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## Democratic Capital: A Voting Rights Surge in Washington Could Strengthen the Constitution for Everyone

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## DEMOCRATIC CAPITAL: A VOTING RIGHTS SURGE IN WASHINGTON COULD STRENGTHEN THE CONSTITUTION FOR EVERYONE

Jamin Raskin\*

If the game runs sometimes against us at home, we must have patience till luck turns, and then we shall have an opportunity of winning back the *principles* we have lost. For this is a game where principles are the stake.

—Thomas Jefferson<sup>1</sup>

### I. DWINDLING OPTIONS FOR BRINGING CONGRESSIONAL REPRESENTATION TO DISENFRANCHISED AMERICANS IN D.C.

On the long, hard road to political equality with the people of the fifty states, the citizens of Washington, D.C. are running out of options. The modern “home rule” system has been frustrating for several reasons, but its worst feature has been the continuing denial to the local population of equal voting representation in Congress.<sup>2</sup> This Pennsylvania Avenue freeze-out translates into a haughty Congressional indifference to the political interests and priorities of the District population, witness a sequence of anti-abortion, antigay rights, and antistatehood riders attached to the District’s budget over the years<sup>3</sup> and, most recently, the trampling of the District’s interests in the government shut-down of October 2013.<sup>4</sup> Meantime, the business of national legislative

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<sup>1</sup> Letter from Thomas Jefferson to John Taylor (June 1, 1778), in 1 JEFFERSON’S LETTERS, at 188 (Willson Whitman ed., E.M. Hale & Co. 1940).

<sup>2</sup> See Mary M. Cheh, *Theories of Representation: For the District of Columbia, Only Statehood Will Do*, 23 WM. & MARY BILL RTS. J. 65, 77–78 nn.101–07 (noting that the Home Rule Act reserves to Congress power over the selection of D.C. judges, the management of certain municipal operations, and the passage of non-resident income taxes, and that it does not provide for the enfranchisement of D.C. residents); Jamin B. Raskin & Cathleen Caron, *Democracy and Disenfranchisement in Washington, D.C.*, 6 HUM. RTS. BRIEF no.2, 2 (1999) (“[C]itizens of the District of Columbia, the so-called ‘federal district’ that is the location of the U.S. federal government, do not enjoy the rights of representative government that other U.S. citizens take for granted.”).

<sup>3</sup> See Ben Pershing, *Budget Deal Includes D.C. Abortion Rider, Money for School Vouchers*, WASH. POST (Apr. 9, 2011), [http://www.washingtonpost.com/blogs/dc-wire/post/sources-budget-deal-includes-dc-abortion-rider-money-for-school-vouchers/2011/04/08/AF3ET24C\\_blog.html?hpid=z1](http://www.washingtonpost.com/blogs/dc-wire/post/sources-budget-deal-includes-dc-abortion-rider-money-for-school-vouchers/2011/04/08/AF3ET24C_blog.html?hpid=z1).

<sup>4</sup> See Shushannah Walshe, *The Costs of the Government Shutdown*, ABC NEWS (Oct. 17,

process—Senate confirmation of judicial and executive branch nominees, decisions about the federal budget, war and peace, treaty ratification, the regulation of commerce, the development of national health care policies, the promotion of the general welfare—continues in the federal city without any participation by Washingtonians in the United States Senate and only the lonely, passionate voice of the District’s non-voting delegate, Democrat Eleanor Holmes Norton, in the Republican-controlled U.S. House of Representatives.<sup>5</sup> Adding insult to injury, a never-ending succession of political scandals in both local and federal Washington seems to fulfill the Anti-Federalists’ worst predictions about what it would mean to carve a federal “District” outside of the normal republican relationships in the states and continually attract to the “Seat of the Government”<sup>6</sup> the ambitious, the opportunistic, the cunning, the snobby, and all manner of courtesans, worshipping power and money over democratic values.<sup>7</sup>

No one knows how to transform the District’s essential powerlessness in federal affairs, which remains unique and startling as capital cities go on this earth. Every option for achieving equal political membership and participation for 600,000 Washingtonians seems to have been tried and come up short. Consider each major option in turn:

#### *A. Statehood*

The local favorite, “statehood” in the vernacular means a shrunken federal district and admission of the residential portions by Congress through simple legislation as the fifty-first state of “New Columbia.”<sup>8</sup> Yet, no option seems *less* likely at this point.

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2013, 12:23 AM), <http://abcnews.go.com/blogs/politics/2013/10/the-costs-of-the-government-shutdown/>.

<sup>5</sup> See Biography of Congresswoman Eleanor Holmes Norton, HOUSE.GOV, <http://norton.house.gov/about/full-biography> (last visited Oct. 23, 2014).

<sup>6</sup> U.S. CONST. art. I, § 8, cl. 17.

<sup>7</sup> This [federal] city, and the government of it, must indubitably take their tone from the characters of the men, who from the nature of its situation and institution must collect there. This city will not be established for productive labor, for mercantile, or mechanic industry; but for the residence of government, its officers and attendants. . . . [I]n the early periods of its existence, when its laws and government must receive their fixed tone, it must be a mere court, with its appendages—the executive, congress, the law courts, gentlemen of fortune and pleasure, with all the officers, attendants, suitors, expectants and dependents on the whole.

THE ANTI-FEDERALIST NOS. 41–43 (Part II) (Richard Henry Lee); see also THE ANTI-FEDERALIST NO. 3 (A Farmer) (arguing that a foreign military attack on the nation would be less likely under a confederacy than under a republic because “the wealth of the empire is [more] universally diffused, and will not be collected into any one overgrown, luxurious and effeminate capital to become a lure to the enterprising [and] ambitious”).

<sup>8</sup> The most recent House and Senate resolutions have been presented in 2013. See S. 132, 113th Cong. (2013); H.R. 292, 113th Cong. (2013).

