

ORAL ARGUMENT NOT YET SCHEDULED
No. 25-5418

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

DISTRICT OF COLUMBIA,
Plaintiff-Appellee,

v.

DONALD J. TRUMP, in his official capacity as
President of the United States, *et. al.*,
Defendants-Appellants.

On Appeal from the United States District Court
for the District of Columbia, No. 1:25-cv-03005
Before the Honorable Jia M. Cobb

BRIEF OF *AMICI CURIAE* LOCAL
CIVIL RIGHTS AND LEGAL SERVICES ORGANIZATIONS
IN SUPPORT OF PLAINTIFF-APPELLEE AND AFFIRMANCE

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CERTIFICATE AS TO PARTIES, RULINGS, AND RELATED CASES

Pursuant to D.C. Circuit Rule 28(a)(1), counsel for *amici* furnish the following information:

A. Parties and *Amici*

The parties to this case and *amici* are set forth in the Appellee's Certificate as to Parties, Rulings, and Related Cases filed May 18, 2026, Dkt. 2173967.

B. Rulings Under Review

The district court ruling under review is the November 20, 2025 Memorandum Opinion and Order entered by Judge Jia M. Cobb granting Plaintiff-Appellee's motion for a preliminary injunction and section 705 stay. The opinion and order are included in the Joint Appendix filed on April 1, 2026, Dkt. 2166644. *See* JA808; JA869.

C. Related Cases

There are no related cases.

CORPORATE DISCLOSURE STATEMENT

Pursuant to Rule 26.1 of the Federal Rules of Appellate Procedure and Rule 26.1 of the United States Court of Appeals for the District of Columbia Circuit, counsel for *amici curiae* certify that *amici* are not publicly held corporations, do not have parent corporations, and no publicly held corporation owns 10 percent or more of their stock. *Amici curiae* are non-profit, tax-exempt organizations.

CERTIFICATE PURSUANT TO D.C. CIRCUIT RULE 29

Pursuant to D.C. Circuit Rule 29(b), undersigned counsel for *amici curiae* represents that all parties have consented to the filing of this brief. No party's counsel authored this brief in whole or in part. No party, party's counsel, or any person other than *amici* or their counsel contributed money intended to fund preparing or submitting this brief.

Pursuant to D.C. Circuit Rule 29(d), undersigned counsel for *amici curiae* certify that a separate brief is necessary. *Amici curiae* are local civil rights and legal services organizations that are strongly committed to an effective, accountable local government in the District and that work closely with D.C. residents, including vulnerable populations. Amici are therefore well-positioned to explain how the National Guard deployment continues a racialized pattern of disenfranchisement of D.C. residents, undermines democracy in the District, and makes residents less safe.

/s/ Madeleine Gates

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STATEMENT OF INTEREST

Amici are a coalition of D.C.-based civil rights and legal services organizations. These organizations represent leaders of the District’s legal and non-profit community. *Amici* are strongly committed to an effective, accountable local government in the District. In light of core local government principles and Congress’s command in the Home Rule Act that local legislative powers be assumed by the District of Columbia “to the greatest extent possible, consistent with the constitutional mandate,” Section 102(a), *amici* believe that decisions on important local issues such as public safety should rest with the District’s elected leaders. *Amici* therefore have a strong interest in this case, which involves the validity of an important and longstanding measure undertaken by the District’s locally-elected government in order to protect the safety of its residents.

Amici include the Washington Lawyers’ Committee for Civil Rights and Urban Affairs, the American Civil Liberties Union of the District of Columbia, Amica Center for Immigrant Rights, Bread for the City, Children’s Law Center, D.C. Appleseed Center for Law & Justice, Disability Rights D.C. at University Legal Services, League of Women Voters of the District of Columbia, Legal Aid D.C., School Justice Project, Tzedek DC, and The Washington Legal Clinic for the Homeless.

INTRODUCTION

The President’s unilateral decision to deploy the National Guard to conduct law enforcement activities in the District of Columbia occurs in a troubling historical context. Since the nation’s founding, D.C. residents—particularly its Black residents—have struggled to exercise political control over their city and have long sought local accountability for those who make and enforce their laws. Although every American city in a state can take these basic elements of representative democracy as a given, for D.C., they have been elusive and, even when obtained, only tenuously held. Setting loose American troops—locally unaccountable and not trained for domestic law enforcement—to police the streets of D.C. neighborhoods on the thin pretext of an “emergency” adds particular insult to this longstanding injury. The President’s use of the military to further his apparent desire to “take [the District] back,” “take it away from the mayor,” and “run it the way it’s supposed to be run”¹ defies any notion of democratic representation and flies in the face of the more than 200-year-old fight by District residents to achieve democratic rule. This

¹ Julia Miller, *Trump suggests federal government take over DC if local leaders ‘can’t do the job’*, CBS42 (Mar. 14, 2025), <https://www.cbs42.com/hill-politics/trump-suggests-federal-government-take-over-dc-if-local-leaders-cant-do-the-job>; Mark Segraves, *Here’s what a second Trump presidency could mean for DC*, NBC Washington (Nov. 6, 2024), <https://www.nbcwashington.com/news/local/heres-what-a-second-trump-presidency-couldmean-for-dc/3762595>; TIME, *Trump Threatens to Federalize D.C. After Beating of ‘Big Balls’*, at 0:16–0:23 (YouTube, Aug. 6, 2025), https://www.youtube.com/watch?v=Fb7yKvOQE_c.

assault on local control and accountability is as anti-democratic as it is unlawful. It is irreparably injuring the District and its residents, and ending it is undoubtedly in the public interest.

