**COUNCIL OF THE DISTRICT OF COLUMBIA**

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# TESTIMONY OF CHAIRMAN PHIL MENDELSON COUNCIL OF THE DISTRICT OF COLUMBIA

## H.R. 51, THE WASHINGTON, D.C. ADMISSION ACT

UNITED STATES HOUSE OF REPRESENTATIVES
COMMITTEE ON OVERSIGHT AND REFORM

MARCH 22, 2021

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Thank you ChairwomanMaloney, Ranking Member Comer, and members of the Committee. I am Phil Mendelson, Chairman of the Council of the District of Columbia. I am pleased to testify today in support of H.R. 51, the Washington, D.C. Admission Act. Full and fair representation for the over 700,000 citizens residing in the District of Columbia is only possible through achieving statehood, and so I urge this Committee, and this Congress, to move favorably and expeditiously on this measure.

I want to thank this Committee for its ongoing support for the District of Columbia.In particular, I would like to thank the Delegate for the District of Columbia, Congresswoman Eleanor Holmes Norton, for her staunch representation of the District and for introducing H.R. 51. I also want to thank Chairwoman Maloney for cosponsoring this legislation, for agreeing to hold this hearing today, and for the House's historic adoption of H.R. 51 last year.

## THE CASE FOR STATEHOOD FOR THE DISTRICT OF COLUMBIA

Forover 200 years, the United States citizens residing in the District of Columbia have been denied the same rights of citizenship that areenjoyed by United Statescitizens everywhere else: full self-governance and representation in the national legislature. Denying this tothe District of Columbia deprives these citizens of the fundamental rights of our democracy. This is inconsistent with the principles of our American revolution and I do not think this was intended by our Founding Fathers.Regardless, this civil rights injustice must be corrected, just like other anomalies of the Founding Era,like the disenfranchisement of women and Blacks. Statehood would do that.

Self-governance is the essence of democracy and freedom. It is more sensitive to constituents. It reflects community values and priorities. Self-governance is the lifeblood of every town hall, city council, county board, and state legislature in the United States of America. The only option to gain both full voting representation and full self-governance is to pass H.R. 51 and grant statehood to the District of Columbia.

Our Founding Fathers did not envision eliminating the rights of the citizens of the federal district. In fact, James Madison, in Federalist No. 43, contemplated that the residents of the District would not be disenfranchised when he wrote: "they [the citizens of the federal district] will have had their voice in the election of the government which is to exercise authority over them[.]" And when the District of Columbia was established in the 1790s, its citizens had voting rights and self-governance. This was not immediately taken away. Nowhere in the Federalist Papers or James Madison's notes will you find a discussion that it was a goal of the Founding Fathers to take our citizenship rights away.

Actually, what was of concern to the Founding Fathers was to protect the government from riots. Like Shays' Rebellion literally months before the Constitutional Convention. "The indispensable necessity of complete authority at the seat of government, carries its own evidence with it. … Without it, …the public authority might be insulted and its proceedings interrupted with impunity…"[1] Like what happened here at the Capitol on January 6, 2021.

Ironically, January 6th helps make our case for statehood. Rather than "insult" and interrupt Congressional proceedings, the District came to the rescue – sending our Metropolitan Police and DC National Guard to quell the riot. Yet because we are not a state we were unable to send the Guard directly and immediately; we had to ask the President of the United States. And, as you know, sending the Guard to help was then delayed for hours.

[1] The Federalist No. 43 (James Madison)

It has been over 200 years since Congress rescinded voting rights from the last group of Washington residents who had previously voted in Maryland and Virginia. To add to this injury, it is Congress that has plenary authority over all matters in the District.[2] It is taxation without representation.

Numerous efforts have been made to correct this injustice, and some incremental changes have been made. In 1960, the 23rd Amendment was adopted, granting District residents the ability to vote for the President.[3] In 1970, the District of Columbia Delegate Act[4] was enacted to give the District a representative in the House of Representatives. But, as you know, that position is non-voting – the same status as that of members from U.S. territories. In these measures Congress has recognized that the structure put in place by the Founding Fathers must adapt.

In 1973, Congress adopted the Home Rule Act, a major reform for District governance, but that act is silent as to Congressional representation.[5]And this limited home rule, as I will later explain, is inadequate and problematic.

