Voting Rights for District of Columbia Residents – Impact on Maryland

Introduction

During debate on the Organic Act of 1801, under which Congress assumed exclusive legislative authority over the District of Columbia, and which divested the citizens of the District of their rights to self-governance and full voting representation in Congress, Representative John Smilie of Pennsylvania argued that:

Not a man in the District would be represented in the Government, whereas every man who contributed to the support of a Government ought to be represented in it, otherwise his natural rights were subverted, and he left, not a citizen, but a subject. This was one right the bill deprived these people of, and he had always been taught to believe it was a very serious and important one. It was a right which this country, when under subjection of Great Britain, thought worth making a resolute struggle for, and evinced a determination to perish rather than not enjoy.

Although the District of Columbia obtained limited home rule in 1973, District residents still lack full voting representation in Congress. The District only has one nonvoting delegate to the House of Representatives but no senators. Although delegates may serve and vote on committees and serve as committee and subcommittee chairs, the fact that the District's delegate is not allowed to vote on the House floor effectively limits his/her power.

In addition, the District is significantly disadvantaged by its lack of representation in the Senate. As Garry Young, Director of the George Washington University Center for Washington Area Studies, observed in his report, The District of Columbia and Its Lack of Representation in Congress: What Difference Does It Make?:

The Senate is enormously important in the American political system and the typical senator wields far more power than the typical House

member. The power of individual senators derives not so much from their fewer numbers, but from the way Senate procedures enable individual senators to obstruct the legislative process. This ability gives individual senators considerable leverage to protect his or her state from legislative harm and obtain for his or her state a fair share of federal largesse.

Young also points out that the District "utterly lacks influence in the areas that the House does not affect: federal treaties, confirmation of executive branch appointees, and confirmation of judicial branch appointees. ... Unlike every state, the District has no say over who is appointed to sit on the relevant federal district court and appeals court."

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This paper will review the relevant history of the District of Columbia as it relates to voting rights, options for providing District of Columbia residents with full congressional representation, and the fiscal implications for Maryland of the various voting rights scenarios.

Historical Background

Creation of the District of Columbia

Constitutional Authority

On June 21, 1783, a band of unpaid soldiers demanding compensation for their service in the Revolutionary War marched into Philadelphia. Although the soldiers presented their demands to the Pennsylvania legislature, not Congress, and Congress was not even in session at the time, the incident prompted Congress to leave Philadelphia for New Jersey and convinced many of the framers of the Constitution that the federal government would need to have control over the national capital in order to provide for its own maintenance and safety.

Four years later, in 1787, delegates to the Constitutional Convention adopted the "District Clause," part of Article One, Section Eight of the

United States Constitution, which gives Congress the power "[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 the Government of the United States...." However, the Constitution did not specify a location for the capital. In 1788, the Maryland General Assembly passed an act directing the State's congressional representatives to cede land not exceeding 10 miles square to Congress for the seat of government. In 1789, the Virginia General Assembly ceded a tract of land not exceeding 10 miles square.

The Residence Act and Selection of the Location of the District

After years of negotiation and heated debate, on July 9, 1790, Congress passed "An Act for Establishing the Temporary and Permanent Seat of the Government of the United States," known as the Residence Act, which authorized the President to select a site for the capital "not exceeding ten miles square, to be located ... on the River Potomac, at some place between the mouths of the Eastern Branch [now called the Anacostia River] and Connogochegue [Conococheague Creek, which empties into the Potomac River near Williamsport, Maryland, about 70 miles upstream]." This location was the result of an agreement among Alexander Hamilton, James Madison, and Thomas Jefferson that the federal government would pay each state's remaining Revolutionary War debts in exchange for establishing the new national capital in a Southern state. President George Washington signed the bill into law on July 16, 1790.

The Residence Act authorized the President to appoint three commissioners to survey, define, and limit the district, under the President's direction. The commissioners were given the power to purchase or accept land on the eastern side of the river within the district "as the

President shall deem proper" and were directed to provide suitable buildings for Congress, the President, and the public offices of the United States Government by the first Monday in December 1800. The Residence Act was amended in 1791 to allow Alexandria, Virginia to be included in the federal district. On March 30, 1791, the President proclaimed the boundaries of a territory 10 miles square lying on both sides of the Potomac as the seat of the national government.

On December 19, 1791, the General Assembly of Maryland ratified the cession of the Maryland portion of the territory. Chapter 45, Section 2, of the Acts of 1791 provides:

That all that part of the said territory, called Columbia, which lies within the limits of this state, shall be and the same is hereby acknowledged to be for ever 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 of government of the United States; ... 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.

Pursuant to the Residence Act, President Washington appointed three commissioners (Thomas Johnson and Daniel Carroll, representing Maryland, and David Stuart, representing Virginia) in 1791 to supervise the planning, design, and acquisition of property in the federal district and capital city. The three commissioners named the federal district "The Territory of Columbia" and the federal city the "City of Washington."

Working under the general supervision of the three commissioners and at the direction of President Washington, during 1791 and 1792, Andrew Ellicott and several assistants, including a free African American astronomer named Benjamin Banneker, surveyed the borders of the

federal district and placed boundary stones at every mile point. The survey team enclosed within a diamond-shaped square, each side of which was 10 miles long, an area on both sides of the Potomac River containing the full 100 square miles that the Residence Act had authorized.

The Organic Act of 1801

The President arrived in Washington in June 1800; government personnel and records were transferred from Philadelphia to Washington at about the same time. Congress first met in Washington in November 1800.

After the enactment of the Residence Act, the ceded land continued to be governed by Maryland and Virginia laws and District residents continued to participate in the congressional elections of these states and to be represented by Maryland and Virginia congressmen. In December 1800, Congress began to debate a bill that would formally assert federal jurisdiction

over the District and its 14,000 residents. Congressional participants in this debate acknowledged and understood that assumption of federal jurisdiction over the Virginia and Maryland land meant the impending loss of political rights for residents of the District. Congress passed a bill on February 27, 1801, commonly known as the Organic Act of 1801, that exercised its constitutionally granted power of exclusive jurisdiction over the District. After the passage of this Act, citizens living in the District were no longer considered residents of Maryland or Virginia, which ended their representation in Congress. Residents of the new District also lost their right to self-governance. Congress became the equivalent of their state legislature despite the fact that they no longer had representation in that body. Local taxes could be levied and spent and municipal regulations enacted by a Congress in which no member claimed District residents as constituents.

Early Forms of Local Government

The following year, in 1802, Congress granted the City of Washington its first municipal charter. Voters, defined as white males who paid taxes and had lived in the city for at least a year, received the right to elect a 12-member council. The mayor was appointed by the President. This was the first of several forms of appointed and elected governments until the adoption of home rule in 1973: elected councils and an appointed mayor (1802-1820); elected councils and an elected mayor (1820-1871); an appointed governor, a two-house legislature (one appointed and the other elected), and an elected, nonvoting delegate to the Congress (1871-1874); and an appointed, three-member commission (1874-1967). Following the defeat by Congress of a home rule effort in 1967, then-President Lyndon B. Johnson reorganized the District government and created the positions of an appointed mayor and an appointed nine-member council. In 1968, President Johnson signed legislation allowing District residents to vote for an elected school board.

