Without the Consent of the Governed: Dobbs, Drug Policies, and Other Hurdles in D.C.'s Pursuit of Local Autonomy

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About the Speakers
(Listed Alphabetically)

Vanessa Batters-Thompson (Moderator) is the executive director of the DC Appleseed Center for Law and Justice. DC Appleseed uses teamwork, advocacy, and litigation to improve the District for everyone who lives and works here. Vanessa brings to her role nearly twenty years of legal, policy, and management experience, and a passion for serving her community. Prior to joining Appleseed, Vanessa served as the D.C. Bar Pro Bono Center's Associate Director of Legal Services for Individuals and Families. In this role, Vanessa led the Center's family law initiatives, co-managed the Center's Advocacy & Justice Clinic, and directed the Center's award-winning training program. Vanessa previously worked in Bread for the City's legal clinic, providing direct representation to clients and engaging in systematic advocacy. She additionally received a Friedman Fellowship from George Washington University Law School's Jacob Burns Community Legal Clinics, where she supervised students representing domestic violence and family law clients.

David P. Grosso is a Partner at ArentFox Schiff LLC where he advises clients on issues where federal and District of Columbia governments intersect. His experience comes from serving as a Councilmember on D.C. Council for eight years and as a staff member on the Council for six years. He has background in federal policy matters having previously served as chief counsel to Congresswoman Eleanor Holmes Norton and as CareFirst BlueCross BlueShield's VP of Public Policy. David was born in D.C., spent his early childhood on a farm in VA, and lived in Petworth during his teenage years. David volunteered helping Salvadoran refugees in the late 80s and spent a year as a volunteer with the Brethren Volunteer Service in San Antonio building a transitional housing program for homeless women in the early 90s. David graduate from Earlham College and Georgetown Law and lives in Brookland neighborhood in D.C. with his partner Serra Sippel.

Lorelie (Lorie) S. Masters, a partner at Hunton Andrews Kurth LLP, handles all aspects of complex commercial litigation and arbitration recovering through her career billions of dollars in insurance coverage for her policyholder clients. She is author of two well-known treatises, Insurance Coverage Litigation and Liability Insurance in International Arbitration: The Bermuda Form. She helped found the

American College of Coverage Counsel and was an Adviser to the American Law Institute's Restatement of the Law, Liability Insurance.

Bruce V. Spiva is an attorney and community leader who has spent his over 30-year career fighting for civil rights and civil liberties, voting rights, consumer protection, and antitrust enforcement. Over the past three decades, he has tried cases and argued appeals in courtrooms across the country, including arguing against vote suppression in the United States Supreme Court in 2021. In 2022, in his first run for public office, Bruce came in second in the Democratic primary for Attorney General of Washington, D.C.

TAB ONE

Updated July 20, 2022

The Hyde Amendment: An Overview

The Hyde Amendment, named after its original congressional sponsor, Representative Henry J. Hyde, refers to annual funding restrictions that Congress has regularly included in the annual appropriations acts for the Departments of Labor, Health and Human Services, and Education, and related agencies ("L-HHS-Ed").

The most recently enacted version of the Hyde Amendment (P.L. 117-103. Div. H, §§ 506–507), applicable for fiscal year (FY) 2022, prohibits covered funds to be expended for any abortion or to provide health benefits coverage that includes abortion. This restriction, however, does not apply to abortions of pregnancies that are the result of rape or incest ("rape or incest exception"), or where a woman would be in danger of death if an abortion is not performed ("life-saving exception"). As a statutory provision included in annual appropriations acts, Congress can modify, and has modified, the Hyde Amendment's scope over the years, both as to the types of abortions and the sources of funding subject to this restriction.

Covered Abortions

All versions of the Hyde Amendment have included, at a minimum, the life-saving exception. The original FY1977 version of the Amendment (P.L. 94-439, § 209) included only the life-saving exception. The FY1979 version (P.L. 95-480, § 210) included three exceptions: (1) the life-saving exception; (2) a rape or incest exception, but only if the rape or incest had been reported promptly to a law enforcement agency or public health service; and (3) an exception for instances in which severe and long-lasting physical health damage to the mother would result if the pregnancy were carried to term, as determined by two physicians.

Like the original version, between FY1981 and FY1993, the Amendment again generally included only the life-saving exception. For FY1994, the rape or incest exception, without a reporting requirement, was reintroduced to the Amendment. The scope of abortions subject to the Amendment has generally included these two exceptions since FY1994.

Covered Funds

As originally enacted for FY1977, the Hyde Amendment applied only to funds appropriated in the same act where the Hyde Amendment is found, i.e., the annual L-HHS-Ed appropriations act. Beginning in FY1999, the Hyde Amendment language has also included coverage of trust funds that receive a transfer from the annual L-HHS-Ed appropriations act.

Where Congress has enacted an L-HHS-Ed appropriations act as a single division of a larger omnibus appropriations act, questions may arise regarding whether the Hyde Amendment's reference to "funds appropriated in this Act" includes funds appropriated in other divisions of the larger omnibus. Historically, such omnibus appropriations acts have included a prefatory provision specifying that "any reference to 'this Act' contained in any division of this Act shall be treated as referring only to the provisions of that division." *See*, *e.g.*, P.L. 117-103, § 3. Where such language is included with a version of the Hyde Amendment in an omnibus appropriations act, it will likely constrain the application of the Hyde Amendment to funds appropriated, or transferred, in the L-HHS-Ed division of the omnibus.

Effect of the Hyde Amendment

A significant effect of the Hyde Amendment is that it restricts federally funded abortions under major federal health care programs, such as Medicaid, a cooperative federal-state program that provides medical benefits assistance to low-income individuals, and Medicare, which provides health coverage not only for certain elderly individuals, but also certain disabled individuals under 65. Medicaid is covered by the Hyde Amendment because it is funded through appropriations made in the annual L-HHS-Ed appropriations act. Medicare is covered because it is financed from various trust funds that receive transfers from the same appropriations act. The Hyde Amendment also restricts abortion funding under other health programs funded through the L-HHS-Ed appropriations act, including certain community health centers that provide primary health services in underserved areas.

Because the Hyde Amendment is a limitation on particular sources of funds, it does not apply to other sources of funds that may be available to a federal program. Some states have opted to cover abortions beyond the Hyde restrictions under their Medicaid programs using exclusively state funds. Similarly, the Office of Legal Counsel in the Department of Justice has concluded that the Hyde Amendment applied to those portions of student aid programs under Title IV of the Higher Education Act (HEA) funded through the annual L-HHS-Ed appropriations act. However, it concluded that the Amendment did not limit the use of mandatory appropriations for such programs provided in the HEA itself. 45 Op. O.L.C.—(Jan. 16, 2021).

Other Hyde-like Provisions

Although the Hyde Amendment does not generally apply to funding provided outside of the L-HHS-Ed appropriations act, programs with such funding may still be subject to Hyde-like restrictions on abortion. For example, the Hyde Amendment has been incorporated by statutory cross-reference to apply to the Indian Health Service, which provides health services to American Indians and Alaska

Natives and is funded through the Department of the Interior, Environment, and Related Agencies Appropriations Act. Similarly, the Children's Health Insurance Program (CHIP), which generally provides health coverage to children in families that earn too much to qualify for Medicaid but not enough to buy private insurance, is funded through mandatory appropriations provided in Title XXI of the Social Security Act. CHIP is therefore not covered by the Hyde Amendment. However, the CHIP statute includes its own independent limitations on abortion coverage at 42 U.S.C. § 1397ee(c)(1) and (7).

Other examples of Hyde-like provisions that Congress has regularly included in other annual appropriations acts or permanently codified include:

- Department of State, Foreign Operations, and Related Programs Appropriations Act, P.L. 117-103, Div. K, Title III (restricting funds for global health programs and the Peace Corps), Title VII, §§ 7018 and 7057;
- Financial Services and General Government Appropriations Act, P.L. 117-103, Div. E, §§ 613, 810;
- Department of Justice Appropriations Act, P.L. 117-103, Div. B, Title II, § 202;
- 10 U.S.C. § 1093 (placing restrictions on funds available to the Department of Defense).

For more detailed information on these provisions, see CRS Report RL33467, *Abortion: Judicial History and Legislative Response*, by Jon O. Shimabukuro.

Litigation History

Upon enactment, the original Hyde Amendment was immediately challenged on the grounds that it violated the Medicaid Act and the Fifth and First Amendments of the Constitution. In *Harris v. McRae*, 448 U.S. 297(1980), the Supreme Court upheld the Hyde Amendment.

The Court rejected the plaintiffs' statutory argument that the Medicaid Act imposed an obligation on states to continue funding those medically necessary abortions for which federal reimbursements became unavailable under the Hyde Amendment. The Medicaid program, according to the Court, "was designed as a cooperative program of shared financial responsibility, not as a device for the Federal Government to compel a State to provide services that Congress itself is unwilling to fund."

As to the constitutional challenge, the Court held that the Hyde Amendment did not violate the liberty interests protected by the Fifth Amendment's Due Process Clause because the Amendment "places no governmental obstacle in the path of a woman who chooses to terminate her pregnancy." Rather, the Court reasoned, the Amendment merely provides unequal subsidization of abortion relative to other medical services to encourage alternative activity deemed by Congress to be in the public interest.

The Court further held that the Hyde Amendment, which principally impacts the indigent who receive health care coverage through Medicaid, was not predicated on a constitutionally suspect classification that raised equal protection concerns under the Fifth Amendment. The Court also ruled that the funding restriction did not violate the First Amendment's Establishment Clause merely because it may coincide with the religious tenets of the Roman Catholic Church.

After 1993, when the rape or incest exception was included in the Hyde Amendment, several appellate courts considered the interplay between this version of the Amendment and more restrictive state requirements that limited abortion coverage to only instances where the mother's life was in danger. These courts uniformly concluded that the states' narrower funding restriction impermissibly conflicted with the Medicaid Act's requirements and enjoined those restrictions. *See* Planned Parenthood Affiliates of Michigan v. Engler, 73 F.3d 634, 638 (6th Cir. 1996) (collecting cases).

According to these courts, the Medicaid Act and its implementing regulations require participating states to cover certain categories of health services and prohibit states from arbitrarily denying or reducing the scope of such mandatory, medically necessary services solely because of the diagnosis or condition of the recipient. In these courts' view, abortions fall within several mandatory categories of care, including family planning services. The Hyde Amendment, according to the courts, effectively defined the range of medically necessary abortions covered by Medicaid by carving out particular abortion services that states are not obligated to cover. Because the states' narrower restrictions would deny a medical service in all cases except those where a patient's life is at risk, the courts reasoned that such restrictions impermissibly discriminated in the coverage of medically necessary abortions on the basis of a patient's medical condition.

Open Questions Related to the Hyde Amendment

Following the Supreme Court's decision in *Dobbs v. Jackson Women's Health Organization*, No. 19-1392 (U.S. June 24, 2022), which overruled *Roe v. Wade*, 410 U.S. 113 (1973), and held that there is no constitutional right to abortion, many states are expected to enact or begin enforcing state laws that restrict abortion access. *See* CRS Legal Sidebar LSB10779, *State Laws Restricting or Prohibiting Abortion*, by Laura Deal. Many of these laws permit abortions in narrower circumstances than the current version of the Hyde Amendment, such as by including only a life-saving exception to the restrictions they impose. If the current version of the Hyde Amendment were reenacted, its prior litigation history suggests that the interplay between these state laws and the Amendment in the context of the Medicaid program may be relitigated. There may also be additional interpretive questions regarding the current Hyde Amendment's scope, such as whether its restrictions apply beyond the payment or coverage of abortion services to, for instance, activities like travel that may facilitate abortion access.

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Committees of Congress

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SUMMARY

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February 25, 2022

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Abortion: Judicial History and Legislative Response

In 1973, the U.S. Supreme Court concluded in *Roe v. Wade* that the U.S. Constitution protects a woman's decision to terminate her pregnancy. In a companion decision, *Doe v. Bolton*, the Court found that a state may not unduly burden the exercise of that fundamental right with regulations that prohibit or substantially limit access to the procedure. Rather than settle the issue, the Court's rulings since *Roe* and *Doe* have continued to generate debate and have precipitated a variety of governmental actions at the national, state, and local levels designed either to nullify the rulings or limit their effect. These governmental regulations have, in turn, spawned further litigation in which resulting judicial refinements in the law have been no more successful in dampening the controversy.

Following *Roe*, the right identified in that case was affected by decisions such as *Webster v. Reproductive Health Services*, which gave greater leeway to the states to restrict abortion, and *Rust v. Sullivan*, which narrowed the scope of permissible abortion-related activities that are linked to federal funding. The Court's decision in *Planned Parenthood of Southeastern Pennsylvania v. Casey*, which established the "undue burden" standard for determining whether abortion restrictions are permissible, gave Congress additional impetus to move on statutory responses to the abortion issue, such as the Freedom of Choice Act.

Legislation to prohibit a specific abortion procedure, the so-called "partial-birth" abortion procedure, was passed in the 108th Congress. The Partial-Birth Abortion Ban Act appears to be one of the only examples of Congress restricting the performance of a medical procedure. Legislation that would prohibit the performance of an abortion once the fetus reaches a specified gestational age has also been introduced in numerous Congresses.

Since *Roe*, Congress has attached abortion funding restrictions to various appropriations measures. The greatest focus has arguably been on restricting Medicaid abortions under the annual appropriations for the Department of Health and Human Services. This restriction is commonly referred to as the "Hyde Amendment" because of its original sponsor. Similar restrictions affect the appropriations for other federal agencies, including the Department of Justice, where federal funds may not be used to perform abortions in the federal prison system, except in cases of rape or if the life of the mother would be endangered. Hyde-type amendments also have an impact in the District of Columbia, where federal and local funds may not be used to perform abortions except in cases of rape or incest, or where the life of the mother would be endangered, and affect international organizations like the United Nations Population Fund, which receives funds through the annual Foreign Operations appropriations measure.

The debate over abortion also continued in the context of health reform. The Patient Protection and Affordable Care Act (ACA), enacted on March 23, 2010, includes provisions that address the coverage of abortion services by qualified health plans that are available through health benefit exchanges. The ACA's abortion provisions have been controversial, particularly with regard to the use of premium tax credits or cost-sharing subsidies to obtain health coverage that includes coverage for elective or nontherapeutic abortion services. Under the ACA, individuals who receive a premium tax credit or cost-sharing subsidy are permitted to select a qualified health plan that includes coverage for elective abortions, subject to funding segregation requirements that are imposed on both the plan issuer and the enrollees in such a plan.

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In 1973, the U.S. Supreme Court concluded in *Roe v. Wade* that the U.S. Constitution protects a woman's decision to terminate her pregnancy.[1] In a companion decision, *Doe v. Bolton*, the Court found that a state may not unduly burden the exercise of that fundamental right with regulations that prohibit or substantially limit access to the procedure.[2] Rather than settle the issue, the Court's rulings since *Roe* and *Doe* have continued to generate debate and have precipitated a variety of governmental actions at the national, state, and local levels designed either to nullify the rulings or limit their effect. These governmental regulations have, in turn, spawned further litigation in which resulting judicial refinements in the law have been no more successful in dampening the controversy.

Although the primary focus of this report is legislative action with respect to abortion, discussion of the various legislative proposals necessarily involves an examination of the leading Supreme Court decisions concerning a woman's right to choose.[3]

Judicial History

Roe v. Wade and *Doe v. Bolton*

In 1973, the Supreme Court issued its landmark abortion rulings in *Roe v. Wade* and *Doe v. Bolton*. In those cases, the Court found that Texas and Georgia statutes regulating abortion interfered to an unconstitutional extent with a woman's right to decide whether to terminate her pregnancy. The Texas statute forbade all abortions not necessary "for the purpose of saving the life of the mother."[4] The Georgia enactment permitted abortions only when continued pregnancy seriously threatened the woman's life or health, when the fetus was very likely to have severe birth defects, or when the pregnancy resulted from rape.[5] The Georgia statute also required that abortions be performed only at accredited hospitals and only after approval by a hospital committee and two consulting physicians.[6]

The Court's decisions were delivered by Justice Blackmun for himself and six other Justices. Justices White and Rehnquist dissented. The Court ruled that states may not categorically proscribe abortions by making their performance a crime, and that states may not make abortions unnecessarily difficult to obtain by prescribing elaborate procedural guidelines.[7] The constitutional basis for the decisions rested upon the conclusion that the Fourteenth Amendment right of personal privacy embraced a woman's decision whether to carry a pregnancy to term.[8] With regard to the scope of that privacy right, the Court stated that it includes "only personal rights that can be deemed 'fundamental' or 'implicit in the concept of ordered liberty'" and bears some extension to activities related to marriage, procreation, contraception, family relationships,

[1] 410 U.S. 113 (1973).

[2] 410 U.S. 179 (1973).

[3] For additional discussion of the relevant case law, *see* CRS Report 95-724, *Abortion Law Development: A Brief Overview*, by Jon O. Shimabukuro.

[4] *See Roe*, 410 U.S. at 119.

[5] *See Doe*, 410 U.S. at 183.

[6] *Id* at 183-84.

[7] *Roe*, 410 U.S. at 164-65; *Doe*, 410 U.S. at 201.

[8] *See Roe*, 410 U.S. at 153.

child rearing, and education.[9] Such a right, the Court concluded, "is broad enough to encompass a woman's decision whether or not to terminate her pregnancy."[10]

With respect to protecting that right against state interference, the Court held that because the right of personal privacy is a fundamental right, only a "compelling State interest" could justify its limitation by a state.[11] Thus, while it recognized the legitimacy of the state interest in protecting maternal health and the preservation of the fetus's potential life, as well as the existence of a rational connection between these two interests and a state's anti-abortion law, the Court held these interests insufficient to justify an absolute ban on abortions.[12]

Instead, the Court emphasized the durational nature of pregnancy and found the state's interests to be sufficiently compelling to permit the curtailment or prohibition of abortion only during specified stages of pregnancy. The High Court concluded that until the end of the first trimester, an abortion is no more dangerous to maternal health than childbirth itself, and found that "[with] respect to the State's important and legitimate interest in the health of the mother, the 'compelling' point, in light of present medical knowledge, is at approximately the end of the first trimester."[13] Only after the first trimester did the state's interest in protecting maternal health provide a sufficient basis to justify state regulation of abortion, and then only to protect this interest.[14]

The "compelling" point with respect to the state's interest in the potential life of the fetus "is at viability."[15] Following viability, the state's interest permitted it to regulate and even proscribe an abortion except when necessary, in appropriate medical judgment, for the preservation of the life or health of the woman.[16] In summary, the Court's holding was grounded in this trimester framework analysis and the concept of fetal viability.[17]

In *Doe v. Bolton*, the Court extended *Roe* by warning that just as states may not prevent abortion by making its performance a crime, they may not make abortions unreasonably difficult to obtain by prescribing elaborate procedural barriers.[18] In *Doe*, the Court struck down Georgia's requirements that abortions be performed in licensed hospitals; that abortions be approved beforehand by a hospital committee; and that two physicians concur in the abortion decision.[19] The Court appeared to note, however, that this would not apply to a statute that protected the religious or moral beliefs of denominational hospitals and their employees.[20]

In *Roe*, the Court also dealt with the question of whether a fetus is a person under the Fourteenth Amendment and other provisions of the Constitution. The Court indicated that the Constitution never specifically defines the term "person," but added that in nearly all the sections where the

[9] *Roe*, 410 U.S. at 152-53.

[10] *Id*. at 153.

[11] *Id*. at 155.

[12] *Id*. at 164-65.

[13] *Id*. at 163.

[14] *Id*. at 163-64.

[15] *Id*.

[16] *Id*.

[17] *Id*. at 164-65. *See also id.* at 160 (defining the term "viable" as the point in fetal development when the fetus is "potentially able to live outside the mother's womb, albeit with artificial aid.").

[18] *Doe*, 410 U.S. at 201.

[19] *Id*. at 193-200.

[20] *Id*. at 197-98.

word "person" appears, "the use of the word is such that it has application only postnatally. None indicates, with any assurance, that it has any possible pre-natal application."[21] The Court emphasized that, given the fact that in the major part of the 19th century prevailing legal abortion practices were far freer than today, it was persuaded "that the word 'person', as used in the Fourteenth Amendment, does not include the unborn."[22]

The Court did not, however, resolve the question of when life actually begins. While noting the divergence of thinking on this issue, it instead articulated the legal concept of "viability," defined as the point at which the fetus is potentially able to live outside the womb, with or without artificial assistance.[23] Many other questions were also not addressed in *Roe* and *Doe*, but instead led to a wealth of post-*Roe* litigation.

Supreme Court Decisions After *Roe* and *Doe*

Following *Roe*, the Court examined a variety of federal and state requirements that addressed different concerns related to abortion: informed consent and mandatory waiting periods;[24] spousal and parental consent;[25] parental notice;[26] reporting requirements;[27] advertisement of abortion services;[28] abortions by nonphysicians;[29] locus of abortions;[30] viability, fetal testing, and disposal of fetal remains;[31] and "partial-birth" abortions.[32]

In *Rust v. Sullivan*, the Court upheld on both statutory and constitutional grounds the Department of Health and Human Services' Title X regulations restricting recipients of federal family planning funding from using federal funds to counsel women about abortion.[33] While *Rust* is probably better understood as a case involving First Amendment free speech rights rather than a challenge to the constitutionally guaranteed substantive right to abortion, the Court, following its earlier public funding cases (*Maher v. Roe*[34] and *Harris v. McRae*),[35] did conclude that a woman's

[21] *Roe*, 410 U.S. at 157.

[22] *Id.* at 158.

[23] *Id.* at 160.

[24] Planned Parenthood of Cent. Mo. v. Danforth, 428 U.S. 52 (1976); City of Akron v. Akron Ctr. for Reprod. Health, Inc., 462 U.S. 416 (1983).

[25] Planned Parenthood of Cent. Mo. v. Danforth, *supra;* Bellotti v. Baird, 443 U.S. 622 (1979); City of Akron v. Akron Ctr. for Reprod. Health, Inc., *supra*; Planned Parenthood Ass'n of Kan. City, Mo., Inc. v. Ashcroft, 462 U.S. 476 (1983).

[26] Bellotti v. Baird, *supra*; H. L. v. Matheson, 450 U.S. 398 (1981); Hartigan v. Zbaraz, 484 U.S. 171 (1987); Hodgson v. Minn., 497 U.S. 417 (1990); Ohio v. Akron Ctr. for Reprod. Health, 497 U.S. 502 (1990).

[27] Planned Parenthood of Cent. Mo. v. Danforth, *supra*; Planned Parenthood Ass'n of Kan. City, Mo., Inc. v. Ashcroft, *supra*.

[28] Bigelow v. Va., 421 U.S. 809 (1975).

[29] Conn. v. Menillo, 423 U.S. 9 (1975).

[30] City of Akron v. Akron Ctr. for Reprod. Health, Inc., *supra*; Planned Parenthood Ass'n of Kan. City, Mo., Inc. v. Ashcroft, *supra*; Simopoulos v. Va., 462 U.S. 506 (1983).

[31] Planned Parenthood of Cent. Mo. v. Danforth, *supra*; Colautti v. Franklin, 439 U.S. 379 (1979); Planned Parenthood Ass'n of Kan. City, Mo., Inc. v. Ashcroft, *supra*; City of Akron v. Akron Ctr. for Reprod. Health, Inc., *supra*.

[32] Stenberg v. Carhart, 530 U.S. 914 (2000); Gonzales v. Carhart, 550 U.S. 124 (2007).

[33] 500 U.S. 173 (1991).

[34] 432 U.S. 464 (1977) (upholding state regulation limiting Medicaid assistance to abortions certified as medically necessary).

[35] 448 U.S. 297 (1980) (upholding restrictions on the use of federal funds to perform abortions that are not medically necessary).

right to an abortion was not burdened by the Title X regulations. The Court reasoned that there was no constitutional violation because the government has no duty to subsidize an activity simply because it is constitutionally protected and because a woman is "in no worse position than if Congress had never enacted Title X."[36]

In addition to *Rust*, the Court decided several other noteworthy cases involving abortion following *Roe*. *Webster v. Reproductive Health Services*[37] and *Planned Parenthood of Southeastern Pennsylvania v. Casey*[38] illustrate the Court's shift from the type of constitutional analysis it articulated in *Roe*. These cases and other more recent cases, such as *Stenberg v. Carhart*[39] and *Ayotte v. Planned Parenthood of Northern New England*[40] have implications for future legislative action and how enactments will be judged by the courts in the years to come. *Webster*, *Casey*, and *Ayotte* are discussed in the subsequent sections of this report. A discussion of *Stenberg* is included in the "Partial-Birth Abortion" section of this report.

Webster

In *Webster v. Reproductive Health Services*, the Court upheld Missouri's restrictions on the use of public employees and facilities for the performance of abortions.[41] Although the Court did not overrule *Roe*, a plurality of Justices indicated that it was willing to apply a less stringent standard of review to state abortion regulations.[42] The plurality criticized the trimester framework established by *Roe*, noting that it "is hardly consistent with the notion of a Constitution cast in general terms[.]"[43] The plurality also questioned *Roe*'s identification of viability as the point at which a state could regulate abortion to protect potential life:

> [W]e do not see why the State's interest in protecting potential human life should come into existence only at the point of viability, and that there should therefore be a rigid line allowing state regulation after viability but prohibiting it before viability.[44]

Webster recognized that state legislatures retain considerable discretion to pass abortion regulations, and acknowledged the likelihood that such regulations would probably pass constitutional muster in the future.[45] However, because *Webster* did not affect private doctors' offices or clinics, the ruling was arguably narrow in scope. Nevertheless, *Webster* set the stage for the Court's 1992 decision in *Casey*, where a real shift in direction was pronounced.

Casey

Webster and *Rust* energized legislative activity at the federal and state levels. Some of the state legislative proposals that became law were later challenged in the courts.[46] The constitutionality

[36] *Rust*, 500 U.S. at 203.

[37] 492 U.S. 490 (1989).

[38] 505 U.S. 833 (1992).

[39] 530 U.S. 914 (2000).

[40] 546 U.S. 320 (2006).

[41] 492 U.S. 490 (1989).

[42] *Id.* at 516-22.

[43] *Id.* at 518.

[44] *Id.* at 519.

[45] *Id.* at 520-21.

[46] *See, e.g.*, Sojorner v. Roemer, 772 F.Supp. 930 (E.D. La. 1991) (invalidating Louisiana abortion law).

of Pennsylvania's Abortion Control Act was examined by the Court in *Planned Parenthood of Southeastern Pennsylvania v. Casey*.[47] In *Casey*, a plurality of the Court rejected the trimester framework established in *Roe*, explaining that "in its formulation [the framework] misconceives the pregnant woman's interest . . . and in practice it undervalues the State's interest in potential life[.]"[48] In its place, the plurality adopted a new "undue burden" standard, maintaining that this standard recognized the need to reconcile the government's interest in potential life with a woman's right to decide to terminate her pregnancy.[49] While *Roe* generally restricted the regulation of abortion during the first trimester, *Casey* emphasized that not all of the burdens imposed by an abortion regulation were likely to be undue. Under *Casey*, an undue burden exists if the purpose or effect of an abortion regulation is "to place a substantial obstacle in the path of a woman seeking an abortion before the fetus attains viability."[50]

In adopting the new undue burden standard, *Casey* nonetheless reaffirmed the essential holding of *Roe*, which the plurality described as having three parts.[51] First, a woman has a right to choose to have an abortion prior to viability without undue interference from the state. Second, the state has a right to restrict abortions after viability so long as the regulation provides an exception for pregnancies that endanger a woman's life or health. Third, the state has legitimate interests from the outset of the pregnancy in protecting the health of the woman and the life of the fetus.

After applying the undue burden standard in *Casey*, four provisions of the Pennsylvania law were upheld. The law's 24-hour waiting period requirement, its informed consent provision, its parental consent provision, and its recordkeeping and reporting requirements were found to not impose an undue burden.[52] While the plurality acknowledged that these requirements, notably the 24-hour waiting period, could delay the procedure or make an abortion more expensive, it nevertheless concluded that they did not impose an undue burden. Moreover, the plurality emphasized that "under the undue burden standard a State is permitted to enact persuasive measures which favor childbirth over abortion even if those measures do not further a health interest."[53]

The law's spousal notification provision, which required a married woman to tell her husband of her intention to have an abortion, did not survive the undue burden analysis.[54] A majority of the Court maintained that the requirement imposed an undue burden because it could result in spousal abuse and discourage a woman from seeking an abortion: "The spousal notification requirement is thus likely to prevent a significant number of women from obtaining an abortion. It does not merely make abortions a little more difficult or expensive to obtain; for many women, it will impose a substantial obstacle."[55]

The plurality's decision in *Casey* was significant because the new standard of review appeared to allow more state restrictions to pass constitutional muster. In addition, the plurality maintained that the state's interest in protecting the potentiality of human life extended throughout the course

[47] 505 U.S. 833 (1992).

[48] *Id*. at 873.

[49] *Id*. at 876.

[50] *Id*. at 877.

[51] *Id*. at 846.

[52] *Id*. at 881-901.

[53] *Id*. at 886.

[54] *Id*. at 887-98.

[55] *Id*. at 893-94.

of the pregnancy.[56] Thus, the state could regulate, even to the point of favoring childbirth over abortion, from the outset. Under *Roe*, which utilized the trimester framework, a woman's decision to terminate her pregnancy was reached in consultation with her doctor with virtually no state involvement during the first trimester of pregnancy.

In addition, under *Roe*, abortion was a "fundamental right" that could not be restricted by the state except to serve a "compelling" state interest. *Roe*'s strict scrutiny standard of review resulted in most state regulations being invalidated during the first two trimesters of pregnancy. The "undue burden" standard allowed greater regulation during that period. This is evident from the fact that the *Casey* Court overruled, in part, two of its earlier decisions which had followed *Roe*: *City of Akron v. Akron Center for Reproductive Health*[57] and *Thornburgh v. American College of Obstetricians and Gynecologists*.[58] In these cases, the Court, applying strict scrutiny, struck down 24-hour waiting periods and informed consent provisions; whereas in *Casey*, applying the undue burden standard, the Court upheld similar provisions.

Casey had its greatest immediate effect on women in the state of Pennsylvania; however, its reasoning prompted other states to pass similar restrictions that would withstand challenge under the "undue burden" standard.[59]

Partial-Birth Abortion

On June 28, 2000, the Court decided *Stenberg v. Carhart*, its first substantive abortion case since *Casey*.[60] In *Stenberg*, the Court determined that a Nebraska statute that prohibited the performance of so-called "partial-birth" abortions was unconstitutional because it failed to include an exception to protect the health of the mother and because the language defining the prohibited procedure was too vague.[61] In affirming the decision of the U.S. Court of Appeals for the Eighth Circuit, the Court agreed that the language of the Nebraska statute could be interpreted to prohibit not just the dilation and extraction (D&X) procedure that prolife advocates oppose, but the standard dilation and evacuation (D&E) procedure that is the most common abortion procedure during the second trimester of pregnancy.[62] The Court maintained that the statute was likely to prompt those who perform the D&E procedure to stop because of fear of prosecution and conviction.[63] The result would be the imposition of an "undue burden" on a woman's ability to have an abortion.

After several attempts to pass federal legislation that would prohibit the performance of partial-birth abortions, Congress passed the Partial-Birth Abortion Ban Act of 2003 during the 108th Congress.[64] The measure was signed by President George W. Bush on November 5, 2003. In general, the act prohibits physicians from performing a partial-birth abortion except when it is

[56] *Id*. at 872-73.

[57] 462 U.S. 416 (1983).

[58] 476 U.S. 747 (1986).

[59] *See, e.g.*, Mazurek v. Armstrong, 520 U.S. 968 (1997) (upholding Montana statute restricting the performance of abortions to licensed physicians).

[60] 530 U.S. 914 (2000).

[61] *See also* CRS Report RL30415, *Partial-Birth Abortion: Recent Developments in the Law*, by Jon O. Shimabukuro (available to congressional clients upon request).

[62] *Stenberg*, 530 U.S. at 939.

[63] *Id*. at 945.

[64] Pub. L. No. 108-105, 117 Stat. 1201 (2003).

necessary to save the life of a mother whose life is endangered by a physical disorder, physical illness, or physical injury, including a life-endangering physical condition caused by or arising from the pregnancy itself.[65] Physicians who violate the act are subject to a fine, imprisonment for not more than two years, or both.[66]

Despite the Court's holding in *Stenberg* and past decisions concluding that restrictions on abortion must allow for the performance of the procedure when it is necessary to protect the health of the mother, the Partial-Birth Abortion Ban Act of 2003 does not include such an exception. In his introductory statement for the act, Senator Rick Santorum discussed the measure's lack of a health exception.[67] He maintained that an exception is not necessary because of the risks associated with partial-birth abortions. Senator Santorum insisted that congressional hearings and expert testimony demonstrate "that a partial birth abortion is never necessary to preserve the health of the mother, poses significant health risks to the woman, and is outside the standard of medical care."[68]

Within two days of the act's signing, federal courts in Nebraska, California, and New York blocked its enforcement.[69] On April 18, 2007, the Court upheld the Partial-Birth Abortion Ban Act of 2003, finding that, as a facial matter, it is not unconstitutionally vague and does not impose an undue burden on a woman's right to terminate her pregnancy.[70] In *Gonzales v. Carhart*, the Court distinguished the federal statute from the Nebraska law at issue in *Stenberg*.[71] According to the Court, the federal statute is not unconstitutionally vague because it provides doctors with a reasonable opportunity to know what conduct is prohibited.[72] Unlike the Nebraska law, which prohibited the delivery of a "substantial portion" of the fetus, the federal statute includes "anatomical landmarks" that identify when an abortion procedure will be subject to the act's prohibitions.[73] The Court noted: "[I]f an abortion procedure does not involve the delivery of a living fetus to one of these 'anatomical landmarks'—where, depending on the presentation, either the fetal head or the fetal trunk past the navel is outside the body of the mother—the prohibitions of the Act do not apply."[74]

The Court also maintained that the inclusion of a scienter or knowledge requirement in the federal statute alleviates any vagueness concerns. Because the act applies only when a doctor "deliberately and intentionally" delivers the fetus to an anatomical landmark, the Court concluded that a doctor performing the D&E procedure would not face criminal liability if a fetus is delivered beyond the prohibited points by mistake.[75] The Court observed: "The scienter requirements narrow the scope of the Act's prohibition and limit prosecutorial discretion."[76]

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[65] 18 U.S.C. § 1531(a).

[66] *Id*.

[67] 149 Cong. Rec. S2523 (daily ed. February 14, 2003) (statement of Senator Santorum).

[68] *Id*.

[69] Carhart v. Ashcroft, 287 F.Supp.2d 1015 (D. Neb. 2003); Planned Parenthood Fed'n of America v. Ashcroft, No. C 03-4872 (N.D. Cal. Nov. 6, 2003); Nat'l Abortion Fed'n v. Ashcroft, 287 F.Supp.2d 525 (S.D.N.Y. 2003).

[70] 550 U.S. 124 (2007). Unlike "as-applied" challenges, which consider the validity of a statute as applied to a particular plaintiff, "facial" challenges seek to invalidate a statute in all of its applications.

[71] *Id*. at 141.

[72] *Id*. at 149.

[73] *See* 18 U.S.C. § 1531(b)(1)(A).

[74] *Gonzales*, 550 U.S. at 148.

[75] *Id*.

[76] *Id*. at 150.

In reaching its conclusion that the Partial-Birth Abortion Ban Act of 2003 does not impose an undue burden on a woman's right to terminate her pregnancy, the Court considered whether the federal statute is overbroad, prohibiting both the D&X and D&E procedures. The Court also considered the statute's lack of a health exception.

Relying on the plain language of the act, the Court determined that the federal statute could not be interpreted to encompass the D&E procedure. The Court maintained that the D&E procedure involves the removal of the fetus in pieces.[77] In contrast, the federal statute uses the phrase "delivers a living fetus."[78] The Court stated: "D&E does not involve the delivery of a fetus because it requires the removal of fetal parts that are ripped from the fetus as they are pulled through the cervix."[79] The Court also identified the act's specific requirement of an "overt act" that kills the fetus as evidence of its inapplicability to the D&E procedure. The Court indicated: "This distinction matters because, unlike [D&X], standard D&E does not involve a delivery followed by a fatal act."[80] Because the act was found not to prohibit the D&E procedure, the Court concluded that it is not overbroad and does not impose an undue burden a woman's ability to terminate her pregnancy.

According to the Court, the absence of a health exception also did not result in an undue burden. Citing *Ayotte v. Planned Parenthood of Northern New England*,[81] its 2006 decision involving New Hampshire's parental notification law (discussed below), the Court noted that a health exception would be required if the act subjected women to significant health risks.[82] However, acknowledging medical disagreement about the act's requirements ever imposing significant health risks on women, the Court maintained that "the question becomes whether the Act can stand when this medical uncertainty persists."[83] Reviewing its past decisions, the Court indicated that it has given state and federal legislatures wide discretion to pass legislation in areas where there is medical and scientific uncertainty.[84] The Court concluded that this medical uncertainty provides a sufficient basis to conclude in a facial challenge of the statute that it does not impose an undue burden.[85]

Although the Court upheld the Partial-Birth Abortion Ban Act of 2003 without a health exception, it acknowledged that there may be "discrete and well-defined instances" where the prohibited procedure "must be used."[86] However, the Court indicated that exceptions to the act should be considered in as-applied challenges brought by individual plaintiffs: "In an as-applied challenge the nature of the medical risk can be better quantified and balanced than in a facial attack."[87]

Justice Ginsburg authored the dissent in *Gonzales*.[88] She was joined by Justices Stevens, Souter, and Breyer. Describing the Court's decision as "alarming," Justice Ginsburg questioned

[77] *Id*. at 152.

[78] 18 U.S.C. § 1531(b)(1)(A).

[79] *Gonzales*, 550 U.S. at 152.

[80] *Id*. at 153.

[81] 546 U.S. 320 (2006).

[82] *Gonzales*, 550 U.S. at 161.

[83] *Id*. at 163.

[84] *Id*.

[85] *Id*. at 164.

[86] *Id*. at 167.

[87] *Id*.

[88] *Id*. at 169.

upholding the federal statute when the relevant procedure has been found to be appropriate in certain cases.[89] Citing expert testimony that had been introduced, Justice Ginsburg maintained that the prohibited procedure has safety advantages for women with certain medical conditions, including bleeding disorders and heart disease.[90]

Justice Ginsburg also criticized the Court's decision to uphold the statute without a health exception. Justice Ginsburg declared: "Not only does it defy the Court's longstanding precedent affirming the necessity of a health exception, with no carve-out for circumstances of medical uncertainty . . . it gives short shrift to the records before us, carefully canvassed by the District Courts."[91] Moreover, according to Justice Ginsburg, the refusal to invalidate the Partial-Birth Abortion Ban Act of 2003 on facial grounds was "perplexing" in light of the Court's decision in *Stenberg*.[92] Justice Ginsburg noted: "[I]n materially identical circumstances we held that a statute lacking a health exception was unconstitutional on its face."[93]

Ayotte

In *Ayotte v. Planned Parenthood of Northern New England*, the Court concluded that a wholesale invalidation of New Hampshire's Parental Notification Prior to Abortion Act was inappropriate.[94] Finding that only a few applications of the act raised constitutional concerns, the Court remanded the case to the lower courts to render narrower declaratory and injunctive relief.

The New Hampshire law at issue in *Ayotte* prohibited physicians from performing an abortion on a pregnant minor or a woman for whom a guardian or conservator was appointed until 48 hours after written notice was delivered to at least one parent or guardian.[95] The notification requirement could be waived under certain specified circumstances. For example, notification was not required if the attending abortion provider certified that an abortion was necessary to prevent the woman's death and there was insufficient time to provide the required notice.[96]

Planned Parenthood of Northern New England and several other abortion providers challenged the New Hampshire statute on the grounds that it did not include an explicit waiver that would allow an abortion to be performed to protect the health of the woman.[97] The U.S. Court of Appeals for the First Circuit invalidated the statute in its entirety on that basis.[98] The First Circuit also maintained that the act's life exception was impermissibly vague and forced physicians to gamble with their patients' lives by preventing them from performing an abortion without notification until they were certain that death was imminent.[99]

[89] *Id*. at 170.

[90] *Id*. at 177.

[91] *Id*. at 179.

[92] *Id*. at 187.

[93] *Id*.

[94] 546 U.S. 320 (2006).

[95] *See id*. at 323-24.

[96] *Id*. at 324.

[97] *Id*. at 324-25.

[98] 390 F.3d 53 (1st Cir. 2004).

[99] *Id*. at 63.

Declining to revisit its prior abortion decisions, the Court insisted that *Ayotte* presented a question of remedy.[100] Maintaining that the act would be unconstitutional only in medical emergencies, the Court determined that a more narrow remedy, rather than the wholesale invalidation of the act, was appropriate:

> Generally speaking, when confronting a constitutional flaw in a statute, we try to limit the solution to the problem. We prefer, for example, to enjoin only the unconstitutional applications of a statute while leaving other applications in force . . . or to sever its problematic portions while leaving the remainder intact.[101]

The Court identified three interrelated principles that inform its approach to remedies.[102] First, the Court tries not to nullify more of a legislature's work than is necessary because a ruling of unconstitutionality frustrates the intent of the elected representatives of the people.[103]

Second, the Court restrains itself from rewriting a state law to conform to constitutional requirements, even as it attempts to salvage the law.[104] The Court explained that its constitutional mandate and institutional competence are limited, noting that "making distinctions in a murky constitutional context" may involve a far more serious invasion of the legislative domain than the Court ought to take.[105]

Third, the touchstone for any decision about remedy is legislative intent; that is, a court cannot use its remedial powers to circumvent the intent of the legislature.[106] The Court observed that "[a]fter finding an application or portion of a statute unconstitutional, we must next ask: Would the legislature have preferred what is left of its statute to no statute at all?"[107]

On remand, the lower courts were expected to determine the intent of the New Hampshire legislature when it enacted the parental notification statute. Although the state argued that the measure's severability clause illustrated the legislature's understanding that the act should continue in force even if certain provisions were invalidated, the respondents insisted that New Hampshire legislators actually preferred no statute rather than one that would be enjoined in the manner described by the Court.[108] On February 1, 2007, a federal district court in New Hampshire entered a procedural order that stayed consideration of the case while a bill to repeal the Parental Notification Prior to Abortion Act was pending in the state legislature.[109] The act was subsequently repealed by the legislature, effective June 29, 2007.[110]

Ayotte illustrated the Court's willingness to invalidate an abortion regulation only as applied in certain circumstances. While it is not uncommon for federal courts to save a statute from invalidation by severing unconstitutional provisions, they have generally limited this practice to

[100] *Ayotte*, 546 U.S. at 327.

[101] *Id*. at 328-29.

[102] *Id*. at 329.

[103] *Id*.

[104] *Id*.

[105] *Id*. at 330.

[106] *Id*.

[107] *Id*.

[108] *Id*. at 331.

[109] *See* Planned Parenthood of N. New England v. Ayotte, 571 F.Supp.2d 265 (D. N.H. 2008).

[110] *Abortion Law to Notify Parents Repealed*, Chi. Trib., June 30, 2007, at 7.

federal statutes. Observers noted that the Court's opinion represented an expansion of federal judicial power over the states.[111]

Whole Woman's Health

In *Whole Woman's Health v. Hellerstedt*, the Court invalidated two Texas requirements that applied to abortion providers and physicians who perform abortions.[112] Under a Texas law enacted in 2013, a physician who performs or induces an abortion was required to have admitting privileges at a hospital within 30 miles from the location where the abortion was performed or induced.[113] In general, admitting privileges allow a physician to transfer a patient to a hospital if complications arise in the course of providing treatment. The Texas law also required an abortion facility to satisfy the same standards as an ambulatory surgical center (ASC).[114] These standards address architectural and other structural matters, as well as operational concerns, such as staffing and medical records systems. Supporters of the Texas law maintained that the requirements would guarantee a higher level of care for women seeking abortions. Opponents, however, characterized the requirements as unnecessary and costly, and argued that they would make it more difficult for abortion facilities to operate.

In a 5-3 decision, the Court rejected the procedural and constitutional grounds that were articulated by the U.S. Court of Appeals for the Fifth Circuit to uphold the requirements. Writing for the majority in *Whole Woman's Health*, Justice Breyer concluded that *res judicata* did not bar facial challenges to either the admitting privileges requirement or the ASC requirement.[115] In applying the undue burden standard, Justice Breyer maintained that courts should place considerable weight on the evidence and arguments presented in judicial proceedings when they consider the constitutionality of abortion regulations.[116] Justice Breyer also noted that the undue burden standard requires courts to consider "the burdens a law imposes on abortion access together with the benefits those laws confer."[117]

The *Whole Woman's Health* Court referred heavily to the evidence collected by the district court in its examination of the admitting privileges and ASC requirements. With regard to the admitting privileges requirement, the Court cited the low complication rates for first- and second-trimester abortions, and expert testimony that complications during the abortion procedure rarely require hospital admission.[118] Based on this and similar evidence, the Court disputed the state's assertion that the purpose of the admitting privileges requirement was to ensure easy access to a hospital should complications arise. The Court emphasized that "there was no significant health-related problem that the new law helped to cure."[119] Citing other evidence concerning the closure of abortion facilities as a result of the admitting privileges requirement and the increased driving distances experienced by women of reproductive age because of the closures, the Court

[111] *See, e.g.*, Jack M. Balkin, *The Ayotte Compromise*, Balkinization (Jan. 18, 2006, 12:48 PM), https://balkin.blogspot.com/2006/01/ayotte-compromise.html.

[112] 136 S.Ct. 2292 (2016).

[113] *See id*. at 2300.

[114] *Id*.

[115] *Id*. at 2309.

[116] *Id*. at 2310.

[117] *Id*. at 2309.

[118] *Id*. at 2311.

[119] *Id*.

maintained: "[T]he record evidence indicates that the admitting-privileges requirement places a 'substantial obstacle in the path of a woman's choice.'"[120]

The Court again referred to the record evidence to conclude that the ASC requirement imposed an undue burden on the availability of abortion. Noting that the record supports the conclusion that the ASC requirement "does not benefit patients and is not necessary," the Court also cited the closure of facilities and the cost to comply with the requirement as evidence that the requirement posed a substantial obstacle for women seeking abortions.[121] While Texas argued that the clinics remaining after implementation of the ASC requirement could expand to accommodate all of the women seeking an abortion, the Court indicated that "requiring seven or eight clinics to serve five times their usual number of patients does indeed represent an undue burden on abortion access."[122]

The majority's focus on the record evidence, and a court's consideration of that evidence in balancing the burdens imposed by an abortion regulation against its benefits, is noteworthy for providing clarification of the undue burden standard. Although the *Casey* Court did examine the evidence collected by the district court with respect to Pennsylvania's spousal notification requirement, and was persuaded by it, the Fifth Circuit discounted similar evidence collected by the district court in its consideration of the two requirements.[123] In *Whole Woman's Health*, the Court maintained that the Fifth Circuit's approach did "not match the standard that this Court laid out in *Casey* . . .."[124]

June Medical Services

In *June Medical Services v. Russo*, a majority of the Court held that a Louisiana admitting privileges law imposed an undue burden on a woman's ability to obtain an abortion.[125] Justice Breyer authored an opinion, joined by Justices Ginsburg, Sotomayor, and Kagan, that relied heavily on *Whole Woman's Health*. Justice Breyer maintained that the laws being reviewed in *June Medical Services* and *Whole Woman's Health* were "nearly identical," and that the Louisiana law "must consequently reach a similar conclusion."[126] In a separate opinion, Chief Justice Roberts concurred in the judgment, emphasizing that the legal doctrine of stare decisis required *June Medical Services* to be decided like *Whole Woman's Health*.[127]

The Court in *June Medical Services* considered not only the constitutionality of Louisiana's admitting privileges law, but also whether abortion providers satisfy minimum constitutional standing requirements to challenge an abortion regulation on behalf of their clients.[128] Although plaintiffs in federal court are generally required to assert their own rights and not those of third

[120] *Id*. at 2312 (quoting *Casey*, 505 U.S. at 877).

[121] *Id*. at 2315.

[122] *Id*. at 2318.

[123] *See* Planned Parenthood of Greater Tex. Surgical Health Servs. v. Abbott, 748 F.3d 583, 598 (5th Cir. 2014) (stating that the district court's finding that "there will be abortion clinics that will close" was too vague); Whole Woman's Health v. Cole, 790 F.3d 563, 590 (5th Cir. 2015) (finding the district court's determination that the ASCs that perform abortions could not accommodate patients affected by the closure of non-ASC facilities was "unsupported by evidence" and "clearly erroneous").

[124] *Whole Woman's Heath*, 136 S.Ct. at 2310.

[125] 140 S.Ct. 2103 (2020).

[126] *Id*. at 2133.

[127] *Id*. at 2134.

[128] *Id*. at 2117.

parties, the Court has recognized third-party standing when the real party in interest cannot assert her own rights and a third party has a close relationship with her.[129] Louisiana argued that the petitioners in *June Medical Services*—an abortion clinic and physicians who perform abortions—lacked standing because they did not have a close relationship with abortion patients.[130] The state also contended that the petitioners' opposition to a health regulation intended to protect patients evidenced a conflict of interest with these patients, rendering them unsuitable to assert the rights of their clients.[131]

In the plurality opinion, Justice Breyer concluded that the state waived its standing argument when it opposed the petitioners' initial request for a temporary restraining order against the admitting privileges law.[132] In a memorandum opposing the request, Louisiana had stated that there was "no question that the physicians had standing to contest [the law.]"[133] The plurality therefore determined that the state's "unmistakable concession" barred the Court's consideration of the argument.[134] Nevertheless, the plurality also emphasized the Court's long-standing recognition of abortion providers invoking the rights of their actual and potential patients in challenges to abortion regulations. Citing several of the Court's past abortion decisions recognizing third-party standing, Justice Breyer indicated that the plurality would not have undone those decisions even if the state had not conceded the argument.[135] In his concurring opinion, Chief Justice Roberts expressed agreement with this portion of the opinion.[136] Thus, a majority of the Court concluded that the physicians had standing to assert the constitutional rights of their patients.

Addressing the merits of the admitting privileges law, Justice Breyer applied the undue burden standard, reiterating that it requires balancing an abortion regulation's benefits against any burdens it imposes.[137] The plurality maintained that the district court faithfully engaged in this balancing, and reviewed the evidence collected by the court to determine whether its evidentiary findings were clearly erroneous.[138] The district court found that admitting privileges are not relevant to a patient's care and do not provide a significant health benefit.[139] The lower court also determined that the law's enforcement would reduce the number of Louisiana physicians performing abortions and cause the closure of most of the state's abortion facilities.[140] Balancing these burdens against the absence of any notable health benefit, the district court found the law unconstitutional.[141]

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[129] *See, e.g.*, Singleton v. Wulff, 428 U.S. 106 (1976) (physicians who perform elective abortions have standing to challenge Missouri law that restricts Medicaid coverage for such abortions).

[130] Brief for the Respondent/Cross-Petitioner, June Med. Servs. LLC v. Gee, Nos. 18-1323 & 18-1460, at 41.

[131] *Id*.

[132] *June Med. Servs.*, 140 S.Ct. at 2117.

[133] *Id*. at 2118.

[134] *Id*.

[135] *Id*. (citing *Whole Woman's Health*, 136 S.Ct. at 2314; *Gonzales*, 550 U.S. at 133; *Ayotte*, 546 U.S. at 324; *Stenberg*, 530 U.S. at 922; *Mazurek*, 520 U.S. at 969–70; *Casey*, 505 U.S. at 845; *Akron Ctr. for Reprod. Health*, 462 U.S. at 440 n. 30; *Danforth*, 428 U.S. at 62; *Doe*, 410 U.S. at 188–89).

[136] *Id*. at 2139 n.4.

[137] *Id*. at 2120.

[138] *Id*. at 2111.

[139] June Med. Servs. LLC v. Kliebert, 250 F.Supp.3d 27 (M.D. La. 2017).

[140] *Id*. at 87.

[141] *Id*. at 88-89.

The U.S. Court of Appeals for the Fifth Circuit reversed the district court's decision, contending that the law provides a credentialing function that promotes women's health.[142] The Fifth Circuit disputed the district court's finding that the law's enforcement would cause facility closures, explaining that several of the state's abortion providers did not make a good-faith effort to obtain admitting privileges.[143] In the view of the Fifth Circuit, if these providers made such an effort, they could obtain admitting privileges and abortion facilities would not close.[144] Consequently, burdens associated with facility closures, such as increased driving distances resulting from fewer facilities, would be minimized.[145]

The plurality concluded that the district court's factual determinations were supported by ample evidence and were not clearly erroneous.[146] With regard to any health benefit associated with an admitting privileges requirement, the plurality discussed both the district court's findings, and similar findings by the district court in *Whole Woman's Health*. Writing for the Court in *Whole Woman's Health*, Justice Breyer emphasized that deference should be given to the district court's evaluation of the record evidence.[147] The district courts in both cases determined that an admitting privileges requirement serves no "relevant credentialing function" because privileges may be denied for reasons other than a doctor's ability to perform abortions.[148]

The plurality also maintained that direct and circumstantial evidence supported the district court's finding that the admitting privileges law burdened abortion providers.[149] For the plurality, this evidence refuted the Fifth Circuit's conclusion that some providers did not act in good faith to obtain admitting privileges. For example, direct evidence established that some of the providers were denied privileges for reasons other than their ability to safely perform abortions.[150] And circumstantial evidence illustrated how application costs and reputational risks that accompany rejection could prevent the providers from seeking privileges at some hospitals.[151] According to the plurality, the evidence collected by the district court supported its conclusion that enforcement of the admitting privileges law would cause the closure of most of the state's abortion facilities.[152] For the plurality, fewer abortion facilities would also create additional burdens for women seeking abortions, such as longer wait times and increased driving distances.[153]

Accepting the district court's findings, including its balancing of the burdens imposed by the admitting privileges law against the absence of any real health benefit, the plurality agreed with the lower court's conclusion that the Louisiana law imposed an undue burden on a woman's ability to obtain an abortion.[154] Because the district court applied the undue burden standard just

[142] June Med. Servs. LLC v. Gee, 905 F.3d 787 (5th Cir. 2018).

[143] *Id*. at 807.

[144] *Id*. at 810-11.

[145] *Id* at 811.

[146] *June Med. Servs.*, 140 S.Ct. at 2132.

[147] *Whole Woman's Heath*, 136 S.Ct. at 2310.

[148] *June Med. Servs.*, 140 S.Ct. at 2122.

[149] *Id*. at 2122-23.

[150] *Id*.

[151] *Id*.

[152] *Id*. at 2129.

[153] *Id*. at 2129-30.

[154] *Id*. at 2132.

as the district court in *Whole Woman's Health*, the plurality maintained that the same result was required.[155]

Concurring in the judgment, Chief Justice Roberts agreed that the Louisiana law and the Texas law at issue in *Whole Woman's Health* were nearly identical.[156] Although he dissented in *Whole Woman's Health* and indicated in his concurrence that the Texas case was wrongly decided, he nevertheless maintained that stare decisis required the invalidation of the Louisiana law.[157] Despite his concurrence in the judgment, however, Chief Justice Roberts questioned how the undue burden standard is now applied as a result of *Whole Woman's Health*.[158] Discussing the balancing of an abortion regulation's benefits and burdens, the Chief Justice contended that nothing in *Casey* suggested that courts should engage in this kind of weighing of factors.[159] According to the Chief Justice, *Casey* focused on the existence of a substantial obstacle as sufficient to invalidate an abortion regulation and did not "call for consideration of a regulation's benefits[.]"[160] Reviewing the burdens imposed by the Louisiana law, such as fewer abortion providers and facility closures, the Chief Justice agreed with the plurality that "the determination in *Whole Woman's Health* that Texas's law imposed a substantial obstacle requires the same determination about Louisiana's law."[161] Nevertheless, the Chief Justice further observed that "the discussion of benefits in *Whole Woman's Health* was not necessary to its holding."[162]

In a dissenting opinion, Justice Alito also questioned the use of a balancing test to determine whether an abortion regulation imposes an undue burden on the ability to obtain an abortion.[163] Justice Alito maintained that *Whole Woman's Health* "simply misinterpreted *Casey* . . . [and] should be overruled insofar as it changed the *Casey* test."[164] Justices Thomas and Kavanaugh wrote separate dissenting opinions, but joined Justice Alito in criticizing the use of a balancing test.[165] In another dissenting opinion, Justice Gorsuch criticized the balancing test, not so much as a misinterpretation of *Casey*, but because it produces unpredictable results by giving judges too much discretion to determine the factors considered and the weight to accord to them.[166] These dissenting opinions and the Chief Justice's concurrence evidence skepticism with the balancing test used in *Whole Woman's Health* and *June Medical Services*. The five Justices expressing skepticism about the balancing test indicates potential majority support for a different test to evaluate abortion regulations.

Public Funding of Abortions

After the Supreme Court's decisions in *Roe* and *Doe*, some of the first federal legislative responses involved restrictions on the use of federal money to pay for abortions. In 1976,

[155] *Id*. at 2133.

[156] *Id*.

[157] *Id*. at 2133-34.

[158] *Id*. at 2136.

[159] *Id*.

[160] *Id*. at 2139.

[161] *Id*.

[162] *Id*. at n.3.

[163] *Id*. at 2153.

[164] *Id*. at 2154.

[165] *Id*. at 2153.

[166] *Id*. at 2179-80.

Representative Henry J. Hyde offered an amendment to the Departments of Labor and Health, Education, and Welfare, Appropriation Act, 1977, that restricted the use of appropriated funds to pay for abortions provided through the Medicaid program.[167] Almost immediately, the so-called Hyde Amendment and similar restrictions were challenged in the courts. Two categories of public funding cases have been heard and decided by the Supreme Court: those involving (1) funding restrictions for nontherapeutic (elective) abortions; and (2) funding limitations for therapeutic (medically necessary) abortions.

The 1977 Trilogy—Restrictions on Public Funding of Nontherapeutic or Elective Abortions

The Supreme Court, in three related decisions, ruled that the states have neither a statutory nor a constitutional obligation to fund elective abortions or provide access to public facilities for such abortions.[168]

In *Beal v. Doe*, the Court held that nothing in the language or legislative history of Title XIX of the Social Security Act (Medicaid) requires a participating state to fund every medical procedure falling within the delineated categories of medical care.[169] The Court ruled that it was not inconsistent with the act's goals to refuse to fund unnecessary medical services. However, the Court also indicated that Title XIX left a state free to include coverage for nontherapeutic abortions should it choose to do so.[170] Similarly, in *Maher v. Roe*, the Court held that the Equal Protection Clause does not require a state participating in the Medicaid program to pay expenses incident to nontherapeutic abortions simply because the state has made a policy choice to pay expenses incident to childbirth.[171] More particularly, Connecticut's policy of favoring childbirth over abortion was held not to impinge upon the fundamental right of privacy recognized in *Roe*, which protects a woman from undue interference in her decision to terminate a pregnancy.[172] Finally, in *Poelker v. Doe*, the Court upheld a municipal regulation that denied indigent pregnant women nontherapeutic abortions at public hospitals.[173] The Court also held that staffing those hospitals with personnel opposed to the performance of abortions did not violate the Equal Protection Clause of the Constitution.[174] *Poelker*, however, did not deal with the question of private hospitals and their authority to prohibit abortion services.

Public Funding of Therapeutic or Medically Necessary Abortions

The 1977 Supreme Court decisions left open the question of whether the Hyde Amendment and similar state laws could validly prohibit the governmental funding of therapeutic abortions. In *Harris v. McRae*, the Court ruled 5-4 that the Hyde Amendment's abortion funding restrictions were constitutional.[175] The majority found that the Hyde Amendment did not violate the due

[167] *See* Pub. L. No. 94-439, § 209, 90 Stat. 1418, 1434 (1976) ("None of the funds contained in this Act shall be used to perform abortions except where the life of the mother would be endangered if the fetus were carried to term.").

[168] Beal v. Doe, 432 U.S. 438 (1977); Maher v. Roe, 432 U.S. 464 (1977); Poelker v. Doe, 432 U.S. 519 (1977).

[169] *Beal*, 432 U.S. at 447.

[170] *Id*.

[171] *Maher*, 432 U.S. at 480.

[172] *Id*. at 474.

[173] *Poelker*, 432 U.S. at 521.

[174] *Id*.

[175] 448 U.S. 297 (1980).

process or equal protection guarantees of the Fifth Amendment or the Establishment Clause of the First Amendment. The Court also upheld the right of a state participating in the Medicaid program to fund only those medically necessary abortions for which it received federal reimbursement.[176] In *Williams v. Zbaraz*, a companion case raising similar issues, the Court held that an Illinois statutory funding restriction that was comparable to the Hyde Amendment also did not contravene the constitutional restrictions of the Equal Protection Clause of the Fourteenth Amendment.[177] The Court's rulings in *McRae* and *Zbaraz* indicate that there is no statutory or constitutional obligation of the federal government or the states to fund medically necessary abortions.

Legislative History

Rather than settle the issue, the Court's decisions in *Roe* and *Doe* prompted debate and a variety of governmental actions at the national, state, and local levels to limit their effect. Congress continues to be a forum for proposed legislation and constitutional amendments aimed at limiting or prohibiting the practice of abortion. This section examines the history of the federal legislative response to the abortion issue.