Even when the most recent two Democratic presidents, Barack Obama and Bill Clinton, took office with concurrent Democratic majorities in Congress, nothing happened. There have been no statehood votes in Congress during the Obama administration's tenure, despite the fact that President Obama received ninety-one percent of the local vote in D.C. in 2012,<sup>9</sup> and the U.S. House of Representatives voted a statehood bill down 2–1 in 1993 when Delegate Norton finally managed to get it to the floor.<sup>10</sup>

In its proper historical context of prior statehood admissions, New Columbia's forlorn statehood petition is perfectly logical but politically anomalous. Most states have entered the Union as part of a bipartisan and sectional deal, roughly in pairs, like animals boarding Noah's Ark.<sup>11</sup> That is how Vermont and Kentucky did it back in 1791–1792,<sup>12</sup> Maine and Alabama did it as part of Henry Clay's Missouri Compromise in 1819–1820,<sup>13</sup> Alaska and Hawaii did it in 1959,<sup>14</sup> and so on.<sup>15</sup> Statehood admission has always been an intensely ideological and sectional enterprise requiring the highest artistry in political balancing and compromise, but the District has no partner in the project today. The only hypothetically available candidate, Puerto Rico, whose complex multi-party political system has been inching towards statehood in recent years, offers little "balance" because the national Republican Party has almost as much to fear from a Puerto Rican state as from New Columbia. Both would be majority-minority states whose electorates have strongly backed President Obama and would almost certainly send progressive Democrats to the U.S. Senate.<sup>16</sup> Republicans have

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<sup>9</sup> See FED. ELECTION COMM'N, FEDERAL ELECTIONS 2012: ELECTION RESULTS FOR THE U.S. PRESIDENT, THE U.S. SENATE AND THE U.S. HOUSE OF REPRESENTATIVES (2013), available at <http://fec.gov/pubrec/fe2012/federaelections2012.pdf>.

<sup>10</sup> To read the failed bill, see H.R. 51, 103d Cong. (1993). The New Columbia Admission Act was voted down 277–153 on November 21, 1993. For the roll call, see *HR 51—D.C. Statehood Bill—Voting Record*, PROJECT VOTE SMART, <http://votesmart.org/bill/votes/12573> (last visited Oct. 23, 2014).

<sup>11</sup> See Ralph H. Brock, *The Ultimate Gerrymander: Dividing Texas into Four States*, 6 CARDOZO PUB. L. POL'Y & ETHICS J. 651, 658 n.21 (2008) ("In recent times, at least, states have been admitted in pairs to maintain the partisan balance.").

<sup>12</sup> LOWELL H. HARRISON, *KENTUCKY'S ROAD TO STATEHOOD* 90 (1992).

<sup>13</sup> JAMES A. WOODBURN, *THE HISTORICAL SIGNIFICANCE OF THE MISSOURI COMPROMISE* 254, 264 (1894).

<sup>14</sup> Act of Mar. 18, 1959, Pub. L. No. 86-3, 73 Stat. 4 (admitting Hawaii into the Union); Act of July 7, 1958, Pub. L. No. 85-508, 72 Stat. 339 (admitting Alaska into the Union).

<sup>15</sup> See Jonathan Earle, *The Political Origins of the Civil War*, OAH MAG. HIST., Apr. 2011, at 8–13 (2011), available at <http://teachersites.schoolworld.com/webpages/Eglankler/files/oah%20-%20the%20political%20origins%20of%20the%20civil%20war%20-%20earle.pdf> (noting the "one-for-one" strategy of admitting states in the antebellum era).

<sup>16</sup> See, e.g., Jason Koebler, *Despite Referendum, Puerto Rico Statehood Unlikely Until at Least 2015*, U.S. NEWS (Nov. 7, 2012), <http://www.usnews.com/news/articles/2012/11/07/despite-referendum-puerto-rican-statehood-unlikely-until-at-least-2015> ("Puerto Ricans in the United States vote overwhelmingly for Democrats, and elected officials in Puerto Rico are nearly always Democrats . . ."); Mackenzie Weinger, *Top Republican and Democratic States According to Gallup*, POLITICO (Aug. 11, 2011, 9:18 AM), <http://www.politico.com>

shown more solicitude for Puerto Rican interests than they have for the demands of the disenfranchised in the nation's capital, but any strong push for statehood for either of these disenfranchised populations seems seriously doubtful.<sup>17</sup> True, the restoration of majority voting in the Senate in 2013 with passage of the antifilibuster “nuclear option,”<sup>18</sup> means that New Columbia and Puerto Rico could theoretically enter the Union together if the Democrats retake both houses of Congress and muster the political will to overcome conservative opposition. But neither of those conditions seems remotely likely from where we sit in 2014. The entrance of New Columbia does not enlarge the territory of the nation—the clear Manifest Destiny logic of the most recent statehood admissions, like Alaska and Hawaii<sup>19</sup>—and even Democrats in Congress seem reluctant to surrender police power control over the “federal city.”<sup>20</sup> Still less does any senator fancy diluting his or her precious one percent of the voting sovereignty in the world's most powerful and exclusive club, whose members make up a perfect one hundred, a number that is treated, strangely, as a kind of immutable constitutional or divine anointment.

#### *B. A D.C. Voting Rights Constitutional Amendment*

Besides statehood, there is the idea of passing a constitutional amendment to grant to the “Seat of the Government”<sup>21</sup> the senators and representatives to which it would be entitled if it *were* a state, while maintaining congressional police power jurisdiction over the District. This was the precise design of the D.C. Voting Rights Amendment, which—quite remarkably, at least as seen from this distance—passed Congress in 1978 by the required two-thirds margin in the House and the Senate, collecting the support of not only Robert Dole but Strom Thurmond along the way.<sup>22</sup> Alas, the amendment

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[/news/stories/0811/61095.html](#) (“[I]n the U.S. this year . . . Washington, D.C., and Hawaii rank as the most Democratic areas . . .”).

<sup>17</sup> Both parties claim to support Puerto Rican political equality, but little traction has been gained on this issue in Congress. Republicans are especially tepid with their support; on a recent Puerto Rican statehood bill, only about a dozen of the 125 cosponsors were Republicans. Laura Wides-Munoz, *Puerto Ricans Build Political Base in Fla.*, WASH. POST, Dec. 2, 2013, at A23.

<sup>18</sup> Paul Kane, *Senate Eliminates Filibusters on Most Nominees*, WASH. POST, Nov. 22, 2013, at A1.

<sup>19</sup> See, e.g., *Manifest Destiny*, U.S. HIST., <http://www.u-s-history.com/pages/h337.html> (last visited Oct. 23, 2014) (“Even the Alaska Purchase of 1867 and acquisitions outside the continent, such as Guam and Hawaii, were promoted as examples of manifest destiny in action.”).

