

# Washington D.C. Statehood - The Path to the Recuperation of Constitutional Rights

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**ABSTRACT:** Washington D.C has been, as the capital of the United States, at the center of world politics and global progressive reforms initiatives, thing which can make it very difficult to believe that there are still rights that are denied to citizen residents of the area. This issue has been visited and revisited many times, however, recently a statehood bill has been passed in the House of Representatives that has revived the movement that for so long sought to see it become a reality. To understand the possible solutions to the case at hand, research must be conducted of the origins and the original intent of the capital district.

**KEYWORDS:** statehood, self-governance, constitutional rights, self-determination, congressional representation

## **Introduction**

From its earliest conception, the creation of a federal district to serve as the nation's capital has not been without its faults. The structure of the District of Columbia's administrative organization has been under constant refinement for good reason; its residents have been and remain without representation in Congress, and only but recently were granted three votes in the Electoral College and the right to limited self-governance. To retrieve their constitutional rights, residents of D.C. have turned to the idea of Statehood in the belief that it is their only valid remedy. The early statehood movement started in the 1980s when the D.C. voters began an initiative to start the statehood process, however, these efforts came to no avail. After a long period of staleness, in 2016, Mayor Muriel Bowser called for a referendum which conveyed that more than 78% of D.C. voters are in favor of statehood (Ballotpedia 2016). The future of the District of Columbia is still uncertain; however, the inalienable rights of the residents have for too long been denied and need to be fully acknowledged if a compromise will be reached.

The first significant written mention of the necessity that a separate capital represented was in The Federalist No. 43 essay by James Madison. Among other current issues, it specifically addressed the desire of the government to have exclusive jurisdiction over a new national capital. In the essay, he stated that the new district capital's population "will have had their voice in the election of the government which is to exercise authority over them". This has been often quoted in the efforts of the D.C. Statehood movement. To understand what is the best course of action regarding the idea of Statehood, one must gain an understanding of the district's intended original purpose that it was meant to serve, as well as the many trials the city went through to be in the administrative state that it is today.

## **The Origins and Intended Purpose of Washington D.C.**

The Federalist No. 43 essay was published on January 23, 1788, under the Pseudonym Publius, however, the cries for a new national capital were first audible after the Pennsylvania Mutiny of 1783. During the course of this event, the Congress of the Confederation was forced to vacate the Independence Hall in Philadelphia due to a protest by 400 soldiers from the continental army. The refusal of the Pennsylvania Council to send help during this mutiny subsequently led to the emphasis of a need for the federal government to not rely on any one state for its security. A new district capital had to be under the exclusive control of the federal government.

The selection of the area of the new capital was selected and agreed upon by Thomas Jefferson, James Madison, and Alexander Hamilton. States from the north such as New Jersey and New York offered territories for the new capital finding it in their interest to have it near one of their large cities. As foreseeable, southern states also volunteered to give up territory for the capital in order to have it closer to their plantation farms and interests. Alexander Hamilton previously proposed that the federal government take up the debts incurred by the states over the duration of the revolutionary war. This would mean, however, that the southern states who had already paid off most of their debts would have had to assume part of the Northern share of the general debt. To balance this proposal, the southern states of Virginia and Maryland were selected for the location of the district capital.

The Residence Act was passed on July 9, 1790; it approved the creation of a new national capital on a location officially chosen by George Washington on the North bank of the Potomac River. President Washington also wished the city of Alexandria to be a part of the district, which led to Congress subsequently passing an amendment to the Residence Act in 1791. Members of Congress also added a provision in this amendment that would allow the erection of government buildings only on the Maryland side of the river Potomac. This was due to the general knowledge that Washington and his family-owned property outside and inside the city of Alexandria.

The capital was officially founded in 1791 on territories donated by the states of Virginia and Maryland. The practical organization of the city was decided in the District of Columbia Organic Act of 1801; however, this act was also the reason why the citizens who lived in D.C. lost their representation in Congress since they were no longer considered residents of Virginia and Maryland (DCVote n.d.). The immediate aftermath of the Organic Act of 1801 was that Congress took up proposals to revoke the disenfranchisement of the District's residents by receding territories to the states that just donated it. None of these proposals were in any way successful and were to be revisited at a later date. From 1791 to 1801, residents in the District were still allowed to contribute with votes in their respective former states, Virginia and Maryland. However, this abruptly ended with the Organic act.

### **The District's Position Questioned**

The city of Washington D.C. went through some very turbulent times during the events of the War of 1812, which very clearly revealed that the district's position remained a precarious one. The armed conflict between America and Great Britain and its allies originated from disputes over trading rights. The abuses of Great Britain were not limited only to trade-restrictive violations against the United States but continued with the impressment of seamen from American vessels into the British navy. The United States declared war on the date of June 18, to amend these injustices and validate its rightful place as a sovereign nation and a force to be reckoned with. Along with these reasons was also the goal to subdue Canada under American dominion. This would, at last, expunge the British Empire from the American continent and make it more difficult for them to attempt a reconquest of their former colonies. This movement was growing ever more popular amongst American leaders and politicians, having influential supporters such as Thomas Jefferson and the U.S. secretary of war, William Eustis. This enthusiasm to annex the Canadian provinces led to the invasion of the colony, later resulting in the considerable destruction of public buildings in the provincial capital of Upper Canada. This uncontrolled looting that took place under general Pike served as one of the principal reasons for the later burning of Washington D.C. by the British forces, which subsequently led to the district's position as the capital being questioned again.

