (other than a member of a uniformed service or an individual employed, enrolled, or maintained on the Great Lakes or the inland waterways)—

(A) employed as an officer or crew member of a vessel documented under the laws of the United States, or a vessel owned by the United States, or a vessel of foreign-flag registry under charter to or control of the United States; or

(B) enrolled with the United States for employment or training for employment, or maintained by the United States for emergency relief service, as an officer or crew member of any such vessel;

(5) “overseas voter” means —

(A) an absent uniformed services voter who, by reason of active duty or service is absent from the United States on the date of the election involved;

(B) a person who resides outside the United States and is qualified to vote in the last place in which the person was domiciled before leaving the United States; or

(C) a person who resides outside the United States and (but for such residence) would be qualified to vote in the last place in which the person was domiciled before leaving the United States.

(6) “State” means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, and American Samoa;

(7) “uniformed services” means the Army, Navy, Air Force, Marine Corps, and Coast Guard, the commissioned corps of the Public Health Service, and the commissioned corps of the National Oceanic and Atmospheric Administration; and

(8) “United States”, where used in the territorial sense, means the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, and American Samoa.

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

**LUIS SEGOVIA, JOSE ANTONIO)
TORRES, PAMELA LYNN COLON,)
TOMAS ARES, ANTHONY BUNTEN,)
LAVONNE WISE, IRAQ AFGHANISTAN)
AND PERSIAN GULF VETERANS OF)
THE PACIFIC, and LEAGUE OF)
WOMEN VOTERS OF THE VIRGIN)
ISLANDS,)
Plaintiffs,)**

Case No. 15 C 10196

Judge Joan B. Gottschall

v.)

**BOARD OF ELECTION)
COMMISSIONERS FOR THE CITY OF)
CHICAGO, KAREN KINNEY, UNITED)
STATES OF AMERICA, ASHTON)
CARTER, FEDERAL VOTING)
ASSISTANCE PROGRAM, MATT)
BOEHMER, AND MARISEL)
HERNANDEZ,)
Defendants.)**

MEMORANDUM OPINION AND ORDER

As Franklin D. Roosevelt famously said in a 1944 radio address from the White House, “Nobody will ever deprive the American people of the right to vote except the American people themselves and the only way they could do this is by not voting.” This statement assumes that all United States citizens can vote if they choose to do so. As this case shows, that assumption is incorrect. The plaintiffs in this action are six United States citizens who are former residents of Illinois and who now reside in Puerto Rico, Guam, or the U.S. Virgin Islands, plus two organizations that promote voting rights in United States Territories. The plaintiffs challenge the constitutionality of the Uniformed and Overseas Citizens Absentee Voting Act, 52 U.S.C. § 20310 (“UOCAVA”), contending that it violates their equal protection and due process rights

by barring them from casting absentee ballots in Illinois for federal elections due to their residence in the United States Territories of Puerto Rico, Guam, or the U.S. Virgin Islands, while allowing United States citizens who were previously qualified to vote in Illinois and currently reside in the United States Territory of the Northern Mariana Islands (“NMI”) or in a foreign country to cast absentee Illinois ballots.¹

The federal defendants (the United States of America, the Federal Voting Assistance Program, Ashton Carter, in his official capacity as the Secretary of Defense, and Matt Boehmer, in his official capacity as Director of the Federal Voting Assistance Program) filed a motion to dismiss and a motion for summary judgment.² The plaintiffs filed a cross-motion for summary judgment directed at their claims against the federal defendants. As discussed below, the plaintiffs have standing to challenge the constitutionality of the UOCAVA, the proper standard of review is rational basis, as opposed to strict scrutiny, and under the rational basis standard, the challenged provisions of the UOCAVA are constitutional.

¹ The plaintiffs raise a similar challenge to the Illinois Military and Overseas Voter Empowerment Act (“Illinois MOVE”), 10 Ill. Comp. Stat. § 5/20-1, which allows voters who were formerly qualified to vote in federal elections in Illinois and who now reside in the United States Territory of American Samoa to vote in federal elections via Illinois absentee ballot. As the motions presently before the court all concern the UOCAVA, the court will not address the plaintiffs’ arguments about Illinois MOVE at this time.

² The remaining defendants—the Board of Election Commissioners for the City of Chicago, Marisel Hernandez (the Chairman of the Board of Election Commissioners for the City of Chicago), and Karen Kinney (the Rock Island County Clerk) have answered.

I. BACKGROUND³

A. The Parties

The individual plaintiffs (Luis Segovia, Jose Antonio Torres, Pamela Lynn Colon, Tomas Ares, Anthony Bunten, and Lavonne Wise) are United States citizens and former Illinois residents. Before moving from Illinois, the plaintiffs voted in federal elections administered by Illinois. Currently, Mr. Segovia and Mr. Bunten reside in Guam, Mr. Torres and Mr. Ares reside in Puerto Rico, and Ms. Colon and Ms. Wise reside in the U.S. Virgin Islands, all of which are United States Territories.

The individual plaintiffs all have distinguished careers serving the United States in the armed forces and/or as public servants. Because they reside in Puerto Rico, Guam, or the U.S. Virgin Islands, they cannot vote in federal elections via Illinois absentee ballot. In contrast, former Illinois residents who were qualified to vote in federal elections while living in Illinois can cast Illinois absentee ballots in federal elections if they reside in the NMI (pursuant to the UOCAVA), American Samoa (pursuant to Illinois MOVE), or a foreign country.

³ The following facts are drawn from the parties' Local Rule 56.1 submissions. The plaintiffs and the federal defendants failed to reproduce the opposing side's statements of fact when preparing their responses. *See* Loc. R. 56(b)(3)(a). In addition, the parties' summary chart, which was submitted at the court's request due to the unusual combined documents filed by both sides, does not include any of the Local Rule 56.1 submissions or anything filed after April 26, 2016. (Dkt. 57.) It thus is of limited utility, especially since the federal defendants filed their Local Rule 56.1 submissions as attachments to their combined memorandum in support of their summary judgment/opposition to the plaintiffs' cross-motion for summary judgment/reply in support of their motion to dismiss. For the reader's convenience, the statements of facts filed by the plaintiffs and the federal defendants are Dkt. 49 and Dkt. 51-4, respectively. The plaintiffs' response to the federal defendants' facts is Dkt. 59 and the federal defendants' response to the plaintiffs' facts is Dkt. 51-5.

1. Plaintiffs Currently Residing in Puerto Rico

Plaintiff Jose Antonio Torres is a United States citizen born in 1955 in Ponce, Puerto Rico, who currently resides in Carolina, Puerto Rico. Mr. Torres is a Vietnam-era Veteran who has a combined 100% disability rating by virtue of injuries sustained during his military service. He was recruited to join the United States Army as a high school student in Ponce, Puerto Rico. In 1973, he was stationed in Germany as part of the 141st Field Artillery, a posting that required top secret clearance. He was honorably discharged in 1975 due to severe injuries he sustained in Germany.

Mr. Torres resided in Chicago from 1982 to 1993. He began working for the United States Postal Service in 1986. He was transferred from Illinois to Puerto Rico in 1993, where he continued to work for the Postal Service for another fifteen years until he retired in 2008 after 22 years of federal service. As a federal employee in Puerto Rico, Mr. Torres was required to pay the same federal taxes, including federal income tax, as federal employees living on the mainland. When Mr. Torres resided in Illinois, he voted for President; he now votes in Puerto Rico elections.

Plaintiff Tomas Ares is a United States citizen born in San Lorenzo, Puerto Rico in 1955, where he currently resides. From 1967 to 2007, he resided in Chicago, Illinois. He then retired and moved to Puerto Rico. He is a Vietnam-era Veteran who joined the U.S. Army in 1971 at the age of 17, following the footsteps of his father, who was born in Puerto Rico in 1902 and served in the U.S. Army's 65th Infantry from 1920 through 1944. After Mr. Ares was stationed in Germany, he was honorably discharged in 1972 because he was not of the legal age to serve. When Mr. Ares resided in Illinois, he voted for President; he now votes in Puerto Rico elections.

2. Plaintiffs Currently Residing in Guam

Plaintiff Luis Segovia is a United States citizen born in Chicago, Illinois, in 1978. He moved from Chicago to Guam in 2010 and is a decorated veteran. He served in the U.S. Army in Iraq from 2005 to 2006, where his primary mission was to provide security for the 2005 Iraqi elections. He then served in the Illinois National Guard, where he was deployed to Afghanistan from 2008 to 2009. He joined the Guam National Guard in 2010 after becoming a resident of Guam, and was deployed for a ten-month second tour of duty in Afghanistan. He was recently promoted to the rank of Staff Sergeant, and also serves his country as a federal employee with the Department of the Navy's civilian security forces police assigned to Anderson Air Force Base in Guam. When Mr. Segovia resided in Illinois, he voted for President; he now votes in Guam elections.

Plaintiff Anthony Bunten is a United States citizen born in Moline, Illinois in 1976. Mr. Bunten is a Veteran who joined the U.S. Navy directly out of high school in 1994. He was honorably discharged in 1997, when he moved to Guam to join his now-wife, Barbara Perez Hattori. When Mr. Bunten resided in Illinois, he voted for President; he now votes in Guam elections.

3. Plaintiffs Currently Residing in the U.S. Virgin Islands

Plaintiff Pamela Lynn Colon is a United States citizen born in Chicago, Illinois, in 1959. She lived in Chicago until 1992, when she moved to the U.S. Virgin Islands, and currently resides in St. Croix. From 1996 to 2000, Ms. Colon served as the Assistant Federal Public Defender in St. Thomas in the U.S. Virgin Islands. She has defended numerous clients in the U.S. Virgin Islands who were federally prosecuted, including several who faced the possibility of

life in prison or the death penalty. She is the past-President of the Virgin Islands Bar Association. When Ms. Colon resided in Illinois, she voted for President; she now votes in elections in the U.S. Virgin Islands.

Plaintiff Lavonne Wise is a United States citizen born in Queens, New York; she currently resides in St. Croix in the U.S. Virgin Islands. From 2003 to 2009, she resided in Chicago, Illinois. As a resident of Chicago in 2008, Ms. Wise voted for President by absentee ballot while temporarily working in St. Croix, but after she became a resident of St. Croix in 2009, she became unable to vote for President. She now regularly votes in elections in the U.S. Virgin Islands. Previously, from 1990-1992, Ms. Wise moved from Atlanta, Georgia, to St. Maarten, Netherland Antilles. While living in St. Maarten, Ms. Wise was able to vote for President via absentee ballot.

4. Organizational Plaintiffs

The remaining plaintiffs are the Iraq Afghanistan and Persian Gulf Veterans of the Pacific (“IAPGVP”) and the League of Women Voters of the Virgin Islands (“LWV-VI”). IAPGVP is a nonprofit organization founded in 2014 whose mission is to provide opportunities to engage, enrich, and empower Pacific Island veterans of Iraq, Afghanistan, and the Persian Gulf and their families. While up to one in eight adults in Guam is a veteran and the casualty rate for Guam soldiers in Iraq and Afghanistan has been up to 4.5 times the national average, in 2012, Guam ranked below every State in medical-care spending per veteran. IAPGVP’s position is that political disenfranchisement contributes to the healthcare crisis facing Guam veterans. LWV-VI was founded in 1968 and is a non-profit, non-partisan political organization. Its main goal is to give a voice to all Americans by expanding voter participation. LWV-VI’s position is that

continuing political disenfranchisement contributes to many hardships facing Virgin Islanders, including economic development, healthcare, and the environment.

The plaintiffs allege that unspecified former Illinois residents are members of both organizational plaintiffs. IAPGVP and LWV-VI posit that allowing United States citizens who live in their respective territories to vote would provide new opportunities for national political engagement about issues in Guam and the Virgin Islands. All of the plaintiffs allege that they believe that where one lives as a United States citizen should not affect the right to vote.

5. The Defendants

The state defendants are the Board of Election Commissioners for the City of Chicago, Marisel Hernandez (the Chair of the Board of Election Commissioners), and Karen Kinney (the Rock Island County Clerk). The Board of Election Commissioners is the election authority with jurisdiction over the precincts where Mr. Segovia, Mr. Torres, Ms. Colon, Mr. Ares, and Ms. Wise resided before they moved from Illinois. The Rock Island County Clerk is the election authority with jurisdiction over the precinct where Mr. Bunten resided before he moved from Illinois. The Board of Election Commissioners, Ms. Hernandez, and Ms. Kinney agree that individuals who were eligible to vote in federal elections when they resided in Illinois and who now reside overseas in Puerto Rico, Guam, or the U.S. Virgin Islands are ineligible to vote absentee in Illinois, but would be eligible if they resided in the NMI, American Samoa, or a foreign country. The federal defendants are the United States of America, Secretary of Defense Ashton Carter, the Federal Voting Assistance Program, and Director of the Federal Voting Assistance Program Matt Boehmer. All of the individual defendants have been sued in their official capacities.

B. The UOCAVA and Illinois' MOVE Act

The UOCAVA imposes a range of responsibilities on states (here, Illinois, as the individual plaintiffs wish to vote by Illinois absentee ballot) relating to absentee voting in federal elections by uniformed service members or overseas voters, as those terms are defined in the UOCAVA. 52 U.S.C. § 20302.

- The UOCAVA defines “[f]ederal office” as “the office of President or Vice President, or of Senator or Representative in, or Delegate or Resident Commissioner to, the Congress.” 52 U.S.C. § 20310(3).
- “‘State’ means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, and American Samoa.” 52 U.S.C. § 20310(6).
- “‘United States,’ where used in the territorial sense, means the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, and American Samoa.” 52 U.S.C. § 20310(8).
- An “overseas voter” is: “(A) an absent uniformed services voter [serving in the Army, Navy, Air Force, Marine Corps, and Coast Guard, the commissioned corps of the Public Health Service, or the commissioned corps of the National Oceanic and Atmospheric Administration] who, by reason of active duty or service is absent from the United States on the date of the election involved; (B) a person who resides outside the United States and is qualified to vote in the last place in which the person was domiciled before leaving the United States; or (C) a person who resides outside the United States and (but for such residence) would be qualified to vote in the last place in which the person was domiciled before leaving the United States.”⁴ 52 U.S.C. § 20310(5) & (7).

Because the individual plaintiffs currently are domiciled in Puerto Rico, Guam, and the U.S. Virgin Islands, they fall within the UOCAVA’s definition of “State” and thus do not “reside[] outside the United States” for the purposes of the UOCAVA. *See* 52 U.S.C. § 20310(6)

⁴ The UOCAVA thus creates a seemingly anomalous situation: a member of the armed forces stationed on, for example, Guam, who was previously qualified to vote in Illinois can vote in federal elections via an Illinois absentee ballot. If that person retires from service and stays in Guam, however, she loses her ability to vote via Illinois absentee ballot.

& (8). Thus, the individual plaintiffs are not “overseas voters” as that term is defined in the UOCAVA. 52 U.S.C. § 20310(5) & (7). This means that their state of former residence where they were eligible to vote in federal elections (here, Illinois) is not required to provide absentee ballots that would allow the individual plaintiffs to vote in federal elections.

Under the UOCAVA, United States citizens who were formerly eligible to vote in federal elections in Illinois and who now live in American Samoa also cannot vote via Illinois absentee ballot, as American Samoa—like Puerto Rico, Guam, and the U.S. Virgin Islands—falls within the UOCAVA’s definition of “State.” *See* 52 U.S.C § 20310(6). However, Illinois has extended absentee voting rights to include former Illinois residents who currently reside in American Samoa and are otherwise eligible to vote.⁵ *See* 10 Ill. Comp. Stat. § 5/20-1(1) (“Territorial limits of the United States’ means each of the several States of the United States and includes 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”).⁶

⁵ Illinois MOVE, like the UOCAVA, does not allow United States citizens who were eligible to vote in Illinois to vote via absentee ballot after they move to Puerto Rico, Guam, and the U.S. Virgin Islands. *See* 10 Ill. Comp. Stat. § 5/20-1(1). However, it allows otherwise similarly situated individuals to vote via absentee ballot if they move to American Samoa. *Id.* Presumably, this will be the subject of a second round of dispositive motions.

⁶ The Trust Territory of the Pacific Islands is a former United Nations strategic trusteeship that was administered by the United States. It consisted of the Federated States of Micronesia, the Republic of the Marshall Islands, the NMI, and Palau. *See* <http://www.un.org/en/decolonization/selfdet.shtml>; *see also* *Davis v. Commonwealth Election Comm’n*, No. 1-14-CV-00002, 2014 WL 2111065, at *1 (D. N. Mar. I. May 20, 2014) (the Trust Territory of the Pacific Islands consists of “the islands that later formed the Commonwealth, the republics of Palau and the Marshall Islands, and the Federated States of Micronesia. One of the purposes of the trusteeship was for the United States to promote independence and self-government among the peoples of those islands.”).

In 2009, Congress passed the Military and Overseas Voter Empowerment Act, which amended the UOCAVA. *See United States v. Georgia*, 778 F.3d 1202, 1203 (11th Cir. 2015). As amended, the UOCAVA requires states, upon request, to send an absentee ballot to absent uniformed service voters and overseas voters at least 45 days before an election for Federal office, unless the state provides a hardship waiver. *Id.*

III. THRESHOLD ISSUES: JURISDICTION AND STANDING

The federal defendants raise three threshold arguments: (1) this court lacks subject matter jurisdiction to adjudicate the plaintiffs' challenge to the UOCAVA, (2) the organizational plaintiffs lack standing because they have not identified specific former Illinois residents who are members, and (3) the individual plaintiffs lack standing because their alleged injuries are not fairly traceable to the UOCAVA.

A. Federal Question Jurisdiction

The court must "consider subject-matter jurisdiction as the first question in every case" and "must dismiss . . . if such jurisdiction is lacking." *Aljabri v. Holder*, 745 F.3d 816, 818 (7th Cir. 2014) (citations omitted). Here, the federal defendants challenge subject matter jurisdiction, arguing that the plaintiffs lack standing to bring claims against them. "Subject-matter jurisdiction . . . refers to a tribunal's power to hear a case." *Morrison v. Nat'l Australia Bank, Ltd.*, 561 U.S. 247, 254 (2010). "[A]n issue of statutory standing . . . has nothing to do with whether there is a case or controversy under Article III." *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 90 (1998). Given the federal constitutional questions at issue, subject matter jurisdiction is unquestionably proper, despite the federal defendants' standing arguments. *See* 28 U.S.C. § 1331 (federal question jurisdiction); 28 U.S.C. § 1343 ("The district courts shall have

original jurisdiction of any civil action authorized by law to be commenced by any person . . . [t]o recover damages or to secure equitable or other relief under any Act of Congress providing for the protection of civil rights, including the right to vote”).

B. Standing

Standing is “an essential and unchanging part of the case-or-controversy requirement of Article III” of the United States Constitution. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992). To establish standing, a plaintiff must prove that: (1) she suffered a concrete and particularized injury that is actual or imminent; (2) the injury is fairly traceable to the defendant’s actions; and (3) it is likely that the injury will be redressed by a favorable decision. *Id.* When evaluating standing, the court accepts the material allegations of the complaint as true and construes the complaint in the plaintiffs’ favor. *Davis v. Guam*, 785 F.3d 1311, 1314 (9th Cir. 2015) (citing *Warth v. Seldin*, 422 U.S. 490, 501 (1975)).

1. Organizational Plaintiffs

The federal defendants challenge the organizational plaintiffs’ standing based on the fact that the complaint does not name any members of either organization who were eligible to vote in federal elections when they resided in Illinois. Thus, the federal defendants assert that the organizational plaintiffs have failed to show that they suffered an cognizable injury. “Where at least one plaintiff has standing [for a particular claim], jurisdiction is secure and the court will adjudicate the case whether the additional plaintiffs have standing or not.” *Ezell v. City of Chicago*, 651 F.3d 684, 696 n.7 (7th Cir. 2011); *see also Tuaua v. United States*, 951 F. Supp. 2d 88, 92-93 (D.D.C. 2013), *aff’d*, 788 F.3d 300 (D.C. Cir. 2015) (holding that it was unnecessary to address whether the Samoan Federation of America had standing to pursue a citizenship

challenge on behalf of individuals born in American Samoa because it was undisputed that other plaintiffs had standing). The federal defendants do not and cannot question the individual plaintiffs' contention that they have each suffered a concrete and particularized injury due to their inability to vote in federal elections via Illinois absentee ballot. Thus, the court need not delve into the organizational plaintiffs' membership to determine if those plaintiffs also suffered an injury. The federal defendants' arguments about the organizational plaintiffs' standing are unavailing.

