



# The Phyllis Schlafly Report

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## Statehood for the District of Columbia?

On August 22, 1978, I was present when the United States Senate by a two-thirds vote passed a proposed amendment to the United States Constitution to give Washington, D.C., representation in the Congress and in the election of the President and Vice President "as though it were a state." This proposed amendment was known as the "D.C. Representation" or "D.C. Rep" Amendment. It was an exhilarating evening. The final vote was followed by loud cheering and partying.

Like nearly all proposed amendments of the twentieth century, the D.C. Rep Amendment specified that it would become part of the Constitution if ratified by three-fourths (38) of the states within seven years. When the seven-year time limit expired on August 22, 1985, only 16 states had ratified and the D.C. Rep Amendment died. A decisive majority of 34 of the 50 states had rejected outright or simply refused to ratify this amendment.

Now, a move is afoot to achieve the same goal by bypassing the constitutional amendment procedure and purporting to admit the District of Columbia as a state, using only a simple majority vote of the Congress. The bill is H.R. 51—To Provide for Admission of the State of New Columbia into the Union. D.C. Mayor Marion Barry, in his 1987 inaugural address, called for statehood for Washington, D.C., as "our first order of business on the Hill."

H.R. 51 would admit as our 51st state, "on an equal footing with the other States in all respects whatever," the 67-square-mile area of the District of Columbia, minus a tiny enclave for the Capitol, the White House, the Supreme Court and the adjacent federal buildings along the Mall. This means that Washington, D.C., would have its very own two U.S. Senators and one Representative to lobby and vote for the interests of the federal bureaucracy.

This bill presents both constitutional and policy decisions. The U.S. Department of Justice has testified that it would be unconstitutional unless the Constitution were amended and also opposes this bill as a matter of policy.

Our unique American federal system is based on the independent identity of the states and the Federal Government. This relationship was the result of a conscious decision by the framers of our Constitution.

The District of Columbia cannot be independent as the

50 states are independent. The economy of Washington, D.C., is dependent on the Federal Government. The majority of the D.C.'s workforce is employed either directly by the Federal Government, or in private sector jobs providing services to the Federal Government. The District of Columbia receives a direct payment from the federal treasury of almost a half a billion dollars every year.

At the same time, because it is the seat of our Federal Government, Washington, D.C., is in a position to exercise far more influence over the Federal Government than any other state.

The Founding Fathers recognized this interdependence and therefore located the federal capital under the direct jurisdiction of Congress, in a district outside the boundaries of every state. While the Founding Fathers considered and used several different sites for our nation's capital, there was a consensus that Congress, not one of the states, should have jurisdiction over the permanent seat of our government.

### The District Clause

This consensus resulted in the "District Clause" in our Constitution (Article I, Section 8, clause 17): "Congress shall have Power ... to 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 the 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 be, for the Erection of Forts, Magazines, Arsenals, dock-Yards, and other needful Buildings."

The father of our Constitution, James Madison, clearly understood the importance of control over the permanent seat of our national government. He wrote in 1789: "The seat of government is of great importance, if you consider the diffusion of wealth that proceeds from this source. ... Those who are most adjacent to the seat of Legislation will always possess advantages over others. An earlier knowledge of the laws, a greater influence in enacting them, better opportunities for anticipating them, and a thousand other circumstances will give a superiority to those who are thus situated."

The 23rd Amendment to the U.S. Constitution, ratified on March 29, 1961, gave the residents of the District of

Columbia the power to vote for electors for President and Vice President. The number of electors is set at the same number of electors to which the District would be entitled if it were a state, which is three at the present time. This Amendment further reinforced the special status of the District in our federal system.

The District of Columbia was granted "Home Rule" in 1973. Under the District of Columbia Self-Government and Governmental Reorganization Act, the city of Washington, D.C., is now governed by a mayor and a thirteen-member city council, both elected by popular vote. This city government has extensive legislative power, but Congress retains substantial veto power. Congress has the power of final approval of the District's budget, and the President appoints local judges.

### Representation Proposals

Over the past two hundred years, numerous proposals have been made to give Washington, D.C., residents some sort of direct voting representation in Congress. These unsuccessful proposals were of five different types: (1) to allow the District a voting member in the House of Representatives only, (2) to cede most of the District of Columbia back to Maryland, retaining a small federal district, (3) to allow District residents to vote as Maryland residents in national elections, (4) to amend the Constitution to give the District full representation in both House and Senate, and (5) to grant full statehood.

