



## BOARD OF DIRECTORS

Wednesday, March 10, 2021

12:00 P.M. - 2:00 P.M.

WebEx Virtual Meeting (provided to members only by email)

Video livestream available to public on COG website

### AGENDA

- 12:00 P.M.**
- 1. CALL TO ORDER**  
*Christian Dorsey, COG Board Vice Chair*
  - 2. CHAIRMAN'S REPORT**  
*Christian Dorsey, COG Board Vice Chair*
- 12:05 P.M.**
- 3. EXECUTIVE DIRECTOR'S REPORT**  
*Chuck Bean, COG Executive Director*
  - 4. AMENDMENTS TO THE AGENDA**  
*Christian Dorsey, COG Board Vice Chair*
- 12:15 P.M.**
- 5. APPROVAL OF THE MINUTES FROM FEBRUARY 10, 2021**  
*Christian Dorsey, COG Board Vice Chair*  
**Recommended Action: Approve minutes.**
  - 6. ADOPTION OF CONSENT AGENDA ITEMS**  
*Christian Dorsey, COG Board Vice Chair*
    - A. Resolution R18-2021 – Resolution authorizing COG to receive a grant, procure and enter into a contract to conduct phase 36 of the Continuous Airport System Planning (CASP) Program
    - B. Resolution R19-2021 - Resolution to clarify the COG Pension Plan Administration Committee (PPAC) fiduciary duties and responsibilities**Recommended Action: Adopt Resolutions R18-2021 – R19-2021.**
- 12:20 P.M.**
- 7. STATEHOOD FOR THE DISTRICT OF COLUMBIA**  
*Derrick L. Davis, DC Statehood Task Force Co-Chair*  
*Christian Dorsey, DC Statehood Task Force Co-Chair*  
*Monica Hopkins, ACLU-DC Executive Director*  
  
The board will be briefed on the work of the COG Board DC Statehood Task Force and the history of the path to statehood for the District of Columbia.  
**Recommended Action: Receive briefing.**

- 1:00 P.M.**      **8. COVID-19: VACCINE DISTRIBUTION**  
*Patrick Ashley, District of Columbia Senior Deputy of Health Emergency Preparedness and Response Administration*
- The board will be briefed on the status of regional distribution of the COVID-19 vaccines.
- Recommended Action: Receive briefing.**
- 1: 30 P.M.**      **9. ECONOMIC IMPACTS OF THE COVID-19 PANDEMIC IN THE NATIONAL CAPITAL REGION**  
*Paul DesJardin, COG Director of Community Planning and Services*
- COG has been collecting data to monitor the impacts of the COVID-19 pandemic on the economy, environment, transportation, and health to inform long-term planning and programming efforts to help the region recover from the pandemic. Based on this ongoing work activity, the board will be briefed on the regional economic impacts resulting from the COVID-19 pandemic and key considerations for the region as it plans for recovery.
- Recommended Action: Receive briefing.**
- 1:55 P.M.**      **10. OTHER BUSINESS**
- 2:00 P.M.**      **11. ADJOURN**  
The next COG Board of Directors meeting is scheduled for April 14, 2021.

**AGENDA ITEM #2**

**CHAIRMAN'S REPORT**

# **AGENDA ITEM #3**

## **EXECUTIVE DIRECTOR'S REPORT**



## MEMORANDUM

**TO:** COG Board of Directors  
**FROM:** Chuck Bean, COG Executive Director  
**SUBJECT:** Executive Director's Report – March 2021  
**DATE:** March 3, 2021

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### POLICY BOARD & COMMITTEE UPDATES

**National Capital Region Transportation Planning Board (TPB)** – In February, TPB members were briefed on the initial findings from the Voices of the Region survey to gauge opinions on the future of transportation. More than 2,400 area residents participated in the survey, which will inform Visualize 2045, the region's long-range plan. The board also received briefings on the budget and workplan for the TPB and Commuter Connections.



**Metropolitan Washington Air Quality Committee (MWAQC)** – MWAQC members discussed in February several rules announced by the U.S. Environmental Protection Agency related to air quality planning and how these rules may affect the committee's regional work. They also discussed plans to meet the 2015 ozone National Ambient Air Quality Standard (NAAQS) to protect public health.

**COVID-19 VACCINE COORDINATION**  
To support its member governments, COG hosted four webinars in February featuring experts like Johns Hopkins' Dr. Amesh Adalja to share insights and emerging best practices on vaccine distribution, messaging, and more.

[View select event presentations/video](#)

**Chief Equity Officers Committee (CEOC)** – The newly created CEOC committee met to discuss priorities for 2021 including regional trainings, identifying best practices, and establishing a regional definition of racial equity. They also elected committee leadership: Chair Karla Bruce, Fairfax County, and Vice Chairs Brian McClure, District of Columbia and Tiffany Ward, Montgomery County.

## OUTREACH & PROGRAM HIGHLIGHTS

**COG Presentations** – COG Executive Director Chuck Bean spoke at the Greater Washington Partnership’s “Building the Transit-Oriented Capital Region: Prince George’s County” webinar on February 12. The discussion explored the future of Transit-Oriented Development after the pandemic. COG Department of Community Planning and Services Director Paul DesJardin presented COG’s Housing Targets to graduate students in Urban Planning at the University of Maryland on February 16. DesJardin also participated in the 22nd annual Business Advisory Panel for the Montgomery County Department of Finance on February 16 and discussed COG’s ongoing work to monitor COVID-19 economic impacts.

**Community Engagement Campaign (CEC)** – As part of a COVID-19 relief effort, area water utilities are offering water utility relief programs and have partnered with COG to share messaging about the programs to residents. The CEC has also been actively sharing winter salts messaging, encouraging residents to be #WinterSaltSmart.

**Voices of the Region Focus Groups:** COG Department of Transportation staff completed 11 virtual focus groups to learn more about what people in the region think and feel about the transportation system. The focus groups will provide more detail on the issues explored in the Voices of the Region survey.

## MEDIA HIGHLIGHTS

**More biking, fewer trains: Survey examines the pandemic’s effects on mobility in the D.C. region** – COG Deputy Executive Director for Metropolitan Planning Kanti Srikanth and Transportation Planner Karen Armendariz discuss the recent Visualize 2045 “Voices of the Region” survey and what transportation options residents expect post-pandemic.

[The Washington Post](#)

**Collaboration is Key for Interoperability in National Capital Region** – COG Homeland Security and Public Safety Managing Director Scott Boggs discussed regional work to enhance public safety communications.

[FirstNet](#)

**The Potomac River: Its Future Depends On Us** – COG Principal Environmental Planner Karl Berger discusses chemical threats to the Potomac River.

[Alexandria Living Magazine](#)

**Metro seeks bond sales to raise \$360 million for capital projects** – COG Board letter calling for increased federal funding referenced.

[The Washington Post](#)

**AGENDA ITEM #4**

**AMENDMENTS TO THE  
AGENDA**

## **AGENDA ITEM #5**

### **APPROVAL OF THE MINUTES**

**METROPOLITAN WASHINGTON COUNCIL OF GOVERNMENTS  
777 North Capitol Street, NE  
Washington, D.C. 20002**

**MINUTES  
COG Board of Directors Meeting  
February 10, 2021**

**BOARD MEMBERS AND ALTERNATES:** See attached chart for attendance.

**SPEAKERS:**

Rodney Lusk, COG Secretary-Treasurer

Julie Mussog, COG Chief Financial Officer

Chris Rodriguez, District of Columbia Homeland Security and Emergency Management Agency  
Director

Victor Hoskins, Fairfax County Economic Development Authority President & CEO

David Iannucci, Prince George's County Economic Development Corporation President & CEO

Dr. Travis Gayles, Montgomery County Health Officer

**1. CALL TO ORDER AND PLEDGE OF ALLEGIANCE**

COG Board Chair Robert C. White, Jr. called the meeting to order at 12:00 P.M. and led the Pledge of Allegiance.

**2. CHAIRMAN'S REPORT**

A. New Member Introductions

B. Derrick L. Davis gave an update on the District of Columbia Statehood Taskforce

**3. EXECUTIVE DIRECTOR'S REPORT**

COG Executive Director Chuck Bean briefed the board on COG's selection to receive a federal Enhanced Mobility Program Grant which provides transportation support to seniors and individuals with disabilities. Bean then asked COG Homeland Security and Public Safety Director Scott Boggs to brief the board on the wireless service completion in the Metrorail system and then asked COG Deputy Executive Director for Metropolitan Planning Kanti Srikanth to review COG's current climate action initiatives.

**4. AMENDMENTS TO AGENDA**

A. Add Dedicated federal funding for Metro to the agenda

**ACTION: Approved Amendment.**

**5. APPROVAL OF MINUTES**

The minutes from the January 13, 2021 board meeting were approved (Darryl Moore abstained).

**6. ADOPTION OF CONSENT AGENDA ITEMS**

A. Resolution R13-2021 – Resolution authorizing COG to receive a grant to support eligible expenses for Enhanced Mobility grantees whose operations were affected by COVID-19

B. Resolution R14-2021 – Resolution endorsing the draft Round 9.2 Cooperative Forecasts for use in the Air Quality Conformity Analysis of the Constrained Element of the 2022 update of Visualize 2045, and the FY2023-2026 Transportation Improvement Program (TIP)

C. Resolution R15-2021 – Resolution authorizing COG to receive a grant, procure, and enter into a contract for On-call Travel Monitoring Program support

**ACTION: Approved Resolutions R13-2021 – R15-2021.**

## **7. FY2021 SECOND QUARTER FINANCIAL REPORT**

COG Secretary Treasurer Rodney Lusk and COG Chief Financial Officer Julie Mussog briefed the board on the Fiscal Year 2021 Second Quarter Financial Report.

**ACTION: Received briefing.**

## **8. PUBLIC SAFETY MUTUAL AID REGIONAL COLLABORATION**

District of Columbia Homeland Security and Emergency Management Agency Director Chris Rodriguez briefed the board on the regional collaboration throughout January 2021 to provide mutual aid across public safety agencies including planning, response, and resource sharing to aid in the regional response to the capitol riots and the inauguration.

**ACTION: Received briefing.**

## **AMENDED ITEM - DEDICATED FEDERAL FUNDING FOR METRO**

COG Board Chair Robert C. White, Jr briefed the board on the importance of securing dedicated federal funding for Metro and proposed a resolution and corresponding letter to be sent to the leadership in the House and Senate, urging them to approve federal funding for Metro, both capital and operating funds, in the amount of at least \$2 billion over ten years.

**ACTION: Received briefing and approved Resolution R17-2021.**

## **9. ECONOMIC DEVELOPMENT: OPPORTUNITIES FOR COLLABORATION**

Fairfax County Economic Development Authority President & CEO Victor Hoskins and Prince George's County Economic Development Corporation President & CEO David Iannucci briefed the board on the Northern Virginia Economic Development Alliance and the Maryland National Capital Region Economic Development Alliance and identified opportunities for regional collaboration.

**ACTION: Received briefing.**

## **10. 2030 GREENHOUSE GAS EMISSIONS REDUCTION TARGET AND ACTION PLAN**

Montgomery County Health Officer Dr. Travis Gayles briefed the board on the status of regional distribution of the COVID-19 vaccines.

**ACTION: Received briefing.**

## **11. OTHER BUSINESS**

There was no other business.

## **12. ADJOURN**

Upon motion duly made and seconded, the meeting was adjourned at 2:00 P.M.

**February 10, 2021 Attendance**

<u>Jurisdiction</u>	<u>Member</u>	<u>Y/N</u>	<u>Alternate</u>	<u>Y/N</u>
<b><i>District of Columbia</i></b>				
<b>Executive</b>	Hon. Muriel Bowser		Ms. Beverly Perry Mr. Wayne Turnage Ms. Lucinda Babers	
	Mr. Kevin Donahue		Eugene Kinlow	
<b>Council</b>	Hon. Phil Mendelson			
	<b><i>Hon. Robert White</i></b>	Y		
<b><i>Maryland</i></b>				
Bowie	Hon. Tim Adams	Y		
Charles County	Hon. Reuben Collins	Y	Thomasina Coates Gilbert Bowling	P
City of Frederick	Hon. Michael O'Connor	Y		
Frederick County	Hon. Jan Gardner		Ms. Joy Schaefer	Y
College Park	Hon. Denise Mitchell	Y	Hon. Patrick Wojahn	
Gaithersburg	Hon. Robert Wu		Hon. Neil Harris	
Greenbelt	Hon. Colin Byrd		Hon. Emmett Jordan	Y
Laurel	Hon. Craig Moe		Hon. Michael Leszcz Mr. Bill Goddard	Y
Montgomery County				
<b>Executive</b>	Hon. Marc Elrich	Y	Mr. Richard Madaleno	
<b>Council</b>	Hon. Tom Hucker			
	Hon. Nancy Navarro	Y		
Prince George's County				
<b>Executive</b>	Hon. Angela Alsobrooks		Ms. Tara Jackson	Y
<b>Council</b>	Hon. Derrick Leon Davis	Y		
	Hon. Sydney Harrison	Y		
Rockville	Hon. Bridget Donnell Newton	Y		
Takoma Park	<b><i>Hon. Kate Stewart</i></b>	Y	Hon. Cindy Dyballa Hon. Peter Kovar	
Maryland General Assembly	Hon. Brian Feldman			
<b><i>Virginia</i></b>				
Alexandria	Hon. Justin Wilson	Y	Hon. Redella Pepper	
Arlington County	<b><i>Hon. Christian Dorsey</i></b>	Y		
City of Fairfax	Hon. David Meyer	Y	Hon. Jon Stehle	
Fairfax County	Hon. Jeff McKay		Hon. James Walkinshaw	
	Hon. Penelope Gross	Y	Hon. Daniel Storck	
	Hon. Rodney Lusk	Y	Hon. Walter Alcorn	
Falls Church	Hon. David Snyder	Y	Hon. David Tarter	
Loudoun County	Hon. Juli Briskman	Y		
Loudoun County	Hon. Phyllis Randall	Y		
Manassas	Hon. Mark Wolfe	Y		
Manassas Park	Hon. Darryl Moore	Y		
Prince William County	Hon. Ann Wheeler	Y		
	Hon. Andrea Bailey	Y		
Virginia General Assembly	Hon. George Barker			

Y = Present, voting

(P) = Present as Alternate in addition to Primary

# **AGENDA ITEM #6**

## **ADOPTION OF CONSENT AGENDA ITEMS**

**ADOPTION OF CONSENT AGENDA ITEMS  
March 2021**

**A. RESOLUTION AUTHORIZING COG TO RECEIVE A GRANT, PROCURE AND ENTER INTO A CONTRACT TO CONDUCT PHASE 36 OF THE CONTINUOUS AIRPORT SYSTEM PLANNING (CASP) PROGRAM**

The board will be asked to adopt Resolution R18-2021 authorizing the Executive Director, or his designee, to receive and expend grant funds from the Federal Aviation Administration (FAA) in the amount of \$277,800. The resolution also authorizes the Executive Director, or his designee, to proceed with procurement for a contractor, or contractors, and enter to into a contract to conduct Phase 36 of the Continuous Airport System Planning (CASP) Program. The grant will include the following tasks in support of the CASP Program: (1) Ground Access Forecast and Ground Access Element Update, and (2) Air Cargo Element Update. COG will be required to provide a match of \$27,800 which is available in the budget of the Department of Transportation Planning.

