



## A Policy Brief

# Never Resided Voters

**Spring 2017**



# Introduction

While certain federal statutes provide protections on voter eligibility in federal elections, such as the *Uniformed and Overseas Citizen Absentee Voting Act (UOCAVA)*, elections are administered entirely at the State and local levels. A key component that determines a person's voting eligibility is whether he or she meets the residency requirements of the State they are seeking to vote in. Under *UOCAVA*, 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.

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However, what happens if a U.S. citizen has never lived in the United States? Since voter registration is linked to a place of residence and these citizens have never resided in the U.S., how are they able to participate in the electoral process? Do these individuals who do not fall under the traditional *UOCAVA* “overseas voter” definition have a place to vote?

FVAP refers to U.S. citizens who are 18 years or older and were born abroad, but have never resided in the United States, as “never resided” voters. These citizens are required to submit a tax form to the Internal Revenue Service each year and 18 year-old males must register for the selective service. Based on data from surveys of local election officials and overseas citizens, the Federal Voting Assistance Program (FVAP) estimates there were approximately 11,590 registered US citizen voters who never resided in the U.S. in 2016. Currently, 36<sup>1</sup> States allow never resided citizens to vote if a parent or legal guardian was last domiciled in the State.

Generally the voter registration process for a never resided citizen is simple: they would register to vote using their parent or legal guardian's last known U.S. address and request their absentee ballot be sent to their own current overseas address. If the never resided citizen submits a Federal Post Card Application, or FPCA, with this information to a State that does not allow for never resided citizens to vote, the FPCA is likely to be rejected. Conversely, if the FPCA is submitted to a State that allows for never resided citizens to vote, they would likely be registered and the State law or regulations would be consulted to determine if the voter receives a full ballot with all contests or a ballot containing federal offices only.

## **Background and 2016 Election Feedback**

**U**OCAVA voters are U.S. citizens who are active members of the Uniformed Services, the Merchant Marine, their eligible family members and U.S. citizens residing outside the United States. *UOCAVA* does not specifically address never resided citizens or the broader issue of State residency requirements, thus leaving it up to each State to determine the eligibility of the never resided voter and, if qualified, the type of ballot they will receive.

FVAP's intent when discussing this particular group of citizens is to highlight the questions and concerns that are often encountered when providing assistance to *UOCAVA* stakeholders, and the challenges voters face in navigating different State requirements for eligibility. FVAP's goal is to provide information to highlight those questions and concerns

so that the issues surrounding never resided voters can be addressed. The following is a small sample of never resided citizen feedback FVAP received during the 2016 election cycle:

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**My son is an American citizen, resident in the UK, where he was born. He has “never resided” in the US but I am a Florida resident. How then is he able to register to vote? Is he effectively disenfranchised?**

**At the very least this is taxation without representation, at most it is a violation of a US citizen’s constitutional right to vote. How can he register to vote in the upcoming November election?**

**Voter, August 27, 2016**

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**I really believe that for American citizens born overseas who have never lived in the USA as an adult that their voter registration should be subject to federal civil rights principles. The current arrangement discriminates against certain citizens, merely because of where their family members reside.**

**Local Election Official, August 30, 2016**

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**Please advise how our son can register to vote. He is a US citizen born in the UK of two US citizens who are registered to vote in Florida.**

**We live in UK with access to the US embassy.**

**Voter, August 28, 2016**

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How is it that a US citizen -- who is required to file a tax return from age 18 -- cannot vote in federal elections unless s/he is on the list [of states with “never resided” provisions]? What about those of us whose parents were last domiciled in Florida or any of the 14 states not listed? This is unfair... This affects many people I know.  
Voter, October 5, 2016

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My 22 year old daughter acquired US citizenship at birth (my husband and I are both American Citizens) but she was born in Canada and has never resided in the United States. My husband and I last resided in Indiana, and Indiana does not allow US citizens (like my daughter) who have never resided in Indiana/the USA to vote absentee. Can you please tell me how she can exercise her right to vote, as an American citizen, under these circumstances? How does she go about getting an absentee ballot for the November election?  
Voter, September, 22, 2016

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As these inquiries show, many of the never resided citizens, or their family members, who received the unfortunate news that they would not be allowed to vote in the election felt very passionately about their rights to vote and did not fully understand the process. Highlighting this small but outspoken group of citizens is important as FVAP continues to receive questions from voters and local and State election officials regarding the rules and guidelines for these never resided citizens. This unique group of voters must navigate these added complexities of citizenship and residency, in addition to the time, distance and mobility challenges many overseas voters face.

## Current Statutory Landscape

Currently, 36 States allow for never resided U.S. citizens to vote based, at a minimum, on their parent(s) or legal guardian(s)' last residence in the United States. Four States extend this allowance based on a spouse's last residence, while Illinois only extends to children of military Service members. Of the 36 States with statutory or administrative language addressing never resided citizens, seven specify that a never resided citizen is eligible to receive ballots for federal offices only.

