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NOTE

ON STANDING, SOVEREIGNTY, AND CONSTITUTIONAL AWKWARDNESS

*Robert F. Steiner**

Federal courts have embraced sovereign standing as a vehicle for resolving high-stakes disputes between state governments and the federal executive. And the states have increasingly availed themselves of this powerful doctrine, alleging in federal court that executive overreach harms their “sovereign” and “quasi-sovereign” interests. In the first year of the second Trump Administration, the District of Columbia joined this trend, alleging that the deployment of the National Guard inflicts an “irreparable sovereign injury” on its right to self-governance. The U.S. District Court for the District of Columbia agreed, finding that the deployment usurped the District’s “delegated” sovereign powers under the D.C. Home Rule Act, and issued a preliminary injunction.

This Note argues that the district court’s acceptance of this claim misunderstands both the District’s constitutional status and the nature of sovereignty itself. The Note reinforces the traditional account of “sovereignty” as an innate, status-based, and nondelegable attribute. On this account, sovereignty is possessed by the states by virtue of their constitutional position, by American Indian tribes as preexisting

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polities, and, potentially, by certain territories through deliberate cessions of authority by Congress. The District of Columbia fits none of these categories. Although it has been granted substantial autonomy through statutory home rule, it does not—and cannot—possess sovereignty. As the District is a permanent fixture serving uniquely national purposes, the power of its local government is subordinate in nature—permissive, revocable, and fully under Congress’s control.

By disentangling sovereignty from autonomy, this Note shows why extending sovereign standing to D.C. is both doctrinally unsound and institutionally destabilizing. Such an extension would erode the conceptual limits of sovereignty, exacerbate the politicization of public law litigation, and invite the emergence of a powerful municipal “omniplaintiff.” But importantly, this Note does not argue that rejecting D.C.’s sovereign standing insulates federal action from judicial review; D.C. may still challenge federal executive action in the District—such as the deployment of the National Guard—through several theories routinely raised in litigation. Instead, this Note respects the Constitution’s deliberate line drawing and clarifies the proper bounds of sovereign standing in an era of aggressive intergovernmental litigation.

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INTRODUCTION

The object of the grant of exclusive legislation over the district was, therefore, national in the highest sense, and the city organized under the grant became the city, not of a state, not of a district, but of a nation.

- William Howard Taft, in *Grether v. Wright*, 75 F. 742, 757 (6th Cir. 1896).

In the first year of his second term, President Trump deployed the National Guard in twenty-one states and the District of Columbia.¹ The goal of these deployments was to support law enforcement activities, particularly those of Immigration and Customs Enforcement² and local police.³ However, the sense of additional, more latent motivations persisted throughout the deployments.⁴

Several of the states quickly filed suit in federal court. To establish their standing to sue, each state alleged that the deployments caused a similar panoply of harms.⁵ On one end of the spectrum, they alleged

¹ Tracking Domestic Deployments of the U.S. Military, Lawfare, <https://www.lawfaremedia.org/projects-series/trials-of-the-trump-administration/tracking-domestic-deployments-of-the-u.s.-military> [<https://perma.cc/TZ89-CC49>] (last updated Mar. 24, 2026). This count includes all “federally supported National Guard, Reserve, and Active-Duty deployments for operational non-disaster missions” after President Trump’s second inauguration. *Id.*

² See, e.g., Memorandum on Department of Defense Security for the Protection of Department of Homeland Security Functions, 2025 Daily Comp. Pres. Doc. 672 (June 7, 2025).

³ See, e.g., Memorandum on Restoring Law and Order in Memphis, 2025 Daily Comp. Pres. Doc. 916 (Sep. 15, 2025).

⁴ See Remarks to the Department of War in Quantico, Virginia, 2025 Daily Comp. Pres. Doc. 970, at 12 (Sep. 30, 2025) (“And I told Pete we should use some of these dangerous cities as training grounds for our military”); Remarks Following a Briefing on the Atlantic Hurricane and Wildfire Season and Preparedness Efforts, 2025 Daily Comp. Pres. Doc. 679, at 6 (June 10, 2025) (“And in Minneapolis, that city was burning down. It was 7 days. And I said, ‘I don’t care.’ The Governor, . . . that just happened to be running for Vice President—a total—you talk about an incompetent Governor.”).

⁵ See Complaint for Declaratory and Injunctive Relief at 25–29, *Oregon v. Trump*, 802 F. Supp. 3d 1277 (D. Or. 2025) (No. 25-cv-01756) [hereinafter *Oregon Complaint*]; Complaint for Declaratory and Injunctive Relief at 14–15, *Newsom v. Trump*, 797 F. Supp. 3d 1092 (N.D. Cal. 2025) (No. 25-cv-04870) [hereinafter *California Complaint*]; Complaint for Emergency, Declaratory, and Injunctive Relief at 46–53, *Illinois v. Trump*, 2025 WL 2886645 (N.D. Ill. Oct. 10, 2025) (No. 25-cv-12174) [hereinafter *Illinois Complaint*]; Complaint for Declaratory and Injunctive Relief at 32–51, *Minnesota v. Noem*,

harm to their proprietary interests.⁶ Harms of this sort are no different from those “pocketbook” injuries routinely asserted by private parties in litigation.⁷ But on the other end of the spectrum, the states also availed themselves of the unique categories of injuries cognizable under the doctrine of state standing: injuries to their “sovereign” and “quasi-sovereign” interests.⁸ As the perceived role of the states as institutional actors has expanded—and as standing doctrine has evolved in general—these sovereign-based harms have assumed an “extraordinary scope,”⁹ though they remain controversial.¹⁰

The D.C.¹¹ government filed its own challenge to the National Guard deployment in the District. Filing in the U.S. District Court for the

818 F. Supp. 3d 1030 (D. Minn. 2026) (No. 26-cv-00190) [hereinafter *Minnesota Complaint*]. Because Governor Bill Lee affirmatively requested the deployment to the City of Memphis, the State of Tennessee has not filed suit, though there is a pending challenge in state court brought by Mayor Lee Harris of Shelby County. See *Complaint* at 1–2, *Harris v. Lee*, No. 25-1461-I (Tenn. Ch. Ct. Oct. 17, 2025), https://www.nilc.org/wp-content/uploads/2025/10/Harris-v.-Lee_Complaint.pdf [<https://perma.cc/23YZ-VR25>]. Likewise, Louisiana Governor Jeff Landry requested and helped coordinate the deployment to New Orleans. See Gov. Jeff Landry Announces Extension of Louisiana National Guard Security Mission in New Orleans, La. Off. of the Governor (Mar. 2, 2026), <https://gov.louisiana.gov/news/5069> [<https://perma.cc/J3BU-JNSU>].

⁶ See, e.g., *Minnesota Complaint*, *supra* note 5, at 38–40; see also Seth Davis, *The New Public Standing*, 71 *Stan. L. Rev.* 1229, 1242–50, 1292–98 (2019) (discussing state standing based on monetary injuries that “mirror those to private parties”).

⁷ See Katherine Mims Crocker, *Not-So-Special Solicitude*, 109 *Minn. L. Rev.* 815, 838 (2024) [hereinafter *Crocker, Not-So-Special*] (“Pocketbook injuries for individuals, economic injuries for organizations, and proprietary injuries for states are all the same thing.”).

⁸ See, e.g., *Illinois Complaint*, *supra* note 5, at 46–48 (sovereign harms); *id.* at 51–52 (quasi-sovereign harms). See generally Ann Woolhandler & Michael G. Collins, *Reining in State Standing*, 94 *Notre Dame L. Rev.* 2015, 2016–17 (2019) [hereinafter *Woolhandler & Collins, Reining in State Standing*] (succinctly categorizing the types of harms that give rise to state standing); *Crocker, Not-So-Special*, *supra* note 7, at 835–37 (going into greater depth on these categories).

⁹ *Crocker, Not-So-Special*, *supra* note 7, at 894; see also Ann Woolhandler & Michael G. Collins, *State Standing*, 81 *Va. L. Rev.* 387, 393–94, 459–64 (1995) [hereinafter *Woolhandler & Collins, State Standing*] (tying the development of modern state standing doctrine to the “general change from a common-law, rights-based jurisprudence to a more positivist, interest-based one in which governmental power and private rights became increasingly commensurable”).

¹⁰ See *Missouri v. Biden*, 52 F.4th 362, 369 (8th Cir. 2022) (“Whether and when alleged sovereign injuries can constitute the concrete and particularized injury in fact required for Article III standing is a controversial, unsettled question . . .”).

¹¹ Regarding terminology: “District” or “District of Columbia” refers to the entity mentioned in Article I, Section 8, Clause 17 of the Constitution, whereas “D.C.” or “D.C.”

District of Columbia, D.C. sought declaratory and injunctive relief for an array of harms similar to those alleged by the states, including an “irreparable sovereign injury” to its rights of self-governance under the D.C. Home Rule Act.¹² D.C.’s increasing participation in litigation against the federal government¹³ may obscure the significance of this alleged “sovereign injury.” However, the Administration’s staunch resistance to D.C.’s claim in federal court—including its decision to *increase* the deployment following the complaint¹⁴ while withdrawing from other cities and abandoning its appeals—provides the first reason to view D.C.’s claims with skepticism.¹⁵

government” refers to the city of the District of Columbia and the local government thereof. As will be shown, this distinction is important. See *infra* Part III.

¹² Complaint for Declaratory and Injunctive Relief at 35, *District of Columbia v. Trump*, 810 F. Supp. 3d 19 (D.D.C. 2025) (No. 25-cv-03005) [hereinafter D.C. Complaint]; District of Columbia Home Rule Act, Pub. L. No. 93-198, 87 Stat. 774 (1973) (codified as amended at D.C. Code §§ 1-201.01–207.71 (2026)).

¹³ See, e.g., *District of Columbia v. Trump*, 291 F. Supp. 3d 725, 732–36 (D. Md. 2018) (challenging, with Maryland, President Trump’s ownership stake in D.C.-area hotels and restaurants as violative of the Emoluments Clause), *rev’d sub nom.* In re Trump, 928 F.3d 360 (4th Cir. 2019), *rev’d en banc*, 958 F.3d 274 (4th Cir. 2020), *cert. granted and vacated as moot sub nom.* Trump v. District of Columbia, 141 S. Ct. 1262 (2021) (mem.); *District of Columbia v. U.S. Dep’t of Agric.*, 496 F. Supp. 3d 213, 219 (D.D.C. 2020). D.C. commonly participates in state-led lawsuits as a non-named plaintiff as well. See *Dep’t of Com. v. New York*, 139 S. Ct. 2551, 2563 (2019); *New York v. U.S. Dep’t of Lab.*, 363 F. Supp. 3d 109, 116–17 (D.D.C. 2019); *U.S. House of Representatives v. Price*, No. 16-5202, 2017 WL 3271445, at *1 (D.C. Cir. Aug. 1, 2017); Complaint for Declaratory, Injunctive, and Mandamus Relief at 2, *California v. McMahon*, No. 25-cv-00329 (D.R.I. July 14, 2025).

¹⁴ Compare D.C. Complaint, *supra* note 12, at 29 (reporting a presence of 2,290 Guardsmen by September 2025), with Letter from Phillip L. Swagel, Dir., Cong. Budget Off., to the Hon. Jeff Merkley, Ranking Member, U.S. Senate Comm. on Budget 8 (Jan. 28, 2026) (reporting a presence of 2,950 Guardsmen in the District by the end of December 2025).

¹⁵ Specifically, after a setback in the Supreme Court, the Administration agreed to withdraw the National Guard from Chicago, Los Angeles, and Portland. See *Trump v. Illinois*, 146 S. Ct. 432, 434 (2025) (“[A]t least in this posture, the Government has not carried its burden to show that [10 U.S.C.] § 12406(3) permits the President to federalize the Guard in the exercise of inherent authority to protect federal personnel and property in Illinois.”); Rob McLean, *Trump Says He’s Removing National Guard Troops from Chicago, Los Angeles and Portland*, NBC News (Dec. 31, 2025, at 20:38 ET), <https://www.nbcnews.com/politics/trump-administration/trump-removing-national-guard-troops-chicago-los-angeles-portland-rcna251746> [<https://perma.cc/6BHF-FQWF>]. The Oregon litigation resolved soon thereafter, except for some ancillary issues. See, e.g., *Response to State of Oregon’s Motion to Modify Protective Order and Clarify the Confidentiality Status of Certain Deposition Videos*, *Oregon v. Trump*, No. 25-cv-01756 (D. Or. Mar. 24, 2026). The suits in Illinois and California continued regarding whether the withdrawals mooted the claims. See *Plaintiffs’ Response in Opposition to Defendants’ Motion to Dismiss for Lack of Subject Matter*

I argue that D.C. lacks Article III standing to assert sovereign harms. More broadly, using its challenge to President Trump's National Guard deployment as an illustration, I argue that D.C.'s fundamentally non-sovereign status—derived entirely from and subordinate to Congress's power—makes its requested extension of state standing principles both doctrinally unsound and institutionally problematic. Doctrinally, such an extension would dilute the conceptual dimensions of both the “District” and “sovereignty” under the Constitution. Institutionally, it would exacerbate the increasing politicization of public law litigation and invite the emergence of a uniquely powerful municipal “omniplaintiff.”¹⁶ And these costs in doctrinal clarity and institutional stability would be entirely unnecessary; despite its non-sovereignty, D.C. is by no means powerless to challenge executive action in the District, such as the National Guard deployment. Rather, it remains a viable plaintiff under the same theories that non-sovereigns routinely assert in public interest litigation.

At bottom, this Note respects our Constitution's deliberate distinctions between sovereignty and functional autonomy, and between the District of Columbia and every other constitutional entity. Far from resting on constitutional line drawing, however, this Note undertakes to delineate the concept of “sovereignty” and explain why D.C. lacks it. In so doing, it adds clarity to the doctrine of sovereign state standing. More importantly, it serves to remind us that the separation of powers exists precisely to prevent well-intentioned exceptions to constitutional structure in times of perceived crisis.¹⁷

Jurisdiction Under Rule 12(b)(1), *Illinois v. Trump*, No. 25-cv-12174 (N.D. Ill. Mar. 10, 2026); Plaintiffs-Appellees' Opposition to Motion to Dismiss, *Newsom v. Trump*, No. 25-3727 (9th Cir. Jan. 28, 2026); see also Memorandum of Law in Support of Motion to Dismiss at 4–15, *Minnesota v. Noem*, No. 26-cv-00190 (D. Minn. Mar. 16, 2026) (arguing for dismissal of Minnesota and the Twin Cities' complaint on standing and mootness grounds). In addition to D.C., the Administration declined to withdraw the Guardsmen from New Orleans and Memphis; but recall that those deployments were uncontested by the states of Louisiana and Tennessee, respectively. See *supra* note 5.

¹⁶ Ann Woolhandler & Julia D. Mahoney, *State Standing After Biden v. Nebraska*, 2023 Sup. Ct. Rev. 303, 303.

¹⁷ See *New York v. United States*, 505 U.S. 144, 187 (1992) (“Much of the Constitution is concerned with setting forth the form of our government, and the courts have traditionally invalidated measures deviating from that form. The result may appear ‘formalistic’ in a given case . . . because . . . of the era's perceived necessity. But the Constitution protects us from our own best intentions: It divides power among sovereigns and among branches of government precisely so that we may resist the temptation to concentrate power in one location as an expedient solution to the crisis of the day.”).

This Note advances in four main parts. Part I, by way of background, outlines the D.C. National Guard litigation and the doctrine of state standing that D.C. attempts to invoke. Part II explains the intricate and anomalous nature of the District under the Constitution, considering its status in its own right and in relation to its oft-asserted analogues: the territories and the federal enclaves. It also briefly explores the constitutional status of the American Indian tribes to illustrate a particular point on the nature of “sovereignty.” Understanding the District’s status, in my view, is a precondition to understanding *why* D.C. lacks sovereign standing.

After establishing this proper framing, this Note argues in Part III that the District of Columbia is fundamentally non-sovereign, and thus, that D.C. lacks the capacity to suffer sovereign harms, regardless of the breadth of its home rule authority. It makes this argument in two steps. First, by proving that the D.C. government is municipal in the ordinary sense, exercising power that is permissive, revocable, and fully subordinate to Congress’s plenary authority—closely analogous to the authority of any local government. Second, by establishing that Congress, as the source of sovereignty in the District, did not (and could not) delegate to D.C. any sovereign power in the D.C. Home Rule Act—here too being closely analogous to a state’s grant of home rule to its local subdivisions. It explains how “sovereignty” in the American constitutional order is nondelegable and tied to status. Entities are not *given* sovereignty by a superior government; they *become* sovereign through a preordained process. Part III concludes by addressing an emerging theory that, if accepted, would raise an ambiguity with a specific subset of sovereign-based harms. It explains, however, that this Note’s central thesis remains undisturbed irrespective of this theory’s validity.

Returning to the National Guard case study, Part IV elaborates on the pragmatic interests implicated by D.C.’s lack of sovereignty and suggests other potential avenues D.C. may use to challenge the National Guard deployment—and, derivatively, federal executive action in general.

I. D.C.’S INVOCATION OF SOVEREIGN STANDING

The deployment of the National Guard to the District of Columbia did not come as a surprise. On the campaign trail, then-candidate Trump was quite explicit about his desire to “take over Washington D.C.,

and . . . make it great again.”¹⁸ On March 27, 2025, President Trump took his first step towards this end—ordering federal agencies to coordinate with D.C. officials on the enforcement of federal immigration law and local criminal law.¹⁹ Pursuant to an August 11 directive, the Secretary of Defense mobilized 800 District of Columbia National Guard (“DCNG”) troops with a local law enforcement mission.²⁰ On August 25, the situation was escalated to its fullest extent: the Secretary of Defense was ordered to activate a “specialized [DCNG] unit” to be “deputize[d]” under federal law and to request the assistance of other states’ National Guards for “rapid mobilization” in the District.²¹ Within eleven days, over 2,290 National Guard troops were deployed to the streets of Washington, D.C.—over half of which came from other jurisdictions.²²

On September 4, D.C. commenced litigation to halt the deployment.²³ While the merits of D.C.’s claims were primarily statutory—related to the complex overlay of schemes governing the president’s authority over the National Guard²⁴—the focus of this Note is only on the harms D.C. alleged to support its standing to sue.²⁵

¹⁸ C-SPAN, Former President Trump Holds Rally in Mason City, Iowa, at 01:21:17 (YouTube, streamed Jan. 5, 2024), <https://www.c-span.org/program/public-affairs-event/former-president-trump-holds-rally-in-mason-city-iowa/636610>.

¹⁹ See Exec. Order No. 14252, 90 Fed. Reg. 14559 (Mar. 27, 2025).

²⁰ Memorandum on Restoring Law and Order in the District of Columbia, 2025 Daily Comp. Pres. Doc. 845 (Aug. 11, 2025); C. Todd Lopez, DOD News, National Guard Mobilizes 800 Troops in D.C. to Support Federal, Local Law Enforcement, U.S. Dep’t of War (Aug. 14, 2025), <https://www.war.gov/News/News-Stories/Article/Article/4275149/national-guard-mobilizes-800-troops-in-dc-to-support-federal-local-law-enforcement/> [<https://perm.a.cc/W753-MJ73>].

²¹ Exec. Order No. 14339, 90 Fed. Reg. 42121 (Aug. 25, 2025).

²² D.C. Complaint, *supra* note 12, at 29.

²³ *Id.* at 2–4; see also Plaintiff’s Motion for a Preliminary Injunction and Section 705 Stay at 1, District of Columbia v. Trump, 810 F. Supp. 3d 19 (D.D.C. 2025) (No. 25-cv-03005) (moving to preliminarily enjoin the deployment).

