

## **The Courts Won't Grant D.C. the Vote:**

*Adams v. Clinton* and D.C.'s Remaining Options for  
Obtaining Congressional Representation

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*"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 case in other venues."*<sup>1</sup>

The inequity referred to above is the lack of Congressional voting representation for the citizens of the District of Columbia. The quote highlights the contradiction of democracy embodied in the disenfranchised nation's capital. It is part of the concluding paragraph of the majority opinion of a three judge panel of the U.S. District Court for the District of Columbia. This decision remains the law. On October 16, 2000, the U.S. Supreme Court affirmed the lower court's 2-1 majority decision which clearly states that D.C.'s lack of Congressional representation was not unconstitutional.<sup>2</sup> The rationales which support this ruling influence the viability of various approaches to obtain representation "in other venues." In light of the decision, permanent enfranchisement through a future Supreme Court decision or an act of Congress is unlikely. Instead, in this paper, I argue that the District Court's emphasis on authoritative reasoning indicates that strategies of gaining representation through either state citizenship or a Constitutional amendment have the highest likelihood of long-term success.

The procedural posture of the case is unusual. On June 30, 1998 Lois Adams and 19 co-plaintiffs filed a complaint in the U.S. District Court for the District of Columbia alleging that D.C.'s exclusion from congressional apportionment, Congress' exclusive control over the District, and the Control Board's management of the city violated their rights guaranteed by

the Equal Protection and Republican Guarantee Clauses of the U.S. Constitution.<sup>3</sup> Two and a half months later, Clifford Alexander and 56 co-plaintiffs joined the legal battle by echoing the Adams complaint and additionally alleging violations of due process and the privileges and immunities of U.S. citizens.<sup>4</sup> The *Alexander* complaint also included an appeal to guarantees of representation in Article I and Amendment XVII of the U.S. Constitution. Both cases named a variety of officials in the executive and legislative branches of the government as defendants. Judge Louis F. Oberdorfer consolidated the two cases and granted the plaintiffs' motions for a three judge panel in November.<sup>5</sup>

In their opinion, the three judge panel first restricts its jurisdiction to address only the issue of representation in the House of Representatives. The questions of Senate representation and the legality of the Control Board are remanded to a single-judge court where they are both dismissed for lack of standing.<sup>6</sup> What remains before the court are motions for summary judgment from both the plaintiffs and defendants. In deciding which party's motion to affirm or deny, the judges split in determining the "constitutionality of an apportionment of congressional districts that fails to account for the District of Columbia and its residents."<sup>7</sup>

While the plaintiffs pursue numerous challenges to the constitutionality of disenfranchisement, the Court focuses its attention on Article I. The plaintiffs offer two arguments in relation to Article I. First, they claim that the District can be treated as a state and, second, that D.C. residents can claim "residual citizenship" inherited from 18<sup>th</sup> century Maryland citizenship. Below I examine how the Court addresses both contentions.

Authoritative reasoning, in the form of textual analysis, historical understandings and specific precedents, supports Judge Garland and Judge Kollar-Kotelly's rejection of the "District-as-state theory."<sup>8</sup> The two judges remark that the language of Article I, especially

the specific use of the word “State” demonstrates “how far afield from the common understandings of the relevant terms [associated with states] we would have to go to sustain plaintiff’s theory.”<sup>9</sup> For example, Article I, Section 2, Clause 1 references a “State Legislature.” D.C. has no autonomous state legislature because Congress ultimately has legislative control over the District.<sup>10</sup> The Court notes that the text of the Constitution cannot be reconciled with the “District-as-state” theory: “Congress cannot be considered as a ‘state legislature’ without doing violence to the meaning of that term.”<sup>11</sup> Historical evidence that “indicates a contemporary understanding that residents of the District would not have a vote in the national Congress” complements the textual interpretation excluding the District from Article I.<sup>12</sup> Finally, the Court cites overwhelming judicial precedent as a third reason for considering D.C. a state under the language of Article I. Decisions stretching from 1805 through 1970 clearly bind the Court to reject the plaintiffs’ claim.<sup>13</sup> “In sum,” the Court concludes, “constitutional text, history, and judicial precedent bar us from accepting plaintiff’s contention that the District of Columbia may be considered a state for purposes of congressional representation under Article I.”<sup>14</sup>

