A Simple Case Of DEMOCRACY DENIED

A Statement Of Why It Is Undemocratic And Contrary To The Intent Of The Constitution For The Residents Of The District Of Columbia To Remain Disenfranchised
FACT SHEET
ON D.C. FULL VOTING REPRESENTATION

Three-quarters of a million Americans residing in the District of Columbia are taxed and carry the same burdens of citizenship as all other Americans, yet they have no representation whatsoever in the Senate, and one “non-voting” delegate in the House of Representatives.

This blight on our democracy exits despite the fact that:

* Residents of the District pay over a billion dollars annually in taxes to the Federal Treasury.

* The per capita tax payment for District residents is $327 above the national average—a payment only exceeded by three states.

* The population of the District of Columbia is larger than that of ten states.

* District residents have fought and died in every war since the War for Independence, and, during the Vietnam War, District of Columbia casualties ranked fourth on a proportionate basis out of 50 states.

* Of the 17 Federal Districts in the world community, only two other than Washington, D.C. are not represented in their national legislatures.

* There is no Constitutional prohibition against providing full voting representation for the District of Columbia. It can be done if the Congress votes for it.

The House of Representatives on March 2, 1978, by an overwhelming vote of 289-127 passed a resolution (H.J. Res. 554) which, if passed by the Senate and ratified by the states will give the District:

* Two Senators
* The number of House Members its population demands (1 or 2).
* The Number of Presidential electors commensurate with its population
* Participation in the ratification of Constitutional amendments

CREDITS
Front Cover designed by Ms. Vedia Jones
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PREFACE

Vice-President Mondale, speaking for President Carter, has stated:

“... to promote equal representation, the Administration supports approval of a Constitutional Amendment proposed by District Delegate Fauntroy, which would provide full voting representation in both Houses of Congress, as well as in the selection of the President and Vice-President and in the ratification of Constitutional Amendments.”

DEMOCRATIC PLATFORM - 1976

“We support full Home Rule for the District of Columbia, including... full voting representation in the Congress.”

REPUBLICAN PLATFORM - 1976

“We support giving the District of Columbia voting representation in the U.S. Senate and House of Representatives...”

For a listing of others who support D.C. Full Voting Representation, see Appendix B.

Additional information can be obtained by writing or calling:

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2441 Rayburn House Office Building
Washington, D.C. 20515
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Attention: Johnny Barnes, Legislative Counsel
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# TABLE OF CONTENTS

<table>
<thead>
<tr>
<th>I. Introduction</th>
<th>PAGE</th>
</tr>
</thead>
<tbody>
<tr>
<td>A. Letter from the U.S. Senate</td>
<td>3</td>
</tr>
<tr>
<td>II. Creation of the District of Columbia</td>
<td>4</td>
</tr>
<tr>
<td>A. The Historical Oversight Which Caused the Lack of Representation</td>
<td>6</td>
</tr>
<tr>
<td>B. The Establishment of the Permanent Seat of Government</td>
<td>7</td>
</tr>
<tr>
<td>C. The Events Which Led to the Immediate Disenfranchisement of District Residents</td>
<td>7</td>
</tr>
<tr>
<td>III. Full Voting Representation—The Reasons Why</td>
<td>8</td>
</tr>
<tr>
<td>IV. The Constitution and Full Voting Representation</td>
<td>9</td>
</tr>
<tr>
<td>A. The Historical Problem of District Representation in Congress has been that Representation is Alledged to be Conditioned on Statehood</td>
<td>13</td>
</tr>
<tr>
<td>B. Commonly Raised Issues and Answers Associated to the Constitution</td>
<td>14</td>
</tr>
<tr>
<td>IV. Full Voting Representation, the United States, and the World Community</td>
<td>15</td>
</tr>
<tr>
<td>Appendix:</td>
<td></td>
</tr>
<tr>
<td>A. Excerpts from Recent Editorials on D.C. Full Voting Representation</td>
<td>25</td>
</tr>
<tr>
<td>B. Who Supports D.C. Full Voting Representation</td>
<td>27</td>
</tr>
<tr>
<td>C. House Joint Resolution 554 Inside Back Cover</td>
<td></td>
</tr>
</tbody>
</table>

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## INTRODUCTION

...governments are instituted among men, deriving their just powers from the consent of the governed.

Declaration of Independence

America has made great strides in its development as a premier democracy, based on the enduring principles of the Founding Fathers. It, therefore, seems astonishing that the birthright of the American people—that of electing Members of Congress and enjoying representation by them—a right normally taken for granted—is denied to three-quarters of a million Americans residing at the very seat of the government. Residents of the District of Columbia are relegated to the status of second-class citizens. According them full voting representation in the Congress is a glaring piece of unfinished business that would finally mend the crack in the Liberty Bell.

Is it really possible that the Founding Fathers, who fought so desperately to win independence from “taxation without representation,” would turn around and purposefully disenfranchise a segment of the population? The evidence certainly does not support such a contention. Oversight by the Continental Congress, pressed with the creation of the laws of a new nation, seems clearly to have accounted for the inadvertent disenfranchisement.

Throughout history our government has espoused the virtues of democracy to the world. Unfortunately, for 700,000 residents, and for the nation as a whole, that democracy comes to a halt at the borders of the District. The gates to equality are closed within view of the Washington Monument.

House Joint Resolution 554, which passed the House on March 2, 1978, by an overwhelming vote of 289-127, proposes an amendment to the Constitution which would enable District of Columbia residents to elect two voting Senators, as well as the number of voting representatives to which they would be entitled if the District were a state. H.J. Res. 554 is not a statehood bill. It would simply complete the rights of the Twenty-Third Amendment—enacted in 1961, which enabled District residents to vote for the President and Vice President—to include representation in Congress.

