

Sec. 8—Powers of Congress

Cl. 17—District of Columbia; Federal Property

and replaced with a presidentially appointed Commission in 1878.¹⁶⁸⁶ The Commission lasted until 1967 when it was replaced by an appointed Mayor-Commissioner and an appointed city council.¹⁶⁸⁷ In recent years, Congress provided for a limited form of self-government in the District, with the major offices filled by election.¹⁶⁸⁸ District residents vote for President and Vice President¹⁶⁸⁹ and elect a nonvoting delegate to Congress.¹⁶⁹⁰ An effort by constitutional amendment to confer voting representation in the House and Senate failed of ratification.¹⁶⁹¹

Constitutionally, it appears that Congress is neither required to provide for a locally elected government¹⁶⁹² nor precluded from delegating its powers over the District to an elective local government.¹⁶⁹³ The Court has indicated that the “exclusive” jurisdiction granted was meant to exclude any question of state power over the area and was not intended to require Congress to exercise all powers itself.¹⁶⁹⁴

Chief Justice Marshall for the Court held in *Hepburn v. Ellzey*¹⁶⁹⁵ that the District of Columbia was not a state within the meaning of the diversity jurisdiction clause of Article III. This view, adhered to for nearly a century and a half,¹⁶⁹⁶ was overturned in 1949, the Court upholding the constitutionality of a 1940 statute authorizing federal courts to take jurisdiction of nonfederal controversies between residents of the District of Columbia and the citizens of a state.¹⁶⁹⁷ The decision was by a five to four division, but the five in the majority disagreed among themselves on the reasons. Three

¹⁶⁸⁶ Act of June 11, 1878, 20 Stat. 103.

¹⁶⁸⁷ Reorganization Plan No. 3 of 1967, 32 Fed. Reg. 11699, reprinted as appendix to District of Columbia Code, Title I.

¹⁶⁸⁸ District of Columbia Self-Government and Governmental Reorganization Act, Pub. L. 93-198, 87 Stat. 774.

¹⁶⁸⁹ Twenty-third Amendment.

¹⁶⁹⁰ Pub. L. 91-405, 84 Stat. 848, D.C. Code, § 1-291.

¹⁶⁹¹ H.J. Res. 554, 95th Congress, passed the House on March 2, 1978, and the Senate on August 22, 1978, but only 16 states had ratified before the expiration of the proposal after seven years.

¹⁶⁹² *Loughborough v. Blake*, 18 U.S. (5 Wheat.) 317 (1820); *Heald v. District of Columbia*, 259 U.S. 114 (1922).

¹⁶⁹³ *District of Columbia v. John R. Thompson Co.*, 346 U.S. 100 (1953). The case upheld the validity of ordinances enacted by the District governing bodies in 1872 and 1873 prohibiting racial discrimination in places of public accommodations.

¹⁶⁹⁴ 346 U.S. at 109-10. See also *Thompson v. Lessee of Carroll*, 63 U.S. (22 How.) 422 (1860); *Stoutenburgh v. Hennick*, 129 U.S. 141 (1889).

¹⁶⁹⁵ 6 U.S. (2 Cr.) 445 (1805); see also *Sere v. Pitot*, 10 U.S. (6 Cr.) 332 (1810); *New Orleans v. Winter*, 14 U.S. (1 Wheat.) 91 (1816). The District was held to be a state within the terms of a treaty. *Geofroy v. Riggs*, 133 U.S. 258 (1890).

¹⁶⁹⁶ *Barney v. City of Baltimore*, 73 U.S. (6 Wall.) 280 (1868); *Hooe v. Jamieson*, 166 U.S. 395 (1897); *Hooe v. Werner*, 166 U.S. 399 (1897).

¹⁶⁹⁷ *National Mutual Ins. Co. v. Tidewater Transfer Co.*, 337 U.S. 582 (1949).