On August 24, 1814, the British defeated American forces at the Battle of Bladensburg and were, therefore, free to enter Washington D.C. unopposed and proceed to pillage and burn it. The main target for the British arsonists was the United States Capitol building. The structure was symbolically the most important in the city and the most impressive. They did not manage to burn it to the ground as they have planned, however, the total losses were in excess of \$700,000. The

planned burning of Washington continues next to the White House, which withstood significant damage, but like the US Capitol, remained standing. Other buildings of significant importance such as the United States Treasury and the United States Department of War and Navy were also burnt down (Greenspan, 2018). The British soldiers were looking for money or any valuables in the United States Treasury building, however, they were not fortunate enough to find anything. With the burning of the city's important structures completed, and possibly motivated by the thunderstorm that came the day after, the British left the capital in its new dire state. Many in the public, in America and Europe, were shocked by the burning of Washington D.C. and condemned it as meaningless vandalism despite the British claims that it was only a retaliatory action.

Modern historical commentators demote the storm that followed after the burning of the capital, from its previous epithet as the savior of the city to a mere inconvenience to the British and an actual contributor to the further destruction of the city's structures. However, it is still disputed whether the British were planning to leave the city that early or were forced to do so by the storm. It may be that some public buildings such as the U.S. Patent Office were spared only because the British were rushing out of the way of the storm. The U.S. Patent Office later served as the meeting place for Congress between the period from September 1814 until December 1815. The decision on whether to move the capital to another region may have ended differently if, during that time, Congress would no longer have had a building in D.C. where it could assemble in.

The burning of the capital was not only a shock to the general American public and a major setback to the development of the city but also put the position of the capital in question. The dreadful state of the city emboldened previous critics of the capital's placement to start a movement of relocation. The said critics were congressmen from the North who would have rather placed the capital district in a larger Northern city such as Philadelphia. A similar debate to that in 1790 sparked between Southerners and Northerners on the same topic points, however, this time southern congressmen claimed that their reasoning was only to preserve the dignity of the Republic; this was meant to mask their real purpose which was, just as before, to keep the capital south of the Mason-Dixon line. In the year of 1790, Congress proclaimed in the Residence Act that the district capital on the north bank of the Potomac River will be the "permanent seat of the government of the United States". Due to the clearness of the constitution in this regard, the yet salvageable state of the district, and lack of a good reason to relocate, the House of Representatives decided to vote down the proposal by a margin of 83 to 54 on the date of September 21, 1814, effectively putting an end to the capital relocation debate.

### **The Virginia Retrocession and Its Implications**

However clear the constitution may be, in some cases exceptions have been made either due to necessity or ardent wish for alterations. On the date of July 10, 1846, President James K. Polk signed legislation allowing for the territory south of the Potomac to be returned to the state of Virginia. An important motivator for this change was that Alexandrians had lost representation in Congress in 1801, however, several other causes contributed to the birth of the retrocession movement. By the year 1830, Alexandria was not in an economic stalemate but had been declining steadily for some years. Besides the fact that Congress decided not to have any government buildings erected on the Virginian side of the Potomac River, it also neglected other ways of economic stimulus in the area such as investment in infrastructure (Musgrove 2017).

Without improvements in their infrastructure, it was hard for the Virginian port, a crucial part of the local economy, to compete with the port of Baltimore or even Georgetown. At this time there were rumors that Congress planned to outlaw slavery in the District of Columbia. This action would have seriously hampered the Alexandrian county's economy which was heavily based on the slave trade. By retrocession of its side of the capital district, the Virginia commonwealth would have gained two more representatives to fight its internal struggle with its own abolitionist movement (Virginiaplaces 2019).

It took upward of six years for the Alexandrians to persuade the Virginian legislature to accept retrocession, but only if Congress approves of the motion as well. Congress ratified the legislation that would allow the retrocession of Alexandria county on the date of July 9, 1846. This was followed by a referendum, as agreed upon, to determine whether the residents were in favor of this change. The referendum results showed that a majority of the residents from Alexandria city were in favor of retrocession. However, things were different in Alexandria county where a majority decided to remain part of the District of Columbia. This was promptly overlooked by President James Polk who ratified the referendum and allowed retrocession on September 7, 1846. Although the entire movement originated with them, the Virginia legislature, took months to debate the retrocession, hoping to give the impression that they included the concerns and opinions of the Alexandria county residents in the final verdict (Virginiaplaces 2019).

