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DISTRICT OF COLUMBIA REPRESENTATION: "AS THOUGH IT WERE A STATE"

STATUS

On August 22, the Senate approved and sent to the states a constitutional amendment that would give the District of Columbia voting representation in the House and Senate and, in addition, would allow the District to participate, like the states, in the ratification of constitutional amendments. The vote was 67-32, one more than the required two-thirds majority. The House of Representatives had previously passed the amendment, 289-127, on March 2. As of the date of this Issue Bulletin, two state legislatures have considered the amendment, but neither has ratified. In California, the House approved the amendment, but on August 30 the Senate refused, by a 20 to 17 vote (30 votes being necessary), to suspend the rules in order to bring the measure to the floor. In Delaware, the House rejected ratification by a 21-16 vote on August 31 and, therefore, the Senate did not consider the amendment.

THE PROPOSED AMENDMENT

The text of the amendment is as follows:

> Joint Resolution proposing an amendment to the Constitution to provide for representation of the District of Columbia in the Congress.
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> Section 1. For purpose of representation in the Congress, election of the President and Vice President, and Article V of this Constitution, the District constituting the seat of government of the United States shall be treated as though it were a state.

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

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 The twenty-third article of amendment to the Constitution of the United States is hereby repealed.

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

BACKGROUND ON THE DISTRICT OF COLUMBIA

The exceptional case of the area of land known as the District of Columbia is defined in Article I, Section 8, Clause 17, of the Constitution.

The Congress shall have the power:

To exercise exclusive legislation in all cases whatsoever, over such district (not exceeding ten miles square) as may, by cession of particular States, and the acceptance of Congress, become the seat of the government of the United States, and to exercise like authority over all places purchased by the consent of the legislature of the State in which the same shall be, for the erection of forts, magazines, arsenals, dockyards, and other needful buildings....

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

Congress assumed authority over the District of Columbia, an area of 100 square miles created from lands ceded by Virginia and Maryland, by an act of February 27, 1801, that provided merely that the laws of Virginia and Maryland should continue in force where they had previously applied. At first there were five units of local government in the District--the county of Washington, the city of Washington, and the city of Georgetown, all in the former Maryland territory; and the county and city of Alexandria in the former Virginia territory. The last two left the District with the retrocession of the lands of Virginia back to the state in 1846. Since that date, Washington has remained the same area: 62.7 square miles.

The dramatic rise in population spurred by the events of the Civil War led to the adoption of District-wide government in 1871. Controversy preceding the establishment of the new form of government centered on the issue of suffrage and secondarily on the division of authority between Congress and local officials. A territorial form of government was agreed on as a compromise. This form provided for a governor appointed by the President for a term of four years, an upper legislative chamber composed of eleven members appointed by the President for two-year terms, and a house of delegates composed of twenty-two members elected annually from twenty-two districts. The District was entitled to elect a non-voting territorial delegate to the House of Representatives. Broad powers to make regulations and disburse money on its own warrant were vested in a five-man Board of Public Works, headed by Alexander R. Shepherd. The Board energetically set about making public improvements but spent $20 million in so doing--nearly three times what had been estimated by Congress. Having made Washington a city habitable but bankrupt, the territorial government died ignominiously. In 1874 Congress replaced the territorial form of government with a three-man Board of Commissioners appointed by the President. The office of non-voting delegate to the House of Representatives was abolished.

With the ratification of the Twenty-Third Amendment to the Constitution, which gave the city three electoral votes, in 1961, Washingtonians were given the right to vote in presidential elections for the first time. The Reorganization Plan No. 3 of 1967 instituted a mayor-council form of government with appointed offices. In 1968 Congress passed an act allowing residents of the city to elect members of their school board. In 1968 President Nixon proposed that the nation's capital be granted both "meaningful self-government" and the right to elect representatives to Congress. In 1970, Congress granted the people of the District the right to elect a non-voting delegate to Congress, a position that has been held by Walter E. Fauntroy ever since. The delegate sits on House committees where he may vote, and participates in floor debates where he may not vote. In 1973, the Council received power to legislate in local matters. Congress retains power, under Article I of the Constitution, to enact legislation and to veto or supersede the Council's acts.

Since assuming his delegate seat, Fauntroy has been diligently championing full voter representation in Congress for the District. On February 18, 1976, the House Rules Committee agreed, for the first time in more than a century, to release a constitutional amendment proposing District voting representation in the Senate and House. The bill failed to receive the necessary two-thirds affirmative votes for passage.

