110TH CONGRESS
1st Session
HOUSE OF REPRESENTATIVES
REPT. 110–52
Part 2

DISTRICT OF COLUMBIA HOUSE VOTING RIGHTS ACT OF 2007

MARCH 20, 2007.—Ordered to be printed

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

R E P O R T

together with

MINORITY, DISSENTING, AND ADDITIONAL DISSENTING VIEWS

[To accompany H.R. 1433]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (H.R. 1433) to provide for the treatment of the District of Columbia as a Congressional district for purposes of representation in the House of Representatives, and for other purposes, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

CONTENTS

	Page
Purpose and Summary	2
Background and Need for the Legislation	2
Hearings	5
Committee Consideration	6
Committee Votes	6
Committee Oversight Findings	10
New Budget Authority and Tax Expenditures	10
Congressional Budget Office Cost Estimate	11
Performance Goals and Objectives	13
Constitutional Authority Statement	13
Advisory on Earmarks	14
Section-by-Section Analysis	14
Changes in Existing Law Made by the Bill, as Reported	15
Minority Views	27
Dissenting Views	32
Additional Dissenting Views	34

59–006

PURPOSE AND SUMMARY

H.R. 1433, the "District of Columbia House Voting Rights Act of 2007," will provide the District of Columbia with full representation in the U.S. House of Representatives. The bill permanently expands the U.S. House of Representatives from 435 to 437 seats. The two-seat increase will provide a vote to the District of Columbia and a new, at-large seat through the One Hundred Twelfth Congress to the State next entitled to increase its congressional representation. Based on the 2000 Census, Utah is the State next entitled to increase its congressional representation.

BACKGROUND AND NEED FOR THE LEGISLATION

Over half a million people living in the District of Columbia lack direct voting representation in the House of Representatives and Senate.[1] For over 200 years, the District has been denied this voting representation in Congress—the very entity that has ultimate authority over all aspects of the city's legislative, executive, and judicial functions. The United States is the only democracy in the world that deprives the residents of its capital city voting representation in the national legislature.[2] Essentially, citizens of every State have a vote regarding the laws that govern the District, while those living in the District itself do not.[3]

Residents of the District of Columbia serve in the military, pay billions of dollars in Federal taxes each year, serve on juries, and assume other responsibilities of U.S. citizenship.[4] Notably, numerous District residents work for the Federal Government. Yet despite such contributions, the United States denies democracy in its capital while it promotes democracy abroad. Many Americans realize the great injustice of denying U.S. citizens living in the Nation's capital representation in Congress. In January 2005, a national poll indicated that 82% of Americans believe that Washingtonians deserve congressional representation.[5] There is no sound explanation as to why District residents have been disenfranchised since the District was created in 1800.

The Constitution is completely silent on the question of congressional representation for District residents; it neither provides nor denies representation for them. While there is no evidence that the Framers intended to deny voting representation for District residents, the Framers did provide the Congress with absolute authority over the District to rectify such a problem. Professor Viet Dinh explains, "[t]here are no indications, textual or otherwise, to suggest that the Framers intended that congressional authority under the District Clause, extraordinary and plenary in all respects, would not extend also to grant District residents representation in Congress."[6]

---

[1] H.R. 1433, 110th Cong. (2007).

[2] Rick Bress, Memorandum submitted to the U.S. House of Representatives, Committee on the Judiciary, *Constitutionality of the D.C. Voting Rights Bill* (March 2006).

[3] *Id.*

[4] *See* H.R. 1433, Sec. 2, 110th Cong. (2007).

[5] DC Vote, Memorandum submitted to the U.S. House of Representatives, Committee on the Judiciary, *DC Fair and Equal House Voting Rights Act* (March 2006).

[6] Testimony on the *District of Columbia House Voting Rights Act of 2007* before the H. Comm. on the Judiciary, 110th Cong. (2007) (statement of Prof. Viet. D. Dinh). Professor Dinh also points out that during 1790–1800, 1790 being the year in which Maryland and Virginia ceded land to the Federal Government for the creation of the capital city, and 1800 being the year

CONGRESS'S CONSTITUTIONAL AUTHORITY TO PROVIDE CONGRESSIONAL REPRESENTATION TO THE DISTRICT

Article I, Section 8, Clause 17—the "District Clause"—provides Congress with the authority to provide the District with full representation in the U.S. House Representatives. The District Clause provides:

> "The Congress shall have Power . . . To exercise exclusive Legislation in all cases whatsoever, over such District (not exceeding ten Miles square) as may, by Cession of particular States, and the Acceptance of Congress, become the Seat of the Government of the United States. . . ." [7]

Testifying before the House Government Reform Committee on June 23, 2004, Kenneth Starr said:

> "Congress's powers over the District are not limited to simply those powers that a State legislature might have over a State. As emphasized by the Federal courts on numerous occasions, the Seat of Government Clause is majestic in scope. In the words of the Supreme Court, "[t]he object of the grant of exclusive legislation over the [D]istrict was, therefore, national in the highest sense. . . . In the same article which granted the powers of exclusive legislation . . . are conferred all the other great powers which make the nation." (quoting *O'Donoghue v. United States,* 289 US 516, 539–540 (1933)). And my predecessors on the D.C. Circuit Court of Appeals once held that Congress can "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." [8]

Numerous case law substantiates Starr's claim that "the Seat of Government Clause is majestic in scope." [9] *Neild v. District of Columbia* holds that the District Clause is "sweeping and inclusive in character." [10] *United States v. Cohen* finds that Congress has "extraordinary and plenary power" over the District.[11] Even in *Adams v. Clinton,* in which the U.S. District Court for the District of Columbia held that District residents do not have a judicially cognizable right to congressional representation as the District is not a State under article I, section 2,[12] the Court found that "if [the plaintiffs] are to obtain [relief], they must plead their cause in other venues." [13] The court stated that counsel for defendant House officials acknowledged that "only congressional legislation or constitutional amendment can remedy plaintiffs' exclusion from the

---

in which the Federal Government assumed control over the District, District residents were able to vote in congressional elections in Maryland and Virginia. He says, "[t]he actions of this first Congress, authorizing District residents to vote in congressional elections of the ceding States, thus demonstrate the Framers' belief that Congress may authorize by statute representation for the district." *Id.*

[7] U.S. CONST., Art. I, §8, cl. 17.

[8] *Common Sense Justice for the Nation's Capital: An Examination of Proposals to Give D.C. Residents Direct Representation: Hearing on H.R. 5388, Before the H. Comm. on Government Reform,* 108th Cong. (2004). (testimony of the Hon. Kenneth W. Starr).

[9] *Id.*

[10] 110 F.2d 246, 249 (D.C. App. 1940).

[11] 733 F.2d 128, 140 (D.C. Cir. 1984).

[12] 90 F. Supp. 2d 35, 55–56 (D.D.C. 2000).

[13] *Id.* at 72.

franchise."[14] This holding confirms that Congress is enabled, through the District Clause, to provide the District with congressional representation through simple legislation.

The Supreme Court first recognized Congress's plenary authority over the District in 1805. In *Hepburn v. Ellzey,*[15] the Supreme Court held that diversity jurisdiction did not exist between the District and Virginia, as article III, Section 2 of the Constitution provides that diversity jurisdiction only exists "between citizens of different *States.*"[16] However, the Court, explaining "this is a subject for legislative, not for judicial consideration,"[17] clarified Congress's authority to enact legislation extending diversity jurisdiction to the District.[18] Congress went on to enact such a statute, which, when later challenged in *National Mutual Insurance Co. of the District of Columbia v. Tidewater Co.,* was upheld based on Congress's article I power to legislate for the District.[19]

Tidewater advances the argument that the District Clause can be used to grant District residents certain Constitutional rights and status reserved for State citizens. As such, while article I, section 2 provides for the election of Members of the House of Representatives by the "people of the several States,"[20] Congress is not precluded from providing the District with the opportunity to elect a House Representative. Significantly, five of the concurring justices in *Tidewater* believed that the District was a State under the terms of the Constitution or that the Congress, through use of the District Clause, could treat the District like a State.[21]

Aside from diversity jurisdiction, the Congress has used its plenary authority over the District to provide the District with other rights and privileges afforded to the States. Congress treating the District as a State for purposes of alcohol regulation under the Alcoholic Beverage Control Act was upheld in *Milton S. Kronheim & Co. Inc. v. District of Columbia*.[22] In *Palmore v. United States,*[23] the Supreme Court upheld Congress's designation of the District of Columbia Court of Appeals as the "highest court of a State" for purposes of Supreme Court review of final judgments. Among other examples, the District is also treated like a State for purposes of affording 11th amendment immunity to the Washington Metropolitan Area Transit Authority.[24]

