EXHIBIT A

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

ANGELICA CASTANON, et al.,	:	
Plaintiffs,	:	
vs.	:	No. 1:18-cv-02545-RDM-RLW-TNM
THE UNITED STATES OF AMERICA, et al.,	:	
Defendants.	:	

MEMORANDUM OF AMICI PUBLIC INTEREST ORGANIZATIONS IN SUPPORT OF PLAINTIFFS' OPPOSITION TO MOTION TO DISMISS AND PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

To the extent that a citizen's right to vote is debased, he is that much less a citizen. The fact that an individual lives here or there is not a legitimate reason for overweighting or diluting the efficacy of his vote. The complexions of societies and civilizations change, often with amazing rapidity. A nation once primarily rural in character becomes predominantly urban. Representation schemes once fair and equitable become archaic and outdated. But the basic principle of representative government remains, and must remain, unchanged—the weight of a citizen's vote cannot be made to depend on where he lives.

Reynolds v. Sims, 377 U.S. 533, 567 (1964) (Warren, C.J.)

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INTEREST OF AMICI CURIAE

Amici curiae are public-interest organizations that aim to safeguard the rights of D.C. residents.[1] They submit this brief because they have a substantial interest in the question whether Plaintiffs, as D.C. residents, have a fundamental right under the U.S. Constitution to vote for congressional representation. This brief answers that question in the affirmative.

Since the founding of the Republic, the right to vote for representation in government has been fundamental; without it, the government lacks the consent of the governed. The Supreme Court has long recognized this principle. Nevertheless, Defendants have denied D.C. residents the right to vote for congressional representation, claiming that Article I of the U.S. Constitution precludes D.C. residents from exercising this fundamental right. But Article I merely guarantees voting rights to the residents of the States; it does not deny voting rights to D.C. residents. In addition, over the 200 years since the ratification of Article I, this country has seen a profound expansion of the franchise—including with the ratification of the Fifteenth, Seventeenth, Nineteenth, Twenty-Third, Twenty-Fourth, and Twenty-Sixth Amendments to the U.S. Constitution—which has led the Supreme Court to recognize a constitutional right to political equality. Although the reasons why voting and political equality are fundamental rights apply with equal force to D.C. residents—including because these rights are central to the Constitution's promise of a Republican government—Defendants have denied D.C. residents the right to vote for congressional representation without a rational basis, let alone a compelling reason, in violation of the Due Process and Equal Protection Clauses of the U.S. Constitution.

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[1] See the accompanying Motion for Leave for a statement of the interest in this case of each amicus curiae. The undersigned counsel authored this brief in its entirety on behalf of and with input from the amici curiae, on a *pro bono* basis, with no monetary contribution or funding from a party or party's counsel for the preparation or submission of the brief.

Amici curiae therefore respectfully ask that the Court recognize that D.C. residents have a fundamental right under the Constitution to vote for congressional representation, and enter judgment in favor of Plaintiffs.

ARGUMENT

Denial of the Fundamental Right to Vote for Representation in Congress and for Political Equality Based on Residency in the District of Columbia Violates the Due Process and Equal Protection Clauses of the U.S. Constitution.

A. The Court has a duty to identify and protect fundamental rights.

The federal courts are entrusted with identifying and protecting the fundamental rights of citizens in our democracy—even if those rights have historically been denied by the government. This is an "enduring part of the judicial duty to interpret the Constitution," and "requires courts to exercise reasoned judgment in identifying interests of the person so fundamental that the State must accord them its respect." *Obergefell v. Hodges*, 135 S. Ct. 2584, 2598 (2015).