²⁴ D.C. Complaint, *supra* note 12, at 7–13 (outlining the controlling law); see also *id.* at 47–49 (making constitutional arguments). To learn more about the law governing this and other domestic National Guard deployments, see Chris Mirasola, Domestic Military Deployments After *Trump v. United States*, 67 Wm. & Mary L. Rev. 189, 231 (2025) (“[M]embers of the National Guard wear one of three ‘hats’ . . .”).

²⁵ Article III standing is a separation-of-powers-based, judge-made jurisdictional limit on federal courts. Some helpful heuristics illustrate what it requires. Compare *Baker v. Carr*, 369 U.S. 186, 204 (1962) (describing the “gist of the question of standing” as whether the plaintiff “alleged such a personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issues”), with Antonin Scalia, *The Doctrine of Standing as an Essential Element of the Separation of Powers*, 17 Suffolk U. L.

Each harm asserted in D.C.’s complaint concerned its purported sovereign or quasi-sovereign interests. These theories of injury exist within the doctrine of sovereign standing, a subcategory of the broader doctrine of state standing.²⁶ Although a full exposition of sovereign standing doctrine is beyond this Note’s scope, a basic understanding is the starting point to evaluating D.C.’s claim of sovereignty. Thus, a brief crash course is in order.

A. Sovereign Injuries

In the context of Article III standing, “sovereign” interests are those that are “integral to a state’s core ability to govern.”²⁷ Put another way, sovereign interests bear on the state’s “power to regulate a particular subject to the exclusion of, or in addition to, the government defendant.”²⁸ More simply, sovereign interests are of and concerning jurisdiction.²⁹ And being jurisdictional, these interests are held by the states themselves as government entities and rooted in their residual powers under the Constitution.³⁰ Thus, an injury to a sovereign interest—when a state’s jurisdiction is impinged upon—is existential: it threatens the state’s existence as a separate and independent government.³¹

It might be helpful to think in terms of concrete examples. A unanimous Supreme Court has spoken of sovereign interests as occupying two buckets: interests in geographical power (the state’s power to recognize and maintain its borders) and interests in authoritative power (the state’s power to make and enforce a legal

Rev. 881, 882 (1983) (describing standing as a plaintiff’s answer to the question: “What’s it to you?”).

²⁶ See, e.g., Katherine Mims Crocker, *An Organizational Account of State Standing*, 94 *Notre Dame L. Rev.* 2057, 2066–67 (2019); see also *supra* notes 7–9 and accompanying text (clarifying this distinction).

²⁷ Katherine Mims Crocker, *Note, Securing Sovereign State Standing*, 97 *Va. L. Rev.* 2051, 2055, 2056–57 (2011) [hereinafter Crocker, *Sovereign Standing*].

²⁸ Ann Woolhandler, *Governmental Sovereignty Actions*, 23 *Wm. & Mary Bill Rts. J.* 209, 209 (2014) [hereinafter Woolhandler, *Sovereignty Actions*].

²⁹ Crocker, *Sovereign Standing*, *supra* note 27, at 2056–57.

³⁰ See *id.* at 2068 (“[S]overeign interests . . . are fully independent in that they are held by states qua states”); *id.* at 2057 & n.12.

³¹ See Woolhandler & Collins, *Reining in State Standing*, *supra* note 8, at 2017 (“State sovereignty interests are implicated when the government sues to vindicate its power to govern with respect to a particular subject matter or in a particular territory.”).

code).³² Harm to a state's geographical power may arise, for instance, in competing claims over a piece of territory.³³ Perhaps the more common of the two,³⁴ harm to a state's authoritative power could arise, for example, in a challenge to the enforceability of a state law,³⁵ or where Congress seeks to directly regulate the actions of a state government.³⁶ And somewhat paradoxically, even monetary harm may qualify as harm to a state's authoritative power where it impacts its "uniquely public capacities to make and enforce law and to provide government services."³⁷

Allegations of sovereign harm pervaded the National Guard litigations. California alleged that the deployment violated the Tenth Amendment by "infring[ing] on Governor Newsom's role" over state affairs and "violat[ing] the State's sovereign right to control and have available its National Guard."³⁸ Oregon and Illinois each alleged similar infringements of their "sovereign interest in managing law enforcement within [their] borders."³⁹ D.C. itself alleged, prominently, irreparable

³² See *Alfred L. Snapp & Son, Inc. v. Puerto Rico ex rel. Barez*, 458 U.S. 592, 601 (1982); see also Crocker, *Sovereign Standing*, supra note 27, at 2066–67 (articulating this "two-part 'jurisdictional' framing of sovereign interests"). Others have proffered different methods of categorization. See, e.g., Seth Davis, *Implied Public Rights of Action*, 114 Colum. L. Rev. 1, 17–24 (2014) (describing existing jurisprudence as implying "public rights of action to enforce four different types of government interests"); Timothy Zick, *Are the States Sovereign?*, 83 Wash. U. L.Q. 229, 288–93 (2005) (implying the existence of four specific sovereign powers from the Constitution's structure).

³³ See, e.g., *New Jersey v. New York*, 523 U.S. 767, 770–71 (1998) (resolving competing claims of sovereign authority over a segment of Ellis Island); see also Crocker, *Sovereign Standing*, supra note 27, at 2060 (calling border disputes "the paradigmatic example of the state versus state suit[] contemplated by . . . Article III").

³⁴ See *Snapp*, 458 U.S. at 601 (describing "the power to create and enforce a legal code" as "regularly at issue in constitutional litigation").

³⁵ See, e.g., *Maine v. Taylor*, 477 U.S. 131, 132–33, 136–37 (1986) (upholding Maine's standing to intervene to defend a state law from a preemption claim); *Cameron v. EMW Women's Surgical Ctr., P.S.C.*, 142 S. Ct. 1002, 1011 (2022) ("Paramount among the States' retained sovereign powers is the power to enact and enforce any laws that do not conflict with federal law." (citing U.S. Const. art. VI, § 2)).

³⁶ See, e.g., *New York v. United States*, 505 U.S. 144, 176–77 (1992). Though not canonically a sovereign standing case, *New York v. United States* may be easily framed as one. See Woolhandler & Collins, *State Standing*, supra note 9, at 509–10.

³⁷ Davis, supra note 6, at 1247; see id. at 1242–50 (exploring the line between sovereign and non-sovereign monetary harm to a state).

³⁸ See California Complaint, supra note 5, at 18–20.

³⁹ Oregon Complaint, supra note 5, at 25; Illinois Complaint, supra note 5, at 46; see also Minnesota Complaint, supra note 5, at 53–60 (alleging sovereign harms).

harm to its “sovereignty and right to self-governance.”⁴⁰ Like the states, D.C. emphasized the alleged infringement of its control over local law enforcement.⁴¹ But D.C. also claimed sovereign harms through the “suspending” of local gun regulations⁴² as well as its loss in tax revenue from the deployment’s “financial strain” on the local economy.⁴³

B. Quasi-Sovereign Injuries

Synonymous with *parens patriae*,⁴⁴ quasi-sovereignty “does not lend itself to a simple or exact definition.”⁴⁵ But there is a useful rule of thumb: whereas sovereign harms are to the state itself, quasi-sovereign harms are litigated by the state in a representative capacity.⁴⁶ Gaining prominence in the early twentieth century,⁴⁷ quasi-sovereign interests are derivative in nature, reflecting most saliently a state’s concern with “the health and well-being—both physical and economic—of its residents in general.”⁴⁸ Yet the state does not merely litigate the rights of its citizens in *parens patriae* suits; quasi-sovereign interests are still independent state interests.⁴⁹ This tension leads some to question the notion of quasi-sovereignty altogether.⁵⁰

⁴⁰ See D.C. Complaint, *supra* note 12, at 4, 14, 35.

⁴¹ See *id.* at 35.

⁴² See *id.* at 39.

⁴³ *Id.* at 38; see also Davis, *supra* note 6, at 1249–50 (assessing general harm to a state’s economy as a basis for sovereign standing).

⁴⁴ Crocker, Sovereign Standing, *supra* note 27, at 2072 (“There is strong evidence that, from the beginning, state *parens patriae* and quasi-sovereign standing have been inextricably and exclusively intertwined, even synonymous.”); see also *Parens Patriae*, Black’s Law Dictionary (12th ed. 2024) (“Latin ‘parent of his or her country’”).

⁴⁵ Alfred L. Snapp & Son, Inc. v. Puerto Rico ex rel. Barez, 458 U.S. 592, 601 (1982).

⁴⁶ See, e.g., Crocker, Sovereign Standing, *supra* note 27, at 2055.

⁴⁷ See *id.* at 2064–66; Georgia v. Tenn. Copper Co., 206 U.S. 230, 237 (1907) (declaring that a state’s quasi-sovereign interests lie “behind the titles of its citizens”).

⁴⁸ Snapp, 458 U.S. at 607; see also *id.* (identifying a state’s interest in “its rightful status within the federal system” as an additional quasi-sovereign interest).

⁴⁹ See, e.g., *id.* (“[T]he State must articulate an interest apart from the interests of particular private parties, *i.e.*, the State must be more than a nominal party.”); F. Andrew Hessick, Quasi-Sovereign Standing, 94 Notre Dame L. Rev. 1927, 1935–36 (2019) (“[T]he *beneficiaries* of these quasi-sovereign interests are the populace of the state. But it is the state that holds and acts on these interests to protect the populace.” (citing *Missouri v. Illinois*, 180 U.S. 208, 241 (1901))).

⁵⁰ See, e.g., Woolhandler & Collins, State Standing, *supra* note 9, at 505 n.464, 512 (arguing that *parens patriae* “merely dresses up actions that private parties could easily bring,” such that the doctrine “allows states vicariously to take on the interests of its citizens”).

This Note does not wade into the murky debate on the soundness of “quasi-sovereignty.” Two things can be true at once: the modern form of quasi-sovereignty lacks historical pedigree,⁵¹ but the state’s institutional interest in the well-being of its populace does not.⁵² Therefore, taking quasi-sovereignty as we find it, we can surmise that “quasi” does not denote “less” sovereignty, but rather a difference in the origin and capacity of the interest being asserted. These interests are equally “sovereign” in the sense of being rooted in a state’s constitutional powers.⁵³

An illustration helps define the boundary between sovereign and quasi-sovereign harms: Illinois alleged that the National Guard deployment harmed its “authority to regulate its internal law enforcement activities”⁵⁴ (a sovereign interest) and also “threaten[ed] the economic well-being of the people of Illinois” by “depressing business activities, travel, and tourism in Illinois communities”⁵⁵ (a quasi-sovereign interest).

D.C. alleged several of its own quasi-sovereign harms. It claimed that the presence of the National Guard harms the “crucial relationship” between local police and residents by “eroding trust and inflaming tensions” and creating a “palpable sense of fear.”⁵⁶ It also asserted that the Guard’s use of military-style vehicles puts “pedestrian and driver safety” at risk.⁵⁷ Lastly, D.C. raised the economic injury to local businesses in “key industries, including tourism, restaurants, and hospitality services.”⁵⁸

⁵¹ See *id.* at 431–34; Woolhandler & Collins, *Reining in State Standing*, *supra* note 8, at 2019–20; see also *Snapp*, 458 U.S. at 600 (acknowledging this point). But see Crocker, *Sovereign Standing*, *supra* note 27, at 2064–65 & n.55 (pushing back on this argument).

⁵² Indeed, protecting public welfare is at the core of a state’s Tenth Amendment powers. See *Gonzales v. Oregon*, 546 U.S. 243, 270 (2006).

⁵³ See Eli Savit, *States Empowering Plaintiff Cities*, 52 U. Mich. J.L. Reform 581, 604–05 (2019) (“[F]ormal sovereignty is a prerequisite to suing as *parens patriae*.”); *Hudson Cnty. Water Co. v. McCarter*, 209 U.S. 349, 355–56 (1908).

⁵⁴ *Illinois Complaint*, *supra* note 5, at 46 (citing *United States v. Morrison*, 529 U.S. 598, 618 (2000)).

⁵⁵ *Id.* at 51–52. Additionally, public nuisance was a proto-*parens patriae* suit and remains a good example of the sort of interests at stake. See Crocker, *Sovereign Standing*, *supra* note 27, at 2064–66.

⁵⁶ D.C. Complaint, *supra* note 12, at 35, 39–40.

⁵⁷ *Id.* at 36–38.

⁵⁸ *Id.* at 38; see also Davis, *supra* note 6, at 1249–50 (explaining the unsettled theory of how monetary harm could be considered quasi-sovereign in that “harm to a state’s economy affects the state’s residents”).

C. The “Delegation” Theory of Sovereignty

In the National Guard litigation, D.C. argued that the source of its sovereignty was the D.C. Home Rule Act.⁵⁹ In this 1973 statute, Congress incorporated the modern city of Washington, D.C., and granted it the “powers of local self-government” and authority over “local District matters.”⁶⁰ By D.C.’s interpretation, this granted it a distinct and independent sovereign power.⁶¹

In essence, D.C.’s theory was that Congress’s grant of autonomy was sufficiently broad to transform it into a self-governing jurisdiction with a functional sovereignty. D.C. started from the premise that the Constitution vests Congress with “exclusive” authority over the District.⁶² With the Home Rule Act, Congress chose to delegate nearly all of its power to the new D.C. government, save for “certain matters . . . of federal concern.”⁶³ Meanwhile, the Home Rule Act gave the president only “an extremely limited role in District affairs.”⁶⁴ D.C. argued that it therefore possesses the traditional elements of sovereignty—-independent lawmaking, exclusive police powers, and freedom from unrequested federal control—and is “akin to a sovereign State” in the realm of local affairs.⁶⁵ Indeed, the delegation theory had gotten some traction in the local D.C. courts,⁶⁶ but was wholly unprecedented as a matter of federal law.

Though attention was primarily on the merits, D.C.’s standing was challenged by the Administration in the briefing on the preliminary injunction. It cited two aspects of the Home Rule Act as dooming D.C.’s claim of sovereignty: the President’s reserved role as Commander-in-Chief of the DCNG and Congress’s absolute authority over locally

⁵⁹ See D.C. Complaint, *supra* note 12, at 10; District of Columbia Home Rule Act, Pub. L. No. 93-198, 87 Stat. 774 (1973) (codified as amended at D.C. Code §§ 1-201.01–207.71 (2026)).

⁶⁰ District of Columbia Home Rule Act § 102, 87 Stat. at 777.

⁶¹ See D.C. Complaint, *supra* note 12, at 35.

⁶² *Id.* at 9 (quoting U.S. Const. art. I, § 8, cl. 17). See generally *infra* Part II (exploring the District’s constitutional status).

⁶³ D.C. Complaint, *supra* note 12, at 10–11.

⁶⁴ *Id.* at 11.

⁶⁵ *Feaster v. Vance*, 832 A.2d 1277, 1287 (D.C. 2003); D.C. Complaint, *supra* note 12, at 4, 14, 35.

⁶⁶ See, e.g., *District of Columbia v. ExxonMobil Oil Corp.*, 172 A.3d 412, 421–22 (D.C. 2017) (summarizing precedent).

enacted laws.⁶⁷ These aspects, it argued, were inconsistent with “core rights of self-government” and, by extension, with a claimed authority to prevent the deployment of the National Guard.⁶⁸

U.S. District Judge Jia Cobb rejected these arguments and preliminarily enjoined the deployment.⁶⁹ She ruled narrowly, declining to consider any of the constitutional claims and addressing a select few of the statutory ones.⁷⁰ She likewise declined to address the asserted quasi-sovereign harms,⁷¹ finding the alleged injury to D.C.’s “sovereign power to govern itself” sufficient to support its standing.⁷²

Specifically, Judge Cobb found that the deployment of the DCNG and out-of-state National Guards injured D.C. in two key respects. First, it “usurp[ed] the District’s right to self-governance” under the Home Rule Act.⁷³ Judge Cobb adopted the delegation theory—the interpretation of the Home Rule Act as a congressional delegation of its “exclusive authority” over the District which vests the D.C. government with distinct and independent sovereign interests.⁷⁴ Thus, D.C. is not “a sovereign like a state is, but it can nevertheless exercise delegated sovereign *powers* and is therefore injured by being unlawfully deprived of those powers.”⁷⁵ So D.C. suffered a cognizable harm, according to Judge Cobb, when the Administration unlawfully reallocated its law enforcement authority to the Department of Defense and out-of-state forces.⁷⁶

⁶⁷ Combined Memorandum in Opposition to Plaintiff’s Motion for a Preliminary Injunction and in Support of Defendant’s Motion to Dismiss at 7–8, 16–18, District of Columbia v. Trump, 810 F. Supp. 3d 19 (D.D.C. 2025) (No. 25-cv-03005) [hereinafter Combined Memorandum]; see also D.C. Code § 49-409 (2026) (establishing the President as the Commander-in-Chief of the DCNG); id. §§ 1-206.01, 1-206.02 (establishing congressional control of local D.C. legislation).

⁶⁸ Combined Memorandum, *supra* note 67, at 7–8, 38–39.

⁶⁹ District of Columbia v. Trump, 810 F. Supp. 3d 19, 28–29 (D.D.C. 2025).

⁷⁰ See id. at 34.

⁷¹ See id. at 36 n.9 (setting aside D.C.’s asserted harm in “the risk of ‘serious public safety harms,’” but noting that “another district court has found that such harms may be too speculative to establish a concrete injury” (quoting Memorandum in Support of Plaintiff’s Motion for a Preliminary Injunction and Section 705 Stay at 43, *District of Columbia v. Trump*, 810 F. Supp. 3d 19 (No. 25-cv-03005))).

⁷² Id. at 36.

⁷³ Id. While at times Judge Cobb refers to D.C.’s “sovereign power to govern itself” and “the statutory rights . . . under the D.C. Code” as two distinct rights, I believe that the best reading of her opinion is that the two are indistinguishable. Id.

⁷⁴ Id. at 37.

⁷⁵ Id.

⁷⁶ Id. at 37–38.

Second, Judge Cobb viewed D.C. as having suffered harm to its right to be “free from state interference.”⁷⁷ That is, since the Constitution’s grant of congressional power over the District was meant to be “exclusive,” this injury allegedly arose from the presence of out-of-state National Guards.⁷⁸ This right, she said, “is also intertwined with [the] right to self-rule.”⁷⁹

At bottom, Judge Cobb’s delegation theory would elevate “[a]ny incursion on the District’s exercise of its sovereign power” to an Article III injury.⁸⁰

The Administration swiftly appealed. On December 4, 2025, the U.S. Court of Appeals for the District of Columbia Circuit extended the administrative stay of the preliminary injunction.⁸¹ On December 17, the D.C. Circuit granted a stay pending appeal.⁸² Though the written order did not explicitly address D.C.’s standing, it did address the extent to which its constitutional status may affect the merits of its claims.⁸³ But in a concurring opinion, Judge Rao, joined by Judge Katsas, stressed the need to address the District’s standing before reaching the merits—she viewed the purported sovereign injury as “unprecedented and likely at odds with the unique legal status of the District.”⁸⁴

II. THE CONSTITUTIONAL STATUS OF THE DISTRICT OF COLUMBIA

The District of Columbia has been aptly described as a constitutionally “awkward” place.⁸⁵ Understanding it requires grappling with its Founding-era history, the nature of “plenary” authority and “sovereign” power, and its current reality as a home rule jurisdiction that Congress largely leaves alone. Its complexity leads many courts and

⁷⁷ *Id.* at 37.

⁷⁸ *See id.* (citing U.S. Const. art. I, § 8, cl. 17).

⁷⁹ *Id.* at 38.

⁸⁰ *Id.*

⁸¹ *District of Columbia v. Trump*, No. 25-5418, 2025 WL 3496575, at *1 (D.C. Cir. Dec. 4, 2025) (per curiam).

⁸² *District of Columbia v. Trump*, No. 25-5418, 2025 WL 3673674, at *1 (D.C. Cir. Dec. 17, 2025) (per curiam).