For these reasons, and those presented by the District in its brief, *amici*—all of which are D.C.-based civil rights or legal services organizations that directly serve D.C. residents—urge the Court to affirm the District Court’s preliminary injunction and section 705 stay.

ARGUMENT

I. THE DISTRICT’S STRUGGLE FOR SELF-GOVERNANCE IS INTRINSICALLY INTERTWINED WITH RACIAL JUSTICE AND CIVIL RIGHTS.

The District’s journey to Home Rule was profoundly shaped by the broader trajectory of racial justice and civil rights in the United States. D.C.’s struggle for Home Rule mirrors the nationwide fight for Black civil rights. Correspondingly, denying local control to D.C. residents has been a key objective of those opposed to expanding rights to our nation’s non-White citizens. It is with this historical context in mind that the current National Guard deployment in D.C. can be understood not only as an infringement on Washingtonians’ rights to self-governance, but also as a dangerous regression toward a time in the District’s history even more greatly plagued by racial injustice.

A. The Rise and Fall of Interracial Democracy in the District.

From the outset, Washingtonians were subjected to a democratic deficit. The U.S. Constitution provides that Congress has the power “[t]o exercise exclusive Legislation in all Cases whatsoever, over [the] District.”² Acting on this authority, Congress passed the Organic Act of 1801, which formally brought the District under the authority of Congress and—not for the last time—stripped District residents (who had previously voted as citizens of Maryland or Virginia) of their representation in Congress, their right to vote in elections, and any vestige of self-governance.³ Following “complaints by locals,” Congress slowly expanded enfranchisement and self-governance in the District over the subsequent decades.⁴

In 1802, Congress granted White land-owning residents of Washington City the right to vote for a local city council that had legislative authority, though Congress retained a veto power.⁵ In 1812, Congress split the council into two locally

² U.S. Const. art. I, § 8, cl. 17.

³ Jacob Fenston, *50 Years of Home Rule: A history of D.C.’s struggle for (semi-) self governance*, WAMU 88.5 (Jan. 29, 2024), <https://wamu.org/story/24/01/29/history-district-self-government-home-rule-2/?ref=51st.news>; see Organic Act of 1801, ch. 15, 2 Stat. 103.

⁴ See Meilan Solly, *How the 1973 D.C. Home Rule Act Enabled the Nation’s Capital to Govern Itself—With Congressional Oversight*, SMITHSONIAN MAG. (Aug. 14, 2025), <https://www.smithsonianmag.com/historyyvb/i/how-the-1973-dc-home-rule-act-enabled-the-nations-capital-to-govern-itself-with-congressional-oversight-180987180/>.

⁵ See Solly, *supra* n.4; *D.C. Home Rule*, COUNCIL OF THE DISTRICT OF COLUMBIA, <https://dccouncil.gov/dc-home-rule/> (last accessed May 22, 2026). At that time, the federal district was made up of five separate administrative units: Washington City,

elected chambers, an eight-member board of aldermen and a twelve-member common council, and restructured the office of Mayor from a presidentially appointed position to one elected by the board of aldermen and common council.⁶ With the Act of 1820, White male Washingtonians gained the right to directly elect the Mayor of Washington, providing a limited form of self-governance to the nation's capital for the first time.⁷

The Civil War and its aftermath accelerated the District's fight for full self-governance, but racial backlash ultimately led to its unraveling. Though the majority of the District's Black population was free by 1830, the city had long been a major slavery trading hub, and it was only with the onset of the Civil War—and the departure of Southern representatives—that slavery was abolished in the District with the Compensated Emancipation Act of 1862.⁸

As part of the post-war fervor for equality and civil rights, Congress insisted that the country's capital embody the egalitarian promises of the Union's victory and

Georgetown, Washington County, Alexandria, and the County of Alexandria. Maryland law applied in Washington County, and Virginia law applied in Alexandria County. In 1846, Alexandria and the County of Alexandria were returned to Virginia.

⁶ Joseph V. Jaroscak & Ben Leubsdorf, *Governing the District of Columbia: Overview and Timeline*, CONGRESS.GOV (Feb. 6, 2026), <https://www.congress.gov/crs-product/IF12577>; An Act further to amend the Charter of the City of Washington, ch. 75, 2 Stat. 721 (1812).

⁷ See Jaroscak & Leubsdorf, *supra* n.6.

⁸ District of Columbia Compensated Emancipation Act, ch. 54, 12 Stat. 376 (1862); Chris Myers Asch & George Derek Musgrove, *Chocolate City: A History of Race and Democracy in the Nation's Capital*, 48–49, 58–59, 114–16 (2017).

that the District be a test bed for Black enfranchisement.⁹ In 1867, three years prior to the passage of the 15th Amendment, Congress overrode President Andrew Johnson’s veto and passed the D.C. Suffrage Act, making the District the first jurisdiction in the country to grant Black men the right to vote in elections.¹⁰ Black District residents quickly embraced their new voting rights, “turn[ing] out in force to have their names added to the [voter registration] list.”¹¹

By the end of 1867, Black men made up nearly 50% of the District’s registered voters despite comprising only 30% of the District’s eligible population.¹² The District’s newly enfranchised Black community was a driving force in the mayoral election of 1868, which saw Radical Republican and abolitionist Sayles J. Bowen elected as Mayor of Washington¹³—which was the downtown core and one of the three distinct localities then recognized in the District.¹⁴ Bowen acted quickly, appointing Black men throughout his administration, integrating the city’s fire and

⁹ Tom Lewis, *Washington: A History of Our National City*, 193–94 (2015); see Solly, *supra* note 4.

