The original documents are located in Box 43, folder "Voter Registration" of the John Marsh Files at the Gerald R. Ford Presidential Library.

THE WHITE HOUSE

WASHINGTON

SCHEDULE PROPOSAL
Date: April 1, 1975
Thru: Max Friedersdorf
From: Vern Loen VL
Via: Warren Rustand

MEETING: With three GOP members of the House Administration Committee

DATE: As soon as possible after April 7 because early hearings and fast floor action are expected.

PURPOSE: To discuss a new post card registration bill before the House Administration Committee.

FORMAT: Oval Office - 20 minutes

CABINET PARTICIPATION: Attorney General Edward Levi

PRESS COVERAGE: Announce to press as a meeting to discuss pending legislation - - - White House photographer only

STAFF: Vern Loen

RECOMMEND: Max L. Friedersdorf

PARTICIPANTS:
The President
The Attorney General
Rep. William Dickinson (R-Ala)
Rep. Charles E. Wiggins (R-Calif)
Rep. Bill Frenzel (R-Minn)
Counsellor Robert Hartmann
Vern Loen (staff)
Richard Parsons (Domestic Council)

BACKGROUND:

1. The Administration fought hard against postcard registration last year and successfully stopped it in the House.

2. Postcard registration is a key objective of organized labor and Common Cause. It was strongly opposed by the National Association of Secretaries of State, who regarded it as an administrative nightmare. Also, there was much criticism of the bill by the press.

3. These Members would like a strong signal from the Administration on our position on this legislation, which they anticipate will be on a fast track. Justice Department has been alerted.

APPROVE_____ DISAPPROVE_____

cc: The Attorney General
John Marsh ✓
Bob Hartmann
Bill Kendall
Charles Leppert
Doug Bennett
Pat O'Donnell
Bob Wolthuis
Richard Parsons

Congratulations

October 10, 1975

MEMORANDUM FOR: MAX FRIEDERSDORF

FROM: JACK MARSH

Could you have one of your people give me a rundown on some legislation in the House Administration Committee called the Overseas Citizens' Voting Rights Act, H. R. 3211?

What is this bill? What does it do? What are its chances of passage? If it is passed, what will be the effect?

JOM/dl

THE WHITE HOUSE

WASHINGTON

November 11, 1975

MEMORANDUM FOR: JACK MARSH

THRU: MAX L. FRIEDERSDORF M.L.G.
VERN LOEN VL

FROM: CHARLES LEPPERT, JR. CLJr.

SUBJECT: Post Card Voter Registration

H.R. 1686, the Post Card Voter Registration bill was reported out of the Committee on House Administration on Friday, November 7, by a vote of 17 yeas to 6 nays. the nay votes were all Republican Members of the Committee.

Copies of the bill and committee report will be sent to you as soon as they are available.

Too late for Rules Committee this year.
VL

NOV 13 1975

File

November 11, 1975

Dear Max:

The Overseas Citizens Voting Rights bill, S. 95 as amended, has been voted out of the House Administration Committee by a 14-5 vote. It previously had been voted on favorably by the Subcommittee on Elections, 7-2.

As you know, this bill was passed by the Senate in the last Congress and was passed unanimously by the Senate early this year.

I would hope that you would urge the President to come out strongly in support of this bill which will give some 750,000 Americans who are overseas in the private sector the opportunity to vote in all Federal elections. This right to vote is now held by members of the military and by Federal employees who are overseas, but not by private American citizens. These private citizens are vitally affected by actions which the President and the Congress take, and they deserve to be represented in the Congress of the United States.

As you can see from this letterhead, supporters of this bill are truly bipartisan, and although there are no figures available, I am sure that there are more Republican and Independent voters overseas than there are Democrats. From the strictly political viewpoint, I am sure the President has much more to gain than to lose by supporting this legislation.

I do not urge the President to support this legislation from the political standpoint, however, but only from the standpoint of giving our overseas Americans in the private sector the same rights and privileges as those currently being given to Federal civilian and military employees.

Max, I would be glad to discuss the bill further with you personally. I sincerely believe that support of this bill by the President would be a big plus for him.

Sincerely,

Carl S. Wallace
Executive Director

The Honorable Max L. Friedersdorf
Assistant to the President
The White House
Washington, D. C. 20500

CC: John O. Marsh, Counsellor to the President
William J. Baroody, Jr., Assistant to the President

NOV 14 1975

THE WHITE HOUSE

WASHINGTON

November 12, 1975

MEMORANDUM FOR: JACK MARSH

THRU: MAX L. FRIEDERSDORF M.L.
VERN LOEN VL

FROM: CHARLES LEPPERT, JR. CLJr.

SUBJECT: S. 95 - Overseas Citizens Voting Rights Act of 1975

Following up on my previous status reports on S. 95, attached are copies of S. 95 and the Committee Report as you requested.

D-
I want to give this to D/C personally, Tuesday.

November 12, 1975

MEMORANDUM FOR: JACK MARSH

THRU: MAX L. FRIEDERSDORF
VERN LOEN

FROM: CHARLES LEPPERT, JR.

SUBJECT: S. 95 - Overseas Citizens Voting Rights Act of 1975

Following up on my previous status reports on S. 95, attached are copies of S. 95 and the Committee Report as you requested.

94TH CONGRESS } HOUSE OF REPRESENTATIVES { REPORT
1st Session } { No. 94-649

OVERSEAS CITIZENS VOTING RIGHTS ACT OF 1975

NOVEMBER 11, 1975.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. HAYS of Ohio, from the Committee on House Administration, submitted the following

REPORT

together with

MINORITY VIEWS AND SUPPLEMENTAL VIEWS

[To accompany S. 95]

The Committee on House Administration, to whom was referred the bill (S. 95) having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

On November 4, 1975, a quorum being present, the Committee adopted by recorded vote of 14 ayes and 5 nays, a motion to report S. 95 as amended. The amendment strikes out all after the enacting clause and inserts in lieu thereof a substitute text which appears in italic type in the reported bill.

There were no oversight findings or recommendations by the Committee on House Administration, nor has the Committee on Government Operations submitted a summary of oversight findings.

PURPOSES

The primary purpose of the bill is to assure the right of otherwise qualified private U.S. citizens residing outside the United States to vote in Federal elections. A citizen residing outside the United States shall be eligible to register absentee, and vote by absentee ballot, at the location where he was last domiciled immediately prior to his departure from the United States. A citizen may register and vote under this Act only if he complies with all applicable State or district qualifications, is not voting in any other State or election district, and has a valid passport or card of identity and registration issued under the authority of the Secretary of State.

The committee was satisfied that American citizens outside the United States should be assured the right to vote in congressional as well as in presidential elections. It was plain from testimony in the

hearings that Americans outside the United States possess both the necessary interest and the requisite information to participate in the selection of Senators and Congressmen back home.

Congress is concerned with the common legislative welfare of the entire Nation, along with the specific legislative interests of each district. The citizen outside the United States has distinct congressional interests. The citizen outside the country is interested, for example, in the exchange rate of the dollar, social security benefits, or the energy situation. Furthermore, the local citizen and the overesas citizen share a number of common national interests, such as Federal taxation, defense expenditures (for example, U.S. troops stationed overseas), inflation, and the integrity and competence of our National Government.

BACKGROUND

Reliable estimates indicate that there are probably more than 750,000 American citizens of voting age residing outside the United States in a nongovernmental capacity (sometimes referred to herein as "private citizens" or "civilians"). Studies submitted to the committee have shown that nearly all of these private citizens outside the United States in one way or another are strongly discouraged, or are even barred by the rules of the States of their last domicile from participation in persidential and congressional elections.

These private citizens include thousands of businesspersons, as well as missionaries, teachers, lawyers, accountants, engineers, and other professional personnel serving the interests of their country abroad and subject to U.S. tax laws and other obligations of American citizenship. These civilians in the Nation's service abroad keep in close touch with the affairs at home, through correspondence, television and radio, and American newspapers and magazines.

At present, a typical private American citizen outside the United States finds it difficult and confusing, it not impossible, to vote in Federal elections in his prior State of domicile; that is, the State in which he last resided. The reason is that many of the States impose rules which require a voter's actual presence, or maintenance of a home or other abode in a State, or raise doubts on voting eligibility of the private citizen outside the country when the date of his return is uncertain; or which have confusing absentee registration and voting forms that appear to require maintenance of a home or other abode in the State.

It would appear that, in every State and the District of Columbia, the typical private American citizen outside the United States would not be able to register and vote absentee in Federal elections unless he specifically declared, and could prove, an intent to return to the State. If a private citizen did not have such an intent to return to the State, he could not make this declaration without committing perjury. There is, in effect, a presumption that such a private citizen does not retain the State as his voting domicile unless he can prove otherwise.

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

governing private citizens temporarily residing outside the United States. Furthermore, all 50 States and the District of Columbia impose residency requirements which private citizens outside the country for more extended periods cannot meet.

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

PRIOR LEGISLATION

The enfranchisement of Americans outside the United States in a nongovernmental capacity has received serious congressional consideration only in the last few years. The first important development was the adoption of the 1968 Amendments to the Federal Voting Assistance Act of 1955. Under these amendments, Congress recommended to the States that they adopt simplified absentee voting registration procedures for all citizens "temporarily residing outside the territorial limits of the United States and the District of Columbia." However, according to the Federal Voting Assistance Task Force appointed by the Secretary of Defense to help implement the act, only 28 States and the District of Columbia have so far heeded that recommendation; and even more important, the simplified absentee procedures adopted by the States do not resolve in some cases the serious legal questions referred to above concerning the voting eligibility of private citizens residing outside the country.

Confusion regarding the definition of "residence" under the law of each State remains a major obstacle to the reenfranchisement of citizens residing outside the country, even in those States which had adopted the legislation recommended in the Federal Voting Assistance Act, as amended. Moreover, some States have interpreted the meaning of the word "temporarily" in the act to exclude otherwise eligible persons who do not maintain an abode or other address in the State, or who for some other reason are not considered as having retained their State domicile.

The second important development was the adoption of title II of the Federal Voting Rights Act Amendments of 1970. In the legislative history, Senators Goldwater and Pell took the position that title II should be interpreted as providing for the enfranchisement of all civilian citizens who are temporarily living away from their regular homes, even if they are working or studying abroad. While this interpretation received favorable consideration by a few States, the overwhelming majority of States have declined to rule that this legislative history is sufficient to assure that absentee registration and

voting would be available for U.S. citizens residing outside the United States. The point generally made by the States is that the 1970 amendments dealt only with the issue of durational residency requirements and not with the question of domicile of a U.S. citizen outside the country. The Justice Department also expressed this view in a March 13, 1972, letter from the Assistant Attorney for Civil Rights.

The U.S. District Court for the Southern District of New York also considered the question, in *Hardy* v. *Lomenzo*, 349 F. Supp. 617 (S.D. N.Y. 1972), whether the 1970 amendments could limit a State's statutory standards of bona fide residence. The court rejected the legislative history developed by Senators Goldwater and Pell and held that "the remedy lies with the legislature and not in judicial elision." 349 F. Supp. at 620.

In sum, during the period in which Congress has gone to great lengths, including constitutional amendment, to enfranchise millions of Americans—racial minorities, the young, those in official Government service—most American citizens residing outside the United States, who are in the private sector, continue to be excluded from the democratic process of their own country.

PROTECTION AGAINST FRAUD

The committee has concluded that the potential of voting fraud in the implementation of the bill is remote and speculative. The bill imposes a $5,000 fine and 5 years' imprisonment for willfully giving false information for purposes of absentee registration and voting under the mechanisms set forth in the legislation.

