Governing the Seat, Not the City: The Constitutional Limits of Plenary Power in the District of Columbia

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ABSTRACT

Congress's authority over the District of Columbia is often described as plenary, but it is not unlimited. This Essay argues that the prevailing District Clause doctrine impermissibly collapses two distinct constitutional functions: protecting the federal seat of government and governing a permanent civilian population. The resulting jurisprudence permits Congress to regulate the District of Columbia's local affairs with minimal scrutiny, despite the absence of electoral safeguards that ordinarily justify deference.

This Essay advances a textual and structural rereading of the Constitution's District Clause. The Clause grants Congress authority over "the Seat of the Government," not "the city," reflecting a design in which power follows function—not geography. The Constitution's parallel Enclave Clause confers "like Authority" over federal enclaves, yet courts have recognized that power as functionally limited, not geographically unbounded. Additionally, recent dissents in Veneno v. United States *and* United States v. Vaello Madero *suggest the Supreme Court is increasingly skeptical of plenary power over tribes and territories resting on geography alone. The same critique applies to the District.*

To resolve this tension, this Essay proposes a Bifurcation Test. When Congress regulates seat of government functions, such as securing federal property or ensuring the independent operation of the national government, courts should apply traditional Palmore *deference. But when Congress regulates purely municipal affairs, it must identify a substantial federal interest tied to seat-of-government functions, and the regulation must bear a meaningful relationship to that interest. This approach does not create a new tier of scrutiny; it withdraws deference when political safeguards are absent and ensures that congressional authority does not become self-validating.*

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INTRODUCTION

The Constitution gives Congress broad authority over the District of Columbia,[1] but that authority is not unlimited.[2] Yet for more than a century, courts have described Congress's power under the District Clause as "plenary," subject only to express constitutional prohibitions.[3] That formulation collapses distinct constitutional functions into unbounded authority, even though District residents lack the political safeguards that ordinarily justify deference to Congress.

That is wrong—not just as a matter of policy, but as a matter of constitutional structure. The unitary plenary power doctrine rests on three compounding errors: misapplying historical context, misreading the constitutional text, and failing to adapt doctrine to changed circumstances. Correction of these errors does not require judicial activism. Properly understood, the District Clause grants Congress functionally differentiated authority: extensive when Congress acts to protect the national seat of government but limited and judicially reviewable when Congress regulates ordinary municipal affairs.

This Essay therefore proposes a Bifurcation Test. When Congress regulates to protect the national seat of government, courts apply traditional *Palmore* deference. But when Congress regulates the District's purely municipal affairs, it must identify a substantial federal interest tied to seat-of-government functions, and the regulation must bear a meaningful relationship to that interest.

The need for bifurcation is not theoretical. Congress has repeatedly overridden District laws on criminal sentencing, elections, health policy, drug legalization, and taxation to advance national political interests

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1 *See* U.S. CONST. art. I, § 8, cl. 17.

2 *See, e.g.*, Bolling v. Sharpe, 347 U.S. 497, 500 (1954) (holding that the Fifth Amendment's Due Process Clause constrains congressional legislation in the District of Columbia).

3 *See* Palmore v. United States, 411 U.S. 389, 397 (1973).

unrelated to federal operations.[4] These interventions are routinely upheld because courts assume Congress may govern the District as if it possessed the general police power of state legislatures.[5]

Members of the Supreme Court, however, have grown increasingly skeptical of plenary power doctrines.[6] Recent dissents in the Court addressing plenary power over Native American tribes and United States territories emphasize that longstanding doctrine cannot substitute for constitutional limits, especially when populations lack political recourse.[7] The District of Columbia presents this problem in starkest form: 700,000 citizens governed by a Congress of legislators they did not elect and cannot remove.[8]

This Essay proceeds in three parts. Part I examines the District Clause's text, structure, and founding context, showing that the Clause was designed to secure federal independence, not to authorize general police power over a civilian population. Part II shows how modern doctrine collapsed that distinction, producing jurisprudence without workable limits. Part III proposes the Bifurcation Test and situates it within existing practice.

This Essay does not argue that Congress lacks authority, that District citizens have voting rights, or that the District is a state. Rather, it advances a narrow claim: Congress's authority over the District is functionally differentiated, constitutionally constrained, and judicially reviewable.

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4 *See* Act of Mar. 20, 2023, Pub. L. No. 118-1, 137 Stat. 3 (disapproving D.C. criminal code reform); District of Columbia Appropriations Act, 1996, Pub. L. No. 104-134, § 131, 110 Stat. 1321-91 (restricting abortion funding); District of Columbia Appropriations Act, 1999, Pub. L. No. 105-277, § 171, 112 Stat. 2681-150 (barring the use of appropriated funds to conduct any ballot initiative seeking to legalize or reduce penalties for Schedule I substances).

5 *See* District of Columbia v. John R. Thompson Co., 346 U.S. 100 (1953) (describing Congress as exercising both national legislative power and state legislative power over the District).

6 *See* Veneno v. United States, 146 S. Ct. 52 (2025) (mem.) (Gorsuch, J., dissenting from denial of certiorari); United States v. Vaello Madero, 596 U.S. 159 (2022) (Sotomayor, J., dissenting).

7 *See Veneno*, 146 S. Ct. at 53–56 (Gorsuch, J., dissenting from denial of certiorari); *Vaello Madero*, 596 U.S. at 195–98 (Sotomayor, J., dissenting).

8 *QuickFacts: District of Columbia*, U.S. CENSUS BUREAU, https://www.census.gov/quickfacts/fact/table/DC/PST045225 [https://perma.cc/EA43-Q8R9] (last visited Aug. 23, 2026).

I. THE DISTRICT CLAUSE: TEXT, STRUCTURE, AND PURPOSE

A. The Founding Purpose: Federal Security, Not Municipal Control

The District Clause emerged from a specific problem: After the 1783 Philadelphia Mutiny, when armed Revolutionary War veterans surrounded Congress at Independence Hall demanding back pay and Pennsylvania authorities declined to intervene, the Framers designed Article I, Section 8, Clause 17 of the Constitution to ensure federal independence from state interference.[9] But the Clause's purpose was a limited one.[10] Ratified before the capital's location was selected, it was intended to address state interference with federal operations, not municipal governance over disenfranchised residents.[11]

Ratification debates confirm this limited purpose.[12] Delegates at the state ratifying conventions raised concerns about federal tyranny over District residents.[13] But they assumed that the states ceding the land to become the District would protect residents through conditions on the land transfer itself.[14] The Framers would have been assured by James Madison's Federalist No. 43, which explained that District residents "will have had their voice in the election of the government which is to exercise authority over them" and enjoy "a municipal legislature for local purposes, derived from their own suffrages."[15] Whatever Madison's precise intent, his assurance reveals that the Framers understood congressional authority over the District

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9 *See generally* KENNETH R. BOWLING, THE CREATION OF WASHINGTON, D.C.: THE IDEA AND LOCATION OF THE AMERICAN CAPITAL (1991) (tracing the origins of the federal capital from the Confederation period through the site selection of 1790).

