2016

Fighting to Lose the Vote: How the Solider Voting Acts of 1942 and 1944 Disenfranchised America's Armed Forces

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INTRODUCTION

As President Lyndon B. Johnson remarked in a message to Congress, in a democracy, "the right to vote is the most basic right of all."[1] Yet the path to the American ballot box has been anything but straightforward. For centuries, minorities and women were denied a voice in elections. It took the Civil War to secure passage of the Fifteenth Amendment to the United States Constitution, which prohibited the state and federal governments from restricting the right to vote based on race;[2] it took more than a century for the substance of this amendment to be realized.[3] After decades of grassroots movements for women's suffrage, the Nineteenth Amendment finally granted voting rights to women in 1920.[4] By that time, all adults over twenty-one years of age could legally vote,[5] although state and federal legislation encumbered this right throughout the twentieth century by preventing qualified voters from casting a ballot.[6]

One illustrative episode of such hindrances arose during World War II. Traditional methods of voting were unavailable to the American soldiers drafted into the military as well as to the women who served in auxiliary corps or volunteer organizations, such as the Red

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1. Special Message to Congress: "To Vote at Eighteen—Democracy Fulfilled and Enriched," 1 PUB. PAPERS 751 (June 27, 1968). As 2015 marked the seventieth anniversary of V-E (Victory in Europe) and V-J (Victory over Japan) Days, it is a timely occasion to revisit a chapter of history that has been largely ignored, but that was formative in the development of voting rights in America.

2. U.S. CONST. amend. XV.

3. *See* Voting Rights Act of 1965, Pub. L. No. 89-110, 79 Stat. 437 (codified as amended at 52 U.S.C. §§ 10101–10702 (2014)). As recently as 2000, the Supreme Court struck down a Hawaiian state voting provision because it violated the Fifteenth Amendment. *See* Rice v. Cayetano, 528 U.S. 495 (2000). Under Hawaiian state law, prospective voters were required to attest that they were "Hawaiian" in order to become registered voters. *See id.* at 499. The Supreme Court held that this law abridged the right to vote on account of race. The Court stated, "The purpose and command of the Fifteenth Amendment are set forth in language both explicit and comprehensive. The National Government and the States may not violate a fundamental principle: They may not deny or abridge the right to vote on account of race." *Id.* at 511–12.

The Supreme Court invalidated section 4(b) of the Voting Rights Act ("VRA") in 2013. Shelby Cty. v. Holder, 133 S. Ct. 2612 (2013). This section dictated the formulas for the Justice Department's enforcement of the VRA. *See id.* at 2619. The Court invited Congress to update the formulas that determine which jurisdictions are covered under the VRA, but Congress has yet to do so.

4. U.S. CONST. amend. XIX ("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 sex.").

5. U.S. CONST. amend. XVI.

6. The poll tax and in-person registration requirements are two examples of restrictions placed on voting in the twentieth century. *See infra* note 8 and accompanying text; *see also* discussion *infra* Section II.D.

Cross. Removed from their homes to train and serve overseas, if they were to vote at all it would be by absentee ballot. However, many states did not have absentee voter laws, and those that did had not created them with an eye to the novel circumstances posed by wartime.[7] For example, many states required that new voters register in person, yet it would have been impossible for tens of thousands of Americans in the services to travel home to satisfy this condition.[8] To avoid disenfranchising the millions of people serving the nation, state and federal legislators needed to create laws that would ensure a meaningful opportunity to cast an absentee ballot. After all, it seemed undemocratic to politically silence those in uniform.

Under the belief that the task could not be left to the states, Congress set out in 1942 to create a simple absentee ballot to be used by anyone who left their home to serve the nation.[9] Yet, holding elections and counting votes were activities traditionally reserved to the states, and some representatives and senators bitterly fought the federal voting bill, accusing Congress of trespassing on state sovereignty.[10] Many a day's debate ended in an impasse, and it seemed Congress would never pass voting legislation because sectional hostilities and prejudices cloaked in the guise of "states' rights" overpowered notions of democracy and universal suffrage.

The fight for the soldier vote implicated a complicated intersection of constitutional principles: state sovereignty, Congress's authority over federal elections, and Congress's war powers.[11] While the

7. *See* 88 CONG. REC. 7069 (1942) (stating that only one of the forty-eight states had an "adequate" absentee voting law that would enable Americans displaced from their homes to cast a ballot in the upcoming midterm election).

8. *See id.* at 6928 (discussing the requirement of many states that a person must register to vote in person); *id.* at 6549 (discussing how soldiers who turned twenty-one years old after entering the service would not have "an opportunity to register in their home districts").

9. In the end, a law was passed, but it was largely ineffective. *See* Soldier Voting Act of 1942, Pub. L. No. 77-712, 56 Stat. 753 (originally titled "An Act to provide for a method of voting, in time of war, by members of the land and naval forces absent from the place of their residence") (amended 1944).

10. For example, during the debates for the 1942 soldier voting bill, one representative insisted that there "never has been a Federal election held nor a Federal vote cast," because the states had always possessed the power to hold elections and count ballots. 88 CONG. REC. 7055 (1942). The same representative continued: "Never before in history has the Congress pretended to legislate on such a subject. Never before has this citadel of States' rights been so attacked. Never before has such usurpation been attempted." *Id.*

11. *See* U.S. CONST. amend. X ("The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."); *id.* art. I, § 4, cl. 1 ("The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State

U.S. Constitution allocated the bulk of election duties to the states, it also sanctioned Congress's involvement in governing elections under certain circumstances.[12] But where did the authority of the states end and Congress's powers begin? Did the federal government have the power to pass legislation to ensure that elections for federal offices would not be impaired? Several factors weighed in favor of Congress becoming involved. First, most state absentee voter laws were unworkable in wartime.[13] Second, it seemed natural for the federal government to legislate the logistics of absentee voting because the War and Navy Departments shouldered the duties of distributing ballots and hosting elections in training camps and at overseas posts.[14] Third, as a practical matter, Congress was better positioned to create one mechanism for absentee voting, which seemed preferable to forty-eight conflicting and unique state voting procedures.[15] There was a constant tension between what many believed Congress ought to do, and what Congress could constitutionally do.

All legislators could agree in principle that soldiers should have an opportunity to vote. Many of the senators and representatives who voted for the Selective Training and Service Act of 1940, which implemented the draft and caused millions of Americans to enter the armed services, were the same men and women who felt duty-bound to provide Americans in the armed forces with a method of voting in the 1942 and 1944 elections.[16] Yet, wartime voting became a partisan,

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by the Legislature thereof; but Congress may at any time by Law make or alter such Regulations, except as to the Places of chusing Senators."); *id.* art. I, § 8, cl. 11 (granting Congress the power to "declare War"); *id.* art. I, § 8, cl. 14 (granting Congress the power to "make Rules for the Government and Regulation of the land and naval Forces").

12. *Compare id.* art. I, § 2, cl. 1 ("The House of Representatives shall be composed of Members chosen every second Year by the People of the several States, and the Electors in each State shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature."), *with id.* art. I, § 4, cl. 1 ("The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but Congress may at any time by Law make or alter such Regulations, except as to the Places of chusing Senators.").

13. 88 CONG. REC. 6547 (1942) (acknowledging that the only state with an adequate absentee voting law was New York).

14. 90 CONG. REC. 608 (1944) (discussing how the War and Navy Departments had informed Congress that "it would almost stop the war if they had to deliver all the ballots from the 48 different States under the 48 different procedures they have").

15. *Id.* at 607 (discussing the need for a universal federal ballot because the federal government "cannot furnish to the troops in every part of the world all the different types and kinds of ballots which are required by the 48 States, which have enacted 48 different kinds of election procedures").

16. Pub. L. No. 76-783, § 2, 54 Stat. 885, 885 (providing that "every male citizen of the United States . . . who, on the day or days fixed for the first or any subsequent registration, is between the ages of twenty-one and thirty-six, [shall] present himself

divisive issue. It pitted Republicans against Democrats, and some southerners against legislators who were resistant to race-based restrictions on voting. Diehard states' rights advocates bitterly resisted the expansion of federal powers, some maintaining that the sanctity of the Constitution was up for grabs. Throughout the debates, legislators would be reminded of the consequences of their dissension. It threatened to deprive one of the most cherished cornerstones of democracy for the population of Americans who were risking their lives to preserve this very form of government. In the words of one representative, to pass a mucked-up bill that did not provide a meaningful opportunity to vote would be "a deception . . . against our soldiers and sailors."[17]

This Article explores the legal and constitutional issues that plagued the passage of the Soldier Voting Acts of 1942 and 1944. It is composed of three Parts. The first analyzes the 1942 Soldier Voting Act and explores the congressional handiwork that led to a voter turnout of less than one percent of all servicepeople in the 1942 election.[18] Regardless of whether one was from a red or blue state, all agreed this was a civil rights travesty. The second Part will explore the 1944 Soldier Voting Act, which was supposed to remedy and amend the 1942 bill, boost absentee voting, and provide a simple mechanism for those in the services to cast a ballot. Instead, both sides of the aisle worked to manipulate the ballot in order to secure a certain outcome in the election: Democrats strove to create a ballot that would favor Roosevelt, while Republicans worked to make voting for Roosevelt as difficult as possible. After endless rounds of concessions and amendments, the final version of the 1944 soldier voting law was, in the words of one representative, "as clear as mud."[19] Once again, voter turnout amongst those in the services was extraordinarily low. The third Part explores how the shortcomings in the 1942 and 1944 soldier voting laws were eventually remedied to some extent during the postwar years.

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for and submit to registration" for military service); *see, e.g.*, 86 CONG. REC. 12,160 (1940) (roll call for the vote on the Selective Training and Service Act).

17. 90 CONG. REC. 2630 (1944).

18. The National World War II Museum estimates that approximately four million servicemen were in the armed services in 1942. *See By the Numbers: The US Military*, NAT'L WORLD WAR II MUSEUM, http://www.nationalww2museum.org/learn/education/for-students/ww2-history/ww2-by-the-numbers/us-military.html (last visited Feb. 22, 2016). Of these four million men, only twenty-eight thousand cast votes in the 1942 election. *See* C.P. Trussell, *Both Sides Press Bids for 1944 Service Vote*, N.Y. TIMES, Nov. 21, 1943, at E9.

19. 90 CONG. REC. 2638 (1944).

I.
THE 1942 SOLDIER VOTING ACT

A. *Conscripting Millions*

As war raged in Europe in 1940, President Franklin Delano Roosevelt faced a conundrum. The size of the United States military was skeletal, and yet the possibility that the nation would be forced to join the war could not be ignored.[20] The recently invented Gallup Poll revealed that, as of June 1940, only about seven percent of Americans were in favor of an immediate declaration of war against Germany.[21] While the President knew that proactive legislation was needed to prepare America for the possibility of war, he faced a populace infected with a virulent sense of isolationism, the roots of which had grown deep following World War I and the all-encompassing economic disaster the nation faced during the Great Depression.[22] Throughout the summer of 1940, Congress drafted conscription legislation. President Roosevelt publicly endorsed the anticipated bill—"I am in favor of a selective training bill and I consider it essential to adequate national defense," he said in August 1940.[23] Roosevelt explained that conscription was a necessary measure—even in the absence of a declaration of war—because it would be impossible for the United States to train and mobilize an army only after it joined the conflict.[24] In support, he noted that it took the United States thirteen-and-a-half months to prepare its army for World War I and emphasized that the United States could not afford such a delay in readying itself for another war.[25]

In September 1940, Congress passed the Selective Training and Service Act, which required that all men between twenty-one and thirty-six years of age register for military service.[26] It was an unprecedented measure: never before had the United States held a peacetime

20. *See* JOHN JAMIESON, BOOKS FOR THE ARMY: THE ARMY LIBRARY SERVICE IN THE SECOND WORLD WAR 20 (1950) (estimating that 174,000 men were in the Army before conscription).

21. *See* Hadley Cantril, *Impact of the War on the Nation's Viewpoint*, N.Y. TIMES, June 2, 1940, at 67.

22. *See* RAOUL DE ROUSSY DE SALES, THE MAKING OF TOMORROW 5 (1942) (observing that the United States maintained an isolationist foreign policy during the "boom years and the depression"); *see also* JOHN MILTON COOPER, JR., BREAKING THE HEART OF THE WORLD 11, 228–29, 395 (2001).

23. *See* Charles Hurd, *Need of Men Vital*, N.Y. TIMES, Aug. 3, 1940, at 1.