<sup>20</sup> Mark Plotkin, Op-Ed., *What Are Democrats Waiting for on D.C. Statehood?*, THE HILL (Feb. 25, 2014), <http://thehill.com/opinion/op-ed/199236-what-are-democrats-waiting-for-on-dc-statehood> (asserting that the last time the issue of D.C. statehood had “any visibility,” Democrats controlled both houses and yet the bill for statehood “went nowhere”).

<sup>21</sup> U.S. CONST. art. I, § 8, cl. 17.

<sup>22</sup> H.R.J. Res. 554, 95th Cong., 92 Stat. 3795 (1978). For the roll call, see 1978 D.C. Voting Rights Amendment Roll Call, GOVTRACK, <https://www.govtrack.us/congress/votes/95-1978/s986> (last visited Oct. 23, 2014).

drive failed to get anywhere near the three-fourths of the states it needed for ratification, shriveling up as the gathering “New Right” political tendency targeted the D.C. Amendment—along with the Equal Rights Amendment—as a threat to conservative power in Washington and conservative values across the country, especially in the Sunbelt and the Western Interior.<sup>23</sup> The District simply did not have enough allies across the country to overcome the strength of that hard-edged right-wing politics, which has, of course, only grown more ferocious and formidable ever since.<sup>24</sup>

### C. Equal Protection Litigation Against Congress

Another beguiling possibility is federal court litigation to assert the equal voting and representational rights of District citizens under the Fifth Amendment’s Equal Protection Clause. The theory here is that, under the one person–one vote cases, the right to vote cannot be denied on the basis of *place* any more than on the basis of *race*, and the current regime effects mass disenfranchisement against more than a half-million American citizens based on their place of residency.<sup>25</sup> The problem is that this theory and this argument, elaborated in my 1999 law review article on the topic for the *Harvard Civil Rights–Civil Liberties Law Review*,<sup>26</sup> were rejected in a 2–1 decision of a special panel of the United States District Court in a locally popular 2000 case, called by the second set of parties in its consolidated cases, *Alexander v. Daley*.<sup>27</sup> While expressing concern for the plight of District residents, the panel majority found that appeal to the constitutional preference for voting and participation was foreclosed by the structural provisions of the Constitution limiting congressional representation to the people “of the several States.”<sup>28</sup> This is the decision that sent Washingtonians once more back to the political drawing board. Apparently there will be no *Bolling v. Sharpe*<sup>29</sup> for voting rights in the District, no federal judicial breakthrough for the

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<sup>23</sup> J. Valerie Fifer, *Washington D.C.: The Political Geography of a Federal Capital*, 15 J. AM. STUD. 5, 20–21 (1981) (noting that a lot of the animosity toward D.C. voting rights came from the conservative parts of the Western Interior and the Sunbelt).

<sup>24</sup> See Arin Greenwood, *Q&A with Shadow Sen. Paul Strauss: How Does Puerto Rico’s Statehood Movement Help D.C.?*, HUFFINGTON POST (Feb. 28, 2012, 11:42 AM), [http://www.huffingtonpost.com/2012/02/27/paul-strauss-puerto-rico\\_n\\_1303822.html](http://www.huffingtonpost.com/2012/02/27/paul-strauss-puerto-rico_n_1303822.html) (discussing the partisan opposition to the statehood drives of both Hawaii and Alaska and concluding that “it’s tough to be optimistic about [the D.C. and Puerto Rican] statehood movements right now because we’re in such gridlock”).

<sup>25</sup> For a detailed examination of these arguments, see Jamin B. Raskin, *Is This America? The District of Columbia and the Right to Vote*, 34 HARV. C.R.–C.L. L. REV. 39, 43–44, 57–58, 64, 67, 69–70 (1999).

<sup>26</sup> *Id.*

<sup>27</sup> *Adams v. Clinton*, 90 F. Supp. 2d 35 (D.D.C. 2000), *aff’d per curiam*, 531 U.S. 941 (2000).

<sup>28</sup> *Id.* See throughout for the notion of representation as exclusively belonging to the people “of the several states.” *Id.* at 45–47, 50.

<sup>29</sup> 347 U.S. 497 (1954) (applying the Fourteenth Amendment Equal Protection guarantee to the people of Washington, D.C. through the Fifth Amendment Due Process liberty clause).

impasse over the sharply constrained “fugitive democracy”<sup>30</sup> that is still seeking liberation and expression in the nation’s capital. And even successful appeals to international fora, like the Organization of American States’ Inter-American Commission on Human Rights, can produce positive analysis and definitive findings and recommendations but still leave Washingtonians empty-handed when all the dust settles.<sup>31</sup>

*D. Simple Legislation to Give the District’s Non-Voting Delegate a Real Vote in the House of Representatives*

Over the last few years, some momentum gathered behind the idea of passing a simple law granting the District a voting member in the House of Representatives.<sup>32</sup> This idea faced multiple interlocking and insurmountable problems. First, it would be of questionable constitutionality. In *Alexander v. Daley*, the court determined that the District population could not elect members of Congress because they were not people “of the several States,”<sup>33</sup> a ruling that echoed *Michel v. Anderson*,<sup>34</sup> the D.C. Circuit decision which upheld delegate voting in the U.S. House of Representatives Committee of the Whole only because there was a “revote” provision whenever the margin of victory on a bill or amendment was less than the number of delegates voting.<sup>35</sup> The court essentially held that delegate voting in the Committee of the Whole was only permissible so long as it was meaningless and that the District delegate could not vote on final passage of legislation on the House floor.<sup>36</sup> There are strong, even compelling, arguments on the other side related to Congress’s powers under the District Clause and to enforce the equal protection rights of American citizens in the District,<sup>37</sup> but it would take truly progressive justices, far more passionate about anchoring the Constitution in democratic values than those we have, to consider them seriously.

Second, a voting statute along these lines would be of dubious utility. Granting the District a vote in the House does not address the real problem, which is the exclusion of the District from the Senate, the upper chamber where, historically speaking, the District’s interests and priorities have been marginalized, castigated, traduced,

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<sup>30</sup> Sheldon S. Wolin, *Fugitive Democracy*, in *DEMOCRACY AND DIFFERENCE: CONTESTING THE BOUNDARIES OF THE POLITICAL*, 31, 41 (Seyla Benhabib ed., 1996).

