



Statement of Kenneth R. Thomas
Legislative Attorney, American Law Division
Congressional Research Service

Before

Committee on Homeland Security and Governmental Affairs

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on

S.132, the New Columbia Admissions Act

Chairman Carper, Ranking Member Coburn, and members of the Committee:

My name is Ken Thomas. I am a Legislative Attorney with the American Law Division of the Congressional Research Service at the Library of Congress. I would like to thank you for inviting me to testify today regarding the Committee's consideration of S.132, the New Columbia Admissions Act. My testimony today will be directed to the issue of whether Congress has the constitutional authority to implement S. 132, which would create a state called New Columbia out of a portion of the land that currently constitutes the District of Columbia. I will not be addressing whether the creation of this new state is consistent with historical traditions regarding the creation of new states, nor will I be addressing what policy considerations Congress might wish to evaluate in examining this proposal.

Residents of the District of Columbia have never had more than limited representation in Congress.¹ Over the years, however, various approaches have been suggested to provide representation to these

¹ The District has never had any directly elected representation in the Senate, and has been represented by a nonvoting Delegate (continued...)

residents in the House and the Senate. For instance, an effort was made over thirty years ago to amend the Constitution for that purpose. In 1978, H.J. Res. 554 was approved by two-thirds of both the House and the Senate, and was sent to the states. The text of the proposed constitutional amendment provided, in part, that “[f]or purposes of representation in the Congress, election of the President and Vice President, and Article V of this Constitution, the District constituting the seat of government of the United States shall be treated as though it were a State.”² The Amendment was ratified by sixteen states, but expired in 1985 without winning the support of the requisite thirty-eight states.³

Since the expiration of this proposed Amendment, a variety of other proposals have been made to give the District of Columbia representation in the full House. In general, these proposals would avoid the more procedurally difficult route of amending the Constitution, but would be implemented by statute. Thus, for instance, bills have been introduced and considered which would have (1) granted the Delegate for the District of Columbia the authority to vote in the House of Representatives; (2) retroceded a portion of the District to the State of Maryland; or (3) allowed District residents to vote in Maryland for their representatives to the Senate and House. Efforts to pass these bills have been unsuccessful, with some arguing that these approaches raise constitutional and/or policy concerns.⁴

S. 132 would provide for an alternative option, which is to designate that the populated portions of the District of Columbia be admitted to the Union as a new state. This proposal raises a variety of novel constitutional issues. The primary concern that has been expressed regarding the creation of a “State of New Columbia” out of the existing capital is that it is inconsistent with the unique status of the District. The District of Columbia was established under the District and Federal Enclaves Clause⁵ of the Constitution, the relevant portion of which authorizes Congress to establish a location for a federal seat of government that is under Congress’s exclusive legislative jurisdiction. By creating a city to house the federal government, the Founding Fathers appear to have intentionally created an exception to the Constitution’s structure for representative government. Because representation in Congress is limited to states, citizens of the District of Columbia are not currently represented in the Senate or the House. Thus, concerns about this lack of representation have been a topic of debate almost since the establishment of the District.

The question of whether Congress has the authority to admit the State of New Columbia under S. 132 implicates a number of constitutional provisions. In particular, a court evaluating the constitutionality of S. 132 might consider the Admissions Clause,⁶ the District and Federal Enclaves Clause, and the Twenty-Third Amendment.⁷ In analyzing these constitutional provisions, it is important to remember that the Constitution is made up of both congressional authorities and limitations on those authorities. So, perhaps the first provision that a court would consider in evaluating this proposal is the Admissions Clause, which provides Congress the authority to admit new states to the Union.

(...continued)

in the House of Representatives for only a short portion of its over 200-year existence. See CRS Report RL33830, *District of Columbia Voting Representation in Congress: An Analysis of Legislative Proposals*, by Eugene Boyd.

² See Kenneth Thomas, Larry Eig, CONSTITUTION OF THE UNITED STATES OF AMERICA: ANALYSIS AND INTERPRETATION 51 (2012 ed.).

³ Id.

⁴ See CRS Report RL33830, *supra* note 1; CRS Report RL33824, *The Constitutionality of Awarding the Delegate for the District of Columbia a Vote in the House of Representatives or the Committee of the Whole*, by Kenneth R. Thomas.

⁵ U.S. Const. Art. I, § 8, cl. 17.