Prior to the Court's decision in *Roe*, relatively few bills involving abortion were introduced in either the House or the Senate. Since 1973, however, more than 1,000 separate legislative proposals have been introduced. The wide disparity in these statistics illustrates the impetus that the Court's 1973 decisions gave to congressional action. Most of these proposals have sought to restrict the availability of abortions. Some measures, however, have been introduced to better secure the right to terminate a pregnancy. The Freedom of Choice Act, for example, attempted to codify *Roe* and was introduced in several Congresses.[178] The Freedom of Access to Clinic Entrances Act of 1994 made it a federal crime to use force, or the threat of force, to intimidate abortion clinic workers or women seeking abortions.[179]

Constitutional Amendments

Proponents of more restrictive abortion legislation have employed a variety of legislative initiatives to achieve this end, with varying degrees of success. Initially, legislators focused their efforts on the passage of a constitutional amendment that would overrule the Supreme Court's decision in *Roe*. This course, however, proved to be problematic.

Following *Roe*, a series of constitutional amendments were introduced in an attempt to overrule the Court's decision.[180] To date, however, no constitutional amendment has been passed in either the House or the Senate. Moreover, for several years, proponents of a constitutional amendment had difficulty getting the measures reported out of committee. Interest in the constitutional approach peaked in the 94th Congress, when nearly 80 amendments were introduced. By the 98th Congress, the number had significantly declined. It was during this time that the Senate brought to the floor the only constitutional amendment on abortion that has ever been debated and voted on in either chamber.

[176] *Id*. at 309-10.

[177] 448 U.S. 358 (1980).

[178] *See, e.g.*, S. 1173, 110th Cong. (2007).

[179] 18 U.S.C. 248 note.

[180] *See e.g.*, H.J.Res. 527, 94th Cong. (1975).

S.J.Res. 3 was introduced during the 98th Congress.[181] Subcommittee hearings were held, and the full Judiciary Committee voted (9-9) to send the amendment to the Senate floor without recommendation. As reported, S.J.Res. 3 included a subcommittee amendment that eliminated the enforcement language and declared simply, "A right to abortion is not secured by this Constitution."[182] By adopting this proposal, the subcommittee established its intent to remove federal institutions from the policymaking process with respect to abortion and reinstate state authorities as the ultimate decisionmakers.

S.J.Res. 3 was considered in the Senate on June 27 and 28, 1983. On June 28, 1983, S.J.Res. 3 was defeated (50-49), not having obtained the two-thirds vote necessary for a constitutional amendment.[183]

Statutory Provisions

Bills That Seek to Prohibit the Right to Abortion by Statute

As an alternative to a constitutional amendment to prohibit or limit the practice of abortion, opponents of the procedure have introduced a variety of bills designed to accomplish the same objective without resorting to the complex process of amending the Constitution. Authority for such action is said to emanate from Section 5 of the Fourteenth Amendment, which empowers Congress to enforce the due process and equal protection guarantees of the amendment "by appropriate legislation."[184] For example, S. 158, introduced during the 97th Congress, would have declared as a congressional finding of fact that human life begins at conception, and would, it was contended by its sponsors, allow states to enact laws protecting human life, including fetuses.[185] Hearings on the bill were marked by controversy over the constitutionality of the declaration that human life begins at conception and over the withdrawal of lower federal court jurisdiction over suits challenging state laws enacted pursuant to federal legislation.[186] A modified version of S. 158 was approved in subcommittee, but that bill, S. 1741, was not further considered in the 97th Congress.[187]

Hyde-Type Amendments to Appropriations Measures

As an alternative to the unsuccessful attempts to prohibit abortion outright, opponents of abortion sought to ban the use of federal funds to pay for the performance of the procedure. Because most federally funded abortions were reimbursed under Medicaid, they focused their efforts primarily on that program.

The Medicaid program was established in 1965 to fund medical care for indigent persons through a federal-state cost-sharing arrangement.[188] Abortions were not initially covered under the program. During the Nixon Administration, however, the Department of Health, Education, and

[181] S.J.Res. 3, 98th Cong. (1983).

[182] *Id*.

[183] For a review of the full debate on S.J.Res. 3, *see* 129 Cong. Rec. S9076 *et seq*. (daily ed. June 27, 1983); 129 Cong. Rec. S9265 *et seq*. (daily ed. June 28, 1983).

[184] U.S. Const. amend. XIV, § 5.

[185] S. 158, 97th Cong. (1981).

[186] *The Human Life Bill: Hearings Before the Senate Subcommittee on Separation of Powers*, 97th Cong. (1982).

[187] S. 1741, 97th Cong. (1981).

[188] Pub. L. No. 89-97, tit. I, § 121(a), 79 Stat. 286, 344 (1965).

Welfare decided to reimburse states for the funds used to provide abortions to poor women. This policy decision was influenced by the Supreme Court's decision in *Roe*, which, in addition to decriminalizing abortion, was seen as legitimizing the status of abortion as a medical procedure for the purposes of the Medicaid program.

Since *Roe*, Congress has attached abortion funding restrictions to several other appropriations bills. Although the Foreign Assistance Act of 1973 included the first of such restrictions,[189] the greatest focus has arguably been on the Hyde Amendment, which generally restricts Medicaid abortions under the annual appropriations for the Department of Health and Human Services (HHS).[190]

Since its initial introduction in 1976, the Hyde Amendment has sometimes been reworded to include exceptions for pregnancies that are the result of rape or incest, or abortions that are sought to prevent long-lasting physical health damage to the mother. Until the early 1990s, however, the language was generally identical to the original enactment, allowing only an exception to preserve the life of the mother.[191] In 1993, during the first year of the Clinton Administration, coverage under the Hyde Amendment was expanded to again include cases of rape and incest.[192] Efforts to restore the original language (providing only for the life of the woman exception) failed in the 104th Congress.

Beginning in 1978, Hyde-type abortion limitations were added to the Department of Defense appropriations measures.[193] This recurring prohibition was eventually codified and made permanent by the Department of Defense Authorization Act, 1985.[194]

In 1983, the Hyde Amendment process was extended to the Department of the Treasury and Postal Service Appropriations Act, prohibiting the use of funds for the Federal Employees Health Benefits Program (FEHBP) to pay for abortions, except when the life of the woman was in danger.[195] Prior to this restriction, federal government health insurance plans provided coverage for both therapeutic and nontherapeutic abortions.

The restriction on FEHBP funds followed an administrative attempt by the Office of Personnel Management (OPM) to eliminate nonlife-saving abortion coverage. OPM's actions were challenged by federal employee unions, and a federal district court later concluded that the agency acted outside the scope of its authority. In *American Federation of Government Employees v. AFL-CIO*, the court found that absent a specific congressional statutory directive, there was no basis for OPM's actions.[196]

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[189] Pub. L. No. 93-189, § 2, 87 Stat. 714, 716 (1973).

[190] *See, e.g.*, Consolidated Appropriations Act, 2018, Pub. L. No. 115-141, div. H, tit. V, § 506 (2018).

[191] *See* note 125.

[192] Pub. L. No. 103-112, tit. V, § 509, 107 Stat. 1082, 1113 (1993).

[193] Pub. L. No. 95-457, tit. VIII, § 863, 92 Stat. 1231, 1254 (1978).

[194] Pub. L. No. 98-525, tit. XIV, § 1401(e)(5)(A), 98 Stat. 2492, 2618 (1984) (codified at 10 U.S.C. § 1093).

[195] *See* Pub. L. No. 98-151, § 101(f), 97 Stat. 964, 973 (1983) (referencing H.R. 4139, the Treasury, Postal Service and General Government Appropriations Act, 1984, as passed by the House of Representatives on October 27, 1983). Section 618 of H.R. 4139 stated: "No funds appropriated by this Act shall be available to pay for an abortion, except where the life of the mother would be endangered if the fetus were carried to term, or the administrative expenses in connection with any health plan under the Federal employees health benefit program which provides any benefits or coverages for abortions, except where the life of the mother would be endangered if the fetus were carried to term, under such negotiated plans after the last day of the contracts currently in force."

[196] 525 F.Supp.250 (D.D.C. 1981).

The restriction on FEHBP funds was removed briefly in 1993, before being reinstated by the 104th Congress. That Congress passed language prohibiting the use of FEHBP funds for abortions, except in cases where the life of the mother would be endangered or in cases of rape or incest.[197]

Under Department of Justice appropriations, funding of abortions in prisons is prohibited, except where the life of the mother is endangered, or in cases of rape or incest. First enacted as part of the FY1987 continuing appropriations measure,[198] this provision has been reenacted as part of the annual spending bill in each subsequent fiscal year.[199]

Finally, since 1979, restrictive abortion provisions have been included in appropriations measures for the District of Columbia (DC). The passage of the District of Columbia Appropriations Act, 1989, marked the first successful attempt to extend such restrictions to the use of DC funds, as well as federal funds.[200] Under the so-called "Dornan Amendment," DC was prohibited from using both appropriated funds and local funds to pay for abortions. In 2009, Congress lifted the restriction on the use of DC funds to pay for abortions. Under the Consolidated Appropriations Act, 2010, only federal funds were restricted.[201] The Dornan Amendment has since been reimposed.[202]

Other Legislation

In addition to the temporary funding limitations included in appropriations bills, abortion restrictions of a more permanent nature have been enacted in a variety of contexts since 1970. For example, the Family Planning Services and Population Research Act of 1970 bars the use of funds for programs in which abortion is a method of family planning.[203]

The Legal Services Corporation Act of 1974 prohibits lawyers in federally funded legal aid programs from providing legal assistance for procuring nontherapeutic abortions and prohibits legal aid in proceedings to compel an individual or an institution to perform an abortion, assist in an abortion, or provide facilities for an abortion.[204]

The Pregnancy Discrimination Act provides that employers are not required to pay health insurance benefits for abortion except to save the life of the mother, but does not preclude employers from providing abortion benefits if they choose to do so.[205]

The Civil Rights Restoration Act of 1988 states that nothing in the measure either prohibits or requires any person or entity from providing or paying for services related to abortion.[206]

[197] Pub. L. No. 104-52, tit. V, §§ 524, 525, 109 Stat. 468, 495 (1995).

[198] Pub. L. No. 99-591, tit. II, § 209, 100 Stat. 3341, 3341-56 (1986).

[199] *See, e.g.*, Consolidated Appropriations Act, 2018, Pub. L. No. 115-141, div. B, tit. II, § 202 (2018).

[200] Pub. L. No. 100-462, tit I. § 117, 102 Stat. 2269, 2269-9 (1988).

[201] Pub. L. No. 11-117, div. C, tit. VIII, § 814, 123 Stat. 3034, 3224 (2009).

[202] Consolidated Appropriations Act, 2018, Pub. L. No. 115-141, div. E, tit. VIII, § 810 (2018).

[203] 42 U.S.C. § 300a-6.

[204] 42 U.S.C. § 2996f(b)(8).

[205] 42 U.S.C. § 2000e(k).

[206] 20 U.S.C. § 1688.

The Civil Rights Commission Amendments Act of 1994 prohibits the commission from studying or collecting information about U.S. laws and policies concerning abortion.[207]

Health Reform

The Patient Protection and Affordable Care Act (ACA) was enacted on March 23, 2010, to reduce the number of uninsured individuals and restructure the private health insurance market.[208] The ACA includes provisions that address the coverage of abortion services by qualified health plans that are available through health benefit exchanges (exchanges). The ACA's abortion provisions have been controversial, particularly with regard to the use of premium tax credits or cost-sharing subsidies to obtain health coverage that includes coverage for elective or nontherapeutic abortion services.[209]

In addressing the coverage of abortion services by qualified health plans offered through an exchange, the ACA refers to the Hyde Amendment to distinguish between two types of abortions: abortions for which federal funds appropriated for HHS may be used, and abortions for which such funds may not be used (elective abortions).[210] Under the ACA, individuals who receive a premium tax credit or cost-sharing subsidy are permitted to select a qualified health plan that includes coverage for elective abortions. However, to ensure that funds attributable to such a credit or subsidy are not used to pay for elective abortion services, the ACA prescribes payment and accounting requirements for plan issuers and enrollees.[211]

Under the ACA, the issuer of a qualified health plan must determine whether to provide coverage for either elective abortions or abortions for which federal funds appropriated for HHS are permitted.[212] It appears that a plan issuer could also decide not to cover either type of abortion. The ACA also permits a state to prohibit abortion coverage in exchange plans by enacting a law with such a prohibition.[213]

The ACA indicates that an issuer of a qualified health plan that provides coverage for elective abortions cannot use any funds attributable to a premium tax credit or cost-sharing subsidy to pay for such services.[214] The issuer of a qualified health plan that provides coverage for elective abortions is required to collect two separate payments from each enrollee in the plan: one payment that reflects an amount equal to the portion of the premium for coverage of health services other than elective abortions; and another payment that reflects an amount equal to the actuarial value of the coverage for elective abortions.[215] The plan issuer is required to deposit the separate payments into separate allocation accounts that consist solely of each type of payment and that are used exclusively to pay for the specified services.[216] State health insurance commissioners ensure compliance with the segregation requirements in accordance with

[207] 42 U.S.C. § 1975a(f).

[208] Pub. L. No. 111-148, 124 Stat. 119 (2010).

[209] For additional information on abortion and the Patient Protection and Affordable Care Act, *see* CRS Report R41013, *Abortion and the Patient Protection and Affordable Care Act*, by Jon O. Shimabukuro.

[210] 42 U.S.C. § 18023(b)(1)(B).

[211] *Id*. § 18023(b)(2).

[212] *Id*. § 18023(b)(1)(A).

[213] *Id*. § 18023(a)(1).

[214] *Id*. § 18023(b)(2)(A).

[215] *Id*. § 18023(b)(2)(B)(i).

[216] *Id*. § 18023(b)(2)(B)(ii).

applicable provisions of generally accepted accounting requirements, Office of Management and Budget circulars on funds management, and Government Accountability Office guidance on accounting.[217]

To determine the actuarial value of the coverage for elective abortions, the plan issuer estimates the basic per enrollee, per month cost, determined on an average actuarial basis, for including such coverage.[218] The estimate may take into account the impact on overall costs of including coverage for elective abortions, but cannot take into account any cost reduction estimated to result from such services, such as prenatal care, delivery, or postnatal care.[219] The per month cost has to be estimated as if coverage were included for the entire population covered, but cannot be less than $1 per enrollee, per month.[220]

Under the ACA, a qualified health plan that provides coverage for elective abortions is also required to provide notice of such coverage to enrollees as part of a summary of benefits and coverage explanation at the time of enrollment.[221] The notice, any plan advertising used by the issuer, any information provided by the exchange, and any other information specified by the Secretary provides information only with respect to the total amount of the combined payments for elective abortion services and other services covered by the plan.[222]

The ACA also provides for conscience protection and the preservation of certain state and federal abortion-related laws. The ACA prohibits exchange plans from discriminating against any individual health care provider or health care facility because of its unwillingness to provide, pay for, provide coverage of, or refer for abortions.[223] State laws concerning the prohibition or requirement of coverage or funding for abortions, and state laws involving abortion-related procedural requirements are not preempted.[224] Federal conscience protection and abortion-related antidiscrimination laws, as well as Title VII of the Civil Rights Act of 1964, are also not affected.[225]

Legislation in the 116th Congress

FY2020 Appropriations

On December 20, 2019, President Trump signed into law H.R. 1158, the Consolidated Appropriations Act, 2020.[226] The measure included appropriations for the Department of Justice, FEHBP, and the District of Columbia, and maintained long-standing funding restrictions on abortion and abortion-related services. Funds provided to the Department of Justice could not be used to pay for an abortion, except when the life of the mother would have been endangered by a

[217] *Id.* § 18023(b)(2)(E)(i).

[218] *Id.* § 18023(b)(2)(D)(i).

[219] *Id.* § 18023(b)(2)(D)(ii)(I).

[220] *Id.* § 18023(b)(2)(D)(ii)(III).

[221] *Id.* § 18023(b)(3)(A).

[222] *Id.* § 18023(b)(3)(B).

[223] *Id.* § 18023(b)(4).

[224] *Id.* § 18023(c)(1).

[225] *Id.* § 18023(c)(2).

[226] Pub. L. No. 116-93, 133 Stat. 2317 (2019).

fetus carried to term, or in the case of rape or incest.[227] The omnibus measure prohibited the use of appropriated funds to pay for an abortion or for any administrative expenses related to a health plan in the FEHBP that provided benefits or coverage for abortions.[228] This prohibition, however, did not apply when the life of the mother would have been endangered by a fetus carried to term, or in the case of rape or incest. The omnibus measure also prohibited the use of federal and local DC funds to pay for abortion.[229] President Trump also signed H.R. 1865, the Further Consolidated Appropriations Act, 2020, on December 20, 2019.[230] The act provided appropriations for HHS, foreign operations, and various other federal agencies. Under the measure, funds appropriated for HHS, as well as funds derived from any trust fund that received appropriations, could not be used to pay for abortions except in cases of rape or incest, or when a woman who suffered from a physical disorder, injury, or illness would have her life jeopardized if an abortion were not performed.[231]

With regard to foreign operations, none of the appropriated funds could be made available to an organization or program that supported or participated in the management of a program of coercive abortion or involuntary sterilization.[232] In addition, appropriated funds were not available for the performance of abortions as a method of family planning, or to motivate or coerce any person to practice abortions.[233] Appropriated funds were also not available to lobby for or against abortion.[234] To reduce reliance on abortions in developing nations, funds were available only for voluntary family planning projects that offered a broad range of family planning methods and services.[235] These voluntary family planning projects were required to meet specified requirements.

Contributions to the United Nations Population Fund (UNFPA) were conditioned on the entity not funding abortions.[236] In addition, amounts appropriated to the UNFPA were required to be kept in an account that was separate from the UNFPA's other accounts.[237] The UNFPA could not commingle funds provided under the omnibus measure with the entity's other funds.

FY2021 Appropriations

On December 27, 2020, President Trump signed into law the Consolidated Appropriations Act, 2021.[238] The measure maintains the same abortion funding restrictions that were included in the Consolidated Appropriations Act, 2020, and Further Consolidated Appropriations Act, 2020, for

[227] *Id.* § 202, div. B, tit. II, 133 Stat. 2317, 2412.

[228] *Id.* § 613, div. C, tit. VI, 133 Stat. 2317, 2480.

[229] *Id.* § 810, div. C, tit. VIII, 133 Stat. 2317, 2500.

[230] Pub. L. No. 116-94, 133 Stat. 2534 (2019).

[231] *Id.* §§ 506, 507, div. A, tit. V, 133 Stat. 2534, 2606-07.

[232] *Id.* div. G, tit. III, 133 Stat. 2534, 2827.

[233] *Id.*

[234] *Id.*

[235] *Id.*

[236] *Id.* § 7057(d), div. G, tit. VII, 133 Stat. 2534, 2919.

[237] *Id.*

[238] Pub. L. No. 116-260 (2020).

the Department of Justice,[239] FEHBP,[240] the District of Columbia,[241] HHS,[242] and foreign operations.[243] These restrictions apply to funds appropriated for FY2021.

Legislation in the 117th Congress

The Women's Health Protection Act (WHPA) was introduced on June 8, 2021.[244] If enacted, the bill would guarantee health care providers a statutory right to provide abortion services and would preempt any state laws that would limit or restrict that right.[245] The measure would also establish a corresponding right for patients to obtain abortion services unimpeded by state law restrictions, such as pre-viability abortion prohibitions.[246] The WHPA responds to state abortion restrictions that are perceived as "neither evidence-based nor generally applicable to the medical profession or to other medically comparable outpatient gynecological procedures."[247] The House passed the WHPA on September 24, 2021. The bill awaits further consideration in the Senate.

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[239] *Id.* § 202, div. B, tit. II.

[240] *Id.* § 613, div. E, tit. VI.

[241] *Id.* § 810, div. E, tit. VIII.

[242] *Id.* §§ 506, 507, div. H, tit. V.

[243] *Id.* div. K, tit. III; §§ 7018, 7057(d), div. K, tit. VII.

[244] H.R. 3755, 117th Cong. (2021); S. 1975, 117th Cong. (2021).

[245] *See* H.R. 3755, 117th Cong. § 4(a) (2021); S. 1975, 117th Cong. § 4(a) (2021).

[246] *Id.*

[247] H.R. 3755, 117th Cong. § 2(a)(10) (2021); S. 1975, 117th Cong. § 2(a)(10) (2021).

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CRS REPORT
Prepared for Members and
Committees of Congress

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SUMMARY

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May 12, 2022

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DC Statehood: Constitutional Considerations for Proposed Legislation

Legislative proposals to create a new state from land previously designated as the seat of federal government raise constitutional questions that have not been directly answered by the judicial branch. The District Clause—Article 1, Section 8, clause 17 of the Constitution—gives Congress the authority "[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 the Government of the United States."

Scholars disagree over whether the District Clause poses a constitutional barrier to Congress's ability to exercise its Admissions Clause powers—the powers that enable Congress to admit new states to the Union—over a portion of the District of Columbia. Some argue, for example, that once the District has been established, it should be permanent, and that a minimum size is necessary to carry out the functions the Framers envisioned. Others point out that those restrictions are not found in the Constitution's text, and may reflect policy judgments rather than constitutional objections. Another challenge may arise under the Twenty-Third Amendment, ratified in 1961, which directs "the District constituting the seat of Government of the United States" to appoint electors that will be considered as "electors appointed by a State" for the purpose of electing the President and Vice President in the Electoral College.

Novel legislation is likely to invite legal challenges raising issues of first impression. The interplay among these constitutional provisions has rarely been raised in federal court, so there is little judicial guidance; the most relevant Supreme Court decision is almost 150 years old. The outcome of any constitutional challenges to District statehood cannot be predicted with any certainty. There is also a possibility that courts would decline to hear such a challenge altogether under justiciability doctrines.

This report discusses the constitutional provisions that would be implicated by legislative efforts to change the District's political status. Using H.R. 51 (the Washington, D.C. Admission Act, which passed the U.S. House of Representatives in June 2020) as a case study, this report analyzes constitutional considerations related to District statehood proposals, identifying legal issues Congress may consider when evaluating legislative proposals affecting the District's status.

Contents

Contacts

The District of Columbia (District) is an entity like no other; in legal terms, it is *sui generis*—literally "of its own kind."[1] Beyond its unique position as the United States' capital city and seat of government, the District is also constitutionally distinct from other U.S. states and territories. In practical terms, this means that when Congress considers changes affecting the District's political status, the extent of Congress's powers has not been well-defined by judicial precedent.

Congress has considered various proposals affecting the District's political status with some regularity since the District was first established, including proposals to (1) reincorporate (legally, retrocede) part of the District into the State of Maryland (retrocession), (2) allow District residents to vote in Maryland for representatives to the House and Senate (semi-retrocession), (3) define the District as a congressional district for the purpose of voting representation in the House of Representatives, (4) provide voting rights to the District by means of a constitutional amendment, and (5) admit the District or parts of the District into the Union as the 51st state.[2]

In June 2020, the U.S. House of Representatives voted to pass the Washington, D.C. Admission Act, H.R. 51. That vote marked the first time in history that either house of Congress passed a bill that would confer statehood on a portion of the District. Given H.R. 51's recency, and the magnitude of the legal changes it proposed, it provides a salient case study for examining constitutional implications of changes to the District's political status.

Specifically, H.R. 51 would

- grant admission of Washington, Douglass Commonwealth (Douglass Commonwealth) into the United States as the 51st state, on equal footing with the other states;[3]
- provide for the Mayor of the District of Columbia to issue a proclamation for the first elections to Congress of two Senators and one Representative for Douglass Commonwealth;[4]
- apply current District of Columbia laws to Douglass Commonwealth and continue pending judicial proceedings;[5]
- specify that Douglass Commonwealth consists of all current District of Columbia territory, with specified exclusions for federal buildings and monuments, including the White House, the Capitol Building, the U.S. Supreme Court Building, principal federal monuments, and the federal executive, legislative, and judicial office buildings located adjacent to the National Mall and the Capitol Building;[6]
- designate current District of Columbia territory that is excluded from Douglass Commonwealth as the Capital and the seat of the federal government;[7]

[1] *Sui generis*, BLACK'S LAW DICTIONARY (11th ed. 2019).

[2] For a summary of recent legislative efforts to afford District residents voting representation in Congress, see CRS In Focus IF11443, *District of Columbia Statehood and Voting Representation*, by Joseph V. Jaroscak.

[3] Washington, D.C. Admission Act, H.R. 51, 117th Congress § 101(a) (2021).

[4] *Id.* § 102(a)(1).

[5] *Id.* § 114.

[6] *Id.* § 112.

[7] *Id.* § 111(b).

- prohibit Douglass Commonwealth from imposing taxes on federal property except as Congress permits;[8]
- maintain federal authority over military lands and certain other property within Douglass Commonwealth;[9]
- provide for expedited consideration of a joint resolution to repeal the Twenty-Third Amendment to the Constitution;[10]
- continue certain federal authorities and responsibilities, including employee benefits, agencies, courts, and college tuition assistance, until Douglass Commonwealth certifies that it is prepared to take over those authorities and responsibilities;[11] and
- establish a Statehood Transition Commission to advise the President, Congress, District, and Commonwealth leaders on the transition.[12]

To comport with the Constitution, H.R. 51 or any District statehood bill must fall within Congress's constitutional powers. If the conferral of statehood on a portion of the District through legislation is outside the scope of powers granted to Congress,[13] or if implementation of such legislation would violate a constitutional provision, constitutional challenges to its enactment would likely be upheld by the courts. As a general matter, courts have been guided by this principle: "Let the end be legitimate, let it be within the scope of the constitution, and all means which are appropriate, which are plainly adapted to that end, which are not prohibited, but consist with the letter and spirit of the constitution, are constitutional."[14]

H.R. 51 appears to rely principally on two constitutional provisions for support: the Admissions Clause (also known as the New States Clause) in Article IV, Section 3, clause 1; and the Enclave

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[8] *Id.* § 123.

[9] *Id.* § 201(a).

[10] *Id.* § 224. The Twenty-Third Amendment provides:

> **Section 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; they shall be in addition to those appointed by the States, but they shall be considered, for the purposes of the election of President and Vice President, to be electors appointed by a State; and they shall meet in the District and perform such duties as provided by the twelfth article of amendment.
>
> **Section 2**. The Congress shall have power to enforce this article by appropriate legislation.

U.S. CONST. amend. XXIII. *See also* Cong. Rsch. Serv., *Twenty-Third Amendment: Presidential Electors for District of Columbia*, CONSTITUTION ANNOTATED, https://constitution.congress.gov/browse/amendment-23/ (last visited May 11, 2022).

[11] H.R. 51, 117th Cong. §§ 301–326.

[12] *Id.* § 402.

[13] This includes powers expressly enumerated in the Constitution as well as those that are necessary for the exercise thereof. The Necessary and Proper Clause, U.S. CONST. art. I, § 8, cl. 18, supplements Congress's enumerated powers and provides the legislative branch the power to adopt measures that assist in the achievement of ends contemplated by other constitutional provisions. *See* McCulloch v. Maryland (M'Culloch v. State), 17 U.S. 316, 405, 411–12 (1819); United States v. Comstock, 560 U.S. 126, 133–34 (2010) (describing the Necessary and Proper Clause as giving Congress the "broad power to enact laws that are 'convenient, or useful' or 'conducive' to" a more specific constitutional authority's "beneficial exercise" (quoting *McCulloch*, 17 U.S. at 413, 418)).

[14] *McCulloch*, 17 U.S. at 421.

Clause (also known as the District Clause) in Article I, Section 8, clause 17.[15] It is likely that other District statehood proposals would invoke the same constitutional authorities. The Twenty-Third Amendment, which in some ways is premised on a state-like Federal District, may pose an independent consideration in deliberations over any District statehood proposals.

This report discusses these constitutional provisions that would be implicated by legislative efforts to change the District's political status. Using H.R. 51 as a case study, the report analyzes constitutional considerations related to District statehood proposals, identifying legal issues Congress may consider when evaluating legislative proposals affecting the District's status. The report concludes with a discussion of the justiciability of potential legal challenges to legislative proposals in this area.

The Constitution's Admissions Clause

The Admissions Clause provides that:

> 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.[16]

This commits to Congress the process of admitting new states to the Union, a power that Congress has exercised through legislation 37 times.[17]

Some commentators have posited that conferring statehood upon part of the current District of Columbia would violate the Admissions Clause because the District of Columbia comprises land that was once part of the State of Maryland, and the consent of Maryland's legislature has not been obtained.[18] Using H.R. 51 as an example, the primary rebuttal to this argument might be that Douglass Commonwealth would not be formed "within the Jurisdiction of any other State," because no part of the District of Columbia is *presently* within Maryland's jurisdiction. Congress currently retains plenary legislative authority over the District of Columbia.[19]

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[15] 167 CONG. REC. H52 (daily ed. Jan. 4, 2021) (establishing constitutional authority for H.R. 51).

[16] U.S. CONST. art. IV, § 3, cl. 1. *See also* Cong. Rsch. Serv., *ArtI.S8.C17.1.1 Power over the Seat of Government: Historical Background*, CONSTITUTION ANNOTATED, https://constitution.congress.gov/browse/essay/artI-S8-C17-1-1/ALDE_00001079/ (last visited May 11, 2022).

[17] *See, e.g.*, Keaukaha-Panaewa Cmty. Ass'n v. Hawaiian Homes Comm'n, 588 F.2d 1216, 1223 (9th Cir. 1978) (noting "[t]hirty-seven States have previously been admitted to the Union by action of Congress"). Much of this enabling legislation imposes criteria that a would-be state must satisfy before admission. However, the U.S. Supreme Court has ruled that the Constitution prohibits enforcing such criteria *after* statehood if they would result in the new state being on an unequal footing with her sister states. *E.g.*, Coyle v. Smith, 221 U.S. 559, 573 (1911) (declining to enforce a restriction on the location of the new state's capital found in the enabling legislation) ("[W]hen a new state is admitted into the Union, it is so admitted with all of the powers of sovereignty and jurisdiction which pertain to the original states, and that such powers may not be constitutionally diminished . . . by any conditions, compacts, or stipulations embraced in the act under which the new state came into the Union, which would not be valid and effectual if the subject of congressional legislation after admission.").

[18] *See, e.g.*, R. HEWITT PATE, THE HERITAGE LECTURES NO. 461, D.C. STATEHOOD: NOT WITHOUT A CONSTITUTIONAL AMENDMENT 5 (1993), http://thf_media.s3.amazonaws.com/1993/pdf/hl461.pdf (last visited Mar. 15, 2021) (discussing the New Columbia Admission Act, H.R. 51, 103d Cong. (1993)).

[19] *See* U.S. CONST. art. I, § 8, cl. 17. *See also* Cong. Rsch. Serv., *ArtIV.S3.C1.1.1.1 Admission of and the Rights of New States: Historical Background*, CONSTITUTION ANNOTATED, https://constitution.congress.gov/browse/essay/artIV-S3-C1-1-1-1/ALDE_00001170/ (last visited May 11, 2022).

The District Clause

In relevant part, the District Clause provides that Congress has the 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 Government of the United States . . . .[20]

The original Federal District comprised 10 miles square,[21] chosen by President George Washington to encompass the ports of Georgetown and Alexandria, duly ceded by Virginia and Maryland,[22] and accepted by Congress as the seat of government.[23]

Congress later reduced the size (and changed the shape) of the Federal District. By the 1840s, a move for retrocession peaked among the District of Columbia residents south of the Potomac (that is, on the land previously ceded by Virginia).[24] On July 9, 1846, Congress determined it did not require the land ceded by Virginia for the seat of government.[25] Congress authorized the land's retrocession to Virginia, contingent on first obtaining "the assent of the people of the county and town of Alexandria"[26]—that is, of the individual residents who would be affected by retrocession—notwithstanding that the Commonwealth of Virginia had already given its consent.[27] The voters of Alexandria County assented; President James K. Polk proclaimed the retrocession shortly thereafter.[28]

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[20] *Id.*; Palmore v. United States, 411 U.S. 389, 397 (1973) ("Not only may statutes of Congress of otherwise nationwide application be applied to the District of Columbia, but Congress may also exercise all the police and regulatory powers which a state legislature or municipal government would have in legislating for state or local purposes. Congress 'may exercise within the District all legislative powers that the legislature of a state might exercise within the State . . . so long as it does not contravene any provision of the constitution of the United States.'" (quoting Capital Traction Co. v. Hof, 174 U.S. 1, 5 (1899))).

[21] Ten miles square is 100 square miles. *See, e.g.*, Memorandum from Thomas Jefferson (Aug. 29, 1790), https://founders.archives.gov/documents/Washington/05-06-02-0176 (noting Jefferson's presumption that legislation enabling selection of "a territory not exceeding 10 miles square" meant "100 square miles in any form").

[22] 1798 Md. Acts, ch. 2, *ratified by* 1791 Md. Acts ch. 45, § 2 (quoted in Adams v. Clinton, 90 F. Supp. 2d 35, 58 (D.D.C.) (2000)); 13 William W. Hening, LAWS OF VIRGINIA 43, ch. XXXII (1789).

[23] *See* Residence Act, 1 Stat. 130 (1790) (authorizing the President of the United States to appoint and direct commissioners to survey and acquire land for the Federal District).

[24] *See* Amos B. Casselman, *The Virginia Portion of the District of Columbia*, 12 RECORDS COLUMBIA HIST. SOC'Y, WASH., D.C. 115, 123–34 (1909), https://www.jstor.org/stable/40066996; Mark David Richards, *The Debates Over the Retrocession of the District of Columbia, 1801–2004*, 16 WASH. HIST. 55, 59–62, 66–68 (2004), http://www.dchistory.org/wp-content/uploads/2020/03/10-Debates-Over-Retrocession-by-Mark-David-Richards-16-1.pdf/.

[25] Act of July 9, 1846, ch. XXXV, 9 Stat. 35. The Act provided:

> Whereas, no more territory ought to be held under the exclusive legislation given to Congress over the District which is the seat of the General Government than may be necessary and proper for the purposes of such a seat; and whereas, experience hath shown that the portion of the District of Columbia ceded to the United States by the State of Virginia has not been, nor is ever likely to be, necessary for that purpose . . . .

[26] *Id.* § 4 ("*And be it further enacted*, That this act shall not be in force until after the assent of the people of the county and town of Alexandria shall be given to it in the mode hereinafter provided.").

[27] *Id.* pmbl. ("[W]hereas, the State of Virginia, by an act passed on the third day of February, eighteen hundred and forty-six, entitled 'An act accepting by the State of Virginia the County of Alexandria, in the District of Columbia, when the same shall be receded by the Congress of the United States,' hath signified her willingness to take back the said territory ceded as aforesaid . . . .").

[28] Announcement of Vote to Retrocede the County of Alexandria to the State of Virginia, Proclamation No. 48 (Sept. 7,

A case presenting a constitutional challenge to the 1846 retrocession, *Phillips v. Payne*, eventually made its way to the U.S. Supreme Court in 1875,[29] but was dismissed without an examination of the merits of the constitutional arguments. Central to the Court's holding was the fact that after retrocession, both Virginia and the federal government uniformly treated Alexandria County as once again a part of Virginia for all intents and purposes. The Court stated: "A government *de facto*, in firm possession of any country, is clothed, while it exists, with the same rights, powers, and duties, both at home and abroad, as a government *de jure*."[30] Noting that more than 25 years had elapsed, and neither Virginia nor the United States had complained of the retrocession, the Court held that the displeased resident of Alexandria County who raised the constitutional challenge was estopped from doing so:

> He cannot, under the circumstances, vicariously raise a question, nor force upon the parties to the compact an issue which neither of them desires to make.
>
> In this litigation we are constrained to regard the de facto condition of things which exists with reference to the county of Alexandria as conclusive of the rights of the parties before us.[31]

This case, however, pre-dated the development of modern justiciability doctrine (discussed below), and it is therefore difficult to imagine the present-day Supreme Court using the same line of reasoning if faced with a challenge to H.R. 51. Accordingly, the precedential value of *Phillips v. Payne*'s central holding seems limited, especially given the nearly 30-year delay in that case's resolution and the factual distinctions of retrocession in contrast to statehood.

Constitutional challenges to H.R. 51 may still arise from the District Clause, which some commentators read as limiting Congress's power to change the seat of government once it is established. For example, some argue that "[t]he plain meaning of Article I is that 'the Seat of Government of the United States' comprises all the land supplied for that purpose,"[32] but this understanding is not specified in the Constitution's text and appears inconsistent with historical practice. As noted, the current District of Columbia is already substantially smaller than the original Federal District, because much of "the land supplied for [the] purpose" of the District was retroceded to Virginia more than a century ago. If the Clause is read to include all land supplied for use as the seat of government, the District of Columbia would seemingly still include Alexandria County.

Congress's anticipated power to fix the seat of government "permanently" was raised by Charles Pinckney, a South Carolina delegate to the Constitutional Convention, but no such wording was incorporated into the Constitution's final text.[33] The Framers chose to set a maximum size for the Federal District, but no other size-related restrictions.[34] The Federal District's precise size and location remained unsettled for some time after the constitutional text was sent to the states for

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1846).

[29] Phillips v. Payne, 92 U.S. 130 (1875).

[30] *Id.* at 133.

[31] *Id.* at 134.

[32] *E.g.*, Jeff Jacoby, Opinion, *The Constitution Says No to DC Statehood*, BOS. GLOBE, (June 21, 2020), https://www.bostonglobe.com/2020/06/21/opinion/constitution-says-no-dc-statehood/.

[33] "There is also an authority to the National Legislature, permanently to fix the seat of the general Government . . . ." Charles Pinckney, *Letter to the Federal Convention, in Philadelphia, on the 28th of May, 1787, in* 3 THE RECORDS OF THE FEDERAL CONVENTION OF 1787, at 122 (Max Farrand ed., 1911), https://oll.libertyfund.org/title/farrand-the-records-of-the-federal-convention-of-1787-vol-3 .

[34] U.S. CONST. art. I, § 8, cl. 17.

ratification. At least two states besides Maryland and Virginia (Delaware and New Jersey) passed resolutions authorizing Congress to choose an appropriate site (also "not exceeding ten miles square") for the seat of government from within their borders.[35] It is therefore conceivable that the Federal District could have been much smaller and located in Delaware or New Jersey had Congress chosen to accept one of those states' offers.[36] During the Virginia ratification debates, James Madison—who played a significant role in the drafting of the Constitution while a delegate to the Constitutional Convention—noted that the District Clause grants Congress "the power of legislating over a small district, which cannot exceed ten miles square, and may not be more than one mile."[37]

A different but related argument is that the seat of government became permanently fixed not by the Constitution in Article I, but by Congress's legislative acceptance of Maryland's and Virginia's cession for that purpose. The Residence Act of 1790 used terms of permanence, providing:

> a district of territory, not exceeding ten miles square, to be located as hereafter directed on the river Potomac, at some place between the mouths of the Eastern Branch and Connogochegue, be, and the same is hereby accepted *for the permanent seat of the government* of the United States.[38]

This view is reflected, to some extent, in an opinion arguing against the constitutionality of the 1846 Alexandria County retrocession, memorialized in a letter submitted by a legal scholar to the Senate in January 1910.[39] The letter avers that the Federal District, once created, could not be altered. Accordingly, "[t]he nation can only be protected against" an annulment of the entire Federal District "by a judgment of the Supreme Court of the United States declaring the act of retrocession of 1846 to be null and void."[40] Whatever merit this argument might have in theory,

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[35] *Delaware Convention Proceedings*, MD. J., (Dec. 14, 1787), https://www.consource.org/document/delaware-convention-proceedings-maryland-journal-1787-12-14/; *New Jersey Convention Proceedings*, TRENTON MERCURY, (Dec. 20, 1787), https://www.consource.org/document/new-jersey-convention-proceedings-trenton-mercury-1787-12-20/.

[36] *See also Speech of the Hon. R. M. T. Hunter, of Virginia, On the Subject of the Retrocession of Alexandria to Virginia* (May 8, 1846), https://hdl.handle.net/2027/hvd.hne9lw?urlappend=%3Bseq=12:

> The constitution provides that the territory ceded for [the seat of government] shall not exceed ten miles square. Mr. Madison, in the debates upon the Federal Constitution in the Virginia Convention, said that Congress might take one square mile or ten miles square, as they saw best. . . . Now suppose, Mr. Chairman, that they had taken at first only one square mile, and that had proved insufficient, will any man doubt but that they might have taken more by a subsequent cession, provided they did not exceed the quantity limited by the constitution[?]

[37] *Proceedings of the Virginia Convention, June 14, 1788*, *in* 3 THE DEBATES IN THE SEVERAL STATE CONVENTIONS ON THE ADOPTION OF THE FEDERAL CONSTITUTION (Jonathan Elliot ed., 2d ed. 1836), https://oll.libertyfund.org/title/elliot-the-debates-in-the-several-state-conventions-vol-3/ [hereinafter *Proceedings of the Virginia Convention*].

[38] Residence Act, 1 Stat. 130 (1790) (emphasis added).

[39] Letter From Hannis Taylor to Hon. Thomas H. Carter, U.S. Sen., Rendering an Opinion as to the Constitutionality of the Act of Retrocession of 1846 (Jan. 17, 1910), https://hdl.handle.net/2027/loc.ark:/13960/t1gh9s15c?urlappend=%3Bseq=3 (referred to the Committee on the District of Columbia). Mr. Taylor opined that the 1846 retrocession, together with the cessions from Virginia and Maryland and 19 individual landowners, created a quadrilateral contract foreclosing any possibility of altering the Federal District once established. *Id.* at 12–13.

[40] *Id.* (applying principles of contract law to reach this conclusion). "If that attempted recession upon the part of the United States and Virginia is valid, then the contract as a whole fails. *Neither party is bound unless all are bound.* If the United States and Virginia, as a matter of law, actually annuled [sic] the quadrilateral contract, then Maryland and the representatives of the 19 proprietors can justly and legally claim every foot of land embraced in the limits of the District as now defined." *Id.*

however, the continued recognition of the Federal District since the act of retrocession some 175 years ago undercuts its persuasive authority.[41]

To a certain extent, then, the retrocession of Alexandria County to Virginia may provide a historical blueprint for H.R. 51. Congress evidently determined on that occasion that shrinking the Federal District's physical size was not inconsistent with either the constitutional form or the practical function of the seat of government.[42] However, the 1846 retrocession was subject to decades of debate, and its constitutionality has never been subject to final judicial determination.[43]

Some commentators have framed their constitutional objections to statehood somewhat differently, objecting to a reduction in the Federal District's size because the District's diminished size would make it impracticable for what they view as the District's intended purpose.[44] The drafting of the District Clause was likely informed by the Continental Congress's experience in Philadelphia just a few years before the Constitutional Convention.[45] Though the British surrendered at Yorktown in 1781, the 1783 Treaty of Paris would not formally end the war between Britain and the former colonies until its ratification in 1784.[46] The Continental Army and associated state militias were still deployed, but many were owed back pay.[47] On June 21, 1783, as many as 400 disgruntled militia members gathered outside the Pennsylvania state house, which was both the usual meeting place of the Continental Congress and the chambers of Pennsylvania's state leaders.[48] That evening, the Continental Congress, "having been . . . grossly insulted by the disorderly and menacing appearance of a body of armed soldiers" at the Congress's meeting place, demanded that Pennsylvania take immediate action to protect the peace.[49] If Congress was not assured it could expect "adequate and prompt exertions of

[41] Opponents of proposals involving retroceding the District of Columbia's residential portions to Maryland (*see, e.g.*, District of Columbia-Maryland Reunion Act, H.R. 472, 11th Cong. (2021)) may note that Congress's action to retrocede Alexandria County followed—and expressly cited—the Virginia legislature's prior affirmative act to accept retrocession. Act of July 9, 1846, ch. XXXV, pmbl., 9 Stat. 35 ("[W]hereas, the State of Virginia, by an act passed on the third day of February, eighteen hundred and forty-six, entitled 'An act accepting by the State of Virginia the County of Alexandria, in the District of Columbia, when the same shall be receded by the Congress of the United States,' hath signified her willingness to take back the said territory ceded as aforesaid . . . .").

[42] Act of July 9, 1846, 9 Stat. 35 (concluding the "portion of the District of Columbia ceded to the United States by the State of Virginia has not been, nor is ever likely to be, necessary" for use as the seat of government).

[43] *See supra* note 29 and accompanying text (discussion of Phillips v. Payne, 92 U.S. 130 (1875)).

[44] *E.g.*, U.S. DEP'T OF JUSTICE, OFF. OF LEGAL POL'Y, REPORT TO THE ATTORNEY GENERAL: THE QUESTION OF STATEHOOD FOR THE DISTRICT OF COLUMBIA 57–58 (Apr. 3, 1987), https://www.ojp.gov/pdffiles1/Digitization/115093NCJRS.pdf.

[45] *Id.* at 53 ("In explaining the genesis of the District[,] reference is inevitably made to the Philadelphia Mutiny which took place in June of 1783.").

[46] Definitive Treaty of Peace Between the United States of America and His Britannic Majesty, 8 Stat. 80 (1783); *see also* 26 JOURNALS OF THE CONTINENTAL CONGRESS 23 (1784), https://memory.loc.gov/cgi-bin/.ampage?collId=lljc&fileName=026/lljc026.db&recNum=28.

[47] *See Whereas: Stories from the People's House: Chasing Congress Away*, U.S. HOUSE OF REPRESENTATIVES HISTORY, ART & ARCHIVES (June 1, 2015), https://history.house.gov/Blog/2015/June/6-1-Chasing-Congress/ [hereinafter *Chasing Congress Away*]; *see also generally* Kenneth R. Bowling, *New Light on the Philadelphia Mutiny of 1783: Federal-State Confrontation at the Close of the War for Independence*, 101 PA. MAG. OF HIST. & BIOGRAPHY 419 (1977), https://journals.psu.edu/pmhb/article/view/43383/43104.

[48] *Chasing Congress Away*, *supra* note 47. It is unclear whether the militia members chose that location because of Congress's presence; at least some of the militia leaders were apparently meeting with the state leaders, who were more directly responsible for promised financial payments.

[49] 24 JOURNALS OF THE CONTINENTAL CONGRESS 410 (1783), https://memory.loc.gov/cgi-bin/ampage?collId=lljc&fileName=024/lljc024.db&recNum=417.

[Pennsylvania] for supporting the dignity of the federal government," Congress authorized its next meeting to be held in New Jersey.[50]

Based on these historical events, one might argue that the Federal District's size was intended to be large enough to sustain its own police force or other security. This argument is supported by James Madison's writings in *The Federalist No. 43*, wherein he emphasizes "[t]he indispensable necessity of complete authority at the seat of government," stating:

> Without it, not only the public authority might be insulted and its proceedings interrupted with impunity; but a dependence of the members of the general government on the State comprehending the seat of the government, for protection in the exercise of their duty, might bring on the national councils an imputation of awe or influence, equally dishonorable to the government and dissatisfactory to the other members of the Confederacy.[51]

Madison believed his argument extended equally to federal buildings throughout the United States: "The necessity of a like authority over forts, magazines, etc., established by the general government, is not less evident."[52] Those federal enclaves, however, seem not to have prompted arguments that they must be a minimum size, nor objections to their reliance on state resources for power and other resources. Accordingly, Madison's concern appears more relevant to the federal government's independent *authority* to provide security for federal areas, rather than a concern over size or physical independence.

Whether a smaller-sized Federal District would raise new or different security concerns than the current Federal District, however, is subject to debate. The Pentagon is already located in Virginia, and many federal troops are stationed outside the District's boundaries. Nor is there any current statutory requirement that members of the Capitol Police or D.C. National Guard live in the District of Columbia rather than in Maryland or Virginia.[53] Nonetheless, it is possible that there is some size of Federal District too small to carry out the essential functions of government, but drawing the line between "sufficient" and "too small" would seem to depend on policy judgments rather than constitutional text—judgments that the District Clause seems to commit to Congress when setting forth its "exclusive" legislative authority over the nation's seat of government.[54]

In the modern era, arguments that Congress lacks constitutional authority to reduce the Federal District's size seem targeted at preserving the Federal District's current size following the 1846 reduction.[55] There seem to be few suggestions that the District of Columbia must be restored to its original dimensions to comply with the Constitution. Current objections appear related to a potential reduction's scale, rather than to an alleged lack of underlying power to effect that reduction.[56] Given the Constitution offers no specific guidelines for the Federal District's size—

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[50] *Id.*

[51] THE FEDERALIST NO. 43 (James Madison).

[52] *Id.*

[53] *But see* Zach Smith, Commentary, *D.C. Statehood Bill is Constitutionally Dubious and Pragmatically Flawed*, HERITAGE FOUND. (July 5, 2020), https://www.heritage.org/the-constitution/commentary/dc-statehood-bill-constitutionally-dubious-and-pragmatically-flawed ("The federal government shouldn't be dependent on local authorities for its safety and security.").

[54] U.S. CONST. art. I, § 8, cl. 17.

[55] *See, e.g.*, Smith, *supra* note 53; Roger Pilon, *Testimony Re: H.R. 51: Making DC the 51st State*, CATO INST. (Sept. 19, 2019), https://www.cato.org/testimony/testimony-re-hr-51-making-dc-51st-state/.

[56] *E.g.*, Roger Pilon, Commentary, *D.C. Statehood is a Fool's Errand*, CATO INST. (June 5, 2016), https://www.cato.org/commentary/dc-statehood-fools-errand/ (citing the mention of "ten Miles square" and subsequent

other than to set a 10-mile-square maximum size—it is difficult to find a textual basis in the Clause to distinguish between permissible and impermissible reductions in size.[57]

The Twenty-Third Amendment

Congress passed a Joint Resolution proposing the Twenty-Third Amendment in June 1960.[58] The Amendment permits the "District constituting the seat of Government of the United States" to appoint electors for President and Vice President "in such manner as the Congress may direct" with no more electors than the least populous state, but otherwise the number of electors to which it would be entitled if it were a state.[59] Approximately nine months later, 38 of the 50 states had ratified the Amendment,[60] thereby fulfilling the Constitution's Article V requirement that amendments or repeals must be ratified by three-fourths of the states.[61] Six months after ratification, Congress exercised its power under Section 2 of the Twenty-Third Amendment to enact Public Law No. 87-389, establishing the mechanics of voting for President and Vice President in the District of Columbia.[62]

In the context of H.R. 51, because it would reduce (rather than eliminate) the "District constituting the seat of Government of the United States" primarily to the federal buildings in present-day downtown DC, it seems likely that the Twenty-Third Amendment would continue to operate as written, potentially giving state-like electoral power to the greatly limited population of the reduced Federal District, should there be any such population and should those residents choose to exercise that power.[63]

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establishment of a ten-square-mile district as "strong evidence" against an "enclave scheme" similar to H.R. 51's establishment of Douglass Commonwealth, but not suggesting that the District of Columbia's current size is unconstitutional).

[57] James Madison explained during the Virginia constitutional ratification debates that the Federal District could be as small as one mile square. *Proceedings of the Virginia Convention*, *supra* note 37.

[58] Joint Resolution Proposing an Amendment to the Constitution of the United States, S.J. Res. 39, 74 Stat. 1057 (1960).

[59] U.S. CONST. amend XXIII.

[60] Thirty-nine state legislatures ratified the Twenty-Third Amendment in the following order: Hawaii, June 23, 1960; Massachusetts, August 22, 1960; New Jersey, December 19, 1960; New York, January 17, 1961; California, January 19, 1961; Oregon, January 27, 1961; Maryland, January 30, 1961; Idaho, January 31, 1961; Maine, January 31, 1961; Minnesota, January 31, 1961; New Mexico, February 1, 1961; Nevada, February 2, 1961; Montana, February 6, 1961; Colorado, February 8, 1961; Washington, February 9, 1961; West Virginia, February 1961; Alaska, February 10, 1961; Wyoming, February 13, 1961; South Dakota, February 14, 1961; Delaware, February 20, 1961; Utah, February 21, 1961; Wisconsin, February 21, 1961; Pennsylvania, February 28, 1961; Indiana, March 3, 1961; North Dakota, March 3, 1961; Tennessee, March 6, 1961; Michigan, March 8, 1961; Connecticut, March 9, 1961; Arizona, March 10, 1961; Illinois, March 14, 1961; Nebraska, March 15, 1961; Vermont, March 15, 1961; Iowa, March 16, 1961; Missouri, March 20, 1961; Oklahoma, March 21, 1961; Rhode Island, March 22, 1961; Kansas, March 29, 1961; Ohio, March 29, 1961; and New Hampshire, March 30, 1961. Cong. Rsch. Serv., *Ratification of Amendments to the Constitution*, CONSTITUTION ANNOTATED, https://constitution.congress.gov/browse/essay/intro.5/ALDE_00001236/ (last visited Mar. 17, 2021). Arkansas rejected the Amendment; the remaining states took no action. *See* Senate Committee on Rules and Administration, U.S. SENATE MANUAL 582 n.14, 116th Congress (2020), https://www.govinfo.gov/content/pkg/SMAN-116/pdf/SMAN-116.pdf.

[61] U.S. CONST. art. V. (providing, in pertinent part, that "Amendments . . . shall be valid to all Intents and Purposes, as Part of this Constitution, when ratified by the Legislatures of three fourths of the several States").

[62] An Act to Amend the Act of August 12, 1955, Pub. L. No. 87-389, 75 Stat. 817 (Oct. 4, 1961).

[63] *See, e.g.*, Peter Raven-Hansen, *The Constitutionality of D.C. Statehood*, 60 GEO. WASH. L. REV. 160, 189 (1991) (arguing that this presents more of a theoretical problem than a realistic one, and challenging whether anyone would have standing to lodge a legal objection); *but see* Adam H. Kurland, *Partisan Rhetoric, Constitutional Reality and*

H.R. 51 appears to address the likelihood of this outcome by providing for expedited consideration in both the House and Senate of a joint resolution proposing repeal of the Twenty-Third Amendment.[64] The expedited consideration includes calendaring immediately upon introduction, as well as waived points of order against the joint resolution and consideration thereof.[65] That said, the Bill's provision for fast-track consideration of a resolution to repeal the Twenty-Third Amendment does not guarantee that both houses would ultimately vote in favor of a proposed amendment, or that three-fourths of states would promptly ratify the repeal.[66]

The Justiciability of a Constitutional Challenge

Should H.R. 51 or similar legislation be enacted, there are at least two legal scenarios in which courts might find a constitutional challenge to the implementation of such legislation nonjusticiable, thereby declining to consider or resolve the challenge on the merits.

First, a party bringing such a challenge would need to satisfy standing requirements. The Supreme Court has articulated a three-part test for meeting the constitutionally rooted "standing" doctrine.[67] To establish standing, a party must show it has a genuine stake in the relief sought because it has personally suffered, or will suffer, (1) a concrete, particularized, actual or imminent injury-in-fact that (2) is traceable to the allegedly unlawful actions of the opposing party and (3) is redressable by a favorable judicial decision.[68]

In the context of H.R. 51, it is unclear whether conferring statehood on Douglass Commonwealth would necessarily result in a cognizable injury-in-fact to, for example, other states.[69] The Supreme Court has in other cases dismissed for lack of standing cases brought by individual congressional representatives who "have not been singled out for specially unfavorable treatment as opposed to other Members of their respective bodies," but claim that an "Act causes a type of institutional injury . . . which necessarily damages all Members of Congress . . . equally."[70] Such claims are also "based on a loss of political power, not loss of any private right."[71] Similarly, a

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Political Responsibility: The Troubling Constitutional Consequences of Achieving D.C. Statehood by Simple Legislation, 60 GEO. WASH. L. REV. 475, 479 (1991) (stating that "obtaining D.C. statehood without a constitutional amendment would require that the remaining, drastically reduced District of Columbia be entitled to its constitutionally-mandated three electoral votes for president. However, this result is politically and civically irresponsible").

[64] H.R. 51, 117th Cong. § 224 (2021).

[65] *Id.*

[66] *See, e.g.*, Meagan Flynn, *In Faraway State Houses, A Battle Brews Over Making D.C. the 51st State*, WASH. POST (Feb. 26, 2021) (noting both South Dakota and Arizona had, at the time of the article's publication, passed resolutions opposing D.C. statehood).

[67] *See, e.g.*, Lujan v. Defs. of Wildlife, 504 U.S. 555, 560–61 (1992).

[68] *Id.*

[69] Texas v. Pennsylvania, 141 S. Ct. 1230, 1230 (2020) (denying, for lack of standing, the State of Texas's motion for leave to file a bill of complaint against Pennsylvania). This denial issued notwithstanding Texas's claim that its standing derived from threats to its constitutional guarantee of "equal suffrage in the Senate" and to "its citizens' rights of suffrage in presidential elections." Plaintiffs' Reply in Support of Motion for Preliminary Injunction and Temporary Restraining Order 7–8, Texas v. Pennsylvania, No. 22O155 (Dec. 11, 2020), https://www.supremecourt.gov/DocketPDF/22/22O155/163498/20201211111125165_TX-v-State-MPI-Reply-2020-12-11.pdf.

[70] Raines v. Byrd, 521 U.S. 811, 821 (1997) (dismissing constitutional challenge brought by Members of Congress who voted against the Line Item Veto Act).

[71] *Id.*; *but see* Clinton v. City of New York, 524 U.S. 417, 429–36 (1998) (holding that city and health care providers suffered sufficiently immediate and concrete injury from President's exercise of line item veto against certain tax

claim brought by individual Members who oppose H.R. 51 would likely involve allegations of generalized institutional harm.[72] That said, determination of standing would ultimately depend on the plaintiff's identity and the articulation of alleged harm in a particular case. For instance, a private individual could potentially allege an injury caused by a law or measure of the new state that would not have occurred if the District remained under federal jurisdiction. But whether the case would compel a court to reach the constitutional question—or whether, as in *Phillips v. Payne*, the court would have a basis to resolve the case without reaching the constitutional issues—is difficult to predict.[73]

Perhaps more significantly, courts could determine that a change in the District's political status is a "political question" unsuited for resolution by the judicial branch. The concept of the political question doctrine has been described as "more amenable to description by infinite itemization than by generalization,"[74] but one of the classic characteristics of a political question is "a textually demonstrable constitutional commitment of the issue to a coordinate political department"—that is, a power constitutionally granted to one of the nonjudicial branches of government.[75] As discussed, both the admission of new states and the power of exclusive legislation over the District of Columbia are textually committed to Congress in the Admissions and District Clauses, respectively. Thus, courts arguably could refuse to resolve a challenge to the District's statehood on the ground that it represents a political question textually committed to Congress.[76]

On one hand, there is some support for the argument that a constitutional challenge to District statehood is likely to present a nonjusticiable political question. First, although Congress has extended statehood to new states 37 times since the Constitution's ratification,[77] the federal courts have never upheld a constitutional challenge to the exercise of Congress's powers under the Admission Clause. Second, the case most directly analogous to a challenge to District statehood, *Phillips v. Payne*,[78] arguably suggests—albeit in dictum—that Congress's retrocession of Alexandria County to Virginia may have presented what would today be considered a political

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waivers to have standing to challenge constitutionality of Line Item Veto Act).

[72] *See Raines*, 521 U.S. at 829 ("[A]ppellees have alleged no injury to themselves as individuals . . . [and] the institutional injury they allege is wholly abstract and widely dispersed . . . and their attempt to litigate this dispute at this time and in this form is contrary to historical experience. We attach some importance to the fact that appellees have not been authorized to represent their respective Houses of Congress in this action, and indeed both Houses actively oppose their suit.").

[73] If a statute can be fairly construed so that its validity can be sustained against a constitutional attack, a rule of prudence is that it should be so construed. *E.g.*, Crowell v. Benson, 285 U.S. 22, 62 (1932) ("When the validity of an act of the Congress is drawn in question, and even if a serious doubt of constitutionality is raised, it is a cardinal principle that this Court will first ascertain whether a construction of the statute is fairly possible by which the question may be avoided.").

[74] Comm. of U.S. Citizens Living in Nicar. v. Reagan, 859 F.2d 929, 933 (D.C. Cir. 1988) (quoting CHARLES A. WRIGHT, THE LAW OF FEDERAL COURTS 75 (4th ed. 1983)).

[75] Baker v. Carr, 369 U.S. 186, 217 (1962); *see also* LAWRENCE TRIBE, AMERICAN CONSTITUTIONAL LAW 96 (2d ed. 1988) (distinguishing the textual commitment rationale as the "classical" version of the political question doctrine).

[76] For more detailed analysis of how applicability of the political question doctrine appears to have waxed and waned over the past several decades, see Cong. Rsch. Serv., *Political Question Doctrine: Current Doctrine*, CONSTITUTION ANNOTATED, https://constitution.congress.gov/browse/essay/artIII-S2-C1-2-8-3/ALDE_00001209/ (last visited Mar. 15, 2021).

[77] *See supra* note 17. The first of these was Vermont in 1791. *See* An Act for the Admission of the State of Vermont Into This Union, ch. VII, 1 Stat. 191, 1st Congress (1791). The last was Hawaii in 1959. *See* An Act to Provide for the Admission of the State of Hawaii Into the Union, Pub. L. No. 86-3, 73 Stat. 4, 86th Congress (1959).

[78] Phillips v. Payne, 92 U.S. 130 (1875).

question. In that case, the Supreme Court noted: "In cases involving the action of the political departments of the government, the judiciary is bound by such action,"[79] citing several previous cases in which the judiciary declined to second-guess a determination by the political branches.[80] As recently as 2019, the Supreme Court has invoked the political question doctrine to refuse merits review of constitutional challenges to certain voting and representation issues.[81]

On the other hand, none of these points is definitive. Congress has never before conferred independent statehood on a portion of the Federal District, so any attempt to do so would necessarily be novel legislation to some extent, and it is impossible to predict with any certainty how courts may decide issues of first impression. The *Phillips v. Payne* dictum is not binding. Other recent decisions may indicate that the Supreme Court is sometimes willing to render decisions in cases that arguably presented political questions.[82] As the Court recently reaffirmed: "No policy underlying the political question doctrine suggests that Congress or the Executive . . . can decide the constitutionality of a statute; that is a decision for the courts."[83]

Nevertheless, if a District statehood bill were enacted and faced legal challenges, but courts either determined that challengers lacked standing or their claims presented nonjusticiable political questions, Congress itself would have the final word.

