

**H.R. 2010, TO PROTECT THE
VOTING RIGHTS OF MEMBERS
OF THE ARMED SERVICES IN
ELECTIONS FOR THE DELE-
GATE REPRESENTING AMER-
ICAN SAMOA IN THE UNITED
STATES HOUSE OF REP-
RESENTATIVES**

LEGISLATIVE HEARING

BEFORE THE

COMMITTEE ON RESOURCES
U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED EIGHTH CONGRESS

FIRST SESSION

Wednesday, October 29, 2003

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C O N T E N T S

| | Page |
|--|------|
| Hearing held on Wednesday, October 29, 2003 | 1 |
| Statement of Members: | |
| Faleomavaega, Hon. Eni F.H., a Delegate in Congress from American Samoa | 3 |
| Prepared statement of | 5 |
| Letters and resolution submitted for the record | 12 |
| Pombo, Hon. Richard W., a Representative in Congress from the State of California | 1 |
| Prepared statement of | 3 |
| Statement of Witnesses: | |
| Sunia, Hon. Aitofele, Lieutenant Governor, Pago Pago, American Samoa .. | 9 |
| Additional materials supplied: | |
| Fuimaono, Hon. Lutu Tenari S., President of the Senate, Legislature of American Samoa, Letter submitted for the record | 24 |
| Radewagen, Amata Coleman, National Committeewoman for American Samoa, letter submitted for the record | 25 |

LEGISLATIVE HEARING ON H.R. 2010, TO PROTECT THE VOTING RIGHTS OF MEMBERS OF THE ARMED SERVICES IN ELECTIONS FOR THE DELEGATE REPRESENTING AMERICAN SAMOA IN THE UNITED STATES HOUSE OF REPRESENTATIVES, AND FOR OTHER PURPOSES.

**Wednesday, October 29, 2003
U.S. House of Representatives
Committee on Resources
Washington, D.C.**

The Committee met, pursuant to call, at 2:10 p.m., in Room 1324, Longworth House Office Building, Hon. Richard W. Pombo [Chairman of the Committee] presiding.

Present: Representatives Pombo, Rehberg, Faleomavaega, Inslee, Tom Udall of New Mexico, Grijalva, and Bordallo.

STATEMENT OF THE HONORABLE RICHARD W. POMBO, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

The CHAIRMAN. The Committee on Resources will come to order. The Committee is meeting today to hear testimony on H.R. 2010, a bill to protect the voting rights of members of the Armed Services in elections for the Delegate representing American Samoa in the U.S. House of Representatives, and for other purposes.

Under Rule 4(g) of the Committee rules, any oral opening statements at hearings are limited to the Chairman and Ranking Minority Member. This will allow us to hear from our witness sooner and help members to keep to their schedules. Therefore, if other members have statements, they can be included in the hearing record under unanimous consent.

On behalf of the full Committee, I would like to welcome everyone in attendance today, and specifically our witness. We are fortunate to have with us today an individual from American Samoa who should be able to better inform us about their election laws and his thoughts on the effects of enacting H.R. 2010.

Our full Committee hearing today will focus on legislation introduced by my colleague from American Samoa, Mr. Faleomavaega, who has worked on crafting this legislation for years. We will hopefully be able to directly address the two related issues that the bill

presents: an interest in protecting the voting rights of members of the Armed Services, as well as making the Delegate representing American Samoa be subject to an election by a plurality vote.

When discussing the issue of voting rights of the members of our Armed Services, the war in Iraq presents us with a good example. Thousands of men and women are in the Middle East and across the globe protecting our country from further attack while encouraging the new-found freedom of others. Congress has recognized the importance of ensuring their right to vote, even when on active duty in foreign countries, when it passed the Uniformed and Overseas Citizen Absentee Voting Act in 1986. Specifically this legislation requires that the States and territories allow certain groups of citizens, including members of the United States uniformed services, to register and vote absentee in elections for Federal offices.

Further, under an executive order from 1988, the Presidential designee for the administrative responsibilities associated with the legislation is the Secretary of Defense. In turn, the Secretary of Defense has assigned the work of protecting the right to vote by these soldiers to the Federal Voting Assistance Program. The FVAP actively monitors the voter registration and absentee voting opportunities provided to the members of the Armed Services. The issue at hand today, though, is in part how effective this Act is applied to American Samoa.

In 2001 the General Accounting Office released a report saying that the voting assistance to military and overseas citizens should be improved. Our hearing today will hopefully shed some light on the effectiveness of the current law for those members of the Armed Services from American Samoa and how can it can be changed if necessary. We must also remember the extent of the current powers offered under the existing law.

At this time under section 105 of the Uniformed and Overseas Citizens Absentee Voting Act, the Attorney General is authorized to bring civil actions to enforce the law. This typically occurs when the FVAP notifies the Department of Justice that there is a risk that some overseas voters may not have time to return their ballots in the time allotted by the State or the territory.

Even as recently as last year, two more cases were decided where it was discovered the local laws were prohibiting people from exercising their right to vote.

H.R. 2010 also makes a change in current law to provide for the election of the Delegate by a plurality vote instead of a majority vote in runoff elections that take place quite often. I am hopeful that our witness today can inform the Committee of the structure of the elections in American Samoa, with the understanding that the election for the Delegate is written in Federal law.

Further, any potential change as provided for in Mr. Faleomavaega's bill that is in part subject to decisions made at the local level is an issue that should be examined.

I thank the Lieutenant Governor for flying across numerous time zones to be with us today in Washington, D.C., and look forward to his testimony.

[The prepared statement of Mr. Pombo follows.]

**Statement of The Honorable Richard W. Pombo, Chairman,
Committee on Resources**

The hearing will come to order. Good morning.

On behalf of the full Committee, I would like to welcome everyone in attendance today and, specifically, our witness. We are fortunate to have with us today an individual from American Samoa, who should be able to better inform us about their election laws and his thoughts on the effects of enacting H.R. 2010.

Our full Committee hearing today will focus on the legislation introduced by my colleague from American Samoa, Mr. Faleomavaega, who has worked on crafting this legislation for years. We will hopefully be able to directly address the two related issues that the bill presents; an interest in protecting the voting rights of members of the Armed Services as well as making the Delegate representing American Samoa be subject to an election by a plurality vote.

When discussing the issue of voting rights of the members of our Armed Services, the war in Iraq presents us with a good example. Thousands of men and women are in the Middle East and across the globe protecting our country from further attack, while encouraging the newfound freedoms of others. Congress has recognized the importance of ensuring their right to vote even when on active duty in foreign countries when it passed the Uniformed and Overseas Citizen Absentee Voting Act in 1986.

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Further, under an Executive Order from 1988, the presidential designee for the administrative responsibilities associated with the legislation is the Secretary of Defense. In turn, the Secretary of Defense has assigned the work of protecting the right to vote by these soldiers to the Federal Voting Assistance Program (FVAP). The FVAP actively monitors the voter registration and absentee voting opportunities provided to members of the Armed Services.

The issue at hand today, though, is, in part, how effective this Act is applied to American Samoa. In 2001, the General Accounting Office released a report stating that the "voting assistance to military and overseas citizens should be improved."

Our hearing today will hopefully shed some light on the effectiveness of the current law for those members of the Armed Services from American Samoa, and how it can be changed if necessary.

We must also remember the extent of the current powers offered under existing law. At this time, under Section 105 of the Uniformed and Overseas Citizens Absentee Voting Act, the Attorney General is authorized to bring civil actions to enforce the law. This typically occurs when the FVAP notifies the Department of Justice that there is a risk that some overseas voters may not have time to return their ballots in the time allotted by the State or Territory.

Even as recently as last year, two more cases were decided where it was discovered the local laws were prohibiting people from exercising their right to vote.

H.R. 2010 also makes a change in current law to provide for the election of the Delegate by a plurality vote instead of a majority vote and runoff elections that take place quite often.

I am hopeful that our witness today can inform the Committee of the structure of elections in American Samoa, with the understanding that the election for the Delegate is written in Federal law. Further, any potential change as provided for in Mr. Faleomavaega's bill that is, in part, subject to decisions made at the local level is an issue that should be examined.

I thank the Lieutenant Governor for flying across numerous time zones to be with us today in Washington, D.C., and look forward to his testimony.

The CHAIRMAN. At this time, I'd like to recognize Mr. Faleomavaega.