⁶ U.S. Const. Art. IV, § 3, cl. 1.

⁷ U.S. Const. Amend. XXIII.

The Admissions Clause

The Admissions Clause provides 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 States, without the Consent of the Legislatures of the States concerned as well as of the Congress.

The power of Congress over the statehood admission process appears to be committed to Congress's discretion. There have been no significant challenges to the constitutionality of Congress having granted statehood, and the Supreme Court has provided *in dicta* that decisions regarding the territorial composition of a state are not generally reviewable by the judiciary.⁸ The Admissions Clause does not specify the procedure by which statehood is to be granted, and in fact, the methods by which Congress has chosen to admit states have varied dramatically.⁹ The only significant prerequisite for admission of a state appears to be that a state may be admitted only after the adoption of a state constitution, thus ensuring compliance with the Constitution's requirement that the United States "guarantee to every State in this Union a Republican Form of Government."¹⁰ Further, the one explicit textual limitation in the Constitution to admission of a state - that no new state be formed or erected within the jurisdiction of any other state¹¹ - does not appear to be relevant here.

The Admissions Clause also contains a procedural requirement that, if a new state is to be made up of "Parts of States," the state whose land is being used must consent to such admission. As this requirement only applies to "Part of States," it would, at first glance, also not appear applicable here, as the area that would form the State of New Columbia would come from the federal government, not a state. An argument has been made, however, that Maryland ceded the lands making up the District of Columbia to the federal government with the understanding that the land would only be used for the creation of such a District.¹² Thus, the argument continues, in the event that the ceded land is not used for such purpose, Maryland maintains a reversionary interest by which it could claim the land. Under this theory, Maryland's permission must be sought and obtained before the State of New Columbia could be declared.

On its face, there would appear to be no constitutional bar to Maryland passing a law that transferred any remaining reversionary interest in the District of Columbia. On the other hand, it is not clear that any such reversionary interest exists.¹³ After initial legislation determining where such land was to be situated

⁸ *Phillips v. Payne*, 92 U.S. 130, 132 (1875) ("In cases involving the action of the political departments of the government, the judiciary is bound by such action.").

⁹ See Peter B. Sheridan, *Brief History of Statehood Admission Process* (April 2, 1985) (Congressional Research Service memorandum), reprinted in 131 Cong. Rec. S4441 (daily ed. April 15, 1985). Although the Admissions Clause does not define the procedure by which a territory becomes a state, the usual procedure for admission is: (1) the people of the territory through their territorial legislature petition Congress; (2) Congress passes an "enabling act" that, when signed by the President, authorizes the territory to frame a constitution; (3) the territory passes a constitution; and (4) Congress passes an act of admission approved by the President. Some states, however, have followed different procedures. Under the alternative "Tennessee Plan," territories draft a constitution and elect "Senators" and "Representatives" without any authorization from Congress. Statehood is then affirmed by congressional vote.

¹⁰ U.S. Const. Art. IV, § 4.

¹¹ U.S. Const. Art. IV, § 3, cl. 1.

¹² Office of Legal Policy, U.S. Dep't of Justice, Report to the Attorney General on the Question of Statehood for the District of Columbia (hereinafter OLP Report) (available at <https://www.ncjrs.gov/pdffiles1/Digitization/115093NCJRS.pdf>).

¹³ See Peter Raven-Hansen, *The Constitutionality of D.C. Statehood*, 60 Geo. Wash. L. Rev. 160, 180-83 (1991).

was passed by Maryland and the United States,¹⁴ Maryland passed a statute ceding the specific lands in question. The language of that cession does not appear to contemplate a reversionary interest:

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 forever ceded and relinquished to the congress and government of the United States, in 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 the government of the United States.¹⁵

Property law in Maryland, which would appear to be the controlling law used to evaluate a real property transfer in the state, does not favor implied reversionary interests. “Conditions subsequent [are] not favored in the law, because the breach of such a condition causes a forfeiture and the law is averse to forfeitures.”¹⁶ Thus, the Maryland Court of Appeals has gone to “great lengths” to avoid finding that a property transfer implies a condition subsequent which would result in forfeiture.¹⁷ To avoid this, the court insists on “words indicating an intent that the grant is to be void if the condition is not carried out.”¹⁸ Thus, the language of the statute transferring Maryland’s land to the federal government for the creation of the District of Columbia would appear to be insufficient to indicate an intent to maintain a reversionary interest.

