

DISTRICT OF COLUMBIA HOUSE
VOTING RIGHTS ACT OF 2009

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will resume consideration of S. 160, which the clerk will report by title.

The assistant legislative clerk read as follows:

A bill (S. 160) to provide the District of Columbia a voting seat and the State of Utah an additional seat in the House of Representatives.

The ACTING PRESIDENT pro tempore. The Senator from Connecticut is recognized.

Mr. LIEBERMAN. Mr. President, I thank the Chair. I thank the majority leader for his statement on this bill, S. 160, the DC House Voting Rights Act. I think he got right to the point. This measure has been before Congress for quite a long time. The bill before us is the result of a bipartisan compromise that was worked out in the House of Representatives last year between Delegate NORTON and then-Congressman Tom Davis.

There are questions about the bill. Obviously, there are different points of view. I am very grateful that yesterday 62 Members of this body, including 8 Republicans, voted to stop a filibuster to invoke cloture to get to this bill. I think people are ready to debate it on its merits.

I feel very strongly that this bill rights a historic injustice. It is hard to believe, when you stop to think about it; maybe we become accustomed to things and forget how unacceptable they are and how unaccustomed we should be, but 600,000 Americans are deprived of having voting representation in the Congress of the United States because they happen to live, of all places, in the capital of this greatest democracy in the world.

There are a lot of historic reasons for this originally, but then they became political reasons, frankly partisan. But none of them holds any real sway against the ideal that animates our country. This is a representative democracy. And finally the residents of the District got a delegate in the House, but the delegate cannot vote.

Think of it. If any one of us, the 100 of us who are privileged to be Senators were told for some reason that we could be Senators, we could represent our States, we could participate in debates, but then when the roll was called, we could not vote—it is unbelievable. This is what we have done to the 600,000 residents of the District of Columbia and to their Delegate in the House.

This bill would right that wrong. I would say that few, if any, of our colleagues would argue that somehow the status quo is acceptable; that is, that 600,000 people do not have a voting representative in Congress.

We are the only democracy—and, of course, we believe we are the greatest democracy in the world. Historically, we began the moment of democracy

throughout the world. We are the only democracy in the world where the residents of our capital do not have any voting representation in Congress.

So I think, generally speaking, Members of the Senate understand and accept the injustice of the status quo. The objections are primarily constitutional as I have heard them. I believe the arguments on behalf of the constitutionality of this proposal are strong and convincing, certainly to me.

My cosponsor of this legislation, the distinguished Senator from Utah, ORRIN HATCH, who has, generally speaking, been acknowledged as a wonderful lawyer, a great constitutional scholar, in fact, has written an essay for the Harvard Law Journal, making the case for the constitutionality of this proposal. I commend that to all of our colleagues, particularly those who have doubts about the constitutionality of this measure.

But I honestly think that most people have accepted the injustice question. The constitutionality, okay, let's have some amendments. As Senator REID said, we have got today, tomorrow. We are here. Let's have some amendments and put it in issue, give the Senate the choice that deals with the constitutionality. Some think there ought to be a constitutional amendment to achieve voting representation in the Congress. I do not think that is necessary.

Some think the District of Columbia, the residents should, for purposes of representation in Congress, become part of Maryland or Virginia. There is some historical precedent for that argument, way back. Let's debate it. But let's get it done. This measure has strong support and it has the urgency of justice delayed about it.

So the question before the Senate, as it so often is, are we going to face the differences here and debate them and then have a vote so we can conclude this debate and go back to our States Thursday evening and have a good weekend with our constituents at home or are we going to delay this and use this as a vehicle for unrelated matters that will achieve nothing? That, as usual, is the challenge before us.

I am here, and I look forward to colleagues coming as soon as possible to speak, and hopefully to offer amendments, with the goal that Senator REID has set—we can finish this goal by tomorrow, Thursday. Senator REID has made it clear that if he gets the sense during the day today that there is going to be delay, and there are amendments that are not relevant to the bill, he is going to file cloture. That will mean we will have to stay here on Friday to vote on cloture, and we will not be able to finish this bill presumably until the first part of next week. I hope that does not happen. Please come to the floor and let's talk about it.

I do want to, while I have a moment—I am sure Members are rushing from their offices right now to come to the floor to offer amendments—I do

want to talk for the record about the interesting compromise that Delegate NORTON and Congressman Davis achieved last year, and this answers the question of: Why Utah?

This bill would increase the size of the House of Representatives to 437, adding two new Members to the House. This is quite historic both in terms of righting the injustice suffered for now more than two centuries by the residents of our Nation's capital, but also that we are adding Members to the House of Representatives. That does not happen too often in our history.

One of those seats would go to the District of Columbia, the other as part of the compromise would, for the next 2 years, until the reapportionment of the House that will follow the 2010 census, go to Utah. I would say to clarify, that after the 2010 census, the District would retain its seat because of the injustice that we are correcting. But the second seat would go to whichever State deserves it; that is, according to the population found in the 2010 census.

So let me explain why Utah now. Utah has had an objection to the outcome of the 2000 census and the Congressional apportionment that followed it. According to the 2000 census, the State of Utah missed out on getting a fourth seat in the House of Representatives by 857 people.

This was a very thin margin of error, particularly when one considers the methodology of the count and the way it uniquely affected Utah. Remember, 857 people short of getting a fourth seat as compared to another State. According to officials of the State of Utah, somewhere between 11,000 and 14,000 members of the Church of Latter-day Saints, Mormons, missionaries living abroad but citizens of the United States, residents of Utah, were not counted. It is true, however, that members of the military who are abroad are counted.

In two separate court cases, the State of Utah argued that the methodology of the count of the census was flawed because government officials, including military personnel, were counted in the census, while other Americans, including the LDS missionaries, were not. Our colleagues in the House had an insight. It was one of those moments of compromise. Perhaps it seems we are combining apples and pears, but—and I will stop the metaphor and not go on to a sweet fruit salad—the fact is, this made a lot of sense. Our colleagues in the House recognized that in these two sets of complaints—the historic one for the District and the one for Utah, more current—there was a potential solution to the longstanding impasse on DC voting rights.

Let's state what is implicit. Over time, I fear people concluded, notwithstanding the justice of the argument made by residents of the District that they deserve voting representation, it is clear, and we must acknowledge what is clear, the registration of voters

in the District is overwhelmingly Democratic. So in terms of partisan balance in the House, the feeling, obviously, was that when the District of Columbia gets a voting representative in the House of Representatives, that representative will almost always be Democratic. Utah tends to be Republican, though not totally; there is one Member of the House from Utah today who is a Democrat.

There was another judgment involved, an interesting one which we tend not to think of. If we just added one seat for the District of Columbia, a voting representative, we would end up with 436 Members of the House, an even number, and no constitutional mechanism for breaking a tie. Obviously, presumably a motion that resulted in a tie would fail, but it seems an unsatisfactory resolution to the problem. Without an odd number of Members of the House, gridlock would ensue in too many cases. How would the House, for instance, organize itself if the split between the political parties was even? Clearly, the Vice President does not serve as a tie-breaking vote for the House, as is the case in the Senate. It could be impossible to elect a Speaker or appoint committee chairs. So the solution devised by our colleagues in the House in the last session of Congress increased the size of the House by two Members to 437, which pairs a new seat for the District of Columbia with a new seat for Utah. That simultaneously gives the District the representation it deserves, keeps the House as an uneven number of seats, and balances a likely Democratic seat from the District with a likely Republican seat from Utah.

This is the balance that resulted in the legislation that is before us. It is a compromise but, as in so many cases—and it is a pragmatic compromise—it results in a good solution, frankly, to two problems, one longstanding for the District, the other more current and brief for Utah.

In submitting this legislation from the committee, we are not judging the manner in which the 2000 census was conducted or the outcome of legal disputes that followed. That is a matter of record. However, it is a statistical fact that Utah was the next State in line to receive an additional seat in the House of Representatives. Given that fact, it is a reasonable bipartisan compromise to create the two voting seats proposed in S. 160. I stress, again, that Utah only receives this seat under this bill for 2 years. The bill has no impact on the conduct of the next census in 2010 and subsequent reapportionment. Once reapportionment is conducted for the 2012 election, the Utah seat will be awarded based on population increases to the State that thereby has earned it. It could be Utah. It could be another State. If Utah's 2010 population does not entitle the State to a fourth congressional seat, it will not retain the seat it will receive under this bill.

The bill offers an opportunity to right the wrong Utah believes it suf-

fered in 2000, the closeness of its numbers and also the fact that Mormon missionaries, way beyond the 857 gap between Utah and the State that got the additional seat, way beyond that number, 11,000 to 14,000. I think this is a very fair compromise that ensures, bottom line, every citizen of the country is given the most precious right democracy can provide, the right to vote for someone who can represent him or her with a vote in Congress. When one doesn't have that, as is the case with the District of Columbia, apart from the frustration I described earlier that Delegate NORTON must experience every time the roll is opened in the House, we have the inequity of residents of the District volunteering and being sent to war. Yet the Delegate of the District in the House has no vote on questions of war or peace. We have soldiers returning as veterans, and yet the representative from the District has no vote on the benefits we will confer or not confer on veterans. The residents of the District are not only taxed without representation, which is, as our Founders asserted, a form of tyranny, but they are taxed very heavily. They pay the second highest rate of Federal taxation per capita. Yet they have no voting representation in Congress on the rate of taxation, the manner of taxation or, of course, where the revenue goes.

They are the only governmental entity, outside of a Federal agency, that has to have its budget approved by the Congress. When we are tied up in gridlock and the budget doesn't pass, it means the District of Columbia is in a terrible predicament because it can't get the money it needs to operate. Yet the District has no voting representation on matters of appropriations in Congress. This is the moment to end this antiquity, a profoundly unjust and, frankly, un-America antiquity.

I urge colleagues to come to the Chamber. Let's have some amendments and debate, and let's get this done by tomorrow afternoon.

I yield the floor and suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. McCAIN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. McCAIN. Mr. President, in consultation with the managers, the Senator from Connecticut and the Senator from Arizona, I make a constitutional point of order against this bill on the grounds that it violates article I, section 2, of the Constitution, and I ask for the yeas and nays.

The ACTING PRESIDENT pro tempore. Under the precedent and practices of the Senate, the Chair has no power or authority to pass on such a point of order. The Chair, therefore,

under the precedent of the Senate, submits the question to the Senate: Is the point of order well taken?

Mr. McCAIN. Mr. President, I understand that now the motion is debatable.

The ACTING PRESIDENT pro tempore. The Senator is correct.

Mr. McCAIN. Mr. President, I have a statement on this issue, and I look forward to debating it and a vote at the wishes of the majority and Republican leader on this constitutional point of order.

Mr. LIEBERMAN. Mr. President, I appreciate very much that Senator McCAIN came to the floor to raise this point of order. As I said earlier, this is a matter that concerns people. I feel strongly that the measure is constitutional. But this is exactly what we should be debating. I look forward to his arguments and to responding to them.

I thank the Chair.

The ACTING PRESIDENT pro tempore. The Senator from Arizona is recognized.

Mr. McCAIN. Mr. President, I thank the chairman of the Homeland Security Committee, through whose committee this legislation is proceeding.

I appreciate the frustration felt by the residents of the District of Columbia at the absence of a vote in Congress. I fully understand and appreciate that. I also believe it is important that we look back at both the Constitution itself and the intention of our Founding Fathers, which was to create the District of Columbia as a base of Government.

According to many experts, the District of Columbia is not a State, so therefore is not entitled to that representation. Also, one has to raise the obvious question: If the District of Columbia is entitled to a Representative in the U.S. House of Representatives, then why isn't it also entitled to two Senators? If the District of Columbia is entitled to a Member of Congress, why isn't Puerto Rico, which would probably entail 9 or 10 Members of Congress? Why are other territories of the United States not entitled to full-fledged Members of the U.S. House of Representatives and, indeed, the U.S. Senate?

After great deliberation and debate, our Founding Fathers enshrined in the Constitution, 222 years ago, a unique form of government that proposes a distribution of power and checks and balances on each branch. So, too, the Founding Fathers considered and provided for a unique Federal city to serve as our Nation's seat of government. No single Member would represent the interest of the District but all Members of Congress would share responsibility for the city's well-being. I believe that when you look at distribution of tax revenues and when you look at other measurements, the District of Columbia has been well represented by all Members of Congress.

The Framers specifically limited voting representation in the House of Representatives to States. Article I, section 2, of the Constitution provides unequivocally:

The House of Representatives shall be composed of Members chosen every second year by the People of the several States.

If they had wanted the District of Columbia to have the representation, they would have designated so in the Constitution. Asked to opine on the meaning of the word “States” in the context of House representation, Federal courts have consistently accorded that word its plain meaning, concluding that the word “States” does not include territories or possessions or even the District of Columbia.

Again, I express my sympathy for the residents of the District of Columbia. But to now act in direct contravention to the intent and words of our Founding Fathers, I believe, is a violation of the Constitution of the United States. And to somehow work a deal that includes the State of Utah having an additional seat in return for that is an incredible violation. I will talk more about that.

First, I wish to say that it is very clear the Congress simply cannot amend the Constitution by legislation—no matter how noble the cause. Congress has once before pursued an appropriate constitutional resolution to this issue. In 1978, Congress passed a joint resolution proposing to amend the Constitution to provide for the representation for the District of Columbia in Congress. Seven years later, that resolution failed to obtain the required approval of the 38 States necessary for ratification under article V of the Constitution. There is no reason proponents of voting rights for the District can't pursue this process again. There is a process for amending the Constitution of the United States. There is no reason why those residents of the District of Columbia, and other supporters, should not pursue the legitimate process of amending the Constitution of the United States. It should not be done and, in my view, cannot be done. The courts will decide, if we don't decide here, that it is unconstitutional to do so. I welcome such a process, rather than the consideration of this bill, which is clearly unconstitutional—not only in my judgment but in the overwhelming body of legal opinion.

In addition to being unconstitutional, as I said, I am concerned that this bill is more a product of politics than of principle. Look at what this legislation before us does. It doesn't simply grant the District of Columbia a voting seat in the House; it adds another congressional seat for the State of Utah. The obvious question is, Why Utah? Why not Arizona or Nevada or New Jersey? As a representative of the people of the State of Arizona, who, I believe, legitimately and continuously, as one of the fastest growing States, have been deprived of additional seats

because of the way the census was conducted—and now we are going to give a seat to the State of Utah on the grounds that the census was not accurate. I don't know of any fast-growing State in America that doesn't believe we were undercounted—and legitimately—in the census.

Now, as I understand it—and maybe the proponents of an additional seat for Utah can more eloquently and convincingly describe it than I can—they are saying it is because they came closest in the census to being eligible for another seat in the Congress. The State of Nevada is the fastest growing State in America. Arizona has been among those that are fast growing. But why Utah? What in the world does an additional seat for Utah have to do with representation for the District of Columbia? It can only be interpreted in one way, and that is an attempt to buy votes. We are talking about the Constitution of the United States here, about representation in the Congress of the United States of America, not some political deal.

I have sympathy for the State of Utah if they think they were undercounted in the census. I have sympathy for all States that were undercounted in the census. What some supporters of the bill argue is that Utah is the next State in line to receive a House seat after the last census in 2000 and reapportionment. Nevada was the fastest growing State from 1986 to 2004, until Arizona overtook Nevada as the fastest growing State in 2006, according to the U.S. Census Bureau. Nevada, once again, regained this title for its high growth between 2006 and 2007. For the first time in over 25 years, Utah was listed this year as the fastest growing State, as its population climbed 2.5 percent, with Arizona being second, with a population growth of 2.3 percent. Despite this percentage growth, Texas, California, North Carolina, and Georgia added more people than Utah, Nevada, or Arizona between 2007 and 2008. Mr. President, we are getting on a slippery slope here. Do you judge it by percentage of growth, numbers of votes?

It brings us back to a final question: What in the world would awarding an additional seat to another State have to do with voting rights for the District of Columbia?

I have provided those statistics to illustrate there are other States that have experienced far more phenomenal growth than Utah. I love Utah. It is a wonderful State. But the wheels were greased for Utah to receive an additional seat well before it was listed as the fastest growing State this year. And if the State of Utah or any other State was undercounted, that should be taken into consideration; we should fix the census in the year 2010 and make sure any injustice is corrected. But to somehow say we are going to award a State an additional seat not in keeping with the process of how reapportionment is conducted every 10 years is remarkable and certainly unconstitutional.

In 2004, lawmakers began floating an idea of a compromise bill to balance a House seat for the District of Columbia, which obviously we assume would be won by a Democrat, with a seat for a congressional district in Utah, which most assume would be won by a Republican. The May 3, 2005, editorial in the Washington Post called this a “win-win situation.” While this may be a win-win situation for Washington, DC, and Utah, it is hardly a win for the millions of Americans who are living in high-growth States.

In fact, according to a report by the Congressional Research Service, if the District was considered to be a State during the last apportionment, North Carolina would not have gained a seat. According to a study by the Republican policy committee, if this bill is enacted and the House of Representatives is expanded to 437 seats, then New Jersey would keep a congressional seat it would otherwise lose. Again, this illustrates there are winners and losers in an apportionment, but these districts should be chosen based on concrete data from the census, not by political parties attempting to craft legislation that flies in the face of our Founding Fathers' intentions.

In a February 6, 2009, editorial, the Los Angeles Times states:

This is obviously partisan horse-trading.

The Los Angeles Times is right. Yes, partisan horse trading happens all the time, but this time partisan horse trading would do grave violence to our Constitution.

A commentator wrote in the February 13, 2009, edition of the Washington Times:

... the enactment of blatantly unconstitutional legislation to bypass the constitutional amendment process and give the District of Columbia a seat in the House of Representatives in a crass triumph of raw political power over the rule of law.

I couldn't agree more.

Again, I regret I am unable to support this legislation to provide the residents of the District voting representation in the House of Representatives. However, I took a solemn oath to defend our Constitution as a U.S. Senator. In testifying before the Homeland Security and Governmental Affairs Committee in 2007, Professor Jonathan Turley described this horse trading as “the most premeditated unconstitutional act by Congress in decades.”

We, as Senators, cannot avoid the constitutional issue. While the Supreme Court may be the final arbiter of constitutionality, Congress, as the first branch of Government, has an independent duty to consider the constitutionality of the bills we pass, especially where, as here, our own independent Congressional Research Service advises that “although not beyond question, it would appear likely that the Congress does not have authority to grant voting representation in the House of Representatives to the District of Columbia” as contemplated by this bill.

We really have two aspects of this legislation. First of all, does Congress have the constitutional authority to grant voting rights or an additional seat in the House of Representatives by legislation rather than amending the Constitution of the United States?

As I pointed out earlier in my statement, the fact is, it was tried in 1978 in the proper fashion and did not receive the approval of the 38 States necessary to amend the Constitution. So now we are trying to basically amend the Constitution of the United States by legislation. That is not in keeping with the authority and responsibility of the Congress of the United States of America.

The second is, of course, what in the world does granting voting rights to the District of Columbia have to do with granting another seat to another State? One can only interpret that, as one of the editorials did, as political horse trading. There is no constitutional basis for granting a seat to any State in the United States of America without it being backed up, as laid out by our Founding Fathers, by the results of a census.

I will agree, as I have said before, coming from a State that has been consistently undercounted in our population, the census needs to be fixed to more accurately reflect the true population of every State in America, and that has not happened with the fastest growing States. But to grant a seat to a State because they were "fastest growing" and maybe closest to the requirement for an additional seat turns everything on its head.

What kind of a precedent would we be setting by legislation allowing a State to have another seat in the U.S. House of Representatives, with thousands of votes that would be taken?

I also would like to mention, again, if the District of Columbia deserves a voting representative in the U.S. House of Representatives, doesn't the District of Columbia also deserve two U.S. Senators? How intellectually do you make the argument they deserve a vote in the other body, a coequal body—although we certainly do not recognize that very often. But the fact is, it is a coequal body. They are going to have a vote over there, but they are not going to have representation over here.

Finally, I would like to point out that we have territories in which citizens of the United States reside. Those who were born in those territories, according to a U.S. Supreme Court decision, are citizens of the United States. In fact, they are even eligible to run for President of the United States if they are born in a U.S. territory.

What about Puerto Rico? What about the Virgin Islands? What about the Marianas? What about other territories that are part of the United States of America and in which our citizens also reside who then vote for Representatives in the other body, but those Representatives obviously do not have voting power?

I conclude by saying this is a serious issue. It is a serious issue. It has been clouded by the understandable concern that Members of Congress have for the people who reside in the District of Columbia. We see their license plates every day: "Taxation without Representation." But the way to give them those voting rights is through amending the Constitution of the United States, not a legislative act that clearly is not within the constitutional authority granted by our Founding Fathers to the Congress of the United States.

I look forward to a spirited debate on this issue. I think it is an important one. If this DC voting rights bill does pass and this constitutional point of order is rejected by a majority of the Senate, I have very little doubt that the courts of the United States of America will reject this proposal.

Again, I appreciate and admire and respect the manager of this bill, the distinguished chairman of the Homeland Security Committee, and the senior ranking member, the Senator from Maine. But I think there is a huge credibility problem when you add on a provision for adding a seat to a State for which there is not any factual or, frankly, rational argument for except that perhaps this measure will gain more support.

