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STATEMENT OF
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HEARING ON EQUAL REPRESENTATION IN CONGRESS: PROVIDING VOTING RIGHTS TO THE DISTRICT OF COLUMBIA

SENATE COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS

MAY 15, 2007

Chairman Lieberman, Ranking Member Collins, and members of the Committee: I am Wade Henderson, President and CEO of the Leadership Conference on Civil Rights (LCCR). I appreciate the opportunity to speak before you today regarding LCCR's strong support for providing voting rights to the District of Columbia, in general, and for S. 1257, the "District of Columbia House Voting Rights Act of 2007," in particular.

LCCR is the nation's oldest and most diverse coalition of civil rights organizations. Founded in 1950 by Arnold Aronson, A. Philip Randolph, and Roy Wilkins, the Leadership Conference seeks to further the goal of equality under law through legislative advocacy and public education. LCCR consists of approximately 200 national organizations representing persons of color, women, children, organized labor, persons with disabilities, the elderly, gays and lesbians, and major religious groups. I am privileged to represent the civil and human rights community in submitting testimony for the record to the Committee.

Mr. Chairman, first let me say that I am deeply grateful for both this hearing and for your continued efforts over the years to provide DC residents with meaningful representation in Congress. Given the expertise and the eloquence of the truly remarkable panelists that you have assembled here today, I must admit that organizing my testimony came as a bit of a challenge, because so much of what I would like to say has already been well-said, or will be well-said, by my fellow witnesses.

It occurred to me, however, that it is common in organizing legislative hearings such as this to distinguish between expert witnesses, on one hand, and affected individuals, or what Congressional staffers sometimes refer to as "victims," for lack of a better term, on the other. Interestingly enough, I come before you today as both. And with those two roles in mind, I would like to proceed by answering what I see as the two basic, fundamental questions that have brought us here today: first, why this issue? And second, why this approach?

Why this issue?

In answering the first question, I would like to begin on a personal level. As a lifelong civil rights advocate, I have always spoken out on Capitol Hill on behalf of my fellow Americans. And throughout the course of my career, I have seen changes that have made the nation a better, stronger place, more aligned with its founding principles. African Americans, Latinos, Asians, other minorities, and women now hold legislative office in both houses of Congress, which continue to more closely reflect the make-up of our great nation.

I have seen great progress in the District of Columbia as well. When I was born in the old Freedman's Hospital, on Howard University's campus, the city's hospitals were segregated along racial lines by law. That is no longer the case.

LeDroit Park, where I grew up and where I now own a home, was once an all-black neighborhood by law and by custom. Today, people of all races and from all around the world live in the area. Gone, too, is the legalized system of separate schooling that sent me to an all-black elementary school, despite the fact that I started grade school after the landmark ruling in *Brown v. Board of Education* had officially outlawed racial segregation.

Yet one thing still has yet to change: as a lifelong resident of Washington, and in spite of all my efforts to speak out on Capitol Hill on behalf of other Americans, I have never had anyone on Capitol Hill with the ability to speak out on my own behalf. For over 200 years, my hundreds of thousands of neighbors in this city and I have been mere spectators to our great democracy. Even though we pay federal taxes, fight courageously in wars, and fulfill all of the other obligations of citizenship, we still have no voice when Congress makes decisions for the entire nation on matters as important as war and peace, taxes and spending, health care, education, immigration policy, or the environment.

And while we DC residents understand the unique nature of our city in the American constitutional system, and we recognize Congress' expansive powers in operating the seat of our federal government, we are not even given a single vote in decisions that affect DC residents and DC residents alone. Without as much as a single vote cast on behalf of DC residents, Congress decides which judges will hear purely local disputes under our city's laws, how it will spend local tax revenues, and it even has the power to decide what words the city is allowed to print on its residents' license plates. Adding insult to injury, we have not even been able to cast a single vote when Congress has decided, in recent years, to prevent our elected city officials from using our own taxes to advocate for a meaningful voice in our democracy.