⁸³ *See id.* at *11 (Millet, J.) (holding that the deployments did not raise serious federalism concerns because of “the District’s unique constitutional status,” where it is “not a sovereign State” and where the President serves as the Commander-in-Chief of the DCNG).

⁸⁴ *Id.* at *14 (Rao, J., concurring); *see also id.* at *13 (describing D.C.’s asserted sovereign injury as “likely untenable as a matter of first principles”).

⁸⁵ Akhil Reed Amar, *America’s Constitution: A Biography* 438 (2005).

scholars to resort to “forced analogies”⁸⁶: the states,⁸⁷ the federal enclaves,⁸⁸ and most often, the territories.⁸⁹ This Part establishes that these equivalences are false, and that the District of Columbia has no equivalent. That, in turn, provides the proper framing for the main argument. In other words, to accurately assess D.C.’s claim to sovereign standing, we must begin by embracing and pinning down this awkwardness.

A. The District Clause

That the Constitution creates the District with a single sentence perhaps compounds the confusion. The District Clause grants Congress the power “[t]o exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square) as may, by Cession of particular States, and the Acceptance of Congress, become the Seat of Government of the United States.”⁹⁰ But the history of this otherwise unremarkable language reveals the District Clause’s birth from a single cataclysmic event and its very specific purpose.

In June of 1783, Congress convened in Philadelphia. The war had been won, the Paris Treaty was being drafted, and yet thousands of Continental Army soldiers remained unpaid.⁹¹ Over four hundred soldiers, armed and “imbibing ‘spirituous drink,’” surrounded Independence Hall and besieged the delegates.⁹² When Congress requested the aid of the Pennsylvania militia, the governor refused to

⁸⁶ Allan Erbsen, *Constitutional Spaces*, 95 Minn. L. Rev. 1168, 1214 (2011).

⁸⁷ E.g., *District of Columbia v. John R. Thompson Co.*, 346 U.S. 100, 108 (1953).

⁸⁸ E.g., *District of Columbia v. Trump*, 2025 WL 3673674, at *14 (Rao, J., concurring).

⁸⁹ E.g., *id.* at *11 (Millett, J.); William Baude, Jack Goldsmith, John F. Manning, James E. Pfander & Amanda L. Tyler, *Hart and Wechsler’s The Federal Courts and the Federal System* 499 (8th ed. 2025); Fin. Oversight & Mgmt. Bd. for P.R. v. Aurelius Inv., LLC, 140 S. Ct. 1649, 1658–61 (2020); *District of Columbia v. Trump*, 291 F. Supp. 3d 725, 740 n.11 (D. Md. 2018); Jessica Bulman-Pozen & Olatunde C.A. Johnson, *Federalism and Equal Citizenship: The Constitutional Case for D.C. Statehood*, 110 Geo. L.J. 1269, 1280–84 (2022).

⁹⁰ U.S. Const. art. I, § 8, cl. 17.

⁹¹ 1 J. Thomas Scharf & Thompson Westcott, *History of Philadelphia 1609–1884*, at 429 (Philadelphia, L.H. Everts & Co. 1884); *How Philly Lost the Nation’s Capital to Washington*, Nat’l Const. Ctr. (May 14, 2020), <https://constitutioncenter.org/blog/how-philly-lost-the-nations-capital-to-washington> [<https://perma.cc/SVA7-CL4L>].

⁹² Nat’l Const. Ctr., *supra* note 91 (quoting Jeffery M. Dorwart, *Invasion and Insurrection: Security, Defense, and War in the Delaware Valley, 1621–1815*, at 166 (2008)); 25 *Journals of the Continental Congress 1774–1789*, at 973 (Gaillard Hunt ed., 1922) (1783).

intervene.⁹³ The delegates retreated—some in the dead of night—to Princeton, New Jersey, and did not reconvene in Philadelphia until the Constitutional Convention four years later.⁹⁴

Shaken by the event, Congress established a committee in the fall of 1783 “to consider what jurisdiction may be proper for Congress in the place of their permanent residence” and the “powers to be exercised by Congress within that District.”⁹⁵ It was quickly decided that this permanent residence ought to be under Congress’s absolute control and insulated from state influence—this was an “indispensable necessity” to prevent another “insult[.]” to the dignity of the federal government.⁹⁶ By October, Congress resolved to locate this new “federal town” “at or near the lower falls of Potomac or Georgetown.”⁹⁷ That Congress rejected offers from several major cities in favor of a deserted swamp only underscores the desired isolation.⁹⁸

The Philadelphia mutiny exposed the existential vulnerability of a fledgling national government.⁹⁹ This insecurity is at the heart of the District Clause’s core purposes: insulating the capital from state influence and protecting the supremacy and dignity of the federal government.¹⁰⁰ Accordingly, the Clause was drafted “to eliminate any possibility that the legislative power of Congress over the District was to

⁹³ Dorwart, *supra* note 92, at 166–67; Scharf & Westcott, *supra* note 91, at 429–30.

⁹⁴ Dorwart, *supra* note 92, at 167–68; Nat’l Const. Ctr., *supra* note 91; see also, e.g., 24 Journals of the Continental Congress 1774–1789, *supra* note 92, at 410 (resolving that “further and more effectual measures may be taken for suppressing the present revolt, and maintaining the dignity and authority of the United States”); *Adams v. Clinton*, 90 F. Supp. 2d 35, 50 n.25 (D.D.C.) (per curiam) (recounting the Philadelphia mutiny), *aff’d*, 531 U.S. 941 (2000) (mem.); *id.* at 76–77 & n.11 (Oberdorfer, J., dissenting in part and concurring in part) (same).

⁹⁵ 25 Journals of the Continental Congress 1774–1789, *supra* note 92, at 603.

⁹⁶ The Federalist No. 43, at 240 (James Madison) (Clinton Rossiter ed., 1961); see also 24 Journals of the Continental Congress 1774–1789, *supra* note 92, at 410 (“[T]he United States having been this day grossly insulted by the disorderly and menacing appearance of a body of armed soldiers”); 25 Journals of the Continental Congress 1774–1789, *supra* note 92, at 603–04 (recording the recommendation of the committee).

⁹⁷ 25 Journals of the Continental Congress 1774–1789, *supra* note 92, at 712.

⁹⁸ See Letter and Memorandum from Robert F. Kennedy, Att’y Gen., to Basil L. Whitener, House Comm. on the District of Columbia (Dec. 13, 1963), *reprinted in* Off. of Legal Pol’y, U.S. Dep’t of Just., Report to the Attorney General on the Question of Statehood for the District of Columbia 124, 129 (1987) [hereinafter RFK Memorandum] (on file with author).

⁹⁹ *Adams*, 90 F. Supp. 2d at 50 n.25. But see Bulman-Pozen & Johnson, *supra* note 89, at 1279 n.40 (suggesting that the mutiny was, in part, politically engineered by Hamilton).

¹⁰⁰ James Durling, The District of Columbia and Article III, 107 Geo. L.J. 1205, 1223–24 (2019).

be concurrent with that of the ceding states.”¹⁰¹ So in 1791, when Maryland and Virginia ceded portions of their territory to create the District, they did so totally—relinquishing all sovereign power over the land and its inhabitants.¹⁰² And as a result, District residents were stripped of their state citizenship but retained their federal constitutional rights.¹⁰³

This complete and total cession quickly posed practical difficulties. It was taken for granted the District residents would be given “a municipal legislature for local purposes.”¹⁰⁴ And with the structure created by the District Clause, that burden, by default, was Congress’s. Managing a city while running a country seemed too daunting a task, so Congress provided for the first form of D.C. self-governance in 1801.¹⁰⁵ It incorporated the new city of Washington to be governed by twelve popularly elected councilmembers and a presidentially appointed mayor.¹⁰⁶ It also created the “circuit court of the district of Columbia,” and vested appellate jurisdiction thereof in the U.S. Supreme Court.¹⁰⁷ This original D.C. court had concurrent federal and local jurisdiction and was understood to be an Article III court.¹⁰⁸ The pre-cession common law of the ceding states was to serve as the starting point for the new body of local law.¹⁰⁹

Over the coming decades, Congress gradually created more local departments and elected offices.¹¹⁰ But this self-governance remained

¹⁰¹ *District of Columbia v. John R. Thompson Co.*, 346 U.S. 100, 109 (1953); accord *Durling*, *supra* note 100, at 1220–28.

¹⁰² See *Downes v. Bidwell*, 182 U.S. 244, 260–61 (1901). In 1846, Congress provided for the retrocession of the territory ceded by Virginia. The constitutionality of this was and is still debated. But for our purposes, what is important is that the territory ceded by Maryland (the current Washington, D.C.) is under Congress’s plenary control. See RFK Memorandum, *supra* note 98, at 126–27; Bulman-Pozen & Johnson, *supra* note 89, at 1287.

¹⁰³ *Durling*, *supra* note 100, at 1226–28; see also *id.* at 1232–33 (addressing the nuances with voting rights).

¹⁰⁴ *The Federalist* No. 43, *supra* note 96, at 240–41.

¹⁰⁵ An Act Concerning the District of Columbia (Organic Act of 1801), ch. 15, 2 Stat. 103.

¹⁰⁶ See Joseph V. Jaroscak & Ben Leubsdorf, Cong. Rsch. Serv., IF12577, *Governing the District of Columbia: Overview and Timeline 2* (last updated Feb. 6, 2026).

¹⁰⁷ Organic Act of 1801 §§ 1–8, 2 Stat. at 103–06.

¹⁰⁸ See *United States v. More*, 7 U.S. (3 Cranch) 159, 161 n.* (1805).

¹⁰⁹ Organic Act of 1801 § 1, 2 Stat. at 103–05.

¹¹⁰ See generally Jaroscak & Leubsdorf, *supra* note 106 (providing a brief outline of the history of local D.C. governance).

fundamentally conditional and subject to Congress's good graces.¹¹¹ One case in point is Congress's abolition of the local court system in 1863.¹¹² After the Lincoln Administration grew suspicious of D.C. Circuit Judge William Merrick's alleged Confederate sympathies, Congress abolished the court to remove Judge Merrick from office.¹¹³ During the legislative process, armed sentries were stationed outside Judge Merrick's home to prevent him (or at least, intimidate him) from taking the bench.¹¹⁴ Congress then reestablished a nearly identical court, and each vacancy was filled, unsurprisingly, with Lincoln's political allies.¹¹⁵ Chief Justice Roberts has pointed to this episode to show how the D.C. courts are "uniquely vulnerable" to manipulation.¹¹⁶ Professor Bloch and Justice Ginsburg viewed the incident with similar concern.¹¹⁷

After the Civil War, Congress experimented with other forms of local governance, often oscillating between the more and less progressive. For instance, Congress made D.C. the first locality with universal male suffrage, years *before* the ratification of the Fourteenth and Fifteenth Amendments.¹¹⁸ In January of 1867, overriding President Johnson's veto, Congress passed the "Emancipation by Enfranchisement" Bill.¹¹⁹ This triumph was mooted when, just seven years later, Congress again abolished the local D.C. government; all elected positions were replaced by a presidentially appointed board of commissioners, and District residents (White and Black) lost the right to vote in local elections until the D.C. Home Rule Act was passed a century later.¹²⁰

¹¹¹ See, e.g., *Kendall v. United States ex rel. Stokes*, 37 U.S. (12 Pet.) 524, 619 (1838) ("There is in this district, no division of powers between the general and state governments. Congress has the entire control over the district for every purpose of government . . .").

¹¹² See Act of Mar. 3, 1863, ch. 91, § 16, 12 Stat. 762, 764–65.

¹¹³ These suspicions stemmed from Judge Merrick's grant of habeas petitions filed by parents whose children had enlisted in the Union Army without their consent. See John G. Roberts, Jr., *What Makes the D.C. Circuit Different? A Historical View*, 92 Va. L. Rev. 375, 382–84 (2006).

¹¹⁴ See Susan Low Bloch & Ruth Bader Ginsburg, *Celebrating the 200th Anniversary of the Federal Courts of the District of Columbia*, 90 Geo. L.J. 549, 553–56 (2002).

¹¹⁵ *Id.* at 556.

¹¹⁶ Roberts, *supra* note 113, at 384.

¹¹⁷ See Bloch & Ginsburg, *supra* note 114, at 555 & n.24.

¹¹⁸ Bulman-Pozen & Johnson, *supra* note 89, at 1300–02.

¹¹⁹ *Id.* at 1300 (quoting Cong. Globe, 39th Cong., 2d Sess. 107 (1866) (statement of Sen. Charles Sumner)); see also Amar, *supra* note 85, at 440 ("In 1868, the capital city elected two black aldermen.").

¹²⁰ See Bulman-Pozen & Johnson, *supra* note 89, at 1301 n.171.

These events highlight a crucial point to D.C.'s claim of sovereignty: "[W]hat Congress giveth, Congress can taketh away."¹²¹

B. The District of Columbia Home Rule Act

Congress took three steps in the mid-twentieth century that gave D.C. its modern form of self-rule: passing the Twenty-Third Amendment, granting it a non-voting delegate in the House of Representatives, and, in 1973, passing the D.C. Home Rule Act ("HRA").¹²² The HRA "establishes a municipal structure similar to a state constitution."¹²³ It creates the office of a popularly elected mayor vested with "[t]he executive power of the District."¹²⁴ Though the mayor has significant authority over local law enforcement, jurisdiction is shared with other federal agencies.¹²⁵

The HRA also creates a D.C. Council with legislative power limited to "rightful subjects of legislation," now listed in Section 1-203.02 of the D.C. Code. But Congress imposed additional, express limitations and prohibitions on legislation concerning subjects such as lending and borrowing, taxation, criminal procedure and offenses, and the local judiciary.¹²⁶ The most fundamental limitation, however, is the recognition of the constitutional necessity that Congress retain the power to legislate for the District "on any subject, whether within or without the scope of legislative power granted to the Council."¹²⁷ This

¹²¹ *Am. Fed'n of Gov't Emps. v. D.C. Fin. Resp. & Mgmt. Assistance Auth.*, 133 F. Supp. 2d 75, 82 (D.D.C. 2001).

¹²² Bulman-Pozen & Johnson, *supra* note 89, at 1305. See generally Amar, *supra* note 85, at 440–41 (tracing the influence of the civil rights movement and the Cold War on modern D.C. home rule); District of Columbia Home Rule Act, Pub. L. No. 93-198, 87 Stat. 774 (1973) (codified as amended at D.C. Code §§ 1-201.01–207.71 (2026)).

¹²³ *Council of D.C. v. Gray*, 42 F. Supp. 3d 134, 140 (D.D.C. 2014), *vacated as moot and remanded sub nom. Council of D.C. v. Bowser*, No. 14-7067, 2015 WL 3450417 (D.C. Cir. May 27, 2015) (per curiam) (mem.); see also *Banner v. United States*, 428 F.3d 303, 308 (D.C. Cir. 2005) (per curiam) ("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.").

¹²⁴ D.C. Code §§ 1-204.21–204.22 (2026).

¹²⁵ Compare *id.* § 5-101.03 (describing the general duties of the District mayor), with *id.* §§ 23-501(2), 23-581 (providing for concurrent law enforcement jurisdiction between D.C. police and federal agents and officers).

¹²⁶ See *id.* §§ 1-206.02–206.03.

¹²⁷ *Id.* § 1-206.01.

includes the unilateral power to repeal or amend any local law.¹²⁸ Further, Congress can, and has, legislated for the District over the objection of the local government.¹²⁹ And in addition to Congress's affirmative legislative powers over the District, every law passed by the D.C. Council must be submitted to Congress, where it has thirty days¹³⁰ to veto the law by joint resolution.¹³¹

The HRA gives D.C. a considerable degree of autonomy, augmented by Congress's increasingly hands-off approach to local affairs.¹³² But this autonomy does not, and could not, "alter th[e] constitutional reality" that "Congress *is* the District's government."¹³³ The District Clause is "an unqualified grant of permanent legislative power" for the "enduring purposes" of the federal government—notwithstanding home rule, "purely local affairs [are] obviously subordinate and incidental" to this national interest.¹³⁴ As I argue below, conflating permissive home rule with genuine sovereign power not only "misses the special character of the District under the Constitution,"¹³⁵ but is inconsistent with the nature of sovereignty itself.¹³⁶ But with D.C. being the "exceptional community"¹³⁷ that it is, we have more to cover before turning to the substantive sovereignty issue. Understanding the District's historical

¹²⁸ See *Am. Fed'n of Gov't Emps. v. D.C. Fin. Resp. & Mgmt. Assistance Auth.*, 133 F. Supp. 2d 75, 82 (D.D.C. 2001) ("Since Congress exercises plenary power over the District, it may modify or repeal legislation regarding the District as it sees fit.").

¹²⁹ See *Banner v. United States*, 428 F.3d 303, 309 (D.C. Cir. 2005) (per curiam) ("[T]here is nothing inherently suspect in the prospect that Congress might give decisive weight to national rather than local considerations when it legislates for the District.").

¹³⁰ Congress is given sixty days to review proposed criminal laws, D.C. Code § 1-206.02(c)(2) (2026), and thirty-five for proposed amendments to the D.C. municipal charter, id. § 1-203.03.

¹³¹ Id. § 1-206.02(c)(1); see also, e.g., H.R.J. Res. 26, 118th Cong., 137 Stat. 3 (2023) (most recent veto). Implied repeals of local D.C. law have also been recognized. See *Am. Fed'n of Gov't Emps.*, 133 F. Supp. 2d at 82.

¹³² See, e.g., Jane A. Hudiburg, Cong. Rsch. Serv., R46790, House Rules Changes Affecting Floor Proceedings in the 117th Congress (2021–2022), at 4–5 (2021) (reporting the removal of the House rule that reserved specific dates for consideration of "District of Columbia business").

¹³³ *Banner*, 428 F.3d at 309 (citing U.S. Const. art. I, § 8, cl. 17).

¹³⁴ *O'Donoghue v. United States*, 289 U.S. 516, 538–39 (1933); see also *District of Columbia v. Owens-Corning Fiberglas Corp.*, 572 A.2d 394, 405 n.26 (D.C. 1989) ("We note that under the Home Rule Act, the District government continues to exist as a body corporate for municipal purposes . . ." (internal quotation marks omitted)); D.C. Code § 1-102 (2026).

¹³⁵ *Banner*, 428 F.3d at 309.

¹³⁶ See *infra* Section III.B.

¹³⁷ *District of Columbia v. Murphy*, 314 U.S. 441, 452 (1941).

origins and the D.C. government's statutory roots is only the first step towards a full appreciation of the District's unique constitutional status. We must also establish *why* that status is unique; we must refute its "forced analogies."¹³⁸

C. Forced Analogies

Properly understood, the District is one of one.¹³⁹ It exists simultaneously as a physical geography, a constitutional construct, and a structural necessity for national dominion. Its facial similarities to other entities may justify functional equivalences to serve administrative convenience,¹⁴⁰ but convenience cannot justify inaccuracy on this essential question of sovereignty and public law. That is, precision is indispensable here, where the adjudication of D.C.'s sovereign standing necessarily turns on its classification.¹⁴¹ We should always strive for accuracy in classifying these constitutional spaces, but we should demand it anytime that classification is dispositive.

1. The Territories

The U.S. territories are the most common analogy. This makes sense; on appearances alone, there are several notable parallels.¹⁴² Both lack full enfranchisement and voting representation in Congress, and both are subject to a similar, and "very unusual," form of plenary congressional authority.¹⁴³ The most significant doctrinal manifestation of this analogy is the territorial exception to Article III, which allows Congress to create courts in the U.S. territories without the guarantees of life tenure and

¹³⁸ Erbsen, *supra* note 86, at 1214.

¹³⁹ See, e.g., *District of Columbia v. Carter*, 409 U.S. 418, 432 (1973) ("Unlike either the States or Territories, the District is truly *sui generis* in our governmental structure.").

