COMMON SENSE JUSTICE FOR THE NATION'S CAPITAL: AN EXAMINATION OF PROPOSALS TO GIVE D.C. RESIDENTS DIRECT REPRESENTATION

HEARING

BEFORE THE

COMMITTEE ON GOVERNMENT REFORM

HOUSE OF REPRESENTATIVES

ONE HUNDRED EIGHTH CONGRESS

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COMMON SENSE JUSTICE FOR THE NATION'S CAPITAL: AN EXAMINATION OF PROPOSALS TO GIVE D.C. RESIDENTS DIRECT REPRESENTATION

WEDNESDAY, JUNE 23, 2004

HOUSE OF REPRESENTATIVES,
COMMITTEE ON GOVERNMENT REFORM,
Washington, DC.

The committee met, pursuant to notice, at 10 a.m., in room 2154, Rayburn House Office Building, Hon. Tom Davis (chairman of the committee) presiding.

Present: Representatives Tom Davis of Virginia, Shays, Lewis, Cannon, Blackburn, Waxman, Maloney, Cummings, Davis of Illinois, Clay, Watson, Van Hollen, Ruppersberger, and Norton.

Staff present: David Marin, deputy staff director and communications director; Keith Ausbrook, chief counsel; Ellen Brown, legislative director and senior policy counsel; Howie Denis and Jim Moore, counsels; Robert Borden, counsel and parliamentarian; Rob White, press secretary; Drew Crockett, deputy director of communications; Teresa Austin, chief clerk; Brien Beattie, deputy clerk; Corinne Zaccagnini, chief information officer; Phil Barnett, minority staff director; Kristin Amerling, minority deputy chief counsel; Karen Lightfoot, minority communications director/senior policy advisor; Michelle Ash, minority senior legislative counsel; Rosalind Parker, minority counsel; Earley Green, minority chief clerk; Jean Gosa, minority assistant clerk; and Cecelia Morton, minority office manager.

Chairman TOM DAVIS. Good morning. I'm going to give an opening statement, and Mr. Waxman has to leave. Dana, I'm going to go to Mr. Waxman's statement then we'll go to you, then I'll give an opening statement. Thanks for being here. I'm conscious of your time and when Mr. Regula gets in, conscious of his. We appreciate your being here.

Mr. Waxman.

Mr. WAXMAN. Thank you, Mr. Chairman, for allowing me to give my opening statement before you give yours and Mr. Rohrabacher, thank you as well.

I appreciate the fact that we're having this hearing, unfortunately I'm going to have a conflict between the time, so I'm not going to be able to be here for this full hearing. But I want everyone to know that I think the chairman is doing a great service by holding this hearing. I think it's important that we look at the

issue of voting rights for D.C. citizens. I am a strong supporter of giving the District of Columbia congressional representation.

This hearing to review all the legislative proposals is an important step forward. I welcome all the discussion that will lead to equal voting rights for District residents. We should not deny voting representation to over half a million American citizens who live in Washington, DC, have no voting representation on national issues considered by Congress. They have no representation on issues of taxation or warmaking authority, foreign policy, spending on transportation initiatives, homeland security, health and welfare and the environment. These national issues affect the people of the District of Columbia just like they affect other people who are our constituents around this country.

In addition, often Congress passes measures such as the recent school voucher law, directed specifically and exclusively at D.C. residents. Yet the residents of the District have a limited voice in the passage. To make matters worse, laws passed by the locally elected D.C. City Council must be sent to Congress for review. In fact, some non-controversial items were on the House floor earlier this week, and we were able to move them quickly. But officially, Congress sometimes refuses to approve measures passed by the D.C. City Council, and has even overturned citizen passed ballot initiatives.

The residents of other local jurisdictions do not have Congress overturning their local laws or prohibiting those laws from taking effect in the first place. Eleanor Holmes Norton does an incredible job for the District of Columbia. Without the ability to cast a vote on the House floor, she has been able to achieve stunning results for the District. However, non-voting representation is not acceptable.

I have supported her legislation to give the District of Columbia representation in the House and the Senate, and I believe that if we can't do both, we ought to put out on the House floor a bill to give the D.C. residents a vote in the House of Representatives. I don't think it ought to be tied with anything else. It is a matter of great sense and consistent with our values as a Nation to give democracy to the people of the District of Columbia. The leadership of the House is willing to spend billions of dollars to try to bring democracy to Iraq. Why not allow a vote on the House floor to give the District of Columbia representation?

The only reason I've heard is that they're afraid that the District of Columbia may elect a Republican. Well, that's not a reason to deny people—[laughter]—I stand corrected. If they only would recognize the fact that maybe even a Republican can win in the District of Columbia. But the fact that the D.C. residents who voted in other elections are predominantly Democratic should not be a reason to deny them the ability to have over half a million people get a representative in the House itself.

Mr. Chairman, I appreciate all your efforts. I know you are strongly committed to this equal rights for the District of Columbia, and I look forward to working with you on it.

Chairman TOM DAVIS. Mr. Waxman, thank you very much.

I'm going to go right now, we have our distinguished congressional panel here, Representative Regula, Chairman Regula and

Chairman Rohrabacher, both chairmen of important subcommittees. And Dana, you were here first, I'll let you start, and we'll go to Mr. Regula. Then we'll go back to opening statements, then we have the Mayor and Chairman Cropp in the next panel.

But let me just say, we appreciate both of you being here today. You both have innovative ideas and recognize that citizens of the city should have representation. You have innovative ideas about how to get that, and we appreciate your sharing those thoughts with us.

STATEMENTS OF HON. DANA ROHRABACHER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA; AND HON. RALPH REGULA, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF OHIO

Mr. ROHRABACHER. Thank you, Mr. Chairman. I want to compliment you for your concern about the lack of congressional representation for the residents of our Nation's capital. No taxation without representation is a fundamental principle of our democratic society which since our founding has continually expanded the voting franchise. Today, thanks to the Uniformed and Overseas Citizens Absentee Voting Act, there is nowhere in the world that a U.S. citizen can move to, still owing Federal income tax and lose their rights to voting representation in the U.S. Congress, nowhere except, of course, our Nation's Capital, Washington, DC.

I think that virtually every Member of this body, Republican or Democrat, who thinks about the situation would agree that it needs to be remedied. The dispute is not over whether D.C. residents should have voting representation, but over what form that representation should take. Naturally I believe that my own proposal, H.R. 3709, the District of Columbia Voting Rights Restoration Act, is the fairest and most practical of the solutions. As its name suggests, H.R. 3709 would restore to Washington, DC, residents the same voting rights they had prior to Congress taking them away by the passage of the Organic Act of 1801.

Under my Restoration Act, residents of our Nation's Capital would once again have the right to vote for, to run for, and to serve as, Maryland's U.S. Senators, U.S. Representatives and Presidential electors. And to provide some partisan balance, the Restoration Act adopts your idea, Mr. Chairman, of providing an additional representative for Utah. In addition to my bill, I am also submitting for your consideration legislative language that I believe will remove the issue on Utah redistricting as an impediment to moving forward D.C. voting rights. This language simply locks into place until after the next census the four district map that Utah has already enacted. Since that map is understood by all sides to be a three to one plan, it should erase the fears of the Democratic leadership that including Utah in a D.C. representation bill would provide an undue Republican advantage.

Mr. Chairman, I could go on about the details of my bill, and I have attached questions and answers to my testimony that further describe H.R. 3709, but that's not what's the most important thing at this moment. What's most important is to get the bipartisan support to move a District of Columbia representation bill to the House floor, so that alternative proposals can be considered, and so

that we finally can give the residents of the District of Columbia full and fair congressional representation.

And finally, let me just note, Mr. Chairman, that I think it's sad that politics has gotten in the way of the voting rights of the people of the District of Columbia. But politics and democracy so often go together. We have to recognize that's part of the system that we live in. So let's try to find a way to take care of everybody's political problems and let's move forward in a way that will result in the people of the District of Columbia finally at last receiving their rights to vote for congressional representation and yes, and why don't we give them rights to vote for U.S. Senators as well? So thank you very much, Mr. Chairman.

[The prepared statement of Hon. Dana Rohrabacher follows:]

Testimony before the Committee on Government Reform
"Common-Sense Justice for the Nation's Capital:
An Examination of Proposals to Give D.C. Residents Direct Representation"
Hon. Dana Rohrabacher
June 23, 2004

Mr. Chairman, I want to compliment you for holding this hearing, and for your concern for remedying the lack of congressional representation for the residents of our nation's capital.

"No taxation without representation" is a fundamental principle of our democratic society, which since our founding has continually expanded the voting franchise. Today, thanks to the Uniformed and Overseas Citizens Absentee Voting Act, there is nowhere in the world that a U.S. citizen can move to, still owing federal income tax, and lose their rights to voting representation in the U.S. Congress; nowhere, that is, except to our nation's capital, Washington, D.C.

I think that virtually every member of this body, Republican or Democrat, who thinks about this situation would agree that it needs to be remedied. The dispute is not over whether D.C. residents should have voting representation, but over what form that representation should take.

Naturally, I believe that my own proposal, H.R. 3709, the District of Columbia Voting Rights Restoration Act, is the fairest and most practical solution. As its name suggests, H.R. 3709 would restore to Washington, D.C. residents the same voting rights they had prior to Congress taking them away by passage of the Organic Act of 1801. Under my Restoration Act, residents of our nation's capital would once again have the right to vote for, run for, and serve as, Maryland's U.S. Senators, U.S. Representatives and presidential electors. And to provide some partisan balance, the Restoration Act adopts your idea, Mr. Chairman, of providing an additional representative for Utah.

In addition to my bill, I am also submitting for your consideration legislative language that I believe will remove the issue of Utah redistricting as an impediment to moving forward on D.C. voting rights. This language simply locks into place until after the next census, the 4-district map that Utah has already enacted. Since that map is understood by all sides to be a 3-1 plan, it should erase the fears of the Democratic leadership that including Utah in a D.C. representation bill would provide an undue Republican advantage.

Mr. Chairman, I could go on about the details of my bill, and I have attached a question and answer sheet to my testimony that further describes H.R. 3709. But that's not what is most important at the moment. What is most important is to get the bipartisan support to move a D.C. representation bill to the House floor so that alternative proposals can be considered, and so that we finally give residents of the District of Columbia the full and fair congressional representation they deserve.

Addendum #1—Questions and Answers regarding H.R. 3709

(1) Structure of bill and Constitutional Authority

What does H.R. 3709 do? What is its constitutional authority?

H.R. 3709, the District of Columbia Voting Rights Restoration Act, simply restores the federal voting rights of D.C. residents that Congress took away by enacting the Organic Act of 1801 ten years after the District of Columbia was formed. Once again, D.C. residents would be able to vote for, run for, and serve as, U.S. Senators, U.S. Representatives, and presidential electors from Maryland. It accomplishes this by undoing the disenfranchisement effects of the Organic Act that was enacted pursuant to Article I, Section 8. Congress has the authority under Article I, Section 4 to control the conduct of federal elections.

(2) Political and Geographic Cohesiveness of the District of Columbia

What is to keep the Maryland legislature from splitting D.C. and joining it with two or more Maryland congressional districts? Since the Constitution reserves redistricting to the states, could Congress constitutionally ensure that Maryland would not split D.C. into two or more parts through simple legislation, eliminating the present cohesive geographic, political and legal character of the District?

H.R. 3709 would require in any new congressional redistricting by the Maryland legislature that D.C. be kept intact in the new congressional district, with contiguous territory from adjacent Maryland counties added as necessary to produce a district equal in population to the other Maryland districts.

Such a requirement is entirely constitutional. Article I, Section 4 permits Congress to supersede the states in matters relating to congressional elections. The controlling Supreme Court opinion in Oregon v. Mitchell (the 18-year-old vote case) goes into detail how this section of the constitution has always been understood to include Congressional authority over redistricting, and in fact Congress has exercised this authority to the extent of prohibiting states with more than one representative from having at-large congressional districts. Further authority for the "intact D.C." requirement comes from Article I, Section 8, Clause 17, which provides for Congress' power of "exclusive legislation" over the District.

(3) Representation of the D.C. District by a D.C. Resident

Does the Constitution allow D.C. residents who do not actually live in Maryland to choose the representatives of that state? If it were constitutional to treat D.C. residents as if they were residents of the state of Maryland for the purposes of voting, would D.C. residents be constitutionally precluded from representing the new Maryland district, given the language of Article I specifically requiring that representatives be inhabitants of the state in which they are chosen?

In addition to restoring congressional voting rights, H.R. 3709 also restores Maryland citizenship rights to be a candidate for, and to serve as, U.S. Representatives, U.S. Senators, and presidential electors from Maryland.

(4) Effect of Changes in D.C. or Maryland Population on Redistricting

If, as seems likely, the proposal would require both Maryland and Utah to redistrict, could the new district be eliminated entirely if the population of Maryland or the District decreases to a level that would not support the additional district? In addition, if the population of Maryland or the District rises significantly, allowing either jurisdiction to claim additional House members, would Maryland or would the District receive the additional seat? Would the effect of redistricting in Utah be to make the lone Utah Democrat's reelection more difficult? Would the proposal encounter difficulty because Members fear they would lose a seat because the overall number of representatives under the proposal will decrease from 437 to 435 after the next census?

Under the H.R. 3709, the population of the District of Columbia would be included in the population of Maryland for congressional apportionment purposes. Whatever number of U.S. Representatives that population total entitles Maryland to under the existing formula will be the number it gets.

The additional (4th) Utah seat will not cause any current Member to lose a seat, since Utah will have four congressional districts after the 2010 census apportionment regardless of whether this proposal is adopted in the meantime. The additional Maryland seat will have the effect of either denying some state an additional district or causing a state to lose a seat that it would not otherwise lose. But that's arguably just a fair consequence of restoring rightful congressional representation to U.S. citizens who are currently unfairly denied that representation.

Utah has already enacted into law a 4-district plan that all parties recognize would result in a 3-1 partisan split. It would be a simple matter for Congress to lock in that 4-district plan until after the 2010 census.

(5) Disposition of the District's Electoral College Votes

Because representation in the Electoral College is based on the number of Senators and Representatives in the states, wouldn't Maryland receive only one more electoral vote to correspond with the new district? If so, and the District's three reliably Democratic electoral votes were eliminated, wouldn't the result be to tilt the votes in the Electoral College in favor of a Republican presidential candidate, if a presidential election were determined by a small number of votes?

Yes, H.R. 3709 would result in adding one electoral vote to Maryland's total, and would eliminate D.C.'s current three electoral votes. But just as noted above, that's arguably a fair consequence of providing full and equal federal representation to D.C. residents.

(6) Political Controversy

While the proposal on its face has some rough Democratic and Republican parity, does this equivalence ultimately break down? For example, is the proposal politically feasible, considering the likelihood of objections from Maryland elected officials and residents because of the "transfer" of some Maryland residents to a district dominated by D.C. and the resulting dilution of Maryland representation, as well as because of objections from some in the District to being incorporated into Maryland for representation purposes? Would Maryland's Republican governor and representatives object to a new Democrat in the Maryland delegation or to having another electoral vote that would likely be Democratic in presidential elections?

There are necessarily political consequences to providing fair federal representation to people who have been unfairly denied it for 200 years. I believe the H.R. 3709 is both fair and balanced, perhaps causing some relatively small amount of political pain for both parties. Any other approach (including keeping the status quo) involves its own political controversies.

(7) Effect on Home Rule

Once D.C. is subject to Annapolis for redistricting, can the proposal guarantee the District's ability to continue to govern itself and that the power of the Maryland legislature over the new district would be strictly limited to redistricting? Could there be language ensuring that the District's existing home rule authority be protected? Could the very act of redistricting produce intended or unintended substantive policy and political inhibitions?

H.R. 3709 specifically provides that the D.C. Home Rule Act will not be affected. The only exception is that Maryland's statewide election laws will control D.C.'s participation in federal elections only, and only to the extent that such laws are not superseded by federal law. In cases where Maryland allows discretion to its local governments in administering federal elections, that discretion must also be allowed to D.C. The requirement that the territory of D.C be kept intact in redistricting greatly limits the amount of "coercion" that Maryland could apply to D.C. through the redistricting process.

(8) Severability

Shouldn't the bill creating two new House seats for D.C. and Utah have a clause that the bill is not severable, meaning if the D.C. portion of the bill were found to be unconstitutional, the Utah portion also would fall, or could Utah get a seat leaving the District with nothing?

Yes, H.R. 3709 contains such a non-severability clause.

(9) Creating a D.C.-only District

Would many of the potential problems raised by the proposal be avoided if, instead of treating District citizens as if they were residents of Maryland for congressional voting purposes, it simply treated the District as if it were a state solely for voting purposes?

Attempting to create a D.C.-only congressional district by a statute stating that the District will be considered to be a state for voting purposes doesn't work, either politically or constitutionally.

An initial question would be whether such a proposal would include voting rights for the U.S. Senate. If not, then D.C. residents would still be denied their rightful Senate voting rights. If so, creating two new U.S. Senate seats for D.C. alone, as with the Lieberman/Norton "No Taxation Without Representation Act," is not just highly controversial, but politically undoable. The political questions raised above about the "Davis proposal" pale in comparison to the controversy involved in trying to create two U.S. Senators for one smaller-than-one-congressional-district city.

But the even bigger problem is that such a proposal is simply and clearly unconstitutional. The federal court decision (affirmed by the U.S. Supreme Court) in the Adams v. Clinton and Alexander v. Daley cases states emphatically, repeatedly and with overwhelming evidence that D.C. cannot constitutionally be considered a state for the purposes of voting representation in the U.S. Congress. On the other hand, the same decision, through its discussion of the Organic Act of 1801 and the status of federal enclaves, leaves open the door for Congress, as with the D.C. Voting Rights Restoration Act, to restore rights by statute that it took away by statute.

Addendum #2—Legislative language locking-in Utah's previously-enacted 4-district plan

[Discussion Draft] H.L.C.
AMENDMENT TO H.R. 3709
OFFERED BY MR. ROHRABACHER
Amend section 6(b) to read as follows:
(b) TEMPORARY INCREASE IN APPORTIONMENT.—
(1) IN GENERAL.—Effective January 3, 2007, and until the taking effect of the first reapportionment occurring after the regular decennial census conducted for 2010—
(A) the membership of the House of Representatives shall be increased by 2;
(B) the State of Maryland, together with the State identified by the Clerk of the House of Representatives in the report submitted under paragraph (2), shall each be entitled to one additional Representative, in accordance with the requirements of paragraph (4); and (C) each such Representative shall be in addition to the membership of the House of Representatives as now prescribed by law.
(2) TRANSMITTAL OF REVISED APPORTIONMENT INFORMATION BY PRESIDENT AND CLERK.—
(A) STATEMENT OF APPORTIONMENT BY PRESIDENT.—Not later than December 1, 2004, the President shall transmit to Congress a revised version of the most recent statement of apportionment submitted under section 22(a) of the Act entitled "An Act to provide for the fifteenth and subsequent decennial censuses and to provide for apportionment of Representatives in Congress", approved June 28, 1929 (2 U.S.C. 2a(a)), to take into account the provisions of this section.
(B) REPORT BY CLERK.— Not later than 15 calendar days after receiving the revised version of the statement of apportionment under subparagraph (A), the Clerk of the House of Representatives, in accordance with section 22(b) of such Act (2 U.S.C. 2a(b)), shall send to the executive of the State (other than the State of Maryland) entitled to one additional Representative pursuant to this section a certificate of the number of Representatives to which such State is entitled under section 22 of such Act, and shall submit a report identifying that State to the Speaker of the House of Representatives.
(3) INCREASE NOT COUNTED AGAINST TOTAL NUMBER OF MEMBERS.—The temporary increase in the membership of the House of Representatives provided under paragraph (1) shall not operate to either increase or decrease the permanent membership of the House of Representatives as prescribed in the Act of August 8, 1911 (2 U.S.C. 2), nor shall such temporary increase affect the basis of reapportionment established by the Act of June 28, 1929, as amended (2 U.S.C. 2a), for the Eighty Second Congress and each Congress thereafter.
(4) COMPOSITION OF CONGRESSIONAL DISTRICTS FOR AFFECTED STATE.—During the period in which the temporary increase in the membership of the House of Representatives under this subsection is in effect, the Congressional districts of the State identified by the Clerk of the House of Representatives in the report submitted under paragraph (2) shall be those districts established under a law enacted by the State during 2001 (without regard to any amendments made to such law after 2001) which established Congressional districts for the State but which did not take effect because the number of districts provided under the law was greater than the number of districts to which the State was finally entitled after the regular decennial census for 2000.
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May 18, 2004 (3:32 PM)

Chairman TOM DAVIS. Dana, thank you very much. You've obviously given this a lot of thought. Your entire statement and the accompanying Q&A will be entered into the record. We appreciate it very much.

Mr. Regula, thank you very much for being with us. Chairman Regula is a veteran of the old D.C. Committee, is that correct?

Mr. REGULA. Yes, Mr. Chairman.

Chairman TOM DAVIS. You're welcome to come back here and sit any time you want.

Mr. REGULA. I have been several times.

Mr. REGULA. I'll summarize my testimony in the interest of time. I will say that I sat on the District of Columbia Appropriations Committee for several years, so I have some experience with it. Basically what I'm proposing is that it be a retrocession of D.C. into the State of Maryland from whence it came. We did a similar thing in the case of Virginia. This would allow the city to be a city in the State of Maryland. They therefore would be able to vote on State legislators, they would be able to vote on two U.S. Senators, and they'd be able to have a Congressperson representing basically the geographical area covered by the District of Columbia.

I think there are other advantages. It would give the city access to the State of Maryland's educational program. That would enhance the support for education at all levels. It would give the city, the residents of the city access to economic development programs of the State of Maryland. It would give them access to the Highway Department of the State of Maryland and a whole host of other State agencies. I think in the interest of the residents, they would be best served by this approach it, while it does give them the voting rights that they seek.

I think it's the only practical solution. Statehood is nice to talk about, but I don't anticipate that it's going to happen. By doing the retrocession program, the residents would benefit in all the different ways I suggested.

Can it work? It works in Canada, where the city is part of the larger area, and yet has its own identity. It works in Rome, where the Vatican is carved out as a separate political subdivision. So I think this has a potential for working and has a potential for giving the residents voting rights, as well as quality of life issues that could be very helpful to them.

I'll be glad to answer any questions.

[The prepared statement of Hon. Ralph Regula follows:]

CONGRESSMAN RALPH REGULA
TESTIMONY FOR THE HOUSE COMMITTEE ON GOVERNMENT REFORM
JUNE 23, 2004

I would like to thank the House Committee on Government Reform for inviting me to testify on an issue that I feel strongly about. The idea that the citizens of the District of Colombia do not have one of the fundamental rights of democracy confounds me. As elected members of Congress, we should realize the importance of voting representation in Congress.

My background in District of Colombia affairs is extensive. From 1987 to 1993 I served on the House District of Columbia appropriations subcommittee. Since my tenure on the subcommittee, I have introduced the District of Colombia Retrocession Act in every Congress to date.

I am here today for many reasons: I am here because I care about our Nation's Capital, I care about the people who live here and I care about the Constitution that embraces every citizen of the United States. More specifically, I am here to discuss H.R. 381, the District of Columbia – Maryland Reunion Act. Returning all but a small federal enclave to the state of Maryland is the most practical method to provide the citizens of Washington D.C. with full voting representation.

Several efforts to achieve voting representation for the citizens of Washington D.C. have failed. First, the constitutional amendment to provide D.C. with two voting Senators and one voting Representative, though passed by Congress in 1978, never managed to spark the interest of the State Legislatures. Only 16 had ratified the amendment when time expired in 1985.

Secondly, in 1994 we saw the overwhelming defeat of the Statehood bill, H.R. 51, in the House of Representatives by a vote of 153 to 277. Retrocession is the only viable alternative to these failed initiatives. It is the best possible way to give District of Colombia citizens voting representation.

Retrocession dates back to 1846 when the portion of D.C. west of the Potomac was returned to Virginia. This establishes a historical precedent proving that retrocession can alleviate the distress experienced by the people of the District of Columbia. More importantly, the residents of the District of Columbia would gain voting rights in a way more likely to be accepted by Congress.

Through retrocession, current D.C. residents would become citizens of Maryland, with full voting representation. This would preserve Maryland's historical intent that the land it donated be the seat of the government.

Retrocession would be beneficial for both the District and Maryland. The voting rights issues would be resolved, as D.C. residents would gain not only a voting representative in

the House of representatives, but also two in the senate. They would also have new representation on the state level and enjoy access to Maryland's state infrastructure, facilities, and assistance programs. The most significant gain would be the influx of Maryland state funding on education.

Additionally, by gaining the District's nearly 600,000 residents, Maryland would gain a seat in the House and extend its influence in Congress. With the nation's 2nd highest per capita income, District residents would enhance Maryland's tax base and help create the 4th largest regional market in the country.

We must follow the example of other democratically based nation's throughout the world that provide voting representation in their national legislatures for its citizens residing in the Capital area.

Canada offers a model of how this proposal could and does work. Ottawa, like Washington D.C., is situated on the border of two larger political entities. The bulk of Ottawa lies in Ontario. However, a sizeable population resides across the Ottawa River in Hull, Quebec. The solution Ottawa has come up with is sending representatives to the Provincial Parliament in Toronto and to the Federal Parliament as part of the Ontario delegation.

Voting rights for the citizens of D.C. has been an issue ever since these rights were lost in 1800. Over two hundred years have passed and we are still trying to extend constitutional rights to citizens who are living in the shadow of Congress.

Over the years I have seen this debate evolve from constitutional amendment, to statehood, to simple voting representation, to retrocession. Each cause is inspired by the desire to help the people of the District of Columbia. Yet we appear no closer to a solution. As an advocate of retrocession I believe this plan offers the best course of action. I implore my fellow colleagues to take action on restoring the rights and privileges to the people of the District of Columbia.

Chairman TOM DAVIS. Thank you both very much. Let me just say, Representative Regula, you've been a long time supporter of voting rights for the District. Representative Rohrabacher, you obviously put a lot of thought and hard work into this, and your staff has, and you're also a veteran of the D.C. Committee. I want to give you appropriate thanks for that.

Dana, one of your interesting aspects of your plan is that it makes Maryland election law applicable within the District for the House and Senate elections, and you have some home rule advocates, you obviously have to sift through that, there's a lot of thought in the city about those. But at least you took care of the voting representation part at the national level. Do you want to address that at all?

Mr. ROHRABACHER. Home rule is addressed in this as well. There's no taking away home rule from the people of the District. That's within my legislation.

Chairman TOM DAVIS. Mr. Regula, one of the issues that comes up with yours is you're basically retrocession except for, what would it be, like the Mall area, is that what we're looking at?

Mr. REGULA. Yes, it's what we carve out, and it's what they've done in Canada, carve out the governmental portions. When I say government, the U.S. Government. So that the areas, like along the Mall, would be retained as Federal property, and it would be the balance of the area that would become a city in the State of Maryland.

Chairman TOM DAVIS. Interestingly, I've just remembered how we got here. It was 221 years and 2 days ago that the Philadelphia Mutiny, it was June 21, 1783—221 years ago—that the Mutiny appeared. This is when a group of pensioners from the Revolutionary War marched on the Continental Congress in Philadelphia, and it was the local militia that were sympathetic to the pensioners. They chased the Continental Congress across the river up into Trenton. It was at that point they considered it a Federal city, they didn't want it to be under the control of any city. That's what started this. We missed by 2 days, the hearing today, the anniversary, the 221st anniversary of that, it was called the Philadelphia Mutiny.

Ralph, one of the interesting aspects you bring out that we have to address is the fact that the District still has three electoral votes in the Constitution. I was thinking we could build a condominium in there, fill it up with our friends and we could control three electoral votes at that point. D.C. could be part of Maryland and they could have voting representation and we could control the action every 4 years. [Laughter.]

Mr. REGULA. I think that should be addressed.

Chairman TOM DAVIS. Nothing smooth, nothing's 100 percent smooth.

Mr. REGULA. Alexandria, as I said, came from retrocession to Virginia.

Chairman TOM DAVIS. That's correct. There's the precedent. And as a matter of fact, Constitutionally it was never approved by the courts. But I think by the doctrine of laches, it would stay today if it were challenged. There are some Virginians who would like to give it back. But I'm not sure if the city would want it. But we don't need to go there.

Mr. ROHRABACHER. The people voting, if what we're talking about becomes law, of course will then have the understanding that their vote counts toward the electors in Maryland, and they actually have, they may have more influence on candidates rather than less influence.

Chairman TOM DAVIS. That's right. Also, I note that from 1790 to 1800, Dana, the residents of the District of Columbia who lived in Virginia voted with Virginia for Congress and in Maryland with Maryland for Congress. So we have that precedent that's consistent.

Ms. Norton, any questions?

Ms. NORTON. I want to thank both of my good friends for their work on these two bills. I served with Mr. Rohrabacher on the old D.C. Subcommittee, and with Mr. Regula when he was on the D.C. Appropriations Subcommittee. These are Members, and among the few Members, who know the District very well in all of its details, because they have served on the committees, learned them and both were of considerable service to our city.

As I will say, you of course have particularly in this last week in the Congress a lot else to do in this House. But I am going to make mention in my own opening statement for the gratitude I think the District of Columbia residents owe you in coming forward with bills. What we now have is a bipartisan consensus, there's got to be some approach. And here we've got three Republican bills, not my bill alone, but three bills, and not bills that have been put in politically, but bills by two Members who have thought deeply about the District.

And I want it to be clear, from a Member who knows, that each of these approaches has support in the District of Columbia. Residents of the District of Columbia have been in touch with me, and even have come to meetings in my office. So the notion of leaping about where District residents are is something I certainly am unwilling to do.

But the importance of these two bills is not that I have joined these bills, I have not endorsed these bills. I am not a co-sponsor of these new bills that have come in. But I went to the House floor when Mr. Regula and Mr. Rohrabacher put their bills in, in order to thank them before the full House for how they have advanced the cause of voting rights. We will never get to voting rights unless Republicans and Democrats sit down together and finally agree on a bill we all can agree upon.

Therefore, the actions of these two Members who have particular knowledge of the District of Columbia to step forward is to be greeted, and I assure you will be greeted with great applause in the District of Columbia. You have today in coming forward to testify here, having given your own bills already, materially and very substantially advanced the cause of D.C. voting rights, and I want to personally thank each of you for what you've done.

Mr. ROHRABACHER. Thank you.

Mr. REGULA. Thank you.

Chairman TOM DAVIS. I want to thank you both, two very well respected senior Republican Members. Thank you very much.

Mr. ROHRABACHER. Let me just note, when I was on the District of Columbia Committee, Chairman Dellums was my chairman. And

of course, that's when the Democratic Party controlled the House of Representatives. Let me just note that Chairman Dellums was very fair to me personally on that committee, and I think he handled himself in a very dignified way in that we all got our say. I've been in some committees at times when I didn't feel like I was fairly treated. But in that committee, it really was, he did a good job. And what's important here is that politics over the years have gotten in the way of solving this problem. And not just politics on one side of the aisle, politics on both sides of the aisle, both parties have been maneuvering on this issue.

Well, I think the approach that Mr. Regula and I have come up with in both of our proposals wipes away that politics, wipes away that problem and gives us a chance at both sides to come to a compromise that will end up giving the people of this city their rights for representation. And so it's about time we get on with it.

Mr. REGULA. I'd just like to comment on that. The important thing for the young people of this community is to have access to the finest education, as is the case throughout the Nation. I believe that one of these approaches could enhance the educational opportunity prospectively for the people of this city.

Chairman TOM DAVIS. Well said. Thank you both for your time. Thank you very much.

Before we get to our next panel, I'm going to read my opening statement. Ms. Norton, we'll go to yours, and I'll allow other Members to make opening statements or include them in the record.

The District of Columbia is many things to many people. Home to more than half a million people of diverse backgrounds, capital of the free world, and a symbol of democracy. But perhaps most fundamentally, it is a creature of the Constitution. The District's unique Constitutional status and historic evolution and the fact that it has characteristics of a city and a State, in addition to its Federal component, leaves us with one of the most profound democratic paradoxes of our time: how to reconcile the framer's vision for the Nation's Capital with their aim to establish a republican form of government in the new United States when the citizens of the Federal city lacked the primary tool of democratic participation—representation in the national legislature.

For many years, I've acknowledged publicly that there's an unacceptable contradiction between the democratic ideals on which this country was founded and the District's exclusion from true congressional representation. Let's be real, how can you argue with a straight face that D.C. should not have some direct congressional representation? For more than two centuries, D.C. residents have fought in 10 wars and paid billions of dollars in Federal taxes. They have sacrificed and shed blood to help bring democratic freedoms to people in distant lands. But here at the symbolic apex of democracy, they lack what is arguably the most fundamental right of all.

For the past year and a half, my staff and I have undertaken an intellectual and political journey to learn more about the interaction between the Constitution and the District. As we studied the problem, the lack of direct congressional representation, we focused on two prime requirements for any plan to be found acceptable. First, it needed to be permissible under the Constitution. Second,

it needed to be politically achievable in the current political environment.

Today we want to discuss four legislative proposals for giving the District direct representation in Congress, including my own. All of these plans share one central characteristic. Instead of relying on courts to find some latent Constitutional authority to force representation—which, to date, they have firmly declined to do—instead of proposing a drawn-out, dead on arrival Constitutional amendment process, each requires Congress to take legislative action to remedy the situation, that's what the plans before us today do.

One of the plans we'll hear about today requires Congress to treat the District as a State and grant the District full representation in both the House and Senate. One would allow the people of the District to vote with the people of the State of Maryland in House and Senate elections. Another gives the State of Maryland most of the District except for the central Federal core of the city.

Each of these proposals is commendable, recognizing the untenable justice of the current situation. Each reflects or illuminates the Constitutional authority granted to Congress in the District Clause, and each is worthy of careful study and debate.

I'm offering a fourth plan that I believe is not only Constitutionally viable but also politically feasible. Our plan is relatively simple: treat the District as a congressional district for the purpose of allowing the people of the District to elect a full, voting member of the House of Representatives. Second, increase political palatability, increase the size of the House of Representatives by 2, to 437, until reapportionment for the 2012 election. My plan would not affect the makeup of the Senate in any way, nor would it affect the operation of the 23rd amendment that gives the District three electoral votes in any way.

This plan is a reasonable effort to give the people of the District fair and full representation in one House. I believe there is a sound basis in the Constitution that Congress has the power under the District Clause in Article I, Section 8, to provide for such representation. The District Clause itself confers extremely broad authority over the District on Congress. Congress' authority is "exclusive" and covers "all cases, whatsoever," in the District.

Article I, Section 2 that establishes the House provides that Members of the House are to be elected by the people of the several States." I believe this reference to the several States should not be construed to preclude voting by the people of the District, but under the authority of the District Clause to permit Congress to allow it should Congress decide to do so. After all, at the time this requirement was established, there was no District of Columbia, only the people of the several States, which included people who would become citizens of the District of Columbia.

This description of the House and the people who would vote for House Members, when considered in conjunction with Congress' broad authority under the District Clause, does not establish that the framers intended to foreclose Congress' authority to permit representation in the House of all the people of the States that would comprise the Nation. But these considerations and others will be

addressed more fully by the analysis provided for the committee by Viet Dinh.

By increasing the size of the House by two until reapportionment for the 2012 election, we make this plan politically viable. Let's be blunt: I don't feel it's a sign of weakness in our system to have to consider politics as part of the process. To ignore politics is to ignore the primary motivating force of governmental life up here. Political considerations are neither good nor bad, they're simply there and have to be dealt with.

In this situation, the current apportionment allows us to increase the House in a balanced fashion, as we have done throughout the Nation's history. By adding two seats and reapportioning seats in the House, it's expected the other seat will fall to the next State in line, which in this case would be Utah. It's not unreasonable to assume that a Republican would likely win this new seat. This is the politically neutral approach. This is the way to take the partisan sting out of doing what is right.

And I was intrigued by Mr. Rohrabacher's attitude and suggestion, Ms. Norton, that when we put the bill in, we redistrict Utah as a part of this bill in a politically acceptable way. Maybe that's something we can look at as we move forward. These people are thinking about this. They're excited about this and they're trying to find a way around the problem. We haven't seen that up here for a long time on a compelling issue.

Finally, I want to point out that this sort of bill is only likely to succeed during the middle years between reapportionment, at a time when it's impossible to determine accurately which States will gain and which States will lose after the next census, in this case, the 2010 census. We have a short period of maybe 3, 4 years where we can do great good by giving the District full representation in the House, and the States won't game it, saying will they win or lose by the District taking a 435th seat in the House away from one State or another.

Who knows when this confluence of circumstances will occur again? Will it take decades, will it take centuries? We may never be able to pay so small a price to remove so large an injustice again. Now is the time to act. Americans set the standards for democracy and democratic principles for the rest of the world. It's our duty and honor to set a sterling example. Failing to permit some 550,000 hard working, patriotic, tax paying residents of the Nation's Capital to vote in Congress is so difficult to rationalize because it is, at its core, anti-democratic.

Will moving forward with any of the measures before us today be easy? Not at all. But I have great faith in my colleagues and their willingness to let reason prevail. We need to forge consensus among Members with disparate views. Congress will ultimately grant voting rights to the District of Columbia, because it's really no more complex than this: it's the right thing to do.

We welcome today, and we're pleased to hear from Representative Ralph Regula of Ohio and Representative Dana Rohrabacher. We're also honored in our next panel to have with us the Mayor of Washington, DC, who has restored so much of this city, Anthony Williams, and the Chairwoman of the Council, Linda Cropp, who does such an able job there.

Finally, we're honored to have a distinguished third panel that I'll introduce at the appropriate time to share their views on the plans that have been offered. All of these witnesses have made significant sacrifices to join us today, and their presence is greatly appreciated.

I would now recognize Ms. Norton for an opening statement.

[The prepared statement of Chairman Tom Davis follows:]

Opening Statement of Chairman Tom Davis
Government Reform Committee Hearing
Common Sense Justice for the Nation's Capital: An Examination of Proposals to Give D.C. Residents Direct Representation
June 23, 2004

Good morning.

The District of Columbia is many things to many people. Home to more than half a million people of diverse backgrounds; capital of the free world; symbol of democracy. But perhaps most fundamentally, it's a creature of the Constitution.

The District's unique constitutional status and historic evolution – and the fact that it has characteristics of a city and state, in addition to its federal component – leave us with one of the most profound democratic paradoxes of our time: how to reconcile the Framers' vision for the nation's capital with their aim to establish a republican form of government in the new United States, when the citizens of the federal city lack the primary tool of democratic participation: representation in the national legislature.

For many years, I've acknowledged publicly that there's an unacceptable contradiction between the democratic ideals upon which this country was founded and the District's exclusion from true congressional representation. Let's be real: how can you argue with a straight face that D.C. should not have some direct Congressional representation? For more than two centuries, D.C. residents have fought in ten wars and paid billions of dollars in federal taxes. They have sacrificed and shed blood to help bring democratic

freedoms to people in distant lands. But here, at the symbolic apex of democracy, they lack what is arguably the most fundamental right of all.

For the past year and half, my staff and I have undertaken an intellectual and political journey to learn more about the interaction between the Constitution and the District. As we studied the problem of the lack of direct Congressional representation, we focused on two prime requirements for any plan that I could support. First, it needed to be permissible under the Constitution. Second, it needed to be politically achievable in the current political environment.

Today we want to discuss four legislative proposals for giving the District direct representation in Congress, including my own. All of these plans share one central characteristic. Instead of relying on courts to find some latent Constitutional authority to force representation -- which, to date, they have firmly declined to do -- instead of proposing a drawn-out, dead-on-arrival Constitutional amendment process, each requires Congress to take legislative action to remedy this inequity.

One of the plans we will hear about today requires Congress to treat the District as a state and grant the District full representation in both the House and the Senate. One allows the people of the District to vote with the people of the State of Maryland in House and Senate elections. Another gives to the State of Maryland most of the District except for the central federal core of the city.

Each of these proposals is commendable, recognizing the untenable injustice of the current situation. Each reflects or illuminates the Constitutional authority granted to Congress in the District Clause. Each is worthy of careful study and debate.

I am offering a fourth plan that I believe is not only constitutionally viable but also politically feasible.

My plan is really very simple. Treat the District as a congressional district for the purposes of allowing the people of the District to elect a full, voting member to the House of Representatives. Secondly, increase the size of the House of Representatives by two, to 437, until reapportionment for the 2012 election. My plan would not affect the make up of the Senate in any way, nor would it affect the operation of the 23rd Amendment that gives the District three electoral votes in any way.

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to allow it should Congress decide to do so. After all, at the time this requirement was established, there was no District of Columbia, only the people of the several states, which included people who would become citizens of the District. This description of the House and the people who would vote for House members, when considered in conjunction with Congress's broad authority under the District Clause, does not establish that the Framers intended to foreclose Congress's authority to permit representation in the House of all the people of the states that would comprise the Nation. But these considerations and others will be addressed more fully by the analysis provided by Viet Dinh.

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In this situation, the current apportionment allows us to increase the House in a balanced fashion, as we have done throughout the nation's history. By adding two seats and re-apportioning seats in the House, it is expected that the other new seat will fall to the State of Utah. It is not unreasonable to assume that a Republican would likely win this new seat. This is the politically neutral approach; this is the way to take the partisan sting out of doing what is right.

Finally, I should point out that this sort of bill is only likely to succeed during the middle years between reapportionments, at a time when it is impossible to determine accurately which states will gain and which states will lose seats after the next census, in this case the 2010 Census. We have a short period in which we can do great good by giving the District full representation in the House of Representatives.

Who knows when this confluence of circumstances will occur again? Will it take decades? What if it takes centuries? We may never be able to pay so small a price to remove so large an injustice again. Now is the time to act.

Americans set the standard for democracy and democratic principles for the rest of the world. It's our duty and honor to set a sterling example. Failing to permit some 550,000 hard-working, patriotic residents of the nation's capital to vote in Congress is so difficult to rationalize because it is, at its core, anti-democratic.

Will moving forward with any of the measures before us today be easy? Not at all. But I have great faith in my colleagues and their willingness to let reason prevail. We need to forge consensus among members with disparate views. Congress will ultimately grant voting rights to the District of Columbia because – and it's really no more complex than this – it is the right thing to do.

We welcome today the two fellow Members to share their plans for giving the District representation, Representative Ralph Regula of Ohio and Representative Dana

Rohrabacher of California. We are also honored to have with us today the Mayor of Washington, Anthony Williams, and the Chairman of the Council of the District of Colombia Linda Cropp.

Finally, we are honored to have a distinguished third panel that I will introduce at the appropriate time to share their views on the plans that have been offered. All of these witnesses have made significant sacrifices to join us today and their presence is greatly appreciated.

Ms. NORTON. Thank you very much, Mr. Chairman.

I begin by expressing my deep appreciation to Chairman Tom Davis for the attention and commitment he has given to D.C. voting rights since coming to Congress. In his caucus, the chairman has tried to achieve the return of the delegate vote in the committee of the whole by the majority. And now he has introduced his own bill for fuller voting rights in the House.

Representative Ralph Regula, who previously served on the D.C. Appropriations Subcommittee, has introduced H.R. 381, a bill for full voting rights in the House and Senate. Representative Dana Rohrabacher, who served on the old D.C. Subcommittee, has introduced H.R. 3709 for full voting rights in the House and the Senate. District residents have consistently insisted upon equal rights in Congress since 1801, when the 10-year transition of land donated by Maryland and Virginia was completed. Congress took control of the District of Columbia, and by refusing to act, stripped American citizens living in the new capital of rights they had always enjoyed in common with other citizens. The denial of now more than 200 years betrayed the intention of the Constitutional framers, who were careful to leave these rights in place during the transitional years.

My own efforts, joined by many in the House and Senate, are the most recent of many attempts ever since to return to the original intent of the framers. The two most important of these attempts for the support they have received from Congress are the Statehood bill, the New Columbia Statehood Act of 1993, and the current congressional Voting Rights bill.

In 1993, there was a historic 2 day debate on the Statehood bill on the House floor. And in a final vote of the full House, almost two-thirds of the Democrats and one Republican voted for the bill. However, thereafter, the District became insolvent, and in order to recover, turned over some State costs to the Federal Government, making statehood impossible for now.

I then introduced the No Taxation Without Representation Act, because whether or not the city carried all State costs, or qualified to become a State, it contributes the second highest rate of taxes to support our Government, and residents have fought and died in every war, more than qualifying them for full voting rights in the House and the Senate.

The significance of today's hearing should not be lost, should not be over-emphasized and should not be understated. None of the bills before us has anything close to the necessary support in Congress, and all raise a plethora of questions to be answered. The process we embark upon today is one of steps, not leaps. The Congress does not make great leaps. The importance of today's hearing is this: it represents the most important breakthrough for congressional voting rights in more than 30 years, because it marks the first bipartisan support for D.C. congressional voting rights since the Congress passed a voting rights amendment to give the District of Columbia a House and two votes in the Senate.

Before us is not only my bill, the No Taxation Without Representation Act, but three other D.C. voting rights bills, filed by senior Republicans who all enjoy great respect in the House. Considering the recent partisan history of D.C. voting rights in the Congress,

with only a Democratic bill filed for years, the return of bipartisanship, even with sharply different bills, is a major step and an indispensable predicate to achieving these rights. Until now, we have not had the consensus we have now achieved on the principle of voting representation itself. When Members of both parties file bills on the same subject, the underlying cause is substantially and undeniably advanced.

Some of the bills may not be as familiar as others to the general public or to the press. But my constituents communicate regularly with me on voting rights, and therefore I am quite aware that all four approaches enjoy some support among D.C. residents. However, far greater exposure of all these approaches is necessary, because most residents, including most D.C. elected officials, have little more than surface knowledge of these bills, because they have had to draw their views from a title or quick summary of a bill and because there have been no hearings on these bills.

Today's hearing is a good beginning to inform and educate residents and officials about what our options are. And I intend to hold a town meeting to facilitate even deeper knowledge of all four approaches.

As immensely grateful as I am for these bills, I have not endorsed or co-sponsored any except my own. To do so at this time would be premature. None of the sponsors suggest that these bills are ripe, that residents are familiar with their contents or that they do not raise fair questions that remain to be answered. D.C. residents and elected officials are entitled to much more information that ranges from the Constitutional to the pragmatic. The questions that may be raised about the No Taxation Without Representation Act are better known. But here is a sample of questions about each of the three other bills. Is H.R. 381, the Retrocession Bill, which requires Maryland to agree to the return of the District, achievable politically or as a practical matter? Is H.R. 3709, which treats D.C. residents as Maryland citizens for purposes of representation, Constitutional in light of the Constitutional requirement that residents be, that members who represent a district be actual residents of their State?

Does the House only bill continue to have one Democrat, one Republican symmetry that was the reason that it seemed politically viable in the first place in light of the bitter redistricting battles that recently emerged to reverse representation in several districts, using unprecedented redistricting by the State in the middle of the decade? To put it another way, in light of the Constitutional authority of the States alone to redistrict, without interference from the Congress, is there a way Constitutionally to guarantee how individual members of any State legislature would vote on redistricting, and to lock in the political neutrality that is the only reason a vote in the House only would be attractive?

I think it should be said that I have the most to gain perhaps by winning a full House vote on my watch, a cause to which I have devoted many waking hours. But I recognize that my primary obligation is to make sure that this option is what it appears Constitutionally and pragmatically, and to think through specifically and to tell my constituents how such action would help D.C. residents

achieve the full representation in the Senate they deserve. This is a task I am about at this very moment.

There is almost nothing I cannot do in the House, particularly given my voting right in committee. The District's fundamental empowerment is in the Senate. These bills are not ripe largely because there has not been an opportunity to explore the many questions they raise. Thus, Chairman Davis and I have agreed that the best way to advance D.C. voting rights this year was with today's hearing to offer an opportunity to begin to look at them all. Not surprisingly, I know of only a handful of people who are even generally familiar with these approaches, or the political realities that dictate whether they are achievable. The reason of course is that this is the first hearing to expose and explain them all, and we are very grateful for this important beginning.

We believe this hearing is not only the appropriate way to begin. A hearing on four separate bills for congressional voting rights is in and of itself an important breakthrough in the struggle for full representation. In opening this new and important chapter, I am very grateful to Chairman Davis for his leadership, for his bill and for this hearing. To my colleagues and Representatives Regula and Rohrabacher for their bills and for their contributions to today's hearing, and to my good friends from the District who will be testifying today.

Thank you, Mr. Chairman.

Chairman TOM DAVIS. Thank you very much.

Any other opening statements? Mr. Van Hollen.

Mr. VAN HOLLEN. Thank you, Mr. Chairman, and I will be brief. First, I want to thank you, Chairman Davis, for your sincere commitment and long efforts to try and resolve this very important issue. I want to just say that I fully support full voting rights for the people of the District of Columbia, and I want to especially thank Ms. Norton, who I know has committed all of her career to trying to resolve this very, very important question. I think this hearing is a very important step toward opening a renewed dialog and conversation on this issue.

I support the proposal put forward by Ms. Norton. I think it's the most straightforward way for addressing this issue. I think it deals with the principle of full voting rights for the people of the District of Columbia, the most direct way providing voting rights in the House and the Senate. But I do want to commend all the others who have looked for solutions to this problem and this issue.

I would note that the proposals put forward by Mr. Regula and Mr. Rohrabacher obviously have a direct impact on the State of Maryland. To my knowledge, they have not received any commitment or endorsement from their former colleague and now the Governor of Maryland, Governor Ehrlich. I would note that my good friend, the Mayor of the District of Columbia, and I'm not going to anticipate all of his testimony, but out of the four proposals, that is one proposal that I think, of the four, suggests is the least workable of the four. Maybe there's a way to resolve it, I don't know. But clearly, we need to ask the people of both Maryland and the District of Columbia which of these approaches they prefer as we move forward.

But again, I want to thank everybody who is looking for a way to resolve this question in good faith for the efforts they've put forward. Thank you, Mr. Chairman.

Chairman TOM DAVIS. Thank you very much. Mr. Davis.

Mr. DAVIS OF ILLINOIS. Thank you, Mr. Chairman. I shall also be brief.

Let me just first of all commend you for holding this hearing. I also want to commend you and Delegate Norton for the tremendous amount of time, energy and effort that you have put forward to try and deal with an unresolved issue of longstanding. I have been fully in favor of voting rights for the residents of the District of Columbia since I was a child. I can remember reading history in grammar school and wondering why people who lived in the District of Columbia did not have full voting rights.

I think I would be in total support of the proposal that has been put forth by Delegate Norton, because what we're talking about is giving people their full right to empowerment. They didn't make a determination about how the area was carved up, where they lived. That was decided a long, long time ago. And I think that we need to come full circle now and extend to them the full benefit of being a citizen of this great Nation.

So I thank you, Mr. Chairman and yield back the balance of my time.

Chairman TOM DAVIS. Thank you.

Ms. Watson.

Ms. WATSON. I too want to join my colleagues in commending the Chairman and Ms. Norton's efforts and the efforts of other Members who have been on this issue for decades. I know that when I was in the California State Senate, the issue came before us, and there wasn't a whole lot of support.

I want to state my position very clearly and very directly. I support full representation. Any American living in any area of our country needs to have representation, voting representation in the House and the Senate according to their numbers. The compromises keep the focus on voting rights. But I do not think that the people who live and serve in the District of Columbia need to be retroceded back to Maryland. No, I think that's wrong. And I think we can find a Constitutional way to do it.

So I support only Ms. Norton's bill, unless there is some way to agree that we would have amendments on it. But I really think in today's world, as we're trying to spread democracy around the globe, and impose it on other people who have a different way of looking at government, we can only be the model. And I think every American citizen should be represented proportionately in Congress.

Thank you, Mr. Chairman.

Chairman TOM DAVIS. Thank you very much.

If there are no other opening statements, we're going to go to our distinguished second panel. We have the Mayor of the District of Columbia and we have the Chairwoman of the City Council, Linda Cropp. Will you rise with me and raise your right hands? It's our policy to swear you in before you testify.

[Witnesses sworn.]

Chairman TOM DAVIS. Thank you.

First of all, let me just say thank you both for the job you're doing. You've restored a lot of respect for the city, Mayor Williams, over your tenure. We appreciate the job you're doing, and we're here today in a historic hearing and eager to hear what you have to say, both of you. Thank you.

STATEMENTS OF ANTHONY A. WILLIAMS, MAYOR, DISTRICT OF COLUMBIA; AND LINDA W. CROPP, CHAIRWOMAN, COUNCIL OF THE DISTRICT OF COLUMBIA

Mayor WILLIAMS. Thank you, Mr. Chairman, for your leadership in bringing us all together on this historic occasion. Certainly I want to thank our Congresswoman Norton for spearheading this throughout her time both here in Congress and throughout her entire career, let alone her citizenship of our city.

Congresswoman Watson, thank you for being here and supporting this. You represent many of my family members out in L.A., and you're a great example of how out of loss can come something great. We all miss Congressman Dixon, but you're doing a great job as another friend of our city, and I thank you for that.

And my long time friend, Chris Van Hollen, thank you for your steadfast support for our city.

This is a unique opportunity, and Council Chair and I represent 570,000 disenfranchised citizens of the United States. As we've heard today, we're citizens in every sense of the word, we die for our country in war, we're active in civic life, and yes, we pay taxes. But this Nation denies us a full voice in this very body. And it's my firm conviction that our lack of representation should rise to the level of personal outrage for District citizens and all Americans who value equality and fairness.

So it's with a sense of appreciation and pride that I sit before you today to discuss four distinct efforts to end this injustice. It's especially commendable that these bills have been introduced by both Democrats and Republicans, including three senior and influential members of the majority and the District's own non-voting Congresswoman. That they provide a wide spectrum of alternatives for moving toward representative democracy for our Nation's Capital is another indication that this issue is beginning to mature as a slight that demands a remedy. And I credit the Members of Congress who have authored them for their efforts to put this at the forefront of the push for human and democratic rights for District citizens.

I would first like to commend Representative Regula and Representative Rohrabacher. Their bills offer opportunities for the District to achieve a full cohort of congressional representation. There are variations on the theme of retrocession, although they do have fundamental differences. One commonality of the bills is that the District's congressional representation would be calculated as if the District were part of the State of Maryland. This approach could bring full congressional representation to the District in an expedient fashion, but the approach requires much additional contemplation. Support among the people on both sides of the District line would need to be carefully gauged and assessed. Admittedly, some District citizens might support these proposals, since they provide one version of a solution to non-representation.