I urge my colleagues to take a very close look at what we are doing. The most sacred obligation we have is to respect and preserve the Constitution of the United States of America in everything we do. I have very little doubt this legislation before us violates the Constitution of the United States of America.

I yield the floor.

The PRESIDING OFFICER (Mr. BENNET). The Senator from Connecticut.

Mr. LIEBERMAN. Mr. President, I thank my friend from Arizona for his kind words and also for the serious constitutional questions he raised.

As I said earlier, this is exactly what we ought to be debating on this bill. I take it as a given that neither he nor anyone else I heard speak in this Chamber would say that it is fair or just or consistent with the first principles of our representative democracy, this great Republic of ours, that 600,000 Americans be denied the fundamental right to be represented in Congress by somebody who can actually vote. Pretty much everybody will agree that is wrong, all the more unacceptable because these 600,000 people happen to live in the Capital of this great democracy of ours.

The question is, in one sense, the constitutionality of S. 160, the House District Voting Rights Act that is before us, and in a second sense, which the Senator from Arizona has raised, the wisdom, if you will, of combining the voting rights for residents of the District with an extra seat, in the short run, for the State of Utah. I wish to take some time to respond to these serious arguments.

As I understand it—and I think I do—what the Senator from Arizona and other opponents of the constitutionality of this bill say is that the question of the District of Columbia's voting rights in the House should be settled by section 2 of article I of our Constitution, which says the House shall be made up of Members chosen "by the People of the several States." And they argue that because the District of Columbia is not a State, its residents cannot have representation in the House, presumably at least not without a constitutional amendment.

Those of us who feel strongly that this measure before the Senate is constitutional base our claim on the District clause of the Constitution which states that the Congress has the power "To exercise exclusive Legislation in all Cases whatsoever, over such District," referring, of course, to the Federal District that was created at the time of the Constitution as the National Capital.

Our courts have described in the centuries since this authority in the District clause as a "unique and sovereign power" and "sweeping and inclusive in its character." Unlike many congressional powers, it is not balanced against the countervailing rights of the States.

As former, I believe he was Associate Attorney General, maybe Deputy Attorney General during the previous administration, the Bush administration, Viet Dinh, stated in his testimony before the House of Representatives on this matter:

[W]hen Congress acts pursuant to the District Clause, it acts as a legislature of national character, exercising "complete legislative control as contrasted with the limited power of a state legislature, on the one hand, and as contrasted with the limited sovereignty which Congress exercises within the boundaries of the states, on the other."

That is a very interesting argument about the unique powers of Congress pursuant to this District clause.

Then Mr. Viet Dinh concludes in support of this legislation and the constitutionality of this legislation:

In few, if any, other areas does the Constitution grant any broader authority for Congress to legislate.

That is what we are doing here.

Those who question the constitutionality of the legislation, as I mentioned, rely on section 2 of article I. They rely uniquely and almost totally on the word "States," that the Members of the House shall be chosen by "the People of the several States." So they say the District of Columbia is not a State; therefore, without amending the Constitution, we, in Congress, even under the powerful District clause, do not have the power to grant voting rights in Congress to the Representative of the District of Columbia.

But there is a very clear and powerful line of Supreme Court cases in which the High Court and other courts have upheld Congress's right to treat the District of Columbia as a State and

to treat it as a State for matters that are extremely consequential: for Federal taxation; in other words, the right to tax residents of the States might free the residents of the District from this obligation.

Yet the courts have said the District itself can be treated as a State for purposes of Federal taxation, for purposes of Federal court jurisdiction. This was the question of diversity of jurisdiction. I don't have to go into the details. The courts have said it would be an anomaly to say because you happen to be an American living in the District, you cannot gain access to the Federal courts because the Constitution says the various States with regard to diversity and jurisdiction. The same with the right to a jury trial and, very powerfully, the same with regard to interstate commerce. There it is interstate commerce. We have the interstate commerce clause of the Constitution which has given birth to probably thousands of pieces of legislation, a very active role of oversight for the Government. And even though it is the interstate commerce clause, the courts have said very clearly that the District should be considered a State, notwithstanding the literal words in the Constitution. Because effectively, if you don't, you will create an enclave where people can't be taxed, people can't gain access to the Federal courts, people don't have a right to a jury trial, and people can't be protected by generations of legislation and regulation passed pursuant to the interstate commerce clause.

For instance, as long ago as 1805, in the case of *Hepburn v. Ellzey*, Justice Marshall—the great Justice Marshall—ruled that the District of Columbia could not be considered a State for purposes of diversity jurisdiction under the Constitution, which allows Federal courts to hear disputes between residents of different States. His opinion, nonetheless, remarked on the incongruity of such a result, and Justice Marshall invited Congress to find a solution. Many years later—unfortunately, many years later—Congress did so, and in 1949 the Supreme Court, in the *Tidewater* case, upheld a congressional statute that said the District should be treated as a State for purposes of diversity jurisdiction.

Citing such cases, former Federal Circuit Court Judge Patricia Wald has testified—and again she testified on behalf of this legislation and its constitutionality:

The rationale of the courts in all these cases has been that Congress, under the District Clause, has the power to impose on District residents similar obligations and to grant similar rights as the States claim power to do under the Constitution itself.

So Congress is saying because the States get certain powers from the Constitution, if we don't treat the District as a State, its residents will be deprived of protections, or the Federal Government will be deprived of the right to tax them, for instance. And Judge Wald continued:

Given that the District is in reality what I might call a City-State of 600,000 people—

Where the population, as I indicated in my opening statement yesterday morning, is just about equal to or greater than four States—

engaged in a multitude of private businesses and occupations, there is realistically no other way that a federalist union can do business under the Constitution.

It is also true that Congress has already extended the right of Federal representation, voting representation in Congress, to those who are not citizens of any State. I know this is an unusual statement and an exception, but there is the Uniformed and Overseas Citizens Voting Act. And in that, Congress authorized American citizens overseas to continue to vote for Members of Congress in their last domestic State of residence, regardless of whether they had been citizens of that State and no matter how long they stay overseas. Indeed, as I mentioned yesterday, these people would lose this unusual right to voting representation here in Congress, in States they no longer reside in—and they may not have been there in quite a while—by absentee ballot from elsewhere in the world, only if they renounced their American citizenship or they returned to the United States and came to live in the District of Columbia. Now, that is an anomalous and unacceptable result. Citizens of Federal enclaves within a State are also free to vote in Federal elections held by the State—a right upheld by the Supreme Court.

Notably, Congress has already used this vast authority that I have referred to under the District clause to extend voting rights to residents of the District of Columbia. Between 1789 and 1800, Congress, acting under the District clause, granted residents of the new District—the Nation's capital—the right to vote in their former States of Maryland and Virginia, even though they were actually no longer residents of those States—the land having been formally ceded to the Federal Government to form the new capital district.

Let me now address a few of the other arguments that have been raised by Members, constitutional arguments that have been raised by those who oppose the bill on constitutional grounds.

It has been argued that because the constitutional amendment XXIII was required to grant the District Presidential electors in the electoral college, likewise a constitutional amendment should be required to provide the District with voting representation in the House. But these two issues are distinct. The XXIII amendment worked a fundamental change to the electoral college under Article II of the Constitution. As such, Congress could not legislate with the same latitude it has within Article I, where the District clause is found along with the clause governing composition of the U.S. House.

Some opponents of our proposal also cite the 1990 case of *Adams v. Clinton*

to argue that it would be unconstitutional to grant DC citizens voting rights in the House. That is not the case, in my opinion. In *Adams*, the DC Government and residents brought a case alleging it was a denial of their constitutional rights to exclude them from representation in Congress. The majority opinion of the three-judge court stated, "We are not blind to the inequity of the situation plaintiffs seek to change," but concluded that the court itself could not grant the District residents voting rights in Congress as a matter of constitutional right. But the court did not address whether Congress was empowered to provide voting rights through exercise of the District clause.

As former Solicitor General and Federal Circuit Court Judge Kenneth Starr testified before the House in 2004 on legislation similar to the one before us now, S. 160:

While the Constitution may not affirmatively grant the District's residents the right to vote in congressional elections, the Constitution does affirmatively grant Congress plenary power to govern the District's affairs.

In fact, the majority opinion in *Adams* arguably invited such an approach by stating that for plaintiffs to obtain Federal representation, "they must plead their cause in other venues." And presumably that meant the Congress.

Another concern raised by opponents of the bill is that it is a slippery slope, as the Senator from Arizona said. If Congress has the authority to grant the District a voting representative in the House, what is to stop it from adding two Senators or extending full voting rights to the U.S. territories? I respectfully suggest that these concerns are unfounded. The legislation before us only addresses DC voting rights in the House, and the legal case for this action and its validity is unique.

First, with respect to the Senate, this bill could not be clearer. In Section 2(a)(2) it states:

The District of Columbia shall not be considered a State for purposes of representation in the United States Senate.

But our colleagues have argued: Could some future Congress, using the arguments used on behalf of this bill, pass similar legislation to give DC full voting rights in the Senate? To me, that is a very debatable argument at best. Even some of the legal experts who support this bill believe a different and much more difficult analysis would apply to a bill regarding Senate representation because of the distinct language and history of the constitutional provisions governing composition of the Senate and the greater emphasis on the States as such.

The territories are also a distinct and different case. Different constitutional provisions provide for the creation of the District and the Federal territories. The District enjoys a unique legal and historical status, and one

that largely mirrors the rights and responsibilities of the States. Its residents pay full taxes and face military conscription. The same is not true of the residents of the territories. Amendment XXIII extended the right to vote in Presidential elections to residents of the District but not to residents of the American territories.

As legal expert Richard Bress concluded in testimony on our legislation last session:

Taken together, these differences between the territories and the District render highly unlikely the suggestion that granting voting rights to District residents would lead, as a legal or policy matter, to granting similar privileges to residents of the U.S. territories.

Finally, in his comments, Senator MCCAIN questioned: How do we put together voting rights for the District of Columbia with an extra seat for Utah; isn't this just a pragmatic political agreement? Well, in some sense it is. But in another sense, like so many pragmatic agreements around here—and this is one of the best of them because it is bipartisan—it achieves a just result: Finally, after all these years in which this outrageous anomaly has been allowed to exist, District residents will get voting representation in the House, and it also corrects what I think was an injustice done to the State of Utah in the last census—and which is one that I referred to earlier—when it came just 857 votes short of another seat, but the census did not count what was estimated—or proven in the court case—between 11,000 and 14,000 Mormon missionaries who were clearly residents of Utah but were elsewhere in the world on their years of missionary service.

The truth is that for too long now partisan concerns have stopped Members of Congress from doing what they knew was right, which is to give residents of the District voting rights. And the partisan concerns are understandable, even if they should not have blocked the result. It is a matter of fact that the residents of the District are overwhelmingly registered as members of the Democratic party. So in the normal course, it would be extremely likely that any Member of the House from the District would be voting and organizing with the Democrats. And I suppose if the shoe were on the other foot and this was a largely Republican voting population, to be fair about it, Democrats would probably have a similar feeling.

Last session, acknowledging the inequity of the District's case and the understandable if ultimately unacceptable partisan concerns, two of our colleagues in the House—Delegate ELEANOR HOLMES NORTON of the District and Tom Davis former Republican Congressman from Virginia—tried to work this out. Acknowledging the inequity that I referred to which Utah felt it suffered, and actually went to court on in the last census, a decision was made to put these two together.

There was also an institutional necessity, if I can add to this. It wasn't a

kind of apples and oranges—two problems, let's bring them together and have a bipartisan result, because the new Member of the House from Utah is likely to be a member of the Republican Party. If we only added the one seat for the District, the House would have an even number of Members. One can imagine the gridlock that you would not want to see in the House. You could have an equal number of Members of both parties and a failure to organize, failure to be able to select a Speaker, or a failure to be able to organize committees. On a tie vote, there is no one in the House to exercise tie-breaking authority, similar to the Vice President here in the Senate. So legislation could fail as a result of a tie vote, and that is not a good result either. There was that institutional benefit that if you are going to add one, you really should add two to bring the total back to an uneven number and avoid the problems we have talked about.

I do want to make clear that this kind of equitable grant of an additional seat to Utah, based on what happened after the last census, is only for 2 years. Obviously, if we give the District voting rights, it will go on forever, but it is only for 2 years because another census is coming in 2010 and there will be a reapportionment following that census. If Utah is next in line for that extra seat based on population, of course Utah will hold that extra seat. But if there is another State that, based on population, has a greater claim for that extra seat, then they will get it as well.

I am happy to acknowledge that the bill before us is the result of a political compromise, a bipartisan compromise in the House, but I am not embarrassed by it. I do not think it taints the result because the result is so profoundly just in the case of the District, and I believe also just in the case of Utah, and it only lasts for this one time.

I have tried to argue here, No. 1, on the constitutionality of this measure under the District clause; No. 2, that, yes, this is a bipartisan political agreement, but it is done for good reasons, and that does not taint it at all; and No. 3, I would say that in the bill before us there is provision for an expedited appeal to the courts on the constitutionality. We know there are constitutional differences that have been argued by the Senator from Arizona and myself this morning. We assume they will be tested in court. In the interests of efficient functioning of our Government, we provide in this measure for an expedited appeal.

This is not the first time this would happen. The most significant case I remember, and I am sure it is one of many, is the landmark campaign finance reform legislation that bears the name of my friend from Arizona and our friend from Wisconsin, the McCain-Feingold legislation. Some argued vociferously on the floor that it was unconstitutional. So within the legisla-

tion, in a way quite similar to what we have done here on this, it was provided that there be an expedited appeal. That was a way of saying, even if you believe this legislation may be unconstitutional, we are a legislative body, we do not know, really. I believe this legislation is constitutional, but ultimately—I feel that very strongly, I said that it is, but the ultimate arbiter of that, of course, is the courts.

So I urge my colleagues who have constitutional questions about this legislation but really want to stop the inequity imposed on the residents of the District, that they do not have voting representation here, to vote for this measure because it contains with it an expedited appeal which will occur on the constitutionality of the legislation.

With that, I yield the floor.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. KYL. Mr. President, I appreciate the comments of the Senator from Connecticut—in particular, his comments at the conclusion of his remarks about the appropriateness of an expedited appeal. We are both very certain of our constitutional judgment on this. We are both lawyers. We each come to a totally different conclusion about what is constitutional or not. Fortunately, we have the courts to resolve the issues. As with previous legislation, we had the good sense to include an expedited appeal to the courts so that the issue can be resolved one way or the other. I would note there is one thing that is needed to effectuate this—to be sure that, as it was in the McCain-Feingold legislation, an appeal can be facilitated by ensuring pro bono counsel can represent plaintiff in the case.

Let me also reference a fact that my colleague from Arizona is usually quick to point out. He likes to say he is unburdened by a law degree. That certainly can be a burden for those of us who have the degree, but what he has argued illustrates not only the sensibility of our Constitution but also his extensive knowledge of it. I always appreciate his point of view on these issues because of his wide-reaching experience which helps us understand the reasons for the constitutional provision. I support the constitutional point of order he has raised because I do deeply believe the action the Senate is being asked to take here is unconstitutional.

The creation of a House seat for the District by legislation rather than constitutional amendment is what is before us here, and we believe that only by constitutional amendment can the additional representation be appropriately granted.

I would like to respond briefly to the comments of my colleague from Connecticut. They are all well stated. They are the arguments in opposition to the proposition. I referred to a couple of them yesterday, but let me refresh those and then discuss one other matter.

The primary argument of the proponents of the bill is to rely on the so-

called District clause, which is article I, section 8, clause 17. The District of Columbia Circuit Court actually interpreted this clause in a case called *Neild v. District of Columbia* in 1940. What the court noted in that case was that the District clause does indeed allow Congress to legislate within the District for “every proper purpose of government” and gives Congress “full and unlimited jurisdiction to provide for the general welfare of citizens within the District of Columbia by any and every act of legislation which it may deem conducive to that end,” subject, of course, to the negative prohibitions of the Constitution.

But proponents argue that because the District clause allows Congress to do things in the District of Columbia that States themselves cannot do, then it must also follow that Congress, with regard—that it must also allow Congress to do things with regard to the District that only States can do. For example, article I, section 10, of the Constitution bars States from doing things such as coining money, entering into treaties, and keeping troops. But none of these restrictions apply to Congress in the exercise of its power to govern the District.

Proponents of this bill argue that it follows from this sweeping power that Congress may also grant District residents the rights of citizenship in a State, including the right to congressional representation. But this argument does not follow. Congress has some powers in the District that are broader than the powers of a State, but this does not mean that every power of a State must also extend to the District. States and the District of Columbia are different under the Constitution, and each has some rights and powers that the other lacks.

I note in this regard that the Senator from Connecticut quoted from an opinion of Justice Marshall in a very early case in which Justice Marshall saw a problem with the commerce clause and, because of his view that the District of Columbia was not equivalent to a State, invited Congress to solve the problem, which, many years later, as the Senator noted, Congress did do. But, of course, what this case stands for is the proposition that Justice Marshall, who was there at the time and well understood the intent of the Framers, appreciated that he could not do it from the bench. He could not say that the District was the same as a State and therefore he had the ability to fix the problem. That had to be done in another way.

There is a big difference between those kinds of problems dealing with adversary jurisdiction or the commerce clause, and so on, and the fundamental status as a political entity, which would change the representation of the House of Representatives. Moreover, it would make no sense, in the same document where the Framers specifically composed the House of Members of the several States and then specifically

designated the District of Columbia as something other than a State, that the Framers then forgot to give the District representation in the House. The Framers had the opportunity to provide the District with a Representative in the House but, of course, declined to do so.

The text of the Constitution on this matter is clear. It says Congress shall be composed of Representatives from States and States alone. Here is the exact wording:

The House of Representatives shall be composed of members chosen every second year by the people of the several states, and the electors in each state shall have the qualifications requisite for electors of the most numerous branch of the state legislature.

No person shall be a Representative who shall not have attained to the age of twenty five years . . . and who shall not . . . be an inhabitant of that state in which he shall be chosen.

And finally:

[E]ach state shall have at least one Representative. When vacancies happen in the Representation from any state, the executive authority thereof shall issue writs of election to fill such vacancies.

So any act by Congress purporting to grant a seat in the House of Representatives would contradict this plain text and would be unconstitutional.

My colleague from Connecticut also noted that we have, for Americans residing abroad, enabled them to vote. But, of course, it is tied to their last domestic residence to a State. It is the State to which these votes go. So, even in those situations where there has been a need to accommodate the fact that Americans are not all residing at that moment in a State, we have tied their vote to the State from which they have come.

I mentioned one case, but I would also like to briefly discuss some other cases because judicial precedent has accumulated over the years and strongly supports the point my colleague from Arizona makes with regard to the constitutionality of this legislation.

In *Bolling v. Sharpe*, the companion case to *Brown v. Board of Education*, the U.S. Supreme Court expressly recognized that when it came to the application of the fundamental constitutional principles, the District could not be considered to be the same thing as a State. The *Bolling* petitioners had challenged the constitutionality of racial segregation in the DC public schools. The Court held that such segregation was unconstitutional in the District, but the *Bolling* Court was very careful to make clear that the District was not equivalent to the States and not subject to the same legal strictures.

Brown v. Board of Education was based on the 14th amendment, which by its own terms applied only to the States. Because the District is not a State, the *Bolling* Court reasoned different rules had to apply to this case.

Here is how the Court explained it:

We have this day held that the Equal Protection Clause of the Fourteenth Amend-

ment prohibits the states from maintaining racially segregated public schools. The legal problem in the District of Columbia is somewhat different, however. The Fifth Amendment, which is applicable to the District of Columbia, does not contain an equal protection clause, as does the Fourteenth Amendment, which applies only to the states.

So the Court obviously had a dilemma. It went on to reach the same result as in *Brown v. Board of Education* and strike down racial segregation, but on different grounds. It was careful to emphasize that the law that applies to the District is different because the District is not a State.

Other courts have also emphasized that the District is not a State.

My colleague mentioned *Adams v. Clinton*. DC residents there argued that they had a constitutional right to elect a Representative to Congress but the three-judge district court, examining the text and the history, determined that the District is not a State under article I, section 1, and therefore the plaintiffs did not have a judicially cognizable right to congressional representation.

In another case from the DC Circuit Court, *Michel v. Anderson*, the court affirmed the constitutional principle that Congress cannot grant voting rights to citizens of the District. The court considered congressional rule changes that will allow Delegates from the District and U.S. territories the right to vote in committees and even the committee of the whole in the House. Some Members of Congress sued, claiming these rules went too far. Although the District of Columbia Circuit Court upheld the new rules, it noted that the rules passed constitutional muster only because they did not give the essential qualities of representation to the Delegates; namely, according to the court, it was acceptable to allow the Delegates to participate in deliberations and secondary votes—for example, in committees and the committee of the whole—as long as their votes would not be decisive in the final vote on final passage of the bill. There was a reason for that. The bottom line: The District has a voting Representative in the House to the full extent that it can be granted by the Congress short of a constitutional amendment. At that point, for full representation there would need to be a constitutional amendment.

In a similar vein, in *United States v. Cohen*, then-Judge Scalia explained, again in a DC Circuit Court decision, that the District clause “enables Congress to do many things in the District of Columbia which it has no authority to do in the 50 States.” But Judge Scalia went on to emphasize “[t]hat there has never been any rule law that Congress must treat people in the District of Columbia exactly as people are treated in the various States.”