<sup>31</sup> See *Statehood Solidarity Comm. v. United States*, Case No. 11.204, Inter-Am. Comm’n H.R. Report No. 98/03, OEA/Ser./L/V/II.114, doc. 70 rev. 1 (2003) (finding that the United States’ failure to secure the right of equal political participation to Washingtonians constitutes a serious human rights violation under international human rights law and the OAS Charter).

<sup>32</sup> See *D.C. Voting Rights: Closer Than Ever Before*, C.R. MONITOR (Winter 2007), <http://www.civilrights.org/monitor/winter2007/art2p1.html> (noting that the D.C. Voting Rights Act of 2007 failed in the Senate, but only after passing in the House and garnering more support in the Senate than any similar act before).

<sup>33</sup> *Adams*, 90 F. Supp. 2d at 50.

<sup>34</sup> 14 F.3d 623 (D.C. Cir. 1994).

<sup>35</sup> *Id.* at 625, 632.

<sup>36</sup> *Id.* at 632.

<sup>37</sup> See Raskin, *supra* note 25, at 45–46, 54, 73–74, 77, 86.

and ignored.<sup>38</sup> In terms of exercising both rights of participation in national decision making and rights of self-defense against abusive treatment by Congress, the Senate is the District's main problem. Yet no one even tries to argue that Congress could simply create two new Senate seats for the District without statehood or a constitutional amendment. Third, a statute would be of uncertain duration. Even as less than a half-solution (perhaps something more like a one-tenth solution), this one would not be permanent because it can be repealed at any time. This has been the history of the proposal—which I worked on developing with Congresswoman Norton two decades ago—to grant the D.C. delegate and the four other non-voting delegates the right to vote in the Committee of the Whole.<sup>39</sup> This measure passed when the Democrats controlled the House and was promptly revoked when the Republicans took over the body with House Speaker Newt Gingrich. This could easily become the unstable pattern of voting representation for D.C. in the House under this precarious statutory plan. Fourth, for all of the foregoing reasons, the political support for the plan is shaky, paper-thin, and evanescent. When it looked as if there might be the seeds of a compromise with Utah to make it happen in 2010, everything fell apart when it became clear that the price of the “deal” for the District would have been evisceration of the city's gun laws, which are reviled by the National Rifle Association, although embraced by a violence-weary local populace.<sup>40</sup>

Thus, all the doors appear to have slammed shut one after the other. Despite the valiant work of D.C. Vote's resistance to the constant federal assault on the political rights of the District population, momentum for Congressional representation has stalled out, and the campaign for change has arrived at a standstill.

## II. A CONSTITUTIONAL PROPOSAL TO ENFRANCHISE U.S. CITIZENS IN THE DISTRICT, AND EVERYWHERE ELSE

Yet perhaps all is not lost if we practice the kind of nimble and creative tactics that voting rights activists have always had to rely upon to make progress. What the

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<sup>38</sup> Members of the Senate foiled the recent effort for D.C.'s voting representation in the House of Representatives, first adding a sweeping gun rights amendment to the bill, and then threatening to filibuster the House version if it came to the Senate floor. Kate Phillips, *Senate Passes D.C. Voting Rights Bill*, 61–37, N.Y. TIMES (Feb. 26, 2009), [http://thecaucus.blogs.nytimes.com/2009/02/26/senate-passes-dc-voting-rights-bill-61-37/?\\_php=true&\\_type=blogs&\\_r=0](http://thecaucus.blogs.nytimes.com/2009/02/26/senate-passes-dc-voting-rights-bill-61-37/?_php=true&_type=blogs&_r=0); Amanda Terkel, *Sen. Hatch Vows to Filibuster DC Voting Rights Bill*, THINK PROGRESS (Apr. 15, 2010), <http://thinkprogress.org/politics/2010/04/15/91760/hatch-dc-vote/>.

<sup>39</sup> See Raskin, *supra* note 25, at 40 n.5; see also *Michel*, 14 F.3d at 624–25 (affirming the district court's rejection of a legal challenge to the same proposal).

<sup>40</sup> H.R. 157, 111th Cong. (2009); S. 160, 111th Cong. (2009). The back-and-forth and proliferation of amendments eventually led to nothing but dissipating energy and vanishing political consensus. See Jill Jackson, *Is Congress Getting Closer to Granting D.C. Voting Rights?*, CBS NEWS (Apr. 16, 2010, 4:36 PM), <http://www.cbsnews.com/news/is-congress-getting-closer-to-granting-dc-voting-rights/>.



democracy movement in the District needs today is a dramatic conceptual reframing of the problem and a surge of serious, bare-knuckled political pragmatism to create a democracy surge for all disenfranchised communities across the country.

This reframing invites us to see the District's predicament not as exceptional or marginal, but as reflective of the general weakness of voting and representational norms in our Constitution. The broad range of voting rights problems in the country, including but not limited to disenfranchisement of residents of the capital city, reflects the American citizen's missing constitutional right to vote and to be represented in government. Accordingly, the solution must be a constitutional amendment guaranteeing such a right to *all* citizens, including those caught living outside of state boundaries. Seen through this prism, the District's political predicament and need for structural change form part of a larger argument for a long-overdue expansion of democratic rights in the country. A serious struggle for political equality in the District offers the most dramatic possibility for a democratic breakthrough not just for Washingtonians but for millions of other disenfranchised citizens in the fifty states and the territories and for all Americans, whose voting rights have proven to be precarious indeed.<sup>41</sup>

#### *A. A Comprehensive Democracy Amendment to the Constitution*

There is little or no solace to be found in the constitutional jurisprudence of the twenty-first century for actually disenfranchised Americans like the ones who live in Washington. Any unrepresented or voteless Americans who have turned to the federal courts over the last few decades for vindication of their political rights have been unceremoniously shot down: 600,000 Washingtonians,<sup>42</sup> millions of Americans living in Puerto Rico and Guam,<sup>43</sup> and millions of felons who have completed their incarceration and correctional supervision but remain disenfranchised.<sup>44</sup>

We do not have an affirmative universal grant of the right to vote, and the Equal Protection Clause, the textual passage upon which voting rights movements and liberal

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<sup>41</sup> See Raskin, *supra* note 25, at 42 (“[T]he effective disenfranchisement of the District is the paradigm case testing whether all American citizens actually enjoy a right to vote and to be represented on equal terms.”).

<sup>42</sup> *Adams v. Clinton*, 90 F. Supp. 2d 35, 35–37, 72 (D.C. Cir. 2000), *aff’d per curiam*, 531 U.S. 941 (2000).

