



March 19, 2021

The Honorable Carolyn B. Maloney  
Chairwoman  
House Committee on Oversight and Reform  
U.S. House of Representatives  
Washington, D.C., 20515

The Honorable James Comer  
Ranking Member  
House Committee on Oversight and Reform  
U.S. House of Representatives  
Washington, D.C., 20515

Dear Chairwoman Maloney, Ranking Member Comer, and members of the Committee:

Our Constitution establishes an inclusive multiracial democracy based on the equal worth and dignity of all Americans. Denying the people of Washington, D.C. a voice or representation in Congress or control over their own affairs is inconsistent with these fundamental constitutional values. Passing H.R. 51 to provide D.C. statehood, a simple exercise of Congress's constitutional power to admit new states into the Union, would be an important step towards manifesting our constitutional ideals of equality and inclusion.. The Constitutional Accountability Center enthusiastically supports passage of H.R. 51 and encourages the Committee to report out the bill for consideration on the House Floor.

**1. *Congress has the Constitutional Authority to Shrink the Seat of Government and Establish a New State***

Article one, section eight of the U.S. Constitution provides that a "District (not exceeding ten Miles square) ... may ... become the Seat of the Government of the United States" and gives Congress the power "[t]o exercise exclusive Legislation in all Cases whatsoever" concerning the District.<sup>1</sup> The text of our national charter is very clear: the District that is our Seat of Government, should it exist, may be no more than ten square miles. This means that Congress may readjust the size of the seat of government, so long as it is not larger than one hundred square miles. And Congress has done so in the past, acting within the constraints of the Constitution by passing legislation to establish and reestablish the borders of our seat of government. The Residence Act of 1790 created a capital district to be situated on the Potomac River."<sup>2</sup> Subsequently, the ten-by-ten square mile City of Washington was founded in 1791 with land ceded from Virginia and Maryland.<sup>3</sup> In 1801, Congress passed the District of Columbia Organic Act, which formally established this "ten miles square" portion of land as the District of Columbia and the seat of government for the United States.<sup>4</sup> Forty-five years later, Congress passed legislation to return the

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<sup>1</sup> U.S. Const. art. I, § 8, cl. 17.

<sup>2</sup> The Residence Act of 1790, ch. 28, 1 Stat. 130.

<sup>3</sup> Act of Mar. 3, 1791, ch. 27, 1 Stat. 214.

<sup>4</sup> The District of Columbia Organic Act of 1801, ch. 15, 2 Stat. 103.

Virginia-portion of D.C. to the Commonwealth, thereby shrinking the seat of government by approximately 30 square miles.<sup>5</sup>

Article four, section three of our Constitution states clearly that “[n]ew States may be admitted by the Congress into this Union.”<sup>6</sup> Should the People’s duly elected representatives choose to do so, new states may be admitted into the Union by simple legislation. And Congress has done so thirty-seven times, bringing us from thirteen fledgling colonies to fifty united states. The only caveat the Constitution provides is that new states cannot be carved out of existing states, nor multiple states or parts thereof combined to form a new state without the consent of the affected states—neither of which applies in the case of D.C.<sup>7</sup>

Despite the plain text of the Constitution, opponents to D.C. statehood claim that a constitutional amendment is necessary to grant statehood to Washington, D.C., specifically.<sup>8</sup> These arguments ignore Congress’s enumerated powers in the New State Clause and the Seat of Government Clause. Congress has the power to create a new state out of the residential parts of Washington, D.C., while reducing the size of the federal district that contains the seat of government of the United States, which is exactly what H.R. 51 would do. The land H.R. 51 would convert into the 51<sup>st</sup> state is currently a territory. Over time, Congress has admitted 31 states from territories utilizing the New State Clause via simple legislation. Furthermore, H.R. 51 does not eliminate the existence of the district constituting the seat of government, it merely shrinks it, which Congress has also done in the past. H.R. 51 falls squarely within the express powers the Constitution grants to Congress.

Opponents of D.C. Statehood also claim that granting Washington D.C. statehood conflicts with the Twenty-Third Amendment,<sup>9</sup> which gives three votes in the electoral college to the “District constituting the seat of government.”<sup>10</sup> The Twenty-Third Amendment does not limit Congress’ constitutional authority to make the residential parts of Washington D.C into a state.<sup>11</sup> It gives three electoral votes to the seat of government regardless of the district’s size. If Congress made Washington, D.C. into the 51<sup>st</sup> State, the Twenty-Third Amendment would effectively give the small number of residents who live in federal buildings, such as the President, the power to control those three votes. For that reason, H.R. 51 sets up an expedited process for repealing the Twenty-Third Amendment. But as a constitutional argument against statehood, the Twenty-Third Amendment fails. The Amendment simply does not constrain or impede Congress’s power to grant statehood.