Finally, in *Banner v. United States*, the DC Circuit, in a panel that included now-Chief Justice Roberts, rejected a constitutional challenge to congressional legislation that prevents the DC

government from imposing a “commuter tax” on people who work in the District but reside in Virginia or Maryland. The Court stated that Congress had broad authority to legislate under the District clause but also noted:

None of this is to say that Congress can legislate for the District without regard to other constitutional constraints.

And of particular relevance to the present debate, the DC Circuit panel stated:

[T]he Constitution denies District residents voting representation in Congress.

These cases are all clear, and they all reach either the same result or are all based upon the same reasoning. The final constitutional argument was also addressed by the Senator from Connecticut. This has to do with the 23rd amendment. Let me discuss that.

When Congress in the past has addressed the District’s special status, it has acknowledged that status is dictated by the Constitution, and it recognized that a constitutional amendment was necessary to change the status, as we have just seen. So when Congress sought to give the District a vote in Presidential elections, it passed the 23rd amendment to the Constitution. When Congress dealt with this issue before, it dealt with it correctly. Congress does have the power to grant the District representation in the House if it deems that it is necessary and desirable. But the proper way to do this is through the mechanism that the Framers provided in the Constitution: the amendment process in article V.

Prior to the ratification of the 23rd amendment in 1961, District residents could not choose electors for purposes of choosing the President and Vice President; but because of this amendment, District residents are now able to select electors “equal to the whole number of Senators and Representatives in Congress to which the District would be entitled if it were a State, but in no event more than the least populous State.”

Congress thus recognized in the 1960s that it did have the authority under the District clause and without amending the Constitution to allow District residents to choose Presidential electors.

The 23rd amendment to the Constitution itself recognizes that the District is not a State and cannot be treated as one. First, it ensures that the District, even if otherwise entitled by population, may not appoint a number of electors greater than that of the least populous State. As a consequence, even if the District grew enough in population that as a State it would be entitled to three Representatives and two Senators, let’s say if a smaller State than was not entitled to three Representatives existed, the District’s electors would be limited to a number equal to those of the smaller State.

Even under the 23rd amendment, for the purpose of selecting Presidential electors, the Constitution recognizes that the District is not the same as a

State and is not entitled to be represented in the National Government in the same way.

So where does that leave us? What is next were we to pass this constitutional amendment? There has been an argument made, I think, that the proponents of this legislation would perhaps try, for example, to extend this to representation in the Senate as well. My colleague from Connecticut has said: No, there are totally different historical reasons that would not be so. I accept that there are, in fact, historical reasons that would preclude us from doing that. But I would also suggest the very reasons which caused Congress, the political reasons which caused some in Congress to change from the previous position—which has also been a constitutional amendment is required—to a legislative proposal here, would be very likely to occur in the future on this particular issue as well. I think the same thing could occur with respect to representation in territories, such as the Territory of Puerto Rico, for example.

So if, in fact, today we say, no, that could not possibly be because of tradition and the historical understanding, that is not necessarily the case given the fact that we have now at least some in this body who have thrown over the historical tradition and case law and understanding that only by constitutional amendment could the Constitution—could there be an amendment to allow the District representation.

So I am going to urge my colleagues to vote against the resolution. I am going to urge them to vote to sustain the point of order that my colleague from Arizona has made. There is a constitutional issue, and we need to be on record as to what we believe to be the correct decision. If we believe it is constitutional, then there will be an opportunity to express that in this amendment. If we believe it is unconstitutional, we will have the opportunity to express that. Many of us want to express that proposition.

At the end of the day, however, as my friend from Connecticut has pointed out, the ultimate resolution is not going to be what we believe but, rather, what the courts say with respect to the issue. Again, for that reason, it is important to have a workable, expedited procedure for resolution of this issue in the courts. And I am hopeful we can achieve that in the legislation, even should the legislation pass over the objections of those of us who disagree with it.

I yield the floor.

The PRESIDING OFFICER (Mr. CASEY.) The Senator from Vermont is recognized.

Mr. WHITEHOUSE. Would the Senator yield for a unanimous consent request?

Mr. LEAHY. Mr. President, I so yield without losing my right to the floor.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. WHITEHOUSE. Mr. President, I ask unanimous consent that at the conclusion of the remarks of the distinguished Chairman I be recognized.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. LEAHY. Mr. President, the Senate now considers a bill to provide voting rights to citizens of the Nation’s Capital city. I am proud to cosponsor the District of Columbia House Voting Rights Act of 2009. This important legislation would end over 200 years of unfair treatment to nearly 600,000 Americans living in the District of Columbia, a population roughly equal to the size of Vermont, and give them a vote in the House of Representatives. Earlier this week, the Senate finally broke through the Republican filibuster of this legislation that stalled its consideration in the last Congress. That filibuster prevented its passage, despite the bipartisan support of 57 Senators, a majority of the Senate. The vote earlier this week to overcome that filibuster is an encouraging step toward guaranteeing all citizens representation in our Government.

Last Congress, President Bush threatened to veto this bill. This time, when the Congress passes this bill, I am confident President Obama, who cosponsored and voted for the bill when serving in this body as a Senator from Illinois, will sign it into law.

I commend Congresswoman ELEANOR HOLMES NORTON and Senator HATCH for having worked out a voting rights bill for the District of Columbia that can and should pass with bipartisan support. The bill we consider today would give the District of Columbia delegate a vote in the House of Representatives. To remove partisan political opposition, it accords Utah an additional vote in the House, as well.

As a young lawyer, Congresswoman NORTON worked for civil rights and voting rights around the country. It is a cruel irony that as the District of Columbia’s longtime representative in Congress, she still does not yet have the right to vote. She is a strong voice in Congress, but the citizens living in the Nation’s Capital deserve her vote on their behalf to count.

I believe this legislation is within congressional power as provided in the Constitution. This is not a partisan conclusion. Lawyers from across the political spectrum, from Judge Patricia Wald to Kenneth Starr and former Assistant Attorney General Viet Dinh, agree that this action is constitutional. After careful study, we have all concluded that Congress has the constitutional authority to grant voting rights in the House of Representatives to the representative of the citizens of the District of Columbia.

Last Congress, the Judiciary Committee held a hearing on this issue, and heard compelling testimony from constitutional experts that such a bill is constitutional. They highlighted the fact that Congress’s greater power to confer statehood on the District certainly encompasses the lesser action to

grant District residents voting rights in the House of Representatives.

Moreover, Congress has often treated the District of Columbia as a "State" for a variety of purposes. Congresswoman ELEANOR HOLMES NORTON reminded us that "Congress has not had the slightest difficulty in treating the District as a State, with its laws, its treaties, and for constitutional purposes."

Examples of these actions include a revision of the Judiciary Act of 1789 that broadened Article III diversity jurisdiction to include citizens of the District, even though the Constitution expressly provides that Federal courts may hear cases "between citizens of different States." Congress has also treated the District as a "State" for purposes of congressional power to regulate commerce "among the several States."

The sixteenth amendment, the Federal income tax amendment, grants Congress the power directly to tax incomes "without apportionment among the several States" and that taxing power has been interpreted to apply to residents of the District. The District of Columbia car license plates or tags remind us every day that District residents suffer from "Taxation Without Representation," a battle cry during the founding days of this Republic.

Hundreds of thousands of Americans residing in the District of Columbia are required to pay Federal taxes. In fact, the District of Columbia residents pay the second highest Federal taxes per capita in the Nation, yet residents have no say in how those dollars are spent. We must also remember that many who serve bravely in our armed services come from the District of Columbia. The brave men and women who defend our values and freedoms abroad must also enjoy those same rights here at home.

Opponents of this bill claim that the citizens of the District of Columbia do indeed have representation, that they fall under the jurisdiction of all 100 Senators and 435 Representatives and are sufficiently provided for by Congress. To that argument I say that there is no substitute for direct representation in Congress. How many of us in either party would be willing to go back to our State and say "You do not need your representatives because other States are going to represent you?" I do not believe that would go over well in the Commonwealth of Pennsylvania. Chairman LIEBERMAN knows that would not go over well in his State of Connecticut. I guarantee you that would not go over well in the State of Vermont. Similarly, the citizens of the District of Columbia also deserve the chance to elect a representative who has not only a voice in Congress, but a vote as well.

Over 50 years ago, after overcoming filibusters and obstruction, the Senate rightfully passed the Civil Rights Act in 1957 and the Voting Rights Act in 1965. Let us build on that tradition and

extend the reach and resolve of America's representative democracy. I am pleased that we took the first step in overcoming the filibuster of this legislation, and I urge all Senators to support the final passage of this bill without further delay.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. LIEBERMAN. Mr. President, I ask unanimous consent that a vote on the McCain constitutional point of order occur at 2 p.m. today; that the 10 minutes immediately prior to the vote be equally divided and controlled between Senators MCCAIN and myself or our designees; and that no amendments or motions be in order to the constitutional point of order.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from Arizona.

AMENDMENT NO. 574

Mr. KYL. Mr. President, I ask unanimous consent that it be in order to consider an amendment at the desk and that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The clerk will report.

The bill clerk read as follows:

The Senator from Arizona [Mr. KYL] proposes an amendment numbered 574.

The amendment is as follows:

(Purpose: To provide for expedited judicial review for Members of Congress)

On page 27, strike line 21 through the end of the bill and insert the following:

SEC. 8. JUDICIAL REVIEW.

(a) SPECIAL RULES FOR ACTIONS BROUGHT ON CONSTITUTIONAL GROUNDS.—If any action is brought to challenge the constitutionality of any provision of this Act or any amendment made by this Act, the following rules shall apply:

(1) The action shall be filed in the United States District Court for the District of Columbia and shall be heard by a 3-judge court convened pursuant to section 2284 of title 28, United States Code.

(2) A copy of the complaint shall be delivered promptly to the Clerk of the House of Representatives and the Secretary of the Senate.

(3) A final decision in the action shall be reviewable only by appeal directly to the Supreme Court of the United States. Such appeal shall be taken by the filing of a notice of appeal within 10 days, and the filing of a jurisdictional statement within 30 days, of the entry of the final decision.

(4) It shall be the duty of the United States District Court for the District of Columbia and the Supreme Court of the United States to advance on the docket and to expedite to the greatest possible extent the disposition of the action and appeal.

(b) INTERVENTION BY MEMBERS OF CONGRESS.—

(1) IN GENERAL.—In any action in which the constitutionality of any provision of this Act or any amendment made by this Act is challenged (including an action described in subsection (a)), any member of the House of Representatives (including a Delegate or Resident Commissioner to the Congress) or the Senate shall have the right to intervene or file legal pleadings or briefs either in support of or opposition to the position of a party to the case regarding the constitutionality of the provision or amendment.

(2) COURT EFFICIENCY.—To avoid duplication of efforts and reduce the burdens placed on the parties to the action, the court in any action described in paragraph (1) may make such orders as it considers necessary, including orders to require intervenors taking similar positions to file joint papers or to be represented by a single attorney at oral argument.

(c) CHALLENGE BY MEMBERS OF CONGRESS.—Any Member of Congress may bring an action, subject to the special rules described in subsection (a), to challenge the constitutionality of any provision of this Act or any amendment made by this Act.

Mr. KYL. Mr. President, I understand this amendment has been cleared on both sides.

The PRESIDING OFFICER. Is there further debate?

Mr. LIEBERMAN. Mr. President, I will not object. I just wish to say this amendment is supported not only by myself but the majority leader. It adds language to the bill. It is similar language that was in the so-called McCain-Feingold bill. So we support the amendment.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 574) was agreed to.

Mr. LIEBERMAN. Mr. President, I move to reconsider the vote.

Mr. KYL. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Senator from Nevada.

AMENDMENT NO. 575

(Purpose: To restore Second Amendment rights in the District of Columbia.)

Mr. ENSIGN. Mr. President, I ask unanimous consent that the pending amendment be set aside so I may call up my amendment, which I have sent to the desk.

The PRESIDING OFFICER. Is there objection?

Without objection, the clerk will report.

The bill clerk read as follows:

The Senator from Nevada [Mr. ENSIGN], for himself, Mr. VITTER, Mr. COBURN, Mr. DEMINT, Mr. BURR, Mr. WICKER, Mr. THUNE, Mr. GRASSLEY, Mr. RISCH, Mr. INHOFE, Mr. BENNETT, Mr. ENZI, Mr. CHAMBLISS, Mr. ISAKSON, and Mr. CRAPO, proposes an amendment numbered 575.

Mr. ENSIGN. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

(The amendment is printed in today's RECORD under "Text of Amendments.")

Mr. ENSIGN. Mr. President, while we are here debating the constitutional implications of this bill, I want to take this time to discuss a 30-year constitutional injustice happening right here in Washington, DC.

On June 26 of last year, the Supreme Court issued a landmark ruling affirming the second amendment right to bear arms as an individual and constitutionally protected right. In *District of Columbia v. Heller*, the Court

affirmed that the District of Columbia's ban on ownership of handguns was an unconstitutional restriction on that right. Prior to this decision, Washington, DC, had enforced the most prohibitive gun control laws of any city in the nation. Not only did the District prohibit ownership of handguns, it also required that allowed firearms, such as rifles and shotguns, be "unloaded and disassembled" or "bound by a trigger lock."

Millions of Americans were supportive of Mr. Heller, who was simply wishing to excise his constitutional right to protect himself. Recognizing the District's restrictions were not only unreasonable but also unconstitutional, the majority of the Supreme Court held that "the District's ban on handgun possession in the home violates the Second Amendment, as does its prohibition against rendering any lawful firearm in the home operable for the purpose of immediate self-defense."

Despite the Court's ruling in June, the District of Columbia City Council has continued to exact onerous and unconstitutional firearm regulations on law-abiding residents.

In response to the District's obstruction of the text and spirit of the Court's decision, the House of Representatives passed H.R. 6842, the National Capital Security and Safety Act. Last year, almost half this body joined me in a letter to the majority leader urging prompt consideration of this bill, which was denied and the bill died. That bill would have unequivocally restored the Second Amendment rights of the District residents, and that is why I offer this updated bill as an amendment to S. 160 and encourage my Senate colleagues to join me to address this real injustice.

Mr. President, the residents of the District have waited long enough, and it is time for us to ensure that they realize their constitutional right to bear arms. We must pass this amendment so the Second Amendment rights of the citizens of DC are protected.

This amendment is substantively identical to the bipartisan compromise that passed the House last year, with the exception that it repeals the 2008 DC anti-gun law that was enacted in the interim, and the inclusion of a severability clause. As I said, these are merely technical changes to this widely supported bill that 47 of my colleagues supported in a letter to the Democratic leader in the 110th Congress and two of our new Senate colleagues voted for while they were in the House, when it passed by a vote of 266 to 152 including 85 Democrats.

These changes were necessary to guarantee the second amendment rights to DC residents are adequately protected. Instead of abdicating our constitutional duties as a co-equal branch of Government, we should enact legislation such as my amendment, to defend and protect the constitutional rights of American citizens. It is high time we address this real constitu-

tional injustice and adopt my amendment.

Mr. President, it is high time that we address this real constitutional injustice and pass my amendment. According to the Census Bureau, Washington, DC, is the 27th largest city, with close to 600,000 residents. Similarly large cities, however, have not enacted comparably restrictive gun laws. For example, both Las Vegas proper and the District of Columbia are cities with populations between 500,000 and 600,000 residents. According to the Census Bureau, in 2007, Las Vegas without incorporated areas, was the 28th largest city, just behind DC. These cities, however, have very different gun-control laws.

According to FBI Criminal Justice Information Service Division, in 2007, the murder and non-negligent manslaughter rates were higher in DC than Las Vegas, including all the incorporated areas. When you include the incorporated areas, this more than doubles the population count in Las Vegas. In fact, if you total all the population of Nevada, DC still would reigns in this category. Can you honestly tell me gun control in DC has been effective?

According to the FBI, murder rates in the United States peaked at around 10.2 per 100,000 persons in 1980. Despite the strictest gun ban in the country, however, murder rates in the District continued to climb well into the 1980s and 1990s, peaking in 1996 at about 80.6 per 100,000—nearly 8 times the average of what the rest of the United States had experienced.

Since then, the murder rate in DC has declined somewhat and is now fairly level, following a national trend of decreasing violence. As this chart shows, however, the murder rate in DC still remains over 250 percent higher relative to the 48 largest cities in America.

Law-abiding, Nevada residents only need to register handguns if they live in Clark County, the home of Las Vegas. And then, to do so, they simply bring an unloaded handgun to any police substation—unlike the District of Columbia's single location—where they receive a cursory background check and are given a gun registration card. There are no fees or other onerous hurdles to infringe on the Second Amendment rights of law-abiding citizens.

The DC gun registration laws for lawfully permitted firearms are even more restrictive than Nevada laws for concealed-carry permits. Yet, I repeat, even with a gun ban, DC crime rates are significantly higher. Disarming the law-abiding residents of DC has made them easy prey for criminals to target. Furthermore, most criminals who use guns get them through unregulated channels. According to the Bureau of Justice statistics, most criminals get guns via theft or the black market. According to the ATF, almost 90 percent are acquired through unregulated channels, and the median time between

a gun's acquisition and its use in a crime is over 6 years.

Mr. President, it is high time we address this real constitutional injustice and let DC citizens lawfully defend themselves. I urge my colleagues to support my amendment to protect the Second Amendment rights of DC residents.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Alaska.

Ms. MURKOWSKI. Mr. President, first, I wish to thank my colleague from Nevada for bringing up this very important issue. Those of us who are strong supporters of second amendment rights clearly are looking at this issue and appreciate his leadership.

Earlier this morning, the Senator from Arizona raised a constitutional point of order as it relates to the bill before us, S. 160. I have to admit, I kind of took a step back and said: Well, a constitutional point of order—I am not sure I am familiar with that. So we went to Riddick's, which is our encyclopedia of Senate precedents, and looked up "constitutional point of order" and some of the history there.

I was surprised to find that a constitutional point of order was raised during the consideration of the Alaska statehood bill.

I have had an opportunity on the floor, throughout this past year, to remind all my colleagues that this year is the 50th anniversary of Alaska's statehood and some of the debate that took place on the floor of the Senate and the process that we as a State took to gain statehood.

I pulled up the CONGRESSIONAL RECORD from this debate on the constitutional point of order. It is quite interesting, quite fascinating, from Alaska's perspective, because the point of order that was being discussed was whether section 10 of the Alaska Statehood Act violated the requirement that States come into the Union on equal footing.

The argument that was made at the time was that half of Alaska's territory would be withdrawn by the federal government, depriving the proposed State of Alaska at the time the power to have a uniform system of taxation. Alaska's experience seeking voting representation in Congress explains why I have taken such great interest in the debate over representation for the District of Columbia.

In Alaska, it was a huge fight—a huge fight—as to whether we should become a State. My grandparents on both sides were involved in the debate at the time. It was a fight to gain control of our resources. It was a fight to determine who had control of our fish. As Alaska observes the 50th anniversary of its admission to statehood I reflect back on our fight for voting representation in Congress. This is why I believe it is so important for the people of Alaska to have voting representation in the House of Representatives.

I appreciate the pleas of the people of the District of Columbia, the residents

of this very small area, for voting representation within the Congress because it was not too long ago those same cries were being heard back in Alaska. You have to give the District of Columbia government credit for a pretty effective lobbying campaign. I do not know of any other place that has used their license plates to tell the rest of the country what it is they are asking for: no taxation without representation.

There are significant differences between Alaska's fight for statehood and the cause of representation in the House for Washington, DC. Alaska, 50 years ago, was a territory. The District of Columbia is a different entity, a federal enclave created by our Constitution. Our Constitution makes it clear that they are not a State. However, I supported cloture on the motion to proceed to S. 160 yesterday because I believed it was important that we have this debate on the floor of the Senate and that we hear the perspectives being presented, whether it is from the Senator from Connecticut or the Senators from Arizona, and to allow this issue, which is so important to some 600,000 people, to be debated. I represent a State of just a little over 600,000.

It was back in 1960, June 17, that the Congress approved and sent to the States for ratification the 23rd amendment. It was the 23rd amendment that extended to the people of the District of Columbia representation in the electoral college. It was 285 days later that the 23rd amendment was ratified by the States. That ratification settled the question of whether the people of the District of Columbia should have the right to vote for President, and it settled that question absolutely conclusively, by way of amendment to our U.S. Constitution.

I believe the people of the District of Columbia have been without representation in the Congress for too long. I have strongly supported the view that the people of the District should have voting representation in the House of Representatives, but what we have before us today, S. 160, does not conclusively resolve the question of whether they will.

We know the question of whether Congress may, by legislation, grant the District of Columbia a vote in the House of Representatives has been a matter of spirited debate not only here on this floor but with constitutional scholars on all sides of the issue. It was our assistant majority leader yesterday who observed that S. 160 has attracted—I think the words were some strange bedfellows amongst the community of constitutional scholars. We have very distinguished individuals such as Ken Starr and Viet Dinh who suggest that, in fact, S. 160 is constitutional. On the other side, we have an extremely well-respected gentleman, Jonathan Turley, who has testified that despite the best of motivations, S. 160 is fundamentally flawed on a constitutional level and would only serve

to delay true reform for District residents. His conclusion is that this legislation is facially unconstitutional.

We also have a review by our non-partisan Congressional Research Service, their assessment and their analysis, and they, too, cast doubt on the constitutionality of S. 160. Their report, dated February 17, 2009, states:

Although not beyond question, it would appear likely that Congress does not have the authority to grant voting representation in the House of Representatives to the District of Columbia.

