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REPRESENTATION OF THE DISTRICT OF COLUMBIA IN THE CONGRESS

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HEARINGS

BEFORE THE

SUBCOMMITTEE ON CIVIL AND CONSTITUTIONAL RIGHTS

OF THE

COMMITTEE ON THE JUDICIARY HOUSE OF REPRESENTATIVES

NINETY-FOURTH CONGRESS

FIRST SESSION

ON

H.J. Res. 280

TO AMEND THE CONSTITUTION TO PROVIDE FOR REPRESENTATION OF THE DISTRICT OF COLUMBIA IN THE CONGRESS

JUNE 17, 23, AND SEPTEMBER 3, 1975

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REPRESENTATION OF THE DISTRICT OF COLUMBIA IN THE CONGRESS

TUESDAY, JUNE 17, 1975

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON CIVIL AND CONSTITUTIONAL RIGHTS
OF THE COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The subcommittee met, pursuant to notice, at 10:10 a.m. in room 2141, Rayburn House Office Building, Hon. Don Edwards [chairman of the subcommittee] presiding.

Present: Representatives Edwards, Drinan, Badillo, Butler, and Kindness.

Also present: Alan A. Parker, counsel; and Kenneth N. Klee, associate counsel.

Mr. EDWARDS. The committee will come to order.

Good morning. Today we begin hearings on House Joint Resolution 280 and similar resolutions introduced by our colleague, Mr. Fauntroy, which would amend the Constitution to provide for representation of the District of Columbia in the Congress.

We intend to hold several days of hearings—the next will be on Monday, June 23—to hear from those people who are familiar with the problem and the constitutional issues presented.

The issue before us is not new and has been the subject of much prior discussion.

Since 1790, when the District of Columbia was created, there have been more than 150 congressional resolutions introduced to provide national representation in some form for the District of Columbia.

Hearings have been held on this subject on 21 different occasions—eight of these hearings having been conducted by the House Committee on the Judiciary. As late as the first session of the 90th Congress, House Joint Resolution 396 was favorably reported by the House Committee on the Judiciary, but the Rules committee failed to agree to report the measure to the House for consideration. In the 92d Congress, first session, hearings were again held by subcommittee one, then chaired by our chairman now, Peter W. Rodino, Jr., the gentleman from New Jersey. Again the subcommittee favorably reported out a constitutional amendment, House Joint Resolution 253, as did the full House Committee on the Judiciary, to have the same fate befall it in the Rules committee.

Our subcommittee is particularly sensitive to the issue of voting rights for our citizens, having just successfully completed its consideration of H.R. 6219, an extension and expansion of the Voting Rights Act of 1965. We know the mortar for the cornerstone of our democracy

was mixed with representative government and the precious right to vote. It seems, however, that our Founding Fathers left off just a small corner of that cornerstone and did not consider the franchise for those persons who choose and need to be a resident in the Federal City.

District of Columbia residents, though citizens of the United States subject to all the obligations of citizenship, have not had voting representation in Congress since 1800, and only since 1964 and the ratification of the 23d amendment have District residents been eligible to vote for election for the Office of President and Vice President of the United States. At various times since 1800, Congress has allowed the election of certain local officials, but for over 100 years these officials were Presidential appointees. The District elected its own mayor and 13 council members last November, and the local District government became operational January 2, 1975.

The District has had a nonvoting Delegate since 1970. Our purpose, and the purpose of our resolution before us today, is to again restore representative government to the citizens of the District of Columbia.

Pending before this subcommittee is House Joint Resolution 280, House Joint Resolution 12 and House Joint Resolution 431 through 438. These bills are all identical and for purposes of consideration by this subcommittee we will use House Joint Resolution 280, authored by our colleague, Mr. Fauntroy. Without objection, the text of this resolution will be inserted into the record of this hearing.

[H.J. Res. 280 is as follows:]

94TH CONGRESS
1ST SESSION

H. J. RES. 280

IN THE HOUSE OF REPRESENTATIVES

MARCH 5, 1975

Mr. FAUNTROY 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 legislatures of three-fourths of the several States within seven years from the date of its submission by the Congress:

I

"ARTICLE —

"SECTION 1. The people of the District constituting the seat of government of the United States shall elect two Senators and the number of Representatives in Congress to which the District would be entitled if it were a State. Each Senator or Representative so elected shall be an inhabitant of the District and shall possess the same qualifications as to age and citizenship and have the same rights, privileges, and obligations as a Senator or Representative from a State.

"SEC. 2. When vacancies happen in the representation of the District in either the Senate or the House of Representatives, the people of the District shall fill such vacancies by election.

"SEC. 3. This article shall have no effect on the provision made in the twenty-third article of amendment of the Constitution for determining the number of electors for President and Vice President to to be appointed for the District. Each Representative or Senator from the District shall be entitled to participate in the choosing of the President or Vice President in the House of Representatives or Senate under the twelfth article of amendment as if the District were a State.

"SEC. 4. The Congress shall have power to enforce this article by appropriate legislation.".

Mr. EDWARDS. Mr. Butler?

Mr. BUTLER. I thank the Chairman.

I, too, am anxious to see what these hearings develop; certainly there is an interesting question presented as to whether the unique character of the District of Columbia has so changed since our Constitution was written that we should take another look at exactly what rights and privileges in representative government the residents of the District are entitled to.

Of course, the ultimate decision is going to rest with the other States of the Union since this must necessarily involve a constitutional amendment. We do not gain very much if we endeavor to present a constitutional amendment which will not quickly receive the approval of the rest of the States. So, we have a difficult problem, intellectually, historically, and perhaps sociologically, as we go forward with the examination of this question.

I am pleased that the chairman did choose to have hearings at this time so that we may examine this issue. I would be a little bit less than totally candid if I did not tell you that I have serious reservations about this proposal, and about whether this is an appropriate step at this time; but I certainly want to reserve judgment on this, and am an interested listener to what the witnesses will have to say. I will certainly not close my mind; and I think I speak for the other minority members of this committee, we are anxious to hear what will be said. With that, Mr. Chairman, I have no further statement.

Mr. EDWARDS. The gentleman from Massachusetts, Mr. Drinan.

Mr. DRINAN. Thank you, Mr. Chairman.

I want to welcome our colleagues, Congressman Fauntroy, Congressman Gude, and Mayor Washington. I look forward to these hearings, and I hope we can move forward on a topic in which, in my judgment, action should have been taken a long time ago.

Thank you for being here.

Mr. EDWARDS. Our first witness this morning will be the gentleman who was first elected in 1970 and has served continuously since that time as the nonvoting Delegate from the District of Columbia, Mr. Walter E. Fauntroy. Mr. Fauntroy has established an enviable record for service to his community, and a remarkable record of accomplishment in the House of Representatives when you consider he labors on without the right to vote.

Walter, we welcome you here this morning. I know of your long and continuing battle for voting representation for the citizens of the District of Columbia. You may proceed with your statement.

TESTIMONY OF HON. WALTER E. FAUNTROY, A REPRESENTATIVE IN CONGRESS FROM THE DISTRICT OF COLUMBIA

Mr. FAUNTROY. Thank you so very much, Mr. Chairman, and members of the committee. May I, on behalf of the grateful citizens of the Nation's Capital thank you in a special way for the expeditious way in which you have launched the effort to amend the Constitution, to provide us voting representation in the House and the Senate.

Fifteen years ago today, June 17, 1960, Mr. Chairman, the 86th Congress answered a very basic question about the citizens of our

Nation's Capital. That question was simply this, was it the intent of the Founding Fathers that all American citizens should be able to vote for our Chief Executive, except the residents of the District of Columbia? Are all the citizens of these United States entitled to a vote in the selection of our President, except the people of the District of Columbia? Is this just; is it right; is it fair?

Fifteen years ago, Mr. Chairman, the Congress of the United States and the people of this great Nation answered that question with a resounding "no." They passed and ratified the 23d amendment to the Constitution of the United States, which settled for our democracy the question of whether the citizens of our Nation's Capital, by virtue of the accident of their place of residence, should be denied the right to full participation in the election of the Chief of our executive branch of government.

Today, Mr. Chairman, in this, the 94th Congress, we have both the opportunity and responsibility to answer a second and related question about the citizens of our Nation's Capital, and that question is simply this, was it the intent of the Founding Fathers that all taxpaying citizens of these United States should have voting representation in the U.S. House and the Senate, except the citizens of our Nation's Capital? Did they fight so valiantly our War of Revolution to end the tyranny of taxation without representation for all Americans, except the citizens of the District of Columbia? Is that just; is it right; is it fair?

As we stand on the threshold of our Bicentennial celebration, I believe that the U.S. Congress and the American people will say of the denial of voting representation for District residents in the Nation's legislative branch of Government what they said of the denial of our right to participate in the selection of the head of the executive branch, that it is not right, and that we will correct it by amending the Constitution.

I ask you, therefore, to bring our 94th Congress to the same conclusion on District residents' right to elect voting representation in the legislative branch of Government, that our 86th Congress, on this very day 15 years ago, reached on the question of our right to vote in the election of the head of our executive branch of Government. As the 86th Congress amended the Constitution to provide us full citizenship rights in the executive branch, I ask that this, the Bicentennial Congress, amend the Constitution to provide us full voting rights in the legislative branch of Government, the U.S. House and U.S. Senate.

Put another way, Mr. Chairman, I am asking that on the eve of the Bicentennial celebration the 94th Congress move to mend the crack in the Liberty Bell. The Liberty Bell in Philadelphia was molded to proclaim an end to the tyranny of taxation without representation. But for nearly 200 years of our Nation's history, there has been a crack in that bell, an imperfection that seriously mars our proclamations of democracy, and through that crack have fallen three-quarters of a million Americans who pay nearly a billion dollars in Federal taxes each year, but who, unlike all other taxpayers in our country, have no vote in the U.S. Congress.

Thus, 200 years after the founding of this great Republic, the citizens of the District of Columbia still endure the tyranny of taxation without representation, a condition as obnoxious to democracy in 1976 as it was in 1776. It was the "Spirit of '76" 200 years ago that

brought an end to the tyranny of taxation without representation for the 13 Colonies; and it is that same spirit in this Bicentennial Congress that can end, 200 years later, the tyranny of taxation without representation for the still voteless citizens of our Nation's Capital.

Mr. Chairman, one of the ironies of our Bicentennial celebration next year is that an estimated 40 million visitors will travel to our Nation's Capital to proclaim rights that we, the residents of the District of Columbia, do not fully share. To these visitors and to millions of others who seek to share the true spirit of '76, will we have to sound our proclamation that "Taxation demands representation—support a vote for the District of Columbia in Congress."

Need I remind you that our population of 762,000 people is greater than 10 States? These 10 States have 34 Representatives and Senators, and make up 20 percent of the votes in the Senate. There are at least 12 independent nations in the world that have smaller populations than the District.

And what is most tragic about our injustice is that numerous nations with their national capital under Federal jurisdiction grant representation in the national legislature to the inhabitants of that city. In the British Commonwealth, both Australia and India give voting representation to the people of their national capitals. In Latin America, Argentina, Mexico, and Venezuela, they also grant representation to the citizens of their national capital cities, which, like the District of Columbia are under Federal jurisdiction.

It is difficult to see how we, as a Nation, can proclaim our democratic institutions to the people of the world while a colonial refuge, such as the District of Columbia, exists—not in the far reaches of an empire, but at the seat of the National Government. This must surely shame the people of our Nation. I am convinced that if this Congress were to adopt a full representation proposal and submit it to the States in this, the Bicentennial year, it would be overwhelmingly and speedily approved. The 23d amendment, giving the District residents a vote in Presidential elections, was approved in near record time of under 1 year.

It is simply wrong, Mr. Chairman, that the nonvoting Delegate from the District of Columbia should represent more taxpaying American citizens than any single voting Member of the House of Representatives. It is wrong that he should represent more taxpaying Americans than 20 individual Members of the U.S. Senate; fully one-fifth of the Senate Members represent less people than the nonvoting Delegate. And yet, these citizens alone in the United States are denied voting representation in that body of the legislative branch of our great democracy. Let the occasion of the Nation's Bicentennial celebration be the time that we right that historic wrong.

I am pleased, therefore, to speak today on behalf of my bill, House Joint Resolution 280, with over 107 cosponsors, representing every region of the country, and every political point of view. House Joint Resolution 280 would amend the Constitution to do the following:

First, the District would elect two Senators and as many Representatives as it would be entitled to if it were a State. With its current population, the District of Columbia would be entitled to two Members in the House.

Second, each Senator and Representative would possess the same qualifications as to age and citizenship and have the same rights and privileges and obligations of other Senators and Representatives.

The amendment would have no effect on the provision in the 23d amendment for determining the number of Presidential electors to which the District is entitled. Each District Representative would, however, be able to participate in the choosing of the President under the 12th amendment of the Constitution.

Great strides have been made since the establishment of the American Republic toward expanding the right to vote to an ever-growing number of Americans. Beginning after the Civil War, the States ratified the 15th amendment prohibiting denial of the vote on the basis of race. The 17th amendment took from State legislatures and gave to the people the right to elect U.S. Senators. The 19th amendment eliminated sex as a basis for denying the vote. The 23d amendment gave residents of the District of Columbia the right to vote in Presidential elections: and the 24th amendment abolished the poll tax.

The 1965 Civil Rights Act provided the weight of the Federal Government to enforce protections provided under the 15th amendment, and the Supreme Court established the one man one vote as the principle in order to make the right to vote equal among all citizens And more recently additional steps were taken to provide 18-year-olds the right to vote by the passage of the 26th amendment; and the right of the people of the District of Columbia to the election of local officials was recognized by the passage in the last Congress of the home rule bill.

The denial of the right of congressional voting representation to the people of the District of Columbia stands out as a glaring piece of unfinished business in this Nation's drive toward a more perfect democratic government.

We are met here today, therefore, in search of the "spirit of '76" in our Bicentennial Congress. It is in this spirit that I hope we can end, 200 years after the War of Revolution, the tyranny of taxation without representation for the voteless citizens of our Nation's capital, and in this sense amend the crack in the Liberty Bell forever.

Thank you, Mr. Chairman.

Mr. EDWARDS. Thank you, Mr. Fauntroy, for an excellent statement. Mr. Drinan?

Mr. DRINAN. Thank you very much, Mr. Fauntroy. I wonder if you would care to reply to one of the constitutional contentions that this would not be permissible. Under article V of the Constitution it states rather categorically that "No State without its consent shall be deprived of its equal suffrage in the Senate."

And the argument has been made by Congressman Richard Poff in 1967, when this matter was before this body before, that article V indicates very clearly that a State, and only a State can have voting power in the House and in the Senate. And other arguments throughout the years have stated that the District of Columbia was not intended to be a State, and that if we do permit voting rights in the Senate and in the House to this non-State, then other territories and jurisdictions would claim it.

I wonder if you want to respond to this argument that has been made not by myself, but by others, as to what they feel is the unsuitability, or inappropriateness of what you are recommending.

Mr. FAUNTROY. Yes. First of all, it is for the reasons that you cite that we need to amend the Constitution; to carry out what I firmly believe to be the intent of the Founding Fathers and what is just and fair and right for taxpaying American citizens in our great democracy.

The District of Columbia is a unique political entity. Article I, section 8, of the Constitution makes it very clear that "There shall be States and the District of Columbia." With respect to the Senate question, obviously the Senate was created to insure that small States have equal representation; and it is just not right that a city that happens to have more people in it than 10 States should be denied the opportunity to participate in the legislative branch of Government simply because they happen to live in the District of Columbia.

So, the arguments made are arguments for amending the Constitution, to right a historic wrong. There is simply no reason for denying the people who live in the District of Columbia what is granted people in smaller numbers, who live in the States; and that is representation in the legislative branch.

Now, the Congress was faced with this question 15 years ago with respect to participation in the selection of the President, and it answered that question very clearly that, "It is not right, and we will correct the situation by amending the Constitution and saying that the President shall be elected by the people in the States and the District of Columbia because they pay taxes, they are full American citizens"; and it is my hope that we follow the same impeccable logic in saying that because the Constitution has singled out this District as a unique part of the United States, that the Constitution will also single out this District for representation in the legislative branch of Government in the same fashion that it had the good wisdom 15 years ago.

Mr. BUTLER. Will the gentleman from Massachusetts yield for a moment? I am reluctant to interrupt, but I would like to pursue this point for a moment.

Mr. DRINAN. Yes; I'm happy to yield.

Mr. BUTLER. This is certainly a matter that can be amended by correcting the Constitution, but you cannot amend the Constitution in this instance, it seems to me, without the consent of all the remaining States, otherwise——

Mr. FAUNTROY. There is a process for doing that.

Mr. BUTLER. Sir?

Mr. FAUNTROY. There is a process for doing that.

Mr. BUTLER. Yes; but three-fourths is not all of the States of the Union. Those States that do not ratify an amendment of this nature will have thereby been deprived of their equal suffrage in the Senate without their consent.

So the question, I think, that Mr. Drinan asked, and that I would ask, too, is, how do we amend the Constitution in this regard without the consent of all of the States? Whether it is right or wrong is not a response because the Constitution protects every State in its equal suffrage in the Senate, and it cannot be denied this without its consent. And until a State consents to an amendment which gives other representation in the Senate on a basis other than with equal suffrage of other States, we have denied that part of the Constitution.

Now, what I want to know is, what is the answer to that?

Mr. FAUNTROY. Obviously, Mr. Butler, if you follow that logic and accept it, what would be required would be an amendment to the Constitution to say that all the States must unanimously——

Mr. BADILLO. Just a minute, will the gentleman yield?

Mr. DRINAN. I'll be happy to yield.

Mr. BADILLO. Isn't it true, Mr. Fauntroy, that when a new State comes in, the power of all the other States is also diluted?

Mr. FAUNTROY. An excellent point.

Mr. BADILLO. And historically, we have accepted new States without having to have the unanimous consent of all the others. Therefore, this is not any more unusual than when we went from 13, to 14, to 50 States, in terms of reducing the powers of the others; and therefore, there is no need to have any special unanimity for this, than there was for the admission of any other State.

Mr. FAUNTROY. Mr. Badillo, I want to thank you for having informed me and the people who want to support this.

Mr. BUTLER. Well, if I may interrupt, I am afraid you have been armed with wet powder here——

[Laughter.]

Mr. BULTER [continuing]. This simply is not an elevation of the District to the status of a State. I do not want to burden the Members with the fine points of constitutional law. I just make that argument——

Mr. FAUNTROY. I'm not a lawyer, sir, but I'm an authority on justice. I feel very keenly that it's just not right that the people who happen to live in the District of Columbia should be denied the privilege of participating in the legislative branch of Government. We have already acknowledged that in the executive branch.

While I may not be able to recount the tenets of a medley of morals and ethics, I know what is right.

Mr. DRINAN. Mr. Fauntroy, I wonder if we could pursue this a bit more, and ask you to give us a bit of the history of this concept, should the, or could the District of Columbia become a State, could it become the 51st State. And if we did decide to go that road, we would obviously obviate the difficulty completely that I brought up originally.

Would you care to talk to that, about sentiment in the past of becoming a State, rather than this unique entity called the District of Columbia?

Mr. FAUNTROY. That would change the intent of the Founding Fathers who established the District in article I, section 8, as the Nation's Capital. But that could be done, and indeed much of the desire to have the Nation's Capital transferred to a status of State, grows out of the fact that in our present status we are second-class American citizens, we are denied what every other American has, and that is the opportunity to participate both in the executive branch and the legislative branch.

Mr. DRINAN. Well, as you know, the courts through the years, and Congress, have eroded that concept of the District being a non-State, and in 1940, for example, the Congress expressly authorized the Federal courts to take jurisdiction over non-Federal controversies between the residents of the District of Columbia and citizens of other States.

And in that, and in other areas, the citizens have been given all of those rights that pertain to citizens that reside within a State. I would want you to contemplate the possibility of at least saying that the vast majority of the land in the District of Columbia should become a State, leaving perhaps some enclave to fulfill the intent of the original Founding Fathers. And I now, and hereafter, personally would welcome any thoughts along that line to obviate the difficulty that, frankly, caused many dissents in 1967, when this matter was here before.

Mr. FAUNTROY. The problem that I see with that, Mr. Drinan, is the fact that 55 percent of the taxable land within the set boundaries of the District of Columbia is taken off of the tax rolls by virtue of the presence of what is the core of that enclave. It is wrong to expect us to make up for the Federal payment, which is the just, fair, and right response of the people of the Nation to the fact that our city is so impacted with Federal presence which we must service in terms of our tax resources, but for which we cannot tax the Federal Government.

If we were to be treated as a State and be treated uniquely as a State, and provided with Federal payment, it wouldn't matter whether you call it the District of Columbia, or the State of Columbia.

It is an economic question, and I am not prepared to confront the argument that every State in the Union ought to be able to expect a Federal payment for every Federal installation that may be within its boundaries. I think the best way is to honor article I of the Constitution which clearly says: "There shall be a Nation's capital," and then to afford the residents of that Nation's Capital what we afford all American citizens, which I think was the intent of the Founding Fathers.

Mr. DRINAN. Thank you very much for your fine statement.

Mr. EDWARDS. Mr. Butler?

Mr. BUTLER. Thank you, Mr. Chairman.

Has it ever occurred to you, Mr. Fauntroy, that your long tenure in the Congress arises from the fact that you are a nonvoting member, and that if you had to vote on all these things, you might have more difficulty getting back here? [Laughter.]

Mr. FAUNTROY. I certainly understand that.

Mr. BUTLER. You are willing to make that sacrifice?

Mr. FAUNTROY. Yes, I would be willing.

Mr. BUTLER. Well, I thank the gentleman for his answer. I am sympathetic with the problem of taxation without representation, but the uniqueness of the situation is maybe overstated a little bit. I am trying to get clear in my mind, what would be the difference between the status of the unrepresented citizens of Puerto Rico, or a territory, and the unrepresented citizens of the District of Columbia in regard to this argument of taxation without representation. I wonder if you would address yourself to that?

Mr. FAUNTROY. Yes; I would be very happy to. There would be two differences. The Constitution designates the District of Columbia as a part of the mainland, and originally intended that its citizens should not be denied these rights.

The other, more important difference is that the citizens of Puerto Rico, while they enjoy the programs of the Federal Government, do not pay taxes; and that's a big difference.

Mr. BUTLER. Are you referring to property taxes?

Mr. FAUNTROY. I'm referring to income taxes to the Federal Government, that's what we pay.

Mr. BUTLER. That is the distinction you are making——

Mr. FAUNTROY. Between the other territories and the District of Columbia. Sometimes I'm tempted to want to get their status. For example, in Puerto Rico some people say, "Let's become independent," or "Let's become part of the United States." Well, when you are talking about "independent" you are talking about taking the benefits of the Federal Government away, which we enjoy; and when you talk about becoming a State, you are talking about paying taxes; and I don't blame them for saying, "Let's keep it the way it is."

Mr. BUTLER. I thank you. Have you finished your response to that question?

Mr. FAUNTROY. Yes; I have.

Mr. BUTLER. My other question is: Just exactly who are we talking about in terms of U.S. citizens in the District of Columbia; how many of them are in fact uniquely, totally, prominently citizens of this area, as opposed to those who retain their domicile in other States, or elsewhere in the world? But basically, as far as U.S. citizens are concerned, how many people have retained their domicile elsewhere with respect to voting purposes?

Mr. FAUNTROY. Mr. Butler, I would be happy to provide you with that information. Obviously, there are large numbers of people who reside here, who because of the fact that they are disenfranchised with respect to their citizenship rights in the legislative branch, maintain their voting residency in other States.

Mr. BUTLER. I am aware of the psychological problems. Could you provide us at some later time, then, just what the breakdown is on the people here? That is not criticism.

Mr. FAUNTROY. I think it's important that the committee understand that and have those figures, and we will do the best that we can to give you the number of those who maintain their voting residency in other States; the approximate number of foreigners who live in the District of Columbia; and the number who are transients, who move through from time to time.

I think the essential argument to be remembered is that there was no prescription placed on citizenship representation in the legislative branch on the basis of how many people happen to live where you live. Even if it were one person who were denied representation for the taxes that he pays, I think it would be incumbent upon us to extend that franchise to that person.

The fact that there are more people in this city than there are in 10 States; the fact that I, elected from the people of this city, represent more people than a full one-fifth of the Senate, is an overwhelming argument for recognizing in the Senate the principle on the basis of which the Senate was established; namely, to create a situation to assure that small States had equal representation in that body of the legislative branch of our great democratic Republic.

Mr. BUTLER. Thank you, Mr. Chairman.

Mr. EDWARDS. Mr. Badillo?

Mr. BADILLO. Thank you, Mr. Chairman.

Mr. Fauntroy, I think we might bring out some more information with respect to Puerto Rico. Isn't it a fact that the relationship between Puerto Rico and the United States is one that is set by an agreement entered into between the Congress of the United States and the Legislature of the Commonwealth of Puerto Rico, and that pursuant to that agreement the residents of Puerto Rico receive some rights, and they retain the right to levy their own income taxes. In exchange for that they did not seek to have representation, voting representation in the Congress.

That agreement was then voted upon by the people of Puerto Rico in 1952, and in 1967. The people of Puerto Rico received a choice of accepting the agreement to establish the Commonwealth of Puerto Rico, voting for a State, or being independent. And by an overwhelming margin, in 1952 and in 1967, the people of Puerto Rico voted to accept the Commonwealth status.

Mr. FAUNTROY. I think that is very useful information to provide us, and I certainly hope that at the appropriate time on the floor of the House you will speak with that kind of authority on this question that I am sure is going to be of concern to the Members of Congress.

Mr. BADILLO. And furthermore, the residents of Puerto Rico have the right to seek to amend that agreement at any time. And in fact, recently a committee was appointed which includes the Governor of Puerto Rico, members of the Puerto Rican Legislature, appointees of the President of the United States, and appointees of the Speaker of the House and President of the Senate; and this committee is known as an ad hoc committee on the status of the Commonwealth of Puerto Rico. They are meeting now. They may make recommendations for an alteration of the status of the Commonwealth, but when they do, these recommendations will be submitted to a vote of the Congress, and to a vote of the people of Puerto Rico.

Therefore, there is a very clear relationship when it comes to the Commonwealth of Puerto Rico by which, whatever the people of Puerto Rico will seek to get, they have a right to present it to the Congress of the United States, and to this committee, if they should sometime seek to have Senators and Representatives in the same way as the people of Washington, D.C., do at this time.

Mr. FAUNTROY. Yes, Mr. Badillo, and you remind me of the fact that perhaps there is another cogent argument for our having voting representation in the District of Columbia, in Puerto Rico the citizens are not required to submit their budget to the Federal Government, and to the Congress for approval, while we in the District are. We have demonstrated in the District of Columbia that we are prepared to accept the principle that the Federal Government does have a stake in the governance of the District of Columbia, and it was for that reason that we have gone the Home Rule route that acknowledges Federal interest, but what other American citizen who has the privilege of voting for a Senator and a Congressman, also has the responsibility to submit, on local matters, every budgetary item to the Congress of the United States?

Mr. BADILLO. Thank you, Mr. Chairman.

Mr. EDWARDS. The gentleman from Ohio.

Mr. KINDNESS. Thank you Mr. Chairman.

Mr. Fauntroy, I want to first thank you for your presentation here this morning, and sympathize. I share with you, as a Representative of people in Ohio, the concern of paying more Federal taxes than we get back, and the difference happens to be, as I recall it, somewhere close to the total amount paid out of the District of Columbia. So, we share a similar problem there.

I have heard the argument, and I would like to ask how you respond to it, that people living in the District of Columbia do so by choice, and we recognize that choices are sometimes limited. But, there is the choice available to live in another State, Virginia or Maryland, for example. And I do know that a great many people who live in the District of Columbia maintain their voting residence, their domicile, in another State as far away as California, or Hawaii.

But, how would you respond to the argument that the choice of living in the District of Columbia is a choice made by the individual, and that it therefore is not a deprivation of the right to vote for Senators and Representatives?

Mr. FAUNTROY. I would respond to that by saying that there are some of us who are residents of the District of Columbia by destiny, and not by choice. I had the privilege of being born here. I was raised in the District of Columbia; I went to the public schools here. My teachers had me to stand up and sing, and sometimes tears came to my eyes as I understood what we were singing about, "America, America, God shed his grace on thee, and crowned thy good with brotherhood from sea to shining sea."

I became very proud of the fact that I was an American. I will never forget when, in my seventh year at Patterson Junior High School, in a civics class, they explained to me the beauty of the democratic process, one which I think is the most effective nonviolent means of resolving human conflict created by man. I was just thrilled at singing with Kate Smith, "From the mountains to the prairies to the oceans white with foam," and I tell you that when I came to my maturity and recognized that because I was born—not by choice, I had nothing to do with that, but by destiny—in the District of Columbia, I had to be denied that beautiful means of resolving conflict and translating our beliefs into public policy. I admit I have the choice of leaving, but I don't think it's right to require of any American citizen that to become a first-class citizen he move across a boundary in the country between those shining seas about which I sang as a child. I still believe in it. Believe me, I am the strongest advocate of American democracy. It is not right that any citizen, taxpaying citizen, should be denied voting representation in the legislative branch simply because of the accident of his birth or the location of his residence.

Mr. KINDNESS. Then, if I might characterize your response, would it be fair that the summary of your argument is that no person should be deprived of representation and should not have to move in order to obtain that representation?

Mr. FAUNTROY. Precisely; and I don't want to preach too long, I have made my point.

Mr. KINDNESS. I share many of these experiences with you of singing about our Nation, and our feelings are similar. However, my life has found me moving from State to State, at least so far.

Mr. FAUNTROY. Mr. Kindness, you are very kind.

Mr. KINDNESS. There are other aspects that concern me greatly, and as one who happens to emphasize in my thinking the importance of the States in our Republic, I believe that they have a strong constitutional role to play, despite the actions on the part of the Congress over the years that have reduced the role of the States.

Do you believe that the Constitution requires representation of the States equally in the Senate, and that that is an important consideration; or is that secondary to simply having representation of the people in the Senate?

Mr. FAUNTROY. I think the intent of the Founding Fathers was that the States should have equal representation in the Senate, large and small; and that therefore the smallest entity that we have in this country as a State, including the District of Columbia, which the people designated as a special, unique jurisdiction, should have commensurate representation in both bodies of the Congress.

That argument is punctuated and justified by the fact that States which have less people in them have equal representation with all other States in the Union, and that therefore the unique entity of the District of Columbia ought to also have that kind of representation.

Mr. KINDNESS. So, it is the people, and not the State, then, is that correct?

Mr. FAUNTROY. Right.

Mr. KINDNESS. Thank you, my time is up.

Mr. EDWARDS. Thank you very much.

Our next witness is the gentleman from Maryland whose district is directly contiguous to the District of Columbia, and who has been in the forefront of the movement to seek representation for Washington, D.C.

Mr. Gude, we welcome you, and you may proceed with your statement.

TESTIMONY OF HON. GILBERT GUDE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MARYLAND

Mr. GUDE. Thank you, Mr. Chairman, for this opportunity to present my views on full voting representation for the District of Columbia to you and the members of the Subcommittee on Civil and Constitutional Rights.

I might say at the outset, that I personally find these hearings to be particularly timely, in light of the recent completion of hearings by our District of Columbia Subcommittee on Bicentennial Affairs on this region's preparations for our 1976 national birthday celebration. Like our distinguished colleague from the District, I see a distinct relationship—indeed, opportunity not to be missed—between celebration of the Bicentennial and the drive for congressional voting representation for the residents of our Capital City.

Our Founding Fathers' eloquent arguments against "taxation without representation" unfortunately still ring true for nearly three-quarters of a million American citizens. These arguments, as stated by Thomas Jefferson in the simple declaration that, "The influence over government must be shared among all the people," speak for themselves. I support the extension of voting representation

for the District because it is right, it is fair, and it is an essential element of representative democracy.

I am not going to belabor these points, Mr. Chairman. I would like rather, to discuss briefly and urge the committee's consideration of the thesis that the lack of a provision in the Constitution for congressional representation for the inhabitants of the Nation's Capital may be seen largely as a historical oversight, rather than a distinct design on the part of the framers of the Constitution.

This is certainly not a new thesis, Mr. Chairman, and, indeed, it may be repeated during these hearings. It is one of many factors to be considered in connection with the legislation pending before you. But it is, to me, a persuasive element, as seen in the context of late 18th century America—in this, our Bicentennial era, a particularly relevant context.

It is indeed clear that in establishing a permanent "residence" or seat of the National Government, our Founding Fathers desired a locale free from the interference or jurisdiction of any State, and under the exclusive control of the National Government. Concern along these lines was heightened in large part by an incident in Philadelphia in June 1783, during which certain Pennsylvania troops demanding overtime pay marched on and surrounded Independence Hall where Congress was in session. As you know, Congress requested, but did not receive, protection from Pennsylvania authorities, and voted to move immediately to Princeton, N.J. It is not disputed that there was a general, recognized need of having the Capital City in a territory where the Federal Government would be sovereign, and that few persons challenged this principle.

Indeed, this view of the genesis of article I, section 8, clause 17 of the Constitution is supported by certain Supreme Court cases, such as *S.R.A. Inc.* v. *Minnesota*, in which the Court, in discussing this clause, referred to the purpose of giving "control of the site of Government operations to the United States when such control was deemed essential for Federal activities." In my view, there is little to suggest that in addressing the political rights of the residents of the Capital City, by granting them congressional representation, we are violating this purpose.

Interestingly enough, it appears that slight attention was actually paid to the constitutional provision establishing the seat of the Government, either by the Constitutional Convention, or by the various ratifying State conventions. In only 4 of the 13 State conventions was the subject of the Federal district discussed at all. And, indeed, it was suggested by a Virginia delegate that the origins of the provision were simply in the "insult" to Congress in Philadelphia.

Furthermore, with respect specifically to the political rights of the residents of the Capital City, these are not mentioned in the recorded debates of the Constitutional Convention or the States' conventions. It is precisely this lack of general discussion on the issue, Mr. Chairman, that I believe lends credence to the theory that the absence of suffrage for residents of the Nation's Capital was a historical accident, and oversight.

After all, this provision was written before a site was actually selected—and at a time when its potential residents were fully enfranchised by their respective States—and, moreover, the Potomac region under consideration as a possible site was quite small in both

area and population. It may indeed be inferred that the political status of these persons was not then a major problem facing the drafters of the Constitution, and so was simply overlooked.

Indeed, Mr. Chairman, it is a historical fact that after the District of Columbia was established, the residents of the District voted in the Maryland elections in 1800 for Federal officials.

I do not subscribe to the theory that it was the positive intent of the framers of the Constitution to deny suffrage to District citizens. I might add that there is some mention of the residents of the seat of the Government in James Madison's Federalist 43. In stating why there should be no objection to the creation of the Capital through the appropriation of land from two States, Madison cites, "As they will have had their voice in the election of the Government which is to exercise authority over them."

In my view, it should not be assumed that they cannot continue to have their voice and exercise their basic rights. These need not be inhibited by the establishment of the Capital City.

Thus, I submit for the committee's consideration that the lack of voting representation in the Congress for the District was an oversight, not a grand design, and to grant this now would not be in violation of the purpose of the framers of the Constitution in including article 1, section 8, clause 17. This brief historical exposition is only one of the many reasons to grant favorable consideration to the resolutions pending before you, to provide national representation for Washingtonians on an equal basis with all other Americans.

Thank you, Mr. Chairman.

Mr. EDWARDS. Thank you, Mr. Gude.

Mr. Badillo, any questions?

Mr. BADILLO. I thank you for your testimony. I wonder what your reply would be to the question as to the effect of having two Senators on the reduction of the equal voting power of the States.

Mr. GUDE. In ratifying the Constitution, the States agreed that those stipulations in the Constitution which provided for changes in the Constitution were the method by which the Constitution would be changed in the future; and they did not say in certain matters we have to have a consensus of every State in the Union. In ratifying the Constitution and agreeing to it, they said, "We will change the Constitution in the future by three-quarters of the States ratifiying"—it's as simple as that. That was the agreement as to the way the fundamental law would be changed in the future. To say now that there has to be a consensus of all 50 States, or whatever number of States there are, would seem to me to be an impossible assertion.

Mr. BADILLO. Thank you. Thank you, Mr. Chairman.

Mr. EDWARDS. Mr. Butler?

Mr. BUTLER. I thank the gentleman for his interest and for his helpful testimony. I wonder if you would tell us your view of the reaction of the State of Maryland in the event that the suggestion sometimes made that portions of the District be retroceded to the State of Maryland. Outside the accepted Federal enclave, do you think the State of Maryland would accept that? The Constitution, of course, would require acceptance by Maryland as a condition precedent to any plan.

Mr. GUDE. As my colleague from Virginia knows, having served in the State legislature, it's impossible to predict what the reaction of

the Governor and the State General Assembly would be. I believe the State would be particularly interested in the fiscal considerations in taking over this additional territory. One of the concerns I have, aside from the attitude of the State, is the impact of Maryland in taking over portions of the District of Columbia on physical planning of the city. One of the reasons I feel we have a Federal city that is governed differently from the States is because the Federal Government has a great interest in the physical planning of the city. For example, there are certain height limitations to buildings in the city.

But once the State of Maryland took over parts of the District of Columbia, they could build skyscrapers, put in glue factories, or do anything they desired. Every State is equal, and the zoning and planning would be completely up to the State.

I think the Federal Government, on behalf of all of the people, has a great interest in the physical planning of this city. This is indeed one reason for the Federal payment, as we inhibit certain commercial and industrial development here in order that the physical plan of the city, which makes it such a magnificent city, continues.

That's a reason of my own. It would be impossible to say what the State of Maryland would feel.

Mr. BUTLER. Well, I think I have to accept that, although nobody suggested giving any of it back to the State of Virginia, I suspect it is unpredictable, also.

But you have, it seems to me, put your finger on one of the basic problems here, that the sovereignty of the States is so much different from the rights of the District as a part of our Federal system, that it is simply not a comparable situation to say that there should be comparable representation there. Would you respond to that?

Mr. GUDE. Well, vis-a-vis the question of representation, this is a basic right to which I believe the citizens are entitled. They should have the same voice in their National Legislature that all other citizens of the country have. They pay taxes, serve in the Armed Forces; they are like other American citizens in every respect, so this is a basic right. Having representation through two Senators and as many Representatives as they would be entitled to if they were inhabitants of a State, is a fundamental right. It's not a matter of State representation, but a question that the citizens having representation in a legislature which enacts laws which affect their lives in many respects.

Mr. BUTLER. Well, along the same line—and then, Mr. Chairman, I will yield—you are, of course, identified with much legislation to give voting privileges to American citizens overseas which have so separated themselves from their States that they are no longer allowed to vote in their own States. What would be your reaction, as we go about giving the representation in the Congress to the District of Columbia, that we also include in the voting privileges for those people representation of American citizens overseas who are not identified with any State; would you give us some——

Mr. GUDE. I'm not quite sure I understand.

Mr. BUTLER. There are American citizens residing overseas who are not residents or domiciliaries of any State, but pay taxes. There is legislation which would impose upon the State, and you are a

patron of it, the obligation to let these people vote in their States if they say they want to.

Now, what would your reaction be, instead of giving them the right to vote in Maryland, or wherever they chose to vote, to say that those people overseas who have separated themselves from their States and no longer have a domicile there, could vote for this Representative who would represent the District of Columbia?

Mr. GUDE. If they chose to have the District of Columbia as their domicile, of course, I think this would obligate them to taxes and other responsibilities for which a District citizen is responsible.

If they adopted the District of Columbia as their domicile, then they would have certain responsibilities to the city.

Mr. BUTLER. Do you think that the voting privilege that you are asking us to give to the residents of the District of Columbia must be tied to their domicile in the District of Columbia?

Mr. GUDE. Yes; I believe the question has come up, that people don't have to live here if they want to have voting representation. They could move to Maryland or Virginia, or some place else.

Mr. BUTLER. To a suburb.

Mr. GUDE. To a suburb of the District. But this is just impossible for some people. To make them commute long distances in order to have voting representation puts them in an impossible position and could change their whole livelihood.

Mr. BUTLER. I thank the gentleman.

Mr. EDWARDS. Mr. Kindness?

Mr. KINDNESS. Thank you, Mr. Chairman.

Mr. Gude, I am rather interested in the response you gave to Congressman Butler's question about the possibility of the District of Columbia becoming a part of the State of Maryland again. I just wonder if you remember, we used to have a glue factory on what was then known as the "K Street Freeway." I think those problems could be overcome.

There is another aspect of this that I would like to solicit your comment on. If Senators are to represent the District of Columbia, what would be your view as to how vacancies would be filled in the event there is a vacancy in a Senate seat representing the District of Columbia?

Mr. GUDE. I would propose that there be a special election within so many days of the vacancy, to provide for filling the vacancy.

Mr. KINDNESS. Would it be necessary—I assume from your answer it would be necessary to supplement the 17th amendment, which only deals with vacancies in the representation of States in the Senate, so as to make special provisions, then, for the District of Columbia in filling vacancies?

Mr. GUDE. There would be.

Mr. KINDNESS. Would you see it as possible, or constitutional to provide for that vacancy to be filled by legislation, rather than by constitutional amendment?

Mr. GUDE. Does not the Constitution provide that the States can fill the vacancy in an interim period until——

Mr. KINDNESS. Basically that is correct. But, since the District is not a State, who would fill interim vacancies pending an election? Some way or another we have to approach that question.

Mr. GUDE. This raises a question which is presently coming up in the District of Columbia Committee, as to whether the District of Columbia Council has the right to ratify interstate compacts, or whether Congress retains this power under the self-government bill. It would probably, again, be a question of whether the District of Columbia Council would provide for the method of filling an interim vacancy for a U.S. Senator, or whether Congress would have to fill this legislative role.

This is a very good question. I do not believe the Council has the right to ratify interstate compacts, but as I said, this is a matter which you can put your legal minds to when you report out this bill.

Mr. KINDNESS. Would you be able to comment on this question then, please, sir. I do not recall—because I was not around then—whether the counties of Maryland were established at the time that the District of Columbia territory was ceded by Maryland. If the District of Columbia were to go back to the State of Maryland, do you have any comments as to what constitutional problems there might be under the Maryland constitution as to establishing another county, a County of Columbia, or something of that nature?

Mr. GUDE. The counties are creatures of the State, and if the State agreed to take the land back, there would be a State decision whether it would become part of existing counties, or it would be made into a new county. But I don't think this presents any problems if it were to take place.

Mr. KINDNESS. Thank you, sir.

Mr. EDWARDS. Mr. Parker?

Mr. PARKER. Thank you, Mr. Chairman.

Mr. Gude, assuming the passage of this resolution, and its ratification by the States, there are some technical questions that arise, that are not addressed in the resolution.

If there were to be two voting Members of the House of Representatives selected from the District of Columbia, the question arises as to whether they would be selected at large, or from districts; taking into account the Supreme Court's one-man-one-vote rule, I assume they would have to be from districts. There is no answer in the bill as to how these district lines would be settled, and by whom. Is it contemplated that this type of question is to be addressed under section 4 of the resolution which says that Congress shall have power to enforce this article by appropriate legislation, and that this type of question would be answered by Congress after the ratification of the constitutional amendment?

Mr. GUDE. I believe this gets to the same point that we discussed a few moments ago. It is a question of what responsibilities the Congress has delegated to the city council, whether they could draw congressional district lines, or whether Congress would have this authority.

Mr. PARKER. Is it also contemplated under that section, then, that the question—for instance, we know if two Senators would be allowed the District of Columbia, the Senate would then number 102. The question as to the size of the House of Representatives has not yet been addressed, if you are entitled, under proportional representation, two voting members of the House from the District, would the House be increased to the size of 437; or would you use the formula used when Alaska and Hawaii became States, and just wait for the next decennial census, and then go back to 435?

