I MIGHT STAY AWHILE: THE FUNDAMENTAL RIGHT TO VOTE IN A RESIDENCE VS. DOMICILE

BRYANT L. ROBY JR.*


INTRODUCTION

At the core of rights in the United States is the right to vote, and while this right has long been held to be fundamental it is not equal among all U.S. Citizens.¹ The right to vote is not granted to some U.S. Citizens depending upon what U.S. territory they reside in. This distinction is based on the definition of United States in the Uniformed and Overseas Citizens Absentee Voting Act (“UOCAVA”), which arbitrarily includes some U.S. territories while excluding others.

In Segovia v. United States, the Seventh Circuit upheld the exclusion of former Illinois citizens residing in U.S. territories from voting in federal elections. In Segovia, the court held that U.S. citizens residing in U.S. territories do not have a fundamental right to vote in federal elections.² Here, the Uniformed and Overseas Citizens Absentee Voting Act (“UOCAVA”) and the Illinois Military Overseas...
Voter Empowerment Act ("Illinois MOVE") did not equally protect voting rights for six former Illinois residents. This decision led to the disenfranchisement of former military members, and further limited the right to vote for citizens living in U.S. territories like Puerto Rico. In doing so the court used a rational basis analysis to uphold an underinclusive distinction between citizens of similarly situated U.S. territories that did not allow the Plaintiffs to receive absentee ballots.

This comment discusses the issues in Segovia and how the Plaintiffs could have established that they had a fundamental right to vote. The article first discusses voting throughout American history and how it has expanded since over time. The discussion then focuses on determining state citizenship, and how it relates to the right to vote. Lastly, the comment focuses on how the Plaintiffs could have established their right to vote as fundamental by arguing that they were Illinois citizens.

**History of the Right to Vote: Fundamental Voting Rights, Strict Scrutiny, and Absentee Ballots**

Voting has long been a fundamental right in America. A U.S. citizen must also be a citizen of a state in order to have a fundamental right to vote. The Framers created a government where voting is a vital aspect of the system, and the Supreme Court has a long held that the right to vote is fundamental. The fundamental aspect of voting is inherent in the way the Framers formed the government. James Madison stated that “[t]he right of suffrage is a fundamental Article in

---

3 *Id.*
4 *Id.*
6 *See* U.S. Const amend. 14.
8 Wesberry v. Sanders, 376 U.S. 1, 17 (1964).
Republican Constitutions.”⁹ And without the right to vote other fundamental rights we hold dear are “illusory” because “the right to vote freely [. . . is] the essence of a democratic society, and any restrictions on that right strike at the heart of representative government.”¹⁰ Therefore, every person is granted one equal vote “without regard to race, sex, economic status, or place of residence within a State.”¹¹

A. Expansion Through Legislation and Amendments

The right to vote was not as thoroughly protected as it is today. In the past, the right to vote worked as a privilege bestowed upon the upper-class rather than a right belonging to the many. Accordingly, throughout United States history there has been a continuous expansion of the scope of the right to vote.¹² For instance, initially the right to vote was limited to white property owners and based on a tax payment requirement.¹³ But over time, the several states, Congress, and the Supreme Court have consistently sought to prevent the narrowing of the right the right to vote.¹⁴ As a result, we have seen the vast expansion of the scope of the right to vote over the past three centuries.¹⁵ The first step in the expansion of voting rights was the

---

¹¹ Id.
¹² Id. at 555 n.28 (explaining “The Fifteenth, Seventeenth, Nineteenth, Twenty-third and Twenty-fourth Amendments to the Federal Constitution all involve expansions of the right of suffrage. Also relevant, in this regard, is the civil rights legislation enacted by Congress in 1957 and 1960.”).
¹⁴ Id. at 1508-1509.
¹⁵ Id. at 1508.
abolition of laws that limited voting to property owners.\textsuperscript{16} This process was accomplished by each state individually eliminating property ownership requirements.\textsuperscript{17}

Likewise, the U.S. Congress has consistently expanded voting rights.\textsuperscript{18} Passing constitutional amendments in America is a difficult process because “[a] proposed amendment must be passed by two-thirds of both houses of Congress, then ratified by the legislatures of three-fourths of the states.”\textsuperscript{19} Consequently, when an amendment is passed it reflects a consensus view of the importance of the enumerated right. And the United States has seven amendments that concern the right to vote, illustrating that the right is uniformly valued across the nation.\textsuperscript{20}

In 1868, this nation uniformly demonstrated the value of voting rights by passing the Fifteenth Amendment which states that “the right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.”\textsuperscript{21} Congress again expanded the right to vote by passing the Nineteenth Amendment which states that “[t]he right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of sex.”\textsuperscript{22} The U.S. again expanded the right to vote in 1971 by passing the 26th Amendment which lowered the legal voting age from 21 to 18.\textsuperscript{23}

Additionally, Congress has passed an abundance of legislation protecting the right to vote.\textsuperscript{24} Much of this legislation is meant to

\textsuperscript{17} Stanley L. Engerman Et Al., \textit{supra}, note 16.
\textsuperscript{18} Stanley L. Engerman Et Al., \textit{supra}, note 16.
\textsuperscript{19} U.S. \textit{CONST.} art. V.
\textsuperscript{20} U.S. \textit{CONST.} amend. XV, XIX, XXI, XXIII, XXIV, AND XXVII.
\textsuperscript{21} U.S. \textit{CONST.} amend. XV.
\textsuperscript{22} U.S. \textit{CONST.} amend. XIX.
\textsuperscript{23} U.S. \textit{CONST.} amend. XXVI.
prevent the infringement of the amendments illustrated in the Constitution.\textsuperscript{25} For example, Congress ratified the Voting Rights Act of 1965 by preventing states from enacting discriminatory voting legislation.\textsuperscript{26} Congress has not simply protected the right to vote but has also made voting as easily accessible as possible. For example, the National Voter Registration Act of 1993 allows voters to register to vote when receiving and renewing their driver’s license.\textsuperscript{27} Similarly, Congress intended the UOCAVA to protect the right to vote for citizens living abroad.\textsuperscript{28}