**RECOMMENDED ACTION: Adopt Resolution R18-2021.**

**METROPOLITAN WASHINGTON COUNCIL OF GOVERNMENTS**  
777 North Capitol Street, N.E.  
Washington, D.C. 20002-4239

**RESOLUTION TO CLARIFY THE METROPOLITAN WASHINGTON COUNCIL OF  
GOVERNMENTS PENSION PLAN ADMINISTRATION COMMITTEE (PPAC) FIDUCIARY DUTIES AND  
RESPONSIBILITIES**

**WHEREAS**, the Metropolitan Washington Council of Governments (COG) has established and maintains a Pension Plan for its employees; and

**WHEREAS**, Section 5 of the Summary Plan Description establishes the Pension Plan Administrative Committee (PPAC) and provides that the PPAC has “exclusive responsibility and full discretionary authority to manage and control the operation and administration of the Plan”; and

**WHEREAS**, Section III of the Pension Plan Investment Policy Statement authorizes the PPAC “to administer the investment policies of the Plan and provide oversight for the management of the Plan’s assets. The Committee shall establish and approve any and all modifications to the investment policies. This responsibility includes, but is not limited to, the asset allocation policy for the Plan”; and

**WHEREAS**, certain historical practices have sought COG Board of Directors authorization of plan changes deemed necessary for proper administration of the plan including the requirement for and limitation of investment in specific investment instruments; and

**WHEREAS**, effective, timely management of Pension Plan assets necessitates the PPAC having sufficient discretion to determine investment vehicles, amounts, and timing provided all decisions are in keeping with prudent financial advice and consistent with Board of Director established objectives for administration of the Plan; and

**WHEREAS**, the Pension Plan Administrative Committee (PPAC) Chair wishes to ensure both clarity and transparency of the fiduciary obligations of PPAC members in their charge as Administrators of the Pension Plan.

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE METROPOLITAN  
WASHINGTON COUNCIL OF GOVERNMENTS THAT:**

1. The Metropolitan Washington Council of Governments Pension Plan investments are governed by the Investment Policy Statement (IPS) as approved by the COG Board, and as may be amended from time to time;
2. The PPAC is directed to implement this policy and to execute those actions necessary for the efficient, effective administration of the Pension Plan, such actions to include determining appropriate investment vehicles, amounts of investment, and timing of investments;
3. The PPAC shall review investment allocations at least annually and shall take necessary actions to rebalance, realign, or otherwise adjust the investment portfolio for consistency with the Investment Policy Statement;
4. The COG Chief Financial Officer is authorized to direct the plan’s trustee to transfers funds and make investment portfolio adjustments consistent with the direction of the PPAC.

# **AGENDA ITEM #7**

## **STATEHOOD FOR THE DISTRICT OF COLUMBIA**



## ACLU STATEMENT FOR DC STATEHOOD HEARING

The ACLU submitted this written testimony in support of the Washington, D.C. Admission Act ("H.R. 51") to the House Oversight and Reform Committee for its Sept. 19 hearing on D.C. Statehood. H.R. 51 would grant statehood to the residential areas of the current District of Columbia as the State of Washington, Douglass Commonwealth.

The testimony covers two points. First, 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. Second, in granting statehood through an act of Congress, H.R. 51 is a valid and defensible exercise of congressional power, complying with the District and Federal Enclaves Clause, the Admission Clause, and the Twenty-Third Amendment.”

**DOWNLOAD LETTER**

September 19, 2019

The Honorable Elijah Cummings  
Chairman  
U.S. House Committee on Oversight and Reform  
2157 Rayburn House Office Building  
Washington, D.C. 20515

The Honorable Jim Jordan  
Ranking Member  
U.S. House Committee on Oversight and Reform  
2105 Rayburn House Office Building  
Washington, D.C. 20515

Re: **D.C. Statehood Hearing**

Dear Chairman Cummings and Ranking Member Jim Jordan:

On behalf of the American Civil Liberties Union (ACLU) and our more than three million members, supporters, and activists, we submit this statement for the record to the House Oversight and Reform Committee for its September 19, 2019, hearing, “H.R. 51: Making D.C. the 51st State,” in support of the Washington, D.C. Admission Act (“H.R. 51”). We thank Congresswoman Eleanor Holmes Norton for her decades of advocacy on behalf of the residents of the District of Columbia to achieve full representation in Congress and to Chairman Elijah Cummings for holding the first committee hearing in the House of Representatives on D.C. statehood since 1993.

In 1788, James Madison wrote that the inhabitants of the yet-to-be-chosen federal district should have a “voice in the election of the government which is to exercise authority over them.” Two-hundred years later residents of the District of Columbia still lack representation in Congress. Over 700,000 people living in our Nation’s capital are locked out of American democracy and denied the full rights of representative government.

The continuing denial of representation for District residents is an overt act of voter suppression with roots in the Reconstruction era. In 1867, President Andrew Johnson vetoed a bill granting all adult male citizens of the District, including Black men, the right to vote.<sup>1</sup> Congress overrode that veto, which—along with an increase in D.C.’s



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National Political  
Director

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<sup>1</sup> Andrew Glass, *Congress expands suffrage in D.C. on Jan. 8, 1867*, Politico (Jan. 1. 2008), <https://www.politico.com/story/2008/01/congress-expands-suffrage-in-dc-on-jan-8-1867-007771>.

Black population from 19% in 1860 to 33% in 1870<sup>2</sup>—granted “significant influence in electoral politics” to Black Washingtonians.<sup>3</sup> District residents elected the first Black municipal office holder by the late 1860s, and Black men like Lewis H. Douglass were given a platform from which to spearhead the fight against segregation. But just as activists like Douglass began to exercise their power, Congress replaced D.C.’s territorial government, including its popularly elected House of Delegates, with three presidentially appointed commissioners.<sup>4</sup>

The goal of this move was unmistakable: disenfranchising an increasingly politically active Black community.<sup>5</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>6</sup>

[T]he negroes came into this District from Virginia and Maryland and from other places . . . and [] took possession of a certain part of the political power . . . and there was but one way to get out . . . [by] deny[ing] the right of suffrage entirely to every human being in the District and have every office here controlled by appointment instead of by election . . . in order to get rid of this load of negro suffrage that was flooded in upon them.<sup>7</sup>

To Morgan, it was necessary to “burn down the barn to get rid of the rats.”<sup>8</sup> “[T]he rats being the negro population and the barn being the government of the District of Columbia.”<sup>9</sup> The continued disenfranchisement of D.C. residents perpetuates both, a shameful policy of a racist past and Morgan’s legacy. It is beyond time to rectify this by giving D.C. the true autonomy and self-governance that comes with statehood.

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 also outlines the state’s physical boundaries and the transfer of territorial, legal, and judicial jurisdiction and

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<sup>2</sup> *Demographic Characteristics of the District and Metro Area*, D.C. Office of Planning (May 23, 2012), <https://planning.dc.gov/sites/default/files/dc/sites/op/publication/attachments/Chapter%25202.pdf>.

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

<sup>4</sup> *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).

<sup>5</sup> See Masur, *supra* note 3.

<sup>6</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>7</sup> Harry S. Jaffe and Tom Sherwood, *Dream City: Race, Power, and the Decline of Washington, D.C.* 8 (2014 ed.).

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

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.

Our testimony today covers two points. First, 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; they deserve equal representation in their own government. Second, in granting statehood through an act of Congress, H.R. 51 is a valid and defensible exercise of congressional power. The Constitution says that a state's government must be “republican in form” for admission. And the Supreme Court held in the 1849 case of *Luther v. Borden*, that the decision of whether or not that requirement has been met “rests with Congress.” By any measure, H.R. 51 ensures that the State of Washington, Douglass Commonwealth passes this test.

## **I. Congress Should Grant D.C. Residents Full and Equal Representation**

The Home Rule Act of 1973 gave District residents the power to elect a mayor and council for the first time.<sup>10</sup> Today, residents elect 13 councilmembers who exercise legislative authority over the District.<sup>11</sup> The council and the mayor serve as co-equal branches of government and council committees conduct oversight of D.C. executive agencies.<sup>12</sup>

D.C. residents also elect Advisory Neighborhood Commissioners who advise the council on hyper-local concerns in each of the District's eight wards.<sup>13</sup> A democratically elected attorney general helps enforce the laws of the District, provides legal advice to District agencies, and is charged with upholding the public interest.<sup>14</sup> And “[t]he judicial power of the District is vested in the District of Columbia Court of Appeals and the Superior Court of the District of Columbia.”<sup>15</sup> Finally, D.C. has one seat in the House of Representatives.<sup>16</sup> This representative, currently Congresswoman Eleanor Holmes Norton,<sup>17</sup> has the “right of debate.” She is not a voting member of the chamber.<sup>18</sup>

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<sup>10</sup> D.C. Code Ann. § 1-201.01 *et seq.*

<sup>11</sup> *Id.* §§ 1- 204.01, 204.04.

<sup>12</sup> *About the Council*, Council of the District of Columbia, <https://dccouncil.us/about-the-council/> (last visited Sept. 12, 2019).

<sup>13</sup> D.C. Code Ann. § 1-309.01.

<sup>14</sup> *Id.* § 1-204.35.

<sup>15</sup> *Id.* § 1-204.31.

<sup>16</sup> *Id.* § 1-401.

<sup>17</sup> *About Eleanor*, Congresswoman Eleanor Holmes Norton, <https://norton.house.gov/about> (last visited Sept. 12, 2019).

<sup>18</sup> D.C. Code Ann. § 1-401.

Notwithstanding D.C.'s fully functioning local government, Congress essentially exercises authoritarian rule over the District and its residents. Indeed, several features of Congress's understood authority over the District ensure that Congress will routinely encroach on its autonomy. For example, legislation passed by the D.C. Council and signed by the mayor into law must still go through congressional review before taking effect.<sup>19</sup> And even when it does, Congress can repeal it.<sup>20</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. And District residents have no recourse to hold them accountable through a democratic process.<sup>21</sup> Oftentimes, the policies forced upon D.C. advance polarizing ideologies to score political points while gravely impacting the lives of District residents in the process. For example:

- In 1981, the D.C. Council repealed the death penalty. However, in 1992, at the request of a Senator from Alabama, Congress ordered a voter referendum to reinstate the death penalty. At the time, D.C.'s population was 70% Black. It was not lost on D.C. residents and lawmakers that the referendum would have disproportionate consequences on Black residents.<sup>22</sup> D.C. residents voted against reinstatement and ultimately defeated the referendum.
- In 1989, Congress inserted a provision known as the Armstrong Amendment into the D.C. Appropriations Act. The Amendment permitted religiously affiliated schools to discriminate on the basis of sexual orientation. In 1990, Congress codified the policy into D.C. law. The provision remained in effect until 2015, when the Council repealed it.
- 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>23</sup> It is estimated that hundreds<sup>24</sup> of District residents died (and continue to die) because of this deadly instance of congressional meddling.<sup>25</sup>

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<sup>19</sup> *How a Bill Becomes a Law*, Council of the District of Columbia, <https://dccouncil.us/how-a-bill-becomes-a-law/> (last visited Sept. 12, 2019).

<sup>20</sup> D.C. Code Ann. §§ 1-206.01-03 (discussing Congress's plenary power over the D.C. Council).

<sup>21</sup> *Id.* §§ 1- 204.01, 204.04.

<sup>22</sup> Neil Lewis, *Issues of Race and Home Rule Confound Death Penalty Vote in Washington*, N.Y. Times (Nov. 1, 1992), <https://www.nytimes.com/1992/11/01/us/issues-of-race-and-home-rule-confound-death-penalty-vote-in-washington.html>.

<sup>23</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>24</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>25</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->

- 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>26</sup>
- In 2016 alone, there were “25 different attempts by Members of Congress to overturn, overrule, or change local Washington, D.C. laws.”<sup>27</sup>
- In 2018, House Republicans led by a Representative of Utah attempted to repeal D.C.’s death with dignity law,<sup>28</sup> which passed the D.C. Council with a vote of 11-2 and which two-thirds of D.C. voters supported.<sup>29</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>30</sup>

The District’s lack of control over its courts and criminal system has also had profound impacts on the lives of 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, D.C. Superior and Appeals Court judges are appointed by the President and confirmed by the U.S. Senate, where District residents have no representation at all.<sup>31</sup>

The courthouses in which these judges sit are guarded by U.S. Marshalls. This has consequences for District residents who interact with the local court system. A particularly serious one: unlike D.C.’s local law enforcement agencies, U.S. Marshalls cooperate with ICE detainers. Thus, despite the fact that its elected representatives have declared it a

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remains-epidemic-in-district-report-finds/2011/06/15/AGpHYuVH\_story.html?utm\_term=.3b73c6fe331e.

<sup>26</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-details-of-tester-mccainchilders-gun-bill-in>.

<sup>27</sup> *2016 Attacks on DC’s Home Rule*, DC Vote, <https://www.dcvote.org/2016-attacks-dcs-home-rule> (last visited Sept. 12, 2019).

<sup>28</sup> DC Code § 7-661.01 *et seq.*

<sup>29</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>30</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>31</sup> D.C. Code Ann. § 1-204.33.

“Sanctuary City,” D.C. cannot effectively protect immigrants from deportation if they visit or appear in its courts.<sup>32</sup>

Perhaps the most significant criminal justice consequence of D.C.’s lack of statehood is the District’s lack of control over local 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 has little incentive to be transparent with the D.C. community. Moreover, as many other cities and states, D.C. residents have elected district attorneys seeking to reform criminal justice policies in progressive ways, but the U.S. Attorney is not accountable to voters in the way district attorneys are in states. For that reason, prosecutorial reform—key to combating mass incarceration—has proved unattainable. As recently as September 2019, the District’s U.S. Attorney took steps to aggressively oppose effective sentencing reforms backed by locally elected officials, even going as far as spreading misinformation to undermine locally elected leaders.<sup>33</sup> Today, as a state, D.C. would have the highest incarceration rate in the country.<sup>34</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. Inmates in federal custody are less likely to maintain close family ties during their incarceration due to the distance and expense for family members to travel to visit. This harms their efforts at rehabilitation and reintegration, because maintaining familial and community bonds is essential to successful rehabilitation both during and after incarceration. One inmate from the District held in a New Jersey prison reflected: “Not being able to see your family in some years can make you forget about life. It can make you think your life is in prison, there’s no hope outside that wall.”<sup>35</sup>

D.C. also lacks control over its parole system. All parole and supervised release decisions for D.C.’s returning citizens are made by the federal U.S. Parole Commission instead of a local agency (as it is in the states), making local reform impossible. In 2018, about 76 percent of the U.S. Parole Commission’s caseload, or 6,521 people, were D.C. Code offenders.

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<sup>32</sup> Martin Austerhuhle, *Marshal Law: D.C. Is A Sanctuary City, But That Status Stops At The Courthouse Door*, WAMU (Sept. 20, 2018), <https://wamu.org/story/18/09/20/marshal-law-d-c-sanctuary-city-status-stops-courthouse-door/>.