Conclusion

To date, no legislation has ever conferred statehood on a portion of land previously dedicated as the seat of federal government. Novel legislation is intrinsically likely to invite legal challenges raising issues of first impression. Many of the constitutional questions discussed in this report have not yet been raised in federal court, and even fewer have proceeded to a binding resolution on the merits. Accordingly, this report is intended to inform legislative debate, rather than predict any particular outcome.[84] Congress may desire to consider the constitutional implications of District statehood or other proposals that would affect the District's political status, and to weigh those implications along with appropriate policy considerations when evaluating legislative action.

[79] *Id.* at 132 (concluding, however, that the Court need not "invoke [the] aid" of that principle).

[80] *E.g.*, Williams v. Suffolk Ins. Co., 38 U.S. 415, 422 (1839) (holding, insofar as the American Executive concluded "that the Falkland islands do not constitute any part of the dominions within the sovereignty of the government of Buenos Ayres [sic]," the courts lacked authority to consider any claim to the contrary).

[81] Rucho v. Common Cause, 139 S. Ct. 2484, 2506–07 (2019) (holding "partisan gerrymandering claims present political questions beyond the reach of the federal courts"). The Court also quoted from a previous case: "Sometimes, however, 'the law is that the judicial department has no business entertaining the claim of unlawfulness—because the question is entrusted to one of the political branches or involves no judicially enforceable rights.'" *Id.* at 2494 (quoting Vieth v. Jubelirer, 541 U.S. 267, 277, (2004) (plurality opinion)).

[82] *E.g.*, Zivotofsky *ex rel.* Zivotofsky v. Clinton, 566 U.S. 189 (2012); Bush v. Gore, 531 U.S. 98 (2000).

[83] *Zivotofsky*, 566 U.S. at 196–97 (alteration in original) (overturning two lower courts' rulings that the case presented a nonjusticiable political question) (quoting INS v. Chadha, 462 U.S. 919, 941–42 (1983)).

[84] *Compare* Letter from 39 Law Professors to Congress Regarding Washington, D.C. Admission Act (May 22, 2021), https://www.dropbox.com/s/ghtdagoapnlzowf/Letter%20to%20Congressional%20Leaders%20on%20Constitutionality%20of%20Statehood%20for%20Washington%20D.C.%20May%2022%202021.pdf?dl=0 (concluding no constitutional barriers to H.R. 51), *with* Letter from 22 State Attorneys General to the President and Congress (April 13, 2021), https://ago.wv.gov/Documents/DC%20Statehood%20letter%20as%20sent%20(02539672xD2C78).PDF (concluding that District statehood may be established only by constitutional amendment).

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INSIGHT

Congressional Disapproval of District of Columbia Acts: Overview of Selected Resolutions

Updated March 23, 2023

The U.S. Constitution provides Congress with plenary legislative authority over the District of Columbia (DC) as the federal capital. With the passage of the District of Columbia Self-Government and Governmental Reorganization Act of 1973 (P.L. 93-198, hereinafter the Home Rule Act), Congress granted limited home rule authority to DC, and it empowered DC residents to elect a mayor and city council. Pursuant to Section 601 of the Home Rule Act, Congress "reserves the right, at any time, to exercise its constitutional authority as legislature for the District." The act also established a process by which Congress may review and disapprove of most laws enacted by DC before they take effect.

On March 20, 2023, President Biden signed into law, H.J.Res. 26, Disapproving the action of the District of Columbia Council in approving the Revised Criminal Code Act of 2022, which nullified DC Act A24-0789. On February 9, 2023, the U.S. House of Representatives adopted H.J.Res. 24, which would have nullified DC Act A24-0640. H.J.Res. 24 did not receive floor consideration in the Senate.

Disapproval Process

Most forms of local DC law are transmitted to Congress for a specified review or "layover" period. The length of the layover period differs based on the type of law the District has enacted (60 days for criminal legislation and 30 days for other acts). The layover period excludes Saturdays, Sundays, federal holidays, and days on which neither the House nor the Senate is in session because of an adjournment *sine die* or pursuant to an adjournment resolution. In practice, the start and end date of the review period is subject to the interpretation of the House or Senate Parliamentarian.

Under the Home Rule Act, any Member of the House or Senate may introduce a qualifying joint resolution disapproving a DC law at any time after the law has been submitted to Congress and before the expiration of the layover periods described above. There is no limit on the number of resolutions that may be introduced. The act in question will take effect upon the expiration of the layover period, unless it is

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IN12122

first overturned by a joint resolution of disapproval adopted by both chambers of Congress and signed by the President, enacted over his veto, or with no action taken by the President.

For a more detailed overview of this process, see CRS Insight IN12119, *Congressional Disapproval of District of Columbia Laws Under the Home Rule Act*, by Christopher M. Davis.

Selected Disapproval Resolutions

Since enactment of the Home Rule Act in 1973, four resolutions disapproving DC acts have resulted in the nullification of DC laws, as listed in **Table 1**.

Table 1. Disapproval Resolutions of DC Acts Agreed to in Congress

Through Home Rule Act Disapproval Process

Resolution Number	Congress	Resolution Title
H.J.Res. 26	118th Congress	Disapproving the action of the District of Columbia Council in approving the Revised Criminal Code Act of 2022.
S.J.Res. 84	102nd Congress	A joint resolution disapproving the action of the District of Columbia Council in approving the Schedule of Heights Amendment Act of 1990.
H.Res. 208	97th Congress	A resolution disapproving the action of the District of Columbia Council in approving the District of Columbia Sexual Assault Reform Act of 1981.
S.Con.Res. 63	96th Congress	A concurrent resolution to disapprove the Location of Chanceries Amendment Act of 1979 passed by the City Council of the District of Columbia.

Source: Congress.gov.

Note: H.Res. 208 and S.Con.Res. 63 were adopted as legislative vetoes, prior to the U.S. Supreme Court's 1983 ruling that struck down legislative vetoes.

Six additional disapproval resolutions have received floor consideration in at least one chamber of Congress since enactment of the Home Rule Act, as listed in **Table 2**.

Table 2. Disapproval Resolutions of DC Acts Receiving Floor Consideration

Through Home Rule Act Disapproval Process

Resolution Number	Congress	Resolution Title
H.J.Res. 24	118th Congress	Disapproving the action of the District of Columbia Council in approving the Local Resident Voting Rights Amendment Act of 2022.
H.J.Res. 43	114th Congress	Disapproving the action of the District of Columbia Council in approving the Reproductive Health Non-Discrimination Amendment Act of 2014.
H.J.Res. 158	102nd Congress	Disapproving the action of the District of Columbia Council in approving the Schedule of Heights Amendment Act of 1990.
H.J.Res. 341	100th Congress	A joint resolution disapproving the action of the District of Columbia Council in approving the Prison Overcrowding Emergency Powers Act of 1987.

H.Con.Res. 228	96th Congress	A bill to disapprove the Location of Chanceries Amendment Act of 1979 passed by the Council of the District of Columbia.
S.Con.Res. 78	94th Congress	Concurrent resolution disapproving proposed bond issue by the Government of the District of Columbia.

Source: Congress.gov.

Notes: S.J.Res. 84 was adopted in lieu of H.J.Res. 158 and was enacted, invalidating the Schedule of Heights Amendment Act of 1990. S.Con.Res. 63 was agreed to in lieu of H.Con.Res. 228, invalidating the Location of Chanceries Amendment Act of 1979.

Discussion

The Home Rule Act disapproval procedure is one expedited parliamentary method that Congress might use to invalidate a DC law. It is not, however, the only way Congress might undertake such disapproval. Although Congress has successfully used the disapproval mechanism of the Home Rule Act on three occasions, it has far more frequently influenced actions of the DC government through the regular lawmaking process, including the appropriations process. For example, Congress often includes general policy provisions known as *limitations* or *riders* in appropriations laws to prevent the DC government from expending funds on certain activities, programs, or projects.

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AN ACT

D.C. ACT 23-264

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

MARCH 23, 2020

To amend the Human Rights Act of 1977 to recognize the right to choose or refuse contraception or sterilization, to decide whether to carry a pregnancy to term, to give birth, or to have an abortion, to prohibit the District government from interfering with reproductive health decisions and from imposing a penalty on an individual for a self-managed abortion, miscarriage, or an adverse pregnancy outcome, and to prohibit employment discrimination against health care professionals based on the health care professional's participation in, or willingness to participate in, an abortion or sterilization procedure.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Strengthening Reproductive Health Protections Amendment Act of 2020".

Sec. 2. The Human Rights Act of 1977, effective December 13, 1977 (D.C. Law 2-38; D.C. Official Code § 2-1401.01 *et seq.*), is amended as follows:

(a) Title I is amended as follows:

(1) Section 102 (D.C. Official Code § 2-1401.02) is amended as follows:

(A) Designate the existing paragraph (27A) as paragraph (27B).

(B) A new paragraph (27A) is added to read as follows:

"(27A) "Reproductive health decision" includes a decision by an individual, an individual's dependent, or an individual's spouse related to:

"(A) The use or intended use of a particular drug, device, or medical service, including contraception or fertility control; or

"(B) The planned initiation or termination of a pregnancy.".

(2) Section 105 (D.C. Official Code § 2-1401.05) is amended as follows:

(A) Subsection (a) is amended by striking the sentence "This section shall not be construed to require an employer to provide insurance coverage related to a reproductive health decision.".

(B) Subsections (b) and (c) are repealed.

(3) A new section 105a is added to read as follows:

"Sec. 105a. Government noninterference in reproductive health decisions.

"(a) The District shall recognize the right of every individual to choose or refuse contraception or sterilization.

"(b) The District shall recognize the right of every individual who becomes pregnant to decide whether to carry a pregnancy to term, to give birth, or to have an abortion.

"(c) The District shall not:

"(1) Deny, interfere with, or restrict, in the regulation or provision of benefits, facilities, services, or information, the right of an individual, including an individual under District control or supervision, to:

"(A) Choose or refuse contraception or sterilization; or

"(B) Choose or refuse to carry a pregnancy to term, to give birth, or to have an abortion;

"(2) Interfere with or restrict in the regulation or provision of benefits, facilities, services, or information, the decision of a health care practitioner acting within the scope of the health care practitioner's license to participate in a consenting individual's prenatal care, labor, delivery, or abortion; or

"(3) Penalize an individual for:

"(A) Seeking, inducing, or attempting to induce, the individual's own abortion; or

"(B) Any act or omission during the individual's pregnancy based on the potential or actual impact on the individual's health or pregnancy.

"(d) For the purposes of this section, the term "health care practitioner" means an individual, groups of individuals, partnership, or corporation, including a health care facility, that is licensed, certified, or otherwise authorized by law to provide professional health care services in the District to an individual.".

(b) Title II is amended as follows:

(1) Section 211(a)(1) (D.C. Official Code § 2-1402.11(a)(1)) is amended as follows:

(A) Designate the existing text as subparagraph (A).

(B) The newly designated subparagraph (A) is amended by striking the semicolon and inserting the phrase "; and" in its place.

(C) A new subparagraph (B) is added to read as follows:

"(B) To fail to treat an employee affected by pregnancy, childbirth, a pregnancy-related or childbirth-related medical condition, breastfeeding, or a reproductive health decision, the same for all employment-related purposes, including receipt of benefits under fringe benefit programs, as an employee not so affected but similar in the employee's ability or

inability to work, including the requirement that an employer shall treat an employee temporarily unable to perform the functions of the employee's job because of the employee's pregnancy-related condition in the same manner as it treats other employees with temporary disabilities; provided, that this subparagraph shall not be construed to require an employer to provide insurance coverage related to a reproductive health decision;".

(2) A new part J is added to read as follows:

"PART J - Health Care Professionals.

"Sec. 291. Definitions.

"For the purposes of this part:

"(1) "Health care professional" means a physician, advance practice clinician, nurse, nurse's aide, medical assistant, hospital employee, clinic employee, nursing home employee, pharmacist, pharmacy employee, medical researcher, medical or nursing school faculty, student, or employee, counselor, social worker, or any other individual involved in providing health care.

"(2) "Health care provider" means:

"(A) An individual, group of individuals, partnership, institution, corporation, organization, or board engaged in providing health care in any manner; or

"(B) An individual, group of individuals, partnership, institution, corporation, organization, or board engaged, or authorized, in the credentialing or licensing of a health care professional.

"Sec. 292. Prohibited discrimination.

"(a) It shall be an unlawful discriminatory practice for a health care provider to do any of the following against a health care professional based on the health care professional's participation in an abortion or sterilization procedure, participation in abortion or sterilization training outside the course and scope of the health care professional's employment with that health care provider, or willingness to participate in an abortion or sterilization procedure:

"(1) Fail or refuse to hire the health care professional;

"(2) Discharge the health care professional from employment or a medical training program;

"(3) Transfer the health care professional;

"(4) Discriminate against the health care professional with respect to:

(A) Compensation or promotion;

(B) Residency or other medical training opportunity;

(C) Staff privileges, admitting privileges, or staff appointments; or

(D) Licensure or board certification;

"(5) Take adverse administrative action against the health care professional;

"(6) Harass the health care professional; or

"(7) Otherwise penalize, discipline, or take adverse or retaliatory action against the health care professional.".

Sec. 3. Applicability

(a) This act shall apply upon the date of inclusion of its fiscal effect in an approved budget and financial plan.

(b) The Chief Financial Officer shall certify the date of the inclusion of the fiscal effect in an approved budget and financial plan, and provide notice to the Budget Director of the Council of the certification.

(c)(1) The Budget Director shall cause the notice of the certification to be published in the District of Columbia Register.

(2) The date of publication of the notice of the certification shall not affect the applicability of this act.

Sec. 4. Fiscal impact statement.

The Council adopts the fiscal impact statement in the committee report as the fiscal impact statement required by section 4a of the General Legislative Procedures Act of 1975, approved October 16, 2006 (120 Stat. 2038; D.C. Official Code § 1-301.47a).

Sec. 5. Effective date.

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), a 30-day period of congressional review as provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of Columbia Register.

Chairman
Council of the District of Columbia

Mayor
District of Columbia

APPROVED
March 23, 2020

COUNCIL OF THE DISTRICT OF COLUMBIA

WASHINGTON, DC, 20004

Docket No. **B23-0434**

[X] ITEM ON CONSENT CALENDAR

[X] ACTION & DATE **FIRST READING CC, Feb 4, 2020**

[X] VOICE VOTE

RECORDED VOTE ON REQUEST **APPROVED**

ABSENT

[ ] ROLL CALL VOTE - Result

Council Member	Aye	Nay	NV	AB	Council Member	Aye	Nay	NV	AB	Council Member	Aye	Nay	NV	AB
Chmn. Mendelson	X				Grosso	X				T. White	X			
Allen	X				McDuffie	X				Todd	X			
Bonds	X				Nadeau	X								
Cheh	X				R. White	X								
Gray	X				Silverman	X								
X - Indicate Vote					**AB - Absent**					**NV - Present, Not Voting**				

CERTIFICATION RECORD

Secretary to the Council

3.4.20

Date

Docket No. **B23-0434**

[X] ITEM ON CONSENT CALENDAR

[X] ACTION & DATE **FINAL READING CC, Mar 3, 2020**

[X] VOICE VOTE

RECORDED VOTE ON REQUEST **APPROVED**

ABSENT

[ ] ROLL CALL VOTE - Result

Council Member	Aye	Nay	NV	AB	Council Member	Aye	Nay	NV	AB	Council Member	Aye	Nay	NV	AB
Chmn. Mendelson	X				Grosso	X				T. White	X			
Allen	X				McDuffie	X				Todd	X			
Bonds	X				Nadeau	X								
Cheh	X				R. White	X								
Gray	X				Silverman	X								
X - Indicate Vote					**AB - Absent**					**NV - Present, Not Voting**				

CERTIFICATION RECORD

Secretary to the Council

3.4.20

Date

AN ACT

D.C. ACT 24-644

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

NOVEMBER 21, 2022

To protect persons who assist and support others with self-managed abortions outside the healthcare system, re-codify certain existing protections regarding abortion, sterilization, and contraception, and clarify the extent of those existing protections and remedies in the event of a violation by the District government; and to amend the Human Rights Act of 1977 to add a definition and repeal the section providing the protections superseded by the aforementioned re-codification.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Enhancing Reproductive Health Protections Amendment Act of 2022".

Title I. RIGHT TO BODILY AUTONOMY

Sec. 101. Government noninterference in reproductive health decisions.

(a) The District shall recognize the right of every individual to choose or refuse contraception or sterilization.

(b) The District shall recognize the right of every individual who becomes pregnant to decide whether to carry a pregnancy to term, to give birth, or to have an abortion.

(c) The District shall not:

(1) Deny, interfere with, or restrict, in the regulation or provision of benefits, facilities, services, or information, the right of an individual, including an individual under District control or supervision, to:

(A) Choose or refuse contraception or sterilization; or

(B) Choose or refuse to carry a pregnancy to term, to give birth, or to have an abortion;

(2) Interfere with or restrict in the regulation or provision of benefits, facilities, services, or information, the decision of a health care professional or health care provider acting within the scope of the health care professional or health care provider's license to participate in a consenting individual's use of contraception, prenatal care, labor, delivery, or abortion; or

(3) Penalize a person for:

(A) Seeking, inducing, or attempting to induce the person's own abortion;

(B) Any act or omission by an individual during the individual's pregnancy based on the potential or actual impact on the individual's health or pregnancy, unless the act or omission is otherwise prohibited by District law; provided, that nothing in this section

shall be interpreted to prevent psychiatric commitment or other lawful measures to protect the health of an individual who is pregnant where such measures are applied on the same terms as would apply to a person who is not pregnant;

(C) Assisting an individual who is seeking, inducing, or attempting to induce their own abortion; provided, that nothing in this section shall be interpreted to protect the provision of an abortion procedure unless a licensed health care provider or professional acting within the scope of licensed practice performs the abortion on an individual who voluntarily consents to the procedure; or

(D) Any act of providing, dispensing, administering, or transferring possession of self-managed abortion product; provided, that nothing in this section shall be interpreted to protect:

(i) The provision or administration of a self-managed abortion product to an individual without the individual's voluntary consent; or

(ii) Any negligent or intentional adulteration of medication, intentional misrepresentation of medication safety information, or any act of negligently or intentionally providing, dispensing, administering, or transferring possession of counterfeit or adulterated medication.

(d) A person claiming to be aggrieved by a violation of this section shall have a cause of action in any court of competent jurisdiction for damages and such other remedies as may be appropriate. An action pursuant to this subsection shall be filed in a court of competent jurisdiction within 2 years of the violation or the discovery of the violation.

(e) For the purposes of this section, the term:

(1) "Contraception" means any device, medication, or practice designed or employed to prevent pregnancy, including emergency contraception, the use of which would be lawful in the District.

(2) "Health care professional" shall have the same meaning as provided in section 291(1) of the Human Rights Act of 1977, effective May 6, 2020 (D.C. Law 23-90; D.C. Official Code § 2–1402.91(1)).

(3) "Health care provider" shall have the same meaning as provided in section 291(2) of the Human Rights Act of 1977, effective May 6, 2020 (D.C. Law 23-90; D.C. Official Code § 2–1402.91(2)).

(4) "Person" shall have the same meaning as provided in section 102(21) of the Human Rights Act of 1977, effective December 13, 1977 (D.C. Law 2-38; D.C. Official Code § 2–1401.02(21)).

(5) "Self-managed abortion product" shall have the same meaning as provided in section 102(25A) of the Human Rights Act of 1977, effective December 13, 1977 (D.C. Law 2-38; D.C. Official Code § 2–1401.02(25A)).

Title II. CONFORMING AMENDMENTS

Sec. 201. The Human Rights Act of 1977, effective December 13, 1977 (D.C. Law 2-38, effective December 13, 1977; D.C. Official Code §§ 2-1401.01 *et seq.*), is amended as follows:

(a) Section 102 (D.C. Official Code § 2-1401.02) is amended as follows:

(1) Paragraph (27C) is redesignated as (27D).

(2) A new paragraph (27C) is added to read as follows:

"(27C) "Self-managed abortion product" means a medication that is approved by the U.S. Food and Drug Administration for use, either alone or in combination with other approved medication, in terminating a pregnancy, and that is made available to one or more pregnant individuals other than through the licensed operation of a health care provider or health care professional.".

(b) Section 105a (D.C. Law 23-90, effective May 6, 2020; D.C. Official Code § 2-1401.06) is repealed.

Title III. GENERAL PROVISIONS

Sec. 301. Fiscal impact statement.

The Council adopts the fiscal impact statement in the committee report as the fiscal impact statement required by section 4a of the General Legislative Procedures Act of 1975, approved October 16, 2006 (120 Stat. 2038; D.C. Official Code § 1-301.47a).

Sec. 302. Effective date.

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), a 30-day period of congressional review as provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of Columbia Register.

Chairman
Council of the District of Columbia

Mayor
District of Columbia
APPROVED
November 21, 2022

COUNCIL OF THE DISTRICT OF COLUMBIA

WASHINGTON, DC, 20004

Docket No. **B24-0726**

[X] ITEM ON CONSENT CALENDAR

[X] ACTION — **First Reading, CC**

[X] VOTE DATE — **October 4, 2022**

[ ] VOICE VOTE

RECORDED VOTE ON REQUEST

ABSENT

[X] ROLL CALL VOTE – Result — **Approved**

Council Member	Aye	Nay	NV	AB	Rec	Council Member	Aye	Nay	NV	AB	Rec	Council Member	Aye	Nay	NV	AB	Rec
Chairman Mendelson	X					Henderson	X					R. White	X				
Allen	X					Lewis George	X					Silverman	X				
Bonds	X					McDuffie	X					T. White	X				
Cheh	X					Nadeau	X										
Gray	X					Pinto	X										

X - Indicate Vote **AB – Absent** **NV - Present, Not Voting** **Rec - Recused**

CERTIFICATION RECORD

Secretary to the Council

10.25.22
Date

Docket No. **B24-0726**

[X] ITEM ON CONSENT CALENDAR

[X] ACTION — **Final Reading, CC**

[X] VOTE DATE — **October 18, 2022**

[ ] VOICE VOTE

RECORDED VOTE ON REQUEST

ABSENT — **Gray**

[X] ROLL CALL VOTE – Result — **Approved**

Council Member	Aye	Nay	NV	AB	Rec	Council Member	Aye	Nay	NV	AB	Rec	Council Member	Aye	Nay	NV	AB	Rec
Chairman Mendelson	X					Henderson	X					R. White	X				
Allen	X					Lewis George	X					Silverman	X				
Bonds	X					McDuffie	X					T. White	X				
Cheh	X					Nadeau	X										
Gray				X		Pinto	X										

X - Indicate Vote **AB – Absent** **NV - Present, Not Voting** **Rec - Recused**

CERTIFICATION RECORD

Secretary to the Council

10.25.22
Date

AN ACT

D.C. ACT 24-646

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

NOVEMBER 21, 2022

To prevent the District government from facilitating certain investigations and proceedings that limit the exercise of human right of bodily autonomy in the District of Columbia, and to create a right of action against parties that have secured or enforced certain types of judgments based on exercises of human rights of bodily autonomy in the District of Columbia; to amend Chapter 4A of Title 13 of the District of Columbia Official Code to require affirmation of noninterference in bodily autonomy rights in connection with subpoena requests; and to amend the Human Rights Act of 1977 to include additional definitions.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Human Rights Sanctuary Amendment Act of 2022".

TITLE I. RIGHT TO BODILY AUTONOMY

Sec. 101. District government nonparticipation in interstate investigations and proceedings interfering with certain rights.

(a) The District and its officers and employees acting in their official capacities shall not provide any information or expend or use time, money, facilities, property, equipment, personnel, or other resources in furtherance of any interstate investigation or proceeding seeking to impose civil or criminal liability upon any person for the following conduct, or for attempting, aiding, abetting, advising, facilitating, or intending or conspiring to achieve the following conduct, except to the extent that such conduct would be prohibited under District law:

(1) Receiving or seeking an abortion or contraception;

(2) Performing or inducing an abortion with the voluntary consent of the pregnant person;

(3) Engaging in sexual conduct;

(4) Providing contraception to an entity or to an individual with that individual's voluntary consent;

(5) Using contraception;

(6) Entering into or remaining in a living arrangement, marriage, domestic partnership, or civil union; or

(7) Providing, consenting to, receiving, or facilitating gender-affirming care.

(b) A person claiming to be aggrieved by a violation of this section shall have a cause of action in any court of competent jurisdiction for damages and such other remedies as may be appropriate. An action pursuant to this subsection shall be filed in a court of competent jurisdiction within 2 years of the violation, or the discovery of the violation.

(c) For the purposes of this section, the term:

(1) "Contraception" shall have the same meaning as provided in section 102(4A) of the Human Rights Act of 1977 (D.C. Law 2-38, effective December 13, 1977; D.C. Official Code § 2–1401.02(4A)).

(2) "Domestic partnership" shall have the same meaning as provided in section 102(7B) of the Human Rights Act of 1977 (D.C. Law 2-38, effective December 13, 1977; D.C. Official Code § 2–1401.02(7B)).

(3) "Gender-affirming care" shall have the same meaning as provided in section 102(12A) of the Human Rights Act of 1977 (D.C. Law 2-38, effective December 13, 1977; D.C. Official Code § 2–1401.02(12A)).

(4) "Living arrangement" shall have the same meaning as provided in section 102(15A) of the Human Rights Act of 1977 (D.C. Law 2-38, effective December 13, 1977; D.C. Official Code § 2–1401.02(15A)).

(5) "Person" shall have the same meaning as provided in section 102(21) of the Human Rights Act of 1977 (D.C. Law 2-38, effective December 13, 1977; D.C. Official Code § 2–1401.02(21)).

Sec. 102. Private right of action for use of courts to interfere with exercise in the District of certain rights.

(a) A person who has had a judgment entered against him or her, in any jurisdiction, where liability is based in whole or in part on the person's alleged conduct of a type identified in section 101(a), including under any theory of vicarious, joint, several or conspiracy liability, shall have a cause of action and may recover damages from any party that brought the action leading to that judgment or that has sought to enforce that judgment.

(b) Recoverable damages under this section shall include:

(1) Just damages created by the action that led to that judgment, including money damages in the amount of the judgment and costs, expenses, and reasonable attorney's fees spent in defending the action that resulted in the entry of a judgment in another jurisdiction; and

(2) Costs, expenses, and reasonable attorney's fees incurred in bringing an action under this section, as may be allowed by the court.

(c) Nothing in this section shall be interpreted to enable a court to vacate, render invalid, or otherwise disturb a judgment giving rise to an action under this section.

(d) The provisions of this section shall not create a cause of action based on a judgment entered in another jurisdiction that resulted from:

(1) An action founded in tort, contract, or statute for which a similar claim would exist under the laws of the District; or

(2) An action where no part of the acts that formed the basis for liability occurred in the District, the person subject to the earlier judgement does not reside or have its primary place of business in the District, and the injury caused by the judgement did not occur in the District.

(e) For the purposes of this section, the term "person" shall have the same meaning as provided in section 102(21) of the Human Rights Act of 1977 (D.C. Law 2-38, effective December 13, 1977; D.C. Official Code § 2–1401.02(21)).

TITLE II. INTERSTATE DEPOSITIONS AND DISCOVERY

Sec. 201. Chapter 4A of title 13 of the District of Columbia Official Code is amended as follows:

(a) The table of contents is amended by adding a new section designation to read as follows:

"§ 13-449. Affirmation of noninterference with bodily autonomy.".

(b) Section 13-443 is amended as follows:

(1) Subsection (a) is amended by striking the phrase "submit a foreign subpoena" and inserting the phrase "submit a foreign subpoena and a copy of the sworn statement required under § 13-449(b)" in its place.

(2) Subsection (b) is amended by striking the phrase "When a party" and inserting the phrase "Except as provided in subsection (d) of this section, when a party" in its place.

(3) A new subsection (d) is added to read as follows:

"(d) If a party submits a document to the Clerk of the Superior Court that would be a valid foreign subpoena except that the party seeking enforcement and their counsel refuse to provide the affirmation required by § 13–449, then the Clerk shall not issue the requested subpoena and shall instead issue to the person to whom the document is directed a copy of the document and a notice of violation of § 13–449 on a form developed by the Clerk of the Superior Court.".

(c) A new section 13-449 is added to read as follows:

"§ 13–449. Affirmation of noninterference with bodily autonomy.

"A subpoena issued under the authority of a court of record of a foreign jurisdiction shall not be recognized as a valid foreign subpoena unless it is accompanied by a sworn written statement signed by the party seeking enforcement or their counsel under penalty of perjury that no portion of the subpoena is intended or anticipated to further any investigation or proceeding of a type described in § 2–1441.02(a).".

TITLE III. CONFORMING AMENDMENT

Sec. 301. Section 102 of the Human Rights Act of 1977, effective December 13, 1977 (D.C. Law 2-38; D.C. Official Code § 2-1401.02), is amended as follows:

(a) A new paragraph (4A) is added to read as follows:

"(4A) "Contraception" means any device, medication, or practice designed or employed to prevent pregnancy, including emergency contraception, the use of which would be lawful in the District.".

(b) Paragraphs (12A) and (12A-i) are redesignated as paragraphs (12A-i) and (12A-ii), respectively.

(c) A new paragraph (12A) is added to read as follows:

"(12A) "Gender-affirming care" means any social, psychological, behavioral, medical, or surgical intervention that is lawful in the District and that is designed or employed to support or affirm a person's gender identity or expression, including hormone therapy, behavioral healthcare, reproductive counseling, hair removal, speech therapy, facial reconstruction surgery, and gender affirmation surgery.".

(d) A new paragraph (15A) is added to read as follows:

"(15A) "Living arrangement" means the cohabitation of any number of related or unrelated persons in the same household.".

TITLE IV. GENERAL PROVISIONS

Sec. 401. Fiscal impact statement.

The Council adopts the fiscal impact statement in the committee report as the fiscal impact statement required by section 4a of the General Legislative Procedures Act of 1975, approved October 16, 2006 (120 Stat. 2038; D.C. Official Code § 1-301.47a).

Sec. 402. Effective date.

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), a 30-day period of congressional review as provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of Columbia Register.

Chairman
Council of the District of Columbia

Mayor
District of Columbia

APPROVED
November 21, 2022

COUNCIL OF THE DISTRICT OF COLUMBIA

WASHINGTON, DC, 20004

Docket No. **B24-0808**

[X] ITEM ON CONSENT CALENDAR

[X] ACTION — **First Reading, CC**

[X] VOTE DATE — **October 4, 2022**

[ ] VOICE VOTE

RECORDED VOTE ON REQUEST

ABSENT

[X] ROLL CALL VOTE – Result — **Approved**

Council Member	Aye	Nay	NV	AB	Rec	Council Member	Aye	Nay	NV	AB	Rec	Council Member	Aye	Nay	NV	AB	Rec
Chairman Mendelson	X					Henderson	X					R. White	X				
Allen	X					Lewis George	X					Silverman	X				
Bonds	X					McDuffie	X					T. White	X				
Cheh	X					Nadeau	X										
Gray	X					Pinto	X										

X - Indicate Vote AB – Absent NV - Present, Not Voting Rec - Recused

CERTIFICATION RECORD

Secretary to the Council

10.25.22
Date

Docket No. **B24-0808**

[X] ITEM ON CONSENT CALENDAR

[X] ACTION — **Final Reading, CC**

[X] VOTE DATE — **October 18, 2022**

[ ] VOICE VOTE

RECORDED VOTE ON REQUEST

ABSENT — **Gray**

[X] ROLL CALL VOTE – Result — **Approved**

Council Member	Aye	Nay	NV	AB	Rec	Council Member	Aye	Nay	NV	AB	Rec	Council Member	Aye	Nay	NV	AB	Rec
Chairman Mendelson	X					Henderson	X					R. White	X				
Allen	X					Lewis George	X					Silverman	X				
Bonds	X					McDuffie	X					T. White	X				
Cheh	X					Nadeau	X										
Gray				X		Pinto	X										

X - Indicate Vote AB – Absent NV - Present, Not Voting Rec - Recused

CERTIFICATION RECORD

Secretary to the Council

10.25.22
Date

Congressional Research Service
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FY2023 District of Columbia Budget and Appropriations

November 22, 2022

Congressional Research Service
https://crsreports.congress.gov
R47319

CRS REPORT
Prepared for Members and
Committees of Congress

Congressional Research Service
Informing the legislative debate since 1914

SUMMARY

FY2023 District of Columbia Budget and Appropriations

R47319

November 22, 2022

Joseph V. Jaroscak
Analyst in Economic Development Policy

The District of Columbia (DC) government's local operating budget and much of its local legislation is subject to congressional approval, pursuant to the plenary legislative authority of Congress over the federal capital granted by the U.S. Constitution. In addition to congressional authority over the DC budget process, annual federal appropriations legislation has typically included a series of federal payments for a variety of services and initiatives in DC. Such legislation also often includes general provisions, specific to DC, that establish fiscal, budgetary, and policy controls on federal (and in some cases, local) DC funds.

Each year, the DC government produces a budget through a process coordinated between the Executive Office of the Mayor and the Council of the District of Columbia (DC council). Under the current process, the budget consists of a federal portion and a local portion, which are adopted by the DC council in two separate bills. Once approved, the federal portion is transmitted by the mayor to the President of the United States, who forwards it to Congress for review, possible modification, and approval through the annual appropriations process. The local portion is submitted by the chair of the DC council to the Speaker of the House of Representatives and the President of the Senate, for review by Congress. In 2013, DC enacted the Local Budget Autonomy Amendment Act of 2012 (D.C. Law 19-321), which amended DC's home rule charter to allow for enactment of DC's local budget after a 30-day congressional review period (also known as the layover period), similar to most other DC laws, as opposed to passing the local budget through the federal appropriations process. After a series of legal and legislative challenges, the act was upheld by a DC Superior Court ruling. The DC government has observed the act in its budget process since 2016.

On March 28, 2022, the Biden Administration submitted its full FY2023 budget request, which included $773.9 million in federal payments to DC. The DC government passed a $20 billion budget on September 23, 2022. On July 26, 2022, the House passed a version of the Financial Services and General Government (FSGG) appropriations bill in Division D of H.R. 8294, which would provide $793.9 million in federal payments to DC. The Chair of the Senate Committee on Appropriations released a draft bill and draft explanatory statement on July 28, 2022, with $791.3 million in federal payments to DC.

Contents

Tables

Contacts

Introduction

The U.S. Constitution provides Congress with plenary legislative authority over the District of Columbia (DC) as the federal capital. With the passage of the District of Columbia Self-Government and Governmental Reorganization Act of 1973 (Home Rule Act; P.L. 93-198), Congress granted DC limited home rule authority and empowered DC residents to elect a mayor and city council. Congress retained its authority to review and approve all DC laws, including DC's annual budget and capital budget.[1] In addition to its budget authority, generally, Congress annually appropriates a series of federal payments to DC for a variety of purposes, funded through the Financial Services and General Government (FSGG) appropriations bill.[2]

The provisions in annual federal appropriations acts related to the DC budget typically include the following three components:

1. Federal payments for specific purposes;[3]
2. Approval, disapproval, or modifications to DC's operating budget;[4] and
3. General provisions pertaining to fiscal, budgetary, and policy directives, controls, and restrictions.[5]

District of Columbia Budget Process

The DC Home Rule Act codifies the process by which the Executive Office of the Mayor and Council of the District of Columbia (DC council) develop DC's operating budget. Under this process, the mayor establishes a proposed budget, consistent with guidance on funding levels from the DC Chief Financial Officer. The mayor's budget also considers agency requests and other analysis by the Executive Office of the Mayor.

The DC council serves both oversight and deliberative legislative functions related to the budget process. Each DC council committee holds performance review hearings and budget hearings for each agency under its jurisdiction. Committees compile information and recommendations from this oversight process into committee reports, which provide the basis for the development of a unified balanced budget at the council level.[6]

As required by the Home Rule Act, the DC council must approve a budget within 70 days after receiving a budget proposal from the mayor.[7] The budget consists of a federal portion and a local portion, which are adopted by the DC council in two separate bills. Once approved, the mayor transmits the federal portion to the President, who forwards it to Congress for review, possible modification, and approval through the annual appropriations process. The local portion is

[1] For more information on the DC budget process, see Council of the District of Columbia, *Budget Process (Step-by-Step)*, https://www.dccouncilbudget.com/budget-process-step-by-step.

[2] For more information on FSGG appropriations, see CRS Report R47170, *Financial Services and General Government (FSGG) FY2023 Appropriations: Overview*, by Baird Webel

[3] The federal payments for FY2022 and proposed amounts for FY2023 are enumerated in **Table 1** of this report.

[4] D.C. Code §1-204.46.

[5] For an overview of some such provisions, see "General Provisions: Key Policy Issues" in this report.

[6] Council of the District of Columbia, Office of the Budget Director, *Budget Process (Step-by-Step)*, https://www.dccouncilbudget.com/budget-process-step-by-step.

[7] 87 Stat. 774.

submitted by the chair of the DC council to the Speaker of the House of Representatives and the President of the Senate, for a 30-day period of review by Congress.[8] If Congress does not act to disapprove the legislation within this 30-day period, it becomes law.[9]

Since the passage of P.L. 109-115 for FY2006, DC appropriations have been included in a multi-agency appropriations bill. In FY2006 and FY2007, DC appropriations were included in Transportation, Treasury, Housing and Urban Development, the Judiciary, the District of Columbia, and Independent Agencies appropriations bills (P.L. 109-115 and P.L. 110-5, respectively). Since FY2009, DC appropriations have been included in the Financial Services and General Government appropriations bill (FSGG). Before FY2006, DC appropriations were provided by the House and the Senate in a stand-alone bill.

Local Budget Autonomy

Prior to 2013, Congress reviewed and approved the DC local budget through the federal appropriations process. Some DC political leaders had expressed concern about the effect of delays in the annual appropriations process on the ability of the DC government to manage its affairs and deliver public services. In 2013, DC enacted the Local Budget Autonomy Amendment Act of 2012 (D.C. Law 19-321).[10] The act amended DC's home rule charter to allow for enactment of DC's local budget after a 30-day congressional review period (also known as the layover period), similar to most other DC laws.[11] The DC Board of Elections placed the proposed charter amendment on an April 23, 2013, ballot. DC voters approved the local budget autonomy charter amendment with 83% of the vote in support of the amendment. The act faced legal and federal legislative challenges.[12] A 2016 DC Superior Court ruling upheld the act.[13] The DC government has observed the act in its budget process since 2016.[14] Congress has continued to include language in continuing budget resolutions allowing DC to expend local funds on programs and activities included in its general fund budget (revenues generated by DC).

[8] Government of the District of Columbia, *Fiscal Year 2023 Approved Budget and Financial Plan*, August 1, 2022, https://cfo.dc.gov/page/annual-operating-budget-and-capital-plan.

[9] District of Columbia Council, *How a Bill Becomes a Law: District of Columbia Legislative Process*, https://dccouncil.us/how-a-bill-becomes-a-law/.

[10] *D.C. Law 19-321, Local Budget Autonomy Amendment Act of 2012*, https://code.dccouncil.us/dc/council/laws/19-321.

[11] Prior to the change, DC officials expressed concern regarding delays in the passage of federal appropriations extending beyond the start of a given fiscal year. For more information, see CRS Report R43253, *FY2014 Appropriations: District of Columbia*, by Eugene Boyd.

[12] See Council of the District of Columbia v. Jeffrey S. Dewitt, 144 Daily Wash. L. Rptr. 893 (D.C. Super. Ct. March 18, 2016).

[13] "Superior Court Judge Sides with D.C. Lawmakers on Control of Locally-Raised Dollars," *Washington Post*, March 18, 2016, https://www.washingtonpost.com/local/public-safety/superior-court-judge-sides-with-dc-lawmakers-on-control-of-locally-raised-dollars/2016/03/18/1059c6e6-ed55-11e5-a6f3-21ccdbc5f74e_story.html.

[14] Information provided by the District of Columbia Office of the Chief Financial Officer, 2020.

FY2023 Appropriations of Federal Payments for the District of Columbia

The President's FY2023 Budget Request

On March 28, 2022, the Biden Administration submitted its full FY2023 budget request. The President's proposed budget for federal payments to DC was included in an appendix for *Other Independent Agencies*.[15] The Administration's proposed budget included $773.9 million in federal payments to the District of Columbia for activities including, but not limited to, court services, offender supervision, and public defender services.

District of Columbia FY2023 Budget

On March 16, 2022, the DC mayor submitted a proposed budget to the DC council.[16] The council approved a budget of $19.6 billion on May 24, 2022, and transmitted it to the mayor on July 5, 2022.[17] The mayor signed a version of the budget on July 13, 2022.[18] The mayor transmitted the federal portion of the DC budget to President Biden on August 1, 2022.[19] Also on August 1, 2022, the DC council chair submitted the local budget to the Speaker of the House and the President of the Senate for congressional review, in accordance with the Local Budget Autonomy Amendment Act of 2012 (D.C. Law 19-321).[20]

Congressional Action

The House Financial Services and General Government Appropriations Act, 2023 (H.R. 8254), was marked up in subcommittee on June 16, 2022; marked up in full committee on June 24, 2022; and reported (H.Rept. 117-393) on June 28, 2022. On July 26, 2022, the House passed a version of the FSGG appropriations bill in Division D of H.R. 8294.

The Senate Committee on Appropriations did not hold hearings on the FY2023 budget request for federal payments for DC before the beginning of FY2023. However, the committee chair released a draft bill and draft explanatory statement on July 28, 2022.[21]

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[15] Office of Management and Budget, *Budget of the U.S. Government: Fiscal Year 2023*, Appendix, March 28, 2022, pp. 1240-1244, https://www.whitehouse.gov/wp-content/uploads/2022/03/oia_fy2023.pdf.

[16] Letter from Muriel Bowser, Mayor of the District of Columbia, to Phil Mendelson, Chair, Council of the District of Columbia, March 16, 2022, https://lims.dccouncil.us/downloads/LIMS/49080/Introduction/B24-0715-Introduction.pdf.

[17] District of Columbia Council, B24-0716—Fiscal Year 2023 Local Budget Act of 2022: Legislative History, https://lims.dccouncil.us/Legislation/B24-0716; District of Columbia Council, B24-0715—Fiscal Year 2023 Federal Portion Budget Request Act of 2022: Legislative History, https://lims.dccouncil.us/Legislation/B24-0715.

[18] *D.C. Act 24-0715, Fiscal Year 2023 Federal Portion Budget Request Act of 2022*, https://lims.dccouncil.us/downloads/LIMS/49080/Signed_Act/B24-0715-Signed_Act.pdf; *D.C. Act 24-0716, Fiscal Year 2023 Local Budget Act of 2022*, https://lims.dccouncil.us/downloads/LIMS/49081/Signed_Act/B24-0716-Signed_Act.pdf.

[19] Letter from Muriel Bowser, Mayor of the District of Columbia, to The Honorable Joseph R. Biden, Jr., President of the United States, August 1, 2022, https://app.box.com/s/bzjtghnj6tsfqxvlleob88r41k7lildf.

[20] Letter from Phil Mendelson, Chair, Council of the District of Columbia, to The Honorable Nancy Pelosi and The Honorable Kamala D. Harris, Speaker of the House and President of the Senate, August 1, 2022, https://app.box.com/s/bzjtghnj6tsfqxvlleob88r41k7lildf.

[21] Senate Committee on Appropriations, "Chairman Leahy Releases Fiscal Year 2023 Senate Appropriations Bills," July 28, 2022, https://www.appropriations.senate.gov/news/majority/breaking-chairman-leahy-releases-fiscal-year-

Continuing Resolution

On September 30, 2022, the President signed the Continuing Appropriations Act, 2023 (P.L. 117-180).[22] Section 132 of the Act provided congressional approval of the DC government's general fund budget and capital budget for FY2023.

Table 1. District of Columbia Appropriations FY2022-FY2023: Federal Payments

In Millions of Dollars

	FY2022 Enacted (P.L. 117-103)	FY2023 District of Columbia Request	FY2023 Presidential Budget Request	FY2023 House Passed (H.R. 8294)	FY2023 Senate Committee Majority Draft	FY2023 Enacted
Resident Tuition Support	40.0	20.0	20.0	40.0	40.0	—
Emergency Planning and Security Costs	25.0	30.0	30.0	30.0	30.0	—
DC Courts	257.6	365.1	295.6	295.6	294.0	—
Defender Services	46.0	46.0	24.0	24.0	24.0	—
Court Services and Offender Supervision Agency	286.4	—[a]	281.5	281.5	281.5	—
The Public Defender Service	52.6	—[a]	53.6	53.6	53.6	—
Criminal Justice Coordinating Council	2.2	2.5	2.5	2.5	2.5	—
Judicial Commissions	0.6	0.6	0.6	0.6	0.6	—
School Improvement	52.5	52.5	52.5	52.5	52.5	—
DC National Guard	0.6	0.6	0.6	0.6	0.6	—
Testing and Treatment of HIV/AIDS	4.0	5.0	5.0	5.0	4.0	—

2023-senate-appropriations-bills.

[22] For information on the Act, see CRS Report R47283, *Overview of Continuing Appropriations for FY2023 (Division A of P.L. 117-180)*, by Drew C. Aherne and Sarah B. Solomon.

	FY2022 Enacted (P.L. 117-103)	FY2023 District of Columbia Request	FY2023 Presidential Budget Request	FY2023 House Passed (H.R. 8294)	FY2023 Senate Committee Majority Draft	FY2023 Enacted
DC Water and Sewer Authority[b]	8.0	8.0	8.0	8.0	8.0	—
Federal Payments Total	**775.5**	**530.3**	**773.9**	**793.9**	**791.3**	**—**

Source: P.L. 117-103; DC Act 24-485, Fiscal Year 2023 Federal Portion Budget Request Act of 2022, https://lims.dccouncil.gov/Legislation/B24-0715; OMB, Budget of the U.S. Government: Fiscal Year 2023, Appendix, March 28, 2022, pp. 1233-1245, https://www.whitehouse.gov/wp-content/uploads/2022/03/oia_fy2023.pdf; Senate Committee on Appropriations, "Chairman Leahy Releases Fiscal Year 2023 Senate Appropriations Bills," July 28, 2022, https://www.appropriations.senate.gov/news/majority/breaking-chairman-leahy-releases-fiscal-year-2023-senate-appropriations-bills.

Notes: Figures may not sum to totals due to rounding.

a. This item is not included in the DC Federal Portion Budget Request Act. This is a federally chartered entity working exclusively on behalf of the District. Its budget request is submitted under a separate account.

b. The federal payment for the DC Water and Sewer Authority includes a provision requiring a 100% match from the authority.

General Provisions: Key Policy Issues

Generally, FSGG appropriations acts include a series of general provisions pertaining to federal payments and other sources of DC budgetary funding. These provisions can be grouped into several distinct but overlapping categories, with the most predominant being provisions related to fiscal and budgetary directives and controls. Other provisions include administrative directives and controls, limitations on lobbying for statehood or congressional voting representation, congressional oversight, and congressionally imposed restrictions and prohibitions related to social policy. The following sections provide an overview of some proposed and enacted provisions restricting or prohibiting the use of federal and/or local funds for particular local social policy initiatives in DC.[23]

Abortion Services

The use of public funding for abortion services in DC is a perennial issue debated in Congress during annual deliberations on DC appropriations.[24] President Biden's FY2023 budget request did not include any provisions that would restrict the use of funds by the DC government for abortion

[23] Such provisions are limitations (also known as limitation provisions or, more colloquially, riders) that restrict/prohibit the use of funds for certain purposes. For information on limitations, see CRS Report R41634, *Limitations in Appropriations Measures: An Overview of Procedural Issues*, by James V. Saturno.

[24] Since 1979, with the passage of the District of Columbia Appropriations Act of 1980 (P.L. 96-93; 93 Stat. 719), Congress has placed some limitation or prohibition on the use of public funds for abortion services for District residents. For a detailed overview of these provisions, see CRS Report R41772, *District of Columbia: A Brief Review of Provisions in District of Columbia Appropriations Acts Restricting the Funding of Abortion Services*.

services.[25] The House-passed version and the Senate Committee Chair's draft did not include limiting provisions related to abortion.

DC Voting Representation in Congress

For several years, the general provisions of annual appropriation acts have prohibited the DC government from using federal or local funds to lobby for voting representation in Congress, including statehood.[26] The President's budget included the following three provisions that would limit this type of activity:

1. SEC. 802. None of the Federal funds provided in this Act shall be used for publicity or propaganda purposes or implementation of any policy including boycott designed to support or defeat legislation pending before Congress or any State legislature.
2. SEC. 804. None of the Federal funds provided in this Act may be used by the District of Columbia to provide for salaries, expenses, or other costs associated with the offices of United States Senator or United States Representative under section 4(d) of the District of Columbia Statehood Constitutional Convention Initiatives of 1979 (D.C. Law 3–171; D.C. Official Code, sec. 1–123).
3. SEC. 806. (a) None of the Federal funds contained in this Act may be used by the District of Columbia Attorney General or any other officer or entity of the District government to provide assistance for any petition drive or civil action which seeks to require Congress to provide for voting representation in Congress for the District of Columbia.[27]

The House-passed appropriations bill and the Senate Committee Chair's draft did not include such limiting provisions.

Needle Exchange

Addressing the spread of HIV and AIDS among intravenous drug abusers has been a policy issue of ongoing debate in congressional appropriations for DC.[28] Some appropriations acts have included provisions to prohibit or restrict the use of funds to establish a needle exchange program designed to reduce the spread of HIV and AIDS among users of illegal drugs.

The prohibition on the use of both federal and local funds for a needle exchange program was first approved by Congress as Section 170 of the District of Columbia Appropriations Act, 1999 (Division A of P.L. 105-277). The FY1999 act did allow private funding of needle exchange programs. The Financial Services and General Government Appropriations Act, 2008 (Division D, Title VIII of P.L. 110-161) contained language that further modified the needle exchange provision included in previous appropriations acts. This act allowed the use of local (but not federal) funds for a needle exchange program, a provision that has been continued in subsequent

[25] OMB, Budget of the U.S. Government: Fiscal Year 2023, Appendix, March 28, 2022, pp. 1244-1245, https://www.whitehouse.gov/wp-content/uploads/2022/03/oia_fy2023.pdf.

[26] Several similar provisions date back to the 1980s and 1990s.

[27] OMB, Budget of the U.S. Government: Fiscal Year 2023, Appendix, March 28, 2022, p. 1244, https://www.whitehouse.gov/wp-content/uploads/2022/03/oia_fy2023.pdf.

[28] Delegate Eleanor Holmes Norton, "HIV Progress in D.C. Accelerated by Federal Payments Norton Secures and Her Removal of the Needle Exchange Rider," press release, August 21, 2020, https://norton.house.gov/media-center/press-releases/hiv-progress-in-dc-accelerated-by-federal-payments-norton-secures-and.

fiscal years. Under the Consolidated Appropriations Act, 2010 (Division C, Title VIII of P.L. 111-117), the provision was further modified to prohibit the use of federal funds in locations deemed by local professionals in public health or law enforcement to be "inappropriate" for needle exchange.

The President's FY2023 budget would continue a provision prohibiting the use of federal funds for the distribution of needles or syringes "for the purpose of preventing the spread of blood borne pathogens in any location that has been determined by the local public health or local law enforcement authorities to be inappropriate for such distribution."[29] The House-passed appropriations bill and the Senate Committee Chair's draft did not include limiting provisions related to needle exchange programs in DC.

Schedule I Substances

Several general provisions included in appropriations acts have restricted or prohibited the DC government from implementing local laws related to the legalization or decriminalization of schedule I controlled substances, including marijuana.[30] These provisions have varied depending on the legislation that they were designed to restrict, ranging from legalization to decriminalization of such substances for medical or recreational purposes.[31]

In 2014, the DC council passed the Marijuana Possession Decriminalization Amendment Act of 2014.[32] The act decriminalized the possession of small amounts of marijuana by making such activity a civil violation subject to a civil fine of $25.[33] The act went into effect in July 2014. Also in 2014, almost 65% of DC voters voted to approve Initiative 71 to legalize the possession, growth, and exchange of certain amounts of marijuana among individuals aged 21 and older in DC.[34] Subsequently, the Consolidated and Further Continuing Appropriations Act, 2015 (P.L. 113-235) included a general provision prohibiting the use of funds contained in the act to carry out such laws or regulations. Similar provisions have been included in subsequent appropriations acts. In November, 2020, approximately 76% of DC voters voted to approve ballot Initiative 81, to decriminalize some psychedelic plants and fungi.[35]

The President's FY2023 budget included provisions that would continue to prohibit the use of federal or local funds to enact or implement the legalization or decriminalization of schedule I

[29] OMB, Budget of the U.S. Government: Fiscal Year 2023, Appendix, March 28, 2022, p. 1244, https://www.whitehouse.gov/wp-content/uploads/2022/03/oia_fy2023.pdf.

[30] For a definition of schedule I substances, see 21 U.S.C. §812.

[31] In 1998, District of Columbia voters approved Initiative 59, which allowed the use of medical marijuana to assist persons suffering from debilitating health conditions and diseases, including cancer and HIV infection. Certification and implementation of the initiative, however, were delayed over a decade by Congress due to the passage of the "Barr Amendment," which, in a series of DC appropriations acts, prohibited the use of appropriated funds to conduct any ballot initiative that sought to legalize marijuana or otherwise reduce penalties for its use.

[32] District of Columbia Council, *Marijuana Possession Decriminalization Amendment Act of 2014*, July 2014, https://lims.dccouncil.gov/Legislation/B20-1064

[33] Aaron C. Davis, "D.C. Council Votes to Eliminate Jail Time for Marijuana Possession," *Washington Post*, March 5, 2014.

[34] District of Columbia Council, *Legalization of Possession of Minimal Amounts of Marijuana for Personal Use Initiative of 2014*, February 2015, https://lims.dccouncil.gov/Legislation/B20-1064.

[35] Justin Wm. Moyer, "D.C. Voters Approve Ballot Question to Decriminalize Psychedelic Mushrooms," *Washington Post*, November 3, 2020, https://www.washingtonpost.com/local/dc-politics/dc-magic-mushrooms-result/2020/11/03/bb929e86-1abc-11eb-bb35-2dcfdab0a345_story.html.

substances.[36] The House-passed appropriations bill and the Senate Committee Chair's draft did not include limiting provisions pertaining to the legalization of schedule I substances.

Concluding Observations

Congress maintains plenary authority over DC legislation and budgets, as granted under the U.S. Constitution. One way in which Congress has exercised its authority has been through general provisions in annual federal appropriations legislation. Some Members of Congress have proposed legislation that would modify the role of Congress in passing local DC legislation. For instance, in the 117th Congress, Delegate Eleanor Holmes Norton introduced the District of Columbia Legislative Autonomy Act (H.R. 411), which would amend the DC Home Rule Act by eliminating the process of congressional review for legislation passed by the DC council.

Other proposed legislation related to voting representation in Congress for DC residents would also likely change the role of Congress in local legislation and policy decisions. For information on such proposed legislation, please see CRS Insight IN11599, *District of Columbia Voting Representation Proposals in the 117th Congress*, by Joseph V. Jaroscak.

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[36] OMB, Budget of the U.S. Government: Fiscal Year 2023, Appendix, March 28, 2022, p. 1244, https://www.whitehouse.gov/wp-content/uploads/2022/03/oia_fy2023.pdf.

DISTRICT OF COLUMBIA
HOME RULE ACT

Public Law 93-198; 87 Stat. 774
D.C. Official Code § 1-201.01 *et seq.*
Approved December 24, 1973

Prepared by
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This document depicts the District of Columbia Home Rule Act as enacted by the Congress in December, 1973, and amended through December 26, 2013, the date of the last amendment before the printing of this document. The text of the Act is in the original format as enacted and amended. Where the Office of the General Counsel has added brief annotations to the text, those annotations appear in brackets.

Provisions of the District of Columbia Home Rule Act that amend other acts are not included in this document except for those amendatory provisions found in Title IV (The District Charter).

This document has been updated for printing on:

July 16, 2018
November 16, 2015
January 14, 2014
November 12, 2013
July 5, 2013
January 7, 2013
February 18, 2010
July 17, 2009
November 3, 2008
June 6, 2007
April 1, 2005
July 7, 2004
October 5, 2001
January 28, 1999
February 24, 1998

07.16.18

The last amendatory act included in this printing is:

An Act To amend the District of Columbia Home Rule Act to clarify the rules regarding the determination of the compensation of the Chief Financial Officer of the District of Columbia, approved December 26, 2013 (Pub. L. 113-71; 127 Stat. 1209).

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TITLE I - SHORT TITLE, PURPOSES, AND DEFINITIONS

SHORT TITLE

SEC. 101. [D.C. Official Code § 1-201.01] This Act may be cited as the "District of Columbia Home Rule Act".

STATEMENT OF PURPOSES

SEC. 102. [D.C. Official Code § 1-201.02] (a) Subject to the retention by Congress of the ultimate legislative authority over the nation's capital granted by article I, § 8, of the Constitution, the intent of Congress is to delegate certain legislative powers to the government of the District of Columbia; authorize the election of certain local officials by the registered qualified electors in the District of Columbia; grant to the inhabitants of the District of Columbia powers of local self-government; modernize, reorganize, and otherwise improve the governmental structure of the District of Columbia; and, to the greatest extent possible, consistent with the constitutional mandate, relieve Congress of the burden of legislating upon essentially local District matters.

(b) Congress further intends to implement certain recommendations of the Commission on the Organization of the Government of the District of Columbia and take certain other actions irrespective of whether the charter for greater self-government provided for in title IV of this Act [District Charter] is accepted or rejected by the registered qualified electors of the District of Columbia.

DEFINITIONS

SEC. 103. [D.C. Official Code § 1-202.03] For the purposes of this Act --

(1) The term "District" means the District of Columbia.

(2) The term "Council" means the Council of the District of Columbia provided for by part A of title IV [Subchapter III of Chapter 2 of Title 1, D.C. Official Code].

(3) The term "Commissioner" means the Commissioner of the District of Columbia established under Reorganization Plan No. 3 of 1967.

(4) The term "District of Columbia Council" means the Council of the District of Columbia established under Reorganization Plan No. 3 of 1967.

(5) The term "Chairman" means, unless otherwise provided in this Act, the Chairman of the Council provided for by part A of title IV [Subchapter III of Chapter 2 of Title 1 of the D.C. Official Code].

(6) The term "Mayor" means the Mayor provided for by part B of title IV [Subchapter IV of Chapter 2 of Title 1 of the D.C. Official Code].

(7) The term "Act" includes any legislation passed by the Council, except where the term "Act" is used to refer to this Act or other Acts of Congress herein specified.

(8) The term "capital project" means any physical public betterment or improvement, the acquisition of property of a permanent nature, or the purchase of equipment or furnishings, and includes[:]

(A) costs of any preliminary plans, studies, and surveys in connection with

such betterment, improvement, acquisition, or purchase[;]

(B) costs incidental to such betterment, improvement, acquisition, or purchase, and the financing thereof, including the cost of any election, professional fees, printing or engraving, production and reproduction of documents, publication of notices, taking of title, bond insurance, and interest during construction[;] and

(C) the reimbursement of any fund or account for amounts expended for the payment of any such costs.

(9) The term "pending", when applied to any capital project, means authorized but not yet completed.

(10) The term "District revenues" means all funds derived from taxes, fees, charges, miscellaneous receipts, grants and other forms of financial assistance, or the sale of bonds, notes, or other obligations, and any funds administered by the District government under cost sharing arrangements.

(11) The term "election", unless the context otherwise provides, means an election held pursuant to the provisions of this Act.

(12) The terms "publish" and "publication", unless otherwise specifically provided herein, mean publication in a newspaper of general circulation in the District.

(13) The term "District of Columbia Courts" means the Superior Court of the District of Columbia and the District of Columbia Court of Appeals.

(14) The term "resources" means revenues, balances, enterprise or other revolving funds, and funds realized from borrowing.

(15) The term "budget" means the entire request for appropriations or loan or spending authority for all activities of all departments or agencies of the District of Columbia financed from all existing, proposed, or anticipated resources, and shall include both operating and capital expenditures.

TITLE II -- GOVERNMENTAL REORGANIZATION

REDEVELOPMENT LAND AGENCY

SEC. 201. (a)-(d)[Amendment to the District of Columbia Redevelopment Act of 1945, approved August 2, 1946 (60 Stat. 790; D.C. Official Code § 6-301.01 *et seq.*)]

(e) [Uncodified] None of the amendments contained in this section shall be construed to affect the eligibility of the District of Columbia Redevelopment Land Agency to continue participation in the small business procurement programs under section 8(a) of the Small Business Act (67 Stat. 547).

(f) [D.C. Official Code § 1-202.01(f)] For the purpose of subsection 713(d) [D.C. Official Code § 1-207.13(d)], employees in the District of Columbia Redevelopment Land Agency shall be deemed to be transferred to the District of Columbia as of the effective date of this title without a break in service.