2. Standing—Traceability

Next, the federal defendants argue that the plaintiffs lack standing to sue them (as opposed to the state defendants based on Illinois MOVE) because the plaintiffs' alleged injuries are not fairly traceable to the UOCAVA. Specifically, the federal defendants assert that the UOCAVA does not impose the voting disability of which plaintiffs complain; rather, according to the federal defendants, that restriction results from requirements imposed by Illinois law, as well as provisions of the Constitution, which delegate the authority to regulate voting in federal elections to the states.

The federal defendants expressly state that their standing argument is based on traceability.⁷ The causation element of Article III standing requires the plaintiffs' injury to be

⁷ Another court faced with a similar argument analyzed it under the injury-in-fact element of standing. *See Igartua v. United States*, 86 F. Supp. 3d 50, 55 (D.P.R. 2015). (There are numerous cases captioned *Igartua*, as that plaintiff filed a series of cases addressing voting rights of United States citizens in Puerto Rico. The court will follow the parties' numbering convention in this opinion, but they do not cite to this particular *Igartua* case so it lacks a number). Specifically, that court held that a claim that the UOCAVA was responsible for the inability of United States citizens living in Puerto Rico to vote for representatives from Puerto Rico to the United States House of Representatives did not rise to the level of an "invasion of a legally protected interest" because the UOCAVA did not cause the plaintiffs' injury. *Id.* (quoting

“fairly traceable” to the defendants’ actions. *Sterk v. Redbox Automated Retail, LLC*, 770 F.3d 618, 623 (7th Cir. 2014). To satisfy this standard, a plaintiff’s injury and a defendant’s conduct must be causally connected. *Id.*; *see also Indiana v. E.P.A.*, 796 F.3d 803, 809 (7th Cir. 2015) (quoting *Valley Forge Christian Coll. v. Am. United for Separation of Church & State, Inc.*, 454 U.S. 464, 485 (1982) (traceability exists when a plaintiff sustains an injury “as a consequence of” the challenged conduct)). “If the independent action of some third party not before the court causes [the plaintiff’s harm],” she cannot show traceability. *Sierra Club v. Franklin Cnty. Power of Illinois, LLC*, 546 F.3d 918, 926 (7th Cir. 2008) (internal quotations omitted). Without traceability, a plaintiff lacks standing. *See, e.g., Cnty. of Cook v. HSBC N. Am. Holdings Inc.*, 136 F. Supp. 3d 952, 959-60 (N.D. Ill. 2015).

The Constitution contains “no reference to the election of the President, which is by the electoral college rather than by the voters at the general election; general elections for President were not contemplated in 1787.” *ACORN v. Edgar*, 56 F.3d 791, 793 (7th Cir. 1995). Thus, the Constitution does not give individual citizens a direct right to vote for President and Vice President. *See id.* Instead, the Constitution gives this right to “Electors” appointed by “[e]ach State.” U.S. Const. art. II, § 2; *see also id.* at amend. XII (“Election of President and Vice-President”). However, the Supreme Court has held that “[h]istory has now favored the voter, and in each of the several States the citizens themselves vote for Presidential electors.” *Bush v. Gore*, 531 U.S. 98, 104 (2000). With respect to the House of Representatives, the “People of the

Lujan, 504 U.S. at 560). This is, essentially, the federal defendants’ standing argument in this case. Whether their argument is characterized as an alleged lack of injury-in-fact or traceability, the result appears to be the same. In addition, the federal defendants do not rely on the purported lack of an injury-in-fact. Thus, the court will not consider injury-in-fact.

Several States” can choose the members. *Id.* at art. I, § 2, cl. 1-4. In turn, “[t]he Senate of the United States shall be composed of two Senators from each state, elected by the people thereof” U.S. Const. amend. XVII.

The Constitution gives broad authority to states to regulate both state and federal elections. *See* U.S. Const. art. I, § 4, cl. 1 (“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 places of chusing Senators.”). Article II section 1 provides that “Congress may determine the Time of chusing the Electors [for President], and the Day on which they shall give their Votes; which Day shall be the same throughout the United States.” *ACORN*, 56 F.3d at 793. “This provision has been interpreted to grant Congress power over Presidential elections coextensive with that which Article I section 4 grants it over congressional elections.” *Id.* (citing *Burroughs v. United States*, 290 U.S. 534 (1934)).

The federal defendants argue that in enacting the UOCAVA, “Congress contemplated that States, which have the constitutional authority and duty to prescribe the time, place, and manner of voting in federal elections in the first instance, would extend absentee voting rights as they deemed appropriate.” (Dkt. 51 at 4-5.) In support, the federal defendants contend that UOCAVA’s legislative history makes clear that a state can adopt voting practices which are less restrictive than the practices prescribed by the UOCAVA. *See* H.R. Rep. No. 99-765, at 19 (1986), reprinted in 1986 U.S.C.C.A.N. 2009, 2023. They note that Illinois has done so by extending absentee voting rights in federal elections to individuals who were eligible to vote when they resided in Illinois and then moved to American Samoa. *See* 10 Ill. Comp. Stat.

§ 5/20-1(1). Thus, they conclude that Illinois MOVE—not UOCAVA—bars the individual plaintiffs from voting absentee in Illinois, because Illinois chose to extend the franchise to qualified voters who move from Illinois to American Samoa, but did not include similarly situated people who move to Puerto Rico, Guam, or the U.S. Virgin Islands. In other words, they characterize the UOCAVA as a floor upon which states may build, as opposed to an independent cause of the plaintiffs’ claimed injuries.

The federal defendants’ argument that UOCAVA provides a floor and does not prevent Illinois from giving former Illinois residents in Puerto Rico, Guam, or the U.S. Virgin Islands the right to vote in federal elections is besides the point. It is true that states are responsible for ensuring compliance with the UOCAVA. *See United States v. Alabama*, 857 F. Supp. 2d 1236, 1239 (M.D. Ala. 2012) (“Alabama bears full responsibility for compliance with UOCAVA”). The parties also agree that states, such as Illinois, not the federal government, control how federal elections are conducted. However, the federal defendants have not identified any authority that demonstrates that Illinois’ failure to extend voting rights insulates them from a constitutional challenge to the UOCAVA’s scope or that Illinois’ control over aspects of the methodology of the mechanics of voting and Illinois’ ability to expand who may vote means that the plaintiffs fail to satisfy the traceability element of standing.

Indeed, the UOCAVA includes multiple provisions that require states to “extend additional protections to the UOCAVA absentee voting process that they might not extend to other absentee voters as a matter of state law.” *Alabama*, 778 F.3d at 929. For example, states must accept UOCAVA registration forms and ballot requests received at least thirty days before any election. 52 U.S.C. § 20302(a)(2). States must allow UOCAVA voters to use federal

write-in ballots. 52 U.S.C. § 20302(a)(3). And states cannot enforce requirements regarding notarization, paper type, or envelope type. 52 U.S.C. 20302(i). The presence of these provisions, as well as the bedrock voting rights for certain overseas voters in the UOCAVA, show that the statute—consistent with the Constitution’s provisions about voting in federal elections—requires states to confer certain benefits on certain voters.

At least one court has held that in the context of a constitutional challenge to the UOCAVA, Article II of the Constitution specifies that “only citizens residing in states can vote for electors and thereby indirectly for the President.” *Igartua De La Rosa v. United States (Igartua I)*, 32 F.3d 8, 9-10 (1st Cir. 1994) (applying this rule to putative federal voters who are United States citizens and reside in Puerto Rico); *see also Attorney General of Guam on behalf of All U.S. Citizens Residing in Guam, etc. v. United States*, 738 F.2d 1017, 1019 (9th Cir. 1984) (applying this rule to putative federal voters who are United States citizens and reside in Guam); *Ballentine v. United States*, 486 F.3d 806, 810 (3d Cir. 2007) (applying this rule to putative federal voters who are United States citizens and reside in the U.S. Virgin Islands). *Igartua I*, however, does not stand for the proposition that plaintiffs mounting a challenge to the UOCAVA lacked standing to do so based on traceability. Indeed, that court reached the merits of the plaintiffs’ claims and held that under a rational basis standard, UOCAVA’s failure to extend the franchise to the plaintiffs was constitutional. *Igartua I*, 32 F.3d at 11 (“While the Act does not guarantee that a citizen moving to Puerto Rico will be eligible to vote in a presidential election, this limitation is not a consequence of the Act but of the constitutional requirements discussed above.”). Thus, *Igartua I* and the federal defendants’ characterization of UOCAVA as a mere floor does not establish that the plaintiffs’ claimed injuries are divorced from the UOCAVA.

The fact that state law governs the mechanism by which former Illinois residents who are United States citizens can cast absentee ballots and that UOCAVA's legislative history indicates that states may extend absentee voting rights to other individuals disenfranchised by the UOCAVA, such as residents of American Samoa, also fails to show that the plaintiffs lack standing to challenge the UOCAVA. *See* H.R. Rep. No. 99-765, at 19. As discussed above, the UOCAVA includes Puerto Rico, Guam, the U.S. Virgin Islands, and American Samoa in its definition of state. Illinois MOVE, however, carves out American Samoa. *See* 10 Ill. Comp. Stat. § 5/20-1(1). Thus, an individual who was qualified to vote in a federal election in Illinois can continue to vote in federal elections via an Illinois absentee ballot if she moves to American Samoa, but not if she moves to Puerto Rico, Guam, or the U.S. Virgin Islands.

The federal defendants attempt, without the benefit of authority, to blame Illinois for this situation. However, they are responsible for the terms of the UOCAVA, not Illinois. Illinois' ability to provide redress does not insulate the federal defendants from liability. Relatedly, while the federal defendants have no role in accepting or rejecting Illinois absentee ballots, Illinois is bound by the floor that the federal defendants stress that the UOCAVA provides. If the UOCAVA's definition of "state" excluded Puerto Rico, Guam, and the U.S. Virgin Islands, the individual plaintiffs would be qualified "overseas voters" under the UOCAVA. In that instance, Illinois would have to allow the individual plaintiffs to cast Illinois absentee ballots in federal elections.

For all of these reasons, the federal defendants' claim that Illinois has the ability to broaden the right to vote by absentee ballot to individuals who do not satisfy the UOCAVA does not absolve them from potential liability under UOCAVA; at best, Congress has itself acted in a

specific way and authorized the states to enact their own more expansive laws if they choose to do so. The court fails to see how this destroys the plaintiffs' standing to proceed with equal protection and due process challenges to the UOCAVA against the federal defendants. The federal defendants' request to dismiss the plaintiffs' claims against them or grant summary judgment based on standing is denied.

IV. THE PARTIES' CROSS-MOTIONS FOR SUMMARY JUDGMENT

As is relevant here, the plaintiffs contend that the UOCAVA treats United States citizens who are former Illinois residents who were qualified to vote in federal elections and who now reside in United States Territories differently based on the territory in which they live and thus violates their right to equal protection.⁸ The parties dispute the applicable standard of review: the plaintiffs champion strict scrutiny based on their position that the UOCAVA infringes on

⁸ In their complaint, the plaintiffs allege that the UOCAVA and Illinois MOVE violate the equal protection and due process guarantees in the Fifth and Fourteenth Amendments. (Dkt. 1 at ¶ 52.) The plaintiffs' memorandum in support of their motion for summary judgment (which they combine with their response to the federal defendants' motion to dismiss), however, refers only to equal protection. In turn, the federal defendants' filings refer generally to both equal protection and due process. The gravamen of the plaintiffs' complaint is that UOCAVA and Illinois MOVE treat "similarly situated former state residents differently based on where they reside overseas." (Dkt. 1 at ¶ 52.) Thus, the plaintiffs' due process claim appears to be an equal protection claim recast in due process terms. "[W]here a particular Amendment provides an explicit textual source of constitutional protection against a particular sort of government behavior, that Amendment, not the more generalized notion of substantive due process, must be the guide for analyzing these claims." *See County of Sacramento v. Lewis*, 523 U.S. 833, 842 (1998). The parties' briefs do not address the viability of a standalone due process claim against the federal defendants. As the court lacks the benefit of the parties' views and the plaintiffs' complaint focuses on equal protection, the court will likewise focus on the plaintiffs' equal protection claim against the federal defendants at this point in the proceedings. The court also expressly declines to consider the plaintiffs' arguments about the constitutionality of Illinois MOVE at this time, as they are not properly before the court in connection with motions directed at the federal defendants based on the UOCAVA.

their fundamental right to vote.⁹ In contrast, the federal defendants contend that the court should consider whether the UOCAVA's treatment of certain overseas voters has a rational basis. The parties also dispute whether, under their desired standard of review, the challenged portions of UOCAVA are constitutional. As discussed below, rational basis review applies and the challenged portions of the UOCAVA satisfy that undemanding standard.

This conclusion does not reflect the court's view that the current scheme is desirable or proper. *See generally* *Igartua v. United States*, 626 F.3d 592, 594 (1st Cir. 2010) (holding that "the U.S. Constitution does not give Puerto Rico residents the right to vote for members of the

⁹ Strict scrutiny also applies to laws that draw distinctions based on suspect categories such as race, religion, and national origin. *See, e.g.,* *Srail v. Vill. of Lisle, Ill.*, 588 F.3d 940, 943 (7th Cir. 2009). The plaintiffs, who now reside in Puerto Rico, Guam, and the U.S. Virgin Islands, base their contention that strict scrutiny applies on what they characterize as their fundamental right to vote in federal elections via Illinois absentee ballot, since they were qualified to vote in federal elections when they lived in Illinois. Thus, the court will similarly confine its consideration. However, it notes that the status of unincorporated territories is based, in significant part, on the so-called *Insular Cases*, which state that the United States' possessions are "inhabited by alien races, differing from us in religion, customs, laws, methods of taxation, and modes of thought." *Downes v. Bidwell*, 182 U.S. 244, 287 (1901). "It could be argued that because a large segment of the population of the territories is Latino, black, or of Pacific Islander or Asian extraction, the exclusion of U.S. citizens residing in the territories from the vote for electors to the electoral college therefore has a disproportionately discriminatory effect." *Romeu v. Cohen*, 265 F.3d 118, 133 (2d Cir. 2001) (Walker, C.J. concurring). This is consistent with the description of the *Insular Cases* as establishing a race-based doctrine of "separate and unequal" status for residents of overseas United States Territories. *See Paeste v. Gov't of Guam*, 798 F.3d 1228, 1231 (9th Cir. 2015) ("the so-called 'Insular Cases' . . . established a less-than-complete application of the Constitution in some U.S. territories"); *Igartua-De La Rosa v. United States*, 417 F.3d 145, 162 (1st Cir. 2005) (with respect to Puerto Rico, "There is no question that the *Insular Cases* are on par with the Court's infamous decision in *Plessy v. Ferguson* in licen[s]ing the downgrading of the rights of discrete minorities within the political hegemony of the United States"); *Ballentine v. United States*, No. CIV. 1999-130, 2001 WL 1242571, at *7 (D.V.I. Oct. 15, 2001) ("Those who may not realize the extent to which the current status of the Virgin Islands depends on an entirely repugnant view of the people who inhabited the Virgin Islands at the time of their acquisition are invited to read the *Insular Cases*"). But this issue is not presently before the court as the plaintiffs do not argue that strict scrutiny applies because a suspect class is at issue.

House of Representatives because Puerto Rico is not a state” and noting that “the Constitution does not permit granting such a right to the plaintiffs by means other than those specified for achieving statehood or by amendment”). It must be said that the current voting situation in Puerto Rico, Guam, and the U.S. Virgin Islands is at least in part grounded on the *Insular Cases*, which have been described as “establish[ing] a less-than-complete application of the Constitution in some U.S. territories,” *Paeste*, 798 F.3d at 1231, based on explicitly racist views which “in today’s world seem bizarre.” José Trias Monge, *Injustice According to Law: The Insular Cases and Other Oddities*, in *Foreign in a Domestic Sense: Puerto Rico, American Expansion, and the Constitution*, 228 (Duke 2001).

The inconsistencies between the constitutional rights afforded to United States citizens living in states as opposed to territories have “been the subject of extensive judicial, academic, and popular criticism.” *Id.* (citing Juan Torruella, *The Insular Cases: The Establishment of a Regime of Political Apartheid*, 77 *Rev. Jur. U.P.R.* 1 (2008); Last Week Tonight with John Oliver: U.S. Territories, Youtube (<https://www.youtube.com/watch?v=CesHr99ezWE>)); *see also* *Igartua De La Rosa v. United States (Igartua II)*, 229 F.3d 80, 85-90 (1st Cir. 2000) (Torruella, J., concurring). Earlier this year, Senator Elizabeth Warren spoke out about the impact that the lack of voting rights has on United States citizens residing in Puerto Rico, Guam, and the U.S. Virgin Islands, calling the current situation “absurd” and noting that these individuals have “second class citizen” status that has “real implications” for their lives. <https://www.facebook.com/senatorelizabethwarren/videos/vb.131559043673264/580677832094714/?type=2&theater>. The episode entitled *Island of Warriors* for PBS’ *America By the Numbers* highlights the

struggles of veterans in Guam, and asks if they have been forsaken by the country they swore to defend. <http://www.pbs.org/wgbh/america-by-the-numbers/episodes/episode-102/>.

This court's task, however, is not to opine on the wisdom or fairness of the challenged portions of the UOCAVA. It can determine only the proper standard of review and then apply that standard to the plaintiffs' equal protection claim. The court thus turns to these questions.

A. Legal Standard

The federal defendants filed a Rule 12(b)(6) motion to dismiss followed by a motion for summary judgment. The plaintiffs filed a cross-motion for summary judgment directed at their claims against the federal defendants. As both sides submitted Local Rule 56.1 statements of fact that expand on the factual allegations in the complaint, the court will consider those statements and apply the summary judgment standard. Summary judgment is appropriate "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). A genuine dispute as to any material fact exists if "the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). In resolving summary judgment motions, "facts must be viewed in the light most favorable to the nonmoving party only if there is a 'genuine' dispute as to those facts." *Scott v. Harris*, 550 U.S. 372, 380 (2007).

B. Standard of Review: Strict Scrutiny or Rational Basis?

When evaluating an equal protection claim, the court must first determine the appropriate standard of review. *See Dunn v. Blumstein*, 405 U.S. 330, 335 (1972). The plaintiffs assert that strict scrutiny applies because the UOCAVA treats former Illinois residents who were eligible to vote in federal elections when they lived in Illinois, but who currently live in territories,

differently depending on where they reside. Specifically, the plaintiffs take issue with the fact that the UOCAVA compels Illinois to allow former Illinois residents who currently reside in the NMI and who were qualified to vote in federal elections when they lived in Illinois to cast Illinois absentee ballots but allows Illinois to deny the franchise to similarly situated individuals who reside in Puerto Rico, Guam, and the U.S. Virgin Islands. According to the plaintiffs, the UOCAVA's "selective enfranchisement" of NMI absentee voters means that Congress singled out Illinois absentee voters in Puerto Rico, Guam, and the U.S. Virgin Islands for disfavored treatment, thereby depriving them of the fundamental right to vote. Based on this reasoning, the plaintiffs conclude that strict scrutiny applies.

1. The Rational Basis and Strict Scrutiny Standards

"Laws duly enacted by the legislature come to court with a presumption of constitutional validity, but the level of scrutiny brought to bear on these laws varies." *One Wisconsin Inst., Inc. v. Nichol*, 155 F. Supp. 3d 898, —, No. 15 C 324, 215 WL 9239014, at *2 (W.D. Wis. 2015) (citing *Heller v. Doe by Doe*, 509 U.S. 312, 319 (1993)). If a law burdens a fundamental right, it "is subject to strict scrutiny, meaning that the discriminatory action is permissible only if it is narrowly tailored to address a compelling state interest." *Better Broadview Party v. Walters*, No. 15 C 2445, 2016 WL 374144, at *6 (N.D. Ill. Feb. 1, 2016) (citing *Illinois State Bd. of Elections v. Socialist Workers Party*, 440 U.S. 173, 184 (1979) ("Restrictions on access to the ballot burden two distinct and fundamental rights When such vital individual rights are at stake, a State must establish that its classification is necessary to serve a compelling interest.")).