So the key point here is this: I believe the District of Columbia deserves representation in the House of Representatives, but S. 160 does not conclusively resolve the question of whether they will get it.

I think we have heard on this floor that this is going to lead to litigation. The issue, of course, is how do we interpret article I, section 2, of the Constitution, which says:

The House of Representatives shall be composed of members chosen . . . by the people of the several States.

I don't think there is any dispute amongst the constitutional scholars who are out there that the District of Columbia is not a State for the purposes of article I, section 2. If the courts shall conclude that article I, section 2, of the Constitution means what it says—that only the people of the several States can send voting Representatives to the House—then basically we start all over. We start all over. We start anew with a constitutional amendment on DC representation.

So I would suggest to the body that what we are engaging in today is almost a cruel hoax because what we are doing is we are delaying the end of taxation without representation for several more years. What we are doing is getting this into the courts. Is that what the people of the District are really seeking?

I think 49 years ago the Congress understood what we needed to do in order to provide clarity and to conclusively resolve the issue of the District of Columbia with the 23rd amendment. We knew the way to handle it was to give the people of the District of Columbia a voice in the selection of the President and Vice President, and the route they chose to take was the route of a constitutional amendment. They knew then that was the proper route to take, and I would suggest that today it is the proper route to take to provide for this. This Senator believes that is what we owe to the people of the District of Columbia, to get it right the first time. Let's resolve this. A constitutional amendment passed by the Congress, ratified by the States, settles the matter of DC representation conclusively, and S. 160 doesn't.

Now, we know the history on this. This was tried once before. A constitutional amendment was adopted by two-thirds of both bodies and sent to the States for ratification. Unfortunately,

only 16 States chose to ratify within that 7-year period. So we basically come back to start over. I would suggest that is the method and manner we need to approach as we try to provide representation for the 600,000 people who are residents of the District of Columbia.

I am prepared to support a constitutional amendment and to work for its ratification, and I intend to introduce that constitutional amendment today. It will not be part of S. 160. A constitutional amendment is a different process, one that is done through joint resolution as opposed to a Senate measure or a House measure. I believe amending our Constitution will provide justice for the people of the District of Columbia, and I look forward to working toward that end.

With that, I yield the floor.

AMENDMENT NO. 576 TO AMENDMENT NO. 575
(Purpose: To restore Second Amendment rights in the District of Columbia)

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. COBURN. Mr. President, what is the pending amendment?

The PRESIDING OFFICER. Amendment 575 offered by the Senator from Nevada.

Mr. COBURN. Mr. President, I ask unanimous consent to offer a perfecting second-degree amendment to Senator ENSIGN's amendment.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will report.

The bill clerk read as follows:

The Senator from Oklahoma [Mr. COBURN] proposes an amendment numbered 576 to amendment No. 575.

Mr. COBURN. I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

(The amendment is printed in today's RECORD under "Text of Amendments.")

Mr. COBURN. Mr. President, this is simply a perfecting amendment to change the date of the actual enactment of this bill.

I ask unanimous consent to speak for a few moments on the underlying bill.

The PRESIDING OFFICER. The Senator is recognized.

Mr. COBURN. I will do that for a very short period of time.

We have heard a lot about the constitutionality of this, but I think there is an important point that has not been raised, and I would take exception to the fact that this is not a partisan debate. This is about whether we really follow this wonderful little document each of us in this Chamber has sworn an allegiance to and what it says.

I wish to quote a legal scholar because I think it leads to a lot of common sense. Here is the quote:

It would be ridiculous to suggest that the delegates to the Constitutional Convention or ratification conventions would have worked out such specific and exacting rules for the composition of Congress, only to give the majority of Congress the right to create

a new form of voting members from federal enclaves like the District. It would have constituted the realization of the worst fears for many delegates, particularly the Anti-Federalists, to have an open-ended ability of the majority to manipulate the rolls of Congress and to use areas under the exclusive control of the Federal Government as the source for new voting Members.

I have no doubt that if this present bill is passed, it will be found unconstitutional. As my colleague from Alaska stated earlier, if what we want to do is change the Constitution, the way to do that is through a constitutional amendment and a joint resolution.

So there is no question that people who are taxed have the right to representation, but there is another way to solve that. The best way to solve it is to eliminate the tax on the citizens of the District of Columbia. I will be offering an amendment this afternoon that will do just that.

I yield the floor.

The PRESIDING OFFICER. The Senator from Alabama.

Mr. SESSIONS. Mr. President, this is a distressing situation where, for some reason, we have abandoned the knowledge we gained in 1977 that it takes a constitutional amendment to get representation in the Congress for the District of Columbia. There is so much in the Constitution that refers to this, but article I—the very first article—section 2, says the House of Representatives—that is what we are talking about: giving a Member of the House a vote for the District of Columbia—shall be composed of Members “chosen every second year by the people of the several States.” It goes on to say that the requirements of a Representative are that they should be—they must be, when elected, “an inhabitant of that state in which he shall be chosen.” The Senate—discussed in section 3—of the United States “shall be composed of two Senators from each State.”

So I know there is politics here, and I hope when the Supreme Court reads this debate they look right through it because I don't think it is a sound position we are dealing with. I believe Senator MCCAIN has rightly raised a point of order as to the constitutionality of this bill.

I wish to make some general remarks.

I think the legislation is an affront to the Constitution. Professor Jonathan Turley, one of the liberal outstanding scholars of the law, who has testified before our committee a number of times, testified before the House Judiciary Committee recently—this is the language he used, and I am sure he would consider himself a Democrat. He said he considers this bill to be “one of the most premeditated unconstitutional acts by Congress in decades.”

Congress cannot, consistent with the Constitution, pass a bill that gives congressional voting rights to a non-state without violating the plain text of the Constitution. The Framers of our Constitution envisioned a Federal city that would not be beholden to any

State government. The text of the Constitution does not provide anywhere that a non-state may have a congressional voting Member. Also, the District of Columbia is not a forgotten city. In fact, it receives more Federal dollars, per capita, than any State in the United States.

History is clear that the Framers excluded the District of Columbia from having direct congressional representation. Our Founders could have placed the seat of the Federal Government within a State—and that was discussed—thus ensuring direct congressional representation from that city, but they chose not to do so. As James Madison stated in Federalist No. 43, there was fear that the State that encompassed the Nation's Capital would have too much influence over Congress. It has a lot now. The Framers feared that, symbolically, the honor given to one State would create “an imputation of awe and influence” as compared to other States. That is, that the State would have an advantage in some fashion.

Thus, when the Framers of our Constitution considered carefully how to treat the Nation's Capital, they provided in the District clause—article I, section 8, clause 17, of the Constitution—that Congress had the power to “exercise exclusive Legislation in all cases whatsoever, over such District.”

So it gave Congress the legislative power over the District, clearly. Congress was, of course, made up of Representatives from States. This meant that residents of the District would not have direct representation in Congress—they understood that, clearly, from the beginning and, indeed, they have never had it—but instead, they would have indirect representation and that such direct representation was reserved only for the residents of States.

Second, this bill violates the plain text of the Constitution, as I noted. Article 1, section 2 says “each State shall have at least one representative.” Further, one of the qualifications to be a Congressman is to “be an Inhabitant of that State in which he shall be chosen.” As George Smith, the former senior counsel at the Department of Justice's Office of Legal Counsel recently wrote and was published: “All told, no fewer than 11 constitutional provisions make it clear that congressional representation is linked inextricably to statehood.”

Congress has recognized this fact in years past. In 1977, Congress passed a constitutional amendment, which was never ratified by the States, but we passed it. It was a constitutional amendment that would have given the D.C. residents congressional representation. I suppose that was then and this is now. Now we are just going to pass a law that doesn't have to have a supermajority in Congress or be ratified by the States. That is a lot easier to do. I remind my colleagues that while political winds may change, the plain text of the Constitution doesn't.

The Constitution says only States may have congressional representation, and no bill, no mere congressional legislation, no law we pass can change that fact. The Constitution is the supreme law of the land. Our legislation can't alter the constitutional requirements. We can alter the Constitution through the amendment process, as has been previously done, to fix this very problem.

Alexander Hamilton, many years ago, wrote:

The qualifications of the persons who may . . . be chosen, are defined and fixed in the Constitution, and are unalterable by the legislature.

Finally, the District is not, as I said, forgotten. Its residents have indirect representation. All 435 Members of the Congress travel in the traffic here, go in and out of the city, and 100 Senators likewise do the same. They have done pretty well by way of getting money out of the Federal Government.

One of the Framers' concerns, which Madison articulated, was a fear that the “host” State would benefit too much from “the gradual accumulation of public improvements at the stationary residence of the Government.” According to the most recent data available, as of 2005, the District of Columbia taxpayers received more in Federal funding per dollar of Federal taxes paid than any of the 50 States. According to the Tax Foundation, for every \$1 of Federal tax paid in 2005 by the District of Columbia citizens, they received approximately \$5.55 in Federal spending. This ranks the District the highest nationally by a wide margin. For example, New Mexico, which is perceived to be the most benefitted State, received \$2.03 in Federal spending per \$1 of tax payments their citizens made. But even that amount is \$3.52 less than what the citizens of D.C. receive. Perhaps, some would say Madison's fear has become a reality, with all the jobs that are here and paying good wages—how many of us would love to carve out some of these agencies and have them be settled in Birmingham or Baltimore or New York? Then that tax revenue would be spent in our States. But it is being spent here.

I am just saying I don't believe the District of Columbia is being abused. In fact, they are doing pretty well with taxpayers' money all in all. I know the argument that you don't collect property tax on Government property and everything, but they are doing pretty well under any fair analysis.

The Framers envisioned a Federal district serving as the National Government's home. That district was not to be a State, and the District of Columbia was never to be treated as a State. Granting a non-state congressional representation and voting rights in the Congress of the United States violates the Framers' intent, pretty clearly, and the plain language of the Constitution. Congress, as Professor Turley notes, “cannot legislatively amend the Constitution by re-defining

a voting member of [the House of Representatives].”

We have all sworn to uphold the Constitution and to defend it. As written, this bill violates the Constitution and it will, I predict, be struck down by the Court. I think it is going to come back from the Court like a rubber ball off that wall. If it doesn't, we are going to learn something about the Supreme Court of the United States—something we don't want to know. I submit that we cannot in good faith vote for this bill without conflicting with our oath to the Constitution. So that is why I cannot support it.

I would just point out a recent case decided November 4, 2005, in the U.S. Court of Appeals for the District of Columbia. The panel consisted of now-Chief Justice John Roberts; Judge Harry Edwards, appointed by President Carter; and Judith Rogers, appointed by President Clinton, for whatever that is worth. I hate to even say that because we expect our judges to put away partisan activities when they put their robes on. So that is just background.

Basically, the court dealt with an argument over taxes. As part of their holding—it is a per curiam opinion; no one judge was considered to be the author. They all agreed to this language. They said:

Congress, when it legislates for the District, stands in the same relation to District residents as a state legislature does to the residents of its own State.

So we stand in the same position to the people of D.C., as set up by our Founders, as the State legislatures do to the people of the States. The court also noted:

Not only may statutes of Congress or otherwise national application be applied to the District of Columbia—

That is the tax laws—

but Congress may also exercise all the police and regulatory powers which a state legislature or municipal government would have in legislating for state or local purposes.

Then the court said:

This is true notwithstanding that the Constitution denies District residents voting representation in Congress.

So this panel, in 2005, concluded—all three judges—that the Constitution denies District residents voting representation in Congress.

I am not personally of the view that people who voluntarily live within the borders of the District of Columbia have to have direct congressional representation. I guess it is a matter that we can discuss and debate. Arguments on both sides can be made. I simply say the matter is conclusively decided by the plain language of the Constitution.

As Mr. Smith says, 11 different places in the Constitution say that representation in Congress must come from States. It does not come from districts. It does not come from territories. It does not come from tribal areas. It comes from States.

If we would like to change it, maybe we can, but we are bound by the laws

and our Constitution, and a mere statutory act of this Congress is not able to reverse the Constitution. Therefore, I will object to the passage of this legislation. I think it is incorrect. I will support Mr. McCain's constitutional point of order because I see no other rational conclusion.

As shown by a recent opinion from the District Court of the District of Columbia in 2005, the Constitution does not give congressional voting rights to residents of the District of Columbia.

The PRESIDING OFFICER (Mrs. HAGAN). The Senator from Maryland is recognized.

Ms. MIKULSKI. Madam President, I rise in support of the DC Voting Rights Act. I rise from a new seat, a new chair in the Senate. My desk is now moved to the center aisle. I rise from this desk for the very first time to speak about a new opportunity to expand democracy. That is what the DC Voting Rights Act is—it is about democracy, about fairness, and about empowerment.

The DC Voting Rights Act simply gives the District Representative full voting rights in the U.S. House of Representatives. I also want to point out to my colleagues that this is not only about the District of Columbia, but this is also about Utah. What this legislation does, in a sense of fairness and parity, is grant a seat to the District of Columbia and an additional seat to Utah. What we are doing is trying to adjust, without amending the Constitution, wrongs that need to be righted. The DC Voting Rights Act gives the District Representative full voting rights in the House of Representatives.

Right now, the District of Columbia is represented—and I might add very ably—by Congresswoman ELEANOR HOLMES NORTON, a distinguished public servant. She is called a Delegate to Congress. We call her Congresswoman. When she moves around her great area, she is also called that. What is she allowed to do? One, she is able to have a voice. That is important. So the people of DC do have a voice. But in Congress, a voice also usually means a vote. That is where it doesn't work the way we think it should. She is able to vote in her committee, but she is not able to vote on the House floor. We think that is wrong. We think she should have a voice and we think she should have a vote.

The residents of the District of Columbia are the only residents in a democratic country in the capital city who do not have a vote in determining the fate and direction of the Nation.

What we have essentially done is disempower the over 600,000 residents of the District of Columbia. Yet we do not disempower them when we call them to serve for war. The District of Columbia, through its National Guard, has served ably and willingly. Yet even though they go to fight for the entire United States of America and they are sent to war by the Congress of the United States, they have no voice, no

vote in the direction of their own country. This is not right.

DC residents go by the same rules and laws as the United States of America. They pay taxes. They pay, by the way, Federal taxes because they see themselves as part of the Federal Government. But the Federal Government does not see that they have full representation. I wish sometime we could have those DC residents who fought in wars in the balconies. They fought through the National Guard, and they fought through the regular military. They have fought and they have died, most recently in Iraq and Afghanistan. But when they come home, they are treated like second-class citizens. I don't think that is right.

I also happen to believe if you pay taxes—there was a famous patriot who said: If you pay taxes, you should have representation. If it was good enough for Patrick Henry and Patrick Kennedy, it should be good for us. If you pay taxes to the Federal Government, your representative should have a vote in the Congress of the United States. That is what we want to do today.

When we think about all the major issues that are debated in Congress—the economy, health care, education, the direction of our national security—these issues affect the residents of the District of Columbia the same way they affect Maryland or Virginia or Texas or Alabama or North Carolina. Yet the DC residents do not have a vote on these issues.

How would you feel, Madam President, if you did not have anyone representing you on those issues or if your Congresspeople could have a voice but not a vote? I think the District of Columbia deserves this, and they have been waiting a very long time. The District of Columbia has been waiting for this for 200 years.

Last year when we tried, we fell three votes short. But we are in a new day in Washington, and I hope this new day will be new democracy, the expansion of democracy. We love to expand democracy around the world. Let's expand democracy to the District of Columbia.

The District of Columbia has been made the target of congressional pet projects. We often shove ideas at them. We undo what they often want to pass for themselves. We think they should be able to have a vote to exercise the direction both for themselves and for the Nation.

Currently, DC residents are represented by a delegate. This would give full voting power in the House of Representatives. It would give Utah one additional representative. This solution is fair, it is nonpartisan, and it will enfranchise 600,000 District of Columbia residents and also enfranchise the State of Utah to have one additional representative that they barely missed in a census that was flawed in many ways.

I stand today as a friend and neighbor to the people of the District of Columbia. We in Maryland live next door

to the District. Many of the constituents I represent, the sons and daughters live in Maryland, the moms and dads continue to live in the District of Columbia. I know their fierce devotion to this country, the fact that they are proud to be residents of the Capital of the United States of America. They love doing their duty by participating in their community, by paying their taxes, and going to war, if necessary. But they believe participation and taxation should have representation. I believe like they do; we should give it to them and give it to them this week in this Senate. The time is now.

I yield the floor.

The PRESIDING OFFICER. The Senator from Texas.

Mr. CORNYN. Madam President, when we are sworn in to the Senate, we raise our right hand, put our left hand on the Bible, and swear to uphold the Constitution and laws of the United States. That is why I am very troubled and concerned that those of us who have taken that sacred oath to uphold the Constitution would, in fact, purport to violate the Constitution by passage of S. 160, the DC voting rights bill.

This bill, at various times, has been called the DC voting rights bill; at other times it has been called the DC statehood bill. Of course, DC is not a State, but DC would have to be a State under the Constitution to get the voting Member of the Congress for which the proponents of this legislation are calling.

By the way, if DC is a State for the purpose of creating a district for a Member of Congress, why would not DC be a State for the purpose of having two U.S. Senators? Of course, even the proponents of this legislation know that would be a bridge too far, but this is the first incremental step to considering the District of Columbia as a State entitled, they say, to a Member of Congress, as well as two Members of the Senate.

I believe this legislation is unconstitutional. There is a constitutional way to do it, but the proponents of this result have found that to be a tough row to hoe, to pass a constitutional amendment. So now they have come back trying to do it the so-called easy way but in a way that violates the Constitution and, I would say, cannot be reconciled with the oath that each of us takes.

I know it is common to say the courts will fix it. We ourselves have a duty to pass only legislation that we believe is truly constitutional. For us to say we have the votes now, as some of my colleagues have indicated, we have the votes to do it, but let's not pay attention to the constitutionality of it I think is a very serious mistake.

We all sympathize with the desire of the residents of the District of Columbia to be represented in Congress. But as I said, there are constitutional ways to do this, and this legislation is not a constitutional way to accomplish that goal.

I don't know how the constitutional limitation or, indeed, the prohibition to passing this legislation and expecting it to be enforced could be more plain. Of course, the Constitution in article I, section 2, limits House seats to States alone. The District of Columbia is not a State and, therefore, the District of Columbia may not have a House district and be represented by a voting Member of the House of Representatives.

I am not asking anybody to take my word for it. Let's just look at the text of the Constitution.

The text of the Constitution repeatedly and clearly limits representation in the House of Representatives to the States. The apportionment of Representatives is governed by section 2 of the 14th amendment, which provides: "Representatives shall be apportioned among the several States."

As I mentioned a moment ago, article I, section 2, of the Constitution establishes the House of Representatives and governs its membership. Each of that section's first four clauses specifies States—not cities, not the District of Columbia—as those entities that are entitled to representation in the House.

The first clause provides that Representatives are chosen "by the People of the several States."

The second clause provides that a Representative must be "an inhabitant of the State in which he [or she] shall be chosen."

The third clause says that "each State shall have at least one Representative."

The fourth clause specifies that "when vacancies happen in the Representation from any State," the Governor of that State shall call an election.

Article I, section 4, of the U.S. Constitution provides that rules for the elections of House Members "shall be prescribed in each State by the Legislature thereof. . . ."

Just as the text of the U.S. Constitution makes plain that only States are to be represented in the House of Representatives, it is equally clear the District of Columbia is not a State for purposes of such representation.

Article I, section 8, of the Constitution specifies that the Federal Government "District," the District of Columbia, was to be formed "by Cession of particular States." This provision distinguishes between States and the Federal District in which we are presently located formed by cession of the States.

If that is not enough—the plain text of the Constitution—then I think all we need to do is look back at the 23rd amendment of the Constitution, where the proponents of this result actually tried to do it the right way. The 23rd amendment to the Constitution, which granted the District of Columbia Presidential electors, gives the District of Columbia the number of electors it would be entitled to if it were a State.

This constitutional text presupposes that the District is not a State, as that term is used in the Constitution, for purposes of apportioning Representatives, Senators, and electors.

In short, the text of the Constitution could not be clearer, that Members of Congress are to be elected only from States and that the District of Columbia is not a State.

One may be asking why would we be having this debate 230-something years since this country was founded. It has been understood and, indeed, has been the uninterrupted practice and precedent of our Republic that people have regarded the District of Columbia not as a State and not entitled to a Member of the House. Otherwise, why would this just be coming up now? From the founding until recently, the evidence shows it was understood that a constitutional amendment would be required to give the District a voting seat in Congress. Of course, since the founding, the District has never been granted a voting seat in Congress. Representation has been apportioned in accordance with the constitutional provisions I have cited every 10 years since 1790. In other words, every 10 years we have a census, and every 10 years Congress apportions seats in accordance with these constitutional provisions, every 10 years since 1790. Never in the history of this country has a Congress or a President acted on the belief or on the theory that they had the power somehow to apportion a Representative to the District of Columbia.

Indeed, the Framers of the 23rd amendment clearly thought that granting the District Presidential electors, as I mentioned a moment ago, required a constitutional amendment. Similarly, in 1977, Congress passed a constitutional amendment that would actually have given the District residents what they seek by this act of legislation. At least at that time, the consensus of Congress was a constitutional amendment was required.