\textbf{B. Voting and Court Decisions}

The Supreme Court has also stringently protected the right to vote, recognizing that the right to vote is precious to the American legal system and society.\textsuperscript{29} The Court consistently holds that the right to vote is fundamental and that any infringement is subject to strict scrutiny.\textsuperscript{30} The Court has adopted the Framers view that voting was to be a central aspect of the United States. After all, “no right is more precious in a free country than that of having a voice in [an] election,” and “other rights, even the most basic, are illusory if the right to vote is undermined.”\textsuperscript{31} The United States Constitution does not permit any “classification of people in a way that unnecessarily abridges this right.”\textsuperscript{32} And the Supreme Court has consistently held that “any alleged infringement of the right of citizens to vote must be carefully and meticulously scrutinized.”\textsuperscript{33} This is especially true with regards to Equal Protection claims, as the Court has held that “because of the

\begin{footnotesize}
\begin{itemize}
\item\textsuperscript{25} Reynolds v. Sims, 377 U.S. 533, 555 (1964).
\item\textsuperscript{27} Nat’l Voter Registration Act, 52 U.S. Code § 20501 et. seq. (1993).
\item\textsuperscript{28} Segovia v. U.S., 880 F.3d 384, 387 (7th Cir. 2018).
\item\textsuperscript{29} Reynolds v. Sims, 377 U.S. 533, 555 (1964).
\item\textsuperscript{31} Wesberry v. Sanders, 376 U.S. 1, 17 (1964).
\item\textsuperscript{32} Id.
\end{itemize}
\end{footnotesize}
overriding importance of voting rights, classifications which might invade or restrain them must be closely scrutinized and carefully confined where those rights are asserted under the Equal Protection Clause.”  

Therefore, a court should subject any infringement of a fundamental right to vote to strict scrutiny.

However, the right to vote is not fundamental for all U.S. citizens, and a significant deviation from the strict scrutiny analysis occurs in voting cases when claims are brought by U.S. citizens who are not citizens of a state. For instance, in Igartúa v. U.S, citizens of Puerto Rico sought the right to vote in the House of Representatives to establish a Puerto Rican Congressman. Even though citizens of Puerto Rico are U.S. citizens, the court held that they do not have a fundamental right to vote “since Puerto Rico is not a state and cannot be treated as a state under the Constitution.” In effect, the right to vote is only fundamental for U.S. citizens who are also citizens of a state.

The Second Circuit also examined a variation of this issue. In Romeu v. Cohen, a plaintiff alleged that New York’s enforcement of the UOCAVA violated the Equal Protection Clause when the state refused to send him an absentee ballot in Puerto Rico. In Romeu, the plaintiff, a former citizen of New York, felt that U.S. citizens living in U.S. territories were not receiving the equal protection of their voting rights compared to U.S. citizens living overseas. The court held that

---

35 Igartúa v. United States, 626 F.3d 592, 594 (1st Cir. 2010).
36 Id.; see also, Jones Act, Jones-Shafroth Act, Pub. L. No. 64-368, 39 Stat. 951 (1917) (In the Jones Act of 1917 Congress granted U.S. citizenship to those living and born in Puerto Rico).
37 See also U.S. Const. amend. 23 (stating that “For purposes of representation in the Congress, election of the President and Vice President, and article V of this Constitution, the District constituting the seat of government of the United States shall be treated as though it were a State.”)
38 Romeu v. Cohen, 265 F.3d 118, 126 (2d Cir. 2001).
39 Id. at 125.
40 Id.
there was not an equal protection violation, but rather it was simply part of the cost of a person moving their permanent residence outside of a state.\textsuperscript{41}

Notably, the mere failure to receive an absentee ballot is not subject to strict scrutiny because the right to receive absentee ballots is not fundamental, the right to vote is.\textsuperscript{42} For instance, in \textit{McDonald v. Board of Election Comm'rs.}, the Court analyzed the constitutionality of a statute that did not send inmates awaiting trial absentee ballots.\textsuperscript{43} The Court however decided not to use a heightened scrutiny analysis because the petitioner did not allege an infringement of the right to vote, but rather alleged an infringement of right to receive absentee ballots. The Court held that the there was nothing in the record alleging that the “Illinois statutory scheme ha[d] an impact on appellants' ability to exercise the fundamental right to vote. It is thus not the right to vote that is at stake here but a claimed right to receive absentee ballots.”\textsuperscript{44} The Court reasoned that it was possible the state would allow the inmates to vote through other means.\textsuperscript{45} As a result, the Court did not consider the issue as a violation of the fundamental right to vote and used a rational basis analysis.\textsuperscript{46}

Since \textit{McDonald}, the Court has dealt with a similar issue twice.\textsuperscript{47} However, the \textit{McDonald} decision simply evolved into a requirement that the infringed party allege that their failure to receive absentee

\begin{flushleft}
\textsuperscript{41} Id.
\textsuperscript{42} McDonald v. Bd. of Election Comm'rs, 394 U.S. 802 (1969).
\textsuperscript{43} Id. at 806.
\textsuperscript{44} Id.
\textsuperscript{45} McDonald v. Bd. of Election Comm'rs, 394 U.S. 802, 808 n.6 (1969). ("the record is barren of any indication that the State might not, for instance, possibly furnish the jails with special polling booths or facilities on election day, or provide guarded transportation to the polls themselves for certain inmates, or entertain motions for temporary reductions in bail to allow some inmates to get to the polls on their own.")
\textsuperscript{46} Id.
\end{flushleft}
ballots actually infringes on their right to vote. For example, in *Goosby v. Osser* the Court used a strict scrutiny test to consider the constitutionality of a statute that refused to supply prisoners awaiting trial with absentee ballots. The Court chose to use a strict scrutiny analysis because the petitioners stated that their requests to register and vote by other means were denied. In *O'Brien v. Skinner*, the Court again used a strict scrutiny analysis to deal with New York’s refusal to supply certain inmates awaiting trial absentee ballots. The statute did not specifically deal with inmates but rather stated that individuals could only vote via absentee ballot if they were “unavoidably absent” from their county of residence. Consequently, those held in jail awaiting trial in a county other than their residence were able to vote by absentee ballot, but “persons confined for the same reason in the county of their residence [were] completely denied the ballot.” This violated the well settled principal that "if a challenged statute grants the right to vote to some citizens and denies the franchise to others, the Court must determine whether the exclusions are necessary to promote a compelling state interest." Consequently, the *O'Brien* Court applied a strict scrutiny analysis when holding that the New York statute unconstitutionally infringed upon the right to vote.

---

48 *McDonald*, 394 U.S. at 808.
49 *Goosby*, 409 U.S. at 513.
50 *Id.* at 522 (“Requests by members of petitioners' class to register and to vote either by absentee ballot, or by personal or proxy appearance at polling places outside the prison, or at polling booths and registration facilities set up at the prisons, or generally by any means satisfactory to the election officials, had been denied.”).
51 *O'Brien*, 414 U.S. at 528-29.
52 *Id.* (citing N. Y. Election Law § 117 (1)(b) 1964).
53 *Id.*
55 *Id.*
Federalism & the Right to Vote: Domicile versus Residence

An individual residing in a U.S. territory may not have a fundamental right to vote because a U.S. citizen’s relationship to a state may present a constitutional difference of whether the right is fundamental. As stated, the right to vote in federal elections is not fundamental for all U.S. Citizens. The fundamental aspect of the right to vote is reserved for U.S. citizens who are citizens of a State, even if they reside in a U.S. territory. After all, the definition of ‘reside’ in the Citizenship Clause aligns with the definition of domicile, and that is the context in which courts use it. For this reason, if an individual is domiciled in a state they are a citizen of that state and their right to vote is fundamental.

