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The Implications of the New Columbia Admission Act
Presented to the Senate Committee
Homeland Security and Governmental Affairs
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Chairman Carper, Ranking Senator Coburn and other distinguished Senators of the Committee, thank you for conducting this important and timely Hearing on "Equality for the District of Columbia: Discussing the Implications of S. 132, the New Columbia Admission Act of 2013."

You have been a long distance runner, Mr. Chairman, in our quest for equal footing. I well remember when hundreds of us journeyed by train to Philadelphia in 1987 to highlight our desire to become a state. Along the way, we stopped in Wilmington, Delaware, where you arranged a warm greeting for us from citizens of your state, including the Mayor of Wilmington. That was a great day, one that I am certain helped lead to this day.

My testimony is the product of a series of writings, first began in 1975. From the moment I settled in Washington, D.C. in 1970, it struck me as strange that by virtue of the routine act of crossing an invisible line, coming within the boundaries of the nation's capital and making it my home, most of the rights I had enjoyed, as a citizen of the state of Indiana, were lost. In the shadow of one of the greatest icons of democracy, the Washington Monument, that simple act of moving, an act carried out by thousands and thousands over the years, has made our lives difficult and different from the lives of every other citizen in America. That simple act caused us to become second-class, non-voting citizens unable to participate fully in our federal government.

Currently, close to 650,000 taxpaying Americans who reside in the District of Columbia, more than the number of those who reside in the state of Wyoming and close to the number who reside in six other states, bear all the burdens of citizenship, yet do not share in the benefits, particularly, the right to vote in the same manner as all other citizens. In 1978, the House of Representatives and the Senate passed House Joint Resolution 554 by a two-thirds vote. The Resolution proposed that the District of Columbia would be treated "as though it were a state," for the purposes of electing Senators, Representatives, the President and Vice-President and members to the Electoral College. As the principal author of that Resolution; as one who labored with many others for the seven years following passage of the proposal to secure ratification by thirty-eight states, only to fall short of our goal; as the principal staff author of the very first D.C. Statehood Bill, following the District of Columbia's historic Statehood Constitutional Convention, House Resolution 51, introduced before Congress in 1987; and as a forty-five year resident of the District of Columbia, this is a subject that has claimed much of my attention and a great deal of my interest.

Over the years, I have written about this contradiction between benefits and burdens. Most notably, I have written two law review articles, two booklets published in the Congressional Record, three unpublished articles and a 250-page, definitive treatise on D.C. Statehood among other writings. America seeks to "extend the perimeters of democracy around the world," as former President Reagan often stated, yet democracy comes to a screeching halt within view of the White House. I have joined many and many have joined me in these writings, far too many to mention here. These writings have been designed to assist readers in understanding the complex relationship

between the federal government and the American citizens who happen to reside in the nation's capital. Throughout the muddied history of the District of Columbia, this relationship has been marked by false promises, mounting legal complications, and the unwillingness of the courts to provide the rights that we as citizens deserve. This relationship, unique throughout the world, is a classic "chicken and egg" dilemma. If District residents had political standing and sovereignty, we could have senators, representatives, and local autonomy. If we had senators, representatives, and local autonomy, we could have political standing and sovereignty. The challenge, however, is how to initiate this cycle, because currently, the District has neither the chicken nor the egg. As an Assistant Attorney General for the United States, former Supreme Court Chief Justice William Rehnquist stated, "The need for an amendment [providing representation for the District] at this late date in our history is too self-evident for further elaboration; continued denial of voting representation from the District of Columbia can no longer be justified." Unfortunately, the promissory note that Justice Rehnquist once issued has never been collected. This abandoned promise of the United States still persists as the greatest stain on our country, and now is the time, more than ever before, when we should insist that this promise be fulfilled.

One of my writings is a Law Review Article published by the University of the District of Columbia Law School. Inasmuch as that Article addresses and, I believe, debunks any and all arguments against D.C. Statehood, as part of my testimony, I here submit it for the Record of this Hearing. Thank you Chairman Carper.

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TOWARDS EQUAL FOOTING: RESPONDING TO THE PERCEIVED CONSTITUTIONAL, LEGAL AND PRACTICAL IMPEDIMENTS TO STATEHOOD FOR THE DISTRICT OF COLUMBIA

I. Introduction

A. Making D.C. Citizens the Same as All Other Citizens of the World

Every human being on this planet, residing in a nation with representative government, enjoys political standing 1, and most enjoy sovereignty 2 - except those who happen to reside in Washington, D.C. 3 Political standing in America grows out of the Seventeenth Amendment, providing for the popular election of senators; 4 as well as Article I of the Constitution. 5 The absence of true representation for the people of Washington, D.C. in the United States Senate and only a cloistered presence in the House of Representatives is a blight on America's democracy; a glaring imperfection of a way of life this nation seeks to foist on all others. This contradiction empowers America's detractors and weakens its proponents. 6 Senator Edward M. Kennedy (D-MA) testifying at a House of Representatives D.C. Statehood Hearing in 1984 stated, 'The time has come at long last to end the unacceptable status of the District of Columbia as America's last colony.' 7

Sovereignty for non-federal entities in the United States stems from the Tenth Amendment. 8 The constraints on sovereignty for non-federal entities are specifically stated in several parts of the Constitution, but are generally found in the Commerce Clause - for example, only the federal government maintains the power to make money, declare war, enter into treaties with foreign governments, and exercise broad taxing authority. 9 These constraints on non-federal entities should not be read, however, as only limiting the rights given to the states and local governments, but those of individuals. In *New York v. United States*, the United States Supreme Court noted, "[t]he Constitution does not protect the sovereignty of states for the benefit of the states or state governments as abstract political entities, or even for the benefit of the public officials governing the states. The Constitution divides authority between federal and state governments for the protection of individuals." 10 When citizens have the benefit of political standing and sovereignty, as every American except those residing in Washington, D.C. have, they are said to be on equal footing. 11

II. Background

In America, citizens in small states are treated no different than citizens in large states. Small town farmers are treated no different than big city business people. When it comes to the Constitution and the Bill of Rights, the wealthy elite are treated no different than the modest middle class or the downtrodden homeless. Instead of James Madison's vision of a national government free of any power among the states as the final version of the Constitution granted the states a substantial role and basic involvement in the operation of the national government. When the Constitution was written in 1787, it did not contain a Bill of Rights, a subject of much contention. 12 The Bill of Rights, the first ten amendments, was adopted four years later in 1791. 13

Basic rights and equal treatment for all have been a fundamental premise since the creation of our government. Notwithstanding this history, basic rights continue to elude the people of the District of Columbia.

A. Admitting a New State

Since the admission of Tennessee in 1796, every act making new states a part of the United States has included a clause providing, in relevant part, entry "on an equal footing with the original states in all respects whatever." 14

Congress alone has the power to admit new states. 15 The doctrine of equality of states - treating all states the same and hence all citizens within the states the same - is now an axiom of constitutional law. 16 " Equality of constitutional right and power is the condition of all the states of the Union, old and new." 17 "The power is to admit new states into this Union. This Union was and is a union of states, equal in power, dignity and authority... [t]o maintain otherwise would be to say that the Union...might come to be a union of states unequal in power... ." 18 With that reasoning, the Court struck down a restriction Congress had sought to impose as a condition for admitting Oklahoma into the Union. Congress had sought a change in the location of the state capital in Oklahoma, which, under the Equal Footing Doctrine, is a matter solely within the state. 19 The "equal footing" clause was designed not to wipe out economic diversities among the several states, but to create parity as respects political standing and sovereignty. 20 The Equal Footing Doctrine is deeply rooted in history. 21 That view was repeated in a more recent case in which the Court rejected an argument that Congress could not regulate federal land within a state. 22 Political standing and sovereignty means that a new state is entitled to exercise all the powers of government that the original states exercised. 23 A new state gains authority over civil and criminal laws in order to preserve public order and safety and protect persons and property within its boundaries. 24 A new state has the power to tax private activities conducted within the public domain. 25 Statutes applicable to areas that become new states no longer have any force or effect, unless the new states adopt such statutes. 26

The right of local self-government, as known to our system as a constitutional franchise, belongs, under the Constitution, to the states and to the people thereof...Admission on an equal footing with the original states, in all respects whatever, involves equality of constitutional right and power, which cannot there-afterwards be controlled, and it also involves the adoption as citizens of the United States of those of whom Congress makes members of the political community, and who are recognized as such in the formation of the new state... 27

It seems clear that if the people of the District of Columbia are to be treated the same as all other American citizens – placed on equal footing - ultimately, the Constitutional path to that end is Article IV, Section 3, Clause 1, relating to the admission of new states.

B. The Current Situation

Those residing in Washington, D.C. lack political standing and sovereignty. No other citizens are similarly situated. District residents cannot vote for senators or representatives; although they do vote for a non-voting delegate to the House.28 No matter the population, citizens entitled to only as many electors to the Electoral College as the least populous state. 29 As a result, the District's representation does not correspond with its population. Moreover, while

the Home Rule Act 30 gave District residents the right to vote for a local elected government, Congress placed such severe restraints on that right, that some refer to the Act as "Home Fool." 31 Others liken District residents to Native Americans, commenting that with Home Rule, District residents were given "the reservation without the buffalo." 32 This label is particularly poignant at times when the District government seeks to manage and conduct its financial affairs. Congress must pass an appropriations bill for the District, as it does for every federal agency. Thus, from local budget formulation to implementation the process can take as many as eighteen months. 33

The form and structure of the District makes it very different from any state and makes it difficult to conduct an efficient government. 34 District of Columbia citizenship is particularly diluted when democracy is tested. Had Congress decided the Bush-Gore presidential contest and the Florida vote in 2000, District residents would have had no vote in that vital process. 35 They had no vote when Congress passed the Patriot Act. 36 District citizens also had no vote when decisions were made to involve America in Iraq. District residents shoulder all the duties of citizenship, including paying federal taxes, and fighting and dying in wars, but they do not share in all the fruits of citizenship. 37 Moreover, they have performed both of those responsibilities, paying taxes and fighting in wars, at higher rates than much of the rest of the country. This blight on America exists notwithstanding the fact that Americans living in the District of Columbia pay taxes, 38 as well as fought and died in every war since the American Revolution. 39 Additionally, while over 95 percent of the District's local budget is from local tax dollars, the federal government controls the entire budget. 40 Congress has the power to enact local laws on the District and has final say over any laws passed by the local government. 41 Controlling the budget and laws epitomize "Taxation Without Representation." 42

Congress may at any time - for any reason or no reason, at times arbitrarily, capriciously, and even whimsically – decide to interfere and intervene in the affairs of the people of Washington, D.C. and tell them how to live or tell them how to die. 43 There is pending language in an amendment to the current D.C. Voting Rights Bill that would effectively repeal the revised gun regulation law passed by the District government following the Heller 44 case. That language mirrors language in a bill introduced in a recent Congress. 45 Before Heller, gun control existed in Washington, D.C. for more than thirty years and was supported by the vast majority of District residents because crimes involving guns is a matter of grave concern when it comes to public safety in the District. Notwithstanding that strong local sentiment, Congress sought to repeal the District's strict gun control law. 46 Congress has considered denying tax exemptions for interest on bonds used for health care facilities that perform abortions. 47 A number of rules enacted by Congress are opposed by most District residents, including: bans on the spending of local tax dollars on reproductive rights, 48 medical marijuana, 49 AIDS prevention measures, 50 and domestic partnership benefits. 51 In fact, at this writing the U.S. House of Representatives voted to end the ban on distributing sterile needles and syringes. While not law yet, it seems some in the Congress recognize that human life is more precious than conservative dogma. 52 Congress has debated whether dogs should be on leashes and where kites should be flown in the District of Columbia. Imagine putting aside any discussion of war and debating the removal of snow and ice in District, 53 permission for firefighters to play in the Police Band, 54 or the restructuring of a football stadium. 55 Those debates appear in the Congressional Record. District residents, like all other American citizens, deserve to have authority, power and control over how their tax dollars are spent, and how they conduct their private lives. They deserve sovereignty and political standing.

III. Historical Perspectives

It is important to this discussion that we understand why and how the District of Columbia was created, as well as how this shaped the District to the present day. 56 Indeed, the questions and possible answers that flow from these muddied waters are illuminating. Would the Founding Fathers who fought to end the tyranny of "Taxation Without Representation" have intentionally imposed such a system on their fellow citizens? If so, how could these individuals - giants of the American Revolution and pillars in our history - in good conscience reason such a result? If such reasoning was sound and justified at the time, does it remain sound and just today? Finally, can it really be

argued without contradiction that our Constitution, the very document that gives us rights, must be read to take those same rights away? To the fair mind with historical perspectives, the answers become obvious.

It is the seemingly minor incidents in America's history that often propel the occurrence of major events. 57 Such was the case in creating our nation's capital. During its early days, the capital city was quite peripatetic. 58 Beginning with the First Continental Congress when the young nation's leaders met at Founder's Hall in Philadelphia, the capital city moved from one former colony to another as the exigencies of war demanded, with stints in Baltimore, Lancaster, York, Princeton, Annapolis, Trenton, and New York City, peppered with frequent periods back to Philadelphia. 59 From the end of the Second Continental Congress to the Articles of Confederation, the capital was located in Philadelphia. 60 While meeting there, local militia demanding pay forced Congress to flee. 61 This seemingly minor incident would be a major factor when the Framers crafted the enabling legislation for the nation's capital, with enormous implications for generations who would inhabit the land where the Anacostia and Potomac rivers meet. 62 It was soon apparent that the Articles of Confederation 63 were insufficient for uniting the former colonies as a single nation. 64 With the Mutiny of 1783 fresh in many minds, the idea of exclusive federal jurisdiction over the capital became dominant in the debates. 65 If Philadelphia could not, or perhaps would not, protect its state government, how could the national government rely on a local entity for its safety? 66

A. Site Selection

There was very limited debate concerning the location of the Capital during the Constitutional Convention. 67 Moreover, the Philadelphia episode was not the only compelling argument for exclusive federal jurisdiction over the seat of government. 68 It was to assuage regional jealousies and be free from the influence of adjacent states. 69 After perhaps one of the longest debates in the annals of Congress, these guiding principles manifested themselves in Article I, Section 8, Clause 17 of the United States Constitution - the Seat of Government Clause. 70 Every corner of the country attempted to locate the capital as close to their state as possible. 71 Offers came from New York and Maryland. 72 Other states followed. 73 In addition to the regional disputes, competing views existed on what kind of city should be selected and what would be the ideal of American life. Urban members favored a capital in a thriving metropolis, such as Philadelphia or New York City, 74 because these cities had the greatest claim to time as the capital. 75 These members felt that urbanization and its related commerce ought to be the hallmarks embodied in the capital as they would be “central to America's growth.” 76 The war debts question was at issue and the future of slavery was thought to be at stake. 77 While the northern states wanted the capital, the southern states wanted it as well. 78 The South expressed the sentiment that a less urban site was closer to their ideals that cities were unhealthy, physically and morally, a view amplified by their experiences during Philadelphia's reign as the nation's capital. 79 The notion of an agrarian-rooted capital, they felt, embodied a breaking away from the traditional European approach of placing the capital in a large city. 80 Nonetheless, there was consensus that Congress have jurisdiction over the permanent seat of government. 81

Ultimately the agrarian position prevailed. This may have had more to do with George Washington's influence. Washington not only wanted the capital close to his home at Mount Vernon, he also had significant land holdings in the area. 82 On July 16, 1790, the Potomac site was selected and a “district of territory, not exceeding ten miles square ... accepted for the permanent seat of the government of the United States.” 83 Philadelphia, as a compromise, because it was not selected as the permanent seat, would be the temporary capital. 84 In return for the north's acquiescence on a southern location, the south agreed to support the assumption of the Revolutionary War debts. 85 President Washington was authorized to survey the land for the capital. 86 On November 21, 1800, Congress convened for the first time in the District of Columbia. 87 Interestingly, two weeks earlier, on November 11, 1800 the residents of the District of Columbia cast ballots in congressional elections. 88 A few days later, President Adams instructed Congress to immediately exercise the authority granted to them by the District Clause. By the end of the following February, the Organic Act of 1801 was signed into law. 89 The implications of the Organic Act would be significant, as it had the effect of robbing the residents of the sovereignty they enjoyed as citizens of Maryland and Virginia. It also affected their ability to vote in both the U.S. House elections and state

legislative elections, where U.S. senators were elected at the time. 90 Interestingly, at no place in the Organic Act of 1801 does it expressly state that these rights were to be stripped. 91 In a view expressed by one member of Congress, "[they] have not one political right defined and guaranteed to them by that instrument, while they continue under the exclusive jurisdiction of the United States. 92 Of course, they agree, prompting many to proclaim, "We didn't land on Plymouth Rock. Plymouth Rock landed on us!" 93

B. Effects of the Selection

There is little record reflecting analysis at the time the rights of those residing within the "permanent" Seat of Government were stripped away. It is clear that as quickly as Congress stripped the rights, it looked to restore them. By 1803, a member introduced legislation to retrocede the land back to Maryland and Virginia. 94 Those who enjoyed the rights of citizenship and lost it when moving from the states recognized the wrong in their disenfranchisement. 95 One member 96 stated that he never saw the purpose of giving Congress exclusive jurisdiction, except to serve hastening the capital selection process. 97 This view was offset by the notion that the District would receive a benefit not bestowed upon the several States. 98 Many regarded the benefit as a bargained-for exchange for the burden of second-class citizenship. 99 In 1789, it was estimated that the selected site would benefit from $500,000 spent there annually. 100 This benefit in exchange for rights was explained by James Madison in The Federalist, Number 43, 101 "the [ceding] State will no doubt provide in the compact for the rights and the consent of the citizens inhabiting the [federal district]; as the inhabitants will find sufficient inducements of interest to become willing parties to the cession. . ." 102 A colleague of Representative Smilie (R-PA) observed, "No pecuniary advantages could ever induce me to part with my elective franchise, but it has been the pleasure of those people to part with theirs, and the Constitution of the United States has authorized them to do so." 103 If the surrendering of rights was a bargained-for exchange, then it must be regarded as a compact. 104 Whit Cobb analyzes the idea of a compact between Congress and the District in a 1995 article in the Dickinson Law Review. 105 Cobb introduces the compact as an agreement. 106 Notably, each time removal was debated, a prime reason it failed was recognition of the compact. 107 In 1808, urban members, smarting from roughing it in the yet to be built capital, launched an attempt to return the capital to Philadelphia. 108 John Love of Virginia observed that removal would be a "violation of obligations solemnly entered into, and destroy the contracts made." 109 Nathaniel Macon of North Carolina stated, "I consider the faith of the government as much pledged that the Seat of Government shall be permanently fixed [in Washington, D.C.], as it can be to any contract under the sun." 110 Some members favored removal, yet believed the District ought to be compensated for losing the benefit. That opinion was not universal. 111 Still, if surrendering political standing and sovereignty was the consideration, a material breach should result in returning the District to its position before the agreement: full citizenship status. However, a court cannot grant such relief. 112 A compact is, "an agreement or covenant between two or more parties, especially between governments or states." 113 The compact with Congress was entered into on behalf of the District by Maryland and Virginia acting with apparent authority. 114 Cobb's article reveals that under the compact the exchange that was bargained for was exclusive benefit. This is supported by the provision creating the District and the history of attitudes concerning capital removal. 115 While the statutory language provides that, "offices attached to the seat of government," may be built elsewhere, it may do so only when "expressly provided by law." 116

C. Resizing the District

By the 1830s, Congress was full filing its promise of economic benefit to much of the District. This was not so for those along the southern banks of the Potomac. 117 The former Virginia parcel had yet to receive any benefit whatsoever. 118 This void was viewed as making those residents, "subject to all the evils, without any of the benefits of being citizens of this District," while further being, "denied many valuable privileges enjoyed by the citizens of the States." 119 As one might expect, those subject to this arguable breach of the compact sought some remedy. The remedy they sought was to be retroceded. When the County of Alexandria finally decided to put the idea of retrocession up for a vote on January 24, 1832, it was soundly defeated by a margin of 57% to 42%. 120 However, the growing dissatisfaction was quite clear, and by 1835 Alexandria began to lobby Congress to be

transferred back to its former jurisdiction. 121 At the same time, in spite of Maryland's willingness to reaccept Georgetown, those citizens soundly rejected retrocession by a margin of four-to-one. 122 By 1840, a retrocession vote in Alexandria won solid support, with the yes votes coming in at 537 to 155. 123 Alexandria relied on the slave trade as a principal source of revenue. 124 It feared that the slave trade would soon be abolished, 125 and with it, destruction of the local economy. 126 Congress recognized the need for remedy by passage of the Bill that retroceded Alexandria County. 127 Retrocession enjoyed support from abolitionist and slave states. However, this support was not without challenges. In *Phillips v. Payne*, Alexandria resident Phillips was unhappy at paying higher taxes and filed a claim based on the fact that he had not subscribed to the retrocession and was entitled to be reparated. 128 The Court, without ruling on the constitutionality declared: Virginia is de facto in possession of the territory. She has been in possession, and her title and possession have been undisputed, since she resumed possession, in 1847, pursuant to the act of Congress. .More than a quarter of a century has since elapsed. During all that time, she has exercised jurisdiction over the territory in all respects. She does not complain of the retrocession. . her government. . .[has] asserted her title; and her judicial department has expressly affirmed it. No murmur of discontent has been heard . . .the transfer is a settled and valid fact. 129 Both the Constitution and the Organic Act of 1801 limited the size of the District to no greater than ten miles square, however, neither prescribed a minimum size. 130 While there is an explicit ceiling, there is no explicit floor. Consequently, the wording of the decision in Phillips gives credence to the belief that the Court was not going to recognize a constitutional challenge to retrocession. 131 More importantly, the ruling indicates that there is no barrier to reducing the size of the District from its maximum limit of “ten miles square” to a substantially smaller size. 132

D. Impact of the Selection

After *Phillips* was decided, attempts at removing the capital slowed, though never vanishing entirely. 133 As the twentieth century progressed, technological advances had a major impact on Congress' near-perfect commitment to the compact. 134 Plausible expansions within the District reached critical mass, spurred by the First World War and the New Deal. Even with increased construction, there was a lack of office space to house the expanded federal government, as well as housing shortages. Congress turned to removing parts of the government to the suburbs. 135 The first significant crack in the compact was the relocation of the National Institutes of Health prior to World War II. 136 This removal ignored two facts: 1) the District was and is prohibited from building skyscrapers; and 2) the federal government had ample undeveloped land in the District. 137 Additionally, it enhances the validity of *Phillips* on the question of whether it was constitutional for Congress to retrocede Alexandria and reduce the size of the capital. Moreover, this process may be the only way in which Arlington could have possibly been reunited with the District, as Article IV, Section 3, Clause 1 would require consent from the Commonwealth to sever the state. 138 Senator McCarran accurately forecasted an era of Congressional spoils, undermining the compact. 139 McCarran argued:

If [the Pentagon] belongs anywhere it belongs in the District of Columbia . . . If the state of Virginia is to have this building, the State of Maryland will claim the right to have the Navy Building, some other state will claim the right to have the Internal Revenue Building, and so on. . . 140 Cobb argues that the removal decision, in spite of Congress' will, was unconstitutional, and the District needed the land back to house its expanding federal agencies. 141

IV. The District of Columbia as a State

A former judge of U.S. Court of Appeals for the District of Columbia, Kenneth Starr, 142 advanced a very interesting theory during the Davis Hearing. 143 This was not a hearing on the issue of D.C. Statehood, but a hearing on a bill that would have provided voting representation only in the House for the people of the District of Columbia. 144 According to Judge Starr, Congress has wide authority to govern over the District of Columbia under Article I, Section 8, Clause 17- the Seat of Government Clause. 145 He testified before the Committee that, “[w]hile...the Constitution does not affirmatively grant [District residents] the right to vote in congressional

elections, [the Constitution] does affirmatively grant Congress plenary power to govern the District's affairs." 146 There have been several instances in the past where Congress has treated the District of Columbia as a state. 147 While recognizing that "[w]hether the District of Columbia constitutes a 'State or Territory' within the meaning of any particular statutory or constitutional provision depends upon the character and aim of the specific provision involved," 148 the Supreme Court has often afforded great deference to such Congressional determinations. 149 Significantly, where the Court had previously found that the term "state" for purposes of Article III diversity jurisdiction did not apply to the District of Columbia, 150 it later upheld a Congressional statute allowing for diversity jurisdiction between citizens of the District and citizens of a state. 151 A plurality recognized the plenary power afforded Congress under the District Clause finding the clear language of Article III, Section 2 referring to "different states" to be no bar. 152 Similarly, although 42 U.S.C. § 1983 was found inapplicable to the District of Columbia, 153 the Court acknowledged Congress' authority to amend the statute to make it applicable under its Article I, Section 8, Clause 17 powers 154 - which, in fact, Congress later did. 155 Despite language referring to "states" in several provisions, the Court has allowed wide latitude in applying constitutional provisions through the District Clause. 156 Congress is permitted to directly tax D.C. residents; 157 to regulate commerce across District borders; 158 and to delegate to the District the power to enact local legislation. 159 At times, the courts have even been willing to recognize the District as a state, without explicit Congressional inclusion. 160 The Full Faith and Credit clause of Article IV, Section 1, has been interpreted to include the District, despite the constitutional text that specifies "state." 161 In addition, the Court found a treaty made applicable by statute to the states was also applicable to the District. 162 Such interpretations show the Court's willingness to acknowledge the District of Columbia as a state under some circumstances, yet for other circumstances, the Court has allowed Congress to legislate on the matter under its District Clause power. 163

In 2000, a three judge panel of the U.S. District Court for the District of Columbia ruled that representation in either house of Congress for the District of Columbia was not constitutionally mandated. 164 In its ruling, the Court emphasized that it was without authority to provide remedy for the disenfranchisement of District residents. 165 Without stating that the Constitution barred the enfranchisement of the District, the court merely held that because the Constitution only provided for representation for the states, the District was not required to have representation. 166 The courts have maintained that District plaintiffs have to seek redress in other forums and Congress alone provides the remedy for a right not explicitly prohibited. 167 Some have argued that the reading of Congress' plenary power is inconsistent with the Twenty-Third Amendment to the Constitution, which permits the District of Columbia to choose electors for President and Vice President. 168 In 1961, the 86th Congress found it necessary to amend the Constitution to grant the District the right to vote for President because the District is not a state. 169 The Committee Report stated:

[T]he District is not a State or a part of a State, there is no machinery through which its citizens may participate in such matters ... apart from the Thirteen Original States, the only areas that have achieved national voting rights have done so by becoming a State as a result of the exercise by the Congress ... to create new States pursuant to Article IV, § 3, Clause 1 of the Constitution. 170 The Committee also recognized Congress' limitations: [The Amendment] does not give the District of Columbia any other attribute of a State or change the...powers of the Congress to legislate with respect to the District of Columbia and to prescribe its forms of government. It would not authorize the District to have Representation in the Senate or the House. 171 Arguably, in the context of D.C. Statehood, if the Constitution is read as some would have it, Judge Starr's assertion of Congress' broad powers is inconsistent with the powers considered when the Seat of Government Clause was enacted. 172 It is also inconsistent with an understanding of the Constitution when the Twenty-Third Amendment was enacted more than 150 years later in 1961. 173 If the Judge's theory is correct, 174 it may well represent the least difficult manner in which political standing for the District could be achieved. 175 If Congress can use its plenary powers to grant the District of Columbia a representative, then it should be able to use its plenary powers to grant the District senators and, ipso facto, to create a state out of the District. 176 Judge Starr's reasoning, therefore, is inconsistent with his central conclusion.

A. The Courts Close Their Doors On Equal Footing For the District

Inasmuch as the essence of Washington, D.C. is steeped in constitutional doctrine, one might presume that a path through federal courts could facilitate at least political standing, if not sovereignty, for the District of Columbia. However, the courts have rejected this approach, although sympathizing with the need for relief, while indicating that the matter involves a political question not judicial intervention. Two cases involving claims of constitutional deprivation of voting rights for representation for District residents were consolidated in federal court and decided in 2000. 177 The decision dashed the hopes of District residents that the courts might resolve the equal footing dilemma. In 2004, a subsequent decision in *Banner v. United States*, made clear that the court was not a place to seek relief for questions involving sovereignty for the people of Washington, D.C. 178 Plaintiffs in the *Adams* and *Alexander* cases argued that District residents were entitled to voting representation in Congress on various grounds, including equal protection and due process. In the *Banner* case, the courts rejected an effort to invalidate the limitation imposed by Congress on the ability of the District of Columbia to tax income at its source. The *Banner* Court stated, 'simply put ... the District and its residents are the subject of Congress' unique powers, exercised to address the unique circumstances of our nation's capital."

B. The Statehood Option

Statehood is the express goal of many local District organizations, including the ACLU of the Nation's Capital, with self-government and full voting representation "until then." 179 In fact, the only time in recent history a popular vote has been held in the District of Columbia, the citizens overwhelmingly voted for Statehood. 180 Article IV, Section 3 of the Constitution sets up the framework for becoming a state. 181 The provision requires simple legislation, 182 stating, "[n]ew states may be admitted by the Congress into this Union." 183 The grant of statehood would provide District residents their full bundle of rights. It would provide political standing and sovereignty. It would mean the District would be represented in the federal government, 184 and the District would have a state government to replace the current Council and Mayor. 185 It would allow Congress to avoid dealing with local legislation. 186 Moreover, once statehood is granted, it cannot be taken away. 187 The area within the District proposed for the state are residential neighborhoods. 188 It would not include certain federal buildings or national monuments. 189 Nothing requires the Seat of Government to be larger than that proposed, 190 so reduction to this area seems appropriate. 191 Opponents argue that making the District a state would destroy the original concept of the Seat of Government being independent from any state. 192 Indeed, the U.S. Department of Justice presented an extensive legal memorandum that remains conservative dogma. 193 Some are concerned that the Seat of Government would be surrounded by one state that may exert its influence over the federal government. 194 As it stands, Maryland generally surrounds the current District. 195 By delegating exclusive control of the District, the Constitution enables Congress to address all issues whatsoever that concern the District. If the authority extended to Congress is exclusive, then Congress may do with the District what it thinks best, 196 including designating it as a state. 197 Statehood would solve the problem of representation and sovereignty for those who reside within the District of Columbia. 198 Moreover, as indicated, Congress has used this expansive power in the past. 199 In 1846 a bill allowed for the retrocession of one third of the District back to Virginia. 200 As noted, thirty years later, when the Supreme Court was presented with the opportunity to rule the retrocession unconstitutional, the Court rejected the claim. 201 The defining language describing the geographical limits of the District simply states that the federal seat of power is not to exceed ten miles square. 202 The retrocession of 1846 reduced the District from one hundred square miles to sixty-seven square miles. 203 The District may be reduced in size without violating any provisions of the Constitution. 204 Opponents argue that a fair reading of the terms of the Maryland Act of Cession, does not allow Congress to create a state from that land. 205 The history of the creation of West Virginia makes this seem unlikely. 206 Article IV, Section 3, Clause 1 of the Constitution requires Congress to obtain a state's consent before Congress can change that state's borders. 207 Yet, in 1863, Congress approved an area of western Virginia for statehood, thus creating present-day West Virginia. 208 Opponents also argue that, given the District Clause 209 and the Twenty-Third Amendment, creating a state out of the District of Columbia can only be done by amending the

Constitution. 210 They argue that because the District is provided for in the Constitution, only an amendment to the Constitution can change its borders. 211 Essentially they posit that the "form and function" of the District under the Constitution does not permit any change. 212 The Virginia precedent is again instructive. 213 In 1846, to protect slavery and at the request of Virginia, thirty-three square miles were returned by Congress to Virginia. 214 That act was done by statute, a simple legislative act of Congress. 215 There is already a considerable record from congressional hearings that the non-federal parts of the District can be converted, by simple act of Congress, into a state without amending the Constitution. 216 Even if a constitutional amendment is required to create a state, 217statehood remains the preferred option 218 among District residents. Critics worry that the District is not economically viable as a state. 219 They also express concerns about the District's small land area and how it will affect the potential for population growth. 220 These worries are unfounded. The District is economically viable as a state. 221 The District has had a balanced budget in the past eleven years and has been relatively free of mismanagement and corruption for at least that long. 222 The Control Board, during its existence, certified that the District is economically stable, and gave the District the freedom to enter into the markets. 223 As a state, the District would also have the power to tax the income of non-residents working here. 224 In fact, experts have assessed the economic viability of the District of Columbia over the years and have reached similar conclusions. The findings of these experts are presented later in this Article. 225

Over the years, members of Congress and scholars have also addressed the constitutional and legal issues associated with statehood. Senator Edward M. Kennedy (D-MA), who once chaired the Senate Judiciary Committee and who introduced a companion D.C. Statehood Bill in the Senate, stated: I believe that the District...meets the generally accepted historic standards for the admission of the States to the Union. The three preeminent conditions are the commitment to the principles of democracy, resources and population sufficient to support statehood, and the will of the people for statehood. 226 Senator Arlen Specter (R-PA), who also served as Chair of the Senate Judiciary Committee, echoed similar sentiments, "[M]y sense is that every consideration should be given to the question of statehood for the District of Columbia, and my instincts are in favor of it." 227 Democratic Representative Peter W. Rodino of New Jersey, who chaired the House Committee on the Judiciary for many years, said about D.C. statehood: There is no clause in the Constitution that expressly prohibits Congress from erecting a state out of the non-federal part of the District of Columbia. Under Article I, § 8, Clause 17, Congress exercises "exclusive" authority over the District. If the authority is exclusive, Congress can do with the District what it wishes. If Congress cannot create a state out of the District, the authority must be less than exclusive - an interpretation which runs against the plain meaning of the "exclusive" power clause. 228 On the question of whether it is necessary to repeal Article I, Section 8, Clause 17 of the Constitution prior to going forward with a D.C. Statehood bill, Chairman Rodino was unequivocal again. 229 Referring to the 1846 act of retrocession, the Chairman concluded, "[t]he authority for admitting new states into the union is vested solely in the Congress of the United States by Section 3 of Article IV of the Constitution...." 230 Peter Raven-Hansen, Professor of Constitutional Law at George Washington University Law Center, agrees. 231 While opponents point to a view by former Attorney General Robert Kennedy, 232 proponents can point to a view of the power of Congress by Professor Viet Dinh, a political conservative and principal author of the Patriot Act. 233 While scholars differ, the weight of authority favors the proponents of D.C. Statehood. Rather than constraining Congress, the District Clause offers the broadest powers in the Constitution. On the question of whether the federal government or the new state would owe any obligation to the state of Maryland, which ceded the land to create the District of Columbia, Professor Raven-Hansen found that the original act of cession was unconditional, and the act of Maryland ratifying the cession unequivocally acknowledged the land "to be forever ceded and relinquished to the Congress and government of the United States in full and absolute right, and exclusive jurisdiction..." 234 Congress would continue to have authority over the Seat of Government when the size changes. 235 Indeed, the presence of a ceiling and the absence of a floor 236 suggest that the Framers intended for Congress to have the ability to alter the size of the Seat of Government. 237

The Twenty-Third Amendment established the current framework by which District of Columbia residents vote for President and Vice President. 238 What becomes of that Amendment in the wake of D.C. Statehood? 239 According

to Professor Stephen Saltzburgh, a Professor of Constitutional Law from the University of Virginia Law School, "[t]he truth is, I don't know why anybody cares about what happens with the Twenty Third Amendment . . . every time you tinker with the Constitution it's so costly it would be better to leave it alone . . . ." 240 Similarly, Professor Raven-Hansen reasoned that the Twenty-Third Amendment will become moot, either on the theory that it is no longer applicable by its terms and intent to any existing political jurisdiction, or on a theory of implied repeal by the act of admission of "New Columbia" to the Union. Legislation under the enforcement provisions of the Fourteenth Amendment can work "a pro tanto repeal of the Eleventh Amendment and the incorporated doctrine of sovereign immunity." 241 Moreover, the Constitution is "replete with asterisks to sections that are now obsolete or superseded. They are still in there, but they do not work anymore because subsequent legislation or amendment changed the purpose or made the purpose no longer achievable." 242 There are, of course, contrary views. 243 On the question of whether Congress can impose limitations on the District as a condition for admission as a state, as it has under the Home Rule Act, both J. Otis Cochran, Professor of Constitutional Law at the Tennessee School of Law and Professor Raven-Hansen cited to *Coyle v. Smith* 244 and *Permoli v. City of New Orleans*. 245 Professor Cochran said "[t]he answer to this question...is fairly straightforward primarily because there is judicial precedent on this point...the binding effect of those 'conditions' may be severely limited or non-existent after statehood is achieved.. ." 246 Professor Raven-Hansen said, "Imposing conditions prior to admission of a state is tantamount to writing, at least in part, that state's constitution." 247 In sum, all states must be admitted on equal footing. 248 The District's population is larger than one state and not that much smaller than other states. It is in the range of states such as Alaska, Vermont Wyoming, and North Dakota. 249 There is also great potential for population growth. Some think that because the District is largely urban, there is no place for new residents to move. The facts show this is not the case. 250 In recent years, the District had 200,000 more residents than it has now. 251 One additional thought, as in the Home Rule Act, Congress could provide that no more than one Senator may be elected from any one political party, thereby ensuring the election of one non- Democratic Senator. 252 The courts upheld that provision. 253 However, many would find that solution objectionable. 254 In November 1967, former U.S. Attorney General Ramsey Clark stated, "[Representation for the District] recognizes that the right to vote is the last we should ever withhold, because it can protect all others." Echoing that sentiment in June 1970, former Chief Justice of the United States Supreme Court William Rehnquist, then the Assistant U.S. Attorney General, stated that "[t]he need for an amendment [providing representation for the District] at this late date in our history is too self-evident for further elaboration; continued denial of voting representation from the District of Columbia can no longer be justified." 255 Additionally, Congressman Walter Fauntroy said, "The 1803 proponents of a return of voting rights to the District stated that the disenfranchisement was 'an experiment in how far free men can be reconciled to live without rights.' It is simply time to end this unfruitful experiment." 256

C. Congress Can Grant Statehood to the District of Columbia

Statehood is a viable solution for the District of Columbia. Under the District Clause, Congress has authority "[t]o exercise exclusive legislation in all cases whatsoever, over such District." 257 Article IV grants Congress the power to admit states into the Union. 258 The creation of a state would give District citizens political standing and sovereignty. 259 The only restriction is that Congress may not create a district "exceeding ten miles square." The 1846 Congress rejected the Fixed Form Argument. 260 Congress could again reduce the District by statute. 261 Immediately following the District Clause, it states, Congress shall "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, Dock-Yards, and other needful Buildings." 262 This language inspires further dissent against the Fixed Form Argument. Congress commonly changes the form of forts, arsenals, etc., yet still retains plenary power over these federal places. If Congress enjoys "like Authority" over the District, then it should be able to change the form of it without relinquishing its power. 263

A weaker, but perhaps more practical, variation of the Fixed Form Argument is the "Fixed Function Argument." 264 When drafting the Constitution, the Framers intended the District to function as a permanent location for the seat of

government 265 and never meant for the District to become a state. The Framers' immediate concerns in the late eighteenth century were securing police authority over the District and addressing the limitations of federal power. 266 In the early twenty-first century, however, the federal government possesses substantial power over the armed forces 267 and the state militias. 268 Congress' inability to ward off a band of mutinous soldiers in 1783 Philadelphia 269 is inconceivable today. Like the National Capital Service Area, the District is an enclave inside a state. 270 Opponents to D.C. Statehood also cite the expected economic reliance of the National Capital Service Area on New Columbia as detrimental to the idea of independence for the Seat of Government. 271 However, the District already relies on a regional metropolis, extending beyond its boundaries, especially its transportation system. 272 Non-residents earn two-thirds of the income. 273 Surely, changing the size to the National Capital Service Area would not affect the existing interdependence. 274 Even in the unlikely event of encroachment, Congress still has the means to protect the functioning of the Seat of Government. 275 According to *Cohens v. Virginia*, 276 Congress retains the power to legislate against states impacting the independent functioning of the District. 277 Since the District Clause explicitly assigns Congress authority over the District, would the formation of New Columbia result in an abrogation of legislative power? If so, must the District Clause then be repealed? As the Supreme Court recognized in *Texas v. White*, statehood, once granted, can never be revoked. 278 Thus, this Abrogation of Power Argument proves weak under examination. 279 The multitude of court cases concerning Congress and the District of Columbia establish that the legislative authority in the District is truly "extraordinary and plenary." 280

According to the D.C. Circuit Court of Appeals, Congress can "provide for the general welfare of citizens within the District of Columbia by any and every act of legislation which it may deem conducive to that end." 281 The broad language of the District Clause combined with the extensive judicial precedent illustrates the ability of Congress to control all aspects of District affairs. However, Representative Rodino explains that "if Congress cannot create a state out of the District, the authority must be less than exclusive, an interpretation which runs against the plain meaning of the 'exclusive' power clause." 282 An analysis of the differences between Congressional representation and electoral representation illustrates that a constitutional amendment is not necessary to provide statehood, even though a constitutional amendment was necessary to provide District residents with electors in the Electoral College. In the Constitution, provisions related to the Seat of Government are in Article I, while those related to electors are in Article II. 283 Article I reflects great deference to Congress by endowing the legislative branch with sweeping authority to "make all Laws which shall be necessary and proper for carrying into Execution" its various powers. 284 Among these powers is an "exclusive" authority over the Seat of Government. Article II is different. Although Congress determines the day on which the Electoral College votes, 285 it does not have any other authority. The election of the president and vice-president is precisely detailed and unalterable by simple legislation because the provisions concerning the Electoral College are found within the constrictive Article II. Additionally, legislating with respect to the Electoral College is outside the boundaries of Congress' broader Article I authority. Granting District residents the right to vote in presidential elections could not be achieved through statute. 286 Statehood, however, may be granted through statute because the Constitution specifically allows Congress to admit new states. 287 Opponents argue that repeal of the Twenty-Third Amendment is necessary because its provisions entitle any few remaining residents of the National Capital Service Area three electoral votes. 288 These residents would be endowed with more influence in elections for President and Vice-President, a direct violation of the "one man, one vote" principle. 289 The creation of New Columbia would not be incompatible with the purpose of the Twenty-Third Amendment. 290 Congress intended the Amendment to "provide the citizens of the District of Columbia with appropriate rights of voting in national elections for President and Vice-President of the United States." 291 The few who might be in the National Capital Service Area would vote as residents of New Columbia. 292 As Raven-Hansen states, "[w]hile no constitutional provision should ordinarily be read to yield a nullity, neither should any be read to yield an absurdity." 293 Philip Schrag, a Professor at Georgetown Law Center, reaches a similar conclusion. 294 According to Schrag, the Twenty-Third Amendment empowers Congress, not the District. 295 The Amendment provides the District with the power to appoint electors "in such manner as the Congress may direct," and allows Congress to "enforce [the] article by appropriate legislation." 296 Thus, if Congress decides that the residents of the

National Capital Service Area must vote as residents in New Columbia in order to receive their constitutional right to representation in the Electoral College, Congress may pass this legislation without fear of violating the Constitution. 297 Finally, most states' cession clauses expressly provide for a reversion of ceded land upon the termination of federal use. Like those states, Virginia included an express reversion provision in its cession of Fort Monroe in 1824. 298 New York used a similar provision when ceding the Brooklyn Naval Yard, providing for federal government use only "as long as" the premise was used for the purposes for which jurisdiction was ceded, "and no longer." 299 Maryland, on the other hand, did not expressly provide for a reversion. In fact, the specific words "reversion" or "reverter" are not found in Maryland's cession. 300 The District of Columbia deserves full representation in Congress because the District has a larger population than Wyoming and a population on par with other states. 301 Opponents of D.C. Statehood argue that the District is too small to be on equal footing with larger states such as California, home to thirty-six million people, or Texas. The District has 591,833 citizens within its borders, 302 more numerous than Wyoming with 493,782, yet Wyoming is fully represented in Congress. 303 Six other states are on par with the District. 304 Again, those states are fully represented. 305 At points throughout its history, the District had 802,178 citizens; a population greater than ten other states. 306 Yet, statehood is not about size. The framers intended to accept large and small states into the Union. At the Federal Convention of 1787, Virginia proposed representation based on population, 307 while New Jersey advocated for equal representation for all states. 308 To create a Union with large and small states included, the Framers incorporated the 1787 compromise. 309 The result is a bicameral legislature with equal representation in the Senate and proportional representation in the House.

D. Other Options to Democracy for D.C.

No 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. Our Constitution leaves no room for classification of people in a way that unnecessarily abridges this right. 310 While giving the right to elect a local government in 1973, Congress imposed severe restraints. Congress must pass an appropriations bill for the District - as it does for every federal agency - thus, from the time the district government formulates a budget until the time it can spend the money often takes many months. The result of this congressional oversight mandate costs the District millions and millions of dollars each year. 311 Congress' power to enact laws on the District, while controlling the budget, is tantamount to "Taxation without Representation." Yet, while supporting Statehood, it is important to explore other ideas.