However, I would be very reluctant to support any initiative that has a potential to fragment the District's political identity. The District is a unique political and social unit, and I've learned this both through my personal experience and from reading all the various histories of our city. It's a unique political and social unit that cannot be commingled with the interests of Maryland or any other State. I would imagine that Maryland residents and citizens would also be divided, very divided on this issue. As honorable as these intentions may be, it's my belief that these goals are not workable and do not provide as desirable a solution as an initiative that would keep the District intact.

The bill introduced by you, Chairman Davis, would provide the District with one voting Member in the House of Representatives. Obviously this bill does not address the issue of Senate representation and does not provide a full solution to our disenfranchisement. Nevertheless, it does move the issue forward, and I look forward to working with the committee as it explores and attempts to resolve the outstanding Constitutional, legal, and yes, political issues connected to this approach.

Congresswoman Norton's bill provides, I think, the most comprehensive solution to our disenfranchisement, insofar as it provides representation for the District in both the House and the Senate. Admittedly, this bill faces perhaps the steepest climb of the four proposals. But as I've read histories of our city and certainly the history of our country, the most ambitious options often require the most work. I'm grateful also to Senator Joe Lieberman who shepherded this bill through the Senate Governmental Affairs Committee several years ago. We are deeply appreciative of that.

As I said before, each of these bills advance the cause of democracy in our city. We owe a debt of gratitude to the sponsors, as well as a commitment to continue working together. I encourage the Congress, as Mayor of this city, to hold other hearings and work toward bipartisan support wherever possible. This hearing is the beginning of what should be a spirited debate, both in this body and across the District, on what solution should be pursued. The bipartisan efforts here today are evidence that representation for the District can be a voting rights issue and not a partisan one.

The United States should be a beacon around the world for the virtues and the inclusiveness of democracy. Our city represents that. I was particularly proud of being Mayor here today when we're having this bipartisan discussion of voting for the city. I was proud of our city and the way we conducted the funeral services for President Reagan. I got a lot of positive comments from people across the country.

I was particularly proud a couple of weeks ago on Memorial Day weekend, when I talked to a World War II veteran, I think he was from Maine. He was talking about the night and day difference in the city over the last 25 years, and how he had gone into one of our neighborhoods, he was really impressed with the way the city was coming back. We started talking about the lack of representation in the city. He was shocked that here in Washington, DC, there was no representation for the citizens of this city.

I think many Americans who value this city and have pride in this city would also be shocked at this denial of representation in,

as you said, Mr. Chairman, the apex of democracy in the world. I applaud this committee for addressing this issue, and I look forward to working with you as Mayor of this city to advance this great cause. Thank you.

[The prepared statement of Mayor Williams follows:]

Government of the District of Columbia

Executive Office of the Mayor

Committee on Government Reform
United States House of Representatives

The Honorable Tom Davis, Chairman

Voting Rights for the District of Columbia

Testimony of
Anthony A. Williams
Mayor
District of Columbia

Wednesday, June 23, 2004

Good morning. Chairman Davis and other members of the committee, thank you for the opportunity to testify before you today. As Mayor of the District of Columbia, I represent 570,000 disenfranchised citizens of the United States of America. We are citizens in every sense of the word – we die for our country in war, we are active in civic life, we pay taxes – but this nation denies us a full voice in this very body. It is my firm belief that our lack of representation should rise to the level of personal outrage for District residents and all Americans who value equality and fairness.

So it is with a great sense of appreciation that I sit before you today to discuss four distinct efforts to end this great injustice. It is especially commendable that these bills have been introduced by both Democrats and Republicans, including three senior and influential members of the majority and the District's own nonvoting delegate. That they provide a wide spectrum of alternatives for moving towards representative democracy for the nation's capital is another indication that this issue is beginning to mature as a slight that requires a remedy. I credit the members of Congress who have authored them for their efforts at the forefront of the push for human and democratic rights for District residents. *The fact that we are having this hearing is a milestone.*

I would first like to commend Representative Regula and Representative Rohrbacher. Their bills offer opportunities for the District to achieve a full cohort of congressional representatives. They are variations on the theme of retrocession, although they do have fundamental differences. One commonality of the bills is that the District's congressional representation would be calculated as if the District were part of the State of Maryland. This approach could bring full congressional representation to the District in an expedient fashion, but the approach requires additional contemplation. Support among the peoples on both sides of the District line would need to be carefully gauged. Admittedly, some District residents might support these proposals, since they provide one version of a solution to nonrepresentation. However, I would be reluctant to support any initiative that has the potential to fragment the District's political identity. D.C. is a unique political and social unit that cannot be commingled with the interests of Maryland or any state. I would imagine that Maryland residents would also be divided on this issue. As honorable as their intentions may be, it is my belief that these bills are not workable and do not provide as desirable a solution as an initiative that would keep the District intact.

The bill introduced by Representative Davis would provide the District with one voting member in the House of Representatives. Obviously, this bill does not address the question of Senate representation, and thus does not provide a full solution to our disenfranchisement. Nevertheless, it does move the issue forward and I look forward to working with the chairman and this committee as it explores and attempts to resolve the outstanding constitutional, legal and political issues connected to this approach.

Representative Norton's bill provides the most comprehensive solution to our disenfranchisement insofar as it provides representation for the District in the House and the Senate. Admittedly, this bill faces perhaps the steepest climb of the four proposals, but oftentimes the most ambitious option requires the most work. I am grateful to

Senator Joe Leiberman who shepherded this bill through the Senate Governmental Affairs Committee several years ago.

As I stated before, each of these bills advances the cause of democracy in the Nation's Capital. We owe a debt of gratitude to the sponsors as well as a commitment to continue working together. I encourage the Congress to hold other hearings and work towards bipartisan support, if possible. This hearing is the beginning of what should be a spirited debate in this body and across the District on what solution should be pursued. The bi-partisan efforts here today are evidence that representation for the District can be a voting rights issue and not a partisan one.

The United States should be a beacon around the world for the virtues and inclusiveness of democracy. That light should shine the brightest at the core – right here in Washington, DC. It is the ultimate hypocrisy that its citizens suffer from the exact disenfranchisement this nation was founded to end. Let's work together to correct this injustice.

Chairman TOM DAVIS. Thank you.

Let me just also say, it's important to note that under your leadership and Chairwoman Cropp's and the Council, I know you all don't agree on everything, but you can see this city coming back. And you have created a political atmosphere up here where we can have an honest discussion about these issues, where the city's reputation is now enhanced up here because of the way things are going. We appreciate that and hope that these discussions over the next couple of years will be fruitful and we can be productive in bringing you some voting rights.

Chairman Cropp, thanks for being with us.

Ms. CROPP. Thank you very much, Chairman Davis and our Congresswoman Eleanor Holmes Norton and Congresswoman Watson and Mr. Van Hollen. It's a pleasure to be here with each and every one of you. Let me thank you, Mr. Chairman, for holding this very important public hearing on the provisions of voting representation in Congress for American citizens who live in the District of Columbia.

The good is that this hearing is being held today. The bad is that in 2004, over 570,000 citizens in the District of Columbia who pay $3 billion in Federal taxes are denied voting representation in Congress. The Council and the citizens of the District of Columbia very much appreciate this opportunity to urge you and your colleagues to use your power to bring to the Nation's Capital the same democracy the United States demands of foreign governments. If democracy is good for foreign countries, is it not also good for the District of Columbia and our citizens?

There is nothing in the Constitution that precludes granting the citizens of the District of Columbia voting representation. Article I Section 8 of the Constitution only provides for Congress' authority over the District as a Federal territory. That clause does not deny the citizens of the Federal territory voting representation.

Throughout the world, other capitals model themselves after the United States, except for one important matter. They recognize the flaw in the United States model, that of disenfranchisement of a large segment of their population. They know the importance of granting the citizens of their Federal enclaves voting representation.

The right to representation for the citizens of the District of Columbia, it continues to be unconscionable to citizens that they are denied the basic rights held by every other citizen of the United States, that is the Constitutional right to be represented, to have a voice, to have a vote in the Congress of the United States. The denial of this basic right to citizens who pay the second highest per capita Federal income tax in this country, and who have lost more residents in wars protecting the Nation than 20 other States, is unjust and should be rectified by Congress.

Article I Section 8 gives Congress exclusive jurisdiction over the District of Columbia. We believe that this same broad jurisdiction provides Congress with the Constitutional authority to enact a bill to provide congressional voting rights to the District's citizens. The Congress and the Constitution treat the District as a State for numerous purposes; for example, housing, transportation, education.

Why not for the most precious and fundamental right in a free and democratic society, the right to voting representation?

The Supreme Court, while sympathetic, has essentially stated that it is Congress that has authority to remedy this problem. The Council is committed to achieving full voting representation for its citizens. The Council urges Congress to pass H.R. 1285, No Taxation Without Representation Act of 2003, introduced by Congresswoman Norton, the District's non-voting delegate to Congress, and the Senate companion bill, S. 617, introduced by Senator Joe Lieberman, which will grant the District's citizens voting representation in the House and the Senate.

On behalf of the Council and the citizens of the District of Columbia, I would like to thank these two Members of Congress for introducing legislation that would finally give District residents the right of representation that all other citizens of the United States have been granted. I have attached to my testimony the Council resolution adopted in 2002 supporting these two bills.

The Council's objective is to achieve full voting representation for the citizens of the District. We recognize, however, that there may be several ways to achieve this objective. Full voting representation may be achieved in incremental steps, such as obtaining representation in one or two chambers first, then the other at a later time. We would prefer it all to come at once.

The Council has recently adopted a resolution supporting such an interim step. I have attached to my testimony the Council's resolution adopted June 1, 2004, supporting the incremental approach to achieve full voting representation, R. 15–565.

I want to thank you, Mr. Chairman, for the legislation that you have proposed that would grant full voting representation in the House, and your comments in support of the Council's resolution. Full voting rights representation in the House would provide an interim first step in allowing the citizens of the District of Columbia to have a voice in their Federal Government. Votes taken on the House floor ultimately impact the legislation in the Senate, and those will become law.

The Council looks forward to working with you and toward the obtainment of representation in Congress. Again, let me be clear. While the Council is willing to consider an interim step, our objective remains to obtain full voting representation for the citizens of the District of Columbia. We believe that this is a right too long denied.

The Council greatly appreciates the interest of other Members of the Congress who have introduced or proposed legislation that would provide some form of representation for our citizens. It's reassuring to know that congressional Members of both parties understand the importance of and the need to correct this longstanding injustice.

Representative Regula, I want to thank him for his interest and efforts on this very important issue for the citizens. His proposal would cede the District back to the State of Maryland. While recognizing the origins of the land creating the District of Columbia, I believe that the reunification of the two jurisdictions would present many difficulties. The District has been separated from Maryland since the early 1800's. Since that time, institutions of

government, business and residential citizenship have been developed.

Also, cessation back into the State of Maryland would require redistricting that would ultimately change the political boundaries known today as the District of Columbia and the separate counties of Maryland. Representative Rohrabacher has introduced the District of Columbia Voting Rights Act. I want to thank Representative Rohrabacher for his understanding of this important issue and his efforts in drafting the legislation. Again, while supporting that and thanking him for introducing that, we think that there is another approach that would be better for the citizens of the District of Columbia, and certainly the proposal is extremely well intended.

In order to determine the number of representatives from the State of Maryland whose proposal would incorporate the population of the District with the population of Maryland, the apportionment of representatives and creation of more congressional districts would initially be sort of hard pressed. However, I would like to thank him for his interest in that.

We were joined earlier by young children who had come into the chamber, and they had tee-shirts on, the Young D.C. Suffragettes.

Chairman TOM DAVIS. We start them early here in D.C. [Laughter.]

Ms. CROPP. That's right, we start them early and often. We have to because of the injustice here. But as I look at them, I can only think that they represent thousands of other children in the District of Columbia. And quite frankly, I think they really represent, Mr. Chairman, children in Virginia, Ms. Watson's children in California, Mr. Van Hollen's children in Maryland, children who we are sending mixed messages to.

What we are saying to these children is, do as I say, but not as I do. Because we say that we want democracy. We say that we are sending our citizens around the world to fight for democracy. We say to our children that the right to vote is important. We say to our children that this country was founded on the fundamental principle of no taxation without representation. We say to our children that democracy is important for every citizen in this country. But we do something different.

We do to the District of Columbia and its citizens an injustice, only because you have the power to do it. This hearing, Mr. Chairman, is about changing that injustice. We plead to the rest of the congressional representatives to teach our children in this country a very valuable lesson, that we mean what we say and we do it. The power is in your hands.

Thank you for this opportunity.

[The prepared statement of Ms. Cropp follows:]

U.S. HOUSE OF REPRESENTATIVES
COMMITTEE ON GOVERNMENT REFORM

HEARING ON

"COMMON SENSE JUSTICE FOR THE NATION'S CAPITAL:
AN EXAMINATION OF PROPOSALS TO GIVE DC RESIDENTS DIRECT REPRESENTATION"

TESTIMONY OF
LINDA W. CROPP
CHAIRMAN, COUNCIL OF THE DISTRICT OF COLUMBIA

JUNE 23, 2004

Introduction

Chairman Davis, Representative Waxman, Congresswoman Norton, and members of the Committee on Government Reform, good morning. Let me begin by thanking you, Mr. Chairman, for holding this important public hearing on the provision of voting representation in Congress for the American citizens who live in the District of Columbia. The good is that this hearing is being held today. The bad is that in 2004 the over 500,000 citizens in the District of Columbia who pay $3 billion in federal taxes are denied voting representation in Congress. The Council and the citizens of the District of Columbia very much appreciate this opportunity to urge you and your colleagues to use your power to bring to the nation's capital the same democracy the United States demands of foreign governments. If democracy is good for foreign countries is it not also good for the District of Columbia?

There is nothing in the Constitution that precludes granting the citizens of the District of Columbia voting representation. Article I, Section 8, Clause 17 of the Constitution only provides for Congress' authority over the District as a federal territory. That clause does not deny citizens of the federal territory voting representation.

Throughout the world other capitals model themselves after the United States except for one important matter. They recognized the flaw in the United States model, that of disenfranchising a large segment of their population. They knew the importance of granting the citizens of their federal enclaves voting representation.

My testimony today will cover:

- The right of District residents to congressional voting representation;
- Recent action by the Council of the District of Columbia; and
- Comments on current legislation pending in Congress.

The Right to Representation for the Citizens of the District of Columbia

It continues to be unconscionable to citizens of the District of Columbia that they are denied the basic right held by every other citizen of the United States, that is, the constitutional right to be represented – to have a voice – a vote - in the Congress of the United States. The denial of this basic right to citizens who pay the second highest per capita federal income tax in this country - $3 billion dollars, and who have lost more residents in wars protecting the nation than 20 other states is unjust and should be rectified by this Congress.

Article I, Section 8 of the United States Constitution gives Congress "exclusive jurisdiction" over the District of Columbia. We believe that this same broad jurisdiction provides Congress with the constitutional authority to enact a bill to provide congressional voting rights to District citizens. The Congress and the Constitution treat the District as a state for numerous purposes, e.g., housing, transportation and education, why not for the most precious and fundamental right in a free and democratic society, the right to voting representation. The Supreme Court, while sympathetic, has essentially stated that it is the Congress that has the authority to remedy this problem.

Council Resolution Supporting Voting Rights Advancement in Congress

The Council is committed to achieving full voting representation for its citizens. The Council urges Congress to pass H. R. 1285, "No Taxation Without Representation Act of 2003," introduced by Congresswoman Eleanor Holmes Norton, the District's non-voting delegate to Congress and the Senate companion bill S. 617 introduced by Senator Joseph Lieberman, which would grant District citizens voting representation in the House and the Senate. On behalf of the Council and the citizens of the District of Columbia I would like to thank these two members of Congress for introducing legislation that would finally give District residents the right of representation that all other citizens of the United States have been granted. I have attached to my testimony the Council's resolution adopted in 2002 supporting these two bills (Resolution 14-435, May 7, 2002).

The Council's objective is to achieve full voting representation for the citizens of the District of Columbia. The Council recognizes, however, that there may be several ways to achieve its objective. Full voting representation may be achieved in incremental steps, such as, obtaining representation in one of the two chambers first and in the other chamber at a later time. The Council has recently adopted a resolution supporting such an interim step. I have attached to my testimony the Council's resolution adopted June 1, 2004, supporting the incremental approach to achieving full voting representation (R15-565). I want to thank you Mr. Chairman for the legislation that you have proposed that would grant full voting representation in the House and your comments in support of the Council's resolution. Full voting representation in the House would provide an interim first step in allowing the citizens of the District of Columbia to have a voice

in their federal government. Votes taken on the House floor ultimately impact the legislation in the Senate and those bills that become law. The Council looks forward to working with you toward the obtainment of representation in Congress for the District of Columbia.

Again, let me be clear. While the Council is willing to consider interim steps, our objective remains to obtain full voting representation for the citizens of the District of Columbia. We believe this is a right too long denied.

Comments on Alternative Representation Proposals

The Council greatly appreciates the interest of the members of Congress who have introduced or have proposed legislation that would provide some form of voting representation in Congress for the citizens of the District of Columbia. It is reassuring to know that congressional members of both parties understand the importance of and the need to correct this long-standing injustice to United States citizens who happen to reside within the District of Columbia.

Representative Regula has introduced H. R. 381, "District of Columbia-Maryland Reunion Act." I want to thank Representative Regula for his interest and efforts on this very important issue for citizens of the District of Columbia. This proposal would cede the District of Columbia back to the State of Maryland. While recognizing the origins of the land creating the District of Columbia, I believe that the reunification of the two jurisdictions would present many difficult problems. The District of Columbia has been

separated from Maryland since the early 1800s. Since that time institutions of government, business and residential citizenship have fully developed.

It would be extremely difficult and quite time consuming to make the changes necessary to cede the District back into Maryland. For example, changes would be necessary in the rules and regulations for the operation of businesses, the procedures of government, the payment of taxes and basic services like trash collection. Breaking down and reconfiguring these institutions seems unwarranted and unnecessary.

Cession of the District back into the State of Maryland would require redistricting that could ultimately change the political boundaries known today as the District of Columbia and the affected counties in Maryland. Therefore, ultimately changing the representation of the citizens residing in the newly defined congressional districts. As with redistricting in other states, the citizens often find the realignment inconsistent with their interests.

The magnitude of change necessary to implement this proposal seems enormous. I ask whether making this drastic change is necessary in order to grant citizens of the United States a basic right?

Representative Rohrabacher has introduced H. R. 3709, "District of Columbia Voting Rights Restoration Act of 2004." I want to thank Representative Rohrabacher for his understanding of this important issue and his efforts in drafting this legislation. This proposal would allow the citizens of the District of Columbia for purposes of representation in the

House and Senate to vote as residents of Maryland. This proposal would also allow District residents to vote in presidential elections as Maryland residents and provides for the eligibility of District residents to run for the elected congressional offices and presidential electors as inhabitants of the State of Maryland. For all other purposes the District of Columbia would operate as it does today, as a separate legal entity.

While this proposal is well intended and provides District residents with an opportunity to vote and be represented through the State of Maryland, it does not give the citizens what they truly desire. The citizens of the District of Columbia want their constitutional right to vote and to be represented, to be granted to them as residents of the District of Columbia, not of another state. The creation of the District of Columbia from territory formerly belonging to the State of Maryland did not remove this land from the United States nor did it remove from the people residing in this territory their inalienable rights. So, the question becomes why is it necessary to create a special entity only for voting purposes. If the District of Columbia has the right to exist as a legal governmental entity for all other purposes, it should also have the right to exist as a separate legal governmental entity for voting representation.

In order to determine the number of representatives from the State of Maryland this proposal would incorporate the population of the District with the population of Maryland. The apportionment of representatives and creation of new congressional districts will initially create confusion. It will also be confusing for residents of the District to be part of Maryland for

voting purposes but for all other functions of government to be part of the District.

I again ask is it necessary to create this level of confusion when all we are asking for is the right to voting representation for the people currently living within the District of Columbia?

Conclusion

As stated earlier, the Council and the citizens of the District of Columbia truly appreciate the interest and the efforts of the members of Congress in granting voting representation to the District. While, I know that these efforts are well intended they fail to recognize the basic argument of the residents of the District. Why should the residents of this jurisdiction, who are citizens of the United States, be denied their inalienable right to voting representation solely because they reside in the District of Columbia? This is a right that has been too long denied. The United States is the only democracy in the world in which residents of the capital city are denied representation in the national legislature equal to that enjoyed by their fellow citizens.

The members of the Council of the District of Columbia and I, look forward to working with you Mr. Chairman, the members of this committee and the other members of Congress in achieving this most basic and precious right – the right to voting representation.

Thank you again for the opportunity to present the views of the Council and the citizens of the District of Columbia on this very important matter.

ENROLLED ORIGINAL

A RESOLUTION

14-435

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

May 7, 2002

To declare the sense of the Council on supporting Congresswoman Eleanor Holmes Norton and Senator Joseph Leiberman's No Taxation Without Representation Act of 2001.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Sense of the Council Supporting the No Taxation Without Representation Act Resolution of 2002".

Sec. 2. The Council finds that:

(1) District of Columbia residents are an exclusive group of American citizens forced to pay federal income taxes, but refused voting representation in the United States House of Representatives and the Senate.

(2) The principle of "one person, one vote" demands that citizens who have met all prerequisites of American citizenship should reap all benefits of American citizenship, including voting representation in the U.S. House of Representatives and the Senate.

(3) District of Columbia residents are refused equal representation twofold because they do not have voting representation like other taxpaying American citizens, and they are required to pay federal income taxes, unlike the Americans who live in the territories.

(4) Regardless of the refusal of voting representation, Americans in the District of Columbia are second per capita in income taxes paid to the federal government.

(5) Unequal voting representation in our representative democracy is inconsistent with the founding principles of the nation and the firm principles held by the American people of today.

(6) H.R. 1193, the No Taxation Without Representation Act of 2001, has been introduced in the U.S. House of Representatives by Congresswoman Eleanor Holmes Norton, with 111 bipartisan cosponsors. A companion bill, S.603, has been introduced in the Senate by Senator Joseph Leiberman, with 4 cosponsors.

(7) It is the intent of the Council that District of Columbia residents have equal voting rights as well as equal responsibility to pay taxes and share all the other burdens of U.S. citizenship.

Sec. 3. It is the sense of the Council that the United States Congress should expeditiously pass H.R.1193 (also known as S.603), the No Taxation Without Representation Act of 2001, to promote District of Columbia residents having voting representation in the U.S. House of Representatives and Senate, in addition to taxation.

Sec. 4. The Secretary to the Council shall transmit a copy of this resolution to the officers of both houses of Congress, to the committee chairs which have jurisdiction over District of Columbia affairs, and to the Congresswoman for the District of Columbia.

Sec. 5. This resolution shall take effect immediately upon the first date of publication in the District of Columbia Register.

ENROLLED ORIGINAL

A RESOLUTION

15-565

IN THE COUNCIL OF DISTRICT OF COLUMBIA

June 1, 2004

To declare, on an emergency basis, the sense of the Council in support of federal legislation to meaningfully advance the achievement of voting representation in the Congress of the United States for the residents of the District of Columbia.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Sense of the Council in Support of Voting Rights Advancement in the Congress of the United States Emergency Resolution of 2004".

Sec. 2. The Council of the District of Columbia finds that:

(1) Citizens of the United States who are also residents of the District of Columbia do not have voting representation in their national legislature, unlike the residents of the capitals of all other democratic countries in the world.

(2) These U.S. citizens do not have voting representation even though they pay federal income tax, their children are sent to war by authority of the Congress, and all of their laws are subject to the exclusive jurisdiction of the Congress.

(3) The District of Columbia was established as the federal seat of government through legislation adopted by the Congress over 200 years ago. At the time of the District's establishment, Congress concluded that for then-compelling reasons such a federal enclave was a sensible way of providing a location for our national government. Since then, however, the world has changed, the United States has evolved, issues that may have been relevant 2 centuries ago are not relevant today, and democracy has expanded to all corners of the world and remains a beacon to many. Yet the citizens of the United States who live in our nation's capital do not have voting representation in their national legislature.

(4) The residents of the District of Columbia – whose demographic characteristics include 60% African-American, 31% Caucasian, and 8% Hispanic/Latino - have served proudly in the Armed Forces of the United States. District residents have shouldered a heavy burden and paid the ultimate price for liberty by sending their children into war, including having to endure the loss of more lives in Vietnam than did 10 states. Yet citizens of the District have no vote in the governmental body that can send them and their children to war.

(5) The residents of the District of Columbia pay income taxes of $2 billion annually, which on a per capita basis is higher than every state in the Union except one.

(6) The denial of such a fundamental right as representation to accompany taxation, one of the salient rights upon which our nation was founded and one of the principles of the American Revolution, is an inequity of historic proportions.

(7) Securing the right of voting representation for the people of the District is a moral imperative that should no longer be denied through questionable excuses. All political parties should promote remedying this injustice, unconditionally, as consistent with American democratic principles.

(8) It is a reality, unfortunately, that full voting representation in Congress -- equal to that enjoyed by citizens of the 50 states - may be achieved only through stages or in a number of other ways. Accepting this likelihood allows the opportunity for the citizens of the District to achieve a substantial, meaningful, and historic advancement toward full voting representation.

(9) Such a first but important step can be achieved through any number of ways without creating a political imbalance and consequent liability in the current make-up of the House of Representatives. Therefore, concerns over such political considerations as that balance should not be used to mask this or other unjustified rationales for denying the U.S. citizens of the District representation in the House of Representatives.

(10) The words of President Abraham Lincoln are applicable to the plight of the citizens of the District with respect to their entreaty to the Congress on voting rights. President Lincoln stated: "You cannot escape the responsibility of tomorrow by evading it today." President Lincoln's words some 150 years ago are prescient to this long struggle for representation. He said, "The fight must go on. The cause of civil liberty must not be surrendered at the end of one or even one hundred defeats."

(11) One hundred years later, during the administration of President Dwight D. Eisenhower, and with his strong support, the Congress passed the 23rd Amendment to the United States Constitution granting citizens of the District the right to vote for President of the United States.

(12) Ten years later (but 30 years ago), during the administration of President Richard M. Nixon, and with his strong support, the Congress enacted limited home rule for citizens of the District.

(13) It is time now for the next step toward securing the blessings of liberty for the citizens of the District.

Sec. 3. It is the sense of the Council that:

(1) The Council urges Congress to expeditiously pass H.R. 1285 (also known as S. 617), the No Taxation Without Representation Act of 2003, to grant District of Columbia citizens voting representation in both the U.S. House of Representatives and the U.S. Senate (see Sense of the Council Supporting the No Taxation Without Representation Act Resolution of

2002, effective May 7, 2002 (Res. 14-435; 49 DCR 4487).

(2) As a means to advance the cause, however, full voting representation in either the U.S. House of Representatives or the U.S. Senate in the near term should be supported as a way station and interim step toward full voting representation in Congress for citizens of the District of Columbia.

(3) Expanding the franchise to District citizens has been delayed too long, and Congress should act with immediacy.

Sec. 4. This resolution shall take effect immediately upon the first date of publication in the District of Columbia Register.

Chairman TOM DAVIS. Thank you very much, Chairman Cropp.

We've been joined by Representative Cannon from Utah. Chris, thanks for joining us. Congratulations on your victory yesterday.

Mr. CANNON. Thank you, Mr. Chairman. I apologize, but I have a hearing where I am presenting a bill before the Corrections Committee in just a few minutes. Could I submit an opening statement for the record?

Chairman TOM DAVIS. Without objection, that will be put in.

[The prepared statement of Hon. Chris Cannon follows:]

Statement of Rep Chris Cannon (R-UT)
House Government Reform Committee
Wednesday, June 23, 2004

I thank the Chair for holding this important hearing today that will ultimately conclude with Congress taking the historic step in addressing the rights of the citizens of the District of Columbia. It speaks to the magnitude of the issue that there are 4 legislative proposals being considered today and I am anxious to hear from the sponsors of the various bills that give the District full voting status in Congress.

As many of you know, the State of Utah was extremely close to being allocated an additional seat after the 2000 census. With the inclusion of LDS missionary population abroad we would have been guaranteed that additional seat. A seat that we in Utah feel will most certainly come our way after the 2010 census. With that in mind let me just say that I am supportive of any plan that would

allocate Utah an additional seat until the next census. It is for this reason that I, as well as my colleague Rob Bishop, am an original cosponsor of Chairman Davis's bill.

I remain hopeful that we will see legislation on the floor this year, however, I understand that may be difficult. I hope that through this hearing we begin this important discussion and start to look at the options that are available to us. This is uncharted territory that we are wadding into with boundaries that are not clearly defined. I look forward to scoping out the "District Clause" in Article I, Section 8 of the Constitution. As the Chairman mentioned, this section may grant Congress the authority to expand direct representation for the District's citizens in the Congress.

Mr. Chairman we should view today as a starting point to assess the most appropriate way to provide District residents with voting representation in Congress. I appreciate your leadership in

starting this discussion and look forward to seeing where this will lead.

Mr. CANNON. Thank you very much. I appreciate you holding this hearing and your leadership on the issue. It's a very significant issue for our committee and for the District of Columbia and also for Utah. We appreciate that, and I yield back.

Chairman TOM DAVIS. Thank you very much.

Let me start. Mayor Williams, Ms. Norton is obviously a very effective representative in this city, even without a vote. I can tell you that, being here with her on the committee and everything else. But you have no representation in the Senate, you have no vote on the House floor. And as you look around the country and deal with other mayors and other areas, the city is disadvantaged to that extent, wouldn't you say?

Mayor WILLIAMS. It clearly is. Just one example is in the health care area. Medicaid is a big, big part of our budget. Health care is a big, big part of our budget. The District right now is really, I think, disadvantaged because the Medicaid formula is based on income as opposed to based on the incidence of property in your jurisdiction. We have the highest concentration of poverty in the United States, but we don't have a voice in the Congress in trying to reshape that formula and reshape that fundamental Federal approach to health policy.

This is one example of many. Transportation would be another one.

Chairman TOM DAVIS. And in the case of Medicaid, everybody's admitted they made a mistake in the formulas.

Mayor WILLIAMS. Right.

Chairman TOM DAVIS. And haven't been able to find it, and we've all stood on our heads. I appreciate it, I think that's important to note.

Some who favor statehood for D.C., two Senators as well as a House Member, say they can't support a proposal that provides just the House, that they don't want half a loaf, that they believe it ought to be everything or nothing. And yet, as you look at the history of voting rights in the city, it has been incremental. It started with Presidential voting in 1960, it went to home rule, limited home rule, the first appointed council.

How do you talk to those people and what do you say to those people? I'd just try to say it's been a gradual, incremental approach through time and we're heading in the right direction. But what do you hear in the city on these issues?

Mayor WILLIAMS. I go by the saying, there's an old saying, to plan is human, to implement is divine. It's easy to have a broad, grand plan, and I share that plan. I believe that it is a fundamental injustice that we don't have full representation in the Congress.

But we're still looking, in the civil rights era, we're still looking for full economic empowerment, we're still looking to vindicate civil rights for all Americans. In other words, a step by step approach to civil rights. We're still looking for full vindication of voting rights here in the Congress. It's going to take a step by step approach here. I support legislative autonomy, budget autonomy, a number of measures, voting for a Congresswoman, a number of measures that are not fully satisfactory or sufficient in themselves, but are necessary milestones in getting us to our full destination.

So I reluctantly but at the same time aggressively support a step by step approach, if that gets us to our destination.

Ms. CROPP. Mr. Chairman, if I could just add. Make no mistake, there is no doubt that we would like to have it all. Full voting representation in the Senate and the House, we want it all.

The reality is, right now we probably won't get it all. Our people in the District of Columbia are starving. They are starving for democracy. We have an opportunity to get some vegetables and bread while we're starving, and we haven't had anything to eat in decades. But we have an opportunity to get vegetables and some bread.

We want that for our citizens to keep them alive so that they can keep fighting to get the meat added to their dinner plate. That's the essence of it. We need to move forward so that we can stay alive to fight the continued battle for full democracy.

Chairman TOM DAVIS. Thank you very much. I was going to say, my plan at least gives you a "stake" in the outcome, but I saw—[laughter]—you mentioned, could you lay out more specifically what concerns you have about the city going into Maryland and becoming—what problems does this present if the city were to ever become a part of Maryland and be a full functioning city? Because that's one of the proposals.

Ms. CROPP. I think there are several problems on different front. The District of Columbia for so long has now developed its own identity. The State of Maryland also has its own identity. And that is the basic problem that would happen with that.

In addition to that, I don't think Maryland would necessarily open its arms up to embrace the District, because it certainly would change their political landscape tremendously. So many people have talked about politics being a reality, and that's a very real issue for Maryland, that their political landscape would change.

But beyond that, the District has its own identity and culture, and we believe that we should have our own representatives.

Chairman TOM DAVIS. Thank you very much.

Ms. Norton.

Ms. NORTON. I certainly want to thank both Mayor Williams and the Chair of our Council, Chairwoman Cropp, for what was really very thoughtful testimony. I appreciate your support of my bill and your support of the flexibility I have to have to operate in the House of Representatives. Very tempting, if you all know Eleanor Holmes Norton, I've been here for 14 years, to say, wow, I got a House vote. But of course, the people of the District of Columbia expect me to read between the lines, and that is what I've been doing and will continue to do.

The flexibility I speak of is perhaps heralded by the way Chairman Davis himself has operated on his bill. I have worked with Chairman Davis every step of the way and I'm going to continue to do so. His initial bill, which I have to tell you, District residents in large numbers put their hands up and said, we're for commingled District residents with Maryland residents. But based on the fact that it was a House vote, District residents may just say, I'm for that, because that gets us there. That is not the way to operate in the House of Representatives. Both of you have testified for example that you would not like to see that kind of commingling.

Now, the chairman was only operating from step one. He was still looking at his bill. I didn't jump up and say, oh, my goodness, we couldn't possibly support that. We are in no position to support anything. We need to work with one another just as I am continuing to work with the chairman.

And just as by working with him, his initial bill was changed substantially. It wasn't changed substantially because of anything I did, although we ourselves did our own study. The chairman was continuing to work on the bill himself, and didn't put a bill in until just yesterday. And as with all legislation, he is of course still working on that bill. There's a lot of homework we're still doing. I want to assure everybody I'm doing homework on all these bills.

For example, there's a lot of homework to be done in Utah. All we know about Utah is that Utah is for another vote. Wouldn't you be for one? So everybody, the Democrat and the Republican from Utah says yes, we're for another vote and we're certainly glad if you get us another vote.

But the chairman has not had any opportunity to do any homework in Utah. He's been working on his bill. So nobody knows what the mechanics of Utah are, assuming that's what we're talking about. I raise these issues, not because I believe that this bill is not the way to proceed. On the contrary, everything I do up here is incremental.

I have a bill that I am co-sponsor with the chairman for budget autonomy that we hope to get out this very year which is not full budget autonomy. But it very substantially moves us away from where we are today and toward full budget autonomy. So I want to be clear that I do not oppose incremental approaches. But I have to have the flexibility to do what I do up here every day, and that is to negotiate the best deal for the District of Columbia. And that is what I am going to do.

I am going to work with each and every one of these Members, including Members who have bills that I perhaps could not support ever. I'm going to certainly continue to work with Chairman Davis, who has always been open to changes. And I know the way the House operates. If you continue to work with Members who agree with you on the basic principle, you can ultimately get a bill that will be acceptable to everybody.

We can't do this by leaps and bounds, and we can't do it without knowing what is out there. And so I want everyone to understand my position, which is certainly not one of opposing approaches that edge up to voting rights. I do mean what I say about the Senate. Because it is very hard for me to think of anything I can't do in the House except cast a vote on the House floor. That is a total insult to my constituents, a total and complete insult to my constituents.

Would that the votes were not already determined by the time you get to the House floor. For most Democrats, a vote on the House floor is a mere—well, we do not have a majority, for example. It doesn't determine anything. So one of the things that I am in the process of doing right now is not, it's working on what many residents want to hear, and that this is a way station. What in the hell is that? They want to make sure it's not a permanent station. They want to know, Eleanor Holmes Norton, Linda Cropp, Tony

Williams, specifically tell us how you would make, you would use this opportunity to in fact achieve full voting rights.

I believe that this is a question that can be answered, and I want to invite members of the D.C. City Council, our Mayor to work with me so that we can put this approach on the table, assuming we can work out the considerable political difficulties raised in Utah and even in this Congress, so that we can ask the questions that are already beginning to be asked, and answer the questions that are already beginning to be asked by residents.

In the meantime, I continue to, I am going to continue to work with Chairman Davis specifically on his bill and to encourage him on his approach and to see if we can perfect that approach, along with the bill that I myself have introduced. I thank you both for your work, because your work in the city has been very important in opening the atmosphere here for Republicans and Democrats to want to consider congressional voting rights.

Thank you, Mr. Chairman.

Chairman TOM DAVIS. Thank you very much.

Ms. Watson.

Ms. WATSON. Again, I want to thank the Chair. This debate, discussion and these bills are long overdue. It is my strong feeling that the debate should have happened back when people got full citizenship by being born in this country. Disenfranchisement of any group cannot be justified, unless there has been a crime committed and they lose their rights. I don't feel that the people of the District of Columbia are full citizens because they are victimized by the location in which they choose to live.

There is a fundamental issue here that should be debated. What are the rights of American citizens? I mean, that's the only thing. I don't think an area needs to be ceded back to another area to give you as an American citizen the right to vote. If so, you shouldn't have to pay taxes here.

So I mean, we're discussing something very fundamental here. And to me, it's really simple and it's clear. I'm an ambassador, former Ambassador, and I had to go around and represent the United States in countries that didn't even understand our language or understand our Government. They certainly didn't understand what happened in November 2000. I had to tell them that no, that's not the way we operate.

So how do you go out as someone representing the United States and say, a Democratic process guarantees you certain rights. But should you live in a certain location, you are disenfranchised. What kind of sense does that make, if it addresses the value and the principles of democracy? There is no justification. And I'm different from your representative, because I think that her way is the only way. I don't think there should be a compromise and I don't think it should be sequential. I don't think you need half a loaf. I thought we had debated that decades ago.

But by birthright, you should not be penalized by the site upon which you chose to live. If you're in the continental United States, until your rights are taken away from you because you broke the law, you should have full rights. So my question to the panel, do you feel that there is a penalty placed on you because you chose to live in the cradle of democracy, our Capital?

Ms. CROPP. There's no doubt that there is a very severe penalty placed on us. Ironically, someone who lives in one other State can just decide to move the very next day. And they lose what rights and privileges they had.

You know, you're supposed to be able to move about this country and have certain basic rights as you move. Isn't it ironic that someone could move from California and in 1 day, 1 hour, 3 hour trip, 4 hour trip and all of a sudden they lose their rights and privileges of having voting representation in the Congress of the United States? There's something wrong with that.

Mayor WILLIAMS. I think there clearly is a penalty by virtue of where our citizens choose to live. It puts the city and it certainly puts our leadership in a very untenable position, it's a difficult position. And from the very origins of our city, 200 or so years ago, there was a Mayor and a Council, they would all talk about voting rights for the city. And at that time the Congress would threaten to just pull the Federal Government out of town. They would tell them, instead of talking about voting rights, why don't you build roads, then it wasn't paving roads, it was like, take the trees off the roads, light the streets, take care of basic business, instead of sitting here complaining about voting rights.

This is not a new issue. This has been going on for decades and decades and decades. And it's still not right. It still hasn't been fixed.

Ms. WATERS. If I may just finish, Mr. Chairman, I just want to say I watch every day your representative, Ms. Norton, involve herself in all issues of the committee's province. And we all rush to the floor to vote on budgetary items and so on, and has no voice for you. There is something fundamentally wrong with that.

Thank you, Mr. Chairman.

Chairman TOM DAVIS. Thank you very much.

Mr. Van Hollen wants to make a statement before he leaves. Thanks for being here.

Mr. VAN HOLLEN. Thank you very much, Mr. Chairman. Thank you, Mayor Williams, Chairman Cropp, for your testimony. And as I understand both of your testimony, out of the four proposals that are before us now, the two that involve Maryland, as I understand, in your opinion are probably the most complicated, the most difficult to enact and at least at this point in time, the least desirable, although obviously they involve a conversation with the people of the District of Columbia and Maryland. Is that my understanding of your positions?

Ms. CROPP. That's correct.

Mr. VAN HOLLEN. OK. That leaves of course the proposal of Chairman Davis and of course the legislation of Congresswoman Norton. As I said, I strongly support the legislation put forward by Congresswoman Norton, but I also understand that when you're trying to achieve a goal, sometimes you have to take steps along the way.

So I look forward to working with Congresswoman Norton and Chairman Davis, I think, as his proposal has also been put forth in good faith. I want to work with her and all of you and the people of the District of Columbia to see whether we can't move forward on this. I would very much like to see us get to the end game of

a full voting rights, as expressed in Congresswoman Norton's proposal right away. But I look forward to working with her and all of you to see if there isn't some proposal that moves us in the direction just on the way to full voting rights.

I don't know whether that's possible. But I just want to say to both the chairman and Ms. Norton, I look forward to working with you to try and accomplish that.

Chairman TOM DAVIS. Thank you very much, Mr. Van Hollen.

Mr. Shays.

Ms. SHAYS. Thank you. First I want to say that when I was elected, shortly after a member named Tom Davis came to Congress, I wasn't quite sure whether he represented Washington, DC, or northern Virginia. [Laughter.]

Because he took such a great interest in Washington, DC, I was very proud——

Chairman TOM DAVIS. That doesn't help me in northern Virginia, I just wanted to let you know that. [Laughter.]

Mr. SHAYS. I was very proud that he did that, and I was very proud he did it as a Republican. And I'm very proud of him now for bringing this legislation forward. I would respond to Ms. Watson's comment, because I agree with part of it, but I don't agree with all of it. I think it is absolutely clear that representation in the House of Representatives needs to happen. And the best way it can happen, we should do it. I wrestle with the whole issue of Senatorial, whether a city-State of a half a million plus people should have two Senators.

And we can get into an impassioned speech about that, but the absurdity is looking at a place like California. I know California has two representatives, but I don't think it's easy for someone to have access to those two Senators from California. A little easier if you come from a State like Delaware, or Connecticut. So we do have that distortion, and that's what it is.

My own view, it seems so clear to me, Virginia basically took part of the 10 mile square and I think it's so logical that the erst of Washington should be part of Maryland. But that's not going to happen, for political reasons it's not going to happen.

So I just want to applaud both of you for what I think your testimony is. You may agree ultimately that you need two Senators and a representative. But you have an extraordinary representative, Ms. Norton, who doesn't have the legal rights that I have. Just think what you could do when she has that capability, to be able to stand on the floor to vote on any issue.

And to move the ball forward, to me, is absolutely essential. And I would hope that Republicans and Democrats alike would want to do that. Otherwise, I think we could be debating this 50 years from now. Because the political reality is, it didn't happen under a Democratic President, it didn't happen under a Republican President, it didn't happen under a Democratic Congress, it didn't happen under a Republican Congress. It's going to take both parties to get together and find a solution.

And it's going to have to be a compromise. I'd like to know if I've said anything that you find particularly objectionable in what I've said, to either one of you.

Mayor WILLIAMS. First of all, Congressman, thank you for your support for voting rights in the House and the general notion of representative democracy.

I would just say, and I'm not expert, but it just seems that States were recognized in the Union and given Senate representation on the basis of fundamental principles of democracy, yes, with consideration of politics, yes, but also with due regard to their history and their culture and their tradition. And Washington, whether we like it or not, has now over 200 years developed a distinct culture and experience and history that should be recognized. It isn't just a matter of, with deep, deep respect, in my mind it isn't just a matter of politics.

Ms. CROPP. I want to thank you for your support and your understanding of receiving congressional representation. I'd like to talk to you later on about Senate representation. And I understand the differences.

But when you look at the District of Columbia and look at our population and you compare it with several other States, and we are a city-State at this point, but when you compare it with several other States who also have Senate representation, you look at our population, you look at our income, I think that we still, we too should have that type of Senate representation.

When the country was developed, it wasn't the House for the population component of it, and my telling you about this is like telling Noah about a flood. You know it all much better than I. But the Senate was just to make sure that a State had, each State had some type of equal representation, regardless of size or population. So I would think that the District of Columbia would also fall under that.

Mr. SHAYS. OK, but I would just say, and obviously Maryland has to be a willing player in this. But in the end, you solve the problem. There can be no argument that people in D.C. would not have a voice in the Senate if they get to choose a Senator in the State of Maryland. And that's a fact. That's a fact. They would get to vote.

And so the argument that Ms. Watson makes to me is answered.

Ms. CROPP. Yes, but I'm not talking about the District going to Maryland. I'm saying our own separate Senate.

Mr. SHAYS. I understand that. I'm talking about it going to Maryland. But my point is, we do resolve the issue that Ms. Watson raises. You would be able to vote for both. But in the end, I guess I would just conclude, because my light is red here, seize this opportunity, seize it as a precious, precious opportunity. Don't let it get away.

Ms. CROPP. It's our first step, and we extend our hands and join with Members of Congress to please make this a reality.

Chairman TOM DAVIS. Thank you very much.

I'm going to dismiss the panel, we have another panel to come in. I know you have other things to do. Thank you very much for being here. The committee will take a 2-minute recess as we move to the next panel.

[Recess.]

Chairman TOM DAVIS. We will hold the record open, I know we couldn't get every interested group who had comments before the

committee today to testify, but we will take testimony for the record and submit into the record statements from other groups. I think we'll leave the record open for 10 days if they want to submit them to the committee and make them part of this.

We now move to our third panel. It is a very distinguished panel indeed. We have Wade Henderson, esq., executive director of the Leadership Conference on Civil Rights. We have the Honorable Kenneth W. Starr, who's a former solicitor general of the United States, former Judge, U.S. Court of Appeals for the District of Columbia Circuit, a partner in Kirkland and Ellis, and soon to be dean of the Pepperdine University School of Law. Congratulations, Judge Starr.

We have Ilir Zherka, the executive director of D.C. Vote. We have Walter Smith, the executive director of the D.C. Appleseed Center for Law and Justice. We have Betsy W. Werronen, who is the chairwoman of the D.C. Republican Committee, and Ted Trabue, who's here on behalf of the Greater Washington Board of Trade.

Since we're the major investigatory committee in Congress, we swear everybody in. So if you'd rise with me and raise your right hands.

[Witnesses sworn.]

Chairman TOM DAVIS. Thank you. We're going to start, Mr. Henderson, with you, and we'll move on down the line. We have a button in front of you, it will turn, it will be green for 4 minutes, it will be orange for 1 and then red. Your entire statements are without objection put into the record, so the entire statement is in the record. To the extent you can stay within that 5 minutes, it helps us in bringing the issues and we can move to questions.

You are a very important part of this, we appreciate your being here. We had opportunities to hear from literally dozens of groups and selected you to appear here before us today to answer questions. So we will start with you and move straight on down. Thank you all very much.

STATEMENTS OF WADE HENDERSON, ESQ., EXECUTIVE DIRECTOR, LEADERSHIP CONFERENCE ON CIVIL RIGHTS; KENNETH W. STARR, FORMER SOLICITOR GENERAL OF THE UNITED STATES; FORMER JUDGE, U.S. COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT; ILIR ZHERKA, EXECUTIVE DIRECTOR, D.C. VOTE; WALTER SMITH, EXECUTIVE DIRECTOR, D.C. APPLESEED CENTER FOR LAW AND JUSTICE, INC.; BETSY W. WERRONEN, CHAIRWOMAN, THE DISTRICT OF COLUMBIA REPUBLICAN COMMITTEE; AND TED TRABUE, REGIONAL VICE PRESIDENT FOR DISTRICT OF COLUMBIA AFFAIRS, PEPCO; GREATER WASHINGTON BOARD OF TRADE

Mr. HENDERSON. Thank you, Mr. Chairman. And thank you to the members of the committee for the opportunity to testify on voting representation in Congress for the citizens of the District of Columbia.

My name is Wade Henderson, and I am the executive director of the Leadership Conference on Civil Rights. The Leadership Conference is the Nation's oldest, largest and most diverse coalition of civil and human rights organizations. We strongly support efforts

to give citizens of the District of Columbia full voting representation in the U.S. Congress. And indeed, voting rights for D.C. citizens is one of the compelling human and civil rights issues of our time.

Now, at the outset of this hearing, I want to commend you, Mr. Chairman, for your leadership on this important issue, which has earned you well deserved respect on both sides of the political aisle and all sides of the District line. I also want to thank Delegate Norton for her longstanding and tireless effort to promote equal rights for the residents of the District of Columbia.

The fact that there are now four house bills on the subject is a significant and important development toward closing a gaping hole in the fabric of American democracy. That the bills have been introduced by Republicans and Democrats is a hopeful sign of the return of bipartisanship that has characterized the passage of every major civil rights law, including the 1978 amendment that would have given the District full representation in both houses if it had been ratified by the States.

This hearing and the debate about these bills could not be more timely. Citizen soldiers from every State and the District of Columbia are fighting and dying in Afghanistan and Iraq. All of them except for soldiers of the District of Columbia were represented when Congress decided their fate in 2002, and when Congress decided how much to spend on training, weapons, safety equipment and medical systems, on which their lives would later depend, deciding in effect how much their lives were worth in political terms.

We are only days away from transferring sovereignty to an interim Iraqi government, which will be responsible for holding free elections by early next year. If and when those elections come, and Iraqis are given a chance to elect their own leaders, they will enjoy a right denied to hundreds of thousands of U.S. citizens. The leadership conference strongly believes that remedying the lack of voting rights for the District is the responsibility of Congress and within Congress' legislative power under Article I, Section 8 of the Constitution. The Federal Appellate Court's decision in *Alexander* v. *Daley,* upheld by the Supreme Court in 2001, agreed that it was unjust to deny District residents congressional representation, and made clear that the legislation by Congress was the appropriate remedy.

It is deeply gratifying that we are here today to discuss how to provide voting rights to the District, rather than whether to provide them. Now, initially, I want to turn to H.R. 1285, Delegate Norton's No Taxation Without Representation Act of 2003. The leadership conference has consistently supported this bill and its predecessors as introduced in the House by Delegate Norton and in the Senate by Senator Joe Lieberman.

Of the bills discussed today, the Norton bill is the simplest, fastest and most direct route to providing full voting representation in Congress for residents of the District of Columbia. We believe that it avoids many of the Constitutional problems that we will discuss subsequently, so I want to reiterate endorsement of H.R. 1285.

Now, turning to the specific legislation that is before us today as well, let me first address your bill, Mr. Chairman, the District of Columbia Fairness in Representation Act [D.C. FAIR Act]. Without

question, the legislation would effect a positive change for the residents of the District by giving them some congressional representation. As such, it would be an improvement over the status quo. And we commend the chairman for introducing it.

D.C. FAIR's approach to creating voting rights for District residents is particularly creative. By simultaneously creating a second, temporary congressional district, widely expected to go to Utah, the legislation would likely have no immediate effect on the congressional balance of power between Republican and Democratic parties. One would hope that this would disarm those who shamelessly oppose voting rights for District citizens for purely partisan political reasons. Now, while we appreciate that the bill is intended to further the cause of voting rights by providing the District with a voting Member of the House of Representatives, we must be clear that it would not provide and equal rights for the residents of the District, because it doesn't include Senate representation.

We understand the chairman's intent that the bill serve as a politically practical first step toward voting rights for the District, however, we fear that others might use such a compromise to short circuit efforts to provide full voting representation. Congressman Rohrabacher's District of Columbia Voting Rights Restoration Act would give District residents the right to vote in Federal elections as citizens of Maryland. It is another creative approach to the problem, and worthy of serious consideration.

Of particular importance, the bill's finding of fact, laying out a case for congressional authority to provide voting representation for District residents, is an important addition for any statute on this subject. And we also encourage that the bill would give District residents representation in both Houses. Now, perhaps intended as a political tradeoff, the bill would go beyond congressional elections and treat District residents as citizens of Maryland for the purpose of Presidential elections. While we agree that Congress has full legislative authority to grant congressional representation to the District, we do not agree that it has the power to terminate the District's electoral votes.

The plain language of the 23rd amendment grants electoral college participation to the District and specifically empowers Congress to enforce that grant, not terminate it. Representative Regula's bill, the District of Columbia-Maryland Reunion Act, is perhaps the most drastic of the four proposals, but also the only one with a clear statutory precedent. As the committee is aware, the area west of the Potomac ceded to the Federal Government by Commonwealth of Virginia was returned to Virginia in 1846. The leadership conference agrees with the premise of H.R. 381, that defining a national capital service area that would be retained by the Federal Government as the District of Columbia, all Constitutional requirements for the District would be satisfied, leaving Congress free to return the remainder of Washington to the State of Maryland.

Unfortunately, there is no indication at this time that the State of Maryland or its citizens would accept the return of the District, not that I would propose it, as a District resident. But without question, the political and economic consequences of retrocession would be dramatic and far-reaching for the city of Washington, the

State of Maryland and all the residents of both. We submit that H.R. 381 is premature. Before it is given serious consideration in Congress, funds should be appropriated for an in-depth study of the economic and political consequences of retrocession, including a survey of the residents of both Maryland and the District, to determine whether there is any support for retrocession in the city or the State.

We are also concerned about the unintended consequences of all three bills. Implementation of new congressional districts would require redrawing of congressional boundaries in Utah and/or Maryland. Now, we have already seen the political and legal chaos created by partisan-inspired, mid-decade redistricting schemes in Texas and Colorado. We believe that the Texas plan is both unConstitutional and anti-democratic, and I'm deeply troubled by its potential effect on the voting rights of racial and ethnic minorities.

While clearly not intended to do so, a Federal statute requiring redistricting, even to add a temporary House seat, would set a dangerous precedent that would surely be used as political and legal fodder in future mid-decade redistricting. While it would not be our first choice, if in Congress' judgment there is no other way to pass a bill creating voting representation for the District, we would recommend including protections against politically motivated redistricting sought by either political party. Congress could accomplish this goal by specifically defining the new congressional district boundaries and legislation creating the District, and by prohibiting any mid-decade redistricting of congressional seats, other than the initial post-census redistricting, unless specifically authorized by Federal statute.

Absent this protection, we see no real way of going forward in a significant way. I see my time has expired. I apologize for going over. We think this is an important step. We commend you again for taking the initiative to address these issues. Thank you for introducing your bill, and I think we've made clearly the positions of the leadership conference on all four.