NATIONAL CAPITAL HOUSING AUTHORITY

SEC. 202. [D.C. Official Code § 1-202.02] (a) The National Capital Housing Authority (hereinafter referred to as the "Authority") established under the District of Columbia Alley

Dwelling Act (D.C. Official Code, sec. 5-101 - 5-115 [, approved June 12, 1934 (48 Stat. 930; D.C. Official Code §§ 6-101.01 through 6-102.05)] shall be an agency of the District of Columbia government subject to the organizational and reorganizational powers specified in sections 404(b) and 422(12) of this Act [D.C. Official Code §§ 1-204.04(b) and 1-204.22(12)].

(b) All functions, powers, and duties of the President under the District of Columbia Alley Dwelling Act [D.C. Official Code §§ 6-101.01 through 6-102.05] shall be vested in and exercised by the Commissioner [Mayor]. All employees, property (real and personal), and unexpended balances (available or to be made available) of appropriations, allocations, and all other funds, and assets and liabilities of the Authority are authorized to be transferred to the District of Columbia government.

NATIONAL CAPITAL PLANNING COMMISSION AND MUNICIPAL PLANNING

SEC. 203. [Amendment to An Act providing for a comprehensive development of the park and playground system of the National Capital, approved June 6, 1924 (43 Stat. 463; D.C. Official Code § 2-1002)]

DISTRICT OF COLUMBIA MANPOWER ADMINISTRATION

SEC. 204. [D.C. Official Code § 1-202.04] (a) All functions of the Secretary of Labor (hereafter in this section referred to as the "Secretary") under section 3 of the Act entitled "An Act to provide for the establishment of a national employment system and for cooperation with the states in the promotion of such system, and for other purposes," approved June 6, 1933 (29 U.S.C. §§ 49-49k), with respect to the maintenance of a public employment service for the District, are transferred to the Mayor. After the effective date of this transfer, the Secretary shall maintain with the District the same relationship with respect to a public employment service in the District, including the financing of such service, as he has with the States (with respect to a public employment service in the states) generally.

(b) The Commission [Mayor] is authorized and directed to establish and administer a public employment service in the District and to that end he shall have all necessary powers to cooperate with the Secretary in the same manner as a State under the Act of June 6, 1933, specified in subsection (a) [of this section].

(c) [Amendment to An Act to provide for the establishment of a national employment system and for cooperation with the States in the promotion of such system, and for other purposes, approved June 6, 1933 (29 U.S.C. 49(b)].

(d) All functions of the Secretary of Labor and of the Director of Apprenticeship under the Act entitled "An Act to provide for voluntary apprenticeship in the District of Columbia", approved May 20, 1946, 1933 (29 U.S.C. §§ 49-49k) are transferred to and shall be exercised by the Commissioner [Mayor]. The Office of Director of Apprenticeship provided for in section 3 of such Act (D.C. Code, sec. 36-123)[D.C. Official Code § 32-1403] is abolished.

(e) All functions of the Secretary under chapter 81 of title 5 of the United States Code, with respect to the processing of claims filed by employees of the government of the District for compensation for work injuries, are transferred to and shall be exercised by the Commissioner [Mayor], effective the day after the day on which the District establishes an independent personnel system or systems.

(f) So much of the personnel, property, records, and unexpended balances of appropriations, allocations, and other funds employed, held, used, available, or to be made available in connection with functions transferred to the Commissioner [Mayor] by the provisions of this section, as the Director of the Federal Office of Management and Budget shall determine, are authorized to be transferred from the Secretary to the Commissioner [Mayor].

(g) Any employee in the competitive service of the United States transferred to the government of the District under the provisions of this section shall retain all the rights, benefits, and privileges pertaining thereto held prior to such transfer.

(h) [Amendment to An Act To amend section 22 of the Act approved March 4, 1925, entitled "An Act providing for sundry matters affecting the naval service, and for other purposes, approved August 16, 1937 (29 U.S.C. § 50 *et seq*.)].

TITLE III -- DISTRICT CHARTER PREAMBLE, LEGISLATIVE POWER, AND CHARTER AMENDING PROCEDURE

DISTRICT CHARTER PREAMBLE

SEC. 301. [D.C. Official Code § 1-203.01] The charter for the District of Columbia set forth in title IV [District Charter] shall establish the means of governance of the District following its acceptance by a majority of the registered qualified electors of the District voting thereon in the charter referendum held with respect thereto.

LEGISLATIVE POWER

SEC. 302. [D.C. Official Code § 1-203.02] Except as provided in sections 601, 602, and 603 [D.C. Official Code §§ 1-206.01, 1-206.02, and 1-206.03], the legislative power of the District shall extend to all rightful subjects of legislation within the District consistent with the Constitution of the United States and the provisions of this Act subject to all the restrictions and limitations imposed upon the States by the tenth section of the first article of the Constitution of the United States.

CHARTER AMENDING PROCEDURE

SEC. 303. [D.C. Official Code § 1-203.03] (a) The charter set forth in title IV (including any provision of law amended by such title), except sections 401(a) and 421(a) [D.C. Official Code §§ 1-204.01(a) and 1-204.21(a)], and part C of such title [D.C. Official Code §§ 1-204.31 through 1-204.34], may be amended by an act passed by the Council and ratified by a majority of the registered qualified electors of the District voting in the referendum held for such ratification. The Chairman of the Council shall submit all such acts to the Speaker of the House of Representatives and the President of the Senate on the day the Board of Elections and Ethics [Board of Elections] certifies that such act was ratified by a majority of the registered qualified electors voting thereon in such referendum.

(b) An amendment to the charter ratified by the registered electors shall take effect upon the expiration of the 35-calendar-day period (excluding Saturdays, Sundays, holidays, and days on which either House of Congress is not in session) following the date such amendment was

submitted to the Congress, or upon the date prescribed by such amendment, whichever is later, unless during such 35-day period, there has been enacted into law a joint resolution, in accordance with the procedures specified in section 604 of this act [D.C. Official Code § 1-206.04], disapproving such amendment. In any case in which any such joint resolution disapproving such an amendment has, within such 35-day period, passed both Houses of Congress and has been transmitted to the President, such resolution, upon becoming law subsequent to the expiration of such 35-day period, shall be deemed to have repealed such amendment, as of the date such resolution becomes law.

(c) The Board of Elections and Ethics [Board of Elections] shall prescribe such rules as are necessary with respect to the distribution and signing of petitions and the holding of elections for ratifying amendments to title IV of this Act [District Charter] according to the procedures specified in subsection (a) [of this section].

(d) The amending procedure provided in this section may not be used to enact any law or affect any law with respect to which the Council may not enact any act, resolution, or rule under the limitations specified in sections 601, 602, and 603 [D.C. Official Code §§1-206.01, 1-206.02, and 1-206.03].

TITLE IV -- THE DISTRICT CHARTER

PART A -- THE COUNCIL

Subpart 1 -- Creation of the Council

CREATION AND MEMBERSHIP

SEC. 401. [D.C. Official Code § 1-204.01] (a) There is established a Council of the District of Columbia; and the members of the Council shall be elected by the registered qualified electors of the District.

(b) (1) The Council established under subsection (a) [of this section] shall consist of thirteen members elected on a partisan basis. The Chairman and four members shall be elected at large in the District, and eight members shall be elected one each from the eight election wards established[,] from time to time, under District of Columbia Election Act [Chapter 11 of Title 1 of the D.C. Official Code]. The term of office of the members of the Council shall be four years, except as provided in paragraph (3) [of this subsection], and shall begin at noon on January 2 of the year following their election.

(2) In the case of the first election held for the office of member of the Council after the effective date of this title [January 2, 1975], not more than two of the at-large members (excluding the Chairman) shall be nominated by the same political party. Thereafter, a political party may nominate a number of candidates for the office of at-large member of the Council equal to one less than the total number of at-large members (excluding the Chairman) to be elected in such election.

(3) To fill a vacancy in the Office of Chairman, the Board of Elections shall hold a special election in the District on the Tuesday occurring at least 70 days and not more than 174 days after the date on which such vacancy occurs which the Board of Elections determines, based on a totality of the circumstances, taking into account, inter alia, cultural and religious

holidays and the administrability of the election, will provide the opportunity for the greatest level of voter participation. The person elected Chairman to fill a vacancy in the Office of Chairman shall take office on the day in which the Board of Elections and Ethics [Board of Elections] certifies his election, and shall serve as Chairman only for the remainder of the term during which such vacancy occurred. When the Office of Chairman becomes vacant, the Council shall select one of the elected at-large members of the Council to serve as Chairman and one to serve as Chairman pro tempore until the election of a new Chairman.

(4) Of the members first elected after the effective date of this title [January 2, 1975], the Chairman and two members elected at large and four of the members elected from election wards shall serve for four-year terms; and two of the at-large members and four of the members elected from election wards shall serve for two-year terms. The members to serve the four-year terms and the members to serve the two-year terms shall be determined by the Board of Elections and Ethics [Board of Elections] by lot, except that not more than one of the at-large members nominated by any political party shall serve for any such four-year term.

(c) The Council may establish and select such other officers and employees as it deems necessary and appropriate to carry out the functions of the Council.

(d)(1) In the event of a vacancy in the Council of a member elected from a ward, the Board of Elections shall hold a special election in the District on the Tuesday occurring at least 70 days and not more than 174 days after the date on which such vacancy occurs which the Board of Elections determines, based on a totality of the circumstances, taking into account, inter alia, cultural and religious holidays and the administrability of the election, will provide the opportunity for the greatest level of voter participation. The person elected as a member to fill a vacancy on the Council shall take office on the day on which the Board of Elections and Ethics [Board of Elections] certifies his election, and shall serve as a member of the Council only for the remainder of the term during which such vacancy occurred.

(2) In the event of a vacancy in the Office of Mayor, and if the Chairman becomes a candidate for the Office of Mayor to fill such vacancy, the Office of Chairman shall be deemed vacant as of the date of the filing of his candidacy. In the event of a vacancy in the Council of a member elected at large, other than a vacancy in the Office of Chairman, who is affiliated with a political party, the central committee of such political party shall appoint a person to fill such vacancy, until the Board of Elections and Ethics [Board of Elections] can hold a special election to fill such vacancy, and such special election shall be held on the Tuesday occurring at least 70 days and not more than 174 days after the date on which such vacancy occurs which the Board of Elections determines, based on a totality of the circumstances, taking into account, inter alia, cultural and religious holidays and the administrability of the election, will provide the opportunity for the greatest level of voter participation. The person appointed to fill such vacancy shall take office on the date of his appointment and shall serve as a member of the Council until the day on which the Board certifies the election of the member elected to fill such vacancy in either a special election or a general election. The person elected as a member to fill such a vacancy on the Council shall take office on the day on which the Board of Elections and Ethics [Board of Elections] certifies his election, and shall serve as a member of the Council only for the remainder of the term during which such vacancy occurred. With respect to a vacancy on the Council of a member elected at large who is not affiliated with any political party, the Council shall appoint a similarly non-affiliated person to fill such vacancy until such vacancy can be filled in a special election in the manner prescribed in this paragraph. Such person

appointed by the Council shall take office and serve as a member at the same time and for the same term as a member appointed by a central committee of a political party.

(3) Notwithstanding any other provision of this section, at no time shall there be more than three members (including the Chairman) serving at large on the Council who are affiliated with the same political party.

(e)(1) By a 5/6 vote of its members, the Council may adopt a resolution of expulsion if it finds, based on substantial evidence, that a member of the Council took an action that amounts to a gross failure to meet the highest standards of personal and professional conduct. Expulsion is the most severe punitive action, serving as a penalty imposed for egregious wrongdoing. Expulsion results in the removal of the member. Expulsion should be used in cases in which the Council determines that the violation of law committed by a member is of the most serious nature, including those violations that substantially threaten the public trust. To protect the exercise of official member duties and the overriding principle of freedom of speech, the Council shall not impose expulsion on any member for the exercise of his or her First Amendment right, no matter how distasteful the expression of that right was to the Council and the District, or in the official exercise of his or her office.

(2) The Council shall include in its Rules of Organization procedures for investigation, and consideration of, the expulsion of a member.

QUALIFICATIONS FOR HOLDING OFFICE

SEC. 402. [D.C. Official Code § 1-204.02] No person shall hold the office of member of the Council, including the Office of Chairman, unless he (a) is a qualified elector, (b) is domiciled in the District and if he is nominated for election from a particular ward, resides in the ward from which he is nominated, (c) has resided and been domiciled in the District for one year immediately preceding the day on which the general or special election for such office is to be held; (d) has not been convicted of a felony while holding the office; and (e) holds no public office (other than his employment in and position as a member of the Council), for which he is compensated in an amount in excess of his actual expenses in connection therewith, except that nothing in this clause shall prohibit any such person, while a member of the Council, from serving as a delegate or alternate delegate to a convention of a political party nominating candidates for President and Vice President of the United States, or from holding an appointment in a reserve component of an armed force of the United States other than a member serving on active duty under a call for more than thirty days. A member of the Council shall forfeit his office upon failure to maintain the qualifications required by this section, and, in the case of the Chairman, section 403(c) [D.C. Official Code § 1-204.03(c)].

COMPENSATION

SEC. 403. [D.C. Official Code § 1-204.03] (a) Each member of the Council shall receive compensation, payable in periodic installments, at a rate equal to the maximum rate as may be established from time to time for grade 12 of the General Schedule under section 5332 of title 5 of the United States Code. On and after the end of the two-year period beginning on the day the members of the Council first elected under this Act take office, the Council may, by act, increase or decrease such rate of compensation. Such change in compensation, upon enactment

by the Council in accordance with the provisions of this Act, shall apply with respect to the term of members of the Council beginning after the date of enactment of such change.

(b) All members of the Council shall receive additional allowances for actual and necessary expenses incurred in the performance of their duties of office as may be approved by the Council.

(c) The Chairman shall not engage in any employment (whether as an employee or as a self-employed individual) or hold any position (other than his position as Chairman), for which he is compensated in an amount in excess of his actual expenses in connection therewith.

(d) Notwithstanding subsection (a), as of the effective date of the District of Columbia Appropriations Act, 2001 [December 21, 2001], the Chairman shall receive compensation, payable in equal installments, at a rate equal to $10,000 less than the annual compensation of the Mayor.

POWERS OF THE COUNCIL

SEC. 404. [D.C. Official Code § 1-204.04] (a) Subject to the limitations specified in title VI of this Act [D.C. Official Code §§ 1-206.01 through 1-206.04], the legislative power granted to the District by this Act is vested in and shall be exercised by the Council in accordance with this Act. In addition, except as otherwise provided in this Act, all functions granted to or imposed upon, or vested in or transferred to the District of Columbia Council, as established by Reorganization Plan No. 3 of 1967, shall be carried out by the Council in accordance with the provisions of this Act.

(b) The Council shall have authority to create, abolish, or organize any office, agency, department, or instrumentality of the government of the District and to define the powers, duties, and responsibilities of any such office, agency, department, or instrumentality.

(c) The Council shall adopt and publish rules of procedures which shall include provisions for adequate public notification of intended actions of the Council.

(d) Every act shall be published and codified upon becoming law as the Council may direct.

(e) An act passed by the Council shall be presented by the Chairman of the Council to the Mayor, who shall, within ten calendar days (excluding Saturdays, Sundays, and holidays) after the act is presented to him, either approve or disapprove such act. If the Mayor shall approve such act, he shall indicate the same by affixing his signature thereto, and such act shall become law subject to the provisions of section 602(c) [D.C. Official Code § 1-206.02(c)]. If the Mayor shall disapprove such act, he shall, within ten calendar days (excluding Saturdays, Sundays, and holidays) after it is presented to him, return such act to the Council setting forth in writing his reasons for such disapproval. If any act so passed shall not be returned to the Council by the Mayor within ten calendar days after it shall have been presented to him, the Mayor shall be deemed to have approved it, and such act shall become law subject to the provisions of section 602(c) [D.C. Official Code § 1-206.02(c)] unless the Council by a recess of ten days or more prevents its return, in which case it shall not become law. If, within thirty calendar days after an act has been timely returned by the Mayor to the Council with his disapproval, two-thirds of the members of the Council present and voting vote to reenact such act, the act so reenacted shall become law subject to the provisions of section 602(c) [D.C. Official Code § 1-206.02(c)].

(f) In the case of any budget act adopted by the Council pursuant to section 446 [D.C.

Official Code § 1-204.46] and submitted to the Mayor in accordance with subsection (e) of this section, the Mayor shall have power to disapprove any items or provisions, or both, of such act and approve the remainder. In any case in which the Mayor so disapproves of any item or provision, he shall append to the act when he signs it a statement of the item or provision which he disapproves, and shall, within such ten-day period, return a copy of the act and statement with his objections to the Council. If, within thirty calendar days after any such item or provision so disapproved has been timely returned by the Mayor to the Council, two-thirds of the members of the Council present and voting vote to reenact any such item or provision, such item or provision so reenacted shall be incorporated in the budget act and become law subject to the provisions of section 602(c) [D.C. Official Code § 1-206.02(c)]. In any case in which the Mayor fails to timely return any such item or provision so disapproved to the Council, the Mayor shall be deemed to have approved such item or provision not returned, and such item or provision not returned shall be incorporated in the budget act and become law subject to the provisions of section 602(c) [D.C. Official Code § 1-206.02(c)]. In the case of any budget act for a fiscal year which is a control year (as defined in section 305(4) of the District of Columbia Financial Responsibility and Management Assistance Act of 1995 [D.C. Official Code § 47-393(4)]), this subsection shall apply as if the reference in the second sentence to "ten-day period" were a reference to "five-day period" and the reference in the third sentence to "thirty calendar days" were a reference to "5 calendar days."

Subpart 2 -- Organization and Procedure of the Council

THE CHAIRMAN

SEC. 411. [D.C. Official Code § 1-204.11] (a) The Chairman shall be the presiding officer of the Council.

(b) When the Office of Mayor is vacant, the Chairman shall act in his stead. While the Chairman is Acting Mayor he shall not exercise any of his authority as Chairman or member of the Council.

ACTS, RESOLUTIONS, AND REQUIREMENTS FOR QUORUM

SEC. 412. [D.C. Official Code § 1-204.12] (a) The Council, to discharge the powers and duties imposed herein, shall pass acts and adopt resolutions, upon a vote of a majority of the members of the Council present and voting, unless otherwise provided in this Act or by the Council. Except as provided in the last sentence of this subsection, the Council shall use acts for all legislative purposes. Each proposed act shall be read twice in substantially the same form, with at least thirteen days intervening between each reading. Upon final adoption by the Council each act shall be made immediately available to the public in a manner which the Council shall determine. If the Council determines, by a vote of two-thirds of the members, that emergency circumstances make it necessary that an act be passed after a single reading, or that it take effect immediately upon enactment, such act shall be effective for a period of not to exceed ninety days.

Resolutions shall be used (1) to express simple determinations, decisions, or directions of the Council of a special or temporary character; and (2) to approve or disapprove proposed

actions of a kind historically or traditionally transmitted by the Mayor, the Board of Elections, Public Service Commission, Armory Board, Board of Education, the Board of Trustees of the University of the District of Columbia, or the Convention Center Board of Directors to the Council pursuant to an act. Such resolutions must be specifically authorized by that act and must be designed to implement that act.

(b) A special election may be called by resolution of the Council to present for an advisory referendum vote of the people any proposition upon which the Council desires to take action.

(c) A majority of the Council shall constitute a quorum for the lawful convening of any meeting and for the transaction of business of the Council, except a lesser number may hold hearings.

INVESTIGATIONS BY THE COUNCIL

SEC. 413. [D.C. Official Code § 1-204.13] (a) The Council, or any committee or person authorized by it, shall have power to investigate any matter relating to the affairs of the District, and for that purpose may require the attendance and testimony of witnesses and the production of books, papers, and other evidence. For such purpose any member of the Council (if the Council is conducting the inquiry) or any member of the committee may issue subpoenas, and administer oaths upon resolution adopted by the Council or committee, as appropriate.

(b) In case of contumacy by, or refusal to obey a subpoena issued to, any person, the Council by resolution may refer the matter to the Superior Court of the District of Columbia, which may by order require such person to appear and give or produce testimony or books, papers, or other evidence, bearing upon the matter under investigation. Any failure to obey such order may be punished by such Court as a contempt thereof as in the case of failure to obey a subpoena issued, or to testify, in a case pending before such Court.

PART B- THE MAYOR

ELECTION, QUALIFICATIONS, VACANCY, AND COMPENSATION

SEC. 421. [D.C. Official Code § 1-204.21] (a) There is established the Office of Mayor of the District of Columbia; and the Mayor shall be elected by the registered qualified electors of the District.

(b) The Mayor, established by subsection (a) [of this section], shall be elected, on a partisan basis, for a term of four years beginning at noon on January 2 of the year following his election.

(c)(1) No person shall hold the Office of Mayor unless he (A) is a qualified elector, (B) has resided and been domiciled in the District for one year immediately preceding the day on which the general or special election for Mayor is to be held; (C) has not been convicted of a felony while holding the office; and (D) is not engaged in any employment (whether as an employee or as a self-employed individual) and holds no public office or position (other than his employment in and position as Mayor), for which he is compensated in an amount in excess of

his actual expenses in connection therewith, except that nothing in this clause shall be construed as prohibiting such person, while holding the Office of Mayor, from serving as a delegate or alternate delegate to a convention of a political party nominating candidates for President and Vice President of the United States, or from holding an appointment in a reserve component of an armed force of the United States other than a member serving on active duty under a call for more than thirty days. The Mayor shall forfeit his office upon failure to maintain the qualifications required by this paragraph.

(2) To fill a vacancy in the Office of Mayor, the Board of Elections shall hold a special election in the District on the Tuesday occurring at least 70 days and not more than 174 days after the date on which such vacancy occurs which the Board of Elections determines, based on a totality of the circumstances, taking into account, inter alia, cultural and religious holidays and the administrability of the election, will provide the opportunity for the greatest level of voter participation. The person elected Mayor to fill a vacancy in the Office of Mayor shall take office on the day on which the Board of Elections and Ethics [Board of Elections] certifies his election, and shall serve as Mayor only for the remainder of the term during which such vacancy occurred. When the Office of Mayor becomes vacant the Chairman shall become Acting Mayor and shall serve from the date such vacancy occurs until the date on which the Board of Elections and Ethics [Board of Elections] certifies the election of the new Mayor at which time he shall again become Chairman. While the Chairman is Acting Mayor, the Chairman shall receive the compensation regularly paid the Mayor, and shall receive no compensation as Chairman or member of the Council. While the Chairman is Acting Mayor, the Council shall select one of the elected at-large members of the Council to serve as Chairman and one to serve as chairman pro tempore, until the return of the regularly elected Chairman.

(d) The Mayor shall receive compensation, payable in equal installments, at a rate equal to the maximum rate, as may be established from time to time, for level III of the Executive Schedule in section 5314 of title 5 of the United States Code. Such rate of compensation may be increased or decreased by act of the Council. Such change in such compensation, upon enactment by the Council in accordance with the provisions of this Act, shall apply with respect to the term of Mayor next beginning after the date of such change. In addition, the Mayor may receive an allowance, in such amount as the Council may from time to time establish, for official, reception, and representation expenses, which he shall certify in reasonable detail to the Council.

POWERS AND DUTIES

SEC. 422. [D.C. Official Code § 1-204.22] The executive power of the District shall be vested in the Mayor who shall be the chief executive officer of the District government. In addition, except as otherwise provided in this Act, all functions granted to or vested in the Commissioner of the District of Columbia, as established under Reorganization Plan No. 3 of 1967, shall be carried out by the Mayor in accordance with this Act. The Mayor shall be responsible for the proper execution of all laws relating to the District, and for the proper administration of the affairs of the District coming under his jurisdiction or control, including but not limited to the following powers, duties, and functions:

(1) The Mayor may designate the officer or officers of the executive department of the District who may, during periods of disability or absence from the District of the Mayor, execute

and perform the powers and duties of the Mayor.

(2) The Mayor shall administer all laws relating to the appointment, promotion, discipline, separation, and other conditions of employment of personnel in the Office of the Mayor, personnel in executive departments of the District, and members of boards, commissions, and other agencies, who, under laws in effect on the date immediately preceding the effective date of section 711(a) of this Act [January 2, 1975], were subject to appointment and removal by the Commissioner of the District of Columbia. All actions affecting such personnel and such members shall, until such time as legislation is enacted by the Council superseding such laws and establishing a permanent District government merit system, pursuant to paragraph (3) [of this section], continue to be subject to the provisions of acts of Congress relating to the appointment, promotion, discipline, separation, and other conditions of employment applicable to officers and employees of the District government, to section 713(d) of this Act [D.C. Official Code § 1-207.13(d)], and where applicable, to the provisions of the joint agreement between the Commissioners and the Civil Service Commission authorized by Executive Order No. 5491 of November 18, 1930, relating to the appointment of District personnel. He shall appoint or assign persons to positions formerly occupied, ex officio, by the Commissioner of the District of Columbia or by the Assistant to the Commissioner and shall have power to remove such persons from such positions. The officers and employees of each agency with respect to which legislative power is delegated by this Act and which immediately prior to the effective date of section 711(a) of this Act [January 2, 1975], was not subject to the administrative control of the Commissioner of the District, shall continue to be appointed and removed in accordance with applicable laws until such time as such laws may be superseded by legislation passed by the Council establishing a permanent District government merit system pursuant to paragraph (3) [of this section].

(3) The Mayor shall administer the personnel functions of the District covering employees of all District departments, boards, commissions, offices and agencies, except as otherwise provided by this Act. Personnel legislation enacted by Congress prior to or after the effective date of this section [January 2, 1975], including, without limitation, legislation relating to appointments, promotions, discipline, separations, pay, unemployment compensation, health, disability and death benefits, leave, retirement, insurance, and veterans' preference applicable to employees of the District government as set forth in section 714(c) [D.C. Code § 1-207.14(c)], shall continue to be applicable until such time as the Council shall, pursuant to this section, provide for coverage under a District government merit system. The District government merit system shall be established by act of the Council. The system shall apply with respect to the compensation of employees of the District government during fiscal year 2006 and each succeeding fiscal year, except that the system may provide for continued participation in all or part of the Federal Civil Service System and shall provide for persons employed by the District government immediately preceding the effective date of such system personnel benefits, including but not limited to pay, tenure, leave, residence, retirement, health and life insurance, and employee disability and death benefits, all at least equal to those provided by legislation enacted by Congress, or regulation adopted pursuant thereto, and applicable to such officers and employees immediately prior to the effective date of the system established pursuant to this Act, except that nothing in this Act shall prohibit the District from separating an officer or employee subject to such system in the implementation of a financial plan and budget for the District government approved under subtitle A of title II of the District of Columbia Financial

Responsibility and Management Assistance Act of 1995 [subpart B of subchapter VII of Chapter 3 of Title 47 of the D.C. Code], and except that nothing in this section shall prohibit the District from paying an employee overtime pay in accordance with section 7 of the Fair Labor Standards Act of 1938 (29 U.S.C. § 207). The District government merit system shall take effect not earlier than one year nor later than five years after the effective date of this section [January 2, 1975].

(4) The Mayor shall, through the heads of administrative boards, offices, and agencies, supervise and direct the activities of such boards, offices, and agencies.

(5) The Mayor may submit drafts of acts to the Council.

(6) The Mayor may delegate any of his functions (other than the function of approving or disapproving acts passed by the Council or the function of approving contracts between the District and the Federal Government under section 731 [D.C. Code § 1-207.31] [Repealed]) to any officer, employee, or agency of the executive office of the Mayor, or to any director of an executive department who may, with the approval of the Mayor, make a further delegation of all or a part of such functions to subordinates under his jurisdiction. Nothing in the previous sentence may be construed to permit the Mayor to delegate any functions assigned to the Chief Financial Officer of the District of Columbia under section 424 [subchapter I-A of Chapter 3 of Title 47 of the D.C. Code], without regard to whether such functions are assigned to the Chief Financial Officer under such section during a control year (as defined in section 305(4) of the District of Columbia Financial Responsibility and Management Assistance Act of 1995 [D.C. Code § 47-393(4)]) or during any other year.

(7) The Mayor shall appoint a City Administrator, who shall serve at the pleasure of the Mayor. The City Administrator shall be the chief administrative officer of the Mayor, and he shall assist the Mayor in carrying out his functions under this Act, and shall perform such other duties as may be assigned to him by the Mayor. The City Administrator shall be paid at a rate established by the Mayor.

(8) The Mayor may propose to the executive or legislative branch of the United States government legislation or other action dealing with any subject, whether or not falling within the authority of the District government, as defined in this Act.

(9) The Mayor, as custodian thereof, shall use and authenticate the corporate seal of the District in accordance with law.

(10) The Mayor shall have the right, under rules to be adopted by the Council, to be heard by the Council or any of its committees.

(11) The Mayor is authorized to issue and enforce administrative orders, not inconsistent with this or any other Act of the Congress or any act of the Council, as are necessary to carry out his functions and duties.

(12) The Mayor may reorganize the offices, agencies, and other entities within the executive branch of the government of the District by submitting to the Council a detailed plan of such reorganization. Such a reorganization plan shall be valid only if the Council does not adopt, within sixty days (excluding Saturdays, Sundays, and holidays) after such reorganization plan is submitted to it by the Mayor, a resolution disapproving such reorganization.

MUNICIPAL PLANNING

SEC. 423. [D.C. Official Code § 1-204.23]. (a) The Mayor shall be the central planning agency for the District. He shall be responsible for the coordination of planning activities of the

municipal government and the preparation and implementation of the District's elements of the comprehensive plan for the National Capital which may include land use elements, urban renewal and redevelopment elements, a multi-year program of municipal public works for the District, and physical, social, economic, transportation, and population elements. The Mayor's planning responsibility shall not extend to federal and international projects and developments in the District, as determined by the National Capital Planning Commission, or to the United States Capitol buildings and grounds as defined in sections 1 and 16 of the Act of July 31, 1946 [D.C. Official Code §§ 10-503.11 and 10-503.26], or to any extension thereof or addition thereto, or to buildings and grounds under the care of the Architect of the Capitol. In carrying out his responsibilities under this section, the Mayor shall establish procedures for citizen involvement in the planning process and for appropriate meaningful consultation with any state or local government or planning agency in the National Capital region affected by any aspect of a proposed District element of the comprehensive plan (including amendments thereto) affecting or relating to the District.

(b) The Mayor shall submit the District's elements and amendments thereto to the Council for revision or modification, and adoption by act, following public hearings. Following adoption and prior to implementation, the Council shall submit such elements and amendments thereto to the National Capital Planning Commission for review and comment with regard to the impact of such elements or amendments on the interests and functions of the federal establishment, as determined by the Commission.

(c) Such elements and amendments thereto shall be subject to and limited by determinations with respect to the interests and functions of the federal establishment as determined in the manner provided by act of Congress.

CHIEF FINANCIAL OFFICER OF THE DISTRICT OF COLUMBIA

SEC. 424. (a) [D.C. Official Code § 1-204.24a] IN GENERAL. –

(1) ESTABLISHMENT. – There is hereby established within the executive branch of the government of the District of Columbia an Office of the Chief Financial Officer of the District of Columbia (hereafter referred to as the 'Office'), which shall be headed by the Chief Financial Officer of the District of Columbia (hereafter referred to as the 'Chief Financial Officer').

(2) ORGANIZATIONAL ANALYSIS. –

(A) OFFICE OF BUDGET AND PLANNING. – The name of the Office of Budget and Management, established by Commissioner's Order 69-96, issued March 7, 1969, is changed to the Office of Budget and Planning.

(B) OFFICE OF TAX AND REVENUE. – The name of the Department of Finance and Revenue, established by Commissioner's Order 69-96, issued March 7, 1969, is changed to the Office of Tax and Revenue.

(C) OFFICE OF FINANCE AND TREASURY. – The name of the Office of Treasurer, established by Mayor's Order 89-244, dated October 23, 1989, is changed to the Office of Finance and Treasury.

(D) OFFICE OF FINANCIAL OPERATIONS AND SYSTEMS. – The Office of the Controller, established by Mayor's Order 89-243, dated October 23, 1989, and the Office of Financial Information Services, established by Mayor's Order 89-244, dated October

23, 1989, are consolidated into the Office of Financial Operations and Systems.

(3) TRANSFERS. – Effective with the appointment of the first Chief Financial Officer under subsection (b) [§ 1-204.24b], the functions and personnel of the following offices are established as subordinate offices within the Office:

(A) The Office of Budget and Planning, headed by the Deputy Chief Financial Officer for the Office of Budget and Planning.

(B) The Office of Tax and Revenue, headed by the Deputy Chief Financial Officer for the Office of Tax and Revenue.

(C) The Office of Research and Analysis, headed by the Deputy Chief Financial Officer for the Office of Research and Analysis.

(D) The Office of Financial Operations and Systems, headed by the Deputy Chief Financial Officer for the Office of Financial Operations and Systems.

(E) The Office of Finance and Treasury, headed by the District of Columbia Treasurer.

(F) The Lottery and Charitable Games Control Board, established by the Law to Legalize Lotteries, Daily Numbers Games, and Bingo and Raffles for Charitable Purposes in the District of Columbia, effective March 10, 1981 (D.C. Law 3-172; D.C. Official Code § 3-1301 et seq.).

(4) SUPERVISOR. – The heads of the offices listed in paragraph (3) of this section shall serve at the pleasure of the Chief Financial Officer.

(5) APPOINTMENT AND REMOVAL OF OFFICE EMPLOYEES. – The Chief Financial Officer shall appoint the heads of the subordinate offices designated in paragraph (3) [of this section], after consultation with the Mayor and the Council. The Chief Financial Officer may remove the heads of the offices designated in paragraph (3) [of this section], after consultation with the Mayor and the Council.

(6) ANNUAL BUDGET SUBMISSION. – The Chief Financial Officer shall prepare and annually submit to the Mayor of the District of Columbia, for inclusion in the annual budget of the District of Columbia government for a fiscal year, annual estimates of the expenditures and appropriations necessary for the year for the operation of the Office and all other District of Columbia accounting, budget, and financial management personnel (including personnel of executive branch independent agencies) that report to the Office pursuant to this Act.

(b) [D.C. Official Code § 1-204.24b] APPOINTMENT OF THE CHIEF FINANCIAL OFFICER. –

(1) APPOINTMENT. –

(A) IN GENERAL. – The Chief Financial Officer shall be appointed by the Mayor with the advice and consent, by resolution, of the Council. Upon confirmation by the Council, the name of the Chief Financial Officer shall be submitted to the Committees on Appropriations of the House of Representatives and Senate, the Committee on Government Reform of the House of Representatives, and the Committee on Homeland Security and Governmental Affairs of the Senate for a 30-day period of review and comment before the appointment takes effect.

(B) SPECIAL RULE FOR CONTROL YEARS. – During a control year, the Chief Financial Officer shall be appointed by the Mayor as follows:

(i) Prior to the appointment, the Authority may submit

recommendations for the appointment to the Mayor.

(ii) In consultation with the Authority and the Council, the Mayor shall nominate an individual for appointment and notify the Council of the nomination.

(iii) After the expiration of the 7-day period which begins on the date the Mayor notifies the Council of the nomination under clause (ii) [sub-subparagraph (ii) of this subparagraph], the Mayor shall notify the Authority of the nomination.

(iv) The nomination shall be effective subject to approval by a majority vote of the Authority.

(2) TERM. –

(A) IN GENERAL. – All appointments made after June 30, 2007, shall be for a term of 5 years, except for appointments made for the remainder of unexpired terms. The appointments shall have an anniversary date of July 1.

(B) TRANSITION. – For purposes of this section, the individual serving as Chief Financial Officer as of the date of enactment of the 2005 District of Columbia Omnibus Authorization Act [October 16, 2006] shall be deemed to have been appointed under this subsection, except that such individual's initial term of office shall begin upon such date and shall end on June 30, 2007.

(C) CONTINUANCE. – Any Chief Financial Officer may continue to serve beyond his term until a successor takes office.

(D) VACANCIES. – Subject to paragraph (3) [of this subsection], any vacancy in the Office of Chief Financial Officer shall be filled in the same manner as the original appointment under paragraph (1) [of this subsection].

(E) PAY. - The Chief Financial Officer shall be paid at a rate such that the total amount of compensation paid during any calendar year does not exceed an amount equal to the limit on total pay which is applicable during the year under section 5307 of title 5, United States Code, to an employee described in section 5307(d) of such title.

(3) AUTHORIZING TREASURER OR DEPUTY CFO TO PERFORM DUTIES IN ACTING CAPACITY IN EVENT OF VACANCY IN OFFICE.—

(A) SERVICE AS CFO.—

(i) IN GENERAL.—Except as provided in clause (ii) [sub-subparagraph (ii) of this subparagraph], if there is a vacancy in the Office of Chief Financial Officer because the Chief Financial Officer has died, resigned, or is otherwise unable to perform the functions and duties of the Office—

(I) the District of Columbia Treasurer shall serve as the Chief Financial Officer in an acting capacity, subject to the time limitation of subparagraph (B) [of this paragraph]; or

(II) the Mayor may direct one of the Deputy Chief Financial Officers of the Office referred to in subparagraphs (A) through (D) of subsection (a)(3) [D.C. Official Code § 1-204.24a(c)(1-4)] to serve as the Chief Financial Officer in an acting capacity, subject to the time limitation of subparagraph (B) [of this paragraph].

(ii) EXCLUSION OF CERTAIN INDIVIDUALS.—

Notwithstanding clause (i) [sub-subparagraph (i) of this subparagraph], an individual may not

serve as the Chief Financial Officer under such clause [sub-subparagraph] if the individual did not serve as the District of Columbia Treasurer or as one of such Deputy Chief Financial Officers of the Office of the Chief Financial Officer (as the case may be) for at least 90 days during the 1–year period which ends on the date the vacancy occurs.

(B) TIME LIMITATION.—A vacancy in the Office of the Chief Financial Officer may not be filled by the service of any individual in an acting capacity under subparagraph (A) [of this paragraph] after the expiration of the 210–day period which begins on the date the vacancy occurs.

(c) [D.C. Official Code § 1-204.24c] REMOVAL OF THE CHIEF FINANCIAL OFFICER.–

(1) IN GENERAL. – The Chief Financial Officer may only be removed for cause by the Mayor, subject to the approval of the Council by a resolution approved by not fewer than 2/3 of the members of the Council. After approval of the resolution by the Council, notice of the removal shall be submitted to the Committees on Appropriations of the House of Representatives and Senate, the Committee on Government Reform of the House of Representatives, and the Committee on Homeland Security and Governmental Affairs of the Senate for a 30-day period of review and comment before the removal takes effect.

(2) SPECIAL RULE FOR CONTROL YEARS.– During a control year, the Chief Financial Officer may be removed for cause by the Authority or by the Mayor with the approval of the Authority.

(d) [D.C. Official Code § 1-204.24d] DUTIES OF THE CHIEF FINANCIAL OFFICER. -- Notwithstanding any provisions of this Act which grant authority to other entities of the District government, the Chief Financial Officer shall have the following duties and shall take such steps as are necessary to perform these duties:

(1) During a control year, preparing the financial plan and the budget for the use of the Mayor for purposes of subtitle A of title II of the District of Columbia Financial Responsibility and Management Assistance Act of 1995 [part B of subchapter VII of Chapter 3 of Title 47].

(2) Preparing the budgets of the District of Columbia for the year for the use of the Mayor for purposes of part D [of this title] and preparing the 5-year financial plan based upon the adopted budget for submission with the District of Columbia budget by the Mayor to Congress.

(3) During a control year, assuring that all financial information presented by the Mayor is presented in a manner, and is otherwise consistent with, the requirements of the District of Columbia Financial Responsibility and Management Assistance Act of 1995 [parts A through E of subchapter VII of Chapter 3 of Title 47].

(4) Implementing appropriate procedures and instituting such programs, systems, and personnel policies within the Chief Financial Officer's authority, to ensure that budget, accounting, and personnel control systems and structures are synchronized for budgeting and control purposes on a continuing basis and to ensure that appropriations are not exceeded.

(5) Preparing and submitting to the Mayor and the Council, with the approval of the Authority during a control year, and making public –

(A) annual estimates of all revenues of the District of Columbia (without regard to the source of such revenues), including proposed revenues, which shall be binding on

the Mayor and the Council for purposes of preparing and submitting the budget of the District government for the year under part D of this title, except that the Mayor and the Council may prepare the budget based on estimates of revenues which are lower than those prepared by the Chief Financial Officer; and

(B) quarterly re-estimates of the revenues of the District of Columbia during the year.

(6) Supervising and assuming responsibility for financial transactions to ensure adequate control of revenues and resources.

(7) Maintaining systems of accounting and internal control designed to provide--

(A) full disclosure of the financial impact of the activities of the District government;

(B) adequate financial information needed by the District government for management purposes;

(C) effective control over, and accountability for, all funds, property, and other assets of the District of Columbia; and

(D) reliable accounting results to serve as the basis for preparing and supporting agency budget requests and controlling the execution of the budget.

(8) Submitting to the Council a financial statement of the District government, containing such details and at such times as the Council may specify.

(9) Supervising and assuming responsibility for the assessment of all property subject to assessment and special assessments within the corporate limits of the District of Columbia for taxation, preparing tax maps, and providing such notice of taxes and special assessments (as may be required by law).

(10) Supervising and assuming responsibility for the levying and collection of all taxes, special assessments, licensing fees, and other revenues of the District of Columbia (as may be required by law), and receiving all amounts paid to the District of Columbia from any source (including the Authority).

(11) Maintaining custody of all public funds belonging to or under the control of the District government (or any department or agency of the District government), and depositing all amounts paid in such depositories and under such terms and conditions as may be designated by the Council (or by the Authority during a control year).

(12) Maintaining custody of all investment and invested funds of the District government or in possession of the District government in a fiduciary capacity, and maintaining the safekeeping of all bonds and notes of the District government and the receipt and delivery of District government bonds and notes for transfer, registration, or exchange.

(13) Apportioning the total of all appropriations and funds made available during the year for obligation so as to prevent obligation or expenditure in a manner which would result in a deficiency or a need for supplemental appropriations during the year, and (with respect to appropriations and funds available for an indefinite period and all authorizations to create obligations by contract in advance of appropriations) apportioning the total of such appropriations, funds, or authorizations in the most effective and economical manner.

(14) Certifying all contracts and leases (whether directly or through delegation) prior to execution as to the availability of funds to meet the obligations expected to be incurred by the District government under such contracts and leases during the year.

(15) Prescribing the forms of receipts, vouchers, bills, and claims to be used by all

agencies, offices, and instrumentalities of the District government.

(16) Certifying and approving prior to payment of all bills, invoices, payrolls, and other evidences of claims, demands, or charges against the District government, and determining the regularity, legality, and correctness of such bills, invoices, payrolls, claims, demands, or charges.

(17) In coordination with the Inspector General of the District of Columbia, performing internal audits of accounts and operations and records of the District government, including the examination of any accounts or records of financial transactions, giving due consideration to the effectiveness of accounting systems, internal control, and related administrative practices of the departments and agencies of the District government.

(18) Exercising responsibility for the administration and supervision of the District of Columbia Treasurer.

(19) Supervising and administering all borrowing programs for the issuance of long-term and short-term indebtedness, as well as other financing-related programs of the District government.

(20) Administering the cash management program of the District government, including the investment of surplus funds in governmental and non-governmental interest-bearing securities and accounts.

(21) Administering the centralized District government payroll and retirement systems (other than the retirement system for police officers, fire fighters, and teachers).

(22) Governing the accounting policies and systems applicable to the District government.

(23) Preparing appropriate annual, quarterly, and monthly financial reports of the accounting and financial operations of the District government.

(24) Not later than 120 days after the end of each fiscal year, preparing the complete financial statement and report on the activities of the District government for such fiscal year, for the use of the Mayor under section 448(a)(4) [D.C. Official Code § 1-204.48(a)(4)].

(25) Preparing fiscal impact statements on regulations, multiyear contracts, contracts over $1,000,000 and on legislation, as required by section 4a of the General Legislative Procedures Act of 1975 [D.C. Official Code § 1-301.47a].

(26) Preparing under the direction of the Mayor, who has the specific responsibility for formulating budget policy using Chief Financial Officer technical and human resources, the budget for submission by the Mayor to the Council and to the public and upon final adoption to Congress and to the public.

(27) Certifying all collective bargaining agreements and nonunion pay proposals prior to submission to the Council for approval as to the availability of funds to meet the obligations expected to be incurred by the District government under such collective bargaining agreements and nonunion pay proposals during the year.

(28) With respect to attorneys in special education cases brought under the Individuals with Disabilities Education Act in the District of Columbia during fiscal year 2006 and each succeeding fiscal year –

(A) requiring such attorneys to certify in writing that the attorney or representative of the attorney rendered any and all services for which the attorney received an award in such a case, including those received under a settlement agreement or as part of an

administrative proceeding, from the District of Columbia;

(B) requiring such attorneys, as part of the certification under subparagraph (A), to disclose any financial, corporate, legal, membership on boards of directors, or other relationships with any special education diagnostic services, schools, or other special education service providers to which the attorneys have referred any clients in any such cases; and

(C) preparing and submitting quarterly reports to the Committees on Appropriations of the House of Representatives and Senate on the certification of and the amount paid by the government of the District of Columbia, including the District of Columbia Public Schools, to such attorneys.

(e) [D.C. Official Code § 1-204.24e] FUNCTIONS OF TREASURER. – At all times, the Treasurer shall have the following duties:

(1) Assisting the Chief Financial Officer in reporting revenues received by the District government, including submitting annual and quarterly reports concerning the cash position of the District government not later than 60 days after the last day of the quarter (or year) involved. Each such report shall include the following:

(A) Comparative reports of revenue and other receipts by source, including tax, nontax, and Federal revenues, grants and reimbursements, capital program loans, and advances. Each source shall be broken down into specific components.

(B) Statements of the cash flow of the District government for the preceding quarter or year, including receipts, disbursements, net changes in cash inclusive of the beginning balance, cash and investment, and the ending balance, inclusive of cash and investment. Such statements shall reflect the actual, planned, better or worse dollar amounts and the percentage change with respect to the current quarter, year-to-date, and fiscal year.

(C) Quarterly cash flow forecast for the quarter or year involved, reflecting receipts, disbursements, net change in cash inclusive of the beginning balance, cash and investment, and the ending balance, inclusive of cash and investment with respect to the actual dollar amounts for the quarter or year, and projected dollar amounts for each of the 3 succeeding quarters.

(D) Monthly reports reflecting a detailed summary analysis of all District of Columbia government investments, including –

(i) the total of long-term and short-term investments;

(ii) a detailed summary analysis of investments by type and amount, including purchases, sales (maturities), and interest;

(iii) an analysis of investment portfolio mix by type and amount, including liquidity, quality/risk of each security, and similar information;

(iv) an analysis of investment strategy, including near-term strategic plans and projects of investment activity, as well as forecasts of future investment strategies based on anticipated market conditions, and similar information; and

(v) an analysis of cash utilization, including –

(I) comparisons of budgeted percentages of total cash to be invested with actual percentages of cash invested and the dollar amounts;

(II) comparisons of the next return on invested cash expressed in percentages (yield) with comparable market indicators and established District of Columbia government yield objectives; and

(III) comparisons of estimated dollar return against actual dollar yield.

(E) Monthly reports reflecting a detailed summary analysis of long-term and short-term borrowings inclusive of debt as authorized by section 603 [D.C. Official Code § 1-206.03], in the current fiscal year and the amount of debt for each succeeding fiscal year not to exceed 5 years. All such reports shall reflect –

(i) the amount of debt outstanding by type of instrument;

(ii) the amount of authorized and unissued debt, including availability of short-term lines of credit, United States Treasury borrowings, and similar information;

(iii) a maturity schedule of the debt;

(iv) the rate of interest payable upon the debt; and

(v) the amount of debt service requirements and related debt service reserves.

(2) Such other functions assigned to the Chief Financial Officer under subsection (d) as the Chief Financial Officer may delegate.

(f) DEFINITIONS. – For purposes of this section (and sections 424a and 424b) [D.C. Official Code §§ 1-204.24, 1-204.25, and 1-204.26] –

(1) the term 'Authority' means the District of Columbia Financial Responsibility and Management Assistance Authority established under section 101(a) of the District of Columbia Financial Responsibility and Management Assistance Act of 1995 [D.C. Official Code § 47-391.01(a)];

(2) the term 'control year' has the meaning given such term under section 305(4) of such Act [D.C. Official Code § 47-393(4)]; and

(3) the term 'District government' has the meaning given such term under section 305(5) of such Act [D.C. Official Code § 47-393(5)].

AUTHORITY OF CHIEF FINANCIAL OFFICER OVER PERSONNEL OF OFFICE AND OTHER FINANCIAL PERSONNEL

SEC. 424a. (a) [D.C. Official Code § 1-204.25] IN GENERAL. – Notwithstanding any provision of law or regulation (including any law or regulation providing for collective bargaining or the enforcement of any collective bargaining agreement), employees of the Office of the Chief Financial Officer of the District of Columbia, including personnel described in subsection (b), shall be appointed by, shall serve at the pleasure of, and shall act under the direction and control of the Chief Financial Officer of the District of Columbia, and shall be considered at-will employees not covered by the District of Columbia Merit Personnel Act of 1978, except that nothing in this section may be construed to prohibit the Chief Financial Officer from entering into a collective bargaining agreement governing such employees and personnel or to prohibit the enforcement of such an agreement as entered into by the Chief Financial Officer.

(b) PERSONNEL. – The personnel described in this subsection are as follows:

(1) The General Counsel to the Chief Financial Officer and all other attorneys in the Office of the General Counsel within the Office of the Chief Financial Officer of the District of Columbia, together with all other personnel of the Office.

(2) All other individuals hired or retained as attorneys by the Chief Financial

Officer or any office under the personnel authority of the Chief Financial Officer, each of whom shall act under the direction and control of the General Counsel to the Chief Financial Officer.

(3) The heads and all personnel of the subordinate offices of the Office (as described in section 424(a)(2) [D.C. Official Code § 1-204.24a(b)] and established as subordinate offices in section 424(a)(3)[D.C. Official Code § 1-204.24a(c)]) and the Chief Financial Officers, Agency Fiscal Officers, and Associate Chief Financial Officers of all District of Columbia executive branch subordinate and independent agencies (in accordance with subsection (c)), together with all other District of Columbia accounting, budget, and financial management personnel (including personnel of executive branch independent agencies, but not including personnel of the legislative or judicial branches of the District government).

(c) APPOINTMENT OF CERTAIN EXECUTIVE BRANCH AGENCY CHIEF FINANCIAL OFFICERS. –

(1) IN GENERAL. – The Chief Financial Officers and Associate Chief Financial Officers of all District of Columbia executive branch subordinate and independent agencies (other than those of a subordinate office of the Office) shall be appointed by the Chief Financial Officer, in consultation with the agency head, where applicable. The appointment shall be made from a list of qualified candidates developed by the Chief Financial Officer.

(2) TRANSITION. – Any executive branch agency Chief Financial Officer appointed prior to the date of enactment of the 2005 District of Columbia Omnibus Authorization Act [October 16, 2006] may continue to serve in that capacity without reappointment.

(d) INDEPENDENT AUTHORITY OVER LEGAL PERSONNEL. – Title VIII-B of the District of Columbia Government Comprehensive Merit Personnel Act of 1978 (sec. 1-608.51 et seq., D.C. Official Code) shall not apply to the Office of the Chief Financial Officer or to attorneys employed by the Office.

(e) INAPPLICABILITY TO WATER AND SEWER AUTHORITY.– The authority of the Chief Financial Officer under this section does not apply to personnel of the District of Columbia Water and Sewer Authority established pursuant to the Water and Sewer Authority Establishment and Department of Public Works Reorganization Act of 1996 [D.C. Official Code § 34-2201.01 *passim*].

PROCUREMENT AUTHORITY OF THE CHIEF FINANCIAL OFFICER

SEC. 424b. [D.C. Official Code § 1-204.26] The Chief Financial Officer shall carry out procurement of goods and services for the Office of the Chief Financial Officer through a procurement office or division which shall operate independently of, and shall not be governed by, the Office of Contracting and Procurement established under the District of Columbia Procurement Practices Act of 1986 [1985] [D.C. Official Code § 2-301.01 *et seq.*]or any successor office, except the provisions applicable under such Act to procurement carried out by the Chief Procurement Officer established by section 105 of such Act [D.C. Official Code § 2-301.05] or any successor office shall apply with respect to the procurement carried out by the Chief Financial Officer's procurement office or division.

PART C -- THE JUDICIARY

JUDICIAL POWERS

SEC. 431. [D.C. Official Code § § 1-204.31] (a) The judicial power of the District is vested in the District of Columbia Court of Appeals and the Superior Court of the District of Columbia. The Superior Court has jurisdiction of any civil action or other matter (at law or in equity) brought in the District and of any criminal case under any law applicable exclusively to the District. The Superior Court has no jurisdiction over any civil or criminal matter over which a United States court has exclusive jurisdiction pursuant to an Act of Congress. The Court of Appeals has jurisdiction of appeals from the Superior Court and, to the extent provided by law, to review orders and decisions of the Mayor, the Council, or any agency of the District. The District of Columbia courts shall also have jurisdiction over any other matters granted to the District of Columbia courts by other provisions of law.

(b) The chief judge of a District of Columbia court shall be designated by the District of Columbia Judicial Nominating [Nomination] Commission established by section 434 [D.C. Official Code § 1-204.34] from among the judges of the court in regular active service, and shall serve as chief judge for a term of four years or until a successor is designated, except that the term as chief judge shall not extend beyond the chief judge's term as a judge of a District of Columbia court. An individual shall be eligible for redesignation as chief judge.

(c) A judge of a District of Columbia court appointed on or after the date of enactment of the District of Columbia Court Reorganization Act of 1970 [July 29, 1970] shall be appointed for a term of fifteen years subject to mandatory retirement at age seventy-four or removal, suspension, or involuntary retirement pursuant to section 432 [D.C. Official Code § 1-204.32] and upon completion of such term, such judge shall continue to serve until reappointed or a successor is appointed and qualifies. A judge may be reappointed as provided in subsection (c) of section 433 [D.C. Official Code § 1-204.33].

(d)(1) There is established a District of Columbia Commission on Judicial Disabilities and Tenure (hereinafter referred to as the "Tenure Commission"). The Tenure Commission shall consist of seven members selected in accordance with the provisions of subsection (e) [of this section]. Such members shall serve for terms of six years, except that the member selected in accordance with subsection (e)(3)(A) shall serve for five years; of the members first selected in accordance with subsection (e)(3)(B), one member shall serve for three years and one member shall serve for six years; of the members first selected in accordance with subsection (e)(3)(C), one member shall serve for a term of three years and one member shall serve for five years; the member first selected in accordance with subsection (e)(3)(D) shall serve for six years; and the member first appointed in accordance with subsection (e)(3)(E) shall serve for six years. In making the respective first appointments according to subsections (e)(3)(B) and (e)(3)(C), the Mayor and the Board of Governors of the unified District of Columbia Bar shall designate, at the time of such appointments, which member shall serve for the shorter term and which member shall serve for the longer term.

(2) The Tenure Commission shall act only at meetings called by the Chairman or a majority of the Tenure Commission held after notice has been given of such meeting to all Tenure Commission members.

(3) The Tenure Commission shall choose annually, from among its members, a

Chairman and such other officers as it may deem necessary. The Tenure Commission may adopt such rules of procedures not inconsistent with this Act as may be necessary to govern the business of the Tenure Commission.

(4) The District government shall furnish to the Tenure Commission, upon the request of the Tenure Commission, such records, information, services, and such other assistance and facilities as may be necessary to enable the Tenure Commission properly to perform its functions. Information so furnished shall be treated by the Tenure Commission as privileged and confidential.

(e)(1) No person may be appointed to the Tenure Commission unless such person--

(A) is a citizen of the United States;

(B) is a bona fide resident of the District and has maintained an actual place of abode in the District for at least ninety days immediately prior to appointment; and

(C) is not an officer or employee of the legislative branch or of an executive or military department or agency of the United States (listed in sections 101 and 102 of title 5 of the United States Code); and (except with respect to the person appointed or designated according to paragraph (3)(E)) is not an officer or employee of the judicial branch of the United States, or an officer or employee of the District government (including its judicial branch).

(2) Any vacancy on the Tenure Commission shall be filled in the same manner in which the original appointment was made. Any person so appointed to fill a vacancy occurring other than upon the expiration of a prior term shall serve only for the remainder of the unexpired term of such person's predecessor.

(3) In addition to all other qualifications listed in this section, lawyer members of the Tenure Commission shall have the qualifications prescribed for persons appointed as judges of the District of Columbia courts. Members of the Tenure Commission shall be appointed as follows:

(A) One member shall be appointed by the President of the United States.

(B) Two members shall be appointed by the Board of Governors of the unified District of Columbia Bar, both of whom shall have been engaged in the practice of law in the District for at least five successive years preceding their appointment.

(C) Two members shall be appointed by the Mayor, one of whom shall not be a lawyer.

(D) One member shall be appointed by the Council, and shall not be a lawyer.

(E) One member shall be appointed by the chief judge of the United States District Court for the District of Columbia, and such member shall be an active or retired Federal judge serving in the District.

No person may serve at the same time on both the District of Columbia Judicial Nomination Commission and on the District of Columbia Commission on Judicial Disabilities and Tenure.

(f) Members of the Tenure Commission shall serve without compensation for services rendered in connection with their official duties on the Commission.

(g) The Tenure Commission shall have the power to suspend, retire, or remove a judge of a District of Columbia court as provided in section 432 [D.C. Official Code § 1-204.32] and to make recommendations regarding the appointment of senior judges of the District of Columbia courts as provided in section 11-1504 of the District of Columbia [Official] Code.

REMOVAL, SUSPENSION, AND INVOLUNTARY RETIREMENT

SEC. 432. [D.C. Official Code § 1-204.32] (a)(1) A judge of a District of Columbia court shall be removed from office upon the filing in the District of Columbia Court of Appeals by the Tenure Commission of an order of removal certifying the entry, in any court within the United States, of a final judgment of conviction of a crime which is punishable as a felony under Federal law or which would be a felony in the District.

(2) A judge of a District of Columbia court shall also be removed from office upon affirmance of an appeal from an order of removal filed in the District of Columbia Court of Appeals by the Tenure Commission (or upon expiration of the time within which such an appeal may be taken) after a determination by the Tenure Commission of --

(A) willful misconduct in office,

(B) willful and persistent failure to perform judicial duties, or

(C) any other conduct which is prejudicial to the administration of justice or which brings the judicial office into disrepute.

(b) A judge of a District of Columbia court shall be involuntarily retired from office when (1) the Tenure Commission determines that the judge suffers from a mental or physical disability (including habitual intemperance) which is or is likely to become permanent and which prevents, or seriously interferes with, the proper performance of judicial duties, and (2) the Tenure Commission files in the District of Columbia Court of Appeals an order of involuntary retirement and the order is affirmed on appeal or the time within which an appeal may be taken from the order has expired.

(c)(1) A judge of a District of Columbia court shall be suspended, without salary -

(A) upon --

(i) proof of conviction of a crime referred to in subsection (a)(1) which has not become final, or

(ii) the filing of an order of removal under subsection (a)(2) which has not become final; and

(B) upon the filing by the Tenure Commission of an order of suspension in the District of Columbia Court of Appeals.

Suspension under this paragraph shall continue until termination of all appeals. If the conviction is reversed or the order of removal is set aside, the judge shall be reinstated and shall recover any salary and all other rights and privileges of office.

(2) A judge of a District of Columbia court shall be suspended from all judicial duties, with such retirement salary as the judge may be entitled, upon the filing by the Tenure Commission of an order of involuntary retirement under subsection (b) in the District of Columbia Court of Appeals. Suspension shall continue until termination of all appeals. If the order of involuntary retirement is set aside, the judge shall be reinstated and shall recover judicial salary less any retirement salary received and shall be entitled to all the rights and privileges of office.

(3) A judge of a District of Columbia court shall be suspended from all or part of the judge's judicial duties, with salary, if the Tenure Commission, upon concurrence of five members, (A) orders a hearing for the removal or retirement of the judge pursuant to this subchapter and determines that such suspension is in the interest of the administration of justice,

and (B) files an order of suspension in the District of Columbia Court of Appeals. The suspension shall terminate as specified in the order (which may be modified, as appropriate, by the Tenure Commission) but in no event later than the termination of all appeals.

NOMINATION AND APPOINTMENT OF JUDGES

SEC. 433. [D.C. Official Code § 1-204.33] (a) Except as provided in section 434(d)(1) [D.C. Official Code § 1-204.34(d)(1)], the President shall nominate, from the list of persons recommended by the District of Columbia Judicial Nomination Commission established under section 434 [D.C. Official Code § 1-204.34], and, by and with the advice and consent of the Senate, appoint all judges of the District of Columbia courts.

(b) No person may be nominated or appointed a judge of a District of Columbia court unless the person --

(1) is a citizen of the United States;

(2) is an active member of the unified District of Columbia Bar and has been engaged in the active practice of law in the District for the five years immediately preceding the nomination or for such five years has been on the faculty of a law school in the District, or has been employed as a lawyer by the United States or the District of Columbia government;

(3) is a bona fide resident of the District of Columbia and has maintained an actual place of abode in the District for at least ninety days immediately prior to the nomination, and shall retain such residency while serving as such judge, except judges appointed prior to the effective date of this part who retain residency as required by section 1501(a) of title 11 of the District of Columbia [Official] Code [D.C. Official Code § 11-1501(a)] shall not be required to be residents of the District to be eligible for reappointment or to serve any term to which reappointed;

(4) is recommended to the President, for such nomination and appointment, by the District of Columbia Judicial Nomination Commission; and

(5) has not served, within a period of two years prior to the nomination, as a member of the Tenure Commission or of the District of Columbia Judicial Nomination Commission.