E. The D.C. Voting Rights Amendment

In his seminal book, Facing Mount Kenya, Jomo Kenyatta, the founding leader of independent Kenya, raised the rhetorical question, "Why can't I write about Africa? I am African." 312 Often this author feels the way Kenyatta felt. Many have written about the D.C. Voting Rights Amendment effort how it passed super majorities in Congress, yet failed to pass three-quarters of the state legislatures. However, I lived and breathed that issue in the critical time leading up to its passage and the seven-year ratification effort that followed. The passage of the legislation in Congress was a remarkable victory. When the measure cleared the House, Majority Leader Jim Wright (D-TX) took to the Floor and singled out Congressman Walter E. Fauntroy (D-DC) for praise. 313 Even more remarkable was the victory in the Senate, 314 where the resolution enjoyed unbelievable, bi-partisan support. 315 The President has no role in proposed amendments to the Constitution. 316 In sixteen of the fifty states, both houses simultaneously ratified the Amendment within the seven-year period prescribed. 317 Had the proposed Amendment succeeded, District residents would have political standing, but would continue to lack sovereignty. 318 Other proposals include retrocession of most, or all, of the District to Maryland. 319

F. Full and Partial Retrocession

There are many views about retrocession and how it will work. In one form, retrocession would give the non-federal portion of the District back to Maryland. Maryland is the logical choice, based on historical and geographical considerations. 320 As Maryland surrounds the District on three sides, absorption would not be difficult. 321 The District and Maryland share many systems and are somewhat interdependent regarding matters of infrastructure. 322 Maryland is the only state with these connections; therefore, it is best for any proposed retrocession. 323 At the Davis Hearing, two retrocession proposals were presented. 324 H.R. 381, introduced by Congressman Regula, accords with the traditional retrocession concept and would cede the non-federal land on which the District sits back to Maryland, with the exception of the "National Capital Service Area." 325 H.R. 3709, introduced by Congressman Rohrabacher, calls for what in the past has been referred to as "partial retrocession," and would allow District citizens to vote in Maryland federal elections. 326 Except for their sponsors who testified, neither of these proposals received support during the Hearing. 327 Any retrocession legislation could be done by statute. 328 There is historical precedent based on the retrocession of Alexandria and Arlington in 1846. 329 The same thing could be done for the District. 330 Retrocession would also relieve the federal government of dealing with governing the city. 331 Retrocession would also eliminate the duplication of many services. 332 Yet, there are difficulties with retrocession. It may require the approval of the Maryland legislature and, quite possibly, a majority of the population of Maryland. 333 In the past, Maryland politicians have not endorsed such a proposal. 334 There is also concern that giving the District back to Maryland would destroy the unique character of the city. 335 The District is a source of distinction. 336 Finally, there is the idea of treating the District as we treat other federal enclaves. 337 Residents of federal enclaves vote in the states from which the enclave was carved. 338 The Supreme Court has held that giving Congress exclusive jurisdiction over that land could not deprive those living on the land of their rights. 339 Residents of the District could be treated the same as those from a state because District land was once part of Maryland. 340 By legislative enactment, Congress could assert that, as a federal enclave carved from Maryland, the District may vote in Maryland elections. 341 This method would arguably not require a constitutional amendment, 342 nor require approval of the Maryland legislature. 343 The Uniformed and Overseas Citizens Voting Rights Act of 1975 requires states to accept votes from people overseas, even though the people overseas are not technically residents of the state. 344 Replacing that Act, the Uniformed and Overseas Citizens Absentee Voting Act makes provisions for American citizens who reside outside of the United States to vote by absentee ballot. 345 Under provisions like this Act, District residents could vote in Maryland congressional elections without becoming Maryland citizens. 346 Some argue that Article I, Sections 2 and 3 of the Constitution are an impediment to this approach. 347 Under these provisions, membership in the U.S. House and Senate is limited to individuals elected by the people of the several states. 348 Arguably, because District citizens are not among the people of the several states, they cannot elect representatives and senators. On the other hand, the Fourteenth Amendment may allow Congress to enact partial retrocession as well as specifically grants Congress the power to enforce the amendment through legislation. 349 When the District was established, its residents still voted in Maryland elections. 350 Maryland's voting laws continued to be in force until Congress changed those regulations. 351 Congress has not passed any laws making the voting laws of Maryland inapplicable 352 to District residents. However, the addition of over 500,000 votes to a Maryland federal election would change the dynamics of Maryland elections and government. 353 It would be unfair to force this new voting scheme onto Maryland residents without input from them. 354 This potential conflict is just one of many matters that would have to be decided before District residents could vote in Maryland elections. 355

V. Can the District Afford To Be a State

This author believes the question is better posed if inverted - can the District afford not to be a state? Revenue foregone due to limitations imposed by its status significantly impacts the quality of life of District residents. Experts have addressed these limitations and what lifting them through Statehood could mean for District finances. 356 The District is economically viable as a state, independent of special federal government support. 357

A. What Effect, if any, Will Statehood Have on Federal Payments to D.C.?

For many years, the District of Columbia received a special payment - referred to as "The Federal Payment" - that ended when The District of Columbia Revitalization Act was enacted in 1998. 358 A recurring question has been what will become of federal contributions if the District becomes a state? The responses have been similar; many believe the federal contributions will not change. 359 Dr. Andrew Brimmer, as well as many other scholars, reached the same conclusion. 360 A lump-sum payment system was made permanent by the District of Columbia Revenue Act of 1939 and used until 1973, when the multiyear, lump sum system was established as part of the Home Rule Act. 361 That scheme remained until 1998, when Congress eliminated the federal payment. 362 The financial implications of achieving Statehood for the District are admittedly complex. As Senator Mary Landrieu (D-LA) stated, "The District faces economic challenges that no other city in the country has to meet." 363 The District is caught in limbo between being a state and a city. 364 Even so, numerous experts conclude that any foreseeable negative results of Statehood are moderate, while the possible benefits are immense. 365 The National Capital Revitalization and Self-Government Improvement Act of 1997 gave certain benefits to the District. 366 Dr. Alice Rivlin estimates that the loss of those benefits could cost the District roughly one billion dollars. 367 At the same time, New Columbia would gain roughly $2.26 billion from personal income tax, 368 earmarks, 369 increased budget efficiency, 370 commuter taxes and higher bond ratings. Currently, the local government lacks the sovereignty all states enjoy. 371 In the District, the federal government holds ultimate financial authority. 372 This unique status has long been recognized as having an adverse impact on the District's financial health. 373 Although the District has a larger population than the state of Wyoming and close to that of nine other states, 374 Congress determines its affairs.

B. Will the State be Treated Differently than the Current Government for Purposes of Federal Grants and Loans?

The District's entitlement to federal grants would be more secure as a state. 375 The basis for continued support from the federal government has not changed. 376 Again, expert opinions, spanning many years, tend to agree. 377 Due to its lack of statehood, the District of Columbia cannot lean on a state government to help with local funding. 378 If granted statehood, the District would be in a far better position to fund its needs and those of sixteen million yearly visitors. 379

C. How Will Statehood Affect Taxing Authority?

Approximately 70 percent of the District's workforce does not live within its physical boundary. 380 The District of Columbia is a city where 591,833 people reside 381 and more than 700,000 people work. 382 Congress prohibits the District from taxing income earned by nonresidents working within its boundaries; a limitation on taxing authority discussed extensively in a 1985 report prepared by Dr. Brimmer. 383 In her 2009 testimony, Dr. Rivlin noted: The District is extremely small ... [only 61.4 square miles] at the heart of a prosperous metropolitan area. Relatively affluent suburbs, many of whose residents work in the District, use its roads and parks and other services, but pay no income tax to the District, ring it. Indeed, two-thirds of the income earned in D.C. is earned by non-residents. 384 Correspondingly, Dr. Rivlin argues for such taxing authority. 385 In other large cities, such as New York City, a commuter tax is placed on those who enter the city to work. 386 Consequently, "[t]he District already charges some of the highest tax rates in the country. They have resorted to high rates in part because of restrictions on their tax base." 387 Another burden that residents of the District must bear is the inability to tax specific property in the area. According to Dr. Rivlin, "[f]ully 42 percent of the real and business property base is exempt from taxation, with the federal government accounting for 28 percent." 388 Despite not paying taxes, these properties - foreign embassies, federal buildings, and non-profit organizations 389 - benefit from District services and infrastructure, including: fire, police, roads, and emergency services.

D. What are the Expected Transition Costs of Statehood?

Experts throughout the years have addressed this question with remarked similarity. 390 In 1984, a former Auditor for the District commented that transition costs would likely be low. 391 However, the city lacks the control and restraint necessary to lower its debt, which was created by high interest loans as a result of poor bond ratings. 392 The District's debt burden is considerably higher than recommended by the rating agencies: All three of the rating agencies (Moody's, Standard & Poor's, and Fitch) have indicated that ... the District's debt burden [is] relatively high. Such a high debt burden is a contributing factor to limitations on the potential for further bond rating upgrades forcing the city to continue to pay higher than necessary interest rates. Bond ratings have a direct financial effect ... of the amount of interest that the District must pay on its debt, and bond ratings also represent a broad indicator to investors and other stakeholders of ... current and long-term financial health. 393 The District of Columbia is forced to spend a significant percentage of the annual budget on interest alone - even during an economic or financial crisis when the city does not generate as much revenue as it normally does. 394 Additionally, the city is forced to prioritize paying debt, rather than financing education and health care. In recent years, there has been increasing attention to the District of Columbia's high debt levels, which are among the highest per capita when compared with other cities and states. [The District's] debt consumes nearly 12 percent of the operating budget, more than the 10 percent recommended by bond rating agencies. 395 Dr. Robert Ebel, the Deputy Chief Financial Officer for the District, has estimated that taxing personal income of nonresidents who work in the District would generate $2.26 billion annually. 396 Currently, the District is operating under a structural imbalance. The U.S. Government Accountability Office defines this as "the difference between its cost of providing an average level of services, and its total revenue capacity - the amount of revenue the District would have (including federal grants) if it applied average tax rates to its taxable resources." 397 Consequently, residents must compensate for the lack of revenue from the inability to tax 70 percent of the personal income generated within the city and 42 percent of real and business property. 398 Ed Lazere, Executive Director of the DC Fiscal Policy Institute, has argued that the only realistic way to address a projected revenue shortfall for 2009 is to tap into the city's $330 million emergency and contingency reserves because it is too late to sufficiently implement tax or fee increases. 399 Although borrowing from the emergency and contingency fund (often referred to as the "rainy day" fund) is the usual option to fill the shortfall, D.C.'s lack of control over its budget presents rigid obstacles. Congress has mandated that any money the District borrows from its rainy day fund must be paid back entirely within two years. 400 Because of its unique structure, the District is currently forced to operate like a state, but with the added burden of not taxing like a state. Even though the city has balanced its budget over the past eleven years, 401 it has done so at the cost of raising taxes and eliminating essential services. Statehood would allow the structural changes that are necessary to pay off its large debt, 402 thus freeing desperately needed money to lower taxes and offer better services. Creating New Columbia would help fix the structural imbalance.

VI. International Law and the District of Columbia

By denying representation in Congress to the people of Washington, D.C., the United States damages its authority to advocate for the spread of democracy abroad. 403 The United States is also potentially violating international law. Both formal treaties 404 and the behavior of nations 405 recognize full representation in the national legislature as a universal right to which all people are inherently entitled. The United States of America stands absolutely and totally alone as the only nation in the world with a representative democracy that denies to the citizens of its capital voting representation in the national legislature. However, domestic courts have held that they lack the authority and jurisdiction to create a judicial remedy to this issue, ruling in *Ballentine v. United States*, that "pursuant to Article I of the Constitution, only states are entitled to regular voting members [in Congress]." 406 Earlier courts have also ruled on whether U.S. territories are entitled to membership in the Electoral College, concluding, "the franchise for choosing electors is confined to 'states' cannot be 'unconstitutional' because it is what the Constitution itself provides." 407 However, many courts have been sympathetic to the plight of U.S. citizens robbed of voting rights. 408 Nonetheless, there is mounting international pressure on the United States to resolve the incongruity between

the voting and representational status of living in states and its citizens living elsewhere. 409 While some criticisms have been general or applicable to the District in a nonspecific fashion, 410 some have been aimed squarely at the city of Washington and its specific grievances--lack of self-determination and voting representation. 411

A. Treaty Law

International law comes from two primary and distinct sources--treaty and custom. 412 Treaties are straightforward; they are contracts between states, 413 and have a force equal to that of a Congressional statute granted under the Supremacy Clause of the United States Constitution." 414 The federal government could hardly conduct foreign policy if its treaties were unenforceable under state law. International law is thus a source of domestic law. 415 In practice, the status of treaties in domestic law is more complex. 416 The U.S. is a party to a number of treaties that are part of a growing framework of international human rights law. 417 In the years following the horrors of World War II, 418 the global community came together to recognize that all people are entitled with a corpus of rights that transcend any one nation or government. 419 The Universal Declaration of Human Rights, issued in 1948 by the United Nations Commission on Human Rights, is the first part of the International Bill of Human Rights; it does not create new rights, but rather restates "fundamental freedoms" recognized by the United States and other members of the international community as "inalienable" to all people. 420 "This Declaration may well become the international Magna Carta." 421 The views of the members of the Commission reflect this broad vision. 422 This is not to say there was unanimous agreement among all the delegates. 423 However, 48 out of 58 members of the United Nations, including the United States, supported it. 424 The International Covenant on Civil and Political Rights ("ICCPR") was created in 1966. 425 Article 1 and Article 25 of the ICCPR affirm the political rights in the Declaration: "All peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social, and cultural development." 426 The ICCPR is a treaty and the United States is among 166 countries to have ratified it and is bound by its terms. 427 The treaty covers the lack of self-determination in Articles 1.1 and 1.3. 428 Exclusion of non-self-governing territories from the auspices of the ICCPR would seem to run contrary to its intent and purpose. Some territories, however, have accepted their status. In *Igartua- De La Rosa v. United States*, the court stated that because Puerto Ricans "themselves acceded to their present Commonwealth status," they are not entitled to any further protection under treaties such as the ICCPR. 429 Article 25 of the ICCPR mirrors the language of Article 21 of the Declaration, and further supports the idea that the treaty does not accept the status of non-self-governing territories carte blanche. 430 Residents of the District of Columbia lack Article 25 rights because their powers are subordinate to the unelected masters in Congress. 431 A violation of the ICCPR raises the opportunity for one of the treaty partners to challenge the U.S. under the dispute resolution mechanism outlined in Articles 41 and 42. 432 Such an investigation could lead to a formal denunciation of the United States. 433 The United States is also a party to regional instruments emphasizing its obligation to full voting representation for its people. The Inter-American Democratic Charter ("IADC") was adopted in 2001. 434 In 2003, the Inter-American Commission on Human Rights, a body of the Organization of States ("OAS"), ruled against the United States. 435

B. Customary Law

The United States is also in defiance of customary international law. Custom has a legal force equal to that of treaties or Congressional statute; it can be analogized to common law. 436 Unlike treaty law, customary international law is based not on a single written document but on what the International Court of Justice defines as "evidence of a general practice accepted as law." 437 There are two essential components in establishing custom. 438 The first component requires observing state practice through "interstate interaction and acquiescence." 439 Such practice must be "general and consistent." 440 A given practice need not be adhered to by all nations to become custom. While the 9th Circuit Court ruled in 1994 that a norm must be "specific, universal, and obligatory," 441 the 2nd Circuit Court of Appeals has clarified that position stating, "[s]tates must not be universally successful in implementing the principle in order for custom to arise." 442 For a practice to become custom, it must be widespread and seen as legally mandated - a principle known as *opinio juris*. 443 In addition to its role as a source

of international law, custom is also a part of American domestic law. 444 The traditional view is that custom should be based primarily on state practice, 445 with *opinio juris* being of secondary importance. 446 This view was given a forceful measure of support by the U.S. Supreme Court in *Sosa v. Alvarez*, 447 where Justice Souter stated for the majority that custom should be determined by three primary standards: "[a] norm of international character, accepted by the civilized world, and defined with a specificity comparable to the features of the 18th century paradigms we have recognized." 448 The exact structure of democratic governments may vary considerably. This point is raised by the court in *Igartua* 449 which refuted the plaintiff's claim that there exists no right in customary international law to vote for one's head of state holding, "[n]o serious argument exists that customary international law ... requires a particular form of representative government... If there exists an international norm of democratic government, it is at a level of generality so high as to be unsuitable for importation into domestic law." 450 The Court drew on the *Sosa* 451 ruling, which held that a "high level of generality" is insufficient for determining custom. 452 There may be many different forms of an elected government, yet there is only one real form of electing the legislatures inherent to that government - one citizen, one vote. Anyone seeking to contest this position must ask: is any other method practiced? 453

C. State Practice

Establishing state practice is relatively simple. Every state that holds elections for a national legislature grants the citizens of its capital full voting rights and representation, including all of the countries named in Appendix II. The United States is the sole exception. 454 The American military presence in Iraq and Afghanistan, with the goal of spreading democracy to that region, represents a willingness on the part of the United States government to strongly support those beliefs through action. Both Iraq and Afghanistan now hold elections in which all citizens vote to elect their national legislature. 455

D. *Opinio Juris*

Establishing opinio juris is more complex. The declarations and treaties listed are evidence that states view those rights as legally binding custom. 456 On September 11, 2001, the United States adopted the IADC along with thirty-four countries in the Western Hemisphere. Secretary of State Colin Powell represented the United States at the treaty signing and upon hearing of the terrorist attacks that took place, stated: "It is important that I remain here for a bit longer in order to be part of the consensus of this new charter on democracy. That is the most important thing I can do ... I very much want to express the United States' commitment to democracy ... [and] to individual liberties." 457

E. Implications of Custom

Both state practice and *opinio juris* provide evidence that the right of all people to full representation in the national legislature is international custom. This argument meets the test set forth in *Sosa*. 458 In *Igartua*, Judge Toruella expressed that view in his dissent. 459 Because custom is a part of U.S. domestic law, it could be a possible mechanism to challenge the status of the District in federal court. Statehood should be pursued by primarily political means because no court, under either domestic or international law, has the authority to compel Congress to create a new state. 460 However, a legal challenge allows for the possibility to seek a judicial remedy that would grant some relief. 461

VII. Conclusion

Recent surveys have found that 78 percent of Americans believe District residents have the same Constitutional rights as other U.S. citizens, including equal voting rights in Congress. 462 When informed of the disfranchisement, 82 percent of those surveyed, including 87 percent of Democrats and 77 percent of Republicans, believe District citizens should have equal congressional voting rights. 463 Popular support of that magnitude is an important tool in persuading Congress to support Statehood. The issue is parochial. The District's status gives it little leverage to gain support for their cause. But voters from their home states can encourage Congress to support the District. The most

important reason is that democracy is an American birthright. The quickest solution may be treating District residents the same way other enclave residents are treated. The problem is, assuming that action could be taken by statute, that those same rights can be taken away - a precarious situation. 464 If the goal is to secure for District residents the most rights, without the possibility of those rights being taken away, the solution is statehood. It gives the District the sovereignty that many of its residents desire. Some have said Congress should provide that no more than one Senator could be elected from any party, ensuring the election of a non-Democratic Senator. 465 The courts upheld that provision. 466 Many would find it objectionable. 467 The drive to achieve D.C. Statehood must be waged on several levels. They should not give up on the courts. Many considered America to have a binding agreement with the District at its founding. Equally, America has not met the terms of that agreement. This breach may be cognizable in the courts. Moreover, Congress has proven to be a place where, with hard work, sympathy can be found. It is time, once again, to put the issue squarely before them. Of course, world opinion may be the strongest asset. All of these strategies should be undertaken. Statehood for the people of the District of Columbia is inevitable. Through proper package and presentation, the impossible can become possible. I remain hopeful and optimistic that one day, in our lifetime, the invisible line one crosses when entering Washington, D.C. will make no difference to the matter of equal citizenship. Somewhere in the midst of a long, dark passageway, there is the tunnel's light. Statehood could finally mend the crack in the Liberty Bell, through which close to 600,000 citizens have fallen. Statehood for the District of Columbia is the only path to lasting political standing and sovereignty - equal footing - something all other citizens in America and many around the world enjoy, demand, and take for granted.

Appendix I

Timeline:

209 Years of the District of Columbia's Efforts to Restore Self-Government

1788 The General Assembly of the State of Maryland authorizes the cession of territory for the seat of government of the United States, “acknowledged to be forever ceded and relinquished to the Congress and Government of the United States, and full and absolute right and exclusive jurisdiction, as well of soil as of persons residing or to reside thereon, pursuant to the tenor and effect of the eighth section of the first article of the Constitution. . . And provided also, That the jurisdiction of the laws of this State over the persons and property of individuals residing within the limits of the cession aforesaid shall not cease or determine until Congress shall, by law, provide for the government thereof, under their jurisdiction, in manner provided by the article of the Constitution before recited.” The Maryland Assembly passes supplementary acts of cession in 1792 and 1793 regarding the validity of deeds and sale of property in the new capital.

1789 The General Assembly of the Commonwealth of Virginia authorizes the cession of territory for the permanent seat of the General Government as Congress might by law direct and that the same ‘was thereby forever ceded and relinquished to the Congress and Government of the United States, in full and absolute right, and exclusive jurisdiction. . . .‘ Like Maryland, Virginia's act of cession provides that Virginia law shall continue to apply until Congress, ‘having accepted the said cession, shall, by law, provide for the government thereof, under their jurisdiction, in manner provided by the articles of the Constitution before recited.‘ (District clause).

1790 Congress accepts the territory ceded by the State of Maryland and the Commonwealth of Virginia to form the Seat of Government of the United States. It declares that on the first Monday in December 1800, the Seat of Government of the United States shall be transferred to such district and it authorizes the President to appoint three commissioners to survey and purchase land and prepare it for the new government which is to take up residence on the first Monday in December 1800.

1791 President George Washington issues several presidential proclamations defining and fixing the boundaries of the new District.

1790-1800 Qualified residents of the new District of Columbia continue to vote in elections of federal officers conducted in Maryland and Virginia, including Representatives ***58*** in Congress, even though Maryland and Virginia ceded the land to the Federal government and the District's boundaries had been drawn.

1800 The Seat of Government of the United States is transferred to the new District of Columbia.

1801 A lame duck Congress passes the Organic Act of 1801 on Feb. 27, 1801 and divides the District into two counties, the county of Washington (Maryland cession) and the county of Alexandria (Virginia cession). The Act creates a circuit court for the District of Columbia, authorizes the appointment of a U.S. Attorney, marshals, justices of the peace, and a register of wills for the District. It also provides that the Act shall not 'alter, impeach or impair the rights, granted by or derived from the acts of incorporation of Alexandria and Georgetown [incorporated cities in Virginia and Maryland prior to cession]. No longer in a state, District residents lose their state and national representation (senators were then elected by state legislatures) and their local self-determination to the extent they do not live in the two incorporated cities.