If no fundamental right is at issue, rational basis review—under which a law is constitutional if a plausible rational explanation supports it—applies. *Heller*, 509 U.S. at 320.

Thus, the Supreme Court “many times [has] said” that:

[R]ational-basis review in equal protection analysis is not a license for courts to judge the wisdom, fairness, or logic of legislative choices. Nor does it authorize the judiciary to sit as a superlegislature to judge the wisdom or desirability of legislative policy determinations made in areas that neither affect fundamental rights nor proceed along suspect lines. For these reasons, a classification neither involving fundamental rights nor proceeding along suspect lines is accorded a strong presumption of validity.

Id. at 319 (internal quotations, alterations, and citations omitted). “[R]ational basis review focuses on the [government’s] justification for its actions, rather than on plaintiffs’ disagreement with those actions.” *One Wisconsin Inst., Inc. v. Thomsen*, No. 15-CV-324-JDP, 2016 WL 4059222, at *53 (W.D. Wis. July 29, 2016). Thus, the court must determine if “a rational relationship between the disparity of treatment and some legitimate governmental purpose” exists. *Heller*, 509 U.S. at 320.

2. Does the UOCAVA Affect a Fundamental Right?

Generally, the right to vote is both “precious” and “fundamental.” *Harper v. Va. State Bd. of Elections*, 383 U.S. 663, 670 (1966). Nevertheless, as discussed above, to the extent that the Constitution implicitly confers a right to vote on individuals, as opposed to giving the states “broad authority to regulate the conduct of elections, including federal ones, *Griffin v. Roupas*, 385 F.3d 1128, 1130 (7th Cir. 2004), that right is conferred on citizens of a state. *See Bush*, 531 U.S. at 104 (citizens of “the several States . . . vote for Presidential electors”); U.S. Const. art. I, § 2, cl. 1-4 (the “People of the Several States” choose the members of the House of

Representatives); U.S. Const. amend. XVII (“[t]he Senate of the United States shall be composed of two Senators from each state, elected by the people thereof”).

Citizens residing in territories do not have a constitutional right to vote as citizens of a state do. *See Igartua II*, 229 F.3d at 83 (holding that “Puerto Rico, which is not a State, may not designate electors to the electoral college” so “residents of Puerto Rico have no constitutional right to participate in the national election of the President and Vice-President”); *Igartua-De La Rosa v. United States*, 417 F.3d 145, 148 (1st Cir. 2005) (en banc) (“That the franchise for choosing electors is confined to ‘states’ cannot be ‘unconstitutional’ because it is what the Constitution itself provides. Hence it does no good to stress how important is ‘the right to vote’ for President”).

Without a constitutional right, there can be no fundamental right. *See Echavarria v. Washington*, No. 1:16-CV-107, 2016 WL 1592623, at *3 (W.D. Mich. Apr. 21, 2016) (“A fundamental right is not at issue in this case because there is no constitutional right to release on parole”); *Wolfe v. Alexander*, No. 3:11-CV-0751, 2014 WL 4897733, at *11 (M.D. Tenn. Sept. 30, 2014) (because there is “no constitutional right to be free of health-based dietary restrictions in prison . . . there is no right being burdened, much less a fundamental right”); *Gutierrez v. Corr. Corp. of Am.*, No. 3:13CV98-MPM-DAS, 2013 WL 1800205, at *2 (N.D. Miss. Apr. 29, 2013) (“No fundamental right is implicated in this case, as there is no constitutional right to watch television”); *Thomas v. Rayburn Corr.*, No. CIV.A. 07-9203, 2008 WL 417759, at *3 (E.D. La. Feb. 13, 2008) (“The fact that the homosexual prisoners are currently housed in a non-working cell block likewise implicates no fundamental right, because a prisoner has no constitutional right to a prison job.”). This is critical, as only “[t]he guaranties of certain fundamental personal rights

declared in the Constitution” apply to the territories. *Balzac v. Porto Rico*, 258 U.S. 298, 312-13 (1922); see also *Wal-Mart Puerto Rico, Inc. v. Juan C. Zaragoza-Gomez*, No. 3:15-CV-03018 (JAF), 2016 WL 1183091, at *46 (D.P.R. Mar. 28, 2016) (quoting *Puerto Rico v. Branstad*, 483 U.S. 219, 229 (1987) (“The United States Supreme Court has ‘never held that the Commonwealth of Puerto Rico is entitled to all the benefits conferred’ and limitations placed ‘upon the States under the Constitution.’”).¹⁰

The plaintiffs do not dispute that, as a general proposition, United States citizens residing in territories have no constitutional right to vote in federal elections. Instead, they say that this point is irrelevant because the UOCAVA allows individuals who were qualified to vote in federal elections when they resided in Illinois but now reside in the NMI to continue to vote in federal elections via Illinois absentee ballot but does not allow similarly situated individuals who moved from Illinois to Puerto Rico, Guam, or the U.S. Virgin Islands to vote in federal elections via Illinois absentee ballot. According to the plaintiffs, this differing treatment of former Illinois voters based on the territories they move to merits strict scrutiny.

First, where there is no constitutionally protected right to vote, a state’s law “extend[ing] the right to vote to some non-residents does not implicate strict scrutiny.” See *Snead v. City of Albuquerque*, 663 F. Supp. 1084, 1087 (D.N.M.) (rejecting a challenge to a state law extending

¹⁰ It is true that some courts have held that “only fundamental constitutional rights necessarily apply in the territories.” *Davis v. Commonwealth Election Comm’n*, No. 1-14-CV-00002, 2014 WL 2111065, at *3 (D. N. Mar. I. May 20, 2014) (citing *Wabol v. Villacrusis*, 958 F.2d 1450, 1459 (9th Cir. 1990); *Wal-Mart Puerto Rico*, 2016 WL 1183091, at *46 (“To this day, only ‘fundamental’ constitutional rights are guaranteed to inhabitants of territories.”) (internal quotations and alterations omitted). However, as discussed in the text, a right cannot be fundamental unless it is also constitutional.

the right to vote in municipal bond elections to certain non-residents), *aff'd* by 841 F.2d 1131 (10th Cir. 1987) (unpublished order).

Second, the plaintiffs' authority supporting their contention that strict scrutiny applies because they have a fundamental right to vote all involves residents of a state.¹¹ Based on this authority, the plaintiffs conclude that the UOCAVA allows some citizens (former Illinois residents who live in foreign countries and the NMI) to vote via absentee ballot but denies the franchise to others (former Illinois residents who live in territories other than the NMI). *See* Dkt. 48 at 8-9. But as discussed above, United States citizens living in territories do not have the same fundamental right to vote as United States citizens residing in Illinois who are qualified to vote in federal elections. An Illinois citizen who is qualified to vote in a federal election has a fundamental right to vote. In contrast, because Puerto Rico, Guam, and the U.S. Virgin Islands are territories, not states, the fact that the individual plaintiffs are United States citizens who used to be able to vote in Illinois does not mean that they retain their fundamental right to vote when they move from Illinois to Puerto Rico, Guam, or the U.S. Virgin Islands. *See generally Tuaua*, 788 F.3d at 307-08 (rejecting the claim that "non citizen nationals" born in American Samoa have a constitutional right to United States citizenship where the plaintiffs' cases supporting their claim of a fundamental right to citizenship "do not arise in the territorial context" and thus "do

¹¹ The following are illustrative samples of the plaintiffs' authority: *Harper v. Virginia State Bd. of Elections*, 383 U.S. 663 (1966) (challenge to the constitutionality of Virginia's poll tax), *Obama for Am. v. Husted*, 697 F.3d 423, 425 (6th Cir. 2012) (challenge to an Ohio law that prevented certain voters from casting in-person early ballots), *Dunn v. Blumstein*, 405 U.S. 330, 336 (1972) (in the context of a challenge to durational residence requirements, holding that "[i]n decision after decision, this Court has made clear that a citizen has a constitutionally protected right to participate in elections on an equal basis with other citizens in the jurisdiction"), and *Burdick v. Takushi*, 504 U.S. 428, 434 (1992) (challenge to Hawaii's prohibition on write-in voting).

not reflect the [Supreme] Court’s considered judgment as to the existence of a fundamental right to citizenship for persons born in the United States’ unincorporated territories”).

The plaintiffs also direct the court’s attention to *Dunn*, a Supreme Court case that holds that challenges to voting restrictions always merit strict scrutiny. 405 U.S. at 337 (“if a challenged statute grants the right to vote to some citizens and denies the franchise to others, the Court must determine whether the exclusions are necessary to promote a compelling state interest”) (internal quotations omitted). The holding in *Dunn*, however, is not as broad as the plaintiffs suggest. The Court made its comments in *Dunn* in the context of surveying “state statutes that selectively distribute the franchise” to state voters, not statutes directed at United States citizens residing in United States Territories. *Id.* at 336. Thus, the plaintiffs’ authority does not engage with the federal defendants’ contention that residents of a United States Territory—as opposed to a state— do not have a fundamental right to vote in federal elections. Without a fundamental right (or a suspect class, which as discussed above, is not at issue in this case), strict scrutiny is not triggered.

Further, the plaintiffs assert that strict scrutiny applies to laws that extend a benefit to one class of individuals (here, United States citizens who were formerly qualified to vote in federal elections in Illinois and who currently reside in the NMI) while depriving similarly situated individuals (here, United States citizens who were formerly qualified to vote in federal elections in Illinois and who currently reside in Puerto Rico, Guam, and the U.S. Virgin Islands) of that same benefit. The plaintiffs’ authority, however, involves a challenge to a law that provided benefits to men but not women. *Frontiero v. Richardson*, 411 U.S. 677, 682 (1973). The Court held that the law was subject to “close judicial scrutiny” because classifications based on sex,

like classifications based on race, alienage, and national origin, are subject to strict scrutiny. *Id.* The plaintiffs here have not argued that they belong to a protected class and that the UOCAVA unconstitutionally discriminated based on their membership in that class.¹²

The federal defendants' cases are similarly unhelpful, albeit for a different reason. On a positive note, their cases involve territories.¹³ However, they all involve "a constitutional attack upon a law providing for governmental payments of monetary benefits." *Califano*, 435 U.S. at 5. This type of statute "is entitled to a strong presumption of constitutionality." *Id.* (internal

¹² The court does not express any views on this subject, as the plaintiffs have not raised it and the parties have not briefed it.

¹³ The Territory Clause gives Congress the "Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States; and nothing in this Constitution shall be construed as to Prejudice any Claims of the United States, or of any particular State." U.S. Const., Art. IV, § 3, cl. 2. In *Harris v. Rosario*, cited by the federal defendants, the Supreme Court held that the Territory Clause authorized Congress to set a lower statutory limitation on Aid to Families with Dependent Children payments to residents of Puerto Rico. 446 U.S. 651, 651 (1980) (per curiam). The Court rejected an equal protection challenge, concluding that Congress "may treat Puerto Rico differently from States [under the Territory Clause] so long as there is a rational basis for its actions." *Id.* at 651-52. The Court then concluded that the challenged statute satisfied rational basis review because "Puerto Rican residents do not contribute to the federal treasury; the cost of treating Puerto Rico as a State under the statute would be high; and greater benefits could disrupt the Puerto Rican economy." *Id.* (citing *Califano v. Torres*, 435 U.S. 1 (1978) (per curiam)). Similarly, in *Besinga v. United States*, also cited by the federal defendants, the Ninth Circuit held that "the broad powers of Congress under the Territory Clause are inconsistent with the application of heightened judicial scrutiny to economic legislation pertaining to the territories." 14 F.3d 1356, 1360 (9th Cir. 1994). And in *Quiban v. Veterans Admin.*, the court held that "the Territory Clause permits exclusions or limitations directed at a territory [regarding certain veterans' benefits] . . . so long as the restriction rests upon a rational base." 928 F.2d 1154, 1161 (D.C. Cir. 1991); see also *Consejo de Salud Playa de Ponce v. Rullan*, 586 F. Supp. 2d 22, 26 (D.P.R. 2008) (with respect to certain Medicaid payments, "[i]n an unincorporated United States territory Congress can also discriminate against the territory and its citizens so long as there exists a rational basis for such disparate treatment").

quotations omitted). In contrast, in this case, the right to vote, as opposed to a claim to monetary benefits, is at issue.¹⁴

The plaintiffs' challenge to UOCAVA's differing treatment of the NMI versus other United States Territories appears to be an issue of first impression. Given this, the court turns to principles that are generally applicable to constitutional challenges involving territories. "[T]he Constitution does not apply in full to acquired territory until such time as the territory is incorporated into, or made a part of the United States by Congress." *United States v. Lebron-Caceres*, No. CR 15-279 (PAD), 2016 WL 204447, at *7 (D.P.R. Jan. 15, 2016) (citing *Boumediene v. Bush*, 553 U.S. 723, 757-758 (2008); *Torres v. Commonwealth of Puerto Rico*, 442 U.S. 465, 469 (1979)). The NMI, Puerto Rico, Guam, and the U.S. Virgin Islands are all unincorporated territories. *Id.* (collecting cases). For unincorporated territories:

Congress is not restricted except in 2 instances: (1) where constitutional provisions flatly prohibit Congress from enacting certain types of laws; and (2) in case of fundamental constitutional rights." *See United States v. Verdugo-Urquidez*, 494 U.S. 259, 268 (1989). Otherwise, Congress may treat territories differently than states provided it has a rational basis for that treatment. *Harris*, 446 U.S. at 651. In this sense, unincorporated territories are subject to the plenary power of Congress subject to (1) structural constitutional limitations; (2) fundamental constitutional rights; and (3) the need for a rational basis for congressional action.

¹⁴ Relatedly, the federal defendants also contend that even outside the context of United States Territories, heightened scrutiny does not apply to every voting regulation limiting the franchise. In support, they cite authority about state restrictions that limit the ability to vote. *See, e.g., Green v. City of Tucson*, 340 F.3d 891, 899 (9th Cir. 2003) (holding that state "[e]lection laws will invariably impose some burden on individual voters" but this does not mean that "every voting regulation [is subject] to strict scrutiny" and must "be narrowly tailored to advance a compelling state interest"). This line of cases does not engage with the plaintiffs' position that the UOCAVA is subject to strict scrutiny because it treats the NMI differently than other United States Territories by extending the franchise for federal elections to former state residents who reside in the NMI while refusing to allow similarly situated residents of Puerto Rico, Guam, and the U.S. Virgin Islands to vote.

Id. The court has already found that the individual plaintiffs do not have a fundamental right to vote via Illinois absentee ballot in federal elections, and the plaintiffs have not alleged that the UOCAVA discriminates due to their membership in a suspect class. *See Sweeney v. Pence*, 767 F.3d 654, 668 (7th Cir. 2014) (“[e]qual protection scrutiny is triggered when a regulation draws distinctions among people based on a person’s membership in a suspect class or based on a denial of a fundamental right”) (internal quotations omitted).

In addition, as noted above, the Territory Clause specifically authorizes Congress to make rules and regulations respecting territories. U.S. Const. art. IV, § 3. The UOCAVA applies to United States Territories and “does not distinguish between those who reside overseas and those who take up residence in Puerto Rico [and, as relevant here, Guam and the U.S. Virgin Islands], but between those who reside overseas and those who move anywhere within the United States. Given that such a distinction neither affects a suspect class nor infringes a fundamental right, it need only have a rational basis to pass constitutional muster.” *Igartua I*, 32 F.3d at 10; *see also Romeu v. Cohen*, 265 F.3d 118, 124 (2d Cir. 2001) (holding that “the UOCAVA’s distinction between former residents of States now living outside the United States and former residents of States now living in the U.S. territories is not subject to strict scrutiny”). The plaintiffs here focus on the UOCAVA’s distinction between the NMI versus Puerto Rico, Guam, and the U.S. Virgin Islands, as opposed to the distinction between citizens residing in territories and citizens residing in states that was drawn in *Igartua I* and *Romeu*. Neither distinction, however, infringes upon a fundamental right, which is the basis for the plaintiffs’ position regarding strict scrutiny.

More generally, “a statute is not invalid under the Constitution because it might have gone farther than it did” as “a legislature need not strike at all evils at the same time.”

Katzenbach v. Morgan, 384 U.S. 641, 657 (1966) (internal quotations and citations omitted).

Instead, “it is well-established that ‘reform may take one step at a time, addressing itself to the phase of the problem which seems most acute to the legislative mind’ without creating an equal protection violation.” *Lamers Dairy Inc. v. U.S. Dep’t of Agr.*, 379 F.3d 466, 475 (7th Cir. 2004) (quoting *Williamson v. Lee Optical, Inc.*, 348 U.S. 483, 489 (1955)). Thus, the fact that Congress drew a distinction between United States citizens/former state residents now residing in the NMI versus United States citizens/former state residents who now reside in other territories does not mean that it was required to extend absentee voting across the board to all territories. Accordingly, the UOCAVA’s differing treatment of the NMI versus Puerto Rico, Guam, and the U.S. Virgin Islands does not trigger strict scrutiny.

C. The UOCAVA: Rational Basis Review Applied to the Plaintiffs’ Equal Protection Claim

First, the plaintiffs argue that the challenged portions of the UOCAVA are not supported by a “compelling state interest.” (Dkt. 48 at 11.) This is not the appropriate standard for rational basis review. *See, e.g., Heller*, 509 U.S. at 320.

Second, the plaintiffs argue that the UOCAVA impermissibly gives the NMI “favored status” among territories. (Dkt. 48 at 12.) As the federal defendants correctly note, however, the NMI’s historical relationship with the United States is consistent with the UOCAVA’s treatment of the NMI. The NMI are a chain of islands “strategic[ally] located” in the North Pacific Ocean in the area known as Micronesia. *See* <https://www.cia.gov/library/publications/the-world-factbook/geos/cq.html>; *United States v. Lebron-Caceres*, No. CR 15-279 (PAD), 2016 WL 204447, at *14 (D.P.R. Jan. 15, 2016). The NMI are just north of Guam, which is also located in

the Mariana Islands chain but is politically separate. See <https://www.britannica.com/place/Northern-Mariana-Islands>.

Stepping back in time:

Spain controlled [the NMI] from the sixteenth century until the Spanish American War. In 1898 after the war ended, Spain ceded Guam to the United States and sold the rest of the Marianas to Germany. *Saipan v. Director*, 133 F.3d 717, 720 (9th Cir. 1998). Germany's brief control ended with the commencement of World War I, when Japan took possession of all islands except Guam. *Id.* After World War I, Japan continued to govern most of what is now considered Micronesia, including the Northern Mariana Islands, under a mandate from the League of Nations. *Gale v. Andrus*, 643 F.2d 826, 828 (D.C. Cir. 1980).

Lebron-Caceres, 2016 WL 204447, at *14.

After World War II, the United States administered the Trust Territory of the Pacific Islands, which included all of the islands in the Mariana Island archipelago, pursuant to a Trusteeship Agreement with the United Nations Security Council. *Mtoched v. Lynch*, 786 F.3d 1210, 1213 (9th Cir. 2015). "In 1969, the United States began negotiations with the inhabitants of the Trust Territory directed to establishment of a framework for transition to constitutional self-government and future political relationships." *Lebron-Caceres*, 2016 WL 204447, at *14. During the negotiations, the islands comprising the Trust Territories divided into four groups: the NMI, the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau. *Id.*

Although the other portions of the Trust Territories opted for independent statehood or "free association," the NMI:

elected to enter into a closer and more lasting relationship with the United States. Years of negotiation culminated in 1975 with the signing of the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States (hereinafter 'Covenant'). Pub. L. 94-241, 90 Stat. 263

(1976). After a period of transition, in 1986 the trusteeship terminated, and [the NMI] was fully launched.

Mtoched, 786 F.3d at 1213; *see also* Howard P. Willens & Deanne C. Siemer, *An Honorable*

Accord: The Covenant Between the Northern Mariana Islands and the United States 350-52

(2002). The parties agree that the Covenant became fully effective as of 12:01 a.m. on November 4, 1986 (approximately three months after Congress passed the UOCAVA).¹⁵ On December 22, 1990, the United Nations Security Council officially terminated the United Nations Trusteeship Agreement between the Pacific Trust Territories, the United States, and the United Nations Security Council.