In identifying who may exercise a fundamental right, the Supreme Court has emphasized that courts must do more than merely identify who has historically exercised the right. Otherwise, "received practices could serve as their own continued justification and new groups could not invoke rights once denied." *Id.* at 2602. The duty of the courts emanates from the fact that the Framers did not intend to expressly enumerate every right that may become necessary to guarantee freedom and dignity to all citizens for the life of the Republic. "Had those who drew and ratified the Due Process Clauses of the Fifth Amendment or the Fourteenth Amendment known the components of liberty in its manifold possibilities, they might have been more specific." *Lawrence v. Texas*, 539 U.S. 558, 578–79 (2003). But "[t]hey did not presume to have this insight." *Id.*; *see Obergefell*, 135 S. Ct. at 2598 ("The generations that wrote and ratified the Bill of Rights and the Fourteenth Amendment did not presume to know the extent of freedom in all of its dimensions, and so they entrusted to future generations a charter protecting the right of

all persons to enjoy liberty as we learn its meaning."). Instead, the Framers "knew times can blind us to certain truths and later generations can see that laws once thought necessary and proper in fact serve only to oppress." *Lawrence*, 539 U.S. at 579. Yet "[a]s the Constitution endures, persons in every generation can invoke [the Constitution's] principles in their own search for greater freedom," *id.*, and it is the duty of the courts to interpret how these principles apply in a dynamic and rapidly evolving world.

The task of identifying fundamental rights requires courts to consider whether, in light of changing circumstances, the status quo remains consistent with the Constitution and the principles that define our democracy. Although "[h]istory and tradition guide and discipline this inquiry," *Obergefell*, 135 S. Ct. at 2598, they are "the starting point but not in all cases the ending point," *Lawrence*, 539 U.S. at 572, and they "do not set its outer boundaries," *Obergefell*, 135 S. Ct. at 2598. The court must instead be "guided by many of the same considerations relevant to analysis of other constitutional provisions that set forth broad principles rather than specific requirements." *Id.* Although not "reduced to any formula," the identification of fundamental rights in need of protection "respects our history and learns from it without allowing the past alone to rule the present." *Id.*

For example, in 2003, the Supreme Court recognized for the first time that laws banning sexual activity between consenting adults of the same sex were unconstitutional under the Due Process Clause of the Fourteenth Amendment. *Lawrence,* 539 U.S. at 578–79. The Court overruled *Bowers v. Hardwick*, 478 U.S. 186 (1986), which it held had been incorrectly decided, based on questionable assumptions about history and tradition, and had overlooked the "emerging recognition" and "emerging awareness that liberty gives substantial protection to

adult persons in deciding how to conduct their private lives in matters pertaining to sex." *Lawrence*, 539 U.S. at 571–72.

In 2015, the Supreme Court applied similar reasoning in *Obergefell v. Hodges*, where the Court recognized for the first time that same-sex couples have a fundamental right to marry. 135 S. Ct. at 2599. In reaching its decision, the Court observed that "[t]he history of marriage is one of both continuity and change," involving an institution that "has evolved over time." *Id.* at 2595. But the "principles and traditions" regarding marriage, the Court held, "demonstrate that the reasons marriage is fundamental under the Constitution apply with equal force to same-sex couples." *Id.* at 2599.

As these cases demonstrate, "[w]hen new insight reveals discord between the Constitution's central protections and a received legal stricture, a claim to liberty must be addressed." *Id.* at 2598. The instant case requires the Court to do just that.

B. The right to vote is fundamental under the Constitution.

Since the Founding of the Republic, the right to vote has been fundamental. *See* Declaration of Independence ¶ 2 (1776) ("Governments are instituted among Men, deriving their just powers from the consent of the governed."); The Federalist No. 52 (A. Hamilton or J. Madison) (1788) ("The definition of the right of suffrage is very justly regarded as a fundamental article of republican government."). It is elemental to a free and democratic society that its citizens choose their representatives, and it is "regarded as a fundamental political right, because [it is] preservative of all rights." *Yick Wo v. Hopkins*, 118 U.S. 356, 370 (1886).