**STATEMENT OF THE HONORABLE ENI F.H. FALEOMAVEGA, A
DELEGATE IN CONGRESS FROM AMERICAN SAMOA**

Mr. FALEOMAVEGA. Thank you, Mr. Chairman. And I also would like to offer my personal welcome of the distinguished Lieutenant Governor of American Samoa, Mr. Aitofele Sunia, and certainly I am very, very appreciative of his taking the time to travel all the

way here to Washington to be a witness for this hearing this afternoon.

Mr. Chairman, I want to personally thank you and also our senior Ranking Member, Mr. Rahall, for holding a hearing on H.R. 2010, a bill I introduced after consultation with local leaders to protect the voting rights of active duty members whose home or residence is American Samoa.

As you know, this matter is not new to the people or the Legislature of American Samoa. The truth is that this matter has been before the people and our local leaders for the past 5 years now. Since 1998, I have written to our Governors, past and present. I have written and testified before our local legislature. And I would like to ask that the copies of my testimony, my letters, and local responses be made part of the record.

The CHAIRMAN. Without objection.

Mr. FALEOMAVAEGA. I have also brought this matter to the attention of my constituents through press releases, newsletters, radio and television programs. In fact two years ago, I conducted a congressional survey, and approximately 85 percent of those surveyed agree that American Samoa's active duty members in the service, in the military, should be afforded the same rights and privileges as every other American serving in the U.S. Armed Forces.

Unfortunately, American Samoa's military men and women have been disenfranchised, in my opinion, from the political process and have been denied the right to vote in Federal elections held in the territory. In part, this has been due to two complications. One, American Samoa law has until recently required uniformed and overseas voters to register in person, and this has been contrary to the Uniformed and Overseas Citizenship Voting Act of 1975.

While I am pleased that as of last year our legislature has addressed the registration process to make it easier for military members to register for local and Federal elections, our uniformed and overseas voters have also been denied their right to vote as a result of a public law that was passed in 1978 by the Congress. This public law provides that the Territory of American Samoa is to be represented by a nonvoting Delegate to the U.S. House of Representatives and mandates that if no candidate receives a majority of the votes cast, that on the 14th day—that is, two weeks after the first election—that such a runoff election shall then be held between the candidates receiving the highest and the second highest number of votes cast.

Like the Governor of American Samoa, The Honorable Tulafono, I believe that this 1978 Federal law requiring a runoff election to be held only 14 days after the general election creates, as Governor Tulafono says, and I quote, a situation where it is virtually impossible for the American Samoan Election Office to send out absentee ballots to the men and women in the military and expect to receive them back in time for those votes to be counted in runoff elections. This is especially also true with the college students.

Given that our mail is delayed and our air service limited to two flights a week, the Governor and I agree that some measure should be put in place to assure that the voters—the votes of our military men and women are counted and that this injustice be corrected.

Actually, Mr. Chairman, in 1977 I worked on the legislation which the late Congressman Phil Burton introduced to provide that the Territory of American Samoa be represented by a nonvoting Delegate to the U.S. House of Representatives. As a young Hill staffer then for Congressman Burton, I was instructed to draft legislation to provide for the election also of American Samoa's Governor as well as the Delegate. The law that governed this election and the operation of his office were as a result of a bill that was passed by the Fono, and I am referring specifically to the Office of the Governor.

It should also be noted that at that time the appointed Governor, whose name was Owen Aspinall, signed a bill into law despite U.S. Department of the Interior's opposition to having American Samoa be represented here in the U.S. House of Representatives. In fact, Governor Aspinall signed the bill as a way to get back at the Department of the Interior for not extending his term as Governor.

While this bill allowed for the local representative in Washington, it did not provide for a representative to the U.S. Congress, because the Fono and the local government had no authority to enact Federal legislation. And this is the reason why the Paramount Chief Tui Manu'a and High Chief Lutali, although they served as delegates representing the territory of Washington, but they were never officially members of the U.S. House of Representatives—in fact, it was High Talking Chief Fiti Sunia that was duly the first elected Congressman representing American Samoa in 1980.

I want to say that in the interest of time I want the full substance of my statement to be made part of the record, Mr. Chairman.

I would like to say that H.R. 2010 is a historic bill. It is a bill that immediately restores the voting rights of our military men and women as well as college students from American Samoa. It is also a bill that makes clear in no uncertain terms that the legislature is vested with the authority it needs that for some time in the future it wants to hold primary elections, it can pass local law to provide for that.

H.R. 2010 also protects American Samoa's future in the U.S. Congress. Without 2010, future delegates could miss out on key committee assignments and could be ranked more junior as a result of delayed outcomes of runoff elections. And like Governor Tulafono, I do not believe that American Samoa's future should be weakened or disadvantaged. And this is one more reason why I appreciate the Governor's support of H.R. 2010.

And, again, Mr. Chairman, I thank you for the hearing, and I look forward to hearing from our Lieutenant Governor.

The CHAIRMAN. Thank you.

[The prepared statement of Mr. Faleomavaega follows:]

**Statement of The Honorable Eni F.H. Faleomavaega, a Delegate in
Congress from American Samoa**

Mr. Chairman, I want to personally thank you and Congressman Rahall for holding a hearing on H.R. 2010, a bill I introduced after consultations with local leaders to protect the voting rights of active duty service members whose home of residence is American Samoa.

As you know, this matter is not new to the people or the legislature of American Samoa. The truth is this matter has been before the people and our local leaders for the past five years. Since 1998, I have written to our Governors, past and present. I have written and testified before our local Legislature, or FONONO, and I would like to ask that copies of my testimony, my letters, and local responses be made part of this record.

I have also brought this matter to the attention of my constituents through press releases, newsletters, radio and tv programs. In 2001, I conducted a Congressional survey and 85% of those surveyed agreed that American Samoa's active duty service members should be afforded the same rights and privileges as every other American serving in the U.S. Armed Forces.

Unfortunately, American Samoa's military men and women have been disenfranchised from the political process and have been denied the right to vote in federal elections held in the Territory. In part, this has been due to two complications. One, American Samoa law has until recently required uniformed and overseas voters to register to vote in person and this has been contrary to the Uniformed and Overseas Citizens Voting Act of 1975.

While I am pleased that as of 2002 our legislature has addressed the registration process to make it easier for military members to register for local and federal elections, our uniformed and overseas voters have also been denied the right to vote as a result of Public Law 95-556 passed on October 31, 1978. Federal, or PL 95-556, provides for the Territory of American Samoa to be represented by a nonvoting Delegate to the United States House of Representatives and mandates that if no candidate receives a majority of the votes cast, on the fourteenth day following such election, a runoff election shall be held between the candidates receiving the highest and second highest number of votes cast.

Like the Governor of American Samoa, The Honorable Togiola T.A. Tulafono, I believe this 1978 federal law requiring a runoff election to be held only 14 days after the general election creates, as Governor Togiola says, "a situation where it is virtually impossible for American Samoa's Election Office to send out absentee ballots to the men and women in the military and expect to receive them back in time for those votes to be counted in a run-off election." Given that our mail is delayed and our air service is limited to two flights a week, the Governor and I agree that some measure should be put in place to assure that the votes of our military men and women are counted and that this injustice is corrected.

During the 107th Congress, I introduced H.R. 3576, a bill to establish primary elections and which also made sure that the Delegate was elected by a majority of the votes cast. When introducing this bill, I pointed out that both Guam and the Virgin Islands were once bound by the two week federal runoff requirement but established primary elections to resolve similar problems. Notwithstanding, the American Samoa Government (ASG) chose not to support this bill due to the cost of primary elections.

Given ASG's financial difficulties and out of respect for its concerns, I introduced H.R. 4838 which called for voting by plurality in lieu of primary elections. As I explained when introducing H.R. 4838, 49 of the 50 states use plurality voting to elect their Representatives to Congress. The counties of Tualata and Itu'au in American Samoa also elect their representatives by plurality vote. Plurality voting minimizes costs to the local government and also provides active duty service members and other overseas voters with an opportunity to participate fully in the federal election process. Despite these considerations, ASG chose not to support this bill either and the previous and late Governor Tauese P.F. Sunia said that he believed "the intent of Congress when they established majority vote was to ensure a strong mandate for American Samoa's Delegate."

Actually, in 1977, I worked on the legislation which Congressman Phil Burton introduced to provide that the Territory of American Samoa be represented by a non-voting Delegate to the U.S. House of Representatives. As a young Hill staffer working for Congressman Burton on the Committee on Interior and Insular Affairs, I also worked on the legislation to provide for the election of American Samoa's Governor and I would like to include it should be noted that in 1970 when American Samoa first elected a delegate at large to serve as the government's special representative to Washington, the law that governed his election and the operations of his office were as a result of a bill that was passed by the Fono.