24. *Id.*

25. *Id.*

26. Selective Training and Service Act of 1940, Pub. L. No. 76-783, § 2, 54 Stat. 885, 885. The registration requirement was later expanded to include all male citizens of the United States between the ages of eighteen and sixty-five. *See* Proclamation No. 2597, 8 Fed. Reg. 14,595 (Oct. 28, 1943).

draft.[27] The Act empowered the President of the United States to induct "such number of men as in his judgment is required," and each inductee was obligated to serve a twelve-month period that could be extended if the "interests of national defense" required it.[28] On October 29, 1940, President Roosevelt addressed the nation before the first draft numbers were drawn. "This is a most solemn ceremony," he began. "It is accompanied by no fanfare, no blowing of bugles or beating of drums, and there should be none."[29] Reluctantly, the nation was preparing for war. "We are well aware of the circumstances, the tragic circumstances, in lands across the sea which have forced upon our nation the need to take measures of total defense," the President reminded the public.[30] That same day, Roosevelt gravely sat beside a blindfolded Secretary of War Henry L. Stimson and watched as Stimson pulled numbers from a fishbowl to establish the order in which Americans would be inducted into the armed services.[31] Around the country, Americans listened to radio coverage of the draft. "'This is the first lottery I ever won in my life,' several jokingly complained" as their numbers were selected.[32] Although Election Day was less than one week away, and some thought the timing of the draft would cost Roosevelt the election, Roosevelt instead became the first to ever serve a third term as President.[33]

Initially, only eight hundred thousand of more than sixteen million registrants were called to serve from 1940 to 1941.[34] After the attack on Pearl Harbor in December 1941, the pace of conscription accelerated. By the summer of 1942, almost four million Americans had donned a military uniform, and this number was on the rise.[35] After a thirteen-week basic training regimen, these Americans were

27. *See* DORIS KEARNS GOODWIN, NO ORDINARY TIME: FRANKLIN AND ELEANOR ROOSEVELT: THE HOME FRONT IN WORLD WAR II 186 (1994).

28. Selective Training and Service Act § 3.

29. Radio Address on the Occasion of the Drawing of Numbers Under the Selective Service Act of 1940, 1940 PUB. PAPERS 510 (Oct. 29, 1940).

30. *Id.* at 510–11.

31. *See* GOODWIN, *supra* note 27, at 186; *see also* CONRAD BLACK, FRANKLIN DELANO ROOSEVELT: CHAMPION OF FREEDOM 592–93 (2003).

32. GOODWIN, *supra* note 27, at 187.

33. *Id.* at 189. Despite his win, the election returns were closer than President Roosevelt would have liked. He claimed 54.7% of the vote to Wendell Willkie's 44.8%. *Id.*

34. Radio Address on the Occasion of the Drawing of Numbers Under the Selective Service Act of 1940, 1940 PUB. PAPERS 510 (Oct. 29, 1940). To make these numbers sound more palatable, the White House explained that "more than 95 per cent of the grand total [of registrants] are not to be called, and less than 5 per cent are to be." *Id.* at 512.

35. *By the Numbers: The US Military*, *supra* note 18.

considered ready for warfare and shipped out to locations around the world.[36] With the November 1942 midterm elections on the horizon, the need to ensure that these troops could vote became a crucial issue.

B. *The Initial Bill*

In June 1942, the House of Representatives considered a bill "[t]o provide a method of voting, in time of war, by members of the land and naval forces absent from the States of their residence and serving within the continental United States."[37] This legislation provided that every man who was qualified to vote and displaced from his home due to military service, was entitled to a war ballot. It placed the onus on each state's secretary of state to print and supply soldiers with war ballots listing the candidates running for federal, state, and local offices.[38] The process to cast a vote had three parts. First, the Army was to provide its men with postal cards to be mailed to the secretary of state of their place of residence to request a ballot. Second, the secretary of state was to then mail a ballot along with an oath to be signed by the solider affirming that he was a citizen of that state and a qualified voter. And third, the soldier would then return a completed oath and ballot. If the soldier was a qualified voter under the relevant state standards and the ballot was received by the deadline set by his home state, his vote would be counted.[39]

Most legislators backed the principle of the bill: providing Americans in the armed services with the right to vote. Many agreed that the federal government—and not just the states—should be involved in devising an absentee voting scheme when the Army and Navy would be called upon to execute it. As Democratic Representative Robert Ramsay explained to his colleagues:

> It is true that many of the States have absentee balloting, but it is also true that there are States, I believe six or seven, that do not have absentee balloting at elections. . . . I want to call . . . attention . . . to the fact that the law in Mississippi has absentee voting for primaries only but not for the general elections at all. Even down in the State of Kentucky, there is no absentee vote, and in many States they do have certain rules, but they are cumbersome and it cannot be done satisfactorily. In my own State we have had absentee balloting for years, but it is nearly impossible to make the affidavit that you are going to be absent and get your affidavit in time to

36. Meyer Berger, *American Soldier—One Year After*, N.Y. TIMES, Nov. 23, 1941, at SM29.

37. *See* H.R. REP. NO. 77-2265, at 1 (1942).

38. 88 CONG. REC. 6547 (1942) (discussing the general workings of the bill).

39. *Id.*

> vote. Our ballot is not sent out until 10 days before election and it must be back home 5 days before the election. . . . Many of the States are in a like situation.[40]

Representative Ramsay argued that, at a time when Americans were being drafted into military service—sometimes against their will—and were fighting to preserve democracy, the slipshod absentee voting laws of the states needed to be reformed. There needed to be a federal voting bill.

But, the initial bill was plagued by shortcomings. It limited absentee voting to men who were drafted and sent to training camps outside their home state.[41] But what about soldiers who were drafted and assigned to training camps within their home state, but hundreds of miles from their polling place? These men were absent from their homes, could not travel to their home district to cast a vote, but were unable to cast an absentee ballot because they were not absent from their state of residence. The bill also provided no voting mechanism for Americans who were serving overseas.[42] Another oversight was that the initial bill applied only to men. It ignored the hundreds of thousands of women who left their homes to volunteer to serve in auxiliary corps, the Red Cross, and other wartime organizations.[43] It also did not address how those who had recently turned twenty-one years old could register to vote when most state voting laws required prospective voters to register in person.[44]

Over the following months, the bill bounced back and forth between the Senate and the House of Representatives, as each chamber added amendments that only seemed to delay the bill's passage and complicate the process of casting a ballot. There were some matters

40. *Id.* at 6546–47.

41. *Id.* at 6563.

42. *Id.* at 7058.

43. *Id.* at 6558 (discussing the bill's applicability to women serving the nation); *see also* EMILY YELLIN, OUR MOTHERS' WAR: AMERICAN WOMEN AT HOME AND AT THE FRONT DURING WORLD WAR II 115 (2004). Members of the Women's Army Auxiliary Corps ("WAACs") and the Women Airforce Service Pilots ("WASPs") were not actually considered members of the Army; rather, they were considered "civilians serving *with* the Army." *Id.* Thus, these women were deprived of Army benefits due to their "civilian" status. In 1943, the Army relented and granted women serving as WAACs or WASPs full military status. *Id.* at 116.

44. Both West Virginia and Indiana required would-be voters to register in person. *See* 88 CONG. REC. 6550 (1942) (noting that the state of West Virginia required each individual to "present himself or herself personally before he can vote"); *id.* at 6552 ("In my own state of Indiana, in order to register, a person must personally present himself or herself to the registration officer, there sign the registration card and there identify himself or herself, and these boys in the service have never had that opportunity.").

that met little opposition, such as amending the bill to include women who left their homes to serve the nation.[45] Providing no mechanism for overseas absentee voting also generated little debate, primarily because the War Department insisted it would be impossible to effect. In a letter to Congress, the War Department explained that the "shipment of the supplies of applications for ballots (post cards), the return to the various secretaries of states of the executed applications, thence the carrying of the blank ballots and instructions to the voters, and the return of the executed ballots from the several theaters of operations overseas would present a tremendous problem."[46] As it was already September, and mail service overseas was notoriously slow, there was insufficient time to effect three consecutive overseas mailings.[47] Plus, this three-part system did not take into account the fact that the Army was constantly moving, and many soldiers would not be stationed in the same place as when they originally requested a ballot. The time, effort, and sheer magnitude of the task of achieving successful overseas voting would, in Stimson's words, "impede military functions."[48] Most members of Congress were willing to accept the War Department's position at face value, and there was little debate about extending the reach of the voting bill to those serving overseas.[49]

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45. The amendment read:

> In time of war . . . every individual absent from the place of his residence and serving in the land or naval forces of the United States in the continental United States (excluding Alaska), including the members of the Army Nurse Corps, the Navy Nurse Corps, the Women's Navy Reserve, and the Women's Army Auxiliary Corps, who is or was eligible to register for and is otherwise qualified to vote . . . shall be entitled . . . to vote . . . .

Id. at 6923.

46. *Id.* at 7058 (quoting Secretary of War Henry L. Stimson's letter to the Speaker of the House of Representatives). Stimson noted that it was public knowledge that the Army was already struggling to fulfill the basic needs of servicemen: "[W]e do not have available at this time sufficient transportation facilities to carry our forces, weapons, munitions, foods, medicines and other essential supplies overseas." *Id.* Merely keeping up with mail had become such a strain that the Army had resorted to the "microfilming of V-mail" to decrease the "bulk and weight" of such mail by about ninety-eight percent. *Id.* As the voting procedure called for by the federal bill would require servicemen to mail an application, affidavit, and war ballot, the voting procedure would place a significant burden on the already overburdened overseas mail system. *Id.*

47. *Id.* ("[T]he time is now so short that there is a grave question that the various operations essential to carrying out the provisions of the bill could be completed . . . .").

48. *Id.*

49. *Id.* at 7096 (accepting that Americans overseas would not be provided an absentee ballot in the 1942 election). It is rather extraordinary that the disenfranchisement of millions of Americans overseas produced so little debate in Congress after they had

C. State Sovereignty Concerns

Voter registration and the poll tax were two hotly debated issues. Objections to the bill on these grounds were centered on the sovereignty of the states to prescribe voter qualifications. To some legislators, the bill seemed to interlope on each state's right to determine who was qualified to cast a ballot. As a representative from Alabama put it: "Congress has no more right in this field of legislation than it has to govern Mars."[50] But, state offices were not the only positions at stake in the upcoming election. Federal legislators also bickered over whether the states had the exclusive power to control the methods and regulations governing elections for federal offices. Could states, by failing to pass adequate absentee voter laws, disenfranchise voters in federal elections?

Much of the debate involved two provisions of the Constitution that seemed to place the states in competition with the federal government over how an election would be held. Article I, Section 2, provided: "The House of Representatives shall be composed of Members chosen every second year by the people of the several states, and the electors in each State shall have the *qualifications* requisite for electors of the most numerous branch of the State legislature."[51] While most members of Congress could agree that this language meant that voter "qualifications" were set by the states, disagreement abounded over what constituted a "qualification."[52] Was registering to vote a qualification? What about payment of a poll tax? Complicating matters was Article I, Section 4, of the Constitution, which stated: "The times, places, and manner of holding elections for Senators and Representatives, shall be prescribed in each State by the legislature thereof; *but* the Congress *may* at any time by law make or alter such *regula-*

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spent several months discussing the issue of expanding soldier absentee voting. *See, e.g.*, *id.* at 7072 (debating soldier voting in September 1942).

50. *Id.* at 7073. While some legislators knew that there were enough votes to pass the bill, they still resisted the idea that the federal government would interlope on a matter that belonged to the states. This issue often produced some of the most impassioned diatribes. In the words of Alabama Representative Sam Hobbs, "[t]he people of the States put us here to work for the mutual benefit of both themselves and their Federal Government, not to kill their servants and offspring, the States." *Id.* He deemed the federal voting bill to be "mob violence—lynch law!" *Id.* "You proponents have the votes," he admitted, "but you have no right, on your side!" *Id.* He further implied that the bill was criminal and indicted it for the "murder of the chief sovereignty of the States." *Id.*

51. U.S. CONST. art. I, § 2, cl. 1 (emphasis added); *see also* 88 CONG. REC. 6547 (1942) (discussing the meaning of "qualifications" as used in Article I).

52. 88 CONG. REC. 6547 (1942).

tions, except as to the places of chusing Senators."[53] How Sections 2 and 4 were to be read together was disputed.[54] If states could identify the qualifications for voters, but Congress could alter state regulations pertaining to voting, where did the rights of the states end and Congress's authority begin? What was the difference between a "qualification" and "regulation"?