Early Steps Toward Voting Rights

On March 29, 1961, upon ratification of the Twenty-third Amendment to the U.S.Constitution, District of Columbia residents gained the right to vote in presidential elections. Legislation enacted in 1970 created the position of a nonvoting delegate to the House of Representatives. Walter Fauntroy was elected to the seat in a special election in 1971.

The Development of Home Rule

Following the adoption of the Twenty-third Amendment, a confluence of factors, including the momentum of the civil rights movement, the coordinated actions of local and national organizations educating and mobilizing voters across the nation to pressure Congress to address the District's lack of home rule and congressional representation, and changes in the membership and leadership of the House District Committee following the 1972 elections, prompted action on Capitol Hill. In 1973, Congress granted the District of Columbia limited home

rule authority with the District of Columbia Self-Government and Governmental Reorganization Act, subsequently redesignated the District of Columbia Home Rule Act. The

culmination of over 40 home rule bills that had been introduced in Congress between 1874 and 1972, the Act emerged from numerous Congressional negotiations during the fall of 1973.

The bill that passed the House District Committee on September 11, 1973, provided for an elected mayor and a 13-member city council, with eight members elected from wards and five at-large members; congressional veto power over any laws passed by the city; significant budget autonomy with modest federal oversight; and prohibitions on raising the city's building height limit or levying a tax on nonresidents. However, the committee chair, Charles Diggs, conceded to sacrifice the District's control over local tax revenue and retain complete congressional control over the city's budget in order to secure additional support for the bill. While opposed by statehood advocates, the compromise assisted the bill's passage through the House. Further concessions during conference committee deliberations between the House and Senate resulted in the home rule District of Columbia residents currently hold, featuring significant congressional control of the city's budget; limited control of the judicial system; limitations on building heights; prohibitions on imposing taxes on federal property or on the personal income of nonresidents; and a provision that no more than three at-large members of the council (including the chair) may be affiliated with the same political party, thus ensuring representation of minority parties on the council. On December 24, 1973, President Richard Nixon signed the legislation into law. Nevertheless, District residents continued to desire representation in Congress.

The Proposed District of Columbia Voting Rights Amendment

Building on the successes of the fight for home rule and coupling well-organized lobbying with the strategies, rhetoric, and electoral pressure of the civil rights movement, local advocates continued their efforts to garner bipartisan congressional support for a constitutional amendment providing District of Columbia residents the same national representation as residents of the states. With the support of President Jimmy Carter, the amendment (H.J.Res. 554) passed the House of Representatives on March 2, 1978, with a vote of 289-127; on August 22, 1978, the resolution passed the Senate with a vote of 67-32.

Following these successes, the proposed amendment to the Constitution was sent to the states for ratification. However, ratification of the amendment soon encountered stumbling blocks. In his book, Left With Few Rights: Unequal Democracy and the District Of Columbia, Eli Zigas observed that "the ratification campaign was far from well-organized. Disjointed from the start and under-funded for its entire seven years, the ratification campaign failed to mount a coordinated effort." To the detriment of District of Columbia residents, the campaign was undermined by "partisanship, internal rivalries, and a lack of funds." For example, after attempts to raise $700,000 and hire a 22-member staff failed, the Coalition for Self-Determination for D.C. was left with only two staffers and insufficient funds to address requests for assistance from state legislators. Moreover, while the amendment's supporters had secured broad bipartisan support in Congress, bipartisan efforts dissipated during the ratification campaign, especially during the beginning of the campaign. As Zigas observed, "[a]lthough ratification campaign literature highlighted the support of Republican luminaries such as Barry Goldwater and Bob Dole, the advocates who delivered the literature and the sales pitch [(primarily elected

Democrats)] had few bipartisan credentials." Finally, rivalries among the amendment's advocates hindered the ratification campaign. According to Zigas, "[t]he coalition that non-partisan activists and local politicians

had built during the home rule fight in the early 70's just about dissolved as the amendment went to the states."

Opponents of the ratification campaign capitalized on these weaknesses. Within the first six months of the campaign, only five states ratified the amendment, while eight states had rejected or stalled the measure. Three years into the ratification drive, Joseph Rauh, a prominent local advocate, observed, "[t]he simple fact is that without a major transfusion of energy into the ratification drive, we are not likely to see the necessary 38 states pass this amendment before the seven-year period for adoption expires in August 1985." By August 22, 1985, only 16 states had ratified the amendment. The result contrasted sharply from the ratification of the Twenty-third Amendment 24 years earlier. The earlier momentum of the civil rights movement had slowed, and conservatives persuasively argued that District residents would be overrepresented if the amendment passed. As Zigas observed, "the political climate had shifted to the right, and civil rights could no longer carry the cause."

The Modern Statehood Movement

With the impending failure of H.J. Res. 554, District of Columbia leaders turned in 1983 to the concept of statehood, turning the non-federal land in the District into the nation's fifty-first state. In fact, three years earlier, a ballot initiative in the city had seen majority support to call a constitutional convention in response to statehood proposals. Following the election of delegates to the convention on November 4, 1981, the delegates convened the constitutional convention for 90 working days on January 30, 1982. The Constitution of the State of New Columbia emerged from the convention on May 29, 1982, and was ratified by the District's residents that fall. The following year, the District of Columbia submitted its petition for statehood to Congress. In May 1985, the petition received a hearing; however, the District's representative, Delegate Walter Fauntroy, was the only member of Congress who attended. When the Democrats regained control of the Senate in January 1987, the movement gained traction and, supported by the Democratic House leadership, the statehood proposal progressed

through both a subcommittee and the full House District Committee by June 1987. However, following clear communications that President Reagan opposed statehood and strong opposition from Representative Stan Parris, a Republican from northern Virginia, the measure stalled and no vote was taken on the floor.

Meanwhile, the District of Columbia spiraled into a period of decline that saw rising crime, government corruption, a population exodus, and troubled city finances. The city's decline reached its nadir with the arrest of Mayor Marion Barry on January 18, 1990. Mr. Barry was succeeded by Sharon Pratt Kelly, one of a number of new political leaders, including Delegate Eleanor Holmes Norton, ready to reinvigorate the campaign for statehood. In fact, in the 102nd Congress, Delegate Norton introduced H.R. 2482 in 1991; later that same year, Senator Edward M. Kennedy, who had introduced statehood legislation during the prior decade, introduced S. 2023. With the election of President William J. Clinton in 1992, statehood advocates grew particularly hopeful. In the 103rd Congress, Delegate Norton introduced

H.R. 51, and Senator Kennedy introduced S. 898. On November 3, 1993, the House District Committee once again favorably reported H.R. 51 out of committee, and the House's Democratic leadership consented to place the statehood measure before the full House for the first time. On November 21, 1993, following an intense lobbying effort and vigorous floor debate, the vote was taken on the House floor, with a tally of 277-153 against passage, well short of the 218 votes needed.