CONGRESS'S CONSTITUTIONAL AUTHORITY TO MANDATE A TEMPORARY AT-LARGE SEAT

Article I, § 4 of the Constitution provides:

> The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by

---

[14] *Id.* at 40.
[15] 6 U.S. 445 (1805).
[16] U.S. CONST., Art. III, § 2 (emphasis added).
[17] This opinion in *Hepburn* provides the foundation for the opinion in *Adams.* Both courts recognized the ability of the Congress to act through legislation where the Judiciary was unable to act through an order.
[18] 6 U.S. 445, 453 (1805).
[19] *National Mutual Insurance Co. of the District of Columbia v. Tidewater Co.,* 337 U.S. 582, 589 (1949).
[20] *U.S. Const.,* Art. I, § 2.
[21] 337 U.S. 582, 589 (1949).
[22] 91 F.3d 193 (D.C. Cir. 1996).
[23] 411 U.S. 389 (1973).
[24] *Clarke v. Wash. Metro. Area Transit Auth.,* 654 F. Supp. 712 (D.D.C. 1985), *aff'd,* 808 F.2d 137 (D.C. Cir. 1987),

> the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of [choosing] Senators.

In interpreting article I, the Supreme Court has determined that the Constitution gives Congress broad authority to regulate national elections. In *Oregon v. Mitchell,*[25] Justice Black wrote, "[i]n the very beginning the responsibility of the States for setting the qualifications of voters in congressional elections was made subject to the power of Congress to make or alter such regulations, if it deemed advisable to do so."[26] In 2004, in *Vieth v. Jubelirer,* Justice Scalia noted that, "article I, § 4, while leaving in State legislatures the initial power to draw districts for Federal elections, permitted Congress to 'make or alter' those districts if it wished."[27]

Given this broad authority to regulate Federal elections, Congress has the ability to mandate that Utah's fourth seat be an at-large seat through the year 2012. The congressional Research Service (CRS) finds that "Congress has ultimate authority over most aspects of the congressional election process" and that "congressional power is at its most broad in the case of House elections."[28] As such, Congress has the constitutional authority to temporarily mandate an at-large seat for Utah, notwithstanding the general statutory requirement in 2 U.S.C. 2(c) that Members run from single-member districts rather than at-large districts.[29]

Additionally, a temporary at-large seat in Utah is consistent with the "one person, one vote" principal. The U.S. Supreme Court has held that the U.S. Constitution requires that each congressional district in a State contain equal population.[30] The Court has held that article I, § 2 of the Constitution requires that "as nearly as is practicable, one man's vote in a congressional election is to be worth as much as another's."[31] In Utah, all voters will have the opportunity to vote both for a candidate to represent his or her congressional district and a candidate to represent the State at-large, "thereby comporting with the one person, one vote principle."[32]

HEARINGS

The full Committee on the Judiciary held 1 day of hearings on H.R. 1433 on March 14, 2007. Testimony was received from Viet D. Dinh, former U.S. Assistant Attorney General for Legal Policy at the U.S. Department of Justice; Bruce Spiva, Chair of the Board of DC Vote; Rick Bress, Partner in the Washington, DC office of Latham & Watkins; and Jonathan Turley, Professor of Law at George Washington University.

---

[25] 400 U.S. 112 (1970).
[26] *Id.* at 119.
[27] 541 U.S. 267, 275 (2004).
[28] L. Paige Whitaker and Kenneth R. Thomas, Congressional Research Service (CRS) Memorandum, *Constitutionality of Congress Creating an At-Large Seat for a Member of Congress*" (June 5, 2006) at 1–2.
[29] 2 U.S.C. 2(c)
[30] *See Wesberry v. Sanders,* 376 U.S. 1 (1864).
[31] *Id.* at 18.
[32] L. Paige Whitaker and Kenneth R. Thomas, Congressional Research Service (CRS) Memorandum, *Constitutionality of Congress Creating an At-Large Seat for a Member of Congress*" (June 5, 2006) at 4.

COMMITTEE CONSIDERATION

On March 15, 2007, the Committee met in open session and ordered the bill H.R. 1433 favorably reported, by a vote of 21 to 13, a quorum being present.

COMMITTEE VOTES

In compliance with clause 3(b) of rule XIII of the Rules of the House of Representatives, the Committee advises that the following rollcall votes occurred during the Committee's consideration of H.R. 1433.

1. An amendment offered by Mr. Smith, providing for expedited judicial review and explicit standing for Members of Congress. The amendment failed by a vote of 15 to 19.

ROLLCALL NO. 1

	Ayes	Nays	Present
Mr. Conyers, Jr., Chairman		X	
Mr. Berman		X	
Mr. Boucher		X	
Mr. Nadler		X	
Mr. Scott		X	
Mr. Watt		X	
Ms. Lofgren			
Ms. Jackson Lee		X	
Ms. Waters		X	
Mr. Meehan			
Mr. Delahunt			
Mr. Wexler		X	
Ms. Sánchez		X	
Mr. Cohen		X	
Mr. Johnson		X	
Mr. Gutierrez		X	
Mr. Sherman		X	
Mr. Weiner		X	
Mr. Schiff		X	
Mr. Davis		X	
Ms. Wasserman Schultz		X	
Mr. Ellison		X	
Mr. Smith (Texas)	X		
Mr. Sensenbrenner, Jr.	X		
Mr. Coble	X		
Mr. Gallegly			
Mr. Goodlatte	X		
Mr. Chabot	X		
Mr. Lungren	X		
Mr. Cannon	X		
Mr. Keller	X		
Mr. Issa			
Mr. Pence	X		
Mr. Forbes	X		
Mr. King	X		
Mr. Feeney	X		
Mr. Franks	X		
Mr. Gohmert	X		
Mr. Jordan	X		
Total	15	19	

2. An amendment offered by Mr. Sensenbrenner to amend an amendment offered by Mr. Cannon, requiring Utah to redistrict into four single-member districts. The amendment failed by a vote of 14 to 20.

ROLLCALL NO. 2

	Ayes	Nays	Present
Mr. Conyers, Jr., Chairman		X	
Mr. Berman		X	
Mr. Boucher		X	
Mr. Nadler		X	
Mr. Scott		X	
Mr. Watt		X	
Ms. Lofgren			
Ms. Jackson Lee		X	
Ms. Waters		X	
Mr. Meehan			
Mr. Delahunt			
Mr. Wexler		X	
Ms. Sánchez		X	
Mr. Cohen		X	
Mr. Johnson		X	
Mr. Gutierrez		X	
Mr. Sherman		X	
Mr. Weiner		X	
Mr. Schiff		X	
Mr. Davis		X	
Ms. Wasserman Schultz		X	
Mr. Ellison		X	
Mr. Smith (Texas)	X		
Mr. Sensenbrenner, Jr.	X		
Mr. Coble	X		
Mr. Gallegly			
Mr. Goodlatte	X		
Mr. Chabot	X		
Mr. Lungren	X		
Mr. Cannon		X	
Mr. Keller	X		
Mr. Issa			
Mr. Pence	X		
Mr. Forbes	X		
Mr. King	X		
Mr. Feeney	X		
Mr. Franks	X		
Mr. Gohmert	X		
Mr. Jordan	X		
Total	14	20	

3. An amendment offered by Mr. Cannon, permitting Utah to redistrict before 2012. The amendment failed by a vote of 8 to 26.

ROLLCALL NO. 3

	Ayes	Nays	Present
Mr. Conyers, Jr., Chairman		X	
Mr. Berman		X	
Mr. Boucher		X	
Mr. Nadler		X	
Mr. Scott		X	
Mr. Watt		X	
Ms. Lofgren			
Ms. Jackson Lee		X	
Ms. Waters		X	
Mr. Meehan			
Mr. Delahunt			
Mr. Wexler		X	
Ms. Sánchez		X	
Mr. Cohen		X	
Mr. Johnson		X	

ROLLCALL NO. 3—Continued

	Ayes	Nays	Present
Mr. Gutierrez		X	
Mr. Sherman		X	
Mr. Weiner		X	
Mr. Schiff		X	
Mr. Davis		X	
Ms. Wasserman Schultz		X	
Mr. Ellison		X	
Mr. Smith (Texas)		X	
Mr. Sensenbrenner, Jr.		X	
Mr. Coble		X	
Mr. Gallegly			
Mr. Goodlatte	X		
Mr. Chabot		X	
Mr. Lungren	X		
Mr. Cannon	X		
Mr. Keller		X	
Mr. Issa			
Mr. Pence	X		
Mr. Forbes	X		
Mr. King		X	
Mr. Feeney	X		
Mr. Franks	X		
Mr. Gohmert		X	
Mr. Jordan	X		
Total	8	26	

4. Amendment #A offered by Mr. Gohmert, as amended by an amendment offered by Mr. Franks, delaying the seating of Members elected pursuant to the legislation until the One Hundred and Thirteenth Congress. The amendment failed by a vote of 10 to 24.

