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**TESTIMONY OF
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**BEFORE THE
COMMITTEE ON GOVERNMENTAL REFORM
UNITED STATES HOUSE OF REPRESENTATIVES**

ON

**VOTING REPRESENTATION IN CONGRESS
FOR THE CITIZENS OF THE DISTRICT OF COLUMBIA**

JUNE 23, 2004

Mr. Chairman and members of the Committee, thank you very much for the opportunity to testify today on voting representation in Congress for the citizens of the District of Columbia. My name is Wade Henderson, and I am the Executive Director of the Leadership Conference on Civil Rights. The Leadership Conference is the nation's oldest, largest and most diverse coalition of civil rights groups, consisting of more than 180 national organizations, representing persons of color, women, children, labor unions, individuals with disabilities, older Americans, major religious groups, gays and lesbians and civil liberties and human rights groups. Together, over 50 million Americans belong to the organizations that comprise the Leadership Conference on Civil Rights. The Leadership Conference holds as a guiding tenet that all citizens of the United States must be treated equally under the law. We strongly support efforts to give citizens of the District of Columbia full voting representation in the United States Congress.

At the outset of this hearing, I want to commend you, Mr. Chairman, for your leadership on this important issue. The fact that there are now four House bills on the subject is a significant and important development toward closing a gaping hole in the fabric of American democracy.

This hearing and the debate about these bills could not be more timely. Our citizen-soldiers from every state and the District of Columbia are fighting wars in Afghanistan and Iraq. Men and women from all branches of the military and the National Guard are risking their lives every day. Over 800 Americans have died in Iraq and Afghanistan, with more deaths and injuries suffered daily; citizens of almost every state have been killed in these wars, as have citizens of the District of Columbia.

Most of these soldiers share one thing in common: they had the opportunity to vote for the members of Congress whose vote in 2002 sent them to war in Iraq. Later this year, those who have survived will have the opportunity to express their approval or disapproval of the Congress that sent them to war.

All of them will, except the soldiers from the District of Columbia, who were unrepresented when Congress decided their fate in 2002. They were unrepresented in 2003, and again this year, when Congress wrote the laws that determined the levels of funding, equipment and support they would receive. They were unrepresented every year before, when Congress decided how much to spend on the training, weapons, safety equipment and medical systems on which their lives would later depend – deciding, in effect, how much their lives were worth.

When we vote this November, they will have no opportunity to express their support or dissent for the declaration of war or the nation's preparation for war. They will have no opportunity to vote for the Representatives or Senators of the next Congress, which will write the laws that determine the funding, support and equipment they'll receive in Iraq, Afghanistan and throughout the world. They will have no opportunity to vote for the Congress that might send them to another war.

When the war in Iraq began, we heard a great deal about the hundreds of thousands of Iraqi conscripts who were forced to serve in Saddam's army. They had no choice and had no voice in bringing about the war and there is no way to know how many of them were killed. The men and women of the District's National Guard unit and military reservists from the District were given no choice when they were called up to active duty and sent to Iraq. It is a tragic irony that the brave soldiers of the District also had no voice in bringing about the war in which some of them have been killed.

Among the oft-cited justifications for the wars is to deliver freedom, democracy and self-governance to the people of Iraq and Afghanistan. We are only days away from transferring sovereignty to an interim Iraqi government, which will be responsible for holding free elections by early next year. If those elections come and Iraqis are given the chance to elect their own leaders, they will enjoy a right denied to hundreds of thousands of United States citizens.

As the Chairman's bill points out, residents of the District of Columbia have fought and died for their country in every war since the American Revolution. They have also paid their full share of federal income taxes, social security taxes, gas taxes and more; and they will pay their full share of the interest on deficit spending approved by this Congress to fund the war in Iraq and other programs.

District residents bear the full burdens of citizenship while being denied the national and local privileges of citizenship. Congress freely exercises its powers under the District Clause of Article 1, Section 8 of the Constitution to review every line of the District's local budget, frequently vetoing how District residents chose to raise and spend local tax revenue. Would the residents of Omaha accept such extensive federal intrusions into local issues? Would Congress tell them "not only are we going to decide how much your local taxes your city health department can spend on public health, but when we vote, your Representative and both Nebraska Senators are going to be told to sit this one out?" Of course they wouldn't accept it; and Americans from every other state would consider it an outrage.

The right to vote is nothing short of the definition of democracy. It is a fundamental civil and human right and a focal point of America's efforts to promote freedom throughout the world.

Yet our failure to provide this basic right to the citizens of our nation's capital saps the strength of our call for human rights abroad. It is a hypocrisy that can give others an excuse to ignore us when we try to spread democracy and invites the scorn of the international community. It has caused widespread concern among international institutions that the United States is violating the human rights of its own citizens at the same time it is pressuring other countries to address violations of their citizen's human rights.