Mr. GUDE. My understanding is that the legislation which governed Hawaii and Alaska would govern the District of Columbia. The representation would go to 437, and then at the next census it would go back to 435; there would be a national reapportionment.

Mr. PARKER. It is contemplated, then, that under section 4 Congress would have the power, again, through legislation to determine this, that is what the thrust of that section is there for.

Mr. GUDE. Well, that is a determination of Congress, as to the size of its own body, which is, I think, a different matter from the question of drawing congressional district lines.

Mr. PARKER. Thank you very much. I have no other questions.

Mr. EDWARDS. Mr. Klee?

Mr. KLEE. Thank you very much, Mr. Chairman.

Mr. Gude, I would like to clarify a point made by counsel. If the most recent decennial census were the 1980 decennial census, and this amendment were ratified in 1981 or 1982, do you mean to imply that Congress would have to wait until 1990 before it could reduce the number of Representatives to 435?

Mr. GUDE. Unless Congress changed the statute. This is merely a statute that Congress has enacted, and if Congress wanted to change it and bring it back immediately—I think that Congress would be very reluctant to change it. If this went into effect in 1981 or 1982, I think they would let these two representatives make the total to 437 until 1990.

Mr. KLEE. Would you favor reducing the period for ratification of this amendment, then, from 7 years to 5 years, so that we would know one way or the other by the time the 1980 census was taken the fate of the amendment?

Mr. GUDE. I think that we should have the same amount of time for ratification of this amendment as we had for ratification of other amendments; I would favor the 7 years.

Mr. KLEE. One other question I would like to ask you concerns article V of the Constitution. You made the statement earlier that there is nothing that qualifies the process of constitutional amendments, you need two-thirds of both Houses to pass a resolution, and then you need three-quarters of the States.

But I would like to call your attention to article V of the Constitution, which is merely one long sentence with several semicolons in it. After the part about approval of both Houses of Congress and ratification of the three-fourths of the States it says, "Provided," and then it has some language that is now obsolete, "that no State, without its consent, shall be deprived of its equal suffrage in the Senate."

Now, from a legal standpoint, a proviso is a limiting clause on the language which it follows, and it seems to me that in this case the one proviso on the constitutional amendment process explicit in article V of the Constitution is that a constitutional amendment may not deprive a State, without its consent, of equal suffrage in the Senate, in spite of the preceding language. I wonder how you would respond to that?

Mr. GUDE. My feeling is, as I stated earlier, when the Constitution was ratified and as additional States have entered the Union, there has been acknowledgement that changes in the Constitution would come about through the ratification process, and that there are no strings attached to that. Of course, you can argue, take one other side

and say, "Well, this provision overrides the ratification process," but I think that if the Founding Fathers had had that in mind, they would have put a clause, or a phrase in, in relationship to the ratification clause, stating there was such a stipulation.

Mr. KLEE. That is exactly what this is. Article V is the ratification clause for a constitutional amendment, and this is a proviso in that same sentence, right at the end of that sentence. The process that you are referring to about admitting new States to the Union, a separate process, is enumerated in article IV, section 3, clause 1 of the Constitution. I think if the District of Columbia were being admitted to the Union as a State, it would then stand on an equal basis with the rest of the States percentagewise; but here that path is not being chosen, and what you have, in effect, is a non-State being represented in the Senate. The only way by which that can be done is by a constitutional amendment.

And when you look to the ratification clause in article V, you find this proviso, right in the same sentence.

Mr. GUDE. I think the ratification process was agreed upon, and I don't see that this pertains to that. Now, if you had a system where you granted three Senators to a State, or made some apportionment other than the one-man-one-vote apportionment, then I think you would be denying States equal representation.

Mr. KLEE. I suppose that leads into my next question and that is whether States or people are to be represented in the Senate. What is your particular view on that?

Mr. GUDE. Just as in the case of the 18-year-old vote, I think that times have changed; and just as the Supreme Court ruled that 18-year-olds were entitled to vote, I think people are entitled to representation in the Senate, though originally the concept of the Founding Fathers was that States were represented by the Senators.

Mr. KLEE. I agree that was the concept of the Founding Fathers, that the Senate represent States, and not people; but I would like to also point out that notion was confirmed as recently as 1913, upon the ratification of the 17th amendment which, in the second paragraph referring to vacancies says, "When vacancies happen in the representation of any State in the Senate * * *".

By what virtue should the people of the District of Columbia gain representation in the Senate without assuming the burdens of becoming a State; why should they be entitled to the benefits of statehood, without assuming the concomitant burdens?

Mr. GUDE. I don't know whether you consider taxation a burden, or not; but a lot of people do.

Mr. KLEE. Taxation is one of the burdens.

Mr. GUDE. And they are also serving in the Armed Forces. What burdens do not the people of the District of Columbia have?

Mr. KLEE. I think that they do not have the burden of financing their entire budget, the way the other States do. Is it not true that they receive a preferential status in terms of Federal financing in their budget?

Mr. GUDE. In the State of Maryland, we have had impact aid money to take the place of non-revenue-producing Federal facilities in the State. There is a recognition of the ownership of Federal property in the State of Maryland. But we don't think we get our fair share, either.

I don't think the District of Columbia is properly given recompense

for the amount of Federal property that's owned here in the city. I don't see any burdens that the people of the District of Columbia don't carry, that are carried by the citizens of other States. I don't think you can name one.

Mr. KLEE. I think we differ on the budgetary burden; I see that my time has expired. Thank you very much, Mr. Chairman.

Mr. DRINAN. Thank you very much, Mr. Gude, for your testimony. I'm sorry I had to step out for a moment. But, I was intrigued by not only your testimony this time, but 4 years ago you testified and indicated that in other capital cities of the free world, that they had nothing what we have in Washington, D.C. I have been going back as to the original intention of the Founding Fathers, and I would assume that it was quite by happenstance because of an incident which occurred in Philadelphia when they were threatened by certain soldiers, that they felt that some protection was needed.

But, as you brought out very well, in Stockholm, in Vienna, in Paris, in Rome, and indeed in London, where the Government was copied from by our Founding Fathers, they have nothing like it.

Would you say, therefore, that there is really no rationale that the Founding Fathers had with respect to the District of Columbia, that is permanent, or that really should concern us today?

Mr. GUDE. I have not seen any historical documentation where there was any type of positive assertion that the people of the District will be denied representation; nor is there a negative.

Mr. DRINAN. When the Congress, the first Congress accepted the newly acquired territory, "For the permanent seat of the Government of the United States."

I suppose the essence of the question goes back to that, what do we mean by a permanent seat. Those that will argue that this should be independent, it should not have any influences that would be in conflict with the Federal presence of the Federal work. But I really don't understand what they are saying. And if we can say that rationale doesn't continue, it has no applicability now, or never really had any applicability then, then I would assume that the question would be clear, to make this like a State.

Would you elaborate on one thing, though. You do say in your testimony 4 years ago, that, "In the newer nations our unwise disenfranchisement of the residents of our Capital has been imitated, in Brazil, for example."

Would you just elaborate a bit more on that because it might be helpful to us?

Mr. GUDE. I think in the case of Brazil, they provided in the new capital of Brasilia for representation and enfranchisement of the people in the new city.

Mr. DRINAN. So that the District of Columbia is unique among all the capitals of the world, and even in the English-speaking world, that the anomaly of the District of Columbia is precisely that, an anomaly that is not duplicated elsewhere?

Mr. GUDE. I think it's not only true of the free world, but the people of Moscow have the right to vote for their representatives in the Supreme Soviet—I don't know, maybe we can take a lesson.

Mr. DRINAN. Thank you very much.

Mr. EDWARDS. I believe there are no more questions, Mr. Gude. We thank you very much for your excellent testimony.

The committee takes particular pleasure to welcome this morning a resident of the District of Columbia, the District's No. 1 resident, as a matter of fact; its first elected Mayor in over 84 years, Mayor Walter E. Washington.

Mayor Washington certainly is aware of the power of the vote, and what a difference it can make to a community or to an individual. Mayor Washington, we welcome you here this morning, and you may proceed.

TESTIMONY OF HON. WALTER E. WASHINGTON, MAYOR, WASHINGTON, D.C.

Mayor WASHINGTON. Thank you very much, Mr. Chairman.

Before I proceed, I would, for the benefit of the committee, point out just one or two things that developed in the questioning, and then I'll proceed.

First is the eligible voters—I think Mr. Butler may have asked that question. It is estimated at about 500,000. The registered voters, based on purging the rolls from time to time, range between 250,000 and 300,000. The population is established by the last census, and updated in 1973, is 739,000, which is the basic population figure that would be used by any State or jurisdiction for determining congressional representation. The other figure that may interest you is that we estimated at the time of the home rule, pre-home rule time, that approximately 50,000 persons were residing in the District with registrations in their home States. Now, this is a fluctuating figure and was our best estimate.

Now, I thought in the background of this discussion it might be helpful to give you what our appraisal of the figures is.

Mr. Chairman and members of the committee, I am particularly pleased to appear before the Constitutional Rights Subcommittee of the House Judiciary Committee to support Joint Resolution 280 to amend the Constitution to give the District of Columbia full voting representation in Congress.

It is a simple enough proposition that is presented in this resolution:

> The people of the District constituting the seat of government of the United States shall elect two Senators and the number of Representatives in Congress to which the District would be entitled if it were a State. Each Senator or Representative so elected shall be an inhabitant of the District and shall possess the same qualifications as to age and citizenship and have the same rights, privileges, and obligations as a Senator or Representative from a State.

This is not the first time, as you have pointed out, Mr. Chairman, so eloquently, that any of us have appeared before the Congress on behalf of full enfranchisement of the citizens of Washington, D.C. However, as you pointed out, it is the first time that I have presented this cause as an elected official, and the period is 104 years, not 84; that is the period of time. And it brings another impact, it seems to me, to this hearing in the sense that the District of Columbia is now a self-governing community, like all the other cities of this great land, and this gives added emphasis and meaning to this joint resolution. It would open the doors of the Congress to elected voting Representatives of this city's 740,000 residents. And as the chairman pointed out, as we look back to the experience the Founding Fathers must have had to draw from France, or England, we find London and Paris as Federal cities with the right of representation and the right to vote.

It is also fitting, it seems to me, that we move at this time as the Nation approaches its 200th birthday. We have just marked the 200th anniversary of the start of the Revolutionary War, which was rallied with the cry that taxation without representation is tyranny. That is as timely today as it was then. That is why this resolution is so important and so timely.

It would also be the occasion to remedy a historic error—or what I would rather call a constitutional oversight, if you will.

In a sense, this measure is one of reenfranchising the residents of the Federal District that was created under acts of Congress in 1790 and 1791. Those acts did not take away the rights of the citizens in the areas ceded by Virginia and Maryland to elect their own officials and to vote for Senators and Congressmen. In fact, as Pulitzer Prize Historian Constance McLaughlin Green points out in her two-volume history of Washington, local citizens of the new District continued to vote in State and National elections as late as November 1800.

There is evidence that the Founding Fathers intended it to be that way—that the loss of suffrage amounted to an oversight that was not addressed when enabling legislation was enacted more than a decade before the first government of the new city of Washington actually came into being in 1802. Mrs. Green has cited the records of the Continental Congress, suggesting that it had been taken for granted by Americans of the 1780's that permanent residents of the Capital would indeed "enjoy the privilege of trial by jury and of being governed by laws made by Representatives of their own election."

And James Madison in the Federalist Papers, commenting on article 1, section 8, of the proposed new Constitution, apparently assumed that the new District would be fully franchised. He stated:

> The inhabitants will find sufficient inducements of interest to become willing parties to the cession; as they will have had their voice 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.

It was apparently assumed that existing laws of the two ceding States would provide for suffrage as well as the other rights that were transferred. Unfortunately, things did not work out that way and the suffrage pendulum has been swinging back and forth ever since, but never returning all the way to full suffrage. In 1802, the city of Washington elected a City Council and the President appointed the Mayor. Between 1820 and 1871 the Mayor was elected as well. Under the short-lived 1871 territorial form—it lasted only 3 years—the residents of the District elected the lower house of the territorial legislature, and a nonvoting delegate to the House of Representatives. One hundred years later, the District was once again permitted to elect a nonvoting delegate.

The suffrage pendulum swung far enough by 1961 to permit the District to vote for President, a privilege last exercised by its residents in 1800. I'm not sure you will find the exact citation of that in the Constitution.

By 1968 Congress authorized the election of the school board; and in 1973 Congress delegated the powers of self-government to the District of Columbia, but provided for the congressional review of the city's budget and its legislative acts. These provisions add importance to our historic desire to have a full voice in the Congress.

And if I might just parenthetically, Mr. Chairman, refer to a question that was raised, since I am dealing with the budget. The city receives, the city of Washington as the Nation's Capital receives no special consideration with respect to the Federal payment. Federal payment is a congressional matter of paying in lieu of taxes for services rendered. We have approximately 50 percent of property here in the Federal presence. I love the fact that it is here; I appreciate the fact that it's here; and I also appreciate the fact that the Congress recognizes that it must pay for those services. Now, if 50 percent of the Government, Federal presence was in any State, or any other jurisdiction, it would obviously pay for that. But, that payment, which is about 27 percent of the total budget of the city, is in lieu of taxes for services rendered; and the balance, 73 percent or thereabouts, is paid out of revenues raised in taxes from the citizens of the city. I would submit to you that this has not been over the years a very equitable relationship in terms of the amount, or scope of Federal presence. It is one that we have dealt with most recently in the Congress, in the Home Rule Charter, and sought to increase this in increments, recognizing that the cost of services, and the cost of delivery would increase. And so, we are in that process.

But there is no special consideration here for the city in terms of bailing the city out, which many people seem to feel. It is simply a matter of a working relationship with respect to the budget. I think we must remember that.

It is unquestionably, in my belief, time for the Congress to take the final step, the final step to grant full congressional representation.

I do not believe it is difficult to justify representation in the Congress for the citizens of Washington. Our basic democratic system provides such justification. With respect to the District of Columbia, the Congress not only has an impact on national affairs, as it does for all our citizens, but it has a special substantive and direct responsibility for the District's affairs. Ordinary fairness and basic principles of American democracy, therefore, require that the citizens of the District have a voice in Congress equal to that of individual citizens across the Nation.

In that connection, I would like to point out that according to the 1970 census the population of the District of Columbia is larger than 10 States, including 4 States which have two Representatives each.

As to burdens, the residents of the District have carried out their responsibilities as citizens. They pay Federal and local taxes; they fight and die in our country's wars; they live under laws enacted for them by Congress, and when our local residents perform these acts of citizenship, they are indeed entitled, in my opinion, to their full rights—the rights enjoyed by all other citizens of this Nation.

Therefore, I strongly support House Joint Resolution 280 and related resolutions which would propose full congressional representation for the District of Columbia.

I believe it is long past the time for America to make good on its promise of equal treatment for all its citizens—and I believe this means full congressional representation for the District of Columbia.

I thank you, Mr. Chairman, for this opportunity to testify; and I am certainly prepared to take any questions that you have.

Mr. EDWARDS. Thank you very much, Mayor Washington.

When we look back on the testimony of the three witnesses this morning, Mayor Washington, including yourself, of course, we always get back to the crux of the matter, that 740,000 American citizens are living here near the Nation's Capitol, are treated as second- or third-class citizens; isn't that correct?

Mr. WASHINGTON. Yes, sir.

Mr. EDWARDS. So, regardless of the technicalities and the problems, the constitutional problems, it's only fair and equitable that provisions should be made for them. Is that not correct?

Mayor WASHINGTON. That is absolutely correct, Mr. Chairman, and I would point out that the Constitution has been amended many times. I would expect that at the time that we had horses, and horse-drawn carriages, that there was not any anticipation of the automobile, but we found a way to address that problem in interstate commerce within constitutional and legislative means; and that means the kind of change that has occurred. I'm certain, Mr. Chairman, as you pointed out, that the Founding Fathers, No. 1, meant for this District to be fully franchised. I do not anticipate that they had in mind 740,000 people, any more than they perhaps had in mind the urban explosion which has now brought 80 percent of the entire people in America into metropolitan areas, I am sure they did not conceive of that. But we have found a way, away from what I call some technicality, to address the knowing and growing needs, basically democratic needs of our Nation, and that is what we are talking about, as you point out.

Mr. EDWARDS. Thank you, Mayor Washington. Mr. Butler?

Mr. BUTLER. Thank you for your statement. I want to congratulate you, I reviewed several of your previous statements, you have made about 10 of them on this subject, and none of them seem to be exactly alike. I think that demonstrates a lot of imagination, over the years, and I appreciate that. It seems to me most of the points have been raised in earlier questioning.

Mayor WASHINGTON. Well, I don't know which you refer to, Mr. Butler, but just as the issue is drawn, the statements are made, and they are all consistent.

Mr. BUTLER. Oh, absolutely, there are no inconsistencies. I think you have been for more representation for your people from the word "go".

I think you did deviate there for a moment, in 1970, when you said it would be sufficient to just have representation in the House of Representatives, and not in the Senate. I think you have strongly repudiated that position since then. Your position seems to be pretty clear in this regard.

Mayor WASHINGTON. I think it is.

Mr. BUTLER. I think, also, you have answered the constitutional questions which have been raised in the past.

I think the only real question that is still in my mind is, how do we justify getting this representation for the citizens of the District of Columbia when we are not doing the same thing for the citizens of the United States who are overseas, or elsewhere, who have separated themselves for one reason or another from their representative States. Do you care to say anything about that?

Mayor WASHINGTON. Yes; I would say this, Mr. Butler, I don't know in that amorphous number that you mentioned who you are really talking about.

Mr. BUTLER. 750,000 American citizens.

Mayor WASHINGTON. Yes, I know, but where they are; they might be all over the country. We are talking about a domicile where we can recognize 739,000 to 740,000 people. They are here, they are your citizens; they are serving us; they are serving their country; they are identifiable; they are within a configuration that has been set by the Constitution, and we know who we are talking about. And we know what their desires are. I come as their elected Mayor, speaking for their desires. I really can't deal with a problem that is, as I say, as amorphous as that one in terms of who is representing whom; where they are, whether they are from Canada to Sweden, or the Far East, I really just don't know.

I would like to be able to represent them, if they were concerned about my representing them. But, I came today to speak on behalf of those people whom I represent, whom I know; and whose desire is to have full congressional representation.

Mr. BUTLER. I thank the gentleman. I have no further questions.

Mr. EDWARDS. Mr. BADILLO?

Mr. BADILLO. Thank you, Mr. Chairman.

I want to welcome you, Mayor Washington.

Mayor WASHINGTON. Mr. Badillo, good friend.

Mr. BADILLO. I want to say to Mr. Butler, I know where you developed your imagination; there is nothing like being chairman of the New York City Housing Authority, or being an official of New York City to stimulate imagination over the years.

Mayor WASHINGTON. And may I say, at the time a great Congressman was the Bar President of the Bronx.

Mr. BADILLO. In view of what is happening in New York City, I would certainly agree.

Mr. Mayor, I wonder if you could tell us, at the present time, does the city of Washington receive its fair share of funds under the individual programs that are approved by Congress for education, for housing, for job training, or other areas?

Mayor WASHINGTON. I would say, Mr. Badillo, that we in some cases receive a fair share. And I must state it this way in order to appropriately answer your question. In some cases like revenue sharing, there have been amendments offered which would deny us the opportunity to participate in certain of those funds if, at the same time, we came forward with a reciprocal tax, or the so-called commuter tax.

We are constantly beset by amendments, or by someone leaving us out. They say "the States," and then they stop there, and we go through this battle year after year of whether we are, or not, and getting down to court action. And for most grants we do receive equal treatment, but again, there is a reconciliation in the Federal statute of the city of Washington, and States, which means that I serve for most grants as the governor. But, see, we have no problem dealing with that. I sign off on all of the corporations who are coming here, receiving grants as the governor; and though I do not have the title, there is an accommodation to that in order to deal with Federal grants, both those coming to the city, and those that are given to corporations and other people doing business within the city.

Mr. BADILLO. Right. But, rather than getting any special benefits, isn't it a fact that you have to be very careful when each law is passed to make sure that the city of Washington is included because the

general tendency is to provide for the States and then to have a set-aside for the District of Columbia and for the territories, so that unless you are alert what happens is that you tend to be excluded, rather than tending to be included.

Mayor WASHINGTON. Absolutely right. You are absolutely right, and I know from which you speak. This is a constant vigilance to keep the city in the mainstream of the entire grant process.

Mr. BADILLO. Thank you, Mr. Chairman.

Mr. EDWARDS. Mr. Kindness?

Mr. KINDNESS. Thank you, Mr. Chairman.

Mayor Washington, I have been particularly interested in your statement this morning as a former mayor of a small city. Our problems are very different.

I would like to ask, would you favor full statehood for the District of Columbia?

Mayor WASHINGTON. Well, I think there are problems inherent in that, that I can see at this time. I would be far more favorable, as I have indicated, to this process. I think you've got the Federal presence here, let's deal with that. And, in order to get statehood, you are going to either have to cut out an enclave, or in some way develop a configuration that is going to leave the Federal presence there. And you are going to have all kinds of problems with it because there are many people who think the Federal presence is simply Constitution Avenue, and Pennsylvania Avenue. But, you've got Walter Reed Hospital over here; and Anacostia, Bolling; you've got the forts and there is no way that you can see pulling those elements out that are really all around the city; the new home of the Vice President, the Naval Observatory. The city is basically ringed with old forts from the Civil War, and it's so physically, and economically and socially bound together that I would have problems with statehood in terms of exacting from it some enclaves, or little enclaves all around the city. Ultimately, it seems to me, that would erode the very fabric of the city itself, and the viability of the city. So, that's where I come from.

Mr. KINDNESS. You referred to the horse and buggy concepts being updated. Isn't it sort of a horse and buggy concept, possibly, that we have to deal somehow, constitutionally, with the matter of Federal presence in an area. Throughout the United States we have other Federal facilities that are quite dominant in some communities.

Mayor WASHINGTON. Yes.

Mr. KINDNESS. The Congress has dealt with those problems—perhaps not fully satisfactorily in some cases—but I think, in line with your thinking, we could probably solve those problems with the State of Columbia, or whatever it might be called, if it were a matter of providing full statehood to the District.

I was interested in Mr. Badillo's question about whether the city of Washington received a fair share of funds under Federal programs, and assure you that I harbor the feeling about Ohio, that we do not quite net our fair share. But, do you not agree that there is some advantage, also, to the geographic proximity, or physical presence and acquaintance with officials who deal in the Federal Government with the various programs, whereby you probably have the ultimate in grantsmanship operating in the District of Columbia?

Mayor WASHINGTON. Well, if you are speaking of me in that regard, I would accept it as a compliment. But I can tell you that in the area of grantsmanship, this is a highly competitive area, with cities, it doesn't really make much difference. I see the mayor of Los Angeles, the mayor of New York just about as frequently as I see some of my office heads in the city, and they are going after the Federal dollar. This is a period, a process of very, very serious competition for that dollar and I don't know that we have any particular advantage other than proximity; and sometimes that isn't always an advantage because at the same time we have people saying things about your program and your problem that they wouldn't say if they could get back home.

For instance, I have from time to time heard a Congressman say, "Look, I can't get back home, I'll take off on one of your programs, nothing personal." You know, just because I'm here.

Mr. KINDNESS. I assure you, in Ohio and many other parts of the Nation people get the impression that you do rather well here. So keep up the good work.

Mayor WASHINGTON. Thank you.

Mr. KINDNESS. I would just like to clarify that statehood does not appear to you to be the answer, in practical terms.

Mayor WASHINGTON. In practical terms. It sounds good, it looks good, but I fear for the possible erosion by virtue of the necessity to cut out areas that, in my opinion, identify the Federal presence you would not have to the same degree in other States.

And then, there is a converse, too. Look, you would not think where there are large areas of the Federal presence in our neighboring States, in northern Virginia, Norfolk, or in Tennessee, no one would think because those large installations are there that you would deny, or begin to deny the people that live in the area their right to vote, and their right for representation. I mean, if you look at it in the reverse with all the Federal presence that's around the country, and you start talking about taking it away in relationship, or in proximity to that, you would have one of the biggest howls that you have ever seen in this city and in this body.

Mr. KINDNESS. But they do not make the laws there.

Mayor WASHINGTON. No; but they do here.

Mr. KINDNESS. Right, and I think, basically, that——

Mayor WASHINGTON. I mean they affect the law, they vote and elect the people, that's what I'm trying to get to.

And you know, it's kind of ironic, we are able to vote for the President, nobody raised a big question about that. And now we are talking about another kind of representation that really gets us out of the last vestige of second-class citizenship and into the full stream of American participation, democratically. I just think it is so valid.

I have been sent out to States by the State Department, around the world twice, and I sit and talk to leaders in cities around the world. I have the most difficult time to make them understand that we cannot vote for our congressional representatives. They don't understand it, and it's difficult to talk about democracy in those terms.

I think we have taken most of the big steps, we have bitten the bullet on home rule, and it's going to work. And if we can go this distance, I think we are going to bring a great deal of democratic process, not only into the Nation, but into the world.

Mr. KINDNESS. There is no Federal enclave variation that is involved in the home rule situation, is there?

Mayor WASHINGTON. No.

Mr. KINDNESS. And really, this is not the last vestige of what's referred to as second-class citizenship. Going the whole way would be statehood, wouldn't it? I mean, that would be taking a full part.

Mayor WASHINGTON. I think you can do it. You know, now we are talking semantics. You are talking about a State. I think you can achieve, just as we were able to achieve home rule. We didn't need an enclave, we had the services, they are working. The whole fabric of the city is together. What I am trying to say is, I would like to see the fabric of the city knitted together as a city that is viable, with the Federal and the local facilities and interests—not necessarily together because we are talking about people ultimately, people working together—and once you begin to block out areas for any reason within a given jurisdiction, I think you've got problems. I think then you start the erosion which nobody wants to see.

Mr. KINDNESS. Of course, I would contend that's not at all necessary, to block out areas.

Mayor WASHINGTON. Well, I think that's exactly what statehood would do. Every bill I have seen had that feature in it.

Mr. KINDNESS. Well, this is one of those horse and buggy ideas, I suggest. There has to be some area carved out.

Mayor WASHINGTON. Well, you know, what we don't want to do is eliminate an alternative. We ought to examine that as we examine other pieces of it. I'm saying from my point of view, at the moment that is what I see. I do not discount it as a viable alternative.

Mr. KINDNESS. Thank you, sir.

Mr. EDWARDS. Mr. Parker?

Mr. PARKER. Thank you, Mr. Chairman.

There has been some discussion in the past as to who is eligible in the District of Columbia of those residents to vote. I take it with the election of last year, the machinery already exists in the District of Columbia to identify and register those persons, residents of the District who are eligible to vote?

Mayor WASHINGTON. That's correct.

Mr. PARKER. There is no problem. And that the machinery also already exists to conduct elections.

Mayor WASHINGTON. The machinery does exist to conduct any form of election, from the Presidential to the local election; that is correct.

Mr. PARKER. I was unclear, Mayor Washington, on the response to a question from Mr. Butler. Given the problems of taxation without representation, but taking care of that by granting representation in the House of Representatives for the people of the District of Columbia; and keeping in mind the problems of article V of the Constitution, do I understand you to say you would be satisfied, or it would be satisfactory to have representation in the House, but not the Senate?

Mayor WASHINGTON. No; absolutely.

Mr. PARKER. I was unclear, I wanted to give you an opportunity to make that clear.

Mayor WASHINGTON. I think Mr. Butler was referring to, probably, an earlier testimony where we were talking, perhaps, about the need

for a nonvoting delegate, were talking specifically about the need for a nonvoting delegate bill; I would assume that was what the issue was.

My consistent support has been for full representation in the House and Senate. You see, what happens is that you get a bill from time to time, and you talk to that particular bill; and you are not always dealing with the whole problem. But I think that both Mr. Fauntroy and I have been consistent in our efforts to get full voting representation in the House and in the Senate.

Mr. PARKER. Thank you very much. I have no further questions.

Mr. EDWARDS. Mr. Klee?

Mr. KLEE. Thank you very much, Mr. Chairman.

Mayor Washington, you seem to have stated the proposition here this morning that you think that amending the Constitution, which I take it you agree is a very serious step that has only been accomplished 26 times and attempted a few more times than that, is a more desirable alternative than for the District of Columbia to become a State pursuant to article IV, section 3, clause 1, as was provided by the Founding Fathers.

Yet, your reluctance to statehood stems from the fact that you think certain areas will have to be carved out. There are Federal concentrations in other areas, in other States, and while the State has no jurisdiction over them, there was not any carving out.

Mayor WASHINGTON. Such as?

Mr. KLEE. Such as all around the country. When you have an Army base it is located in the State, but it is wholly Federal; a Veterans Administration, located in Los Angeles, for example is wholly Federal.

Mayor WASHINGTON. Yes.

Mr. KLEE. Now, what is the situation under home rule, do you have jurisdiction over the entire District of Columbia?

Mayor WASHINGTON. No; we don't have jurisdiction, we have a working relationship. We have jurisdiction over the entire District of Columbia as it relates to streets, roads, and other areas. The actual building, Federal building, is under Federal jurisdiction. But we have working relationships. You don't have a fire department, we provide that service. We provide police services, we provide water, sewer.

Mr. KLEE. How would that change if the whole District were made into a State? What would the change be?

Mayor WASHINGTON. The problem is whether or not you have Federal presence, and I am talking about those aspects of statehood proposals that I have seen up to now. It's a viable alternative, I just don't, as I have said, in my opinion at this point, in what legislation has come down, there has not been an adequate statehood proposal developed. And I think, on the other hand, that the constitutional amendment process here, just as the statutory process, embraces the city as a State from time to time is viable.

Mr. KLEE. Thank you.

You said you want to elevate the status of the District of Columbia citizen above that of a second- or third-class citizen. You also gave a figure for the number of people residing in the District that are domiciled in other States.

Mayor WASHINGTON. We estimated at the time we were putting together our figures for the home rule registration about 50,000.

Mr. KLEE. 50,000?

Mayor WASHINGTON. Yes.

Mr. KLEE. In striving to make the citizens of the District of Columbia other than second-class citizens, you would not advocate anything more than equal representation on a basis with the rest of the country, would you?

Mayor WASHINGTON. No.

Mr. KLEE. Would not the effect of section 2 of the 14th amendment, which has customarily resulted in apportionment on the basis of residence rather than domicile, have this effect in that representation would be given to citizens residing in the District of Columbia even though they were domiciled elsewhere?

Mayor WASHINGTON. I don't think so, I don't think so. I think for whatever reasons they prefer to continue to vote in their own home States ought to be preserved; and I don't believe there is any special consideration that would grow to that.

Mr. KLEE. The chairman has indicated that my time has expired.

Mr. EDWARDS. I regret, Mayor Washington, the bells call us. Thank you very much for your testimony; and I apologize, Mr. Klee.

The next meeting of the subcommittee on this subject will be Monday, the 23d.

Mayor WASHINGTON. Thank you again, Mr. Chairman, and members of the committee, for the hearing.

[Whereupon, at 12:10 p.m., the subcommittee adjourned, to reconvene on Monday, June 23, 1975.]

REPRESENTATION OF THE DISTRICT OF COLUMBIA IN THE CONGRESS

MONDAY, JUNE 23, 1975

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON CIVIL AND CONSTITUTIONAL RIGHTS
OF THE COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The subcommittee met, pursuant to notice, at 10:23 a.m., in room 2141, Rayburn House Office Building, Hon. Don Edwards [chairman of the subcommittee] presiding.

Present: Representatives Edwards, Drinan, and Kindness.

Also present: Alan A. Parker, counsel; and Kenneth N. Klee, associate counsel.

Mr. EDWARDS. The committee will come to order.

Today we continue our series of hearings on House Joint Resolution 280 which would amend the Constitution to provide for representation of the District of Columbia.

Our hearings last Tuesday were helpful in again highlighting the areas which require discussion and in outlining the case for such representation.

Today we have a distinguished panel brought together by the Coalition for Self-Determination of the District of Columbia, Mr. John Hechinger, vice president of the Executive Board of the Coalition for Self-Determination of the District of Columbia, and a long-time active citizen in District of Columbia affairs, a friend of the committee's for a long time; Mr. Dick Clark, the national chairman of the Coalition for Self-Determination of the District of Columbia, and an assistant to the president of Common Cause; and Judith Heimann, director of the League of Women Voters of the United States, an organization which is a member of the Coalition for Self-Determination of the District of Columbia, and chairman of the Representative Government Department of the League of Women Voters of the United States.

The committee welcomes all of you. And our first witness we will hear from will be Mr. John Hechinger, and you may proceed.

TESTIMONY OF JOHN HECHINGER, VICE PRESIDENT OF THE EXECUTIVE BOARD OF THE COALITION FOR SELF-DETERMINATION OF THE DISTRICT OF COLUMBIA

Mr. HECHINGER. Thank you, Mr. Chairman, and Mr. Kindness.

Mr. Chairman, I am here to represent the Coalition for Self-Determination of the District of Columbia, a coalition of 43 organizations ranging from the Republican Central Committee to a neighborhood citizens group, CHANGE, to the Board of Trade to the ACLU. I am attaching a list of these organizations to my testimony.

The last time I appeared before the committee was the year they were toting up the results of the decennial census. I pleaded then and plead now that everybody counts—everybody but us, the citizens of the District of Columbia.

What frustration. The decennial census year has passed, just as decade after decade has rolled by without a redress of this fundamental denial of the right to be counted, the very root cause of next year's celebrations of the Bicentennial—that there shall be no taxation without representation.

The effort to redress this wrong goes a long way back for me. For it was not just in the decennial census year that I, a fourth-generation Washingtonian, pleaded for relief, but it was my great-grandfather, who now lies buried in Anacostia, who started this trek to Capitol Hill in the so-far-futile struggle to obtain simple equal rights.

The people of Washington in accordance with that 1970 census make up a body that is greater than 10 States—a body of people who pay taxes into the Federal Treasury greater than 17 of the States.

We have served and are serving in the Armed Forces of our country without a voice in the recent traumatic deliberations on the issues of Vietnam or any foreign engagements.

To engage in the formulation of the national policies of our country should be granted not in halfway measures, but in full representation in Congress by allowing us two Senators and that number of Members of the House of Representatives in accordance with our population. We are a State entity, recognized by Congress as such in the home rule bill. We have been given the authority of a State. Cities are creatures of the State, whereas the States are the creatures of the people. We are not the creatures of a State, but are the creatures of the Constitution, as the creation of the District of Columbia is specifically within article I, section 8, clause 17, of the Constitution—and the Constitution is the creation of the people.

Additionally, we are not geographically located within any other jurisdictional entity as a city is within a State. Our boundaries are like a State's in that there is no placement within the context of another political entity.

Anticipating a question regarding those cities that have a larger population than we, "Would it not be unfair for us to receive congressional representation and not those cities?"—the argument is not with this proposed amendment, but with the constitutional framework itself. We all know that the Constitution's drafters compromised in the development of the membership of the Senate and House regarding the smaller versus the larger States by having the population the determining factor for the number of Members each State would have within the House of Representatives, and that each State, regardless of size, would receive two Senators. Therefore, as does a State, we should receive two Senators, for it fits the entire concept of representation in the Senate. After all, there are many cities that have a larger population base than many of the States, but we in the District of Columbia are a State.

We should be given full measure in Congress rather than be asked to take compromises. We have had enough of compromises. We have been granted home rule, but with tremendous inequities in relation to 200 million other Americans. For example, Congress must still

approve our revenues and expenditures. Congress may overturn any legislation enacted by our elected officials. Further, the President still appoints judges, can call out local police, and can sustain a Mayor's veto if the City Council has overridden it. We cannot change our courts or our criminal code. These things demonstrate how we differ from other cities and go to justify why we should have full representation in both Houses of Congress to espouse our interest and concerns, not only nationally but regarding the local matters that Congress has withheld from our limited grant of self-determination at the municipal level.

It is represented that the Members of Congress are jealous of their proportionate power and do not wish to dilute it further. Why should we be treated differently from the admission of other States to the Union? Besides, the Congress should recognize that, due to the lack of vote, they are temporary citizens of the District of Columbia who moved here 20 years ago to take a temporary job in a temporary building, who are still here and are voting in your home districts by absentee ballot, canceling out and nullifying some voter back home who understands and cares about the issues of your district. These expatriates should be given the vote by full representation here, along with us natives who are getting damn restless on the eve of the historic Bicentennial.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Hechinger follows:]

STATEMENT OF JOHN W. HECHINGER, VICE PRESIDENT OF THE COALITION FOR SELF-DETERMINATION OF THE DISTRICT OF COLUMBIA, FORMER CHAIRMAN OF THE D.C. CITY COUNCIL, AND DEMOCRATIC NATIONAL COMMITTEEMAN

Mr. Chairman, I am here to represent the Coalition for Self-Determination of the District of Columbia, a coalition of 43 organizations ranging from the Republican Central Committee to a neighborhood citizens group, CHANGE, to the Board of Trade to the ACLU. I am attaching a list of these organizations to my testimony.

The last time I appeared before the Committee was the year they were toting up the results of the decennial census. I pleaded then and plead now that everybody counts—everybody but us, the citizens of the District of Columbia.

What frustration! The decennial census year has passed, just as decade after decade has rolled by without a redress of this fundamental denial of the right to be counted, the very root cause of next year's celebrations of the Bicentennial—that there shall be no taxation without representation.

The effort to redress this wrong goes a long way back for me. For it was not just in the decennial census year that I, a fourth-generation Washingtonian, pleaded for relief, but it was my great-grandfather, who now lies buried in Anacostia, who started this trek to Capitol Hill in the so-far futile struggle to obtain simple equal rights.

The people of Washington in accordance with that 1970 census make up a body that is greater than 10 States—a body of people who pay taxes into the Federal Treasury greater than 17 of the States.

We have served and are serving in the Armed Forces of our country without a voice in the recent traumatic deliberations on the issues of Vietnam or any foreign engagements.

To engage in the formulation of the national policies of our country should be granted not in halfway measures, but in full representation in Congress by allowing us two Senators and that number of Members of the House of Representatives in accordance with our population. We are a state entity, recognized by Congress as such in the Home Rule Bill. We have been given the authority of a State. Cities are creatures of the State, whereas the States are the creatures of the people. We are not the creatures of a State, but are the creatures of the Constitution, as the creation of the District of Columbia is specifically within Article I, Section 8,

Clause 17, of the Constitution—and the Constitution is the creation of the people.

Additionally, we are not geographically located within any other jurisdictional entity as a city is within a state. Our boundaries are like a State's in that there is no placement within the context of another political entity.

Anticipating a question regarding those cities that have a larger population than we—"Would it not be unfair for us to receive congressional representation and not those cities?"—the argument is not with this proposed amendment, but with the Constitutional framework itself. We all know that the Constitution's drafters compromised in the development of the membership of the Senate and House regarding the smaller versus the larger states by having the population the determining factor for the number of members each state would have within the House of Representatives, and that each state, regardless of size, would receive two Senators. Therefore, as does a state, we should receive two Senators, for it fits the entire concept of representation in the Senate. After all, there are many cities that have a larger population base than many of the states, but we in the District of Columbia are a State.

We should be given full measure in Congress rather than be asked to take compromises. We have had enough of compromises. We have been granted Home Rule, but with tremendous inequities in relation to 200 million other Americans. For example, Congress must still approve our revenues and expenditures. Congress may overturn any legislation enacted by our elected officials. Further, the President still appoints judges, can call out local police, and can sustain a Mayor's veto if the City Council has overriden it. We cannot change our courts or our criminal code. These things demonstrate how we differ from other cities and go to justify why we should have full representation in both Houses of Congress to espouse our interest and concerns, not only nationally but regarding the local matters that Congress has withheld from our limited grant of self-determination at the municipal level.

It is represented that the Members of Congress are jealous of their proportionate power and do not wish to dilute it further. Why should we be treated differently from the admission of other States to the Union? Besides, the Congress should recognize that, due to the lack of vote, they are temporary citizens of the District of Columbia who moved here 20 years ago to take a temporary job in a temporary building, who are still here and are voting in your home districts by absentee ballot, canceling out and nullifying some voter back home who understands and cares about the issues of your district. These expatriates should be given the vote by full representation here, along with us natives who are getting damn restless on the eve of the historic Bicentennial.

COALITION FOR SELF-DETERMINATION MEMBERSHIP

National members

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American Federation of State, County & Municipal Employees
American Jewish Committee
American Jewish Congress
American Federation of Teachers
American Veterans Committee
B'nai B'rith Women
Common Cause
National Alliance of Postal and Federal Employees
National Association for the Advancement of Colored People
National Association of Black Women Attorneys
National Education Association
American Civil Liberties Union
League of Women Voters
Democratic National Committee
The Rippon Society
United Presbyterian Church
Washington Research Project Action Council

Metropolitan members

ACLU—National Capital Branch
ADA—National Capital Branch
D.C. Bicentennial Commission
Metropolitan Washington Board of Trade

Catholic Archdiocese of Washington
Central Labor Council
CHANGE, Inc.
Delta Sigma Theta Sorority, Inc.
D.C. Citizens for Better Public Education
Committee for Aid & Development of Latin Americans in the Nation's Capital
Common Cause—D.C.
Democratic Central Committee
Downtown Jaycees
D.C. Federation of Civic Associations
Federation of Settlement Houses
Jewish Community Center of Greater Washington
League of Women Voters—D.C.
Metropolitan Washington Housing and Planning Association
Model Cities Commission
POPE, People Organized for Progress and Equality
Republican Central Committee
SED Center
Washington Bar Association
Washington Teachers Union
Women's Political Caucus
V.O.I.C.E.

Mr. EDWARDS. Thank you, Mr. Hechinger. And if there is no objection, we will have all three members of the panel give their testimony and the committee will have questions after that.

Mr. Clark, do you want to proceed, please?

Mr. CLARK. Mrs. Heimann is next.

Mr. EDWARDS. Ms. Heimann. I am sorry.

TESTIMONY OF JUDITH B. HEIMANN, LEAGUE OF WOMEN VOTERS OF THE UNITED STATES

Ms. HEIMANN. Mr. Chairman, I am here representing the League of Women Voters. The league has approximately 145,000 members in all 50 States. It is a matter of great concern to us that a basic right, representation for taxpayers, has not yet been granted to the citizens of our Nation's Capital.

Direct representation in Congress for the citizens of the District of Columbia became a part of the league program in 1924 and over the years our members have worked for the goals of full representation and home rule. Leagues across the country actively supported the 1961 ratification of the 23d amendment to the Constitution, giving District of Columbia citizens the right to vote for President and Vice President. In 1970, members launched a nationwide campaign, including a petition drive, in which over a million and a quarter signatures were collected in support of full voting representation in Congress for District of Columbia citizens. As an interim measure, we also supported the nonvoting delegate bill.

It is ironic that, as our Nation is preparing to observe its Bicentennial, the basic right fought for by the original 13 colonies—the right to have a vote in their Government—has still not been accorded citizens of the District of Columbia. The Declaration of Independence states: "Governments are instituted among men, deriving their just powers from the consent of the governed." But 200 years after the Revolution, the people of Washington, D.C. are still being governed without their consent. The District of Columbia has a population greater than 7 States which now have representation in Congress. Yet District citizens do not have voting representatives in the Congress

that has a veto power over local government decisions and holds the purse-string control, thus denying them rights of self-government that other American citizens consider their due under the Constitution.