If the Framers of the 23rd amendment or the authors of the DC voting rights amendment believed they could have achieved their ends by mere legislation alone without submitting themselves to the admittedly difficult process of constitutional amendment, don't you think they would have done so? Clearly, they would have done so.

Furthermore, the Federal courts have long interpreted the word "State" in section 1 of the 14th amendment to exclude the District of Columbia. Thus, due process, equal protection, and other constitutional challenges to District laws, such as in the recent Heller case—that was the DC gun rights case—are brought under the Bill of Rights rather than the fourteenth amendment that would incorporate the Bill of Rights and apply them to the States.

If the District of Columbia is not a State for purposes of section 1 of the 14th amendment, it seems odd to argue it is a State for purposes of section 2 of

the 14th amendment in the very next sentence of the U.S. Constitution.

The history of our first two centuries under our Constitution demonstrates an uninterrupted consensus by all three branches of Government that the District could not be represented in Congress without a constitutional amendment. Why Congress would even consider passing a piece of legislation that is going to be challenged in the courts and ultimately be decided by the U.S. Supreme Court—and I am predicting here today they will say this is an unconstitutional act by the very same Federal officials who have taken an oath to uphold and defend the laws and Constitution of the United States—why we would do this is baffling to me.

So why could anyone think a bill such as this might actually be upheld? Well, there was a clever lawyer, as there frequently is behind novel legal theories. It was not until 1991, shortly after the Constitution's bicentennial, that a clever law student first advanced the argument that Congress could create a Representative for the District of Columbia through simple legislation. Legislation purporting to do that was first introduced in 2004. This novel legal theory lacks merit, as I have argued, and cannot overcome the weight of textual and historical evidence that would all but declare that this bill is unconstitutional.

Supporters of this theory cite the District clause of the Constitution that gives Congress power to "exercise exclusive legislation in all cases whatsoever" over the District. Because the District is not a State, it doesn't have a State legislature, and so Congress is given that authority under the Constitution. This plenary power, it is argued, gives Congress unfettered power to determine the District's representation in Congress.

But this power cannot be used in any kind of logical way to vitiate the carefully crafted apportionment of representation elsewhere in the four corners of the Constitution. By the logic of the act's supporters, Congress would exercise unlimited plenary power to repeal freedom of speech in the District or give the District 436 representatives in the House and 101 Senators.

The absurdity of this argument is highlighted by the fact this District clause goes on to give Congress the same plenary power—"Like Authority"—over Federal institutions such as, "Forts, Magazines, Arsenals, dock-Yards, and other needful Buildings," in the quaint language of the Constitution. But surely this does not mean that on the basis of the District clause Congress can grant a vote in Congress to a federal dockyard or an arsenal. It doesn't make any sense.

Congress should not adopt an overly aggressive or overly expansive role of its powers under one section of the Constitution that allows it to violate—somehow magically—the clear language and intent of other provisions of

the same Constitution. Like all of Congress's powers, the District clause is limited by the context and the rest of the same Constitution.

As the Supreme Court of the United States first noted back in the early 19th century in *Marbury v. Madison*, and has continually affirmed throughout our history, if Congress could alter the Constitution's meaning through mere legislation, then the Constitution would cease to be "superior, paramount law, unchangeable by ordinary means."

On another note, having argued from a historical perspective, and from the text of the Constitution the historical practice, the political impact of what the Senate is being asked to do—aside from these constitutional concerns—we need to look at the impact of this legislation on the size of congressional delegations in all other States after the 2010 census and beyond.

As I noted earlier, every 10 years we recalculate how many seats will be available to the U.S. House of Representatives from each State, since there is a fixed number. Of course now it is 435. Because of that, every 10 years some States are winners and some States are losers. High population growth States, such as my State—Texas—are likely to get as many as three new congressional seats after the next census. This bill would change the list of winners and losers after the 2010 census and for every census thereafter.

Think about this, colleagues: Some States clearly are going to lose a seat or two in Congress after the 2010 census. Just as my State will gain up to three seats, there will be other States that will lose a seat because of population shifts in our country. There are other States that are not clear winners or clear losers but are on the bubble. I ask my colleagues to consider what they are doing to the interests of their State before they vote on this bill. It could be that by voting for this legislation some Senators will be putting their States on the bubble now and for decades to come.

Now, what does that mean? Well, let me ask this question: Do you want to explain to your constituents that your State must lose a seat after the census so the District of Columbia can gain a seat by this legislation? Are Senators going to vote for a bill that might mean their State would receive one less congressional district after the next census, because they want the District to have one? Do you want to explain to your constituents that you would have had another seat after the census, but instead you are going to have the same number and the District of Columbia is going to grow by an additional seat as a result of your vote on this legislation?

The increase in House membership from 435 to 437 disguises this issue, but only if you are not paying very close attention. Think about this: If the membership of the House had been 437 after the 2000 census, which States

would hold those two seats today? The answer would be Utah and New York. So New York is a big loser in this bill because we are expanding membership in the House without giving New York the seat its people deserve based on the current law.

We don't know which State will be the biggest loser after 2010. If the current census projection holds, it is likely to be New Jersey or Oregon. The fact is we don't know which State would be entitled to that 437th seat if it weren't awarded to the District of Columbia by this legislation. But we do know this: There will be winners and there will be losers. And there will be a new loser every 10 years after this bill passes if it is not struck down, as I predict it will be, by the U.S. Supreme Court.

The ultimate impact of this bill on our representation in the House of Representatives is unclear, but I believe the bill's lack of constitutional foundation is clear. For that reason, I believe Senator MCCAIN's constitutional point of order should be sustained.

I will close where I started: Each of us, as U.S. Senators, has taken a sacred oath to uphold the laws and Constitution of the United States. So how, under any interpretation, would we vote to pass a law that is so clearly unconstitutional? Why is it that Congress would totally abdicate its responsibility in considering legislation to determine whether it is constitutional or not and to kick that responsibility over to the Federal courts?

I believe all of us—Members of the House, Members of the Senate, Federal judges, the President of the United States—have a responsibility to uphold the laws and the Constitution of the United States. And if this Senate passes this clearly unconstitutional legislation, it will have violated its sacred oath to uphold the Constitution, in my humble view.

I yield the floor, and I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. HATCH. Madam President, I ask unanimous consent the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HATCH. Madam President, my friend from Arizona, Senator MCCAIN, this morning raised what he called a constitutional point of order about S. 160. I would like to just respond to a few of his arguments.

He is my friend, and I appreciate his leadership in this body. I appreciate the fact that he went through this great campaign and asserted such influence but also such dedication to this country. I have appreciated his dedication to our country ever since I met him. But I do have some comments to make about his constitutional point of order.

The Senator from Arizona said that this bill is obviously, plainly, and blatantly unconstitutional because the District is not a State.

For him, the constitutional debate apparently begins and ends with a single word.

As I said on Tuesday, however, noting that the District is not a State is a factual observation; it is not itself a constitutional argument.

It is a premise, not a conclusion.

There are many other factors to consider in order properly to answer the constitutional question.

The Senator from Arizona is entitled to answer that question however he choose, but I believe it is necessary to at least consider the factors relevant to the answer.

I, for one, have not avoided the constitutional issue.

I have confronted the issue directly.

I have testified about it before the Senate Homeland Security Committee. I have spoken about it on this floor.

I have written and published an extensive article about the issue.

I have sent that article to my colleagues, including to the Senator from Arizona.

I do not demand, or even expect, that my colleagues necessarily agree with me on this issue, but I would like to hear at least an attempt to respond to those arguments.

America's founders, those who wrote the Constitution we are talking about, passed legislation allowing Americans living on the land ceded for the District to vote in congressional elections. They did that.

That land was no more a State in 1790 than the District is today.

Those Americans did not live in a State.

I do not understand why treating District residents today as if they lived in a congressional district is constitutionally different than treating them in 1790 as if they lived in Virginia or Maryland.

No one argued in 1790 that doing so was unconstitutional.

It seems to me that the Constitution would have been, if anything, even more clear and plain to its own drafters in 1790 than it is to us Senators here today.

Congress has provided, by legislation, that Americans living abroad can vote in congressional elections.

They do not live in a State.

They do not even live in America.

I would like to hear from the Senator from Arizona why Congress can provide voting rights for Americans living in other countries but cannot provide voting rights for Americans living in this country.

If it were so obviously, plainly, and unequivocally obvious that the word "States" in the Constitution can never include the District, then the Supreme Court would not have ruled that the authority of Congress to regulate interstate commerce applies to the District.

The Supreme Court would not have ruled that the sixth amendment right to a speedy and public trial in the State where a crime was committed applies to the District.

The Supreme Court would not have ruled that Congress can extend to the District Federal Court jurisdiction over lawsuits between citizens of different States.

The Supreme Court would not have held that the apportionment of taxes among the States applies to the District.

The Supreme Court would not have upheld Congress's authority to implement in the District the fourteenth amendment's commands regarding the States.

The Supreme Court has indeed held all these things.

If Congress could not provide for the District the House representation the Constitution gives to the States, the Supreme Court would not have affirmed a decision saying that such a goal could indeed be pursued in the political process.

I assume the Senator from Arizona is aware of these and many other similar decisions over the past two centuries.

He is certainly entitled to believe that all of these decisions were wrongly decided.

But, with respect, rather than simply repeating the word States, he should at least attempt to explain why those decisions are all wrong or, in some way, are different than the issue before us now.

And, again with respect for my colleague whom I admire, these Court decisions establish that the Senator from Arizona is simply incorrect when he says that courts have consistently ruled that the word States excludes the District.

The Senator from Arizona also asked why territories would not be entitled to the same congressional representation as the District.

As the Senator himself acknowledged, however, the District is an entirely unique entity in America.

America's founders intended that the District permanently to be a jurisdiction separate from State control.

It should remain that way.

Territories, in contrast, are jurisdictions which can, and in some cases are intended to, become States.

I am unclear why the Senator from Arizona included this argument in a constitutional point of order because it is not a constitutional argument.

It is instead a political argument, and it has been raised and addressed before.

My friend from Arizona also questioned whether Utah is included in this bill.

As the Senator from Connecticut explained, both before and after the remarks of the Senator from Arizona, the House of Representatives must have an odd number of Members.

One will go to the District, and the other to the State which would have next qualified for one under the 2000 census.

As such, this decision was, as the Senator from Arizona said it should be, based on census data.

It is not, as he alleged, simply an arbitrary, irrational, backroom partisan political deal.

This debate about what the Constitution allows Congress to do is important and worthwhile.

I believe the constitutional foundation of this bill is more than sufficiently solid to justify voting for this bill and I hope my colleagues will.

I hope my colleagues will vote down this constitutional point of order which I think is not justified under either the Constitution or under our rules.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. GRASSLEY. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. GRASSLEY. Madam President, I ask unanimous consent to speak as in morning business for 6 minutes.

(The remarks of Mr. GRASSLEY pertaining to the introduction of S. 474 are printed in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

The PRESIDING OFFICER. The Senator from Connecticut is recognized.

Mr. LIEBERMAN. It is fortuitous that I happened to be on the Senate floor managing the DC Voting Rights Act. But I take this opportunity to thank my friend from Iowa for this introduction of this legislation.

It is consistent with not only the actions that I have been privileged to be involved with him on but what our committee has stood for. We will give it a thorough review and, hopefully, we will be able to bring it forward. Senator AKAKA is a very active and senior member of our committee. I am sure his advocacy will help a lot in moving the legislation forward. I thank my friend from Iowa for introducing this legislation.

The PRESIDING OFFICER (Mr. CARDIN). Under the previous order, the first 10 minutes prior to the 2 p.m. vote are equally divided and controlled by the Senator from Connecticut, Mr. LIEBERMAN, and the Senator from Arizona, Mr. MCCAIN.

Mr. LIEBERMAN. Mr. President, I believe the distinguished Senator from West Virginia, Mr. BYRD, is going to speak in support of the point of order Senator MCCAIN has raised.

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. BYRD. Mr. President, I oppose S. 160, the District of Columbia House Voting Rights Act. I must—in other words, I have to—review and renew my objections to legislation of this kind. I have to speak and speak loudly—can you hear me—to its flaws, as I have done when similar erroneous attempts have been made to amend the Constitution with legislation.

As I have said previously, my quarrel is not with the intent of the legislation

but with the vehicle with which the Congress is seeking to effect this change.

What does the Constitution say? Article I, section 2, of the Constitution says—now listen:

The House of Representatives shall be composed of Members chosen every second Year by the people of the several States . . .

The Constitution does not include the residents of the District of Columbia in this context as a State.

We know—or we ought to know—from our history books that our Founding Fathers sought out a Federal city that would not have to rely upon the protections of any one State. Their vision, the vision of the Founding Fathers, a center of government apart from the States, is seen in the distinction made in article I, section 8, between the “States” and a “District.” Therefore, under the Constitution, the District is not a State. Consequently, a constitutional amendment is required to give the District’s citizens voting representation in Congress. This is the step that ought to be taken. It is the step I have consistently supported. As far back as 1978, as the majority leader of the Senate, this body, I—let me identify myself: ROBERT C. BYRD—spoke in support of and voted for H.J. Res. 554, a joint resolution that proposed amending the Constitution to provide for representation of the District of Columbia in Congress. Where is that? Here.

Every Member of this Senate ascribes to the underlying tenet of our system of government; namely, that the Government of the United States of America serves only by the consent of its citizens, as expressed through their elected representatives. That is us, their elected representatives. Every Senator seeks the goal of upholding and perfecting our representative form of government, but the difference lies in how we seek to effect those rights.

I contend that this is no way to go about doing it. While the goal in this case is laudable, it is a dangerous course on which we embark. Simply passing a law that grants voting rights to an entity that is not a State is plainly circumventing the Constitution. As John Adams noted: “Facts are stubborn things.” Let me say that again. This is John Adams talking now, not ROBERT C. BYRD. “Facts are stubborn things.” That is right, I may say to the Senator.

Facts are stubborn things; and whatever may be our wishes, our inclination, or the dictates of our passions, they cannot alter the state of facts and evidence.

So I say this imperfect method of legislation employed to amend the Constitution has already been met with swift opposition and solid opposition. The text of the legislation anticipates that very outcome by providing for the Court’s expedited review. And legal challenges will surely come quickly—don’t doubt it—calling into question the validity of this legislation, and the fate of the District’s long-sought vot-

ing rights will be further bogged down in a swamp—a swamp—of litigation.

Providing voting rights for the District through a constitutional amendment would provide the clarity and the constitutionality needed and would also avoid the path of litigation. Anything short of a constitutional amendment will be insufficient and will certainly set a dangerous precedent.

While it is indeed an arduous task to amend the Constitution, and rightly so, thank heavens, something so critical as representation in the House for the people of the District of Columbia compels it. Shortcuts have no place here. In this instance because of litigation, any shortcut, so-called, may turn out to be the long cut, the long way home for the very deserving, long-suffering people of the Capital City of this country, Washington, DC.

I will support the point of order raised by Senator MCCAIN against the underlying bill, as it addresses this most crucial issue.

I thank the distinguished, very able Senator. I thank the Chair and I yield the floor.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. LIEBERMAN. Mr. President, during the remarks we have just been privileged to hear, the Senator from West Virginia said: “I—let me identify myself: ROBERT C. BYRD.” May I say, there was no need for that identification. There is only one ROBERT C. BYRD. And may I add, it has been an honor to serve with you now for 20-plus years, to learn from you, to respect your love of the Senate, of the Constitution, and to hear you deliver the remarks that you have just delivered.

Mr. BYRD. It has been my honor, my dear friend.

Mr. LIEBERMAN. Thank you, sir.

In the spirit of your history of great debate, I nonetheless, and with total respect, rise to oppose the point of order brought forth by the Senator from Arizona.

We have here a contest between two provisions of our great Constitution. The Senator from Arizona and the Senator from West Virginia rely on the provisions of article I, section 2, clause 1 that says the House Members be chosen by the people of the several States. Those of us who support the measure before us, S. 160, rely instead on article I, section 8, clause 17, the so-called District clause.

It is true the Constitution does require that House Members be elected by the people of the several States. But it is also true Congress has repeatedly not applied that language literally. To fully protect the interests of people living in the Capital City, the Framers gave Congress extremely broad authority over all matters related to the Federal District under the so-called District clause I have referred to.

Here is where the courts have spoken exactly to where we are now. The courts have said this clause, the District clause, gives Congress extraor-

dinary and plenary power over the District of Columbia and, more to the point, have upheld congressional treatment of the District as a State for very important purposes of diversity jurisdiction and interstate commerce.

Article III, for instance, of the Constitution provides that courts may hear cases “between Citizens of different States.” The Supreme Court actually initially ruled under this language that residents of our Nation’s Capital could not sue residents of other States in Federal courts. But in 1940, Congress said that was wrong and asked that residents of the District be treated as a State for that purpose, a law that was upheld in the case of *DC v. Tidewater Transfer Company* of 1949.

The Constitution also allows Congress to regulate commerce among the several States. That is the language of the Constitution, which literally would exclude the District of Columbia and make it impossible for its residents to enjoy all the protections adopted under the Commerce clause. But Congress’s authority to treat the District as a State for Commerce clause purposes was upheld in the case of *Stoughtenburgh v. Hennick*.

So what are we asking for has constitutional precedent. More to the point, ultimately, or as much to the point, is the underlying reality that the Senator from West Virginia and the Senator from Arizona speak to eloquently, which I presume all of us share, which is, it is an outrageous injustice that 600,000 residents of America who happen to live in our Capital City do not have any voting representation in Congress.

Final point. The legislation before us presumes that there will be a legal challenge to its constitutionality, and that will be decided under the expedited procedures provided for in this legislation, in wording almost exactly similar to that provided in the so-called McCain-Feingold landmark campaign finance reform legislation. The Supreme Court will decide.

So if you feel the status quo is unjust, I still urge you to vote for this legislation, even if you wonder about the constitutional basis of it because ultimately that is the judgment of one of the other two branches of our Government that the Supreme Court will decide. Therefore, I respectfully ask my colleagues to vote no on the point of order.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. MCCAIN. Mr. President, I am aware that the hour has expired. I ask unanimous consent for 30 seconds.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from Arizona is recognized.

Mr. MCCAIN. Mr. President, I cannot add to the persuasive argument presented by the most respected Member of the Senate on constitutional matters and other matters. I thank Senator BYRD for his opinion. I thank him

for his many years of service. I know all of us, however we vote on this issue, respect and admire his views. Thank you, sir.

Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The question is on agreeing to the constitutional point of order raised by the Senator from Arizona, whether it is well taken. The yeas and nays have been ordered. The clerk will call the roll.

The bill clerk called the roll.

Mr. DURBIN. I announce that the Senator from Massachusetts (Mr. KENNEDY) is necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 36, nays 62, as follows:

[Rollcall Vote No. 67 Leg.]

YEAS—36

Alexander	Cornyn	Kyl
Barrasso	Crapo	Martinez
Bennett	DeMint	McCain
Bond	Ensign	McConnell
Brownback	Enzi	Murkowski
Bunning	Graham	Risch
Burr	Grassley	Roberts
Byrd	Gregg	Sessions
Chambliss	Hutchison	Shelby
Coburn	Inhofe	Thune
Cochran	Isakson	Vitter
Corker	Johanns	Wicker

NAYS—62

Akaka	Hagan	Nelson (FL)
Baucus	Harkin	Nelson (NE)
Bayh	Hatch	Pryor
Begich	Inouye	Reed
Bennet	Johnson	Reid
Bingaman	Kaufman	Rockefeller
Boxer	Kerry	Sanders
Brown	Klobuchar	Schumer
Burr	Kohl	Shaheen
Cantwell	Landrieu	Snowe
Cardin	Lautenberg	Specter
Carper	Leahy	Stabenow
Casey	Levin	Tester
Collins	Lieberman	Udall (CO)
Conrad	Lincoln	Udall (NM)
Dodd	Lugar	Voinovich
Dorgan	McCaskill	Warner
Durbin	Menendez	Webb
Feingold	Merkley	Whitehouse
Feinstein	Mikulski	Wyden
Gillibrand	Murray	

NOT VOTING—1

Kennedy

The PRESIDING OFFICER. On this vote, the constitutional point of order is not well taken.

Mr. LIEBERMAN. Mr. President, I move to reconsider the vote, and I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. LIEBERMAN. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. THUNE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. MERKLEY). Without objection, it is so ordered.

AMENDMENT NO. 579

Mr. THUNE. Mr. President, I call up my amendment that is at the desk, and I ask for its immediate consideration.

The PRESIDING OFFICER. Is there objection to setting aside the pending amendment?

Without objection, it is so ordered.

The clerk will report.

The legislative clerk read as follows:

The Senator from South Dakota [Mr. THUNE], for himself, Mr. VITTER, Mr. GRASSLEY, Mr. WICKER, Mr. COBURN, Mr. DEMINT, Mr. INHOFE, Mr. BENNETT, Mr. ENZI, and Mr. RISCH, proposes an amendment numbered 579.

The amendment is as follows:

(Purpose: To amend chapter 44 of title 18, United States Code, to allow citizens who have concealed carry permits from the State or the District of Columbia in which they reside to carry concealed firearms in another State or the District of Columbia that grants concealed carry permits, if the individual complies with the laws of the State or the District of Columbia)

At the appropriate place, insert the following:

SEC. ____ . RESPECTING STATES RIGHTS AND CONCEALED CARRY RECIPROCITY ACT OF 2009.