(c) Not less than six months prior to the expiration of the judge's term of office, any judge of the District of Columbia courts may file with the Tenure Commission a declaration of candidacy for reappointment. If a declaration is not so filed by any judge, a vacancy shall result from the expiration of the term of office and shall be filled by appointment as provided in subsections (a) and (b). If a declaration is so filed, the Tenure Commission shall, not less than sixty days prior to the expiration of the declaring candidate's term of office, prepare and submit to the President a written evaluation of the declaring candidate's performance during the present term of office and the candidate's fitness for reappointment to another term. If the Tenure Commission determines the declaring candidate to be well qualified for reappointment to another term, then the term of such declaring candidate shall be automatically extended for another full term, subject to mandatory retirement, suspension, or removal. If the Tenure Commission determines the declaring candidate to be qualified for reappointment to another term, then the President may nominate such candidate, in which case the President shall submit to the Senate for advice and consent the renomination of the declaring candidate as judge. If the President determines not to so nominate such declaring candidate, the President shall nominate another

candidate for such position only in accordance with the provisions of subsections (a) and (b). If the Tenure Commission determines the declaring candidate to be unqualified for reappointment to another term, then the President shall not submit to the Senate for advice and consent the renomination of the declaring candidate as judge and such judge shall not be eligible for reappointment or appointment as a judge of a District of Columbia court.

DISTRICT OF COLUMBIA JUDICIAL NOMINATION COMMISSION

SEC. 434. [D.C. Official Code § 1-204.34] (a) There is established for the District of Columbia the District of Columbia Judicial Nomination Commission (hereafter in this section referred to as the "Commission"). The Commission shall consist of seven members selected in accordance with the provisions of subsection (b) [of this section]. Such members shall serve for terms of six years, except that the member selected in accordance with subsection (b)(4)(A) shall serve for five years; of the members first selected in accordance with subsection (b)(4)(B), one member shall serve for three years and one member shall serve for six years; of the members first selected in accordance with subsection (b)(4)(C), one member shall serve for a term of three years and one member shall serve for five years; the member first selected in accordance with subsection (b)(4)(D) shall serve for six years; and the member first appointed in accordance with subsection (b)(4)(E) shall serve for six years. In making the respective first appointments according to subsections (b)(4)(B) and (b)(4)(C), the Mayor and the Board of Governors of the unified District of Columbia Bar shall designate, at the time of such appointments, which member shall serve for the shorter term and which member shall serve for the longer term.

(b)(1) No person may be appointed to the Commission unless the person --

(A) is a citizen of the United States;

(B) is a bona fide resident of the District and has maintained an actual place of abode in the District for at least 90 days immediately prior to appointment; and

(C) is not a member, officer, or employee of the legislative branch or of an executive or military department or agency of the United States (listed in sections 101 and 102 of title 5 of the United States Code); and (except with respect to the person appointed or designated according to paragraph (4)(E)) is not an officer or employee of the judicial branch of the United States, or an officer or employee of the District government (including its judicial branch).

(2) Any vacancy on the Commission shall be filled in the same manner in which the original appointment was made. Any person so appointed to fill a vacancy occurring other than upon the expiration of a prior term shall serve only for the remainder of the unexpired term of such person's predecessor.

(3) It shall be the function of the Commission to submit nominees for appointment to positions as judges of the District of Columbia courts in accordance with section 433 of this Act [D.C. Official Code § 1-204.33].

(4) In addition to all other qualifications listed in this section, lawyer members of the Commission shall have the qualifications prescribed for persons appointed as judges for the District of Columbia courts. Members of the Commission shall be appointed as follows:

(A) One member shall be appointed by the President of the United States.

(B) Two members shall be appointed by the Board of Governors of the unified District of Columbia Bar, both of whom shall have been engaged in the practice of law in the District for at least five successive years preceding their appointment.

(C) Two members shall be appointed by the Mayor, one of whom shall not be a lawyer.

(D) One member shall be appointed by the Council, and shall not be a lawyer.

(E) One member shall be appointed by the chief judge of the United States District Court for the District of Columbia, and such member shall be an active or retired Federal judge serving in the District.

(5) Members of the Commission shall serve without compensation for services rendered in connection with their official duties on the Commission.

(c) (1) The Commission shall act only at meetings called by the Chairman or a majority of the Commission held after notice has been given of such meeting to all Commission members. Meetings of the Commission may be closed to the public. Section 742 of this Act [D.C. Official Code § 1-207.42] shall not apply to meetings of the Commission.

(2) The Commission shall choose annually, from among its members, a Chairman, and such other officers as it may deem necessary. The Commission may adopt such rules of procedures not inconsistent with this Act as may be necessary to govern the business of the Commission.

(3) The District government shall furnish to the Commission, upon the request of the Commission, such records, information, services, and such other assistance and facilities as may be necessary to enable the Commission properly to perform its function. Information, records, and other materials furnished to or developed by the Commission in the performance of its duties under this section shall be privileged and confidential. Section 552 of title 5, United States Code (known as the Freedom of Information Act), shall not apply to any such materials.

(d)(1) In the event of a vacancy in any position of the judge of a District of Columbia court, the Commission shall, within sixty days following the occurrence of such vacancy, submit to the President, for possible nomination and appointment, a list of three persons for each vacancy. If more than one vacancy exists at one given time, the Commission must submit lists in which no person is named more than once and the President may select more than one nominee from one list. Whenever a vacancy will occur by reason of the expiration of such judge's term of office, the Commission's list of nominees shall be submitted to the President not less than sixty days prior to the occurrence of such vacancy. In the event the President fails to nominate, for Senate confirmation, one of the persons on the list submitted to the President under this section within sixty days after receiving such list, the Commission shall nominate, and with the advice and consent of the Senate, appoint one of those persons to fill the vacancy for which such list was originally submitted to the President.

(2) In the event any person recommended by the Commission to the President requests that the recommendation be withdrawn, dies, or in any other way becomes disqualified to serve as a judge of the District of Columbia courts, the Commission shall promptly recommend to the President one person to replace the person originally recommended.

(3) In no instance shall the Commission recommend any person, who in the event of timely nomination following a recommendation by the Commission, does not meet, upon such nomination, the qualifications specified in section 433 [D.C. Official Code § 1-204.33].

(4) Upon submission to the President, the name of any individual recommended under this subsection shall be made public by the Judicial Nomination Commission.

PART C-i -- THE ATTORNEY GENERAL

ELECTION OF THE ATTORNEY GENERRAL

SEC. 435. [D.C. Official Code § 1-204.35] (a) The Attorney General for the District of Columbia shall be elected on a partisan basis by the registered qualified electors of the District. Nothing in this section shall prevent a candidate for the position of Attorney General from belonging to a political party.

(b)(1) If a vacancy in the position of Attorney General occurs as a consequence of resignation, permanent disability, death, or other reason, the Board of Elections shall hold a special election in the District on the Tuesday occurring at least 70 days and not more than 174 days after the date on which such vacancy occurs which the Board of Elections determines, based on a totality of the circumstances, taking into account, inter alia, cultural and religious holidays and the administrability of the election, will provide the opportunity for the greatest level of voter participation. The person elected Attorney General to fill a vacancy in the Office of the Attorney General shall take office on the day in which the Board of Elections and Ethics [Board of Elections] certifies his or her election, and shall serve as Attorney General only for the remainder of the term during which the vacancy occurred unless reelected.

(2) When the position of Attorney General becomes vacant, the Chief Deputy Attorney General shall become the Acting Attorney General and shall serve from the date the vacancy occurs until the date on which the Board of Elections and Ethics [Board of Elections] certifies the election of the new Attorney General at which time he or she shall again become the Chief Deputy Attorney General. While the Chief Deputy Attorney General is Acting Attorney General, he or she shall receive the compensation regularly paid the Attorney General, and shall receive no compensation as Chief Deputy Attorney General.

(c) The term of office for the Attorney General shall be 4 years and shall begin on noon on January 2nd of the year following his or her election. The term of office of the Attorney General shall coincide with the term of office of the Mayor.

(d) Any candidate for the position of Attorney General shall meet the qualifications of section 103 of the Attorney General for the District of Columbia Clarification and Elected Term Amendment Act of 2010, passed on 2nd reading on February 2, 2010 (Enrolled version of Bill 18-65) [D.C. Official Code § 1-301.83], prior to the day on which the election for the Attorney General is to be held.

(e) The first election for the position of Attorney General shall be after January 1, 2014.

PART D -- DISTRICT BUDGET AND FINANCIAL MANAGEMENT

Subpart 1 -- Budget and Financial Management

FISCAL YEAR

SEC. 441. [D.C. Official Code § 1-204.41] (a) In general – Except as provided in subsection (b) [of this section], the fiscal year of the District shall, beginning on October 1, 1976, commence on the first day of October of each year and shall end on the 30th day of September of

the succeeding calendar year. Such fiscal year shall also constitute the budget and accounting year. The District may change the fiscal year of the District by an act of the Council. If a change occurs, such fiscal year shall also constitute the budget and accounting year.

(b) Exceptions. –

(1) Armory Board. – The fiscal year for the Armory Board shall begin on the first day of January and shall end on the thirty-first day of December of each calendar year.

(2) Schools. – Effective with respect to fiscal year 2007 and each succeeding fiscal year, the fiscal year for the District of Columbia Public Schools (including public charter schools) and the University of the District of Columbia may begin on the first day of July and end on the thirtieth day of June of each calendar year.

SUBMISSION OF ANNUAL BUDGET

SEC. 442. [D.C. Official Code § 1-204.42] (a) At such time as the Council may direct, the Mayor shall prepare and submit to the Council each year, and make available to the public, an annual budget for the District of Columbia government which shall include:

(1) The budget for the forthcoming fiscal year in such detail as the Mayor determines necessary to reflect the actual financial condition of the District government for such fiscal year, and specify the agencies and purposes for which funds are being requested; and which shall be prepared on the assumption that proposed expenditures resulting from financial transactions undertaken on either an obligation or cash outlay basis, for such fiscal year shall not exceed estimated resources from existing sources and proposed resources;

(2) An annual budget message which shall include supporting financial and statistical information on the budget for the forthcoming fiscal year and information on the approved budgets and expenditures for the immediately preceding three fiscal years;

(3) A multiyear plan for all agencies of the District government as required under section 443 [D.C. Official Code §§ 1-204.43];

(4) A multiyear capital improvements plan for all agencies of the District government as required under section 444 [D.C. Official Code § § 1-204.44];

(5) A program performance report comparing actual performance of as many programs as is practicable for the last completed fiscal year against proposed goals for such programs for such year, and, in addition, presenting as many qualitative or quantitative measures of program effectiveness as possible (including results of statistical sampling or other special analyses), and indicating the status of efforts to comply with the reports of the District of Columbia Auditor and the Comptroller General of the United States;

(6) An issue analysis statement consisting of a reasonable number of issues, identified by the Council in its action on the budget in the preceding fiscal year, having significant revenue or budgetary implications, and other similar issues selected by the Mayor, which shall consider the cost and benefits of alternatives and the rationale behind action recommended or adopted; and

(7) A summary of the budget for the forthcoming fiscal year designed for distribution to the general public.

(b) The budget prepared and submitted by the Mayor shall include, but not be limited to, recommended expenditures at a reasonable level for the forthcoming fiscal year for the Council, the District of Columbia Auditor, the District of Columbia Board of Elections and Ethics [Board

of Elections], the District of Columbia Judicial Nomination Commission, the Zoning Commission of the District of Columbia, the Public Service Commission, the Armory Board, the Commission on Judicial Disabilities and Tenure, and the District of Columbia Water and Sewer Authority.

(c) The Mayor from time to time may prepare and submit to the Council such proposed supplemental or deficiency budget recommendations as in his judgment are necessary on account of laws enacted after transmission of the budget or are otherwise in the public interest. The Mayor shall submit with such proposals a statement of justifications, including reasons for their omission from the annual budget. Whenever such proposed supplemental or deficiency budget recommendations are in an amount which would result in expenditures in excess of estimated resources, the Mayor shall make such recommendations as are necessary to increase resources to meet such increased expenditures.

(d) The Mayor shall prepare and submit to the Council a proposed supplemental or deficiency budget recommendation under subsection (c) [of this section] if the Council by resolution requests the Mayor to submit such a recommendation.

MULTIYEAR PLAN

SEC. 443. [D.C. Official Code § § 1-204.43] The Mayor shall prepare and include in the annual budget a multiyear plan for all agencies included in the District budget, for all sources of funding, and for such program categories as the Mayor identifies. Such plan shall be based on the actual experience of the immediately preceding three fiscal years, on the approved current fiscal year budget, and on estimates for at least the four succeeding fiscal years. The plan shall include, but not be limited to, provisions identifying:

(1) Future cost implications of maintaining programs at currently authorized levels, including anticipated changes in wage, salary, and benefit levels;

(2) Future cost implications of all capital projects for which funds have already been authorized, including identification of the amount of already appropriated but unexpended capital project funds;

(3) Future cost implications of new, improved, or expanded programs and capital project commitments proposed for each of the succeeding four fiscal years;

(4) The effects of current and proposed capital projects on future operating budget requirements;

(5) Revenues and funds likely to be available from existing revenue sources at current rates or levels;

(6) The specific revenue and tax measures recommended for the forthcoming fiscal year and for the next following fiscal year necessary to balance revenues and expenditures;

(7) The actuarial status and anticipated costs and revenues of retirement systems covering District employees; and

(8) Total debt service payments in each fiscal year in which debt service payments must be made for all bonds which have been or will be issued, and all loans from the United States Treasury which have been or will be received, to finance the total cost on a full funding basis of all projects listed in the capital improvements plan prepared under section 444 [D.C. Official Code § 1-204.44]; and for each such fiscal year, the percentage relationship of the total debt service payments (with payments for issued and proposed bonds and loans from the

United States Treasury, received or proposed, separately identified) to the bonding limitation for the current and forthcoming fiscal year as specified in section 603(b) [D.C. Official Code § 1-206.03(b)].

MULTIYEAR CAPITAL IMPROVEMENT PLAN

SEC. 444. [D.C. Official Code § 1-204.44] Multiyear capital improvements plan. The Mayor shall prepare and include in the annual budget a multiyear capital improvements plan for all agencies of the District which shall be based upon the approved current fiscal year budget and shall include:

(1) The status, estimated period of usefulness, and total cost of each capital project on a full funding basis for which any appropriation is requested or any expenditure will be made in the forthcoming fiscal year and at least four fiscal years thereafter, including an explanation of change in total cost in excess of 5 per centum for any capital project included in the plan of the previous fiscal year;

(2) An analysis of the plan, including its relationship to other programs, proposals, or elements developed by the Mayor as the central planning agency for the District pursuant to section 423 of this Act [D.C. Official Code § 1-204.23];

(3) Identification of the years and amounts in which bonds would have to be issued, loans made, and costs actually incurred on each capital project identified; and

(4) Appropriate maps or other graphics.

DISTRICT OF COLUMBIA COURTS' BUDGET

SEC. 445. [D.C. Official Code § 1-204.45] The District of Columbia courts shall prepare and annually submit to the Director of the Office of Management and Budget, for inclusion in the annual budget, annual estimates of the expenditures and appropriations necessary for the maintenance and operation of the District of Columbia court system. The courts shall submit as part of their budgets both a multiyear plan and a multiyear capital improvements plan and shall submit a statement presenting qualitative and quantitative descriptions of court activities and the status of efforts to comply with reports of the Comptroller General of the United States.

WATER AND SEWER AUTHORITY BUDGET

SEC. 445A. [D.C. Official Code § 1-204.45a] (a) IN GENERAL. -- The District of Columbia Water and Sewer Authority established pursuant to the Water and Sewer Authority Establishment and Department of Public Works Reorganization Act of 1996 shall prepare and annually submit to the Mayor, for inclusion in the annual budget, annual estimates of the expenditures and appropriations necessary for the operation of the Authority for the year. All such estimates shall be forwarded by the Mayor to the Council for its action pursuant to sections 446 and 603(c) [D.C. Official Code §§ § 1-204.46 and § 1-206.03(c)], without revision but subject to his recommendations. Notwithstanding any other provision of this Act, the Council may comment or make recommendations concerning such annual estimates, but shall have no

authority under this Act to revise such estimates.

(b) PERMITTING EXPENDITURE OF EXCESS REVENUES FOR CAPITAL PROJECTS IN EXCESS OF BUDGET. -- Notwithstanding the amount appropriated for the District of Columbia Water and Sewer Authority for capital projects for a fiscal year, if the revenues of the Authority for the year exceed the estimated revenues of the Authority provided in the annual budget of the District of Columbia for the fiscal year, the Authority may obligate or expend an additional amount for capital projects during the year equal to the amount of such excess revenues.

ENACTMENT OF LOCAL BUDGET BY COUNCIL

Sec. 446. [D.C. Official Code § 1-204.46] (a) Adoption of Budgets and Supplements - The Council, within 70 calendar days, or as otherwise provided by law, after receipt of the budget proposal from the Mayor, and after public hearing, and by a vote of a majority of the members present and voting, shall by act adopt the annual budget for the District of Columbia government. The federal portion of the annual budget shall be submitted by the Mayor to the President for transmission to Congress. The local portion of the annual budget shall be submitted by the Chairman of the Council to the Speaker of the House of Representatives pursuant to the procedure set forth in section 602(c) [D.C. Official Code § 1-206.02(c)]. Any supplements to the annual budget shall also be adopted by act of the Council, after public hearing, by a vote of a majority of the members present and voting.

(b) Transmission to President During Control Years - In the case of a budget for a fiscal year which is a control year, the budget so adopted shall be submitted by the Mayor to the President for transmission by the President to the Congress; except, that the Mayor shall not transmit any such budget, or amendments or supplements to the budget, to the President until the completion of the budget procedures contained in this Act and the District of Columbia Financial Responsibility and Management Assistance Act of 1995.

(c) Prohibiting Obligations and Expenditures Not Authorized Under Budget- Except as provided in section 445A(b), section 446B, section 467(d), section 471(c), section 472(d)(2), section 475(e)(2), section 483(d), and subsections (f), (g), (h)(3), and (i)(3) of section 490 [D.C. Official Code §§ 1-204.45a(b), 1-204.46b, 1-204.67(d), 1-204.71(c), 1-204.72(d)(2), 1-204.75(e)(2), 1-204.83(d), and subsections (f), (g), (h)(3), and (i)(3) of § 1-204.90], no amount may be obligated or expended by any officer or employee of the District of Columbia government unless--

(1) such amount has been approved by an act of the Council (and then only in accordance with such authorization) and such act has been transmitted by the Chairman to the Congress and has completed the review process under section 602(c)(3) [D.C. Official Code § 1-206.02(c)(3)]; or

(2) in the case of an amount obligated or expended during a control year, such amount has been approved by an Act of Congress (and then only in accordance with such authorization).

(d) Restrictions on Reprogramming of Amounts - After the adoption of the annual budget for a fiscal year (beginning with the annual budget for fiscal year 1995), no reprogramming of amounts in the budget may occur unless the Mayor submits to the Council a request for such reprogramming and the Council approves the request, but and only if any additional expenditures

provided under such request for an activity are offset by reductions in expenditures for another activity.

(e) Definition - In this part, the term “control year” has the meaning given such term in section 305(4) of the District of Columbia Financial Responsibility and Management Assistance Act of 1995 [D.C. Official Code § 47-393(4)].

PERMITTING INCREASE IN AMOUNT APPROPRIATED AS LOCAL FUNDS DURING A FISCAL YEAR

Sec. 446A. [D.C. Official Code § 1-204.46a] (a) IN GENERAL. – Notwithstanding the fourth sentence of section 446 [D.C. Official Code § 1-204.46], to account for an unanticipated growth of revenue collections, the amount appropriated as District of Columbia funds under budget approved by Act of Congress as provided in such section may be increased –

(1) by an aggregate amount of not more than 25 percent, in the case of amounts allocated under the budget as 'Other-Type Funds'; and

(2) by an aggregate amount of not more than 6 percent, in the case of any other amounts allocated under the budget.

(b) CONDITIONS. – The District of Columbia may obligate and expend any increase in the amount of funds authorized under this section only in accordance with the following conditions:

(1) The Chief Financial Officer of the District of Columbia shall certify –

(A) the increase in revenue; and

(B) that the use of the amounts is not anticipated to have a negative impact on the long-term financial, fiscal, or economic health of the District.

(2) The amounts shall be obligated and expended in accordance with laws enacted by the Council of the District of Columbia in support of each such obligation and expenditure, consistent with any other requirements under law.

(3) The amounts may not be used to fund any agencies of the District government operating under court-ordered receivership.

(4) The amounts may not be obligated or expended unless the Mayor has notified the Committees on Appropriations of the House of Representatives and Senate, the Committee on Government Reform of the House of Representatives, and the Committee on Homeland Security and Governmental Affairs of the Senate not fewer than 30 days in advance of the obligation or expenditure.

(c) EFFECTIVE DATE. – This section shall apply with respect to fiscal years 2006 through 2007.

ACCEPTANCE OF GRANT AMOUNTS NOT INCLUDED IN ANNUAL BUDGET

Sec. 446B. [D.C. Official Code § 1-204.46b] (a) AUTHORITY TO ACCEPT, OBLIGATE, AND EXPEND AMOUNTS. – Notwithstanding section 446(c) [D.C. Official Code § 1-204.46(c)], the Mayor, in consultation with the Chief Financial Officer of the District of Columbia may accept, obligate, and expend Federal, private, and other grants received by the District government that are not reflected in the budget as provided in such section.

(b) CONDITIONS. –

(1) ROLE OF CHIEF FINANCIAL OFFICER; APPROVAL BY COUNCIL. – No Federal, private, or other grant may be accepted, obligated, or expended pursuant to subsection (a) [of this section] until –

(A) the Chief Financial Officer submits to the Council a report setting forth detailed information regarding such grant; and

(B) the Council has reviewed and approved the acceptance, obligation, and expenditure of such grant.

(2) DEEMED APPROVAL BY COUNCIL. – For purposes of paragraph (1)(B), the Council shall be deemed to have reviewed and approved the acceptance, obligation, and expenditure of a grant if –

(A) no written notice of disapproval is filed with the Secretary of the Council within 14 calendar days of the receipt of the report from the Chief Financial Officer under paragraph (1)(A) [of this subsection; or

(B) if such a notice of disapproval is filed within such deadline, the Council does not by resolution disapprove the acceptance, obligation, or expenditure of the grant within 30 calendar days of the initial receipt of the report from the Chief Financial Officer under paragraph (1)(A) [of this subsection].

(c) NO OBLIGATION OR EXPENDITURE PERMITTED IN ANTICIPATION OF RECEIPT OR APPROVAL. – No amount may be obligated or expended from the general fund or other funds of the District of Columbia government in anticipation of the approval or receipt of a grant under subsection (b)(2) [of this section] or in anticipation of the approval or receipt of a Federal, private, or other grant not subject to such subsection.

(d) ADJUSTMENTS TO ANNUAL BUDGET. – The Chief Financial Officer may adjust the budget for Federal, private, and other grants received by the District government reflected in the amounts provided in the budget approved by Act of Congress under section 446 [D.C. Official Code § 1-204.46], or approved and received under subsection (b)(2) [of this section] to reflect a change in the actual amount of the grant.

(e) REPORTS. – The Chief Financial Officer shall prepare a quarterly report setting forth detailed information regarding all Federal, private, and other grants subject to this section. Each such report shall be submitted to the Council and to the Committees on Appropriations of the House of Representatives and Senate not later than 15 days after the end of the quarter covered by the report.

(f) EFFECTIVE DATE. – This section shall apply with respect to fiscal year 2006 and each succeeding fiscal year.

CONSISTENCY OF BUDGET, ACCOUNTING, AND PERSONNEL SYSTEMS

SEC. 447. [D.C. Official Code § 1-204.47] The Mayor shall implement appropriate procedures to insure that budget, accounting, and personnel control systems and structures are synchronized for budgeting and control purposes on a continuing basis. No employee shall be hired on a full-time or part-time basis unless such position is authorized by act of the Council (or Act of Congress, in the case of a year which is a control year). Employees shall be assigned in accordance with the program, organization, and fund categories specified in the act of the Council (or Act of Congress, in the case of a year which is a control year) authorizing such

position. Hiring of temporary employees and temporary employee transfers among programs shall be consistent with applicable acts of the Council (or Acts of Congress, in the case of a year which is a control year) and reprogramming procedures to insure that costs are accurately associated with programs and sources of funding.

FINANCIAL DUTIES OF THE MAYOR

SEC. 448. [D.C. Official Code § 1-204.48] (a) Subject to the limitations in section 603 [D.C. Official Code § 1-206.03] and except to the extent provided under section 424(d) [D.C. Official Code § 1-204.24d], the Mayor shall have charge of the administration of the financial affairs of the District and to that end he shall:

(1) Supervise and be responsible for all financial transactions to insure adequate control of revenues and resources and to insure that appropriations are not exceeded;

(2) Maintain systems of accounting and internal control designed to provide:

(A) Full disclosure of the financial results of the District government's activities;

(B) Adequate financial information needed by the District government for management purposes;

(C) Effective control over and accountability for all funds, property, and other assets;

(D) Reliable accounting results to serve as the basis for preparing and supporting agency budget requests and controlling the execution of the budget;

(3) Submit to the Council a financial statement in any detail and at such times as the Council may specify;

(4) Submit to the Council, by February 1 of each fiscal year, a complete financial statement and report for the preceding fiscal year , as audited by the Inspector General of the District of Columbia in accordance with subsection (c) in the case of fiscal years 2006 through 2008;

(5) Supervise and be responsible for the assessment of all property subject to assessment and special assessments within the corporate limits of the District for taxation, prepare tax maps, and give such notice of taxes and special assessments, as may be required by law;

(6) Supervise and be responsible for the levying and collection of all taxes, special assessments, license fees, and other revenues of the District, as required by law, and receive all moneys receivable by the District from the Federal Government or from any agency or instrumentality of the District, except that this paragraph shall not apply to moneys from the District of Columbia Courts;

(7) Have custody of all public funds belonging to or under the control of the District, or any agency of the District government, and deposit all funds coming into his hands, in such depositories as may be designated and under such terms and conditions as may be prescribed by act of the Council;

(8) Have custody of all investments and invested funds of the District government, or in possession of such government in a fiduciary capacity, and have the safekeeping of all bonds and notes of the District and the receipt and delivery of District bonds and notes for transfer, registration, or exchange; and

(9) Apportion the total of all appropriations and funds made available during the fiscal year for obligation so as to prevent obligation or expenditure thereof in a manner which would indicate a necessity for deficiency or supplemental appropriations for such fiscal year, and with respect to all appropriations or funds not limited to a definite period, and all authorizations to create obligations by contract in advance of appropriations, apportion the total of such appropriations or funds or authorizations so as to achieve the most effective and economical use thereof.

(b) Notwithstanding subsection (a) [of this section], the Mayor may make any payments required by subsection (b) or subsection (c) of section 483 [D.C. Official Code § 1-204.83(b) or (c)] and take any actions authorized by an act of the Council under section 467(b) [D.C. Official Code § 1-204.67(b)] or under subsection (a)(4)(A), or subsection (e), of section 490 [D.C. Official Code § 1-204.90(a)(4)(A) or (e)].

(c) The financial statement and report for a fiscal year prepared and submitted for purposes of subsection (a)(4) shall be audited by the Inspector General of the District of Columbia (in coordination with the Chief Financial Officer of the District of Columbia) pursuant to section 208(a)(4) of the District of Columbia Procurement Practices Act of 1985 [D.C. Official Code § 2-302.08(a)(4)], and shall include as a basic financial statement a comparison of audited actual year-end results with the revenues submitted in the budget document for such year and the appropriations enacted into law for such year using the format, terminology, and classifications contained in the law making the appropriations for the year and its legislative history.

ACCOUNTING SUPERVISION AND CONTROL

SEC. 449. [D.C. Official Code § 1-204.49] Except to the extent provided under section 424(d) [D.C. Official Code § 1-204.24d], the Mayor shall:

(1) Prescribe the forms of receipts, vouchers, bills, and claims to be used by all the agencies, offices, and instrumentalities of the District government;

(2) Examine and approve all contracts, orders, and other documents by which the District government incurs financial obligations, having previously ascertained that money has been appropriated and allotted and will be available when the obligations shall become due and payable;

(3) Audit and approve before payment all bills, invoices, payrolls, and other evidences of claims, demands, or charges against the District government and with the advice of the legal officials of the District determine the regularity, legality, and correctness of such claims, demands, or charges; and

(4) Perform internal audits of accounts and operations and agency records of the District government, including the examination of any accounts or records of financial transactions, giving due consideration to the effectiveness of accounting systems, internal control, and related administrative practices of the respective agencies.

GENERAL AND SPECIAL FUNDS

SEC. 450. [D.C. Official Code § 1-204.50] The General Fund of the District shall be composed of those District revenues which on the effective date of this title [December 24, 1973]

are paid into the Treasury of the United States and credited either to the General Fund of the District or its miscellaneous receipts, but shall not include any revenues which are applied by law to any special fund existing on the date of enactment of this title [December 24, 1973]. The Council may from time to time establish such additional special funds as may be necessary for the efficient operation of the government of the District. All money received by any agency, officer, or employee of the District in its or his official capacity shall belong to the District government and shall be paid promptly to the Mayor for deposit in the appropriate fund, except that all money received by the District of Columbia Courts shall be deposited in the Treasury of the United States or the Crime Victims Fund.

RESERVE FUNDS

SEC. 450A. [D.C. Official Code § 1-204.50a] (a) Emergency Reserve Fund. --

(1) In general. -- There is established an emergency cash reserve fund ("emergency reserve fund") as an interest-bearing account (separate from other accounts in the General Fund) into which the Mayor shall make a deposit in cash not later than October 1 of each fiscal year of such an amount as may be required to maintain a balance in the fund of at least 2 percent of the operating expenditures as defined in paragraph (2) of this subsection or such amount as may be required for deposit in a fiscal year in which the District is replenishing the emergency reserve fund pursuant to subsection (a)(7) [paragraph (7) of this subsection].

(2) In general. -- For the purpose of this subsection, operating expenditures is defined as the amount reported in the District of Columbia's Comprehensive Annual Financial Report for the fiscal year immediately preceding the current fiscal year as the actual operating expenditure from local funds, less such amounts that are attributed to debt service payments for which a separate reserve fund is already established under this Act.

(3) Interest. -- Interest earned on the emergency reserve fund shall remain in the account and shall only be withdrawn in accordance with paragraph (4) [of this subsection].

(4) Criteria for use of amounts in emergency reserve fund. -- The Chief Financial Officer, in consultation with the Mayor, shall develop a policy to govern the emergency reserve fund which shall include (but which may not be limited to) the following requirements:

(A) The emergency reserve fund may be used to provide for unanticipated and nonrecurring extraordinary needs of an emergency nature, including a natural disaster or calamity as defined by section 102 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Public Law 100-707) or unexpected obligations by Federal law.

(B) The emergency reserve fund may also be used in the event of a State of Emergency as declared by the Mayor pursuant to section 5 of the District of Columbia Public Emergency Act of 1980 (sec. 6-1504, D.C. Code) [D.C. Official Code § 7-2304].

(C) The emergency reserve fund may not be used to fund:

(i) any department, agency, or office of the Government of the District of Columbia which is administered by a receiver or other official appointed by a court;

(ii) shortfalls in any projected reductions which are included in the budget proposed by the District of Columbia for the fiscal year; or

(iii) settlements and judgments made by or against the Government of the District of Columbia.

(5) Allocation of emergency cash reserve funds. -- Funds may be allocated from

the emergency reserve fund only after:

(A) an analysis has been prepared by the Chief Financial Officer of the availability of other sources of funding to carry out the purposes of the allocation and the impact of such allocation on the balance and integrity of the emergency reserve fund; and

(B) with respect to fiscal years beginning with fiscal year 2005, the contingency reserve fund established by subsection (b) [of this section] has been projected by the Chief Financial Officer to be exhausted at the time of the allocation.

(6) Notice. -- The Mayor, the Council, and (in the case of a fiscal year which is a control year, as defined in section 305(4) of the District of Columbia Financial Responsibility and Management Assistance Act of 1995 [D.C. Official Code § 47-393(4)]) the District of Columbia Financial Responsibility and Management Assistance Authority shall notify the Committees on Appropriations of the Senate and House of Representatives in writing not more than 30 days after the expenditure of funds from the emergency reserve fund.

(7) Replenishment. -- The District of Columbia shall appropriate sufficient funds each fiscal year in the budget process to replenish any amounts allocated from the emergency reserve fund during the preceding fiscal years so that not less than 50 percent of any amount allocated in the preceding fiscal year or the amount necessary to restore the emergency reserve fund to the 2 percent required balance, whichever is less, is replenished by the end of the first fiscal year following each such allocation and 100 percent of the amount allocated or the amount necessary to restore the emergency reserve fund to the 2 percent required balance, whichever is less, is replenished by the end of the second fiscal year following each such allocation.

(b) Contingency Reserve Fund. --

(1) In general. -- There is established a contingency cash reserve fund ("contingency reserve fund") as an interest-bearing account, separate from other accounts in the General Fund, into which the Mayor shall make a deposit in cash not later than October 1 of each fiscal year of such amount as may be required to maintain a balance in the fund of at least 4 percent of the operating expenditures as defined in paragraph (2) of this subsection or such amount as may be required for deposit in a fiscal year in which the District is replenishing the emergency reserve fund pursuant to subsection (b)(6) [paragraph (6) of this subsection].

(2) In general. -- For the purpose of this subsection, operating expenditures is defined as the amount reported in the District of Columbia's Comprehensive Annual Financial Report for the fiscal year immediately preceding the current fiscal year as the actual operating expenditure from local funds, less such amounts that are attributed to debt service payments for which a separate reserve fund is already established under this Act.

(3) Interest. -- Interest earned on the contingency reserve fund shall remain in the account and may only be withdrawn in accordance with paragraph (4) [of this section].

(4) Criteria for use of amounts in contingency reserve fund. -- The Chief Financial Officer, in consultation with the Mayor, shall develop a policy governing the use of the contingency reserve fund which shall include (but which may not be limited to) the following requirements:

(A) The contingency reserve fund may only be used to provide for nonrecurring or unforeseen needs that arise during the fiscal year, including expenses associated with unforeseen weather or other natural disasters, unexpected obligations created by Federal law or new public safety or health needs or requirements that have been identified after the budget process has occurred, or opportunities to achieve cost savings.

(B) The contingency reserve fund may be used, if needed, to cover revenue shortfalls experienced by the District government for 3 consecutive months (based on a 2 month rolling average) that are 5 percent or more below the budget forecast.

(C) The contingency reserve fund may not be used to fund any shortfalls in any projected reductions which are included in the budget proposed by the District of Columbia for the fiscal year.

(5) Allocation of contingency cash reserve. -- Funds may be allocated from the contingency reserve fund only after an analysis has been prepared by the Chief Financial Officer of the availability of other sources of funding to carry out the purposes of the allocation and the impact of such allocation on the balance and integrity of the contingency reserve fund.

(6) Replenishment. -- The District of Columbia shall appropriate sufficient funds each fiscal year in the budget process to replenish any amounts allocated from the contingency reserve fund during the preceding fiscal years so that not less than 50 percent of any amount allocated in the preceding fiscal year or the amount necessary to restore the contingency reserve fund to the 4 percent required balance, whichever is less, is replenished by the end of the first fiscal year following each such allocation and 100 percent of the amount allocated or the amount necessary to restore the contingency reserve fund to the 4 percent required balance, whichever is less, is replenished by the end of the second fiscal year following each such allocation.

(c) Quarterly Reports. -- The Chief Financial Officer shall submit a quarterly report to the Mayor, the Council, the District of Columbia Financial Responsibility and Management Assistance Authority (in the case of a fiscal year which is a control year, as defined in section 305(4) of the District of Columbia Financial Responsibility and Management Assistance Act of 1995 [D.C. Official Code § 47-393(4)]), and the Committees on Appropriations of the Senate and House of Representatives that includes a monthly statement on the balance and activities of the contingency and emergency reserve funds.

COMPREHENSIVE FINANCIAL MANAGEMENT POLICY

SEC. 450B. [D.C. Official Code § 1-204.50b] (a) Comprehensive Financial Management Policy. -- The District of Columbia shall conduct its financial management in accordance with a comprehensive financial management policy.

(b) Contents of Policy. -- The comprehensive financial management policy shall include, but not be limited to, the following:

(1) A cash management policy.

(2) A debt management policy.

(3) A financial asset management policy.

(4) An emergency reserve management policy in accordance with section 450A(a) [D.C. Official Code § 1-204.50a(a)].

(5) A contingency reserve management policy in accordance with section 450A(b) [D.C. Official Code § 1-204.50a(b)].

(6) A policy for determining real property tax exemptions for the District of Columbia.

(c) Annual Review. -- The comprehensive financial management policy shall be reviewed at the end of each fiscal year by the Chief Financial Officer who shall --

(1) not later than July 1 of each year, submit any proposed changes in the policy

to the Mayor and (in the case of a fiscal year which is a control year, as defined in section 305(4) of the District of Columbia Financial Responsibility and Management Assistance Act of 1995 [D.C. Official Code § 47-393(4)]) the District of Columbia Financial Responsibility and Management Assistance Authority (Authority) for review;

(2) not later than August 1 of each year, after consideration of any comments received under paragraph (1) [of this subsection], submit the changes to the Council of the District of Columbia (Council) for approval; and

(3) not later than September 1 of each year, notify the Committees on Appropriations of the Senate and House of Representatives, the Committee on Government Reform of the House of Representatives, and the Committee on Governmental Affairs of the Senate of any changes enacted by the Council.

(d) Procedure for Development of First Comprehensive Financial Management Policy. --

(1) Chief Financial Officer. -- Not later than April 1, 2001, the Chief Financial Officer shall submit to the Mayor an initial proposed comprehensive financial management policy for the District of Columbia pursuant to this section.

(2) Council. -- Following review and comment by the Mayor, not later than May 1, 2001, the Chief Financial Officer shall submit the proposed financial management policy to the Council for its prompt review and adoption.

(3) Authority. -- Upon adoption of the financial management policy under paragraph (2) [of this subsection], the Council shall immediately submit the policy to the Authority for a review of not to exceed 30 days.

(4) Congress. -- Following review of the financial management policy by the Authority under paragraph (3) [of this subsection], the Authority shall submit the policy to the Committees on Appropriations of the Senate and House of Representatives, the Committee on Government Reform of the House of Representatives, and the Committee on Governmental Affairs of the Senate for review, and the policy shall take effect 30 days after the date the policy is submitted under this paragraph.

SPECIAL RULES REGARDING CERTAIN CONTRACTS

SEC. 451. [D.C. Official Code § 1-204.51] (a) Contracts Extending Beyond One Year. -- No contract involving expenditures out of an appropriation which is available for more than one year shall be made for a period of more than five years unless, with respect to a particular contract, the Council, by a two-thirds vote of its members present and voting, authorizes the extension of such period for such contract. Such contracts shall be made pursuant to criteria established by act of the Council.

(b) Contracts Exceeding Certain Amount. --

(1) In general. -- No contract involving expenditures in excess of $1,000,000 during a 12-month period may be made unless the Mayor submits the contract to the Council for its approval and the Council approves the contract (in accordance with criteria established by act of the Council).

(2) Deemed approval. -- For purposes of paragraph (1) [of this subsection], the Council shall be deemed to approve a contract if --

(A) during the 10-day period beginning on the date the Mayor submits the contract to the Council, no member of the Council introduces a resolution approving or

disapproving the contract; or

(B) during the 45-calendar day period beginning on the date the Mayor submits the contract to the Council, the Council does not disapprove the contract.

(c) [Multiyear Contracts. --]

(1) The District may enter into multiyear contracts to obtain goods and services for which funds would otherwise be available for obligation only within the fiscal year for which appropriated.

(2) If the funds are not made available for the continuation of such a contract into a subsequent fiscal year, the contract shall be cancelled or terminated, and the cost of cancellation or termination may be paid from --

(A) appropriations originally available for the performance of the contract concerned;

(B) appropriations currently available for procurement of the type of acquisition covered by the contract, and not otherwise obligated; or

(C) funds appropriated for those payments.

(3) No contract entered into under this subsection shall be valid unless the Mayor submits the contract to the Council for its approval and the Council approves the contract (in accordance with criteria established by act of the Council). The Council shall be required to take affirmative action to approve the contract within 45 days. If no action is taken to approve the contract within 45 calendar days, the contract shall be deemed disapproved.

(d) Exemption for Certain Contracts. -- The requirements of this section shall not apply with respect to any of the following contracts:

(1) Any contract entered into by the Washington Convention Center Authority for preconstruction activities, project management, design, or construction.

(2) Any contract entered into by the District of Columbia Water and Sewer Authority established pursuant to the Water and Sewer Authority Establishment and Department of Public Works Reorganization Act of 1996 [, effective April 18, 1996 (D.C. Law 11-111; D.C. Official Code § 34-2201.01 *et seq*.)], other than contracts for the sale or lease of the Blue Plains Wastewater Treatment Plant.

(3) At the option of the Council, any contract for a highway improvement project carried out under title 23, United States Code.

ANNUAL BUDGET FOR THE BOARD OF EDUCATION

SEC. 452. [D.C. Official Code § 1-204.52] [Repealed.]

REDUCTIONS IN BUDGETS OF INDEPENDENT AGENCIES.

SEC. 453. [D.C. Official Code §1-204.53] (a) In accordance with subsection (b) of this section and except as provided in subsection (c) of this section, the Mayor may reduce amounts appropriated or otherwise made available to independent agencies of the District of Columbia (including the Board of Education) for a fiscal year if the Mayor determines that it is necessary to reduce such amounts to balance the District's budget for the fiscal year.

(b)(1) The Mayor may not make any reduction pursuant to subsection (a) of this section unless the Mayor submits a proposal to make such a reduction to the Council and the Council

approves the proposal.

(2) A proposal submitted by the Mayor under paragraph (1) of this subsection shall be deemed to be approved by the Council:

(A) If no member of the Council files a written objection to the proposal with the Secretary of the Council before the expiration of the 10-day period that begins on the date the Mayor submits the proposal; or

(B) If a member of the Council files such a written objection during the period described in subparagraph (A) of this paragraph, if the Council does not disapprove the proposal prior to the expiration of the 45-day period that begins on the date the member files the written objection.

(3) The periods described in subparagraphs (A) and (B) of paragraph (2) of this subsection shall not include any days which are days of recess for the Council (according to the Council's rules).

(c) Subsection (a) [of this section] shall not apply to amounts appropriated or otherwise made available to the Council, the District of Columbia Financial Responsibility and Management Assistance Authority established under section 101(a) of the District of Columbia Financial Responsibility and Management Assistance Act of 1995[, approved April 17, 1995 (109 Stat. 100; D.C. Official Code § 47-391.01(a)], or the District of Columbia Water and Sewer Authority established pursuant to [section 202 of] the Water and Sewer Authority Establishment and Department of Public Works Reorganization Act of 1996 [, effective April 18, 1996 (D.C. Law 11-111; D.C. Official Code § 34-2202.02].

Subpart 2 -- Audit

DISTRICT OF COLUMBIA AUDITOR

SEC. 455. [D.C. Official Code § 1-204.55] (a) There is established for the District of Columbia the Office of District of Columbia Auditor who shall be appointed by the Chairman, subject to the approval of a majority of the Council. The District of Columbia Auditor shall serve for a term of six years and shall be paid at a rate of compensation as may be established from time to time by the Council.

(b) The District of Columbia Auditor shall each year conduct a thorough audit of the accounts and operations of the government of the District in accordance with such principles and procedures and under such rules and regulations as he may prescribe. In the determination of the auditing procedures to be followed and the extent of the examination of vouchers and other documents and records, the District of Columbia Auditor shall give due regard to generally accepted principles of auditing including the effectiveness of the accounting organizations and systems, internal audit and control, and related administrative practices.

(c) The District of Columbia Auditor shall have access to all books, accounts, records, reports, findings and all other papers, things, or property belonging to or in use by any department, agency, or other instrumentality of the District government and necessary to facilitate the audit.

(d) The District of Columbia Auditor shall submit his audit reports to the Congress, the Mayor, and the Council. Such reports shall set forth the scope of the audits conducted by him and shall include such comments and information as the District of Columbia Auditor may deem

necessary to keep the Congress, the Mayor, and the Council informed of the operations to which the reports relate, together with such recommendations with respect thereto as he may deem advisable.

(e) The Council shall make such report, together with such other material as it deems pertinent thereto, available for public inspection.

(f) The Mayor shall state in writing to the Council, within an appropriate time, what action he has taken to effectuate the recommendations made by the District of Columbia Auditor in his reports.

(g) This section shall not apply to the District of Columbia Courts or the accounts and operations thereof.

PERFORMANCE AND FINANCIAL ACCOUNTABILITY

SEC. 456. (a) [D.C. Official Code § 1-204.56a] PERFORMANCE ACCOUNTABILITY PLAN. --

(1) SUBMISSION OF ANNUAL PLAN. -- Concurrent with the submission of the District of Columbia budget to Congress each year (beginning with 2001), the Mayor shall develop and submit to the Committee on Government Reform and Oversight of the House of Representatives, the Committee on Governmental Affairs of the Senate, the Committees on Appropriations of the House of Representatives and the Senate, and the Comptroller General a performance accountability plan for all departments, agencies, and programs of the government of the District of Columbia for the subsequent fiscal year.

(2) CONTENTS OF PLAN. -- The performance accountability plan for a fiscal year shall contain the following:

(A) A statement of measurable, objective performance goals established for all significant activities of the government of the District of Columbia during the fiscal year (including activities funded in whole or in part by the District but performed in whole or in part by some other public or private entity).

(B) A description of the measures of performance to be used in determining whether the government has met the goals established under paragraph (1) of this subsection with respect to an activity for a fiscal year. Such measures shall analyze the quantity and quality of the activities involved, and shall include measures of program outcomes and results.

(C) The title of the District of Columbia management employee most directly responsible for the achievement of each goal and the title of such employee's immediate supervisor or superior.

(3) DESCRIPTION OF ACTIVITIES SUBJECT TO COURT ORDER. -- In addition to the material included in the performance accountability plan for a fiscal year under paragraph (2) [of this section], the plan shall include a description of the activities of the government of the District of Columbia that are subject to a court order during the fiscal year and the requirements placed on such activities by the court order.

(b) [D.C. Official Code § 1-204.56b] PERFORMANCE ACCOUNTABILITY REPORT. --

(1) SUBMISSION OF REPORT. -- Not later than March 1 of each year (beginning with 2001), the Mayor shall develop and submit to the Committee on Government

Reform and Oversight of the House of Representatives, the Committee on Governmental Affairs of the Senate, the Committees on Appropriations of the House of Representatives and the Senate, and the Comptroller General a performance accountability report on activities of the government of the District of Columbia during the fiscal year ending on the previous September 30.

(2) CONTENTS OF REPORT. -- The performance accountability report for a fiscal year shall contain the following:

(A) For each goal of the performance accountability plan submitted under subsection (a) [D.C. Official Code § 1-204.56a] for the year, a statement of the actual level of performance achieved compared to the stated goal.

(B) The title of the District of Columbia management employee most directly responsible for the achievement of each goal and the title of such employee's immediate supervisor or superior.

(C) A statement of the status of any court orders applicable to the government of the District of Columbia during the year and the steps taken by the government to comply with such orders.

(3) EVALUATION OF REPORT. -- The Comptroller General, in consultation with the Director of the Office of Management and Budget, shall review and evaluate each performance accountability report submitted under this subsection and not later than April 15 of each year shall submit comments on such report to the Committee on Government Reform and Oversight of the House of Representatives, the Committee on Governmental Affairs of the Senate, and the Committees on Appropriations of the House of Representatives and the Senate.

(c) [D.C. Official Code § 1-204.56c] FINANCIAL ACCOUNTABILITY PLAN AND REPORT. --

(1) DEVELOPMENT AND SUBMISSION. -- Not later than March 1 of each year (beginning with 1997), the Chief Financial Officer shall develop and submit to the Committee on Government Reform and Oversight of the House of Representatives, the Committee on Governmental Affairs of the Senate, the Committees on Appropriations of the House of Representatives and the Senate, and the Comptroller General a 5-year financial plan for the government of the District of Columbia that contains a description of the steps the government will take to eliminate any differences between expenditures from, and revenues attributable to, each fund of the District of Columbia during the first 5 fiscal years beginning after the submission of the plan.

(2) REPORT ON COMPLIANCE. --

(A) SUBMISSION OF REPORT. -- Not later than March 1 of every year (beginning with 1999), the Chief Financial Officer shall submit a report to the Committee on Government Reform and Oversight of the House of Representatives, the Committee on Governmental Affairs of the Senate, the Committees on Appropriations of the House of Representatives and the Senate, the Comptroller General, and the Director of the Congressional Budget Office on the extent to which the government of the District of Columbia was in compliance during the preceding fiscal year with the applicable requirements of the financial accountability plan submitted for such fiscal year under this subsection.

(B) EVALUATION OF REPORT. -- The Comptroller General, in consultation with the Director of the Congressional Budget Office, shall review and evaluate the financial accountability compliance report submitted under subparagraph (A) [of this paragraph] and not later than April 15 of each year shall submit comments on such report to the Committee

on Government Reform and Oversight of the House of Representatives, the Committee on Governmental Affairs of the Senate, and the Committees on Appropriations of the House of Representatives and the Senate.

(d) [D.C. Official Code § 1-204.56d] QUARTERLY FINANCIAL REPORTS. --

(1) Submission of quarterly financial reports. Not later than fifteen days after the end of every calendar quarter (beginning with a report for the quarter beginning October 1, 1997), the Chief Financial Officer shall submit to the Committee on Government Reform and Oversight of the House of Representatives, the Committee on Governmental Affairs of the Senate, and the Subcommittees on the District of Columbia of the Committees on Appropriations of the House of Representatives and the Senate, a report on the financial and budgetary status of the government of the District of Columbia for the previous quarter.

(2) Contents of report. Each quarterly financial report submitted under paragraph (1) [of this subsection] shall include the following information:

(A) A comparison of actual to forecasted cash receipts and disbursements for each month of the quarter, as presented in the District's fiscal year consolidated cash forecast which shall be supported and accompanied by cash forecasts for the general fund and each of the District government's other funds other than the capital projects fund and trust and agency funds;

(B) A projection of the remaining months cash forecast for that fiscal year.

(C) Explanations of (i) the differences between actual and forecasted cash amounts for each of the months in the quarter, and (ii) any changes in the remaining months forecast as compared to the original forecast for such months of that fiscal year.

(D) The effect of such changes, actual and projected, on the total cash balance of the remaining months and for the fiscal year.

(E) Explanations of the impact on meeting the budget, how the results may be reflected in a supplemental budget request, or how other policy decisions may be necessary which may require the agencies to reduce expenditures in other areas.

(F) An aging of the outstanding receivables and payables, with an explanation of how they are reflected in the forecast of cash receipts and disbursements.

(G) For each department or agency, the actual number of full-time equivalent positions, the actual number of full-time employees, the actual number of part-time employees, and the actual number of temporary employees, together with the source of funding for each such category of positions and employees.

(H) A statement of the balance of each account held by the District of Columbia Financial Responsibility and Management Assistance Authority as of the end of the quarter, together with a description of the activities within each such account during the quarter based on information supplied by the Authority.

(e) [D.C. Official Code § 1-204.56e] SUBMISSION OF REPORTS TO DISTRICT OF COLUMBIA FINANCIAL RESPONSIBILITY AND MANAGEMENT ASSISTANCE AUTHORITY. --

In the case of any report submitted by the Mayor under this section for a fiscal year (or any quarter of a fiscal year) which is a control year under the District of Columbia Financial Responsibility and Management Assistance Act of 1995, the Mayor shall submit the report to the District of Columbia Financial Responsibility and Management Assistance Authority established under section 101(a) of such Act [D.C. Official Code § 47-391.01(a)] in addition to any other individual to whom the Mayor is required to submit the report under this section.

PART E -- BORROWING

Subpart 1 -- Borrowing

DISTRICT'S AUTHORITY TO ISSUE AND REDEEM GENERAL OBLIGATION BONDS FOR CAPITAL PROJECTS

SEC. 461. [D.C. Official Code § 1-204.61] General obligation bonds - Authority to issue; right to redeem.

(a)(1) Subject to the limitations in section 603(b) [D.C. Official Code § 1-206.03(b)], the District may incur indebtedness by issuing general obligation bonds to refund indebtedness of the District at any time outstanding, to finance the outstanding accumulated operating deficit of the general fund of the District of $331,589,000, existing as of September 30, 1990, to finance or refund the outstanding accumulated operating deficit of the general fund of the District of $500,000,000, existing as of September 30, 1997, and to provide for the payment of the cost of acquiring or undertaking its various capital projects. Such bonds shall bear interest, payable on such dates, at such rate or rates and at such maturities as the Mayor, subject to the provisions of section 462 of this Act [D.C. Official Code § 1-204.62], may from time to time determine to be necessary to make such bonds marketable.

(2) The District may not issue any general obligation bonds to finance the operating deficit described in paragraph (1) of this subsection after September 30, 1992.

(b) The District may reserve the right to redeem any or all of its obligations before maturity in such manner and at such price as may be fixed by the Mayor prior to the issuance of such obligations.

CONTENTS OF BORROWING LEGISLATION AND ELECTIONS ON ISSUING GENERAL OBLIGATION BONDS

SEC. 462. [D.C. Official Code § 1-204.62] (a) The Council may by act authorize the issuance of general obligation bonds for the purposes specified in section 461 [D.C. Official Code § 1-204.61]. Such an Act shall contain, at least, provisions --

(1) Briefly describing each project to be financed by the Act;

(2) Identifying the act authorizing each such project;

(3) Setting forth the maximum amount of the principal of the indebtedness which may be incurred for the projects to be financed;

(4) Setting forth the maximum rate of interest to be paid on such indebtedness;

(5) Setting forth the maximum allowable maturity for the issue and the maximum debt service payable in any year; and

(6) Setting forth, in the event that the Council determines in its discretion to submit the question of issuing such bonds to a vote of the qualified voters of the District, the manner of holding such election, the date of such election, the manner of voting for or against the incurring of such indebtedness, and the form of ballot to be used at such election.

(b) Any election held on the question of issuing general obligation bonds must be held

before the act authorizing the issuance of such bonds is transmitted to the Speaker of the House of Representatives and the President of the Senate pursuant to section 602(c) [D.C. Official Code § 1-206.02(c)].

(c) Notwithstanding section 602(c)(1) [D.C. Official Code § 1-206.02(c)(1)], the provisions required by paragraph (6) of subsection (a) [of this section] to be included in any act authorizing the issuance of general obligation bonds shall take effect on the date of the enactment of such act.

PUBLICATION OF BORROWING LEGISLATION

SEC. 463. [D.C. Official Code § 1-204.63] (a) After each act of the Council of the District of Columbia under section 462(a) [D.C. Official Code § 1-204.62(a)] authorizing the issuance of general obligation bonds has taken effect, the Mayor shall publish such act at least once in at least 1 newspaper of general circulation within the District together with a notice that such act has taken effect. Each such notice shall be in substantially the following form:

"NOTICE

"The following act of the Council of the District of Columbia (published with this notice) authorizing the issuance of general obligation bonds has taken effect. As provided in the District of Columbia Self-Government and Governmental Reorganization Act, the time within which a suit, action, or proceeding questioning the validity of such bonds may be commenced expires at the end of the 20-day period beginning on the date of the first publication of this notice.

"_____ ,
"Mayor."

(b) Neither the failure to publish the notice provided for in subsection (a) [of this section] nor any error in any publication of such notice shall impair the effectiveness of the act of the Council authorizing the issuance of such bonds or the validity of any bond issued pursuant to such act.

SHORT PERIOD OF LIMITATION

SEC. 464. [D.C. Official Code § 1-204.64] (a) At the end of the 20-day period beginning on the date of the first publication pursuant to the notice in section 463(a) [D.C. Official Code § 1-204.63(a)] that an act authorizing the issuance of general obligation bonds has taken effect:

(1) Any recital or statement of fact contained in such act or in the preamble or title of such act shall be deemed to be true for the purpose of determining the validity of the bonds authorized by such act, and the District and all others interested shall be estopped from denying any such recital or statement of fact; and

(2) Such act, and all proceedings in connection with the authorization of the issuance of such bonds including any election held on the question of issuing such bonds, shall be deemed to have been duly and regularly taken, passed, and done by the District, in compliance with this Act and all other applicable laws, for the purpose of determining the validity of such act and proceedings; and no court shall have jurisdiction in any suit, action, or

proceeding questioning the validity of such act or proceedings except in a suit, action, or proceeding commenced before the end of such 20-day period.

(b) At the end of the 20-day period beginning on the date of the first publication pursuant to the notice in section 463(a) [D.C. Official Code § 1-204.63(a)] that an act authorizing the issuance of general obligation bonds has taken effect, no court shall have jurisdiction in any suit, action, or proceeding questioning the validity of any general obligation bond issued pursuant to such act if:

(1) Such general obligation bond was purchased in good faith and for fair value; and

(2) Such general obligation bond contains substantially the following statement which shall bind the District of Columbia:

> "It is hereby certified and recited that all conditions, acts, and things required by the District of Columbia Self-Government and Governmental Reorganization Act and other applicable laws to exist, to have happened, and to have been performed precedent to and in the issuance of this bond exist, have happened, and have been performed and that the issue of bonds, of which this is one, together with all other indebtedness of the District of Columbia, is within every debt and other limit prescribed by law."

ISSUANCE OF GENERAL OBLIGATION BONDS

SEC. 465. [D.C. Official Code § 1-204.65] (a) After an act of the Council authorizing the issuance of general obligation bonds under section 461(a) [D.C. Official Code § 1-204.61(a)] takes effect, the Mayor may issue such general obligation bonds as authorized by such act of the Council. An issue of general obligation bonds may be all or any part of the aggregate principal amount of bonds authorized by such act.

(b) The principal amount of the general obligation bonds of each issue shall be payable in annual installments beginning not more than three years after the date of such bonds and ending not more than thirty years after such date.

(c) The general obligation bonds of each issue shall be executed by the manual or facsimile signature of such officials as may be designated to sign such bonds by the act of the Council authorizing the issuance of the bonds, except that at least one such signature shall be manual. Coupons attached to the bonds shall be authenticated by the facsimile signature of the Mayor unless the Council provides otherwise.

PUBLIC OR PRIVATE SALE

SEC. 466. [D.C. Official Code § 1-204.66] General obligation bonds issued under this part may be sold at private sale on a negotiated basis (in such manner as the Mayor may determine to be in the public interest), or may be sold at public sale upon sealed proposals after publication of a notice of such sale at least once not less than ten days prior to the date fixed for sale in a daily newspaper carrying municipal bond notices and devoted primarily to financial news or to the subject of state and municipal bonds published in the city of New York, (New York), and in 1 or more newspapers of general circulation published in the District. Such notice shall state, among other things, that no proposal shall be considered unless there is deposited

with the District as a down-payment a certified check or cashier's check for an amount equal to at least two per centum of the par amount of general obligation bonds bid for, and the Mayor shall reserve the right to reject any and all bids.

AUTHORITY TO CREATE SECURITY INTERESTS IN DISTRICT REVENUES

SEC. 467. [D.C. Official Code § 1-204.67]. (a) IN GENERAL. -- An act of the Council authorizing the issuance of general obligation bonds or notes under section 461(a), section 471(a), section 472(a), or section 475(a) [D.C. Official Code § 1-204.61(a), § 1-204.71(a), § 1-204.72(a), or § 1-204.75(a)] may create a security interest in any District revenues as additional security for the payment of the bonds or notes authorized by such act.

(b) CONTENTS OF ACTS. -- Any such act creating a security interest in District revenues may contain provisions (which may be part of the contract with the holders of such bonds or notes):

(1) Describing the particular District revenues which are subject to such security interest;

(2) Creating a reasonably required debt service reserve fund or any other special fund;

(3) Authorizing the Mayor of the District to execute a trust indenture securing the bonds or notes;

(4) Vesting in the trustee under such a trust indenture such properties, rights, powers, and duties in trust as may be necessary, convenient, or desirable;

(5) Authorizing the Mayor of the District to enter into and amend agreements concerning:

(A) The custody, collection, use, disposition, security, investment, and payment of the proceeds of the bonds or notes and the District revenues which are subject to such security interest; and

(B) The doing of any act (or the refraining from doing any act) that the District would have the right to do in the absence of such an agreement;

(6) Prescribing the remedies of the holders of the bonds in the event of a default; and

(7) Authorizing the Mayor of the District to take any other actions in connection with the issuance, sale, delivery, security, and payment of the bonds or notes.

(c) TIMING AND PERFECTION OF SECURITY INTERESTS. -- Notwithstanding article 9 of title 28 of the District of Columbia [Official] Code [D.C. Official Code § 28:9-101 *et seq*.], any security interest in District revenues created under subsection (a) [of this section] shall be valid, binding, and perfected from the time such security interest is created, with or without the physical delivery of any funds or any other property and with or without any further action. Such security interest shall be valid, binding, and perfected whether or not any statement, document, or instrument relating to such security interest is recorded or filed. The lien created by such security interest is valid, binding, and perfected with respect to any individual or legal entity having claims against the District, whether or not such individual or legal entity has notice of such lien.

(d) OBLIGATIONS AND EXPENDITURES NOT SUBJECT TO APPROPRIATION. -- Section 446(c) [D.C. Official Code § 1-204.46(c)] shall not apply to any obligation or

expenditure of any District revenues to secure any general obligation bond or note under subsection (a) [of this section].

