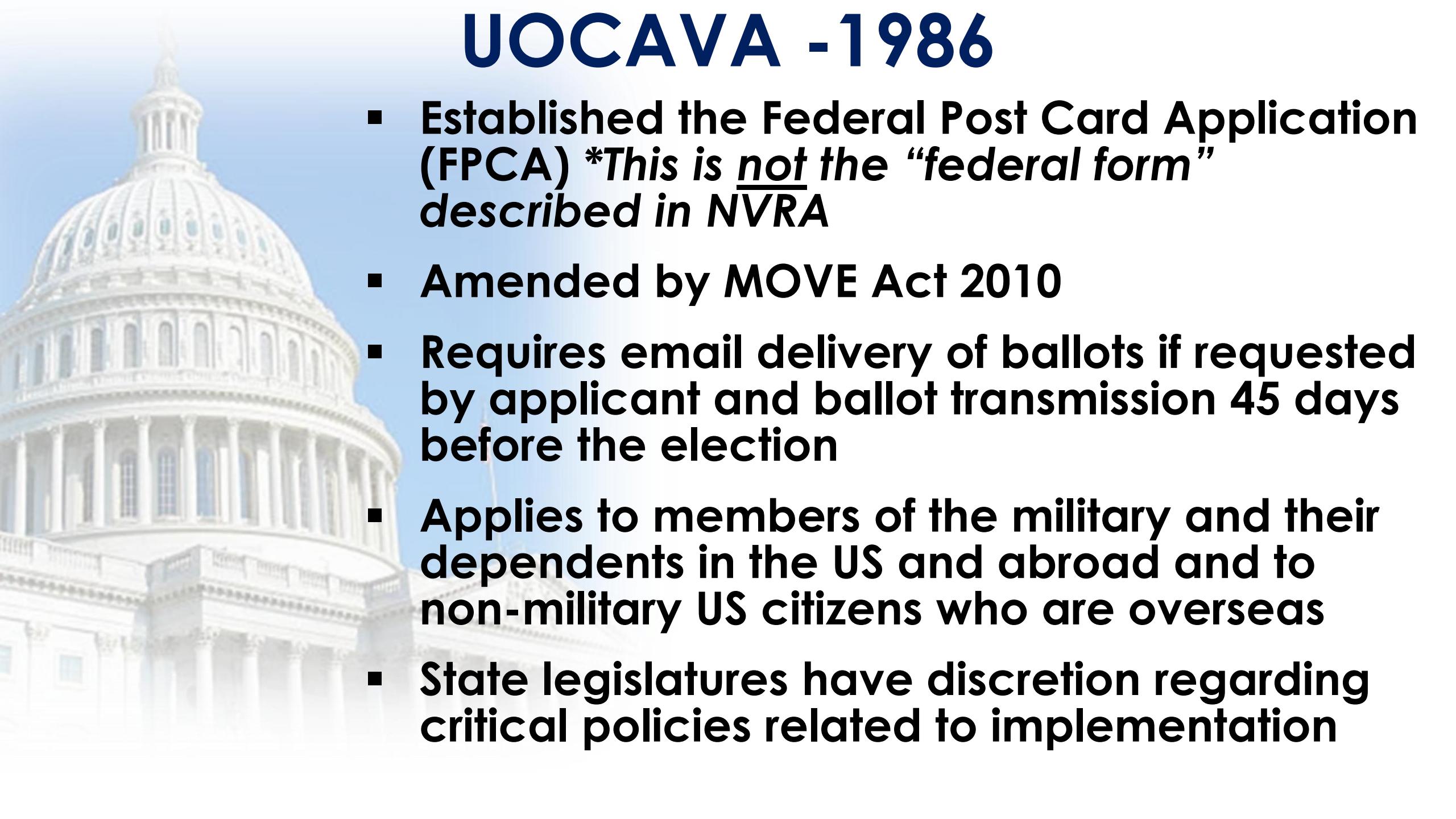


Strengthening UOCAVA Laws

**State Policy Decisions for the Uniformed and
Overseas Citizens Absentee Voting Act**

Montana Senate
State Administration

January 8, 2025

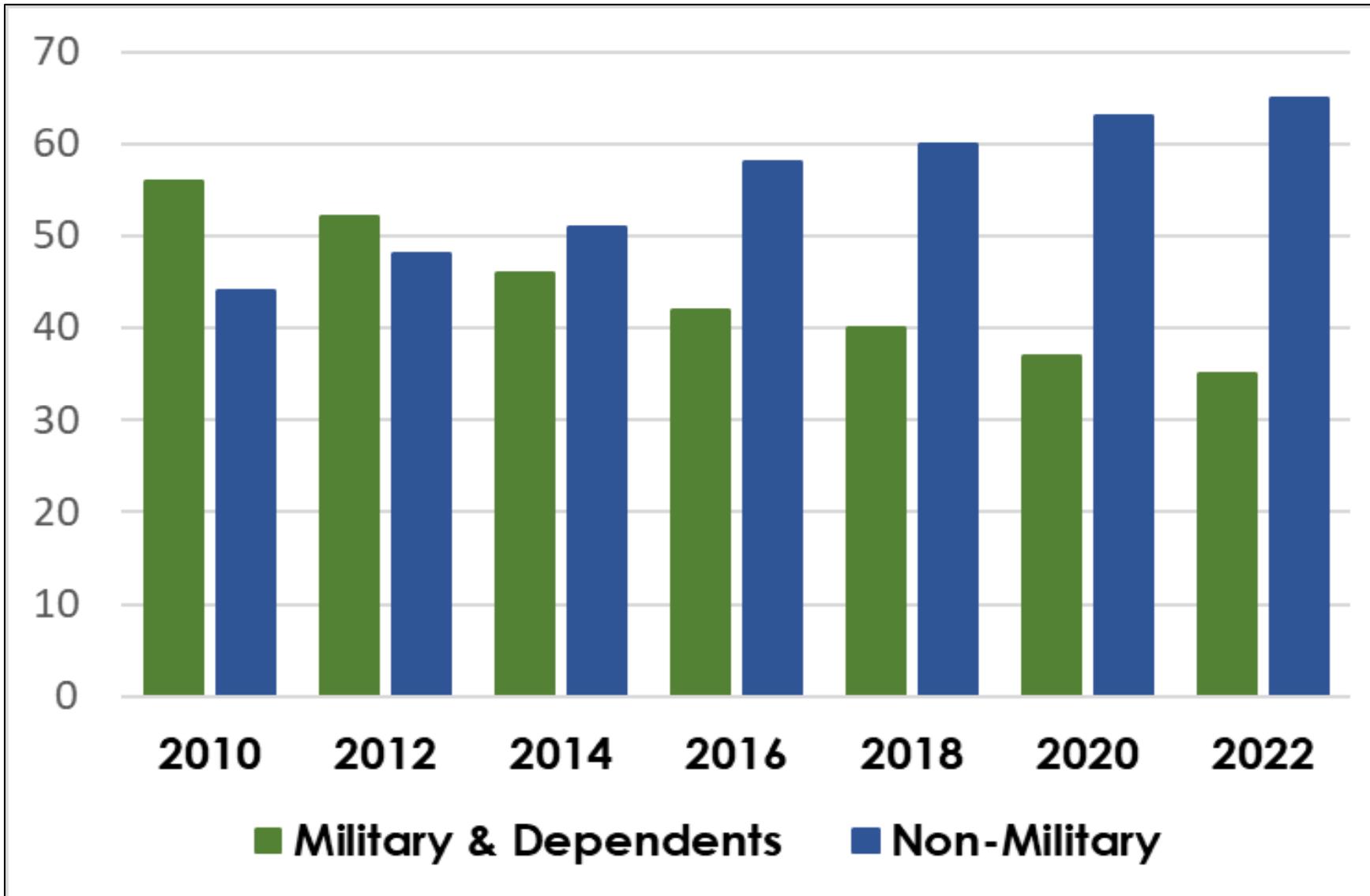


UOCAVA -1986

- Established the Federal Post Card Application (FPCA) **This is not the “federal form” described in NVRA*
- Amended by MOVE Act 2010
- Requires email delivery of ballots if requested by applicant and ballot transmission 45 days before the election
- Applies to members of the military and their dependents in the US and abroad and to non-military US citizens who are overseas
- State legislatures have discretion regarding critical policies related to implementation

INCREASINGLY NON-MILITARY

65% NON-MILITARY IN 2022



UOCAVA - 52 USC Ch. 203

SEC. 102. STATE RESPONSIBILITIES

(a) **IN GENERAL.**--Each State shall --

- (1) permit absent uniformed services voters and overseas voters to use absentee registration procedures and to vote by absentee ballot in general, special, primary, and runoff elections for Federal office;
- (2) accept and process, with respect to any election for Federal office, **any otherwise valid voter registration application and absentee ballot application** from an absent uniformed services voter or overseas voter, if the application is received by the appropriate State election official not less than 30 days before the election;