The Court is just as firm in its rejection of the assertion of “residual citizenship.”<sup>15</sup> The notion that rights secured from past political boundaries cannot be annulled by new political boundaries applies to D.C because current District residents live on land ceded by Maryland to the federal government in 1790. Until Congress assumed jurisdiction over that area with the passage of the Organic Act in 1801, the former Maryland residents continued to vote in Maryland. Therefore, the plaintiffs allege that “the Constitution gave [D.C. residents as a group] the right to vote upon its ratification” and the Organic Act took it away. In other words, the plaintiffs argue that residents living on the land ceded by Maryland were endowed with representation by the Constitution in perpetuity.<sup>16</sup> The Court emphatically

rejects this argument. “[I]t is the Constitution itself,” the majority counters, “that is the source of plaintiffs’ voting disability.”<sup>17</sup> The merits of “residual citizenship” are not only unpersuasive, but the Court also rejects them in light of judicial precedent. One such precedent is *Albaugh v. Tawes*. In 1964, the Supreme Court affirmed a decision which “concluded that residents of the District of Columbia have no right to vote in Maryland elections.”<sup>18</sup> The District Court refuses to second-guess the Supreme Court or attempt to address any incongruities presented by other cases. It succinctly states that the “law is set forth in *Albaugh*.”<sup>19</sup> Thus, authoritative reasoning explicitly bolsters the Court’s dismissal of the “District-as-state” and “residual citizenship” theories.

Moving beyond Article I, the majority rejects plaintiffs’ claim that their lack of representation is a violation of constitutionally protected rights. The two judges believes that D.C. residents have no right to representation for the Constitution to protect. “[T]he Constitution does not grant [the right to vote in Congressional elections] except to individuals who qualify under Article I – which District resident do not.”<sup>20</sup> Thus, “the denial of representation does not deny [citizens of D.C.] equal protection, abridge their privileges or immunities, deprive them of liberty without due process, or violate the guarantee of a republican form of government.”<sup>21</sup>

Judge Oberdorfer’s dissent offers an alternative conclusion. He departs from Judges Garland and Kollar-Kotelly by accepting the residual citizenship theory. He argues that the former residents of Maryland who voted in Maryland between 1790 and 1801 “secured for themselves and their political posterity a constitutionally-protected right” to representation.<sup>22</sup> Judge Oberdorfer proceeds to apply the one-person one-vote principle which the Supreme Court articulated in *Wesberry v. Sanders* in 1964.<sup>23</sup> In this framework, representation can only be denied when the policy rationales for the denial withstand strong

scrutiny. The instant case fails under this scrutiny in the eyes of Judge Oberdorfer. “I have found nothing,” he writes, “that necessitates federal officials continuing the practice of obstructing the ‘precious’ constitutional right of the inhabitants of the District of Columbia to vote for voting representation in the House of Representatives.”<sup>24</sup> In the end, Judge Oberdorfer prioritizes the rightness of the plaintiffs’ cause by favoring the judicially-constructed idea of one-person one-vote over the authoritative obstacles presented by the majority.

The dissent’s conclusion, however, is not the law. The majority’s refusal to provide a judicial remedy for the plaintiffs stands. It is worth repeating that it grounds its decision in the belief that the Constitution only guarantees Congressional representation to citizens of the “several States.”<sup>25</sup> For, it is this principle which must serve as the standard with which to evaluate potential remedies.

The Supreme Court’s affirmation of the District Court’s ruling makes it clear that D.C. resident’s could gain representation through four ways: 1) a favorable decision by the Supreme Court, 2) an act of Congress, 3) a Constitutional amendment, or 4) state citizenship provided through D.C. statehood or retrocession to Maryland.

