

# **VOTER DISENFRANCHISEMENT AND INTERNATIONAL LAW**

The Peculiar Case of the District of Columbia

Jonathon H. Foglia<sup>1</sup>

570,000 residents of the District of Columbia lack a fundamental right common to citizens of every other democracy throughout the world where power is shared between national and state governments – the right to full and equal voting representation in their national legislatures.<sup>2</sup> In fact, over 180 nations provide equal representation to residents of their capital cities,<sup>3</sup> including every Latin America country, where early on, federal government structures were inspired by the United States.<sup>4</sup>

Domestic litigation efforts in the United States challenging this anomaly have time and again hit impasses<sup>5</sup>, despite growing support from diverse political quarters in the United States.<sup>6</sup> I suggest in this brief paper that activists struggling for equal voting rights should invoke international law, including established norms and customs, in order to convince the courts to step in where Congress lacks the political will.<sup>7</sup>

## **Scope of This Paper:**

Extensive scholarly work exists exploring the domestic sources of law informing voting rights for D.C. residents.<sup>8</sup> My paper seeks to start at the point where these works are mostly silent: the proposition that disenfranchisement of D.C. voters violates international law. Scholarly work is admittedly sparse in this area, rendering my task all the more challenging.

After quickly summarizing important historical developments in D.C. over the last 200 years, I will survey the field of international law, specifically treaties and conventions, and

more generally those norms and customary law that I believe compel the conclusion that the United States is in violation of international law. Next I will summarize efforts currently underway to extend full democracy to the nearly 570,000 second-class citizens of D.C. Finally I will highlight how continued disenfranchisement of D.C. voters undermines the United States' reputation abroad as a nation committed to universal suffrage, drawing upon analogous situations throughout history.

### **The Historical Development of D.C.:**

While an in-depth historical overview of D.C. disenfranchisement is beyond the scope of this paper, a brief sketch of its relationship with the federal government is required before proceeding.<sup>9</sup> At the time the Constitution was ratified by the thirteen newly formed states, there was no permanent seat of federal power. Article I, §8, Cl. 17 however delegated to Congress the responsibility for “exercis[ing] exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square) as may ... become the Seat of the Government of the United States.”<sup>10</sup> In 1800 Maryland and Virginia ceded land to create D.C., and in 1802 residents of the fledgling federal enclave elected their first city council, but the mayor would be appointed by the president for the next 170 years. Little changed in terms of D.C. voting rights until 1961, when the 23rd Amendment was ratified, giving residents of D.C. the right to vote in presidential elections.

With the momentum of the civil rights movement behind it D.C. gradually received limited autonomy. The decision was based partly upon practicalities. After all, the population of D.C. had swelled from 14,000 in 1800 to nearly 800,000 in the mid 1960s. In 1968 D.C. elected its first Board of Education, and in 1973 Congress effectively granted D.C. Home Rule, permitting residents for the first time to vote for their mayor. Congress did

in 1978 pass a proposed amendment to the Constitution that would have given D.C. residents full representation in Congress, but the amendment failed to garner the support of the required 38 states within the required seven years. Since then legislation has periodically been introduced but has not passed either chamber of Congress.<sup>11</sup> Nonetheless, D.C. residents have consistently shouldered all the responsibilities of federal citizenship, including serving and dying in the military, sitting on federal juries, and paying federal income taxes, to name but a few.

### **International Law and Full Voting Rights for D.C.:**

The International Covenant on Civil and Political Rights (“ICCPR”), which the United States ratified on September 8, 1992, contains two guarantees relevant to voting rights in D.C. – Articles 25 and 26. Among the two articles, the stronger argument for full D.C. voting rights is based on Article 25, which states in relevant part, “*every citizen* shall have the right and the opportunity ... without unreasonable restrictions ... to take part in the conduct of public affairs, directly or through freely elected representatives” (emphasis added). On its face, Article 25 contemplates no exception for those citizens of a federal enclave. Article 26 of the ICCPR furthermore states, in relevant part, “[a]ll persons are equal before the law and are entitled without any discrimination to the equal protection of the law.” Admittedly, the Constitution of the United States makes the explicit distinction between the several states and the District. It is the citizens of the states upon who are bestowed congressional representation and a republican form of government.<sup>12</sup> Therefore a continued refusal to extend full voting rights to residents of D.C. does not violate the text of the Constitution. Indeed, distilled to its most simple form, the most recent federal court decision dismissing the grievances of D.C. residents reasoned that since the peculiar arrangement is

