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Hon. John Conyers, Jr. 2426 Rayburn House Office Building Washington, D.C. 20515

Hon. Edolphus Towns 2232 Rayburn House Office Building Washington, D.C. 20515

Hon. Robert A. Brady 206 Cannon House Office Building Washington, DC. 20515 Hon. Lamar Smith 2409 Rayburn House Office Building Washington, D.C. 20515

Hon. Darrell Issa 2347 Rayburn House Office Building Washington, D.C. 20515

Hon. Dan Lungren 2262 Rayburn House Office Building Washington DC 20515

Re: H.R. 157, H.R. 665, S. 160

Dear Representative Conyers, Representative Smith, Representative Towns, Representative Issa, Representative Brady and Representative Lungren:

On behalf of the New York City Bar Association, we write to identify serious constitutional flaws in proposed legislation to extend voting rights to the Representative from the District of Columbia. This change can only be accomplished by constitutional amendment, and Congress should not attempt to do so by enacting legislation that, in our view, will not survive a court challenge, but rather should pursue a constitutional amendment.

The Association is an independent non-governmental organization with a membership of more than 23,000 lawyers, judges, law professors, and government officials, principally from New York City, but also from around the United States and over 50 other nations. Founded in 1870, the Association is amongst the Nation's largest and oldest bar associations, with a long history of promoting the public good and just application of the law. It is this commitment to the just application of the law and to those principals established by the U.S. Constitution that compel us to write in opposition to the proposed legislation.

The Association believes that this proposed legislation to extend voting rights to the Representative from the District of Colombia (H.R. 157, H.R. 665, S. 160)¹ is misguided in as much as the Constitution only grants Congress the power to accomplish such an objective through the Article V amendment process. Article I, Section 2, of the Constitution clearly established that "[t]he House of Representatives shall be composed of Members chosen every second year by the people of the Several States. .." This Section unequivocally limits those persons able to be a Member of the House of Representatives to individuals from the States. Though the District of Columbia did not exist upon ratification, the Constitution expressly refers to the future Seat of Government as "such District," rather than a State. See Article 1, Section 8, Clause 17.

Perhaps more persuasive of the necessity for an amendment to the Constitution is the treatment of the District by the Twenty-third Amendment. This amendment, detailing the number of electors the District shall have in a Presidential election, states that "[t]he District... shall appoint in such manner as the Congress may direct: A number of electors to President and Vice President equal to the whole number of Senators and Representatives in Congress to which the District would be entitled *if it were a State...*." (Emphasis added.) This language, and the *Adams v. Clinton* opinion of the U.S. District Court for the District of Columbia, affirm that "the Constitution does not contemplate that the District may serve as a state for purposes of the apportionment of congressional representatives." 90 F. Supp. 2d 35, 50 (D.D.C. 2000).

Although Article 1, Section 8, Clause 17 of the Constitution gives Congress the power to "exercise exclusive legislation in all cases whatsoever" over the District of Columbia, this does not supersede subsequent sections which restrict representation in the House of Representatives to Members from the States and treat the District of Columbia as an entity distinct from the States. Rather, this clause was intended by the Framers to clarify that the District shall be governed by the Congress as opposed to those States from which the land for the District was ceded. See The Federalist No. 43 (James Madison).

Based upon the certain terms of the Constitution and the well-established distinction between the States and the District of Columbia for purposes of Congressional representation, it is the recommendation of the Association that in attempting to alter the voting rights of the Representative from the District of Columbia, nothing less than an amendment to the Constitution is permissible. For this reason, we oppose the passage of H.R. 157, H.R. 665 and S. 160 and recommend that Congress should pursue the proposal to amend the Constitution offered in S. J. Res. 11 to accomplish the goal of adding a voting seat in the House of Representatives for the District of Columbia.

On behalf of the Association, thank you for your attention to and consideration of this issue.

Samuel W. Seymour

H.R. 665 was referred last month to the Subcommittee on the Constitution, Civil Rights and Liberties. S. 160 was passed by the Senate on February 26, 2009 and referred to the House of Representatives, where no further action has yet occurred. H.R. 157 is similarly inactive as of the writing of this letter.