The Federal Voting Assistance Task Force of the Department of Defense has not reported a single case of voting fraud in the entire 20 years that absentee registration and voting by private U.S. citizens overseas that been recommended to the States by Congress.

The States would still be free under this bill to establish further safeguards against fraud. Many of the States, for example, already require notarization by a U.S. official of at least one absentee voting document. The absentee voter often is required to go down to the U.S. consulate or other local American official with his passport and have his application for registration notarized. If the State does not also treat the registration request as an application for absentee ballot, the voter may be obliged to have another form notarized requesting the ballot. And if the State also requires notarization on the ballot, the voter may have to visit the U.S. consulate once again for this purpose.

The States would also have available the technical assistance of the State Department in verifying the U.S. citizenship and certain other qualifications of a citizen making application for absentee registration and an absentee ballot from outside the United States. The bill requires that a citizen seeking to register and vote absentee under this bill must have a valid passport or card or identity issued under the authority of the Secretary of State.

TAXATION

The Committee deleted, as inappropriate for this legislation, the provision in the Senate bill which would have expressly provided that the exercise by an overseas citizen of the right to register and vote in Federal elections under this bill would not affect the determination of his place of residence or domicile for purposes of any tax imposed

under Federal, State, or local law. The amended bill is neutral on the question of taxation.

The Committee notes the effect of voting in Federal elections on the determination of an overseas citizen's liability for Federal taxation is already dealt with in the Internal Revenue Code and the regulations and ruling of the Internal Revenue Service. Similarly, the Committee believes there is no need for Congress to interfere with existing State and local law governing the determination of the liability, if any, of the overseas citizen for State and local taxation which might result from his voting in Federal elections under this bill. The Committee does not intend either to restrict the right of a State or locality to attempt to tax an overseas citizen voting in Federal elections under this bill, or to limit the right of an overseas citizen to contest the imposition of such taxation under applicable law.

CONSTITUTIONALITY

The committee is of the view, based upon opinions submitted in the hearings, that the act would be upheld if subjected to constitutional challenge in the U.S. Supreme Court. The committee recognizes the principles that the right to vote for national officers is an inherent right and privilege of national citizenship, and that Congress retains the power to protect this right and privilege under both the necessary and proper clause and the 14th amendment.

The present application of many State residency and domicile rules in Federal elections denies or abridges the inherent constitutional right of citizens outside the United States to enjoy their freedom of movement to and from the United States.

The right of international travel has been recognized as "an important aspect of the citizen's 'liberty' " as long ago as *Kent* v. *Dulles*, 357 U.S. 116, 127 (1958), and was reaffirmed in *Aptheker* v. *Secretary of State*, 378 U.S. 500, 505 (1964). The right guaranteed in cases such as *Kent* and *Aptheker* is not limited to those who are always on the move. An American citizen has, under these decisions, the same right to international travel and settlement as he has to interstate travel and settlement under decisions such as *Crandall* v. *Nevada*, 6 Wall. 35 (1868), *Edwards* v. *California*, 314 U.S. 160 (1941), and *Shapiro* v. *Thompson*, 394 U.S. 618 (1969).

The Supreme Court in *Oregon* v. *Mitchell*, 400 U.S. 112 (1970) upheld by an 8 to 1 vote the provision (hereinafter the "change of residence provision") in the Voting Rights Act Amendments of 1970 permitting a U.S. citizen who moved from one State to another within 30 days before a presidential election to vote in such election in his prior State even though he no longer retained the prior State as his residence or domicile. In *Oregon* v. *Mitchell*, at least three of the Justices (Stewart, Burger, and Blackmun) gave detailed attention to the question of congressional power to regulate voter qualifications in adopting the change of residence provision. And at least three other Justices (Brennan, White, and Marshall) also recognized the significance of this issue, although they did not discuss it in detail.[1]

[1] The two remaining Justices (Black and Douglas) approved the durational residency provisions of the 1970 amendments on broad constitutional grounds and were the only ones in the majority who therefore did not specifically address themselves to the scope of congressional power to enact the change of residence provision. *See* 400 U.S. at 134 (Black, J.), 147-50 (Douglas, J.).

In *Oregon* v. *Mitchell*, therefore, the Supreme court explicitly affirmed Congress' decision in the 1970 amendments that the protection of the voting rights of a specific group of citizens with a particular problem—those moving from State to State—does justify a reasonable extension of the bona fide residence concept. Under the 1970 amendments, the citizen moving to a new State may still retain a bona fide voting residence in his prior State even though he may not have retained bona fide residence in the prior State for other purposes. This retention of bona fide voting residence in the prior State constitutes an accommodation by the prior State to assure preservation of the citizen's voting rights. It is the committee's view that Congress may constitutionally require the State to make a similar accommodation to permit the private U.S. citizen overseas to vote in his last State of bona fide voting residence even though that State may not remain his bona fide residence for other purposes.

The extension of the bona fide residence concept in this manner already has a basis in the election laws and practices of many States. As noted above, at least 28 States and the District of Columbia already do allow private U.S. citizens who are "temporarily" residing overseas to retain a bona fide residence in the State for voting purposes. And virtually all States permit U.S. Government employees, and their dependents, who are residing overseas, even for an extended period, to retain a bona fide voting residence in the State. It is evident, therefore, that a majority of the States themselves have already extended their "political community" to include substantial numbers of U.S. citizens residing outside the country.

The State election laws and procedures providing this extension of bona fide voting residence, however, have imposed a checkerboard of residence and domicile rules that make it difficult for many private U.S. citizens outside the United States to take advantage of this extension and to cast their absentee ballots in a Federal election. Only about 25 percent of the private U.S. citizens residing outside this country who considered themselves eligible to vote actually cast a ballot in the 1972 election.

Virtually all States have successfully administered their elections under the liberal test of residence applied to military and other U.S. Government personnel (and their dependents). Since the total number of such absentee residents already on the voting rolls exceeds the additional number of persons accorded the same rights by the bill, Congress may rationally conclude that the setting of a uniform definition of residence for voting purposes based on criteria similar to those applicable to government employees and their dependents is an appropriate and workable means for protecting the vote of private citizens outside the United States in Federal elections, and their freedom of travel, without penalty by reason of loss of the vote.

The committee is aware of the principle in *Dunn* v. *Blumstein*, 405 U.S. 330, 343–44 (1972) that a State may impose an appropriately defined and uniformly applied requirement of bona fide residence to preserve the "basic conception of a political community." There is no doubt that private U.S. citizens overseas may have a different stake in voting in Federal elections than do their fellow citizens residing in

this country. Nevertheless American citizens outside the United States do have their own Federal stake—their own U.S. legislative and administrative interests—which may be protected only through representation in Congress and in the executive branch. The fact that these interests may not completely overlap with those of citizens residing within the State does not make them any less deserving of constitutional protection. The President and Congress are concerned with the common interests of the entire Nation, along with the specific concerns of each State and district.

The committee also notes that the change of residence provision upheld in *Oregon* v. *Mitchell* dealt only with Presidential elections. However, each of the majority opinions dealing with the change of residence provision suggested in dictum that the provision probably would also have been upheld if it applied to congressional, as well as to Presidential, elections.[2]

The Committee specifically considered the question, whether a U.S. citizen residing outside the United States could remain a citizen of a State for purposes of voting in Federal elections, even though while residing outside the country he does not have a place of abode or other address in such State, and his intent to return to such State may be uncertain. The question was raised in the context of the requirement in Article I, Section 2 and the Seventeenth Amendment of the Constitution that voters in elections for Senators and Representatives "shall have the qualifications requisite for electors of the most numerous branch of the State legislature," and that the House of Representatives shall be chosen by the "people of the several States," along with the affirmation in the Fourteenth Amendment, Section 1 that "all persons born or naturalized in the United States and subject to the jurisdiction thereof are citizens of the United States and of the State wherein they reside."

The Committee believes that a U.S. citizen residing outside the United States can remain a citizen of his last State of residence and domicile for purposes of voting in Federal elections under this bill, as long as he has not become a citizen of another State and has not otherwise relinquished his citizenship in such prior State.

Furthermore, the Committee is persuaded that the Constitutional provisions regarding election of Senators and Representatives discussed above are not sufficient to prevent Congress from protecting a person who exercises his Constitutional right to enjoy freedom of movement to and from the United States, when Congress may protect this right from other less fundamental disabilities. As Justice Stewart said in *Oregon* v. *Mitchell*, 400 U.S. at 292, "The power of the States with regard to the franchise is subject to the power of the Federal Government to vindicate the unconditional personal rights secured to the citizen by the Federal Constitution."

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[2] *See* opinions of Justice Black referring to "federal elections" (at 134); Justice Douglas referring to the right to vote for Senators and Representatives as "national officers" (at 148–50); Justices Brennan, White and Marshall referring to "federal elections" in the broad context of the right of interstate migration (at 237–38); and Justices Stewart, Burger and Blackmun, whose opinion states that—

"[W]hile [the change of residence provision] applies only to presidential elections, nothing in the Constitution prevents Congress from protecting those who have moved from protecting those who have moved from one state to another, from disenfranchisement *in any federal election, whether congressional or presidential.*" 400 U.S. at 287. (Emphasis added.)

HEARINGS

The Committee, acting through its Subcommittee on Elections, held intensive hearings on February 25 and 26, and March 11, 1975, on H.R. 3211, a bill identical to S. 95 as passed by the Senate. In the course of those hearings, testimony was heard from the Honorable Charles McC. Mathias; the Honorable Gilbert A. Gude; Ms. Mary C. Lawton, Deputy Assistant Attorney General; the Honorable R. Sargent Shriver, Chairman, Ambassador's Committee on Voting by Americans Overseas; Dr. Eugene L. Stockwell, National Council of Churches of Christ in the United States; J. Eugene Marans, Counsel to the Bipartisan Committee for Absentee Voting, Inc., and Carl S. Wallace, Executive Director to the Bipartisan Committee for Absentee Voting, Inc.; William C. Whyte, and Robert R. Snure, Chamber of Commerce of the United States. A prepared statement from the Honorable Barry M. Goldwater was also submitted and made a part of the record.

ESTIMATED COST OF LEGISLATION

The Committee does not anticipate the need for any appropriation from the Federal treasury. The cost to individual States will vary and depend upon each State's individual provisions for registration and absentee voting.

SECTION-BY-SECTION EXPLANATION OF THE BILL

Short Title

The first section of the bill provides that the bill may be cited as the "Overseas Citizens Voting Rights Act of 1975".

Definitions

Section 2 of the bill contains the following definitions:

(1) The term "Federal election" is defined to mean any general, special, or primary election held for the purpose of selecting, nominating, or electing any candidate for the office of President, Vice President, Presidential Elector, Member of the Senate, Member of the House of Representatives, Delegate from the District of Columbia, Guam, or the Virgin Islands, or the Resident Commissioner of the Commonwealth of Puerto Rico.

(2) The term "State" is defined to mean each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, and the Virgin Islands.

(3) The term "United States" is defined to include the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, and the Virgin Islands. Such term, however, does not include American Samoa, the Canal Zone, the Trust Territory of the Pacific Islands, or any other territory or possession of the United States.