In 1978, the District's non-voting delegate in the House of Representatives, Walter Fauntroy, introduced a constitutional amendment that would have given the Districttwo senators, a representative, and an unrestricted vote for President.[6] Congress approved the amendment,but it was not ratified by the necessary three-quarters of the states within the seven-year time limit.

In 2007, Senators Liberman and Collins reported bipartisan legislation to add two full-voting seats in the House of Representatives:one for the District and one for Utah.[7] This approach relied on Congress's authority to legislate on matters for the District as well as to create and adjust the number of Congressional seats in the House of Representatives.[8] Unfortunately, a Senate cloture vote on the measure fell short by three votes.

The idea of the Washington D.C. Admission Act was first proposed in 1971.[9] This approach is consistent with long standing practice, having already been employed 37 times. Congress has granted statehood to several territories that were

[2] District of Columbia Organic Act, 6th Congress, 2nd Sess., ch. 15, 2 Stat. 103.
[3] U.S. Const. amend. XIII § 1, granting the District the same number of presidential electors as the smallest state.
[4] District of Columbia Delegate Act, Pub. L. No. 91-405, § 201, 84 Stat. 848 (1970).
[5]District of Columbia Home Rule Act, Pub. L. No. 93-198, 87 Stat. 774, D.C. OFFICIAL CODE § 1-201.01 *et seq.* (1973) [hereinafter Home Rule Act].
[6] H.R.J. Res. 554, 95th Cong. (1978).
[7]*See* District of Columbia House Voting Rights Act, S. 1257, 110th Cong. (2007).
[8] S. Rep. No. 110-12, at 3 (2007).
[9]*City and State: D.C. State Bill*, Washington Post, July 7, 1971, at C4.

in existence for less than 10 years. On the other hand, the last three states admitted to the Union – Hawaii, Alaska, and Arizona – were territories for 61, 47, and 49 years, respectively, before being granted statehood. The District has been around for 214 years. Long enough.

In 1992, the Congressional report that accompanied H.R. 4718, the New Columbia Admission Act, laid out three main requirements to evaluate statehood petitions.[10] First, that the residents support the principles of democracy. Second, that a majority of the electorate support statehood. Third, that the proposed new State has sufficient population and resources to support itself as well as provide its share to the Federal government.

Regarding the first two requirements: over 85 percent of District residents who voted in our 2016 general election approved a referendum to grant authority to the Council to petition Congress to enact a statehood admission act and to approve the District's Constitution.[11] Passage of the referendum established that the citizens of the District: (1) agree that the new state shall guarantee an elected representative form of government; (2) agree that the District should be admitted to the union as a state; (3) approve a Constitution of the state of Washington, Douglass Commonwealth; and (4) approve the boundaries for the state.

As to the third requirement:

Yes, the District has sufficient population. It is currently larger than two states – Wyoming and Vermont. It is only slightly smaller than North Dakota and Alaska.

Yes, the District has sufficient resources. Our Fiscal Year 2021 budget[12]totals $16.9 billion and is the District's twenty-fifth consecutive balanced budget and the fifth to be adopted under local budget autonomy.[13] The District's budget prioritizes principles of responsible budgeting, fiscal responsibility, and efficient use of public resources. Indeed, our fiscal position has become the envy of other states, counties, and cities. Both our pension and Other Post-Employment Benefits funds are fully funded, using conservative actuarial assumptions. At the conclusion of fiscal year 2020, our reserves continue to equal to 60 days operating costs – a Government Finance Officers Association best practice.

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[10] *See* H. Rep. No. 102-909 (1992). The three requirements are as follows: (1) That the inhabitants of the proposed new State are imbued with and are sympathetic toward the principles of democracy as exemplified in the American form of government; (2) That a majority of the electorate wish statehood; and (3) That the proposed new State has sufficient population and resources to support State government and to provide its share of the cost of the Federal government.

[11] *See* Advisory Referendum on the State of New Columbia Admission Act Resolution of 2016, effective July 12, 2016 (Res. 21-570; 63 DCR 9627).

