Opening Statement of Former Rep. Tom Davis
Subcommittee on the Constitution, Civil Rights, and Civil Liberties
Hearing on H.R. 157, the "District of Columbia House Voting Rights Act of 2009"
January 27, 2009

Thank you, Chairman Nadler and Ranking Member Sensenbrenner, for inviting me to testify this morning on legislation near and dear to me. I also want to thank full Committee Chairman Conyers for his steadfast commitment to this legislation, and of course my friend, Delegate Eleanor Holmes Norton, with whom I've marched for D.C. voting rights for many years now.

I think the bill before the Subcommittee continues to be a unique and creative legislation solution to a vexing and patently unjust problem. It's a solution that provides a win-win opportunity for the Congress, and I'm pleased the Subcommittee has decided to consider it again at the very start of the 111th Congress.

For 207 years the citizens of the District of Columbia have been denied the right to elect their own fully empowered representative to the nation's legislature. This historical anomaly has happened for a number of reasons: inattention, misunderstanding, a lack of political opportunity, and a lack of will to compromise to achieve the greater good. I think the stars are aligning in a way that makes those reasons moot.

I have long stated it is simply wrong for the District to have no directly elected national representation. How can you argue with a straight face that the Nation's Capital shouldn't have a voting Member of Congress? For more than two centuries, D.C. residents have fought in 10 wars and paid billions of dollars in federal taxes. They have sacrificed and shed blood to bring democratic freedoms to people in distant lands. Today, American men and women continue fighting for democracy in Baghdad, but here in the Nation's Capital, residents lack the most basic democratic right of all.

What possible purpose does this denial of rights serve? It doesn't make the federal district stronger. It doesn't reinforce or reaffirm congressional authority over D.C. affairs. In fact, it undermines it and offers political ammunition to tyrants around the world to fire our way.

In spite of my concerns, I was long frustrated by the lack of a politically acceptable solution to this problem. That all changed after the 2000 census, when Utah missed picking up a new seat by less than a thousand people. Utah, as you know, contested this apportionment and lost in court. As I looked at the situation, I realized the predominance of Republicans in Utah and Democrats in the District offered the solution that had been evading us.

The D.C. House Voting Rights Act would permanently increase the size of Congress by two Members. It's intended to be partisan-neutral. It takes political concerns off the table, or at least it should.

We also took great pains over the years to dispel some substantial myths surrounding the founding of Washington, D.C. The idea for a federal district arose out of an incident that took place in 1783 while the Continental Congress was in session in Philadelphia. When a crowd of Revolutionary War soldiers, who had not been paid, gathered in protest outside the building, the Congress requested help from the Pennsylvania militia.

The state refused, and the Congress was forced to adjourn and reconvene in New Jersey. After that incident, the Framers concluded there was a need for a Federal District, under solely federal control, for the protection of the Congress and the territorial integrity of the capital. So the Framers gave Congress broad authority to create and govern such a District. That is the limit of what the Framers had to say about a Federal District in the Constitution – that there should be one and that it should be under congressional authority.

After ratification of the Constitution, one of the first issues to face the new Congress was where to place this Federal District. Some wanted it in New York. Others wanted it in Philadelphia, and others on the Potomac. These factions fought a fierce political battle to decide the matter because they believed they were founding a great city, a new Rome. They expected this new city to have all the benefits of the great capitals of Europe. They never once talked about denying that city's inhabitants the right to vote.

Finally, Jefferson brokered a deal that allowed the city to be placed on the banks of the Potomac in exchange for Congress paying the Revolutionary War debt. New York got the debt paid and Philadelphia got the capital for ten years. Then as now, political decisions were shaped by the issues of the day.

In 1790, Congress passed the Residence Act, giving those residing in the new District the right to vote. But while the capital was being established, those living here were permitted to continue voting where they had before, in Virginia or Maryland.

That continued until the seat of government officially moved to Washington in 1800. Since no records survived, we may never know why Congress then passed a stripped down version of a bill authored by Virginia Congressman "Light Horse" Harry Lee, which simply stated the laws of Virginia and Maryland then in effect, having been superseded in the District, would still apply.

But there is absolutely no evidence the Founding Fathers – who had just put their lives on the line to forge a representative government – then decided the only way to secure that government was to deny representation to some of their fellow citizens. One historian aptly described the process as a "rushed and improvised accommodation to political reality, necessitated by the desperate logic of lame duck political maneuvering." But the inelegant compromise ultimately adopted left a decidedly undemocratic accident in its wake. District residents had no vote in Congress.

After answering the political question, and dispelling historical myths, we moved on to address whether Congress, independent of a constitutional amendment, had the authority to give the District a voting Member. Through hearing testimony and expert opinions, we have established the soundness of that congressional authority.

As Ken Starr, a former appeals court judge here in the District, wrote and testified, the authority of Congress with respect to the District is "awesome." We also received the expert opinion of Viet Dinh, the renowned Georgetown law professor and former Assistant Attorney General, asserting the power of Congress to do this legislatively. You will have the pleasure of hearing from Professor Dinh today.

Some legal scholars will disagree, but the courts have never struck down a congressional exercise of the District Clause. There is no reason to think the courts would act differently in this case.

By now, virtually every Member is aware of the constitutional arguments for and against. I ask that those who are new to this legislation – let's fact it, both chambers look a little different than they did when we started down this road – I ask that they think carefully about what they hear today, and moving forward. Every first year law student in the country learns that you can't just read the Constitution once-over to figure out what it means. But that's where the other side's argument usually stops and starts on this issue.

Those opposing this bill ignore 200 years of case law and clear instruction from the court that this is a congressional matter requiring a congressional solution. Under opponents' reading of the Constitution:

- The federal government would not be allowed to impose federal taxes on District residents – the Constitution says direct taxes shall be apportioned among the several states;
- District residents would have no right to a jury trial – you have to be from a state to have that right;
- D.C. residents would have no right to sue people from outside D.C. in the federal courts – only people from states have that right;
- The Full Faith and Credit clause would not apply to D.C. – that applies only between the states; and,
- The District would be able to pass laws which interfere with interstate commerce – the Commerce Clause only allows Congress to regulate commerce among the several states.

But in each of those cases the Supreme Court has held that Congress can consider the District a "state" for purposes of applying these fundamental provisions. If Congress has the authority to do so regarding those constitutionally granted rights and duties, there should be no question it has the same authority to protect the most sacred right of every American – to live and participate in a representative republic.

It is now essentially a matter of political will as to whether D.C. receives a voting Member of Congress or not – whether the D.C. delegate becomes D.C.'s representatives. Six years after starting this effort with my friend, Eleanor Holmes Norton, and countless others, I think that will has reached critical mass. We've reached this point because, quite simply, it's the right and fair thing to do.

Thank you again, Mr. Chairman and Members of the subcommittee, for giving this recently-retired Member of Congress an opportunity to testify, and thank you for giving this legislation the early hearing it deserves.