Right of Citizens Residing Overseas to Vote in Federal Elections

Section 3 of the bill provides that each citizen residing outside the United States has the right to register for, and to vote by, an absentee ballot in any Federal election. Any citizen registering for an absentee ballot under section 3 may not be required to register in person for such absentee ballot. Any such citizen may vote in accordance with the provisions of section 3 in the State, or any election district of such State, in which he was last domiciled immediately before his departure from the United States and in which he could have met all qualifications established under any present law (except minimum voting age qualifications) to vote in Federal elections, even though while residing outside the United States he does not have a place of abode or other address in such State or district, and his intent to return to such State or district may be uncertain, if (1) he has complied with State or district qualifications relating to absentee registration for, and voting by, absentee ballots; (2) he does not maintain a domicile, is not registered to vote, and is not voting in any other State or election district of any State or territory or in any territory or possession of the United States; and (3) he has a passport or card of identity and registration issued by the Secretary of State.

Absentee Registration and Ballots for Federal Elections

Section 4(a) of the bill requires States to provide by law for absentee registration of citizens residing outside the United States who are entitled to vote in Federal elections in the State involved and whose application to vote in any such election is received not later than 30 days before the election involved.

Section 4(b) of the bill requires States to provide for the casting of absentee ballots in Federal elections by citizens residing outside the United States who (1) are entitled to vote in the State involved under section 3 of the bill; (2) have registered to vote under section 4(a); of the bill; and (3) have returned the absentee ballots to the appropriate election official in sufficient time so that the ballot is received by such official not later than the time of closing of the polls in the State on the day of the election.

Enforcement

Section 5(a) of the bill provides that whenever the Attorney General of the United States has reason to believe that a State or election district is denying the right to register to vote in any election in violation of section 3 of the bill, or fails to take any action required by section 4 of the bill, the Attorney General may bring an action in a district court of the United States for a restraining order, a preliminary or permanent injunction, or any other order he considers appropriate.

Section 5(b) imposes a fine of not more than $5,000, or a prison term of not more than 5 years, or both, against anyone who knowingly or willfully deprives or attempts to deprive any person of any right secured by the bill.

Section 5(c) of the bill imposes a fine of not more than $5,000, or a prison term of not more than 5 years, or both, against anyone who knowingly or willfully (1) gives false information in connection with registering to vote or voting under the bill; (2) conspires for the purpose of encouraging the giving of false information; or (3) pays or accepts payment either for registration to vote or for voting.

Severability

Section 6 of the bill provides that if any provision of the bill is held invalid, the validity of the remainder of the bill shall not be affected.

Effect on Certain Other Laws

Section 7 of the bill provides that nothing in the bill shall (1) be deemed to require registration in any State or election district in which registration is not required as a condition to voting in any Federal election; or (2) prevent any State or election district from adopting or following any voting practice less restrictive than the voting practices required by the bill.

Effective Date

Section 8 of the bill provides that the bill shall apply with respect to any Federal election held on or after January 1, 1976.

SUPPLEMENTAL VIEWS OF MR. FRENZEL

The Overseas Citizens Voting Rights Act of 1975, as amended by the Committee, is worthy legislation, long overdue, which is calculated to extend the franchise to Americans resident overseas who, for a variety of reasons, are now not voting.

According to a State Department estimate, there were in 1973, about 1.6 millionAmericans, not counting military personnel, living abroad. Of this total, about 410,000 were government employees, their dependents, or dependents of military personnel. Almost 1.2 million were non-government-affiliated Americans.

Typically, these Americans are business people, and their families. The Association of Americans Resident Overseas estimates that less than 10% of them are retired people who have chosen to live outside of the U.S. An informal AARO survey of 1,545 Americans resident in France showed that 76% of those responding did not vote in the last Presidential election.

The reasons these taxpaying American citizens do not vote are many. Several states prohibit absentee registration. Some prohibit some kinds of absentee ballots. Some states demand state income taxes for the privilege of voting. Much voting or registration material is hard to get. Some of it arrives too late. Local clerks and registrars often don't have voting information for overseas residents.

Americans resident overseas have special problems that often require Congressional help, but most of them now have no Member of Congress to give them help.

These people pay U.S. taxes, are U.S. citizens and should be allowed to vote in U.S. elections. S. 95, as amended, does just that, without frills and without unnecessary infringements on states' rights.

In the Committee, the objections to the bill were (1) that the Constitution requires that overseas residents be allowed only to vote for President, not Members of Congress, and (2) that overseas residents should be subject to state income taxes if they wish to vote.

The first objection would seem to be met by the one court test of the 1970 Voting Rights Act, *Oregon* v. *Mitchell*. The question there was the 30-day residency test for voters in Presidential elections who moved to another state, but several of the justices' opinions stated that Congress clearly had the right to determine residency requirements in the case of *all* Federal elections. I believe we have not only that right, but where the franchise has been denied, we have that obligation.

The second objection makes sense only for state elections. This bill refers to people who pay Federal taxes, and it covers only Federal elections. I don't believe Americans resident overseas should have to pay state taxes on income earned abroad as some kind of super poll tax. Simple equity demands that they have a voice in national elections, and that is all S. 95 tries to do for them.

S. 95 is an important step toward expanding the voting franchise to all eligible Americans. It does so without laying unnecessary costs or extra work on the states. It is confined solely to registration and voting in national elections. It does not tamper with other effects of establishing a domicile, because anything other than registration or voting would go beyond the jurisdiction of the Committee.

I support S. 95 as a vital piece of election legislation.

BILL FRENZEL.

MINORITY VIEWS

The Overseas Voting Rights Act of 1975 purports to confer upon U.S. citizens residing outside the United States the right to vote in all federal elections. This legislation allows the ballot of such a citizen to be cast in the State and in the voting district in which he last resided prior to assuming his foreign residence.

Believing that such a proposal exceeds the power of Congress to enact, we respectfully dissent. It is our conclusion that Congress may not, consistent with the Constitution, extend the right to vote in all federal elections to U.S. citizens *who are not residents*[1] *of any state.*

At the outset, it is essential to focus the issue presented by this legislation. We are *not* here concerned with the power of the Congress to establish uniform national procedures for absentee ballotting in federal elections; nor are we concerned with a Congressional effort to modify or even abolish State *durational* residence requirements as a condition to voting in federal elections.

Several decisions of the Supreme Court have recognized the broad discretion of the Congress to enact comprehensive regulations with respect to the times, places and manner of holding federal elections.[2] Other cases acknowledge Congressional authority to fix voter qualifications in federal elections if appropriate to enforce Constitutionally protected rights.[3] Although the question is not free of doubt, at least one case suggests that there may also be Constitutional power for Congress to enact voter qualifications in federal elections, even absent a finding that certain State imposed qualifications or procedures are unconstitutional or pose an unacceptable burden on federal Constitutional rights.[4]

But these cases do not stand for the proposition that the authority of Congress in this field is absolute. They go only so far as to establish Congressional power to make or alter voter qualifications in federal elections with respect to those citizens *Constitutionally eligible* to vote in such elections.

Unlike any previous act of Congress, the present legislation abolishes residency requirements entirely in all federal elections. Such a quantum jump in the exercise of federal power, if Constitutionally permissible, would authorize a future Congress to disregard State boundaries in fixing voter qualifications and, for example, authorize residents of State A to vote in State B for some perceived public pur-

[1] "Use of word residence. In the absence of evidence of a contrary legislative intent, 'residence' in a statute is generally interpreted, as being the equivalent of the domicile in statutes relating to . . . voting . . ." Restatement (Second) of the Conflict of Laws, sec. 11, comment *k* at 118–119 (1971). See also *In re Lassin's Estate*, 204 P. 2d 1071, 1072; *McHaney* v. *Cunningham*, 45 F.2d 725, 726; *Baker* v. *Keck*, 13 Fed. Supp. 486, 488; *Applications of Hoffman*, 65 N.Y.S. 2d 107, 111.

[2] *Smiley* v. *Holm*, 285 U.S. 355 (1932); *United States* v. *Classic*, 313 U.S. 299, 314 (1941); *Ex parte Siebold*, 100 U.S. 371 (1880); *United States* v. *Saylor*, 322 U.S. 385 (1944).

[3] *Katzenbach* v. *Morgan*, 384 U.S. 641 (1966); *Oregon* v. *Mitchell*, 400 U.S. 112 (1970).

[4] *Oregon* v. *Mitchell*, *supra* at 119–135.

pose. Such a startling possibility requires a more convincing justification than reliance upon the principle, accepted in other contexts, that the right to vote is a cherished Constitutional right which may be protected by appropriate Congressional enactments.

The Constitution is not silent on the question of who may cast a ballot for members of the House of Representatives and members of the Senate. Article I, Section 2 of the Constitution provides:

> The House of Representatives shall be composed of Members chose every second year *by the People of the several States* and the Electors *in each State* shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislation. (Emphasis added.)

The Seventeenth Article of Amendment to the Constitution provides:

> The Senate of the United States shall be composed of two Senators from each State, *elected by the people thereof*, for six years; and each Senator shall have one vote. The Electors *in each State* shall have the qualifications requisite for Electors. (Emphasis added.)

Since H.R. 3211 unmistakably extends the power to vote for Representatives and Senators within a particular State to U.S. citizens who do not reside therein, we are faced with the question of whether such citizens may fairly be characterized as people "of the several States" or people "thereof".

It has been argued that voters for Representatives and Senators need only be "people of the several States", that is, citizens of the United States, rather than the particular State in which they voted, in order to meet the Constitutional test as an elector. Such a construction strains the plain meaning of the Constitution beyond permissible limits. If there is any doubt that electors must be "of" the State in which their ballot is cast, the reference in both Article 1, Section 2 and the Seventeenth Amendment to "Electors in each State" dispels that doubt. The words "in each State" can only have meaning in the context of particular State residency. It requires an unnatural and unwarranted construction of the Constitutional language quoted above to find that non-residents of a State can be included within the class of "people thereof" and we decline to do so.

Although we believe the limiting language of Article I, Section 2 and the Seventeenth Amendment to be decisive on the Constitutional question, it has been argued with great force that the Supreme Court in *Oregon* v. *Mitchell* 400 U.S. 112 (1970) and *Katzenbach* v. *Morgan* 384 U.S. 6416 (1966) has established a basis for sustaining this legislation. It is important, therefore, to reconcile our conclusion with the holding and reasoning of these cases.

Katzenbach is the easier to dispose of. That case sustained the Constitutionality of Section 4(e) of the Voting Rights Act of 1965 outlawing certain literacy tests as a qualification for voting. It stands for the proposition that Section 5 of the Fourteenth Amendment gives to Congress authority to enact appropriate legislation to enforce the guarantees of that Amendment. Since Congress found that a literacy qualification for voting operated to discriminate against certain otherwise qualified voters, and since there was a factual and rational basis for such a finding, the Court concluded that the provisions of the Voting Rights Act under challenge were "appropriate" and within the power of Congress to enact.

It is reasoned that Congress could similarly find that a requirement of residency within a State for voting therein operates to discriminate against the right of non-residents of such State, and that the proposed legislation is an appropriate vehicle for enforcing the Fourteenth Amendment right to vote without discrimination.

There are several answers to this contention.

First, Congress *has not* found that residency imposes an unconstitutional burden upon voting. The bill as originally introduced contained a series of findings of fact which, in total, concluded that U.S. citizens residing abroad were denied a right to vote by reason of burdensome or discriminatory State absentee voting procedures. These findings were stricken in subcommittee and are not part of the legislation now before the House.[5]

Secondly, Congress *could not* find a State violation of the Equal Protection Clause of the Fourteenth Amendment in denying a right to vote to non-residents thereof, since the Equal Protection Clause of that Amendment reaches only to persons within the jurisdiction of a State. We have acknowledged that Congressional authority over federal elections may not be dependent upon a preliminary finding that State qualifications or procedures amount to Fourteenth Amendment violations; but the point here is that Congressional authority to grant to an overseas citizen the right to vote in a State in which he is not a resident cannot be pegged to the Equal Protection rights of such a citizen as was done in *Katzenbach*.