[The prepared statement of Mr. Henderson follows:]

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TESTIMONY OF
WADE HENDERSON, EXECUTIVE DIRECTOR
LEADERSHIP CONFERENCE ON CIVIL RIGHTS

BEFORE THE
COMMITTEE ON GOVERNMENTAL REFORM
UNITED STATES HOUSE OF REPRESENTATIVES

ON

VOTING REPRESENTATION IN CONGRESS
FOR THE CITIZENS OF THE DISTRICT OF COLUMBIA

JUNE 23, 2004

Mr. Chairman and members of the Committee, thank you very much for the opportunity to testify today on voting representation in Congress for the citizens of the District of Columbia. My name is Wade Henderson, and I am the Executive Director of the Leadership Conference on Civil Rights. The Leadership Conference is the nation's oldest, largest and most diverse coalition of civil rights groups, consisting of more than 180 national organizations, representing persons of color, women, children, labor unions, individuals with disabilities, older Americans, major religious groups, gays and lesbians and civil liberties and human rights groups. Together, over 50 million Americans belong to the organizations that comprise the Leadership Conference on Civil Rights. The Leadership Conference holds as a guiding tenet that all citizens of the United States must be treated equally under the law. We strongly support efforts to give citizens of the District of Columbia full voting representation in the United States Congress.

At the outset of this hearing, I want to commend you, Mr. Chairman, for your leadership on this important issue. The fact that there are now four House bills on the subject is a significant and important development toward closing a gaping hole in the fabric of American democracy.

This hearing and the debate about these bills could not be more timely. Our citizen-soldiers from every state and the District of Columbia are fighting wars in Afghanistan and Iraq. Men and women from all branches of the military and the National Guard are risking their lives every day. Over 800 Americans have died in Iraq and Afghanistan, with more deaths and injuries suffered daily; citizens of almost every state have been killed in these wars, as have citizens of the District of Columbia.

Most of these soldiers share one thing in common: they had the opportunity to vote for the members of Congress whose vote in 2002 sent them to war in Iraq. Later this year, those who have survived will have the opportunity to express their approval or disapproval of the Congress that sent them to war.

All of them will, except the soldiers from the District of Columbia, who were unrepresented when Congress decided their fate in 2002. They were unrepresented in 2003, and again this year, when Congress wrote the laws that determined the levels of funding, equipment and support they would receive. They were unrepresented every year before, when Congress decided how much to spend on the training, weapons, safety equipment and medical systems on which their lives would later depend – deciding, in effect, how much their lives were worth.

When we vote this November, they will have no opportunity to express their support or dissent for the declaration of war or the nation's preparation for war. They will have no opportunity to vote for the Representatives or Senators of the next Congress, which will write the laws that determine the funding, support and equipment they'll receive in Iraq, Afghanistan and throughout the world. They will have no opportunity to vote for the Congress that might send them to another war.

When the war in Iraq began, we heard a great deal about the hundreds of thousands of Iraqi conscripts who were forced to serve in Saddam's army. They had no choice and had no voice in bringing about the war and there is no way to know how many of them were killed. The men and women of the District's National Guard unit and military reservists from the District were given no choice when they were called up to active duty and sent to Iraq. It is a tragic irony that the brave soldiers of the District also had no voice in bringing about the war in which some of them have been killed.

Among the oft-cited justifications for the wars is to deliver freedom, democracy and self-governance to the people of Iraq and Afghanistan. We are only days away from transferring sovereignty to an interim Iraqi government, which will be responsible for holding free elections by early next year. If those elections come and Iraqis are given the chance to elect their own leaders, they will enjoy a right denied to hundreds of thousands of United States citizens.

As the Chairman's bill points out, residents of the District of Columbia have fought and died for their country in every war since the American Revolution. They have also paid their full share of federal income taxes, social security taxes, gas taxes and more; and they will pay their full share of the interest on deficit spending approved by this Congress to fund the war in Iraq and other programs.

District residents bear the full burdens of citizenship while being denied the national and local privileges of citizenship. Congress freely exercises its powers under the District Clause of Article 1, Section 8 of the Constitution to review every line of the District's local budget, frequently vetoing how District residents chose to raise and spend local tax revenue. Would the residents of Omaha accept such extensive federal intrusions into local issues? Would Congress tell them "not only are we going to decide how much your local taxes your city health department can spend on public health, but when we vote, your Representative and both Nebraska Senators are going to be told to sit this one out?" Of course they wouldn't accept it; and Americans from every other state would consider it an outrage.

The right to vote is nothing short of the definition of democracy. It is a fundamental civil and human right and a focal point of America's efforts to promote freedom throughout the world.

Yet our failure to provide this basic right to the citizens of our nation's capital saps the strength of our call for human rights abroad. It is a hypocrisy that can give others an excuse to ignore us when we try to spread democracy and invites the scorn of the international community. It has caused widespread concern among international institutions that the United States is violating the human rights of its own citizens at the same time it is pressuring other countries to address violations of their citizen's human rights.

Most notably, the Inter-American Commission on Human Rights (IACHR) of the Organization of American States (OAS) concluded in December of last year that the U.S. government is in violation of Articles 2 and 20 of the American Declaration of the Rights and Duties of Man, which lays out the fundamental human rights principles that OAS members, including the United States, must observe under the OAS charter. Article 2 of the Declaration states that "(a)ll persons are equal before the law and have the rights and duties established in this Declaration, without distinction as to race, sex, language, creed or any other factor." Article 20 states that "(e)very person having legal capacity is entitled to participate in the government of his country, directly or through his representatives, and to take part in popular elections, which shall be by secret ballot, and shall be honest, periodic and free."

The OAS reached its conclusion after nearly ten years of proceedings, which were initiated when a petition was filed by the Statehood Solidarity Committee, an organization of DC residents led by Timothy Cooper. In its ruling, the OAS found that the right of DC citizens to vote and participate in government have been "curtailed in such a manner as to deprive the Petitioners of the very essence and effectiveness of that right," and that the U.S. government could not articulate any reasonable justification for this denial. In a finding that should be particularly embarrassing, the OAS also pointed out that as far as it knew, "no other federal state in the Western Hemisphere denies the residents of its federal capital the right to vote for representatives in their national legislature."

Similar concerns have also been raised by and with other international bodies. The U.N. Human Rights Committee received a complaint in March 1995, again from the Statehood Solidarity Committee, that the disenfranchisement of D.C. residents amounted to violations of human rights under articles 25 and 26 of the U.N. International Covenant on Civil and Political Rights (ICCPR). This led to the United States being questioned about the issue on the floor of the United Nations, for the first time in history. And in 2001, the U.N. Committee on the Elimination of Racial Discrimination (CERD) was presented with a brief showing that the disenfranchisement of D.C. residents violates articles 2 and 5 of the U.N. Covenant on the Elimination of All Forms of Racial Discrimination, leading to representatives of the United States being questioned by the Committee. In both instances, U.N. committee members expressed dissatisfaction with the U.S.'s failure to present adequate reasons for denying D.C. residents a fair and equal vote. As Timothy Cooper pointed out upon the release of the most recent ruling by the OAS, on the continuing lack of voting rights for D.C. residents, "America can run but it cannot hide from the judgment of the international community."

The Leadership Conference strongly believes that remedying the lack of voting rights for the District is the responsibility of Congress and within Congress' legislative power under the District Clause. The appellate court's decision in Alexander v. Daley, upheld by the Supreme

Court in 2001, agreed that it was unjust to deny District residents congressional representation and made clear that legislation by Congress was the proper remedy.

We are grateful for the Chairman's sincere interest in ending this injustice and for his leadership, along with Delegate Norton, on this important human rights issue. It is deeply gratifying that we are here today to discuss how to provide voting rights to the District, rather than whether to provide them. It is also a hopeful and important sign that the four bills at issue in this hearing – the Chairman's, Delegate Norton's and those filed by Representatives Rohrabacher and Regula – have been introduced by Republicans and Democrats, marking a return to bipartisanship. Clearly, both parties have an equal interest in protecting and preserving the fundamental tenets of our democracy.

Turning to the specific legislation, let me first address the Chairman's bill, the "District of Columbia Fairness In Representation Act" (D.C. FAIR Act). Without question, the legislation would effect a positive change for the residents of the District by giving them some congressional representation. As such, it would be an improvement over the status quo and we commend the Chairman for introducing it.

D.C. FAIR's approach to creating voting rights for District residents is particularly creative. By simultaneously creating a second, temporary new congressional district, widely expected to go to Utah, the legislation would likely have no immediate effect on the congressional balance of power between the Republican and Democratic parties. One would hope that this would disarm those who shamelessly oppose voting rights for purely partisan political reasons.

While we appreciate that the bill is intended to further the cause of voting rights by providing the District with a voting member of the House of Representatives, we must be clear that it would not provide full and equal rights for the residents of the District. The bill makes no attempt to provide Senate representation for District residents, perpetuating their second class status as the only American citizens who aren't represented by two United States senators. We understand the Chairman's intent that the bill serve as a politically practical first step toward voting rights for the District; however, we fear that others might use such a compromise to short-circuit efforts to provide full representation. This result would perpetuate the fundamental injustice we are all attempting to remedy and would not be acceptable to the Leadership Conference.

We are also concerned about the unintended consequences of creating the second congressional district. Even though it would be temporary, to implement the new congressional district, Utah would have to redraw its congressional boundaries before the first congressional election after enactment of the bill. The Leadership Conference opposes any attempt to redraw congressional districts other than the constitutionally mandated reapportionment and associated intrastate redistricting that follows each decennial census.

We have already seen the political and legal chaos created by partisan-inspired mid-decade redistricting schemes in Texas and Colorado. We believe that the Texas effort is both unconstitutional and anti-democratic, and we are deeply troubled by its potential effects on the

voting rights of racial and ethnic minorities. A federal statute that required a state to conduct mid-decade redistricting would encourage future efforts to undermine election results through redistricting. While clearly not intended to do so, requiring redistricting even to add a temporary House seat would set a dangerous precedent that would surely be used as political and legal fodder in future mid-decade redistricting battles.

While it would not be our first choice, if in Congress' judgment there is no way to pass any bill creating voting representation for the District of Columbia without preserving the current balance of power between the political parties, we would recommend that the bill include protections against politically-motivated redistricting sought by either party. Congress could accomplish this goal by specifically defining the new congressional district boundaries in the legislation creating the district and by prohibiting any mid-decade redistricting of congressional seats other than the initial post-census redistricting unless specifically authorized by federal statute.

It is a particularly inappropriate time for Congress to allow redistricting that may harm the voting representation of racial minorities. The Voting Rights Act of 1965, one of the most important civil rights laws in our nation's history, will soon be up for reauthorization. In the 109th Congress, reauthorization bills are sure to be introduced and hearings will be held. Redistricting is a central issue in the Voting Rights Act, and with its reauthorization looming, we must be particularly careful when considering any laws that will change district boundaries. Absent a way to address the concerns discussed here, we see no way to proceed on this bill in the short-term.

Next, I turn to HR 3709, Congressman Rohrabacher's "District of Columbia Voting Rights Restoration Act of 2004." First, let me commend the Congressman for introducing the bill. Giving District residents the right to vote in federal elections as citizens of Maryland is another creative approach to the problem and worthy of serious consideration. Of particular importance, the bill's findings of fact laying out a case for congressional authority to provide voting representation to District residents is an important addition for any statute on this subject. We are also encouraged, and strongly support the principle, that under the bill District residents would have the right to vote for representatives in both houses of Congress, as do the citizens of every state.

Perhaps intended as a political trade-off, the bill would go beyond congressional elections and treat District residents as citizens of Maryland for the purpose of presidential elections. Again, the idea is creative and worth considering, however we have several serious reservations. Under the terms of the 23rd amendment, District residents are already included in the Electoral College for selection of the President and Vice President. In fact, given the District's population, their representation in the Electoral College is exactly what it would be if the District was a state. As a result, section 4 of the bill seems to be fixing a problem that does not exist. Further, it would have the effect of diluting the Electoral College participation of both District residents and the citizens of Maryland by reducing their total number of electoral votes by two.

Additionally, section 4, subparagraph (c) asserts that Congress has the authority under the 23rd amendment and article I, section 8 of the Constitution to strip the District of its electoral

votes. While we agree that Congress has full legislative authority to grant congressional representation to the District, we do not agree that it has the power to terminate the District's electoral votes. The plain language of the 23rd amendment grants Electoral College participation to the District and specifically empowers Congress to enforce that grant, not to terminate it.

As does the Chairman's bill, H.R. 3709 would also temporarily create two new congressional districts. As discussed in detail above, the second district would effectively require Utah to conduct mid-decade redistricting, which we strongly oppose. Unlike the D.C. FAIR Act, H.R. 3709 would make Washington, D.C.'s congressional district a part of Maryland's delegation. Section 6, subparagraph (c) places several restrictions on how Maryland would define the boundaries of its new district. We applaud the intent of the section, which appears to be designed to benefit District residents, but have concerns about the constitutionality of the particular mechanisms employed.

Specifically, without regard to Washington's population relative to Maryland's other congressional districts, subparagraph (c)(2) would initially define the new seat as consisting exclusively of the area of the District of Columbia. While we appreciate the practical appeal of the definition, courts have consistently applied the "one person, one vote" rule to voting districts within a state and have held that districts with disparate populations are unconstitutional. To avoid this problem, Maryland would be forced to immediately redistrict its entire delegation, a process that we have made clear that we oppose.

Representative Regula's bill, the "District of Columbia-Maryland Reunion Act" (H.R. 381), is perhaps the most drastic of the four proposals, but also the only one with clear legislative precedent. As the Committee is aware, the area west of the Potomac ceded to the federal government by the Commonwealth of Virginia was returned to Virginia by federal legislation in 1846. The Leadership Conference agrees with the premise of H.R. 381 that by defining a National Capital Service Area that would be retained by the federal government as the District of Columbia, all constitutional requirements for the District would be satisfied, leaving Congress free to return the remainder of Washington to the state of Maryland.

Retrocession to Maryland is a legitimate topic of discussion and presents one advantage to District residents that is lacking in the other bills. By making the District part of Maryland for all purposes, it would provide current Washington residents with full and equal rights in all federal, state and local matters. The other bills would provide varying levels of federal representation for District residents, but would not provide any of the self-determination in state and local matters that is enjoyed by citizens of the states and currently denied to residents of Washington.

In varying forms, the idea of retrocession to Maryland has been considered for quite some time. Unfortunately, there is no indication at this time that the state of Maryland or its citizens would accept the return of the District. Without question, the political and economic consequences of retrocession would be dramatic and far-reaching for the city of Washington, the state of Maryland and all of the residents of both. We submit that H.R. 381 is premature. Before it is given serious consideration in Congress, funds should be appropriated for an in-depth study of the economic and political consequences of retrocession, to be followed by a survey of the

residents of Maryland and the District to determine whether there is any support for retrocession in the city or the state.

An additional practical problem with the bill is that even if it is enacted and Maryland passes a law accepting retrocession, the retrocession would not take effect until a separate constitutional amendment was passed and ratified repealing the 23rd amendment. We should not forget that in 1978, with strong bipartisan support in both Houses, Congress passed an amendment that would have given the District full voting representation in Congress and repealed the 23rd amendment. The amendment expired before coming anywhere near being ratified by the required 38 states.

It is also worth noting that the transition provisions in section 5 of the bill would have to be significantly changed in order to pass constitutional muster. The bill creates an extra House seat for Maryland that would last until the next post-census reapportionment and installs the then-current Delegate from the District of Columbia as the new House member for the entire time. Depending on the date of retrocession, the plain language of section 5 could create an unelected member of Congress with a term lasting any time up to 10 years.

Finally, I turn to H.R. 1285, Delegate Norton's "No Taxation Without Representation Act of 2003." The Leadership Conference has consistently supported this bill and its predecessors, as introduced in the House by Delegate Norton and in the Senate by Senator Lieberman. Of the bills discussed today, the Norton bill is the simplest, fastest and most direct route to providing full voting representation in Congress for the residents of the District of Columbia.

We remain deeply grateful to Delegate Norton for her tireless efforts on behalf of voting rights for the residents of the District of Columbia and reiterate our endorsement of H.R. 1285.

The Leadership Conference believes it is time to move forward on the important legislation under discussion today. Residents of the District of Columbia dutifully comply with the civic responsibilities and obligations required by our democratic form of government, they pay taxes and they serve in our armed forces. Yet they are blatantly deprived of many of the essential rights and privileges of citizenship enjoyed by all other Americans. This is an issue of simple justice and fairness.

Residents of the District of Columbia are the only United States citizens today who pay federal income tax each year (and pay at the second highest per capita rate in the nation) yet are denied voting representation in the Congress. It is an affront to American history, dating back to the birth of the nation, when one of the rallying cries of the American Revolution was the phrase "no taxation without representation."

In America's early years, before the District was established in 1800, the residents of the city of Washington were able to vote for representatives in Congress, as citizens of either Maryland or Virginia. There is no prohibition on restoring voting representation in Congress for citizens of the District of Columbia.

In preparing for today's hearing, I was struck by the breadth of support for D.C. voting rights in the years leading up to the 1978 Constitutional Amendment. Like most pieces of

enacted civil rights legislation, there was a time when voting rights for the citizens of the District of Columbia had strong bipartisan support. Listen to some of the voices, voices you might not have expected to hear:

- President Richard Nixon -- *It should offend the democratic sense of this nation that the citizens of its capital... have no voice in the Congress.*
- Senator Robert Dole -- *The Republican party supported DC voting representation because it was just, and in justice we could do nothing else.*
- Senator Robert Byrd -- *The people of the District... suffered more lives lost in the Vietnam War than 10 states... conscription without representation.*
- Assistant Attorney General (now Supreme Court Chief Justice) William Rehnquist -- *The need for an amendment at this late date in our history is too self-evident for further elaboration; continued denial of voting representation from the District of Columbia can no longer be justified.*
- Senator Howard Baker -- *We simply cannot continue to deny American citizens their right to equal representation in the national government... this basic right is a bedrock of our Republic that cannot be overturned.*

America has long been the leading advocate for democracy and representative government throughout the world. It is now time to preach democracy at home. I urge the Congress to bring democracy home to the citizens of the District of Columbia. We should give those who live within the shadow of the Capitol the basic American right to full representation in the Congress of the United States.

Thank you for the opportunity to appear before the committee today. Again, I commend you, Mr. Chairman, for your leadership on this fundamental civil and human rights issue.

Chairman TOM DAVIS. Thank you very much.

Judge Starr, thank you for being with us.

Judge STARR. Thank you, Mr. Chairman.

My comments go exclusively to the issue of the Constitutional authority of the Congress to effect one or more changes. I will not discuss, as I know others are, the policy, much less the political implications.

In my judgment, Congress does enjoy authority to create a seat in the House of Representatives, fully voting seat. And the source of authority I find in Article I, Section 8, the great powers clause or provision of the Constitution, which then enumerates a number of specific rights, particularly of relevance here, Clause 17, which is worded quite broadly and quite majestically. I note that it precedes the grand necessary and proper clause, which has been authoritatively interpreted by Chief Justice John Marshall early in the history of the Republic to grant enormous powers to the Congress of the United States.

The language is quite simple, yet very broad, to exercise exclusive legislation in all cases whatsoever over the District of Columbia. This is plenary power. But as Congress' powers over the District are not limited to simply the powers that a State legislature might possess over a State. But as emphasized by Federal courts on numerous occasions, including the Supreme Court, the Seat of Government clause is majestic.

In the words of the Supreme Court, "The object of the grant of exclusive legislation over the District was, therefore, national in the highest sense. . . . In the same article which granted the powers of exclusive legislation . . . are conferred all the other great powers which make the Nation." My structural point. The location of the Seat of Government clause in a section of the Constitution that confers broad powers on the Congress. The language I quoted was from 1933, The *O'Donoghue* v. *the United States.*

Now, the Constitution does not speak to voting rights, and it certainly does not speak to the voting rights of those in the seat of government. And in light of that, some textualists and indeed, some courts, have insisted that Article I effectively disenfranchises the District's residents in congressional elections, barring an amendment to the Constitution. In my view, that's quite wrong. Legislation to enfranchise the District's residents presents an entirely and altogether different set of issues from those that courts have addressed in calling into question the scope of congressional power.

And while it's true that the Constitution does not affirmatively grant the right to vote in congressional elections, to District elections, it does grant Congress plenary power to govern the District's affairs. Thus, when we look at the entire cascade of cases over our two centuries, the Judiciary has rightly shown considerable deference where Congress announces its considered judgment that the District should be considered as a State for specific legislative purposes.

I cite too, Congress we now know may exercise its power to regulate commerce across the District's borders, even though the Commerce Clause of Article I refers only to commerce among the several States. Congress may also, as we now know, bind the District

with a duly ratified treaty which allowed citizens of France to inherit property in the States of the Union, a decision by the Supreme Court in 1890.

An issue arose with respect to diversity jurisdiction, lawsuits between citizens of different States. And in 1949, the Supreme Court's decision in the *Tidewater* case upheld Congress' determination that diversity jurisdiction should extend to citizens of the District of Columbia as an appropriate exercise of power under the Seat of Government Clause. That holding confirms, I believe, what the law has long been understood to say.

Moreover, and I set this out in my written testimony in brief form, I believe fundamental principles of representative democracy likewise support the extension of the franchise in this respect, and I cite various cases including *Powell* v. *McCormack and the U.S. Term Limits* case. In my judgment, Congress enjoys Constitutional authority.

[The prepared statement of Judge Starr follows:]

TESTIMONY OF THE HON. KENNETH W. STARR

BEFORE THE HOUSE GOVERNMENT REFORM COMMITTEE

2154 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, D.C.

JUNE 23, 2004

TESTIMONY OF THE HON. KENNETH W. STARR BEFORE THE HOUSE GOVERNMENT REFORM COMMITTEE 2154 RAYBURN HOUSE OFFICE BUILDING JUNE 23, 2004

I am pleased to testify on the very important issue and to discuss congressional authority to govern the District of Columbia more generally. Following immediately in the wake of the District's establishment as the Seat of our National Government in 1800,[1] Congress began working to enfranchise the capital city's residents. Previous efforts – which have included bills to retrocede the District to Maryland, bills calling for the District's residents to vote in Maryland's House and Senate contests, and bills deeming the District to be a "State" for purposes of federal elections – have been thwarted by constitutional and political barriers. While I will leave for others discussion of the political considerations presented by the particulars of the D.C. Fairness Act, I commend Chairman Davis for seeking to address – and surmount – the legal and constitutional obstacles that have hobbled congressional efforts to solve the continuing problem of District disenfranchisement.

I. CONGRESS ENJOYS PLENARY POWER OVER THE DISTRICT OF COLUMBIA.

Legislation to enfranchise the District's residents is authorized by the Seat of Government Clause, Art. I, § 8, Cl. 17, which provides: "The Congress shall have power … to exercise exclusive legislation in all cases whatsoever" over the District of Columbia. This

[1]. *See* "An act establishing the temporary and permanent seat of the Government of the United States," 1 Stat. 130 (July 16, 1790). The 1790 Act identified the first Monday of December 1800 (December 1) as the date for the transfer of the seat of the federal government from its current home (then Philadelphia) to its new permanent home in the District of Columbia.

sweeping language gives Congress "extraordinary and plenary" power over our nation's capitol city.[2]

To understand the scope and importance of the Seat of Government Clause, it is important first to understand its historical foundations. There is general agreement that the Clause was adopted in response to an incident in Philadelphia in 1783, in which a crowd of disbanded Revolutionary War soldiers, angry at not having been paid, gathered to protest in front of the building in which the Continental Congress was meeting under the Articles of Confederation.[3] Congress called upon the government of Pennsylvania to provide protection, but the Commonwealth refused, Congress was forced to adjourn, quietly leave the city, and

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[2]. *United States v. Cohen*, 733 F.2d 128, 140 (D.C. Cir. 1984) (Scalia, J.). *See also id.* at 140-141 (the Seat of Government Clause, Art. I, § 8, Cl. 17, "enables Congress to do many things in the District of Columbia which it has no authority to do in the 50 states. There has never been any rule of law that Congress must treat people in the District of Columbia exactly the same as people are treated in the various states.") (footnote omitted).

[3]. *See, e.g.*, KENNETH R. BOWLING, THE CREATION OF WASHINGTON, D.C. 30-34 (1991); JUDITH BEST, NATIONAL REPRESENTATION FOR THE DISTRICT OF COLUMBIA 14-15 (1984) ("The proximate cause of the provision for a federal district was the Philadelphia Mutiny of 21 June 1783."); STEPHEN MARKMAN, STATEHOOD FOR THE DISTRICT OF COLUMBIA 47 (1988) ("Unquestionably, this incident made a deep impression on the members [of the Continental Congress]."); Peter Raven-Hansen, *Congressional Representation for the District of Columbia: A Constitutional Analysis*, 12 HARV. J. ON LEGISLATION 167, 171 (1975) ("That the memory of the mutiny scare . . . motivated the drafting and acceptance of the 'exclusive legislation' clause was clearly demonstrated in the subsequent ratification debates."). THE FEDERALIST, No. 43 at 289 (Jacob E. Cooke ed., 1961); JOSEPH STORY, 3 COMMENTARIES ON THE CONSTITUTION §§ 12-13 (1833). Despite requests from the Congress, the Pennsylvania state government declined to call out its militia to respond to the threat, and the Congress had to adjourn abruptly to New Jersey. The episode, viewed as an affront to the weak national government, led to the widespread belief that exclusive federal control over the national capitol was necessary. "Without it," Madison wrote, "not only the public authority might be insulted and its proceedings be interrupted, with impunity; but a dependence of the members of the general Government, on the State comprehending the seat of the Government for protection in the exercise of their duty, might bring on the national councils an imputation of awe or influence, equally dishonorable to the Government, and dissatisfactory to the other members of the confederacy." THE FEDERALIST NO. 43, *supra*, at 289; *see also* 4 THE DEBATES IN THE SEVERAL STATE CONVENTIONS ON THE ADOPTION OF THE FEDERAL CONSTITUTION AS RECOMMENDED BY THE GENERAL CONVENTION AT PHILADELPHIA IN 1787, at 220 (Jonathan Elliot ed., 2d ed. 1888), *reprinted in* 3 THE FOUNDERS' CONSTITUTION 225 (Philip B. Kurland & Ralph Lerner eds., 1987) ("Do we not all remember that, in the year 1783, a band of soldiers went and insulted Congress? . . . . It is to be hoped that such a disgraceful scene will never happen again; but that, for the future, the national government will be able to protect itself.") (North Carolina ratifying convention, remarks of Mr. Iredell).

reconvene at Princeton.[4] In the wake of this dramatic event, the Framers took drastic measures – through the Seat of Government Clause – to ensure "that the federal government be independent of the states,"[5] and to ensure that the District would be beholden exclusively to the federal government for any and all purposes, big and small.[6]

Congress's powers over the District are not limited to simply those powers that a State legislature might have over a State.[7] As emphasized by the federal courts on numerous occasions, the Seat of Government Clause is majestic in its scope. In the words of the Supreme Court, "[t]he object of the grant of exclusive legislation over the [D]istrict was, therefore, national in the highest sense. . . . In the same article which granted the powers of exclusive legislation . . . are conferred all the other great powers which make the nation."[8] And my predecessors on the D.C. Circuit Court of Appeals once held that Congress can "provide for the

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4. MARKMAN, *supra* note 3, at 46-47; Raven-Hansen, *supra* note 3, at 169.

5. MARKMAN, *supra* note 3, at 48.

6. *See, e.g.*, THE FEDERALIST No. 43, at 272 (Madison) (Clinton Rossiter ed. 1961) (remarking on the "indispensable necessity of complete authority at the seat of government" since without it, "the public authority might be insulted and [the federal government's] proceedings interrupted with impunity"); Raven-Hansen, *supra* note 3, at 169-72 (citing statements from the ratification debates).

7. *See* Palmore v. United States, 411 U.S. 389, 397-398 (1973) ("Not only may statutes of Congress of otherwise nationwide application be applied to the District of Columbia, but Congress may also exercise all the police and regulatory powers which a state legislature or municipal government would have in legislating for state or local purposes. Congress 'may exercise within the District all legislative powers that the legislature of a State might exercise within the State; and may vest and distribute the judicial authority in and among courts and magistrates, and regulate judicial proceedings before them, as it may think fit, so long as it does not contravene any provision of the Constitution of the United States.' *Capital Traction Co. v. Hof*, 174 U.S. 1, 5 (1899). This has been the characteristic view in this Court of congressional powers with respect to the District. It is apparent that the power of Congress under Clause 17 permits it to legislate for the District in a manner with respect to subjects that would exceed its powers, or at least would be very unusual, in the context of national legislation enacted under other powers delegated to it under Art. I, § 8.").

8. *O'Donoghue v. United States*, 289 U.S. 516, 539-40 (1933). Presumably, these "great powers" include the power to admit States to the Union and the power to regulate elections.

general welfare of citizens within the District of Columbia by any and every act of legislation which it may deem conducive to that end."[9]

II. THE CONSTITUTION IS SILENT ABOUT VOTING RIGHTS FOR THE DISTRICT'S RESIDENTS.

While the Framers clearly intended to give Congress plenary authority over the District, what is far less clear is what they intended with respect to representation of the area. The question of representation does not appear to have seriously arisen until the federal government took up residence in the District in 1800, well after the Constitution had been drafted and ratified.[10]

In the face of the Constitution's silence, some ardent textualists (and indeed some courts) have insisted that Article I effectively disenfranchises the District's residents in congressional elections. For example, the United States District Court for the District of Columbia has held that D.C.'s residents cannot be treated like residents of the 50 States for purposes of electing members to the House of Representatives,[11] and the House may not unilaterally amend its Rules to give the District's Delegate the right to vote in the Committee of the Whole.[12]

But legislation to enfranchise the District's residents presents an entirely and altogether different set of issues. While the Constitution may not affirmatively grant the District's residents

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9. *Neild v. District of Columbia*, 110 F.2d 246, 250-51 (D.C. Cir. 1940).

10. *See* Raven-Hansen, *supra* note 3, at 172.

11. *Adams v. Clinton*, 90 F. Supp. 2d 35, 62 (D.D.C.) (holding "exclusion [of D.C. residents from voting in Congressional elections] was the consequence of the completion of the cession transaction – which transformed the territory from being part of a state, whose residents were entitled to vote under Article I, to being part of the seat of government, whose residents were not. Although Congress' exercise of jurisdiction over the District through passage of the Organic Act was the last step in that process, it was a step expressly contemplated by the Constitution. *See* U.S. Const. art. I, § 8, cl. 17."), *aff'd*, 531 U.S. 941 (2000), *reh'g denied*, 531 U.S. 1045 (2000), *appeal dismissed*, 2001 U.S. App. LEXIS 25877 (D.C. Cir. Oct. 18, 2001), *cert. denied*, 537 U.S. 812 (2002).

12. *Michel v. Anderson*, 817 F. Supp. 126, 141 (D.D.C. 1993), *aff'd*, 14 F.3d 623 (D.C. Cir. 1994).

the right to vote in congressional elections, the Constitution *does* affirmatively grant Congress plenary power to govern the District's affairs. Accordingly, the judiciary has rightly shown great deference where Congress announces its considered judgment that the District should be considered as a "State" for a specific legislative purposes.[13] For example, Congress may exercise its power to regulate commerce across the District's borders, even though the Commerce Clause[14] only referred to commerce "among the several states."[15] And Congress may bind the District with a duly ratified treaty, which allows French citizens to inherit property in the "States of the Union."[16]

III. THE SUPREME COURT HAS AFFIRMED CONGRESS'S PLENARY POWER TO EXTEND "STATES'" RIGHTS TO D.C. RESIDENTS WHERE THE CONSTITUTION IS SILENT.

In *Hepburn & Dundas v. Ellzey*,[17] the Supreme Court considered whether the District's citizens could bring suits in federal court under the Constitution's Diversity Clause,[18] which confers power on the federal courts to hear suits "between Citizens of different **States**." Absent

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13. *Adams* does *not* compel a different result. In *Adams*, the court held the District's voters could not vote in Maryland's congressional elections, basing its decision, in large part, on the fact that "Congress has ceded none of its authority over the District back to Maryland, and Maryland has not purported to exercise any of its authority in the District." 90 F. Supp. 2d at 64. The Fairness Act, in sharp contrast, would express Congress's incontrovertible intention to enfranchise the District's voters.

14. U.S. Const. Art. I, § 8, Cl. 3.

15. *Stoutenburgh v. Hennick*, 129 U.S. 141 (1889).

16. *De Geofroy v. Riggs*, 133 U.S. 258, 268-69 (1890) (while "state" might not ordinarily include an "organized municipality" such as the District, "[t]he term is used in general jurisprudence . . . as denoting organized political societies with an established government. Within this definition the District of Columbia . . . is as much a State as any of those political communities which compose the United States.").

17. 6 U.S. 445 (1805).

18. Art. III, § 2, Cl.1.

a congressional pronouncement to the contrary,[19] the Court concluded that the constitutional reference to "States" did not include the District.[20]

In 1948, however, Congress enacted a statute that treated the District as a State so that its residents could maintain diversity suits in federal courts.[21] In 1949, the Supreme Court's *Tidewater* decision upheld that statute as an appropriate exercise of Congress' power under the Seat of Government Clause, even though the Diversity Clause refers *only* to cases "between Citizens of different **States**."[22] The *Tidewater* holding confirms what is now the law: the Constitution's use of the term "State" in Article III cannot mean "and not of the District of Columbia." Identical logic supports legislation to enfranchise the District's voters: the use of the word "State" in Article I cannot bar Congress from exercising its plenary authority to extend the franchise to the District's residents.

IV. FUNDAMENTAL PRINCIPLES OF REPRESENTATIVE DEMOCRACY SUPPORT CONGRESS' DETERMINATION TO EXTEND THE FRANCHISE TO DISTRICT OF COLUMBIA RESIDENTS.

As the Supreme Court has repeatedly insisted, interpretation of the Constitution, particularly Article I, should be guided by the fundamental democratic principles upon which this nation was founded.[23] Absent any persuasive evidence that the Framers' intent in using the

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19. Section 11 of the Judiciary Act of 1789 gave federal courts jurisdiction to hear cases where "the suit is between the citizen of the State where the suit is brought, and a citizen of another State." 1 Stat. 73, 78. It was unclear whether Congress intended for the Judiciary Act to apply to the District's residents.

20. *Hepburn*, 6 U.S. at 452-53.

21. *See* 62 Stat. 869, *codified at* 28 U.S.C. § 1332(d).

22. *National Mut. Ins. Co. v. Tidewater Transfer Co.*, 337 U.S. 582 (1949).

23. *See Powell v. McCormack*, 395 U.S. 486, 547 (1969) (noting that "[a] fundamental principle of our representative democracy is, in Hamilton's words, 'that the people should choose whom they please to govern them'") (citation omitted); *U.S. Term Limits, Inc. v. Thornton*, 514 U.S. 779, 819-823 (1995) (adding that "an aspect of sovereignty is the right of the people to vote for whom they wish").

term "State" was to deny the inhabitants of the District the right to vote for voting representation in the House of Representatives, a consideration of fundamental democratic principles further supports the conclusion that the use of that term does not necessitate that result.

A republican, that is representative, form of government, is a foundational cornerstone in the Constitution's structure; the denial of representation was one of the provocations that generated the Declaration of Independence and the War that implemented it. Article I creates the republican form of the national government, and Article IV guarantees that form to its *people*,[24] regardless of whether they reside in a District or a State.

[24]. The right to vote arises out of the "relationship between the people of the Nation and their National Government, with which the States may not interfere." *Term Limits*, 514 U.S. at 845 (Kennedy, J., concurring); *see also id.* at 844 ("The federal right to vote . . . do[es] not derive from the state power in the first instance but . . . belong[s] to the voter in his or her capacity as a citizen of the United States."); *id.* at 805 (noting that "'while, in a loose sense, the right to vote for representatives in Congress is sometimes spoken of as a right derived from the states,'" in fact it "was a new right, arising from the Constitution itself") (quoting *United States v. Classic*, 313 U.S. 299, 314-15 (1941)); 514 U.S. at 820-21 (noting "that the right to choose representatives belongs not to the States, but to the people").

Chairman TOM DAVIS. Judge Starr, thank you very much.

Mr. Zherka.

Mr. ZHERKA. Mr. Chairman, Congresswoman Norton, members of the committee, thank you very much for inviting me to testify at this historic hearing on how we fulfill the promise of American democracy for people living in the Capital of the free world.

Senator Robert Dole once said the District of Columbia is not just a plot of land full of big white buildings and people who have come here temporarily to work for the Federal Government. Rather, it is a home to almost three-quarters of a million people who should be granted congressional representation, just as the citizens of our States are.

Senator Dole and others on this committee and throughout our history supported full voting representation in Congress for District residents, because they understood that real people live here who deserve to be treated like real Americans, people like Iliana Canefield, who is in the third grade, is a member of the Young Suffragists, and dreams of representing D.C. in the U.S. Senate. People like James Davis, a native Washingtonian and recent high school graduate, who does not understand why D.C. should only get a voting Member of the House.

People like Bruce Spiva, a partner at a law firm that handles civil rights cases. As he fights for the rights of others, he himself is denied the most fundamental civil right of a democracy, the right to choose those who make our laws. People like Frank Rich, who has lived his entire life in this great city, served this Nation in World War II and Korea, to defend democracy, but still does not enjoy the fruits of democracy here at home.

These people are just like the people in your districts. They play by the rules, pay their taxes, serve our Nation in times of war, and love this country. And yet we treat them like second class citizens, and that is shameful.

This hearing offers hope, however, that things will change. For this hearing is not about whether D.C. should have voting representation, but how to achieve that result. D.C. Vote strongly supports the No Taxation Without Representation bill, because that bill leaves D.C. intact, treats D.C. like a State for purposes of representation, and provides equal representation in the House and Senate without amending the Constitution.

Congress already treats Washington, DC, as we just heard, like a State for purposes of Federal law and regulations. We think that's the right approach. But we also believe that for a bill to be enacted, it must have bipartisan support. Unfortunately, none of the bills we are considering today and talking about has such support thus far.

As the Congress considers how to provide, on a bipartisan basis voting representation for D.C., we would like to offer two principles. First, be creative. Other countries with Federal cities have solved this problem in different ways. In Australia, for example, the two Senators representing the capital, Canberra, serve 3 year terms rather than the 6-year term that Senators from the States serve. Chairman Davis' idea of adding two seats to the House is certainly a creative approach and should be seriously considered by all sides.

We believe that voting representation in the U.S. House of Representatives is important. We support efforts to achieve that result and encourage others to do the same. That said, we believe that Congress should follow a second principle: pass a bill that provides representation in both chambers. This is a bicameral legislature, and D.C.'s biggest disadvantage, as the Congresswoman said earlier, now is that it has absolutely no representation, voting or otherwise, in the Senate. That much change, and this Congress has the power to change it now.

Mr. Chairman, members of the committee, as the U.S. fights wars and spends billions of dollars securing the rights of voting representation for people living in Baghdad, Kabul and elsewhere, let us also put an end to the shameful denial of voting representation for D.C. residents.

I commend you for holding this hearing and for your devotion to ending this injustice. I look forward to working with you and the Congress in the future, and to your questions today. Thank you very much.

[The prepared statement of Mr. Zherka follows:]

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Testimony of Ilir Zherka, Executive Director of DC Vote
Before the House Government Reform Committee
June 23, 2004

Mr. Chairman, members of Committee, I would like to thank you for inviting me to testify at this historic hearing on how we fulfill the promise of American Democracy for people living in the capital of the free world.

Founded in 1998, DC Vote is an educational and advocacy organization dedicated to securing full voting representation in Congress for the residents of the District of Columbia.

The United States of America was founded on the principle that people have an inalienable right to shape the laws under which they live. Sadly, that is not a right shared by those who live in our nation's capital.

Since 1801, DC residents had been denied local autonomy and any form of voting representation in the U.S. Government. Only under international pressure in 1961 did Congress pass the 23rd Amendment to the U.S. Constitution giving Washingtonians limited voting rights in presidential elections. In 1971, for the first time in nearly a hundred years, DC residents were granted a non-voting Delegate to the House of Representatives and given limited, local autonomy. In 1978, the Congress passed the "DC Voting Rights Amendment," with over two-thirds of each chamber supporting the legislation. Sixteen states had ratified the Amendment in 1985 when the time limit for its passage came to an end. The amendment fell short of the thirty-eight states (three-fourths of the various states) needed for the amendment to go into effect. The amendment would have given Washington, DC, representation in the House of Representatives according to the population and two U.S. Senators. In 2001, the Supreme Court, in *Alexander v. Daley*, made clear that DC's status must be changed through legislative action.

Residents of Washington, DC pay taxes, serve our country in times of war, and are subject to Federal laws, but have no vote in Congress. To make matters worse, Congress continues to restrict the rights of DC residents. Other Americans have a direct say, through their local government, over the laws that affect them locally. But Washingtonians do not have that right. The Congress gives itself the power to review and approve every line of DC's budget, and freely and often restricts how locally raised revenues are spent.

Such federal interference in local affairs would be unthinkable in any other jurisdiction in the United States.

We are seeking voting representation principally so that residents will have more power over their lives, a greater say in the passage of Federal laws under which they live, and more influence over regulations or laws that directly affect DC. When polled, 72% of Americans support giving District residents equal voting rights in both the House of Representatives and the Senate.

Defenders of the *status quo* argue that the Founders intentionally gave the nation's capital a special status. While that is true, there is no evidence that the Founders intended to disenfranchised citizens living in the area that would become the nation's capital. In fact, the Constitution neither provides nor denies residents living in the capital voting representation in the Congress. This anomaly can be changed. Our country has risen to rectify other injustices that some have argued were intended by our Founders, such as the denial of voting rights to women, minorities and those having reached the age of eighteen.

Additionally, every nation that used the U.S. Constitution as a model for their own constitution -- Argentina, Australia, Brazil, India, Mexico and Venezuela -- has long since provided full voting representation in the national legislature for the residents of their capitals or federal districts. In fact, such representation is provided to residents of all democratic nations around the world, but not in the United States.

This hearing offers hope that things will change, for this hearing is not about whether DC should have voting representation, but how to achieve that result.

DC Vote supports the No Taxation Without Representation bill reintroduced in 2003 by Senator Joe Lieberman and Congresswoman Eleanor Holmes Norton. The bill leaves DC in tact, treats DC like a state for purposes of representation, and provides equal representation in the House and Senate without amending the constitution. Congress already treats Washington, DC like a state for purposes of federal law and regulations. We think that is the right approach. But, we also believe that for a bill to be enacted, it must have bi-partisan support. Unfortunately, none of the bills we are discussing today has such support thus far.

As the Congress considers how to provide, on a bi-partisan basis, voting representation for DC, we would like to offer two principles. First, be creative. Other countries with Federal cities have solved this problem in different ways. In Australia, for example, the two senators representing the capital, Canberra, serve three-year terms, rather than the six-year terms that Senators from the states serve. Chairman Davis' idea of adding two seats to the House is certainly a creative approach and should be seriously considered by all sides. We believe that voting representation in the U.S. House of Representatives for the District is important. We support efforts to achieve that result and encourage others to do the same. That said, we believe Congress should follow a second principle as well: pass a bill that provides representation in both chambers. This is bi-cameral legislature and DC's biggest

disadvantage now is that it has absolutely no representation, whether voting or otherwise, in the Senate. That must change and you have the power to change it now.

Mr. Chairman, Mr. Waxman, members of the Committee, as the United States fights wars and spends billions of dollars securing the right to voting representation for people living in Baghdad, Kabul, and elsewhere, let us also put an end to the shameful denial of voting representation for DC residents.

I commend you for holding this hearing and for your devotion to ending this injustice. I look forward to working with you and the Congress in the future and to your questions today.

Thank you.

Chairman TOM DAVIS. Thank you very much.

Mr. Smith.

Mr. SMITH. Thank you, Mr. Chairman.

My name is Walter Smith. I have a terrible, terrible cold, so I'll be as brief as you probably want me to be.

Let me say at the beginning, I was one of the lawyers who brought the lawsuit now almost 6 years ago, July 4, 1998, asking a three judge Federal court to declare then that it was unConstitutional that citizens in the District do not now have full voting representation, and it was only by a two to one vote we didn't get that remedied immediately and on the spot.

But what a lot of people don't realize is that although we lost that case only by a two to one vote, far from saying that District citizens should not have full voting representation, what that court actually said was that it is unfair and inequitable and a serious grievance that we do not have that voting right today, and it passed the issue to the Congress. It is to your great credit, Chairman Davis, and to yours, Ms. Norton, that you are now addressing that in the way the court invited you to do.

Let me make five quick points, please, about the issues that are before you right now. The first is that in our view, there is no principled basis whatever, none, to continue to deny voting representation to citizens of the District. I don't want to repeat any point anyone's made before, but let me make one that no one has pointed out. We see ourselves as the greatest democracy on Earth. We are the only democracy on Earth that has a capital that denies democratic rights to the citizens of that capital. It is an international disgrace that is so. And again, I am pleased to be part of an effort to begin to remedy that situation.

My second point is that we fully support full voting representation for the citizens of the District. And for that reason, D.C. Appleseed has long supported Ms. Norton's bill.

My last three points are all legal points, and Congressman Davis, you asked in the request that I look at these. As you know, they are addressed in my testimony and in the memos that I attached to it. But let me make three quick points.

First of all, we have written a number of memos, one several years ago, some coming from the distinguished law form of Latham and Watkins, pointing out what I hear Mr. Starr joining us in saying today, what Judge Starr has said, and I'm very pleased to hear his analysis of the issue. The Congress, under the District Clause, has the power to grant voting representation to citizens of the District. And I urge you to exercise that power soon.

We also think, and this is a separate point, that if in fact you proceed on what people have been calling an interim basis, and we like others support full voting representation, but if you proceed on an interim basis, we do think included within the broad power under the District Clause you have the authority to proceed by interim steps, whether it is granting voting representation in one House or the other House or voting representation in one House and then non-voting delegates in the other. That's included within the board power that you have to grant full voting representation.

My last two points have to do with the bills that talk about effectively granting us representation through Maryland. And as you

know from the memos we have attached, we have serious Constitutional concerns with those proposals, even though we applaud the fact that those bills are here and represent an effort by other Members of Congress to find a bipartisan approach to at long last bring us what we're entitled to.

And let just quickly say two of the reasons we're concerned about the Maryland approach. First, and the most important one, and Ms. Norton referred to this, under the Constitution, Article I, Section 2, only an inhabitant of any given State can represent that State in the Congress of the United States. So that if you deemed to treat us only as citizens of Maryland for purposes of voting, then no one who lives in Washington, DC, can ever represent Washington, DC, in the Congress.

And that's one of the good things that came out of the court case that I participated in, because the court itself said that is so, and said we'd be the only people in the country who have voting representation without any chance of being people who can actually represent ourselves. You should not choose that route.

The other reason you shouldn't choose that route is because we do not think that Congress has the authority as explained in the memo to deem citizens of one jurisdiction to be citizens of another jurisdiction for voting purposes. That is not within the power of the Congress.

We urge you to move forward as the remarks of all the people here have indicated you should do. And again, we commend Chairman Davis for taking the lead in this effort.

[The prepared statement of Mr. Smith follows:]

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Testimony of Walter Smith, Executive Director
DC Appleseed Center for Law and Justice, Inc.

Before the Committee on Government Reform
U.S. House of Representatives

June 23, 2004

Good morning, Congressman Davis. My name is Walter Smith. I am the Executive Director of The DC Appleseed Center for Law and Justice, Inc.

DC Appleseed is a nonpartisan, nonprofit public interest organization dedicated to improving living and working conditions in the National Capital area. Some of DC Appleseed's current projects include: (1) leading a coalition of various groups concerned with the conduct of the area's largest health insurance company, CareFirst; (2) addressing the problems of special education in the District; and (3) proposing solutions to the District's inability to raise the revenues it needs to deliver fundamental governmental services to citizens who work and live in the District of Columbia.

Today, though, I am happy you invited me to testify briefly about another project to which DC Appleseed is strongly committed, one that I have been personally involved with for seven years—DC's lack of voting representation in the Congress.

Just to note my history with this issue, I was the Deputy Corporation Counsel for the District of Columbia when Corporation Counsel John Ferren and I determined that a lawsuit needed to be brought on behalf of the District and its citizens contending that our lack of voting representation is unconstitutional. As you know, with the pro bono assistance of one of the District's leading law firms, Covington & Burling, we brought that suit before a three-judge federal court on July 4, 1998.

As you also know, by a narrow 2-1 vote, the court ruled that while our denial of the vote was inequitable, unjustified, and amounted to a serious grievance, our remedy nevertheless lay with Congress not the courts. I thereafter represented the District on a pro bono basis in appealing that ruling to the US Supreme Court.

Since the Supreme Court affirmed the 2-1 ruling, many of us who care deeply about our denial of voting rights, including DC Appleseed, have

been working with Congresswoman Norton, the Mayor, the City Council, and other District leaders to urge the Congress to rectify this inequity. We have brought our case to the Congress because that is precisely what the 2-1 ruling from the court directed us to do.

This last point is a key one and one that many people are not aware of: far from ruling that DC citizens are not entitled to voting rights, the court case actually ruled almost the opposite: that it is unjust that we do not have voting rights, but that this is an issue that Congress, not the courts, should address.

It is to your great credit that you and the Government Reform Committee are now addressing the issue and that you are holding this public hearing. It is also a very encouraging sign to us that there are several pending bills addressing the issue -- bills that come from both parties. This indicates to us that at long last the debate is no longer over whether to bring democracy to the Nation's Capital – but only over the details as to how that is to be accomplished. Here are the five points DC Appleseed would like to make about this important issue.

First, there is no principled basis—none—for continuing to deny citizens of the Nation's Capital the most basic and most precious right of our democracy: the right to voting representation. And there is no better time than now, when we are fighting for democracy abroad, to be sure that we are protecting democracy here at home -- in our own Capital. We are the greatest democracy on earth; and yet we are the only democracy on earth that denies democracy to the people who live in its Capital. The Congress can and should address this inequity—now.

Second, DC Appleseed strongly supports the approach Congresswoman Norton and Senator Lieberman have proposed for Congress to address the inequity—giving the citizens of the District the same basic right as other U.S. citizens—the right to full voting representation in the Congress. That is and always should be our purpose on this issue and we should never settle for anything less than that.

Our third point is this: Congress has the authority by simple legislation to confer voting rights on District citizens. A constitutional amendment is not required. At the request of the District and Congresswoman Norton, DC Appleseed prepared a legal memorandum on that issue and submitted it to Senator Lieberman and his Committee for the Senate hearings. I also testified on that issue before Congresswoman Morella's Subcommittee on the District of Columbia. In addition, as you know, with the pro bono assistance of another leading firm in Washington, D.C., Latham & Watkins, we have submitted an additional memorandum on that issue to the staff of the Government Reform Committee. These two memoranda are attached to my written testimony.

The key point in these memoranda is this: Congress has power under its broad authority under the District Clause (Article I, Section 8, Clause 17) to treat the District as if it were a State

for voting purposes. This proposition is established by the governing judicial precedents and was confirmed in the court's 2-1 decision in our recent voting rights litigation (Alexander v. Daley).

DC Appleseed's fourth and fifth points relates to issues raised by the various bills now before the Committee. One issue is whether Congress could grant something less than full voting representation as an interim step—for example, either voting representation only in the House, or voting representation in the House plus a nonvoting delegate in the Senate. We believe Congress's exclusive authority over the District gives it the power to move in such incremental steps, although, as I say, we would support that approach only if those were in fact steps toward ultimate, full voting representation.

The other significant issue -- and our last point -- concerns proposals to grant DC voting rights by treating its citizens as if they were part of Maryland. As the third memorandum attached to my testimony explains, for two reasons we do not think this approach is either constitutional or even workable.

First, we do not think Congress has authority to deem citizens to be citizens of a state in which they do not and have never resided. In fact, if Congress had that power, it obviously could redraw voting jurisdictions at will and place citizens in whatever State it wished. That proposition was categorically rejected by the Alexander v. Daley court, which observed that a previous Supreme Court case (Albaugh v Tawes) "forecloses the conclusion that District residents may be allowed to vote in congressional elections through the State of Maryland." 90 F.Supp.2d at 57.

In any event, allowing District residents to vote through Maryland is for all practical purposes foreclosed by Article I, Section 2, Clause 2 of the Constitution. That clause provides that no person may be a representative unless he or she is "an Inhabitant of that State in which he shall be chosen." As the court in Alexander v Daley pointed out, if the District were treated as part of Maryland for purposes of that clause, no one from the District of Columbia could ever represent District citizens since none of them would be an "inhabitant "of Maryland. As the court said, this "would make the District the only area where all of the voters are constitutionally unqualified to serve as their own representatives." 90 F.Supp.2d at 61 n. 47. That unintended consequence should make this approach unacceptable. Any representation for the District should be for the District alone as a separate entity. This is the fair, sensible, and constitutional way for the Congress to proceed. And we urge it to do so expeditiously.

Again, many thanks for inviting me to testify today. I'd be happy to answer any questions you have.

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MEMORANDUM

July 31, 2003
ATTORNEY WORK PRODUCT
PRIVILEGED & CONFIDENTIAL

To: Walter Smith, Executive Director, DC Appleseed Center for Law and Justice
From: Rick Bress & Matt Parker
File no: 501813-0000
Copies to: Gary Epstein, Jim Rogers
Subject: Preliminary Analysis Regarding D.C. Voting Proposal By Representative Thomas M. Davis III

At your request, we have done a preliminary analysis of the proposal recently announced by Representative Thomas M. Davis III (R-Virginia) to provide residents of the District of Columbia with a voting Representative in the House of Representatives. The details of the plan appear to still be in development, and the Congressman has not yet released a draft for review. Broadly speaking, however, the proposal is to add two new Representatives to the House, raising its number from 435 to 437. One new seat technically would go to Maryland, though it would be elected by a district composed predominantly of D.C. residents (the district would also include Maryland residents); the other new seat would go to Utah, which narrowly (by a margin of 857 residents) lost its fifth seat in the apportionment arising from the 2000 census. The House would then revert to 435 Members once the 2010 Census is completed.

Our understanding is that the purpose of Congressman Davis' proposal is to afford District residents voting representation in the House, and do so in a way that is likely to: (a) gather bipartisan support in the Congress; (b) gather support as well from D.C. citizens and groups seeking voting representation for D.C.; and (c) be achievable through simple legislation rather than constitutional amendment.

In our opinion, the Congressman's proposal is laudable and a significant advance for the cause of democracy in the Nation's Capital. We also think his determination to combine a new seat for Utah with a seat for D.C. is a shrewd and sensible proposal with a clear legal precedent – the conferring of new house seats on Alaska and Hawaii (by simple legislation) at a time when one was expected to vote Republican and the other Democrat. For these reasons, it appears to us that the goal of achieving bipartisan support for D.C. representation is well-served by the proposal.

However, we think that as the details of the proposal are further developed, serious thought should be given to the way in which residents of D.C. are given voting representation. Specifically, we believe that direct representation for D.C. as a separate entity, rather than as part of Maryland, is the better course. We say that for three reasons.