constitutionally ordained, it is ergo lawful.<sup>13</sup> This reasoning however runs afoul of the ICCPR, where the intent was to dismantle all distinctions among citizens in the exercise of political rights and extend the universal suffrage to all. It would be a hard argument indeed to insist that Article 26 of the ICCPR maintains an arrangement that the countries that ratified the ICCPR contemplated but still elected to do nothing about<sup>14</sup> – inferior political rights for citizens residing in capitals cities.

Lack of full D.C. voting rights furthermore betrays promises made by the United States to its neighbors in the Organization of American States (“OAS”), specifically Articles 1, 2 and 20 of the American Declaration of the Rights and Duties of Man (“ADRDM”).<sup>15</sup> The right to liberty guaranteed in Article 1, when read broadly, is compromised since oversight of D.C. by a legislature that D.C. residents have never elected deprives residents a voice in decisions that impact the most fundamental individual rights. Like Article 26 of the ICCPR, Article 2 of the ADRDM guarantees equal protection before the laws, but goes even further to emphatically state that all persons possess each and every right enumerated in the ADRDM. A plain reading of the ADRDM reveals not the slightest contemplation of inferior rights for residents of capital cities. Finally, the disenfranchisement of D.C. residents violates the guarantee of Article 20 of the ADRDM to a “right to vote and to participate in government.” One need not dig deep to discover instances of congressional meddling in issues that anywhere else in the United States would be matters of self-determination. In D.C. Congress blocked local referendums and killed social programs such as clean-needle initiatives, by threatening to withdraw federal funds for all social services.<sup>16</sup> In one of the more recent and egregious actions, the House of Representatives voted to repeal D.C.’s 1976 ban on handguns and semiautomatic weapons, as well as terminate D.C.’s registration requirements for ammunition.<sup>17</sup>

Additionally, activists have long taken note of the disproportionate impact the disenfranchisement of District residents has on people of color. Nearly 70% of District residents are people of color, while overall, people of color constitute only about 25% of the United States.<sup>18</sup> Two researchers recently argued that this disproportionate impact on people of color violates the Convention on the Elimination of All Forms of Discrimination (“CERD”).<sup>19</sup> Specifically, Article 2 of the CERD compels a state to eliminate without delay racial discrimination in all its forms. Under the CERD “racial discrimination” includes any “distinction, restriction or preference based on color ... which has the purpose or effect of nullifying or impairing the ... exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.” To the American lawyer reading this paper, equating disparate impact with unlawful discrimination is hardly an abstract, aspirational goal of jurisprudence; indeed it is a well-settled proposition in the practice of American civil rights litigation.<sup>20</sup> What is more, so as to leave little doubt over what the United States Senate understood when it ratified the CERD, Article 5 defines political rights as encompassing “universal and equal suffrage [] to take part in the Government.”

Aside from treaties and covenants in international law, I submit that disenfranchisement of District residents contravenes customary law as well. States have provided equal voting rights to residents of their capitals since the time the states were first considered full democracies. Gradually this arrangement has become part of public international law, notwithstanding the absence of any explicit codification or international agreement. Since the lack of any meaningful representation in Congress for D.C. residents is woefully out of step with universal state practice, disenfranchisement arguably violates customary law.<sup>21</sup>