The LWVUS strongly favors a constitutional amendment such as that provided by House Joint Resolution 12 and House Joint Resolution 280. That is, we favor the same representation for the District in the U.S. Congress that the District would have if it were a State—two Senators and a proportionate number of Representatives. Should the 94th Congress submit this or a similar amendment for ratification by the States, the league will work to secure ratification. We appreciate the efforts of the Judiciary Committee in acting favorably on similar legislation in the past, and we urgently request this committee once again to recommend the immediate passage of House Joint Resolution 12 or House Joint Resolution 280.

Thank you.

[The prepared statement of Ms. Heimann follows:]

STATEMENT BY JUDITH B. HEIMANN, LEAGUE OF WOMEN VOTERS OF THE UNITED STATES

I am Judith Heimann, member of the Board of Directors of the League of Women Voters of the United States and chairman of the Representative Government Committee. I am pleased to make this statement in support of H.J. Res. 12 and H.J. Res. 280, which provide for a constitutional amendment to guarantee for the District of Columbia voting representation in Congress.

The LWVUS is a nonpartisan citizen organization, with approximately 145,000 members in all 50 States as well as the District of Columbia, Puerto Rico and the Virgin Islands. It is a matter of great concern to us that a basic right, representation for taxpayers, has not yet been granted to the citizens of our Nation's capital.

Direct representation in Congress for the citizens of the District of Columbia became a part of the League program in 1924 and over the years our members have worked for the goals of full representation and home rule. Leagues across the country actively supported the 1961 ratification of the 23rd Amendment to the Constitution, giving D.C. citizens the right to vote for president and vice-president. In 1970, members launched a nationwide campaign, including a petition drive, in which over a million and a quarter signatures were collected in support of full voting representation in Congress for D.C. citizens. As an interim measure, we also supported the non-voting delegate bill.

It is ironic that, as our Nation is preparing to observe its Bicentennial, the basic right fought for by the original 13 colonies—the right to have a vote in their government—has still not been accorded citizens of the District of Columbia. The Declaration of Independence states: ". . . governments are instituted among men, deriving their just powers from the consent of the governed." But 200 years after the Revolution, the people of Washington, D.C. are still being governed without their consent. The District of Columbia has a population greater than seven States which now have representation in Congress. Yet District citizens do not have voting representatives in the Congress that has a veto power over local government decisions and holds the purse-string control, thus denying them rights of self government that other American citizens consider their due under the Constitution.

The LWVUS strongly favors a constitutional amendment such as that provided by H.J. Res. 12 and H.J. Res. 280. That is, we favor the same representation for the District in the U.S. Congress that the District would have if it were a State—two Senators and a proportionate number of representatives. Should the 94th Congress submit this or a similar amendment for ratification by the states, the League will work to secure ratification. We appreciate the efforts of the Judiciary Committee in acting favorably on similar legislation in the past, and we urgently request this committee once again to recommend the immediate passage of H.J. Res. 12 or H.J. Res. 280. For Your Information—LWVUS Statement of Position on D.C. Self-government:

District representation in Congress and in the Electoral College became a part of the program in 1924; *self-government* for the District in 1938. Following the 1961 ratification of the Twenty-third Amendment to the U.S. Constitution, which gave the District representation in the Electoral College, the 1962 Convention adopted: "Support of self-government and representation in Congress for the District of Columbia." Each Convention since then has affirmed the position.

Mr. Edwards. Thank you very much, Ms. Heimann, for an excellent statement.

Mr. Clark.

TESTIMONY OF RICHARD W. CLARK, CHAIRMAN, NATIONAL BOARD OF DIRECTORS OF SELF-DETERMINATION FOR THE DISTRICT OF COLUMBIA

Mr. Clark. Yes, Mr. Chairman. I would like to just make a few brief comments as opposed to reading my entire testimony.

Mr. Edwards. Without objection, the full testimony will be made a part of the record, Mr. Clark, and you may proceed.

[The prepared statement of Mr. Clark follows:]

STATEMENT OF RICHARD W. CLARK, CHAIRMAN, NATIONAL BOARD OF DIRECTORS OF SELF-DETERMINATION FOR D.C.

Mr. Chairman and members of the Committee, I am appearing before you in behalf of Self-Determination for D.C., a coalition of 18 national organizations and 26 metropolitan D.C. organizations. The organizations which comprise the coalition represent millions of Americans from every state in the Union as well as the District of Columbia. I am also a staff member of Common Cause, one of the member organizations and strong backers of the Self-Determination coalition. Common Cause would like to especially associate ourselves with the present testimony. We will also submit a supplementary statement for the record in support of full voting representation.

Self-Determination believes that responsible government in a democracy must be accountable, accessible and responsible to the people it is intended to serve. We believe that full voting representation in Congress is essential for the achievement of responsible government in our nation's capital city.

The national coalition supports full voting representation in the House and Senate according to the apportionment formula which would apply if the District were a State. We recognize that the District is not a state, but in the same way that the framers of the Constitution found a creative way to provide for proportional and equal representation, so it is our challenge today to find a fair way of providing balanced representation for the people. The District of Columbia is a unique political entity. The search for an answer to the present anomaly of taxation without representation will likely be unique.

The credibility of our political and governmental institutions is being severely tested by the course of recent events. We must seize every opportunity to restore confidence in government by bringing the practice of government more in line with the democratic philosophy and ideals of our federal republic. What better place to contribute to the resurrection of that spirit, than in the District of Columbia—the seat of our national government and a focal point of our bicentennial celebration.

There has been a long tradition of advocacy for Congressional Representation and other rights of citizenship for District residents. In *Federalist Paper* No. 43, James Madison referred to the necessity of providing for the "rights and consent of the citizens" who were to inhabit the Federal District. In the same passage, he asserted in principle the right of federal district residents to have a "voice in the election of the government which is to exercise authority over them."

The relocation of the Federal Government to Washington in 1800 marked the beginning of the Congressional debates concerning the nature of the District

Government, debates which have extended to this very day. Similarly, every President since 1915 has made some public pronouncement in support of representation. The issue has traditionally had bipartisan support, an example of which was its inclusion in both the Democratic and Republican party platforms in 1972.

During the past decade and a half, Congress has responded on several occasions to the continuing concern for more responsible government in the District. Recognition of the second-class status of the District as well as the need for reform was implicit. The enactment of the 23rd Amendment in 1961, the Reorganization Plan of 1967, the provision for an elected school board in 1968, the non-voting delegate bill in 1970, and enactment of home rule legislation in 1973, were all in response to the second class status of the District and the need for reform.

Each of these legislative actions was progressive. However, they have not, and could not, reduce the political anomaly, and absurdity, of denying District residents equitable representation in that same legislative body—the Congress of the United States—which under the Constitution has exclusive jurisdiction over District affairs. The absurdity is even more pronounced when we understand that, with only partial home rule status, the 535 members of the Congress still serve as overseers for the District, deliberating on issues, especially fiscal matters, which are normally reserved to local or state legislative bodies, wasting the valuable time of national legislators.

The Constitution neither requires nor denies Congressional Representation for the District of Columbia. Accordingly, many advocates of District representation suggest that the Founding Fathers' omission was one of mere oversight. Speculation aside, it is fact that the circumstances surrounding that omission and its ramifications are far more profound in 1975 than they were in 1787.

The framers of the Constitution probably did not anticipate the evolution of a Capitol City of three-fourths of a million people—more populous than any state upon the founding of the Republic, and more populous in 1975 than ten states. Who among these forefathers would have foreseen that by 1967, one hundred eighty years later, District residents would have the highest per capita income among the several states, and pay more in federal income taxes than 17 states.

Several years have elapsed since the House Judiciary Committee last deliberated on the District representation issue. As was the case then, it is unlikely that the Committee will find much public testimony in opposition to the *principle* of voting representation for the Capitol City. Indeed, there is apparent awareness that citizens of the District have fought and died for our country (at a higher per capita rate than the citizenry of the majority of states), are held accountable to the laws of the land, and otherwise fulfill the responsibilities and requirements of citizenship. Thus, by what manner of rationality, justice and morality can the District be denied full representation? How much longer can we abrogate the rights of citizenship for hundreds of thousands of our own countrymen while attempting to proselytize much of the rest of the world for democracy?

Home rule, as well as representation, is requisite for the provision of equal protection and participatory democracy for the citizens of the District. The absence of full home rule, especially budgetary authority, like the absence of Congressional representation keeps alive an opprobrious legacy of colonialism. Despite the provision of limited home rule in 1973, under Article I. Section 8, Clause 17 of the Constitution, exclusive jurisdiction "in all cases whatsoever", is still reserved to the Congress. To deny the District equitable representation in the Congress is to make mockery of the spirit as well as the substance of our democratic process. This unenviable condition will remain so long as the District is denied equal representation in the deliberations and decision making process of both bodies of that ultimate legislative authority, the Congress of the United States.

In a related connection, it is a typical irony that Senator Inouye, former chairman of one of the Congressional committees designated to oversee District affairs, represents a constituency geographically situated thousands of miles away. As an advocate of home rule and representation, the Senator once noted the socio-economic contrast between the District and his primary constituency, Hawaii. The irony is perhaps culminated in recognition that the interests of the two are on occasion in decided conflict.

From the preceding example, it requires little insight to understand the potential problems of morale and incentive which are imposed upon a Congressman who, following his role as overseer, is often conscripted to serve as "advocate-by-default" for District interests. It is trite to even have to suggest that the ad-

vocacy role for District interests can only fairly be performed by representatives accountable to the District electorate, especially where conflict of interests exist.

The quest of justice and equality for the District would not be complete without reference to the numerical comparison of its population and representation to other states. The 1970 decennial census ranks the District population as 41st in comparison with the fifty states. Most significant is the fact that the ten states with populations smaller than the District have a combined total of 35 full-voting Congressmen—20 Senators and 15 Representatives. Contrast these figures with the absence of a single full-voting representative in either body of Congress who is accountable to the District citizenry. As stated by Clinton Rossiter in the introduction to the Federalist, "[There is] no happiness without liberty, no liberty without self-government, no self-government without constitutionalism, no constitutionalism without morality * * *."

Mr. Chairman, the issue before the Committee is clear. It is the case of three-quarters of a million citizens, effectively disenfranchised by the failure to provide them representation in the national legislature. These citizens have a two-fold interest in fair and equitable representation in the Congress. First, there is the matter of the District's basic right to equitable representation in the federal legislative process. Secondly, there is the matter of the District's right to participate in the legislative body having exclusive jurisdiction over their local affairs, a situation unique to the District.

The evidence is clear that there is no manner of rationality, justice or morality by which the District can any longer be denied the rights and privileges of our participatory democracy. Self-Determination believes that to further delay justice to the District is to deny justice. Similarly, to compromise the theoretical ideal of Congressional representation through the advocacy of less than full representation—that is, two Senators and House representation according to apportionment—would be to grant the forces of political expediency precedence over the rights of citizenship.

COALITION FOR SELF-DETERMINATION MEMBERSHIP

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American Jewish Committee
American Jewish Congress
American Federation of Teachers
American Veterans Committee
B'nai B'rith Women
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National Association for the Advancement of Colored People
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Metropolitan Washington Housing and Planning Association
Model Cities Commission
POPE, People Organized for Progress and Equality
Republican Central Committee
SED Center
Washington Bar Association
Washington Teachers Union
Women's Political Caucus
V.O.I.C.E.

Mr. CLARK. Thank you. I did want to say that I am representing the national coalition which is a part of the self-determination for the District of Columbia. I represent 18 national organizations. Mr. Hechinger represents the local component of that same coalition.

We are here to testify today also in support of Joint Resolution 280 as well as 12, which both provide for full representation based on the formula that would apply if the District were a State. This happens to be the fourth time that I have had occasion to testify in support of full representation since coming to the District in 1968.

Considering that the bill before us, as in past years, is only one or two pages long, it seems to me that perhaps our problem is more political than it is substantive. I have begun to feel the frustration, as I know many other people in the District of Columbia feel, who are coming back time after time, without resolution of a principle that seems very, very basic and very fundamental to us, and that relates to the whole question of participation in that body which is responsible ultimately for our legislative affairs. This frustration I think about personally and seems very little compared to the frustration that organizations such as Mrs. Heimann's must feel when they have been involved in this campaign since 1925. I am aware that there is at least one person in this room who has sat through years and years of hearings over a 25-year period, again in a question of something that seems very fundamental.

I think that we have all heard the arguments for full representation, including the historical omission argument, the Federalist Paper 43 argument, and of course, the more basic taxation without representation argument.

You are probably equally familiar with the arguments against voting representation, at least the key arguments. I happen to feel that a number of those key arguments are really making the case for representation, one being that the District of Columbia is a Federal city. I think that there is no one here that would deny the fact that the District of Columbia is the Federal city, and that, in fact, the monuments, the Federal buildings and the Capitol are proprietary interests of citizens from across the country in every State. However, we do not extend that proprietary interest to the residents of the District of Columbia. We think that the people are the people and, therefore, are not possessed or owned by the rest of the people in the country.

Another argument is that the District is not a State. I think it is absurd. Of course, the District is not a State. That is the essence of our being here and proposing the advocacy of a Constitutional amendment.

The third argument that we hear quite frequently is that people coming to the District of Columbia know in advance that they cannot vote or will not have representation in the Congress. Well, I happen to be one of those very naive people who apparently did not read my history books very well and was not aware of that until I actually got here, or at least I had never given it very much forethought.

I think it is also pertinent that I remember during hearings in 1973 on home rule in which Congressman Cable from Texas made the point that it seemed rather ridiculous to have people maybe having a toothbrush back in their home districts just so that they could establish a residency requirement or meet a residency requirement, when in fact, they are spending and living their daily lives here in the District of Columbia. It is where they work, it is where they play, it is where their children go to school.

I think the critical point is that the Constitution neither provides nor proscribes voting representation in Congress. That is at the heart of the problem that is before us and also of my previous statement that I think it may be in the end more political than substantive.

The challenge before the committee today is one that this committee has dealt with very recently in the Voting Rights Act, and that is the case for the expansion of voting rights, not for the restriction or the limitation on voting rights, the same way that we expanded voting rights in the 14th amendment, the 19th amendment, the 23d amendment, the 24th amendment, and the 26th amendment.

This also happens to be the 23d or 24th, I was unable to verify which, 23d or 24th time since 1800 that Congress has deliberated on this issue. That, in and of itself, perhaps, makes a strong case for certainly the principle of voting representation for the District of Columbia, the fact that we have not been able to put this issue to rest, because it is so basic, it is so fundamental.

Congress too has already recognized the unique status of the District and that it should be recognized as a State for certain purposes. That is in the 23d amendment. So I think that that principle certainly is already there, again, that the District should have or can be represented as a State for certain purposes.

We call on Congress to now extend that same principle to treatment of the District of Columbia as a State for purpose of full voting representation in Congress.

Mr. EDWARDS. Thank you, Mr. Clark.

Well, I believe what we will do is in the questions any of the panel can volunteer to answer or we can have two or three answers to some of these problems, because it is not an easy bill to enact. And as you know, historically it has been difficult and it is not going to be particularly easy this time either.

A lot of it has to do with what the attitudes are back home in the various constituencies of the Members of the House and of the Senate. And that is why I am glad Mrs. Heimann's organization, which is nationwide, is in support of the bill, and will use its influence, which is rather large, back home. We have found from very recent experience that getting a two-thirds vote in the House is not an easy thing to get, and that is what we have to have for this bill, and the same in the Senate, and the Senate is the one that is more affected than this body would be.

One of the questions that we are going to have to answer over and over again, and which other witnesses have answered forthrightly, and I am sure you will too, is you are asking Congress to give the District of Columbia two Senators and apparently two House Members, but you would not pick up the burdens of being a State. Now, what is your answer for that? That is going to be asked of us over and over. It would be much easier if you came to Congress and said, we want to be a State.

Mr. HECHINGER. Mr. Chairman?

Mr. EDWARDS. Mr. Hechinger.

Mr. HECHINGER. In terms of not picking up the burdens of a State, in what way will we have not picked up that burden?

Mr. EDWARDS. Well, you will not be a State.

Mr. HECHINGER. We will not be a State?

Mr. EDWARDS. That is right.

Mr. HECHINGER. In terms of the contributions of those things that a State has in relation to the Federal Government, I think we could rightly claim that we already have the burdens of a State. What we are asking for is the privilege, the full privileges of being a State, rather the right that goes with that burden of representation in the national houses of representation. For we carry the burden, in terms of interstate commerce, in terms of wage and hour and those things which reflect in our municipal laws the same as a State, taxation, Federal taxation. I believe our Federal taxes are $1 billion. We are picking up the burdens.

Mr. CLARK. I would like to add to that by saying that I am not sure that I would agree with that assumption. Certainly the District of Columbia has, in terms of its advocacy for maximum local self-government and representation in Congress, demonstrated its clear willingness and interest in having the greatest degree of political rights possible. The question of statehood has been raised over and over again. Self-determination several years ago was attempting to decide its own position on this. We did not rule out the possibility of statehood. What we said was we would accept the fullest degree of home rule and representation, whatever that happens to be.

It is our opinion at this point that the statehood would, you know, ideally be a good idea. We would love to have the responsibility. We already are, as John pointed out, responsible, for example, for raising taxes locally under the home rule bill. But we do not have the authority to exercise full fiscal control over those same local affairs. We have the taxing responsibility without the budgetary authority, as you are well aware of.

There are other problems with the whole statehood question that are very political. One is that we have not seen in the Congress of the United States any constituency for statehood, even though it has been discussed and bills have been introduced many times in the past. During the last session of Congress, we could not count more than 12 or 15 members in the entire Congress who were advocating statehood, who would get out in front on that issue. So, it is not much of a political reality.

In addition to that, it is fairly clear that the residents of the District have been split on the issue in terms of whether we should go over that as a principle, or whether we should go after full voting representation.

And this full voting representation is a compromise that we have reached based on the fact that we do respect the Federal interest in the city and the fact that there is a strong political case that stands against the whole statehood question.

Mr. EDWARDS. Mr. Kindness.

Mr. KINDNESS. Thank you, Mr. Chairman. I appreciate the testimony of all three of you this morning, and I would like to just ask whether the League of Women Voters has taken a position with respect to the statehood question?

Ms. HEIMANN. We have not taken a position as far as the statehood question goes. We are for full representation in Congress, as we have been since 1924. On the statehood question, we have not asked our members across the country how they feel on that, since a bill has not been introduced now. And if and when it should be, I am sure we will ask.

It seems to me that I would like to agree with Mr. Hechinger and Dick that it is the burdens of statehood the District is carrying. It is the advantages of statehood perhaps that the District does not have at this point. And it also, of course, then comes to this Federal enclave business because of the constitutional requirement which adds an extra dimension which you have to go through of deciding where is the Federal enclave if you make the District a State. So it seems to me there are many more ramifications to being a State.

Mr. KINDNESS. In that connection, I know there are some State capitals, for example, which is not a close analogy, but reasonably close, where State-owned properties in the Capital City has some degree of exemption from the the municipal ordinances and are under direct State control, so that there does not appear to be that great a problem in those cases, which I would think could be the situation here with what is often referred to as a Federal enclave. I think there is a straw man being put up there that does not make a very strong argument, to my way of thinking, that that constitutes a problem.

Might I ask whether the League of Women Voters has taken a position that relates directly to one or the other of these resolutions?

Ms. HEIMANN. You mean on the ones that are before us now?

Mr. KINDNESS. Yes.

Ms. HEIMANN. Yes. Well, they are both identical as far as we can see, and we are certainly for full representation both in the Senate and in the House.

Mr. KINDNESS. Those are actions taken regarding these resolutions?

Ms. HEIMANN. Well, we do not go back to our members once we have a position. We do not go back on every individual bill, because these bills are no different from bills that we have had before, and I know they have been before us or before the committee in 1967 and in 1971 on very similar bills, and certainly we took this petition drive in 1970 on the very same question.

Mr. KINDNESS. Right. Then this is the general position that has been taken by the League of Women Voters?

Ms. HEIMANN. And we are quite sure all of our members are with us.

Mr. KINDNESS. Has there ever been a time when the League of Women Voters has considered the question of statehood for the District of Columbia?

Ms. HEIMANN. I really do not think so, Mr. Kindness.

Mr. KINDNESS. Thank you.

Ms. HEIMANN. But, I would have to go back, and if I can find it, I will send it to you.

Mr. KINDNESS. I would be very interested.

Ms. HEIMANN. As far as I know, not, but I will be glad to go and research it and let you know if we have.

Mr. KINDNESS. That would certainly be appreciated. Thank you. I have no further questions, Mr. Chairman.

[Subsequent to the hearings, the following letter was received for the record:]

LEAGUE OF WOMEN VOTERS OF
THE DISTRICT OF COLUMBIA,
Washington, D.C., June 30, 1975.

SUPPLEMENTARY STATEMENT OF THE LEAGUE OF WOMEN VOTERS OF THE DISTRICT OF COLUMBIA

A question was directed to Mrs. Heimann of the League of Women Voters of the United States at the hearing on national representation for the District of Columbia as to whether the League of Women Voters of the United States had a position on statehood for Washington, D.C. Mrs. Heimann answered quite correctly that it did not.

However, I should like for the record to show that the League of Women Voters of the District of Columbia studied the question in 1972–73, and reached the following positions as approved by the membership of the local League:

1. The first choice as to the form of self-government is full voting representation in the U.S. Congress as though the city were a state, and an elected local government with full control of local affairs.

2. The League of Women Voters of the District of Columbia will support statehood as one of the methods of achieving self-government for the citizens of Washington, D.C., with the following provisions:

(a) The League will pursue the goal of statehood only if there is evidence of strong support for this form of self-determination.

(b) Adequate provisions must be assured for the economic viability of the state.

(c) The boundaries of the Federal District must not encompass large areas of residential property where citizens would still be denied the franchise.

3. Retrocession to Maryland as a form of statehood is not supported by the League.

Submitted by

(Mrs.) ELLYN SWANSON,
President.

Mr. HECHINGER. Mr. Chairman, Mr. Kindness, may I just say a word in regard to the matter of statehood?

Mr. EDWARDS. Certainly.

Mr. HECHINGER. Straight out, we are concerned, those of us who have worked and thought about this for many years, that it is going for statehood is a method to distract, to put off what we are asking for due to the many problems that have been brought up repeatedly as inherent in why we cannot be a State. One is the argument that was used to argue against home rule, that is the fact that the ultimate power for controlling that piece of land that is known as the District of Columbia of 10 miles square is in the Constitution, under clause 17. That argument that we cannot be a State under the constitutional argument that it will remove totally from Congress the power to control that new State, the District of Columbia.

In every proposal for statehood there is a Federal enclave. For example, in the home rule bill there was established an administrator for the enclave, and even now at this early stage in home rule the White House has realized the impracticability of the meshing of public services between the enclave and the remainder of the cities are so enormous in terms of the streets, public safety from the police department, the safety of people eating in restaurants under the supervision of the health department outside of the enclave, fire services and all services are so intermeshed that to have a separate entity such as an enclave would be totally impractical and not administratable.

Further, some of the pieces of important Federal properties are not within a tightly subscribable enclave, and they have every reason to be included, as say, the Capitol Building.

But at any rate, these arguments, some of these arguments that I am putting up are not meant to say that we would not welcome statehood. But in fact, represent what has been so far a means of frustrating full representation in Congress.

Mr. CLARK. Could I add just one or two other points to that?

Mr. KINDNESS. If I might please, I believe the time is mine——

Mr. EDWARDS. Yes.

Mr. KINDNESS. I would like to just respond here, and then I would be very happy to have the opportunity to hear further comments also. But I apparently misunderstood your testimony, Mr. Hechinger. On page 3 there appears at the bottom the statement, "Why should we be treated differently from the admission of other States to the Union?" Well, underlying that is an inference that full statehood would be an acceptable approach to this problem. And further, on page 3, "After all, there are many cities that have a larger population base than many of the States, but we in the District of Columbia are not a State." And there is certainly a cross analogy there. Would you care to comment further to reconcile those statements so that we have the record clear? I might ask you to do so by asking this question: Do you personally, or does your organization favor full statehood for the District of Columbia?

Mr. HECHINGER. Our organization believes that statehood is an impractical route to obtain full representation. Nevertheless, were it to be a wrong assessment, then we would indeed welcome statehood.

To reconcile the seeming disparity of our position I cite the fact that the District of Columbia is a unique entity with recognition in the present home rule bill that the District of Columbia is referred to as a State. And the language is such that it refers to the District of Columbia today, in terms of its statelike quality without being a State, so it is in that same context that I refer that representation should be given in full measure as in the admission of any other State. So that the fact is that there is that dichotomy of description that exists, not alone by our words, but by the fact that it has been written into legislation.

Mr. KINDNESS. Mr. Chairman, if you will allow, I would appreciate hearing further on the subject.

Mr. CLARK. Just to expand the statements I made earlier, we have been very fearful of combining the opposition to both representation in Congress and the opposition to home rule that exists in Congress, which is what, in fact, we would be doing by going a statehood route. When you consider for a moment the fact that we could not during the

last session of Congress, we could not even get budgetary control as part of the home rule bill, I am thinking about all of the controls that would be transferred under a statehood proposal, and again it seems pretty preposterous to think that, you know, that that is feasible.

Mr. EDWARDS. Well, I thank both of the witnesses. That point has been cleared up for me. There is a unique situation with regard to the District of Columbia that does not exist with any other State, particularly in its relationship to the Federal Government, and I think that the answers that you have given to that sticky question are very good.

Mr. Parker.

Mr. PARKER. Thank you, Mr. Chairman. I just want to follow up for a moment on that question, because when you talk about the practicality of achieving the goal of representation for voters in the District of Columbia, it requires a two-thirds vote of both Houses and ratification by three-quarters of the States to achieve what it is that these resolutions will do. And by the Constitution the Congress by simple majority vote can grant statehood, and in terms of the practicality of the approach, I still do not understand the reluctance, I guess it is, to be in a sense purer and just ask for statehood than it does to go through the obviously more difficult route of amending the Constitution?

Mr. CLARK. Again, we are not opposed to it. As I say, there have been numerous attempts by residents of the District of Columbia to push statehood proposals, and they have just never gone anywhere There is no question that in principle we would subscribe to it.

Mr. PARKER. I see.

Mr. CLARK. In terms of what it would mean ultimately.

Mr. PARKER. Thank you.

Mr. HECHINGER. Mr. Parker, may I add to that?

Mr. PARKER. Yes.

Mr. HECHINGER. The unwillingness of Congress to remove the government of the District of Columbia totally from control of Congress can be illustrated in the matter of the commuter tax. Ohio, for example, has commuter taxes throughout the State. We are prevented in the home rule bill from enacting a commuter tax. There are Senators and Members of the House of Representatives who have voted against it thus representing their particular constituencies in Maryland and in Virginia.

In statehood, we would be freed from all control of the Houses of Congress, immediately that would raise the specter of the commuter tax, a major thing in the minds of those Congressmen who are voting against it within the Houses of Congress, and therefore, what we are asking for is to go the constitutional amendment route, for even though it is a harder route to follow, it will avoid the assured opposition of the statehood route.

Mr. PARKER. The followup on that, I can certainly understand, and I think proceeding from the question of whether or not the people, the voters in the District ought to be represented, that could be taken care of by representation in the House of Representatives. But when you talk about two Senators, adding two Senators to the U.S. Senate, you are now talking about the representatives of the sovereign, or of a State, and I do not understand the rationale for

that. As well, we talk about taxation without representation, and that is taken care of by Representatives in the House of Representatives. How do you argue for the two Senators without statehood?

Mr. HECHINGER. Well, the fact is that we have a population that is greater than 10 of the States, and to get only Members in the House of Representatives is still incomplete representation and therefore is still taxation without representation.

Mr. PARKER. Go ahead, Mr. Clark.

Mr. CLARK. What we are partly struggling with is the unique status of the District of Columbia, and perhaps some conflicting principles in the Constitution. What we are advocating very strongly is representation of the people in the Congress, both bodies. It is not just the House that deliberates on District affairs, not only nationally, but also locally, but also the Senate. So, it is disenfranchising not to have representation in both bodies. So we are kind of held in, you know, double jeopardy.

As I understand the representation in the Senate it is based on equal votes, and the one in the House is based on population. That was really an attempt to find a way of balancing the people's interest and the people's representation. That is similar to what we are trying to do here. We are trying to find a way of balancing interests and balancing the representation. But even the Senate is elected by the people ultimately, so that the case that we are making is one for representation in that ultimate body.

We understand the conflict with sovereignty of a State and all of that, and I hope that we will get into that through some of the other questions.

Mr. EDWARDS. Mr. Drinan.

Mr. DRINAN. Thank you, Mr. Chairman. Thank you for coming, all of the witnesses, and I am sorry that I had another meeting.

I wonder if you would, any or all of you would elaborate on the concept of statehood? Mr. Parker just brought it up, and in the terms that we have, as you know far better than I, this option of statehood is a bit intriguing. Could we finesse the whole process of getting the two-thirds vote in both Houses and three-fourths of the States? Would you just elaborate on the present best thinking of the people, experts like yourselves, as to what we should do about statehood, the whole concept? Would that solve the problem?

Mr. HECHINGER. Father Drinan, we have spoken to that in the following manner: That we ultimately would want statehood; that that would be the finest thing to have in our quest, but we do not consider it a practical attainable political course, and that has been demonstrated in the past to be a way to shunt aside the right of representation. I mean, that even though statehood appears to be a simpler way of getting representation, it actually may be the more complicated way even though the constitutional amendment route necessitates obtaining two-thirds in each House and three-quarters of the States, the fact is, sir, that the 23d amendment passed all of the States faster than any amendment except for the 18-year-old vote amendment. I mean, there is beginning to be an appreciation by people of the entire country that 750,000 citizens do not have representation in Congress, and the people are appalled and will approve it quickly. A simple demonstration of why it is difficult to get statehood, is the

matter of the commuter tax, which you were present to hear, I believe, so I will just stop there.

Mr. DRINAN. All right. But in the ultimate end, if statehood went through, or a constitutional amendment went through, the rights of the people would be the same, would they not?

Mr. HECHINGER. That is correct, and even more so. The right of statehood would remove those congressional restrictions which number about 10, among which is the inability to appoint judges.

Mr. DRINAN. But is there any way to get around the commuter tax and all of those problems so that realistically we could get a simple majority in both Houses? That is a question of practical politics, and in your judgment I take it the answer is "no"?

Mr. HECHINGER. That is right, sir.

Mr. DRINAN. Thank you very much. I yield back, Mr. Chairman.

Mr. EDWARDS. The problem, one of the problems seems to be that you do not believe that Members of the House and Senate are going to turn over the Federal enclave, and the operation of the Federal physical structure and land to a sovereign State, is that correct?

Mr. CLARK. Well, if the enclave were delineated, assuming there still would be a Federal district that would be separate from the State itself, but it is the contiguous nature of those, of what would be the State of Columbia and the Federal enclave, and the past history involving Congress whole kind of possessive attitude toward the District of Columbia that we are deferring to. Again, it is not the fact that we would not like to explore the whole, you know, possibility of statehood.

Mr. DRINAN. Mr. Chairman, one question on that. The enclave that was proposed by Mrs. Green, and that washed out somewhere along the line in a particular bill, has that particular enclave; namely, the whole Mall area, the Federal presence, has that figured at all in the thinking about the District becoming a State? I mean, the geographical representation of that particular enclave, have people thought of that, or are they exempting that from the rest of the District of Columbia, allowing that to be a Federal enclave, and then the District of Columbia becomes a State of Columbia?

Mr. CLARK. That is what I was speaking to. In fact, I remember Congressman Dellums made that very point at the time the Federal enclave was being discussed during home rule hearings, was this could be a first step to statehood, at least in terms of delineating the geographical area that would be necessary to set apart before the District could become a State.

Mr. HECHINGER. Congressman Drinan, I say, that having been in the city administration, that I see that the actual physical separation of the enclave from the rest of the city as an impossible administrative thing. I know the interlacing of the sewers of the water supply. Are we going to charge the Congress for services to the Federal buildings? If we think of statehood, I almost feel that you have got to think of the full 10-mile square and not have an enclave. I do not object theoretically to statehood for getting full representation if that would do it. But the fact is that beyond the question of all overlapping utilities in the broadest sense of the word, counting policing as services, even parades crossing streets in the enclave and outside the enclave

and the fact that part of the Federal Establishment is outside of the circumscribable enclave area—the lots of problems are too great, sir.

Mr. DRINAN. All right. Thank you.

Mr. EDWARDS. Mr. Klee.

Mr. KLEE. Thank you, Mr. Chairman.

Mr. Hechinger, you speak of an area of 10 miles square. You are not talking about reincorporating the area over there in Virginia, are you?

Mr. HECHINGER. It would take a retrocession in reverse to do that. You are right, it was originally 10 miles square, but Alexandria on the other side of the river was ceded back to Virginia.

Mr. KLEE. I take it at present Congress and the Federal Government have exclusive control over the District really, that it is a federally owned city, and that it was designed that way by the Constitution really, and the residents of the District are living at the sufferage of the Federal Government, both under the home rule and under the Constitution. And what you are seeking to do is to change that at least insofar as voting representation is concerned.

One point that has not been brought out yet is there would be a fundamental conflict of interest that can possibly be created if voting representation is given to the District of Columbia both in the House and the Senate. And I think Congressman Hutchinson, both in 1967 and 1972, put this best when he said in his minority views in the record:

> I believe every Member of the House must resolve the following question in his own mind before he votes on this proposal. On close votes in the House or the Senate where one or two votes can make the difference on extremely controversial issues, should the people who choose to reside in the Nation's Capital hold the balance of power?

And this could be particularly crucial on something like the commuter tax that you brought up, things where the residents here might have a particular pecuniary or other interest, whereas the national interest and the constituency across the country might run contrary to that. And I wonder if you could resolve this conflict-of-interest question?

Mr. HECHINGER. Well, I think that it is never true that in a body the size of the Congress that the balance of power lies in the last two votes to come into that body. The fact is that Congress is quite split on issues of the District of Columbia. Take the matter of the commuter tax. We have a lot of adherents to that idea. I believe Chairman Edwards himself has spoken in favor of the commuter tax for the District of Columbia and there are others who will be forever against the commuter tax. And so all we are asking is, in regard to municipal matters, which are withheld by Congress from our city government, to at least have representation in Congress proportionate to our population in the House of Representatives and two Senators.

Mr. KLEE. The way the committee system works, as I have seen it in the short time that I have been here, the subcommittee chairman and committee chairmen have a great deal of power in deciding what goes on, and I would think that if a Member elected from the District did become chairman of the District Committee, that he would have quite a powerful position in deciding what legislation was there, and

the possibility of conflict of interest between the local, District, and the national interest might be very apparent. And I guess there is really no answer to it. And I would like to move on to another question.

Mr. CLARK. Could I make a response to that question also? I think those kinds of conflicts of interest exist everywhere in the Congress. I mean, Maryland and Virginia vote on the Metro system, they vote also on the commuter tax. I mean, there is a conflict of interest and, you know, that would directly benefit. Or the strip mining bill, you know, if you use that line of argument, then West Virginia probably should have taken themselves out of the vote.

Mr. KLEE. But those people represent States and not a unique Federal City. You have made the point very well that the reason for not having statehood is that the Federal Government here is inextricably intertwined with the local government in terms of services, and things like this, and there really is a national interest I suppose in making sure the Federal Government can get water, and it is not burdened by things that the local government decides to do, and there is a potential conflict of interest here.

Mr. HECHINGER. May I just add one word and a little lightness on the thing. Conflict of interest has been working to our disadvantage for so long, and do you know that Congressman MacMillan from South Carolina would never permit the cigarette tax to be raised, you know. I mean, one source of revenue for this municipality and for 20 years it would never have been able to have been raised because of that. So, I just am reinforcing Mr. Clark's point there.

Mr. KLEE. I would like to address a question to Mrs. Heimann if I could. Do you feel that all American citizens not domiciled in a State or territory should be entitled to representation in Congress?

Ms. HEIMANN. You are talking about overseas?

Mr. KLEE. And here as well. In other words, we have heard a lot in the hearings where three-quarters of a million people are living in the District of Columbia that are disenfranchised, and there are approximately that many American citizens who pay taxes who are domiciled overseas, who are also disenfranchised. I was wondering what your position on this would be?

Ms. HEIMANN. Mr. Klee, it seems to me many of the overseas citizens, citizens who live overseas have the privilege to retain their residences in a State, and many of them do not do so because they do not wish to pay income taxes in the States. Therefore, if they do not wish to pay income tax, I do not really think they have a right to be represented. If they wish to retain and pay their income tax, then certainly they should be represented.

Mr. KLEE. Mrs. Heimann, I can only say that we have heard a lot about taxation without representation. But the question of voting domicile is different and distinct from the question of tax domicile the way it is developed. And I can only speak for myself as a resident of California, that I have been advised that I need not pay income taxes, but that I can still vote in the State as a voting domicile, and I guess the issue really is when you look at the statistics, you have about 140,000 people who are born in the District of Columbia and who do not have a voting domicile anywhere else. We have a court case here where Mr. Fauntroy was a plaintiff in 1967 where he says there are over 200,000 people residing in the District of Columbia that retain

their voting domicile in other States. And one question that I do want to bring up is when we make the residents of the District not second-class citizens, will we give them more than equal representation, and the way apportionment is determined under section 2 of the 14th amendment, historically the census has looked at residency, because residency has been a good indication of where people live. But in the case of the District, you have a very high concentration of people who really do have an animus revertendi back home, they are here for 5 years or 10 years, and their interests are back home. Would you advocate looking for domicile, for representation on a national basis rather than residency as a more equitable means of representation, if it is given?

Ms. HEIMANN. Well, that is a very difficult question. I do believe that a lot of the residents who live here and come here temporarily do, indeed, retain their residence in California, as you do, because, partly because they cannot vote here. And I know when I moved here from California I was told please keep your residency in California so you can vote. However, I have moved to Maryland so I have solved that problem.

But, I really think that if you gave the citizens in the District representation, a lot more people would give up the distinction between being domiciled for retaining their residency. It is a very frustrating experience not to be able to vote if you live in the District, and you must know that it would be easier if you could live and vote here.

Mr. KLEE. I suppose it would, but again, returning to the analogy with the overseas citizens, of the 471,458 persons over 20 years of age in 1970 residing in the District, about 30 percent of those were born here. And presumably the rest would not be disenfranchised. Of the people overseas, we really do not know because a lot of the States have requirements. New York, for example, has a very strict requirement where you need an actual physical residence, and I guess what I am coming down to is, what is the position of the League of Women Voters on enfranchising the people that are American citizens, that pay taxes that are domiciled overseas?

Ms. HEIMANN. When you come down to that, we do not have a position on that. I really cannot tell you. One of the basic principles of the League of Women Voters, of course, is "to protect the right of every citizen to vote."

Mr. KLEE. I have a question for the panel at large now relating to the 23d amendment. I notice House Joint Resolution 280 does not touch the 23d amendment. Would it not be inconsistent to give the District of Columbia four Representatives in Congress and only three electoral votes for President? How do you feel about that?

Mr. HECHINGER. I think it inconsistent. I do. I do think the number of votes in the electoral college should be in accordance to population, only I am nervous about adding any more issues to this one drive for full representation that we are seeking. I do not wish to overcomplicate it. Congress may come to amend, to the end that there will be direct election of President, our electoral college deficiency in that amendment.

Mr. KLEE. Well, I can appreciate your reluctance, but we have seen before where perhaps political expediency has really created an inconsistency within the Constitution, and I think you would all

agree that it is very important if you are going to amend the Constitution to do a thorough job. The 23d amendment, of course, gave the District of Columbia three electoral votes, but provided no vote in the House of Representatives in case the election was thrown into the House.

And are you really advocating, if we have a constitutional amendment here to give the residents of the District voting representation, that we should go back and sort of clean up some of the conflicts that would be created?

Mr. CLARK. I come down at the same place as John on that. You know, yes, you know, we would support that in principle, and it would seem to be the wisdom of those who introduced the bill that, you know, this is going to complicate things further. But I think this committee probably should understand that as well as anybody as to whether that would be a wise move or not. But I think that certainly again it is like the statehood question, we would support the maximum fulfillment of voting rights for residents in the District of Columbia as anybody else in the country holds. But it is also trying to balance that ideal position against what we think is within reason and attainable.

Mr. KLEE. Some Members of Congress, one of whom will probably testify before this committee, are of the view that going back to 1800, and the creation of the District, and talk in the Federalist 43 by Madison that the original States who ceded this land would continue to permit the residents to vote in those State elections, going back to all of that, these members are of the view that perhaps a solution of that is to consider the residents of the District of Columbia as residents of Maryland for voting purposes in terms of electing Representatives and Senators in the State of Maryland, from whence they came, as was envisioned in the Federalist 43. And I wondered what your reaction to that proposal may be, which may be offered as an alternative to the committee?

Mr. CLARK. The retrocession proposal——

Mr. KLEE. It would not be retrocession, except for voting purposes.

Mr. CLARK. [continuing]. Has been raised, as you know, many, many times. I think that the essence of a liberal democracy is that it continues, and ours in particular, to grow and be cognizant of new developments. And in 1975 the fact is that the District of Columbia has emerged as an independent political entity, and that the State of Maryland, to impose 250,000 voters on the residents of Maryland is certainly going to create some disruption in the balance of political power, even if it is only for purposes of representation. That is a very important purpose.

Mr. KLEE. At least there is some nexus with Maryland. I guess the position of these members might be, and I do not want to put words in their mouths, but just looking at the view, would be imposing two Senators on the rest of the country as a whole has less logical connection than reverting back to Maryland, and I take it you would just disagree with that?

Mr. CLARK. We disagree vehemently with that. There is also a complication there, as you know, as to what that would mean legally. Nobody knows, you know, but there is one thing that seems to be clear, and that is the residents of Maryland would have something to say about that. And I know in past years we have not been able to get

one politician in Maryland to support any kind of retrocession, even for purposes of voting. That has been advocated before. In fact, in 1972 or 1973 when it was last proposed, during home rule hearings, the day after three members of the Maryland Assembly introduced a resolution to make it very clear that that is not something they were contemplating as kind of a way of sending a message to us here.

Mr. KLEE. This leads to my final question. It is apparent that the residents of the District did come from Maryland way back when, and the Constitution was set up very carefully to provide that the States would not have their voting representation in Congress diluted unless a new State was created. And it seems to me what this is setting a precedent for, albeit a very special precedent, is that a State can sort of cede part of its land into a non-State, and then a non-State can gain representation in the Congress. And I wonder if this type of thing is not prohibited by the proviso to the amendatory article of the Constitution, article V, which states that for all constitutional amendments, two-thirds of both Houses must approve it, and then three-fourths of the States must ratify it, provided that no State without its consent shall be deprived of its equal suffrage in the Senate. Now, this would go to Senators only and not to Representatives. The reply to that in the past has been that equal just means a proportional share, and that as long as all of the States are equal, that is all that matters. But, of course, if you have States only representing half of the Senate, and non-States and territories being the other half, they would have equal suffrage, and I would wonder if the word "equal" would not mean a share as used in this amendment, and the only way to allocate the share of the State which would be diminished under article IV, section 3, clause 1, if a new State were admitted into the Union.

Mr. CLARK. That is a very interesting point, and one that we have given some consideration to. And in fact, our legal counsel is in the process of developing a legal memorandum that speaks to that very question. That is one more complex issue that has to be resolved, but it is something that we would like to comment on at a later date.