¹⁰ D.C. Suffrage Act, ch. 6, 14 Stat. 375 (1867); Karis Lee, *The 1868 Mayoral Election, African-American Vote, and Riots that Followed*, BOUNDARY STONES (Feb. 10, 2025), <https://boundarystones.weta.org/2020/03/12/1868-mayoral-election-african-american-vote-and-riots-followed>.

¹¹ Lee, *supra* n.10.

¹² Asch & Musgrove, *supra* n.8, at 147.

¹³ See *id.* at 148–150; see also Lee, *supra* note 10; Lewis, *supra* note 9, at 194.

¹⁴ See Asch & Musgrove, *supra* note 8, at 35–37, 156. The other two localities were Georgetown, which was a Maryland municipality before its incorporation into D.C., and Washington County, covering all remaining District territory east of the Potomac River. See *id.*

police departments, installing Black men as ward commissioners, and appointing a Black doctor as the city's public health physician.¹⁵ By 1870, the District's elected council had banned race discrimination in places of public entertainment, eateries, hotels, and other private establishments.¹⁶ The enfranchisement of Black men in the District had created a "biracial democracy in Washington [that] seemed to be on the verge of making revolutionary changes."¹⁷

Unfortunately, this era of District self-governance, biracial enfranchisement, and local political accountability was short lived. Opponents of Black voting rights began pushing for "consolidation." Consolidation was purportedly about merging the District's three localities into a single administrative governmental unit under tighter federal control to address financial mismanagement, but was actually "aimed to revoke self-government in the District" in order to disenfranchise Black men.¹⁸ George Vashon, the first professor at Howard University, contemporaneously condemned consolidation as "a base plot, designed to defraud the eight thousand freedmen therein of the elective franchise, and cheat them of their newborn freedom."¹⁹

¹⁵ *See id.*, at 150–51.

¹⁶ *See id.*

¹⁷ *Id.* at 150.

¹⁸ *Id.* at 156–61.

¹⁹ EVENING STAR, Jan. 15, 1869, <https://www.loc.gov/resource/sn83045462/1869-01-15/ed-1/?sp=4&st=text&r=0.267,0.865,0.27,0.334,0>; Asch & Musgrove, *supra* n.8, at 160.

This racist backlash to Black voting rights and District self-governance ultimately prevailed. In 1871, Congress consolidated the District into a single territorial government and abolished the elected office of Mayor.²⁰ In 1874, Congress fully eliminated all elected offices in the District and reverted to a presidentially appointed board of three commissioners to run the city. This arrangement was made permanent by Congress in 1878.²¹ As historian Derek Musgrove explained, the revocation of elected offices was “effectively . . . the end of local democracy for three generations in the District of Columbia” and in its place “[t]hree white men would run the city by themselves . . . for the next 100 years.”²² The District’s loss of self-governance and democracy—driven by the White majority’s racial resentment—mirrored larger post-Civil War trends in American society and previewed and paralleled the rollback of Reconstruction in the South.²³

²⁰ Solly, *supra* n.4; An Act to provide a Government for the District of Columbia, ch. 62, 16 Stat. 419 (1871).

²¹ Solly, *supra* n.4; Asch & Musgrove, *supra* n.8, at 164–65; *D.C. Home Rule*, *supra* n.5; An Act for the government of the District of Columbia, and for other purposes, ch. 337, 18 Stat. 116 (1874); Organic Act of 1878, ch. 180, 20 Stat. 102 (1878).

²² Fenston, *supra* n.3; *see also* Asch & Musgrove, *supra* n.8, at 166 (“The scope of disenfranchisement was remarkable. ‘Under this bill,’ wrote the editors of the *Nation*, ‘not a vestige is left of popular municipal government. . . .’ With the new law, explained District commissioner Thomas Bryan, Congress hoped that it could ‘be forever free from the disturbing influence of elections in its immediate neighborhood.’”).

²³ Asch & Musgrove, *supra* note 8, at 167.

B. The Civil Rights Movement Wins the District Home Rule.

The District languished without representation or local autonomy for decades, but with the end of World War II and the emergence of the Civil Rights Movement, there was growing bipartisan recognition that Washingtonians' lack of self-governance and elections was a stain on American democracy. Six times between 1948 and 1966, the Senate passed legislation that would have provided for varying degrees of D.C. Home Rule.²⁴ Indeed, every single President—both Republicans and Democrats—from Harry Truman through Richard Nixon endorsed the need for it.²⁵ But White segregationists were able to obstruct this effort, particularly

²⁴ Solly, *supra* n.4; *D.C. Home Rule*, *supra* n.5.

