

April 21, 2021

Re: Vote YES on H.R. 51, the Washington, D.C. Admission Act

Dear Representative,

The American Civil Liberties Union (ACLU) and the ACLU of the District of Columbia urges you to vote YES on H.R. 51, the Washington, D.C. Admission Act. H.R. 51 would grant statehood to the residential areas of the current District of Columbia as the State of Washington, Douglass Commonwealth and define the reduced federal territory that would remain the District of Columbia and serve as the seat of the federal government.

The ACLU submitted [written testimony](#)¹ to the House Committee on Oversight and Reform for the March 22, 2021 hearing on H.R. 51, including our [legal analysis](#)² of the bill making the following findings and concluding that the Washington, D.C. Admission Act is a valid, defensible exercise of congressional authority and is constitutionally permissible.

- *First*, H.R. 51 is constitutional under the District and Federal Enclaves Clause, which provides for a federal district that “may” serve as the “Seat of Government.” H.R. 51 reduces the size of the District but preserves a small area consisting of federal buildings as a redrawn federal district and national seat of government. Thus, it does not violate the clause. Furthermore, the District Clause affords Congress broad plenary powers over the District, including authority to change its boundaries and size so long as it is smaller than ten square miles.
- *Second*, there is no Admission Clause problem. That clause provides that “no new State shall be formed or erected within the Jurisdiction of any other State,” and vests Congress with the authority to admit new states to the Union. And Congress may grant D.C. statehood without first obtaining consent from the state of Maryland, because Maryland does not retain a reversionary interest in the land it ceded to the federal government for creation of the District.
- *Third*, H.R. 51 is not at odds with Twenty-Third Amendment, which provides the District with three electoral votes. While the Twenty-Third Amendment raises important policy considerations by giving the residents of a smaller federal district outsized influence in presidential elections, it does not bear on the constitutionality of H.R. 51. In any event, the bill avoids these problems in two ways: (1) by repealing the statute that provides for the District’s participation in federal elections—thus leaving it without appointed electors—and (2) kickstarting expedited procedures to repeal the Twenty-Third Amendment.
- *Fourth*, arguments that the new State of Washington, Douglass Commonwealth fails to meet the minimum requirements of statehood fail because such requirements are policy concerns, not constitutional limitations.

In 1788, James Madison wrote that the inhabitants of the yet-to-be-chosen federal district

¹ <https://www.aclu.org/hearing-statement/aclu-written-statement-hearing-hr-51-making-dc-51st-state>.

² <https://www.aclu.org/archive-docs/aclu-legal-analysis-washington-dc-admission-act>.

should have a “voice in the election of the government which is to exercise authority over them.” More than two-hundred years later, residents of the District of Columbia still lack full representation in Congress and this continuing denial 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,³ Congress replaced D.C.’s territorial government, including its popularly elected House of Delegates, with three presidentially appointed commissioners in 1871.⁴ The goal of this move was unmistakable: disenfranchising an increasingly politically active Black community,⁵ with D.C. later cited as a model for a national segregationist policy.⁶

Over 700,000 people living in the District are locked out of American democracy and denied the rights of representative government. Despite D.C.’s fully functioning local 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; they deserve equal representation in their own government.

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 democracy. The ACLU urges members to vote YES on H.R. 51. If you have any questions, please contact Kristen Lee, Policy Analyst, at klee@aclu.org.

Sincerely,



Monica Hopkins
Executive Director
ACLU of the District of Columbia

³ Kate Masur, *Capital Injustice*, N.Y. Times (Mar. 28, 2011), <https://www.nytimes.com/2011/03/29/opinion/29masur.html>.

⁴ *History of Local Government in Washington, D.C.*, DC Vote, <https://www.dcvote.org/inside-dc/history-local-government-washington-dc> (last visited Sept. 12, 2019).

⁵ See Masur, *supra* note 3.

⁶ Thomas Adams Upchurch, *Senator John Tyler Morgan and the Genesis of Jim Crow Ideology, 1889- 1891*, *Alabama Review* 57, 110-31 (April 2004).