That the right to vote is a fundamental part of our representative democracy is axiomatic. For "[t]he true principle of a republic" and "[a] fundamental principle of our representative democracy . . . in Hamilton's words, [is] 'that the people should choose whom they please to govern them.'" *Powell v. McCormack*, 395 U.S. 486, 540–41, 547 (1969). It is "of the most

fundamental significance under our constitutional structure." *Ill. State Bd. of Elections v. Socialist Workers Party*, 440 U.S. 173, 184 (1979); *see Burdick v. Takushi*, 504 U.S. 428, 433 (1992) ("It is beyond cavil that 'voting is of the most fundamental significance under our constitutional structure.'") (citation omitted). And because the right to vote is "at the heart of our [country's] democracy," *Burson v. Freeman*, 504 U.S. 191, 198 (1992), "any restrictions on that right strike at the heart of representative government," *Reynolds v. Sims*, 377 U.S. 533, 555 (1964). The right to vote is also "preservative of all rights." *Yick*, 118 U.S. at 370. This is why "[n]o right is more precious in a free country than that of having a voice in the election of those who make the laws under which, as good citizens, we must live. Other rights, even the most basic, are illusory if the right to vote is undermined." *Wesberry v. Sanders*, 376 U.S. 1, 17 (1964).[2]

[2] Recent scientific studies have concluded that voting confers physical- and mental-health benefits on citizens. *See* Parissa J. Ballard, et al., *Impacts of Adolescent and Young Adult Civic Engagement on Health and Socioeconomic Status in Adulthood*, J. of Child Development (2017) (concluding that young people who engaged in any of three activities—volunteering, voting, or activism—were more likely to have a higher income, better education, and better health later in life than those who did not); Malte Klar & Tim Kasser, *Some Benefits of Being an Activist: Measuring Activism and Its Role in Psychological Well-Being*, Political Psychology (2009) (concluding that statistical analysis "clearly suggested that being politically active is associated with higher levels of personal well-being, and may even cause improvements in vitality"); Tony A. Blakely, et al., *Socioeconomic Inequality in Voting Participation and Self-Rated Health*, Am. J. of Pub. Health (2001) (concluding that people are more likely to self -report their health status as "fair" or "poor" in locations where there is poor voter turnout, independent of income inequality and state median household income); Lynn M. Sanders, *The Psychological Benefits of Political Participation*, Am. Political Sci. Ass'n (2001) (concluding that civic participation from activities such as voting "alleviates psychological distress, which might offset some of the negative mental health consequences associated with disadvantaged social status"). Thus, denial of the fundamental right to vote also denies citizens correlated physical and mental health benefits.

C. The right to political equality is also fundamental under the Constitution.

Although at the time of our country's founding certain citizens were denied suffrage, "history has seen a continuing expansion of the scope of the right of suffrage in this country," *Reynolds*, 377 U.S. at 555. The Supreme Court has recognized in this dramatic expansion of the franchise a constitutional right of political equality—a right that history and tradition have confirmed is fundamental to our Constitution and our country's democracy.

Nearly a century after the Constitutional Convention and Ratification, voting rights were dramatically expanded with the ratification of the Fifteenth Amendment, in 1870, which prohibited race-based restrictions on the right to vote. An influential factor that led to the amendment was that African-American soldiers had served in the Union Army during the Civil War. *See, e.g.*, Akhil Amar, *The Bill of Rights as a Constitution*, 100 Y.L.J. 1131, 1164 n.152 (1991). "The design of the Amendment [was] to reaffirm the equality of races at the most basic level of the democratic process, the exercise of the voting franchise." *Rice v. Cayetano*, 528 U.S. 495, 512 (2000). In urging Congress to enact the landmark Voting Rights Act of 1965 pursuant to Section 2 of the amendment, President Johnson declared: "Every American citizen must have an equal right to vote." Communication from the President of the United States Transmitting "A Bill to Enforce the 15th Amendment to the Constitution of the United States," Mar. 17, 1965.

Voting rights were further expanded in the early twentieth century. The Seventeenth Amendment was ratified in 1913, providing for the popular election of senators. "Senators were originally to be elected by the state legislatures, but under the Seventeenth Amendment Senators are also elected by the people." *Oregon v. Mitchell*, 400 U.S. 112, 119 (1970). And the Nineteenth Amendment was ratified in 1920, dramatically expanding the franchise by prohibiting sex-based restrictions on the right to vote. As with the Fifteenth Amendment, a critical factor that led to the ratification of the Nineteenth Amendment, and convinced President

Wilson to support the amendment, was the important role women played as "economic soldiers" in the fight against Germany during World War I. *See, e.g.*, Amar, *supra*, at 1202 n.312.