First, and not surprisingly, D.C. citizens and organizations supporting voting rights for D.C. are more likely to support the proposal if the new House seat is in fact a D.C. seat, not a Maryland-based seat. These groups consider DC to be a cohesive political and geographic entity and they favor it being given its own voting representation, rather than being required to "join" another State in order to gain such representation. And, as a related matter, it is not at all obvious that Maryland's elected leaders would support a new Maryland seat tied to D.C. or that Maryland citizens would wish to be placed in a new district dominated by D.C.

Second, from our initial review we believe Representative Davis's Maryland-based proposal is far less attractive as a matter of law and more likely to fail a legal challenge than would a proposal that simply gave the new seat to D.C. alone. In particular, as we detailed in our prior memorandum (attached hereto), there is substantial case law supporting Congress's broad powers over D.C., including its power to treat the District as a State for several constitutional purposes, including voting. On the other hand, we have grave doubts that the courts would countenance legislation giving D.C. residents the right to select another State's Representatives and treating D.C.'s residents as if they were residents of that other State. In fact, we know of no precedent that would support such an outcome.

Finally, and perhaps most important, we are concerned that the proposal's indirect method of securing representation for D.C. residents will lead to troubling, unintended, adverse consequences. Principal among these – and the one that would surely be regarded by D.C. residents as fatal to the proposal – is that, voting as members of a Maryland district, D.C. residents will be constitutionally prohibited from choosing as their Representative a fellow District resident, and must instead be represented by an inhabitant of Maryland. In other words, the proposal to give D.C. residents voting representation through a new Maryland-based district would mean that D.C. residents could not be represented by someone from D.C. – including Eleanor Holmes Norton. Further, the proposal invites mid-Census redistricting by Maryland, which may affect D.C. residents' ability to retain their own Representative, and it leaves a serious question whether the D.C. would retain the vote after the 2010 Census, when the House would revert to 435 seats.

In sum, for all these reasons, set forth in greater detail below, while we are heartened by Representative Davis's proposal, we are skeptical of its relative legal and practical merit as initially proposed. At this point, therefore, we believe that the better tack is to reform the proposed legislation to provide direct voting representation to residents of the Nation's Capital.

ANALYSIS

A. The Proposal Would Be Strengthened From A Legal Perspective By Providing D.C. Residents Voting Representation Directly

Representative Davis's proposal is apparently designed to afford D.C. residents voting representation in a way that is most defensible as simple legislation rather than as a constitutional amendment. We believe (for reasons set out in our previous memo, attached) that the best way to do that is through legislation directly providing voting representation to the District of Columbia. On the other hand, we believe that the Maryland-based proposal presents serious constitutional impediments.

Although no provision of the Constitution says so directly, the text and ratification history make it quite clear (and leave no room for serious dispute) that only *residents* of a State have the constitutional right to vote for that State's congressional Representatives. This foundational proposition is implicitly confirmed in section 2 of the Fourteenth Amendment, which provides that "Representatives shall be apportioned among the several States according to their respective numbers." Pursuant to this clause, a State is entitled (but entitled only) to that representation in the House according to its relative population as determined in a decennial census. *See* Art. I, § 2, cl.3. As a general matter, it would be unconstitutional for Congress to give a State greater representation than it is due by deeming its "respective numbers" to include non-residents. But that is what the Davis proposal would do if it treated D.C. residents as if they were residents of Maryland in order to create a new Maryland district.

It is equally clear, despite Maryland's historical cession of the lands that currently comprise the District, that as a matter of law District residents are not now Maryland residents for voting (or other) purposes. Contemporaneous with the birth of the federal District, Chief Justice Marshall declared in *Reily v. Lamar*, 6 U.S. (2 Cranch) 344, 356 (1805), that upon the political "separation of the district of Columbia from the state of Maryland," a District resident "ceased to be a citizen of [Maryland]." On that same ground, the three-judge district court in *Albaugh v. Tawes*, 233 F. Supp. 576 (1964), *aff'd*, 379 U.S. 27 (1964), squarely rejected a claim that the District is part of Maryland for purposes of United States senatorial elections. That court observed that it is "clear that residents of the District of Columbia have no right to vote in Maryland elections generally, and specifically, in the selection of United States senators." *Id.* at 577. The reasoning of that holding applies just the same to Members of the House of Representatives.

Finally, it is hard to see how Congress could claim the constitutional authority to "deem" District residents to be Maryland residents for purposes of congressional representation. The political values underlying the system of proportionate representation would quickly lose their coherence if Congress were able to alter the apportionment by the addition to a State's tally of persons who have no plausible claim actually to be residents of that State. Congress, of course, does have authority at the margins to determine what qualifies as state residency for purposes of the census, apportionment, and voting. In this respect, the Uniform Overseas Citizen Absentee Voting Act, 42 U.S.C. § 1973ff – 1973ff-6, provides that States must permit a member of the military or United States citizen living abroad to vote in its congressional elections when their last address in the United States was in that State. But there is a world of difference between permitting a former state resident to continue to use absentee ballots for that State while

abroad and allowing a District resident who has never resided in Maryland to have a voting say in Maryland's congressional elections.

B. A Maryland-Based Proposal Would Not Permit D.C. Residents To Elect As Their Representative A Fellow D.C. Resident

The fundamental concept of congressional representation in this Nation rests on the right of state residents to elect one of their own to represent them and their State's interests in Congress. This concept is manifested in the Constitution's prescription that "No person shall be a Representative . . . who shall not, when elected, be an Inhabitant of that State in which he shall be chosen." Art. I, §2, cl.2. This means that every Representative of Maryland, including the one chosen by D.C. voters under Representative Davis's plan, must be a Maryland (not D.C.) resident. In other words, D.C. residents would be prohibited from choosing as their Representative a fellow D.C. resident. This is surely not intended by Congressman Davis and would obviously be unacceptable and unfair to D.C. residents. In fact, if District residents cannot elect a District resident, they will almost certainly consider themselves unrepresented.

C. A Maryland-Based Proposal Would Be Politically Unstable

Although Representative Davis's proposal is designed to avoid partisan and political disputes in the near term, if it is Maryland-based it will provide little political stability in the medium to long run. To begin with, once Congress creates an additional Maryland seat, Maryland will have to redistrict to create and accommodate the new district composed of D.C. and a small slice of Maryland. It is unclear that Congress could prevent Maryland state legislators at that time from redistricting the State in a way that would divide the District's vote and effectively eliminate the ability of District voters to have a true "District Representative." But even if that likelihood is remote, the proposal's provision for the elimination of the two additional House seats after the 2010 Census seems a very real and concrete concern. After that Census, Representatives will be apportioned under the Constitution as described above pursuant to each State's "respective numbers." For constitutional purposes, Maryland's respective numbers do not include District residents. Hence, Maryland's delegation would likely be reduced once again to four Members. At that time, either District voters would continue to vote for Maryland's representative (diluting the rightful votes of Maryland voters) or, more likely, lose the vote entirely. After all, if the new seat is to be a Maryland-based seat, reapportionment issues will be decided by the Annapolis legislature, not Congress, and D.C. residents will have no voting representation in that Annapolis legislature. And it seems likely that the Annapolis legislature will favor Maryland residents if a choice has to be made about which district to give up if Maryland loses a seat at the time of the reapportionment. For these reasons, even assuming the proposal were enacted and not successfully challenged, it strikes us as at best a very temporary fix and not one that would ensure permanent voting representation for D.C. residents.

CONCLUSION

Congressman Davis is to be commended for his proposal to bring congressional voting representation to the Nation's Capital. His idea to combine a seat for D.C. with a new seat for Utah is a sensible and well-founded way to build support for his proposal. However, the proposal could be strengthened both legally and practically if D.C. voting representation were

established by treating D.C. as if it were a State solely for voting purposes, rather than attempting to deem D.C. residents to be residents of Maryland. The former course is constitutionally defensible, would assure that a D.C. resident would represent D.C. in Congress, would remain stable through later reapportionments, and is likely to be preferred by D.C. residents. But the latter course – the Maryland-based proposal – is constitutionally suspect, would deprive D.C. residents of the opportunity to represent D.C., would be politically unstable at the time of reapportionment, and is less likely to be supported by D.C. residents. We therefore recommend that the proposal be redesigned to afford D.C. representation directly through a new district that contains only D.C.

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MEMORANDUM

February 3, 2003

ATTORNEY WORK PRODUCT
PRIVILEGED & CONFIDENTIAL

To: Walter Smith
From: Rick Bress
Kristen E. Murray
File no: 501813-0000
Copies to: Gary Epstein, Jim Rogers
Subject: Analysis of Congress's Authority By Statute To Provide D.C. Residents Voting Representation in the United States House of Representatives and Senate

The United States is the only democratic nation that deprives the residents of its capital city of voting representation in the national legislature. American citizens resident in the District of Columbia are represented in Congress only by a non-voting delegate to the House of Representatives. These residents pay federal income taxes, are subject to any military draft, and are required to obey Congress' laws, but they have no say in the enactment of those laws.[1] Indeed, as Congress has the power to veto District legislation, the residents of the 50 States have more say than District residents over local District law.

District residents thus lack what has been recognized by the Supreme Court as perhaps the single most important of constitutional rights. As the Court has stated:

> No right is more precious in a free country than that of having a voice in the election of those who make the laws under which, as good citizens, we must live. Other rights, even the most basic, are illusory if the right to vote is undermined. Our Constitution leaves no room for classification of

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[1] Indeed, Congress also has authority over local District legislation; thus, without voting representation in Congress, District residents also have no voting representation in the body which controls the local budget they must adhere to and the local laws that they are required to obey.

people in a way that unnecessarily abridges this right.[2]

The abridgment of District residents' voting rights is hardly "necessary." It plainly could be redressed (as was the District's similar lack of representation in the electoral college) by constitutional amendment. But Congress and the States are rightly reluctant to amend the Constitution absent a demonstrated need. Here, the end may be accomplished more simply. Although the issue is not free from doubt, for the reasons explained below we conclude that Congress can by legislation extend District residents the same voting representation possessed by residents of the 50 States, under its plenary power to provide for the governance of the District and its residents.

Our analysis postulates the enactment of legislation akin to the "No Taxation Without Representation Act of 2002" introduced in the 107th Congress by Sen. Joseph I. Lieberman (D-CT).[3] The official title of the bill, which passed the Governmental Affairs Committee by a 9-0 vote on October 9, 2002, was "[a] bill to provide for full voting representation in Congress for the citizens of the District of Columbia, and for other purposes." The proposed legislative findings accompanying the legislation were as follows:

> (1) The residents of the District of Columbia are the only Americans who pay Federal income taxes but are denied voting representation in the House of Representatives and the Senate.
>
> (2) The residents of the District of Columbia suffer the very injustice against which our Founding Fathers fought, because they do not have voting representation as other taxpaying Americans do and are nevertheless required to pay Federal income taxes unlike the Americans who live in the territories.
>
> (3) The principle of one person, one vote requires that residents of the District of Columbia are afforded full voting representation in the House and the Senate.
>
> (4) Despite the denial of voting representation, Americans in the Nation's Capital are second among residents of all States in per capita income taxes paid to the Federal Government.
>
> (5) Unequal voting representation in our representative democracy is inconsistent with the founding principles of the Nation and the strongly held principles of the American people today.[4]

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2 Wesberry v. Sanders, 376 U.S. 1, 17-18 (1964).

3 Sen. Lieberman sponsored the Act, S. 3054. The co-sponsors were Sen. Thomas A. Daschle, Sen. Richard J. Durbin, Sen. Russell D. Feingold, Sen. Tom Harkin, Sen. James M. Jeffords, Sen. Edward M. Kennedy, Sen. Mary L. Landrieu, Sen. Barbara A. Mikulski, and Sen. Charles E. Schumer.

4 S. 3054, 107th Cong. §2 (2002).

In relevant part, the bill provided as follows:

> For the purposes of congressional representation, the District of Columbia, constituting the seat of government of the United States, shall be treated as a State, that its residents shall be entitled to elect and be represented by 2 Senators in the United States Senate, and as many Representatives in the House of Representatives as a similarly populous State would be entitled to under the law.[5]

The proposed legislation also prescribed the method by which the first Senators and Representative would be elected, at which time the current position of the District's congressional delegate would expire.[6][7]

ANALYSIS

The starting point in analyzing Congress's authority to provide District residents voting representation, of course, is the relevant constitutional text. The voting rights of American citizens resident in the 50 States are regulated primarily by Article I, Sections 2 and 3.[8] Section 2 states that "[t]he House of Representatives shall be composed of Members chosen every second Year by the People of the several States, and the Electors of each State shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature."[9] Article I, Section 3 states that "[t]he Senate of the United States shall be composed of two Senators from each State, ... for six years; and each Senator shall have one vote."[10] These provisions guarantee congressional representation to state residents.[11]

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5 S. 3054, 107th Cong. §3 (2002).

6 S. 3054, 107th Cong. §4, 5 (2002).

7 S. 3054, 107th Cong. §5(d) (2002).

8 Although the Constitution originally called for the election of Senators directly by the States (as opposed to their residents), the 17th Amendment changed the Senate election process to a popular election. It states, in relevant part: "The Senate of the United States shall be composed of two Senators from each State, elected by the people thereof, for six years; and each Senator shall have one vote." U.S. Const. amend. XVII. As the Court recognized in U.S. Term Limits, Inc. v. Thornton, it is "a fundamental principle of our representative democracy....that 'the people should choose whom they please to govern them.'" 514 U.S. 779, 795 (1995), quoting Powell v. McCormack, 395 U.S. at 547 (1969).

9 U.S. Const. art. I, § 2.

10 U.S. Const. art. I, § 3.

11 The Constitution places other qualifications on state congressional representatives as well. For example, each representative must "be an Inhabitant of that State" in which he or she is chosen (U.S. Const. art. I, § 2, cl. 2); representatives shall be "apportioned among the several States which may be included within this Union" (U.S. Const. art. I, § 2, cl. 3); "each State shall have at Least one Representative" (U.S. Const. art. I, § 2, cl. 3); the "Executive Authority" of each "State" shall fill vacancies (U.S. Const. art. I, § 2, cl. 4); and the legislature of "each State" shall

The Supreme Court has held, however, that neither these provisions nor any other in the Constitution provide for or guarantee congressional voting representation to District residents. In Alexander v. Daley, the Supreme Court affirmed the holding of the United States Court of Appeals for the District of Columbia Circuit that the Constitution does not *require* Congress to afford District residents representation in the House of Representatives.[12] The plaintiffs in Alexander argued, among other things, that the District could be treated as a State under Article I because the Supreme Court had, for some purposes, interpreted the term "State" as used in the Constitution to include the District. The Court, however, rejected the "District-as-State" theory, concluding that the Constitution does not treat the District in that way for purposes of apportioning representatives in the House of Representatives.[13]

The Alexander court did *not* hold that the Constitution prohibits Congress from extending the vote to District residents through legislative means. Rather, the Alexander Court concluded only that the judiciary could not confer the franchise. The Court stated:

> Like our predecessors, we are not blind to the inequity of the situation plaintiffs seek to change. But longstanding judicial precedent, as well as the Constitution's text and history, persuade us that this court lacks authority to grant plaintiffs the relief they seek. If they are to obtain it, they must plead their cause in other venues.[14]

Although the Court did not specify how the plaintiffs must proceed in "other venues" – *i.e.* via constitutional amendment or, instead, by simple legislation – the Court expressly noted that counsel for the House of Representatives had earlier conceded Congress' authority to extend the vote to District residents legislatively.[15]

Congress's authority to extend the franchise to District residents by statute has been the subject of substantial academic and political debate.[16] Those who believe that Congress lacks this power (and must therefore proceed via constitutional amendment) rely principally on a negative pregnant. Citing Article

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prescribe times, places, and manner of holding elections for representatives (U.S. Const art. I, § 4, cl. 1).

12 90 F.Supp. 2d 35 (D.D.C. 2000), *aff'd* 531 U.S. 940 (2000).

13 Alexander, 90 F.Supp. 2d at 47.

14 Id. at 72.

15 Id. at 40 (*emphasis added*).

16 See e.g., Statement of Walter Smith before the Subcommittee on the District of Columbia, Committee on House Government Reform, 2002 WL 20319210 (July 19, 2002); Statement of Jamin B. Raskin before the Senate Governmental Affairs Committee, 2002 WL 20317469 (May 23, 2002); Statement of Adam H. Kurland before the Senate Governmental Affairs Committee, 2002 WL 20317468 (May 23, 2002); Jamin B. Raskin, Symposium: *Is there a Constitutional Right to Vote and Be Represented? The Case of the District of Columbia*, 48 Am.U.L.Rev. 589 (1999); Jamin B. Raskin, *Is this America? The District of Columbia and the Right to Vote*, 34 Harv. C.R.-C.L. L.Rev. 39 (1999); Peter Raven-Hansen, Congressional Representation for the District of Columbia: A Constitutional Analysis, 12 Harv. J. on Legis. 167, 172 (1975).

1's detailed provisions for the congressional voting representation of State residents and the maxim *expressio unius est exclusio alterius*, they assert that the Constitution purposefully withholds voting representation from those (like District residents) who do not reside in a State. This argument is not without force. *Exclusio unius* is a longstanding and oft-used canon of statutory and constitutional construction. But it is not a "binding rule of law."[17] At bottom, whether the mention of one thing (here, congressional voting representation for state residents) implies the exclusion of another (here, congressional voting representation for District residents) depends on a contextual analysis of whether the draftsmen likely "considered the alternatives that are arguably precluded."[18] We see little to support such a negative inference here. As explained below, the history of and policies behind the Framers' creation of the District, the purpose of the Framers' enumeration of "States" in the Constitution's provisions for congressional representation, and the fundamental importance of the franchise argue powerfully that those who drafted the Constitution did not, by guaranteeing the vote to state residents, intend to withhold the vote from District residents. Moreover, the Framers gave Congress plenary power over the District, including the power for most purposes to treat the District as though it were a State and District residents as though they were state residents. Historical application and judicial interpretation suggest that this authority is sufficiently broad to extend to District residents the voting rights taken for granted by other American citizens. For these reasons, further explained below, we conclude that, although the Constitution does not expressly provide for or guarantee voting representation to District residents, it permits such representation to be extended through congressional legislation.

A. The History Of The District Clause Demonstrates That The Framers Had No Affirmative Intent To Deprive District Residents Of Voting Representation

The Framers viewed the right to vote as the single most important of the inalienable rights that would be guaranteed to the citizens of their Nation.[19] The right was extended universally, as at the time of the framing every eligible American citizen lived in a State. There is no evidence that the Framers intended that those resident in areas that would later be ceded to form the national capital would forfeit upon its formation the voting rights they had previously possessed and exercised.

Article I, Section 8, Clause 17 of the Constitution, also known as the "District Clause," gives Congress the power to "exercise exclusive Legislation in all Cases, whatsoever, over such District (not exceeding ten Miles square) as may, by Cession of Particular States, and the Acceptance of Congress, become the Seat of the Government of the United States." This clause and its "exclusive legislation" authority were included in the Constitution to ensure that the seat of the federal government would not be beholden to or unduly influenced by the state in which it might be located.[20] The Framers' insistence on a

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17 Martini v. Federal Nat'l Mortgage Ass'n, 178 F.3d 1336, 1342 (D.C. Cir. 1999).

18 Id. at 1343.

19 Wesberry, 376 U.S. at 9-19.

20 Kenneth R. Bowling, The Creation of Washington, D.C.: The Idea and Location of the American Capital, at 30-34 (1991).

separated and insulated federal district arose from incident that took place in 1783 while the Continental Congress was in session in Philadelphia. When a crowd of Revolutionary War soldiers who had not been paid gathered in protest outside the building, the Congress requested protection from the Pennsylvania militia, but the State refused and the Congress was forced to adjourn and reconvene in New Jersey. This incident convinced the Framers that the seat of the national government should be under exclusive federal control, for its own protection and the integrity of the capital.[21] Thus, the Framers gave Congress broad authority to create and legislate for the protection and administration of a distinctly federal District.

There is no affirmative mandate in the Constitution for the congressional disenfranchisement of District residents, and no reason to believe the Framers desired that result. When the District Clause was drafted, the eligible citizens of every State possessed the same voting rights. The continuation of these voting rights for citizens resident in the lands that would be ceded to create the federal District received little attention and does not appear to have been widely considered until after the Constitution was ratified and the District had been established.[22] As one commentator has explained:

> First, given the emphasis on federal police authority at the capital and freedom from dependence on the states, it is unlikely that the representation of future residents in the District occurred to most of the men who considered the "exclusive legislation" power. As long as the geographic location of the District was undecided, representation of the District's residents seemed a trivial question. Second, it was widely assumed that the land-donating states would make appropriate provision in their acts of cession to protect the residents of the ceded land....Finally, it was assumed that the residents of the District would have acquiesced in the cession to federal authority.[23]

It is doubtful even at the time of the District's creation, moreover, that many would have adverted to the issue, as few could have foreseen that the ten mile square home to 10,000 residents would evolve into the vibrant demographic and political entity it is today. Some appear to have recognized that the unique

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21 See James Madison, Federalist No. 43 ("Without it, not only the public authority might be insulted and its proceedings be interrupted, with impunity; but a dependence of the members of the general Government, on the State comprehending the seat of the Government for protection in the exercise of their duty, might bring on the national councils an imputation of awe or influence, equally dishonorable to the Government, and dissatisfactory to the other members of the confederacy.").

22 Peter Raven-Hansen, Congressional Representation for the District of Columbia: A Constitutional Analysis, 12 Harv. J. on Legis. 167, 172 (1975).

23 Id. See also National Mut. Ins. Co. v. Tidewater Transfer Co., 337 U.S. 582, 587 (1949) ("There is no evidence that the Founders, pressed by more general and immediate anxieties, thought of the special problems of the District of Columbia....This is not strange, for the District was then only a contemplated entity.").

treatment of the District within a constitution of united States could leave its residents disenfranchised, but there is no indication that the Framers affirmatively desired that result.[24]

To the contrary, based on everything we know of the Framers, it is inconceivable that they would have purposefully intended to deprive the residents of their capital city of this most basic right. The Framers' express intent was to create a republican form of government for all citizens of the United States. The exclusion of District residents from the political process is directly contrary to that vision. History suggests that, while the Constitution fails to guaranty or provide for voting representation to district residents, this was an inadvertent omission that can be remedied by congressional action.

B. The Supreme Court Has Validated Congress' Broad Authority To Treat The District As A State, And Its Residents As State Residents, Under The District Clause

Congress has long exercised its authority under the District Clause to treat the district as if it were a "State" and provide District residents many of the same privileges and rights that the Constitution guarantees residents of the 50 States. In Loughborough v. Blake, for example, the Supreme Court upheld legislation that imposed direct federal taxes on D.C. residents.[25] Article I, Section 2, Clause 3 of the Constitution stated that "Representatives and direct Taxes shall be apportioned among the several States which may be included within this Union."[26] Despite the absence of mention of the District in this clause, the Court held that direct taxation of the District was constitutionally permissible. The Court stated that even if the language in Article I, Section 2, Clause 3 were not read to include the District, "[i]f the general language of the constitution should be confined to the States, still the [District Clause] gives to Congress the power of exercising 'exclusive legislation in all cases whatsoever within this district,'" including the power to assess the same direct tax on the District as it could assess on a state.[27]

Congress also treated the District as a state when it extended to District residents the right to sue under 42 U.S.C. § 1983. In District of Columbia v. Carter, the Supreme Court had held that Section 1983

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24 For example, Alexander Hamilton supported an express provision in the Constitution for voting representation for the future Seat of Government. During the New York ratifying convention he proposed an amendment stating that "[w]hen the Number of Persons in the District of Territory to be laid out for the Seat of Government of the United States, shall according to the Rule for the Apportionment of Representatives and direct Taxes amount to _____ such District shall cease to be parcel of the State granting the Same, and Provision shall be made by Congress for their having a District Representation in the Body." 5 The Papers of Alexander Hamilton 189 (Harold C. Sybett & Jacob E. Cooke eds., Columbia University Press 1962). Although this provision was not adopted, as there is no evidence of any opposition to it, it was likely discarded as unnecessary.

25 18 U.S. 317 (1820).

26 U.S. Const. art. I, § 2, cl. 3.

27 Loughborough, 18 U.S. at 322-4.

did not apply of its own accord because the 14th Amendment does not apply to the District of Columbia.[28] The Court stated that "the commands of the Fourteenth Amendment are addressed only to the State or to those acting under color of its authority....since the District of Columbia is not a 'State' within the meaning of the Fourteenth Amendment...neither the District nor its officers are subject to its restrictions."[29] The Court noted, however, that Congress has the power to extend the same protection to District residents by using its power under the District Clause.[30] Congress subsequently followed this route and enacted legislation that expressly applied Section 1983 to the District.[31] Its power to do so pursuant to the District Clause has never been challenged.

Most notably for present purposes, the Supreme Court has affirmed Congress's enactment under the District Clause of legislation extending Article III diversity jurisdiction to citizens of the District. Initially in Hepburn v. Ellzey, the Court had refused to allow District residents to bring diversity suits in federal court because Article III provides federal jurisdiction only to disputes "between Citizens of the several States."[32] The plaintiffs, District residents, had argued that the District was "a distinct political society, and is therefore 'a state' according to the definitions of writers on general law."[33] The Court disagreed. It held that insofar as the Constitution is concerned the term "state" means a member of the union.[34] The Court acknowledged, however, that "it is extraordinary that the courts of the United States, which are open to aliens, and to the citizens of every state in the union, should be closed" to District residents, who are also "citizens of the United States, and of that particular district which is subject to the jurisdiction of congress."[35] The Court also expressly suggested that this inequity was within Congress' power to resolve, stating that "this is a subject for legislative, not for judicial consideration."[36]

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28 In some contexts, the Supreme Court has treated the District directly as a State for constitutional purposes. In Loughran v. Loughran, 292 U.S. 216, 228 (1934), for example, the Court held that the Full Faith and Credit Clause in Article IV of the Constitution binds the courts of the district equally with the courts of the States.

29 409 U.S. 418, 423-24 (1973).

30 Id. at 424 n.9 ("inclusion of the District of Columbia in Section 1983 can not be subsumed under Congress' power to enforce the Fourteenth Amendment but, rather, would necessitate a wholly separate exercise of Congress' power to legislate for the District under Art. I, 8, cl. 17").

31 The 1979 Amendments added language related to the District of Columbia to Section 1983. Pub. L. No. 96-170 (codified as amended at 42 U.S.C.A. § 1983).

32 6 U.S. 445 (1805).

33 Id. at 452.

34 Id.

35 Id. at 453.

36 Id.

In 1940, Congress took up that gauntlet and enacted legislation extending federal diversity jurisdiction to District residents.[37] In National Mutual Ins. Co. v. Tidewater Transfer Co. the Supreme Court upheld that statute against constitutional challenge.[38] Five justices concurring in that result agreed that Congress had the power to extend to the District "state" status for purposes of federal diversity jurisdiction, even though Hepburn had held that Article III itself only affords this protection to "citizens of the several States."[39]

Writing for the plurality, Justice Jackson read Hepburn to suggest that the District Clause gives Congress the power to treat the District as a state.[40] He noted Chief Justice Marshall's comment that it was "extraordinary" that citizens of the District, which is subject to the jurisdiction of Congress," do not have the same rights as "citizens of every state in the union."[41] Justice Jackson recognized that the reference to "legislative...consideration" was somewhat ambiguous, because it could also connote a constitutional amendment, but interpreted it to mean that "Congress had the requisite power under [the District Clause]" to address this inequity as "this is a subject for legislative, not for judicial consideration."[42] Justice Jackson also noted that "Congress had acted on the belief that it possesses that power" under the District Clause and that Congress' determination is entitled to great deference.[43]

The plurality noted Congress's unquestioned authority under Article I to make the defendant "suable by a District citizen" in the federal "courts of the District of Columbia or perhaps to a special statutory court sitting outside of it."[44] It further observed that, in the bankruptcy context, Congress has used its Article I power to provide Article III courts jurisdiction over non-diverse cases that do not arise under the laws of the United States. Hence, the plurality reasoned that Congress must also possess the authority under Article I to extend diversity jurisdiction to District residents.[45] In particular, it reasoned that, "[i]f Congress has the power to bring the defendant from his home all the way to a forum within the

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37 Act of April 20, 1940, 54 Stat. 143 (1940). The effect of the Act was to amend 28 U.S.C. § 41(1) so that it read in pertinent part: "The district courts shall have original jurisdiction as follows: Of all suits of a civil nature, at common law or in equity…where the matter in controversy exceeds, exclusive of interest and costs, the sum or value of $3,000 and…(b) Is between citizens of different States, or citizens of the District of Columbia, the Territory of Hawaii, or Alaska, and any State or Territory…."

38 337 U.S. 582 (1949).

39 Id.

40 The two concurring justices thought that Hepburn should be overruled and the District treated directly as a state under Article III. See id. at 626.

41 Id. at 589.

42 Id. at 587, quoting Hepburn, 6 U.S. at 453.

43 Tidewater, 337 U.S. at 589.

44 Id. at 602.

45 Id. at 600.

District, there seems little basis for denying it power to require him to meet the plaintiff part way in another forum."[46] In other words, the greater authority, at the behest of a District resident, to subpoena a defendant to a special District of Columbia Article I court must necessarily encompass the lesser ability to allow a District resident to bring a diversity suit in an Article III court.

To be sure, the Tidewater plurality did not hold that the District could be treated as a state for all purposes. It emphasized that the extension of diversity jurisdiction did not invade "fundamental freedoms" or "reach for powers that would substantially disturb the balance between the Union and its component states" but rather involved a "constitutional issue [that] affects only the mechanics of administering justice in our federation."[47] It noted that, "[i]n mere mechanics of government and administration we should, so far as the language of the great Charter fairly will permit, give Congress freedom to adapt its machinery to the needs of changing times."[48] In this regard, the plurality emphasized that Congress's determination regarding the scope of its powers under the District Clause is entitled to great deference.[49]

Congress has used this same power to enact hundreds of other statutes affecting the "mechanics of government and administration" under which the District is treated like a state. These statutes range from the Federal Election Campaign Act,[50] the federal copyright statute,[51] the Racketeer Influenced and Corrupt Organizations Act,[52] to the federal civil rights and equal employment opportunity statute,[53] and the federal crime victim compensation and assistance statute.[54]

C. Congress's Statutory Provision Of Voting Rights To District Residents Would Be Permissible Under Tidewater And Would Not Impermissibly Disturb The Constitution's Structural Framework

In Hepburn, the Court stated that the extension of diversity jurisdiction to District residents was a matter for legislative consideration, not that of the courts, and Congress legislated accordingly.[55] Congress likewise extended the protections of § 1983 to District residents after the Court in Carter held that these residents were not protected by the text of the 14th Amendment. In Alexander, the Court similarly held that the Constitution does not extend voting representation to District residents, but

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46 Id. at 602.

47 Id. at 585.

48 Id. at 585-6.

49 Id. at 589.

50 2 U.S.C. § 431(12) (1994).

51 17 U.S.C. § 101 (1994).

52 18 U.S.C. § 1961(2) (1994).

53 42 U.S.C. § 2000(e)(i).

54 42 U.S.C. § 10603(d)(1) (1998).

55 Hepburn, 6 U.S. at 453.

suggested that the plaintiffs should plead their case in "other venues."[56] Just as Congress responded to the Court's suggestions in Hepburn and Carter that legislation was appropriate, so should Congress act on the suggestion in Alexander that legislation is the proper and valid means to extend voting representation to District residents.

1. Congress's Statutory Provision Of Voting Rights to District Residents Would Be Permissible Under Tidewater

"It is beyond cavil that 'voting is of the most fundamental significance under our constitutional structure.'" Burdick v. Takushi, 504 U.S. 428, 433 (1992) (quoting Illinois State Bd. of Elections v. Socialist Workers Party, 440 U.S. 173, 184 (1979). Consistent with Tidewater, Congress should have the authority to provide this "most fundamental" right to District residents, on par with that of State residents, so long as the extension of the franchise does not (i) invade "fundamental freedoms" or (ii) "reach for powers that would substantially disturb the balance between the Union and its component states."[57]

Neither limit would be threatened here. First, the extension of basic voting representation to District residents unquestionably *advances* the "fundamental freedoms" of District residents. It would accomplish that goal, moreover, without impinging upon the fundamental freedoms of other United States citizens. To the extent that the addition of the additional voting representative to the House and two to the Senate would dilute the voting power of citizens of other States, it does so in the very same way that voting power has routinely been diluted by the addition of new States to the Union (and, for that matter, by increases in the Nation's population), and trenches on no vested rights.

Second, like their State counterparts, the District's representatives would represent their constituencies. They would be expected to represent the District's residents *vis a vis* the federal government in the same way a State's representatives represent that State *vis a vis* the federal government. There is no reason to suppose that this representation would at all (much less "substantially") "disturb the balance between the Union and its component states."

2. Congress's Statutory Provision Of Voting Rights To District Residents Would Not Impermissibly Disturb The Constitution's Structural Framework

Extension of the franchise to District residents would pose no threat to the balance of powers among the States or between Congress and the other federal branches. While the Constitution structures individuals' representational voting rights in terms of their States and intrastate districts, it is now well established that the right is a personal one belonging to each citizen as an individual. As the Supreme Court has explained, "the Framers envisioned a uniform national system, rejecting the notion that the Nation was a collection of States, and instead creating a direct link between the National Government and

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[56] Alexander, 90 F.Supp. 2d at 72.

[57] Tidewater, 337 U.S. at 585.

the people of the United States."[58] The role of the States within this federal representational structure is essentially functional; they were the "obvious and, actually, only political subdivisions capable together of conducting national elections."[59] (As Chief Justice Marshall noted in reference to the respective roles of States and the people in the ratification of the Constitution, "[i]t is true, [the people] assembled in their several states – and where else should they have assembled?"[60]) The District is now similarly capable of undertaking that role. Because the right to vote belongs to the individual, and not to the States, it should not trench upon any right of the States *qua* States to extend the right to citizens of the District.

To the extent that it may affect the balance of power among the States, the extension of the franchise to District residents would accomplish nothing that Congress could not equally accomplish by admitting the populated areas of the District as a new State, a change Congress could effect through a simple majority vote of both Houses.[61] As the Supreme Court concluded in Tidewater, Congress's unquestioned ability to accomplish a desired result by another means argues strongly for its power to accomplish that result directly: if Congress could admit the District as a State, there is no substantial reason to preclude it from exercising a lesser power to extend state-like congressional voting rights to district residents.[62]

Indeed, residents of entities less similar to States have been granted voting representation, although it is also is not guaranteed by Article I. In Evans v. Cornman the Supreme Court held that residents of federal enclaves within States have a constitutional right to congressional representation, ruling that Maryland had denied its "citizen[s'] link to his laws and government" by disenfranchising residents on the campus of the National Institutes of Health.[63] And through the Overseas Voting Act, Congress afforded Americans living abroad the right to vote in federal elections as though they were present in their last place of residence in the United States.[64] If residents of federal enclaves and Americans living abroad can thus be afforded voting representation, Congress should be able to extend the same to District residents.

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58 Term Limits, 514 U.S. at 803.

59 Alexander, 90 F.Supp. 2d at 89 (Oberdorfer, J., dissenting).

60 McCulloch v. Maryland, 17 U.S. 316, 403 (1819).

61 U.S. Const. art I, § 3.

62 While residents of territories lack the right to vote, the District's residents are more akin to those of the fifty states than of the territories. Unlike residents of territories, District residents pay federal taxes, cast votes in presidential elections, and can be drafted into the military. Residents of territories have never been a part of the "people of the several states" and neither they nor their predecessors have ever possessed a constitutionally protected right to vote.

63 398 U.S. 419, 422 (1970).

64 42 U.S.C. § 1973ff-1 (1988).

D. Other Reasons That Have Been Advanced To Dispute Congress's Authority To Provide District Residents Congressional Voting Representation Are Insubstantial

Certain commentators who believe that an amendment to the Constitution is required to provide District residents congressional voting representation emphasize that the District obtained a vote in the electoral college by way of a constitutional amendment and that Congress previously attempted unsuccessfully to provide the District congressional voting representation by the same route. Neither fact stands as a substantial barrier to a purely legislative solution.

In 1961, the Twenty-third Amendment extended representation in the Electoral College to District residents.[65] Congress's resort to a constitutional amendment in that context does not demonstrate its inability to provide District residents congressional voting representation by statute. Even if Congress's authority were the same in both contexts (a point that is not at all clear), Congress's determination in 1961 to proceed by constitutional amendment casts no substantial light on the understanding of the Framers in 1787 whether an amendment would be necessary to affect such a change.

In 1978, a two-thirds majority approved a proposed constitutional amendment extending voting congressional representation to the District. The decision to pursue a constitutional amendment rather than simple legislation in these instances was a policy choice based on the consensus that an amendment would provide a quick and permanent solution to the disenfranchisement of District residents.[66] To the extent that some in Congress believed an amendment necessary to achieve the desired end, several other members of Congress believed that simple legislation was a valid alternative to a constitutional amendment.[67] In any event, Congress's decision to proceed via a constitutional amendment has no bearing on Congress' authority to achieve the same result legislatively, as "a failed constitutional amendment does not alter the meaning of the Constitution, and the views of a failed amendment's congressional supporters have no well-established significance."[68]

II. CONCLUSION

The Supreme Court has stated that "[o]ur Constitution leaves no room for classification of people in a way that unnecessarily abridges [the right to vote]."[69] The exclusion of District residents from full voting congressional representation is unnecessary given Congress' broad ability to legislate for the District pursuant to the District Clause. Congress has exercised this power to impose upon the District

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65 25 U.S.C.A. § 25a (1994).

66 Statement of Walter Smith before the Subcommittee on the District of Columbia, Committee on House Government Reform, 2002 WL 20319210 (July 19, 2002).

67 Statement of Walter Smith before the Subcommittee on the District of Columbia, Committee on House Government Reform, 2002 WL 20319210 (July 19, 2002).

68 Alexander v. Daley, 26 F.Supp. 2d 156, 160 (D.D.C. 1998); see also Alexander v. Daley, 90 F.Supp. 2d at 97-99 (D.D.C. 2000) (Oberdorfer, J., dissenting).

69 Wesberry, 376 U.S. at 17.

both burdens and benefits shared by the 50 States. The Supreme Court has validated the extension of state-like treatment to the District, and emphasized that Congress's exercise of authority under the District Clause is entitled to great deference. For the reasons stated above, we conclude that Congress has the authority under the District Clause to extend congressional voting representation to the District's residents.

MEMORANDUM

TO:	Hon. Eleanor Holmes Norton, District of Columbia Delegate to Congress Hon. Anthony Williams, Mayor of the District of Columbia Hon. Linda Cropp, Chairman, District of Columbia City Council Hon. Robert Rigsby, District of Columbia Corporation Counsel
FROM:	Walter Smith, Executive Director, DC Appleseed Center L. Elise Dieterich, Esq., Swidler Berlin Shereff Friedman, LLP
DATE:	May 22, 2002
RE:	**Congress' Authority to Pass Legislation Giving District of Columbia Citizens Voting Representation in Congress**

We have been asked by the District of Columbia and by the District of Columbia's Delegate to Congress, the Honorable Eleanor Holmes Norton, to address the question of Congress' authority to provide, by legislation, that citizens of the District of Columbia shall have voting representation in the Congress.[1] The legal precedents relevant to this question are familiar to us, because we represented the District (on a *pro bono* basis) in litigation designed to determine whether the Constitution already requires that District citizens be given voting representation. That litigation, known as *Alexander v. Daley*,[2] was ultimately decided in the United States Supreme Court; it determined that the Constitution does not categorically require that D.C. citizens be given voting representation and, therefore, that the Court lacks authority to provide it.

However, as we will explain, the key court opinion in that litigation made clear that Congress does have authority to grant D.C. citizens voting representation and that there are compelling reasons for Congress to do so. As we will also explain, the *Alexander* decision is consistent with the other relevant legal precedents on the question of Congress' authority over this issue. *Alexander* is furthermore consistent with actions that Congress itself has taken in treating citizens of the District as if they were citizens of a State for other limited purposes under the Constitution. For all these reasons, discussed below, we conclude that Congress has the requisite authority under the Constitution to give D.C. citizens what the Supreme Court has called the most precious right of American citizens. In the Court's words:

[1] The District of Columbia has a non-voting delegate in the House of Representatives, but has never had full voting representation in the House or Senate.
[2] 90 F. Supp. 2d 35 (D.D.C. 2000).

> No right is more precious in a free country than that of having a voice in the election of those who make the laws under which, as good citizens, we must live. Other rights, even the most basic, are illusory if the right to vote is undermined.[3]

The half million citizens of the District of Columbia, like citizens of the fifty states, bear all of the obligations of American citizenship: they are required to obey the laws passed by Congress; they pay federal taxes; they serve in the military; and, they fight and die in our wars. Yet, they lack the most basic right that should accompany American citizenship – the right to full voting representation in the Congress. The time is now ripe for Congress to exercise its authority to remedy this longstanding inequity.

I. CONGRESS' BROAD AUTHORITY TO LEGISLATE FOR THE DISTRICT OF COLUMBIA

The District of Columbia, the seat of the federal government, was established pursuant to Article I, Section 8, Clause 17 (the so-called "District Clause") of the United States Constitution. That Clause provides:

> The Congress shall have power . . . To exercise exclusive legislation in all cases whatsoever, over such District (not exceeding ten miles square) as may, by cession of particular states, and the acceptance of Congress, become the seat of the government of the United States[.]

The courts have repeatedly emphasized the magnitude of Congress' power under this Clause. It has been held, for example, that Congress may "provide for the general welfare of citizens within the District of Columbia by any and every act of legislation which it may deem conducive to that end."[4] Given the breadth of Congress' power under the District Clause, it would appear that Congress has the authority to provide for the "general welfare" of D.C. citizens by providing them the most important right they as citizens should possess – the right to vote. And in fact, the *Alexander v. Daley* decision confirms that is so.

II. THE *ALEXANDER V. DALEY* DECISION

In 1998, a group of District citizens and the District of Columbia brought suit seeking a declaratory judgment that the Constitution commands that District citizens be afforded voting representation in Congress. On March 20, 2000, a three-judge federal court in the District of Columbia decided that case, *Alexander v. Daley*. The court held, by a 2-1 vote, that the Constitution does not require that citizens of the District be given

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[3] *Wesberry v. Sanders*, 376 U.S. 1, 17 (1964).
[4] *Neild v. District of Columbia*, 110 F.2d 246, 250 (D.C. Cir. 1940).

voting representation in Congress. The court based its decision on the fact that Article I of the Constitution gives representation only to "people of the several States" and the District is not a State. On October 16, 2000, the U.S. Supreme Court affirmed this decision. *Alexander* is therefore the governing legal authority on the question whether District residents are constitutionally entitled to voting representation in the Congress; under *Alexander* they are not.

But *Alexander* also constitutes the best, most current legal authority on the question whether Congress has legislative power to grant D.C. citizens voting representation; under *Alexander*, Congress does have that power.

The *Alexander* court did not hold that the Constitution precludes District residents from having voting representation. Instead, the Court held only that "this court lacks authority to grant" voting representation.[5] The court furthermore made clear that even though it lacked authority to grant relief, that did not mean plaintiffs were without recourse. The court stated that plaintiffs could seek relief "in other venues," including "through the political process."[6] Indeed, the court specifically noted that counsel for the defendant House of Representatives asserted in the litigation that "only congressional legislation or constitutional amendment can remedy plaintiffs' exclusion from the franchise."[7]

The *Alexander* court's interpretation and application of the relevant judicial precedents is consistent with House counsel's position. Two key precedents relied on by the court were Chief Justice John Marshall's 1805 decision in *Hepburn v. Ellzey*,[8] and Justice Robert Jackson's 1949 plurality opinion in *National Mutual Insurance Co. of District of Columbia v. Tidewater Transfer Company*.[9] It is important to describe those two precedents before explaining how the *Alexander* court applied them.

Hepburn was the first Supreme Court decision addressing whether the District of Columbia may be treated as a "State" within the meaning of the Constitution. The case concerned the fact that Article III of the Constitution authorizes the federal courts to hear cases "between citizens of different States." The question in *Hepburn* was whether District of Columbia residents are eligible under this Article III provision to bring suit in federal court. Chief Justice Marshall said they are not, relying primarily on the fact that the District is not a State within the meaning of the clauses of Article I of the Constitution granting congressional representation only to States. He believed that just as the District is not a State under Article I, it also is not a State under Article III.

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[5] 90 F. Supp. 2d 35, 72 (emphasis supplied).
[6] *Id.*, at 72, 37.
[7] *Id.*, at 40 (emphasis supplied).
[8] 6 U.S. 445 (1805).
[9] 337 U.S. 582 (1949).

Nevertheless, Chief Justice Marshall closed his *Hepburn* opinion by noting that: (1) citizens of the District are "citizens of the United States"; (2) they are "subject to the jurisdiction of congress"; (3) it is "extraordinary" that they should be denied rights to which "citizens of every state in the union" are entitled; and (4) this inequity is "a subject for legislative, not for judicial consideration."[10]

Nearly 150 years later Congress addressed the inequity by passing a law, under its District Clause power, treating D.C. citizens as if they were citizens of a State for purposes of federal court jurisdiction. In the *Tidewater* case, the Supreme Court was asked to decide whether this law was valid. The Court held that it was, although the Justices had different reasons for reaching that conclusion. The important opinion from *Tidewater* is the plurality decision issued by Justice Jackson, because it is the decision relied on by the *Alexander* court.

Justice Jackson said that the clear implication of Chief Justice Marshall's opinion in *Hepburn* was that Congress had the power under the District Clause to treat the District as if it were a State for purposes of federal diversity jurisdiction. As noted, Chief Justice Marshall said in his opinion that it was "extraordinary" that citizens of the District, which is "subject to the jurisdiction of Congress," do not have the same rights as "citizens of every state in the union," but that this is "a subject for legislative, not for judicial consideration." Justice Jackson interpreted this to mean that "Congress had the requisite power under Art. I [the District Clause]" to address the inequity facing District citizens.[11]

It is true, said Justice Jackson, that Chief Justice Marshall's reference to this being a subject for "legislative" consideration is "somewhat ambiguous, because constitutional amendment as well as statutory revision is for legislative, not judicial, consideration."[12] Even so, Justice Jackson concluded, the better reading of Chief Justice Marshall's opinion is that Congress has power under the District Clause to treat the District as if it were a State. And, in any case, Justice Jackson said, "it would be in the teeth of his language to say that it is a denial of such power."[13] Finally, Justice Jackson said, "congress had acted on the belief that it possesses that power" and Congress' determination is entitled to great deference.[14] This is particularly true given that "congressional power over the District, flowing from Art. I, is plenary in every respect."[15] Thus, the Court in *Tidewater* approved Congress' legislative expansion of federal diversity jurisdiction to embrace the District, notwithstanding the use of the word "State" in Article III.

Based in part on *Tidewater* and *Hepburn*, plaintiffs in the *Alexander* case argued that the court should treat the District as if it were a State under the provisions of Article I

[10] 6 U.S. 445, 453.
[11] 337 U.S. 582, 589.
[12] *Id.*, at 587.
[13] *Id.*, at 589.
[14] *Id.*, at 603.
[15] *Id.*, at 592.

giving voting representation to States. The dissenting judge in *Alexander* agreed with this argument.[16] The two-judge majority disagreed, but it disagreed in a way that clearly validated Congress' power to treat the District as if it were a State under Article I.

First, the majority said that *Tidewater* "reconfirmed Marshall's conclusion that the District was not a state within the meaning Article III's grant of jurisdiction to the federal courts, holding instead that Congress had lawfully expanded federal jurisdiction beyond the bounds of Article III by using its Article I power to legislate for the District."[17] Then, and more importantly, the *Alexander* majority declared in the closing section of its opinion that "many courts have found a contradiction between the democratic ideals upon which this country was founded and the exclusion of District residents from congressional representation."[18] Yet "it is the Constitution and judicial precedent that create the contradiction" and "that precedent is of particularly strong pedigree."[19] That "pedigree," the *Alexander* majority said, was primarily *Hepburn* and *Tidewater*; to support that view, the *Alexander* majority quoted this passage from *Tidewater*:

> Among his contemporaries at least, Chief Justice Marshall was not generally censured for undue literalness in interpreting the language of the Constitution to deny federal power and he wrote from close personal knowledge of the Founders and the foundation of our constitutional structure. Nor did he underestimate the equitable claim which his decision denied to residents of the District . . ..[20]

The *Alexander* majority then closed by stating:

> Like our predecessors, we are not blind to the inequity of the situation plaintiffs seek to change. But longstanding judicial precedent, as well as the Constitution's text and history, persuade us that this court lacks authority to grant plaintiffs the relief they seek. If they are to obtain it, they must plead their cause in other venues.[21]

Taken together, these statements by the *Alexander* court constitute persuasive legal support affirming the legislative authority of Congress to address the voting inequity described by the court, for the reasons that follow.

In *Hepburn*, Chief Justice Marshall concluded that the District is not a State under Article III, but he strongly implied that this inequity (denial of federal court jurisdiction to District citizens) could be remedied by Congress under the District Clause. *Tidewater* later made express what Chief Justice Marshall had implied – that Congress does have

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[16] 90 F. Supp. 2d 35, 94-96.
[17] *Id.*, at 54-55 (emphasis supplied).
[18] *Id.*, at 72.
[19] *Id.*
[20] *Id.*, at 72 (emphasis supplied) (citing *Tidewater*, 337 U.S. at 586-87).
[21] *Id.*

the power under the District clause to give D.C. citizens the same rights that citizens of States have under Article III. Indeed, the Judiciary Committee of the House of Representatives recommended the Act of April 20, 1940, which defined the word "States" as used in the diversity jurisdiction statute to include the District of Columbia, as a "reasonable exercise of the constitutional power of Congress to legislate for the District of Columbia."[22]

Alexander now makes clear that Congress may use this same District Clause power to remedy the other inequity identified by Chief Justice Marshall – denial of voting representation to District residents. The *Alexander* court gave its guidance on this issue in essentially the same way as had Chief Justice Marshall; *i.e.,* once the court found that the District was not a State for purposes of Article I, it offered a closing statement regarding the best manner to address that inequity – just as Chief Justice Marshall had done.

Thus, in *Hepburn*, Chief Justice Marshall expressed his view that it is "extraordinary" that District citizens should be denied rights available to citizens of every state in the union; the *Alexander* court similarly stated that it was inequitable and contrary to our "democratic ideals" that District citizens are denied the voting representation enjoyed by other U.S. citizens. Likewise, Chief Justice Marshall specifically referenced the fact that citizens of the District are subject to the jurisdiction of Congress, referring to Congress' power under the District Clause; the *Alexander* court, in turn, quoted the passage from *Tidewater* noting that Chief Justice Marshall was reluctant to "deny federal power" regarding District residents, given the "equitable claim" they presented. The "federal power" available to address the "equitable claim," as *Tidewater* explained, is plainly Congress' District Clause authority.

Perhaps most important of all, just as Chief Justice Marshall had noted that the inequity presented in *Hepburn* presented a "subject for legislative" consideration, so too the *Alexander* court noted that District citizens could take their claim to "other venues," including the "political process."[23] Indeed, the *Alexander* opinion is even stronger on this point than was Chief Justice Marshall's opinion because the *Alexander* court specifically referenced Congress' own position that the inequity at issue could be addressed through "congressional legislation *or* constitutional amendment."[24]

For all these reasons, the recent *Alexander* decision, affirmed by the United States Supreme Court in October 2000, has made clear the authority of Congress under the District Clause to pass legislation treating citizens of the District of Columbia as though they are citizens of a State for purposes of voting representation. Furthermore, although *Alexander* only recently made that authority clear, past actions by Congress and other relevant legal precedents confirm that authority.

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[22] H.R. Rep. No. 1756, 76th Cong., 3d Sess., p. 3.
[23] 90 F. Supp. 2d 35, 37.
[24] *Id.*, at 40 (emphasis supplied).

III. OTHER AUTHORITY CONFIRMING CONGRESS' DISTRICT CLAUSE POWER

Beyond *Tidewater* and *Alexander*, there are other examples in which the courts have approved the extension by Congress to District residents of a constitutional protection otherwise applicable only to residents of the states. The most important example is found in the cases construing 42 U.S.C. § 1983, the federal statute implementing the protections of the 14th Amendment. In *District of Columbia v. Carter*,[25] the Supreme Court held that, because the 14th Amendment does not apply to the District of Columbia, Section 1983 did not apply to District residents. "[T]he commands of the 14th Amendment are addressed only to the State or to those acting under color of its authority. . . . [S]ince the District of Columbia is not a 'State' within the meaning of the 14th Amendment . . . neither the District nor its officers are subject to its restrictions."[26] For this reason, the Court held, "[I]nclusion of the District of Columbia in § 1983 cannot be subsumed under Congress' power to enforce the 14th Amendment but, rather, would necessitate a wholly separate exercise of Congress' power to legislate for the District under [the District Clause]."[27] In response, Congress subsequently enacted legislation, pursuant to its power under the District Clause, making Section 1983 expressly applicable to the District. The validity of that legislation has never been challenged, and the courts have since assumed its applicability in many cases brought under its auspices.[28]

The Supreme Court also has upheld instances where Congress has used its power under the District Clause to extend to District citizens certain burdens of citizenship that, under the Constitution, apply to citizens of "states." The most important example is *Loughborough v. Blake*.[29] In that case, the Supreme Court held that Congress, under the District Clause and in conjunction with its Article I, Section 8 power "to lay and collect taxes," could impose a direct tax on the people of the District, notwithstanding that Article I, Section 2 states that "direct taxes shall be apportioned among the several States." Taken together, these cases confirm that Congress has authority under the District Clause to extend the benefits and burdens of U.S. citizenship to District residents, even where the Constitution applies those benefits and burdens only to citizens of the States.

A final confirmation that Congress has power under the District Clause to give D.C. citizens the vote is the fact that Article IV, Section 3 of the Constitution gives Congress the power to grant all the privileges of statehood – including the vote – by simple legislation. Accordingly, there should be no doubt that Congress also has <u>the lesser power</u> to grant a single attribute of statehood – the right to voting representation in Congress – if it deems that appropriate. As Justice Jackson said in *Tidewater*, when

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[25] 409 U.S. 418 (1973).
[26] *Id.*, at 423-24.
[27] *Id.*, at 424 n.9.
[28] *See, e.g. Inmates of D.C. Jail v. Jackson*, 158 F.3d 1357 (D.C. Cir. 1998).
[29] 18 U.S. 317 (1820).