Mr. HECHINGER. Mr. Klee, may I just add a word, not being a constitutional lawyer. I am not going to address myself to that specifically as Mr. Clark has said that we will study that. But to suggest that one State of the Union would cede parts of its property to create another State in order to increase the overall representation in the Senate seems to strain reality. I believe we in the District of Columbia differ from the problem that you pose in that we are established by the Constitution under article I, section 8, clause 17, and thereby are unique. So therefore, I do not believe that that would create a precedent.

Mr. KLEE. I see, because there are parts of the country, the northern peninsula of Michigan, northern and southern California, New York City, where there has been talk of creating a separate State and, of course, this issue would come up in the future.

Thank you very much Mr. Chairman. I have no further questions.

Mr. EDWARDS. Are there further questions?

Mr. KINDNESS. Mr. Chairman, if I might?

Mr. EDWARDS. Mr. Kindness.

Mr. KINDNESS. I would appreciate having any comments that any of the three witnesses might have on how it would be contemplated that congressional districting would be done under the procedure

that is anticipated here? I simply have not gotten into that, and I would certainly welcome any comments on it. How would the District of Columbia be divided to vote?

Mr. HECHINGER. In geographical terms?

Mr. KINDNESS. In order to comply with the one-man-one-vote rule and the Supreme Court?

Mr. HECHINGER. I believe that that would probably have to wait until it was studied with a great deal of thoroughness. We already have geographical divisions into wards, and they are delineated on the one-man-one-vote basis. If you took the eight wards which we have, and divide them into four wards and four wards, we would have equal distribution by population.

Mr. KINDNESS. I am sorry. I did not make my question clear. The mechanism by which it would be accomplished; that is, who would do it?

Mr. CLARK. The Congress could do that. Certainly it has the authority, but hopefully if the District of Columbia does not have it now the Congress would transfer that authority to them, to the local government.

Mr. KINDNESS. Would it be logical to deal with that question at the same time that this is being done; that is, to establish what is essentially an aberration from the usual procedure in congressional districting which is done by the State legislative bodies?

Mr. CLARK. I do not think that it is necessary to include that as part of the constitutional amendment. I am not a lawyer either, but I would assume that the provision in the joint resolution that extends the authority to enact enabling legislation would cover that.

Mr. KINDNESS. Thank you.

Mr. EDWARDS. Mr. Hechinger, Mrs. Heimann, and Mr. Clark, thank you very much for your most valuable testimony. The committee will continue these hearings, and we hope to be marking up and presenting a bill, if we have the votes, to the full committee by the middle of July.

We stand adjourned.

[Whereupon, at 11:28, the committee was recessed subject to the call of the Chair.]

REPRESENTATION OF THE DISTRICT OF COLUMBIA IN THE CONGRESS

WEDNESDAY, SEPTEMBER 3, 1975

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON CIVIL AND CONSTITUTIONAL RIGHTS
OF THE COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The subcommittee met, pursuant to notice, at 10 a.m., in room 2237, Rayburn House Office Building, Hon. Robert F. Drinan presiding.

Present: Representatives Drinan and Butler.

Also present: Alan A. Parker, counsel; and Kenneth N. Klee, associate counsel.

Mr. DRINAN. Good morning. The subcommittee will come to order. The chairman, Congressman Don Edwards, has been called back to California on a personal matter of sickness in the family and will not be able to be present with us today.

We are this morning continuing our series of hearings on House Joint Resolution 280, a resolution to amend the Constitution to provide for representation of the District of Columbia in Congress. Today's witnesses have been called upon request of the minority pursuant to rule XI(j)(1).

Our first witness today will be Mr. Meyer Zitter, Chief of the Population Division of the Bureau of the Census. Mr. Zitter was most helpful and illuminating to this subcommittee during our recently concluded hearings and consideration of the Voting Rights Act, an act that is now law.

I understand, Mr. Zitter, that you have no prepared statement, but you are here to respond to questions posed by Mr. Butler or minority counsel and may I ask you to proceed in any way agreeable to you.

TESTIMONY OF MEYER ZITTER, CHIEF OF THE POPULATION DIVISION, BUREAU OF THE CENSUS; ACCOMPANIED BY CHARLES JOHNSON, ASSISTANT CHIEF OF THE POPULATION DIVISION, BUREAU OF THE CENSUS

Mr. ZITTER. Thank you, sir. I do not have a prepared statement. I would like to introduce Charles Johnson, Assistant Chief of the Population Division.

Mr. DRINAN. Welcome.

Mr. ZITTER. We are here to answer whatever questions you have and be of whatever service we can.

Mr. DRINAN. Mr. Butler.

Mr. BUTLER. I will begin the questioning. I appreciate very much your being here. I apologize for trespassing on your time, but we have

before us the question of amending the Constitution to provide for the representation of the District of Columbia in the Congress of the United States: I have asked you to testify because I want to know exactly who and what we are talking about when we speak of residents of the District of Columbia.

So let us begin basically with what is the population, the number of people within the boundaries, of the District of Columbia?

Mr. ZITTER. In the last estimate, as of July 1, 1974, there were approximately 723,000 people living in the District of Columbia and of this about 72 percent, a little over half a million, were of voting age, that is, all persons 18 and over.

We have a few more characteristics of the people in the District.

Mr. BUTLER. Please, proceed.

Mr. ZITTER. At the time of the 1970 census, there were 756,000. That means since 1970 there has been a decline in the population of the District. There has been some outmigration of the population from the District of Columbia. At the time of the 1970 census, 45 percent of the native population in the District of Columbia were born in the District and 42 percent were born in a different State, migrating in from a different State of the United States, and about 12 percent did not report to us on their State of birth.

We know something about the migration patterns. In the 1970 census we asked respondents where they were living in 1965, and based on those statistics, something like 73 percent of the residents of the District of Columbia who were 5 years old and over in 1970 were also living here in 1965. Fourteen percent were living in a different State, and about 13 percent failed to report where they were living in 1965. We know that those who failed to report moved between 1965 and 1970, and they were living in a different house, but we didn't know what the previous State was.

I mentioned at the present time the District of Columbia has been losing population through outmigration to other parts of the country. We know between 1970 and 1973 there were approximately 26,000 more people that moved out of the District than in; this was a net number. We don't know the gross components.

We don't have any data on the number of people who live in the District and registered to vote in another State. This is not part of the material collected in the 1970 census. In the 1972 election for the country as a whole there were 3.1 million, or 4 percent of all voters who voted by absentee ballot. We had put down some notes because we thought the subcommittee was interested in something on absentee vote but specific data are not available for the District.

Mr. BUTLER. Would you please repeat that? I am not sure about that.

Mr. ZITTER. Some people who cast their vote did not vote in person. States permit them to vote absentee by making arrangements beforehand because they don't expect to be available on the date of voting. We don't know about the District of Columbia, but from the surveys we know for the country as a whole something like 3 million people cast their vote by absentee ballot, and we made these notes because the minority counsel expressed interest in it to us.

Mr. BUTLER. You do not have any projection from that as to how many people in the District of Columbia voted by absentee ballot elsewhere?

Mr. ZITTER. No, we don't know.

Mr. BUTLER. You have a total?

Mr. ZITTER. Yes. We got this in our survey in 1972, our national sample survey conducted in November of that year. We asked people right after the election whether they registered and voted. One of the questions was whether voting was by absentee ballot. The sample is not large enough to provide reliable statistics by State.

That is about all I have in front of me on the District of Columbia population, but I will be glad to answer any more questions.

Mr. BUTLER. You had some figures—45 percent, I believe, is the most recent estimate who were born in the District of Columbia as opposed to having been born elsewhere?

Mr. ZITTER. That is right.

Mr. BUTLER. Do you carry that a generation back? Are they children of citizens of other States, or do you know whether they are in their second generation in the District of Columbia?

Mr. ZITTER. We do have the data by age. I don't believe I have it in front of me, but we could provide the committee with the exact numbers, but these things would vary over time. This is a lifetime type of movement. That is, if you were born somewhere in 1920 and show up in the District of Columbia in 1970, your State of birth is not the District of Columbia, but it doesn't tell you how long you lived there. But we do know by age as to the State of birth, but, again, none of the statistics tell how long. I can't tell you what it was a generation ago other than the fact in each prior census we had the same kind of information, so we can compare 1970, 1960, 1950, and 1940, and see how the State of birth figures have changed for the District of Columbia.

Mr. BUTLER. I do not want to take your time now, but if you could give us that trend, I would like to know that.

Mr. ZITTER. I will provide that.

In 1940, 1950, and 1960, approximately one-third of the total population of the District of Columbia had been born in the District. In 1970, however, over two-fifths of the total population of the District of Columbia had been born there. There is an inverse relationship between age and the proportion of the District of Columbia population which was born in D.C. In 1970, about one-fourth of those 50 and over had been born in the District as compared with three-fourths of those under 15 years old.

Mr. BUTLER. Do you have information indicating the employment of these people? I am interested mostly in how many are federally employed as opposed to other forms of employment of the residents of the District of Columbia.

Mr. ZITTER. Yes; what we have would be for the District of Columbia, their employment status by type of employer, whether they work for the Government or not. We don't have these data by whether born in the District of Columbia or not.

Mr. BUTLER. I am off the subject of birth now.

Mr. ZITTER. OK, fine.

Mr. BUTLER. I am on the subject of employment now, and I do not wish to relate that to the place of birth. I want to find out how many

of the 723,000 people who live in the District of Columbia are employed by the Federal Government.

Mr. ZITTER. Reading from the 1970 census report on the District of Columbia, let me throw some numbers out and you can get the whole picture.

In 1970, there were 170,000 males, 16 and over, living in the District of Columbia who were employed. And of those, 52,000 worked for the Federal Government and about 2,800 worked for the State government and 11,000 for the local government.

Mr. BUTLER. My curiosity is aroused a little. What State government did you have in mind?

Mr. ZITTER. Persons who live in the District could work for the State of Maryland or Virginia.

Mr. BUTLER. I see, another government.

Mr. ZITTER. Yes, as opposed to the local government which would be the D.C. government.

We have a separate set of numbers on the females. There were 164,000 females, 16 and over, living in the District of Columbia in 1970 who were employed, and of those 57,000 worked for the Federal Government, 3,000 for the State government, and 14,000 for the local government. These are as of 1970.

Mr. BUTLER. So somewhere in the neighborhood of one-third of the employed people in the District are employed by the Federal Government. Is that a fair statement?

Mr. ZITTER. Approximately, yes.

Mr. BUTLER. There is no reason to doubt that the figures for 1974 are substantially different from 1970 percentagewise, is there?

Mr. ZITTER. I would agree that they should be about the same; yes.

Mr. BUTLER. All right. Do you have figures indicating what percentage of the population of the 723,000 are dependent on the Federal Government for support? That is to say, are there dependent members of families with the head of the household employed by the Federal Government?

Mr. ZITTER. No, sir, we don't have that.

Mr. BUTLER. All right. Let us try to put it together. Do you have some speculation or estimates based on experience which would indicate when you have a population of 723,000 and some 99,000 are working for the Federal Government how many people are there in families dependent on those 99,000?

Mr. ZITTER. Let me approach it another way. In 1970, approximately one-third of the employed District residents worked for the Federal Government. I would assume then that it may follow that approximately one-third of the people in the District of Columbia may be related to the people who work for the Government and are dependent on it. If the total population in 1970 in the District of Columbia was something like over three-quarters of a million and one-third worked for the Government, then approximately one-third of the people in the District of Columbia would therefore depend on the Federal Government because this assigns to them the same number of dependents as everybody else.

Mr. BUTLER. All right. What is the average number of dependents to one person employed?

Mr. ZITTER. The average family size in D.C. in 1970 was running a little over 3.5 persons to the family. What you have here is many

husbands and wives working for the Federal Government, so you couldn't multiply by 3. We would have to see if we have anything from the 1970 census that would reflect on it.

Mr. BUTLER. That is the information I would like.

How many people in the District of Columbia look to the Federal Government to support them from their labor, either directly as employment or indirectly as a member of the household which is supported by the Federal Government?

Mr. ZITTER. Yes; I think we can look into that and let you know.

Mr. BUTLER. If you could give me the best guess to that, you can qualify it if you want to, but I would like to have that information.

Mr. ZITTER. Yes, sir.

[The information referred to follows:]

In 1970, there were 52,000 men, or 30 percent of all the employed men living in the District of Columbia, who were employed by the Federal Government. In addition to these men who were employed by the Federal Government and their dependents who would have been supported by the men's earnings, there were also 57,000 women, or 35 percent of all the employed women living in the District of Columbia who were also employed by the Federal Government. These women and their dependents would also have been supported by funds received from Federal employment. Some of these men and women employed by the Federal Government may have been married to each other but the number is unknown. In 1973, according to Civil Service Commission figures, there were about 50,000 Federal civilian annuitants residing in the District. About 12,000 of these annuitants were survivors. There were also about 6,000 Armed Forces personnel who were retired and living in the District, according to Department of Defense figures. Although we have no precise figure on the number of persons in the District who are supported by the Federal Government, it appears that at least one-third are so supported.

Mr. BUTLER. Along the same line, what percentage of the population of the District of Columbia is unemployed, but employable in the sense that they are either on welfare or aided by private sources and therefore are not gainfully employed?

Mr. ZITTER. Using some terms quite different than our conventional——

Mr. BUTLER. You may use whatever terms you wish.

Mr. ZITTER. At the present, I can tell what the unemployment rate is and how many people are defined unemployed and by definition anybody unemployed is available to work. He is in the labor force and looking for a job. That is by definition.

The other category we call not in the labor force and have no way of knowing how many of these are really available for work. This is outside the kind of statistics we would collect. But we could get you some numbers on the first part of it.

Mr. BUTLER. Well, yes, you can give me the unemployment rate and, of course, we can project some numbers from that.

Now how about the people who are unemployable because of physical or mental limitations? Do you have any information on that?

Mr. ZITTER. No; I don't believe so. We did not get information in the census as to why people weren't in the labor force. But I will check and see if we can get some of the census information on welfare, unemployment, and work disability.

Mr. BUTLER. One more question along the same line: There are people living in the District of Columbia who are here as Federal retirees. Do you have that information?

Mr. ZITTER. I think the Civil Service Commission, who runs the Federal retirement program, might have data, and we can check it for you. I don't have it with me.

Mr. BUTLER. Will you, then, pull this information together; use any source you want to—hearsay is admissible—find what you can for the information of the subcommittee, to indicate the portion of the permanent population of the 723,000 which is retired and living on sources of income which do not require further effort from them and of those retired persons how many are Federal retirees?

Mr. ZITTER. We will see what we can pull together. I am not sure we can answer all those questions.

[The information referred to follows:]

About 11,000 families in the District of Columbia received public welfare or public assistance income in 1969, as did about 5,000 of all unrelated individuals.

The unemployment rate for the District in 1970 was 3.9 percent for men and 3.6 percent for women. There were about 7,000 men and 6,000 women who were unemployed.

There were about 21,000 disabled persons 16 to 64 years old in 1970 who were not in the labor force and were unable to work because of disability. (This figure excludes inmates of institutions and persons attending school.)

The Bureau does not gather data on the number of retirees as such. However, there were approximately 17,000 men and 34,000 women 65 years old and over who were not in the labor force in 1970. Information from the Civil Service Commission indicates that in 1973 there were about 50,000 Federal civilian annuitants residing in the District. About 12,000 of these annuitants were survivors. According to the Department of Defense, there were also about 6,000 Armed Forces personnel (excluding survivors) who were retired and living in the District in 1973.

Mr. BUTLER. Going to another subject: Do you have any indication from your census figures over the years as to what is the outmigration in the District? What I want to find out is how many people come to the District of Columbia, work here as long as they can stand it, and quit and retire or seek other employment and leave. How many people who work for the Federal Government, for example, work here, earn their retirement and then go elsewhere to live? How deep are their roots, is the question?

Mr. ZITTER. That would be very hard to come up with those kinds of statistics, because those people, when they finish work and leave, there is no way of tracing them down.

Mr. BUTLER. You can tell because they are not there anymore.

Mr. ZITTER. But most people in this country, or many people in the country, after retirement, move to States like Florida and Arizona. The figures are clear if you look at the population 65 and over, which is the age associated with retirement from the labor force; there are significant increases in these populations through net migration from other States. That we know. The District of Columbia, I am sure, would be a contributor, as many other States are a contributor to States like Florida and Arizona.

There are some numbers that may tell us how many people living in the District of Columbia at one point in time, receiving social security benefits after retirement, may move to another State and get their check at that State. There are some figures available on that type of migration.

We also know that between 1965 and 1970 we can talk about how many people moved into the State and out of the State by age. This would give some idea of how many people over 65 left the District of Columbia.

Mr. BUTLER. The purpose of my objective is to find out what domicile means to the people of the District of Columbia. I suspect that those people are not going to Florida; they are going back home, wherever that is. But I would like to know.

Also, I would like to know if you have any indication that people working elsewhere retire and come to live in the District of Columbia. Have you ever run into anybody that did that?

Mr. ZITTER. All we could tell you is some people, over 65, moved into the District of Columbia and are not in the labor force.

Mr. BUTLER. You do not think they were here and became 65? You think they came from elsewhere?

Mr. ZITTER. We can tell you they moved from elsewhere after they were 65. It doesn't tell you anything about their lifetime work experience, which is what you seem interested in. Data are not available from the census on where they work throughout their lifetime by when they go elsewhere, returning to their previous State of birth or previous State of residence. We will try to put together whatever we think will help answer the question.

Mr. BUTLER. I feel this subcommittee is charged with the responsibility of undertaking a very significant step in altering the status of the people of the District of Columbia. My purpose in having you here today is to find out exactly who we are talking about. I suspect it is not 723,000 people but substantially less than that who consider themselves permanent residents of this area, and I am trying to figure out exactly where we are because we are getting to the point where we have many, many cities in the United States with a lot more people involved than in the District, and that is why I am searching for this information.

You have been very helpful to me in understanding the questions I have asked you, and I anticipate the answers will be forthcoming when the lightning strikes.

Mr. ZITTER. We will put together what we can that will help you.

Mr. BUTLER. I thank you very much. I have no further questions at the moment.

Mr. DRINAN. Thank you, Mr. Butler.

Counsel?

Mr. KLEE. Thank you, Mr. Chairman.

Mr. Zitter, I have a few questions.

Of the 45 percent of the population in the District of Columbia that were born here and are still here now, can you provide the percentage under voting age? What percentage of the people that were born in the District and are still here now under 18?

Mr. ZITTER. I don't believe we can provide that.

Mr. KLEE. Well, maybe under the age of 20 should be my question. I would call your attention to page 84 of your 1970 report on "State of Birth" and perhaps you can provide that for the record. My tentative calculations show of the 321,402 people born in the District of Columbia, that some 179,243 are 19 or under. While that is not 18, it seems to be all that is listed in your report.

If you could provide the figures for voting age, that would be more useful.

Mr. ZITTER. Yes; I can check the report and send for the record, the number you want if it is available. I want to make sure you are

reading from the column that is State of birth and still living in the State of birth.

Mr. KLEE. Yes; it says, "Born in State of residence."

Mr. ZITTER. OK. We estimate that there were about 164,000 persons of voting age living in the District of Columbia in 1970 who reported being born there.

Mr. KLEE. That leads to the next question, which goes to the difference between residence and domicile. Would it be possible for you to base your apportionment after the 1980 census on domicile rather than on residence if you included a question in the 1980 census to elicit the domicile of the people surveyed?

Mr. ZITTER. Well, the practice in taking the census is to use our definition of usual residence, the same as we have been using over a period of time. If we tried to collect an additional set of numbers on domicile, I think you run a serious risk of introducing tremendous errors in the basic census data because people would not understand it.

Mr. KLEE. Of course, constitutionally, apportionment is done by residence, and domicile in most cases, I would imagine, would be about the same. You do not have many instances where people residing within a State are not domiciled in that State.

But in the case of the District of Columbia, the plaintiffs, including Delegate Walter Fauntroy, in the case of *Carliner* v. *Board of Commissioners*, asserted without any evidence to the contrary that over 200,000 residents of the District were eligible to vote in other jurisdictions. If that allegation is indicative of the presence of a great number of people who are residents of the District of Columbia but not domiciled there, then would apportionment on the basis of residents rather than domicile result in tremendous overrepresentation of the District of Columbia in Congress?

Mr. ZITTER. If it works out that way, yes. I think my concern would be to collect information in the census. You want to use one definition of residence no matter how we define it. To introduce others would compound the problem. And domicile is only one concept in addition to residence. You could talk about legal voting residents or where you maintain property, but all of these would unduly complicate it.

Mr. KLEE. Section 2 of the 14th amendment, which speaks to the apportionment process, is somewhat vague in what it requires; perhaps in order to comply with the Constitution the Bureau of Census may have to use domicile rather than residence to adequately reflect the population within a jurisdiction.

I have one other question and that pertains to American citizens residing overseas. There has been entered on the record the statement that if House Joint Resolution 280 becomes part of the Constitution, we will no longer have disenfranchised Americans; but another witness, who will testify later, will present statistics indicating that many Americans who are U.S. citizens residing overseas cannot vote. Do you have statistics to show how many Americans are residing overseas and figures to indicate what the accuracy of these statistics would be?

Mr. ZITTER. Yes; the 1970 census did enumerate the citizens abroad. The citizens abroad is made up of two different kinds of universes. One we do a good job of counting and can get good figures on. The other part is evasive.

The citizens abroad which are associated with Federal Government as either members of the Armed Forces, their dependents, or Federal civilian employees and their dependents we get a good count on.

The other large category of unknown size is other citizens; people who go abroad to work for private industry or retire, and we counted them in 1970 only on a voluntary basis, and we don't know just what percent we missed.

In 1970, we counted 1.7 million Americans abroad. Of those about 235,000 were in the latter category, that is, just counted on voluntary basis and the coverage is probably fairly weak. But the other part is very good. About 1.1 million, or 60 percent of the population abroad in 1970, were members of the Armed Forces.

Mr. KLEE. What number of American citizens residing overseas were not members of the Armed Forces?

Mr. ZITTER. Also excluding the dependents?

Mr. KLEE. I don't think the dependents are given voting privileges that the members of the armed services are.

Mr. ZITTER. Of the 1.7 million, 1.1 million were members of the Armed Forces. We had another 56,000 who were Federal civilian employees, and then 370,000 dependents of both of these groups. Dependents are not only children but often represent wives of servicemen. You have adults as well as children, although the bulk may have been under voting age.

Mr. KLEE. I see, and you do not know how many of these people residing overseas were eligible to vote in the States from which they came, aside from members of the Armed Forces?

Mr. ZITTER. No; we don't have any statistics on that.

Mr. KLEE. Thank you, Mr. Chairman. I have no further questions.

Mr. DRINAN. Thank you very much.

Mr. Zitter, do you have anything further to add? You may amplify; proceed as you wish, if you have anything else to say.

Mr. ZITTER. No, sir; other than to emphasize what I said earlier, that we will try to get to the subcommittee answers to the questions raised to the best of our ability.

Mr. DRINAN. All right.

Mr. Butler, do you have further questions?

Mr. BUTLER. I do.

Mr. DRINAN. I yield to Mr. Butler.

Mr. BUTLER. Just to clear up in my mind exactly how you record your statistics, let us take a Member of Congress who is fortunate or wealthy enough, or for whatever reason owns a home in Georgetown, I am sure, and also in Oregon. What questions do you ask him when you come by his residence in Georgetown, and how do you record that information?

Mr. ZITTER. That is one group of the pouplation that may be handled differently than the rest of the population. In the case of Congressmen we offer them the option of where they want to be enumerated, whether a resident in the District of Columbia, this area, or back at their State of residence.

Mr. BUTLER. All right. You have your census enumerator stumbling around Georgetown and he comes across somebody who, for all practical pruposes, considers himself a resident of Oregon and also has a residence in Washington. What questions do you ask him?

Mr. ZITTER. The instructions on the form say, "Where you live and work most of the time." Since the staff of the subcommittees live and work in the District most of the time, or Arlington or whatever, they would be enumerated in this area.

Mr. BUTLER. Do you ask him where his domicile is?

Mr. ZITTER. No; the question is what is the usual place of residence.

Mr. BUTLER. If this is the usual place of residence, he shows up in that 743,000?

Mr. ZITTER. That is right.

Mr. BUTLER. How about for purposes of apportionment? Is he in any way included in the figures for Oregon?

Mr. ZITTER. No. We do not allocate that. We don't even ask him what is his "legal residence."

Mr. BUTLER. What does the census taker in Oregon do when he stumbles across this vacant house? What information does he record?

Mr. ZITTER. Presumably if the house is vacant or somebody is there, they tell us that Mr. So-and-So lives and works in Washington most of the time and presumably there is no question on the form.

Mr. BUTLER. What do you do to resolve the conflict if the man's wife answers the question in Oregon one way and the man answers the question differently in Washington?

Mr. ZITTER. If the wife in Oregon insists on listing her husband——

Mr. BUTLER. It is not a question of insistence, but inconsistency, because they do not take time to record and make responses. How do you clear that up?

Mr. ZITTER. We try to explain in the instructions, since most of the census is done by mail, what our definition is, who is to be enumerated at this particular household and the instructions are careful. If so-and-so lives and works elsewhere, he is not to be listed here. It is handled in the instructions.

Mr. BUTLER. All right. Thank you.

Mr. DRINAN. Mr. Klee.

Mr. KLEE. Thank you, Mr. Chairman.

I have one final question, Mr. Zitter. Would you supply for the record the number of Americans residing overseas who are 18 years of age and over? That would be the number of eligible voters; and would you also provide figures showing the total number of Americans residing overseas so we can have that comparison?

Mr. ZITTER. Yes. Of the 1.7 million Americans abroad in 1970, about 1.4 million were of voting age.

Mr. KLEE. Thank you. I have no further questions.

Mr. DRINAN. Mr. Parker?

Mr. PARKER. Thank you.

Mr. Zitter, using Congressman Butler's example of having Federal employees who had a residence here in the District and also in some other State, let's assume 500 Members of Congress and you have maybe 20 employees average, so we are talking about 20,000 people at the most who may be recorded in that fashion. From a statistical standpoint, would that have any bearing in terms of the Bureau of Census attitude about reapportionment problems or plans, to spread that out over the other 50 States?

Mr. ZITTER. I am not sure. You talk about attitude on this. We record the things according to what we think the constitutional requirement is.

Mr. PARKER. Given the the total population of the United States, divided among the 50 States, if you were to take at most 20,000, 30,000, even 100,000 persons in the District who were recorded as residing in the District and not figures in the population figures of the various States for purposes of reapportionment, from a statistical standpoint would that be significant at all?

Mr. ZITTER. With the reapportionment formula you can't tell in advance just what impact allocating some people from one area to another would have. Although 10,000 sounds small, you cannot tell.

Mr. PARKER. It would only have an impact if they all came from the same city and congressional district.

Mr. ZITTER. To the extent they concentrate in one place, it is more likely to have an impact. If equally distributed throughout the country, it wouldn't have much impact.

Mr. PARKER. You gave us a profile earlier of the population. There were 723,000 persons in the District of Columbia, 72 percent voting age, and 45 percent born in the District of Columbia, 42 percent born in a different State. Comparing that with the city of Los Angeles or the city of San Francisco, major urban areas, is there anything in the figures that you think would be at all different or startling from other cities in the United States?

Mr. ZITTER. There are one or two characteristics. The District will probably have a larger proportion of the population who were born elsewhere at any given time, and has at any given time a smaller proportion living in the same place as 1965. The residents are a little more mobile than residents in other States.

Mr. PARKER. Coming from California, where it is hard to find anyone born in California, could you compare those kinds of statistics for me, say, for the city of Los Angeles?

Mr. ZITTER. We will provide that for the record. I think it is important that the District does behave like a city in that respect rather than a State.

[The information referred to follows:]

There are some differences in the migration patterns of persons living in the District of Columbia when compared with those of persons living in Los Angeles. For example, among the residents of the District of Columbia in 1970, 43 percent reported that they were born in the District, 40 percent reported that they were born in a different State, 4 percent reported they were born in a foreign country, and 12 percent failed to report their place of birth. Among the residents of Los Angeles in 1970, 36 percent reported that they were born in the State of California, 42 percent reported that they were born in a different State, 15 percent reported that they were foreign born, and 5 percent failed to report their place of birth.

Among persons 5 years old and over living in the District of Columbia in 1970, 73 percent reported that they were living in the District of Columbia in 1965, 12 percent reported that they were living in a different State in 1965, 3 percent reported that they were abroad in 1965, and 13 percent indicated that they moved between 1965 and 1970 but failed to report their 1965 residence. Among persons 5 years old and over living in Los Angeles in 1970, 72 percent reported that they were living in the same county as in 1965, 11 percent reported that they were living in a different county in California in 1965, 9 percent reported that they were living in a different State in 1965, 3 percent reported that they were living abroad at that time, and 6 percent reported that they had moved since 1965 but failed to report their 1965 residence.

There were many persons who were born in the United States who were living in Puerto Rico or in the outlying areas of the United States in 1970. There were 107,000 persons living in Puerto Rico who were born in the United States, 24,000 in Guam, 8,000 in the Virgin Islands, 1,000 in American Samoa, 24,000 in the Canal Zone, and 4,000 in the Trust Territories of the Pacific Islands.

Mr. PARKER. I have no further questions.

[Subsequent to the hearing Mr. Butler requested that the following table be submitted for the record:]

TABLE A.—APPORTIONMENT AND APPORTIONMENT POPULATION BASED ON THE 1970 CENSUS

States	Size of State delegation [1]	Apportionment population	Resident population [2]	U.S. population abroad [3]			
				Total	Federal employees		Dependents of Federal employees
					Armed Forces	Civilians	
United States	435	204,053,325	203,235,298	1,580,998	1,076,431	67,993	436,574
Alabama	7	3,475,885	3,444,165	31,720	22,121	786	8,813
Alaska	1	304,067	302,173	1,894	1,304	114	476
Arizona	4	1,787,620	1,772,482	15,138	9,866	652	4,620
Arkansas	4	1,942,303	1,923,295	19,008	13,027	443	5,538
California	43	20,098,863	19,953,134	145,729	93,511	9,547	42,671
Colorado	5	2,226,771	2,207,259	19,512	12,585	961	5,966
Connecticut	6	3,050,693	3,032,217	18,476	12,681	1,049	4,746
Delaware	1	551,928	548,104	3,824	2,678	145	1,001
District of Columbia		(4)	756,510	6,461	3,139	841	2,481
Florida	15	6,855,702	6,789,443	66,259	38,948	3,391	23,920
Georgia	10	4,627,306	4,589,575	37,731	26,151	975	10,605
Hawaii	2	784,961	769,913	14,988	6,151	2,042	6,795
Idaho	2	719,921	713,008	6,913	4,362	281	2,270
Illinois	24	11,184,320	11,113,976	70,344	50,769	2,725	16,850
Indiana	11	5,228,156	5,193,669	34,487	25,454	943	8,090
Iowa	6	2,846,920	2,825,041	21,879	16,069	796	5,014
Kansas	5	2,265,846	2,249,071	16,775	10,812	650	5,313
Kentucky	7	3,246,481	3,219,311	27,170	20,138	525	6,507
Louisiana	8	3,672,008	3,643,180	28,828	20,969	658	7,201
Maine	2	1,006,320	993,663	12,657	7,754	540	4,363
Maryland	8	3,953,698	3,922,399	31,299	19,542	2,215	9,542
Massachusetts	12	5,726,676	5,689,170	37,506	25,123	2,092	10,291
Michigan	19	8,937,196	8,875,083	62,113	46,329	1,925	13,859
Minnesota	8	3,833,173	3,805,069	28,104	20,806	1,167	6,131
Mississippi	5	2,233,848	2,216,912	16,936	11,741	443	4,752
Missouri	10	4,718,034	4,677,399	40,635	30,438	1,151	9,046
Montana	2	701,573	694,409	7,164	5,113	312	1,739
Nebraska	3	1,496,820	1,483,791	13,029	8,939	464	3,626
Nevada	1	492,396	488,738	3,658	2,028	310	1,320
New Hampshire	2	746,284	737,681	8,603	5,446	550	2,607
New Jersey	15	7,208,035	7,168,164	39,871	26,905	2,412	10,554
New Mexico	2	1,026,664	1,016,000	10,664	6,680	529	3,455
New York	39	18,338,055	18,241,266	96,789	70,316	4,741	21,732
North Carolina	11	5,125,230	5,082,059	43,171	31,268	1,009	10,894
North Dakota	1	624,181	617,761	6,420	4,432	243	1,745
Ohio	23	10,730,200	10,652,017	78,183	57,807	2,460	17,916
Oklahoma	6	2,585,486	2,559,253	26,233	17,273	870	8,090
Oregon	4	2,110,810	2,091,385	19,425	13,614	926	4,885
Pennsylvania	25	11,884,314	11,793,909	90,405	62,043	3,368	24,994
Rhode Island	2	957,798	949,723	8,075	5,374	371	2,330
South Carolina	6	2,617,320	2,590,516	26,804	19,043	490	7,271
South Dakota	2	673,247	666,257	6,990	4,792	244	1,954
Tennessee	8	3,961,060	3,924,164	36,896	26,375	827	9,694
Texas	24	11,298,787	11,196,730	102,057	63,915	3,658	34,484
Utah	2	1,067,810	1,059,273	8,537	5,582	381	2,574
Vermont	1	448,327	444,732	3,595	2,229	177	1,189
Virginia	10	4,690,742	4,648,494	42,248	26,721	2,547	12,980
Washington	7	3,443,487	3,409,169	34,318	20,784	2,427	11,107
West Virginia	4	1,763,331	1,744,237	19,094	13,055	471	5,568
Wisconsin	9	4,447,013	4,417,933	29,080	22,264	978	5,838
Wyoming	1	335,719	332,416	3,303	1,965	171	1,167

[1] Apportionment computed in accordance with provisions of title 2, United States Code, sec. 2a.

As transmitted to the President for apportionment purposes, except for the New York figure, which represents a later revision. Figures for some States differ from those in the detailed tables because of corrections made after the tabulations were completed.

[3] Includes military and civilian Federal employees and their dependents who (a) were living in outlying areas of the United States and reported a State as their "home of record", or (b) were living in a foreign country and were American citizens or reported a State as their home of record.

[4] The population of the District of Columbia is not included in the apportionment population.

Mr. DRINAN. Thank you very much, Mr. Zitter and Mr. Johnson, for your helpfulness. We appreciate your coming here this morning. Congressman Butler and counsel would like you to stay, if you could, to listen to Mr. Marans and possibly respond also to questions.

The next witness will be Mr. J. Eugene Marans, counsel for the Bipartisan Committee on Absentee Voting, Inc. We have your testimony. You may read it, if you like, or summarize or proceed in any way that is agreeable to you.

TESTIMONY OF J. EUGENE MARANS, COUNSEL FOR THE BIPARTISAN COMMITTEE ON ABSENTEE VOTING, INC.

Mr. MARANS. Thank you, Mr. Chairman. As you suggested, I will summarize the high points of this statement, as I understand that some members of the committee may have questions they would like to ask about the position of the Bipartisan Committee.

I am honored to appear and testify at the request of the chairman in these hearings on House Joint Resolution 280, which proposes an amendment of the Constitution to provide for representation of the District of Columbia in the Congress.

It is my understanding the committee wishes me to testify in my dual capacity of Secretary and Counsel for the Bipartisan Committee on Absentee Voting and as a constitutional lawyer interested in the subject of absentee voting. I also have a personal interest in the proposed amendment as a resident of the District of Columbia.

The primary objective of the Bipartisan Committee, as you probably know, is to assure the right of U.S. citizens residing outside the United States to vote in Federal elections in their State of last voting domicile. The Bipartisan Committee strongly supports H.R. 3211, now pending before the House Administration Committee, which would achieve this objective. The Senate companion bill, S. 95, has been unanimously adopted by that Chamber.

For the information of this subcommittee, I respectfully request that the attached copies of H.R. 3211—not attached to your statement, Mr. Chairman, but the one given to the reporter—and two statements prepared by the Bipartisan Committee regarding that bill, be inserted in the record of the hearings on House Joint Resolution 280.

Mr. DRINAN. Without objection, that will be done.

[The information referred to follows:]

[H.R. 3211, 94th Cong., 1st sess.]

A BILL To guarantee the constitutional right to vote and to provide uniform procedures for absentee voting in Federal elections in the case of citizens outside the United States

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Overseas Citizens Voting Rights Act of 1975".

CONGRESSIONAL FINDINGS AND DECLARATIONS

SEC. 2. (a) The Congress hereby finds that in the case of United States citizens outside the United States—

(1) State and local residency and domicile requirements are applied so as to restrict or precondition the right of such citizens to vote in Federal elections;

(2) State and local election laws are applied to such citizens so as to deny them sufficient opportunities for absentee registration and balloting in Federal elections;

(3) State and local election laws are applied in Federal elections so as to discriminate against such citizens who are not employees of a Federal or State Government agency, or who are not dependents of such employees; and

(4) Federal, State, and local tax laws are applied in some cases so as to give rise to Federal, State, and local tax liability for such citizens solely on the basis of their voting in Federal elections in a State, thereby discouraging such citizens from exercising the right to vote in Federal elections.

(b) The Congress further finds that the foregoing conditions—

(1) deny or abridge the inherent constitutional right of citizens to vote in Federal elections;

(2) deny or abridge the inherent constitutional right of citizens to enjoy their free movement to and from the United States;

(3) deny or abridge the privileges and immunities guaranteed under the the Constitution to citizens of the United States and to the citizens of each State;

(4) in some instances have the impermissible purpose or effect of denying citizens the right to vote in Federal elections because of the method in which they may vote;

(5) have the effect of denying to citizens the equality of civil rights and due process and equal protection of the laws that are guaranteed to them under the fourteenth amendment to the Constitution; and

(6) do not bear a reasonable relationship to any compelling State interest in the conduct of Federal elections.

(c) Upon the basis of these findings, Congress declares that in order to secure, protect, and enforce the constitutional rights of citizens outside of the United States it is necessary—

(1) to require the uniform application of State and local residency and domicile requirements in a manner that is plainly adapted to secure, protect, and enforce the right of such citizens to vote in Federal elections;

(2) to establish uniform standards for absentee registration and balloting by such citizens in Federal elections;

(3) to eliminate discrimination, in voting in Federal elections, against such citizens who are not employees of a Federal or State Government agency, and who are not dependents of such employees; and

(4) to require that Federal, State, and local tax laws be applied so as not to give rise to Federal, State, and local tax liability for such citizens solely on the basis of their voting in Federal elections in a State.

DEFINITIONS

SEC. 3. For the purposes of this Act, the term—

(1) "Federal election" means any general, special, or primary election held solely or in part for the purpose of selecting, nominating, or electing any candidate for the office of President, Vice President, Presidential elector, Member of the United States Senate. Member of the United States House of Representatives, Delegate from the District of Columbia, Resident Commissioner of the Commonwealth of Puerto Rico, Delegate from Guam, or Delegate from the Virgin Islands;

(2) "State" means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, and the Virgin Islands;

(3) "United States" includes the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, and the Virgin Islands, but does not include American Samoa, the Canal Zone, the Trust Territory of the Pacific Islands, or any other territory or possession of the United States; and

(4) "citizen outside the United States" means a citizen of the United States residing outside the United States whose intent to return to his State and election district of last domicile may be uncertain, but who does intend to retain such State and election district as his voting residence and domicile for purposes of voting in Federal elections and has not established a domicile in any other State or any other territory or possession of the United States, and who has a valid Passport or Card of Identity and Registration issued under the authority of the Secretary of State.

RIGHT OF CITIZENS RESIDING OVERSEAS TO VOTE IN FEDERAL ELECTIONS

SEC. 4. No citizen outside the United States shall be denied the right to register for, and to vote by, an absentee ballot in any State, or election district of a State, in any Federal election solely because at the time of such election he does not have a place of abode or other address in such State or district, and his intent to return to such State or district may be uncertain, if—

(1) he was last domiciled in such State or district prior to his departure from the United States;

(2) he has complied with all applicable State or district qualifications and requirements concerning registration for, and voting by, absentee ballots (other than any qualification or requirement which is inconsistent with this Act);

(3) he intends to retain such State or district as his voting residence and voting domicile for purposes of voting in Federal elections;

(4) he does not maintain a domicile, and is not registered to vote and is not voting in any other State or election district of a State or territory or in any territory or possession of the United States; and

(5) he has a valid Passport or Card of Identity and Registration issued under the authority of the Secretary of State.

ABSENTEE BALLOTS FOR FEDERAL ELECTIONS

SEC. 5. (a) Each State shall provide by law for the registration or other means of qualification of all citizens outside the United States and entitled to vote in a Federal election in such State pursuant to section 4 who apply, not later than thirty days immediately prior to any such election, to vote in such election.

(b) Each State shall provide by law for the casting of absentee ballots for Federal elections by all citizens outside the United States who—

(1) are entitled to vote in such State pursuant to section 4;

(2) have registered or otherwise qualified to vote under section 5(a);

(3) have submitted properly completed applications for such ballots not later than seven days immediately prior to such election; and

(4) have returned such ballots to the appropriate election official of such State not later than the time of closing of the polls in such State on the day of such election.

(c) In the case of any such properly completed application for an absentee ballot received by a State or election district, the appropriate election official of such State or district shall as promptly as possible, and in any event, no later than—

(1) seven days after receipt of such a properly completed application, or

(2) seven days after the date the absentee ballots for such election have become available to such official,

whichever date is later, mail the following by airmail to such citizen:

(A) an absentee ballot;

(B) instructions concerning voting procedures; and

(C) an airmail envelope for the mailing of such ballot.

(d) Such absentee ballots, envelopes, and voting instructions provided pursuant to this Act and transmitted to citizens outside the United States, whether individually or in bulk, shall be free of postage to the sender including airmail postage, in the United States mail.

(e) Ballots executed by citizens outside the United States shall be returned by priority airmail wherever practicable, and such mail may be segregated from other forms of mail and placed in special bags marked with special tags printed and distributed by the Postal Service for this purpose.

ENFORCEMENT

SEC. 6. (a) Whenever the Attorney General has reason to believe that a State or election district undertakes to deny the right to register or vote in any election in violation of section 4 or fails to take any action required by section 5, he may institute for the United States, or in the name of the United States, an action in a district court of the United States, in accordance with sections 1391 through 1393 of title 28, United States Code, for a restraining order, a preliminary or permanent injunction, or such other order as he deems appropriate.

(b) Whoever shall deprive or attempt to deprive any person of any right secured by this Act shall be fined not more than $5,000, or imprisoned not more than five years, or both.

(c) Whoever knowingly or willfully gives false information as to his name, address, or period of residence for the purpose of establishing his eligibility to register, qualify, or vote under this Act, or conspires with another individual for the purpose of encouraging the giving of false information in order to establish the eligibility of any individual to register, qualify, or vote under this Act, or pays or offers to pay or accepts payment either for registration to vote or for voting shall be fined not more than $10,000, or imprisoned not more than five years, or both.

SEVERABILITY

SEC. 7. If any provision of this Act, or the application thereof to any person or circumstance, is held invalid, the validity of the remainder of the Act, and the application of such provisions to other persons or circumstances, shall not be affected.

EFFECT ON CERTAIN OTHER LAWS

SEC. 8. (a) Nothing in this Act shall—

(1) be deemed to require registration in any State or election district in which registration is not required as a precondition to voting in any Federal election, or

(2) prevent any State or election district from adopting or following any voting practice which is less restrictive than the practices prescribed by this Act.

(b) The exercise of any right to register or vote in Federal elections by any citizen outside the United States, and the retention by him of any State or district as his voting residence or voting domicile solely for this purpose, shall not affect the determination of his place of residence or domicile for purposes of any tax imposed under Federal, State, or local law.