It is enough to make people feel like dumping crates of tea into the Potomac River.

Shifting my focus from that of a DC resident to a broader civil and human rights perspective, the continued disenfranchisement of DC residents before Congress stands out as the most blatant violation today of the most important civil right we have, the right to vote. Without it, without the ability to hold our leaders accountable, all of our other rights are illusory. Our nation has made tremendous progress throughout history in expanding this right, including through the 15th, 19th, and 26th Amendments; and in the process, it has become more and more of a role model to

the rest of the world. The Voting Rights Act of 1965 has long been the most effective law we have to enforce that right, and it has resulted in a Congress that increasingly looks like the nation it represents. Its unanimous renewal by this chamber last year, despite some unfortunate resistance in the House, stands out as one of Congress' proudest moments in many years.

In spite of this progress, however, one thing remains painfully clear: the right to vote is meaningless if you cannot put anyone into office. Until DC residents have a vote in Congress, they will not be much better off than African Americans in the South were prior to August 6, 1965, when President Johnson signed the Voting Rights Act into law – and the efforts of the civil rights movement will remain incomplete.

Their situation will also undermine our nation's moral high ground in promoting democracy and respect for human rights in other parts of the world. Indeed, the international community has already been taking notice. In December of 2003, for example, a body of the Organization of American States (OAS) declared the U.S. in violation of provisions of the American Declaration of the Rights and Duties of Man, a statement of human rights principles to which the U.S. subscribed in 1948.[1] In 2005, the Organization for Security and Cooperation in Europe, of which the U.S. is a member, also weighed in. It urged the United States to "adopt such legislation as may be necessary" to provide DC residents with equal voting rights.[2]

Extending voting rights to DC residents is one of the highest legislative priorities of the Leadership Conference on Civil Rights this year, and will remain so every year, until it is achieved.

Why this approach?

Mr. Chairman, while you have been a loyal friend to the civil rights movement for many decades now, with a record dating all the way back to your volunteer work in Mississippi in 1963 to register African American voters, I am greatly encouraged to see that you are continuing to gain more allies in one of your more recent civil rights endeavors, that of expanding the franchise to DC residents, as evidenced by the recent House passage of the "District of Columbia House Voting Rights Act of 2007" ("DC VRA"). I would now like to turn to a discussion of that specific proposal.

I must admit that when Representative Tom Davis (R-VA) first proposed pairing a first-ever vote in the House for the District of Columbia with an additional House seat for Utah, a state which had been shortchanged in the last reapportionment of Congressional seats in 2001, I was skeptical. While I greatly appreciated Rep. Davis' creative effort, I testified before his committee in 2004 about two concerns I had with his approach. First, his bill, like yours today, would have required a mid-decade redrawing of Utah's federal legislative districts, a move that I believed raised constitutional concerns and that could set a dangerous precedent for diluting the votes of racial and ethnic minorities. Second, unlike the "No Taxation Without Representation

[1] Inter-American Commission on Human Rights, *Statehood Solidarity Committee/United States*, Report No. 98/03, Case 11.204 (Dec. 29, 2003).
[2] OSCE Parliamentary Authority, Washington, *DC Declaration and Resolutions Adopted at the Fourteenth Annual Session*, July 1-5, 2005.

Act" that you and Delegate Eleanor Holmes Norton (D-DC) had sponsored in previous years, I was concerned about the fact that the DC VRA would only provide DC residents with a vote in the House, stopping short of providing the full representation that DC deserves.

A few things have changed, however. For one, last year, the Supreme Court settled the issue of whether mid-decade redistricting is constitutional, by upholding the 2003 redrawing of Texas' congressional map in *League of United Latin American Citizens v. Perry*.[3] In addition, when it appeared that the DC VRA was picking up momentum in the House of Representatives last fall, the Governor and the legislature of Utah showed extraordinary care in proposing a new Congressional map that would avoid the kinds of problems that had made LCCR so skeptical of mid-decade redistricting in the first place.

