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COMMENTS

Silent Citizens: United States Territorial Residents and the Right to Vote in Presidential Elections

Amber L. Cottlet

While Congress has gone to great lengths to enfranchise millions of Americans, a large number of United States citizens continue to be excluded from the democratic process of their own country. Nearly four million\(^1\) United States citizens residing in American territories cannot legally vote for the President and Vice President of the United States.\(^2\)

Although territorial residents have challenged this system, they have been unable to change it. The courts have expressed sympathy for the plight of territorial residents who wish to vote for the officials that govern them, but consistently have held that only a constitutional amendment can grant them the right to vote.\(^3\)

In addition, the courts have held that state residents lose their right to vote in presidential elections upon moving to one of the territories.\(^4\) Although state residents who move overseas retain their right to vote via absentee ballot under provisions of the Uniformed and Overseas Citizens Absentee Voting Act ("UOCAVA"),\(^5\) UOCAVA does not protect the voting rights of state residents who move to one of the territories.\(^6\)

Without the presidential vote, territorial residents cannot express their views through the choice of competing parties,


\(^{2}\) Igartua de la Rosa v United States, 32 F3d 8, 9 (1st Cir 1994), cert denied 115 S Ct 1426 (1995).

\(^{3}\) See Igartua de la Rosa, 32 F3d at 10; Attorney General of the Territory of Guam v United States, 738 F2d 1017, 1019 (9th Cir 1984); Sanchez v United States, 376 F Supp 239, 242 (D Puerto Rico 1974).

\(^{4}\) Igartua de la Rosa, 32 F3d at 10-11.

\(^{5}\) 42 USC §§ 1973ff et seq (1988).

\(^{6}\) Igartua de la Rosa, 32 F3d at 10-11.
platforms, and policies. In short, they are shut out of the debate and decision-making process of the executive branch of the Federal Government. Since territorial residents are directly and seriously affected by these policies, it is imperative that they have a voice in the elections of those making the policies.

This Comment argues that Congress must address the needs of territorial residents. Part I examines the current state of the law regarding the right of territorial residents to vote in presidential elections. Part II argues for a constitutional amendment granting territorial residents the right to vote in presidential elections. In addition, part II argues that, at a minimum, Congress should amend UOCAVA to permit state residents who move to the territories to vote via absentee ballot in their last state of residence.

I. THE CURRENT STATE OF THE LAW UNJUSTLY DENIES TERRITORIAL RESIDENTS THE RIGHT TO VOTE IN PRESIDENTIAL ELECTIONS

A. United States—Territorial Relations

The United States governs five island political communities in the Pacific and Caribbean: the Territory of American Samoa, the Territory of Guam, the Commonwealth of the Northern Mariana Islands, the Commonwealth of Puerto Rico, and the Territory of the United States Virgin Islands.7 The United States considers all five communities to be unincorporated territories8 and the Federal Government exercises full plenary power over them.9

Territorial residents are United States citizens10 and are governed by almost all of the laws applicable to citizens of the states.11 Despite their citizenship, however, territorial residents

8 Id at 450.
10 Id at 28.
are unable to participate in presidential elections and do not have full and effective voting representation in Congress. Territorial residents may participate in party conventions to help select presidential nominees, but they cast no votes in the final presidential elections.

Several territorial residents have alleged that their inability to vote in presidential elections violates their constitutional rights. These claims have involved two classes of citizens: (1) citizens who have always resided in the territories and have never voted in a presidential election; and (2) citizens who previously resided and voted in one of the fifty states, but who have become ineligible to vote because they moved to one of the territories.

B. Territorial Residents

The first class of citizens, those who have always resided in the territories, alleged that their inability to vote in United States presidential elections violated their constitutional rights. However, in Igartua de la Rosa v United States, the First Circuit reaffirmed the rule that citizens of the United States who reside in Puerto Rico may not cast votes for the offices of President and Vice President of the United States. This decision followed the twenty-year-old decision of Sanchez v United States, which also denied such rights to Puerto Rican residents. In Attorney General of the Territory of Guam v United States, the Ninth Circuit similarly denied presidential voting rights to residents of Guam.

All three courts rested their decisions on the current method of presidential elections—the electoral college. The Constitution does not grant citizens the right to elect the President. Article
II, Section 1, Clause 2 of the United States 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." The Electors appointed by the states, not the voting public, elect the President and Vice President of the United States. The Constitution further provides that only states may cast electoral votes in presidential elections.

Accordingly, the right to vote "inheres not in citizens but in states . . . ." Citizens cannot exercise individual votes in presidential elections, and because the territories are not states, they are not entitled under Article II to choose electors. Thus, the courts have concluded that territorial citizens have no constitutional right to participate in presidential elections.

As a matter of policy, this result is very controversial. In April 1970, President Nixon appointed an ad hoc advisory group to study the feasibility of extending the right to vote for the President and Vice President of the United States to the citizens of Puerto Rico. In its report, the group strongly recommended granting the presidential vote to the citizens of Puerto Rico. The report stated, "[w]e strongly believe that place of residence should not be the basis for denying any qualified citizen his right to vote for the two federal officials who represent us all, not just a portion of this citizenry."