## **Current Efforts on Behalf of District Residents in the International Forum:**

From time to time, foreign governments and international NGOs have expressed their concern over the disenfranchisement of District residents, and have pressed the United States for a reasonable explanation. In each instance, the United States has responded with the conclusory statement that District residents have no right to congressional representation under the United States Constitution.<sup>22</sup> Incredibly, on at least one occasion, United States representative to the UN Committee on the Elimination of Racial Discrimination completely misrepresented the political rights of District residents, when he responded that the District's delegate to the House of Representatives was "vested with the same powers and privileges as representatives from the states."<sup>23</sup>

Furthermore, after the Statehood Solidarity Committee, a D.C. organization struggling for full and equal voting rights, presented oral arguments before the United Nations Human Rights Committee in New York, the Committee requested that the United States Assistant Secretary of State for Human Rights, Democracy and Labor offer a reasonable explanation for an arrangement that is an anomaly in the international community.<sup>24</sup> More recently, supporters of full and equal District voting rights took to the floor of the United Nations Commission on Human Rights, exercising an intervention under Item 11 of the ICCPR. During this special appearance, the Commission was told that, "[t]he disenfranchisement of the people of Washington, D.C., 63% of whom are African-Americans, represents a failure of the US political leadership to keep pace with evolutionary standards of democracy around the world...[t]he fact that the US Constitution prohibits equal political rights to over a half million people provides no grounds to justify non-compliance with international treaty obligations under the Vienna Convention on the Law of Treaties."<sup>25</sup>

The troubling messages repeated by activists at home and abroad has recently prompted inter-governmental organizations to pursue formal inquiries beyond mere spontaneous questions of United States delegations. The most probing of these inquiries began on April 1, 1993, when the Statehood Solidarity Committee, with the assistance of the Washington College of Law at American University, filed a formal petition with the Inter-American Commission on Human Rights (“IACHR”). Specifically, the petitioners claimed that the historical disenfranchisement of D.C. residents stood in direct violation of Articles 2 and 20 of the ADRDM.<sup>26</sup> As outlined above, the substantive guarantees of Articles 2 and 20 embody the universal rights of equal protection before the laws and the right to fully participate in the political process, respectively.

Soon after the petition was filed with the IACHR, the United States stated its position that the complaints presented by the Statehood Solidarity Committee failed to state any claim whatsoever under the ADRDM,<sup>27</sup> since the establishment of a federal enclave with “voting rights that differ from [those in] other areas of the United States” was not based on any improper grounds as set forth in the ADRDM, but was instead a matter of federalism. In a phrase that revealed the United States’ recalcitrance on the issue, the government stated in response to the petition’s filing that, “[t]hese are sensitive issues better left to domestic political processes. There is simply no basis for the Commission to substitute its judgment for the political debate and decision-making of the federal branches of the government of the United States.”<sup>28</sup>

In February 2004, after nearly ten years of delayed responses from the United States, the Commission released its Final Report.<sup>29</sup> Agreeing with the arguments made by petitioners that the “unjustified and arbitrary distinction upon the people of the District of Columbia ... lacks a legitimate aim and an objective justification, and that this differential

treatment bears no relationship of proportionality between the means employed and the aim sought to be realized ... [and] cannot be properly justified by reference to the arguments of the framers of the U.S. Constitution at the time of the forming of the Republic over 200 years ago,”<sup>30</sup> the Commission concluded that “the [United States] is responsible for violations of the Petitioners’ rights under Articles II and XX of the American Declaration by denying them an effective opportunity to participate in their federal legislature.” Continued disenfranchisement, in the Commission’s view, “deprive[s] [District residents] of the very essence of representative government, namely that title to government rests with the people governed,”<sup>31</sup> and is an arrangement glaringly absent throughout the Americas.