In the 104th Congress, Delegate Norton reintroduced H.R. 51 in 1995. However, the atmosphere on Capitol Hill had changed significantly since the fall of 1993. In 1994, Republicans had successfully regained majorities in both the House and Senate. Meanwhile, the District of Columbia's financial troubles had worsened. In February 1995, the city announced that it faced a $700 million deficit, equivalent to 22% of the entire operating budget, and had a strategy to close that gap only by half. Congress, distrustful of a recently re-elected Mayor Barry's ability to

address the city's financial distress, transferred much of the authority over the city to an appointed board, the District of Columbia Financial Control Board, through the District of Columbia Financial Responsibility and Management Assistance Act of 1995. Subsequently, under the National Capital Revitalization and Self-Government Improvement Act of 1997 (Title XI of the Balanced Budget Act of 1997), Congress further stripped the District of Columbia of autonomy. The Act eliminated the federal payment (an annual transfer of federal funds intended to compensate the city for lost property tax revenue incurred because of the federal government's presence) and the annual contribution to the District pension fund. In exchange, the Act transferred several functions and responsibilities from the District's government to the federal government: (1) the pension liability for judges, police and firefighters, and teachers; (2) the D.C. court system; (3) the operation and repair of the District's corrections facilities; and (4) offender services. In addition, the Act authorized the control board to assume control of numerous public services, leaving the mayor responsible only for economic development, recreation, emergency preparedness, cable television, tourism and promotion, and the various boards and commissions of the city. The strengthened control board sparked significant protests from the city's residents.

In the spring of 1998, many of his mayoral powers having been stripped by Congress, Mr. Barry determined he would not seek reelection. Shortly thereafter, Anthony Williams, the city's Chief Financial Officer, announced his candidacy for mayor. His reputation for fiscal responsibility and efficient management and his strong, positive relationship with the control board would lead Mr. Williams to win that September's primary and November election. In addition, September 1998 also saw the appointment of Alice Rivlin, former director of the Congressional Budget Office and the Office of Management and Budget, as chair of a control board comprised of new members. The new members welcomed the opportunity to work with Mr. Williams and indicated that they would pursue a more hands-off management style than employed with the prior administration.

Meanwhile, during the fall of 1998, a group of 57 District of Columbia residents sought a separate forum to address their status, filing an action in United States District Court to seek a judicial remedy for their lack of voting representation in Congress. The court consolidated the suit, Alexander v. Daley, with the case of Adams v. Clinton, which had been filed several months

earlier. The plaintiffs in Adams v. Clinton, a separate group of twenty District of Columbia residents, sought not only voting representation but also alleged that their constitutional rights were "violated by Congress's exercise of exclusive jurisdiction over the District, and by its denial to plaintiffs of 'a state government, insulated from Congressional interference in matters of local concern.'" On March 20, 2000, the United States District Court for the District of Columbia issued its opinion, concluding:

Like our predecessors, we are not blind to the inequity of the situation plaintiffs seek to change. But longstanding judicial precedent, as well as the Constitution's text and history, persuade us that this court lacks authority to grant plaintiffs the relief they seek. If they are to obtain it, they must plead their case in other venues.

The decision was subsequently affirmed by the Supreme Court.

Options for Full Congressional Representation

Options for providing District of Columbia residents with full voting representation in Congress, i.e., a representative and two senators, generally fall into four major categories:

- statehood: admitting the State of New Columbia into the Union;

- virtual statehood: treating the District as a state for the purpose of congressional representation;

- retrocession: returning all or part of the District to Maryland; and

- semi-retrocession: treating District residents as citizens of Maryland for the purpose of voting in federal elections.

Statehood

Recent Proposals

In the years after the appointment of the control board, the city's finances had stabilized; after the District achieved its fourth consecutive balanced budget, the control board suspended its activities on September 30, 2001. In 2002, hearings in both houses of Congress on voting representation for the District occurred for the first time since 1993. Proposals for statehood reemerged during the 112th Congress. In 2011, Delegate Norton introduced H.R. 265, the New Columbia Admission Act; Senator Joseph Lieberman subsequently introduced S. 3696. The proposals were reintroduced during the 113th Congress, as Delegate Norton introduced H.R. 292 and Senator Thomas Carper introduced S. 132.

The New Columbia Admission Act establishes procedures for admitting the state of New Columbia into the Union. The bill would:

- require the Mayor of the District of Columbia to (1) submit to eligible voters propositions for statehood and adoption of a state constitution and (2) issue a proclamation for the first elections to Congress of two senators and one representative of New Columbia;

- require the President to issue a proclamation announcing the results and admitting New Columbia into the Union following the adoption of the propositions and the certification of the elections;

- establish that New Columbia consists of all the territory of the District at the time of enactment, except land within specified "metes and bounds" that would remain the District of Columbia, including the principal federal monuments; the White House; the Capitol Building; the Supreme Court Building; the federal executive, legislative, and judicial office buildings located adjacent to the Mall and the Capitol Building; and certain military property;

- prohibit New Columbia from imposing taxes on these federal properties unless authorized by Congress;

- maintain the District of Columbia as the seat of the federal government and the federal government's authority over military lands and other specified property;

- provide for the conversion of District government offices to state offices, apply current District laws to New Columbia, and continue pending judicial proceedings; and

- provide for expedited consideration of a joint resolution proposing an amendment to the Constitution to repeal the Twenty-third Amendment.

Benefits of Statehood

Granting statehood to the District of Columbia would definitively address issues surrounding congressional representation for District residents. As citizens of a state, New Columbia residents would be entitled to elect two senators and at least one representative, depending on population. Similarly, a ratified

constitutional amendment granting statehood to the District would entitle District residents to full congressional representation. Gaining these rights to congressional representation through statehood would be permanent, rather than subject to reversal when circumstances change.

Full Senate and House representation would provide significant advantages to District residents that they currently lack due to the limited rights and powers of the District's delegate. For example, delegates are not permitted to fully participate in the election of the Speaker of the House of Representatives, serve as presiding officers, sign petitions to discharge legislation from

committee, or offer motions to reconsider a vote on a measure. In addition to limitations under the House rules, a delegate's influence is limited in other respects. For example, Garry Young, Director of the George Washington University Center for Washington Area Studies, observes that, unlike many representatives from small states, "[no] delegate—either from DC or one of the territories—has ever served on the most coveted and powerful committees," such as Ways and Means, Appropriations, or Rules. The District of Columbia, like other nonstates, has no representation in the United States Senate. Consequently, the District lacks influence over issues exclusive to the Senate, including federal treaties and the confirmation of appointees of the executive and judicial branches. Moreover, according to Young, "[t]he average senator has far more power, especially power to obstruct, than the average member of the House." Due to the ability of a senator under the Senate rules to forestall consideration of a bill (e.g., through nongermane amendment requests, requests to hold a measure, or filibusters), a single senator can exercise significant leverage over legislation. This power to obstruct serves as an important bargaining tool. Statehood would, therefore, significantly increase the influence of District residents in Capitol Hill proceedings.