[12] *See* the Fiscal Year 2021 Local Budget Act of 2020, effective October 20, 2020 (D.C. Law 23-136; 67 DCR 13201); *See* Fiscal Year 2021 Federal Portion Budget Request Act of 2020 (D.C. Act 23-409; 67 DCR 10652).

[13] *See* the Local Budget Autonomy Act of 2012, effective July 25, 2013 (D.C. Law 19-321; 60 DCR 12135).

Yes, the District is able to provide its share of the cost to fund the Federal government. In this regard I wish to make three points. First, on a per capita basis District residents currently pay more in federal taxes than residents in any of the 50 states. Second, the District is a so-called "donor state," contributing more in taxes to the federal government than it receives in grants, subsidies, and other payments. Third, while decades ago the District relied on a substantialannual payment from the United States (approximately $660 million annually in the mid-1990s, about 16% of the District's budget) in Fiscal Year 2020, the approved federal payments budget amounted to only $136.7 million or 0.9 percent of the District's gross funds budget.

### *Hurdles*

While I staunchly advocate for District statehood, I recognize that there are hurdles. Many of these hurdles are simply a matter of national politics and efforts by parties jockeying for majorities in Congress.Many state legislatures see a disadvantage to admitting a new state that might affect their state's influence in the House or Senate,and many state legislatures do not understandthat the United States citizens of the District of Columbia raise their own taxes and pay for their own governance but are not equal to the United States citizens in any of the 50 states.

It is also important to recognize that educating the nation of the District's half-status is another important hurdle to clear. But most people will agree that the idea of tax-paying citizens without full representation in the United States Congress is a concept against everything we are taught in school about the basic democratic values of our country. Many do not believe it,or are forced to square this injustice using misconceptions about the District. The District of Columbia is unique in many ways, but no unique qualities should support disenfranchisement of its citizens.

### *REBUTTING ARGUMENTS AGAINST STATEHOOD*

Finances.Opponents of statehood have long argued that the District is not capable of governing itself in a fiscally responsible manner. Dissenting views in the committee report on H.R. 4718 raised doubts as to whether the District had the economic viability – meaning both population and resources – to support a state government that was independent of other states and the federal government, and whether the District had the resources to bear its equitable share of the cost of the federal government.[14]Well, the District's financial status is the envy of jurisdictions around the country. Our fundamentals are solid, with 16.7 percent population growth since 2010 – highest compared to the 50 states. Revenues are growing

[14]H. Rep. No. 102-909 on the New Columbia Admission Act (1992).

steadily and at a rate greater than most states. And we don't have unfunded liabilities -- unlike most states.

We have established a system for multi-year capital planning to bring all capital assets to a state of good repair by fiscal year 2028; no other jurisdiction has this.[15] Our independent Chief Financial Officer has developed resiliency strategies that include recession planning and cybersecurity analysis. The District continues to grow in population, is diversifying its economy, and was growing in jobs before the pandemic. As a result, revenues to support the budget were growing on average more than 3 percent annually prior to the pandemic. This fiscal strength has resulted in ratings for our general obligation bonds being upgraded by all three rating agencies, including AAA by Moody's. The District has more than answered the doubts raised almost 30 years ago about its economic viability. The District is flourishing and is capable of meeting the financial cost of becoming the 51st state.

Retrocession.There have been efforts at restoring voting rights for District residents by retroceding all populated areas of the city back to the State of Maryland. The most recent iteration of this idea was introduced in the House in 2013.[16] Advocates of retrocession have argued that it is the most practical and constitutionally sound way to give District residents votes in both the House and the Senate, and that it makes historical sense when compared to the previous retrocession of Arlington to Virginia.[17] This may be theoretically logical. But the citizens of both the District and Maryland do not support it, so it is unpopular. More importantly, Congress can't force this on Maryland. So it is impractical. Full statehood is the most practical way to fully restore the rights of those who now live in the nation's capital.

Small Population.Some have argued that the population of the District should be a disqualification for full participation in the Union. While decidedly small, population is not, and should not be a requirement to become a state. Historically, most states had less population when admitted than the District does now. Currently, the District's population is greater than that of two existing states, Vermont and Wyoming, and only slightly smaller than North Dakota and Alaska. At the growth rate we have seen over the past decade, it is possible that the District will out rank these other states.