10 *See* THE FEDERALIST NO. 43, at 272–73 (James Madison) (Clinton Rossiter ed., 1961) (grounding the need for exclusive jurisdiction in the seat of government's independence and security).

11 *See id.*

12 *See infra* notes 13–14.

13 New York delegate Thomas Tredwell warned that the federal district "departs from every principle of freedom[;] . . . for, subjecting the inhabitants of that district to the exclusive legislation of Congress, in whose appointment they have no share or vote, is . . . a tyranny." 2 THE DEBATES IN THE SEVERAL STATE CONVENTIONS ON THE ADOPTION OF THE FEDERAL CONSTITUTION, at 402 (Jonathan Elliot ed., 2d ed. 1836). Alexander Hamilton proposed amending the Constitution to guarantee District residents congressional representation once the population reached a threshold. 5 THE PAPERS OF ALEXANDER HAMILTON 189 (Harold C. Syrett & Jacob E. Cooke eds., 1962).

14 North Carolina delegate James Iredell explained that states could "stipulate the conditions of the cession" and would naturally "take care of the liberties of its own people." 4 THE DEBATES IN THE SEVERAL STATE CONVENTIONS ON THE ADOPTION OF THE FEDERAL CONSTITUTION, at 219 (Jonathan Elliot ed., 2d ed. 1836).

15 THE FEDERALIST NO. 43, at 272–73 (James Madison) (Clinton Rossiter ed., 1961).

as constrained.[16] If the Framers intended for the federal government to have truly plenary power, state preconditions protecting voting rights would have been unenforceable under the Supremacy Clause—yet Madison never suggested they were futile.[17]

B. The "Seat of the Government": Function over Geography

Article I, Section 8, Clause 17 of the Constitution, the District Clause states that Congress has the power:

> To exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square) as may, by Cession of particular States, and the Acceptance of Congress, become the Seat of the Government of the United States, and to exercise like Authority over all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, dock-Yards, and other needful Buildings.[18]

One textual objection to this Essay's Bifurcation Test is that the District Clause grants Congress power to "exercise exclusive Legislation in all Cases whatsoever."[19] That phrase seems to give Congress unlimited power over the District—but it does not. The phrase modifies the nature of congressional authority, not its scope. "[E]xclusive" means state law cannot operate in the District: Congress's power is not shared with Maryland or Virginia. "[I]n all Cases whatsoever" reinforces that exclusivity: Congressional legislation is supreme and not subject to state interference.

In fact, the District Clause contains two limiting principles courts have overlooked. First, semantic: Congress governs "the Seat," not "the city."[20] Second, structural: Authority tracks the federal function protected, i.e., power exists because of what the seat of government, forts, and arsenals do, not where they are.

The operative noun is "Seat," not borough, city, town, or municipality. In Founding-era usage, a "seat of government" referred to the place where sovereign authority was fixed and exercised; that is, where officials

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16 Madison's use of the future perfect tense—"will have had their voice"—has sparked debate about whether he contemplated continued suffrage or only pre-cession voting rights. *See* Peter Raven-Hansen, *Congressional Representation for the District of Columbia: A Constitutional Analysis*, 12 HARV. J. ON LEGIS. 167, 172–73 n.24 (1975).

17 *See* THE FEDERALIST NO. 43 (James Madison).

18 U.S. CONST. art. I, § 8, cl. 17.

19 *Id.*

20 *See id.*

convened, laws were made, and government operated.[21] Blackstone's Commentaries, studied by Founding-era lawyers, used "seat" to identify where authority functioned: the seat of justice, empire, or war.[22]

The Clause's use of the definite article "the" narrows its scope: It signals a particular, identifiable thing.[23] It is not an abstract category of governance; it is the site of the national authority. The Clause grants Congress authority over a place because it is the seat of government, but it does not grant general authority over whatever civilian population ends up living there.[24]

The Framers understood themselves to be making two decisions in the District Clause: what function of the government to establish (seat) and where to locate it (place). The First Congress accepted "some place" on the Potomac "for the permanent seat of the government of the United States."[25] The states did the same. North Carolina's 1788 Convention, a meeting to ratify the federal Constitution, was simultaneously charged with "fixing the unalterable seat of government of this state" at a "place" to be selected.[26]

The federal Constitution grants authority over a District insofar as it becomes the seat of government. The geographic reference, "not exceeding ten Miles square," operates as a limiter, not an independent grant.[27] It defines how much land may be set aside, not power's scope. If authority were geographic rather than functional, there would have been no reason to anchor the grant to a seat. If power were truly unlimited within the ten square miles, the seat of government language would be surplusage—the Framers needed no constitutional clause to draw a square on a map. They could also have authorized exclusive legislation over "such City as may be designated the capital." They did not.

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21 *Seat*, SAMUEL JOHNSON, A DICTIONARY OF THE ENGLISH LANGUAGE (1st ed. 1755) (defining "seat" to include place of authority); *Seat*, NOAH WEBSTER, AN AMERICAN DICTIONARY OF THE ENGLISH LANGUAGE (1828) (defining "seat" as "the place of sitting; throne; chair of state; tribunal; post of authority").

22 *See* 1 WILLIAM BLACKSTONE, COMMENTARIES *22–23.

23 U.S. CONST. art. IV, § 3, cl. 2. The Territories Clause also uses "the" but does so before "Territory," granting Congress authority over a purely geographical term. *Id.* In the District Clause, "the" modifies a singular "Seat." *See* U.S. CONST. art. I, § 8, cl. 17.

24 *See* Jessica Bulman-Pozen & Olatunde C.A. Johnson, *Federalism and Equal Citizenship: The Constitutional Case for D.C. Statehood*, 110 GEO. L.J. 1269, 1276, 1278–79 (2022) (describing Founding-era concerns about federal dependence on states, the Philadelphia Mutiny, and the assumption that District residents would retain local self-government and political voice).

