GRANTING REPRESENTATION IN THE ELECTORAL COLLEGE TO THE DISTRICT OF COLUMBIA

JUNE 9, 1960.—Referred to the House Calendar and ordered to be printed

Mr. CELLER, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany H.J. Res. 757]

The Committee on the Judiciary, to whom was referred the joint resolution (H.J. Res. 757) proposing an amendment to the Constitution of the United States granting representation in the electoral college to the District of Columbia, having considered the same, report favorably thereon without amendment and recommend that the joint resolution do pass.

PURPOSE

The purpose of this proposed constitutional amendment is to provide the citizens of the District of Columbia with appropriate rights of voting in national elections for President and Vice President of the United States. It would permit District citizens to elect Presidential electors who would be in addition to the electors from the States and who would participate in electing the President and Vice President.

The District of Columbia, with more than 800,000 people, has a greater number of persons than the population of each of 13 of our States. District citizens have all the obligations of citizenship, including the payment of Federal taxes, of local taxes, and service in our Armed Forces. They have fought and died in every U.S. war since the District was founded. Yet, they cannot now vote in national elections because the Constitution has restricted that privilege to citizens who reside in States. The resultant constitutional anomaly

1 The voters in the States do not vote directly for the candidates for President and Vice President, instead they vote for members of the electoral college, who in turn vote for President and Vice President.

2 The proposed amendment would give the District the same number of electors which it would have if it were a State but in no event more than the least populous State—probably three depending on the 1960 census and some other factors. There are at present 537 places in the electoral college (equal to the total of Senators and Representatives in Congress from each State). This total, if Congress does not change the present law, will be 535 after the 1960 census—the membership in the House of Representatives has been temporarily increased by two to provide one Representative each for Alaska and Hawaii. In any event, the electors from the District will be in addition to the total number of places reserved to the States.
of imposing all the obligations of citizenship without the most fundamental of its privileges, will be removed by this proposed constitutional amendment.

NEED FOR CONSTITUTIONAL AMENDMENT

Simply stated, voting rights are denied District citizens because the Constitution provides machinery only through the States for the selection of the President and Vice President (art. II, sec. 1). In fact, all national elections including those for Senators and Representatives are stated in terms of the States. Since the District is not a State or a part of a State, there is no machinery through which its citizens may participate in such matters. It should be noted that, apart from the Thirteen Original States, the only areas which have achieved national voting rights have done so by becoming States as a result of the exercise by the Congress of its powers to create new States pursuant to article IV, section 3, clause 1 of the Constitution.

It was suggested that, instead of a constitutional amendment to secure voting rights, the District be made either into a separate State or its land retroceded to the State of Maryland. Apart from the serious constitutional question which would be involved in the first part of this argument, any attempted divestiture by the Congress of its exclusive authority over the District of Columbia by invocation of its powers to create new States would do violence to the basic constitutional principle which was adopted by the framers of the Constitution in 1787 when they made provision for carving out the "seat of Government" from the States and set it aside as a permanent Federal district. They considered it imperative that the seat of Government be removed from possible control by any State and the Constitution in article 1, section 8, clause 17 specifically directs that the seat of Government remain under the exclusive legislative power of the Congress. This same reasoning applies to the argument that the land on which the District is now located be retroceded to the State of Maryland.

Members of the House of Representatives and of the Senate are elected by the people of the respective States (art. I, sec. 2; 17th amendment). The electors who cast ballots for President and Vice President in December are elected by the people of their respective States at the preceding November election, this being the method of appointment of electors in each of the States (art. II, sec. 1).

In 1788 and 1789, Maryland and Virginia ceded territory to the Federal Government, and Congress, by acts which were approved on July 16, 1790 (1 Stat. 130) and March 3, 1791 (1 Stat. 214) established the District of Columbia which was finally proclaimed to be the National Capital after the elections of 1800. Jurisdiction over the District vested in the United States on the first Monday of December 1800. (See U.S. V. Hammond, Fed. Cas. No. 15285 (1801).) On July 9, 1846, all land ceded by Virginia for the District of Columbia was retroceded to Virginia (9 Stat. 35).

1 Art. I, sec. 8, clause 17 provides 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 Cession of particular States, and the Acceptance of Congress, become the Seat of Government of the United States ..."

While the Continental Congress was meeting in Philadelphia on June 20, 1783, soldiers from Lancaster, Pa., veterans of the Revolutionary War, arrived at Philadelphia "to obtain a settlement of accounts." The harassment by the soldiers continued through June 24, 1783, on which date Congress, abandoning hope that State authorities would disperse the soldiers, removed itself from Philadelphia. It met subsequently in Princeton, Trenton, N.J., Annapolis, Md., and New York City.

When no repetition of the Philadelphia experience came about, the Continental Congress nonetheless did not lightly dismiss this Philadelphia incident and on October 7, 1783, the Continental Congress adopted a resolution providing for buildings and land to be under the exclusive jurisdiction of the United States. Records fail to disclose any action taken to implement this resolution. Probably, when the urgency diminished, the resolution was allowed to expire.