One might argue, however, that the language of the Maryland statute, which makes the transfer of land “pursuant to the tenor and effect of the eighth section of the first article of the constitution of the government of the United States,” suggests that the transfer was made for the limited purpose of creating the District of Columbia under the District and Federal Enclaves Clause (found in section 8 of Article I). However, to the extent that the District and Federal Enclaves Clause, as discussed below, gives Congress the authority to both receive lands for the District of Columbia and subsequently dispose of them, the fact that the land grant was made pursuant to that Clause would appear to contemplate this possible result. Thus, the ultimate question as to what limits on congressional power exist regarding the land in question would appear to be determined by the District and Federal Enclaves Clause.

The District and Federal Enclaves Clause

The District and Federal Enclaves Clause, Article I, Section 8, Cl. 17 of the United States Constitution, provides that:

“[Congress shall have 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 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.

¹⁴ In 1788, the General Assembly of Maryland authorized its representatives in Congress “to cede to the congress of the United States, any district in this state, not exceeding ten miles square, which the congress may fix upon and accept for the seat of government of the United States.” An Act to Cede to Congress a District of Ten Miles Square in This State for the Seat of Government of the United States, 2 Kilty Laws of Md., ch. 46 (1788). In 1790, Congress accepted Maryland’s offer of cession with only a general indication of the land to be accepted. An Act for Establishing the Temporary and Permanent Seat of the Government of the United States, 1 Stat. 130 (1790). See *Adams v. Clinton*, 90 F. Supp. 2d 35, 57-58 (D.D.C. 2000).

¹⁵ 2 Kilty Laws of Maryland 1791, ch. 45 (1800) as quoted in *Adams v. Clinton*, 90 F. Supp. 2d at 58.

¹⁶ *Gray v. Harriet Lane Home for Invalid Children*, 64 A.2d 102, 108 (Md. 1949).

¹⁷ *Id.*

¹⁸ *Id.*

The District and Federal Enclaves Clause establishes the procedure for the creation of a federal seat of government, as well as other federal enclaves within the United States that are suitable for military bases or other government facilities. The District and Federal Enclaves Clause also provides that Congress has “exclusive legislation in all Cases whatsoever” over these lands. Based on this language, courts have found that Congress has “plenary” or the blended powers of both a local and national legislature over these places.¹⁹ Because of this plenary power, some ordinary constitutional restrictions do not operate. For instance, when creating local courts of local jurisdiction in the District, Congress acts pursuant to its legislative powers under the District and Enclaves Clause, so it does not need to create courts that comply with Article III court requirements.²⁰

One concern that has been raised about statehood for the District of Columbia is whether Congress has the authority under the District and Federal Enclaves Clause to dispose of a significant part of the District. Under this argument, there is a minimum size for the District of Columbia that Congress is required to maintain in order to fulfill the purpose for the creation of the District. Further, the argument goes, once Congress has determined the necessary amount of land required and has accepted those ceded lands from the states, it cannot dispose of any of those lands, regardless of whether there is a continued need for them. Under this argument, the borders of the District of Columbia are irrevocably fixed once the seat of government has been established.²¹

It should be noted, however, that the District and Federal Enclaves Clause has no textual limitation that prevents Congress from reducing the amount of land associated with either the District of Columbia or with other federal enclaves. Further, there is no case law suggesting that such limitation exists, despite the fact that the borders of the District have been reduced since the land was ceded to the federal government. The only explicit limitation provided in the Clause is that Congress shall not establish a district larger than ten miles square, and the existence of this upper limit suggests that no specific lower limit exists. The flexibility provided to Congress to choose not only the location, but also the size of such district, suggests that the Founding Fathers intended to leave the determination of the appropriate size and place of the District to Congress.