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<sup>5</sup> Act of July 9, 1846, ch. 35, 9 Stat. 35.

<sup>6</sup> U.S. Const. art. 4, § 3, cl. 1.

<sup>7</sup> *Id.*

<sup>8</sup> R. Hewitt Pate, *D.C. Statehood: Not Without a Constitutional Amendment*, The Heritage Foundation (1993), <https://www.heritage.org/political-process/report/dc-statehood-not-without-constitutional-amendment>.

<sup>9</sup> Jeff Jacoby, *The Constitution Says No to DC Statehood*, Boston Globe (June 21, 2020), <https://www.bostonglobe.com/2020/06/21/opinion/constitution-says-no-dc-statehood/>.

<sup>10</sup> U.S. Const. amend. XXVIII, § 1, cl. 1.

<sup>11</sup> Monica Hopkins & Adriel I. Cepeda, *DC Statehood Will Give Representation to City Residents and Rectify a Deep Injustice*, The Hill (Sept. 18, 2019), <https://thehill.com/blogs/congress-blog/politics/461836-dc-statehood-will-give-representation-to-city-residents-and>.

## **2. The Denial of Full Voting Rights to the Citizens of Washington, D.C. is Undemocratic.**

The War of Independence was fought because American colonists could not bear the tyranny of a King and Parliament that made decisions about American society and American lives without any American representation in the decision-making. When our thirteen colonies joined together and declared their independence, they said with one voice that “[g]overnments are instituted among Men, deriving their just powers from the consent of the governed.”<sup>12</sup> Congress, however, rules the people of the District of Columbia without their consent. Taxation without representation drove this country to revolution and independence. And yet, nearly 245 years later, D.C. residents obey federal laws and pay federal taxes without having a full say in the laws that govern them.

Currently, D.C. residents cannot elect members of Congress with full voting power, but federal lawmakers possess veto power over decisions made by the District’s local government. This lack of power became particularly concerning during January 6’s tragic Capitol riot, when D.C.’s Mayor could not activate D.C.’s National Guard to repel assaults by domestic terrorists.<sup>13</sup> To add insult to injury, National Guard units from other states can come into the city without the Mayor’s consent.<sup>14</sup> But this lack of self-determination is apparent in more everyday contexts as well. For instance, Congress has restricted how the local Washington, D.C. government spends its locally raised tax dollars. It also appoints local judges. Congress has failed to act on several of D.C.’s judicial vacancies—one seat has been vacant since November 2013.<sup>15</sup> And D.C. cannot change the composition of its local government (by expanding the City Council, for example) without the express permission of the U.S. Congress.<sup>16</sup>

There is no legitimate reason to continue disenfranchising the over 710,000 residents of Washington, D.C. Throughout our history, We the People have amended our Constitution to make our democracy more open, inclusive, and just, but Washington D.C. continues to be, as Frederick Douglass long ago lamented, the “one spot where there is no government for the people, of the people, and by the people. Its citizens submit to rulers whom they have had no choice in selecting. They obey laws which they had no voice in making. They have a plenty of taxation, but no representation.”<sup>17</sup> There is no right guaranteed by more parts of the Constitution than the right to vote.<sup>18</sup> And yet, the citizens of Washington D.C. continue to live with the reality that their local laws may be overturned by Congress, a body where they have no meaningful representation, even as they yet must comply with laws Congress chooses to pass.

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<sup>12</sup> The Declaration of Independence para. 2. (U.S. 1776).

<sup>13</sup> Ian Ayres, *Op-Ed: Why the Capitol Riot Could Speed Up D.C.’s Path to Statehood*, L.A. Times (Jan. 25, 2021), <https://www.latimes.com/opinion/story/2021-01-25/d-c-statehood-capitol-riot>.

<sup>14</sup> Dominique Maria Bonessi, *Your Questions About How The National Guard Works In D.C., Answered*, DCist (Jan. 11, 2021), <https://dcist.com/story/21/01/11/dc-national-guard-deployment-capitol-delay/>.

<sup>15</sup> Martin Austerhuhle, *Judges Say ‘Unprecedented’ Vacancies At D.C. Court Are Slowing The Legal System*, DCist (Apr. 15, 2019), <https://dcist.com/story/19/04/15/judges-say-unprecedented-vacancies-at-d-c-court-are-slowing-the-legal-system/>.

<sup>16</sup> Amanda Michelle Gomez, *51 Reasons to Support D.C. Statehood*, Washington City Paper (Feb. 11, 2021), <https://washingtoncitypaper.com/article/508326/51-reasons-to-support-d-c-statehood/>.

<sup>17</sup> Martin Austerhuhle, *Though Douglass Statue is Moving to U.S. Capitol, His Legacy on D.C. Suffrage Should Not Be Forgotten*, DCist (Sept. 25, 2012), <https://dcist.com/story/12/09/25/frederick-douglass/> (internal citation omitted).

