



**Washington, DC, Residents Deserve the Right to Assess and Meet
Their Own Community's Needs:**

Stop Congressional Interference in District Affairs and Lift the Ban on Abortion Funding

Since 1980, Congress has prohibited the use of federal funds appropriated for the District of Columbia to pay for abortion services except in cases where the woman's life is endangered or she is a victim of rape or incest.

Beginning in 1988, Congress went one step further by also preventing the District of Columbia from using its own locally-raised, non-federal revenues to provide abortion care to its low-income residents. This violation of the District's autonomy was relieved for only two years, in 1993 and 1994, when Congress voted to lift the ban. A year later, an anti-choice majority in Congress restored the ban and it has remained in effect since that time.

In May 2009, President Obama's budget recommendation to Congress sought removal of the restriction. Congress should act accordingly to end the ban and allow District residents and their elected representatives to decide whether and how to meet the needs of poor women in their communities.

- *Removal of the DC abortion ban would not alter the current prohibition against federal funding of abortion services.*
 - The Hyde Amendment currently forbids federal funding for abortion services for low income women on Medicaid. That provision would remain in force and unchanged. All states and the District of Columbia would continue to be bound by the Hyde Amendment.
- *The DC abortion ban violates the spirit of the Home Rule Act, intrudes upon the District's autonomy, and disenfranchises District residents.*
 - Article I, Section 8 of our Constitution gave Congress the authority to establish a federal district (Washington, D. C) and to exercise complete legislative control therein. However, in 1973, Senators and Representatives holding widely divergent political views, also recognized that the citizens of the District of Columbia had been denied the most basic privilege enjoyed by all other Americans – the right to elect those men and women who will control their local governments. They enacted the Home Rule Act to “grant to the inhabitants of the District of Columbia powers of local self government...and relieve Congress of the burden of legislating upon essentially local District matters.” With the

enactment of home rule, Washington's citizens gained the right to elect their own mayor and council, which was empowered to legislate over areas of local concern. Thus Congress clearly recognized the importance of allowing the District's leadership and residents to exercise control over their municipal affairs.

- While the scope of the local legislative prerogative has never been precisely defined, the Supreme Court has held that our system of limited federalism reserves certain subject areas, including fire prevention, police protection, sanitation, public health, and parks and recreation for state and local decision-making. The provision of services to pregnant women – including abortion care – is clearly a matter of local public health policy intended to be left to the District of Columbia under home rule. Congress should respect the democratic process in the District and respect the choices its residents and leaders make.
- As one member of Congress noted, “the government of the District of Columbia representing the wishes of its citizenry must...be able to choose how to spend its revenues collected through property and income taxes and other sources.” 132 Cong. Rec. H4872 (daily ed. July 24, 1986; statement by Rep. Theodore Weiss (NY)).
- The District abortion ban is antithetical to the spirit of the Home Rule Act. Measures such as the abortion ban serve only to disenfranchise and marginalize the District's leaders and residents. Through this provision, non-resident Members of Congress impose their own ideology, morality or religious belief upon the District's residents and utterly disregard the needs or wishes of the broader community or those directly impacted. Most egregiously, those who seek to negate the will of the District's residents or leaders are not accountable to the people of the District. That which they could not do in their own home districts, they do with impunity against the residents of the District.
- The Home Rule Act was viewed by some as a key civil rights victory for the predominantly African American residents of the District. Measures such as the abortion ban erode and undermine such progress and serve only to accentuate the voicelessness of those residing in the District.
- *Restrictions on the District's expenditure of its own tax money are especially egregious.*
 - Our forefathers fought the Revolutionary War to end the burden of taxation without representation. Yet the District's citizens have yet to fully reap the benefits of that victory. Indeed, the Home Rule Act represents their only claim to representative democracy. But even this limited right is diminished when Congress attempts to dictate how local funds may be spent.
 - This grievance is even more pronounced because a majority of Washington, D.C.'s budget comes from local tax dollars paid by residents. It appears that “the greatest portion of the District's appropriation consists of Congress appropriating

the District's own local tax dollars as if they were federal funds." See A New Paradigm for District-Federal Relations: Finding a Fair Balance Between Local and Federal Priorities in Governing the District of Columbia, 2001-2002 Policy Agenda, at 13-3; see also, D.C. Fiscal Policy Institute, *Meeting DC's Challenges, Maintaining Fiscal Discipline: Improving the DC-Federal Relationship* (February 2007). The federal contribution consists mainly of entitlements that all states receive.

- *Local, non-federal revenues can be used to pay for abortion care in the states, but Congress tramples on the District's ability to assert that right.*
 - In Harris v McRae, 448 U.S. 297 (1980), the Supreme Court held that the Hyde Amendment's restriction on federal Medicaid funding of abortions was constitutional despite its devastating impact on poor women. But at the same time the Court also ruled that state and local governments were still free to pay for abortion for poor women with their own funds. The Court stated that "a participating state is free, if it so chooses, to include in its Medicaid plan those medically necessary abortions for which federal reimbursement is unavailable."
 - In recognizing the limited federal role in establishing local health policy, the Supreme Court placed the primary fiscal responsibility for funding abortions with the state legislatures and, in the special case of the District of Columbia, with the District government.
 - In fact, numerous states currently use their own, non-federal funds, to provide medically necessary abortions. Congress does not order New York, California or Arizona not to spend local tax dollars on abortion and it should not do so with the District.
- *The fact that Congress appropriates an annual federal payment for the District does not permit it to specifically restrict the use of the District's funds.*
 - The federal payment (a small percentage of the District's annual budget) is neither a gratuity, a subsidy, nor a grant. Rather, as Congress has acknowledged, the payment is a reimbursement for revenues lost and costs incurred by the District due to the federal presence.
 - It is clear that the payment – which is less than the federal aid received by many states – may not be used to justify restrictions on the use of District money. "Nowhere is it contemplated that the Federal payment should be used to set policies for the District government." 125 Cong. Rec. H6072 (daily ed. July 11, 1979)

- *Congress should not burden poor women in the District from accessing their constitutionally protected right to abortion.*
 - Poor women have the same legal right to an abortion as middle and upper income women. However, their ability to exercise that right has been significantly diminished by restrictions such as the Hyde Amendment and the DC ban. These policies also especially harm women of color, denying them access to a constitutionally protected right.
 - The facts below demonstrate that the needs of women in the District are significant and they should have greater access to a range of reproductive health services such as family planning, prenatal care, maternal and child care, and abortion care. Congress should not interfere in the District's delivery of health care services to women:
 - Of the 592,000 residents of the District, more than 52 percent are women and more than 63 percent of all residents are African American or Hispanic/Latino.
 - 67.5% of African American families living below the poverty line in the District are headed by women; 40.7% of Latino families living in poverty are headed by Latina women.
 - According to the Centers for Disease Control and Prevention, the number of infant deaths per 1,000 births in the US is 6.8, but in the District it is 12.2.
 - The poverty rate among African Americans in the District has increased from 22% to 32% between 1986 and 2006 and more than 68% of Medicaid enrollees are African American.
 - Justice Thurgood Marshall, writing in dissent in Harris v McRae, captured the fundamental injustice that laws such as the DC abortion ban visit upon poor women. Policies such as these that deny poor women access to abortion are "a form of discrimination repugnant to the equal protection of the laws guaranteed by the Constitution . . . and represents a cruel blow to the most powerless members of our society."

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July 2009