Appointed Governor Owen Aspinall signed the bill into law despite the U.S. Department of the Interior's (DOI) opposition to American Samoa having an elected delegate. In fact, Governor Aspinall signed the bill as a way to get back at the DOI for not extending his term as Governor. While this bill allowed for a local representative to Washington, it did not provide for a representative to the U.S. Congress because the Fono and Governor Aspinall had no authority to enact federal

legislation. This is why PC Fuimaono and HC Lutali never actually became official delegates to the U.S. Congress. American Samoa's first Congressional Delegate was HTC Fofu Sunia who was elected in 1980 after Congress enacted legislation to provide that the Territory be represented by a nonvoting Delegate to the United States House of Representatives.

To be clear about this, I would like to provide this Committee with a legal history of how election law was determined for American Samoa. In 1951, President Harry S. Truman issued Executive Order 10264 which transferred administrative responsibility for the islands of American Samoa from the Secretary of the Navy to the U.S. Secretary of the Interior. The Secretary of the Interior, in turn, appointed our Governors.

In 1960, the people of American Samoa adopted a Constitution. The Constitution was revised in 1966 and was approved by the Secretary of the Interior on June 2, 1967. In 1967, the Revised Constitution of American Samoa provided for an elected Legislature, or Fono, consisting of a Senate and a House of Representatives. However, it did not provide our people with the right to elect our own Governor and Lieutenant Governor and, at the time, American Samoa was the only remaining off-shore area of the United States which did not have a popularly elected Governor and Lieutenant Governor.

On June 10, 1976, Congressman Phil Burton took notice of American Samoa's situation and introduced a bill to make it possible for our Governor and Lieutenant Governor to be popularly elected rather than appointed by the Secretary of the Interior. As staff counsel the Committee on Interior and Insular Affairs, Congressman Burton instructed me to draft this legislation which the U.S. House of Representatives overwhelmingly passed by a landslide vote of 377 to 1.

Instead of sending his bill to the Senate, Congressman Burton decided to consult further with the Secretary of the Interior, Rogers C.B. Morton, about American Samoa's unique political status as an unincorporated and unorganized territory which was and is unlike the organized territories of Guam and the Virgin Islands. As a result of their consultations, the two agreed that Secretary Morton would issue a Secretarial Order (No. 3009) authorizing the American Samoa Government to pass enabling legislation to provide for an elected Governor and the Lieutenant Governor.

Secretary's Order No. 3009 amended American Samoa's Constitution to specifically provide for an elected rather than an appointed Governor and Lieutenant Governor. Secretary's Order 3009 was also in keeping with the will of the majority of voters in American Samoa who voted in favor of electing their own Governor and Lieutenant Governor in a plebiscite that was held on August 31, 1976.

Furthermore, Congressman Phil Burton introduced legislation on August 2, 1978, to provide that the Territory of American Samoa be represented by a nonvoting Delegate to the U.S. House of Representatives. I also was tasked with drafting this legislation which became Public Law 95-556 and was made effective October 31, 1978.

I can assure you that in the case of the Delegate, American Samoa's federal election laws were patterned after those of the Virgin Islands and Guam. At the time, consideration was not given to whether or not majority or plurality voting should be established for American Samoa. Congress simply enacted legislation to provide American Samoa with representation in the U.S. Congress and we could not foresee some 25 years ago that American Samoa's men and women would serve in record numbers in the U.S. Armed Forces which consequently made it impossible for them to participate in runoff elections held two weeks after general elections.

Today, we are keenly aware that this requirement to hold a runoff election 14 days after the general election is outdated, unreasonable and unjust. To right this wrong and after further consultations with our local leaders, I introduced H.R. 2010 which includes the suggestions of Governor Togiola. In a letter dated September 11, 2003, Governor Togiola informed me that he had reviewed the copy of H.R. 2010 that I sent to him and that he was satisfied that this bill will provide an immediate solution to address the concerns we have regarding the voting rights of our men and women in the military services. In a letter dated September 15, 2003, I thanked Governor Togiola for his support and I would like to ask that our letters be made part of the record.

Although we have had some differences regarding this issue, Governor Togiola and I have always agreed that our military men and women should have the right to vote especially when they contribute almost a million dollars per year in taxes to our local government. I am pleased that Governor Togiola is now happy with this bill and I again commend him for supporting its passage.

I also want to thank the President of the American Samoa Senate, The Honorable Lutu Tenari S. Fuimaono, for his support. In a letter dated October 28, 2003, President Fuimaono stated that he fully supports H.R. 2010 and that he wishes Chair-

man Pombo the best of luck in moving forward on the bill. I would like to ask that his letter also be included as part of the record.

Finally, I would like to say that H.R. 2010 is an historic bill. It is a bill that immediately restores the voting rights of our military men and women. It is also a bill that makes clear in no uncertain terms that FONO is vested with the authority it needs to establish primary elections for the office of the Delegate, if it so chooses. H.R. 2010 also protects American Samoa's future in the U.S. Congress. Without H.R. 2010, future Delegates could miss out on key committee assignments and could be ranked more junior as a result of delayed outcomes and run-off elections. Like Governor Togiola, I do not believe American Samoa's future should be weakened or disadvantaged and this is one more reason I appreciate his support of H.R. 2010.

Given the importance and urgency of this bill, I am hopeful that members of this Committee will also work for the successful passage of H.R. 2010. H.R. 2010 is the right thing to do and, as a Vietnam veteran, I will not rest until we fully guarantee that our active duty service members have the right to vote in federal elections held in American Samoa. To alleviate any concerns that I will personally benefit from this legislation, I would like the Chairman, the Ranking Member, and Members of the Committee to know that I intend to introduce an amendment in the nature of a substitute for purposes of changing the effective date of this bill from January 2004 to January 2006. If supported, any change in law will not go into effect until the 2006 election cycle and the 2004 election requirements will remain as is.

While I am aware that some members of the FONO continue to have disagreements with this legislation, I respect their opinions and I thank them for their efforts to address this issue locally. However, only Congress can vest the American Samoa Legislature with the authority it needs to establish primary elections.

As I have repeatedly stated, H.R. 2010 in no way affects how the American Samoa Government chooses to elect its local leaders and, having made every change requested of me by our local leaders and after years of good-faith efforts on my part, I believe the time has come to put aside our differences and do right by our men and women in the military. Our sons and daughters have fought and died to preserve our freedoms and I will do everything in my power to protect their right to vote. I urge your support of H.R. 2010 and I thank you again for holding this hearing.

[NOTE: The attachments listed below submitted for the record by Mr. Faleomavaega have been retained in the Committee's official files.]

ATTACHMENTS

- 04/05/00—Faleomavaega to ASG Governor Sunia, Lieutenant Governor, President of the Senate and Senators, Speaker of the House and Representatives, Attorney General
- 11/20/01—Faleomavaega to ASG Governor Sunia, Lieutenant Governor, President of the Senate and Senators, Speaker of the House and Representatives
- 12/20/01—Faleomavaega to ASG Governor Sunia, Lieutenant Governor, President of the Senate and Senators, Speaker of the House and Representatives
- 01/02/02—Governor Tauese Sunia to Faleomavaega, ASG Lieutenant Governor, President of the Senate and Senators, Speaker of the House and Representatives, Chief Election Officer
- 01/28/02—ASG Speaker of the House to Faleomavaega, ASG Governor, Election Office, President of the Senate
- 02/27/02—Faleomavaega to ASG Speaker of the House
- 03/05/02—Faleomavaega to ASG Senate President and Senators
- 05/23/02—Faleomavaega to ASG Governor Sunia, Lieutenant Governor, President of the Senate and Senators, Speaker of the House and Representatives
- 07/10/02—ASG President Pro Tem and Speaker of the House to The Honorable James Hansen, Chairman of U.S. House Committee on Resources, ASG Governor Tauese Sunia, Senators, Representatives, Chief Election Office, The Honorable Nick Rahall (Ranking Member of the U.S. House Committee on Resources), Congressman Eni Faleomavaega, Members of the U.S. House Committee on Resources
- 07/11/03—Governor Tauese Sunia to Faleomavaega, Chairman of the U.S. House Committee on Resources, ASG President of the Senate and Senators, Speaker of the House and Representatives, Chief Election Officer
- 07/15/02—Faleomavaega to The Honorable Nick Rahall, Ranking Member, U.S. House Committee on Resources
- 07/15/02—Faleomavaega to The Honorable James Hansen, Chairman, U.S. House Committee on Resources