This is inherent in the U.S. federalist system that reserves rights to the states and the federal government; a system that protects individuals’ fundamental rights against both State and Federal conduct. This assertion is plainly supported by the U.S. Constitution. The Federalist system was designed to place power in the hands of the people in each state. The Tenth Amendment states that the powers not given to the federal government “are reserved to the states respectively, or to the people.” And the Declaration of Independence states that the power to govern derives from the people giving their “consent to be governed.” The predominate way that people give this consent is by voting, and the Constitution clearly places this right in the hands of State citizens as well as U.S. citizens. In fact, the only jurisdiction that is permitted to vote in federal

56 See Igartúa v. United States, 626 F.3d 592, 594 (1st Cir. 2010).
57 Igartúa v. United States, 626 F.3d 592, 594 (1st Cir. 2010).
58 See e.g., Robertson v. Cease, 97 U.S. 646, 649 (1878).
59 See U.S. CONST. amend. XIV.
60 See U.S. CONST. amend. XV, XIX, XXI, XXII, XXIII, XXIV, and XXVII.
61 U.S. CONST. amend. X.
62 U.S. CONST. amend. X.
63 THE DECLARATION OF INDEPENDENCE, 1 stat. 1 (U.S. 1776).
64 See U.S. CONST. amend. XV, XIX, and XXI.
elections that is not a state is Washington D.C., and even this required
the ratification of the Twenty-Third Amendment.\textsuperscript{65} Above all, the right
to vote was a state matter, before it was an aspect of national
citizenship.\textsuperscript{66}

The fundamental nature of the right to vote for citizens of a state
is inherent in the U.S. Constitution, by allowing \textit{the people} of each
state to vote for their own representatives.\textsuperscript{67} Article One of the U.S.
Constitution states that “[t]he House of Representatives shall be
composed of Members chosen . . . by the People of the several
States.”\textsuperscript{68} And the Seventeenth Amendment further placed the right to
vote in the hands of State citizens by giving them the right to vote for
U.S. Senators opposed to electors.\textsuperscript{69} Thus, pursuant to the
Constitution the right to vote is fundamental for U.S. Citizens and
State Citizens.

Yet, determining State citizenship is a more complex matter than
expected. The Fourteenth Amendment’s Citizenship Clause states that
“[a]ll persons born or naturalized in the United States . . . are citizens
of . . . the State wherein they reside.”\textsuperscript{70} This text seems to assert that
State citizenship is granted based an individual’s residency, but that is
not the case. Within the judicial system the terms “domicile,”
“resident,” and “citizen” have become so intertwined that their
meaning within the context of the Fourteenth Amendment is difficult
to ascertain.\textsuperscript{71} This is due to several factors, but generally the term
reside refers to domicile as opposed to residence.

Firstly, the common definition of “reside” either explicitly refers
to domicile or coincides with its definition. For instance Webster’s
Dictionary defines reside as, “to dwell permanently or continuously[

\textsuperscript{65} U.S. CONST. amend. 23.
\textsuperscript{66} Briffault, \textit{supra}, note 13 at 1511.
\textsuperscript{67} U.S. CONST. Art. I, § 2, Cl 1.
\textsuperscript{68} U.S. CONST. Art. I, § 2, Cl 1.
\textsuperscript{69} U.S. CONST. amend. XV.
\textsuperscript{70} U.S. CONST. amend. XIV, § 1 (1870).
\textsuperscript{71} See O.R. Clark, \textit{Elections: Student Voting}, CORNELL LAW QUARTERLY,
Volume II, 223, 228 (1917).
or] occupy a place as one's legal domicile.” 72 The legal definitions of these terms similarly relate residence with the definition of domicile. 73 Black’s Law Dictionary does not define reside but rather distinguishes the terms “residence” and “legal residence.” 74 In Black’s Law Dictionary the term residence coincides with the common definition in Webster’s Dictionary. 75 At any rate the definition of “legal residence” directs the reader to “domicile,” which Black’s Law Dictionary defines as “a person's true, fixed, principal, and permanent home [. . . or] the residence of a person or corporation for legal purposes.” 76 Accordingly, within the legal context the term reside refers to domicile.

Even more, the meaning of reside is so convoluted because courts often use the terms “residence” and “domicile” interchangeably. 77 “Residence may or may not demonstrate citizenship, which depends on domicile.” 78 But above all “the underlying distinction between the concepts of domicile and residence remains: while a person may have only one domicile, he or she may have more than one residence.” 79

Within the context of the Citizenship Clause, courts may use the terms interchangeably, but both terms use and meaning are consistent

---

73 See Domicile, BLACK'S LAW DICTIONARY (10th ed. 2014).
74 See Residence; & Legal Residence, BLACK'S LAW DICTIONARY (10th ed. 2014).
75 Residence, BLACK'S LAW DICTIONARY (10th ed. 2014) (defines residence as “The act or fact of living in a given place for some time”); “Residence”. (2018). In: Merriam-Webster Online Dictionary. [online] Available at: http://www.merriam-webster.com [Accessed 12 Nov. 2018] (defined as “the act or fact of dwelling in a place for some time[, or] the act or fact of living or regularly staying at or in some place for the discharge of a duty or the enjoyment of a benefit”).
76 Domicile, BLACK'S LAW DICTIONARY (10th ed. 2014).
78 Heinen v. Northrop Grumman Corp., 671 F.3d 669, 670 (7th Cir. 2012); see also id.
with the definition of domicile. This has been the Supreme Court’s interpretation since it decided a diversity jurisdiction issue in *Robertson v. Cease* just a decade after the ratification of the Citizenship Clause. In *Robertson*, the Court, for the first time since the passing of the Fourteenth Amendment dealt with determining State citizenship for diversity jurisdiction. The Court held that there was nothing in the “language or policy” of the Citizenship Clause that conferred jurisdiction based on mere residence in a state. And the Court stated that a Defendant’s residence was “insufficient to show his citizenship in [a] State.” This is because residence alone cannot confer that an individual had a fixed “permanent domicile in that state.”