There is also some indication that the Founding Fathers anticipated the need for the District of Columbia to vary in size or location after its formation. In the Constitutional Convention, Charles Pinckney of South Carolina suggested that the Committee on Detail report out language authorizing Congress “to fix and permanently establish the seat of Government of the [United States].”²² Although part of his proposal was eventually incorporated into what became the District Clause, the word “permanently” was dropped in committee.²³ This suggests that the Founding Fathers intended for Congress to be left with the flexibility to move the capital to another location if events required such.²⁴

In practice, Congress has reduced the boundaries of the District of Columbia before. In 1791, soon after Congress accepted the cession of land to create the District, the First Congress amended the act of

¹⁹ *Kendall v. United States ex rel. Stokes*, 37 U.S. (12 Pet.) 524, 619 (1838); *Shoemaker v. United States*, 147 U.S. 282, 300 (1893); *Atlantic Cleaners & Dyers v. United States*, 286 U.S. 427, 435 (1932); *O'Donoghue v. United States*, 289 U.S. 516, 518 (1933).

²⁰ *Palmore v. United States*, 411 U.S. 389 (1973). *See also* *Swain v. Pressley*, 430 U.S. 372 (1977).

²¹ OLP Report at 18-21, *supra*, note 12.

²² James Madison, *The Debates in the Federal Convention of 1787 Which Framed the Constitution of the United States* (Gaillard Hunt & James Brown Scott eds., 1920).

²³ Raven-Hansen, *supra* note 13, at 168.

²⁴ *See also* THE FEDERALIST, No. 43 (J. Cooke ed. 1961) (“[T]he gradual accumulation of public improvements at the stationary residence of the government would be both too great a public pledge to be left in the hands of a single State, and would create . . . many obstacles to a removal of the government . . .”) (emphasis added).

acceptance, changing the southern boundary of the District.²⁵ This amendment, which was voted for by James Madison and other framers of the Constitution, amended the act which had accepted cession²⁶ to include portions of what are now Anacostia and Alexandria.²⁷ This strengthens the argument that Congress has the authority to vary the size of the District of Columbia, as the Supreme Court has held that acts passed by the first Congress, which contained many Members who had taken part in framing the Constitution, have special significance in discerning constitutional meaning.²⁸

In 1846, Congress provided for a more significant alteration of the District of Columbia boundaries. Based on a variety of factors, including economic stagnation exacerbated by the decision not to locate federal buildings across the Potomac River, efforts were made to retrocede to Virginia that portion of the District formerly within Virginia's borders.²⁹ Congress subsequently passed a bill providing for the retrocession of close to one-third of the District of Columbia back to Virginia.³⁰ The constitutionality of the retrocession did come before the Supreme Court in the case of *Phillips v. Payne*,³¹ but the Court in that case held that the passage of thirty years from the retrocession to the constitutional challenge "estopped" the plaintiff and prevented the Court from reaching the merits of the case.

It should also be noted the language of the District and Federal Enclaves Clause provides that Congress shall "exercise like Authority" as is exercised over the District "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." Further, Article IV, section 3, cl. 2 provides that Congress shall have "[p]ower to dispose of . . . Property belonging to the United States," and there are numerous instances where the United States has ceased to exercise ceded jurisdiction over federal enclaves by retrocession³² or even by transfer of lands to another state.³³ Many of these transfers involved only partial retrocession of jurisdiction, for purposes such as providing voting rights for inhabitants of an enclave³⁴ or to allow states to police the highways of enclaves.³⁵ There have, however, been instances in which the federal government has ceded all legislative jurisdiction over a federal enclave to a state,³⁶ and the Supreme Court has suggested that there are few limitations on agreements between states and the federal

²⁵ An Act to amend "An act for establishing the temporary and permanent seat of the Government of the United States," Act of March 3, 1791, 1 Stat. 214.

²⁶ Act of July 16, 1790, ch. 28, 1 Stat. 130.

²⁷ Raven-Hansen, *supra* note 113, at 169.

²⁸ *Marsh v. Chambers*, 463 U.S. 783, 790 (1983).

²⁹ Mark David Richards, *The Debates over the Retrocession of the District of Columbia, 1801-2004*, Washington History, Vol. 16, No. 1 at 54, 60-62 (Spring/Summer, 2004).

³⁰ An Act to Retrocede the County of Alexandria, in the District of Columbia, to the State of Virginia, Act of July 9, ch. 351846, 9 Stat. 35.

³¹ 92 U.S. 130, 132 (1875).

³² See U.S. Interdepartmental Comm. For the Study of Jurisdiction Over Federal Areas Within the States, at 87-88, 90-93 in 2 JURISDICTION OVER FEDERAL AREAS WITHIN THE STATES: A TEXT OF THE LAW OF LEGISLATIVE JURISDICTION (1957) (available at <http://babel.hathitrust.org/cgi/pt?id=mdp.39015053597798;view=1up;seq=1>).