- 07/23/02—Faleomavaega to ASG Governor Sunia, Chairman and Ranking Member of the U.S. House Committee on Resources, Deputy Assistant Secretary of the U.S. Department of the Interior, ASG Lieutenant Governor, President of the Senate and Senators, Speaker of the House and Representatives, Chief Election Officer
- 07/23/02—Faleomavaega to The Honorable James Hansen, Chairman, U.S. House Committee on Resources
- 07/23/02—Faleomavaega to The Honorable Nick Rahall, Ranking Member of the U.S. House Committee on Resources
- 09/05/02—Faleomavaega to ASG Governor Tauese Sunia
- 09/05/02—Faleomavaega to ASG President of the Senate and Senators
- 09/05/02—Faleomavaega to ASG Speaker of the House and Representatives
- 09/12/02—Faleomavaega Statement before the American Samoa Legislature
- 05/07/03—Faleomavaega to ASG Governor Togiola Tulafono, Lieutenant Governor, President of the Senate and Senators, Speaker of the House and Representatives
- 09/05/03—Senator Te'o J. Fuavai to Faleomavaega
- 09/11/03—ASG Governor Togiola Tulafono to Faleomavaega, ASG Lieutenant Governor, President of the Senate and Senators, Speaker of the House and Representatives
- 09/15/03—Faleomavaega to ASG Governor Togiola Tulafono, Lieutenant Governor, President of the Senate and Senators, Speaker of the House and Representatives
- 09/19/03—Senate Resolution
- 10/16/03—Faleomavaega to Senator Te'o J. Fuavai
- 10/27/03—President of ASG Senate, Lutu Fuiamono, to Faleomavaega.
- 10/28/03—Office of the Governor to Lieutenant Governor, Aitofele T.F. Sunia.
- 07/21/76—Congressional Record, Providing for an Elective Governor and Lieutenant Governor of American Samoa
- 10/03/78—Congressional Record, Providing the Territory of American Samoa with a Nonvoting Delegate

The CHAIRMAN. I would like to now introduce our witness for today's hearing. I would like to welcome Lieutenant Governor Aitofele Sunia who has taken it upon himself to travel to Washington today from American Samoa. I know it is more than a hop, skip and a jump for you to get all the way here, and I really appreciate you making the effort.

Before you begin your testimony, I wish to continue my customary practice of swearing in all the witnesses as provided under rule 4(f). If I could have you stand and raise your right hand.

[Witness sworn.]

The CHAIRMAN. The record will show that you answered in the affirmative.

Thank you very much. Welcome to the Committee. If you are ready, you can begin.

**STATEMENT OF AITOFELE SUNIA, LIEUTENANT GOVERNOR,
PAGO PAGO, AMERICAN SAMOA**

Mr. SUNIA. Thank you, Mr. Chairman, and honorable members of the Committee. Good afternoon and talofa. It is indeed my pleasure and honor to appear before your honorable Committee this afternoon. I had traveled here to present to you, sir, and your Committee, members of your Committee, a written statement of the Governor's position in support of this legislative measure and also to appear in person to respond to any questions that you may have. Hopefully I can answer them for you should there be any questions that Mr. Chairman and members of the Committee wish to address on this issue.

Basically it is a very simple matter. It is a matter of extending or providing the mechanics or vehicle so that our men and women in uniform and college students can exercise their constitutional right to vote. Without this measure, they had been denied this right to cast their votes for the seat to the U.S. Congress, and I believe that this measure will enable them to exercise this right. And I don't have to emphasize how important the right is, but I believe it is to them.

And the way that our elections are set up, this runoff two weeks after the general election in reality does not afford the opportunity for these people to cast their votes, because by the time the airplane gets back to us two weeks later—they only fly down there twice a week—and by the time the airplane gets down there with those ballots, the votes have already been counted, and they are counted out, not in. And that is not fair.

And that is basically why I am here, Mr. Chairman, and members of the Committee. It is as simple as that. If there are further questions on it, I hope I will be able to respond. Thank you very much.

The CHAIRMAN. Thank you, sir.

The CHAIRMAN. In terms of the plurality voting, I know that there are a number of States that have plurality voting and runoff elections. Can you explain to the Committee why that has proven to be a problem in Samoa?

Mr. SUNIA. Well, I am not sure if it is a problem, sir. Our local legislature is elected by plurality. This is one of the English words I have a hard time pronouncing. Plurality.

The CHAIRMAN. I have a hard time with it, too, so don't feel bad.

Mr. SUNIA. And that is how we elect all members to our local legislature, by plurality. And when it was originally set up for the election of our Delegate to Congress—I apologize, but I don't know why it was set up the way it is. Maybe the Congressmen can enlighten the Committee on that.

But as to your question, as to the two methods of elections, there is no—there is really no problem. We're happy with the way the local members of the local legislature are elected, and that is plurality. There are no qualms with that, that I know of.

The CHAIRMAN. Now I will ask my colleague if he could respond to that.

Mr. FALOMAVAEGA. If the Chairman will yield, the situation in providing for the election of the Delegate of American Samoa; as the bill was introduced in 1978 here in the Congress, we just simply patterned the same provisions as that of electing the Delegates from Guam to the Virgin Islands, which was 10 years before that. I think the first elected delegates from Guam and the Virgin Islands was in 1970. And what that did was just simply provided that if there was no majority—specifically, this is how the law was written. If no majority is provided under the first round of the election, then a runoff election is to be held two weeks thereafter.

I tried, as much as I could, to find the legislative history how or who the authors were of this Federal legislation that provided for this requirement, that two weeks was all that was sufficient to provide for the runoff election. I suppose 30 years ago, or 40 years ago, the presumption being that the majority of the voters were still on

an island like Guam or the Virgin Islands and that there was never really any serious consideration about those who served in the military and students who left. And now in the years pursuing, how Guam and the Virgin Islands have elected their Delegates, they went ahead and initiated the primary process for—which then allows this majority requirement still in place for Guam and the Virgin Islands. Unfortunately with us, we still have this provision there that requires that there is to be a runoff in two weeks. And probably the worst place to have mailings and letters and things of the sort to be provided, it takes a week just to prepare the ballots for the runoff, and then by the time the ballots are sent off island, the election is over. So I think this is how the situation evolved with our election in the territory.

The question of plurality was raised as to where does it say in the Constitution or whether by Federal law that you have to have a majority vote in order to legitimize an election? And as much as I could remember, at least in reading the legislative history, there is no constitutional requirement that a person elected to the U.S. House of Representatives has to be elected by a majority vote.

The fact is I recall—

The CHAIRMAN. There's not. In California you can win with a plurality vote, and it is whoever has the most votes on Election Day wins.

Mr. FALEOMAVAEGA. Right. In fact, my recollection, I think 49 out of 50 States do elect their Members in the House by plurality. So this was the reason why I felt that the election of a Delegate is in compliance with not only the constitutional requirements but the fact that 48 other States also have the same requirements.

The problem that comes into play is when you have four or five candidates running—and I have tried earnestly to find out really if there was some Federal provision or constitutional mandate that a federally elected person to the House of Representatives has to be by majority, and I did not find any provision anywhere that Members of the U.S. House of Representatives have to be elected by a majority vote.

I did add a provision in the bill, Mr. Chairman, to the effect that if at some point in time in the future our local government or the legislature should decide to hold primary elections, that authorization is provided for in the bill—and this is one critical factor that the Governor has lent his support—that the fact that our local government is given that prerogative if it should decide to do so sometime in the future.

The reason why they did not want a primary is they say it is too expensive. So the rights of our men and women in the military to vote versus too expensive, I find it difficult sometimes to make that as a valid reason for not having primaries; but here again, that is what they've chosen to do, and I believe that the proposed bill will accommodate that need if at sometime in the future the legislature and the local administration will want to have primaries.

The CHAIRMAN. I am going to go ahead and recognize Mr. Faleomavaega if he has any questions to the Lieutenant Governor.

Mr. FALEOMAVAEGA. I do not have any questions for the Lieutenant Governor other than to thank him for making such a long trip to come before our Committee hearing, Mr. Chairman.

I would like to ask unanimous consent that the—one of our senators, local senators, had expressed his objection to the proposed bill, and I'd like to ask unanimous consent that his letter and the resolution that was passed be made a part of the record, and also the letter that I had written to Senator Te'o also be made a part of the record.

The CHAIRMAN. Without objection.