<sup>33</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>34</sup> *District of Columbia and NATO incarceration comparison*, Prison Policy Initiative (2018), <https://www.prisonpolicy.org/graphs/NATO2018/DC.html>.

<sup>35</sup> Martin Austerhuhle, *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/>.

The U.S. Parole Commission is a major driver of over-incarceration in the District.<sup>36</sup> It has been known to hold people longer than intended<sup>37</sup> and to deny parole due to non-completion of rehabilitative programs—even if the facility in which the person is being held does not offer such programs. The Commission can also revoke supervised release and send people back to prison for minor technical violations or for reasons that go against District policies. For example, Tyrone Hall was sent back to prison for 13 months even though he was acquitted of the misdemeanor charge that triggered his parole violation.<sup>38</sup> Another federal agency, the Court Services and Offender Supervision Agency (CSOSA) monitors D.C. Code offenders after they have been released. And a third federal agency, the Pretrial Services Agency runs all of D.C.’s pretrial services, including drug treatment programs, mental health services, and referral to social services in the District.<sup>39</sup>

The fact that these important decisions are in the hands of federal agencies over which local government has little control has had a devastating impact on the lives of D.C. residents and their families. It has also prevented progressive reforms that have the support of local residents and leaders. Statehood would allow the District to delegate these crucial services to state agencies accountable to local lawmakers and residents.

## **II. H.R. 51 is a Valid Exercise of Congressional Authority**

D.C. residents deserve statehood, and Congress is empowered to grant it. The Washington, D.C. Admission Act is a valid and defensible exercise of congressional authority and is constitutionally permissible. The following pages offer a legal analysis of the bill. It begins by summarizing the bill’s relevant provisions, reviews the bill’s constitutional and legal bases, and make the following findings:

*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.

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<sup>36</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>37</sup> Letter from the Council for Court Excellence to the United States Court of Appeals for the District of Columbia Circuit, (Aug. 31, 2015), [http://www.courtexcellence.org/uploads/publications/Restoring\\_Local\\_Control\\_of\\_Parole\\_Sign\\_On\\_Letter.pdf](http://www.courtexcellence.org/uploads/publications/Restoring_Local_Control_of_Parole_Sign_On_Letter.pdf).

<sup>38</sup> Mitch Ryals, *Local D.C. Courts Acquitted Him, But He Still Went to Prison*, Wash. Cty. Paper (May 15, 2019), <https://www.washingtoncitypaper.com/news/loose-lips/article/21068873/advocates-say-dcs-federally-controlled-parole-system-needs-reform>.

<sup>39</sup> *What PSA Does*, Pretrial Services Agency for the District of Columbia, <https://www.psa.gov/> (last visited Sept. 12, 2019).

*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.

#### **a. Summary Analysis of H.R. 51**

We have reviewed H.R. 51 and provide here a summary of its provisions as we understand them. Generally, the Act would admit most of the District of Columbia’s currently populated areas into the Union as a new state, preserving a small area consisting of federal buildings (e.g., White House, Capitol, U.S. Supreme Court Building) as a redrawn federal district. The bill directs the process for admission, describes with particularity the territorial bounds of the newly constituted state, regulates the transfer of real and personal property held by the former District of Columbia to the new state, establishes the jurisdiction and powers of the new state, outlines the responsibilities and legal interests of the federal government, and establishes expedited procedures for repealing the Twenty-Third Amendment, which assigns Electoral College votes to the District of Columbia.

#### **i. Summary of Title I—Procedures for Admission**

Subtitle A of Title I of the bill generally issues three directives that guide the admissions process of the State of Washington, Douglass Commonwealth. Section 101 states that upon proclamation by the President and the certification of elections for federal representation, the State of Washington, Douglass Commonwealth will be a state on equal footing with all other states. Section 102 outlines the elections process for two federal senators and one representative (until the next reapportionment) in Congress. It also directs the transfer of offices of the mayor and members and chair of the D.C. Council to the new governor, legislative assembly, and speaker of the legislative assembly, respectively, and also orders the continuation of authority and duties of judicial and executive offices to the respective executive and judicial offices of the new state. Section 103 directs the President to proclaim the election results of the first election held pursuant to this section not later than ninety days after receiving the certification of the election results, and directs that upon the President’s proclamation the state will be admitted into the Union.

Subtitle B describes the new territory of the State of Washington, Douglass Commonwealth. Section 111 directs that the state will include all of the current territory of the District of Columbia minus the area of the national capitol, which would remain as the District of Columbia for purposes of serving as the seat of the federal government. The territory that remains as the national capital would be determined pursuant to the specific geographic boundaries established by the bill. It also requires the President, in consultation with the Chair of the National Capital Planning Commission and in accordance with the boundaries established by the bill, to conduct a technical survey of the metes and bounds of the District of Columbia and the new state.

Section 112 specifies the specific street boundaries of the national capitol that will remain as the District of Columbia, and expressly includes the principal federal monuments, the White House, the Capitol Building, the U.S. Supreme Court building, and the federal executive, legislative, and judicial office buildings located adjacent to the National Mall and the Capitol Building. Section 113 directs the continuation by the state of title to (or jurisdiction over) all real and personal property held by the former District of Columbia for purposes of administration and maintenance. It also directs the District of Columbia, on the day before it's admitted as a state, to convey to the federal government all interest held by it in any bridge or tunnel that connects Virginia with the current District.

Subtitle C establishes the jurisdiction and powers of the new state. Section 121 prohibits the new state from imposing any taxes on federal property, except to the extent permitted by Congress. Section 122 establishes the legislative jurisdiction and powers of the state and extends the force and effect of federal laws to the state. Section 123 establishes parameters for the continuation and transfer of all judicial proceedings of District of Columbia courts to the appropriate newly established state courts, and the continuation of judicial proceedings of the U.S. District Court for the District of Columbia. Section 124 directs that no provision of the act will confer U.S. nationality, terminate lawful U.S. nationality, or restore U.S. nationality that has been lawfully terminated.

## **ii. Summary of Title II—Responsibilities and Interests of the Federal Government**

Title II assigns responsibilities, jurisdiction, and legal interests of the federal government in relation to the grant of statehood. Section 201 establishes the continuation of the revised District of Columbia as the seat of the federal government. Section 202 establishes exclusive congressional jurisdiction of lands within the new state that were controlled or owned by the federal government for defense or Coast Guard purposes prior to admission of the state. It also prohibits congressional jurisdiction to operate in a manner that prevent such lands from being a part of the state, and permits concurrent jurisdiction by the state in matters it would otherwise have jurisdiction over and which are consistent with federal law. Section 203 establishes that the state and its residents disclaim all right and title to any unappropriated lands or property not granted to the state or its subjurisdictions under the act, the right or title of which is held by the federal government. It also clarifies that the act does not affect any pending claims against the United States.

Regarding elections, Section 204 outlines registration procedures and voting requirements to allow individuals residing in the revised District of Columbia to vote absentee in federal elections in the state where the voter was domiciled before residing in the District of Columbia. It gives the Attorney General authority to enforce this section. Section 205 repeals the law providing participation of the District of Columbia in the election of President and Vice President of the United States. Finally, Section 206 outlines expedited procedures for the House and Senate to consider a constitutional amendment to repeal the Twenty-Third Amendment.

### **iii. Summary of Title III—General Provisions**

Title III contains general provisions which include definitions for terms in the bill and directs the President to certify enactment not more than sixty days after the date of enactment.

#### **b. H.R. 51 is a Constitutional Exercise of Congressional Power**

Critics—including the Department of Justice under several presidential administrations—have raised concerns about the constitutionality of admitting the District of Columbia as a state through an act of Congress, rather than by a constitutional amendment. However, H.R. 51 is a valid and defensible exercise of congressional authority. It complies with the District and Federal Enclaves Clause, the Admission Clause, and the Twenty-Third Amendment.

Concerns about D.C.’s viability as a state are policy considerations that should be appropriately addressed, but they are not constitutional limitations on Congress’s authority to pass H.R. 51.

#### **i. The District and Federal Enclaves Clause**

The District and Federal Enclaves Clause states:

[Congress shall have power . . .] [t]o exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square) as may, by Cession of particular States, and the Acceptance of Congress, become the Seat of Government of the United States, and to exercise like Authority over all Places purchased by the Consent of the Legislature of the State in which the Same shall for, the Erection of Forts, Magazines, Arsenals, dock-Yards, and other needful Buildings.<sup>40</sup>

Courts have consistently interpreted this provision to find that Congress has broad “plenary” powers over the District and other federal enclaves.<sup>41</sup> H.R. 51 is consistent with Congress’s broad authority because the clause provides for a federal district that “may”

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<sup>40</sup> U.S. Const. art. I, § 8, cl. 17.

<sup>41</sup> See *O’Donoghue v. United States*, 289 U.S. 516, 539 (1933); *Atl. Cleaners & Dyers v. United States*, 286 U.S. 427, 435 (1932); *Shoemaker v. United States*, 147 U.S. 282, 300 (1893); *Kendall v. United States ex rel. Stokes*, 37 U.S. 524, 619 (1838).

serve as “the Seat of Government.”<sup>42</sup> Because the Act only reduces (instead of absorbing) the District of Columbia, it does not violate the clause.

Critics, however, assert that the District and Federal Enclaves Clause permanently fixed the size of the District, thereby depriving Congress of the power to shrink the District from its current size.<sup>43</sup> Neither the language of the clause nor its history supports these interpretations.

### 1. The “Fixed Boundaries” Argument

Critics have charged that the District Clause deprives Congress of authority to dispose of lands currently part of the District of Columbia. This argument posits that once Congress determined the amount of land required for the District and accepted those ceded lands from the states, it cannot dispose of any of it. In essence, the argument goes, Congress may not reduce the District’s now “fixed” boundaries.<sup>44</sup>

This argument has drawn on analogies to Article IV, section 3—the Admission Clause—which gives Congress the power to admit new states but makes no provision for one’s expulsion or secession.<sup>45</sup> Just as the Supreme Court has held that the relationship between the Union and a state is “indissoluble,”<sup>46</sup> so too, the argument goes, Congress’s acceptance of ceded lands to create the District “contemplates a single act” and “makes no provision for revocation of the act of acceptance or for retrocession.”<sup>47</sup> Put another way, the argument is that Congress exhausted its authority to change the boundaries or size of the District when it accepted land to create it, and those boundaries are now fixed.

However, as noted above, it is sufficiently well-settled that Congress’s power over the District of Columbia is sweeping—or “plenary.” Its authority “relates not only to national power but to all the powers of legislation which may be exercised by a state in dealing with its affairs.”<sup>48</sup> The District Clause, unlike the Admission Clause, grants Congress authority in the most expansive language possible, giving it power to exercise

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<sup>42</sup> U.S. Const. art. I, § 8, cl. 17.

<sup>43</sup> See Office of Legal Policy, U.S. Dep’t. of Justice, Report to the Attorney General on the Question of Statehood for the District of Columbia iii, 18, 36 (1987) [hereinafter OLP].

<sup>44</sup> See *id.* at iii; see also Letter and Memorandum from Robert K. Kennedy, Attorney General, to Rep. Basil L. Whitener (1963), in *Home Rule, Hearings on H.R. 141 Before Subcomm. No. 6 of the H. Comm. on the District of Columbia*, 88th Cong., 1st Sess. (1964), reprinted in OLP, *supra* note 43, at 128 [hereinafter Kennedy letter]. But see Raven-Hansen, *The Constitutionality of D.C. Statehood*, 60 Geo. Wash. L. Rev. 160, 167-69 (1991) (rejecting argument).

<sup>45</sup> See Kennedy letter, *supra* note 44, at 128.

<sup>46</sup> See *Texas v. White*, 74 U.S. 700, 726 (1868).

<sup>47</sup> Kennedy letter, *supra* note 44, at 128; see also OLP, *supra* note 43, at 36.

<sup>48</sup> *Dist. of Columbia v. John R. Thompson Co.*, 346 U.S. 100, 108 (1953); see also *Neild v. Dist. of Columbia*, 110 F.2d 246, 249 (D.C. Cir. 1940) (Congress’s District Clause authority “is sweeping and inclusive in character”).

“exclusive Legislation in *all Cases whatsoever*.”<sup>49</sup> This sweeping and exclusive authority should include the power of Congress to contract the District to less than its current size.<sup>50</sup> Indeed, Congress’s authority to alter the boundaries and size of the District is supported by the language of the District Clause, its legislative history, and its historical application.

First, the District Clause provides no textual limitation preventing Congress from reducing the size of the District. Its only explicit limitation is that Congress shall not establish a district *larger* than ten square miles; it says nothing about a lower limit.<sup>51</sup> Furthermore, Congress’s authority is conferred by the same operative language—“The Congress shall have Power . . . [t]o”—as all other powers listed in Article I, section 8, none of which are exhausted by exercise of that authority.<sup>52</sup> There is no reason to believe that the District Clause is somehow different.

Second, the clause’s history supports an interpretation that recognizes Congress’s power to move or change the size of the District. During the Constitutional Convention, Charles Pinckney of South Carolina urged the Committee on Detail to adopt language that would authorize Congress “to fix and *permanently* establish the seat of Government of the [United States].”<sup>53</sup> While some of Pinckney’s language was eventually incorporated into the District Clause, the adverb “permanently” was dropped.<sup>54</sup> Similarly, a proposal that Congress be granted exclusive jurisdiction over an area no less than three, and no more than six, miles square for the purpose of a permanent seat of government was abandoned in favor of the language now enshrined in the District Clause, which establishes a maximum size for the District but no minimum.<sup>55</sup> The failure of these proposals suggests that the Framers intended for Congress to have flexibility to move or change the size of the

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<sup>49</sup> U.S. Const. art. I, § 8, cl. 17 (emphasis added).

<sup>50</sup> See *Equality for the District of Columbia: Discussing the Implications of S. 132, the New Columbia Admission Act of 2013: Hearing on S. 132 Before the S. Comm. on Homeland Security and Governmental Affairs*, 113th Cong. 2d Sess. 82 (2014) (prepared statement of Viet D. Dinh, Professor, Georgetown University) [hereinafter Dinh] (“Just as a state may consent to the creation of a new state from within its borders, so too should Congress be permitted to carve a state from the District of Columbia, over which it enjoys sovereign control.”).

<sup>51</sup> See *id.* at 83 (“[T]he presence of an upper, not lower, limit on the geographical size of the District in the Constitution at least suggests that the Framers were, if anything, more concerned with the latter.”).

<sup>52</sup> See Raven-Hansen, *supra* note 44, at 168.

<sup>53</sup> James Madison, *The Debates in the Federal Convention of 1787 Which Framed the Constitution of the United States of America* 420 (1920) (emphasis added).

<sup>54</sup> As Peter Raven-Hansen noted: “Congress itself subsequently resurrected ‘permanency’ when it accepted the cessions of Maryland and Virginia ‘for the *permanent* seat of the government,’ but it did not and could not thereby with a single statute either amend the District Clause or prevent future Congresses from enacting further legislation on the subject.” Raven-Hansen, *supra* note 44, at 168 (quoting *Retrocession of Alexandria to Virginia*, House Comm. on the District of Columbia, H.R. Rep. No. 325, 29th Cong., 1st Sess. 3 (1846)).