<sup>43</sup> *Igartúa v. United States*, 626 F.3d 592, 594 (1st Cir. 2010) (affirming the district court’s dismissal of a putative class action brought on the theory that Puerto Ricans had a right to vote for members of the House of Representatives); *Attorney General of Guam v. United States*, 738 F.2d 1017, 1018–19 (9th Cir. 1984) (affirming the district court’s dismissal of a declaratory action brought on the theory that U.S. citizens in Guam have a constitutional right to vote for President).

<sup>44</sup> See, e.g., Pamela S. Karlan, *Convictions and Doubts: Retribution, Representation, and the Debate over Felon Disenfranchisement*, 56 STAN. L. REV. 1147, 1147 n.1 (2004) (citing *Richardson v. Ramirez*, 418 U.S. 24 (1974), in which the Supreme Court upheld a California lifetime ban on voting by convicted felons, finding “the exclusion of felons from the vote has an affirmative sanction in § 2 of the Fourteenth Amendment”).

justices have built the principle of one person–one vote, has been drained of meaning for voting rights. In 2000, within a period of a few months, the Supreme Court rejected Washington’s petition for certiorari in its equal protection voting rights case, *Alexander v. Daley*,<sup>45</sup> and granted George W. Bush’s petition in *Bush v. Gore*<sup>46</sup> to intervene in the Florida presidential election to stop the manual recounting of tens of thousands of ballots in the state.<sup>47</sup> The juxtaposition reveals that, for all practical purposes, the celebrated Equal Protection Clause does not work effectively to vindicate voting rights for disenfranchised populations, but now better serves the purposes of strategic political actors who seek to keep people from voting and having their ballots counted.

We have seen recently a succession of crises and controversies over voting rights and processes, including the permanent disenfranchisement of felons,<sup>48</sup> the disenfranchisement of voters whose names resemble those of felons,<sup>49</sup> the imposition of state voter photo-ID laws and restrictive registration laws,<sup>50</sup> the disenfranchisement of citizens of the U.S. territories in presidential elections,<sup>51</sup> challenged ballots and ballots cast in the wrong precinct,<sup>52</sup> ballot recount rules,<sup>53</sup> repeal of early voting

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<sup>45</sup> *Adams*, 90 F. Supp. 2d 35.

<sup>46</sup> 531 U.S. 98 (2000).

<sup>47</sup> *Id.* at 99 (“Because it is evident that any recount seeking to meet 3 U.S.C. § 5’s December 12 ‘safe-harbor’ date would be unconstitutional under the Equal Protection Clause, the Florida Supreme Court’s judgment ordering manual recounts is reversed.”).

<sup>48</sup> See Matt Apuzzo, *Holder Urges States to Lift Bans on Felons’ Voting*, N.Y. TIMES, Feb. 12, 2014, at A17 (reporting that Attorney General Eric Holder called on states to repeal laws that permanently disenfranchise convicted felons, comparing such laws to the racist laws prevalent in the South after the Civil War).

<sup>49</sup> See Gregory Palast, *Florida’s Flawed “Voter-Cleansing” Program*, SALON (Dec. 4, 2000), [http://www.salon.com/2000/12/04/voter\\_file/](http://www.salon.com/2000/12/04/voter_file/) (reporting that a Florida “voting cleaning” program aimed at removing felons from voting rolls had at least a fifteen percent margin of error and thus incorrectly targeted at least 7,000 Florida citizens).

<sup>50</sup> See generally Claire Foster Martin, *Block The Vote: How a New Wave of State Election Laws Is Rolling Unevenly over Voters & the Dilemma of How to Prevent It*, 43 CUMB. L. REV. 95, 103–12 (discussing the voter photo-ID and registration laws of states including Alabama, Kansas, Rhode Island, South Carolina, Tennessee, Texas, and Wisconsin).

<sup>51</sup> *Igartúa v. United States*, 626 F.3d 592, 601–02 (1st Cir. 2010) (rejecting a class action on behalf of all U.S. citizens in Puerto Rico seeking to establish their right to vote in presidential elections); see also *Igartúa-de la Rosa v. United States*, 117 F.3d 15, 147–48 (1st Cir. 2005) (similar).

<sup>52</sup> See Gary D. Robertson, *New Law Bars Voting Outside of Precinct*, CHARLOTTE OBSERVER (Aug. 18, 2013), <http://www.charlotteobserver.com/2013/08/18/4246395/new-law-bars-voting-outside-of.html> (reporting on a North Carolina law that required poll workers to reject ballots cast in the wrong precinct); Amanda Becker, *Ohio Must Count Ballots Cast in Wrong Precinct*, ROLL CALL (Oct. 11, 2012), [http://www.rollcall.com/news/ohio\\_must\\_count\\_ballots\\_cast\\_in\\_wrong\\_precinct-218155-1.html](http://www.rollcall.com/news/ohio_must_count_ballots_cast_in_wrong_precinct-218155-1.html) (reporting on restrictive Ohio voting laws including one that discounted ballots cast in wrong precincts and another that allowed military personnel to cast provisional ballots but denied others the right to do so).

<sup>53</sup> See John M. Broder, *In Case of a Recount, a Long Wait for Ohio*, N.Y. TIMES (Nov. 5, 2012), <http://www.nytimes.com/2012/11/06/us/politics/ohio-law-could-bring-long-delays-in>

laws,<sup>54</sup> and so on. What all of these conflicts, whether ideological, administrative, or mechanical in nature, have in common is that there is no constitutional basis for resolving them based on principles favoring strong democracy and universal suffrage.

Plainly speaking, the people have no individual constitutional right to vote, a fact insisted upon by the Supreme Court in *Bush v. Gore*.<sup>55</sup> We have instead a ragtag series of *ad hoc* antidiscrimination voting amendments that collectively underscore the absence of a universal suffrage mandate. The most concise expression of the profound vulnerability of voting rights in the new century arrived in 2013 in the form of *Shelby County v. Holder*,<sup>56</sup> the Supreme Court's decision striking down the coverage formula of the preclearance provisions of the Voting Rights Act, which has been critical to modern civil rights progress, on the grounds that it violated the heretofore unknown principle that Congress cannot organize states into different classes for the purpose of achieving federal goals.<sup>57</sup> Political rights are plainly under attack in America and on the Court, and the overworked Equal Protection Clause has become too thin a thread to support the powerful popular yearnings for the freedom to vote, participate, and govern.