¹⁴⁰ See, e.g., 28 U.S.C. §§ 1332(e), 1257(b), 1451(2); see also *Fin. Oversight & Mgmt. Bd. for P.R. v. Aurelius Inv., LLC*, 140 S. Ct. 1649, 1663–65 (2020) (discussing cases about the District as providing a "rough analogy" for doctrine in the territories).

¹⁴¹ Cf. *District of Columbia v. Trump*, 291 F. Supp. 3d 725, 740 n.11 (D. Md. 2018) (upholding D.C.'s quasi-sovereign standing by labeling it a "territory" and citing to precedent applicable to Puerto Rico); Erbsen, *supra* note 86, at 1169 ("Spatial precision is essential because knowing *how* the Constitution addresses a particular problem often requires knowing *where* the problem arises.").

¹⁴² See Erbsen, *supra* note 86, at 1211 ("At first glance, the 'District' looks like a 'Territory.'" (citing U.S. Const. art. IV, § 3, cl. 2)).

¹⁴³ *Aurelius*, 140 S. Ct. at 1658 (quoting *Palmore v. United States*, 411 U.S. 389, 398 (1973)); see also Amar, *supra* note 85, at 439 (noting a *de facto* similarity: "a sizable percentage of nonwhite residents").

salary protection.¹⁴⁴ Commonly, courts and scholars recognize the technical distinction between the District and the territories but argue that their facial similarities are sufficient to justify the analogy.¹⁴⁵ But with surprising regularity, offhand remarks reveal a belief by some that the District is not just analogous to the territories, but that it *literally is* a territory.¹⁴⁶

However, the District is neither functionally nor literally a territory—the two are distinguishable on several grounds. Most fundamental is their basis in separate constitutional clauses. The District Clause is found among Congress’s enumerated powers in Article I, Section 8; the Territory Clause is found in Article IV.¹⁴⁷ Each clause confers a vast form of plenary congressional power, but does so in different terms: as to the District, Congress may “exercise exclusive Legislation in all Cases whatsoever,” and as to the territories, Congress may “dispose of and make all needful Rules and Regulations.”¹⁴⁸ And whereas the “District” is referred to as a unique and singular entity, the territories are lumped in with “Property belonging to the United States.”¹⁴⁹

On text and structure alone, therefore, three distinctions can be identified. First, with the Territory Clause’s inclusion of “dispose of,” Congress has apparently broader power over the territories than the

¹⁴⁴ See Durling, *supra* note 100, at 1216 (“Like judges, the vast majority of scholars treat the District’s non-Article III courts as fitting within the territorial court exception to Article III.”). See generally *id.* (arguing that D.C.’s inclusion in the territorial exception is erroneous, and therefore, that the local D.C. judiciary violates Article III because its judges lack life tenure).

¹⁴⁵ See, e.g., *Aurelius*, 140 S. Ct. at 1658–65; *District of Columbia v. John R. Thompson Co.*, 346 U.S. 100, 105–07 (1953); *Centro de Periodismo Investigativo v. Fin. Oversight & Mgmt. Bd. for P.R.*, No. 17-cv-01743, 2018 WL 2094375, at *4 n.4 (D.P.R. May 4, 2018).

¹⁴⁶ See, e.g., *District of Columbia v. Trump*, No. 25-5418, 2025 WL 3673674, at *11 (D.C. Cir. Dec. 17, 2025) (Millett, J.) (noting “the District’s unique constitutional status as a federal territory”); *District of Columbia v. Trump*, 291 F. Supp. 3d 725, 740 n.11 (D. Md. 2018) (“The District of Columbia, as a United States territory, is ‘similarly situated to a State in this respect’ and may assert quasi-sovereign interests in federal court.” (quoting *Alfred L. Snapp & Son, Inc. v. Puerto Rico ex rel. Barez*, 458 U.S. 592, 608 n.15 (1982))); *Metro. Wash. Chapter, Associated Builders & Contractors, Inc. v. District of Columbia*, 578 F. Supp. 3d 7, 16 (D.D.C. 2021) (“It has long been recognized in this Circuit that the Privileges and Immunities Clause does not apply to the District of Columbia, which as a federal territory, sits under the exclusive authority of Congress.”), *aff’d in part, appeal dismissed in part*, 62 F.4th 567 (D.C. Cir. 2023).

¹⁴⁷ See U.S. Const. art. IV, § 3, cl. 2.

¹⁴⁸ Compare U.S. Const. art. I, § 8, cl. 17, with *id.* art. IV, § 3, cl. 2.

¹⁴⁹ Compare *id.* art. I, § 8, cl. 17 (referring to “such District”), with *id.* art. IV, § 3, cl. 2 (referring to “the Territory or other Property belonging to the United States”).

District.¹⁵⁰ Second, that the Framers rooted each entity in different clauses provides some evidence that they understood them as disanalogous, at least implicitly.¹⁵¹ And third, ontologically speaking, the District, being the “seat of the national government,” would appear to be more significant than the territories, as mere “property.”¹⁵²

The early history of the territories provides further grounds for distinction. From the Founding through the Spanish-American War, territories were viewed as “transitory” or “ephemeral,” meaning, in a “period of pupilage” before becoming a state.¹⁵³ That is, “[f]rom the moment of their creation, the Territories were destined for admission as States into the Union.”¹⁵⁴ This stands in stark contrast with the District—the capital is permanent, not temporary; it is “the very heart . . . of the Union itself.”¹⁵⁵ There can be no question that, as originally conceptualized, the District was never intended to be on the path to statehood.¹⁵⁶

The modern law of the territories makes our inquiry much more complicated. The United States’ victory in the Spanish-American War and its “burgeoning colonial ambitions” fundamentally changed the territories’ constitutional status.¹⁵⁷ It would be impossible to lay out the labyrinthine doctrine of the modern U.S. territories in this short Note.¹⁵⁸ Fortunately, one aspect is dispositive for our purposes: the territories

¹⁵⁰ See Durling, *supra* note 100, at 1222 (discussing the contemporary public meaning of “dispose of”); see also *id.* (describing Gouverneur Morris’s—the Territory Clause’s drafter—expressed intention to “vest[] Congress with the broadest possible powers”).

¹⁵¹ See *Examining Bd. of Eng’rs, Architects & Surveyors v. Flores de Otero*, 426 U.S. 572, 596 n.27 (1976); Durling, *supra* note 100, at 1223.

¹⁵² See, e.g., *O’Donoghue v. United States*, 289 U.S. 516, 538–39 (1933).

¹⁵³ *Id.* at 536–37; accord James T. Campbell, *Aurelius’s Article III Revisionism: Reimagining Judicial Engagement with the Insular Cases* and “The Law of the Territories,” 131 *Yale L.J.* 2542, 2569 n.111 (2022).

¹⁵⁴ *District of Columbia v. Carter*, 409 U.S. 418, 431 (1973).

¹⁵⁵ *O’Donoghue*, 289 U.S. at 539. But see Bulman-Pozen & Johnson, *supra* note 89, at 1281–83 (arguing that the distinction between the early territories and the District “can be overstated,” but conceding that the District is ultimately “*sui generis*” (citing *Carter*, 409 U.S. at 432)).

¹⁵⁶ See *supra* Section II.A.

¹⁵⁷ *United States v. Vaello Madero*, 142 S. Ct. 1539, 1552 (2022) (Gorsuch, J., concurring).

¹⁵⁸ Justice Gorsuch’s concurrence in *Vaello Madero* provides a great overview of, and a great argument for overturning, the current doctrine. See *id.* at 1552–57. For the countervailing “repurposing” theory (that the modern doctrine can be used to protect traditional cultural practices in the territories), see *Developments in the Law—The U.S. Territories*, 130 *Harv. L. Rev.* 1616, 1680–1704 (2017).

(with two nuanced caveats) are unquestionably non-sovereign.¹⁵⁹ So even if one accepts an equivalence between the District and the territories, distinctions notwithstanding,¹⁶⁰ D.C.’s claim of sovereignty would require additional support.

The Commonwealths of Puerto Rico and the Northern Mariana Islands present two caveats to the general rule of territorial non-sovereignty. Puerto Rico is especially extraordinary.¹⁶¹ It is the only territory with Article III courts,¹⁶² Eleventh Amendment sovereign immunity embraced by a federal court of appeals,¹⁶³ and state-like standing endorsed by the Supreme Court.¹⁶⁴ Thus, it is accepted that

¹⁵⁹ See, e.g., Gary Lawson, Territorial Governments and the Limits of Formalism, 78 Calif. L. Rev. 853, 864 (1990); *Fuld v. Pal. Liberation Org.*, 145 S. Ct. 2090, 2111–14 (2025) (Thomas, J., concurring in the judgment). See generally Emmanuel Hiram Arnaud, Dual Sovereignty in the U.S. Territories, 91 Fordham L. Rev. 1645, 1650–66 (2023) (discussing the Court’s dual-sovereignty doctrine, including its application to non-sovereigns like the U.S. territories).

¹⁶⁰ See Erbsen, *supra* note 86, at 1208–14 (summarizing the distinctions).

¹⁶¹ What follows reveals the delicacy of Puerto Rican sovereignty after *Vaello Madero*, 142 S. Ct. 1539, and *Puerto Rico v. Sánchez Valle*, 579 U.S. 59 (2016). However, the following discussion finds support in older precedents and remains a viable theory. For an exploration of this developing complexity, see Christina D. Ponsa-Kraus, Political Wine in a Judicial Bottle: Justice Sotomayor’s Surprising Concurrence in *Aurelius*, 130 Yale L.J.F. 101 (2020).

¹⁶² Campbell, *supra* note 153, at 2550, 2574–75.

¹⁶³ See *Ramirez v. P.R. Fire Serv.*, 715 F.2d 694, 697 (1st Cir. 1983); *P.R. Aqueduct & Sewer Auth. v. Metcalf & Eddy, Inc.*, 506 U.S. 139, 141 n.1 (1993) (recognizing that “the law of the First Circuit” is “that the Commonwealth of Puerto Rico is treated as a State for purposes of the Eleventh Amendment,” but declining to consider the issue). CNMI’s lack of Eleventh Amendment immunity is recognized by the Ninth Circuit. See, e.g., *Norita v. Northern Mariana Islands*, 331 F.3d 690, 693–94 (9th Cir. 2003). Generally, “Guam does not contend that it is entitled to Eleventh Amendment immunity,” so the Ninth Circuit has yet to foreclose the issue. *Paeste v. Gov’t of Guam*, 798 F.3d 1228, 1234 (9th Cir. 2015); see also *id.* at 1234 n.8 (citing relevant precedent). Likewise, the Third Circuit “ha[s] not yet resolved whether the Eleventh Amendment applies to the Virgin Islands.” *Russell v. Richardson*, 905 F.3d 239, 254 (3d Cir. 2018). American Samoa does not seem to have ever pressed the Eleventh Amendment issue in federal court—but its lack of coverage seems inevitable. See *Meaamaile v. American Samoa*, 550 F. Supp. 1227, 1231 n.5 (D. Haw. 1982); see also *Ferstle v. Am. Samoa Gov’t*, 4 A.S.R.2d 160, 163–67 (Am. Sam. 1987) (grounding the territory’s sovereign immunity in the common law rather than the Eleventh Amendment).

¹⁶⁴ See *Alfred L. Snapp & Son, Inc. v. Puerto Rico ex rel. Barez*, 458 U.S. 592, 608 n.15 (1982) (“Although we have spoken throughout of a ‘State’s’ standing as *parens patriae*, . . . Puerto Rico is similarly situated to a State in this respect . . .”); *Puerto Rico v. Branstad*, 483 U.S. 219, 228–30 (1987) (upholding Puerto Rico’s right to sue Iowa to compel an extradition). At least two federal district court opinions have extended *Snapp* to the other territories. One was reversed on the merits. *Territory of Am. Samoa v. Nat’l Marine Fisheries Serv.*, No. 16-cv-00095, 2017 WL 1073348, at *11 (D. Haw. Mar. 20,

Puerto Rico has some degree of sovereignty, although the extent is uncertain and politically sensitive.¹⁶⁵

Puerto Rico's sovereign status was achieved through a long collaborative process with the United States. Gradually, the United States "relinquished its control" over the island and assisted it in establishing a "republican form of government pursuant to a constitution of [the Puerto Rican population's] own adoption."¹⁶⁶ Today, Puerto Rico is a constitutional commonwealth with an independently operative government—it is "an autonomous political entity, 'sovereign over matters not ruled by the [Federal] Constitution.'"¹⁶⁷ Therefore, and as the Court has recognized, it is unproblematic to extend functional state status to Puerto Rico in certain contexts.¹⁶⁸

The Commonwealth of the Northern Mariana Islands ("CNMI") has its own unique origins. The United Nations assumed trusteeship over the islands after their liberation from Imperial Japan in 1944.¹⁶⁹ By U.N. authorization, the United States oversaw the administration of the islands after World War II, but the islands were *not* a U.S. territory or possession—ultimate authority remained with the U.N.¹⁷⁰ In 1975, Congress negotiated and agreed to a bilateral "Covenant" with the local

2017), *rev'd*, 822 F. App'x 650 (9th Cir. 2020) (mem.). The other, involving the Virgin Islands, has remained fairly dormant. *Comm'r of Dep't of Plan. & Nat. Res. v. Century Alumina Co.*, No. 05-cv-00062, 2008 WL 4809897, at *8 (D.V.I. Oct. 31, 2008); see also *Gov't of V.I. v. Health Quest, LLC*, 2023 VI Super 63U, ¶¶ 15–20 (citing both *Snapp* and *Century Alumina* in discussing the Virgin Islands' *parens patriae* standing in territorial court).

¹⁶⁵ See Campbell, *supra* note 153, at 2576 n.150, 2635 n.404; see also *Vaello Madero*, 142 S. Ct. at 1542–43 ("Congress may distinguish the Territories from the States in tax and benefits programs . . . [if it] has a rational basis for doing so."); *Sánchez Valle*, 579 U.S. at 78 (holding that Puerto Rico and the United States "are not separate sovereigns" for the purposes of the Double Jeopardy Clause).

¹⁶⁶ *Fin. Oversight & Mgmt. Bd. for P.R. v. Aurelius Inv., LLC*, 140 S. Ct. 1649, 1671, 1673 (2020) (Sotomayor, J., concurring in the judgment) (alteration in original) (internal quotation marks omitted) (first quoting Examining Bd. of Eng'rs, Architects & Surveyors v. Flores de Otero, 426 U.S. 572, 597 (1976); and then quoting Act of July 3, 1950, ch. 446, §§ 1–2, 64 Stat. 319, 319).

¹⁶⁷ *Id.* at 1673 (alteration in original) (quoting *Rodriguez v. Popular Democratic Party*, 457 U.S. 1, 8 (1982)).

¹⁶⁸ See *Calero-Toledo v. Pearson Yacht Leasing Co.*, 416 U.S. 663, 670–76 (1974); *Flores de Otero*, 426 U.S. at 597; *Rodriguez*, 457 U.S. at 7–8; *Snapp*, 458 U.S. at 608 n.15.

¹⁶⁹ Joseph E. Horey, *The Right of Self-Government in the Commonwealth of the Northern Mariana Islands*, 4 Asian-Pac. L. & Pol'y J. 180, 181 (2003).

¹⁷⁰ See S.C. Res. 318, at 1–2 (Apr. 2, 1947).

territorial government.¹⁷¹ This Covenant functions like a contract in specifically defining the parties' relationship.¹⁷² Thus, while CNMI voluntarily submitted itself to U.S. rule, "the authority of the United States towards the CNMI arises solely under the Covenant."¹⁷³ In contrast with the default of plenary congressional authority under the Territory Clause, the Covenant permits a local constitution (subject to congressional approval)¹⁷⁴ and imposes other explicit limitations on Congress's power.¹⁷⁵

As a result of this odd configuration, the nature of any CNMI "sovereignty" is ill-defined. While the Covenant refers to itself as "a sovereign act of self-determination,"¹⁷⁶ courts have seldom opined on the question. The Supreme Court has never interpreted the Covenant,¹⁷⁷ and circuit precedent is sparse. Compared to Puerto Rico, CNMI would appear to have stronger rights of self-governance, but only insofar as they are specifically provided for by the Covenant.¹⁷⁸ The Covenant

¹⁷¹ Horey, *supra* note 169, at 181–83; Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America, Pub. L. No. 94-241, 90 Stat. 263 (1976).

¹⁷² See *United States ex rel. Richards v. De Leon Guerrero*, 4 F.3d 749, 754 (9th Cir. 1993) (explaining that the Covenant alone defines the boundaries of the relationship between the United States and CNMI).

¹⁷³ *Sagana v. Tenorio*, 384 F.3d 731, 734 (9th Cir. 2004) (quoting *Hillblom v. United States*, 896 F.2d 426, 429 (9th Cir. 1990)); accord *De Leon Guerrero*, 4 F.3d at 754; see also Horey, *supra* note 169, at 230–44 (arguing that the Territory Clause has no application to CNMI or, at most, is "a procedural vehicle for the federal legislative powers which the Covenant allows").

¹⁷⁴ Covenant §§ 201–202, 90 Stat. at 265; see also N. Mar. I. Const. pmbl. ("We the people of the Northern Mariana Islands, grateful to Almighty God for our freedom, ordain and establish this Constitution as the embodiment of our traditions and hopes for our Commonwealth in political union with the United States of America.").

¹⁷⁵ See *De Leon Guerrero*, 4 F.3d at 753–55 (discussing and citing some of these limitations).

¹⁷⁶ Covenant pmbl., 90 Stat. at 264.

¹⁷⁷ But cf. *United States v. Vaello Madero*, 142 S. Ct. 1539, 1542 (2022) (recognizing Congress's extension of Supplemental Security Income benefits to CNMI residents under the Covenant, without substantive comment); *Nguyen v. United States*, 539 U.S. 69, 72–73, 75–77 (2003) (affirming CNMI's federal court as an Article IV court but avoiding any interpretation of the Covenant).

¹⁷⁸ Compare *Northern Mariana Islands v. Atalig*, 723 F.2d 682, 691 n.28 (9th Cir. 1984) ("As a commonwealth, the NMI will enjoy a right to self-government guaranteed by the mutual consent provisions of the Covenant. No similar guarantees have been made to Puerto Rico or any other territory." (citation omitted)), with *Norita v. Northern Mariana Islands*, 331 F.3d 690, 693–94 (9th Cir. 2003) (affirming that CNMI lacks sovereign immunity in federal court because it was not included in the Covenant), and *De Leon Guerrero*, 4 F.3d at

contains an important catch-all providing that Congress may generally legislate for CNMI, except that alterations of “the fundamental provisions of th[e] Covenant” require joint consent.¹⁷⁹ Beyond that, where the Covenant is truly silent, courts balance “the federal interest to be served by the legislation at issue against the degree of intrusion into the internal affairs of the CNMI.”¹⁸⁰

The mutual enterprise establishing the Puerto Rican commonwealth, by contrast, was more reminiscent of a standard enabling act for the admission of a new state.¹⁸¹ Perhaps this justifies the extension of sovereign standing and Eleventh Amendment immunity to Puerto Rico, but not CNMI.¹⁸² Or, and perhaps the more likely explanation, the law here is simply inconsistent.¹⁸³ Indeed, a compelling argument exists that CNMI and Puerto Rico have an equivalent constitutional status.¹⁸⁴

This Note does not purport to offer any clarity on the law of the territories beyond what is necessary to distinguish them from the District. The bottom line is twofold. First, the District is not a territory under the Territory Clause—it is a federal district under the District Clause. Again: these labels matter, both for the sake of precision and for the fact that D.C.’s inaccurate labeling may be—and has been—dispositive to its standing.¹⁸⁵

Second, the two caveats to the rule of territorial non-sovereignty—for territories that may possess some degree of sovereignty—exist for reasons inapplicable to the D.C. government. Puerto Rico’s and CNMI’s rights of self-governance are memorialized in their own constitutions and after a process of a deliberate cession of authority by Congress. Their labeling as “territories” denotes their spheres of authority, which

755 (declining to “carv[e] out an area of ‘local affairs’” immunity beyond the terms of the Covenant).