The first two options have a questionable chance of success in light of the judicial precedents. In terms of a Supreme Court decision, the Court is unlikely to reverse itself in a future case given the strength and clarity of previous decisions as well as the availability of legislative solutions. One avenue of challenge that would have a higher likelihood of Supreme Court review is to demonstrate a tension between two decisions of the Court. The plaintiffs in *Adams v. Clinton* attempted to articulate such a conflict of interpretation by claiming that *Evans v. Cornman*, which enfranchised residents of the federal complex of the

National Institute of Health in Maryland, was a better guide for determining D.C.'s right to vote in Maryland elections than *Albaugh*.<sup>26</sup> The District Court, in evaluating this assertion, avoids confrontation by noting that it is the Supreme Court which has “the prerogative of overruling its own decisions.”<sup>27</sup> On October 16, 2000 the Court chose not exercise this prerogative. The chances of a reversal in the future are slim. The Courts would rather see D.C. residents “plead their cause in other venues.”<sup>28</sup>

One such venue is Congress. The relative political efficiency of achieving representation through an act of Congress is appealing. That act's vulnerability to future legal challenge is its figurative Kryptonite.<sup>29</sup> Because the Supreme Court held in *Adams v. Clinton* that D.C. residents can be denied representation for lack of state citizenship, there is little to prevent it from doing so again in the face of an act of Congress enfranchising District residents. Even if a bill were to pass Congress, it could prove to be dead on arrival.<sup>30</sup> Given the Supreme Court's disposition, the focus of legislative efforts must be on amending the Constitution or gaining state citizenship.

These two options, while neither easy nor assured solutions, have the greatest chance of withstanding legal challenge. Thus, they offer the best possibility of a long-term remedy. The advantage of a Constitutional amendment is its focus on representation and ability to settle the issue. The difficulty of obtaining an amendment and, more importantly, the previous failure in ratifying such an amendment proposed by Congress in 1978 are its disadvantages. With the necessary two-thirds majorities of both the House and Senate, the 95<sup>th</sup> Congress officially proposed the “Washington DC Voting Rights Amendment” and sent it to the states for ratification.<sup>31</sup> Only 16 of the 38 states needed for passage of the amendment approved it by the 1985 deadline.<sup>32</sup> While advocates for representation must recognize the importance of this fact, it does not preclude another attempt at amending the

Constitution. The amendment option will always have the advantage of being able to withstand judicial scrutiny and avoid a conflict with the intent of the district clause of the Constitution.<sup>33</sup>

The state citizenship strategy, the second solution which fits well within *Adams v. Clinton*, is more politically efficient than a Constitutional amendment. Statehood requires only a simple majority. But, it carries political baggage that a Congressional amendment does not. Proposals for D.C. Statehood or retrocession to Maryland raise concerns about the national capital being dominated by one state. While promoters of state citizenship schemes account for these concerns by proposing to maintain a Federal District, usually encompassing the area of the National Capital Service Area, the mention of the terms ‘D.C.’ and ‘state’ in tandem runs contrary to high school civic lessons about the intent of the Framers of the Constitution in creating D.C.<sup>34</sup> In a court of law, such schemes may prove legal, but in the court of public opinion, they may face more difficulty.

An in-depth comparison of the Constitutional amendment and state citizenship strategies is too large a topic for this paper. However, *Adams v. Clinton* makes it clear that those two options provide the most promise for long-lasting enfranchisement of D.C. residents. Both require intense amounts of political capital, energy, and compromise. Without the courts as a viable provider of a solution, one can only hope that the blatant injustice of D.C.’s situation will inspire sufficient legislative action.

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### Endnotes

<sup>1</sup> Majority Opinion in *Adams v. Clinton*, 68. Court Reporter Citation: 90 F. Supp. 2d 35. (D.D.C. 2000) The full title of the consolidated cases is: *Lois E. Adams, et al., v. William Jefferson Clinton, et al.* and *Clifford Alexander, et al. v. William M. Daley, et al.* The page citations in this paper refer to the pagination used in the U.S. District Court’s publication of “Memorandum Opinion of Circuit Judge Merrick B. Garland and U.S District Judge Colleen Kollar-Kotelly” obtained at: <http://www.dcd.uscourts.gov/district-court-2000.html>. Hereafter referred to as “Majority Opinion.”

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<sup>2</sup> *Adams v. Clinton*, 531 U.S. 941 (2000).

