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The D. C. Ripoff Amendment

On August 22, 1978, the U.S. Congress passed and sent to the states a new proposed amendment to the United States Constitution to give the District of Columbia representation "as though it were a state." It passed the U.S. Senate with only one vote more than the required two-thirds majority.

The text of this proposed constitutional amendment, which has become known as "D.C. Rep" is as follows:

"Joint Resolution proposing an amendment to the Constitution to provide for representation of the District of Columbia in the Congress.

"Section 1. For the purpose of representation in the Congress, election of the President and Vice President, and Article V of this Constitution, the District constituting the seat of government of the United States shall be treated as though it were a state.

"Section 2. The exercise of the rights and powers conferred under this article shall be by the people of the District constituting the seat of government, and as shall be provided by the Congress.

"Section 3. The twenty-third article of amendment to the Constitution of the United States is hereby repealed.

"Section 4. This article shall be inoperative, unless it shall have been ratified as an amendment to the Constitution by the legislatures of three-fourths of the several states within seven years from the date of its submission.

Lobbyists for Federal Employees

Each of our 50 states is represented in the U.S. Congress by two Senators and one to 43 Representatives. D.C. Rep would add two Senators and at least one Representative who would represent the federal bureaucracy "as though it were a state."

The District of Columbia already has 100 Senators and 435 Representatives who live in or near Washington and who are constantly voting special benefits for the District that no other state receives, such as the new extravagant subway system.

But all that is apparently not enough for the federal octopus. D.C. Rep would give the federal employees their own special representatives in the Senate and House as "inside" lobbyists to make it easier and

speedier to pass big-spending bills in Congress.

The powerful groups that want to consolidate all control in the federal government are not satisfied with the tremendous power that already rests there. Federal employees in the executive branch of our government already spend our tax dollars to draft legislation, lobby it through Congress, and propagandize the public to accept it. The executive branch of the federal government already spends more than such private-enterprise advertisers as AT&T to sell the public on plans to give away more of our money and to control more of our lives.

The real issue involved in the proposed constitutional amendment called D.C. Rep is the giving of special privileges and power to Washington bureaucrats. They would surely elect Senators and Representatives who would vote for the interests of their constituents, namely, higher taxes on the rest of the country to pay for the continued expansion of the federal bureaucracy and its payroll.

The federal government employs more than 38 percent of those working in the District of Columbia (223,900 employees). Related service industries employ another 25 percent (149,200 employees). Employment trends show an ever-increasing domination by the federal government, and there are no significant competing interests. Washington, D.C. can really be considered a "company town." It simply is not possible to separate the land area of the District of Columbia from its dominant activity, the daily business of the federal government.

Senators from the 50 states must represent the interests of all the citizens in their states -- urban and rural, business and labor, and all social and economic classes. In the District, however, there are no significant competing interests that the new Senators would have to respect. The federal employees are the overwhelmingly dominant class, and they would elect Senators and Representatives who are sympathetic to the continued growth and prosperity of the federal bureaucracy. District Senators and Representatives would not have to listen to farmers, businessmen, labor representatives, or any defined group except federal employees.

The passage of the D.C. Rep amendment by Congress proves the effectiveness of an "inside" lobbyist. It is the supreme achievement of the District's non-voting delegate in the Congress, Walter E. Fauntroy,

who has been diligently working for this goal since he became the nonvoting delegate in 1970. He is a classic example of how an "inside" lobbyist can be specially effective in persuading Congress to pass special-interest legislation.

Fauntroy is already making plans to be elected in 1980 as the first U.S. Senator from Washington, D.C. If that happens, he can then spend all his time lobbying for bigger federal spending, higher wages for federal employees, and an expanded federal bureaucracy. After all, the federal government will be the largest "industry" in his "state," and federal employees will be by far his largest bloc of constituents. Isn't it the job of Senators to represent the interests of their constituents?

The Phony Arguments

Of course the proponents of D.C. Rep don't call their proposed constitutional amendment a plan to give privileged treatment to federal payrollers. With public relations skill, they have packaged it in the typical trappings of ultra-liberal bleeding-heart rhetoric.

The first bogus issue used in behalf of D.C. Rep is that District residents are the victims of "taxation without representation." We are made to feel guilty. We are made to feel that somehow District residents have been mistreated and deprived of their just participation in the American democracy.

It is not true that District residents are the victims of taxation without representation. In 1961 the 23rd Amendment to the U.S. Constitution, which gave Washington, D.C. three electoral votes, provided for the vote for President and Vice President by residents of the District of Columbia.