The Constitution of the United States does not expressly deny Congressional representation to District residents. However, the principles of democracy—the essence of our Constitution, laboriously etched by the blood and sacrifice of Americans throughout the years—demand that we extend, during the 95th Congress, full voting representation to the people of the District of Columbia. To further delay this fundamental right is to deny democracy. I ask for your support in this effort.

WALTER E. FAUNTROY
Member of Congress

3
Dear Colleague:

This morning, by an impressive two-thirds vote, the House of Representatives approved a constitutional amendment (H.J. Res. 554) to provide full voting representation for the District of Columbia in both the House and the Senate. As supporters or cosponsors of the companion Senate measure, we are writing to urge your support for the amendment and for an end to the long-standing and unjust second class status of District citizens in our government.

One of the most honored principles of our democracy is the concept of "one person, one vote." In the District of Columbia, however, that principle has no application. Instead, for District citizens, the rule is "700,000 persons, no vote." For too long, the District of Columbia has been called "America's last Colony."

Now, for the first time in many years, we have the chance to change all that. The House of Representatives has voted to end the injustice by which citizens of the District are denied their proper representation in Congress, and we believe the Senate should act as well.

During extensive hearings by the House Judiciary Subcommittee on Civil and Constitutional Rights, leading Constitutional scholars strongly endorsed full voting representation for the District, including representation in the Senate as well as in the House. Among those testifying in support of H.J. Res. 554, for example, was Professor Charles Alan Wright of the University of Texas School of Law, who testified:

"It seems to me that the clear purpose of [the "Equal Suffrage Clause" of the Constitution; Article V—] was to insure that the Great Compromise would not be undone and that representation in the Senate would not be put on the basis of population. That purpose is not compromised by allowing the District to have two Senators any more than it is when a new state is admitted.

For your interest, we are attaching a staff briefing paper prepared in the House in support of H.J. Res. 554. It deals with all of the major issues and makes a solid case for approval of the Resolution.

We urge your support for this fundamental principle of justice for the citizens of the nation's capital, and we look forward to favorable Senate action on this Resolution.

Sincerely,

[Signatures]

*"...no State, without its Consent, shall be deprived of its equal Suffrage in the Senate."
CREATION OF THE DISTRICT OF COLUMBIA

The purpose for which the federal district was created—to enable Congress to have exclusive jurisdiction over its surroundings—is incompatible with full voting representation for the people who reside in the nation's capital. Indeed it seems clear that it was historical oversight which caused the lack of representation.

History often reveals that minor incidents propel the occurrence of major events. The creation of Washington, D.C. as the permanent seat of government was one such event; the incident which gave rise to this event took place in June, 1783.

Meeting in Philadelphia, the still seatless Congress (which up to this time had also met at Baltimore, Lancaster, York, Princeton, Annapolis, Trenton, and New York as the exigencies of war demanded) was threatened by a band of mutinous soldiers, dissatisfied because Congress had failed to pay for their military services. Congress requested protection from the Pennsylvania militia but was refused, and for two days was held in a state of siege. Congress was outraged. The glaring inadequacies of the itinerant government were quite apparent. The desirability of a capital controlled exclusively by the Federal government was emphasized.

Four years later, in 1787, as a direct result of the incident, Congress resolved that:

"The Congress shall have power . . . to exercise exclusive legislation in all cases whatsoever over such District (not exceeding ten miles square as may by the cession of particular states, and the acceptance of Congress, become the seat of government of the United States . . . " (Set forth in Article One of the Constitutional Convention, the Seventeenth paragraph of Section Eight.)

No longer would Congress find itself beleaguered by pre-existing local, commercial, and political interests. The issue of who should control the capital settled, there remained the provocative question of where to locate the permanent seat of government. Rivalry for the location was intense, and liberal offers came from many states. New York offered to cede the township of Kingston; Maryland offered the city of Annapolis; Rhode Island, Newport; New Jersey, Trenton. Sectional jealousies—the fear that one section of the country might gain economically or politically over the other—was the principle barrier toward an expeditious selection of a location. Northerners favored a site on the Delaware, the South favored the Potomac. The slavery question had its influence as well.

While the ensuing debates in the House were acrimonious, the gravity of the situation was not undermined. "... the peace of the United States," stated one member, "depends as much on this as on any other question which can come before Congress." Another said, "The existence of the Union depends on this subject." On August 27, 1789 in the House of Representatives, Mr. Scott of Pennsylvania moved "[T]hat a permanent residence ought to be fixed for the general government of the United States at some convenient place as near the center of wealth, population and extent of territory as may be consistent with the convenience to the navigation of the Atlantic Ocean..." This motion was agreed to by a vote of 27 to 23. There was then general agreement that the capital would be located no farther north than New York nor south than Virginia; progress was being made.

Later that year, on September 22, the vexatious question was nearly settled in favor of Pennsylvania. However, Congress adjourned on September 29, postponing the matter until the next session, when a different conclusion would be reached. This conclusion was greatly influenced by another burning question for Congress concerning the assumption by the federal government of the Revolutionary War debts of the states. Northern states were anxious for the passage of such a bill, while the South was opposed. Alexander Hamilton, then Secretary of the Treasury, saw in the two questions an opportunity for compromise whereby the North and the South would get what they both desired: assumption of the war debts and the seat of government respectively.

Meanwhile, the Assembly of Virginia passed an act ceding to the United States ten square miles of its territory. A year before, the Legislature of the state of Maryland passed a similar act ceding to the U.S. Congress any district in that state of ten square miles. At the time of the passage of Virginia's Act a resolution was also passed asking the cooperation of Maryland in urging Congress to fix the seat of government upon the banks of the Potomac, and promising to advance a sum of money not exceeding $210,000 toward the cost of erecting public buildings. The suggestion was also made that Maryland advance a sum not less than two-fifths of that amount. Maryland agreed and later fulfilled its promise to the extent of $72,000.