³³ See, e.g. Act of Feb. 22, 1869, 44 Stat. 1176 (ceding to Virginia the authority to police an area originally ceded to the United States from Maryland).

³⁴ *Id.* at 90-93.

³⁵ *Id.* at 93-94.

³⁶ *Id.* at 89. See 66 Pub. L. 395, 41 Stat. 1439 (1921) (retroceding land acquired by the United States to house government employees to Virginia); 81 Pub. L. 14, 63 Stat. 11 (1949) (retroceding Los Alamos Atomic Energy Commission area to New Mexico); Public Law 83-704, 68 Stat. 961 (1954) (retroceding jurisdiction over Atomic Energy Commission land at Sandia Base, Albuquerque to New Mexico).

government as to how legislative authority over lands may be allocated.³⁷ Arguably, if Congress has significant discretion in the acquisition and disposal of federal enclaves, then it has “like authority” regarding the District itself.

Finally, concerns have been raised that the withdrawal of the populated areas of the District of Columbia into the proposed State of New Columbia is inconsistent with the intent of the District and Federal Enclaves Clause, as it would leave the federal government dependent on the State of New Columbia’s infrastructure and services for protection of the health and safety of federal employees, officers, and elected officials. This argument is based on the assertion that the District Clause was intended to completely remove a new federal Capital from the control of any state, motivated in part by a desire to avoid a repeat of the humiliation suffered by the Continental Congress on June 21, 1783. In that incident, some eighty soldiers marched on Congress, which was sitting in Philadelphia, and physically threatened and verbally abused the Members. Neither municipal nor state authorities would take action to protect the Members of Congress,³⁸ and the Members were forced to flee the city.³⁹

Beyond establishing a geographical enclave with a public health and safety infrastructure, it seems clear that the Founding Fathers also anticipated that the District of Columbia would have permanent local residents. James Madison, writing in *The Federalist*, assumed that there would be inhabitants at the seat of government who would have “their voice in the election of the government which is to exercise authority over them, as a municipal legislature for all local purposes, derived from their own suffrages, will of course be allowed them. . . .”⁴⁰ At the time of the establishment of the District of Columbia, however, permanent residents totaled just over 8,000, so the relevance of a sizable local population to support the purposes of the District and Federal Enclaves Clause is not clear. Further, the fact that many federal workers currently live in Maryland and Virginia would seem to diminish the significance of how many inhabitants must reside in the District of Columbia.

The ultimate question here would seem to be whether there would be sufficient infrastructure and services within the District of Columbia to meet the needs of the federal government after the admission of the State of New Columbia. The concern would be that, if the District of Columbia’s public safety infrastructure and other services were transferred to the State of New Columbia, this would make the federal government so dependent on the new state that it would defeat the purpose of the District and Federal Enclaves Clause.

³⁷ *Fort Leavenworth Railroad Co. v. Lowe*, 114 U.S. 525, 541-42 (1885). In *Lowe*, the Court stated that:

[T]he state and general government, may deal with each other in any way they may deem best to carry out the purposes of the constitution. It is for the protection and interests of the states, their people and property, as well as for the protection and interests of the people generally of the United States, that forts, arsenals, and other buildings for public uses are constructed within the states. As instrumentalities for the execution of the powers of the general government, they are, as already said, exempt from such control of the states as would defeat or impair their use for those purposes; and if, to their more effective use, a cession of legislative authority and political jurisdiction by the state would be desirable, we do not perceive any objection to its grant by the legislature of the state.

³⁸ J. Fiske, *THE CRITICAL PERIOD OF AMERICAN HISTORY, 1783-1789*, at 112-113 (1888); W. Tindall, *THE ORIGIN AND GOVERNMENT OF THE DISTRICT OF COLUMBIA*, at 31-36 (1903).

³⁹ Thus, Madison noted that “[t]he indispensable necessity of complete authority at the seat of government, carries its own evidence with it. . . . Without it, not only the public authority might be insulted and its proceedings interrupted with impunity, but a dependence of the members of the general government on the State comprehending the seat of government, for protection in the exercise of their duty, might bring on the national council an imputation of awe or influence, equally dishonorable to the government and dissatisfactory to the other members of the confederacy.” *THE FEDERALIST*, No. 43 at 288-89 (J. Cooke ed. 1961). See also 3 J. Story, *COMMENTARIES ON THE CONSTITUTION OF THE UNITED STATES* 1213, 1214 (1833).