ROLLCALL NO. 4

	Ayes	Nays	Present
Mr. Conyers, Jr., Chairman		X	
Mr. Berman		X	
Mr. Boucher		X	
Mr. Nadler		X	
Mr. Scott		X	
Mr. Watt		X	
Ms. Lofgren			
Ms. Jackson Lee		X	
Ms. Waters		X	
Mr. Meehan			
Mr. Delahunt			
Mr. Wexler		X	
Ms. Sánchez		X	
Mr. Cohen		X	
Mr. Johnson		X	
Mr. Gutierrez		X	
Mr. Sherman		X	
Mr. Weiner		X	
Mr. Schiff		X	
Mr. Davis		X	
Ms. Wasserman Schultz		X	
Mr. Ellison		X	
Mr. Smith (Texas)	X		
Mr. Sensenbrenner, Jr.		X	
Mr. Coble	X		
Mr. Gallegly			
Mr. Goodlatte	X		
Mr. Chabot	X		

ROLLCALL NO. 4—Continued

	Ayes	Nays	Present
Mr. Lungren	X		
Mr. Cannon		X	
Mr. Keller		X	
Mr. Issa			
Mr. Pence		X	
Mr. Forbes		X	
Mr. King	X		
Mr. Feeney	X		
Mr. Franks	X		
Mr. Gohmert	X		
Mr. Jordan	X		
Total	10	24	

5. Amendment #1 offered by Mr. Gohmert, expanding the total number of congressional districts by classifying military reservations with populations greater than 10,000 as separate congressional districts. The amendment failed by a vote of 3 to 31.

ROLLCALL NO. 5

	Ayes	Nays	Present
Mr. Conyers, Jr., Chairman		X	
Mr. Berman		X	
Mr. Boucher		X	
Mr. Nadler		X	
Mr. Scott		X	
Mr. Watt		X	
Ms. Lofgren			
Ms. Jackson Lee		X	
Ms. Waters		X	
Mr. Meehan			
Mr. Delahunt			
Mr. Wexler		X	
Ms. Sánchez		X	
Mr. Cohen		X	
Mr. Johnson		X	
Mr. Gutierrez		X	
Mr. Sherman		X	
Mr. Weiner		X	
Mr. Schiff		X	
Mr. Davis		X	
Ms. Wasserman Schultz		X	
Mr. Ellison		X	
Mr. Smith (Texas)	X		
Mr. Sensenbrenner, Jr.		X	
Mr. Coble		X	
Mr. Gallegly			
Mr. Goodlatte		X	
Mr. Chabot	X		
Mr. Lungren		X	
Mr. Cannon		X	
Mr. Keller		X	
Mr. Issa			
Mr. Pence		X	
Mr. Forbes		X	
Mr. King		X	
Mr. Feeney		X	
Mr. Franks		X	
Mr. Gohmert	X		
Mr. Jordan		X	
Total	3	31	

H.R. 1433, was ordered favorably reported by a vote of 21 to 13.

ROLLCALL NO. 6

	Ayes	Nays	Present
Mr. Conyers, Jr., Chairman	X		
Mr. Berman	X		
Mr. Boucher	X		
Mr. Nadler	X		
Mr. Scott	X		
Mr. Watt	X		
Ms. Lofgren			
Ms. Jackson Lee	X		
Ms. Waters	X		
Mr. Meehan			
Mr. Delahunt			
Mr. Wexler	X		
Ms. Sánchez	X		
Mr. Cohen	X		
Mr. Johnson	X		
Mr. Gutierrez	X		
Mr. Sherman	X		
Ms. Baldwin			
Mr. Weiner	X		
Mr. Schiff	X		
Mr. Davis	X		
Ms. Wasserman Schultz	X		
Mr. Ellison	X		
Mr. Smith		X	
Mr. Sensenbrenner		X	
Mr. Coble		X	
Mr. Gallegly			
Mr. Goodlatte		X	
Mr. Chabot		X	
Mr. Lungren		X	
Mr. Cannon	X		
Mr. Keller		X	
Mr. Issa			
Mr. Pence	X		
Mr. Forbes		X	
Mr. King		X	
Mr. Feeney		X	
Mr. Franks		X	
Mr. Gohmert		X	
Mr. Jordan		X	
Total	21	13	

COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee advises that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

NEW BUDGET AUTHORITY AND TAX EXPENDITURES

Clause 3(c)(2) of rule XIII of the Rules of the House of Representatives is inapplicable because this legislation does not provide new budgetary authority or increased tax expenditures.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

In compliance with clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the Committee sets forth, with respect to the bill, H.R. 1433, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, March 16, 2007.

Hon. JOHN CONYERS, Jr., *Chairman,*
Committee on the Judiciary,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 1433, the District of Columbia House Voting Rights Act of 2007.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Matthew Pickford (for federal costs), who can be reached at 226–2860, and Melissa Merrell (for the state and local impact), who can be reached at 225–3220.

Sincerely,

PETER R. ORSZAG,
DIRECTOR.

Enclosure

cc: Honorable Lamar S. Smith.
Ranking Member

H.R. 1433—District of Columbia House Voting Rights Act of 2007.

SUMMARY

H.R. 1433 would expand the number of Members in the House of Representatives from 435 to 437 during the 110th Congress. The legislation would provide the District of Columbia with one Representative and add one new at-large Member (after a special election). Under H.R. 1433, the new at-large seat would initially be assigned to the state of Utah and then would be reallocated based on the next Congressional apportionment following the 2010 census.

CBO estimates that enacting the bill would increase direct spending by about $200,000 in 2008 and by about $2.5 million over the 2008–2017 period. In addition, implementing the bill would have discretionary costs of about $1 million in 2008 and about $9 million over the 2008–2012 period, assuming the availability of the appropriated funds.

H.R. 1433 contains an intergovernmental mandate as defined in the Unfunded Mandates Reform Act (UMRA), but CBO estimates that the costs would not be significant and would not exceed the threshold established in UMRA ($66 million in 2007, adjusted annually for inflation). The bill contains no private-sector mandates as defined in UMRA.

ESTIMATED COST TO THE FEDERAL GOVERNMENT

The estimated budgetary impact of H.R. 1433 is shown in the following table. The costs of this legislation fall within budget function 800 (general government).

	By Fiscal Year, in Millions of Dollars									
	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017
CHANGES IN DIRECT SPENDING										
New Representative's Salary and Benefits										
Estimated Budget Authority	*	*	*	*	*	*	*	*	*	*
Estimated Outlays	*	*	*	*	*	*	*	*	*	*
CHANGES IN SPENDING SUBJECT TO APPROPRIATION										
New Representative's Office and Administrative Expenses										
Estimated Authorization Level	1	2	2	2	2	2	2	2	2	2
Estimated Outlays	1	2	2	2	2	2	2	2	2	2

NOTE: * = less than $500,000.

BASIS OF ESTIMATE

For this estimate, CBO assumes that the bill will be enacted before the start of fiscal year 2008, that Utah will hold a special election before or early in the second session of the 110th Congress, and that spending will follow historical patterns for Congressional office spending.

The legislation would permanently expand the number of Members in the House of Representatives by two to 437 Members. The new representatives would take office on the same day. One new Member would represent the District of Columbia and the other would be a Representative at-large for the state of Utah until the next apportionment based on the 2010 census. The District of Columbia currently has a nonvoting delegate to the House of Representatives and would not hold a special election. H.R. 1433 would establish voting representation for the conversion of the District's delegate to Representative and would not add significant costs since the position is already funded with the same salary and administrative support as other Representatives.

Direct Spending

Enacting H.R. 1433 would increase direct spending for the salary and associated benefits for the new at-large Representative. CBO estimates that the increase in direct spending for the Congressional salary and benefits would be about $2.5 million over the 2008–2017 period. That estimate assumes that the current Congressional salary of $165,200 would be adjusted for inflation. With benefits, the 2008 cost would be about $200,000.