When dealing with diversity issues courts look to domicile instead of residence because domicile is akin to citizenship. The main reason for this distinction is that residence can be temporary, and domicile is a fixed location. Generally, domicile can “only be changed through a person’s intention to acquire a new domicile, a person never intending to make a permanent home elsewhere never loses his or her original domicile, in spite of absence from a jurisdiction that can stretch for years at a time.” Courts analyze several factors when determining domicile, such as: intent of an individual to return or remain, property owned in the state, voting practices, and tax records. And the Supreme Court has frowned on the use of residence

---

80 *Id.*
81 *Id.* at 650.
82 *Id.*
83 *Id.*
84 *Id.*
85 *Id.*
88 Galva Foundry Co. v. Heiden, 924 F.2d 729, 730 (7th Cir. 1991).
alone because it makes it easier to manipulate jurisdiction. For example, in *Morris v. Gilmer* a creditor changed his residence to Tennessee in order to obtain diversity jurisdiction. The Court held that “a citizen of the United States can instantly transfer his citizenship from one State to another, and that his right to sue in the courts of the United States is none the less because his change of domicil[e] was induced by the purpose.” However, the Court also held that for the change in domicile to “constitute a change of citizenship” the change in residence had to be accompanied with the intention to make it a permanent residence. As a result, the Court did not grant jurisdiction as the creditor “had no purpose to acquire a domicil[e] or settled home in Tennessee.”

Domicile allows individuals who move around or have multiple residences to decide their own citizenship. In *Carrington v. Rash*, the Court struck down a statute that did not permit servicemen to vote in Texas if they were not domiciled there before enlisting. The Court stated that Texas would only be permitted to implement reasonable policies for “determining whether servicemen have actually acquired a new domicile in a State for franchise purposes.” Similarly, in *Saenz v. Roe* the Court struck down a minimum residency requirement to vote. The Court held that the Citizenship Clause allows people to choose to be citizens of a state, not for states to choose its citizens. And the Seventh Circuit has also supported this key aspect of domicile.

---

90 *Id.* at 329.
91 *Id.* at 328.
92 *Id.*
93 *Id.* at 329.
95 *Id.* at 96.
97 *Id.* at 511.
98 See Galva Foundry Co. v. Heiden, 924 F.2d 729, 730 (7th Cir. 1991).
Segovia: Standing Issue

In deciding Segovia, the Seventh Circuit considered three issues. The first issue was whether the Plaintiffs, six former residents of Illinois, had standing to bring their equal protection claim against the Uniformed and Overseas Citizens Absentee Voting Act (“UOCAVA”). The Court recognized that the UOCAVA was enacted by Congress to “protect the voting rights of United States citizens who move overseas but retain their American citizenship.” The Act reserves the right of these citizens to receive absentee ballots to vote in “general, special, primary, and runoff elections for Federal office.” Under UOCAVA a U.S. citizen is permitted to receive an absentee ballot from the last state they were domiciled, and they do not need to have any intention to return to that state. The Seventh Circuit held that the Plaintiffs, do not have standing because their injury is not “fairly traceable” to the government’s enforcement under the UOCAVA.

There are two aspects of standing. First, to confer federal jurisdiction in relation to Article III of the U.S. Constitution the Plaintiff must allege an injury that would be remedied by the court ruling in their favor. Second, the court must determine whether the plaintiff’s injury is “fairly traceable” to “the challenged conduct.” The Plaintiff will not have standing if the injury “results from the independent action of some third party not before the court.”

99 Id.
100 Id.
103 Id. at 388-389; see also Hollingsworth v. Perry, 570 U.S. 693, 704 (2013).
104 Segovia v. United States, 880 F.3d 384, 388-89 (7th Cir. 2018).
106 Hollingsworth, 570 U.S. 693 at 700.
Traceability does not need to be direct, but rather must have a causal showing.\textsuperscript{108}

In \textit{Segovia}, the Seventh Circuit disagreed with the district court and held that the Plaintiff’s injury was not traceable to the government’s enforcement of the UOCAVA.\textsuperscript{109} This decision was based on the definition of “United States” in the UOCAVA.\textsuperscript{110} The UOCAVA defines the United States as “the States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, and American Samoa.”\textsuperscript{111} The court held that the UOCAVA does not prohibit Illinois from providing residents of Puerto Rico, Guam, and the Virgin Islands absentee ballots, but rather the Illinois statute does that unilaterally.\textsuperscript{112}

However, the court’s opinion lacks an in-depth discussion of traceability. The court analogizes the standing issue in \textit{Segovia} with the Supreme Court’s decision in \textit{Simon v. E. Ky. Welfare Rights Org.}.\textsuperscript{113} But the facts presented in \textit{Simon} present constitutionally different causality issues.\textsuperscript{114} In \textit{Simon} the Court held that the injury-in-fact was not fairly traceable to the government enforcement of an IRS ruling.\textsuperscript{115} The plaintiff alleged that the injury resulted from an IRS rule that offered hospitals a tax incentive for giving indigent patients limited services.\textsuperscript{116} The Supreme Court held that there was no standing because there was a lack of a causal relationship.\textsuperscript{117} The Court expressed that whether a hospital denied indigent patients could stem from a number of factors that did not include the tax incentive.\textsuperscript{118}

\textsuperscript{108} Id. at 44.
\textsuperscript{109} \textit{Segovia}, 880 F.3d at 387.
\textsuperscript{110} Id.
\textsuperscript{112} Id.
\textsuperscript{114} Id.
\textsuperscript{115} Id.
\textsuperscript{116} Id.
\textsuperscript{117} Id.
\textsuperscript{118} Id.
result, “there was [not] substantial likelihood that victory in th[e] suit would result in respondents' receiving the hospital treatment they desire[d].”

But, the Seventh Circuit’s use of Simon was in error because the facts and issues presented in relation to standing were slightly outside the scope of those in Segovia. The court attempted to compare the third-party decision of local hospitals to Illinois refusing to send absentee ballots to non-resident citizens. This analysis is improper for several reasons. First, in Simon, part of the reason the Court held there was no causal connection was because a hospital could make the decision to turn away indigent patients absent any consideration of the tax incentive. Unlike the scenario in Simon, the decision not to send absentee ballots to U.S. citizens residing in Puerto Rico directly stems from the government’s enforcement of the UOCAVA, as the Illinois statute must correspond to the federal one. Also, there are over 5,000 hospitals in this country, and the causal aspect of the individual decisions of each hospital is much more attenuated than the decision of Illinois to enact Illinois Military Overseas Voter Empowerment Act ("Illinois MOVE"). Second, unlike in Simon if the Plaintiffs in Segovia won their claim they would have an immediate remedy to their issue. Further, not allowing standing under the UOCAVA is inconsistent with the doctrine of expressio unius, which asserts that omissions should be understood as exclusions. It is not always the

---

119 Id.
120 See Segovia v. United States, 880 F.3d 384, 389 (7th Cir. 2018); see also id. see also id. Simon, 426 U.S. at 44.
121 Segovia, 880 F.3d at 389; see also Simon, 426 U.S. at 39.
122 Simon, 426 U.S. at 44.
125 Segovia, 880 F.3d at 389.
case that omissions are exclusions, but that is the case here. The UOCAVA does not mention equivalent U.S. territories such as the Northern Mariana islands in the definition of the United States, and as a result they have been permitted to receive absentee ballots. The UOCAVA not mentioning these similarly situated territories has resulted in certain U.S. Citizens arbitrarily not being protected by the UOCAVA. The result is that the UOCAVA does not provide non-resident U.S. citizens equal protection of their voting rights depending on the territory they reside in. Consequently, the UOCAVA confers standing because if there were changes to the UOCAVA the Plaintiffs injury would be remedied.

