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In the United States Court of Appeals

For the Seventh Circuit

No. 16-4240

LUIS SEGOVIA, et al.,

Plaintiffs-Appellants,

v.

UNITED STATES OF AMERICA, et al.,

Defendants-Appellees.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division. No. 15-cv-10196 — Joan B. Gottschall, *Judge*.

ARGUED SEPTEMBER 15, 2017 — DECIDED JANUARY 18, 2018

Before MANION, ROVNER, and HAMILTON, *Circuit Judges*.

MANION, *Circuit Judge*. In this appeal, former residents of Illinois now residing in the United States territories of Puerto Rico, Guam, and the Virgin Islands challenge federal and state statutes that do not allow them to obtain absentee ballots for federal elections in Illinois. Generally, federal and state law require that former residents living outside of the United States who retain their U.S. citizenship

receive such ballots. But the territories where the plaintiffs now reside are considered part of the United States under the relevant statutes, while other territories are not. The anomalous result is that former Illinois residents who move to some territories can still vote in federal elections in Illinois, but the plaintiffs cannot. The plaintiffs challenge that result as violative of their equal protection rights and their right to travel protected by the Due Process Clause.

The district court rejected their claims, holding that there was a rational basis for the inclusion of some territories but not others in the definition of the United States. With respect to the challenge to the Illinois statute, we agree with the district court. However, we conclude that plaintiffs lack standing to challenge the federal Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA) in this context. The UOCAVA does not prevent Illinois from providing the plaintiffs absentee ballots, and so it does not cause their injury. To the extent the plaintiffs are injured, it is because they are not entitled to ballots under state law. Therefore, we affirm the portion of the judgment in favor of the state defendants, but vacate the portion of the judgment in favor of the federal defendants and remand the case with instructions to dismiss that portion for want of jurisdiction.

I. Background

Congress enacted the UOCAVA to protect the voting rights of United States citizens who move overseas but retain their American citizenship. To do

that, the law requires the States to permit "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). An "overseas voter" for these purposes is "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)(c). In short, federal law requires each State to provide absentee ballots to its former otherwise qualified residents who now reside outside of the United States.

Illinois complies with this requirement. Its law provides that "[a]ny non-resident civilian citizen, otherwise qualified to vote, may make application to the election authority having jurisdiction over his precinct of former residence for a vote by mail ballot containing the Federal offices only not less than 10 days before a Federal election." 10 ILCS 5/20-2.2. Non-resident civilian citizens are United States citizens who reside "outside the territorial limits of the United States," but previously maintained a residence in Illinois and are not registered to vote in any other State. *Id.* 5/20-1(4). As required under the UOCAVA, these voters need not declare any intent to return to Illinois in order to be eligible to vote. *Id.*

So what's the catch? Our plaintiffs are residents of Guam, Puerto Rico, and the Virgin Islands. All three territories are considered part of the United States under both the UOCAVA and Illinois law. Federal law says the United States "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), while Illinois law says that it 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 ILCS 5/20-1(1). The upshot is that the plaintiffs are not entitled to vote in federal elections in Illinois because they still reside within the United States. Had they moved instead to American Samoa or the Northern Mariana Islands, Illinois law would consider them to be overseas residents entitled to ballots. This distinction between the various U.S. territories gave rise to this litigation.

The plaintiffs sued federal and Illinois officials in the Northern District of Illinois seeking declaratory and injunctive relief. They argued that the UOCAVA and Illinois law violate the Due Process and Equal Protection Clauses by permitting residents of some territories to vote in federal elections but not others. The plaintiffs also contended that the statutes infringe upon their right to travel guaranteed by the Due Process Clause. The parties filed cross-motions for summary judgment, and the district court granted the defendants' motions in two separate opinions. *Segovia v. Bd. of Election Commrs.*, 201 F. Supp. 3d 924 (N.D. Ill. 2016) (*Segovia I*); *Segovia v. Bd. of Election Commrs.*, 218 F. Supp. 3d 643 (N.D. Ill. 2016) (*Segovia II*). The plaintiffs timely appealed.

