

June 25, 2020

**RE: Vote YES on H.R. 51, the Washington, D.C. Admission Act,  
Vote NO on Motion to Recommit**

Dear Representative:

**The American Civil Liberties Union (ACLU) urges you to vote YES on H.R. 51, the Washington, D.C. Admission Act, and to vote NO on any motion to recommit that may be offered to undermine it.** The ACLU will score the vote on final passage of H.R. 51 and on ANY motion to recommit that would otherwise harm civil liberties.



National Political  
Advocacy Department  
915 15th St. NW, 6th FL  
Washington, D.C. 20005  
[aclu.org](http://aclu.org)

Susan Herman  
*President*

Anthony Romero  
*Executive Director*

Ronald Newman  
*National Political  
Director*

The ACLU submitted written [testimony](#)<sup>1</sup> to the House Oversight Committee for the September 19, 2019, hearing considering H.R. 51, finding the bill to be a valid and defensible exercise of congressional power and constitutionally permissible. The ACLU strongly believes D.C. residents deserve full representation in our national government. 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. D.C. residents pay taxes, serve on juries, fight in wars, and contribute to our country's prosperity, and are deserving of equal representation in the federal government.

H.R. 51 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 sets 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.

### **Background**

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

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<sup>1</sup> <https://www.aclu.org/letter/aclu-statement-dc-statehood-hearing>.

Congress's understood authority over the District ensures that the federal government routinely encroaches on D.C. autonomy.

In general, legislation passed by the D.C. Council and signed by the Mayor into law must still go through congressional review before taking effect.<sup>2</sup> And even when it does, Congress can repeal it.<sup>3</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, leaving District residents with no recourse to hold them accountable through a democratic process.<sup>4</sup> Oftentimes, the policies forced upon D.C. advance polarizing ideologies to score political points that gravely impact the lives of District residents. For example:

- In 1998, Congress passed the Barr Amendment in an 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>5</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>6</sup> It is estimated that hundreds<sup>7</sup> of District residents died, and continue to die, because of this deadly instance of congressional meddling.<sup>8</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>9</sup>

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<sup>2</sup> *How a Bill Becomes a Law*, Council of the District of Columbia, <https://dccouncil.us/how-a-bill-becomes-a-law/>.

<sup>3</sup> D.C. Code Ann. §§ 1-206.01-03 (discussing Congress's plenary power over the D.C. Council).

<sup>4</sup> *Id.* §§ 1- 204.01, 204.04.

<sup>5</sup> *Democracy Held Hostage*, ACLU, <https://www.aclu.org/other/democracy-held-hostage>.

<sup>6</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>7</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>8</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/AGpHyuVH\\_story.html?utm\\_term=.3b73c6fe331e](https://www.washingtonpost.com/local/aids-infection-rate-remains-epidemic-in-district-report-finds/2011/06/15/AGpHyuVH_story.html?utm_term=.3b73c6fe331e).

<sup>9</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-detalis-of-tester-mccainchilders-gun-bill-in>.

- In 2018, House Republicans led by a representative of Utah attempted to repeal D.C.’s death with dignity law,<sup>10</sup> which passed the D.C. Council with a vote of 11-2 and which two-thirds of D.C. voters supported.<sup>11</sup>
- 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>12</sup>

Furthermore, the District’s lack of control over its courts and criminal justice system has 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 by constituents, 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>13</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. This makes it even more difficult for D.C. residents serving their time to maintain the familial and community bonds essential to successful rehabilitation both during and after incarceration.<sup>14</sup>

Perhaps the most significant criminal justice consequence of D.C.’s lack of statehood is the lack of control over local D.C. 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 is not accountable to voters in the way district attorneys are in states and has little incentive to be transparent with the D.C. community. Similar to many other cities and states, D.C. residents’ locally elected attorneys have sought to reform the District’s criminal justice policies in progressive ways; however, unlike other cities and states, the U.S. Attorney’s unique role overseeing federal and local prosecutions in the District has stalled many of these local reforms. For that reason, prosecutorial reform—key to

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<sup>10</sup> DC Code § 7-661.01 *et seq.*

<sup>11</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/>.

<sup>12</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>13</sup> D.C. Code Ann. § 1-204.33.

<sup>14</sup> Martin Auster Muhle, *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/>.

combating mass incarceration—has proved unattainable.<sup>15</sup> The fact that federal agencies, and 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, it is important that the continuing denial of representation for District residents is an overt act of voter suppression stemming from the Reconstruction era. By the late 1860s, newly enfranchised Black residents in the District exercising their new political power helped elect the first Black municipal office holder.<sup>18</sup> Pushback was swift, and in 1871, 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: to disenfranchise 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 and no representatives in the Senate.<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>

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<sup>15</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>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.

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 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 representative democracy. We urge Members to vote YES and pass H.R. 51 and vote NO on any motion to recommit.

If you have any questions, please contact Sonia Gill, Senior Legislative Counsel, at [sgill@aclu.org](mailto:sgill@aclu.org).

Sincerely,



Ronald Newman  
National Political Director  
National Political Advocacy Department



Monica Hopkins  
Executive Director  
ACLU of the District of Columbia



Sonia Gill  
Senior Legislative Council  
National Political Advocacy Department