In consideration of the above-mentioned issues, the causal connection between the injury and the UOCAVA is enough to confer standing. Non-resident U.S. Citizens are unable to vote in federal elections because the governments enforcement of the UOCAVA allows Illinois to refuse them absentee ballots. The District Court was correct that “Illinois is bound by the floor that the federal defendants stress that the UOCAVA provides.” And that if the UOCAVA excluded “Puerto Rico, Guam, and the U.S. Virgin Islands” Illinois would be required to provide the Plaintiffs with absentee ballots, or if the UOCAVA specifically addressed American territories the Plaintiffs would be able to obtain absentee ballots. Therefore, the Plaintiffs injuries are indeed traceable to the UOCAVA.

127 See Dahlstrom v. Sun-Times Media, LLC, 777 F.3d 937, 945 n.6 (7th Cir. 2015).
131 Id.
132 Segovia v. Bd. of Election Comm'rs for Chi., 201 F. Supp. 3d 924, 937 (N.D. Ill. 2016)
133 Id.
The Plaintiffs Should Have Argued that their Domicile is Illinois
So Their Right to Vote Would Be Fundamental

The second issue decided by the Seventh Circuit in Segovia involved the narrowing of the fundamental right to vote. The court held that the right to vote is not fundamental for non-resident U.S. citizens. As a result, the court used a rational basis test instead of a strict scrutiny analysis. The Seventh Circuit is correct that non-resident U.S. citizens do not have a fundamental right to vote because that right is reserved to citizens of a state. However, whether that right is fundamental depends on whether the individual is also a citizen of a State. So, if the Plaintiffs were able to establish that they were domiciled in Illinois they would have a fundamental right to vote, and the Court’s decision of standing would have been of little consequence.

Here the plaintiffs were “six United States citizens who are former residents of Illinois and who now reside in Puerto Rico, Guam, or the U.S. Virgin Islands, plus two organizations that promote voting rights in United States Territories.” The individuals were also former military servicemembers. The Plaintiffs contended that their denial of absentee ballots is a due process violation of Equal Protection under the UOCAVA and Illinois Move Statute. The Due Process Clause protects life, liberty, and property. “Liberty . . . extends to the full range of conduct which the individual is free to pursue, and it cannot be restricted except for a proper governmental objective.” State legislation violates Equal Protection when “the rights allegedly impaired are individual and personal in nature.”

\begin{footnotes}
\item[134] Segovia, 880 F.3d at 389.
\item[135] Id.
\item[136] Id.
\item[137] Segovia, 218 F. Supp. 3d at 652.
\item[138] Id.
\item[139] Id. at 339.
\item[140] U.S. Const. Amend. 14.
\end{footnotes}
Equal protection claims only require a strict scrutiny analysis when the legislation in question “impermissibly interferes with the exercise of a fundamental right.”\footnote{Mass. Bd. of Ret. v. Murgia, 427 U.S. 307, 312 (1976).} Under a strict scrutiny analysis a law which infringes upon a fundamental right “is permissible only if it is narrowly tailored to address a compelling state interest.”\footnote{Id.}

The UOCAVA and Illinois MOVE affect a fundamental right, but not in the manner the Plaintiffs alleged.\footnote{Segovia v. United States, 880 F.3d 384, 389 (7th Cir. 2018).} The Plaintiffs were not receiving the same protection of voting rights as those similarly situated in territories like the Northern Mariana Islands.\footnote{Id.} Illinois citizens have a fundamental right to vote regardless of their current residence.\footnote{Id.} It is within the plain meaning of the Fifteenth and Nineteenth Amendment that “the right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State.”\footnote{See U.S. Const. amend. XIV § 1} These amendments expressly specify the right in relation Federal and State conduct. At the time of enacting these amendments Congress did not consider the right to vote in respect to U.S. territories, but rather just in regard to U.S. State citizens. And the right to vote in federal elections is enumerated in the constitution relating to States.\footnote{U.S. Const. amend. XIV § 1.} For instance, the President of the United States is elected by the electors from the several States, not U.S. Territories.\footnote{U.S. Const. art. II, § 1, Cl 2.} Even more, Senators and members of the House of Representatives are both voted upon “by the People of the several States.”\footnote{U.S. Const. art. II, § 1, Cl 2.} “Article I of the U.S. Constitution alone “uses the term ‘State’ or ‘States’ eight times when defining and outlining the House of Representatives.”\footnote{Igartúa v. United States, 626 F.3d 592, 595 (1st Cir. 2010).} The right to vote for citizens of U.S. territories cannot be read into any of these
constitutional provisions or amendments, as they specifically place limits upon the federal government and the states. Thus, if this right was further reserved to citizens in U.S. territories it would have to be stated within the U.S. Constitution.

The Seventh Circuit held that although the right to vote is fundamental that right is not fundamental for U.S. citizens who are currently residing in U.S. territories. The court cited one case to support its assertion. That case was a First Circuit case which is part of a long line of cases that have consistently held that Puerto Rican citizens and residents could not vote in federal elections because they do not have a fundamental right to vote. In *Igartúa I*, the plaintiffs alleged that the UOCAVA did not equally protect the right to vote for Puerto Rican residents because those who formally resided in a state were given the right to vote in federal elections while other Puerto Rican citizens were not. The First Circuit used a rational basis test in this case because Puerto Rican citizens do not have a fundamental right to vote. Through this series of cases the plaintiffs sought the right to vote in federal elections based on a number of different arguments, but the conclusion is always the same. Each *Igartúa* court basis its decision on two keys reasons; (1) Puerto Rican citizens do not have a fundamental right to vote, and (2) the right to vote in federal elections is reserved to states and Puerto Rico cannot be

---

153 *Id.*

154 *See Segovia*, 880 F.3d at 389; *see also* *Igartúa* v. U.S., 626 F.3d 592, 595 (1st Cir. 2010).