[The letters and resolution follow:]



AMERICAN SAMOA GOVERNMENT
PAGO PAGO, AMERICAN SAMOA 98799

LEGISLATURE OF AMERICAN SAMOA

CERTIFICATION

Senate Chamber
September 19, 2003

I certify that Senate Resolution No. 28-17 passed on this date in the Senate during its Second Regular Session of the Twenty-eighth Legislature of American Samoa.

A handwritten signature in black ink, appearing to read 'Leo V. Ma'oa'.

Leo V. Ma'oa
SECRETARY OF THE SENATE

**THE TWENTY-EIGHTH LEGISLATURE
SECOND REGULAR SESSION**

S.R. NO. 28-17

SENATE RESOLUTION

A SENATE RESOLUTION REQUESTING THE CONGRESS OF THE UNITED STATES, HOUSE OF REPRESENTATIVES TO WITHDRAW H.R. 2010 FROM CONSIDERATION AT THIS TIME UNTIL THE LEGISLATURE OF AMERICAN SAMOA DECIDES WHETHER TO ADOPT PLURALITY OR PRIMARY VOTING FOR THE DELEGATE REPRESENTING THE TERRITORY OF AMERICAN SAMOA IN THE UNITED STATES HOUSE OF REPRESENTATIVES.

WHEREAS, the current 28th Legislature of American Samoa is presently considering primary and plurality voting for the delegate representing the Territory of American Samoa in the United States House of Representatives and a decision will be made soon on this issue by the Legislature of American Samoa; and

WHEREAS, the current delegate Congressman Eni F. H. Faleomavaega had promised the Senators of the 28th Legislature of American Samoa that he would hold off on submitting H.R. 2010, until we the 28th Legislature of American Samoa decided the issue; and

WHEREAS, the submission of H.R. 2010 is premature at this time we, the Senators of the 28th Legislature of American Samoa respectfully request the withdraw of H.R. 2010 from consideration by the United States House of Representatives at this time.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE TERRITORY OF AMERICAN SAMOA:

THAT, the 28th Legislature of American Samoa, for and on behalf of the Government and People of the Territory of American Samoa, do hereby respectfully request that the United States House of Representatives withdraw H.R. 2010 from consideration at this time until the 28th Legislature of American Samoa decides to adopt primary or plurality voting for it's delegate representing the Territory of American Samoa in the United States House of Representatives; and

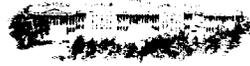
BE IT FURTHER RESOLVED, that the Secretary of the Senate shall deliver this resolution to the following: Speaker Denny Hastert; Majority Leader Tom Delay; Minority Leader Nancy Pelosi; Representative Richard Pombo, Chairman of Committee on Resources and Representative Eni F. H. Falcomavaega, all members of the United States House of Representatives.


LUTU TENARI S. FUIMAONO
President of the Senate

COMMITTEE ON
INTERNATIONAL RELATIONS
FLAMING DEMOCRATIC MEMBER
SUBCOMMITTEE ON ASIA AND THE PACIFIC
SUBCOMMITTEE ON THE WESTERN HEMISPHERE

COMMITTEE ON RESOURCES
SUBCOMMITTEE ON FISHERIES CONSERVATION,
WILDLIFE AND OCEANS
SUBCOMMITTEE ON ENERGY AND
MINERAL RESOURCES

NATIONAL GUARD AND
RESERVES COMPONENTS CAUCUS
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Congress of the United States
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October 16, 2003

The Honorable Te'o J. Fuavai, Senator
American Samoa Legislature
P.O. Box 485
Pago Pago, American Samoa 96799

Dear Senator Fuavai:

Lau Afiega Te'o

I am writing to thank you for your letter dated September 5, 2003 regarding H.R. 2010, a bill I introduced to protect the voting rights of active duty service members whose home of residence is American Samoa. You are to be commended for your leadership and for introducing a bill in the 28th Legislature of American Samoa to decide this issue.

I am supportive of your efforts. However, I would like to clarify two items which I believe will be helpful as this process moves forward. First, I would like to respond to your suggestion that I have excluded our local leaders and Legislature from this process and that I have in some way violated an agreement between us. I have neither excluded our leaders nor violated any agreements between us and, as a matter of record, I am submitting a history of my correspondence to ASG and the Fono and a history of their responses. I am hopeful that once you review this history there will be no further misunderstandings about this issue.

On April 5, 2000, November 20, 2001, December 20, 2001, February 27, 2002, March 5, 2002, and May 23, 2002, I wrote to ASG regarding P.L. 95-556 which requires American Samoa to hold a runoff election for the office of the Delegate two weeks after the general election if a candidate does not receive a majority of the votes cast. I copied and distributed each of these letters to every member of the Fono and explained that it was my intent to introduce legislation which would amend federal law to allow our active duty service members to fully participate in the federal election process.

In response to my efforts, I received one letter from Governor Sunia dated January 1, 2002 in which he acknowledged receipt of my letters and raised no concerns. On January 28, 2002, I received a letter dated December 5, 2001 from Speaker McMoore. In his letter, the Speaker stated that he intended to address this issue in the House of

Representatives. From January to July 2002, I heard nothing more from our local leaders regarding this matter.

In July 2002, Chairman Hansen of the U.S. House Resources Committee decided to hold a hearing on the bill and the Fono and the late Governor immediately requested a postponement. Chairman Hansen said that he would leave the decision up to me about whether to postpone or hold the hearing. Out of deference to the Governor and our local leaders, I requested a postponement of the hearing that was scheduled for Wednesday July 17, 2002.

On September 12, 2002, I testified before the Fono and almost a year passed and the Fono took no action. On February 4, 2003, I informed the Governor and the Fono of my intent to introduce a revised bill (H.R. 2010) inclusive of both plurality and majority voting and which would also resolve the problem of holding a run-off election two weeks after the general election. On May 7, 2003, I forwarded a copy of H.R. 2010 (attached) and once again requested an opportunity to testify before our local legislature regarding this bill.

Again, I did not receive a reply from ASG or the Fono. After years of good-faith effort on my part, I am now in receipt of your letter dated September 5, 2003 requesting another postponement so that the Fono can decide this matter. Please know that as much as I appreciate your efforts to decide this matter, the Fono cannot change federal law. Only the U.S. Congress can change federal law and this is one reason I have introduced H.R. 2010 and included a provision which will give the Fono the authority it needs to establish primary elections, if it so chooses.

Without the passage of this bill, the U.S. Congress will not recognize any changes the Fono may make to how federal elections are conducted in American Samoa. On the other hand, if H.R. 2010 is signed into law, the Fono will finally have the federal authority it needs to decide whether to establish plurality or majority voting for the office of the Delegate.

To further clarify this matter, I would like to refer you to American Samoa's Constitution which states that the Legislature shall have authority to pass legislation with respect to subjects of local application, except that no such legislation may be inconsistent with the laws of the United States applicable in American Samoa. In no uncertain terms, this means that the Fono may not make changes to U.S. federal law, including the federal law which defines how we elect our Delegate.

While the Fono may express an opinion or offer a non-binding resolution, the Fono may not enact a law to establish primary elections for the Office of the Delegate without Congressional approval and authorization. Again, this is why I have introduced H.R. 2010. If passed, H.R. 2010 will give the Fono the authorization it needs to establish primary elections if it so chooses. As you are aware, the establishment of primary elections will also provide for a majority result in the general election thereby making the plurality issue irrelevant and inapplicable.

In connection with H.R. 2010, it should also be noted that in 1970 when American Samoa first elected a delegate at large to serve as the government's special representative to Washington, the law that governed his election and the operations of his office were as a result of a bill that was passed by the Fono. Appointed Governor Owen Aspinall signed the bill into law despite the U.S. Department of the Interior's (DOI) opposition to American Samoa having an elected delegate. In fact, Governor Aspinall signed the bill as a way to get back at the DOI for not extending his term as Governor.

While this bill allowed for a local representative to Washington, it did not provide for a representative to the U.S. Congress because the Fono and Governor Aspinall had no authority to enact federal legislation. This is why PC Fuimaono and HC Lutali never actually became official delegates to the U.S. Congress. American Samoa's first Congressional Delegate was HTC Fofu Sunia who was elected in 1980 after Congress enacted legislation to provide that the Territory be represented by a nonvoting Delegate to the United States House of Representatives.

To be clear about this, I would like to provide you with a legal history of how election law was determined for American Samoa. In 1951, President Harry S. Truman issued Executive Order 10264 which transferred administrative responsibility for the islands of American Samoa from the Secretary of the Navy to the U.S. Secretary of the Interior. The Secretary of the Interior, in turn, appointed our Governors.