25 Residence Act of July 16, 1790, ch. 28, § 1, 1 Stat. 130.

26 *Minutes of the North Carolina Constitutional Convention at Hillsborough (1788)*, *in* 22 THE STATE RECORDS OF NORTH CAROLINA 1, 28–29, 33 (Walter Clark ed., 1907).

27 U.S. CONST. art. I, § 8, cl. 17.

When states wanted to grant the state legislature authority over municipal governance, they did so explicitly. For example, the Pennsylvania state constitution explicitly granted the legislature the authority to create and organize "towns, boroughs, cities, and counties,"[28] whereas the Virginia and Massachusetts state constitutions only provided for the representation of such localities in the state legislature.[29] But when Pennsylvania fixed its seat in Philadelphia, the legislature gained no plenary power. When New York's seat was New York City, the state exercised no exclusive legislation over Manhattan. No state disenfranchised its capital.

The Framers made the same choice. They chose "the Seat of the Government," a term of art denoting function, to secure the location where national authority would be exercised, not to grant plenary power over whoever might reside in the capital.[30]

C. The Enclave Clause Parallel: Function Defines Scope

The second limiter is structural. The Enclave Clause appears in the same sentence as the District Clause, with parallel structure:

> To exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square) as may, by Cession of particular States, and the Acceptance of Congress, become the Seat of the Government of the United States, *and to exercise like Authority over all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, dock-Yards, and other needful Buildings*.[31]

The choice to include the two grants together was intentional, and reading the entire clause is necessary to understand the separate parts. First, the term "like Authority" denotes a similarity in kind, not just degree. The authority exercised is identical, and Congress's authority over forts and arsenals, or federal enclaves, is like its authority over the District: exclusive and functionally limited. Second, the preposition "for" is an explicit limiter. The authority exists for specific enumerated purposes, implying that where the purpose ends, the authority's plenary nature decreases. The Enclave

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28 PA. CONST. of 1776, § 9 (the General Assembly "shall have power to . . . grant charters of incorporation; constitute towns, boroughs, cities, and counties").

29 MASS. CONST. of 1780, ch. I, § III, art. II (providing that "every corporate town" may elect state representatives); VA. CONST. of 1776 (providing for "a Representative for each of such other cities and boroughs, as may hereafter be allowed particular representation by the legislature").

30 U.S. CONST. art. I, § 8, cl. 17.

31 *Id.* (emphasis added).

Clause's inclusion of "other needful Buildings" does not change that analysis because, under the *ejusdem generis* canon of construction, that phrase reaches only structures serving similar purposes to the "Forts, Magazines, Arsenals, [and] dock-Yards" preceding it.[32]

The Supreme Court has consistently enforced functional limitations on the Enclave Clause, holding that the Enclave Clause's "exclusive Legislation" does not create absolute federal sovereignty that displaces all state authority.[33] In *James v. Dravo Contracting Co.*,[34] the Court held that a state may qualify its cession of jurisdiction "by reservations not inconsistent with the governmental uses," and that Clause 17 does not require a state's consent to federal acquisition to be unqualified.[35] This holding implies that the extent of federal jurisdiction turns on the terms of a state's cession rather than on the "exclusive Legislation" language in the Clause itself, and reinforces that federal authority operates functionally, not territorially.[36] Depending on the terms of the land transfer, states may retain authority to execute process, apply laws in force at the time of cession, and tax activity within an enclave.[37]

Military bases represent the apex of Enclave Clause authority because the Clause creates plenary power over property acquired "for the Erection of Forts." Yet in *Flower v. United States*,[38] the Supreme Court pierced the plenary veil: When the military opens a portion of an enclave to unrestricted

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32 *See* Cir. City Stores, Inc. v. Adams, 532 U.S. 105, 114–15 (2001) (applying ejusdem generis to confine a residual clause to items of the same class as the specific enumerated terms preceding it); *see also* Antonin Scalia & Bryan A. Garner, READING LAW: THE INTERPRETATION OF LEGAL TEXTS 199–200 (2012) ("[W]hen the tagalong general term is given its broadest application, it renders the prior enumeration superfluous.").

33 *See* Howard v. Comm'rs of Sinking Fund of Louisville, 344 U.S. 624, 627 (1953) (recognizing that a state retains authority over a federal enclave absent interference with the jurisdiction the United States asserts); Evans v. Cornman, 398 U.S. 419, 424–26 (1970) ("Congress has now permitted the States to extend important aspects of state powers over federal areas.").

34 302 U.S. 134 (1937).

35 *See id.* at 147–49.

36 *ArtI.S8.C17.2.3 State Jurisdiction Over Places Purchased*, CONST. ANNOTATED https://constitution.congress.gov/browse/essay/artI-S8-C17-2-3/ALDE_0000008/ [https://perma.cc/NBR7-BVYH].

37 *See Dravo*, 302 U.S. at 149, 161 (effective reservation of concurrent jurisdiction); *Howard*, 344 U.S. at 627; James Stewart & Co. v. Sadrakula, 309 U.S. 94, 99–100 (1940) (state safety regulations in force at cession continue in effect on the enclave); Collins v. Yosemite Park & Curry Co., 304 U.S. 518, 533–35 (1938) (state excise taxes on liquor sales enforceable within the park, though state licensing provisions were not).

38 407 U.S. 197 (1972) (per curiam).

public use, it abandons any special interest in regulating public expression there.[39]

Fort Sam Houston in San Antonio, Texas is a federal enclave.[40] In 1969, John Flower walked onto Fort Sam and quietly distributed flyers promoting a debate about the Vietnam War.[41] He was arrested and charged under a federal trespassing statute and sentenced to six months in jail.[42]

The Supreme Court unanimously reversed his conviction.[43] The Court, without reference to the Enclave Clause, refused to collapse function into geography.[44] Flower was arrested on New Braunfels Avenue, on base and on federal land.[45] But the avenue was open to the public and used by civilians and military,[46] without guard posts or closures.[47]

Those facts were dispositive. Because of the base's open nature, the Court held that "the military has abandoned any claim that it has special interests in who walks, talks, or distributes leaflets on the avenue."[48] Federal ownership did not matter. The Enclave Clause text did not matter. Function mattered.

