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D.C. Representation: How Congress Promotes the Interests of the District of Columbia

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Pending legislation in the Senate to grant the District of Columbia a representative in Congress would undermine the District's unique constitutional status as a city under the responsibility of the U.S. Congress.

The "District of Columbia House Voting Rights Act of 2009" (S. 160) would grant the District a voting representative in Congress. Such legislation would undermine the Founders' vision of the "federal town" as a unique enclave that would receive substantial benefits from its appointment as the seat of government. Because the seat of government would be located in the federal city, the Founders anticipated that the interests of residents in the District would be protected and advanced by the Congress as a whole—a scenario that has proven to be substantially true throughout American history.

In fact, by diminishing lawmakers' attention to the city, the creation of a voting Representative for the District may actually reduce the influence D.C. residents enjoy in Congress. Those who value the true interests of the District should defend the existing arrangement, which promotes the collective responsibility of Congress to preserve the welfare of the federal city.

What Is Required by the Principles of Consent and Representation? The Founders believed that government derives its just powers from the consent of the governed. This means, in practice, that the best form of government is one where citizens are governed by elected representatives.

James Madison wrote in *Federalist 39* that a republican form of government is the only form that can be reconciled with "the fundamental principles of the revolution,"¹ by which he meant, of course, the Declaration of Independence's requirement that government operate by the consent of the governed. Such a government "derives all its powers directly or indirectly from the great body of the people."

This does not mean, however, that citizens are entitled to being governed *exclusively* by directly chosen representatives. "It is *sufficient* for such a government," Madison continued, "that the persons administering it be appointed, either directly or indirectly, by the people."²

For instance, the Founders maintained that the judicial branch is a representative branch, even though its members are only indirectly appointed by the people, through the chief executive (who is also appointed indirectly by the people). By this reasoning, the District is already represented in the national government to a certain extent, because it votes for President through the Electoral College.

The Founders' View of the District as Unique. It is widely believed that the Framers of the Constitution did not fully anticipate the difficulty of a large

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number of people residing in the District. It is alleged that they were either unaware of, or simply did not care about, the potential defects of the lack of voting representation in Congress for the District.³

These claims, however, do not withstand close scrutiny. Jonathan Turley, a progressive legal scholar at George Washington University, has effectively rebutted the idea that the Founders did not foresee this development. As he explains:

The absence of a vote in Congress was clearly understood as a prominent characteristic of a federal district. Moreover, being a resident of the new capital city was viewed as compensation for this limitation. The fact that members would work, and generally reside, in the District gave the city sufficient attention in Congress.⁴

Early American leaders understood this argument well. Turley cites Maryland Representative John Dennis, who maintained in 1801 that though District residents “might not be represented in the national body, their voice would be heard.”⁵

Thus, while the Founders adhered strongly to the twin principles of government by consent and representation when it came to the federal city, they accepted this lack of formal representation because the District’s unique status.

Congress’s Collective Responsibility for the District. One of the arguments in favor of granting the District of Columbia representation in the House is that without representation, the interests of the District will be neglected.

This argument dates back to the debates over ratifying the Constitution. During the New York

debates, delegate Thomas Tredwell, who later served in the U.S. Congress, declared that “[t]he plan of the federal city...departs from every principle of freedom.” He added that the lack of voting representation could lead to “as complete a tyranny as can be found in the Eastern world,” because the residents would have no formal control over the makers of public policy.⁶

Tredwell’s fear reflects the practical argument for government by consent. Under strict application of this principle, governments not based on consent through formal political representation can potentially ignore the legitimate concerns of the governed more easily.

But the Founders avoided this problem by placing the seat of government in this special capital district, so that the enlightened self-interest of the lawmakers who live and work there for much of the year would advance the city’s interests. The D.C. Circuit Court made essentially this point in deciding *United States v. Cohen*: “It is, in any event, fanciful to consider as ‘politically powerless’ a city whose residents include a high proportion of the officers of all three branches of the federal government, and their staffs.”⁷

The facts have demonstrated that such enlightened self-interest is indeed at work, and, consequently, Tredwell’s fear of legislative tyranny over the District has not been realized. Even though the District has never enjoyed a full voting Representative in Congress, its interests have been protected and advanced as much as, or more than, any other state or district in our national legislative branch.