¹⁷⁹ Covenant § 105, 90 Stat. at 264.

¹⁸⁰ *De Leon Guerrero*, 4 F.3d at 755.

¹⁸¹ See, e.g., *Puerto Rico v. Sánchez Valle*, 579 U.S. 59, 82 (2016) (Breyer, J., dissenting); *Examining Bd. of Eng’rs, Architects & Surveyors v. Flores de Otero*, 426 U.S. 572, 596–97 (1976).

¹⁸² Note, however, that the Covenant’s self-governance guarantees allow CNMI to assert what would otherwise appear as a freestanding sovereign harm. See, e.g., *Northern Mariana Islands v. United States*, 670 F. Supp. 2d 65, 77 (D.D.C. 2009); Covenant § 103, 90 Stat. at 264. Of course, the D.C. Home Rule Act contains no such guarantees.

¹⁸³ See *Norita*, 331 F.3d at 696 (identifying an “apparent inter-circuit conflict with the First Circuit” if “CNMI and Puerto Rico are similarly situated commonwealths”); Horey, *supra* note 169, at 182; Campbell, *supra* note 153, at 2582–83.

¹⁸⁴ See *Norita*, 331 F.3d at 695–96.

¹⁸⁵ See, e.g., *District of Columbia v. Trump*, 291 F. Supp. 3d 725, 740 n.11 (D. Md. 2018).

are insulated from unilateral congressional revision. Conversely, D.C.'s rights to self-rule are provided by a mere statute which, by its terms, was not intended to alter Congress's absolute and unconditional authority.¹⁸⁶

2. *The Enclaves*

There is certainly some appeal to an analogy between D.C. and the enclaves. The two can be viewed as constitutional siblings—Congress's power over each is identical and conferred by the same clause.¹⁸⁷ The second half of the District Clause contains the colloquial Enclave Clause: Congress may exercise the same “exclusive Legislation in all Cases whatsoever” over “all Places purchased by the Consent of the Legislature of the State in which the Same shall be.”¹⁸⁸ “Places” refers to “needful Buildings,” such as “Forts, Magazines, Arsenals, [and] dock-Yards.”¹⁸⁹ As with the territories, many proponents of the analogy recognize their technical distinction but argue for their functional equivalence.¹⁹⁰ And here too, there are examples of references that—either knowingly or unknowingly—treat the two as literal equivalents.¹⁹¹

However appealing the analogy, the entities' fundamental distinction prohibits its use as a substantive matter. The primary textual difference is in the manner of creation: a “District” is created by “Cession,”

¹⁸⁶ *Supra* Section II.B.

¹⁸⁷ *Adams v. Clinton*, 90 F. Supp. 2d 35, 63 (D.D.C. 2000) (per curiam).

¹⁸⁸ U.S. Const. art. I, § 8, cl. 17.

¹⁸⁹ *Id.*

¹⁹⁰ See, e.g., *Adams*, 90 F. Supp. 2d at 101–04 (Oberdorfer, J., dissenting in part and concurring in part) (arguing that differentiating D.C. residents and enclave residents for the purposes of voting rights would be “a distinction without a material difference”); Peter Raven-Hansen, *The Constitutionality of D.C. Statehood*, 60 *Geo. Wash. L. Rev.* 160, 171 (1991) (same).

¹⁹¹ Both opinions in the D.C. Circuit's grant of stay fell victim to this trap. *District of Columbia v. Trump*, No. 25-5418, 2025 WL 3673674, at *11 (D.C. Cir. Dec. 17, 2025) (Millett, J.) (referring to D.C.'s “‘unique status’ as a federal enclave” and its “unique constitutional status as a federal territory” (quoting *District of Columbia v. Carter*, 409 U.S. 418, 432 (1973))); *id.* at *14 (Rao, J., concurring) (“But as already explained, the District is a federal enclave . . .”). Then-Judge Ketanji Brown Jackson has also made this understandable mistake. *Youssef v. Embassy of the U.A.E.*, No. 17-cv-02638, 2021 WL 3722742, at *11 (D.D.C. Aug. 23, 2021) (“[T]he District of Columbia is ‘neither a state nor [a] territory, but a federal enclave’ itself.” (alteration in original) (quoting *Medynski v. Margolis*, 389 F. Supp. 743, 746 (D.D.C. 1975))). And while the Supreme Court is usually accurate in its characterization of the District, Justices have occasionally made the slip, at least in passing. See *N. Pipeline Constr. Co. v. Marathon Pipe Line Co.*, 458 U.S. 50, 75 (1982) (plurality opinion) (“*Palmore*[, 411 U.S. 389 (1973).] was concerned with the courts of the District of Columbia, a unique federal enclave . . .”).

whereas “Places,” i.e., enclaves, are acquired by congressional “purchase[.]”¹⁹² This is far from a “distinction without a difference.”¹⁹³ Of course, it is presumed deliberate that the Framers used two different words in such close proximity to describe the same action: acquiring land.¹⁹⁴ The words carry different meanings as well: “cession” connotes an absolute transfer of jurisdiction; “purchase,” by contrast, suggests a more ephemeral or transient action.¹⁹⁵

This difference is confirmed by the Framers’ intent for the two entities. Recall that the District was intended to serve a supreme goal: the survival of the federal government.¹⁹⁶ This was to be achieved through the expulsion of all state influence, most directly to protect federal independence and supremacy, but also for the more exalted aim of fostering a national identity.¹⁹⁷ This all required a permanent, everlasting seat of the government.¹⁹⁸

Enclaves are just property—often purchased for an important use,¹⁹⁹ but serving no higher purpose in and of themselves.²⁰⁰ Congress’s power to erect buildings on federal property is inherent, as is its power to voluntarily transact with the states.²⁰¹ And the Constitution provides other mechanisms for acquiring exclusively controlled federal property.²⁰² If the Enclave Clause merely reiterated these principles, it would be redundant.²⁰³ But we do not presume that the Framers were

¹⁹² U.S. Const. art. I, § 8, cl. 17.

¹⁹³ Raven-Hansen, *supra* note 190, at 171.

¹⁹⁴ See *Wright v. United States*, 302 U.S. 583, 588 (1938).

¹⁹⁵ Compare Cession, 1 Samuel Johnson, *A Dictionary of the English Language* (London, J.F. & C. Rivington et al., 6th ed. 1785) (“Resignation; the act of yielding up or quitting to another.”), with Purchase, *id.* (“To buy for a price.”); see also Cede, *Black’s Law Dictionary* (12th ed. 2024) (“To surrender or relinquish (esp. a portion of territory).”); Purchase, *id.* (“The acquisition of an interest in real or personal property by . . . voluntary transaction.”). See generally Erbsen, *supra* note 86, at 1238 & n.263 (analyzing the potential meaning behind the use of “cession” and “purchase”); *Adams*, 90 F. Supp. 2d at 63 n.52 (same).

¹⁹⁶ The Federalist No. 43, *supra* note 96, at 240–41; *supra* Section II.A.

¹⁹⁷ *Grether v. Wright*, 75 F. 742, 756–57 (6th Cir. 1896) (Taft, J.).

¹⁹⁸ E.g., *O’Donoghue v. United States*, 289 U.S. 516, 538–39 (1933); RFK Memorandum, *supra* note 98, at 3; accord *id. passim*.

¹⁹⁹ Military bases and defense installations are the most common use, which Madison himself seemed to contemplate. See The Federalist No. 43, *supra* note 96, at 241 (“Nor would it be proper for the places on which the security of the entire Union may depend to be in any degree dependent on a particular member of it.”).

²⁰⁰ See Erbsen, *supra* note 86, at 1235.

²⁰¹ *Id.* at 1235–36.

²⁰² *Id.* at 1236–37.

²⁰³ See *id.*

redundant. The most apparent intention behind the Enclave Clause does not concern purchasing property per se, but rather, the unique jurisdictional problem created by the states' territorial sovereignty: whether a state retains jurisdiction over its territory purchased by Congress such that it could, for example, impose an income tax on employees working there.²⁰⁴ The Framers did not resolve this question so much as create a way to avoid it: state consent.²⁰⁵

Difficult questions remain regarding the nuances of this arrangement. And this difficulty is exacerbated by Congress's longstanding practice of permitting concurrent state jurisdiction, thereby disclaiming the full extent of its power under the Enclave Clause.²⁰⁶ However, one point that has been settled highlights a key distinction between the District and the enclaves: even at the maximum extent of congressional power, an enclave does not alter the "geographical structure" of the state.²⁰⁷ That is, while state jurisdiction is preempted, the enclave still ultimately exists within the state's territory.²⁰⁸ Therefore, residents of enclaves retain their state citizenship, voting rights, and eligibility for many state benefits.²⁰⁹ Enclaves thus do not formally divest the state of sovereignty over the territory; they create an exclusive federal proprietary interest that preempts state law insofar as it interferes with that interest, if the state so consents.²¹⁰

But the District is no longer part of any state—Maryland forever "relinquished to . . . Congress . . . [the] full and absolute right and exclusive jurisdiction."²¹¹ Therefore, District residents were stripped of state citizenship and, of consequence, their right to vote in state and

²⁰⁴ See *id.* at 1237.

²⁰⁵ See *id.* at 1239; see also *The Federalist* No. 43, *supra* note 96, at 241 ("All objections and scruples are here also obviated by requiring the concurrence of the States concerned in every such establishment.").

²⁰⁶ See, e.g., 40 U.S.C. § 3112(a); 4 U.S.C. §§ 105–106; see also Erbsen, *supra* note 86, at 1239 (discussing this practice).

²⁰⁷ *Howard v. Comm'rs of the Sinking Fund of Louisville*, 344 U.S. 624, 626 (1953).

²⁰⁸ *Evans v. Cornman*, 398 U.S. 419, 421–22 (1970) (rejecting the notion that enclaves are "a state within a state" (quoting *Howard*, 344 U.S. at 627)); accord *Adams v. Clinton*, 90 F. Supp. 2d 35, 64 n.55 (D.D.C. 2000) (*per curiam*).

²⁰⁹ Erbsen, *supra* note 86, at 1240–42; see also *id.* at 1242 (positing that the most sensible construction of this confusing doctrine is: "(1) enclaves are physically within states, but (2) most state law is preempted").

²¹⁰ See, e.g., *James v. Dravo Contracting Co.*, 302 U.S. 134, 146–49 (1937) (holding that a state may condition the sale of territory to Congress on its retaining concurrent jurisdiction).

²¹¹ *Adams*, 90 F. Supp. 2d at 58 (quoting *An Act Concerning the Territory of Columbia and the City of Washington*, ch. 45, § 2, 1791 Md. Laws).

federal elections.²¹² But at the same time, Congress does not *own* the District in a proprietary sense; much of the property remains owned privately or by the D.C. government.²¹³ Rather, Congress is sovereign over the District—its “own creature.”²¹⁴ It is an indestructible and permanent power for the enduring purposes of the federal government, comparable to a state’s power over its own territory.²¹⁵

The difference, quite simply, is that “[i]n the one case the United States is acting primarily in a proprietary capacity; in the other in a purely governmental one.”²¹⁶ There are thousands of federal enclaves that are all indistinguishable as far as the Constitution is concerned, but the District is *sui generis*.

3. *A Brief Note on the Indian Tribes*

Explicit comparisons of the District and the American Indian tribes are rare. In contrast with the territories and the enclaves, a view of the tribes and the District as functional or literal equivalents would be patently unreasonable. So while it is too much to put the Indian tribes in the category of the District’s “forced analogies,”²¹⁷ a quick mention of their status-distinction is still worthwhile. For one, several parallels indeed exist.²¹⁸ Second, analogies to the Indian tribes are a common resort for advocates of territorial sovereignty,²¹⁹ which could, hypothetically, be extended to the District by someone who (erroneously) views it as a territory. Third, and most importantly, the tribes illustrate a key point about the nature of sovereignty and its

²¹² Id. at 37. But cf. U.S. Const. amend. XXIII (granting District residents the right to vote in presidential elections).

²¹³ See Raven-Hansen, *supra* note 190, at 171.

²¹⁴ *Adams*, 90 F. Supp. 2d at 64 n.54.

²¹⁵ See, e.g., *Banner v. United States*, 428 F.3d 303, 309 (D.C. Cir. 2005) (*per curiam*).

²¹⁶ RFK Memorandum, *supra* note 98, at 127 n.10.

²¹⁷ Erbsen, *supra* note 86, at 1214.

²¹⁸ See, e.g., Victoria Verbyla Sutton, *Divergent but Co-Existent: Local Governments and Tribal Governments Under the Same Constitution*, 31 Urb. Law. 47, 76–77 (1999) (noting analogous federal oversight in certain areas and lack of a state “buffer”); Zachary S. Price, *Dividing Sovereignty in Tribal and Territorial Criminal Jurisdiction*, 113 Colum. L. Rev. 657, 657 (2013) (analogizing federal control over local criminal jurisdiction in the tribes, D.C., and the territories); Amar, *supra* note 85, at 439.

²¹⁹ See, e.g., Campbell, *supra* note 153, at 2632–51 (using federal Indian law as a “guidepost” in offering a new paradigm for the U.S. territories); Kamaile A.N. Turčan, *Fisheries Management in American Samoa and the Expanding Application of Parens Patriae Standing to Challenge Federal Administrative Action*, 33 Notre Dame J.L. Ethics & Pub. Pol’y 1, 8–10, 12–15 (2019).

existence outside the context of formal statehood: its innate connection not just to status, but to a status that predates and is independent of the United States.²²⁰

The legal nature of the Indian tribes is elusive,²²¹ but two settled points bear relevance to D.C.’s claim of “sovereignty.” First, federally recognized tribes are accepted as possessing an inherent sovereignty that is similar to (though less than) that of a state.²²² This sovereignty is similar to a state’s in being viewed as intrinsically tied to status and conferring a preeminence over local health and welfare.²²³ Accordingly, infringements on tribal sovereignty confer Article III standing.²²⁴ Second, the Constitution contemplates the Indian tribes as a preexisting *society*, whereas the District is mentioned as a distinctly federal *space* that may be created in the future.²²⁵

The Indian tribes are not states, but they are similarly sovereign as separate and independent polities that predate the Constitution.²²⁶ Their sovereignty—as with the states’—is rooted in their status; their autonomy and self-governance are a result of their sovereign status, rather than its source. Understanding these distinctions sharpens the conceptual framework for evaluating D.C.’s claim of “sovereignty.”

III. NEITHER INHERENT NOR DELEGATED SOVEREIGNTY

A clear constitutional line separates the District from the states, the territories, and all the other constitutional spaces. This Note’s argument is simple: Why cross it? The history shows that this line was not a textual quirk or oversight but was explicitly intended by the Framers. To

²²⁰ See also *infra* Section III.B (elaborating on this aspect of sovereignty).

²²¹ See Erbsen, *supra* note 86, at 1253 (calling federal Indian law “a convoluted mess”).

²²² See *United States v. Cooley*, 141 S. Ct. 1638, 1643 (2021) (explaining the general rule restricting tribal sovereign power over non-members and its two exceptions).

²²³ *United States v. Wheeler*, 435 U.S. 313, 322 (1978) (“[Native American tribes] remain ‘a separate people, with the power of regulating their internal and social relations.’” (quoting *United States v. Kagama*, 118 U.S. 375, 381–82 (1886))); *McGirt v. Oklahoma*, 140 S. Ct. 2452, 2465–68 (2020); *Worcester v. Georgia*, 31 U.S. (6 Pet.) 515, 519 (1832); *infra* Section III.B.

²²⁴ See, e.g., *Mashantucket Pequot Tribe v. Town of Ledyard*, 722 F.3d 457, 463 (2d Cir. 2013) (“[A]ctual infringements on a tribe’s sovereignty constitute a concrete injury sufficient to confer standing.”).

²²⁵ Compare U.S. Const. art. I, § 8, cl. 3 (Commerce Clause), with *id.* art. I, § 8, cl. 17 (District Clause).

²²⁶ See, e.g., *Worcester*, 31 U.S. (6 Pet.) at 559.

accept D.C.’s invocation of *state* standing principles would flout this fundamental structural difference.

But beyond strict formalism—lines qua lines—this argument serves several functional interests as well. It adds clarity to an area of law plagued by “incoherence” and “confusion” by refining its rhetoric and providing a logical limiting principle.²²⁷ And in doing so, this argument also protects the substance of the form of “sovereignty” contemplated by the Constitution. In Part IV, this Note elaborates on these more functional arguments—explaining why the theory of delegated municipal sovereignty is neither practically necessary nor normatively desirable.

But first, here in Part III, this Note advances its primary, and more formalist, argument: that D.C. possesses neither inherent nor delegated sovereignty and, therefore, lacks standing under Article III to assert sovereign harms. It explains that the District’s local government is municipal in the ordinary sense, that the sovereign power at stake in the National Guard deployment is Congress’s, and that the theory of a municipality wielding an independent “delegated” sovereignty is inconsistent with the long-settled understanding of sovereign power as status-based and nontransferable.

A. D.C.’s Ordinarily Municipal Government

It is irrefutable that the District’s local government is municipal in nature. The D.C. Code,²²⁸ the courts,²²⁹ and D.C. itself all say as much.²³⁰ It is equally irrefutable that municipal governments lack

²²⁷ Crocker, *Sovereign Standing*, supra note 27, at 2070.

²²⁸ D.C. Code § 1-102 (2026).

²²⁹ E.g., *Frederick Douglass Found., Inc. v. District of Columbia*, 82 F.4th 1122, 1136 (D.C. Cir. 2023); *Wash. Metro. Area Transit Auth. v. Ark Union Station, Inc.*, 268 F. Supp. 3d 196, 202 (D.D.C. 2017) (Jackson, J.); *Hamilton v. District of Columbia*, 720 F. Supp. 2d 102, 108 (D.D.C. 2010).

²³⁰ D.C. Complaint, supra note 12, at 5. While D.C. readily identifies itself as a municipal corporation in its filings, it is somewhat inconsistent in exactly how it describes that status. Sometimes, it gets it right. See, e.g., Amended Complaint at 10, *District of Columbia v. Trump*, 291 F. Supp. 3d 725 (D. Md. 2018) (No. 17-cv-01596) (“The District of Columbia is a municipal corporation empowered to sue and be sued, and is the local government for the territory constituting the permanent seat of the federal government.”). Other times, it attaches qualifiers to its municipal label that, in my view, are plainly inaccurate. See, e.g., Complaint at 8, *District of Columbia v. U.S. Dep’t of Agric.*, 496 F. Supp. 3d 213 (D.D.C. 2020) (No. 20-cv-00119) (“Plaintiff the District of Columbia is a *sovereign* municipal corporation” (emphasis added)); D.C. Complaint, supra note 12, at 5 (“[T]he District of

inherent sovereign power.²³¹ The Tenth Amendment vests the states with power over local affairs; local governments are “created by states for their own administrative convenience.”²³² So when local governments act, their power to do so ultimately traces to their parent state.²³³ The grant of home rule does not change this because the autonomy remains permissive and revocable.²³⁴ Indeed, when faced with purported municipal sovereign standing, “every federal court that has considered the question has flatly rejected” it.²³⁵ The rationale is simple: the “power is derivative and not sovereign.”²³⁶ The standing of municipal governments in federal court is therefore limited to harms to their own direct or proprietary interests.²³⁷

D.C. should know this—it has argued this before. In the National Prescription Opioid Litigation, over three thousand municipal governments received class certification in their consolidated suit, which was appealed by the defendant opioid manufacturers.²³⁸ In the U.S. Court of Appeals for the Sixth Circuit, twelve states (and D.C.) filed as

Columbia (the District) is a municipal corporation *organized under the Constitution of the United States.*” (emphasis added)). The D.C. government is neither organized under the Constitution (as explained in Section II.B) nor sovereign (as explained here in Part III).