⁴⁰ *THE FEDERALIST*, No. 43 at 289 (J. Cooke ed. 1961).

An evaluation of the infrastructure and services that the current District of Columbia provides the federal government is beyond the scope of my testimony today, as is what federal infrastructure and services would be available in the District of Columbia after the State of New Columbia was established under S. 132. Clearly, the federal government has authority to provide for its own infrastructure and service, and to some extent the federal government has already done so. However, it is also the case that it might be difficult or impractical to replicate the infrastructure or services currently provided by the existing District of Columbia.

How would the courts be likely to resolve this issue? There appears to be little or no case law addressing whether the federal courts would consider the size of the District of Columbia a decision that is within the courts' purview. Certainly, the decision as to whether the State of New Columbia was sufficiently populous or of sufficient size to be admitted under the Admissions Clause might evade court review.⁴¹ Whether the court would be similarly deferential to a decision to reduce the size of the District of Columbia is not clear, but it is also difficult to envision the standards under which the courts would make such an evaluation. One would assume, however, that the courts would provide some deference if Congress were to determine that sufficient infrastructure and services could be provided within a smaller portion of the District of Columbia so as to avoid unnecessary influence from the surrounding states.

The Twenty-Third Amendment

Another concern that has been expressed about granting D.C. statehood is that such a statute would be incompatible with the Twenty-Third Amendment. The Twenty-Third Amendment provides that:

Sec. 1. 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.

Sec. 2. The Congress shall have power to enforce this article by appropriate legislation.

The purpose of this amendment was to provide the citizens of the District of Columbia with the right to vote in the national elections for President and Vice President of the United States. It gives District citizens the right to choose presidential electors who, along with electors from the states, would participate in electing the President and Vice President. As noted in the associated House Report, however, the Amendment would "perpetuate recognition of the unique status of the District as the seat of Federal Government under the exclusive legislative control of Congress."⁴²

Now, the Twenty-Third Amendment does not textually appear to address either the power of Congress to admit states or the power of Congress under the District and Federal Enclaves Clause to dispose of property. Rather the concern is that admission of the State of New Columbia, by depriving the District of Columbia of a local population, would either make the Twenty-Third Amendment a "dead letter" or that it would leave the electoral franchise to the few persons living in the new District of Columbia, such as the President of the United States and his family.

⁴¹ See discussion accompanying footnotes 8-10, *supra*.

⁴² H.R. Rep. No. 1698, 86th Cong. 2d Sess. 1, 2 (1960).

The first concern, that the Twenty-Third Amendment would be rendered a “dead letter” by the passage of a statute, does not appear to be of constitutional import. In general, it is the case that the Constitution cannot be amended by a statute. However, there appears to be no such conflict if a properly authorized federal statute has the practical result that a constitutional provision would fall into disuse. For instance, the Constitution provides that states have authority to establish the time, place and manner for the holding of U.S. House and Senate elections, subject to congressional revision.⁴³ The allocation of this power to the state, however, would not appear to prevent Congress from enacting comprehensive electoral regulations, occupying the legislative field, and for practical purposes making the states’ power to regulate elections inoperative.

A more significant question is whether residents of the new federal enclave would be authorized to exercise the three electoral votes allocated to the residents of the District of Columbia. For instance, the White House, which would be located in the District of Columbia after passage of the S. 132, serves as the official residence of the President and his family, and would presumably continue to do so after the admission of the State of New Columbia. Now, it would appear that the mechanism for exercising the electoral franchise of the Twenty-Third Amendment would no longer exist after the passage of S. 132, as § 203 of the proposed bill would repeal the implementing legislation for that Amendment. In theory, however, a President and his family could bring a law suit under the Twenty-Third Amendment, seeking to mandamus the federal government to establish a mechanism for such vote to be effectuated. Thus, the possibility remains that a court could provide for this electoral franchise to continue to be exercised, allowing any residents remaining in the District of Columbia to vote for three electors for the Electoral College. It is not clear, however, whether such a law suit is likely to be brought.

⁴³ U.S. Const. Art. I, § 4, cl. 1.