In 1967 Congress instituted a mayor-council form of government with appointed offices. In 1968 Congress allowed residents of Washington to elect members of their school board. In 1970 Congress granted the District the right to elect a delegate to the Congress. Although he cannot vote in the House, he does participate in House floor debates and does vote on House committees. This position has been held by Walter E. Fauntroy ever since it was created. In 1973 the City Council was given the power to legislate in local matters. Congress retains the power, under Article I of the Constitution, to enact legislation and to veto or supersede the Council's acts.

The District receives a direct grant from the federal government every year in recognition of the District's role as our nation's capital and as compensation for tax losses because of the large amount of nontaxable federal property in the city. The 1978 grant is \$300 million, or 28 percent of the District's budget. No state receives such an unrestricted annual grant from the federal government. The total federal aid to the District of Columbia was \$1,010 per capita in 1975. No state with voting representation in the Congress receives anything like that level of handouts.

The population of Washington, D.C. today is estimated at 690,000, a figure which would entitle the District to one Representative. However, only 31 percent of the voting age population voted in 1976, the lowest percentage of any state. One reason for this low percentage is the large numbers of citizens residing in the District who maintain voting domiciles elsewhere. Apparently no records exist on the number of District residents who vote in other states, but in the court case of *Carliner v. Board of Education* it was estimated that

200,000 residents of the District are eligible to vote in another state.

The principal reason that D.C. Rep passed the Congress is that its sponsors made a crudely racist appeal by calling attention to the high percentage of blacks who live in the District. The *Washington Post* reported that "part of the strategy of supporters is to put pressure on Senators who have large numbers of blacks in their states."

The race issue is as phony as a \$3 bill. The constitutional decision to locate the seat of our government in a District geographically separate from any state was made at a time when few blacks lived in the area and their right to vote was not even an issue. The many arguments against giving two special Senators and a Representative to Washington, D.C. have nothing whatever to do with the race of its residents.

The Constitutional Reasons

District residents do not have voting representation in Congress for two reasons. First, the United States is a sovereign nation of many sovereign states, and the District is not a state in any definition of that word. Second, the Founding Fathers had the great wisdom, in Article I, Section 8 of the Constitution, to exempt the seat of our government from the political process so that the federal government might remain the servant of the people and not become its master.

The setting apart of the District of Columbia as an area separate and distinct from the states is based on Article I, Section 8, Clause 17 of the U.S. Constitution, which states: "The Congress shall have power . . . to exercise exclusive legislation in all cases whatsoever, over such district (not exceeding ten miles square) as may, by cession of particular states, and the acceptance of Congress, become the seat of the government of the United States, and to exercise like authority over all places purchased by the consent of the legislature of the state in which the same shall be, for the erection of forts, magazines, arsenals, dockyards, and other needful buildings. . . ."

James Madison, in *Federalist Paper* No. 43, explained the reason for the special treatment accorded the District of Columbia: "The indispensable necessity of complete authority at the seat of government, carries its own evidence with it. It is a power exercised by every legislature of the Union, I might say of the world, by virtue of its general supremacy. Without it, not only the public authority might be insulted and its proceedings interrupted with impunity; but a dependence of the members of the general government on the state comprehending the seat of the government, for protection in the exercise of their duty, might bring on the national councils an imputation of awe, or influence, equally dishonorable to the government and dissatisfactory to the other members of the Confederacy."

In 1801, Maryland and Virginia ceded 100 square miles to form the District of Columbia. In 1846 the lands that came from Virginia were ceded back to that state. Since that date, the Washington land area has remained constant at 62.7 square miles.

Under our present Constitution, the District of Columbia is not allowed any voting representation in Congress. In Article I, Section 2, the Constitution states that "the House of Representatives shall be composed of members chosen every second year by the people of the several states," and in Article I, Section 3, that "the Senate of the United States shall be composed

of two Senators from each state." The District of Columbia is not a state, so it does not come within that definition.

Under the Great Compromise of the Constitutional Convention of 1787, the Senate is the body of equal representation of the states while the House is the body of representation of the people. In *Federalist Paper* No. 62, the author (either Madison or Hamilton) states: "In this spirit it may be remarked, that the equal vote allowed to each state is at once a constitutional recognition of the portion of sovereignty remaining in the individual states, and an instrument for preserving that residuary sovereignty."