The statutory or administrative language for never resided U.S. citizen voters varies by State, some examples include:



### Colorado § 1-8.3-102.2.D

(d) An overseas voter who was born outside the United States, is not described in paragraph (b) or (c) of this subsection (2), and, except for a state residency requirement, otherwise satisfies this state's voter eligibility requirements if the last place where a parent, legal guardian, spouse, or civil union partner of the voter was, or under this article would have been, eligible to vote before leaving the United States is within this state.



### Ohio § 3511.01

(3) A person who was born outside of the United States, who may be considered a state resident using the standards for residency established in sections 3503.02 and 3511.011 of the Revised Code, and who otherwise satisfies the requirements to vote in this state, if both of

the following apply:(a) The last place where the person's parent or legal guardian was, or would have been, eligible to vote before leaving the United States is within this state; and (b) The person has not previously registered to vote in any other state.



#### **Rhode Island § 17-21.1-2**

(b) If the person is a United States citizen and has never lived in the United States, but has a parent who is a qualified elector pursuant to this chapter, then that person shall be eligible to register and vote in federal elections where his or her parent is a qualified elector.



#### **Georgia § 21-2-219**

(e) A person who is a United States citizen, permanently residing overseas, who has never lived in the United States, may register and vote in this state in the county of residence of either of such person's parents under the limitations of subsection (c) of this Code section if either of the person's parents is registered to vote in this state. Such person shall be deemed to reside at the same location as the parent for voting purposes.

While 36 States have addressed never resided citizens in statute or by administrative rule, others have not done so thus creating potential confusion for voters seeking to determine where, and even if, they are eligible to vote. Most recently New Jersey addressed this topic through Senate Bill 92. Originally the bill passed both chambers but was later given a conditional veto by the New Jersey Governor due to his concerns with never resided voters receiving a local ballot. Senate Bill 92 was refilled in 2017 with amendments addressing the Governor's concerns; as of February 2017, Senate Bill 92 would allow never resided and

overseas citizens with no intent to return to receive a federal ballot.<sup>2</sup>

## Citizenship

To understand how a potential voter can be a U.S. citizen who has never resided in the United States, it is important to understand the ways an individual can become a U.S. citizen. An individual becomes a citizen by birth or following birth.<sup>3</sup>

To become a citizen by birth, an individual must:

- Be born in the United States or certain U.S. territories; OR
- If born abroad, had a parent(s) who was a citizen at the time of birth.

An individual can become a U.S. citizen following birth by either acquiring citizenship through their parents, or by going through the naturalization process. Citizenship is acquired through the parents under circumstances in which the individual is adopted by U.S. citizens or whose parents naturalize before the child turns 18.<sup>4</sup> Naturalization is the process by which U.S. citizenship is granted to a foreign citizen or national after he or she fulfills the requirements established by Congress in the *Immigration and Nationality Act (INA)*.

### ***Citizenship for Families of Military Members***

The naturalization process typically requires that the individual seeking citizenship be a permanent resident within the United States for a certain period of time; however, spouses and dependents of Service members can become citizens without ever residing in the United States. The *National Defense Authorization Act* for Fiscal Year 2008 amended the

*Immigration and Nationality Act* to allow certain spouses and dependents of Service members to naturalize without ever traveling or residing in the United States.<sup>5</sup>

In general, a spouse is eligible for overseas naturalization if:

- He/she is authorized to accompany the Service member abroad pursuant to the member's official orders;
- He/she is lawfully permitted for permanent residence in the United States;
- He/she is residing abroad with the Service member in marital union, and;
- He/she has been a permanent resident of the U.S. for three years immediately preceding the date of filing the naturalization application and has lived in marital union with their citizen spouse for at least those three years. The *National Defense Authorization Act* for Fiscal Year 2008 treats qualifying residence abroad as residence and physical presence in the U.S. under this section.

Children of military members also have special exemptions that allow them to complete the naturalization process without traveling to the United States for any part of that process. They are eligible for citizenship under the following conditions:

- At least one parent is a U.S. citizen or, if deceased, the parent was a U.S. citizen at the time of death.
- The U.S. citizen parent had been physically present in the United States for at least five years. Military service abroad can substitute for this requirement.
- The child is under 18 years old.
- The child is residing outside of the United States in the legal or physical custody of the U.S. citizen parent.

Of the 36 States with statutory or administrative language addressing never resided citizens, seven specify that a never resided citizen is eligible to receive ballots for federal offices only.

Spouses, children or parents of a U.S. citizen who died as a result of combat during active duty in the U.S. armed forces are also granted special provisions that may allow them to become citizens without ever residing in the United States. These family members are granted an exemption from the naturalization physical presence requirements for two years immediately following the Service member's death.<sup>6</sup>

## Residency and Never Resided Voting Eligibility

All of the 36 States with never resided provisions allow U.S. citizens who have never lived in the United States to register to vote and request an absentee ballot based on their parent or legal guardian's last residence in the United States. While this language initially appears straightforward, there are certain gray areas that should be considered.