155 *Id.; see also* *Igartúa* v. United States, 626 F.3d 592, 595 (1st Cir. 2010); *Igartúa-de la Rosa* v. U.S., 417 F.3d 145, 147 (1st Cir. 2005) (*Igartúa IV*); *Igartúa-de la Rosa* v. U.S., 417 F.3d 145 (1st Cir. 2005) (*Igartúa III*); *De La Rosa* v. U.S., 229 F.3d 80 (1st Cir. 2000) (*Igartúa II*); *Igartúa-de la Rosa* v. U.S., 32 F.3d 80 (1st Cir. 1994) (*Igartúa I*) (*Igartúa* is a series of cases in which individuals brought several claims and arguments attempting to establish their right to vote in Presidential Elections and for a member of the House of Representatives as Puerto Rican citizens).

156 *Igartúa-de la Rosa* v. U.S., 32 F.3d 8 (1st Cir. 1994).

157 *Id.* at 83.

158 *See e.g., id.* at 85.
considered a state under the U.S. Constitution. But, these cases differ from the facts in Segovia for multiple reasons.

First, Puerto Rican citizens were attempting to establish their own representatives in congress, and the right to vote for the President of the United states, which is a right reserved only to states. The First Circuit stated that “since Puerto Rico is not a state, and cannot be treated as a state under the Constitution . . . its citizens do not have a constitutional right to vote for members of the House of Representatives.” This presented a constitutionally different question than the one presented by the Plaintiffs, as the plaintiffs were exercising their right to vote as former Illinois residents, not citizens of Puerto Rico. Second, in Igartúa I, the court plainly stated that former state residents residing in Puerto Rico have the right vote in federal elections.

The issue in Segovia more closely aligns with the above-mentioned case of Romeu because like in Segovia, the plaintiff in Romeu claimed that as former state citizen the UOCAVA did not equally protection his right to vote. “Romeu [could not] vote for the President [of the United States] in Puerto Rico because the existing laws do not confer such a voting right on U.S. citizens domiciled in Puerto Rico.” Yet, the Segovia court’s only mention of Romeu is a

---

159 See Igartúa v. United States, 626 F.3d 592, 595 (1st Cir. 2010); Igartua-de la Rosa v. U.S., 417 F.3d 145, 147 (1st Cir. 2005) (Igartúa IV); Igartúa-de la Rosa v. U.S., 417 F.3d 145 (1st Cir. 2005) (Igartúa III); De La Rosa v. U.S., 229 F.3d 80 (1st Cir. 2000) (Igartúa II); Igartúa de la Rosa v. U.S., 32 F.3d 8 (1st Cir. 1994) (Igartúa I).

160 Id.
161 Id.
162 Segovia v. U.S., 880 F.3d 384, 391 (7th Cir. 2018).
163 “[T]he Uniformed and Overseas Citizens Absentee Voting Act [. . .] provides that United States citizens, including residents of Puerto Rico, who reside outside the United States retain the right to vote via absentee ballot in their last place of residence in the United States.” De La Rosa v. United States, 32 F.3d 8, 10 (1st Cir. 1994).
164 Id.; see also Romeu v. Cohen, 265 F.3d 118, 126 (2d Cir. 2001).
165 Romeu, 265 F.3d at 126.
quote stating that granting the Plaintiffs voting rights under the UOCAVA “would have created a distinction of questionable fairness among Puerto Rican U.S. citizens, some of whom would be able to vote for President and others not, depending whether they had previously resided in a State.” But this fairness is embedded in the system created by the U.S. Constitution. It may not be fair that states have significantly greater rights than U.S. territories, but that is the system created by the U.S. Constitution.

In turn, if the Plaintiffs in Segovia could have established that they had a fundamental right to vote by presenting a constitutionally different issue, that the UOCAVA and Illinois MOVE statute did not equally protect the right to vote for Illinois citizens. The Plaintiffs being former Illinois residents, while significant, did not award them a fundamental right to vote. However, the Plaintiffs should have placed stock in their former residency in Illinois and argued that although they reside in Puerto Rico they consider Illinois their domicile, and are therefore Illinois citizens. “[S]ince the adoption of the Fourteenth Amendment to the Federal Constitution the mere allegation of residence in Illinois did not make such a prima facie case of citizenship in that State.” The Segovia Court bases nearly its entire decision on the fact that non-resident U.S. citizens do not have a fundamental right to vote. But if the Plaintiffs could have established that their domicile was Illinois it would negate the fact that residents of U.S. territories do not have a fundamental right to vote.

Along those lines, the Seventh Circuit has proved to be quite lenient when considering whether an individual has an actual domicile in a state. Take for example Galva Foundry Co. v. Heiden. In Galva, the Defendant, Heiden, alleged there was no diversity jurisdiction because he and the Plaintiff were both citizens of Illinois. But Heiden also had significant ties to Florida. “Heiden had

166 Id. at 125.
168 Segovia v. U.S., 880 F.3d 384, 390 (7th Cir. 2018).
169 Galva Foundry Co. v. Heiden, 924 F.2d 729, 730 (7th Cir. 1991).
170 Id.
registered to vote in Florida, had taken out a Florida driver's license, had stated in an application for a Florida tax exemption that he had become [. . .] a permanent resident of Florida, and had listed his Florida address as his permanent address on both his federal and Illinois income tax returns.”\textsuperscript{171} However, while Heiden split time between Illinois and Florida he only took these actions to shield himself from Illinois tax law.\textsuperscript{172} In the end the court held that “this is shady business but it cannot convert” the suit against Heiden, who is a citizen of Illinois, into “a suit against a Floridian.”\textsuperscript{173}

Most individuals may lack the financial means to keep multiple residences in different states, but as stated domicile is based on several factors, and intent is the focal point.\textsuperscript{174} Even if individuals like the Plaintiffs vote and pay taxes in Puerto Rico, Guam, or the U.S. Virgin Islands they can still prove that their domicile is Illinois.\textsuperscript{175} They must establish that they never intended to change their domicile and they have an intent to return. The UOCAVA does not require an intent to return but this will be necessary in order to argue that they have a fundamental right to vote. These facts will be specific to each plaintiff. This article does not attempt to establish exactly how a person can reside in a U.S. territory and be a State citizen, but rather provide that if they are able to do so they have a fundamental right to vote.

If a plaintiff is able to establish state citizenship then the UOCAVA would permit Illinois citizens residing in certain territories the right to vote, but deny that right to the those residing in Puerto Rico, Guam, or the U.S. Virgin Islands. This is a violation of the Equal Protection Clause that would be subject to strict scrutiny because the plaintiffs would be an Illinois Citizens with the fundamental right to vote. And this arbitrary distinction would almost certainly fail a strict scrutiny analysis.

