RESOLVED, That the American Bar Association opposes, as violative of the Equal Protection Clause, the provisions of the federal Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA), which permit former residents of a state who have moved to American Samoa or the Commonwealth of the Northern Marianas Islands to continue to vote in national elections in that state, while denying those same rights to those who have moved from a state to the U.S. Virgin Islands, Puerto Rico, and Guam.
REPORT

Throughout the history of our nation, the patriotism exhibited by our brothers and sisters in the territories of Guam, the Commonwealth of the Northern Mariana Islands, American Samoa, the U.S. Virgin Islands, and Puerto Rico has often gone unacknowledged. . . . We welcome their greater participation in all aspects of the political process and affirm their right to seek the full extension of the Constitution with all the rights and responsibilities that entails.

-- Republican Party Platform, 2016¹

We also recognize and honor the contributions and the sacrifices made in service of our country by the Americans living in the territories of Guam, American Samoa, the U.S. Virgin Islands, and the Commonwealth of the Northern Mariana Islands. We support self-government and self-determination for the people of the territories, and their right to decide their future status. All Americans should be able to vote for the people who make their laws, just as they should be treated equally. And all American citizens, no matter where they reside, should have the right to vote for the President of the United States.

-- Democratic Party Platform, 2016²

In the midst of this year’s presidential election, nearly five million Americans are systematically denied the fundamental right to vote for our nation’s leaders: the citizens of America’s insular territories. Both the Democratic and Republican National Committees permit these citizens to participate in the nomination of their candidates for President and Vice President, but, for most citizens of the United States who choose to live in the U.S. Virgin Islands, Puerto Rico, Guam, the Northern Marianas Islands, or American Samoa, their participation ends there. And based solely on place of residence, Americans who live in the territories are denied voting representation in either house of Congress, even though Congress possesses plenary authority over local territorial matters.

At the 1992 Annual Meeting, the American Bar Association resolved to support an amendment to the United States Constitution to provide for participation of citizens in American territories to vote in national elections. See 92A10H. The report accompanying that resolution characterized this continued disenfranchisement as “so blatantly, so basically outrageously unfair that it should have been corrected long ago.” Unfortunately, although nearly 30 years have passed, little additional progress has been made to correct this inequity. This resolution therefore reaffirms the ABA’s longstanding commitment to

the enfranchisement of all Americans, regardless of the state or territory they call home.

Although an amendment to the United States Constitution is necessary to provide all citizens of all United States territories the right to vote in national elections, the federal government has enacted a partial solution through legislation. The Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA), codified at 52 U.S.C. §§ 20301-11, requires that all states permit “overseas voters to use absentee registration procedures and to vote by absentee ballot in general, special, primary, and runoff elections for Federal office.” 52 U.S.C. § 20302(a)(1). An “overseas voter” is defined as “a person who resides outside the United States and (but for such residence) would be qualified to vote in the last place in which the person was domiciled before leaving the United States.” 52 U.S.C. § 20310(5)(c). Significantly, the UOCAVA excludes two territories—American Samoa and the Commonwealth of the Northern Marianas Islands (“CNMI”)—from the definition of “United States.” 52 U.S.C. § 20310(8). As a result, the UOCAVA mandates that all fifty states permit a resident of that state who has since moved to American Samoa or the CNMI to continue to vote in that state by absentee ballot in all presidential and congressional elections. However, a resident of a state who moves to any of the other three American territories—the U.S. Virgin Islands, Puerto Rico, or Guam—does not receive this treatment, and remains disenfranchised at the federal level.

The UOCAVA does not cure the systematic disenfranchisement of the American citizens residing in American Samoa and the CNMI, since it only provides voting rights to those who moved to those territories from elsewhere, thus excluding the substantial number of Americans who have called those territories home for their entire lives. But imperfect as it may be, there is no justification whatsoever for treating American citizens who move from a state to American Samoa or the CNMI differently than American citizens who move from a state to the U.S. Virgin Islands, Puerto Rico, or Guam.

