

Testimony before the Committee on Government Reform
“Common-Sense Justice for the Nation’s Capital:
An Examination of Proposals to Give D.C. Residents Direct Representation”
Hon. Dana Rohrabacher
June 23, 2004

Mr. Chairman, I want to compliment you for holding this hearing, and for your concern for remedying the lack of congressional representation for the residents of our nation’s capital.

“No taxation without representation” is a fundamental principle of our democratic society, which since our founding has continually expanded the voting franchise. Today, thanks to the Uniformed and Overseas Citizens Absentee Voting Act, there is nowhere in the world that a U.S. citizen can move to, still owing federal income tax, and lose their rights to voting representation in the U.S. Congress; nowhere, that is, except to our nation’s capital, Washington, D.C.

I think that virtually every member of this body, Republican or Democrat, who thinks about this situation would agree that it needs to be remedied. The dispute is not over whether D.C. residents should have voting representation, but over what form that representation should take.

Naturally, I believe that my own proposal, H.R. 3709, the District of Columbia Voting Rights Restoration Act, is the fairest and most practical solution. As its name suggests, H.R. 3709 would restore to Washington, D.C. residents the same voting rights they had prior to Congress taking them away by passage of the Organic Act of 1801. Under my Restoration Act, residents of our nation’s capital would once again have the right to vote for, run for, and serve as, Maryland’s U.S. Senators, U.S. Representatives and presidential electors. And to provide some partisan balance, the Restoration Act adopts your idea, Mr. Chairman, of providing an additional representative for Utah.

In addition to my bill, I am also submitting for your consideration legislative language that I believe will remove the issue of Utah redistricting as an impediment to moving forward on D.C. voting rights. This language simply locks into place until after the next census, the 4-district map that Utah has already enacted. Since that map is understood by all sides to be a 3-1 plan, it should erase the fears of the Democratic leadership that including Utah in a D.C. representation bill would provide an undue Republican advantage.

Mr. Chairman, I could go on about the details of my bill, and I have attached a question and answer sheet to my testimony that further describes H.R. 3709. But that’s not what is most important at the moment. What is most important is to get the bipartisan support to move a D.C. representation bill to the House floor so that alternative proposals can be considered, and so that we finally give residents of the District of Columbia the full and fair congressional representation they deserve.

Addendum #1—Questions and Answers regarding H.R. 3709

(1) Structure of bill and Constitutional Authority

What does H.R. 3709 do? What is its constitutional authority?

H.R. 3709, the District of Columbia Voting Rights Restoration Act, simply restores the federal voting rights of D.C. residents that Congress took away by enacting the Organic Act of 1801 ten years after the District of Columbia was formed. Once again, D.C. residents would be able to vote for, run for, and serve as, U.S. Senators, U.S. Representatives, and presidential electors from Maryland. It accomplishes this by undoing the disenfranchisement effects of the Organic Act that was enacted pursuant to Article I, Section 8. Congress has the authority under Article I, Section 4 to control the conduct of federal elections.

(2) Political and Geographic Cohesiveness of the District of Columbia

What is to keep the Maryland legislature from splitting D.C. and joining it with two or more Maryland congressional districts? Since the Constitution reserves redistricting to the states, could Congress constitutionally ensure that Maryland would not split D.C. into two or more parts through simple legislation, eliminating the present cohesive geographic, political and legal character of the District?

H.R. 3709 would require in any new congressional redistricting by the Maryland legislature that D.C. be kept intact in the new congressional district, with contiguous territory from adjacent Maryland counties added as necessary to produce a district equal in population to the other Maryland districts.

Such a requirement is entirely constitutional. Article I, Section 4 permits Congress to supersede the states in matters relating to congressional elections. The controlling Supreme Court opinion in *Oregon v. Mitchell* (the 18-year-old vote case) goes into detail how this section of the constitution has always been understood to include Congressional authority over redistricting, and in fact Congress has exercised this authority to the extent of prohibiting states with more than one representative from having at-large congressional districts. Further authority for the “intact D.C.” requirement comes from Article I, Section 8, Clause 17, which provides for Congress’ power of “exclusive legislation” over the District.

(3) Representation of the D.C. District by a D.C. Resident

Does the Constitution allow D.C. residents who do not actually live in Maryland to choose the representatives of that state? If it were constitutional to treat D.C. residents as if they were residents of the state of Maryland for the purposes of voting, would D.C. residents be constitutionally precluded from representing the new Maryland district, given the language of Article I specifically requiring that representatives be inhabitants of the state in which they are chosen?