II. Analysis

A. Standing to Challenge the UOCAVA

Nobody doubts that the plaintiffs, who are unable to apply for absentee ballots, have suffered an injury-in-fact sufficient to confer Article III standing in this case. But, in order for us to properly exercise jurisdiction, their injury must be "fairly traceable to the challenged conduct." *Hollingsworth v. Perry*, 133 S. Ct. 2652, 2661 (2013). The federal defendants say that the plaintiffs' injury is not traceable to the government's enforcement of the UOCAVA, but rather to the plaintiffs' ineligibility for ballots under Illinois law. As they explain, federal law sets the floor, but Illinois is permitted to offer ballots to residents of the territories even if not required to do so by the UOCAVA. The district court rejected this argument, concluding that "Illinois is bound by the floor that the federal defendants stress that the UOCAVA provides." *Segovia I*, 201 F. Supp. 3d at 937. Thus, it concluded that the plaintiffs' injury is in part traceable to the UOCAVA.

We disagree. Federal law *requires* Illinois to provide absentee ballots for its former residents living in the Northern Mariana Islands, but it does not *prohibit* Illinois from providing such ballots to former residents in Guam, Puerto Rico, and the Virgin Islands. State law could provide the plaintiffs the ballots they seek; it simply doesn't. Instead, it adds (by way of subtraction from the definition of the United States) only American Samoa to the roster of territories that may take advantage of the overseas voting procedures. In short, the reason the plaintiffs

cannot vote in federal elections in Illinois is not the UOCAVA, but Illinois' own election law.

To be sure, federal law *could have* required Illinois to provide the plaintiffs absentee ballots. But that does not render federal law the cause of the plaintiffs' injuries. Consider *Simon v. Eastern Kentucky Welfare Rights Organization*, 426 U.S. 26 (1976). In that case, the Supreme Court held that indigent patients lacked standing to challenge an IRS rule that gave favorable tax treatment to hospitals which declined to provide non-emergency services to such patients. The Court explained that Article III "requires that a federal court act only to redress injury that fairly can be traced to the challenged action of the defendant, and not injury that results from the independent action of some third party not before the court." *Id.* at 41–42. So while the IRS rule may have incentivized hospitals to deny the plaintiffs care, it was the hospitals—not the IRS—that made the decision not to treat the patients.

Our decision in *DH2, Inc. v. S.E.C.*, 422 F.3d 591 (7th Cir. 2005), is similar. DH2 was an arbitrager that made money buying undervalued mutual funds whose prices had yet to be adjusted from the effects of overseas trading. It challenged SEC statements that it said required mutual funds to use "fair value pricing," eliminating the discrepancy that permitted companies like DH2 to profit with minimal risk. In reality, the challenged rules didn't require the use of fair value pricing if "market quotations for their portfolio securities [were] not readily available." *Id.* at 595 (quoting 69 Fed. Reg. 22304–05 (Apr. 23, 2004)). For that reason, we concluded that DH2 had

not established that any injury it might have suffered would be fairly traceable to the SEC rules. *Id.* at 597. We observed that under the challenged rules, "mutual funds have the discretion to use fair value pricing in lieu of market quotations when circumstances warrant the conclusion that market quotations are no longer current." *Id.* Thus, "to a significant degree, the injury DH2 complains of hinges on the decisions of independent actors whose discretion—though subject to securities laws and regulation by the SEC—is nonetheless quite broad." *Id.* Given the discretion the funds retained, DH2 could not sue the SEC.