Spending Subject to Appropriation

Based on the current administrative and expense allowances available for Members and other typical Congressional office costs, CBO estimates that the addition of a new Member would cost about $1 million in fiscal year 2008 and about $9 million over the 2008–2012 period, subject to the availability of appropriated funds.

ESTIMATED IMPACT ON STATE, LOCAL, AND TRIBAL GOVERNMENTS

H.R. 1433 contains an intergovernmental mandate as defined in UMRA because it would temporarily preempt laws in the state of Utah that govern the election of Members of the House of Representatives. The bill would require the state to elect an additional Member of the House using a statewide election. The state may derive benefits from having an additional Member of the House of Representatives. However, Utah could incur some costs to hold a special election in 2007 or 2008 and would incur small marginal costs to elect the additional Member through the 2010 election cycle. CBO estimates that those costs would not be significant and would not exceed the threshold established in UMRA ($66 million in 2007, adjusted annually for inflation.)

ESTIMATED IMPACT ON THE PRIVATE SECTOR

The legislation contains no new private-sector mandates as defined in UMRA.

PREVIOUS CBO ESTIMATE

On March 16, 2007, CBO also provided a cost estimate for H.R. 1433 as ordered reported by the House Committee on Oversight and Government Reform on March 13, 2007. The two versions of the bill are similar, and our cost estimates are the same.

ESTIMATE PREPARED BY:

Federal Costs: Matthew Pickford (226–2860)
Impact on State, Local, and Tribal Governments: Melissa Merrell (225–3220)
Impact on the Private-Sector: Paige Piper/Bach (226–2940)

ESTIMATE APPROVED BY:

Peter H. Fontaine
Deputy Assistant Director for Budget Analysis

PERFORMANCE GOALS AND OBJECTIVES

The Committee states that pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, H.R. 1433, will provide the District of Columbia with full representation in the U.S. House of Representatives.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee finds the authority for this legislation in article I, section 8, clause 17 of the Constitution and article I, section 4, clause 1.

ADVISORY ON EARMARKS

In accordance with clause 9 of rule XXI of the Rules of the House of Representatives, H.R. 1433 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(d), 9(e), or 9(f) of Rule XXI.

SECTION-BY-SECTION ANALYSIS AND DISCUSSION

The following discussion describes the bill as reported by the Committee.

Section 1. Short Title. This section designates the short title of the bill as the "District of Columbia House Voting Rights Act of 2007."

Section 2. Findings. This section notes that the citizens of the District of Columbia lack direct voting representation in the U.S. Senate and House of Representatives. It notes that District Citizens have served in every war since the War of Independence and that they pay Federal taxes. This section also notes that the Nation is founded on principles of "one person, one vote" and "government by the consent of the governed."

Section 3. Treatment of District of Columbia as Congressional District. This section establishes that the District of Columbia shall be considered a congressional district for purposes of representation in the House of Representatives. It clarifies that the District remains entitled to three Presidential electors as required by the 23rd Amendment. It makes conforming amendments at various places in the U.S. Code where the current language mentions congressional districts in States, adding "the District of Columbia."

Section 4. Permanent Increase in the Membership of House Representatives. This section provides that, effective for the 110th Congress and each succeeding Congress, the size of the Congress shall be increased by two Members. One seat would be designated for the District of Columbia, and the other seat would go to Utah, the State next in line under the 2000 Census apportionment formula. The section also requires that the new seat established in Utah shall be an at-large seat that shall exist through the 112th Congress, the period prior to elections for redrawn seats pursuant to the 2012 reapportionment.

Section 5. Repeal of the Office of the District of Columbia Delegate. The section repeals the Office of the District of Columbia Delegate and makes conforming amendments.

Section 6. Repeal of Office of Statehood Representative. This section eliminates the Office of Statehood Representative, but leaves intact the Office of Statehood Senator. This section also makes appropriate conforming amendments.

Section 7. Nonseverability of Provisions. This section ensures that should any section of this bill be struck down, all sections will be vacated. The carefully crafted balance is an essential part of this legislation. Any result that would grant a seat to the District and not Utah, or vice versa, would be counter to Congress's intent. Therefore, no provision of this legislation should be effective unless all provisions are effective. No provision of the bill should be enjoined without the entire bill being so enjoined.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

SECTION 22 OF THE ACT OF JUNE 18, 1929

AN ACT To provide for the fifteenth and subsequent decennial censuses and to provide for apportionment of Representatives in Congress.

SEC. 22. (a) On the first day, or within one week thereafter, of the first regular session of the Eighty-second Congress and of each fifth Congress thereafter, the President shall transmit to the Congress a statement showing the whole number of persons in each State, excluding Indians not taxed, as ascertained under the seventeenth and each subsequent decennial census of the population, and the number of Representatives to which each State would be entitled under an apportionment of [the then existing number of Representatives] *the number of Representatives established with respect to the One Hundred Tenth Congress* by the method known as the method of equal proportions, no State to receive less than one Member.

* * * * * * *

(d) This section shall apply with respect to the District of Columbia in the same manner as this section applies to a State, except that the District of Columbia may not receive more than one Member under any reapportionment of Members.

SECTION 3 OF TITLE 3, UNITED STATES CODE

NUMBER OF ELECTORS

§ 3. The number of electors shall be equal to the number of Senators and Representatives to which the several States are by law entitled at the time when the President and Vice President to be chosen [come into office;] *come into office (subject to the twenty-third article of amendment to the Constitution of the United States in the case of the District of Columbia);* except, that where no apportionment of Representatives has been made after any enumeration, at the time of choosing electors, the number of electors shall be according to the then existing apportionment of Senators and Representatives.

TITLE 10, UNITED STATES CODE

* * * * * * *

Subtitle B—Army

* * * * * * *

PART III—TRAINING

* * * * * * *

CHAPTER 403—UNITED STATES MILITARY ACADEMY

* * * * * * *

§ 4342. Cadets: appointment; numbers, territorial distribution

(a) The authorized strength of the Corps of Cadets of the Academy (determined for any year as of the day before the last day of the academic year) is 4,000 or such higher number as may be prescribed by the Secretary of the Army under subsection (j). Subject to that limitation, cadets are selected as follows:

(1) * * *

* * * * * * *

[(5) Five cadets from the District of Columbia, nominated by the Delegate to the House of Representatives from the District of Columbia.]

* * * * * * *

(f) Each candidate for admission nominated under clauses (3) through (9) of subsection (a) must be domiciled in the State, or in the congressional district, from which he is nominated, or in [the District of Columbia,] Puerto Rico, American Samoa, Guam, or the Virgin Islands, if nominated from one of those places.

* * * * * * *

Subtitle C—Navy and Marine Corps

* * * * * * *

PART III—EDUCATION AND TRAINING

* * * * * * *

CHAPTER 603—UNITED STATES NAVAL ACADEMY

* * * * * * *

§ 6954. Midshipmen: number

(a) The authorized strength of the Brigade of Midshipmen (determined for any year as of the day before the last day of the academic year) is 4,000 or such higher number as may be prescribed by the Secretary of the Navy under subsection (h). Subject to that limitation, midshipmen are selected as follows:

(1) * * *

* * * * * * *

[(5) Five from the District of Columbia, nominated by the Delegate to the House of Representatives from the District of Columbia.]

* * * * * * *

§ 6958. Midshipmen: qualifications for admission

(a) * * *

(b) Each candidate for admission nominated under clauses (3) through (9) of section 6954(a) of this title must be domiciled in the State, or in the congressional district, from which he is nominated, or in [the District of Columbia,] Puerto Rico, American Samoa, Guam, or the Virgin Islands, if nominated from one of those places.

* * * * * * *

Subtitle D—Air Force

* * * * * * *

PART III—TRAINING

* * * * * * *

CHAPTER 903—UNITED STATES AIR FORCE ACADEMY

* * * * * * *

§ 9342. Cadets: appointment; numbers, territorial distribution

(a) The authorized strength of Air Force Cadets of the Academy (determined for any year as of the day before the last day of the academic year) is 4,000 or such higher number as may be prescribed by the Secretary of the Air Force under subsection (j). Subject to that limitation, Air Force Cadets are selected as follows:

(1) * * *

* * * * * * *

[(5) Five cadets from the District of Columbia, nominated by the Delegate to the House of Representatives from the District of Columbia.]

* * * * * * *

(f) Each candidate for admission nominated under clauses (3) through (9) of subsection (a) must be domiciled in the State, or in the congressional district, from which he is nominated, or in [the District of Columbia,] Puerto Rico, American Samoa, Guam, or the Virgin Islands, if nominated from one of those places.