(a) SHORT TITLE.—This section may be cited as the “Respecting States Rights and Concealed Carry Reciprocity Act of 2009”.

(b) RECIPROCITY FOR THE CARRYING OF CERTAIN CONCEALED FIREARMS.—

(1) IN GENERAL.—Chapter 44 of title 18, United States Code, is amended by inserting after section 926C the following:

“§926D. Reciprocity for the carrying of certain concealed firearms

“Notwithstanding any provision of the law of any State or the District of Columbia or political subdivision thereof—

“(1) a person who is not prohibited by Federal law from possessing, transporting, shipping, or receiving a firearm, and is carrying a valid license or permit which is issued pursuant to the law of any State or the District of Columbia and which permits the person to carry a concealed firearm, may carry in any State or the District of Columbia a concealed firearm in accordance with the terms of the license or permit, subject to the laws of the State or the District of Columbia in which the firearm is carried concerning specific types of locations in which firearms may not be carried; and

“(2) a person who is not prohibited by Federal law from possessing, transporting, shipping, or receiving a firearm, and is otherwise than as described in paragraph (1) entitled to carry a concealed firearm in and pursuant to the law of the State or the District of Columbia in which the person resides, may carry in any State or the District of Columbia a concealed firearm in accordance with the laws of the State or the District of Columbia in which the person resides, subject to the laws of the State or the District of Columbia in which the firearm is carried concerning specific types of locations in which firearms may not be carried.”.

(2) CLERICAL AMENDMENT.—The table of sections for chapter 44 of title 18 is amended by inserting after the item relating to section 926C the following:

“§926D. Reciprocity for the carrying of certain concealed firearms.”.

(c) SEVERABILITY.—If any other provision of this Act, another amendment made by this Act, or the application of such provision or amendment to any person or circumstance is held to be unconstitutional, this section and the application of the provi-

sions of such to any person or circumstance shall not be affected thereby.

(d) EFFECTIVE DATE.—The amendments made by this section shall take effect 90 days after the date of enactment of this Act.

Mr. THUNE. Mr. President, my amendment is a very simple amendment. It allows individuals the right to carry a lawfully concealed firearm across State lines while at the same time respecting the laws of the host State. It is very similar to legislation I introduced earlier, a stand-alone bill, S. 371, which currently has 19 Senate cosponsors.

As I believe and the Supreme Court found last June, the second amendment of the Constitution provides law-abiding citizens have the right to possess firearms in order to defend themselves and their families. As such, I believe a State's border should not be a limit on this right. Today, there are 48 States that have laws permitting some form of concealed carry. While some States with concealed carry laws grant reciprocity to permit holders from other select States, what my amendment would do is eliminate the need for these laws by allowing an individual to carry a concealed firearm across State lines if they either have a valid permit or if under their State of residence they are legally entitled to do so.

After entering another State, the individual must respect the laws of the host State as they apply to conceal-and-carry permits, including the specific types of locations in which firearms may not be carried. Reliable empirical research shows that States with concealed carry laws enjoy significantly lower violent crime rates than those States that do not. For example, for every year a State has a concealed carry law, the murder rate declines by 3 percent, rape by 2 percent, and robberies by over 2 percent.

My amendment is relevant to this debate because it underscores the selective support that the District of Columbia has when it comes to individual rights such as the second amendment, and together with Senator ENSIGN's amendment will increase these rights. Specifically, anytime the word “State” is mentioned throughout my amendment, DC is also explicitly mentioned as well.

My amendment is a common-sense measure that will strengthen public safety throughout the Nation. And I would hope if the Senate is willing to pass the unconstitutional legislation that is before us—the underlying bill creating an additional Member of Congress within the District of Columbia—then the Senate should also be able and willing to pass amendments which are constitutional and protect each citizen's second amendment rights.

Mr. President, I urge my colleagues to support this amendment, and I yield the floor.

Mr. LIEBERMAN. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. KYL. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT NO. 585

(Purpose: To provide for the retrocession of the District of Columbia to the State of Maryland, and for other purposes)

Mr. KYL. Mr. President, in a few moments I am going to propose an amendment. I thought to conserve time that I would simply describe the amendment now, and then as soon as it is copied, I will distribute it and ask unanimous consent that the pending business be laid aside so that I can offer that amendment.

This is the retrocession amendment. It is an amendment that has been frequently offered in the House of Representatives over the years, and it is the alternative to the constitutional mechanism for providing the District of Columbia with representation in the House and Senate.

Rather than going the constitutional amendment route, there is one thing we know we can constitutionally do legislatively. Congress has the ability to retrocede to the State of Maryland all of the non-Federal areas within the District of Columbia that adjoin Maryland. The effect of that, obviously, is to give the residents of the District of Columbia today the same rights as other citizens of Maryland, if this procedure were to be followed.

Under this amendment, it would require an affirmative action of the Legislature of the State of Maryland, so that if the Legislature of Maryland did not wish to proceed with this, then it would not occur. It also would require the repeal of the 23rd amendment to the Constitution, as I will describe in just a moment. But the effect of it is, as I said, to allow the residents of the District to enjoy representation in both the House of Representatives and the Senate. It would do so without violating the Constitution's requirements that only States be represented in Congress and it would do so without creating a city state that would have disproportionate leverage in Congress and over the Federal budget.

The amendment provides quite simply that after certain conditions are satisfied:

The territory ceded to Congress by the State of Maryland to serve as the District constituting the permanent seat of the Government of the United States is ceded and relinquished to the State of Maryland.

Retrocession, as I said, includes a minor exception for the so-called national areas—the White House, the Capitol building, the Supreme Court building, and the other Federal buildings and monuments around the National Mall. The length of the amendment is simply due to the fact that there is a full description in section 3 of the amendment of the area that would remain under the exclusive jurisdiction and control of the Congress.

There is an important transition provision that would allow lawsuits begun

in the District of Columbia to be continued in Maryland courts. The amendment also provides that until the next reapportionment, the DC Delegate will serve as a full Member of the House of Representatives from Maryland. As I said, there are two conditions that would have to be satisfied before it takes effect. First, the State of Maryland would have to enact accepting the retrocession of the District to Maryland; and second, amendment XXIII, which currently gives the District three electoral votes in Presidential elections, would need to be repealed.

The reason for this is that in the absence of such a repeal, amendment XXIII might be construed not to be mooted and might be construed to give the very few residents living around the National Mall three electoral votes. The intent here is not to capture anyone who actually has an abode in that area, but there are some people who might be living there nonetheless.

We believe the amendment is the most reasonable means of providing representation in Congress to the residents of the District. It is a solution that is based on precedent. Obviously, as we all know, in 1846 the part of the District south of the Potomac River was retroceded to the Commonwealth of Virginia and became Arlington County and old Alexandria. We have done this before. We know how it works.

If we adopt the amendment, the residents of Maryland could have a vote in the House and in the Senate within a year or two. If we continue down our current unconstitutional path, the legislation will be tied up in litigation for several years and, at least in the view of many of us, then struck down and we will be back at the drawing board. Unlike proposals to grant statehood to the District of Columbia, retrocession provides representation to the District residents in the national legislature but without creating a city state that would further skew representation in the Senate.

In that regard, I would note that the number of people represented in most of the congressional districts of the United States exceeds the number of people who are residents of the District of Columbia. As State population continues to grow, there is every reason to believe that ratio would continue to exist.

I urge my colleagues to support this sensible constitutional means of providing representation in Congress to the residents of the District of Columbia.

At this point I ask unanimous consent that pending business be laid aside for the purpose of offering an amendment.

The PRESIDING OFFICER. Is there objection to setting aside the pending amendment?

Without objection, it is so ordered.

The clerk will report the amendment.

The assistant legislative clerk read as follows:

The Senator from Arizona (Mr. KYL) proposes an amendment numbered 585.

(The amendment is printed in today's RECORD under "Text of Amendments.")

Mr. KYL. Mr. President, I note for the benefit of colleagues that we now have, I think, two pending amendments.

I urge my Republican colleagues, if they wish to speak to either of these two amendments or to lay down further amendments—we have good cooperation here on both sides of the aisle to move forward with this legislation, and if Members who have an interest can be here and express their views or offer their amendments, we can move through the bill more quickly.

I will suggest the absence of a quorum here, but in the event Members on the Republican side wish to speak, certainly this would be a good time for them to come down and speak to the bill and offer amendments.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. DURBIN. Mr. President, I ask unanimous consent the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DURBIN. Mr. President, there are several amendments pending. This is a bill which is trying to make history. I thank Senator LIEBERMAN, Senator HATCH, and others for bringing this bill to the floor. We have 600,000 residents who live right here in the District of Columbia who do not have a vote. They do not have a vote in the House of Representatives nor in the Senate. They never have. They were created as a kind of Capitol District without a voting Congressman, Congresswoman, or Senator. Of course, the people in the District of Columbia pay Federal taxes. Their sons and daughters take an oath to protect America and march off to war. At least seven have recently died in Iraq and Afghanistan. They are bound by virtually all the Federal laws that people in Illinois or Oregon or Connecticut would be bound by, but they do not have a voice.

There is no representation of 600,000 people. I think that is a gross miscarriage of justice. I salute those who bring this bill to the floor today to give the District of Columbia, specifically the 600,000 people who live here, that voice in Congress. It is long overdue.

But there is an interesting relationship between Congress and the District of Columbia. Even though they do not have a voice in the Congress, Congress has always had a voice in the District. Congress has assumed a role somewhere between Governor and mayor when it comes to the District of Columbia. I have seen it when I served in the House and the Senate. A lot of Members from all over the United States of America who secretly long to be mayors get their chance. They come to

Washington, they come to Congress, and they sit down and they play mayor for the District of Columbia.

They make all kinds of decisions, decisions that do not relate to war and peace or Federal Government; decisions that in most places are going to be confined to mayors and city councils or Governors or legislatures. People in Congress cannot suppress the urge to be mayors, so they make all kinds of rules for the District of Columbia. Some of them are nothing short of outrageous.

They delve into issues which the people in this city ought to decide for themselves—zoning issues, issues of public health, issues that, frankly, we do not have any business working on. But we can't stop ourselves. These Senators who want to be mayors get their chance. You can be a Senator from another State, but you can play part-time mayor in the District of Columbia.

That is one of the good reasons for this underlying bill, so finally at least some person can stand up in the House of Representatives and say: I am representing these people and these people do not care for what you are doing to them.

Along come a couple of amendments here. They are in this big constitutional debate, history making, about the future of Washington, DC, and several of my colleagues cannot suppress the urge to be mayor. They want to be mayor of the District of Columbia.

One of them has come in with a proposal relative to firearms in the District of Columbia. This is offered by Senator ENSIGN of the State of Nevada and about a half dozen or a dozen other Republican Senators. Here is what they are trying to do.

They want us to write the ordinances for firearms in the District of Columbia. Are we going to do it in a committee hearing? Bring in the police? Bring in the experts? Sit down and do this thoughtfully? No. We are not going to have any committee hearings. We are going to allow the National Rifle Association to write the gun ordinance for the District of Columbia.

Do you want to guess what is going to be in that ordinance? Not much, when it comes to dealing with firearms.

I guess you could be sarcastic and say why would you worry about controlling firearms in Washington, DC? I am not going to be sarcastic because I can recall a time not that long ago when a deranged individual brought a gun into this Capitol building and fatally injured two Capitol Hill policemen before he was finally suppressed.

I can recall when a President of the United States at the Washington Hilton hotel on Connecticut Avenue, a man by the name of Ronald Reagan, was shot down in the District of Columbia.

I can recall time and again the efforts made, by men and women who are Capitol police officers, to protect us

and our visitors, wondering at any moment whether someone was going to open fire on them.

I can recall not that long ago an inauguration with 2 million people on the Mall and the overwhelming concern we all had for the safety of everyone involved and particularly for our new President or First Lady, the First Family. I saw the length we went through to protect them because of the obvious—we live in a dangerous place. We live in a dangerous time. A person with a gun, if they are willing to lose their own lives, can take out the lives of almost anyone. That is a fact. So, is there reason for us to be careful when it comes to guns? In my hometown of Springfield there is. In the great city of Chicago that I represent, you bet there will be. Kids are getting gunned down every day—certainly in Washington, DC, our capital city.

Guns need to be taken seriously—I won't say more seriously. Every life is precious. But when we are entertaining visitors from around the world who come to our Washington, DC, U.S. Capitol, we want to offer them protection and safety as they travel. Maybe it is a special circumstance here. But this town needs to be as safe as possible, for the people arriving here, for the visitors, for all of us.

So the National Rifle Association has decided they want to establish the standard for firearms in the District of Columbia. Let me tell you what they would do, to give you an idea if they could write the ordinance for guns in the District of Columbia, with the Ensign amendment. There are a few things they would like to do. The amendment would provide:

The District of Columbia government shall not have authority to enact laws or regulations that discourage or eliminate the private ownership or use of firearms.

If that is your starting point, listen to what follows. It blocks the District of Columbia from passing any background check or registration regulations, even sensible regulations that are needed to help law enforcement know who is buying guns. So the first thing the NRA wants to do is say we cannot ask you for a background check to find out if you should be able to own a firearm in the District of Columbia. What a great starting point.

It also prevents the District of Columbia passing laws that require gun proficiency training. It even prohibits them from educating parents about child gun safety.

You read the stories—we all do—about children killed when they find a firearm at home, play with it, shoot themselves or a playmate, a little brother or a little sister. This bill would prohibit the District of Columbia from establishing gun safety training.

The amendment would also prohibit the DC City Council from taking steps to unduly burden—that is the language of the bill—the acquisition or use of firearms by persons not already prohib-

ited under Federal law. That means that DC could not pass a law, for example, restricting access to guns by those convicted of misdemeanor sex offenses involving a child.

That is a fact—because the Federal law does not prohibit that, DC could not. A person convicted of a misdemeanor sex offense with a child could not be prohibited, under this NRA amendment, from owning a firearm in the District of Columbia. Make you feel safer? Would it make anyone feel safer? Obviously, some people at the NRA would.

Let me tell you what else. It repeals the age limits for legal gun possession. Now, this is a good one. Let's basically say you cannot tell someone you are too young to own a gun or maybe too old and feeble. It repeals DC's prohibition on gun possession by anyone who was voluntarily committed to a mental institution in the last 5 years. How many times have we heard the stories on college campuses, in my State, in the State of Virginia, of someone who had a serious mental illness, turned to violence and killed innocent people?

It happened in Illinois. It happened in Virginia. It happened in other places. So governments try to keep guns out of the hands of people who are mentally unstable. The Ensign amendment would stop the government of the District of Columbia from imposing that standard when it came to possession of a firearm.

It also repeals, while we are at it, not just those voluntarily committed to mental institutions, but it would repeal the DC government's prohibition on gun possession for those who have been judged by a court to be chronic alcoholics; you cannot stop them. Under this Ensign amendment, they can own a gun. It is their second amendment right.

Well, I will tell you what. That is not what the Supreme Court said. The Supreme Court said reasonable regulation of firearms was still the standard in America. But I am afraid the Ensign amendment goes way beyond reasonable regulation.

Well, here is another one. What if you had a requirement that before someone could buy a gun in the District of Columbia, they had to be able to see, a vision test. Not unreasonable. You want to have a gun or drive a car, you ought to be able to do it safely. This bill would prohibit the District of Columbia from imposing an onerous burden that a person has to pass a vision test in order to own a firearm.

I find this incredible. It is also unimaginable to me that this law expressly allows the residents of the District of Columbia to cross borders into our States, buy firearms and come back. There is no restriction, no limitation.

Now, I admit it has not worked very well. There has been a lot of gun violence in this town, even with that law. But why do we want to raise this white flag and say we are not even going to

try to restrict or limit them? So when the supporters of the Ensign amendment say DC does not need any gun laws because Federal gun laws are strong enough, pay attention, they are, in fact, trying to weaken Federal gun laws at the very same time they are passing this amendment.

We do not debate guns around here much anymore. We used to. Basically, we reached a point where there are not many people who will stick their political necks out to vote for sensible gun control—too big a hassle. The NRA is going to target you back home, and you are going to have to spend a lot of money to try to explain to people, as I have, if you want to own a gun, if you want to use it safely, responsibly, for self-defense or sporting purposes, your right should be protected.

But you also ought to accept the responsibility, the responsibility to make certain that people check on your background so you do not have a criminal record, a history of mental illness, chronic alcoholism. You ought to be able to limit the kind of guns people buy. I mean, there are some people in my State and all over who say you should not limit people. They should be able to buy whatever they want.

I do not buy that. I have always said, if you need an AK-47 to go deer hunting, you ought to stick to fishing. Obviously, you do not know how to use a gun, you just want to spray bullets until something stops moving. There are also limitations in most places as to where you can take your gun and how you can use it. I do not think that is unreasonable.

Coming from a family, people who are hunters and sportsmen, they are pretty conscientious. They lock up the guns in the gun cabinet. They know when the rabbit season starts and when the squirrel season starts and they are out there. They do not want to take their gun into the mall. It would not make, in my opinion, sense to them. That gun has a purpose.

But there are other people who disagree, people who think this is an absolute right. I am afraid that is what has inspired the Ensign amendment. I do not know if Senator ENSIGN or the people, the dozen or so folks who have co-sponsored this amendment, have all gone back to their home States and said: We hope you will do exactly this. My guess is they have not. My guess is Senator ENSIGN has not gone to the mayor of Las Vegas and said: Let's take all the gun laws out; that ought to help us bring in some tourists. I do not think he has done that. Maybe he has, in all fairness. I will give him his chance to respond to that on the floor.

But it strikes me as peculiar and fundamentally unjust that Senators who will not impose these standards in their own hometowns want to impose them in the District of Columbia. They do not have the courage to stand in their own hometowns and say: We ought to let people with a history of mental illness have guns. Why? Be-

cause reasonable people would say to them: Are you out of your mind? They would not say someone judged by the court as a chronic alcoholic ought to be able to buy an assault weapon. Not unless you happen to live in the Nation's Capital, where Senators get to be mayor, where Senators try to write gun laws, where Senators pass ordinances here. It is a shame.

It has been going on for a long time. I am not picking on the sponsors of this amendment. It has been going on as long as I have been here. But it does not make any sense. If there was ever a town, and if there was ever a time where we should take the extra measure to be safe, it is this town at this moment.

We have to make sure the men and women who serve in elected office, the wonderful staff people whom we have, the millions of visitors who come into this building come in with peace of mind, knowing they and their families are going to be safe, not to worry that some law passed in the Senate is going to create a shooting gallery right outside the Capitol grounds.

This amendment does not make good sense. It certainly does not make common sense. It is not required by the Supreme Court. It is an amendment that basically is an attempt for the National Rifle Association to do a little temperature check, find out where they are in this new Congress, to push to the limits the gun issue and to see who is going to follow it.

I know a lot of Members who said: Well, that is their decision, I respect them for it. But I respectfully disagree. Let us keep DC safe. Let's make sure all the people who value this city and the great tradition and heritage of this city take an extra measure to make it a safe place for visitors, for those who live here, for kids going to school, for folks going to church on Sunday. I do not think they deserve anything less.

If one of those Senators, any one of these Senators want to stand up and say: I have proposed this gun ordinance in my hometown and my home State, I think it should apply to Washington, they would have more credibility. But without that, they just want to experiment, experiment on a city that for over 200 years has not had a voice in this Congress, experiment on a city that is a helpless victim, many times to these political experiments that people like to try, through Congress, on Washington, DC.

I urge my colleagues: Read this. Take the time to read this amendment. Pause and reflect and ask yourself one question: Would I want this in my hometown? Is this a standard? I know some will say yes, but most will say no. This is extreme. This goes too far.

The District of Columbia is trying its best after the Supreme Court challenged and voided one of its ordinances. It rewrote its gun law. It allows for the registration of pistols, revolvers, and long guns for self-defense at home. So people in the District can have a gun in their home for self-defense.

It bans assault weapons and junk guns used for crime. It prevents persons with a history of violence within 5 years from registering a gun. It prevents a person convicted of domestic violence or who is the subject of a protective order, within 5 years, from registering a gun.

It prevents a person with multiple alcohol-related offenses within 5 years from registering a gun. It requires that an applicant for a gun complete a firearm safety training course. It limits an applicant to registering one gun every 30 days. It bans magazines on guns over 10 rounds. It tightens gun dealer licensing requirements. It requires all new semiautomatic pistols to be stamped so they can be traced in a crime.

It protects children by requiring registrants to safely store their firearms, and it abolishes concealed carry licenses, except in very narrow circumstances. That is the law if you want to own a gun in the District of Columbia. If you have a legal right to do so, you have to follow some basic rules, commonsense rules, rules that will be thrown right out the window with the Ensign amendment.

That is not good for the District, it is not good for America. I urge my colleagues to oppose this amendment.

I yield the floor.

The PRESIDING OFFICER. The Senator from South Carolina.

AMENDMENT NO. 573

Mr. DEMINT. Mr. President, I appreciate the comments of the Senator from Illinois, and I think it helps to set up some of my comments as well. We are talking about a bill on DC voting rights that has a lot to do with our Constitution. I have an amendment to that that also has a lot to do with our Constitution; that is, the right of free speech and the right of freedom of the press, what we will call the Broadcasters Freedom Act.