I have argued elsewhere (and a decade ago!) that the missing right to vote in the Constitution produces multiple problems for our democratic ambitions, practices, and values.<sup>58</sup> In a radically decentralized electoral regime where there is no national non-partisan electoral commission, no national ballots or voting standards, and no national voting systems or technology, “millions of Americans are disenfranchised in every federal election by bad technology, registration obstacles, or tactical suppression of voting.”<sup>59</sup> And we know that, in a time of deep partisan polarization, strategic efforts to restrict the franchise are resurgent across the country.<sup>60</sup> Moreover, “more than eight

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-a-recount.html?\_r=0 (“Ohio, like several of the other battleground states . . . has a labyrinthine recount procedure that ensures weeks of delay and the likelihood of a mountain of lawsuits.”).

<sup>54</sup> Martin, *supra* note 50, at 112–15 (discussing the shortening of Georgia’s early voting period).

<sup>55</sup> *Bush v. Gore*, 531 U.S. 98, 104 (2000); *see also* *Shaw v. Reno*, 509 U.S. 630, 633 (1993), and the Court’s use of scare quotes to describe the “‘right’ to vote,” which it proceeded to racialize and diminish in that case. For a discussion of how the *Shaw* Court undermined political democracy and the rule of law, see Jamin B. Raskin, *The Supreme Court’s Racial Double Standard in Redistricting: Unequal Protection in Politics and the Scholarship that Defends It*, 14 J.L. & POL. 591 (1998).

<sup>56</sup> 133 S. Ct. 2612 (2013).

<sup>57</sup> *Id.* at 2623–29 (“[C]ongress—if it is to divide the States—must identify those jurisdictions to be singled out on a basis that makes sense in light of current conditions. It cannot rely simply on the past.”).

<sup>58</sup> *See generally* Jamin Raskin, *A Right-to-Vote Amendment for the U.S. Constitution: Confronting America’s Structural Democracy Deficit*, 3 ELECTION L.J. 559 (2004) [hereinafter Raskin, *A Right-to-Vote Amendment*].

<sup>59</sup> *Id.* at 559.

<sup>60</sup> *See* Martin, *supra* note 50, at 102–23 (“The 2010 mid-term elections resulted in a wave of conservatives taking political office at the national and state levels, and lawmakers around

million American citizens, a majority of them belonging to racial and ethnic minority groups, remain absolutely or substantially disenfranchised” under our constitutional, geographic, and political arrangements.<sup>61</sup> This population includes more than a half-million Washingtonians,<sup>62</sup> nearly four million U.S. citizens living in the federal territories of Puerto Rico, Guam, American Samoa, the Northern Mariana Islands, and the Virgin Islands,<sup>63</sup> and more than four million U.S. citizens disenfranchised as a result of felony criminal convictions.<sup>64</sup> Furthermore, while the voting rights of natural persons have been neglected, the political “free speech” rights of for-profit corporations have been inflated ludicrously by a five-justice majority on the Supreme Court.<sup>65</sup> In what will doubtless come to be called the *Citizens United* era, the hopes of millions of natural persons to vote and be represented in Congress have been trampled underfoot while the political agendas of Big Pharma, the military-industrial complex, the health insurance lobby, and other major corporate “speakers” have been consecrated and constitutionalized through the judicial transformation of corporations into political supercitizens.

We need a constitutional amendment that secures the right of people to vote and be represented while repudiating the corporatist and plutocratic *Citizens United* decision. The first nation on earth conceived in popular insurgency against taxation without representation, theocracy, and the marriage of political tyranny and unbribed corporate power (remember the East India Company!), has fallen dramatically behind other democracies in making electoral process and political institutions responsive, accountable, and immune to corporate takeover. The following “Democracy Amendment” would take care of a series of problems, including: the missing constitutional right to vote, the lack of voting rights of persons living in the territories in presidential elections, the denial of the right to run for president to foreign-born American

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the country did not waste any time in introducing legislation to change their state election codes.” (footnote omitted).

<sup>61</sup> See Raskin, *A Right-to-Vote Amendment*, *supra* note 58, at 559.

<sup>62</sup> See *District of Columbia Quick Facts*, U.S. CENSUS BUREAU, <http://quickfacts.census.gov/qfd/states/11000.html> (last visited Oct. 23, 2014) (reporting that the population of D.C. in 2013 was approximately 646,000).

<sup>63</sup> See Mark Hugo Lopez & Gabriel Velasco, *A Demographic Portrait of Puerto Ricans: Statistical Profile*, PEW RES. HISPANIC TRENDS PROJECT (June 13, 2011), <http://www.pewhispanic.org/2011/06/13/a-demographic-portrait-of-puerto-ricans/> (reporting that the population of Puerto Rico in 2010 was approximately 3.7 million in total and that Puerto Ricans by birth are U.S. citizens); U.S. GOV'T ACCOUNTABILITY OFF., GAO-07-119, U.S. INSULAR AREAS: ECONOMIC, FISCAL, AND FINANCIAL ACCOUNTABILITY CHALLENGES (2006), *available at* <http://www.gao.gov/new.items/d07119.pdf> (reporting that in 2000 the population of U.S. citizens in American Samoa, the Commonwealth of the Northern Mariana Islands, Guam, and the Virgin Islands totaled approximately 290,000).

<sup>64</sup> Map of Incarceration and Felony Disenfranchisement, THE SENTENCING PROJECT, <http://www.sentencingproject.org/map/map.cfm>.

<sup>65</sup> See, e.g., *McCutcheon v. FEC*, 134 S. Ct. 1434 (2014) (invalidating limits on aggregate contribution limits as unconstitutional); *Citizens United v. FEC*, 130 S. Ct. 876 (2010) (holding that corporate expenditures are a form of speech protected by the First Amendment).

citizens like Arnold Schwarzenegger and Jennifer Granholm and millions of other naturalized citizens, the lack of congressional representation for more than a half-million people living in the District of Columbia, the aggressive assertion of campaign spending rights by and for corporations, and the discriminatory treatment of minor political parties.

*B. Consider the Democracy Amendment*

An amendment to the Constitution could provide resolution to many of the issues discussed above by implementing the following rights:

Section 1. All citizens of the United States of at least eighteen years of age have the right to vote in elections for President and Vice President and for electors for President and Vice President. All U.S. citizens who have attained the age of thirty-five years and been fourteen years a resident within the United States are eligible to the office of President of the United States.