Like the funds in *DH2* and the hospitals in *Simon*, Illinois has discretion to determine eligibility for overseas absentee ballots under its election laws. That discretion is actually wider than the independent actors had in those cases, because there is *nothing* other than Illinois law preventing the plaintiffs from receiving ballots. Federal law doesn't encourage Illinois not to offer the plaintiffs ballots. And the federal government doesn't run the elections in Illinois, so, UOCAVA or not, whether the plaintiffs can obtain absentee ballots is entirely up to Illinois. Given that type of unfettered discretion with respect to the plaintiffs, the federal government cannot be the cause of their injuries. Illinois has caused their injuries by failing to provide them ballots. Simply put, the plaintiffs cannot sue the federal government for failing to enact a law requiring Illinois to remedy

their injury. Therefore, we hold that the plaintiffs lack standing to challenge the UOCAVA.[1]

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[1] Additionally, at least for the equal-protection claim, there may be an additional standing problem. The plaintiffs "must establish the district court's jurisdiction over each of their claims independently." *Rifkin v. Bear Stearns & Co., Inc.*, 248 F.3d 628, 634 (7th Cir. 2001). And we have serious doubts that the plaintiffs' injury with respect to the equal-protection claim is "likely to be redressed by a favorable judicial decision" against the federal defendants. *Hollingsworth*, 133 S. Ct. at 2661. For even if we were to hold that the UOCAVA's distinction among the territories violated the equal-protection component of the Due Process Clause, what would be the proper remedy? The Supreme Court has told us that "we must adopt the remedial course Congress likely would have chosen 'had it been appraised of the constitutional infirmity.'" *Sessions v. Morales-Santana*, 137 S. Ct. 1678, 1701 (2017) (quoting *Levin v. Commerce Energy, Inc.*, 560 U.S. 413, 427 (2010)). Although the remedy in the run of cases would be to extend the favorable treatment (here, voting rights) to all, that would not hold when extension "would render the special treatment Congress prescribed « the general rule, no longer an exception." *Id.*

The caveat would seem to apply here, as the UOCAVA makes the Northern Mariana Islands the only United States territory treated as a foreign nation for the purposes of overseas voting. The other territories are considered part of the United States and therefore not subject to the UOCAVA's requirement that they be permitted to vote in federal elections in their last state of residence. Under *Morales-Santana*, we should presume that Congress would have wanted the general rule—that U.S. territories are part of the United States—to control over the exception for the Northern Marianas. Therefore, instead of extending voting rights to all the territories, the proper remedy would be to extend them to none of the territories. That means a holding that the UOCAVA violates equal protection would not remedy the plaintiffs' injuries.

B. Constitutionality of the Illinois Law

Having decided that the plaintiffs lack standing to challenge the UOCAVA in the context of this case, we are left with their challenge to Illinois' overseas-voting law. The plaintiffs say the law violates the Equal Protection Clause as well as their right to interstate travel guaranteed by the Due Process Clause. We consider these arguments in turn.

1. Equal Protection

The plaintiffs first argue that the Illinois law should be subject to strict scrutiny. "[E]qual protection analysis requires strict scrutiny of a legislative classification only when the classification impermissibly interferes with the exercise of a fundamental right or operates to the peculiar disadvantage of a suspect class." *Mass. Bd. of Retirement v. Murgia*, 427 U.S. 307, 312 (1976) (per curiam) (footnote omitted). To be sure, the right to vote "is a fundamental matter in a free and democratic society." *Reynolds v. Sims*, 377 U.S. 533, 561–62 (1964). But the residents of the territories have no fundamental right to vote in federal elections. The territories send no electors to vote for president or vice president and have no voting members in the United States Congress. See *Igartua v. United States*, 626 F.3d 592, 597–98 (1st Cir. 2010). Even residents of the District of Columbia had no federal voting rights at all until the Twenty-Third Amendment was ratified in 1961, allowing the District to designate three electors to vote with the Electoral College. Washington, D.C., still has no voting representation in the House of

Representatives or the Senate. The unmistakable conclusion is that, absent a constitutional amendment, only residents of the 50 States have the right to vote in federal elections. The plaintiffs have no special right simply because they *used to* live in a State.

Nor do the plaintiffs constitute a suspect class. "A suspect class either 'possesses an immutable characteristic determined solely by the accident of birth,' or is one '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.'" *St. John's United Church of Christ v. City of Chicago*, 502 F.3d 616, 638 (7th Cir. 2007) (quoting *Frontiero v. Richardson*, 411 U.S. 677, 686 (1973), and *San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1, 28 (1973)). The plaintiffs' current condition is not immutable, as nothing is preventing them from moving back to Illinois. And there has been no suggestion that the plaintiffs form a class of people historically subjected to unequal treatment. Indeed, we doubt that "people who move from a State to a territory" even constitute a class of people recognized by the law. Thus, we decline the plaintiffs' invitation to apply strict scrutiny to the Illinois law.