In addition, the Sanchez court was particularly sympathetic to the plight of territorial residents, stating that "it is inexcusable that there still exists a substantial number of U.S. citizens who cannot legally vote for the President and Vice President of the United States." However, the court noted that it was unable to take any action, holding that only a constitutional amend-
ment could grant these citizens such a right. The Igartua de la Rosa and Attorney General of Guam courts similarly held that a constitutional amendment would be required to permit the territorial citizens to vote in a presidential election.

C. Prior State Residents

Igartua de la Rosa also included a second class of citizens asserting a different claim. This class consisted of citizens who had resided and voted in one of the fifty states, but who had become ineligible to vote by reason of moving to one of the territories. These citizens asserted that the Uniformed and Overseas Citizens Absentee Voting Act ("UOCAVA") violated their constitutional rights to due process and equal protection under the law.

UOCAVA allows United States citizens residing outside the United States to retain the right to vote in federal elections via absentee ballot in their last state of residence, provided these citizens otherwise qualify to vote under the laws of the state in which they last resided. The statute defines "United States" to include the territories.

The Igartua de la Rosa court noted that UOCAVA only applies to those citizens who move outside the United States; it does not apply to citizens who move from one jurisdiction to another within the United States. Because the statutory definition of "United States" includes the territories, the Igartua de la Rosa court concluded that UOCAVA does not provide presidential voting rights to citizens who have taken up residence in the territories rather than outside the United States.

Despite the plaintiffs' contention to the contrary, the Igartua de la Rosa court further held that UOCAVA does not discriminate against citizens who have taken up residence in the territories rather than outside the United States. UOCAVA does not...
distinguish between those who reside overseas and those who reside in the territories.\textsuperscript{43} Rather, it distinguishes between those who move overseas and those who move anywhere within the United States.\textsuperscript{44}

The court found a rational basis for this distinction.\textsuperscript{45} Without UOCAVA, voters who move overseas would lose their right to vote in all federal elections. However, voters who move to a new residence within the United States are eligible to vote in federal elections in their new place of residence.\textsuperscript{46} For example, the court noted that a citizen who moves to Puerto Rico becomes eligible to vote in the federal election for the Resident Commissioner,\textsuperscript{47} Puerto Rico's representative in Congress.\textsuperscript{48} Although the citizen would lose her right to vote in the federal election for the President of the United States, the court found that "this limitation is not a consequence of [UOCAVA] but of the constitutional requirements [of Article II]."\textsuperscript{49} Thus, the court upheld the constitutionality of UOCAVA and dismissed the plaintiffs' claims.\textsuperscript{50}

II. THE UNITED STATES CONGRESS SHOULD ADDRESS THE NEEDS OF TERRITORIAL RESIDENTS

The current state of the law excludes territorial residents from participating in the presidential elections of a government that exercises significant authority over them. This inability to participate fully in the democratic process reinforces territorial residents' perception that they are being kept in a second-class, semicolonial status.\textsuperscript{51} The intensity of the residents' feeling with respect to the presidential voting issue cannot be overestimat-
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ed. All of the territories are concerned about their lack of political participation. It is a concern that cuts across all status and party lines.

This Comment argues for a constitutional amendment granting territorial residents the right to vote in presidential elections. In the alternative, this Comment suggests that Congress amend the Uniformed and Overseas Citizens Absentee Voting Act ("UOCAVA") to permit state citizens who move to the territories to vote via absentee ballot in their last state of residence.

A. Constitutional Amendment

As the Igartua de la Rosa, Guam, and Sanchez courts made clear, the only way for territorial residents to achieve the presidential vote is by constitutional amendment in accordance with Article V of the Constitution. Several factors provide strong support for such an amendment.

1. Legislative trends.

Legislative trends toward electoral equality support the passage of a constitutional amendment allowing territorial residents to vote in presidential elections. Congress has, through the passage of constitutional amendments, extended the right to vote to a rising number of American citizens. In 1789, only a small percentage of the total population had the right to vote. Today, almost all American citizens over eighteen years of age have been granted voting privileges. Six of the sixteen amendments add-

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53 Id.
54 Id.
55 See Igartua de la Rosa v United States, 32 F3d 8, 10 (1st Cir 1994), cert denied 115 S Ct 1426 (1995); Attorney General of the Territory of Guam v United States, 738 F2d 1017, 1019 (9th Cir 1984); Sanchez v United States, 376 F Supp 239, 242 (D Puerto Rico 1974). According to Article V of the United States Constitution, an amendment to the Constitution must be proposed by either two-thirds of both Houses of Congress or by a convention called by two-thirds of the State legislatures; the proposed amendment must then be ratified by either three-fourths of the State legislatures or conventions in three-fourths of the States. US Const, Art V.
ed to the Constitution since the Bill of Rights have dealt with extending the right to vote to classes of citizens who previously had been denied this right: the Fifteenth Amendment guarantees the voting rights of former slaves;\(^5\) the Seventeenth Amendment provides for the direct election of United States Senators;\(^6\) the Nineteenth Amendment grants the vote to women;\(^7\) the Twenty-Third Amendment enfranchises citizens residing in the District of Columbia;\(^8\) the Twenty-Fourth Amendment abolishes poll taxes as a prerequisite to voting;\(^9\) and the Twenty-Sixth Amendment enfranchises citizens over the age of eighteen.\(^{10}\)

The legislative history of these amendments indicates that Congress’s goal was to increase political participation. The Committee on the Judiciary, reporting on the Twenty-Fourth Amendment, stated that the purpose of the amendment was to broaden the suffrage\(^{11}\) and “provide a more direct approach to participation by more of the people in their Government.”\(^{12}\) Similarly, the legislative history of the Twenty-Sixth Amendment noted that “the history of this country has . . . been a history of efforts to expand the franchise and to expand the political base of our democratic processes.”\(^{13}\) Granting the presidential vote to United States citizens in the territories would be a logical step in this trend of broadening participation in the democratic process.