Most notably, the Inter-American Commission on Human Rights (IACHR) of the Organization of American States (OAS) concluded in December of last year that the U.S. government is in violation of Articles 2 and 20 of the American Declaration of the Rights and Duties of Man, which lays out the fundamental human rights principles that OAS members, including the United States, must observe under the OAS charter. Article 2 of the Declaration states that "(a)ll persons are equal before the law and have the rights and duties established in this Declaration, without distinction as to race, sex, language, creed or any other factor." Article 20 states that "(e)very person having legal capacity is entitled to participate in the government of his country, directly or through his representatives, and to take part in popular elections, which shall be by secret ballot, and shall be honest, periodic and free."

The OAS reached its conclusion after nearly ten years of proceedings, which were initiated when a petition was filed by the Statehood Solidarity Committee, an organization of DC residents led by Timothy Cooper. In its ruling, the OAS found that the right of DC citizens to vote and participate in government have been "curtailed in such a manner as to deprive the Petitioners of the very essence and effectiveness of that right," and that the U.S. government could not articulate any reasonable justification for this denial. In a finding that should be particularly embarrassing, the OAS also pointed out that as far as it knew, "no other federal state in the Western Hemisphere denies the residents of its federal capital the right to vote for representatives in their national legislature."

Similar concerns have also been raised by and with other international bodies. The U.N. Human Rights Committee received a complaint in March 1995, again from the Statehood Solidarity Committee, that the disenfranchisement of D.C. residents amounted to violations of human rights under articles 25 and 26 of the U.N. International Covenant on Civil and Political Rights (ICCPR). This led to the United States being questioned about the issue on the floor of the United Nations, for the first time in history. And in 2001, the U.N. Committee on the Elimination of Racial Discrimination (CERD) was presented with a brief showing that the disenfranchisement of D.C. residents violates articles 2 and 5 of the U.N. Covenant on the Elimination of All Forms of Racial Discrimination, leading to representatives of the United States being questioned by the Committee. In both instances, U.N. committee members expressed dissatisfaction with the U.S.'s failure to present adequate reasons for denying D.C. residents a fair and equal vote. As Timothy Cooper pointed out upon the release of the most recent ruling by the OAS, on the continuing lack of voting rights for D.C. residents, "America can run but it cannot hide from the judgment of the international community."

The Leadership Conference strongly believes that remedying the lack of voting rights for the District is the responsibility of Congress and within Congress' legislative power under the District Clause. The appellate court's decision in *Alexander v. Daley*, upheld by the Supreme

Court in 2001, agreed that it was unjust to deny District residents congressional representation and made clear that legislation by Congress was the proper remedy.

We are grateful for the Chairman's sincere interest in ending this injustice and for his leadership, along with Delegate Norton, on this important human rights issue. It is deeply gratifying that we are here today to discuss how to provide voting rights to the District, rather than whether to provide them. It is also a hopeful and important sign that the four bills at issue in this hearing – the Chairman's, Delegate Norton's and those filed by Representatives Rohrabacher and Regula – have been introduced by Republicans and Democrats, marking a return to bipartisanship. Clearly, both parties have an equal interest in protecting and preserving the fundamental tenets of our democracy.

Turning to the specific legislation, let me first address the Chairman's bill, the "District of Columbia Fairness In Representation Act" (D.C. FAIR Act). Without question, the legislation would effect a positive change for the residents of the District by giving them some congressional representation. As such, it would be an improvement over the status quo and we commend the Chairman for introducing it.

D.C. FAIR's approach to creating voting rights for District residents is particularly creative. By simultaneously creating a second, temporary new congressional district, widely expected to go to Utah, the legislation would likely have no immediate effect on the congressional balance of power between the Republican and Democratic parties. One would hope that this would disarm those who shamelessly oppose voting rights for purely partisan political reasons.

While we appreciate that the bill is intended to further the cause of voting rights by providing the District with a voting member of the House of Representatives, we must be clear that it would not provide full and equal rights for the residents of the District. The bill makes no attempt to provide Senate representation for District residents, perpetuating their second class status as the only American citizens who aren't represented by two United States senators. We understand the Chairman's intent that the bill serve as a politically practical first step toward voting rights for the District; however, we fear that others might use such a compromise to short-circuit efforts to provide full representation. This result would perpetuate the fundamental injustice we are all attempting to remedy and would not be acceptable to the Leadership Conference.

We are also concerned about the unintended consequences of creating the second congressional district. Even though it would be temporary, to implement the new congressional district, Utah would have to redraw its congressional boundaries before the first congressional election after enactment of the bill. The Leadership Conference opposes any attempt to redraw congressional districts other than the constitutionally mandated reapportionment and associated intrastate redistricting that follows each decennial census.