SECTION I -- REPRESENTATION IN THE HOUSE

A constitutional amendment is required in order to give the District voting representation in Congress. The Constitution states (Article I, Section 2) that "the House of Representatives shall be composed of members chosen every second year by the people of the several States," and (Article I, Section 3) "the Senate of the United States shall be composed of two senators from each state." Because the District of Columbia is not a state, the proposed amendment provides that "for purposes of representation in the Congress...the District...shall be treated as though it were a state." Since the ratification of the Constitution in 1789, no lands or territories have achieved voting representation in Congress without first becoming a state under Article IV, Section 3, Clause 1 of the Constitution.

Because representation in the House of Representatives is based on the apportionment of population by state, it has become a firm tradition to regard the House as "the people's house." Proponents of the D.C. amendment argue that it is unjust to deny representation to nearly 700,000 citizens. Thus, the favorable report of the House Committee on the Judiciary maintains that "It seems indeed ironic that a nation which has, over the years, continued, through congressional and judicial action, to extend the franchise still denies representation in the National Legislature to American citizens residing in the Nation's Capital."

The regular membership of the House of Representatives has remained unchanged at 435 for 66 years. When Alaska and Hawaii became states, each was assigned one seat, temporarily increasing the size of the House to 437. However, the statehood enactments for both of these states provided that the total of 435 would be restored in the apportionment based on the 1960 census. If the proposed constitutional amendment is ratified, one of the several unanswered questions confronting Congress would be whether to increase the size of the House of Representatives.

Article I, Section 2, Clause 3, of the Constitution provides that even though the number of representatives shall be apportioned according to the national population, "each state shall have at least one representative." After one representative has been assigned to each state as required by the Constitution, the apportionment by population takes place.

Proponents of the constitutional amendment contend that the District of Columbia has a larger population than seven of the states. And since the populations of these states are represented by at least one United States representative, the residents of the District should be at least equally represented. Further, they argue that land area is no qualification for voting representation in the House. (Rhode Island, the smallest state, has an area of 1,214 square miles, as compared to the 62.7 square miles of the District.)

The following table compares certain important characteristics of the District and those states with the smallest representation in Congress:

	Pop. 1970	Estimated Pop. 1977	No. of Reps.	Elec. Votes	Total Votes for Pres. 1976	% of Reg. Voters Voting in 1976	% of Voting Age Pop. Voting in 1976
Alaska	302,173	407,000	1	3	122,398	59%	47%
Wyoming	332,416	406,000	1	3	155,671	82	60
Vermont	444,732	483,000	1	3	182,186	73	64
Nevada	488,738	633,000	1	3	195,271	82	49
Delaware	548,104	582,000	1	3	234,673	78	58
North Dakota	617,761	653,000	1	3	292,970	N/A	71
South Dakota	666,257	689,000	2	4	300,192	71	64
Montana	694,409	761,000	2	4	322,962	75	66
New Hampshire	737,681	849,000	2	4	338,611	71	59
Washington, D.C.	756,510	690,000	1	3	165,965	59	31

NOTES

1. Population estimates for 1977 are by the Bureau of the Census.

2. The District's representative in Congress is non-voting.

3. The number of electoral votes is the sum of a state's United States senators and representatives. The Twenty-third Amendment to the Constitution stipulates that Washington, D.C. shall have the same number of electors as the least populous state.

HIGHLIGHTS

1. Compared to the nine least populous states, the population of the District of Columbia is decreasing while the others are increasing. In fact, the District's population has been decreasing steadily since 1950, when it reached a high of 802,178.

2. If the District of Columbia had been granted congressional voter representation in 1970, it would have received two members of the House. If the proposed amendment is ratified by three-fourths of the states, the District will probably receive one member of the House after the 1981 reapportionment based on the 1980 decennial census.

3. Although the population of the District is 690,000, its registered voter turnout for the 1976 presidential elections was lower in percentage than any of the least populous states (59 percent, the same as Alaska). Its voter turnout of those eligible to vote, registered or non-registered (31 percent),* was substantially lower than the next lowest turnout (Alaska with 47 percent.) In addition, the percent of eligible voter turnout in the District for the 1976 elections was the lowest in the nation, and the percent of the registered voters voting was the lowest in the nation.

4. Since the District turned out 59 percent of the registered voters and 31 percent of the voting age population for the presidential election of 1976, then the lack of voter representation in Congress can be calculated to affect 281,355 registered voters and 535,483 persons of voting age.