Current never resided provisions are based on an individual's parent(s)' last place of domicile, but what if that parent has moved back to the United States and is no longer "last domiciled," but instead, "currently domiciled"? At least one State, Oregon, has made the interpretation that the never resided provision no longer applies in this scenario. Once the parent of the person living overseas moves back to Oregon, that parent is no longer considered to have last resided in the State, which renders the never resided provision moot and the overseas child is no longer qualified under this provision.

The Oregon example applies to a parent who lived in Oregon, moved overseas, and then years later, moved back to Oregon. What if that parent relocated to a different State upon returning to the United States? Should the overseas child then vote based on the parent's last residence before he left the United States the first time, or based on their parent's current residence in the new State? State statutes are unclear on this and may require a State-by-State interpretation of whether that overseas child is eligible in their State.



At least three States (Arizona, Georgia and Nebraska) only allow never resided citizens to vote in their State if their parent was last registered to vote in their State. In these cases, the never resided individual's parent(s) must have not only lived in the State before leaving the country, but must also have been registered to vote in that State. If the parent is still living overseas, then they are eligible to register to vote based on UOCAVA, which in turn would make their children eligible to vote based on these States' never resided provisions. However, potential problems could arise if the parent is now deceased or has moved back to the United States and since registered to vote in another State. The never resided child still living abroad may not know if, or where, their deceased parent was last registered to vote, or may no longer be eligible under these State provisions because their parent has since returned to the U.S. and registered elsewhere.

### ***Never Resided Spouses***

While all 36 States' never resided statutes cover never resided children, only Colorado, Michigan, Oregon and South Dakota cover spouses who have never lived in the United States. Under these four States' laws, spouses are eligible to vote in that State if their spouse was last domiciled in the State (i.e., a never resided spouse is eligible to vote in Colorado as long as their spouse was last domiciled in Colorado). If a never resided U.S. citizen is married to a U.S. citizen who last resided in any other State, they have no place to register to vote as they do not meet any other State's residency requirements.

### ***Never Resided Grandchildren***

During the 2016 General Election, a small number of potential voters stated to FVAP that neither they nor their parents had ever resided in the United States. In these cases, their grandparent(s) were the last ones to have lived in the United States and it was difficult to determine their grandparents' last place of residence when they did live in the United States. Currently, this

scenario is not explicitly covered under any existing State's never resided statute. While the number of potential voters impacted is likely small, this number could increase in the future as more generations of U.S. citizens reside permanently overseas.

## Conclusion and FVAP Next Steps

**F**VAP does not advocate for or against State adoption of never resided provisions; however, it does have a responsibility to educate stakeholders, including impacted voters and the States, about the implications of having or not having such a provision in statute. FVAP is also dedicated to seeking out ways to improve the election process for *UOCAVA* voters. Overseas citizens in general face voting complexities that the general domestic voting population does not have to consider – and never resided citizens have yet another layer of complexity to overcome. The FVAP “Overseas Citizen Population Analysis Report” released in 2016 found that of the 5.7 million U.S. citizens overseas, 3.1 million were still under the age of 18.<sup>7</sup> The number of never resided voters will only increase in the future as these 3.1 million reach voting age.

When considering adopting or modifying existing never resided provisions and to be fully prepared for when the situation occurs, FVAP encourages all States to consider the impact to, and address potential gray areas, for never resided voters: exactly who the State wants to grant voting privileges to and which ballot these voters will be eligible to receive. FVAP also recommends addressing the State's current policies regarding this issue during local election official training sessions.

1 A full list of states with “never resided” provisions can be found here:

<https://www.fvap.gov/citizen-voter/reside>

2 <http://www.njleg.state.nj.us/bills/BillView.asp>

3 FVAP does not play a role in determining citizenship. For more information, please consult the Department of State or visit <https://travel.state.gov/content/travel/en/legal-considerations/us-citizenship-laws-policies.html>.

4 <https://www.uscis.gov/node/42030>

5 <https://www.uscis.gov/military/citizenship-military-personnel-family-members/citizenship-spouses-and-children-military-members>

6 <https://www.uscis.gov/military/family-based-survivor-benefits/survivor-benefits-relatives-us-citizen-military-members>

7 [https://www.fvap.gov/uploads/FVAP/Reports/FVAP-OCPA\\_201609\\_final.pdf](https://www.fvap.gov/uploads/FVAP/Reports/FVAP-OCPA_201609_final.pdf)



For more information on the Federal Voting Assistance Program, this research, or how FVAP can assist your office, please contact your FVAP State Analyst:

Nate Bacchus (571) 372-0739 [nate.a.bacchus@fvap.gov](mailto:nate.a.bacchus@fvap.gov)

Meghan Kelly (571) 372-0742 [meghan.kelly@fvap.gov](mailto:meghan.kelly@fvap.gov)