Of course, the Fourteenth Amendment is not limited to Equal Protection guarantees. It also prohibits any State from making or enforcing any law which shall abridge the privileges or immunities of citizens of the United States. It is our view that Congress *could not* have established a privileges or immunities violation so as to justify this legislation on a *Katzenbach* theory.

Without question, voting in national elections is a privilege of U.S. citizenship,[6] but national citizenship has never been understood to confer a right to vote in a particular State without first establishing bona fide residence therein. If this were not true, there would be a national citizenship right to vote in any State at any time—clearly an untenable proposition.

Also unquestioned is the right of interstate and foreign travel as one of the privileges of U.S. citizens protected against State abridgement by the Fourteenth Amendment.[7] There is, of course, no direct barrier to foreign travel in State laws requiring continuation of residency as a condition to voting therein. The assertion is made, however, that losing one's vote is an unconstitutional burden upon the protected right to travel.

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[5] In passing, if the present bill were confined to the matter of eliminating burdensome absentee voting procedures in federal elections imposed by a State upon its own citizens, these views would be addressed to issues of policy rather than Constitutional power.

[6] *Twining* v. *New Jersey*, 211 U.S. 78, 97 (1908); *In re Quarles*, 158 U.S. 532, 535 (1895).

[7] *Dunn* v. *Blumstein*, 405 U.S. 330 (1972); *Kent* v. *Dulles*, 357 U.S. 116, 127 (1958).

Foreign or interstate travel does not require an abandonment of a domestic domicile unless that be the free choice of the traveler. If an overseas citizen loses his right to vote in a particular State by abandoning his residence therein, the cause of his loss is not State action. It is a personal decision to forfeit his State citizenship, the consequences of which are not forbidden by the Privileges and Immunities Clause of the Fourteenth Amendment. Moreover, the traveler, in the case of interstate migration, is free to establish a new residence in his State of destination and to vote therein. Any durational bar to such voting in federal elections *in the State of destination* in which residency has been established is subject to federal supervision; but that is not to say that federal power can be asserted so as to compel voting in a State voluntarily abandoned by the traveler.[8]

Third, the reasoning of *Katzenbach* itself precludes acceptance of the proffered argument that the granting of the right to vote in a particular State to a non-resident thereof is appropriate legislation to enforce Fourteenth Amendment guarantees. The decision in that case is based upon an expansive construction of the words "appropriate legislation" in Section 5 of the Fourteenth Amendment. It was there held that the quoted words were to be given the same interpretation as that accorded the "necessary and proper" clause by Chief Justice Marshall in *McCulloch* v. *Maryland*, (17 U.S. 316 (1819)).

> Let the end be legitimate, let it be within the scope of the Constitution, and all means which are appropriate, which are plainly adapted to that end which are not prohibited but is consistent with the letter and spirit of the Constitution, is Constitutional.

It is evident that neither the "necessary and proper" nor the "appropriate legislation" clauses provides carte blanche authority for Congress to legislate without Constitutional restraints. It cannot with impunity disregard "the letter and the spirit of the Constitution."

It is our view that an attempt to confer federal voting rights within a State to non-residents thereof is plainly inconsistent with the letter and spirit of Article I, Section 2 and the Seventeenth Amendment.

Oregon v. *Mitchell* is more troublesome. That case considered the Constitutionality of the 1970 Amendments to the Voting Rights Act which, *inter alia*, (1) granted the right to vote in all elections, State and federal, to 18-year-old citizens of a State; (2) permitted a citizen of a State who moved to a new State more than thirty days prior to a Presidential election to vote for Presidential electors in the State to which he moved notwithstanding that State's durational residency requirements; and (3) permitted a citizen moving from a State within thirty days of a Presidential election to vote for Presidential electors in the State from which he moved.

[8] The "right to travel" cases focus primarily upon the restrictions which may not be imposed upon newly arrived citizens of a State. For example, unreasonable durational residency requirements upon new citizens of a State may not deprive such citizens of welfare benefits therein. It has been held that such a denial unconstitutionally burdens the right of interstate travel. But no case has held that a welfare mother who voluntarily cuts her ties with State A and moves to State B must be retained on the welfare roles of State A. Such reasoning, which is applied by the proponents of this legislation, actually burdens the right to travel, rather than fosters it.

Five members of the Court agreed, for differing reasons, that the Congress possessed the power to fix minimum age qualifications for voting in federal elections and that no such power exists with respect to State elections. The other Amendments with respect to voting for Presidential and Vice Presidential electors were sustained by an eight to one margin.

Since eight members of the Court concluded that a non-resident of a State could, under limited circumstances, vote for Presidential and Vice Presidential electors in the State of his former residence, we carry a heavy burden to demonstrate that such a conclusion is Constitutionally inappropriate in the case of elections for federal Representatives and Senators.

The late Justice Black, who announced the judgment of the Court in *Mitchell*, treated the matter summarily in one paragraph. He viewed the Voting Rights Amendment in question as a Congressional effort to establish uniform *durational* residency requirements and uniform procedures for *absentee* voting by State citizens in Presidential elections. His conclusion that Congress has ample authority in both such cases is eminently correct; but, as indicated at the outset, we are not concerned in this case with either of those issues. In short, Justice Black did not speak to the troublesome question presented by this legislation.

Mr. Justice Douglas wrote a separate opinion in *Mitchell* concurring with the judgment of the Court on the residency issue. He, like his brother Black, treated the issue solely as one of Congressional power to alter *durational* residency requirements. Although his analysis includes a "privileges and immunities" argument to buttress his "equal protection" rationale, it is a simple fact that Justice Douglas did not concern himself with the question, presented by this legislation, as to whether Congress could disregard residency requirements entirely.

Justices Brennan, White, and Marshall joined in a common opinion sustaining the residency Amendments of the Voting Rights Act of 1970. They, like Black and Douglas, viewed the issue as one of Congressional power to alter *durational* residency requirements. Unlike Black and Douglas, however, these Justices found Congressional authority to alter such durational residency rules in Presidential elections in the Constitutional right of citizens to travel interstate. Such a right, the Justices argued, could be secured by appropriate Congressional legislation to "eliminate an unnecessary burden on the right of interstate migration." (Mitchell, page 239)

Once again, however, the Justices did not address the issue before use. Their focus was upon State durational residency requirements. We are here presented with a different question.

Justice Stewart, with whom Chief Justice Burger and Justice Blackmun joined on this issue, in contrast with his colleagues Black and Douglas, gave extended consideration to the residency question.

Relying primarily upon the *Slaughter-House Cases*, 83 U.S. 36 (1873), Justice Stewart bottomed his agreement that it was well within the power of Congress to modify *durational* residency requirements upon the right of interstate travel as a protected privilege of national citizenship. In the course of his opinion, Justice Stewart ad-

vanced the suggestion that the power in Congress to protect the right of all U.S. citizens to vote for Presidential electors was not limited to that office. ". . . [N]othing in the Constitution prevents Congress from protecting those who have moved from one State to another from disenfranchisement in any federal election, whether Congressional or Presidential." But this suggestion must be read in the context in which it was advanced. Justice Stewart was addressing himself to *durational* residency requirements only.

In summary, then, it is fair to conclude that all of the Justices, including Harlan in dissent, treated the 1970 Amendments to the Voting Rights Act as modifying the *durational* residency requirements of State laws affecting the right to vote for Presidential and Vice Presidential electors. No separate consideration was given by any of the Justices to the implications of Section 202(e) of the Voting Rights Act allowing a citizen to vote in the State of his former residence.

It is understandable that the Justices focused upon durational residency requirements, rather than the Constitutionality of permitting citizens to vote in a State in which they no longer maintained a residence, since the Congressional findings supporting the enactment of the Voting Rights Act referred to durational residency requirements only.

Section 202 of the Act states:

> (a) The Congress hereby finds that the imposition and application of the durational residency requirement as a precondition to voting for the offices of President and Vice President * * * operates to deny various Constitutionally protected rights.
>
> (b) Upon the basis of these findings, Congress declares that * * * it is necessary (1) to completely abolish the durational residency requirement as a precondition to voting for President and Vice President * * *.

Support for our conclusion that *Oregon* v. *Mitchell* holds only that Congress acted within its power in abolishing durational residency requirements for voting for President and Vice President, and may not properly be cited as authority for Congress to abolish *all* residency requirements in *all* federal elections, can be found on an additional ground as well.

In *Mitchell*, the issue was the right to vote for Presidential and Vice Presidential electors. The Constitution does not expressly limit the right to vote for such electors to the people of the several States as in the case of Congressional and Senatorial electors.[9] Even so, when a right to vote for *Presidential* electors was granted to citizens of the District of Columbia, non-residents in any State, it was necessary to amend the Constitution to do so. *A fortiori*, a right to vote in Congressional and Senatorial elections by non-residents in any State would seem to require a Constitutional Amendment.

[9] Compare U.S. Constitution, Art. I, sec. 2 and Amendment XVII with Art. II, sec. 1, cl. 2, regarding the selection of Presidential electors. The Constitution therein merely provides that "Each State shall appoint, in such Manner as the Legislature thereof may direct . . ." its Presidential electors. Whether the term "each State" has a significantly different connotation, with distinct Constitutional requirements, from "by the People . . . of each State" is a question apart from that addressed in these views. Suffice that there would seem to be no explicit Constitutional enunciation of whom shall be such electors and whom shall be the voters choosing them, and for that reason these comments focus solely upon an analysis of the Constitutional infirmity of the Overseas Citizens Voting Rights Act as it relates to congressional elections.

A final argument needs to be considered. Mr. Justice Black, in *Mitchell*, stated, at page 124, "I would hold, as have a long line of decisions in this Court, that Congress has ultimate supervisory power over Congressional elections." In a footnote (at page 124) he justified this conclusion as follows. ". . . [I]nherent in the very concept of a supreme national government with national officers is a residual power in Congress to insure that those officers represent their national constituency as responsively as possible. This power arises from the nature of our Constitutional system of government and from the Necessary and Proper Clause." But Justice Black later qualified this sweeping claim of ultimate supervisory power by recognizing, as he must, that Congress could not by legislation repeal other provisions of the Constitution in attempting to regulate federal elections. (*Oregon* v. *Mitchell*, page 128) This "inherent" authority of Congress over federal elections, therefore, is not an independent, unlimited source of power. It is merely a restatement of Congressional power under Article I, Section 4 and the Necessary and Proper Clause.

For all of the foregoing reasons we are satisfied that Congress may not grant the right to vote in all federal elections to non-residents of the State in which their vote is to be cast. The objectives of this legislation may be laudable. As a matter of policy, participation by all U.S. citizens, wherever situated, in the selection of federal representatives may be wise; but good policy is not in itself a source of Constitutional power. In an effort to effectuate a salutary policy, this legislation exceeds Constitutional limits. Accordingly, a "no" vote on passage of the bill is required.

CHARLES E. WIGGINS.
SAMUEL L. DEVINE.
MARJORIE S. HOLT.
W. HENSON MOORE.