By way of comparison, the residents of the following territories of the United States are United States citizens but do not vote for president or have voting representation in Congress.

	POPULATION
Puerto Rico	3,210,000
Virgin Islands	100,000
American Samoa	31,000
Guam	100,000

Most of the amendment's proponents have resurrected the great American battle cry: "No taxation without representation!" They argue that since the residents of the District of Columbia have

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*The problems in determining how many citizens of the District are in fact affected by the lack of voting representation in Congress is complicated by the sizable number of citizens who reside in the District but maintain legal domiciles in other states. No records exist of the number of District residents casting absentee ballots in other states. In the court case of Carliner v. Board of Education, it was estimated that 200,000 residents of the District were eligible to vote in other jurisdictions. Whether this number is accurate cannot be determined.

no immunity from federal taxation, they should by right have voting representation in Congress. But, it must be remembered that during the first several decades of the Republic, the converse of the battle cry was also true, that is, most states allowed only tax-paying land owners to vote and thereby have a say in their representation. And, the notion of no taxation without representation (and its converse), while still very much a part of the American spirit, has been somewhat attenuated by modern American history. In the federal and state legislatures, and in court rulings, the modern trend has been to separate the issue of taxation from the issue of representation. Numerous classes of citizens, fully subject to and protected by the laws, pay no federal or state income tax whatever even though they regularly vote in federal elections in the state of their residence. These groups include, among others, retired persons living solely on social security, students attending colleges and universities, disabled Americans supported entirely by veteran's or other compensation, and individuals living entirely on welfare.

As stated before, if the proposed amendment is ratified by the required three-fourths of the states, the Congress will have to decide whether to increase the membership of the House of Representatives or keep it at 435. The population of the District of Columbia is not currently figured into the national population for purposes of apportionment. The United States is facing a decennial census in 1980 which will be the basis of reapportionment of Congressional districts in 1981. If the House decides to keep its membership at 435 and if the population trends, as estimated by the Bureau of the Census, continue until 1981, then adding the population of the District to the apportionment population would result in the loss of one seat from Illinois and the assigning of that seat to the District.* In other words, Illinois, a state whose population is increasing, will be deprived of representation in the House by a non-state whose population has been declining for 28 years. (This reapportionment is in addition to the prognosticated reapportionment resulting from the 1980 census of national population migration.)

SECTION I -- THE SENATE

The case for representation in the Senate is conceded by both proponents and opponents to be more difficult. Members of the House represent numbers of people. But senators represent their states at-large. The Senate is the body of equal representation of the states while the House is the body of proportional representation of the people. This distinction is a result of the "Great Compromise" of the Constitutional Convention of 1787 which resolved the competing interests of the large versus the small states. It is the foundation of the uniquely American ideas of governmental federalism and state "sovereignty." Thus, in Federalist No. 62, the author

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*This was calculated using the Census Bureau's "method of equal proportions" which has been the official method since 1910.

(either Hamilton or Madison) remarks: "In this spirit it may be remarked, that the equal vote allowed to each state is at once a constitutional recognition of the portion of sovereignty remaining in the individual states, and an instrument for preserving that residuary sovereignty."

STATE SOVEREIGNTY

The proposed amendment would give the District federal representation "as though it were a state." But what is a "state" and what matter of sovereignty is there in the states? Chief Justice Marshall, in Cherokee Nation v. Georgia (1831), defined a state as "a political community of free citizens, occupying a territory of defined boundaries, and organized under a government sanctioned and limited by a written Constitution, and established by the consent of the governed." James Brown Scott in Sovereign States offered this definition: "The State is an artificial person, representing and controlled by its members but not synonymous or identical with them. Created for a political purpose, it is a body politic. It is a distinct body, and artificial person; it has a will distinct from its members, altough its exercise is controlled by them."

In the Constitution, all the powers and authorities enumerated in the several articles are derived from the "more perfect union" of the states. In Federalist No. 39, Madison establishes his important idea that the proposed Constitution is neither a confederacy of sovereign states nor a consolidation of the states but a combination of both: "It appears, on one hand, that the Constitution is to be founded on the assent and ratification of the people of America, given by deputies elected for the special purpose; but, on the other, that this assent and ratification is to be given by the people, not as individuals composing one entire nation, but as composing the distinct and independent States to which they respectively belong." Thus, Madison does not claim the type of state sovereignty enjoyed by the states under the Articles of Confederation but he does claim that the states are "distinct and independent."