The Overseas Citizens Voting Rights Act of 1975 and UOCAVA were passed in 1976 and 1986, respectively, and neither included the NMI as part of the definition of the “the United States.” At the time of the UOCAVA’s enactment, NMI was not yet a United States Territory, as the parties’ summary judgment submissions (which are consistent with the court’s research) indicate that the Trusteeship Agreement under which NMI was supervised by the United Nations was still in effect, and the Covenant under which NMI became a United States Territory and

¹⁵ See <http://www.lawsources.com/also/usa.cgi?xcm> for a helpful collection of links to proclamations concerning the NMI, including Proclamation No. 5564, dated November 3, 1986. This proclamation is entitled “Placing into Full Force and Effect the Covenant with the Commonwealth of the Northern Mariana Islands, and the Compacts of Free Association with the Federated States of Micronesia and the Republic of the Marshall Islands.” In that proclamation, then-President Reagan stated, “ I determine that the Trusteeship Agreement for the Pacific Islands is no longer in effect as of . . . November 3, 1986, with respect to the Northern Mariana Islands.” Proclamation No. 5564 at § 1. He also stated that “[t]he Commonwealth of the Northern Mariana Islands in political union with and under the sovereignty of the United States of America” and that “[t]he domiciliaries of the Northern Mariana Islands are citizens of the United States” as specified in the Covenant. *Id.* at § 2. Finally, he “welcome[d] the Commonwealth of the Northern Mariana Islands into the American family and congratulate[d] our new fellow citizens.” *Id.*

granted American citizenship to its residents was not fully effectuated. Accordingly, a rational reason supports the UOCAVA's exclusion of the NMI—which was not yet a United States Territory and had a unique relationship with the United States—from its definition of the territorial limits of the United States.

To support the rationality of a challenged statute, a defendant is not “limited to the justifications that the legislature had in mind at the time that it passed the challenged provisions—any rational justification for the laws will overcome an equal protection challenge.” *One Wisconsin Inst.*, 2016 WL 4059222, at *53; *Heller*, 509 U.S. at 320-21 (the party challenging a statute must negate “every conceivable basis which might support it . . . whether or not the basis has a foundation in the record”). So even if the court accepts the plaintiffs' contention that “the NMI carve-out” in the UOCAVA was a “product of historical timing” and not a deliberate choice by Congress (Dkt. 58 at 7), the so-called “historical timing” supports the UOCAVA's constitutionality. *See City of Chicago v. Shalala*, 189 F.3d 598, 605 (7th Cir. 1999) (holding that “a statute must be upheld against equal protection challenge if there is any reasonably conceivable state of facts that could provide a rational basis for the classification” so “[a] classification does not fail rational-basis review because it is not made with mathematical nicety or because in practice it results in some inequality”); *see also F.C.C. v. Beach Commc'ns, Inc.*, 508 U.S. 307, 315 (1993) (the legislature need not “articulate its reasons for enacting a statute, it is entirely irrelevant for constitutional purposes whether the conceived reason for the challenged distinction actually motivated the legislature”); *Srail v. Vill. of Lisle, Ill.*, 588 F.3d 940, 946-47 (7th Cir. 2009) (“any rational basis will suffice, even one that was not articulated at the time the disparate treatment occurred”).

Next, the plaintiffs approach Congressional purpose from a different angle, contending that Congress expressed its rationale for promoting overseas voting rights in the legislative history of the Overseas Citizens Voting Rights Act of 1975, UOCAVA's predecessor statute. The plaintiffs highlight the following legislative history:

At present, even if a private citizen residing outside the United States could honestly declare an intent to return to the State of his last residence, he would have a reasonable chance to vote in Federal elections only in the 28 States and the District of Columbia which have statutes expressly allowing absentee registration and voting in Federal elections for citizens "temporarily residing" outside the United States. The remaining 22 States do not have specific provisions governing private citizens temporarily residing outside the United States. Furthermore, all 50 States and the District of Columbia impose residency requirements which private citizens outside the country for more extended periods cannot meet.

The committee has found this treatment of private citizens outside the United States to be highly discriminatory. Virtually all States have statutes expressly allowing military personnel, and often other U.S. Government employees, and their dependents, to register and vote absentee from outside the country. In the case of these Government personnel, however, the presumption is that the voter does intend to retain his prior State of residence as his voting domicile unless he specifically adopts another State residence for that purpose. This presumption in favor of the Government employee operates even where the chances that the employee will be reassigned back to his prior State of residence are remote. The committee considers this discrimination in favor of Government personnel and against private citizens [that violates] the equal protection clause of the 14th amendment.

H.R. REP. 94-649, pt. 1, at 2, 1975 U.S.C.C.A.N. 2358, 2359-60. According to the plaintiffs, this shows that Congress intended the UOCAVA (the Act's successor statute) to extend the federal voting franchise to each and every overseas voter who is a United States citizen and a former resident of a state, regardless of the location of their current overseas residence.

The Overseas Citizens Voting Rights Act of 1975 defined "United States" as "the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, and the Virgin

Islands” but not “American Samoa, the Canal Zone, the Trust Territory of the Pacific Islands, or any other territory or possession of the United States.”¹⁶ 89 Stat. at 1142. Thus, it differentiated between (1) the District of Columbia, Puerto Rico, Guam, and the U.S. Virgin Islands, (2) the Canal Zone (which ended its relationship with the United States in 1979, <https://www.britannica.com/place/Canal-Zone>), American Samoa (whose residents are United States nationals, not citizens, *Tuaua*, 788 F.3d at 302), and the now-former Trust Territory of the Pacific Islands (which included the NMI); and (3) other United States Trust Territories or possessions. The plaintiffs appear to be asserting that the court should strike down the relevant portions of UOCAVA for lack of a rational basis based on Congress’ intent as purportedly expressed in the 1975 legislative history for the UOCAVA’s predecessor statute, and find that Congress actually meant to treat voters in all overseas locations alike when it enacted the UOCAVA. This is at odds with the language of the Overseas Citizens Voting Rights Act of 1975 as well as the UOCAVA’s language.¹⁷ See *Park ‘N Fly, Inc. v. Dollar Park & Fly, Inc.*,

¹⁶ The Twenty-Third Amendment, passed in 1961, created the means by which the residents of the District of Columbia vote in Presidential elections.

¹⁷ The plaintiffs repeatedly contend that the Overseas Citizens Voting Rights Act of 1975 “*excluded* former state citizens residing [in NMI] from the right to vote in federal elections in their prior states of residence.” (Dkt. 48 at 12) (emphasis in original.) They then conclude that “the federal defendants’ argument—that the NMI was not addressed [in the UOCAVA] simply because it did not yet exist or have an established relationship with the United States—is wrong as a matter of history.” (*Id.* at 13.) In support, the plaintiffs contend that the 1975 Act provides that citizens who “maintain a domicile . . . in any territory or possession of the United States”—which the plaintiffs claim includes the NMI—cannot vote in federal elections in their former state of residence. *Id.* at § 3(2). However, the 1975 Act allowed former state residents residing in the NMI to vote absentee in federal elections as its definition of “United States” specifically excluded “the Trust Territory of the Pacific Islands.” See P.L. 94-203, § 2(3). Thus, the 1975 Act treated the islands comprising the Trust Territory of the Pacific Islands like a foreign country because they were not United States Territories (and indeed, other than the NMI, none of the trust territories ever became United States Territories). The plain language of the

469 U.S. 189, 194 (1985) (“Statutory construction must begin with the language employed by Congress and the assumption that the ordinary meaning of that language accurately expresses the legislative purpose”).

Next, the court agrees with the federal defendants that Congress could have reasonably concluded that because the NMI is the only United States Territory that used to be a Pacific Trust Territory and, as of the date of the UOCAVA’s enactment, was not yet a United States Territory, it was more analogous to a foreign country, as opposed to the United States Territories of Puerto Rico, Guam, and the U.S. Virgin Islands. As noted above, the other Pacific Trust Territory Islands (the Federated States of Micronesia, Palau, and the Marshall Islands) chose independent statehood or “free association,” but the NMI entered into a covenant with the United States that set forth specific parameters of the relationship. *Com. of N. Mariana Islands v. Atalig*, 723 F.2d 682, 691 (9th Cir. 1984); *An Honorable Accord*, at 57-194.

In doing so, the NMI’s status as a former Trust Territory informed its relationship with the United States. When the United States administered the Trust Territories, it did so “based upon the President’s treaty power conferred in Article II, Section 2, cl. 2 of the Constitution, rather than under the authority conferred upon Congress by the Territorial Clause.”

Lebron-Caceres, 2016 WL 204447, at *14. Thus, the United States acted as a trustee, not a sovereign power; “[i]ts authority derived from the trust itself.” *Id.* (citations omitted).

Overseas Citizens Voting Rights Act of 1975’s reference to “any other territory or possession of the United States” did not bar former Illinois residents now living in the NMI from voting, given its specific language granting that right to the “Trust Territory of the Pacific Islands,” which included the NMI. *See Loughrin v. United States*, — U.S. —, 134 S. Ct. 2384, 2390 (2014) (“courts must give effect, if possible, to every clause and word of a statute”) (internal quotations and citation omitted).

Accordingly, “the Trust Territory was not considered a territory or an insular possession of the United States.” *Id.* (collecting cases). “And so in approving the Covenant with the Northern Mariana Islands, the federal government was constrained by the Trusteeship Agreement.” *Id.* (citations omitted).

“In contrast, the sovereignty held by Spain over Puerto Rico was formally transferred to the United States by way of the Treaty of Paris” and “[s]ince then, the United States has administered Puerto Rico through legislation enacted under the Territorial Clause. *Id.* The United States acquired Guam in 1898 when, during the Spanish-American War, Spain ceded Guam to the United States. *See United States v. Vega Figueroa*, 984 F. Supp. 71, 77 (D.P.R. 1997). The United States purchased the U.S. Virgin Islands in 1917. *Id.*; *An Honorable Accord*, at 293.

Courts have concluded that the position that the NMI has a “political status . . . distinct from that of unincorporated territories such as Puerto Rico” is “credible.” *Com. of N. Mariana Islands*, 723 F.2d at 691 n.28. The rationale for the distinction is that “[u]nder the trusteeship agreement, the United States does not possess sovereignty over the NMI.” *Id.*; *see also Davis*, 2014 WL 2111065, at *1 (summarizing the history of the NMI and its political relationship with the United States); *Lebron-Caceres*, 2016 WL 204447, at *14 (same). Instead, “[a]s a commonwealth, the NMI [enjoys] a right to self-government guaranteed by the mutual consent provisions of the Covenant No similar guarantees have been made to Puerto Rico or any other territory.” *Com. of N. Mariana Islands*, 723 F.2d at 691 n.28; *An Honorable Accord* at 343 (“Against all odds, [the NMI] accomplished what no people preceding them had ever done—they joined the United States voluntarily on terms they had negotiated and approved”).

In addition, in 2008, the NMI first received a non-voting delegate in the House of Representatives. 48 U.S.C. § 1751 (2008). The NMI was entitled to a Resident Representative to Congress as early as 1978, but that Representative “ha[d] no official status in the Congress.” H. Rep. No. 108-761, at 5 (2005); *see also id.* at 3 (describing the NMI as “the last and only territory with a permanent U.S. population that has no permanent voice in Congress.”). The plaintiffs say that this “reveal[s], at most, a pattern of unique dealings between the United States and the NMI” and assert that this is not enough to survive rational basis review. (Dkt. 58 at 9.) But the NMI’s unique political status is a reason *supporting* its treatment in the UOCAVA, as the plaintiffs can prevail only if they negate “every conceivable basis which might support it . . . whether or not the basis has a foundation in the record.” *Heller*, 509 U.S. at 320-21; *see also One Wisconsin Inst.*, 2016 WL 4059222, at *53 (the rationality of a challenged statute can be based on “any rational justification,” not merely the “the justifications that the legislature had in mind at the time that it passed the challenged provisions”).

Moreover, until 2008, the NMI retained nearly exclusive control over immigration to the Territory. The transition to the full application of federal “immigration laws,” as defined in § 101(a)(17) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(17), in the NMI will end on December 31, 2019. 48 U.S.C. § 1806(a)(2) (“There shall be a transition period beginning on the transition program effective date and ending on December 31, 2019, during which the Secretary of Homeland Security, in consultation with the Secretary of State, the Attorney General, the Secretary of Labor, and the Secretary of the Interior, shall establish, administer, and enforce a transition program to regulate immigration to the Commonwealth, as provided in this section.”). The plaintiffs have not pointed to any parallel provisions regarding

immigration to Puerto Rico, Guam, and the U.S. Virgin Islands.

Finally, the court notes that the plaintiffs' requested relief would not result in a universally applicable rule that permits all United States citizens in Puerto Rico, Guam, and the U.S. Virgin Islands to vote in federal elections. Instead, if the plaintiffs prevail, former Illinois residents who were qualified to vote in federal elections when they lived in Illinois who then moved to Puerto Rico, Guam, and the U.S. Virgin Islands would be able to vote in federal elections via Illinois absentee ballot. As another court considering a challenge brought by a Puerto Rican resident who had previously lived and voted in New York to, among other things, the UOCAVA's provisions preventing him from voting for President via a New York absentee ballot after he moved to Puerto Rico has stated:

if the UOCAVA had done what plaintiff contends it should have done—namely, extended the vote in federal elections to U.S. citizens formerly citizens of a State now residing in Puerto Rico while not extending it to U.S. citizens residing in Puerto Rico who have never resided in a State—the UOCAVA would have created a distinction of questionable fairness among Puerto Rican U.S. citizens, some of whom would be able to vote for President and others not, depending [on] whether they had previously resided in a State. The arguable unfairness and potential divisiveness of this distinction might be exacerbated by the fact that access to the vote might effectively turn on wealth. Puerto Rican voters who could establish a residence for a time in a State would retain the right to vote for the President after their return to Puerto Rico, while Puerto Rican voters who could not arrange to reside for a time in a State would be permanently excluded.

Romeu, 265 F.3d at 125.¹⁸ That reasoning applies equally to Guam and the U.S. Virgin Islands.

¹⁸ *Romeu* centered on the plaintiff's inability to vote after he moved from New York—where he was qualified to vote in federal elections—to Puerto Rico. This case, in contrast, centers on the differing treatment of Illinois qualified voters depending on the United States Territory to which they move. This distinction does not affect the applicability of the *Romeu* court's observation to this case. As in *Romeu*, the relief requested by the plaintiffs in this case would cause a similar inequality among United States citizens in Puerto Rico, Guam, and the U.S. Virgin Islands depending on whether they had ever lived, or could arrange to live, in a state and qualify to vote in federal elections there.

It is rational, at least as the term is understood in the context of rational basis review, to enact a law that does not differentiate between residents living in a particular United States Territory based on whether they could previously vote in a federal election administered by a state.¹⁹

For all of these reasons, the court finds that the UOCAVA's challenged provisions survive rational basis review. In reaching this conclusion, the court notes that it gave the parties' arguments the most serious consideration possible given the gravity of the plaintiffs' constitutional claims. However, the parties' submissions were often repetitive and lacking in substance, and the parties did not take full advantage of their ability to file written submissions adequately addressing the interesting, novel, and complex issues presented by this case.

IV. CONCLUSION

For the above reasons, the federal defendants are entitled to summary judgment as to the plaintiffs' equal protection claim based on the UOCAVA. Thus, the federal defendants' motion for summary judgment [50] is granted, their motion to dismiss [42] is denied as moot, and the plaintiffs' cross-motion for summary judgment [47] is denied. The plaintiffs' standalone due process claim survives these rulings as the parties did not brief it. This case is set for status on September 9, 2016, at 9:30 a.m. The parties should be prepared to discuss further proceedings regarding the plaintiffs' due process claim against the federal defendants and their contention that

¹⁹ It is true that the NMI appears to differentiate in this way (*i.e.*, a United States citizen residing in the NMI who has never been eligible to vote in a state-administered federal election cannot vote for President at all, while a United States citizen who was eligible to vote in federal elections in Illinois and then moved to the NMI can cast an Illinois absentee ballot in a federal election). The plaintiffs, however, have failed to establish that given the undemanding nature of the rational basis standard and the NMI's unique relationship with the United States, the ability of some NMI residents to vote depending on their former state voting rights gives the plaintiffs a similar right.

portions of Illinois MOVE are unconstitutional due to the statute's treatment of American Samoa.

Date: August 23, 2016

/cc

/s/
Joan B. Gottschall
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

LUIS SEGOVIA, et al.,)	
)	
Plaintiffs,)	Case No. 15 C 10196
)	
v.)	
)	Judge Joan B. Gottschall
BOARD OF ELECTION)	
COMMISSIONERS FOR THE CITY OF)	
CHICAGO, et al.,)	
)	
Defendants.)	

MEMORANDUM OPINION AND ORDER

The plaintiffs in this action are six United States citizens who are former residents of Illinois and who now reside in Puerto Rico, Guam, or the U.S. Virgin Islands, plus two organizations that promote voting rights in United States territories. The defendants are comprised of state and federal voting-related commissions and groups, as well as the United States of America and several individuals sued in their official capacities. A complete description of the parties and the underlying factual history of the case can be found in this court’s August 23, 2016 Memorandum Opinion and Order (the “prior order”) [63].

Before the court is the plaintiffs’ second motion for summary judgment [70] and the federal defendants’ cross-motion for summary judgment [77]. The plaintiffs raise two main arguments: first, they challenge the constitutionality of the Illinois Military Overseas Voter Empowerment Act (“Illinois MOVE”), arguing that this statute violates their equal protection rights by excluding former Illinois voters now living in Puerto Rico, Guam, and the U.S. Virgin Islands (“USVI”) from voting by Illinois absentee ballot in federal elections, while allowing former Illinois residents living in American Samoa and the Northern Mariana Islands (“NMI”) to

vote absentee. Second, the plaintiffs contend that Illinois MOVE and the Uniformed and Overseas Citizen Absentee Voting Act (“UOCAVA”), infringe upon their substantive due process right to interstate travel.

As discussed below, the court concludes that Illinois MOVE does not violate the plaintiffs’ equal protection rights because this statute’s different treatment of former Illinois residents living in various U.S. territories is rationally related to legitimate state interests. These legitimate state interests include the synchronization of Illinois MOVE with applicable federal overseas and absentee voting laws such as the UOCAVA’s predecessor statute, the Overseas Citizens Voting Rights Act (“OCVRA”). In arriving at this conclusion, the court rejects the plaintiffs’ request for strict scrutiny review of Illinois MOVE and applies instead the more lenient rational basis review.

The plaintiffs’ briefs focus extensively on the fact that Illinois MOVE tracks the language of the UOCAVA’s predecessor statute, the OCVRA, instead of the more recent UOCAVA. However, the court notes that the practical effect of Illinois MOVE’s alleged “outdatedness” is the enfranchisement of *more* former Illinois citizens living in U.S. territories than federal law currently provides. This consequence of enhanced absentee voting rights does not create a constitutional inequality because Congress specifically has authorized the states to provide more generous voting rights than those provided by the UOCAVA.

The court also rejects the plaintiffs’ argument that Illinois MOVE and the UOCAVA unconstitutionally burden their right to interstate travel. The plaintiffs’ inability to vote in federal elections by absentee ballot in their respective territories stems not from a violation of their right to travel, but from the constitutional status of Puerto Rico, Guam, and the USVI.

Thus, the court denies the plaintiffs' second motion for summary judgment and grants the federal defendants' cross-motion for summary judgment.

I. LEGAL ARGUMENT

A. RELEVANT STATUTES: the OCVRA, the UOCAVA, and Illinois MOVE

Before turning to the parties' summary judgment arguments, the court first identifies the three statutes involved in the court's ruling and the key definitions of each:

The Overseas Citizens Voting Rights Act (OCVRA), Pub. L. 94-203, 89 Stat. 1142, was enacted in 1976 and provided uniform procedures for absentee voting in federal elections. This federal statute imposed a range of responsibilities on the states, including Illinois, relating to absentee voting by citizens of the United States residing overseas, as those terms are defined in the statute. It has now been repealed but nevertheless is relevant in this case. It contained the following definitions:

- "State" means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, and the Virgin Islands. 42 U.S.C. § 1973dd(2).
- "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. 42 U.S.C. § 1973dd(3).