<sup>55</sup> See H.P. Caemmerer, *Washington: The National Capital*, S. Doc. 332, 71st Cong., 2d. Sess. 5 (1932) (cited in OLP, *supra* note 43, at 54).

District.<sup>56</sup> Indeed, had the District Clause required a permanent and fixed capital, a constitutional amendment would be needed to move the capital even in cases of invasion, insurrection, or epidemic—all significant concerns at the founding.<sup>57</sup>

Third, history undermines arguments that the District Clause permanently fixed the District's form, as Congress changed its boundaries twice since the Constitution's ratification. The first change occurred in 1791, less than one year after Virginia and Maryland ceded land for the District and less than four years after the Constitutional Convention, when the First Congress—including James Madison—voted to change the District's southern boundary to include all of the area that is now known as Anacostia, Arlington, and Alexandria.<sup>58</sup> That measure significantly bolsters H.R. 51, because the Supreme Court has observed that “an Act ‘passed by the first Congress assembled under the Constitution, many of whose members had taken part in framing that instrument . . . is contemporaneous and weighty evidence of [the Constitution's] true meaning.’”<sup>59</sup>

Similarly, in 1846, Congress reduced the District's area by roughly one third when it returned to Virginia the entirety of the land the state ceded to the national government in 1789—*i.e.*, what is now Arlington County and Alexandria.<sup>60</sup> Congress only did so after specifically considering and rejecting the fixed form interpretation of the District Clause. The House Committee on the District of Columbia concluded:

The true construction of [the District Clause] would seem to be that Congress may retain and exercise exclusive jurisdiction over a district not exceeding ten miles square; and whether those limits may enlarge or diminish that district, or change the site, upon considerations relating to the seat of government, and connected with the wants for that purpose, the limitation upon their power in this respect is, that they shall not hold more than ten

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<sup>56</sup> See *The Federalist*, No. 43 (James Madison) (Clinton Rossiter ed., 1961) (“[T]he gradual accumulation of public improvements at the stationary residence of the government would be both too great a public pledge to be left to the hands of a single State, and would create . . . *many obstacles to a removal of the government.* . . .”) (emphasis added).

<sup>57</sup> See Raven-Hansen, *supra* note 44, at 168.

<sup>58</sup> An Act to amend “An act for establishing the temporary and permanent seat of the Government of the United States,” ch. 17, 1 Stat. 214 (1791).

<sup>59</sup> *Marsh v. Chambers*, 463 U.S. 783, 790 (1983) (quoting *Wisconsin v. Pelican Ins. Co.*, 127 U.S. 265, 297 (1888)); see also Raven-Hansen, *supra* note 44, at 170 (“Neither the ‘permanency’ of the seat of government nor the District Clause gave pause to any of the thirteen original Framers, including James Madison, who voted for the amendment.”).

<sup>60</sup> See An Act to Retrocede the County of Alexandria, in the District of Columbia, to the State of Virginia, ch. 35, 9 Stat. 35 (1846); see also Dinh, *supra* note 50, at 82 (“Only half a century removed from its acceptance of lands to create the District, Congress was convinced that there was no restriction on its ability to alienate large portions of that land.”).

miles square for this purpose; and the end is, to attain what is desirable in relation to the seat of government.<sup>61</sup>

The constitutionality of the 1846 retrocession did come before the Supreme Court in *Phillips v. Payne*.<sup>62</sup> However, the Court found that, because 30 years had passed between the retrocession and the constitutional challenge, the plaintiff was “estopped” from bringing his claim.<sup>63</sup> While the Court did not reach the merits of the case, it did state in dictum that, “[i]n cases involving the action of the political departments of the government, the judiciary is bound by such action.”<sup>64</sup> Thus, *Phillips* should not be read to raise questions about the retrocession’s constitutionality.

Finally, returning to the language of the District Clause itself, it is worth noting that it is immediately followed in the same paragraph by a grant permitting Congress “to exercise *like Authority* over all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, dock-Yards, and other needful Buildings.”<sup>65</sup> This authority has been construed consistently to allow Congress to both acquire and convey such places.<sup>66</sup> Further, Article IV, section 3, clause 2 of the Constitution provides that Congress shall have “[p]ower to dispose of . . . Property belonging to the United States.”<sup>67</sup> Indeed, there are numerous instances where the United States has ceased to exercise ceded jurisdiction over federal enclaves, either by retrocession or transfer of lands to another state.<sup>68</sup> As George Washington University Law Professor Peter Raven-Hansen has reasoned, “Congress does not exhaust its authority by

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<sup>61</sup> Retrocession of Alexandria to Virginia, House Comm. on the District of Columbia, H.R. Rep. No. 29-325, at 3-4 (1846).

<sup>62</sup> 92 U.S. 130, 132 (1875).

<sup>63</sup> *Id.* at 134.

<sup>64</sup> *Id.* at 132.

<sup>65</sup> U.S. Const. art. I, § 8, cl. 17 (emphasis added); see generally, Cong. Research Serv., *Equality for the District of Columbia: Discussing the Implications of S. 132, the New Columbia Admission Act of 2013: Hearing on S. 132 Before the S. Comm. on Homeland Security and Gov. Affairs*, 113th Cong. 2d Sess. (2014) (Statement of Kenneth R. Thomas, Legislative Attorney, American Law Division), available at <https://norton.house.gov/sites/norton.house.gov/files/CRS.pdf> [hereinafter Thomas].

<sup>66</sup> See U.S. Interdepartmental Comm. for the Study of Jurisdiction over Federal Areas Within the States, *in 2 Jurisdiction Over Federal Areas Within the States: A Text of the Law of Legislative Jurisdiction* 273 (1957) (stating that “[b]y reason of article IV, section 3, clause 2, of the Constitution, Congress alone has the ultimate authority to determine under what terms and conditions property of the Federal Government may or shall be sold”).

<sup>67</sup> U.S. Const. art. IV, § 3, cl. 2.

<sup>68</sup> See, e.g., Pub. L. 83-704, 68 Stat. 961 (1954) (retroceding jurisdiction over Atomic Energy Commission land at Sandia Base, Albuquerque to New Mexico); 81 Pub. L. 14, 63 Stat. 11 (1949) (retroceding jurisdiction over Los Alamos Energy Commission area to New Mexico); Act of Feb. 22, 1869, 44 Stat. 1176 (1921) (ceding to Virginia the authority to police land originally ceded to the United States by Maryland).

using it to acquire these places. If it can thus change the form of such federal places, then it has ‘like authority’ to do the same to the District itself.”<sup>69</sup>

## 2. The “Fixed Function” Argument

Second, opponents of D.C. statehood have argued that reducing the size of the District to an area comprising federal monuments and buildings only and largely devoid of people would undermine the *intent* of the District and Federal Enclaves Clause.<sup>70</sup> This argument, in effect, posits that the District Clause fixed the “function” of the whole District and no change in form or size that would impinge on that essential function is constitutional absent a constitutional amendment.<sup>71</sup> However, it is doubtful that a reduction in the size of the District would, in fact, impede the function of a separate federal capital.

D.C. statehood detractors highlight the fact that the reduced District—comprising the Capitol and surrounding buildings—would be entirely within the new State of Washington, Douglass Commonwealth and, thus, would be akin to any other federal enclave, wholly dependent on the new state for essential services.<sup>72</sup> They argue that this would undermine the District’s independence and give the new state outsized benefits and outsized influence on federal policy.

One answer—most strongly advanced by Professor Raven-Hansen—is that the reduced District would be no more an enclave within a state than the existing District.<sup>73</sup> The current District is a contiguous federal territory surrounded on three sides by Maryland. The proposed reduced District would be a contiguous federal territory surrounded on three sides by the new State of Washington, Douglass Commonwealth. “Geographically speaking, the only difference is size; to say that one is ‘outside’ Maryland and the other ‘inside’ [the State of Washington, Douglass Commonwealth] is an exercise in semantics.”<sup>74</sup>

Furthermore, as Raven-Hansen has argued, the current District has “long since ceased to be self-sustaining in any practical sense of the word.”<sup>75</sup> The District is already

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<sup>69</sup> Raven-Hansen, *supra* note 44, at 171; *see also* Retrocession of Alexandria to Virginia, House Comm. on the District of Columbia, H.R. Rep. No. 325, 29th Cong., 1st Sess. 3 (1846) (stating “[t]here is no more reason to believe that [Congress’s power to locate the District], when once exercised and executed, is exhausted, than in any other of [Congress’s enumerated powers]”).

<sup>70</sup> OLP, *supra* note 43, at 25, 55.

<sup>71</sup> *Id.* at 25.

<sup>72</sup> *Id.* at 57-58 (“In a very real sense, the federal government would be largely dependent upon the [State of Washington, Douglass Commonwealth] for its day to day existence. . . . In short . . . the Congress would lose control over the immediate services necessary to the government’s smooth day to day operation. The national government would again be dependent upon the goodwill of another sovereign body.”).

<sup>73</sup> *See* Raven-Hansen, *supra* note 44, at 174-75.

<sup>74</sup> *Id.* at 174.

<sup>75</sup> *Id.* at 175.

inextricably connected to the surrounding metropolitan areas, including parts of Maryland and Virginia, which are home not only to many federal employees but several important federal buildings.<sup>76</sup> This level of interconnectedness has not undermined the independence and authority of the federal government within the District, nor should the proposed change in the size of the District.

Finally, Congress’s plenary authority under the District Clause has never been territorially limited to the District. The Supreme Court has recognized that “the power in Congress, as the legislature of the United States, to legislate exclusively within [the District], carries with it, as an incident, the right to make that power effectual.”<sup>77</sup> This means that Congress has the power to legislate against state encroachments on the independence of the District. It would surely retain that power even if the District were reduced in size.

## ii. Admission Clause

The Admission Clause provides:

New States may be admitted by the Congress into this Union; but no new State shall be formed or erected within the Jurisdiction of any other State; nor any State be formed by the Junction of two or more States, or Parts of States, without the Consent of the Legislatures of the States concerned as well as of the Congress.<sup>78</sup>

Congress thus is the branch of government imbued with the power to admit new states through legislation. The Supreme Court has construed this power expansively.<sup>79</sup> Indeed, aside from the Admission Clause, the Constitution imposes only one textual limitation on congressional power to admit new states. Article IV, section 4—the Guarantee Clause—of the Constitution requires that the United States must “guarantee

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<sup>76</sup> See *id.* (citing Phillip W. Buchen, *Time for the Sun to Set On Our Imperial Capital*, Legal Times 26, 27 (Feb. 18, 1991) (remarking that the placement of the Department of Defense, the Central Intelligence Agency, the National Security Agency, and the Social Security Administration in surrounding states has not undermined the independence of the federal government)).

<sup>77</sup> *Cohens v. Virginia*, 19 U.S. 264, 428 (1821); see also *id.* at 429 (“The American people thought it a necessary power, and they conferred it for their own benefit. Being so conferred, it carries with it all those incidental powers which are necessary to its complete and effectual execution.”). *Cohens* established the Supreme Court’s jurisdiction to review state criminal proceedings. Having established jurisdiction, the Court found that there was no conflict between Congress’s authorization of a lottery in the District of Columbia and a Virginia statute prohibiting lotteries in the state. However, it recognized that “[w]hether any particular law be designed to operate within the District or not, depends on the words of that law. If it be designed so to operate, then the question, whether the power so exercised be incidental to the power of exclusive legislation, and be warranted by the constitution, requires a consideration of that instrument. In such cases, the constitution and the law must be compared and construed.” *Id.*

<sup>78</sup> U.S. Const. art. IV, § 3, cl. 1.

<sup>79</sup> See *Luther v. Borden*, 48 U.S. at 42 (“[I]t rests with Congress to decide what government is the established one in a State[.]”).

to every State in this Union a Republican Form of Government.”<sup>80</sup> Section 101(b) of the bill meets this substantive prerequisite.<sup>81</sup>

Still, some critics of D.C. statehood argue that Congress lacks the authority to admit the new State of Washington, Douglass Commonwealth without the express consent of Maryland because the new state would be “formed or erected within the Jurisdiction of [an]other State.”<sup>82</sup>

The Admission Clause prohibits the creation of new states from “within the Jurisdiction of any other State” without the existing state’s consent.<sup>83</sup> Opponents of D.C. statehood argue that Maryland ceded to the federal government the lands that now make up the District of Columbia solely to create such a District.<sup>84</sup> They argue that, if the ceded land is not used for that purpose, Maryland holds a “reversionary interest” in the current District and, thus, an act like H.R. 51 would be unconstitutional without Maryland’s permission, as triggered by the consent requirement of the Admission Clause.<sup>85</sup>

But as Professor Peter Raven-Hansen explained, this argument “treats use of the ceded land for the district as a condition subsequent to the cession and assumes that the condition would be defeated by any other use of the ceded lands.”<sup>86</sup> For the reasons discussed below, no such reversionary interest exists.

The principal problem with the Maryland “reversionary interest” argument is that an asserted condition subsequent or reverter has been neither expressly made nor implied. Maryland’s legislature originally authorized its delegation to the House of Representatives “to cede to the congress of the United States any district in this state, not exceeding ten miles square, which the congress may fix upon and accept for the seat of government of the United States.”<sup>87</sup> After legislation determining where such land was to be situated passed in Maryland and Congress, Maryland passed another statute ratifying the cession of those specific lands. That cession stated:

That all that part of the said territory, called Columbia, which lies within the limits of this state, shall be and the same is hereby acknowledged to be **for ever ceded and relinquished to the congress and government of the United States, in full and**

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<sup>80</sup> U.S. Const. art. IV, § 4.

<sup>81</sup> See H.R. 51 § 101(b) (“The State Constitution shall always be republican in form[.]”).

<sup>82</sup> See R. Hewitt Pate, *D.C. Statehood: Not Without a Constitutional Amendment*, The Heritage Lectures 5 (1993). *But see* Raven-Hansen, *supra* note 44, at 177-83 (rejecting argument).

<sup>83</sup> U.S. Const. art. IV, § 3, cl. 1.

<sup>84</sup> See OLP, *supra* note 43, at iii.

<sup>85</sup> See Pate, *supra* note 82, at 5.

<sup>86</sup> Raven-Hansen, *supra* note 44, at 178.

<sup>87</sup> 2 Laws of Maryland 1788, ch. 46 (Kilty 1800).