The interesting point about the talk of my previous colleague is, he was talking about the urge to be mayor here in the Senate. It is interesting, after we just passed this massive stimulus bill, where we were telling not only mayors but every Governor in the country what they had to do and how they need to spend their money, to control everything from education to health care.

We cannot resist the urge to be Governors and mayors and, in fact, we cannot resist the urge to substitute our opinions of what should happen to our whole constitutional form of Government. It is interesting to hear about the guns amendment and the opinions there. I respect the Senator's opinion about the gun laws, what they should be.

But the fact is, that what we do here is not about our opinion, it is about our oath of office, of protecting and defending the Constitution. The Constitution does not give me a right to decide who is going to bear arms. I mean it is a basic constitutional right.

It does not give us the right to use our own opinions and good intentions

on every piece of legislation. One of the reasons as a country we are so much in debt—and this is attributed to both parties—is we have moved away from any constitutional mooring of limited Government to the point now where it is whoever's opinion can prevail is what passes.

An appeal to the Constitution is almost irrelevant. There is no way you can interpret the Constitution to say the Federal District of Columbia is going to have Congressmen and Senators. Now, I respect an opinion of anyone who says it should not be that way, that people who pay taxes should have Congressmen and Senators. But the fact is, our oath of office is to defend the Constitution, not to employ our own opinions, to do what we think is right, to get money for our States.

That is a pretty simple judgment to make in this case, if we can count, if we can look at the language of the Constitution and see something so obvious. Now, sure, we do not like it, we do not like the way it has turned out. There are 600,000 people living here and a lot of people with very good intentions say they should have the same rights as States. But that is our opinion, it is not the Constitution.

What worries me about a lot of our rights that are given in the Constitution, particularly our Bill of Rights, not only the right to bear arms, which people's opinion is being substituted for the Constitution, but the same thing has happened with the right of free speech, the freedom of the press in our country, which has been so instrumental to maintaining freedom and the ability of the American people to be vigilant over their Government, finding out what is going on here.

Back in 1949, the Federal Government implemented what was called the fairness doctrine over concerns that with the relatively few number of radio stations across the country, a diversity of opinion would not be heard.

Substituting our own good opinion for that of the Constitution, there are some in Washington who decided we needed to referee what was said on radio.

If one political opinion was expressed, the fairness doctrine required that they have an opposite opinion also expressed. The whole idea was to create a diversity of points of view. The fact is, as with many things we do here, it had exactly the opposite effect of what was intended. It put a chilling effect on political speech because what radio station would want to deal with the liability of expressing an opinion if someone else was going to come in and say they had to have somebody else express a different opinion? It violates the right of free speech and, in the process, actually puts a chilling effect on the development of political points of view in radio.

In 1987, it had become obvious what this was doing. Thousands of radio stations were developing all over the country. The Reagan administration

overturned this so-called fairness doctrine, which was really a radio censorship act. With that act gone, we have seen the development of radio talk shows all over the country. One can tune in anywhere and get all kinds of diversity of opinion.

Frankly, it has become very annoying to a lot of Congressmen and Senators. There is nothing worse than going home and trying to tell people one thing, and they actually find out that is not the truth. Increasingly, that has been happening with bills we are passing, when folks back home find out through talk radio those guys didn't even read that bill. The front cover of that bill says it is not amnesty, but the bill says it is. The President says there are no earmarks, but open it up and there are thousands of earmarks in the bill. The President says he is expanding our energy supplies, but then look and see that they actually have a drilling moratorium that we didn't know about.

Talk radio has become very annoying to politicians who don't want Americans to know the truth. So increasingly a number of people in Congress are looking back to that fairness doctrine and thinking we need to bring it back. We need to censor radio talk shows. We need to create that liability, that risk. Every time someone freely expresses an opinion, that station needs to know that they are liable to make sure another opinion is expressed.

Who is going to decide what should be expressed? The Governors and the Mayor in Washington? In fact, what we are finding out is so many people on the other side can't resist the urge to be Founding Fathers. They want to change the Constitution and change what it means and ignore it. But freedom of speech is so important. The fact is, people in this Senate who swore an oath to the Constitution are actually advocating bringing back radio censorship and certainly will eventually apply it to the blogosphere and the Web. They will not stop with radio talk shows. We need to act to make sure this oppression, this tyranny is not reimposed on the American people.

It is not just important to protect what radio talk show hosts can say. What we are really trying to protect is what millions of Americans are free to listen to: different opinions, facts, information about where to find more complete information about what is going on. The primary reason more and more Americans are standing up and are outraged about what is going on here is because they are finally finding out the truth about what we are doing, how much money we are spending, how much we are borrowing, the porkbarrel earmarks we are sending all over the country, basically changing the mission of the Federal Government from one that stands for the national interest and constitutional government to one that is essentially trying to run local governments and State govern-

ments and to rearrange the Constitution.

The Federal Communications Commission could actually reimplement this radio censorship idea without Congress. That is why my amendment I will offer tomorrow, the Broadcasters Freedom Act, will prohibit the Federal Communications Commission from bringing back any part of the radio censorship they called at one time the fairness doctrine.

Some here will say it is not germane to this debate on DC voting rights. But DC voting rights are about the Constitution and whether we will follow it. If we don't respect the Constitution on one issue, why should we respect it on another? The fact that people at the FCC and here in Congress are talking about bringing it back means it is germane to this discussion. It is germane to everything we do here, the right to freedom of speech. The freedom of the press is so foundational to our form of government, our way of life, it is germane to everything we do here.

This amendment is so important to what we do because if we can't get the American people informed and engaged and activated and get them to stand and express their outrage, this Government, this Congress, is going to continue to violate the Constitution at every turn; to substitute their opinion, whether it be the first amendment or second amendment, any time their opinion is different from the Constitution. Their belief and the prevailing belief here in Congress is, if you can pass something, then it is legal. It doesn't matter if it violates the Constitution. What will matter is if the American people know what we are doing. They are going to stand up. They will e-mail. They will call. They will express their outrage to these people who are taking our constitutional rights every day. They are going to hear from the people back home, and they will back down or they will be brought home at the next election.

That is why radio freedom, freedom of the press, talk radio, bloggers, cable TV, all these alternative media that are going around, the New York Times and the other liberal press, and taking the truth and the facts to the American people is something we have to protect with our lives in Congress. The broadcasters freedom amendment that will be offered tomorrow is critically important to what we do.

I urge all of my colleagues, don't buy these lame arguments that it is not germane to this constitutional debate. Don't buy the argument that it is not relevant because no one is bringing it up. We have seen what people can sneak into bills that we don't get a chance to read. We need to make it a law that the FCC or this Congress cannot implement any aspect of the fairness doctrine. That is what this amendment is about.

I urge colleagues to take the Constitution seriously, take this amendment seriously. Vote for it and show

the American people that we will stand for their constitutional rights.

I yield the floor.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. BURRIS. Mr. President, I rise to support the District of Columbia House Voting Rights Act. For too long politics has trumped basic fairness. This is not a bill for statehood but one that ensures the simple and long overdue right of American citizens to have a voice in their Government. It is the duty of any democracy to have every citizen represented. America is a model for democracy around the world. Right here at home in our own Capital City almost 600,000 Americans live without a full vote in their Government. Passage of this bill is a matter of fundamental rights. Citizens of Washington, DC, pay taxes like everyone else, but they have no voice in how their taxes are spent. The phrase "no taxation without representation" used by the original Thirteen Colonies is every bit as relevant today.

The residents of our Capital City pay one of the highest tax rates in the Nation, but they do not have a single voting representative in either House of Congress. Unlike every other city in America, Washington, DC, is forced to remain dependent upon Congress for even the most basic functions. Congress has control over DC's local budget. Congress can review and overturn laws that DC residents pass. Even more important to consider is the brave service and sacrifice Washington's men and women in uniform make in serving our Nation in the Armed Forces. These great patriots deserve full participation in Congress.

The foundation of our system of government is that all citizens are represented in the Federal Government. Today we must make good on the promise and grant full and fair representation to the people of Washington, DC.

This issue has been around a long time. Finally, in this bill, we have a balanced and sensible approach, one seat for the District of Columbia and one additional seat for the State of Utah.

I urge passage of this bill to give full, equal voice to the residents of this District and allow those 600,000 citizens to finally become full members of our Republic.

I yield the floor.

AMENDMENT NO. 575

The PRESIDING OFFICER (Mr. BURRIS). The Senator from Connecticut.

Mr. LIEBERMAN. Mr. President, I rise to oppose the amendment offered by the Senator from Nevada, Mr. ENSIGN, with regard to gun control. I do so for five reasons.

First, this amendment is completely unrelated to the DC House Voting Rights Act before us today. If it bears any relationship to this bill, it is in an inadvertent, unintended way to make the point of how badly we in Congress

treat the District, as if we have the right not only to deprive it of voting representation in the House of Representatives—600,000 residents without voting representation, no government with consent of the governed—but we exercise, by this amendment, if it passes, the right to intervene in the District when its own legislative body, the council, has legislated and impose our desires on them.

Let me come back to my first point. The amendment is unrelated to the DC House Voting Rights Act. We should not be adding controversial, non-germane issues to what I believe is a historic civil rights bill that finally nullifies what has gone on for most of American history, which is a voting rights injustice. Residents of the District have fought for decades to win the voting rights the rest of us take for granted. It has taken tremendous work over more than this year to get this bill to where it is today, to enable us to actually be on the Senate floor debating a voting rights bill.

We had a good debate earlier on a constitutional point of order raised by the Senator from Arizona, Mr. MCCAIN, that went to the heart of the bill. That is what we ought to be debating. That point of order was rejected, but it was relevant to what we are all about in S. 160. Congress has on many occasions, of course, debated legislation related to gun ownership, which is the subject of the Ensign amendment, unrelated to the DC House Voting Rights Act. No doubt we will have the opportunity to debate the issue of gun ownership and gun rights in the future. Opponents have raised relevant concerns about the constitutionality and appropriateness of the legislation we are considering. That is what we should be debating, not gun legislation.

I fear, of course, in doing so, what we are doing on the Ensign amendment is we are going to cloud the prospects for this bill with controversial, unrelated amendments that take us from the focus here, which is that 600,000 Americans do not have voting representation in Congress.

Second, I believe Congress should not limit the District's ability to enact its own measures with regard to gun violence. Some Senators, Members of this body, may believe as a policy matter that the District's gun laws are not adequate, not correct, but the District's gun laws have no effect whatsoever on the varying gun ownership laws of the States. The fact is that none of our constituents—not one of our constituents—will be affected or is affected by the gun laws of the District of Columbia. We do not represent anybody who is a resident and voter in the District of Columbia.

The gun rights of residents of other States are guided and controlled and enabled pursuant to the laws and regulations enacted by the elected officials and executive officials in those States. Likewise, the elected officials of the District of Columbia have enacted laws

regarding gun ownership that I believe this body should respect, just as I would want this body to respect the laws of my State with regard to guns or anything else. As I will explain in a moment, in fact, the District of Columbia has enacted new gun laws in response to the court case of DC v. Heller. Congress should not be singling out particular States and localities to repeal their laws on guns or anything else.

This is not a uniform nationwide standard that will be adopted if the Ensign amendment passes. This is a law with regard to guns for the District of Columbia. It is as if a law of my State of Connecticut was challenged in the Supreme Court, and it was invalidated, and actually my legislature then responded to the constitutional invalidation by adopting a law which they believed was consistent with the Supreme Court decision, but then we in Congress came along and said: No, Connecticut, that is not enough. We are going to tell you exactly what your law should be—not for the entire United States of America but for the State of Connecticut. I would be outraged. Any Member of this Chamber would be outraged if we did to one of our States what this amendment proposes to do to the District. It is just not fair, and it is not consistent with our basic principles of limited Federal Government and the rights of States and localities to legislate for themselves.

That is my second point. Congress should not limit the District's ability to enact laws of its own regarding guns or anything else.

The third point is this: This amendment is actually outdated. The Ensign amendment is the same as legislation that passed the House last September to remove restrictions on gun ownership in the District. But there is an important point that has been left out here.

Last month, January, the District's government enacted new gun laws that are their response to the holding of the Supreme Court in the DC v. Heller decision. The Heller decision struck down several provisions of the District's previous municipal code regarding guns. The decision particularly invalidated the District's handgun ban and trigger lock-storage requirement. But consistent with the newly enacted District of Columbia law adopted by the council, those provisions are no longer in the law. So the Ensign amendment, in fact, is outdated. In fact, if you look carefully at this amendment, it repeals and modifies provisions that used to be in the DC law but no longer are because the recent enactment of the DC City Council removed those provisions of the law.

So my third point is the Ensign amendment is outdated and does not relate to the reality that has been created by the District's City Council itself.

Fourth, let me talk about the District's new gun measures and their relationship to the Heller decision. The

Supreme Court made clear in its decision in *Heller* that the second amendment meant something. It is something this Senator has always felt. There is a constitutional right to bear arms. But that right, I have always felt, is no more unlimited than any other right in the Constitution, including the fundamental—I would almost say sacred—rights in the first amendment. Those are not unlimited either, as we know. So the Supreme Court decision said that the total bans in the DC law on gun ownership, possession of guns in the home, were unconstitutional and violative of the second amendment. But the decision also made clear that reasonable regulation of gun ownership was permissible.

This amendment essentially invalidates a whole series of what I believe the Supreme Court would find to be reasonable regulations of gun ownership and again does not acknowledge what the DC City Council has done.

The gun laws the District passed last month restore the right of gun ownership for self-defense in homes here in the District and amend the District's safe-storage requirements so that a firearm no longer needs to be kept bound by a trigger lock within the home. The District's new gun law permanently repealed DC's ban on semi-automatic firearms and permits residents to own semiautomatic pistols. If you look at the Ensign amendment, you would not believe that was true. In fact, in the Inoperable Pistol Amendment Act of 2008, the city of the District of Columbia provided a self-defense exception to allow residents with registered firearms to carry these weapons lawfully in their homes or places of business. Additionally, the Firearms Control Amendment Act of 2008 exempted from the registration requirement "[a]ny person who temporarily possesses a firearm registered to another person while in the home of the registrant" if that person believes they are in imminent danger. So these are the very real rights of gun owners that are now enshrined, adopted in the DC law that has been passed.

My fifth point is this, and I referred to it a moment ago: The Ensign amendment goes much further than the Supreme Court did in limiting the right of localities, States, and municipalities to regulate gun ownership while recognizing the second amendment constitutional right to bear arms. In fact, Justice Scalia wrote the majority opinion in the *Heller* case, and he specifically noted that a wide range of gun laws would be lawful and not violative of the second amendment—everything from laws "forbidding the carrying of firearms in sensitive places" to "conditions and qualifications on the commercial sale of arms."

The amendment offered by my colleague from Nevada would overturn provisions that the *Heller* decision did not address and did not strike down.

This amendment provides that the government of the District of Columbia

"shall not have authority to enact laws or regulations that discourage or eliminate the private ownership or use of firearms." Potentially, this could prevent the District from passing legislation regarding background checks, which have been widely accepted by courts, or registration regulations that are needed to help law enforcement keep tabs of who is buying and owning guns in the District.

The Ensign amendment repeals DC's ban on sniper rifles that can pierce armor plating up to a mile away and its ban on military-style semiautomatic weapons and high-capacity ammunition magazines.

The amendment repeals DC's requirements—modeled on a California law which has been strongly supported by law enforcement agencies—that semiautomatic pistols manufactured after January 1, 2011, be microstamp-ready. Microstamping is a law enforcement tool that helps solve gun crimes by imprinting shell casings with a unique identifier so they can quickly be matched to the handguns that fire them.

The Ensign amendment also repeals the District's age limits for legal gun possession. Imagine how we would feel in my State of Connecticut or in the Presiding Officer's State of Illinois if Congress came along and told us how to write laws for our States.

This amendment repeals the District of Columbia's prohibition on gun possession by anyone who was voluntarily committed to a mental institution in the last 5 years. It repeals the District's prohibition on gun possession for those who have been adjudicated as chronic alcoholics and those who have failed a vision test. This would be—I do not even want to say it. It is shocking.

The amendment also weakens Federal law. Federal law prohibits gun dealers from selling handguns directly to out-of-State consumer buyers because of the high risk this creates for interstate gun trafficking. But this amendment would allow DC residents to cross State lines to buy handguns in neighboring States, undermining those Federal antitrafficking laws.

It is no surprise that the chief of police of the District of Columbia, Cathy Lanier, has testified that the legislation on which the Ensign amendment is based would undermine safety and security in the Nation's Capital.

So those are five reasons why I believe this amendment should not be adopted. But as the chairman of the committee that has reported out the underlying bill and as somebody who personally has worked for a lot of years to try to right this wrong on the residents of the District of Columbia, our Nation's Capital—the capital of the greatest democracy in the world—not having a voting representative in Congress, I just think this amendment, leaving aside its merits or demerits, adds something to this historic piece of legislation that just does not belong and may, along the way, complicate its path to passage.

So regardless of your position on gun control—and I state again, I have always believed the second amendment has meaning, that it makes constitutional the right to bear arms, but that it is not unlimited—this amendment comes close to a judgment that the second amendment really is unlimited. So that is why I, on its merits, think it goes too far.

But whatever you think of the merits, if you really believe in helping eliminate one of the last vestiges of voting rights blocks in our country—when you think about it, when the Constitution was adopted, people of color could not vote. Good God, people of color were only counted as three-fifths of people who were White. Woman could not vote. A lot of men could not vote if they were not property owners. And over the years, on this journey of ours, from the ideals in our Declaration of Independence, we have gone forward to eliminate one after another block to the reality that the Government was premised on that you would not have governing without the consent of the governed. Yet this bizarre anomaly remains in our Nation's Capital where people are deprived of the right to have a voting representative here.

So I appeal to my colleagues, whatever your position on gun ownership and gun violence, whatever your position on the amendment offered by the Senator from Nevada, please don't stand in the doorway, as Bob Dylan once sang, and block this underlying bill or cause it to become more controversial than it should be.

I thank my colleagues, I thank the Chair, and I yield the floor.

THE PRESIDING OFFICER. The Senator from Utah.

MR. BENNETT. Mr. President, I ask unanimous consent to speak for 10 minutes.

THE PRESIDING OFFICER. Without objection, it is so ordered.

MR. BENNETT. I ask the Chair to notify me when I have consumed 8 minutes.

THE PRESIDING OFFICER. The Chair will do so.

MR. BENNETT. Mr. President, I have two items I wish to discuss, one that has already been raised on the floor by my friend, Senator DEMINT, with respect to his proposed amendment No. 573 to the underlying bill. As I understand it, Senator DEMINT will be offering an amendment dealing with the fairness rule. I was a cosponsor of this legislation in the last Congress and I am happy to support it in this Congress; that is, the position that says we should not allow the FCC to reinforce what has been called the fairness rule that was dropped some years ago. Who can be against fairness? Well, I am in favor of fairness, but I am opposed to censorship, under the mislabeling that we have here, the fairness doctrine is nothing more than censorship. The Federal Government would say to a radio or television broadcaster we have

determined that the broadcasting that you have been doing is not fair and so you are going to be ordered by the Government to present a different point of view on your show and we will determine whether it is fair or it is not. The fairness doctrine was imposed on the grounds that radio was such a pervasive medium that anything that was said on radio regarding politics should be balanced by someone who holds a different point of view. Right away, this raises the question of how many points of view?

We have seen Presidential elections where we had President Clinton, where we had Pat Buchanan, where we had Ralph Nader, and some minor candidates, and who determines which one is important enough to qualify for a fairness opportunity on radio? According to the so called Fairness Doctrine, the government determines. Who determines, therefore, what is one position that deserves putting down so that other positions can be raised in the name of fairness? The Federal Government. What do we get into when the Federal Government has the authority to make these kinds of decisions? Again, there is a word for it and it is called censorship.

One way to deal with an argument, to use the Latin phrase "reductio ad absurdum," which means "reduce it to an absurdity." Take it to its ultimate end. If we are going to take the Fairness Doctrine to its ultimate end, then we are going to say to the late night comedians, when you make a joke about a Democrat, since you are on the airwaves, you must make a joke of equivalent nastiness about a Republican. When you put down the President, you must find an equivalent Republican figure to put down in the name of fairness. The consequence of all of that, of course, if it were enforced, would be that the late night comedians get shut down all together.

We have already had an opportunity for fairness, if you will, with respect to talk radio. When a group of people got together and financed a liberal talk show host—one who aspires to enter this body at some time—the public spoke. The station went out of business. Let the public decide what they are going to listen to and let the public decide how they are going to pick. There are so many outlets for different points of view that we do not need to go back to the Fairness Doctrine and impose Government censorship on the way people think and respond.

The PRESIDING OFFICER. The Senator from Oklahoma.

AMENDMENT NO. 581

Mr. COBURN. Mr. President, I ask unanimous consent that the pending amendment be set aside and that amendment No. 581 be called up.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

The clerk will report the amendment. The bill clerk read as follows:

The Senator from Oklahoma [Mr. COBURN] proposes an amendment numbered 581.

Mr. COBURN. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

(Purpose: In the nature of a substitute)

Strike all after the enacting clause and insert the following:

SECTION 1. ELIMINATION OF FEDERAL INCOME TAX FOR RESIDENTS OF THE DISTRICT OF COLUMBIA.