Subpart 2 -- Short-Term Borrowing

BORROWING TO MEET APPROPRIATIONS

SEC. 471. [D.C. Official Code § 1-204.71]. (a) In the absence of unappropriated revenues available to meet appropriations made pursuant to section 446 [D.C. Official Code § 1-204.46], the Council may by act authorize the issuance of general obligation notes. The total amount of all such general obligation notes originally issued during a fiscal year shall not exceed 2% of the total appropriations for the District for such fiscal year.

(b) Any general obligation note issued under subsection (a) [of this section], as authorized by an act of the Council, may be renewed. Any such note, including any renewal of such note, shall be due and payable not later than the last day of the fiscal year occurring immediately after the fiscal year during which the act authorizing the original issuance of such note takes effect.

(c) Section 446(c) [D.C. Official Code § 1-204.46(c)] shall not apply to any amount obligated or expended by the District for the payment of the principal of, interest on, or redemption premium for any general obligation note issued under subsection (a) [of this section].

BORROWING IN ANTICIPATION OF REVENUES

SEC. 472. [D.C. Official Code § 1-204.72] (a) IN GENERAL. -- In anticipation of the collection or receipt of revenues for a fiscal year, the Council may by act authorize the issuance of general obligation notes for such fiscal year, to be known as revenue anticipation notes.

(b) LIMIT ON AGGREGATE NOTES OUTSTANDING. -- The total amount of all revenue anticipation notes issued under subsection (a) [of this section] outstanding at any time during a fiscal year shall not exceed 20 percent of the total anticipated revenue of the District for such fiscal year, as certified by the Mayor under this subsection. The Mayor shall certify, as of a date which occurs not more than 15 days before each original issuance of such revenue anticipation notes, the total anticipated revenue of the District for such fiscal year.

(c) PERMITTED OUTSTANDING DURATION. -- Any revenue anticipation note issued under subsection (a) [of this section] may be renewed. Any such note, including any renewal of such note, shall be due and payable not later than the last day of the fiscal year during which the note was originally issued.

(d) EFFECTIVE DATE OF AUTHORIZATION ACTS; PAYMENTS NOT SUBJECT TO APPROPRIATION. --

(1) EFFECTIVE DATE. -- Notwithstanding section 602(c)(1) [D.C. Official Code § 1-206.02(c)(1)], any act of the Council authorizing the issuance of revenue anticipation notes under subsection (a) [of this section] shall take effect --

(A) if such act is enacted during a control year (as defined in section 305(4) of the District of Columbia Financial Responsibility and Management Assistance Act of 1995) [D.C. Official Code § 47-393(4)], on the date of approval by the District of Columbia Financial Responsibility and Management Assistance Authority; or

(B) if such act is enacted during any other year, on the date of enactment of such act.

(2) PAYMENTS NOT SUBJECT TO APPROPRIATION. -- Section 446(c) [D.C. Official Code § 1-204.46(c)] shall not apply to any amount obligated or expended by the District for the payment of the principal of, interest on, or redemption premium for any revenue anticipation note issued under subsection (a) [of this section].

NOTES REDEEMABLE PRIOR TO MATURITY

SEC. 473. [D.C. Official Code § 1-204.73] No notes issued pursuant to this part shall be made payable on demand, but any note may be made subject to redemption prior to maturity on such notice and at such time as may be stated in the note.

SALES OF NOTES

SEC. 474. [D.C. Official Code § 1-204.74] All notes issued pursuant to this part may be sold at not less than par and accrued interest at private sale without previous advertising.

BOND ANTICIPATION NOTES

SEC. 475. [D.C. Official Code § 1-204.75] (a) AUTHORIZING ISSUANCE. --

(1) IN GENERAL. -- In anticipation of the issuance of general obligation bonds, the Council may by act authorize the issuance of general obligation notes to be known as bond anticipation notes in accordance with this section.

(2) PURPOSES; PERMITTING ISSUANCE OF GENERAL OBLIGATION BONDS TO COVER INDEBTEDNESS .-- The proceeds of bond anticipation notes issued under this section shall be used for the purposes for which general obligation bonds may be issued under section 461 [D.C. Official Code § § 1-204.61], and such notes shall constitute indebtedness which may be refunded through the issuance of general obligation bonds under such section.

(b) MAXIMUM ANNUAL DEBT SERVICE AMOUNT. -- The Act of the Council authorizing the issuance of bond anticipation notes shall set forth for the bonds anticipated by such notes an estimated maximum annual debt service amount based on an estimated schedule of annual principal payments and an estimated schedule of annual interest payments (based on an estimated maximum average annual interest rate for such bonds over a period of 30 years from the earlier of the date of issuance of the notes or the date of original issuance of prior notes in anticipation of those bonds). Such estimated maximum annual debt service amount as estimated at the time of issuance of the original bond anticipation notes shall be included in the calculation required by section 603(b) [D.C. Official Code § § 1-206.03(b)] while such notes or renewal notes are outstanding.

(c) PERMITTED OUTSTANDING DURATION. -- Any bond anticipation note, including any renewal note, shall be due and payable not later than the last day of the third fiscal year following the fiscal year during which the note was originally issued.

(d) GENERAL AUTHORITY OF COUNCIL. -- If provided for in [an] Act of the Council authorizing such an issue of bond anticipation notes, bond anticipation notes may be

issued in succession, in such amounts, at such times, and bearing interest rates within the permitted maximum authorized by such Act.

(e) EFFECTIVE DATE OF AUTHORIZATION ACTS; PAYMENTS NOT SUBJECT TO APPROPRIATION. --

(1) EFFECTIVE DATE. -- Notwithstanding section 602(c)(1) [D.C. Official Code § 1-206.02(c)(1)], any act of the Council authorizing the renewal of bond anticipation notes under subsection (c) [of this section] or the issuance of general obligation bonds under section 461(a) [D.C. Official Code § § 1-204.61(a)] to refund any bond anticipation notes shall take effect --

(A) if such act is enacted during a control year (as defined in section 305(4) of the District of Columbia Financial Responsibility and Management Assistance Act of 1995 [D.C. Official Code § 47-393(4)]), on the date of approval by the District of Columbia Financial Responsibility and Management Assistance Authority; or

(B) if such act is enacted during any other year, on the date of enactment of such act.

(2) PAYMENT NOT SUBJECT TO APPROPRIATION. -- Section 446(c) [D.C. Official Code § 1-204.46(c)] shall not apply to any amount obligated or expended by the District for the payment of the principal of, interest on, or redemption premium for any bond anticipation note issued under this section.

Subpart 3 -- Payment of Bonds and Notes

SPECIAL TAX

SEC. 481. [D.C. Official Code § 1-204.81] (a) Any act of the Council authorizing the issuance of general obligation bonds under section 461(a) [D.C. Official Code § 1-204.61(a)] shall provide for the annual levy of a special tax or charge, if the Council determines that such tax or charge is necessary. Such tax or charge shall be levied, without limitation as to rate or amount, in amounts which together with other District revenues available and applicable will be sufficient to pay the principal of and interest on such general obligation bonds as they become due and payable. Such tax or charge shall be levied and collected at the same time and in the same manner as other District taxes are levied and collected, and when collected shall be set aside in a separate debt service fund and irrevocably dedicated to the payment of such principal and interest.

(b) The Comptroller General of the United States shall make annual audits of the amounts set aside and deposited in each debt service fund pursuant to subsection (a) [of this section].

FULL FAITH AND CREDIT OF THE DISTRICT

SEC. 482. [D.C. Official Code § § 1-204.82] The full faith and credit of the District is pledged for the payment of the principal of and interest on any general obligation bond or note issued under section 461(a), section 471(a), or section 472(a) [D.C. Official Code § 1-204.61(a), § 1-204.71(a), or § 1-204.72(a)], whether or not such pledge is stated in such bond or note or in the act authorizing the issuance of such bond or note.

PAYMENT OF THE GENERAL OBLIGATION BONDS AND NOTES

SEC. 483. [D.C. Official Code § 1-204.83] (a) The Council shall provide in each annual budget for the District of Columbia government for a fiscal year adopted by the Council pursuant to section 446 [D.C. Official Code § 1-204.46] sufficient funds to pay the principal of and interest on all general obligation bonds or notes issued under section 461(a), section 471(a), or section 472(a) [D.C. Official Code § 1-204.61(a), § 1-204.71(a), or § 1-204.72(a)] becoming due and payable during such fiscal year.

(b) The Mayor shall insure that the principal of and interest on all general obligation bonds and notes issued under section 461(a), section 471(a), or section 472(a) [D.C. Official Code § 1-204.61(a), § 1-204.71(a), or § 1-204.72(a) are paid when due, including by paying such principal and interest from funds not otherwise legally committed.

(c) [Repealed.]

(d) Section 446(c) [D.C. Official Code § 1-204.46(c)] shall not apply to:

(1) Any amount set aside in a debt service fund under section 481(a) [D.C. Official Code § 1-204.81(a)];

(2) Any amount obligated or expended for the payment of the principal of, interest on, or redemption premium for any general obligation bond or note issued under section 461(a), section 471(a), or section 472(a) [D.C. Official Code § 1-204.61(a), § 1-204.71(a), or § 1-204.72(a)];

(3) Any amount obligated or expended as provided by the Council in any annual budget for the District of Columbia government pursuant to subsection (a) [of this section] or as provided by any amendment or supplement to such budget; or

(4) Any amount obligated or expended by the Mayor pursuant to subsection (b) or (c) [of this section].

Subpart 4 -- Full Faith and Credit of the Unites States

FULL FAITH AND CREDIT OF UNITED STATES NOT PLEDGED

SEC. 484. [D.C. Official Code § 1-204.84] The full faith and credit of the United States is not pledged for the payment of any principal of or interest on any bond, note, or other obligation issued by the District under this part. The United States is not responsible or liable for the payment of any principal of or interest on any bond, note, or other obligation issued by the District under this part.

Subpart 5 -- Tax Exemptions; Legal Investment; Water Pollution; Reservoirs; Metro Contributions; and Revenue Bonds

TAX EXEMPTION

SEC. 485. [D.C. Official Code § 1-204.85] Bonds and notes issued by the Council pursuant to this title and the interest thereon shall be exempt from all federal and District taxation except estate, inheritance, and gift taxes.

LEGAL INVESTMENT

SEC. 486. [D.C. Official Code § § 1-204.86] Notwithstanding any restriction on the investment of funds by fiduciaries contained in any other law, all domestic insurance companies, domestic insurance associations, executors, administrators, guardians, trustees, and other fiduciaries within the District may legally invest any sinking funds, moneys, trust funds, or other funds belonging to them or under or within their control in any bonds issued pursuant to this title, it being the purpose of this section to authorize the investment in such bonds or notes of all sinking, insurance, retirement, compensation, pension, and trust funds. National banking associations are authorized to deal in, underwrite, purchase and sell, for their own accounts or for the accounts of customers, bonds and notes issued by the Council to the same extent as national banking associations are authorized by paragraph seven of section 5136 of the Revised Statutes (12 U.S.C. 24), to deal in, underwrite, purchase and sell obligations of the United States, states, or political subdivisions thereof. All federal building and loan associations and federal savings and loan associations; and banks, trust companies, building and loan associations, and savings and loan associations, domiciled in the District, may purchase, sell, underwrite, and deal in, for their own account or for the account of others, all bonds or notes issued pursuant to this title. Nothing contained in this section shall be construed as relieving any person, firm, association, or corporation from any duty of exercising due and reasonable care in selecting securities for purchase or investment.

WATER POLLUTION

SEC. 487. [D.C. Official Code §§ 1-204.87] (a) The Mayor shall annually estimate the amount of the District's principal and interest expense which is required to service District obligations attributable to the Maryland and Virginia pro rata share of District sanitary sewage water works and other water pollution projects which provide service to the local jurisdictions in those states. Such amounts as determined by the Mayor pursuant to the agreements described in subsection (b) [of this section] shall be used to exclude the Maryland and Virginia share of pollution projects cost from the limitation on the District's capital project obligations as provided in section 603(b) [D.C. Official Code § 1-206.03(b)].

(b) The Mayor shall enter into agreements with the states and local jurisdictions concerned for annual payments to the District of rates and charges for waste treatment services in accordance with the use and benefits made and derived from the operation of the said waste treatment facilities. Each such agreement shall require that the estimated amount of such rates and charges will be paid in advance, subject to adjustment after each year. Such rates and charges shall be sufficient to cover the cost of construction, interest on capital, operation and maintenance, and the necessary replacement of equipment during the useful life of the facility.

COST OF RESERVOIRS ON POTOMAC RIVER

SEC. 488. [D.C. Official Code § 1-204.88] (a) The Mayor is authorized to contract with the United States, any state in the Potomac River basin, any agency or political subdivision thereof, and any other competent state or local authority, with respect to the payment by the

District to the United States, either directly or indirectly, of the District's equitable share of any part or parts of the non-federal portion of the costs of any reservoirs authorized by the Congress for construction on the Potomac River or any of its tributaries. Every such contract may contain such provisions as the Mayor may deem necessary or appropriate.

(b) Unless hereafter otherwise provided by legislation enacted by the Council, all payments made by the District and all moneys received by the District pursuant to any contract made under the authority of this Act shall be paid from, or be deposited in, a fund designated by the Mayor. Charges for water delivered from the District water system for use outside the District may be adjusted to reflect the portions of any payments made by the District under contracts authorized by this Act which are equitably attributable to such use outside the District.

(c) There are hereby authorized to be appropriated such sums as may be necessary to carry out the purposes of this section.

DISTRICT'S CONTRIBUTIONS TO THE WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY

SEC. 489. [D.C. Official Code § 1-204.89] Notwithstanding any provision of law to the contrary, beginning with fiscal year 1976 the District share of the cost of the Adopted Regional System described in this National Capital Transportation Act of 1969 (83 Stat. 320), may be payable from the proceeds of the sale of District general obligation bonds issued pursuant to this title.

REVENUE BONDS AND OTHER OBLIGATIONS

SEC. 490 [D.C. Official Code § 1-204.90] (a)(1) Subject to paragraph (2) [of this subsection], the Council may by act or by resolution authorize the issuance of taxable and tax-exempt revenue bonds, notes, or other obligations to borrow money to finance, refinance, or reimburse and to assist in the financing, refinancing, or reimbursing of or for capital projects and other undertakings by the District or by any District instrumentality, or on behalf of any qualified applicant, including capital projects or undertakings in the areas of housing; health facilities; transit and utility facilities; manufacturing; sports, convention, and entertainment facilities; recreation, tourism and hospitality facilities; facilities to house and equip operations of the District government or its instrumentalities; public infrastructure development and redevelopment; elementary, secondary and college and university facilities; educational programs which provide loans for the payment of educational expenses for or on behalf of students; facilities used to house and equip operations related to the study, development, application, or production of innovative commercial or industrial technologies and social services; water and sewer facilities (as defined in paragraph (5) [of this subsection]); pollution control facilities; solid and hazardous waste disposal facilities; parking facilities, industrial and commercial development; authorized capital expenditures of the District; and any other property or project that will, as determined by the Council, contribute to the health, education, safety, or welfare, of, or the creation or preservation of jobs for, residents of the District, or to economic development of the District, and any facilities or property, real or personal, used in connection with or supplementing any of the foregoing; lease-purchase financing of any of the foregoing facilities or property; and any costs related to the issuance, carrying, security, liquidity or credit

enhancement of or for revenue bonds, notes, or other obligations, including, capitalized interest and reserves, and the costs of bond insurance, letters of credit, and guaranteed investment, forward purchase, remarketing, auction, and swap agreements. Any such financing, refinancing, or reimbursement may be effected by loans made directly or indirectly to any individual or legal entity, by the purchase of any mortgage, note, or other security, or by the purchase, lease, or sale of any property.

(2) Any revenue bond, note, or other obligation issued under paragraph (1) [of this subsection] shall be a special obligation of the District and shall be a negotiable instrument, whether or not such revenue bond, note, or other obligation is a security as defined in section 28:8-102(1)(a) of title 28 of the District of Columbia [Official] Code [D.C. Official Code § 28:8-102(1)(a)].

(3) Any revenue bond, note, or other obligation issued under paragraph (1) [of this subsection] shall be paid and secured (as to principal, interest, and any premium) as provided by the act or resolution of the Council authorizing the issuance of such revenue bond, note, or other obligation. Any act or resolution of the Council, or any delegation of Council authority under subsection (a)(6) [of this section], authorizing the issuance of revenue bonds, notes, or other obligations may provide for (A) the payment of such revenue bonds, notes, or other obligations from any available revenues, assets, property (including water and sewer enterprise fund revenues, assets, or other property in the case of bonds, notes, or obligations issued with respect to water and sewer facilities), and (B) the securing of such revenue bond, note, or other obligation by the mortgage of real property or the creation of a security interest in available revenues, assets, or other property (including water and sewer enterprise fund revenues, assets, or other property in the case of bonds, notes, or obligations issued with respect to water and sewer facilities).

(4)(A) In authorizing the issuance of any revenue bond, note, or other obligation under paragraph (1) [of this subsection], the Council may enter into, or authorize the Mayor to enter into, any agreement concerning the acquisition, use, or disposition of any available revenues, assets, or property. Any such agreement may create a security interest in any available revenues, assets, or property, may provide for the custody, collection, security, investment, and payment of any available revenues (including any funds held in trust) for the payment of such revenue bond, note, or other obligation, may mortgage any property, may provide for the acquisition, construction, maintenance, and disposition of the undertaking financed or refinanced using the proceeds of such revenue bond, note, or other obligation, and may provide for the doing of any act (or the refraining from doing of any act) which the District has the right to do in the absence of such agreement. Any such agreement may be assigned for the benefit of, or made a part of any contract with, any holder of such revenue bond, note, or other obligation issued under paragraph (1) [of this subsection].

(B) Notwithstanding article 9 of title 28 of the District of Columbia [Official] Code, any security interest created under subparagraph (A) [of this paragraph] shall be valid, binding, and perfected from the time such security interest is created, with or without the physical delivery of any funds or any other property and with or without any further action. Such security interest shall be valid, binding, and perfected whether or not any statement, document, or instrument relating to such security interest is recorded or filed. The lien created by such security interest is valid, binding, and perfected with respect to any individual or legal entity having claims against the District, whether or not such individual or legal entity has notice of

such lien.

(C) Any funds of the District held for the payment or security of any revenue bond, note, or other obligation issued under paragraph (1) [of this subsection], whether or not such funds are held in trust, may be secured in the manner agreed to by the District and any depository of such funds. Any depository of such funds may give security for the deposit of such funds.

(5) In paragraph (1) [of this subsection], the term "water and sewer facilities" means facilities for the obtaining, treatment, storage, and distribution of water, the collection, storage, treatment, and transportation of wastewater, storm drainage, and the disposal of liquids and solids resulting from treatment.

(6)(A) The Council may by act delegate to any District instrumentality the authority of the Council under subsection (a)(1) [of this section] to issue taxable or tax-exempt revenue bonds, notes, or other obligations to borrow money for the purposes specified in this subsection. For purposes of this paragraph, the Council shall specify for what undertakings revenue bonds, notes, or other obligations may be issued under each delegation made pursuant to this paragraph. Any District instrumentality may exercise the authority and the powers incident thereto delegated to it by the Council as described in the first sentence of this paragraph only in accordance with this paragraph and shall be consistent with this paragraph and the terms of the delegation.

(B) Revenue bonds, notes, or other obligations issued by a District instrumentality under a delegation of authority described in subparagraph (A) [of this paragraph] shall be issued by resolution of that instrumentality, and any such resolution shall not be considered to be an act of the Council.

(C) Nothing in this paragraph shall be construed as restricting, impairing, or superseding the authority otherwise vested by law in any District instrumentality.

(b) No property owned by the United States may be mortgaged or made subject to any security interest to secure any revenue bond, note, or other obligation issued under subsection (a)(1) [of this section].

(c) Any and all such revenue bonds, notes, or other obligations issued under subsection (a)(1) [of this section] shall not be general obligations of the District and shall not be a pledge of or involve the faith and credit or the taxing power of the District (other than with respect to any dedicated taxes) and shall not constitute a debt of the District, and shall not constitute lending of the public credit for private undertakings for purposes of section 602(a)(2) [D.C. Official Code § 1-206.02(a)(2)].

(d) Any and all such bonds, notes, or other obligations shall be issued pursuant to an act of the Council without the necessity of submitting the question of such issuance to the registered qualified electors of the District for approval or disapproval.

(e) Any act of the Council authorizing the issuance of revenue bonds, notes, or other obligations under subsection (a)(1) [of this section] may --

(1) Briefly describe the purpose for which such bonds, notes, or other obligations are to be issued;

(2) Identify the act authorizing such purpose;

(3) Prescribe the form, terms, provisions, manner, and method of issuing and selling (including sale by negotiation or by competitive bid) such bonds, notes, or other obligations;

(4) Provide for the rights and remedies of the holders of such bonds, notes, or other obligations upon default;

(5) Prescribe any other details with respect to the issuance, sale, or securing of such bonds, notes, or other obligations; and

(6) Authorize the Mayor to take any actions in connection with the issuance, sale, delivery, security, and payment of such bonds, notes, or other obligations, including the prescribing of any terms or conditions not contained in such act of the Council.

(f) Section 446(c) [D.C. Official Code § 1-204.46(c)] shall not apply to --

(1) Any amount (including the amount of any accrued interest or premium) obligated or expended from the proceeds of the sale of any revenue bond, note, or other obligation issued under subsection (a)(1) [of this section];

(2) Any amount obligated or expended for the payment of the principal of, interest on, or any premium for any revenue bond, note, or other obligation issued under subsection (a)(1) [of this section];

(3) Any amount obligated or expended pursuant to provisions made to secure any revenue bond, note, or other obligation issued under subsection (a)(1) [of this section]; and

(4) Any amount obligated or expended pursuant to commitments made in connection with the issuance of revenue bonds, notes, or other obligations for repair, maintenance, and capital improvements relating to undertakings financed through any revenue bond, note, or other obligation issued under subsection (a)(1) [of this section].

(g)(1) The Council may delegate to any housing finance agency established by it (whether established before or after April 12, 1980) the authority of the Council under subsection (a) [of this section] to issue revenue bonds, notes, and other obligations to borrow money to finance or assist in the financing of undertakings in the area of primarily low- and moderate-income housing. The Council shall define for the purposes of the preceding sentence what undertakings shall constitute undertakings in the area of primarily low- and moderate-income housing. Any such housing finance agency may exercise authority delegated to it by the Council as described in the first sentence of this paragraph (whether such delegation is made before or after April 12, 1980) only in accordance with this subsection.

(2) Revenue bonds, notes, and other obligations issued by a housing finance agency of the District under a delegation of authority described in paragraph (1) [of this subsection] shall be issued by resolution of the agency, and any such resolution shall not be considered to be an act of the Council.

(3) Section 446(c) [D.C. Official Code § 1-204.46(c)] shall not apply to --

(A) Any amount (including the amount of any accrued interest or premium) obligated or expended from the proceeds of the sale of any revenue bond, note, or other obligation issued under subsection (g)(1) [paragraph (1) of this subsection];

(B) Any amount obligated or expended for the payment of the principal of, interest on, or any premium for any revenue bond, note, or other obligation issued under subsection (g)(1) [paragraph (1) of this subsection]; and

(C) Any amount obligated or expended to secure any revenue bond, note, or other obligation issued under subsection (g)(1) [paragraph (1) of this subsection].

(h)(1) The Council may delegate to the District of Columbia Water and Sewer Authority established pursuant to the Water and Sewer Authority Establishment and Department of Public Works Reorganization Act of 1996 [D.C. Official Code § 34-2201.01 *et seq*.] the authority of the

Council under subsection (a) [of this section] to issue revenue bonds, notes, and other obligations to borrow money to finance or assist in the financing or refinancing of undertakings in the area of utilities facilities, pollution control facilities, and water and sewer facilities (as defined in subsection (a)(5) [of this section]). The Authority may exercise authority delegated to it by the Council as described in the first sentence of this paragraph (whether such delegation is made before or after the date of enactment of this subsection [August 6, 1996]) only in accordance with this subsection.

(2) Revenue bonds, notes, and other obligations issued by the District of Columbia Water and Sewer Authority under a delegation of authority described in paragraph (1) [of this subsection] shall be issued by resolution of the Authority, and any such resolution shall not be considered to be an act of the Council.

(3) Section 446(c) [D.C. Official Code § 1-204.46(c)] shall not apply to --

(A) Any amount (including the amount of any accrued interest or premium) obligated or expended from the proceeds of the sale of any revenue bond, note, or other obligation issued pursuant to this subsection;

(B) Any amount obligated or expended for the payment of the principal of interest on, or any premium for any revenue bond, note, or other obligation issued pursuant to this subsection;

(C) Any amount obligate or expended to secure any revenue bond, not, or other obligation issued pursuant to this subsection; or

(D) Any amount obligated or expended for repair, maintenance, and capital improvements to facilities financed pursuant to this subsection.

(i)(1) The Council may delegate to the District of Columbia Tobacco Settlement Financing Corporation (hereafter in this subsection referred to as the "Corporation") established pursuant to the Tobacco Settlement Financing Act of 2000 [D.C. Official Code §§ 7-1831.01 - 7-1831.06] the authority of the Council under subsection (a) to issue revenue bonds, notes, and other obligations which are used to borrow money to finance or assist in the financing or refinancing of capital projects and other undertakings of the District of Columbia and which are payable solely from and secured by payments under the Master Tobacco Settlement Agreement. The Corporation may exercise authority delegated to it by the Council as described in the first sentence of this paragraph (whether such delegation is made before or after the date of the enactment of this subsection) only in accordance with this subsection and the provisions of the Tobacco Settlement Financing Act of 2000.

(2) Revenue bonds, notes, and other obligations issued by the Corporation under a delegation of authority described in paragraph (1) shall be issued by resolution of the Corporation, and any such resolution shall not be considered to be an act of the Council.

(3) Section 446(c) [D.C. Official Code § 1-204.46(c)] shall not apply to --

(A) any amount (including the amount of any accrued interest or premium) obligated or expended from the proceeds of the sale of any revenue bond, note, or other obligation issued pursuant to this subsection;

(B) any amount obligated or expended for the payment of the principal of, interest on, or any premium for any revenue bond, note, or other obligation issued pursuant to this subsection;

(C) any amount obligated or expended to secure any revenue bond, note, or other obligation issued pursuant to this subsection; or

(D) any amount obligated or expended for repair, maintenance, and capital improvements to facilities financed pursuant to this subsection.

(4) In this subsection, the term "Master Tobacco Settlement Agreement" means the settlement agreement (and related documents), as may be amended from time to time, entered into on November 23, 1998, by the District of Columbia and leading United States tobacco product manufacturers.

(j) The revenue bonds, notes, or other obligations issued under subsection (a)(1) [of this section] are not general obligation bonds of the District government and shall not be included in determining the aggregate amount of all outstanding obligations subject to the limitation specified in section 603(b) [D.C. Official Code § 1-206.03(b)].

(k) The issuance of revenue bonds, notes, or other obligations by the District where the ultimate obligation to repay such revenue bonds, notes, or other obligations is that of one or more nongovernmental persons or entities may be authorized by resolution of the Council. The issuance of all other revenue bonds, notes, or other obligations by the District shall be authorized by act of the Council.

(l) During any control period (as defined in section 209 of the District of Columbia Financial Responsibility and Management Assistance Act of 1995 [D.C. Official Code § 47-392.09]), any act or resolution of the Council authorizing the issuance of revenue bonds, notes, or other obligations under subsection (a)(1) [of this section] shall be submitted to the District of Columbia Financial Responsibility and Management Assistance Authority for certification in accordance with section 204 of that Act [D.C. Official Code § 47-392.04]. Any certification issued by the Authority during a control period shall be effective for purposes of this subsection for revenue bonds, notes, or other obligations issued pursuant to such act or resolution of the Council whether the revenue bonds, notes, or other obligations are issued during or subsequent to that control period.

(m) The following provisions of law shall not apply with respect to property acquired, held, and disposed of by the District in accordance with the terms of any lease-purchase financing authorized pursuant to subsection (a)(1) [of this section]:

(1) The Act entitled "An Act authorizing the sale of certain real estate in the District of Columbia no longer required for public purposes", approved August 5, 1939 (53 Stat. 1211; D.C. Code sec. 9-401 et seq.) [D.C. Official Code § 10-801 *et seq*.].

(2) Subchapter III of chapter 13 of title 16, District of Columbia [Official] Code.

(3) Any other provision of District of Columbia law that prohibits or restricts lease-purchase financing.

(n) For purposes of this section, the following definitions shall apply:

(1) The term "revenue bonds, notes, or other obligations" means special fund bonds, notes, or other obligations (including refunding bonds, notes, or other obligations) used to borrow money to finance, assist in financing, refinance, or repay, restore or reimburse moneys used for purposes referred to in subsection (a)(1) [of this section] the principal of and interest, if any, on which are to be paid and secured in the manner described in this section and which are special obligations and to which the full faith and credit of the District of Columbia is not pledged.

(2) The term "District instrumentality" means any agency or instrumentality (including an independent agency or instrumentality), authority, commission, board, department, division, office, body, or officer of the District of Columbia government duly established by an

act of the Council or by the laws of the United States, whether established before or after the date of enactment of the District of Columbia Bond Financing Improvements Act of 1997 [August 5, 1997].

(3) The term "available revenues" means gross revenues and receipts, other than general fund tax receipts, lawfully available for the purpose and not otherwise exclusively committed to another purpose, including enterprise funds, grants, subsidies, contributions, fees, dedicated taxes and fees, investment income and proceeds of revenue bonds, notes, or other obligations issued under this section.

(4) The term "enterprise fund" means a fund or account for operations that are financed or operated in a manner similar to private business enterprises, or established so that separate determinations may more readily be made periodically of revenues earned, expenses incurred, or net income for management control, accountability, capital maintenance, public policy, or other purposes.

(5) The term "dedicated taxes and fees" means taxes and surtaxes, portions thereof, tax increments, or payments in lieu of taxes, and fees that are dedicated pursuant to law to the payment of the debt service on revenue bonds, notes, or other obligations authorized under this section, the provision and maintenance of reserves for that purpose, or the provision of working capital for or the maintenance, repair, reconstruction or improvement of the undertaking to which the revenue bonds, notes, or other obligations relate.

(6) The term "tax increments" means taxes, other than the special tax provided for in section 481 [D.C. Official Code § 1-204.81] and pledged to the payment of general obligation indebtedness of the District, allocable to the increase in taxable value of real property or the increase in sales tax receipts, each from a certain date or dates, in prescribed areas, to the extent that such increases are not otherwise exclusively committed to another purpose and as further provided for pursuant to an act of the Council.

PART F -- INDEPENDENT AGENCIES AND AUTHORITIES

BOARD OF ELECTIONS

SEC. 491. [Amendment to D.C. Official Code § 1-1001.03] Section 3 of the District of Columbia Elections Act (D.C. Official Code § 1-1001.03) is amended to read as follows:

"SEC. 3. (a) There is created a District of Columbia Board of Elections (hereafter in this section referred to as the 'Board'), to be composed of three members, no more than two of whom shall be of the same political party, appointed by the Mayor, with the advice and consent of the Council. Members shall be appointed to serve for terms of three years, except of the members first appointed under this Act. One member shall be appointed to serve for a one-year term, one member shall be appointed to serve for a two-year term, and one member shall be appointed to serve for a three-year term, as designated by the Mayor.

"(b) Any person appointed to fill a vacancy on the Board shall be appointed only for the unexpired term of the member whose vacancy he is filling.

"(c) A member may be reappointed, and, if not reappointed, the member shall serve until his successor has been appointed and qualifies.

"(d) The Mayor shall, from time to time, designate the Chairman of the Board."[.]

ZONING COMMISSION

SEC. 492. (a) [Amendment to § 1 of the Act of March 1, 1920 (D.C. Official Code § 6-621.01)].

(b)(1) [Amendment to § 2 of the Act of June 20, 1938 (D.C. Official Code § 6-641.02)].

(2) [Amendment to § 5 of the Act of June 20, 1938 (D.C. Official Code § 6-641.05)].

PUBLIC SERVICE COMMISSION

SEC. 493. (a) [D.C. Official Code § 1-204.93] There shall be a Public Service Commission whose function shall be to insure that every public utility doing business within the District of Columbia is required to furnish service and facilities reasonably safe and adequate and in all respects just and reasonable. The charge made by any such public utility for any facility or services furnished, or rendered, or to be furnished or rendered, shall be reasonable, just, and nondiscriminatory. Every unjust or unreasonable or discriminating charge for such facility or service is prohibited and is hereby declared unlawful.

(b) [Amendment to par. 97(a) of § 8 of the Act of March 4, 2913 (D.C. Official Code § 34-801)].

ARMORY BOARD

SEC. 494. [Amendment to § 2 of the Act of June 4, 1948 (D.C. Official Code § 3-302)].

BOARD OF EDUCATION

SEC. 495. [D.C. Official Code § 1-204.95] [Repealed.].

INDEPENDENT FINANCIAL MANAGEMENT, PERSONNEL,
AND PROCUREMENT AUTHORITY OF
DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY

SEC. 496. (a) FINANCIAL MANAGEMENT, PERSONNEL, AND PROCUREMENT AUTHORITY. – Notwithstanding any other provision of this Act [this chapter] or any District of Columbia law, the financial management, personnel, and procurement functions and responsibilities of the District of Columbia Water and Sewer Authority shall be established exclusively pursuant to rules and regulations adopted by its Board of Directors. Nothing in the previous sentence may be construed to affect the application to the District of Columbia Water and Sewer Authority of sections 445A, 451(d), 453(c), or 490(g)[490(h)] [§ 1-204.45a, § 1-204.51(d), § 1-204.53(c), or § 1-204.90(g) [§ 1-204.90(h)]].

(b) CONSISTENCY WITH EXISTING AUTHORIZING LAW. – The rules and regulations adopted by the Board of Directors of the District of Columbia Water and Sewer Authority to establish the financial management, personnel, and procurement functions and responsibilities of the Authority shall be consistent with the Water and Sewer Authority Establishment and Department of Public Works Reorganization Act of 1996 [D.C. Official Code § 34-2201.01 *passim*], as such Act is in effect as of January 1, 2008.

SEC. ___. -- INITIATIVES, REFERENDUMS, AND RECALLS

Amendment No. 1 -- Initiative and Referendum

Sec. 1. [D.C. Official Code § 1-204.101] Definitions

(a) The term "initiative" means the process by which the electors of the District of Columbia may propose laws (except laws appropriating funds) and present such proposed laws directly to the registered qualified electors of the District of Columbia for their approval or disapproval.

(b) The term "referendum" means the process by which the registered qualified electors of the District of Columbia may suspend acts of the Council of the District of Columbia (except emergency acts, acts levying taxes, or acts appropriating funds for the general operation budget) until such acts have been presented to the registered qualified electors of the District of Columbia for their approval or rejection.

Sec. 2. [D.C. Official Code § 1-204.102] Process

(a) An initiative or referendum may be proposed by the presentation of a petition to the District of Columbia Board of Elections and Ethics [Board of Elections] containing the signatures of registered qualified electors equal in number to five (5) percent of the registered electors in the District of Columbia: PROVIDED, That the total signatures submitted include five (5) percent of the registered electors in each of five (5) or more of the City's Wards. The number of registered electors which is used for computing these requirements shall be according to the latest official count of registered electors by the Board of Elections and Ethics [Board of Elections] which was issued thirty (30) or more days prior to submission of the signatures for the particular initiative or referendum petition.

(b) (1) Upon the presentation of a petition for a referendum to the District of Columbia Board of Elections and Ethics [Board of Elections] as provided in this section, the District of Columbia Board of Elections and Ethics [Board of Elections] shall notify the appropriate custodian of the act of the Council of the District of Columbia (either the President of the United States or the President of the Senate and the Speaker of the House of Representatives) as provided in sections 404 and 446 of the Home Rule Act [D.C. Official Code §§ 1-204.04 and 1-204.46] and the President of the United States or the President of the Senate and the Speaker of the House of Representatives, shall, as is appropriate, return such act or portion of such act to the Chairman of the Council of the District of Columbia. No further action may be taken upon such act or portion of such act until after a referendum election is held.

(2) No act is subject to referendum if it has become law according to the provisions of section 404 of the Home Rule Act [D.C. Official Code § 1-204.04].

Sec. 3. [D.C. Official Code § 1-204.103] [Submission of measure at election] The District of Columbia Board of Elections and Ethics [Board of Elections] shall submit an initiative measure without alteration at the next general, special, or primary election held at least ninety (90) days after the measure is received. The District of Columbia Board of Elections and Ethics [Board of Elections] shall hold an election on a referendum measure within one hundred and

fourteen (114) days of its receipt of a petition as provided in section 2 of this act [D.C. Official Code § 1-204.102]. If a previously scheduled general, primary, or special election will occur between fifty-four (54) and one hundred and fourteen (114) days of its receipt of a petition as provided in section 2 of this act [D.C. Official Code § 1-204.102], the District of Columbia Board of Elections and Ethics [Board of Elections] may present the referendum at that election.

Sec. 4. [D.C. Official Code § 1-204.104] [Rejection of measure] If a majority of the registered qualified electors voting on a referred act vote to disapprove the act, such action shall be deemed a rejection of the act or that portion of the act on the referendum ballot and no action may be taken by the Council of the District of Columbia with regard to the matter presented at referendum for the three hundred sixty-five (365) days following the date of the District of Columbia Board of Elections and Ethics' [Board of Elections'] certification of the vote concerning the referendum.

Sec. 5. [D.C. Official Code § 1-204.105] Approval of measure. If a majority of the registered qualified electors voting in a referendum approve an act or adopt legislation by initiative, then the adopted initiative or the act approved by referendum shall be an act of the Council upon the certification of the vote on such initiative or act by the District of Columbia Board of Elections and Ethics [Board of Elections], and such act shall become law subject to the provisions of section 602 [D.C. Official Code § 1-1-206.02(c)].

Sec. 6. [D.C. Official Code § 1-204.106] [Short title and summary] The District of Columbia Board of Elections and Ethics [Board of Elections] shall be empowered to propose a short title and summary of the initiative and referendum matter which accurately reflects the intent and meaning of the proposed referendum or initiative. Any citizen may petition the Superior Court of the District of Columbia no later than thirty (30) days prior to the election at which the initiative or referendum will be held for a writ in the nature of mandamus to correct any inaccurate short title and summary by the District of Columbia Board of Elections and Ethics [Board of Elections] and to mandate that Board to properly state the summary of the initiative or referendum measure.

Sec. 7. [D.C. Official Code § 1-204.107] [Adoption of acts to carry out subchapter] The Council of the District of Columbia shall adopt such acts as are necessary to carry out the purpose of this subchapter within one hundred eighty (180) days of the effective date of this Amendment [October 27, 1978]. Neither a petition initiating an initiative nor a referendum may be presented to the District of Columbia Board of Elections and Ethics [Board of Elections] prior to October 1, 1978.

CHARTER AMENDMENT NO. 2 -- RECALL OF ELECTED PUBLIC OFFICIALS

Sec. 1. [D.C. Official Code § 1-204.111] [Recall defined] The term "recall" means the process by which the qualified electors of the District of Columbia may call for the holding of an election to remove or retain an elected official of the District of Columbia (except the Delegate to Congress for the District of Columbia) prior to the expiration of his or her term.

Sec. 2. [D.C. Official Code § 1-204.112] [Process]. Any elected officer of the District of Columbia government (except the Delegate to Congress for the District of Columbia) may be recalled by the registered electors of the election ward from which he or she was elected or by the registered electors of the District of Columbia at large in the case of an at-large elected officer, whenever a petition demanding his or her recall, signed by ten (10) percent of the registered electors thereof, is filed with the District of Columbia Board of Elections and Ethics [Board of Elections]. The ten (10) percent shall be computed from the total number of the registered electors from the ward, according to the latest official count of registered electors by the Board of Elections and Ethics [Board of Elections] which was issued thirty (30) or more days prior to submission of the signatures for the particular recall petition. In the case of an at-large elected official, the ten (10) percent shall include ten (10) percent of the registered electors in each of five (5) or more of the City's wards. The District of Columbia Board of Elections and Ethics [Board of Elections] shall hold an election within one hundred fourteen (114) days of its receipt of a petition as provided in section 2 of this act [D.C. Official Code § 1-204.112]. If a previously scheduled general, primary, or special election will occur between fifty-four (54) and one hundred fourteen (114) days of its receipt of a petition as provided in section 2 of this act [D.C. Official Code § 1-204.112], then the District of Columbia Board of Elections and Ethics [Board of Elections] may present the recall question at that election.

Sec. 3. [D.C. Official Code § 1-204.113] [Time limits on initiation of process] The process of recalling an elected official may not be initiated within the first three hundred sixty-five (365) days nor the last three hundred sixty-five (365) days of his or her term of office. Nor may the process be initiated within one year after a recall election has been determined in his or her favor.

Sec. 4. [D.C. Official Code § 1-204.114] [When official removed; filling of vacancies] An elected official is removed from office if a majority of the qualified electors voting in the election vote to remove him or her. The vacancy created by such recall shall be filled in the same manner as other vacancies as provided in sections 401(d) and 421(c)(2) of the Home Rule Act and section 10(a) of the District of Colombia Elections Act [D.C. Official Code §§ 1-204.01(d), 1-204.21(c)(2), and § 1-1001.10(a)].

Sec. 5. [D.C. Official Code § 1-204.115] [Adoption of acts to carry out subchapter] The Council of the District of Columbia shall adopt such acts as are necessary to carry out the purpose of this subchapter within one hundred eighty (180) days of the effective date of this amendment [October 27, 1978]. No petition for recall may be presented to the District of Columbia Board of Elections and Ethics [Board of Elections] prior to October 1, 1978.

TITLE V -- FEDERAL PAYMENT [Repealed]

DUTIES OF THE MAYOR, COUNCIL, AND FEDERAL OFFICE OF MANAGEMENT AND BUDGET

SEC. 501. [Repealed by section 11601(a) of the National Capital Revitalization and Self-Government Improvement Act of 1997, approved August 5, 1997 (P.L. 105-7; 111 Stat. 14)].

SEC. 502. [Repealed by section 11601(a) of the National Capital Revitalization and Self-Government Improvement Act of 1997, approved August 5, 1997 (P.L. 105-7; 111 Stat. 14)].

TITLE VI -- RESERVATION OF CONGRESSIONAL AUTHORITY

RETENTION OF CONSTITUTIONAL AUTHORITY

SEC. 601. [D.C. Official Code § 1-206.01] Notwithstanding any other provision of this Act, the Congress of the United States reserves the right, at any time, to exercise its constitutional authority as legislature for the District, by enacting legislation for the District on any subject, whether within or without the scope of legislative power granted to the Council by this Act, including legislation to amend or repeal any law in force in the District prior to or after enactment of this Act and any act passed by the Council.

LIMITATIONS ON THE COUNCIL

SEC. 602. [D.C. Official Code § 1-1-206.02] (a) The Council shall have no authority to pass any act contrary to the provisions of this Act except as specifically provided in this Act, or to --

(1) impose any tax on property of the United States or any of the several states;

(2) lend the public credit for support of any private undertaking;

(3) enact any act, or enact any act to amend or repeal any Act of Congress, which concerns the functions or property of the United States or which is not restricted in its application exclusively in or to the District;

(4) enact any act, resolution, or rule with respect to any provision of title 11 of the District of Columbia [Official] Code (relating to organization and jurisdiction of the District of Columbia courts);

(5) impose any tax on the whole or any portion of the personal income, either directly or at the source thereof, of any individual not a resident of the District (the terms "individual" and "resident" to be understood for the purposes of this paragraph as they are defined in section 4 of title I of the District of Columbia Income and Franchise Tax Act of 1947[, approved July 16, 1947 (61 Stat. 332; D.C. Official Code § 47-1801.04)]);

(6) enact any act, resolution, or rule which permits the building of any structure within the District of Columbia in excess of the height limitations contained in section 5 of the Act of June 1, 1910 [An Act To regulate the height of buildings in the District of Columbia (36 Stat. 453)] (D.C. Code, sec. 5-405)[D.C. Official Code § 6-601.05], and in effect on the date of enactment of this Act [December 24, 1973];

(7) enact any act, resolution, or regulation with respect to the Commission on Mental Health;

(8) enact any act or regulation relating to the United States District Court for the District of Columbia or any other court of the United States in the District other than the District courts, or relating to the duties or powers of the United States Attorney or the United States Marshal for the District of Columbia;

(9) enact any act, resolution, or rule with respect to any provision of title 23 of the

District of Columbia [Official] Code (relating to criminal procedure), or with respect to any provision of any law codified in title 22 or 24 of the District of Columbia Code (relating to crimes and treatment of prisoners), or with respect to any criminal offense pertaining to articles subject to regulation under chapter 32 of title 22 during the forty-eight full calendar months immediately following the day on which the members of the Council first elected pursuant to this Act take office; or

(10) enact any act, resolution, or rule with respect to the District of Columbia Financial Responsibility and Management Assistance Authority established under section 101(a) of the District of Columbia Financial Responsibility and Management Assistance Act of 1995 [D.C. Official Code § 47-391.01(a)].

(b) Nothing in this Act shall be construed as vesting in the District government any greater authority over the National Zoological Park, the National Guard of the District of Columbia, the Washington Aqueduct, the National Capital Planning Commission, or, except as otherwise specifically provided in this Act, over any federal agency, than was vested in the Commissioner [Mayor] prior to the effective date of title IV [District Charter] of this Act [January 2, 1975].

(c) (1) Except acts of the Council which are submitted to the President in accordance with the Budget and Accounting Act, 1921 [Chapter 11 of Title 31, United States Code], any act which the Council determines, according to section 412(a) [D.C. Official Code § 1-204.12(a)], should take effect immediately because of emergency circumstances, and acts proposing amendments to title IV of this Act [District Charter] and except as provided in section 462(c) and section 472(d)(1) [D.C. Official Code §§ 1-204.62(c) and § 1-204.72(d)(1)], the Chairman of the Council shall transmit to the Speaker of the House of Representatives, and the President of the Senate, a copy of each act passed by the Council and signed by the Mayor, or vetoed by the Mayor and repassed by two-thirds of the Council present and voting, each act passed by the Council and allowed to become effective by the Mayor without his signature, and each initiated act and act subject to referendum which has been ratified by a majority of the registered qualified electors voting on the initiative or referendum. Except as provided in paragraph (2) [of this subsection,] such act shall take effect upon the expiration of the 30-calendar-day period (excluding Saturdays, Sundays, and holidays, and any day on which neither House is in session because of an adjournment sine die, a recess of more than 3 days, or an adjournment of more than three days) beginning on the day such act is transmitted by the Chairman to the Speaker of the House of Representatives and the President of the Senate, or upon the date prescribed by such act, whichever is later, unless during such 30-day period, there has been enacted into law a joint resolution disapproving such act. In any case in which any such joint resolution disapproving such an act has, within such 30-day period, passed both Houses of Congress and has been transmitted to the President, such resolution, upon becoming law, subsequent to the expiration of such 30-day period, shall be deemed to have repealed such act, as of the date such resolution becomes law. The provisions of section 604 [D.C. Official Code § 1-206.04], except subsections (d), (e), and (f) of such section, shall apply with respect to any joint resolution disapproving any act pursuant to this paragraph.

(2) In the case of any such act transmitted by the Chairman with respect to any act codified in title 22, 23, or 24 of the District of Columbia [Official] Code, such act shall take effect at the end of the 60-day period beginning on the day such act is transmitted by the Chairman to the Speaker of the House of Representatives and the President of the Senate unless,

during such 60-day period, there has been enacted into law a joint resolution disapproving such act. In any case in which any such joint resolution disapproving such an act has, within such 60-day period, passed both Houses of Congress and has been transmitted to the President, such resolution, upon becoming law subsequent to the expiration of such 60-day period shall be deemed to have repealed such act, as of the date such resolution becomes law. The provisions of section 604 [D.C. Official Code § 1-206.04], relating to an expedited procedure for consideration of joint resolutions, shall apply to a joint resolution disapproving such act as specified in this paragraph.

(3) The Council shall submit with each Act transmitted under this subsection an estimate of the costs which will be incurred by the District of Columbia as a result of the enactment of the Act in each of the first 4 fiscal years for which the Act is in effect, together with a statement of the basis for such estimate.

BUDGET PROCESS; LIMITATIONS ON BORROWING AND SPENDING

SEC. 603. [D.C. Official Code § 1-206.03] (a) Nothing in this act shall be construed as making any change in existing law, regulation, or basic procedure and practice relating to the respective roles of the Congress, the President, the federal Office of Management and Budget, and the Comptroller General of the United States in the preparation, review, submission, examination, authorization, and appropriation of the total budget of the District of Columbia government.

(b)(1) No general obligation bonds (other than bonds to refund outstanding indebtedness) or Treasury capital project loans shall be issued during any fiscal year in an amount which would cause the amount of principal and interest required to be paid both serially and into a sinking fund in any fiscal year on the aggregate amounts of all outstanding general obligation bonds and such Treasury loans, to exceed 17 percent of the District revenues (less any fees or revenues directed to servicing revenue bonds, any revenues, charges, or fees dedicated for the purposes of water and sewer facilities described in section 490(a) [D.C. Official Code § 1-204.90(a)] (including fees or revenues directed to servicing or securing revenue bonds issued for such purposes), retirement contributions, revenues from retirement systems, and revenues derived from such Treasury loans and the sale of general obligation or revenue bonds) which the Mayor estimates, and the District of Columbia Auditor certifies, will be credited to the District during the fiscal year in which the bonds will be issued. Treasury capital project loans include all borrowings from the United States Treasury, except those funds advanced to the District by the Secretary of the Treasury under the provisions of title VI of the District of Columbia Revenue Act of 1939 [, approved July 26, 1939 (P.L. 76-225; 53 Stat. 1118)].

(2) Obligations incurred pursuant to the authority contained in the District of Columbia Stadium Act of 1957[, approved September 7, 1957] (71 Stat. 619; D.C. Code, title 2, chapter 17, subchapter II) [D.C. Official Code §§ 3-321 through 3-330], obligations incurred by the agencies transferred or established by sections 201 [Amendments] and 202 [D.C. Official Code § 1-202.02], whether incurred before or after such transfer or establishment, and obligations incurred pursuant to general obligation bonds of the District of Columbia issued prior to October 1, 1996, for the financing of Department of Public Works, Water and Sewer Utility Administration capital projects, shall not be included in determining the aggregate amount of all outstanding obligations subject to the limitation specified in the preceding paragraph.

(3) The 17 percent limitation specified in paragraph (1) [of this subsection] shall be calculated in the following manner:

(A) Determine the dollar amount equivalent to 17 percent of the District revenues (less any fees or revenues directed to servicing revenue bonds, any revenues, charges, or fees dedicated for the purposes of water and sewer facilities described in section 490(a) [D.C. Official Code § 1-204.90(a)] (including fees or revenues directed to servicing or securing revenue bonds issued for such purposes), retirement contributions, revenues from retirement systems, and revenues derived from such Treasury loans and the sale of general obligation or revenue bonds) which the Mayor estimates, and the District of Columbia Auditor certifies, will be credited to the District during the fiscal year for which the bonds will be issued;

(B) Determine the actual total amount of principal and interest to be paid in each fiscal year for all outstanding general obligation bonds (less the allocable portion of principal and interest to be paid during the year on general obligation bonds of the District of Columbia issued prior to October 1, 1996, for the financing of Department of Public Works, Water and Sewer Utility Administration capital projects) and such Treasury loans;

(C) Determine the amount of principal and interest to be paid during each fiscal year over the term of the proposed general obligation bond or such Treasury loan to be issued; and

(D) If in any one fiscal year the sum arrived at by adding subparagraphs (B) and (C) [of this paragraph] exceeds the amount determined under subparagraph (A) [of this paragraph], then the proposed general obligation bond or such Treasury loan in subparagraph (C) [of this paragraph] cannot be issued.

(c) Except as provided in subsection (f) [of this section], the Council shall not approve any budget which would result in expenditures being made by the District government, during any fiscal year, in excess of all resources which the Mayor estimates will be available from all funds available to the District for such fiscal year. The budget shall identify any tax increases which shall be required in order to balance the budget as submitted. The Council shall be required to adopt such tax increases to the extent its budget is approved.

(d) Except as provided in subsection (f) [of this section], the Mayor shall not forward to the President for submission to Congress a budget which is not balanced according to the provision of subsection 603(c) [(subsection (c) of this section) -- D.C. Official Code § 1-206.03(c)].

(e) Nothing in this Act shall be construed as affecting the applicability to the District government of the provisions of section 3679 of the Revised Statutes of the United States (31 U.S.C. 1341), the so-called Anti-Deficiency Act [Subchapter II of Chapter 15 of Title 31, United States Code].

(f) In the case of a fiscal year which is a control year (as defined in section 305(4) of the District of Columbia Financial Responsibility and Management Assistance Act of 1995[, approved April 17, 1995 (109 Stat. 152; D.C. [Official] Code § 47-393(4)])--

(1) subsection (c) of this section and subsection (d) [of this section] shall not apply; and

(2) the Council may not approve, and the Mayor may not forward to the President, any budget which is not consistent with the financial plan and budget established for the fiscal year under subtitle A of title II of such Act [part B of subchapter VII of Chapter 3 of Title 47 of the D.C. Official Code].

CONGRESSIONAL ACTION ON CERTAIN DISTRICT MATTERS

SEC. 604. [D.C. Official Code § 1-206.04] (a) This section is enacted by Congress --

(1) as an exercise of the rulemaking power of the Senate and the House of Representatives, respectively, and as such these provisions are deemed a part of the rule of each House, respectively, but applicable only with respect to the procedure to be followed in that House in the case of resolutions described by this section; and they supersede other rules only to the extent that they are inconsistent therewith; and

(2) with full recognition of the constitutional right of either House to change the rule (so far as relating to the procedure of that House) at any time, in the same manner and to the same extent as in the case of any other rule of that House.

(b) For the purpose of this section, "resolution" means only a joint resolution, the matter after the resolving clause of which is as follows: "That the . . . . . approves/disapproves of the action of the District of Columbia Council described as follows: . . . . . .", the blank spaces therein being appropriately filled, and either approval or disapproval being appropriately indicated; but does not include a resolution which specifies more than 1 action.

(c) A resolution with respect to Council action shall be referred to the Committee on the District of Columbia of the House of Representatives, or the Committee on the District of Columbia of the Senate, by the President of the Senate or the Speaker of the House of Representatives, as the case may be.

(d) If the Committee to which a resolution has been referred has not reported it at the end of 20 calendar days after its introduction, it is in order to move to discharge the Committee from further consideration of any other resolution with respect to the same Council action which has been referred to the Committee.

(e) A motion to discharge may be made only by an individual favoring the resolution, is highly privileged (except that it may not be made after the Committee has reported a resolution with respect to the same action), and debate thereon shall be limited to not more than 1 hour, to be divided equally between those favoring and those opposing the resolution. An amendment to the motion is not in order, and it is not in order to move to reconsider the vote by which the motion is agreed to or disagreed to.

(f) If the motion to discharge is agreed to or disagreed to, the motion may not be renewed, nor may another motion to discharge the Committee be made with respect to any other resolution with respect to the same action.

(g) When the Committee has reported, or has been discharged from further consideration of, a resolution, it is at any time thereafter in order (even though a previous motion to the same effect has been disagreed to) to move to proceed to the consideration of the resolution. The motion is highly privileged and is not debatable. An amendment to the motion is not in order, and it is not in order to move to reconsider the vote by which the motion is agreed to or disagreed to.

(h) Debate on the resolution shall be limited to not more than 10 hours, which shall be divided equally between those favoring and those opposing the resolution. A motion further to limit debate is not debatable. An amendment to, or motion to recommit, the resolution is not in order, and it is not in order to move to reconsider the vote by which the resolution is agreed to or disagreed to.

(i) Motions to postpone made with respect to the discharge from Committee or the consideration of a resolution, and motions to proceed to the consideration of other business, shall be decided without debate.

(j) Appeals from the decisions of the chair relating to the application of the rules of the Senate or the House of Representatives, as the case may be, to the procedure relating to a resolution shall be decided without debate.

TITLE VII -- REFERENDUM; SUCCESSION IN GOVERNMENT; TEMPORARY PROVISIONS; MISCELLANEOUS; AMENDMENTS TO DISTRICT OF COLUMBIA ELECTION ACT; RULES OF CONSTRUCTION; AND EFFECTIVE DATES

PART A -- CHARTER REFERENDUM

REFERENDUM

SEC. 701. [D.C. Official Code § 1-207.01] On a date to be fixed by the Board of Elections, not more than five months after the date of enactment of this Act, a referendum (in this part referred to as the "charter referendum") shall be conducted to determine whether the registered qualified electors of the District accept the charter set forth in title IV of this Act [District Charter].

SEC. 702. [D.C. Official Code § 1-207.02] (a) The Board of Elections shall conduct the charter referendum and certify the results thereof as provided in this part.

(b) Notwithstanding the fact that such section does not otherwise take effect unless the charter is accepted under this title, the applicable provision of part E of title VII of this Act [D.C. Official Code §§ 1-207.51 and 1-207.52] shall govern the Board of Elections in the performance of its duties under this Act.

SEC. 703. [D.C. Official Code § 1-207.03] (a) The charter referendum ballot shall contain the following, with a blank space appropriately filled:

"The District of Columbia Self-Government and Governmental Reorganization Act, enacted _____, proposes to establish a charter for the governance of the District of Columbia, but provides that the charter shall take effect only if it is accepted by a majority of the registered qualified voters of the District voting on this issue.

"Indicate in one of the squares provided below whether you are for or against the charter.

"□ For the charter

"□ Against the charter.

"In addition, the Act referred to above authorizes the establishment of advisory neighborhood councils if a majority of the registered qualified voters of the District voting on this issue in this referendum vote for the establishment of such councils.

"Indicate in one of the squares provided below whether you are for or against the establishment of Advisory Neighborhood Councils.

"□ For Advisory Neighborhood Councils

"□ Against Advisory Neighborhood Councils."

(b) Voting may be by paper ballot or by voting machine. The Board of Elections may make such changes in the second and fourth paragraphs of the charter referendum ballot as it determines to be necessary to permit the use of voting machines if such machines are used.

(c) Not less than five days before the date of the charter referendum, the Board of Elections shall mail to each registered qualified elector (1) a sample of the charter referendum ballot, and (2) information showing the polling place of such elector and the date and hours of voting.

(d) Not less than one day before the charter referendum, the Board of Elections shall publish, in one or more newspapers of general circulation published in the District, a list of the polling places and the date and hours of voting.

SEC. 704. [D.C. Official Code § 1-207.04] (a) If a majority of the registered qualified electors voting in the charter referendum vote for the charter, the charter shall be considered accepted as of the time the Board of Elections certifies the result of the charter referendum to the President of the United States, as provided in subsection (b) [of this section].

(b) The Board of Elections shall, within a reasonable time, but in no event more than thirty days after the date of the charter referendum, certify the result of the charter referendum to the President of the United States and to the Secretary of the Senate and the Clerk of the House of Representatives.

Part B -- SUCCESSION IN GOVERNMENT

ABOLISHMENT OF EXISTING GOVERNMENT AND TRANSFER OF FUNCTIONS

SEC. 711. [D.C. Official Code § 1-207.11] The District of Columbia Council, the Offices of Chairman of the District of Columbia Council, Vice Chairman of the District of Columbia Council, and the seven other members of the District of Columbia Council, and the Offices of the Commissioner of the District of Columbia and Assistant to the Commissioner of the District of Columbia, as established by Reorganization Plan No. 3 of 1967, are abolished as of noon January 2, 1975. This subsection [section] shall not be construed to reinstate any governmental body or office in the District abolished in said plan or otherwise heretofore.

CERTAIN DELEGATED FUNCTIONS AND FUNCTIONS OF CERTAIN AGENCIES

SEC. 712. [D.C. Official Code § 1-207.12] No function of the District of Columbia Council (established under Reorganization Plan No. 3 of 1967) or of the Commissioner of the District of Columbia which such District of Columbia Council or Commissioner has delegated to an officer, employee, or agency (including any body of or under such agency) of the District, nor any function now vested pursuant to section 501 of Reorganization Plan No. 3 of 1967 in the District Public Service Commission, Zoning Advisory Council, Board of Zoning Adjustment, Office of the Recorder of Deeds, or Armory Board, or in any officer, employee, or body of or under such agency, shall be considered as a function transferred to the Council pursuant to section 404(a) of this Act [D.C. Official Code § 1-204.04(a)]. Each such function is hereby

transferred to the officer, employee, or agency (including any body of or under such agency), to whom or to which it was delegated, or in whom or in which it has remained vested, until the Mayor or Council established under this Act, or both, pursuant to the powers herein granted, shall revoke, modify, or transfer such delegation or vesting.

TRANSFER OF PERSONNEL, PROPERTY, AND FUNDS

SEC. 713. [D.C. Official Code § 1-207.13] (a) In each case of the transfer, by any provision of this Act, of functions to the Council, to the Mayor, or to any agency or officer, there are hereby authorized to be transferred (as of the time of such transfer of functions) to the Council, to the Mayor, to such agency, or to the agency of which such officer is the head, for use in the administration of the functions of the Council or such agency or officer, the personnel (except the Commissioner of the District of Columbia, the Assistant to the Commissioner, the Chairman of the District of Columbia Council, the Vice Chairman of the District of Columbia Council, the other members thereof, all of whose officers are abolished by this Act), property, records, and unexpended balances of appropriations and other funds which relate primarily to the functions so transferred.