Federal land.Some say that the vast amount of land owned or controlled by the federal government within the District is another disqualification for statehood. There is, to be sure, a substantial amount of federal land in the District. However,

[15] The District continues to make these capital investments while still remaining below our locally-mandated 12 percent debt cap. *See* D.C. OFFICIAL CODE § 47-335.02(a). Incidentally, Congress mandated an 18 percent limit.
[16] District of Columbia-Maryland Reunion Act, H.R. 2681, 113th Cong. (2013).
[17] *See Legislative Hearing on H.R. 5388*, *the District of Columbia Fair and Equal Housing Voting Rights Act of 2006* (testimony for the record of Lawrence H. Mirel for the Committee for the Capital City) (Sept. 20, 2006).

there are over 700,000 disenfranchised U.S. citizens on the non-federal land. Moreover, as a percentage of total land, the District has the third lowest total number of acres under federal control and has the 13th lowest number of federal acres when compared against the 50 states. This ranks behind a few notable states including Alaska, Montana, Arizona, and Wyoming.[18] Under the provisions of the Washington, D.C. Admission Act, much of the federal acreage in our borders would be retained as a federal enclave, leaving the state of Washington, Douglass Commonwealth with even less land under federal control.

Federal payment.Some argue that large, current federal grants and payments to the District are a disqualification for statehood. In truth, however, the vast majority of the federal dollars that the District receives consists of Medicaid and other federal program subsidies received by all the states. As explained earlier, we used to receive a substantial federal payment in addition to the federal program allocations, but that was eliminated over two decades ago.

Another way to look at the issue of federal grants is to compare it to how much in taxes a state remits to the federal government. The District of Columbia paid $27.5 billion in taxes in 2019.[19] The amount paid is more than 22 other states.[20] This fact is astonishing when considering the size of the District compared to other states.

Attached to my testimony is a chart that compares the federal funding received and taxes paid by the District to ten states with populations comparable to that of the District. First, it shows that the difference between what the District pays in taxes and what it receives in federal grants is more than $23 billion.[21] Second, it shows that the District's total payment to the federal government minus the funding it receives is significantly higher than that of Vermont, Wyoming, Alaska, and North Dakota – states with populations similar to the District.[22] Finally, the facts show that, in the end, the District is a *significant* contributor to the federal government, more so than many other states in the country.

Governance. In spite of evidence to the contrary, some argue that the District is incapable of governing itself. Look no further than the state of our finances to rebut this. But I want to say more about governance. Even in the face of the hurdles that no other jurisdiction must endure, the District is capable of

[18]CAROL HARDY VINCENT, LAURA A. HANSON, CARLA N. ARGUETA, CONG. RESEARCH SERV., R42346, FEDERAL LAND OWNERSHIP: OVERVIEW AND DATA, at 7-9 (2017).
[19]Internal Revenue Service SOI Tax Stats - Gross Collections, by Type of Tax and State - IRS Data Book Table 5, https://www.irs.gov/statistics/soi-tax-stats-gross-collections-by-type-of-tax-and-state-irs-data-book-table-5 (last visited March 10, 2021).
[20]*Id.*
[21]*See* Exhibit 1.
[22]*Id.*

managingits affairs just like any state. We stand on our record of responsible governing.

An example of the District's sound governing practice is the management of our budget after the Council initiated, and the voters by referendum ratified, the Local Budget Autonomy Act of 2012.[23] Removing uncertainty over the District's bud-get authority has ensured that its budget is not being inefficiently spent on unnecessary borrowing costs or paying a premium for services. The flexibility of bud-get autonomy has allowed the District to address the urgent service and program-matic needs of the city, from trash collection to public safety response, and ensured that these services are delivered efficiently in terms of both time and resources.