In 1960, the people of American Samoa adopted a Constitution. The Constitution was revised in 1966 and was approved by the Secretary of the Interior on June 2, 1967. In 1967, the Revised Constitution of American Samoa provided for an elected Legislature, or Fono, consisting of a Senate and a House of Representatives. However, it did not provide our people with the right to elect our own Governor and Lieutenant Governor and, at the time, American Samoa was the only remaining off-shore area of the United States which did not have a popularly elected Governor and Lieutenant Governor.

On June 10, 1976, Congressman Phil Burton took notice of American Samoa's situation and introduced a bill to make it possible for our Governor and Lieutenant Governor to be popularly elected rather than appointed by the Secretary of the Interior. As staff counsel the Committee on Interior and Insular Affairs, Congressman Burton instructed me to draft this legislation which the U.S. House of Representatives overwhelmingly passed by a landslide vote of 377 to 1.

Instead of sending his bill to the Senate, Congressman Burton decided to consult further with the Secretary of the Interior, Rogers C.B. Morton, about American Samoa's unique political status as an unincorporated and unorganized territory which was and is unlike the organized territories of Guam and the Virgin Islands. As a result of their consultations, the two agreed that Secretary Morton would issue a Secretarial Order (No. 3009) authorizing the American Samoa Government to pass enabling legislation to provide for an elected Governor and the Lieutenant Governor.

For your information, Secretary's Order No. 3009 amended American Samoa's - Constitution to specifically provide for an elected rather than an appointed Governor and Lieutenant Governor. Secretary's Order 3009 was also in keeping with the will of the majority of voters in American Samoa who voted in favor of electing their own Governor and Lieutenant Governor in a plebiscite that was held on August 31, 1976.

Furthermore, Congressman Phil Burton introduced legislation on August 2, 1978 to provide that the Territory of American Samoa be represented by a nonvoting Delegate to the U.S. House of Representatives. This became Public Law 95-556 and was made effective October 31, 1978. I can assure you that in the case of the Delegate, American Samoa's federal election laws were patterned after those of the Virgin Islands and Guam. At the time, consideration was not given to whether or not majority or plurality voting should be established for American Samoa. Congress simply enacted legislation to provide American Samoa with representation in the U.S. Congress and we could not foresee some 25 years ago that American Samoa's men and women would serve in record numbers in the U.S. Armed Forces which consequently made it impossible for them to participate in runoff elections held two weeks after general elections.

Twenty five years later, we can agree that federal law needs to be amended for the sake of our men and women in the military as well as our college students and I am pleased to report that Governor Togiola agrees with me on this point. In a letter dated September 11, 2003 (attached), the Governor offered his full support for H.R. 2010 and I am hopeful that after careful review you will also support our efforts to do right by American Samoa for generations to come.

Please feel free to contact me again if you have further questions or concerns. As always, I wish you the very best.

Soifua,


ENI F.H. FALEOMAVAEGA
Member of Congress

cc:

The Honorable Togiola T.A. Tulafono, Governor
The Honorable Aitofele Sunia, Lieutenant Governor
The Honorable Lutu T. Fuimaono, President of the Senate, and Senators
The Honorable Matagi Ray McMoore, Speaker of the House, and Representatives

The CHAIRMAN. Mr. Rehberg.

Mr. REHBERG. Thank you, Mr. Chairman. And real quickly, I want to thank Mr. Faleomavaega and the Lieutenant Governor for their kind hospitality when I was in Samoa a year ago in the heart of the election, and I can tell you it was a mess. If I remember

correctly, the year plurality was, what, 6- or 9,000 votes in the final analysis? And that was a lot of heartache and a lot of controversy over so resounding a victory, and it just—it seems to be a problem that should not exist.

And I am here to lend my support and I will continue to support it if you don't give me any more tuna. Jeff Flake asked me today if I was still eating tuna, and I said, yes, I was, and he is too. Glad to do it. Just no more tuna fish.

Mr. FALEOMAVAEGA. I thank my good friend from Montana for his support of the bill. Appreciate it.

The CHAIRMAN. Ms. Bordallo.

Ms. BORDALLO. Thank you very much, Mr. Chairman, and Congressman Faleomavaega. Talofa. Welcome, Lieutenant Governor Sunia. And before I begin, I have a couple of questions here. I would like to extend the condolences from the people of Guam to the people of Samoa on the passing of Governor Sunia. I remember being with the Governor and the First Lady on their last visit to Washington, and we're certainly very sorry about that.

And I want to thank you, Lieutenant Governor Sunia, for traveling all those many thousands of miles to be here, but I'd also like to remind the Chairman that Guam is many more thousands of miles away, just so we remember. And we're looking forward, Mr. Chairman, for your trip in January to American Samoa and to Guam and I think to Australia. Is that right?

The CHAIRMAN. Yeah. At least those two.

Ms. BORDALLO. Lieutenant Governor, can you share with us your views on whether U.S. law currently provides American Samoa adequate authority to authorize and provide for a primary election for the office of Delegate?

Mr. SUNIA. As I understand it—thank you, Madam Member of the Committee—the election of a Delegate to the U.S. Congress is provided for by Federal law, and if I understand your question correctly, as to whether or not present law is—

Ms. BORDALLO. Local law.

Mr. SUNIA. Local law?

Ms. BORDALLO. Local law for a primary election.

Mr. SUNIA. For a Delegate to Congress?

Ms. BORDALLO. Or the U.S. law provides for a primary election.

Mr. SUNIA. We look to you as law to provide for this for this particular election. Our own local elections for gubernatorial and the local legislature is provided for by our local law, but the election of the Delegate to the U.S. Congress, we abide by Federal law. It supersedes our local law. Maybe the Congressman can enlighten.

Mr. FALEOMAVAEGA. Will the gentlelady yield?

Ms. BORDALLO. Yes.

Mr. FALEOMAVAEGA. I think there's a little complication here to understand that when we first—the first Delegates that we elected to Washington in 1970 came about because of the local laws that we passed to provide for it, and this is the same thing with Guam. You pass local law to provide for that. Over the years, there has been a lot of misunderstanding, thinking that this is the same laws that govern the current Delegate position, and I've had to explain to the people that the only reason why we have a Delegate here in the U.S. House of Representatives is because the Congress

passed a Federal law to provide for it. The local government does not have the authority to provide for that.

Now, the contrast here with Guam, like your Governorship, is governed by organic legislation. We are not. In fact, our Governor—Office of the Governors is governed by the secretarial order of the Secretary of the Interior. So there was no Federal legislation to provide for the elected Governor.

However, the Delegate, the office of Delegate, is governed by Federal law, and this is the reason why I am proposing this bill to amend the Federal law because of the deficiencies contained in the current law, which the 2-week runoff election and the fact that at one time our local laws even stipulated that people in the military had to personally appear in the territory to register to vote, which was totally contrary to the Federal law that currently allows any person in the military stationed anywhere in the world to file an absentee ballot, whatever a claim of residency, whatever State or territory. So these are some of the things that we've tried to correct.

Ms. BORDALLO. But the primary election is part of your local government?

Mr. FALEOMAVAEGA. The primary election, if it so chooses—this bill authorizes the local government to provide local law with reference to primary election if it so chooses. Right now they are still debating over it. Right now they discussed the issue, and the latest reason for not having a primary election is they think it is too expensive; but the bill definitely does provide that at some future time, the local government can provide for local—I mean for primary elections if it so chooses. And this is what this bill provides.

Ms. BORDALLO. But the primary election that is in place now is part of your—

Mr. FALEOMAVAEGA. We have no primary election.

Ms. BORDALLO. You have no primary—

Mr. FALEOMAVAEGA. No primary elections. That is the problem we're having right now.

Ms. BORDALLO. But it can be reestablished if the local government sees fit?

Mr. FALEOMAVAEGA. It can be established if the local government wants it.

Ms. BORDALLO. My second question would be, would establishing a primary election be a priority of the Government of American Samoa, do you think?

Mr. FALEOMAVAEGA. I know that the issue of primary elections was—in fact it was—the proposed bill was held about two years ago. It did not pass, and the basic reason for their not wanting to get into the primary elections is they say it was too expensive.

Ms. BORDALLO. And that is the sentiment of the people still—

Mr. FALEOMAVAEGA. Well, that is the feeling of the members of the Fono, I mean, the local legislature, that they did not want to pass local law to provide for primary elections because they think it is too expensive.