○

Union Calendar No. 320

94TH CONGRESS
1ST SESSION

S. 95

[Report No. 94-649]

IN THE HOUSE OF REPRESENTATIVES

MAY 19, 1975

Referred to the Committee on House Administration

NOVEMBER 11, 1975

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in italic]

AN ACT

To guarantee the constitutional right to vote and to provide uniform procedures for absentee voting in Federal elections in the case of citizens outside the United States.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, ~~That this Act may be cited as the "Overseas Citizens Voting Rights Act of 1975".~~

~~CONGRESSIONAL FINDINGS AND DECLARATIONS~~

~~SEC. 2. (a) The Congress hereby finds that in the case of United States citizens outside the United States—~~

~~(1) State and local residency and domicile requirements are applied so as to restrict or precondition the right of such citizens to vote in Federal elections;~~

(2) State and local election laws are applied to such citizens so as to deny them sufficient opportunities for absentee registration and balloting in Federal elections;

(3) State and local election laws are applied in Federal elections so as to discriminate against such citizens who are not employees of a Federal or State Government agency, or who are not dependents of such employees; and

(4) Federal, State, and local tax laws are applied in some cases so as to give rise to Federal, State, and local tax liability for such citizens solely on the basis of their voting in Federal elections in a State, thereby discouraging such citizens from exercising the right to vote in Federal elections;

(b) The Congress further finds that the foregoing conditions—

(1) deny or abridge the inherent constitutional right of citizens to vote in Federal elections;

(2) deny or abridge the inherent constitutional right of citizens to enjoy their free movement to and from the United States;

(3) deny or abridge the privileges and immunities guaranteed under the Constitution to citizens of the United States and to the citizens of each State;

(4) in some instances have the impermissible pur-

pose or effect of denying citizens the right to vote in Federal elections because of the method in which they may vote;

(5) have the effect of denying to citizens the equality of civil rights and due process and equal protection of the laws that are guaranteed to them under the fourteenth amendment to the Constitution; and

(6) do not bear a reasonable relationship to any compelling State interest in the conduct of Federal elections.

(c) Upon the basis of these findings, Congress declares that in order to secure, protect, and enforce the constitutional rights of citizens outside the United States it is necessary—

(1) to require the uniform application of State and local residency and domicile requirements in a manner that is plainly adapted to secure, protect, and enforce the right of such citizens to vote in Federal elections;

(2) to establish uniform standards for absentee registration and balloting by such citizens in Federal elections;

(3) to eliminate discrimination, in voting in Federal elections, against such citizens who are not employees of a Federal or State Government agency, and who are not dependents of such employees; and

(4) to require that Federal, State, and local tax

laws be applied so as not to give rise to Federal, State, and local tax liability for such citizens solely on the basis of their voting in Federal elections in a State.

DEFINITIONS

SEC. 3. For the purposes of this Act, the term—

(1) "Federal election" means any general, special, or primary election held solely or in part for the purpose of selecting, nominating, or electing any candidate for the office of President, Vice President, Presidential elector, Member of the United States Senate, Member of the United States House of Representatives, Delegate from the District of Columbia, Resident Commissioner of the Commonwealth of Puerto Rico, Delegate from Guam, or Delegate from the Virgin Islands;

(2) "State" means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, and the Virgin Islands;

(3) "United States" includes the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, and the Virgin Islands, but does not include American Samoa, the Canal Zone, the Trust Territory of the Pacific Islands, or any other territory or possession of the United States; and

(4) "citizen outside the United States" means a citizen of the United States residing outside the United

States whose intent to return to his State and election district of last domicile may be uncertain, but who does intend to retain such State and election district as his voting residence and domicile for purposes of voting in Federal elections and has not established a domicile in any other State or any other territory or possession of the United States, and who has a valid Passport or Card of Identity and Registration issued under the authority of the Secretary of State.

RIGHT OF CITIZENS RESIDING OVERSEAS TO VOTE IN FEDERAL ELECTIONS

SEC. 4. No citizen outside the United States shall be denied the right to register for, and to vote by, an absentee ballot in any State, or election district of a State, in any Federal election solely because at the time of such election he does not have a place of abode or other address in such State or district, and his intent to return to such State or district may be uncertain, if—

(1) he was last domiciled in such State or district prior to his departure from the United States;

(2) he has complied with all applicable State or district qualifications and requirements concerning registration for, and voting by, absentee ballots (other than any qualification or requirement which is inconsistent with this Act);

~~(3) he intends to retain such State or district as his voting residence and voting domicile for purposes of voting in Federal elections;~~

~~(4) he does not maintain a domicile, and is not registered to vote and is not voting in any other State or election district of a State or territory or in any territory or possession of the United States; and~~

~~(5) he has a valid Passport or Card of Identity and Registration issued under the authority of the Secretary of State.~~

~~ABSENTEE BALLOTS FOR FEDERAL ELECTIONS~~

~~SEC. 5. (a) Each State shall provide by law for the registration or other means of qualification of all citizens outside the United States and entitled to vote in a Federal election in such State pursuant to section 4 who apply, not later than thirty days immediately prior to any such election, to vote in such election.~~

~~(b) Each State shall provide by law for the casting of absentee ballots for Federal elections by all citizens outside the United States who—~~

~~(1) are entitled to vote in such State pursuant to section 4;~~

~~(2) have registered or otherwise qualified to vote under section 5 (a);~~

~~(3) have submitted properly completed applications for such ballots not later than seven days immediately prior to such election; and~~

~~(4) have returned such ballots to the appropriate election official of such State not later than the time of closing of the polls in such State on the day of such election.~~

~~(c) In the case of any such properly completed application for an absentee ballot received by a State or election district, the appropriate election official of such State or district shall as promptly as possible, and in any event, no later than—~~

~~(1) seven days after receipt of such a properly completed application, or~~

~~(2) seven days after the date the absentee ballots for such election have become available to such official,~~

~~whichever date is later, mail the~~ following by airmail ~~to such citizen:~~

~~(A) an absentee ballot;~~

~~(B) instructions concerning voting procedures; and~~

~~(C) an airmail envelope for the mailing of such ballot.~~

~~(d) Such absentee ballots, envelopes, and voting instructions provided pursuant to this Act and transmitted to citizens~~

outside the United States, whether individually or in bulk, shall be free of postage to the sender including airmail postage, in the United States mail.

(c) Ballots executed by citizens outside the United States shall be returned by priority airmail wherever practicable, and such mail may be segregated from other forms of mail and placed in special bags marked with special tags printed and distributed by the Postal Service for this purpose.

ENFORCEMENT

SEC. 6. (a) Whenever the Attorney General has reason to believe that a State or election district undertakes to deny the right to register or vote in any election in violation of section 4 or fails to take any action required by section 5, he may institute for the United States, or in the name of the United States, an action in a district court of the United States, in accordance with sections 1391 through 1393 of title 28, United States Code, for a restraining order, a preliminary or permanent injunction, or such other order as he deems appropriate.

(b) Whoever shall deprive or attempt to deprive any person of any right secured by this Act shall be fined not more than $5,000, or imprisoned not more than five years, or both.

(c) Whoever knowingly or willfully gives false information as to his name, address, or period of residence for the

purpose of establishing his eligibility to register, qualify, or vote under this Act, or conspires with another individual for the purpose of encouraging the giving of false information in order to establish the eligibility of any individual to register, qualify, or vote under this Act, or pays or offers to pay or accepts payment either for registration to vote or for voting shall be fined not more than $10,000, or imprisoned not more than five years, or both.

SEVERABILITY

SEC. 7. If any provision of this Act, or the application thereof to any person or circumstance, is held invalid, the validity of the remainder of the Act, and the application of such provisions to other persons or circumstances, shall not be affected.

EFFECT ON CERTAIN OTHER LAWS

SEC. 8. (a) Nothing in this Act shall—

(1) be deemed to require registration in any State or election district in which registration is not required as a precondition to voting in any Federal election, or

(2) prevent any State or election district from adopting or following any voting practice which is less restrictive than the practices prescribed by this Act.

(b) The exercise of any right to register or vote in Federal elections by any citizen outside the United States, and the retention by him of any State or district as his voting

~~residence or voting domicile solely for this purpose, shall not affect the determination of his place of residence or domicile for purposes of any tax imposed under Federal, State, or local law.~~

~~AUTHORIZATION OF APPROPRIATIONS~~

~~SEC. 9. (a) Section 2401 (c) of title 39, United States Code (relating to appropriations for the Postal Service) is amended—~~

~~(1) by inserting after "title" a comma and the following: "the Overseas Citizens Voting Rights Act of 1975,"; and~~

~~(2) by striking out "Act." at the end and inserting in lieu thereof "Acts.".~~

~~(b) Section 3627 of title 39, United States Code (relating to adjustment of Postal Service rates) is amended by striking out "or under the Federal Voting Assistance Act of 1955" and inserting in lieu thereof "under the Federal Voting Assistance Act of 1955, or under the Overseas Citizens Voting Rights Act of 1975,".~~

~~EFFECTIVE DATE~~

~~SEC. 10. The provisions of this Act shall take effect with respect to any Federal election held on or after January 1, 1976.~~

That this Act may be cited as the "Overseas Citizens Voting Rights Act of 1975".

DEFINITIONS

SEC. 2. For the purposes of this Act, the term—

(1) "Federal election" means any general, special, or primary election held solely or in part for the purpose of selecting, nominating, or electing any candidate for the office of President, Vice President, Presidential elector, Member of the United States Senate, Member of the United States House of Representatives, Delegate from the District of Columbia, Resident Commissioner of the Commonwealth of Puerto Rico, Delegate from Guam, or Delegate from the Virgin Islands;

(2) "State" means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, and the Virgin Islands; and

(3) "United States" includes the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, and the Virgin Islands, but does not include American Samoa, the Canal Zone, the Trust Territory of the Pacific Islands, or any other territory or possession of the United States.

RIGHT OF CITIZENS RESIDING OVERSEAS TO VOTE IN FEDERAL ELECTIONS

SEC. 3. Each citizen residing outside the United States shall have the right to register absentee for, and to vote by, an absentee ballot in any Federal election in the State, or

any election district of such State, in which he was last domiciled immediately prior to his departure from the United States and in which he could have met all qualifications (except any qualification relating to minimum voting age) to vote in Federal elections under any present law, even though while residing outside the United States he does not have a place of abode or other address in such State or district, and his intent to return to such State or district may be uncertain, if—

(1) he has complied with all applicable State or district qualifications and requirements, which are consistent with this Act, concerning absentee registration for, and voting by, absentee ballots;

(2) he does not maintain a domicile, is not registered to vote, and is not voting in any other State or election district of a State or territory or in any territory or possession of the United States; and

(3) he has a valid passport or card of identity and registration issued under the authority of the Secretary of State.

ABSENTEE REGISTRATION AND BALLOTS FOR FEDERAL ELECTIONS

SEC. 4. (a) Each State shall provide by law for the absentee registration or other means of absentee qualification of all citizens residing outside the United States and entitled to vote in a Federal election in such State pursuant to section 3 whose application to vote in such election is received by the appropriate election official of such State not later than thirty days immediately prior to any such election.

(b) Each State shall provide by law for the casting of absentee ballots for Federal elections by all citizens residing outside the United States who—

(1) are entitled to vote in such State pursuant to section 3;

(2) have registered or otherwise qualified to vote under subsection (a); and

(3) have returned such ballots to the appropriate election official of such State in sufficient time so that such ballot is received by such election official not later than the time of closing of the polls in such State on the day of such election.