Grabbing their dictionaries, representatives defined "qualification" as "any quality . . . which fits a person for any . . . legal power or ability," while "regulation" meant "the act of regulating; order; method; rule."[55] Much like these definitions, case law interpreting the Constitution was of little help, for there was a dearth of authority that directly examined the difference between a "qualification" and a "regulation," or that carved a boundary between the powers of Congress and the states to pass voting legislation. However, the Supreme Court had held that Congress had some authority to govern elections. For example, in an 1879 case, the Court examined Article I, Section 4, and observed that there was "no declaration that [voting] regulations shall be made either wholly by the State legislatures or wholly by Congress."[56] Thus, the Court extrapolated that, "[i]f Congress does not interfere, of course they may be made wholly by the State; but if it chooses to interfere, there is nothing in the words to prevent its doing so, either wholly or partially."[57]

On the side of preserving states' rights to govern elections were several vocal representatives from the South. Representative Edward Cox, of Georgia, respected by those on both sides of the aisle for his expertise as a trained lawyer, vehemently argued that the proposed bill was unconstitutional and impermissibly stepped on the states' authority to legislate voting.[58] Relying upon a Wisconsin state court decision, Cox argued that the requirement that citizens register to vote was a "condition precedent to the exercise of the franchise," and thus

53. U.S. CONST. art. I, § 4, cl. 1 (emphasis added).

54. 88 CONG. REC. 6547 (1942).

55. *Id.* (defining various terms for purposes of the debate).

56. *Ex parte* Siebold, 100 U.S. 371, 383 (1879). During congressional debates, representatives argued that *Siebold* established that Congress had authority to create voting regulations. 88 CONG. REC. 6547 (1942).

57. *Siebold*, 100 U.S. at 383. The Supreme Court further explained that Congress could "either make the regulations, or it may alter them. If it only alters, leaving, as manifest convenience requires, the general organization of the polls to the State, there results a necessary co-operation of the two governments in regulating the subject." *Id.* Thus, the Supreme Court's view was that Congress had the prerogative to either act or not, but if it did, the state and federal governments would have to cooperate to execute the legislation of both levels of government.

58. 88 CONG. REC. 6548 (1942).

"Congress cannot interfere" because it constituted a qualification.[59] He further noted that the poll tax, too, was a "qualification fixed by the State which cannot be reached by any congressional act."[60] Backing Cox's argument were vocal representatives from Mississippi and Alabama.[61] They believed that in a time of "war or in emergency there is no occasion for us, when we are fighting to preserve freedoms and fighting for rights, to usurp the rights of the states."[62] They seemingly ignored the danger of the states usurping voting rights by failing to pass workable absentee ballot legislation.

Cox's view was met by overwhelming opposition. Many legislators were shocked that a federal official could argue that a soldier who had recently reached his twenty-first birthday and had not had an opportunity to register to vote in his home district, should be disenfranchised merely because he had been drafted into the United States military. "[I]t seems to me," one representative remarked, "that the least we can do is . . . give a vote to those who may die before they get another chance to vote."[63] "Who," asked another representative, "is more entitled to cast his vote, who is better qualified to exercise his right of franchise, than the men and boys who are offering their lives,

59. *Id.*; *see* State v. Baker, 38 Wis. 71 (1875). This was a strange case for Representative Cox to cite. Certainly, the Supreme Court's analysis in *Siebold* trumped the language of a state case that preceded it. In addition, *Baker* addressed the issue of whether certain votes, already cast in an election, should be counted when the voters had not properly registered to vote due to the ineptitude of election inspectors. *Baker*, 38 Wis. at 74–75. The Wisconsin Supreme Court held that these technically defective votes could still be counted in the election. *Id.* at 89. It seems that Cox relied on this case due to its interpretation of "registration" as constituting a "qualification." *Id.* at 86–87. This language would suggest that registration fell under the arm of the states under Article I, Section 4. The case, however, examines only the Wisconsin state constitution—not the United States Constitution. *Id.*

60. 88 CONG. REC. 6548 (1942).

61. Representatives Rankin and Whittington, both of Mississippi, attacked the proposed federal voting bill on the grounds that it infringed on states' rights. *See, e.g.*, *id.* at 6543 (statement of Rep. Rankin) (deeming the bill "an effort to wipe out the election laws of every State in the Union"); *id.* at 6555 (statement of Rep. Whittington) (characterizing the franchise "a privilege . . . that can be granted or withheld only by the States"). Representative Hobbs, of Alabama, analogized the proposed bill to the theft of a car. *Id.* at 6557–58. In his hypothetical scenario, a federal official tells servicemen that he is so grateful for their willingness to lay down their lives for their country that he wants them to enjoy a day off. *Id.* at 6557. The federal official invites the servicemen to use a state-owned car for the day: "Take the car. It is full of gas. Go out and have a good time. Enjoy yourselves," the federal official tells the servicemen. *Id.* "We are enacting here today a parallel of that parable," said Representative Hobbs. *Id.* at 6558.

62. *Id.* at 6564 (statement of Rep. Whittington).

63. *Id.* at 6558 (statement of Rep. Patrick).

if necessary, to protect the freedom and our democratic way of life . . . ?"[64]

Those who supported the federal legislation did not need to rely only on moral considerations. There was law on their side as well. For instance, the Supreme Court, in *United States v. Classic*, held—after considering the language of Article I, Sections 2 and 4 of the Constitution—that "a primary election which involves a necessary step in the choice of candidates for election as representatives in Congress . . . is subject to congressional regulation as to the manner of holding it."[65] *Classic* took a step further, arguably in dicta:

> Not only does § 4 of Article I authorize Congress to regulate the manner of holding elections, but by Article I, § 8, Clause 18, Congress is given authority "to make all laws which shall be necessary and proper for carrying into execution the foregoing powers and all other powers by this Constitution in the Government of the United States or in any department or office thereof."[66]

Surely, this authority emboldened legislators who wished to provide a means for soldiers absent from their homes to register to vote from afar.[67]

State case law provided further support for the argument that registration was not a "qualification" under Article I, Section 2. For example, in *Meffert v. Brown*, the Court of Appeals of Kentucky held that the "act of registering is only one step towards voting, and it is not one of the elements that makes the citizen a qualified voter."[68] In *Hindman v. Boyd*, the Supreme Court of Washington held that "registration is not an element entering into the definition of a qualified voter."[69] Other states with similar case law included Nebraska, Illi-

64. *Id.* at 6551 (statement of Rep. Rees).

65. 313 U.S. 299, 320 (1941).

66. *Id.* This statement is arguably dicta, as the question in *Classic* was whether Congress had the constitutional authority to regulate primary elections. After answering in the affirmative, the Supreme Court went a step further in its discussion of the breadth of Congress's powers to regulate elections. *See id.*

67. *See, e.g.*, 88 CONG. REC. 6551 (1942) (statements of Reps. Rees and Gwynne, asserting that Congress did have the power to regulate elections).

68. 116 S.W. 779, 781 (Ky. 1909). The Court of Appeals of Kentucky went on to observe that "[o]ne may be a qualified voter without exercising the right to vote. Registering does not confer the right; it is but a condition precedent to the exercise of the right." *Id.*

69. 84 P. 609, 613 (Wash. 1906). The court continued: "It is held by eminent authority that registration laws cannot be justly regarded as adding a new qualification to those prescribed by the Constitution, but that they are merely reasonable and convenient regulations prescribing the mode of exercising the right to vote." *Id.*

nois, Kansas, and Iowa.[70] These cases temporarily quelled debate; federal legislation would suspend state voter registration requirements.[71]

D. The Poll Tax

A far more contentious issue took main stage when the poll tax reared its head. After the post-Civil War Reconstruction period, all eleven states that had formed the Confederacy instituted the poll tax as a qualification for voting.[72] The connection between this tax and the disenfranchisement of African Americans is well known. Although the poll tax had previously been considered a state issue, some federal legislators viewed the federal soldier voting law as an opportunity to test whether the poll tax could be eliminated at the federal level.[73] In a surprising break with the usual solidarity among Southern states on state sovereignty issues, Representative Kefauver, of Tennessee, announced that he wished to propose an amendment to the soldier voting bill, one that would eliminate the payment of a poll tax by those displaced from their homes to serve the nation.[74] Kefauver declared that

70. *See* Grinnell v. Hoffman, 5 N.E. 596, 608 (Ill. 1886) ("A registry law is merely a mode of ascertaining and determining whether or not a man possesses the necessary qualifications of a voter."); Edmonds v. Banbury, 28 Iowa 267, 268 (1869) (distinguishing registration from a qualification by explaining that the "name of plaintiff not being on the register as provided by [the registration] statute, he was not permitted to vote at said election, although, except for such omission of his name from the register, defendants knew plaintiff to be a qualified voter"); State v. Butts, 2 P. 618 (Kan. 1884) (explaining that the state "constitution makes no attempt to make 'registration' a necessary qualification, nor a failure to be duly registered as an elector a disqualification," and that the Kansas Registration Act of 1879 was "obnoxious to the constitution" and void because it made registration a qualification); Stearns v. Corner, 34 N.W. 499, 501 (Neb. 1887) (explaining that registration was not a qualification, but was a "method of proving the existence of the qualifications required by the constitution" (emphasis omitted)).

71. Soldier Voting Act of 1942, Pub. L. No. 77-712, § 1, 56 Stat. 753, 753 (amended 1944).

72. *See* CONG. RESEARCH SERV., THE CONSTITUTION OF THE UNITED STATES OF AMERICA: ANALYSIS AND INTERPRETATION, S. DOC. NO. 92-82, at 1587 (1973). These states were: South Carolina, Mississippi, Florida, Alabama, Georgia, Louisiana, Texas, Tennessee, Virginia, North Carolina, and Arkansas. *See* JAMES M. MCPHERSON, ORDEAL BY FIRE: THE CIVIL WAR AND RECONSTRUCTION 131, 154 (2d ed. 1992) (detailing the secession of the Southern states in 1861).

73. Representative Kefauver supported abolishing the poll tax for soldiers, and was the only southern legislator to take this stance. 88 CONG. REC. 6553 (1942) (statement of Rep. Kefauver). Other legislators later suggested removing the poll tax from the Soldier Voting Act altogether, citing its controversial nature and suggesting that it would be better addressed through other legislation. *Id.* at 6930 (arguing that bill would be defeated if an amendment to abolish the poll tax was not removed from it).

74. *Id.* at 6553. Kefauver openly admitted that his "position on this bill and to some similar matters is not in conformity with many of my colleagues from the South," and that he felt "torn between two forces." *Id.*

"if we feel that these boys are capable of serving on the battlefield to protect us and our country, we ought to feel they are capable of voting in an election without registration and without the payment of a poll tax."[75] Kefauver maintained that a poll tax was not a "qualification" that the states could set.[76] The ability to pay a tax "does not make a man more capable of voting than a man who happens not to buy a poll tax," he averred.[77]

The amendment was met by a chorus of disapproval. Once again, state sovereignty was the rallying cry for those who opposed the proposed federal legislation.[78] These legislators maintained that each state had the ability to set its own qualifications for voting—a poll tax being one such qualification—and for a federal law to override that power was sacrilege.[79] Bolstering their argument was the Supreme Court's relatively recent decision in *Breedlove v. Suttles*, which considered a Georgia statute that required every inhabitant of the state between the ages of twenty-one and sixty to pay a poll tax of one dollar. A failure to pay this tax resulted in the loss of the opportunity to vote.[80] One Georgia voter challenged the state's poll statute as a violation of federal law.[81] The Supreme Court disagreed. "To make payment of poll taxes a prerequisite of voting is not to deny any privilege or immunity protected by the Fourteenth Amendment," the Court observed.[82] After describing the holding of the case, one senator declared: "The decision was obviously right, for the elector sought to be qualified to vote in a State election without complying with State requirements."[83] Many in the House of Representatives agreed. In the words of one representative, "the soldiers who are fighting for rights

75. *Id.*

76. *Id.*

77. *Id.*

78. For example, one senator argued: "It seems to me that every . . . State . . . has the right to retain the tax if it chooses to do so. The very power to abrogate or do away with a poll tax presupposes the right to have one if the States sees [sic] fit." *Id.* at 6931.

79. *E.g.*, *id.* (statement of Sen. Connally).

80. 302 U.S. 277, 280 (1937).

81. *Id.*

82. *Id.* at 283. The Supreme Court noted that the "payment of poll taxes as a prerequisite to voting is a familiar and reasonable regulation long enforced in many States and for more than a century in Georgia." *Id.* at 283–84. The Georgia poll tax excluded payment by "females who do not register for voting." *Id.* at 279–80 (citing section 92-108 of the Georgia Code). An argument was made that this exclusion violated the Nineteenth Amendment. *See id.* at 283–84. In response, the Supreme Court stated that it was "fanciful to suggest that the Georgia law is a mere disguise under which to deny or abridge the right of men to vote on account of their sex." *Id.* at 284.