1802 Congress abolishes the board of commissioners and incorporates the City of Washington (formerly in the County of Washington) with a presidentially appointed mayor and a popularly elected council of twelve members with two chambers, one with seven members and the second with five members. The second chamber is to be chosen by all the members elected. All acts of the council must be sent to the Mayor for his approval. Suffrage is limited to 'free, white male inhabitants of full age, who have resided twelve months in the city and paid taxes therein the year preceding the election's being held.'

1804 Congress extends the 1802 charter fifteen years and provides for the direct election of both houses of the Council, each with nine members.

1812 Congress amends the charter of the City of Washington to enlarge the council, now consisting of an elected board of aldermen (eight members) and an elected board of common council (twelve members). The Mayor is to be elected by the two boards in a joint meeting. Congress also expands the corporation's taxing authority and authority to develop public institutions, although subject to the approval of the President (including the budget) since the Mayor will no longer be a Presidential appointee.

1812 Congress confers certain powers upon a levy court or board of commissioners for the County of Washington (part of Maryland cession not included in the city of Washington) primarily dealing with taxes for public improvements such as roads and bridges. The board has seven members designated by the President from existing magistrates in the county.

1820 Congress repeals the 1802 and 1804 acts and reorganizes the government of the City of Washington by providing for a popularly elected Mayor. Existing elected council continued.

1822 A Committee of Twelve, appointed "pursuant to a resolution of a meeting of the Inhabitants of the City of Washington," requests from Congress a republican form of government and the right to sue and to have federal representation "equal to citizens who live in States." "The committee confesses that they can discover but two modes in which the desired relief can be afforded, either by the establishment of a territorial government, suited to their present condition and population, and restoring them, in every part of the nation to the equal rights enjoyed by the citizens of the other portions of the United States, or by a retrocession to the states of Virginia and Maryland, of the respective parts of the District which were originally ceded by those states to form it." Washington City residents were not interested in retrocession, however.

1825 On December 28, a Committee of Thirteen sends a ten-page Memorial to Congress "praying for an amelioration of their civil and political condition" and said they should be treated at least as well as territories.

1841 In his inaugural address, President William Henry Harrison says “Amongst the other duties of a delicate character which the President is called upon to perform is the supervision of the government of the Territories of the United States. Those of them which are destined to become members of our great political family are compensated by their rapid progress from infancy to manhood for the partial and temporary deprivation of their political rights. It is in this District only where American citizens are to be found who under a settled policy are deprived of many important political privileges without any inspiring hope as to the future. . . Are there, indeed, citizens of any of our States who have dreamed of their subjects in the District of Columbia? The people of the District of Columbia are not the subjects of the people of the States, but free American citizens. Being in the latter condition when the Constitution was formed, no words used in that instrument could have been intended to deprive them of that character.”

1846 Congress, the Virginia Legislature and the City of Alexandria approve the retrocession of the county and town of Alexandria (what is now Arlington County and the City of Alexandria) back to Virginia, decreasing the size of the District by about forty percent. The referendum on retrocession passes 763 for to 222 against. Residents of Alexandria City approve the retrocession (734 for to 116 against), while residents of Alexandria County, disapprove it (29 for to 106 against).

1848 Congress reorganizes the government of the City of Washington, approving a new charter that allows voters to elect the Board of Assessors, the Register of Wills, the Collector, and the Surveyor. It abolishes the property qualifications for voting and extends voting rights to all white male voters who pay a one dollar yearly school tax.

1850 Congress ends the slave trade in the District.

1862 Congress abolishes slavery in the District (on April 16th, “Emancipation Day,” nine months before the Emancipation Proclamation is issued) and establishes a school system for black residents.

1867 Congress grants the vote to every male person “without any distinction on account of color or race” who is not a pauper or under guardianship, is twenty-one or older, who has not been convicted of any infamous crime and has not voluntarily given “aid and comfort to the rebels in that late rebellion,” and who has resided in the District for one year and three months in his ward. African Americans make up thirty-three percent of the District's population and wield considerable political power.

1871 Congress repeals the charters of the cities of Washington and Georgetown and creates the Territory of the District of Columbia. The Territory will have a Presidentially appointed Governor and Secretary to the District, subject to Senate confirmation, a bicameral legislature with a Presidentially appointed upper house and Board of Public Works, both subject to Senate confirmation, and a popularly elected twenty-two seat House of Delegates, and a nonvoting Delegate to the House of Representatives. Norton P. Chipman is the District's first nonvoting Delegate to the U.S. House of Representatives. However, the District's voters lose the right to elect its executive and the upper house of its legislature.

1874 Congress removes all elected Territorial officials, including the nonvoting Delegate in Congress, temporarily replaces the Territorial government with three presidentially appointed commissioners and places an officer of the Army Corps of Engineers in charge, under the general supervision and direction of the commissioners, of public works in the District. The First and Second Comptroller of the Treasury are appointed to a board of audit to audit the Board of Public Works and Territorial Government's financial affairs.

1878 Congress passes the Organic Act of 1878 which declares that the territory ceded by the State of Maryland to Congress for the permanent seat of government of the United States shall continue to be the District of Columbia and a municipal corporation with three Presidentially appointed commissioners, one of whom shall be an officer of the Army Corps of Engineers, as officers of the corporation. The board of the metropolitan police, the board of school trustees, the offices of the sinking-fund commissioners, and the board of health are abolished and their duties

and powers transferred to the Commissioners. Congress and the Secretary of the Treasury must approve the Commissioners' proposed annual budget. The federal payment is fifty percent of the budget Congress approves. Congress must also approve any public works contract over $1,000.

1888 Conservative newspaperman Theodore Noyes of The Washington Star launches campaign for congressional representation and strongly opposes real democracy. Noyes writes, “National representation for the capital community is not in the slightest degree inconsistent with control of the capital by the nation through Congress.” Sen. Henry Blair of New Hampshire introduces the first resolution for a constitutional amendment for District voting rights in Congress and in the Electoral College, which fails to pass.

1899 A political scientist describes the Board of Trade--which supports congressional voting rights only--as providing District with the ideal form of local government through a “representative aristocracy.”

1919 Congress reduces the federal payment to forty percent. The Board of Trade and the Chamber of Commerce advocate Congressional voting rights and oppose home rule.

1925 Congress abandons a fixed percentage federal payment and gives the commissioners authority to raise local taxes.

1935 The California legislature passes a resolution recommending Congress amend the Constitution to grant the District representation in Congress.

1940 Congress grants District residents the same access to federal courts as that available to residents of the states (diversity jurisdiction). The Supreme Court, in *National Mut. Ins. Co. v. Tidewater Transfer Co., Inc.*, 337 U.S. 582 (1949), upholds that act.

1943 Board of Trade appears before Senate Committee to support representation in Congress but opposes local self-government.

1952 President Truman transmits Reorganization Plan No. 5 of 1952 to Congress to streamline the District's government by transferring over fifty boards and commissions to the Commissioners. When transmitting the plan to Congress, he states “I strongly believe that the citizens of the District of Columbia are entitled to self-government. I have repeatedly recommended, and I again recommend, enactment of legislation to provide home rule for the District of Columbia. Local self-government is both the right and the responsibility of free men. The denial of self-government does not befit the National Capital of the world's largest and most powerful democracy. Not only is the lack of self-government an injustice to the people of the District of Columbia, but it imposes a needless burden on the Congress and it tends to controvert the principles for which this country stands before the world.”

1960's Segregationist Rep. John McMillan, who favors a District vote for President and Vice President, says a struggle for home rule will cripple the campaign for the national vote. McMillan thinks the national vote should “satisfy” DC residents “at least for a while.”

1961 Twenty-Third Amendment to the Constitution that gives the District a limited vote in the electoral college is ratified.

1964 District voters vote for the first time for President since the creation of the District in 1800, but only get “three fourths” of a vote since the District is limited to three electoral votes regardless of its population, which at the time would have merited two seats in the House.

1967 Thinking he might reduce tensions in the District and prevent riots like those occurring in other U.S. cities, President Lyndon Johnson transmits Reorganization Plan No. 3 of 1967 to Congress. It creates a Presidentially appointed Council of nine members and a Presidentially appointed Commissioner and Assistant Commissioner of

the District of Columbia (Mayor and Deputy Mayor equivalents), eliminating the office held by an officer of the Corps of Engineers. He notes that the commissioner form of government was designed for a city of 150,000 people and that "(t)oday Washington has a population of 800,000. . . . I remain convinced more strongly than ever the Home Rule is still the truest course. We must continue to work toward that day - when the citizens of the District will have the right to frame their own laws, manage their own affairs, and choose their own leaders. Only then can we redeem that historic pledge to give the District of Columbia full membership in the American Union." He appoints Walter Washington "Mayor" and Thomas Fletcher "Deputy Mayor" and John Hechinger as Council Chairman.

1968 Congress authorizes an elected school board and the District residents vote for school board members, their first vote for any local body since the territorial government was dissolved in 1874.

1970 Congress passes a law authorizing a nonvoting delegate in House of Representatives for the District (the first since 1874). D.C. Statehood Party is formed with Julius Hobson its first candidate for nonvoting Delegate.

1971 District voters elect Walter Fauntroy as their second nonvoting Delegate to House of Representatives.

1973 Congress passes the D.C. Self-Government and Governmental Reorganization Act (Home Rule Act) providing for an elected Mayor, thirteen member Council and Advisory Neighborhood Commissions and delegating certain powers to the new government, subject to Congressional oversight and veto. The new government is prohibited from taxing federal property and nonresident income and from changing the federal building height limitation, altering the court system or changing the criminal code until 1977. Congress retains a legislative veto over Council actions and must approve the District's budget. All District judges are Presidential appointees. A "floating" federal payment is retained. A mixture of District and Federal agencies governs planning and zoning.

1974 District voters elect Walter Washington as their first elected Mayor since 1870 and their first elected Council, headed by Chairman Sterling Tucker, since 1874.

1978 Congress amends the Home Rule Act to add recall, initiative and referendum provisions and makes a number of changes to address the problems of delay and federal intrusions into purely local decisions.

1978 Congress passes a Constitutional amendment to give the District full Congressional voting rights (two senators and representatives) and full representation in the Electoral College. The states have seven years to ratify it.

1979 An initiative to hold a Statehood Constitutional Convention is filed. Congress rejects the Council's bill on the location of chanceries, an example of the federal interference in local land use decisions.

1980 District voters overwhelmingly approve the initiative to hold a Statehood Constitutional Convention.

1981 District voters elect forty-five delegates to the Statehood Constitutional Convention. Congress rejects the Council's revision to the District sexual assault law.

1982 The convention, of which D.C. Statehood activist Charles Cassell is elected President, completes its work in three months. In November, voters approve a statehood constitution for the State of New Columbia and elect two "Shadow" Senators and a Representative to promote statehood (the latter not implemented until 1990).

1983 A petition for statehood, including the 1982 constitution ratified by the voters, is sent to Congress, where no action is taken on it.

1985 The 1978 constitutional voting rights amendment dies after only sixteen states ratify it.

1987 The District Council revises the Constitution for the State of New Columbia and transmits it to both Houses of Congress.

1990 District residents elect their first statehood senators and representative. The positions were first authorized in 1982 when the statehood constitution was approved.

1992 The House of Representatives, with a new Democratic majority, grants a limited vote in the Committee of the Whole

to the District Delegate.

1993 The House District Committee favorably reports a statehood bill out of committee; in first full House vote on statehood ever, but it fails (153 to 277).

1995 The District Delegate's vote in the House Committee of the Whole is revoked. Congress authorizes the President to appoint the District of Columbia Financial Responsibility and Management Assistance Authority (Control Board), which replaces the elected school board with an appointed board. The law also creates the Office of Chief Financial Officer for the District of Columbia.

1997 Congress strengthens the Control Board by giving it total control over the District's courts, prisons and pension liabilities (much of that $5 billion in unfunded liabilities is from the pre-Home Rule era), increased control over Medicaid and removes nine agencies from the Mayor's authority. The Federal Payment provisions are repealed. Locally elected officials can regain authority after four consecutive balanced budgets.

1998 Voters vote on a medical marijuana initiative (Initiative 59), but the Barr Amendment prohibits spending money to even count the ballots. U.S. District Court Judge Richard Roberts rules in 1999 that ballots can be counted (69% of the voters favored the initiative), but Congressional riders prohibit implementing the initiative.

1998 Twenty District citizens (*Adams v. Clinton*) sue the President, the Clerk and Sergeant At Arms of the U.S. House of Representatives, and the Control Board seeking declaratory judgments and injunctions to redress their deprivation of their democratic right (1) to equal protection or "the right to stand on an equal footing with all other citizens of the United States," (2) to enjoy republican forms of government, (3) to be apportioned into congressional districts and be represented by duly elected representatives and Senators in Congress, and (4) to participate through duly elected representatives in a state government insulated from Congressional interference in matters properly with the exclusive competence of state governments under the 10th Amendment.

1998 Another lawsuit, *Alexander v. Daley*, is filed by fifty-seven District residents and the District government against the Secretary of Commerce, the Clerk and Sergeant of Arms of the U.S. House of Representatives, and the Secretary and Sergeant of Arms of the U.S. Senate alleging violations of their equal protection and due process rights and privileges of citizenship and seeking voting representation in both houses of Congress.

1999 President Bill Clinton vetoes H.R. 2587, the "District of Columbia Appropriations Act, 2000" because it contains numerous riders that "are unwarranted intrusions into local citizens' decisions about local matters." Specifically, the bill prohibits (1) the use of federal and District funds for petition drives or civil actions for voting representation in Congress; (2) limits access to representation in special education cases; (3) prohibits the use of federal and District funds for abortions except where the mother's life was in danger or in cases of rape or incest; (4) prohibits the use of federal and District funds to implement or enforce a Domestic Partners Act; (5) prohibits the use of federal and District funds for a needle exchange program and District funding of any entity, public or private that has a needle exchange program, even if funded privately; (6) prohibits the D.C. Council from legislating regarding controlled substances in a manner that any state could do; and (7) limits the salary that could be paid to D.C. Council Members.

2000 A three judge panel of the U.S. District Court for the District of Columbia, in the consolidated lawsuit of *Adams v. Clinton* and *Alexander v. Daley*, finds it has authority to only rule on the issue of apportionment and representation in the House and holds that inhabitants of the District are not unconstitutionally deprived of their right to vote for voting representation in the House. The court remands the issues of voting representation in the Senate and Adams' challenge to the existence of the Control Board to the single District Judge with whom the cases were originally filed, and that judge dismisses both claims. Adams' claim regarding the right to an elected state government insulated from Congressional interference is not directly addressed. In his dissent, Judge Louis Oberdorfer finds the people of the District of Columbia are entitled to elect members of the U.S. House.

2000 A D.C. Superior Court jury finds Statehood activists Anise Jenkins and Karen Szulgit not guilty of "Disruption of Congress" when they spoke out on July 29, 1999 in the House of Representatives against passage of the Barr Amendment that prohibited the implementation of D.C. Initiative 59. Ben Armfield was acquitted of a similar charge earlier in the year. Ms. Szulgit reflected on their 7-month ordeal saying: "Freedom isn't free. I look forward to the day when we stand together—all the D.C. democracy advocates, our locally elected officials, and every member of Congress--and finally address the unfinished business of the civil rights movement."

2000 On the 40th anniversary of the founding of SNCC, the Unemployment and Poverty Action Committee (UPAC), of which James Foreman is president, petitions Congress to "grant immediate Statehood to the majority part of the District of Columbia."

2001 The D.C. Democracy 7 are acquitted. They were arrested on July 26, 2000 for "Disruption of Congress" in the House of Representatives Visitors' Gallery for allegedly chanting "D.C. Votes No! Free D.C.!" during a Congressional vote on the D.C. Appropriations Bill. Their first trial ended in a hung jury and mistrial.

2001 The Control Board officially suspends its operations and transfers home rule authority back to the elected Mayor and Council (although upon certain conditions occurring, the Control Board can be reactivated in the future).

2001 The Inter-American Commission on Human Rights of the Organization of American States (OAS) rules on a 1993 charge brought by the Statehood Solidarity Committee and finds that the denial to District citizens of equal political participation in their national legislature and the right to equality before the law is a violation of their human rights.

2002 At the Second World Social Forum in Porto Alegre, Brazil, the D.C. Statehood Green Party presents a petition calling for Statehood, democracy, and full rights under the U.S. Constitution for residents of the District of Columbia.

2004 The Inter-American Commission on Human Rights issues a report finding that the United States Government violates District residents' rights by denying them participation in their federal legislature.

2004 The demand for D.C. Statehood is dropped from the Democratic Party platform at the suggestion of D.C. Delegate Eleanor Holmes Norton, vice-chair of the DNC Platform Committee.

2005 The Parliamentary Assembly of the Organization for Security and Cooperation in Europe (OSCE) passes a resolution calling on Congress to support equal voting rights legislation for District residents.

2005 The U.S. Court of Appeals for the District of Columbia holds in Banner v. United States that in prohibiting a commuter tax on nonresidents working in the District, Congress was merely exercising the power that "the legislature of a State might exercise within the State" and does not violate the Equal Protection or the Uniformity Clause of the Constitution.

2006 The U.N. Human Rights Committee finds that the District's lack of voting representation in Congress violated the International Covenant on Civil and Political Rights, a treaty ratified by more than 160 countries, including the United States.

2007 The Organization for Security and Cooperation in Europe's Office of Democratic Institution and Human Rights finds the District's lack of equal congressional voting rights inconsistent with United States' human rights commitments under the OSCE Charter.

2008 D.C. Statehood continues to be missing from the Democratic Party platform.

2009 Congress considers granting the District a vote in the House of Representatives; extraneous gun rights amendments threaten to kill the bill. Despite having a Democratically controlled House and Senate, an amendment that would prohibit the District from providing money to any needle exchange program that operates within 1,000 feet of virtually any location where children gather is added to the House version of its 2010 appropriation bill.

2009 The D.C. Council creates a new Special Committee on Statehood and Self-Determination chaired by Council Member Michael A. Brown. The Committee begins an extensive series of hearings on statehood and its ramifications. Led by Council Chair Vincent Gray, nine members of the D.C. Council attend the 2009 Legislative Summit of the National Conference of State Legislatures in Philadelphia and promote statehood.

“We hold these Truths to be self-evident, that all Men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty, and the Pursuit of Happiness - that to secure these rights, Governments are instituted among Men, deriving their just Powers from the Consent of the Governed. . . .”

-- Preamble, Declaration of Independence, July 4, 1776

Appendix II

Table: A list of countries whose capitals receive full representation in their national legislature

Albania Tirane

Algeria Algiers

Andorra Andorra la Vella

Antigua St. Johns

Argentina Buenos Aires

Australia Canberra

Austria Brussels

Bahamas Nassau

Barbados Bridgetown

Belgium Brussels

Belize Belmopan

Botswana Gaborone

Brazil Brasilia

Bulgaria Sofia

Burma Rangoon

Cambodia Phnom-Penh

Cameroon Yaounde

Canada Ottawa

Cape Verde Islands Praia

China Beijing

Colombia Bogota

Cook Islands Auarua

Costa Rica San Jose

Cyprus Nicosia

Czech Republic Prague

Denmark Copenhagen

Djibouti Djibouti

Dominica Roseau

Dominican Republic Santo Domingo

Egypt Cairo

El Salvador San Salvador

Equatorial Guinea Malabo

Fiji Suva

Finland Helsinki

France Paris

Gabon Libreville

Gambia Banjul

Germany Berlin

Greece Athens

Grenada St. George's

Guatemala Guatemala City

Guinea Conakry

Guyana Georgetown

Haiti Port-au-Prince

Hungary Budapest

Iceland Reykjavik

India New Delhi

Indonesia Djakarta

Iran Tehran

Ireland Dublin

Israel Jerusalem

Italy Rome

Ivory Coast Abidjan

Jamaica Kinston

Japan Tokyo

Kenya Nairobi

Korea (North) Pyongyang

South Korea Seoul

Liberia Monrovia

Liechtenstein Vaduz

Luxembourg Arlon

Macao Macao

Madagascar Antananarivo

Malawi Lilongwe

Malaysia Kuala Lumpur

Maldives Male

Malta Valletta

Mauretania Nouakchott

Mauritius Port Louis

Mexico Mexico City

Monaco Monaco-Ville

Mongolia Ulan Bator

Morocco Rabat

Nauru Yeran: Administrative District

Netherlands Amsterdam

New Zealand Wellington

Nicaragua Managua

Nigeria Abuja

Norway Oslo

Pakistan Islamabad

Panama Panama City

Papua New Guinea Port Moresby

Paraguay Asuncion

Philippines Manila

Poland Warsaw

Portugal Lisbon

Romania Bucharest

San Marino San Marino

Senegal Dakar

Sierra Leone Freetown

Singapore Singapore City

South Africa Cape Town (Legislative)

Russia Moscow

Slovakia Bratislava

Spain Madrid

Sri Lanka Columbo

Surinam Paramaribo

Sweden Stockholm

Switzerland Bern

Syria Damascus

Tanzania Dar es Salaam

Tonga Nukualofa

Trinidad and Tobago Prot of Spain

Turkey Ankara

United Kingdom London

Venezuela Caracas

Vietnam Hanoi

West Samoa Apia

Yugoslavia Belgrade

Zaire Kinshasa

Zambia Lusaka

Zimbabwe Harare

Footnotes

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1 Political standing in this context is equal participation; voting representation in a nation's governing body. "[E]qual representation for equal numbers of people" is a fundamental goal. *Wesberry v. Sanders*, 376 U.S. 1, 18 (1964).

2 Sovereignty is "[s]upreme dominion, authority, or rule," independence. Black's Law Dictionary 1430 (8th ed. 2004).

3 In fact, many federal nations that extend the rights of representation to the residents of the capital have molded their governments after our own. Yet, on this basic issue of representation, they have taken the lead and surpassed the United States. A full discussion of the status of the District of Columbia in the context of other capital cities around the world is presented in International Law and the District of Columbia, infra, with excerpts from a wider discussion prepared and presented by the author in the booklet, If You Favor Freedom: You Must Favor Statehood for the District of Columbia, published in October, 1986, when he served as Chief of Staff to

former Congressman Walter E. Fauntroy (D-D.C.). If You Favor Freedom was preceded by another booklet prepared and presented by the author in 1978, A Simple Case of Democracy Denied, published when he served as Counsel to Congressman Fauntroy. Interestingly, nothing changed between 1978 and 1986 regarding the District of Columbia's standing compared to other world capitals and nothing has changed to this date. See generally Office of Congressman Walter E. Fauntroy, If You Favor Freedom: You Must Favor Statehood for The District Of Columbia (Johnny Barnes, ed., 1986), reprinted in H.Rep. No. 100-1 (1987), available at http:// www.dcvote.org/trellis/struggle/1986favorfreedomstatehood.cfm, [hereinafter If You Favor Freedom].

4 U.S. Const. amend. XVII, provides that, "[t]he Senate of the United States shall be composed of two Senators from each State, elected by the people thereof ..." Prior to the adoption of the Seventeenth Amendment, Senators were elected by state legislatures. U.S. Const. art. I, § 3, cl. 1.