\textsuperscript{171} Id.
\textsuperscript{172} Id. at 731.
\textsuperscript{173} Id.
\textsuperscript{174} Saenz v. Roe, 526 U.S. 489, 505 (1999).
\textsuperscript{175} See Galva Foundry Co., 924 F.2d at 730.
Although the concept of domicile is generally used in the context of diversity jurisdiction the Supreme Court has also used domicile when considering voting rights cases.\(^{176}\) As well, the point of a diversity jurisdiction inquiry is determining which state an individual belongs to, and that would be the same determination for considering if a person has a fundamental right to vote as a State Citizen.\(^{177}\)

Since the Plaintiffs reside in Puerto Rico, the fact that they are not permitted to vote in federal elections is because Puerto Rico does not have any rights under the Constitution to participate in federal elections since it is not a state.\(^{178}\) But an Illinois citizen would not be participating in elections on behalf of Puerto Rico, they would be participating in federal elections based on their fundamental right as an Illinois Citizens. This issue must be seen on its face not analyzed based on decisions that present constitutionally different issues.\(^{179}\) The Plaintiffs in Segovia are qualified voters as Illinois citizens. The UOCAVA protects the fundamental right to vote for Illinois Citizens who reside in the American Samoa but does not equally protect that right for Illinois citizens residing in Puerto Rico. The reason for their exclusion is not justified by a “narrowly tailored” compelling government interest.\(^{180}\) The UOCAVA may have been enacted before there was a change in the status of certain U.S. territories but these changes have resulted in an unconstitutional enforcement.\(^{181}\) Therefore the UOCAVA would not satisfy the strict scrutiny test as its

\(^{176}\) *Saenz*, 526 U.S. at 508.

\(^{177}\) I am aware that in the future there may be issues with domicile for jurisdiction and domicile for voting. But diversity jurisdiction has evolved to mainly determine whether an individual purposefully availed themselves in the state. *See* J. McIntyre Mach., Ltd. v. Nicastro, 564 U.S. 873, 889 (2011).

\(^{178}\) *See* Igartúa v. United States, 626 F.3d 592, 594 (1st Cir. 2010).

\(^{179}\) *See* Segovia v. United States, 880 F.3d 384, 391 (7th Cir. 2018).


\(^{181}\) The Seventh Circuit held that when UOCAVA and Illinois MOVE were passed the Northern Marianas was a “Trust Territory” with less integration than other U.S. territories, but now the Northern Marianas further resemble other US territories and even have a non-voting delegate to the House of Representatives. *See* Segovia v. U.S., 880 F.3d 384, 391 (7th Cir. 2018).
enforcement permits the unconstitutional infringement of the Illinois Citizens fundamental voting rights.

**Segovia: The Distinction Between American Territories is Not Rational**

The third issue the Segovia court considered was whether Illinois MOVE was rational. The court erred in its rational basis analysis of Illinois MOVE by placing more significance on potential political ramifications opposed to the actual rationality of the statute. The court in Segovia held that the rationality for Illinois MOVE is arbitrary now but was not when it was enacted nearly 40 years ago.\(^{182}\)

The court reasoned that “while the distinction among United States territories may seem strange to an observer today, it made more sense when Illinois enacted the challenged definition.”\(^{183}\) The court then discussed that when Illinois’ MOVE was enacted the distinction that is now arbitrary was logical.\(^{184}\) The court held that it is irrelevant if the distinction between the Northern Marianas/American Samoa and other U.S. territories is arbitrary because Illinois defines living in the other territories as residing within the United States.\(^{185}\) The court reasoned that if it were to hold the statute unconstitutional residents of the Northern Mariana Islands would lose their voting rights, and some Puerto Rican residents would be able to vote while others would not.\(^{186}\) And therefore it is rational “for Illinois to retain the same definition it enacted nearly 40 years ago.”\(^{187}\)

The court should not have based its decision on these ramifications. The rational basis test asks whether “there is a rational relationship between the disparity of treatment and some legitimate

---

\(^{182}\) Segovia, 880 F.3d at 390.

\(^{183}\) Id.

\(^{184}\) Id.

\(^{185}\) Id.

\(^{186}\) Id.

\(^{187}\) Id.
governmental purpose.”\textsuperscript{188} The Supreme Court has already held that during a rational basis analysis “the constitutionality of a statute predicated upon the existence of a particular state of facts may be challenged by showing to the court that those facts have ceased to exist.”\textsuperscript{189} For instance, recently in \textit{Shelby County v. Holder}, the Supreme Court held that the coverage formula of the 1965 Civil Rights Act was unconstitutional because of changed conditions.\textsuperscript{190} Shelby County alleged that the coverage formula in the Voting Rights Act of 1965 was facially unconstitutional.\textsuperscript{191} When the coverage formula was enacted it required jurisdictions that had “tests or devices as prerequisites to voting, and had lower voter registration and turnout, in the 1960s and early 1970s” to “obtain federal permission before enacting any law related to voting.”\textsuperscript{192} The Supreme Court previously upheld the coverage formula as rational in 1966 because it “was a legitimate response to the problem” of voter discrimination, and it was initially only meant to last for five years.\textsuperscript{193} However, it had been consistently reauthorized with no changes coverage to the coverage formula.\textsuperscript{194} But in 2013, the Court used a rational basis test when it held the coverage formula was unconstitutional because the legislation did not make sense “in light of current conditions.”\textsuperscript{195} The Court stated that the use of the formula was irrational because it was based on “40 year old data,” and Congress needed to “draft another formula based current conditions.”\textsuperscript{196}

Similarly, the rationality analysis of Illinois MOVE should be concerned with the current operation of the statute not just whether it

\begin{flushright}
\textsuperscript{188} Bd. of Trs. v. Garrett, 531 U.S. 356, 423 (2001).
\textsuperscript{190} Shelby Cty. v. Holder, 570 U.S. 529, 557 (2013).
\textsuperscript{191} \textit{Id.}
\textsuperscript{192} \textit{Id.} at 539.
\textsuperscript{194} Shelby Cty. v. Holder, 570 U.S. 529, 529 (2013) (In 2006 Congress reauthorized the coverage formula for another 25 years).
\textsuperscript{195} \textit{Id.} at 553-556.
\textsuperscript{196} \textit{Id.} at 556-557.
\end{flushright}
was reasonable when enacted forty years ago. “There is no valid reason to insulate” Illinois MOVE “merely because it was previously enacted 40 years ago.” When Illinois MOVE was enacted the Northern Mariana Islands was a trust territory, a significant distinction from U.S. territories like Puerto Rico because trust territories are less intertwined with the U.S. government. But the Northern Mariana Islands has been a fully incorporated U.S. Territory since 1986. The changed status of the Northern Mariana Islands has resulted in Illinois MOVE violating Puerto Rican residents Equal Protection rights. And since this Equal Protection violation is based on changed conditions that led to the statute arbitrarily distinguishing between U.S. Territories the Seventh Circuit should have held that Illinois MOVE was irrational and unconstitutional.