Because the Illinois law does not affect a fundamental right or a suspect class, it need only satisfy rational-basis review. *Armour v. City of Indianapolis*, 132 S. Ct. 2073, 2080 (2012). That is, we will invalidate it only if there is no rational relationship between the law and some legitimate

government purpose. *Id.* And while the distinction among United States territories may seem strange to an observer today, it made more sense when Illinois enacted the challenged definition. As the district court explained, in 1979 the Northern Mariana Islands were a Trust Territory, rather than a fully incorporated U.S. territory. See *Segovia I*, 201 F. Supp. 3d at 945–46. The covenant to establish a commonwealth in the Northern Marianas did not take effect until 1986. Meanwhile, American Samoa is still defined as an "outlying possession" under federal law, and persons born there are American nationals, but not citizens. 8 U.S.C. §§ 1101(a)(29), 1408(1); *United States v. Karaouni*, 379 F.3d 1139, 1142–43 (9th Cir. 2004) ("All citizens of the United States are nationals, but some nationals, such as persons born in American Samoa and other U.S. territorial possessions, are not citizens."). One could rationally conclude that these two territories were in 1979 more similar to foreign nations than were the incorporated territories where the plaintiffs reside. So, at least at the time, it was rational for Illinois to treat the Northern Marianas and American Samoa as foreign countries for the purposes of overseas absentee voting.

In the special context of this case, our conclusion that the Illinois definition was rational in 1979 controls the outcome. That is because even if the plaintiffs were correct and the definition at some point became irrational as the Northern Marianas and American Samoa became more integrated into the United States, it would not help the plaintiffs. They are injured specifically because Illinois defines their resident territories as *within* the United States.

It would be perverse for us to tell Illinois that (1) its distinction made sense in 1979; (2) the current definition is arbitrary because the territories are more integrated into the United States; and so (3) the remedy is to *contract* voting rights for residents in the excluded territories (which it couldn't do anyway because the Northern Marianas are treated as overseas under the UOCAVA). Rather than remove voting rights from its former residents in American Samoa, we think it rational for Illinois to retain the same definition it enacted nearly 40 years ago.

Finally, on a somewhat related note, we think it is significant that were we to require Illinois to grant overseas voting rights to all its former citizens living in the territories, it would facilitate a larger class of "super citizens" of the territories. As the Second Circuit observed, further extending voting rights under 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 whether they had previously resided in a State." *Romeu v. Cohen*, 265 F.3d 118, 125 (2d Cir. 2001). The natural result, as we explained in the previous paragraph and in the first footnote, would be to treat all the territories as part of the United States, so that residing in a territory would give one the rights to participate in territorial elections, but not federal elections in one's former State of residence. Until that happens, however, we see no reason to require Illinois to extend voting rights to its former residents living in Guam, Puerto Rico, and the Virgin Islands.

We affirm the district court's judgment in favor of the state defendants on the equal-protection claim.

2. Right to Travel

The plaintiffs also argue that the Illinois statute violates their due process right to interstate travel. This claim is borderline frivolous. The Second Circuit correctly explained that "[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. We agree. By choosing to move to a territory, the plaintiffs gave up the right to vote in Illinois and gained the right to vote in territorial elections. The right to travel doesn't guarantee the plaintiffs anything more than the privileges afforded other territorial residents. See *Memorial Hosp. v. Maricopa County*, 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."). Therefore, the district court properly granted summary judgment to the state defendants.

III. Conclusion

This is a strange case. The plaintiffs seek the right to continue to vote in federal elections in Illinois even though they are now residents of United States territories. In effect, the plaintiffs are upset that the territories to which they moved are considered under federal and state law to be *part of the United States* rather than overseas. They would like overseas voting rights while still living within the United States. No court has ever held that they are so entitled, and we will not be the first.