On June 28, 1790, Congress having reconvened, the bill establishing a permanent seat of government was again brought forth and amended by inserting, "on the River Potomac at some place between the mouth of the Eastern Branch and Connoquocque." Finally, on July 16, 1790, by a vote of 32 to 20, the act was passed entitled "An Act Establishing the Temporary and Permanent Seat of the Government of the United States." The word "temporary" applied to Philadelphia whose disappointment in not becoming the nation's capital was appeased by Congress holding sessions there for a ten-year period, until 1800. The following month, the funding of war debts bill proposed by Hamilton became law. At last, in 1791, after one of the keenest and most prolonged fights in the annals of Congress, which included a series of important compromises, George Washington was able to select the site upon which the capital would be built.

The question of District representation received little attention during the drafting of the Constitution or during the debates on the location of the seat of government. Only four states addressed the issue. The Continental Congress was faced with the awesome responsibility of creating the government of a new nation and had many other problems to solve. The strong concern over the division of the states from dependence on a state overshadowed whatever concerns Congress may have had about the impact the future location of the federal district might have on the citizens residing therein. Moreover, the drafters of the Constitution did not know where the district they created would be located. Thus, there was no opportunity to be concerned about an unidentified group of citizens.

Some concern, however, was expressed about the interests of the citizens of the federal district. James Madison in The Federalist No. 43, stated that:

"The inhabitants of the District will find sufficient inducements of interest to become willing parties to the cession; as they will have had their vote in the election of the government which is to exercise authority over them; as a municipal legislature for local purposes, derived from their own suffrages, will, of course, be allowed them... every imaginable objection seems to be obviated."
FULL VOTING REPRESENTATION — THE REASONS WHY

Taxation without representation is tyranny in 1776, just as it was tyranny in 1776. According to a recent Congressional Research Service report, citizens of the District of Columbia pay more than one billion dollars in federal income taxes, an amount greater than 14 of the states. Moreover, the District’s per capita tax payment is exceeded by only three states.

Rarely is the working of a democracy more distorted than when the national legislature taxes the citizens of a political entity, yet does not share its authority with them. Based upon the 1970 census, the District has a population larger than 10 states. Those ten states have a total of 34 Representatives in the House and Senate, or, on a per capita basis, there is one Member sitting in Congress for approximately 165,000 people in those states. Yet the District’s 700,000 people have only one non-voting delegate in Congress. They are equal to other citizens for the purpose of taxation, but unequal for the purpose of representation.

The following states had a lesser population in 1970* than did the District of Columbia (750,000 people):

- Alaska: 302,173
- Delaware: 548,104
- Idaho: 713,008
- Montana: 694,409
- Nevada: 488,738
- New Hampshire: 737,681
- North Dakota: 617,761
- South Dakota: 666,257
- Vermont: 444,732
- Wyoming: 332,416

It should also be noted that aid to the District is not out of proportion to taxes paid to the federal government. Contrary to the conventional wisdom, the District does not receive an amount of federal aid that is out of proportion with the taxes it pays into the Treasury. While the District receives an admittly high amount of federal aid on a per capita basis, the mitigating factor is that these funds include aid dispensed to the many national institutions located within the District. When the figures are adjusted to account for aid utilized only within the District, there are 17 states which receive more aid. Moreover, the District is not the only entity to receive more aid than it pays in taxes. Indeed, it has to be constantly watchful to assure its inclusion in proper funding allocations, because there is a general tendency to distribute the money to the states, with a set-aside for the District. The absence of representation makes this monitoring role more difficult, and indeed there have been occasions when, through oversight, the District has been excluded from federal programs in which it was intended to be included.

The District is the only political and geographical entity within the United States whose citizens bear the responsibilities of government without sharing in the appropriate privileges of government. The importance of “taxation without representation” takes on its fullest significance when considered in light of what the missing representation means. Congress passes on legislation affecting the District as well as the states. However, only the District lacks a respectable share of input in the enactment of the very laws which affect its residents. This is a serious abridgement of rights, especially since Congress has ultimate control.

*The provisional estimates of the U.S. Census Bureau, July 1, 1977, lists the District (690,000) at a population greater than seven states; Wyoming 406,000, Nevada 633,000, Alaska 407,000, North Dakota 653,000, South Dakota 689,000, Delaware 582,000, Vermont 483,000.
over District decisions. Claims that a conflict of interest would arise with the District's Congressmen and Senators participating in votes on District issues fly in the face of the daily operation of Congress. For example, who would argue that West Virginia should not vote on strip-mining legislation? Or that New Jersey should not vote on federal subsidies to industries? Or that California should not vote on preserving the great redwood forests?

*Representation by only one non-voting Delegate provides little more than a formal voice.* Since 1971, the District of Columbia has been represented in the House of Representatives by one popularly elected delegate, who may vote in committee but not on the floor. This situation provides little more than a formal voice in legislative matters.

Nonetheless, the ability to elect one non-voting delegate is important. Interestingly enough, the very fact of his presence, albeit a somewhat cloistered presence, adds reality to the issue of full representation: for, if the Constitution did not expressly provide for even limited representation for the District, and yet a way was found to establish such representation, cannot a way be found now to bring the District fully into the Union?

If 700,000 residents are entitled to only one Representative in the House of Representatives, in effect, they are each only one fourth a citizen. The non-voting delegate from the District must represent almost twice as many people as any one of the 435 Representatives. The three-quarters of a million persons represented by him is more than the number of persons represented by one-fifth of the Members of the Senate. The net effect is that the D.C. Delegate represents, without a vote, more than five times as many persons as any other representative. The result of this gross underrepresentation is felt daily by the taxpaying Americans of Washington, D.C., who must rely on a single representative to reflect their legislative interest and to provide constituent services.