The Uniformed and Overseas Citizen Absentee Voting Act (UOCAVA), 52 U.S.C. § 20302, replaced the OCVRA in 1986. It also imposes a range of responsibilities on the states, including Illinois, relating to absentee voting in federal elections by uniformed service members or overseas voters, as those terms are defined in the statute. It contains the following definitions:

- "State" means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, and American Samoa. 52 U.S.C. § 20310(6).

- “United States,” where used in the territorial sense, means the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, and American Samoa. 52 U.S.C. § 20310(8).

Illinois MOVE, 10 Ill. Comp. Stat. § 5/20-1 et seq., likewise addresses absentee voting for Illinois residents who live overseas. It contains the following relevant definition:

- “Territorial limits of the United States” means each of the several States of the United States and includes 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. 10 Ill. Comp. Stat. § 5/20-1(1).

Putting these three statutes together, the following result occurs: under the now repealed OCVRA, former Illinois residents living in Puerto Rico, Guam, and the USVI were not eligible to vote by absentee ballot because they were included within the statute’s definitions of “State” and the “United States.” Former Illinois residents living in the NMI and American Samoa were not similarly included in these definitions and thus could vote absentee. Under the UOCAVA, the same result occurred *except* that American Samoa also was included within the definition of “State” and “United States” so former Illinois residents living in American Samoa lost the ability to vote by absentee ballot. Under Illinois MOVE, which tracks the language of the OCVRA (the reason for this will be discussed at length below), American Samoa and the NMI are not included within the definition of the “[t]erritorial limits of the United States” and thus former Illinois residents living in either American Samoa or the NMI retain the right to vote by absentee ballot, although former Illinois residents living in Puerto Rico, Guam, and the USVI are not afforded this right.¹

Illinois MOVE’s tracking of the OCVRA instead of the UOCAVA creates a difference in treatment as to American Samoa that goes to the heart of the plaintiffs’ equal protection

¹ A more detailed description of the interaction between the UOCAVA and Illinois MOVE is contained in the court’s prior order. *See* Dkt. 63, at 8-10.

argument: under Illinois MOVE, former Illinois residents living in American Samoa may vote by absentee ballot. Had Illinois updated its election laws following the OCVRA's repeal in 1986 to mirror the newly enacted UOCAVA, these residents of American Samoa would have lost their right to absentee vote.

B. EQUAL PROTECTION UNDER ILLINOIS MOVE

Having identified the operative statutes and their effect upon territorial residents, the court moves to the plaintiffs' first argument: that Illinois MOVE violates their right to equal protection under the 14th Amendment of the Constitution because they (residents of Puerto Rico, Guam, and the USVI who were formerly registered to vote in Illinois) are denied the right to vote absentee in federal elections while former Illinois citizens living in American Samoa and the NMI are afforded this right. The plaintiffs also focus upon the fact that Illinois MOVE tracks the language of the repealed OCVRA and thus treats American Samoa differently from the more recent UOCAVA. This, they contend, is arbitrary and violates their right to equal protection. The plaintiffs maintain that Illinois MOVE's disparate treatment of former Illinois residents living in various U.S. territories violates the Equal Protection Clause under any level of scrutiny, but they seek the application of a strict scrutiny standard of review.²

² The court limits its analysis of Illinois MOVE to American Samoa only. The plaintiffs allege that Illinois MOVE is arbitrary because it treats former Illinois residents now living in American Samoa **and the NMI** differently from similarly situated person livings in Puerto Rico, Guam, and the USVI. However, in its prior order, the court discussed at great length the NMI's unique historical relationship with the United States and expressly found that the UOCAVA's treatment of the NMI survives rational review scrutiny. Illinois MOVE and the UOCAVA treat the NMI identically: under both statutes, former Illinois residents living in the NMI may vote by absentee ballot. The court applies to Illinois MOVE the rational basis arguments contained in its prior order and finds that Illinois MOVE's treatment of the NMI—which mirrors that of the UOCAVA—is rationally based. There is no reason to recreate the wheel with respect to the NMI where there are no relevant differences between the two statutes and where it is clear that the federal government's treatment of the territories informs the states' voting laws, regardless of whether the states retain control over the mechanics of voting. The court therefore rejects the plaintiffs' argument that "Illinois has no comparable 'unique relationship' with the NMI . . . [and thus] the [c]ourt's grounds for sustaining UOCAVA do not apply to [Illinois] MOVE." Pls.' Mot., Dkt. 71, at 5.

A. Standard of Review

The Equal Protection Clause of the Fourteenth Amendment to the United States Constitution provides that “[n]o State shall . . . deny to any person within its jurisdiction the equal protection of the laws.” U.S.C.A. Const. Amend. XIV, § 1. “The guarantee of equal protection coexists, of course, with the reality that most legislation must classify for some purpose or another.” *Perry v. Schwarzenegger*, 704 F. Supp. 2d 921, 995 (N.D. Cal. 2010). When evaluating an equal protection claim, the court must first determine the appropriate standard of review, whether “strict scrutiny” or “rational basis.” *See City of Cleburne, Tex. v. Cleburne Living Center*, 473 U.S. 432, 452 (1985); *Sweeney v. Pence*, 767 F.3d 654, 668 (7th Cir. 2014) (noting that “[i]f either a suspect class or fundamental right is implicated, ‘the government’s justification for the regulation must satisfy the strict scrutiny test to pass muster under the Equal Protection Clause.’ But if neither condition is present, the proper standard of review is rational basis”) (citations omitted).

The plaintiffs argue that they comprise a suspect class, thereby giving rise to strict scrutiny, because “historical experience has shown that Territorial residents have been effectively locked out of the political process.” Pls.’ Mot., Dkt. 71, at 6.³ Alternatively, the plaintiffs argue that rational basis review is applicable. The court examines each standard of review to determine which is applicable.

³ In its first motion for summary judgment, the plaintiffs did not advance a suspect class theory but instead sought to establish an equal protection violation based upon the existence of a fundamental right. This was unsuccessful. In its prior order, the court concluded, as have many other courts, that citizens residing in territories do not have a constitutional right to vote in federal elections in the same manner as citizens of the 50 states, and, further, that in the absence of a constitutional right to vote, there can be no violation of a fundamental right giving rise to strict scrutiny review. *See* Prior Order, Dkt. 63, at 24; *see also Romeu v. Cohen*, 265 F.3d 118, 123 (2d Cir. 2008) (“Citizens . . . living in U.S. territories possess more limited voting rights than U.S. citizens living in a State.”). Stripped of their ability to make a “fundamental right” argument based on their right to vote, the plaintiffs now alight upon the “suspect class” language as a new approach to defeating rational basis review in favor of strict scrutiny review.

1. Strict Scrutiny Based on a Suspect Class

Classifications based on sex, race, alienage, and nationality are inherently suspect. *See Frontiero v. Richardson*, 411 U.S. 677, 682 (1973) (plurality). The Supreme Court first articulated the term “suspect class,” along with its corresponding indicia of “suspectness,” in *San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1, 28 (1973), where the Court addressed whether poor school districts in Texas comprised a suspect class. Answering in the negative, the Court noted that: “[t]he 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.” *Id.* at 28; *see also Engquist v. Oregon Dep’t of Agric.*, 553 U.S. 591, 128 S. Ct. 2146, 2147 (2008) (“equal protection jurisprudence has typically been concerned with governmental classifications that ‘affect some groups of citizens differently than others’”) (citation omitted); *McCauley v. City of Chicago*, No. 09 C 2604, 2009 WL 3055312, at *3 (N.D. Ill. Sept. 18, 2009), *aff’d on other grounds*, 671 F.3d 611 (7th Cir. 2011).

The plaintiffs’ argument that they are a suspect class is unpersuasive for a number of reasons. First, the plaintiffs have not provided the court with any authority supporting their contention that they comprise a suspect class based on their political powerlessness. The plaintiffs’ discussion of cases where strict scrutiny has been applied to various statutes based on a suspect class do not involve U.S. territories or voting rights, and the plaintiffs have not drawn the court’s attention to any aspects of these cases that are relevant or compelling to the issues presented here. *See, e.g., Dandamudi v. Tisch*, 686 F.3d 66 (2d Cir. 2012) (finding a suspect class and applying heightened scrutiny to a statute that prohibited legally admitted aliens from

working as pharmacists in New York); *Adusumelli v. Steiner*, 740 F. Supp. 2d 582 (S.D.N.Y. 2010) (finding a suspect class and applying strict scrutiny to a statute preventing nonimmigrant aliens on temporary work visas from working as pharmacists in New York). It appears that some of the cases the plaintiffs cite were chosen because the statutes in those cases created improper classifications based on alienage, but it is settled law that Congress, and the states when implementing federal law, may continue to treat residents of territories differently from residents of the 50 states. *See Igartua v. U.S.*, 86 F. Supp. 3d 50, 55-56 (D. Puerto Rico 2015) (U.S. territories cannot be defined as “States” for purpose of Articles I and II of the Constitution); *Romeu v. Cohen*, 265 F.3d 118, 123 (2d Cir. 2001) (citizens living in territories possess more limited voting rights than citizens living in a State). It has been long established that residents of U.S. territories “lack equal access to channels of political power.” *Quiban v. Veterans Admin.*, 928 F.2d 1154, 1160 (D.C. Cir. 1991). However, this lack of political power is consistent with Congress’s right under the Territory Clause of the Constitution, U.S. Const. Art. IV, § 3, cl. 2 (the “Territory Clause”), to treat the U.S. territories differently, including the manner in which residents of the territories are, or are not, enfranchised with the right to vote in federal elections. The plaintiffs certainly are unhappy with their lack of political influence, but their attempt to create a suspect class based on this reality is not supported by legal precedent.

Furthermore, numerous other courts have held that Congress’s power to make laws regarding the territories is subject to rational basis review. *See, e.g., Harris v. Rosario*, 446 U.S. 651, 651 (1980) (applying rational basis review to federal statute providing less federal financial assistance to Puerto Rican families than families living in the 50 states); *Besinga v. U.S.*, 14 F.3d 1356, 1360 (1994) (holding that “[b]ecause the Philippines was a territory of the United States at the relevant time, this dispute implicates Congress’ power to regulate territorial affairs under the

Territory Clause. Controlling precedent dictates rational basis review); *Romeu v. Rossello*, 121 F. Supp. 2d 264, 282 (S.D.N.Y. 2000) (declining to find Puerto Ricans a suspect class for purposes of the Equal Protection Clause and applying rational review to provisions of the UOCAVA and New York election law). The court joins in this conclusion.

Additionally, the court finds without merit the plaintiffs' argument that because the Constitution includes no provision granting the 50 states the authority to treat residents of the territories differently, Illinois MOVE's disparate treatment of territorial residents should be reviewed under a heightened level of scrutiny. This unavailing argument collapses the separation of powers inherent in our system of federalism. Only Congress "shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States." U.S. Const. Art. IV, § 3, cl. 2. The states' power, meanwhile, is established by the Tenth Amendment to the Constitution, which provides that "[t]he powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people." U.S. Const., Amend. X. It is well-established that the states retain the power to conduct elections, but this power is informed by the federal government's equally well-established ability to treat the territories differently from the 50 states pursuant to the Territory Clause. *See Iguarta-De La Rosa v. U.S.*, 417 F.3d 145, 147 (1st Cir. 2005) (the territories are not considered "states" within the meaning of the Constitution). The plaintiffs' attempt to meld the distinct powers of the federal and state governments into one pot by arguing that the states have no broad authority to treat residents of the territories differently, thus triggering strict scrutiny review of a statute that does so (*see* Pls.' Mot., Dkt. 71, at 10), is without merit.

For these reasons, the court finds that former Illinois residents currently living in U.S. territories who may not vote by absentee ballot in federal elections do not constitute a suspect class. The plaintiffs' desire to participate in the federal election process is understandable, but the plaintiffs have not persuaded the court that they constitute a suspect class for purposes of engendering strict scrutiny of Illinois MOVE. Rational basis review is appropriate.⁴

2. Rational Basis Review as Applied to Illinois MOVE

On rational basis review, a classification in a statute enjoys a strong presumption of validity. *See Lyng v. Automobile Workers*, 485 U.S. 360, 370 (1988). “[T]hose attacking the rationality of the legislative classification have the burden ‘to negative every conceivable basis which might support it.’” *F.C.C. v. Beach Commc’n*, 508 U.S. 307, 314-15 (1993) (citations omitted). Additionally, because a legislature is not required to articulate its reasons for enacting a statute, it is entirely irrelevant for constitutional purposes whether the conceived reason for the challenged distinction actually motivated the legislature.” *Id.* at 315; *see also Nordlinger v. Hahn*, 505 U.S. 1, 15 (1992) (equal protection “does not demand for purposes of rational-basis review that a legislature or governing decision-maker actually articulate at any time the purpose or rationale supporting its classification”). As long as there is “a rational relationship between the disparity of treatment and some legitimate governmental purpose,” the statute survives rational basis scrutiny. *City of Chicago v. Shalala*, 189 F.3d 598, 605 (7th Cir. 1999)

⁴ The court also notes another problem with the plaintiffs' attempt to characterize themselves as a suspect class: doing so raises potential equal protection issues as to all other persons residing in U.S. territories who were not once Illinois residents. As noted in *Romeu*, “extend[ing] the vote in federal elections to U.S. citizens formerly citizens of a State now residing in Puerto Rico while not extending it to U.S. citizens residing in Puerto Rico who have never resided in a State . . . would have created a distinction of questionable fairness among Puerto Rican U.S. Citizens.” 265 F.3d at 125. Similarly here, and as this court noted in its prior order, the plaintiffs' requested relief “would not result in a universally applicable rule that permits all United States citizens in Puerto Rico, Guam, and the U.S. Virgin Islands to vote in federal elections.” *See* Prior Order, Dkt. 63, at 40 & n.8.

(citations omitted). With these guidelines in mind, the court turns to the language of Illinois MOVE and the parties' arguments.

Illinois MOVE prevents former Illinois citizens living in Puerto Rico, Guam and the USVI from voting absentee in federal elections. But it grants this right to similarly situated persons living in American Samoa (and the NMI). Illinois MOVE is more expansive than the UOCAVA with respect to American Samoa. The plaintiffs maintain that Illinois MOVE's failure to mirror the UOCAVA as to American Samoa lacks a rational basis and is arbitrary.

Defendants the Board of Election Commissioners for the City of Chicago and Marisel Hernandez respond that a rational basis exists for the disparate treatment under Illinois MOVE of former Illinois residents living in the various territories. They explain that in 1979, the State of Illinois amended its election laws to define the territorial limits of the United States in such a way as to track precisely the language and provisions of the OCVRA. The State of Illinois did not similarly amend its election laws following the OCVRA's repeal and the UOCAVA's enactment. These state defendants do not provide any explanation for this inaction other than to say it was a "product of historical timing." Defs.' Mem., Dkt. 74, at 8-11.

Any rational justification of an embattled statute will overcome an equal protection challenge. The state defendants posit that Illinois MOVE mirrored the OCVRA beginning in 1979 to stay in compliance with federal law, and that this mirrored language simply remained in place even after the OCVRA was repealed in 1986. The court accepts this explanation and finds that Illinois had (and has) a legitimate state interest in staying abreast of federal voting rights laws. The adoption of language into Illinois MOVE that mirrored federal statutes such as the OCVRA legitimately achieved this purpose.

The court also finds that Illinois—certainly at least until 1986—had a legitimate state interest in treating American Samoa differently from Puerto Rico, Guam, and the USVI. American Samoa became a United States territory in 1900, “when the traditional leaders of the Samoan Islands of Tutuila and Aunu'u voluntarily ceded their sovereign authority to the United States Government.” *Tuaua v. U.S.*, 788 F.3d 300, 302 (D.C. Cir. 2015), *cert. denied*, 136 S. Ct. 2461 (2016); *see also* Hon. Fofu I.F. Sunia of American Samoa, Address at the University of San Diego (May 14, 1986), 132 Cong. Rec. E1664-01, 1986 WL 791182. However, in 1949, this nation of islands and coral atolls rebuffed the Department of the Interior’s attempt to introduce Organic Act 4500, which sought to incorporate American Samoa into the United States in the same fashion as already had been achieved in Puerto Rico and the USVI, and soon would be achieved in Guam. *See* http://www.newworldencyclopedia.org/entry/American_Samoa (last visited Oct. 27, 2015).⁵

American Samoa strives to preserve its traditional way of life, called *fa’a Samoa*, notwithstanding its growing ties with the United States. *See* U.S. Gov’t Accountability Office, GAO-08-1124T (Sept. 18, 2008), at 6 (hereinafter “GAO Report”). American Samoa’s constitution protects the Samoan tradition of communal ownership of ancestral lands by large, extended families, and “American Samoans take pride in their unique political and cultural practices, and . . . [their] history free from conquest or involuntary annexation by foreign powers.” *Tuaua v. U.S.*, 951 F. Supp. 2d 88, 91 (D.D.C. 2013).

Federal law classifies American Samoa as an “outlying possession” of the United States. *See* Immigration and Naturalization Act (“INA”) § 101(a)(29), 8 U.S.C. § 1101(a)(29). People

⁵ An Organic Act is an act of Congress establishing a territory of the United States. The U.S. entered into an Organic Act with Puerto Rico in 1900, with the USVI in 1936 (repealed and replaced in 1954), and with Guam in 1950. *See* Pub. L. 56–191, 31 Stat. 77 (Puerto Rico); Pub. L. 64–389, 39 Stat. 1132 (USVI); (Pub. L. 83–517, 68 Stat. 497) (USVI); and 48 U.S.C. § 1421 et seq.) (Guam). In the absence of an Organic Act, a territory is classified as “unorganized.”

born in American Samoa are U.S. nationals but not U.S. citizens at birth. *See* INA § 308(1), 8 U.S.C. § 1408(1). The State Department’s Foreign Affairs Manual (“FAM”) categorizes American Samoa as an unincorporated territory and states that “the citizenship provisions of the Constitution do not apply to persons born there.” 7 FAM § 1125.1(b).

This basic understanding of the history of American Samoa—which illustrates that American Samoa has not followed the same path as Puerto Rico, Guam, and the USVI as concerns incorporation, citizenship, and cultural practices—leads the court to conclude that a rational basis supported Illinois’ decision with respect to Illinois MOVE to track the language of the OCVRA and to exclude American Samoa from its definition of “[t]erritorial limits of the United States.” At the time of the OCVRA’s enactment, the federal government viewed American Samoa more like a foreign country than as part of the United States’ territorial limits.

But what of the fact, as the Plaintiffs repeatedly point out, that Illinois neglected to update Illinois MOVE following the OCVRA’s repeal and the UOCAVA’s enactment? The plaintiffs maintain that Illinois’ failure to update Illinois MOVE is an irrational act that creates an unconstitutional disparity among former Illinois residents living in the various territories. Again, the court disagrees. While it is true that Illinois MOVE remains predicated on an approach to American Samoa that was informed by the historical context of the 1970s and does not reflect the current treatment of American Samoa under the UOCAVA, the practical effect of Illinois MOVE’s outdatedness is that it provides *more generous* voting rights to former Illinois residents than would exist had Illinois updated its laws to mirror the UOCAVA. And, critically, this state-based electoral generousness is clearly permitted under the OACAVA. An examination of the legislative history of the UOCAVA indicates a clear intention to preserve the ability of states to extend voting rights to individuals disenfranchised by the UOCAVA. *See* H.

R. Rep. No. 99-765, at 19, 1986 WL 31901, at *19 (deeming unnecessary for inclusion in the UOCAVA any language contained in the OCVRA stating that “this Act will not be deemed to require registration in any State in which registration is not required as a precondition to voting in a Federal election *nor will it prevent any State from adopting any voting practice which is less restrictive than the practices prescribed by this Act*” because the UOCAVA would not impinge on either activity) (emphasis added). The UOCAVA provides the voting practices floor upon which Illinois must stand, but at the same time it grants Illinois the right to expand upon these practices. The UOCAVA essentially provides a built-in rational basis explanation for states that failed to implement any narrowing of voting rights engendered by the UOCAVA.