Section 2. Territories 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 Territories would be entitled if their populations were combined into a single State; they shall be in addition to those appointed by the States and the District constituting the Seat of Government of the United 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 most populous Territory and perform such duties as provided by the twelfth article of amendment.

Section 3. All citizens of the United States of at least eighteen years of age have the right to vote in elections for executive and legislative officers of their states and, where applicable, in elections for their United States Representatives and Senators. The District constituting the Seat of Government of the United States shall elect United States Senators and Representatives in such number and such manner as to which it would be entitled if it were a State.

Section 4. The rights of citizens of at least eighteen years of age to vote, to participate in politics, and to run for office on an equal basis shall not be denied or abridged by the United States or by any State. Corporate entities are not citizens for political purposes and may not vote, run for office, engage in campaign spending, or make campaign contributions. Congress may set reasonable

limits on campaign spending and contributions in the interest of protecting political equality and the integrity of self-government.

Section 5. The Congress shall have power to enforce this article by appropriate legislation. Nothing in this Article shall be construed to deny the power of States to expand further the electorate.

Of all of the disenfranchised groups and electorally vulnerable populations, Washingtonians may have not only the greatest incentive but also the best resources at their disposal to lead a campaign for democratic constitutional change. Their disenfranchisement takes place in the capital city itself, right before the eyes of the national and world press corps, the representatives of the states, and the world's ambassadors; it would not be hard to galvanize national and global attention to this anachronistic injustice. Moreover, the District's political leadership is unified for full voting rights and political equality,<sup>66</sup> and there is remarkable political talent in the District ready to help. The resilient D.C. Vote has built itself into an effective organizing structure that can mobilize residents to fight for democratic rights.<sup>67</sup>

Where would the resources come from for a constitutional amendment drive to "free D.C." and liberate the vote nationally? Consider this: in the 2012 campaign cycle, there were \$137.85 million in total itemized (non-PAC) campaign contributions made to federal candidates from citizens living in the District of Columbia, according to Open Secrets.<sup>68</sup> There was another \$204.7 million in contributions made from PACs operating in D.C.<sup>69</sup> This is an extraordinary sum of money coming from the ranks of a disenfranchised population. Indeed, the District's population was the second-largest contributor in absolute dollars to Obama's 2012 campaign out of the nation's metropolitan areas, giving \$27,127,663 and finishing behind only New York City in the rankings.<sup>70</sup> In the 2008 cycle, with an average contribution of \$376 per

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<sup>66</sup> See Mike DeBonis, *D.C. Officials Decry Lack of Vote in Congress in Light of Pending Vote in Syria*, WASH. POST (Sept. 9, 2013), [http://www.washingtonpost.com/local/dc-politics/2013/09/09/3f66ffe0-1949-11e3-a628-7e6dde8f889d\\_story.html](http://www.washingtonpost.com/local/dc-politics/2013/09/09/3f66ffe0-1949-11e3-a628-7e6dde8f889d_story.html) (quoting current and former district authorities calling the lack of vote in Congress an "injustice" and "atrocious").

<sup>67</sup> The group holds numerous events each year, maintains a large staff and network of supporters, controlled a \$1.2 million budget in 2012, and has effectively promoted the ubiquitous local slogan, "Taxation Without Representation." See *Annual Report 2012*, DC VOTE, <http://www.dcvote.org/sites/default/files/documents/articles/ar2012.pdf>.

<sup>68</sup> *District of Columbia: Money Summary 2011–2012*, CTR. FOR RESPONSIVE POL., <http://www.opensecrets.org/states/summary.php?state=DC&Cycle=2012> (last visited Oct. 23, 2014) (summarizing figure produced from subtracting PAC donations from total itemized contributions).

<sup>69</sup> *Id.*

<sup>70</sup> *Id.*; *Top Metro Areas: Election Cycle 2012*, CTR. FOR RESPONSIVE POL., <http://www.opensecrets.org/bigpicture/topmetro.php?cycle=2012> (last visited Oct. 23, 2014) (showing that, while D.C. gave more money in total, New York was the only metro area that contributed more to Obama than the district).

donor, Washington, D.C., ranked third highest in campaign contributions per capita, behind only New York City and Los Angeles, placing it ahead of Chicago, Miami, Boston, Houston, and San Francisco.<sup>71</sup>

We must assume that the vast majority of PACs operating with a Washington address have a primarily national purpose and character. But what if politically and financially active individuals residing in the District called a partial “donors’ strike” in federal elections in order to promote constitutional democracy for themselves and other Americans? Every participating Washingtonian would pledge to donate fifty percent of his or her annual federal campaign contributions to “Democracy PAC,” which would in turn spend the money aggressively backing candidates, parties and movements to promote the Democracy Amendment with its plan for securing voting rights for all Americans and congressional representation for the District.

Congressional and presidential candidates could be asked to cooperate. For example, if a candidate were holding a \$1,000-per-head fund-raising dinner, he or she would be asked to treat \$500 from a Washingtonian as meeting the price of admission so long as the D.C. donor simultaneously contributed the other \$500 to the Democracy PAC. The PAC would, in turn, endorse and support cooperating candidates. If the idea caught on, the District-based donor community could expect to raise more than \$65 million a year alone locally and then turn its attention to mobilizing donors from across the country who see the logic of the campaign and agree to join the Democracy PAC. The Internet would be the perfect tool to organize such a movement, which could become a formidable political and cultural force overnight.

A movement like this will, of course, force politically active District residents to decide whether to identify with local political culture and collective aspirations for change or whether to define themselves solely as individual careerists who have located in the nation’s capital in pursuit solely of profit, power, and pleasure, which was the Anti-Federalists’ dread prediction.<sup>72</sup> My own guess is that there are many more democratic patriots in the capital city than opportunistic power players. At the very least, creating a “democracy surge” in Washington and among progressive donors nationally will allow the pro-voting forces to identify their allies.

It is often remarked that the people of Washington, D.C. have been quiescent in the face of their congressional disenfranchisement. From the standpoint of street protest before Congress, this observation has some truth in it, but Washingtonians, who see protests come and go, may simply be more sober and realistic about the meaning of public demonstrations today in the face of the awesome power of political money. Washingtonians are among the most avid and loyal campaign donors in the country<sup>73</sup> and should organize to flex their financial muscle in politics for a

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<sup>71</sup> See *Top Metro Areas: Election Cycle 2008*, CTR. FOR RESPONSIVE POL., <http://www.opensecrets.org/bigpicture/topmetro.php?cycle=2008> (last visited Oct. 23, 2014).