* * * * * * *

DISTRICT OF COLUMBIA DELEGATE ACT

TITLE II—DISTRICT OF COLUMBIA DELEGATE TO THE HOUSE OF REPRESENTATIVES

SHORT TITLE

SEC. 201. This title may be cited as the "District of Columbia Delegate Act".

[DELEGATE TO THE HOUSE OF REPRESENTATIVES

[SEC. 202. (a) The people of the District of Columbia shall be represented in the House of Representatives by a Delegate, to be known as the "Delegate to the House of Representatives from the

District of Columbia", who shall be elected by the voters of the District of Columbia in accordance with the District of Columbia Election Act. The Delegate shall have a seat in the House of Representatives, with the right of debate, but not of voting, shall have all the privileges granted a Representative by section 6 of Article I of the Constitution, and shall be subject to the same restrictions and regulations as are imposed by law or rules on Representatives. The Delegate shall be elected to serve during each Congress.

[(b) No individual may hold the office of Delegate to the House of Representatives from the District of Columbia unless on the date of his election—

[(1) he is a qualified elector (as that term is defined in section 2(2) of the District of Columbia Election Act) of the District of Columbia;

[(2) he is at least twenty-five years of age;

[(3) he holds no other paid public office; and

[(4) he has resided in the District of Columbia continuously since the beginning of the three-year period ending on such date.

He shall forfeit his office upon failure to maintain the qualifications required by this subsection.]

* * * * * * *

[OTHER PROVISIONS AND AMENDMENTS RELATING TO THE ESTABLISHMENT OF A DELEGATE TO THE HOUSE OF REPRESENTATIVES FROM THE DISTRICT OF COLUMBIA

[SEC. 204. (a) The provisions of law which appear in—

[(1) section 25 (relating to oath of office),

[(2) section 31 (relating to compensation),

[(3) section 34 (relating to payment of compensation),

[(4) section 35 (relating to payment of compensation),

[(5) section 37 (relating to payment of compensation),

[(6) section 38a (relating to compensation),

[(7) section 39 (relating to deductions for absence),

[(8) section 40 (relating to deductions for withdrawal),

[(9) section 40a (relating to deductions for delinquent indebtedness),

[(10) section 41 (relating to prohibition on allowance for newspapers),

[(11) section 42c (relating to postage allowance),

[(12) section 46b (relating to stationery allowance),

[(13) section 46b–1 (relating to stationery allowance),

[(14) section 46b–2 (relating to stationery allowance),

[(15) section 46g (relating to telephone, telegraph, and radiotelegraph allowance),

[(16) section 47 (relating to payment of compensation),

[(17) section 48 (relating to payment of compensation),

[(18) section 49 (relating to payment of compensation),

[(19) section 50 (relating to payment of compensation),

[(20) section 54 (relating to provision of United States Code Annotated or Federal Code Annotated),

[(21) section 60g–1 (relating to clerk hire),

[(22) section 60g–2(a) (relating to interns),

[(23) section 80 (relating to payment of compensation),

[(24) section 81 (relating to payment of compensation),
[(25) section 82 (relating to payment of compensation),
[(26) section 92 (relating to clerk hire),
[(27) section 92b (relating to pay of clerical assistants),
[(28) section 112e (relating to electrical and mechanical office equipment),
[(29) section 122 (relating to office space in the District of Columbia), and
[(30) section 123b (relating to use of House Recording Studio),

of title 2 of the United States Code shall apply with respect to the Delegate to the House of Representatives from the District of Columbia in the same manner and to the same extent as they apply with respect to a Representative. The Federal Corrupt Practices Act and the Federal Contested Election Act shall apply with respect to the Delegate to the House of Representatives from the District of Columbia in the same manner and to the same extent as they apply with respect to a Representative.

[(b) Section 2106 of title 5 of the United States Code is amended by inserting "a Delegate from the District of Columbia," immediately after "House of Representatives,".

[(c) Sections 4342(a)(5), 6954(a)(5), and 9342(a)(5) of title 10 of the United States Code are each amended by striking out "by the Commissioner of that District" and inserting in lieu thereof "by the Delegate to the House of Representatives from the District of Columbia".

[(d)(1) Section 201(a) of title 18 of the United States Code is amended by inserting "the Delegate from the District of Columbia," immediately after "Member of Congress,".

[(2) Sections 203(a)(1) and 204 of title 18 of the United States Code are each amended by inserting "Delegate from the District of Columbia, Delegate Elect from the District of Columbia," immediately after "Member of Congress Elect,".

[(3) Section 203(b) of title 18 of the United States Code is amended by inserting "Delegate," immediately after "Member,".

[(4) The last undesignated paragraph of section 591 of title 18 of the United States Code is amended by inserting "the District of Columbia and" immediately after "includes".

[(5) Section 594 of title 18 of the United States Code is amended (1) by striking out "or" immediately after "Senate,", and (2) by striking out "Delegates or Commissioners from the Territories and possessions" and inserting in lieu thereof "Delegate from the District of Columbia, or Resident Commissioner".

[(6) Section 595 of title 18 of the United States Code is amended by striking out "or Delegate or Resident Commissioner from any Territory or Possession" and inserting in lieu thereof "Delegate from the District of Columbia, or Resident Commissioner".

[(e) Section 11(c) of the Voting Rights Act of 1965 (42 U.S.C. 1973i(c)) is amended by striking out "or Delegates or Commissioners from the territories or possessions" and inserting in lieu thereof "Delegate from the District of Columbia".

[(f) The second sentence in the second paragraph of section 7 of the District of Columbia Alcoholic Beverage Control Act (D.C. Code,

sec. 25–107) is amended by striking out "the presidential election" and inserting in lieu thereof "any election".]

* * * * * * *

DISTRICT OF COLUMBIA OFFICIAL CODE

* * * * * * *

TITLE 1—GOVERNMENT ORGANIZATION

* * * * * * *

CHAPTER 1—DISTRICT OF COLUMBIA GOVERNMENT DEVELOPMENT

* * * * * * *

SUBCHAPTER II—STATEHOOD

* * * * * * *

PART A—CONSTITUTIONAL CONVENTION INITIATIVE

* * * * * * *

SUBPART I—GENERAL

* * * * * * *

§ 1—123. Call of convention; duties of convention; adoption of constitution; rejection of constitution; election of Senator and Representative.

(a) * * *

* * * * * * *

(d)(1) Following the approval of a proposed constitution by a majority of the electors voting thereon, there shall be held an election of candidates for the [offices of Senator and Representative] *office of Senator* from the new state. Such election shall be partisan and shall be held at the next regularly scheduled primary and general elections following certification by the District of Columbia Board of Elections and Ethics that the proposed constitution has been approved by a majority of the electors voting thereon. In the event that the proposed constitution is approved by the electors at the general election to be held in November, 1982, the primary and general elections authorized by this paragraph shall be held in September, 1990, and November, 1990, respectively.

(2) The qualifications for candidates for the [offices of Senator and Representative] *office of Senator* shall conform with the provisions of Article I of the United States Constitution and the primary and general elections shall follow the same electoral procedures as provided for candidates for nonvoting Delegate of the District of Columbia in the District of Columbia Election Code of 1955, subchapter I of Chapter 10 of this title. The term of the 1st Representative elected pursuant to this initiative shall begin on January 2, 1991, and shall expire on January 2, 1993. The terms of the 1st Senators elected pursuant to this initiative shall begin on January

2, 1991, and shall expire on January 2, 1997, and January 2, 1995, respectively. At the initial election, the candidate for Senator receiving the highest number of votes will receive the longer term and the candidate receiving the second highest number of votes will receive the shorter term. A primary and a general election to replace [a Representative or] a Senator whose term is about to expire shall be held in September and in November respectively, of the year preceding the year during which the term of [the Representative or] the Senator expires. Each [Representative shall be elected for a 2-year term and each] Senator shall be elected for a 6-year term as prescribed by the Constitution of the United States.

(3) The District of Columbia Board of Elections and Ethics shall:

(A) Conduct elections to fill the positions of 2 United States Senators [and 1 United States Representative]; and

* * * * * * *

(e) A [Representative or] Senator elected pursuant to this subchapter shall be a public official as defined in § 1—1106.02(a), and subscribe to the oath or affirmation of office provided for in § 1—604.08.