We hold that the plaintiffs lack standing to challenge the federal UOCAVA because their injury derives not from the federal statute, but from the failure of Illinois law to guarantee them absentee ballots. So we VACATE the portion of the district court's judgment in favor of the federal defendants and REMAND the case with instructions to dismiss the claims against the federal defendants for want of jurisdiction. With respect to the state defendants, however, we AFFIRM the portion of the judgment below that the Illinois law does not violate the Equal Protection Clause or the due-process right to interstate travel.

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,

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.

Case No. 15 C 10196
Judge Joan B. Gottschall

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

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[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.

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.

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[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.

BACKGROUND[3]

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

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[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.

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.

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.

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.

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.

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.

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.

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) & (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

[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.

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]

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[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;

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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.*

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.

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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.").

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").

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)).

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.

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]

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[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 Lujan, 504 U.S. at 560). This is, essentially, the federal defendants' standing

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The causation element of Article III standing requires the plaintiffs' injury to be "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

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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.

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 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.

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

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[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

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standard of review: the plaintiffs champion strict scrutiny based on their position that the UOCAVA infringes on their fundamental right to vote.[9] In

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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.

[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

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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 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

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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.

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.

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).

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.

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.

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.

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[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.

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 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

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[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).

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 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

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[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.

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

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[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").

constitutionality." *Id.* (internal 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

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[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.

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.

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.

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

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[15] See http://www.lawsource.com/also/usa.cgi?xcm for a helpful collection of links to proclamations concerning the NMI, including Proclamation No. 5564, dated November 3, 1986.

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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 granted American citizenship to its residents was not fully effectuated. Accordingly, a rational

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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.

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.
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> 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*

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[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

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Park 'N Fly, Inc. v. Dollar Park & Fly, Inc., 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,

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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 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).

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). 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. 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]

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[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.

[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

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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.

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 portions of Illinois MOVE are

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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.

unconstitutional due to the statute's treatment of American Samoa.

Date: August 23, 2016 ______/s/______
Joan B. Gottschall
United States
District Judge

/cc

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

LUIS SEGOVIA, et al.,
Plaintiffs,

v.

BOARD OF ELECTION COMMISSIONERS FOR THE CITY OF CHICAGO, et al.,
Defendants.

Case No. 15 C 10196

Judge Joan B. Gottschall

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.

LEGAL ARGUMENT

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 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.

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

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[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.

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]

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[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

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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

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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.

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.

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

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[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.

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]

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[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.

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) (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. Fofo 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

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[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."

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 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.

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 UCOAVA 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

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[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).

(cont'd)

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.

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.

(cont'd from previous page)
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.

Date: October 28, 2016 /s/

Joan B. Gottschall
United States District Judge

UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

LUIS SEGOVIA, et al.,
Plaintiffs - Appellants
v.
UNITED STATES OF AMERICA, et al.,
Defendants - Appellees

No. 16-4240

Final Judgment

January 22, 2018

Before: DANIEL A. MANION, Circuit Judge
ILANA DIAMOND ROVNER, Circuit Judge
DAVID F. HAMILTON, Circuit Judge

Originating Case Information:

District Court No: 1:15-cv-10196
Northern District of Illinois, Eastern Division
District Judge Joan B. Gottschall

* * *

The portion of the district court's judgment in favor of the federal defendants is VACATED and the case is REMANDED with instructions to dismiss the claims against the federal defendants for want of jurisdiction. With respect to the state defendants, however, the portion of the judgment below that the Illinois law does not violate the Equal Protection Clause or the due process right to interstate travel is AFFIRMED.

The above is in accordance with the decision of this court entered on January 18, 2018. Parties shall bear their own costs.

RIGHTS OF PERSONS

FIFTH AMENDMENT

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

RIGHTS GUARANTEED

FOURTEENTH AMENDMENT

SECTION 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

52 U.S.C. § 20301. Federal responsibilities
(a) Presidential designee

The President shall designate the head of an executive department to have primary responsibility for Federal functions under this chapter.