(b) If any question arises in connection with the carrying out of subsection (a) [of this section], such questions shall be decided --

(1) in the case of functions transferred from a Federal officer or agency, by the Director of the Office of Management and Budget; and

(2) in the case of other functions (A) by the Council, or in such manner as the Council shall provide, if such functions are transferred to the Council, and (B) by the Mayor if such functions are transferred to him or to any other officer or agency.

(c) Any of the personnel authorized to be transferred to the Council, the Mayor, or any agency by this section which the Council or the head of such agency shall find to be in excess of the personnel necessary for the administration of its or his function shall, in accordance with law, be retransferred to other positions in the District or Federal Government or be separated from the service.

(d) No officer or employee shall, by reason of his transfer to the District government under this Act or his separation from service under this Act, be deprived of any civil service rights, benefits, and privileges held by him prior to such transfer or any right of appeal or review he may have by reason of his separation from service.

EXISTING STATUTES, REGULATIONS, AND OTHER ACTIONS

SEC. 714. [D.C. Official Code § 1-207.14] (a) Any statute, regulation, or other action in respect of (and any regulation or other action issued, made, taken, or granted by) any officer or agency from which any function is transferred by this Act shall, except to the extent modified or made inapplicable by or under authority of law, continue in effect as if such transfer had not been made; but after such transfer, references in such statute, regulation, or other action to an officer or agency from which a transfer is made by this Act shall be held and considered to refer to the officer or agency to which the transfer is made.

(b) As used in subsection (a) [of this section], the term "other action" includes, without limitation, any rule, order, contract, compact, policy, determination, directive, grant,

authorization, permit, requirement, or designation.

(c) Unless otherwise specifically provided in this Act, nothing contained in this Act shall be construed as affecting the applicability to the District government of personnel legislation relating to the District government until such time as the Council may otherwise elect to provide equal or equivalent coverage.

PENDING ACTIONS AND PROCEEDINGS

SEC. 715. [D.C. Official Code § 1-207.15] (a) No suit, action, or other judicial proceeding lawfully commenced by or against any officer or agency in his or its official capacity or in relation to the exercise of his or its official functions, shall abate by reason of the taking effect of any provision of this Act; but the court, unless it determines that the survival of such suit, action, or other proceedings is not necessary for purposes of settlement of the questions involved, shall allow the same to be maintained, with such substitutions as to parties as are appropriate.

(b) No administrative action or proceeding lawfully commenced shall abate solely by reason of the taking effect of any provision of this Act, but such action or proceeding shall be continued with such substitutions as to parties and officers or agencies as are appropriate.

VACANCIES RESULTING FROM ABOLISHMENT OF OFFICES OF COMMISSIONER AND ASSISTANT TO THE COMMISSIONER

SEC. 716. [D.C. Official Code § 1-207.16] Until the 1st day of July next after the first Mayor takes office under this Act no vacancy occurring in any District agency by reason of section 711 [D.C. Official Code § 1-207.11], abolishing the offices of Commissioner of the District of Columbia and Assistant to the Commissioner, shall affect the power of the remaining members of such agency to exercise its functions; but such agency may take action only if a majority of the members holding office vote in favor of it.

STATUS OF THE DISTRICT

SEC. 717. [D.C. Official Code § 1-207.17] (a) All of the territory constituting the permanent seat of the Government of the United States shall continue to be designated as the District of Columbia. The District of Columbia shall remain and continue a body corporate, as provided in section 2 of the Revised Statutes relating to the District (D.C. Code, sec. 1-102) [D.C. Official Code § 1-102]. Said Corporation shall continue to be charged with all the duties, obligations, responsibilities, and liabilities, and to be vested with all of the powers, rights, privileges, immunities, and assets, respectively, imposed upon and vested in said Corporation or the Commissioner.

(b) No law or regulation which is in force on the effective date of title IV of this Act [January 2, 1975] shall be deemed amended or repealed by this Act except to the extent specifically provided herein or to the extent that such law or regulation is inconsistent with this Act, but any such law or regulation may be amended or repealed by act or resolution as authorized in this Act, or by Act of Congress, except that, notwithstanding the provisions of section 752 of this Act [D.C. Official Code § 1-207.52], such authority to repeal shall not be

construed as authorizing the Council to repeal or otherwise alter, by amendment or otherwise, any provision of subchapter III of chapter 73 of title 5, United States Code in whole or in part.

(c) Nothing contained in this section shall affect the boundary line between the District of Columbia and the Commonwealth of Virginia as the same was established or may be subsequently established under the provisions of title I of the Act of October 31, 1945 (59 Stat. 552) [An Act To establish a boundary line between the District of Columbia and the Commonwealth of Virginia, and for other purposes (P.L. 79-208)].

CONTINUATION OF DISTRICT OF COLUMBIA COURT SYSTEM

SEC. 718. [D.C. Official Code § 1-207.18] (a) The District of Columbia Court of Appeals, the Superior Court of the District of Columbia, and the District of Columbia Commission on Judicial Disabilities and Tenure shall continue as provided under the District of Columbia Court Reorganization Act of 1970 subject to the provisions of part C of title IV of this Act [District Charter] and section 602(a)(4) [D.C. Official Code § 1-206.02(a)(4)].

(b) The term and qualifications of any judge of any District of Columbia court, and the term and qualifications of any member of the District of Columbia Commission on Judicial Disabilities and Tenure appointed prior to the effective date of title IV of this Act [January 2, 1975] shall not be affected by the provisions of part C of title IV of this Act [District Charter]. No provision of this Act shall be construed to extend the term of any such judge or member of such Commission. Judges of the District of Columbia courts and members of the District of Columbia Commission on Judicial Disabilities and Tenure appointed after the effective date of title IV of this Act [January 2, 1975] shall be appointed according to part C of such title IV [District Charter].

(c) Nothing in this Act shall be construed to amend, repeal, or diminish the duties, rights, privileges, or benefits accruing under sections 1561 through 1571 of title 11 of the District of Columbia [Official] Code [D.C. Official Code §§ 11-1561 - 11-1571], and sections 703 and 904 of such title [D.C. Official Code §§ 11-703 - 11-904], dealing with the retirement and compensation of the judges of the District of Columbia courts.

SEC. 719. [D.C. Official Code § 1-207.19] The term of any member elected to the District of Columbia Board of Education, and the powers and duties of the Board of Education shall not be affected by the provisions of section 495 [D.C. Official Code § 1-204.95]. No provision of such section shall be construed to extend the term of any such member or to terminate the term of any such member.

PART C -- TEMPORARY PROVISIONS

POWERS OF THE PRESIDENT DURING TRANSITIONAL PERIOD

Sec. 721. [D.C. Official Code § 1-207.21] The President of the United States is hereby authorized and requested to take such action during the period following the date of the enactment of this Act and ending on the date of the first meeting of the Council, by Executive Order or otherwise, with respect to the administration of the functions of the District government, as he deems necessary to enable the Board of Elections properly to perform its

function under this Act.

REIMBURSABLE APPROPRIATIONS FOR THE DISTRICT

Sec. 722. [D.C. Official Code § 1-207.22] (a) The Secretary of the Treasury is authorized to advance to the District of Columbia the sum of $750,000, out of any money in the Treasury not otherwise appropriated, for use (1) in the paying the expenses of the Board of Education (including compensation of the members thereof), and (2) in otherwise carrying into effect the provisions of this Act.

(b) The full amount expended out of the money advanced pursuant to this section shall be reimbursed to the United States, without interest, during the second fiscal year which begins after the effective date of title IV [January 2, 1975], from the general fund of the District.

INTERIM LOAN AUTHORITY

Sec. 723. [D.C. Official Code § 1-207.23] (a) The Mayor is authorized to accept loans for the District from the Treasury of the United States, and the Secretary is authorized to lend to the Mayor, such sums as the Mayor may determine are required to complete capital projects for which construction and construction services funds have been authorized or appropriated, as the case may be, by Congress prior to October 1, 1983, or the date of the enactment of the appropriation Act for the fiscal year ending September 30, 1984, for the government of the District of Columbia, whichever is later. In addition, such loans may include funds to pay the District's share of the cost of the adopted regional system specified in the National Capital Transportation Act of 1969.

(b) Loans advanced pursuant to this section during any six-month period shall be at a rate of interest determined by the Secretary as of the beginning of such period, which, in his judgment, would reflect the cost of money to the Treasury for borrowing at a maturity approximately equal to the period of time the loan is outstanding.

(c) Subject to the limitations contained in section 603(b) [D.C. Official Code § 1-206.03(b)], there is authorized to be appropriated to make loans under this section the sum of $155,000,000 for the fiscal year ending September 30, 1982, the sum of $155,000,000 for the fiscal year ending on September 30, 1983, and the sum of $155,000,000 for the fiscal year ending on September 30, 1984.

(d) The authority contained in this section to make loans shall be effective for any fiscal year only to such extent or in such amounts as are provided in appropriations Acts.

POLITICAL PARTICIPATION IN CERTAIN ELECTIONS FIRST HELD UNDER THIS ACT

Sec. 724. [D.C. Official Code § 1-207.24] (a) In order to provide continuity in the government of the District of Columbia during the transition from the appointed government to the elected government provided for under this Act, no person employed by the United States or by the government of the District of Columbia shall be prohibited by reason of such employment --

(1) from being a candidate in the first primary election and general election held

under this Act for the office of Mayor or Chairman or member of the Council of the District of Columbia provided for under title IV of this Act [District Charter], and

(2) if such a candidate, from taking an active part in political management or political campaigns in any election referred to in paragraph (1) of this subsection.

(b) Such candidacy shall be deemed to have commenced on the day such person obtains from the Board of Elections an official nominating petition with his name stamped thereon, and shall terminate --

(1) in the case of such candidate who ceases to be eligible as a nominee for the office with respect to which such petition was obtained by reason of his inability or failure to qualify as a bona fide nominee prior to the expiration of the final date for filing such petition under the election laws of the District of Columbia, on the day following such expiration date;

(2) in the case of such candidate who is elected to any such office with respect to which such nominating petition was obtained, on the day such candidate takes office following the election held with respect thereto;

(3) in the case of such candidate who is defeated in a primary election held to nominate candidates for the office with respect to which such nominating petition was obtained, on the expiration of the thirty-day period following the date of such primary election; and

(4) in the case of such candidate who fails to be elected in a general election to any such office with respect to which such nominating petition was obtained, on the expiration of the thirty-day period following the date of such election.

(c) The provisions of this section shall terminate as of January 2, 1975.

PART D -- MISCELLANEOUS

AGREEMENTS WITH UNITED STATES

SEC. 731. [D.C. Official Code § 1-207.31] [Repealed] (a) To prevent duplication and to promote efficiency and economy, an officer or employee of:

(1) The United States government may provide services to the District of Columbia government; and

(2) The District of Columbia government may provide services to the United States government.

(b)(1) Services under this section shall be provided under an agreement:

(A) Negotiated by officers and employees of the 2 governments; and

(B) Approved by the Director of the Office of Management and Budget and the Mayor of the District of Columbia.

(2) Each agreement shall provide that the cost of providing the services shall be borne in the way provided in subsection (c) of this section by the government to which the services are provided at rates or charges based on the actual cost of providing the services.

(3) To carry out an agreement made under this subsection, the agreement may provide for the delegation of duties and powers of officers and employees of:

(A) The District of Columbia government to officers and employees of the United States government; and

(B) The United States government to officers and employees of the District of Columbia government.

(c) In providing services under an agreement made under subsection (b) of this section:

(1) Costs incurred by the United States government may be paid from appropriations available to the District of Columbia government officer or employee to whom the services were provided; and

(2) Costs incurred by the District of Columbia government may be paid from amounts available to the United States government officer or employee to whom the services were provided.

(d) When requested by the Director of the United States Secret Service Division, the Chief of the Metropolitan Police shall assist the Secret Service and the United States Secret Service Uniformed Division on a non-reimbursable basis in carrying out their protective duties under section 302 to title 3 and section 3056 of title 18 [of the U.S.C.].

PERSONAL INTEREST IN CONTRACTS OR TRANSACTIONS

SEC. 732. [D.C. Official Code § 1-207.32] Any officer or employee of the District who is convicted of a violation of section 208 of title 18, United States Code, shall forfeit his office or position.

COMPENSATION FROM MORE THAN ONE SOURCE

SEC. 733. [D.C. Official Code § 1-207.33] (a) Except as provided in this Act, no person shall be ineligible to serve or to receive compensation as a member of the Board of Elections because he occupies another office or position or because he receives compensation (including retirement compensation) from another source.

(b) The right to another office or position or to compensation from another source otherwise secured to such a person under the laws of the United States shall not be abridged by the fact of his service or receipt of compensation as a member of such Board, if such service does not interfere with the discharge of his duties in such other office or position.

ASSISTANCE OF THE UNITED STATES CIVIL SERVICE COMMISSION IN DEVELOPMENT OF DISTRICT MERIT SYSTEM

SEC. 734. [D.C. Official Code § 1-207.34] The United States Civil Service Commission is hereby authorized to advise and assist the Mayor and the Council in the further development of the merit system or systems required by section 422(3) [D.C. Official Code § 1-204.22(3)] and the said Commission is authorized to enter into agreements with the District government to make available its registers of eligibles as a recruiting source to fill District positions as needed. The costs of any specific services furnished by the Civil Service Commission may be compensated for under the provisions of section 731 of this Act [D.C. Official Code § 1-207.31] [Repealed].

REVENUE SHARING RESTRICTIONS

SEC. 735. [Amendment to section 141(c) of the State and Local Fiscal Assistance Act of 1972, approved October 20, 1972 (P.L. 92-512; 86 Stat. 919)] [Repealed].

INDEPENDENT AUDIT

SEC. 736. [D.C. Official Code § 1-207.36] [Repealed] (a) In addition to the audit carried out under section 455 [D.C. Official Code § 1-204.55], the Comptroller General each year shall audit the accounts and operations of the District of Columbia government. An audit shall be carried out according to principles, under regulations, and in a way the Comptroller General prescribes. When prescribing the procedures to follow and the extent of the inspection of records, the Comptroller General shall consider generally accepted principles of auditing, including the effectiveness of accounting organizations and systems, internal audit and control, and related administrative practices.

(b) The Comptroller General shall submit each audit report to Congress and the Mayor and Council of the District of Columbia. The report shall include the scope of an audit, information the Comptroller General considers necessary to keep Congress, the Mayor, and the Council informed of operations audited, and recommendations the Comptroller General considers advisable.

(c)(1) By the 90th day after receiving an audit report from the Comptroller General, the Mayor shall state in writing to the Council measures the District of Columbia government is taking to comply with the recommendations of the Comptroller General. A copy of the statement shall be sent to Congress.

(2) After the Council receives the statement of the Mayor, the Council may make available for public inspection the report of the Comptroller General and other material the Council considers pertinent.

(d) To carry out this section, records and property of or used by the District of Columbia government necessary to make an audit easier shall be made available to the Comptroller General. The Mayor shall provide facilities to carry out an audit.

ADJUSTMENTS

SEC. 737. [D.C. Official Code § 1-207.37] (a) Subject to section 731 [D.C. Official Code § 1-207.31] [Repealed], the Mayor, with the approval of the Council, and the Director of the Office of Management and Budget, is authorized and empowered to enter into an agreement or agreements concerning the manner and method by which amounts owed by the District to the United States, or by the United States to the District, shall be ascertained and paid.

(b) The United States shall reimburse the District for necessary expenses incurred by the District in connection with assemblages, marches, and other demonstrations in the District which relate primarily to the federal government. The manner and method of ascertaining and paying the amounts needed to so reimburse the District shall be determined by agreement entered into in accordance with subsection (a) of this section.

(c) Each officer and employee of the District required to do so by the Council shall provide a bond with such surety and in such amount as the Council may require. The premiums for all such bonds shall be paid out of appropriations for the District.

ADVISORY NEIGHBORHOOD COMMISSIONS

SEC. 738. [D.C. Official Code § 1-207.38] (a) The Council shall by act divide the District into neighborhood commission areas and, upon receiving a petition signed by at least 5 per centum of the registered qualified electors of a neighborhood commission area, shall establish for that neighborhood an elected advisory neighborhood commission. In designating such neighborhoods, the Council shall consider natural geographic boundaries, election districts, and divisions of the District made for the purpose of administration of services.

(b) Elections for members of each advisory neighborhood commission shall be nonpartisan, and shall be administered by the Board of Elections and Ethics [Board of Elections]. Advisory neighborhood commission members shall be elected from single-member districts within each neighborhood commission area by the registered qualified electors of such district.

(c) Each advisory neighborhood commission --

(1) may advise the District government on matters of public policy including decisions regarding planning, streets, recreation, social services programs, health, safety, and sanitation in that neighborhood commission area;

(2) may employ staff and expend, for public purposes within its neighborhood commission area, public funds and other funds donated to it; and

(3) shall have such other powers and duties as may be provided by act of the Council.

(d) In the manner provided by act of the Council, in addition to any other notice required by law, timely notice shall be given to each advisory neighborhood commission of requested or proposed zoning changes, variances, public improvements, licenses, or permits of significance to neighborhood planning and development within its neighborhood commission area for its review, comment, and recommendation.

(e) In order to pay the expenses of the advisory neighborhood commissions, enable them to employ such staff as may be necessary, and to conduct programs for the welfare of the people in a neighborhood commission area, the District government shall allot funds to the advisory neighborhood commissions out of the general revenues of the District. The funding apportioned to each advisory neighborhood commission shall bear the same ratio to the full sum allotted as the population of the neighborhood bears to the population of the District. The Council may authorize additional methods of financing advisory neighborhood commissions.

(f) The Council shall by act make provisions for the handling of funds and accounts by each advisory neighborhood commission and shall establish guidelines with respect to the employment of persons by each advisory neighborhood commission, which shall include fixing the status of such employees with respect to the District government, but all such provisions and guidelines shall be uniform for all advisory neighborhood commissions and shall provide that decisions to employ and discharge employees shall be made by the advisory neighborhood commission. These provisions shall conform to the extent practicable to the regular budgetary, expenditure and auditing procedures and the personnel merit system of the District.

(g) The Council shall have authority, in accordance with the provisions of this Act, to legislate with respect to the advisory neighborhood commissions established in this section.

(h) The foregoing provisions of this section shall take effect only if agreed to in accordance with the provisions of section 703(a) of this Act [D.C. Official Code § 1-207.03(a)].

NATIONAL CAPITAL SERVICE AREA

SEC. 739. [D.C. Official Code § 1-207.39] (a) There is established within the District of Columbia the National Capital Service Area which shall include, subject to the following provisions of this section, the principal federal monuments, the White House, the Capitol Building, the United States Supreme Court Building, and the federal executive, legislative, and judicial office buildings located adjacent to the Mall and the Capitol Building, and is more particularly described in subsection (f) [of this section].

(b) There is established in the Executive Office of the President the National Capital Service Director who shall be appointed by the President. The President, through the National Capital Service Director, shall assure that there is provided, utilizing District of Columbia governmental services to the extent practicable, within the area specified in subsection (a) [of this section] and particularly described in subsection (f) [of this section], adequate fire protection and sanitation services. Except with respect to that portion of the National Capital Service Area comprising the United States Capitol Buildings and Grounds as defined in sections 1 and 16 of the Act of July 31, 1946 [An Act To define the area of the United States Capitol Grounds, to regulate the use thereof, and for other purposes (60 Stat. 718)], as amended (D.C. Code, sec. 9-106 [and] 9-128)[D.C. Official Code §§ 10-503.11 and 10-503.26], the United States Supreme Court Building and Grounds as defined in section 11 of the Act of August 18, 1949 [An Act Relating to the policing of the building and grounds of the Supreme Court of the United States (63 Stat. 617)], as amended (40 U.S.C. § 13p), and the Library of Congress Buildings and Grounds as defined in section 11 of the Act of August 4, 1950 [An Act Relating to the policing of the buildings and grounds of the Library of Congress (64 Stat. 411)], as amended (2 U.S.C. § 167j), the National Capital Service Director shall assure that there is provided within the remainder of such area specified in subsection (a) [of this section] and subsection (f) [of this section], adequate police protection and maintenance of streets and highways.

(c) The National Capital Service Director shall be entitled to receive compensation at the maximum rate as may be established from time to time for level IV of the Executive Schedule of section 5314 of title 5 of the United States Code. The Director may appoint, subject to the provisions of title 5 of the United States Code governing appointments in the competitive service, and fix the pay of, in accordance with the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, such personnel as may be necessary.

(d) [Amendment to section 45 of An Act to provide for the organization of the militia of the District of Columbia, approved March 1, 1889 (25 Stat. 778; D.C. Official Code § 49-103)].

(e)(1) Within one year after the effective date of this section [December 24, 1973 or January 2, 1975], the President is authorized and directed to submit to the Congress a report on the feasibility and advisability of combining the Executive Protective Service and the United States Park Police within the National Capital Service Area, and placing them under the National Capital Service Director.

(2) Such report shall include such recommendations, including recommendations for legislative and executive action, as the President deems necessary in carrying out the provisions of paragraph (1) of this subsection.

(f)(1)(A) The National Capital Service Area referred to in subsection (a) of this section is

more particularly described as follows:

Beginning at that point on the present Virginia-District of Columbia boundary due west of the northernmost point of Theodore Roosevelt Island and running due east to the eastern shore of the Potomac River;

thence generally south along the shore at the mean high water mark to the northwest corner of the Kennedy Center;

thence east along the north side of the Kennedy Center to a point where it reaches the E Street Expressway;

thence east on the expressway to E Street Northwest and thence east on E Street Northwest to 18th Street Northwest;

thence south on 18th Street Northwest to Constitution Avenue Northwest; thence east on Constitution Avenue to 17th Street Northwest;

thence north on 17th Street Northwest to Pennsylvania Avenue Northwest;

thence east on Pennsylvania Avenue to Jackson Place Northwest;

thence north on Jackson Place to H Street Northwest;

thence east on H Street Northwest to Madison Place Northwest;

thence south on Madison Place Northwest to Pennsylvania Avenue Northwest;

thence east on Pennsylvania Avenue Northwest to 15th Street Northwest;

thence south on 15th Street Northwest to Pennsylvania Avenue Northwest;

thence southeast on Pennsylvania Avenue Northwest to John Marshall Place Northwest;

thence north on John Marshall Place Northwest to C Street Northwest;

thence east on C Street Northwest to 3rd Street Northwest;

thence north on 3rd Street Northwest to D Street Northwest;

thence east on D Street Northwest to 2nd Street Northwest;

thence south on 2nd Street Northwest to the intersection of Constitution Avenue Northwest and Louisiana Avenue Northwest;

thence northeast on Louisiana Avenue Northwest to North Capitol Street;

thence north on North Capitol Street to Massachusetts Avenue Northwest;

thence southeast on Massachusetts Avenue Northwest so as to encompass Union Square;

thence following Union Square to F Street Northeast;

thence east on F Street Northeast to 2nd Street Northeast;

thence south on 2nd Street Northeast to D Street Northeast;

thence west on D Street Northeast to 1st Street Northeast;

thence south on 1st Street Northeast to Maryland Avenue Northeast;

thence generally north and east on Maryland Avenue to 2nd Street Northeast;

thence south on 2nd Street Northeast to C Street Southeast;

thence west on C Street Southeast to New Jersey Avenue Southeast;

thence south on New Jersey Avenue Southeast to D Street Southeast;

thence west on D Street Southeast to Canal Street Parkway;

thence southeast on Canal Street Parkway to E Street Southeast;

thence west on E Street Southeast to the intersection of Canal Street Southwest and South Capitol Street;

thence northwest on Canal Street Southwest to 2nd Street Southwest;

thence south on 2nd Street Southwest to Virginia Avenue Southwest;

thence generally west on Virginia Avenue to 3rd Street Southwest;

thence north on 3rd Street Southwest to C Street Southwest;
thence west on C Street Southwest to 6th Street Southwest;
thence north on 6th Street Southwest to Independence Avenue;
thence west on Independence Avenue to 12th Street Southwest;
thence south on 12th Street Southwest to D Street Southwest;
thence west on D Street Southwest to 14th Street Southwest;
thence south on 14th Street Southwest to the middle of the Washington Channel;
thence generally south and east along the mid-channel of the Washington Channel to a point due west of the northern boundary line of Fort Lesley McNair;
thence due east to the side of the Washington Channel;
thence following generally south and east along the side of the Washington Channel at the mean high water mark, to the point of confluence with the Anacostia River, and along the northern shore at the mean high water mark to the northern most point of the 11th Street Bridge;
thence generally south and east along the northern side of the 11th Street Bridge to the eastern shore of the Anacostia River;
thence generally south and west along such shore at the mean high water mark to the point of confluence of the Anacostia and Potomac Rivers;
thence generally south along the eastern shore at the mean high water mark of the Potomac River to the point where it meets the present southeastern boundary line of the District of Columbia;
thence south and west along such southeastern boundary line to the point where it meets the present Virginia-District of Columbia boundary;
thence generally north and west up the Potomac River along the Virginia-District of Columbia boundary to the point of beginning.

(B) Where the area in subparagraph (A) of this paragraph is bounded by any street, such street, and any sidewalk thereof, shall be included within such area.

(2) Any federal real property affronting or abutting, as of the effective date of this Act [December 24, 1973], the area described in paragraph (1) [of this subsection] shall be deemed to be within such area.

(3) For the purposes of paragraph (2) [of this subsection], federal real property affronting or abutting such area described in paragraph (1) [of this subsection] shall--

(A) be deemed to include, but not limited to, Fort Lesley McNair, the Washington Navy Yard, the Anacostia Naval Annex, the United States Naval Station, Bolling Air Force Base, and the Naval Research Laboratory; and

(B) not be construed to include any area situated outside of the District of Columbia boundary as it existed immediately prior to the date of enactment of this Act [December 24, 1973], nor be construed to include any portion of the Anacostia Park situated east of the northern side of the 11th Street Bridge, or any portion of the Rock Creek Park.

(g)(1) Subject to the provisions of paragraph (2) of this subsection, the President is authorized and directed to conduct a survey of the area described in this section in order to establish the proper metes and bounds of such area, and to file, in such manner and at such place as he may designate, a map and a legal description of such area, and such description and map shall have the same force and effect as if included in this Act, except that corrections of clerical, typographical and other errors in any such legal descriptions and map may be made. In conducting such survey, the President shall make such adjustments as may be necessary in order

to exclude from the National Capital Service Area any privately owned properties, and buildings and adjacent parking facilities owned by the District of Columbia government.

(2) In carrying out the provisions of paragraph (1) of this subsection, the President shall, to the extent that such survey, legal description, and map involves areas comprising the United States Capitol Buildings and Grounds as defined in sections 1 and 16 of the Act of July 31, 1946, as amended (40 U.S.C. 193a, 193m) [D.C. Official Code §§ 10-503.11 and 10-503.26], and other buildings and grounds under the care of the Architect of the Capitol, consult with the Architect of the Capitol.

(3) [Amendment to section 1 of the Act of July 31, 1946 (60 Stat. 719; D.C. Official Code § 10-503.11)].

(4) [Amendment to section 9 of the Act of July 31, 1946 (60 Stat. 719; D.C. Official Code § 10-503.19)].

(5) [Amendment to section 9 of the Act of July 31, 1946 (60 Stat. 719; D.C. Official Code § 10-503.19)].

(6) [Amendment to section 14(a) of the Act of July 31, 1946 (60 Stat. 720; D.C. Official Code § 10-503.25)].

(7) [Amendment to section 1 of the Act of July 31, 1946 (60 Stat. 719; D.C. Official Code § 10-503.11)].

(8) [Amendment to section 9 of the Act of August 18, 1949 (63 Stat. 617; 40 U.S.C. § 13n)].

(9) [Amendment to section 9 of the Act of August 4, 1950 (64 Stat. 411; 2 U.S.C. 167h)].

(h)(1) Except to the extent specifically provided by the provisions of this section, and amendments made by this section, nothing in this section shall be applicable to the United States Capitol Buildings and Grounds as defined in sections 1 and 16 of the Act of July 31, 1946, as amended (40 U.S.C. 193a, 193m) [D.C. Official Code §§ 10-503.11 and 10-503.26], or to any other buildings and grounds under the care of the Architect of the Capitol, the United States Supreme Court Building and Grounds as defined in section 11 of the Act of August 18, 1949, as amended (40 U.S.C. § 13p), and the Library of Congress Buildings and Grounds as defined in section 11 of the Act of August 4, 1950, as amended (2 U.S.C. § 167j), and except to the extent herein specifically provided, including amendments made by this section, nothing in this section shall be construed to repeal, amend, alter, modify, or supersede any provision of the Act of July 31, 1946, as amended (40 U.S.C. 193a *et seq*.) [D.C. Official Code §§ 10-503.11, 10-503.12 through 10-503.19, and 10-503.21 through 10-503.26], or any other of the general laws of the United States or any of the laws enacted by the Congress and applicable exclusively to the District of Columbia, or any rule or regulation promulgated pursuant thereto, in effect on the date immediately preceding the effective date of title IV of this Act [January 2, 1975] pertaining to said buildings and grounds, or any existing authority, with respect to such buildings and grounds, vested by law, or otherwise, on such date immediately preceding such effective date [January 2, 1975], in the Senate, the House of Representatives, the Congress, or any committee or commission or board thereof, the Architect of the Capitol, or any other officer of the legislative branch, the Chief Justice of the United States, the Marshal of the Supreme Court of the United States, or the Librarian of Congress.

(2) Notwithstanding the foregoing provision of this section, any of the services and facilities authorized by this Act to be rendered or furnished (including maintenance of streets

and highways, and services under section 731 of this Act [D.C. Official Code § 1-207.31] [Repealed]) shall, as far as practicable, be made available to the Senate, the House of Representatives, the Congress, or any committee or commission or board thereof, the Architect of the Capitol, or any other officer of the legislative branch vested by law or otherwise on such date immediately preceding the effective date of title IV of this Act [January 2, 1975] with authority over such buildings and grounds, the Chief Justice of the United States, the Marshal of the Supreme Court of the United States, and the Librarian of Congress, upon their request, and, if payment would be required for the rendition or furnishing of a similar service or facility to any other federal agency, payment therefor shall be made by the recipient thereof, upon presentation of proper vouchers, in advance or by reimbursement (as may be agreed upon by the parties rendering and receiving such services).

(i) Except to the extent otherwise specifically provided in the provisions of this section, and amendments made by this section, all general laws of the United States and all laws enacted by the Congress and applicable exclusively to the District of Columbia, including regulations and rules promulgated pursuant thereto, in effect on the date immediately preceding the effective date of title IV of this Act [January 2, 1975] and which, on such date immediately preceding the effective date of such title [January 2, 1975], are applicable to and within the areas included within the National Capital Service Area pursuant to this section shall, on and after January 2, 1975, continue to be applicable to and within such National Capital Service Area in the same manner and to the same extent as if this section had not been enacted, and shall remain so applicable until such time as they are repealed, amended, altered, modified, or superseded, and such laws, regulations and rules shall thereafter be applicable to and within such area in the manner and to the extent so provided by any such amendment, alteration, or modification.

(j) In no case shall any person be denied the right to vote or otherwise participate in any manner in any election in the District of Columbia solely because such person resides within the National Capital Service Area.

EMERGENCY CONTROL OF POLICE

SEC. 740. [D.C. Official Code § 1-207.40] (a) Notwithstanding any other provision of law, whenever the President of the United States determines that special conditions of an emergency nature exist which require the use of the Metropolitan Police force for Federal purposes, he may direct the Mayor to provide him, and the Mayor shall provide, such services of the Metropolitan Police force as the President may deem necessary and appropriate. In no case, however, shall such services made available pursuant to any such direction under this subsection extend for a period in excess of forty-eight hours unless the President has, prior to the expiration of such period, notified the Chairmen and ranking minority members of the Committees on the District of Columbia of the Senate and the House of Representatives, in writing, as to the reason for such direction and the period of time during which the need for such services is likely to continue.

(b) Subject to the provisions of subsection (c) of this section, such services made available in accordance with subsection (a) of this section shall terminate upon the end of such emergency, the expiration of a period of thirty days following the date on which such services are first made available, or the enactment into law of a joint resolution by the Congress providing for such termination, whichever first occurs.

(c) Notwithstanding the foregoing provisions of this section, in any case in which such services are made available in accordance with the provisions of subsection (a) of this section during any period of an adjournment of the Congress sine die, such services shall terminate upon the end of the emergency, the expiration of the thirty-day period following the date on which Congress first convenes following such adjournment, or the enactment into law of a joint resolution by the Congress providing for such termination, whichever first occurs.

(d) Except to the extent provided for in subsection (c) of this section, no such services made available pursuant to the direction of the President pursuant to subsection (a) of this section shall extend for any period in excess of 30 days, unless the Senate and the House of Representatives enact into law a joint resolution authorizing such an extension.

HOLDING OFFICE IN THE DISTRICT

SEC. 741. [Repealed by section 4(c) of An Act To amend the District of Columbia Revenue Act of 1947 regarding taxability of dividends received by a corporation from insurance companies, banks, and other savings institutions, approved April 17, 1974 (P.L. 93-268; 88 Stat. 87)].

OPEN MEETINGS

SEC. 742. [D.C. Official Code § 1-207.42] (a) All meetings (including hearings) of any department, agency, board, or commission of the District government, including meetings of the Council of the District of Columbia, at which official action of any kind is taken shall be open to the public. No resolution, rule, act, regulation, or other official action shall be effective unless taken, made, or enacted at such meeting.

(b) A written transcript or a transcription shall be kept for all such meetings and shall be made available to the public during normal business hours of the District government. Copies of

such written transcripts or copies of such transcriptions shall be available, upon request, to the public at reasonable cost.

TERMINATION OF THE DISTRICT'S AUTHORITY TO BORROW FROM THE TREASURY

SEC. 743. (a) [Amendment to section 1 An Act to authorize the Commissioners of the District of Columbia to borrow funds for capital improvement programs and to amend provisions of law relating to Federal Government participation in meeting costs of maintaining the National Capital City, approved June 6, 1958 (72 Stat. 183; D.C. Official Code § 10-619)].

(b) [Repeal of An Act authorizing loans from the United States Treasury for expansion of the District of Columbia water system, approved June 2, 1950 (64 Stat. 195].

(c) [Amendment to title II of An Act to authorize the financing of a program of public works construction for the District of Columbia, and for other purposes, approved May 18, 1954 (68 Stat. 104; D.C. Official Code § 34-2101 *et seq*.)].

(d) [Repeal of section 402 of An Act to authorize the financing of a program of public works construction for the District of Columbia, and for other purposes, approved May 18, 1954

(68 Stat. 110].

(e) [Repeal of section 4 of An Act to authorize the Commissioners of the District of Columbia to plan, construct, operate, and maintain a sanitary sewer to connect the Dulles International Airport with the District of Columbia system, approved June 12, 1960 (74 Stat. 211].

(f) [Uncodified] Nothing contained in this section shall be deemed to relieve the District of its obligation to repay any loan made to it under the authority of the Acts specified in the preceding subsections, nor to preclude the District from using the unexpended balance of any such loan appropriated to the District prior to the effective date of this provision, not to prevent the District from fulfilling the provisions of section 722 [D.C. Official Code § 1-207.22].

PART E -- AMENDMENTS TO THE DISTRICT OF COLUMBIA ELECTION ACTAMENDMENTS

SEC. 751. [Amendment to the District of Columbia Election Act, approved August 12, 1955 (69 Stat. 699; D.C. Official Code § 1-1001.01 *et seq*.)].

DISTRICT COUNCIL AUTHORITY OVER ELECTIONS

SEC. 752. [D.C. Official Code § 1-207.52] Notwithstanding any other provision of this Act or of any other law, the Council shall have authority to enact any act or resolution with respect to matters involving or relating to elections in the District.

PART F -- RULES OF CONSTRUCTION

CONSTRUCTION

SEC. 761. [D.C. Official Code § 1-207.61] To the extent that any provisions of this Act are inconsistent with the provisions of any other laws[,] the provisions of this Act shall prevail and shall be deemed to supersede the provisions of such laws.

SEVERABILITY

SEC. 762. [D.C. Official Code § 1-207.62] If any particular provision of this Act, or the application thereof to any person of circumstance, is held invalid, the remainder of this Act and the application of such provision to other persons or circumstances shall not be affected thereby.

PART G -- EFFECTIVE DATES

EFFECTIVE DATES

SEC. 771. [D.C. Official Code § 1-207.71] (a) Titles I and V, and parts A and G, and section 722 of title VII shall take effect on the date of enactment of this Act [December 24, 1973].

(b) Sections 712, 713, 714, and 715 of title VII, and section 401(b) of title IV, and title II shall take effect July 1, 1974, except that any provision thereof which in effect transfer

authority to appoint any citizen member of the National Capital Planning Commission of the District of Columbia Redevelopment Land Agency shall take effect January 2, 1975.

(c) Titles III and IV, except section 401(b) of title IV, shall take effect January 2, 1975, if title IV is accepted by a majority of the registered qualified electors in the District of Columbia voting on the charter issue in the charter referendum.

(d) Title VI and parts D and F and sections 711, 716, 717, 718, 719, 721, and 723 of title VII shall take effect only if and upon the date that title IV becomes effective.

(e) Part E of title VII shall take effect on the date on which title IV is accepted by a majority of the registered qualified electors in the District of Columbia voting on the charter issue in the charter referendum.

TITLE I

Sec. 101.

Dec. 24, 1973, 87 Stat. 777, Pub. L. 93-198, title I, § 101; Aug. 5, 1997, 111 Stat. 251, Pub. L. 105-33, title XI, § 11717(a).

Sec. 102.

Dec. 24, 1973, 87 Stat. 777, Pub. L. 93-198, title I, § 102.

Sec. 103.

Dec. 24, 1973, 87 Stat. 777, Pub. L. 93-198, title I, § 103; Dec. 28, 1981, 95 Stat. 1493, Pub. L. 97-105, § 1; Apr. 17, 1995, 109 Stat. 141, Pub. L. 104-8, § 301(a)(1); Aug. 5, 1997, 111 Stat. 777, Pub. L. 105-33,§ 11601(b)(1)(A).

TITLE II

Sec. 201.

Dec. 24, 1973, 87 Stat. 779, Pub. L. 93-198, title II, § 201(f).

Sec. 202.

Dec. 24, 1973, 87 Stat. 779, Pub. L. 93-198, title II, § 202.

Sec. 203.

Amendment to An Act providing for a comprehensive development of the park and playground system of the National Capital, approved June 6, 1924 (43 Stat. 463; D.C. Official Code § 2-1002)

Sec. 204.

Dec. 24, 1973, 87 Stat. 779, Pub. L. 93-198, title II, § 204; Aug. 29, 1974, 88 Stat. 793, Pub. L. 93-395, § 1(1).

TITLE III

Sec. 301.

Dec. 24, 1973, 87 Stat. 779, Pub. L. 93-198, title III, § 301.

Sec. 302.

Dec. 24, 1973, 87 Stat. 779, Pub. L. 93-198, title III, § 302.

Sec. 303.

Dec. 24, 1973, 87 Stat. 784, Pub. L. 93-198, title III, § 303; Aug. 14, 1974, 88 Stat. 458, Pub. L. 93-376, title III, § 306(a); Oct. 12, 1984, 98 Stat. 1837, Pub. L. 98-473, § 131(b).

TITLE IV

Part A

Subpart 1

Sec. 401.

Dec. 24, 1973, 87 Stat. 785, Pub. L. 93-198, title IV, § 401; Aug. 14, 1974, 88 Stat. 458, Pub. L. 93-376, title III, § 306(a); Aug. 29, 1974, 88 Stat. 793, Pub. L. 93-395, § 1(2); Jul. 18, 2012, 126 Stat. 1133. Pub. L. 112-145, § 2(a); Jul. 31, 2013, D.C. Law 19-124A, § 401(a), 60 DCR 12134, 20 DCSTAT 1741.

Sec. 402.

Dec. 24, 1973, 87 Stat. 786, Pub. L. 93-198, title IV, § 402); Jul. 31, 2013, D.C. Law 19-124A, § 401(b), 60 DCR 12134, 20 DCSTAT 1741.

Sec. 403.

Dec. 24, 1973, 87 Stat. 787, Pub. L. 93-198, title IV, § 403; Dec. 21, 2001, 107 Stat. 957, Pub. L. 107-96, § 136.

Sec. 404.

Dec. 24, 1973, 87 Stat. 787, Pub. L. 93-198, title IV, § 404; Oct. 27, 1978, 92 Stat. 2023, Pub. L. 95-526; Apr. 17, 1995, 109 Stat. 116, Pub. L. 104-8, § 202(f)(2); Jul. 25, 2013, D.C. Law 19-321, § 2(b), 60 DCR 1724, 20 DCSTAT 1743.

Subpart 2

Sec. 411.

Dec. 24, 1973, 87 Stat. 788, Pub. L. 93-198, title IV, § 411.

Sec. 412.

Dec. 24, 1973, 87 Stat. 788, Pub. L. 93-198, title IV, § 412; Oct. 27, 1978, 92 Stat. 2023, Pub. L. 95-526; Oct. 12, 1984, 98 Stat. 1974, Pub. L. 98-473, § 131(c); Jul. 25, 2013, D.C. Law 19-321, § 2(c), 60 DCR 1724, 20 DCSTAT 1743.

Sec. 413.

Dec. 24, 1973, 87 Stat. 789, Pub. L. 93-198, title IV, § 413.

Part B

Sec. 421.

Dec. 24, 1973, 87 Stat. 789, Pub. L. 93-198, title IV, § 421; Aug. 14, 1974, 88 Stat. 458, Pub. L. 93-376, title III, § 306(a); Jul. 18, 2012, 126 Stat. 1133. Pub. L. 112-145, § 2(b)); Jul. 31, 2013, D.C. Law 19-124A, § 401(c), 60 DCR 12134, 20 DCSTAT 1741.

Sec. 422.

Dec. 24, 1973, 87 Stat. 790, Pub. L. 93-198, title IV, § 422; Aug. 17, 1991, 105 Stat. 540, Pub. L. 102-106, § 3; Oct. 29, 1993, 107 Stat. 1350, Pub. L. 103-127, title I, § 140; Apr. 17, 1995, 109 Stat. 116, 147, Pub. L. 104-8, §§ 202(h), 302(b); Nov. 29, 1999, 113 Stat. 1515, Pub. L. 106-113,§ 119(a); Oct. 16, 2006, 120 Stat. 2039, Pub. L. 109-356, § 303(a).

Sec. 423.

Dec. 24, 1973, 87 Stat. 792, Pub. L. 93-198, title IV, § 423.

Part Bi

Sec. 424.

Dec. 24, 1973, 87 Stat. 774, Pub. L. 93-198, § 424, as added Apr. 17, 1995, 109 Stat. 142, Pub. L. 104-8, § 302(a); Nov. 22, 2000, 114 Stat. 2440, Pub. L. 106-522, § 155; Dec. 21, 2001, 115 Stat. 949, Pub. L. 107-96, § 111(d); Dec. 23, 2004, 118 Stat. 3970, Pub. L. 108-489, § 4(a); Oct. 16, 2006, 120 Stat. 2034, Pub. L. 109-356, §§ 201(a), 308(a); May 1, 2013, 127 Stat. 441, Pub. L. 113-8, § 2; Dec. 26, 2013, 127 Stat. 1209, Pub. L. 113-71, § 1(a).

Sec. 424a.

Dec. 24, 1973, 87 Stat. 774, Pub. L. 93-198, § 424a, as added Oct. 16, 2006, 120 Stat. 2037, Pub. L. 109-356, § 202(a)(1); July 15, 2008, 122 Stat. 2491, Pub. L. 110-273, § 2(a).

Sec. 424b.

Dec. 24, 1973, 87 Stat. 774, Pub. L. 93-198, § 424b, as added Oct. 16, 2006, 120 Stat. 2037, Pub. L. 109-356, § 203(a)(1).

Part C

Sec. 431.

Dec. 24, 1973, 87 Stat. 792, Pub. L. 93-198, title IV, § 431; Oct. 13, 1977, 91 Stat. 1155, Pub. L. 95-131, § 3(a); Oct. 30, 1984, 98 Stat. 3142, Pub. L. 98-598, § 2(b); Oct. 28, 1986, 100 Stat. 3228, Pub. L. 99-573, § 4; June 13, 1994, Pub. L. 103-266, §§ 2(b)(1), 2(b)(2), 2(b)(3), 108 Stat. 713; Apr. 26, 1996, 110 Stat. 1321-91, Pub. L. 104-134, § 133(a).

Sec. 432.

Dec. 24, 1973, 87 Stat. 794, Pub. L. 93-198, title IV, § 432; June 13, 1994, Pub. L. 103-266, §§ 2(b)(4), (5), 108 Stat. 713.

Sec. 433.

Dec. 24, 1973, 87 Stat. 795, Pub. L. 93-198, title IV, § 433; Oct. 28, 1986, 100 Stat. 3228, Pub. L. 99-573, §§ 12, 13; June 13, 1994, Pub. L. 103-266, §§ 2(b)(6), 2(b)(7), 2(b)(8), 108 Stat.713; Sept. 9, 1996, 110 Stat. 2369, Pub. L. 104-194, § 131(b); Apr. 26, 1996, 110 Stat. 1321-92, Pub. L. 104-134, § 133(b).

Sec. 434.

Dec. 24, 1973, 87 Stat. 796, Pub. L. 93-198, title IV, § 434; Oct. 13, 1977, 91 Stat. 1155, Pub. L. 95-131, § 3(b); Oct. 28, 1986, 100 Stat. 3228, Pub. L. 99-573, §§ 8-10, 15; June 13, 1994, Pub. L. 103-266, §§ 2(b)(9), 2(b)(10), 108 Stat. 713; Sept. 9, 1996, 110 Stat. 2369, Pub. L. 104-194, § 131(a).

Sec. 435.

Dec. 24, 1973, 87 Stat. 774, Pub. L. 93-198, as added May 30, 2011, D.C. Law 18-160A, § 201(b), 57 DCR 3012; Jul. 18, 2012, 126 Stat. 1133, Pub. L. 112-145, § 2(c).

Part D
Subpart 1

Sec. 441.

Dec. 24, 1973, 87 Stat. 798, Pub. L. 93-198, title IV, § 441; Aug. 29, 1974, 88 Stat. 793, Pub. L. 93-395, § 1(3); Nov. 15, 1977, 91 Stat. 1383, Pub. L. 95-185, § 1; Oct. 30, 2004, 118 Stat. 2230, Pub. L. 108-386, § 4; Oct. 16, 2006, 120 Stat. 2029, Pub. L. 109-356, § 124; Jul. 25, 2013, D.C. Law 19-321, § 2(d), 60 DCR 1724, 20 DCSTAT 1743.

Sec. 442.

Dec. 24, 1973, 87 Stat. 798, Pub. L. 93-198, title IV, § 442; Aug. 14, 1974, 88 Stat. 458, Pub. L. 93-376, title III, § 306(a); Apr. 17, 1995, 109 Stat. 142, Pub. L. 104-8, § 301(c); Aug. 6, 1996, 110 Stat. 1698, Pub. L. 104-184, § 4(c).

Sec. 443.

Dec. 24, 1973, 87 Stat. 799, Pub. L. 93-198, title IV, § 443.

Sec. 444.

Dec. 24, 1973, 87 Stat. 800, Pub. L. 93-198, title IV, § 444.

Sec. 445.

Dec. 24, 1973, 87 Stat. 800, Pub. L. 93-198, title IV, § 445; Aug. 5, 1977, 111 Stat. 753. Pub. L. 105-33, § 11243(a).

Sec. 445A.

Dec. 24, 1973, 87 Stat. 800, Pub. L. 93-198, title IV, § 445a, as added Aug. 6, 1996, 110 Stat. 1698, Pub. L. 104-184, § 4(a); Aug. 5, 1997, 111 Stat. 784, Pub. L. 105-033, § 11714(a).

Sec. 446.

Dec. 24, 1973, 87 Stat. 801, Pub. L. 93-198, title IV, § 446; Dec. 23, 1981, 95 Stat. 1493, Pub. L. 97-105, § 2; Apr. 17, 1995, 109 Stat. 142, Pub. L. 104-8, § 301(b)(1); Aug. 6, 1996, 110 Stat. 1696, Pub. L. 104-184, § 2(c)(2); Aug. 5, 1997, 111 Stat. 777, Pub. L. 105-33, §§ 11509, 11714(b); Nov. 22, 2000, 114 Stat. 2440, Pub. L. 106-522, § 160(a)(2); Oct. 30, 2004, 118 Stat. 2230, Pub. L. 108-386, § 5; Oct. 16, 2006, 120 Stat. 2021, 2028, 2041, Pub. L. 109-356, §§ 101(b), 121(a), 305(b); Jul. 25, 2013, D.C. Law 19-321, § 2(e), 60 DCR 1724, 20 DCSTAT 1743.

Sec. 446A.

Dec. 24, 1973, 87 Stat. 801, Pub. L. 93-198, title IV, § 446A, as added Oct. 16, 2006, 120 Stat. 2020, Pub. L. 109-356, § 101(a).

Sec. 446B.

Dec. 24, 1973, 87 Stat. 801, Pub. L. 93-198, title IV, § 446B, as added Oct. 16, 2006, 120 Stat. 2020, Pub. L. 109-356, § 305(a); Mar. 13, 2009, 23 Stat. 696, Pub. L. 111-8, § 808(a); Jul. 25, 2013, D.C. Law 19-321, § 2(f), 60 DCR 1724, 20 DCSTAT 1743.

Sec. 447.

Dec. 24, 1973, 87 Stat. 801, Pub. L. 93-198, title IV, § 447; Jul. 25, 2013, D.C. Law 19-321, § 2(g), 60 DCR 1724, 20 DCSTAT 1743.

Sec. 448.

Dec. 24, 1973, 87 Stat. 801, Pub. L. 93-198, title IV, § 448; Oct. 13, 1977, 91 Stat. 1155, Pub. L. 95-131, § 2; Dec. 23, 1981, 95 Stat. 1493, Pub. L. 97-105, § 3; Aug. 5, 1997, 111 Stat. 753, Pub. L. 105-33, § 11243(b); Oct. 16, 2006, 120 Stat. 2036, 2041, Pub. L. 109-356, §§ 201(b)(1), 306.

Sec. 449.

Dec. 24, 1973, 87 Stat. 802, Pub. L. 93-198, title IV, § 449; Oct. 16, 2006, 120 Stat. 2036, Pub. L. 109-356, § 201(b)(2).

Sec. 450.

Dec. 24, 1973, 87 Stat. 803, Pub. L. 93-198, title IV, § 450; Aug. 5, 1997, 111 Stat. 753, Pub. L. 105-33, § 11243(c).

Sec. 450A.

Dec. 24, 1973, 87 Stat. 803, Pub. L. 93-198; title IV, 450A, as added Nov. 22, 2000, 114 Stat. 2440, Pub. L. 106-522, § 159(a)(1); Dec. 21, 2001, 107 Stat. 956, Pub. L. 107-96, § 133(d); Oct. 18, 2004, 118 Stat. 1345, Pub. L. 108-335, § 332; Oct. 16, 2006, 120 Stat. 2021, 2028, Pub. L. 109-356, §§ 102, 122(a).

Sec. 450B.

Dec. 24, 1973, 87 Stat. 803, Pub. L. 93-198; title IV, 450B, as added Nov. 22, 2000, 114 Stat. 2440, Pub. L. 106-552, § 154(a).

Sec. 451.

Dec. 24, 1973, 87 Stat. 803, Pub. L. 93-198, title IV, § 451; Apr. 17, 1995, 109 Stat. 151, Pub. L. 104-8, § 304(a); Apr. 26, 1996, 110 Stat. 1321-92, Pub. L. 104-134, § 134; Sept. 9, 1996, 110 Stat. 2376, Pub. L. 104-194, § 144; Aug. 5, 1997, 111 Stat. 781, Pub. L. 105-33, § 11704(a).

Sec. 452.

Dec. 24, 1973, 87 Stat. 803, Pub. L. 93-198, title IV, § 452; Apr. 17, 1995, 109 Stat. 116, Pub. L. 104-8, § 202(g)(2); Oct. 30, 2004, 118 Stat. 2228, Pub. L. 108-386, § 2; June 1, 2007, Pub. L. 110-33, § 1(a)(1).

Sec. 453.

Dec. 24, 1973, 87 Stat. 803, Pub. L. 93-198, title IV, § 453 as added Aug. 17, 1991, 105 Stat. 539, Pub. L. 102-106, § 2; Apr. 17, 1995, 109 Stat. 106, Pub. L. 104-8, § 106(a)(4); Aug. 6, 1996, 110 Stat. 1698, Pub. L. 104-184, § 4(b); Aug. 5, 1997, 111 Stat. 753, Pub. L. 105-33, § 11243(d); Nov. 19, 1997, 111 Stat. 2187, Pub. L. 105-100, § 157(e)(1).

Subpart 2

Sec. 455.

Dec. 24, 1973, 87 Stat. 803, Pub. L. 93-198, title IV, § 455; Aug. 5, 1997, 111 Stat. 754, Pub. L. 105-33, § 11244(a).

Sec. 456.

Dec. 24, 1973, 87 Stat. 774, Pub. L. 93-198, § 456, as added Oct. 19, 1994, 108 Stat. 3488, Pub. L. 103-373, § 3(a)(2); Apr. 17, 1995, 109 Stat. 140, Pub. L. 104-8, § 224(b)(2); Nov. 19, 1997, 111 Stat. 2174, Pub. L. 105-100, § 130; Oct. 21, 1998, 112 Stat. 2681, Pub. L. 105-277, § 165; Nov. 29, 1999, 113 Stat. 1531, Pub. L. 106-113, § 169; Nov. 6, 2000, 114 Stat. 1940, Pub. L. 106-449, § 1.

Part E

Subpart 1

Sec. 461.

Dec. 24, 1973, 87 Stat. 804, Pub. L. 93-198, title IV, § 461; Dec. 23, 1981, 95 Stat. 1493, Pub. L. 97-105, § 4; Aug. 17, 1991, 105 Stat. 540, Pub. L. 102-106, § 4; Aug. 5, 1997, 111 Stat. 768, Pub. L. 105-33, § 11405.

Sec. 462.

Dec. 24, 1973, 87 Stat. 804, Pub. L. 93-198, title IV, § 462; Aug. 29, 1974, 88 Stat. 793, Pub. L. 93-395, § 1(4); Dec. 23, 1981, 95 Stat. 1493, Pub. L. 97-105, § 5; Aug. 5, 1997, 111 Stat. 769, Pub. L. 105-33, § 11503.

Sec. 463.

Dec. 24, 1973, 87 Stat. 804, Pub. L. 93-198, title IV, § 463; Dec. 23, 1981, 95 Stat. 1493, Pub. L. 97-105, § 6.

Sec. 464.

Dec. 24, 1973, 87 Stat. 805, Pub. L. 93-198, title IV, § 464; Aug. 14, 1974, 88 Stat. 458, Pub. L. 93-376, title III, § 306(a); Dec. 23, 1981, 95 Stat. 1493, Pub. L. 97-105, § 7.

Sec. 465.

Dec. 24, 1973, 87 Stat. 805, Pub. L. 93-198, title IV, § 465; Aug. 29, 1974, 88 Stat. 793, Pub. L. 93-395, § 1(5); Dec. 23, 1981, 95 Stat. 1493, Pub. L. 97-105, § 8.

Sec. 466.

Dec. 24, 1973, 87 Stat. 806, Pub. L. 93-198, title IV, § 466; Aug. 29, 1974, 88 Stat. 793, Pub. L. 93-395, § 1(6); Dec. 23, 1981, 95 Stat. 1493, Pub. L. 97-105, § 9; Oct. 12, 1984, 98 Stat. 1974, Pub. L. 98-473, § 131(a); Dec. 19, 1985, 99 Stat. 1185, Pub. L. 99-190, § 101(c); Oct. 30, 1986, 100 Stat. 3341-180, Pub. L. 99-591, § 131; Dec. 22, 1987, 101 Stat. 1329, Pub. L. 100-202, § 1(c); Nov. 21, 1989, 103 Stat. 1280, Pub. L. 101-168, § 129; Nov. 5, 1990, 104 Stat. 2237, Pub. L. 101-518, § 129; Oct. 1, 1991, 105 Stat. 569, Pub. L. 102-111, § 125; Oct. 5, 1992, 106 Stat. 1433, Pub. L. 102-382, § 125; Oct. 29, 1993, 107 Stat. 1347, Pub. L. 103-127, § 124; Sept. 30, 1994, 108 Stat. 2586, Pub. L. 103-334, § 124; Aug. 5, 1997, 111 Stat. 769, Pub. L. 105-33, § 11504.

Sec. 467.

Dec. 24, 1973, 87 Stat. 806, Pub. L. 93-198, title IV, § 467, as added Dec. 23, 1981, 95 Stat. 1496, Pub. L. 97-105, § 10; enacted, Apr. 9, 1997, D.C. Law 11-254, § 2, 44 DCR 1575; Aug. 5, 1997, 111 Stat. 770, Pub. L. 105-33, § 11505; Jul. 25, 2013, D.C. Law 19-321, § 2(h), 60 DCR 1724, 20 DCSTAT 1743.

Subpart 2

Sec. 471.

Dec. 24, 1973, 87 Stat. 806, Pub. L. 93-198, title IV, § 471; Dec. 23, 1981, 95 Stat. 1493, Pub. L. 97-105, § 11; Jul. 25, 2013, D.C. Law 19-321, § 2(h), 60 DCR 1724, 20 DCSTAT 1743.

Sec. 472.

Dec. 24, 1973, 87 Stat. 806, Pub. L. 93-198, title IV, § 472; Dec. 23, 1981, 95 Stat. 1493, Pub. L. 97-105, § 12; Aug. 5, 1997, 111 Stat. 771, Pub. L. 105-33, § 11506; Jul. 25, 2013, D.C. Law 19-321, § 2(h), 60 DCR 1724, 20 DCSTAT 1743.

Sec. 473.

Dec. 24, 1973, 87 Stat. 806, Pub. L. 93-198, title IV, § 473.

Sec. 474.

Dec. 24, 1973, 87 Stat. 806, Pub. L. 93-198, title IV, § 474.

Sec. 475.

Dec. 24, 1973, 87 Stat. 806, Pub. L. 93-198, title IV, § 475, as added Aug. 5, 1997, 111 Stat. 771, Pub. L. 105-33, § 11507(a); Jul. 25, 2013, D.C. Law 19-321, § 2(h), 60 DCR 1724, 20 DCSTAT 1743.

Subpart 3

Sec. 481.

Dec. 24, 1973, 87 Stat. 807, Pub. L. 93-198, title IV, § 481; Dec. 23, 1981, 95 Stat. 1498, Pub. L. 97-105, § 13.

Sec. 482.

Dec. 24, 1973, 87 Stat. 807, Pub. L. 93-198, title IV, § 482, as added Dec. 23, 1981, 95 Stat. 1498, Pub. L. 97-105, § 14.

Sec. 483.

Dec. 24, 1973, 87 Stat. 807, Pub. L. 93-198, title IV, § 483, as added Dec. 23, 1981, 95 Stat. 1498, Pub. L. 97-105, § 14; Aug. 5, 1997, 111 Stat. 777, Pub. L. 105-33, § 11601(b)(1)(B); Jul. 25, 2013, D.C. Law 19-321, § 2(h), 60 DCR 1724, 20 DCSTAT 1743.

Subpart 4

Sec. 484.

Dec. 24, 1973, 87 Stat. 800, Pub. L. 93-198, title IV, § 484, as added Dec. 23, 1981, 95 Stat. 1499, Pub. L. 97-105, § 15.

Subpart 5

Sec. 485.

Dec. 24, 1973, 87 Stat. 807, Pub. L. 93-198, title IV, § 485.

Sec. 486.

Dec. 24, 1973, 87 Stat. 807, Pub. L. 93-198, title IV, § 486.

Sec. 487.

Dec. 24, 1973, 87 Stat. 808, Pub. L. 93-198, title IV, § 487.

Sec. 488.

Dec. 24, 1973, 87 Stat. 808, Pub. L. 93-198, title IV, § 488.

Sec. 489.

Dec. 24, 1973, 87 Stat. 808, Pub. L. 93-198, title IV, § 489.

Sec. 490.

Dec. 24, 1973, 87 Stat. 809, Pub. L. 93-198, title IV, § 490; Dec. 28, 1977, 91 Stat. 1612, Pub. L. 95-218; Apr. 12, 1980, 94 Stat. 335, Pub. L. 96-235; Dec. 23, 1981, 95 Stat. 1493, Pub. L. 97-105, § 16; Oct. 15, 1982, 96 Stat. 1614, Pub. L. 97-328; Aug. 6, 1996, 110 Stat. 1696, Pub. L. 104-184, §§ 2(a), (b), (c)(1); Aug. 5, 1997, 111 Stat. 773, Pub. L. 105-33, § 11508; Nov. 22, 2000, 114 Stat. 2440, Pub. L. 106-522, § 160(a)(1); Jul. 25, 2013, D.C. Law 19-321, § 2(h), 60 DCR 1724, 20 DCSTAT 1743.

PART F

Sec. 491.

Amendment to D.C. Official Code § 1-1001.03.

Sec. 492.

Amendment to § 1 of the Act of March 1, 1920 (D.C. Official Code § 6-621.01).

Sec. 493.

Dec. 24, 1973, 87 Stat. 811, Pub. L. 93-198, title IV, § 493(a).

Sec. 494.

Amendment to § 2 of the Act of June 4, 1948 (D.C. Official Code § 3-302)

Sec. 495.