²⁵ Harry S. Truman, *Special Message to the Congress on Civil Rights*, HARRY S. TRUMAN LIB. & MUSEUM (Feb. 2, 1948), <https://www.trumanlibrary.gov/library/public-papers/20/special-message-congress-civil-rights>; Dwight D. Eisenhower, *Annual Message to the Congress on the State of the Union*, DWIGHT D. EISENHOWER PRESIDENTIAL LIB., MUSEUM & BOYHOOD HOME, 13 (Feb. 2, 1953), https://www.eisenhowerlibrary.gov/sites/default/files/file/1953_state_of_the_union.pdf; *President [Kennedy] and Other Leaders Join in Hailing D.C. Vote Amendment*, EVENING STAR, at A-4 (Mar. 30, 1961), <https://www.newspapers.com/article/evening-star-president-and-other-leaders/178803273/>; Lyndon B. Johnson, *Televised Statement by the President Concerning the Signing of the D.C. Home Rule Petition by a Majority of House Members*, THE AM. PRESIDENCY PROJECT (Sept. 3, 1965), <https://www.presidency.ucsb.edu/documents/televised-statement-the-president-concerning-the-signing-the-dc-home-rule-petition>; Richard Nixon, *Statement on Signing the District of Columbia Self-Government and Governmental Reorganization Act*, THE AM. PRESIDENCY PROJECT (Dec. 24, 1973), <https://www.presidency.ucsb.edu/documents/statement-signing-the-district-columbia-self-government-and-governmental-reorganization>.

Representative John McMillan, a South Carolina politician who used his power as chairman of the House District Committee to block Home Rule for 22 years.²⁶ Segregationists like McMillan, who called Washington “the last plantation,” vehemently opposed granting self-governance and voting rights to District residents, who by 1957 were majority Black.²⁷

As efforts for D.C. Home Rule foundered, local Black leaders began explicitly tying the District’s struggle for self-governance to the broader Civil Rights Movement.²⁸ In an era where Civil Rights leaders fought for Black suffrage across the South, D.C., the nation’s first majority-Black major city, was fully disenfranchised and ruled by Congressional and Executive dictate.²⁹ The District’s plight was not just a microcosm of the broader struggle for Black civil and voting rights, but was itself a core injustice that the Civil Rights Movement sought to overcome.

In 1965, future D.C. Mayor Marion Barry sought to “use the energy and momentum of civil rights to jump-start the struggling local home rule movement.”³⁰

²⁶ Fenston *supra* n.3; Lewis, *supra* n.9, at 390–91.

²⁷ Lewis, *supra* n.9, at 390–91; *African American Heritage*, D.C. OFF OF PLANNING, <https://planning.dc.gov/page/african-american-heritage> (last accessed on May 22, 2026).

²⁸ *D.C. Home Rule: What It Is, How It Works, and Why It Matters*, ACLU D.C. (Feb. 26, 2026), <https://www.acludc.org/news/dc-home-rule-what-it-how-it-works-and-why-it-matters/>.

²⁹ See Asch & Musgrove, *supra* n.8, at 1.

³⁰ *Id.* at 343.

Barry founded the Free D.C. movement, which organized rallies, boycotted businesses, and lobbied Congress in support of Home Rule, while tying the of lack local autonomy to “problems that plagued Black Washingtonians.”³¹

In August of that year, the Reverend Doctor Martin Luther King Jr. traveled to the District to attend the Voting Rights Act of 1965 signing ceremony and to support a bill proposed by President Johnson that would have provided for an elected mayor and city council for the District.³² Immediately after the signing, King joined a D.C. Home Rule march. He spent the next two days in the District advocating for Home Rule, drawing crowds of thousands and making eight separate appearances across the city.³³ Unfortunately, this push for Home Rule was “ultimately unsuccessful, as a unified local and federal white establishment presented insurmountable challenges for Black activists,” with McMillan himself dismissing Free D.C. as a “Communist Plot” and initiating an investigation into Barry for supposedly violating federal law.³⁴ As the *Congressional Quarterly* noted, the 1965 Home Rule Bill had been defeated by “Southerners and some Northerners of both

³¹ *Id.* at 345; Derek Gray, *The NAACP in Washington DC: From Jim Crow to Home Rule* 174 (2022); Solly, *supra* n.4.

³² Gray, *supra* n.31, at 173–74; Asch & Musgrove, *supra* n.8, at 344; Fenston, *supra* n.3; Lewis, *supra* n.9, at 401–02.

³³ *See* Gray, *supra* n.31, at 173–74; Fenston, *supra* n.3; John Herbers, *Dr. King to Fight Bias in the North; Will Submit Proposals at Johnson’s Suggestion*, N.Y. TIMES (Aug. 6, 1965), <https://www.nytimes.com/1965/08/06/archives/dr-king-to-fight-bias-in-the-north-will-submit-proposals-at.html>; Solly, *supra* n.4.

³⁴ Gray, *supra* n.31, at 176.

parties that [feared] the Negro majority would dominate the city elections.”³⁵

Despite this resistance, District residents won crucial victories on the path to Home Rule. In 1961, the 23rd Amendment to the Constitution was ratified, providing District residents the right to vote in Presidential elections for the first time in over 150 years.³⁶ In 1967, after President Johnson’s Home Rule bill failed, he convinced Congress to replace the District’s three-commissioner system with a singular Mayor-Commissioner. President Johnson appointed Walter Washington to the position, giving District residents their first Black city executive, a move that “incensed” segregationist McMillan in the House.³⁷ In 1970, the District gained an elected non-voting delegate to Congress, which it had lacked since disenfranchisement in the 1870s.³⁸ Walter Fauntroy was elected to the position, providing Washingtonians another Black voice to represent their interests.³⁹

The last push that finally won Home Rule began in the South. Following the

³⁵ Asch & Musgrove, *supra* n.8, at 344.