(b) Duties of Presidential designee

The Presidential designee shall—

(1) consult State and local election officials in carrying out this chapter, and ensure that such officials are aware of the requirements of this Act;

(2) prescribe an official post card form, containing both an absentee voter registration application and an absentee ballot application, for use by the States as required under section 20302(a)(4) of this title;

(3) carry out section 20303 of this title with respect to the Federal write-in absentee ballot for absent uniformed services voters and overseas voters in general elections for Federal office;

(4) prescribe a suggested design for absentee ballot mailing envelopes;

(5) compile and distribute (A) descriptive material on State absentee registration and voting procedures, and (B) to the extent practicable, facts relating to specific elections, including dates, offices involved, and the text of ballot questions;

(6) not later than the end of each year after a Presidential election year, transmit to the President and the Congress a report on the effectiveness of assistance under this chapter, including a statistical analysis of uniformed services voter participation, a separate statistical analysis of overseas nonmilitary participation, and a description of State-Federal cooperation;

(7) prescribe a standard oath for use with any document under this chapter affirming that a material misstatement of fact in the completion of such a document may constitute grounds for a conviction for perjury;

(8) carry out section 20304 of this title with respect to the collection and delivery of marked absentee ballots of absent overseas uniformed services voters in elections for Federal office;

(9) to the greatest extent practicable, take such actions as may be necessary—

> (A) to ensure that absent uniformed services voters who cast absentee ballots at locations or facilities under the jurisdiction of the Presidential designee are able to do so in a private and independent manner; and
>
> (B) to protect the privacy of the contents of absentee ballots cast by absentee uniformed services voters and overseas voters while such ballots are

in the possession or control of the Presidential designee;

(10) carry out section 20305 of this title with respect to Federal Voting Assistance Program Improvements; and

(11) working with the Election Assistance Commission and the chief State election official of each State, develop standards—

(A) for States to report data on the number of absentee ballots transmitted and received under section 20302(c) of this title and such other data as the Presidential designee determines appropriate; and

(B) for the Presidential designee to store the data reported.

(c) Duties of other Federal officials

(1) In general

The head of each Government department, agency, or other entity shall, upon request of the Presidential designee, distribute balloting materials and otherwise cooperate in carrying out this chapter.

(2) Administrator of General Services

As directed by the Presidential designee, the Administrator of General Services shall furnish official post card forms (prescribed under subsection (b)) and Federal write-in

absentee ballots (prescribed under section 20303 of this title).

(d) Authorization of appropriations for carrying out Federal Voting Assistance Program Improvements

There are authorized to be appropriated to the Presidential designee such sums as are necessary for purposes of carrying out subsection (b)(10).

52 U.S.C. § 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 manner[1] 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.

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[1] So in original. Probably should be "in a manner".

(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 [52 U.S.C. 20901 et seq.]) 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. Definitions

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.

10 ILCS 5/20-1. Definitions

§ 20-1. The following words and phrases contained in this Article shall be construed as follows:

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.

2. "Member of the United States Service" means (a) members of the Armed Forces while on active duty and their spouses and dependents of voting age when residing with or accompanying them, (b) members of the Merchant Marine of the United States and their spouses and dependents when residing with or accompanying them and (c) United States government employees serving outside the territorial limits of the United States.

3. "Citizens of the United States temporarily residing outside the territorial limits of the United States" means civilian citizens of the United States and their spouses and dependents of voting age when residing with or accompanying them, who maintain a precinct residence in a county in this State and whose intent to return may be ascertained.

4. "Non-Resident Civilian Citizens" means civilian citizens of the United States (a) who reside outside the territorial limits of the United States, (b) who had maintained a precinct residence in a county in

this State immediately prior to their departure from the United States, (c) who do not maintain a residence and are not registered to vote in any other State, and (d) whose intent to return to this State may be uncertain.

5. “Official postcard” means the postcard application for registration to vote or for a vote by mail ballot in the form provided in Section 204(c) of the Federal Voting Rights Act of 1955, as amended (42 U.S.C. 1973cc-14(c)).