Flower exposes the flaw in District Clause jurisprudence: Enclave Clause doctrine recognizes that function, not geography, determines permissible regulation; District Clause jurisprudence does not. In *Flower*, federal ownership of Fort Sam Houston was insufficient to justify restricting civilian speech unrelated to military functions.[49] Yet in the District, federal ownership is treated as sufficient to justify any regulation of civilian life, even regulations that have nothing to do with protecting federal operations. The Court applies functional analysis to enclaves but geographic analysis to the District. That inconsistency cannot be reconciled with the Constitution's text or structure. The result is a body of law that recognizes theoretical limits but declines to enforce them in practice. Part II addresses that problem. Part III then proposes a framework for resolving it.

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39 *Id.* at 198–99.

40 *See* United States v. Hopkins, 901 F.3d 518, 519 (5th Cir. 2018).

41 *See Flower*, 407 U.S. at 197.

42 *Id.*

43 *Id.* at 199.

44 *Id.* at 197–99 (analyzing the case entirely under First Amendment principles without invoking Enclave Clause authority).

45 *Id.* at 197.

46 *Id.* at 198.

47 *Id.* ("There is no sentry post or guard at either entrance or anywhere along the route. Traffic flows through the post on this and other streets 24 hours a day . . . Fort Sam Houston was an open post; the street, New Braunfels Avenue, was a completely open street." (quoting United States v. Flower, 452 F.2d 80, 90 (5th Cir. 1971) (Simpson, J., dissenting))).

48 *Id.*

49 *See id.*

II. THE PLENARY POWER DOCTRINE: REPETITION WITHOUT REASONING

Modern jurisprudence on the District Clause emerged from judicial accommodation that hardened into doctrine through repetition, not reasoning. Deference in cases involving federal courts became all-purpose: Congress may legislate however it chooses absent explicit prohibition. Courts stopped asking whether congressional action served a federal purpose. They stopped distinguishing between protecting the seat of government and governing residents. Functional analysis disappeared.

The result is a jurisprudence with no limiting principle. A zoning regulation affecting federal buildings receives the same deference as a local criminal sentencing law unrelated to federal operations. Congress's override of locally enacted marijuana policy is treated identically to security measures protecting the Capitol complex. The doctrine collapses distinct constitutional functions into a single, undifferentiated mass of "plenary" authority, precisely what the District Clause's functional language was designed to prevent.

Modern District Clause jurisprudence rests on a missing middle between two Supreme Court cases and their progeny: plenary power deference from *Palmore v. United States*,[50] cabined only by *Bolling v. Sharpe*'s[51] prohibition on outright constitutional violations.

A. The Doctrinal Anchors: Palmore *and* Bolling

In 1971, D.C. police stopped Roosevelt Palmore, spotted a gun in his car, and arrested him for unregistered possession of a firearm as a convicted felon.[52] Congress had determined that local felonies in the District would be prosecuted before judges serving fifteen-year terms.[53] Palmore was convicted in D.C. Superior Court and appealed, arguing that only Article III courts with life-tenured judges could try felonies in the District.[54]

The Supreme Court ruled 8-1 against Palmore. The Court reasoned that, under the "characteristic view," the District Clause grants "plenary" power, so Congress had authority to set up the Superior Court as it did.[55] That was it—ipse dixit.

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50 411 U.S. 389 (1973).

51 347 U.S. 497 (1954).

52 *Palmore*, 411 U.S. at 391.

53 *See* E. BARRETT PRETTYMAN, JR., HISTORY OF THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT IN THE COUNTRY'S BICENTENNIAL YEAR 82 (1976); D.C. CODE §§ 11-1501(a), 11-1502 (1970).

54 *Palmore*, 411 U.S. at 391–94.

55 *Id.* at 397–98.

The *Palmore* Court cited six previous cases for its plenary proposition,[56] each deriving its authority by citing its predecessors, resulting in a self-reinforcing but not self-justifying doctrine. First, the Court cited *Kendall v. United States*,[57] a decision which narrowly expanded congressional authority in the context of the power of District judges to issue mandamuses, while broadly maintaining that "Congress has the entire control over the district for every purpose of government."[58] The Court also cited *Mattingly v. District of Columbia*,[59] which asserted that Congress legislates for the District "as may the legislature of any State over any of its subordinate municipalities."[60] *Gibbons v. District of Columbia*[61] ratified that holding and added that Congress's power "has never since been doubted."[62]

But the absence of challenge is not a constitutional argument, and in any event, the premise is false. Nevertheless, the *Palmore* Court relied on this line of precedent to support its conclusion, even when the precedent indicated the plenary power could be questioned. For example, in *O'Donoghue v. United States*,[63] the Court held that because the District was formed by portions of Maryland and Virginia, it was "not reasonable to assume that the cession stripped them of" the many "rights, guaranties, and immunities of the Constitution."[64] The dissent in *Palmore* noted that this decision was "a major retreat from *O'Donoghue*,"[65] but no matter; the damage was done. Instead, the *Palmore* Court aligned more closely with decisions like *Shoemaker v. United States*,[66] which described congressional authority as "full and unlimited jurisdiction," a formulation later echoed and broadened in *Atlantic Cleaners & Dyers v. United States*,[67] which declared congressional power in the District "unlimited."[68]

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56 *Id*. at 397 n.7.

57 37 U.S. (12 Pet.) 524 (1838).

58 *Id.* at 619.

59 97 U.S. 687 (1878).

60 *Id.* at 690.

61 116 U.S. 404 (1886).

62 *Id.* at 407.

63 289 U.S. 516 (1933).

64 *Id.* at 544 (addressing Article III status of D.C. courts).

65 Palmore v. United States, 411 U.S. 389, 416 (1973) (Douglas, J., dissenting). The majority held that *O'Donoghue* did not control because the courts in question only heard local matters, not local matters and federal ones. *Id.* at 405–06 (majority opinion).

66 147 U.S. 282 (1893).

67 286 U.S. 427, 435 (1932) ("[I]n passing [§ 3 of the Sherman Act], [Congress] had unlimited power, except as restricted by other provisions of the Constitution."); *Shoemaker*, 147 U.S. at 300.

68 *Atl. Cleaners*, 286 U.S. at 435.