*District residents bear all the burdens of citizenship, but do not share the most cherished right of citizenship, full representation in the Congress.* In addition to the federal taxes paid by District residents, they also pay local taxes; they are subject to all the laws of the United States as well as treaties made with foreign governments, and they have fought and died in every war since the War for Independence. During the Vietnam War, District of Columbia casualties ranked fourth on a proportionate basis out of the 50 states.

*There is no Constitutional prohibition against providing full voting representation for the District of Columbia.* It can be done if Congress votes for it, and if the states ratify the measure. Throughout the years, Constitutional scholars have studied this issue, and their findings have been in favor of extending full voting representation to the citizens of the District. Some of their findings are listed in the following excerpts:

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... [T]he plain meaning of this provision (Article V of the Constitution) is that no State shall have any greater numerical representation in the Senate than any other State. It can not mean that the aliquot share of the legislative power possessed by a State at any given time can not be reduced, as the proportion of that power, which was originally 2 as to 26, has been steadily diminished by the admission of new States until it is now 2 as to 96 [now 2 as to 100]].
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- November, 1967  Ramsey Clark, Former Attorney General for the United States
- June, 1970  William Rehnquist, former Assistant Attorney General (now a U.S. Supreme Court Justice)
- July, 1971  Sherman L. Cohn, Professor of Law Georgetown University Law Center

"Among the many considerations related to full voting representation, one point stands out above all: If no Constitutional purpose is served by exclusion of the District, the broader principles of government which the Constitution is meant to effect favor [Congessional representation]."

- June, 1975  Peter Raven-Hansen Writing for the Harvard Journal on Legislation

"It seems to me that the clear purpose of the 'equal suffrage' clause was to ensure that the Great Compromise would not be undone and that representation in the Senate would not be put on the basis of population. That purpose is not compromised by allowing the District to have two Senators any more than it is when a new state is admitted."

- October, 1977  Professor Charles Alan Wright University of Texas School of Law

"Representatives . . . raise a threshold question that must be answered before any specific amendment to the Constitution is considered: i.e., is representation for the District necessary? The right answer must be 'yes'."

- October, 1977  Professor Stephen A. Saltzburg University of Virginia Law School
THE CONSTITUTION AND FULL VOTING REPRESENTATION

The Constitution is a living, expanding document. The amendments to the Constitution are testimony that it is not static and inflexible. The historical problem of District representation in Congress has been that representation is conditioned on statehood. Yet, the District has been deemed a state for other purposes of government.

In *Loughborough v. Blake* (1820), Chief Justice Marshall ruled that Congress has the authority to directly tax residents. Article I, Section 2 of the Constitution states that direct taxes are to be appointed “among the several states which may be included in this union.” Nevertheless, District residents have equally shared this burden of citizenship for the 158 years since the Court’s decision.

The District was able to participate more fully in the rights originally bestowed on state residents when the Supreme Court ruled that its residents had a Sixth Amendment right to trial by jury. This was affirmed in *Callan v. Wilson* (1887) even though the Amendment referred only to “an impartial jury of the state and [judicial] district wherein the crime shall have been committed.”

In *Stoutenburgh v. Hennick* (1889), the Court ruled that Congress could exercise—but not delegate—its commerce power to regulate business across District borders, despite the language in Article I, Section 8 referring only to “commerce ... among the several states.”

And in *National Mutual Insurance Company v. Tidewater* (1949), the Supreme Court upheld a federal statute which included the District under diversity jurisdiction in federal courts along with the states. The longtime inclusion of the District in several government contexts normally reserved for the states not only illuminates the similarity between the functions of the District and the states, but also gives precedence for the proposed amendment on voting representation in Congress.

Moreover, there is general agreement in case law that some words in the Constitution are “technical”—describing the mechanics of government—and are meant to be strictly and narrowly construed. Other words are “general”, for which time and experience are intended to give meaning. The word “State” belongs in this category of general terms. Were it not for the general words, the Constitution would not be a living document and would have surpassed its usefulness long ago.

The word “State” in the Constitution appears to be ambiguous as it pertains to the District. Moreover, the term need not be interpreted in a singular capacity, when it is realized that there are examples of inconsistent word usage in the Constitution. The word “manner” has been held to include the setting of voter qualifications in Article II, Section 1, but not in Article I, Section 4. If it is realized that “State” is ambiguous, then its logical interpretation demands including the District when necessary to carry out the intent of the Founding Fathers to achieve basic Constitutional principles. As the Supreme Court said in *United States v. Classic* (1941):

“We read ... [the Constitution’s] words, not as we read legislative codes which are subject to continuous revision with the changing course of events, but as the revelation of the great purposes which were intended to be achieved by the Constitution as a continuing instrument of government.”
Amending the Constitution to extend the right to vote to a previously disenfranchised group is not a new concept. Indeed, there have been six amendments which resulted in enfranchisement.

The 15th amendment made race, color or previous condition of servitude illegal factors in denying the right to vote. The 17th amendment provided for the popular election of Senators. Women achieved the right to vote when the 19th amendment was ratified. In 1961, District residents were extended the right to vote for President and Vice-President pursuant to the 23rd amendment. The 24th amendment abolished poll taxes as a prerequisite to voting in federal elections, and the right to vote was extended to 18 year old persons following ratification of the 26th amendment.

There are several commonly raised points associated with the Constitution which opponents use to argue against full voting representation for the District. Those points are addressed in an issue/answer format which follows:

**ISSUE:**

Why is it appropriate for the federal district to be represented in the Senate as well as in the House?

**ANSWER:**

There is no Constitutional prohibition against providing the federal district representation in the Senate as well as the House. The Senate and the House have different functions. Partial representation maintains under-representation. Moreover, accepting the concept of representation renders partial representation illogical.