**absolute right, and exclusive jurisdiction**, as well of soil as of persons residing, or to reside thereon, pursuant to the tenor and effect of the eighth section of the first article of the constitution of the government of the United States.<sup>88</sup>

The language of this statute does not appear to contemplate a reversionary interest.<sup>89</sup> Indeed, its express terms—“*for ever ceded and relinquished . . . in full and absolute right*, and exclusive jurisdiction”—appear to signal the exact opposite: an unconditional grant of land to the United States.<sup>90</sup> This language should control and Maryland should retain no authority over the land it ceded because “the . . . cession of the District of Columbia to the Federal government relinquished the authority of the States.”<sup>91</sup> Thus, the consent provision in the Admission Clause should not apply.<sup>92</sup>

Still some may argue that, while Maryland’s statute ratifying cession did not expressly state a reverter interest, it implied one by making the transfer of land “pursuant to the tenor and effect of the eighth section of the first article of the constitution of the government of the United States,” thereby suggesting that the transfer was only made for the limited purpose of creating the District of Columbia under the District and Federal Enclaves Clause.<sup>93</sup> However, even if the language of Maryland’s statute ratifying cession of the District were not expressly prohibitive of a reverter interest, one cannot infer any such reverter. Reverter would presumably be determined under Maryland common law<sup>94</sup> and Maryland property law does not favor implied reversionary interests.<sup>95</sup> The Maryland Court of Appeals has gone to “great lengths in refusing to imply a condition subsequent which would result in a forfeiture,” instead insisting on “words indicating an intent that the

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<sup>88</sup> 2 Laws of Maryland 1791, ch. 45, § 2 (Kilty 1800), as quoted in *Adams v. Clinton*, 90 F. Supp. 2d 35, 58 (D.D.C. 2000) (per curiam) (emphasis added).

<sup>89</sup> See Thomas, *supra* note 65, at 3-4.

<sup>90</sup> 2 Laws of Maryland 1791, ch. 45, § 2 (Kilty 1800) (emphasis added); cf. *Van Ness v. Washington*, 29 U.S. 232, 285 (1830) (construing a private land grant to the District “for use of the United States forever” as vesting “an absolute unconditional fee-simple in the United States”).

<sup>91</sup> *Downes v. Bidwell*, 182 U.S. 244, 261 (1901); see also *Reily v. Lamar*, 6 U.S. 344, 356-57 (1805); *Hobson v. Tobriner*, 255 F. Supp. 295, 297 (D.D.C. 1996); *Albaugh v. Tawes*, 233 F. Supp. 576, 578 (D. Md.), *aff’d*, 379 U.S. 27 (1964) (per curiam).

<sup>92</sup> This follows the precedent of the Enabling Act of 1802, which did not require consent from Connecticut, even though the Act formed the state of Ohio partially from territory ceded to the United States by Connecticut in 1786. See Dinh, *supra* note 50, at 75 (citing The Enabling Act of 1802, 2 Stat. 173 (1802)).

<sup>93</sup> See Pate, *supra* note 82, at 5. But see Thomas, *supra* note 65, at 4-5 (rejecting argument).

<sup>94</sup> This seems intuitively correct, but it is an understandably open question.

<sup>95</sup> See generally Raven-Hansen, *supra* note 44, at 178-82; see *Gray v. Harriet Lane Home for Invalid Children*, 64 A.2d 102, 110 (Md. 1949) (“Conditions subsequent [are] not favored in the law, because the breach of such a condition causes a forfeiture and the law is averse to forfeitures.”); *Faith v. Bowles*, 37 A. 711, 712 (Md. 1897).

grant is to be void if the condition is not carried out.”<sup>96</sup> Here, there are no words indicating intent that Maryland should retain any interest in the District once it ceded such land to the United States. Again, the operative language of the statute—“for ever ceded and relinquished . . . in full and absolute right, and exclusive jurisdiction”—denotes the exact opposite. The statute’s statement of purpose that the land be used to create the District of Columbia is “no more than an expression of personal trust and confidence that the grantee will use the property so far as may be reasonable and practicable to effect the purpose of the grant, and not . . . a condition subsequent or restraint upon the alienation of the property.”<sup>97</sup>

Finally, as James Madison explained in *The Federalist* No. 43, the consent provision of the Admission Clause was adopted as a “particular precaution against the erection of new States, by the partition of a State without its consent.”<sup>98</sup> As the lands comprising the District of Columbia have not been a part of Maryland since before 1790, it is hard to imagine how Congress’s exercise of its valid authority to alter the size of the District would undermine the original intent of the Admission Clause. Thus, D.C. statehood is both consistent with and constitutional under the Admission Clause and does not require Maryland’s consent for Congress to change the boundaries and size of the District.

In any event, a textual reading of the Admission Clause precludes any reverter interest, implied or otherwise. The Admission Clause forbids the “form[ing] or erect[ing]” of a “new State . . . within the Jurisdiction of any other state.”<sup>99</sup> But the District of Columbia, in its current form, is neither part of Maryland nor within its jurisdiction.<sup>100</sup> The enactment of H.R. 51 would not change that. Once passed, the

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<sup>96</sup> *Gray*, 64 A.2d at 108; see also *Estate of Poster v. Comm’r*, 274 F.2d 358, 365 (4th Cir. 1960) (“[U]nyielding insistence upon language expressly voiding the gift in case of diversion from the declared use is an established Maryland rule in the construction of written instruments; in the absence of language expressly stating that such diversion shall effect a forfeiture, the gift is absolute and not conditional.”); *Kilpatrick v. Baltimore*, 31 A. 805, 806 (Md. 1895) (“[A] condition will not be raised by implication, from a mere declaration in the deed, that the grant is made for a special and particular purpose without being coupled with words appropriate to make such a condition.”).

<sup>97</sup> *Columbia Bldg. Co. v. Cemetery of the Holy Cross*, 141 A. 525, 528 (Md. 1928); see also *Raven-Hansen*, *supra* note 44, at 181 n.96 (“Even when a statement of purpose was accompanied by the proviso that if the grant was used for any other purpose it ‘shall at once become void,’ the Maryland Court of Appeals refused to find a reverter because the proviso did not expressly state that the grant was effective for only ‘so long as’ it was used as provided.”) (quoting *McMahon v. Consistory of St. Paul’s Reformed Church*, 75 A.2d 122, 125 (Md. 1950)); cf. *Selectmen of Nahant v. United States*, 293 F. Supp. 1076, 1078 (D. Mass. 1968) (“The mere recital in the deed of the purpose for which the land conveyed was to be used is not in itself sufficient to impose any limitation or restriction on the estate granted.”).

<sup>98</sup> *The Federalist* No. 43, at 274 (James Madison) (1961).

<sup>99</sup> U.S. Const. art. IV, § 3, cl. 1.

<sup>100</sup> See *Downes*, 182 U.S. at 261 (“[T]he . . . cession of the District of Columbia to the Federal government relinquished the authority of the States . . .”); see also *Hobson*, 255 F. Supp. at 297 (“[T]he effect of cession upon individuals was to terminate their state citizenship and the jurisdiction of the state governments over them.”); cf. *Brennan v. S & M Enters.*, 362 F. Supp. 595,

Mayor of the District of Columbia would issue a proclamation for the election of two Senators and one Representative in Congress within 30 days.<sup>101</sup> Upon certification of that election, the President would “issue a proclamation announcing the results of such elections” within ninety days,<sup>102</sup> at which point the State of Washington, Douglass Commonwealth would immediately become a separate, new state by operation of law.<sup>103</sup> At no point in this process would the new state be “within the Jurisdiction” of Maryland.

### iii. Twenty-Third Amendment

The Twenty-Third Amendment was proposed by Congress in June 1960 and ratified in March 1961. It states:

**Sec. 1. The District constituting the seat of Government of the United States shall** appoint in such manner as the Congress may direct:

A number of electors of President and Vice-President equal to the whole number of Senators and Representatives in Congress to which the District would be entitled if it were a State, but in no event more than the least populous State . . . .

**Sec. 2.** The Congress shall have power to enforce this article by appropriate legislation.<sup>104</sup>

The purpose of the amendment was to provide all those living in the District of Columbia with the right to vote in national elections for President and Vice President. There is discernable tension between it and H.R. 51.

The Twenty-Third Amendment practically means that residents of the District of Columbia hold three votes in the Electoral College. Under H.R. 51/S. 631, the few residents who live in the reduced District—including the President and their family—would therefore have outsized influence in presidential elections. Critics have argued that this anomaly would violate the Twenty-Third Amendment’s intent, thus foreclosing a statutory reduction in the size of the District.<sup>105</sup> Critics have also argued that the Twenty-Third

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599 (D.D.C. 1973) (noting “unique geographic status of Washington, D. C.”), *aff’d*, 505 F.2d 475 (D.C. Cir. 1974).

<sup>101</sup> H.R. 51 § 102(a).

<sup>102</sup> *Id.* 103(a).

<sup>103</sup> *Id.* 103(b).

<sup>104</sup> U.S. Const. amend. XXIII (emphasis added).

<sup>105</sup> See Kennedy letter, *supra* note 44, at 132.

Amendment, by giving the District three electoral votes, contemplates the continued existence of a large populated federal district.<sup>106</sup>

However, these arguments are not supported by the text of the Amendment or any other part of the Constitution. The Twenty-Third Amendment, like the District Clause, makes no mention of a minimum geographic size or population in the federal district and it applies regardless of changes in the District’s population. “[I]n general, the Constitution is not violated anytime the factual assumptions underlying a provision change.”<sup>107</sup> Thus, changing the factual premise underlying the Twenty-Third Amendment—that there will be a large populated district—does not violate its terms granting electoral rights to residents of that district.

Indeed, there is no inherent *conflict* between H.R. 51/S. 631 and the text of the Twenty-Third Amendment. Although peculiar, this result does not pose a constitutional obstacle to H.R. 51. The concerns raised by the interaction of H.R. 51 with the Twenty-Third Amendment are policy considerations, not constitutional limits.

The most significant concern is with the allocation of three electoral votes to residents of the reduced District, including the President and their family. This may be bad policy, but not unconstitutional. Moreover, H.R. 51 seeks to avoid the problem in two ways: (1) by repealing 3 U.S.C. § 21,<sup>108</sup> which presently provides for the District’s participation in federal elections—thus leaving it without appointed electors—and (2) by kickstarting “Expedited Procedures for Consideration of Constitutional Amendment Repealing 23rd Amendment.”<sup>109</sup> While these measures do not likely escape the Amendment’s mandatory language (i.e., “The District . . . *shall* appoint” electors), neither does the Amendment foreclose the Act from a constitutional standpoint.<sup>110</sup> As a separate practical matter, it is worth noting that repealing the Twenty-Third Amendment will itself require a constitutional amendment. Thus, despite the appeal of H.R. 51 as a legislative resolution to D.C. statehood, the Act would not foreclose the need to engage in the

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<sup>106</sup> See *id.* at 134 (“[A] persuasive argument can be made that the adoption of the 23d Amendment has given permanent constitutional status to the existence of a federally owned ‘District constituting the seat of government of the United States,’ having a substantial area and population.”). *But see id.* (“This is not to imply that the existing boundaries of the District of Columbia are immutable or that Congress could not move the seat of government to a different location. . .”).

<sup>107</sup> See Dinh, *supra* note 50, at 84 (citing *Adams*, 90 F. Supp. 2d. at 50).

<sup>108</sup> See H.R. 51 § 205.

<sup>109</sup> *Id.* § 206.

<sup>110</sup> See Kennedy letter, *supra* note 44, at 132 (“[The Twenty-Third] amendment does not leave it up to Congress to determine whether or not the District of Columbia shall cast three electoral votes in a particular presidential election. It contains a clear direction that the District ‘shall appoint’ the appropriate number of electors, and gives Congress discretion only as to the mechanics by which the appointment is made.”). *But see* Phillip G. Shrag, *The Future of District of Columbia Home Rule*, 39 CATH. U. L. REV. 311, 348-49 (1990) (arguing Twenty-Third Amendment is not self-executing, so Congress can simply decline to provide electors for the District); *see also* Raven-Hansen, *supra* note 44, at 187-88.

amendment process. However, given the interest in ensuring fairly appointed electors, Congress should have a strong incentive to begin the expedited procedures for repealing the Twenty-Third Amendment.

#### iv. Minimum Requirements of Statehood

One final argument has been made against D.C. statehood, namely that the new state “effectively lacks the minimum requirements to become a state.”<sup>111</sup> This argument takes the premise that “[t]here are . . . certain effective minimum requirements defining a ‘state eligible for admission to the Union, which are not found in the Constitution.’”<sup>112</sup> For example, statehood detractors argue that a state must have a large enough population and enough resources to support a state government and uphold its share of the cost of the federal government.<sup>113</sup> Second, critics argue that any new state must have sufficiently diverse interests to function as “a proper Madisonian society.”<sup>114</sup> Only then, in this view, could the state serve as an appropriate counterweight to federal authority.<sup>115</sup>

In essence, opponents of D.C. statehood argue that it is “too small, too poor, and too identified with the federal government” to satisfy these requirements.<sup>116</sup> However, as explained, there are no explicit requirements for statehood other than states should not be formed from within or by joining lands of states without those states’ consent and must have “a republican form of government.” This has led Professor Raven-Hansen to characterize the argument as “strictly a political one, dressed up in constitutional garb.”<sup>117</sup>

To the extent there is any authority requiring sufficient population and financial viability for statehood, it can only be found in a House Committee report on Alaskan statehood prepared in 1957.<sup>118</sup> That report describes these requirements as “historical standards” and “traditionally accepted requirements for statehood.”<sup>119</sup> However, they are not implicit constitutional requirements. They have not even been strictly applied as historical standards.<sup>120</sup>

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<sup>111</sup> OLP, *supra* note 43, at 59. *But see* Raven-Hansen, *supra* note 44, at 191-92 (rejecting argument).

<sup>112</sup> OLP, *supra* note 43, at 59.

<sup>113</sup> *See id.* at vi, 59-62.

<sup>114</sup> *See id.* at v, 62-63; *see also* The Federalist No. 51 (James Madison) (Clinton Rossiter, ed., 1961).

<sup>115</sup> *See* OLP, *supra* note 43, at 63-67; *see also* The Federalist No. 51, at 323 (James Madison).

<sup>116</sup> Raven-Hansen, *supra* note 44, at 166.

<sup>117</sup> *Id.* at 189.

<sup>118</sup> *See* H.R. Rep. No. 624, 85th Cong., 1st Sess. 11 (1957).

<sup>119</sup> *Id.*

<sup>120</sup> *See* Northwest Ordinance of 1787, *reprinted in* Act of Aug. 7, 1787, 1 Stat. 50, 53 n.(a) (1789) (setting the first population standard for statehood at 60,000 people; however, that standard was subsequently disregarded on five occasions); General Accounting Office, Experiences of Past Territories Can Assist Puerto Rico Status Deliberations 12 (1980) (listing states with “dubious economic potential” at the time of their admission); *see generally* Raven-Hansen, *supra* note 44, at 191.

Second, Congress has not articulated a “multiplicity of interests”<sup>121</sup> standard. Indeed, according to Professor Raven-Hansen, “[t]he ideal Madisonian society was actually a construct which Madison directed toward American society as a whole, not each component state.”<sup>122</sup> Had that concept been applied to the original thirteen colonies—or Utah for that matter, with an overwhelmingly Mormon population now and at the time it was admitted to the Union—they might have failed to gain statehood.

Furthermore, it is not even clear that a new State of Washington, Douglass Commonwealth would lack this “multiplicity of interests.” While the federal government is undeniably the primary economic driver in the District, it is simply “untrue and patronizing” to assert that there are no competing interests in the District or that its identity is wholly wrapped up with the national government.<sup>123</sup> Regardless, these considerations are nothing more than policy considerations—for Congress to decide—not constitutional limits on D.C. statehood.<sup>124</sup> These issues are precisely what this hearing intends to review.