These are not abstract disputes. The plenary power doctrine has real consequences for real people, nowhere more painfully than when Congress wields that power to diminish, rather than protect, District residents' rights. For example, on the first day of school in September 1950, twelve-year-old Spottswood "Spotts" Bolling, Jr. and his parents went to enroll in the District's newly opened junior high school in Anacostia.[69] He was denied. He was Black.[70]

Bolling sued the D.C. Board of Education alleging unconstitutional discrimination.[71] The Court decided *Bolling v. Sharpe*[72] and *Brown v. Board of Education*[73] the same day.[74] In *Brown*, the Supreme Court held that the Equal Protection Clause of the Fourteenth Amendment, which only applies to the States, prohibits racially segregated public schools.[75] In *Bolling*, the Supreme Court held that the Fifth Amendment's Due Process Clause, which applies to the District, contains the same protections against racial segregation as the Fourteenth Amendment's Equal Protection Clause.[76] The Court declared that "it would be unthinkable" that the Constitution imposes a "lesser duty on the Federal Government" than the states.[77]

B. Why State Equivalence Fails

Bolling gave constitutional teeth to *Palmore*'s otherwise generic assurance that Congress must respect individual rights when legislating for the District. But that only established the floor. *Bolling* did not establish a rule of equivalence between federal and state legislatures acting locally. Instead, it answered a negative: what Congress may *not* do in the District. The Court did not suggest that Congress inherits the full police powers of a state legislature when it acts in the District. It held the opposite, finding it "unthinkable" that the federal government and states exercise local police power with parity.

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69 *See* Anne McDonough, Bolling v. Sharpe *70 Years Later*, DC HISTORY CENTER + HUMANITIESDC (May 16, 2024), https://dchistory.org/news-and-insights/bolling-v-sharpe-70-years-later/ [https://perma.cc/3XRW-RELJ].

70 *See Law School Special Collections*, *Archives & Law Library Exhibits: BHM 2017* - Bolling v. Sharpe, CATH. UNIV. OF AM. JUDGE KATHRYN J. DUFOUR L. LIBR. https://libguides.law.cua.edu/c.php?g=913318&p=9758590 [https://perma.cc/S55L-S73K] (last visited Nov. 10, 2026).

71 *Id.*

72 347 U.S. 497 (1954).

73 347 U.S. 483 (1954).

74 *Bolling*, 347 U.S. at 498.

75 *Brown*, 347 U.S. at 495.

76 *Bolling*, 347 U.S. at 499–500.

77 *Id.* at 500.

State equivalence as a doctrine, the idea that the federal government can legislate in the District if a state could do the same in a city, cannot be the right interpretation of the District Clause because when Congress regulates in the District it does so as a super-legislature, exercising the combined legislative, executive, and judicial powers of the federal government in addition to those of the states.[78] And it does so unconstrained by the state constitutions with which local governments must comply. Congress possesses more authority in the District than any state does in its own capital while retaining none of the democratic accountability that state legislatures have.[79]

When the Framers wanted to authorize Congress to exercise state-like power, they said so explicitly. The Territories Clause, for instance, grants Congress power to "make all needful Rules and Regulations" regarding the territories of the United States.[80] But as the Supreme Court instructs, the District is not a territory.[81]

The state equivalence framework's biggest failure is that the accountability mechanism that constrains state power, the congressional vote, is absent in the District.[82] Political accountability to voters is the foundational premise of judicial review of constitutionality. In *United States v. Carolene Products Co.*,[83] the Supreme Court established the framework that governs how courts evaluate lawsuits challenging government action.[84] It is a highly deferential framework, reflecting the practical reality that courts should not second-guess democratic choices made by elected representatives. The political, not judicial, process is the check on abuse of

78 Am. Ins. Co. v. Canter, 26 U.S. (1 Pet.) 511, 546 (1828) (finding that when Congress legislates, it "exercises the combined powers of the general, and of a state government"); N. Pipeline Constr. Co. v. Marathon Pipe Line Co., 458 U.S. 50, 76 (1982) ("Congress' power over the District of Columbia encompasses the *full* authority of government, and thus, necessarily, the Executive and Judicial powers as well as the Legislative."). *But see* Banner v. United States, 428 F.3d 303, 308 (D.C. Cir. 2005) ("Congress, when it legislates for the District, stands in the same relation to District residents as a state legislature does to residents of *its own state*.").

79 John Payton, *Should the District of Columbia Have Responsibility for the Prosecution of Criminal Offenses Arising Under the District of Columbia Code?*, 11 U.D.C. L. REV. 35, 35–37 (2008).

80 U.S. CONST. art. IV, § 3, cl. 2.

81 *See* O'Donoghue v. United States, 289 U.S. 516, 537–39 (1933) (contrasting the characteristics of territories with D.C.).

82 *See* Bulman-Pozen & Johnson, *supra* note 24, at 1271–74.

83 304 U.S. 144 (1938).

84 *Id.* at 152 n.4.

authority.[85] The Supreme Court has upheld local regulations that it has acknowledged are unwise, needless, wasteful, and anticompetitive.[86] It has done so out of deference to state legislators who are accountable to their voters. If voters do not like a law, they can vote the bums out!

But not in the District. In 2023, House Republicans overrode the elected D.C. Council's revision of the criminal code, overturning local decisions about sentencing reform and criminal penalties.[87] In 2025, Congress prohibited D.C. from spending its local tax revenues.[88] Congress has also blocked the spending of local revenues on reproductive health care for low-income women.[89] And Congress has repeatedly barred D.C. from legalizing marijuana[90] and introduced bills that would ban the city from painting slogans on its own streets.[91]

The perverse result is that members of Congress impose unpopular, punitive, and burdensome regulations on District residents to appeal to their actual constituents back home, bearing none of the costs and facing none of the accountability in the District that the courts assume constrain legislative overreach.[92]

C. Plenary Power in Retreat

The Supreme Court has taken notice of these adverse effects of ungrounded federal authority, and the foundation is crumbling for congressional plenary power over populations defined by geography.

In *Veneno v. United States*,[93] decided in late 2025, Justices Gorsuch and Thomas dissented from a denial of certiorari in which the petitioner asked

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85 "For protection against abuses by legislatures the people must resort to the polls, not to the courts." Munn v. Illinois, 94 U.S. 113, 134 (1876), *quoted in* Williamson v. Lee Optical of Okla., Inc., 348 U.S. 483, 488 (1955).

86 *See, e.g.*, *Williamson*, 348 U.S. at 488–89.

87 Act of Mar. 20, 2023, Pub. L. No. 118-1, 137 Stat. 3 (disapproving the District of Columbia's Revised Criminal Code).

88 Full-Year Continuing Appropriations and Extensions Act, 2025, Pub. L. No. 119-4, 139 Stat. 9 (omitting the standard provision allowing D.C. to spend its locally generated tax revenues resulting in approximately $1.1 billion in cuts to local programs funded by D.C. tax dollars); Gary Fields & Ashraf Khalil, *DC Fears Revenue Cliff as Congress Debates Its Financial Future*, AP (Mar. 13, 2025, at 18:17 EDT), https://apnews.com/article/trump-congress-dc-budget-cuts-muriel-bowser-fb33057ab9ef4ef50f5234607f2bda9c [https://perma.cc/V9PV-AD52].