Due to the unique status of the District of Columbia, created by the Constitution of the United States, bona fide residents of the District (other than Members of Congress) shall, notwithstanding any other provision of law, be exempt from the individual Federal income tax for taxable years beginning after the date of the enactment of this Act.

Mr. COBURN. Mr. President, I know my colleague from New York wishes to speak and I will be very brief. I should not take more than 10 minutes.

We are in a debate about the District of Columbia and the fact that they are taxed and not represented with a vote in the Congress. It is a legitimate debate. I tend to look at the Constitution and, as a matter of fact, as I read the Constitution—and I am not a constitutional lawyer, but I will tell my colleagues that anybody who reads the Constitution can say this is an unconstitutional bill we have in front of us.

I also reject the idea that the District of Columbia does not have representation. All one has to do is look at the facts: \$66,000 per resident of the District of Columbia, that is how much money the Federal Government spends per capita in the District of Columbia. That is \$5.5 for every dollar they pay in taxes. So the 535 votes in the Congress have well represented them greater than any other group of citizens in the country. But there is a claim—a legitimate claim—that they don't have their own representative and that they are taxed.

This is a simple amendment. What it says is while we work this out, the way to be fair is to eliminate Federal income tax on citizens of the District of Columbia. They don't have a vote. Their tags even say taxation without representation is unfair; no taxation without representation. This solves that. They will have to change all of the auto tags. I don't know what that will cost. But the fact is we will take away Federal income taxes on money earned in the District of Columbia from every citizen of the District of Columbia.

Now, two things happen with that, especially since they have 535 representatives already. Think about what will happen to the District of Columbia in terms of income. Think about what will happen to the District of Columbia in terms of economic progress. Think about what will happen in terms of the value of the ownership of any asset in the District of Columbia. Think of the growth. Think of the modernization

that will happen as we make this the center of progress based on the idea that because there is no representation, there should be no Federal taxation. It is a very simple, straightforward amendment. It solves the immediate problem. When we finally do a constitutional amendment with a joint resolution, which we are ultimately going to have to do, what we will have done is given the people of the District of Columbia the benefit of having a tax advantage because they don't have, under their thinking, representation in the Congress.

I am not trying to have a cute vote. If I had my way, I would try to eliminate almost every Federal income tax. As the Senator from New York knows, I try to do that quite often, and try to eliminate a lot of spending. The whole point being, there is a legitimate point to be made by the citizens of the District of Columbia in that they are treated differently than everybody else in this country. My argument is they actually have 535 representatives plus their Delegate, and it has shown to be very effective for them, because no place else in the country gets as much Federal money per capita as the District of Columbia. So if we want to treat the citizens of the District of Columbia fairly—by the way, this excludes all Members of Congress, so if my colleagues are thinking about voting for it for a selfish reason, please don't. If you are thinking about voting for this amendment on the basis of fairness, please consider it.

AMENDMENT NO. 575

I wish to take a few more minutes to comment on the Ensign amendment, if I might, and then I will finish. The Ensign amendment isn't about concealed carrying, it is about the right that is guaranteed under the second amendment to be applied to people in the District of Columbia.

James Madison wrote in *Federalist* No. 46:

Besides the advantage of being armed, which the Americans possess over the people of almost every other nation . . . forms a barrier against the enterprises of ambition, more insurmountable than any which a simple government of any form can admit of.

If you look at the murder rate in the District of Columbia, what happened when the gun ban in 1975 was first instituted, we didn't see it rise that much because we allowed people to keep their guns. When the complete ban took place, we saw a fivefold rise that is still going up—except for the last 2 years—in the murder rate compared to the rest of the cities in this country. There is something to be said for the thinking that a perpetrator of a felony thinks he or she may possibly be harmed significantly. That tends to drive down violent crime—we know that—in the States that have concealed carry, and that, I believe, is 26 or 28 States. It may be even more than that now.

The fact is, this isn't about concealed carry; this is about guaranteeing the

rights of individual citizens in the District of Columbia to represent themselves with a right that every other citizen in this country has. Because Congress didn't act on that right, it took the Heller decision to give them that right. All this does is bring into line the District of Columbia with the rest of the States in the country. I will have taken the amount of time that I should in favor of Senator SCHUMER. I thank him very much for the consideration of allowing me to go first. I thank the chairman of the committee as well.

The PRESIDING OFFICER. The Senator from New York is recognized.

Mr. SCHUMER. Mr. President, I rise in opposition to a dangerous amendment that would go far beyond authorizing gun possession for self-defense in the home and create serious threats to public safety, and that is the Ensign amendment.

First, I support the Lieberman bill to bring representation to the District of Columbia, which seems to be in total keeping with what America is all about. I just say to my good friend from Oklahoma that representation, of course, involves dealing with taxation, but it involves many other things. To simply say the people of the District of Columbia don't have to pay any taxes but would be deprived of other rights in these Chambers, to me, is not what this bill is all about. It is a compromise, obviously. But it is one that moves us up the steps to gaining representation for the hundreds of thousands of the hard-working, taxpaying citizens of the District of Columbia.

Now, of course, we are getting into the sort of season of irrelevant or controversial amendments. The Ensign amendment is certainly the second of those. Let me say this: The Heller case basically said there is an individual right to bear arms. I have some degree of sympathy with those who are in the pro-gun movement who say: Hey, so many Americans look to expand the first amendment, the fourth amendment, and the fifth and sixth amendments broadly, and then see the second amendment through a narrow pinhole, saying that it is only involving militias.

If you believe in a broad and expansive Constitution, how is it that just one of them is perceived as narrow as possible? The Heller decision says it is not just militias that have a right to bear arms, or members of them, but individuals. But every Justice in that case, including Justice Scalia, made the opposite point. Just as those in the pro-gun movement have some justification in saying it is unfair to regard every amendment expansively except the second, those of us who believe more in gun control have the right to say that every amendment has a limitation.

I am a strong believer in the first amendment, but I don't vote against libel laws or pornography laws. I cer-

tainly agree with, I believe Oliver Wendell Holmes, who said: You cannot falsely scream fire in a crowded theater. So those are limitations on the first amendment. I say to my friends in the pro-gun movement, if every other amendment has limitations, such as the first, fourth, fifth, sixth—and many on that side of the aisle are for more strict limitations on those amendments than we might be—how is it that the second amendment should not have any limitation?

This proposal by Senator ENSIGN, my friend from Nevada, just shows the absurdity of that argument because there are things in this amendment that people would say defy common sense. It defies common sense to say someone who was voluntarily committed to a mental institution should be allowed to get a gun. It defies common sense to say someone who can't pass a sight test should have a right to a gun. It defies common sense to say a 10-year-old has a right to carry a shotgun. Yet in the defense of an overly expansive view of the second amendment, even conceding that it does apply to these individuals, my colleague from Nevada wishes to say those things. Again, how many people in America think if you fail a sight test, you should have a right to a gun? You might say some sight tests are faulty. Well, change the test. How many people would say someone who has been in a mental institution—voluntarily committed—should have the right to have a gun?

This is about Washington, DC, but didn't we learn on the campus of Virginia Tech about the destructive link when mentally ill people are allowed to acquire guns? Wasn't the country in an uproar about that? Yet here, just a few short years later, as parents of those slain students are still mourning, we are about to say in the District of Columbia, a neighboring jurisdiction, if you not just have a mental illness, but it has to be pretty significant if you have been in a mental institution, you should all have a right to have a gun.

So all we are trying to do in opposing the Ensign amendment is invoke common sense. We are not getting into the discussion of whether the second amendment applies to individuals or just to those in militias. The Supreme Court has ruled on that. We are saying to our friends, just as they get up on the floor and advocate limitations on every other amendment, it is contradictory to say the second amendment should not have the most reasonable of limitations. There can't be a more reasonable restriction than the requirement that someone be required to see before they are allowed on the streets with a gun. It just doesn't make sense.

One other point: My colleagues on the other side of the aisle tend to advocate for States rights in the broad balance of things. The States should have the ability to make these decisions. It is clear the District of Columbia, with its high crime rate, is not Nevada, Wy-

oming, or Nebraska. It is clear that firearms cause far more damage in the District of Columbia than they do in many other States. Why shouldn't the citizens of the District of Columbia have the right to determine, within constitutional confines, how those firearms may be used and who may have them? If you are for a State being able to decide so many other policies, and you don't like the encroaching Federal Government, why is it different for guns? I guess that is at the nub of the Ensign amendment, Mr. President.

Somehow the sponsor of this amendment seems to believe that guns are different from everything else. The supporters of this amendment seem to believe that guns are different from everything else—limitations on every other amendment but not the second amendment. States rights is a good thing, but not when it comes to the States' or localities' view to regulate guns. Why is it different?

If you want to cite the Heller case in defense of the individual right to bear arms, the Heller case also says—Justice Scalia—that restrictions on firearms that are reasonable, like bans on mentally ill people having access to guns, are constitutional and could be, and should be, decided by the citizens of Washington, DC.

So this amendment, make no mistake about it, if passed, will lead to needless maiming and deaths. It is a serious amendment; it is not frivolous. It goes way beyond a political statement on an important bill. I hope my colleagues will rise to the occasion and reject it.

I yield the floor.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. LIEBERMAN. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. LIEBERMAN. Mr. President, I ask unanimous consent the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. NELSON of Florida). Without objection, it is so ordered.

Mr. LIEBERMAN. Mr. President, I have a unanimous consent to offer that has been cleared on both sides. It is as follows:

I ask unanimous consent that at 5:45 p.m. today, the Senate proceed to vote in relation to the Coburn amendment No. 581, with the time until then equally divided and controlled between Senators COBURN and LIEBERMAN or their designees, and that no amendment be in order to the Coburn amendment prior to the vote in relation to the amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. LIEBERMAN. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. LIEBERMAN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. LIEBERMAN. Mr. President, I ask unanimous consent that I be allowed to speak for a few minutes or until Senator COBURN arrives, whichever event occurs earlier.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT NO. 581

Mr. LIEBERMAN. I thank the Chair. I rise to speak against Coburn amendment No. 581. I suppose that in part I should say that this amendment, sponsored as it is by an opponent of the underlying bill, accepts one of the major contentions we are making about the inequity of the current situation, which is that the 600,000 residents of the District of Columbia, uniquely among all Americans, do not have voting representation in Congress. Nonetheless, they are taxed. I mean, this goes back to one of the early American Revolutionary slogans or principles, which is "taxation without representation is tyranny." Our proposal, S. 160, the House Voting Rights Act, responds to that inequity by providing for voting representation in the House of Representatives for the District of Columbia. The Coburn amendment takes the opposite view and says that since the District does not have representation, well, by God, they should not be subject to taxation. So it would eliminate the Federal tax. This amendment would eliminate Federal taxes for DC residents. But that is not what DC residents are asking or we are offering on their behalf. I mean, the point of this is that residents of the District of Columbia do pay taxes. They pay higher per capita taxes to the Federal Government than any other entity but one. They are second highest, approximately \$20 billion a year.

Second, they not only have been conscripted into our military services, but since the Volunteer Army, they have volunteered. Residents of this District have not only served, but they have sacrificed their lives in the cause of American security and freedom.

So the point is that there is something very, I hope, inspiring about this. The residents of the District of Columbia are not asking for any free ride. They want to be contributors to America in every way, including Federal taxation, but they also expect to be represented in the House of Representatives with a voting Representative. So on behalf of what I would describe as the patriotic citizens of the District of Columbia, I would say this amendment makes a point, but it is not a sound or fair one.

I polled the members of my staff who live in the District of Columbia to ask how they would advise me to vote. I am pleased to say that they put principle ahead of personal interests and have urged me to vote against this amendment.

I also say that if the amendment passed, we would have yet another enormous gap, and this gap we now have between Federal expenditures and revenues would grow even larger.

So perhaps Senator COBURN is making a point, but it is not one that I believe we ought to adopt in an amendment; therefore, I would urge my colleagues to oppose the amendment.

The PRESIDING OFFICER. The Senator from Arizona is recognized.

Mr. KYL. Mr. President, I would like to ask my colleague from Connecticut a question or two about this. First of all, I think it is correct that all of us would like to see a way, a proper way—and we disagree about what that way is—for the residents of the District of Columbia to have a full franchise in terms of congressional representation. Failing that, I think Senator COBURN was simply saying they should not have to pay taxes.

I was wondering myself about potentially a second-degree amendment that might give that option to other States or congressional districts on the theory that maybe this would be a two-fer for their constituents: they could vote to get rid of their Congressman and the income tax. I wonder if my colleague would have an idea about such an amendment.

Mr. LIEBERMAN. To my friend from Arizona, I do have some ideas about such an amendment, but I guess it would be best to not verbalize them on the floor.

Actually, we are at a time in our history, difficult as it is economically, where I think people are turning to the Federal Government and asking for not such a free ride but asking for help. There is a wonderful word; I do not know if it is in the dictionary; the word is "deviltry." It is another way to say mischievous or mischief.

I think our friend from Oklahoma may be up to a little deviltry with this amendment.

Mr. KYL. I think the Senator from Connecticut is probably right about that. His point is to draw an important distinction, and that is that there are two elements to this, one being the taxation and the other the representation. The Senator from Connecticut rightly points to a very important episode in our history where the Founding Fathers tied those two together. There are other factors as well.

I urge support for the amendment. The PRESIDING OFFICER. Under the previous order, the question is on agreeing to amendment No. 581 offered by the Senator from Oklahoma.

Mr. LIEBERMAN. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be.

The clerk will call the roll.

The bill clerk called the roll.

Mr. DURBIN. I announce that the Senator from Massachusetts (Mr. KENNEDY) is necessarily absent.

The PRESIDING OFFICER (Mr. BURRIS). Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 7, nays 91, as follows:

[Rollcall Vote No. 68 Leg.]

YEAS—7

Bunning	DeMint	Wicker
Burr	Graham	
Coburn	Kyl	

NAYS—91

Akaka	Feingold	Mikulski
Alexander	Feinstein	Murkowski
Barrasso	Gillibrand	Murray
Baucus	Grassley	Nelson (FL)
Bayh	Gregg	Nelson (NE)
Begich	Hagan	Pryor
Bennet	Harkin	Reed
Bennett	Hatch	Reid
Bingaman	Hutchison	Risch
Bond	Inhofe	Roberts
Boxer	Inouye	Rockefeller
Brown	Isakson	Sanders
Brownback	Johanns	Schumer
Burr	Johnson	Sessions
Byrd	Kaufman	Shaheen
Cantwell	Kerry	Shelby
Cardin	Klobuchar	Snowe
Carper	Kohl	Specter
Casey	Landrieu	Stabenow
Chambliss	Lautenberg	Tester
Cochran	Leahy	Thune
Collins	Levin	Udall (CO)
Conrad	Lieberman	Udall (NM)
Corker	Lincoln	Vitter
Cornyn	Lugar	Voinovich
Crapo	Martinez	Warner
Dodd	McCain	Webb
Dorgan	McCaskill	Whitehouse
Durbin	McConnell	Wyden
Ensign	Menendez	
Enzi	Merkley	

NOT VOTING—1

Kennedy

The amendment (No. 581) was rejected.

Mr. LIEBERMAN. Mr. President, I move to reconsider the vote, and I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. LIEBERMAN. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. AKAKA. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. AKAKA. Mr. President, as chairman of the District of Columbia subcommittee, I rise today in support of S. 160, the District of Columbia Voting Rights Act of 2009. I vote to enfranchise thousands of District residents and to affirm my commitment to the fundamental right of all Americans to participate in our great democracy.

Despite our Nation's founding principle of "no taxation without representation," District of Columbia residents lack full representation in Congress. They have sent sons and daughters to war in defense of our country, and they have paid Federal taxes in support of our Government. Despite this, the distinguished Delegate from the District of Columbia lacks a vote on the floor of the House of Representatives.

Fair voting representation is fundamental to our democracy. I understand the challenges facing the District's residents, and I sympathize with its trouble to attain voting representation

in Congress. I also understand that this will be an ongoing discussion. I am sensitive to the concerns raised by my colleagues on the constitutionality of our actions.

Legal scholars have testified before the Homeland Security and Governmental Affairs Committee and the Senate Judiciary Committee that Congress does have the constitutional authority to extend a vote to a District Representative in the House. I believe this legislation is constitutional, but ultimately it is the role of the courts to decide.

Our representative democracy is based on the principle that citizens of this country should have a say in the laws that govern this country. If citizens disagree with the laws, they have the power to vote for different representatives. By extending this core principle to the District of Columbia, I believe this bill would be a decisive step forward for the rights of DC residents.

AMENDMENT NO. 575

Now I wish to address the pending Ensign amendment.

Today, we are addressing voting rights. Now is not an appropriate time to cloud the debate with amendments on gun control. Last year, when this gun issue was brought up on the Senate floor before being considered by the committee, I joined 10 of my colleagues in a letter to the majority leader asking that the bill follow Senate procedures and be referred to committee before consideration on the floor.

As the chairman of the subcommittee charged with the oversight of the District of Columbia, I am familiar with the debate on DC's gun policies. Last year, the U.S. Supreme Court in the Heller decision struck down the District of Columbia's gun ban. Since then, the DC City Council has taken necessary steps to comply with the Supreme Court's decision, including the passage of legislation to address issues raised by the ruling. I do not believe any congressional action is needed to help DC comply with the Heller decision, but, more importantly, this is not the appropriate time to consider and vote on this issue.

I am not against gun ownership. I am for self-determination. I strongly encourage my colleagues to give the District of Columbia and its citizens the opportunity to vote on and establish their own rules regarding gun control. It would be ironic if we were to with one hand finally give the people of the District voting representation but on the other hand take away their right to self-determination by forcing them to adopt a gun control policy on which they were unable to vote. I, therefore, urge my colleagues to vote no on the Ensign amendment and all related amendments.

I am proud to lend my support for the underlying bill. I urge my colleagues to vote in support of voting rights for the residents of the District of Columbia and to reject any amend-

ment that would abridge those rights or is not germane to the issue at hand.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. LIEBERMAN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. LIEBERMAN. Mr. President, I have a unanimous consent agreement to propound which has been cleared on both sides.

I ask unanimous consent that when the Senate resumes consideration of S. 160 on Thursday, February 26, the time until 10:30 a.m. be for debate with respect to the Kyl amendment No. 585, with the time equally divided and controlled between Senators KYL and LIEBERMAN or their designees, with no amendment in order to the amendment prior to the vote, and that at 10:30 a.m. the Senate proceed to vote in relation to the amendment.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. LIEBERMAN. I thank the Chair. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. REID. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. BEGICH). Without objection, it is so ordered.

CLOTURE MOTION

Mr. REID. Mr. President, I send a cloture motion to the desk.

The PRESIDING OFFICER. The cloture motion having been presented under rule XXII, the Chair directs the clerk to read the motion.

The assistant legislative clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, hereby move to bring to a close debate on S. 160, the District of Columbia House Voting Rights Act of 2009.

Harry Reid, Richard Durbin, Sheldon Whitehouse, Jeanne Shaheen, Patty Murray, Bernard Sanders, Roland W. Burris, Charles E. Schumer, Debbie Stabenow, Barbara A. Mikulski, Bill Nelson, John F. Kerry, Christopher J. Dodd, Frank R. Lautenberg, Jeff Bingaman, Amy Klobuchar, Robert Menendez, Barbara Boxer.

Mr. REID. Mr. President, I ask unanimous consent that the mandatory quorum call be waived.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. REID. Mr. President, I would like to announce to everyone where we are in regard to this bill. We have been working through the amendments. Senator LIEBERMAN has done a terrific

job. I understand there will be a few more that may be offered. We expect to have votes throughout Thursday on pending amendments, and those that are offered on Thursday we are going to try to dispose of those tomorrow.

I filed cloture today, but I hope it isn't necessary to have this cloture vote. However, if necessary, we will look forward to seeing if we can get a consent agreement to have the vote tomorrow; otherwise, we are going to wind up coming in Friday morning. I hope that is not necessary. This is a piece of legislation that has been talked about for a long time. We have had it on the Senate floor before. I think everyone has had the ability to offer whatever they believe is appropriate.

I really express my appreciation for the cooperation of all Members, both Democrats and Republicans, but especially Senator KYL, who did some very good work with Senator LIEBERMAN this afternoon.

MORNING BUSINESS

Mr. REID. Mr. President, I ask unanimous consent that we now proceed to a period of morning business with Senators permitted to speak for up to 10 minutes each.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMISSION OF INQUIRY

Mr. LEAHY. When historians look back at the last 8 years, they are going to evaluate one of the most secretive administrations in the history of the United States. Now, the citizens of this country have said we should have change, and we should. But we also know that the past can be prologue unless we set things right.

In the last administration, there was a justification for torture. It presided over the abuse at Abu Ghraib, destroyed tapes of harsh interrogations, and conducted extraordinary renditions that sent people to countries that permit torture during interrogation.

They used the Justice Department, our premiere law enforcement agency, to subvert the intent of congressional statutes, even to subvert nonpartisan prosecutions, and instead to use them in partisan ways to try to affect the outcome of elections. They wrote secret law to give themselves legal cover for these misguided policies, policies that could not withstand scrutiny if brought to light.

Nothing has done more to damage America's standing and moral authority than the revelation that during the last 8 years we abandoned our historic commitment to human rights by repeatedly stretching the law and the bounds of Executive power to authorize torture and cruel treatment.

As President Obama said to Congress and the American people last night, "if we're honest with ourselves, we'll