UOCAVA REQUIREMENT FOR STATES

- Accept and process **valid** voter registration applications and **valid** absentee ballot applications.
- Allow persons who would be qualified to vote **in the last place the person was domiciled** before leaving US.
- Permit the use of the FPCA and FWAB.
- Accept applications submitted electronically and transmit blank ballots electronically if requested.
- Transmit ballots 45 days before election if timely received.
- Provide an explanation if the application is rejected.
- Prohibits notarization requirements.

Voter Registration and Absentee Ballot Request

Federal Post Card Application (FPCA)

Print clearly in blue or black ink, please see back for instructions.

1. Who are you? Pick one.

I request an absentee ballot for all elections in which I am eligible to vote AND:

I am on active duty in the Uniformed Services or Merchant Marine -OR- I am an eligible spouse or dependent.

I am a U.S. citizen living outside the country, and I intend to return.

I am a U.S. citizen living outside the country, and my intent to return is uncertain.

I am a U.S. citizen living outside the country, and I have never lived in the United States.

Last name

Suffix (Jr., II)

Mr.
 Mrs.

Miss
 Ms.

Need not have any current association with the state address used to register

Receive ballot by email or online

5. What are your preferences for future elections?

A. Do you want to register and request a ballot for all elections you are eligible to vote in?

Yes
 No

B. How do you want to receive voting materials from your election office?

Mail
 Email or online
 Fax

WHAT IS LEFT TO THE STATES TO DECIDE?

State Legislative Options	More Secure	Avoid
Separate Military v. Non-Military	Military Only Privileges	Combined
FPCA Receipt Deadline	30 Days Prior to Election	No Deadline
Residency Requirement	Prior Residency	Never Resided in US
Military ID Requirement	DL, Military ID, SSN4	No ID
Non-Military ID Requirement	US Passport/DPOC	No ID
Non-Military Proof of Address	Utility Bill, Lease	No Proof of Address
Method for Return of Voted Ballot	Return by Mail	Electronic Return
Deadline for Return of Ballot	Election Day in Office	Extended Deadline
Ballot if Pending Verification	Provisional Absentee	Standard Ballot

PRIOR RESIDENCY POLICY DECISIONS

✓ 11 states prohibit US citizens who were born abroad and who have never lived in the state from voting in state or federal elections.

✗ 39 states allow some US citizens who have Never Resided in the US to register and vote. However, there are statutory requirements.

NEVER RESIDED IN MONTANA



A Policy Brief

Never Resided Voters

Under Federal Law, a U.S. citizen living outside the United States is eligible to vote in elections for federal offices **in the last jurisdiction he or she resided prior to leaving** the United States.

Under Montana law, an individual who is born abroad to a U.S. citizen parent and turns 18 without ever residing in Montana can vote in Montana – if their parent was last registered to vote in Montana.

APPLICATION DEADLINES

Federal Law:

§20302. (a) (2) accept and process, with respect to any election for Federal office, any otherwise valid voter registration application and absentee ballot application from an absent uniformed services voter or overseas voter, **if the application is received by the appropriate State election official not less than 30 days before the election;**

Montana Law:

13-21-104 (2)(c) a covered voter **may register and vote up to the time that the polls close on election day**

More than half of UOCAVA ballot applications in Montana are from non-military applicants.

UOCAVA BALLOTS TRANSMITTED 2020 ELECTION

County	Total	Postal Mail	Electronic	Other
GALLATIN	781	103	575	103
MISSOULA	753	67	319	367
YELLOWSTONE	619	10	0	609
FLATHEAD	501	3	429	69
CASCADE	356	185	1	170
LEWIS AND CLARK	346	83	202	61
RAVALLI	239	28	59	152
LAKE	127	23	73	31
PARK	123	13	35	75
SILVER BOW	109	19	0	90

Source: EAC EAVS

VERIFICATION OF IDENTITY & CITIZENSHIP

6. What additional information must you provide?

Puerto Rico and Vermont require more information, see back for instructions. ***Additional state guidelines*** may be found at FVAP.gov. You may also use this space to clarify your voter information.