Statehood would also free District residents from significant congressional oversight. Article I, Section 8, Clause 17 of the United States Constitution grants Congress the power to “exercise exclusive Legislation in all Cases whatsoever” over the District of Columbia. Moreover, under the District of Columbia Home Rule Act:

... the Congress of the United States reserves the right, at any time, to exercise its constitutional authority as legislature for the District, by enacting legislation for the District on any subject, whether within or without the scope of legislative power granted to the Council by this Act, including legislation to amend or repeal any law in force in the District prior to or after enactment of this Act and any act passed by the Council.

Young notes that Congress has “used the District as an arena for the contentious social issues of the day [including] abortion, gay rights, disputes over fighting drug abuse, school vouchers, and assisted suicide.” In fact, Young goes so far as to state that Congress has used the District “as a laboratory for experiments in policymaking.”

Beyond Congress’s direct legislative impact on District residents, District autonomy is further curtailed by the provisions of the Home Rule Act. First, the Act limits the areas within which the City Council may legislate. As noted above, the Act bars the Council from imposing taxes on the personal income of nonresidents or authorizing the construction of buildings higher than limits established by Congress. Furthermore, the Act provides a 30-day period within which Congress may pass a joint resolution, with concurrence of the President, to repeal legislation passed by the City Council. This period is extended to 60 days if the legislation impacts the District’s criminal laws. No state is subject to such constraints. Statehood for New Columbia would free District residents from this congressional interference.

Potential Constitutional Issues

Opponents of statehood have raised several questions about the constitutionality of proposals to create the State of New Columbia. First, opponents cite Article I, Section 8, Clause 17 of the United States Constitution, which grants Congress 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.

Opponents suggest that the clause evidences the framers' intent that these ceded lands remain a permanent capital and to prevent Congress from granting statehood to any part of it. Consequently, Congress may not permanently relinquish its exclusive, constitutional powers over the District. However, proponents of statehood maintain that exclusive congressional jurisdiction over the District includes the power to delegate that authority, for example, through the Home Rule Act, and to make such delegation permanent. In addition, proponents observe that Congress has previously relinquished control over a part of the territory of the District through the 1846 retrocession of lands originally ceded by Virginia.

Article IV, Section 3 of the United States Constitution specifies certain requirements for admission of a state to the Union. That section states that:

New States may be admitted by the Congress into this Union; but no new State 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 the States, without the consent of the legislatures of the States concerned as well as of the Congress.

Opponents of statehood contend that this clause implies that the consent of Maryland would be necessary to create a new state out of its former

territory. They posit that a constitutional question arises whether Maryland could object to the creation of another state out of territory it ceded to the United States specifically for the creation of the national seat of government. Meanwhile, proponents of statehood observe that Maryland has not exercised authority over the lands comprising the District of Columbia for over two centuries. In addition, proponents maintain that the Maryland legislature used "absolute and unconditional language to cede the land," despite the fact that clauses retaining reversionary interests in land were common at the time and employed in grants of land to the federal government.

Finally, opponents maintain that statehood would nullify the Twenty-third Amendment to the United States Constitution, which authorizes the District to "appoint in such manner as Congress may direct a number of electors of President and Vice President." However, proponents counter that the amendment is not self-executing. In fact, the amendment states, "[t]he Congress shall have power to enforce this article by appropriate legislation." Proponents

observe that had Congress not passed enabling legislation prior to the Presidential election following the amendment's ratification, the District would not have been able to participate. Conversely, by repealing the enabling legislation following the admission of New Columbia, the electoral status of the District would simply revert to its status during the period prior to the enactment of enabling legislation. This course of action is addressed explicitly in the New Columbia Admission Act. Section 205 of the bill repeals laws providing for participation of the District of Columbia in the election of President and Vice President following the admission of New Columbia into the Union. Section 206, as noted above, provides for the expedited consideration of repeal of the Twenty-third Amendment.

Virtual Statehood

As an alternative to the creation of New Columbia, Congress could grant the District "virtual statehood" for purposes of congressional voting representation. Legislation granting the District congressional representation through a representative in the House and two senators would address concerns of effective representation while preserving the District's separate and independent political status.

Recent Proposals

During the 109th Congress, Delegate Norton and Senator Lieberman introduced the No Taxation Without Representation Act of 2005, H.R. 398 and S. 195, respectively. The bills would have treated the District as a state for the purpose of congressional representation, permitting District residents to elect two senators and as many representatives as a similarly populous state would be entitled to under the law. In addition, the bills would have given the District one representative with full voting rights until the next reapportionment and permanently increased the size of the House from 435 to 436 for purposes of future reapportionment. The bills were referred to the House Judiciary Committee and Senate Committee on Homeland Security and Governmental Affairs and their subcommittees. The following year, Representative Tom Davis introduced an alternative proposal, H.R. 5388, the District of Columbia Fairness and Equal Representation Act of 2006.[1] Under the bill, the District of Columbia would constitute a congressional district for purposes of representation only in the House of Representatives. In addition, the bill would have permanently increased the membership of the House from 435 to 437 members beginning with the 110th Congress. While one of these two new seats would have been occupied by a Representative of the District of Columbia, the second would have been elected at-large from the state of Utah based on the 2000 decennial census of the population and apportionment calculations. The bill was referred to the House Judiciary Committee's Subcommittee on the Constitution, which held a hearing on the bill on September 14, 2006, but did not report it out of committee. Although the proposal received the support of the Utah legislature, which approved a redistricting map creating a fourth congressional district for the state, the

bill did not receive a floor vote prior to the adjournment of the 109th Congress. Finally, Delegate Norton introduced H.R. 5410, the No Taxation Without Representation Act

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1 H.R. 2043.

H.R. 5388 superseded an earlier but similar measure Representative Davis introduced in 2005,

of 2006. Similar to H.R. 398 of 2005, the bill was reported unfavorably out of the House Government Reform Committee by voice vote.

Continuing the pursuit of "virtual statehood" during the 110th Congress, Delegate Norton and Representative Davis introduced H.R. 328, the District of Columbia Fair and Equal House Voting Rights Act of 2007. The measure included many of the same provisions included in H.R. 5388. The bill was referred to the House Committee on the Judiciary. Delegate Norton also introduced H.R. 1433, which was later incorporated into H.R. 1905. H.R. 1905 not only would have considered the District of Columbia a congressional district for purposes of representation in the House of Representatives but also contained provisions increasing the estimated tax payment safe harbor percentage for determining the amount of estimated tax payable by certain taxpayers. The House passed H.R. 1905 on April 19, 2007, with a vote of 241-177; the measure was then received in the Senate and referred to the Committee on Finance, where no further major action was taken. The next month, Senator Lieberman introduced S. 1257, similar to the aforementioned House bills. The bill was referred to and subsequently reported by the Senate Committee on Homeland Security and Governmental Affairs. However, on September 18, 2007, the Senate voted 57-42 for cloture on the motion to proceed to consideration of the bill, and the bill failed on the floor.