ENFORCEMENT

SEC. 5. (a) Whenever the Attorney General has reason to believe that a State or election district undertakes to deny the right to register or vote in any election in violation of section 3 or fails to take any action required by section 4, he may institute for the United States, or in the name of the United States, an action in a district court of the United States, in accordance with sections 1391 through 1393 of title 28, United States Code, for a restraining order, a

preliminary or permanent injunction, or such other order as he deems appropriate.

(b) Whoever knowingly or willfully shall deprive or attempt to deprive any person of any right secured by this Act shall be fined not more than $5,000, or imprisoned not more than five years, or both.

(c) Whoever knowingly or willfully gives false information as to his name, address, or period of residence for the purpose of establishing his eligibility to register, qualify, or vote under this Act, or conspires with another individual for the purpose of encouraging the giving of false information in order to establish the eligibility of any individual to register, qualify, or vote under this Act, or pays, or offers to pay, or accepts payment either for registration to vote or for voting shall be fined not more than $5,000, or imprisoned not more than five years, or both.

SEVERABILITY

SEC. 6. If any provision of this Act is held invalid, the validity of the remainder of the Act shall not be affected.

EFFECT ON CERTAIN OTHER LAWS

SEC. 7. Nothing in this Act shall—

(1) be deemed to require registration in any State or election district in which registration is not required as a precondition to voting in any Federal election; or

(2) prevent any State or election district from adopting or following any voting practice which is less restrictive than the practices prescribed by this Act.

EFFECTIVE DATE

SEC. 8. The provisions of the Act shall apply with respect to any Federal election held on or after January 1, 1976.

Union Calendar No. 320

94TH CONGRESS
1ST SESSION

S. 95

[Report No. 94–649]

AN ACT

To guarantee the constitutional right to vote and to provide uniform procedures for absentee voting in Federal elections in the case of citizens outside the United States.

MAY 19, 1975

Referred to the Committee on House Administration

NOVEMBER 11, 1975

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

NOV 26 1975

THE WHITE HOUSE

WASHINGTON

November 26, 1975

MEMORANDUM FOR: PHIL BUCHEN

FROM: MAX FRIEDERSDORF M.F.

I am attaching an analysis of S. 95 as reported by the House Administration Committee and now pending before the full House.

The bill has passed the Senate without opposition.

OMB has given me an administration position indicating opposition due to Constitutional questions raised by the Justice Department during hearings on this bill.

The legislation would affect 750,000 Americans now living overseas exclusive of Federal employees and military.

There has been a ten year effort to get this bill passed and it has very wide bipartisan support on the Hill.

The Justice Department objection is based on a Constitutional question involving state voting rights, but I am advised that state voting rights prerogatives would be protected under the bill. Under the provisions of the bill a U.S. citizen would be permitted to vote in the last state of domicile in a federal election if not domiciled in another state.

The bill would grant a U.S. citizen living overseas the same rights to vote in a federal election as our milibary and federal employees receive at the same time.

The importance of altering our position on this bill is urgent because I believe the legislation would die if the President indicates strong opposition or indicates a veto.

I would appreciate it if you could examine this analysis and if possible I would like to change the administration position to one of support, acknowledging there maybe a Constitutional test needed later on.

I am also attaching a speech made by Senator Goldwater rebutting critics of this legislation.

cc: Jim Lynn, Jim Cannon, Jack Marsh

ANALYSIS OF S. 95 AS REPORTED BY HOUSE ADMINISTRATION COMMITTEE NOVEMBER 11, 1975

General Purpose

The general purpose of the bill is twofold:

(1) To assure the right of a U.S. citizen residing outside the United States to vote in Federal elections in his State of last domicile (and in which he could have qualified to vote in Federal elections, except for minimum voting age, under any present law); and

(2) To adopt uniform absentee registration and voting procedures covering these overseas citizens in Federal elections.

The bill is designed to extend to private citizens overseas essentially the same ability to register and vote absentee in federal elections as is now enjoyed by Federal government employees and their dependents.

Section-by-Section Analysis

Section 1 - Title of Bill

This section cites the Act as the Overseas Citizens Voting Rights Act of 1975.

Section 2 - Definitions

This section contains the following definitions:

(1) "Federal election" means any presidential or congressional election, including elections for Delegate from the District of Columbia, Guam and the Virgin Islands and Resident Commissioner of Puerto Rico.

(2) "State" and (3) "United States" include the several States, the District of Columbia, Puerto Rico, Guam and the Virgin Islands, but do not include American Samoa, the Canal Zone, the Trust Territory of the Pacific Islands, or any other territory or possession of the United States.

For purposes of S. 95, therefore, citizens would be regarded as "residing outside the United States" if they reside in a foreign country, American Samoa, the Canal Zone, the Trust Territory of the Pacific Islands, or any other territory or possession of the United States (except Puerto Rico, Guam and the Virgin Islands).

The following examples illustrate the operation of these definitions (assuming the overseas citizen met the other requirements for voting under S. 95):

(i) The U.S. citizen whose last domicile is the State of New York and is now residing in France would be able to continue voting in presidential and congressional elections at his last election district in the State of New York.

(ii) The U.S. citizen whose last domicile was the State of New York and is now residing in Puerto Rico, Guam or the Virgin Islands would not be granted the right to continue voting in presidential and congressional elections in New York under this bill (although New York would remain free to confer this right under State law).

(iii) The U.S. citizen whose last domicile was the State of New York and is now residing in American Samoa, the Canal Zone, or the Trust Territory of the Pacific Islands would be granted the right under this bill to continue voting in presidential and congressional elections in the State of New York, since none of these territories and possessions has a presidential or congressional election.

(iv) The U.S. citizen whose last domicile was Puerto Rico, Guam or the Virgin Islands and is now residing in France would be granted the right to continue voting for Resident Commissioner in Puerto Rico or Delegate from Guam or the Virgin Islands, as the case may be.

(v) The U.S. citizen whose last domicile was Puerto Rico, Guam or the Virgin Islands and is now residing in New York would not be granted any additional voting rights by this bill, and would be subject to the laws of the State of New York and Puerto Rico, Guam or the Virgin Islands, as the case may be, to determine his place of voting.

Section 3 - Right of Citizens Overseas to Vote in Federal Elections

This section accomplishes the first general purpose of the bill -- assuring the substantive right of the citizen residing outside the United States to register and vote absentee in his State of last domicile (and in which he could have met all qualifications, except for minimum voting age, to vote in Federal elections under any present law).

Comment: The wording of the section assures that the overseas citizen would be able to vote in Federal elections under this bill in only one State -- his State of last domicile.

Since the concept of domicile may not be well-defined in some States, the section further requires that the overseas citizen's ties to the State of last domicile must have been sufficient to have enabled him to vote in Federal elections under present law.

The exception for minimum voting age assures that a child who is below voting age at the time of his departure from the United States would be able to vote under this bill in his State of last domicile (generally presumed to be that of his parents) upon reaching voting age overseas.

The reference to "any present law" assures that an overseas citizen would be entitled to rely on present voting laws in proving that he would have been eligible to vote in Federal elections in his State of last domicile prior to his departure from the United States.

Exercise of this substantive right to register and vote absentee is conditioned upon the additional requirements that --

(1) the overseas citizen has complied with all applicable State or district qualifications and requirements consistent with this bill concerning absentee registration and voting;

(2) he does not maintain a domicile, and is not registered to vote, and is not voting in, any other State (as defined in the bill) or election district of a State or in any territory or possession of the United States; and

(3) he has a valid passport or Card of Identity and Registration issued under the authority of the Secretary of State.

This substantive right would be assured the overseas citizen even though while residing outside the United States he does not have a place of abode or other address in the State or district, and his intent to return to the State or district may be uncertain.

Comment: This qualification is included in the bill because many States impose rules which require a voter's actual presence, or maintenance of a home or other abode in the State, or raise doubts on voting eligibility of the overseas private citizen when the date of his return is uncertain.

It is often difficult for an overseas private citizen to assert, without risk of committing perjury, that he has a specific intent to return to his State of last domicile. The average businessman or missionary, for example, often has no assurance that he will be transferred back to the same State from which he was sent overseas by his employer.

Section 4 - Absentee Registration and Ballots for Federal Elections

This section accomplishes the second general purpose of the bill -- assuring that the States adopt uniform absentee registration and voting procedures covering overseas citizens in Federal elections.

Section 4(a) requires each State to provide by law (e.g., statute, regulation or ruling) for absentee registration or other means of absentee qualification of all citizens residing outside the United States and entitled to vote in a Federal election in such State under section 3 who apply not later than 30 days immediately prior to the election.

> Comment: This subsection would, in effect, require those States (about 22) which now provide absentee registration procedures only for government personnel and dependents to provide similar procedures for overseas private citizens. The 30-day registration deadline under S. 95 corresponds to the 30-day qualification rules which are prescribed in section 202(d) of the Voting Rights Act Amendments of 1970 and in Dunn v. Blumstein, 405 U.S. 330 (1972) with respect to durational residency requirements.

> Note: The Senate Report on S. 95 puts the overseas citizen on notice that if he makes his application to register at the last minute, the chances are lessened that the local election official will have sufficient time to confirm the applicant's claim of last domicile in the State, and compliance with the other conditions set forth in section 3.

Section 4(b) requires each State to provide by law (e.g., statute, regulation, ruling) for the casting of absentee ballots for Federal elections by overseas citizens who --

(1) are entitled to vote in Federal elections in the State under the substantive tests of section 3;

(2) have registered or otherwise qualified to vote under section 4(a); and

(3) have returned their ballots to the appropriate election official of the State in sufficient time that the ballot is received by the election official not later than the time of closing of the polls on election day.

Comment: The Senate Report on S. 95 puts the overseas citizen on notice that if he makes his application for an absentee ballot at the last minute, the chances are lessened that the local election official will have sufficient time to confirm the applicant's registration or other qualifications to vote under the bill as provided in sections 3 and 4(a).

Section 5 - Enforcement

This section provides for three enforcement procedures.

(a) authority for the Attorney General to seek injunctive relief against any State or election district that fails to comply with the provisions of the bill;

(b) criminal penalties of up to $5,000 fine and five years' imprisonment for knowingly or willfully depriving a person of any right secured by the bill; and

(c) criminal penalties of up to $5,000 fine and five years' imprisonment for knowingly or willfully (i) giving (or conspirin to give) false information as to name, address or period of

residence for purposes of establishing eligibility to register, qualify or vote under the bill, or (ii) paying or offering to pay, or accepting payment for, registration or voting under the bill.

Section 6 - Severability

This section contains a standard severability clause which would save the remainder of the bill in the unlikely event any provision of the bill were held invalid by the courts.

Section 7 - Effect on Certain Other Laws

This section, inserted in the Senate bill at the request of Senator Goldwater, constitutes a "saving provision" to eliminate any possibility this bill could be interpreted --

(1) to require registration in any State in which registration is not now required for Federal elections; or

(2) to prevent any State or election district from adopting or following any voting practice less restrictive than those prescribed by the bill.

Comment: Senator Goldwater secured adoption of a similar saving provision in section 202(g) of the Voting Rights Act Amendments of 1970.

Section 8 - Effective Date

This section sets an effective date of January 1, 1976.

Comment: It is important to retain the January 1, 1976 effective date so that overseas citizens will be able to vote in all of the presidential and congressional primary elections in 1976, as well as in the general election. Local election officials should have no difficulty in preparing the necessary voting materials for this purpose if the bill is enacted before the end of 1975, since the first presidential primary does not occur until February 1976.

fication in either the threatened or endangered classes.