### III. Conclusion

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. Congressional interference in D.C.’s autonomy has had disastrous consequences for the health and welfare of District residents. 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. Disenfranchised District residents deserve full representation in Congress, and the true autonomy and self-governance that comes with statehood.

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

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<sup>121</sup> The Federalist No. 51 (James Madison) (1961).

<sup>122</sup> Raven-Hansen, *supra* note 44, at 191.

<sup>123</sup> *See id.* at 192.

<sup>124</sup> Indeed, though multiple Departments of Justice have raised these concerns, even they have recognized that these are political, not constitutional concerns. *See* OLP, *supra* note 43, at v (“The District of Columbia lacks this essential *political* requisite for statehood.”) (emphasis added); *see also* *District of Columbia Representation in Congress: Hearing on S.J. 65 Before the Subcomm. on the Constitution of the S. Comm. on the Judiciary*, 95th Cong., 2d Sess. 17-18 (1978) (testimony of Assistant Attorney General John M. Harmon), *reprinted in* OLP, *supra* note 43, at 92, 94 (“At this point, a *practical* problem is presented.”) (emphasis added); *Representation for the District of Columbia: Hearings on Proposed Constitutional Amendment to Provide for Full Congressional Representation for the District of Columbia Before the Subcomm. on Civil and Constitutional Rights of the H. Comm. on the Judiciary*, 95th Cong., 1st Sess. 126 (1977) (testimony of Assistant Attorney General Patricia M. Wald), *reprinted in* OLP, *supra* note 43, at 98, 100 (“This presents *practical and even theoretical* problems.”) (emphasis added).

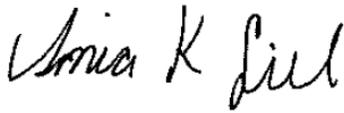
Sincerely,



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



Adriel I. Cepeda Derieux  
Staff Attorney  
Voting Rights Project

## Could D.C. become a state? Explaining the hurdles to statehood.

Democrats will soon control the House and the Senate, providing advocates a possible way forward

By **Meagan Flynn** and **Teddy Amenabar**

Jan. 8, 2021 at 7:43 p.m. EST

With Democrats soon to assume control of both chambers of Congress and the White House, advocates of making Washington, D.C., the 51st state believe they are on the brink of a historic opportunity.

Seven months after the House of Representatives [passed a D.C. statehood bill](#) for the first time, Mayor Muriel E. Bowser (D) says the unprecedented [assault on the U.S. Capitol](#) adds to the urgency of the cause: D.C. residents, she said, risked their lives on Jan. 6 to defend a Congress that affords them no voting representation.

But D.C. statehood still faces a number of high hurdles, not only in the narrowly divided Senate but in public opinion. [A 2019 Gallup poll](#) found that nearly two-thirds of Americans opposed D.C. statehood. Last year, statehood advocates [launched a campaign](#) to introduce the nation to everyday residents of their country's capital, arguing that perhaps the nation doesn't know enough about the people who live in the District to have an informed position about making it a state.

Here are the challenges that remain for statehood, once President-elect Joe Biden and Georgia Democratic Sens.-elect Raphael Warnock and Jon Ossoff — all statehood supporters — [take office](#).

## Why isn't D.C. already a state? What does the Constitution say?

Washington, D.C.'s founding is enshrined in the Constitution, which provides that the District — “not exceeding 10 Miles square” — would “become the Seat of the Government of the United States.” For a brief period after the city's creation in 1790, residents enjoyed voting rights and were allowed to cast ballots as residents of Maryland or Virginia. But those rights ended shortly after Congress moved into town and the new Capitol in 1800 and passed the District of Columbia Organic Act of 1801. The act stripped D.C. residents of their rights to vote in all federal elections, including for president, and gave Congress oversight of the city.

The District was not afforded presidential electors until the passage of the 23rd Amendment in 1961; its residents didn't get a nonvoting delegate in the House until 1970.

# How can Congress change this?

Those opposed to making D.C. a state have argued that statehood for D.C. can't happen without a constitutional amendment. They say the founders intended the entire District to serve as the seat of the federal government, not as a state. But legislation put forth by nonvoting Del. Eleanor Holmes Norton (D) every year since 1991 would not eliminate the "seat of government" that the Constitution calls for. Instead, H.R. 51 would shrink the national capital to a small complex of federal buildings, while allowing the rest of the District to become a state.

Proponents of statehood argue that this plan preserves the federal enclave — whose only requirement is that it can't exceed 10 square miles — and escapes the need for a constitutional amendment.

Outstanding questions remain over what would happen to the three electoral college votes currently afforded to the District when it becomes a smaller federal enclave. Some have wondered whether the 23rd Amendment would have to be repealed so that the few residents of the federal enclave — namely, those residing at 1600 Pennsylvania Avenue — don't retain them.

## What needs to happen for D.C. to become a state?

The bill to make D.C. a state has enough support in the House of Representatives to pass again, and Majority Leader Steny H. Hoyer (D-Md.) has pledged to bring it for a floor vote, with backing from Speaker Nancy Pelosi (D-Calif.). But it faces obstacles in the Senate.

Democrats will soon occupy half the seats in that chamber, thanks to the victories of Ossoff and Warnock, both of whom support statehood. That creates a 50-50 split in the Senate among Democrats and Republicans, with Vice President-elect Kamala D. Harris able to cast the tie-breaking vote. She, like Biden, supports statehood.

But because of the Senate filibuster — which requires 60 votes rather than 51 for legislation to pass — a simple majority of Democrats in the Senate isn't good enough to pass statehood; the bill would need the support of at least 10 Senate Republicans as well.

Alternatively, the Senate could vote to end the filibuster, meaning that 50 votes in favor of statehood — plus Harris as the tiebreaker — would suffice.

Statehood advocates run into another roadblock here: Not all Senate Democrats have signed on to support statehood. And not all of them support eliminating the Senate filibuster, including moderates such as Sens. Joe Manchin III (W.Va.) and Kyrsten Sinema (Ariz.) (They are among six in the Democratic caucus who also did not co-sponsor the statehood bill last session.)

Other Democrats who previously opposed eliminating the filibuster have said they might consider the maneuver if Republicans repeatedly obstruct Biden's agenda.

Sen. Charles E. Schumer (D-N.Y.), who is expected to lead the Senate Democratic majority, has previously said he would make D.C. statehood among his top priorities, as a way of expanding voting rights. He did not rule out eliminating the filibuster when questioned at a news conference Jan. 6.

# What would the state be called?

The federal district would be reduced to a two-square-mile enclave, including the White House, Capitol Hill, the Supreme Court and other federal buildings. The rest of what is now the District would become the State of Washington, Douglass Commonwealth.

# Why statehood? Why not become a part of Maryland or Virginia?

While some have argued D.C. is too small to be a state, it's more populous than Wyoming and Vermont, with about 706,000 residents, and rivals the population of North Dakota.

Statehood advocates say it's a moral issue, an unjust lack of voting representation based on where a person lives — in this case a historically African American city where 46 percent of residents are Black.

But politically, Democrats also support the fight for statehood because D.C. would almost certainly elect two Democratic senators, making it easier for the party to solidify control of the Senate long-term. Local advocates avoid framing the debate as a partisan issue, saying it's a question of equal representation under the law.

Still, Republicans are loath to give Democrats any political advantage. Some have instead pushed to make D.C. part of Virginia or Maryland, a proposal Rep. H. Morgan Griffith (R-Va.) put forth as recently as last fall; it did not go anywhere. Rep. Andy Harris, the only Republican in Maryland's congressional delegation and a longtime opponent to D.C. autonomy, also supports the retrocession proposal. But most Marylanders oppose adding the District as a new county to their state, according to a 2019 Washington Post-University of Maryland poll.

Bowser has been asked before about the possibility of retrocession. She has said D.C. would completely upend the current geopolitical powers in Maryland if it became a part of the state again. The District already has a larger population than any city in Maryland, though it is smaller than Montgomery and Prince George's counties. Back in 2019, Bowser said retrocession would just mean the theoretical next governor of Maryland would probably come from the District.

# What is the argument against D.C. becoming a state?

Strict constitutionalists say that D.C. statehood goes against the intent of the nation's founders. They argue the framers would have never wanted a small federal jurisdiction surrounded by a single state, which is the current solution prescribed by statehood advocates. They also raise the electoral-vote issue.

Republicans overwhelmingly agree that the only viable path toward statehood is through a constitutional amendment. Some in the GOP have also said that the District, and the people who live there, aren't the same as the average American in other parts of the country. Republicans have argued the city is too corrupt and too financially dependent

on the federal government to be the 51st state — although the former argument does not have any bearing on voting rights elsewhere in the country, and D.C. residents pay the among the most federal income taxes per capita in the nation.

Last year, Sen. Tom Cotton (R-Ark.) said that Washington, as a state, would only be “an appendage of the federal government” where the only “vital industries” are lobbying and bureaucracy. Wyoming may have a smaller population than D.C., but Cotton said it has a greater right to statehood because it’s a “well-rounded, working-class state” with workers in mining, logging and construction.

And then there’s the endless battle to control the Senate. Majority Leader Mitch McConnell (R-Ky.) has said that the campaign for statehood is just an attempt by Democrats to consolidate power with “two more liberal senators.” McConnell once called the Democrat’s campaign for statehood “full-bore socialism.”

## How many times has the House voted on D.C. statehood?

Twice. The House of Representatives first voted on D.C. statehood in 1993, but the bill failed, 277 to 153. Then, last June, the House passed legislation to declare D.C. the nation’s 51st state largely along party lines. It was the first time a chamber of Congress approved a bill granting the District statehood.

The Senate has never voted on D.C. statehood. McConnell refused to bring the House legislation to a vote.

*Fenit Nirappil contributed to this report.*

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## Bowser will make case for D.C. statehood at congressional hearing next month

By **Meagan Flynn**

Feb. 22, 2021 at 6:00 a.m. EST

Mayor Muriel E. Bowser (D) will make the case for D.C. statehood to members of Congress next month at a congressional hearing where lawmakers will debate the constitutional and logistical hurdles to making the District the 51st state.

The House Committee on Oversight and Reform will hold the hearing for Del. Eleanor Holmes Norton's statehood bill on March 11.

After the social justice demonstrations that followed the killing of George Floyd, the disputed 2020 election and the Jan. 6 storming of the Capitol, Democrats are pushing the statehood issue as a top civil rights and voting rights priority this session.

Norton (D-D.C.), the District's nonvoting delegate in Congress, has proposed shrinking the federal district to a two-square-mile enclave of federal buildings — including the Capitol and the White House. The rest of the District would become the State of Washington, Douglass Commonwealth, to honor abolitionist Frederick Douglass.

A spokeswoman for Norton said the hearing will include testimony on whether the District would be financially self-sufficient as a state, as well how the separation of the rest of the city from the federal enclave would work.

Because the federal government funds and provides some services to the District — mostly within its criminal justice and penal system — questions remain about how the District would re-engineer and pay for those functions. Norton and Bowser have insisted that the District, with a population of about 700,000, is financially prepared.

“The fact that more than half a million Americans living in the District of Columbia are denied representation in Congress is a historic wrong that flies in the face of the democratic values on which our nation was founded,” panel chair Rep. Carolyn B. Maloney (D-N.Y.) said in a statement. “This hearing will make that clear.”

In addition to Bowser, witnesses called by the Democrats will include D.C. Council Chairman Phil Mendelson; the acting D.C. chief financial officer; Wade Henderson, the interim CEO of the Leadership Conference on Civil and Human Rights; a legislative attorney with the Congressional Research Service; and a military veteran. Republicans, who strongly oppose D.C. statehood, are also expected to call witnesses.

Republicans have long argued that a constitutional amendment would be required to make the District a state.

They took that position during the last hearing on D.C. statehood, in 2019, which preceded the statehood bill's historic passage in the House in June.

Democrats are expected to push statehood through the House again this session, but the legislation faces significant hurdles in the Senate. Because of the Senate filibuster, statehood would need 60 votes instead of 50 to pass. Statehood advocates have urged the Senate to eliminate the filibuster, something not even all Democrats support doing.

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Resolution No.: 19-364  
Introduced: February 11, 2020  
Adopted: February 25, 2020

**COUNTY COUNCIL  
FOR MONTGOMERY COUNTY, MARYLAND**

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Lead Sponsor: Councilmember Glass  
Co-sponsors: Council President Katz, Councilmember Albornoz, Councilmember Rice,  
Councilmember Jawando, Councilmember Friedson, Councilmember Navarro

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**SUBJECT:** Support for District of Columbia Statehood

**Background**

1. This nation is founded on the belief that all people are endowed with certain inalienable rights and that to secure these rights, governments are instituted, deriving their just powers from the consent of the governed.
2. The United States is the formal union of states formed by their people and to have the full rights of self-government, one must be a citizen of a state.
3. Statehood only requires a simple majority vote in each house of Congress and the President's signature and is the only form of self-government that Congress cannot amend or take away
4. The people of the District of Columbia are the only Americans who bear all the burdens of citizenship, but who do not enjoy all of the citizenship's benefits and remain effectively a colony
5. Residents of the District of Columbia have fought and died in each of America's wars, including the war that created this country.
6. No other nation in the entire world denies the right of self-government, including participation in its national legislature, to the residents of its capital and several international human rights organizations have found that the District's lack of voting representation in Congress violates international law.
7. The Constitution only sets a maximum size for the "Seat of the Government of the United States," otherwise known as the District of Columbia, and Congress, with the consent of the Commonwealth of Virginia and local residents, reduced the size of the District of Columbia in 1846, when it returned one-third of the District to Virginia.

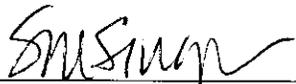
8. Congress in the 1973 District of Columbia Self-Government and Government Re-organization Act, (the "Home Rule Act") has already carved out the federal core of the District, including the White House, Capitol, Supreme Court, Mall and monuments, as the National Capital Service Area and such area can constitutionally be the "Seat of the Government of the United States."
9. District voters have overwhelmingly expressed their desire for statehood by voting in a 2016 advisory referendum in favor of statehood.
10. Newly introduced legislation H.R. 51 / S. 631 has a record 224 and 35 original cosponsors respectively.
11. The District of Columbia is home to over 702,000 residents, which is more than the states of Wyoming and Vermont.
12. District residents pay the highest federal income tax per capita when compared to residents of any of the 50 states.
13. The District has passed 24 consecutive balanced budgets, achieved a "triple A" bond rating in 2018 and maintains enviable cash reserves. Washington, DC adds nearly 900 new residents per month; its \$16 billion local budget is funded by mostly local taxes and fees, the District has clearly proven its ability to self-govern.
14. Statehood is the simplest and most constitutional way to make the people of the District of Columbia full citizens of the United States of America and is a matter of simple justice.

**Action**

The County Council for Montgomery County, Maryland approves the following resolution:

The Council urges the Congress to use its powers under Article IV, Section 3 of the United States Constitution and admit the residential and commercial areas of the District of Columbia, minus the National Capital Service Area which shall henceforth be the Seat of the Government of the United States, as the 51st State of the Union.