89 Consolidated Appropriations Act, 2023, Pub. L. No. 117-328, 136 Stat. 4459, 4723.

90 *Id.* at 4722.

91 H.R. 1774, 119th Cong. (2025) (proposing withdrawing federal highway funds unless the District removed "Black Lives Matter" street paint).

92 *See, e.g.*, Fields & Khalil, *supra* note 88 (reporting that members of Congress have used their authority over the District to "win points" with their home-state constituents).

93 146 S. Ct. 52 (2025) (mem.).

the Court to reconsider *United States v. Kagama*,[94] the basis for congressional plenary power over Native American tribes.[95] The dissenters said plenary power "should make this Court blush. Not only does that notion lack any foundation in the Constitution; its roots lie instead only in archaic prejudices. This Court is responsible for *Kagama*, and this Court holds the power to correct it. We should not shirk from the task."[96]

The dissent from the doctrine of tribal plenary power mirrors and reinforces the structural defects in District Clause jurisprudence. Like *Palmore*, *Kagama* upheld sweeping congressional authority based on "little more than *ipse dixit*."[97] The *Kagama* Court rejected the argument that the text of the Constitution's Indian Commerce Clause supports plenary power and instead relied on, as Justice Gorsuch writes, "archaic colonial prejudices," which then spawned a self-reinforcing chain of cases.[98] The government's opposition to the petition in *Veneno* rested on that chain, arguing that because the Court's plenary power decisions have stood for years, the doctrine must continue.[99] But the dissent, noting that the same was true of the cases upholding racial segregation and Japanese internment, urged the Court to reconsider its plenary power decisions: "a matter so grave 'can[not] be settled until settled right.'"[100]

Additionally, Justice Sotomayor's dissent in *United States v. Vaello Madero*[101] offered an equal protection critique of plenary power. Applying rational basis review to Puerto Rico's exclusion from the Social Security Administration's Supplemental Security Income program ("SSI"), she argued that geographic discrimination fails constitutional scrutiny when it lacks genuine justification and when affected residents "cannot rely on their elected representatives to remedy the punishing disparities."[102] The analysis turned on two features: (1) the rational basis offered (tax status) was pretextual because SSI recipients by definition pay little to no taxes, and (2) the fact that territorial residents lack political representation to check arbitrary congressional action.[103]

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94 118 U.S. 375 (1886).

95 *Veneno*, 146 S. Ct. at 52–53 (Gorsuch, J., dissenting from the denial of certiorari).

96 *Id.* at 53.

97 *Id.* (quoting Haaland v. Brackeen, 599 U.S. 255, 357 (2023) (Thomas, J., dissenting)).

98 *Id.* at 55.

99 *Id.* at 56.

100 *Id.* (quoting Frederic R. Coudert, *The Evolution of the Doctrine of Territorial Incorporation*, 26 COLUM. L. REV. 823, 842 (1926)).

101 596 U.S. 159 (2022).

102 *Id*. at 197–98 (Sotomayor, J., dissenting).

103 *Id.*

If the Constitution prohibits plenary power over sovereign tribes with their own governmental structures, and if equal protection principles forbid geographic discrimination against territorial residents, then surely, it cannot tolerate unlimited congressional authority over disenfranchised citizens residing in the nation's capital itself. District citizens suffer an extreme democratic deficit: no voting representation in Congress, no autonomous control over local affairs, and no state constitution to constrain federal overreach.[104] When Congress regulates D.C.'s municipal affairs, neither federalism constraints nor electoral accountability justify deference. This Essay's Bifurcation Test applies *Vaello Madero*'s logic: When political safeguards fail, and congressional justifications are pretextual, courts must apply meaningful scrutiny.

III. THE BIFURCATION TEST: A FUNCTIONAL FRAMEWORK

The accountability deficit is structural, not merely a policy issue. To compensate for this failure, to execute the District Clause faithfully and to recognize the shift in jurisprudence on the Equal Protection and Enclave Clauses, and away from *Palmore*'s plenary power, this Essay proposes the Bifurcation Test to be employed by courts reviewing congressional action in the District: Congress retains plenary deference when regulating seat of government functions but faces heightened scrutiny when regulating the District's municipal affairs.

This test is not radical. Congress exercises two distinct roles legislating for the District, and the Constitution demands different scrutiny depending on the role. When Congress regulates seat of government functions, it retains broad rational basis review from *Palmore*. This is Congress acting as the national legislature to protect uniquely federal interests in the nation's capital. That power is extensive: It includes the right to establish security perimeters and access control at federal buildings and monuments, traffic and parking regulations that facilitate federal operations and executive motorcades, building codes for federal buildings, land use planning to ensure adequate space, and flexibility to expand for federal needs.

But in the latter category, which includes matters such as municipal trash collection, business licensing, and residential zoning unrelated to federal operations, Congress must satisfy heightened scrutiny. Interference in these matters would have Congress acting as a super-legislature for a

104 *D.C. Home Rule*, COUNCIL OF THE DISTRICT OF COLUMBIA, https://dccouncil.gov/dc-home-rule/ [https://perma.cc/CV5V-CHMP] (last visited Aug. 21, 2026) (describing the District's gradual development of control over local affairs, and the continued lack of complete self-governance for District residents).

population it does not represent, exercising authority untethered from its enumerated federal function. When Congress acts as a city council, the structural safeguards that ordinarily justify rational basis review, including electoral accountability, political representation, and federalism constraints, are entirely absent.

The test does not overrule *Palmore*. It limits *Palmore* to its proper domain: cases where Congress actually regulates seat-of-government functions. That is not a revolution; it is a return to constitutional text and structure.

A. Equal Protection and the Accountability Gap

The Bifurcation Test follows core equal protection principles that the Supreme Court has enforced for seventy-five years. *Bolling* stands for an equality principle: The federal government cannot treat people worse than states can.[105] But equal protection is not only about suspect classifications. It is also about arbitrary governance. The Supreme Court has repeatedly applied heightened rational basis scrutiny, what one might call "rational basis with bite," when structural deficits undermine normal political safeguards that justify deference.[106]

For example, in *United States Department of Agriculture v. Moreno*,[107] the Court struck down a restriction on food stamps intended to punish hippie communes.[108] The Court characterized its review as rational basis review, but in actuality, it applied a stricter level of scrutiny, inquiring into the legislative motives to find animus, rejecting hypothetical justifications, and striking down the law.[109] In *City of Cleburne v. Cleburne Living Center*,[110] the Court applied what Justice Thurgood Marshall called "'second order' rational-basis review" to hold that the State's asserted interests were a pretext for prejudice against the intellectually disabled.[111] And in *Romer v. Evans*,[112] the Court struck down a Colorado state constitutional amendment that

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105 *See supra* Section II.A.