The legislative history of the Twenty-Third Amendment suggests that territorial participation in presidential elections is indeed the next step in this trend. In April 1960, Puerto Rican Governor Muñoz Marín testified before the House Committee on the Judiciary on the question of granting the presidential vote to the citizens of the District of Columbia.\(^{14}\) He urged that United States citizens residing in the territories be granted the right to vote for the President and Vice President.\(^{15}\)

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\(^{5}\) US Const, Amend XV.

\(^{6}\) US Const, Amend XVII.

\(^{7}\) US Const, Amend XIX.

\(^{8}\) US Const, Amend XXIII.

\(^{9}\) US Const, Amend XXIV.

\(^{10}\) US Const, Amend XXVI.


\(^{12}\) HR Rep 87-1821 at 3 (cited in note 64).

\(^{13}\) Constitutional Amendment Legislative History, S Rep No 92-26, 92nd Cong, 1st Sess 3 (1971), reprinted in 1971 USCCAN 931, 932.

\(^{14}\) District of Columbia Representation and Vote: Hearings Before Subcommittee Number 5 of the House Committee on the Judiciary on House Joint Resolution 529, 86th Cong, 2d Sess 21 (1960).

\(^{15}\) Id.
In response, the committee chairman stated that he "deeply sympathize[d]" with the position of territorial residents. However, he noted that the committee had to approach the matter "piecemeal," and concluded that inclusion of the territories in the Twenty-Third Amendment at such a late date would endanger its chances of ratification. Significantly, however, the chairman closed Governor Marín's testimony by declaring that political participation in presidential elections for territorial residents would be the "goal."

The chairman's statements appear to endorse a more inclusive conception of political participation and, more specifically, expansion of the democratic process to the territories. These statements, coupled with the clear legislative trends toward electoral equality, support the passage of a constitutional amendment allowing territorial residents to vote in presidential elections.


The courts have followed Congress's lead in effectuating the principle of electoral equality in federal, state, and local elections. Supreme Court opinions have been almost wholly favorable towards legislative and litigation efforts to expand the voting rights of persons or groups previously disenfranchised for reasons of race, ethnicity, language, military service, or property ownership. A comparison of early twentieth-century precedent with recent decisions reveals dramatic changes in the Court's approach toward equality in voting rights. These decisions demonstrate a trend in which the Court and Congress have reinforced each other's efforts to achieve broader equality in voting rights.

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69 Id at 22.
70 Id.
71 District of Columbia Representation and Vote at 23 (cited in note 67).
72 See South Carolina v Katzenbach, 383 US 301 (1966)(upholding the constitutionality of the VRA as a means to eliminate racial discrimination in voting); Katzenbach v Morgan, 384 US 641 (1966)(upholding the constitutionality of the provision of the VRA that abolished English literacy tests as a prerequisite to voting); Carrington v Rash, 380 US 89 (1965)(invalidating state constitutional provision that prohibited members of armed services from voting); City of Phoenix v Kolodziejski, 399 US 204 (1970)(holding that limitation of the franchise to property taxpayers in elections to approve issuance of general obligation bonds is unconstitutional).
In *Reynolds v Sims*, the Supreme Court examined a legislative apportionment system to determine if voters in one part of the state had greater representation per person in the state legislature than voters in another part of the state. The Court began by stating, "history has seen a continuing expansion of the scope of the right of suffrage in this country." It further noted the legislative trend toward electoral equality, citing the Fifteenth, Seventeenth, Nineteenth, Twenty-Third, and Twenty-Fourth Amendments as significant expansions of the right to vote.

The *Reynolds* Court concluded that the apportionment plans were unconstitutional because the apportionments were irrational and not made on the basis of population. It found that "[a] citizen . . . is no more and no less so because he lives in the city or on the farm." The Court further stated that the Constitution demands equal representation "for all citizens, of all places as well as of all races."

Voting rights should be extended to territorial residents for the same reason. Territorial residents are citizens, no more and no less so because they live in the territories rather than in a state. Place of residence should not be the basis for denying any qualified citizen the right to vote.

The record of Congress and the Supreme Court in the field of electoral reform over the past thirty years is one of expanding incorporation of all United States citizens into the national election system. The trend toward electoral equality, evidenced by constitutional amendments and judicial decisions, weighs in favor of a constitutional amendment granting the presidential vote to territorial citizens. As these trends toward electoral equality continue, and as more and more previously disenfranchised groups of citizens are effectively incorporated into the electoral process, it will become increasingly difficult for Congress to ignore the claims for electoral participation made by the few remaining communities of American citizens who still remain largely outside the political life of the nation.

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75 Id at 540.
76 Id at 555.
77 Id at 555 n 28.
79 Id at 568.
80 Id.