<sup>3</sup> Majority Opinion, 2.

<sup>4</sup> *Id.*, 3.

<sup>5</sup> *Id.*, 4.

<sup>6</sup> For Remand order see *Id.*, 5.

Single Judge Opinion in *Adams v. Clinton*, 90 F. Supp. 2d 27 (D.D.C 2000). The page citations in this paper refer to the pagination used in the U.S. District Court's publication of its "Memorandum and Order of Judge Louis F. Oberdorfer" obtained at: <http://www.dcd.uscourts.gov/district-court-2000.html>.

<sup>7</sup> Majority Opinion, 7.

<sup>8</sup> *Id.*, 21.

<sup>9</sup> *Id.*, 21.

<sup>10</sup> U.S.C. Article I, Section 8, Clause 17.

<sup>11</sup> *Id.*, 22.

<sup>12</sup> *Id.*, 28.

<sup>13</sup> *Id.*, 33-37.

<sup>14</sup> *Id.*, 37.

<sup>15</sup> *Id.*, 38.

<sup>16</sup> *Id.*, 48.

<sup>17</sup> *Id.*, 48. (*italics in original*)

<sup>18</sup> *Id.*, 39. *Albaugh v. Tawes* 233 F. Supp. 576 (D. Md. 1964)

<sup>19</sup> Majority Opinion, 54.

<sup>20</sup> *Id.*, 64.

<sup>21</sup> *Id.*, 67.

<sup>22</sup> Dissenting Opinion in *Adams v. Clinton*, 3. Court Reporter Citation: 90 F. Supp. 2d 35. (D.D.C. 2000) The full title of the consolidated cases is: *Lois E. Adams, et al., v. William Jefferson Clinton, et al. and Clifford Alexander, et al. v. William M. Daley, et al.* The page citations in this paper refer to the pagination used in the U.S. District Court's publication of "Opinion of Judge Louis F. Oberdorfer Concurring in Part - Dissenting in Part" obtained at: <http://www.dcd.uscourts.gov/district-court-2000.html>. Hereafter referred to as "Dissenting Opinion."

<sup>23</sup> *Id.*, 2.

<sup>24</sup> *Id.*, 5.

<sup>25</sup> U.S.C. Article I, Section 2, Clause 1.

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<sup>26</sup> Majority Opinion, 50.

<sup>27</sup> *Id.*, 54.

<sup>28</sup> *Id.*, 68.

<sup>29</sup> For an in-depth discussion of Superman's ultimate vulnerability, Kryptonite, see:  
<http://theages.superman.ws/Encyclopaedia/kryptonite.php>

<sup>30</sup> An Example of such a bill is the "No Taxation Without Representation Act of 2003." H.R. 1285 (108<sup>th</sup> Congress) sponsored by Del. Eleanor Holmes Norton (D-DC). See also S. 617 (108<sup>th</sup> Congress) sponsored by Sen. Joseph Lieberman (D-CT).

<sup>31</sup> H.J. Res. 554 (95<sup>th</sup> Congress). Sponsored by Rep. William Edwards.  
Text of proposed amendment: <http://www.law.emory.edu/FEDERAL/usconst/notamend.html>.

<sup>32</sup> Dissenting Opinion, 52.

<sup>33</sup> U.S.C. Article I, Section 8, Clause 17 "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 . . ."

<sup>34</sup> The boundaries of the National Capital Service Area are currently defined by 40 USCS § 8501 (2004)

Bill for D.C. Statehood: "New Columbia Admission Act." H.R. 51 (103<sup>rd</sup> Congress). Sponsored by Del. Eleanor Holmes Norton. See also: S. 898 (103<sup>rd</sup> Congress) Sponsored by Sen. Edward Kennedy. Specifically see: Title I, Sec. 111, describing the maintenance of the District of Columbia as a separate entity from the proposed state of New Columbia.

Bill for retrocession to Maryland: "District of Columbia-Maryland Reunion Act" H.R. 381 (108<sup>th</sup> Congress). Sponsored by Rep. Ralph Regula. Specifically see: Section 4 regarding National Capital Service Area.