

Background Paper 79-3

CONSTITUTIONAL AMENDMENT
DISTRICT OF COLUMBIA VOTING RIGHTS

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I
Introduction

On August 22, 1978, the U.S. Senate passed H. J. Res. 554, to grant full voting rights to the District of Columbia, by a vote of 67-32. The House of Representatives had passed it March 2 by a vote of 289-127. The Senate vote was one more than the two-thirds required for a constitutional amendment. The House vote was 11 more. The full text of the resolution is attached as Appendix A of this paper. The essential components of the proposed amendment to the U.S. Constitution can be summarized as follows:

- The District of Columbia would be treated as a state for purposes of congressional and electoral college representation and for participation in presidential elections and ratifications of constitutional amendments.
- The 23rd amendment, which gave district residents the vote for presidential elections and the electoral vote of the least populous state, would be repealed.
- The 7-year ratification period was made a part of the resolution itself so that an extension could be granted only by a two-thirds vote.
- Implementation would be left to Congress subsequent to ratification.

In addition, it should be noted that the proposed amendment does not make the district self-governing. Congress would continue to have veto authority over legislation and budgets passed by the elected District government.

II Background

The District of Columbia was created pursuant to Article I, Section 8, Clause 17 of the U.S. Constitution. That clause gives Congress direct jurisdiction over such district, not to exceed 10 miles square, as may be ceded by particular states to become the seat of the national government. The location of the capital city between Maryland and Virginia on the banks of the Potomac came about as a result of the great controversy over Alexander Hamilton's plan to have the Federal Government redeem the national and state debts from the Revolutionary War at face value. In order to get the votes in 1790, for federal debt assumption, Hamilton and the northern congressmen agreed to locate the permanent capital in the South. Maryland and Virginia ceded the 10 miles square and Washington, D.C., was created in 1800. (In 1846, Congress retroceded the Virginia portion of the District to Virginia.)

Since 1800, there have been 23 attempts to grant congressional representation to the District. From 1871-75 there was a nonvoting delegate from the District in the House. Since 1970, there has also been a nonvoting delegate from the District. In 1973, the District was granted limited home rule with an elected mayor and council. In 1961, the 23rd amendment to the U.S. Constitution gave the District the vote in presidential elections.

In 1967, 1972 and 1976, proposed constitutional amendments that would have given the District a voting representative in Congress were considered. The 1976 measure was voted on in the House but fell 45 votes short of the two-thirds required. H. J. Res. 554 goes beyond any of the former proposals by granting the District two senate seats and the right to vote on proposed constitutional amendments. The sponsor of H. J. Res. 554 is Representative Don Edwards of California.

In most nations a question of voting rights for the residents of a capital city does not arise. Capital cities such as Paris, London or Rome are represented in the national legislatures just as other cities. Only in a federal system would a capital city be separate and apart from the states or provinces that constitute the federation. This is true in the U.S., Australia, Brazil and others. Only in the U.S. and Brazil, however, do the residents of the federal capital have no representation in the federal legislature.

The history of the U.S. Constitution offers some insight into why a separate federal enclave was included in the Constitution. James Madison in the Federalist Papers, No. 43, explained it as follows:

The indispensable necessity of complete authority at the seat of government carries its own evidence with it * * *. Without it not only the public authority might be insulted and its proceedings interrupted with impunity, but a dependence of the members of the general government on the State comprehending the seat of the government for protection in the exercise of their duty might bring on the national councils an imputation of awe or influence equally dishonorable to the government and dissatisfactory to the other members of the Confederacy.

Madison and his colleagues in the Constitutional Convention of 1787 were mindful of the so-called "mutiny of 1783" in which Revolutionary soldiers who had not been paid marched on Independence Hall in Philadelphia where Congress was meeting. Congress asked state and city assistance for protection. This was denied and many of the Founding Fathers concluded that a national capital would have to be under national rather than state jurisdiction.

III Pros and Cons

Proponents of the proposed amendment point out that residents of the District have all the obligations of U.S. citizenship but are deprived of one of its most fundamental rights. Among other things, this arrangement constitutes taxation without representation. Based on 1977 population, the District is larger than seven states including Nevada. (This will not be so very soon since Nevada's population is approaching 700,000 and the District's has just dropped below that figure.) Proponents contend that there is no historical evidence to show that the framers of the Constitution intended the District to be without representation in Congress. In other words, absence of such representation is a historical oversight. Further, proponents say that the amendment would not alter the status of the District as it relates to the Federal Government, nor would it make the district a state.