83. 88 CONG. REC. 6932 (1942) (statement of Sen. Pepper); *see also id.* at 7089–91 (discussing the significance of *Breedlove*).

under the Constitution will not appreciate their Representatives in Congress surrendering the rights guaranteed to the States under the Constitution."[84] Apparently, in the view of these legislators, the soldiers would have preferred to lose their right to vote than to see federal wartime legislation encroach on states' rights.

Some representatives grew impatient to pass voting legislation rather than spend additional weeks entertaining arguments that would lead only to further restrictions on voting. A few representatives accused their Southern colleagues of filibustering a necessary and perfectly legitimate piece of legislation simply because it would be beneficial to some African Americans. As Tennessee Representative John Jennings declared: "I am ready to believe . . . that the real purpose . . . of the opposition to the enactment of this measure is to continue to draw the bar . . . across the brow of the Negro citizens of this Nation."[85] He would not stand for this. "We have put them in our armed forces, we have clothed them with the uniforms of our soldiers and sailors," Jennings said.[86] "I say to you and I am willing to say to everybody, that those men are citizens of this country, they are its defenders, and they have the right to vote."[87] Representative Louis Ludlow, of Indiana, agreed:

> What a travesty it would be to send Negroes by the multiplied thousands to the firing line to fight and die for freedom and then tell them that they shall have no part or parcel in the freedom at home which they are sworn to support and defend with their lives.[88]

The idea that men drafted into military service to defend democracy would be deprived of the right to vote seemed antithetical. As one senator stated:

> He is told, "We are sorry; you are a qualified soldier without paying [the poll tax], but not a qualified citizen without paying a sum of money." Yet we are preaching . . . the liberation of the oppressed

84. *Id.* at 6555 (statement of Rep. Whittington).

85. *Id.* at 6556.

86. *Id.*

87. *Id.* at 6556–57. Jennings was not the only legislator to pin the delay on racism. Representative Vorys of Ohio boldly declared that certain Southern representatives "are willing to delay giving our fighting men an opportunity to vote in order to hang on to their systems of keeping Negroes from voting." *Id.* at 6552.

88. *Id.* at 7075. Ludlow further stated that he would consider himself "very derelict in my duty if I did not raise my voice and my vote against such an unspeakable and unmitigated injustice as that." *Id.*

> peoples of the world, and the emancipation of the subjected peoples everywhere.[89]

To fight against Hitler (and, concomitantly, his views on racial inequality) while tolerating voting policies that disenfranchised citizens based on race, seemed the ultimate in hypocrisy.

Although there was a dearth of federal case law supporting their position, and *Breedlove* definitively undermined them, legislators favoring the suspension of the poll tax emphasized its disenfranchisement of American soldiers of all races. Many state statutes required that a poll tax be paid within a certain time period.[90] Thus, soldiers from these states, stationed far from home, who likely lacked access to the specific rules of their home states, would be required to timely remit payment to exercise their right to vote.[91] As one Senator explained:

> A man in the service of his country, busy with his chores and cares, is expected, without notice or information, to be informed and thoughtful enough to send to the proper official his poll tax money, so that weeks or months thereafter, other circumstances permitting, he will be qualified to vote in an election for the authority which sent him to war.[92]

Despite these arguments, the poll tax remained such a controversial issue that even senators who supported its abolition felt the voting

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89. *Id.* at 6935 (statement of Sen. Pepper). This senator also noted that those soldiers who had not paid poll taxes previously would be subject to paying the amount past due, plus interest: "In many cases, it may easily mean with interest and fees, $25, $30, or $40—a month's pay—to the individual soldier fighting with a democracy, as part of a democracy, for democracy." *Id.* The poll tax was not only debated bitterly in the Senate. *See, e.g., id.* at 7065–77 (transcripts of the debate in the House of Representatives).

90. Some states required the poll tax to be paid six, or even nine, months in advance of an election. *See* Ronnie L. Podolefsky, *The Illusion of Suffrage: Female Voting Rights and the Women's Poll Tax Repeal Movement After the Nineteenth Amendment*, 7 COLUM. J. GENDER & L. 185, 189, 193 (1998).

91. Senator Claude Pepper noted that "[e]very one of the eight States having a poll tax makes it a condition precedent to the right to vote," and that soldiers would have to be "thoughtful enough to have paid it at the time prescribed by the State statutes." 88 CONG. REC. 6935 (1942). He doubted that this was possible under the circumstances of military service. *See id.*

92. *Id.* It was unlikely that an American overseas, busy fighting a war, would be sufficiently vigilant about his voting rights to remember to remit his poll tax payment in a timely manner. *See id.* (statement of Sen. Pepper). Another difficulty in the timely payment of the poll tax—one that was not discussed during congressional debates—was the lack of control servicemen exerted over their mail service. Even those conscientious enough to mail a poll tax payment within the period prescribed by their states were at the mercy of the notoriously slow overseas mail service to get their poll tax payments in on time. *See, e.g.*, 90 CONG. REC. 623 (1944) (discussing slow mail service).

bill should not be the vehicle to declare its application during war time.[93] They feared the anti-poll tax provision, alone, could prevent the absentee voting legislation from being passed.

E. Passage of the Act and Its Aftermath

With the election less than two months away, Congress finally put the bill to a vote. Despite the fierce opposition to certain provisions, on September 16, 1942, the 1942 Soldier Voting Act was enacted into law.[94] It allowed men and women serving the nation during wartime to cast absentee ballots so long as they continued to reside within the United States.[95] As for registration, the Act specifically stated that, "notwithstanding any provision of State law relating to the registration of qualified voters," every person absent from their homes due to their war service was entitled to vote.[96] As for the poll tax, the Act provided that "[n]o person in military service in time of war shall be required, as a condition of voting in any election for [a federal office], to pay any poll tax or other tax or make any other payment to any State or political subdivision thereof."[97] The passage of the latter measure was rather extraordinary, as it signified the "first expansion of African American voting rights since Reconstruction [in the 1860s]."[98] While there were many lost opportunities to make strides toward racial equality during World War II—for example, when the War and Navy Departments were pressured to integrate their units and ships, they resisted and maintained that racial integration would "'have a highly destructive effect on morale'"—the elimination of the poll tax in the soldier voting bill was one shining example of a step toward equality.[99]

Although the elimination of the poll tax for those in the services was a boon, the overall impact of the law was nonetheless negligible. Of the four million servicemen and tens of thousands of women serving the nation, only twenty-eight thousand absentee war ballots were

93. 88 CONG. REC. 6930 (1942) (statement of Sen. Green). As one senator remarked, "[s]ome members of the committee favor the abolition of the poll tax, but not by this bill," as the "addition of controversial matter to the pending bill would probably result in its defeat." *Id.*

94. Soldier Voting Act of 1942, Pub. L. No. 77-712, 56 Stat. 753 (amended 1944).

95. *Id.* § 3.

96. *Id.* § 1.

97. *Id.*

98. Robert P. Saldin, *Strange Bedfellows: War and Minority Rights*, 173 WORLD AFF. 57 (2011).

99. BLACK, *supra* note 31, at 584–85; *see also* Saldin, *supra* note 98, at 59 (noting that more than one million African Americans served in segregated units in the armed forces during World War II).

cast in the 1942 election.[100] In other words, the voter turnout for the armed services was less than 1%. While the 1942 election generated one of the lowest voter turnouts in American history, the soldier vote fell far below the 35.7% national turnout that year.[101] The Soldier Voting Act had undoubtedly failed. Due to its late enactment, states had little time to prepare war ballots and make preparations to execute their duties under the new law.[102] With a presidential election two years away, and millions more Americans joining the services and shipping out overseas, the Soldier Voting Act needed to be overhauled in order to be effective in the upcoming presidential election.

II.
THE 1944 VOTING ACT

A. The Need for the Soldier Vote

By 1944, approximately eleven-and-a-half million Americans were serving in the Army, Navy, Marines, and Coast Guard.[103] Added to this number were hundreds of thousands of women who had left their homes to serve in the Red Cross, United Service Organizations, and the Army or Navy Nurse Corps, or noncombatant positions in the Army, Navy, Coast Guard, and Marine Corps.[104] Thus, approximately

100. Trussell, *supra* note 18. Interestingly, only one-third of those in the armed services who applied for a war ballot cast a vote that was counted. *See* 90 CONG. REC. 487 (1944) (stating that, of the "4,000,000 persons in our armed forces . . . only 78,589 applications were received and . . . only 28,051 votes were cast").

101. Phil Gailey, *Voter Turnout Is Estimated at 37.3%, Lowest Since 1942*, N.Y. TIMES, Nov. 8, 1986, at A8 (attributing the low voter turnout to the war and disenfranchisement of African American voters in the South). As a point of comparison, the lowest voter turnout was recorded in 1926, with 35.2% of eligible Americans casting a vote. *Id.*; *see also* Editorial, *The Worst Voter Turnout in 72 Years*, N.Y. TIMES (Nov. 11, 2014), http://www.nytimes.com/2014/11/12/opinion/the-worst-voter-turnout-in-72-years.html (noting that the 2014 voter turnout was the lowest in any federal election since 1942).

102. *See* 90 CONG. REC. 607 (1944) (discussing state absentee-voting legislation that required ballots be returned to the states within twelve to twenty days of the soldier's receipt). Legislators in the 1944 debates cited the 1942 Act's late enactment as one contributing factor for the low soldier turnout in the 1942 election. *Id.* at 620; *see also infra* notes 130–31 and accompanying text.

103. *By the Numbers: The US Military*, *supra* note 18; *see also News from Home*, YANK MAG., Sept. 10, 1944, at 15 (stating that the "latest figures, released last week, show that the total strength of the armed forces now comes to about 11,417,000").

104. *See generally* YELLIN, *supra* note 43. According to Yellin, approximately eighty-six thousand women joined the Navy's Women Accepted for Volunteer Emergency Service ("WAVES"). *Id.* at 137. Nearly twenty thousand women joined the Marines. *Id.* at 148. More than eighteen hundred were accepted into training in the Army Air Force as WASPs. *Id.* at 154. Approximately eleven thousand women joined the Coast Guard. *Id.* at 142. Thirty-five thousand women served as nurses in the Army and Navy *Id.* at 168. Seven thousand women worked for the Red Cross overseas. *Id.*

twelve million Americans were displaced from their homes to serve the nation.[105] By one conservative estimate, this meant that one out of every ten voters was away from home.[106] With Franklin Delano Roosevelt seeking a controversial fourth term, and the world engulfed in the fifth year of World War II, the *New York Times* declared that the upcoming presidential election was poised to generate "the greatest absentee vote in the history of the country"—that is, unless suitable legislation was passed.[107] All eyes turned to Congress to get it right this time around.

Politically, the nation was divided. Franklin Delano Roosevelt had already achieved an unprecedented third term as President of the United States, and Republicans felt no small amount of angst at the prospect of Roosevelt, a Democrat, winning a fourth term.[108] As early as December 1943, predictions were made that Roosevelt would win by a landslide.[109] Joining the Republicans in resisting a fourth term were Democrats who opposed the New Deal and Roosevelt's other social and political reforms. Six southern states traditionally regarded as blue states—Texas, Mississippi, Arkansas, Louisiana, South Carolina, and Florida—were dubbed the "bolting bloc," united by their common opposition to Roosevelt's liberal policies.[110] The bolting bloc supported a Democratic platform that opposed "social equality among the races," promised there would be no federal action to abolish the poll tax, and reaffirmed the sovereignty of the states.[111] While Republicans and Democrats could agree on foreign policy—the war must be fought and won—they diverged on domestic issues such as the proper scope of federal regulations (including legislation of the New Deal

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The National World War II Museum estimates that a total of three hundred fifty thousand women served in the armed forces or volunteered for war organizations at home and abroad. *See American Women in World War II: On the Home Front and Beyond*, NAT'L WWII MUSEUM, http://www.nationalww2museum.org/learn/education/for-students/ww2-history/at-a-glance/women-in-ww2.html (last visited Mar. 1, 2016).

105. Throughout congressional debates, many senators and representatives reported that there were eleven million Americans in the services. *See, e.g.*, 90 CONG. REC. 614 (1944). But, considering that there were nearly eleven-and-a-half million men in the armed forces as of September 1944, *see News from Home*, *supra* note 103, at 15, and there were hundreds of thousands of women who were also serving the nation in one capacity or another, *see supra* note 104 and accompanying text, it is more accurate to state that there were nearly twelve million Americans in the services.