The Commission concluded its decision by emphatically calling upon the United States Government “to provide an effective remedy, which includes adopting the legislative or other measures necessary to guarantee to the Petitioners the effective right to participate, directly or through freely chosen representatives and in general conditions of equality, in their national legislature.”<sup>32</sup> Underscoring the customary law arguments of activists, the Commission made a point of noting that no other state in the Western Hemisphere denies that which it extends to its citizens living outside of its federal capital – the right to vote.<sup>33</sup>

To date, the U.S. State Department has not officially responded to the Commission’s findings, nor has Congress or the Bush Administration. Activists have reason to celebrate however, as the Commission’s report represents the first time that an international investigative body has so strongly opined that voter disenfranchisement in D.C. violates international law.

Efforts in an international forum have not been limited to the OAS. In 1995 for example, representatives of the D.C. Statehood Solidarity Committee met with the United

Nations High Commissioner for Human Rights. Furthermore, Democracy First, along with the World Organization Against Torture, which is accredited by the United Nations, appeared before the United Nations Committee on the Elimination of Racial Discrimination in August of 2001, in order to bring attention to the complete disenfranchisement of the District. The appearance prompted committee members to question the United States delegation. Whether by coincidence or not, the U.N. Human Rights Committee released its General Comment on Article 25 of the ICCPR (“General Comment 25”) soon after its meetings with District activists.<sup>34</sup> General Comment 25 clarifies those universal political rights afforded each member state’s citizenry. It unambiguously reaffirms that plain meaning of the ICCPR, and cannot be reasonably read to permit the disenfranchisement of the District.<sup>35</sup>

### **History, International Opinion, and the United States Supreme Court.**

That a Committee of the OAS finds the United States in violation of international law is empowering for District voting-rights activists, but likely will not, without more, bring a sudden end to 200 years of disenfranchisement for District residents. Nor will the sporadic articulation of concerns from committee members of the U.N. Human Rights Committee, a favored punching bag of some political commentators following the ascension of Libya to committee chairmanship. Some despondent D.C. voting rights activists may (quite reasonably) argue that the reluctance of American courts thus far to intervene in a bizarre arrangement sanctioning second-class citizenship implies that international legal arguments stand little chance of changing the status quo. I do not agree with this foregone conclusion however. Rather, I believe D.C. voting rights activists can find inspiration in the fact that the Supreme Court has, at pivotal moments during the struggle for civil rights, been prodded by international opinion. Thus the challenge for District voting rights activists is making the

Court take notice of international norms and customary law. Such a strategy, while challenging, is within the grasp of litigants.

Following the Second World War, in which the Allied Powers fought to destroy fascism, the United States found itself in an increasingly indefensible position over the segregation of blacks in the South. By the late 1940s, American diplomats grew alarmed at the extent to which continued segregation was undermining the United States' hard-line position against the communist government of the Soviet Union.<sup>36</sup> Indeed in the final weeks of the Truman Administration, the Justice Department submitted an *amicus* brief in *Brown v. Board of Education*,<sup>37</sup> arguing, *inter alia*, that continued segregation was having a corrosive effect on American prestige and credibility abroad. In the end, the legal basis the Court relied upon to do away with separate but equal in 1954 was not neatly grounded in either its own precedent or in any precise textual point in the Constitution. To be sure, segregation was overturned because evolving contemporary sensibilities, including those of our foreign allies, simply could not contemplate any permissible government interest in upholding segregation.

Additionally, in 2001, when the Court granted *certiorari* to consider whether a state could, consistent with the 8th Amendment, apply capital punishment to the mentally retarded<sup>38</sup>, both the European Union and former American diplomats, including many career ambassadors, submitted *amicus* briefs. The American diplomats in particular argued, "the growing international consensus against the execution of people with mental retardation has increasingly isolated the United States diplomatically."<sup>39</sup> A majority of the Court agreed; in overturning the death penalty as applied to the petitioner, Justice Stevens wrote "...within the world community, the imposition of the death penalty for crimes committed by mentally retarded offenders is overwhelmingly disapproved."<sup>40</sup>