In 1961, the states ratified the Twenty-Third Amendment to the Constitution, granting the presidential vote to residents of the District of Columbia ("District"). The District of Columbia is not a state, but is under the exclusive control of Congress. The Twenty-Third Amendment marked the first time that United States citizens residing in a unit of government other than a state were granted the right to vote in presidential elections.

Until the passage of the Twenty-Third Amendment, United States citizens residing in the District of Columbia could not participate in presidential elections. The Amendment solved this problem by ordering the District to appoint electors who will "be considered, for the purposes of the election of President and Vice President, to be electors appointed by a State ..." The District of Columbia is entitled to a number of electors "equal to the whole number of Senators and Representatives in Congress to which the District would be entitled if it were a State, but in no event more than the least populous State." In practice, this entitles the District to three presidential electors.

The House Committee on the Judiciary, reporting on the proposed amendment, examined the relationship between the United States and the District of Columbia in deciding whether it should pass such an amendment. The committee first stressed that there were more than 800,000 United States citizens residing in the District. The members emphasized that a large number of otherwise eligible voters were unjustly excluded from the democratic process in their own country. In addition, the committee noted that District residents have all the obligations of citizenship, including the payment of federal taxes and service in the

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81 US Const, Amend XXIII.
82 Congress has the right to exercise exclusive legislation over the District of Columbia. US Const, Art I, § 8, cl 17.
84 Attorney General of Guam, 738 F2d at 1019.
85 US Const, Amend XXIII, § 1.
86 Id.
89 Id.
armed forces. Furthermore, the committee noted that District of Columbia residents fought and died in every United States war since the District was founded. Thus, the committee concluded that it was a "constitutional anomaly" to impose "all the obligations of citizenship without the most fundamental of its privileges."

The argument for enfranchisement of territorial residents is even stronger. In contrast to the 800,000 District of Columbia residents, almost four million citizens reside in the territories. Therefore, a much larger group of United States citizens are excluded from the democratic process in the territories than were excluded in the District of Columbia.

In addition, like District of Columbia residents, territorial residents are obligated to serve in the armed forces. Again, like District of Columbia residents, territorial residents have fought and died for the United States in many wars. Indeed, United States citizens in Puerto Rico have served with distinction in every armed conflict involving the United States since 1917. Moreover, a large proportion of the Puerto Rican servicemen were volunteers, the figure exceeding that of most states. The obligation to fight for the United States, together with an outstanding service record, demonstrate that territorial residents share the responsibilities of citizenship. By accepting the duties of citizenship, territorial residents have earned the rights of citizenship, namely, the right to vote. Thus, this Comment argues that it is a "constitutional anomaly" to impose on territorial residents "the obligations of citizenship without the most fundamental of its privileges."

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90 Id.
91 Id.
92 HR Rep No 86-1698 at 2 (cited in note 88).
93 Puerto Rico has a population of 3,522,000; Guam has a population of 133,000; the United States Virgin Islands has a population of 102,000; American Samoa has a population of 47,000; and the Northern Mariana Islands has a population of 43,000. Bureau of the Census, Statistical Abstract of the United States 822 (table 1355) (113th ed 1993)(cited in note 1).
94 See United States v Valentine, 288 F Supp 957, 979 (D Puerto Rico 1968)(holding that the Selective Service Act, which makes every male citizen of the United States liable for service in the armed forces, applies to territorial residents who are United States citizens).
95 Scribner, The Presidential Vote for Puerto Rico at 8 (cited in note 29).
96 Id.
97 HR Rep No 86-1698 at 2 (cited in note 88).
4. Abolition of taxes as a qualification for voting.

A likely objection to a territorial amendment is that the territories, unlike the District of Columbia, do not pay taxes to the Federal Government. Because of their territorial status, the territories are not bound by Article I, Section 8 of the Constitution which requires that federal taxes be "uniform throughout the United States." Therefore, Congress has had full discretion to favor, disfavor, or treat the territories uniformly with respect to the states. In fact, Congress consistently has favored the territories by granting them immunity from federal taxes. American Samoa, Guam, the Northern Mariana Islands, and the United States Virgin Islands have "mirror image" taxes whereby the residents pay their local government what they would have paid the United States had United States tax law applied. Puerto Rico taxes its residents at rates higher than any state and, at certain levels of income, more than federal rates.

Thus, one could argue that Congress should not grant the presidential vote to the territories unless the vote is accompanied by the territories' incorporation into the national tax system. According to this line of reasoning, the vote and federal taxes should be considered inseparable; Congress should not concede the former unless the territories accept the latter. If the territories expect to participate in presidential elections, they must pay their way.

This argument, however, is unpersuasive. The territories' nonpayment of federal taxes should not be a hindrance to achieving the presidential vote. Several factors demonstrate that voting rights and federal taxes are distinct matters which can, and should, be considered separately.

First, commentators have argued that congressional and Supreme Court trends since the Twenty-Third Amendment are moving in the direction of promoting and favoring voting rights without regard to the payment or nonpayment of taxes. The nonpayment of taxes is fast becoming irrelevant to voting rights.