<sup>72</sup> See *supra* note 7 and accompanying text.

<sup>73</sup> See *supra* notes 67–71 and accompanying text.

constitutional amendment to place universal democracy at the foundation of our political institutions. Constitutional patriots across the country will quickly follow suit. A Democracy PAC could lead a vibrant and successful movement for a constitutional amendment in both Congress and the states.

### C. *Will it Work?*

There are no guarantees in politics, and constitutional amendments—requiring two-thirds votes in both houses of Congress and ratification by three-fourths of the states—are always a tall order.

On the other hand, a Democracy Amendment would have nationwide appeal because the majority of our seventeen constitutional amendments since the Bill of Rights have been suffrage-expanding, democracy-deepening amendments. From equal protection<sup>74</sup> to abolition of racial restrictions on voting<sup>75</sup> to the direct election of U.S. senators<sup>76</sup> to women’s suffrage<sup>77</sup> to District voting in presidential elections<sup>78</sup> to abolition of poll taxes<sup>79</sup> to lowering of the voting age to eighteen,<sup>80</sup> all of the narrative momentum and political logic of the Constitution point toward passage of the full Democracy Amendment. Our Constitution is trying to tell us something. Every constitutional amendment seems impossible—until it becomes inevitable. The voting crises of our day are not subsiding, and in practice the right to vote remains deeply contested and precarious. A movement led by Washington for all of America has great and urgent promise.

If this pathway does not work or is not chosen, Washingtonians will have to return to the necessity of statehood for achieving first-class political citizenship. Given the profound political difficulties we have already seen with trying to press admission of the fifty-first state,<sup>81</sup> the statehood path would, in practice, likely mean not promoting admission of a new state but rather merging the residential portions of the District of Columbia back into Maryland. Here, statehood would be accomplished by reunion

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<sup>74</sup> U.S. CONST. amend. XIV, § 1 (“[N]or shall any state . . . deny to any person within its jurisdiction the equal protection of the laws.”).

<sup>75</sup> *Id.* amend. XV, § 1 (“The right of citizens of the United States to vote shall not be denied or abridged . . . on account of race, color, or previous condition of servitude.”).

<sup>76</sup> *Id.* amend. XVII (“The Senate of the United States shall be composed of two Senators from each State, elected by the people thereof . . .”).

<sup>77</sup> *Id.* amend. XIX (“The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of sex.”).

<sup>78</sup> *Id.* amend. XXIII, § 1.

<sup>79</sup> *Id.* amend. XXIV, § 1 (“The right of citizens of the United States to vote shall . . . not be denied . . . by reason of failure to pay a poll tax or other tax.”).

<sup>80</sup> *Id.* amend. XXVI, § 1 (“The right of citizens of the United States, who are eighteen years of age or older, to vote shall not be denied or abridged . . . on account of age.”).

<sup>81</sup> *See supra* Part I.A.



of the residential communities of the District with the State of Maryland whence they came more than two centuries ago. As a chartered city within Maryland (or a county—Douglass County, perhaps, after the great Maryland-born abolitionist orator and former Marshal of the District of Columbia, Frederick Douglass), Washington would keep its home rule powers, its council, its mayor, its board of education, and its advisory neighborhood commissions, but it would send its own state senators and delegates to Annapolis, and it would participate, both through voting and by fielding candidates of its own, in the election of the Maryland governor, lieutenant governor, attorney general and so on. Most importantly, the residents of Washington would participate in the election of two U.S. senators, one or more voting members of the U.S. House and full political rights equal to other Americans.

This path would surely present political complications of its own. Statehood by merger and retrocession does not seem currently desirable to many people in the District or Maryland, and no one has yet to make a compelling case for it.<sup>82</sup> The path of constitutional expansion presents itself as the most immediate, compelling, and viable option for political change, not just for Washingtonians but for all Americans.

In truth, in pressing for a long overdue Democracy Amendment, we have nothing to lose but our constitutional conservatism and anxiety, qualities that, in the extreme, undermine our democratic resiliency and political progress as a nation. As Thomas Jefferson once wrote:

Some men look at constitutions with sanctimonious reverence, and deem them like the arc [sic] of the covenant, too sacred to be touched. They ascribe to the men of the preceding age a wisdom more than human, and suppose what they did to be beyond

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<sup>82</sup> See James L. Craig, Jr., *A Shared Sovereignty Solution to the Conundrum of District of Columbia Congressional Representation*, 57 *How. L.J.* 235, 242–43 (2013) (arguing that some Marylanders might oppose retrocession of the residential portions of the District back into Maryland because it would change the balance of power within the state, and that Democrats, who make up the majority of District residents, obviously prefer an independent statehood admission because retrocession would effectively submerge a Democratic district into an already blue state). However, these arguments have a superficial quality to them. In truth, if everything else fails to achieve democratic equality, there are profound historical, cultural, political, demographic, environmental, and economic ties between Maryland and the District that could make a reunified state a desirable and compelling second-best solution from the perspective of people on both sides of the borderline. See Gregor Aisch et al., *Where We Came from and Where We Went, State by State*, *N.Y. TIMES* (Sept. 20, 2014), <http://www.nytimes.com/interactive/2014/08/13/upshot/where-people-in-each-state-were-born.html?smid=pl-share&abt=0002&abg=0> (revealing that persons born in D.C. end up living in Maryland more than anywhere else in the United States, and that the number of those born in D.C. living in Maryland is more than double the number of those still living in the District). Although the argument for statehood through reunion with Maryland has yet to be developed, much less promoted in the relevant communities, it should definitely not be taken off the table.

amendment . . . . But I know also, that laws and institutions must go hand in hand with the progress of the human mind. As that becomes more developed, more enlightened, as new discoveries are made, new truths disclosed, and manners and opinions change with the change of circumstances, institutions must advance also, and keep pace with the times.<sup>83</sup>

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<sup>83</sup> Letter from Thomas Jefferson to Samuel Kercheval (July 12, 1816), *in* THE DECLARATION OF INDEPENDENCE 68, 73 (Michael Hardt & Garnet Kindervater eds., 2007).