



DC APPLESEED
C E N T E R

1111 Fourteenth Street, NW
Suite 510
Washington, DC 20005

Phone 202.289.8007
Fax 202.289.8009
www.dcappleseed.org

SPECIAL COMMITTEE ON STATEHOOD AND SELF-DETERMINATION

**THE STATUS AND IMPLICATIONS OF THE DC HOUSE VOTING RIGHTS ACT
AND THE GUN AMENDMENT**

**TUESDAY, APRIL 7, 2009, 6:30 P.M.
JOHN A. WILSON BUILDING, ROOM 412
1350 PENNSYLVANIA AVENUE, NW**

Testimony of Walter Smith
Executive Director
DC Appleseed Center

My name is Walter Smith. I am the Executive Director of the DC Appleseed Center for Law and Justice, Inc.

DC Appleseed is a nonpartisan, nonprofit public interest organization dedicated to improving living and working conditions in the national capital area. Today I want to testify briefly about a project to which DC Appleseed is strongly committed, one that I have been personally involved with for nearly 12 years— addressing DC's lack of democracy and lack of voting representation in the Congress.

Just to note my history with this issue, I was the Special Deputy Corporation Counsel for the District of Columbia when Corporation Counsel John Ferren and I determined that a lawsuit needed to be brought on behalf of the District and its citizens contending that our lack of voting representation is unconstitutional. As you know, with the pro bono assistance of one of the District's leading law firms, Covington & Burling, we brought one of two lawsuits before a three-judge federal court on July 4, 1998.

As you also know, by a narrow 2-1 vote, the court ruled that while our denial of the vote was inequitable, unjustified, and amounted to a serious grievance, our remedy nevertheless lay with Congress not the courts. I thereafter represented the District on a pro bono basis in appealing that ruling to the US Supreme Court.

Since the Supreme Court affirmed the 2-1 ruling, we and others who care deeply about our denial of voting rights have been working with Congresswoman Norton, the Mayor, the Council, and other District leaders to urge the Congress to rectify this inequity. We have taken our case to Congress in part because that is precisely what the 2-1 ruling from the courts directed us to do.

This last point is a key one, and one that many people are not aware of: far from ruling that DC citizens are not entitled to voting rights, the court case actually ruled almost the opposite: that it is unjust that we do not have voting rights, but that this is an issue that Congress, not the courts, should address.

I don't think there is any disagreement that the pending DC Voting Rights bill is limited in its scope and does not address the broad array of civil rights long denied to the residents of the nation's capital. These rights include budgetary and legislative autonomy, the ability to tax income at its source, and of course, full participation in the other chamber of Congress, the United States Senate.

However, the fact that the House Voting Rights Act is incomplete doesn't mean we shouldn't support it. When this bill is passed, District residents will take an important step forward toward full democracy.

In fact, the District struggle for full democracy has included a number of such steps.

For example, the 23rd Amendment, allowing DC residents to vote in presidential elections, was clearly imperfect. Ratified in 1961, the 23rd Amendment writes inequality into the Constitution itself. No matter how large DC's population grows, the District is entitled, under this Amendment, to no more electoral votes than that of the least populous state.

But I would argue that we should not have denied ourselves the opportunity to cast votes in the last 13 presidential elections simply because the 23rd Amendment doesn't go far enough in providing equal rights to DC.

Similarly, the Home Rule Act was justly criticized because it expressly retained Congress's right to interfere with purely local affairs and prohibited our Council from legislating on certain matters – such as a non-resident income tax. Even with an unfairly limited Mayor and Council, I believe we are far better off with the Home Rule Act and those elected officials than with the appointed Commissioners we previously had.

Finally, look at the Delegate position itself. Even with no vote, Eleanor Holmes Norton has a remarkable record of accomplishment that outshines many of her colleagues who do have a vote. It is inconceivable to think now that the District of Columbia should have rejected the possibility of a nonvoting Delegate on the ground that it did not give us all that we are entitled to.

The fact is that the next step forward -- having a voting member of the House of Representatives -- will put DC in a stronger position as we prepared for still further steps, just as our votes for President, our own elected Mayor and Council, and our Delegate to Congress have made it possible for us to move to this current step. In addition, by having a full voting member of Congress, first in the House, then hopefully in the Senate, it will

be ever more untenable for Members of Congress from all over the country to overturn decisions made by DC's local elected officials on local DC issues.

If the DC Voting Rights Act is challenged and then upheld by the Supreme Court, then we can move on to expanding that franchise. However, if the Court finds that the DC vote is unconstitutional, its ruling can and should be used to propel us forward in other ways. Here is why I say that.

First, the Court's ruling, even if it is against us, is quite likely to agree that our lack of voting representation is unjust. It is also quite likely to suggest which remedies are available to us to correct the injustice. If we must pursue other remedies under the Constitution, then we need to know it, and the sooner the better. This is one reason why the provision in the bill allowing expedited judicial review of the bill's constitutionality seems to me to be a good thing.

Second, while some say that a loss in the Supreme Court on DC Voting Rights would present a major setback to the movement, I don't see it that way. Instead, I believe that such a ruling would put the issue of DC democracy front and center and in the national headlines for the first time ever. Keep in mind that most Americans are not aware of the District of Columbia's unique political status. Raising the kind of awareness that a landmark Supreme Court ruling can bring goes well beyond what we can achieve with the 'Taxation Without Representation' slogan. A Supreme Court decision – even if it finds the DC Voting Rights Act unconstitutional – will help bring visibility and momentum to our cause because it will amount to a nationwide announcement that, even though the Congress and the President endorsed greater democracy for DC, another way must be found to establish that democracy.

My final point is that we are most likely to attain equality and full citizenship for District of Columbia residents by working together. Whatever the outcome of the DC Voting Rights bill is, I hope we find a way to come together and achieve our shared goals.