Those who are currently pushing for full statehood now assert that this can be done without constitutional amendment by the simple expedient of passing a statute just like those that have admitted other states to the Union. Article IV, Section 3, clause 1 of the Constitution states: "New states may be admitted by the Congress into this Union."

The U.S. Department of Justice believes that it is not possible to admit Washington, D.C., as a state without a constitutional amendment. Congress has no power to relinquish the plenary legislative authority over the seat of government granted it by the District Clause in Article I. Congress cannot abrogate this power by a simple majority vote; this could be accomplished only by a constitutional amendment.

It was clearly the intent of the framers of the Constitution that the seat of the Federal Government be outside of and independent of any state. Those who think that that reasoning has lost validity cannot bypass the Constitution by ignoring it; they should face the constitutional question directly and try to amend the Constitution.

More important, the 23rd Amendment is the 20th century recognition of the District of Columbia as a unique juridical entity in the American system. Even if the size of the District were reduced, as contemplated in H.R. 51, this would not change the treatment accorded the District in the 23rd Amendment.

It is curious how the advocates of D.C. statehood have changed their tune since 1978. When they were promoting the D.C. Representation Amendment, they rejected the statehood route, admitting that it would be unconstitutional.

For example, in 1978, Senator Edward Kennedy stated that "the District is neither a city nor a state. In fact, statehood may well be an impossible alternative, given the practical and constitutional questions involved in changing the historical

status of the nation's capital."

A pamphlet entitled "Democracy Denied," circulated in support of the 1978 D.C. Representation Amendment, and endorsed by District Delegate Walter E. Fauntroy, plainly acknowledged that granting statehood to the District of Columbia "would defeat the purpose of having a federal city, i.e., the creation of a district over which the Congress would have exclusive control." Delegate Fauntroy then opposed District statehood, correctly pointing out that "this would be in direct defiance of the prescriptions of the Founding Fathers."

The House Committee Report on the 23rd Amendment stated: "Apart from the serious constitutional question which would be involved ... any attempted divestiture by the Congress of its exclusive authority over the District of Columbia by invocation of its powers to create new States would do violence to the basic constitutional principle which was adopted by the framers of the Constitution in 1787 when they made provision for carving out the 'seat of government' from the States and set it aside as a permanent federal district."

The problems with statehood for the District are not limited to constitutional problems. The bill calling for the state of New Columbia attempts to carve out a concentrated federal enclave for the major buildings of the Federal Government. This is a very difficult task because the operations of the Federal Government are spread throughout the District. Except for the museums, most of the federal buildings are not located along the Capitol Mall, which is the area casually proposed as a reduced federal enclave. The statehood bill would create tremendous practical problems with respect to basic services, including police, fire and sewers, and it is doubtful that such a geographical entity could be accurately called a District under the constitutional District clause.

At the same time, the new "state" called New Columbia would be dotted with federal buildings, its territory cut up by competing jurisdictions. This attempt to Balkanize the District by creating a new state, sashaying around dozens of federal buildings and properties, makes the wisdom and purpose of the law very questionable.

Former D.C. Mayor Walter E. Washington testified in 1975 that the city of Washington, D.C., is "so physically and economically and socially bound together that I would have problems with statehood in terms of exacting from it some enclaves, or little enclaves all around the city. Ultimately, it seems to me, that would erode the very fabric of the city itself, and the viability of the city."

Nothing has changed since the states rejected the proposed D.C. Representation Amendment in 1985. The notion of treating the District like a state is no more desirable, and no less constitutionally suspect, than a decade ago, or a century ago.

### Is It Democracy Denied?

Let's consider some of the arguments in favor of statehood for the District of Columbia.

It is argued that the disenfranchisement of the Americans living in the District of Columbia is inconsistent with our democracy and is a simple case of democracy denied. The residents of the District are U.S. citizens, they are taxed like other citizens, they are subject to conscription like other citizens, yet they have no representation whatsoever in the

Senate and only one non-voting delegate in the House.