During the spring of 2009, Delegate Norton introduced H.R. 157, the District of Columbia House Voting Rights Act of 2009, similar to earlier measures. While the bill was reported by the House Committee on Judiciary in early March and placed on the Union Calendar, no further

major action was taken. Meanwhile, Senator Lieberman introduced S. 160, the District of Columbia House Voting Rights Act of 2009. As introduced, the measure would have considered the District a congressional district for purposes of representation in the House of Representatives but not for purposes of representation in the Senate. In addition, the bill provided for expedited judicial review of any action brought to challenge its constitutionality. However, S. 160 was amended by the Senate Committee on Homeland Security and Governmental Affairs, which added a second title to the bill – the Second Amendment Enforcement Act. The amendments would have curtailed the ability of the District of Columbia to "prohibit, constructively prohibit, or unduly burden the ability" of its residents to acquire or lawfully possess firearms in their homes or businesses or use those weapons for sporting, self-protection, or other lawful purposes. The amendments further repealed District legislation requiring gun registration, banning semiautomatic weapons, and imposing criminal penalties for possession of an unregistered handgun. The bill successfully passed the Senate on a vote of 61-37 but was held at the desk after its receipt in the House.

During the 112th Congress, Delegate Norton once again introduced measures granting the District of Columbia congressional representation. H.R. 266, the District of Columbia Equal Representation Act of 2011, would have treated the District as a state for purposes of representation in both the House of Representatives and in the Senate. Meanwhile, H.R. 267, the District of Columbia House Voting Rights Act of 2011, would have treated the District as a state for purposes of representation only in the House of Representatives. The measures were referred to the Committee on the Judiciary and the Committee on Oversight and Government Reform but

received no additional major congressional action. Delegate Norton reintroduced the bills during the 113th Congress as H.R. 362 and H.R. 363, respectively; the measures have met the same fate.

Benefits of Virtual Statehood

Proponents of virtual statehood observe that this solution would not conflict with Article I, Section 8, Clause 17 of the United States Constitution, as the legislation would preserve the independent federal district and maintain Congress's exclusive jurisdiction over the District. In addition, according to the Congressional Research Service, advocates of virtual statehood also observe that "the District is routinely identified as a state for the purpose of intergovernmental grant transfers, that Congress' authority to define the District as a state under other provisions of the Constitution has withstood Court challenges, and that Congress has passed legislation allowing citizens of the United States residing outside the country to vote in congressional elections in their last state of residence." Legislation granting the District congressional representation would provide District residents effective representation without the challenges of pursuing a constitutional amendment.

Potential Constitutional Concerns

Citing District of Columbia v. Carter, 409 U.S. 418, 93 S.Ct. 602 (1973), the U.S. District Court for the District of Columbia, in Adams v Clinton, 90 F. Supp. 2d 35 (D.D.C.), aff'd, 531 U.S. 941 (2000), observed that "[w]hether the District of Columbia constitutes a 'State or Territory' within the meaning of any particular ... constitutional provision depends upon the character and aim of the specific provision involved."

Opponents of virtual statehood argue that legislation considering the District of Columbia a state for purposes of voting rights conflicts with Article I, Section 2, Clause 1 of the United States Constitution, which confers voting rights to representatives "of the several states." As noted by the court in Adams, construing the term "state" to include the "District of Columbia" for purposes of representation would lead to many incongruities in other parts of the Constitution. For example, Article I, Section 2, Clause 1 requires that voters for the House of Representatives "have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature." As the District lacked a legislature until the enactment of home rule, this language would have lacked effect for a substantial portion of the District's history. Similar

issues extend to instances where the Constitution refers to the Executive Branch of a state. As the Adams court notes, while Article I, Section 2, Clause 4 provides that the "Executive Authority" of a state shall issue writs of election to fill vacancies in the representation from the state, the District lacked an executive until the Home Rule Act, and Congress serves as the "ultimate executive authority for the District."

Proponents of virtual statehood counter that the sweeping language of Article I, Section 8, Clause 17 grants Congress the authority to define the District as a state. While the constitutionality of this argument remains untested, advocates may cite the Uniformed and Overseas Citizens Absentee Voting Act, through which Congress has granted voting rights to citizens who are not residents of a state. Moreover, proponents cite the U.S. Supreme Court's

holding in National Mutual Insurance Company v. Tidewater Transfer Company, 337 U.S. 582 (1949). While Article III grants jurisdiction to the federal courts over controversies "between citizens of different states," the Supreme Court upheld the constitutionality of 28 U.S.C. § 1332(d), under which Congress extended federal diversity jurisdiction to suits involving citizens of the District. Consequently, advocates argue, Congress may have the authority to treat the District as a "state" for purposes of Article I, the Seventeenth Amendment, and congressional representation. However, Kenneth Thomas of the Congressional Research Service challenges this interpretation. Mr. Thomas notes that at least six of the Justices authored opinions "rejecting the proposition that Congress's power under the District Clause was sufficient to effectuate structural changes to the federal government." Moreover, Mr. Thomas notes that the remaining three Justices, who found that the Congress could grant diversity jurisdiction to District citizens, specifically limited their opinion to the extent that the enactment did not "involve an extension or a denial of any fundamental right or immunity" or "reach for powers that would substantially disturb the balance between the Union and its component states." Mr. Thomas thus suggests that the

Supreme Court would reject the legislative grant of congressional voting rights to District residents as an extension of a fundamental right and "a substantial disturbance to the existing federalism structure."

Congressional legislation extending Senate representation to the citizens of the District of Columbia poses additional questions concerning constitutionality. Opponents note that virtual statehood conflicts with Article I, Section 3, Clause 1, which provides that the Senate "shall be composed of two Senators from each State, chosen by the Legislature thereof for six Years." The Adams court maintains that the framers did not intend the clause to apply to the District because "[since] Congress is ultimately both the Legislature and Executive for the District, ... Congress would [then be empowered to] fill vacancies in the District's Senate seats – except when Congress is in recess, in which event Congress would also fill the vacancies." The clause was subsequently amended in 1913 by the adoption of the Seventeenth Amendment, which provides for the direct election of senators by popular vote. However, the Adams court notes that "when the United States assumed exclusive jurisdiction over the District in 1801, inhabitants had been voting for representation in the House of Representatives, but had never voted for representation in the Senate." Furthermore, Article V of the United States Constitution provides "that no State, without its Consent, shall be deprived of its equal Suffrage in the Senate." Scholars suggest that this clause establishes a "state veto power over District representation in the Senate," by which "every state would have to consent in order to enable the addition of Senators from the District." As with other proposals, the constitutionality of such legislation remains unresolved.

Retrocession

Early Retrocession Efforts

Efforts to retrocede the District of Columbia back to Virginia and Maryland began as early as 1803, only two years after Congress assumed exclusive federal authority over the District under the Organic Act.

On February 8, 1803, Representative John Bacon of Massachusetts introduced a motion seeking "to retrocede that part of the Territory of Columbia that was ceded by the states of Maryland and Virginia." The motion made retrocession contingent on the state legislatures agreeing to the retrocession. During the debate on the motion supporters of retrocession asserted that:

- exclusive jurisdiction over the District was not necessary or useful to the national government;

- exclusive control of the District deprived the citizens of the District of their political rights;

- too much of Congress' time would be consumed in legislating for the District, and governing the District was too expensive; and

- Congress was not competent to legislate for the District because it lacked sensitivity to local concerns.