We have already seen the political and legal chaos created by partisan-inspired mid-decade redistricting schemes in Texas and Colorado. We believe that the Texas effort is both unconstitutional and anti-democratic, and we are deeply troubled by its potential effects on the

voting rights of racial and ethnic minorities. A federal statute that required a state to conduct mid-decade redistricting would encourage future efforts to undermine election results through redistricting. While clearly not intended to do so, requiring redistricting even to add a temporary House seat would set a dangerous precedent that would surely be used as political and legal fodder in future mid-decade redistricting battles.

While it would not be our first choice, if in Congress' judgment there is no way to pass any bill creating voting representation for the District of Columbia without preserving the current balance of power between the political parties, we would recommend that the bill include protections against politically-motivated redistricting sought by either party. Congress could accomplish this goal by specifically defining the new congressional district boundaries in the legislation creating the district and by prohibiting any mid-decade redistricting of congressional seats other than the initial post-census redistricting unless specifically authorized by federal statute.

It is a particularly inappropriate time for Congress to allow redistricting that may harm the voting representation of racial minorities. The Voting Rights Act of 1965, one of the most important civil rights laws in our nation's history, will soon be up for reauthorization. In the 109th Congress, reauthorization bills are sure to be introduced and hearings will be held. Redistricting is a central issue in the Voting Rights Act, and with its reauthorization looming, we must be particularly careful when considering any laws that will change district boundaries. Absent a way to address the concerns discussed here, we see no way to proceed on this bill in the short-term.

Next, I turn to HR 3709, Congressman Rohrabacher's "District of Columbia Voting Rights Restoration Act of 2004." First, let me commend the Congressman for introducing the bill. Giving District residents the right to vote in federal elections as citizens of Maryland is another creative approach to the problem and worthy of serious consideration. Of particular importance, the bill's findings of fact laying out a case for congressional authority to provide voting representation to District residents is an important addition for any statute on this subject. We are also encouraged, and strongly support the principle, that under the bill District residents would have the right to vote for representatives in both houses of Congress, as do the citizens of every state.

Perhaps intended as a political trade-off, the bill would go beyond congressional elections and treat District residents as citizens of Maryland for the purpose of presidential elections. Again, the idea is creative and worth considering, however we have several serious reservations. Under the terms of the 23rd amendment, District residents are already included in the Electoral College for selection of the President and Vice President. In fact, given the District's population, their representation in the Electoral College is exactly what it would be if the District was a state. As a result, section 4 of the bill seems to be fixing a problem that does not exist. Further, it would have the effect of diluting the Electoral College participation of both District residents and the citizens of Maryland by reducing their total number of electoral votes by two.

Additionally, section 4, subparagraph (c) asserts that Congress has the authority under the 23rd amendment and article I, section 8 of the Constitution to strip the District of its electoral

votes. While we agree that Congress has full legislative authority to grant congressional representation to the District, we do not agree that it has the power to terminate the District's electoral votes. The plain language of the 23rd amendment grants Electoral College participation to the District and specifically empowers Congress to enforce that grant, not to terminate it.

As does the Chairman's bill, H.R. 3709 would also temporarily create two new congressional districts. As discussed in detail above, the second district would effectively require Utah to conduct mid-decade redistricting, which we strongly oppose. Unlike the D.C. FAIR Act, H.R. 3709 would make Washington, D.C.'s congressional district a part of Maryland's delegation. Section 6, subparagraph (c) places several restrictions on how Maryland would define the boundaries of its new district. We applaud the intent of the section, which appears to be designed to benefit District residents, but have concerns about the constitutionality of the particular mechanisms employed.

Specifically, without regard to Washington's population relative to Maryland's other congressional districts, subparagraph (c)(2) would initially define the new seat as consisting exclusively of the area of the District of Columbia. While we appreciate the practical appeal of the definition, courts have consistently applied the "one person, one vote" rule to voting districts within a state and have held that districts with disparate populations are unconstitutional. To avoid this problem, Maryland would be forced to immediately redistrict its entire delegation, a process that we have made clear that we oppose.

Representative Regula's bill, the "District of Columbia-Maryland Reunion Act" (H.R. 381), is perhaps the most drastic of the four proposals, but also the only one with clear legislative precedent. As the Committee is aware, the area west of the Potomac ceded to the federal government by the Commonwealth of Virginia was returned to Virginia by federal legislation in 1846. The Leadership Conference agrees with the premise of H.R. 381 that by defining a National Capital Service Area that would be retained by the federal government as the District of Columbia, all constitutional requirements for the District would be satisfied, leaving Congress free to return the remainder of Washington to the state of Maryland.