D.C. Rep would give the District representation in the Congress "as though it were a state." But what is a state? Chief Justice Marshall, in *Cherokee Nation v. Georgia* (1831), defined a state as "a political community of free citizens, occupying a territory of defined boundaries, and organized under a government sanctioned and limited by a written Constitution, and established by the consent of the governed."

Washington, D.C. is a far cry from that definition. The District does not have independence in its City Council's deliberations as the states do in their legislatures. The yearly budget is not legislated by the District at all but by the appropriate committee of each House of Congress. The police power is jointly administered with several federally-chartered police forces.

States may enter into compacts with each other, subject to the approval of Congress. All such interstate compacts participated in by the District of Columbia have been negotiated by Congress in its behalf.

The Constitution in Article IV, Section 4, guarantees a "republican form of government" to each state. All states have a republican constitution that is very similar to the national Constitution. But the District of Columbia's City Council, which might be said to substitute for a state legislature, is dependent on the approval of Congress for its actions, and is therefore not independent.

Unanswered Questions

What does D.C. Rep open up in the way of anticipated statehood for other U.S. territories? The residents of the following U.S. territories are United States citizens but do not vote for President or have voting representation in Congress: Puerto Rico with a population of 3,210,000, the Virgin Islands with a population of 100,000, American Samoa with a population of 31,000, and Guam with a population of 100,000. The argument of "taxation without representation" applies just as much to those territories as it does to the District of Columbia.

What kind of a precedent does this set for representation for other big cities? Why should Washington, D.C. have special representation but not New York City, Chicago, or Los Angeles?

The number of members of the House of Representatives has remained unchanged at 435 for 66 years. Every ten years, the Congress is reapportioned based on the census. When Alaska and Hawaii became states, each was assigned one seat in Congress, temporarily increasing the House to 437. But the number dropped back to 435 at the next reapportionment.

Article I, Section 2, Clause 3 of the Constitution provides that "each state shall have at least one representative." The population apportionment takes

place after one representative has been assigned to every state.

Congress could increase the size of the House in order to accommodate the District Representative, or it could follow tradition and keep its membership at 435, with the District Representative simply being allotted a seat after the reapportionment of 1980. If the House decides to keep its membership at 435, and if present population projections remain accurate, then the state that would have to relinquish a seat for the District would be Illinois. In other words, Illinois, a state whose population is increasing, would be deprived of a seat in favor of the District where the population has been declining for 28 years. (This loss of a seat for Illinois is in addition to the loss of a seat already anticipated from the 1980 reapportionment.)

The D.C. Rep amendment grants to the District the power to participate in the ratification of constitutional amendments under Article V of the Constitution. But Article V states that constitutional amendments are to be ratified by the state legislatures of the several states. The District has no state legislature since it is not a state. So how would the District ratify a constitutional amendment? It has been held unconstitutional to allow ratification to be handled by a referendum of the people. It is hard to see how the District's City Council could function as a state legislature. Any procedure Congress might adopt for ratification of constitutional amendments by the District would give the District special privileges not enjoyed by any of the several states.

In *Firemen's Insurance Company v. Washington* (1973), the Court ruled that Congress, in legislating for the District, has all the powers of a state legislature, and Congress may delegate to the District government "full legislative authority, subject of course, to constitutional limitations to which all lawmaking is subservient and subject also to the power of Congress at any time to revise, alter, or revoke the authority granted." Would Congress itself have the power to ratify a constitutional amendment on behalf of the District of Columbia and so provide one of the ratifications of the three-fourths required?

Another problem of D.C. Rep is that it appears to grant direct election of the President by popular vote, while the several states cast their ballots for President through the Electoral College.

According to the research study made by the Heritage Foundation of Washington, D.C., to which we are indebted for many of the facts in this report, D.C. Rep might end up giving the District of Columbia "substantial constitutional privileges not enjoyed by the several states." The text of the constitutional amendment, combined with the unique situation of the District and the special relation between its City Council and the U.S. Congress, raises many questions that should be answered before D.C. Rep is ratified by the states.

Rushing Ratification?

The advocates of D.C. Rep started off their campaign for ratification using the end-justifies-any-means tactics. Their approach is, we want this constitutional amendment right now, and we'll change any rules that stand in our way of getting it!

California was the only legislature in session at the time Congress completed action. So the principal D.C.

Rep lobbyist, Walter E. Fauntroy, and Washington City Council Chairman Sterling Tucker flew to Sacramento to urge immediate ratification.

