



Access to Voting for Americans Abroad: Ensuring voting rights laws are implemented

Background

Overseas Americans – estimated at 6 to 7 million – have had the right to vote in federal elections since 1975 (effective implementation 1976), the result of an active grassroots campaign for the right to vote by overseas Americans. It quickly became clear, however, that a theoretical right to vote did not necessarily translate into effective enfranchisement. Each state had different procedures and deadlines, mail was sometimes slow, and getting information was often difficult.

Great strides have been made in recent years. More overseas Americans than ever before who wish to vote are able to do so. On-line registration tools – www.votefromabroad.org, www.fvap.gov, and www.overseasvotefoundation.org – have facilitated voting, while important legislation has been passed.

Legislative advancements

The 2009 Military and Overseas Empowerment Act (MOVE Act) mandated that states send blank ballots, including by electronic means, to voters at least 45 days prior to an election. This is an incredibly important step in helping to resolve a key problem of overseas American enfranchisement: of those who wished to vote in 2008, but could not, half were unable to vote because they did not receive their ballot in time.¹ Receiving the ballot in time to vote and return it is perhaps the most important issue with respect to overseas voting. The MOVE Act has been a crucial step forward.

Nearly as important for overseas voting has been the 2002 Help America Vote Act (HAVA). HAVA mandates that overseas absentee ballots be tabulated separately from domestic absentee ballots, and created the Election Assistance Commission (EAC), whose mandate includes overseeing that process.

This separate tabulation is important for several reasons. One is the impact on individual overseas Americans: some do not vote because they believe that their vote is not counted and does not count. They feel disenfranchised. Ensuring that they can see that their votes count and are counted serves an important role in encouraging overseas Americans to feel included in their country's political process.

Secondly, the EAC's tabulation of overseas absentee ballots provides elected officials and candidates with a clearer picture of their overseas American constituents. Nearly 40,000 ballots were voted (of the 60,000 transmitted to voters) in New York, 90,000 in Florida (of the 115,000 ballots transmitted to overseas voters) and over 15,000 in North Carolina (of the 20,000 ballots transmitted). These voters can make the difference – and have made the difference – in close elections.² Having full data enables elected officials to understand this component of their constituency.

¹ Overseas Vote Foundation 2008 Post Election Survey Report: 52% of those who tried but could not vote, were unable to because their ballots were late or did not arrive. 14% of voters did not receive a ballot at all. https://www.overseasvotefoundation.org/files/OVF_2009_PostElectionSurvey_Report.pdf

² Recently votes from abroad have provided the winning margins in the Senate races of Jon Tester, Jim Webb, Mark Begich, Al Franken, as well as Loretta Sanchez and Scott Murphy in the House.

The Election Assistance Commission

The EAC should have four commissioners – two appointed by the Democratic Party and two by the Republican Party. Three are needed for the EAC to conduct votes, write policy and issue advisory opinions; this quorum has not existed since 2010. The House Committee on Rules and Administration, given oversight of the EAC, last met on February 12, 2014 – and the formal nominations of the two Democrats appointed by President Obama were put off again. During the Committee’s December 2013 hearings, a debate ensued about whether the EAC should even exist. Its funding and resources have been severely cut in recent years. Nonpartisan organizations like the League of Women Voters and the Brennan Center routinely demonstrate their support for the EAC by objecting to attempts to eliminate it. They agree the EAC’s role in counting overseas ballots, among other mandates, is crucial. The four commissioners are needed, and the EAC is needed.

Impact on Overseas Americans

Uneven state compliance with federal regulations

Despite the important advances in federal legislation, the facilitation of voting faces the same challenge today that it has faced throughout: voting is the responsibility of the individual states. While federal legislation mandates some elements of overseas voting, the 13,000 different voting constituencies in the United States may have very different regulations and practices. Implementation of MOVE and HAVA is moving forward, yet another challenge does remain.

Enfranchising Americans born abroad

American citizens born and residing overseas, who file taxes, register with the Selective Service and are for all other purposes recognized as American, are not yet entitled to vote in all states. The Uniform Law Commission passed a model statute known as the Uniform Military and Overseas Voters Act (UMOVA) in 2010, which enfranchises Americans born and residing overseas and it is slowly being implemented by states. Currently, 30 states plus the District of Columbia explicitly allow Americans born and residing overseas to vote, although several allow them to vote only under certain conditions. In the other 20 states, American citizens who have never resided in the US to vote and whose parents were last resident in states other than these 30 remain disenfranchised.³

Remedy

We ask:

- Congress to support the EAC’s mandate – it currently has no Commissions, no Counsel and only an Acting Executive Director – and provide adequate funding for its operations; the Senate Rules and Administration Committee to move urgently to confirm the President’s existing nominees for Commissioner and to seek the urgent provision of nominees to fill the two remaining Commissioner positions;
- Congress to encourage the states to send full and complete data on overseas absentee ballots to the EAC;
- Congress to encourage their respective states to pass legislation implementing UMOVA.

³ Many states remain silent on the matter of voting rights of overseas-born Americans, which enables some to successfully vote by absentee ballot. This is no replacement, however, for a regulation that fully supports their enfranchisement, just as laws exist to fully enforce their requirement to file taxes and, for males, to register with the Selective Service.