Section 6

Provide any information that may assist your election official in accepting this form. You can use this space to designate particular elections or the period you wish to receive ballots.

If you are using this form to register to vote, provide proof of citizenship (include a photocopy, do not send original documents.) If you do not include proof of citizenship, you will be given a ballot with only federal offices.

State specific proof of citizenship requirements for
FPCA – Example Arizona

STATES MAY REQUIRE DPOC WITH FPCA

IN THE UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

KRIS W. KOBACH, *et al.*,

Plaintiffs-Appellees

v.

UNITED STATES ELECTION ASSISTANCE COMMISSION, *et al.*,

Defendants-Appellants

and

PROJECT VOTE, INC., *et al.*,

Intervenors-Appellants

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS, No. 5:13-cv-4095
THE HONORABLE ERIC F. MELGREN

BRIEF FOR THE UNITED STATES ELECTION ASSISTANCE COMMISSION

JOCELYN SAMUELS
Acting Assistant Attorney General

DIANA K. FLYNN
SASHA SAMBERG-CHAMPION
Attorneys
Department of Justice
Civil Rights Division
Appellate Section
Ben Franklin Station
P.O. Box 14403
Washington, DC 20044-4403
(202) 307-0714

**DOJ - Civil Rights Division,
DOD -FVAP and EAC all
confirm that states may
require documentary
proof of citizenship for
UOCAVA applicants
submitting the FPCA.**

STATES MAY REQUIRE DPOC WITH FPCA

“...the Federal Voting Assistance Program ("FVAP") at the **Department of Defense granted its request to add instructions regarding its proof-of-citizenship requirement to the Federal Post Card Application**, a voter registration and absentee ballot application form for overseas citizens developed pursuant to the Uniformed and Overseas Citizens Absentee Voting Act ("UOCAVA"), 42 U.S.C. § 1973ff(b)(2).

However, the UOCAVA is a separate statute from the NVRA and contains no language similar to the NVRA's limitation that the Federal Form "may require only such identifying information ... as is necessary to enable the appropriate State election official to assess the eligibility of the applicant and to administer voter registration and other parts of the election process." 42 U.S.C. § 1973gg-7(b)(1).

STATES BEST PRACTICES FOR VERIFICATION

- Establish separate process for military and non-military
- Confirm identity and citizenship for applicants
 - Require copy of US passport or other DPOC with application
- Require prior residence in state, verified by applicant
- Establish requirements for proof of current overseas address for non-military applicants
 - permanently or indefinitely overseas
 - temporarily overseas
- Require Chief Election Official to provided training for local election officials regarding state law, verification requirements and procedures.

EAC GUIDANCE ON MINIMUM FEDERAL REQUIREMENTS

“Make every effort to ensure that a voter registration application is not rejected as unverifiable until the State has given the individual an opportunity to correct the information at issue and attempted to validate the accuracy of the government information contained in its databases. **This does not mean that States should accept or add unverified registration applications to the statewide list.** Rather, it means only that election officials should make certain efforts before an application is determined to be unverifiable and finally rejected.”

PROVISIONAL ABSENTEE BALLOTS

- **If verification is pending**, transmit a provisional absentee ballot to applicant with instructions for providing missing information
- Federal mandates for transmitting ballots by certain deadlines
 - Not later than 45 days before an election if the application is received prior
 - If application is received less than 45 days, “in a manner that expedites transmission”

Montana Law:

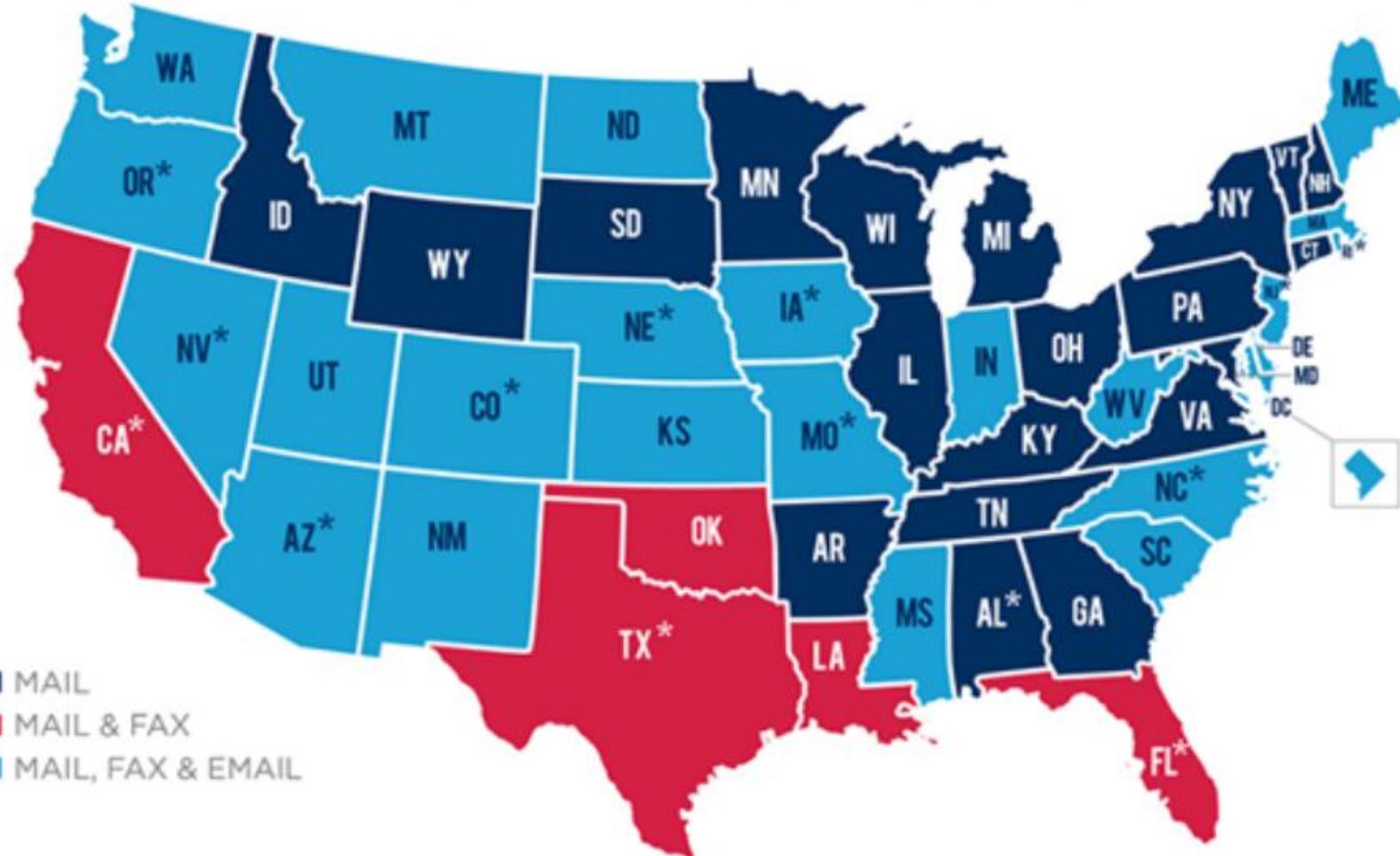
13-21-104 (2)((d)) a covered voter is allowed to cast a provisional ballot if there is a question about the elector's registration information or eligibility to vote

