

Testimony in Support of S.Con.Res. 135: URGING THE UNITED STATES
CONGRESS TO GRANT FULL VOTING RIGHTS FOR RESIDENTS OF THE
DISTRICT OF COLUMBIA.

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As a former resident of the District of Columbia, I am in strong support of S.Con.Res 135, URGING THE UNITED STATES CONGRESS TO GRANT FULL VOTING RIGHTS FOR RESIDENTS OF THE DISTRICT OF COLUMBIA. To deny taxpaying American citizens, who serve their nation in the military and countless other ways, the right to representation in the Congress of the United States is fundamentally un-American.

In the American Declaration of Independence itself, our founding fathers outlined “unalienable Rights” and stated that “to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed.” The Declaration specifically notes that among the violations of those “unalienable Rights” that the British King and government had perpetrated were:

- a refusal “to pass other Laws for the accommodation of large districts of people, unless those people would relinquish the right of Representation in the Legislature, a right inestimable to them and formidable to tyrants only.”
- subjecting our citizens “to a jurisdiction foreign to our constitution, and unacknowledged by our laws; giving his Assent to their Acts of pretended Legislation;” and
- “imposing Taxes on us without our Consent.”

The American citizens living today in the District of Columbia suffer these same violations of their “unalienable Rights.”

The Constitution of the United States specifically gives the Congress of the United States plenary power over the District of Columbia:

“To exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square) as may, by Cession of particular States, and the Acceptance of Congress, become the Seat of the Government of the United States.”

That plenary power includes the ability to pass legislation that would give the citizens of

the District of Columbia representation in the Congress of the United States. The instant S.Con.Res. 135 properly urges the Congress of the United States to exercise that ability to, at long last, remove the deprivation of the citizens of the District of Columbia of their basic American right to representation in the body that enacts the laws that govern those citizens.

The extraordinary deprivation of the rights of the citizens of the District of Columbia was recognized by Chief Justice John Marshall in 1805 in his decision in *Hepburn & Dundas v. Ellzey*, 6 U.S. 445, regarding their inability to maintain an action in United States Courts. Justice Marshall makes it clear that the ability to vindicate such rights lay with the legislative branch (at p. 453):

It is true that as citizens of the United States and of that particular district which is subject to the jurisdiction of Congress, it is extraordinary that the courts of the United States, which are open to aliens and to the citizens of every state in the union, should be closed upon them. But this is a subject for legislative, not for judicial consideration.

Indeed the United States Congress has rectified the extraordinary deprivation of rights addressed in *Hepburn* through legislation, an action upheld by the Supreme Court in *National Mutual Insurance Co. of District of Columbia v. Tidewater Transfer Company*, 337 U.S. 582 (1949). It is time that the Congress similarly rectifies the deprivation of the citizens of the District of Columbia of their right to elected representation in Congress, as urged in S.Con.Res. 135.

Chief Justice Marshall further recognized that the lack of representation for the citizens of the District was inconsistent with our fundamental American concepts of government in *Loughborough v. Blake*, 18 U.S. (5 Wheat.) 317 (1820), a case dealing with the ability to tax citizens without such representation. Justice Marshall stated (at pp. 324-325),

Although in theory it might be more congenial to the spirit of our institutions to admit a representative from the district, certainly the Constitution does not consider their want of a representative in Congress as exempting it from equal taxation.

The ability of the Congress to legislate on the subject of representation in Congress for the citizens of the District of Columbia was more recently affirmed by the United States District Court, District of Columbia, in its decision in *Adams v. Clinton*, 90 F.Supp.2d 35 (2000). In *Adams*, the plaintiffs challenged the constitutionality of their deprivation of representation in Congress. The court found (at p. 37):

None of the parties contests the justice of plaintiffs' cause. President Clinton and the other defendants, however, maintain that the dictates of the Constitution and the decisions of the Supreme Court bar us from

providing the relief plaintiffs seek. Any such relief, they say, must come through the political process.

Plaintiffs' grievances are serious, and we have given them the most serious consideration. In the end, however, we are constrained to agree with defendants that the remedies plaintiffs request are beyond this court's authority to grant.

and (at p. 72):

As we have noted, many courts have found a contradiction between the democratic ideals upon which this country was founded and the exclusion of District residents from congressional representation. . . .

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

Adams v. Clinton makes it clear that the citizens of the District of Columbia cannot receive a remedy for their deprivation of rights from the Judicial system. Only the Congress has the authority to remedy the deprivation of the right of representation currently suffered by the citizens of the District of Columbia. The cases cited above indicate that just as Congress removed the ability of the residents of the District of Columbia to vote for Congressional representatives in 1801, it may restore them by legislation. I agree with that conclusion and therefore endorse the provision of S.Con.Res.135 urging the Congress to pass such legislation.

However, in the alternative, I also support S.Con.Res 135's call for the passage of a Constitutional Amendment to give full voting rights to the citizens of the District of Columbia. When the Constitution was adopted, the right to vote for representatives to Congress was severely restricted. Over the more than 200 years since that time, the Constitution has been amended numerous times to extend that right to previously excluded persons:

- In 1870, the 15th Amendment to the U.S. Constitution was ratified and extended the franchise to persons of all races, including former slaves:

The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any state on account of race, color, or previous condition of servitude.

- In 1920, the 19th Amendment to the U.S. Constitution was ratified and extended suffrage to women:

The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of sex.

- In 1961, the 23rd Amendment to the U.S. Constitution was ratified to give District of Columbia residents the right to vote for President and Vice President:

A number of electors of 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; they shall be in addition to those appointed by the states, but they shall be considered, for the purposes of the election of President and Vice President, to be electors appointed by a state; and they shall meet in the District and perform such duties as provided by the twelfth article of amendment.

- In 1971, the 26th Amendment to the U.S. Constitution was ratified and extended the franchise to citizens 18 years old:

The right of citizens of the United States, who are eighteen years of age or older, to vote shall not be denied or abridged by the United States or by any State on account of age.

In addition, since 1888 more than 150 resolutions have been offered in Congress to provide for representation for citizens of the District of Columbia. In 1978, Congress, on a bipartisan basis, passed a proposed Constitutional amendment to give the citizens of the District of Columbia representation in Congress and sent it to the states for ratification:

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.

Section 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.

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

Section 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.

Unhappily this previous attempt in 1978 failed to garner the necessary adoption by the requisite number of states within the specified seven years. I applaud the State of Hawaii for being one of the states which did recognize the inherent injustice of this lack of representation and which did ratify the 1978 proposed amendment.

The failure to adopt the 1978 amendment does not lessen the inequity and essential antithesis to American values inherent in the inability of citizens of the District of Columbia to have a voice in the Congress that enacts the legislation that binds them. Instead it must be viewed as another step in the more-than-a-century old campaign toward the ultimate goal of giving all citizens the right to elect the representatives whose authority comes from the consent of the governed.

S.Con.Res. 135 gives Hawaii and Hawaiians another opportunity to be in the vanguard of patriots seeking to broaden American democracy once again. As a citizen who formerly, when I lived in the District of Columbia, was denied this fundamental right of representation, I commend Senator Shimabukuro for offering S.Con.Res. 135, the Senate for adopting it, and urge its adoption by the Judiciary Committee and the full House.