Article I, Section 3, of the Constitution provides that the Senate be composed of two senators from each state. Historically, the Constitution provided that these two senators were to be chosen by the legislatures of the several states, giving effect to the Great Compromise, which holds that the United States is a nation composed of people who live in discernible political entities whose representation in the legislature must take cognizance of their relative population sizes. The Seventeenth Amendment changed the method of senatorial selection so that senators no longer represent "states," they represent "people." Equally important is the fact that there is no language in the Constitution which prohibits senatorial representation for the federal district. Indeed, the broader principles of democracy encourage both Senate and House representation.

Senate representation is also justified by the Constitution's vesting all legislative powers of the United States in a Congress which is composed of two bodies. Both the House and Senate consider legislation, and both must act before a measure becomes law. Further, each of these bodies possesses unique powers. The House originates all bills for raising revenues and has the sole power to impeach a President, while the Senate has the sole power to ratify treaties and to confirm Cabinet members, ambassadorial appointees, and other officers of the United States, including federal judges. Furthermore, the legislative process requires action by both bodies, and any suggestion of House representation only is not unlike stating that our Constitution purports inequality. Therefore, once House representation for the federal district is deemed Constitutionally acceptable, it is a contradiction to argue against Senate representation.

**ISSUE:**

Does Article V of the Constitution prohibit the granting of full voting representation to the District?

**ANSWER:**

The plain meaning of the Article and the intent of the Framers was that each state should have an equal number of votes in the Senate, while representation in the House would be based on population. Nothing in the language of the Article states that the Constitution cannot be amended to give an entity other than a state voting power in the Senate. Thus ratification by three-fourths of the states is all that is required.

The clear purpose of that clause was to ensure that the Great Compromise would not be undone and that representation in the Senate would not be put on the basis of population. That purpose is not compromised by allowing the District to have two Senators. This resolution does not favor one state over any other state, nor does it favor the District over any state—all are still treated the same. Over and over again, Congressional committees, including Senate committees, have come to the conclusion that senatorial representation for the District would in no way violate Article V.

Further, the equal suffrage clause of Article V was used in an attack on the Nineteenth Amendment in the case of *Leser v. Garnet*, 258 U.S. 130 (1922). In sustaining the amendment, the Supreme Court did not even bother to mention the argument in its opinion.

**ISSUE:**

Is it proper for the federal district to participate in the ratification of proposed Constitutional amendments?

**ANSWER:**

This is a policy issue which support for the concept of full political participation for residents of the federal district would demand.

*(Article V: "The Congress, whenever two-thirds of both houses shall deem it necessary, shall propose amendments to this constitution, or, on the application of the legislatures of two-thirds of the several states, shall call a convention for proposing amendments, which in either case, shall be valid to all intents and purposes, as part of this constitution, when ratified by the legislatures of three-fourths of the several states, or by conventions in three-fourths thereof, as the one or the other mode of ratification may be proposed by the Congress. Provided, that no amendment which may be made prior to the year one thousand eight hundred and eight shall in any manner affect the first and fourth clauses in ninth section of first article, and that no state, without its consent, shall be deprived of its equal suffrage in the senate.)* See also the various excerpts relating to Article V, Chapter 2 from statements made by Constitutional scholars.
Allowing the District to participate in the ratification of proposed constitutional amendments is sound policy—well grounded in logic and fundamentally fair.

The process of amending the Constitution involves a series of succeeding steps, as set forth in Article V. Members of Congress submit a proposed amendment to the states for their approval, the states ratify and within a reasonable time the Congress then determines the efficacy of those ratifications.

H.J. Res. 554 would permit the District to participate in every step of the ratification process. This full participation does not present a Constitutional issue. It is a policy judgment that the District should participate in the entire ratification process. There is no justification for less than full participation.

ISSUE:
Is it proper to repeal the 23rd Amendment and allow the District electors based upon its Congressional representation?

ANSWER:
This is a matter of policy and not a constitutional issue.

The number of electors to be chosen by the District is limited by the 23rd Amendment to the number to which the least populous state is entitled (three). If the District is granted a total of four representatives in Congress—two senators and two representatives—then the District would, if it were a state, be entitled to four electors. There is no reasonable basis for denying the residents of the federal district their full entitlement to participation in the choice of the President.

Further, the wording of H.J. Res. 554 is sufficiently flexible to provide full District participation in presidential elections regardless of what may be the future of the electoral college. The resolution simply states that "for purposes of... election of the President and Vice President... the District constituting the seat of government of the United States shall be treated as though it were a state." Thus, so long as there is an electoral college, the District will take part in its deliberations on the same basis as if it were actually a state. If the electoral college is abolished, the District will participate on an equal basis in whatever system is established in its place.

ISSUE:
Is statehood a preferred method of providing full voting representation to residents of the federal district?

ANSWER:
Statehood for the District would defeat the purpose of having a federal city, i.e., the creation of a District over which the Congress would have exclusive control. (Article I, Section 8, clause 17 of the Constitution.)

As a state, the District would receive its proportionate share of representation in Congress. This conflicts, however, with the intent of Article I, Section 8, clause 17 to establish a federal district under the exclusive control of the Congress.

The statehood alternative is frequently suggested because presumably it could be effected by legislation rather than a constitutional amendment. It is not clear, however, whether Article I is an obstacle to a decision by Congress to convert the District to a state. This difficulty might be overcome by carving out a federal enclave, but this raises substantial practical problems.

No state should have responsibility for and control over the critical parts of the federal power structure. Preserving a federal triangle or federal territories separate from, but located in a state would pose enormous problems. Rather than statehood, the constitutional amendment to allow voting representation in the Congress seems to be a perfect compromise. It recognizes that citizens throughout the country should have a voice in what happens in the District of Columbia but that citizens of the District of Columbia should also have a voice in federal programs that have as much impact in the District as in any state.