In sum, the court denies the plaintiffs’ equal protection challenge as to Illinois MOVE. It is true that Illinois MOVE is premised upon a repealed statute, but Illinois’ failure to amend its election laws after the UOCAVA’s passage resulted only in the ability of former Illinois residents living in American Samoa to retain their right to cast absentee ballots in federal elections. Any disparity created by Illinois MOVE’s outdatedness is cured by the UOCAVA’s express endorsement of the states’ ability to provide greater voting rights than those provided in the UOCAVA. Additionally, the court finds that American Samoa’s unique relationship with the United States rationally supports Illinois’ decision to track the language of the OCVRA back in 1979. It matters not that Illinois continues to do so almost 40 years later.

The plaintiffs’ attempt in this second round of summary judgment motions to pit federal and state voting statutes against each in an effort to find irrationalities that may further their goal of federal election enfranchisement cannot succeed. The underlying reality in this case is that Congress retains the right to dictate the terms of its relationship with the U.S. territories, and these terms sometimes shift and change depending on the individual territory and the historical

context informing each relationship. But even in the face of these shifts and changes, the federal statutes are not so rigid as to deprive the states of their ability to provide greater voting rights than those enumerated under federal law. The court’s ruling today—which finds no unconstitutionality with regards to Illinois MOVE’s treatment of American Samoa in a fashion that differs from the UOCAVA, or of its treatment of American Samoa and the NMI in a manner that is different from Puerto Rico, Guam, and the USVI—is grounded in large measure on the fact that Illinois retains the right to enfranchise persons disenfranchised by the UOCAVA and by the fact that Illinois’ absentee and overseas voting laws are informed by rationally-based federal statutes constitutionally curtailing the federal election absentee voting rights of residents of United States territories.

C. Right to Interstate Travel

The court now addresses the plaintiffs’ second argument: that the UOCAVA and Illinois MOVE violate their “fundamental right to interstate travel, which is protected by the substantive component of due process.” Pls.’ Mot., Dkt. 71, at 2.

“The right to travel interstate, although nowhere expressed in the Constitution, has long been recognized as a basic fundamental right.” *Andre v. Bd. of Trs. of Village of Maywood*, 561 F.2d 48, 52 (7th Cir. 1977) (citation omitted); *see also Perez v. Personnel Bd. of City of Chicago*, 690 F. Supp. 670, 673 (N.D. Ill. 1988) (noting that “[t]he right to interstate travel lacks any precise textual source but is considered fundamental to our federal system”). As noted in *Shapiro v. Thompson*, 394 U.S. 618, 629 (1969), *overruled on other grounds by Edelman v. Jordan*, 94 S. Ct. 1347 (1974):

This Court long ago recognized that the nature of our Federal Union and our constitutional concepts of personal liberty unite to require that all citizens be free to travel throughout the length and breadth of our land uninhibited by statutes, rules, or regulations which unreasonably burden or restrict this movement.

The right to travel encompasses three different components: “the right of a citizen of one State to enter and leave another State, the right to be treated as a welcome visitor rather than an unfriendly alien when temporarily present in the second State, and for those travelers who elect to become permanent residents, the right to be treated like other citizens of that State.” *Saenz v. Roe*, 526 U.S. 489, 500 (1999). That being said, as the plaintiffs concede, it has not been determined conclusively whether the right to travel applies to travel between the 50 states and the U.S. territories. *See* Pls.’ Mot., Dkt. 71, at 11 n.8.

If anything, the plaintiffs’ arguments come closest to invoking the first prong of the three-part test—the right to leave one state and enter another. But neither the UOCAVA nor Illinois MOVE infringe upon the plaintiffs’ right to leave Illinois and travel to a U.S. territory. They are free to come and go as they please, although their decisions to relocate to Puerto Rico, Guam, or the USVI have come at a cost. They moved outside of the State of Illinois and became residents of U.S. territories “in a constitutional scheme that allocates the right to appoint electors to States but not territories.” *Romeu*, 265 F.3d at 126. As further noted in *Romeu*:

A citizen’s decision to move away from her State of residence will inevitably involve certain losses. She will lose the right to participate in that State’s local elections, as well as its federal elections, the right to receive that State’s police protection at her place of residence, the right to benefit from the State’s welfare programs, and the right to the full benefits of the State’s public education system. Such consequences of the citizen’s choice do not constitute an unconstitutional interference with the right to travel.

Id. at 126-27. By moving to their respective territories, the plaintiffs gained the rights and privileges of citizens of their new residence. Their loss of the right to vote in federal elections was not caused by the UOCAVA or Illinois MOVE, but by their own decision to relocate. *See* Brian C. Kalt, *Unconstitutional but Entrenched: Putting UOCAVA and Voting Rights for Permanent Expatriates on a Sound Constitutional Footing*, 81 Brook. L. Rev. 466 (2016)

(opining that “the right to travel does not give citizens an unconditional right to emigrate without cost or consequence”).

Nor do the plaintiffs’ arguments successfully invoke the second and third prongs of the right to travel analysis. Neither the UOCAVA nor Illinois MOVE infringe upon the plaintiffs’ right to be treated as welcome visitors in their respective territories or infringe upon their right to be treated like other citizens of their respective territories. *See Memorial Hosp. v. Maricopa Cnty.*, 415 U.S. 250, 261 (1974) (“The right of interstate travel must be seen as insuring new residents the same right to vital governmental benefits and privileges in the States to which they migrate as are enjoyed by other residents.”). Indeed, it is the very fact that the plaintiffs are treated the same as the other citizens of Puerto Rico, Guam, and the USVI that the plaintiffs find so unappealing. In truth, it is the denial of special treatment—the ability to vote by absentee ballot in federal elections (because of their former nexus to Illinois) despite the fact that citizens of Puerto Rico, Guam, and the USVI do not have the right to vote in federal elections—that the plaintiffs now try to convert into a due process violation based on their right to travel. But again, the denial of special treatment does not equate with an unconstitutional violation of the right to travel. *See Romeu*, 265 F.3d at 127. The plaintiffs’ inability to vote by absentee ballot in their respective territories stems not from a violation of their right to travel, but from the constitutional status of Puerto Rico, Guam, and the USVI. *See Romeu*, 121 F. Supp. 2d at 278.

In *Califano v. Gautier Torres*, 435 U.S. 1 (1978), the Court addressed whether the Social Security Act’s exclusion of Puerto Rico from Supplemental Security Income (“SSI”) benefits constituted an interference with the plaintiff’s constitutional right.⁶ In that situation, the plaintiff

⁶ The Social Security Act’s 1972 amendment defined eligible individuals for SSI benefits as only those persons living within the 50 states and the District of Columbia. 42 U.S.C. § 1382c(e). However, as noted in *Califano*, 435 U.S. at 2, persons in Puerto Rico not eligible to receive SSI benefits were still eligible to receive benefits under pre-existing programs.

was a former resident of Connecticut who had moved to Puerto Rico. While noting that “laws prohibiting newly arrived residents in a State or county from receiving the same vital benefits as other residents unconstitutionally burdened the right of interstate travel,” the Court refused to extend that doctrine to the premise that “a person who travels to Puerto Rico must be given benefits superior to those enjoyed by other residents of Puerto Rico if the newcomer enjoyed those benefits in the State from which he came.” *Id.* at 4. The Court added that “[i]f there ever could be a case where a person who has moved from one State to another might be entitled to invoke the law of the State from which he came as a corollary of his constitutional right to travel, this is surely not it.” *Id.* at 5.

Nor does the court find that this is such a case. The court already has rejected the plaintiffs’ attempts to find Illinois MOVE and the UOCAVA unconstitutional. The court can find no way to allow the plaintiffs to create a right to travel violation premised upon these constitutional statutes.

II. CONCLUSION

For the reasons set forth above, the court denies the plaintiffs’ second summary judgment motion [70] and grants the federal defendants’ cross-motion for summary judgment [77]. The clerk is directed to enter final judgment accordingly.

Date: October 28, 2016

/s/

Joan B. Gottschall
United States District Judge

**I. UOCAVA Enforcement Activity by the Attorney
General in 2017**

B. Activity in Other UOCAVA Litigation

United States v. New York



Peter S. Kosinski
Co-Chair

Gregory P. Peterson
Commissioner

Todd D. Valentine
Co-Executive Director

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Douglas A. Kellner
Co-Chair

Andrew J. Spano
Commissioner

Robert A. Brehm
Co-Executive Director

November 16, 2017

Hon. Gary L. Sharpe
United States District Court Judge
Northern District of New York
James T Foley Courthouse
445 Broadway – Room 441
Albany, New York 12207

RE: *United States v State of New York, et al*
Civil Action No. 10-CV-1214

Dear Judge Sharpe:

Please find submitted herewith a proposed Supplemental Remedial Order relating to the Political Calendar for the 2018 federal election in New York State as well as a complete version of the calendar such order would effectuate.

The proposed calendar and Order were circulated to all parties, and we are authorized to state there are no objections.

The Board was contacted in early October by Gary Donoyan, Esq. representing the Libertarian Party of New York who indicated that his client was contemplating moving to intervene in this matter, and he was made aware of our imminent application to this Court. Such a motion to intervene has not occurred, but we are sending him a copy of this letter application as a courtesy.

We respectfully ask the court to consider this request at its earliest convenience.

Respectfully yours,

s/ Kimberly Galvin

Kimberly Galvin,
Counsel
Bar Roll: 505011

s/ Brian Quail

Brian L. Quail,
Counsel
Bar Roll: 510786

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK
ALBANY DIVISION**

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	Case No. 1:10-CV 1214 (GLS/RFT)
)	
v.)	
)	
STATE OF NEW YORK and THE NEW)	
YORK STATE BOARD OF ELECTIONS,)	
)	
Defendants.)	
)	
_____)	

SUPPLEMENTAL REMEDIAL ORDER

WHEREAS the January 27, 2012 Order of this court granted a Permanent Injunction to the United States upon its application to bring the State of New York into compliance with the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA) of 1986, 42 U.S.C. §§1973ff to 1973ff-7, as amended by the Military and Overseas Voter Empowerment (MOVE) Act, Pub. L. No. 111-84, subtitle H, §§ 575-589, 123 Stat. 2190, 2318-235 (2009). The January 27, 2012 Order set the 2012 federal non-presidential primary date as June 26, 2012 and provided that in subsequent even-numbered years, New York's non-presidential federal primary date shall

be the fourth Tuesday of June, unless and until New York enacts legislation resetting the non-presidential federal primary for a date that complies fully with all UOCA V A requirements, and is approved by the court (Decretal Paragraphs "1" and "2");

WHEREAS by Order dated February 9, 2012, this court adopted a political calendar for the implementation of the 2012 federal non-presidential primary and general election, and such calendar was specific to 2012. (ECF Document No. 64, pp. 2-3, 5-6);

WHEREAS by Order dated December 12, 2013, this court adopted a political calendar for the implementation of the 2014 federal non-presidential primary and general election, and such calendar was specific to 2014. (ECF Document No. 85, pp 2-6);

WHEREAS by Order dated October 29, 2015, this court adopted a political calendar for the implementation of the 2016 federal non-presidential primary and general election, and such calendar was specific to 2016. (ECF Document No. 88, pp 3-5);

WHEREAS as of this date the State of New York has not amended the New York State Election Law to change the date of the federal primary with respect to this court's Order of January 27, 2012 and until such action has occurred this application is necessary;

WHEREAS the instant application requests that the court supersede various sections of the Election Law as necessary to effectuate the January 27, 2012 Order of this court;

WHEREAS the parties to this action consent to the issuance of this Supplemental Remedial Order;

WHEREAS it is the judgment of this court that the enumerated sections of New York State law must be superseded to provide for a MOVE Act compliant election in New York for the year 2018, now therefore, it is hereby,

ORDERED that the following sections of New York State law be and hereby are superseded for the 2018 election of federal offices in New York:

Schedule of State Law Provisions Superseded for Compliance with MOVE Act

Section of Election Law	Subject	Description of Change
§ 1-106	Timeliness of filings related to federal offices	For the 2018 Federal Primary and General Elections, that all certificates and petitions of designation or nomination, certificates of acceptance or declination of such designations and nominations, certificates of authorization for such designations, certificates of disqualification, certificates of substitution for such designations or nominations and objections and specifications of objections to such certificates and petitions required to be filed with the state board of elections or a board of elections outside of the city of New York shall be deemed timely filed and accepted for filing if sent by mail or overnight delivery service (as defined in Election Law 1-106(3) in an envelope postmarked or showing receipt by the overnight delivery service prior to midnight of the last day of filing, and received no later than one business day after the last day to file such certificates, petitions, objections or specifications.

Section of Election Law	Subject	Description of Change
§ 4-110	Date of certification of Primary Election ballot by New York State Board of Elections for candidates for federal office	from thirty-six to fifty-four days pre-Primary [May 3, 2018]
§ 4-114	Date of certification of ballot by county boards of elections for candidates for federal office	from thirty-five to fifty-three days pre-Primary or pre General Election [Primary: May 4, 2018; General: September 14, 2018]
§ 4-112 [1]	Date of certification of General Election ballot by New York State Board of Elections for candidates for federal office	from thirty-six to fifty-four days pre-General Election [September 13, 2018]
§ 6-104 [6]	Dates for holding state committee meeting to nominate candidates for statewide federal office	measured from federal primary [February 13, 2018 thru March 6, 2018]
§ 6-158 [1]	Filing of designating petitions for Federal Primary	from the time period “between the tenth Monday to the ninth Thursday” to the time period “between the twelfth Monday to the eleventh Thursday” preceding the Federal Primary [April 9, 2018 April 12, 2018]
§ 6-158 [4]	Filing of opportunity to ballot petitions for Federal Primary	from the eighth Thursday to the tenth Thursday preceding Federal Primary [April 19, 2018]
§ 6-158 [4]	Filing of opportunity to ballot petitions upon declination for Federal Primary	from the seventh to the ninth Thursday preceding Federal Primary [April 26, 2018]
§ 6-158 [6]	Last day to file certificate of nomination to fill vacancy in federal office pursuant to § 6-116	from seven to twenty-one days after Federal Primary [July 17, 2018]
§ 6-158 [9]	Filing dates for independent nominations for federal offices	from the time period “twelve weeks preceding through eleven weeks preceding” to the time period “fifteen weeks preceding through fourteen weeks preceding” the General Election [July 24, 2018 to July 31, 2018]

Section of Election Law	Subject	Description of Change
§ 6-158 [11]	Last day to accept or decline independent nomination for federal office	from three days after the eleventh Tuesday to three days after the fourteenth Tuesday preceding the General Election, and from three days after the Primary to three days after the fourteenth Tuesday preceding the General Election [August 3, 2018]
§ 6-158 [12]	Last day to fill vacancy after declination of a federal independent nomination	from the eleventh to the fourteenth Tuesday preceding the General Election [August 6, 2018]
§ 10-108 [1] and § 11-204 [4]	Deadline to transmit Military and Special Federal absentee ballots for Federal Primary or General Election to voters with valid applications on file	from thirty-two days to forty-five days before Federal Primary or General Election for federal offices. [May 12, 2018 for Federal Primary] [September 22, 2018 for General Election]

ORDERED that nothing herein shall prohibit the State of New York from making statutory changes in its federal office election process to put New York in compliance with the MOVE Act, and that such changes, if made, may be implemented in 2018 upon the determination of this court that such changes render the 2018 election for federal offices MOVE Act compliant.

Date: November 21, 2017
Albany, New York

Gary L. Sharpe
GARY L. SHARPE
United States District Court Judge

TABLE OF POLITICAL CALENDAR EVENTS ADJUSTED TO COMPLY WITH COURT ORDER IMPLEMENTING THE MOVE ACT

The Federal MOVE Act requires military and special federal ballots to be sent out 45 days prior to an election for federal office. Here's a summary of the key calendar changes that ensure compliance.

The following table shows the 2018 events that occur in the political calendar grouped by topic. The left-hand column indicates the sections of law that would need to be superseded in order to comply with the Court Order to send out the military ballots by the 45th day before both the federal primary and the general election.

The table also applies the statutory rule of moving filing dates if the last day for filing shall fall on a Saturday, Sunday or legal holiday, the next business day shall become the last day for filing. Election Law §1-106

Designating Petitions for Federal Office/Federal Primary Election:

- First date to circulate designating petitions for federal office is March 6, 2018.
- Dates to file designating petitions are April 9, 2018 to April 12, 2018.
 - Nominating petitions by independent bodies for federal office as those petition dates are altered by this plan.
 - First date to circulate independent nominating petitions for federal office is June 19, 2018.
 - Dates to file independent nominating petitions for federal office are July 24, 2018 to July 31, 2018.
 - Nominating petitions by independent bodies for state/local office are NOT altered by this plan.

Opportunity to Ballot Petitions for Federal Office/Federal Primary Election:

- First date to circulate OTB petitions for federal office is changed to March 27, 2018.
- Last date to file OTB petitions is changed to April 19, 2018.

To provide for the reduction in time to process designations and allow an administrative process for objections, and judicial review, NYS Election Law Section 1-106 should be superseded to require as part of this plan the following:

For the 2018 Federal Primary and General Elections, that all certificates and petitions of designation or nomination, certificates of acceptance or declination of such designations and nominations, certificates of authorization for such designations, certificates of disqualification, certificates of substitution for such designations or nominations and objections and specifications of objections to such certificates and petitions required to be filed with the state board of elections or a board of elections outside of the city of New York shall be deemed timely filed and accepted for filing if sent by mail or overnight delivery service (as defined in NYS Election Law Section 1-106(3)(a)) in an envelope postmarked or showing receipt by the overnight delivery service prior to midnight of the last day of filing, and received no later than one business day after the last day to file such certificates, petitions, objections or specifications.