When the present Constitution was being debated in the Constitutional Convention of 1787, it was urged that some provision be made in the Constitution for a seat of government under the exclusive control of the Federal Government and that such seat be at a place away from any State capital because such a situation would tend "to produce disputes concerning jurisdiction" and because the intermingling of the two legislatures would tend to give "a provincial tincture" to the national deliberations. This suggestion was adopted and resulted in art. I, sec. 8, clause 17 of the Constitution, providing for a permanent seat of government, now known as the District of Columbia (Report of the Interdepartmental Committee for the Study of Jurisdiction over Federal Areas within the States (June 1957), GPO, pt. II, pp. 15-17).

2 See footnote 5.
MINIMUM IMPACT; PRESERVATION OF ORIGINAL CONCEPT OF CONSTITUTION

The instant resolution would change the Constitution only to the minimum extent necessary to give the District appropriate participation in national elections. It would not make the District of Columbia a State. It would not give the District of Columbia any other attributes of a State or change the constitutional powers of the Congress to legislate with respect to the District of Columbia and to prescribe its forms of government. It would not authorize the District to have representation in the Senate or the House of Representatives. It would not alter the total number of presidential electors from the States, the total number of Representatives in the House of Representatives, or the apportionment of electors or Representatives among the States. It would, however, perpetuate recognition of the unique status of the District as the seat of Federal Government under the exclusive legislative control of Congress.

AMENDMENT NOT RELATED TO HOME RULE

This proposed constitutional amendment with respect to voting by citizens of the District in national elections is a matter entirely separate from questions as to possible changes in the form of local government which the Congress might establish for the District. The present constitutional provisions relating to the District already vest plenary power in the Congress to legislate in this respect and the present constitutional powers would not be modified by the amendment here proposed. Questions as to possible changes in the form of local government for the District, including local home-rule proposals and other possible changes in the structure of the District government, are matters which may properly be brought before other committees of the Congress and will not be affected by the constitutional amendment here proposed.

SECTION ANALYSIS OF RESOLUTION

The first section of the resolution provides by its terms that the proposed amendment shall be valid as a part of the Constitution only if ratified by the legislatures of three-fourths of the States within 7 years after it has been submitted to them by the Congress. Then follows the proposed article of amendment. It consists of two sections. Section 1 provides that the District constituting the seat of Government shall appoint in such manner as the Congress may direct, a number of electors for President and Vice President equal to the whole number of Senators and Representatives in Congress to which the District would be entitled if it were a State but in no event more than the least populous State. It should be noted that this language follows closely, insofar as it is applicable, the language of Article II of the Constitution.

1 Congress first adopted the 7-year limitation provision in proposing the 18th amendment to the Constitution. It did so because, at that time, several proposed constitutional amendments already submitted to the States for ratification had long lain dormant but were nevertheless subject to being resurrected and acted upon by the several States. (See Dillon v. Gloss, 266 U.S. 368, 373 (1921).)

2 The first 19 amendments to the Constitution were ratified by the necessary number of States within 10 months, 20 days of their submission by the Congress. According to a statement in Colemen v. Miller, 367 U.S. 433, 433 (1939), the average time for ratification of amendments 19-21 has been computed to be 1 year, 6 months, 18 days; 3 years, 6 months, 25 days has been the longest time used in ratifying. The 22d amendment was ratified in 9 years, 11 months, 7 days. (See also Dillon v. Gloss, 266 U.S. 368, 372; Constitution of the United States, S. Doc. 170, 82d Cong., p. 39.)
It is the committee's intention that the number of electors to be elected by the District be based upon each decennial census as it occurs and as is now the procedure adopted for national elections; it is not intended to use the present population of the District as the basis for determining the number of its electors in all future presidential elections. It is the committee's intention, regarding future enabling legislation to carry out the provisions of this constitutional amendment, that no district inhabitants (including minor dependents) who maintain legal domiciles or voting residences elsewhere, be included in the census computation insofar as determining the number of electors is concerned. The electors are to be in addition to those appointed by the States but they are to be considered for purposes of the elections of President and Vice President as now provided in article XII of the Constitution to be electors appointed by a State. They are to meet in the District and perform such duties as provided by the XIIth article of amendment.

Section 2 of the proposed article provides that Congress shall have power to enforce this article by appropriate legislation. This section and section 1 of the proposed article, as well as other provisions of the Constitution (especially arts. I and II thereof) are authorizations to Congress to establish, among other things, the qualifications of electors and of voters in connection with national elections for President and Vice President as well as to provide for the conduct, manner, time, and place of elections.
CONSTITUTIONAL PROVISIONS AFFECTED BY COMMITTEE AMENDMENT

There follows in parallel columns the provisions of the United States Constitution which are affected by the instant resolution (H.J. Res. 757).

**UNITED STATES CONSTITUTION**

**H.J. RES. 757**

[No pertinent provision affected.]

[Amendment XII]

The Electors shall meet in their respective states, and vote by ballot for President and Vice-President, one of whom at least, shall not be an inhabitant of the same state with themselves; they shall name in their ballots the person voted for as President, and in distinct ballots the person voted for as Vice-President, and they shall make distinct lists of all persons voted for as President, and of all persons voted for as Vice-President, and of the number of votes for each, which lists they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the President of the Senate;—The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates and the votes shall then be counted;—The person having the greatest number of votes for President, shall be the President, if such number be a majority of the whole number of Electors appointed; and if no person have such majority, then, from the persons having the highest numbers not exceeding three on the list of those voted for as President, the House of Representatives shall choose immediately, by ballot, the President. * * *