Congress treated the District as a State for purposes of Article III of the Constitution, it was "reaching permissible ends by a choice of means which certainly are not expressly forbidden by the Constitution."[30] And Congress did so in circumstances where "no good reason is advanced" for denying Congress that power.[31] All of this applies equally to Congress' power to treat citizens of the District as if they were citizens of a state under Article I solely for voting purposes.

IV. THE 1978 PROPOSED CONSTITUTIONAL AMENDMENT

The only remaining question is whether Congress' power under the District Clause is somehow undermined by the proposed constitutional amendment adopted by Congress in 1978. We do not think it is.

As you know, in 1978, a bi-partisan, two-thirds majority in Congress approved a proposed constitutional amendment, which provided: "For purposes of representation in the Congress . . . the District constituting the seat of government of the United States shall be treated as though it were a State." At that time, there appears to have been consensus that an amendment to the Constitution would be the simplest and most durable remedy to the District's disenfranchisement. Several experts consulted by Congress in connection with the 1978 Amendment argued that Congress could, by simple legislation, enfranchise citizens of the District of Columbia, but took the position that a constitutional amendment would be preferable.[32] Others, including the spokeswoman for the administration of then-President Carter and a task force convened to examine the problem, apparently assumed that, to effectuate a legislative solution to the problem, Congress would exercise its authority pursuant to Article IV, Section 3 of the Constitution to confer full statehood on the District, a step perceived by many as problematic.[33]

The House Judiciary Committee in its report ultimately said: "The committee is of the opinion that the District should not be transformed into a State . . .."[34] Indeed, it seems clear from the record that Congress in 1978 was seeking a solution that would permanently enfranchise District citizens without the possibility of a later legislative reversal, while still maintaining the unique status of the District as the national capital, under federal control. Thus, the Committee concluded, that: "If the citizens of the

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[30] 337 U.S. 582, 603.

[31] *Id.*

[32] *See, e.g., Proposed Constitutional Amendments (H.J. Res. 139, 142, 392, 554, and 565) to Provide for Full Congressional Representation for the District of Columbia: Hearings Before the House Subcommittee on Civil and Constitutional Rights of the Committee on the Judiciary*, 95th Cong. 86-100 (1977) (testimony of Peter Raven-Hansen, Attorney at Law, and Herbert O. Reid, Professor of Law, Howard University School of Law).

[33] *See, e.g., Proposed Constitutional Amendments (H.J. Res. 139, 142, 392, 554, and 565) to Provide for Full Congressional Representation for the District of Columbia: Hearings Before the House Subcommittee on Civil and Constitutional Rights of the Committee on the Judiciary*, 95th Cong. 125-126 (1977) (testimony of Patricia Wald, Assistant Attorney General, Office of Legislative Affairs).

[34] H.R. Rep. No. 95-886, at 4 (1978).

District are to have voting representation in the Congress, a constitutional amendment is essential; statutory action alone will not suffice. This is the case because provisions for elections of Senators and Representatives in the Constitution are stated in terms of the States, and the District of Columbia is not a State."[35]

Despite this definitive-sounding statement, the Committee was not unanimous in believing that a constitutional amendment was necessary. Representatives Thornton, Hungate, Butler, Hyde, and Kindness filed separate views with the House Judiciary Committee Report on an early version of the proposed constitutional amendment, stating: "[I]t would be desirable for the residents of the District of Columbia to have voting representation in Congress . . . [but] we are not convinced that a constitutional amendment is either wise or necessary. More careful consideration should be given to the possibility that statutory provisions could be used to achieve this goal."[36] Representative Holtzman of the Committee also filed supplemental views, stating that: "the Committee [should] explore the possibility, suggested by Rep. Ray Thornton, of providing the District of Columbia with representation through the normal legislative process."[37]

Taking the record as a whole, we conclude that Congress, confronted with conflicting views on whether legislation would suffice, having heard the recommendation of several experts favoring the permanency of a constitutional amendment, and wishing to avoid debate on whether Congress should confer statehood on the District, determined that the proposed constitutional amendment afforded the most straightforward means to the desired end. It also appears from the record that Congress was confident that the proposed amendment would soon be ratified. The Committee on the Judiciary, in the 1975 report on an early version of the constitutional amendment, stated that:

> On June 16, 1960, Congress proposed the 23rd amendment to the Constitution. On April 3, 1961 – less than 1 year later – that amendment was ratified. It represented a national consensus that the District of Columbia was entitled on a permanent basis to participate in the election of the President and Vice President of the United States. Based upon the testimony received by the committee we conclude that there is an equally broad consensus that the denial of representation in the Congress for District citizens is wrong and that correction of this injustice is long overdue.[38]

In 1978, the Committee on the Judiciary, considering the final resolution proposing the constitutional amendment, said: "The committee is of the opinion that the District should not be transformed into a State, and it is confident that this proposed

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[35] *Id.*; H.R. Rep. No. 94-714, at 4 (1975).
[36] H.R. Rep. No. 94-714, at 15 (1975).
[37] *Id.*, at 9.
[38] *Id.*, at 3.

constitutional amendment when submitted to the States will be quickly ratified."[39] As it turned out, however, the proposed constitutional amendment failed to gain the approval of three-fourths of the states within the allotted seven year time period, as required, and was not ratified, leaving District citizens disenfranchised, as they still are today.

We believe there are two points from the 1978 Amendment's legislative history that are relevant to Congress' power now. The first is that there were strong differences of opinion in 1978 whether a constitutional amendment was required, and it is clear that many who supported a constitutional amendment did so because they thought one would be quickly passed and would render a permanent solution to the problem. It is also clear that many believed even in 1978 that Congress had the power to address the problem by simple legislation. The *Alexander* decision has now provided persuasive judicial support for that power. Subsequent experience has also shown that those who believed quick ratification would be forthcoming were mistaken; the fact is that even where a proposed constitutional amendment is supported by an overwhelming majority of the people (which polls show is the case with regard to giving D.C. citizens the vote),[40] obtaining ratification by three fourths of the states is very difficult.

The other important lesson to be drawn from the 1978 Amendment is that the majority view in Congress was then, and presumably still remains, that some means should be found to address the inequity facing D.C. citizens. As Senator Strom Thurmond stated in defense of the passage of the proposed amendment:

> I think it is a fair thing to do. We are advocating one man, one vote. We are advocating democratic processes in this country. We have more than 700,000 people in the District of Columbia who do not have voting representation. I think it is nothing but right that we allow these people that representation. We are advocating democratic processes all over the world. We are holding ourselves up as the exemplary Nation that others may emulate in ideas of democracy. How can we do that when three-quarters of a million people are not allowed to have voting representation in the capital city of this Nation?[41]

As Senator Dole similarly stated:

> The absence of voting representation for the District in Congress is an anomaly which the Senate can no longer sanction. It is an unjustifiable gap in our scheme of representative government – a gap we can fill this afternoon by passing this resolution.
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> ***

[39] H.R. Rep. No. 95-886, at 4 (1978).
[40] *Metro in Brief*, WASH. POST, April 13, 2000, at B3.
[41] 124 Cong. Rec. 27,253 (1978).

It seems clear that the framers of the Constitution did not intend to disenfranchise a significant number of Americans by establishing a Federal District. I believe that the framers would have found the current situation offensive to their notions of fairness and participatory government.[42]

The *Alexander* decision has confirmed the correctness of these statements by Senators Thurmond and Dole. As noted, that decision declared that there is "a contradiction between the democratic ideals upon which this country was founded and the exclusion of District residents from Congressional representation."[43] And, most importantly, the *Alexander* decision demonstrates that Congress has authority to correct this contradiction and include District residents in our democracy.

CONCLUSION

The *Alexander* decision, affirmed by the United States Supreme Court, has made clear that Congress has legislative authority to give voting representation to the citizens of the Nation's capital. That court has also confirmed Congress' own stated view that denial of that voting representation is a serious inequity that should be corrected. Now that Congress' authority has been established, it seems appropriate that Congress should act expeditiously to correct the inequity.

[42] 124 Cong. Rec. 27,254-55 (1978).
[43] 90 F. Supp. 2d 35, 72.

Chairman TOM DAVIS. Thank you.

Ms. Werronen, thank you for being with us.

Ms. WERRONEN. Thank you, Mr. Chairman.

I'm Betsy Werronen, the chairwoman of the D.C. Republican Party. Before I begin my testimony, I would just like to make a brief aside. Our new headquarters here in the District is called the Edward W. Brooke Leadership Center. And I think that it is very fitting that today, when we all participate in this hearing, that Senator Brooke is going to the White House to be presented the Medal of Freedom by President Bush.

I'd like to say, Senator Brooke is a proud product of D.C. public schools, of Howard University, but he had to go to Massachusetts to be elected to the Senate.

Now, on behalf of the members of the D.C. Republican Committee, I speak in full support of voting rights for the people of the District of Columbia in the Congress of the United States. Our Republican Party has a proud heritage in support of voting rights for all Americans. We are proudly the party of Lincoln, and from Frederick Douglass, the former slave, abolitionist and suffrage advocate to Everett Dirksen, who sent the first Home Rule bill to be reported to the House in over 75 years, Republicans have continued to champion the right of all to express their most fundamental democratic right, their vote.

The 1948 Republican platform at the insistence of our President's grandfather, Senator Prescott Bush, contained a plank calling for self-government and national suffrage for the Nation's Capital. And Republican party platforms from 1960 through 1976 supported Home Rule and D.C. voting representation. I want to assure you that the D.C. delegation to the Republican National Convention in August will carry the fight for such a plank in this year's Republican platform.

I'd like to submit for the record Nelson Rimensnyder, a congressional historian, who has done extensive work in this area, a paper of his, Republicans and D.C. Voting Rights.

Chairman TOM DAVIS. Without objection, that will be put into the record.

[The information referred to follows:]

STATEMENT AND RESEARCH SUBMITTED FOR THE HEARING RECORD
By
Nelson F. Rimensnyder

In Support of H. R. 4640

Legislation to Establish the District of Columbia as a Congressional District for Purposes of Representation in the U. S. House of Representatives

Committee on Government Reform
U. S. House of Representatives
Washington, D. C.

June 23, 2004

Chairman Davis and Members of the Committee:

My name is Nelson Rimensnyder. Since 1960 I have been working privately and professionally for voting representation in Congress for residents of the District of Columbia. In 1961, for my senior project in high school, I petitioned my state legislature, during visits to the State Capitol in Harrisburg, to vote for a constitutional amendment to allow residents of the District of Columbia to vote for President.

A version of that amendment passed the U. S. Senate with crucial Republican support and provided for D. C. voting representation in Congress. The U. S. House, dominated by opposing Democrats, stripped that provision from the proposed amendment. That year, Pennsylvania became the 23rd State to ratify the 23rd Amendment to the Constitution.

After U. S. Army Service and graduate school, I became a resident of the District of Columbia in 1970. First at the Congressional Research Service of the Library of Congress and then, for 17 years at the U. S. House Committee on the District of Columbia, I researched the 200-year-old issues of D. C. home rule, local government finances and representation for the District of Columbia, my adopted home. A short overview of that research is provided for potential use in the continuing deliberations on these matters.

In recent years, I have become active in the District of Columbia Republican Party, and I have attached research that I submitted to the Party on June 2, 2004 during Party consideration of the activities pursuant to getting D. C. voting representation language included in the Platform of the National Republican Party.

Chairman Davis, I commend you and the Committee's staff for producing the innovative and sincere proposal contained in H. R. 4640. I have urged my Delegate to

the U. S. House of Representatives, the Honorable Eleanor Holmes Norton, to co-sponsor this proposal and seek the support of her party for passage.

In my Capitol Hill garage are 90 boxes of my research, supported by primary and secondary source material and a considerable library of books, that could help achieve voting representation in the House and perhaps renewed consideration of a Delegate to the U. S. Senate from the District of Columbia, a proposal that has passed the House on at least two occasions (1970, 1973) with overwhelming bipartisan support. Information about this archive is provided and I hope that you, Chairman Davis, and the Committee will be supportive of my efforts to preserve and catalog this unique collection by establishing a National Capital Archive at a local university or appropriate research institution.

I remain available to assist the Committee on these matters. Thank you.

THE REPUBLICAN PARTY AND THE DISTRICT OF COLUMBIA

Extracts from Republican Party Platforms, Supporting Statements and Supplementary Records

Compiled From the

NATIONAL CAPITAL ARCHIVE:

A Collection of Documentary Materials and Research Relating to the Establishment, Planning, Development, Finances and Political Status of the District of Columbia

Nelson F. Rimensnyder
Historian and Curator
(202) 546-4668
June 2004

[PROPOSED LANGUAGE FOR REPUBLICAN PARTY PLATFORM]

DISTRICT OF COLUMBIA:
OUR NATION'S CAPITAL

Since its first national convention in 1856, the Republican Party has initiated and supported constitutional legislative action to provide for voting representation in Congress for citizens residing in the District of Columbia. Framers of the Constitution intended that Congress consider such action after the District of Columbia was created from territory ceded by a state or states and had attained a population comparable to that required for a vote in the U. S. House of Representatives.

For over 200 years, citizens residing in the District of Columbia have paid federal taxes, served in the Armed Forces and abided by all the laws enacted by a Congress in which they have no voting members. We urge that Congress redress this grievance called "unconscionable" by President Dwight D. Eisenhower in nine addresses to Congress recommending action.

Furthermore, we urge Congress to enact legislation, proposed by President George W. Bush, providing for budget autonomy and consider other proposals for an annual, predictable and equitable federal payment to compensate the District of Columbia for revenues denied and services provided.

Nelson Rimensnyder
(202) 546-4668
June, 2004

CONGRESSIONAL AND EXECUTIVE DOCUMENTARY MATERIALS RELATING TO THE PLANNING, DEVELOPMENT AND GOVERNANCE OF THE DISTRICT OF COLUMBIA

An Archival – Research Proposal

In 1995, the U. S. House of Representatives abolished the Committee on the District of Columbia, a standing Committee since 1808. Records that had been collected for over 20 years documenting relations between Congress, the Executive Branch and local officials in the District of Columbia were discarded. Rescued, these records fill 90 boxes and are stored precariously in a Capitol Hill garage. The records have not been systematically sorted or cataloged. Some of them were donated to the District of Columbia by other committees of Congress that had, historically, exercised jurisdiction over some aspects of the governance of the District of Columbia. Other records were donated to the Committee when the U. S. House of Representatives Library was closed and the U. S. Senate Committee on the District of Columbia was abolished.

These records should be cataloged and prepared for proper archival storage, and ultimately made available to the public through an appropriate repository. Ideally, a local university or research institution should make this archive part of a permanent collection for use by faculty, students, government officials and the public.

The records are rich in material relating to the fiscal relations between the Federal government and local governments operating in the District of Columbia. The development of the "federal payment" since 1790 is particularly well represented. Connections between revenue and development restrictions, such as the 200-year-old imposed building height restrictions, have been made historically to justify special fiscal support for local services in the District of Columbia.

The collection also includes comprehensive documentation of the political and legislative process that led to the passage of the Home Rule Act for the District of Columbia, including the origins and development of all its provisions – a goldmine of original source material for political scientists and historians.

Some of this material should probably be prepared for publication by Congress in the form of reference compendiums for the use of current and future policy and decision makers in Congress, the Executive Branch and local government. For example, the collection contains virtually every proposal made since 1801 related to the political rights and status of citizens residing in the seat of government, the District of Columbia.

Nelson F. Rimensnyder
Director of Research (Retired)
Committee on the District of Columbia
U. S. House of Representatives

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REPUBLICANS AND DC VOTING RIGHTS
A Progressive Record Embracing the Best Principles of the Party

For over 100 years the Republican Party has exercised critical leadership in efforts to provide voting rights for residents of the Nation's Capital. Inheritors of the party of Abraham Lincoln included such prominent figures as Frederick Douglas, former slave and abolitionist author, lecturer and suffrage advocate. Douglass settled in Washington in 1870. Shortly thereafter, he summarized Republican support for D. C. voting rights in local government and Congress in what became an often repeated quote of the period: "In a republic, all must be citizens on a basis of equality." Douglass served in the Legislative Assembly of the District of Columbia from 1871 - 1874.

In 1888, Senator Henry Blair, Republican of New Hampshire, introduced the first resolution in Congress to amend the Constitution to give D. C. electoral votes for president and voting members of Congress. By the administration of Theodore Roosevelt, Republicans were introducing such resolutions in every Congress. In 1916, Republican leaders convened the first hearings on representation resolutions, and the voteless D. C. residents were invited to testify. D. C. Republican Party leaders testified in favor of these resolutions during these initial hearings and at every similar hearing in subsequent years.

In 1948, the D. C. League of Women Voters were among numerous groups encouraging D. C. Republican leaders to promote a plank in their party platform advocating home rule, the vote for President and representation in Congress.

In that same year, 1948, the U. S. House of Representatives was under Republican majority control for the first time in nearly 20 years. That year, the Committee on the District of Columbia, chaired by Representative Everett Dirksen, Republican of Illinois, sent to the floor the first home rule bill to be reported in the House in over 75 years. Opposing Democrats used every available parliamentary maneuver to prevent a final floor vote.

The 1948 Republican Party Platform advocated "self government for the residents of the Nation's Capital." Senator Prescott Bush, Republican of Connecticut, sat on the 1952 platform committee and insisted on a plank calling for "self-government and national suffrage for the Nation's Capital." D. C. Republican leaders, especially Gilbert Hahn, Jr., worked closely with Senator Bush to include language in the 1956 Republican Party Platform recommending "immediate home rule and national representation for the District of Columbia.."

Meanwhile, President Eisenhower in annual messages to Congress was reminding congressional leaders and the nation of the need to pass legislation and amend the Constitution to achieve these voting rights.

By 1959, a growing group of Republican Senators began to employ every available opportunity to get the Democratic leadership to schedule votes to send constitutional amendment resolutions to the States. Among this group were Prescott Bush, father and grandfather of future Republican presidents, Everett Dirksen (now a Senator), Kenneth Keating of New York, and Francis Case of South Dakota. They were able to rally 25 of their Republican colleagues to vote for resolutions to provide for D. C. voting members of Congress and presidential electors.

President Eisenhower issued a letter urging a yes vote. The outcome was a compromise with the House sending only the presidential vote measure to the States.

In 1961, after only nine months, 38 State legislatures, with overwhelming Republican support, ratified the 23rd Amendment allowing D. C. residents to vote in presidential elections. Again, the D. C. League of Women Voters, acting through the National League and its chapters in all 435 congressional districts, was a major factor in the success of this amendment in Congress and before the state legislatures.

At the insistence of D. C. Republican leaders, Republican party platforms in 1960, 1964, 1968, 1972 and 1976 would continue the long established Republican policy of support for home rule and D. C. voting representation in Congress.

During the period 1960 - 1980, Fred Schwengel, a Republican member of the House of Representatives from Iowa, was a tireless advocate for D. C. voting rights. Schwengel served for sixteen years and introduced the first D. C. Statehood bill in 1971. He thought all options for D. C. representation in Congress should be on the table. Later, in 1980, when Schwengel was no longer a Member of Congress, he worked with the League of Women Voters to persuade the Iowa legislature to become one of the 16 states to ratify the proposed D. C. voting rights amendment submitted to the states in 1978. Schwengel had been a public high school teacher before his election to Congress and was the founder and first president of the U. S. Capitol Historical Society and the Republican Heritage Foundation.

In 1968 House Republican leaders and Republican members of the District of Columbia Committee, particularly Gilbert Gude of Montgomery County, were able to get a bill providing for an elected school board out of Committee and to the floor for a vote. Republicans voted overwhelmingly for the elected school board, and future President George H. W. Bush of Texas was among them. The leadership of Gilbert Gude reflected a long established tradition of progressive interest by Republicans from Maryland in promoting D. C. voting rights.

The modern drive for D. C. home rule and representation in Congress also found a champion in Republican President Richard Nixon. While a Congressman from California, Nixon had voted for D. C. home rule. As a member of the Senate D. C. Committee, he also advocated D. C. voting rights. Only weeks after being sworn as President in 1969, Nixon sent a major message to Congress on the District of Columbia recommending the enactment of an elected local government and a delegate to the House until such time as the Constitution should be amended to provide for "at least one representative in the House of Representatives, and such additional representation as Congress shall approve, and to provide for the possibility of two senators."

In 1970, a Republican President would sign the legislation giving D. C. a delegate to the House, the first such representation since 1875, when Norton P. Chipman, a Republican, represented the Nation's Capital in Congress.

In 1974, a Republican President would sign the first D. C. home rule bill to pass in 100 years. Both were provisions long advocated by Republican presidents, party platforms, congressional leaders, and the D. C. and national Republican Party leaders.

In 1978, Republicans in Congress, led by such prominent Senators as Robert Dole, Charles Percy, Barry Goldwater, Strom Thurmond and Howard Baker, would vote in overwhelming numbers to assure the two thirds vote necessary to send to the states a proposed amendment to the Constitution providing for the District of Columbia to be represented in Congress as though it were a state. Unfortunately, the League of Women Voters were not invited by the elected D. C. political establishment to lead the ratification effort. Instead, an "Inside-the-Beltway" ratification organization was formed and the proposed amendment was approved by only 16 of the 38 states needed in the seven years authorized for ratification.

As Senator Robert Dole, Republican of Kansas said at the time: "The Republican Party has always supported voting rights for the District of Columbia because it is fair."

Nelson Rimensnyder
May 9, 2002

(202) 546-4668

Republican Party Platform of 1948

We favor eventual statehood for Hawaii, Alaska and Puerto Rico. We urge development of Alaskan land communications and natural resources.

We favor self-government for the residents of the nation's capital.

1952 Republican Platform

EQUAL RIGHTS

We recommend to Congress the submission of a Constitutional Amendment providing equal rights for men and women.

We favor legislation assuring equal pay for equal work regardless of sex.

STATEHOOD

We favor immediate statehood for Hawaii.

We favor statehood for Alaska under an equitable enabling act.

We favor eventual statehood for Puerto Rico.

DISTRICT OF COLUMBIA

We favor self-government and national suffrage for the residents of the Nation's Capital.

Republican Platform 1956

EQUAL OPPORTUNITY AND JUSTICE

District of Columbia. We favor self-government, national suffrage and representation in the Congress of the United States for residents of the District of Columbia.

Equal Rights. We recommend to Congress the submission of a constitutional amendment providing equal rights for men and women.

Segregation has been ended in the District of Columbia Government and in the District public facilities including public schools, restaurants, theaters and playgrounds.

Republican Platform 1960

Republicans will continue to work for Congressional representation and self-government for the District of Columbia and also support the constitutional amendment granting suffrage in national elections.

We support the right of the Puerto Rican people to achieve statehood, whenever they freely so determine. We support the right of the people of the Virgin Islands to an elected Governor, national representation and suffrage, looking toward eventual statehood, when qualified. We also support the right of the people of Guam to an elected Governor and national representation. These pledges are meaningful from the Republican leadership under which Alaska and Hawaii have newly entered the Union.

Congress should submit a constitutional amendment providing equal rights for women.

Republican Platform 1964

The Party of Abraham Lincoln will proudly and faithfully live up to its heritage of equal rights and equal opportunities for all

Under housing and urban renewal programs, notably in the Nation's Capital, it has created new slums by forcing the poor from their homes to make room for luxury apartments, while neglecting the vital need for adequate relocation assistance.

—full implementation and faithful execution of the Civil Rights Act of 1964, and all other civil rights statutes, to assure equal rights and opportunities guaranteed by the Constitution to every citizen;

—improvements of civil rights statutes adequate to changing needs of our times;

—such additional administrative or legislative actions as may be required to end the denial, for whatever unlawful reason, of the right to vote·

Republican Platform 1968

We specifically favor representation in Congress for the District of Columbia. We will work to establish a system of self-government for the District of Columbia which will take into account the interests of the private citizens thereof, and those of the federal government.

We will support the efforts of the Puerto Rican people to achieve statehood when they freely request such status by a general election, and we share the hopes and aspirations of the people of the Virgin Islands who will be closely consulted on proposed gubernatorial appointments.

Republican Platform 1972

We remain committed to a comprehensive program of human rights, social betterment and political participation for the people of the District of Columbia. We will build on our strong record in this area—a record which includes cutting the District of Columbia crime rate in half, aggressive support for a balanced transportation system in metropolitan Washington, initiation of a Bicentennial program and celebration in the national capital region, and support for the first Congressional Delegate in nearly a century. We support voting representation for the District of Columbia in the United States Congress and will work for a system of self-government for the city which takes fair account of the needs and interests of both the Federal Government and the citizens of the District of Columbia.

The Republican Party adheres to the principle of self-determination for Puerto Rico. We will welcome and support statehood for Puerto Rico if that status should be the free choice of its people in a referendum vote.

Additionally, we will pursue negotiations with the Congress of Micronesia on the future political status of the Trust Territories of the Pacific Islands to meet the mutual interests of both parties. We favor extending the right of electing the territorial Governor to the people of American Samoa, and will take complementary steps to increase local self-government in American Samoa. We vigorously support such action as is necessary to permit American citizens resident in Guam, Puerto Rico and the Virgin Islands to vote for President and Vice President in national elections. We support full voting rights in committees for the Delegates to Congress from Guam and the Virgin Islands.

Republican Platform 1976

Puerto Rico, the District of Columbia and the Territories

The principle of self-determination also governs our positions on Puerto Rico and the District of Columbia as it has in past platforms. We again support statehood for Puerto Rico, if that is the people's choice in a referendum, with full recognition within the concept of a multicultural society of the citizens' right to retain their Spanish language and traditions; and support giving the District of Columbia voting representation in the United States Senate and House of Representatives and full home rule over those matters that are purely local.

We will continue to negotiate with the Congress of Micronesia on the future political status of the Trust Territories of the Pacific Islands to meet the mutual interests of both parties. We support a plebiscite by the people of American Samoa on whether they wish to elect a territorial governor. We favor whatever action is necessary to permit American citizens resident in Guam, Puerto Rico and the Virgin Islands to vote for President and Vice President in national elections. With regard to Guam and the Virgin Islands, we urge an increased degree of self-sufficiency and support maximum broadening of self-government.

Women's Rights

We acknowledge the legitimate efforts of those who support or oppose ratification of the Equal Rights Amendment.

We reaffirm our Party's historic commitment to equal rights and equality for women.

Equal Rights

Puerto Rico has been a territory of the United States since 1898. The Republican Party vigorously supports the right of the United States citizens of Puerto Rico to be admitted into the Union as a fully sovereign state after they freely so determine. We believe that the statehood alternative is the only logical solution to the problem of inequality of the United States citizens of Puerto Rico within the framework of the federal constitution, with full recognition within the concept of a multicultural society of the citizens' right to retain their Spanish language and traditions. Therefore we pledge to support the enactment of the necessary legislation to allow the people of Puerto Rico to exercise their right to apply for admission into the Union at the earliest possible date after the presidential election of 1980.

We also pledge that such decision of the people of Puerto Rico will be implemented through the approval of an admission bill. This bill will provide for the Island's smooth transition from its territorial fiscal system to that of a member of the Union. This enactment will enable the new state of Puerto Rico to stand economically on an equal footing with the rest of the states and to assume gradually its fiscal responsibilities as a state.

We continue to favor whatever action may be necessary to permit American citizens resident in the United States territories of the Virgin Islands and Guam to vote for President and Vice President in national elections.

Republican Platform

1984

The party of Lincoln will remain the party of equal rights for all.

We continue to favor whatever legislation may be necessary to permit American citizens residing in the Virgin Islands, Guam, and Puerto Rico to vote for president and vice president in national elections.

The Right to Political Participation

Republicans want to broaden involvement in the political process. We oppose government controls that make it harder for average citizens to be politically active. We especially condemn the congressional Democrats' scheme to force taxpayer funding of campaigns.

Because we support citizen participation in politics, we continue to favor whatever legislation may be necessary to permit Americans citizens residing in Guam, the Virgin Islands, American Samoa, the Northern Mariana Islands, and Puerto Rico to vote for president and vice president in national elections and permit their elected federal delegate to have the rights and privileges — except for voting on the floor — of other Members of Congress.

Puerto Rico has been a territory of the United States since 1898. The Republican Party vigorously supports the right of the United States citizens of Puerto Rico to be admitted into the Union as a fully sovereign State after they freely so determine. Therefore, we support the establishment of a presidential task force to prepare the necessary legislation to ensure that the people of Puerto Rico have the opportunity to exercise at the earliest possible date their right to apply for admission into the Union.

We also pledge that a decision of the people of Puerto Rico in favor of statehood will be implemented through an admission bill that would provide for a smooth fiscal transition, recognize the concept of a multicultural society for its citizens, and ensure the right to retain their Spanish language and traditions.

We recognize that the people of Guam have voted for a closer relationship with the United States of America, and we reaffirm our support of their right to improve their political relationship through a commonwealth status.

The Republican Party welcomes, as the newest member of the American family, the people of the Commonwealth of the Northern Marianas Islands, who became U.S. citizens with President Reagan's 1986 presidential proclamation.

The nation's capital. We call for closer and responsible congressional scrutiny of the city, federal oversight of its law enforcement and courts, and tighter fiscal restraints over its expenditures. We oppose statehood as inconsistent with the original intent of the framers of the Constitution and with the need for a federal city belonging to all the people as our nation's capital.

A new era for the territories. We welcome greater participation in all aspects of the political process by Americans residing in Guam, the Virgin Islands, American Samoa, the Northern Marianas and Puerto Rico.

Because territorial America is far-flung and divergent, we know that any single approach to the future will not necessarily meet the needs of all. Republicans therefore emphasize respect for the wishes of those who reside in the territories regarding their relationship to the rest of the union.

We affirm the right of American citizens in the United States territories to seek the full extension of the Constitution with the accompanying rights and responsibilities, and we support all necessary legislation to permit them to do so.

The Republican Party supports the right of the United States citizens of Puerto Rico to be admitted to the union as a fully sovereign state after they freely so determine.

We recognize that the people of Guam have voted for a closer relationship with the United States of America, and we reaffirm our support of their right to mutually improve their political relationship through commonwealth.

We support American Samoa's efforts to advance toward economic self-reliance through a multi-year plan, while ensuring the protection afforded to the people of American Samoa by the original treaty of cession.

We support the full extension of rights and responsibilities under the U.S. Constitution to American citizens of the Virgin Islands.

We commend President Bush for the successful development of self-government in Micronesia and the Marshall Islands and for efforts to conclude the United Nations' last trusteeship in Palau consistent with the people's right of self-determination.

Individual rights. We applaud congressional Republicans for overturning the District of Columbia's law blaming firearm manufacturers for street crime.

Republican Platform

1996

The Nation's Capital

The District of Columbia should be an example for the rest of the country. Instead, decades of domination by the Democrat party has left the city bankrupt and dangerous. Its residents — and all Americans — deserve better than that.

We reaffirm the constitutional status of the District of Columbia as the seat of government of the United States and reject calls for statehood for the District.

We call for structural reform of the city's government and its education system. For both efficiency and public safety, we will transfer water and sewer management in the District to the Army Corps of Engineers or to a regional entity.

We endorse proposals by the congressional Republican Leadership for dramatic reductions in federal taxes — and the city's own outrageous marginal tax rate — within the District. Bill Clinton opposes that idea. A Republican president will make it part of a comprehensive agenda to transform the nation's capital into a renewal community, an enterprise zone leading the way for the rest of urban America to follow.

Americans in the Territories

We welcome greater participation in all aspects of the political process by Americans residing in Guam, the Virgin Islands, American Samoa, the Northern Marianas, and Puerto Rico. No single approach can meet the needs of those diverse communities. We therefore emphasize respect for their wishes regarding their relationship to the rest of the Union. We affirm their right to seek the full extension of the Constitution, with all the rights and responsibilities it entails.

We support the Native American Samoans' efforts to preserve their culture and land-tenure system, which fosters self-reliance and strong extended family values.

We recognize that the people of Guam have voted for a closer relationship with the United States of America, and we affirm our support of their right to mutually improve their political relationship through commonwealth.

We support the right of the United States citizens of Puerto Rico to be admitted to the Union as a fully sovereign state after they freely so determine.

We endorse initiatives of the congressional Republican leadership to provide for Puerto Rico's smooth transition to statehood if its citizens choose to alter their current status, or to set them on their own path to become an independent nation.

REPUBLICAN PLATFORM 2000

The Nation's Capital

The District of Columbia is a special responsibility of the federal government and should be a model for urban areas throughout the country. Its downhill slide has at least been arrested, both through its internal efforts and the active intervention of congressional Republicans, who have taken unprecedented steps to help the city recover. Their D.C. homebuyers' tax credit is helping to revitalize marginal neighborhoods; their landmark tuition assistance act has opened the doors of the nation's colleges to D.C. students.

Now, to enhance the city's economic security, reverse the movement out of the city, and ensure a safe and healthy environment for families, we advocate deep reductions in the District's taxes, currently among the highest in the nation, and encourage user-friendly development policies.

We call once again for structural reform of the city's schools so that none of its children will be left behind. We strongly support both charter schools and the opportunity scholarships for poor kids that have been repeatedly blocked by the administration.

We respect the design of the Framers of the Constitution that our nation's capital has a unique status and should remain independent of any individual state.

Americans In The Territories

We welcome greater participation in all aspects of the political process by Americans residing in Guam, the Virgin Islands, American Samoa, the Northern Marianas, and Puerto Rico. Since no single approach can meet the needs of those diverse communities, we emphasize respect for their wishes regarding their relationship to the rest of the Union. We affirm their right to seek the full extension of the Constitution, with all the rights and responsibilities it entails.

We support the Native American Samoans' efforts to preserve their culture and land-tenure system, which fosters self-reliance and strong extended-family values.

We support increased local self-government for the United States citizens of the Virgin Islands, and closer cooperation between the local and federal governments to promote private sector-led development and self-sufficiency.

We recognize that Guam is a strategically vital U.S. territory in the far western Pacific, an American fortress in the Asian region. We affirm our support for the patriotic U.S. citizens of Guam to achieve greater local self-government, an improved federal-territorial relationship, new economic development strategies, and continued self-determination as desired with respect to political status.

We support the right of the United States citizens of Puerto Rico to be admitted to the Union as a fully sovereign state after they freely so determine. We recognize that Congress has the final authority to define the constitutionally valid options for Puerto Rico to achieve a permanent status with government by consent and full enfranchisement. As long as Puerto Rico is not a State, however, the will of its people regarding their political status should be ascertained by means of a general right of referendum or specific referenda sponsored by the United States government.

SENATOR BARRY GOLDWATER SPEAKS ABOUT VOTING REPRESENTATION IN CONGRESS FOR THE DISTRICT OF COLUMBIA

"I believe the Founding Fathers considered it basic to the scheme of government that they created for all U. S. citizens to enjoy a representative form of government, with national officers who will be responsive as possible directly to the people.

We have a situation in America where citizens do not possess the most cherished of political rights -- voting representation in Congress. We know that District residents have born the same responsibility as other U. S. citizens when their country called on them to serve in time of war. We know that during the Vietnam War, for example, District of Columbia casualties ranked fourth, on a proportionate basis, out of the 50 States.

The District residents died and bled for their country. Now they are seeking their chance to vote and be represented in it."

Congressional Record. August 17, 1978, p. 26609

SENATOR STROM THURMOND SPEAKS ABOUT VOTING REPRESENTATION IN CONGRESS FOR THE DISTRICT OF COLUMBIA

"It is just not fair that residents of the District of Columbia do not have the right to elect voting representatives to Congress. History tells us that the failure to provide the District of Columbia with voting representation was an oversight and not because of any specific intent by the Founding Fathers.

Taxation without representation was an axiom that was rejected in 1776. It was not fair then to tax and now allow representation, and it is not fair today.

One of America's fundamental rights is the right to participate in our democracy. Residents of the District of Columbia are denied that right."

Congressional Record. August 16, 1978, p. 26369

PRESIDENT GEORGE H. W. BUSH ON D.C. VOTING RIGHTS

On at least two occasions during his administration, President Bush stated that he was opposed to statehood for the District of Columbia, but open to supporting measures for voting representation in Congress for District residents.

News Conferences, March 23, 1990; May 24, 1990

SENATOR ROBERT DOLE SPEAKS ABOUT THE REPUBLICAN PARTY AND VOTING REPRESENTATION IN CONGRESS FOR THE DISTRICT OF COLUMBIA

The PRESIDING OFFICER. The Senator from Kansas.

Mr. DOLE. Mr. President, in one minute I can tell you this issue was addressed in Kansas City, Mo., in 1976 in the Republican platform. It is right there. It says:

> We support giving the District of Columbia voting representation in the U.S. Senate and House of Representatives.

That is the Republican platform. We fought over it, we traveled across the country saying, "Look at our platform." Our leaders said, "Look at the platform," and pointed to it with pride as an excellent expression of Republican ideals and principles.

The time has come for action, and if this platform means anything it means the Republican Party supports this resolution.

Mr. President, on Saturday I announced my support for House Joint Resolution 554 at a meeting with D.C. Republican leaders who support voting representation for the District. There are convincing reasons to support this measure which compel me to vote "yes." The absence of voting representation for the District in Congress is an anomaly which the Senate can no longer sanction. It is an unjustifiable gap in our scheme of representative government—a gap which we can fill this afternoon by passing this resolution.

Many of my distinguished colleagues have raised important issues regarding the nature of our Federal Republic and the representation of States in the U.S Senate. I appreciate having the benefit of their discussion. However, it is my view that we can recognize the District as a State for purposes of representation without damaging the fabric or structure of our democracy. In fact, granting effective representation to three-quarter million people will strengthen our system of democracy by extending the benefits of representation and by giving residents of the District a stake in our system of legislative participation.

It seems clear that the framers of the Constitution did not intend to disenfranchise a significant number of Americans by establishing a Federal District. I believe that the framers would have found the current situation offensive to their notions of fairness and participatory government.

REPUBLICAN PLATFORM—1976

Two years ago the Republican Party took a clear and unequivocal stand in favor of D.C. voting representation. The 1976 platform states:

> We support giving the District of Columbia voting representation in the U.S. Senate and House of Representatives. . . .

As delegate, platform committee member, and temporary chairman of the convention, I helped write that platform. As Vice Presidential nominee, I helped carry its message to the American people.

I consider its principles and policies to be representative of the thinking of Republicans on most issues. Its D.C. plank represented a clear commitment to voters in the District of Columbia—a commitment which I will not lightly cast aside.

Republicans rallied to that platform in great numbers. Our most distinguished leaders enthusiastically adopted it as an excellent expression of Republican principles and ideals. By all accounts, it was a platform that conservatives could be proud of.

I am particularly proud of my party for adopting this plank because the conventional wisdom is that, for the near future, Democrats would be favored to win these new seats.

The Republican Party supported D.C. voting representation because it was just, and in justice we could do nothing else. We supported full rights of citizenship because from the first—from Lincoln forward—we have supported the full rights of citizenship for all Americans.

THE HEALTH OF OUR DEMOCRACY

The health of any democracy depends on a general willingness to put aside narrow partisan concerns in favor of improving the system and extending its benefits to others. Whether we are amending the constitution, regulating elections, or judging Senate election contests, we must place fairness ahead of party. I would hope that Members from both sides of the aisle will do this in the future on other fundamental issues with partisan ramifications.

In addition to narrow partisan concerns, there are other considerations which we must put aside in the face of more important considerations.

Throughout our Nation's history more and more Americans have been enfranchised by the system. As we sought to eliminate economic discrimination, race discrimination, and sex discrimination, we extended the right to vote—to meaningfully participate in congressional elections—to an increasingly larger number of people. First, nonlandowners were given the right to vote during the first half of the last century. Later came former slaves, women, and 18-year-olds.

Today we are being asked to end our discrimination against people who happen to live in the District of Columbia. I realize that some are concerned about diluting the power of their States as a result. But in every instance where more Americans were brought into the electoral system in the past, the segment of our population that had 100 percent of the voting power was asked to give up some of that power to someone else in the interest of improving our system of democracy. This is no time to reverse that trend—this is no reason to oppose this bill.

THE BURDENS AND BENEFITS OF CITIZENSHIP

The reasons for granting voting representation in Congress are compelling. District residents pay taxes, fight wars, and cope with Federal regulation just as other American. The burdens of citizenship are borne by them just as much as they are by our constituents.

Generally, they also participate in the advantages of citizenship, including the protections of the bill of rights. However, there is something missing, and we are being called upon to rectify that today. In a democracy, nothing is so fundamental as the right to vote and the right to representation, and I see no good reason why that basic principle should not apply to the District as well as to our respective States.

The District of Columbia is not just a plot of land full of big white buildings and people who have come here temporarily to work for the Federal Government. Rather, it is home to almost three-quarters of a million people, who should be granted congressional representation just as the citizens in all of our States are.

I thank the distinguished Senator from Massachusetts.

SENATOR EDWARD BROOKE SPEAKS ABOUT VOTING REPRESENTATION IN CONGRESS FOR THE DISTRICT OF COLUMBIA

27252 CONGRESSIONAL RECORD — SENATE

August 22, 1978

Mr. BROOKE. Mr. President, my enthusiastic endorsement of House Joint Resolution 554 is based primarily on fundamental concepts of liberty and justice, but my support and interest are also intensely personal, for my roots are in Washington, D.C.

I was born and raised here. I attended and graduated from Shaw Junior High School, Dunbar High School, and Howard University. For as long as I can remember, I have fought, along with family and friends and colleagues, to attain the goal of providing for the citizens of the District of Columbia the same rights and privileges that older citizens throughout the Nation have enjoyed.

Mr. President, there is no self-government in the power to tax one, to imprison one, and to send one to war is not in one's self, but in those to whom one has voluntarily confided as one's representative.

Those statements were made back in 1916, and here we are in 1978 still trying to give this basic right of representation to the people of the District of Columbia.

I hope and pray that my colleagues will go along with this and pass this measure by an overwhelming vote and give the citizens of the District of Columbia a right they have so long been denied.

CLOSE TO HOME

The Best Bush for the District

President George W. Bush has made known his opposition to voting representation in Congress for residents of the District. When his father, George H. W. Bush, was president, he also opposed such representation. However, the Bush family hasn't always been against the idea that D.C. residents should be represented in Congress.

Prescott S. Bush, the grandfather and father of George W. Bush and George H. W. Bush, respectively, was an advocate of such representation during his 10-year tenure in the Senate. From 1952 to 1963, when he represented Connecticut in the Senate, he voted for every D.C. home rule bill and measure to grant congressional representation that reached the floor. Before his election to the Senate, Bush had served for 19 years as an elected member of the Town Meeting of Greenwich, Conn., and from that experience, he brought to the Senate an understanding of the challenges of local government.

In 1960 Prescott S. Bush voted for a resolution to amend the Constitution to provide for the District to be represented by voting members of the House. He was joined by 25 Republican colleagues who provided the needed two-thirds vote for passage. A letter from President Eisenhower urging a yes vote was read into the Congressional Record.

Unfortunately, a similar action was not forthcoming in the House. That year, however, Bush and other Republicans in the House and Senate voted overwhelmingly to approve and send to the states a resolution giving D.C. residents the right to vote for electors for president and vice president. Three-fourths of the state legislatures, with solid Republican support, ratified the 23rd Amendment in fewer than 12 months.

THREE GENERATIONS OF A FAMOUS FAMILY. FROM LEFT, BARBARA, GEORGE W., GEORGE H. W., DOROTHY AND PRESCOTT S. BUSH, MIDLAND, TEX., 1950.
COURTESY OF THE GEORGE BUSH PRESIDENTIAL LIBRARY

This support was consistent with the Republican Party platforms of 1952, 1956 and 1960, which advocated D.C. home rule and voting representation. Bush held leadership positions on the platform committees during those years.

By 1961 Prescott Bush had become the principal leader in the Senate for D.C. voting rights. In May of that year, he introduced a resolution to amend the Constitution to give D.C. residents two senators and representation in the House according to population. He presented his reasoning on the Senate floor, concluding that senators and representatives "could make certain that the interests of the District were adequately considered by Congress."

He took his case before the Senate Judiciary Committee, where he testified during hearings that the District's lack of representation was a "historic oversight" that demanded a constitutional remedy. He was disappointed that his resolution was not reported from the committee.

Bush did not seek another term that year, and congressional interest in his resolution lay dormant until 1969, when President Richard Nixon, in a special message to Congress, urged the adoption of the former senator's proposal. Bush, who died in 1972, did not live to see his resolution pass both the House and the Senate in 1978, although it was ratified by only 16 states, far short of the three-fourths needed.

Today those who seek representation in Congress for D.C. residents should remind Republicans in the White House and Congress of their party's past position on enfranchisement for citizens residing in the nation's capital. It was a progressive record that embraced the best principles of the party.

President George W. Bush should consider emulating the sincere advocacy of his grandfather, Prescott S. Bush, for voting representation in Congress for the residents of the District.

—Nelson Rimensnyder

is a former director of research for the House Committee on the District of Columbia.

THE WASHINGTON POST

B8 SUNDAY, JANUARY 26, 2003

Close to Home

On Tuesday, Bush Should Speak for D.C.

When President Bush delivers his State of the Union address to Congress on Tuesday, he should revive a tradition of presidential advocacy for D.C. voting rights that was begun 50 years ago.

In his 1953, 1954, 1955 and 1956 State of the Union addresses, Dwight D. Eisenhower championed D.C. voting rights. Typical was his 1954 statement that "the time is long overdue for granting national suffrage to its [the District's] citizens and also applying the principle of local self-government to the nation's capital."

Republicans in Congress overwhelmingly supported D.C. voting rights during the Eisenhower years, but the Democratic Party was regionally divided on the issue and blocked a change in the voting status of D.C. residents.

After passage of the 1957 Civil Rights Act, however, Senate leaders Everett Dirksen (R-Ill.) and the current president's grandfather, Prescott Bush (R-Conn.), made D.C. voting rights a priority. Bush was instrumental in including strong voting-rights language in the Republican Party platform. The senators' effort resulted in passage of the 23rd Amendment resolution submitted to the states for ratification in 1960. The League of Women Voters led the ratification effort, and 38 states voted approval in nine months. In 1964, D.C. voters for the first time were able to cast their ballots for president.

Eisenhower and Republican leaders wanted the amendment to provide for voting representation in the House, too, and at a minimum provide for delegate representation in the Senate. But Democratic opposition stripped away the congressional representation elements of the resolution that eventually was submitted to the states.

In his memoirs, Eisenhower mentioned with pride the support of the Republican Party and his administration for D.C. voting rights. Eisenhower lived in the District during several military tours and witnessed firsthand the segregation and lack of voting rights here.

Presidents John F. Kennedy, Lyndon B. Johnson and Richard M. Nixon continued Eisenhower's tradition of recommending congressional action on D.C. voting rights in their State of the Union addresses and other messages to Congress. They—along with Harry S. Truman, who also was a supporter of D.C. voting rights—served in Congress, Truman and Nixon on the Senate's District Committee and Kennedy on the House's District Committee. Because of this service, these presidents understood the importance of voting rights to D.C. residents. Presidents who had been governors—Franklin D. Roosevelt and Ronald Reagan, for example—tended to ignore the issue or be less supportive.

Finally, President Bush should consider the example of his grandfather, Prescott Bush, and his father, George H.W. Bush. Prescott Bush was an artillery captain in the American Expeditionary Force in Europe during World War I and often reminded his Senate colleagues that it was unfair for residents of the District to pay federal taxes, serve in the military and be subject to the other laws enacted by a Congress in which they had no voting members.

And President George H.W. Bush, during his one term in the House, voted for an elected D.C. School Board—the first local election authorized by Congress in the District in 95 years.

For more than 200 years, the residents of the District have been petitioning for representation in Congress. In his State of the Union address, President Bush should uphold the best traditions of his party and redress this longstanding grievance. It would be something that would have made his grandfather proud.

—Nelson Rimensnyder

is former director of research for the House Committee on the District of Columbia.

A DELEGATE VOICE IN THE SENATE FOR THE DISTRICT OF COLUMBIA

By Nelson Rimensnyder*

Now that Rep. Tom Davis (R-VA) has given a new birth to the Republican Party's 125-year tradition of seeking voting representation in Congress for the District of Columbia, let's not limit the options to representation in the U. S. House alone. The Senate also should seriously consider proposals to open the doors of that chamber to an elected advocate of residents of the District of Columbia.

In 1970, the U. S. House of Representatives, by an overwhelmingly bipartisan vote (338 to 23), sent to the Senate a bill to enable D. C. residents to elect two non-voting delegates to Congress: one to the House for a two-year term and one to the Senate for a six-year term. Then Chairman of the Senate D. C. Committee, Joe Tydings (D-MD), refused to move the measure. The Senate insisted upon its own bill, providing for a House Delegate only.

House members advocated a bicameral D. C. delegate representation because of the unique status of the Nation's Capital under the Constitution. A representative of the Washington Metropolitan Board of Trade testifying in favor of the House bill challenged anticipated Senate opposition by observing: "Valid ideas do not necessarily have precedents, and someone representing us in the U. S. Senate will also have the privilege of the floor and the opportunity to participate in discussions affecting the City of Washington."

In 1973, the House again sent to the Senate a measure providing for the election of a D. C. Delegate to the Senate for a six-year term. The delegate proposal was in a section of the D. C. Home Rule bill that had already passed the House. At the opening of the House-Senate conference on the Home Rule Act, Senator Tom Eagleton (D-MO), Chairman of the Senate D. C. Committee, declared that the provision for a Senate delegate was not even on the table for discussion.

Shortly after the conclusion of the conference, I asked Senator Eagleton if he would consider holding hearings on the concept of a D. C. Senate delegate. His answer was an emphatic "No!" However, Senator Charles Mathias (R-MD), ranking Republican on the D. C. Committee at the time, told me he thought the Senate delegate idea was worthy of consideration by the Senate.

Interestingly, the Senate in 1989 did seriously take up the matter of Senate delegate representation. In the National Resources Committee, a proposal to enable Puerto Rico to send a non-voting representative to the Senate was defeated in Committee by a 10 to 9 vote, with Republicans and Democrats on both sides of the proposal. In debate, Senator McClure (R-ID) argued in favor, while Senator Malcolm Wallop (R-WY) observed that enacting such a measure would be "setting a precedent that D. C. will want and cannot be refused."

A new advocate for D. C. Senate delegate representation has recently emerged. In 1997, the Federal City Council sponsored a study on D. C. governance, which in its published recommendations stated, "There can be no denying to one-half million American citizens any representation in the upper house of the national legislature. As a minimum step, we recommend that the Senate immediately permit the District to elect a delegate who would have floor privileges and would participate and vote in Senate committee activities."

Since its founding in 1854, the Republican Party has been advocating various solutions to the Senate representation riddle. When the District of Columbia was given a unified government by Congress in 1871, a delegate to the House was authorized. The local D. C. Republican Central Committee had petitioned Congress for delegate representation in both the House and the Senate, until the Constitution could be amended to provide for voting representation.

From 1890 to 1930 bills to give D. C. elected delegates to the House and Senate appeared in both Chambers. In 1892, Senator William A. Peffer (R-KS) introduced a bill for D. C. delegates to the House and Senate, each to serve two-year terms. A similar bill was introduced in the House on the 76th birthday anniversary of Frederick Douglass on February 14, 1893. Although in the twilight of his life (Douglass died in 1895), he was delighted by this gesture. Douglass never gave up his ambition to represent the District of Columbia in Congress. In 1871, he had been narrowly defeated in the Republican primary for the nomination to be the first delegate to represent his adopted hometown in Congress. His primary opponent, Norton P. Chipman, was a well-known Union Army veteran who went on to serve two terms in the U. S. House before Congress abolished the office in 1875.

In the 1920's, Senator Wesley Jones (R-WA), a senior member of the Senate D. C. Committee, combined the concepts of a D. C. vote in the House and Senate delegate representation in a resolution authorizing "such other representation in the Senate as Congress may provide." During this period, District of Columbia residents, speaking for numerous business, civic and political organizations, testified on voting representation proposals before the D. C. Committee. All witnesses favored proposals for delegate representation in the Senate and House, pending a voting representation amendment to the Constitution.

If the Senate fails to take the initiative, it is time now for the House of Representatives to pass once again a D. C. Senate delegate bill. Such an action would give the Senate another opportunity to hold hearings and vote at last to open its doors and floor to a voice elected by the residents of the Nation's Capital.

*Nelson Rimensnyder served as Director of Research for the former House D. C. Committee, 1975-1992.

DISTRICT OF COLUMBIA DELEGATE TO THE SENATE

CONGRESS
SESSION

H. R.

IN THE HOUSE OF REPRESENTATIVES

A BILL

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SEC. (a) The people of the District of Columbia shall be represented in the Senate of the United States by a Delegate, to be known as the "Delegate to the Senate from the District of Columbia", who shall be elected by the voters of the District of Columbia in accordance with the District of Columbia Election Act, in the same manner as such Act relates to the election of the Delegate to the House of Representatives from the District of Columbia. The Delegate shall have a seat in the Senate, with the right of debate, but not of voting, shall have all the privileges granted a Senator by section 6 of article 1 of the Constitution and shall be subject to the same restrictions and regulations as are imposed by law or rules of the Senate. The term of each such Delegate shall be six years, the first such term to begin at the start of the Congress convening at noon on the day of January,

(b) No individual may hold the office of Delegate to the Senate from the District of Columbia unless on the day of his election—

(1) he is a qualified elector (as that term is defined in section 2(2) of the District of Columbia Election Act) of the District of Columbia;

(2) he is at least thirty years of age;

(3) he holds no other paid public office; and

(4) he has resided in the District of Columbia continuously since the beginning of the three-year period ending on such date.

He shall forfeit his office upon failure to maintain the qualifications required by this subsection.

DISTRICT OF COLUMBIA DELEGATE TO THE SENATE

CONGRESS
SESSION

S.

IN THE SENATE OF THE UNITED STATES

A BILL

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(3) he holds no other paid public office; and

(4) he has resided in the District of Columbia continuously since the beginning of the three-year period ending on such date.

He shall forfeit his office upon failure to maintain the qualifications required by this subsection.

Ms. WERRONEN. Thank you.

I thought it was important to convey for the record the role of the Republican Party in securing basic rights to the residents of the District. But the right for American citizens to vote should not be a Republican or a Democrat issue. I think the bipartisan spirit that has been exemplified here today shows that on issues of importance to the residents of the District, we can and will work together. Having our Mayor, our Council and the local Republican party united demonstrates how important this issue is to the people of the District, regardless of party.

Let me make several important points. I want to talk on principle first, and not really get into the specifics of the details of achieving this. The residents of the District of Columbia are citizens of the United States. We are entitled under the Constitution to the same rights and responsibilities as all other citizens.