Congress Advances the District’s Interests. From early in the District’s history, Congress has

1. James Madison, “Federalist # 39,” *The Federalist*, ed. Jacob E. Cooke (Middletown, CT: Wesleyan University Press, 1961), p. 250, hereinafter cited as *The Federalist*, number and page in the Cooke edition.
2. *Ibid.*, 251.
3. See, e.g., Lawrence L. Frankel, “National Representation for the District of Columbia: A Legislative Solution,” *U. of Penn L. Rev.*, Vol. 139 (1990), p. 1685: “It appears that the framers of the Constitution did not deliberately intend to disenfranchise the District, nor did they have any reason to do so.”
4. Jonathan Turley, “Too Clever By Half: The Unconstitutionality of Partial Representation of the District of Columbia in Congress,” *Geo. Wash. L. Rev.*, Vol. 76 (2008), p. 332.
5. *Ibid.*
6. *Ibid.*, at 334.
7. *United States v. Cohen*, 733 F.2d 128, 135 (D.C. Cir. 1984).

acted to develop the city, which had previously been largely undeveloped forest and swampland. In the 19th century, lawmakers helped fund development of Pierre L'Enfant's plan for the city. In the early 20th century, a congressional commission shepherded an extensive beautification project that included the development of the National Mall and the addition of new monuments to improve the grandeur of the city.⁸

Lawmakers continue to spare little expense on the nation's capital. Congress today funds more than 20 percent of the city's operating budget⁹ and provides substantial funding for local amenities like the construction and operation of its subway system. In fact, in 2005, the city received more than \$5.50 in federal spending for every dollar paid in federal taxes, more than double what any state receives.¹⁰ Even on the budgetary level, the District is given special treatment: The city receives federal funds under a separate appropriations bill instead of the general appropriations measure passed by Congress.

Additionally, the District is also set to receive a great deal of extra funding from the recently passed American Recovery and Reinvestment Act. In fact, Eleanor Holmes Norton, the District's non-voting delegate to Congress, boasts on her website that the city will receive greater financial support from this "stimulus" legislation than seven states.¹¹

The rationale for the District's special treatment is that it is the collective responsibility to promote the

interests of the federal city—a rationale that would be largely eliminated if the District has its own Representative to look after its particular interests.

It is unclear whether Congress would continue to provide such generous federal funding to the District—as it currently does through a special appropriations process—were the city to secure representation in Congress. While the core agencies of government would likely remain in Washington for the foreseeable future, lawmakers might question why one congressional district receives so large a share of federal largesse and over time eliminate the capital's favored status.

Preserve the District's Unique Status. Congress's latest attempt to grant representation to the District of Columbia by legislative fiat is not only unconstitutional but potentially contrary to the District's interests. If the city's unique status were changed by the addition of such representation, the nation's capital could be deprived of the congressional patronage on which it has for so long depended. And finally, it is always to be remembered that residents of the District are not compelled to live in the federal city, even if they work in the District.

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8. "The L'Enfant and McMillan Plans," National Register of Historic Places, at www.nps.gov/history/nr/travel/wash/lenfant.htm (February 20, 2009).
 9. "FY 2009 Proposed Budget and Financial Plan," District of Columbia Government, June 9, 2008, at cfo.dc.gov/cfo/frames.asp?doc=/cfo/lib/cfo/budget/2009/executive_summary.pdf (February 20, 2009).
 10. "Federal Taxes Paid vs. Federal Spending Received by State, 1981–2005," Tax Foundation, October 19, 2007, at www.taxfoundation.org/research/show/22685.html (February 20, 2009).
 11. Press release, "Norton Gives Selected Preview of Stimulus Tax Breaks that Help Residents at Tax Fair Press Conference," Office of Delegate Eleanor Holmes Norton, February 14, 2009, at http://www.norton.house.gov/index.php?option=com_content&task=view&id=1022&Itemid=121 (February 20, 2009).