Ms. BORDALLO. Lieutenant Governor, I have one more question. Can you give the Committee a sense of how many students attend a university in the U.S. mainland, and do you know how many servicemen and women list American Samoa as their home of

record? I just wanted to get some idea of how many people, you know, where absentee ballots would come in place.

Mr. SUNIA. As to the number of students, it is around 120, and this is a number that I had gotten from last year, being the government treasurer, when I was sending out checks to pay for their scholarship, education.

As to the number of soldiers, I am sorry. I cannot give—

Ms. BORDALLO. Would you know that?

Mr. FALEOMAVEGA. Offhand, there has never been a literal active count of the number of soldiers or men and women in the military from American Samoa, but I would hazard a guess; I say relatively about 2,000 currently serve in the military. And interestingly enough, too, we have 5,000 veterans that live in the territory, and so this is basically my guess on the number of our active duty men and women in—

Ms. BORDALLO. And registered voters?

Mr. FALEOMAVEGA. No. This is the problem. A lot of them have never bothered to register.

Ms. BORDALLO. What is the number of registered voters?

Mr. FALEOMAVEGA. So far as I am aware, I think maybe only about 60 have been known to register to vote, and one of the reasons why there has been hardly any of the men and women in the military because that they were told years ago that they could not register—they cannot vote until they personally come to the territory to register, which to me is ridiculous.

So if I were stationed out there in Bosnia or in Iraq, I have to physically come to register in American Samoa. That is the reason why the Congress passed this Federal Voting Rights Act for our military men and women, so they don't have to make any personal appearances to vote—I mean to register to vote.

Ms. BORDALLO. Mr. Chairman, if you would, I have one more question, the \$64,000 question. How many NFL players in the United States from Samoa?

Mr. SUNIA. Well, I saw two last Monday night.

Ms. BORDALLO. That's good enough, Lieutenant Governor.

Mr. FALEOMAVEGA. If the gentlelady will yield, for a population of about 180,000, including those living in the U.S. and American Samoa, we have about 15 NFL players right now on the roster.

Ms. BORDALLO. That is quite a record. Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Grijalva.

Mr. GRIJALVA. I have no questions.

The CHAIRMAN. Mr. Udall?

How many total registered voters are there in Samoa?

Mr. FALEOMAVEGA. My last reading, Mr. Chairman, is approximately 16,000.

The CHAIRMAN. Sixteen thousand.

Mr. FALEOMAVEGA. Registered voters, that's correct.

The CHAIRMAN. OK. Are there any further questions of the Lieutenant Governor?

I think Mr. Faleomavaega has talked to me about this over the past several months about moving forward with this bill, and I do think this is something that the Committee seriously must give a serious look at in terms of scheduling, moving this bill, because I know it has presented itself as being a problem. We have had some

people who have contacted the Committee in opposition to this, and I do think we need to look at what their opposition is, to see if there is some way of having some kind of a compromise position on that, because I am not exactly sure at this point what their opposition is, but I will work with Mr. Faleomavaega to try to satisfy that.

Mr. FALEOMAVAEGA. Will the Chairman yield?

The CHAIRMAN. Yes.

Mr. FALEOMAVAEGA. I want to note also for the record that the original bill proposed that the—should this bill become enacted, that the first election by plurality be held at next year's election, and I felt that I wanted to change the year of the election to 2006 so that will dispel any notion by some of my critics who think that I am doing this for political advantage. And I'd like to note for the record, that this bill to me is more important than any election on my part, and I feel very bad that those who do oppose the bill, for the life of me, just can't seem to come through in understanding that this is really a tremendous disservice to our men and women in the military.

And, again, I just want to offer that to the Committee, that there is absolutely no reason whatsoever, rhyme or reason, why this bill is to be opposed.

Unfortunately, it has taken the color now that the local Republican Party has stated its opposition to this bill, but for the life of me I find it very difficult to even fathom to understand what their reasons for opposing the bill are.

The CHAIRMAN. I appreciate the gentleman's willingness to work with the Committee on this. I do think this is important legislation that we need to move forward with. So I want to thank Lieutenant Governor, for your testimony; for the members, their questions.

The members of the Committee may have additional questions for the witness, and we will ask you to respond to those in writing. They will be submitted to you in writing if any of the members have additional questions, and give you the opportunity to answer those in writing so that we can include those in the hearing record.

The hearing record will be held open for those responses.

The CHAIRMAN. If there are additional testimony, Mr. Faleomavaega mentioned that he had other information that he wanted to include. We will hold the hearing record open to give him the opportunity to have further testimony submitted.

The CHAIRMAN. If there is no further business—

Mr. FALEOMAVAEGA. Mr. Chairman, I just would—

The CHAIRMAN. Mr. Faleomavaega.

Mr. FALEOMAVAEGA [continuing]. Offer my appreciation again to you for your leadership and your initiative and interest in holding this hearing this afternoon, and I sincerely hope that this is the beginning of the process. I wanted to thank again our Lieutenant Governor for traveling all the way here to testify before the Committee, and certainly my colleagues and members of the Committee for their participation and assistance in the bill. And again, I thank you, Mr. Chairman, for your help in this.

The CHAIRMAN. Well, I thank you, and I hope you at least are buying them dinner tonight.

Mr. SUNIA. Mr. Chairman?

The CHAIRMAN. Yes, sir.

Mr. SUNIA. I just wanted to thank you, Mr. Chairman, and members of the honorable Committee for the opportunity to appear before you. It is a rare opportunity to be able to travel to Washington to appear before a congressional committee, and I don't mind the long flights. I think it is worth the few minutes that I get to sit here and be able to speak to an august body like yourselves, and especially I want to thank the honorable Member from Guam for the kind words of condolence.

I want to say to the members of the Committee, it was made mention of a certain commodity from the territory, that I would instruct my staff back home to replenish this stock here that you continue to so desire. And I look forward to having you in American Samoa, Mr. Chairman, and if you should ever make that trip. Again, thank you very much. May God bless you, sir, and your Committee. God bless the Congress of the United States. God bless America and God bless American Samoa.

[Speaking in native language.]

Mr. FALÉOMAVAEGA. Mr. Chairman, I also would like to add for the record, by unanimous consent, a letter received from the President of the Senate supporting this proposed bill, a letter dated 27 October and signed by the President of the Senate, Lutu Tenari Fuimaono. I'd like to make that a part of the record.

The CHAIRMAN. Without objection.

[The letter submitted for the record by The Honorable Lutu Tenari Fuimaono, President of the Senate, follows:]



**LEGISLATURE OF AMERICAN SAMOA
OFFICE OF THE PRESIDENT
SENATE
AMERICAN SAMOA GOVERNMENT
PAGO PAGO, AMERICAN SAMOA 96799**

LUTU TENARI FUIMAONO
President

In reply refer to:

Tel: (684) 633-4186, 6331, 4789
Fax: (684) 633-1638

October 27, 2003

Honorable Faleomavaega E. Hunkin
Congressman
U.S. House of Representatives
Committee on Resources
Washington, DC 20515

Dear Congressman Faleomavaega:

I spoke with your Deputy Chief of Staff on my support of HB 2010.

My apologies for the late notice as we are currently in Special session for the next two weeks. I fully support HB2010 and wish Chairman Pombo the best of luck in moving forward on the Bill.

Ma le fa'aaloalo tele,


LUTU TENARI S. FUIMAONO
President of the Senate
Legislature of American Samoa

Mr. FALEOMAVAEGA. Thank you.

The CHAIRMAN. Again, I want to thank the members of the Committee, our witness for testifying today. I do believe this is an important issue that we will move forward on. I thank all of you for your participation in this hearing, and the hearing is adjourned.

[Whereupon, at 3:50 p.m., the Committee was adjourned.]

[Additional material submitted for the record follows:]

[A letter submitted for the record by Amata Coleman Radewagen, National Committeewoman for American Samoa, follows:]

Amata Coleman Radewagen
RNC Member for American Samoa

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January 17, 2004

The Honorable Richard Pombo, Chairman
 Committee on Resources
 U. S. House of Representatives
 1324 Longworth House Office Building
 Washington, D. C. 20515

Dear Mr. Chairman:

At your hearing to consider H.R. 2010, American Samoa Lt. Governor Aitofele Sunia, the only witness to participate that day and testifying in favor of the bill on behalf of the Governor, when asked by Committee members, twice answered that he saw no problem with our current runoff system in the territory. No doubt the Lt. governor said he saw no problem with the current system because the total absentee vote has never come close to the margin of difference in a congressional race. Indeed, I believe it was revealed at the hearing that armed service personnel absentee voters accounted for fewer than 60 ballots in the 2002 congressional election.

