

February 11, 2020

U.S. House Committee on Oversight and Reform  
2157 Rayburn House Office Building  
Washington, D.C. 20515

Re: **House Oversight and Reform Committee Markup on  
H.R. 5803, Washington, D.C. Admission Act**

Dear Representative:

On behalf of the American Civil Liberties Union (ACLU), we urge you to vote “yes” on H.R. 5803, the Washington, D.C. Admission Act, as introduced, during the bill’s markup in the House Oversight and Reform Committee on February 11, 2020. We thank Congresswoman Norton for her decades of advocacy on behalf of the residents of the District of Columbia to achieve full representation in Congress and Chairwoman Maloney for continuing Congressman Cummings’ commitment to holding the first congressional vote in the House of Representatives on D.C. statehood since 1993.

H.R. 5803 would grant statehood to the residential areas of the current District of Columbia as the State of Washington, Douglass Commonwealth. The bill outlines a process to elect two senators and one representative for the new state. It also outlines the state’s physical boundaries and the transfer of territorial, legal, and judicial jurisdiction and authorities to the new state. In addition, it defines the reduced federal territory that would remain the District of Columbia and serve as the seat of the federal government.

Over 700,000 people living in our Nation’s capital are locked out of American democracy and denied the rights of representative government. Despite D.C.’s fully functioning local government, Congress essentially exercises authoritarian rule over the District and its residents. Decisions on policies that impact D.C. residents’ rights, liberties, health, and welfare are routinely made by Congress—a body that neither represents their interests nor is politically accountable for its decisions regarding the District. Indeed, several features of Congress’s understood authority over the District ensure that Congress will routinely encroach on its autonomy. For example, legislation passed by the D.C. Council and signed by the mayor into law must still go through congressional review before taking effect.<sup>1</sup>



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<sup>1</sup> *How a Bill Becomes a Law*, Council of the District of Columbia, <https://dccouncil.us/how-a-bill-becomes-a-law/>.

And even when it does, Congress can repeal it.<sup>2</sup> In this way, representatives from other states, elected by other constituents with no ties to D.C., are free to impose their own policy preferences on the District. And District residents have no recourse to hold them accountable through a democratic process.<sup>3</sup> Oftentimes, the policies forced upon D.C. advance polarizing ideologies to score political points while gravely impacting the lives of District residents in the process. For example:

- In 1998, Congress passed the Barr Amendment in the omnibus appropriations bill. Not only did the amendment block a voter-approved ballot measure legalizing medical marijuana in the District, it even prohibited the release of the referendum results in a violation of the First Amendment's protection of political speech. It took almost a year to reveal that the ballot measure overwhelmingly passed with 69% of the vote through an ACLU Lawsuit.<sup>4</sup>
- In 1998, Republicans in Congress prevented the District from using its own funds to pay for needle exchange programs to stem the spread of HIV/AIDS. By the time legislation lifted the needle exchange ban in 2007, D.C. had the highest rate of HIV/AIDS in the country.<sup>5</sup> It is estimated that hundreds<sup>6</sup> of District residents died, and continue to die, because of this deadly instance of congressional meddling.<sup>7</sup>
- In 2010, two senators from Arizona and Montana sought to loosen D.C.'s gun laws with a bill repealing the District's ban on assault weapons and high-capacity magazines and lifting gun registration requirements.<sup>8</sup>
- In 2018, House Republicans led by a Representative of Utah attempted to repeal D.C.'s death with dignity law,<sup>9</sup> which passed the D.C. Council with a vote of 11-2 and which two-thirds of D.C. voters supported.<sup>10</sup>

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<sup>2</sup> D.C. Code Ann. §§ 1-206.01-03 (discussing Congress's plenary power over the D.C. Council).

<sup>3</sup> *Id.* §§ 1- 204.01, 204.04.

<sup>4</sup> *Democracy Held Hostage*, ACLU, <https://www.aclu.org/other/democracy-held-hostage>.

<sup>5</sup> *DC Needle Exchange Program Prevented 120 New Cases of HIV in Two Years*, George Washington University (Sept. 3, 2015), <https://publichealth.gwu.edu/content/dc-needle-exchange-program-prevented-120-new-cases-hiv-two-years>.

<sup>6</sup> Lauren Ober, *Once-Controversial D.C. Needle Exchange Found To Save Money — And Lives*, WAMU (Sept. 25, 2015), [https://wamu.org/story/15/09/25/dc\\_needle\\_exchange/](https://wamu.org/story/15/09/25/dc_needle_exchange/).