AUTHORIZATION OF APPROPRIATIONS

SEC. 9. (a) Section 2401(c) of title 39, United States Code (relating to appropriations for the Postal Service) is amended—

(1) by inserting after "title" a comma and the following: "the Overseas Citizens Voting Rights Act of 1975,"; and

(2) by striking out "Act," at the end and inserting in lieu thereof "Acts.".

(b) Section 3627 of title 39, United States Code (relating to adjustment of Postal Service rates) is amended by striking out "or under the Federal Voting Assistance Act of 1955" and inserting in lieu thereof "under the Federal Voting Assistance Act of 1955, or under the Overseas Citizens Voting Rights Act of 1975,".

EFFECTIVE DATE

SEC. 10. The provisions of this Act shall take effect with respect to any Federal election held on or after January 1, 1976.

BIPARTISAN COMMITTEE ON ABSENTEE VOTING, INC.,
Washington, D.C., June 23, 1975.

Hon. JOHN H. DENT,
Chairman, Subcommittee on Elections of the House Administration Committee, U.S. House of Representatives, Washington, D.C.

DEAR MR. DENT: As requested by the Subcommittee, we are pleased to submit this statement of additional views in support of the Overseas Citizens Voting Rights Act of 1975 pending before your Subcommittee, H.R. 3211, which would assure the right of otherwise qualified American citizens residing overseas to vote in presidential and congressional elections in their state of last domicile.

At the outset, we want to express our gratitude to you and your Subcommittee for conducting these hearings on absentee registration and voting by overseas residents. We particularly appreciate your keen understanding of the need to assure private U.S. citizens the same rights to register and vote absentee in federal elections in their state of last domicile as are now enjoyed by U.S. government employees and their dependents.

As you know, the Senate has recently passed the Overseas Citizens Voting Rights Act of 1975 (S. 95) in a form identical to H.R. 3211. With the pendency of the 1976 primary elections, the Bipartisan Committee on Absentee Voting urges the House Administration Committee and the full House to act promptly in approving this important legislation.

I. CONSTITUTIONALITY

We share your view, expressed in the hearings on H.R. 3211, that the U.S. Supreme Court has the primary responsibility for determining the constitutionality of this legislation.

We submit there is little doubt H.R. 3211 would be upheld if subjected to constitutional challenge in the Supreme Court.

A. Constitutional findings

The constitutional basis for the bill is outlined in the findings and declarations of purpose in section 2. The enumeration of these findings is patterned closely on those in section 202(a) of the Voting Rights Act Amendments of 1970 (the "1970 Amendments"), which was upheld by the Supreme Court in an 8–1 decision n *Oregon* v. *Mitchell*, 400 U.S. 112 (1970).

The broad sweep of the findings in H.R. 3211 is not meant to suggest that Congress considers each one of the findings to have the same constitutional strength as every other. In accordance with long-established custom, the enumeration is designed to give the Justices on the Supreme Court several constitutional provisions on which to peg their opinion.

The Bipartisan Committee considers the key constitutional finding in H.R. 3211 to be that the present application of State residency and domicile rules in Federal elections denies or abridges the inherent constitutional right of citizens outside the United States to enjoy their freedom of movement to and from the United States. We think Congress is also justified in retaining the other findings in the bill which indicate that the right to vote for national officers is an inherent right and privilege of national citizenship, and that Congress retains the power to protect this right and privilege under both the necessary and proper clause and the 14th Amendment.

The right of international travel has been recognized as "an important aspect of the citizen's 'liberty' " as long ago as *Kent* v. *Dulles*, 357 U.S. 116, 127 (1958), and was reaffirmed in *Aptheker* v. *Secretary of State*, 378 U.S. 500, 505 (1964). The right guaranteed in cases such as *Kent* and *Aptheker* is not limited to those who are always on the move. An American citizen has, under these decisions, the same right to international travel and settlement as he has to interstate travel and settlement under decisions such as *Crandall* v. *Nevada*, 6 Wall. 35 (1868). *Edwards* v. *California*, 314 U.S. 160 (1941), and *Shapiro* v. *Thompson*, 394 U.S. 618 (1969).

B. Oregon v. Mitchell

The Supreme Court, in approving section 202 of the 1970 Amendments in *Oregon* v. *Mitchell*, *supra*, upheld the provision (hereinafter the "change of residence provision") permitting a U.S. citizen who moved from one State to another within 30 days before a presidential election to vote in such election in his prior State even though he no longer retained the prior State as his residence or domicile.

At least three of the Justices (Steward, Burger, and Blackmun) gave detailed attention to the question of congressional power to regulate voter qualifications in adopting the change of residence provision. And at least three other Justices (Brennan, White, and Marshall) also recognized the significance of this issue, although they did not discuss it in detail.[1]

For example, Justice Stewart (speaking for himself and Justices Burger and Blackmun) devoted several pages of his opinion to the issue—

"whether, despite the intentional withholding from the Federal Government of a general authority to establish qualifications to vote in either congressional or presidential elections, there exists congressional power to do so when Congress acts with the objective of protecting a citizen's privilege to move his residence from one State to another." 400 U.S. at 291–92.

In that opinion, Justice Stewart specifically stated that "the power to facilitate the citizen's exercise of his constitutional privilege to change residence is one that cannot be left for exercise by the individual States without seriously diminishing the level of protection available." 400 U.S. at 292. Further, the opinion

[1] The two remaining Justices (Black and Douglas) approved the durational residency provisions of the 1970 Amendments on broad constitutional grounds and were the only ones in the majority who therefore did not specifically address themselves to the scope of congressional power to enact the change of residence provision. *See* 400 U.S. at 134 (Black, J.), 147–50 (Douglas, J.).

explicitly stated what he believed to be the permissible scope of congressional power to make an exception to State voter qualifications:

"The power that Congress has exercised in enacting [the change of residence provision] is not a general power to prescribe qualifications for voters in either federal or state elections. It is confined to federal action against a particular problem clearly within the purview of congressional authority." *Ibid.*

Justices Brennan, White and Marshall, in their opinion, did not discuss Congress' power to regulate qualifications for voters in the same detail as Justice Stewart. They did recognize, however, that the change of residence provision in the 1970 Amendments operated to modify such State qualifications to some extent, and they concluded, as had Justice Stewart, that such a modification was justified to protect the right of free interstate migration. *See* 400 U.S. at 237–38.

In *Oregon* v. *Mitchell*, therefore, the Supreme Court explicitly affirmed Congress' decision in the 1970 Amendments that the protection of the voting rights of a specific group of citizens with a particular problem—those moving from State to State—does justify a reasonable extension of the bona fide residence concept. Under the 1970 Amendments, the citizen moving to a new State may still retain a bona fide voting residence in his prior State even though he may not have retained bona fide residence in the prior State for other purposes.

C. Retention of Bona Fide Voting Residence

This retention of bona fide voting residence in the prior State constitutes an accommodation by the prior State to assure preservation of the citizen's voting rights. We think there is little question that Congress may constitutionally require the States to make a similar accommodation to permit the private U.S. citizen overseas to vote in his last State of bona fide voting residence even though that State may not remain his bona fide residence for other purposes.

The extension of the bona fide residence concept in this manner already has a basis in the election laws and practices of many States. At least 28 States and the District of Columbia already do allow private U.S. citizens who are "temporarily" residing overseas to retain a bona fide residence in the State for voting purposes. And virtually all States permit U.S. Government employees, and their dependents, who are residing overseas, even for an extended period, to retain a bona fide voting residence in the State. It is evident, therefore, that a majority of the States themselves have already extended their "political community" to include substantial numbers of U.S. citizens residing outside the country.

The State elections laws and procedures providing this extension of bona fide voting residence, however, have imposed a checkerboard of residency and domicile rules that make it difficult for many private U.S. citizens outside the United States to take advantage of this extension and to cast their absentee ballots in a Federal election. Only about 25 percent of the private U.S. citizens residing outside this country who considered themselves eligible to vote actually cast a ballot in the 1972 election.

D. Proscription of Foreign Voting Domicile

As a matter of law, Congress has left the U.S. citizen going overseas little choice but to retain a voting domicile in his last State of domicile. The Immigration and Nationality Act of 1952 lists voting in a foreign election as one of the acts for which a U.S. citizen "shall lose his nationality." 8 U.S.C. § 1481(a)(5).

Although the Supreme Court has questioned the constitutionality of requiring loss of citizenship for voting in foreign elections, the Court's decision was by only a 5–4 majority. *Afroyim* v. *Rusk*, 387 U.S. 253 (1967). The continuing vitality of this decision was called into question by the more recent 5–4 decision in *Rogers* v. *Bellei*, 401 U.S. 815 (1971).

The Library of Congress has stated, therefore, that the "constitutionality of congressionally-prescribed expatriation must be taken as unsettled." The Constitution of the United States, Analysis and Interpretation 294 (1973) (referred to hereinafter as the "Constitution Annotated").

Since a U.S. citizen cannot establish a foreign voting domicile without risking loss of his American citizenship, Congress would be fully justified in assuring that he could retain a bona fide voting residence in his last State of domicile in this country.

E. Voting by Government Personnel

Virtually all States have successfully administered their elections under the liberal test of residence applied to military and other U.S. Government personnel (and their dependents). Since the total number of such absentee residents already

on the voting rolls exceeds the additional number of persons accorded the same rights by the bill, Congress may rationally conclude that the setting of a uniform definition of residence for voting purposes based on criteria similar to those applicable to government employees and their dependents is an appropriate and workable means for protecting the vote of private citizens outside the United States in Federal elections, and their freedom of travel, without penalty by reason of loss of the vote. See also Part V below.

F. Political Community

We are aware of the principal in *Dunn* v. *Blumstein*, 405 U.S. 330, 343–44 (1972) that a State may impose an appropriately defined and uniformly applied requirement of bona fide residence to preserve the "basic conception of a political community." There is no doubt that private U.S. citizens overseas may have a different stake in voting in Federal elections than do their fellow citizens residing in this country. Nevertheless American citizens outside the United States do have their own Federal stake—their own U.S. legislative and administrative interests—which may be protected only through representation in Congress and in the executive branch. The fact that these interests may not completely overlap with those of citizens residing within the State does not make them any less deserving of constitutional protection. The President and Congress are concerned with the common interests of the entire Nation, along with the specific concerns of each State and district.

We also note that the change of residence provision upheld in *Oregon* v. *Mitchell* dealt only with Presidential elections. Each of the majority opinions dealing with the change of residence provision suggested in dictum, however, that the provision probably would also have been upheld if it applied to congressional, as well as to Presidential, elections.[2]

II. TAX LIABILITY

A. Tax Provision in H.R. 3211

Section 8(b) of H.R. 3211 provides that the exercise of the right to register or vote in Federal elections by an overseas citizen, and the retention by him of a State as his voting domicile *solely* for this purpose, shall not affect the determination of his place of domicile for Federal, State or local tax purposes.

This provision is not meant to create any new tax exemption for the citizen outside the United States. It is designed only to assure that Federal, State and local governments would not seek to impose income or inheritance taxes on overseas citizens *solely* in the basis of the citizen's exercise of the right to register and vote absentee in Federal elections. The tax provision in the bill is modeled on an Internal Revenue Service Ruling interpreting the existing Federal income tax exclusion (described below) in section 911 of the Internal Revenue Code. *See* Rev. Rul. 71–101, 1971–1 C.B. 214.

B. Constitutional Basis of Tax Provision

We believe there is ample constitutional basis for the tax provision in the 24th Amendment abolishing the poll tax as a qualification to vote in Federal elections. The 24th Amendment specifically eliminates the payment of "any poll tax or other tax as a precondition for voting in Federal elections:

"SECTION 1. The right of citizens of the United States to vote in any primary or other election for President or Vice President, for electors for President or Vice President, or for Senator or Representative in Congress, shall not be denied or abridged by the United States or any State by reason of failure to pay any poll tax or other tax.

"SECTION 2. The Congress shall have power to enforce this article by appropriate legislation."

The prohibition of "any poll tax or other tax" in this Amendment would appear on its face to apply to U.S. citizens overseas as well as those at home. The Amendment itself specifically gives Congress the power to enforce the voting tax prohibition by appropriate legislation.

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[2] *See* opinions of Justice Black referring to "federal elections" (at 134); Justice Douglas referring to the right to vote for Senators and Representatives as "national officers" (at 148–50); Justice Brennan, White and Marshall referring to "federal elections" in the broad context of the right of interstate migration (at 237–38); and Justices Stewart, Burger and Blackmun, whose opinion states that—

"[W]hile [the change-of-residence provision] applies only to presidential elections, nothing in the Constitution prevents Congress from protecting those who have moved from one state to another, from disenfranchisement *in any federal election, whether congressional or presidential.*" 400 U.S. at 287 (emphasis added).

One member of your Subcommittee has proposed that an overseas citizen be required to retain full domicile (*i.e.*, intent to return), rather than only voting domicile, in his last State of bona fide voting residence in order to vote in Federal elections in that State. Under this proposal, the overseas citizen would have to subject himself to State tax liability as a condition to vote in Federal elections.

We think that such a requirement would be unconstitutional. *First*, requirement of full State domicile solely for voting purposes, without a specific tax exemption provision, would amount to an unconstitutional poll tax in the same way as if such a tax were enforced directly on the act of voting itself. *Cf. Harman* v. *Forssenius*, 280 U.S. 528 (1965).

Second, such a requirement of full State domicile solely for voting purposes, without a specific tax exemption provision, might very well constitute a violation of the due process clauses of the 5th and 14th Amendments. "The taxing power of a state is restricted to her confines and may not be exercised in respect of subjects beyond them." *Guaranty Trust Co.* v. *Virginia*, 305 U.S. 19, 23 (1938).

The Constitution Annotated expresses well the jurisdiction on which State income tax on individuals may be based:

"Jurisdiction, in the case of residents, is founded upon the rights and privileges incident to domicile; that is, the protection afforded the recipient of income in his person, in his right to receive the income, and in his enjoyment of it when received, and, in the case of nonresidents, upon dominion over either the receiver of the income or the property or activity from which it is derived and upon the obligation to contribute to the support of a government which renders secure the collection of such income." Constitution Annotated 1393.

It would appear, from the foregoing, that compelling an overseas citizen to pay State and local taxes *solely* for the privilege of voting in a Federal election, without the citizen enjoying any other rights and privileges incident to domicile in the State, would be a violation of due process as well as of the poll tax prohibition. See also the discussion in Part II(D)(2) below.

C. Effect of Tax Provision

1. Federal Taxation

The tax provision in H.R. 3211 should have no effect on the Federal income or inheritance tax liability of U.S. citizens overseas, except to codify existing IRS rulings and eliminate any remaining doubt in this area.

(a) *Income taxation.*—All U.S. citizens, whether residing at home or overseas, are subject to Federal income taxation on all of their income, subject to certain exemptions. For the citizen residing overseas, the Internal Revenue Code currently allows an exclusion of $20,000 to $25,000 for income earned in work overseas, as indicated above, the Internal Revenue Service has already issued a ruling stating that the overseas citizen would not lose this exclusion solely by voting in elections back home. The tax provision in H.R. 3211 only codifies this existing IRS policy. It does not create any new Federal income tax exemptions for overseas citizens.

The overseas citizen does not enjoy any exemption for investment income by reason of residence outside the United States. Investment income of overseas citizens is subject to Federal income taxation in the same manner as investment income of citizens at home. This includes dividends, interest, rents, royalties—*all* income other than income earned in work overseas.

(b) *Estate taxation.*—The overseas citizen is also fully liable for Federal estate tax to the same extent as citizens residing in the United States. The Internal Revenue Code provides no exemption from Federal estate tax for U.S. citizens by virtue of their residence overseas. The tax provision in H.R. 3211, therefore, would have no practical effect whatever on Federal estate tax liability of overseas citizens.

2. State and Local Taxation

The effect of the tax provision in H.R. 3211 on State and local income or inheritance tax liability of U.S. citizens overseas would differ from State to State.

(a) *Income taxation.*—In a 1971 study, the Library of Congress reported that—

11 states had no broad-based income tax;

12 states did not tax individuals with abodes outside the state on income earned overseas;

16 states exempted the first $20,000–$25,000 earned overseas; and

only 12 states appeared to tax income earned overseas.

The practical effects of H.R. 3211 on State income taxation, as of the date of that study, would therefore have been as follows:

(i) No effect in 11 states having no broad-based income tax;

(ii) No effect in 12 states which did not tax individuals with abodes outside the state or income earned abroad, except possibly in those states that tax investment income of overseas citizens:

(iii) No effect in 16 states having $20,000–$25,000 exclusion for income earned abroad, except on citizens with earned income above those levels and with investment income; and

(iv) Limitation of income tax liability in the 12 states that tax income earned abroad to individuals who are subject to the state's taxing jurisdiction for reasons other than voting in Federal elections.

In sum, the tax provision of H.R. 3211 would have little or no practical effect on the income tax liability of overseas citizens in 38 states. With respect to the remaining 12 states, the tax provision would have an effect only on those citizens whose *sole* contact with the state is their exercise of the right to register and vote in Federal elections.

(b) *Inheritance taxation.*—State inheritance tax is generally imposed on overseas citizens on the basis of state domicile. The tax provision in H.R. 3211 would assure that state governments would not be able to assert inheritance tax jurisdiction on the overseas citizen *solely* on the basis of his exercise of the right to register and vote in Federal elections, although the state would not be precluded from asserting such inheritance tax jurisdiction on some other basis.

The tax provision in H.R. 3211 might, therefore, have some practical effect on the state inheritance tax liability of those overseas citizens whose *sole* remaining contact with their state of last domicile is the retention of a voting domicile for the purpose of voting in Federal elections.

D. Reasons for Tax Provision

1. Federal Taxes

As described above, the tax provision in H.R. 3211 codifies a current IRS ruling with respect to an existing Federal income tax exclusion. The tax provision has no effect whatever on an overseas citizen's Federal estate tax liability.

With respect to Federal taxation, therefore, the tax provision serves only to remove any remaining uncertainty as to an overseas citizen's income tax liability under present law, and would leave existing estate tax liability unchanged.

2. State and Local Taxes

There is ample justification for relieving the overseas citizen of the payment of state and local income and inheritance taxes *solely* for the privilege of voting in Federal elections.

First, the Poll Tax Amendment gives Congress a clear mandate to assure by appropriate legislation that states will allow "citizens of the United States" to vote in Federal elections without imposition of "any poll tax or other tax."

Second, as described above, the overseas citizen is already subject to Federal income taxation and estate taxation, even though he is currently given a limited exclusion from income taxation for foreign earned income. He is already subject to Federal taxation by virtue of being an American citizen, whether or not he votes in any election. It should be noted that even his limited exclusion from income taxation may well be phased out in the current round of tax reform legislation being considered by Congress.

Third, the overseas citizen in most instances is also subject to substantial foreign income tax and sales tax (or value-added tax) liability in the country of his residence. The foreign income taxation is generally creditable against any Federal income tax he must pay on such income, in order to avoid double taxation, but it is not ordinarily creditable against any state or local taxation. The foreign sales (or VAT) tax may run as high as 30 percent on some items, but it is not allowed either as a credit or as a deduction against Federal, state or local taxation in the United States.

By paying foreign income and sales (or VAT) taxes, the overseas citizen helps pay for the services actually used in his country of residence. He pays for police and fire services, schools, sewers, garbage collection, streets and highways, health care, social security, and any other government benefits provided by that country and used by him.

It plainly would be unreasonable for a state to impose an additional income tax burden on the overseas citizen *solely* for the purpose of voting in Federal elections, even though the citizen makes no use of any other service provided by the state, such as police, fire, education, sanitary, transportation and social services for which he is already paying taxes in his country of foreign residence.

Fourth, Federal and State governments long ago abandoned the notion of "no representation without taxation" in setting qualifications for voters in Federal elections in this country. Numerous classes of citizens residing at home pay no Federal or State income tax whatever even though they regularly vote in Federal elections in their state of residence. These groups include, among others, retired persons living solely on social security; students attending colleges and universities; disabled Americans supported entirely by veterans' or other compensation; and individuals living entirely on welfare.

Indeed, the current inability of hundreds of thousands of overseas citizens to vote in Federal elections produces invidious "taxation without representation," since these citizens do remain generally liable for U.S. income and estate taxation. It would seem highly appropriate for the Bicentennial Election to be the first election in which these taxpayers are finally assured the right to vote back home for President and Congress.

III. PROTECTION AGAINST FRAUD

The Bipartisan Committee submits that the potential of voting fraud in the implementation of H.R. 3211 is remote and speculative.

First, the Federal Voting Assistance Program of the Department of Defense *has not reported a single case of voting fraud in the entire 20 years* that absentee registration and voting by private U.S. citizens overseas has been recommended to the States by Congress.

Second, H.R. 3211 itself imposes a $10,000 fine and five years' imprisonment for willfully giving false information for purposes of absentee registration and voting under the mechanisms set forth in the legislation.

Third, all States also have criminal statutes prohibiting voting fraud in elections held in the State. The State would be free to require that an overseas citizen seeking to vote under this bill designate a local agent to accept service of process in any criminal action brought against him for voting fraud, with an appropriate provision making it reasonably probable that a notice of such service will be communicated to the person charged. *See* Constitution Annotated 1419.

It might also be possible for a State to require the overseas voter to submit an advance waiver of extradition to the State for trial on a charge of voting fraud as a condition for registering and voting under H.R. 3211. Some foreign countries, however, do not respect a waiver of extradition, even if executed subsequent to the issuance of an extradition request by the United States. *See* 6 Whiteman, Digest of International Law 1030–1033 (1968).

As a practical matter, moreover, most extradition laws and treaties specifically exempt political (*e.g.*, voting) offenses. *See* Whiteman, *supra*, at 799. It might be possible to nullify this exemption by an advance waiver of extradition, but we are not aware of any situation in which this procedure has been attempted.

The use of an advance waiver of extradition probably would be novel in U.S. and international law. Indeed there appears to be no specific provision whatever in U.S. law regarding waiver of extradition. *See* Whiteman, *supra*, at 1031–1032. Each waiver situation appears to be handled on a case-by-case, country-by-country basis. *Ibid.*

Fourth, the States would still be free under H.R. 3211 to establish further safeguards against fraud. Many of the States, for example, already require notarization by a U.S. official of at least one absentee voting document. The absentee voter often is required to go down to the U.S. consul or other local American official with his passport and have his application for registration notarized. If the State does not also treat the registration request as an application for absentee ballot, the voter may be obligated to have another form notarized requesting the ballot. And if the State also requires notarization on the ballot the voter may have to visit the U.S. consulate once again for this purpose.

Fifth, the States would also have available the technical assistance of the State Department in verifying the U.S. citizenship and certain other qualifications of a citizen making application for absentee registration and an absentee ballot from outside the United States. The bill requires that a citizen seeking to register and vote absentee under this bill must have a valid Passport or Card of Identity issued under the authority of the Secretary of State.

Sixth, one can be confident that a U.S. citizen who has any continuing contacts with the United States, even without a stated intent to return to this country, is not casually going to risk an indictment for voting fraud. If a citizen were to be under indictment for voting fraud, and did not surrender himself for trial, he might well be obliged to remain a lifelong international fugitive, forever inhibited from entering the United States. There are, of course, constitutional problems in denying a U.S. citizen residing abroad his passport, social security or certain other benefits prior to a conviction. It is evident, however, that a citizen indicted on voting fraud charges could be subject to significant administrative sanctions by U.S. consular officials and various other federal agencies even before conviction.

Based on 20 years' prior experience, we think the various safeguards in the absentee registration and voting mechanism of H.R. 3211 make it highly unlikely that any overseas citizen would seek to use the procedures of this bill to commit voting fraud.

IV. CONGRESSIONAL ELECTIONS

A. General

The Bipartisan Committee's principal statement before your Subcommittee emphasized our view that American citizens outside the United States should be assured the right to vote in congressional as well as in Presidential elections.

It was plain from other testimony in the hearings on the bill that Americans outside the United States possess both the necessary interest and the requisite information to participate in the selection of Senators and Congressmen back home.

Congress is concerned with the common legislative welfare of the entire Nation, along with the specific legislative interests of each district. There is no doubt that the local inhabitants for the district may not have the same interests as citizens outside the United States. The local citizen may be more interested in regional farm prices, the closing of a naval base, or construction of a new highway. Yet the citizen outside the United States also has his congressional interests. The citizen outside the country may be more interested, for example, in the exchange rate of the dollar, social security benefits, or the energy situation.

It is apparent, moreover, that the local citizen and the overseas citizen share a number of common national interests, such as Federal taxation, defense expenditures (for example, U.S. troops stationed overseas), inflation, and the integrity and competence of our National Government.

B. Comparison with 1970 Amendments

One member of your Subcommittee raised the question whether H.R. 3211 would discriminate in favor of overseas Americans, since the change of residence provision in the 1970 Amendments applicable to Americans at home applies only to Presidential elections and not to Congressional elections.

We believe that any such advantage for overseas citizens, if indeed it does exist, would pale beside the gross existing discrimination against Americans overseas.

First, under *Dunn* v. *Blumstein*, 405 U.S. 330 (1972), every voting-age American citizen at home can register and vote in Congressional, state and local elections, as well as Federal elections, in his new state of residence if he registers 30 days or more before the elections. Private Americans overseas, in comparison, can register and vote absentee in Federal elections in only about half the states, and then only if they can prove an intent to return to the state.

Second, the number of voting-age Americans moving to a new state too late to register for any given election under the 30-day rule of *Dunn* v. *Blumstein* amounts, at the maximum, to tens of thousands of individuals, and they will all be able to register to vote in their new state for all future Congressional elections. By contrast, hundreds of thousands of private Americans overseas are prevented from voting in Congressional elections indefinitely until they return to this country, and of course, they cannot vote in foreign elections without risking their American citizenship.

If the Congress perceives discrimination against Americans at home in H.R. 3211, the correct remedy is to add Congressional elections to the durational residency and change of residence provisions of the 1970 Amendments. Perpetuation of the existing grievous discrimination against Americans overseas definitely is the *wrong* remedy.

V. EQUALITY WITH GOVERNMENT EMPLOYEES

Virtually all States have statutes expressly allowing military personnel and other U.S. Government employees, and their dependents, to register and vote absentee from outside the country. In the case of these Government personnel, however, the legal presumption is that the voter does intend to retain his prior State of residence as his voting domicile unless he specifically adopts another State residence for that purpose. This presumption in favor of the Government employee operates even where the chances that the employee will be reassigned back to his prior State of residence are remote. The Bipartisan Committee considers this discrimination in favor of Government personnel and against private citizens to be unacceptable as a matter of public policy, and to be suspect under the equal protection clause of the 14th Amendment.

The extent of this discrimination against private U.S. citizens is further described in a recent Library of Congress study on absentee registration and voting,[3] which is attached as Appendix A hereto.

The Library of Congress study shows that *49 States* permit Federal government employees serving overseas to register and vote absentee or do not require registration, but only *28 States* generally allow private U.S. citizens overseas to register and vote absentee.

As indicated above, however, even the 28 States which generally do allow private U.S. citizens overseas to register and vote absentee do not grant the private citizen the same legal presumption allowed government employees that the voter does intend to retain his prior State of voting domicile.

The result is that American businessmen, missionaries, teachers, students, retired couples and other citizens overseas often cannot vote in Federal elections even in these 28 States, while government employees living in the same foreign country have no difficulty in exercising the Federal franchise.

It is this serious discrimination against the private U.S. citizen that H.R. 3211 is designed in part to redress.

VI. DISTRIBUTION AMONG THE STATES

A recent survey made for the Federal Voting Assistance Program of the Defense Department indicates that the distribution among the states of the last voting domicile of U.S. citizens residing overseas should be generally comparable to the distribution among the states of U.S. voters as a whole in the 1972 Presidential election, with the exception of California and New York. One could have anticipated that these two states would have a somewhat higher proportion of overseas citizens claiming the state as their last voting domicile, since these are the two leading commercial states from which American businessmen go overseas.

It would appear, therefore, that adoption of H.R. 3211 would not result in a significantly disproportionate increase in the number of voters in federal elections in any one state, although California and New York might gain relatively more voters than other states. The likelihood is that the overseas citizens enfranchised to vote in federal elections by H.R. 3211 would be distributed among the states in generally the same proportion as are all voters in federal elections.

The following table, based upon the Federal Voting Assistance Program survey, illustrates this conclusion by showing—

(a) the estimated percentage of overseas citizens that could claim each state as their last voting domicile under H.R. 3211; and

(b) each state's percentage of the total national popular vote in the 1972 Presidential election:

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[3] Yadlovsky, Absentee Registration and Voting: Chart and Tables Showing Major Provisions of the Laws of the Fifty States and the District of Columbia (Burdette rev. Dec. 18, 1973).

State	Estimated percentage of overseas citizens that could claim State as last voting domicile under H.R. 3211 (A)	State's percentage of total national popular vote in 1972 Presidential election (B)
Alabama	0.3	1.29
Alaska	.2	.12
Arizona	.6	.84
Arkansas	.1	.83
California	15.2	10.76
Colorado	.9	1.23
Connecticut	2.5	1.78
Delaware	.5	.30
District of Columbia	.4	.21
Florida	3.3	3.32
Georgia	.3	1.51
Hawaii	.8	.35
Idaho	.2	.40
Illinois	5.4	6.88
Indiana	1.1	2.73
Iowa	.6	1.58
Kansas	.4	1.18
Kentucky	.6	1.37
Louisiana	.4	1.35
Maine	.6	.54
Maryland	1.3	1.74
Massachusetts	4.9	3.16
Michigan	4.0	4.49
Minnesota	2.2	2.24
Mississippi	.1	.83
Missouri	1.9	2.38
Montana	.2	.41
Nebraska	.4	.74
Nevada	.1	.23
New Hampshire	.4	.43
New Jersey	4.5	3.86
New Mexico	.9	.50
New York	19.4	9.21
North Carolina	.7	1.95
North Dakota	.1	.36
Ohio	4.0	5.27
Oklahoma	.5	1.32
Oregon	1.1	1.19
Pennsylvania	4.8	5.91
Rhode Island	.7	.53
South Carolina	.3	.87
South Dakota	.2	.40
Tennessee	.7	1.55
Texas	5.1	4.47
Utah	1.0	.62
Vermont	.4	.24
Virginia	1.1	1.87
Washington	3.1	1.89
West Virginia	.1	.98
Wisconsin	1.5	2.38
Wyoming	.1	.19
Total	100.0	100.00

NOTES

A)—Voting statistics, nonfederally employed citizens residing outside the United States, survey for the Federal voting assistance program of the Department of Defense, cited in hearings on voting by U.S. citizens residing abroad, Subcommittee on Privileges and Elections, U.S. Senate Rules and Administration Committee, 93d Cong., 1st sess. 153-157 (1973).
(B)—See election statistics, the World Almanac 1975 at 734.

VII. EFFECT ON EACH STATE

The Federal Voting Assistance Program survey also indicates that H.R. 3211, if adopted, would generally produce only a nominal increase in the number of voters in any one state who might be expected to vote in Federal elections.

The estimated effect of H.R. 3211 would range from a 0.06-percent increase of voters in Federal elections in the State of West Virginia up to a 1.26-percent increase of voters in such elections in the State of Hawaii. The estimated increase would exceed 1.0 percent of voters in Federal elections in only two states—Hawaii and New York. The estimated increase would be under 0.5 percent in thirty states.

The following table, based on the Federal Voting Assistance Program survey, illustrates this conclusion by showing—

(a) the estimated maximum number of overseas citizens that might be expected to vote in each state under H.R. 3211;

(b) each state's total popular vote in the 1972 Presidential election; and

(c) the estimated maximum percentage effect that voting by overseas citizens under H.R. 3211 would have had on each state's total popular vote in the 1972 Presidential election.

State	Estimated maximum number of overseas citizens that might be expected to vote in each State under H.R. 3211 (A)	State's total popular vote in 1972 Presidential election (B)	Estimated maximum percentage effect of voting by overseas citizens under H.R. 3211 on State's total popular vote in 1972 Presidential election (C)
Alabama	1,300	1,006,093	0.13
Alaska	850	95,219	.89
Arizona	2,550	653,505	.39
Arkansas	450	647,666	.07
California	65,000	8,367,859	.78
Colorado	3,850	953,878	.40
Connecticut	10,700	1,384,277	.77
Delaware	2,150	235,516	.91
District of Columbia	1,700	163,421	1.04
Florida	14,100	2,583,283	.55
Georgia	1,300	1,174,722	.11
Hawaii	3,400	270,274	1.26
Idaho	850	310,379	.27
Illinois	23,100	4,723,236	.49
Indiana	4,700	2,125,529	.22
Iowa	2,550	1,225,944	.21
Kansas	1,700	916,095	.19
Kentucky	2,550	1,067,499	.24
Louisiana	1,700	1,051,491	.16
Maine	2,550	417,271	.61
Maryland	5,550	1,353,812	.41
Massachusetts	20,950	2,458,756	.85
Michigan	17,100	3,489,727	.49
Minnesota	9,400	1,741,652	.54
Mississippi	450	645,963	.07
Missouri	8,100	1,852,589	.44
Montana	850	317,603	.27
Nebraska	1,700	577,225	.29
Nevada	450	181,766	.24
New Hampshire	1,700	334,055	.50
New Jersey	19,250	2,997,229	.66
New Mexico	3,850	385,931	1.05
New York	82,950	7,161,830	1.11
North Carolina	3,000	1,518,612	.20
North Dakota	450	280,514	.16
Ohio	17,100	4,094,787	.42
Oklahoma	2,150	1,029,900	.21
Oregon	4,700	927,946	.51
Pennsylvania	20,500	4,592,105	.45
Rhode Island	3,000	411,000	.73
South Carolina	1,300	673,960	.19
South Dakota	850	307,415	.28
Tennessee	3,000	1,201,182	.25
Texas	21,800	3,471,281	.63
Utah	4,300	478,476	.90
Vermont	1,700	186,947	.91
Virginia	4,700	1,457,019	.32
Washington	13,250	1,470,847	.90
West Virginia	450	762,399	.06
Wisconsin	6,400	1,852,890	.35
Wyoming	450	145,570	.31
Total	428,450	77,734,195	

NOTES

(A) Computed from voting statistics, nonfederally employed citizens residing outside the United States, supra, based on approximately same percentage (57 percent) of 18-yr-or-older overseas citizens voting as of all 18-yr-or-older citizens voting in 1972 Presidential election (57 percent times 751,500 equals approximately 428,500).

(B) See election statistics, "The World Almanac," supra.

(C) (A) divided by (B).

Please do not hesitate to let us know if you have any further questions regarding the Bipartisan Committee's position on H.R. 3211.

Sincerely yours,

J. EUGENE MARANS,
Counsel for the Bipartisan Committee on Absentee Voting.

Attachment.

APPENDIX A

ABSENTEE REGISTRATION AND VOTING CHART AND TABLES SHOWING MAJOR PROVISIONS OF THE LAWS OF THE FIFTY STATES AND THE DISTRICT OF COLUMBIA

INTRODUCTORY NOTE

The chart which follows is designed to provide quick reference for determining whether persons may register or vote by absentee procedures in particular jurisdictions. The tables provide statistical information regarding the number of jurisdictions which permit particular classes of persons to register or vote by absentee procedures. Neither the chart nor the tables specifically cover the actual application and voting provisions of any jurisdiction's law.

CONTENTS

State	Civilians			Military, dependents, Federal employees		
	Register absentee	Vote absentee		Register absentee	Vote absentee	
		Primaries	General election		Primaries	General election
Alabama: 1958 Recomp. Code 1940, Title 17, and 1971 Supp.	No (§ 28)	Only those persons listed in next column (Supp. § 64(16)).	Only those confined to home or hospital because of physical disability (Supp. § 64(24)(a)); disabled veterans in veteran facilities (Supp. § 64(16)(a)); seamen, sailors, deep - sea fisherman (Supp. § 64(26)(g)); persons away on business (Supp. § 64(16)(b)).	No (Supp. § 27(1)	Yes (Supp. § 64(16)(a))	Yes (Supp. §§ 64(16)(a)).
Alaska: Michie Stats. and 1973 Supp.	Yes (§ 15.07.050)	Yes (§ 15.20.010)	Yes (§ 15.20.010)	Yes (§ 15.70.050)	Yes (§ 15.20.010)	Yes (§ 15.20.010).
Arizona: Rev. Stats. Ann.; 1972–73 Supp.; and 1973 Sess. Laws Examined.	Yes (Supp. § 16–108)	Yes (Supp. §§ 16–1101; 16–1101–01).	Yes (Supp. § 16–1101)	Yes (Supp. § 16–108)	Yes (Supp. §§ 16–1101; 16–1101–01).	Yes (Supp. §§ 16–1101; 16–1101. 01).
Arkansas: Stats. Ann. 1947, 1956 Rep. and 1971 Supp.	Only those unable because of illness to appear in person (Supp. Const. Amend. No. 51, § 9(e)).	Yes (Supp. § 3–901 and § 3–903).	Yes (Supp. § 3–901 and § 3–903).	Registration not required (Supp. Const. Amend. No. 51, § 9(f)).	Yes (Supp. § 3–901 and 3–903).	Yes (Supp. § 3–901 and § 3–903).
California: West Election Code; 1973 Supp. and 1973 Sess. Laws Examined.	Yes (§ 213: Supp. 213(1))	Yes (§ 14630)	Yes (§ 14620) (Supp. §§ 14662, 14800) (1973 Sess. Laws, §§ 22032, 14629.5).	Yes. Application to register may be made at same time as application for absentee ballot (§ 213).	Yes (§ 14630)	Yes (Supp. § 14662).
Colorado: Rev. Stat., 1963; 1969 Handbook; and 1970, 1971 Sess. Laws Examined.	Yes. Elector known to county clerk may register members of his family (§ 49–4–2) or elector may use affidavit (1970 Sess. Laws § 49–4–13) or Federal postcard application (1970 Sess. Laws, § 49–4–14).	Yes (§ 49–14–1)	Yes (§ 49–14–1)	Yes. Application to register may be made at same time as application for absentee ballot. (1970 Sess. Laws, § 49–4–14).	Yes (§§ 49–14–1, 49–14–2)	Yes (§§ 49–14–1, 49–14–2).
Connecticut: Gen. Stats. Ann.; 1973 Supp.; and 1973 Sess. Laws Examined.	No (Supp. §§ 9–16, to 9–20), unless physically disabled (Supp. §§ 9–31a).	Yes (1973 Sess. Laws, § 9–133a).	Yes (Supp. § 9–135)	Yes (Supp. § 9–26)	Yes (1973 Sess. Laws, § 9–133a).	Yes (§ 9–134).
Delaware: Code Ann., Title 15; 1970 Supp.; and 1972 Noncumulative Supp.	No, unless out of country. (Noncum. Supp. § 1901).	No direct primary. (Noncum. Supp. § 55–01).	Yes (Noncum. Supp. §§ 5501, 5503).	Yes. Application to register made at same time as application for absentee ballot. (Supp. §§ 1901–1909).	No direct primary. (Noncum. Supp. § 5501).	Yes (Noncum. Supp. §§ 5501, 5503).

District of Columbia: Code 1973 ed.	No, except disabled. (§§ 1–1105 1–1107).	Yes. (§ 1–1105)	Yes (§ 1–1109(b))	Yes. May register simultaneously for both Primary and General election. (Armed Forces Voting Information 1964 D.O.D. Gen. 6p. 9).	Yes (§ 1–1105)	Yes (§ 1–1109(b)).
Florida: Stats. Ann.; 1973 Supp.; 1973 Sess. Laws Examined.	Yes (Supp. §§ 97.041, 97.063.)	Yes (Supp. § 101.62)	Yes (Supp. § 101.62)	Yes. Application to register may be made at same time as application for absentee ballot. (Supp. §§ 97.063, 97.0631, 97.064).	Yes. (Supp. § 101.691)	Yes (Supp. § 101.691).
Georgia: Code Ann. 1970 Revision and 1970–1973 Sess. Laws Examined.	No, except Federal employees outside State can register by mail. A relation may apply for registration card (§ 34–619).	Yes (§ 34–1401)	Yes (§ 34–1401)	Yes. A relative may apply for a military registration card (§ 34–169).	Yes (§ 34–1401)	Yes. (§34–1401).
Hawaii: Rev. Stats. 1968 ed. and 1972 Supp.	Yes (Supp. § 11–16)	Yes (Supp. §§ 15–1, 15–12)	Yes (Supp. §§ 15–1, 15–12)	Yes (Supp. § 11–16)	Yes (Supp. § 15–1)	Yes (Supp. § 15–1).
Idaho: Code; 1971 Supp.; and 1973 Sess. Laws Examined.	Yes (Supp. § 34–410)	Yes (Supp. § 34–1001 and 1973 Sess. Laws, §§ 1002, 1002A).	Yes (Supp. § 34–1001 and 1973 Sess. Laws, §§ 1002, 1002A).	Yes (Supp. § 34–410)	Yes (Supp. § 1001 and 1973 Sess. Laws, § 1002).	Yes (Supp. § 1001 and 1973 Sess. Laws, § 1002).
Illinois: Smith-Hurd Ann. Stats. 1965 ed. 1973–74 Supp.; 1973 Sess. Laws examined.	No, except in Presidential elections by out-of-country residents (Supp. §21A–1).	Yes (Supp. § 19–1 and 1973 Sess. §Laws §§ 19–2, 19–12. 1).	Yes (Supp. § 19–1 and 1973 Sess. Laws §§ 19–2, 19–12. 1).	Not required (§ 20–1)	Yes (§ 20–2 and 1973 Sess. Laws, § 20–3).	Yes (§ 20–2 and 1973 Sess. Laws, § 20–3).
Indiana: Burns Stats. Ann. 1972 ed., and 1973 Sess. Laws Examined.	Yes (§ 3–1–7–12)	Yes (§ 3–1–22–1)	Yes (§ 3–1–22–1)	Yes (§ 3–1–7–12) and at same time as application for absentee ballot (1973 Sess. Laws, § 3–1–22–3).	Yes (§ 3–1–22–1)	Yes (§ 3–1–22–1).
Iowa: Code Ann. 1973 ed. and 1973 Sess. Laws Examined.	Yes (§§ 48. 12, 53. 28)	Yes (1973 Sess. Laws, § 53. 1).	Yes (1973 Sess. Laws, § 53. 1).	Yes, execution of affidavit on absentee ballot constitutes registration on absentee ballot (§ 53. 38).	Yes (1973 Sess. Laws, § 53. 39).	Yes (1973 Sess. Laws, § 53. 39).
Kansas: Stats. Ann. 1964 ed.; and 1972–73 Sess. Laws Examined.	Yes (Supp. § 25–2309)	Yes (1972 Sess. Laws, § 25–1119).	Yes (1972 Sess. Laws)	Registration not required (1972 Sess. Laws)	Yes (§ 25–1220 and 1972 Sess. Laws, § 25–1122).	Yes (§ 25–1220 and 1972 Sess. Laws, § 25–1122).
Kentucky: Baldwins K.R.S., 1972 Pamphlet Edition.	Yes (§ 128. 040(4))	Yes (§§ 125. 220, 125. 230)	Yes (§§ 125. 220, 125. 230)	Yes (§ 128. 040(4))	Yes (§ 125. 230)	Yes (§ 125. 230).
Louisiana: Rev. Stat. Title 18, and 1973 Supp.	No (§ 233)	Yes, in person (Supp. §§1071(B), 1074).	Yes, in person (Supp. §§ 1071(B), 1074).	Yes (Supp. § 233)	Yes (Supp. § 1071(C))	Yes (Supp. § 1071(C)).
Maine: Rev. Stats. Ann. 1964, Title 21; 1973–74 Supp.; and 1973 Sess. Laws Examined.	No, except special provisions for disabled (§ 72, but see Supp. § 102–A).	Yes (§§ 1–1, 1–2, 1251)	Yes (§§ 1–1, 1–2, 1251)	Yes (§ 1302)	Yes (§§ 1–1, 1–2, 1306, 1307).	Yes (§§1–1, 1–2, 1306, 1307).