And recently, the Court, in striking down state statutes criminalizing same sex sodomy, took the unusual step of explicitly acknowledging that its own precedent was out of step with a decision of the European Court of Human Rights.<sup>41</sup> In discussing the earlier European case, Justice Kennedy pointed out that the decision was authoritative in 45 countries, or all members of the European Council. Of noteworthiness is the fact that prior to delivering its opinion, the Supreme Court received *amicus* briefs from a number of international organizations who argued that the statutes violated substantive international law, including persuasive case law from foreign jurisdictions.<sup>42</sup>

### **The Challenge Ahead for D.C. Voting Rights Activists:**

Continued disenfranchisement of D.C. residents is not merely at tension with international law – it categorically violates international law. Efforts to free D.C. from its colonial status must be framed accordingly. At a time when the Bush Administration has identified the propagation of democracy abroad as a key objective of its foreign policy, disenfranchisement gravely undercuts the legitimacy and reputation of the United States abroad. That the United States plans to establish free and full elections for Iraqis as part of the post-war reconstruction process is richly ironic to 570,000 American citizens who are treated differently before the Constitution for no other reason than incidentally living in a federal city.

Recent history however indicates that the Court has taken notice of evolving standards in the international community when striking down statutes that discriminate against racial minorities and members of marginalized social groups. The dramatic disconnect between America's purported commitment to democracy and the reality of disenfranchisement in D.C. could, when properly framed and presented, compel the Court to

extend full and equal representation. Although Congress has failed to act, and although there is no explicit textual basis in the Constitution guaranteeing D.C. residents the right to vote, the Supreme Court has expanded the breadth of civil rights in historically analogous situations.

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<sup>1</sup> Northeastern University School of Law, Boston, MA. May 2005 J.D. Candidate. [Foglia.j@neu.edu](mailto:Foglia.j@neu.edu).

<sup>2</sup> League of Women Voters, *Full Voting Representation in Congress for the District Of Columbia*, DC Voter, June 1999, available at <http://www.dcwatch.com/lwvdc/lwv9906b.htm>

<sup>3</sup> Center for Voting and Democracy, *Washington DC Voting Rights*, Nov. 2002, available at <http://www.fairvote.org/vra/dcrights2.htm>

<sup>4</sup> Mexico and Brazil for example both amended their constitutions to correct this inequality.

<sup>5</sup> See *Adams v. Clinton*, 90 F. Supp. 2d 35 (D.D.C. 2000). A special three-judge panel convened under the apportionment clause of the Constitution dismissed, by a 2-1 vote, all the plaintiffs' constitutional challenges, including due process, equal protection, republican guaranty, and privilege and immunity arguments. The panel held that the only way plaintiffs could be extended full congressional representation was through an affirmative Act of Congress. For a summary of the arguments presented by the plaintiffs in *Adams*, see Charles Miller, *DC Has its Day in Court*, National Voter, Sep/Oct 1999, available at [http://www.lwv.org/elibrary/nv/1999/voter\\_0999\\_2.html](http://www.lwv.org/elibrary/nv/1999/voter_0999_2.html)

<sup>6</sup> Over the last few years, resolutions or proclamations have been passed by citizens in some of the largest municipalities in the United States, including Atlanta, Chicago, Detroit, Los Angeles, Philadelphia, and San Francisco. Many of these acts of solidarity can be viewed at <http://www.dcvote.org/rights/resolutions.cfm>

<sup>7</sup> Although this paper focuses on the international implications of DC voter disenfranchisement, it bears mentioning that almost all restrictions on the franchise in place at the time the Constitution was ratified have since been eliminated, including restrictions based on race, sex, national origin, wealth, ownership of property, education, marital status and place of residence. The Supreme Court has recognized the historical trend in the United States towards "one person, one vote" in a number of cases, including *Wesberry v. Sanders*, 376 U.S. 1 (1964), and *Reynolds v. Sims*, 377 U.S. 533 (1964).

<sup>8</sup> For a superb examination of the constitutional arguments in favor of equal voting rights for the residents of D.C. see 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).