<sup>7</sup> New HIV and AIDS cases from intravenous drug use began declining in 2008, but they fell more sharply in 2009. Lena Sun, *AIDS remains an epidemic in District, but new cases on decline, report finds*, Washington Post (Jun. 15, 2011), [https://www.washingtonpost.com/local/aids-infection-rate-remains-epidemic-in-district-report-finds/2011/06/15/AGpHyyVH\\_story.html?utm\\_term=.3b73c6fe331e](https://www.washingtonpost.com/local/aids-infection-rate-remains-epidemic-in-district-report-finds/2011/06/15/AGpHyyVH_story.html?utm_term=.3b73c6fe331e).

<sup>8</sup> *Norton Releases First Details of Tester-McCain/Childers Gun Bill in Preparation for Meeting Wed.*, Press Release, Congresswoman Eleanor Holmes Norton (May 4, 2010), <https://norton.house.gov/media-center/press-releases/norton-releases-first-details-of-tester-mccainchilders-gun-bill-in>.

<sup>9</sup> DC Code § 7-661.01 *et seq.*

<sup>10</sup> Mikaela Lefrak, *'Death With Dignity' Law Goes Into Effect In D.C. As Congress Pushes To Repeal It*, WAMU (Jul. 18, 2017), <https://wamu.org/story/17/07/18/death-dignity-goes-effect-d-c-congress-pushes-repeal/>.

- Congress regularly attaches a rider known as the Dornan Amendment to an annual appropriations bill, blocking the District from using its own local tax dollars to provide abortion coverage for individuals enrolled in Medicaid—something states are free to do. Bans on insurance coverage for abortion disproportionately harm poor women, and particularly poor women of color.<sup>11</sup>

The District's lack of control over its courts and criminal system has also had profound consequences for thousands of D.C. residents. The federal government has controlled D.C.'s courts and criminal justice system since 1997. Unlike states, where judges are either appointed by state officials or elected, D.C. Superior and Appeals Court judges are appointed by the President and confirmed by the Senate, where District residents have no representation at all.<sup>12</sup> Additionally, because D.C. is not a state and has no prisons, persons convicted of D.C. offenses are placed in the custody of the Federal Bureau of Prisons, which may house them as far away as California and Arizona, making it even more difficult to maintain the familial and community bonds essential to successful rehabilitation both during and after incarceration.<sup>13</sup>

Perhaps the most significant criminal justice consequence of D.C.'s lack of statehood is the District's lack of control over local prosecutions. D.C. has a locally elected attorney general who serves as the chief juvenile prosecutor for the District. However, all juvenile felonies and various adult misdemeanors are prosecuted by a federally appointed U.S. Attorney who has little incentive to be transparent with the D.C. community. Moreover, as many other cities and states, D.C. residents have elected district attorneys seeking to reform criminal justice policies in progressive ways, but the U.S. Attorney is not accountable to voters in the way district attorneys are in states. For that reason, prosecutorial reform—key to combating mass incarceration—has proved unattainable. As recently as September 2019, the District's U.S. Attorney took steps to aggressively oppose effective sentencing reforms backed by locally elected officials, even going as far as spreading misinformation to undermine locally elected leaders.<sup>14</sup> Today, as a state, D.C. would have the highest incarceration rate in the country.<sup>15</sup>

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<sup>11</sup> *Research Brief: The Impact of Medicaid Coverage Restrictions on Abortion*, Ibis Reproductive Health (Nov. 2015), <https://ibisreproductivehealth.org/sites/default/files/files/publications/ResearchBriefImpactofMedicaidRestrictions.pdf>.

<sup>12</sup> D.C. Code Ann. § 1-204.33.

<sup>13</sup> Martin Austerhuhle, *D.C. Inmates Serve Time Hundreds Of Miles From Home. Is It Time To Bring Them Back?*, WAMU (Aug. 10, 2017), <https://wamu.org/story/17/08/10/d-c-inmates-serving-time-means-hundreds-miles-home-time-bring-back/>.

<sup>14</sup> Mark Joseph Stern, *D.C. Residents Aren't Buying a Trump-Appointed Prosecutor's Campaign Against Criminal Justice Reform*, Slate (Sept. 6 2019), <https://slate.com/news-and-politics/2019/09/dc-us-attorney-blocks-community-from-community-event.html>.

<sup>15</sup> *District of Columbia and NATO incarceration comparison*, Prison Policy Initiative (2018), <https://www.prisonpolicy.org/graphs/NATO2018/DC.html>.

