



Written by [Bruce Walker](#) on December 12, 2009

Congress Edges D.C. Toward Unofficial Statehood

The House of Representatives passed a bill on December 10 that would allow the government of the District of Columbia to use public funds to pay for abortions and also allow the city government to legalize the medical use of marijuana. If enacted into law, this legislation would move the District closer to exercising the same sorts of sovereign powers as state governments, with profound long-term structural implications for our federal system.



The Constitution grants the federal government exclusive authority over a small and defined part of the Republic. In the words of the Constitution, the U.S. Congress possesses 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, dock-Yards, and other needful Buildings.

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This exclusive legislative authority does not apply to the robust and sovereign states with constitutionally guaranteed rights reinforced by the 10th Amendment. There was little, in the original interpretation of the Constitution, that Congress could legislate with regard to the states, each of which has its own legislative body and own state constitution. The enumerated powers in Article I of the U.S. Constitution carved out some areas of federal activity, but in no sense was Congress granted any broad power to legislate as it pleased.

The situation with the District of Columbia was utterly different. A very small part of the nation was explicitly set aside for the federal government alone to rule. Even the power of self-rule by the inhabitants of the District of Columbia was long denied by Congress. If Congress tomorrow wished to strip from the District of Columbia all self government and all right to elect municipal officials, it could do so without violating the U.S. Constitution.

If this sounds draconian, consider that people choose to live in this very tiny bit of America. When the District of Columbia was first established, it was largely upon undeveloped land by the Potomac River. Those who later moved into the District of Columbia fully understood that the Constitution did not provide for self-government there. But they also understood that living where the seat of government is located provided certain benefits — in terms of employment and in terms of the proximity to power.

Living near the center of federal power grants a great deal of influence over the operation of the federal government. In theory, a citizen of Wyoming may have more political clout than someone who lives in



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D.C., but in practice that it not the case.

So when Congress devolves power back to those people who already voluntarily live in the center of federal power, it may indicate that federalism is being weakened more. This is particularly true when Congress is seriously considering granting the District of Columbia a voting member in the House of Representatives.

The Constitution in Article I clearly defines the criteria for serving as a voting member of Congress. When America had many distant territories, it was common for the territories to have a representative in the House, but always as a strictly *non-voting* member. This allowed the territories to have a voice, but not a vote, in the deliberations of one house of Congress. This privilege was not granted, however, in the Senate. The very specific constitutional language on representation in the Senate, where each state has equal representation, has — so far — been scrupulously observed. Yet the movement towards just such "empowerment" of inhabitants of the District of Columbia is definitely gaining momentum.

What should be done, if Americans feel that people living in D.C. are somehow cheated of political rights? The federal government could abandon the district and let it revert back to part of Maryland, as it once was. Then these new Marylanders would have all the rights of citizens of a state, although without authority over federal property and offices in the district. Another option would be to amend the Constitution and grant the district certain, specific, new rights. This is exactly what happened when D.C. was given three electoral votes 48 years ago when the 23rd Amendment was passed.

It does not appear that Congress intends to pursue these two alternatives to enfranchising inhabitants of the District of Columbia. Instead, the efforts are all directed at allowing the district its special status and moving increasingly toward giving its inhabitants the rights of state citizens.



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