I am also less troubled than I was before about the fact that the DC VRA only provides DC with representation in the House. To be sure, LCCR still strongly supports the full representation, in both the House and the Senate, of District of Columbia residents. At the same time, I have been pleasantly surprised at the attention that the debate over the DC VRA has brought to not only the issue of DC disenfranchisement but also the more recent unfair dilution of the votes of Utah citizens, and at the number of new – and in some cases unexpected – allies we have recruited along the way. While any political compromise involves the risk that it will cut off future progress, I have grown more optimistic that the enactment of this legislation will mark the beginning of the debate, rather than the end.

At the same time, I recognize that the bill is still not without its critics, and I would like to address some of the other concerns that have been raised about it. During the debate over the DC VRA on the House floor several weeks ago, I must say I was profoundly disappointed in the objections that several Members raised. For example, one member referred to the bill as a "cynical political exercise,"[4] while another labeled it "a raw power grab by the new Democrat majority."[5]

To anyone who would resort to such harsh rhetoric, in criticizing the approach taken by the DC VRA, I would simply ask: what is your alternative, and what have you been doing to turn it into law? Sadly, only a very small number of Members who opposed the DC VRA in the House would be able to provide a credible answer to that question. Some opponents paid lip service to the idea of returning most of DC to the state of Maryland, a complicated but legitimate option that I will discuss below.[6] Yet when they were given opportunities to offer an amendment or even a complete substitute to the bill, in the form of a "motion to recommit," on two separate occasions, opponents attempted to simply derail the current proposal instead.

Putting aside the more reckless and partisan arguments that have been made against the DC VRA, other opponents have argued that while DC residents deserve Congressional

[3] 126 S. Ct. 2594 (2006).
[4] Rep. Pete Sessions (R-TX), Congressional Record, 110th Cong., 1st Session at H3569 (Apr. 19, 2007).
[5] Rep. Patrick McHenry (R-NC), Congressional Record, 100th Cong., 1st Session at H3574 (Apr. 19, 2007).
[6] Rep. Ralph Regula (R-OH) has, to his credit, proposed retrocession for a number of years. Only a very small number of his colleagues, however, have supported his efforts. On April 16 of this year, three days before the House attempted for a second time this year to bring H.R. 1905 to a vote on final passage, Rep. Louie Gohmert (R-TX) introduced a similar counter-proposal.

representation, Congress does not have the power to treat DC as a "state" for the purpose of giving it that representation. While I anticipate that Professor Dinh will respond to this argument more thoroughly, I would like to respond with two brief points.

First, when the District of Columbia was first envisioned, it was primarily created in order to keep any one state from controlling and possibly harming the seat of the federal government. The creation of a "no man's land," where the most important civil right we have in a democratic system would simply not apply, was not necessary to this end. While there was some debate over the issue of whether residents of the new district would be represented in Congress, and while those opposed to initially granting DC representation certainly prevailed with the passage of the Organic Act of 1801, the decision at the time involved an important trade-off that no longer applies: long before such developments as the telephone, air travel, and the Internet made it far easier for citizens across the nation to communicate with their legislators, the very small population that resided in the District in 1801 did enjoy greater access to Congress than other citizens had, even in the absence of actual voting representation.[7] Over the past two centuries, however, particularly after the abolition of slavery, the size and the relative influence of the native DC population has changed so drastically that the assumptions made in 1801 simply no longer apply.