106 *See* Gerald Gunther, *The Supreme Court, 1971 Term—Foreword: In Search of Evolving Doctrine on a Changing Court: A Model for a Newer Equal Protection*, 86 HARV. L. REV. 1, 12 (1972); Gayle Lynn Pettinga, *Rational Basis With Bite: Intermediate Scrutiny by Any Other Name*, 62 IND. L.J. 779, 799 n.9 (1987) (referring to a "more searching use of rational basis as 'rational basis with bite'").

107 413 U.S. 528 (1973).

108 *Id.* at 534–35.

109 *Id.* at 534–38.

110 473 U.S. 432 (1985).

111 *Id.* at 455–56, 458 (Marshall, J., concurring in the judgment in part and dissenting in part).

112 517 U.S. 620 (1996).

prohibited municipalities from protecting gay citizens under the pretext of freedom of association.[113]

The common thread in these cases is not the subject matter, but the political process's failure to protect discrete groups lacking political power. District residents are subject to regulations imposed by legislators they did not elect and cannot remove. This is arbitrary governance and the purported justification is circular: Congress may treat you differently because Congress has the power to treat you differently.

This argument finds support in recent scholarship recognizing that the Reconstruction Amendments fundamentally transformed the District's constitutional status. As Professors Bulman-Pozen and Johnson demonstrate, the Fourteenth Amendment "makes state citizenship a constitutive component of equal national citizenship," requiring meaningful self-governance protections even for nonstate residents.[114]

Additionally, the Bifurcation Test harmonizes District and Enclave Clause jurisdiction. Following *Flower*'s functional analysis, the federal government has broad authority to secure domestic military bases, but when it regulates civilian conduct unrelated to military necessity, judicial scrutiny should be heightened. If federal ownership alone does not justify restricting civilian speech on a military base, geographic location alone cannot justify regulating municipal governance in the District.

The Bifurcation Test also finds support in another unlikely constitutional source: the dormant Commerce Clause. The Commerce Clause grants Congress affirmative authority to regulate interstate commerce.[115] But the Supreme Court has long held that even when Congress has not acted, states may not exercise their otherwise plenary police powers to implicate out-of-state national interests.[116]

For example, in *Pike v. Bruce Church, Inc.*,[117] the Court held that when a state regulation directly intrudes on national economic unity, it triggers heightened scrutiny and is presumptively invalid.[118] This inquiry, like the proposed Bifurcation Test, is functional. Just as courts ask whether a state is regulating within its proper local sphere or intruding on a national domain under the dormant Commerce Clause, courts reviewing District Clause

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113 *Id.* at 635–36.

114 Bulman-Pozen & Johnson, *supra* note 24, at 1291–1305.

115 *See* U.S. CONST. art. I, § 8, cl. 3.

116 *See, e.g.*, Tenn. Wine & Spirits Retailers Ass'n v. Thomas, 588 U.S. 504, 514–17 (2019).

117 397 U.S. 137 (1970).

118 *Id.* at 142.

legislation under this Essay's Bifurcation Test must ask whether Congress is securing the seat of government or regulating municipal affairs.

The analogy here is structural, not remedial. Dormant Commerce Clause doctrine rests on the uncontroversial premise, reaffirmed by the Court in *National Pork Producers Council v. Ross*,[119] that constitutional grants of power are limited by the Constitution's text, structure, and purpose, even when those limits are not spelled out as categorical prohibitions.[120] The Commerce Clause does not expressly forbid state protectionism; courts infer that limit to preserve the federal system's design.[121] Likewise, the District Clause distinction follows naturally from the Clause's structure and historical purpose and is fully consistent with ordinary methods of constitutional interpretation.

B. Distinguishing Federal from Local Authority

When applying the Bifurcation Test, some regulations will implicate both seat-of-government and municipal functions. For example, the size of the security perimeter permitted around the Capitol protects federal operations but has the potential to restrict residential vehicle traffic in the Capitol Hill neighborhood. In such cases, courts should evaluate the action's primary purpose and effect. This functional analysis is well established, and courts have applied it since *McCulloch v. Maryland*.[122] Deferring to Congress on the size of the Capitol's security perimeter seems necessary and tailored to serve federal operations. But if Congress attempted to prohibit all street vending within a mile of federal buildings in the District, courts would need to apply a heightened level of review.

What level? For seat-of-government regulations, courts should apply traditional *Palmore* deference. Congress's judgment about what is necessary to secure federal operations receives substantial weight. This is Congress exercising enumerated constitutional authority and judicial restraint is appropriate.

But when Congress regulates purely municipal affairs in the District, ordinary rational basis deference is unwarranted. Because District residents lack the electoral safeguards that justify such deference under *Carolene Products*, courts must require Congress to articulate a substantial federal interest rooted in seat-of-government functions, and the regulation must bear

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119 598 U.S. 356 (2023).

120 *See id.* at 380.

121 *See id.* at 369–70.

122 17 U.S. (4 Wheat.) 316, 329–30 (1819). *See also* Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah, 508 U.S. 520, 535 (1993) (examining whether facially neutral regulations actually serve their purpose by considering their operation and design).

a meaningful relationship to that interest. Under this test, "substantial" means the interest is genuine, nonpretextual, and actually related to Congress's unique role in governing the seat of government—not merely any policy Congress deems wise. As the Court has previously held, "the justification must be genuine, not hypothesized or invented *post hoc* in response to litigation."[123] This approach does not apply intermediate scrutiny nor create a new tier of scrutiny; it withdraws deference when political safeguards fail and ensures that congressional exclusivity does not become self-validating.

The Bifurcation Test does not strip Congress of authority over the District. It does not treat the District as a state. And it does not require strict scrutiny for every local regulation. Congress retains extensive power: It may regulate the Seat as broadly as necessary to protect operations and override municipal decisions threatening the same. Congress may also legislate for the District on matters within its enumerated powers subject to nationwide constraints.

But Congress may not regulate purely local affairs without justification simply because of geography. The test returns jurisprudence to first principles: text, structure, and function. It asks courts to distinguish legitimate federal authority from arbitrary governance of a disenfranchised population.