General Election: November 6, 2018
 State Primary: September 11, 2018
 Federal Primary: June 26, 2018

Designating Petitions for State Primary

First day to sign June 5, 2018
 Filing Dates July 9-July 12
 Last day to authorize July 16
 Last day to accept/decline..... July 16
 Last day to fill vacancy July 20
 Last day to authorize substitution July 24

Opportunity to Ballot Petitions

First day to sign June 26, 2018
 Last day to file OTB July 19
 Last day to file OTB if designated candidate declines July 26

Statewide Party Nominations May 15-June 5, 2018

Summary of Current Statutory Text (CO#= Changes in law to comply with Court Order)		SECTION OF LAW	Date	Comments
Certification of Federal Primary Election				
CO-1	Certification of Federal Primary ballot by SBOE of designations filed in its office 54 days before federal primary.	§ 4-110	5/3/2018	Statute needs to be superseded. § 4-110. Certification of primary election candidates; state board of elections The state board of elections not later than <u>fifty-four days before a primary election for federal office; or thirty-six days before a primary election for state/local office</u> , shall certify to each county board of elections: The name and residence of each candidate to be voted for within the political subdivision of such board for whom a designation has been filed with the state board; the title of the office or position for which the candidate is designated; the name of the party upon whose primary ballot his name is to be placed; and the order in which the names of the candidates are to be printed as determined by the state board. Where an office or position is uncontested, such certification shall state such fact.
CO-2	Determination of candidates for federal office; CBOEs of designations filed in its office – 53 days before federal primary.	§ 4-114	5/4/2018	Statute needs to be superseded. § 4-114. Determination of candidates and questions; county board of elections The county board of elections, not later than <u>fifty-three days before a primary or general election for federal office; or the thirty-fifth day before the day of a primary or general election for state/local offices</u> , or the fifty-third day before a special election, shall determine the candidates duly nominated for public office and the questions that shall appear on the ballot within the jurisdiction of that board of elections.
Federal Primary Election				
	Federal Primary	Court Order	6/26/2018	Set by Federal Court Order
	Canvass of Federal Primary Returns by County Board of Elections	§9-200(1)	7/5/2018	
	Recanvass of Federal Primary Returns	§9-208(1)	7/11/2018	
	Post-Election Audit of Voting Systems	§9-211(1)	7/3/2018	

Summary of Current Statutory Text (CO#= Changes in law to comply with Court Order)	SECTION OF LAW	Date	Comments	
Certification of General Election				
	Certification of offices to be filled at General Election	§4-106 (1) (2)	3/6/2018	Same as the first date to circulate designating petitions for federal primary.
	Deadline for vacancies to occur and be filled at the General Election for state/local candidates where the contest was not already on the ballot.	§6-158 (14) Pub Off §42 (1)	9/19/18	Except State Supreme Court Justices, deadline is 3 months before the date of the General Election. (August 6, 2018)
CO-3	Certification of General Election ballot by SBOE of federal candidates filed in its office to be completed 54 days before General Election.	§ 4-112 (1)	9/13/2018	<p>Statute needs to be superseded.</p> <p>§ 4-112. Certification of nominations; state board of elections 1. The state board of elections not later than <u>fifty-four days before a general election for federal offices; or, thirty-six days before a general election for state/local offices</u>, or fifty-three days before a special election, shall certify to each county board of elections the name and residence of each candidate nominated in any valid certificate filed with it or by the returns canvassed by it, the title of the office for which nominated; the name of the party or body specified of which he is a candidate; the emblem chosen to distinguish the candidates of the party or body; and a notation as to whether or not any litigation is pending concerning the candidacy. Upon the completion of any such litigation, the state board of elections shall forthwith notify the appropriate county boards of elections of the results of such litigation.</p>
CO-4	Determination of federal candidates; CBOEs filed locally – 53 days before General Election	§ 4-114	9/14/2018	<p>Statute needs to be superseded.</p> <p>§ 4-114. Determination of candidates and questions; county board of elections The county board of elections, not later than <u>fifty-three days before a primary or general election for federal office; or the thirty-fifth day before the day of a primary or general election for state/local offices</u>, or the fifty-third day before a special election, shall determine the candidates duly nominated for public office and the questions that shall appear on the ballot within the jurisdiction of that board of elections.</p>

Summary of Current Statutory Text (CO#= Changes in law to comply with Court Order)		SECTION OF LAW	Date	Comments
	Certification of General Election ballot by SBOE of state candidates filed in its office to be completed 36 days before General Election.	§ 4-112 (1)	10/1/2018	
	Determination of state/local candidates and questions; CBOEs filed locally – 35 days before General Election	§ 4-114	10/2/2018	
General Election				
	General Election	§ 8-100 (1)(c)	11/6/2018	
Party Designations				
Designating Petitions for the Federal Primary				
	First day for signing designating petitions for federal office.	§ 6-134 (4)	3/6/2018	
CO-5	Dates for filing designating petitions for Federal Primary.	§ 6-158 (1)	4/9/18 to 4/12/18	Footnote: Change the time to receive documents sent by overnight mail to not later than one business day after the last date to file for filings made at State Board or County Boards outside of the City of NY. (§1-106) Change to 12 th Monday and 11 th Thursday before primary. Notwithstanding the provisions of Section 6-158(1), in 2018, a designating petition for federal office shall be filed not earlier than the <u>twelfth</u> Monday before, and not later than the <u>eleventh</u> Thursday preceding the federal primary election.
	Last day to authorize federal designations.	§ 6-120 (3) § 6-158 (6)	4/16/2018	Remaining issues in this section are based on the dates as changed to file designating petitions for federal office.
	Last day to accept/decline a federal designation.	§ 6-158 (2)	4/16/2018	
	Last day to fill vacancy after declination of federal designation.	§ 6-158 (3)	4/20/2018	
	Last day to file authorization of substitution after a declination of federal designation.	§ 6-120 (3)	4/24/2018	

Summary of Current Statutory Text (CO#= Changes in law to comply with Court Order)	SECTION OF LAW	Date	Comments	
Opportunity to Ballot (OTB) Petitions for the Federal Primary				
	First day for signing OTB for federal office.	§ 6-164	3/27/2018	
CO-6	Last day to file OTB petitions for federal office.	§ 6-158 (4)	4/19/2018	Footnote: Except in 2018 for Federal primary election, petition of enrolled members of a party requesting an opportunity to write in the name of an undesignated candidate for a federal public office at a federal primary election shall be filed not later than the <u>10th</u> Thursday preceding the federal primary election.
CO-7	Last day to file an OTB petition if there has been a declination by a designated candidate.	§ 6-158 (4)	4/26/2018	Footnote: Except in 2018 for Federal primary election, if a designating petition has been filed and the person named has declined such designation, and another person has been designated to fill the vacancy, then in that event, a petition for an opportunity to ballot in a primary election for Federal office shall be filed not later than the <u>9th</u> Thursday preceding such federal primary election.
Party Nominations Other than Primary for Federal Office				
	Dates for holding state committee meeting to nominate candidates for federal statewide office	§6-104 (6)	Feb 13 thru Mar 6, 2018	Change in 2018. Dates are based on the state/local political calendar dates as provided in statute as there is a federal statewide office in 2018
CO-8	Last day to file certificates of nomination to fill vacancies in federal office created pursuant to § 6-116.	§ 6-158 (6)	7/17/2018	<p><u>21</u> days after Federal primary election.</p> <p>We should supersede Section 6-158(6) to provide more time post primary to convene a state committee meeting, in the event a vacancy occurs after 7 days before the last date to circulate designating petitions for federal office, or 60 days before the primary pursuant to Pub Officers Law Sec 42-4-a.</p> <p>With the July 4th holiday and the availability of time post-primary, it would be helpful to increase the statutorily provided 7 days after the federal primary time period to at least 21 days after the primary.</p>
	Last day to accept or decline a nomination for federal office made based on § 6-116.	§ 6-158 (7)	7/20/2018	3 days after the last date to file certificate of nomination.

Summary of Current Statutory Text (CO#= Changes in law to comply with Court Order)		SECTION OF LAW	Date	Comments
	Last day to file authorization of nomination for federal office made based on § 6-116.	§ 6-120 (3)	7/23/2018	4 days after the last day to file certificate of nomination. Date falls on Saturday, July 21 st – moves to Monday, July 23, 2018.
	Last day to fill a vacancy after a declination for federal office made based on § 6-116.	§ 6-158 (8)	7/24/2018	4 days after the last day to file declination.
Party Nominations Other than Primary for State Office				
	Dates for holding state committee meeting to nominate candidates for statewide office	§6-104 (6)	5/15/2018 thru 6/5/2018	Not earlier than 21 days before the first day to sign designating petitions, not later than the first day to sign designating petitions for the primary election.
Independent Petitions for Federal Office				
	First day for signing nominating petitions for federal office.	§ 6-138 (4)	6/19/2018	Notwithstanding NYS Election Law provisions, we will need to move the independent nominating ballot access time period in 2018 for federal office to begin and end four weeks earlier than currently provided for in statute. Otherwise, there will be less than 8 days to research objection/specs, conduct hearings, hold a board vote to make determinations, provide an opportunity for litigation and conduct the state/local primary before the September 13 th deadline to certify the federal candidates for the general election ballot.
CO-9	Dates for filing independent nominating petitions for federal office.	§ 6-158 (9)	7/24/2018 to 7/31/2018	Statute needs to be superseded. 9. A petition for an independent nomination for an office to be filled at the time of a general election shall be filed not earlier than <u>fifteen</u> weeks and not later than <u>fourteen</u> weeks preceding such election. Based upon previous experience, additional time is necessary to process filings, objections and specifications, and respond to any litigation, prior to the certification of the ballot and the timely production of ballots.

Summary of Current Statutory Text (CO#= Changes in law to comply with Court Order)		SECTION OF LAW	Date	Comments
CO-10	Last day to accept or decline independent petition nomination for federal office.	§ 6-158 (11)	8/3/2018	<p>Statute should be superseded.</p> <p>Federal primary occurs prior to independent petition filing period for federal office, so the second part of this should be null. Not sure the best way to point that out to address the deadline issue that would be left hanging if not addressed.</p> <p>11. A certificate of acceptance or declination of an independent nomination for an office to be filled at the time of a general election shall be filed not later than the third day after the fourteenth Tuesday preceding such election except that a candidate who files such a certificate of acceptance for an office for which there have been filed certificates or petitions designating more than one candidate for the nomination of any party, may thereafter file a certificate of declination not later than the <u>third day after the fourteenth Tuesday preceding such primary election.</u></p>
CO-11	Last day to fill a vacancy after a declination to an independent petition nomination for federal office.	§ 6-158 (12)	8/6/2018	<p>Statute should be superseded.</p> <p>12. A certificate to fill a vacancy caused by a declination of an independent nomination for an office to be filled at the time of a general election shall be filed not later than the sixth day after the <u>fourteenth Tuesday</u> preceding such election.</p>
CO-12	Last day to decline after acceptance if nominee loses party primary.	§ 6-158 (11)	8/3/2018	<p>Statute issue. The federal primary takes place before independent petitions for federal office are filed. Therefore, this issue would not take place and the regular declination deadline for an independent petition nomination for federal office should be referenced.</p>
Independent Petitions For State/Local Office				
	First day for signing nominating petitions for state/local office.	§ 6-138 (4)	7/10/2018	
	Dates for filing independent nominating petitions for state/local office.	§ 6-158 (9)	8/14/2018 - 8/21/2018	
	Last day to accept or decline independent petition nomination for state/local office.	§ 6-158 (11)	8/24/2018	
	Last day to fill a vacancy after a declination of independent petition nomination for state/local office.	§ 6-158 (12)	8/27/2018	

Summary of Current Statutory Text (CO#= Changes in law to comply with Court Order)	SECTION OF LAW	Date	Comments
Last day to decline after acceptance of independent petition nomination if nominee loses party primary.	§ 6-158 (11)	9/14/2018	
Voter Registration			
Federal Primary Election			
Mail registration: Last day to postmark application and last day it must be received by board of elections.	§ 5-210 (3)	6/1/2018 thru 6/6/2018	
In person registration: Last day application must be received by board of elections to be eligible to vote in primary election.	§§ 5-210, 5-211, 5-212	6/1/2018	
Change of Address: Changes of address received 20 days before an election must be completed before such election.	§ 5-208 (3)	6/6/2018	
Voting by Absentee Ballot			
For Federal Primary			
Last day to postmark application for ballot.	§8-400(2)(c)	6/19/2018	
Last day to apply in person for a ballot.	§8-400(2)(c)	6/25/2018	
Last day to postmark ballot and date it must be received by the board of elections.	§8-412(1)	6/25/2018 - 7/3/2018	
Last day to deliver ballot in person to the county board, by 9 PM.	§8-412(1)	6/26/2018	
Military/Special Federal (UOCAVA) Voters for Federal Primary			
Last day for a BOE to receive application for Military or Special Federal ballot if not previously registered.	§ 10-106(5) §11-202	6/1/2018	
Last day for a BOE to receive Military or Special Federal absentee application if previously registered.	§ 10-106(5) §11-204(4)	6/19/2018	
Last day to apply personally for Military absentee if previously registered.	§ 10-106(5)	6/25/2018	

Summary of Current Statutory Text (CO#= Changes in law to comply with Court Order)		SECTION OF LAW	Date	Comments
CO-13	Deadline to transmit Military/Special Federal absentee ballots for Federal Primary to voters with valid applications on file.	§ 10-108(1) §11-204(4)	5/12 is Saturday (45 days)	Ballots for UOCAVA voters shall be mailed or otherwise transmitted not later than 32 <u>45</u> days before a primary or general election for federal office. These sections need to be superseded. § 10–108. Military voters; distribution of ballots to 1. (a) Ballots for military voters shall be mailed or otherwise distributed by the board of elections, in accordance with the preferred method of transmission designated by the voter pursuant to section 10–107 of this article, as soon as practicable but in any event not later than <u>forty-five days before a primary or general election for federal offices or</u> ; thirty-two days before a primary or general election <u>for state/local offices</u> ; § 11–204. Processing of applications by board of elections 4. If the board of elections shall determine that the applicant making the application provided for in this section is qualified to receive and vote a special federal ballot, it shall, as soon as practicable after it shall have so determined, or not later than <u>forty-five days before a primary or general election for federal offices or</u> ; thirty-two days before each general or primary election <u>for state/local offices</u> ;
	Last day to post mark Military/Special Federal ballot and date it must be received by the board of elections.	§ 10-114(1) § 11-212	6/25/2018 7/3/2018	
Military/Special Federal (UOCAVA) Voters for General Election				
	Last day for a BOE to receive application for a Military absentee ballot if not previously registered.	§ 10-106 (5)	10/27/2018	
	Last day for a BOE to receive a Military absentee application, if by mail and previously registered.	§ 10-106 (5)	10/30/2018	
	Last day for a BOE to receive application for Special Federal absentee ballot if not previously registered.	§ 11-202 (1)	10/12/2018	

	Summary of Current Statutory Text (CO#= Changes in law to comply with Court Order)	SECTION OF LAW	Date	Comments
	Last day for a BOE to receive a Special Federal absentee application if previously registered.	§ 11-204 (4)	10/30/2018	
	Last day to apply personally for a Military absentee ballot if previously registered.	§ 10-106 (5)	11/5/2018	
CO-14	Deadline to transmit Military/Special Federal general election absentee ballots for federal offices to be filled at the General Election to voters with valid applications on file.	§ 10-108(1) § 11-204(4)	9/22/2018 (45 days)	<p>Footnote: Transmit ballot for federal office 9/24/2018 (45 days falls on SAT). However, a second ballot with only state/local offices/propositions would need to be transmitted ONLY to Military voters thereafter who previously received only federal ballot. Later, Military applicants would continue to receive two ballots: one with federal contests, and one with state/local contests and proposals.</p> <p>§ 10–108. Military voters; distribution of ballots to</p> <p>1. (a) Ballots for military voters shall be mailed or otherwise distributed by the board of elections, in accordance with the preferred method of transmission designated by the voter pursuant to section 10–107 of this article, as soon as practicable but in any event not later than <u>forty-five days before a primary or general election for federal offices or</u>; thirty-two days before a primary or general election <u>for state/local offices</u>;</p> <p>§ 11–204. Processing of applications by board of elections</p> <p>4. If the board of elections shall determine that the applicant making the application provided for in this section is qualified to receive and vote a special federal ballot, it shall, as soon as practicable after it shall have so determined, or not later than <u>forty-five days before a primary or general election for federal offices or</u>; thirty-two days before each general or primary election <u>for state/local offices</u>;</p>
	Last day to postmark Military/Special Federal ballot and date it must be received by the board of elections.	§10-114(1) §11-212	11/5/2018 11/19/2018	

D*R*A*F*T

**2018
POLITICAL CALENDAR**

September 28, 2017



**Federal Primary Election
June 26**

**State/Local Primary Election
September 11**

**General Election
November 6**

This political calendar is a ready reference to the significant dates pertaining to elections to be held in this state. For complete information be sure to consult the State's Election Law and Regulations and any relevant court orders.

All dates are based on court-ordered and statutory provisions in effect on the date of publication and may be subject to change. Final confirmation should be obtained from your county board of elections or the State Board.

NEW YORK STATE
BOARD OF ELECTIONS
40 NORTH PEARL STREET – SUITE 5,
ALBANY, NEW YORK 12207
(518) 474-6220

For TDD/TTY, call the NY State Relay 711

www.elections.ny.gov

PRIMARY ELECTION HOURS:

In New York City and the counties of Nassau, Suffolk, Westchester, Rockland, Orange, Putnam, Erie and Dutchess, POLLS OPEN at 6 AM and CLOSE at 9 PM. In all other counties POLLS OPEN at 12 NOON and CLOSE at 9 PM.

GENERAL ELECTION HOURS:

All Polls OPEN at 6 AM and CLOSE at 9 PM

**FILING REQUIREMENTS
FEDERAL COURT ORDER**

For the 2018 Federal Primary Election and General Elections, all certificates and petitions of designation or nomination, certificates of acceptance or declination of such designations and nominations, certificates of authorization for such designations, certificates of disqualification, certificates of substitution for such designations or nominations and objections and specifications of objections to such certificates and petitions required to be filed with the State Board of Elections or a board of elections outside of the city of New York shall be deemed timely filed and accepted for filing if sent by mail or overnight delivery service (as defined in New York State Election Law §1706(3)(a)) in an envelope postmarked or showing receipt by the overnight delivery service prior to midnight of the last day of filing, and received no later than one business day after the last day to file such certificates, petitions, objections or specifications.

**SIGNATURE REQUIREMENT FOR FEDERAL DESIGNATING
AND OPPORTUNITY TO BALLOT PETITIONS**

5% of the enrolled voters of the political party in the political unit (excluding voters in inactive status) or the following, whichever is less: For any office to be filled by all the voter of:
the entire state15,000
(with at least 100 or 5% of enrolled voters from each of one-half of the congressional districts)
any congressional district 1,250

**SIGNATURE REQUIREMENTS FOR
FEDERAL INDEPENDENT NOMINATING PETITIONS**

5% of the total number of votes, excluding blank and void, cast for the office of governor at the last gubernatorial election in the political unit, except that not more than 3,500 signatures shall be required on a petition for any office to be filled in any political subdivision outside the City of New York, and not more than the following for any office to be voted for by all the voters of:
the entire state15,000
(with at least 100 from each of one-half of the congressional districts)
any congressional district3,500

FEDERAL ELECTION - ELECTION DATES

March 6	Certification of offices to be filled at General Election. §4-106(1)(2)
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June 26 th	Federal Primary Election. Court Ordered
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CERTIFICATION OF FEDERAL PRIMARY

May 3	Certification of Federal primary ballot by State Board of Elections of designations filed in its office. §4-110
May 4	Determination of candidates for Federal office by county boards. §4-114

CANVASS OF FEDERAL PRIMARY ELECTION RESULTS

July 5	Canvass of Federal Primary returns by counties. §9-200(1)
July 11	Recanvass of Federal Primary returns. §9-208(1)
July 3	Verifiable Audit of Voting Systems §9-211(1)

Sept. 19	Deadline for vacancies to be filled at General Election. §6-158(14)
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November 6 th	General Election §8-100(1)(c)
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CERTIFICATION OF FEDERAL GENERAL BALLOT

Sept. 13	Certification of general election ballot by State Board of Federal designations filed in its office. §4-112(1)
Sept. 14	Determination of Federal candidates and questions by county boards. §4-114

***** BECOMING A CANDIDATE *****

DESIGNATING PETITIONS FOR FEDERAL PRIMARY

March 6	First day for signing Federal designating petitions. §6-134(4)
April 9 - April 12	Dates for filing Federal designating petitions. §6-158(1)
April 16	Last day to authorize Federal designations §6-120(3) & §6-158(6)
April 16	Last day to accept or decline Federal designations. §6-158(2)
April 20	Last day to fill a vacancy after a Federal declination. §6-158(3)
April 24	Last day to file authorization of substitution after declination of a Federal designation. §6-120(3)

OPPORTUNITY TO BALLOT PETITIONS FOR FEDERAL PRIMARY

March 27	Frist day for signing Federal OTB petitions. §6-164
April 19	Last day to file Federal OTB petitions. §6-158(4)
April 26	Last day to file OTB petition if there has been a declination by a designated candidate. §6-158(4)

PARTY NOMINATION OTHER THAN PRIMARY

Feb. 13- March 6	Dates for holding state committee meeting to nominate candidates for Federal statewide office. §6-104(6)
July 17	Last day to file certificates of nomination to fill vacancies in Federal office created pursuant to §§ 6-116 & 6-158(6)
July 20	Last day to accept or decline a nomination for Federal office made based on § 6-116
July 23	Last day to file authorization of nomination for Federal office made based on § 6-116
July 23	Last day to fill a vacancy after a declination for Federal office made based on § 6-116
July 24	Last day to fill vacancy after declination 6-158(8)

INDEPENDENT PETITIONS FOR FEDERAL OFFICE

June 19	First day for signing Federal nominating petitions. §6-138(4)
July 24- July 31	Dates for filing Federal independent nominating petitions. §6-158(9)
August 3	Last day to accept or decline Federal independent nomination. §6-158(11)
August 6	Last day to fill a vacancy after a declination to any independent petition for Federal office. §6-158(12)
August 3	Last day to decline after acceptance if nominee loses party primary. §6-158(11)

FEDERAL ELECTION - VOTER REGISTRATION

VOTER REGISTRATION FOR FEDERAL PRIMARY

June 1	Mail Registration for Federal Primary: Last day to postmark application and last day it must be received by board of elections is June 6. §5-210(3)
June 6	In person registration for Federal Primary: Last day application must be received by board of election to be eligible to vote in primary election. §5-210, 5-211 & 5-212
June 6	Changes of address for Federal Primary received by this date must be processed. §5-208(3)

