

Statement of

The Honorable Patrick Leahy

United States Senator
Vermont
May 23, 2007

Statement Of Senator Patrick Leahy,
Chairman, Senate Judiciary Committee
Hearing On
"Ending Taxation Without Representation:
The Constitutionality Of S. 1257"
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Exactly one year ago, this Committee was in the middle of extensive hearings on the reauthorization of the Voting Rights Act. It was a rare example of both chambers of Congress and both political parties working together to enact important legislation. That bipartisan legislation was referred to as the cornerstone of all civil rights laws because it preserved the fundamental right to vote for all Americans. Today, we are considering another bipartisan measure involving the fundamental right of all citizens in a democracy - the right to vote and to have their votes counted.

The D.C. voting rights bill would give the District of Columbia Delegate a full vote in the House and would grant a new seat to the State of Utah. I am a cosponsor of this legislation in the Senate. I thank Senator Feingold, Chairman of the Constitution Subcommittee, for chairing this important hearing on the constitutionality of the bill.

We welcome our colleague from the House, Congresswoman Eleanor Holmes Norton, to the Senate Judiciary Committee. She has testified here before in connection with nominees for the District of Columbia. On those issues, and so many others, we value her views. As a young lawyer she worked for civil rights and voting rights around the country. It is a cruel irony that upon her return to the District of Columbia and election to the House of Representatives she does not yet have the right to vote on behalf of the people of the District of Columbia who she was elected to represent. She is a strong voice in the Congress but she and the people of the District of Columbia deserve a vote, as well.

One of the constitutional experts testifying today is Retired Chief Judge Patricia Wald. In her thoughtful testimony, she highlights the fact that Congress's greater power to confer statehood on the District certainly contains the lesser one, the power to grant District residents voting rights in the House of Representatives. Judge Wald also reminds us that Congress has exercised this authority in the past without a rigid adherence to the constitutional text when it granted voting rights to Americans abroad - in their last state of residence - regardless of whether they are citizens of that state, pay taxes to that state, or have any intent to return to that state.

Congress has repeatedly acted to treat the District of Columbia as a "State" for various 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 only provides that federal courts may hear cases "between citizens of different States." Congress has also been allowed to treat the District as a "State" for purposes of congressional power to regulate commerce "among the several States." The Sixteenth Amendment grants Congress the power to directly tax incomes "without apportionment among the several States" but has been interpreted also to apply to residents of the District.

In 2005, President Bush praised the Iraqi people for exercising their democratic right to vote, and noted that "by participating in free elections, the Iraqi people have firmly rejected the anti-democratic ideology of the terrorists...[a]nd they have demonstrated the kind of courage that is always the foundation of self-government." Unfortunately, the President does not speak so enthusiastically about voting rights for the American citizens living literally in his backyard. The United States is the only democracy in the world that denies a portion of its citizens full representation. That is wrong. It is well past time for us to correct this unfair and undemocratic practice.

The Bush Administration contends that Congress lacks the authority to authorize congressional representation for the residents of the District of Columbia. As one of our witnesses will point out today, the purpose of the District Clause in the Constitution was to ensure federal authority over the Nation's Capital "not to deprive citizens living there of their rights of citizenship." In my view, disenfranchisement of American citizens living in our Nation's Capital is contrary to the genius of the Framers. Our Founders established a republican form of government and that system that has been perfected for more than 200 years.

It is disappointing that the Bush Administration has threatened to veto this legislation. Generally this President's concern with the Constitution has been limited to reading Article II as if establishing the exclusive and all-encompassing power of the government in the President. I am encouraged that at least this Administration must acknowledge that the Constitution has an Article I in order for it to reference the District Clause. I regret this Administration's effort to construe it in a most limited and narrow way, however, in a way the former White House counsel might call "quaint." As we move forward, perhaps based on the record we establish at this hearing today, I hope the Administration will reconsider its interpretation of the District Clause, just as I hope we will be able to restore meaning to the right of habeas corpus which is also specified in Article I.

I believe that the legislation I have cosponsored and that we are considering today is within Congress's express powers as provided in the Constitution. I believe that it is also the right thing to do for hundreds of thousands of Americans residing in our Nation's Capital, paying taxes, serving our Nation and working hard.

The reauthorization and renewal of the Voting Rights Act last year was a triumph for all Americans, and a testament to the efforts of its supporters in the House and Senate. Similarly, the D.C. Voting Rights Act can be another bipartisan triumph. It passed the House of Representatives by a wide, bipartisan margin. I hope we will see a repeat of that experience and success in the Senate. Our democracy and our Nation will be better when we complete the circle in this

Congress by granting the residents of our Nation's capital, the right to a full vote in the House of Representatives. We can and we should provide this fundamental right to those who live in the seat of the greatest democracy on earth.

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