(f) A [Representative or] Senator:

(1) * * *

* * * * * * *

(g)(1) A [Representative or] Senator may solicit and receive contributions to support the purposes and operations of the [Representative's or] Senator's public office. A [Representative or] Senator may accept services, monies, gifts, endowments, donations, or bequests. A [Representative or] Senator shall establish a District of Columbia statehood fund in 1 or more financial institutions in the District of Columbia. There shall be deposited in each fund any gift or contribution in whatever form, and any monies not included in annual Congressional appropriations. A [Representative or] Senator is authorized to administer the [Representative's or] Senator's respective fund in any manner the [Representative or] Senator deems wise and prudent, provided that the administration is lawful, in accordance with the fiduciary responsibilities of public office, and does not impose any financial burden on the District of Columbia.

(2) Contributions may be expended for the salary, office, or other expenses necessary to support the purposes and operations of the public office of a [Representative or] Senator, however, each [Representative or] Senator shall receive compensation no greater than the compensation of the Chairman of the Council of the District of Columbia, as provided in § 1—204.03 and § 1—611.09.

(3) Each [Representative or] Senator shall file with the Director of Campaign Finance a quarterly report of all contributions received and expenditures made in accordance with paragraph (1) of this subsection. No campaign activities related to election or reelection to the office of [Representative or] Senator shall be conducted nor shall expenditures for campaign literature or paraphernalia be authorized under paragraph (1) of this subsection.

(4) The recordkeeping requirements of subchapter I of Chapter 11 of this title, shall apply to contributions and expenditures made under paragraph (1) of this subsection.

(5) Upon expiration of a [Representative's or] Senator's term of office and where the [Representative or] Senator has not been re-elected, the [Representative's or] Senator's statehood fund, established in accordance with paragraph (1) of this subsection, shall be dissolved and any excess funds shall be used to retire the [Representative's or] Senator's debts for salary, office, or other expenses necessary to support the purposes and operation of the public office of the [Representative or] Senator. Any remaining funds shall be donated to an organization operating in the District of Columbia as a not-for-profit organization within the meaning of section 501(c) of the Internal Revenue Code of 1986, approved October 22, 1986 (100 Stat. 2085; 26 U.S.C. 501(c)).

(h) A [Representative or] Senator elected pursuant to subsection (d) of this section, shall be subject to recall pursuant to § 1—1001.18, during the period of the [Representative's or] Senator's service prior to the admission of the proposed new state into the union.

* * * * * * *

§ 1—125. Statehood Commission.

(a) The Statehood Commission shall consist of [27] *26* voting members appointed in the following manner:

(1) * * *

* * * * * * *

(5) The United States Senators shall each appoint 1 member; *and*

[(6) The United States Representative shall appoint 1 member; and]

[(7)] *(6)* The Mayor, the Chairman of the Council, and the Councilmember whose purview the Statehood Commission comes within shall be non-voting members of the Commission.

(a-1)(1) Notwithstanding any other provision of law, members serving unexpired terms on August 26, 1994, may continue to serve until appointments or reappointments are confirmed. Appointments or reappointments shall be made immediately after August 26, 1994, in the following manner:

(A) * * *

* * * * * * *

[(H) The United States Representative shall appoint 1 member for a 2 year term.]

* * * * * * *

§ 1—127. Appropriations.

There is authorized to be appropriated from the General Fund of the District of Columbia an amount for the salaries and office expenses of the elected representatives to the Senate [and House] referred to in 1—123(d) during the period of their service prior to the admission of the proposed new state into the union.

* * * * * * *

PART B—HONORARIA LIMITATIONS

§ 1—131. Application of honoraria limitations.

Notwithstanding the provisions of 1—135, the honoraria limitations imposed by part H of subchapter I of Chapter 11 of this title shall apply to a Senator [or Representative] elected pursuant to 1—123(d)(1), only if the salary of the Senator [or Representative] is supported by public revenues.

* * * * * * *

PART C—CAMPAIGN FINANCE REFORM

§ 1—135. Application of Campaign Finance Reform and Conflict of Interest Act.

All provisions of the District of Columbia Campaign Finance Reform and Conflict of Interest Act, subchapter I of Chapter 11 of this title, which apply to the election of and service of the Mayor of the District of Columbia shall apply to persons who are candidates or elected to serve as United States Senators [and United States Representative] pursuant to this initiative.

* * * * * * *

CHAPTER 10. ELECTIONS

* * * * * * *

SUBCHAPTER I. REGULATION OF ELECTIONS

§ 1—1001.01. Election of electors.

In the District of Columbia electors of President and Vice President of the United States, [the Delegate to the House of Representatives,] *the Representative in the Congress,* the members of the Board of Education, the members of the Council of the District of Columbia, the Mayor and the following officials of political parties in the District of Columbia shall be elected as provided in this subchapter:

(1) * * *

* * * * * * *

§ 1—1001.02. Definitions.

For the purposes of this subchapter:

(1) * * *

* * * * * * *

[(6) The term "Delegate" means the Delegate to the House of Representatives from the District of Columbia.]

* * * * * * *

(13) The term "elected official" means the Mayor, the Chairman and members of the Council, the President and members of the Board of Education, [the Delegate to Congress for the District of Columbia, United States Senator and Representative,] *the Representative in the Congress, United States Sen-*

ator, and advisory neighborhood commissioners of the District of Columbia.

* * * * * * *

§ 1—1001.08. Qualifications of candidates and electors; nomination and election of [Delegate] *Representative*, Mayor, Chairman, members of Council, and members of Board of Education; petition requirements; arrangement of ballot.

(a) * * *

* * * * * * *

(h)(1)(A) The [Delegate,] *Representative in the Congress,* Mayor, Chairman of the Council of the District of Columbia and the 4 at-large members of the Council shall be elected by the registered qualified electors of the District of Columbia in a general election. Each candidate for the office of [Delegate,] *Representative in the Congress,* Mayor, Chairman of the Council of the District of Columbia, and at-large members of the Council in any general election shall, except as otherwise provided in subsection (j) of this section and 1-1001.10(d), have been elected by the registered qualified electors of the District as such candidate by the next preceding primary election.

* * * * * * *

(i)(1) Each individual in a primary election for candidate for the office of [Delegate,] *Representative in the Congress,* Mayor, Chairman of the Council, or at-large member of the Council shall be nominated for any such office by a petition:

(A) * * *

* * * * * * *

(j)(1) A duly qualified candidate for the office of [Delegate,] *Representative in the Congress,* Mayor, Chairman of the Council, or member of the Council, may, subject to the provisions of this subsection, be nominated directly as such a candidate for election for such office (including any such election to be held to fill a vacancy). Such person shall be nominated by petition:

(A) * * *

(B) In the case of a person who is a candidate for the office of member of the Council (other than the Chairman or an at-large member), signed by 500 voters who are duly registered under 1-1001.07 in the ward from which the candidate seeks election; and in the case of a person who is a candidate for the office of [Delegate,] *Representative in the Congress,* Mayor, Chairman of the Council, or at-large member of the Council, signed by duly registered voters equal in number to 1 1/2 per centum of the total number of registered voters in the District, as shown by the records of the Board as of 123 days before the date of such election, or by 3,000 persons duly registered under 1-1001.07, whichever is less. No signatures on such a petition may be counted which have been made on such petition more than 123 days before the date of such election.

* * * * * * *

§ 1—1001.10. Dates for holding elections; votes cast for President and Vice President counted as votes for presidential electors; voting hours; tie votes; filling vacancy where elected official dies, resigns, or becomes unable to serve.

(a)(1) * * *

* * * * * * *

(3)(A) Except as otherwise provided in the case of special elections under this subchapter or section 206(a) of the District of Columbia Delegate Act, primary elections of each political party for [the office of Delegate to the House of Representatives] *the office of Representative in the Congress* shall be held on the 1st Tuesday after the 2nd Monday in September of each even-numbered year; and general elections for such office shall be held on the Tuesday next after the 1st Monday in November of each even-numbered year.

* * * * * * *

(d)(1) In the event that any official, other than [Delegate,] Mayor, member of the Council, member of the Board of Education, or winner of a primary election for the office of [Delegate,] Mayor, or member of the Council, elected pursuant to this subchapter dies, resigns, or becomes unable to serve during his or her term of office leaving no person elected pursuant to this subchapter to serve the remainder of the unexpired term of office, the successor or successors to serve the remainder of the term shall be chosen pursuant to the rules of the duly authorized party committee, except that the successor shall have the qualifications required by this subchapter for the office.