Nevertheless, I am certain the Lt. Governor shares the view of the Republican Party of American Samoa, whose chairman submitted a statement for the record, and the American Samoa Senate, which submitted a unanimous resolution to the committee opposing H.R. 2010, that every vote is precious and that it is the responsibility of government to ensure that American Samoa's voting procedures reflect the requirements of the Uniformed Overseas Citizens Absentee Voting Act (42 U.S.C. 1973ff et seq). Although H.R. 2010 is one method to achieve that goal, it is a defective bill and is less desirable than other alternatives available to the committee. Therefore, I must join the Republican Party of American Samoa and the Senate of the American Samoa Legislature in opposing H.R. 2010 and request that it not be adopted in its present form.

In support of this bill it has been argued that the change proposed would do no more than bring American Samoa into line with the practices of 49 of the 50 states, which elect members of the U.S. House of Representatives by plurality rather than majority of votes cast. In reality such a change would make the American Samoa congressional election unique in the American political system. If H.R. 2010 were adopted in its present form, American Samoa's congressional election would be the only one in all 440 congressional districts in which candidates were not required to face a potential multi-candidate primary or other mechanism--such as a caucus or convention--to narrow the field of candidates to just two for a general election to follow.

Louisiana, whose system resembles that of American Samoa, is the one state that does demand a majority vote in a first round of balloting for a candidate for Congress to avoid a runoff. In the recent Louisiana gubernatorial election, in which all candidates participated in a single, preliminary contest in October irrespective of party affiliation, a Republican candidate, Bobby Jindal, finished first with 33% of the vote and the Democrat Lt. governor, Kathleen Blanco, was the runner up with 18% of the vote.

Under H.R. 2010, Mr. Jindal would have become governor, a result that would have pleased me, particularly since I had the honor of traveling to Louisiana to campaign for him. However, even though he won nearly twice as many votes as Ms. Blanco in the general election, the runoff was quite another story, with the Lt. governor closing the gap and winning the governorship 52%-48%.

This is not the only time this happened in 2003, either. In Argentina, which has a system like that of Louisiana and American Samoa, the runner up in the preliminary vote for president won that office when the first place finisher dropped out after he concluded he would not be able to capture sufficient votes from the losing, first-round candidates to maintain his advantage.

For the same reason in Louisiana, former Governor Edwin Edwards several years ago dropped his bid for re-election when, despite having finished a close second in a multi-candidate race, he concluded he would have been unable to overtake his opponent in a runoff. And in Georgia, challenger Paul Coverdell finished closely behind Senator Wyche Fowler in a general election in which a conservative third-party candidate siphoned off enough votes to keep both men just barely under 50%. In a December runoff, Coverdell made up the difference and overtook Fowler to win the seat.

Citing procedures in 49 of the 50 states also ignores the other territories and the District of Columbia, perhaps purposefully so, since not only do all of them have primaries, but both Guam and the U.S. Virgin Islands also require election by majority vote in the general election to preclude a runoff. As you know, voting procedures for Guam and USVI are established under organic legislation enacted by Congress and, as is the case with American Samoa's congressional voting system, can be changed only by Congress.

When Congress adopted majority voting for the three small territories that send non-voting delegates to the U.S. House of Representatives, I am certain that, in their deliberations, Members took into account the fact that islands had small electorates in which all candidates would be well known to the voters, a circumstance that very well could lead to a reevaluation of candidates and a different order of finish in a runoff, such as occurred in Louisiana last November.

While it may be true that only Congress can change the way American Samoa (or Guam or the USVI) elects its delegates to Congress, it is not ordained that it must always be so. It should be recalled that P.L. 95-556—as well as the congressional election procedures for Guam and USVI—was drafted and enacted by a Democrat-controlled Congress that legislated under an entirely different philosophical approach to government than that which guides the current Republican majority.

One of the principles that I cherish most as a Republican is that less national government is best government and that government functions best when it is closest to the people it serves. I strongly believe that powers not expressly granted to the federal government by the Constitution should be left to the states and territories and to the people. Although Congress has the power to legislate for its territories under Article IV, section 3, clause 2 of the U.S. Constitution, it does not mean that Congress cannot devolve authority to the territories. Moreover, just as Congress has the power to change the Guam and USVI organic acts and the American Samoa constitution at its own volition, it is my guess that in this day and age—and especially under a Republican majority—it is unlikely to do so in the absence of an express request of the people of the territory involved.

Having been in existence for over a half century, the American Samoa Legislature is a mature lawmaking body that has been entrusted to write its own constitution and make provision for the election of a governor and Lt. governor. Moreover, I see no reason why authority for prescribing the manner of election of a Member of Congress should be any different than it is for 50 of the 50 states. Similarly, if Guam and USVI want their organic acts amended to change its election procedures, I see no reason they should be denied that change if requested.

Therefore, I respectfully request that H.R. 2010 be overhauled substantially. Specifically, I suggest 48 U.S.C. 1732 be amended by striking all language in the second sentence of section “a” following the words “and by” and striking the entire third sentence, and substituting therefore the words “a procedure prescribed by American Samoa statute.”

Furthermore, I believe that Congress should not force an action upon American Samoa first that later can be undone by local action. Rather, the more principled way to proceed would be for Congress to allow the local government to have the time to act first and only then to impose its will if that were to prove necessary. H.R. 2010 has it backwards and reflects the fundamentally different way Republicans and Democrats in Washington legislate.

If the American Samoa Legislature were to fail to adopt a statute in a timely manner to accommodate the requirements of the Uniformed and Overseas Citizens Absentee Voting Act, Congress could create a new section “b” to remedy that by moving into it the second, third and fourth sentences of the current section “a,” striking the word “fourteenth” in the now second sentence and substituting the words “twenty eighth.” Current section “b” would be redesignated “c.”

Thus, were the American Samoa Government unable to agree to a new procedure to protect overseas absentee voters, the rights of those voters could be protected with minimal disruption by merely extending by two weeks the time allotted for runoff ballots to be prepared, printed, posted, returned, processed and counted. Even if the 60 affected ballots last time became 600 ballots next time, four weeks would be sufficient time to complete the process, as it is in Louisiana. This procedure would remain in effect until such time as the American Samoa Government produced an acceptable alternative.

The only person who might be inconvenienced by the lengthening of time between a general election and a runoff would be an incumbent in those rare years when there are contested House leadership contests or a newly elected freshman delegate who might also have seniority and committee assignments affected. That would be a small price to pay for protecting absentee voter rights while minimizing disruption to the local system and preserving as much local authority as possible. Moreover, that provision of the law would be triggered only by the absence of local action, a circumstance I do not foresee.

Finally, I would hope that a substantially rewritten H.R. 2010 would truly become an overseas voters protection act. Regrettably, the current bill quickly became known in the media and by the public and thus has been tainted as “Eni’s plurality bill,” because, fairly or unfairly, it struck many leaders and people in the islands that the major change that would be achieved would be to guarantee the incumbent’s reelection, since so few overseas voters actually would be affected. Even the author has acknowledged as much by offering to change the effective day to January 1, 2006. Since 1996, there have been runoffs in the congressional race in every election featuring candidates affiliated with the two major national political parties. I am convinced that Congress would not want to adopt legislation whose main purpose appeared to be to enable an incumbent to win election by avoiding having to face the electorate twice, a privilege neither Congress nor any of the states or other territories affords to candidates in any of the other 439 congressional districts.

Nor would Congress want to create a bigger problem than it solved by creating a system that could allow a candidate to win a seat in Congress with literally a handful of votes. In Papua New Guinea, a neighboring island country, a 109-member parliament is

elected every five years in a plurality system with no primary or other winnowing mechanism. Many seats are routinely won with less than a quarter of the vote and some parliamentarians have won their seats with under 10 percent of the vote. Over 3,000 candidates contested the most recent elections (averaging nearly 30 candidates per electorate) and the resulting Parliament could hardly be said to be truly reflective of the voter sentiment.

While I would not suggest such a large group of candidates ever would contest American Samoa's congressional seat, the possibility of a one-shot election as envisioned under H.R. 2010 would be tempting to aspirants and undoubtedly would increase the field substantially in an open seat situation. The history of our elections, not surprisingly, is multicandidate contests any time there is no incumbent running for reelection. That situation is bound to occur sooner or later.

I have discussed this letter with the local Republican leadership, who concurs in its contents.

Thank you for giving me the opportunity to present my views for your consideration.

Sincerely,



Amata Coleman Radewagen
National Committeewoman for
American Samoa