State	Civilians			Military, dependents, Federal employees		
		Vote absentee			Vote absentee	
	Register absentee	Primaries	General election	Register absentee	Primaries	General election
Maryland: Ann. Code, Art. 33; and 1973 Supp.	Yes (Supp. § 3-7).....	Yes (Supp. §§ 27-1; 27-2)..	Yes (Supp. §§ 27-1; 27-2)..	Yes. Registration is automatic when the executed oath on absentee ballot envelope has been accepted by the Board of Supervisors of Elections (and, Supp. § 3-7).	Yes (Supp. §§ 27-1; 27-2)..	Yes (Supp. §§ 27-1; 27-2).
Massachusetts: Gen. L. Ann.; 1973 Supp.; and 1973 Sess. Laws Examied.	No, except for physically disabled persons. (Supp., ch. 51, §§ 42, 42A, 42B).	Yes (Supp., ch. 54, § 86)....	Yes (Supp., ch. 54, § 86)...	Yes. Registered automatically when application for absentee ballot received. (Supp., ch. 54, § 103D).	No (Supp., ch. 54, §§ 103 B, 103 C).	Yes (Supp. ch. 54, §§ 8-103B, 103C).
Michigan: Comp. L. Ann. 1973-74 Supp. and 1973 Sess. Laws Examined.	Yes (§ 168. 504).....	Yes (Supp. §§ 168. 758, 168. 758a).	Yes (Supp. §§ 168. 758, 168. 758a).	Yes (Supp. §§ 168. 759a)...	Yes (Supp. § 168. 758).....	Yes (Supp. § 168. 758).
Minnesota: Stats. Ann. 1973 Supp.; and 1973 Sess. Laws Examined.	Yes (§ 201. 20(2)).....	Yes (1973 Sess. Law, § 207. 02).	Yes (1973 Sess. Laws, § 207. 02).	Yes (1973 Sess. Laws, § 207. 19).	Yes (1973 Sess. Laws, § 207. 19).	Yes (1973 Sess. Laws, § 207.-19).
Mississippi: Code of 1942; 1972 Supp.: and 1973 Sess. Laws Examined.	No (Supp. § 3203-503).....	Yes. (Supp. §§ 3203-302, 3203-603).	Yes. (Supp. § 3203-302)....	Yes (Supp. § 3203-203)....	Yes (Supp. § 3203-202)....	Yes (Supp. § 3203-202).
Missouri: Vernon's Ann. Stats. (1966 Rev.); 1973 Supp.; and 1973 Sess. Laws Examined.	Yes (1973 Laws, Act 139, § 7).	Yes (Supp. § 112.010).....	Yes (Supp. § 112.010).....	Registration not required. (Supp.§ 112.310).	Yes (Supp. § 112.300).....	Yes (Supp. § 121.300).
Montana: Rev. Codes and 1973 Supp.	No (Supp. § 23-3006(1)) but may be registered at home. (Supp. § 23-3007).	Yes (Supp. 23-3701).....	Yes (Supp. § 23-3701).....	Yes (Supp. §§ 23-3006(2), 23-3719).	Yes (Supp. § 23-3706).....	Yes (Supp. § 23-3706).
Nebraska: Rev. Stats. 1943 Reissue of 1958; 1973 Cumulative Supp.; 1973 Supp.	Yes (1973 Supp. § 32-221)..	Yes (1973 Supp. §§ 32-803, 32-820).	Yes (1973 Supp. §§ 32-803, 32-820).	Yes. May register when they vote by absentee ballot. (1973 Supp. § 32-221).	Yes (1973 Supp. §§ 32-803, 32-820).	Yes (1973 Supp. §§ 32-803, 32-820).
Nevada: Rev. Stats. 1971 Ed., Title 24, and 1973 Sess. Laws Examined.	No (§ 293.517).....	Yes (§ 293.313).....	Yes (§ 293.313)	Yes, when applying for ballot (§§ 293.320; 293.-553).	Yes (§ 293.313)	Yes (§ 293.313).
New Hampshire; Rev. Stats. Ann. 1970 Ed., and 1970 Sess. Laws Examined.	No (§§ 55:10-55:14) except those residing temporarily outside the United States (§ 55:24).	No (§ 60:1).....	Yes (§ 60:1).....	Yes, automatic when application for absentee ballot is accepted by election board (§ 60:23).	No (§ 60:1).....	Yes (§ 60:1).
New Jersey: N.J. Stats. Ann., 1973-74 Supp.; and 1973 Sess. Laws Examined.	No, except for physically disabled persons (§ 19: 31-6).	Yes (Supp. §§ 19:57-15, 19:57-19).	Yes (Supp. §§ 19:57-2, 19:57-19).	Registration not required (Supp. § 19:57-25).	Yes (Supp. §§ 19:57-2, 19:57-3).	Yes (Supp. §§ 19:57 19: 57-3).

New Mexico: Stats. 1953, 1970 Repl. Vol; 1973 Supp.; and 1973 Sess. Laws Examined.	Yes (§§ 3-4-5; 3-4-7)	Yes (§ 3-6-3)	Yes (§ 3-6-3)	Yes, automatic when application for absentee ballot is accepted (§ 3-6-2 and Supp. § 3-6-5(D)).	Yes (§ 3-6-3)	Yes (§ 3-6-3).
New York: McKinney's Election Law 1964 Rev.; 1973-74 Supp.; and 1973 Sess. Laws Examined.	Yes (Supp. § 153)	No (§ 117)	Yes (§ 117)	Yes (Supp. § 305)	No (Supp. § 302)	Yes (Supp. § 303).
North Carolina: Gen. Stats., 1972 Repl. Vol., and 1972 Interim Supp.	No (§§ 163-72, 163-68)	Yes (Supp. §§ 163-240, 163-240).	Yes (§ 163-226)	Yes (§ 163-245)	Yes (§ 163-245)	Yes (§ 163-245).
North Dakota: Century Code 1971 Repl. Vol.; 1973 Supp.; and 1973 Sess. Laws Examined.	Registration not required (§ 16-04-26).	Yes (§ 16-18-01)	Yes (§ 16-18-01)	Registration not required	Yes (§§ 16-18-01, 16-18-11).	Yes (§§ 16-18-01, 16-18-11).
Ohio: Page's Ohio Rev. Code 1972 Repl. Vol. and 1973 Supp.	Yes (Supp. § 3503.11)	Yes (§§ 3509.01, 3509.02)	Yes (§§ 3509.01, 3509.02)	Registration not required (§ 3511.02).	Yes (§ 3511.01)	Yes (§ 3511.01).
Oklahoma: Stats, Ann. Title 26; 1973-74 Supp.; and 1973 Sess. Laws Examined.	No (Supp. §§ 93.4, 103.8)	Yes (Supp. § 326)	Yes (Supp. § 326)	Registration not required (Supp. § 345.1).	Yes (Supp. § 345.1)	Yes (Supp. § 345.1).
Oregon: Rev. Stats., 1971 Ed., and 1973 Digest of Oregon Laws.	Yes (§ 247.111)	Yes (§ 253.010)	Yes (§ 253.010)	Yes, not required in advance. Is automatic when the executed oath on the absentee ballot return has been accepted by election officials. (§ 253-600).	Yes (§§ 253.510, 253.520, 253.530).	Yes (§§ 253.510, 253.520, 253.530).
Pennsylvania: Purdon's Pa. Stats. Ann. Title 25; 1973-74 Supp.; and 1973 Sess. Laws Examined.	No, except persons with physical disability. (Supp. § 951-18.2) Bedridden veterans not required to register. (Supp. § 3146.1 (i)).	Yes (Supp. § 3146.1)	Yes (Supp. § 3146.1)	Yes (Supp. § 951-18.1)	Yes (Supp. § 3146.1)	Yes (Supp. § 3146.1).
Rhode Island: Gen. L., 1969 Ed.; 1972 Supp.; and 1972 Sess. Laws Examined.	No, except for shut-ins (because of age, disability, illness) (§§ 17-9-7, 17-9-10).	No (Supp. § 17-20-1)	Yes (Supp. § 17-20-1)	Registration not required (§ 17-21-2; Dependents see § 17-9-11; for members of Peace Corps see § 17-9-25).	No (§ 17-21-40)	Yes (§ 17-21-40).
South Carolina: Code 1962; 1971 Supp.; and 1971-1972 Sess. Laws Examined.	No (Supp. §§ 23-63; 23-449.1) except "temporary" registration of students away at school (Supp. §§ 23-442, 23-443; 23-444).	No (Supp. § 23-442) except students away at school (Supp. § 23-449.8).	No, except students away at school (Supp. §§ 23-441; 23-442).	Yes (Supp. § 23-444)	Yes (Supp. § 23-449.8)	Yes (Supp. § 23-442).
South Dakota: Comp. Laws 1967, Title 12; 1973 Supp. and 1973 Sess. Laws Examined.	Yes (Supp. § 12-4-4.1)	Yes (Supp. § 12-9-1)	Yes (Supp. § 12-19-1)	Yes (Supp. § 12-19-18)	Yes (§§ 12-19-15; 12-19-16).	Yes (§§ 12-19-15; 12-19-16).

State	Civilians			Military, dependents, Federal employees		
	Register absentee	Vote absentee		Register absentee	Vote absentee	
		Primaries	General election		Primaries	General election
Tennessee: Code Ann., 1971 Repl. Vol.; and 1972 Sess. Laws Examined.	Yes (Supp. §§ 2-215, 2-606, 2-612).	Yes (Supp. §§ 2-602, 2-611).	Yes (Supp. §§ 2-602, 2-611).	Yes (Supp. §§ 2-606, 2-612).	Yes (Supp. § 2-612).	Yes (Supp. § 2-612.)
Texas: Vernon's Texas Election Code; 1972-1973 Supp.; and 1973 Sess. Laws Examined.	Yes (Supp. Art. 5.13a).	Yes (Supp. Art. 5.05).	Yes (Supp. Art. 5.05).	Not required (Supp. Art. 5.05 sub 2a).	Yes (Supp. Art. 5.05 sub 2a).	Yes (Supp. Art. 5.05 sub. 2a).
Utah: Code Ann. 1953, 1969 Replacement; 1973 Supp. and 1973 Sess. Laws Examined.	Yes (Supp. § 20-2-7).	Yes (Supp. § 20-6-1).	Yes (Supp. § 20-6-1).	Yes, automatic when the executed affidavit on the back of the absentee ballot envelope has been accepted by election officials (§ 20-17-8).	Yes (§ 20-17-7).	Yes (Supp. § 20-17-7).
Vermont: Stats. Ann., Title 17; 1973 Supp.; and 1973 Sess. Laws Examined.	No (§ 68).	Yes (§ 121).	Yes (§ 121).	Yes, many execute Freeman's Oath and Oath of Allegiance at the time the affidavit on the back of the ballot envelope is executed (§§ 68, 135).	Yes (§ 147).	Yes (§ 147).
Virginia: Code 1950, 1973 Repl. Vol.; and 1973 Supp.	No (§ 24.1-47), except temporary registration to vote in Presidential elections (§ 24.1-72.2).	Yes (§ 24.1-227).	Yes (§ 24.1-227).	Yes (§§ 24.1-47, 24.1-48).	Yes (§ 24.1-227).	Yes (§ 24.1-227).
Washington: Rev. Code Ann.; 1972 Supp.; and 1972-1973 Sess. Laws Examined.	No (Supp. § 29.07.060).	Yes (Supp. § 29.36.010).	Yes (Supp. § 29.36.010).	Yes by signing affidavit on preaddressed ballot return envelope (§§ 29.39.-11029.39.140).	Yes (§ 29.39.090, Supp. § 29.39.010).	Yes (§ 29.39.090, Supp. § 29.39.010).
West Virginia: Code; 1971 Repl. Vol. and 1973 Supp.	Yes (§ 3-2-23).	Yes (§ 3-3-1).	Yes (§ 3-3-1).	Yes (§ 3-2-23).	Yes (§ 3-3-1).	Yes (§ 3-3-1).
Wisconsin: Stats. Ann.; 1973 Supp.; and 1973 Sess. Laws Examined.	Yes, if more than 50 mi. from residence or ill (§ 6.30, Supp. § 6.30).	Yes (Supp. § 6.85).	Yes (Supp. § 6.85).	Registration not required (§ 6.22).	Yes (Supp. § 6.85).	Yes (Supp. § 6.85).
Wyoming: Stats. 1957; 1973 Supp.; and 1973 Sess. Laws Examined.	Yes (Supp. § 22.1-33(a)).	Yes (Supp. § 22.1-135).	Yes (Supp. § 22.1-135).	Yes (Supp. § 22.1-33(b)).	Yes (Supp. § 22.1-135).	Yes (Supp. § 22.1-135).

TABLE 1.—*Absentee registration (civilian)*

A. North Dakota does not require registration as a prerequisite to voting.

B. Twenty-seven States permit absentee registration by civilians, including the following:

Alaska
Arizona
California
Colorado
Florida
Hawaii
Idaho
Indiana
Iowa
Kansas
Kentucky
Maryland
Michigan
Minnesota
Missouri
Nebraska
New Mexico
New York
Ohio
Oregon
South Dakota
Tennessee
Texas
Utah
West Virgina
Wisconsin (if 50 miles from home)
Wyoming

C. Thirteen States do not generally permit absentee registration by civilians, including the following:

Alabama
Delaware
Georgia
Louisiana
Mississippi
Nevada
New Hampshire (exceptions)
North Carolina
Oklahoma
South Carolina (exceptions)
Vermont
Virginia (exceptions)
Washington

D. Nine States *and* the District of Columbia permit *certain* civilians (e.g., ill, disabled, and so on) to register or to be registered at home, including the following:

Arkansas
Connecticut
Illinois
Maine
Massachusetts
Montana
New Jersey
Pennsylvania
Rhode Island

TABLE 2.—*Absentee registration (military)* [1]

A. North Dakota does not require registration as a prerequisite to voting.
B. Alabama does not permit servicemen to register absentee.
C. Ten states do not require servicemen to register, including the following:

Arkansas
Illinois
Kansas
Missouri
New Jersey
Ohio
Oklahoma
Rhode Island
Texas
Wisconsin

D. Thirty-eight States *and* the District of Columbia permit absentee registration by servicemen, including the following:

Alaska
Arizona
California
Colorado
Connecticut
Delaware
Florida
Georgia
Hawaii
Idaho
Indiana
Iowa
Kentucky
Louisiana
Maine
Maryland
Massachusetts
Michigan
Minnesota
Mississippi
Montana
Nebraska
Nevada
New Hampshire
New Mexico
New York
North Carolina
Oregon
Pennsylvania
South Carolina
South Dakota
Tennessee
Utah
Vermont
Virginia
Washington
West Virginia
Wyoming

[1] "Military" generally includes members of the armed forces, their dependents, and other federal employees serving overseas.

TABLE 3.—*Absentee voting—primaries (civilian)*

A. Delaware has no direct primary.
B. Alabama permits absentee voting in primaries only by certain, limited groups of civilians.
C. Five States do not permit civilians to vote absentee in primaries, including the following:

Massachusetts
New Hampshire
New York
Rhode Island
South Carolina

D. Forty-three States *and* the District of Columbia permit absentee voting in primaries by civilians, including the following:

Alaska
Arizona
Arkansas
California
Colorado
Connecticut
Florida
Georgia
Hawaii
Idaho
Illinois
Indiana
Iowa
Kansas
Kentucky
Louisiana
Maine
Maryland
Michigan
Minnesota
Mississippi
Missouri
Montana
Nebraska
Nevada
New Jersey
New Mexico
North Carolina
North Dakota
Ohio
Oklahoma
Oregon
Pennsylvania
South Dakota
Tennessee
Texas
Utah
Vermont
Virginia
Washington
West Virginia
Wisconsin
Wyoming

TABLE 4.—*Absentee voting—primaries (military)* [1]

A. Delaware has no direct primary.
B. Four States do not permit absentee voting in primaries by military personnel, including the following:

Massachusetts	New York
New Hampshire	Rhode Island

C. All other States *and* the District of Columbia permit absentee voting in primaries by military personnel.

TABLE 5.—*Absentee voting—general elections (civilian)*

A. Two States, Alabama and South Carolina, only permit certain groups of civilians to vote absentee in general elections.
B. All other States *and* the District of Columbia permit absentee voting by civilians in general elections.

TABLE 6.—*Absentee voting—general elections (military)* [1]

All States *and* the District of Columbia permit absentee voting by military personnel in general elections.

[1] "Military" generally includes members of the armed forces, their dependents, and other federal employees serving overseas.

PREPARED STATEMENT OF CARL Z. WALLACE, EXECUTIVE DIRECTOR OF THE BIPARTISAN COMMITTEE ON ABSENTEE VOTING, INC.

INTRODUCTION

My name is Carl S. Wallace, appearing before you today as Executive Director of the Bipartisan Committee on Absentee Voting, Inc. I want to thank you for this opportunity to testify on H.R. 3211 and related overseas voting bills introduced by Representative Dent, the Distinguished Chairman of this subcommittee and by Congressmen Hays, Frenzel, and Gude. The Chairman of the Bipartisan Committee is J. Kevin Murphy, who is also President of Purolator Services, Inc. Unfortunately, Mr. Murphy had to be in California today, and he apologizes for not being here personally to testify on behalf of the overseas voting bills.

The Bipartisan Committee wholeheartedly supports H.R. 3211 and commends the Subcommittee for expediting consideration of this important legislation. We understand that H.R. 3211 is virtually identical to S. 95, which has recently been introduced by Senators Mathias, Pell, Bayh, Goldwater, Brock, and Roth.

The Senate unanimously passed a similar bill in the last Congress, and the House Administration Committee reported out the Senate bill with minor changes. The full House, however, was unable to act on the bill in the press of business at the close of the session. We are hopeful that both chambers will be able to act favorably on the legislation early in this session.

THE BIPARTISAN COMMITTEE

The Bipartisan Committee was formed in 1965 by overseas leaders for the Democratic and Republican parties. It has a truly bipartisan membership, representing both of our major political parties. Its officers include representatives of both the Democratic and Republican parties. The principal objective of the Committee is to assure the right of absentee registration and voting for American citizens residing outside the United States. A list of the officers and principal constituent organizations of the Bipartisan Committee is attached as Appendix A to this statement.

I would like now to introduce J. Eugene Marans, Secretary and Counsel for the Bipartisan Committee, who will discuss in detail the need for new overseas voting legislation, and our views on H.R. 3211.

AMERICANS SERVING THEIR NATION ABROAD

(Remarks of Mr. Marans)

Reliable estimates indicate that there are probably more than 750,000 American civilians of voting age residing overseas.[1] This overseas community of some 750,000 voting-age American civilians is larger than the 1970 population of each of a dozen States, including Delaware, Nevada and New Hampshire. Our studies have shown that nearly all of these overseas citizens in one way or another are strongly discouraged, or are even barred, by the rules of the states of their last domicile from participation in Presidential and Congressional elections. These civilians include thousands of businessmen, as well as missionaries, teachers, lawyers, accountants, engineers, and other professional personnel serving the interests of their country abroad and subject to U.S. tax laws and the other obligations of American citizenship. These civilians in the Nation's service abroad keep in close touch with the affairs at home, through correspondence, television and radio, and American newspapers and magazines.

FORMS OF DISENFRANCHISEMENT

At present, a typical American citizen residing overseas in a non-governmental capacity finds it difficult and confusing, if not impossible, to vote in federal elections in his prior state of domicile; that is, the state in which he last resided. The reason is that many of the states impose rules which require a voter's actual presence, or maintenance of a home or other abode in the state, or raise doubts of voting eligibility of the overseas citizen when the date of his return is uncertain; or which have confusing absentee registration and voting forms that appear to require maintenance of a home or other abode in the state.

Let me give you an illustration of this typical disenfranchised American residing overseas:

"A qualified voting resident left the state a number of years ago to work overseas in a business or professional capacity. His former home in the state has been sold and he now only has a physical residence in a foreign country. He looks upon this as temporary and intends eventually to return to the United States, although he does not know to which state he will return. He may be working overseas for as many as 5 or 10 years. He considers that his last residence before his departure from the state remains his bona fide residence for voting in Federal elections, even though he has no present place of abode within the state and is unable to state an intent to return to the state."

What are his chances for voting in Federal elections back home?

First, would appear that, in every state and the District of Columbia, the typical American citizen overseas would not be able to register and vote absentee in federal elections unless he specifically declared, and could prove, an intent to return to the state. If the citizen did not have such an intent to return to the state, he could not make this declaration without committing perjury. There is, in effect, a legal presumption that such a citizen does not retain the state as his voting domicile unless he can prove otherwise.

Second, even if such a citizen could honestly declare an intent to return to the state of his last residence, his chances for voting in federal elections would be improved in only about half of the states. These 29 states—including the District of Columbia—appear to have statutes which expressly allow absentee registration and voting in federal elections for "citizens temporarily residing abroad," *e.g.*, citizens residing overseas for a short time who can declare an intent to return to the state:

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[1] We have included as Appendix B (p. 76) to this statement the State Department's tabulation of U.S. citizens residing in foreign countries for the fiscal year 1972. This tabulation, which is based on the number of overseas citizens registering with U.S. consulates, shows that there were at least 1.14 million American citizens residing overseas exclusive of U.S. Government employees and their dependents. The Bureau of the Census estimates that in 1970 approximately 66% of the American population was of voting age, *i.e.*, 18 years or older. *Statistical Abstract of the United States 1972* at 8 (1972). We think it is reasonable to conclude, therefore, that at least 750,000 of the American civilians overseas (66% × 1.14 million = 752,400) are of voting age. Civilian in this context means non-governmental.

The most important fact, in any event, is that the number of voting-age American civilians overseas is substantial and continues to grow each year.

Alaska	Massachusetts
Arizona	Michigan
Arkansas	Minnesota
California	Mississippi
Colorado	Montana
Connecticut	Nebraska
Delaware	New Mexico
District of Columbia	North Dakota
Florida	Oklahoma
Georgia	Oregon
Hawaii	Tennessee
Idaho	Texas
Iowa	Washington
Kansas	Wyoming
Maryland	

Even in some of these 29 states, however, the absentee registration for such citizens may be ambiguous.

Third, 12 states appear to have statutes which generally allow absentee registration and voting in federal elections, but which do not have specific provisions governing non-governmental overseas voters. Many of these 12 states impose burdensome residency requirements, including in some cases maintenance of a home or abode in the state. The New York State statute is one of the most burdensome in this regard:

Indiana	New York
Kentucky	South Dakota
Maine	Utah
Missouri	Vermont
Nevada	West Virginia
New Hampshire	Wisconsin

Fourth, 8 states appear to have statutes which allow absentee voting, but not absentee registration, by non-governmental overseas voters in federal elections. Many of these states also have burdensome residency requirements:

Illinois	Rhode Island
New Jersey	South Carolina
North Carolina	Pennsylvania
Ohio	Virginia

Fifth, two states—Alabama and Lousiana—require that all non-governmental overseas voters register and vote in person.

The situation with respect to Presidential elections has been ameliorated somewhat as the result of the efforts of Senators Goldwater and Pell, during the debate on the Voting Rights Act Amendments of 1970 (sometimes referred to herein as the "1970 Amendments"). However, it appears that, in the 1972 election, only a few states—such as Connecticut and Illinois—specifically allowed an overseas citizen to vote for President solely on the basis of the Goldwater-Pell legislative history. Even these few states required the voter to be able to prove a definite intent to return to the state. The statement of the U.S. Chamber of Commerce, which we fully support, explains the keen disappointment of thousands of private American citizens overseas in seeking to vote in the 1972 Presidential election.

It should be noted that virtually all states have statutes expressly allowing military personnel, and often other U.S. Government employees, and their dependents, to register and vote absentee from overseas. In the case of these government personnel, however, the legal presumption is that the voter *does* intend to retain his prior state of residence as his voting domicile unless he specifically adopts another state residence for that purpose. This presumption in favor of the government employee operates even where the chances that the employee will be reassigned back to his prior state of residence are remote. The result is continuing discrimination in favor of government personnel and against private citizens overseas in seeking access to the federal franchise. Such discrimination certainly appears questionable as a matter of public policy, and may very well be suspect under the Equal Protection Clause of the Fourteenth Amendment.

INITIAL EFFORTS TO ENFRANCHISE AMERICANS OVERSEAS

The Voting Rights Act of 1965, the 1970 Amendments and the 26th Amendment to the Constitution have been major breakthroughs in providing effective instruments to meet the problem of discrimination against millions of American voters previously disenfranchised either by race, age or residence. As I have mentioned, the U.S. citizen abroad may have been an unexpected beneficiary of the 1970 Amendments, but in general, none of these landmark pieces of legislation has clearly resolved the problem of American citizens residing abroad.

The enfranchisement of Americans residing abroad in a non-governmental capacity has received serious Congressional consideration only in the last few years. The first important development was the adoption of the 1968 amendments to the Federal Voting Assistance Act of 1955. Under these amendments, Congress recommended to the states that they adopt simplified absentee voting and registration procedures for all citizens "temporarily residing outside the territorial limits of the United States and the District of Columbia." However, according to the Federal Voting Assistance Task Force appointed by the Secretary of Defense to help implement the Act, only 29 states—including the District of Columbia—have so far heeded that recommendation; and even more important, the simplified absentee procedures adopted by the states do not resolve in some cases the serious legal questions referred to earlier concerning the voting eligibility of citizens residing abroad. Confusion regarding the definition of "residence" under the law of each state remains a major obstacle to the re-enfranchisement of citizens residing abroad, even in those states which have adopted the legislation recommended in the Federal Voting Assistance Act, as amended. Moreover, some states have interpreted the meaning of the word "temporarily" in this Act to exclude otherwise eligible persons who do not maintain an abode or other address in the state, or who for some other reason are not considered as having retained their state domicile.

The second important development was the adoption of Title II of the Federal Voting Rights Act Amendments of 1970. In the legislative history, Senator Barry M. Goldwater took the position that Title II should be interpreted as providing for the enfranchisement of all "civilian citizens who are temporarily living away from their regular homes," even if they are working or studying abroad. 116 Cong. Rec. 3539 (daily ed. March 11, 1970). The Senator viewed Title II as obliging the states to provide absentee registration and voting in Presidential elections for Americans abroad who satisfied a domicile test (*i.e.*, intent to return). While this interpretation received favorable consideration by a few states, the majority of states have declined to rule that this legislative history is sufficient to assure that absentee registration and voting would be available for U.S. citizens residing abroad. The point generally made by the states is that the 1970 Amendments dealt only with the issue of durational residency requirements and not with the question of domicile of a U.S. citizen overseas.

The Justice Department also expressed the view, in a March 13, 1972 letter to the Bipartisan Committee, that the legislative history of Title II may not be sufficient to reach the domicile or bona fide residency question for such a citizen. The Justice Department letter stated, in pertinent part, that:

"In light of the general reservation of power to the states to determine voting qualifications, we do not consider it appropriate to assume Congressional intent to preclude the states from having a requirement of bona fide residency, or to enact a federal standard for measuring bona fide residency, in the absence of clear and unequivocal language."

We have attached the Justice Department letter as Appendix C to this statement (p. 78).

The United States District Court for the Southern District of New York also considered the question, in *Hardy* v. *Lomenzo* (Oct. 2, 1972), whether the 1970 Amendments could limit a state's statutory standards of bona fide residence, such as the New York State requirement that the overseas non-governmental voter maintain in a fixed, permanent and principal home in the state. The court rejected the legislative history developed by Senators Goldwater and Pell and held that "the remedy lies with the legislature and not in judicial elision." We have attached this District Court opinion as Appendix D to this statement (p. 80).

The *Hardy* decision was not appealed, in large part because there was an indication that the case would have been dismissed as moot on appeal. Even if the case had reached the Supreme Court, it was expected that the Justice Department would support the District Court decision for the reasons stated in the March 13, 1972 Justice Department letter attached as Appendix C hereto.

In sum, during the period in which Congress has gone to great lengths, including a constitutional amendment, to enfranchise millions of Americans—the black, the young, those in official government service—American citizens residing overseas, who are in the private sector, continue to be excluded from the democratic process of their own country.

TWOFOLD PROPOSAL: PRESENTATION OF VOTING DOMICILE AND DEVELOPMENT OF ABSENTEE REGISTRATION AND VOTING PROCEDURES

As I said at the outset, the Bipartisan Committee on Absentee Voting strongly favors H.R. 3211 and related overseas voting bills pending before this subcommittee. The first priority for American civilian voters overseas is to require, in clear and unmistakable statutory language, that private American citizens overseas be allowed to vote for President and the Congress in their state of last voting domicile, even though these citizens may not be able to prove that they intend to retain that state as their domicile for other purposes. Both of the pending bills would satisfy this legislative need.

This is the heart of the matter. The checkerboard pattern of domicile rules among the states should no longer be permitted to deny private American citizens overseas the franchise in federal elections. Unless Congress paints with a broad brush, these citizens may continue, year after year, to be denied the right to register and vote absentee in elections for President and for the Congress.

The pending bills also deal effectively with the second legislative need of private American voters overseas, which is the adoption of uniform absentee registration and voting procedures covering these voters in federal elections. The bills would, in effect, require the states to provide the same absentee registration and balloting procedures for these overseas citizens in federal elections as the states provide in Presidential elections under the 1970 Amendments for citizens residing in this country. One of the most important of these provisions would require election officials to mail out balloting material as promptly as possible after receipt of a properly completed application.

We also fully support the provision in the bills assuring that federal and state governments would not seek to impose income or inheritance taxes on an overseas citizen *solely* on the basis of the citizen's exercise of the right to register and vote absentee in federal elections.

The tax provision is modeled on an Internal Revenue Service ruling interpreting the federal income tax exemption in section 911 of the Internal Revenue Code. *See* Rev. Rul. 71–101, 1971–1 C.B. 214.

The provision is not meant to create any new tax exemption for the overseas citizen. It is designed only to assure that he will not be subjected to federal or state tax liability solely by registering and voting absentee in federal elections.

WHY CONGRESSIONAL ELECTIONS?

We strongly support the provisions of the pending bills assuring the right of American citizens residing overseas to vote in Congressional elections as well as in Presidential elections. It is plain from other testimony before this subcommittee that Americans residing overseas possess both the necessary interest and the requisite information to participate in the selection of Senators and Congressmen back home.

First, one must recognize that Congress is concerned with the common legislative questions of the entire nation, along with the specific legislative interests of each district. It is conceded that the local inhabitants of the district may not have the same bundle of interests as citizens residing overseas. The local citizen may be more interested in regional farm prices, the closing of a naval base, the construction of a new highway. Yet the citizen overseas also has his bundle of Congressional interests. The overseas citizen may be more interested, for example, in the exchange rate of the dollar, social security benefits, or immigration policy.

It is plain, moreover, that the local citizen and the overseas citizen share a number of common national interests, such as federal taxation, defense expenditures (*e.g.*, U.S. troops stationed overseas), inflation, and the integrity and competence of our national government.

We believe that U.S. citizens residing overseas should not be denied access to the ballot for Congress, and that Congress should not be deprived of the votes of American citizens residing overseas.

Second, ample evidence has been presented in these hearings that the U.S. citizen overseas can and does keep up with political developments in his own state, and would be encouraged to do so even more if he were unequivocally given the right to vote in federal elections. Americans overseas are by and large a well-educated and highly literate group, and from my own experience, I would venture to say that they are generally as well informed about important issues back home as the average citizen residing in the United States.

This subcommittee knows that legislative representation is a two-way street. If private citizens overseas have no vote for Congress, they have no representation in Congress. No legislator is directly responsible at the ballot box for their welfare. The American Senators and Congressmen, as you well know, long ago became our national ombudsmen. The American citizen not only wants to learn about the actions taken by his Congressman, but also wants to be able to make the Congressman aware of the citizen's interests, concerns and problems.

FRAUD PROVISIONS

The Bipartisan Committee believes that the potential of voting fraud in the implementation of the pending legislation is remote and speculative. You are aware, of course, that both of the pending bills provide $10,000 fine and five years' imprisonment for willfully giving false information for purposes of absentee registration and voting under the mechanisms set forth in the legislation.

As noted by Senator Mathias, the Federal Voting Assistance Task Force of the Department of Defense has not reported a single case of overseas voting fraud through the use of the Federal Post Card Application in the entire 19 years that this form has been recommended by Congress.

It is evident, I think, that if someone wanted to commit voting fraud, the mechanisms provided by these bills would hardly be the way to do it. Many of the states require notarization by a U.S. official of at least one of the voting documents. The voter generally must go down to the U.S. consulate or other local American official with his passport and have his application for registration notarized. If the state does not also treat the registration request as an application for an absentee ballot, the voter may be obliged to have another form notarized requesting the ballot. And if the state also requires notarization on the ballot, the voter may have to trek down the U.S. consulate once again for this purpose.

One can be confident that a U.S. citizen who has any continuing contacts with the United States, even without a stated intent to return to this country, is not casually going to risk an indictment for voting fraud. Extradition treaties do not generally cover voting fraud. However, if a citizen under indictment did not want to stand trial in the United States, he might well be obliged to remain a lifelong international fugitive, forever inhibited from entering the United States. There are of course constitutional problems in denying a U.S. citizen residing abroad his passport, social security or certain other benefits prior to a conviction. But I think it is evident that a citizen indicted on voting fraud charges could be subject to significant administrative sanctions by U.S. consular officials and various other federal agencies even before conviction.

CONSTITUTIONALITY

The distinguished constitutional lawyer, Nathan Lewin, has given the Privileges and Elections Subcommittee of the Senate Rules and Administration Committee his opinion that if the comparable bill which passed the Senate last year were subjected to constitutional challenge after enactment, the Supreme Court would have an appropriate constitutional basis on which to uphold the legislation. We have attached Professor Lewin's opinion as Appendix E to this statement (p. 84).

SUPPORT FOR THE LEGISLATION

The bills pending before thls subcommittee have generated tremendous enthusiasm and support from American citizens residing in all parts of the world. Hundreds of these citizens have sent letters and returned questionnaires stating their support of the legislation and detailing their individual voting problems. The large number of business, civic, professional and religious organizations represented at these hearings gives further indication of the desire for this legislation.

SUMMARY

In sum, I think we will see from these two days of hearings that—
1. There is a need for the pending legislation.
2. The legislation is constitutional.
3. The legislation has the overwhelming support of American citizens around the world, and in American business, civic, professional and religious communities as well as from the election officials who have had an opportunity to review the bills.

American citizens overseas have been denied the vote too long. They suffered great disappointment in seeking to vote in the 1972 Presidential election. Their hope for future participation in the national process rides on favorable action on the bills pending before this subcommittee.

We are gratified at your concern in holding these hearings and respectfully urge that legislation along the lines of H.R. 3211 will be adopted in time to allow all 750,000 U.S. private citizens overseas of voting age to participate fully in the Bicentennial elections.

APPENDIX A

BIPARTISAN COMMITTEE ON ABSENTEE VOTING, INC.

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Secretary/Treasurer/Counsel

J. Eugene Marans.

Executive Director

Carl S. Wallace, Corporate Vice President, Purolator, Inc.

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United Kingdom.—Anthony Hyde, V. W. Warren Pearl.

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James Trowbridge, The Ford Foundation.
Bishop Paul A. Washburn, The United Methodist Church.
Walter Whitmyre, IBM—Taiwan.
James E. Wood, Jr., Baptist Joint Committee of Public Affairs.

TABLE 1

Appendix B

DEPARTMENT OF STATE

U.S. CITIZENS RESIDING IN FOREIGN COUNTRIES, FISCAL YEAR 1972

Countries dependent areas	U.S. Government agencies		American residents [1]	Total
	Employees	Dependents		
Afghanistan	182	307	296	785
Algeria	22	28	650	700
Angola	4	4	361	369
Arab Republic of Egypt	20	49	1,218	1,287
Argentina	128	266	4,880	5,274
Australia	102	975	35,464	36,541
Austria	157	274	8,095	8,526
Bahamas	27	200	5,000	5,227
Bahrain [2]	-	173	748	922
Barbados	36	162	1,610	1,808
Belgium	410	3,596	14,250	18,256
Bermuda	217	1,204	7,900	9,321
Bolivia	92	218	560	870
Botswana	10	11	250	271
Brazil	534	803	22,735	24,072
British Honduras	6	6	410	422
Bulgaria	22	26	100	148
Burma	47	60	36	143
Burundi	11	17	94	122
Cambodia (see Khmer Republic)				
Cameroon	43	61	369	473
Canada	384	5,556	267,000	272,940
Central Africa Republic	9	15	185	209

U.S. CITIZENS RESIDING IN FOREIGN COUNTRIES, FISCAL YEAR 1972—Continued

Countries dependent areas	U.S. Government agencies		American residents [1]	Total
	Employees	Dependents		
Ceylon	36	54	195	285
Chad	69	21	88	178
Chile	93	267	2,866	3,226
Colombia	228	495	13,096	13,819
Congo (see Zaire).				
Costa Rica	58	151	6,488	6,697
Cyprus	76	416	619	1,111
Czechoslovakia	24	43	635	702
Dahomey	65	27	70	162
Denmark	47	121	4,179	4,347
Dominican Republic	196	336	7,300	7,832
Ecuador [2]	287	547	3,700	4,534
El Salvador	77	161	1,705	1,943
Equatorial Guinea				
Ethiopia	338	2,034	1,850	4,222
Fiji Islands	10	22	1,177	1,209
Finland	41	98	760	899
France	467	797	23,106	24,370
French West Indies	3	7	150	160
Gabon	8	10	79	97
Gambia	4	5	76	85
Germany	6,762	156,349	63,732	226,843
Ghana	84	135	950	1,169
Greece	295	3,587	34,920	38,802
Guatemala	136	294	9,505	9,935
Guinea	16	11	70	97
Guyana	29	49	401	479
Haiti	43	61	3,209	3,313
Honduras	183	244	5,150	5,577
Hong Kong	118	274	5,500	5,892
Hungary	24	37	510	571
Iceland	82	1,733	400	2,215
India	347	709	4,209	5,265
Indonesia [2]	168	314	3,290	3,772
Iran	299	1,128	7,660	9,087
Ireland	14	434	10,235	10,683
Israel	67	134	50,000	50,201
Italy	692	14,421	65,515	80,628
Ivory Coast	53	80	537	670
Jamaica	38	69	6,000	6,107
Japan [1]	3,847	32,950	23,091	59,888
Ryukyu Islands		27,493		27,493
Jordan	30	36	156	222
Kenya	441	299	3,724	4,464
Khmer Republic (Cambodia)	62	22	10	94
Korea	1,470	2,566	5,165	9,201
Kuwait	26	45	925	996
Laos	725	936	166	1,827
Lebanon	110	302	4,937	5,349
Lesotho	7	10	149	166
Liberia [2]	197	463	3,758	4,418
Libya	32	42	2,928	3,002
Luxembourg	34	75	640	749
Madagascar	11	12	478	501
Malawi	35	39	520	594
Malaysia	58	215	2,055	2,328
Mali	40	24	105	169
Malta	18	26	700	744
Mauritania	5	7	5	17
Mauritius	9	15	38	62
Mexico	311	645	97,985	98,941
Morocco	234	1,956	796	2,986
Mozambique	5	11	92	108
Nepal	99	163	422	684
Netherlands	131	3,050	9,050	12,231
Netherlands Antilles	6	13	1,450	1,469
New Zealand	35	333	4,500	4,868
Nicaragua	73	171	2,900	3,144
Niger	106	32	128	266
Nigeria	185	380	3,418	3,983
Norway	70	603	9,000	9,673
Pakistan [2]	203	343	1,341	1,887
Panama	116	2,616	4,513	7,245
Paraguay	68	173	730	971
Peru	276	319	9,000	9,595
Philippines	1,273	20,051	20,723	41,597
Poland	52	96	5,800	5,948
Portugal	181	2,976	5,438	8,595
Azores	152	190	10,800	11,142
Romania	23	59	134	216

U.S. CITIZENS RESIDING IN FOREIGN COUNTRIES, FISCAL YEAR 1972—Continued

Countries dependent areas	U.S. Government agencies		American residents [1]	Total
	Employees	Dependents		
Rwanda	5	11	80	96
Saudi Arabia	82	234	6,032	6,348
Senegal	49	71	207	327
Sierra Leone	200	17	328	545
Singapore	50	118	7,300	7,468
Somali Republic	16	23	93	132
South Africa, Republic of	52	118	7,360	7,530
Soviet Union	79	162	160	401
Spain	535	15,778	27,700	44,013
Sudan	11	17	48	76
Surinam	5	7	229	241
Swaziland	12	25	262	299
Sweden	46	117	3,900	4,063
Switzerland	109	198	21,600	21,907
Taiwan	369	7,009	3,603	10,981
Tanzania	46	84	1,300	1,430
Thailand	920	6,185	8,645	15,750
Togo	82	17	78	177
Trinidad and Tobago	9	44	1,326	1,379
Tunisia	72	148	393	613
Turkey	350	7,219	2,389	9,958
Uganda [2]	42	58	791	891
United Kingdom	1,054	31,190	67,460	99,704
Upper Volta	14	24	156	194
Uruguay	67	179	902	1,148
Venezuela	111	392	15,183	15,686
Vietnam	2,054	242	7,500	9,796
Yemen [2]	4	6	20	30
Yugoslavia	64	136	3,246	3,446
Zambia	16	33	1,000	1,049
Zaire	218	318	2,852	3,388
Other:				
Leeward Islands	----	117	----	117
Marshall Islands	64	40	----	104
Undistributed	8	40	----	48
Grand total	31,612	369,820	1,141,606	1,543,038

[1] Includes employees at Ryukyu.
[2] 1971 figures used because the 1972 figures were not available.
[3] 1970 figures used because new figures unavailable.

Appendix C

Department of Justice,
Assistant Attorney General,
Washington, D.C., March 13, 1972.

J. Eugene Marans, Esquire,
Cleary, Gottlieb, Steen and Hamilton,
1250 Connecticut Avenue NW.,
Washington, D.C.

Dear Mr. Marans: This is in response to your discussion with members of my staff on February 1, 1972, and your letter of February 3, 1972, concerning the Voting Rights Act Amendments of 1970, 42 U.S.C. 1973aa–1, particularly the provisions of Sections 202(d) and (f) pertaining to absentee registration and absentee balloting in presidential elections. As counsel for the Bipartisan Committee on Absentee Voting, you have asked whether, in our judgment, the 1970 Amendments require a state to provide absentee registration procedures and absentee ballots to former residents of that state now temporarily residing abroad.

In brief, our conclusions are (1) that the 1970 Amendments do not *per se* preclude a state from applying a requirement of residency to those seeking to register within that state and (2) that the question of whether a person outside a state is a resident of that state for voting purposes is, at least in the first instance, a question of that state's law.

The United States Constitution reserves to the federal government the power to regulate the time and manner of federal elections (Article I, section 2; Article I, section 4; Article II, section 1) while reserving to the states the power to determine voter qualification. (*Beachman* v. *Braterman*, 300 F. Supp. 182 (S.D. Fla.), affirmed 396 U.S. 12 (1969); *Lassiter* v. *Northampton County Board of Elections*,

360 U.S. 45, 50–51 (1959)). Traditionally, this right has included the power to determine bona fide residency. (*Hall* v. *Beals*, 396 U.S. 45, 53 (1969) (Marshall, J., dissenting); *Carrington* v. *Rash*, 380 U.S. 89 (1965)). The Congress and the states acting together have, through the amendment process, placed additional restrictions on the powers of the states so that they may not now establish procedures violative of the equal protection clause nor deny or abridge the right to vote on account of race, color, or sex or age if the age is eighteen or more. Legislation passed by Congress to implement the equal protection clause and the voting amendments, such as the suspension of literacy tests, has placed additional limitations on the powers of the states. It is with this constitutional scheme in mind that we must look to the 1970 Amendments to determine what, of any, limitations Congress placed upon the traditional right of the states to determine voter qualifications.