District residents have uncomplainingly accepted our responsibilities, including the obligation to serve in the defense of our country and the obligation to pay taxes, just like all other citizens. It is the right thing to do. And today, there is simply no justification for not granting this basic right.

Second, we recognize that there are several options for granting District residents voting representation that they are entitled to. But because the District of Columbia is a unique entity, set up by our founding fathers as a Federal city, Congress can show creativity and practicality in implementing voting representation.

And as an important first step, we support fully the option of voting rights for a representative of the District in the House of Representatives. We believe this is the most achievable way to grant our citizens their rights and honor the principles and spirit of the Constitution. We urge you, Mr. Chairman, and this committee, to aggressively pursue the goal of full voting rights for a representative of the District to the U.S. House. We pledge to do all that we can to help the Congress achieve it.

Thank you.

[The prepared statement of Ms. Werronen follows:]

HOUSE OF REPRESENTATIVES
COMMITTEE ON GOVERNMENT REFORM
WEDNESDAY, JUNE 23, 2004

VOTING REPRESENTATION IN CONGRESS

TESTIMONY BY
BETSY W. WERRONEN, CHAIRMAN
DC REPUBLICAN COMMITTEE

I am Betsy Werronen, Chairman of the DC Republican Committee. Thank you very much for the opportunity to come before the Committee on Government Reform today. On behalf of the members of the DC Republican Committee, I speak in full support of Voting Rights for the people of the District of Columbia in the Congress of the United States.

The Republican Party has a proud heritage in support of voting rights for all Americans. We are still proudly the Party of Lincoln, who risked his Presidency and took this country to war in order to guarantee the rights of citizenship to all Americans. From Frederick Douglass, the former slave, abolitionist and suffrage advocate to Everett Dirksen, who sent to the floor the first Home Rule bill to be reported in the House in over 75 years. Republicans have continued to champion the right of all Americans to express their most fundamental democratic right: their vote. The 1948 Republican Platform at the insistence of our President's grandfather, Senator Prescott Bush, contained a plank calling for "self-government and national suffrage for the Nation's Capital." Republican Party Platforms from 1960 through 1976 supported Home Rule and DC voting representation; and I can assure you that the DC Delegation to the Republican National Convention in August will carry the fight for such a plank in this year's Platform. Historian Nelson Rimensnyder has done extensive work in this area and I would like to submit for the record his paper on "Republicans and DC Voting Rights: A Progressive Record Embracing the Best Principles of the Party."

The right for American citizens to vote should not be a Republican or Democrat issue. The bipartisan spirit that is exemplified here today shows that on issues of importance to the citizens of the District we can and will work together. Having our Mayor, our Council and the local Republican

Party united demonstrates how important this issue is to the people of the District, regardless of party.

I would like to briefly focus on the important principles that should guide the form of representation in Congress rather than the specific details of achieving such representation. Please keep in mind three important points.

- First, the residents of the District of Columbia are citizens of the United States and are entitled under the Constitution to the same rights and responsibilities as all other United States citizens. District Residents have uncomplainingly accepted our responsibilities, including the obligation to serve in the defense of our country and the obligation to pay taxes just like all other citizens. Correspondingly, we must have the right to voting representation in Congress just like all other citizens. It is the right thing to do. There is simply no defense for not granting this basic right.

- Second, we recognize that there are several options for granting citizens of the District of Columbia the voting representation in Congress that they are entitled to. These options range from granting the District a voting member in the House, voting members in the Senate, or even full Statehood, to participating in federal elections in Maryland and retrocession to the State of Maryland. Because the District of Columbia is a unique entity, set up by our Founding Fathers as a federal city, Congress can show creativity and practicality in implementing voting representation for the District of Columbia. As an important first step, we support the option of full voting rights for a Representative in the House of Representatives. Furthermore, we believe that this is the most achievable way to grant our citizens their rights and honor the principles and spirit of the Constitution.

We urge this Committee to aggressively pursue the goal of a full voting Representative in the U. S. House of Representatives and pledge to do all that we can to help achieve it.

Chairman TOM DAVIS. Thank you very much.

Mr. Trabue, thank you. Last but not least.

Mr. TRABUE. Good afternoon, Chairman Davis, Congresswoman Norton and members of the committee. Thank you for having me this afternoon.

For the record, my name is Ted Trabue, and I'm the regional vice president for District of Columbia affairs at PEPCO, which is our local electric provider. But I'm here today to speak on behalf of the Greater Washington Board of Trade.

I find it kind of odd today to be in on this panel, because I think I am the only native Washingtonian who has come before this committee today to speak. I'm a fourth generation Washingtonian, and I am really happy to be a Washingtonian here—there's another one? Great. Glad to hear that there's one other—to support particularly the Norton bill and the Davis proposal.

I'd like to go back a little bit, because we talked about some of the history of the District, and I know there are a lot of interns here in the room. My first internship was with the old House District Committee, under the chairmanship of the Honorable Charlie Diggs. I remember some of the discussions that were going on over 25 years ago in that committee.

It saddens me that we are here over a quarter of a century later, debating some of those very same issues. I just hope that by the time that these young fellow native Washingtonians grow up that we still won't be in the midst of this debate. I am heartened today, though, that this is not about the merits, it's about the methodology. I think that everybody who has testified here today, and clearly as demonstrated by your leadership on this issue, you get it. You understand. You very, very clearly understand it. We need to move forward.

The Board of Trade is frustrated with the ongoing disenfranchisement of the District of Columbia. As the seat of our Nation's Government, our city has stood for over 200 years as one of the world's grandest and most enduring icons of democratic aspiration. Over time, the laws passed here have validated and strengthened the notion of equal protection and have guided our Nation's defense of human rights at home and abroad, and have served as a blueprint for other nations pursuing representative government.

As was noted earlier, like Canberra in Australia, Mexico City, Brazilia, Ottawa up in Canada, were all modeled after our Nation's Capital. But what is unique to our circumstances is that we are clearly denied the fundamental rights of American citizenship.

Let me speak to two of the bills that are not the table today, H.R. 381, which talks about reunion with Maryland, and H.R. 3709, which talks about allowing District residents to vote in Maryland elections. While both bills have some historical and possibly legal precedent, the Board of Trade finds both of them to be politically impractical. In essence, we would not like the Congress to talk about turning the clock back 200 years in an effort to move forward. We think that the plans that have been presented by Congresswoman Norton and Congressman Davis are very, very good plans on moving forward and putting the Nation's Capital on fair ground with the rest of the 50 States in the United States.

Chairman Davis and Ms. Norton, I am conscious of the time and your need to wrap up this hearing, so I will conclude my statement.

[The prepared statement of Mr. Trabue follows:]

Testimony of Ted Trabue on behalf of the Greater Washington Board of Trade

For Presentation before the Committee on Government Reform, U.S. House of Representatives; June 23, 2004

Good morning. My name is Ted Trabue, and I am testifying today on behalf of the Greater Washington Board of Trade. The Board of Trade consists of 1,200 member businesses which, together, employ about 40 percent of the Washington region's private sector workforce. Thank you for this opportunity to testify on this most important issue to the employers and citizens of the District of Columbia.

The Board of Trade remains frustrated with the ongoing disenfranchisement of the District of Columbia. As the seat of our nation's government, our city has stood for 200 years as one of the world's grandest and most enduring icons of democratic aspiration. Over time, the laws passed here have validated and strengthened the notion of equal protection, have guided our nation's defense of human rights at home and abroad, and have served as a blueprint for other nations pursuing representative government.

It is, therefore, a profound irony that the residents of this great city have been denied the most fundamental right of a modern democracy – that of voting representation in their nation's legislative body. People who pay taxes to the Federal government and serve in its military, show up for jury duty and complete all other obligations of citizenship are denied a voice in Congress. This circumstance violates our nation's core democratic principles. As a practical matter, the absence of a locally-elected advocate in Congress acts to the disadvantage of those who live, work and employ people in the District.

For these reasons, the Board is heartened by the level of interest within Congress for a fair and practical remedy. The fact that we are here today to evaluate not one, but *four* possible scenarios for voting representation underscores the fact that the time for this idea has finally come. In the interest of time, I will briefly summarize the views of the Board of Trade on the bills before us today, as well as pending legislation.

H.R. 1285, No Taxation Without Representation Act of 2003

The Board of Trade enthusiastically supports Rep. Eleanor Holmes Norton's legislation, which would grant the District of Columbia the full complement of congressional representation now enjoyed by the 50 states. Her plan reflects the longstanding views of this organization, and is consistent with the basic principle of equal representation.

H.R. 381, District of Columbia-Maryland Reunion Act

This legislation, which would return to Maryland much of the territory that now constitutes the District of Columbia, has received much serious consideration. The Board of Trade acknowledges that *retrocession* is an interesting strategy, with some historical precedent, to provide District citizens with voting representation in Congress.

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Nonetheless, we believe this plan has too many political and practical hurdles to overcome to be a useful vehicle for solving the problem.

The sheer enormity of this change makes it nearly impossible to fathom. The context in which basic public services are now provided for 573,000 District residents would be fundamentally changed. The government that is now responsible for providing these services would be abolished, substantially changed, or required to fit into an unnatural relationship with Maryland State Government and 24 local jurisdictions. The balance of interests that defines Maryland politics would be seriously affected. This plan would not, we believe, be welcomed in Maryland.

Furthermore, we believe that the retrocession movement overlooks a very basic fact: that the District of Columbia is a distinct place with its own identity, traditions and folkways. Any attempt to shoehorn this most unique city into another state – one with its own character and customs – would detract from the identity of both.

H.R. 3709, The District of Columbia Voting Rights Restoration Act of 2004

We believe the proposal to allow the citizens of the District of Columbia to vote in Maryland congressional elections is intriguing, and also has some historical precedent, but may also be politically impractical. While this would be an interesting way to provide District residents with representation in the Senate, we are not sure it would be welcomed by Maryland. Furthermore, it does not address a basic principle – that citizens who participate fully in the rituals of democracy are entitled to representation congruent with the political jurisdiction that governs them, and are entitled to the chance to seek and hold office. While a District resident would be allowed to vote for Maryland members of Congress, he or she could not run for Congress from those jurisdictions.

The "Davis Plan"

While we understand that formal legislation has yet to be submitted, the Board of Trade is inclined to support a plan that has been developed by Chairman Davis. As we understand it, this plan would temporarily add two House seats -- one in Utah and the other in the District of Columbia. This plan, which would take effect next year and remain operative until the 2010 redistricting when the District's seat would become permanent, could grant this city the locally-elected voice we deserve, while maintaining the existing partisan balance in the House.

As is so often the case, the first step is often the hardest. The fact is that this plan, too, has practical political obstacles that would have to be overcome. However, once the District of Columbia has that first locally elected member of Congress – one with the full privileges of membership – we believe the goal of securing two elected United States Senators will be far easier to attain. That goal of Senate representation is a goal we should not lose sight of if the District's residents are to have a real voice in Congress. As long as it is understood that Chairman Davis' plan is merely the beginning, and not the end of the process of attaining voting representation, we believe his is a pragmatic step in the right direction and we hope the issues of partisan parity can be worked out.

On behalf of the Board of Trade, I thank you for this opportunity to testify, and for your consideration of our testimony.

Chairman TOM DAVIS. Thank you very much.

Judge Starr, let me start with you. I found your testimony very powerful. What you're saying, though, is that this is a legislative remedy, not a judicial remedy. Because there have been a number of suits under the clause that you discussed.

Judge STARR. That's correct. It is Congress that enjoys the power under Article I, again, the power is one of the specific enumerated powers that has then been judicially interpreted to be very broad, or as the Supreme Court has said, majestic in its scope, or plenary. It's Congress and not the judiciary that enjoys the power.

Chairman TOM DAVIS. The fact that at the time the Constitution was written, the District of Columbia was a part of two different States at that point, it was created in 1790, the Constitution was written, of course, and ratified prior to that. And then from 1790 to 1800, people who lived in the District were voting in Maryland and Virginia for Congress for the House, because Senators were appointed at that point.

Does that add anything, or do you think the plenary power just by itself is enough?

Judge STARR. I think the plenary power by itself is enough, but I do believe that a court would be intrigued by that historical context; that is, that there was at the founding of the Republic enfranchisement, there was the ability to elect State legislators, for example, in addition to a Member of the House of Representatives. And the State legislators, of course, then elected the Senate. So there was full enfranchisement at that time, in terms of, obviously there were other issues in terms of disqualifications on very tragic grounds.

But those who were permitted to vote on the basis of residency were able to vote fully and completely. What I think a court would take into account, or it's certainly logical for a court to take into account, is that as a matter of history, the ratifiers of the Constitution, as well as the drafters, simply were not contemplating this particular specific issue. But I think covered it by virtue, again, of the breadth of Clause 17.

Chairman TOM DAVIS. There's just no question that the founders never envisioned this to be a city of over a half a million people and that voting rights would be extended to other groups. It's a completely different world at this point.

Judge STARR. Completely different world. And that's why, for example, in other areas, the Constitution is interpreted by the Supreme Court in ways in which the framers might have found odd, such as in freedom of speech. It is now widely agreed that freedom of speech includes symbolic speech. Yet as great a Justice as Hugo Black would say, no, it doesn't go that far.

Now, what's happened is we have a fuller and richer understanding of the meaning of "freedom of speech." And I think so too when we look even at structural arrangements in the Constitution, we have a fuller and deeper understanding, as guided here very helpfully by Supreme Court decisions that have already addressed the issue of, can the District for purposes of specific provisions in the Constitution be a State. And the Supreme Court has said, yes, it can.

Chairman TOM DAVIS. Previous Congresses have concluded that a Constitutional amendment was required to provide voting representation in the District. This was kind of the assumption. But the Congress is not bound by the conclusions of previous Congresses, are they?

Judge STARR. I would certainly hope not, and it certainly has never been the law that the Congress of the United States, elected by the people and who in turn take an oath to uphold the Constitution are somehow bound by a possibly, if not completely erroneous view of what the Constitution means. So there should be no freeze-in or lock-in effect at all, in my judgment.

Chairman TOM DAVIS. Mr. Trabue, I'm curious to know if the Board of Trade sees representation as a business issue.

Mr. TRABUE. We do see it as a business issue. Very clearly, as you might recall, a number of years ago when we were working on the Woodrow Wilson Bridge project, that was clearly an issue where you had the three jurisdictions, Maryland, Virginia and the District of Columbia, having to come together, because all three of those jurisdictions were going to have to deal with the funding on that bridge, and therefore then have to go to Transportation Committee to get authorization for that funding.

There's a very clear example where we would have been strengthened in our numbers if Congresswoman Norton or if the District had had a vote at the table. Clearly, business, transportation is a huge issue for us, and it's clearly a business issue.

Chairman TOM DAVIS. I'm going to recognize Ms. Norton, she's got a bill on the floor, she's got to go. She can speak on the floor, as you know, she can put amendments on, she just can't vote on her bill. But she's going to go talk. Ms. Norton.

Ms. NORTON. Thank you very much, Mr. Chairman. I have a bill that's coming up that I expect to be passed, recognizing the 40th anniversary of the 1964 Civil Rights Act and the Equal Employment Opportunity Commission, which I chaired, and thus I would like to speak to this bill.

I'm going to quickly ask some questions right down the line, if I can quickly go down the line. Mr. Henderson first, very thoughtful testimony and probing some of the legal issues as well. I noticed that you said at page 5 that Congress could, might as a way to avoid political unfairness actually itself define the new congressional district boundaries in the legislation. Of course, this is redistricting.

I wonder if you'd had an opportunity, or if anyone at the Leadership Council has had an opportunity to look closely at that as a Constitutional matter. Redistricting must be done with a State. Congress has power to say how many districts. Within a State, how that is redistricted as a Constitutional matter is jealously guarded by the States. One wonders if one could—I mean, I'd be very interested in that, since that obviously is one of the issues I have raised. One wonders if you have yet given that to a bunch of Constitutional lawyers to look at, or whether you would agree to do so.

Mr. HENDERSON. We certainly have agreed to do so, and we will be seeking additional advice on the interpretation of what Congress' authority would permit under these circumstances.

But I think you correctly note that we observe the complications caused by a redistricting solution appended to any bill seeking to provide full voting representation, or even partial voting representation for District citizens. Our concern of course is that redistricting tends to be, in most jurisdictions, a political question.

Obviously Congress sought to avoid those issues with respect to some of the particular and unique problems associated with minority voters. And the Voting Rights Act anniversary is, I think, one of the seminal events of civil rights that we note. That anniversary comes up next year, the Civil Rights Act anniversary is of course occurring now. It's only fitting that these issues are subject to discussion.

But I think the Constitutional questions raised by the redistricting aspect of other bills that are under consideration indeed require further explanation, which is one of the cautions that we've cited.

Ms. NORTON. I appreciate that caution in your own testimony. Nothing is guarded more zealously within States than their right to redistrict. The reason I would like that explored is I wonder if Congress would ever allow a precedent whereby Congress said that, what the redistricting would be in a given State, or whether we could ever get that through. I raise this, because there have been all these assumptions about pragmatic. We ought to decide what we can get through here, and a whole bunch of people could line up and say, or, could they. And that's my question. Could they then line up and say, you're creating a precedent for Congress redistricting, and that is a no-no, at least it has been for most of our history. It would be very important, because I think that would help clear away one of the issues that has been raised.

Mr. Starr, I very much appreciate your testimony. As you are perhaps aware, your testimony helps the chairman's bill, it helps my bill as well, because you talk about the plenary power of Congress. That is something that we have thought does exist.

I wonder if proceeding on the way Congress has decided that the District should be considered a State, for virtually every purpose, is it your view that Congress could have denied, if it would like, considering the District for some purposes, or could consider the District a State for some purposes and not other purposes? Is this entirely a plenary power of the Congress of the United States, with no controls whatsoever from the Constitution itself? Or is the Congress simply interpreting what it thinks the Constitution meant when it set up a District of Columbia, that it meant for the District of Columbia to be treated as a State for these purposes, and it's simply pronouncing that, and the judiciary is following what the Congress has in fact pronounced flowing from the Constitution itself?

Judge STARR. I would say, Congresswoman Norton, that the Congress is exercising its own judgment, reflecting upon the State of the law as well as the development and evolution of the District of Columbia, and is responding to that in a way that, in its virtually unfettered judgment, it is entitled to under the provision of the Constitution that I think empowers it to make these judgments.

But it's a judgment call, as opposed to a mandate of the Constitution as I see it, to treat the District in a particular manner.

In other words, the power is vested in Congress to come to a judgment at the national legislature as how to treat the District, as most of the Constitution, driving it in one particular direction. But a huge caveat, and that is, I do not believe that plenary power is so unfettered that the Congress could violate other provisions of the Constitution.

Ms. NORTON. Such as statehood, for example. I'm trying to find the limits of this power. If in fact they can go down the line and they have virtually gone down the line and defined us as a State for every purpose except voting rights, you're saying, so go to the next step and define the District as a State for voting rights. Is that what you're saying?

Judge STARR. I think that's right, that Congress can in fact move and say, we're going to define voting rights the District as a matter of power, as a State, entitled to the full prerogatives of the State. Now, I do not, I think an argument that will be mounted the other way, if I may, and that is the 23rd amendment, of course, ratified in 1961, which is used as an argument to the effect that Congress does not enjoy the power, because of the sense that there needed to be, and Mr. Henderson spoke to this, a Constitutional amendment with respect to representation as it were in the electoral college.

Now, why is that? I think the judgment was that the election of the President is one thing that has truly, may I say, national significance, in a way that is as important as the election of any single Member of the House of Representatives to the Nation as a whole, still the degree of importance obviously to the particular jurisdiction is extremely high. So I think as a prudential matter, the determination was made that with respect to an issue as grand as the election of the President of the United States, there should be no doubt, let's have a Constitutional amendment. That was a judgment call. I don't think it binds you.

Ms. NORTON. Thank you very much. I'd like to say to Ms. Werronen how much I appreciate the work you have done in the District for congressional voting rights, and how principled you've been, in fact, harking as you said in your testimony to where Republicans in our city and Republicans nationally had long been. We were extremely disappointed that in the 2000 Republican National Convention that the party actually removed its longstanding support for congressional voting rights.

Now, you say that you will carry a plank, I wish you would tell us whether you are working on language for such a plank and whether you believe, given the fact that they actually extracted voting rights, something they had always been for, what you think are the chances of reinserting voting rights as it was before into your platform?

Ms. WERRONEN. I will in August be, as a delegate, be a member of the platform committee. Our full D.C. Republican Committee just passed its own local platform, and that indeed contains a plank on voting rights.

What we hope to do is to work with the White House and to work with the platform committee on language that affects the District of Columbia.

Ms. NORTON. We would love to have for the record what the local party plank would be, if you would be so kind as to submit your plank for the record.

Ms. WERRONEN. Absolutely.

Ms. NORTON. Thank you.

Chairman TOM DAVIS. Without objection.

[The information referred to follows:]

D.C. REPUBLICAN COMMITTEE 2004 PLATFORM

Unanimously Adopted by the DCRC, June 22, 2004

The District of Columbia Republican Committee ("DCRC") is pleased to make recommendations for issues to be addressed in the Republican platform. Our recommendations are limited to those of special interest to the District of Columbia, the only totally urban entity represented at the Republican National Convention. Therefore a number of important national policy issues, including those dealing with national defense and national economic and tax policy, are not addressed in this document.

In addition, the DCRC stands resolutely behind the President in the war on terror. We are especially proud of the leadership this Administration has shown in working to rid the world of terror and to bring the possibility of freedom to millions of people. Washington, D.C., as the seat of government and the location of many national treasures, is a primary target for terrorists, and hence, warrants additional homeland security resources.

I. A Republican Urban Agenda: As an overarching principle, we believe that the District of Columbia is an excellent location to implement local urban initiatives, including the following:

Education:

- Support and strengthen public and charter schools and voucher programs, to provide students and parents with choices in education.
- Strengthen all schools supported with public funds by establishing rigorous academic standards of achievement for students, standards of subject competency for teachers and standards of performance for administrators; enhanced accountability for meeting such standards; effective policies to insure the safety of students and teachers in school; and increased attention to improving the quality of school facilities.
- Establish workforce development and job training programs including apprentice programs and vocational education to strengthen employment options and the urban economy.
- Reauthorize and fund the federal DC Tuition Assistance Program.

Health Care and Welfare:

- Recognize the adverse public health and safety implications of drug addiction, especially on our youth, provide alternative opportunities for substance abuse programs to empower individuals to choose the certified drug treatment option that best meets individual needs and implement programs which would, as appropriate, substitute treatment for incarceration.
- Make health care both available and affordable through programs such as small business insurance pools and through programs directed at vulnerable population groups such as children and the elderly.
- Reauthorize the Ryan White Care Act, enact the Early Treatment for HIV Act, and strengthen other HIV/AIDS prevention and treatment programs.
- Make adoption easier by providing prospective parents with resources for legal and financial issues involved in the adoption process.

Housing:

- Reinstate the federal tax credit for first time home buyers in the District of Columbia.
- Establish federal tax incentives to provide affordable housing opportunities for key sectors of the workforce such as teachers, police officers and firefighters.
- Improve home ownership opportunities for public housing residents through tax abatements and funding for purchasers.

Public Transportation:

- Maximize the value of investments in public transportation through public/private development projects in the areas around stations.
- Increase the federal commitment through the Urban Mass Transit Act for the upkeep and expansion of public transportation.

Economic Development:

- Expand the current Enterprise Zone for the District of Columbia.
- Enhance local small and disadvantaged business opportunities by providing reliable and accessible funding for the Small Business Administration and the Minority Business Development Administration.
- Provide incentives for the redevelopment of "brownsfield" land that has been abandoned or underutilized because of environmental contamination.
- Encourage high technology companies to locate in urban jurisdictions through the provision of workforce development programs, affordable facilities and financial incentives.

II. District of Columbia Issues

- Support voting representation in Congress, starting with the House of Representatives.
- Support autonomy in budgeting and spending local funds, as proposed by President Bush and passed by the Republican United States Senate.
- Support legislative autonomy so that District of Columbia laws do not have to be reviewed by Congress.
- Support local autonomy by establishing a locally elected, nonpartisan attorney general to prosecute District of Columbia law, funded by savings from the federal United States Attorney for the District of Columbia.
- Close District of Columbia structural deficit by annual federal payment for compensation for nontaxable land and/or permitting the District of Columbia to tax income earned in the District by non-residents.
- Require reimbursement for services provided to the federal government for special events such as protection of dignitaries and organized protests.
- End the practice of Congressional riders to the District's annual appropriation bill that limit local government decision-making.
- Recognize the special status of the District of Columbia as the nation's capital for homeland security purposes by increasing the federal financial obligation and significantly enhancing safety efforts.

III. Issues Dealing with Marriage and Family:

- District of Columbia Republicans respect and appreciate the diversity of the American family. The District of Columbia Republican Committee believes that legal issues regarding the family and marriage are the responsibility of the states and should not be addressed in the United States Constitution.
- Because there are various views in our Party on right to life/choice, the District of Columbia Republican Committee does not support any language in the platform on this issue.

Ms. NORTON. I very much appreciate your testimony, Walter Smith, especially given your encyclopedic knowledge of all of the Constitutional issues involved. You indicate that you would, that Appleseed would support the approach of one House vote only, but only if we would support—let me just quote it. We would support that approach only if those were in fact steps toward ultimate full voting representation.

One of the, I have raised earlier that I am literally in the process of trying to think through those steps. Because there's been a lot of lip service, almost no analytical thinking about, let's see how this would help us get to the next step. See, I think it is possible to think through that issue. What is dangerous is the notion that you don't even have to think about it somehow, if you get there you're going to get to the next step.

What I'd like to know is if you have begun to think through the issue of how getting one House, something that would be, something I would devoutly desire on my watch, would in fact help us to get to the next House where frankly, all that the District needs now resides, since most of what it needs here it can get.

Mr. SMITH. Yes, we have thought about it, Ms. Norton. And one of the arguments in favor, if this is how it plays out, and if you end up supporting it, is that once you have the vote in one House, it gives you a platform upon which to argue, a higher platform to argue for completion of the journey, rather than doing it, as someone said before, all in one leap or one bound.

But a lot of it depends, as you've pointed out more than once here this morning, in the political give and take that is going to have to occur as you build a bipartisan consensus support for one approach or the other.

Ms. NORTON. I would like to invite you, Mr. Smith, and Appleseed, to help me as you have in the past to think through those steps. Because I think they can be thought through. Virtually everyone at the table has been helpful in thinking through such steps before, and I think they would advance the House only proposal considerably.

I'd like to ask you, Mr. Zherka, about ground breaking work that D.C. Vote did about voting rights and see if there has been any followup on that. I was astounded to discover that D.C. voting, that most Americans, even most college educated Americans, did not know that the District did not have voting rights. I wonder if D.C. Vote has any indication of whether there's been any improvement in at least the knowledge of the District's voteless status since your poll of some years ago?

Mr. ZHERKA. We're actually working, thank you, Congresswoman, we're working very closely with some local foundations to put together a proposal and a grant to achieve that goal, to poll nationally to find out if knowledge of this problem has increased. A number of years ago there was a national poll, in 1998, that showed that a majority of Americans didn't even know that the District was disenfranchised. We need to go back and figure out if that's changed. I suspect that it may have changed a little bit, but probably not much.

There's a lot of education that needs to happen. We are trying to educate people as much as we can. We're a small organization,

but we're working together with the Leadership Conference on Civil Rights and other groups to put together public service announcement campaign. We'd like to have, from the chairman and from this Congress, really the freedom to give the District the freedom to spend its own money, to lobby on this issue, to educate on this issue, and to do the work that's necessary to support this movement, to support measures that are being talked about up here.

So we want to urge you, Congresswoman, and the chairman, to as you're thinking about this issue, also think about the lobby prohibition rider in the appropriations bill and free up the District to engage this question and educate people.

Ms. NORTON. Thank you very much. I must say, I think we ought to be able to get a small grant to do this. We need to know whether or not anybody knows this except us. We really can't move very much in Congress unless we get some feedback from Americans who are astounded when they learn this. And if they don't know it, there will be no pressure out there. So I very much appreciate the work you've done in that regard.

Finally, Mr. Trabue, I wonder if you'd tell us how you operate when you have matters involving the District of Columbia that need, the predicate for my question is, you obviously are from the private sector. Let me just say how much we appreciate that because the Board of Trade is regional, it has nevertheless come forward and supported D.C. voting rights. That kind of reach is very important to us.

You represent many issues the way a business, and represent businesses in the District of Columbia, in the same way that your corollary organizations would represent businesses in Maryland and Virginia, let's say. What do you do if in fact you have a piece of legislation that is vital, involves a District of Columbia business matter, you have me here, how do you get that through the Senate? Tell us the processes you use.

Mr. TRABUE. Congresswoman Norton, let me give you a closer to home example. I work for PEPCO, as you know, and we have a number of issues that are of very great importance to us on the Federal level, particularly energy policy, because that directly affects our business. Although we are headquartered here in the District of Columbia, we are a Fortune 300 company. We don't have two Senators with whom we can directly correspond and help us on some of these Federal matters, or matters that may come before the Federal Energy Regulatory Commission.

We work through national trade associations at great expense, mind you, to the company, to the residents and businesses here in the District of Columbia, but we have to work through national trade associations to try to make sure that some of our views are heard and hopefully incorporated in legislation that is moving before the Senate. So we are working at a great disadvantage. I take my company as an example, but there are a myriad of others here in the city who I'm sure have very similar problems and constraints.

Ms. NORTON. Thank you very much. And thank you, Mr. Chairman.

Chairman TOM DAVIS. Thank you very much.

Ms. NORTON. I apologize for running out early to go to the floor.

Chairman TOM DAVIS. Mr. Clay.

Mr. CLAY. Thank you, Mr. Chairman. I want to thank you and the Ranking Member Norton for bringing this important issue forward.

In the interest of time, I have one question for the entire panel, and we can start with Mr. Henderson and go down the table. Let me preface this by saying that as a young, as a freshman member of the Missouri Legislature in the mid-1980's, I sponsored an amendment to a resolution that would ratify the D.C. Voting Rights Amendments, statehood amendment.

Of course, as we all know, only 16 out of 38 States ratified that amendment. Almost 20 years fast forward, in your opinion, should we continue to pursue the initiative of full statehood rights for the District of Columbia, or do you think in a practical manner there should be some fallback position, or should we continue to go for two U.S. Senators as well as a voting Member in the House? And how practical do you think that is, 20 years into the future?

Mr. HENDERSON. It's a challenging question, Mr. Clay. First of all, let me thank you for your years of support and leadership on the issue of full voting representation for D.C. citizens. As a native D.C. citizen myself, I think the issue of voting representation for the citizens of Washington is, as I noted earlier, one of the paramount human and civil rights issues of our time.

I think the aspirations of D.C. citizens to be represented in both Houses of Congress, to have full voting representation, a meaningful right to participate in the debates of our time, and an ability to have an impact on the decisions that affect their lives are really one of the controlling factors of citizenship in our country as a whole. And I note at the real anomaly of having voting rights denied District residents while seeking to provide that for citizens of every other part of the world. It is quite likely that the citizens of Baghdad will have full voting representation, while the citizens of the District of Columbia will struggle to achieve that.

Having said that, it is my view that those aspirations can't be squelched by political considerations that are designed to short circuit the full voting aspirations of D.C. residents. I appreciate the interim steps that are being taken here. I appreciate the legislation that is being proposed. I think Chairman Davis deserves true commendation for having led on this issue in the way that he's chosen to do it.

But I think in the final analysis, the full voting representation of D.C. residents cannot be short-circuited by other political considerations. I will leave to others the question of what form that representation takes, but it is most important in my view that it be provided pursuant to the Constitutional requirement of citizenship in the United States.

My last point is this. As a D.C. resident, I support the notion of statehood for the District of Columbia. I think it's an important consideration. That's a personal view. But having said that, I think the issue of voting representation in the full measure can be stated in a number of ways, and I've stated my view on that.

Mr. CLAY. Thank you for your response, Mr. Henderson. Mr. Starr.

Judge STARR. Congressman, that's an ultimate prudential judgment that you and others will have to make, and I'm ill equipped to provide guidance no that. I do want to just share with you the preamble to the Constitution, because we hear at lot and understandably about individual rights and individual liberties. But it's individual rights and individual liberties within a Federal republic, that is we do not vote as a nation, we vote as inhabitants of a particular State, and the Constitution is filled with that kind of structural language.

And it begins at the very outset. It talks about the people of the United States, but in order to form a more perfect union, and of course that's a union of States. So I would simply say that the Constitution reflects a seat of government, a national seat of government and without, I hope, introducing into the world of guidance and advice, I would simply say that prudence might suggest that it makes sense to lift up the value of individual liberty in terms of the right to vote, without doing that which might be viewed as enormous structural damage to our union, that is, seeking to in effect cerate a state without going through the entire Constitutional process.

So you will have your own experience by virtue of the amendment process, and that will guide and inform your judgment as to whether something short of an amendment is wise at this particular time.

Mr. CLAY. You don't think we're locked in with 100 U.S. Senators, do you? In the last 45 years, we added Alaska and Hawaii, and then added to the numbers in the Senate.

Judge STARR. No, that's exactly right. As I said earlier, in response to a different question, I think there is no lock-in effect here. And again, my simple point today has been that Congress does enjoy very broad powers under Article I, Section 8, Clause 17. And that I think is an interesting and creative way to now think about the issue of individual voting rights within the district.

Mr. CLAY. All right. Thank you.

Mr. ZHERKA. Congressman, to answer our question, I think clearly District residents want and deserve representation in the Congress and also control over their own lives, particularly their local laws. One of the reasons representation is important is because of the consistent and unwarranted interference of Congress in local matters.

So as we look at representation, we're looking at different options to achieve representation. I think as we look at issues of local control, there are certainly different ways to achieve that as well. Statehood has been one way that would certainly achieve both, but the Congress is also looking at budget autonomy, and other issues that deal at the local control issue.

But certainly District residents deserve control over their local affairs, as well as representation in the House and Senate.

Mr. CLAY. Mr. Smith.

Mr. SMITH. Congressman Clay, I think the ultimate goal has to be full representation for citizens of the District. And I think what we're doing today is a step toward achieving that goal. As Mr. Henderson said, it isn't clear exactly what the details are going to be.

But as long as there is a bipartisan commitment to getting there, I think we are going to get there.

But the sea change, I think that you're hearing here today, between now and back in the early 1980's, when we were seeking to get a Constitutional amendment, is I think there is a powerful argument available, and Judge Starr has made it today, that we do not need a Constitutional amendment to get there. This can be accomplished by simple legislation. And that I believe is what the Congress ought to be about.

Mr. CLAY. Ms. Werronen, if you would respond. My time is getting short.

Ms. WERRONEN. Congressman, we are very proud of our status as a Federal city, and it is unique and we support at this time as a first step full voting rights in the House of Representatives.

Mr. TRABUE. Thank you. On behalf of the Board of Trade, I would say that the Board of Trade does support full voting representation for the residents of the District of Columbia. Like many of the panelists before us, we think this is a good first step toward achieving that goal.

Mr. CLAY. Thank you. I thank the panel for their responses.

Chairman TOM DAVIS. Thank you very much.

Mr. Henderson, let me just note, you supported the 23rd amendment, and yet that wasn't the ultimate goal, correct?

Mr. HENDERSON. Correct, Mr. Chairman. And again——

Chairman TOM DAVIS. You supported the non-voting delegate, and yet that wasn't the ultimate goal?

Mr. HENDERSON. Supported the non-voting delegate and I think you can point to other points along the journey that we have made as a city with some shared State responsibilities. Again, some of this may be determined incrementally. We have certainly supported that in the past.

And yet each stop along the way, we have reaffirmed our complete commitment for full voting rights. I think your bill today certainly precipitates a conversation about the importance of full voting rights, while at the same time making a step in the right direction on the issue of voting representation in a practical way that deserves consideration.

So I think that the sea change that Walter Smith and others on this panel, the fact that you have been able to achieve a bipartisan, non-partisan approach to the important civil and human rights issue of full voting representation shouldn't be denied. I think the conversation that will proceed from this point forward is one about how we construct the legislative vehicle necessary to get the support, the 218 votes needed in the House, to get this thing enacted. That's a particular political question. Obviously you are in a better position to evaluate it than we. But I think it's an important step.

Chairman TOM DAVIS. Thank you. And I would just add, I think if the House can move through the Senate, where Senator Hatch chairs the appropriate committee in the Senate, from Utah, is something that would also take into consideration at this point.

Voltaire once said that he may disagree with what you say, but he would fight to the death to defend your right to say it. A lot on our side probably aren't going to like the representation the District gets the first time out. But I think I would fight to the death

to say this is a basic right that belongs to the citizens of the District as it belongs to all American citizens.

And as I said, we're fighting around the globe for this for people. We ought to bring it to our Nation's Capital. And any way we can get it done, incrementally or whatever, we want to continue to look at it. We want to continue to work with all of you as we develop a plan. I'm not sure it will go necessarily in this Congress, because we have some issues in the background that may take a little time, but not a lot of time to resolve.

But what we are reaching is a consensus on both sides that this is a human right that needs to be addressed. You have all added a lot to the record today. I appreciate everyone taking their time. The record will remain open for 10 days to other groups who weren't able to participate in the hearing to submit statements.

The hearing is adjourned.

[Whereupon, at 12:50 p.m., the committee was adjourned, to reconvene at the call of the Chair.]

[The prepared statement of Hon. Wm. Lacy Clay, copies of H.R. 1285, H.R. 381, H.R. 3709, and H.R. 4640, and additional information submitted for the hearing record follow:]

Statement of the Honorable Wm. Lacy Clay
Before The
Government Reform Committee
Wednesday, June 23, 2004

"Common Sense Justice for the Nation's Capital: An Examination of Proposals to Give D.C. Residents Direct Representation."

Mr. Chairman, Washington, D.C. should be entitled to a voting representative in the House of Representatives. Over 183 nations provide their citizens the type of representation citizens of Washington, D.C. are denied.

Attempts to en-franchise the District of Washington have been debated by Congress, and the residents of D.C. as early as 1801 with little or no positive results.

Because of its position as the Federal Capitol Center of our nation Washington D.C. is unique. The 2000 Census estimated that there are over 570,000 people living within the Districts boundaries. That fact alone should qualify it constitutionally as a congressional district.

History informs us that it wasn't until 1871 that Congress created the elected position of a non-voting Delegate from the District to the U.S. House of Representatives. In that same year, almost 100 years after the Declaration of Independence, the District also created its first elected government.

Residents of D.C. have fought in every war since our country was founded, and have certainly paid their share of taxes to support our armed services like any other state in the Union.

So here we are today, 203 years later since it all began in 1801. Not surprising, we are still debating the merits of full voting opportunity in our nation's capital.

Personally, I like the suggestion of an expatriate system that could be empirically tested to explore the advantages or disadvantages of District residents voting in Maryland or Virginia for the position of U.S. Senate to guarantee representation in that body as well. On the other-hand, D.C. needs its own full voting member in the House.

Of course - unfortunately, the likelihood of that becoming a reality is highly unlikely primarily because of our current political realities. I know that you have heard it before, but the truth is that taxation without full representation is blatantly wrong.

Finally, if Congress is serious about changing the status quo through a Constitutional Amendment then we also examine similar situations such as within the Puerto Rican territory, which has an estimated population of over 3,800,000 residents, and is not yet a state.

Why should we limit serious debate regarding statehood? Exceptions made for the District will ultimately produce counterproductive resentment from those also wishing to become equals.

I look forward to hearing from today's witnesses and hope they will address some of these issues. I ask unanimous consent to submit my statement into the record.

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108TH CONGRESS
1ST SESSION

H. R. 1285

To provide for full voting representation in Congress for the citizens of the District of Columbia, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MARCH 13, 2003

Ms. NORTON introduced the following bill; which was referred to the Committee on the Judiciary

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A BILL

To provide for full voting representation in Congress for the citizens of the District of Columbia, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "No Taxation Without Representation Act of 2003".

SEC. 2. FINDINGS.

Congress finds the following:

(1) The residents of the District of Columbia are the only Americans who pay Federal income

1 taxes but are denied voting representation in the
2 House of Representatives and the Senate.
3 (2) The residents of the District of Columbia
4 suffer the very injustice against which our Founding
5 Fathers fought, because they do not have voting rep-
6 resentation as other taxpaying Americans do and are
7 nevertheless required to pay Federal income taxes
8 unlike the Americans who live in the territories.
9 (3) The principle of one person, one vote re-
10 quires that residents of the District of Columbia are
11 afforded full voting representation in the House and
12 the Senate.
13 (4) Despite the denial of voting representation,
14 Americans in the Nation's Capital are second among
15 residents of all States in per capita income taxes
16 paid to the Federal Government.
17 (5) Unequal voting representation in our rep-
18 resentative democracy is inconsistent with the found-
19 ing principles of the Nation and the strongly held
20 principles of the American people today.

21 **SEC. 3. REPRESENTATION IN CONGRESS FOR DISTRICT OF**
22 **COLUMBIA.**

23 For the purposes of congressional representation, the
24 District of Columbia, constituting the seat of government
25 of the United States, shall be treated as a State, such that

1 its residents shall be entitled to elect and be represented
2 by 2 Senators in the United States Senate, and as many
3 Representatives in the House of Representatives as a simi-
4 larly populous State would be entitled to under the law.

5 **SEC. 4. ELECTIONS.**

6 (a) FIRST ELECTIONS.—

7 (1) PROCLAMATION.—Not later than 30 days
8 after the date of enactment of this Act, the Mayor
9 of the District of Columbia shall issue a proclama-
10 tion for elections to be held to fill the 2 Senate seats
11 and the seat in the House of Representatives to rep-
12 resent the District of Columbia in Congress.

13 (2) MANNER OF ELECTIONS.—The proclama-
14 tion of the Mayor of the District of Columbia re-
15 quired by paragraph (1) shall provide for the holding
16 of a primary election and a general election and at
17 such elections the officers to be elected shall be cho-
18 sen by a popular vote of the residents of the District
19 of Columbia. The manner in which such elections
20 shall be held and the qualification of voters shall be
21 the same as those for local elections, as prescribed
22 by the District of Columbia.

23 (3) CLASSIFICATION OF SENATORS.—In the
24 first election of Senators from the District of Colum-
25 bia, the 2 senatorial offices shall be separately iden-

1 tified and designated, and no person may be a can-
2 didate for both offices. No such identification or des-
3 ignation of either of the 2 senatorial offices shall
4 refer to or be taken to refer to the terms of such
5 offices, or in any way impair the privilege of the
6 Senate to determine the class to which each of the
7 Senators elected shall be assigned.

8 (b) CERTIFICATION OF ELECTION.—The results of
9 an election for the Senators and Representative from the
10 District of Columbia shall be certified by the Mayor of
11 the District of Columbia in the manner required by law
12 and the Senators and Representative shall be entitled to
13 be admitted to seats in Congress and to all the rights and
14 privileges of Senators and Representatives of the States
15 in the Congress of the United States.

16 **SEC. 5. HOUSE OF REPRESENTATIVES MEMBERSHIP.**

17 (a) IN GENERAL.—Upon the date of enactment of
18 this Act, the District of Columbia shall be entitled to 1
19 Representative until the taking effect of the next reappor-
20 tionment. Such Representative shall be in addition to the
21 membership of the House of Representatives as now pre-
22 scribed by law.

23 (b) INCREASE IN MEMBERSHIP OF HOUSE OF REP-
24 RESENTATIVES.—Upon the date of enactment of this Act,
25 the permanent membership of the House of Representa-

1 tives shall increase by 1 seat for the purpose of future
2 reapportionment of Representatives.
3 (c) REAPPORTIONMENT.—Upon reapportionment,
4 the District of Columbia shall be entitled to as many seats
5 in the House of Representatives as a similarly populous
6 State would be entitled to under the law.
7 (d) DISTRICT OF COLUMBIA DELEGATE.—Until the
8 first Representative from the District of Columbia is seat-
9 ed in the House of Representatives, the Delegate in Con-
10 gress from the District of Columbia shall continue to dis-
11 charge the duties of his or her office.

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108TH CONGRESS
1ST SESSION

H. R. 381

To provide for the retrocession of the District of Columbia to the State of Maryland, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 27, 2003

Mr. REGULA (for himself, Mr. BEREUTER, Mr. DUNCAN, Mr. FOLEY, Mr. HOBSON, Mr. SAM JOHNSON of Texas, Mr. KOLBE, and Mr. ROHRABACHER) introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Committee on Government Reform, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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A BILL

To provide for the retrocession of the District of Columbia to the State of Maryland, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "District of Columbia-Maryland Reunion Act".

1 **SEC. 2. RETROCESSION OF DISTRICT OF COLUMBIA TO**
2 **MARYLAND.**

3 (a) IN GENERAL.—Upon the issuance of a proclama-
4 tion by the President under section 7 and except as pro-
5 vided in subsection (b), the territory ceded to Congress
6 by the State of Maryland to serve as the District consti-
7 tuting the permanent seat of the Government of the
8 United States is ceded and relinquished to the State of
9 Maryland.

10 (b) CONTINUATION OF FEDERAL CONTROL OVER
11 NATIONAL CAPITAL SERVICE AREA.—Notwithstanding
12 subsection (a), Congress shall continue to exercise exclu-
13 sive legislative authority and control over the District of
14 Columbia, which shall consist of the National Capital
15 Service Area described in section 4.

16 **SEC. 3. EFFECT ON JUDICIAL PROCEEDINGS IN DISTRICT**
17 **OF COLUMBIA.**

18 (a) CONTINUATION OF SUITS.—No writ, action, in-
19 dictment, cause, or proceeding pending in any court of the
20 District of Columbia on the effective date of this Act shall
21 abate as a result of the enactment of this Act, but shall
22 be transferred and shall proceed within such appropriate
23 court of the State of Maryland as established under the
24 laws or constitution of the State of Maryland.

25 (b) APPEALS.—An order or decision of any court of
26 the District of Columbia for which no appeal has been filed

1 as of the effective date of this Act shall be considered an
2 order or decision of a court of the State of Maryland for
3 purposes of appeal from and appellate review of such order
4 or decision in an appropriate court of the State of Mary-
5 land.

6 **SEC. 4. NATIONAL CAPITAL SERVICE AREA.**

7 (a) DESCRIPTION.—The National Capital Service
8 Area referred to in section 2(b) is comprised of the prin-
9 cipal Federal monuments, the White House, the Capitol
10 Building, the United States Supreme Court Building, and
11 the Federal executive, legislative, and judicial office build-
12 ings located adjacent to the Mall and the Capitol Building
13 (but shall not include the District Building), and is more
14 particularly described as the territory located within the
15 following boundaries:

16 Beginning at the point on the present Virginia-
17 District of Columbia boundary due west of the
18 northernmost point of Theodore Roosevelt Island
19 and running due east of the eastern shore of the Po-
20 tomac River;

21 thence generally south along the shore at the
22 mean high water mark to the northwest corner of
23 the Kennedy Center;

1 thence east along the north side of the Kennedy
2 Center to a point where it reaches the E Street Ex-
3 pressway;
4 thence east on the expressway to E Street
5 Northwest and thence east on E Street Northwest to
6 Nineteenth Street Northwest;
7 thence north on Nineteenth Street Northwest to
8 F Street Northwest;
9 thence east on F Street Northwest to Eight-
10 eenth Street Northwest;
11 thence south on Eighteenth Street Northwest to
12 Constitution Avenue Northwest;
13 thence east on Constitution Avenue to Seven-
14 teenth Street Northwest;
15 thence north on Seventeenth Street Northwest
16 to H Street Northwest;
17 thence east on H Street Northwest to Madison
18 Place Northwest;
19 thence south on Madison Place Northwest to
20 Pennsylvania Avenue Northwest;
21 thence east on Pennsylvania Avenue Northwest
22 to Fifteenth Street Northwest;
23 thence south on Fifteenth Street Northwest to
24 Pennsylvania Avenue Northwest;

1 thence southeast on Pennsylvania Avenue
2 Northwest to Tenth Street Northwest;
3 thence north on Tenth Street Northwest to E
4 Street Northwest;
5 thence east on E Street Northwest to Ninth
6 Street Northwest;
7 thence south on Ninth Street Northwest to
8 Pennsylvania Avenue Northwest;
9 thence southeast on Pennsylvania Avenue
10 Northwest to John Marshall Place Northwest;
11 thence north on John Marshall Place Northwest
12 to C Street Northwest;
13 thence east on C Street Northwest to Third
14 Street Northwest;
15 thence north on Third Street Northwest to D
16 Street Northwest;
17 thence east on D Street Northwest to Second
18 Street Northwest;
19 thence south on Second Street Northwest to the
20 intersection of Constitution Avenue Northwest and
21 Louisiana Avenue Northwest;
22 thence northeast on Louisiana Avenue North-
23 west to North Capitol Street;
24 thence north on North Capitol Street to Massa-
25 chusetts Avenue Northwest;

1 thence southeast on Massachusetts Avenue
2 Northwest so as to encompass Union Square;
3 thence following Union Square to F Street
4 Northeast;
5 thence east on F Street Northeast to Second
6 Street Northeast;
7 thence south on Second Street Northeast to D
8 Street Northeast;
9 thence west on D Street Northeast to First
10 Street Northeast;
11 thence south on First Street Northeast to C
12 Street Northeast;
13 thence east on C Street Northeast to Third
14 Street Northeast;
15 thence south on Third Street Northeast to
16 Maryland Avenue Northeast;
17 thence south and west on Maryland Avenue
18 Northeast to Constitution Avenue Northeast;
19 thence west on Constitution Avenue Northeast
20 to First Street Northeast;
21 thence south on First Street Northeast to
22 Maryland Avenue Northeast;
23 thence generally north and east on Maryland
24 Avenue to Second Street Northeast;

1 thence south on Second Street Northeast to
2 East Capitol Street;
3 thence east on East Capitol Street to Third
4 Street Northeast;
5 thence south on Third Street Northeast to
6 Independence Avenue Southeast;
7 thence west on Independence Avenue Southeast
8 to Second Street Southeast;
9 thence south on Second Street Southeast to C
10 Street Southeast;
11 thence west on C Street Southeast to New Jer-
12 sey Avenue Southeast;
13 thence south on New Jersey Avenue Southeast
14 to D Street Southeast;
15 thence west on D Street Southeast to Wash-
16 ington Avenue Southwest;
17 thence north and west on Washington Avenue
18 Southwest to the intersection of Independence Ave-
19 nue Southwest and Second Street Southwest;
20 thence south on Second Street Southwest to
21 Virginia Avenue Southwest;
22 thence generally west on Virginia Avenue to
23 Third Street Southwest;
24 thence north on Third Street Southwest to C
25 Street Southwest;

1 thence west on C Street Southwest to Sixth
2 Street Southwest;
3 thence south on Sixth Street Southwest to E
4 Street Southwest;
5 thence west on E Street Southwest to Seventh
6 Street Southwest;
7 thence north on Seventh Street Southwest to
8 Maryland Avenue Southwest;
9 thence west on Maryland Avenue Southwest to
10 Ninth Street Southwest;
11 thence north on Ninth Street Southwest to
12 Independence Avenue Southwest;
13 thence west on Independence Avenue Southwest
14 to Twelfth Street Southwest;
15 thence south on Twelfth Street Southwest to D
16 Street Southwest;
17 thence west on D Street Southwest to Four-
18 teenth Street Southwest;
19 thence south on Fourteenth Street Southwest to
20 the middle of the Washington Channel;
21 thence generally south and east along the
22 midchannel of the Washington Channel to a point
23 due west of the northern boundary line of Fort Les-
24 ley McNair;

1 thence due east to the side of the Washington
2 Channel;
3 thence following generally south and east along
4 the side of the Washington Channel at the mean
5 high water mark, to the point of confluence with the
6 Anacostia River, and along the northern shore at the
7 mean high water mark to the northernmost point of
8 the Eleventh Street Bridge;
9 thence generally south and west along such
10 shore at the mean high water mark to the point of
11 confluence of the Anacostia and Potomac Rivers;
12 thence generally south and east along the
13 northern side of the Eleventh Street Bridge to the
14 eastern shore of the Anacostia River;
15 thence generally south along the eastern shore
16 at the mean high water mark of the Potomac River
17 to the point where it meets the present southeastern
18 boundary line of the District of Columbia;
19 thence south and west along such southeastern
20 boundary line to the point where it meets the
21 present Virginia-District of Columbia boundary;
22 thence generally north and west up the Poto-
23 mac River along the Virginia-District of Columbia
24 boundary to the point of beginning.

1 (b) STREETS AND SIDEWALKS.—The National Cap-
2 ital Service Area shall include any street (and sidewalk
3 thereof) that bounds such Area.
4 (c) AFFRONTING OR ABUTTING FEDERAL REAL
5 PROPERTY.—
6 (1) IN GENERAL.—The National Capital Serv-
7 ice Area shall include any Federal real property af-
8 fronting or abutting such Area as of the effective
9 date of this Act.
10 (2) PROPERTY INCLUDED.—For purposes of
11 paragraph (1), Federal real property affronting or
12 abutting the National Capital Service Area shall—
13 (A) include the Department of Housing
14 and Urban Development Building, the Depart-
15 ment of Energy Building, Fort Lesley McNair,
16 the Washington Navy Yard, the Anacostia
17 Naval Annex, the United States Naval Station,
18 Bolling Air Force Base, and the Naval Re-
19 search Laboratory; and
20 (B) not include any portion of Rock Creek
21 Park, any portion of Anacostia Park east of the
22 northern side of the Eleventh Street Bridge, or
23 any territory not located in the District of Co-
24 lumbia on the day before the date of the enact-
25 ment of this Act.

SEC. 5. TRANSITION PROVISIONS RELATING TO HOUSE OF REPRESENTATIVES.

(a) TEMPORARY INCREASE IN APPORTIONMENT.—

(1) IN GENERAL.—Until the taking effect of the first reapportionment occurring after the effective date of this Act—

(A) the individual serving as the Delegate to the House of Representatives from the District of Columbia shall serve as a member of the House of Representatives from the State of Maryland;

(B) the State of Maryland shall be entitled to 1 additional Representative until the taking effect of such reapportionment; and

(C) such Representative shall be in addition to the membership of the House of Representatives as now prescribed by law.

(2) INCREASE NOT COUNTED AGAINST TOTAL NUMBER OF MEMBERS.—The temporary increase in the membership of the House of Representatives provided under paragraph (1) shall not operate to either increase or decrease the permanent membership of the House of Representatives as prescribed in the Act of August 8, 1911 (37 Stat. 13; 2 U.S.C. 2), nor shall such temporary increase affect the basis of reapportionment established by the Act of November

15, 1941 (55 Stat. 761; 2 U.S.C. 2a), for the 82nd Congress and each Congress thereafter.