Another advantage to budget autonomy: it has ensured that the delivery of services – even to the federal government – is not disrupted due to federal budget battles that have no relation to the District or its budget. As U.S. Representative Tom Davis noted in 2003: while Congress' involvement in the District's budget stems from a desire to ensure the financial well-being of the nation's capital, "the unfortunate reality is that the city's local budget can get tied up in political stalemates over Congressional appropriations that rarely have anything to do with the District's budget."[24]

As for oversight, the Council conducts rigorous oversight over all of the District agencies that report directly to the Mayor of the District of Columbia, as well as numerous independent and regional agencies and bodies, e.g., DC Water, the Metropolitan Washington Council of Governments, and the Washington Metropolitan Airports Authority. The Council, through its tencommittees, holds performance and budget oversight hearings on every District agency. During these hearings the committees scrutinize the past and present performance and budgetary needs of each agency. The Council also holds numerous public oversight hearings throughout the year over agencies and specific subject-matter areas. Further, the Council holds hearings on legislation and resolutions throughout the year since the Council is a full-time legislature.

During Council Period 23 (January 2, 2019 to January 1, 2020) the Council and its various committees held hundreds of meetings, hearings, and roundtables. The Council itself held 41 Legislative Meetings in Council Period 23. The Committee of the Whole held 19 regular meetings and 18 additional meetings to consider legislation in the Committee and process reports from other committees.

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[23] *Supra* note 14.

[24] *Budget Autonomy for the District of Columbia: Restoring Trust in Our Nation's Capital, Hearing Before the H. Comm. On Government Reform,* 108th Cong., Serial No. 108-36, at 2 (statement of U.S. Representative Tom Davis).

This is further evidence that the District government is more than capable of governing itself and that Congressional interference is unnecessary.

***CONGRESSIONAL INTERFERENCE***

For the citizens of the District of Columbia, a compelling argument for statehood is to end Congressional interference in our affairs. Every year we watch as members of Congress, who have no connection with the District,introduce legislation or insert appropriation riders that detrimentally impact the functions ofgovernment. The policies of the District government are many times at the mercy of whichever party is in control of Congress. As a District policymaker, I can tell you that this hurts our ability to manage the affairs of our government.

One case in point is the restriction of the District's ability to tax and regulate marijuana. When District residents overwhelmingly approved Initiative 71[25] in 2014 to provide for the legalization of possession of minimal amounts of marijuana for personal use,we were reflecting a trend among the 50 states. But Congress stepped in to prohibit the District from passing laws to regulate this industry; that rider remains on the books. TheCouncil was challenged on whether the mere act of having a public hearing on the regulation of marijuana was a violation of the Anti-Deficiency Act.[26] One has to think that Congress surely has more important things to worry aboutthan aboutthis*uniquely local issue*. Worse, we are in an untenable situation: residents may possess and use marijuana (just like many other states) but government (the District government) is unable to regulate the sale.Perhaps this rider will be rescinded in the next Appropriations bill.

Another case in point is the appropriation rider that prohibited needle exchange – a government program to reduce the spread of HIV and other diseases. The program exists in many cities. It is proven to reduce infection, the spread of disease, and fatalities. Yet the District was precluded from implementing the program while Congress provided no alternative help. After many years the rider was finally lifted, but the damage to the public health remains to this day. The essential point here is that the District requires full self-governance. The nation's capital should be a model for the country. The current governance situation holds us back.

As you know, the Home Rule Act also places limitations on what laws the Council can approve. As a result, we cannot fix inequities in criminal sentencing without the approval of the United State Attorney General, and we cannot update the limits on small claims or strengthen our Anti-SLAPP law because we cannot legislate judicial process. We can't even regulate the filing fee for evictions – which at $15 is by far the lowest in the country. Further, the Home Rule Act requires

[25]*See* the Legalization of Possession of Minimal Amounts of Marijuana Personal Use Initiative of 2014, effective February 26, 2015 (D.C. Law 20-153; 62 DCR 880).
[26]*See* 31 U.S.C. § 1341.

Congressional review of all permanent and temporary bills passed by the Council. But that review has not resulted in a single Congressional disapproval in almost three decades.

Congressional review of legislation is not only unnecessary it has a significant impact on the operations of the Council. In 2009, the Council's General Counsel estimated that between 50 and 60 percent of the legislative measures the Council adopts could be eliminated if there were no Congressional review requirement.[27] He added that the Congressional review requirement from time to time has resulted in gaps in critical pieces of criminal legislation that cannot be cured with a retroactive applicability date because of the *ex postfacto* clause of the Constitution.[28] Under section 602 of the Home Rule Act, the Council has passed thousands of laws and transmitted thousands of pages to Congress, which requires significant staff time and effort, and only three acts have been disapproved and none since March 21, 1991.Our General Counsel correctly noted at the time "Congress may not legislate with the District in mind very often, but we always legislate with Congress in mind."[29]Congressional review of District legislationhas proven to be inefficient, ineffective, and unnecessary.