(2)[(A) In the event that a vacancy occurs in the office of Delegate before May 1 of the last year of the Delegate's term of office,] *In the event that a vacancy occurs in the office of Representative in the Congress before May 1 of the last year of the Representative's term of office,* the Board shall hold a special election to fill the unexpired term. The special election shall be held on the first Tuesday that occurs more than 114 days after the date on which the vacancy is certified by the Board unless the Board determines that the vacancy could be filled more practicably in a special election held on the same day as the next District-wide special, primary, or general election that is to occur within 60 days of the date on which the special election would otherwise have been held under the provisions of this subsection. The person elected to fill the vacancy in the office of Delegate shall take office the day on which the Board certifies his or her election.

[(B) In the event that a vacancy occurs in the office of Delegate on or after May 1 of the last year of the Delegate's term of office, the Mayor shall appoint a successor to complete the remainder of the term of office.]

(3) In the event of a vacancy in the office of [United States Representative or] United States Senator elected pursuant to § 1—123 and that vacancy cannot be filled pursuant to paragraph (1) of this subsection, the Mayor shall appoint, with the advice and consent

of the Council, a successor to complete the remainder of the term of office.

* * * * * * *

§1—1001.11. Recount; judicial review of election.

(a)(1) * * *

(2) If in any election for President and Vice President of the United States, [Delegate to the House of Representatives,] *Representative in the Congress,* Mayor, Chairman of the Council, member of the Council, President of the Board of Education, or member of the Board of Education, the results certified by the Board show a margin of victory for a candidate that is less than one percent of the total votes cast for the office, the Board shall conduct a recount. The cost of a recount conducted pursuant to this paragraph shall not be charged to any candidate.

* * * * * * *

§1—1001.15. Candidacy for more than 1 office prohibited; multiple nominations; candidacy of officeholder for another office restricted.

(a) * * *

(b) Notwithstanding the provisions of subsection (a) of this section, a person holding the office of Mayor, [Delegate,] *Representative in the Congress,* Chairman or member of the Council, or member of the Board of Education shall, while holding such office, be eligible as a candidate for any other of such offices in any primary or general election. In the event that said person is elected in a general election to the office for which he or she is a candidate, that person shall, within 24 hours of the date that the Board certifies said person's election, pursuant to subsection (a)(11) of § 1-1001.05, either resign from the office that person currently holds or shall decline to accept the office for which he or she was a candidate. In the event that said person elects to resign, said resignation shall be effective not later than 24 hours before the date upon which that person would assume the office to which he or she has been elected.

* * * * * * *

§1—1001.17. Recall process.

(a) The provisions of this section shall govern the recall of all elected officers of the District of Columbia except [the Delegate to the Congress from the District of Columbia] *the Representative in the Congress*.

* * * * * * *

MINORITY VIEWS

We write to express our serious concerns regarding portions of H.R. 1433, the District of Columbia House Voting Rights Act of 2007.

H.R. 1433 would, by statute, attempt to create a full-fledged Member of Congress to represent the District of Columbia. At the same time, it would abolish the position of Delegate for the District of Columbia. The bill would also grant one additional Member to Utah.[1] The new Utah Member would serve "at-large." The bill would also permanently increase the size of the House to include 437 Members. The bill also contains a "non-severability" clause, such that if any of the provisions of the bill are struck down, the entire bill will be rendered invalid.

What follows is a summary of what many have argued are constitutional and policy flaws in the legislation.

Supporters of the bill claim Congress has the authority to enact this bill under Article I, Section 8, clause 17 of the Constitution ("the District Clause"), which states "The Congress shall have power . . . To exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square) as may, by Cession of particular States, and the Acceptance of Congress, become the Seat of the Government of the United States" However, that very clause would seem to spell trouble for this legislation, as it makes clear that D.C. is *not* a State, and Article I, Section 2 of the Constitution makes clear that "The House of Representatives shall be composed of Members chosen every second year by the people of the Several *States* . . ." Since D.C. is not a State, it does not appear it can have a voting Member in the House.

In 2000, a federal district court in D.C. itself stated "We conclude from our analysis of the text that the Constitution does *not* contemplate that the District may serve as a state for purposes of the apportionment of congressional representatives."[2]

Supporters of the bill point for precedent to a case decided by the Supreme Court in 1949[3] that upheld a federal law extending the diversity jurisdiction of the federal courts to hear cases in which D.C. residents were parties. But as the Congressional Research Service stated in a recent report, "The plurality opinion [in that case] took pains to note the limited impact of their holding . . . [T]he plurality specifically limited the scope of its decision to cases

[1] According to the last U.S. census, Utah was next in line to receive a new Member based on its population growth.

[2] *Adams v. Clinton,* 90 F.Supp.2d 35, 50 (D.D.C. 2000).

[3] *National Mutual Insurance Co. v. Tidewater,* 337 U.S. 582 (1949).

which did not involve an extension of any fundamental right,"[4] such as the right to vote for a Member of Congress.

If that 1949 Supreme Court case does what proponents of the bill says it does, Congress would not have had to go through the trouble of passing a constitutional amendment to the States, which it did in 1978, that would have provided D.C. two Senators and a Representative. That amendment failed to get the approval of three-quarters of the States over seven years.[5]

Even conceding for purposes of argument the proponents of this bill's understanding of the vast breadth of the District Clause, the bill would actually set a terrible precedent for civil rights, and be unfair to others.

The bill provides for only one Representative for D.C. and not two Senators as well. As Professor Jonathan Turley has written, that is akin to pretending as if "allowing Rosa Parks to move to the middle of the bus would have been a civil rights victory."[6]

The bill requires us to ask what will happen in the future under the precedent it sets? Will future Congresses use this same authority to grant D.C. two, five, or ten or more Members, or Senators, when politically expedient? Will they take them back again if they vote the wrong way? This bill invites political gamesmanship and manipulation of the District's representation.

Further, surely if Congress can give voting rights to D.C. under the constitution by statute—and ignore other provisions of the Constitution in the process—then Congress can take rights away. Under the constitutional theory of proponents of this bill, Congress could, by statute, *deny* D.C. voters the protection from racial discrimination in voting under the Fifteenth Amendment, deny them the protections from discrimination in voting based on sex in the Nineteenth Amendment, and *take away* the right to vote to those over 18 granted by the Twenty-Sixth Amendment, all under the "plenary" authority of the District Clause. Again, this bill sets a very bad precedent by opening up the possibility of such abuses.

This bill also arguably subjects our men and women training for the military at Forts around the country to unfair, unequal treatment. The very same Article I, Section 8, clause 17 of the Constitution, which supporters of this bill say gives Congress the authority to grant D.C. a Member of Congress by statute, grants the *very same authority* to Congress to do the same thing for our men and women training for the military at Forts around the country. That very same clause of the Constitution states: "The Congress shall have power . . . to exercise like Authority over all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of *Forts,* Magazines, Arsenals, Dockyards, and other needful Buildings; . . ." So if the District

---

[4] Kenneth R. Thomas, CRS Report to Congress, RL33824, "The Constitutionality of Awarding the Delegate for the District of Columbia a Vote in the House of Representatives or the Committee of the Whole" (January 24, 2007) at 16.

[5] In 1978, Congress passed a constitutional amendment providing the District with full representation in both the House and Senate. The amendment then needed 38 of the 50 state legislatures to ratify it within seven years time. Ultimately, only 16 did so, and the amendment was rendered void. The following is a list of the 16 states that approved the amendment: New Jersey; Michigan; and Ohio in 1978; Minnesota; Massachusetts; Connecticut; and Wisconsin in 1979; Maryland and Hawaii in 1980; Oregon in 1981; Maine; West Virginia; and Rhode Island in 1983; Iowa; Louisiana; and Delaware in 1984.

[6] Jonathan Turley, "Too Clever by Half: the Unconstitutional D.C. Voting Rights Bill," *Roll Call* (January 25, 2007).

Clause grants Congress the authority to grant D.C. a voting Member by statute, then it must also grant Congress the authority to grant military forts their own voting Members in the House. Mr. Gohmert offered two amendments to make that very point at a time when Members of the majority party are advocating hamstringing the efforts of our men and women in the military.

The bill cries out for a provision requiring expedited judicial review of the constitutionality of its provisions to make sure that, if the bill unconstitutionally grants D.C. a voting Member, that unconstitutional action does not go on any longer than it has to. Such an amendment was offered by Ranking Member Smith, but rejected on a party line vote. That amendment would simply have required expedited judicial review of the constitutionality of the provisions of H.R. 1433. The amendment's language was substantively identical to the expedited judicial review provisions in the McCain-Feingold campaign finance law, Public Law 107–155, which were employed to facilitate the Supreme Court's expeditious review of that legislation.