While a recent lawsuit has challenged the constitutionality of the pertinent UOCAVA provisions on equal protection grounds, that lawsuit was ultimately dismissed for lack of Article III standing, and the constitutionality of the UOCAVA has not been adjudicated on the merits. See Segovia v. United States, 880 F.3d 384 (7th Cir. 2018). Nevertheless, several courts have recently held, in cases challenging similar differential treatment between the territories with respect to Supplemental Security Income (SSI) benefits, that it is unconstitutional under the Equal Protection Clause of the Fifth Amendment of the United States Constitution for Congress to enact legislation that grants benefits to some territories while withholding those same benefits from others. See, e.g., United States v. Vaello-Madero, 956 F.3d 12 (1st Cir. 2020); Schaller v. U.S. Social Security Administration, Civ. No. 18-00044 (D. Guam June 19, 2020).

In addition to supporting a constitutional amendment to provide American citizens residing in the territories with the right to vote in national elections, the ABA has repeatedly urged that Americans who reside in United States territories receive the same rights and benefits as those who reside in the fifty states and the District of Columbia. See, e.g., 20M10C (supporting an interpretation of the Citizenship Clause of the Fourteenth Amendment that recognizes all persons born in the territories as natural-born citizens of the United States); 14A10A (urging an amendment to 28 U.S.C. § 44(c) to grant each territory representation on its respective federal court of appeals); 99M107 (urging
Congress to establish an Article III district court in the U.S. Virgin Islands). This resolution builds on the foundation established by prior ABA policy supporting the enfranchisement and equal treatment of American citizens residing in United States territories by supporting an interpretation of the Equal Protection Clause that treats all five inhabited territories the same for purposes of absentee voting rights under the UOCAVA. Regardless of the wisdom in treating Americans who have moved from a state to a territory as “overseas voters” for purposes of absentee voting, equal protection principles, as well as general notions of fairness, support applying the same statutory legal protections to all five territories.3

The United States has long championed democracy both at home and around the world. Yet, when it comes to the rights of the nearly five million American citizens living in the territories, our nation falls far short of our democratic principles.4 The systematic disenfranchisement of the people of the U.S. Virgin Islands, Puerto Rico, Guam, the Northern Marianas Islands, and American Samoa for more than 100 years has placed those territories in a “near permanent colonial status.”5 The citizens of America’s territories are not “the subjects of a king or a master,” and deserve no more and no less voting rights than the citizens of the fifty states.6 It is our hope that the ABA will lend its voice to these silenced Americans, to ensure that each and every American citizen living under the American flag can meaningfully participate in national politics.

Respectfully submitted,

Nesha R. Christian-Hendrickson, Esq.
President, Virgin Islands Bar Association

August 2020

3 In its Segovia opinion, the Seventh Circuit stated in dicta that even if the plaintiffs had standing to challenge the UOCAVA, the appropriate remedy might not necessarily be expanding the definition of “overseas voter” to include those who move from a state to the U.S. Virgin Islands, Puerto Rico, and Guam, but may involve restricting the definition of “overseas voter” to exclude American Samoa and the CNMI. See Segovia v. United States, 880 F.3d 384, 389 n.1 (7th Cir. 2018). This resolution takes no position as to whether the unconstitutionality of the UOCAVA should be cured by extending the statutory protections to all territories or withholding it from all territories; rather, it merely urges that all five inhabited territories receive the same treatment, whatever that treatment might be.


6 Id.
1. **Summary of Resolution**

The resolution reaffirms prior ABA policy supporting an amendment to the United States Constitution to provide for participation of citizens in American territories to vote in national elections. It further opposes, as violative of the Equal Protection Clause, the provisions of the federal Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA) which permit former residents of a state who have moved to American Samoa or the Commonwealth of the Northern Marianas Islands to continue to vote in national elections in that state, while denying those same rights to those who have moved from a state to the U.S. Virgin Islands, Puerto Rico, and Guam.