It should be emphasized that it would be unfair to say that the District is seeking the benefits but not the burdens of statehood. The District bears unique burdens and receives special benefits. It is different from a state; but no difference justifies the denial to District citizens of the fundamental right of voting representation in Congress.

Moreover, the precedent that was set when a portion of the District was ceded back to Virginia in 1846 (the Virginia legislature passed an act consenting to the retrocession) as well as the implications of Article IV, Section 3 of the Constitution (which states in pertinent part, "... no new state shall be formed or erected within the jurisdiction of any other state") strongly suggests that the consent of Maryland would be required. This point is buttressed by the language of the Maryland Act of Cession which gave the land to the United States for the sole purpose of creating a federal district.

Statehood also presents a troublesome problem with the 23rd Amendment if the federal district were to be wiped out by legislation.

ISSUE:
Is full retrocession—ceding the District back to the state of Maryland—a viable alternative for gaining full voting rights?

ANSWER:
Full retrocession is not a viable alternative. First, it would destroy the unique character of the District which was contemplated by the Framers and which has been accepted
by the country. Second, it would require the consent of the state legislature of Maryland—consent which is not likely forthcoming.

Retrospection of the District would give the state of Maryland plenary power over all the affairs of the District. Residents of the District would participate in Maryland Congressional elections, thus causing the state to acquire additional members in the House (probably two). Washington would become a Maryland city, and its residents would be entitled to send state representatives to Annapolis.

Such an alternative would provide for full representation, but it conflicts with the reasons for the creation of this federal city as envisioned by the Framers. Furthermore, Article I, Section 8, Clause 17 may require that full representation be enacted by constitutional amendment rather than by statute.

Full retrospection would require the consent of the Maryland legislature (in 1846, the Virginia legislature consented to retrospection of that portion of the District that lay south of the Potomac). Further, Article IV, Section 3 suggests that boundaries of a state cannot be changed without the consent of the legislature of that state. There is no indication that the required consent would be forthcoming. Indeed, Maryland representatives to Congress are adamantly opposed to the idea.

Finally, it would be in the best interest of both Maryland and the District for them to remain separate entities, as each face problems which are specific to themselves.

ISSUE:

Is partial retrospection of the District to Maryland, with District residents voting in Maryland Congressional elections, a viable alternative for gaining full voting representation?

ANSWER:

Partial retrospection of the District to Maryland would not, for numerous reasons, give the people of the District full representation. In addition, such an alternative may be in violation of several provisions of the Constitution (Article I, Section 2, and the 14th, 15th, and 17th Amendments), and would be difficult to reconcile with Article I, Section 8. Finally, partial retrospection would also require the consent of the Maryland legislature, and such consent does not appear to be forthcoming.

This alternative, retroceding limited jurisdiction over the District for purposes of allowing District residents to vote in Maryland Congressional elections, is offered by its proponents as a means whereby the District can achieve full voting representation through legislation, and at the same time maintain its unique character as recognized by the Constitution. Its supporters suggest partial retrospection may be effected by simple majority rather than the most difficult process of obtaining two-thirds vote in each House. This alternative, however, cannot be achieved through legislation, for the proposition is in violation of several Constitutional provisions, and is in conflict with Article I, Section 8. In addition to these Constitutional problems, partial retrospection raises a number of practical problems as well.

Assuming that Maryland is willing to accept partial retrospection and that the Congress is willing to take this approach to the problem of representation, the obvious question would arise whether residents of the District qualify as "people" of Maryland. Logically they do not. District citizens do not live in Maryland, nor do District citizens pay Maryland taxes; therefore, District citizens are not Maryland residents nor Maryland "people." They are District "people." Moreover, even if partial retrospection could magically transform District residents into Maryland "people," the qualifications for electors clause of both provisions (Article I, Section 2, and the 17th Amendment) might act as a bar to a statutory method of giving a formal vote in the Congress, since a usual qualification for voting for the state legislature is residency.

Article I, Section 2 speaks of the apportionment of Representatives according to their respective numbers. Partial retrospection could be viewed as a dilution of the one person, one vote rule set forth in Baker v. Carr, whereby District residents would be counted among the number of Maryland persons for purposes of apportionment. If not, District citizens would be treated unequally. If they were, then the apportionment could be challenged by citizens of other states because D.C. residents are among Maryland numbers in only the most theoretical way.

Further, District residents would not elect Maryland officials—governor or state legislators. Thus, the District would have no voice in setting election district lines or filling vacancies. These issues are fundamental to the concept of full voting representation.

Even assuming that partial retrospection would be constitutionally permissible, politically it is a bad idea. District residents should have their own representatives, for the District is a separate place with definite boundaries of great political significance that would remain separate after partial retrospection. The very fact that partial retrospection would transfer to Maryland only the authority to control the federal voting rights of District citizens clearly signals that the citizens of the District would be unable to look to Maryland to represent their distinct and unique interest in the Congress. Therefore, partial retrospection is not a viable alternative, constitutionally or politically, for gaining full voting representation.
If the federal district is provided full representation, will the territories be in a position to demand the same treatment?

**ISSUE:**

**ANSWER:**

*District representation does not open the door to representation for cities and territories. The Constitution provides the means by which such non-state entities may be represented.*

Such a grant of representation does not open the door to a similar exception for cities, since cities are within the boundaries of states and thus have representation. Nor does it present an argument for voting representation for territories since actual statehood is their preordained end, at which time, they will have voting representation in Congress.

Furthermore, there are unique factors affecting the District which make Congressional representation for it more compelling than for non-state entities.

First, District residents are United States citizens, while residents of the territories, commonwealths, and possessions are not. Second, residents of the District, unlike those of the territories, commonwealths, and possessions, are already bearing the full burdens that states bear in terms of federal taxation. Moreover, territories, commonwealths, and possessions do not have their budgets and legislation reviewed in Congress before they become effective. Because the actions of the D.C. government are subject to such review, the residents of the District have a particularly strong need to be represented in Congress.