Retrocession to Maryland is a legitimate topic of discussion and presents one advantage to District residents that is lacking in the other bills. By making the District part of Maryland for all purposes, it would provide current Washington residents with full and equal rights in all federal, state and local matters. The other bills would provide varying levels of federal representation for District residents, but would not provide any of the self-determination in state and local matters that is enjoyed by citizens of the states and currently denied to residents of Washington.

In varying forms, the idea of retrocession to Maryland has been considered for quite some time. Unfortunately, there is no indication at this time that the state of Maryland or its citizens would accept the return of the District. Without question, the political and economic consequences of retrocession would be dramatic and far-reaching for the city of Washington, the state of Maryland and all of the residents of both. We submit that H.R. 381 is premature. Before it is given serious consideration in Congress, funds should be appropriated for an in-depth study of the economic and political consequences of retrocession, to be followed by a survey of the

residents of Maryland and the District to determine whether there is any support for retrocession in the city or the state.

An additional practical problem with the bill is that even if it is enacted and Maryland passes a law accepting retrocession, the retrocession would not take effect until a separate constitutional amendment was passed and ratified repealing the 23rd amendment. We should not forget that in 1978, with strong bipartisan support in both Houses, Congress passed an amendment that would have given the District full voting representation in Congress and repealed the 23rd amendment. The amendment expired before coming anywhere near being ratified by the required 38 states.

It is also worth noting that the transition provisions in section 5 of the bill would have to be significantly changed in order to pass constitutional muster. The bill creates an extra House seat for Maryland that would last until the next post-census reapportionment and installs the then-current Delegate from the District of Columbia as the new House member for the entire time. Depending on the date of retrocession, the plain language of section 5 could create an unelected member of Congress with a term lasting any time up to 10 years.

Finally, I turn to H.R. 1285, Delegate Norton's "No Taxation Without Representation Act of 2003." The Leadership Conference has consistently supported this bill and its predecessors, as introduced in the House by Delegate Norton and in the Senate by Senator Lieberman. Of the bills discussed today, the Norton bill is the simplest, fastest and most direct route to providing full voting representation in Congress for the residents of the District of Columbia.

We remain deeply grateful to Delegate Norton for her tireless efforts on behalf of voting rights for the residents of the District of Columbia and reiterate our endorsement of H.R. 1285.

The Leadership Conference believes it is time to move forward on the important legislation under discussion today. Residents of the District of Columbia dutifully comply with the civic responsibilities and obligations required by our democratic form of government, they pay taxes and they serve in our armed forces. Yet they are blatantly deprived of many of the essential rights and privileges of citizenship enjoyed by all other Americans. This is an issue of simple justice and fairness.

Residents of the District of Columbia are the only United States citizens today who pay federal income tax each year (and pay at the second highest per capita rate in the nation) yet are denied voting representation in the Congress. It is an affront to American history, dating back to the birth of the nation, when one of the rallying cries of the American Revolution was the phrase "no taxation without representation."

In America's early years, before the District was established in 1800, the residents of the city of Washington were able to vote for representatives in Congress, as citizens of either Maryland or Virginia. There is no prohibition on restoring voting representation in Congress for citizens of the District of Columbia.

In preparing for today's hearing, I was struck by the breadth of support for D.C. voting rights in the years leading up to the 1978 Constitutional Amendment. Like most pieces of

enacted civil rights legislation, there was a time when voting rights for the citizens of the District of Columbia had strong bipartisan support. Listen to some of the voices, voices you might not have expected to hear:

- President Richard Nixon -- *It should offend the democratic sense of this nation that the citizens of its capital... have no voice in the Congress.*
- Senator Robert Dole -- *The Republican party supported DC voting representation because it was just, and in justice we could do nothing else.*
- Senator Robert Byrd -- *The people of the District... suffered more lives lost in the Vietnam War than 10 states... conscription without representation.*
- Assistant Attorney General (now Supreme Court Chief Justice) William Rehnquist -- *The need for an amendment at this late date in our history is too self-evident for further elaboration; continued denial of voting representation from the District of Columbia can no longer be justified.*
- Senator Howard Baker -- *We simply cannot continue to deny American citizens their right to equal representation in the national government... this basic right is a bedrock of our Republic that cannot be overturned.*

America has long been the leading advocate for democracy and representative government throughout the world. It is now time to preach democracy at home. I urge the Congress to bring democracy home to the citizens of the District of Columbia. We should give those who live within the shadow of the Capitol the basic American right to full representation in the Congress of the United States.

Thank you for the opportunity to appear before the committee today. Again, I commend you, Mr. Chairman, for your leadership on this fundamental civil and human rights issue.