58 US Const, Art I, § 8, cl 1.
59 Helfeld, Feasibility of the Presidential Vote for Puerto Rico, in Scribner, Studies on the Presidential Vote for Puerto Rico at 103 (cited in note 11).
60 Id at 103-04.
61 Van Dyke, 14 Hawaii L Rev at 507 (cited in note 7).
62 Id.
The Twenty-Fourth Amendment to the United States Constitution removed the barrier of the poll or any other tax as a requirement to vote in national elections. The House Committee on the Judiciary, reporting on the proposed amendment, made clear that its purpose was to prevent the United States from denying the right to vote because of a failure to pay "any poll tax or other tax." The members noted that taxes are a "meaningless requirement, having no reasonable relationship to the rights and privileges of citizenship."

The Supreme Court subsequently extended this principal to state and local elections. In *Harper v Virginia Board of Elections*, the Court invalidated a Virginia poll tax that conditioned the right to vote on the payment of a $1.50 fee. The Court emphasized that it made no difference that the voter at issue could afford to pay the tax. The fact that the voter had the money was irrelevant because “[v]oter qualifications have no relation to... paying this or any other tax.” Since that decision, the Supreme Court has consistently struck down state and local legislation conditioning voting rights on various types of tax payments.

Although one could argue that a poll tax is qualitatively different from an income tax, Congress’s and the Court’s language suggest that they are analogous. Congress clearly stated that the Federal Government cannot condition voting rights on the payment of a poll tax or any other tax. In addition, the *Harper* Court held that it makes no difference that the voter in fact can afford to pay the tax because voting qualifications have no relation to any tax. These statements suggest that the government may not condition voting rights on payments of any type of tax, including the income tax. They further suggest that it is irrelevant that some territorial residents indeed may be able to pay the tax. The nonpayment of taxes is simply irrelevant to voting rights.

104 US Const, Amend XXIV.
105 HR Rep No 87-1821 at 2 (emphasis added)(cited in note 64).
106 Id at 4.
107 383 US at 663.
108 Id at 668.
109 Id at 666 (emphasis added).
110 See Kolodziejski, 399 US at 204; Kramer v Union Free School Dist., 395 US 621 (1969)(invalidating a state law that restricted the vote in school districts to owners and lessees of taxable real property).
Furthermore, President Nixon’s ad hoc advisory group specifically cited the Twenty-Fourth Amendment and Harper in support of its recommendation for extending the presidential vote to the citizens of Puerto Rico. In light of those precedents, the advisory group concluded, “we find it unpersuasive to argue that U.S. citizens in Puerto Rico should or would be required to pay Federal taxes in order to vote for [the] President and Vice President.”

Moreover, commentators have argued that the presidential vote should not be tied to federal taxes because full incorporation into the national tax system would cripple the territorial governments. All of the territorial governments face large deficits and need the maximum possible tax receipts for public purposes. Per capita income in all of the territories is about one-third less than that in the poorest state and well below the United States average. To resolve these disparities, the United States has refrained from exacting taxes in the territories. If Congress were to impose federal taxes, it simply would have to return those funds to the territorial governments in the form of federal appropriations. At this time, full payment of federal taxes is incompatible with the social and economic progress of the territories.

Congress should not deny a community of American citizens the right to vote in presidential elections because of their inability, without great economic harm, to pay federal taxes. The citizens’ expressed will to participate in the election of the President of the United States should not depend on their economic capacity to support their political aspirations. Just as in the Twenty-Fourth Amendment, the payment of federal taxes is a “meaningless requirement, having no reasonable relationship to the rights and privileges of citizenship.”

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112 Id at 9.
119 HR Rep No 87-1821 at 4 (cited in note 64).
However, an intermediate solution may be more viable. The problem of achieving congressional and state legislative approval for a constitutional amendment likely would be reduced considerably if the proposed amendment were accompanied by an understanding or a concrete assurance that the territories would begin to pay federal taxes when it becomes economically feasible. Thus, this Comment argues that although voting rights should not be conditioned on taxes, a compromise solution might help secure a constitutional amendment for the territories.

5. No change in territorial status.

Some have argued, in opposition to a constitutional amendment, that the grant of the presidential vote would imply impending statehood for the territories.120 Witnesses appearing before the Ad Hoc Advisory Group on the Presidential Vote for Puerto Rico argued that the vote is a "long step toward statehood."121 The advisory group noted that this argument stemmed from the fact that citizens in all fifty states have the right to vote for the President and Vice President.122 The witnesses argued that a similar right to vote would ultimately lead to the similar status of statehood.

This argument, however, resembles the predictions in 1917 that the grant of United States citizenship to the Puerto Ricans would mean early statehood for Puerto Rico.123 Over three-quarters of a century has passed without this outcome materializing.

Furthermore, this argument misses the significance of the Twenty-Third Amendment's extension of the right to vote to citizens residing in the District of Columbia; the right to vote has not led to statehood for the District. The House Committee on the Judiciary noted that the Twenty-Third Amendment only changed the Constitution to the minimum extent necessary to grant District residents the right to vote in presidential elections.124 The committee specifically stated that the amendment "would not make the District of Columbia a State," nor would it give the District "any other attributes of a State or change the

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120 Scribner, The Presidential Vote for Puerto Rico at 12 (cited in note 29).
121 Id.
122 Id.
123 Id.
124 HR Rep No 86-1698 at 3 (cited in note 88).
constitutional powers of the Congress to legislate with respect to the District of Columbia and to prescribe its forms of government. 125

Therefore, it is unpersuasive to argue that a similar amendment for the territories would lead to statehood. Nor would a constitutional amendment even grant the territories the attributes of statehood. As with the District of Columbia, a constitutional amendment would not alter Congress's plenary power over the territories. 126 Congress would continue to have full power to legislate both nationally and locally with respect to the territories, a power incompatible with statehood. A territorial amendment would change the Constitution only to the extent necessary to grant territorial residents the right to vote in presidential elections.