FEDERAL ELECTION - VOTER REGISTRATION

VOTER REGISTRATION FOR GENERAL

Oct. 12	Mail Registration: Last day to postmark application for general election and last day it must be received by board of elections is Oct 17. §5-210(3)
Oct 17	In person registration: Last day application must be received by board of election to be eligible to vote in general election. If you have been honorably discharged from the military or have become a naturalized citizen since October 14 th , you may register in person at the board of elections up until October 29 th . §5-210, 5-211, 5-212
Oct. 12	Changes of address received by this date must be processed. §5-208(3)
Oct. 17	Change of party enrollment. Last day to accept a change of enrollment. §5-208(3)

*****VOTING BY ABSENTEE*****

ABSENTEE VOTING FOR FEDERAL PRIMARY

June 19	Last day to postmark application for Federal primary ballot. §8-400(2)(c)
June 25	Last day to apply in person for Federal primary ballot. §8-400(2)(c)
June 25	Last day to postmark Federal primary ballot. Must be received by the county board no later than July 3 rd . §8-412(1)
July 3	Last day to deliver Federal primary ballot in person to county board, by close of polls on election day. §8-412(1)

MILITARY/SPECIAL FEDERAL VOTERS FOR FEDERAL PRIMARY

May 12	Date to transmit Military/Special Federal ballots for Federal primary. (5/12 Saturday) §10-108(1) & §11-204(4)
June 1	Last day for a board of elections to receive application for Military/Special Federal ballot if not previously registered. §10-106(5) & §11-202
June 19	Last day for a board of elections to receive Military/Special Federal application if previously registered. §10-106(5) & §11-204(4)
June 25	Last day to apply personally for Military ballot if previously registered. §10-106(5)
June 25	Last day to postmark Military/Special Federal ballot and date it must be received by the board of elections is July 3. §10-114(1) & §11-212

ABSENTEE VOTING FOR FEDERAL GENERAL

Oct 30	Last day to postmark application or letter of application for general election ballot. §8-400(2)(c)
Nov. 5	Last day to apply in person for general election ballot. §8-400(2)(c)
Nov. 5	Last day to postmark ballot. Must be received by the county board no later than Nov. 19 th . §8-412(1)
Nov. 6	Last day to deliver ballot in person to county board, by close of polls on election day. §8-412(1)

MILITARY/SPECIAL FEDERAL VOTERS FOR FEDERAL GENERAL

Sept. 22	Date to transmit Military/Special Federal general election ballots. §10-108(1) & §11-204(4)
Oct. 12	Last day for a board of elections to receive application for Special Federal absentee ballot if not previously registered. §11-202(1)
Oct. 27	Last day for a board of elections to receive application for Military absentee ballot if not previously registered. §10-106(5)
Oct 30	Last day for a board of elections to receive Military absentee application, if by mail and previously registered. §10-106(5)
Oct. 30	Last day for a board of elections to receive Special Federal absentee application, if previously registered. §11-204(4)
Nov. 5	Last day to apply personally for Military ballot if previously registered. §10-106(5)
Nov. 5	Last day to postmark Military/Special Federal ballot and date it must be received by the board of elections is Nov. 19 th . §10-114(1) & 11-212

STATE/LOCAL ELECTION - ELECTION DATES	
Sept. 11	State/Local Primary Election §8-100(1)(a)
May 22	PARTY CALLS: Last day for State & County party chairs to file a statement of party positions to be filled at the State Primary Election. §2-120(1)

CERTIFICATION OF STATE/LOCAL PRIMARY	
Aug. 6	Certification of September state/local primary ballot by SBOE of designations filed in its office. §4-110
Aug. 7	Determination of candidates and questions; County Boards. §4-114

CANVASS OF STATE/LOCAL PRIMARY RESULTS	
Sept. 20	Canvass of State/Local Primary Returns by County Board of Elections §9-200(1)
Sept. 26	Recanvass of State/Local Primary returns. §9-208(1)
Sept. 18	Verifiable Audit of Voting Systems. §9-211(1)

Nov. 6	General Election §8-100(1)(c)
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CERTIFICATION OF STATE/LOCAL GENERAL ELECTION BALLOT	
Oct. 1	Certification of state election ballot by SBOE of nominations filed in its office. §4-112(1)
Oct. 2	Determination of state/local candidates and questions by county boards. §4-114

CANVASS OF STATE/LOCAL GENERAL ELECTION RESULTS	
Dec. 3	Canvass of General Election results by County Board of Elections §9-214(1)
Nov. 21	Recanvass of General results. §9-208(1)
Nov. 21	Verifiable Audit of Voting Systems. §9-211(1)
Dec. 14	State Board of Canvassers meet to certify General Election (12/15 Saturday)

** BECOMING A CANDIDATE **	
DESIGNATING PETITIONS FOR STATE/LOCAL PRIMARY	
June 5	First day for signing designating petitions for state/local offices. §6-134(4)
July 9- July 12	Dates for filing designating petitions for state/local offices. §6-158(1)
July 16	Last day to authorize designations for state/local offices. §6-120(3)
July 16	Last day to accept or decline designations for state/local offices. §6-158(2)
July 20	Last day to fill a vacancy after a declination for state/local office. §6-158(3)
July 24	Last day to file authorization of substitution after declination of a state/local designation. §6-120(3)

OPPORTUNITY TO BALLOT PETITIONS FOR STATE/LOCAL PRIMARY	
June 26	First day for signing OTB petitions for state/local offices. §6-164
July 19	Last day to file OTB petitions for state/local offices §6-158(4)
July 26	Last day to file OTB petition if there has been a declination by a designated candidate for state/local offices. §6-158(4)

PARTY NOMINATION OTHER THAN PRIMARY	
May 15 through June 5	Dates for holding state committee meeting to nominate candidates for statewide office
June 5	First day to hold a town caucus. §6-108 **
Sept. 18	Last day for filing nominations made at a town or village caucus or by a party committee. §6-158(6)
Sept. 18	Last day to file certificates of nomination to fill vacancies created pursuant to §§ 6-116 & 6158(6)
Sept. 21	Last day to accept or decline a nomination For State/local office made based on § 6-116
Sept. 24	Last day to file authorization of nomination made based on § 6-116
Sept. 25	Last day to fill a vacancy after a declination made based on § 6-116

INDEPENDENT PETITIONS FOR STATE/LOCAL OFFICES	
July 10	First day for signing nominating petitions for state/local offices. §6-138(4)
Aug 14 - Aug. 21	Dates for filing independent nominating petitions for state/local office. §6-158(9)
Aug. 24	Last day to accept or decline nomination for state/local office. §6-158(11)
Aug. 27	Last day to fill a vacancy after a declination in state/local office. §6-158(12)
Sept. 14	Last day to decline after acceptance if nominee loses party primary. §6-158(11)

STATE/LOCAL ELECTION JUDICIAL DISTRICT CONVENTIONS	
Sept. 18 thru 26	Dates for holding Judicial conventions. §6-158(5)
Sept. 25	Last day to file certificates of nominations. §6-158(6)
Sept. 28	Last day to decline. §6-158(7)
Oct. 2	Last day to fill vacancy after a declination. §6-158(8)

SIGNATURE REQUIREMENT FOR DESIGNATING AND OPPORTUNITY TO BALLOT PETITIONS FOR STATE/LOCAL OFFICES

5% of the enrolled voters of the political party in the political unit (excluding voters in inactive status) or the following, whichever is less:
For any office to be filled by all the voters of:

the entire state 15,000
(with at least 100 or 5% of enrolled voters from each of one-half of the congressional districts)

New York City 7,500
any county or borough of New York City 4,000
a municipal court district within NY City 1,500
any city council district within New York City. ... 900
cities or counties having more than 250,000 inhabitants 2,000
cities or counties having more than 25,000 but not more than 250,000 1,000
any city, county, councilmanic or county legislative districts in any city other than NY City 500
any congressional district 1,250
any state senatorial district 1,000
any assembly district 500

any political subdivision contained within another political subdivision, except as herein provided, requirement is not to exceed the number required for the larger subdivision; a political subdivision containing more than one assembly district, county or other political subdivision, requirement is not to exceed the aggregate of the signatures required for the subdivision or parts of subdivision so contained.

***NOTE:** Section 1057-b of the New York City Charter Supersedes New York Election Law signature requirements for Designating and OTB petitions and Independent nominating petitions with respect to certain NY City offices.

SIGNATURE REQUIREMENT FOR INDEPENDENT NOMINATING PETITIONS FOR STATE/LOCAL OFFICES

5% of the total number of votes, excluding blank and void, cast for the office of governor at the last gubernatorial election in the political unit, except that not more than 3,500 signatures shall be required on a petition for any office to be filled in any political subdivision outside the City of New York, and not more than the following for any office to be voted for by all the voters of:

the entire state 15,000
(with at least 100 or 5% of enrolled voters from each of one-half of the congressional districts)

any county or portion thereof outside the city of NY 1,500

the City of New York 7,500
any county or borough or any two counties or boroughs within the city of NY City 4,000
a municipal court district 3,000
any city council district within NY City 2,700
any congressional district 3,500
any state senatorial district 3,000
any assembly district 1,500

any political subdivision contained within another political subdivision, except as herein provided, requirement is not to exceed the number required for the larger subdivision.

*****VOTER REGISTRATION*****

VOTER REGISTRATION FOR STATE/LOCAL PRIMARY	
Aug. 17	Mail Registration for state/local Primary: Last day to postmark application and last day it must be received by board of elections is Aug. 22. §5-210(3)
Aug. 17	In person registration for state/local Primary: Last day application must be received by board of election to be eligible to vote in primary election. §5-210, 5-211, 5-212
Aug. 22	Changes of address for state/local Primary received by this date must be processed. §5-208(3)
Oct. 12	Mail Registration: Last day to postmark application for general election and last day it must be received by board of elections by Oct. 17. §5-210(3)

STATE/LOCAL ELECTION VOTER REGISTRATION FOR GENERAL	
Oct. 12	In person registration: Last day application must be received by board of election to be eligible to vote in general election. If honorably discharged from the military or have become a naturalized citizen since October 12 th , you may register in person at the board of elections up until October 27 th (10/28 Saturday) §5-210, 5-211, 5-212
Oct. 17	Changes of address received by this date must be processed. §5-208(3)
Oct. 12	Change of Party Enrollment: Last day to receive. §5-304(3)

*****VOTING BY ABSENTEE*****

ABSENTEE VOTING FOR STATE/LOCAL PRIMARY	
Sept. 4	Last day to postmark application for state/local primary ballot. §8-400(2)(c)
Sept. 10	Last day to apply in person for state/local primary ballot. §8-400(2)(c)
Sept. 10	Last day to postmark state/local ballot. Must be received by the county board no later than Sept. 18 th . §8-412(1)
Sept. 11	Last day to deliver state/local primary ballot in person to county board, by close of polls. §8-412(1)

MILITARY VOTERS/SPECIAL FEDERAL FOR STATE/LOCAL PRIMARY

Aug. 10	First day to mail ballot to Military/Special Federal Voter. §10-108(1)
Aug. 17	Last day for a board of elections to receive application for Military ballot for state/local primary if not previously registered. §10-106(5)
Sept. 4	Last day for a board of elections to receive Military application for state/local primary if previously registered. §10-106(5)
Sept. 10	Last day to apply personally for Military ballot for state/local primary if previously registered. §10-106(5)
Sept. 10	Last day to postmark Military ballot for state/local primary and date it must be received by the board of elections is September 18 th . §10-114(1)

ABSENTEE VOTING FOR GENERAL ELECTION

Oct. 30	Last day to postmark application or letter of application for general election ballot. §8-400(2)(c)
Nov. 5	Last day to apply in person for ballot for general election ballot. §8-400(2)(c)
Nov. 5	Last day to postmark general election ballot. Must be received by the county board no later than Nov. 19 th . §8-412(1)
Nov. 6	Last day to deliver general election ballot in person to county board, by close of polls on election day. §8-412(1)

MILITARY/SPECIAL FEDERAL VOTERS FOR GENERAL

Oct. 5	Date to transmit Military voters' absentee ballots for state/local offices and proposals, per federal court order.
Oct. 28	Last day for a board of elections to receive application for a Military absentee ballot if not previously registered. §10-106(5) (10/28 Saturday)
Oct. 30	Last day for a board of elections to receive Military/Special Federal absentee application, if by mail and previously registered. §10-106(5)
Nov. 5	Last day to apply personally for a Military General Election ballot if previously registered. §10-106(5)
Nov. 5	Last day to postmark Military/Special Federal ballot and it must be received by the board of elections is Nov. 19 th §10-114(1) §11-212

FINANCIAL DISCLOSURE

DATES FOR FILING:	
PRIMARY ELECTION	
32 Day Pre-Primary	August 10
11 Day Pre-Primary	August 31
10 Day Post Primary	September 21
August 28 th thru Sept. 10 th ★	
GENERAL ELECTION	
32 Day Pre-General	October 5
11 Day Pre-General	October 26
27 Day Post-General	December 3
Oct. 23 rd thru Nov. 5 th ★	

★ During this time period any contribution or loan which exceeds \$1,000 must be reported within 24 hours of receipt. This same contribution or loan must also be reported in the Post-Election report. IE Committees have additional and different reporting obligations. See §14-107(4)(e).

2018 Periodic Reports	
January 16 th	
July 16 th	

FINANCIAL DISCLOSURE

DATES FOR FILING:

PRIMARY ELECTION §14-108(1)	
32 Day Pre-Primary	August 10
11 Day Pre-Primary	August 31
10 Day Post-Primary	September 21
24 Hour Notice §14-107(4)(a)	August 28 th thru Sept. 10 th

GENERAL ELECTION §14-108(1)	
32 Day Pre-General	October 5
11 Day Pre-General	October 26
27 Day Post-General	December 3
24 Hour Notice §14-108(2)	October 23 rd thru November 5 th

Periodic Reports §14-108(1)	
	January 16 th
	July 16 th

Additional Independent Expenditure Reporting	
24 Hour Notice	Primary: Aug. 13 th thru Sept. 10 th
§14-107(3) (b) & (c)	General: Oct. 8 th thru Nov. 5 th
Weekly Notice	Refer to §14-107(3)(b)

DRAFT

**I. UOCAVA Enforcement Activity by the Attorney
General in 2017**

**C. Other Enforcement Activity in 2017 to Obtain
UOCAVA Compliance**

South Carolina

South Carolina General Assembly
122nd Session, 2017-2018

Download [This Bill](#) in Microsoft Word format

A15, R39, H3150

STATUS INFORMATION

General Bill

Sponsors: Rep. Funderburk

Document Path: l:\council\billsggs\22921zw17.docx

Introduced in the House on January 10, 2017

Introduced in the Senate on March 30, 2017

Last Amended on May 2, 2017

Passed by the General Assembly on May 3, 2017

Governor's Action: May 4, 2017, Signed

Summary: Special elections

HISTORY OF LEGISLATIVE ACTIONS

Date	Body	Action Description with journal page number
12/15/2016	House	Prefiled
12/15/2016	House	Referred to Committee on Judiciary
1/10/2017	House	Introduced and read first time (House Journal-page 93)
1/10/2017	House	Referred to Committee on Judiciary (House Journal-page 93)
3/22/2017	House	Committee report: Favorable Judiciary (House Journal-page 51)
3/28/2017	House	Debate adjourned until Wed., 3-29-17 (House Journal-page 45)
3/29/2017	House	Amended (House Journal-page 34)
3/29/2017	House	Read second time (House Journal-page 34)
3/29/2017	House	Roll call Yeas-84 Nays-23 (House Journal-page 36)
3/30/2017	House	Read third time and sent to Senate (House Journal-page 15)
3/30/2017	Senate	Introduced and read first time (Senate Journal-page 8)
3/30/2017	Senate	Referred to Committee on Judiciary (Senate Journal-page 8)
3/30/2017		Scrivener's error corrected
3/31/2017	Senate	Referred to Subcommittee: Campsen (ch), Young, Fanning
5/2/2017	Senate	Recalled from Committee on Judiciary (Senate Journal-page 5)
5/2/2017	Senate	Amended (Senate Journal-page 5)
5/2/2017	Senate	Read second time (Senate Journal-page 5)
5/2/2017	Senate	Roll call Ayes-38 Nays-0 (Senate Journal-page 5)
5/3/2017		Scrivener's error corrected
5/3/2017	Senate	Read third time and returned to House with amendments (Senate Journal-page 27)
5/3/2017	House	Concurred in Senate amendment and enrolled (House Journal-page 55)
5/3/2017	House	Roll call Yeas-101 Nays-1 (House Journal-page 55)
5/4/2017		Ratified R 39
5/4/2017		Signed By Governor
5/9/2017		Effective date See Act
5/15/2017		Act No. 15

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VERSIONS OF THIS BILL

[12/15/2016](#)

[3/22/2017](#)

[3/29/2017](#)

[3/30/2017](#)

[5/2/2017](#)

[5/3/2017](#)

(A15, R39, H3150)

AN ACT TO AMEND SECTION [7-13-190](#), AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO SPECIAL ELECTIONS TO FILL VACANCIES IN OFFICES, SO AS TO ADJUST THE DATES ON WHICH PRIMARIES, RUNOFF PRIMARIES, AND SPECIAL ELECTIONS MUST BE HELD, AND TO REMOVE THE EXEMPTION FROM HOLDING CERTAIN SPECIAL AND GENERAL ELECTIONS; AND TO REQUIRE THE STATE ELECTION COMMISSION TO PROVIDE RANK CHOICE BALLOTS FOR A FEDERAL SPECIAL ELECTION FOR WHICH THE PRIMARY IS HELD ON MAY 2, 2017, TO INDIVIDUALS CASTING BALLOTS IN ACCORDANCE WITH THE UNIFORMED AND OVERSEAS CITIZENS ABSENTEE VOTING ACT.

Be it enacted by the General Assembly of the State of South Carolina:

Special elections to fill vacancies, procedures

SECTION 1. Section [7-13-190](#)(B) of the 1976 Code, as last amended by Act 412 of 1998, is further amended to read:

"(B)(1) In partisan elections, whether seeking nomination by political party primary or political party convention, filing by these candidates shall open for the office at twelve o'clock noon on the third Friday after the vacancy occurs for a period to close eight days later at twelve o'clock noon. If seeking nomination by petition, the petitions must be submitted not later than twelve o'clock noon, sixty days prior to the election. Verification of these petitions must be made not later than twelve o'clock noon forty-five days prior to the election. If seeking nomination by political party primary or political party convention, filing with the appropriate official is the same as provided in Section [7-11-15](#) and if seeking nomination by petition, filing with the appropriate official is the same as provided in Section [7-11-70](#).

(2) A primary must be held on the eleventh Tuesday after the vacancy occurs. A runoff primary must be held on the thirteenth Tuesday after the vacancy occurs. The special election must be on the twentieth Tuesday after the vacancy occurs. If the twentieth Tuesday after the vacancy occurs is no more than sixty days prior to the general election, the special election must be held on the same day as the general election. If the filing period closes on a state holiday, then filing must be held open through the succeeding weekday. If the date for an election falls on a state holiday, the election must be set for the next succeeding Tuesday. For purposes of this section, state holiday does not mean the general election day."

Exemption from holding certain special elections removed

SECTION 2. Section [7-13-190](#)(E) of the 1976 Code, as added by Act 3 of 2003, is amended to read:

"(E) (Reserved)"

State Election Commission requirements

SECTION 3. (A) For a federal special election for which the primary is held on May 2, 2017, the State Election Commission must provide a rank choice ballot to an individual who casts a ballot in accordance with the Uniformed and Overseas Citizens Absentee Voting Act.

(B) This SECTION applies to any federal special election for which the primary is May 2, 2017.

Time effective

SECTION 4. SECTION 1 takes effect upon approval by the Governor and applies to elections for which candidate filings begin on or after that date.

Time effective

SECTION 5. SECTION 2 takes effect on January 1, 2018, and applies to elections for which candidate filings begin on or after that date.

Ratified the 4th day of May, 2017.

Approved the 4th day of May, 2017.