<sup>9</sup> I submit that an overview is required because, according to a recent poll, nearly 50% of Americans assume D.C. residents have equal voting rights in Congress. Source: telephone interviews with adults across the United States with college degrees, conducted by Mark David Richards of TDM Research and Communications, from November 12 through 21, 1999.

<sup>10</sup> One of the reasons the drafters of the Constitution felt it was necessary to designate a district in which the federal government would enjoy exclusive jurisdiction was a preoccupation with angry mobs. Indeed while the Continental Congress was meeting in Philadelphia, an angry mob descended upon their meeting place. The Governor of Pennsylvania however refused to call out the militia, and the hapless legislators were forced to flee. Just how DC came to be located on the banks of the Potomac and Anacostia Rivers is also the result of historical wrangling. Its location owes to nothing more than a compromise between two men: Thomas Jefferson and Alexander Hamilton. Mr. Jefferson supported Mr. Hamilton's proposal that the federal government absorb the former colonies' debts

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incurred during the Revolution only on the condition that the seat of the federal government would be located somewhere in rural Virginia, as opposed to the more urban and crowded New York, as Hamilton had envisioned.

<sup>11</sup> H.R. 3709, the District of Columbia Voting Rights Restoration Act of 2004, introduced on January 20, 2004 by Representative Rohrabacher (R- CA), is the most recent Bill in Congress on D.C. full voting rights.

<sup>12</sup> Article IV, Section 4 of the Constitution of the United States, in relevant part states that, “The United States shall guarantee to every State in the Union a Republican Form of Government...”

<sup>13</sup> *Adams v. Clinton*, 90 F. Supp. 2d 35 (D.D.C. 2000), *passim*.

<sup>14</sup> At the time the ICCPR no country except the United States denied full and equal voting rights the citizenry residing within its capital.

<sup>15</sup> Adopted during the Ninth International Conference of American States in Bogotá, Colombia. (1948)

<sup>16</sup> See Guy Taylor, *Court Knocks Medicinal Marijuana Off Ballot*, Washington Times, September 20, 2002. See also Veto Message From The President Of The United States on the District Of Columbia Appropriations Act 2000. H. DOC. NO. 106-135 (September 28, 1999).

<sup>17</sup> Spencer S. Hsu, *House Votes to Repeal D.C. Gun Limits*, Washington Post, Sep. 30, 2004 at B1.

<sup>18</sup> 2000 Census, Census Bureau, United States Department of Commerce, Washington, D.C.

<sup>19</sup> Timothy Cooper and Charles Sullivan, *Voting Rights and Disenfranchisement*, prepared for the World Organization Against Torture, available at <http://www.woatusa.org/cerd/voting.html>.

<sup>20</sup> From labor law to real estate law to insurance and banking law, courts in the United States since the 1960s have held that policies disproportionately impacting minorities are functionally equivalent to unlawful discrimination under the 14th Amendment’s guaranty to equal protection of the laws. See *Griggs v. Duke Power Co.*, 401 U.S. 424 (1971); see also Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d.

<sup>21</sup> Additionally, for the last 50 years, as the colonial powers have shed their far-flung possessions, self-determination and autonomy have guided relations between states. The peculiar arrangement of D.C. thus deviates from these contemporary norms, treating the District instead as a colonial possession.

<sup>22</sup> For example, during the 52d session of the Sub-commission on the Promotion and Protection of Human Rights (“SCPPHR”), based in Geneva, Switzerland and organized under the United Nations High Commissioner for Human Rights, the plight of District residents was discussed. The International Human Rights Association of American Minorities advised the SCPPHR that District residents lacked the fundamental right of self-determination, along with the right to equal protection of the laws. See the summary of proceedings from the August 12, 2000 meeting (afternoon session) of the Sub-Commission on the Promotion and Protection of Human Rights, Geneva, Switzerland, available at <http://www.unhcr.ch>. In another instance, the United Nation’s Committee on the Elimination of Racial Discrimination (“CERD”) has specifically requested a formal response from the United States on the lack of full voting rights in the District of Columbia.