(b) REPEAL OF LAWS PROVIDING FOR DELEGATE FROM THE DISTRICT OF COLUMBIA.—Sections 202 and 204 of the District of Columbia Delegate Act (Public Law 91–405; sections 1–401 and 1–402, D.C. Official Code) are repealed, and the provisions of law amended or repealed by such sections are restored or revived as if such sections had not been enacted.

SEC. 6. EFFECT ON OTHER LAWS.

No law or regulation which is in force on the effective date of this Act shall be deemed amended or repealed by this Act except to the extent specifically provided in this Act, or to the extent that such law or regulation is inconsistent with this Act.

SEC. 7. PROCLAMATION REGARDING ACCEPTANCE OF RETROCESSION BY MARYLAND.

Not later than 30 days after the State of Maryland enacts legislation accepting the retrocession described in section 2(a), the President shall issue a proclamation announcing such acceptance and declaring that the territory ceded to Congress by the State of Maryland to serve as the District constituting the permanent seat of the Government of the United States has been ceded back to the State of Maryland.

1 **SEC. 8. EFFECTIVE DATE.**

2 The provisions of this Act and the amendments made
3 by this Act shall take effect on the date the President
4 issues a proclamation under section 7 or the date of the
5 ratification of an amendment to the Constitution of the
6 United States repealing the twenty-third article of amend-
7 ment to the Constitution, whichever comes later.

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108TH CONGRESS
2D SESSION

H. R. 3709

To restore the Federal electoral rights of the residents of the District of Columbia, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 20, 2004

Mr. ROHRABACHER introduced the following bill; which was referred to the Committee on House Administration, and in addition to the Committees on Government Reform, and the Judiciary, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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A BILL

To restore the Federal electoral rights of the residents of the District of Columbia, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "District of Columbia Voting Rights Restoration Act of 2004".

SEC. 2. FINDINGS.

The Congress finds the following:

(1) There is no reason, either historically or by virtue of law, why the people of the District of Co-

lumbia, the capital of the United States of America, should not have full voting representation in the Congress of the United States.

(2) Article I, section 8, clause 17 of the Constitution of the United States, which authorized the creation of the District of Columbia, provides only that the Congress shall have "exclusive legislation in all cases whatsoever" over that District.

(3) The same clause of the Constitution provides that Congress "shall exercise like authority over" other Federal territories that have been purchased from the States for Federal purposes. Residents of other Federal enclaves, though also denied voting rights after becoming subject to exclusive Federal jurisdiction, have had restored their right to vote for and serve as elected Federal officials from their respective States which ceded the Federal enclaves to the United States.

(4) Congress has exercised its authority to regulate Federal elections under article I, section 4 of the Constitution to set the legal requirements that States must follow in establishing Congressional districts. Congress has also exercised this authority to require States to allow United States citizens who are former residents, and their children who are

1 United States citizens, who are living overseas to
2 vote in Federal elections in the previous State of res-
3 idence, notwithstanding the fact that such former
4 residents and their children may have no intention
5 of returning or establishing residence in that State,
6 and notwithstanding the fact that such citizens are
7 not subject to the laws of that State, including tax
8 laws.

9 (5) The entire territory of the current District
10 of Columbia was ceded to the United States by the
11 State of Maryland, one of the original 13 States of
12 the United States. The portion of the original Dis-
13 trict of Columbia ceded to the United States by the
14 Commonwealth of Virginia was returned to the au-
15 thority of that state in 1846, and the people who
16 now reside in that area vote as citizens of the Com-
17 monwealth of Virginia.

18 (6) The Supreme Court of the United States
19 has found that the cession of legislative authority
20 over the territory that became the District of Colum-
21 bia by the States of Maryland and Virginia did not
22 remove that territory from the United States, and
23 that the people who live in that territory are entitled
24 to all the rights, guarantees, and immunities of the
25 Constitution that they formerly enjoyed as citizens

of those States. O'Donoghue v. United States, 289 U.S. 516 (1933); Downes v. Bidwell, 182 U.S. 244 (1901). Among those guarantees are the right to equal protection of the laws and the right to participate, equally with other Americans, in a Republican form of government.

(7) Since the people who lived in the territory that now makes up the District of Columbia once voted in Maryland as citizens of Maryland, and Congress by adoption of the Organic Act of 1801 severed the political connection between Maryland and the District of Columbia by statute, Congress has the power by statute to restore Maryland state citizenship rights, including Federal electoral rights, that it took away by enacting the Organic Act of 1801.

SEC. 3. RESTORATION OF RIGHT OF DISTRICT OF COLUMBIA RESIDENTS TO PARTICIPATE AS MARYLAND RESIDENTS IN CONGRESSIONAL ELECTIONS.

(a) IN GENERAL.—Notwithstanding any other provision of law, for purposes of representation in the House of Representatives and Senate, the right of the people of the District of Columbia to be eligible to participate in elections for the House of Representatives and Senate as

1 Maryland residents in accordance with the laws of the
2 State of Maryland, is hereby restored.

3 (b) ELIGIBILITY TO HOLD CONGRESSIONAL OF-
4 FICE.—Notwithstanding any other provision of law, for
5 purposes of determining eligibility to serve as a Member
6 of the House of Representatives or Senate, the right of
7 the residents of the District of Columbia to be considered
8 inhabitants of the State of Maryland is hereby restored.

9 (c) EFFECTIVE DATE.—This section shall apply with
10 respect to elections for Federal office occurring during
11 2006 and any succeeding year.

12 **SEC. 4. RESTORATION OF RIGHT OF DISTRICT OF COLUM-**
13 **BIA RESIDENTS TO PARTICIPATE AS MARY-**
14 **LAND RESIDENTS IN PRESIDENTIAL ELEC-**
15 **TIONS.**

16 (a) IN GENERAL.—Notwithstanding any other provi-
17 sion of law, the right of the people of the District of Co-
18 lumbia to be eligible to participate in elections for electors
19 of President and Vice President, and to serve as such elec-
20 tors as Maryland residents in accordance with the laws
21 of the State of Maryland, is hereby restored.

22 (b) ELIGIBILITY TO SERVE AS ELECTORS.—Notwith-
23 standing any other provision of law, for purposes of deter-
24 mining eligibility to serve as electors of President and Vice
25 President, the right of the residents of the District of Co-

1 lumbia to be considered inhabitants of the State of Mary-
2 land is hereby restored.

3 (c) TERMINATION OF APPOINTMENT OF SEPARATE
4 ELECTORS BY DISTRICT OF COLUMBIA.—In accordance
5 with the authority under sections 1 and 2 of the 23rd
6 amendment to the Constitution and the authority under
7 article I, Section 8, to legislate for the District of Colum-
8 bia, and notwithstanding any other provision of law, Con-
9 gress directs that no electors of President and Vice Presi-
10 dent shall be appointed by the District of Columbia and
11 that no votes from such electors shall be cast or counted
12 in the electoral vote for President and Vice President.

13 (d) CONFORMING AMENDMENT.—

14 (1) IN GENERAL.—Chapter 1 of title 3, United
15 States Code, is amended by striking section 21.

16 (2) CLERICAL AMENDMENT.—The table of sec-
17 tions for chapter 1 of title 3, United States Code,
18 is amended by striking the item relating to section
19 21.

20 (e) EFFECTIVE DATE.—This section and the amend-
21 ments made by this section shall apply with respect to
22 Presidential elections beginning with the 2008 Presi-
23 dential election.

24 **SEC. 5. COORDINATION OF ELECTION ADMINISTRATION.**

25 (a) APPLICATION OF MARYLAND ELECTION LAWS.—

1 (1) IN GENERAL.—Federal elections in the Dis-
2 trict of Columbia shall be administered and carried
3 out by the State of Maryland, in accordance with the
4 applicable laws of the State of Maryland.
5 (2) TREATMENT OF DISTRICT AS UNIT OF
6 LOCAL GOVERNMENT.—For purposes of the laws of
7 the State of Maryland which apply to Federal elec-
8 tions in the District of Columbia pursuant to para-
9 graph (1), the District of Columbia shall be consid-
10 ered to be a unit of local government within the
11 State of Maryland with responsibility for the admin-
12 istration of Federal elections.
13 (b) CONFORMING AMENDMENTS TO HELP AMERICA
14 VOTE ACT OF 2002.—
15 (1) TREATMENT OF DISTRICT OF COLUMBIA AS
16 PART OF MARYLAND.—Section 901 of the Help
17 America Vote Act of 2002 (42 U.S.C. 15541) is
18 amended—
19 (A) by striking "the District of Columbia";
20 (B) by striking "In this Act" and inserting
21 "(a) IN GENERAL.—In this Act"; and
22 (C) by adding at the end the following new
23 subsection:

1 "(b) SPECIAL RULE FOR STATE OF MARYLAND AND
2 DISTRICT OF COLUMBIA.—For purposes of this Act, the
3 following shall apply:
4 "(1) The voting age population of the State of
5 Maryland shall be considered to include the voting
6 age population of the District of Columbia for pur-
7 poses of sections 101(d)(4) and 252(b).
8 "(2) The District of Columbia shall be consid-
9 ered a unit of local government or jurisdiction lo-
10 cated within the State of Maryland.
11 "(3) An election for Federal office taking place
12 in the District of Columbia shall be considered to
13 take place in the State of Maryland.".
14 (c) CONFORMING AMENDMENTS TO OTHER FEDERAL
15 ELECTION LAWS.—
16 (1) UNIFORMED AND OVERSEAS CITIZENS AB-
17 SENTEE VOTING ACT.—
18 (A) IN GENERAL.—Title I of the Uni-
19 formed and Overseas Citizens Absentee Voting
20 Act (42 U.S.C. 1973ff et seq.) is amended by
21 adding at the end the following new section:
22 **"SEC. 108. SPECIAL RULE FOR STATE OF MARYLAND AND**
23 **DISTRICT OF COLUMBIA.**
24 "For purposes of this title, the following shall apply:

1 "(1) An absent uniformed services voter or
2 overseas voter who is a resident of the District of
3 Columbia shall be considered to be a resident of the
4 State of Maryland.
5 "(2) An election for Federal office taking place
6 in the District of Columbia shall be considered to
7 take place in the State of Maryland.
8 "(3) The State of Maryland, and the election
9 officials of the State of Maryland, shall be respon-
10 sible for carrying out the provisions of this title with
11 respect to voters who are residents of the District of
12 Columbia.".
13 (B) CONFORMING AMENDMENT.—Section
14 107(6) of the Uniformed and Overseas Citizens
15 Absentee Voting Act (42 U.S.C. 1973ff–6) is
16 amended by striking "the District of Colum-
17 bia,".
18 (2) NATIONAL VOTER REGISTRATION ACT OF
19 1973.—
20 (A) IN GENERAL.—The National Voter
21 Registration Act of 1973 (42 U.S.C. 1973gg et
22 seq.) is amended—
23 (i) by redesignating section 13 as sec-
24 tion 14; and

1 (ii) by adding at the end the following
2 new section:

3 **"SEC. 12. SPECIAL RULE FOR STATE OF MARYLAND AND**
4 **DISTRICT OF COLUMBIA.**

5 "For purposes of this Act, the following shall apply:
6 "(1) The District of Columbia shall be consid-
7 ered a registrar's jurisdiction within the State of
8 Maryland.
9 "(2) An election for Federal office taking place
10 in the District of Columbia shall be considered to
11 take place in the State of Maryland.
12 "(3) The State of Maryland, and the election
13 officials of the State of Maryland, shall be respon-
14 sible for carrying out this Act with respect to the
15 District of Columbia, except that—
16 "(A) section 5 shall apply to motor vehicle
17 driver's license applications and the motor vehi-
18 cle authority of the District of Columbia in the
19 same manner as that section applies to a State,
20 and the State of Maryland shall provide the
21 District of Columbia with such forms and other
22 materials as the District of Columbia may re-
23 quire to carry out that section; and
24 "(B) the District of Columbia shall des-
25 ignate voter registration agencies under section

7 in the same manner as a State, and the State of Maryland shall provide the District of Columbia with such forms and other materials as the District of Columbia may require to carry out that section.".

(B) CONFORMING AMENDMENT.—Section 3(4) of such Act (42 U.S.C. gg–1(4)) is amended by striking "and the District of Columbia".

(3) VOTING ACCESSIBILITY FOR THE ELDERLY AND HANDICAPPED ACT.—

(A) IN GENERAL.—The Voting Accessibility for the Elderly and Handicapped Act (42 U.S.C. 1973ee et seq.) is amended—

(i) by redesignating section 8 as section 9; and

(ii) by inserting after section 7 the following new section:

"SPECIAL RULE FOR STATE OF MARYLAND AND DISTRICT OF COLUMBIA

"SEC. 8. For purposes of this Act, the following shall apply:

"(1) The District of Columbia shall be considered a political subdivision of the State of Maryland.

"(2) An election for Federal office taking place in the District of Columbia shall be considered to take place in the State of Maryland.

"(3) The State of Maryland shall be responsible for carrying out this Act with respect to the District of Columbia.".

(B) CONFORMING AMENDMENT.—Section 8(5) of such Act (42 U.S.C. 1973ee–6(5)) is amended by striking "the District of Columbia,".

(d) CONFORMING AMENDMENT TO HOME RULE ACT.—Section 752 of the District of Columbia Home Rule Act (sec. 1–207.52, D.C. Official Code) is amended by striking the period at the end and inserting the following: ", except to the extent required under section 5 of the District of Columbia Voting Rights Restoration Act of 2004.".

(e) OTHER CONFORMING AMENDMENT TO DISTRICT OF COLUMBIA ELECTION LAW.—The District of Columbia Elections Code of 1955 is amended by adding at the end the following new section:

"SEC. 18. APPLICABILITY OF MARYLAND ELECTION LAW FOR ADMINISTRATION OF FEDERAL ELECTIONS.

"Notwithstanding any other provision of this Code or other law or regulation of the District of Columbia—

"(1) any election for Federal office in the District of Columbia shall be administered and carried

1 out by the State of Maryland, in accordance with the
2 applicable law of the State of Maryland; and
3 "(2) no provision of this Code shall apply with
4 respect to any election for Federal office to the ex-
5 tent that the provision is inconsistent with the appli-
6 cable law of the State of Maryland.".
7 (f) EFFECTIVE DATE.—This section and the amend-
8 ments made by this section shall apply with respect to
9 elections for Federal office occurring during 2006 and any
10 succeeding year.

11 **SEC. 6. TRANSITION PROVISIONS FOR HOUSE OF REP-**
12 **RESENTATIVES.**

13 (a) NUMBER AND APPORTIONMENT OF MARYLAND
14 MEMBERS.—For purposes of determining the number and
15 apportionment of the members of the House of Represent-
16 atives from the State of Maryland for the One Hundred
17 Tenth Congress and each succeeding Congress, the popu-
18 lation of the District of Columbia shall be added to the
19 population of Maryland under the decennial census.
20 (b) TEMPORARY INCREASE IN APPORTIONMENT.—
21 (1) IN GENERAL.—Effective January 3, 2007,
22 and until the taking effect of the first reapportion-
23 ment occurring after the regular decennial census
24 conducted for 2010—

1 (A) the membership of the House of Rep-
2 resentatives shall be increased by 2;
3 (B) the State of Maryland, together with
4 the State identified by the Clerk of the House
5 of Representatives in the report submitted
6 under paragraph (2), shall each be entitled to
7 one additional Representative; and
8 (C) each such Representative shall be in
9 addition to the membership of the House of
10 Representatives as now prescribed by law.
11 (2) TRANSMITTAL OF REVISED APPORTION-
12 MENT INFORMATION BY PRESIDENT AND CLERK.—
13 (A) STATEMENT OF APPORTIONMENT BY
14 PRESIDENT.—Not later than December 1,
15 2004, the President shall transmit to Congress
16 a revised version of the most recent statement
17 of apportionment submitted under section 22(a)
18 of the Act entitled "An Act to provide for the
19 fifteenth and subsequent decennial censuses and
20 to provide for apportionment of Representatives
21 in Congress", approved June 28, 1929 (2
22 U.S.C. 2a(a)), to take into account the provi-
23 sions of this section.
24 (B) REPORT BY CLERK.—Not later than
25 15 calendar days after receiving the revised

1 version of the statement of apportionment
2 under subparagraph (A), the Clerk of the
3 House of Representatives, in accordance with
4 section 22(b) of such Act (2 U.S.C. 2a(b)),
5 shall send to the executive of the State (other
6 than the State of Maryland) entitled to one ad-
7 ditional Representative pursuant to this section
8 a certificate of the number of Representatives
9 to which such State is entitled under section 22
10 of such Act, and shall submit a report identi-
11 fying that State to the Speaker of the House of
12 Representatives.

13 (3) INCREASE NOT COUNTED AGAINST TOTAL
14 NUMBER OF MEMBERS.—The temporary increase in
15 the membership of the House of Representatives
16 provided under paragraph (1) shall not operate to ei-
17 ther increase or decrease the permanent membership
18 of the House of Representatives as prescribed in the
19 Act of August 8, 1911 (2 U.S.C. 2), nor shall such
20 temporary increase affect the basis of reapportion-
21 ment established by the Act of June 28, 1929, as
22 amended (2 U.S.C. 2a), for the Eighty Second Con-
23 gress and each Congress thereafter.

24 (c) PROHIBITING DIVISION OF DISTRICT OF COLUM-
25 BIA INTO SEPARATE CONGRESSIONAL DISTRICTS.—

1 (1) IN GENERAL.—Notwithstanding subsection
2 (a), in establishing Congressional districts after the
3 effective date of this section, the State of Maryland
4 shall ensure that the entire area of the District of
5 Columbia is included in the same Congressional dis-
6 trict (except as provided in paragraph (2)).
7 (2) SPECIAL RULE IF POPULATION OF DISTRICT
8 EQUALS OR EXCEEDS AVERAGE POPULATION OF
9 MARYLAND CONGRESSIONAL DISTRICTS.—If the pop-
10 ulation of the District of Columbia equals or exceeds
11 the average population of a Congressional district in
12 the State of Maryland under the decennial census
13 used for the apportionment of the Members of the
14 House of Representatives from the State of Mary-
15 land, the State of Maryland shall ensure that at
16 least one Congressional district in the State consists
17 exclusively of territory within the District of Colum-
18 bia.
19 (3) SPECIAL RULE FOR INITIAL DISTRICT.—
20 Until the State of Maryland establishes Congres-
21 sional districts to take into account the enactment of
22 this section, the Congressional district of the addi-
23 tional Representative to which the State is entitled
24 under this section shall consist exclusively of the
25 area of the District of Columbia.

1 **SEC. 7. REPEAL OF OFFICE OF DISTRICT OF COLUMBIA**
2 **DELEGATE.**

3 (a) IN GENERAL.—Sections 202 and 204 of the Dis-
4 trict of Columbia Delegate Act (Public Law 91–405; sec-
5 tions 1–401 and 1–402, D.C. Official Code) are repealed,
6 and the provisions of law amended or repealed by such
7 sections are restored or revived as if such sections had
8 not been enacted.

9 (b) CONFORMING AMENDMENTS TO DISTRICT OF CO-
10 LUMBIA ELECTIONS CODE OF 1955.—The District of Co-
11 lumbia Elections Code of 1955 is amended—

12 (1) in section 1 (sec. 1–1001.01, D.C. Official
13 Code), by striking "the Delegate to the House of
14 Representatives";

15 (2) in section 2 (sec. 1–1001.02, D.C. Official
16 Code)—

17 (A) by striking paragraph (6), and

18 (B) in paragraph (13), by striking "the
19 Delegate to Congress for the District of Colum-
20 bia";

21 (3) in section 8 (sec. 1–1001.08, D.C. Official
22 Code)—

23 (A) by striking "Delegate" in the heading,
24 and

1 (B) by striking "Delegate," each place it
2 appears in subsections (h)(1)(A), (i)(1), and
3 (j)(1);
4 (4) in section 10 (sec. 1–1001.10, D.C. Official
5 Code)—
6 (A) by striking subparagraph (A) of sub-
7 section (a)(3), and
8 (B) in subsection (d)—
9 (i) by striking "Delegate," each place
10 it appears in paragraph (1), and
11 (ii) by striking paragraph (2) and re-
12 designating paragraph (3) as paragraph
13 (2);
14 (5) in section 15(b) (sec. 1–1001.15(b), D.C.
15 Official Code), by striking "Delegate,"; and
16 (6) in section 17(a) (sec. 1–1001.17(a), D.C.
17 Official Code), by striking "except the Delegate to
18 the Congress from the District of Columbia".
19 (c) EFFECTIVE DATE.—The amendments made by
20 this section shall apply with respect to elections occurring
21 during 2006 and any succeeding year.
22 **SEC. 8. REPEAL OF OFFICES OF STATEHOOD REPRESENTA-**
23 **TIVE AND SENATOR.**
24 (a) IN GENERAL.—Section 4 of the District of Co-
25 lumbia Statehood Constitutional Convention Initiative of

1 1979 (sec. 1–123, D.C. Official Code) is amended by strik-
2 ing subsections (d) through (h).
3 (b) CONFORMING AMENDMENTS.—
4 (1) STATEHOOD COMMISSION.—Section 6 of
5 such Initiative (sec. 1–125, D.C. Official Code) is
6 amended—
7 (A) in subsection (a)—
8 (i) by striking "27 voting members"
9 and inserting "24 voting members",
10 (ii) by adding "and" at the end of
11 paragraph (4); and
12 (iii) by striking paragraphs (5) and
13 (6) and redesignating paragraph (7) as
14 paragraph (5); and
15 (B) in subsection (a–1)(1), by striking sub-
16 paragraphs (F), (G), and (H).
17 (2) AUTHORIZATION OF APPROPRIATIONS.—
18 Section 8 of such Initiative (sec. 1–127, D.C. Offi-
19 cial Code) is hereby repealed.
20 (3) APPLICATION OF HONORARIA LIMITA-
21 TIONS.—Section 4 of D.C. Law 8–135 (sec. 1–131,
22 D.C. Official Code) is hereby repealed.
23 (4) APPLICATION OF CAMPAIGN FINANCE
24 LAWS.—Section 3 of the Statehood Convention Pro-

1 cedural Amendments Act of 1982 (sec. 1–135, D.C.
2 Official Code) is hereby repealed.
3 (5) LIST OF ELECTED OFFICIALS.—Section
4 2(13) of the District of Columbia Elections Code of
5 1955 (sec. 1–1001.02(13), D.C. Official Code) is
6 amended by striking "United States Senator and
7 Representative,".

8 **SEC. 9. NONSEVERABILITY OF CERTAIN PROVISIONS.**

9 If any provision of sections 3, 6(a), or 6(b) of this
10 Act, or the application thereof to any person or cir-
11 cumstance, is held invalid, the remaining provisions of this
12 Act or any amendment made by this Act shall be treated
13 as invalid.

14 **SEC. 10. RULES OF CONSTRUCTION.**

15 Nothing in this Act may be construed—
16 (1) to permit residents of the District of Colum-
17 bia to vote in elections for State or local office in the
18 State of Maryland or to permit nonresidents of the
19 District of Columbia to vote in elections for local of-
20 fice in the District of Columbia;
21 (2) to affect the power of Congress under arti-
22 cle I, section 8, clause 17 of the Constitution to ex-
23 ercise exclusive legislative authority over the District
24 of Columbia; or

1 (3) to affect the powers of the Government of
2 the District of Columbia under the District of Co-
3 lumbia Home Rule Act (except as specifically pro-
4 vided in this Act).

○

108TH CONGRESS
2D SESSION

H. R. 4640

To establish the District of Columbia as a Congressional district for purposes of representation in the House of Representatives, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JUNE 22, 2004

Mr. TOM DAVIS of Virginia (for himself, Mr. SHAYS, Mr. CANNON, Mr. BISHOP of Utah, and Mr. PLATTS) introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Committee on Government Reform, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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A BILL

To establish the District of Columbia as a Congressional district for purposes of representation in the House of Representatives, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "District of Columbia Fairness in Representation Act" .

SEC. 2. FINDINGS.

Congress finds as follows:

(1) Over half a million people living in the District of Columbia, the capital of our democratic Nation, lack direct voting representation in the United States Senate and House of Representatives.

(2) District of Columbia residents have fought and died to defend our democracy in every war since the War of Independence.

(3) District of Columbia residents pay billions of dollars in Federal taxes each year.

(4) Our Nation is founded on the principles of "one person, one vote" and "government by the consent of the governed".

SEC. 3. TREATMENT OF DISTRICT OF COLUMBIA AS CONGRESSIONAL DISTRICT.

(a) IN GENERAL.—Notwithstanding any other provision of law, the District of Columbia shall be considered a Congressional district for purposes of representation in the House of Representatives.

(b) CONFORMING AMENDMENT REGARDING APPLICATION OF METHOD OF EQUAL PROPORTIONS IN APPORTIONMENT OF HOUSE OF REPRESENTATIVES.—Section 2(a) of the Act entitled "An Act to provide for apportioning Representatives in Congress among the several States by the equal proportion method", approved Novem-

1 ber 15, 1941 (2 U.S.C. 2b), is amended by inserting "or
2 the District of Columbia" after "no State".
3 (c) CONFORMING AMENDMENTS REGARDING AP-
4 POINTMENTS TO SERVICE ACADEMIES.—
5 (1) UNITED STATES MILITARY ACADEMY.—Sec-
6 tion 4342 of title 10, United States Code, is amend-
7 ed—
8 (A) in subsection (a), by striking para-
9 graph (5); and
10 (B) in subsection (f), by striking "the Dis-
11 trict of Columbia,".
12 (2) UNITED STATES NAVAL ACADEMY.—Such
13 title is amended—
14 (A) in section 6954(a), by striking para-
15 graph (5); and
16 (B) in section 6958(b), by striking "the
17 District of Columbia,".
18 (3) UNITED STATES AIR FORCE ACADEMY.—
19 Section 9342 of title 10, United States Code, is
20 amended—
21 (A) in subsection (a), by striking para-
22 graph (5); and
23 (B) in subsection (f), by striking "the Dis-
24 trict of Columbia,".

1 (d) EFFECTIVE DATE.—This section and the amend-
2 ments made by this section shall apply with respect to the
3 One Hundred Ninth Congress and each succeeding Con-
4 gress.

5 **SEC. 4. TEMPORARY INCREASE IN APPORTIONMENT OF**
6 **HOUSE OF REPRESENTATIVES.**

7 (a) IN GENERAL.—Effective January 3, 2005, and
8 until the taking effect of the first reapportionment occur-
9 ring after the regular decennial census conducted for
10 2010—

11 (1) the membership of the House of Represent-
12 atives shall be increased by 2 members;

13 (2) each such Representative shall be in addi-
14 tion to the membership of the House of Representa-
15 tives as now prescribed by law; and

16 (3) the State identified by the Clerk of the
17 House of Representatives in the report submitted
18 under subsection (b) shall be entitled to one addi-
19 tional Representative.

20 (b) TRANSMITTAL OF REVISED APPORTIONMENT IN-
21 FORMATION BY PRESIDENT AND CLERK.—

22 (1) STATEMENT OF APPORTIONMENT BY PRESI-
23 DENT.—Not later than 30 days after the date of the
24 enactment of this Act, the President shall transmit
25 to Congress a revised version of the most recent

1 statement of apportionment submitted under section
2 22(a) of the Act entitled "An Act to provide for the
3 fifteenth and subsequent decennial censuses and to
4 provide for apportionment of Representatives in
5 Congress", approved June 28, 1929 (2 U.S.C.
6 2a(a)), to take into account the provisions of this
7 Act.

8 (2) REPORT BY CLERK.—Not later than 15 cal-
9 endar days after receiving the revised version of the
10 statement of apportionment under paragraph (1),
11 the Clerk of the House of Representatives, in ac-
12 cordance with section 22(b) of such Act (2 U.S.C.
13 2a(b)), shall send to the executive of each State a
14 certificate of the number of Representatives to which
15 such State is entitled under section 22 of such Act,
16 and shall submit a report to the Speaker of the
17 House of Representatives identifying the State enti-
18 tled to one additional Representative pursuant to
19 this section.

20 (c) INCREASE NOT COUNTED AGAINST TOTAL NUM-
21 BER OF MEMBERS.—The temporary increase in the mem-
22 bership of the House of Representatives provided under
23 subsection (a) shall not—

24 (1) operate to either increase or decrease the
25 permanent membership of the House of Representa-

1 tives as prescribed in the Act of August 8, 1911 (2
2 U.S.C. 2);
3 (2) affect the basis of reapportionment estab-
4 lished by the Act of June 28, 1929, as amended (2
5 U.S.C. 2a), for the Eighty Second Congress and
6 each Congress thereafter; or
7 (3) be taken into account in determining the
8 number of electors under section 3 of title 3, United
9 States Code, with respect to the 2004 Presidential
10 election.

11 **SEC. 5. REPEAL OF OFFICE OF DISTRICT OF COLUMBIA**
12 **DELEGATE.**

13 (a) IN GENERAL.—Sections 202 and 204 of the Dis-
14 trict of Columbia Delegate Act (Public Law 91–405; sec-
15 tions 1–401 and 1–402, D.C. Official Code) are repealed,
16 and the provisions of law amended or repealed by such
17 sections are restored or revived as if such sections had
18 not been enacted.

19 (b) CONFORMING AMENDMENTS TO DISTRICT OF CO-
20 LUMBIA ELECTIONS CODE OF 1955.—The District of Co-
21 lumbia Elections Code of 1955 is amended—
22 (1) in section 1 (sec. 1–1001.01, D.C. Official
23 Code), by striking "the Delegate to the House of
24 Representatives";

(2) in section 2 (sec. 1–1001.02, D.C. Official Code)—

(A) by striking paragraph (6), and

(B) in paragraph (13), by striking "the Delegate to Congress for the District of Columbia";

(3) in section 8 (sec. 1–1001.08, D.C. Official Code)—

(A) by striking "Delegate" in the heading, and

(B) by striking "Delegate," each place it appears in subsections (h)(1)(A), (i)(1), and (j)(1);

(4) in section 10 (sec. 1–1001.10, D.C. Official Code)—

(A) by striking subparagraph (A) of subsection (a)(3), and

(B) in subsection (d)—

(i) by striking "Delegate," each place it appears in paragraph (1), and

(ii) by striking paragraph (2) and redesignating paragraph (3) as paragraph (2);

(5) in section 15(b) (sec. 1–1001.15(b), D.C. Official Code), by striking "Delegate,"; and

1 (6) in section 17(a) (sec. 1–1001.17(a), D.C.
2 Official Code), by striking "except the Delegate to
3 the Congress from the District of Columbia".
4 (c) EFFECTIVE DATE.—The amendments made by
5 this section shall apply with respect to elections occurring
6 during 2004 and any succeeding year.

7 **SEC. 6. REPEAL OF OFFICE OF STATEHOOD REPRESENTA-**
8 **TIVE.**

9 (a) IN GENERAL.—Section 4 of the District of Co-
10 lumbia Statehood Constitutional Convention Initiative of
11 1979 (sec. 1–123, D.C. Official Code) is amended as fol-
12 lows:
13 (1) By striking "offices of Senator and Rep-
14 resentative" each place it appears in subsection (d)
15 and inserting "office of Senator".
16 (2) In subsection (d)(2)—
17 (A) by striking "a Representative or";
18 (B) by striking "the Representative or";
19 and
20 (C) by striking "Representative shall be
21 elected for a 2-year term and each".
22 (3) In subsection (d)(3)(A), by striking "and 1
23 United States Representative".
24 (4) By striking "Representative or" each place
25 it appears in subsections (e), (f), (g), and (h).

1 (5) By striking "Representative's or" each
2 place it appears in subsections (g) and (h).
3 (b) CONFORMING AMENDMENTS.—
4 (1) STATEHOOD COMMISSION.—Section 6 of
5 such Initiative (sec. 1–125, D.C. Official Code) is
6 amended—
7 (A) in subsection (a)—
8 (i) by striking "27 voting members"
9 and inserting "26 voting members",
10 (ii) by adding "and" at the end of
11 paragraph (5); and
12 (iii) by striking paragraph (6) and re-
13 designating paragraph (7) as paragraph
14 (6); and
15 (B) in subsection (a–1)(1), by striking sub-
16 paragraph (H).
17 (2) AUTHORIZATION OF APPROPRIATIONS.—
18 Section 8 of such Initiative (sec. 1–127, D.C. Offi-
19 cial Code) is amended by striking "and House".
20 (3) APPLICATION OF HONORARIA LIMITA-
21 TIONS.—Section 4 of D.C. Law 8–135 (sec. 1–131,
22 D.C. Official Code) is amended by striking "or Rep-
23 resentative" each place it appears.
24 (4) APPLICATION OF CAMPAIGN FINANCE
25 LAWS.—Section 3 of the Statehood Convention Pro-

1 cedural Amendments Act of 1982 (sec. 1–135, D.C.
2 Official Code) is amended by striking "and United
3 States Representative".
4 (c) EFFECTIVE DATE.—The amendments made by
5 this section shall apply with respect to elections occurring
6 during 2004 and any succeeding year.

7 **SEC. 7. NONSEVERABILITY OF PROVISIONS.**

8 If any provision of this Act or any amendment made
9 by this Act is held invalid, the remaining provisions of this
10 Act or any amendment made by this Act shall be treated
11 as invalid.

○

Statement of U.S. Representative Ray Browne of the District of Columbia to the Committee on Government Reform, U.S. House of Representatives, regarding voting representation in the U.S. Congress for the District of Columbia, June 23, 2004

Mr. Chairman and Members of the Committee:

I am Ray Browne, U.S. Representative elected by the people of the District of Columbia to seek and achieve voting representation in the Congress of the United States.

It is a distinct privilege to be able to express to you on behalf of the residents of the District strong support for legislation to provide full voting representation for such residents in the Congress. I wish to thank you for taking this historic step on a bipartisan basis to remedy a glaring gap in this nation's claim as the light of the world for democracy and the justice to mankind that it is capable of providing.

While people can argue about the rationale over 200 years ago when the District of Columbia was established and the periods since when its citizens were denied the right to voting representation in our national legislature, it can no longer be argued with credulity that the lack of voting representation should continue any longer. It is to besmirch our nation's example to others of democratic ideals for this intolerable state of affairs not to be remedied at once.

To assist in providing the Committee with additional background to this issue and the need to address it, I am enclosing several documents for this record:

1. Copy of a Sense of the Council Resolution No. PR 15-0855 adopted by the D.C. Council on June 1, 2004, regarding voting representation for the District in Congress;
2. Copy of my statement to the D.C. Council in support of that Resolution;
3. Copy of an Explanation and Discussion of the Resolution as originally introduced by all but one of the D.C. Council.

As you will see, the Council in a resolution sought by my office strongly endorsed full voting representation in Congress but expressed support for voting representation in the U.S. House of Representatives as a way station and interim step toward such full voting representation. For the Council to arrive at this position was not an easy achievement. For residents who have lived without such representation, it is difficult to accept that an incremental step is justified. After countless hours of seeking the views of my constituents, I have grappled with that issue just as the Congress is now. Considering all the factors, it is my judgment that our residents will greatly benefit from having voting representation in the House of Representatives immediately and will be better able to pursue in the future full voting representation in Congress having a voting Member of at least one House of Congress in the interim.

I am pleased that your committee is hearing support for correcting this historic inequity from representatives of both political parties. It is to show a callous disregard for the people who live here not to attain such representation that can be attained today. It should be a bipartisan effort and I am doing all that I can to insure that. There is simply no justifiable rationale for it not to be.

Achieving such representation in the House of Representatives can be accomplished in any number of ways. The Chairman of this committee has put forward one very creative approach that would have my support if it can attract the necessary support in Congress for it to be enacted. There are other approaches that can be crafted that would be acceptable as well. However, the principal encouragement that I wish to make is that this deficiency in our nation's form of government must

be corrected and done so without further delay. With the compelling needs that the people of this great city, this our Nation's Capital City, have similar to those of all of their fellow citizens around the country, including especially today the clear and present dangers that we face here in this uncertain, terror-threatened world, to fail to provide a voice for the people of this city would be inexcusable.

The Congress *is* the "court of last resort" for our country . . . and it is time this historic inequity is corrected. I applaud this committee for seeking to do the in this instance, the moral, the just and the right thing for the people of the District and of our nation at this point in its history. I hope the Congress will rise to this challenge and will, as it does so many times, meet its obligation to right wrongs and enact legislation to provide voting representation for the District of Columbia in the U.S. Congress as soon as possible.

Thank you.

Enclosures:
1. D.C. Council Resolution
2. Testimony of U.S. Representative Ray Browne to the D.C. Council
3. Explanation and Discussion document regarding the resolution as introduced by members of the D.C. Council on voting representation for the District in Congress

Statement of Hon. Ray Browne, U.S. Representative for the District of Columbia, to a Public Roundtable held by the Subcommittee on Public Interest of the Council of the District of Columbia on the Proposed Sense of the Council Resolution 15-855, May 19, 2004

Chairperson Mendelson, Councilmembers of the District of Columbia, concerned members of the public, I am Ray Browne, U.S. Representative for the District of Columbia. I am also, a longtime District resident, businessperson and activist in District of Columbia affairs.

I am here to urge each of you in the strongest terms I am capable of conveying to pass the Proposed Sense of the Council Resolution, PR 15-855, as a way station to full voting representation in Congress leading to statehood. I come to this position after listening to many voices, our citizens, community organizations, local leaders, the faith community and others.

That Resolution was introduced by the distinguished Chairperson of this Subcommittee, Mr. Mendelson, Council Chairperson Linda Cropp, and Councilmembers Harold Brazil, Carol Schwartz, David Catania, Jim Graham, Jack Evans, Kathleen Patterson, Vincent Orange, Sharon Ambrose, Kevin Chavous and Sandy Allen. It is my understanding that to have this many of this august legislative body agree on any resolution does not occur very often. Knowing that makes me all the more appreciative of and indebted to each of the Councilmembers who have added their leadership and commitment to what we fervently hope will become an historic achievement in the annals of this magnificent City we call home, our nation's capital, Washington, D.C.

The purpose of the resolution before you is to express the sense of the Council on supporting federal legislation that will meaningfully advance the achievement of voting representation in the Congress of the United States for the residents of the District of Columbia.

Following under separate cover is a background information and discussion document on the Resolution's provisions. I urge the Council to review and consider that information as you consider the Resolution itself.

As you know, the position of service to which I have been elected, that of U.S. Representative for the District of Columbia entails a mandate to seek voting representation in the Congress of the United States. In carrying out that mandate and service, I have traveled to many other cities throughout our nation and spoken with countless numbers of our fellow citizens on this matter of such consequence to those of us who reside in the District.

Many of our fellow citizens, including some within high levels of government, are not cognizant of the anomaly of our city's residents having no voting representation in Congress. And, many around the nation upon learning of this artifact of history and indefensible inequity, become interested in helping to right this wrong.

Given the unique conditions that exist in the nation today for obtaining at last a measure of justice and equity for the residents of the District, this resolution once passed by the Council will carry with it a strong and compelling bipartisan entreaty to Congress for legislation to provide voting representation in the House of Representatives. As the Council's Resolution conveys,

there simply is no legitimate rationale at this juncture in the history of our nation the Congress *not to pass* such legislation.

Clearly, there were a number of reasons why over two centuries ago Congress sought an enclave for itself and gave President George Washington the right to select the site for the nation's capital. At that time, it did not provide for representation in Congress for that small enclave. Some of the original reasons for decisions relating to a federal city continue. Some have, because of changed conditions, become less or no longer relevant. The Congress and the President at that time could not have foreseen the many changes that time would bring: inventions that would radically change the lives of the citizenry and how people conduct commerce; changes in society, including the abolishment of slavery in the District of Columbia and throughout the nation; evolution of the capital from a place to house the President and the Congress into one of the truly great and vibrant cities of the world; and, the threat of terrorism at the doorstep of city residents.

While the population of the District is still relatively small compared to some of our nation's states, the District contributed heavily to the preservation of our freedoms through service by residents in the Armed Forces of the United States in all of our wars. In service to our country in the Vietnam War, the District lost more lives than 10 of the states lost. This was a heavy price to pay. But, the sons and daughters of the District made their contribution to a nation whose decision to go to war and to fund wars could not be influenced by District residents through voting representation in the body that made such decisions. Until 1961, residents could not even vote for someone to serve as their President, the Commander-in-Chief who, with the Congress, would send them and their children to war.

Over the years and particularly in recent years, the issue of District residents being taxed but have no voting representation in the institution of government that imposes such taxes has taken more prominence. It is a matter of history that this nation was founded upon several fundamental precepts. Key among those was "no taxation without representation." Our country fought a war, costly in human and resources terms, over this issue. From the outrage this grievance generated among the people in the Colonies early patriots collectively discovered the uncommon courage to create a new nation based upon ideals of a democracy.

To many residents who are deeply committed to the cause of voting representation in the Congress, I urge that you join in supporting the Council's adoption of the Resolution 15-855. Passage of that resolution will convey to the Congress the depth of interest, support and concern for this cause. The resolution specifically recognizes that full voting representation is the ultimate goal of many residents and that can and will be pursued with vigor regardless of if an interim and historic step is taken by Congress to provide a secure vote in the House of Representatives.

The support for an incremental step is not in the least inconsistent with movements of this kind. Certainly, this was the experience of the civil rights movement. And, we have experienced incremental successes in our own home rule quest. Consider with me the question where would we be today if we had listened to the voices in 1973 who urged full home rule or nothing. The answer is that we would *still* be living under the control of a presidentially-appointed commission or a presidentially-appointed mayor and council. <u>There is absolutely no one who</u>

can seriously argue that such a result would be better than the limited home rule the District has today.

In part because of these prior advances, we have before us the real possibility of budget autonomy which would go a long way toward completing the vision of home rule. Because of achieving *limited home rule* when the District did, we are better positioned now to achieve *full home rule*. Likewise, achieving a vote for the District on the Floor of the House of Representatives today will position the District to be far better able to make the case for and achieve full voting representation in Congress and statehood tomorrow. To not take this step today is tantamount to accepting continued second-class citizenship for the people of the District who in such case would likely be relegated to that status for many years to come.

There are numerous ways that can be crafted to provide for such a vote for the District. The Congress will need to consider and resolve the issues surrounding such legislation. As the Resolution indicates, the political reality of dealing with the current almost even balance in the House of Representatives between the two major political parties should not permitted to be used as a shield *by anyone* to avoid acting upon legislation to provide a vote in the House for the people of the District. This fact of life today can and must be accommodated and factored into legislation if it is to garner the requisite support that it needs to become the law of the land.

In conclusion, I believe that the Council is at the threshold of taking an historic step forward in securing fundamental rights for the people of the District. We live in dangerous times . . . this is not hyperbole unfortunately . . . the words accurately describe our current condition. Never in the history of our nation has it been more important than now for the people who live in this acknowledged potential target of terrorism to have some say over how their lives will be protected, how their children will be cared for in normal times and in times of emergency, and what resources will be available to them should an act of terrorism be perpetrated upon them and their city.

Your passage of this resolution will do much to help protect our residents and others who work here, including those who live here temporarily while serving and working in Congress, as well as those who visit the nation's capital from around the nation and the world. I urge that you act with great dispatch to approve the Proposed Resolution 15-855.

Because of the exigencies of this situation, once this Council passes this resolution, if it does so, I will use that historic achievement with every resource I can muster to encourage the Congress to act wisely and immediately to pass legislation to provide District residents with voting representation in the House of Representatives as a way station to full voting representation in Congress and statehood. This is an imperative and must be recognized as such.

Thank you for your attention to and action on this vital subject.

Enclosure: Explanation and Discussion of PR 15-855

Draft

Explanation and Discussion

of

Proposed Resolution 15-855 (PR 18-855), the "Sense of the Council in Support of Voting Rights Advancement in the Congress of the United States Resolution of 2004"

To declare the sense of the Council on supporting federal legislation that will meaningfully advance The achievement of voting representation in the Congress of the United States for the residents of the District of Columbia.

In the Council of the District of Columbia, introduced by: Chairman Linda W. Cropp, Councilmembers Phil Mendelson, Harold Brazil, Carol Schwartz, David A. Catania, Jim Graham, Jack Evans, Kathleen Patterson, Vincent B. Orange, Sr., Sharon Ambrose, Kevin P. Chavous, and Sandra (Sandy) Allen.

Subsection 2 (1):

This subsection addresses the fact that although residents of the District of Columbia pay federal income tax, can be sent to war by authority of the Congress, and are living in what is a likely target of a future terrorist attack on the country, they have NO voting rights in Congress over the paramount decisions the Congress makes that directly affect their lives and futures.

The point regarding terrorism is particularly poignant and relevant at this time, unlike every other population within the United States, there is not a single person from the District who is responsible for the health and welfare of District Residents and has a vote on the Floor of either the House or Senate of the United States. Members of Congress have their own constituents to worry about, to take care of, to vote on behalf of, to carry out case work for, and to parlay votes on the House Floor for support for matters of great and small importance to the District. The District's Delegate works with those tools available to the Delegate, but the key tool -- a vote on the House Floor -- is simply not there. Without that, the residents will continue to remain subjects of an anachronistic disenfranchisement, a condition that will become all the more glaring and **potentially devastating to District residents and those who work in or visit the City** should there be some catastrophic event in the Nation's capital.

And, while there are 435 members of Congress who are able to vote on the House or Senate Floor on matters affecting the lives of the District Residents, as well as the lives of those who commute into the City to work on a daily basis, not a single one of them has the direct and particular responsibility for the people of the District, their families, their concerns, their health and welfare, their security.

All major democracies of the world ensure that the residents of their capital city are represented in those countries' national legislatures. This subsection seeks to highlight these fundamental examples of this gross inequity.

Subsection 2(2):

This subsection delves into the historic background to legislation establishing the District of Columbia. For its initial years, the Congress met in Philadelphia, Pennsylvania and New York City. During those years, there events that became somewhat contentious and underscored the desirability for the nation's capital to have a home somewhere other than in an existing state. In 1790 when the

U.S. Constitution was adopted, its language provided for he establishment of a federal district. In 1800, the Capital moved from Philadelphia to Washington, D.C. The population of the area at the time was 14,000. Congress determined that one way to deal with the issues that had arisen when it was located in an existing state and other needs was to carve out of other land in the nation, a reserve that would serve as a capital enclave. They did this from land in Maryland and Virginia, although that from Virginia was subsequently returned to that state in 1846.

Since that time, the Federal City has grown to over a half million people or about as many as several of the states. Based on U.S. Department of Labor statistics for March of 2004, the Districts employment picture is diverse with the general breakdown as follows:

Construction—14,000
Manufacturing—2,500
Trade, Transportation and Utilities—27,700
Information Industry—24,400
Financial Activities—31,000
Professional and Business—144,000
Education and Health—93,000
Leisure and Entertainment—51,000
Other Service Sector—55,000
Government—231,000

As the reader can see, approximately two-thirds (66%) of the employment in the District is non-government, although government continues to play a vital role in the job market and the economy of the District. A considerable amount of the economic activity in the District is obviously related to government but not to the exclusion of a unique and rich diversity economy as highlighted above.

Subsection 2(3):

This subsection underscores the diversity of the District, which is similar in make up to other U.S. cities such as Detroit, Atlanta, Montgomery, Philadelphia and Richmond, to name a few. When the city was first established, slavery was still very much a part of the culture of much of the United States . . . including the District. It was not until 1862 that President Lincoln signed legislation passed by Congress to abolish slavery in the District of Columbia. It is therefore not surprising that the District became home to a significant number of former slaves. That act by Congress and the President was a major advancement in human rights and the securing of individual liberties. Unfortunately, other than the passage of the 23rd Amendment to the Constitution, no other single example of extraordinary leadership to secure the fundamental rights for residents of the District has been forthcoming until now. The demographics of the city evolved to the point that it is now with approximately 60 per cent of the city being of African American heritage. By comparison, and for informational purposes, the demographics of—

- Detroit Michigan are: 83.5 percent African American; 12.5 percent White; 1% Asian;
- Atlanta, Georgia are: 62 percent African American; 33 percent white; 4 percent hispanic; 2 percent Asian;
- Montgomery, Alabama are: 50 percent African American; 49 percent white; 1 percent Asian;
- Philadelphia, Pennsylvania are: 43 percent African American; 45 percent white;
- Richmond, Virginia are: 59 percent African American; 40 percent white; 2.6 percent;

Hispanic; 1.8 percent Asian;

- Newark, New Jersey are: 56 percent African American; 28 percent white;
- Birmingham, Alabama are: 74 percent African American; 24 percent white; 1 percent Asian.

The men and women of the District of all races have served their nation well. They can be sent be sent to war by Congress and the President. Indeed, in the Vietnam War, the District lost more lives lost than 10 states. Yet . . . the people who go to war or whose children go to war on behalf of the nation cannot have a say on the House or Senate Floors in matters dealing with such a matter of great personal and national importance.

Subsection (4):

The Districts residents and businesses pay income and other federal taxes just as other citizens living elsewhere in the United States do. Yet, District residents are not afforded any ability to vote in the Congress of the Untied States on such taxation. This is historically one of the keystone issues and grievances that led to the Revolutionary War that led to the founding of the United States of America.

Although taxation without representation in Congress is certainly a key element to the argument that District residents should have a voting representative in Congress, it is by no means the only one. And taxation should not be the only factor in considering the rightness of the cause of providing representation in Congress. But, since it has a prominent place in the list of reasons why the people living in he District should have a voice in Congress who can vote for their interests, some modest discussion and analysis helps put the tax issue in perspective.

The following data are derived from the U.S. Internal Revenue Service*.

With respect to **total Internal Revenue Gross Collections *** by state for fiscal year 2003, including, but not limited to, corporation income tax and personal income tax collections**, in comparison with the states, the District of Columbia ranks as follows:**

- Collections from the District were **roughly six (6) times** such collections from Alaska, Montana, North Dakota, and Wyoming;

- Collections from the Distinct were **roughly three (3) times** such collections from Hawaii, Maine, and West Virginia;

- Collections from the District were **roughly two (2) times** such collections from Idaho, Mississippi, New Hampshire, New Mexico, Rhode Island, and Utah;

- Collections from the District were **approximately the same** as such collections from Alabama, Arkansas, Louisiana, Kentucky, Oklahoma, and Oregon;

In terms of corporate income tax only, IRS collections from in the District were for fiscal year 2003—

Seventy (70) times such collections from Wyoming;

Thirty-eight (38) times such collections from South Dakota;

Thirty-four (34) times such collections from Alaska;

Twenty-four (24) times such collections from North Dakota;

Twenty-one (21) times such collections from Vermont;

Sixteen (16) times such collections from New Mexico;

Thirteen (13) times such collections from Maine and New Hampshire;

Eleven (11) times such collections from Hawaii;

Nine (9) times such collections from Minnesota and Oklahoma;

Eight (8) times such collections from Idaho;

Six (6) times such collections from Utah;

Five (5) times such collections from Kansas, Oregon, and South Carolina;

Four (4) times such collections from Arizona, Colorado, and Kentucky;

Three (3) times such collections from Alabama and Louisiana;

Two (2) times such collections from Indiana, Iowa, Maryland and Rhode Island;

More than such collections from Delaware, Massachusetts, Michigan, Missouri, Nevada, Tennessee, and Wisconsin;

And **approximately the same** as Arkansas, Florida and Nebraska.

With respect to **personal income tax**, District residents paid in Tax Year 2001 more taxes than did the residents of Hawaii, North Dakota, South Dakota, Montana, Vermont, Wyoming or Alaska.

And, **on a per capita basis**, District residents **paid more personal income taxes than residents of all states except one.**

Considering such stunning comparative tax figures, on this fundamental issue alone, fundamental equity dictates the immediate remedial action instituted by Congress. Such data highlights Representative Davis' comment so vividly conveys, one cannot with a straight face contend that the district should not have representation in Congress.

These figures are merely part, albeit an important part, of the overall picture as to the rationale as to why in 2004, over 200 years since the District founding, residents of the nation's capital should have a say, a voting say, in their national government . . . one that cannot be taken away on a whim but appropriately protected once secured.

Subsection 2 (5):

This subsection states the logical conclusion from any fair analysis of the issue of representation in Congress in general as well as the considerations highlighted in Subsection 2(4) above. This ***is*** an inequity of historic proportions. It cannot be denied any longer if this nation is to keep the faith with the world and its own populous as the bastion of democracy that is has been for so long. The nation must have the ability to adapt to changing times and to look inwardly and outwardly as it has done in the past to correct injustices that are not defensible. It must have the good judgment and courage to do so forthrightly with no one permitted to avoid responsibility in remedying this egregious wrong. To not have done so in the past is history. That cannot be changed. To not do so at this time would be to besmirch the legacy of democracy that the United States has provided to the rest of the world and should continue to provide in this millennium.

Subsection 2(6):

This subsection acknowledges a fundamental reality that cannot be ignored. The U.S. Congress has witnessed in recent years an almost even balance between the representation of major political parties in Congress. The stakes are so high and are perceived so that to not recognize such a reality is to accept that until one body or the other becomes so dominant that that issue is no longer of consequence. Most people would conclude that that is unlikely to occur in the short-term. And, for residents of the District, there should be no more endless waiting for a substantial measure of equity to be afforded to them.

Therefore, this subsection makes the point that it is clear that to make a substantial, meaningful and historic advancement toward full voting representation in Congress, the step of obtaining voting representation in stages, i.e. first in the House of Representatives, is not only warranted, it is the only step that is feasible at this time. This is not to give ground one iota on the ultimate hope, goal, and drive for full voting representation in Congress. But, that hope, goal and drive must yield for the moment otherwise District residents are likely to continue to have NO representation in Congress for some additional period of years. The stakes are simply too high for the District not to secure a major step toward representative democracy in stages. The perfect should not be allowed to be the enemy of making unquestionable and historic progress for the people who live in the District.

Subsection 2(7)

This subsection raises the point that there are a number of ways to achieve voting representation in the House of Representatives. Some of those ways are the subject of legislative proposals being crafted in Congress currently. Others are available and workable that have not found their way into specific legislative proposals. As Subsection 2(6) recognizes, the chances of the District finally after 200 years to obtain a vote in Congress is dependent upon a sober and realistic acknowledgement of the political balance in the House of Representatives, the sensitivity of that issue, and to work with Congress to find a means acceptable to the Congress that can become the law of the land soon.

Subsection 2(8):

This subsection references the words of President Lincoln, whose morality and fairness and words continue to provide guidance and comfort to people of all political persuasions in the United States. President Eisenhower is referred to because it was in his term as President that the 23rd

Amendment to the Constitution was passed by Congress with his strong support. This amendment provided the right to residents of the District to vote in Presidential elections. This was a key step toward enfranchisement of the residents . . . and surely no one would argue seriously today that it should not have been taken. It was a historic achievement. And, district resident shave reason to be proud and appreciative that in the recent past, the state of Alabama joined other states that have ratified this amendment by ratifying the amendment itself.