<sup>18</sup> U.S. const. amends. XV, XVII, IX, XXIII, XXIV, XVI.

This double denial of democracy leaves resident of the District without a true voice in their affairs. No other democratic nation disenfranchises its capital residents in this manner.<sup>19</sup>

Despite some limited progress, such as the Twenty-Third Amendment, which granted D.C. residents the right to vote in presidential elections, D.C.'s appalling exclusion from the basic democratic rights that Americans elsewhere take for granted continues to this day.

### **3. Suppressing the Voting Power of Washington, D.C. Residents is Rooted in White Supremacy.**

D.C.'s lack of statehood represents a refusal to treat people of color as equal citizens deserving of dignity, political self-determination, and representation in national affairs. The shameful disenfranchisement of D.C.'s citizens of color goes back to Reconstruction. In 1867, Congress overrode a presidential veto in order to grant all adult male citizens in D.C.—including African American men—the right to vote.<sup>20</sup> However, as Black political power increased, so too did white supremacist backlash. In response to racist pressure, in 1874, Congress placed three presidential commissioners in charge of the District, leaving its residents no voice or representation.<sup>21</sup> Some southern members of Congress insisted that after “the negroes came into this district,” Congress was right to “deny the right of suffrage entirely to every human being” rather than give Black people a say in their affairs.<sup>22</sup>

To this day, opponents of D.C. statehood dehumanize the residents who live, work, raise families, and contribute to the community in our capital city, nearly a majority of whom are Black, insisting that the people of Washington D.C. are not “real people”<sup>23</sup> and would not form a “well-rounded working class state.”<sup>24</sup> The denial of democracy in Washington D.C. represents many things, including the refusal to treat Black people as equal citizens deserving of dignity, respect, and a voice in their affairs. Providing D.C. statehood would be an important step towards addressing our long history of racial injustice and exclusion.

## **Conclusion**

D.C. residents contribute to our national society in a myriad of ways—they pay taxes, they serve in the military, and so much more. They outnumber the residents of both Wyoming and Vermont—two states Congress admitted into the Union by simple legislation. And yet, unlike the citizens of Wyoming and Vermont, D.C. residents cannot elect members of Congress with full voting power or have full control over

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<sup>19</sup> Mark Joseph Stern, *The Constitution Isn't the Obstacle to D.C. Statehood*, Slate (Sept. 19, 2019), <https://slate.com/news-and-politics/2019/09/dc-statehood-hearing-constitution-republicans.html>.

<sup>20</sup> Andrew Glass, *Congress Expands Suffrage in D.C. on Jan. 8, 1867*, Politico (Jan. 8, 2008), <https://www.politico.com/story/2008/01/congress-expands-suffrage-in-dc-on-jan-8-1867-007771>.

<sup>21</sup> Kate Masur, *Capital Injustice*, N.Y. Times (Mar. 28, 2011), <https://www.nytimes.com/2011/03/29/opinion/29masur.html>.

<sup>22</sup> Adriel I. Cepeda Derieux, *D.C. Statehood is a Racial Justice Issue*, ACLU (July 27, 2020), <https://www.aclu.org/news/voting-rights/d-c-statehood-is-a-racial-justice-issue/> (internal citation omitted).

<sup>23</sup> Sarah Jones, *Actually, D.C. Is Full of 'Real People,'* N.Y. Magazine (July 1, 2020), <https://nymag.com/intelligencer/2020/07/the-opposition-to-washington-d-c-statehood-is-racist.html>.

<sup>24</sup> Joshua Keating, *The Case Against D.C. Statehood Hasn't Changed Since Marion Barry*, Slate (June 26, 2020), <https://slate.com/news-and-politics/2020/06/dc-statehood-tom-cotton-vote.html>.

local affairs. D.C. residents deserve to be on equal footing with the residents of Wyoming, Vermont, and the other 48 states. And in 2016, the residents of D.C. asked Congress to make it so, passing a referendum expressing their desire for statehood and preparing a draft Constitution.<sup>25</sup>

Consistent with the principles upon which this country was founded, Congress should pass the Washington, D.C. Admission Act to give D.C. residents full voting rights, meaningful political representation in Congress, and control over their local affairs. The bill is an exercise of Congress's express constitutional power to add new states to our nation by enacting simple legislation—a power it has used repeatedly throughout history—and to adjust the borders of the seat of government.

Sincerely,



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<sup>25</sup> Rebecca Hersher, *D.C. Votes Overwhelmingly To Become 51st State*, NPR (Nov. 9, 2016), <https://www.npr.org/sections/thetwo-way/2016/11/09/501412360/d-c-votes-overwhelmingly-to-become-51st-state>.