5 U.S. Const. art. I, § 2, cl. 1 provides, "The House of Representatives shall be composed of members chosen every second Year by the people of the several States." There are 435 Representatives in the House. That number was set by Congress in 1911 and is not a Constitutional mandate. The number has varied, over the years. Initially, each state had one Representative in a Unicameral Body. Election of Senators and Representatives, Pub. L. 62-5, 37 Stat. 13, 14 (codified as 2 U.S.C. § 2 (1911)).

6 Timothy Cooper, Executive Director of the World Rights Organization and D.C. Statehood enthusiast and activist who has traveled around the world, has reported that, "On December 30, 2003, the Organization of American States' (OAS) Inter-American Commission on Human Rights issued Rep. No. 98/03 in case 11.204--Statehood Solidarity

Committee v. United States. That report reads in part: 'The Commission hereby concludes that the State is responsible for violations of the Petitioners' rights under Articles II and XX of the American Declaration by denying them an effective opportunity to participate in their federal legislature...'" Statehood Solidarity Comm. v. United States, Case Rep. No. 98/03 Inter-Amer. Comm. H.R. (2003); Inter-American Comm'n. on Human Rights, Org. of Am. States, Rep. No. 09/03 § 117 (2003), http:// www.cidh.org/annualrep/2003eng/USA.11204a.htm. The Inter-American Commission on Human Rights recommended to the United States that it "[p]rovide the Petitioners with an effective remedy, which includes adopting the legislative or other measures necessary to guarantee to the Petitioners the effective right to participate, directly or through freely chosen representatives and in general conditions of equality, in their national legislature." *Id.* at § 119. Moreover, the Organization for Cooperation in Europe (OSCE), both the Office for Democratic Institutions and Human Rights (ODHIR) and the Parliamentary Assembly call "on the Congress of the United States to adopt such legislation as may be necessary to grant the residents of Washington, D.C. equal voting rights in their national legislature in accordance with its human dimension commitments." Organization for Security and Cooperation in Europe, Washington, D.C. Declaration on Democracy, Human Rights and Humanitarian Questions § 58 (July 5, 2005). A fuller discussion of the implications of America's denial of voting rights to its own citizens and the impact of such denial on America's standing in the world community is presented in International Law and Politics supra.

7 Kennedy Introduces Bill Urging Statehood for D.C., Wash. Post, Jan. 25, 1985, available at http://www.washingtonpost.com/wpdyn/content/article/2009/03/18/AR2009031802555.html.

8 U.S. Const. amend. X provides, "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."

9 U.S. Const. art. I, §8, cl. 3 states that, "The Congress shall have the Power To regulate Commerce with foreign Nations, and among the several States, and with the Indian tribes ..."

10 New York v. United States, 505 U.S. 144, 181 (1992) (emphasis added).

11 U.S. Const. amend. XIV provides that, "no state shall ... deny to any person within its jurisdiction the equal protection of the laws." Known as the "Equal Protection Clause," this provision of the Constitution makes clear and true America's promise that "all men [and women] are created equal." Id. The protections of the Fourteenth Amendment were extended to the people of Washington, D.C. in *Bolling v. Sharpe*, 347 U.S. 497 (1954), a companion case to the landmark school desegregation case, *Brown v. Board of Education*, 347 U.S. 483 (1954). The Court in Sharpe relied on the Fifth Amendment in reaching its decision regarding the District of Columbia. *Sharpe*, 347 U.S. at 497 (1954).

12 Mark A. Graber, Enumeration and Other Constitutional Strategies for Protecting Rights: The View From 1787/1791, 9 U. Pa. J. Const. L. 357, 360-63 (2007). The Federalists would have preferred a document that merely outlined the structure of the government. The anti-Federalists distrusted centralized authority such as had been experienced under the British Crown. To secure passage of the Constitution, the Federalists had to agree to add amendments incorporating basic rights. *Id.*

13 There are many scholarly works, discussing this period of our history and the creation of our government. See American Civil Liberties Union, The Bill of Rights: A Brief History (2004), http://www.aclu.org/crimjustice/gen/10084res20020304.html. See also Eugene W. Hickock, Jr., The Bill of Rights: Original Meaning and Current Understanding (1991); Richard E. Labunski, James Madison and the Struggle for the Bill of Rights (2006); Creating the Bill of Rights: The Documentary Record from the First Federal Congress (Helen E. Viet et al. eds., Johns Hopkins University Press 1991); The District of Columbia: Its History, Its Government, Its People (Johnny Barnes, ed., 3d ed. 1975).

14 1 Stat. 491 (1796) (emphasis added).

15 U.S. Const. art. IV, §. 3, cl. 1.

16 Escanaba Co. v. City of Chicago, 107 U.S. 678, 689 (1883). See also *Pollard's Lessee v. Hagan*, 44 U.S. 212 (1845); *Permoli v. First Municipality*, 44 U.S. 589, 609 (1845); *Pound v. Turck*, 95 U.S. 459 (1877).

17 *Escanaba*, 107 U.S. at 689.

18 *Coyle v. Smith*, 221 U.S. 559, 567 (1911) (affirming an earlier decision by the Court in *Texas v. White*, 74 U.S. 700 (1869)).

19 *Id.*

20 *United States v. Texas*, 339 U.S. 707, 716 (1950) (emphasis added).

21 *Utah Div. of State Lands v. United States*, 482 U.S. 193, 196 (1987).

22 *United States v. Medenbach*, 116 F.3d 487 (9th Cir. 1987) (state consent is not a prerequisite to federal regulation of federal land

pursuant to the Property Clause). See also *United States v. Gardner*, 107 F.3d 1314, 1319 (9th Cir. 1997).

23 *Pollard v. Hagan*, 44 U.S. 212, 223 (1845).

24 *Van Brocklin v. Tenn.*, 117 U.S. 151, 167 (1886).

25 *Wilson v. Cook*, 327 U.S. 474, 487 (1946).

26 *Permoli v. First Municipality*, 44 U.S. 589, 609 (1845).

27 *Boyd v. Nebraska*, 143 U.S. 135, 170 (1892) (emphasis added).

28 District of Columbia Delegate Act, Pub. L. No. 91-405, 84 Stat. 845 (1970).

29 U.S. Const. amend. XXIII, § 1 ("The District constituting the seat of Government of the United States shall appoint in such manner as the Congress may direct: A number of electors of 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, but in no event more than the least populous State ..."). *Id.*

30 District of Columbia Self-Government and Governmental Reorganization Act, Pub. L. No. 93-198, 87 Stat. 774 (1973) (codified as D.C. Code § 1-221 (1973)), renamed "The Home Rule Act" as part of The District of Columbia Revitalization Act, Title XI of the Balanced Budget Act of 1997, Pub. L. No. 105-33, 111 Stat. 251 (1997) .

31 See The District of Columbia Revitalization Act, Title XI of the Balanced Budget Act of 1997, Pub. L. No. 105-33, III Stat. 251(1997). Also referred to and recently formally renamed as the "Home Rule Act," its stated purpose is, in part, "to the greatest extent possible ... relieve Congress of the burden of legislating upon essentially local District matters." Id. at § 102(A). The Act provides for a locally elected Mayor and thirteen-member D.C. Council. Id. at §§ 401(A), 421(A). As is clear, however, Congress really did not relieve itself of the burden of legislating on local matters.

32 See If You Favor Freedom, supra note 3. This document was produced at the introduction of H.R. 51, a D.C. Statehood Bill.

33 Under the Home Rule Act, Congress can exercise a Line Item veto and thereby considers each expenditure the District proposes to make. District of Columbia Self-Government and Governmental Reorganization Act, Pub. L. No. 93-198, 87 Stat. 774 (1973) (codified as D.C. Code § 1-221 (1973)).

34 See Id. In a recent D.C. Appropriations Bill, Congress placed as many as seventy limitations on the District of Columbia's ability to spend its own money. See District of Columbia Appropriations Act, S. 1446, 109th Cong. (2006). Some of those limitations, such as not using federal funds to pay for abortions or banning needle exchange programs, are placed every year in D.C. appropriations bills. Whatever the limitation, the citizens of other states are not similarly bridled.

35 Office of the Clerk, U.S. House of Representatives, The Electoral College, http://clerk.house.gov/art_history/house_history/electoral.html (last visited Nov. 9, 2009). In the case of an Electoral College deadlock or if no candidate receives the majority of votes, a 'contingent election' is held. The election of the President goes to the House of Representatives. Each state delegation casts one vote for one of the top three contenders to determine a winner. ***Id.***

36 Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT) Act of 2001, Pub. L. 107-56, 115 Stat. 272 (2001) (codified throughout the United States Code).

37 Federal taxation was implemented through U.S. Const. amend. XVI; the first draft was implemented through the Selective Service Act, Pub. L. No. 65-12, 40 Stat. 76 (1917).

38 District of Columbia Appropriations Act of 2005, Pub. L. 108-335, 108th Cong. (2004).

39 See If You Favor Freedom, supra, note 3, at 1-5 (providing a good, non-technical examination of many of the issues surrounding D.C. Statehood).

40 See section 603 of the District of Columbia Self-Government and Governmental Reorganization Act. Congress through this section controls "the borrowing, spending and budgetary process..." for the District of Columbia. Jason I. Newman & Jacques B. DePuy, Bringing Democracy to the Nation's Last Colony: The District of Columbia Self-Government Act, 24 Am. U. L. Rev. 537, 550 (1975).

41 See Constance McLaughlin Green, Washington: A History of the Capital, 1800-1950 (1962).

42 Daniel A. Smith, Tax Crusaders and the Politics of Direct Democracy 21-23 (1998). The statement, "Taxation without representation is tyranny," was a rallying cry that helped to shape attitudes leading to the American Revolution. Its origin is unclear, however, it is often attributed to a Harvard Trained Lawyer, James Otis, Jr., who lived in Massachusetts and believed strongly, when the British passed the Stamp Act, that the Parliament had no right to tax the colonies that were without representation in that body. ***Id.***

43 See If You Favor Freedom, supra note 3.

44 *District of Columbia v. Heller*, 554 U.S. ___, 128 S.Ct. 2783 (2008).

45 District of Columbia Personal Protection Act, H.R. 1288, 109th Cong. (2005).

46 ***Id.***

47 H.R. 4922, 101st Cong. (1991).

48 National Commission for a Human Life Amendment, Pro-life Legislation in Congress 2000 9 (2000). "On July 11, 2000, the District of Columbia City Council...approved the Health Insurance Coverage for Contraceptive Act of 2000 (D.C. Bill 13-399), a measure that mandated contraceptive ...coverage in health insurance plans. On July 13, 2000, the subcommittee approved the FY 2001 D.C. Appropriations Bill ... with the provision that the proposed D.C. Council law 'shall not take effect."' *Id.*

49 District of Columbia Appropriations Act of 1999, H.R. 4380, 105th Cong. (1998). On October 21, 1998, Rep. Robert L. Barr Jr. (R-GA.) attached an amendment to the above-noted 1999 D.C. appropriations bill. The so-called "Barr Amendment" prohibited the District from spending money on any initiative that would legalize or reduce the penalties for users of marijuana. The measure passed along with the D.C. spending bill.

50 Drug Free Century Act, S. 5, 106th Cong. § 3005(a) (1999). "Notwithstanding any other provision of law, none of the amounts made available under any federal law for any fiscal year may be expended, directly or indirectly, to carry out any program of distributing sterile needles or syringes ..." Id. See also Makebra Anderson, Needle Exchange Program Sticks with Addicts, Minn. Spokesman- Recorder, Mar. 7, 2005, http:// www.spokesman-recorder.com/news/article/article.asp? NewsID=3814&sID=3&ItemSource=N. ("Because of its unique relationship with the federal government, D.C. is the only city in the U.S. that has been barred from using local tax dollars to fund needle exchange programs.").

51 The D.C. Council initially passed a bill allowing for health benefits, among other things, for persons in a "caring relationship," but not necessarily married. District of Columbia Appropriations Act, 2006, H.R. 2546, 104th Cong. (1994). While this bill was not vetoed during the Congressional review period, Congress added a rider to the bill prohibiting the use of federal or local funds to implement the bill. Id. In a later D.C. appropriations bill, Congress reversed itself in part and did not insert language prohibiting the use of local funds for such purposes. District of Columbia Appropriations Act, 2001, H.R. 4942, 106th Cong. (2000). This reversal is hailed as a victory among some Home Rule proponents.

52 H.B. 3170 passed the United States House of Representatives on July 24, 2009. H.R. 3170, 111th Cong. (2009); see also H.R. Rep. No. 111-202 (2009). See also D.C. Appleseed Center, HIV/AIDS in the Nation's Capital 19-23, 88 (2005), http://www.dcappleseed.org/projects/publications/HIV.pdf. In 2005, Washington, DC had the highest rate of AIDS cases in the country, 128.4 per 100,000 vs. 19.7 per 100,000, nationally - nearly 1 out of every 50 residents has AIDS, and it is estimated that nearly 1 out of every 20 is infected with HIV. Id. In Washington, DC, intravenous drug use is directly responsible for 35 percent of the all AIDS cases and 54 percent of AIDS cases in women since the beginning of the epidemic. *Id.*

53 Oversight and Regulation of Public Buildings, H.R. 2068, 107th Cong. § 3103(a) (2001); Act of July 29, 1970, Pub. L. No. 91-0358, §802, 84 Stat. 667 (amending D.C. Code §22-1117 (1967)).

54 D.C. Code §§ 5-131.01-.05 (2001).

55 D.C. Code §§ 3-321 to -330 (2001).

56 There are many sources from which to draw for information, including Judith Best, National Representation for the District of Columbia 17 (1984); Constance McLaughlin Green, Washington: Village and Capital, 1800-1878 11 (1962); Kenneth R. Bowling, The Creation of Washington D.C.: The Idea and Location of the American Capital 30 (1993); Robert Fortenbaugh, The Nine Capitals of the United States 9 (1948); 2 The Records of the Federal Convention of 1787, at 127-28 (Max Farrand ed., 1911), cited in Kenneth D. Merin, Congressional Research Service, Statehood for the District of Columbia (1977); Eugene W. Hickock, Jr., The Bill of Rights: Original Meaning and Current Understanding (1991).; Richard E. Labunski, James Madison and the Struggle for the Bill of Rights (2006); Creating the Bill of Rights: The Documentary Record from the First Federal Congress (Helen E. Viet et al. eds.,1991).

57 The District of Columbia: Its History, Its Government, Its People (Johnny Barnes, ed., 3d ed. 1975).

58 Fortenbaugh, supra note 56 at 9.

59 *Id.*

60 Bowling, supra note 56, at 30. As the summer of 1783 approached, hundreds (more than 200) mutinous soldiers (their numbers grew from roughly 30) from Pennsylvania who fought for the Continental Army converged upon the Pennsylvania State House – which was also then located at Independence Hall - seeking payment from the Pennsylvania State Executive Council. It is noteworthy here, that the soldiers made their demand upon the City of Philadelphia and the state of Pennsylvania, not upon the Congress as many have believed in the past. Congress in fact had earlier simply referred their demands to the Secretary of War. *Id.*

61 Id. at 14-72. When the City of Philadelphia and the state of Pennsylvania refused to come to the aide of the State Executive Council, the members of the Confederation Congress fled to Princeton, New Jersey. *Id.*

62 H.P. Caemmerer, Washington: The National Capital, S. Doc. No. 71-332, at 17 (3d Sess. 1932), cited in Kenneth D. Merin, Congressional Research Service, Statehood for the District of Columbia (1977); Congressional Research Service, The Constitution of the United States: Analysis and Interpretations, S. Doc. No. 99-16, (1st Sess. 1987). George Washington, who served as the First President of the United States, was tasked with surveying the land to create Washington, D.C. from land offered by Maryland and Virginia. *Id.* at 365.

63 Barbara Silberdick Feinberg, The Articles of Confederation 10-25 (2002); Le Baron Bradford Prince, The Articles of Confederation vs. The Constitution 43 (1867). The Articles of Confederation preceded the Constitution as the document governing the original thirteen states. It was adopted by Congress on November 15, 1777, and ratified by all of the states on March 1, 1781. Unlike the Constitution, the Articles reposed power in the states, with limited power in the central government. Because it was felt the Articles did not accomplish the goals of unifying the states, the Constitution replaced them on March 4, 1789. *Id.*

64 *Id.*

65 Peter Raven-Hansen, Congressional Representation for the District of Columbia: A Constitutional Analysis, 12 Harv. J. on Legis. 167, 169-72 (1975); See also Bowling, supra note 56, at 76-77.

66 Judith Best, National Representation for the District of Columbia, 17 (Univ. Publishers of Am. 1984). See also Green, supra note 41, at 11 (1962).

67 2 The Records of the Federal Convention of 1787, at 127-28 (Max Farrand ed., 1911), cited in Kenneth D. Merin, Congressional Research Service, Statehood for the District of Columbia (1977).

68 Whit Cobb, Democracy in Search of Utopia: The History, Law, and Politics of Relocating the Nation's Capital, 99 Dick. L. Rev. 527, 529-31 (1995).

69 *Id.*

70 U.S. Const. art. I, § 8, cl. 17 provides that: "The Congress shall have power...To exercise exclusive Legislation in all Cases whatsoever, over such a 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, dock-Yards, and other needful Buildings..."

71 H.P. Caemmerer, Washington: The National Capital, S. Doc. No. 71-332, at 17 (3d Sess. 1932), cited in Kenneth D. Merin, Congressional Research Service, Statehood for the District of Columbia (1977).

72 *Id.*

73 Id. Virginia offered the entire City of Williamsburg, with its colonial capitol, governor's palace, public buildings, 300 acres of additional land, a cash payment of up to 100,000 pounds and a contiguous district. *Id.*

74 Fortenbaugh, supra note 56, at 9.

75 *Id.*

76 Cobb, supra note 68, at 534-36.

77 Green, supra note 41, at 11. See also 2 The Records of the Federal Convention of 1787, at 127-28 (Max Farrand ed., 1911), cited in Kenneth D. Merin, Congressional Research Service, Statehood for the District of Columbia (1977);

78 Green, supra note 41, at 11.

79 Pelatiah Webster, Essay on the Seat of the Federal Government and the Executive Jurisdiction of Congress over a Ten Miles District, in Political Essays on the Nature and Operation of Money, Public Finances and Other Subjects 376-402 (1789), quoted in Bowling, supra note 56, at 131; Cobb, supra note 68, at 535.

80 Bowling, supra note 56, at 10-11.

81 Green, supra note 41, at 8-9.

82 Cobb, supra note 68, at 537. Congressional Research Service, The Constitution of the United States: Analysis and Interpretations, S. Doc. No. 99-16, at 365 (1st Sess. 1987).

83 An Act for Establishing the Temporary and Permanent Seat of the Government of the United States, 1 Stat. 130 (1790).

84 *Id.*

85 Christopher Shortell, Rights, Remedies and the Impact of State Sovereign Immunity 28-31 (2008). It should be noted that the debts incurred by the Northern states were considerably higher than the debts incurred by those in the Southern states. *Id.*

86 An Act for Establishing the Temporary and Permanent Seat of the Government of the United States, 1 Stat. 130 (1790).

87 See Green, supra, note 41, at 23.

88 *Id.*

89 Mark David Richards, The Debates Over Retrocession, 1801-2004," Wash. Hist., Spring/Summer 2004, at 57.

90 The District of Columbia Fair and Equal House Voting Rights Act, Hearing on H.R. 5388 Before the H. Comm. on the Judiciary, 110th Cong. 3 (2006) (statement of the Am. Bar Ass'n.).

91 The District of Columbia Organic Act of 1801 incorporated the District of Columbia and placed it under the exclusive control of Congress. An Act of Feb. 27, 1801, ch. 15, 2 Stat. 103 (concerning the District of Columbia).

92 Richards, supra note 89, at 58.

93 Malcolm X, Speech on The Ballot or the Bullet (Mar. 29, 1964).

94 *Id.* at 57.

95 T.W. Noyes, Our National Capital and its Un-Americanized Americans 60 (1951). Noyes, who was the publisher of the Washington Star newspaper, notes that in a pamphlet published in 1801, Augustus B. Woodard, a Virginia lawyer who moved to the District wrote, "This body of people is as much entitled to the enjoyment of the rights of citizenship as any other part of the people of the United States. There can be no necessity for their disfranchisement ... they are entitled to a participation in the general codicils on the principles of equity and reciprocity." Id.

96 Richards, supra note 89, at 57-58. (statement of Representative John Smilie (R-PA)).

97 Representative Smilie stated, Here the citizens would be governed by laws, in the making of which they have no voice - by laws not made with their own consent, but by the United States for them - by men who have not the interest in the laws made that legislators ought always to possess – by men also not acquainted with the minute and local interests, coming...from distances of 500 to 1,000 miles.

Id.

98 In 1 Annals of Cong. 864 (Joseph Gales, ed., 1789), Madison stated, "The seat of Government is of great importance, if you consider the diffusion of wealth that proceeds from this source ... Those who are most adjacent to the seat of Legislation will always possess advantages over others. An earlier knowledge of the laws, a greater influence in enacting them, better opportunities for anticipating them, and a thousand other circumstances will give a superiority to those who are thus situated." Madison could not have been more wrong.

99 Cobb, supra note 68, at 532 (citing 1 Annals of Cong. 896 (Joseph Gales, ed., 1789)).

100 *Id.*

101 The Federalist No. 43 (James Madison). The Federalists Papers are a series of 85 articles, written by James Madison, Alexander Hamilton, John Jay and John Adams, advocating the ratification of the United States Constitution. Number 43, published on January 23, 1978, related to "The Powers Conferred by the Constitution Further Considered." *Id.*

102 Cobb, supra note 68, at 532 (citing The Federalist No. 43, at 280).

103 Statement by Representative John Baptiste Charles Lucas, reprinted in Richards, supra note 89, at 59, citing 1 Constance M. Green, Washington: A History of the Capital 1800-1950, 30 (1976).

104 A compact is a contract, a covenant between parties. Black's Law Dictionary (Westlaw 8th ed. 2004).

105 Cobb, supra note 68, at 529-31.

106 *Id.* at 529. Stating eight reasons, that D.C. would be a, "national commons in which the representatives of the nation would govern the district with the federal interest at heart and in which, in exchange for federal patronage, the citizens of the district would surrender their suffrage." *Id.*

107 Id. at 529-31, 545-546.

108 *Id.* at 545. As Cobb puts it, "the issue that seemed most consistently on the minds of the members was related to the capital compact: whether the proposed removal to Philadelphia amounted to a 'breach of contract." Id.

109 *Id.*

110 Whit Cobb, Democracy in Search of Utopia: The History, Law, and Politics of Relocating the Nation's Capital, 99 Dick. L. Rev. 527, 546 (1995).