This is a correct copy of Council action.

  
\_\_\_\_\_  
Selena Mendy Singleton, Esq.,  
Clerk of the Council

**COUNTY COUNCIL OF PRINCE GEORGE'S COUNTY, MARYLAND**  
**2020 Legislative Session**

Resolution No. CR-4-2020

Proposed by Council Members Hawkins and Turner

Introduced by Council Members Hawkins, Turner, Ivey, Glaros, Taveras, Dernoga,  
Harrison, Davis, Streeter, Franklin and Anderson-Walker

Date of Introduction February 11, 2020

**RESOLUTION**

1 A RESOLUTION concerning

2 District of Columbia Statehood

3 For the purpose of declaring support for admitting the District of Columbia as the fifty-first State  
4 of the United States of America.

5 WHEREAS, this nation is founded on the belief that all people are endowed with certain  
6 inalienable rights and that to secure these rights, governments are instituted, deriving their just  
7 powers from the consent of the governed; and

8 WHEREAS, the United States is the formal union of states formed by their people and to  
9 have the full rights of self-government, one must be a citizen of a state; and

10 WHEREAS, statehood only requires a simple majority vote in each house of Congress and  
11 the President's signature and is the only form of self-government that Congress cannot amend or  
12 take away; and

13 WHEREAS, as a result, the people of the District of Columbia are the only Americans who  
14 bear all of the burdens of citizenship, but who do not enjoy all of the citizenship's benefits and  
15 remain effectively a colony; and

16 WHEREAS, residents of the District of Columbia have fought and died in each of  
17 America's wars, including the war that created this country; and

18 WHEREAS, no other nation in the entire world denies the right of self-government,  
19 including participation in its national legislature, to the residents of its capital and several  
20 international human rights organizations have found that the District's lack of voting  
21 representation in Congress violates international law; and

22 WHEREAS, the U.S. Constitution only sets a maximum size for the "Seat of the

1 Government of the United States," otherwise known as the District of Columbia, and Congress,  
2 with the consent of the Commonwealth of Virginia and local residents, reduced the size of the  
3 District of Columbia in 1846, when it returned one-third of the District to Virginia; and

4 WHEREAS, Congress in the 1973 District of Columbia Self-Government and Government  
5 Re-organization Act, (the "Home Rule Act") has already carved out the federal core of the  
6 District, including the White House, Capitol, Supreme Court, Mall and monuments, as the  
7 National Capital Service Area and such area can constitutionally be the "Seat of the Government  
8 of the United States"; and

9 WHEREAS, District voters have overwhelmingly expressed their desire for statehood by  
10 voting in a 2016 advisory referendum in favor of statehood; and

11 WHEREAS, District residents pay the highest federal income tax per capita when  
12 compared to residents of any of the 50 states; and

13 WHEREAS, the District has passed 24 consecutive balanced budgets, achieved a "triple A"  
14 bond rating in 2018 and maintains enviable cash reserves. Washington, DC adds nearly 900 new  
15 residents per month; its \$16 billion local budget is funded by mostly local taxes and fees, the  
16 District has clearly proven its ability to self-govern; and

17 WHEREAS, statehood is the simplest and most constitutional way to make the people of  
18 the District of Columbia full citizens of the United States of America and is a matter of simple  
19 justice:

20 NOW, THEREFORE, BE IT RESOLVED that the Prince George's County Council urges  
21 the Congress to use its powers under Article IV, Section 3 of the United States Constitution and  
22 admit the residential and commercial areas of the District of Columbia, minus the National  
23 Capital Service Area which shall henceforth be the Seat of the Government of the United States,  
24 as the 51st State of the Union.

25 BE IT FURTHER RESOLVED that the Clerk of the Council shall transmit signed copies  
26 of this Resolution to the Maryland Congressional Delegation, the District of Columbia Delegate  
27 to the United States House of Representatives, the Prince George's County Delegation to the  
28 Maryland General Assembly, the Mayor of the District of Columbia, and the Chairman of the  
29 Council of the District of Columbia, so that they may be apprised of the sentiments of the Prince  
30 George's County Council, Maryland on this matter

Adopted this 11th day of February, 2020.

COUNTY COUNCIL OF PRINCE  
GEORGE'S COUNTY, MARYLAND

BY: \_\_\_\_\_  
Todd M. Turner  
Council Chair

ATTEST:

\_\_\_\_\_  
Donna J. Brown  
Clerk of the Council

# HOUSE JOINT RESOLUTION 5

P5  
HJ 8/20 – HRU

1lr2160

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By: **Delegate Acevero**

Introduced and read first time: February 5, 2021

Assigned to: Rules and Executive Nominations

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## HOUSE JOINT RESOLUTION

1 A House Joint Resolution concerning

2 **United States of America – District of Columbia – Statehood**

3 FOR the purpose of urging the members of the United States Congress to enact federal  
4 legislation or propose a constitutional amendment granting legislative autonomy  
5 and statehood to the District of Columbia; providing that copies of this Resolution be  
6 sent to certain persons; and generally relating to the granting of statehood for the  
7 District of Columbia.

8 WHEREAS, The people living on the land that would eventually be designated as  
9 the District of Columbia were provided the right to vote for representation in Congress  
10 when the United States Constitution was ratified in 1788; and

11 WHEREAS, The passage of the Organic Act of 1801 placed the District of Columbia  
12 under the exclusive authority of the United States Congress and abolished residents' right  
13 to vote for members of Congress and the President and Vice President of the United States;  
14 and

15 WHEREAS, Residents of the District of Columbia were granted the right to vote for  
16 the President and Vice President through passage of the Twenty-Third Amendment to the  
17 United States Constitution in 1961; and

18 WHEREAS, As of 2019, the U.S. Census Bureau data estimates that the District of  
19 Columbia's population at approximately 705,000 residents is comparable to the populations  
20 of Wyoming (578,000), Vermont (624,000), North Dakota (762,000), and Alaska (731,000);  
21 and

22 WHEREAS, Residents of the District of Columbia share all the responsibilities of  
23 United States citizenship, including paying more federal taxes than residents of 22 states,  
24 service on federal juries, and defending the United States as members of the United States  
25 armed forces in every war since the War for Independence, yet they are denied full  
26 representation in Congress; and



**HOUSE JOINT RESOLUTION 5**

1 WHEREAS, The residents of the District of Columbia themselves have endorsed  
2 statehood for the District of Columbia and passed a District-wide referendum on budget  
3 autonomy; and

4 WHEREAS, No other democratic nation denies the right of self-government,  
5 including participation in its national legislature, to the residents of its capital; and

6 WHEREAS, The residents of the District of Columbia lack full democracy, equality,  
7 and citizenship enjoyed by the residents of the 50 states; and

8 WHEREAS, The United States Congress repeatedly has interfered with the District  
9 of Columbia's limited self-government by enacting laws that affect the District of  
10 Columbia's expenditure of its locally raised tax revenue, including barring the usage of  
11 locally raised revenue, thus violating the fundamental principle that states and local  
12 governments are best suited to enact legislation that represents the will of their citizens;  
13 and

14 WHEREAS, Although the District of Columbia has passed 24 consecutive balanced  
15 budgets, it still faces the possibility of being shut down yearly because of Congressional  
16 deliberations over the federal budget; and

17 WHEREAS, District of Columbia Delegate Eleanor Holmes Norton introduced in the  
18 116th Congress H.R. 51, the Washington, D.C. Admission Act, that provides that the State  
19 of Washington, D.C. would have all the rights of citizenship as taxpaying American citizens,  
20 including two Senators and at least one House member; and

21 WHEREAS, The United Nations Human Rights Committee has called on the United  
22 States Congress to address the District of Columbia's lack of political equality, and the  
23 Organization of American States has declared the disenfranchisement of the District of  
24 Columbia residents a violation of its charter agreement, to which the United States is a  
25 signatory; now, therefore, be it

26 **RESOLVED BY THE GENERAL ASSEMBLY OF MARYLAND,** That the members  
27 of the United States Congress are urged to enact federal legislation or propose a  
28 constitutional amendment granting legislative autonomy and statehood to the District of  
29 Columbia; and be it further

30 **RESOLVED,** That certified copies of this Joint Resolution be sent by the Secretary  
31 of State to: the Honorable Joseph R. Biden, President of the United States of America, 1600  
32 Pennsylvania Avenue, Washington, D.C. 20500; the Honorable Kamala Harris, Vice  
33 President of the United States, President of the United States Senate, Suite  
34 S-212, United States Capitol Building, Washington, D.C. 20510; the Honorable Patrick  
35 Leahy, President Pro Tempore of the United States Senate, 437 Russell Senate Office  
36 Building, Washington, D.C. 20510; the Honorable Chuck Schumer, United States Senate  
37 Majority Leader, 322 Hart Senate Office Building, Washington, D.C. 20510; the Honorable  
38 Nancy Pelosi, Speaker of the United States House of Representatives, 1236 Longworth  
39 House Office Building, Washington, D.C. 20515; and the Honorable Eleanor Holmes

1 Norton, Delegate to the United States House of Representatives for the District of  
2 Columbia, 2136 Rayburn House Office Building, Washington, D.C. 20515; and be it further

3       RESOLVED, That a copy of this Resolution be forwarded by the Department of  
4 Legislative Services to the Maryland Congressional Delegation: Senators Benjamin L.  
5 Cardin and Christopher Van Hollen, Jr., Senate Office Building, Washington, D.C. 20510;  
6 and Representatives Andrew P. Harris, C. A. Dutch Ruppersberger III, John P. Sarbanes,  
7 Anthony G. Brown, Steny Hamilton Hoyer, David J. Trone, Kweisi Mfume, and Jamie  
8 Raskin, House Office Building, Washington, D.C. 20515; and be it further

9       RESOLVED, That a copy of this Resolution be forwarded by the Department of  
10 Legislative Services to the Honorable Lawrence J. Hogan, Jr., Governor of Maryland; the  
11 Honorable William C. Ferguson, IV, President of the Senate of Maryland; and the  
12 Honorable Adrienne A. Jones, Speaker of the House of Delegates; and be it further

13       RESOLVED, That the Secretary of State is directed to send copies of this Joint  
14 Resolution to the presiding officers of both Houses of the legislature of each of the several  
15 states, with the request that it be circulated among leaders in the legislative branch of the  
16 state governments.

# **AGENDA ITEM #8**

## **COVID-19: VACCINE DISTRIBUTION**

## **AGENDA ITEM #9**

# **ECONOMIC IMPACTS OF THE COVID-19 PANDEMIC IN THE NATIONAL CAPITAL REGION**

# ECONOMIC IMPACTS OF THE COVID-19 PANDEMIC IN THE NATIONAL CAPITAL REGION

Paul DesJardin  
Director, Community Planning and Services

COG Board of Directors  
March 10, 2021



1

## Overview

- Numerous actions have been taken to contain the pandemic spread of COVID-19 and to mitigate its threat to personal and public health.
- These actions have restricted socio-economic activities throughout the country, including the metropolitan Washington area.
- Staff from various COG departments are collaborating to develop a snapshot summary of observed impacts on the region from a multisectoral perspective.
- Sectors of analysis include:
  - Health
  - Economy
  - Transportation (Roadways and Public Transportation)
  - Environment



2

## Overview

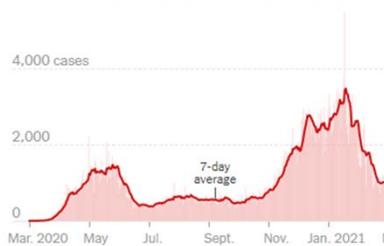
- A multisectoral approach will provide a snapshot summary of impacts from a broader perspective to provide more context.
- Analyses and findings, while empirical, are intended to provide a general contextual understanding of the impacts and are not intended to constitute a comprehensive “deep dive.”
- Analyses will measure what has occurred and will not be predictive in nature due to remaining uncertainties.
- Presentations to be made in two phases:
  - *Near-term Activities*: readily available data that can be presented to stakeholders starting in December.
  - *Longer-term Activities*: data collection and analysis activities that may take longer to complete

3

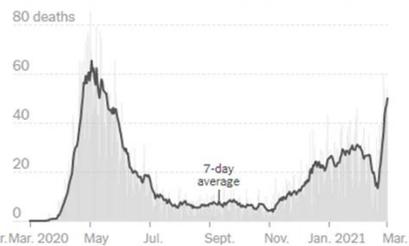
## COVID Cases & Deaths in the Washington, DC Metropolitan Area

	ON MARCH 1	DAILY AVG. IN LAST 7 DAYS	PER 100,000	14-DAY CHANGE	TOTAL REPORTED
Cases	738	1,018	16	-30% ↘	400,540
Deaths	54	50	0.80	+153% ↗	6,685

New cases



Deaths

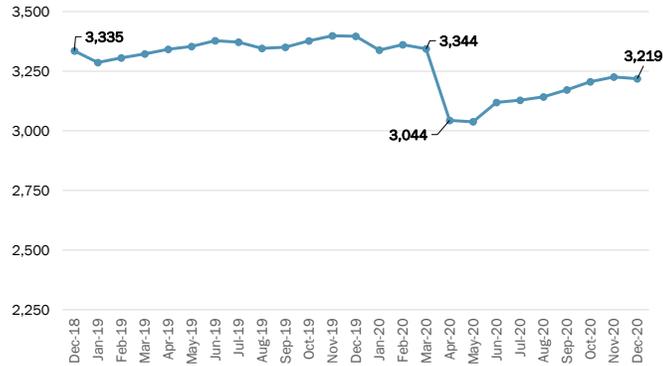


New York Times Cases & Deaths Tracker: <https://www.nytimes.com/interactive/2020/us/covid-cases-deaths-tracker.html#USA-MSA47900>. The Times uses reports from state, county and regional health departments.  
**March 1 Update:** Over several days, Virginia added many deaths that occurred earlier in 2021.