Opponents of the proposal argued that:

- the national government needed a place unencumbered by state laws;

- District residents had not complained or petitioned Congress on the question of retrocession;

- the District might be granted representation in Congress when it achieved sufficient population;

- the expense of administering the District would decrease over time;

- retroceding the land removed the national government of any obligation to remain in the
District; and

- the cession of the land and its acceptance by Congress constituted a contract that could only be dissolved by all parties involved, including the states of Maryland and Virginia, Congress, and the people of the District.

The Bacon motion was defeated by a vote of 66 to 26.
In 1804, another bill was introduced to retrocede all portions of the District except Washington City,[2] but it was defeated 97 to 46.
Efforts to retrocede portions of the District

[2] The District of Columbia originally consisted of five jurisdictions: Washington City (the seat of government), Georgetown, Washington County, Alexandria, and Alexandria County.

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continued until the Civil War; however, the only successful effort resulted in the retrocession of the area west of the Potomac River to Virginia in 1846.

Largely because Virginia agreed to the retrocession, there was no immediate constitutional challenge to the change. The constitutional question concerning retrocession to Virginia was not reviewed by the Supreme Court until 1875. In Phillips v. Payne, 92 U.S. 130 (1875), the Court issued a decision that allowed the retrocession to stand but did not rule on its constitutionality. The Court noted that since the parties to the retrocession (the federal government and the state of Virginia) were

satisfied with its outcome, no third party posed sufficient standing to bring suit.

Recent Proposals

In the modern era, a number of bills have been introduced to retrocede all or part of the District to Maryland. Most would involve the creation of a federal enclave, the National Capital Service Area, comprising federal buildings and grounds under control of the federal government. The most recent proposal is H.R. 2681, the District of Columbia-Maryland Reunion Act, introduced in the 113th Congress by Representative Louie Gohmert of Texas. The legislation would:

- upon the issuance of a proclamation by the President following acceptance of the retrocession, cede and relinquish to Maryland the territory ceded by Maryland to Congress to serve as the District constituting the permanent seat of Government of the United States, except for a National Capital Service Area described in the bill;

- continue federal control over a National Capital Service Area consisting of the principal federal monuments, the White House, the U.S. Capitol, the Supreme Court building, and the federal executive, legislative, and judicial office buildings located adjacent to the Mall and the Capitol;

- require the Congressional Budget Office to prepare a report on the economic impact on Maryland of the State's acceptance of retrocession;

- prohibit Maryland from accepting the retrocession until at least one year after the report is submitted to the governor;

- within 30 days after the State of Maryland enacts legislation accepting the retrocession, require the President to issue a proclamation announcing the acceptance and declaring the territory has been ceded back to Maryland; and

- require the individual serving as the Delegate to the House of Representatives from the District of Columbia serve as a member of the House from Maryland and grant Maryland an additional congressional seat until the next reapportionment.
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Proponents argue that retrocession is an elegant strategy to achieve full national representation and local self-determination for the District. As citizens of Maryland, District residents would gain votes in Congress, full representation through Maryland's Electoral College delegation, and the same local autonomy given to Baltimore, Annapolis, and other cities in the state. Rejoining Maryland would allow District residents to gain senators and a voting representative without increasing the size of Congress. In contrast to statehood and a constitutional amendment, the power of the fifty states, especially in the Senate, would not be diluted by retrocession, and the chances of the enfranchisement of District residents causing a partisan shift in Congress would be lessened.

According to proponents, retrocession and the concurrent creation of a federal enclave would not conflict with Article 1, Section 8, Clause 17 of the U.S. Constitution, which requires Congress to exercise exclusive legislative control over the federal district.

Opponents of retrocession note that the adoption of such a measure could force Congress to consider the repeal of the Twenty-third Amendment to the Constitution, which grants District residents representation in the electoral college equivalent to the number of Senators and Representatives in Congress it would be entitled to if it were a state. If the amendment were not repealed, the net effect would

be to grant a disproportionately large role in presidential elections to a relatively small population residing in the federal enclave.

In addition, retrocession has not proven to be politically popular in either jurisdiction. Voting rights advocates in the District of Columbia see it as a distraction from the District's drive for statehood. Others fear that it would extinguish the city's unique cultural and political identity and that the votes of District residents would have less impact than under independent statehood. Elected officials in Maryland also have not embraced the idea. State legislators responding to a survey in 1990 indicated overwhelmingly that they would not accept retrocession. More recently, Governor Martin O'Malley has signaled that he is not in favor of retrocession but does support statehood for the District of Columbia.

Semi-retrocession

Short of retroceding all or a portion of the District to Maryland, another option would treat District residents as citizens of Maryland for the purpose of voting in federal elections. Such an arrangement would allow District residents to vote as residents of Maryland in elections for the House of Representatives and to have their votes counted in the election of the two senators from Maryland. This semi-retrocession arrangement would also allow District residents to be considered inhabitants of Maryland for the purpose of determining eligibility to serve as a member of the House of Representatives or the Senate but would not change their status regarding Congress' exclusive legislative authority over the affairs of the District.

The idea of semi-retrocession is reminiscent of the arrangement that existed between 1791 and 1801, the period between the creation of the District of Columbia as the national capital and the assumption by Congress of exclusive control over the District. During this period residents of the District residing on the respective Maryland and Virginia sides of the

territory were allowed to vote in national elections as citizens of their respective states and, in fact, voted in the 1800 presidential election.

Several bills have been introduced since 1970 to allow District residents to vote in Maryland's congressional and presidential elections without retroceding the area to Maryland. The most recent proposal is H.R. 299, the District of Columbia Voting Rights Restoration Act of 2013, introduced in the 113th Congress by Representative Dana Rohrabacher of California. The proposed congressional findings recited in the bill state that:

Since the people who lived in the territory that now makes up the District of Columbia once voted in Maryland as citizens of Maryland, and Congress by adoption of the Organic Act of 1801 severed the political connection between Maryland and the District of Columbia by statute, Congress has the power by statute to restore Maryland state citizenship rights, including Federal electoral rights, that it took away by enacting the Organic Act of 1801.

The measure would:

- restore the right of District of Columbia residents to participate as Maryland residents in congressional and presidential elections;

- consider District residents as inhabitants of Maryland for purposes of running for the House of Representatives or Senate;

- prohibit electors for President and Vice President from being appointed from the District of Columbia and electoral votes from being cast or counted;

- increase the number of members of the House of Representatives to 436 and give Maryland an additional

congressional district;

- require that the entire area of the District of Columbia be included in the same congressional district;

- require federal elections in the District of Columbia to be administered and carried out in accordance with applicable Maryland law, and consider the District to be a unit of local government in Maryland for purposes of administering federal elections; and

- repeal provisions of (1) the District of Columbia Delegate Act that establishes the office of District of Columbia Delegate to the House of Representatives and (2) the District of Columbia Statehood Constitution Convention Initiative of 1979 that provides for electing a Senator and Representative for the District.