106. 90 CONG. REC. 487 (1944) (statement of Rep. Lesinski).

107. Trussell, *supra* note 18.

108. *See Insulating Servicemen*, CHI. SUN, June 23, 1944.

109. *See, e.g.*, *Hague Predicts Fourth Term*, N.Y. TIMES, Jan. 22, 1944, at 6.

110. Turner Catledge, *Southern Bolters Map 4th Term Fight*, N.Y. TIMES, June 9, 1944, at 28 (reporting on the formation of the "bolting bloc").

111. *See id.* (discussing the conditions bolting bloc delegates were instructed to insist upon at the national convention).

ilk).[112] With southern, traditionally Democratic, states refusing to support Roosevelt, it seemed the 1944 election would be a close call. The soldier vote, alone, could easily determine the outcome of the election. After all, Roosevelt had won his third term by a margin of approximately five million votes.[113]

Over the winter of 1943, Congress debated a comprehensive amendment to the 1942 soldier voting law. Initially, a proposal was made (known as the Lucas-Green measure), to create a Federal War Ballot Commission in order to streamline overseas voting and avoid the hassle of allowing each state to dictate how its citizens in the services could vote.[114] Impassioned speeches about the proposed Commission's unconstitutionality swayed many votes. In the words of Mississippi Representative John Rankin, the proposed bill "violates the laws of practically all the States and the constitutions of most of them."[115] Rankin especially disfavored the bill, arguing it allowed absentee voters to cast a vote for several offices by merely designating whether he or she was voting "Republican" or "Democrat."[116] "[U]nder our state laws," he said, "we do not even print a party name on the ballot; you have to go down the ballot and pick out the candidates; and if you have not enough intelligence or have not paid enough attention to the election to know who those candidates are, that is your misfortune."[117] Rankin argued that many states would not know "what to do with a ballot" if a soldier wrote "Republican" or "Democrat" instead of identifying a candidate by name.[118] One representative referred to this proposed ballot as a mere "gesture of a ballot," one that would not result in more soldiers casting votes, because the ballots cast could not be counted if the states did not know how to interpret them.[119] This potent coalition "killed the bill," and the onus to provide

112. *See* Robert A. Taft, *Taft Says the Big Issue Is the Domestic Problem of Restoring Liberties*, N.Y. TIMES MAG., Sept. 3, 1944, at 12, 37–38 (comparing the party platforms).

113. BLACK, *supra* note 31, at 598.

114. 90 CONG. REC. 600–28 (1944) (presenting the Lucas-Green proposal); *id.* at 612 (referring to the proposal as "the Lucas-Green bill").

115. 89 CONG. REC. 9632 (1943).

116. *Id.*

117. *Id.* Rankin did not seem to consider that many Americans might vote a party line, nor did he consider the difficulty Americans overseas might have in staying abreast of the candidates running for local, state, and federal offices. *Id.*

118. *Id.*

119. *Id.* (statement of Rep. Vursell). Representative Charles Vursell maintained that such a ballot would be "a great disappointment to a great many of the men who would receive it" because it would "not have the name of a single candidate on it, not even for President of the United States or for Member of Congress." *Id.*

a method for absentee voting once again fell on each individual state.[120]

Public opinion fiercely opposed this outcome. From the popular soldier newspaper *The Stars and Stripes* to home front publications, the overwhelming sentiment was that federal legislation was needed for the armed forces to have a fair chance to cast a ballot.[121] Even President Roosevelt felt he could no longer refrain from speaking on this important issue. In a January 1944 message to Congress, the President declared: "The American people are very much concerned over the fact that the vast majority of the 11,000,000 members of the armed forces . . . are going to be deprived of their right to vote in the important national election this fall, unless the Congress promptly enacts adequate legislation."[122] Voicing support for the bill that was defeated in 1943, Roosevelt praised the measure's efficiency and simplicity. The bill would have provided "blank ballots on special paper suitable for air delivery . . . by the War and Navy Departments to all the fronts and camps and stations out in the field well in advance of election day."[123] Once the names of all candidates were known, lists of their names would be distributed, and the soldiers could then vote for their choice of candidates in secrecy.[124] If the men did not receive a list of candidates, they could still vote by naming the party for which he or she wished to vote.[125] "Our millions of fighting men do not have any lobby or pressure group on Capitol Hill to see that justice is done for them," Roosevelt observed.[126] But, as "their Commander in Chief, I am sure that I can express their wishes in this matter and their resent-

120. *The Nation: Votes for Soldiers*, TIME, Jan. 17, 1944, at 1.

121. Excerpts from *Stars and Stripes* were read into the *Congressional Record*, reaffirming that the Americans at war were eager to cast ballots in the 1944 election and were counting on Congress to provide a mechanism to make it possible. 90 CONG. REC. 20–21 (1944). "We on the front are determined to use bullets and ballots," declared the Algiers edition of *Stars and Stripes*. *Id.* at 21. Congress was well aware of the criticism it faced over the defeat of the Lucas-Green voting bill. *Id.* at 432–33 (noting that "commentators, columnists, and newsmen alike . . . say or infer Congress does not want the soldier to vote; that we are trying by circumlocution and subterfuge to keep him from having his ballot").

122. *Id.* at 706. Roosevelt admitted that he had "hesitated to say anything to Congress on this matter for the simple reason that the making of these rules is solely within the discretion of the two Houses of the legislative branch of the Government." *See id.* at 708. Be that as it may, Roosevelt believed "most Americans will agree with me that every Member of the two Houses of Congress ought to be willing in justice 'to stand up and be counted.'" *Id.*

123. *Id.* at 707.

124. *Id.*

125. *Id.*

126. *Id.* at 708.

ment against the discrimination which is being practiced against them."[127] Congress had its marching orders.

B. *Designing the Absentee Ballot*

In early 1944, a new bill was proposed. It provided that the federal government would make recommendations to the states in an effort to create a uniform voting process for all persons displaced by virtue of their involvement in fighting the war or by serving those who were.[128] Early congressional hearings attempted to pinpoint how the 1942 bill had failed and how it could be improved. Congress determined that one of the chief problems with the 1942 legislation was its late passage.[129] As the bill was signed into law only one-and-a-half months before Election Day, there was inadequate time for the states to comply with the bill's three-part process (receipt of a serviceman's ballot request, the state's mailing of a ballot, and the serviceman's transmission of the completed ballot) before Election Day.[130] The 1942 bill also provided no mechanism for overseas voting; thus, all Americans serving overseas were automatically disenfranchised based on their location.[131] Congress was under pressure to ensure that the 1944 bill being drafted and debated would not suffer from such defects.

The proposed bill strove to make absentee voting "as simple as possible."[132] Although many legislators wished to provide a ballot that covered local, state, and federal elections (rather than just federal elections), the magnitude of the task rendered it impractical. For example, as Senator Lucas explained of his own state: there were "102 counties in Illinois. We have 102 different kinds of tickets in Illinois. If the Army and Navy are going to carry State ballots . . . they will have to carry 102 Illinois ballots to every camp in this country and every camp overseas."[133] In addition, no one knew "where the 700,000 or 800,000 [Illinois] boys are serving," as the Secretaries of War and the Navy refused to provide the names, serial numbers, or addresses of service-

127. *Id.*

128. *Id.* at 600–03 (reading the text of the proposed amendment).

129. *See, e.g.*, *id.* at 487–88; *id.* at 620 (discussing the "shortage of time" following the enactment of 1942 absentee voter legislation as a reason for the low soldier voter turnout in that election).

130. *Id.*; *see also id.* at 607 (discussing state legislation requiring ballots be returned to the states within twelve to twenty days). *See generally* 88 CONG. REC. 6547 (1942) (discussing the general workings of the 1942 bill).

131. *See* Soldier Voting Act of 1942, Pub. L. No. 77-712, 56 Stat. 753 (amended 1944).

132. 90 CONG. REC. 621 (1944) (statement of Sen. Theodore Green).

133. *Id.* at 611.

men because releasing such information threatened the soldiers' security.[134] Furthermore, servicemens' addresses were constantly changing.[135] The War and Navy Departments simply could not bear the burden of hosting each state and local election. According to the Census Bureau of the Department of Commerce, in 1942, there were elections held on ninety-nine different dates for federal, state, county, and municipal offices.[136] Put differently, there was an election one out of every four days.[137] As eager as the War and Navy Departments were to allow their men to vote, the feat of transporting the necessary ballots to certain state citizens around the world and ensuring that the ballots were returned in time to be counted was unachievable. Thus, Congress narrowed its vision to creating a wartime absentee ballot for only federal offices in the 1944 election.[138]

A foremost consideration was designing federal ballots so that their shipment would pose the least hardship to the already overburdened Army and Navy. First, there were concerns about allotting adequate shipping space and time to mail ballots around the world.[139] The average state ballot, including an envelope and voting instructions, weighed three ounces; its size and weight was the equivalent of approximately one thousand microfilmed V-mail letters.[140] Congress feared that if ballots were to displace letters from family, it would be destructive to soldiers' morale.[141] Exacerbating this potential problem were the inefficient multiple-mailings required under many state election laws. The War Department informed Con-

134. *Id.*; *see, e.g.*, G. ALLEN REEDER, LETTER WRITING IN WARTIME, "HOW AND WHAT TO WRITE ABOUT," 197–201 (1943) (discussing restrictions on mail to those serving in the Army and Navy and information that must not be mentioned in letters or on envelopes, such as the name of a ship or an address other than that "officially designated by the military or Naval authorities").

135. It was estimated that the "changes of address . . . of the soldiers each day are in excess of 10,000 that are in this country and abroad." 90 CONG. REC. 607 (1944) (statement of Sen. Lucas).

136. *Id.* at 610.

137. *Id.*

138. *Id.* (proposing a uniform federal ballot).

139. *Id.* at 730.

140. *Id.* (quoting a January 11, 1944 letter from the War Department to Congress, which was read before the Committee on Privileges and Elections on January 20, and re-read during the Senate debate on January 26, 1944). The Army and Navy were so overburdened with mail that they began microfilming V-mail to reduce the amount of shipping space needed. *See* 88 CONG. REC. 7058 (1942).

141. 90 CONG. REC. 785 (1944) (statement of Sen. Murdock) (stating that "there is nothing more conducive to the maintenance of that morale on the battle fronts and the morale at home than an interchange of letters between soldiers and sailors and their parents, relatives, and sweethearts"). Sending each person in the services their state's ballot would have displaced billions of V-mail letters. *See id.*

gress that approximately a dozen states had adopted voting procedures that "'entail[ed] a minimum of four air carriages, apart from the transmission of the initial post card.'"[142] Even those states that required a ballot request by post card, the mailing of the ballot, and the return of the ballot—three carriages—posed a difficulty. The War Department called on Congress to ensure that its legislation for the 1944 election provided for a single, lightweight ballot and minimal use of the already overtaxed mails.[143]

A second consideration was the need to ship ballots well in advance of the election so that the Army and Navy had sufficient time to transport them across Europe, North Africa, the Mediterranean, and remote islands dotted across the Pacific Ocean.[144] Mail could be notoriously slow.[145] By one senator's numbers, the average time for a ballot to make the round trip by mail ranged from twenty-two days to North Africa, to fifty-two days to the Far East.[146] Another consideration was the fact that ten thousand Americans in the services were

142. *Id.* at 730 (quoting a January 11, 1944 War Department letter read before the Committee on Privileges and Elections on January 20, and re-read before the Senate on January 26, 1944); *see also supra* note 140.

143. *Id.* It is likely that the War Department was concerned that a multi-step absentee ballot process would strain resources necessary to ship essential war supplies (such as tanks, airplanes, anti-aircraft guns, ammunition, etc.) to Europe, especially for the upcoming invasion of Normandy. *See, e.g., id.* at 610 (stating that the Secretaries of War and Navy would take all steps necessary to deliver ballots, so long as they did not "interfere with the effective prosecution of the war"). No definite date for the invasion could be set, as it depended on the weather, tide, and completion of preparations. DWIGHT D. EISENHOWER, CRUSADE IN EUROPE 239 (1948). Meanwhile, war raged in the Pacific and supplies also needed to be shipped halfway around the world to remote islands stretching from just north of Australia to the shores of Japan. When the mail service was already strained by pressing needs for war supplies, the addition of eleven million post cards, eleven million ballots, and another eleven million (completed) ballots—under the more efficient state legislation—seemed impossible. For these reasons, the War and Navy Departments urged Congress to develop a federal ballot that would be lightweight and that required as few mailings as possible.

144. 90 CONG. REC. 623 (1944) (statement of Sen. Revercomb).