RETURN OF VOTED BALLOTS

HOW VOTERS CAN SUBMIT THEIR

BALLOT OR FWAB

FEDERAL WRITE-IN ABSENTEE BALLOT



ALASKA*



HAWAII



GUAM



AMERICAN SAMOA



VIRGIN ISLANDS



PUERTO RICO



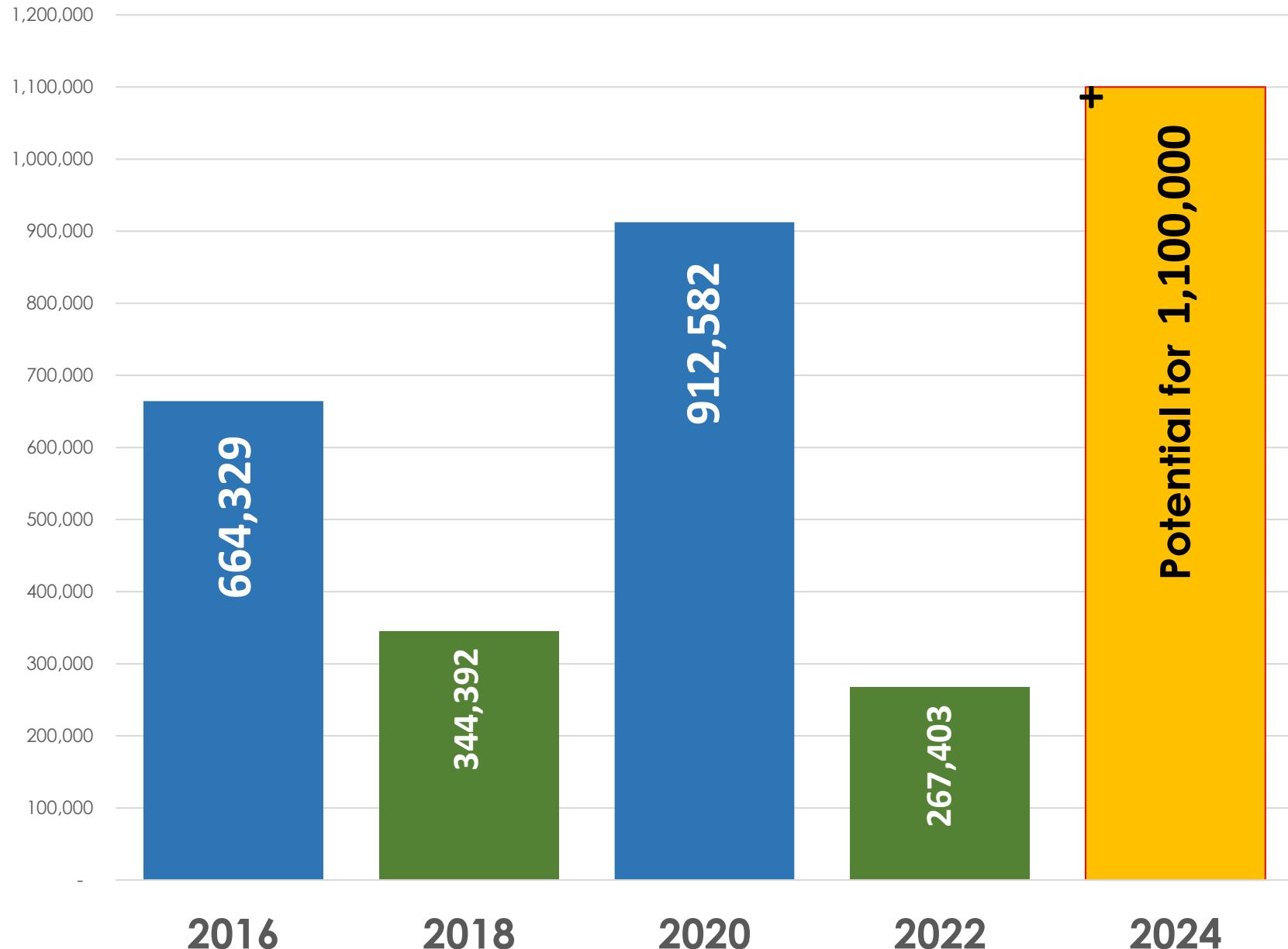
RISK MANAGEMENT FOR ELECTRONIC BALLOT DELIVERY, MARKING, AND RETURN

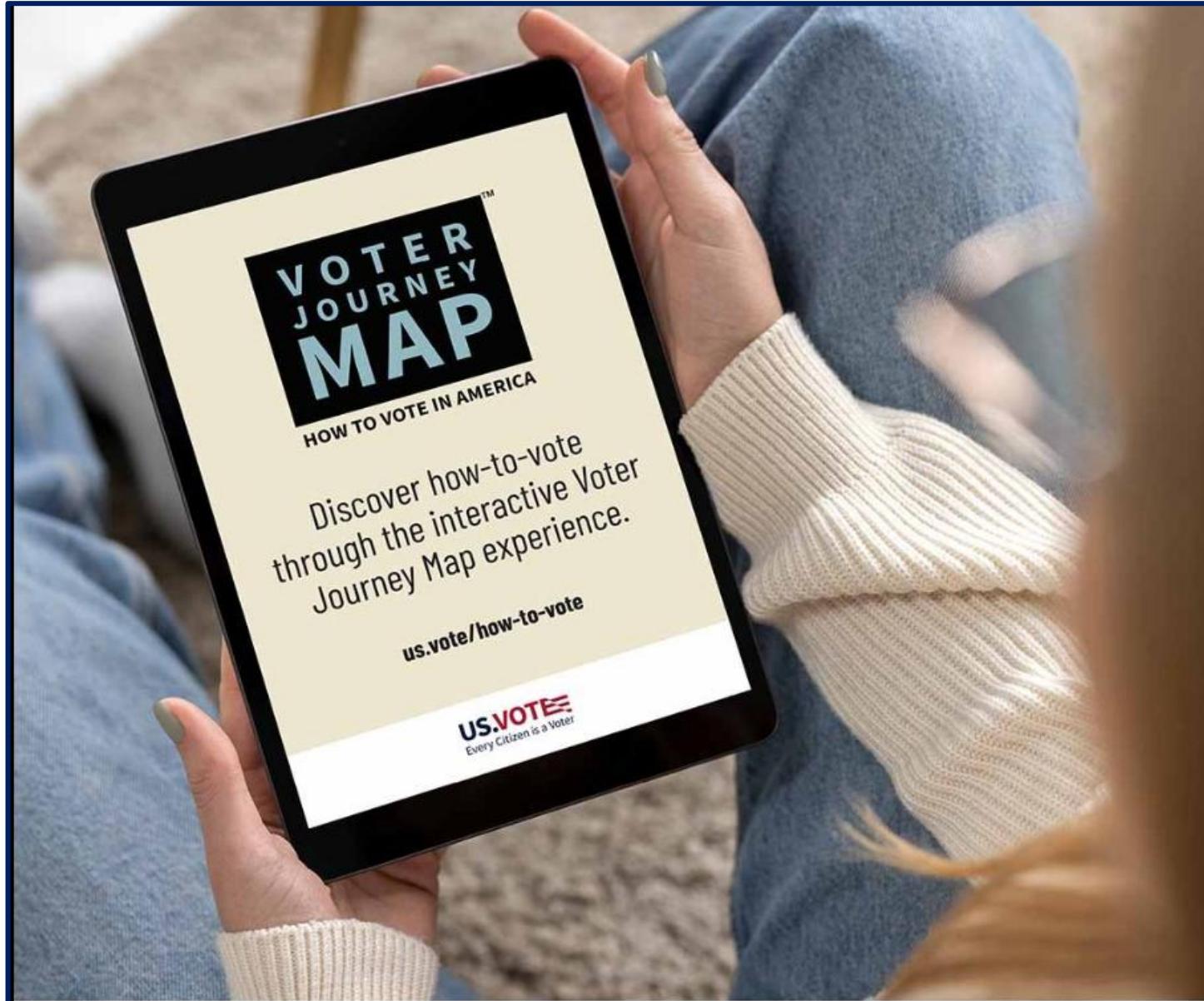
Report May 2020

“While there are effective risk management controls to enable electronic ballot delivery and marking, we recommend paper ballot return as **electronic ballot return technologies are high-risk even with controls in place**...If election officials choose or are mandated by state law to employ this **high-risk process**, its use should be limited to voters who have **no other means to return their ballot**.”

IMPACT OF UOCAVA BALLOTS ALL STATES

UOCAVA Ballots Returned





US.VOTE
Every Citizen is a Voter

SOCIAL MEDIA How to Vote IN AMERICA



WHEN YOU AND ALL YOUR FRIENDS
ABROAD HAVE REQUESTED YOUR
ABSENTEE BALLOTS AT

Vote from Abroad • org



Vote from Abroad
@vfaglobal

...