²³¹ E.g., *Barnes v. District of Columbia*, 91 U.S. 540, 544–45 (1876).

²³² *Kerr v. Polis*, 20 F.4th 686, 698 (10th Cir. 2021) (citing *City of Trenton v. New Jersey*, 262 U.S. 182, 185–86 (1923)).

²³³ E.g., *County of Onondaga v. State*, 44 N.Y.3d 639, 651 (2025) (“Authority granted to local governments derives from the State’s otherwise plenary power . . .”), *cert. denied sub nom. Rockland County v. New York*, 146 S. Ct. 1808 (2026).

²³⁴ See, e.g., Katharine Cooney & Katherine Mims Crocker, *Local Government Standing as State Standing*, 2025 Wis. L. Rev. 1255, 1262–63 (“As entities whose powers rest in states’ ‘absolute discretion,’ local governments are not considered sovereign entities within our constitutional structure . . .” (footnote omitted) (quoting *Hunter v. City of Pittsburgh*, 207 U.S. 161, 178 (1907))); Nestor M. Davidson, *Local Constitutions*, 99 Tex. L. Rev. 839, 896–98 (2021).

²³⁵ Savit, *supra* note 53, at 608.

²³⁶ *Colo. River Indian Tribes v. Town of Parker*, 776 F.2d 846, 848 (9th Cir. 1985); accord Savit, *supra* note 53, at 599–611. See generally Issue Brief, *Municipal Standing in Regulatory Litigation, Governing for Impact* (Dec. 2024), https://governingforimpact.org/wp-content/uploads/2024/12/Municipal-Standing_Issue-Brief.pdf [<https://perma.cc/JV5N-HGDX>] (collecting cases).

²³⁷ See Cooney & Crocker, *supra* note 234, at 1259–63; *Municipal Standing in Regulatory Litigation*, *supra* note 236.

²³⁸ See Soo Youn, *Thousands of US Cities and Counties in Federal Opioid Lawsuit File for Class Status*, ABC News (June 14, 2019, at 19:12 ET), <https://abcnews.go.com/US/thousands-us-cities-counties-federal-opioid-lawsuit-file/story?id=63714873> [<https://perma.cc/GQ7L-NXVF>]; Opioids, Nat’l Ass’n of Att’ys Gen., <https://www.naag.org/issues/opioids/> [<https://perma.cc/KBB4-XX98>] (last visited May 17, 2026).

amici supporting the defendants. Why? Because, in their view, the suit “freed the subdivisions from state control and thus invaded state sovereignty.”²³⁹ The argument sounds familiar: “[t]he States are sovereign entities,” whereas “[p]olitical subdivisions lack this inherent authority.”²⁴⁰ Local governments exist as “convenient agencies” that are “‘all derived from, or exist in, subordination to’ either the United States or the government of a particular State.”²⁴¹ The states and D.C. used these principles to argue that the municipalities lacked the sovereign capacity to “vindicate the interests of the public at large,” as, in our “dual system of government,” there is simply “no place for sovereign cities.”²⁴² The Sixth Circuit reversed the class certification on other grounds.²⁴³

The decision by the District Attorney General’s Office to sign on to this brief is difficult to reconcile. The D.C. government is an ordinary municipality in many key respects. It is an entirely statutory entity functioning as a public corporation.²⁴⁴ Its primary purpose is to “relieve Congress of the burden of legislating upon essentially local District matters,”²⁴⁵ including daily services like utilities, infrastructure, education, and public safety. And, of course, its self-governance is restricted and remains under absolute congressional control.²⁴⁶

But D.C. is distinct in a way that makes its position even more precarious than an ordinary municipality’s. A state’s authority over its subdivisions is constrained by federalism; Congress faces no such constraint.²⁴⁷ When legislating for the District, Congress “possesses ‘the

²³⁹ Brief of *Amici* States of Arizona et al. Supporting Appellants and Reversal at 3, In re Nat’l Prescription Opiate Litig., 976 F.3d 664 (6th Cir. 2020) (No. 19-4097).

²⁴⁰ *Id.* at 5–6.

²⁴¹ *Id.* at 6 (first quoting *Wis. Pub. Intervenor v. Mortier*, 501 U.S. 597, 607–08 (1991); and then quoting *United States v. Kagama*, 118 U.S. 375, 379 (1886)).

²⁴² *Id.* at 3, 6 (emphasis omitted) (quoting *Cnty. Commc’ns Co. v. City of Boulder*, 455 U.S. 40, 53 (1982)).

²⁴³ See *Nat’l Prescription Opiate Litig.*, 976 F.3d at 677.

²⁴⁴ See D.C. Code § 1-102 (2026) (creating a “body corporate for municipal purposes” to exercise all “powers of a municipal corporation”).

²⁴⁵ District of Columbia Home Rule Act, Pub. L. No. 93-198, § 102(a), 87 Stat. 774, 777 (1973) (codified as amended at D.C. Code § 1-201.02(a) (2026)).

²⁴⁶ Cf. Z. Payvand Ahdout & Bridget Fahey, *Layered Constitutionalism*, 124 *Colum. L. Rev.* 1295, 1349 (2024) (“What good is the power to govern if the mechanisms of government are controlled by someone else?”).

²⁴⁷ See, e.g., *Neild v. District of Columbia*, 110 F.2d 246, 249–51 (D.C. Cir. 1940).

combined powers of a general and of a State government,”²⁴⁸ limited only by the individual constitutional rights of District residents and a handful of structural provisions.²⁴⁹ That is, Congress possesses a dual authority over the District—it wields the sum of all state and federal power.²⁵⁰ But a state could not legislate for its municipalities beyond the limits of its general police powers. Faced with the weight of this reality, D.C. has previously conceded its necessary implication.²⁵¹ But in the National Guard litigation, it appears to have retracted that concession.

The D.C. government, as “a body corporate,”²⁵² lacks inherent sovereignty. In terms of the District’s “independent and supreme authority,”²⁵³ it is not the D.C. municipal government—it is Congress. The delegation theory recognizes this but holds that D.C. was delegated not only autonomy, but a piece of Congress’s sovereignty itself, thus sufficient to allege its own distinct sovereign harm.²⁵⁴ As shown, this is inconsistent with municipal authority; shown below, it is also inconsistent with sovereignty itself.

B. Congress Cannot Delegate Its Sovereignty

Congress is the source of sovereignty in the District.²⁵⁵ This conclusion flows from the Constitution itself—it is as true today as it

²⁴⁸ *O’Donoghue v. United States*, 289 U.S. 516, 539 (1933) (quoting *Stoutenburgh v. Hennick*, 129 U.S. 141, 147 (1889)).

²⁴⁹ See *Views on Legis. Making the Dist. of Columbia a Cong. Dist.*, 33 Op. O.L.C. 156, 179–80 (2009) (discussing some of these limits).

²⁵⁰ See, e.g., *N. Pipeline Constr. Co. v. Marathon Pipe Line Co.*, 458 U.S. 50, 76 (1982) (plurality opinion) (“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.”); *Banner v. United States*, 428 F.3d 303, 308 (D.C. Cir. 2005) (per curiam).

²⁵¹ *District of Columbia v. Trump*, 291 F. Supp. 3d 725, 735 n.6 (D. Md. 2018) (“The District of Columbia concedes that it cannot allege injury to a sovereign interest because *it is not a sovereign*.” (emphasis added)).

²⁵² D.C. Code § 1-102 (2026).

²⁵³ *Sovereign*, Black’s Law Dictionary (12th ed. 2024).

²⁵⁴ *District of Columbia v. Trump*, 810 F. Supp. 3d 19, 36–38 (D.D.C. 2025).

²⁵⁵ E.g., *District of Columbia v. Owens-Corning Fiberglas Corp.*, 572 A.2d 394, 405 (D.C. 1989) (“Congress is sovereign in the District . . .”); *Banner*, 428 F.3d at 309 (“Congress is not a foreign sovereign government in relation to the District . . .”); *District of Columbia v. John R. Thompson Co.*, 346 U.S. 100, 107 (1953) (“[W]hile the District was ‘a separate political community,’ its sovereign power was lodged in the Congress.” (quoting *Metro. R.R. Co. v. District of Columbia*, 132 U.S. 1, 9 (1889))); see also *United States v. Sumler*, 136 F.3d 188, 191 (D.C. Cir. 1998) (“District residents live under only one sovereign while most Americans live under two . . .”); *Goode v. Markley*, 603 F.2d 973, 976 (D.C. Cir.

was before home rule. And this conclusion cannot be seriously disputed, as even proponents of the delegation theory take it for granted.²⁵⁶ Instead, they interpret the D.C. Home Rule Act as *delegating* to D.C. a “sovereign power to govern itself.”²⁵⁷ On this view, D.C. exercised this delegated sovereignty by creating the mayor’s office and giving her executive authority over matters such as local law enforcement.²⁵⁸ Therefore, when the Administration deploys the National Guard with a law enforcement mission, allegedly usurping the mayor’s authority, the local government suffers a sovereign injury.²⁵⁹

In her order granting a preliminary injunction, Judge Cobb cited two cases to support this reasoning. First, she cited the first half of *John R. Thompson*’s seminal holding.²⁶⁰ But the full holding is more illustrative:

[T]here is no constitutional barrier to the delegation by Congress to the District of Columbia of full legislative power, subject of course to constitutional limitations to which all lawmaking is subservient and *subject also to the power of Congress at any time to revise, alter, or revoke the authority granted.*²⁶¹

The Court in *Thompson* upheld D.C.’s authority to enact local civil rights legislation and, more broadly, Congress’s ability to grant it that authority. The Court reasoned, however, by equating the Congress-D.C. relationship to that between any state and municipality.²⁶² The greatest

1979) (“Violations of the District of Columbia Code and violations of the United States Code are all crimes against a single sovereign, namely, the United States.”).

²⁵⁶ See, e.g., D.C. Complaint, *supra* note 12, at 48–49.

²⁵⁷ See *District of Columbia v. Trump*, 810 F. Supp. 3d at 36; see also *supra* Section I.C (explaining the delegation theory of sovereignty).

²⁵⁸ See *District of Columbia v. Trump*, 810 F. Supp. 3d at 63 (“Under D.C. law, the powers to ‘preserve the public peace,’ ‘prevent crime and arrest offenders,’ and ‘enforce and obey all laws’ are reserved to the local elected representatives of the District.” (quoting D.C. Code § 5-101.03 (2025))). However, in fact, the D.C. Mayor’s Office, with its core responsibilities, was created by Congress. See District of Columbia Home Rule Act, Pub. L. No. 93-198, §§ 421–423, 87 Stat. 774, 789–92 (1973). Judge Cobb does not grapple with the implication of this fact.

²⁵⁹ *District of Columbia v. Trump*, 810 F. Supp. 3d at 36–37.

²⁶⁰ See *id.* (quoting *Thompson*, 346 U.S. at 109).

²⁶¹ *Thompson*, 346 U.S. at 109 (emphasis added).

²⁶² *Id.* at 107–10; *id.* at 109 (“[T]he delegated power of municipalities is as broad as the police power of the state, except as that power may be restricted by terms of the grant or by the state constitution.”).

irony comes in *Thompson*'s invocation of an older precedent to quite explicitly affirm the District's lack of sovereignty.²⁶³

Judge Cobb also cited *New Jersey v. EPA* for the notion that New Jersey had standing based on harm to authority delegated by the federal government.²⁶⁴ But that is not exactly right—New Jersey suffered a cognizable harm in being burdened from meeting an obligation *imposed* on it by federal law. The Clean Air Act directs the EPA to formulate national air quality standards and to require states to develop and submit plans to meet these standards; a non-compliant state is subject to sanctions and federal intervention.²⁶⁵ The EPA substantially amended a component of the emissions calculation, which New Jersey argued increased the cost to maintain its obligations.²⁶⁶ Specifically, the EPA delegated to New Jersey the authority to regulate major polluters in the state, and New Jersey argued that the rule change made it more costly and otherwise onerous to exercise this authority.²⁶⁷ So, in a sense, New Jersey's harm was to the delegated authority itself. But in another, more accurate sense, New Jersey's harm was the “exacerbated administrative costs and burdens” and the “jeopardize[d] . . . ability to come into compliance with the ozone [standards] by attainment deadlines.”²⁶⁸ The harm was monetary and rooted in New Jersey's obligations under the Clean Air Act, doing little to support the notion that D.C. wields sovereign power under the Home Rule Act.

The lack of support for this delegation theory of sovereignty is unsurprising. No federal court has understood a grant of home rule as conferring independent sovereignty on a local government.²⁶⁹ And again, this is not a new development: “Political subdivisions of States—counties, cities, or whatever—never were and never have been

²⁶³ Id. at 107 (“The subordinate legislative powers of a municipal character, which have been or may be lodged in the city corporations, or in the District corporation, *do not make those bodies sovereign.*” (emphasis added) (quoting *Metro. R.R. Co. v. District of Columbia*, 132 U.S. 1, 9 (1889))).

²⁶⁴ *District of Columbia v. Trump*, 810 F. Supp. 3d at 37 (citing *New Jersey v. EPA*, 989 F.3d 1038, 1047 (D.C. Cir. 2021)).

²⁶⁵ *New Jersey v. EPA*, 989 F.3d at 1042.

²⁶⁶ Id. at 1044–46.

²⁶⁷ Id. at 1046.

²⁶⁸ Id. at 1046–47.

²⁶⁹ See, e.g., *Cnty. Commc'ns Co. v. City of Boulder*, 455 U.S. 40, 52–54 (1982); *Waller v. Florida*, 397 U.S. 387, 391–95 (1970).

considered as sovereign entities.”²⁷⁰ With even the broadest grants, local governments remain subject to the state’s plenary power.²⁷¹ A budding theoretical question posits whether a complete grant of state constitutional power confers municipal sovereignty as a matter of *state* law, but this is hotly debated and irrelevant to our discussion of *federal* law.²⁷² Indeed, the delegation theory is wholly unprecedented in federal constitutional law.

Beyond just lacking precedent, the delegation theory is inconsistent with conventional understandings of “sovereignty.” The orthodoxy is that government sovereignty in the United States originated at least partially in the English Crown.²⁷³ When the original colonies adopted their pre-Founding constitutions, they became “endowed with all the functions essential to separate and independent existence.”²⁷⁴ That is, they became sovereign. Upon the Founding, they ceded their sovereign power only to the extent necessary to create the new federal government.²⁷⁵ By splitting “the atom of sovereignty,” all areas beyond

²⁷⁰ *Reynolds v. Sims*, 377 U.S. 533, 575 (1964); accord *Hunter v. City of Pittsburgh*, 207 U.S. 161, 178 (1907); *Ysursa v. Pocatello Educ. Ass’n*, 555 U.S. 353, 362 (2009).

²⁷¹ See Richard Briffault, “What About the ‘Ism’?” Normative and Formal Concerns in Contemporary Federalism, 47 *Vand. L. Rev.* 1303, 1309 (1994); Richard C. Schragger, *The Attack on American Cities*, 96 *Tex. L. Rev.* 1163, 1170 (2018) (“At its simplest, state constitutions . . . provide cities with the general authority to legislate for . . . the local populace, though almost always subject to override by state law.”).

²⁷² Compare *In re Del. Pub. Sch. Litig.*, 239 A.3d 451, 520–24 (Del. Ch. 2020) (holding that the City of Wilmington had quasi-sovereign standing to sue Delaware in state court), with Richard Briffault, *Home Rule for the Twenty-First Century*, 36 *Urb. Law.* 253, 257 (2004) (“[H]ome rule does not raise local governments to the level of sovereign entities within our system.”).

²⁷³ E.g., *Trs. of Dartmouth Coll. v. Woodward*, 17 U.S. (4 Wheat.) 518, 614 (1819) (Marshall, C.J.) (“By the revolution which separated this country from the British empire, all the powers of the British government devolved on the States.”); *United States v. Curtiss-Wright Exp. Corp.*, 299 U.S. 304, 316–17 (1936); Baude et al., *supra* note 89, at 1161; see also Savit, *supra* note 53, at 604–05 & nn.131–33 (detailing that *parens patriae* originated in “the English Sovereign” (quoting *In re Multidistrict Vehicle Air Pollution M.D.L. No. 31*, 481 F.2d 122, 131 (9th Cir. 1973))).

²⁷⁴ *Lane County v. Oregon*, 74 U.S. (7 Wall.) 71, 76 (1869); accord *Martin v. Hunter’s Lessee*, 14 U.S. (1 Wheat.) 304, 324–27 (1816).

²⁷⁵ *Fontain v. Ravenel*, 58 U.S. (17 How.) 369, 384 (1855) (“[W]hen this country achieved its independence, the prerogatives of the crown devolved upon the people of the States. And this power still remains with them, except so far as they have delegated a portion of it to the federal government.”); *Hunter’s Lessee*, 14 U.S. (1 Wheat.) at 325; see also Crocker, *Sovereign Standing*, *supra* note 27, at 2060–61 (discussing the “sovereignty-ceding rationale”).

the limited scope of federal power remain the states' original and supreme prerogative.²⁷⁶

Sovereignty, on this view, is fixed and finite. The original states possess it because they predate the Union as separate and independent governments, and newly admitted states possess it by virtue of the equal footing doctrine.²⁷⁷ Congress may not expand, constrict, or otherwise alter a newly admitted state's sovereignty, despite its sole power of admission.²⁷⁸ Sovereignty, then, must not derive from congressional grace, but must directly flow from the Constitution as a preexisting status.²⁷⁹ If sovereignty could be delegated, it would presuppose the delegator's power to control it either before or after the delegation.²⁸⁰ Newly admitted states thus are not delegated or permissively given sovereignty—they become sovereign by assuming the same status possessed by the original thirteen polities that predate the Union. Therefore, sovereignty is held by “states qua states,”²⁸¹ attaching to their unique status as a higher form of government.

Not all share this view. Professors Ann Woolhandler and Michael G. Collins, for instance, are proponents of the “popular” theory of sovereignty, which posits that ultimate political authority resides in the people, thereby rejecting the notion of states themselves as distinct sovereign entities.²⁸² Governments, then, are mere vehicles for the

²⁷⁶ *U.S. Term Limits, Inc. v. Thornton*, 514 U.S. 779, 838 (1995) (Kennedy, J., concurring).

²⁷⁷ See *Coyle v. Smith*, 221 U.S. 559, 573 (1911) (“[W]hen a new State is admitted into the Union, it is so admitted with all of the powers of sovereignty and jurisdiction which pertain to the original States . . .”); *Alden v. Maine*, 527 U.S. 706, 713 (1999).

²⁷⁸ See *Coyle*, 221 U.S. at 565–75.

²⁷⁹ See Briffault, *supra* note 271, at 1340 (“Implicit in the Tenth Amendment’s reservation of powers to the state is that the states had those powers in the first place and did not derive them from a federal grant. If there is anything to the rhetoric of ‘state sovereignty,’ this is it.”).

²⁸⁰ See, e.g., Delegate, *Black’s Law Dictionary* (12th ed. 2024) (“To give part of one’s power or work to someone in a lower position within one’s organization . . .”); Delegation, *id.* (“The act of entrusting another with authority or empowering another to act as an agent or representative . . .”).

²⁸¹ Crocker, *Sovereign Standing*, *supra* note 27, at 2068.

²⁸² See, e.g., Woolhandler, *Sovereignty Actions*, *supra* note 28, at 216–18 (arguing that public interest lawsuits being brought by private individuals “reinforce[s] dual sovereignty principles—that state and federal governments take their power directly from the people”); Woolhandler & Collins, *State Standing*, *supra* note 9, at 439; Woolhandler & Collins, *Reining in State Standing*, *supra* note 8, at 2020.

populace to exercise their sovereign power.²⁸³ Still others posit that state “sovereignty” is really just a guarantee of structural autonomy—the right of states to structure their own government and to participate in the structuring of the national government.²⁸⁴ This framing finds support in some recent Supreme Court opinions.²⁸⁵

This Note expresses no view on which theory of sovereignty is “correct,” if such a determination is possible.²⁸⁶ Such an undertaking is

²⁸³ See Woolhandler & Collins, *State Standing*, supra note 9, at 397 (“[C]onstitutional rights are held by people, not government.”); see also Schragger, supra note 271, at 1218 (“[F]ederalism guarantees serve as protections for popular sovereignty and not simply as guarantees of state sovereignty.”).