145. One senator recalled an "amusing story" about how slow the delivery of mail could be. *Id.* at 615. The story had been reported by renowned war correspondent Ernie Pyle. ERNIE PYLE, HERE IS YOUR WAR 49 (1943). Pyle, who was stationed in North Africa, heard a story of one soldier who had not received a single letter from his wife in three months and became so disgusted that he finally wrote her a letter threatening divorce. *Id.* The following day, he received a bundle of fifty letters that covered the three-month period he had gone without mail. *Id.* He had to telegram his wife to take back the divorce threats. *Id.*

146. 90 CONG. REC. 623 (1944) ("I find that to transport a ballot by air mail both ways from a central point in the United States, say Springfield, Ill., to various points where our soldiers and sailors may be, requires the following times: To [N]orth Africa, 22 days; to Europe, 37 days; to the Pacific, 43 days; and to the Far East, 52 days."). The numbers quoted above may be conservative estimates, for during a debate two days later, the following chart was considered for purposes of discussion:

moved to new locations each day.[147] Thus, if it was possible to create a method of voting that did not require a particular ballot to reach a particular person, the burden on the Army and Navy would be greatly reduced. This factor weighed heavily in favor of a universal federal ballot, one that could be used by any person in the services—regardless of his or her home state.[148]

A final goal was to create a ballot that could be shipped around the world well in advance of the November election. As the Democratic National Convention came after the Republican National Convention, and the former was scheduled for July, ballots bearing the names of the candidates could not be printed until July.[149] Some members of Congress had serious doubts that the Army and Navy would

(a)	Alaskan area:	*Days*
	Nearest	10
	Farthest	13
(b)	Pacific area:	
	Nearest	14
	Farthest	26
(c)	Canal Zone:	7 ½
(d)	Caribbean area:	
	Nearest	8
	Farthest	12
(e)	South Atlantic area:	
	Nearest	10
	Farthest	12
(f)	Middle East area:	
	Nearest	14
	Farthest	16
(g)	Persian Gulf area:	18
(h)	Far East area:	
	Nearest	26
	Farthest	32
(i)	Mediterranean area:	
	Nearest long haul	18
	Nearest short haul	13 ½
	Farthest long haul	22
	Farthest short haul	17 ½
(j)	North Atlantic area:	
	Nearest	9 ½
	Farthest	29 ½

See id. at 716 (quoting the figures in this chart).

147. *Id.* at 611 (statement of Sen. Lucas).

148. *Id.* at 610 (discussing the impossibility of the Army and Navy following the distinct voting laws of each state and the need for a single law creating a ballot requiring a single air carriage so ballots could be mailed in bulk).

149. *See id.* at 722 (discussing the scheduling of the Democratic Convention).

have sufficient time to distribute ballots and transport them back to the United States to be counted within this timeframe.[150]

Due to these factors, the proposed federal war ballot took on a different appearance than a home-front ballot. To avoid printing ballots at the last minute after the Democratic National Convention, the bill envisioned the use of a bobtailed ballot—a ballot that listed the offices at issue in the election (examples include President, Vice-President, Senator, etc.), and allowed the voter to write the name of the candidate for whom he or she was voting.[151] Under the bill, this ballot would have the following format[152]:

150. Act of April 1, 1944, Pub. L. No. 277, § 303(a), 58 Stat. 136, 141–42.
151. *Id.*; 90 CONG. REC. 722 (1944) (discussing the use of the bobtailed ballot and the timing of the Democratic and Republican National Conventions).
152. 58 Stat. at 141–42.

OFFICIAL FEDERAL WAR BALLOT
Instruction—To vote, write in the name of the candidate of your choice for each office.

ELECTORS OF PRESIDENT AND VICE PRESIDENT OF THE UNITED STATES
(A vote for President includes a vote for Vice President of the same party, and shall be deemed to be a vote for the candidates by name for Presidential and Vice Presidential electors of his party in your State)

Write in the name of your choice for President. [ ]

UNITED STATES SENATOR
(ONLY if a Senator is to be elected in your State)

Write in the name of your choice for Senator. [ ]

UNITED STATES SENATOR, UNEXPIRED TERM
(ONLY if a Senator is to be elected in your State for an unexpired term)

Write in the name of your choice for Senator. [ ]

REPRESENTATIVE IN CONGRESS FOR YOUR DISTRICT

Write in the name of your choice for Representative in Congress for your district. [ ]

REPRESENTATIVE AT LARGE IN CONGRESS
(ONLY in the States entitled thereto)

Vote for one or two as the case may be

Write in the name or names of your choice for Representative at Large. [ ]

[ ]

Such a "blank" ballot could be printed well in advance of the election, could be used by anyone irrespective of their home state, and gave the Army and Navy ample time to ship the ballots to troops around the world. To eliminate excessive use of the mails, the new bill required only two transmissions: one to the soldier and the other back to the states.[153] In addition, the federal ballot was small, "printed on

153. 90 CONG. REC. 621 (1944) (statement of Sen. Green).

thin paper, weighing very little, uniform in size, could be carried in bulk, and . . . would take up much less space" than the state ballots.[154] These provisions eased the burden on the mails significantly.[155]

C. *Tension in the Legislature*

The bill was met by stiff opposition. Ohio Senator Robert Taft emerged as its chief opponent. Fomenting his hostility to the measure was his deep-seated distrust of the Democratic Party, and, in particular, President Roosevelt.[156] Despite all the benefits of a universal federal ballot, he argued that a ballot should name the candidates. "I have no doubt that in the State of Maine, for instance, where no Senator is up for election this year, there will be thousands of votes cast for a Democrat for Senator in Maine," Taft maintained.[157] "Is that a reasonable kind of a ballot?" he asked.[158] Taft openly expressed his doubts in the abilities of the Secretaries of War and the Navy, officials appointed by Roosevelt, to conduct a fair election, suggesting that they would help Roosevelt by strategically hosting elections. "They can have [an election] held just after a great victory. . . . They can emphasize the prestige of the President in the election," Taft elaborated.[159] Taft ignored that the Secretary of War, Henry Stimson, was, like Taft, a Republican.[160]

One of the bill's chief proponents, Illinois Senator Scott Lucas, quickly quashed Taft's criticism of the bobtailed ballot.[161] Lucas noted that the Supreme Court had held, in *Newberry v. United States*, that Congress could exercise its power to regulate elections by directing "that voting must be by written or printed ballot or voting machines."[162] Taft was not so foolhardy as to argue against this Supreme Court precedent.[163]

Instead, Taft turned his attention to the bill's elimination of voter registration and poll tax requirements for the armed services. Although the 1942 bill had suspended state registration and poll tax laws

154. *Id.* at 619.
155. *Id.* at 621 (noting that "this bill makes the balloting as simple as possible").
156. *See* WILLIAM S. WHITE, THE TAFT STORY 43–45 (1954).
157. 90 CONG. REC. 712 (1944).
158. *Id.* It is hard to believe that this argument was based on a genuine fear that a person would vote for an office that was already filled. It seems obvious that, in such a situation, a state would simply ignore the mistakenly cast vote.
159. *Id.* at 717.
160. GOODWIN, *supra* note 27, at 71 (noting that Stimson was a Republican conservative).
161. 90 CONG. REC. 720 (1944).
162. *Id.* (quoting Newberry v. United States, 256 U.S. 232, 255 (1921)).
163. *See id.* at 721 (indicating Senator Taft's lack of a response).

for those in the services, Taft believed these issues were still matters for debate.[164] Once he opened these cans of worms, Taft sat back and let his colleagues from the South make impassioned speeches about state sovereignty and the necessity of the poll tax to maintain white superiority. Louisiana Senator John Overton made some of the boldest statements on this issue. "In Mississippi and Louisiana, down in the Solid South," he said to the Senate floor, "we have got to retain our constitutional rights to prescribe qualifications of electors, and for what reason? Because we are bound to maintain white supremacy in those States."[165] When Overton was reminded that the 1942 law had eliminated registration and the poll tax, and yet "white supremacy" had been maintained in the South, he responded that the "poison is slow in its operation, but none the less deadly."[166]

In the face of these and other arguments that Congress lacked the power to create a universal federal war ballot that suspended state voting requirements, supporters of the bill turned to a new argument favoring the legislation: Congress could act under its war powers.[167] Case law seemed to be on their side. For instance, in *Burroughs v. United States*, the Supreme Court considered, inter alia, whether a federal law governing corrupt election practices violated the states' power to appoint electors under Article II, Section 1 of the Constitution.[168] The Supreme Court ruled that the importance of a presidential election "cannot be too strongly stated," and to "say that Congress is without power to pass appropriate legislation to safeguard such an election from the improper use of money to influence the result is to deny the nation in a vital particular the power of self-protection."[169] The Court went so far as to state: "Congress, undoubtedly, possesses that power,

164. *Id.* at 719.

165. *Id.* at 725. When Overton was asked whether he believed that "this bill would tend to tear down white supremacy," he answered, "It would." *Id.* His frustration over the expansion of the federal government, first with the New Deal programs, and now with the war, was apparent. Believing the federal government was encroaching on the power of the states, he delivered several diatribes against the soldier voting bill. *Id.* In one such episode, he accused the federal government of saying to the states:

> You cannot prescribe the qualifications of the voters . . . we will deny you the right to require registration; we deny you the right of prescribing educational tests; we deny the poll-tax provision; we deny this, and we deny that . . . . [W]e assume the authority to abolish all those safeguards which you [the states] have undertaken to [ensure] white control of your local governments.

Id. "We cannot, we shall not . . . submit to such action," Overton declared. *Id.*

166. *Id.* at 726–27.

167. *See id.* at 721.

168. 290 U.S. 534 (1934).

169. *Id.* at 545.

as it possesses every other power essential to preserve the departments and institutions of the general government from impairment or destruction, whether threatened by force or by corruption."[170] Resting on *Burroughs*, it was argued that Congress had the power to protect the 1944 election "from the distortion which would be caused by the enforced absence of a substantial body of the electorate."[171] By one senator's estimate, approximately twenty percent of eligible voters had been "lifted from their homes and scattered to the four corners of the earth, without their sanction"; they had been taken by the Army and Navy "because it is war."[172] Under *Burroughs*, how could the Constitution's war powers provision *not* bestow upon Congress the power to avoid the "destruction" of millions of Americans' voting rights simply because they were far from home fighting for their country?

Another case supporting Congress's authority to suspend state registration and poll tax requirements involved emergency legislation to ameliorate the economic crisis during the Great Depression. "While emergency does not create power, emergency may furnish the occasion for the exercise of power," the Supreme Court explained in *Home Building & Loan Ass'n v. Blaisdell*.[173] In the course of its decision, the Court reasoned that "the war power of the Federal Government is not created by the emergency of war, but it is a power given to meet that emergency. It is a power to wage war successfully."[174] Relying on this broad definition of Congress's war powers, Senator Lucas argued that surely Congress, in times of war, had the authority to pass legislation that safeguarded the right to vote for those in the services.[175] After all, "Congress declared war. Congress enacted the Selective Service Act . . . . Congress can tell almost anyone in this emergency just what he may or may not do."[176]

As weeks of debate turned into months, tempers and patience wore thin. The charade of niceties was slowly worn down, and the issue of soldier voting became a partisan issue, with Republicans and

170. *Id.* Put in slightly different terms, the Supreme Court concluded that the "power of Congress to protect the election of President and Vice President from corruption being clear, the choice of means to that end presents a question primarily addressed to the judgment of Congress." *Id.* at 547. Whether disenfranchising up to eleven million Americans in a presidential election amounted to "corruption" is debatable. But the spirit of the Court's holding certainly weighed in favor of Congress having the power to provide a mechanism to allow these Americans to vote.

171. 90 CONG. REC. 721 (1944) (statement of Sen. Lucas).

172. *Id.*

173. 290 U.S. 398, 426 (1934).

174. *Id.*

175. 90 CONG. REC. 720–21 (1944).

176. *Id.*

Democrats accusing one another of intentionally manipulating the legislation to ensure a certain outcome in the presidential election.