B. Retention of Voting Rights by Citizens Relocating to the Territories Via UOCAVA

In the absence of a constitutional amendment granting all territorial citizens the right to vote, state citizens who move to the territories should at least retain their right to vote in presidential elections. To do so, Congress need only amend UOCAVA's definition of "United States" to exclude the territories. Former state residents residing in the territories would then be considered to reside outside the United States, and UOCAVA provisions would apply to them. Like overseas citizens, the relocated territorial citizens could continue to vote by absentee ballot in their last state of residence.

1. Right to travel.

The retention of voting rights by citizens relocating to the territories may be supported as a corollary of the fundamental right to travel. The right to interstate travel has long been recog-

125 Id.
126 The Federal Government exercises plenary power over the territories. See Leibowitz, Analysis of United States Territorial Relations at 110 (cited in note 9). See also Simms v Simms, 175 US 162, 168 (1899) (holding that "[i]n the Territories of the United States, Congress has the entire dominion and sovereignty, national and local, federal and state, and has full legislative power over all subjects upon which the legislature of a State might legislate within the State . . .").
nized as a virtually unqualified right under the Constitution\textsuperscript{127} and has been found to include the "freedom to enter and abide in any State in the Union . . . ."\textsuperscript{128}

The textual source of the constitutional right to travel, however, has proved elusive. It has been assigned both to the Privileges and Immunities Clause of Article IV\textsuperscript{129} and the Privileges and Immunities Clause of the Fourteenth Amendment.\textsuperscript{130} The right has also been inferred from the federal structure of government adopted by the Constitution.\textsuperscript{131} However, in light of "the unquestioned historic acceptance of the principle of free interstate migration," the Supreme Court has not felt compelled to locate the right definitively in any particular constitutional provision.\textsuperscript{132} Whatever its origin, the right to travel has been firmly established by the Court.\textsuperscript{133}

In \textit{Oregon v Mitchell},\textsuperscript{134} eight Justices of the Supreme Court upheld Section 202 of the Voting Rights Act Amendments of 1970 ("VRA Amendments").\textsuperscript{135} Prior to the VRA Amendments, states imposed various durational residency requirements for newly relocated citizens, requiring \textit{bona fide} residence in the new state for a particular length of time before an election.\textsuperscript{136} The VRA Amendments abolished state durational residency requirements\textsuperscript{137} and established a uniform registration deadline of thirty days prior to a presidential election.\textsuperscript{138} Citizens moving to a new state within thirty days of a presidential election, who were unable to register at the new residence because the registration deadline had expired, were also afforded the right to vote; the "change of residency provision" of the VRA Amendments


\textsuperscript{130} \textit{Edwards v California}, 314 US 160, 177-78 (1941)(Douglas concurring).

\textsuperscript{131} Guest, 383 US at 757-58.


\textsuperscript{133} Id at 903.

\textsuperscript{134} 400 US at 112.


\textsuperscript{136} Comment, 12 Ga J Intl & Comp L at 280-81 (cited in note 56).

\textsuperscript{137} 42 USC § 1973aa-1(c) (1988).

\textsuperscript{138} 42 USC § 1973aa-1(d) (1988)
permitted such citizens to vote in their prior state of residence, via absentee ballot, even though they no longer resided in that state.\(^{139}\)

In upholding the VRA Amendments, six of the Justices on the Mitchell Court recognized the constitutional right of all citizens to unimpeded interstate travel and settlement. Justice Stewart, in an opinion joined by Justice Blackmun and Chief Justice Burger, gave detailed attention to the question of congressional power to regulate voter qualifications in adopting the change of residency provision.\(^{140}\) They concluded that Congress had the power to protect citizens who exercise their constitutional right to travel from losing their right to vote.\(^{141}\) Justices William Brennan, Jr., Byron White, and Thurgood Marshall similarly held that the change of residency provision was a reasonable means of eliminating an unnecessary burden on the right of interstate migration.\(^{142}\) Thus, a majority of the Supreme Court explicitly affirmed the power of Congress to protect a group of citizens with a particular problem through reasonable extension of the concept of *bona fide* residency.

The VRA Amendments prevent citizens from having to choose between exercising their right to travel and exercising their right to vote. Under the VRA Amendments, a citizen moving to a new state may retain a *bona fide* voting residence in her prior state even though she may not have retained *bona fide* residence in the prior state for other purposes. This retention of *bona fide* voting residence in the prior state constitutes an accommodation by the prior state to assure preservation of the citizens' voting rights.