111 *Id.* at 545-46.

112 U.S. Const. art IV, § 3, cl. 1. Congress has the sole and exclusive power to grant statehood to a land area. It is the position of proponents of statehood for the District of Columbia that political standing and sovereignty, resulting in equal footing, is achieved through statehood.

113 A convenant is, "a formal agreement or promise, usually in a contract;" while an agreement is, "a mutual understanding between two or more persons about their relative rights and duties regarding past or future performances; a manifestation of mutual assent by two or more persons." Black's Law Dictionary (8th ed. 2004) (emphasis added).

114 U.S. Const. art. IV, § 3, cl. 1.

115 4 U.S.C. §§ 71-72 (2006).

116 4 U.S.C. § 72 (2006).

117 Richards, supra note 89, at 60.

118 Neither the Pentagon or the CIA or any federal facilities for that matter, had been constructed in Virginia at that time. See generally David Alexander, The Building: A Biography of the Pentagon 6 (2008) (the plans for the Pentagon originated between the end of World War I and U.S. entry into World War II); Central Intelligence Agency, The CIA Campus: The Story of Original Headquarters Building, https://www.cia.gov/news-information/featured-story-archive/2008-featured-storyarchive/original-headquarters-building.html (In 1955, President Eisenhower signed legislation for a new CIA headquarters building in Langley, VA); Federal Bureau of Investigation, Timeline of FBI History, http://www.fbi.gov/libref/historic/history/historicdates.htm (On May 8, 1972, the FBI opened its new training facility in Quantico, VA).

119 Cobb, supra note 68, at 532 (citing Recession of Alexandria, Daily Nat'l Intelligencer Mar. 6, 1846 at 1).

120 Richards, supra note 89, at 61.

121 *Id.*

122 *Id.* at 62.

123 *Id.* at 67.

124 *Id.* at 68.

125 Richards, supra note 89, at 68.

126 Id. at 68. The strongest evidence to suggest that some oppossed retrocession was a petition signed by over 300 individuals, however, it was specifically against, "retrocession without relief."

127 An Act to Retrocede the County of Alexandria, in the District of Columbia, to the State of Virginia, 9 Stat. 35 (1846).

128 *Phillips v. Payne*, 92 U.S. 130, 131 (1875).

129 *Id.* at 133.

130 U.S. Const. art. I, § 8, cl. 17. An Act For Establishing the Temporary and Permanent Seat of the Government of the United States, 1 Stat. 130 (1790). See also Retrocession of Alexandria to Virginia, House Committee on the District of Columbia, H.R. Rep. No. 29-325, at 3-4(1846).

131 *Phillips*, 92 U.S. at 133.

132 See id. at 132. According to Peter Raven-Hansen, a Constitutional Law Professor at George Washington University Law School, "The true construction of this clause, U.S. Const. art. I, § 8, cl. 17, would seem to be that Congress may retain and exercise exclusive jurisdiction over a district not exceeding ten miles square; and whether those limits may enlarge or diminish that district, or change the site ... the end is to attain what is desirable in relation to the seat of government." Peter Raven-Hansen, The Constitutionality of Statehood, 60 Geo.Wash. L. Rev. 160, 169 (1991). If it were unconstitutional, it must follow that the Court would have required the County of Alexandria to cede the land back to the District. Thus, the example of Phillips is instructive in terms of the perceived impediments to statehood in two regards. First, it shows Congress has the authority, by statute, to reduce the size of the District to that which is less than the "10 Miles square" ceiling. Second, it confirms the existence and scope of the Compact between the Congress and the District.

133 Cobb, supra note 68, at 575-586.

134 *Id.* at 584.

135 *Id.* at 584-587.

136 *Id.* at 585.

137 *Id.* at 588 (citing Alfred Goldberg, The Pentagon: The First Fifty Years (1992) (If the District were permitted to build such structures, the office and residential space arguments would lose much of their sheen. Over 5,000 acres of land was available.)).

138 Interestingly, Virginia already had a Constitutional question put before the Supreme Court on severing part of its land in the creation of West Virginia. In that case, Congress no longer viewed the Richmond government (which admittedly has announced cessation from the Union) as the seat of government in Virginia, and considered a competing government seated in Wheeling to be the recognized capital. Vasan Kesavan & Michael Stokes Paulsen, Is West Virginia Unconstitutional?, 90 Cal. L. Rev. 291, 299-302 (2002). The Wheeling government conducted the electoral and legislative processes that led to the creation of West Virginia, achieved by severing state west of the Appalachian foothills. Id. The Supreme Court affirmed the validity of this act in *Virginia v. West Virginia*, 78 U.S. 39 (1870). Ironically, it would be in Arlington where perhaps the most egregious breach of the capital Compact would take place. The War Department, expanding swiftly, desired a building suitable to its needs. Without such facilitates readily available in the District, and with the nation at war, plans for the $35,000,000 Pentagon were expedited. *Id.* This violation of the Compact was not without its critics. Cobb, supra note 68, at 590-591.

139 See Cobb supra note 68, at 590-591.

140 *Id.* at 591.

141 See generally id.

142 Kenneth Starr also served as U.S. Solicitor General, Independent Counsel for the Whitewater matter and is now Dean of Pepperdine University Law School. Kenneth Starr - Meet the Faculty, http://law.pepperdine.edu/academics/faculty/default.php

143 Common Sense Justice for the Nation's Capital: An Examination of Proposals to Give D.C. Residents Direct Representation: Hearing Before the H. Comm. On Gov. Reform, 108th Cong. 75-85 (2004) [hereinafter Common Sense].

144 The Common Sense hearing did not initially include any witnesses opposing the Davis proposal. I first presented a memorandum to Chairman Davis to raise some of the concerns with the Davis Proposal and to present another side. Subsequently, I was invited to testify as the only witness opposing the Davis Bill. Interestingly, while I was allowed to testify and to submit testimony for the record, my testimony does not appear among the witnesses at the Committee's website. All of the testimony that appears is in support of the Davis proposal, a most unfortunate practice by the Committee. I rely a great deal on first-hand information in the construction of this Article. I was in the room. I was an eyewitness for much of this history. There are, however, many resources available for a deeper probing of the matters discussed in this Article. For example, see Fauntroy, supra note 3; The District of Columbia, Its History, Its Government, Its People (Johnny Barnes ed., 3d ed. 1975); Green, supra note 41; Lawrence M. Frankel, National Representation for the District of Columbia: A Legislative Solution, 139 U. Pa. L. Rev. 1659 (1991); Peter Raven-Hansen, Congressional Representation for the District of Columbia: A Constitutional Analysis, 12 Harv. J. on Legis. 167 (1975); Peter Raven-Hansen, The Constitutionality of D.C. Statehood, 60 Geo. Wash. L. Rev. 160 (1991).

145 U.S. Const. art. I, § 8, cl. 17.

146 Common Sense, supra note 143, at 75 (statement of the Hon. Kenneth Starr) (emphasis in original); Dinh & Charnes, infra note 193, at 4 (agreeing with Judge Starr, We conclude that Congress has ample constitutional authority to enact the District of Columbia Fairness in Representation Act. The District Clause, U.S. Const. art. I, § 8, cl. 17, empowers Congress to 'exercise exclusive Legislation in all Cases whatsoever, over such District' and thus grants Congress plenary and exclusive authority to legislate all matters concerning the District. This broad legislative authority extends to the granting of Congressional voting rights for District residents--as illustrated by the text, history and structure of the Constitution as well as judicial decisions and pronouncements in analogous or related contexts. Article I, section 2, prescribing that the House be composed of members chosen 'by the People of the several States,' does not speak to Congressional authority under the District Clause to afford the District certain rights and status appurtenant to states. Indeed, the courts have consistently validated legislation treating the District as a state, even for constitutional purposes. Most notably, the Supreme Court affirmed Congressional power to grant District residents access to federal courts through diversity jurisdiction, notwithstanding that the Constitution grants such jurisdiction only 'to all Cases ... between Citizens of different States."'). Cases like, *Adams v. Clinton*, 90 F. Supp. 2d 35, 50 n. 25 (D.D.C. 2000) (per curiam), aff'd, 531 U.S. 940 (2000) (holding that District residents do not

have a judicially enforceable constitutional right to Congressional representation, do not deny (but rather, in some instances, affirm) Congressional authority under the District Clause to grant such voting rights).

147 A detailed analysis of this view from the Court can be found in Dinh and Chames, infra, note 193, at 9-16.

148 *District of Columbia v. Carter*, 409 U.S. 418, 420 (1973).

149 *Nat'l. Mut. Ins. v. Tidewater Transfer*, 337 U.S. 582, 603 (1949).

150 *Hepburn v. Ellzey*, 6 U.S. 445, 453 (1805).

151 *Nat'l Mut. Ins.*, 337 U.S. at 604.

152 *Id.* at 614 (Rutledge, J. concurring).

153 *Carter*, 409 U.S. at 418.

154 *Id.* at 424, n.9.

155 42 U.S.C. § 1983, amended by Pub. L. No. 96-170, 93 Stat. 1284 (1979).

156 U.S. Const. art. I, § 8, cl. 17.

157 *Loughborough v. Blake*, 18 U.S. 317 (1820).

158 *Stoutenburgh v. Hennick*, 129 U.S. 141 (1889).

159 *District of Columbia v. John R. Thompson Co*., 346 U.S. 100 (1953).

160 *Loughran v. Loughran*, 292 U.S. 216, 228 (1934), reh'g denied, 292 U.S. 615 (1934); De Geofroy v. Riggs, 133 U.S. 258 (1890).

161 *Loughran*, 292 U.S. at 228.

162 *De Geofroy*, 133 U.S at 271-72.

163 U.S. Const. art. I, § 8, cl. 17.

164 *Adams v. Clinton*, 90 F. Supp.2d 35, 72 (D.D.C. 2000), aff'd per curiam, 531 U.S. 941 (2000).

165 *Id.*

166 *Id.* at 48.

167 See generally *Hepburn v. Ellzey*, 6 U.S. (1 Cranch) 445 (1805); Adams, 90 F. Supp. 2d at 35.

168 U.S. Const. amend. XXIII.

169 *Id.*

170 H.R. Rep. No. 83-1698, at 2 (1960).

171 *Id.* at 3.

172 Adam H. Kurland, Partisan Rhetoric, Constitutional Reality, and Political Responsibility: The Troubling Constitutional Consequences of Achieving D.C. Statehood by Simple Legislation, 60 Geo. Wash. L. Rev. 475 (1992).

173 U.S. Const. amend. XXIII.

174 Certainly the multitude of court cases concerning Congress and the District of Columbia establish that the legislative authority in the District is truly "extraordinary and plenary..." *United States v. Cohen*, 733 F.2d 128, 140 (D.C. Cir. 1984).

175 According to the D.C. Circuit Court of Appeals, Congress can "provide for the general welfare of citizens within the District of Columbia by any and every act of legislation which it may deem conducive to that end." *Nields v. District of Columbia*, 110 F.2d 246, 250-251 (D.C. Cir. 1940).

176 In fact, in later testimony, Chairman Peter Rodino stated, "If Congress cannot create a state out of the District, the authority must be less than exclusive, an interpretation which runs against the plain meaning of the 'exclusive' power clause." H.R. Rep. No. 100-305, at 46-47 (1987).

177 *Adams v. Clinton*, 90 F. Supp. 2d 35 (D.D.C. 2000), aff'd 531 U.S. 941 (2000). The above case was consolidated with *Alexander v. Daley*, another matter involving constitutional deprivation of voting rights in the District of Columbia.

178 *Banner v. United States*, 303 F. Supp. 2d 1 (D.D.C. 2004).

179 Constitution for the State of New Columbia Approval Act of 1987: Hearing on Bill 7-154 Before the D.C. Council (1987) (statement of Mary Jane DeFrank, Executive Director, ACLU-National Capital Area).

180 Jamin B. Raskin, Domination, Democracy, and The District: The Statehood Position, 39 Cath. U. L. Rev. 417, 435-436 (1990). On February 8, 1980, the necessary petitions are filed to place a statehood initiative comparable to the "Tennessee Plan" on the ballot in D.C. Id. On November 4, 1980, 151,000 voters approve an Act that activates the statehood admission process. Id. On November 2, 1982, D.C. voters again overwhelmingly ratify the D.C. Statehood Constitution written by elected delegates. *Id.*

181 U.S. Const. art. IV, § 3.

182 See H.R. 2482, 102nd Cong. (1991). See also New Columbia Admission Act, H.R. 51, 100th Cong. § 16 (1987).

183 *Id.*

184 United State House of Representatives, Representative Offices, http://www.house.gov/house/MemberWWW_by_State.shtml. The District of Columbia, like Puerto Rico, the Virgin Islands, Guam and American Samoa currently has one non-voting Delegate in the House of Representatives. *Id.*

185 *Id.*

186 Indeed in passing the Home Rule Act, Congress indicated that its purpose was to relieve Congress of the burden of legislating for the District of Columbia. District of Columbia Self-Government and Governmental Reorganization Act, Pub. L. No. 93-198, § 102(A), 87 Stat. 774 (1973) [hereinafter Governmental Reorganization Act].

187 See If You Favor Freedom, supra note 3, (emphasis added) (providing a good examination of many of the issues surrounding D.C. Statehood).

188 New Columbia Admission Act, H.R. 51, 100th Cong. § 16 (1987).

189 Those edifices are distinctly federal in nature and that character should not be destroyed. When Congress uses its exclusive control over the District to reduce the size of the federal district and to create the territory of New Columbia, Congress can then use its constitutional power under Article IV, Section 3 to admit that land area into the Union. U.S. Const., art. IV, § 3.

190 U.S. Const., art. I, § 8, cl. 17. The seat of Government shall "not [exceed] ten miles square." Id. Obviously, it can be less than that as it is now, with the return of part of D.C. to Virginia by Act of Congress in 1846. Act of July 9, 1846, ch. 35, § 1, 9 Stat. 35 (as amended at 29 Cong. ch. 35) (providing for the retrocession of the County of Alexandria, in the District of Columbia, to the State of Virginia).

191 Indeed Congress defined and adopted the boundaries for this reduced Federal Enclave when it passed the District of Columbia Self Government and Governmental reorganization Act. See Sec. 739 of Pub. L. No. 93-198 (1973). Referred to as the National Capital Service Area, it will become the District of Columbia, consisting of the Mall and the principal federal monuments, the White House, the Capitol Building, the United States Supreme Court Building and the Federal Office Buildings adjacent to the Mall, housing the offices of the executive, legislative and judicial branches. Id.

192 R. Hewitt Pate, The Heritage Foundation, D.C. Statehood: Not Without A Constitutional Amendment (1983), https://www.policyarchive.org/bitstream/handle/10207/12663/92076_1.pdf?sequence=1.

193 See Off. of Legal Policy, U.S. Dep't. of Justice, Report to the Attorney General: The Question of Statehood for the District of Columbia (1987) [hereinafter Report to the Attorney General]. This report continues to be cited as authority by opponents of D.C. Statehood and was most recently cited during the Davis Hearings by Judge Kenneth Starr and also as part of the follow-up study by Professor Viet Dinh. See also Viet D. Dinh & Adam H. Charnes, Report to The House Comm. on Govt. Reform on The Authority of Congress to Enact Legislation to Provide the District of Columbia with Voting Representation in the House of Representatives, 108th Cong., 2d Sess. 2 (2004) [hereinafter Dinh & Charnes].

194 See Report to the Attorney General, supra note 193, at 25-27, 56-58.

195 See generally An Act to Cede to Congress a District of Ten Miles Square in This State for the Seat of the Government of the United States, 1788 Md. Acts ch. 46 (1788), reprinted in D.C. Code, 2001 Ed. An Act Authorizing Cession from MD (West 2009).

196 U.S. Const. art. I, § 8, cl. 17 (reading "[t]o 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 Government of the United States...")

197 Hearing Before the House Subcom. on Fiscal Affairs and Health, Comm. on the District of Columbia, 100th Cong. (1987) (statement of Professor Jason Newman): "Although Article I, Section 8, Clause 17, raises a number of interesting questions concerning the seat of the Federal Government, it does not prohibit Congress from creating a new state out of parts of the present District of Columbia.)" .

198 See U.S. Const. art I, § 2, cl. 1..

199 S. Con. Res. 259, 29th Cong., 9 Stat. 35 (1846).

200 *Id.*

201 *Phillips*, 92 U.S. 130 (1875).

202 U.S. Const. art. 1, § 8, cl. 17.

203 See *Phillips* supra note 201.

204 See *Phillips* supra note 132.

205 See Report to the Attorney General, supra note 193, at 61.

206 Act for the Admission of West Virginia, 37th Cong., (1862).

207 U.S. Const. art. IV, § 3, cl. 1. This Article and Clause provides in relevant part that, "...no new State shall be formed or erected within the jurisdiction of any other State." *Id.*

208 Report to the Attorney General, supra note 193, at 61. However, if Congress could create a state out of land over which a state had control, it seems incongruous to say the District could not be a state, having been ceded from Maryland for over 200 years.

209 U.S. Const. art. I, § 8, cl. 17; U.S. Const. amend. XXIII.

210 Report to the Attorney General, supra note 193, at 23-25.

211 *Id.* at 72.

212 Peter Raven-Hansen, The Constitutionality of D.C. Statehood, 60 Geo. Wash. L. Rev 160 (1991).

213 Green, supra note 41, at 173-176.

214 Law of July 9, 1846, ch. 35, § 1, 9 Stat. 35 (providing for the retrocession of the County of Alexandria, to the State of Virginia).

215 *Id.*

216 See generally H.R. Rep. No. 100-305 (1987). See also Hearing on H.R. 3861 Before the Subcomm. on Fiscal Affairs and Health of the Comm. on the District of Columbia, 98th Cong. 36-50 (to provide for the admission of the state of New Columbia into the Union, May 15, 1986). See *Van Ness v. City of Washington*, 29 U.S. (4 Pet.) 62, 70 (1830) (a private grant of land for the creation of the District "for use of the United States forever" vests "an absolute unconditional fee-simple in the United States.").

217 R. Hewitt Pate, The Heritage Foundation, D.C. Statehood: Not Without A Constitutional Amendment (1983), https://www.policyarchive.org/bitstream/handle/10207/12663/92076_1.pdf?sequence=1.

218 Constitution for the State of New Columbia Approval Act of 1987: Hearing on Bill 7-154 Before the D.C. Council (1987). On November 4, 1980, more than 150,000 D.C. voters voted in an election to activate the statehood admission process. H.R. Rep. No. 100-305, at 14 (1987). That vote was reaffirmed on November 2, 1982, when over 110,000 voters participated in a referendum to ratify the statehood constitution that had been drafted by duly elected delegates to a constitutional convention. Id.

219 Report to the Attorney General, supra note 193, at 5-6.

220 *Id.* at 3-4.

221 H.R. Rep. No. 100-305, at 12 (1987). The House Committee found that, "[w]ithin the District of Columbia, earnings by industry are very diverse and rank higher than many states in several categories. In finance, in insurance, real estate activities, the District of Columbia ranks higher than 14 states. In hotel and lodging, it ranks higher than 27 states of the Union. In business services, it ranks higher than 41 states...There are 1,800 trade associations in the District of Columbia; 18-20 million tourists visit the District of Columbia every year. The benefit to the District of Columbia from tourism is larger than the federal payroll." See also Can the District Afford to be a State infra Part V exploring financial implications of D.C. Statehood.

222 District of Columbia Appropriations Act of 2005, H.R. 4850, 108th Cong. (2004). The D.C. Appropriations Bill makes appropriations for the government of the District of Columbia and other activities chargeable in whole or in part against the revenues of said District for the fiscal year ending September 30, 2005, and for other purposes. Id.

223 *Id.*

224 H.R. Rep. No. 100-305, at 46-47 (1987).

225 See infra Part V, at 50.

226 Hearing on H.R. 3861 Before the Subcomm.on Fiscal Affairs and Health of the H. Comm. on the District of Columbia, 100th Cong. (1987) (statement of Sen. Edward M.Kennedy).

227 See H.R. Rep. No. 100-135, at 32.

228 See If You Favor Freedom, supra note 3, at 21.

229 But see Report to the Attorney General, supra note 193, at 18 n.72, 19, in which the argument is made that when Congress accepted the land from Maryland and Virginia, the boundaries were declared "finally fixed." Id. This argument is addressed in Raven-Hansen, supra, note 212, as well as by a parade of scholars with a different view. The position discussed there was that of the Justice Department under a single U.S. President and would not likely be the view under the current administration. Both President Obama and Attorney General Holder have expressed support for D.C. Statehood.

230 *Id.* at 22.

231 Raven-Hansen, supra, note 212, at 189.

232 Letter and Memorandum from Robert F. Kennedy, Attorney General, to Rep. Basil L. Whitener (1963), reprinted in Report to the Attorney General, supra note 193, at 128.

233 District of Columbia Voting Rights Act of 2009: Before the Comm. of the Judiciary, Subcomm. On the Constitution, Civil Rights and Civil Liberties of the H.R. at 3 (Jan. 2009) (statement of Viet D. Dinh, Professor, Georgetown University Law Center).

234 Raven-Hansen, supra, note 212 at 179.

235 *Id.* at 172-73.

236 This again seems to debunk the "fixed form" argument because that Act of Congress rendered the form no longer fixed. See Act to Retrocede the County of Alexandria, in the District of Columbia, to the State of Virginia, ch. 35, 9 Stat. 35 (1846).

237 If You Favor Freedom, supra note 3, at 22 (statement of Chairman Peter W. Pidino).

238 U.S. Const. amend. XXIII, § 1.

239 Kurland, supra note 172, at 476-79. The weight of authority indicates that repeal of the Twenty-Third Amendment is simply unnecessary Passage of the Twenty-third Amendment in 1961 granted Congress the authority to direct the appointment of electors to the Electoral College in the District of Columbia. This authority allows District residents to participate in elections for President and Vice-President. Although valuable, the Twenty-third Amendment fails to endow District residents with all the rights of citizenship. District residents still cannot vote for Senators, cannot vote for Representatives (with the exception of one non-voting delegate), and cannot be accorded with more electors than the least populous state. The Twenty-Third Amendment might narrow the divide between people living elsewhere in the United States and the world, but full statehood for D.C. remains the best option for eliminating that divide. *Id.*

240 See If You Favor Freedom, supra note 3, at 25-26.

241 Raven-Hansen, supra note 212, at 183-90, n. 114 (citing *Fitzpatrick v. Bitzer*, 427 U.S. 445 (1976)).

242 Examples of this are in the U.S. Constitution Article I, Section 9; Article II, Section 1; Article IV; Article V; and the Twelfth Amendment.

243 Kurland, supra note 172, at 486.

244 *Coyle v. Smith*, 221 U.S. 559 (1911).

245 *Permoli v. City of New Orleans*, 44 U.S. 589 (1845).