Congressional review is not only burdensome, but it has a deleterious effect on the District government's finances. Our ability to go to the bond markets to finance capital improvements costs more or less dependingupon our bond ratings. And while the District has a triple-A rating from Moody's, the other agencies have held back. Why? A primary reason cited by the rating agencies is Congressional review and interference. This costs us money because it means higher interest rates.

These are a few examples of how the current Home Rule structure is sometimes harmful to the District and is a poor governance structure that would be rectified by statehood.

***RESPECTING THE WILL OF DISTRICT RESIDENTS***

In April of 2016, the New Columbia Statehood Commission announced that the District of Columbia would pursue statehood through an approach modelled on the Tennessee Plan. This would entail the creation of a contemporary constitution and boundaries for the state of Washington, Douglass Commonwealth. The Commission convened a series of town hall meetings, culminating with a three-day

[27]*Pathways to Statehood, From Voting Rights to Full Self-Determination: Political and Constitutional Considerations: Public Hearing before the Council of the District of Columbia Special Committee on Statehood and Self-Determination*, June 1, 2009 (written testimony of Brian Flowers, General Counsel of the Council of District of Columbia, at 5).
[28]*Id.*at 6.
[29]*Id.*

District-wide constitutional convention. The Commission then adopted a draft Constitution and state boundaries.

The draft Constitution and boundaries were then sent to District residents for ratification. Over 85 percent of District residents who voted in our 2016 general election approved the referendum to grant authority to the Council to petition Congress to enact a statehood admission act and to approve the District's Constitution.[30]

In light ofthis action, Congress needs to respect the will of District citizens.They want and deserve fair and equal representation. Continuing to ignore their request for statehood is to ignoredemocratic values.Until it is grantedour citizens will continue to feel left out of the democratic process – because they are -- which is inconsistent with the principles upon which our country was founded.

## CONCLUSION

One of the most important arguments that is never addressed by the opponents of District statehood is that we are the only national capital in the free world where the citizens do not enjoy a vote in the national legislature. Indeed, Mexico, which had modeled its federal system after ours– including a federal district as its national capital – recently granted statehood to Mexico City. It is now our time. The United States is the greatest democracy in world, and the fact that the citizens of its capital city do not have voting representation is indefensible and a stain on our democracy. We implore Congress to treat us as equals and no longer as second-class citizens.

Statehood is the only practical way that our citizens can participate in a fully democratic government. It is the only way to ensure that our local government will never be subject to a shutdown because of quibbling over purely federal matters, and our local services not suspended because of partisan disagreements. It is the only way to ensure that our local laws will no longer be victims to national debates over divisive social issues.It is the only way to ensurea judicial system that is sensitive to our community values. Statehood is the only way to give residents a full, guaranteed, and irrevocable voice in the Congress of the United States. The same voice enjoyed by our fellow citizens across the country.

Statehood is the most practical solution to right the historical wrong of denying voting rights to citizens of the District and to guarantee the right to local self-governance. The District of Columbia has a proven track record of prudent fiscal management and good governance. The State of Washington, D.C. would

[30] *See* Advisory Referendum on the State of New Columbia Admission Act Resolution of 2016, effective July 12, 2016 (Res. 21-570; 63 DCR 9627).

enter the Union as a 51st state with an economy envied by other jurisdictions. Politics must be set aside,and allof the excuses used to justify denial of our inalienable rights must be shelved. Our limited home-rule power delegated by Congress is appreciated, but too tenuous and too often a bargaining chip in political battles. Limited home-rule cannot make up for all of the rights withheld by Congress that we could have only with statehood.

The Council appreciates the Committee's consideration of the Washington, D.C. Admission Act, and urges that it be brought before the Committee for a favorable markup and before the House and Senate for a vote. The Council and I look forward to working with the Committee to move this bill forward to ensure that the next time I am called to testify it will be as Speaker of the Legislative Assemblyof the state of Washington, D.C.