It began on an apologetic note, when a Democratic Representative from Illinois broached the subject. "I hate to say it; I do not want to hurt anybody's feelings," he began, "but I cannot help but believe that the Republicans, fearing that most of these servicemen, by right, would cast their votes for President Roosevelt . . . will vote for the [Soldier Voting Bill] because they feel that . . . many of those servicemen and servicewomen will be deprived of the right to vote."[177] A Republican representative then countered that the Democrats were responsible for the creation of a bobtailed ballot for service people, and had chosen not to provide them with the same sort of ballot that the public on the home front would use.[178] Republicans emphasized how the bobtailed ballot would make it difficult to vote.[179] They reminded their fellow legislators that while Americans might be able to name the candidates for President, they were less likely to recall the names of the senators and representatives running for office in their home states.[180] Republicans also believed that the bobtailed ballot clearly favored Roosevelt, and charged Democrats with manipulating the ballot so he could win a fourth term.[181] As Republican Senator Styles Bridges explained, his son was fighting in the Pacific theater and would have to cast an absentee ballot. The "only President whom that boy can remember—and he has been in overseas service for nearly a year and in active service nearly 2 years—is the present President of the United States, Franklin D. Roosevelt."[182] If his son was like the other millions of Americans fighting overseas, when "given a blank ballot to vote and the present incumbent is the only President he has heard of in the last 11 years, and the name of the other candidate is not available to him, how can he intelligently cast his vote?"[183] While the

177. *Id.* at 2621.

178. *See id.* at 2622.

179. *Id.* at 722.

180. *Id.*

181. *Id.* Adding to the Republicans' concern that the bobtailed ballot would favor Roosevelt were military opinion polls that showed the armed services favored Roosevelt. *See, e.g.*, *What They Think*, TIME, Feb. 7, 1944, at 72 (reporting that a poll conducted in the Southwest Pacific of more than "700 enlisted men: soldier, sailors, marines; whites and Negroes" revealed that 69.2% were in favor of a fourth term for Roosevelt).

182. 90 CONG. REC. 722 (2014).

183. *Id.* The bobtailed ballot was ostensibly offered to ensure that ballots could be shipped around the world, well in advance of the election, so that the Army and Navy would have plenty of time to distribute the ballots to every American. If the names of the candidates were provided on the ballots, the ballots could not be printed and

answer was relatively easy—all his son and others like him would have to do is write the word "Republican" or "Democrat" in the space provided—the use of a bobtailed ballot remained a sticking point for many Republicans.

The legislators' sense of decorum continued to diminish. "I am sick and tired of individuals charging indirectly and with innuendo that somebody is trying to do something about the fourth term," one exasperated senator remarked.[184] "Let Senators on the other side keep on fooling around with this bill in the way they are doing, and I will guarantee that Mr. Roosevelt will be reelected for a fourth term," he predicted.[185] In the House, Democratic Representative Michael Bradley admonished his "good friends on the Republican side" that "when these soldiers come back they are going to be resentful of those who have made it difficult for them to cast their ballots."[186] Disgusted by the delay, proposed amendments to reinstate the state poll tax and registration requirements, and other tactics to slow passage of the bill, Representative Bradley asked his colleagues to not kid themselves about the purpose of this political handiwork. He concluded his remarks by stating: "It is a bill to make it difficult for soldiers to vote."[187]

D. Passage and Aftermath

Despite the months of bickering over the bill, it finally passed and became law in April 1944.[188] Although he did not veto the Act, President Roosevelt criticized it as "'wholly inadequate' and 'confusing.'"[189] In the end, a federal ballot was created that would allow those in the services to vote only if their state did not have an adequate voting mechanism.[190] Through the following recommendations, the bill encouraged the states to take action and amend their absentee voting laws. The law urged states to allow members of the armed forces to request an absentee state ballot by use of a postcard printed by the federal government that would be distributed to every person in the

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shipped until after the July Democratic National Convention. *See supra* notes 154–58 and accompanying text.

184. 90 CONG. REC. 613 (1944) (statement of Sen. Lucas).

185. *Id.*

186. *Id.* at 2623.

187. *Id.*

188. *See* Act of Apr. 1, 1944, Pub. L. No. 78-277, 58 Stat. 136.

189. William M. Leary, Jr., *Books, Soldiers and Censorship During the Second World War*, 20 AM. Q. 237, 240 (1968).

190. Act of Apr. 1, 1944 §§ 202–203.

services.[191] On their postcard, each prospective voter would fill out basic pedigree information and return the postcard to the secretary of state of their state of residence.[192] If state law permitted, the postcard operated as a request for a state ballot, and it was recommended that the secretaries of state transmit a state ballot expeditiously upon receipt of the postcard.[193] The federal bill recommended that states extend the timeline under their absentee ballot laws to account for the mailing of ballots to and from remote locations, waive registration requirements, and reduce the size and weight of their ballots and other voting materials.[194]

In the event that a state governor certified that his state did not have an adequate absentee ballot procedure, or that a federal ballot would be accepted, the bill also established an "Official Federal War Ballot."[195] Twenty states authorized the use of this federal ballot.[196] Although assurances had been made throughout congressional hearings that the federal bobtailed ballot would not require voters to identify candidates by name (and that voters could instead designate the political party they supported for a particular office), the Official Federal War Ballot instructed its users: "To vote, write in the name of the candidate of your choice for each office."[197] However, the bill provided that no ballot would be invalid if there was a "mistake or omission in writing the name of the candidate where the candidate intended by the voter is plainly identifiable."[198] In addition, each state was required to provide "a list of candidates and their parties" to the United States War Ballot Commission, which would in turn be provided to the Secretaries of War and the Navy for distribution abroad.[199] For the twenty states that permitted the use of the federal ballot, the names

191. *Id.*
192. *Id.* § 203.
193. *Id.* § 207(b).
194. *Id.* § 207(d)–(e).
195. *Id.* §§ 302–303.
196. The states that authorized the use of the federal ballot were: California, Connecticut, Florida, Georgia, Maine, Maryland, Massachusetts, Michigan, Nebraska, New Hampshire, New Jersey, New Mexico, North Carolina, Oklahoma, Oregon, Rhode Island, Texas, Utah, Vermont, and Washington. *See Candidates for the Federal Ballot*, YANK MAG., Oct. 15, 1944, at 22–23. The remaining twenty-eight states required their citizens to vote through a state absentee ballot. *Id.*
197. § 303(a).
198. *Id.* It seems this language would have permitted a person to write "Republican" or "Democrat" rather than a candidate's name, and still have their vote counted. The congressional debates on the use of the bobtailed ballot would certainly lend support to this interpretation. *See, e.g.*, 90 CONG. REC. 722 (1944) (statement of Sen. Bridges) ("All he would have to do would be to write in the word 'Republican.'").
199. § 306.

and offices of candidates running for election were also printed in *Yank, the Army Weekly*, a pervasive and beloved Army publication.[200]

One of the most striking omissions from the 1944 Act was that, unlike its 1942 counterpart, it made no provision concerning the suspension of the poll tax. In fact, its language that the Federal War Ballot Commission "shall have no powers or functions with respect to the determination of the validity of ballots cast under the provisions of this title," and that "such determination shall be made by the duly constituted election officials of the appropriate districts, precincts, counties, or other voting units of the several States," enabled states to exclude the ballots of those in the armed services who were unable to register to vote (in person) and had not paid their poll taxes.[201] In these ways, the 1944 bill was a step backward from the bill passed in 1942.

In November 1944, Franklin Delano Roosevelt was elected to a fourth term; approximately three million votes separated him from the Republican candidate, Thomas E. Dewey.[202] Once again, the average voter turnout on the home front was considerably higher than the soldier vote. On average, 55.9% of eligible Americans cast a vote, while only about 25% of those in the armed services cast an absentee ballot.[203] An estimated 3.4 million absentee ballots were cast in 1944, which was an improvement over the 28,000 cast in 1942.[204] However, that almost seventy-five percent of Americans in uniform did not vote suggests the 1944 bill also failed to provide a meaningful opportunity to vote.

One problem that plagued the 1944 election was the delay in mail service. For example, in a September 1944 issue of *Yank, the Army Weekly,* one soldier stationed in France griped in a letter to the editor that he received his ballot for the Michigan primary election after the election already occurred.[205] He had read that absentee ballots were to be given "high priority" and delivered by airmail. "Does 'High Prior-

200. *Candidates for the Federal Ballot*, *supra* note 196, at 22–23.

201. § 311(a).

202. *Franklin Delano Roosevelt*, YANK MAG., Apr. 27, 1945, at 10.

203. *See Voter Turnout in Presidential Elections: 1828-2008*, AM. PRESIDENCY PROJECT, http://www.presidency.ucsb.edu/data/turnout.php (last visited Mar. 4, 2016); *see also About the Election*, YANK MAG., Nov. 19, 1944, at 3.

204. *About the Election*, *supra* note 203 (providing that an estimated 3.4 million absentee ballots were cast by Americans displaced from their homes due to the war); Trussell, *supra* note 18, at E9.

205. *Too Late to Vote*, YANK MAG., Sept. 3, 1944, at 20.

ity' mean in excess of 40 days?" he asked.[206] As a pre-election poll of servicemen revealed that "100% felt strongly about their right to vote" and did not want to rely on the complicated mechanisms set up by the states, the results of the 1944 election indicate that absentee voter legislation was ineffective—at both the state and federal levels.[207] One of the most tragic ironies of the war was that the majority of men risking their lives fighting for their nation were deprived of an opportunity to have a voice in the 1944 presidential election.

III.
THE AFTERMATH OF THE 1942 AND 1944 SOLDIER VOTING LEGISLATION

A. The End of the Poll Tax And Other Mechanisms of Voting Discrimination

One of the obstacles that plagued the soldier voting bills was the insistence by some state representatives on maintaining "white superiority" by depriving African Americans, including those in the services, of their right to vote.[208] Toward the tail-end of the war and afterwards, inroads were made to tear down the artifices that limited the voting rights promised by the Fifteenth Amendment.

Beginning with the Supreme Court's 1944 decision in *Smith v. Allwright*, race-based hindrances to voting rights began to be dismantled.[209] In *Smith*, an African American man living in Texas was denied the right to cast a ballot in a primary election in 1940 for the nomination of Democratic congressional candidates as well as certain state officers.[210] He brought suit, and his complaint was dismissed in district court.[211] On appeal, the Fifth Circuit, citing the Supreme Court's decision in *Grovey v. Townsend*, affirmed because *Grovey* held that the denial of an absentee ballot to an African American resident—solely because of his race—in a primary election did not violate the Fourteenth or Fifteenth Amendments.[212]

206. *Id.*; *see also* 90 CONG. REC. 623 (1944) (discussing the slow speed of the mail service from the United States to various overseas locations where soldiers and sailors were stationed).

207. *The Nation: Votes for Soldiers*, *supra* note 120, at 2 (referencing a poll conducted by the Algiers edition of *Stars and Stripes*, the Army's overseas newspaper).

208. *See, e.g.*, 90 CONG. REC. 725 (1944) (statement of Sen. Overton).

209. 321 U.S. 649 (1944).

210. *Id.* at 651.

211. *Id.* at 650.

212. Smith v. Allwright, 131 F.2d 593, 594 (5th Cir. 1942) (per curiam), *rev'd*, 321 U.S. 649 (1944); *see also* Grovey v. Townsend, 295 U.S. 45 (1935). In *Grovey*, the Supreme Court found that the "managers of the primary election [could not be charac-

In spite of *Grovey*, the Supreme Court reversed the lower courts in *Smith* based on its intervening decision in *United States v. Classic*, which held that Article I, Section 4 of the Constitution authorized Congress to regulate both primary and general elections.[213] Relying on *Classic*, the Supreme Court held that "the right to vote in such a primary for the nomination of candidates without discrimination by the State, like the right to vote in a general election, is a right secured by the Constitution."[214] As the Fifteenth Amendment provided that the right to vote could not be abridged by any state on account of race, the Court held that "the great privilege of the ballot may not be denied a man by the State because of his color."[215]

It was no secret that the poll tax operated to deny the ballot to African American voters, and essentially accomplished what the Supreme Court held to be unconstitutional in *Smith*. But, the battle to eradicate the poll tax was not won until almost two decades after the *Smith* decision.[216] First, in 1962, Congress proposed the Twenty-Fourth Amendment to the Constitution, which provided:

> The right of the citizens of the United States to vote in any primary or other election for President or Vice President, for electors for President or Vice President, or for Senator or Representative in Congress, shall not be denied or abridged by the United States or any State by reason of failure to pay a poll tax or other tax.[217]

Two years later, the amendment was ratified.[218] Even the extraordinary act of passing a constitutional amendment did not put an end to the issue, for the payment of a poll tax could still be required to

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terized] as state officers in such sense that any action taken by them in obedience to the mandate of the state convention respecting eligibility to participate in the organization's deliberations, is state action." *Id.* at 53. For this, among other reasons, the Supreme Court concluded that it could find "no ground for holding that the respondent [county clerk] has in obedience to the mandate of the law of Texas discriminated against the petitioner or denied him any right guaranteed by the Fourteenth and Fifteenth Amendments." *Id.* at 55.