It might also be possible to amend the Act, giving a qualified but protected status to the species under study. This qualified status could be limited to a reasonably adequate study period, (such as, two years), or might protect the studied species on Federal lands, or on certain classes of Federal lands only. This alternative however, also raises the controversial issue of competing State and Federal powers over the management of wild animals, an issue which Mr. Widman of this office has discussed with your staff. It would appear desirable to have any potential legislative solution to this controversy developed before introducing an amendment to extend the coverage of the Act.

In regard to the specific problem of the grizzly bear, we have checked the matter with the Department of the Interior. As you know, during the court proceeding that Department agreed to initiate an independent study of the grizzly bear's status. We are advised that the final report of that study has now been submitted to Interior, and that Interior is planning to take appropriate action on the grizzly bear in the immediate future.

While the Council has no immediate suggestions for resolving all these issues, we would be happy to review any proposal which you might develop.

Sincerely,

RUSSELL W. PETERSON,
Chairman.

COUNCIL ON ENVIRONMENTAL QUALITY,
Washington, D.C., February 3, 1975.

Hon. ROGERS C. B. MORTON,
Secretary of the Interior,
Washington, D.C.

DEAR MR. SECRETARY: On December 30, 1974, notice of rule making appeared in the Federal Register regarding the threatened kangaroos. Similarly, on January 2, 1975, notice of proposed rule making appeared in the Register regarding the grizzly bear. This letter represents the Council's comments on those two actions.

We commend the Department of the Interior for taking these two actions. We realize that both have been highly controversial and there have been numerous delays and false starts. With these two actions, the Department is taking its first steps in public implementation of the Endangered Species Act of 1973, which was an important component of the Administration's Environmental Program. As a consequence, these two actions take on considerable significance as potential precedents.

In that regard, elements of the actions concern us greatly, particularly in light of the intent and substantive provisions of the Act.

Section 4(d) of the Endangered Species Act requires the Secretary of the Interior to promulgate "such regulations as he deems necessary and advisable *to provide for the conservation of such (threatened) species.*" (Emphasis added). Conservation is defined, *inter alia*, as ". . . to use . . . all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to this chapter (the Act) are no longer necessary. Such methods and procedures included . . . research, census, law enforcement, habitat acquisition . . . and, *in the extraordinary case where population pressures within a given ecosystem cannot be otherwise relieved, may include regulated taking*" (16 U.S.C. 1532) (Emphasis added).

This language clearly restricts the use of regulated taking to the "extraordinary case" where population pressures cannot be otherwise relieved. In the absence of facts which clearly establish that the population pressures cannot be relieved in any other way, there would appear to be no basis for legally valid regulations on regulated taking. Also, the principal language establishes the goal of other regulations, to be promulgated, as the restoration of species to a non-threatened or non-endangered status.

In this regard, the regulations promulgated regarding the three species of kangaroo are not consistent with the letter or the spirit of the Endangered Species Act of 1973. The regulations purport to allow importation of taken kangaroos when (1) a sustained yield program is established that (2) is not detrimental to the survival of the species. Neither the "sustained yield program" nor the "not detrimental" test meet the statutory criterion, showing that population pressures cannot be otherwise relieved. Thus, we believe that the regulations should be revised or interpreted so as to be in keeping with the mandate of the Act.

The rules submitted with the proposed listing of the grizzly bear are also troublesome. One portion of the proposal indicates that de facto regulations will be promulgated which allow the taking (mostly by sport hunting) of up to 25 bears per year in the Bob Marshall Ecosystem. Again, in our view, the Secretary must first fulfill the statutory burden by showing that the proposed taking by hunting will be the "extraordinary case" which follows substantial attempts to relieve population pressures by other means. In our view, this test, again, has not been met and we believe that the regulations and proposal for final action should be revised accordingly.

One other portion of the proposed regulations concerning grizzly bears is also of special concern to us. The regulations pertaining to listing of grizzlies in the Yellowstone ecosystem state that depredating bears may be taken. Similarly, the de facto regulations for the Bob Marshall Ecosystem state that nuisance (including depredating) bears may be taken.

We feel that the regulations in both cases should clearly differentiate between bears causing depredations on public and on private lands. On public lands, no threatened grizzly bears should be taken except for clear reasons of human safety.

Grizzly bears, and in fact all endangered and threatened species, are valued highly by the people of this nation. Public lands are lands held in trust for all Americans, not just one or another special interest group.

Certain uses of these lands require specific regulation and are a privilege, not a right. Grazing and ranching are such uses. Thus, in determining which of such discretionary uses may be allowed or may have priority, the public land manager must consider the impact of the proposed use on other public uses or values of those lands. Where there are public values, particularly wildlife such as the threatened grizzly on public lands, it may be logically argued that if a livestock owner wishes the privilege of grazing domestic livestock on the same area, he must accept some losses from the wildlife as part of the cost of doing his business on that public land. In such a case the restoration of the threatened species should be recognized as having a greater public value than the economic return to the affected rancher. Considering this, we believe that taking of a threatened species committing depredations, or otherwise being a "nuisance," on public lands should be prohibited in any case not involving direct threats to human safety. In fact, we suggest that the intent of Section 7 (16 U.S.C. 1536) of the Act, inter alia, to prohibit taking (killing) of endangered or threatened species on lands belonging to all of the American people, in any situation where it cannot be shown that such taking represents the "extraordinary case where population pressures . . . cannot be otherwise relieved."

Again, we are aware of the deep commitment with which the personnel in the Department of the Interior have approached the preservation of endangered and threatened species. Implementation of this law will undoubtedly aid in protecting both endangered species and environmental quality throughout the U.S. and the world. In that regard, we hope our comments are helpful in further administration of the law and in achieving its objectives.

Sincerely,

RUSSELL W. PETERSON,
Chairman.

REBUTTAL TO CRITICS OF OVERSEAS VOTING LEGISLATION

Mr. GOLDWATER. Mr. President, it has been brought to my attention that some questions were raised recently at hearings by the House Subcommittee on Elections with respect to the constitutionality of legislation strengthening the voting rights of overseas citizens.

PRECEDENT OF 1970 LAW SUPPORTS FURTHER ACTION BY CONGRESS

Frankly, I cannot see any doubt at all about the constitutionality of the proposed law. It is a logical extension of a law on the same subject which I authored in 1970 and which was upheld as a valid exercise of Congress powers by the U.S. Supreme Court 6 months later.

This law is section 202 of the Voting Rights Act Amendments of 1970, which extended absentee registration and balloting rights to American citizens who were denied the right to vote because they were away from home on election day and were not allowed to register absentee or obtain absentee ballots. One of the stated purposes of the law, spelled out during Senate floor action on it, is the intent to facilitate the vote in Presidential elections for Americans outside the United States.

The law also struck down the durational waiting periods preventing Americans from voting for President and Vice President solely because they had made a change of households before the election. Section 202, in which these provisions were set forth, was upheld in *Oregon* v. *Mitchell*, 400 U.S. 112 (1970).

In overhauling State residence and absentee regulations in Presidential elections, Congress had relied upon at least four district grounds for the exercise of congressional authority. In the case of Oregon, the Supreme Court seized upon each of these justifications in holding for the validity of the statute.

First, section 202 rests upon Congress power to secure the rights inherent in national citizenship, which include the right to vote for Federal officers. Since these rights adhere to U.S. citizenship, rather than citizenship of a State, we acted to protect the rights under the necessary and proper clause of article I of the Constitution.

A related basis for congressional power was our design to protect the fundamental, national right of travel by a citizen.

A third basis of Congress authority that was asserted is our power to enforce

the privileges and immunities guaranteed to citizens of all the States. Here we were mindful of correcting the maze of conflicting State and local requirements applicable to Presidential elections which created a serious inequality of treatment among citizens of one State as compared with citizens of the other States.

Fourth, we viewed section 202 as an exercise of power under the 14th amendment. In this context, we were protecting against a discriminatory classification in voting made between citizens who were able to be physically present at the time of registration or voting and those who could not be present in person. Also, we considered the unfair classification made between citizens who were new residents and those who were longtime residents of a State or locality.

In light of similar laws in many of the States which indicated that States could satisfy their legitimate interests by the rules legislated in section 202, we in Congress could not find any compelling reason why a State should condition the right to vote for President on the duration of resident's physical presence or absence at the polls.

Eight members of the Supreme Court upheld Congress' power to adopt the uniform regulations of section 202. Justice Brennan, joined by Justices Marshall and White, rested his opinion squarely upon the "compelling interest" doctrine and Congress' power to enforce the 14th amendment by "eliminating an unnecessary burden on the right of interstate migration" (400 U.S., at 239).

Justice Douglas also upheld section 202 as a 14th amendment matter, but tied his opinion to section 1 of that amendment, the privileges and immunities clause.

Justice Stewart, jointed by Chief Justice Burger and Justice Blackmun, sustained section 202 on the ground of Congress' authority to protect and facilitate the exercise of privileges of U.S. citizenship under the Necessary and Proper Clause of Article I. He stated that the privilege of free travel, without loss of the right to vote, "finds its protection in the Federal Government and is national in character" (400 U.S., at 287).

Justice Black based his opinion sustaining section 202 on the final authority of Congress to make laws governing Federal elections and Congress' general powers under the Necessary and Proper Clause of Article I.

Only Justice Harlan believed section 202 was invalid on any ground.

The fact that the Court divided in choosing alternative grounds for upholding section 202 is argued by some as depriving the case of precedential weight. But what this restricted view overlooks is the fact that eight Members of the Court actually did unite on the principle that the jurisdiction of the States over matters normally considered as being within their primary domain is subject to the superior power of Congress to vindicate personal rights or privileges of citizenship which the Court has determined to be secured by the Constitution.

Moreover, Oregon clearly stands for the proposition that so long as Congress acts with a purpose of protecting these rights or privileges in a narrowly drawn manner, rather than with the purpose of passing general legislation over a State-reserved field, Congress possesses power to establish specific regulations attacking a particular problem in that field.

POWER OF CONGRESS RESTS ON WELL-SETTLED CASE LAW

Applying the above rules to the pending legislation on behalf of overseas citizens, I am confident Congress is on firm ground in proposing to expand the 1970 vote law to cover congressional as well as Presidential elections. The case law may be summarized as follows:

First. In the past 10 years there have been, at least eight Supreme Court decisions upsetting State and local election practices founded upon the principle of a strict judicial scrutiny under the 14th amendment of the State or local governmental objectives and methods. *Bullock* v. *Carter*, 405 U.S. 134, 144 (1972); *Dunn* v. *Blumstein*, 405 U.S. 330, 337 (1972); *Evans* v. *Cornman*, 398 U.S. 419, 424, 426 (1970); *Phoenix* v. *Kolodziejski*, 399 U.S. 204, 205 (1970); *Ciprian*o v. *City of Houma*, 395 U.S. 701, 704 (1969); *Kramer* v. *Union School District*, 395 U.S. 621, 628 (1969); *Harper* v. *Va. Board of Elections*, 383 U.S. 663, 670 (1966); and *Carrington* v. *Rash*, 380 U.S. 89 (1965).

Second. In at least three of the above cases, the Supreme Court has overturned State rules which were purported to be bona fide residence requirements.

In *Carrington* v. *Rash*, 380 U.S. 89 (1965), the Court overturned the use by Texas of an irrebuttable statutory presumption that excluded servicemen from the vote by classifying them as nonresidents.

In *Evans* v. *Cornman*, 398 U.S. 419 (1970), the Court struck down a Maryland statute which created a presumption that persons living on a Federal enclave within the State did not fulfill the residence requirement for voting in Maryland.