In addition to restoring congressional voting rights, H.R. 3709 also restores Maryland citizenship rights to be a candidate for, and to serve as, U.S. Representatives, U.S. Senators, and presidential electors from Maryland.

(4) Effect of Changes in D.C. or Maryland Population on Redistricting

If, as seems likely, the proposal would require both Maryland and Utah to redistrict, could the new district be eliminated entirely if the population of Maryland or the District decreases to a level that would not support the additional district? In addition, if the population of Maryland or the District rises significantly, allowing either jurisdiction to claim additional House members, would Maryland or would the District receive the additional seat? Would the effect of redistricting in Utah be to make the lone Utah Democrat's reelection more difficult? Would the proposal encounter difficulty because Members fear they would lose a seat because the overall number of representatives under the proposal will decrease from 437 to 435 after the next census?

Under the H.R. 3709, the population of the District of Columbia would be included in the population of Maryland for congressional apportionment purposes. Whatever number of U.S. Representatives that population total entitles Maryland to under the existing formula will be the number it gets.

The additional (4th) Utah seat will not cause any current Member to lose a seat, since Utah will have four congressional districts after the 2010 census apportionment regardless of whether this proposal is adopted in the meantime. The additional Maryland seat will have the effect of either denying some state an additional district or causing a state to lose a seat that it would not otherwise lose. But that's arguably just a fair consequence of restoring rightful congressional representation to U.S. citizens who are currently unfairly denied that representation.

Utah has already enacted into law a 4-district plan that all parties recognize would result in a 3-1 partisan split. It would be a simple matter for Congress to lock in that 4-district plan until after the 2010 census.

(5) Disposition of the District's Electoral College Votes

Because representation in the Electoral College is based on the number of Senators and Representatives in the states, wouldn't Maryland receive only one more electoral vote to correspond with the new district? If so, and the District's three reliably Democratic electoral votes were eliminated, wouldn't the result be to tilt the votes in the Electoral College in favor of a Republican presidential candidate, if a presidential election were determined by a small number of votes?

Yes, H.R. 3709 would result in adding one electoral vote to Maryland's total, and would eliminate D.C.'s current three electoral votes. But just as noted above, that's arguably a fair consequence of providing full and equal federal representation to D.C. residents.

(6) *Political Controversy*

While the proposal on its face has some rough Democratic and Republican parity, does this equivalence ultimately break down? For example, is the proposal politically feasible, considering the likelihood of objections from Maryland elected officials and residents because of the "transfer" of some Maryland residents to a district dominated by D.C. and the resulting dilution of Maryland representation, as well as because of objections from some in the District to being incorporated into Maryland for representation purposes? Would Maryland's Republican governor and representatives object to a new Democrat in the Maryland delegation or to having another electoral vote that would likely be Democratic in presidential elections?

There are necessarily political consequences to providing fair federal representation to people who have been unfairly denied it for 200 years. I believe the H.R. 3709 is both fair and balanced, perhaps causing some relatively small amount of political pain for both parties. Any other approach (including keeping the status quo) involves its own political controversies.

(7) *Effect on Home Rule*

Once D.C. is subject to Annapolis for redistricting, can the proposal guarantee the District's ability to continue to govern itself and that the power of the Maryland legislature over the new district would be strictly limited to redistricting? Could there be language ensuring that the District's existing home rule authority be protected? Could the very act of redistricting produce intended or unintended substantive policy and political inhibitions?

H.R. 3709 specifically provides that the D.C. Home Rule Act will not be affected. The only exception is that Maryland's statewide election laws will control D.C.'s participation in federal elections only, and only to the extent that such laws are not superseded by federal law. In cases where Maryland allows discretion to its local governments in administering federal elections, that discretion must also be allowed to D.C. The requirement that the territory of D.C. be kept intact in redistricting greatly limits the amount of "coercion" that Maryland could apply to D.C. through the redistricting process.

(8) *Severability*

Shouldn't the bill creating two new House seats for D.C. and Utah have a clause that the bill is not severable, meaning if the D.C. portion of the bill were found to be unconstitutional, the Utah portion also would fall, or could Utah get a seat leaving the District with nothing?