At the beginning, it is necessary to distinguish between two general types of voter qualifications, durational residency requirements and bona fide residency. The former require an individual to have resided in a certain state or political subdivision for a specified length of time before he can be qualified to vote, while the latter is a determination of whether an individual is a bona fide resident of the state or political subdivision regardless of the length of his residency.

Congress expressly dealt with durational residency requirements in Section 202(c) of the 1970 Amendments (hereafter cited by section only) by prohibiting a state from imposing such a requirement to deny or abridge the right of a citizen otherwise qualified to vote in a presidential election. The Amendments provide that applications for registration or other means of qualification must be accepted up to the 30th day before the presidential election. (Section (d)). The limitation of this section, however, does not supersede the power of the states to require a citizen to be a bona fide resident of that particular state as a qualification for registration and voting in that particular state.

Section (e) is, to a limited extent, a restriction on the power of the states to require bona fide residency as a condition to obtaining a ballot. Under that Section, when a citizen moves from one state or political subdivision to a new state or political subdivision within 30 days of a presidential election and is unable to register at his new residence because the registration deadline has passed, he must be allowed to vote, either in person or absentee, in the place of his former residence. Section (e) did not expand or qualify the concept of bona fide residency in any other manner.

With regard to the absentee provisions, Section (c) provides that if a citizen of the United States has complied with the requirements of state law providing for the casting of absentee ballots, no state may deny such citizen the right to vote in a presidential election because of his failure to be physically present in such state or political subdivision at the time of such election. A state is, accordingly, prohibited from restricting the availability of absentee ballots to persons or classes absent for particular purposes, but this language does not appear to preclude a state from establishing bona fide residency as a requirement for obtaining an absentee ballot in that state.

Sections (d) and (f) establish standards for absentee registration and the casting of absentee ballots. Under Section (f), each citizen "who is otherwise qualified to vote by absentee ballot in any State or political subdivision" in an election for electors for President or Vice-President must be given the opportunity, if registration or other qualification is necessary, to register or qualify absentee. The provision applicable to absentee balloting, Section (d), requires each state to provide procedures for the casting of absentee ballots by "all duly qualified residents of such state" who will be absent from the state on election day and who have applied for an absentee ballot not later than seven days prior to a presidential election and return the ballot up to the time of the closing of the polls.[1]

Since anyone who is qualified to vote absentee may also register absentee, we must look to Section (d) to determine which citizens are covered by the absentee provisions of the Amendments. This Section requires the state to provide absentee ballots to each "duly qualified resident of such state." While Sections (c) and (e), by prohibiting durational residency requirements, as discussed above, expressly limit the power of the states in certain situations, there is no language in Section (d) placing additional limitations on the right of the states to ascertain the

[1] Section (g) provides generally that any state or political subdivision may adopt voting procedures which are less restrictive than those contained in Section 202.

residency of an individual. Since there is no language in Section (d) restricting the states' right to determine bona fide residency, we must, under this Section, follow the constitutional scheme of reserving to the states the power to determine which citizens are "duly qualified residents" according to state law.

From our reading of the legislative history of the 1970 Amendments, it appears that Senator Goldwater was, among other things, concerned with instances in which states did not accord civilians the same absentee registration and voting privileges they gave military personnel. However, in light of the general reservation of power to the states to determine voting qualifications, we do not consider it appropriate to assume Congressional intent to preclude the states from having a requirement of bona fide residency, or to enact a federal standard for measuring bona fide residency, in the absence of clear and unequivocal language. While a state may not conclusively presume that a certain class of citizens may never be considered bona fide residents, each state must determine, on a case-by-case basis, the true intent and residency of the individual requesting to register absentee or obtain an absentee ballot. (See *Carrington* v. *Rash*, *supra*.) Under Sections (c), (d) and (f) a state may not deny absentee registration procedures and absentee ballots to individuals outside the country if such person has been determined by the state or local officials to be a "duly qualified resident of such state."

Sincerely,

DAVID L. NORMAN,
Assistant Attorney General,
Civil Rights Division.

APPENDIX D

HARDY v. LOMENZO

Cite as 349 F. Supp. 617 (1972)

JACK G. HARDY AND RALPH S. VON KOHORN ON BEHALF OF EACH AND ON BEHALF OF ALL OTHERS SIMILARLY SITUATED, PLAINTIFFS,

v.

JOHN P. LOMENZO, SECRETARY OF STATE OF THE STATE OF NEW YORK, ET AL., DEFENDANTS

No. 72 Civ. 3965

UNITED STATES DISTRICT COURT, S.D. NEW YORK, OCT. 2, 1972

ON REARGUMENT OCT. 18, 1972

Action was brought for declaratory relief in regard to the plaintiffs' right to participate in the presidential election. The District Court, Cannella, J., held that the Voting Rights Act of 1970 while abolishing durational residency requirements in no sense abrogates the rights of the several states to enact bona fide residence requirements, that the word "deemed," in the New York Election Law provision relating to qualifications of voters and requiring state residency creates a presumption only, which is effective only on presentation of suitable evidence of continued residence, and that the statute did not abridge the plaintiffs' constitutional rights.

Complaint dismissed.

New York Civil Liberties Union, by Burt Neuborne, New York City for plaintiffs.

Louis J. Lefkowitz, Atty. Gen., of the State of New York, by A. Seth Greenwald, Asst. Atty. Gen., New York City, for defendants Rockefeller and Lomenzo and pro se.

John J. S. Mead, Westchester County Atty,. by John J. Sherlock, Senior Asst. County Atty., White Plains, N.Y., for defendants Van Wart and Hayduk, Commissioners of the Westchester County Board of Elections.

CANNELLA, District Judge.

This matter came originally before the Court on motion of plaintiffs for an order, pursuant to Title 28 U.S. Code Section 2281 and 2284, convening a statutory three judge court to hear and determine this action or in the alternative for appropriate relief declaring plaintiffs' rights and the defendants' responsibilities herein. On the hearing plaintiffs withdrew the request for a three judge court,

and submitted the case to this court with the stipulation that declaratory as opposed to injunctive relief is sought.

The plaintiff's claims are that defendants' refusal, under color of Sections 150 and 151(b) of the New York Election Law, McKinney's Consol. Laws, c. 100, to permit plaintiffs to participate in the November 7, 1972 Presidential election is violative of plaintiffs' rights under the First and Fourteenth Amendments to the Constitution of the United States; and that defendants' refusal, under color of Section 151(b) of the New York Election Law to permit plaintiffs to participate in the Presidential election abridges their right to participate in the electoral process in violation of the Voting Rights Act of 1970 (42 U.S.C. § 1973aa–1).

Defendants Rockefeller and Lomenzo and the New York Attorney General, on their part, move for an order pursuant to Rules 12(b)(1) and (6) of the Federal Rules of Civil Procedure, dismissing the complaint upon the grounds that the court lacks jurisdiction, and further that the complaint fails to state a claim upon which relief may be granted and that the complaint is banned by laches.

The motion addressed to the court's jurisdiction is without substantiation and is denied. The motion based on laches although of some merit also is denied. That part of the defendants' motion which is addressed to the sufficiency of the complaint is granted for reasons hereafter discussed.

The facts as taken from the submitted papers are as follows: Plaintiff, Von Kohorn resided in Westchester County, New York, from 1938 to 1963 when he moved from Westchester County to New Zealand where apparently he has since remained, except for a visit to the Westchester County Board of Elections on or about April 11, 1972 where he submitted an application for absentee registration which was on the same day rejected. He abides in New Zealand and his future domiciliary plans are uncertain but he does wish to vote in the 1972 Presidential election.

Plaintiff, Hardy, resided in Scarsdale, Westchester County, New York, until December 1964 when he moved to Brazil because of business obligations. He intends to return to Westchester County upon completion of his business obligations but has no nexus with New York or the county except that he maintains a telephone listing at his mother's home in Westchester. His request for absentee registration to vote in the 1972 Presidential election was rejected by the Westchester County Board of Elections early in 1972.

[1] The claim of Von Kohorn may be disposed of summarily. After a temporary residence in Westchester County, New York, he moved to Wellington, New Zealand. The reason for his move is not assigned and he evinces no intention ever to return to New York, or, indeed, to the United States. His expressed desire to vote in the 1972 Presidential election gives him no grievance against the defendants or any of them. He is for the purposes of the present record a resident in Wellington and so far as known intends so to remain.

Hardy's claim requires an examination of the statutes here involved. New York Election Law Section 151(b) provides as to residence for the purpose of registering and voting:

> "(b) As used in this article, the word 'residence' shall be deemed to mean that place where a person maintains a fixed, permanent and principal home and to which he, wherever temporarily located, always intends to return."

[2] The question first to be considered is whether or not the Voting Rights Act of 1970, 42 U.S.C. § 1973aa–1, is preemptive of that definition. The avowed purpose of the Voting Rights Act is to abolish durational residency requirements as a precondition to voting for the offices of President and Vice President and to prescribe uniform opportunities for absentee registration and absentee balloting in presidential elections. 42 U.S.C. § 1973aa–1(a), (b); Oregon v. Mitchell, 400 U.S. 112, 134, 236, 286, 287 (1970). The rationale is that the imposition of parochial durational residency requirements unreasonably burdens the privilege of taking up residence in another state. It seems clear, however, that the Voting Rights Act did not intend to abrogate the power of the several states to define residence so as to insure that voting be limited to bona fide residents. The sole exception is found in 42 U.S.C. § 1973aa–1, Subd. (e) which permits persons moving within 30 days prior to election to vote in the State of prior residence.

Thus, with particular reference to the present case the Voting Rights Act, 42 U.S.C. § 1973aa–1(c), provides:

> ". . . nor shall any citizen of the United States by denied the right to vote for electors for President and Vice President, or for President and Vice President, in such election because of the failure of such citizen to be physically present in such State or political subdivision at the time of such elec-

tion, *if such citizen shall have complied with the requirements prescribed by the law of such State or political subdivision providing for the casting of absentee ballots in such election.* (Emphasis supplied).

Similarly, subdivision (d) provides:

"For the purposes of this section, each State shall provide by law for the registration or other means of qualification *of all duly qualified residents of such State* . . .; and each State shall provide by law for the casting of absentee ballots . . . *by all duly qualified residents of such State* who may be absent . . .". (Emphasis supplied).

Plaintiffs urge that the emphasized phrases of the Act should be ignored in its construction, but the court cannot take the view that this recurrent language was inserted into the Act without meaning. If, as suggested the language is inadvertent, the remedy lies with the legislature and not in judicial elision.

The court finds that the Voting Rights Act of 1970 while abolishing durational residency requirements, in no sense abrogates the rights of the several states to enact bona fide residence requirements. The distinction is clearly recognized in Dunn v. Blumstein, 405 U.S. 330 at 343, 92 S.Ct. 995 at 1003–1004, 31 L.Ed.2d 274 (1972).

". . . We emphasize again the difference between bona fide residence requirements and durational residence requirements. We have in the past noted approvingly that the States have the power to require that voters be bona fide residents of the relevant political subdivision. E.g., Evans v. Corman. 398 U.S. 419, at 422, 90 S.Ct. 1752, 26 L.Ed.2d 370; Karmer v. Union Free School District, *supra*. 395 U.S. 621, at 625, 89 S.Ct. 1886, 23 L.Ed.2d 583; Carrington v. Rash, 380 U.S. 89, at 91, 85 S.Ct. 775, 13 L.Ed.2d 675; Pope v. Williams, 193 U.S. 621, 24 S.Ct. 573, 48 L.Ed. 817 (1904). An appropriately defined and uniformly applied requirement of bona fide residence may be necessary to preserve the basic conception of a political community, and therefore could withstand close constitutional scrutiny. But *durational* residence requirements, representing a separate voting qualification imposed on bona fide residents, must be separately tested by the stringent standard. Cf. Shapiro v. Thompson, *supra*. 394 U.S. 618, at 636, 89 S.Ct. 1322, 22 L.Ed.2d 600. (Emphasis in original.)

[3] The court finds that the defendants' refusal under Section 151(b) of the New York Election Law, to permit plaintiffs to participate in the 1972 Presidential election does not abridge the plaintiffs' rights under the Voting Rights Act of 1970.

This conclusion requires consideration of plaintiffs' remaining claims namely, that defendants' refusal under color of Sections 150 and 151(b) of New York Election Law, to permit plaintiffs to participate in the November 7, 1972 Presidential election denies them equal protection of the laws and abridge their privileges and immunities in violation of the Fourteenth Amendment of the United States Constitution and abridges their right to participate in the electoral process in violation of the First Amendment.

New York Election Law, Section 150, relates to qualifications of voters requiring among other things residency of the State. The definition of "residence" is set forth in Section 151(b) and is quoted above. Plaintiffs' memorandum makes clear, however, that the claim of unconstitutionality derives from New York Election Law, Section 151(b), which provides, in part, as follows:

"(a) For the purpose of registering and voting no person shall be *deemed* to have gained or lost a residence by reason of his presence or absence while employed in the service of the United States, nor while engaged in the navigation of the waters of this state, or of the United States, or of the high seas; nor while a student of any institution of learning; nor while kept at any welfare institution, asylum or other institution wholly or partly supported at public expense or by charity; nor while confined in any public prison . . .". (Emphasis Supplied).

[4, 5] The argument in that "no rational basis exists for such an arbitrary discrimination which acts to disenfranchise Americans residing abroad simply because they are employed in a private rather than a governmental capacity". In the opinion of the court, however, no such arbitrary discrimination is made. The word "deemed", given proper cognizance, creates a presumption only and the further provisions of the quoted subdivision make it clear that the presumption is effective only upon presentation of suitable evidence of continued residence. Thus:

". . . Any person applying for registration who claims to belong to any class of persons mentioned in this section shall file with the board taking his

registration a written statement showing where he actually resides and where he claims to be legally domiciled, his business or occupation, his business address, and to which class he claims to belong . . .".

The court finds that the New York statutory requirements serve a legitimate purpose in seeking to ensure that voters be bona fide residents and do not discriminate against or abridge the plaintiffs' rights under the Constitution of the United States. The complaint, accordingly is dismissed.

So ordered.

ON REARGUMENT

The motion to reargue is granted and on reargument the court adheres to its opinion of October 2, 1972. For the purposes of reargument, the court by order of October 12, 1972, on consent granted the application of United States Senator Barry Goldwater to intervene *amicus curiae* in behalf of plaintiffs and has considered the brief submitted in his behalf, as well as the brief and affidavits of plaintiffs and the opposing brief of defendants Lomenzo and Rockefeller.

The basis of submission of this action to the court is set forth in the court's original opinion. On reargument plaintiffs address themselves specifically to the Equal Protection clause of the Fourteenth Amendment. (Petitioner's memorandum of law, p. 2). The intervenor asks review of all aspects of the case as originally submitted.

[6] It is noted that with plaintiffs' memorandum plaintiff, Von Kohorn, has submitted an affidavit stating, among other things, "I intend to reestablish a domicile in White Plains although my future domiciliary plans are still uncertain." This differs little from Von Kohorn's original position and is utterly lacking of that element of present intent required to establish voting residence. See Ramey v. Rockefeller, 348 F. Supp. 80 (E.D.N.Y. 1972).

[7] Recognizing fully the intervenor's position that the legislative history of the Voting Rights Act Amendments of 1970, and his personal purpose show a clear intent to provide the broadest possible opportunity to citizens to register to vote in a Presidential election, the court finds no reason to alter its original opinion that this objective, by the terms of the Act, does not transcend the power of the States to require that voters be bona fide residents. See Dunn v. Blumstein, 405 U.S. 330, 343, 92 S.Ct. 995, 31 L.Ed.2d 274 (1972).

On October 3, 1972, the day following this court's opinion of October 2, 1972, a statutory three judge court convened for the United States District Court for the Eastern District of New York, handed down an opinion in which Sections 151(a) and 151(b) of the New York Election Law are considered learnedly and at length. Ramey v. Rockefeller, 348 F.Supp. 780 (E.D.N.Y. 1972). These are the sections of the New York Law here under assault on constitutional grounds. The case arose in different context (dormitory students physically present in New York), but it is noted the court found no inconsistency between the sections and no reason to declare the New York statutes unconstitutional.

Relevant to the claim of the plaintiff Hardy is the following, taken from *Ramey*: "The objective is to determine the place which is the center of the individual's life now, the locus of his primary concern. The determination must be based on all relevant factors; . . . *the state may insist on other indicia* . . .". (Emphasis supplied). Hardy moved from New York to Brazil in 1964. In the years intervening, until his present application never has he offered to vote in New York. His professed intention to return at some indeterminate time is bolstered only by a telephone listing at his mother's home. The court is of the opinion that under section 151(b), even as modified in *Ramey*, New York is entitled to stronger evidence of allegiance than that here presented.

The court does not consider this a class action. For evident reasons each application to register to vote is distinct and requires separate consideration.

The court having granted and considered the motion to reargue adheres to its opinion of October 2, 1972.

Mr. MARANS. The Bipartisan Committee supports the proposition that all U.S. citizens, wherever they may be residing, should have the right to vote in person or absentee in all Federal elections. For that reason, the Bipartisan Committee fully supports the principle that domiciliaries of the District of Columbia ought to have the right to vote for Senators and the Representatives in Congress to which the District would be entitled if it were a State. It seems plain that the creation of the two new Senators and appropriate number of Repre-

sentatives would require a constitutional amendment. This procedure would naturally follow from the history of the 23d amendment granting residents of the District the right to vote for President and Vice President of the United States.

The Bipartisan Committee has taken the position, however, that assuring the right of overseas citizens to vote in their State of last domicile could be accomplished solely by legislation, and without the need of a constitutional amendment. The granting of this right to overseas citizens does not involve the creation of any new Senators or Representatives. Furthermore, the Constitution does not now contain any specific provision governing voting by overseas citizens in any Federal elections, as compared to the 23d amendment.

The Bipartisan Committee strongly urges that the House act promptly to approve H.R. 3211 so that overseas citizens will be assured the right to vote in the Federal elections of our Bicentennial year. There is little doubt in our mind that H.R. 3211, if subjected to constitutional challenge, would be upheld by the Supreme Court of the United States. We have testified to this effect before the House Administration Committee.

If the Congress wished to buttress the constitutionality of H.R. 3211 through an amendment to the Constitution, the Bipartisan Committee would have no strong objection as long as the securing of such an amendment did not in any way jeopardize the successful adoption of H.R. 3211 in time for the 1976 Federal elections. As you know, a similar two-step legislative enactment and constitutional amendment was utilized in reducing the voting age to 18 years, even though the Supreme Court subsequently concluded that Congress did have full authority to lower the voting age for Federal elections without the need for specific constitutional amendment.

The main point is that overseas citizens strongly desire the right to vote in Federal elections next year, and believe that the adoption of H.R. 3211 is necessary to achieve that end, whether or not a constitutional amendment is later adopted in the nature of ratification of this legislation.

I will not go into detail as to the situation of Americans serving their Nation abroad. The statement indicates that reliable estimates show there are probably more than 750,000 American civilians of voting age residing overseas. Our studies have shown that nearly all of these overseas citizens in one way or another are strongly discouraged or even barred by the rules of the States of their last domicile from participation in Presidential or congressional elections.

It should be noted, however, that virtually all States have statutes expressly allowing military personnel and often other U.S. Government employees and their dependents to register and vote absentee from overseas. In the case of these Government personnel, however, the legal presumption is that the voter does intend to retain his prior State of residence as his voting domicile unless he specifically adopts another State residence for that purpose. With respect to the District of Columbia——

Mr. BUTLER. Before we go to that, this is what I am interested in, the character of our overseas voting age population. Do you have a breakdown on where they are, what communities they are in? Is that in your testimony before the subcommittee?

Mr. MARANS. It was in the testimony before the House Administration Committee and in the published hearings before that committee, and it is also in the copy of that statement I have submitted to the reporter.

Mr. BUTLER. Do you have information which indicates how many of these people overseas are presently qualified to vote under existing State legislation?

Mr. MARANS. Yes. Without citing specific references to these hearings, the Defense Department Federal Voting Assistance Task Force several years ago sponsored a study which included this question. They estimated, based on that study, that no more than 25 percent of these overseas citizens of voting age considered themselves qualified to vote in elections in their last State of domicile.

Mr. BUTLER. Last State of domicile?

Mr. MARANS. That is correct. That is the State in which under the State requirements of domicle for voting they would have been required to qualify.

Mr. BUTLER. Then conversely three-fourths of the people overseas consider themselves permanent residents of territories outside the United States?

Mr. MARANS. No; that is not correct. They believe that even if they were to apply to register to vote absentee in their last State of domicile or prior State of domicile, they would not be successful in that effort or it would be so difficult or so time consuming under present procedures and present law, it would not be worth their efforts.

Mr. DRINAN. If the gentleman would yield.

Mr. BUTLER. Certainly.

Mr. DRINAN. Isn't it tied to income taxes at the State level? I know almost countless individuals serve the United States in some capacity abroad and who recognize if they vote in Iowa, California, or elsewhere, they may be charged with paying income tax at the State level.

Mr. MARANS. Mr. Chairman, that is correct with respect to some States. It turns out, based upon an analysis of the Library of Congress, that the great majority of States have certain exclusions in their income tax laws for foreign-earned income. This exclusion is similar to an exclusion contained now in section 911 of the Internal Revenue Code.

Mr. DRINAN. Except if they work for the U.S. Government they don't qualify.

Mr. MARANS. That is correct.

Mr. DRINAN. That is the vast majority. Consequently, the hangup is not domicile or residence, but they will have to pay income tax, and that is the basic reason why 75 percent of them don't vote.

Mr. MARANS. That is one factor in their consideration, there is no doubt. That factor is taken into account in H.R. 3211.

Mr. BUTLER. It is taken into account by an amnesty provision, as far as State taxes is concerned, is it not?

Mr. MARANS. The provision in H.R. 3211 states that no person shall be liable for Federal or State taxation solely by reason of voting in a Federal election in that State. If a citizen has other contacts with that State by which the State could assert tax jurisdiction, the

citizen would not be able to escape this taxation under H.R. 3211. The provision in H.R. 3211 in effect says that no State shall impose a tax solely for voting in Federal elections.

Mr. DRINAN. Thank you very much.

Mr. BUTLER. Let me be sure I understand who these 750,000 people are. Do you have a breakdown in the information?

Mr. MARANS. We have a breakdown by country.

Mr. BUTLER. Do you have a breakdown by whether they are employed or dependents or not?

Mr. MARANS. We do not, although one will find at least some information about that in the Defense Department study which is also included in the House Administration Committee hearings.

Mr. BUTLER. How do you treat Puerto Ricans in this?

Mr. MARANS. In H.R. 3211?

Mr. BUTLER. In the 750,000 figure.

Mr. MARANS. In that figure Puerto Ricans are not included but regarded as residents of the United States for purposes of that bill. For example, a citizen of the State of Virginia who travels to Puerto Rico would not be regarded as living in a foreign country and would not be able to continue voting in the State of Virginia under H.R. 3211. However, a citizen of Puerto Rico, who moves to France, would be able to continue voting in Federal elections; that is, for Commissioner in the Commonwealth of Puerto Rico.

Mr. BUTLER. Or any other local election?

Mr. MARANS. If it were any other local election in Puerto Rico that would be on the basis of Puerto Rico law, and I am not familiar with that law.

Mr. BUTLER. Are there any other groups of people, residents of Guam? Are they in the 750,000?

Mr. MARANS. No, because they are living in a U.S. territory or possession. It is not a foreign country. These definitions are also set out in H.R. 3211.

Mr. BUTLER. I am talking about the 750,000 people.

Mr. MARANS. The 750,000 figure includes only those citizens who are residing in foreign countries and who would be covered under the definitional structure of H.R. 3211.

Mr. KLEE. And who are not members of the Armed Forces?

Mr. MARANS. No; they are not members of the Armed Forces, but private American citizens not in Government service.

Mr. BUTLER. So, even if we passed the legislation before us, and the legislation you provide, citizens of Virginia living in Guam would not get the benefit of it?

Mr. MARANS. Citizens who are in Guam would get the benefit of it; yes.

Mr. BUTLER. Of H.R. 3211?

Mr. MARANS. One moment. I would like to look at the definition here, myself. I am sorry. I stand corrected. For purposes of H.R. 3211, Guam is regarded as a State, as are the District of Columbia, the Commonwealth of Puerto Rico, and the Virgin Islands. For that reason a citizen of Virginia who moves to Guam would be obliged to vote for a delegate to Congress from Guam and would not be able to continue to use H.R. 3211 to vote for Congress or President in Virginia.

Mr. BUTLER. Just like a resident of the District of Columbia, too, a permanent resident?

Mr. MARANS. A permanent resident of the District of Columbia would have a slight advantage in that he would also be able to vote for President and Vice President of the United States.

Mr. BUTLER. Thank you. I am diverting myself. I want to get to the 750,000, and I find that is people who do not live in the geographical limits of the United States or its territories.

Mr. MARANS. That is correct. It does not include, so far as I know, the U.S. citizens having a domicile in the States of the United States and now living in American Samoa, the Canal Zone, the Trust Territories of the Pacific Islands or any other territory or possession of the United States. I expect the number of these individuals is not a large one.

Mr. BUTLER. Can you give me some estimate, then, of the number of U.S. citizens who are not covered by H.R. 3211 and therefore not provided representations in the Congress by H.R. 3211, not residents of the District of Columbia, but who do reside in these trust territories and the like?

Mr. MARANS. I could not at this time give you an estimate of the American citizens residing in American Samoa, Canal Zone, and the Trust Territories of the Pacific Islands, but will supply that information.

Mr. BUTLER. When you get an opportunity, would you get that figure, because it seems to me that is not a different class of people from those people we are trying to protect in the District of Columbia insofar as their representation rights, and I would like to know how many people we are talking about.

Mr. MARANS. Right.

[Subsequent to the hearing, the following information was supplied for the record:]

CLEARY, GOTTLIEB, STEEN & HAMILTON,
Washington, D.C., September 8, 1975.

ALAN A. PARKER, Esq.,
Chief Counsel, Subcommittee on Civil and Constitutional Rights, Rayburn House Office Building, Washington, D.C.

DEAR MR. PARKER: At the hearing, Representative Butler asked me whether I could provide the Subcommittee with information showing the number of U.S. citizens residing in the territories of the Pacific Islands who had a prior domicile in a state of the United States, and therefore might be able to vote in federal elections in that prior state under H.R. 3211 if they have not established a new domicile in the territory.

In reviewing the census figures available to me, however, I find that they do not provide sufficient detail to answer this question. Since I am not authorized, as a private citizen, to request more detailed information from the Bureau of the Census, I would suggest that the Subcommittee itself may want to ask the Bureau whether this information could be provided to it.

In making such a request to the Bureau of the Census, I would think the Subcommittee might ask for the number of U.S. citizens residing in each of the following jurisdictions who were born in a state of the United States (or at least not in the jurisdiction listed): Territories--American Samoa, Midway Islands, Wake Island, Johnson Island, Swan Islands, Other; Canal Zone; Trust Territory of the Pacific Islands.

While I would seriously question the use of this "state-birth" test of present domicile for citizens residing in the District of Columbia, I think this test should provide a reasonable estimate of the number of citizens in the above outlying areas having a prior state domicile.

As I pointed out to the Subcommittee in the hearings, the U.S. citizens of the above jurisdiction who had at one time enjoyed a prior state domicile, and now meet certain other conditions of H.R. 3211, would be able to vote in federal elections in such state of prior domicile under that bill. United States citizens residing in Puerto Rico, Guam, and the Virgin Islands, however, would not be authorized by H.R. 3211 to vote in federal elections of their prior state of domicile, although they might be allowed to vote in elections of some states of retained domicile pursuant to the laws of each such state.

Please do not hesitate to let me know if you have any further questions regarding these issues.

Sincerely yours,

J. EUGENE MARANS.

Mr. DRINAN. Mr. Marans, proceed and finish the statement in any way that is appropriate.

Mr. MARANS. Thank you, Mr. Chairman.

As indicated in the statement, the Bureau of the Census has estimated the 1974 voting age population of the District of Columbia to be 526,000. This local community of over one-half million voting age American citizens is, in itself, larger than the voting age population of a half-dozen States, including Delaware, Idaho and Vermont. These individuals include thousands of citizens in the Nation's service at home. The number is, of course, less than the estimated 750,000 overseas citizens.

It seems a curious irony that the thousands of Americans working for the Federal Government and domiciled in the District of Columbia lack the right to vote in senatorial and congressional elections which is enjoyed by U.S. Government employees overseas. As I have noted, military personnel and other U.S. Government employees have the right to register and vote absentee from overseas in virtually every State, yet Federal Government employees right here in the District of Columbia are denied that right unless they have managed to retain a voting domicile in some prior State.

Mr. KLEE. Mr. Marans, I wish to interject a question on that subject. Do you have any idea how many people in the District of Columbia have retained the domicile right to vote in a State of prior residence?

Mr. MARANS. Persons residing in the District of Columbia?

Mr. KLEE. Yes; persons who reside in the District and who vote in other States.

Mr. MARANS. I do not have any specific figure on that. The census materials do not make clear whether the Bureau of Census has taken that into account. It may have been discussed in the testimony of the prior witness, and I was not able to be present for that testimony. It has been asserted, as you know, in at least one case in the U.S. District Court of the District of Columbia that as many as 200,000 individuals may have retained domicile in a prior State. In reviewing that case, however, I find that this was a bare assertion by one of the parties in the case, and the estimate of 200,000 was derived by making the assumption that all individuals who were born outside the District of Columbia retained domicile in their prior State of domicile and have not changed the domicile to the District of Columbia. There is no indication of any support in this opinion for that assertion.

Mr. KLEE. Was the figure in that case uncontroverted? Was there any notation by the judge that the defendants in the case questioned the figure?

Mr. MARANS. There was no specific question of the figure. However, as in many judicial opinions, the judge dismissed the contentions of the party making the assertion and dismissed those contentions on other grounds. The court, therefore, did not find it necessary to discuss the retained domicile point.

As I have indicated, the Bipartisan Committee believes there is no need for a constitutional amendment to assure the right of overseas citizens to vote in Federal elections in their State of last domicile under H.R. 3211. If this right were also incorporated in a proposed constitutional amendment, the bipartisan committee might favor such a step as being in the nature of an appropriate constitutional ratification of an existing statutory right. The grouping together of overseas citizens and District of Columbia residents in the same constitutional amendment might be appropriate in the sense that these appear to be the two largest remaining groups of American citizens still lacking the right to vote in congressional elections—with overseas citizens still barred in many States from voting in Presidential elections.

The Bipartisan Committee would strongly oppose, however, any proposed constitutional amendment that would grant overseas citizens the right to vote in Federal elections only in the District of Columbia, rather than in their State of last domicile as is contemplated by H.R. 3211. It goes almost without saying that such an attempt at lumping overseas citizens into the District of Columbia electorate, even by constitutional amendment, would create such an extreme distortion of the political community in the District of Columbia as to be wholly contrary to our democratic tradition.

Mr. BUTLER. But you would concede it would be a step forward for those groups, would you not?

Mr. MARANS. We have indicated in the statement that this extreme distortion would work to the disadvantage of both overseas citizens and District of Columbia residents. Overseas citizens would be denied the right to continue their relationship with the Senators and Congressmen, and the District of Columbia residents would suffer extreme dilution of their right to vote for President and Congress, which would be wholly unjustified, given the reasonable alternative available under H.R. 3211.

As I said, the bipartisan committee would also oppose any constitutional amendment proposal that would have the effect of delaying House approval of H.R. 3211, or which might jeopardize its chances of success in time for voting by overseas citizens in the Bicentennial Federal elections.

We have heard it said, with respect to both overseas and District of Columbia residents, that they should not be entitled to vote for Congress because they do not pay their full share of Federal taxation. We think this argument is absolute nonsense with respect to both groups.

Our statement on H.R. 3211, which I have attached for the record, makes clear that the overseas citizen is already subject to Federal income taxation and estate taxation, even though he is currently given a limited exclusion from income taxation for foreign-earned income. He is already subject to Federal taxation by vitrue of being an American citizen, whether or not he votes in any election. It should be noted that even his limited exclusion from income taxation

may well be phased out in the current round of tax reform legislation being considered by the Ways and Means Committee.

For all of this tax liability, the overseas citizen obtains only the smallest direct Federal financial benefits compared to his fellow citizens back home.

At first glance, the District of Columbia appears to receive a disproportionate amount of the Federal aid given to State and local governments. For fiscal year ending June 30, 1971, for example, Federal aid to the District of Columbia amounted to $822 per capita, compared to a national per capita aid figure of $142. The next highest aid recipient was Alaska with $511 per capita. All the remaining States were under $300 per capita.

It is striking to note, however, that in the taxable year 1971, the individual Federal income tax per capita received from D.C. residents was $527, which was $114 above the national individual Federal income tax per capita. Indeed, the District of Columbia individual Federal income tax per capita for 1971 was higher than that of either Maryland, $511, or Virginia, $421; the District per capita figure was higher than that for any single region of the country. In fact, the District individual Federal income tax per capita was higher than the per capita tax for all but four States of the Union. The point is that, while the District of Columbia may have the highest need for Federal aid among all U.S. jurisdictions, the citizens of the District pay just about the highest individual Federal income tax per capita in the entire country.

Mr. DRINAN. May I interrupt at that point. I read the paper, but I don't understand why the Federal taxes in the District of Columbia per capita are so high.

Mr. MARANS. The Treasury Department releases on which this figure is based do not discuss this question. My own guess is that the Federal Government pays well; and on the average, citizens of the District of Columbia do well.

Furthermore, this is income which is mainly wage income. These are not citizens who, by and large, have the benefit of large capital gains or have the benefit of a number of tax shelters. For that reason, their tax liability tends to be, as I indicated, among the highest in the Nation.

Mr. DRINAN. That doesn't include the District of Columbia taxes.

Mr. MARANS. No; that is additional taxation.

It is interesting to note, moreover, that the District of Columbia is not the only jurisdiction in which the per capita Federal aid to local government exceeds the Federal income tax paid per capita. For fiscal year 1971, the State of Mississippi also shared that honor, with Federal aid per capita running 121.6 percent of the 1971 taxable year Federal per capita individual income tax, compared to the District's 156 percent ratio.

Furthermore, Federal and State Governments long ago abandoned the notion of "no representation with"—there is a misprint in my statement there, it should read "without taxation"—in setting qualifications for voters in Federal elections in this country. Numerous classes of citizens residing at home pay no Federal or State income tax whatever even though they regularly vote in Federal elections in their State of residence. These groups include, among others, retired

persons living solely on social security; students attending colleges and universities; disabled Americans supported entirely by veterans' or other compensation; and individuals living entirely on welfare.

If anything, one may argue that the residents of the District of Columbia have an even greater need for full congressional representation because of the significant Federal impact on its citizens, and the substantial Federal contribution to the Capital City's budget.

In sum, during the period in which Congress has gone to great lengths including two congressional amendments to enfrancise millions of Americans—the blacks, the young, and those in official Government service overseas—the American citizens residing overseas in the private sector and the citizens residing in the District of Columbia continue to be excluded from important Federal democratic processes of their own country. We can do better for the overseas citizens in the Bicentennial election. We ought not wait for the Tricentennial to grant a full Federal franchise to citizens in the District of Columbia.

Mr. DRINAN. Thank you, Mr. Marans, for your testimony. I yield to Mr. Butler for any questions he might have.

Mr. BUTLER. I thank you very much. This has covered much of what I wanted to know, and I appreciate it.

I think we ought to say for the record, on page 3 where you state there is little doubt that H.R. 3211 will be upheld by the Supreme Court of the United States, that the Attorney General has testified through Ms. Lawton, I believe, to the contrary.

Mr. MARANS. The Deputy Assistant Attorney General has so testified.

Mr. BUTLER. I just want the record to show that.

Mr. MARANS. The record might also show Mr. Dent's response to Ms. Lawton to the effect if Congress failed to pass all the legislation which the Attorney General had asserted to be unconstitutional in the last 40 years, yet which was subsequently upheld by the Supreme Court, much of the legislation of that period might not have been adopted.

Mr. BUTLER. Is that good or bad?

Mr. MARANS. The question answers itself.

Mr. BUTLER. It also avoids some litigation.

I think I understand your view with regard to the constitutional amendment which would try to solve both these problems at the same time. But what do you envision would happen if we passed legislation which gave representation to the District of Columbia and the population would increase, constituting another Member of the House of Representatives. Would that situation require another constitutional amendment?

Mr. MARANS. The present resolution, so far as I understand, would allow the District of Columbia the number of Representatives in Congress to which it would be entitled if it were a State. It is my understanding that, at the time of the next reapportionment of the U.S. Congress after this amendment were passed, if the District of Columbia population had so increased, the District of Columbia would, under this form of amendment, be entitled to the appropriate number of additional representatives.

Mr. BUTLER. All right. Thank you. That is clear to me.

Mr. DRINAN. Counsel.

Mr. KLEE. Is there a reasonable possibility this constitutional amendment would require ratification by all 50 States in accordance with the proviso in article V of the Constitution that no State shall be deprived without its consent of its equal suffrage in the Senate?

Mr. MARANS. It is my view there would only be a slim possibility. One could envision the argument being made by one or more States in the Supreme Court of the United States. In looking through the cases, *Leser* v. *Garnett* was the only case I found decided by the Supreme Court. This was in 1922. In that case, the challenge was to the 19th amendment of the Constitution allowing female suffrage. Justice Brandeis dismissed the article V provision without discussion.

My inclination is to think the Court, with some discussion, would also dismiss an assertion based on Resolution 280.

Mr. KLEE. If a Constitutional amendment ratified by only three-fourths of the States can give representation in the Senate to a non-State (since the District of Columbia is not applying for statehood which is the normal route by which States get representation in Congress) would it be possible under your interpretation of article V for there to be a constitutional amendment giving the District of Columbia 50 Senators subject to the requirement that it be ratified by merely three-quarters of the States?

Mr. MARANS. If I were making an argument to the Court, I would not make such a contention.

It seems to me, however, one can make a fairly strong argument that article V would not prohibit the allowance of two Senators to the District of Columbia. The District of Columbia would then have the same number of Senators as each of the States. I think this is an argument the Court would accept. If each State continued to have the same number of Senators as every other State and the District of Columbia, it would be regarded as still retaining its equal suffrage in the Congress.

Mr. KLEE. If the District were given 50 Senators, how would your construction of the proviso change since article V only protects equal suffrage to States and the District of Columbia is not a State? The implication of your answer was that something would be askew if they were given 50 Senators.

Mr. MARANS. Article V does not say no State without its consent shall be deprived of equal representation with any other State in the Senate. It says, "no State, without its consent, shall be deprived of its equal suffrage in the Senate."

If I were making the argument to the Court, I would indicate that it is not necessary that the District of Columbia be a State in order to prohibit it from having 50 Senators.

Mr. KLEE. You noted on the record the District of Columbia derives more from the Federal Government in benefits than it contributes in taxes. Are the issues of voting representation and taxation two separate issues?

Mr. MARANS. I think the tradition in modern America, since the early 19th century, has been to separate the issue of taxation from the issue of representation. You may recall, there was a time when only taxpayers were allowed to vote.

Mr. KLEE. The U.S. citizens residing overseas derive fewer benefits than they contribute to the U.S. Treasury in taxes and revenues; is that true?

Mr. MARANS. Yes. If one reviews the types of aid received by the District of Columbia, he finds that a U.S. citizen overseas receives virtually none of that aid.

Mr. KLEE. I have just one last question concerning voting in connection with taxation by States. The point was made that many of the residents residing overseas do not vote in their States of last domicile because to do so might develop a tax liability.

Is it true many citizens residing overseas can retain domicile and vote in a State even though they are no longer residents of that State for tax purposes?

Mr. MARANS. Virtually, no State would allow a U.S. citizen residing overseas to continue voting in that State unless the citizen can assert or prove the maintenance of a full domicile in that State except for one class of citizen. That is Federal Government employees, both military and nonmilitary.

Mr. KLEE. My question is as follows: Is paying income taxes in the United States a necessary element of domicile in every case?

Mr. MARANS. It would appear from our research that, if a citizen in any State asserts domicile in the State, the State would have the jurisdiction to assert tax on that citizen. This is apart from the question of whether the State might also provide certain exclusions from taxation for U.S. citizens overseas.

Mr. KLEE. Thank you very much, Mr. Chairman.

I have no further questions.

Mr. DRINAN. I want to thank you for your testimony and commend you for your work in behalf of U.S. citizens overseas. I am familiar with that problem, and I hope that legislation could be put through.

The only question that has not been brought up is the 20,000 students in the District of Columbia.

Mr. MARANS. The question of students is one which one will find in every other State in which the 18-year-old vote now applies. Coming from a State of distinguished academic institutions, you are aware of the fact that a number of students in those institutions desire to vote in the State of Massachusetts. Even if they could assert the retention of their parents' domicile, many students under the law are given a good deal of flexibility as to whether they want to vote in the State where they are going to school or of their residence.

I would not think this situation would be any different if applied to the District of Columbia.

[The prepared statement of Mr. Marans follows:]

STATEMENT OF J. EUGENE MARANS, SECRETARY AND COUNSEL FOR THE BIPARTISAN COMMITTEE ON ABSENTEE VOTING

I. INTRODUCTION

I am honored to appear and testify, at the request of the Chairman, in these hearings on House Joint Resolution 280, which proposes an amendment of the Constitution to provide for representation of the District of Columbia in the Congress.

It is my understanding the Committee wishes me to testify in my dual capacity of Secretary and Counsel for the Bipartisan Committee on Absentee Voting and as a constitutional lawyer interested in the subject of absentee voting. I also have a personal interest in the proposed amendment as a resident of the District of Columbia.

The primary objective of the Bipartisan Committee, as you probably know, is to assure the right of U.S. citizens residing outside the United States to vote in Federal elections in their state of last voting domicile. The Bipartisan Committee

strongly supports H.R. 3211, now pending before the House Administration Committee, which would achieve this objective. The Senate companion bill, S. 95, has been unanimously adopted by that chamber.

For the information of this Subcommittee, I respectfully request that the attached copies of H.R. 3211, and two statements prepared by the Bipartisan Committee regarding that bill, be inserted in the record of the hearings on House Joint Resolution 280 as exhibits to my prepared statement on this resolution.

The Bipartisan Committee supports the proposition that all U.S. citizens, wherever they may be residing, should have the right to vote in person or absentee in all Federal elections. For that reason, the Bipartisan Committee fully supports the principle that domicilaries of the District of Columbia ought to have the right to vote for Senators and the Representatives in Congress to which the District would be entitled if it were a state. It seems plain that the creation of the two new Senators and appropriate number of Representatives would require a constitutional amendment. This procedure would naturally follow from the history of the Twenty-third Amendment granting residents of the District the right to vote for President and Vice President of the United States.

The Bipartisan Committee has taken the position, however, that assuring the right of *overseas* citizens to vote in their state of last domicile could be accomplished solely by legislation, and without the need of a constitutional amendment. The granting of this right to overseas citizens does not involve the creation of any new Senators or Representatives. Furthermore, the Constitution does not now contain any specific provision governing voting by overseas citizens in any Federal elections, as compared to the Twenty-third Amendment, which signifies an intent to establish the District of Columbia as a separate place of voting domicile at least for presidential elections.