The bill raises several policy issues:

- Can Congress, without the consent of the State, require Maryland to administer or supervise federal elections in the District?

- Does transferring administrative authority and associated costs for federal elections in the District to Maryland constitute an unfunded mandate?

- Who should bear the additional cost of conducting federal elections in the District?

The constitutionality of semi-retrocession has not been tested in the courts. Since the proposal does not make the District a state,

questions have been raised about whether it would violate Article 1, Section 2 of the Constitution, which requires representatives to be chosen from the states, and the Fourteenth Amendment, the basis for the "one-person, one-vote" rule for defining and apportioning congressional districts in the states.

Fiscal Implications for Maryland

The different District of Columbia voting rights proposals would impact Maryland, from a fiscal standpoint, to varying degrees. Retrocession, which would redefine the State and have a range of impacts on its finances, would have the broadest impact. Semi-retrocession, which would involve Maryland having at least partial responsibility for the administration of federal elections in the District, could result in additional election administration costs for Maryland. Statehood, on the other hand, could result in lost income tax revenue for Maryland if the new state taxes nonresident income. Virtual statehood would likely have little or no direct fiscal impact on Maryland.

Retrocession

The District of Columbia government serves partially in a role similar to that of state governments and partially in the role of a local government, providing services typical of both. Pursuant to the Revitalization Act of 1997 (Balanced Budget Act of 1997, Pub. L. No. 105-33, Title XI: National Capital Revitalization and Self-Government Improvement Act of 1997), the federal government is also responsible for certain governmental functions and financial obligations in the District, including administration of the District's court system, incarceration of adult felons, and certain pension obligations. In addition to relieving the District of Columbia government of certain governmental and fiscal responsibilities, the Revitalization Act also ended a mandated annual federal payment the District received up to that point, reducing its direct federal funding. According to a report by the District of Columbia Office of the Chief Financial Officer, the Revitalization Act was a net benefit to the District, however, resulting in $201 million in budget savings at the time.

For background purposes, to show the comparative size of government spending among the District of Columbia, Maryland, and several Maryland local governments, Exhibit 1
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provides information on the size of the operating budgets of the District government, the State of Maryland, Montgomery and Prince George's counties (the District's neighboring Maryland counties), and Baltimore City.

Retrocession would involve some amount of realignment of the governmental responsibilities for the retroceded area of the District. Certain state-like functions that the District government currently performs would likely become the responsibility of the State of Maryland, and the governmental responsibilities of the federal government in the District would potentially be shifted to the State of Maryland, the local government or governments of the retroceded area, or some combination of both.

Exhibit 1

District of Columbia, Maryland, and County Operating Budgets Fiscal 2014

District of Columbia	State of Maryland	Montgomery County	Prince George's County	Baltimore City
Proposed Operating Budget	$12.2 billion*	$2.4 billion		
Approved Operating Budget				

$37.0 billion

$4.8 billion $3.3 billion

Population

632,323

5,884,563

1,000,709 881,138 621,342

* In addition to the government services covered by the District of Columbia government's budget, the federal government also funds certain government services and pension obligations in the District pursuant to the Revitalization Act of 1997. In 2008, the District of Columbia Office of the Chief Financial Officer (OCFO) estimated that the costs of those services totaled $800.4 million in 1998 dollars, which, adjusted for inflation, would total $1.1 billion today (Robert Zahradnik, District of Columbia Office of the Chief Financial Officer, Update of the National Capital Revitalization and Self-Government Improvement Act of 1997, Table 1 (for discussion only) (September 5, 2008)).[3]

Sources: District of Columbia FY 2014 [October 2013 – September 2014] Proposed Budget and Financial Plan (submitted to Congress August 8, 2013); Maryland Department of Budget and Management, FY 2014 Fiscal Digest (Approved Operating Budget); Montgomery County, Office of Management and Budget, Approved FY 2014 Operating and Capital Budget and Amendments to FY 2013-18 Capital Improvements Program (CIP); Prince George's County, Office of Management and Budget, Approved Operating Budget FY 2014; Baltimore City, Fiscal 2014, Executive Summary, Board of Estimates Recommendations; U.S. Census Bureau, Population Division, Annual Estimates of the Resident Population: April 1, 2010 to July 1, 2012

[3] The $800.4 million excludes an increase in the federal Medicaid contribution for the District that is included in the OCFO analysis. The increase in the federal Medicaid contribution was included in the Balanced Budget Act of 1997, which the Revitalization Act was a part of. The District government's budget appears to include that additional federal Medicaid contribution amount.

Determining the fiscal impact of retrocession on Maryland would be a significant undertaking. In order to do so, an assumption would likely have to be made about how the retroceded area would fit into Maryland's governmental structure (e.g., would it become part of a neighboring Maryland county or counties or would it be a new county-level jurisdiction similar to Baltimore City). A full evaluation of the fiscal impact of retrocession would then require analysis of:

- the State's various revenue sources (including federal funding) and how adding the retroceded area would affect State revenues from those sources;

- State government agencies, programs, and obligations and how costs would increase to serve the retroceded area (including evaluation of how, and to what extent, existing District of Columbia governmental infrastructure could be used and what one-time transition costs might be incurred);

- whether any District government personnel and existing personnel-related liabilities (e.g., pension, retiree health care) would be shifted to the State and the associated fiscal impact of that shift;

- the level of State aid (funding support) that would be directed to the local government or governments of the retroceded area;

- the projected financial condition (under retrocession) of the local government or governments of the retroceded area and any implications that might have for the State;

- how the State capital program would be affected going forward by projects in the retroceded area (e.g., infrastructure

upgrades) and any outstanding debt on bonds issued previously by the District government;

- assets and other liabilities that might be transferred to the State from the District and/or federal governments; and

- any potential cumulative effect the addition of the retroceded area might have on the State's overall financial condition and bond rating.

Recent bills introduced in Congress proposing retrocession have included a requirement that, at least one year in advance of Maryland's enactment of legislation accepting retrocession, the Congressional Budget Office submit a report to Congress and the Governor of Maryland analyzing the economic impact of retrocession on the State of Maryland, including the anticipated effect on the budgets of the State government and local governments (H.R. 2681, 113th Congress; H.R. 3732, 112th Congress).

Semi-retrocession

Semi-retrocession would allow District of Columbia residents to be considered residents of Maryland for the purpose of voting in federal elections. A recent semi-retrocession proposal in Congress (H.R. 299, 113th Congress) would increase the number of members of the U.S. House of Representatives by one, to 436, so that Maryland, with the added population of the District, would have an additional congressional district, at least initially (population changes among the states could change the number of Maryland's districts in the future). District of Columbia residents would be considered Maryland residents in the elections for U.S. President, the Senate, and the House of Representatives. In addition, for the purpose of administration of federal elections, the District would be considered a local government in

Maryland and federal elections in the District would be held in accordance with Maryland election laws.