Yes, H.R. 3709 contains such a non-severability clause.

(9) Creating a D.C.-only District

Would many of the potential problems raised by the proposal be avoided if, instead of treating District citizens as if they were residents of Maryland for congressional voting purposes, it simply treated the District as if it were a state solely for voting purposes?

Attempting to create a D.C.-only congressional district by a statute stating that the District will be considered to be a state for voting purposes doesn't work, either politically or constitutionally.

An initial question would be whether such a proposal would include voting rights for the U.S. Senate. If not, then D.C. residents would still be denied their rightful Senate voting rights. If so, creating two new U.S. Senate seats for D.C. alone, as with the Lieberman/Norton "No Taxation Without Representation Act," is not just highly controversial, but politically undoable. The political questions raised above about the "Davis proposal" pale in comparison to the controversy involved in trying to create two U.S. Senators for one smaller-than-one-congressional-district city.

But the even bigger problem is that such a proposal is simply and clearly unconstitutional. The federal court decision (affirmed by the U.S. Supreme Court) in the *Adams v. Clinton* and *Alexander v. Daley* cases states emphatically, repeatedly and with overwhelming evidence that D.C. cannot constitutionally be considered a state for the purposes of voting representation in the U.S. Congress. On the other hand, the same decision, through its discussion of the Organic Act of 1801 and the status of federal enclaves, leaves open the door for Congress, as with the D.C. Voting Rights Restoration Act, to restore rights by statute that it took away by statute.

Addendum #2—Legislative language locking-in Utah’s previously-enacted 4-district plan

[Discussion Draft] H.L.C.

AMENDMENT TO H.R. 3709

OFFERED BY MR. ROHRABACHER

Amend section 6(b) to read as follows:

(b) TEMPORARY INCREASE IN APPORTIONMENT.—

(1) IN GENERAL.—Effective January 3, 2007, and until the taking effect of the first reapportionment occurring after the regular decennial census conducted for 2010—

(A) the membership of the House of Representatives shall be increased by 2;

(B) the State of Maryland, together with the State identified by the Clerk of the House of Representatives in the report submitted under paragraph (2), shall each be entitled to one additional Representative, in accordance with the requirements of paragraph (4); and (C) each such Representative shall be in addition to the membership of the House of Representatives as now prescribed by law.

(2) TRANSMITTAL OF REVISED APPORTIONMENT INFORMATION BY PRESIDENT AND CLERK.—

(A) STATEMENT OF APPORTIONMENT BY PRESIDENT.—Not later than December 1, 2004, the President shall transmit to Congress a revised version of the most recent statement of apportionment submitted under section 22(a) of the Act entitled “An Act to provide for the fifteenth and subsequent decennial censuses and to provide for apportionment of Representatives in Congress”, approved June 28, 1929 (2 U.S.C. 2a(a)), to take into account the provisions of this section.

(B) REPORT BY CLERK.— Not later than 15 calendar days after receiving the revised version of the statement of apportionment under subparagraph (A), the Clerk of the House of Representatives, in accordance with section 22(b) of such Act (2 U.S.C. 2a(b)), shall send to the executive of the State (other than the State of Maryland) entitled to one additional Representative pursuant to this section a certificate of the number of Representatives to which such State is entitled under section 22 of such Act, and shall submit a report identifying that State to the Speaker of the House of Representatives.

(3) INCREASE NOT COUNTED AGAINST TOTAL NUMBER OF MEMBERS.—The temporary increase in the membership of the House of Representatives provided under paragraph (1) shall not operate to either increase or decrease the permanent membership of the House of Representatives as prescribed in the Act of August 8, 1911 (2 U.S.C. 2), nor shall such temporary increase affect the basis of reapportionment established by the Act of June 28, 1929, as amended (2 U.S.C. 2a), for the Eighty Second Congress and each Congress thereafter.

(4) COMPOSITION OF CONGRESSIONAL DISTRICTS FOR AFFECTED STATE.—During the period in which the temporary increase in the membership of the House of Representatives under this subsection is in effect, the Congressional districts of the State identified by the Clerk of the House of Representatives in the report submitted under paragraph (2) shall be those districts established under a law enacted by the State during 2001 (without regard to any amendments made to such law after 2001) which established Congressional districts for the State but which did not take effect because the number of districts provided under the law was greater than the number of districts to which the State was finally entitled after the regular decennial census for 2000.

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