Congress passed UOCAVA to prevent citizens from having to choose between the right to travel and the right to vote.\(^{143}\) Congress relied on Mitchell in enacting UOCAVA. The Committee on House Administration, reporting on the Overseas Citizens Voting Rights Act of 1975,\(^{144}\) the precursor to UOCAVA, noted the

\(^{140}\) Mitchell, 400 US at 285-292 (Stewart concurring in part and dissenting in part).
\(^{141}\) Id at 292.
\(^{142}\) Id at 239 (Brennan, White, and Marshall concurring in part and dissenting in part).
\(^{143}\) Comment, 12 Ga J Intl & Comp L at 292 (cited in note 56).
right to interstate travel recognized in *Mitchell*.\(^{146}\) The committee further noted that the Court also recognized the right of international travel\(^{146}\) and concluded that under decisions such as *Kent v Dulles*\(^{147}\) and *Aptheker v Secretary of State*,\(^{148}\) a United States citizen has the same right to international travel and settlement as she has to interstate travel and settlement.\(^{149}\)

The committee concluded that, in the same way the VRA Amendments permitted a citizen moving to a new state to vote in her last state of *bona fide* voting residence, UOCAVA could permit a citizen moving overseas to vote in her last state of *bona fide* voting residence.\(^{150}\) Thus, both the VRA Amendments and UOCAVA were passed to protect the citizens' inherent right to travel, without penalizing their right to vote.

Arguments based on the fundamental right to travel should apply with equal force to state citizens who move to one of the territories. The Supreme Court has recognized that there is a "virtually unqualified constitutional right to travel" between the United States and its territories.\(^{151}\) Therefore, in the same way that a citizen should not have to choose between moving to a new state and voting, or between moving overseas and voting, so too a citizen should not have to choose between moving to the territories and voting. In order to protect the fundamental right to travel, Congress should authorize territorial residents to vote via absentee ballot in their last state of residence.

2. *Similarity to overseas citizens.*

The Committee on House Administration stressed several reasons why overseas citizens should be entitled to retain the right to vote.\(^{152}\) A primary reason was the overseas citizens' close connection to and correspondence with the United States.\(^{153}\) The committee emphasized this close nexus, finding

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\(^{148}\) Id.
\(^{150}\) 378 US 500, 505 (1964).
\(^{151}\) HR Rep No 94-649 at 5 (cited in note 145).
\(^{152}\) Id at 6.
\(^{153}\) Califano v Torres, 435 US 1, 4 n 6 (1978). See also Lopez Lopez v Aran, 844 F2d 898, 902 (1st Cir 1988)(holding that the constitutional right to travel is fully applicable in Puerto Rico).
\(^{154}\) HR Rep No 94-649 at 2 (cited in note 145).
\(^{155}\) Id.
that overseas citizens have the requisite interest and information
to participate in national elections. The members noted that
citizens abroad "keep in close touch with the affairs at home,
through correspondence, television and radio, and American
newspapers and magazines."

A similarly close nexus exists between the United States and
its territories. Territorial residents have access to American
television, radio, newspapers, magazines, and movies. In ad-
dition, correspondence between territorial residents and the
mainland is commonplace. Like overseas residents, territorial
residents keep in close touch with the affairs of the mainland.
Therefore, they clearly possess the requisite interest and infor-
mation to participate in national elections.

3. Extension of the political community.

A likely counterargument is that extension of UOCAVA and
bona fide voting residency to territorial residents would dilute
the political community of the individual states. In Dunn v
Blumstein, the Supreme Court suggested in dicta that a state
may impose an appropriately defined and uniformly applied re-
quirement of bona fide residence to preserve the "basic concep-
tion of a political community." The preservation of a political
community is necessary to prevent diluting the vote of actual
state residents, in contravention of the vote-dilution, equal-repre-
sentation cases.

A state, however, can reasonably extend its political commu-
nity to embrace citizens relocating to the territories without de-
sroying its political community. It is possible to have a legiti-
mate connection to the state without a physical presence—the
experience of the states with respect to overseas citizens proves
this. States allowing the extension of bona fide residence to over-
seas citizens acknowledge that these citizens retain a sufficient

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154 Id at 1-2.
155 Id at 2.
156 The Ad Hoc Advisory Group on the Presidential Vote for Puerto Rico noted the
long history of American cultural influences on Puerto Rico, writing that "the links of
Puerto Rico to the mainland of the United States are today so close and [are] intended to
be so close . . . ." Scribner, The Presidential Vote for Puerto Rico at 10 (quoting the testi-
mony of Professor Carl J. Friedrich)(cited in note 29).
157 Irwin B. Blatt, A Study of Culture Change in Modern Puerto Rico 18, 122 (R & E
158 Id at 18.
160 See Reynolds, 377 US at 533.
connection to the state and are members of the political community, despite their absence.\textsuperscript{161} It is evident, therefore, that the states are already required to extend their political community to include substantial numbers of United States citizens residing outside the mainland. States can similarly be required to extend their political community to citizens relocating to the territories.

It must be admitted, however, that a potential problem could exist with the extension of UOCAVA to citizens relocating to the territories. It is possible that a territorial resident could relocate to a state, establish voting residency, and then relocate back to the territories and retain \textit{bona fide} voting residency through UOCAVA. If this happened in large enough numbers, state citizens’ voting rights would indeed be diluted.

However, this scenario appears unlikely to pose a real problem for two reasons. First, it is very unlikely that such relocations would occur in sufficiently large numbers to dilute the political community of the states. As mentioned above, the median level of income of the territories is well below that of the national average.\textsuperscript{162} It does not appear that a sufficiently large number of territorial residents could afford to make this type of relocation for the sole purpose of achieving the presidential vote.