³⁶ Solly, *supra* n.4; see *23rd Amendment: Topics in Chronicling America*, LIB. OF CONG.: RSCH. GUIDES, <https://guides.loc.gov/chronicling-america-23rd-amendment> (last accessed on May 22, 2026); *President [Kennedy] and Other Leaders Join in Hailing D.C. Vote Amendment*, EVENING STAR (Mar. 30, 1961), <https://www.newspapers.com/article/evening-star-president-and-other-leaders/178803273/>.

³⁷ Lewis, *supra* n.9 at 402; see Asch & Musgrove, *supra* n.8, at 351.

³⁸ See Asch & Musgrove, *supra* n.8, at 378; Solly, *supra* n.4; see also Michael Kohler, *In the 1870s, D.C. Briefly Had a Delegate in Congress*, BOUNDARY STONES (Feb. 11, 2025), <https://boundarystones.weta.org/2021/05/05/1870s-dc-briefly-had-delegate-congress>.

³⁹ See Asch & Musgrove, *supra* n.8, at 379.

passage of the Voting Rights Act of 1965, Civil Rights leaders in the District pushed for Black voter registration across the country, including in McMillan’s congressional district in South Carolina. Fauntroy and other leaders “led a vigorous campaign to help unseat McMillan” by using “the arithmetic of our [Black] power politics” to register and organize Black voters in his district.⁴⁰ Fauntroy also focused on key districts across the nation by lobbying Black voters to support congressional candidates who would back Home Rule legislation.⁴¹ In 1972, their efforts finally paid off when McMillan—whose district’s share of registered Black voters had grown to nearly 30%—lost reelection and he was replaced as Chair of the District Committee by Congressman Charles Diggs, one of the founding members of the Congressional Black Caucus.⁴² The D.C. Home Rule Act finally passed both chambers of Congress and was signed into law by President Nixon in 1973, taking effect in 1975.⁴³

⁴⁰ *Id.*; Solly, *supra* n.4.

⁴¹ Martin Austeruhle, *Four Decades After Getting Home Rule, The Fight in D.C. Goes On*, WAMU 88.5 (Nov. 15, 2013), https://wamu.org/story/13/11/15/four_decades_on_dc_continues_fighting_for_home_rule/.

⁴² Solly, *supra* n.4; Austeruhle, *supra* n.41; Asch & Musgrove, *supra* n.8, at 379; *Charles Coles Diggs, Jr.*, UNITED STATES HOUSE OF REPRESENTATIVES: HISTORY, ART & ARCHIVES, <https://history.house.gov/People/Detail/12254> (last accessed on May 22, 2026).

⁴³ Asch & Musgrove, *supra* n.8. at 379; *D.C. Home Rule: What it Is*, *supra* n.28; COUNCIL OF THE DISTRICT OF COLUMBIA, *50 Years of Home Rule for DC: The Council Begins a Year of Celebration* (Dec. 22, 2023), <https://dccouncil.gov/50-years-of-home-rule-for-dc-the-council-begins-a-year-of-celebration/>.

C. The District's Struggle for Full Self-Governance and Representation Continues.

Home Rule was a major win in Washingtonians' struggle for self-governance and representation, but it was not a full victory. To this day, Congress retains plenary authority over the District, depriving its over 700,000 residents of representation in legislation on national matters and also on purely local issues. Most notably, Home Rule failed to provide Washington, D.C. with voting representation in Congress.⁴⁴ This stark injustice is acutely felt by the District's over 700,000 residents, whose license plates read "End Taxation Without Representation."⁴⁵

While the Home Rule Act permits D.C. residents to elect local lawmakers, it also permits Congress to legislate on any local D.C. issue at any time and it further requires that any law passed by the D.C. Council first go through a Congressional review period before taking effect, allowing Congress to contravene the express will of D.C. voters acting through their elected representatives.⁴⁶ During that review

⁴⁴ *D.C. Home Rule*, *supra* n.5.

⁴⁵ *New Census Data Shows DC's Population Surpasses 700,000 for the First Time in Five Years*, EXECUTIVE OFFICE OF THE MAYOR (Dec. 19, 2024), <https://mayor.dc.gov/release/new-census-data-shows-dc%E2%80%99s-population-surpasses-700000-first-time-five-years>; Katherine Brodt, *In Washington, "Taxation Without Representation" is History*, BOUNDARY STONES (Feb. 12, 2020), <https://boundarystones.weta.org/2020/02/12/washington-taxation-without-representation-history>; *End Taxation Without Representation Tags*, DC DEPARTMENT OF MOTOR VEHICLES, <https://dmv.dc.gov/service/end-taxation-without-representation-tags>.