Second, while Article 1, Section 2 of the Constitution does indeed provide that House members shall be chosen "by the people of the several States," there is room for disagreement over how narrowly or broadly the word "state" should be interpreted. In a number of other contexts, the use of the term "state" in the Constitution has been interpreted to include the District of Columbia. While there were competing justifications given, a majority of the Supreme Court in 1949 ruled, in *National Mutual Insurance Co. v. Tidewater Transfer Co.*,[8] that the District could be treated as a state for the purpose of federal diversity jurisdiction. Few people if any would argue that the right to a "speedy and public trial" under the Sixth Amendment, or the Equal Protection clause of the Fourteenth Amendment, does not apply in the District of Columbia, even though their text refers to the actions of a "state." Most recently, the U.S. Court of Appeals for the D.C. Circuit held that the Second Amendment applies with full force in the District of Columbia, even though its text also refers to "the security of a free State."[9]

Given these examples, and given the principles on which the then-recent American Revolution had been based, it is certainly plausible – at the very least – that our Founding Fathers would have wanted Congress to have maximum leeway in preventing the evil of "taxation without representation" from ever being imposed on citizens again. In fact, given the current size and relative political weakness of the DC population today, they most likely would be horrified that Congress had not addressed it a long time ago.

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[7] *See, e.g.*, remarks of Rep. Huger in 1803: "Gentlemen, in looking at the inconvenience attached to the people of the Territory, do not sufficiently regard the superior convenience they possess. Though the citizens may not possess full political rights, they have a greater influence upon the measure of the Government than any equal number of citizens in any other part of the Union." Annals of Congress 489 (Feb. 1803).
[8] 337 U.S. 582 (1949).
[9] *Shelly Parker, et al. v. District of Columbia and Adrian M. Fenty*, 478 F.3d 370, 395 (D.C. Cir. 2007).

Finally, I would like to discuss two alternatives that DC VRA opponents frequently raised during last month's debate on the House floor.[10] While both of them have their merits, and both certainly represent good-faith contributions to the broader debate over DC representation, they are also accompanied by serious practical and legal hurdles that would need to be addressed before LCCR could support either approach.

One alternative is to amend the Constitution to provide DC with Congressional representation purposes. LCCR would certainly support an effort to amend the Constitution, if it is ultimately deemed necessary. However, our nation has an extensive legal and political tradition of amending the Constitution, our nation's most precious document, only as a last resort when other efforts to address the problem at hand have been tried and have failed. With regard to DC representation, and in light of the fact that the Supreme Court has yet to rule definitively on Congress' authority to provide representation, I do not believe we are at that point yet.

Retrocession, or returning most of what is currently the District of Columbia to its former home in Maryland, is another option that has been under discussion for a number of years. The federal government would retain a small and essentially uninhabited area of DC as a "National Capital Service Area," and current DC residents would be given full voting rights as new citizens of Maryland.

It is also a legitimate topic of discussion, and because Congress returned another portion of the original District of Columbia to Virginia in 1846, there is also clear legislative precedent for such an approach. At the same time, however, retrocession would require the consent of Maryland, and achieving the political consensus necessary to return the District to Maryland could be all but impossible. The political and economic consequences of the move would be dramatic and far-reaching for the populations of both DC and Maryland. In addition, it could not be undertaken through legislation alone: Congress and the states would still need to amend the Constitution in order to repeal the 23rd Amendment. Given the drastic nature of the approach, I believe that retrocession is premature, but it deserves further study.

Ultimately, I believe the DC VRA is the best approach for Congress to take on behalf of the residents of both DC and Utah. It presents a politically neutral approach, it has a solid chance of surviving constitutional scrutiny, and unlike the above two options, it can be passed and signed into law this year. The residents of both DC and Utah have already waited far too long.

This concludes my prepared remarks. Again, I want to thank you for the opportunity to speak before your committee today. I look forward to answering any questions you may have.

[10] There are certainly other alternatives. DC statehood is another option that has been debated in the past, and Rep. Dana Rohrabacher has long supported a measure, most recently H.R. 492 in the current Congress, to treat DC voters as Maryland residents for federal election purposes. *See* Eugene Boyd, *CRS Reports for Congress: District of Columbia Voting Representation in Congress: An Analysis of Legislative Proposals*, Congressional Research Service, Updated Jan. 30, 2007.