Opponents of that amendment claimed that an expedited review of the legislation would already be provided by 28 U.S.C. §§ 2284 and 1253. But that is far from clear. 28 U.S.C. § 2284 only applies to "action[s] filed challenging the constitutionality of an apportionment of congressional district or the apportionment of any statewide legislative body." The creation of a new House Member to represent a non-State constitutes neither an "apportionment"—which Black's Law Dictionary defines as "the allocation of congressional representatives among the *states* based on population" [7]—nor something relating to a "*state*wide legislative body." Further, 28 U.S.C. § 1253 states that "any party may appeal to the Supreme Court from an order granting or denying, after notice and hearing, an interlocutory or permanent injunction in any civil action, suit or proceeding required by any Act of Congress to be heard and determined by a district court of three judges." However, nothing in that section requires the Supreme Court to ever hear the case, and absent a statutory requirement the Supreme Court retains the discretion regarding whether and when to hear a case.

In contrast, the amendment requiring expedited judicial review offered by Ranking Member Smith would have required that the case be brought in the District of Columbia before a three-judge federal district court with direct appeal to the Supreme Court. Most importantly, Ranking Member Smith's amendment provided that "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.*" The amendment also set out specific time frames within which the filings of notices of appeal and jurisdictional statements must be made. The amendment also provided for challenges to the law or intervention by Members of Congress, just as the McCain-Feingold law provided for. Obviously, if the votes of Members of Congress are to be diluted by the creation of additional Members whose seats are uncon-

[7] Black's Law Dictionary (8th ed. 2004) (apportionment) (emphasis added).

stitutional, such Members should have the ability to be a part of a legal challenge to that unconstitutional action.

Professor Jonathan Turley, someone the majority consults frequently for his views, said in his remarks offered at the hearing on the bill held in the Subcommittee on the Constitution, Civil Rights, and Civil Liberties, "Permit me to be blunt, I consider this Act to be the most premeditated unconstitutional act by Congress in decades." As Professor Turley also pointed out, the inevitable legal challenge to this bill could produce chaos. With a relatively close party division in the House, the casting of a determinative vote subsequently held invalid by a court could throw the validity of untold pieces of future legislation into question.

If the existence of either the new District Member, or the new Utah Member, is subject to a temporary or permanent injunction, a provision of the Act would *not* have been technically "declared or held invalid or unenforceable." Rather, it could be enjoined for years on appeal, without any declaration or holding of unenforceability. By adding a district for Utah, that new seat would add another electoral vote for Utah in the presidential election. Given the experience of the last two presidential elections, it is possible that another presidential tie or one-vote margin in the Electoral College could be mired in litigation surrounding this very bill.

Most people understand that the District of Columbia is not a state, and that the Constitution, unless amended, allows Members of Congress to be elected only by citizens of the several States. Congress knows a constitutional amendment is required to change that, and Congress passed such an amendment to the states in 1978, but only 16 of the required 38 states ratified it. There is absolutely no reason to prolong a judicial resolution of these important issues, especially when doing so risks constitutional chaos regarding the validity of future legislation passed by the House.

When the House Judiciary Committee, under the leadership of Democratic Chairman Peter Rodino in the 95th Congress, reported out a constitutional amendment to do what this bill purports to be able to do, the report accompanying that constitutional amendment stated the following: "If the citizens of the District are to have voting representation in the Congress, a constitutional amendment is essential; *statutory action alone will not suffice.*"[8] If this committee does not want to take advice from its own Democratic predecessors, it should have at least been willing to submit the question to the Supreme Court on an expedited basis.

Finally, the bill would require superimposing an at-large seat onto the existing three seats elected by district in Utah. In doing so, it would require the creation of an anomalous situation that this country has not seen since the development of the Supreme Court's "one man, one vote" line of cases. In effect, under this "at-large" arrangement, all voters in Utah would be able to vote for two Representatives—their district Representative and their at-large Representative—whereas voters in the rest of country would only be able to vote for their one district Representative. This situation would result in Utah voters' having disproportionately large voting power compared to voters in the other States, and it could

[8] H. Rep. No. 95–886 (95th Cong., 2d Sess.) at 4.

make the bill even more vulnerable to a constitutional challenge. In any case, the Utah legislature met in special session last year to pass a new redistricting plan to accommodate an additional Member into Utah's districting map. Requiring Utah to resort to an "at-large" seat in the bill would require negating that effort of the Utah legislature. Mr. Cannon and Mr. Sensenbrenner both offered amendments that could have ameliorated, but not eliminated, the potential constitutional flaws of the legislation, but such amendments were not adopted by the Committee.

LAMAR SMITH.
HOWARD COBLE.
ELTON GALLEGLY.
BOB GOODLATTE.
STEVE CHABOT.
DANIEL E. LUNGREN.
STEVE KING.
TOM FEENEY.
TRENT FRANKS.

DISSENTING VIEWS

I write to express my constitutional concerns regarding the at-large provision in H.R. 1433, the District of Columbia House Voting Rights Act of 2007.

Most everyone on this Committee will agree that District of Columbia residents should have representation in the House of Representatives. The question is how to achieve this goal.

H.R. 1433 seeks to solve this problem by authorizing a new voting Member for the District of Columbia, and also a new Member for the State of Utah. Unfortunately, the bill provides that the new seat established in Utah shall be filled by a Member elected at-large. Choosing to proceed in this manner is fraught with constitutional concerns.

The provision of this bill that would make the additional seat in Utah one that would be filled at-large is problematic. Superimposing an at-large seat onto the existing three seats elected by district in Utah would create an anomalous situation that this country has not seen since the development of the Supreme Court's "one man, one vote" line of cases. As Professor Turley noted during his testimony on the hearing for H.R. 1433, in effect, under this at-large arrangement, all voters in Utah would be able to vote for two Representatives—their district Representative and their at-large Representative—whereas voters in the rest of country would only be able to vote for their one district Representative. This situation would result in Utah voters having disproportionately large voting power compared to voters in the other States.

Ever since the "one-man, one-vote" doctrine was established in *Wesberry v. Sanders,*[1] at-large districts have been frowned upon. Congress even codified it in 1967. Justice Stevens has noted, "As I read the 1967 statute it entirely prohibits States that have more than one congressional district from adopting either a multi-member district or electing their Representatives in at-large elections."[2]

"In each State entitled in the Ninety-first Congress or in any subsequent Congress thereafter to more than one Representative under an apportionment made pursuant to the provisions of subsection (a) of section 22 of the Act of June 18, 1929, entitled 'An Act to provide for apportionment of Representatives' (46 Stat. 26), as amended, there shall be established by law a number of districts equal to the number of Representatives to which such State is so entitled, *and Representatives shall be elected only from districts so established,* no district to elect more than one Representative (except that a State which is entitled to more than one Representative and which has in all previous elections elected its Representatives

[1] 376 U.S. 1 (1964)
[2] *Branch v. Smith,* 538 U.S. 254, 286 (2003)

at Large may elect its Representatives at Large to the Ninety-first Congress)."[3]

To rectify the constitutional trouble with an at-large district, last year the Utah legislature met in special session to approve a redistricting map adding a fourth congressional seat to the State's delegation. This was done to assuage my concerns regarding the constitutionality of an at-large seat. Requiring Utah to resort to an at-large seat in the bill would require negating that effort of the Utah legislature. I offered an amendment to remove the at-large seat and resort back to Utah's map, which raises no constitutional red flags, but it was not adopted by the Committee.

The *Wesberry* Court stated that congressional representation must be based on population as nearly as is practicable. H.R. 1433 fails to meet this standard.

In its current form, the District of Columbia House Voting Rights Act fails to meet the basic one-person, one-vote requirements of the Equal Protection Clause of the Fourteenth Amendment.

F. JAMES SENSENBRENNER, JR.

[3] Pub. L. 90–196, 81 Stat. 581 (emphasis added).

ADDITIONAL DISSENTING VIEWS

Last year, Congress passed the Fannie Lou Hamer, Rosa Parks, and Coretta Scott King Voting Rights Act Reauthorization and Amendments Act of 2006. In reauthorizing this important civil rights law, the Subcommittee on the Constitution held twelve hearings examining the ongoing discrimination experienced by minority voters in Section 5 covered jurisdictions. The Subcommittee heard testimony that one of the most frequently used election practices that has been and continues to be used by state and local jurisdictions to diminish the weight of a vote is through the use of at-large elections. It is ironic that the Majority now incorporates this type of election practice into such an important bill, rejecting efforts to ensure that protections provided in the Constitution are preserved.

STEVE CHABOT.

○