The answer to this is that the American system of government is not, and never pretended to be, pure democracy. We have a unique federal system in which power is dispersed among competing sovereignties and branches, and governmental functions are divided among them. The checks and balances in our federal system place some restrictions on pure democracy in order to secure individual liberties. The unique status of the District of Columbia is part of this system. The Founding Fathers required U.S. citizenship *and* state citizenship before all constitutional rights could be enjoyed.

The residents of the District enjoy all the rights of other American citizens except the right to vote for an individual delegation in Congress. In exchange for the privilege and financial benefits of living in the seat of our government, they have the immediate protection of all of Congress.

Residents of the District are represented by the Congress as a whole. Both chambers of Congress maintain a committee or subcommittees, devoted specifically to the problems of the District of Columbia. The residents of Washington, D.C., enjoy the fruits of a preeminent relationship by direct representation in the entire Congress.

It is difficult to take seriously the claim of the District residents that they have no voice in the national government. In fact they have far more influence than the average American. District residents have far more opportunities to contact members of Congress than the average citizen anywhere else in the country. Most members of Congress spend more time in the District of Columbia than in the district they represent. Many members of Congress maintain a home in Washington, D.C.

A second argument made in behalf of District of Columbia statehood is that it has a larger population than that of several states, so the District has enough people to participate directly in Congressional elections.

However, population alone has never been a sufficient argument for statehood. If population were the criterion, then there are fifteen other cities with larger populations than Washington, D.C., and therefore a better claim to statehood.

The District's cry of "no taxation without representation" is a specious attempt to make us feel guilty by constructing a parallel between our treatment of Washington, D.C., and the treatment of the American colonists by King George. Those situations are not comparable at all. District residents are not the victims of a far-away imperial power imposing taxes selectively. District residents pay the same taxes paid by all Americans. In return, the District receives five and one-half times the national average in per capita federal aid. The District participates with the states on an equal basis in the federal grant-in-aid and entitlement programs. In addition, the District of Columbia government receives an annual Congressional grant of more than a half billion dollars, which no state receives. All this is plus the numerous parks, monuments, museums and other civic facilities built and maintained by the Federal Government.

The advocates of District statehood sometimes argue that the United States is the only nation on earth that denies the residents of its capital city representation in the national legislature.

The United States simply has a different form of

government from all other countries in the world. The Founding Fathers decided against locating the seat of our government in a large metropolitan or commercial center, such as the British have in London or the French in Paris. We gain nothing by trying to emulate other forms of government; ours has endured for 200 years while retaining maximum individual liberties. We have the longest lasting Constitution in all history.

Sometimes the argument is made that opposition to District statehood is really racism since the majority of District residents are black. History clearly proves that race had nothing whatever to do with the Constitution framers' decision to disenfranchise the residents of the seat of our government. During most of the years of agitation for voting representation for the District, the majority of the District's residents were white.

The race issue is as phony as a \$3 bill. The constitutional decision to locate the seat of our government in a District geographically separate from any state was made at a time when few blacks lived in the area and their right to vote was not even an issue. The many arguments against giving two special Senators and a Representative to Washington, D.C., have nothing whatever to do with the race of its residents.

Statehood is not a racial issue or a civil rights issue, and those who make that assertion are engaging in political posturing. The status of the District of Columbia is a constitutional issue that goes to the very foundation of our federal Union.

The residents of the District of Columbia are not excluded from participation in Congressional elections because they are black or female or because of who they are, but because they have chosen to live outside of the boundaries of any state. To reclaim the right to vote for a Congressman, they need only move across the District line into Maryland or Virginia. The 23rd Amendment is the way that the Congress and the states chose to address the issue of the voting status of the District. Any change in this plan must be by constitutional amendment.

### **Not a Mistake or Oversight**

The disenfranchisement of District residents was not a Founding Fathers' mistake or oversight, but was an integral part of the original constitutional plan. The Founding Fathers exempted the seat of our government from the political process so that the Federal Government would remain the servant of all the people, not become their master. The matter of District voting rights was debated at the time, and was supported by Alexander Hamilton and others, but their arguments were rejected.

The Constitution framers decided on a separate and independent federal enclave to accommodate the new government. It was to be a territory in which no state would control basic services and security. It was James Madison's view, supported by the majority of the delegates to the Constitutional Convention of 1787, that Congress should exercise complete authority over the seat of government and a small area around it so that it would be insulated from assault and interruptions.