In the early 1960s, the Supreme Court examined the Fifteenth, Seventeenth, and Nineteenth Amendments in two seminal voter-dilution cases—*Gray v. Sanders*, 372 U.S. 368, 379–81 (1963), and *Reynolds v. Sims*, 377 U.S. 533, 555, 558 (1964)—and recognized that these amendments embody the "conception of political equality." *See also Evans v. Cornman*, 398 U.S. 419, 426 (1970). Based on this conception, the Supreme Court in *Gray* and *Reynolds* found unconstitutional state laws that weighted citizens' votes differently based on the location of their residence. *Gray*, 372 U.S. at 379–81; *Reynolds*, 377 U.S. at 568–72.

In *Gray*, the Court held that the Georgia county unit system, applicable in statewide primary elections, was unconstitutional because it resulted in a dilution of the weight of the votes of certain Georgia voters merely because of where they resided. 372 U.S. at 381. The Court concluded that the Fourteenth Amendment does not allow states to weight one citizen's vote more than another's merely "because he lives in a rural area or because he lives in the smallest rural county," and instead requires that "all who participate in the election are to have an equal vote—whatever their race, whatever their sex, whatever their occupation, whatever their income, and wherever their home may be in that geographical unit." *Id.* at 379. "The concept of 'we the people' under the Constitution," the Court explained, "visualizes no preferred class of voters but equality among those who meet the basic qualifications." *Id.* at 379–80. The Court based its conclusion on "[t]he conception of political equality" that is embodied in "the Fifteenth, Seventeenth, and Nineteenth Amendments." *Id.* at 381; *see also id.* at 380 (noting the "concept of political equality in the voting booth contained in the Fifteenth Amendment"). Thus, based on

the principle of "political equality," the Court in *Gray* established the "one person, one vote" rule. *Id.* at 380-81.

In *Reynolds*, the Court reaffirmed the "one person, one vote" rule from *Gray*, as well as the holding that the voting-rights amendments embodied the right to political equality at the polls. *Reynolds*, 377 U.S. at 568–72. The Court noted that the Constitution "[u]ndeniably" protects the right to vote, and that *Gray*'s recognition of "the basic principle of equality among voters within a State" means that "voters cannot be classified, constitutionally, on the basis of where they live." *Id.* at 554, 560. The Court added that, "[t]o say that a vote is worth more in one district than in another would run counter to our fundamental ideas of democratic government," in that "[d]iluting the weight of votes because of place of residence impairs basic constitutional rights under the Fourteenth Amendment just as much as invidious discriminations based upon factors such as race or economic status." *Id.* at 563–64, 566 (citations omitted). The Court also emphasized that voting is a right and privilege of citizenship whose exercise must *not* depend on place of residence:

> To the extent that a citizen's right to vote is debased, he is that much less a citizen. The fact that an individual lives here or there is not a legitimate reason for overweighting or diluting the efficacy of his vote. The complexions of societies and civilizations change, often with amazing rapidity. A nation once primarily rural in character becomes predominantly urban. Representation schemes once fair and equitable become archaic and outdated. But the basic principle of representative government remains, and must remain, unchanged—the weight of a citizen's vote cannot be made to depend on where he lives.

Id. at 567; *see also Bush v. Gore*, 531 U.S. 98, 104 (2000) (noting the "equal weight accorded to each vote and the equal dignity owed to each voter"). The Court thus ruled that Alabama's plans for apportionment of its legislative seats violated the Equal Protection Clause because seats were not apportioned on a population basis in accordance with the "one person, one vote" rule. *Reynolds*, 377 U.S. at 568–72.

Subsequent voting-rights amendments have further expanded the franchise while also embodying the critical principle of political equality found within the Fifteenth, Seventeenth, and Nineteenth Amendments. The Twenty-Third Amendment, ratified in 1961, provided D.C. residents with the right to vote in presidential elections. The Twenty-Fourth Amendment, ratified in 1964, prohibited economic discrimination at the polls, providing that "[t]he right of citizens of the United States to vote in any primary or other election . . . shall not be denied or abridged by the United States or any state by reason of failure to pay any poll tax or other tax." U.S. Const. amend XXIV, § 1.