All legislative bodies have rules of procedure. This enables them to conduct government business in an orderly and fair way that empowers the majority at the same time that it protects the rights of the minority. Rules of procedure are usually adopted at the beginning of each session so that they are not tainted by prejudice for or against any particular legislation.

Among the rules of the California legislature is one that says that a new bill may not be heard by a committee within 30 days of its introduction. Another requires any committee to give four days' notice of a hearing on a bill. Such rules are designed to allow both sides time to present their arguments, and for the public and the press either to attend the hearing or to notify their legislators of their wishes.

The D.C. Rep lobbying twosome from Washington, Fauntroy and Tucker, demanded that the rules be waived so their special-interest amendment could be passed immediately. They urged ratification before the California legislature adjourned -- without a hearing, without debate, and before Californians realized what their legislators were voting on or why.

D.C. Rep was stalled after some legislators refused to let the steamroller ride over their rules, and California adjourned without ratifying the amendment. Some amendment supporters shouted "double-cross." But why the rush? States have seven years to vote the D.C. Rep amendment up or down.

Since the U.S. Constitution (including all ratified amendments) is the supreme law of our land, there is more reason, not less, for state legislatures to take their time, hear both sides of the issue, and find out what their constituents want. The whole idea of ratifying a constitutional amendment without due consideration is an insult to constitutional integrity. The ill-considered early ratifications of the Equal Rights Amendment should have taught state legislatures the lesson that when they act in haste they may repent at leisure.

Wealthy Washington, D.C.

What is the wealthiest metropolitan area in the United States? What is the area where the average household income is \$27,702 -- about one-third above the national average? What is the area that is almost recession-proof, where unemployment is far below the rest of the country, where it's nearly impossible to be fired, and where workers do not worry about being laid off?

What is the only large U.S. city that is booming? What is the area where the average price of an existing home is \$80,600 (some \$30,000 above the national average), and where the favorite topic of conversation at dinner parties is the "killing" people make when selling their homes?

While other major U.S. cities are suffering from urban decay and boarded-up buildings, what is the only major city where there are no abandoned buildings or vacant lots? What is the area where the cost of a new office building can skyrocket from an estimated \$48 million to \$123 million, but everyone makes money and nobody loses?

What is the area where per capita federal aid is more than \$1,000 per year? What is the area where

workers' fringe benefits include such luxuries as the use of a WATS line to make free long-distance telephone calls? What is the one area where inflation results in windfall profits because it generates income tax receipts at a faster rate than purchasing power is declining? What is the one area where the energy crisis is not an economic detriment but an asset which creates 19,000 new jobs (in the Department of Energy)?

Are we talking about a utopia of which dreamers and philosophers are wont to write? No, such a land really exists. It's called Washington, D.C., our nation's capital. While the rest of the country tightens its belt in the face of the shrinking dollar, Washington, D.C. grows richer and richer. *Time Magazine* calls it a "privileged ghetto, home of a pampered class."

If Washington's prosperity were real wealth generated out of production, we could rejoice in its success. The trouble is that Washington's wealth is acquired by picking your pockets in order to pay the cost of the taxpayer-financed federal bureaucracy.

Federal employees are paid on a principle called "comparability." This means that they are supposed to be paid the same as those doing comparable jobs in the private sector. This formula, however, is subject to the defect called "grade inflation." That means that federal teams write inflated descriptions of federal jobs that, on paper, justify higher grade levels, and therefore higher salaries. It's a great system. Pay raises result, not from more efficiency, but from bigger and better job descriptions. The attractiveness of federal jobs, through "comparability" salaries plus generous fringe benefits, is shown by the fact that last year 11,921,964 persons inquired about getting a federal job.

Another reason the average household income is so high is that so many married couples have both husband and wife on the federal payroll and together they earn in excess of \$100,000 per year. (An example was Peter Bourne and his wife prior to his recent abrupt departure from the White House staff.)

A third reason the average Washington-area income is so high is that the federal government spends \$80 billion in contracts with non-governmental agencies. This is a favorite way to pay individual salaries exceeding \$100,000 per year, far beyond the federal pay-scale limit of \$58,245.

One out of five Americans is now working for the government. The other four out of five Americans are working hard to support the new affluent, privileged class. They are paying more and liking it less. No wonder there's a tax revolt brewing.

Yet the federal bureaucracy is now demanding that we abandon the wisdom of our Founding Fathers and change the United States Constitution in order to give federal employees two Senators and a Representative of their very own. The true name for this arrogance is "the D.C. Ripoff Amendment."

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