INTRODUCTION: THE CONSTITUTIONAL IMPORTANCE OF THE DISTRICT OF COLUMBIA

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My own views on the right to congressional representation in the District of Columbia not only keep popping up in this wonderfully contentious symposium issue of the American University Law Review, but are more fully elaborated in my article in the current issue of the Harvard Civil Rights-Civil Liberties Law Review, "Is This America? The District of Columbia and the Right to Vote," which was the original starting point for our discussion. Therefore, I will not tax the reader's patience with a full rehashing of my thesis about why the disenfranchisement of hundreds of thousands of American citizens living in the District violates the Equal Protection and Due Process Clauses. Rather, I will offer a few thoughts to frame the lively discussion that follows.

The District of Columbia has played a pivotal yet unsung role in the progress of American constitutional democracy. The leading Supreme Court case of all time, Marbury v. Madison, involved a fight over a presidential appointment of a Georgetown businessman to the post of municipal justice of the peace. The slave traffic in the District was a major bone of contention between North and South in the years leading up to the Civil War, and Congress abolished slavery in the District a year before the Emancipation Proclamation. After the Civil War, Congress voted to extend the franchise to black men in the

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2. 5 U.S. 1 (1 Cranch) 137 (1803).
3. See id. at 152-54.
District's local elections, laying the groundwork for enactment of the Fifteenth Amendment. The District has been the site of critical national political protests for democratic rights, such as the 1963 March on Washington where Dr. Martin Luther King made his "I Have a Dream" speech. It has also provided landmark modern Supreme Court cases establishing, among other things, the right to travel, the right of equal protection against discriminatory treatment by Congress, and the purpose requirement in equal protection race cases.

Now, with the filing of *Alexander v. Daley* in the U.S. District Court for the District of Columbia, the people of Washington, D.C. offer the courts and the nation an opportunity to declare, in the final year of the twentieth century, that our Constitution fully protects the right to vote and be represented in national government for every community of American citizens taxed, drafted, and governed by our institutions. This case presents a question of profound importance not just for the voteless residents of the District, but for all America. For a critical part of our Constitutional creed—as Abraham Lincoln put it and Brenda Wright reminded us at this conference—is the principle that, "As I would not be a slave, so I would not be a master. This expresses my idea of democracy. Whatever differs from this, to the extent of the difference, is no democracy." After a century of global war, violence, and genocide, America has the chance to offer a coda and counterpoint to these events by articulating the very life instinct of democratic constitutionalism: the foundational democratic principle that all the governed must be represented in government on an equal and fair basis.

The dynamic and still-unfolding history of the District and its people in court underscores what is both similar and dissimilar about residents of the District as compared to American citizens living in the fifty states. Like state residents, they are citizens of the United States and have all the same responsibilities: they pay federal taxes; they are drafted and fight and die in foreign wars; they are governed by the Constitution and

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5. *See id. at 272.*


the governmental structure we have put in place through it. Yet, unlike citizens in the states, citizens in the District are governed directly by Congress in all things and have no other state government or state constitution to provide a buffer against national power. Moreover, even while Congress acts as both their federal and state legislature, District residents are uniquely disenfranchised in Congress as taxpaying American citizens. We saw the meaning of this disenfranchisement during the impeachment and trial of President Clinton when Eleanor Holmes Norton protested the House of Representatives' denial of her right to vote on the impeachment articles, as well as the District's complete eclipse from proceedings in the Senate. District residents were the only U.S. citizens who twice helped to put President Clinton in office (under the terms of the Twenty-third Amendment) and yet had no say on whether he should be removed from office.

When forced to confront the District population's status within our constitutional regime, the Supreme Court has always found that particular constitutional rights in question apply to District residents. But the Court has never faced, until now, a direct challenge to the basic disenfranchisement of District residents in national government. The Alexander case—whose lead plaintiff Clifford Alexander, is a former Secretary of the United States Army and whose other plaintiffs include Stephen Trachtenberg, the President of George Washington University, H. Patrick Swygert, the President of Howard University, Dorothy Height, the President of the National Council of Negro Women, and nineteen veterans of foreign wars—is a classic case of first impression and shows every sign of becoming one of the great cases of our time.

As you can see from the dialogue that follows, it would be possible to teach an entire course in Constitutional Law out of the pleadings filed in this lawsuit. The United States District Court for the District of Columbia (and ultimately the U.S. Supreme Court) will have to wrestle with all the grand themes, doctrines, problems, and issues of the Constitution: the vision of the Constitution as the organizing document of "We, the people" or as a closed compact among the states; the relationship of democratic sovereignty to governmental structure; the rights of the people versus the power of the national government; the proper federalism protections for local communities against national tyranny; the primacy of one person, one vote and political