The Twenty-Sixth Amendment, ratified in 1971, prohibited States from denying the right to vote to citizens eighteen years of age or older. Like the Fifteenth and Nineteenth Amendments, support for the Twenty-Sixth Amendment stemmed in part from the fact that individuals who were eighteen paid federal taxes and were drafted to serve in the Vietnam War, but often could not vote. The House Judiciary Committee Report noted that "their civic and military obligations and their readiness and capacity to participate in the political process rendered unreasonable a minimum voting age classification above 18." H.R. Rep. No. 92-37, at 5 (1970). The Report also indicated that the amendment was meant to further promote political equality, consistent with the Constitution, stating that the "amendment is part of a constitutional tradition of enlarging participation in our political processes." *Id.* at 9.[3]

[3] During debate in the House, co-sponsor Representative Emmanuel Celler of New York stated that the amendment "represents another step in the American tradition of enlarging the franchise." 117 Cong. Rec. H1118 (Mar. 23, 1971) (statement of Rep. Celler). Senator Jennings Randolph of West Virginia echoed this sentiment and "pointed out that the history of this country has to a great extent been a history of [the] efforts to expand the franchise and to expand the political base of our democratic processes." S. Rep. No. 92-905, at 3 (1972).

The constitutional right to political equality that the Supreme Court perceived in the Fifteenth, Seventeenth, and Nineteenth Amendments has found reaffirmation in the Twenty-Third, Twenty-Fourth, and Twenty-Sixth Amendments. History and tradition confirm that the right to political equality is now a fundamental constitutional right.

D. Congressional representation and political equality are fundamental rights that apply with "equal force" to D.C. residents.

Just as the "reasons marriage is fundamental under the Constitution apply with equal force to same-sex couples," *Obergefell*, 135 S. Ct. at 2599, the reasons that voting for congressional representation and that political equality are fundamental under the Constitution apply with equal force to D.C. residents.

It cannot be denied that D.C. residents have the same interest in representative government and in political equality as other citizens in this country, which is not diminished because of the location of their residence. To hold otherwise would be to deny that "sovereignty is vested in the people, and that sovereignty confers on the people the right to choose freely their representatives to the National Government." *U.S. Term Limits, Inc. v. Thornton*, 514 U.S. 779, 794 (1995); *see Powell*, 395 U.S. at 547 (noting that "[a] fundamental principle of our representative democracy" is that "the people should choose whom they please to govern them") (citation omitted). It would "strike at the heart of representative government," since "[t]he right to vote freely for the candidate of one's choice is of the essence of a democratic society." *Reynolds*, 377 U.S. at 555. This is especially so in light of the fact that D.C. residents pay significant federal taxes and serve in the country's armed forces. *See Am.* Compl. ¶¶ 72, 73, ECF No. 9.

To deny D.C. residents representation in Congress and political equality, moreover, is to deny them the ability to preserve and protect other fundamental rights and privileges to the same

degree as other citizens. *Frontiero v. Richardson*, 411 U.S. 677, 685 (1973) (the right to vote is itself "preservative of other basic civil and political rights") (citation omitted); *Reynolds*, 377 U.S. at 562 ("Especially since the right to exercise the franchise in a free and unimpaired manner is preservative of other basic civil and political rights, any alleged infringement of the right of citizens to vote must be carefully and meticulously scrutinized."). As the Court has made clear, "[t]o the extent that a citizen's right to vote is debased, he is that much less a citizen," and "[t]he fact that an individual lives here or there is not a legitimate reason for" denying someone the right of political equality. *Reynolds*, 377 U.S. at 567. To hold otherwise would be to recognize a "preferred class of voters," held to be improper in *Gray*, 372 U.S. at 379–80. And absent this right, Congress can (and does) decide how to spend significant tax revenues collected from D.C. residents, and can even conscript D.C. residents for service in the military during armed conflicts, with little or no accountability to those residents.[4] These immense powers vested in the Congress are part of the reason why the right to vote is so fundamental, and the exercise of these powers by Congress is as important to D.C. residents as to other citizens across the country.