246 Constitutional and Economic Issues Surrounding Statehood for the District of Columbia: Hearing Before the Subcomm. on Fiscal Affairs and Health of the H. Comm. on the District of Columbia, 99th Cong. (1986) (statement of Prof. Cochran) (citing *Permoli v. First Municipality*, 44 U.S. 589, 594 (1845))

247 *Id.*

248 See U.S. Const. art. IV, § 3, cl. 1.

249 U.S. Census Bureau, U.S. Dept. of Commerce, Resident Population of the 50 States, the District of Columbia, and Puerto Rico: Census 2000 (Dec. 28, 2000), http://www.census.gov/population/www/cen2000/maps/files/tab02.pdf The population of the District of Columbia was 572,059 at the time of the U.S. Census in 2000. Alaska reported 626, 932 residents, North Dakota reported 642, 200 residents, Vermont reported 608, 827 residents, and Wyoming reported 493,782.

250 U.S. Census Bureau, U.S. Dept. of Commerce. Estimated Daytime Population and Employment-Residence Ratios: 2000 (2000), http:// www.census.gov/population/socdemo/daytime/2000/tab01.xls. According to the Census Bureau, the District's daytime population is estimated at 982,853. The influx of over 410,000 workers into Washington on a normal business day comprises a seventy-two percent increase of the capital's normal population. That is the largest increase percentage-wise of any city studied and the second-largest net increase, behind only New York City. *Id.*

251 U.S. Census Bureau, U.S. Dept. of Commerce, District of Columbia: Race and Origin 1800-1990 (2002), http:// www.census.gov/population/www/documentation/twps0056/tab23.pdf. In 1970, the population of the District of Columbia was 756,510 and in 1980, the population was 638,333. *Id.*

252 District of Columbia Self-Government and Governmental Reorganization Act, Pub. L. No. 93-198, § 401, 87 Stat. 774 (1973) (codified as D.C. Code § 1-221 (1973)). The Act provides:

(a) [t]here is established a Council of the District of Columbia; and the members of the Council shall be elected by the registered qualified electors of the District. (b) (1) [t]he Council established under subsection (a) shall consist of thirteen members elected on a partisan basis. The Chairman and four members shall be elected at large in the District, and eight members shall be elected one each from the eight election wards established, from time to time, under the District of Columbia Election Act .... The term of office of the members of the Council shall be four years, except as provided in paragraph (3), and shall begin at noon on January 2 of the year following their election. (2) [i]n the case of the first election held for the office of member of the Council after the effective date of this title [January 2, 1975], not more than two of the at-large members (excluding the Chairman) shall be nominated by the same political party. Thereafter, a political party may nominate a number of candidates for the office of at-large member of the Council equal to one less than the total number of at-large members (excluding the Chairman) to be elected in such election. (emphasis added) *Id.*

253 *Hechinger v. Martin*, 411 F. Supp. 650, 654-55 (D.D.C. 1976), aff'd, 429 U.S. 1030 (1977).

254 The people of Washington, D.C. have made their preference clear through votes. See Constitution for the State of New Columbia Approval Act of 1987, Act 7-19, D.C. Council (1987), 34 D.C. Reg. 3057-3110.

255 D.C. Vote - Republicans and D.C. Voting Rights, http://
www.dcvote.org/pdfs/congress/dcvrarepublicans0807.pdf

256 Congressman Walter Fauntroy, Preface to If You Favor Freedom, supra note 3.

257 U.S. Const. art. 1, § 8, cl. 17.

258 U.S. Const. art. IV, § 3. Congress's power to create states reads: "New States may be admitted by the Congress into this Union; but no new States shall be formed or erected within the Jurisdiction of any other State; nor any State be formed by the Junction of two or more States, or parts of States, without the Consent of the Legislatures of the States concerned as well as of the Congress." Using this "exclusive" authority, Congress can reduce the size of the federal district to include only certain federal buildings and national monuments, the icons of democracy. At the same time, Congress with the remaining government buildings, businesses and residential can admit that territory into the Union as the state of New Columbia. *Id.*

259 See Governmental Reorganization Act, Pub. L. No. 93-198 § 102(A), 87 Stat. 774 (1973). The District of Columbia currently has one non-voting delegate in the House.

260 An Act to Retrocede the County of Alexandria, in the District of Columbia, to the State of Virginia, ch. 35, 9 Stat. 35 (1846).

261 Johnny Barnes, The Ones the Voting Rights Act Left Behind: Options for Restoring Full Voting Right in the District of Columbia (2006), 19-20 (on file with the author).

262 U.S. Const. art. 1 § 8 cl. 17.

263 Raven-Hansen, supra note 212, at 168.

264 Id. Proponents of the Fixed Function Argument concede that Congress may adjust the size of the District, but assert that any changes to the district cannot affect its function.

265 Kennedy Letter, supra note 235.

266 Report to the Attorney General, supra note 193, at 25.

267 U.S. Const. art. 1, § 8, cl. 15.

268 *Perpich v. Department of Defense*, 496 U.S. 334 (1990).

269 See Barnes, supra note 261, at 8. In 1783, Pennsylvania militiamen surrounded the building in Philadelphia where the Founders were meeting to discuss the new Constitution. Id. The militiamen, demanding payment, refused to let the Founders leave. Id. Congress called on Pennsylvania for help, but members of the Pennsylvania government sided with their militiamen. Id. Seeing no other option for escape, the Founders were forced to sneak out the back door of the building under the cover of darkness. *Id.* This seemingly minor incident convinced the Founders that the seat of the federal government needed to be independent from state control. *Id.*

270 Raven-Hansen, supra note 212, at 166. Proponents of D.C. statehood, however, do not propose to eliminate the district comprising the seat of government. Instead, they propose to shrink it to an enclave of federal buildings and installations called the National Capital Service Area, and then to admit the balance of what is now D.C. as the new state of New Columbia. Id. See also 40 U.S.C. § 8501(a)(1) (2009), which currently defines the National Capital

Service Area as: "The National Capital Service Area is in the District of Columbia and includes the principal federal monuments, the White House, the Capitol Building, the United States Supreme Court Building, and the federal executive, legislative, and judicial office buildings located adjacent to the Mall and the Capitol Building, ..."

271 An argument proposed and then refuted by Raven-Hansen. See generally Raven-Hansen, supra note 212.

272 Raven-Hansen, supra note 212, at 170.

273 If the District of Columbia Becomes a State: Fiscal Implications, Hearing Before Special D.C. Council Comm. on Statehood and Self Determination, 18th Council Period 2 (2009) (statement of Dr. Alice M. Rivlin, Special D.C. Council Comm. on Statehood and Self Determination).

274 See Roy P. Franchino, The Constitutionality of Home Rule and National Representation for the District of Columbia, Part II, 46 Geo. L. J., 387 (1958).

275 Raven-Hansen, supra note 212, at 171-72.

276 *Cohens v. Virginia*, 19 U.S. 264, 347 (1821).

277 Id. at 428. (stating that "the power vested in Congress as the legislature of the United States, to legislate exclusively within [the District], carries with it, as an incident, the right to make the power effectual").

278 *Texas v. White*, 74 U.S. 700 (1868), overruled by Morgan v. United States, 113 U.S. 476, 496 (1885).

279 See Pate, supra note 194, at 4.

280 *United States v. Cohen,* 733 F.2d 128, 140 (D.C. Cir. 1984).

281 *Neilds v. District of Columbia*, 110 F.2d 246, 250-51 (D.C. Cir. 1940).

282 H.R. Rep. No. 100-305, at 46-47 (1987).

283 Dinh & Charnes, supra note 193, at 19-20.

284 U.S. Const. art. I, § 8, cl. 18.

285 U.S. Const. art. II, § 1, cl. 4.

286 Dinh & Charnes, supra note 193, at 20.

287 U.S. Const. art. IV, § 3. The creation of New Columbia and reducing the District implicates Article I powers, which not only allow Congress to legislate in manners deemed "necessary and proper" for the United Sates in general, but also allows Congress to legislate in "all Cases whatsoever" for the District in particular. U.S. Const. art. I, § 8.

288 Kurland, supra, note 172, at 487.

289 U.S. Const. amend. XIV, § 1.

290 Raven-Hansen, supra note 212, at 187.

291 U.S. Const. amend. XXIII.

292 Constitution for the State of New Columbia, Bill No. 7-154, D.C. Council (1987).

293 Raven-Hansen, supra note 212, at 184.

294 Philip G. Schrag, The Future of District of Columbia Home Rule, 39 Cath. U. L. Rev. 348-49 (1990).

295 See 106 Cong. Rec. 12, 561 (1960) (statement of Rep. Whitener).

296 U.S. Const. amend. XXIII.

297 Schrag, supra note 298, at 348-49.

298 Such an omission is indicative that a reversion was not intended. See Crook Horner & Co. v. Old Point Comfort Hotel Co., 54 F. 604, 606-08 (E.D. Va. 1983) (discussing the the March 1, 1821 Act of the Virgina Assembly ceding lands). The cession stated that, "should the said United States at any time abandon the said lands and shoal, or appropriate then to any other purpose than those indicated in the preamble to this act ... the same shall revert to and revest in this Commonwealth." *Id.* at 606. When reviewing a statement of purpose stating that if the grant was used for any other purpose than intended, it "shall at once become void," the Maryland Court of Appeals refused to find a reverter because the provision did not expressly state that the grant was only effective "so long as" it was used as provided, *McMahon v. Consistory of St. Paul's Reformed Church*, 75 A.2d 122, 125 (Md. 1950).

299 *Palmer v. Barrett*, 162 U.S. 399, 403 (1896) (quoting the language of the cessation of jurisdiction to the United States).

300 See U.S. Census Bureau, supra note 249.

301 *Id.*

302 *Id.*

303 *Id.*

304 *Id.* Vermont, North Dakota, and Alaska have populations of 608,827, 642,200, and 626, 932, respectively. Montana, Delaware, and South Dakota each have a population of less than a million people. *Id.*

305 United State House of Representatives, Representative Offices, http://www.house.gov/house/MemberWWW_by_State.shtml

306 U.S. Census Bureau, U.S. Dep't. of Commerce, Population of Counties by Decennial Census: 1900 to 1990 (1995), available at http:// www.census.gov/population/www/censusdata/cencounts/index.html.

307 Yale Law School The Avalon Project, Note of James Madison; May 30, 1787, available at http://avalon.law.yale.edu/subject_menus/madispap.asp.

308 Yale Law School The Avalon Project, Note of James Madison; June 15, 1787, available at http://avalon.law.yale.edu/subject_menus/madispap.asp.

309 Yale Law School The Avalon Project, Note of James Madison; July 16, 1787, available at http://avalon.law.yale.edu/subject_menus/madispap.asp.

310 *Wesberry v. Sanders*, 376 U.S. 1, 17-18 (1964).

311 See infra Part V of this Article. This blight on America exists despite the fact that over 95 percent of D.C.'s budget is from local tax dollars.

312 Jomo Kenyatta, Facing Mount Kenya 5 (1938).

313 H.R. J. Res. 554, 92 Stat. 3795, 94th Cong., 124 Cong. Rec. 5272 (1978). The resolution was approved by a vote of 289 to 127. *Id.* Eighteen members did not vote. Id.

314 H.R. J. Res. 554, 92 Stat. 3795, 94th Cong.,124 Cong. Rec. 27260 (1978). The Senate took up the House Bill, literally by-passing the Senate Judiciary Committee, and approved it by a vote of 67 to 32; thus paving the way for consideration by the state legislatures. *Id.*

315 Id. Senate Republican supporters included Strom Thurmond (SC), Barry Goldwater (AZ), Bob Dole (KA) and Howard Baker (TN) who was later President Reagan's Chief of Staff.

316 U.S. Const. art. V.

317 H. R. Rep. No. 111-22, at 24 n. 14 (2009). The sixteen states that ratified the 1978 amendment within the seven-year timeframe were: New Jersey, Michigan, Ohio, Minnesota, Massachusetts, Connecticut, Wisconsin, Maryland, Hawaii, Oregon, Maine, West Virginia, Rhode Island, Iowa, Louisiana and Delaware. Id. An extension was not possible, as was done with the Equal Rights Amendment, because the seven-year limit was placed in the Article of Amendment itself. The United States Supreme Court, in *Dillon v. Gloss*, 256 U.S. 368, 371-374 (1921), held that Article V of the Constitution implies that amendments must be ratified, if at all, within some reasonable time after their proposal. Id. The Court also stated that Congress, in proposing an amendment, may fix a reasonable time for ratification, and that the period of seven years, fixed by Congress in the resolution proposing the Eighteenth Amendment was reasonable. Id. at 375-376.

318 The lesson learned is that, with proper packaging and presentation, both Democrats and Republicans in Congress can be persuaded to support equal footing for the people of the District of Columbia.

319 A plan then-Attorney General Robert F. Kennedy deemed impractical and unconstitutional. See supra note 235.

320 See District of Columbia-Maryland Reunion Act, H.R. 381, 108th Cong. § 3 (2003).

321 Printable Maps - Reference, http:// nationalatlas.gov/printable/reference.htmlMaryland (last visited Dec. 1, 2009).

322 Common Sense, supra note 144, at 161 (statement of Ted Trabue, Reg. V.P. for Dist. of Columbia Affairs, PEPCO; Greater Wash. Bd. of Trade). This hearing did not initially include any witnesses opposing the Davis proposal. I first presented a memorandum to Chairman Davis to raise some of the concerns with the Davis Proposal and to present another side. Subsequently, I was invited to testify as the only witness opposing the Davis Bill. Interestingly, while I was allowed to testify and to submit testimony for the record, my testimony did not appear among the witnesses at the Committee's website. All of the testimony that appears is in support of the Davis proposal - a most unfortunate practice by the Committee. I rely a great deal on first-hand information in the construction of my presentations on this issue because I was in the room when a great deal of the relevant activity occurred. I was an eyewitness to much of this history.

323 *Id.* at 12-14 (statement of Ralph Regula, Member, House of Representatives, State of Ohio).

324 *Id.* at 3, 12 (statement of Dana Rohrbacher, Member, House of Representatives, State of California; statement of Ralph Regula, Member, House of Representatives, State of Ohio).

325 H.R. 381, 108th Cong. (2004).

326 H.R. 3709, 108th Cong. (2004).

327 See generally Common Sense, supra note 144. No single proposal enjoyed overwhelming support throughout the testimony by many representatives of groups with positions on the D.C. statehood/voting rights issue. Id. The Committee members, throughout the testimony, gave no indication of support for any one position. *Id.*

328 See supra note 321.

329 John Hammond Moore, Alexandria and Arlington "Come Home" - Retrocession, 1846, 3 N. Va. Heritage 3, 3-9 (1981); Dean C. Allard, When Arlington Was Part of the District of Columbia, 6 The Arlington Hist. Mag. 36, 36-45 (1978).

330 *Id.* (statement of Linda Cropp, Chair, D.C. Council).

331 Common Sense, supra note 144, at 60.

332 *Id.*

333 Dinh & Charnes, supra note 193 at 2.

334 See supra note 321, at 22.

335 Common Sense, supra note 144, at 16.

336 Id. at 31 (statement of Anthony Williams, Mayor, Dist. of Columbia).

337 U.S. Const. art. I, § 8, cl. 17. See also Paul v. United States, 371 U.S. 245 (1963) (a state may not legislate with respect to a federal enclave unless it reserved the right to do so when it gave its consent to the purchase by the United States and only state law existing at time of acquisition remains enforceable).

338 *Evans v. Cornman*, 398 U.S. 419 (1970).

339 Id. at 426.

340 An Act to Cede to Congress a District of Ten Miles Square in This State for the Seat of the Government of the United States, 1788 Md. Acts ch. 46, reprinted in D.C. Code, 2001 Ed. An Act Authorizing Cession from MD. (West 2009).

341 Common Sense, supra note 144, at 65.

342 *Id.*

343 See Dinh & Charnes, supra note 323, at 9.

344 Unified and Overseas Citizens Voting Rights Act of 1975, 42 U.S.C. § 1973, repealed by Uniformed and Overseas Citizens Absentee Voting Act, Pub. L. No. 99-410, 100 Stat. 924 (1986).

345 Uniformed and Overseas Citizens Absentee Voting Act, Pub. L. No. 99-410, 100 Stat. 924 (1986).

346 Common Sense, supra note 144, at 65.

347 U.S. Const. art. I, § 2,3.

348 *Id.*

349 U.S. Const. amend. XIV, § 5.

350 Organic Act, ch. 15, 2 Stat. 103 (1801) (eliminating the right of District residents to vote for Senators and Representatives). Prior to passage of the Organic Act, from 1790 to 1801, District residents fully participated in federal elections as voters in Virginia and Maryland, the two states that ceded land in order to create the District of Columbia. Id. See An Act to Cede to Congress a District of Ten Miles Square in This State for the Seat of the Government of the United States, 1788 Md. Acts ch. 46, reprinted in D.C. Code, 2001 Ed. An Act Authorizing Cession from MD. (West 2009).; see also Act for the Cession from the State of Virginia, 13 Va. Acts Ch. 32, reprinted in D.C. Code, 2001 Ed. Act of Cession from the State of Virgina (West 2009).

351 See Jason I. Newman & Jacques B. DePuy, Bringing Democracy to the Nation's Last Colony: The District of Columbia Self-Government Act, 24 Am. U. L. Rev. 537, 540 (1975).

352 *Id.*

353 Report to the Attorney General, supra note 193, at 19-31.

354 *Id.*

355 *Id.* This plan would keep the District out of state government, but there would be times when District representation would be essential. Should the District send representatives to draw boundaries? State governments decide districting issues. The District would deserve a say. In Maryland, the Governor fills vacancies in the Senate. Would this require District residents to vote for Governor? If not, one would represent the District in the federal government for whom they did not vote. That would make no sense. Last, should District residents vote in Maryland primary elections? If they have a say in the final decision, should they not have a say in the earlier decision?

356 If You favor Freedom, supra note 3, at 32-42.

357 Admission of the State of New Columbia into the Union: Hearing on H.R. 51 before the H. Comm. on the District of Columbia, 100th Cong., 1st Sess. (1987) (statement of Matthew Watson, Former Auditor, Dist. of Columbia); See also If You favor Freedom, supra note 3, at 33.

358 Balanced Budget Act of 1997, Pub. L. No.105-33, 111 Stat. 251 (1997). The Act has an impact on eight major areas of the District Government: 1) retirement funds for certain classes of D.C. employees; 2) financing the accumulated deficit; 3) reforming the criminal justice system; 4) management reform; 5) privatization of tax collections: 6) improving bond financing; 7) reform of the regulatory process; and 8) elimination of the federal payment. *Id.*

359 Admission of the State of New Columbia into the Union: Hearing on H.R. 51 Before the H. Comm. on the District of Columbia, 100th Cong., 1st Sess. (1987) (statement of Matthew Watson, Former Auditor, Dist. of Columbia). Although not legally compelled to, the President has supported and the Congress has regularly appropriated federal payments for the District of Columbia. Upon admission as a state, the District would have no greater or lesser entitlement to receive continued payments. But, there is no reason to believe that the payments would not continue. While I believe that the District is financially viable as a state even without the continuance of the federal payment, there would certainly be some decline in the quality of services if the District does not receive some contribution from its major property owner. Such a decline in the quality of life in the nation's capital is not likely to be acceptable to the federal interest. *Id.*

360 The Economic and Financial Impact of DC Statehood: Public Oversight Hearing Before the Special Comm. on Statehood and Self-Determination, D.C. Council (July 2009) (statement of Dr. Andrew Brimmer, Former Chair, Dist. of Columbia Fin. Resp. and Mgmt. Asst. Auth.). "A review of the history of the federal payment and an examination of its logical and practical basis suggests that the state of New Columbia would probably receive some form of federal payment." *Id.*

361 Subcomm. Consideration and Mark-up of H.R. 2637 Before the H. Comm. on the Dist. of Columbia, 98th Cong. (1983) (statement of Congressman Walter E. Fauntroy, Chairman, Subcomm. .on Fiscal Affairs and Health). Following enactment of the Home Rule Act, the payment experienced a steady decline; from 27.3 percent in 1975 to well below 20 percent in the years that followed. *Id.*

362 Balanced Budget Act of 1997, Pub. L. No.105-33, 111 Stat. 251 (1997) [hereinafter Balanced Budget Act].

363 Press Release, Sen. Mary Landrieu, Report Confirms Fiscal Imbalance in D.C.: Identifying the Problem is First Step in Reaching a Solution (Jun. 5, 2003), available at http://www.dcwatch.com/govern/budget030605.htm. See also U.S. Gov't. Accountability Off.Rpt. no. 03-666, District of Columbia: Structural Imbalance and Management Issues (May 2003), available at http://www.gao.gov/new.items/d03666.pdf. (last visited Nov. 8, 2009).

364 Home Rule Act, Pub. L. No. 93-198, 87 Stat. 774 (1973) (codified as D.C. Code §§ 1-201.01-207.71 (2001)). Under this Act, the District must bear the burden of state-like responsibilities while relying on Congress to agree to its budgetary and legislative decisions, a process that can take up to eighteen months. *Id.*

365 The Economic and Financial Impact of DC Statehood: Public Oversight Hearing Before the Special Comm. on Statehood and Self-Determination, D.C. Council (July 2009) [hereinafter Economic and Financial Impact].

366 See Balanced Budget Act, Pub. L. No. 105-33, 111 Stat. 251 (1997).

367 See supra note 365, (statement of Alice Rivlin, Former Chair, Dist. of Columbia Fin. Resp. and Mgmt. Asst. Auth.).

368 See supra note 365. (statement of Robert Ebel, Deputy Chief Fin. Off., Dist. of Columbia).

369 Id. (statement of Robert Ebel, Deputy Chief Fin. Off., Dist. of Columbia and Walter Smith, Exec. Dir., D.C. Appleseed Ctr.).

370 *Id.* (statement of Walter Smith, Exec. Dir., D.C. Appleseed Ctr.).

371 U.S. Const. art. IV, §3, cl. 1.

372 Home Rule Act, Pub. L. No. 93-198, 87 Stat. 774 (1973) (codified as D.C. Code §§ 1-201.01-207.71 (2001)).

373 "The District faces unique hurdles including its status as a combination 'city-state,' and even county, if you will, its special relationship to the Federal Government and to Congress in particular." District of Columbia Bond Authorization Act: Hearing on H.R. 1807 before the Subcomm. on Fiscal Affairs and Health of the H. Comm. on the Dist. of Columbia (1981) (statement of Hyman Grossman, V.P., Standard & Poor's Corp.). Mr. Fauntroy detailed seven reasons upon which the special federal payment was justified. Id. Those reasons remain unchanged to this date and include 1) revenue foregone due to nontaxable commercial and industrial property utilized by the federal government; 2) revenue foregone due to nontaxable business income; 3) revenue foregone due to federally imposed exemptions from District taxes; 4) the cost of providing services to corporations doing business only with the Federal Government; 5) the cost of direct services to the Federal Government; 6) unique expenditure requirements mandated by the Federal Government; and 7) the relative tax burden placed upon District residents. *Id.*

374 U.S. Census Bureau, U.S. Dep't. of Commerce, Annual Population Estimates 2000 to 2008 (Dec. 22, 2008), available at http://www.census.gov/popest/states/NST-ann-est.html (last visited Jul. 27, 2009).