2. **Approval by Submitting Body**

Approved by the Virgin Islands Bar Association on July 25, 2020.

3. **Has this or a similar Resolution been submitted to the House or Board previously?**

At the 1992 Annual Meeting, the House of Delegates passed 92A10H, in which it was resolved that the American Bar Association supports the amendment to the United States Constitution to provide for participation of citizens in American territories to vote in national elections.

4. **What existing Association policies are relevant to this Resolution and how would they be affected by its adoption?**

At the 1992 Annual Meeting, the ABA House of Delegates adopted 92A10H, which supports an amendment to the United States Constitution to permit citizens in American territories to vote in national elections. The ABA has also adopted various resolutions urging that Americans who reside in United States territories receive the same rights and benefits as those who reside in the fifty states and the District of Columbia, see, e.g., 20M10C (supporting an interpretation of the Citizenship Clause of the Fourteenth Amendment that recognizes all persons born in the territories as natural-born citizens of the United States); 14A10A (urging an amendment to 28 U.S.C. § 44(c) to grant each territory representation on its respective federal court of appeals); 99M107 (urging Congress to establish an Article III district court in the U.S. Virgin Islands).

5. **If this is a late Report, what urgency exists which requires action at this meeting of the House?**

N/A.

6. **Status of Legislation (if applicable).**
7. **Brief explanation regarding plans for implementation of the policy, if adopted by the House of Delegates.**

If adopted, this policy would support the passage of an appropriate constitutional amendment, as well as the filing of an *amicus curiae* brief in an appropriate case.

8. **Cost to the Association (both indirect and direct costs).**

None.

9. **Disclosure of Interest.**

None.

10. **Referrals**

ABA Coalition on Racial and Ethnic Justice  
ABA Commission on Hispanic Legal Rights & Responsibilities  
ABA Government & Public Sector Lawyers Division  
ABA Section on Civil Rights & Social Justice  
ABA Section on International Law  
ABA Section on State & Local Government Law  
ABA Young Lawyers Division

11. **Contact Name and Address Information. (Prior to the meeting. Please include name, address, telephone number and e-mail address.)**

Anthony M. Ciolli  
Past President, Virgin Islands Bar  
PO Box 590  
St. Thomas, VI 00804  
340-774-2237  
aciolli@gmail.com

12. **Contact Name and Address Information. (Who will present the Resolution with Report to the House?)**

Anthony M. Ciolli  
Past President, Virgin Islands Bar  
PO Box 590  
St. Thomas, VI 00804  
340-774-2237  
aciolli@gmail.com
EXECUTIVE SUMMARY

1. Summary of Resolution.

The resolution reaffirms prior ABA policy supporting an amendment to the United States Constitution to provide for participation of citizens in American territories to vote in national elections. It further opposes, as violative of the Equal Protection Clause, the provisions of the federal Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA) which permit former residents of a state who have moved to American Samoa or the Commonwealth of the Northern Marianas Islands to continue to vote in national elections in that state, while denying those same rights to those who have moved from a state to the U.S. Virgin Islands, Puerto Rico, and Guam.

2. Summary of the Issue which the Resolution addresses.

The United States Constitution denies the right of Americans who reside in the U.S. Virgin Islands, Puerto Rico, Guam, American Samoa, and the Commonwealth of the Northern Marianas Islands to vote in national elections. While certain provisions of the UOCAVA permit former residents of a state who move to American Samoa or the Northern Marianas Islands to continue to vote in national elections in that state, that right is denied to those who move to the U.S. Virgin Islands, Puerto Rico, or Guam.

3. An explanation of how the proposed policy position will address the issue.

This resolution addresses the issue by urging for passage of a constitutional amendment to provide for citizens who reside in United States territories to participate in national elections, as well as by supporting an interpretation of the Equal Protection Clause which would require that all five territories receive the same treatment under the UOCAVA.

4. A summary of any minority views or opposition internal and/or external to the ABA which have been identified.

No minority or opposing views have been identified.