4

## Non-Farm Jobs - Washington MSA

December 2018 to December 2020  
(Bureau of Labor Statistics, Not Seasonally-adjusted, Thousands)



The region lost 300,000 jobs between March and April of this year.  
As of December, 180,000 jobs have been added during our partial reopening

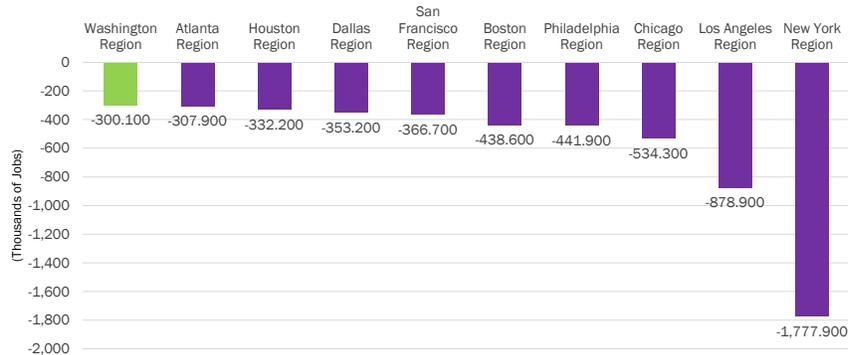


Economic Impacts of the COVID-19 Pandemic in the National Capital Region | 5  
March 10, 2021

5

## Non-Farm Job Loss March to April 2020 In 10 Largest MSAs

(Source: Bureau of Labor Statistics)



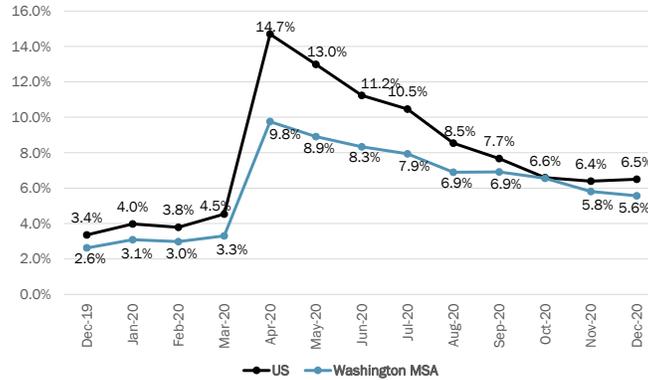
Our initial job losses were the lowest when compared to many of our peer regions.  
New York and Los Angeles experienced the most severe losses.



Economic Impacts of the COVID-19 Pandemic in the National Capital Region | 6  
March 10, 2021

6

## Unemployment Rate Washington MSA and US



Our unemployment rate nearly tripled with the onset of the pandemic but was still nearly 5 points below the nation. With reopening, the national and local rates did converge in October, but the December local rate is again below the national rate.

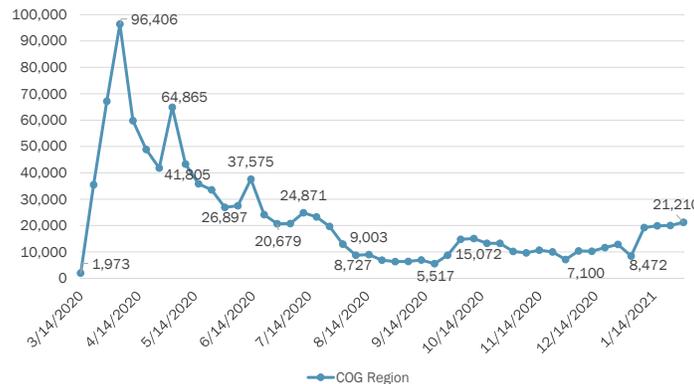


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March 10, 2021

7

## Unemployment Insurance Claims

(DC Department of Employment Services, Maryland Department of Labor, Licensing, and Regulation, and Virginia Employment Commission)



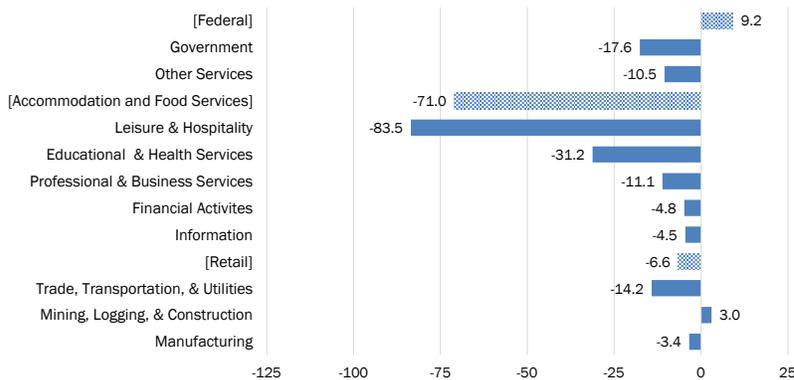
Weekly unemployment insurance claims peaked during April, declined steadily through September but increased slightly during January.



Economic Impacts of the COVID-19 Pandemic in the National Capital Region | 8  
March 10, 2021

8

## Over-the-year Job Change By Sector December 2020 vs December 2019 Washington MSA (Thousands)



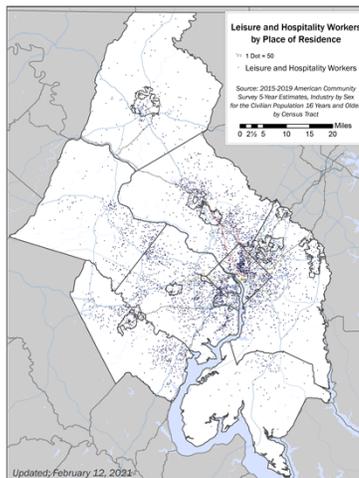
The most-current employment data shows job losses to be in hospitality, retail, and several service industry sectors.

9

## Place of Residence for Leisure and Hospitality Workers

(Source: Census ACS)

- Leisure and Hospitality workers – the sector most vulnerable to layoffs – live throughout the region.
- Neighborhoods with the highest concentrations of leisure and hospitality workers include east of Rock Creek Park in the District of Columbia, western Alexandria, South Arlington, Herndon and Annandale in Fairfax County, along US 1 in Fairfax and Prince William Counties, and Wheaton and Twinbrook in Montgomery County.



10

## New Housing Units Authorized 12-month total for COG Region

(Source: US Census C-40 data)



The number of new housing permits has declined monthly since July 2019 and is far below the adopted COG target.

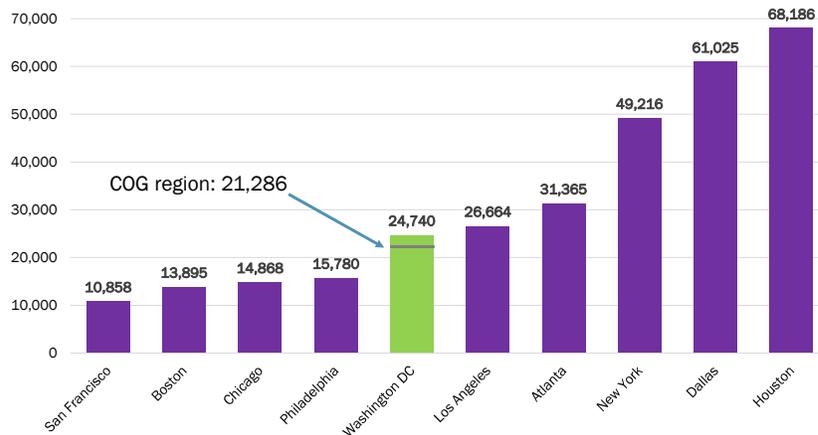


Economic Impacts of the COVID-19 Pandemic in the National Capital Region | 11  
March 10, 2021

11

## New Housing Units Authorized Issued in 10 Largest MSAs February 2020 to January 2021

(Source: Census Bureau)

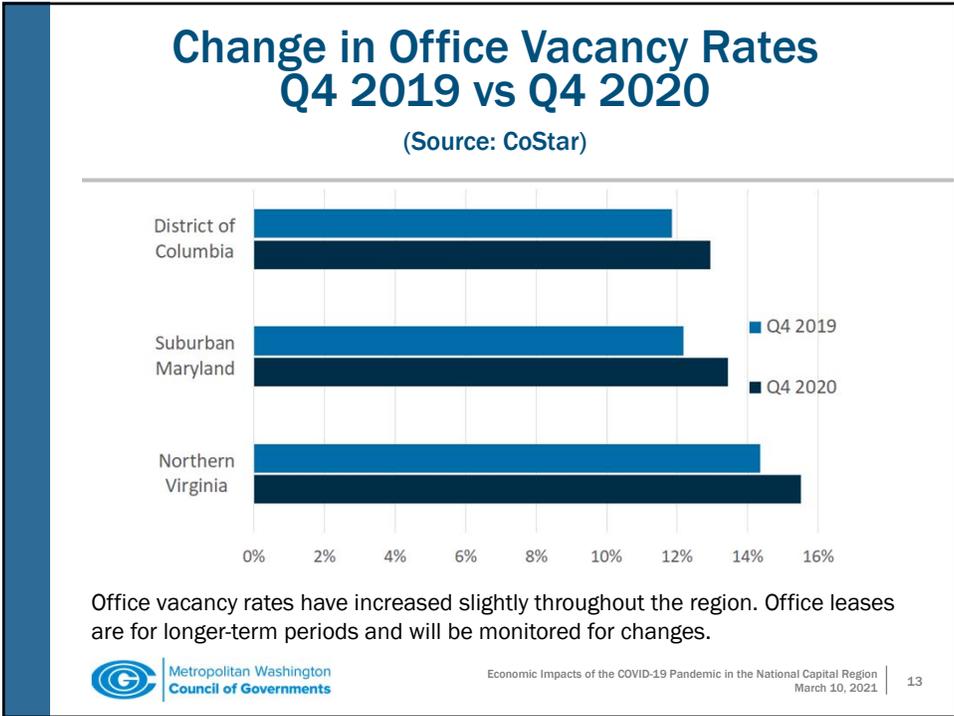


Our region lags behind several large peer MSAs in current permitting activity, most notably Houston, Dallas and New York.

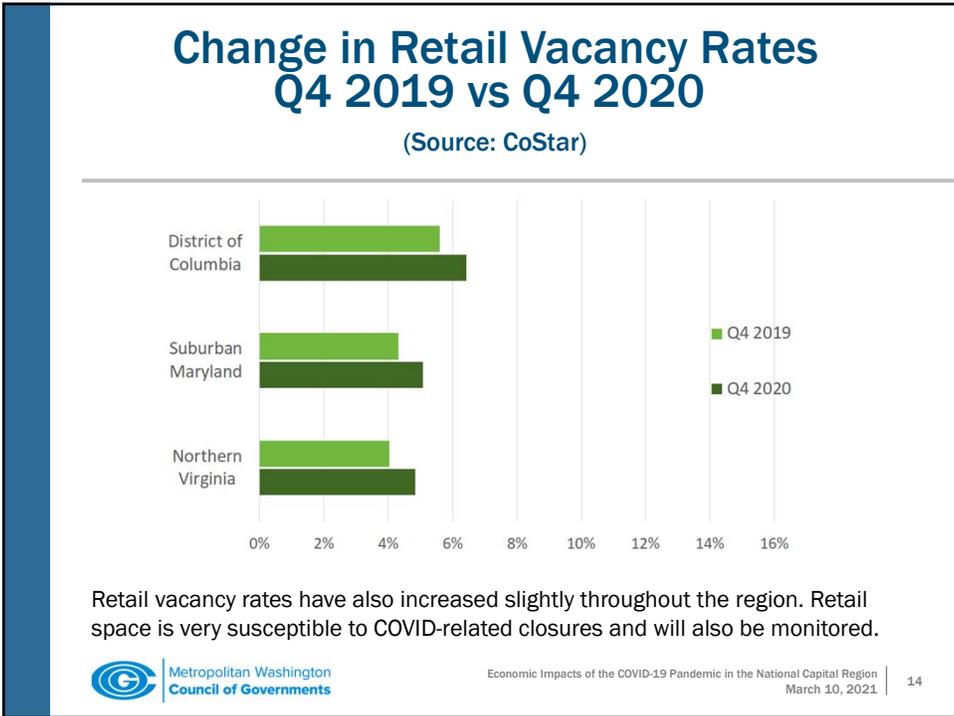


Economic Impacts of the COVID-19 Pandemic in the National Capital Region | 12  
March 10, 2021

12



13



14

## Potential Long-Lasting Effects of the Virus - Consumer

Sources: Harris Poll. WTIA, M & T Bank Corporation  
January 2021

*"Once the government provides information that the spread of the virus is flattening how long will it take you to do each of the following?"*

	Immediately to 30 days	Up to 6 mos.	From 7 to 11 mos.	>12 mos.	Never Again
Stay in a hotel	30%	63%	13%	20%	3%
Go to the movies	27%	61%	14%	21%	4%
Go out to dinner	40%	<b>74%</b>	10%	14%	2%
Travel by plane	21%	53%	16%	24%	7%
Attend sporting event	23%	56%	14%	22%	8%
Take a gym class	31%	65%	11%	16%	8%
Go to the office	42%	<b>73%</b>	9%	9%	9%
Use public transportation	27%	56%	14%	19%	11%
Host/attend a large social gathering	22%	56%	14%	23%	7%
Greet people with a handshake	27%	54%	10%	21%	15%

Harris national poll reveals concerns for a return to normal activities

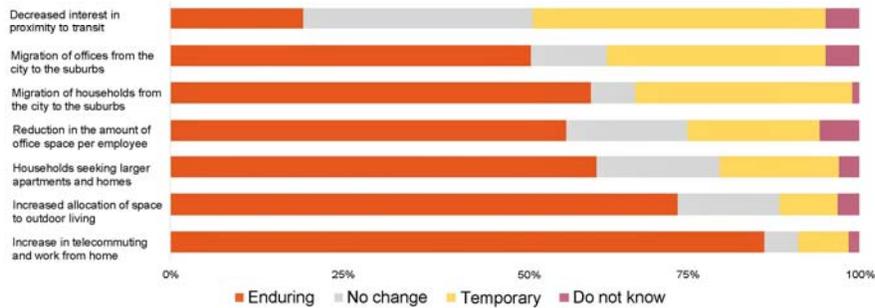


15

## Potential Long-Lasting Effects of the Virus – Real Estate

Sources: RCLCO Real Estate Advisors Year-End Sentiment Survey, January 2021.  
WTIA, M & T Bank Corporation

National real estate market poll suggests some pandemic trends may endure



16

## Planning Directors 2021 COVID Impacts Proposed Assessment Framework

Meeting Date	Theme	Committee member facilitator(s)
March 19	Public Participation	Montgomery, Alexandria
April 9	Transportation	COG TPB Staff
May 21	Office space/ telework	
June 18	Retail	Prince William
July 16	Housing	
September 17	Economic Recovery	District of Columbia
October 15	Resilience/ Planning Process	District of Columbia
November 19	Infrastructure	
December 17	Summary paper or PPT	ALL

17

## Summary – Economy

- With the onset of the pandemic, the region lost nearly 300,000 jobs between March and April – more than were lost locally during the Great Recession. We have fared better than our peer regions and our economy has now regained more than 180,000 jobs.
- The region's unemployment rate nearly tripled but was still nearly 5 points below the nation. National and local unemployment rates have improved, and local unemployment filings increased in recent weeks.
- Local commercial real estate markets have not yet been affected but should be monitored. New housing permits remain well below the adopted COG targets, as well as the number approved in many other major metropolitan areas.
- The Planning Directors will focus their 2021 meetings on anticipating the range of post-COVID impacts on several key economic sectors

18

## Next Steps

Staff from COG departments continue collaborating on the multisectoral assessment of COVID-19 impacts on the region.

- Deeper dive into more data
- Future presentations to be made (near term and longer term)
  - COG Board of Directors
  - Transportation Planning Board
  - Climate Energy and Environment Policy Committee
  - Metropolitan Washington Air Quality Committee
  - Chesapeake Bay and Water Resources Policy Committee
  - Human Services Policy Committee
  - Region Forward Coalition
  - Supporting Committees and Subcommittees



19

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20

**AGENDA ITEM #11**

**OTHER BUSINESS**

**AGENDA ITEM #12**

**ADJOURN**