State sovereignty, or the "portion" of state sovereignty envisaged by Madison, has been much reduced by events of American history. The Civil War destroyed the notion, as championed by John C. Calhoun, that the states were almost entirely sovereign. The Fourteenth and Fifteenth Amendments to the Constitution were squarely aimed at limiting the independence of the states. The Sixteenth Amendment established a federal tax on everyone's income. But, the Seventeenth Amendment, which changed the selection of United States senators from appointment by the state legislatures to the direct election of the people, was the most crippling blow. Appointment of senators by the states, through the state legislatures, was a continuing imposition of the reality of state sovereignty on the federal government. And the Supreme Court of the twentieth century has consistently imposed federal mandates on the states, especially through its interpretation of the Fourteenth Amendment.

So what is left of state sovereignty that by definition would preclude the awarding of two Senate seats to the District of Columbia? The states are sovereign or "distinct and independent," to use Madison's definition, in that they are political beings that can tax, spend, create and execute law, punish crime and administer justice. All of these authorities are carried out by the City Council of the District of Columbia but all are subject to congressional approval. So the District cannot be said to have "independence" in its city council's deliberations as the states do in the deliberations of their legislatures. And the yearly budget, that exercise of the power of the purse, is not legislated at all by the District but is a duty of the appropriate committees of each House. And the police power in the District is not the exclusive jurisdiction of the city government since the city police exercises joint jurisdiction with several federally-chartered police forces in some areas and has no jurisdiction over certain federal properties at all.

In addition, the states may enter into interstate treaties and compacts, permissible under the Constitution subject to the approval of Congress, with other states. The states have used this right to a significant extent in the twentieth century, especially concerning matters of commerce, large public-works, and transportation. No other power of the states seems to be more definitive of the states' continuing distinctness and independence. The District of Columbia is currently party to several interstate compacts, but they have all been negotiated between the Congress and the interested states. Currently the procedures by which the District will become party to additional compacts are undergoing reexamination. Some interpret the home rule charter to mean that the District can enter into interstate compacts while others interpret it to mean the opposite. Legislation has been introduced into Congress to grant unequivocally the right for the District to enter into such compacts. But until such legislation passes, the District, unlike the states, has no such right.

THE TWO HOUSES

In his famous work, Democracy in America, Alexis de Tocqueville, after scrutinizing the make-up of the national legislature, remarked: "The principle of the independence of the States prevailed in the formation of the Senate, and that of the sovereignty of the nation predominated in the composition of the House of Representatives." That the Senate balances the House in terms of the use of political power is argued by the Federalists as one of the most fundamental underpinnings of the Constitution. A representative, facing reelection every two years and representing only a locale of a state, not an entire state, can be subject to the demands of a narrow constituency. His constituency might be the political opposite of a bordering constituency of the same state. For instance, a congressman representing a district heavily populated by members of labor unions would necessarily represent this interest in his voting record or face eviction from office at the next election. But the neighboring district of the same state might be rural and inclined to support

the right-to-work laws, and such support would be reflected, in all likelihood, by its congressman. In the words of the Federalists, the House is "the numerous body" and "the representative ought to be acquainted with the interests and circumstances of his constituents" (No. 56) because "...it is particularly essential that the branch of it under consideration (i.e. the House) should have an immediate dependence on, and an intimate sympathy with, the people" (No. 52) and because "the House of Representatives is so constituted as to support in the members an habitual recollection of their dependence on the people." (No. 57)

Because of this constitutional mandate to keep close ties to the people, it has become customary for congressmen to attend very closely to the needs and complaints of constituents. Thus, some congressmen maintain as many as four constituent offices in their congressional districts while it is unusual for a senator to maintain more than two offices in his entire state.

While competing interests may be few in a congressional district, a senator, representing all the congressional districts in his state, must necessarily face a multitude of competing interests. As a result, he must have a more general view of all political issues. By way of example, the senators from Illinois must represent a state whose House delegation is evenly split between the two parties (twelve Republicans, twelve Democrats), and likewise the senators from Arizona (two Republicans, two Democrats). Today a senator faces from within his state what Madison saw as a national characteristic in 1787, namely, a "dissimilarity in the ingredients," and a "diversity in the state of property, in the genius, manners, and habits of the people of the different parts of the union." (No. 60)

In addition, the framers of the Constitution gave certain other powers to the Senate that they regarded as non-political functions, namely the power to try impeachments, to ratify treaties, and to approve executive nominations. These tasks were assigned to the Senate because it is more likely to be free from the "demon of faction" than the House, that "numerous and changeable body." Thus, the Senate was contemplated by the Federalists to be "a select and stable body," (No. 63) an idea that Tocqueville later reemphasized by calling it "the great executive council of the nation," a body that will be "sufficiently independent" (No. 65) to wisely tend to "national concerns" (No. 64) and "the comprehensive interests of their country" (No. 62).