²⁸⁴ See, e.g., Craig Green, *Beyond States: A Constitutional History of Territory, Statehood, and Nation-Building*, 90 U. Chi. L. Rev. 813, 839–41 (2023) (arguing that the structure of the Declaration of Independence supports this theory); Bulman-Pozen & Johnson, supra note 89, at 1276–78 (citing the federalist structure of the Constitution to support this theory); cf. Ahdout & Fahey, supra note 246, at 1348–49 (describing the Supreme Court’s apparent commitment to this principle).

²⁸⁵ See, e.g., *Fuld v. Pal. Liberation Org.*, 145 S. Ct. 2090, 2096–97 (2025); *Snyder v. United States*, 144 S. Ct. 1947, 1956 (2024). Compare *Galette v. N.J. Transit Corp.*, 146 S. Ct. 854, 875 (2026) (“[A]ll States maintain the power to ‘structure themselves as they wish.’” (quoting *Berger v. N.C. State Conf. of the NAACP*, 142 S. Ct. 2191, 2197 (2022))), with *id.* at 865 (“Sovereign immunity, however, is ‘personal’ to the State itself.” (quoting *Coll. Sav. Bank v. Fla. Prepaid Postsecondary Educ. Expense Bd.*, 527 U.S. 666, 675 (1999))).

²⁸⁶ But it does offer one insight: the notion that these theories are “mutually exclusive” may be misguided. Crocker, *Sovereign Standing*, supra note 27, at 2069. Two things are true about “popular” sovereignty. First, as a rhetorical matter, it has a profound significance in this Nation’s history. See, e.g., *The Declaration of Independence* para. 2 (U.S. 1776) (“[T]o secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed . . .”); Abraham Lincoln, *The Gettysburg Address*, in *Famous Speeches by Eminent American Statesmen* 103, 103 (Frederick C. Hicks ed., 1929) (“It is rather for us to be here dedicated to the great task . . . that the government of the people, by the people, and for the people, shall not perish from the earth.”). Second, as a literal matter, it is true that a government cannot act independent of individual people—it is not a sentient being. In terms of pure logic, if government is *dependent* on and therefore *subordinate* to the people, the ultimate source of sovereignty must be the people. See *infra* note 289 (defining “sovereign”).

Going beyond the eloquence and truism of “popular” sovereignty, it “does not, in fact, go very far.” Crocker, *Sovereign Standing*, supra note 27, at 2069. Just as government depends on people to act, people depend on government to exercise their sovereignty. See *id.* (“‘[T]he people’ have no efficient method of expressing or enforcing their ‘sovereignty’ . . . [because] ‘the states are the institutions that exercise “sovereign” powers.’” (quoting Zick, supra note 32, at 335)). However the “people” choose to exercise their sovereignty, its exercise can only be described as through government. See *Government*, *Black’s Law Dictionary* (12th ed. 2024) (“An organization through which a body of people exercises political authority; the machinery by which sovereign power is expressed . . .”); *Late Corp. of the Church of Jesus Christ of Latter-Day Saints v. United*

not necessary because, across each theory, a few common threads foreclose the possibility that D.C. wields sovereignty under any formulation. Each theory proceeds from the premise that sovereignty is uniquely tied to statehood or, at least, some high form of organized government, despite disagreeing on its metaphysical source.²⁸⁷ And each accepts that states have certain spheres where their power is preeminent and independent.²⁸⁸ These concepts—higher status and zones of preeminence—are the first principles of sovereignty.²⁸⁹ And the D.C. municipal government embodies neither. Congress delegated to D.C. the power to legislate “upon essentially local District matters”²⁹⁰—a conditional grant of statutory authority, not sovereign power. It bestows no higher status (the government is wholly statutory) and creates no zones of preeminence (it is subject to Congress’s unilateral power of veto, amendment, and abolishment).

D.C., as a municipal corporation, possesses many powers flowing from its “dual public-private roles.”²⁹¹ And to be sure, D.C., like any

States, 136 U.S. 1, 57 (1890) (“The sovereign will is made known to us by legislative enactment.” (quoting *Fontain v. Ravenel*, 58 U.S. (17 How.) 369, 384 (1855))); cf. Antonin Scalia, *A Matter of Interpretation: Federal Courts and the Law* 17 (Amy Gutmann ed., 1997) (“It is the *law* that governs, not the intent of the lawgiver. . . . Men may intend what they will; but it is only the laws that they enact which bind us.”). And the Founders, to their credit, did not seem to view each theory with mutual exclusivity. See, e.g., *The Federalist* No. 39, *supra* note 96, at 212 (James Madison) (contrasting the House of Representatives, which “derive[s] its powers from the people,” with the Senate, which “derive[s] its powers from the States as political and coequal societies”). If there is a “correct” answer to the great debate of these theories of sovereignty, this author would suggest that it need not be absolute.

²⁸⁷ Compare Crocker, *Sovereign Standing*, *supra* note 27, at 2068 (outlining the states qua states argument), with Woolhandler & Collins, *State Standing*, *supra* note 9, at 397 (supporting the popular sovereignty view), and Green, *supra* note 284, at 908 (focusing on the structural autonomy perspective).

²⁸⁸ Compare Crocker, *Sovereign Standing*, *supra* note 27, at 2057 n.12 (states qua states), with Woolhandler, *Sovereignty Actions*, *supra* note 28, at 214–17 (popular sovereignty), and Bulman-Pozen & Johnson, *supra* note 89, at 1276–77 (structural autonomy).

²⁸⁹ See *Tarble’s Case*, 80 U.S. (13 Wall.) 397, 406 (1872) (“There are within the territorial limits of each State two governments, restricted in their spheres of action, but independent of each other, and supreme within their respective spheres.”); *The Federalist* No. 39, *supra* note 96, at 212 (James Madison) (“Each State, in ratifying the Constitution, is considered as a sovereign body independent of all others, and only to be bound by its own voluntary act.”); *Sovereign*, *Black’s Law Dictionary* (12th ed. 2024) (“(Of a state) characteristic of or endowed with supreme authority . . .”).

²⁹⁰ *District of Columbia Home Rule Act*, Pub. L. No. 93-198, § 102(a), 87 Stat. 774, 777 (1973).

²⁹¹ Cooney & Crocker, *supra* note 234, at 1260.

municipality, possesses certain *derivative* sovereign powers when performing certain government functions.²⁹² These powers are not “enjoy[ed] by right of its political status,” but rather, as “derivative” suggests, are sourced from Congress.²⁹³ And D.C., as any municipality, “has the right to sue and be sued, but it possesses no sovereign power.”²⁹⁴

D.C. can sue for cognizable harm to its direct or proprietary interests, including, potentially, through violations of its statutory rights under the D.C. Code.²⁹⁵ But what D.C. may not do is allege harm to a status which it does not possess. Sovereignty is nondelegable—it cannot be bestowed by statute. Sovereignty is a status that can be achieved through one of three known channels: gaining statehood, establishing a constitutional commonwealth (as with Puerto Rico and CNMI), or, in the exceptional case, being recognized as an independent, preexisting society in the same sense as the original thirteen states (as with the Indian tribes). D.C. is not entitled to skirt this process; if we let it, some of the substance of sovereignty is lost.

C. Addressing Quasi-Sovereignty

In the National Guard litigation, D.C. asserted quasi-sovereign harms to “pedestrian and driver safety,” the “trust” between local police and residents, and local businesses in “key industries.”²⁹⁶ Because these harms were subsidiary in D.C.’s complaint, and because they were set aside without a ruling,²⁹⁷ this Note focuses on the sovereign harms that were central to the district court’s “delegation” theory. However, the alleged quasi-sovereign harms raise distinct and novel questions that warrant brief mention.

²⁹² See, e.g., *District of Columbia v. Owens-Corning Fiberglas Corp.*, 572 A.2d 394, 405–06 (D.C. 1989) (holding that D.C. can invoke the sovereign immunity doctrine of *nullum tempus*).

²⁹³ *Id.* at 404; see also *id.* at 402 (“All authority exercised by the District government is derived from congressional mandate.”).

²⁹⁴ *Croson v. District of Columbia*, 2 F.2d 924, 924 (D.C. Cir. 1924) (citing *United States v. Cella*, 37 App. D.C. 423, 426 (D.C. Cir. 1911)).

²⁹⁵ See *City of Sausalito v. O’Neill*, 386 F.3d 1186, 1197 (9th Cir. 2004) (“Rather, as a municipality, Sausalito may sue to protect its own ‘proprietary interests’ that might be ‘congruent’ with those of its citizens.” (quoting *Colo. River Indian Tribes v. Town of Parker*, 776 F.2d 846, 848 (9th Cir. 1985))); see also *id.* at 1198 (listing municipal interests sufficient to confer standing).

²⁹⁶ D.C. Complaint, *supra* note 12, at 35, 37–38; *supra* Section I.B.

²⁹⁷ See *District of Columbia v. Trump*, 810 F. Supp. 3d 19, 36 n.9 (D.D.C. 2025).

As a general proposition, D.C. lacks quasi-sovereign (or *parens patriae*) standing for the same reason it lacks sovereign standing: it is non-sovereign.²⁹⁸ Recall that quasi-sovereign interests are representative and derivative, but are equally “sovereign” in the sense of being rooted in the states’ zones of preeminence guaranteed by the Constitution.²⁹⁹ Lacking “formal sovereignty,” D.C. is fundamentally incapable of asserting an independent quasi-sovereign interest in the health and well-being of District residents; the proprietor of that interest—the “parent” of the District—is Congress.

There is an additional wrinkle, however. While municipalities are non-sovereign, a developing theory suggests that they may sue as agents of their parent state in *parens patriae* suits—not asserting an independent quasi-sovereign interest but litigating the state’s interests on its behalf.³⁰⁰ There is reason to credit this theory. From the standpoint of municipalities as “arms of the state” created for convenience, it sounds in general principles of agency law.³⁰¹ Further, the Supreme Court has previously invoked the common law of agency to resolve a party’s claimed authority to represent a state’s interests.³⁰² But despite its apparent theoretical consistency, this theory remains unconventional as far as federal constitutional law is concerned,³⁰³ though it presents the best argument in support of D.C.’s quasi-sovereign standing.

The question would therefore become whether Congress authorized D.C. to assert its quasi-sovereign interests.³⁰⁴ D.C. rests on a local

²⁹⁸ See, e.g., Savit, *supra* note 53, at 604–05 (“[F]ormal sovereignty is a prerequisite to suing as *parens patriae*.”).

²⁹⁹ See *supra* Section I.B; Savit, *supra* note 53, at 604–06; Cooney & Crocker, *supra* note 234, at 1262–63.

³⁰⁰ See Cooney & Crocker, *supra* note 234, at 1282–86; Savit, *supra* note 53, at 608–11.

³⁰¹ Cooney & Crocker, *supra* note 234, at 1286.

³⁰² See *Hollingsworth v. Perry*, 570 U.S. 693, 712–15 (2013) (rejecting petitioners’ claimed authorization, finding that “the most basic features of an agency relationship are missing”); see also *id.* at 710 (“[A] State must be able to designate agents to represent it in federal court. That agent is typically the State’s attorney general. But state law may provide for other officials [too] . . .” (citation omitted)); cf. *Biden v. Nebraska*, 143 S. Ct. 2355, 2368 (2023) (suggesting that harm to public corporations is indistinguishable from harm to the state itself).

³⁰³ See Savit, *supra* note 53, at 608 (“[E]very federal court that has considered the question has flatly rejected the idea that cities can sue as *parens patriae*.”); Cooney & Crocker, *supra* note 234, at 1262.

³⁰⁴ Note that the D.C. Attorney General’s Office posits a different theory of its *parens patriae* power—it flows, not from Congress, but from Maryland. See Memorandum from Janet M. Robins, Deputy Att’y Gen., Legal Couns. Div., to Elizabeth Wilkins, Chief of

statute directing its attorney general to “uphold[] the public interest”³⁰⁵ as the statutory basis of its *parens patriae* standing. It cannot be denied that this language “implicitly track[s] quasi-sovereign interests.”³⁰⁶ Likewise, it has been interpreted by the D.C. Court of Appeals (D.C.’s highest court) as conferring a generally applicable *parens patriae* authority.³⁰⁷ Analogous language in D.C.’s consumer protection statute has been interpreted by both local and federal courts as permitting *parens patriae* suits as well.³⁰⁸ Local courts have used the delegation theory to justify this interpretation³⁰⁹—there is no need to belabor why this is incorrect. To date, no federal court has considered the substantive issue: this “public interest” power derives from a 2010 amendment to

Staff, Off. of the Att’y Gen. 2 (Nov. 10, 2016) (on file with the *Virginia Law Review*). Upon its incorporation in 1801, the District adopted the pre-cession common law of Maryland. *Id.* at 2–3 & n.2. Therefore, D.C. argues that its Attorney General possesses the same inherent powers that the Maryland Attorney General would have had in 1801, including the power to sue as *parens patriae*. *Id.*; see also *District of Columbia v. ExxonMobil Oil Corp.*, 172 A.3d 412, 429 (D.C. 2017) (noting the same argument). But “[t]his is simply a misinterpretation of the 1801 statute.” *Adams v. Clinton*, 90 F. Supp. 2d 35, 60 n.46 (D.D.C. 2000) (*per curiam*). All Congress did was use the pre-cession common law of Maryland as the starting point for the new body of District common law; “without such a provision the new District would have had no laws upon which to build.” *Id.* By its nature, cession extinguishes sovereignty. See, e.g., *United States v. Percheman*, 32 U.S. (7 Pet.) 51, 86 (1833); *Rhode Island v. Massachusetts*, 37 U.S. (12 Pet.) 657, 733 (1838). Maryland “forever ceded and relinquished” its “full and absolute right and exclusive jurisdiction” over the District. *Adams*, 90 F. Supp. 2d at 58 (quoting An Act Concerning the Territory of Columbia and the City of Washington, ch. 45, § 2, 1791 Md. Laws). D.C.’s understanding of this “inherent” quasi-sovereign power argument ignores this fact and further overlooks the fact that its modern attorney general’s office did not exist until 2010 and, indeed, exists only by the grace of Congress.

³⁰⁵ D.C. Code § 1-301.81(a)(1) (2026).

³⁰⁶ Cooney & Crocker, *supra* note 234, at 1283.

³⁰⁷ See *ExxonMobil*, 172 A.3d at 429–32; see also Off. of the People’s Couns. for D.C. v. D.C. Water & Sewer Auth., 313 A.3d 579, 587 (D.C. 2024) (stating, in dicta, that it “generally falls to the Attorney General to bring *parens patriae* suits”).

³⁰⁸ See *District of Columbia v. Exxon Mobil Corp.*, 640 F. Supp. 3d 95, 110–11 (D.D.C. 2022), *aff’d*, 89 F.4th 144 (D.C. Cir. 2023); *District of Columbia v. Pro-Football Inc.*, No. 22-cv-03813, 2025 WL 3140640, at *2 (D.D.C. Nov. 10, 2025); *District of Columbia v. JTH Tax LLC*, No. 22-cv-03165, 2023 WL 130736, at *3 (D.D.C. Jan. 9, 2023); see also D.C. Code § 28-3909(a) (2026) (allowing the D.C. Attorney General to litigate violations of local consumer protection laws “if it is in the public interest”).

³⁰⁹ See *ExxonMobil*, 172 A.3d at 421–22 (collecting precedent); see also *id.* at 442 n.12 (Easterly, J., dissenting) (agreeing with the majority that “[t]he sovereign authority of the [D.C.] Council has a distinct origin—the Home Rule Act”). But see, e.g., *Ward v. District of Columbia*, 494 A.2d 666, 668–69 (D.C. 1985) (expressing serious skepticism of the delegation theory, though not definitively rejecting it); *District of Columbia v. Owens-Corning Fiberglas Corp.*, 572 A.2d 394, 402–06 (D.C. 1989) (same).

the D.C. Charter by the local legislature, not directly from Congress.³¹⁰ Again, for D.C. to litigate Congress's quasi-sovereign interests as its agent, it would require congressional approval.³¹¹

Under black-letter agency principles, an agency relationship arises only where the principal manifests assent that the agent shall act on its behalf.³¹² That manifestation may be express or implied, and silence or inaction suffices where the circumstances and relevant behavioral norms create a reasonable expectation of response, i.e., a "duty to speak."³¹³

D.C.'s best argument for such assent is Congress's failure to act on—or even acknowledge—the 2010 Charter amendment when it was submitted for review.³¹⁴ But this argument is vulnerable. The Home Rule Act's review process for D.C. law does not create the kind of traditionally bilateral and conversational setting in which silence might imply assent.³¹⁵ Congress is a complex institution with unique behavioral norms; its inaction often "betokens unawareness, preoccupation, . . . paralysis,"³¹⁶ or innumerable other states of mind. More fundamentally, legislatures, by their nature, do not typically engage in "conversation" as such. It is problematic to analogize legislative processes to a dialogue or conversational exchange, at least as a general rule.³¹⁷ Thus, because the Home Rule Act does not mandate a congressional response,³¹⁸ its review process is not fairly characterized as an exchange with the D.C. government, and it is "treacherous" to

³¹⁰ See Attorney General for the District of Columbia Clarification and Elected Term Amendment Act of 2010, D.C. Act No. 18-351, § 101, 57 D.C. Reg. 3012, 3012–13 (Apr. 9, 2010); see also *Zukerberg v. D.C. Bd. of Elections & Ethics*, 97 A.3d 1064, 1068–70 (D.C. 2014) (outlining the amendment's legislative history).

³¹¹ See Savit, *supra* note 53, at 609 ("[I]t is up to the state to choose who gets to speak for it."); Cooney & Crocker, *supra* note 234, at 1287 (recognizing that, under the agency theory, states "exercise near complete control over municipal litigation choices").

³¹² Restatement (Third) of Agency §§ 1.01, 1.03 (A.L.I. 2006).

³¹³ Peter Tiersma, *The Language of Silence*, 48 Rutgers L. Rev. 1, 41 (1995); see also Restatement (Third) of Agency § 1.03 cmts. b, e (A.L.I. 2006) (providing illustrations).

³¹⁴ See *Zukerberg*, 97 A.3d at 1069–70 ("Once the legislation reached Congress, nothing happened.").

³¹⁵ See Tiersma, *supra* note 313, at 33–35; Restatement (Third) of Agency § 1.03 cmt. b (A.L.I. 2006).

³¹⁶ *Zuber v. Allen*, 396 U.S. 168, 185 n.21 (1969).

³¹⁷ Tiersma, *supra* note 313, at 92–96; see also *id.* at 89 ("The fact that a lawmaking body says nothing about the proposed legislation should normally mean exactly that: nothing.").