Maryland law requires that a uniform voting system be used across the State (Election Law Article, § 9-101); therefore, a proposal requiring that federal elections in the District be held in accordance with Maryland law could result in Maryland's voting system being used in the District for those elections. Maryland is in the initial stages of transitioning to a new optical scan (paper-based) voting system for the 2016 and future elections. The existing touchscreen system will be used for Maryland's elections in 2014. A study conducted by RTI International for the Department of Legislative Services in 2010 included an estimate of the capital cost of a new optical scan voting system of $35.7 million (which would be financed and paid for over multiple years), with operations and maintenance costs being in the range of $5.0 to $6.0 million annually. One-time implementation costs of between $1.3 million and $5.4 million were also identified.

Maryland has approximately 1,700 polling places and 3.7 million registered voters. The District has 143 polling places and approximately 500,000 registered voters. The capital cost of a new voting system (consisting largely of polling places and early voting center hardware) and associated operations and maintenance costs would, to a certain extent, increase roughly proportionally to an increase in the number of polling places, early voting centers, and voters that need to be served by the system. Based on the costs identified in the RTI International report, adding the District to Maryland's federal elections could result in an increase in the capital costs of a new voting system in the millions of dollars and an increase in the operations and maintenance costs in the hundreds of thousands of dollars. The one-time implementation costs may also increase, but likely to a lesser extent. It appears that a number of the implementation costs may not be significantly affected by an increase in the size of the electorate being served by the system. Voting system costs are currently shared by the State and counties pursuant to a 2001 Maryland law (Chapter 564), and, therefore, an increase in the

costs of a new voting system might similarly be shared by the State and the District.

Maryland law could also be amended to allow the District to use its existing voting system under a semi-retrocession proposal in order to avoid the additional cost of extending Maryland's voting system to the District. However, costs for programming and development of procedures and documentation associated with coordinating the use of the two separate systems,

while likely much less than the cost of extending Maryland's system to the District, could still be significant.

Other costs that would be incurred include programming costs associated with entering and managing District voters in the State's voter registration system, which the staff of the State Board of Elections indicates would be in the range of $250,000. A small team of three or four State personnel may need to work in the District of Columbia Board of Elections office to help to ensure that federal elections in the District are being conducted in accordance with Maryland election law, the cost of which could total over $300,000 annually. The extent to which these costs would be the responsibility of the State of Maryland is uncertain. The State board currently bills the local boards of elections for costs associated with the voter registration system. Therefore, the voter registration system programming costs may be billed to the District of Columbia Board of Elections. Presumably the District of Columbia Board of Elections may also share at least a portion of the cost of State personnel assisting the District of Columbia Board of Elections. Federal funding may also be provided to assist with implementation of semi-retrocession. A significant portion of election administration costs in Maryland are solely the responsibility of local boards of elections, including costs for election judges and other polling place and early voting center costs, and voter notification costs. Those costs for federal elections in the District would likely remain the responsibility of the District of Columbia Board of Elections.

It is unclear how the District of Columbia Board of Elections would administer local elections and federal elections in accordance with two separate bodies of election law (Maryland's and the District's, respectively), in some cases at the same time. Presumably, however, any associated costs resulting from that administrative challenge would be the responsibility of the District of Columbia Board of Elections.

Statehood – Income Tax Revenue Loss

Under a provision of the Home Rule Act (§ 602(a)(5)), Congress has prohibited the District of Columbia Council from imposing any tax on the personal income of an individual who is not a District resident. This has been cited as a significant constraint on the District's revenue-raising capacity. According to the District of Columbia Office of the Chief Financial Officer, 55% of the income earned in the District is earned by nonresidents.

If a new state is created out of the current District, minus a federal enclave, there is the possibility that the new state would tax income earned in the new state by nonresidents. A 2003 U.S. Government Accountability Office report on the District's finances found that the federal prohibition on the District imposing a tax on the income of nonresidents was unique among the states and that most states taxed nonresident income to some extent. Some states, however, have reciprocal agreements with certain other states to not tax the income of the other state's residents.

Maryland currently taxes income generated in Maryland by nonresidents (Tax-General Article, §§ 10-105 and 10-106.1), but Maryland has reciprocal agreements with the District of Columbia, Pennsylvania, Virginia, and West Virginia in which the jurisdictions agree to not tax

the wages earned within their borders by the other jurisdiction's residents (the District is also subject to the congressional prohibition preventing it from taxing nonresident income). Maryland, like many

other states, also allows Maryland residents to claim a tax credit for income tax paid to another state (Tax-General Article, § 10-703).[4] State Taxation, a legal treatise, indicates that taxation of personal income by multiple states raises federal constitutional concerns under the Commerce Clause and that "states generally avoid these constitutional difficulties by providing their residents with a credit for personal income taxes imposed by other states on income derived from sources within those states."

If the District of Columbia becomes a state and begins taxing wages earned by Maryland residents in the new state, Maryland revenue would decrease as a result of tax credits claimed against the Maryland income tax for the income tax paid to the new state. Conversely, there would be no reciprocal agreement between Maryland and the new state, and residents of the new state would then also be subject to Maryland income tax on wages earned in Maryland. A much larger number of Maryland residents commute to the District, however, than vice versa, and consequently, Maryland would experience a significant net loss in revenue.

According to information from the U.S. Census Bureau's American Community Survey (ACS), in 2011, approximately 330,000 Maryland residents commuted to the District and approximately 39,000 District residents commuted to Maryland. Other U.S. Census Bureau information, from the bureau's Longitudinal Employer-Household Dynamics (LEHD) program, which is derived from separate data, indicates that, in 2011, 251,000 workers with primary jobs in the District lived in Maryland and 47,000 workers with primary jobs in Maryland lived in the District. Both the ACS and LEHD data have limitations. The LEHD data, for example, excludes certain jobs, including certain federal jobs and self-employment. The ACS and LEHD information, however, confirms that a significantly greater number of Maryland residents work in the District than vice versa.

Some Maryland residents who commute to the District likely work in the area that would become a federal enclave if a new state were created

and, therefore, would not be subject to a nonresident income tax imposed by the new state. This may lessen the disparity between the amount of revenue Maryland would lose to the new state and the revenue Maryland would gain from the new state's residents that work in Maryland, but Maryland's tax revenue loss should still be significant. A 2009 analysis published in State Tax Notes estimated that if a nonresident income tax were imposed in the District, $2.26 billion in tax revenue could be generated from the nonresidents working in the District if the District's existing tax rates were continued, and $1.31 billion could be generated if tax rates were lowered to a national average. Both the ACS and LEHD information indicates that Maryland residents make up a majority of the nonresidents working in the District.

[4] Under § 10-703 of the Tax-General Article, the credit only applies to the State income tax and not the county income tax. However, the Court of Appeals, in Comptroller v. Wynne, 431 Md. 147 (2013), recently held that the inapplicability of the tax credit to the county income tax with respect to a resident taxpayer's pass-through income from an S corporation violated the dormant Commerce Clause of the federal Constitution. The judgment has been stayed pending an appeal to the U.S. Supreme Court.

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