If our nation's capital is now to be located in a state, then each of the other 50 states has as good a claim to the location and its benefits as would the State of New Columbia. Washington, D.C., is no longer the center of our nation, which

was one of the reasons why that location was chosen. If the District of Columbia were made a state, we should relocate the capital to the population center of our country, which is a few miles from St. Louis, Missouri.

There is a substantial question as to whether the permission of Maryland would have to be secured before the District could be admitted to the Union as a state. Maryland ceded its land for the specific purpose of establishing a seat for the national government, not for the creation of a new state. If the District were to be granted statehood, the specific terms of Maryland's gift of the land would be violated and the cession's validity cast into question.

Furthermore, unless Maryland's permission were secured, admitting the District into the Union would conflict with Article IV, Section 3 of the Constitution, which provides that "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."

The District of Columbia lacks the fundamental requisites of a state. It lacks the resources to support a state government and to provide its share of the cost of the Federal Government. The District contains only 63 square miles, compared with the area of Rhode Island, our smallest state, which, with 1,212 square miles, is 19 times as large.

Economically, the District is dependent on the support of the Federal Government. In 1983, the District received \$2,177 per capita in federal aid, higher than any state and five-and-one-half times as much as the national average, which was \$384. In addition to all other federal aid programs, the District receives a direct payment from the federal treasury of a half billion dollars. The District simply is not a viable economic unit in the absence of funding from the Federal Government. It has no significant industry, farming or natural resources.

The per capita personal income of District residents in 1983 was \$16,409, which was \$4,700 above the national average, and most of its jobs are recession-proof. It enjoys the most modern mass transit system, paid for in large part by the national taxpayers.

As Senator Sam Hayakawa pointed out during the 1978 hearings: "The economics of Washington, D.C., make it a unique place. There is no seaport, no industry, no agriculture. There are no major money-making businesses, only one money-spending one — the Federal Government." To become a state, the District must be prepared to give up its special federal payment and stand equal with other states in fiscal affairs.

The District lacks the multiplicity and diversity of industries and competing interests which characterize all our other states, and which are essential for democratic government. That is one of the factors which disperse the power of government and preserve individual liberties. The District is an artificial political creation with only one industry: government. As a result, the District has only one substantial interest group: government workers.

Senators from the other 50 states must represent the interests of all the citizens in their states — urban and rural, business and labor, and all social and economic classes. In the District, however, there are no significant competing interests

which the new Senators and Congressman would have to respect. The federal employees are the overwhelmingly dominant class, and they would elect Senators and Representatives who are sympathetic to the continued growth and prosperity of the federal bureaucracy. District Senators and Representatives would not have to listen to farmers, businessmen, labor representatives, or any defined group except federal employees.

If the District were admitted as a state, New Columbia would become an imperial state, first among equals.

Because of deference to Senatorial choice over federal judicial appointments, the state of New Columbia would control two of the nation's most influential courts, the United States District Court for the District of Columbia and the United States Court of Appeals for the District of Columbia Circuit, both located in the District. These two courts have extraordinary influence over the determination and development of federal law, and their decisions routinely have broad national impact.

### **Don't Disturb the Balance**

The District of Columbia should not be admitted to the Union as a state. It is an integral part of the Federal Government and lacks the basic independence that is a fundamental characteristic of each of the 50 states. Self-government and individual liberty, including the rights of minorities, were secured by dispersing power in our unique federal system. This system would be fundamentally altered by the admission of a state that is dependent on the Federal Government and at the same time, could exercise extraordinary influence over Congressional policy-making.

The constitutional issues are insurmountable unless the Constitution itself is amended. The clause creating the District of Columbia gives Congress exclusive legislative authority over the entire District of Columbia, not merely over the actual Federal Government buildings. Congress does not have the power to abdicate its exclusive authority over this District.

Any attempt to force statehood for Washington, D.C., is an attempt to frustrate the clear wishes of the American people who ratified the 23rd Amendment in 1961 and rejected the D.C. Representation Amendment in 1978-1985. The Founding Fathers gave us a marvelous constitutional structure that has stood the test of time for 200 years. It should not be changed without the national consensus required to amend the United States Constitution.

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