213. *Smith*, 321 U.S. at 659–60 (1944) (citing United States v. Classic, 313 U.S. 299, 316–17 (1941)).

214. *Id.* at 661–62. The Supreme Court acknowledged that "[t]he statutes of Texas relating to primaries and the resolution of the Democratic party of Texas extending the privileges of membership to white citizens only are the same in substance and effect today as they were when *Grovey v. Townsend* was decided by a unanimous Court." *Id.* at 661.

215. *Id.* at 662 (citing U.S. CONST. amend. XV).

216. *See* U.S. CONST. amend XXIV.

217. *Id.*; *see also 24th Amendment to States*, N.Y. TIMES, Sept. 15, 1962, at 15.

218. *24th Amendment, Banning Poll Tax, Has Been Ratified*, N.Y. TIMES, Jan. 24, 1964, at 1.

cast a ballot in a state election.[219] However, two years after the ratification of the Twenty-Fourth Amendment, in 1966, the Supreme Court held, in *Harper v. Virginia Board of Elections*, that "[t]o introduce wealth or payment of a fee as a measure of a voter's qualifications is to introduce a capricious or irrelevant factor," and that to require payment of a poll tax as a "condition of obtaining a ballot" caused "an 'invidious' discrimination . . . that runs afoul of the Equal Protection Clause."[220] The precedent that had existed at the time of the 1942 and 1944 soldier voting bills—established by *Breedlove*—was overruled by *Harper* to the extent it allowed a poll tax to serve as a prerequisite to voting.[221]

B. A New Voting Age

As the poll tax was put to rest, America became embroiled in war once again, but this time with Vietnam. In 1968, President Lyndon B. Johnson sent a message to Congress, asking it to lower the voting age to eighteen. "The ballot box is the great anvil of democracy, where democracy is shaped by the will of the people," his message began.[222] He noted that "[a]t the age of eighteen, young Americans are called upon to bear arms," this was the age at which "Americans are treated as adults before many courts of law and are held responsible for their acts."[223] It was the former consideration that caused Congress to act on the President's suggestion. During World War II, the Selective Training and Service Act of 1940 set the draft age minimum at twenty-one years.[224] However, in late 1942, the draft age was lowered to eighteen.[225] Historically, the states set the voting age for federal elections at twenty-one; this meant that men between the ages of eighteen and twenty could be drafted into the military, but did not have a voice in elections.

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219. *See id.* ("States may still impose poll taxes, however, as a requirement to vote in other state and local elections.").

220. 383 U.S. 663, 668 (1966).

221. *Id.* at 668–69 (citing Breedlove v. Suttles, 302 U.S. 277, 283 (1937)). Indeed, *Breedlove* was cited by legislators and quoted during debates over both the 1942 and 1944 soldier voting bills. *See, e.g.*, 88 CONG. REC. 6932 (1942) (discussing *Breedlove*); *see also id.* at 6555 (quoting *Breedlove*); 90 CONG. REC. 813 (1944) (citing and quoting *Breedlove*).

222. Special Message to Congress: "To Vote at Eighteen—Democracy Fulfilled and Enriched," 1 PUB. PAPERS 751, 752 (June 27, 1968).

223. *Id.*

224. Selective Training and Service Act of 1940, Pub. L. No. 76-783, § 2, 54 Stat. 885, 885.

225. C.P. Trussell, *Shorn Draft Bill Passed by House*, N.Y. TIMES, Nov. 11, 1942, at 18.

At the time Johnson made his appeal to Congress, approximately twenty-five percent of the American forces fighting in Vietnam were under the age of twenty-one, and twenty-nine percent of the war's casualties were accounted for by men between the ages of eighteen and twenty.[226] Initially, Congress passed a law to amend the Voting Rights Act of 1965 to lower the voting age to eighteen in federal, state, and local elections.[227] In so doing, Congress stated that the age requirement denied and abridged "the inherent constitutional rights of citizens eighteen years of age but not yet twenty-one years of age to vote—a particularly unfair treatment of such citizens in view of the national defense responsibilities imposed upon such citizens."[228] That this amendment was made in response to Vietnam was evident. However, a sharply divided Supreme Court ruled that Congress lacked the power to set an age limit for state and local elections.[229] In response, Congress once again utilized its power to amend the Constitution to achieve its suffrage goals. In the most rapid ratification process in American history, the Twenty-Sixth Amendment became a part of the Constitution in 1971, thus establishing a universal voting age of eighteen.[230]

Nearly thirty years after the Soldier Voting Acts of 1942 and 1944, Congress had built a foundation to fortify the voting rights of those in the armed services. Nevertheless, problems have persisted.

C. Soldier Voting Rights Today

After World War II, overseas military personnel continued to face difficulties with casting absentee ballots. It was not until 1986,

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226. *Lowering the Voting Age to 18: Hearings Before the Subcomm. on Constitutional Amendments of the S. Comm. on the Judiciary*, 90th Cong. 23 (1968) (statement of R. Spencer Oliver, President, Young Democratic Clubs of America).

227. Voting Rights Act of 1965, Pub. L. No. 89-110, 79 Stat. 437 (codified as amended at 52 U.S.C. §§ 10101–10702 (2014)).

228. *Id.* § 301(a)(1).

229. Oregon v. Mitchell, 400 U.S. 112, 118 (1970). Justice Black delivered the judgment of the Court, and expressed his own view of the case. *See id.* Justices Douglas and Harlan both filed separate opinions concurring in part and dissenting in part. *Id.* at 135 (Douglas, J., dissenting); *id.* at 152 (Harlan, J., dissenting). Justices Brennan, White, and Marshall dissented in part and concurred in part. *Id.* at 229. Justice Stewart concurred in part and dissented in part; and Chief Justice Burger and Justice Blackmun joined Justice Stewart. *Id.* at 281.

230. The Twenty-Sixth Amendment simply reads: "The right of citizens of the United States, who are eighteen years of age or older, to vote shall not be denied or abridged by the United States or by any State on account of age." U.S. CONST. amend. XXVI; *see also* ALEXANDER KEYSSAR, THE RIGHT TO VOTE: THE CONTESTED HISTORY OF DEMOCRACY IN THE UNITED STATES 228 (2000) ("The ratification process was by far the most rapid in the history of the republic.")

when Congress passed the Uniformed and Overseas Citizens Absentee Voting Act ("UOCAVA") that action was taken to improve the absentee voting process.[231] This Act protected service members' right to vote in federal elections regardless of where they were stationed at the time.[232] Implementation of UOCAVA by the states was slow, which made additional legislation necessary.[233]

In 2009, Congress passed the Military and Overseas Voter Empowerment ("MOVE") Act of 2009, which required states to amend their election laws to ensure that overseas military personnel could cast votes electronically.[234] It also required states to transmit validly requested absentee ballots to UOCAVA voters within forty-five days of a federal election, except where the state was granted a waiver by the Department of Defense.[235] Since the passage of MOVE, the Department of Justice has filed five lawsuits (against Wisconsin, Guam, New York, New Mexico, and Illinois) alleging non-compliance with provisions of the statute.[236] According to Donald Inbody, some of the same problems that plagued overseas voting during World War II—such as "getting a marked ballot back to the right precinct in time to be counted"—continue to the present day.[237] Inbody estimates that in the 2012 presidential election, two hundred and fifty thousand overseas and military personnel who wanted to vote were prevented from doing so due to an inability to "navigate the system."[238]

CONCLUSION

After serving as the Supreme Commander of the Allied Expeditionary Force, orchestrating the Allied invasion of Normandy, and working to end the Second World War with an Allied victory, Dwight Eisenhower considered running for President in 1952.[239] While on the campaign trail, General Eisenhower declared, "I believe if a man is

231. Pub. L. No. 99-410, 100 Stat. 924 (1986) (codified as amended at 52 U.S.C. §§ 20301–20311 (2014)).

232. *See id.* § 102.

233. Donald S. Inbody, *Should Soldiers' Votes Get Counted? That's Not as Easy as You'd Think*, WASH. POST (Nov. 11, 2015), https://www.washingtonpost.com/news/monkey-cage/wp/2015/11/11/ensuring-soldiers-a-chance-to-vote-was-a-challenge-in-the-civil-war-it-still-is-today/.

234. Pub. L. No. 111-84, § 577, 123 Stat. 2190, 2319 (codified at 52 U.S.C. § 20302 (2014)).

235. *See id.* § 579(a)(1)(c); *see also* Press Release, U.S. Dep't of Justice, Fact Sheet: Move Act (Oct. 27, 2010), http://www.justice.gov/opa/pr/fact-sheet-move-act.

236. *See* Press Release, U.S. Dep't of Justice, *supra* note 235.

237. Inbody, *supra* note 233.

238. *Id.*

239. EISENHOWER, *supra* note 143, at 211.

old enough to fight he is old enough to vote."[240] There can be little doubt that this sentiment was fueled by his experience in Europe, commanding hundreds of thousands of young men who were fighting to preserve democracy but were deprived of a meaningful opportunity to vote.

The Soldier Voting Acts of 1942 and 1944 fell short of their objective of making it simple for everyone in the services to cast a ballot. The 1942 Act included no provision for overseas voters, but it made an extraordinary leap toward racial equality when it exempted servicepeople from paying a poll tax at a time when Supreme Court precedent clearly upheld the use of the tax as a condition precedent to voting.[241] The 1944 Act enabled more people to vote, but it abandoned the poll tax exemption and affirmed the power of the states to make determinations about which votes would be counted.[242] Both statutes were products of their times. When eight states had poll taxes on their books,[243] and even more states' representatives cleaved to their belief in white superiority,[244] it is not surprising that the 1944 legislation omitted the progressive ideal of making the ballot box colorblind. It took nearly two decades after the 1944 Soldier Voting Act for the law to catch up with the intrepid Congress of 1942. And when it happened, it came about through the unusual combination of a constitutional amendment to prohibit the use of the poll tax in federal elections, and a Supreme Court decision requiring the same of state elections.[245]

The sense that those sent to war should have a voice in state and federal elections was the prevailing sentiment in Congress in 1942 and 1944. Most believed that a person willing to risk his or her life for the country clearly merited a stake in plotting the country's future path. Yet, Congress could not pass a simple voting bill because prejudice got in its way. Requiring registration in person allowed a voting official to observe the race of a prospective voter, and the poll tax effectively disenfranchised a large class of African Americans who lived in

240. *See* Henry J. Abraham, *Reduce the Voting Age to 18?*, 43 NAT'L MUN. REV. 11, 12 (1954).

241. Soldier Voting Act of 1942, Pub. L. No. 77-712, § 2, 56 Stat. 753, 753; *see* Breedlove v. Suttles, 302 U.S. 277 (1937) (upholding a Georgia statute that levied a poll tax upon males between the ages of twenty-one and sixty).

242. *See* Act of Apr. 1, 1944, Pub. L. No. 78-277, 58 Stat. 136.

243. *See* 88 CONG. REC. 6935 (1942) (noting that eight states still had poll tax legislation).

244. *See supra* notes 165–66 and accompanying text.

245. *See* U.S. CONST. amend. XXIV; Harper v. Va. State Bd. of Elections, 383 U.S. 663, 668 (1966).

a society that denied them upward social mobility and access to jobs paying fair wages. At a time when America was fighting against Hitler and all he stood for—including Hitler's "racial science," which dictated that the Aryan race was superior to all others[246]—Americans were unable to agree that a person wearing a military uniform could vote irrespective of the color of his or her skin. As one senator observed during debates in 1942, "while we are preaching to the world the sentiments and the spirit of democracy and non-discrimination, we are patently practicing discrimination against our poor people at home."[247]

The right to vote has been a cherished privilege for those who enjoy life under a democratic form of government. Yet obstacles have been placed before the ballot box, and those in the armed services have faced unique difficulties in exercising their right to vote. The Soldier Voting Acts passed in 1942 and 1944 have largely been forgotten, but the advances made helped pave the way for later legislation that further broadened soldier suffrage. However, an effective soldier ballot has not yet been implemented, and until one is, those in uniform will continue to be deprived of one of the fundamental rights for which they are fighting. Silencing these potential voters weakens the virtue of democratic elections. For, in the words of President Johnson, "when America has extended the vote to citizens whose hour has come, new vitality has been infused into the life-stream of the nation, and America has emerged the richer."[248]

246. *See, e.g.*, *Reich Considers Schools for Jews*, N.Y. TIMES, Apr. 24, 1935, at 8.
247. 88 CONG. REC. 6931–32 (1942) (statement of Sen. Pepper).
248. Special Message to Congress: "To Vote at Eighteen—Democracy Fulfilled and Enriched," 1 PUB. PAPERS 751, 753 (June 27, 1968).