³¹⁸ See District of Columbia Home Rule Act, D.C. Code §§ 1-206.02, 1-203.03 (2026) (providing for the review process). Note that affirmative congressional approval is required for certain appropriations. See *id.* § 1-204.45.

infer that Congress *approved* the 2010 amendment merely because it failed to *disapprove* it.³¹⁹

Even so, Congress may have retroactively ratified the 2010 amendment or any of D.C.'s subsequent assertions of *parens patriae*.³²⁰ Perhaps more persuasively, Congress may have acquiesced in—and thus prospectively authorized—the continued assertion of this authority in future cases.³²¹ Under each theory, and as with assent generally, knowing inaction is sufficient provided the circumstances give “notice that others are likely to draw such an inference from silence.”³²²

Several factors support an argument for either ratification or acquiescence. First, Congress has knowledge—at least, plausibly—of D.C.'s *parens patriae* suits.³²³ D.C. has asserted quasi-sovereign standing in several high-profile federal court cases, and the local D.C. courts have repeatedly affirmed this interpretation of the “uphold[] the public interest” statutory language.³²⁴ Second, and relatedly, this conduct has been repeated over time and without objection.³²⁵ Third, agency law looks to the parties’ broader relationship and prior dealings.³²⁶ Here, Congress has extended to D.C. several causes of action against the federal government for public welfare harms,³²⁷

³¹⁹ *Zuber*, 396 U.S. at 186 n.21 (“It is at best treacherous to find in congressional silence alone the adoption of a controlling rule of law.” (quoting *Girouard v. United States*, 328 U.S. 61, 69 (1946))); accord *Rapanos v. United States*, 547 U.S. 715, 750 (2006) (plurality opinion); see also *Council of D.C. v. Gray*, 42 F. Supp. 3d 134, 150 n.7 (D.D.C. 2014) (rejecting D.C.’s argument that “Congress’s silence . . . could signify tacit approval” of local legislation).

³²⁰ See Restatement (Third) of Agency § 4.01(1) (A.L.I. 2006) (“Ratification is the affirmance of a prior act done by another, whereby the act is given effect as if done by an agent acting with actual authority.”). See generally Tiersma, *supra* note 313, at 37–43 (outlining the circumstances in which silence can constitute ratification).

³²¹ See Restatement (Third) of Agency § 4.02 cmt. b (A.L.I. 2006) (explaining how ratification is ordinarily “limited to a single act or transaction,” but how acquiescence may “creat[e] actual authority for similar acts in the future”).

³²² *Id.* § 4.01 cmt. f; Tiersma, *supra* note 313, at 34.

³²³ See Restatement (Third) of Agency § 4.06 (A.L.I. 2006) (requiring “knowledge of [the] material facts involved in the original act”).

³²⁴ See *supra* notes 307–08 and accompanying text.

³²⁵ See Restatement (Third) of Agency § 4.01 cmt. d (A.L.I. 2006) (“[I]f the [principal] is aware of ongoing conduct encompassing numerous acts by the [agent], failure to terminate may constitute ratification . . .”).

³²⁶ *Id.* § 1.03 cmt. e.

³²⁷ See, e.g., 42 U.S.C. §§ 7602(d)–(e), 7604(a) (Clean Air Act); 33 U.S.C. §§ 1362(3), 1365(h) (Clean Water Act).

including some expressly invoking “*parens patriae*,”³²⁸ and has expressed an increasing disinterest in local affairs.³²⁹

To be clear, a court could plausibly demand a more explicit recognition or approval of this authority, citing the same reluctance to impute meaning to congressional inaction. But acquiescence refers to a state of mind; it does not require any affirmative communicative content.³³⁰ Here, Congress has sustained inaction in the face of repeated, visible assertions of authority. Even if it is too much to say Congress’s silence was intended to *communicate* approval, it may provide important evidence of how it understands and tolerates D.C.’s continued assertion of its authority.

Regardless of this question, however, it is important not to lose focus on the more fundamental point. Even if D.C. could establish agency authorization, this would not salvage its sovereign standing claim. The agency-standing theory would permit municipalities to assert the state’s interests, not to transform themselves into independent sovereigns. The distinction matters: an agent acts on behalf of a principal; it does not acquire the principal’s status.³³¹ D.C.’s quasi-sovereign standing, if it exists at all, would depend entirely on Congress—confirming rather than contradicting this Note’s central thesis that D.C. possesses no inherent sovereignty.³³²

³²⁸ 15 U.S.C. § 15c(a) (“Any attorney general of a State may bring a civil action in the name of such State, as *parens patriae* [for violations of the Clayton Act]”); *id.* § 15g(2) (including D.C. in the statutory definition of “State”).

³²⁹ See, e.g., District of Columbia Home Rule Act, Pub. L. No. 93-198, § 102(a), 87 Stat. 774, 777 (1973) (stating the policy to “relieve Congress of the burden of legislating upon essentially local District matters”).

³³⁰ See Tiersma, *supra* note 313, at 32; see also *id.* at 95–96 (explaining how “legislative silence . . . resembles acquiescence in agency law” in that it “communicates nothing, but is at best an indicator of possible legislative intent”).

³³¹ Restatement (Third) of Agency § 1.01 (A.L.I. 2006) (“[T]he agent shall act on the principal’s behalf and subject to the principal’s control”); cf. *GEO Grp., Inc. v. Menocal*, 146 S. Ct. 774, 784 (2026) (describing “the general rule that sovereign immunity is not transferrable to agents . . . of a government”).

³³² An additional—more complicated—question arises if D.C. can show agency authorization: Would the *Mellon* bar apply? The *Mellon* bar is a jurisdictional rule that prohibits a state from suing the federal government as *parens patriae* to protect its citizens from the operation of federal law. See *Massachusetts v. Mellon*, 262 U.S. 447, 485–86 (1923); Crocker, *Sovereign Standing*, *supra* note 27, at 2070–71. I do not undertake to resolve this question, which, due to the lack of precedent, would be better left for a future project.

IV. FUNCTIONAL INTERESTS SERVED BY A FORMALIST ARGUMENT

The District's anomalous nature makes functional equivalences an attractive course; the Federal Judicial Code is replete with examples.³³³ Occasionally, this temptation extends to constitutional matters. In *District of Columbia v. Carter*, the Court endorsed a context-dependent definition of the District's status for constitutional and statutory issues that "depends upon the character and aim of the specific provision involved."³³⁴ In *Palmore v. United States*, the Court rejected arguments that D.C.'s local Article I courts violate Article III, deferring to Congress's broad, and "very unusual," powers under the District Clause.³³⁵ And in the innovative *Tidewater* opinion, after affirming that the District "was not a state for purposes of the Constitution," the Court nevertheless concluded that it may be considered one for diversity jurisdiction.³³⁶ To the Court, the Article III issue was no big deal—it involved only the "mere mechanics of government and administration."³³⁷

These cases could be construed as supporting D.C.'s claim of sovereign standing. Perhaps standing is a pure procedural matter, justifying an approach that looks past rigid labels, especially when public welfare is at stake.³³⁸ Further, in an era of congressional passivity over District affairs, D.C. fulfills many sovereign-like duties—as in, duties typically fulfilled by the state.³³⁹ And it does so for a population

³³³ E.g., 28 U.S.C. § 1257(b) (including the D.C. Court of Appeals in the term "highest court of a State"); id. § 1451(2) ("The term 'State' includes the District of Columbia."); id. § 1332(e) ("The word 'States', as used in this section, includes . . . the District of Columbia . . .").

³³⁴ 409 U.S. 418, 420 (1973).

³³⁵ 411 U.S. 389, 397–98 (1973). For compelling arguments that *Palmore* was wrongly decided, see Durling, *supra* note 100, at 1207; Stephen I. Vladeck, *Petty Offenses and Article III*, 19 Green Bag 2d 67, 73–74 (2015).

³³⁶ See *Nat'l Mut. Ins. Co. v. Tidewater Transfer Co.*, 337 U.S. 582, 586–88, 600 (1949) (plurality opinion).

³³⁷ *Id.* at 585–86.

³³⁸ See *id.* at 585 (distinguishing constitutional issues that affect "only the mechanics of administering justice" from those that "involve an extension or a denial of any fundamental right or immunity"); *Commodity Futures Trading Comm'n v. Schor*, 478 U.S. 833, 851 (1986).

³³⁹ See *District of Columbia v. Owens-Corning Fiberglas Corp.*, 572 A.2d 394, 405–06 (D.C. 1989) (recognizing that, under the Home Rule Act, D.C. performs "many 'public functions' typically exercised by the government of a state").

larger than that of Wyoming or Vermont.³⁴⁰ Perhaps, then, function ought to trump form: if D.C. bears many of the burdens of state-like governance, it should enjoy the judicial tools necessary to discharge them. Indeed, courts have used similar logic to justify Puerto Rico's functional state status,³⁴¹ though its existence as a constitutional commonwealth—as distinct from a statutory municipality—seems central to that rationale.³⁴²

An argument that recognizes the formal distinction between D.C. and the states but argues for their functional equivalence to permit a suit to enjoin executive overreach is defensible. However, I submit that this argument overlooks the interests served by, and the minor consequences of, recognizing D.C.'s lack of sovereignty. I will offer three final points to show that this Note's position is beyond mere obsession with labels, or “lines qua lines.”

First, by policing the boundaries of “sovereignty,” this Note's argument serves to add much-needed clarity to state standing doctrine. It refines the rhetoric of state sovereignty oft-criticized as vague, inflated, and “amorphous.”³⁴³ For instance, this Note's account of sovereignty (requiring higher status and zones of preeminence) would resolve many of the doctrinal offshoots born of the nebulous, if half-baked, notion of “special solicitude.”³⁴⁴ Specifically, it would limit sovereign standing to actual infringements of a state's jurisdictional or enforcement interests,

³⁴⁰ Press Kit: Vintage 2024 National and State Population Estimates, U.S. Census Bureau (Dec. 19, 2024), <https://www.census.gov/newsroom/press-kits/2024/national-state-population-estimates.html> [<https://perma.cc/EL9Z-ZBXT>] (navigate to “Annual Estimates of the Resident Population for the United States, Regions, States, District of Columbia, and Puerto Rico”).

³⁴¹ See, e.g., *Examining Bd. of Eng'rs, Architects & Surveyors v. Flores de Otero*, 426 U.S. 572, 597 (1976) (“[A]fter 1952, . . . Congress relinquished its control over the organization of the local affairs of the island and granted Puerto Rico a measure of autonomy comparable to that possessed by the States”); *Norita v. Northern Mariana Islands*, 331 F.3d 690, 695 (9th Cir. 2003) (“Puerto Rico . . . possesses many of the attributes of sovereignty, and has [the] full power of local self-determination similar to the one the states of the Union have.” (quoting *Ursulich v. P.R. Nat'l Guard*, 384 F. Supp. 736, 737 (D.P.R. 1974))).

³⁴² See, e.g., *Fin. Oversight & Mgmt. Bd. for P.R. v. Aurelius Inv., LLC*, 140 S. Ct. 1649, 1671–73 (2020) (Sotomayor, J., concurring in the judgment); *supra* Subsection II.C.1.

³⁴³ Woolhandler, *Sovereignty Actions*, *supra* note 28, at 229.

³⁴⁴ *Massachusetts v. EPA*, 549 U.S. 497, 536 (2007) (Roberts, C.J., dissenting); see Woolhandler & Mahoney, *supra* note 16, at 321–23 (discussing some of these developments); Crocker, *Not-So-Special*, *supra* note 7, at 894–96 (same). See generally *id.* at 827–33 (explaining the concept of “special solicitude” in state standing).

i.e., harm to its “power to govern with respect to a particular subject matter or in a particular territory.”³⁴⁵ That an action happens to burden a state or its inhabitants is insufficient by itself to constitute a “sovereign” harm.³⁴⁶ Likewise, it would reject a state’s standing to enforce its citizens’ rights under federal statutes,³⁴⁷ at least where the statute concerns an area beyond the states’ police powers.³⁴⁸

More broadly, any interpretation of “special solicitude” that would endorse a more lenient Article III standard for states than for private parties is without support in this Note’s account of sovereignty. And at the same time, this account adds a logical and easily administered limiting principle: only sovereigns may allege sovereign harms. This most obviously permits the states, federal government, and federally recognized Indian tribes to avail themselves of sovereign standing; difficult questions will arise as the status of the U.S. territories continues to evolve, but a city’s assertion of sovereign harm is readily excluded.

Second, this Note’s argument would prevent the creation of a particularly troublesome “omniplaintiff.”³⁴⁹ A common and forceful critique of contemporary state standing doctrine is its sanction of politically motivated lawsuits. As it goes, the Supreme Court’s recent injury-in-fact jurisprudence³⁵⁰ and the increasingly turbulent political climate—manifesting in the rise of hyper-partisan state attorneys general³⁵¹—combine such that “disputes that arguably belong in the

³⁴⁵ Woolhandler & Collins, *Reining in State Standing*, *supra* note 8, at 2017.

³⁴⁶ See Crocker, *Not-So-Special*, *supra* note 7, at 894–95 & n.448 (“[Some courts] have suggested that feeling implicit pressure to change state laws because they interact with federal regulation in undesirable ways can inflict injury.”); *id.* at 895 & n.449 (“[S]ome cases ground injury not only in the actual preemption of actual state laws, but in the hypothetical preemption of hypothetical state laws.”).

³⁴⁷ See, e.g., *Texas v. United States*, 86 F. Supp. 3d 591, 626–28 (S.D. Tex.) (recognizing this theory, though disclaiming its application in the case on ripeness grounds), *aff’d*, 809 F.3d 134 (5th Cir. 2015), *aff’d by an equally divided court*, 579 U.S. 547 (2016).

³⁴⁸ See *id.* (“In the instant case, the States are suing to compel the Government to enforce the federal immigration statutes . . .”). *Contra United States v. Texas*, 143 S. Ct. 1964, 1970–73 (2023) (rejecting an identical claim in a subsequent suit).

³⁴⁹ See Woolhandler & Mahoney, *supra* note 16, at 303.

³⁵⁰ E.g., *id.* at 343 (“It is no surprise that . . . politically ambitious state attorneys general[] have been swift to respond to the incentives created by the Court’s state standing doctrine.”); Davis, *supra* note 6, at 1233–34 (noting how states are increasingly framing their injuries as monetary).

³⁵¹ E.g., Tara Leigh Grove, *Foreword: Some Puzzles of State Standing*, 94 *Notre Dame L. Rev.* 1883, 1887–88 (2019) (“Indeed, many recent ‘State v. United States’ lawsuits could be seen as efforts by state officials to go after their political opponents on a national stage.”).

political arena are instead becoming the province of the courts,”³⁵² threatening the legitimacy of the federal judiciary.³⁵³

Issues with politicization are turbocharged when the plaintiff is the D.C. municipal government. Most obvious is the issue of proximity, which speaks for itself. However, there is also an issue of a *lack* of political pressure: a politically overzealous attorney general may be ousted in a competitive state, but D.C., being the second-most politically hegemonic electorate in the country,³⁵⁴ is likely to produce more hyper-partisan litigators to join the ranks of those from “red” and “blue” states. And if D.C.’s sovereign standing is upheld, it would set an attractive precedent for any large city interested in joining these politically salient disputes on its own terms, rather than in conjunction with, and under the control of, its parent state. This is distinct from the agency theory—where a municipality is *permitted* to assert the *sovereign’s* interest on its behalf.³⁵⁵

Third, it is important to reiterate that the courthouse doors remain far from closed on the National Guard deployments in the District, and on executive overreach more generally. As mentioned, D.C. may sue in the same capacity as any other public corporation for harm to its direct or proprietary interests.³⁵⁶ And these harms could plausibly arise out of violations of its rights to self-governance under the Home Rule Act. For instance, the City of Chicago alleged that the National Guard deployments caused financial harm by forcing it to reallocate resources and responsibility within the city police department and by “directly interfer[ing]” with local police’s day-to-day operations.³⁵⁷ The Twin Cities alleged similar financial harm through operational disruption and

³⁵² Woolhandler & Mahoney, *supra* note 16, at 303–04.

³⁵³ See Grove, *supra* note 351, at 1891 (“To the extent that federal courts become embroiled in . . . increasingly partisan disputes, that may not bode well for the long-term future of the third branch.”).

³⁵⁴ Partisan Affiliations of Registered Voters, Ballotpedia, https://ballotpedia.org/Partisan_affiliations_of_registered_voters [<https://perma.cc/5CT3-DZLQ>] (last visited May 12, 2026) (reporting D.C. (75.7% registered Democrat) as second to Wyoming (77.2% registered Republican)).

³⁵⁵ See *supra* notes 300–03 and accompanying text.

³⁵⁶ See, e.g., Complaint at 5–6, *District of Columbia v. United States*, No. 25-cv-00065 (D.D.C. Jan. 10, 2025) (filing, as a “municipal corporation,” a CERCLA suit for pollution to the Anacostia River); *id.* at 4 (alleging direct financial injury through the incurrence of “Response Costs”).

³⁵⁷ See Illinois Complaint, *supra* note 5, at 47–48, 50–51.

increased overtime pay,³⁵⁸ and the City of St. Paul specifically asserted a proprietary injury through the allegedly unauthorized use of municipally owned property.³⁵⁹

The same facts can often be framed as either a sovereign or non-sovereign injury.³⁶⁰ From the facts alleged in its complaint in the National Guard case, D.C. could have made the same arguments as the other municipal plaintiffs—the decision to instead frame its injury as “sovereign” was deliberate, and indeed unnecessary. After its sovereign standing was met with skepticism in the D.C. Circuit’s preliminary ruling,³⁶¹ D.C. pivoted: it recast its injuries as purely financial and abandoned the argument for its inherent “sovereignty.”³⁶² It conceded that the Home Rule Act merely delegated “statutory authority” and, more explicitly, that injuries to its home rule authority are not “‘sovereign’ in the constitutional sense.”³⁶³

Lastly, it is important to note Congress’s role in protecting D.C. from executive overreach. Congress could experiment with different statutory causes of action including, as discussed, permitting D.C. to sue as its agent for harm to District residents.³⁶⁴ But the nuclear option would be Congress suing for its own institutional injury: the executive’s infringement of its plenary authority over the District.³⁶⁵ Such a suit raises a heap of its own doctrinal and normative issues and warrants its own attention; I leave that task to future scholars.

CONCLUSION

As this era of aggressive intergovernmental litigation persists, states—and indeed, their subdivisions—will continue to press the outer boundaries of standing doctrine. Courts, in turn, will continue to face

³⁵⁸ See, e.g., Minnesota Complaint, *supra* note 5, at 32–34.

³⁵⁹ See *id.* at 43–44.

³⁶⁰ See, e.g., Davis, *supra* note 6, at 1242–51 (tracing the “four ways in which states can claim financial injuries when suing the federal government”).

³⁶¹ District of Columbia v. Trump, No. 25-5418, 2025 WL 3673674, at *13–14 (D.C. Cir. Dec. 17, 2025) (Rao, J., concurring).

³⁶² See Brief for Appellee the District of Columbia at 19–23, District of Columbia v. Trump, No. 25-5418 (D.C. Cir. May 18, 2026), 2026 WL 1430850.

³⁶³ *Id.* at 22; see also *id.* (describing its injuries as “akin to ones that municipalities routinely raise”).

³⁶⁴ See *supra* Section III.C.

³⁶⁵ Cf. Comm. on the Judiciary of the U.S. House of Representatives v. McGahn, 968 F.3d 755, 763, 767–68 (D.C. Cir. 2020) (holding that legislative bodies have standing to assert an “institutional injur[y]”).

pressure to accommodate politically sympathetic plaintiffs by bending structural categories to fit novel facts.

The D.C. National Guard litigation presented the largest platform to date for the delegation theory. Despite D.C.'s eventual repudiation, its initial projection of this theory—and the district court's acceptance of it—likely caught the attention of municipalities nationwide. There is no basis, moreover, to limit the delegation theory to Congress and the District; its logic is generally applicable. Any city with a sufficiently broad home rule charter and a political axe to grind can use it to claim the mantle of sovereign-plaintiff in federal court. If accepted, the theory would distort beyond recognition a doctrine that was, at its inception, a reflection of the inviolability of sovereignty in our constitutional order.

The better path is the one this Note has charted: insisting that sovereignty means something specific, if abstract, and that this meaning requires courts to engage seriously with the constitutional status of the governmental plaintiffs before them. The Constitution drew these lines deliberately, and the judiciary is not well served by erasing them when the political stakes are high enough to make erasure feel justified. Rather, the Constitution is resilient enough to address executive overreach through the channels it has built—it does not need to be amended by analogy.