E. There is no rational basis to deny D.C. residents the rights to voting representation in Congress and to political equality, let alone a compelling interest.

As the right to vote for congressional representation and the right to political equality are fundamental under the Constitution, the denial of these rights to D.C. residents based on their place of residency violates the Due Process and Equal Protection Clauses, absent a compelling

[4] In fact, with no direct accountability to D.C. residents, Congress not only appropriates federal tax revenues collected from D.C. residents, but also reviews and approves the District's annual budget, giving Congress ultimate authority over how the District can spend local tax revenues collected from D.C. residents by the District itself. *See* District of Columbia Home Rule Act, D.C. Code §§ 1-206.02(c), 1-206.03. In this sense, the interest of D.C. residents in having congressional representation is even greater than that of residents in the several States, whose elected officials can pass budgets without congressional approval.

government interest. *See United States v. Windsor*, 570 U.S. 744, 768–70 (2013) (Fifth Amendment's Due Process Clause incorporates principle of equal protection applied to Federal Government) (citing *Bolling v. Sharpe*, 347 U.S. 497 (1954)). *But see Adams v. Clinton*, 90 F. Supp. 2d 35, 65–68 (D.D.C. 2000), *aff'd*, 531 U.S. 941 (2000). There is no such compelling government interest.

Title 2 of the United States Code, which sets out the framework for States regarding elections for Congress, provides that residents of the States who are qualified to vote under state law can vote for congressional representation. *See, e.g.*, 2 U.S.C. § 1 (election of senators); *id.* § 2b (election of representatives). Similarly, the Uniformed and Overseas Citizens Absentee Voting Act provides that members of uniformed services and U.S. citizens who reside overseas may vote in congressional elections by absentee ballot. *See* 52 U.S.C. §§ 20301–11. Neither statutory scheme allows for District residents to vote for congressional representation.

Yet there is no governmental interest that provides a rational basis for the denial of these rights to D.C. residents, let alone a compelling interest required to deny them voting rights. *See Reynolds*, 377 U.S. at 562 ("Especially since the right to exercise the franchise in a free and unimpaired manner is preservative of other basic civil and political rights, any alleged infringement of the right of citizens to vote must be carefully and meticulously scrutinized."); *Evans*, 398 U.S. at 422 ("And before that right can be restricted, the purpose of the restriction and the assertedly overriding interests served by it must meet close constitutional scrutiny.").[5]

[5] Defendants note evidence that, leading up to ratification in 1789, the Framers created the District in part because of concerns that the national government, if based in a State, would need to rely on a State militia for national protection, a concern that arose from the "Philadelphia Mutiny," where the State of Pennsylvania refused to deploy its militia to defend against protesters during a meeting of the Continental Congress. Defs. Mem. in Supp. of Mot. to Dismiss, at 25, ECF No. 21-1. But this concern, even if it justified creating a separate federal district, does not justify denying D.C. residents congressional representation.

F. Acknowledging District residents' right to vote in congressional elections is consistent with Article I of the Constitution.

Defendants' primary argument is that Article I, section 2, of the U.S. Constitution *prohibits* D.C. residents from having congressional representation by not expressly providing for such representation. Defs. Mot. at 2, 7, 20–21. This argument is fatally flawed for at least two reasons.

First, Defendants erroneously argue that a right established in Article I—that the people of the several States shall have the right to choose representatives in Congress—operates as a restriction that mandates the denial of that right to D.C. residents. But Article I does not say that "only" the people who live in States shall have representation in Congress. Nor have the Defendants demonstrated that the Framers intended to prohibit D.C. residents in perpetuity from having representation in Congress. To the contrary, Defendants admit that citizens who lived in what is now the District of Columbia had the right to congressional representation after ratification of Article I by virtue of their citizenship in Maryland and Virginia until passage of the Organic Act of 1801, which extinguished those rights by ceding territory to form the District. Defs. Mot. at 4.[6] A more persuasive reading of Article I is that it was meant to establish and guarantee voting rights, not deny them.