In *Dunn* v. *Blumstein*, 405 U.S. 330 (1970), the Court held unconstitutional the 1-year durational waiting period Tennessee had used as a precondition to voting in that State.

Ironically, Dunn, which overturned a State residence rule, is cited by opponents of the overseas voting bill for the proposition that such rules are immune from the reach of Congress. To the contrary, the Supreme Court observed in Dunn that:

> If it was not clear then [referring to 1965], it is certainly clear now that a more exacting test is required for any statute that "places a condition on the exercise of the right to vote." 405 U.S., at 337.

Thus, the Supreme Court has made it clear that the States may not use a bona fide residence rule in such a way that it could sweep an entire group of otherwise qualified U.S. citizens off the voting rolls, unless the restriction is proven necessary to promote a compelling State interest.

Third. The right to vote for national elective officers, including Members of Congress and Presidential electors, has been expressly recognized as a right directly secured to citizens by the Constitution.

Contrary to the blanket statement by opponents of overseas voting legislation that no Supreme Court opinions indicate the existence of any inherent constitutional right to vote in Federal elections, other than the lone opinion of Justice Black in Oregon, there are at least five Supreme Court decisions in which such a right has been specifically mentioned: *United States* v. *Classic*, 313 U.S. 299, 314, 315 (1941); *Twining* v. *New Jersey*, 211 U.S. 78, 97 (1908); *Wiley* v. *Sinkler*, 179 U.S. 58, 62 (1900); *In re Quarles*, 158 U.S. 532, 538 (1895); and *Ex parte Yarborough*, 110 U.S. 651, 663 (1884). (Also see the opinion of Justice Frankfurter in *United States* v. *Williams*, 341 U.S. 70, at 79 (1951).

In Twining, the Supreme Court plainly announced that:

> Among the rights and privileges of National citizenship recognized by this court [is] the . . . right to vote for National officers." 211 U.S., at 97.

Fourth. Opponents of overseas voting legislation argue that elections for Presidential electors may be State rather than Federal elections for constitutional purposes. This argument ignores the decision of *In re Quarles*, where the Supreme Court expressly stated that:

> Among the rights secured to citizens directly by the Constitution is "the right to vote for *presidential electors* or members of Congress." 158 U.S., at 535. (Emphasis added.)

These same critics mistakenly cite *Burroughs* v. *United States*, 290 U.S. 534 (1934), in support of their position. Burroughs specifically considers and rejects the very suggestion raised by the critics, holding that Presidential electors, "exercise Federal functions under, and discharge duties in virtue of authority conferred by, the Constitution of the United States." Id. at 545. Thus Burroughs actually can be cited as additional support for the power of Congress to legislate with respect to Presidential elections.

Fifth. Critics of overseas voting legislation assert that the liberty to travel abroad is seemingly not as absolute as the right of interstate travel. Again, the critics ignore the clear message of the Supreme Court.

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

The Court stated:

> "Freedom of movement across frontiers in either direction, and inside frontiers as well, was a part of our heritage. Travel abroad, like travel within the country, may be necessary for a livelihood. It may be as close to the heart of the individual as the choice of what he eats, or wears, or reads. Freedom of movement is basic in our scheme of values." 357 U.S. at 126.

Far from taking a narrower view of Congress power to secure the vote to travelers abroad, than of its comparable power with respect to interstate travelers, the Supreme Court has given a broad protection to foreign travel. In Aptheker against Secretary of State, the Court considered freedom of movement abroad to

be of such great importance that the Court held this personal liberty paramount to a substantial governmental interest in restricting travel based on grounds of national security, 378 U.S. 500, 505, 508 (1964).

LEGISLATION IS CONSISTENT WITH BASIC SCHEME OF REPRESENTATIVE GOVERNMENT

In summary, it is clear the proposed overseas voting legislation is constitutional. Its object is to protect and facilitate the right of almost 1 million U.S. citizens to vote in Federal elections. These citizens have a direct and substantial interest in decisions and policies acted upon by the public officials chosen in Federal elections, the President and Vice President and Members of Congress.

Action by Congress is required if overseas citizens are to be brought within the basic system of representative government. No single State can guarantee the franchise to all or most of these persons. In order to establish a uniform process by which all or most overseas citizens can enjoy an equal opportunity to vote in Federal elections, it is necessary for Congress to enact appropriate implementing legislation.

The specific procedures which Congress uses in the pending overseas voting bill are, in general, derived from section 202 of the Voting Rights Act Amendments of 1970, which in turn were drawn from the proven practice of the States themselves. In section 202 we made a finding that these practices were applied by many States with respect to some of their residents without significant fraud or administrative difficulty in their own elections, and in the overseas voting bill we again make the same finding.

If some of the States can use these practices successfully for purposes of voting, and determining residence for voting, by certain citizens from such State, such as absentee servicemen and women and their accompanying dependents, then surely we in Congress may properly find that there is no compelling reason why all States should not use the same practices for protecting the vote of citizens with at least an equal nexus with the particular State. Whatever the interest of the States in more narrowly defining residence for purposes of purely State, county, and municipal offices, there is no compelling need for using a stricter test in Federal elections than the one set forth in the pending legislation.

I would remind critics of the proposal that the bill is not open ended. It only applies to Federal elections. It only covers U.S. citizens who have a past nexus, a domicile, in the particular State where they are seeking to vote in Federal elections.

Moreover, the absentee citizen must comply with all applicable qualifications and valid procedural requirements of a State. Each State will retain full power to test whether an applicant for absentee registration or voting first, is of legal age; second, is incapacitated by reason of insanity; third, is disqualified as a convicted felon; fourth, meets the prescribed time and manner for making application; and fifth, is accurate or truthful in making statements pertinent to the application, such as a claim to being last domiciled in such State prior to departure from the United States.

Thus, Congress can act, consistent with the highest standards of our constitutional system, to establish uniform, national practices securing the right of Americans abroad to participate in the choice of Federal officers whose decisions and programs affect them directly and substantially.

NATIONAL AIR AND SPACE MUSEUM

Mr. MOSS. Mr. President, having recently been appointed to be a member of the Board of Regents of the Smithsonian Institution, I was disturbed to read an article on February 28 in the Washington Post indicating that the construction of the National Air and Space Museum is experiencing a cost overrun.

Michael Collins, the Director of the museum, has set the matter straight in a letter to the editor of the Post published on March 10.

I ask unanimous consent that Mr. Collins' letter be printed in the RECORD.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

[Letter to the editor, Washington Post, Mar. 10, 1975]

MUSEUM'S COST

Your February 26 front page story concerning construction cost overruns states that the National Air and Space Museum will have a 6% overrun. While it may seem a small point, those of us working on this project are proud of the fact that there will be no overrun, in terms of either time or money. The building will be ready for its public opening in July 1976, as originally planned, and it will cost no more than its original $41.9-million price tag.

MICHAEL COLLINS,
Director,
National Air and Space Museum.

Washington.

Mr. MOSS. Mr. President, at my request, Mike Collins has provided me with background information on the status of the National Air and Space Museum construction. So that the record may be completely clear in this regard, I ask unanimous consent that the background statement be printed in the RECORD.

This major and important construction project, even though delayed for many years, is not overrunning.

There being no objection, the statement was ordered to be printed in the RECORD, as follows:

STATEMENT ON PURPORTED COST OVERRUN ON THE NATIONAL AIR AND SPACE MUSEUM CONSTRUCTION

GAO's report to the Congress of February 24, 1975, entitled "Financial Status of Major Civil Acquisitions, December 31, 1973" cites on page 27 that the National Air and Space Museum's current cost estimate of $41,900,000 exceeds by $2,400,000 (6 percent) the 1962 estimate of $39,500,000. While both of these amounts do pertain to this building, their comparison over this extended period is completely misleading. This comparison, however, since it is now a matter of record, deserves to be explained. There is no cost overrun against the funds actually appropriated for this project.

While an exhaustive search of historical records has not been undertaken, the following chronology and facts are clear.

1. The construction of a suitable building to house the Nation's air and space collections has been a long-awaited event. The act of August 12, 1946, establishing the National Air Museum, included provisions for a method of selecting a site for a National Air Museum to be located in the Nation's Capital. The act of September 6, 1958, designated the site for a building to be on the Mall from Fourth to Seventh Streets, Independence Avenue to Jefferson Drive, S.W.

2. During the period of the late 1950's and early 1960's, the Smithsonian Institution engaged in preplanning studies for this new museum building. During this period it was concluded, as part of the planning process, that the costs of such a building should not exceed $40,000,000, which the Institution believed would produce an outstanding building to commemorate American attainments.

3. A "Schedule of Building Projects" was included by the Smithsonian in both its FY 1962 and FY 1963 budget submissions to the Congress. The Schedule in the FY 1962 submission (page 32) projected the FY 1963 request for a planning appropriation of $1,820,000 and an FY 1965 construction appropriation of $37,680,000 for the NASM building. These two amounts total $39,500,000. The Schedule in the FY 1963 document (page 57) maintained the two amounts but slipped the Schedule to FY 1964 and FY 1966. This Schedule, dated January 2, 1962, would appear to be the source of the 1962 "original estimate" cited in the GAO report.

4. In 1963, the Smithsonian revised its cost estimate to $41,920,000, including a total of $1,875,000 for planning. Actual planning appropriations in the amounts of $511,000 and $1,364,000, for a total of $1,875,000 were made available to the Institution by the Interior and Related Agencies Appropriation Acts for the fiscal years 1964 and 1965, respectively. This planning was completed and the project approved by the Commission of Fine Arts and the National Capital Planning Commission. The cost of the building, built to those plans and specifications, was estimated to be $40,000,000 in 1965.

5. In 1966, the Congress enacted legislation authorizing the construction of the NASM but deferred appropriations for construction until expenditures for the Vietnam war had shown a substantial reduction.

6. By the early 1970's, when it appeared this project might be allowed to proceed, it was obvious that as a result of rising costs of labor and materials over the intervening years, the 1965 plans would now cost between $60 and $70 million to implement. Consequently, in its FY 1972 budget, the Smithsonian requested an appropriation of $1,900,000 for planning and redesign of the museum building with the goal of using the latest design and construction techniques to lower the cost of the building to $40,000,000—the estimate of ten years earlier. Those new planning funds were appropriated and the redesign completed and approved by the Commission of Fine Arts and the National Capital Planning Commission.

7. For FY 1973 the Institution requested a construction appropriation of $40,000,000. The Interior and Related Agencies Appropriation Act for that year provided an appropriation of $13,000,000 and contract authority for an additional $27,000,000. Appropriations to liquidate the contract authority were provided in FY 1974 ($17,000,000) and FY 1975 ($7,000,000) and are requested for FY 1976 ($3,000,000, the balance of the approved amount).

8. The construction of the new museum building started in the fall 1972, and is now

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THE WHITE HOUSE

WASHINGTON

December 30, 1975

MEMORANDUM FOR: JIM CONNOR

FROM: MAX FRIEDERSDORF M.G.

SUBJECT: S. 95 - Overseas Voting Rights Act

I would like to request a photo be taken of the President signing S. 95 (the deadline is Friday, January 2nd).

The bill provides that 700,000 Americans living overseas be permitted to vote in Federal elections.

Supporters of the bill wish to publish photos of the President signing the bill in overseas magazines and newspapers.

Some of the chief sponsors are Senators Goldwater, Hugh Scott, Bob Griffin, and Representative John Rhodes.

cc: Jack Marsh
Dick Cheney
Phil Buchen
Jim Lynn
Jim Cannon