Section 3:

This section expresses the sense of the Council that a means for achieving voting representation in he House of Representatives in the *near-term* should be supported as an interim step toward full voting representation in Congress. The council is by this action not abridging any aspiration or goal to attain full voting representation. It is, though, seeking to secure a substantial, a meaningful, an historic step toward securing rights for the District that President Eisenhower and the Congress supported through support for the 23rd amendment to the Constitution.

This section expresses the sense of the Council that it is in our Nation's interests in conveying to the rest of the world its commitment, it courage to right a wrong, its ability to adjust to changing conditions without sacrificing great principles. It also expresses that it is in the best interest of the citizens of the District the bipartisan leadership and membership of Congress as well as the President and the Executive Branch should move ***immediately*** to secure for the people...the women, the men, the children of the capital of the United States . .. . Voting representation in the House of Representatives.

Councilmember Phil Mendelson

A PROPOSED RESOLUTION

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

To declare the existence of an emergency with the respect to the need for the Council to express its support for voting rights in the United States Congress.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Sense of the Council in Support of Voting Rights Advancement in the Congress of the United States Emergency Declaration Resolution of 2004".

Sec. 2. (a) On June 23, 2004, the United States House of Representatives will hold a hearing on (1) H.R. 3709 – District of Columbia Voting Rights Restoration Act of 2004 - introduced in the House of Representatives by Rep. Dana Rohrabacher; (2) H.R. 1285 and S.716 – No Taxation Without Representation Act of 2003 - introduced by Rep. Eleanor Norton in the House and Senator Joseph Lieberman in the Senate; (3) H.R 381 – the District of Columbia-Maryland Reunion Act - introduced by Rep. Ralph Regula in the House; and (4) a proposal by Rep. Tom Davis of Virginia which would create an additional seat in the House each for Utah and the District of Columbia.

(b) At the time PR15-855 was introduced on May 7, 2004 by twelve Councilmembers, the Council intended to act on the resolution by June 1, 2004.

(c) Notice of Intent to Act on PR15-855 in not less than 15 days was published in the May 21, 2004 edition of the *D.C Register*.

(d) Emergency legislation is necessary in order to allow the Council to express its

1 position on voting rights prior to Congressional action on June 23, 2004.

2 Sec. 3. The Council of the District of Columbia determines that the circumstances

3 enumerated in section 2 constitute emergency circumstances making it necessary that the Sense of

4 the Council in Support of Voting Rights Advancement in the Congress of the United States

5 Emergency Resolution of 2004 be adopted after a single reading.

6 Sec. 4. This resolution shall take effect immediately.

THE BROWNE COMPANY
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RECEIVED
JUN 28 2004
HOUSE COMMITTEE ON
GOVERNMENT REFORM

June 16, 2004

Honorable Tom Davis
Committee on Government Reform
U.S. House of Representatives
2157 Rayburn House Office Building
Washington, D. C. 20515

Dear Mr. Chairman,

On behalf of the people of the District of Columbia. I thank you for your sense of fundamental fairness in advancing the goal of representation in the U. S. House of Representatives for our citizens. While a seat in the House is not our ultimate goal, as I am sure you understand, it certainly is a historic and laudable way station.

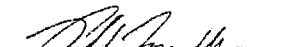
As you know, in recent weeks, I urged the Council of the District of Columbia to pass a resolution that would for the first time put the Council on record supporting legislation to provide a vote for the District in the in the U. S House of Representatives or U. S. Senate as a step toward full voting representation in Congress. The Council voted 11to2 in favor of that Resolution. For your information, and use, attached is a copy of the Resolution.

I respectfully request that you consider including this resolution in testimony next week as your Committee receives testimony on voting rights legislation for District residents. Such inclusion will help the Congress and the public become more informed about this issue. Additionally, I would hope the resolution could be acknowledged in the Congressional Record.

It is my hope that with your leadership a bill can be crafted that will garner the requisite support to provide voting representation in our national legislature for the citizens of the District. I look forward to assisting in that achievement.

All the best,

Ray Browne
U. S. Representative (shadow)
Enclosure: Sense of the Council Resolution
RB:ba



Councilmember Phil Mendelson

A PROPOSED RESOLUTION

IN THE COUNCIL OF DISTRICT OF COLUMBIA

To declare, on an emergency basis, the sense of the Council in support of federal legislation to meaningfully advance the achievement of voting representation in the Congress of the United States for the residents of the District of Columbia.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Sense of the Council in Support of Voting Rights Advancement in the Congress of the United States Emergency Resolution of 2004".

Sec. 2. The Council of the District of Columbia finds that:

(1) Citizens of the United States who are also residents of the District of Columbia do not have voting representation in their national legislature, unlike the residents of the capitals of all other democratic countries in the world.

(2) These U.S. citizens do not have voting representation even though they pay federal income tax, their children are sent to war by authority of the Congress, and all of their laws are subject to the exclusive jurisdiction of the Congress.

(3) The District of Columbia was established as the federal seat of government through legislation adopted by the Congress over 200 years ago. At the time of the District's establishment, Congress concluded that for then-compelling reasons such a federal enclave was a sensible way of providing a location for our national government. Since then, however, the world has changed, the United States has evolved, issues that may have been relevant two centuries ago are not relevant today, and democracy has expanded to all corners of the world and remains a beacon to many. Yet the citizens of the United States who live in our nation's capital do not have voting representation in their national legislature.

1 (4) The residents of the District of Columbia -- whose demographic characteristics include
2 60% African American, 31% Caucasian, and 8% Hispanic/Latino - have served proudly in the
3 Armed Forces of the United States. District residents have shouldered a heavy burden and paid the
4 ultimate price for liberty by sending their children into war, including having to endure the loss of
5 more lives in Vietnam than did ten states. Yet citizens of the District have no vote in the
6 governmental body that can send them and their children to war.
7 (5) The residents of the District of Columbia pay income taxes of $2 billion annually, which
8 on a per capita basis is higher than every state in the Union except one.
9 (6) The denial of such a fundamental right as representation to accompany taxation, one of
10 the salient rights upon which our nation was founded and one of the principles of the American
11 Revolution, is an inequity of historic proportions.
12 (7) Securing the right of voting representation for the people of the District is a moral
13 imperative that should no longer be denied through questionable excuses. All political parties should
14 promote remedying this injustice, unconditionally, as consistent with American democratic
15 principles.
16 (8) It is a reality, unfortunately, that full voting representation in Congress – equal to that
17 enjoyed by citizens of the 50 states - may be achieved only through stages or in a number of other
18 ways. Accepting this likelihood allows the opportunity for the citizens of the District to achieve a
19 substantial, meaningful, and historic advancement toward full voting representation.
20 (9) Such a first but important step can be achieved through any number of ways without
21 creating a political imbalance and consequent liability in the current make-up of the House of
22 Representatives. Therefore, concerns over such political considerations as that balance should not
23 be used to mask this or other unjustified rationales for denying the U.S. citizens of the District
24 representation in the House of Representatives.
25 (10) The words of President Abraham Lincoln are applicable to the plight of the citizens
26 of the District with respect to their entreaty to the Congress on voting rights. President Lincoln
27 stated: "You cannot escape the responsibility of tomorrow by evading it today." President
28 Lincoln's words some 150 years ago are prescient to this long struggle for representation. He

1 said, "The fight must go on. The cause of civil liberty must not be surrendered at the end of one
2 or even one hundred defeats."
3 (11) One hundred years later, during the administration of President Dwight D.
4 Eisenhower, and with his strong support, the Congress passed the 23rd Amendment to the United
5 States Constitution granting citizens of the District the right to vote for President of the United
6 States.
7 (12) Ten years later (but 30 years ago), during the administration of President Richard M.
8 Nixon, and with his strong support, the Congress enacted limited home rule for citizens of the
9 District.
10 (13) It is time now for the next step toward securing the blessings of liberty for the
11 citizens of the District.
12 Sec. 3. It is the sense of the Council that:
13 (1)The Council urges Congress to expeditiously pass H.R. 1285 (also known as S. 617),
14 the "No Taxation Without Representation Act of 2003," to grant District of Columbia citizens
15 voting representation in both the U.S. House of Representatives and the U.S. Senate (see Council
16 Resolution 14-435, May 7, 2002).
17 (2) As a means to advance the cause, however, full voting representation in either the
18 U.S. House of Representatives or the U.S. Senate in the near term should be supported as a way
19 station and interim step toward full voting representation in Congress for citizens of the District
20 of Columbia.
21 (3) Expanding the franchise to District citizens has been delayed too long, and Congress
22 should act with immediacy.
23 Sec. 4. This resolution shall take effect immediately upon the first date of publication in
24 the *District of Columbia Register*.

Testimony of

Johnny Barnes

Submitted To

The Committee On Government Reform

United States House of Representatives

Regarding

The Hearing Held on Wednesday, June 23, 2004

"Common Sense Justice for the Nation's Capital: An Examination of Proposals to Give D.C. Residents Direct Representation"

Mr. Chairman, My name is Johnny Barnes, and I am the Executive Director of the American Civil Liberties Union for the National Capital Area. I am delighted to present this testimony regarding a very important issue not only to the people of Washington, D.C., but also to the nation as a whole.

I want to first thank you, Mr. Chairman, for the time you are giving to this matter. I know that there are many demands that could claim your interest and attention, yet you are devoting considerable energy and time to this cause, a cause that in many ways is parochial. For that you are to be congratulated and applauded.

With a membership of close to 10,000, the ACLU-NCA has been in business in this Region for more than forty years. We draw members from the District of Columbia as well as Prince George's and Montgomery Counties in nearby Maryland. Those who join us also become members of the National ACLU. Founded in 1920 and headquartered in New York City, the National ACLU has a membership of 600,000, with 53 affiliates, more than 300 Chapters and a presence in every state and Puerto Rico.

Since the formation of the ACLU-NCA in 1961, its mission has been to undertake lawsuits and other legal actions and also to promote civil liberties through legislative advocacy. On any given day, we address a range of issues and concerns, including AIDS policy, censorship, children's rights, educational reform, discrimination, the death penalty, lesbian and gay rights, police misconduct, privacy matters, prisoner's rights, reproductive freedom, women's rights, workplace rights and, of course, voting rights.

Both National ACLU and our Affiliate are on record in support of advancing voting rights for the people of Washington, D.C.

[I wish to acknowledge the input of ACLU Legal Interns, Sue-Yun Ahn, Columbia Law School, and Dekonti Mends-Cole, Georgetown University Law Center, in the preparation of this testimony. Their participation and support has been invaluable.]

The exact text of a Resolution, passed by the ACLU at its 2003 Convention, the most recent action by National, states as follows:

"The American Civil Liberties Union reaffirms its support for statehood and – until then – for self-government and full voting representation for the citizens of Washington, D.C. All options to these ends should be considered, including passing simple legislation to achieve the desired result. Whatever the means, the time has come to place D.C. citizens on equal footing with other American citizens, to secure self-government and to end taxation without representation in the Nation's Capital."

Following is National Policy #324b, "Self-Governance for the District of Columbia," as reflected in Board Minutes on three separate occasions:

"The American Civil Liberties Union reaffirms its support of the constitutional amendment recently enacted by the Congress of the United States which would give residents of the District of Columbia full voting representation in both Houses, and pledges its active participation, as a member of the National Coalition for Self-Determination, in the newly initiated effort to obtain ratification by the legislatures of thirty-eight states." **[ACLU Board Minutes, September 23-24, 1978].**

"Existing ACLU policy supporting voting rights and self-government supports the position of statehood for the District of Columbia." **[ACLU Board Minutes, September 24-25, 1988].**

"Pursuant to ACLU policy supporting statehood for the District of Columbia, in the interim the ACLU supports all measures for increased home rule for the District of Columbia." **[ACLU Board Minutes, April 8-9, 1989].**

Mr. Chairman, it is clear that the plain meaning of these expressions of ACLU policy leaves us with no choice except to oppose the D.C. Council's Resolution, 15-855, and your proposal, H.R. 4640, as currently drafted.

In sum, we strongly oppose the Resolution and the Davis Proposal because:

- A plain reading of current ACLU policy (National and Local) compels us to oppose the Resolution and the Davis proposal.

- Of all the proposals to provide representation in Congress for the people of the District of Columbia, H.R. 4640 is the most Constitutionally suspect.

- The Bill, H.R. 4640, is of limited duration expanding the House of Representatives to accommodate the two new members only until the next Census is taken (five years from now).

- No Congress can bind a future Congress by statute, and because H.R. 4640 would be advanced by a simple act of Congress, it can also be withdrawn by a simple act of a subsequent Congress.

  Note - Congresswoman Norton was given a vote in the Committee of the Whole; however, in a subsequent Congress when control of the House shifted, the Norton vote was withdrawn.

- Congresswoman Norton can now vote in and chair subcommittees and committees; introduce legislation; speak on the floor of the House; and serve in House leadership posts. She could even be the Speaker of the House, without a vote. Hence providing a vote for her in the House gives us little, while giving up much.

Background

The D.C. Council held a Hearing, on Wednesday, May 19th, on Proposed Resolution 15-855, expressing the "Sense of the Council in Support of Voting Rights Advancement in the Congress of the United States." A copy of the Resolution is annexed. The Resolution passed by a vote of eleven to two. In brief, the Resolution declares the Council's support for "Federal legislation that will meaningfully advance the achievement of voting representation in the Congress for the District of Columbia." While the Resolution does not expressly mention the proposal by you, Mr. Chairman, it is clear that the intent is to support the proposal that you prefer to move through the

Congress, H.R. 4640, that would provide one voting representative for D.C. in the House of Representatives, together with another voting representative for Utah. You will note that at Section 3(1) of the Resolution, it is provided that, "A remedy for achieving voting representation in the United States House of Representatives in the near term should be strongly supported ..." (Emphasis added). The House would be *temporarily* expanded --- until the next Census --- to accommodate the two new members.

History

As a principal staff author of House Joint Resolution 554, the proposed amendment to the Constitution of the United States passed by two-thirds of the House and Senate in 1978; as one who labored, with many others, in the seven years following passage of that amendment in our effort to secure ratification by thirty-eight states, only to fall short of our goal; and as a principal staff author of the very first D.C. Statehood Bill, H.R. 51, introduced before Congress in 1987; this is a subject that has claimed much of my attention and a great deal of my interest since I became a resident of Washington, D.C. more than three decades ago. From the moment I settled here, it struck me as strange that by virtue of the routine act of crossing an invisible line, coming within the boundaries of Washington, D.C. and making the Nation's Capitol my home, many of the rights I had enjoyed, as a citizen of a state, were lost. In the shadow of the greatest symbol of democracy, the Washington Monument, that simple act, carried out by thousands, has made our lives difficult and different from the lives of every other citizen in America. That simple act caused us to become second-class, non-voting and unable to fully participate in our federal government. I say the situation is strange. Australian legislators who visited here and who noted, in testimony before Congress, that their Constitution was tailored after ours, said the situation is "curious." Curious because, despite looking to America in shaping their constitution, Australia, and more than a hundred other democracies around the world, looked beyond us and made provision for full citizenship for those residing in their capital cities. Residents of Cape Town, the capital of South Africa, are fully represented in their national government. Even the residents of Moscow, the capital of Russia, enjoy representation. The United States stands virtually alone, among the community of nations, in denying its residents full participation in national affairs. The US is the only nation that does not have representation for

residents of its capital city equal to that enjoyed by all other citizens. It is a situation about which former Senator Strom Thurmond once questioned, "We are advocating democratic processes all over the world. We are holding ourselves up as the exemplary Nation that others may emulate in ideas of democracy. How can we do that when…people are not allowed to have voting representation in the capital city of this Nation?"

There are several options to providing voting representation in the capital city of this Nation. Some of these options provide greater rights. Others may be easier to achieve. Some may require a change in the Constitution. Most, I believe, can be accomplished by statute, by a simple majority vote of Congress and presentment to the President.

After great struggle, sacrifice and loss of life, the United States was founded, to end the tyranny of "Taxation Without Representation." Beginning with the Federalists Papers, it is clear that the Founding Fathers based our government on the idea of representative government. Direct representation in the governing body that governs its citizens is the central tenet of American government. The Declaration of Independence asserts, "To secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed." Indeed, in every constitution of every state, from Alabama to Wyoming, throughout the Nation, the words "All political power is inherent in the people," appear. Yet, residents of the District of Columbia are the only people governed by Congress, other than well-defined federal enclaves, and worse, we are the only people that do not elect voting members of Congress. This is contrary to the fundamental principles of democracy. In Wesberry v. Sanders, the Supreme Court stated, "No right is more precious in a free country than that of having a voice in the election of those who make the laws under which, as good citizens, we must live. Other rights, even the most basic, are illusory if the right to vote is undermined. Our Constitution leaves no room for classification of people in a way that unnecessarily abridges this right" 376 U.S. 1, (1964). Certainly those rights for which the American Civil Liberties Union stands and fights for, the Bill of Rights and other amendments, are rendered far less meaningful when citizens cannot elect the very persons responsible for their preservation and protection. The First Amendment --- freedom of speech and press, the right to assemble and petition the Government, the right to practice one's religion and the

establishment clause --- has far less meaning, without the right to vote for those charged with making and enforcing the laws to ensure those rights. The Fourth Amendment, which guards against illegal searches and seizures, has no lasting effect if those in elected positions pass laws chipping away the essence of the Amendment. Due process and Equal Protection are mere empty platitudes if those who are elected do not, by statute construct methods by which the government secures these rights. Indeed, all of our rights spring from the right to vote. It therefore seems untenable that a nation so dedicated to democratic principles denies full voting rights to the residents of its Capital.

Currently, District residents vote only for President, Vice-President and a non-voting delegate to the U.S. House of Representatives. Yet, even that slice of citizenship is diluted when democracy is tested. Had the recent presidential election and the Florida vote been decided by Congress we would have had no vote in that vital process. We had no vote when the Patriot Act was passed. And, we had no vote when decisions were made to involve America in Iraq. District residents are expected, however, to shoulder all duties of citizenship, including paying federal taxes, fighting and dying in wars. And, we have performed both of those responsibilities at higher rates than much of the rest of the country. According to the 14th Amendment to the United States Constitution, states must provide equal protection to citizens under the laws. Even though this applies directly to the states, the Supreme Court has held the federal government to roughly the same standard in the context of discrimination and has applied the principle of equal protection to the District of Columbia through the Fifth Amendment to the Constitution. Bolling v. Sharpe, 347 U.S. 497 (1954).

District residents do not enjoy the same rights and privileges as every other citizen in the United States, despite bearing the same burdens of citizenship, because of where we live. It is well established in law that it is a denial of equal protection to dilute a citizen's vote because of where s/he lives. "One man, one vote." If it is unconstitutional to deny a person equal representation in a governing body because of where that person lives, how can it be just for Congress to deny all representation in a governing body based on where a person lives?

The Founders worried that if the seat of the federal government was in a state, that state would attempt to exercise its power and influence over the federal government, and thereby exercise power over the other states. This concern arose at a time of great interstate competition, and in relation to a previous attempt by Pennsylvania militiamen to force the Congress to pay them. The militiamen surrounded the building in Philadelphia where the Founders were meeting and refused to let them out until they were paid. Congress called on Pennsylvania to help, but members of the Pennsylvania government sided with their militiamen. The delegates had to sneak out a back door of the building, under cover of darkness, to escape. Following that incident, the Founders realized that the need for the seat of the federal government to be independent of state control was paramount.

The concern over a state influencing the federal government is really no longer salient. Now, the United States government is the most powerful in the world. There is no reason for concern that the federal government would fall prey to the influence of whatever government controls the District. It is now time to give District residents our full political rights and allow us to vote in all federal elections.

Various ideas to rectify the lack of voting rights have been proposed, beginning as early as 1801, but to date, none have been successful. There have been bills that proposed D.C. statehood; bills for retrocession to Maryland, both full and partial; bills for partial representation; bills and a near successful attempt to pass and ratify a constitutional amendment granting District residents the right to vote for our own legislators; and a bill to treat the District like Guam, Puerto Rico, and the Virgin Islands so that residents would not have to pay federal income tax. As noted, to date, all but one of these bills have failed to gain approval by Congress. As I indicated, the proposed Constitutional Amendment passed Congress, but was not ratified by the states.

The D.C. Council Resolution and H.R. 4640 – Constitutionally Weak, Substantively Empty

The D.C. Council Resolution and your proposal, Mr. Chairman, are held out as an interim measure that can be accomplished by statute. In the past referred to as "Partial Representation," the point of this interim measure, it

is said, is to grant the District a voting member in the House of Representatives. At first blush, this may seem attractive; after all, it is classic Redskins football, if I may use an athletic metaphor. The idea is to move the ball gradually down the field, ten yards at a time, until full voting participation --- a touchdown --- can be achieved.

However, partial representation, in any form, has raised numerous constitutional objections, including Article I, Section 2 and 3, requiring members of Congress to be elected by the people of the states; Article II, Section 1, requiring states to appoint electors --- the Florida problem; and the Seventeenth Amendment to the Constitution, directing that the Senate be composed of Senators from the states.

H.R. 4640, introduced after at least seven drafts, is constitutionally weak because it grants the District of Columbia a voting representative in the House of Representatives. Section 3(a) of the Bill provides that "the District of Columbia shall be considered a Congressional district for purposes of representation in the House of Representatives." Under Article 1, section 2, clause 1 of the Constitution, the House of Representatives is to be "composed of Members chosen every second Year by the People of the several *States*" (emphasis added). The Bill would seem, more than any other proposal currently before the Congress, to violate this clear constitutional mandate by allowing a representative from the District of Columbia, which is not a "state" for the purposes of Article 1, section 2, clause 1.

Article 1, section 2, clause 1 states, "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*" (emphasis added). The District of Columbia is not a "state" under Article 1, section 2, clause 1. There have been instances where the courts have treated the District of Columbia as analogous to a state or territory under particular constitutional provisions; however, the District of Columbia has never been found to be a state for the purposes of Article 1, Section 2 representation. Most recently, the District Court for the District of Columbia confirmed this conclusion in Adams v. Clinton, 90 F. Supp. 2d 35, 48 (D. C. 2000). Granting the District of Columbia a congressional district in

the House of Representatives may undermine the Framers' intent in providing for "states" in Article 1, section 2.

Article I, section 2, clause 2, Qualifications Clause states, "... No person shall be a Representative who shall not have attained to the age of twenty five years, and been seven years a citizen of the United States, and who shall not, when elected, be an inhabitant of that State in which he shall be chosen." Again, H.R. 4640 seeks to grant the District of Columbia a voting representative in the House of Representatives, arguably violating Article I, section 2, clause 2 of the Constitution by qualifying a non-state representative. As stated, the District has not been recognized *as a state* by the courts. *See* Seegars v. Ashcroft, 297 F. Supp. 2d 201, 239-40 (holding that the District of Columbia is not a state in regards to the Second Amendment). In order for the proposal to be consistent with Article I, section 2, clause 2, there must be either a reading of District of Columbia as a state or amendment of the Constitution to include the District of Columbia in the Qualifications Clause. According to U.S. Term Limits, Inc. v. Thornton, 514 U.S. 779, 804 (1995) a statute cannot amend the constitution; the qualifications for representatives must be done through the amendment process. The Court found that the framers intended the constitution to be the exclusive source of qualifications for members of Congress. *See* Id. at 801. In Powell v. McCormack, 395 U.S. 486, 522 (1969) the Court noted that allowing Congress to impose additional qualifications would violate that "fundamental principle of our representative democracy..." U.S. Term Limits not only applies to the state legislatures, but also to the federal legislature when circumventing the amendment procedure.

In addition, it would seem that H.R. 4640 may violate the Doctrine of One Person One Vote. That Doctrine is well established in American Law. *See* Wesberry and Reynolds v. Sims, 377 U.S. 533 (1964). Under this Doctrine, congressional districts in each state are required to be composed of largely equal numbers of people. While in early cases the Doctrine was dismissed as involving a political question, the case of Baker v. Carr, 396 U.S. 186 (1962), changed that view. In a 1969 case, the Court announced the rule that each state must make a good faith effort to achieve precise mathematical equality in drawing its election districts, Kirkpatrick v. Preisler, 394 U.S. 526 (1969), and the state must justify each variance no matter how small. The standard is strict. To illustrate the point, the Court affirmed a lower

court's decision that threw out a congressional district plan that resulted in a disparity of 19,275 persons when the average disparity was only 3,421 persons, White v. Weiser, 412 U.S. 783 (1973). And see Karcher v. Daggett, 462 U.S. 725 (1983), where the Court discarded a plan that had a population difference of 3,674 people where the average congressional district consisted of 526,059 people. Given the language of the Bill, presumably the District of Columbia Council will design the election district(s) for Washington, D.C. Since only one seat is initially contemplated under H.R. 4640, it is not possible to draw an election district that will achieve precise mathematical equality with other election districts throughout the states. Although the courts have afforded some deference to the apportionment decisions made by Congress as opposed to the states, a good faith effort to make equally proportionate districts is still required. U.S. Dept. of Commerce v. Montana, 503 U.S. 442 (1992); Wisconsin v. City of New York, 517 U.S. 1 (1996). Such an arbitrary structure would seem constitutionally impermissible. Thus, District voters could have more people within their district than other congressional districts, hence less power; therefore the District's plan could not possibly meet the one person, one vote mandate of Wesberry, Reynolds and Carr. It does not matter that some smaller states are guaranteed at least one representative, inasmuch as that guarantee is set out in the constitution.

Your proposal, Mr. Chairman, H.R. 4640, is of limited duration expanding the House of Representatives to accommodate the two new members only until the next Census is taken (five years from now). The proposal seems certain to be challenged in the courts, especially after the 2010 census has been conducted. Although the Section 3 grant of a congressional district to the District of Columbia is a permanent measure, the temporary increase in the number of representatives under Section 4 will sunset during "the first reapportionment occurring after the regular decennial census conducted for 2010." Thus, the number of representatives at that time will return to 435, pursuant to 2 U.S.C. 2; the apportionment following the 2010 census would have to take into account at least the one representative granted to the District of Columbia under Section 3 of the Bill. Litigation is certain to ensue from whichever state will lose one representative because of the grant of representation to the District of Columbia, challenging the validity of the Proposal. The Proposal includes a non-severability clause, §7; if any one provision of the Proposal is found to be unconstitutional, the entire

Proposal will become invalid. Those seeking to retain the representative granted under this Proposal will have great difficulty being sustained when Article I, section 2, clause 1 and 2 of the Constitution itself imposes a structure providing for representatives only for states, thus excluding the District of Columbia. Moreover, as previously stated, no Congress can bind a future Congress, and because the Davis Proposal would be advanced by a mere act of Congress, it can also be withdrawn by an act of a subsequent Congress.

Moreover, granting the District a vote in the House, as indicated, is little more than we already have. And, doing so while granting Utah another representative seems to be giving too much while getting very little.

Judge Starr's Theory

Former Judge Kenneth Starr advanced a very interesting theory during the Hearing, and it merits consideration. According to Judge Starr, Congress has been given wide authority to govern over the District of Columbia under the Article I, section 8, clause 17 Seat of Government, or District, Clause. Judge Starr, in his testimony before the Committee, argued that "[w]hile the Constitution may not affirmatively grant the District's residents the right to vote in congressional elections, the Constitution *does* affirmatively grant Congress plenary power to govern the District's affairs" (*emphasis in original*). Using such plenary powers, Congress has at times considered the District of Columbia as a state for specific legislative purposes, and under such reasoning, Congress may be able to treat the District of Columbia as a state for the purposes of Article I representation as well.

There have been several instances in the past where Congress has treated the District of Columbia as a state. While recognizing that "[w]hether the District of Columbia constitutes a 'State or Territory' within the meaning of any particular statutory or constitutional provision depends upon the character and aim of the specific provision involved," District of Columbia v. Carter, 409 U.S. 418, 420 (1973), the Supreme Court has often afforded great deference to such Congressional determinations. National Mutual Insurance v. Tidewater Transfer, 337 U.S. 582, 603 (1949). Significantly, where the Court had previously found that the term "state" for the

purposes of Article III diversity jurisdiction did not apply to the District of Columbia, Hepburn & Dundas v. Ellzey, 6 U.S. 445 (1805), it upheld a later Congressional statute allowing for diversity jurisdiction between citizens of the District and citizens of a state. Tidewater. A plurality recognized the plenary power afforded Congress under the District Clause and found the clear language of Article III, section 2 referring to "different States" to be no bar. Similarly, although 42 U.S.C. § 1983, passed by Congress to enforce the Fourteenth Amendment in the states, was found inapplicable to the District of Columbia, District of Columbia v. Carter, 409 U.S. 418 (1973), the Court acknowledged Congress' authority to amend the statute to make it applicable to the District, under its Article I, section 8, clause 17 powers - which Congress later did. Despite the clear language in the constitutional text referring to "states" in several provisions, the Court has allowed Congress wide latitude in applying such provisions to the District of Columbia through its District Clause.

At times, the courts themselves have been willing to recognize the District of Columbia as a state for certain purposes, even without explicit Congressional inclusion. The Full Faith and Credit clause of Article IV, section 1, has been interpreted to include the District of Columbia, despite the constitutional text that specifies "state." Loughran v. Loughran, 292 U.S. 216 (1934). In addition, the Court found a treaty made applicable by statute to the states was also applicable to the District of Columbia. Geofroy v. Riggs, 133 U.S. 258 (1890). Such interpretations show the Court's willingness to acknowledge the District of Columbia as a state under some circumstances; for other circumstances, the Court has allowed for Congress to legislate on the matter under its District Clause power.

The District Court of the District of Columbia recently ruled, by a three-judge panel, that the Constitution did not require that the citizens of the District of Columbia should have representation in either houses of congress. Adams v. Clinton, 90 F. Supp. 2d 35 (D.D.C. 2000). In so ruling, however, the court emphasized that it was without authority to provide remedy for the disenfranchisement of the District residents. Without saying that the Constitution barred the enfranchisement of the District, the court merely stated that because the Constitution only provided for representation for the states, it was not required by the Constitution that the District have representation. However, in many ways similar to the Ellzey decision, the court stated in its Adams opinion that the plaintiffs

would have to seek redress in other forums; and in much the same way as the issue discussed in Ellzey, Congress should statutorily provide the remedy for a right which the Constitution does not explicitly prohibit.

The reading of Congress's plenary power under the "seat of government" clause may be an inconsistent reading with the Twenty-Third Amendment to the Constitution as well. In 1961, the 86th Congress found that it was necessary to amend the Constitution in order to grant the District of Columbia the right to vote for the President of the United States. In the House Report, dated May 31, 1960, the Committee on the Judiciary found that proposing the amendment to the Constitution to grant the District electorates was necessary. The Committee explicitly stated that it was necessary to amend the Constitution because the District is not considered a state. The Committee Report stated that, "the District is not a State or a part of a State, there is no machinery through which its citizens may participate in such matters. It should be noted that apart from the Thirteen Original States, the only areas which have achieved national voting rights have done so by becoming a State as a result of the exercise by the Congress of its powers to create new States pursuant to article IV, section 3, clause 1 of the Constitution." H.R. REP. NO. 1698, at 2 (1960). The Committee recognized Congress' limitations on granting the District of Columbia representation. The Committee Report states that "[the Amendment] does not give the District of Columbia any other attribute of a State or change the constitutional powers of the Congress to legislate with respect to the District of Columbia and to prescribe its forms of government. It would not authorize the District to have Representation in the Senate or the House of Representatives." H.R. REP. NO. 1698, at 3 (1960). Thus, one might argue, that if the Constitution is read strictly, then the broad powers assumed in Judge Starr's testimony are inconsistent with the powers considered when the seat of government clause was enacted and also the understanding of the Constitution more than 150 years later in 1961 when the Twenty- Third Amendment was enacted.

Yet, if Judge Starr's theory is correct, it may well represent the least difficult manner in which full voting representation could be achieved. It seems without argument that if Congress, can use its plenary powers to grant the District a representative, it can use those powers to also grant the District senators. The ACLU would certainly support such grants.

Another, Better Option

Statehood

Under the ACLU Resolution, statehood is the express goal, with self-government and full voting representation "until then." Neither the D.C. Council's Resolution nor H.R. 4640 advances those goals.

Article IV, Section 3 of the Constitution sets up the framework for becoming a state. It requires simple legislation, stating, "New states may be admitted by the Congress into this Union." Granting statehood would provide District residents our full bundle of rights under the laws. It would not only mean the District would be represented in the federal government, but it would also mean that the District would have a state government to replace the current Council and Mayor. In addition, it would allow Congress to avoid having to deal with local legislation, which it is neither equipped to nor really interested in dealing with. Moreover, *once statehood is granted, it cannot be taken away.*

The area proposed for statehood would basically be the neighborhoods. It would not include the federal buildings or the national monuments. Those buildings are distinctly federal in nature, and we would not want to do anything to destroy that character. Those buildings belong to the whole Nation, and we want to share them with our fellow citizens. But, nothing in the Constitution requires that the seat of the federal government must be larger than the proposed area, so reduction of the District to this area seems an appropriate compromise.

Opponents argue that making the District a state would destroy the Founding Fathers' original concept of the seat of national government being independent from any state. Even though the buildings would be exclusively reserved for the federal government, some are still concerned that the seat of the federal government would be completely surrounded by one state that may try to exert its influence over the federal government. This is unlikely, however. Maryland almost completely surrounds the District, but has never used this geographical advantage to try to influence the federal government. The same thing would happen if the District were a state, only the federal area would be smaller.

Opponents also argue that a fair reading of the terms of the Maryland Act of Cession, granting the land upon which the District is currently situated, does not allow Congress to create a state from that land. The history of the creation of West Virginia makes this seem unlikely, though. Article IV, Section 3, Clause 1 of the Constitution requires Congress to obtain a state's consent before Congress can change that state's borders. In 1863, the President and Congress approved an area of western Virginia for statehood without Virginia's consent, thereby creating present-day West Virginia. If Congress could create a state out of land of which another state had direct control over, it seems incongruous to say that they couldn't make the District a state after it has been independent from Maryland for over 100 years. They also argue that, in any case, creating a state out of the District of Columbia, given the District Clause, Article I, Section 8, Clause 17, and given the Twenty-Third Amendment to the Constitution, can only be done by first amending the Constitution. They argue that because the area of the District is provided for in the Constitution, only an amendment to the Constitution can change those borders.

The Virginia precedent is instructive on this issue. At one time, land that had been ceded by Virginia was part of the District of Columbia, but slaveholder residents there feared (correctly, it turned out) that slavery would be banned in the District. To protect slavery and at the request of Virginia, in 1846, those 33 square miles were returned by Congress.

The act of returning the land to Virginia was accomplished, *by statute*, by a simple legislative act of Congress. Congress could do the same for the District, but instead of returning it to Maryland, make it into a state. But, even if a constitutional amendment is required to create a state here, the spirit of many in the District is that statehood remains the preferred option. In any event, there is considerable constitutional authority, on record from previous congressional hearings, for the proposition that the residential part of the District of Columbia can be converted into a state, by simple act of Congress, without amending the Constitution.

There are also criticisms of D.C. statehood on the practical level. Critics worry that the District is not financially stable or economically viable as a state. They also worry about its small land area, and how it affects potential for population growth. The District is economically viable as a state. The

District has had a balanced budget in recent years and has been relatively free of mismanagement and corruption for at least that long. The Control Board, during its existence, certified that the District is economically stable, and gave the District the freedom to enter into the markets. As a state, the District would also have the power to tax the income of non-residents working here. This would provide additional funds for us to live up to the obligations of statehood.

Our population is not that much smaller than other states. We are in the range of states such as Alaska, Vermont, Wyoming, and North Dakota. It is also untrue to say that there is no potential for population growth. Some think that because the District is largely urban, there is nowhere for new residents to move. The facts show this is not the case. In recent years, the District had 200,000 more residents than it has now. There is potential for the population to grow, even in the absence of space for it to grow. Aside from that, if our government is truly elected by the people, then land mass should not matter. We are not asking for additional rights or representation in relation to other states. We just want our fair, proportionate representation.

Other Options

Retrocession

At the outset, I should state that the Board of the ACLU-NCA has declined to support Retrocession, favoring a broader return of rights to DISTRICT citizens. Retrocession, as a concept in the past, would give the nonfederal portion of the District back to Maryland. Maryland is the most logical choice for retrocession, based on historical and geographical considerations. The land the District is on was ceded and at one time was part of Maryland, and much of the common law of the District is still that of Maryland. Maryland surrounds the District on three sides, so absorption by the state would not be difficult in that sense either. Moreover, the District and Maryland share many systems. Transportation, water, and sewage systems all cross into the District from Maryland. Maryland is the only state that has these connections, so Maryland makes the most sense for any proposed retrocession.

At the Hearing, two retrocession proposals were presented. A Bill introduced by Congressman Regula, H.R. 381, which follows the traditional retrocession concept, would cede the nonfederal land on which the on which the District of Columbia sits back to Maryland --- except for the so-called "National Capital Service Area." A Bill introduced by Congressman Rohrabacher, H.R. 3709, which in the past has been referred to as "partial retrocession," would allow District citizens to vote in Maryland congressional elections. Except for their sponsors who testified, neither of these proposals received support at the hearing.

As stated, nothing in the Constitution prevents reduction of the federal area to a federal enclave, so all retrocession legislation arguably could be done by statute. And, as noted, there is historical precedent for such a move also. In 1846, Alexandria and Arlington were retroceded to Virginia when Virginia realized it had not gained anything by giving up Alexandria and Arlington, and the federal government was about to abolish slavery in the District. The same thing could be done for the neighborhoods of the District, without the need for all of the states to approve of it.

This too would be a way of relieving the federal government of its responsibility of dealing with the local governing of the city. It would also eliminate the duplication of the services both Maryland and the District provide.

One of the difficulties with retrocession is that it may require the approval of the Maryland legislature, and possibly the entire population of Maryland if the legislature decided it wanted to have a vote on the issue. Also, many Maryland politicians have expressed reluctance to endorse such a proposal.

Additionally, there is a concern among both residents and outsiders that giving the District back to Maryland would destroy the unique character of the city as the seat of the federal government. Despite the problems associated with being the seat of the federal government, it is a source of distinction for the District. Retrocession to Maryland would make the District just another city in Maryland. In any case, the Board of the ACLU-NCA would have the concern not only that the approval of Marylanders would be required, but that the approval of District citizens should also be required.

Finally, there is the idea of treating the District as we treat other federal enclaves. This would basically mean treating District residents as Maryland voters for federal elections. This arguably would not require a constitutional amendment either, so it is a preferable method in that respect. It also would not require the approval of the Maryland legislature, which makes this a particularly appealing proposal. The Uniformed and Overseas Citizens Voting Rights Act of 1975, a federal statute, requires states to accept votes from people overseas, even though the people overseas are not technically residents of the state. The same thing could be done here, force Maryland to accept the votes of District residents. District residents would vote in Maryland congressional elections, but would not become citizens of Maryland. Article I, Sections 2 and 3 of the Constitution, some argue, is an impediment to this approach. Under these provisions, membership in the U.S. House and Senate is limited to individuals elected by the people of the several states. Since District citizens would not be among the people of the several states, the argument goes, they cannot elect Representatives and Senators. On the other hand, the 14th Amendment may provide the power for Congress to enact partial retrocession, because it specifically grants Congress the power to enforce the amendment through legislation.

There is also the example of the other federal enclaves. There are parts of states that are exclusively legislated by the federal government. These are called federal enclaves. Residents of federal enclaves vote in the states from which the enclave was carved. In Evans v. Cornman, 398 U.S. 419 (1970), the Supreme Court held that giving Congress exclusive legislation over that land could not deprive those living on the land of their rights. The District could be treated the same way because District land was once part of Maryland. Congress could, by legislation, assert that, as a federal enclave carved from Maryland, District residents retain the right to vote in Maryland elections.

When the District was established, residents still voted in Maryland elections, so there is precedent for allowing this to happen. When the District was created, the statute creating it said that the laws of the state the land was part of continued to be in force in that part of the District until Congress changed that law. Moreover, Congress has not passed any

laws making the voting laws of Maryland inapplicable. The first argument against this is that it infringes on the rights of Maryland residents. The addition of over 500,000 votes to a Maryland federal election would change the dynamics of Maryland elections and government. It would be unfair to force this onto Maryland residents without any input from them whatsoever. In addition, there are many legal problems that would have to be ironed out before this could actually be put into practice. Theoretically, giving District residents the right to vote in Maryland federal elections would keep the District out of state government, but there would be times when District representation in state government would be essential. The crossroads of federal and state government are the bases for other legal problems presented by treating the District the same way as other federal enclaves for voting purposes in Maryland.

The first question is whether the District should get to send representatives to Annapolis for the purpose of drawing boundaries. State governments decide all districting issues for the purpose of voting in the federal elections, so the District would deserve a say in how the lines of the District are drawn. In Maryland, the Governor has the power to fill vacancies in the Senate delegation, should a vacancy arise. Would this power mean that District residents should be able to vote for governor? If not, District residents would be subject to representation in the federal government by a person they did not vote for. That would be in direct contrast to the point of the partial retrocession, and would therefore not make much sense. Third, should District residents be able to vote in Maryland primary elections? If they have a say in the final decision, shouldn't they also have a voice in the earlier decision? All of these are intrusions on Maryland state government, which the idea of enclave treatment intended to avoid.

The D.C. Voting Rights Amendment

House Joint Resolution 554 passed the House of Representatives and the United States Senate by a two-thirds vote in 1978. If the Resolution had been ratified by three-fourths of the states, the District would have been treated "As if it were a state," for purposes of electing Senators, Representatives, the President and Vice-President and for purposes of participating in the electoral college --- no Florida problem. The Twenty-

Third Amendment would have been repealed. One benefit of a constitutional amendment is that Congress could not tamper with our status by statute. That too is a benefit of statehood. Once a state, always a state.

Conclusion

There really is no "best solution" to the problem of how to give District citizens equal voting rights. There are solutions that would give greater rights, and solutions that may be more likely to succeed. The question is what is the ultimate goal. If the goal is to just get District residents voting rights as soon as possible, the quickest solution may be treating District residents, for purposes of voting in Maryland federal elections, the same way other enclave residents are treated. It requires approval by the least amount of people, should be relatively easy to implement, and would provide acceptable representation in the federal government for District residents. The problem again is that, assuming that action could be done by statute, those same rights can be taken away by statute at any time by Congress, and that is a pretty precarious situation for the most fundamental right of citizenship.

If the goal is to secure for District residents the most rights, without the possibility of those rights being taken away, the best solution is statehood. It would give the District the sovereignty that many of our residents desire, and Congress would not be able to take away any of our rights under statehood, without our approval

Realistically, the likelihood of success for statehood at this time may be diminished by how closely the Senate is divided. The demographics of District residents suggest that we would vote for Democrats. Republicans in Congress may not want to do anything that would tip the balance even more in favor of Democrats. It is possible to provide, as Congress did in the D.C. Home Rule Bill, that no more than one Senator may be elected from any one political party, thereby ensuring the election of one non-Democratic Senator. That provision in the Home Rule Bill was upheld by the courts. Many, however, including the ACLU-NCA Board, would find that solution objectionable.

Full voting rights for the people of the District of Columbia is inevitable, and the inevitable always unavoidably occurs. By package and presentation, the impossible can become possible. I remain hopeful and optimistic that one day, in our lifetime, that invisible line one crosses when entering Washington, D.C. will make no difference on the matter of equal citizenship. Resolution 15-855 and H.R. 4640, however, is not another step in the journey towards full voting rights. In my view, it is an end that could mean an end to that journey. Somewhere in the midst of a long, dark passageway, there is the tunnel's light. But, it is not with the D.C. Council's Resolution, nor H.R. 4640.

July 6, 2004

Supplemental Written Testimony of John Forster
Activities Coordinator, Committee for the Capital City

Committee on Government Reform
Tom Davis, Chairman

"Common Sense Justice for the Nation's Capital: An examination of Proposals to Give DC Residents Direct Representation", June 23, 2004

Thank you again Chairman Davis for holding these important hearings and for keeping the record open to enable the submission of additional testimony.

Our previously submitted testimony addressed our support for the legislative proposals of both Congressmen Dana Rohrabacher and Ralph Regula. These bills provide in our view equitable solutions to the voting rights, home rule and governmental structure issues that face the citizens of the District of Columbia.

Proposals that seek to solve our local dilemma through a Maryland-based solution are often met with two objections: some residents of Washington DC proclaim that they want the city to be "kept intact" and "not lose its identity" by becoming a part of Maryland, while some residents of Maryland voice their objection to "being saddled with" the perceived problems of the District of Columbia. This testimony will briefly look at both issues.

Proponents of reunion with Maryland, as represented by the Committee for the Capital City, advocate keeping the city of Washington intact as a home-rule city within the State of Maryland. We seek to preserve our existing borders, neighborhoods, and unique status as the nation's capital city. As a Maryland home-rule city, there is no need to change our local government structure. We can maintain all of our elected positions including the mayor, the city council, and the advisory neighborhood commissions. Our local elected officials should be responsible for running this jurisdiction without congressional oversight, just like the local elected officials in Maryland's twenty three counties and one other home rule city (Baltimore).

Some of the "unique features" of Washington do need to be changed and relegated to the history books. The lack of voting rights in Congress, the lack of participation in a state government, and the lack of control of our own local political affairs all need to end now… joining other national civil and voting

rights abuses that have been ended by federal legislation. There is no need to preserve our existing disenfranchisement for history's sake.

If Washington were to be accepted by Maryland as a new home-rule city in that state, we would gain representation in the US Senate and House of Representatives while preserving our local borders and political infrastructure. In addition, we would gain the new representation of a governor and, by our calculation, four senators and twelve delegates to the Maryland state legislature.

Would access to Maryland state assistance in areas such as education, health care, and law enforcement benefit the citizens of Washington and the commuters and tourists who visit here? It's hard to imagine that it would hurt. Do Montgomery County, Prince George's County or Baltimore similarly benefit from state assistance? It would be very expensive and inefficient for those jurisdictions to provide their own state services, as we know from our experience here in Washington DC … a jurisdiction smaller than all three.

What would Maryland gain if it were expanded to include the city of Washington? If real estate is all about location, location, location, Washington certainly has that. If the issue is about money, Washington has that too. Washington has a higher per capita income than Maryland. Our budget is balanced. Our real estate, sales, and income tax revenues are steadily rising… a trend that is expected to continue for the foreseeable future.

The future of Washington looks very bright. We could be Maryland's crown jewel… aiding that state immeasurable in its campaign for economic growth and political prestige. The cost savings that would occur by eliminating duplicate government services would accrue to the people and taxpayers of both jurisdictions.

From a political perspective, reunion with Maryland benefits Montgomery and Prince George's county desires to move the center of Maryland politically closer to the Washington suburbs. Meanwhile, Baltimore could be expected to join with Prince George's county in welcoming Washington's African-American majority into not only Maryland, but into the American political system… contributing to solving a civil rights battle in their own backyard. Statewide, reunion provides Maryland with a ninth Congressional district and an additional electoral vote.

The partisan political situation doesn't look insurmountable either. The Democratic Party in Maryland would surely favor the additional largely Democratic voters, strengthening their hold of the two US Senate seats and the state government, and increasing their likelihood of taking back the governorship.

While the Maryland Republican party would seem to have little to gain, joining Democrats in support of this proposal would end the chance of Washington DC gaining two Senators or statehood, both fight-to-the-death battles for Republicans

who oppose two US Senators exclusively representing Washington DC. In reality, both Maryland Democrats and Republicans should fear increased federal representation for a separate Washington DC and the impact of that power on commuter taxes. It is surprising to some that Maryland Democrats have not joined their Republican counterparts in opposition to DC-only Senators and/or Statehood for DC, both measures that would greatly increase the chance of a commuter tax and the resultant damage to Maryland's budget and services.

As we addressed in our previous testimony, reuniting Washington DC and the State of Maryland requires the recognition of these many benefits by all concerned.

Congress can and should, however, move earlier by providing the restoration of federal voting rights as laid out in Congressman Rohrabachers's bill. Congress should have no reservations about Maryland-based solutions to the lack of voting rights for Washington DC residents. Washington DC voters need representation in the House and Senate, and there is no more a feasible or legal way to achieve that goal than passing HR 3709, the District of Columbia Voting Rights Restoration Act of 2004.

(end)

STAND UP! FOR DEMOCRACY IN DC COALITION
202-232-2500
www.standupfordemocracy.org

Stand Up for Democracy in DC Coalition's mission is "To obtain full democracy for all residents of the District of Columbia with equal rights under the U.S. Constitution and Human Rights consistent with international law, and to promote good governance for the welfare of the people." We strongly reject the bills that were presented at that hearing that give DC less than full Congressional voting rights and statehood we deserve as American citizens. Our position is that a single vote in the United States House of Representatives for 600,000 tax-paying people falls far too short of fulfilling this mission and such a desperate compromise may actually destroy any prospects of ever reaching the ultimate goal of full democracy and equal rights for the people of Washington, DC.

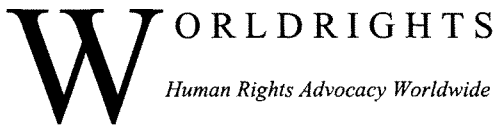
DC's non-voting Delegate Eleanor Holmes Norton's bill (H.R. 1285) for full voting representation in the U.S. House and the U.S. Senate is at least a significant part of full democracy. However, H.R. 4640 introduced by Tom Davis (R-VA) would provide only one vote for more than half a million people, 60% of whom are African-American, and therefore would reduce all DC residents, regardless of race, to 1/3rd of a citizen, even less than the 3/5ths of a person status forced upon chattel slaves in pre-civil war America.

The constitutional questions raised by the retrocession of DC residents to Maryland, in H.R. 381 by Rep. Ralph Regula (R-OH) and the thinly veiled retrocession bill, H.R. 3709, introduced by Rep. Dana Rohrabacher (R-CA) have been enumerated by a legal panel commissioned by Delegate Norton. In addition, these proposals are bogus since very few DC residents support this as a "solution" and the state of Maryland has never expressed any interest in reclaiming what is now Washington, DC or the people in it.

We would like to thank the Congress for reviving a debate on how to end the disgraceful contradiction that DC's undemocratic status reveals to the world. Partial representation is not an acceptable solution as even "a step' or a "waystation" to DC's lack of full voting representation. We want to note several examples. The exclusion of the people of DC from representation in the Senate has locked the people of DC out of voting participation in some of the most crucial decisions in recent history, including the impeachment of President Clinton, the refusal of the Senate to take action during the election of 2000, the decision to send DC residents to Iraq. A single vote in the House would also exclude our participation in the Senate's exclusive constitutional role of "advise and consent". The Senate has a co-equal role with the President in appointing federal judges, since it must provide its "advice and consent" before any nominee becomes a judge. Judicial nominees are lifetime appointments. To leave DC residents out of this process reduces us to tax-paying colonial subjects, ruled by a judicial authority about whose selection we have no say. The executive business of the

Senate also includes deliberation on treaties submitted to the Senate by the President of the United States for its "advice and consent." These treaties involve the disbursement of billions of dollars to other countries and establish relationships with these countries that effect not just DC residents but the entire world.

We would like to thank the House Government Operations Committee for beginning this discussion, however, Stand Up! recommends that the discussion begin on a higher plane -- with the commitment to full citizen's rights for the people of Washington, DC. We also urge you to include voices of DC residents who asked to testify and were silenced at the June 23, 2004 hearing.



June 23, 2004

Rep. Thomas M. Davis III
Chairman
House Government Reform Committee
U.S. House of Representatives
Washington, D.C. 20005

Mr. Chairman, and distinguished members of the Committee:

I have the honor to enter into this hearing record on the matter of the "Examination of Proposals to Give DC Residents Direct Representation" the legal decision issued on December 29, 2003 by the Inter-American Commission on Human Rights in Case No. 11.204, Statehood Solidarity Committee v. the United States.

This case, adjudicated over a period of almost eleven years, finds the government of the United States of America in violation of internationally recognized human rights standards by denying the residents of the District of Columbia representation in their own national legislature through duly elected representatives on general terms of equality.

Any remedy that fails to convey a grant of equal congressional representation to the residents of the District of Columbia—that is, two U.S. Senators and at least one representative in the U.S. House of Representatives—will fail to remedy the violations of international law, and serve only to perpetuate them.

Sincerely,

Timothy Cooper
Executive Director

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A PETITION TO THE CONGRESS OF THE UNITED STATES

THE ASSOCIATION OF THE OLDEST INHABITANTS OF THE DISTRICT OF COLUMBIA, since its organization on December 7, 1865, has consistently supported voting representation in Congress by elected, qualified residents of the District of Columbia.

Your petitioners respectfully submit that the drafters of the Constitution did not intend residents of the seat of government to be excluded from representation in Congress. Alexander Hamilton spoke for many when, during the ratification debate in New York, he said that Congress could address the matter of representation at the appropriate time by submitting a constitutional amendment proposal to the States for ratification.

Indeed, in 1960 Congress submitted an amendment proposal to the States providing for residents of the District of Columbia to vote for presidential electors. The proposal was ratified by 38 States in nine months and became the 23rd Amendment. This important voting right was achieved with the zealous support of **The Association of the Oldest Inhabitants of the District of Columbia,** the persistent advocacy of the President of the United States, Dwight David Eisenhower, and the Republican and Democratic parties, which have had planks in their national platforms recommending voting rights for residents of the District of Columbia.

Your petitioners respectfully submit that voting representation in the national legislature is a distinctive, basic right of citizens in a government of the people, by the people, for the people; in a government that roots its justice in the consent of the governed; in a government that inseparably couples taxation and arms bearing as a soldier with representation.

Your petitioners respectfully submit that since the 575,000 citizens of the District of Columbia pay federal taxes, obey federal laws and have gone to war and died in defense of the United States beginning with the War of 1812 – the Second War for Independence – they are entitled on American principles to be represented in the Congress which taxes them, makes laws for them and which sends them to war.

Until Congress considers granting voting representation in the national legislature, your petitioners, members of the Association, respectfully request consideration of proposals to provide for the election of a Delegate to the U. S. Senate who can speak in the Senate for the residents of the District of Columbia and introduce legislation on their behalf, as does the Delegate from the District in the U. S. House of Representatives.

Your petitioners, in recognition and reaffirmation of the afore-stated principles and facts, urge most earnestly that Congress act expeditiously to grant voting representation in Congress to residents of the District of Columbia.

Approved by a vote of the membership of **The Association of the Oldest Inhabitants of the District of Columbia** and affirmed by its officers assembled in Washington, D. C. on March 19, 2004.

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