⁴⁶ D.C. Code § 1-206.02(c)(1).

period, the law may be blocked by a joint disapproval resolution passed by both Houses of Congress and signed by the President.⁴⁷ Congress's ability to second guess legislation passed by D.C.'s elected officials leads to wasted time and resources, deep frustration within the District community, and the contravention of D.C. voters' will by a body in which these same voters have no voting representative. For example, in 2023, Congress blocked the implementation of an updated criminal code passed by the D.C. Council.⁴⁸ Congress's disapproval resolution effectively voided six years of careful study and compromise that incorporated input from local judges, prosecutors, and defenders.⁴⁹

Congress has further used its power to legislate on a wide range of purely local District issues: for example, Congress passed a law to clarify the application of D.C.'s Height Act to penthouse apartments,⁵⁰ as well as to require D.C.'s taxi cabs to utilize fare meters instead of the existing zone system.⁵¹ In addition, Congress's control over D.C. is often exerted through the inclusion of general policy provisions (referred to as "riders") within the federal budget that direct or limit how the District expends funds. Riders are used by Congress to effectively revoke policies passed by

⁴⁷ *Id.*

⁴⁸ Revised Criminal Code Act of 2022, D.C. Act 24–789, 70 D.C. Reg. 1361 (Jan. 25, 2023); H.R. Res. 97, 118th Cong. (2023); S.J. Res. 12, 118th Cong. (2023).

⁴⁹ *Crim. Code Reform Comm'n Advisory Grp.* DC.GOV, <https://ccrc.dc.gov/page/ccrc-advisory-group> (last accessed May 22, 2026).

⁵⁰ Pub. L. No. 113–103, 128 Stat. 1155 (2014).

⁵¹ Pub. L. No. 109–356, 120 Stat. 2019 (2006).

D.C. officials.

Congress also wields its control over the District's budget to the direct detriment of D.C. residents. In August of 2024, the District submitted its Fiscal Year 2025 budget to Congress, which was deemed approved in September 2024.⁵² On March 14, 2025, six months into the District's fiscal year, Congress passed a Continuing Resolution that mandated the District revert to its Fiscal Year 2024 spending levels, requiring cuts of up to \$1 billion dollars.⁵³ Congress forced these cuts even though they only impacted D.C.'s locally-raised tax dollars and, thus, made no difference to federal spending.⁵⁴

The District's lack of full self-governance and of any voting representation in Congress has pushed Washingtonians and many Americans to call for full statehood. A 2016 referendum found that 86% of Washingtonians favored making D.C. a state.⁵⁵ The District of Columbia is the only political and geographic entity within the United States whose citizens bear the full responsibilities of citizenship,

⁵² Legis. Detail for B25-0785 - Fiscal Year 2025 Loc. Budget Act of 2024, D.C. COUNCIL LEGIS. INFO. MGMT. SYS., <https://limsdccouncil.gov/Legislation/B25-0785> (last accessed May 22, 2026).

⁵³ Meagan Flynn, *House votes for \$1 billion in D.C. cuts while seeking to avert shutdown*, WASH. POST (Mar. 11, 2025), <https://www.washingtonpost.com/dc-md-va/2025/03/11/house-spending-bill-dc-budget/>.

⁵⁴ Aidan Quigley & Andrew Menezes. *Trump endorses Senate-passed D.C. budget fix*, ROLL CALL, (Mar. 28, 2025), <https://rollcall.com/2025/03/28/trump-washington-dc-budget-fix/>.

⁵⁵ *Why Statehood for D.C.*, GOVERNMENT OF THE DISTRICT OF COLUMBIA, <https://statehood.dc.gov/page/why-statehood-dc>, (last accessed May 22, 2026).

including income taxation, without sharing in the full rights and privileges of citizenship. Indeed, Washington’s residents pay more federal taxes than residents in 19 states and pay more per capita to the federal government than any state.⁵⁶

The recent federalization of the Metropolitan Police Department (“MPD”) and the deployment of the National Guard at the center of this action underscore the District’s vulnerability to federal interference. The partial democracy afforded by D.C.’s Home Rule Act is under attack to a degree never seen since its passage in the 1970s. This renewed and comprehensive attack not only compounds the historical racialized harms endured throughout the struggle for Home Rule; it causes fresh injury to D.C. residents and communities every day.

II. DEMOCRATIC ACCOUNTABILITY FOR LAW ENFORCEMENT IS AN ESSENTIAL ASPECT OF THE DISTRICT’S SELF-GOVERNANCE.

D.C. residents have fought hard, and continue to fight, for the right to fully govern themselves, ensuring that those making choices about running the District are accountable to those who will feel the impacts of their decisions. This accountability is critical in all areas of local governance, but nowhere more so than policing. Deploying armed National Guard units—many of which hail from states far from D.C.—to police local neighborhoods feeds community distrust and

⁵⁶ *Id.*

undermines accountability mechanisms that have taken years to build.

District leadership is capable of addressing concerns about community safety, including crime and police misconduct. More importantly, if residents feel that their needs are not being met by the local government, they, like citizens of every state in the United States, can use their power at the ballot box to elect different leadership that will implement new strategies. In accordance with basic principles of democracy, District residents and the officials they elect should be trusted to determine what measures will protect their communities.

A. District Residents Faced Decades of Abuses by Law Enforcement and Fought to Have Control over Policing.

Failures of D.C. police and residents' powerlessness to force reforms were a major impetus for Washingtonians' fight for democratic control of the District. The decades prior to the passage of Home Rule saw discrimination by and within D.C.'s police department, lack of accountability for law enforcement, and rampant police brutality. In the 1950s, the MPD systematically evaded accountability to D.C. residents. The D.C. NAACP repeatedly pushed for answers from the Department about police shootings of unarmed Black men arrested for misdemeanors, but rarely got responses from police officials.⁵⁷ Few MPD officers were ever indicted, let alone convicted, and the Police Board never took disciplinary action.⁵⁸ The Wall Street

⁵⁷ Gray, *supra* n.31, at 145.