C. The Test in Practice

The Bifurcation Test produces sensible results. In 2023, Congress overrode the District's Revised Criminal Code Act, which would have reduced sentences for assault, robbery, and theft.[124] Congress identified no federal interest in this override beyond disagreement.[125] Under the test, this is municipal regulation. Criminal sentencing for ordinary offenses between local residents does not affect federal operations. Congress knows how to protect federal interests: For example, crossing the White House fence line is a federal crime.[126] That regulation, with its nexus to the literal home of the Executive, would be a clear example of proper federal function.

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123 United States v. Virginia, 518 U.S. 515, 555–56 (1996) (rejecting Virginia's pretextual defense of the Virgina Military Institute's male-only admissions).

124 Act of Mar. 20, 2023, Pub. L. No. 118-1, 137 Stat. 3 (disapproving the District of Columbia's Revised Criminal Code); Melissa Quinn, *Senate Votes to Block D.C. Crime Bill, Nullifying District Law for First Time in 31 Years*, CBS NEWS (Mar. 8, 2023, at 22:37 EST), https://www.cbsnews.com/news/senate-votes-to-block-dc-crime-bill/ [https://perma.cc/STP2-SEJ6].

125 *See* 137 Stat. at 3.

126 *See* 18 U.S.C. § 1752.

Other examples present closer questions. For one, Congress imposes height restrictions on buildings in downtown D.C.[127] Height restrictions affect the city's growth, development, and similar municipal concerns, but serve aesthetic purposes related to federal presence. The test requires examining whether restrictions genuinely serve seat-of-government functions or merely favor federal aesthetics over local autonomy.

If height restrictions are designed to ensure helicopter access to the White House South Lawn, they serve seat functions. If they exist solely to preserve "federal character," they regulate aesthetics and require further scrutiny.

This type of balancing is what courts do. They distinguish commercial from noncommercial activity, ministerial from discretionary acts, government from private speech. Functional line drawing is adjudication. The Bifurcation Test requires no second-guessing. Congress retains broad discretion. The test simply requires that Congress's interests be present and identifiable. Congress should regulate the seat, not govern the city.

D. Reconciling Home Rule

The Home Rule Act alone cannot cure these structural deficits, but a bifurcated constitutional framework can by aligning the scope of congressional authority with function.

The Act, passed after decades of struggle for local representation, grants District residents "powers of local self-government" over "local District matters"[128] while reserving to Congress control over matters of federal concern such as legislation concerning "the functions or property of the United States."[129] This distinction mirrors the Bifurcation Test. Home Rule already recognizes that Congress's authority over the District is functionally differentiated, and the test makes that distinction constitutionally enforceable.

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127 Height of Buildings Act of 1910, Pub. L. No. 61-196, 36 Stat. 452 (codified as amended at D.C. CODE § 6-601.05 (2026)). There is some disagreement about the purpose of this Act. One popular belief is that it was to preserve sight lines to the federal monuments. But historical reasons point to fire safety and dislike of the Cairo Hotel, the city's tallest residential building. *See id.*; National Capital Planning Commission, Part I: Historical Background on the Height of Buildings Act 1, 5–8 (unpublished report), https://www.ncpc.gov/heightstudy/docs/Historical_Background_on_the_Height_of_Buildings_Act_(draft).pdf [https://perma.cc/M256-RQ9P].

128 D.C. CODE § 1-201.02(a) (2026); District of Columbia Home Rule Act, Pub. L. No. 93-198, 87 Stat. 774 (1973) (codified as amended at D.C. CODE §§ 1-201.01–1-207.71 (2026)).

129 § 1-206.02(a)(3).

Under Home Rule, Congress retains plenary override authority for local regulations.[130] The Bifurcation Test does not strip Congress of that authority; it requires only that when Congress exercises its authority to regulate purely municipal affairs or matters unrelated to seat-of-government functions, courts scrutinize whether a substantial federal interest justifies the override. This modest constraint addresses what Home Rule cannot: the absence of electoral accountability when Congress acts as a super-legislature for District residents.

The D.C. Council's relationship with Congress mirrors any municipal government's relationship with its state.[131] Courts do not treat Baltimore parking ordinances as "Maryland General Assembly acts." The distinction is not the authority's source, but how it is exercised and held accountable. When Congress overrides the D.C. Council, it exercises federal power without electoral constraint. In contrast, District residents vote in Council members, and they can vote them out.

CONCLUSION

The District Clause protects a federal seat, not a fiefdom. Its purpose is to secure the independent operations of the federal government, not to subjugate its civilian population. *Palmore*'s plenary power doctrine, untethered from constitutional purpose, has crystallized into a reflexive judicial deference enabling the continued federal disenfranchisement of more than 700,000 American citizens.

Seventy-five years ago, when Spotts Bolling was turned away from a public school in the District for being Black, the Supreme Court declared it unthinkable that the Constitution would impose a lesser duty to protect its citizens on the federal government than on the states. Contemporary District Clause doctrine inverts that principle.

This Essay's proposed Bifurcation Test offers a modest course correction, supported by constitutional structure, historical practice, and evolving Equal Protection Clause doctrine. The Supreme Court's increasing skepticism of plenary power claims over Territories and Tribes reflects broader recognition that geography alone cannot justify governance without representation.

The District exemplifies this democratic deficit most acutely. Its residents are not merely federal employees and tourists. They are American

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130 § 1-206.02(c).

131 *See* Hunter v. City of Pittsburgh, 207 U.S. 161, 178 (1907) ("Municipal corporations are political subdivisions of the state, created as convenient agencies for exercising such of the governmental powers of the state as may be intrusted to them.").

citizens living ordinary lives, sending their children to neighborhood schools, paying local taxes, operating businesses, and building communities. The District is not a federal outpost with incidental residents; it is a real city with real neighborhoods and real municipal needs.

The path forward does not require constitutional amendment or statehood legislation, though either would independently resolve the problem. It requires only that courts do what they have always done: interpret constitutional text in light of structure and purpose and decline to extend deference when its justification is absent. The Constitution endures not because its commands are self-executing, but because courts have been willing to correct doctrinal drift and realign power with constitutional purpose.[132] A nation measured by its ideals cannot treat its capital as the exception.

132 *See* BRANDON J. MURRILL, CONG. RSCH. SERV., R45319, THE SUPREME COURT'S OVERRULING OF CONSTITUTIONAL PRECEDENT 1 (2018).