Also, the court should not have placed such significance on the potential ramifications that may have been accompanied by granting the Plaintiffs voting rights because the logic was circular. The Seventh Circuit held that holding the statute unconstitutional would take away the right to vote for American residents living in the American Samoa. This conclusion makes little sense in terms of an Equal Protection Claim. Simply put, the court held that it is rational for a statute to limit voting rights for U.S. citizens living in Puerto Rico because to overturn the statute would limit the voting rights of

---

197 See id. at 556.
199 Segovia v. U.S., 880 F.3d 384, 391 (7th Cir. 2018).
200 Id.
201 See id.
202 See id; see also Shelby Cty. v. Holder, 570 U.S. 529, 557 (2013).
203 See id.
204 (The American Samoa is not only included in the definition of United States in UOCAVA but in the definition of United States in Illinois because in 1979 it was more similar to a foreign nation than an incorporated U.S. territory)
U.S. citizens living in the American Samoa.\textsuperscript{205} Put differently, the court could not remedy the Equal Protection violation of U.S. citizens living in Puerto Rico because it may result in U.S. citizens living in the American Samoa not being equally protected. The proper conclusion to such a dilemma is that Illinois MOVE violates the Equal Protection Clause and the legislature needs to remedy the issue based on “current conditions.”\textsuperscript{206}

**Consequences: The Potential Issues of Voting in Puerto Rico**

The *Segovia* Court was correct that the potential ramifications from granting the Plaintiffs voting rights could lead to future issues regarding voting and Equal Protection Claims.\textsuperscript{207} Once some residents of Puerto Rico have voting rights and others do not, the door is opened for Puerto Rican citizens to bring an Equal Protection claim of their own. And Puerto Rico is in a sort of purgatory when it comes to rights in America: Puerto Rico wants the right to vote, but that right is reserved to states; Puerto Rico also wants to be a state but does not have any voting power to bring forth legislation in the U.S. Congress.\textsuperscript{208} For the longest time Puerto Rico wanted its cake and to eat it too: it did not want to be a state, but they still wanted voting rights.\textsuperscript{209} But those rights are reserved to states, and Puerto Rico is not.\textsuperscript{210} However, largely due to its 123-billion-dollar debt, Puerto Rico now would like become America’s 51st state.\textsuperscript{211} This is an issue President Trump and Congress have not considered, likely due to

\begin{itemize}
\item \textsuperscript{205} Segovia v. U.S., 880 F.3d 384, 391 (7th Cir. 2018).
\item \textsuperscript{206} Id.
\item \textsuperscript{207} Id.
\item \textsuperscript{210} Igartúa v. United States, 626 F.3d 592, 594 (1st Cir. 2010).
\item \textsuperscript{211} Campbell, *supra*, note 209.
\end{itemize}
Puerto Rico’s mounting monetary issues.\(^{212}\) There is also no clear procedure for how a U.S. territory becomes a state.\(^{213}\) And while Puerto Rico’s leaders have asked Congress for a process to statehood they have largely been ignored.\(^{214}\) So, if the Segovia court did grant the Plaintiff’s the right to vote, the potential issues that the court would have been faced with in the future would go far beyond just the scope of voting rights.

That said, the Seventh Circuit may not have considered all these issues when deciding Segovia, but the potential ramifications of the decision were much more substantial than simply granting voting rights. Yet, if a plaintiff is able to base their Equal Protection claim on the distinction that they are a citizen of a State it may prevent these issues because it would still uphold the general principle that the right to vote in federal elections is one reserved to the states.\(^{215}\)

**Conclusion**

Voting in America is an integral part of our governmental system and it is a cherished right among citizens.\(^{216}\) The right to vote has seen a continuous expansion since the ratification of the Constitution.\(^{217}\) It is also a fundamental right for most U.S. citizens.\(^{218}\) Since the U.S. Constitution clearly places the right to vote in the hands of the states, a U.S. citizen only has a fundamental right to vote if they are also a citizen of a state.\(^{219}\) As a fundamental right any infringement of the

---


\(^{213}\) Campbell, *supra*, note 209; see also U.S. Const. Art. IV, § 3, Cl 1 (merely stating that “new States may be admitted by the Congress into this Union”).

\(^{214}\) Campbell, *supra*, note 209.

\(^{215}\) Igartúa v. United States, 626 F.3d 592, 594 (1st Cir. 2010).


\(^{217}\) *Id.* at 555 n.28.

\(^{218}\) *Id.*; Igartúa v. United States, 626 F.3d 592, 594 (1st Cir. 2010).

\(^{219}\) See Igartúa v. United States, 626 F.3d 592, 594 (1st Cir. 2010); U.S. Const article I, § 2; U.S. Const. Amend. 15, 17, 19, and 23.
right to vote is subject to strict scrutiny.\textsuperscript{220} For those individuals who are not citizens of a state that right is not fundamental, and it may be subject to a less stringent standard of review when infringed upon.\textsuperscript{221} And despite the phrasing of the Fourteenth Amendment’s Citizenship Clause, state citizenship is based on domicile opposed to residency.\textsuperscript{222} Consequently, if U.S. Citizens residing in a Puerto Rico, Guam, or the U.S. Virgin Island would like to challenge the UOCAVA they should allege an Equal Protection violation based on the assertion that they are domiciled in Illinois, and as Illinois Citizens they have a fundamental right to vote.\textsuperscript{223} The argument that the UOCAVA does not equally protect the right to vote of non-resident U.S. citizens has been, and likely will continue to be struck down because only state citizens have a fundamental right to vote.\textsuperscript{224} The remedy may be finding a suitable plaintiff who can allege domicile within a state, and argue that as a State citizen they have a fundamental right to vote. And since legislation like the UOCAVA and Illinois Move arbitrarily grant the right to vote to an Illinois citizen living in the American Samoa it would likely not pass strict scrutiny.\textsuperscript{225} This could result in an improved statute that properly addresses American territories. And it would prevent courts from getting involved in the complicated business of Puerto Rico statehood and voting rights.\textsuperscript{226}

\textsuperscript{221} See Igartúa v. United States, 626 F.3d 592, 594 (1st Cir. 2010).
\textsuperscript{222} See e.g., Robertson v. Cease, 97 U.S. 646, 649 (1878).
\textsuperscript{223} See Segovia v. United States, 880 F.3d 384, 391 (7th Cir. 2018); Igartúa v. United States, 626 F.3d 592, 594 (1st Cir. 2010).
\textsuperscript{224} See Segovia v. United States, 880 F.3d 384, 391 (7th Cir. 2018); Igartúa v. United States, 626 F.3d 592, 594 (1st Cir. 2010).
\textsuperscript{225} See Reynolds v. Sims, 377 U.S. 533, 560-61 (1964); Segovia v. United States, 880 F.3d 384, 391 (7th Cir. 2018)
\textsuperscript{226} See Campbell, supra, note 209.