6. “Federal office” means the offices of President and Vice-President of the United States, United States Senator, Representative in Congress, delegates and alternate delegates to the national nominating conventions and candidates for the Presidential Preference Primary.

7. “Federal election” means any general, primary or special election at which candidates are nominated or elected to Federal office.

8. “Dependent”, for purposes of this Article, shall mean a father, mother, brother, sister, son or daughter.

9. “Electronic transmission” includes, but is not limited to, transmission by electronic mail or the Internet.

10 ILCS 5/20-2. Members of the United States; application for ballots

§ 20-2. Any member of the United States Service, otherwise qualified to vote, who expects in the course of his duties to be absent from the county in which he resides on the day of holding any election may make application for a vote by mail ballot to the election authority having jurisdiction over his precinct of residence on the official postcard or on a form furnished by the election authority as prescribed by Section 20-3 of this Article not less than 10 days before the election. A request pursuant to this Section shall entitle the applicant to a vote by mail ballot for every election in one calendar year. The original application for ballot shall be kept in the office of the election authority for one year as authorization to send a ballot to the voter for each election to be held within that calendar year. A certified copy of such application for ballot shall be sent each election with the vote by mail ballot to the election authority's central ballot counting location to be used in lieu of the original application for ballot. No registration shall be required in order to vote pursuant to this Section.

Ballots under this Section shall be mailed by the election authority in the manner prescribed by Section 20-5 of this Article and not otherwise. Ballots voted under this Section must be returned postmarked no later than election day and received for counting at the central ballot counting location of the election authority during the period for counting provisional ballots, the last day of which is the 14th day following election day.

10 ILCS 5/20-2.1. Citizens temporarily residing outside country; vote by mail registration and ballot

§ 20-2.1. Any member of the United States Service, otherwise qualified to vote, who expects in the course of his duties to be absent from the county in which he resides on the day of holding any election may make application for a vote by mail ballot to the election authority having jurisdiction over his precinct of residence on the official postcard or on a form furnished by the election authority as prescribed by Section 20-3 of this Article not less than 10 days before the election. A request pursuant to this Section shall entitle the applicant to a vote by mail ballot for every election in one calendar year. The original application for ballot shall be kept in the office of the election authority for one year as authorization to send a ballot to the voter for each election to be held within that calendar year. A certified copy of such application for ballot shall be sent each election with the vote by mail ballot to the election authority's central ballot counting location to be used in lieu of the original application for ballot. No registration shall be required in order to vote pursuant to this Section.

Ballots under this Section shall be mailed by the election authority in the manner prescribed by Section 20-5 of this Article and not otherwise. Ballots voted under this Section must be returned postmarked no later than election day and received for counting at the central ballot counting location of the election authority during the period for counting provisional ballots, the last day of which is the 14th day following election day.

10 ILCS 5/20-2.2. Non-resident civilians; federal elections

§ 20-2.2. Any non-resident civilian citizen, otherwise qualified to vote, may make application to the election authority having jurisdiction over his precinct of former residence for a vote by mail ballot containing the Federal offices only not less than 10 days before a Federal election. Such application may be made on the official postcard or by facsimile or electronic transmission. A request pursuant to this Section shall entitle the applicant to a vote by mail ballot for every election in one calendar year at which Federal offices are filled. The original application for ballot shall be kept in the office of the election authority for one year as authorization to send a ballot to the voter for each election to be held within that calendar year at which Federal offices are filled. A certified copy of such application for ballot shall be sent each election with the vote by mail ballot to the election authority's central ballot counting location to be used in lieu of the original application for ballot. No registration shall be required in order to vote pursuant to this Section. Ballots under this Section shall be delivered by the election authority in the manner prescribed by Section 20-5 of this Article in person, by mail, or, if requested by the applicant and the election authority has the capability, by facsimile transmission or by electronic transmission. Ballots voted under this Section must be returned postmarked no later than election day and received for counting at the central ballot counting location of the election authority during the period for counting provisional ballots, the last day of which is the 14th day following election day.