THE INDEPENDENCE OF THE STATES

The Constitution guarantees a "republican form of government" to each state (Article IV, Section 4). And all states have a republican constitution that closely mirrors the federal Constitution -- but not the District of Columbia whose city council takes the place of the state legislature, but every action of which is conditional on the approval of Congress, and therefore, not independent.

As Ignazio Silone said in his School for Dictators: "The first test to be applied in judging an alleged democracy is the degree of self-governing attained by its institutions." The District has self-government at the pleasure of Congress--not independent of it. Indeed, Congress could abolish the City Council or the District of Columbia at will. It retains such constitutional prerogatives. To give such a unique area equal standing with the several states in the Senate would effect a fundamental change in the Senate indeed. One must wonder if certain other cities, for instance, New York City, should make an equally justiable claim to representation in the Senate.

Proponents of the amendment have maintained that the clause of Article V: "no state, without its consent, shall be deprived of its equal suffrage in the Senate," is not at issue here because this clause merely insures that no state can receive proportionally more representation in the Senate than any other and because this clause has never been an impediment to the admission of new states under Article IV, Section 3. But a strict reading of Article IV and Article V taken together might lead to the conclusion that a state can have its proportional suffrage in the Senate reduced by the admission of a state only but cannot be denied its proportional suffrage by the admission of any other entity.

THE SPECIAL CASE OF THE DISTRICT OF COLUMBIA

Washington, D.C. is the "federal enclave" and as such can be considered a company town. It is not possible to separate the land area of the District of Columbia from its one and only activity, the daily business of the federal government. The federal government employs 38.3 percent (223,900 employees) of those working in the District while the service industry, which is closely aligned with the federal government, employs 25.5 percent (149,200 employees). Employment trends show an ever increasing domination by the federal government.

The District receives a direct grant from the federal government annually. This payment is provided in recognition of the District's role as the nation's capital and helps compensate the city for tax losses due to the large amount of non-taxable federal property in the city. It is based on Congress's jurisdiction over the city as provided in Article I, Section 8, Clause 18 of the Constitution, already referred to above. Needless to say, none of the fifty states receives such an unrestricted annual grant from the federal government. Since 1950, when the population of the District began to decline, the amount of the federal payment has steadily increased to the point that for 1978 the sum will be $300 million, or 28.04 percent of the District's budget. Total federal aid to the District was $1,010 per capita in 1975, about four times more, on the average, than federal aid to any of the states, except Alaska which received $739 of federal money per capita. Compared to the forty-eight largest cities in 1974, Washington (the eleventh largest) received more aid from the federal government than any city except New York City.

Washington would have a recession-proof economy as long as federal spending stayed constant. Since federal spending is ever increasing, the area of the District has an assured boom economy. In Washington the federal government is omnipresent and nearly omnipotent. There are no competing factions or interests. Manufacturing employment in 1976 was only 16,100.

Because of all this, it would seem that U.S. senators from the District of Columbia would be in the seemingly paradoxical, but at least unique, position of representing the interests of the federal government to the federal government. In addition, it would seem that a senator from the District would be under no compulsion to weigh the interests of any competing interests since there are not any other interests that could have a significant influence in his election. It is rather obvious to point out that the employees of the federal bureaucracy, the overwhelmingly dominant class in the District, will elect representatives to the U.S. Congress who are sympathetic to the continued growth and prosperity of the federal working class. But bigger and more federal agencies and programs, something which favors the economy of the District, has the effect on the people of the several states of greater federal taxes, and more federal regulations. While the senators from the several states must continually balance the claims of competing factions from within their own states and also balance the federalist distinction of state versus federal sovereignty, senators from the District would have no immediately practical reason for so doing.

Under the home rule charter, the City Council can be regarded as a kind of state legislature for the District of Columbia, but one of no sovereignty because of Congress' absolute veto over any of the actions of the council and absolute legislative control over the city's budget. Providing for election of senators from the District would give the District the status of a state since it would have equal representation in the Senate, almost the definition of a state. With the District regarded as a state in the Senate, it would seem that the federal government has become incarnated in a new way in that in addition to federal law, regulation, and influence, there comes into existence a physical manifestation of the federal government--the land of the state of District of Columbia, and a human manifestation--the senators from the District.