The Virginia retrocession decision of 1847 has been under trial many times since its execution. When the territories have been ceded to the federal government by the states of Maryland and Virginia, they pledged to “forever cede and relinquish” their claims to the donated land. This contractual infringement has led many historians to consider the decision of retrocession an unconstitutional one. Some presidents have tried to undo this action but lacked the support to do so. Abraham Lincoln attempted to reintegrate Alexandria county into the federal district, however, he failed because of a lack of support in Congress. While Lincoln used security reasons as justification for re-annexation, President Taft directly called the retrocession unconstitutional and tried to have it added back to D.C.

### **Statehood Alternatives**

The retrocession of Virginia, although often questioned whether constitutional, has managed to directly resolve the issue of no representation in Congress for the residents of Alexandria county. This has, in turn, lead to suggestions that Maryland should also proceed to take the same action, and reintegrate its previously held territories into itself. The first official mention of this idea was in 1839 when congressmen proposed the retrocession of only but a part of the district back into Maryland, however, without avail. Later in 2001, Republican lawmakers sponsored a bill that would return to Maryland all previously donated territories and subsequently, giving republicans two more votes in Congress. The only remaining territories in control of the Federal government would have been the ones included in the national mall, region which was to be called the "National Capital Service Area". With little support from the democrats, the bill failed to pass.

There are a few problems that would arise if Maryland were to annex the remainder of the district's territories. Just as with Virginia, this annexation could be considered unconstitutional, due to its contractual breach of the “forever cede” section of the clause. Maryland might also not welcome back the territory it so long ago relinquished. Previous polls have shown that Maryland citizens are not enthusiastic about the proposal to retrieve the district's territories. Although the retrocession could still be achieved without the consent of the state of Maryland, it would require a constitutional amendment; a major step to accomplish something that would potentially please none of the parties involved.

Another way residents of Washington D.C. could reacquire their representation in Congress would be if they were to be treated as Maryland residents. The District of Columbia Voting Rights Restoration Act of 2004 would have accomplished this without hampering the organization of the city. Albeit a valid option to return voting rights, it lacked the support it needed to become legislation.

### **Hard-fought for Progress**

The structure of D.C.'s local government has been subject to change ever since its inception. The Organic Act of 1871 had done away with the territorial subdivisions of the previous act and had

united the district territories under a single local government (DCVote, n.d.). The new leader of the city was a Governor appointed by the President. The short-lived position of governor of D.C. was plagued with corruption and incompetency. The next nine decades after the dissolution of the governancy saw direct mayor appointments by the president without the consent of the residents. The names of the mayors changed from governors, board members, and commissionaires but one thing remained the same until 1973; none of them were voted in office by the local population.

Eventually, in the year 1973, Congress passed the home rule act which allowed residents to elect the local government that was to preside over them. This is rightfully considered a step forward to regaining the rights took away after the Organic act of 1801, however, Congress still has too much direct control of the city. Congressional oversight over the city is too vast in its capabilities, leaving the local government with very little that it can do without arbitration. The city still lacks the envisioned autonomy that James Madison thought it should have over its presiding local government.

In the year 1961, Congress finally granted D.C. the right to vote in the Presidential elections, by ratifying an amendment to the constitution. Section one of the Twenty-third Amendment to the United States Constitution states that “The District constituting the seat of Government of the United States shall appoint in such manner as the Congress may direct:

A number of electors of President and Vice President equal to the whole number of Senators and Representatives in Congress to which the District would be entitled if it were a State, but in no event more than the least populous State; they shall be in addition to those appointed by the States, but they shall be considered, for the purposes of the election of President and Vice President, to be electors appointed by a State; and they shall meet in the District and perform such duties as provided by the twelfth article of amendment.”

In other words, Congress is more than willing to treat the District of Columbia as if it were a state in specific cases but not in others. Statehood privileges are appropriated by the government to D.C in some cases and in others, depending on convenience or interest, are not. For instance, during the 2020 COVID-19 pandemic crisis, Washington D.C. received considerably less funding than the states. To combat COVID-19, each of the 50 states received upwards of \$1.25 billion while Washington D.C. received a much smaller amount of about \$500 million. This was an appalling case of injustice when you take into account the fact that D.C. had, at that point, more COVID-19 cases than 19 other states.

## **Conclusions**

On June 26, 2020, the House of Representatives passed a bill with a vote of 232-180 to make D.C. the 51<sup>st</sup> state. This marked the first time when a chamber of Congress passed a motion on Washington D.C statehood. Although the bill is unlikely to go any further than this at this point in time, it represents an important step forward to resolve this seemingly unending issue. This bill is in concord with the 2016 referendum that has made it clear that the will of the District of Columbia’s residents is to receive the status of statehood. This noble goal should be pursued, however, the exact form of local government present in D.C. is not as important as restoring the unalienable rights that have been taken away after 1801.

Taking into consideration the fact that D.C. is an autonomous city in name only, it has been made clear that the necessity for D.C. to be treated as an equal to all other states is of much greater importance than the changing of its government form, ostensibly to that of a state. For the past two centuries, Congress has found it difficult to come up with a remedy for the injustices done to the residents of Washington D.C., either out of incompetency, corruption, other hidden interests, and sometimes all these together. However, it is no longer possible to ignore the voices of D.C.’s residents as they have proven to be one of the country’s most capable and resourceful communities.

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