⁵⁸ *See id.*

Journal reported that Black District residents saw the police as an “army of occupation” and “full of racist cops who hate Negroes.”⁵⁹

The fight for greater control over D.C. police was part and parcel of District residents’ fight for democratic control. District residents chafed under a police regime that failed to represent the interests of the diverse population in the District and discriminated against Black Washingtonians without any accountability mechanisms or recourse available for District residents.⁶⁰ Residents knew that no reform could be effective if it did not address the fundamental anti-democratic character of D.C.’s police.⁶¹ It is thus unsurprising that when the Black United Front held neighborhood hearings on police misconduct in the District, what emerged was a list of thirteen demands for “community control” of the police department.⁶²

In the debates over Home Rule, some federal politicians were skeptical about local control over the police.⁶³ Representative Ancher Nelsen introduced an amendment that would have given the President the authority to appoint the MPD

⁵⁹ *Id.* at 178.

⁶⁰ *See* Asch & Musgrove, *supra* n.8, at 370.

⁶¹ *See id.* at 367–70.

⁶² *Id.* at 367.

⁶³ *See Home Rule for the District of Columbia, 1973–1974, Background and Legislative History of H.R. 9056, H.R. 9682, and Related Bills Culminating in the District of Columbia Self-Government and Governmental Reorganization Act, Approved December 24, 1973 (Public Law 93-198), Serial No. S-4, U.S. GOV’T PRINTING OFF. (Dec. 31, 1974), at 1763–64.*

Chief, but the amendment was defeated in the House.⁶⁴ Thus, in a victory for Washingtonians, the Home Rule Act embraced the commonsense notion that crime is a local issue, vesting a local, democratically-accountable official—the Mayor—with authority over District policing. The Home Rule Act’s core purpose is to “relieve Congress of the burden of legislating upon essentially local District matters,” and, importantly, to do so “to the greatest extent possible, consistent with the constitutional mandate.”⁶⁵ The Mayor is placed in charge of the MPD.⁶⁶ Section 740 of the Home Rule Act preserves this distinction, permitting the President to request the services of the MPD in carefully circumscribed situations when “special conditions of an emergency nature exist which require the use of the Metropolitan Police force *for federal purposes*.”⁶⁷ By placing local policing in the community’s control and supervision, Congress recognized the essentially local nature of community safety and respected the inherent dignity of District residents in allowing them the right to govern themselves democratically.

⁶⁴ See *id.* at 2406. The amendment would have put in place a Board of Police Commissioners composed of the Secret Service Director, the FBI Director, and the Mayor, who would be responsible for presenting the President with three nominees for the position. The President would then appoint one of the nominees.

⁶⁵ D.C. Code § 1–201.02(a)

⁶⁶ D.C. Code § 1–204.22(4); see also § 5–105.01(a).

⁶⁷ D.C. Code § 1–207.40(a) (emphasis added).

B. Community Safety Is a Quintessentially Local Issue, and Police Must Be Accountable to the Community.

As D.C. residents' fight for local control over the MPD demonstrates, community safety is a local concern best addressed by District residents and officials who are democratically accountable to them. Deployment of soldiers who report only to the President and his designees is antithetical to local oversight, rolls back hard-won democratic gains, and makes all residents less safe.

Local oversight of policing in the District takes many forms. Impacted residents may file misconduct complaints against District officers with the Office of Police Complaints.⁶⁸ D.C. law establishes a Police Complaints Board, appointed by the Mayor and confirmed by the Council, that periodically reviews the citizen complaint process and makes recommendations about aspects of the MPD management that impact police misconduct, among other matters.⁶⁹ Local attorneys and civil rights groups monitor police misconduct, reporting abuses of power, lobbying elected officials, and bringing both individual and systemic litigation where necessary. Aggrieved residents can bring claims under 42 U.S.C. § 1983, challenging one-off instances of misconduct and patterns or policies of illegal behavior. These systems are far from perfect, and do not prevent or address all

⁶⁸ OFFICE OF POLICE COMPLAINTS, *File a Police Complaint*, <https://policecomplaints.dc.gov/service/file-a-complaint> (last accessed May 23, 2026).

⁶⁹ See D.C. Code § 5–1104(a), (d).

instances of police abuse. Nonetheless, District residents' democratic, administrative, and litigation avenues to hold the MPD accountable dwarf comparable mechanisms available regarding federal officers.⁷⁰

Democratically-elected officials are also incentivized to be responsive regarding both crime and police misconduct in the District. For example, in 2022, the Council passed the Comprehensive Policing and Justice Reform Amendment Act, which implemented reforms on uses of force and increased transparency and accountability for police officers.⁷¹ It has also passed legislation to address local spikes in crime.⁷² Whether one agrees or disagrees with these measures, they are democracy in action—a locality balancing different interests, opposing groups, and District-specific problems in an open and accountable manner. And if residents find these measures to be inadequate, they can elect new leaders to implement different solutions.

Policing by troops not accountable to residents disrupts these efforts by D.C. residents, local organizations, law enforcement, and local officials to increase the

⁷⁰ Cf. *Egbert v. Boule*, 596 U.S. 482, 491 (2022) (explaining that “*Bivens*” damages claims against federal officers for constitutional violations are “disfavored” (quoting *Ziglar v. Abbasi*, 582 U.S. 120, 137 (2017))); *Byrd v. Lamb*, 990 F.3d 879, 883 (5th Cir. 2021) (Willett, J., specially concurring) (“Virtually everything beyond the specific facts of the *Bivens* trilogy is a new context And new context = no *Bivens* claim”) (cleaned up).