Woohoo! 🎉

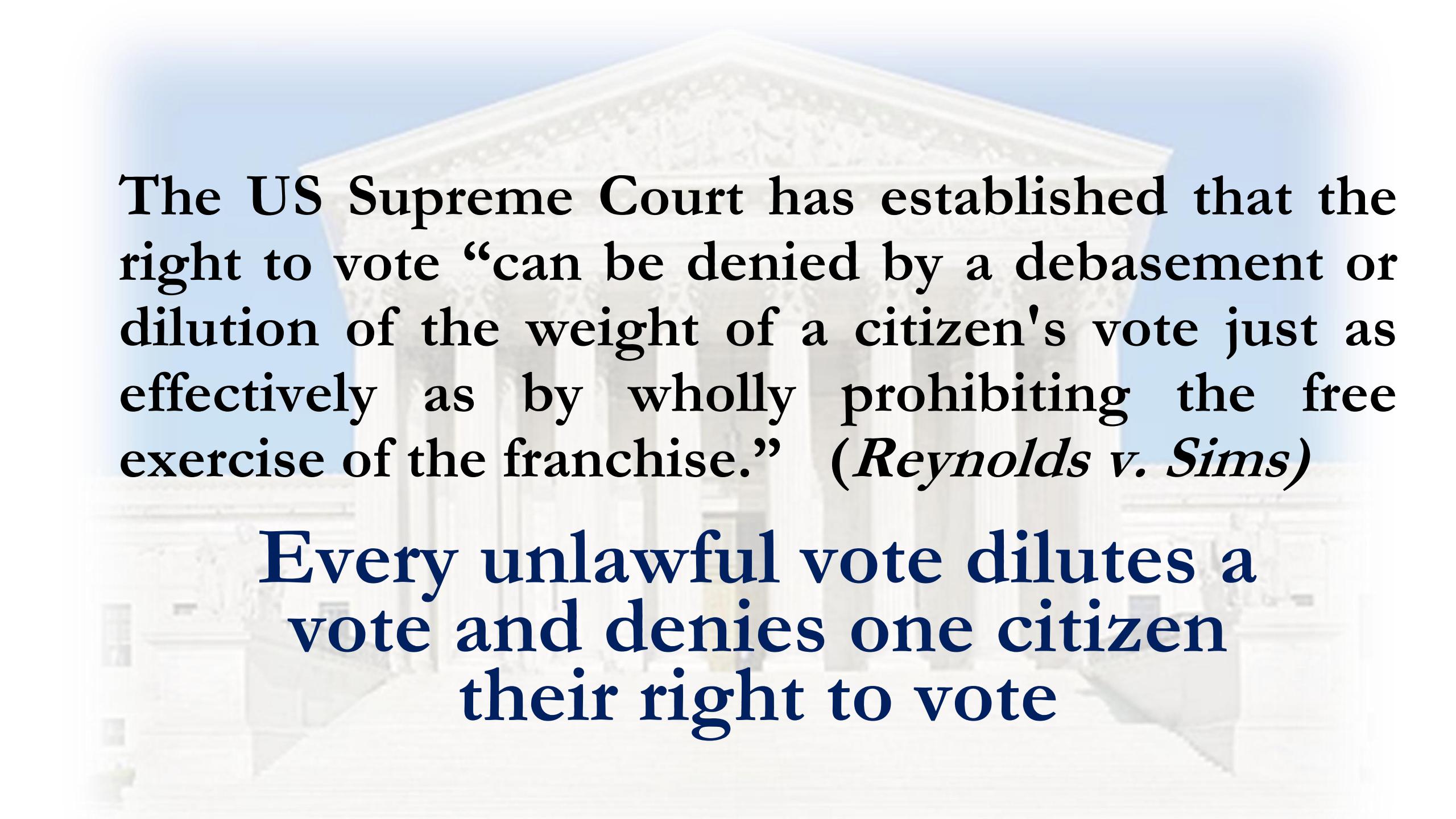
My friends and I just requested our
overseas ballots and we're so pumped to
vote! It's like a party but with less
dancing and more civic duty. 🎉

Are you **#ReadyToVote**? Go to
voteabroad.org/SocMediaVFA
#OverseasBallots
#FriendsWhoVoteTogether **#BeAVoter**
#VoteFromAbroad

8:02 AM · Sep 3, 2024 · 537 Views



**NO MENTION OF
CITIZENSHIP
REQUIREMENT**

A faint, light blue watermark of the US Supreme Court building is visible in the background of the slide.

The US Supreme Court has established that the right to vote “can be denied by a debasement or dilution of the weight of a citizen's vote just as effectively as by wholly prohibiting the free exercise of the franchise.” (*Reynolds v. Sims*)

Every unlawful vote dilutes a vote and denies one citizen their right to vote

MODERNIZE STATE LAWS UNDER UOCAVA

Federal law requires states to process "**otherwise valid**" applications according to state law. Strengthening state laws will protect military voters from vote dilution.

- Separate Requirements for Military vs Non-Military
 - Applicant Identification & Verification
 - Application and Return Deadlines
- Require Proof of US Citizenship
- Require Proof of Prior Residency in State (non-military)
- Require Proof of Overseas Address (non-military)
- Ballot Return Method

ADDITIONAL INFORMATION

Heather Honey

HH@election-institute.com

- **www.electionresearchinstitute.org**
- **Report on UOCAVA Issues 2020**
- **EAC.gov EAVS Reports**
- **FVAP.gov**

Protecting
Military Voters