Unlike territories, commonwealths, and possessions, only the District is part of the contiguous United States and only the District has such a unique status that it is specifically mentioned in the text of the Constitution. Over the years, the various commonwealths, territories and possessions have sometimes requested, and been granted, independence from the United States. Clearly, this is not an option for the District, and has never been seriously argued by persons connected with District affairs.

Further, with the adoption of the 23rd Amendment, a Constitutional distinction was established. Federal district residents now vote for President and Vice-President while territories, commonwealths, and possessions do not.

Does Section 2 of H.J. Res. 554 create a Constitutional problem by providing for direct election of the President and Vice-President?

**ISSUE:**

**ANSWER:**

*Section 2 merely provides for selection of electors for the federal district by a process comparable to that in the states and allows Congress to establish that process.*

It has been suggested that the language of Section 2 of House Joint Resolution 554 provides direct election of the President and Vice-President. Section 2, however, must be read in conjunction with Section 1 of the joint resolution. Section 1 states in part: “For purposes of election of the President and Vice-President ... the [federal district] shall be treated as though it were a state.” No state may elect the President and Vice-President by direct election. Moreover, the constitution is explicit as to how a President and Vice-President are to be elected—they are chosen by electors who are themselves selected by the states. The Congress could not Constitutionally select electors for the federal district, thus, Section 2 makes it clear that some entity other than Congress, which may be established by the Congress, would perform a role comparable to states in selecting electors from the federal district.

The Constitution specifically prohibits Congress from determining the qualifications of the persons who elect its members. Presumably, this represented one of the many attempts to maintain states’ sovereignty; but, there was also an historical basis, in that the various states’ qualifications were quite different. Some required electors to own property, others required the payment of property taxes, others required nothing. Much controversy could have been generated by a Congressional attempt to set requirements. Several Constitutional amendments and the current universal suffrage reduce the importance of this right of the states, but not the intent. Congress could solve the problem of determining the qualifications of District electors by delegating, through the implementation of the Amendment, the responsibility to the people of the District, who would then hold a Constitutional assembly on the matter. Congress would thereby not decide the qualifications of who would determine them. Precedence for this approach is found in the implementing legislation of the Twenty-third Amendment, delegating to the District the “authority to enact any act or resolution with respect to matters involving or relating to elections in the District.”

Congress is also prohibited from prescribing the place(s) where Senators shall be chosen. Had the Constitution granted it this right, then the places of meeting of the states’ legislatures would have been prescribed by Congress. With the direct election of Senators by the people, there is less rationale for this provision. This problem could also be solved through Congressional delegation of the responsibility to the people of the District.

A third responsibility of the states, that of drawing the boundaries for election districts, also stemmed from Con-
gress' wish to stay out of the affairs of the states. Delegation to the people is again the apparent answer. The District already has election wards for its own elections, and these can provide a basis for drawing Congressional districts.

Because of the belief that when Congressional vacancies arise, the Congress should not select the persons to be a part of its own membership, this responsibility is placed with the governors of the states. Congress could also delegate to the people this power to fill vacancies. The people could, for example, lodge this power with the District mayor.

While it might be better for the Congress to have no role, just as it has no role in this process with respect to the states, Congress in the exercise of its exclusive legislative authority (Article 1, Section 8, Clause 17) may do so. The local government as an agency of Congress can not, under current authority, establish Congressional boundaries, decide on the place of choosing Senators, establish a process for filling vacancies or establish qualifications for electors. Thus, since the District has no indigenous legislature, Section 2 allows the Congress to assist the District in creating a structure by which these decisions can be carried out.

FULL VOTING REPRESENTATION,
THE UNITED STATES, AND THE WORLD COMMUNITY

The United States stands side by side with two military dictatorships in denying representative government to the citizens of its capital.

The vast majority of nations in the world community with national legislatures do not discriminate against residents of the capital city with respect to representation in the legislature. In these nations, the citizens of the capital are represented in the national legislature in the same way that all other citizens of the nation are represented. Thus, the citizens of London have voting representation in the British Parliament, and the citizens of Paris have voting representation in the National Assembly of France.

Seventeen nations in the world community are federations (that is, they have a federal constitution and a federal system of government): Argentina, Australia, Austria, Brazil, Cameroon, Canada, India, Malaysia, Mexico, Nigeria, Pakistan, Switzerland, the Soviet Union, the United States, Venezuela, West Germany and Yugoslavia. Of obvious note among these nations is the Soviet Union, in which residents of its capital city, Moscow, are represented in the national legislature.

Only three of these federal nations — Brazil, Nigeria and the United States — deny the citizens of the capital city the right to representation in the national legislature. In fact, many federal nations that extend the rights of representation to the residents of the capital have modeled their governments after our own. Yet, on this basic issue of representation, they have taken the lead and surpassed us.

Six of these federal nations have actually adopted the United States Constitutional concept of a separate federal capital city under national jurisdiction:

- Argentina (Buenos Aires)
- Australia (Canberra)
- Brazil (Brasilia)
- India (New Delhi)
- Mexico (Mexico City)
- Venezuela (Caracas)

Of these six nations only Brazil does not give citizens residing in its capital the right to voting representation in the national legislature. But Brazil, governed by a military regime, is awaiting a 1980 census to determine if the population of Brasilia is sufficient to warrant representation. Indications are that the federal district of Brasilia may well be given representation. Rio de Janeiro, the former federal capital district of Brazil, was fully represented in the national legislature for over one hundred years.

In the case of Nigeria, also a military regime, the draft constitution now being considered would create a new federal capital territory, independent of other states in the federation, with voting representation in the legislature.