Second, Defendants overlook the fact that, even if not explicit, D.C. residents' right to vote is historically rooted in the text and structure of the Constitution—which established a

[6] In addition, the "expressio unius" canon of construction that Defendants rely on is inapplicable here because there is no exhaustive list or group of items in the provision that can be read to signal the intentional exclusion of D.C. from its scope. *See, e.g.*, *Barnhart v. Peabody Coal Co.*, 537 U.S. 149, 168 (2003) ("As we have held repeatedly, the canon e*xpressio unius est exclusio alterius* does not apply to every statutory listing or grouping; it has force only when the items expressed are members of an 'associated group or series,' justifying the inference that items not mentioned were excluded by deliberate choice, not inadvertence.").

Republican form of government whose power derives from the consent of the governed, and in which voting and political equality are fundamental rights.

As recently as this term, the Supreme Court has emphasized that certain rights are "embedded" in the text and structure of the Constitution, even if they are not expressly provided in the Constitution. *Franchise Tax Bd. of California v. Hyatt*, 139 S. Ct. 1485, 1499 (2019). In *Hyatt*, the Court held that States have a constitutional right to sovereign immunity from suit in the courts of other States, even though, as the respondent pointed out, "no constitutional provision explicitly grants that" right. *Id.* at 1498. In an opinion by Justice Thomas, the Court explained that "[t]here are many other constitutional doctrines that are not spelled out in the Constitution but are nevertheless implicit in its structure and supported by historical practice." *Id.* Echoing Chief Justice Marshall's opinion in *McCulloch v. Maryland*, the Court declared that "we must never forget, that it is a *constitution* we are expounding." *Id.* at 1492–93 (quoting 4 Wheat. 316, 407 (1819)). The Court reasoned that the Constitution guarantees States the right to sovereign immunity in courts of other States because it "is a historically rooted principle embedded in the text and structure of the Constitution," and rejected respondent's text-based argument as "ahistorical literalism." *Id.* at 1498–99.

The same reasoning applied by the Court in *Hyatt* supports the conclusion that D.C. residents have a constitutional right to vote for congressional representation. The guarantee of this right to D.C. residents may not be "spelled out" in the Constitution. *Id.* at 1498. But the text and structure of the Constitution guarantee to all Americans a Republican government, and the central principle of a Republican government is the consent of the governed, guaranteed by the right to vote for congressional representation and the right to political equality. To deny these fundamental rights to D.C. residents is to deny them a truly Republican government, based on a

form of constitutional "ahistorical literalism" rejected in *Hyatt*. *Id.* at 1498. Indeed, this view ignores the fact that citizens who lived in the area that currently occupies the District had a right to vote for congressional representation at the time the Constitution was ratified until Congress extinguished that right by passing the Organic Act of 1801.

In sum, Article I was intended to establish voting rights as a device of democracy, not to be used as a tool to deny a fundamental right to D.C. residents. Article I does not support the denial of voting rights to District residents simply because of where they live, or because these rights have been denied in the past. Defendants' arguments to the contrary disregard hundreds of years of this country's rich history and tradition that have led to the broadening of the franchise and the recognition of the fundamental nature of voting rights and the right to political equality in the Constitution. In the words of the Supreme Court, Defendants' interpretation fails to "respect[] our history and learn[] from it without allowing the past alone to rule the present." *Obergefell*, 135 S. Ct. at 2598. To deny D.C. residents the right to vote for congressional representation is to elevate literalism over logic. It is to claim fidelity to the Framers' pen, but not to their promise.

CONCLUSION

Even if denying D.C. residents representation in Congress may have once seemed fair and equitable, it is now clear that it is archaic and outdated. D.C. residents should be permitted to vote for representation in Congress and to exercise the right of political equality. The principles of representative government require nothing less. And at last including residents of the District in this country's democracy will not only bring justice to District residents, it will bring justice to the country as a whole. As Dr. King said in his April 16, 1963 Letter from Birmingham Jail, "Injustice anywhere is a threat to justice everywhere."

Dated: June 10, 2019

Respectfully submitted,

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