With this in mind, it would seem that, for the senators from the District, none of the state restraints on the federal government that Madison speaks of would be any longer applicable: "Thus each of the principal branches of the federal government will owe its existence more or less to the favor of the State governments, and must consequently feel a dependence, which is much more likely to beget a disposition too obsequious than too overbearing towards them. On the other side, the component parts of the State governments will in no instance be indebted for their appointment to the direct agency of the federal government, and very little, if at all, to the local influence on its members." (No. 45)

SPECIAL PRIVILEGES FOR THE DISTRICT

Another power granted to the District under Section 1 of the amendment is the participation of the District in the ratification of constitutional amendments under Article V of the Constitution. But Article V states that proposed constitutional amendments shall be ratified by the state legislatures of the several states. Since it is not a state, the District has no state legislature. Congress would have to decide whether the City Council can function in this capacity.

Several of the legislatures of the states that have not yet ratified the controversial Equal Rights Amendment have considered putting the ratification to a referendum of the people. But the state attorneys general have all rightly pointed that such a referendum would be unconstitutional since the Constitution specifically provides that constitutional amendments shall be ratified by the state legislatures. Since there are inherent contradictions in declaring that the City Council of the District can function as a state legislature, Congress might decide that the people of the District may vote on the ratification of constitutional amendments in which case the people of the District would enjoy a constitutional privilege not enjoyed by the people of the several states.

This problem leads directly to a discussion of Section 2 of the proposed constitutional amendment, namely: "The exercise of the rights and powers conferred under this article shall be by the people of the District constituting the seat of government, and as shall be provided by the Congress." Neither a reading of the committee report of the House Committee on the Judiciary nor a reading of the record of the debates on the floor of the House or Senate gives a satisfactory explanation of either the intent or the meaning of this section. In the dissenting committee views of Congressmen Henry Hyde, Carlos Moorhead, Jack Brooks, Charles Wiggins, and John Ashbrook, this section:

> implies that the exercise of these foregoing "rights and powers" must be exercised jointly with the "people of the District" and the Congress, each holding veto power over the other. This might entail the Congress, for example, voting twice on the ratification of a constitutional amendment, first in discharging its constitutional role under Article V in proposing an amendment and a second time as a sort of legislative endorser for the "people of the District" under this proposed amendment.

Of the sixteen amendments to the Constitution ratified since the Bill of Rights, seven stipulate that Congress shall have the power "to enforce this article by appropriate legislation." The Prohibition Amendment, since repealed, gave concurrent enforcement power to Congress and the several states. The proposed District of Columbia amendment would be the first to give enforcement powers to Congress and the people of what is in this case neither a state nor a territory.

This "Congress and people" section of the amendment was probably included in order to take into account the peculiar interlocking legislative relationship between Congress and the District's city council. In debate on the floor of the Senate, Senator Edward Kennedy stated that any details about how the amendment should be implemented "can be worked out by the D.C. government and Congress."

What authority should Congress grant the City Council to determine the procedure to be employed concerning the three powers of Section 1? And even if the City Council is granted substantial authority in these matters, it must be remembered that Congress always maintains absolute veto over all actions of the City Council. And since the Congress, not the City Council, has legislative authority over the city's budget, Congress would be appropriating the funds necessary to hold elections of its own members, in addition to issuing regulations on campaign contributions, expenditures, and campaign procedures.

In addition, if the District should ever have sufficient population to be allotted two representatives in the House, then Congress would have some authority in determining the lines of the two congressional districts. In the states, the drawing of district lines based on re-apportionment is done by the state legislatures, another example of the continuing viability of state sovereignty. And, finally, it would seem that the Hatch Act, which prohibits federal employees and the employees of the D.C. government from participating in political campaigns would necessarily have to be relaxed for the special case of the District of Columbia. Otherwise, a majority of the adult residents of the District would be unable to be active in campaign politics.

Because of this unique relationship between the District's city council and the U.S. Congress, other questions arise when the three powers provided by Section 1 are contemplated in light of Section 2. It appears likely that the states are going to be unable to determine the precise nature of what they are considering ratifying. In the event of the required three-fourths ratifications of the states, it could happen that the District of Columbia, with its new constitutional position "as though it were a state" might end up with substantial constitutional privileges not enjoyed by the several states.

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