Two other examples are instructive: Canberra was accorded full representation in the Australian Parliament in 1967, after it was determined that the capital had a significant permanent resident population; Canberra, like the District of Columbia was a planned city, built on land that was largely uninhabited. Mexico City was given full voting representation in 1928, only a few years after the ratification of the Mexican Constitution. Yet 178 years have passed since the District of Columbia became the official seat of government of the United States.

Thus, the United States stands virtually alone in its denial of voting representation to the citizens of our nation's capital. Once Brazil and Nigeria act, we shall stand entirely alone.
CONCLUSION

Full voting representation in Congress for the District would further the principles of democracy which the Founding Fathers framed for all citizens.

District representation in Congress would swing the suffrage pendulum back to where it was before December, 1800, when Congress moved to its Potomac site and inadvertently disenfranchised District residents. House Joint Resolution 554 is in no way incompatible with Congress' continued exclusive jurisdiction over the District. It does not present difficult Constitutional problems concerning its implementation. Most importantly, it would further the principles of democracy that the Founding Fathers intended to have flourish among all citizens.

The 1803 proponents of a retrocession of voting rights measure stated that the disenfranchisement was "an experiment in how far freemen can be reconciled to live without rights." It is simply time to end this unfruitful experiment.

APPENDIX A

EXCERPTS FROM RECENT EDITORIALS AND COLUMNS ON D.C. FULL VOTING REPRESENTATION


"The District of Columbia is not just a plot of land full of impersonal federal buildings. It is home to 700,000 people. These people—and their problems—deserve the same voice in Congress as any other 700,000 people." — Robert Calver


"... many Americans throughout the nation have reacted when apprised of the District's disenfranchisement. They recognize the wrongness of taxation without representation, and of excluding the people of the District from participation in important national decisions. The incredibly long effort for full representation—having come this far—should not wind up crushed by an insensitive Senate. The job needs to be finished this year."

The Chicago Times: Sunday, August 28, 1977

"There is no legitimate reason the 750,000 persons who reside in this nation's capital shouldn't be represented in Congress."—Aldo Beckman

The Baltimore Sun: Friday, September 30, 1977

"Let the country decide if the Constitution is flexible enough to accommodate the change—or if federal taxation without federal representation is destined to be Washington's lot." —J. F. terHorst

The Los Angeles Times: Tuesday, May 10, 1977

"It is intolerable that residents of the District must pay taxes, serve in the military in time of war and be subject to all the enactments of Congress, yet have no voice in the decisions affecting their lives and welfare."

The Milwaukee Journal: Tuesday, May 10, 1977

"Human rights ought to start at home. And the District of Columbia where Carter and the Congress work would be a good place to start."

The Washington Star: Monday, March 6, 1978

"Conventional wisdom is that a good many—perhaps too many—Senators will be reluctant to open their select circle to two newcomers. But so parochial an opposition, we trust, will be beneath the dignity of the Senate and its sense of equity."

The Philadelphia Inquirer: Thursday April 27, 1978

"Through the years the principle has remained the same. It is one of basic justice: that residents of the nation's capital should have the same voice in Congress as everyone else does.

... now it is the Senate's turn to act. It should not let the opportunity to right a longstanding wrong slip away."
APPENDIX B

WHO SUPPORTS D.C. FULL VOTING REPRESENTATION

Two hundred and eighty-nine (289) Members of the United States House of Representatives.

PRESIDENT CARTER
VICE-PRESIDENT MONDALE

THE DEMOCRATIC PLATFORM-1976
THE REPUBLICAN PLATFORM-1976

COALITION FOR SELF-DETERMINATION FOR D.C.

American Civil Liberties Union
American Federation of State, County and Municipal Employees
American Federation of Teachers
American Jewish Committee
American Jewish Congress
Americans for Democratic Action
American Veterans Committee
B'nai B'rith Women
Common Cause
Delta Sigma Theta Sorority, Inc.
Democratic National Committee
Friends Committee on National Legislation
League of Women Voters of the United States
National Alliance of Postal and Federal Employees
National Association for the Advancement of Colored People
National Association of Black Women Attorneys
National Association of Counties
National Education Association
National Women's Political Caucus
The Newspaper Guild
The Ripon Society
United Methodist Church, Board of Church and Society
United Presbyterian Church
Woman's National Democratic Club, Political Action Committee
American Association of University Women
Catholic Archdiocese of Washington
Central Labor Council
CHANGE, Inc.
Committee for Aid & Development of Latin Americans in the Nation's Capital
Democratic Central Committee
D.C. Citizens for Better Public Education
D.C. Federation of Civic Associations
D.C. Federation of College Democrats
H.J. Res. 554

IN THE HOUSE OF REPRESENTATIVES

July 25, 1977

Mr. Edwards of California introduced the following joint resolution; which was referred to the Committee on the Judiciary

JOINT RESOLUTION
To amend the Constitution to provide for representation of the District of Columbia in the Congress:

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled (two-thirds of each House concurring therein), That the following article is proposed as an amendment to the Constitution of the United States, which shall be valid to all intents and purposes as part of the Constitution when ratified by the legislature of three-fourths of the several States within seven years from the date of its submission by the Congress:

I-O

"Article

"Section 1. For purposes of representation in the Congress, election of the President and Vice President, and article V of this Constitution, the District constituting the seat of government of the United States shall be treated as though it were a State.

"SEC. 2. The exercise of the rights and powers conferred under this article shall be by the people of the District constituting the seat of government, and as shall be provided by the Congress.

"SEC. 3. The twenty-third article of amendment to the Constitution of the United States is hereby repealed.

"SEC. 4. This article shall be inoperative, unless it shall have been ratified as an amendment to the Constitution by the legislatures of three-fourths of the several States within seven years from the date of its submission."

Amend the title so as to read: “Joint resolution proposing an amendment to the Constitution to provide for representation of the District of Columbia in the Congress.”
Let Washington Speak.

Congressional Voting Rights for D.C.