375 Constitutional and Economic Issues Raised by D.C. Statehood: Hearing on H.R. 325 Before the H. Comm. on the District of Columbia, 99th Cong., 2nd Sess. (1986) (statement of Matthew Watson, Former Auditor, Dist. of Columbia).

376 Hearing and Mark-Up of H.R. 2637, 98th Cong. (1983) (statement of Congressman Walter E. Fauntroy, Chairman, Subcomm. On Fiscal Affairs and Health).

377 If You Favor Freedom, supra note 3, at 32-42. Dr. Andrew F. Brimmer, noted economist, stated: A comprehensive examination of the District government's receipts under major federal government programs was undertaken. The results indicate that - if the District of Columbia were to become a state - it would neither gain nor lose any significant level of Federal funds. At the present time, the District of Columbia receives federal funding as follows: Where funding is available to local governments only, the District is funded as a local government - e.g., the Department of Housing and Urban Development, Community Development Block Grant Program. Where funding is available to state governments only, the District is designated by the statute or regulations to receive Federal funds along with the 50 states and U.S. territories or is treated as if it were a state. Where federal funding is available to state and local governments or to local governments through the state, the District generally is treated as a state. On balance, then, the District of Columbia is presently treated as a state. There are few, if any, major funding sources that would become available to the District as a result of statehood. The major programs funded to local governments generally have provisions for state funding where the local government is not an applicant. *Id.*

378 Structural Imbalance of the District of Columbia: Hearing Before the S. Subcomm. of the Comm. on Appropriations, 108th Cong. 4 (2004) (statement of Anthony Williams, Former Mayor, District of Columbia). "The D.C. Public Schools have prepared a 10-year modernization program for all facilities in need of repair, and to execute it would cost $250 million per year over the next 6 years." *Id.*

379 Washington D.C. Visitors and Convention Assoc. - DC City Fact Sheet, http://washington.org/planning/meeting-planners/dc-in-abox/dc-city-fact-sheet.

380 See supra note 378, at 5.

381 *Id.* at 4.

382 *Id.*

383 If You Favor Freedom, supra note 3, at 32-42 Discussing the economics of the District's taxing authority, Dr. Andrew F. Brimmer noted: The Government of the District of Columbia collects revenues from taxes, fees, grants under Federal programs, and other miscellaneous sources, in much the same way as other states and local governments within the United States. Its position differs from that of other jurisdictions because of (1) the Federal payments it receives to compensate for costs associated with the presence of the Federal Government, and (2) the Federal restrictions placed on its taxing authority and on its budgetary discretion ... Although the Federal payment is a small part of total revenue for the District of Columbia, the Congress has authority to appropriate the entire District budget. Further, the District of Columbia is prohibited from taxing (1) earnings of workers residing outside of the District, (2) property owned by the Federal Government, or (3) property owned by certain organizations, such as the National Geographic Society, the National Academy of Sciences, and others exempted from taxation under Federal laws ... Property taxes and income taxes are the leading sources of tax revenues, followed closely by sales taxes. These, along with several minor tax sources, have been providing over 70% of total general fund revenues in recent years. The remaining revenue sources include the Federal payment. Miscellaneous charges and fines, including licenses and permits, service charges, etc., provide about 5% of total revenue, and the net receipts form the lottery now amount to nearly 2% of total general fund revenues.

Id.

384 See supra note 367.

385 *Id.* Including non-resident income in the tax base would give the District the option of cutting its income tax rates in half and still raising substantial additional revenue to improve public services. Better services and lower income tax rates would make the District a more attractive place to live and might precipitate substantial in-migration, especially of upper income people whose location decisions are sensitive to income tax rates. *Id.*

386 Paul Gessing, Nat'l. Taxpayer's Union Found., Commuter Taxes: Milking Outsiders for All They're Worth 141 (2003), http://www.ntu.org/main/press_papers.php?PressID=148&org_name=NTUF.

387 See supra note 383.

388 Structural Imbalance of the District of Columbia: Hearing Before the S. Subcomm. of the Comm. on Appropriations, 108th Cong. 24 (2004) (statement of Dr. Alice Rivlin, Director, Brookings Institution Greater Washington Research Program).

389 Union Station Redevelopment Corp. Payment in Lieu of Taxes Act of 2009: Hearing on Bill 18-220 Before the D.C. Comm. On Fin. and Revenue, D.C. Council (2009) (statement of Ed Lazere, Exec. Dir., D.C. Fiscal Policy Inst.), available at http://dcfpi.org/wp-content/uploads/2009/05/5-21-09unionst.pdf (last visited Nov. 9. 2009).

390 Constitutional and Economic Issues Raised by D.C. Statehood: Hearing on H.R. 325 Before the H. Comm. on the District of Columbia, 99th Cong., 2nd Sess. (1986) (statement of Dr. Lucy Reuben, Vice President, Financial Research Associates, Inc. and Associate Professor of Finance, George Mason University). "With respect to the cost of statehood, clearly the costs of statehood will be proportionate to any added responsibilities of statehood. At present, however, the District already bears many of these costs through its full-scale legislative and executive systems. Presumably, additional fiscal responsibilities will be paid for through the additional fiscal flexibility of any incremental powers of statehood." *Id.*

391 *Id.* (statement of Matthew Watson, Former Auditor, Dist. of Columbia). Transition costs, of themselves, are likely to be minimal, and should be of no concern in making a determination as to whether to approve statehood. However, although the District now performs at its own expense almost all activities which it would be required

to perform as a state, several programs which the state would be required to take over from the Federal Government would have cost implications which are not merely transition costs, but which would continue indefinitely. *Id.* Although the District of Columbia has encountered many financial obstacles, it has managed to balance its budget for the past eleven years as well as create an emergency and contingency reserve. See infra note 392.

392 Moody's - Ratings Policy & Approach, http://v3.moodys.com/ratings-process/Ratings-Policy-Approach/002003. Any city or state in the U.S. borrows money from the private sector via bonds and agrees to pay a certain amount of interest depending on how high or low their bond-ratings are. *Id.*

393 Letter from Natwar M. Ghandi, Chief Fin. Off. for the Dist. of Columbia to Adrian M. Fenty, Mayor, Dist. of Columbia and Vincent C. Gray, Chair, Council of the Dist. of Columbia 3-4 (Jul. 8, 2008), available at http://cfo.dc.gov/cfo/frames.asp?doc=/cfo/lib/cfo/debt_letter_070908_.pdf (last visited Nov. 9, 2009).

394 *Id.*

395 Union Station Redevelopment Corp. Payment in Lieu of Taxes Act of 2009: Hearing on Bill 18-220 Before the D.C. Comm. On Fin. and Revenue, D.C. Council (2009) (statement of Ed Lazere, Exec. Dir., D.C. Fiscal Policy Inst.), available at http://dcfpi.org/wp-content/uploads/2009/05/5-21-09unionst.pdf (last visited Nov. 9. 2009).

396 *Id.* (statement of Robert Ebel, Dep. Chief Fin. Off., Dist. of Columbia).

397 U.S. Gov't. Accountability Off.Rpt. no. 03-666, District of Columbia: Structural Imbalance and Management Issues 7 (May 2003), available at http://www.gao.gov/new.items/d03666.pdf. (last visited Nov. 8, 2009).

398 *Id.*

399 Ed Lazere, DC Fiscal Policy Inst., Filling DC's Newest Revenue Hole (2009), available at http://dcfpi.org/?p=603 (last visited Nov. 9, 2009).

400 *Id.*

401 Public Oversight Roundtable on the Economic and Financial Impacts of District of Columbia Statehood: Hearing Before the Spec. Committee on Statehood and Self-Determination, D.C. Council (2009) (testimony of Ed Lazere, Exec. Dir., DC Fiscal Policy Inst.), available at http://dcfpi.org/?p=693 (last visited Nov. 9, 2009).

402 *Id.*

403 See supra note 6. Such efforts are necessarily weakened by the dissonance between American foreign policy and domestic action.

404 Known as "Treaty Law," Sean D. Murphy, Principles of International Law 66 (2006) [hereinafter Murphy].

405 Known as "Customary Law." *Id.* at 78.

406 *Ballentine v. United States*, 486 F.3d 806, 811 (3d Cir. 2007) (citing *Adams v. Clinton*, 90 F.Supp.2d 35, 48-49 (D.D.C.2000)), *aff'd* 531 U.S. 941 (2000).

407 Id. at 811 (quoting *Igartua-De La Rosa v. United States*, 417 F.3d 145,147 (1st Cir. 2005)). Separation of powers makes it impossible for any court to simply order Congress to create a new state in order to grant a group of people representation. *Id.*

408 See generally *Igartua-De La Rosa v. United States*, 417 F.3d 145 (1st Cir. 2005) (Torruella, J. and Howard, J. dissenting).

409 See supra note 6.

410 Press Release, Special Comm. Decolonization, Special Comm. on Decolonization Adopts Text Calling United States to Expedite Self-Determination Process for Puerto Rican People (June 9, 2008), http://www.un.org/News/Press/docs/2008/gacol3176.doc.htm. The United Nations Special Committee on Decolonization adopted text calling on the United States to Expedite Self-determination Process for Puerto Rican People. *Id.*

411 See supra note 6. Statehood Solidarity Comm. v. United States, Case Rep. No. 98/03 Inter-Amer. Comm. H.R. (2003); Inter-American Comm'n. on Human Rights, Org. of Am. States, Rpt. No. 09/03 § 117 (2003), http://www.cidh.org/annualrep/2003eng/USA.11204a.htm.

412 Statute of the International Court of Justice, art. 38 § 1 (June 26, 1945). [hereinafter ICJ Statute])

413 See supra note 406.

414 U.S. Const. art. VI, § 2.

415 *Id.*

416 The courts have established a bifurcated system for their integration into law. This system, first articulated by Chief Justice John Marshall in Foster v. Neilson, 27 U.S. 253, 314 (1829), defines a treaty as either self or non-self-executing. Self-executing treaties become American law as soon as they are ratified, while non-self-executing treaties require Congress to pass implementing legislation before they are actionable in domestic courts. Justice Marshall wrote: Our Constitution declares a treaty to be the law of the land. It is, consequently, to be regarded in courts of justice as equivalent to an act of the legislature, whenever it operates of itself without the aid of any legislative provision. But when the terms of the stipulation import a contract, when either of the parties engages to perform a particular act, the treaty addresses itself to the political, not the judicial department; and the legislature must execute the contract before it can become a rule for the Court. *Id.*

417 Including, but not limited to: the UN Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the Inter-American Democratic Charter and the American Declaration of the Rights and Duties of Man.

418 Atlantic Charter, U.S.-U.K., August 14, 1941, 55 Stat. 1600; EAS 236; 3 Bevans 686, available at www.state.ga/documents.organization/65515.pdf. Less than six months before the United States entered into World War II, President Franklin Roosevelt and Prime Minister Winston Churchill of Britain signed the Atlantic Charter "to make known certain common principles" they were determined to defend in the face of Nazi aggression. Among those principles were a commitment to "respect the rights of all peoples to choose the form of government under which they will live," and to "see sovereign rights and self-government restored to those who have been forcibly deprived of them." *Id.* The Atlantic Charter was an articulation of American foreign policy to no longer fight for territory but to protect and encourage freedom and democracy.

419 The International Bill of Human Rights is the most comprehensive enumeration of those political rights, and speaks directly to the specific rights denied to residents of Washington, D.C. It consists of several components, including the U.N. Universal Declaration of Human Rights (Declaration), the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social, and Cultural Rights (ICESC), and two optional protocols to the ICCPR. The Declaration and the ICCPR both explicitly support the case for D.C. statehood. Article 21 of the Declaration states: "Everyone has the right to take part in the government of his country, directly or through freely chosen representatives." United Nations Universal Declaration of Human Rights, G.A. Res. 217 A (III), at 71, U.N. GAOR, 3d Sess., 1st plen. mtg., U.N. Doc. A/810 (Dec. 12, 1948)). "The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall

be by universal and equal suffrage," Id. Article 21 echoes similar, Hobbesian language found in the Declaration of Independence, which famously states that "[governments derive] their just powers from the consent of the governed." Declaration of Independence para. 2 (U.S. 1776). Both of these documents are inherently reflective of American values - values applied to the vast majority of American citizens, but not to the residents of the District.

420 Social, Humanitarian and Cultural Questions: Universal Declaration of Human Rights, 1947-8 U.N.T.B. 573, available at http://unyearbook.un.org/unyearbook.html?name=194748index.html. (last visited Nov. 9, 2009).

421 International Human Rights Treaties: Hearing Before the S. Comm. on Foreign Relations, 69th Cong. 1 (1980) (statement of Claiborne Pell, Chair, S. Comm. On Foreign Relations).

422 United Nations Yearbook Summary, 1948, http:// www.udhr.org/history/yearbook.htm. One Member of the Commission stated, "[i]t was imperative that the peoples of the world should recognize the existence of a code of civilized behavior which would apply not only in international relations but also in domestic affairs." Id. at B(1)(a). Another took the view that "by making human rights international, the United Nations Charter had placed upon States positive legal obligations." Id. Still another was even more emphatic, stating "the primary purpose of the

Declaration was...to enable man, all over the world, to develop his rights and, in consequence, his personality...Man should feel confident that [government] powers could not impair his fundamental rights." *Id.*

423 *Id.* For example, "[t]he representative of New Zealand, the Union of South Africa, Saudi Arabia, the USSR, Poland, the Byelorussian SSR, the Ukrainian SSR, Yugoslavia, and Czechoslovakia criticized the draft Declaration."

424 *Id.*

425 International Covenant on Civil and Political Rights, G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171 (entered into force Mar. 23, 1976), available at http://www1.umn.edu/humanrts/instree/b3ccpr.htm (last visited Nov. 9, 2009). The ICCPR is designed to give judicial force to the Declaration.

426 *Id* at art. I, cl. 1.

427 *Id.* at art. 1, cl. 3. "The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations." *Id.*

428 *Id.*

429 *Igartua-De La Rosa v. United States*, 417 F.3d 145, 149, n. 5 (1st Cir. 2005). In its opinion, the court quoted a U.N. General Assembly Official Record from 1953 that states "when choosing their constitutional and international status, the people of the Commonwealth of Puerto Rico have effectively exercised their right to self-determination." Id. (quoting G.A. Res. 748 (VIII), U.N. GAOR, 8th Sess., 459th plen. mtg. at 26 (1953)).

430 See GA. Res. 748 (VIII), U.N. GAOR, 8th Sess., 459th plen. mtg. at 25. Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions: a) To take part in the conduct of public affairs, directly or through freely chosen representatives; b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors; c) To have access, on general terms of equality, to public service in his country. *Id.*

431 Jimmy Carter, the Carter Ctr., U.S. Finally Ratifies Human Rights Covenant (1992), available at http://www.cartercenter.org/news/documents/doc1369.html (last visited Nov. 9, 2009). The Senate, which ratified the ICCPR in 1992, did not make any reservations or declarations; a clear indication the Senate saw the scope of those provisions as acceptable and appropriate. However, the Senate did declare the ICCPR to be a non-self-executing treaty, which precludes District residents from suing the federal government for violating the terms of the ICCPR.

432 See supra note 430, at art. 41, 42. The U.N. Human Rights Committee would have original jurisdiction over the claim; and, it would also have the authority to appoint an ad hoc Commission to further investigate. Id.

433 *Id.*

434 Organization of American States, Inter-American Democratic Charter, Sept. 11, 2001, http://www.oas.org/charter/docs/resolution1_en_p4.htm. The Inter-American Democratic Charter (IADC) was adopted in 2001 and contains language on political rights similar to that of the Declaration and the ICCPR. The IADC is a binding resolution of the General Assembly of the Organization of American States (OAS), and was based on the American Declaration for the Rights and Duties of Man (American Declaration), a precursor to the U.N. Universal Declaration of Human Rights.

435 See supra note 6. The Commission stated that the United States, "... has failed to justify the denial to the [residents of the District of Columbia] of effective representation in their federal government, and consequently, that [they] have been denied an effective right to participate in their government, directly or through freely chosen representatives and in general conditions of equality, contrary to Articles XX and II of the American Declaration." Inter-American Comm'n. on Human Rights, Org. of Am. States, Rpt. No. 09/03 § 109 (2003), http://www.cidh.org/annualrep/2003eng/USA.11204a.htm.

436 See Murphy, supra note 407, at 78.

437 ICJ Statute, supra note 416, at art. 38 § 1(b).

438 Frederic L. Kirgis, Jr., Appraisals of the ICJ's Decision: Nicaragua v. United States (Merits), 81 Am. J. Int'l L. 144, 146 (1987).

439 Anthea Elizabeth Roberts, Traditional and Modern Approaches to Customary International Law: A Reconciliation, 95 Am. J. Int'l L. 757, 758 (2001).

440 *Id.*

441 In re Estate of Ferdinand Marcos, Human Rights Litig., 25 F.3d 1467, 1475 (9th Cir. 1994).

442 *Flores v. S. Peru Copper Corp*., 406 F. 3d 65, 80 (2nd Cir. 2003). "States need not be universally successful in implementing the principle in order for a rule of customary international law to arise. If that were the case, there would be no need for customary international law. But the principle must be more than merely professed or inspirational." *Id.*

443 See supra Roberts note 439, at 757.

444 See The Paquete Habana, 175 U.S. 677, 686 (1900). The Supreme Court, ruling in Paquete Habana famously stated: "International law is part of our law, and must be ascertained and administered by the courts ... For this purpose, where there is no treaty, and no controlling executive or legislative act or judicial decision, resort must be had to the customs and usages of civilized nations." Id.

445 See Roberts supra note 439, at 758.

446 *Id.*

447 *Sosa v. Alvarez-Machain*, 542 U.S. 692 (2004) (referencing examples of international custom when the Alien Tort Statute was enacted in 1789, including prohibitions against piracy and diplomatic immunity).

448 Id. at 725 (discussing that claims based on present-day laws of nations must be based on accepted norms).

449 *Igartua*, 417 F.3d at 151.

450 *Id.*

451 *Sosa*, 542 U.S. at 737, n. 27.

452 *Id.*

453 See U.S. Const. art. I, § 3, cl. 1. American Congressional districts do vary somewhat in size and Senate representation is not proportionate to population. Id. However, the basic principle remains that every citizen has the right to be represented under the same system as their fellows.

454 Arjun Garg, A Capital Idea: Legislation to Give the District of Columbia a Vote in the House of Representatives, 41 Colum. J. L. & Soc. Prob. 1 (2007). Opponents of statehood for the District have often argued it has a unique status as the seat of the federal government that must be preserved. However, six foreign capitals, Canberra (Australia), Brasilia (Brazil), New Delhi (India), Mexico City (Mexico), and Caracas (Venezuela) were all initially conceived of as federal districts mirroring the American model. *Id.* at 9-10. All six have since attained full voting representation in their national legislatures; no other disenfranchised capital enclaves now exist. *Id.*

455 See Constitution of Afghanistan Ch. III art. 61 and Ch. V art. 83-84, http://www.servat.unibe.ch/law/icl/af00000_.html; Constitution of Iraq Chap. II art. 10 & art. 20, Chap. IV art. 30 and Ch. V art. 36, http:// portal.unesco.org/ci/in/files/20704/11332732681iraq_constitution_en.pdf.

456 *Igartua-De La Rosa* 417 F.3d at 176. Judge Toruella wrote, "The ICCPR, the UDHR, the American Declaration, the ACHR and the IADC are all evidence of the emergence of a norm of customary international law with an independent and binding juridical status." *Id.*

457 *Id.* at 172. (emphasis added).

458 *Sosa*, 542 U.S. at 716. (discussing the three-part standard for what constitutes a "custom": "[a] norm of international character; accepted by the civilized world; and defined with a specificity comparable to the features of the 18th century paradigms").

459 *Igartua-De La Rosa* 417 F.3d at 176, (Tortuella, J. dissenting). "The right to equal political participation, as evidenced by these international treaties, covenants, and declarations, is reinforced by what has become the overwhelming practice worldwide ... While the system of democratic government may differ from country to country, the fundamental right of citizens to participate, directly or indirectly, in the process of electing their leaders is at the heart of all democratic governments." Id.

460 *Id.* at 152-153.

461 28 U.S.C. § 2201(a). Under the Declaratory Judgment Act, "in a case of actual controversy within its jurisdiction...any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought." *Id.*

462 KRC Research, DC Vote, U.S. Public Opinion on D.C. Voting Rights 11 (Jan. 2005), http://www.dcvote.org/trellis/research/polljan2005.pdf. KRC Research surveyed 1,007 U.S. adults by telephone. *Id.* at 3.

463 *Id.* at 7, 11.

464 H.R. Rep. No. 100-305, at 46 (1987). The true benefit of statehood is that it is permanent. Id. At one time, Hawaii, Alaska and Minnesota were territories of the United States. Id. It is obvious that they cannot now be returned to such a status, nor could the District of Columbia, should it become a state. Statehood gives the citizens of a particular state sovereignty. *Id.*

465 D.C. Code § 1-221 (1973). The Act provides: (a) [t]here is established a Council of the District of Columbia; and the members of the Council shall be elected by the registered qualified electors of the District. (b) (1) [t]he Council established under subsection (a) shall consist of thirteen members elected on a partisan basis. The Chairman and four members shall be elected at large in the District, and eight members shall be elected one each from the eight election wards established, from time to time, under the District of Columbia Election Act ... The term of office of the members of the Council shall be four years, except as provided in paragraph (3), and shall begin at

noon on January 2 of the year following their election. (2) [i]n the case of the first election held for the office of member of the Council after the effective date of this title [January 2, 1975], not more than two of the at-large members (excluding the Chairman) shall be nominated by the same political party. Thereafter, a political party may nominate a number of candidates for the office of at-large member of the Council equal to one less than the total number of at-large members (excluding the Chairman) to be elected in such election.

Id. (emphasis added).

466 *Hechinger v. Martin*, 411 F. Supp. 650, 654-655 (D.D.C. 1976), aff'd 429 U.S. 1030 (1977). A provision in the Home Rule Act requires that no more than one at large councilmember may be from any one political party. Id.

467 Constitution for the State of New Columbia Approval Act of 1987, Act 7-19, D.C. Council (1987), 34 D.C. Reg. 3057-3110. The people of Washington, D.C. have made their preference clear through votes. Id.

Respectfully Submitted,

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