⁷¹ See D.C. Law 24–345 (2023).

⁷² E.g., D.C. Act 26–104, *Juvenile Curfew Emergency Amendment Act of 2025* (2025).

fairness and safety of policing in the District and makes already-vulnerable populations less safe. For example, for more than two decades, *amicus* The Washington Legal Clinic for the Homeless has provided training to nearly every MPD recruit class on homelessness in the District and on connecting unhoused people to resources; National Guardsmen have had no such specialized training. Further, the MPD requires that officers “understand and are sensitive to the needs and rights of homeless persons in the District of Columbia,” while the National Guard has no such mandate.⁷³ And over-policing has serious harms for youth in particular, including disengagement in school.⁷⁴ Moreover, when communities do not perceive law enforcement as legitimate, they are less likely to report crimes or testify as witnesses, making solving crimes—or even accurately tracking them—more difficult.⁷⁵ This is particularly true for domestic violence and sexual assault survivors, for whom a lack of trust in law enforcement can often be a significant

⁷³ *Interactions with Homeless Persons*, GENERAL ORDER OPS-308.14 (Oct. 31, 2011), <https://go.mpdonline.com/GO/GO-OPS-308-14.pdf>

⁷⁴ Juan Del Toro et al., *The Policing Paradox: Police Stops Predict Youth’s School Disengagement Via Elevated Psychological Distress*, DEV. PSYCH. (July 2022), <https://pmc.ncbi.nlm.nih.gov/articles/PMC9465843/pdf/nihms-1831786.pdf>.

⁷⁵ See Kyle McLean & Justin Nix, *Understanding the Bounds of Legitimacy: Weber’s Facets of Legitimacy and the Police Empowerment Hypothesis*, 39 JUSTICE Q. 1287 (2021), <https://digitalcommons.unomaha.edu/cgi/viewcontent.cgi?article=1093&context=criminaljusticefacpub>.

barrier to reporting crime.⁷⁶ Local oversight is a critical tool for building trust between law enforcement and the community, and policing by unaccountable Guard troops is antithetical to such oversight.⁷⁷

These problems will only worsen, as federal officials have announced a “summer surge” of law enforcement agents in D.C. that will include an additional 1,500 National Guard troops.⁷⁸ Turning over policing of the District to a National Guard that is responsive only to a federal chain of command erases District residents’ hard-earned rights and unjustly denies the community input in its own welfare. Washingtonians have no say in the race for governor of South Carolina, or Ohio, or Louisiana. And citizens of those states will not feel the consequences of deployment

⁷⁶ See U.S. DEP’T OF JUSTICE, *Improving Law Enforcement Response to Sexual Assault and Domestic Violence by Identifying and Preventing Gender Bias* (2022), 6–7, https://www.justice.gov/d9/pages/attachments/2022/05/31/gender_bias_guidance.final.pdf.

⁷⁷ See Barbara Attard, *Oversight of Law Enforcement is Beneficial and Needed—Both Inside and Out*, 30 PACE L. REV. 5, 1548–49 (Sept. 2010), <https://digitalcommons.pace.edu/cgi/viewcontent.cgi?article=1755&context=plr>; Ian T. Adams et al., *Police reform from the top down: Experimental evidence on police executive support for civilian oversight*, 44 J. POL’Y ANAL. & MGMT. 345, 405–06 (2025), https://www.researchgate.net/publication/381953850_Police_reform_from_the_top_down_Experimental_evidence_on_police_executive_support_for_civilian_oversight..

⁷⁸ Campbell Robertson, *A ‘Summer Surge’ of Law Enforcement Is Planned for D.C., Officials Say*, N.Y. TIMES (May 15, 2026), <https://www.nytimes.com/2026/05/15/us/politics/law-enforcement-agents-washington-dc.html>.

of the National Guard on our streets. As D.C. becomes less safe for its residents surrounded by these state militias, D.C. residents have no democratic recourse. It should be for District residents, who experience both the fluctuations in crime and the excesses of the police, to determine how to keep our community safe.

CONCLUSION

In addition to the reasons set forth in the District's brief demonstrating the necessity of a preliminary injunction and stay pursuant to 5 U.S.C. § 705, *amici* urge the Court to affirm the judgment below in order to prevent irreparable injury to the District and its residents, and because such relief is in the public interest. As described *supra*, Defendants' deployment of National Guard troops in the District for local law enforcement purposes causes irreparable harm to the District and its residents. The damage to public trust and safety caused by shifting law enforcement from local police to state militias constitutes irreparable harm. So too does the stripping of District residents' hard-fought right to govern themselves and to direct how D.C. is policed. Unless the district court's decision is affirmed, this illegal occupation will continue to diminish Washingtonians' safety, dignity, and right to self-determination. In turn, the public interest is served by upholding District residents' civil rights and returning control over community welfare to their hands.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limitation of Fed. R. App. P. 32(a) and Fed. R. App. P. 29(a)(5) because this brief contains 5,887 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f).

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CERTIFICATE OF SERVICE

I hereby certify that on May 26, 2026, I electronically filed this motion with the Clerk of the Court for the United States Court of Appeals for the District of Columbia Circuit using the appellate CM/ECF system.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

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