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Will: The D.C. statehood pretense

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Advocates for statehood for the District of Columbia rally near the Supreme Court and Capitol prior to a House of Representatives hearing on creating a fifty-first state March 22.

The Democratic-controlled Congress will soon try to transform part of the District of Columbia, which today is about one-eighteenth the size of Rhode Island but 18.9% larger than Denver International Airport, into a state. This will involve theatrical and constitutional difficulties.

The Democrats' theatrical challenge will be to keep straight faces while insisting that their motivation is altruistic: indignation about D.C. residents paying federal taxes without being fully represented in Congress.

In 1984, President Ronald Reagan came within 3,761 Minnesota votes of carrying all 50 states, but won less than 14% of Washington D.C. votes. In 2020, Donald Trump won 5.4% of the D.C. vote. San Francisco will never vote Republican but will do so before D.C. does. Democrats insist, however, that this is irrelevant to them: Their interest is the inviolable principle "no taxation without representation."

It became inviolable recently. After 2009, when Democrats controlled Congress and the presidency, they did not act on D.C. statehood. Then, however, Democrats had 57 senators. Today, they have only 50. Does *anyone* believe that if D.C. were as incorrigibly Republican as it is Democratic, Democrats would favor D.C. statehood, which would mean two more Republican senators until the last trumpet shall sound?

There is, however, a constitutional impediment to D.C. statehood-by-statute. Paradoxically, the impediment was created to enlarge D.C.'s political rights and importance.

The Constitution's Framers mandated creation of a seat of the federal government "not exceeding ten miles square" over which Congress would "exercise exclusive legislation." This was done with 63 square miles from Maryland and 37 square miles from Virginia, which got its land back in 1847. In 1961, ratification of the 23rd Amendment — the impediment — gave District residents the right to dispose presidential electoral votes no more numerous than those of "the least populous state."

Historian John Steele Gordon, writing in *City Journal*, notes that in 1978 Congress sent to the states for ratification a constitutional amendment that would have treated the District as a state in federal elections, meaning it would have two senators and at least one House member. The amendment fell 22 states short of the 38 required for ratification.

A 2019 Gallup poll showed a national majority opposed to D.C. statehood. Many more than 13 states will probably always oppose D.C. statehood — for partisan reasons, or because they think D.C. as a state is facially implausible, or because they oppose the dilution of their senators' powers (by becoming two of 102 rather than of 100). So, congressional Democrats now propose

legislatively reducing D.C. to a tiny enclave around the National Mall, and declaring the rest of the District a state.

But what about the 23rd Amendment? Because 38 states will not vote to repeal it in order confer statehood on D.C., Democrats propose an almost inscrutable process to *legislatively* transfer to the new “state” the electoral votes *constitutionally* given to the District, which would be reduced to the mini enclave whose few hundred residents would vote in their “state of most recent domicile.” If you are confused, you understand.

But as the Cato Institute’s Roger Pilon has patiently explained to Congress, *what was done by constitutional amendment cannot be undone by legislation*. In 1961, a Democratic-controlled Congress understood that a constitutional amendment was necessary to give D.C. presidential electoral votes. In 1978, a Democratic-controlled Congress understood that an amendment was necessary to enlarge D.C.’s representation. But in 2021, a Democratic-controlled Congress is resorting to a convoluted process to vitiate the Founders’ intent and evade constitutional due process. What, Pilon asks, has changed?

Democrats have. Their devotion to constitutional propriety expired three months ago, at noon, Jan. 20.

Historian Gordon proposes a constitutional amendment that would confound Democrats by giving them what they say they want. It would repeal the 23rd Amendment and say: “For purposes of participating in federal elections only, the citizens of the seat of government of the United States shall be regarded and counted as being citizens of the state that ceded the land to the Government of the United States.”

D.C. residents would vote in Maryland presidential, U.S. Senate and U.S. House elections. Maryland, by acquiring approximately 700,000 citizens-for-voting-purposes, would gain an electoral vote. D.C. residents, transformed into Maryland voters, would cheerfully pay their federal taxes because they would vote for 2% of U.S. senators and 1/435th of the House membership. And Democrats’ primary interest — their altruist dedication to the inviolable principal of no taxation without representation — would be affirmed, so they would be serene. Right? Of course not.