<sup>23</sup> Initial report and second and third periodic reports of the United States of America. Committee on the Elimination of Racial Discrimination. 59<sup>th</sup> Session. August 6, 2001. United Nations Document. CERD/C/SR.1476. Released May 22, 2003. The response is located at paragraph no. 45 of the document.

<sup>24</sup> DC Vote, *Chronology of Major Events in the International Human Rights Campaign on Behalf of Equal Rights for the People of Washington, DC*, available at <http://www.dcvote.org>.

<sup>25</sup> Democracy First, *Full Cooper Statement to U.N. on Human Rights Violations*. April 16, 2002, available at [http://letsfreedc.org/newsreel/2002/4/nr\\_36.php](http://letsfreedc.org/newsreel/2002/4/nr_36.php).

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<sup>26</sup> *Statehood Solidarity Committee v. United States*. Case No. 11.204. Inter-American Commission on Human Rights, Organization of American States.

<sup>27</sup> United States Department of State. *Observations of the United States Case No. 11.204 Statehood Solidarity Committee*. Undated, available at <http://www.state.gov/documents/organization/16535.pdf>.

<sup>28</sup> Inter-American Commission on Human Rights. *Statehood Solidarity Committee v. United States*. Final Report No. 98/03, Dec. 29, 2003 at para. 113.

<sup>29</sup> *Id.* para. 8 (documenting that the United States requested three separate extensions before even filing its initial response to the original petition).

<sup>30</sup> *Id.* at paras. 42 and 43.

<sup>31</sup> *Id.* at para. 103.

<sup>32</sup> *Id.* at para. 119.

<sup>33</sup> *Id.* at para. 108. The Commission noted that in Buenos Aires, Brasilia, Caracas, and Mexico City, which constitute federal enclave similar D.C., all citizens vote in national legislative elections.

<sup>34</sup> Office of the High Commissioner for Human Rights. *The right to participate in public affairs, voting rights and the right of equal access to public service (Art. 25)*. 57th Session. Adopted on 12 July 1996.

<sup>35</sup> *Id. passim*. See e.g. para. 1. “Article 25 of the Covenant recognizes and protects the right of every citizen to take part in the conduct of public affairs, the right to vote and to be elected and the right to have access to public service;” para. 4. “Any conditions which apply to the exercise of the rights protected by article 25 should be based on objective and reasonable criteria;” para. 10. “The right to vote at elections and referenda must be established by law and may be subject only to reasonable restrictions, such as setting a minimum age limit for the right to vote;” para. 21. “Although the Covenant does not impose any particular electoral system, any system operating in a State party must be compatible with the rights protected by article 25 and must guarantee and give effect to the free expression of the will of the electors. *The principle of one person, one vote, must apply...*” (emphasis added).

<sup>36</sup> For an in-depth analysis of the remarkable interplay between the domestic civil rights movement, international opinion, and American-Soviet rivalry, see Mary L. Dudziak, *Desegregation as a Cold War Imperative*, 41 Stan. L. Rev. 61 (1988). Professor Dudziak details, among other events, the impact race relations in the United States had on the conduct of American diplomacy, drawing upon myriad diplomatic cables, memoranda and memoirs of people serving in the Foreign Service at the time of segregation.

<sup>37</sup> 347 U.S. 483 (1954).

<sup>38</sup> *Atkins v. Virginia*, 536 U.S. 304 (2002).

<sup>39</sup> Brief for Morton Abramowitz, Stephen W. Bosworth et. al. as *Amicus Curiae* at 9.

<sup>40</sup> *Id.* at n4 (citing brief of the European Union).

<sup>41</sup> *Lawrence v. Texas*, 539 U.S. 558, \_\_\_, 123 S.Ct. 2472, 2481 (2003).

<sup>42</sup> Among the *amici curiae* that submitted briefs in *Texas v. Johnson* were Amnesty International, Human Rights Watch, and Mary Robinson, the much celebrated former United Nations High Commissioner for Human Rights.