The fact that federal agencies, not the D.C. government, control local prosecutions and other important decisions, including D.C.'s parole system<sup>16</sup> and pretrial services,<sup>17</sup> has had a devastating impact on the lives of D.C. residents and their families. Statehood would allow the District to delegate these crucial services to state agencies accountable to local lawmakers and residents.

Finally, members of the committee should not overlook the fact that the continuing denial of representation for District residents is an overt act of voter suppression with roots in the Reconstruction era. Just as newly enfranchised Black residents in the District began to exercise their political power after the Civil War, helping to elect the first Black municipal office holder by the late 1860s,<sup>18</sup> Congress replaced D.C.'s territorial government, including its popularly elected House of Delegates, with three presidentially appointed commissioners.<sup>19</sup> The goal of this move was unmistakable: disenfranchising an increasingly politically active Black community.<sup>20</sup> Indeed, in his filibuster against the Federal Elections Act of 1890, Senator John Tyler Morgan of Alabama, one of the most prominent and outspoken white supremacists of the Jim Crow era, cited D.C. as a model for a national segregationist policy:<sup>21</sup> To Morgan, it was necessary to “burn down the barn to get rid of the rats.”<sup>22</sup> “[T]he rats being the negro population and the barn being the government of the District of Columbia.”<sup>23</sup> Today, D.C. has one seat in the House of Representatives.<sup>24</sup> This representative, currently Congresswoman Eleanor Holmes Norton,<sup>25</sup> has the “right of debate” and is not a voting member of the chamber.<sup>26</sup>

D.C. residents pay taxes, serve on juries, fight in wars, and contribute to our country's prosperity; they deserve equal representation in their own government. Continued congressional control of the District of Columbia and its residents undermines the fundamental principle of self-government and is antithetical to a free society. Congress has

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<sup>16</sup> Philip Fornaci *et al.*, *Restoring Control of Parole to D.C.*, The Washington Lawyer's Committee (Mar. 16 2018), [http://www.washlaw.org/pdf/2018\\_03\\_16\\_why\\_we\\_need\\_a\\_dc\\_board\\_of\\_parole.PDF](http://www.washlaw.org/pdf/2018_03_16_why_we_need_a_dc_board_of_parole.PDF).

<sup>17</sup> *What PSA Does*, Pretrial Services Agency for the District of Columbia, <https://www.psa.gov/> (last visited Sept. 12, 2019).

<sup>18</sup> Kate Masur, *Capital Injustice*, N.Y. Times (Mar. 28, 2011), <https://www.nytimes.com/2011/03/29/opinion/29masur.html>.

<sup>19</sup> *History of Local Government in Washington, D.C.*, DC Vote, <https://www.devote.org/inside-dc/history-local-government-washington-dc> (last visited Sept. 12, 2019).

<sup>20</sup> See Masur, *supra* note 3.

<sup>21</sup> Thomas Adams Upchurch, *Senator John Tyler Morgan and the Genesis of Jim Crow Ideology, 1889-1891*, *Alabama Review* 57, 110-31 (April 2004).

<sup>22</sup> Harry S. Jaffe and Tom Sherwood, *Dream City: Race, Power, and the Decline of Washington, D.C.* 8 (2014 ed.).

<sup>23</sup> *Id.*

<sup>24</sup> D.C. Code Ann. § 1-401.

<sup>25</sup> *About Eleanor*, Congresswoman Eleanor Holmes Norton, <https://norton.house.gov/about> (last visited Sept. 12, 2019).

<sup>26</sup> D.C. Code Ann. § 1-401.

an opportunity to rectify a great injustice that has left hundreds of thousands of Americans in the District of Columbia unable to fully participate in our democracy; we urge members to vote “yes” and pass H.R. 5803 out of committee.

The ACLU previously submitted written testimony in support of the bill, which included a [legal analysis](#)<sup>27</sup> concluding the bill is a valid and defensible exercise of congressional power and constitutionally permissible. If you have any questions, please contact Sonia Gill, Senior Legislative Counsel, at [sgill@aclu.org](mailto:sgill@aclu.org).

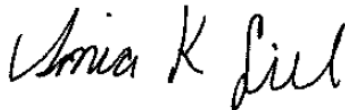
Sincerely,



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Monica Hopkins  
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Sonia Gill  
Senior Legislative Council  
National Political Advocacy Department

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<sup>27</sup> *Making D.C. the 51st State: Hearing on H.R. 51 Before the H. Comm. on Oversight and Reform*, 116th Cong. 1 (2019) (statement of the ACLU), <https://www.aclu.org/letter/aclu-statement-dc-statehood-hearing>.