The Bipartisan Committee strongly urges that the House act promptly to approve H.R. 3211 so that overseas citizens will be assured the right to vote in the Federal elections of our Bicentennial Year. There would appear little doubt that H.R. 3211, if subjected to constitutional challenge, would be upheld by the Supreme Court of the United States.

If the Congress wished to buttress the constitutionality of H.R. 3211 through an amendment to the Constitution, the Bipartisan Committee would have no strong objection as long as the securing of such an amendment did not in any way jeopardize the successful adoption of H.R. 3211 in time for the 1976 Federal elections.

As you know, a similar two-step legislative enactment and constitutional amendment was utilized in reducing the voting age to 18 years, even though the Supreme Court subsequently concluded that Congress did have full authority to lower the voting age for Federal elections without the need for specific constitutional amendment.

The main point is that overseas citizens strongly desire the right to vote in Federal elections next year, and believe that the adoption of H.R. 3211 is necessary to achieve that end, whether or not a constitutional amendment is later adopted in the nature of ratification of this legislation.

II. THE BIPARTISAN COMMITTEE

The Bipartisan Committee on Absentee Voting was formed in 1965 by overseas leaders for the Democratic and Republican parties. It has a truly bipartisan membership, representing both of our major political parties. Its officers include representatives of both the Democratic and Republican parties.

III. AMERICANS SERVING THEIR NATION ABROAD

Reliable estimates indicate there are probably more than 750,000 American civilians of voting age residing overseas.[1] This overseas community of some 750,000 voting age American civilians is larger than the estimated 1974 voting age population of each of fifteen states and the District of Columbia.[2] Our studies have shown that nearly all of these overseas citizens in one way or another are strongly discouraged, or even barred, by the rules of the states of their last domicile from participation in Presidential or Congressional elections.

These overseas civilians include thousands of businessmen, as well as missionaries, teachers, lawyers, accountants, engineers, and other professional personnel serving the interests of their country abroad and subject to U.S. tax laws and the

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[1] See Bipartisan Committee statement attached as Exhibit hereto.
[2] *Statistical Abstract of the United States 1974* at 439.

other obligations of American citizenship. These civilians in the Nation's service abroad keep in close touch with the affairs at home through correspondence, television and radio, and American newspapers and magazines.

At present, a typical American citizen residing overseas in a non-governmental capacity finds it difficult and confusing, if not impossible, to vote in federal elections in his prior state of domicile; that is, the state in which he last resided. The reason is that many of the states impose rules which require a voter's actual presence, or maintenance of a home or other abode in the state, or raise doubts of voting eligibility of the overseas citizen when the date of his return is uncertain; or which have confusing absentee registration and voting forms that appear to require maintenance of a home or other abode in the state.

It should be noted that virtually all states have statutes expressly allowing military personnel, and often other U.S. government employees, and their dependents, to register and vote absentee from overseas. In the case of these government personnel, however, the legal presumption is that the voter *does* intend to retain his prior state of residence as his voting domicile unless he specifically adopts another state residence for that purpose. This presumption in favor of the government employee operates even where the chances that the employee will be reassigned back to his prior state of residence are remote. The result is continuing discrimination in favor of government personnel and against private citizens overseas in seeking access to the federal franchise. Such discrimination certainly appears questionable as a matter of public policy, and may very well be suspect under the Equal Protection Clause of the Fourteenth Amendment.

As I said at the outset, the Bipartisan Committee on Absentee Voting strongly favors H.R. 3211. The first priority for American civilian voters overseas is to require, in clear and unmistakable language, that private American citizens overseas be allowed to vote for President and Members of Congress in their last state of domicile even though these citizens may not be able to prove they intend to retain that state as their domicile for other purposes. Both S. 95, as passed by the Senate, and H.R. 3211 pending in the House Administration Committee would satisfy this legislative need.

IV. AMERICANS SERVING THEIR NATION AT HOME

The Bureau of the Census has estimated the 1974 voting age population of the District of Columbia to be 526,000.[3] This local community of over one-half million voting age American citizens is in itself larger than the voting age population of a half-dozen states, including Delaware, Idaho and Vermont. These individuals include thousands of citizens in the nation's service at home.

It seems a curious irony that the thousands of American citizens working for the federal government and domiciled in the District of Columbia lack the right to vote in Senatorial and Congressional elections which is enjoyed by U.S. government employees overseas. As I have noted, military personnel and other U.S. government employees have the right to register and vote absentee from overseas in virtually every state, yet federal government employees right here in the District of Columbia are denied that right unless they have managed to retain a voting domicile in some prior state.

V. POSSIBILITY OF JOINT CONSTITUTIONAL AMENDMENT

As I have indicated, the Bipartisan Committee believes there is no need for a constitutional amendment to assure the right of overseas citizens to vote in federal elections in their state of last domicile under H.R. 3211. If this right were also incorporated in a proposed constitutional amendment, the Bipartisan Committee might favor such a step as being in the nature of an appropriate constitutional ratification of an existing statutory right. The grouping together of overseas citizens and District of Columbia residents in the same constitutional amendment might be appropriate in the sense that these are the lwo largest remaining groups of American citizens still lacking the right to vote in Congressional elections (with overseas citizens still barred in many states from voting in Presidential elections).

The Bipartisan Committee would strongly oppose, however, any proposed constitutional amendment that would grant overseas citizens the right to vote in federal elections only in the District of Columbia, rather than in their state of

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[3] *Statistical Abstract of the United States 1974* at 439.

last domicile as is contemplated by H.R. 3211. It goes almost without saying that such an attempt at lumping overseas citizens into the District of Columbia electorate, even by constitutional amendment, would create such an extreme distortion of the political community in the District of Columbia as to be wholly contrary to our democratic tradition.

The extreme distortion caused by such an inclusion of overseas citizens in the District of Columbia electorate would work to the disadvantage of both overseas citizens and District of Columbia residents. Overseas citizens would be denied the right to continue their relationship with the Senators and Congressmen and the political community of their state of last domicile. The District of Columbia residents would suffer an extreme dilution of their right to vote for President and Congress which would be wholly unjustified given the alternative available under H.R. 3211.

As I have said, the Bipartisan Committee would also oppose any constitutional amendment proposal that would have the effect of delaying House approval of H.R. 3211, or which might jeopardize its chances of success in time for voting by overseas citizens in the Bicentennial federal elections.

VI. TAXATION WITHOUT REPRESENTATION

We have heard it said, with respect to both overseas and District of Columbia residents, that they should not be entitled to vote for Congress because they do not pay their full share of federal taxation. We think this argument is absolute nonsense with respect to both groups.

Our memorandum on H.R. 3211, which I have attached for the record, makes clear that the overseas citizen is already subject to federal income taxation and estate taxation, even though he is currently given a limited exclusion from income taxation for foreign-earned income. He is already subject to federal taxation by virtue of being an American citizen, whether or not he votes in any election. It should be noted that even his limited exclusion from income taxation may well be phased out in the current round of tax reform legislation being considered by Congress.

For all of this tax liability, the overseas citizen obtains only the smallest direct federal financial benefits compared to his fellow citizens back home.

At first glance, the District of Columbia appears to receive a disproportionate amount of the federal aid given to state and local governments. For fiscal year ending June 30, 1971, for example, federal aid to the District of Columbia amounted to $822 per capita, compared to a national per capita aid figure of $142.[4] The next highest aid recipient was Alaska with $511 per capita. All the remaining states were under $300 per capita.

It is striking to note, however, that in the taxable year 1971 the individual federal income tax per capita received from D.C. residents was $527, which was $114 *above* the national individual federal income tax per capita.[5] Indeed, the District of Columbia individual federal income tax per capita for 1971 was higher than that of either Maryland ($511) or Virginia ($421); the District per capita figure was higher than that for any single region of the country. In fact, the District individual federal income tax per capita was higher than the per capita tax for all but four states of the Union. The point is that, while the District of Columbia may have the highest need for federal aid among all U.S. jurisdictions, the citizens of the District pay just about the highest individual federal income tax per capita in the entire country.

It is interesting to note, moreover, that the District of Columbia is not the only jurisdiction in which the per capita federal aid to local government exceeds the federal income tax paid per capita. For fiscal year 1971 the State of Mississippi also shared that honor, with federal aid per capita running 121.6% of the 1971 taxable year federal per capita individual income tax, compared to the District's 156.0% ratio.

Furthermore, federal and state governments long ago abandoned the notion of "no representation with taxation" in setting qualifications for voters in federal elections in this country. Numerous classes of citizens residing at home pay no federal or state income tax whatever even though they regularly vote in federal elections in their state of residence. These groups include, among others, retired

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[4] *Statistical Abstract of the United States 1972* at 414.
[5] *Statistical Abstract of the United States 1974* at 231.

persons living solely on social security; students attending colleges and universities; disabled Americans supported entirely by veterans' or other compensation; and individuals living entirely on welfare.

If anything, one may argue that the residents of the District of Columbia have an even greater need for full Congressional representation because of the significant federal impact on its citizens, and the substantial federal contribution to the capital city's budget.

VII. CONCLUSION

In sum, during the period in which Congress has gone to great lengths including two Congressional amendments to enfranchise millions of Americans—the blacks, the young, and those in official government service overseas—the American citizens residing overseas in the private sector and the citizens residing in the District of Columbia continue to be excluded from important federal democratic processes of their own country. We can do better for the overseas citizens in the Bicentennial Election. We ought not wait for the Tricentennial to grant a full federal franchise to citizens in the District of Columbia.

COMMON CAUSE STATEMENT IN SUPPORT OF FULL CONGRESSIONAL VOTING REPRESENTATION FOR THE DISTRICT OF COLUMBIA

This statement is on behalf of Common Cause, a national citizen's lobby having approximately 300,000 members, over 5,000 of whom reside in the District of Columbia. Common Cause appreciates this opportunity to express its support of the Full Voting representation amendment contained in House Joint Resolution 12 and House Joint Resolution 280.

For nearly one hundred years District residents have petitioned for full representation in their government. Congress has responded cautiously, step by step. Since 1800, when Congress first assumed "exclusive jurisdiction" over the District, the local government has been reorganized six different times. The most recent reorganization occurred in 1974, and resulted in a change from an appointed Mayor and Council to an elected Mayor and Council. The 1974 plan provided for the delegation of legislative authority to the new elected officials, while Congress maintains the ultimate jurisdiction as provided under Article I, Section 8 of the Constitution. Another response was contained in the 23rd Amendment which granted District residents the long overdue right to vote for President and Vice-President. The provision of an elected School Board and a non-voting delegate to the House of Representatives were additional responses during the last decade.

These extensions of suffrage constitute only partial self-government for the District. Complete enfranchisement requires that District residents not only be represented in the National Executive Branch and local government but in Congress as well. With each incremental extension of self-government Congress had demonstrated its ability to protect the Federal interests in the District, while expanding local suffrage. Full voting representation would represent yet another step toward the long overdue right of self-determination.

The American public has shown that it too recognizes the D.C. citizen's right to voting representation in national affairs by the speedy ratification by the states of the 23rd Amendment.

The Committee has heard testimony raising the constitutionality of representation for the District, especially as such representation pertains to the Senate. The major question involves Article V of the Constitution which says, ". . . that no state, without its consent, shall be deprived of its equal suffrage in the Senate."

The general issue of Senate representation has been debated in Congress since the origin of the Constitution. During the Convention of 1787 questions concerning the actual number of Senators, method of selection and Senate duties and powers were embodied in the central dispute that pitted the small states against the larger ones. The Great Compromise resolved this conflict by establishing two separate Houses, balancing the decision-making process between them. Representation was to be determined by geographical area. The Senate would represent all the people in a given state whereas membership in the House of Representatives would reflect representation of only a portion of the state's population.

In order to maintain this balanced relationship, and to reassure small states, the "equal suffrage" clause was added to Article V. On June 20, 1787 James Madison reported the remark of Roger Sherman, delegate from Connecticut:

". . . two branches, and a proportional representation in them, provided each state had an equal voice in the other. This was necessary to secure the rights of the lesser States; otherwise three or four of the large States would rule the others as they please." [1]

On November 24, 1803 Jonathan Dayton, delegate to the convention from New Jersey, stated before the U.S. Senate:

"Was nothing meant by the provision of the Constitution that no amendment should ever deprive the States of the equality of votes in this House? Yet, it was that jealous caution which foresaw the necessity of guarding against encroachments of larger States. The States, whatever their relative magnitude, were equal under the old Confederation, and the small States gave up a part of their rights as a compromise for a better form of government and security; but they cautiously preserved their equal rights in the Senate . . ." [2]

Article V, therefore, is a safeguard to prevent larger states from dominating smaller ones. It was not designed to require unanimous consent from the states for representation in Congress. In fact, 37 states have been granted representation in Congress! Granting the District of Columbia full voting (including Senate) representation would neither deprive any state of its franchise, nor inequitably alter the distribution of that franchise.

District of Columbia representation in the House of Representatives only, as some have suggested, would clearly circumvent the Founding Fathers' intention of balanced and equitable representation. Governing authority resides in both Houses, and each possess an effective veto power over the other. The Constitution also grants the Senate and House different duties and responsibilities. Without a vote in both Houses, District residents would be excluded from a voice in the confirmation of top policy-makers and administrators. In addition, there would be no voice in certain aspects of foreign affairs.

We are concerned that 700,000 American citizens have no vote in the Congress of the United States where decisions affecting their daily lives are routine. It is ironic that the citizens of the Nation's Capital are not afforded the same fundamental rights to participation that most Americans take for granted. In the District of Columbia, where the principles of popular representation should be strongest, as both a model and a symbol for the rest of the country and the world, they are weakest. Common Cause fully supports House Joint Resolution 12 and House Joint Resolution 280. As our bicentennial year approaches, we challenge the members of Congress to end this embarrassing vestige of taxation without representation by providing for the rightful participation of District residents in our democracy.

Mr. DRINAN. I notice our distinguished colleague, Mr. Fauntroy, the Delegate from the District of Columbia, is in attendance.

If there are no further comments, I declare the subcommittee adjourned.

[Whereupon at 11:25 a.m., the subcommittee was adjourned, to reconvene at the call of the Chair.]

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[1] I. M. Farrand, The Records of the Federal Convention, page 343 (2 ed. 1966).
[2] Ibid., vol. III, pages 400–401.

APPENDIXES

APPENDIX 1

Washington, D.C., June 24, 1975.

Hon. DON EDWARDS,
Chairman, Subcommittee On Civil Rights and Constitutional Rights, Committee On The Judiciary, U.S. House of Representatives, Washington, D.C.

MY DEAR MR. CHAIRMAN: I should like to make reference to my statement submitted to the Subcommittee on June 21 relative to the hearings the subcommittee is conducting regarding H. J. Res. 280 (94th Congress, 1st Session) and such other matters.

I wish to so revise or modify the statement with regards to the two insertions requested in the same. The two insertions (both Insertion I and Insertion II) should now be removed from the body of the statement; be so designated as Appendices (as "Appendix I" and "Appendix II," respectively), and inserted after or behind the statement, but appearing as a portion thereof, of course.

This change will not only give the statement some form of continuity, but also a sense of congruity, I believe.

Moreover, to the "Recent Bibliography and References" portion of the statement, I wish to add the following addition source (to be placed in correct order in the cited section):

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Metelski, John B., JD, "Micronesia and Free Association: Can Federalism Save Them?," 5 *California Western International Law Journal* 162–183 (No. 1, Winter, 1974).

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Thanking you very kindly for your attention to these matters and the modifications of my June 21 statement to the Subcommittee as so cited herein, I am again.

Sincerely yours,

LEONARD S. BROWN, Jr.,
Esquire.

WASHINGTON, D.C.,
June 21, 1975.

Hon. DON EDWARDS,
Chairman, Subcommittee on Civil Rights and Constitutional Rights, Committee on the Judiciary, U.S. House of Representatives, Washington, D.C.

MY DEAR MR. CHAIRMAN: I should like to participate in the *Hearings* of the Subcommittee On Civil Rights and Constitutional Rights of the House Committee On The Judiciary by submitting a personal statement in support of extending and expanding representation in the Congress for all of our American Territories and Commonwealths, *but with due specficity for the District of Columbia, our great nation's capital city and the home of some nearly one million voteless and under-represented "minorities."*

I would go much further than the provisions and proposals of House Joint Resolution No. 280 (94th Congress, 1st Session) and amend the Constitution of the United States of America to grant NOW full, voting representations in both the United States Senate and House of Representatives for all of our Territories and Commonwealths, *with specificity to and for the District of Columbia!* This includes the Virgin Islands, the Commonwealth of Puerto Rico, the American Samoa, our U.S. Trust Territories, the projected Mariana Commonwealth, such other Territories and Commonwealths, *but with specificity for and to the District of Columbia!*

While we are discussing and proposing further extensions and expansions of our endemic democracy and democratic system as we only know it, including the abolition of the Electoral College with the substitution by a system of democratically-popularly electing the President and Vice President and the extensions

and expansions of the Voting Rights Act of 1965 and 1970, there ought to be, indeed, a "package" of extending and expanding our democracy in our today's, modern age, in the 1970s, by extending and expanding democracy and our democratic system, in our own evolutionary way of doing things, to include all of our Territories and Commonwealth, *and with due specificities for the District of Columbia!*

I participate here as a political science and legal professional, a graduate of Howard University, a political "activist," as a private citizen, and of the memberships I hold in the organizations so cited in my statement, including the bibliography and references given therein.

Thanking you very kindly for the use of my statement and its inclusion in the records of your hearings. I am

Sincerely yours,

LEONARD S. BROWN, Jr.,
Esquire.

STATEMENT OF LEONARD S. BROWN, JR., ESQUIRE, IN SUPPORT OF ENACTMENT OF LEGISLATION BY THE CONGRESS GRANTING ("VOICE-AND-VOTE *NOW*") FULL, VOTING REPRESENTATION IN THE CONGRESS OF THE UNITED STATES FOR THE DISTRICT OF COLUMBIA AND SUCH OTHER AMERICAN TERRITORIES AND COMMONWEALTHS OF THE NATION:

Mr. Chairman and members of the House Subcommittee On Civil Rights and Constitutional Rights, Committee On The Judiciary, I am submitting this statement on Full, Voting Congressional Representation in the Congress for the District of Columbia and such other American Territories, commonwealths, and possessions really as a professional and private citizen (a socio-political-legal scientist). I am, of course, not representing any specific organization, although I hold memberships in, *inter alia*, the Disabled American Veterans organization, the NAACP, Washington Area Political Science Association, American Political Science Association, Western Political Science Association, Midwest Political Science Association, the Academy of Political Science, the American Academy of Political and Social Science, Southern Political Science Association, Southern Historical Association, Virginia Historical Society, American Historical Association, and such other groups. Moreover, I am permitted to practice law in both the District of Columbia and the Commonwealth of Virginia. My age is 44 years of growth.

I do not believe that H.J. Res. 280 (94th Congress, 1st Session) goes far enough. What ought to be proposed, to my way of full democracy and full democratic thinking, is full Congressional representatives in the Congress. Both the United States Senate and House of Representatives, for all territories and commonwealths, and possessions, of the United States, *but with due specificity including the Seat of Government (SOG) and federal territory of the District of Columbia, which the latter has recently gained some, tidy bit of local Home Rule.*

We have evolved far enough *NOW* in our evolutionary democratic system processes to include *NOW* and *NOW* bring into our democracy and democratic system, with full, voting democratic-representative participations, the Virgin Islands, the Commonwealth of Puerto Rico, the America Samoa, Guam, our U.S. Trust Territories, the projected Mariana Commonwealth, such other territories, commonwealths, and possessions, *and, specifically, the District of Columbia!* It must be noted that our democratic system has in it *NOW* several millions of so-called American "minorities," who are, at the sametime, full-blooded American citizens under our Constitution (Amendments V, XIII, XIV, and XV), the Civil Rights Acts of 1866, 1964, and 1970, the Voting Rights Acts of 1965 and 1970, and 42 USC, §§ 1981–2000 (1970 Edition) and are being denied otherwise full, American citizenship and participations in our federal government. Of course, there is "taxation without representation"! Many of our citizens are being denied full democracy in a more fuller, purer democratic system as we so evolve and move on in the spheres of modern days and times! Most of them are so-called "minorities" of America and its possessions—subjects of the USA, if you will! *And specifically is this the case of the District of Columbia!* Where there are some 750,000 persons, "a population larger than ten states that together have thirty-four votes in Congress" today! The District of Columbia, who, like some selected American territories, commonwealths, and possessions, has only recently gained a voiceless, non-voting delegate to the lower house of the national legislature. The District of Columbia citizens can now cast votes (and Electoral ballots) for the President and Vice President candidates (the Executive Branch of the national

government), but it cannot happen today in and with the Legislative Branch of the same government! [At this point, I wish to insert for inclusion in this statement and my participations in these hearings the statement I made before the House Committee On The Judiciary, 90th Congress, 1st Session, in the 1967 *Hearings* titled "D.C. Representation In Congress," at pp. 130–132, giving my specific views and observations on how the District of Columbia fares currently in the nation and in the Congress without full, voting representations in both houses of the Congress. I trust that the full statement as so inserted here will be printed here, at this point, in its entirety].

It must be noted at this juncture, that most all of the territories, commonwealths, and possessions of this great nation of ours participate in the local and state primaries and conventions, as well as the national party conventions, as voters and voting delegates, to designate and choose Presidential and Vice Presidential nominees of the several political parties, yet, save the District of Columbia today, cannot today, and *NOW*, participate in the Congress (in either house), with a "voice-and-vote *NOW*" when the Congress counts the Electoral College votes, or if the Congress had to choose both the President and Vice President, *or the choice of the Vice President when and if that office becomes vacant between elections*, or if it ever became necessary to impeach the President, Vice President, judges, or other federal officials.

Even in the Soviet Union today, and *NOW*, in a non-democratic system, all possessions, subcultures, minorities, nationalities, areas, territories, and autonomous/semi-autonomous republics and regions have full, voting representations in the Soviets and Supreme Soviet, albeit that the Soviets, Supreme Soviet, and the representatives all are "rubber stamps" and "rubber stampers." France gave full, "voice-and-vote" representations in the France parliament to its territories, possessions, and *departments*, especially its colonies and formers of Africa and other liked areas of the world. The once Empire of Great Britain has its today, and *NOW*, Commonwealth of Nations, granting full representations to its former colonies (now independent nations within the Commonwealth of Nations), present Territories, and British Subjects. Why cannot our more democratic and more fuller, purer democratic nation become more evolutionarily democratic today, and *NOW*, grant full ("voice-and-vote *NOW*) representations in both houses of the Congress to all of our American territories, commonwealths, and possessions, *and with a specificity for and regarding the District of Columbia—the capital city of the nation and the entire world! Should the latter be so undemocratic and suffer the pains of shortchanged democracy in a so-called democratic nation such as great as our is today*, and *NOW*?

The Founding Fathers of this Nation, and the Framers of our own United States Constitution, intended that no area under the jurisdiction of the United States of America (in the years of our independence) be without and void of democratic, republican representations in the Congress of this United States of America! This was their *raison d'etre* for revolting against the English throne, colonial governors, declaring our INDEPENDENCE, and establishing a new democratic nation—to be further democratized and so modified from the so-called Articles of Confederation into the organic act we so live by today, and should amend accordingly, the United States Constitution. See, generally, Rexford G. Tugwell, Ph. D., *Battle For Democracy* (1935), and Ashmore, "Rexford Guy Tugwell: Man of Thought, Man of Action," III *The Center Magazine* 2–7 (No. 5, September/October, 1970). This is a publication of the Center for the Study of Democratic Institutions, P.O. Box 4068, Santa Barbara, California 92705. [The whole volume of the *Center Magazine* is devoted to the Constitution, its revisions and modifications, and suggested further modifications. See, generally, pp. 10–73, *Id*].

Now, in both 1967 and 1971, I suggested the form of the new Article to the Amendments of the United States Constitution that I thought the organic act ought to carry to implement my suggestions at those times with regard to representations in the Congress (in both houses—United States Senate and House of Representatives) for the District of Columbia solely, or singly. Since I have so modified my personal views since 1967 and 1971 on the extensions and expansions of full, voting representations in the Congress, to include all United States territories, commonwealths, possessions, *and with specificity for and with the District of Columbia*, I wish today, and *NOW*, to suggest a new Amendment form to accommodate and implement my modified suggestions herein [However, at this point, as with the insertions of my statement made in 1967 before the House

Committee On The Judiciary and referred to *supra*, I want to insert in its entirety my statement made before Subcommittee No. 1, Committee On The Judiciary, U.S. House of Representatives, 92d Congress, 1st Session, in *Hearings* Titled "Voting Representation In Congress For The District of Columbia" at pp. 336–340].

My new suggested Amendment would read as follows:

ARTICLE—

Section 1. The people of the District of Columbia (constituting the seat of government of the United States of America), the Virgin Islands, Commonwealth of Puerto Rico, the America Samoa, Guam, Mariana Commonwealth, and such other Territories, Commonwealth, and Possessions of the United States of America as so determined shall elect two Senators and the number of Representatives in the United States House of Representatives to which they would be so entitled to if they were States.

Section 2. Each Senator or Representative so elected shall be a voting inhabitant of the District of Columbia, Commonwealth, Territory, or Possession from which he or she is so elected and shall possess the same qualifications as to age and citizenship and have the same rights, privileges, and obligations as a Senator or Representatives from a State.

Section 3. When vacancies happen in the representations of the District of Columbia, Territories, Commonwealths, and Possessions of the United States of America as so represented in the Congress, in either the Senate or House of Representatives, the people of the District of Columbia and the several Territories, Commonwealths, and Possessions represented in the Congress, shall fill such vacancies by special elections called for such purposes.

Section 4. For the purposes of electing a President and Vice President of the United States, the District of Columbia and the several Territories, Commonwealths, and Possessions so represented in the Congress shall be entitled to the number of electors in the Electoral College as if they were States and have representations in the Congress.

Section 5. The rules of apportionment for representation in the House of Representatives, *as contained in Article XIV of this organic act, are so modified for the enforcement and implementation of this Article.*

Section 6. The Congress shall have the powers to enforce this article by appropriate legislation.

I cannot over-emphasize, nor really understate, my point of view that I am of the firm belief that if we are extending and expanding our democracy to all of our citizens, including our so-called "minorities" in such acts of Congress as the Voting Rights Acts of 1965 and 1970, and the Extensions and Expansions of these Voting Rights Acts in such legislation as H.R. 6219 (94th Congress, 1st Session), in rather timely and current discussion anew of abolishing the Electoral College and substituting for it a more democratic form of electing the President and Vice President by popular votes of the electorate, and in and by recent Congressional hearings upon the operations and implementations (really workings) of the Amendment XXV of the Constitution, then it only holds true that the democratic "package" ought and should include, imperatively, the extensions and expansions of our evolutionary, endemic democracy to all of our citizens by bringing all of them into the SYSTEM *per se* by full, voting representations in both houses of the Congress! This is only fair—and in a democratic system and native, endemic democracy such as ours, this is not asking too much of the system to bring all Americans into the SYSTEM! This includes all of our so-called, native "minorities" and subcultured nationalities. If the non-democratic system of the Soviet Union can do it and laugh at our democratic SYSTEM for not doing it, then which system is really democratic? Ours or theirs? All of our citizens should be represented in the Congress of the United States of America in both houses (the United States Senate and House of Representatives) by and with full, voting ("Voice-and-Voting *NOW*) representations! *The citizens of the District of Columbia should deserve some special treatment in this regards, being denied no representation at all onetime, semi-representation at another time, voiceless and voteless representation later, and being further handicapped by the provisions of the so-called Hatch Act now because many of the District of Columbia citizens are employees of both the local and federal governments.* Let all of this be termed the "Compromise of 1975." Cf. The historic "Missouri Compromise" on the admission of states to the Union.

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Appendix 2

Statement of Leonard S. Brown, Jr., Member, District of Columbia Young Democratic Clubs and the District of Columbia Political Science Association

Mr. Chairman and members of the House Committee on the Judiciary I am submitting this statement on Congressional representation for the District of Columbia as a private citizen and as a social scientist, and not as a representative of the organizations in which I hold membership.

I support the adoption by Congress of a Constitutional amendment granting FULL Congressional representation (two Senators and Representatives) for our nation's capital city. I would go much further than the provisions of House Joint Resolution 396!

I am in favor of granting the nearly one million people of the District full participation in the electoral process for the selecting of our Presidents and Vice Presidents, as well as participation in any other Congressional processes which might affect the Presidency after election day and the subsequent counting of the Electoral votes, e.g., the counting of the Electoral votes themselves; House vote for the President; Senate vote for Vice President; House impeachment of the President: Senate trial of the President; Congressional confirmation of a Vice President in the event of a vacancy; Congressional action in the case of Presidential disability; the succession of the Speaker of the House and/or the President Pro Tempore of the Senate to the Presidency, etc.

While the House Committee on the Judiciary is conducting hearings on possible Congressional representation for the District, the Senate is simultaneously holding hearings on the Presidential Electoral College System. This occurrence might just be providence, because Congressional representation and complete participation in Presidential electoral politics for the District are the most crucial Constitutional problems facing the Congress and the nation today—in our "democratic way of life." The District of Columbia can only have full, complete participation in the Electoral Presidential choice process as the direct results of the District's actual representation in the Congress. Today, as the results of the Constitutional provisions in Articles I and II and Amendments 12, 23, and 25, there are very serious Constitutional defects in regard to the District and the Presidency. These defects ought to be corrected by Congressional action before the 1968 Presidential election and before someone takes the matteri nto the Federal courts.

The following are truisms today: (1) Under Amendment 23, the District is permitted to participate in the choice of Presidential Electors, and thus it is permitted to participate only partially in the Presidential Electoral process and cannot "go all the way" because it does not now have two Senators and Representatives in the Congress. Presently, the District cannot vote for and help choose a President if the election were thrown in the House and votes for the three leading candidates were taken according to the States. This would be the similar case if the Senate found it incumbent upon it to choose a Vice President while the House was electing the President. The District would be responsible for the votes for the three leading candidates in the House vote (i.e., nominating), but the lack of Congressional representation in the Congress would not permit it to follow through the electoral process all the way.

(2) If under Article I of the Constitution, it became incumbent upon the House to impeach the President and the Senate to try the impeached President, the District could not participate, after having voted for the Chief Magistrate in the Presidential Electoral College System. The District does not today have the necessary Congressional representation for such participation.

(3) Under Article I, Section 2, of the Constitution, the national decennial census is presently taken in the District for the other purposes other than the original purpose, i.e., for determining Congressional representation in the House each ten years.

(4) Under Article XII, presently no District representation is present in and during the Joint Sessions of Congress for the counting of the Presidential Electoral votes and the subsequent Congressional certification that Presidents and Vice Presidents have been elected.

(5) Under the provisions of the Presidential Succession Act of 1947, providing for the assumption of the Presidency by the Speaker of the House and the President Pro Tempore, respectively, in the absence of a Vice President, the District would not have had the occasion to participate beforehand in the choice of these

officers in the respective bodies of the Congress—because these officers are supposed to be closer to the people than members of the President's Cabinet, who are next in line for the succession.

(6) Under the newest Amendment to the Constitution, the 25th, dealing with Presidential disability, the District is not permitted to participate in the Congressional ("a majority of both Houses of Congress") confirmation of a new Vice President after the President nominates one to fill a vacancy. Nor is the District presently permitted to participate in the 25th Amendment's provision giving Congress ("by two-thirds vote of both Houses") the power to decide when the President is "unable to discharge the powers and duties of his office . . ." A Vice President could become President under these circumstances without the District electorate having ever had any say-so in the choice one way or the other.

Congress might just help remedy some of the Constitutional defective problems here by causing amendment to the Constitution to abolish the Presidential Electoral College System and provide for direct, popular election of our Chief Executive. If this were the case, the problems of the District of Columbia in regard to the nation's capital and its "half-way" participation in the Presidential Electoral College process and "Congressional Presidential politics" would continue to remain with us. This would be the case short of granting full, complete Congressional representation to the District.

There is, moreover, the legal situation to be considered (apart from the Constitutional question) because of the District's lack of voting representation on Capitol Hill. Some lawyers and citizens are now of the opinion that the people of the District could go to court now and have some "Congressional Presidential politics" action invalidated under the "Equal Protection of the Laws" clause of the 14th Amendment. The view has also been expressed that if the Electoral College is abolished (and the District is still without Congressional representation in Congress) District residents will have strong cases under the "one-man, one-vote" doctrine as enunciated by the United States Supreme Court in *Gray vs. Sanders*, 372 U.S. 368, 381 (1963).

So it is, with or without the Electoral College, the District can only participate adequately in the "Congressional Presidential political process" except by full, complete Congressional representation—two Senators and Representatives. Only by granting the District full Congressional representation in both Houses can the present defective problems of the Constitution be remedied in so far as the District of Columbia is concerned.

I thus support the adoption of a House Joint Resolution providing, *inter alia*, the following:

ARTICLE—

Section 1. The people of the District of Columbia constituting the seat of Government of the United States shall elect and be represented in the Congress by two Senators and in the House of Representatives by one or more Representatives in accordance to the rule of apportionment established by Article XIV of the Constitution.

Section 2. For the purposes of electing a President and Vice President of the United States, the District shall be entitled to the number of electors as it has representation in the Congress, as if it were a State.

Section 3. The Congress shall have power to enforce this article by appropriate legislation.

In conclusion, I urge that the remedy to the District's legal and Constitutional representational problems ought to be supplied before the next Presidential election, i.e., November, 1968. The nearly one million people of the nation's capital city deserve full Congressional representation on the very strength of the ideals of democracy itself (and the District's people have no representation in the national legislative of a democracy) and the ideals of the "American Way of Life"!

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Appendix 3

Statement of Leonard S. Brown, Jr.

"Once it be postulated that the District is entitled to voting representation here, no less than full membership in both Houses can be justified. The people of each of the 50 States are represented in this House according to their numbers, and in the other body by two Senators. To accord the people of the District only a single Representative when their population may entitle them to more would transgress the one-man, one-vote doctrine currently so widely accepted. To deny them their equal suffrage in the Senate would leave them uniquely among the people who have direct voting representation in Congress, only half represented, with a political voice in one house of a bicameral legislature but not in the other.* * * [I]f the District is to be granted representation at all, it should be granted that representation to which it would be entitled if it were a State."—*Hon. Edward Hutchinson, Report No. 819, House of Representatives, 90th Congress, 1st Session.*

Mr. Chairman and members of the subcommittee, I am submitting this statement on congressional representation for the District of Columbia as a private citizen and as a registered political scientist, and not as a representative of the organizations in which I happen to hold membership.

I support the adoption by the Congress of a constitutional amendment granting full congressional representation (two Senators and Representatives) for our Nation's Capital City. My position is similar to that of Congressman Edward Hutchinson, as expressed above. In short, I support the version as approved by the House Committee on the Judiciary in 1967 (i.e., together with a slight modification that I suggested in 1967 be included in the House Committee on the Judiciary's version).

I am in favor of granting the nearly 1 million people of the District full participation in the electoral process for the selection of our Presidents and Vice Presidents, as well as full participation in any other congressional processes which might affect the Presidency after election day and the subsequent counting of the electoral votes, e.g., the counting of the electoral votes themselves; removal of the constitutional restriction on the number of electoral votes accorded the District (as provided in the 24th amendment to the Constitution); House vote for the President; Senate vote for Vice President; House impeachment of the President; Senate trial of the impeached President; congressional confirmation of a Vice President in the event of a vacancy (as provided in the 25th amendment); congressional action in the case of Presidential disability; the succession of the Speaker of the House and/or the President pro tempore of the Senate to the Presidency, etc.

Congressional representation and complete participation in Presidential electoral politics for the District are, in my estimation, the most crucial constitutional problems facing the Congress and the Nation today—in our democratic way of life. The District can only have full, complete participation in the Presidential electoral choice process as the direct results of the District's actual and full representation in the Congress of the United States of America! Today, as the direct results of the constitutional provisions in article I, II, and amendments

12, 23, and 25, there are in existence very serious constitutional defects, denials, and preplexing problems in regard to the District and the Presidency. These defects ought to be corrected by the Congress and the people before the 1972 presidential election, and before someone takes the matter into the Federal courts for adjudication on basis of the Equal Protection of the Laws clause of the 14th amendment to the Constitution.

Here are some of the truisms that exist today in regard to the District, the 23d amendment, the existence of the electoral college system, and the lack of full District representation in the Senate and the House:

1. The 23d amendment itself whittles down the rights of the District residents by half because the amendment limits the District's electoral votes to the number assigned to the least populous State (three) instead of granting equality with States of similar population. Regardless of the increase in the District's population in years to come, no contemplation is made for according the District representation in the future in conformity with its population, as is accorded the several States.

2. Also, under the 23d amendment, the District is permitted to participate in the choice of Presidential electors (thus increasing the electoral votes by three and not decreasing them by three) in the electoral college, but it cannot go all the way because the people of the District are given second-class American citizenship in that they do not have two Senators, at least one Representative, and a voice in both Houses of Congress to help if it were ever incumbent upon the House and the Senate to elect a President and Vice President, respectively. If the presidential election were thrown into the House today and votes for the three leading candidates for the Presidency were taken according to the States and the Senate proceeded to elect a Vice President by majority vote from the two leading candidates for the Vice Presidential office, the District would be responsible for having helped to nominate the leading candidates in this nationwide primary, but it could not follow through in the electoral process because it does not today have votes in the House and in the Senate. District residents could attack this state of affairs in the Federal courts as a denial of equal protection of the laws.

3. If under article I of the Constitution, it became incumbent upon the House to impeach the President for any reason whatsover and the Senate to try the impeached President during a court proceeding, the District could not participate in the impeachment and/or trying of the President—this would be the case even though the District's people did vote for the Chief Magistrate in the electoral college. If the status quo remains, District residents can attack any impeachment and trial of the President as denials of equal protection of the laws to District residents and have the Supreme Court declare impeachments and trials of the President unconstitutional.

4. Under article I, section 2, of the Constitution, the national decennial census is taken in the District for the other purposes other than the original purpose, i.e., primarily for determining congressional representation in the House each 10 years.

5. Under article XII of our great organic act, presently no voting District representation is present in and during the joint sessions of the Congress for the counting and certification of the electoral votes. The joint session, in this regard, is rather ritualistic and pro forma today, but it is nevertheless a constitutional requirement, District residents could go to court now and have electoral vote counts invalidated and declared unconstitutional because of the denial of the equal protection of the laws because of the lack of voting participation in this ceremony of District Members of the Congress.

6. Under the provisions of the Presidential Succession Act of 1947 (61 Stat. 380, 3 U.S.C. 19), providing for the assumption of the Presidency by the Speaker of the House and the President pro tempore, respectively, in the absence of a President, in the one instance, and a Vice President, in the second instance, the District would not have had the occasion to participate beforehand in the choice of the Speaker of the House and President pro tempore of the Senate—and these two officials were placed ahead of the President's cabinet in the line of Presidential succession because they are assumed to be and regarded as being closer to the people by the very fact that they are elected to their legislative leaderships by representatives who are more closer to the people and who, when assembled. represent the people and the Nation as a whole—in our republican, representative form of Government, as opposed to pure democracy.

7. Under the amendment to the Constitution, the 25th, dealing with Presidential disability, the District is not permitted to participate in the congressional (a majority of both Houses of Congress) confirmation of a new Vice President (in the absence of a Vice President chosen in an election) after the President nominates one to fill a vacancy. Nor is the District of Columbia presently permitted to participate in the 25th amendment's provision giving the Congress (by two-thirds vote of both Houses) the power to decide when the President is "unable to discharge the powers and duties of his office * * *." A Vice President could become President under the 25th amendment without the District's electorate having ever had any say-so in the choice one way or the other. District residents could go to the Federal court and would have a case for invalidating and declaring unconstitutional actions taken under the 25th amendment based on the denials of equal protection of the laws of the people of the District of Columbia.

Congressional representation and complete participation in the presidential electoral politics, if not just the electoral college itself and its obsolete middleman function in a democracy, are, again, I state, the most crucial constitutional problems facing the Congress and the Nation today. The President, the chamber of commerce, and the powerful, influential, conservative American Bar Association, inter alia, are strongly on record for reforming the electoral college system and thus Congress might just soon help remedy some of the District's constitutional problems by causing amendment to the Constitution to abolish the electoral college outright to provide for the direct, popular election of our Presidents and Vice Presidents. But even if this became the case, short of granting the District two Senators and votes in the House, the problems of the District of Columbia in regard to the Capital City's half-way participation in the presidential electoral process would continue to remain with us.

The legal situation to be considered here (apart from the constitutional one, per se and the filing of suits in the Federal courts to declare the electoral college unconstitutional) is that the presidential election itself could be carried to court to be declared invalid and unconstitutional on basis of the equal protection of the laws clause of the 14th amendment. Some persons are of the view that District residents could now go to the courts under the one-man, one-vote doctrine as enunciated by the U.S. Supreme Court in *Baker* v. *Carr*, 369 U.S. 186 (1961).

I support the adoption of a House joint resolution providing, inter alia, the following:

ARTICLE—

Section 1. The people of the District of Columbia constituting the seat of government of the United States shall elect two Senators and the number of Representatives in Congress to which the District would be entitled if it were a State.

Section 2. Each Senator or Representative so elected shall be an inhabitant of the District and shall possess the same qualifications as to age and citizenship and have the same rights, privileges, and obligations as a Senator or Representative from a State.

Section 3. When vacancies happen in the representation of the District in either the Senate or the House of Representatives, the people of the District shall fill such vacancies by special elections called for such purposes.

Section 4. For the purposes of electing a President and Vice President of the United States, the District shall be entitled to the number of electors as it has representation in the Congress and as if it were a State.

Section 5. The Congress shall have power to enforce this article by appropriate legislation.

In conclusion, I urge here again, as I did to the House Committee on the Judiciary during the conduct of its hearings in 1967 (see generally pp. 130–132, "D.C. Representation in Congress, Hearings Before the Committee on the Judiciary, House of Representatives," July 19, 20, 26, and August 2, 1967) that the remedy to the District's constitutional representation problems be supplied before the next presidential election, that is, November 1972. The nearly 1 million people of the District of Columbia deserve full congressional representation on the very strength of the "ideals of democracy itself."

Participation by the people in their Government is a major premise of our Nation—the solid foundation of representative Government. The District now participates in our Federal system fully when it comes to the judiciary branch and somewhat in the choosing of the executive branch of Government, why deny it full participation in the legislative branch? The principle of the matter alone would seem to dictate that full representation is not only due the District,

but it is mandatory. I believe that a majority of the Members of Congress feel this same way. They are, perhaps, not unlike the Founding Fathers, who seemingly suggested the importance of the legislative branch of the Government in our Federal system by providing for the National Legislature in the first article of the Constitution. If the people of the District have full participation in the executive and judiciary branches of Government, why deny them a voice—full representation—in the legislative branch?

Historically, the American people have gained a voice in their Government by first choosing representatives to a legislative assembly of some sort—and the District's people have no voting representation in the national legislature of a democracy. Why has the cart been placed before the horse and not behind him in the District's situation?

I heartily agree with the utterances of the Washington Post editorial of September 25, 1967 ["Congressmen of D.C."], when it said that what is "at stake, of course, is that vital principle of representative Government for which the Revolutionary War was fought. Today the District of Columbia is the only significant part of the Union that is denied a voice and a vote in the country's policymaking body. If the Judiciary Committee is in a mood to be guided by the basic concepts of American Government, it will launch another great perfecting amendment to the Constitution.".

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