Opponents claim that the proposed amendment would give the District most of the privileges of statehood while preserving special benefits based on its special status as the capital city. Involving the District in the amendment ratification process and giving it two senators, when the original concept of the Senate was that of a body representing sovereign states, are inconsistent with the theory of federalism embodied in the Constitution. Opponents of the proposed amendment point principally to two alternatives as preferable. One is to allow the District to elect a full-fledged member of the House. After all, say proponents, the House represents people, the Senate, states. The other alternative is to retrocede the District, or at least its populated residential areas, to Maryland. If the 1846 precedent were followed, this would require approval of the Maryland General Assembly and the present residents of the District.

Opponents also particularly oppose the rights of the District to participate in the constitutional amendment

process because Article V clearly envisions that only states should participate. Furthermore, it is noted that the amendment is confusing on the subject of how the District would ratify. It has no legislature in the usual sense. Its city council's actions are subject to override by Congress. Would this allow Congress to involve itself in the amendment process at a point when the states are in control? It is not clear. Congress, by statute perhaps, could provide for ratification in the District by popular vote or convention.

IV Conclusion

Unlike the Equal Rights Amendment where the battle is based on speculation by both sides concerning likely consequences, the D.C. Voting Rights Amendment is, for the most part, clear in its effect. There is minimal argument over what its provisions actually mean. The arguments are over the rightness or wrongness of the proposal. Basically, on the one side is the argument that no American citizen should be without equal representation in Congress. The voting franchise in itself is a civil right. In addition, because the population of the District is overwhelmingly black, the proposal also becomes a civil rights issue in the racial sense. Arguments against the proposed amendments are based primarily on what is seen as a distortion of the concept of federalism. By allowing seats in the Senate and participation in the ratification of constitutional amendments to the District, federalism is diluted because, in both cases, the Constitution has provided only for states. Indeed, a federal system means that each constituent unit has certain sovereignty independent of the central government. The District has no such sovereignty now and this amendment would not give it any. One's view on the subject then is determined by whether a concern for equity or a concern for the purity of federalist principles is more important.

The 1976 platforms of both the Democratic and Republican parties endorsed full voting rights for the District. President Carter has affirmed his support for the amendment. The Republican national chairman, Mr. Brock, has also come out in favor. The amendment was officially forwarded to every state on August 23, 1978.

SUGGESTED READING
(Available in Research Library)

Auerback, Stuart, "D.C.: Chasing Full Voting Rights Since 1801," The Washington Post, August 23, 1978.

Congressional Quarterly Weekly Report, Vol XXXVI, No 8, Feb. 25, 1978, p. 553.

Congressional Quarterly Weekly Report, Vol. XXXVI, No 10, March 11, 1978, p. 653.

Congressional Quarterly Weekly Report, Vol. XXXVI, No. 34, August 26, 1978, p. 2277.

The Federalist Papers, Mentor Books, New York, 1961.

Graham, Virginia S., "District of Columbia: Voting Representation in Congress," Issue Brief IB 78031, Library of Congress, Congressional Research Service, August 1978.

House Committee on the Judiciary, "District of Columbia Representation in Congress," Report to accompany H. J. Res. 554, no. 95-886, February 16, 1978.

Republican Policy Committee, U.S. Senate, "Arguments Opposing Representation, unpublished photocopy, August 1978.

Rimensnyder, Nelson, "District of Columbia Delegate Representation in the U.S. House of Representatives: The 19th Century Precedent," Library of Congress, Legislative Reference Service, March 1974.

Self Determination for D.C., "A Simple Case of Democracy Dented," Undated pamphlet issued after the House vote but before the Senate vote.

Subcommittee on Civil and Constitutional Rights, House Committee on the Judiciary, "Representation for the District of Columbia," hearings conducted Aug. 3, Sept. 14 and 21, October 4 and 6, 1977, Washington, 1978.

95TH CONGRESS
2D SESSION

H. J. RES. 554

IN THE SENATE OF THE UNITED STATES

MARCH 6, 1978

Received; read the first time

JOINT RESOLUTION

Proposing an amendment to the Constitution to provide for representation of the District of Columbia in the Congress.

1 *Resolved by the Senate and House of Representatives*
2 *of the United States of America in Congress assembled*
3 *(two-thirds of each House concurring therein), That the*
4 following article is proposed as an amendment to the Con-
5 stitution of the United States, which shall be valid to all
6 intents and purposes as part of the Constitution when ratified
7 by the legislatures of three-fourths of the several States
8 within seven years from the date of its submission by the
9 Congress:

II

1 "ARTICLE —

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

7 "SEC. 2. The exercise of the rights and powers con-
8 ferred under this article shall be by the people of the Dis-
9 trict constituting the seat of government, and as shall be
10 provided by the Congress.

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

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

Passed the House of Representatives March 2, 1978.

Attest: EDMUND L. HENSHAW, JR.,
Clerk.