Second, these citizens, in relocating to a state for only a short period of time, would probably not achieve a sufficient connection with that state to establish \textit{bona fide} voting residency. As with overseas citizens who no longer have a sufficient connection with the United States, such citizens would be violating their oaths as \textit{bona fide} voting residents and would be subject to prosecution for fraud.\textsuperscript{163} While violations may be difficult to detect, Congress found the potential for such fraud by overseas citizens to be remote and speculative;\textsuperscript{164} one can reasonably assume that the potential for such fraud by territorial citizens is similarly remote.

4. \textit{Lack of effective congressional representation}.

One could argue that UOCAVA addressed an inequity far worse than the inequities that territorial residents face. Without

\textsuperscript{161} Comment, 12 Ga J Intl & Comp L at 291 (cited in note 56).
\textsuperscript{162} Leibowitz, \textit{Analysis of United States Territorial Relations} at 5 (cited in note 9).
\textsuperscript{163} Comment, 12 Ga J Intl & Comp L at 296-97 (cited in note 56).
\textsuperscript{164} See HR Rep No 94-649 at 4 (cited in note 145). See also Comment, 12 Ga J Intl & Comp L at 296-97 (cited in note 56)(discussing the possibility that overseas citizens may no longer have a sufficient connection with the United States and concluding that the incidents of such fraud would be slight).
UOCAVA, United States citizens who moved overseas were completely deprived of a voice in the Federal Government because they lost their right to vote in all federal elections.\textsuperscript{165} In contrast, one could argue that citizens who move to the territories are not completely deprived of a voice in the Federal Government. As the \textit{Igartua de la Rosa} court noted, a citizen who moves to Puerto Rico becomes eligible to vote in the federal election for the Resident Commissioner,\textsuperscript{166} Puerto Rico's representative in Congress.\textsuperscript{167}

This argument, however, is not persuasive. None of the territories have full and effective voting representation in Congress.\textsuperscript{168} The territories of American Samoa, Guam, and the United States Virgin Islands each elect a "Delegate" to the United States House of Representatives ("House") every two years.\textsuperscript{169} The three Delegates have offices in the House and receive salaries and expenses equal to those of full members of the House.\textsuperscript{170} They are allowed to sit on certain committees, chair those committees or their subcommittees, introduce legislation, and vote in the committees and subcommittees.\textsuperscript{171} However, they cannot vote when the House meets in plenary session to enact a bill or approve a budget.\textsuperscript{172}

The Commonwealth of Puerto Rico elects a "Resident Commissioner" to the United States House of Representatives every four years.\textsuperscript{173} The Resident Commissioner has the same rights and privileges as the three Delegates described above, but also has no vote on the final passage of bills and budgets.\textsuperscript{174}

The Commonwealth of the Northern Mariana Islands has a "Resident Representative" to the United States House of Representatives who is elected for a four-year term.\textsuperscript{175} The Resident Representative has no statutorily authorized privileges in the House, except the same right that every person has to present

\textsuperscript{165} \textit{Igartua de la Rosa}, 32 F3d at 10.
\textsuperscript{166} Id at 11 n 3.
\textsuperscript{167} Van Dyke, 14 Hawaii L Rev at 512-13 (cited in note 7).
\textsuperscript{171} Van Dyke, 14 Hawaii L Rev at 469 (cited in note 7).
\textsuperscript{172} Id.
\textsuperscript{173} 48 USC § 891 (1988).
\textsuperscript{174} Van Dyke, 14 Hawaii L Rev at 469-70 (cited in note 7).
\textsuperscript{175} Id at 470.
testimony.\textsuperscript{176} In contrast to the Delegates and the Resident
Commissioner, whose salary and staff are provided by Congress,
the Commonwealth of the Northern Mariana Islands pays for the
salary and all expenses of its Representative.\textsuperscript{177} None of the terri-
tories are represented in the United States Senate.\textsuperscript{178}

Thus, the argument that state residents who move to the
territories are eligible to vote in federal elections is technically
true, but unpersuasive. They can only vote for congressional
representatives who have no substantive power. The representa-
tives are merely weak advocates for the needs of their people
rather than functioning legislators for the nation. In the final
analysis, they cannot block or promote legislation effectively
because they cannot form meaningful coalitions and they have no
vote to trade. For all practical purposes, relocated territorial
residents are denied a voice in the Federal Government just as
effectively and completely as the overseas citizens were before
UOCAVA.

CONCLUSION

Territorial citizens are a silent minority; their silence is not
by choice but by political exclusion. A constitutional amendment
granting territorial residents the right to vote in presidential
elections is long overdue. The trends towards electoral equality,
the similarity to the District of Columbia, and the abolition of
taxes as a qualification for voting all militate in favor of such an
amendment. In the alternative, state residents who move to the
territories should retain their right to vote. The need to protect
the state residents' fundamental right to travel, the similarity to
overseas citizens, and the lack of any effective territorial repre-
sentation demonstrate that Congress should amend UOCAVA to
permit state residents who move to the territories to vote via
absentee ballot in their last state of residence.

Place of residence should not be the basis for denying any
qualified citizen the right to vote. These proposals are viable
solutions to address the inexcusable fact that there still exists a
substantial number of United States citizens who cannot legally
vote for the President and Vice President of the United States.

\textsuperscript{176} Id at 513.
\textsuperscript{177} Id at 470.
\textsuperscript{178} Leibowitz, \textit{Analysis of United States Territorial Relations} at 41 (cited in note 9).