Dec. 24, 1973, 87 Stat. 811, Pub. L. 93-198, title IV, § 495; July 7, 2000, D.C. Law 13-159, § 2, 47 DCR 2212; June 1, 2007, Pub. L. 110-33, § 1(a)(2).

Sec. 496.

Dec. 24, 1973, 87 Stat. 811, Pub. L. 93-198, title IV, § 496, as added July 15, 2008, 122 Stat. 2491, Pub. L. 110-273, § 3(a)(2).

PART G

Sec. ___. Initiatives, Referendums, and Recalls

Charter Amendment No. 1

Sec. 1. Mar. 10, 1978, D.C. Law 2-46, § 2, 24 DCR 199.

Sec. 2. Mar. 10, 1978, D.C. Law 2-46, § 2, 24 DCR 199; June 7, 1979, D.C. Law 3-1, § 5, 25 DCR 9454.

Sec. 3. Mar. 10, 1978, D.C. Law 2-46, § 2, 24 DCR 199.

Sec. 4. Mar. 10, 1978, D.C. Law 2-46, § 2, 24 DCR 199.

Sec. 5. Mar. 10, 1978, D.C. Law 2-46, § 2, 24 DCR 199; Oct. 27, 1978, 92 Stat. 2023, Pub. L. 95-526, § 1.

Sec. 6. Mar. 10, 1978, D.C. Law 2-46, § 2, 24 DCR 199; Oct. 27, 1978, 92 Stat. 2023, Pub. L. 95-526, § 1.

Sec. 7. Mar. 10, 1978, D.C. Law 2-46, § 2, 24 DCR 199; Oct. 27, 1978, 92 Stat. 2023, Pub. L. 95-526, § 1.

Charter Amendment No. 2

Sec. 1. Mar. 10, 1978, D.C. Law 2-46, § 2, 24 DCR 199.

Sec. 2. Mar. 10, 1978, D.C. Law 2-46, § 2, 24 DCR 199; June 7, 1979, D.C. Law 3-1, § 5, 25 DCR 9454.

Sec. 3. Mar. 10, 1978, D.C. Law 2-46, § 2, 24 DCR 199.

Sec. 4. Mar. 10, 1978, D.C. Law 2-46, § 2, 24 DCR 199.

Sec. 5. Mar. 10, 1978, D.C. Law 2-46, § 2, 24 DCR 199.

TITLE V

Sec. 501.

Dec. 24, 1973, 87 Stat. 812, Pub. L. 93-198, title V, § 501; Aug. 5, 1997, 111 Stat. 777, Pub. L. 105-33, § 11601(a)(1).

Sec. 502.

Dec. 24, 1973, 87 Stat. 813, Pub. L. 93-198, title V, § 502; Aug. 29, 1994, 88 Stat. 793, Pub. L. 93-395, § 1(7); Aug. 6, 1981, 95 Stat. 150, Pub. L. 97-30; Oct. 15, 1982, 96 Stat. 1626, Pub L. 97-34; Aug. 2, 1983, 97 Stat. 367, Pub. L. 98-65; June 12, 1984, 98 Stat. 242, Pub. L. 98-316; Nov. 8, 1984, 98 Stat. 3369, Pub. L. 98-621, § 9(c)(2); Dec. 12, 1989, 103 Stat. 1901, Pub. L. 101-223, § 2(a); Aug. 17, 1991, 105 Stat. 495, Pub. L. 102-102, § 2(a); Aug. 5, 1997, 111 Stat. 777. Pub. L. 105-33, § 11601(a)(1).

Sec. 503.

Dec. 24, 1973, 87 Stat. 813, Pub. L. 93-198, title V, § 503, as added Aug. 17, 1991, 105 Stat. 495, Pub. L. 102-102, § 2(b); Oct. 19, 1994, 108 Stat. 3488, Pub. L. 103-373, § 2; Apr. 17, 1995, 109 Stat. 142, Pub. L. 104-8,§ 301(e); Aug. 5, 1997, 111 Stat. 777, Pub. L. 105-33, § 11601(a)(1).

TITLE VI

Sec. 601.

Dec. 24, 1973, 87 Stat. 813, Pub. L. 93-198, title VI, § 601.

Sec. 602.

Dec. 24, 1973, 87 Stat. 813, Pub. L. 93-198, title VI, § 602; Sept. 7, 1976, 90 Stat. 1220, Pub. L. 94-402; Oct. 27, 1978, 92 Stat. 2023, Pub. L. 95-526; Dec. 23, 1981, 95 Stat. 1493, Pub. L. 97-105, § 17; Oct. 12, 1984, 98 Stat. 1974, Pub. L. 98-473, § 131(d)-(g); Apr. 17, 1995, 109 Stat. 107, 142, Pub. L. 104-8, §§ 108(b)(2), 301(d)(1).

Sec. 603.

Dec. 24, 1973, 87 Stat. 814, Pub. L. 93-198, title VI, § 603; Apr. 17, 1995, 109 Stat. 115, Pub. L. 104-8, § 202(f)(1); Aug. 6, 1996, 110 Stat. 1697, Pub. L. 104-184, § 3; enacted, Apr. 9, 1997, D.C. Law 11-254, § 2, 44 DCR 1575; Aug. 5, 1997, 111 Stat. 754, Pub. L. 105-33, §§ 11243(e), 11601(b)(1)(C), 11601(b)(1)(D), 11602(b), 11604.

Sec. 604.

Dec. 24, 1973, 87 Stat. 816, Pub. L. 93-198, title VI, § 604; Oct. 12, 1984, 98 Stat. 1975, Pub. L. 98-473, § 131(h).

TITLE VII

PART A

Sec. 701.

Dec. 24, 1973, 87 Stat. 779, Pub. L. 93-198, title VII, § 701.

Sec. 702.

Dec. 24, 1973, 87 Stat. 779, Pub. L. 93-198, title VII, § 702.

Sec. 703.

Dec. 24, 1973, 87 Stat. 779, Pub. L. 93-198, title VII, § 703; Apr. 24, 1974, 88 Stat. 93, Pub. L. 93-272, § 1.

Sec. 704.

Dec. 24, 1973, 87 Stat. 779, Pub. L. 93-198, title VII, § 704.

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Sec. 711.

Dec. 24, 1973, 87 Stat. 779, Pub. L. 93-198, title VII, § 711.

Sec. 712.

Dec. 24, 1973, 87 Stat. 779, Pub. L. 93-198, title VII, § 712.

Sec. 713.

Dec. 24, 1973, 87 Stat. 779, Pub. L. 93-198, title VII, § 713.

Sec. 714.

Dec. 24, 1973, 87 Stat. 779, Pub. L. 93-198, title VII, § 714.

Sec. 715.

Dec. 24, 1973, 87 Stat. 779, Pub. L. 93-198, title VII, § 715.

Sec. 716.

Dec. 24, 1973, 87 Stat. 779, Pub. L. 93-198, title VII, § 716.

Sec. 717.

Dec. 24, 1973, 87 Stat. 779, Pub. L. 93-198, title VII, § 717.

Sec. 718.

Dec. 24, 1973, 87 Stat. 779, Pub. L. 93-198, title VII, § 718.

Sec. 719.

Dec. 24, 1973, 87 Stat. 779, Pub. L. 93-198, title VII, § 719.

PART C

Sec. 721.

Dec. 24, 1973, 87 Stat. 779, Pub. L. 93-198, title VII, § 721.

Sec. 722.

Dec. 24, 1973, 87 Stat. 779, Pub. L. 93-198, title VII, § 722.

Sec. 723.

Dec. 24, 1973, 87 Stat. 779, Pub. L. 93-198, title VII, § 723; Oct. 13, 1977, 91 Stat. 1155, Pub. L. 95-131, § 1.

Sec. 724.

Dec. 24, 1973, 87 Stat. 779, Pub. L. 93-198, title VII, § 724, as added, April 17, 1974, 88 Stat. 85, Pub. L. 93-268, § 3.

PART D

Sec. 731.

Dec. 24, 1973, 87 Stat. 822, Pub. L. 93-198, title VII, § 731; Sept. 13, 1982, 96 Stat. 934, Pub. L. 97-258, § 1 [Chapter 15, subchapter III, § 1537], § 4(a), and § 5(b).

Sec. 732.

Dec. 24, 1973, 87 Stat. 822, Pub. L. 93-198, title VII, § 732.

Sec. 733.

Dec. 24, 1973, 87 Stat. 822, Pub. L. 93-198, title VII, § 733; Aug. 14, 1974, 88 Stat. 458, Pub. L. 93-376, title III, § 306(a).

Sec. 734.

Dec. 24, 1973, 87 Stat. 822, Pub. L. 93-198, title VII, § 734.

Sec. 735.

Amendment to section 141(c) of the State and Local Fiscal Assistance Act of 1972, approved October 20, 1972 (Pub. L. 92-512; 86 Stat. 919).

Sec. 736.

Dec. 24, 1973, 87 Stat. 822, Pub. L. 93-198, title VII, § 736; Sept. 13, 1982, 96 Stat. 934, Pub. L. 97-258, § 1, 4(a), and 5(b).

Sec. 737.

Dec. 24, 1973, 87 Stat. 824, Pub. L. 93-198, title VII, § 737; Apr. 12, 2000, D.C. Law 13-91, § 116, 47 DCR 520.

Sec. 738.

Dec. 24, 1973, 87 Stat. 824, Pub. L. 93-198, title VII, § 738; Aug. 14, 1974, 88 Stat. 458, Pub. L. 93-376, title III, § 306(a); Oct. 30, 1975, D.C. Law 1-27, § 2, 22 DCR 2470; Sept. 27, 1983, D.C. Law 5-26, § 2, 30 DCR 3654; Sept. 26, 1984, D.C. Law 5-116, § 4, 31 DCR 4018; Sept. 26, 1995, D.C. Law 11-52, § 814, 42 DCR 3684; Apr. 20, 1999, D.C. Law 12-264, § 3, 46 DCR 2118.

Sec. 739.

Dec. 24, 1973, 81 Stat. 825, Pub. L. 93-198, title VII, § 739.

Sec. 740.

Dec. 24, 1973, 87 Stat. 830, Pub. L. 93-198, title VII, § 740; Oct. 12, 1984, 98 Stat. 1975, Pub. L. 98-473, § 131(i), (j).

Sec. 741.

Dec. 24, 1973, 87 Stat. 831, Pub. L. 93-198, title VII, § 741; Apr. 17, 1974, 88 Stat. 87, Pub. L. 93-268, § 4(c).

Sec. 742.

Dec. 24, 1973, 87 Stat. 831, Pub. L. 93-198, title VII, § 742.

Sec. 743.

Amendment to section 1 An Act to authorize the Commissioners of the District of Columbia to borrow funds for capital improvement programs and to amend provisions of law relating to Federal Government participation in meeting costs of maintaining the National Capital City, approved June 6, 1958 (72 Stat. 183; D.C. Official Code § 10-619).

Sec. 751.

Amendment to the District of Columbia Election Act, approved August 12, 1955 (69 Stat. 699; D.C. Official Code § 1-1001.01 *et seq.*).

Sec. 752.

Dec. 24, 1973, 87 Stat. 836, Pub. L. 93-198, title VII, § 752.

Sec. 761.

Dec. 24, 1973, 87 Stat. 820, Pub. L. 93-198, title VII, §§ 717(b), 761; Mar. 3, 1979, D.C. Law 2-139, § 3205(kk), 25 DCR 5740; Aug. 1, 1979, D.C. Law 3-14, § 2(d), 25 DCR 10565.

Sec. 762.

Dec. 24, 1973, 87 Stat. 779, Pub. L. 93-198, title VII, § 762, as added, Oct. 12, 1984, 98 Stat. 1975, Pub. L. 98-473, § 131(l).

Sec. 771.

Dec. 24, 1973, 87 Stat. 779, Pub. L. 93-198, title VII, § 771); Aug. 29, 1974, 88 Stat. 793, Pub. L. 93-395, § 1(8).

APPENDIX ONE:

THE D.C. REVITALIZATION ACT: HISTORY, PROVISIONS AND PROMISES

Photo by Michael Bonfigli

Jon Bouker, Arent Fox LLP

When Congress granted home rule to the District of Columbia in 1973,[167] Rep. Charles C. Diggs, Jr., then chair of the House D.C. Committee, declared that Washington's residents had become "masters of their own fate."[168] Led by a democratically elected mayor and city-council, the District was not quite its own "master" but a semi-autonomous, unique, government entity with city and state functions and limited power over its own budget and laws.[169] However, a mere two decades later, the District's limited home rule was in crisis. As the District government's financial position reached its nadir in the mid-1990s, residents' frustration and anger mounted as the District was unable to deliver efficiently the most basic services to its citizens, and the city's congressional overseers began calling for a partial or even complete elimination of home rule.

After enjoying relative financial stability for most of the 1980s, the District began operating at a deficit in 1994, and by 1995 the accumulated deficit had ballooned to $722 million. To make matters worse, Wall Street dropped the District's bond ratings to "junk" levels, prompting Moody's to brand them risky and "speculative."[170] As a result, the city was unable to pay its vendors, to render basic services, or to obtain a simple line of credit. District residents, tired of dealing with ineffective and inefficient services, underachieving schools, and high crime rates, fled to the Maryland and Virginia suburbs in droves – 53,000 District residents, representing 22,000 households, left between 1990 and 1995. This flight contributed to the erosion of the District's tax base and exacerbated budget shortfalls.[171] It was a vicious cycle that was driving the city toward insolvency.

The growing economic crisis would soon come to the attention of the Clinton Administration and the newly elected Republican Congress. Despite their myriad differences on the wide range of national issues facing the country, the President and the Congress would have to come together to prevent the Nation's Capital from sliding into bankruptcy. Their analysis ultimately would examine both sides of the city's balance sheet: the federally imposed limitations on revenue and the District's own expenditures.

Because tackling the District's revenue limitations presented far too many political challenges for the Congress and the President to resolve,[172] the legislation that was adopted to stem the crisis, the National Capital Revitalization and Self-Government Improvement Act of 1997 (known as "The Revitalization Act"), addressed only the expenditure side of the District's budget. For example, the Act removed several costly state functions and relieved the District of its massive, federally created pension liability and disproportionate share of Medicaid payments, but did not touch limitations on revenue, such as the non-resident income tax ban, property tax exemptions or the federal height limitations on buildings. Despite the indisputable positive financial impact that the Revitalization Act continues to have on the District, even those who supported and championed the legislation recognized that it would never amount to a complete remedy for the District's structural financial challenges. It was (and remains today) an incomplete remedy because it alleviates only some of the expenditures that the District must bear uniquely as the national capital, but it ignores the crippling federally imposed

limitations on local revenue. The architects of the Revitalization Act articulated, before and after its passage, their belief that the Act would have to be revisited and potentially strengthened at some point in the future.

The Control Board

By 1995, the District had reached a point beyond its own ability to stem the worsening economic crisis. The congressional leadership and D.C. oversight committees began to discuss a solution to the District's fiscal challenges. Following the 1994 elections, the Congress was controlled for the first time in 40 years by Republicans (a party which then and today holds less than 10% of the voter registrations in the District). Yet, despite the political differences between the Congress and the District, Speaker Gingrich (R-GA) and House D.C. Subcommittee Chair Davis (R-VA) dedicated themselves to working across the aisle to find a bi-partisan solution to the crisis. Two options gained traction in early 1995: first, place the city in federal receivership, not unlike the commissioner structure prior to home rule, a move favored by some of the newly elected congressional Republicans and almost no one in the District; or second, cede some control over the city's affairs to a control board created by the Federal Government, a course of action supported by Congresswoman Norton (D-DC), the District's non-voting representative to Congress. Norton knew that jurisdictions such as New York, Cleveland and Philadelphia had emerged from financial crisis with the assistance of state-created financial control boards, and that those jurisdictions had retained partial autonomy during the control periods and received full autonomy once the control period had ended. Norton and her colleague, Representative Davis, whom Speaker Gingrich had hand-picked to chair the D.C. Subcommittee, convinced Congress to choose the latter course, passing legislation in 1995 to establish the District of Columbia Financial Responsibility and Management Assistance Authority – or as it was and is commonly known: the "Control Board."[173]

From the outset, Congress expected a great deal from the Control Board. It was required to:

- ensure that the District efficiently and effectively deliver services to its residents,
- enhance the District's timely payments of its debts; increase the city's access to capital markets,
- assure the city's long-term economic vitality and operational efficiency, and
- repair and foster a better relationship between the District and the Federal Government.[174]

As if that mandate were not vast enough, the Control Board also was tasked with perhaps its most important role – shepherding the city through the process of balancing its budget. Congress gave the Control Board four years to balance the District's budget – a balance that was required to be maintained for four years before the Control Board could be dissolved.[175]

To ensure that these goals were achieved, Congress vested the Control Board with broad powers traditionally reserved for the city government – including the authority to approve or reject the city's annual budget, its financial plan, and any attempts to spend or borrow in the city's name, and to review all future and existing city contracts. All District spending was to be routed through the Control Board. The Board also was expected to approve the Mayor's appointments to key government positions, including the Chief Financial Officer (CFO), and had the authority to remove such appointees for cause. In extraordinary circumstances, and only after following a specific process identified in the legislation, the Control Board also could disapprove District laws passed by the Council.

Armed with those powers, the Control Board set out to remedy the District's fiscal crisis, and immediately took action to do so. In an attempt to calm vendors' discontent with the District's contracting processes, the Board reviewed and approved over 1,500 contracts. It removed the contracting authority from the Department of Human Services to ensure city agents undertook better contracting procedures and achieved savings for the District. The Board also:

- oversaw repairs to the District's emergency vehicles to improve the promptness and reliability of essential city emergency services;
- privatized city functions to cut costs; and
- exercised its financial oversight by rejecting Council-approved expenditures that would have further increased the accumulated deficit and would have – in the Board's eyes – been irresponsible.[176]

As time passed, the Board grew more assertive. It forced a member of Mayor Barry's cabinet to resign, rejected millions in contracts between the city and the Mayor's associates that it found questionable, and even regularly quashed legislation approved by the D.C. Council.[177] In one of its most controversial actions, the Board fired the public school superintendent, revoked most of the school board's powers, and appointed its own superintendent to lead the system.[178]

In their own effort to stem the crisis and to demonstrate fiscal responsibility, the Council and the Mayor also began taking steps to lift D.C. out of its financial deficit and to strengthen managerial controls. The Council passed legislation that reduced spending by cutting welfare benefits and youth programs, and, for his part, the Mayor pledged to reduce the number of workers on the city payroll to further ease the city's budgetary burdens.[179]

Despite these advances, wholesale remediation of the District's financial situation proved elusive. The inability of the Control Board to rehabilitate the city's finances and management was not for lack of effort. However, after 20 months of work, the Control Board – by its own admission – had managed only "marginal progress."[180] Perplexed by its inability to effect major change in the city's situation, the Control Board, along with other stakeholders, including Congress and D.C. Appleseed, began to discuss remedies for the root causes of D.C.'s fiscal problems.

Searching for Solutions

What the various stakeholders determined was that D.C.'s fiscal problems were more deeply rooted and structural than any short-term maladies that the Control Board and Council had determined to cure. Irresponsible spending and government mismanagement certainly contributed to the problem and precipitated the fiscal crisis. The District's long-term recovery, however, would depend upon an examination and re-structuring of the limitations on its revenue stream coupled with relief from its state-type and federal expenditure responsibilities. These twin constraints on the District's budget were the root causes of the District's long-term, structural deficit.

City Acting as a State

In its assessment of these structural challenges, the Control Board determined that the most basic threat to the District's long term financial viability was its status as a hybrid municipal entity. It lacked revenue support from a state government, but was forced by necessity to provide its residents the services normally funded by a state. As the Board noted, comparison between the District and any other similarly situated city in the United States revealed the disparity:

> Every other city in the United States is part of a broader governance structure that begins with a state and includes other cities and counties, as well as special districts and independent authori-

Photo by Michael Bonfigli

ties. States distribute and share certain powers with their cities, counties, and special districts. The District, in contrast, is neither a state with the power to distribute its authority and functions to other governmental units, nor a city with the ability to rely upon a state to share or shift the burden of governance within a broader geographical area.[181]

It was what President Clinton called the "not quite" syndrome – the District was "not quite a State, not quite a city, not quite independent, not quite dependent."[182]

As a result of this hybrid status, the District was required to fund many state functions as if it possessed the broad taxing base of a state. Virtually no government service remained unaffected by this reality. For example, states generally assume the nonfederal share of Medicaid expenditures. New York City was the only city outside of D.C. that paid a portion of Medicaid costs, and that level was 25 percent. By contrast, the District was forced to pay 50 percent of its Medicaid costs – the largest burden borne by any city in the Nation. The District's high ratio of Medicaid recipients to tax payers (in D.C. the ratio was two taxpayers for every Medicaid recipient, whereas in Maryland and Virginia the ratio exceeded 4:1) only exacerbated the problem.[183] As a result, between fiscal years 1991 and 1995, the District's Medicaid expenditures for private providers alone had ballooned from $427 million to $744 million, and it was estimated the total would jump another $40 million by FY 1997.[184] As noted by the GAO in a 1996 report, were the District required to pay half of its nonfederal share of Medicare expenditures, "the impact on [its] financial condition would [have been] significant."[185]

Similarly, welfare programs, the nonfederal share of which was funded with state dollars in most cases, were funded without state-level assistance in the District.[186] Education, typically the province of the state both from a funding and a policy perspective, also was a responsibility that fell to the District. The District government was forced to educate the city's youth without nearly $300 million in operational funding it would have received were it part of a state.[187] Infrastructure needs also were the responsibility of the District government. Whereas most states footed the bill for road and bridge construction, maintenance and improvement, the District bore those responsibilities on its own. Further examples of this phenomenon were the financial burden D.C. faced in operating its courts, hospitals, prisons and university. From 1993-1995, the District government, for example, paid subsidies to the D.C. General Hospital and the University of the District of Columbia of $163 million and $184 million, respectively.[188] The District also was forced to maintain and operate a completely unified court system as well as a jail housing felons. All of these services, usually provided and funded by the states, were the responsibility of the District alone – a responsibility it had without having the corresponding statutory state taxing power needed to meet the responsibility.

In addition to its state-type service responsibilities, the District also had a unique problem in the management of its unfunded pension liability. When the District received home rule in 1974, the District government assumed the workforce from the Federal Government. With those employees came a $2 billion unfunded pension liability, which had been accumulated entirely by the Federal Government. By 1997, that $2 billion unfunded pension liability had grown to $5 billion, almost entirely as a function of interest[189] – approximately the same size as the city's entire budget at that time. It was estimated that by 2004 the liability would balloon further to $7 billion.[190]

Revenue Stream Limitations

Simultaneously providing city and state services to its residents, non-residents, and visitors presented the District with

"D.C. cannot tax nearly $2 of every $3 earned in the District."

expenditure pressures unlike any other jurisdiction. Compounding this challenge, the District's Home Rule Act[191] forced limitations on the District's revenue stream. Ironically, many – if not all – of these revenue limitations imposed by Congress were a result of the District's service as the seat of the Federal Government and its thousands of employees.

Ban on Nonresident Tax. First, the Home Rule Act expressly prohibited the District from taxing nonresident income – a revenue source routinely utilized by many other comparable cities and also by states around the country. In Philadelphia, for example, those who work in the city but commute home to suburban enclaves are required to pay income taxes to the municipal authorities. By contrast, the District's suburban commuters – because of the limitations imposed by Congress –come into the city each work day, add to the demands on many of the District's public services, and pay no municipal income tax. As a result, The General Accounting Office (GAO) has estimated that D.C. cannot tax nearly $2 of every $3 earned in the District.[192]

Property Tax Exemption. D.C.'s revenue stream is limited further by virtue of the large federal presence in the city. About 42 percent of the assessed value of all land and improvements in the District is tax exempt.[193] This includes federal property, which constitutes roughly 23 percent of the total assessed land value of the District, as well as other properties which the Federal Government specifically immunized from D.C. property taxes, including foreign embassies and consulates, international organizations, and the headquarters of such national organizations as the American Legion and the Daughters of the American Revolution. Of course, the tenants who occupy the buildings sitting upon that nontaxable land nonetheless rely upon the city's fire department and police force services.[194]

Building Height Limitation. Similarly, federal legislation limits the height of buildings in the District, stunting high rise development – and, by extension, growth of the tax base.[195] Of course, many District and federal officials support the so-called "Height Act" to maintain the unique character and beauty of the District.

Federal Compensation Falls Short

For a time, the Federal Government did provide the District with an annual payment, which was intended to serve as state-like support for the city and make up for the revenue limitations imposed on the District. The payments soon proved woefully inadequate because the size of the payment was not indexed for inflation and also was subject to annual appropriations. By 1997, the $660 million payment did not compensate fully the District for the additional responsibilities it carried as a result of the Federal Government's presence, nor did it compensate for the loss of revenue caused by federally imposed restrictions on the District's taxing authority. GAO has determined that D.C.'s ability to tax nonresident income and federally occupied or immunized property alone cost the city over $1 billion in revenue each year -$505 million more than the $660 million Federal Payment.[196] Further, because the Congress increased the Federal Payment only once in the 10 years preceding the passage of the Revitalization Act in 1997, the net present value decreased due to annual inflation. The District was, essentially, fighting the battle against insolvency with both hands tied behind its back – unable to cut expenditures because it would cause more residents to flee the city, and unable to raise

revenue because of federal restrictions. Because the Federal Government had created the problem and alone had the authority to alleviate it, it became clear to all of the stakeholders analyzing the District's long term financial outlook that only the Federal Government could help the District remedy the so-called fiscal structural imbalance – the financial inequities in the unique relationship between the federal and District governments.

Towards a Revitalization Act

In December 1996, the Control Board released a Strategic Plan, which – it was hoped – would help spur a redefinition of the financial relationship between the District and the Federal Government. D.C.'s structural challenges became the centerpiece of the revitalization discussion and the basis of any future legislation. Accordingly, the Board's plan aimed to realign many of the state-type responsibilities imposed upon the District in an effort to ease its financial burdens.[197] Given that the Federal Government was the only entity that could reasonably and logically act as the District's "state," the Control Board looked to it to take on more responsibility in the financing and management of the District's state functions.

The theory behind the Control Board's analysis was simple: the Federal Payment appropriated annually to the District was simply not sufficient to address the District's many financial obligations. This, coupled with the District's restricted ability to create revenue through taxation and other means, meant that more federal assistance was needed to rehabilitate the District's financial status. The Control Board's plan, therefore, called on the Federal Government to pay for the District's entire Medicaid bill, close the gap on the District's pension shortfall, and assist in paying for many other city programs typically funded by states.[198] According to Control Board Vice-Chairman Stephen D. Harlan, the plan's aim was to restructure "a relationship that has been from the start one-sided and sometimes arbitrary . . . . Failure to reform this relationship is to condemn District citizens to perpetual second-class status . . . . Congress has been trying to figure out for 200 years how to govern this city. We don't have it right yet." The Control Board's plan became a precursor to a major, Administration-led effort to dramatically restructure the relationship between the District and the Federal Government in hopes of revitalizing the Nation's Capital.

The Players

Once it became apparent that a major overhaul of D.C.'s relationship with the Federal Government was needed, a core group of political players – local and federal – assembled to shepherd legislation through the Administration and Congress. Locally, Congresswoman Norton took the lead, serving as the bridge between the Federal Government and the District. Another indispensable partner was Rep. Davis, Chairman of the House D.C. Subcommittee. Representing Northern Virginia, Davis said often that D.C. was "the goose that laid the golden egg for this region."[199] His dual role as supporter of the revitalization movement and member of the Republican caucus would prove immensely important given the hesitancy among some members of his party to support any federal effort to help the District.

Additional congressional support for the proposed realignment of the District's relationship with the national government was somewhat mixed. Some members in the newly elected Republican majority viewed District revitalization chiefly as a "bail out" for a city, which – in their view – had brought its financial woes upon itself through local mismanagement. Among these vocal members, who a few years prior had swept into power on a platform of fiscal conservatism, there was great hostility towards any plan that would increase federal spending, including spending to help the

"A relationship that has been from the start one-sided and sometimes arbitrary . . . . Failure to reform this relationship is to condemn District citizens to perpetual second-class status.""

–Control Board Vice Chairman Stephen Harlan

District. However, the majority of Republican members, led by the Republican leadership, were supportive. Davis noted that the issue was a top priority among the leadership of both Houses of Congress, including particularly House Speaker Gingrich.

Despite the strong political differences that existed between the predominantly Democratic, population of the District and his Republican "revolutionaries," Speaker Gingrich – a historian – asserted that, as the Nation's Capital, the District must be saved. In private meetings, he often said that the District would "not go down on my watch." Gingrich made his commitment clear when, during a forum at Eastern High School (shortly after being elected Speaker) he said that the "goal should not be to balance the city budget or make sure the debt rating is okay" but rather to "have the best capital city in the world and make that real."[200]

Complementing the strong support of the Republican Speaker was the Clinton Administration's wholesale support for federal assistance. President Clinton's approach to the District was unlike that of any of his predecessors since the advent of home rule. Early in his administration (and following a celebrated walk up Georgia Avenue to talk with District residents and business people)[201], the President ordered his cabinet to find ways to assist the District. The President said his view was that the Federal Government ought to share a "special relationship" with the residents and local government of the capital city.[202] The President also made it clear to his cabinet secretaries that their work on behalf of the District should become a personal obligation and that it should not be passed down the chain of command to lower ranking officials. To institutionalize this focus, the President created the Inter-agency District of Columbia Task Force. The director of the Task Force was charged with coordinating the cabinet's activities in support of the Nation's Capital. President Clinton felt so strongly that the Task Force was a successful model of how the Federal Government should deal with the District, that he issued an executive order on the last day of his presidency that formalized its structure.[203]

Therefore, it was no surprise that when discussion of a full-scale overhaul of the District's relationship with the Federal Government began, President Clinton relied directly on his cabinet to formulate the Administration's plan of attack.[204] Clinton tasked his Director of the Office of Management and Budget, Franklin Raines, to oversee the Administration's work on the effort. Born and raised in the District, Frank Raines was uniquely suited to represent the Administration in this effort because of his deep knowledge of the District's finances and his personal stake in the District's revitalization as a native Washingtonian.

What followed were dozens of meetings between members of the Clinton cabinet, the Control Board, congressional and local elected representatives, which culminated with the unveiling of The National Capital Revitalization and Self-Government Improvement Plan ("the Revitalization Plan").[205] In addition, the Inter-agency Task Force itself provided invaluable support to the District at the agency level, such as technical assistance and grants.

The Revitalization Plan

In January 1997, the Clinton Administration formally announced the Revitalization Plan. President Clinton "had two goals in mind – first, to revitalize Washington, D.C. as the Nation's Capital and second, to improve the prospects for home rule to succeed."[206] The four steps the Federal Government proposed to take were:

1. Shift away from the District some of the local, county, and state responsibilities the Federal Government gave the city in 1974, which, in the words of one Clinton

official, had "proven beyond the city's resources to deal with."[207]

2. Invest considerable resources to improve the city's capital infrastructure.[208]
3. Establish a number of mechanisms to strengthen the District's economic base.[209]
4. Provide the District with technical expertise and resources to the maximum extent possible to help the city government become more efficient and responsive.[210]

The specific elements of the Revitalization Plan are described in the following section:

Overtaking Major Financial and Managerial Responsibilities

Courts: The Revitalization Plan called for the city's courts to remain self-managed given their successful track record, but the Federal Government would take financial responsibility. In total, the Federal Government was to provide the District with $129 million in the first year and $685 million over five years to fund the city's courts and alleviate that drain on the District's budget.[211]

Jails/Inmates: The Federal Justice Department was to "assume [both] financial and administrative responsibility for the District's felony offenders, including substantial capital investment in providing appropriate prison facilities."[212] This is a function usually managed and financed by the states. D.C.'s convicted felons would be sentenced under guidelines similar to federal sentencing guidelines and, eventually, would be eligible for transfer to any federal facility in the country.[213]

Medicaid: Further, the Revitalization Plan would increase the federal Medicaid payment to 70 percent of the total cost. Despite this reduction of Medicaid expenses, the District still would be one of only two cities required to pay Medicaid costs normally borne by states.[214] The Federal Department of Health and Human Services also would assist the District government in the management of its Medicaid program to ensure that Federal funds were not mismanaged.[215]

Pension Liability: Perhaps most importantly, the Revitalization Plan called for the Federal Government to assume the District's $5 billion pension liability – a debt as large as the District's entire budget at the time – for all active and retired District employees.[216]

Under the Plan, the Federal Government was to assume both financial and administrative responsibility for the District's retirement programs for law enforcement officers and firefighters, teachers, and judges.[217] Federal assumption of the pension liability was contingent upon the District establishing replacement plans for its current and future employees.[218]

Financing the Accumulated Deficit: Although the Control Board's strategic plan had failed to address the issue of D.C.'s accumulated deficit, the Administration Plan specifically addressed this problem by providing the District with the authority to borrow from the Federal treasury to finance $400 - $500 million in debt.[219] The term of the loan was envisioned at 15 years with options for refinancing upon improvement of the District's credit situation.[220]

This part of the Revitalization Plan was critical to the immediate improvement of the District's cash-flow problem. By placing the District on a sound financial basis, it would be able to pay vendors in a timely manner and attract vendors that could reliably perform services for District residents. Further, by financing the accumulated deficit, the District bond ratings, which had been rated at junk levels, would improve.[221]

Improving Infrastructure

Road and Bridge Maintenance: The Plan also established a National Capital Infrastructure Authority (NCIA) that would fund repairs to and construction of roads and mass transit facilities. The fund would initially be capitalized with $125 million in federal seed money from the Federal Highway Trust Fund. This money could be used to construct roads and bridges, serve as the local match for Federal-aid road and bridge projects, and capital expenditures for the Washington Metropolitan Area Transit Authority.[222] Further, the Plan allowed contributions to the NCIA from other sources, including voluntary payments in lieu of taxes from tax-exempt organizations.[223] Over time, it was estimated that $1.4 billion in federal funds would be invested to repair the District's roads and bridges.[224]

Strengthening the City's Economic Base

Economic Development Corporation: The Revitalization Plan contained an economic stimulus package for the District, providing tax incentives to spur downtown investment as well as development in poorer neighborhoods, and it would set up an "improvement fund" that local tax-exempt firms would be encouraged to support.[225] In addition, the Plan called for the creation of an Economic Development Corporation (EDC) "to revitalize the city's economy, with local planning and control that [would] leverage[] Federal and private resources."[226] The EDC was to be "a non-Federal, private-public corporation [to] provide the District with a focal point for its economic development activities, an entity whose sole purpose is to develop the economy of the Nation's Capital."[227]

Tax Incentives/Grants: Further supporting the economic aims of the plan were $300 million in grants and tax incentives to be provided to the District.[228] Of the $300 million provided by the Federal Government, $250 million would come in "federal tax incentives for jobs and capital to strengthen the [District's] economic base" and the other $50 million was to come in federal commitments to help capitalize the EDC.[229]

Tax Collection: In addition to other technical assistance being provided to the District by the Inter-Agency Task Force, the Internal Revenue Service would assume responsibility for collecting the city's annual income taxes at a savings to the District of $117 million.[230]

Concessions Made by the District

In return for the above-described assistance, the District was required to make some significant concessions, including losing the annual Federal Payment on which it relied for a significant amount of its total revenue and taking drastic steps to gets its financial house in order.

Federal Payment Repealed: In return for the proposed federal assistance, the Revitalization Plan called for the repeal of the District's annual Federal Payment, which – in the Administration's view – increasingly failed to meet the various purposes for which it had been created.[231] The Administration believed that the federal take over of so many of the District's state-like functions far exceeded the benefit provided by the Federal Payment and certainly made up for its elimination.[232]

From the outset, the Plan's supporters were aware that the repeal of the Federal Payment would be the most difficult component for the District to support, despite the fact that at that time the payment had been increased by the Congress only once in ten years and had, in essence, significantly declined in real terms given rising inflation.

Federal Oversight of District's Financial Affairs: Under the Revitalization Plan, Congress was to retain a large degree of control over the District government's affairs; the DC subcommittees, for example, would continue to oversee the District and

Photo by Michael Bonfigli

the Control Board would remain in place. Further, the congressional appropriations committees would continue to play a large role in setting the District's budget by determining the level of funding for those functions for which the Federal Government was directly responsible under the Plan (e.g., the criminal justice system).[233] However, the appropriations committees would not continue to appropriate every detail of the city's budget, including those funded with local dollars.[234]

For the Revitalization Plan to go forward, the District would be required to take "specific steps to improve its budget and management"[235] – specifically, balancing its budget on a schedule more expedited than that called for under the Control Board legislation.[236] This give and take dynamic, which was essential to securing support from Congressional Republicans, led to the Plan being dubbed the "grand swap."[237]

Notably, the Administration's proposal did not specifically require any further concentration of the city's management in the hands of Congress or the Control Board. Any mention of management reform was vague. Home rule, it seemed, would not be a casualty of the federal effort to revitalize Washington, D.C. But the city would be required to put its financial house in order. Support for the Administration's proposal was generally positive among local stakeholders. Congresswoman Norton hailed the Revitalization Plan as "the most promising and certainly the most innovative approach yet to emerge for relieving the District government of costs it can no longer shoulder." She was encouraged about the Plan's prospects for passage, since the proposal was mindful of "congressional insistence that its own costs not rise dramatically."[238] Control Board Chair Brimmer also complimented the Administration effort, calling it a "good deal for the District" that would result in a net gain for the city, notwithstanding the elimination of the Federal Payment.[239]

There were opponents of the Plan, however, including freshman Senator Lauch Faircloth (R – NC), Chair of the Senate Appropriations D.C. subcommittee. Sen. Faircloth called the Plan "an ill-conceived effort to bail out a poorly managed city" and mocked the effort, referring to it as the "great rip-off."[240]

Even some local leaders, most notably certain members of the D.C. Council, were skeptical of the Revitalization Plan. They wondered whether the city could survive without the Federal Payment and whether it was giving up too much autonomy in order to improve its financial situation.[241] Others questioned why it had not addressed education or community safety – concerns which Administration officials said were best left to local authorities. It was hoped that the relief from so many other responsibilities would give the District the "flexibility and more resources . . . to be able to deal directly with those areas" not taken over by the Federal Government.[242]

Because of these reservations, the Administration, Congresswoman Norton, and Congressman Davis had a significant task to obtain enactment of the Administration Proposal over the objections of significant detractors in Congress and the District government.

Towards Adoption

Once the Revitalization Plan was made public, a series of three sets of negotiations began: first, among District officials, the Administration, and Congresswoman Norton; second, between Norton and the Administration; and finally, involving the Administration and Norton negotiating in tandem with congressional Republicans.

The Memorandum of Understanding

In order to secure the support of the District for the President's proposal, Raines developed a memorandum of understanding

(MOU) outlining the basic principles of the Plan. By gaining local support for the MOU, the White House hoped to prevent city officials from criticizing the revitalization proposal as it moved through Congress.[243] Clinton officials also felt that if the District signed an MOU this would increase the possibility of success in Congress by demonstrating that D.C. officials were, indeed, making sacrifices to obtain much needed federal aid.[244] For strategic purposes, the memorandum contained the major components of the original proposal – broad mandates for federal assumption of the costs of the unfunded pension liability, courts, prisons, a greater share of Medicaid, and the elimination of the District's Federal Payment – but not all of the detail, which was left to be decided by congressional leaders.

Obtaining District approval was not a foregone conclusion. Many District officials and stakeholders were uneasy about voting to support the repeal of the annual Federal Payment, regardless of the federal benefits they would receive in return.[245] In addition, some Council members saw the Administration's proposal as an affront to home rule.[246]

To convince Mayor Barry and the Council that the Revitalization Plan was the District's only chance for fiscal recovery, Raines relied upon the support of Congresswoman Norton. Their argument was straightforward: given that the unfunded pension liability was approximately $5 billion, and the costs of each of the so-called "state functions" (courts, prisons, Medicaid, etc.) would continue to rise with inflation, it was of great benefit to the District for the Federal Government to assume those costs. Indeed, the savings to the District from the proposed deal would increase each year and were expected to surpass any benefit from retention of the annual Federal Payment – particularly since that payment did not increase with inflation.
Notwithstanding Raines' and Norton's advocacy, the Council's opposition to eliminating the Federal Payment was formidable. Indeed, the Council agreed to the MOU only after Administration officials agreed to include language noting the District's opposition to elimination of the Federal Payment.[247] The Council, led negotiations by Council Chair Pro Tempare, Charlene Drew Javis, insisted on adopting concurrently a resolution outlining its reservations with the Administration proposal, urging Congress to continue the Federal Payment to compensate the District for revenues lost due to federally imposed restrictions on its ability to tax.[248] Council member Jack Evans stated that "giving up the federal payment would weaken the city financially."[249] The Council resolution also called on Congress to assume a larger share of the District's Medicaid expenses, pay the costs associated with operating St. Elizabeth's Hospital, and provide funds to repair D.C. public schools.[250] Councilman Harry Thomas (D – Ward 5) best summarized the Council's final support for the MOU: "If we don't act now, we're going to lose everything."[251]

Within a week of D.C. Council ratification, OMB Director Raines, acting Council Chair Linda Cropp, and Mayor Barry had all signed the MOU to "strengthen Home Rule and to agree to work toward the revitalization of the District of Columbia."[252]

Negotiating with the Administration

As Mayor Barry and the Council were negotiating the terms of the MOU with the Administration, Norton began her negotiations with the Administration to create the draft bill. Because of the high level mandate from the President, her negotiations with the Administration on various aspects of the revitalization package occurred mostly with the cabinet secretaries and high-ranking deputies. In addition to Raines, who spearheaded the negotiation, various Clinton cabinet officials were tasked with specific parts of the revitalization discussion. For

example, Norton negotiated the pension section of the bill directly with Treasury Secretary Robert Rubin and OMB Controller Edward DeSeve.

Selling the Revitalization Plan to Congress

As negotiations between the District and the Administration on the terms of an MOU progressed, congressional hearings on the Administration Plan began in earnest as some in Congress demanded to know why it should support a plan to pour millions of dollars of federal aid into the District. Even among its congressional supporters, the Plan was viewed as a "starting point" from which a widely-supported "bipartisan plan" would ultimately emerge.[253] Though the Administration had established the principles that would guide the District's revitalization, it was Congress that would be deciding on the final plan and its details – a process that all stakeholders expected would take "months of hard work, patience, delicate negotiations, and many more committee hearings."[254]

Thus, throughout the spring of 1997, the Administration's chief advocates for the plan, specifically Raines and DeSeve, testified before the four main congressional committees of jurisdiction,[255] highlighting the plan's two main strengths:

> First, its careful and principled conceptualization, based on the Federal interest in certain State functions and in eliminating congressionally created pension liability, and, second, its recognition that the plan must address two audiences at once: District residents, and a Congress whose major focus . . . is deficit reduction.[256]

By explaining the dire needs of the District, the unfair hand it had been dealt in the institution of home rule, and the reasons why federal support was absolutely critical, the Revitalization Plan's advocates hoped they could garner enough support to secure passage of the legislation from a skeptical Congress.[257]

The Final Revitalization Act

After multiple hearings and countless hours of behind the scenes negotiations, the final legislative package setting forth the plan for the District's revitalization emerged late in the summer of 1997. True to the original plan proposed by the Clinton Administration, the package relieved D.C. of some of its most burdensome state-like obligations in an effort to help it again achieve financial sustainability.

Provisions

The final package provided for the Federal Government to assume the District's $5 billion unfunded pension liability,[258] transferred financing of the District's courts to the Federal Government,[259] and authorized the District's CFO to enter into private contracts for the collection of taxes.[260] Further, the package transferred responsibility for the District's felons to the Federal Bureau of Prisons and mandated the closure of the Lorton Correctional Complex.[261] The package also endeavored to assist the District in reestablishing its creditworthiness by providing the city with access to the U.S. Treasury to liquidate its accumulated operating deficit[262] and by updating the bond provision of the Home Rule Act to "conform with changes in the municipal securities marketplace."[263]

As expected, though, the relief provided by these portions of the package did not come without a price. The package also eliminated the mandatory $660 million Federal Payment to the District, instead providing the District with $190 million for FY 1998 and "amount[s] as may be necessary" in subsequent years.[264] In addition, the package required the District to balance its budget by FY 1998 – one year earlier than was required by the legislation establishing the Control Board.[265]
Some of the original provisions in the Administration's proposal were not adopted

in the final legislation. For example, the legislation did not include the National Capital Infrastructure Authority (NCIA), which would have funded $1.4 billion in repairs to and construction of roads and mass transit facilities; nor did the bill include a provision allowing the IRS to assume responsibility for collecting the city's annual income taxes at a savings of $117 million. Another casualty of the negotiations was the economic development corporation proposed by Director Raines in the original package.

In addition, Congress adopted several provision not included in the Administration's Plan. For example, Senators Trent Lott (R-MS), Connie Mack (R-FL) and Sam Brownback (R-KS), with the support of Congresswoman Norton (D-DC), proposed District-only tax provisions in the Taxpayer Relief Act of 1997, which was passed on the same day as the Revitalization Act.[266] These provisions included a $5,000 homebuyer credit, a $3,000 wage credit for employers hiring District employees, capital gains exemption on certain assets, and tax free bonds.[267] The wage credit and the capital gains exemption were limited to District census tracts with higher concentrations of poverty.

The Faircloth Attachment

Though the loss of the Federal Payment was significant, some Members of Congress also wanted to limit greatly the powers of the D.C. Council and the Mayor – a move they believed was necessary to ensure proper implementation and success of federal aid provided under the Revitalization Act. The chief advocate of this position was Senator Lauch Faircloth, who initially had opposed the Revitalization legislation. He proposed eliminating mayoral control of District agencies and putting those agencies and functions under the Control Board[268] to oversee the District's finances and management. Not surprisingly, District officials and home rule advocates strenuously opposed this proposal. Congresswoman Norton called it a potential reversion to days when appointed commissioners had authority over the District's agencies and Mayor Barry, who bitterly opposed Faircloth's bid to strip him of his mayoral powers, called the idea a "rape of democracy." Whether this "Faircloth Attachment," as it came to be known, would be included in the final package was uncertain through the final hours of congressional negotiation. Only on the final night of closed-door negotiations on the package (in which Norton was not included) was the decision made whether to include the provision in the final bill.

Ultimately, Faircloth had his way and the authority and autonomy of the District were sacrificed in order to secure congressional approval of the Revitalization Act. The "District of Columbia Management Reform Act of 1997" – as that part of the package was officially titled – required the Control Board to develop, in consultation with the private sector, "management reform plans" for each of nine city departments: the Department of Administrative Services, the Department of Consumer and Regulatory Affairs, the Department of Corrections, the Department of Employment Services, the Department of Fire and Emergency Medical Services, the Department of Housing and Community Development, the Department of Human Services, the Department of Public Works, and the Public Health Department.[269] More importantly, though, the Management Reform Act changed the way city department heads were appointed and removed from their positions. Department heads would be appointed by the Mayor only after consultation with the Control Board.[270] Mayoral appointments would become final only after ratification by a majority of the Control Board, and if the Mayor failed to appoint anyone within 30 days of the creation of a vacancy, the Control Board was given unchecked authority to fill the position.[271] Furthermore, the Control Board was given the ability to remove department

heads at its discretion, while the Mayor could remove such persons only with the approval of the Control Board.[272]

Aftermath

The morning the final package was released, Congresswoman Norton held a press conference hailing it as a "big win for the District."[273] Unfortunately, all the details of the Revitalization Plan were unknown to her at the time. Specifically, Norton was not informed by her colleagues that the Faircloth Attachment – a blow to Home Rule – had indeed been included in the final legislation. When she learned of this, Norton called the attachment "too high a price to pay." Following an editorial in the Washington Post criticizing the Congresswoman for her apparent reversal on the bill, she took the extraordinary step of issuing an "Open Letter to My Constituents" explaining that she still thought the Revitalization Act was a "win for the District," even though the Faircloth Attachment was a "bitter pill to swallow."[274] Although tremendously unpopular among District residents, the Faircloth Attachment ultimately was not enough to undermine the months of hard work that had gone into constructing an aid package for the District.

A "Revitalized" City

The congressional leadership included the provisions of the Revitalization Act in the Balanced Budget Act of 1997 and passed that omnibus legislation in the House and the Senate on July 30 and 31, 1997, respectively. Neither the President nor the Control Board wasted any time implementing the Revitalization Act once it cleared Congress. The President signed the bill on August 5, 1997 and within hours the Control Board – amidst spirited protest of the Faircloth Attachment – announced its immediate implementation.[275]

For all the work that had gone into constructing the plan, its passage could not or did not ensure the revival of the District. As OMB Controller Edward DeSeve pointed out, "[t]he plan [was] not a panacea. The District's government and Financial Authority will have to continue to do the hard work necessary to create a City where streets are safe, where children enjoy the quality education they deserve, where every resident has the chance to make the most of his or her own life – and where the City's government spends within its means."[276] And so, the city government and the Control Board set out to use the tools provided to them in the Revitalization Act to address the city's needs.

On September 15, 1997, the D.C. City Council and Mayor returned to work with much of its power stripped away, forced to defer to the Control Board, appointed by the President and now newly empowered to make management reforms by directly controlling District agencies. District officials had to come to grips with this new reality in tending to the affairs of those citizens who had elected them to office.[277] After a nation-wide search, Dr. Brimmer appointed the District's first Chief Management Officer – essentially a Control Board appointed city manager – who would oversee the new department heads appointed pursuant to the Board's new authority.

When Dr. Brimmer retired as chair of the Control Board when his term expired, President Clinton selected Dr. Alice Rivlin on May 30, 1998 to replace him. Dr. Rivlin was Franklin Raines' predecessor as Director of the Office of Management and Budget. An economist, Rivlin authored a seminal 1990 paper entitled "Financing the Nation's Capital" that predicted the District's eventual financial decline. Rivlin made it clear upon her appointment that she viewed her job as returning to the District full authority over the agencies and cross-cutting functions that had been lost in the Revitalization Act. Rivlin believed that "[The Control Board] should act more and more like a board of directors, a policy board, and strengthen the administrative team in the city so that we

“According to the 2003 GAO Report on the District’s structural imbalance, notwithstanding the improvements effected by the Revitalization Act in 1997, the District still faces’ a more permanent imbalance between [its] revenue raising capacity and the cost of meeting its public service responsibilities.”

really have in place, and functioning, a city that can run itself well without a board."[278]

Shortly after the election of the new Mayor, former Chief Financial Officer Anthony Williams, on November 3, 1998, Rivlin voluntarily relinquished control of the agencies Congress assigned to the Board, thus restoring home rule.[279] Congress also followed suit, passing the District of Columbia Management Restoration Act of 1999, which repealed the Faircloth Attachment.[280]

The Promise to Revisit the City's Needs

Without the passage of the Revitalization Act in 1997, the District likely would not have fully recovered from fiscal insolvency. Although clearly not a complete remedy for the District's financial inequities, the Act nevertheless relieved the District of several large state functions that no other city had to bear, including courts, prisons and a greater share of Medicaid. The Act removed from the District's balance sheet $5 billion in unfunded pension liability, created solely by the Federal Government, which itself likely would have consigned the District to permanent financial crisis. The ongoing economic impact of the Revitalization Act on the District also is of great financial benefit to the City. Each year, the Act makes the Federal Government responsible for over $1 billion in state functions that the District no longer has to pay. This amount is in contrast to the old, static Federal Payment, which had remained at $660 million (with only one increase) for nearly a decade leading up to the passage of the Revitalization Act.

Although the benefits of the Revitalization Act were at the time of passage (and continue to be) substantial, several areas untouched by the Act contribute to the District's on-going structural imbalance. For example, the District is still forbidden by Congress in the Home Rule Act from enacting a non-resident income tax, denying it from taxing two-thirds of the income earned in the city.[281] Any attempt to repeal this provision would almost certainly result in the bipartisan opposition of members of the Virginia and Maryland congressional delegations. Indeed, when a non-resident income tax bill was introduced in 1998, Virginia senior Senator, John Warner made clear his contempt for the proposal, saying it would pass "over his dead body."[282] In addition, approximately 40 percent of the District's land remains off of the District's tax rolls, and the federal Building Height Act[283] prevents the District from compensating for this lack of revenue by seeking greater vertical development. Finally, although the Revitalization Act relieved the District of several state functions, many still remain. Only the District, without assistance from a state, must continue to pay for state education functions, a state hospital, and a disproportionate share of transit funding, despite the fact that approximately two-thirds of the users of the region's transit system do not reside in the District. Furthermore, the District must bear many other uncompensated costs, such as security, because it is the Nation's Capital.[284]

According to the 2003 GAO Report on the District's structural imbalance, notwithstanding the improvements effected by the Revitalization Act in 1997, the District still faces "a more permanent imbalance between [its] revenue raising capacity and the cost of meeting its public service responsibilities."[285] The GAO estimates the annual imbalance to be approximately $1 billion, when measured against the costs faced by an urban area such as the District.[286] This financial imbalance remains while at the same time District residents continue to endure a disproportionately high tax burden but are afforded a level of services below the national average.[287]

The principal authors of the Revitalization Act did not intend for it to be a complete remedy to the District's structural imbalance. The Act's findings recognized the burdens

associated with being the national capital:

> (A) Congress has restricted the overall size of the District of Columbia's economy by limiting the height of buildings in the District and imposing other limitations relating to the Federal presence in the District.
>
> (B) Congress has imposed limitations on the District's ability to tax income earned in the District of Columbia.
>
> (C) The unique status of the District of Columbia as the seat of the government of the United States imposes unusual costs and requirements which are not imposed on other jurisdictions and many of which are not directly reimbursed by the Federal Government.
>
> (D) These factors play a significant role in causing the relative tax burden on District residents to be greater than the burden on residents in other jurisdictions in the Washington, D.C. metropolitan area and in other cities of comparable size.[288]

So, Congressman Davis and Congresswoman Norton specifically included a provision in the Act authorizing an unspecified amount for a "federal contribution" to the operations of the Nation's Capital:

> (2) FEDERAL CONTRIBUTION- There is authorized to be appropriated a Federal contribution towards the costs of the operation of the government of the Nation's capital–
>
> (A) for fiscal year 1998, $190,000,000; and
>
> (B) for each subsequent fiscal year, such amount as may be necessary for such contribution.
>
> In determining the amount appropriated pursuant to the authorization under this paragraph, Congress shall take into account the findings described in paragraph (1).[289]

This provision is an escape hatch of sorts, allowing for direct funding of the District by the Federal Government if necessary, despite the end of the Federal Payment. The provision has been used only once since the passage of the Revitalization Act, to authorize appropriation to the District in the amount of $190 million, in 1998. This was money OMB Director Raines indicated was "left over" from the budget authority he received for the Revitalization Act, because certain provisions, such as a greater share of federal highway funding, were not enacted. The "federal contribution provision" could be used today as a justification for a remedy for the structural imbalance. In fact, Congresswoman Norton has cited this provision in previous legislative proposals for a new Federal Payment to the District.[290]

In addition to the federal contribution provision in the Revitalization Act itself, the legislative history of the Act supports the notion that the Congress should revisit the financial relationship between the Federal Government and the District after a period of time to determine whether further federal assistance is necessary. Congresswoman Norton envisioned that the Revitalization Act would be revisited "to test its fiscal effectiveness and to ensure that the District won't be left with unintended cash shortfalls and other financial difficulties."[291] Director Raines acknowledged that the Federal Government "should remain flexible if Congress, in looking at [the issue], felt that the city still needed some cash to operate."[292] The provision for a federal contribution allows a mechanism to revisit the financial relationship with the District, should Congress choose to do so. Just as those who created the Revitalization Act understood that the Federal Payment did not meet the needs of the District in balancing its responsibilities as both the Nation's Capital and as an urban jurisdiction responsible for services to more the 500,000 residents,

today we must re-examine the Revitalization Act and recognize that is not a complete remedy to the District's financial challenges.

Congresswoman Norton has continued to press for a more complete remedy to the structural imbalance during the last decade, introducing legislation that would further relieve the strain on the District caused by its inequitable financial relationship with the Federal Government. Her most recent efforts have included (1) legislation that would divert 2 percent of the federal income taxes paid by Maryland and Virginia residents to the District of Columbia,[293] and (2) legislation to create a new mandatory Federal Payment, which would be deposited into an account to support the District's crumbling infrastructure.[294] This second bill in particular has garnered unanimous support from the Members of Congress representing jurisdictions surrounding the District. Other ideas to remedy the District's structural imbalance have included increasing the federal share of Medicaid cost, increasing the number of state functions funded by the Federal Government, renegotiating the current Metro transit cost formula or providing a dedicated revenue stream and targeted amendments to the Revitalization Act such as recalculating the method by which the District is reimbursed for holding federal prisoners prior to commitment.

Whatever remedy is selected to alleviate the structural imbalance, it is clear that such a remedy should not mimic the failings of the Federal Payment that the District lost in the Revitalization Act. Accordingly, any remedy to the structural imbalance must contain the following attributes: (1) payments cannot be static, they must increase annually to at least meet inflation; (2) payments must be automatic, in effect an entitlement, and not contingent upon the uncertainly of timely annual congressional appropriations; and finally (3) investment must be large enough to at least approach the size of the imbalance documented in the 2003 GAO report. As an entitlement, not unlike social security or Medicare, the payment to the District should be included in the Administration's annual budget so that the Congress would not have to find an offset from existing priorities to fund the bill.

Now, more than 10 years after the passage of the Revitalization Act, and with the arrival of a new Administration in Washington, is a prudent time to revisit the fiscal challenges the District continues to face as a national capital. As Congresswoman Norton remarked upon the introduction of a bill to remedy the District's structural imbalance in 2005:

> Congress relieved the District of the costs of some but not all state functions and left the unique federal structural impediments described in the GAO report. Nevertheless, the District has made remarkable progress, maintaining balanced budgets and surpluses every year despite adverse national economic conditions and improving city services. The CFO has ominously warned, however, that looking to the out years, the structural imbalance endangers the city's financial future… It would be tragic for Congress to allow the progress that has been made to be retracted because of dangerous and escalating uncompensated federal burdens.[295]

ENDNOTES

167 The District of Columbia Home Rule Act, Pub.L. No. 93-198, 87 Stat. 774 (enacted December 24, 1973) ("Home Rule Act").

168 *A City in Transition, D.C., Where Home Rule Flew and Faltered,* Wash. Post, June 18, 1995, at A1.

169 *See* §§ 441-453 and § 404 of the Home Rule Act.

170 *Roller Coaster Ride to Who Knows Where; It was a Year of Comings and Goings,* Wash. Post, Dec. 28, 1995, at J1.

171 Steven A. Holmes & Michael Janofsky, *Trying to Fix Capital Where 'Everything is Broken',* N.Y. Times, July 25, 1999, at A1. *See also, White House Proposal for the District of Columbia Before the Subcomm. On Gov't Reform and Oversight of the House Committee*

on Government Reform and Oversight, 105th Cong. 5-6 (1997) ("Subcomm. Hearing") (opening statement of Connie Morella).

172 For example, both the Democratic and Republican Senators representing Maryland and Virginia would have strenuously opposed any effort to repeal the congressionally imposed ban on the District to enact a non-resident income tax.

173 *See* District of Columbia Financial Responsibility and Management Assistance Act of 1995, Pub. L. 104-8 (1995).

174 *See id.* at § 2(b).

175 *Id.* at Title II.

176 U.S. Gen. Accounting Office, GAO-96-126, District Government; Information on Its Fiscal Condition and the Authority's First Year of Operations, July 9, 1996 (Statement of Gregory M. Holloway, Director, Governmentwide Audits, Accounting and Information Management Division) at 24.

177 *After'96 Effort to Shrink D.C. Government, a Mountain of Tasks Remains,* Wash. Post, Dec. 19, 1996, at B1.

178 *Id.*

179 *Id.*

180 *Id.*

181 Preface – Control Board Report

182 Subcomm. Hearing, *supra* note 176, at 7 (statement and testimony of Franklin D. Raines, Director Office of Management and Budget) ("Raines Testimony").

183 *See infra* note 181.

184 U.S. Gen. Accounting Office, GAO-96-133, District Government, Information on Its Fiscal Condition, July 19, 1996 (Statement of Gregory M. Holloway, Director, Governmentwide Audits, Accounting and Information Management Division) at 11.

185 *Id.*

186 *See infra* note 181.

187 *See infra* note 181.

188 *See infra* note 181.

189 DC Appleseed Center, The District of Columbia's Pension Dilemma–An Immediate and Lasting Solution (June 1996).

190 *Id.*

191 *See* Home Rule Act.

192 U.S. Gen. Accounting Office, GAO-96-126, District Government; Information on Its Fiscal Condition and the Authority's First Year of Operations, July 9, 1996 (Statement of Gregory M. Holloway, Director, Governmentwide Audits, Accounting and Information Management Division) at 9.

193 *Id.*

194 *Who's in Charge? Marion Barry and Newt Gingrich promised a revolution. They've delivered a city that still can't pay bills. The reasons are as old as Washington,* Part 1 of 2, The Washington Post Magazine, Dec. 18, 1995, at W12.

195 Building Height Amendment Act of 1910, 36 Stat. 452, as amended (codified as amended at D.C. Code Ann. § 5-405 (1994) (limiting the height of buildings to the width of the street onto which the building faces)).

196 GAO Report, *supra* note 192, at 10.

197 Preface – Control Board Report; see also David A. Vise & Peter Baker, *Clinton Wary of Increasing Funds for D.C., Barry Lauds Control Board as it Requests More Money,* Wash. Post., Dec. 13, 1996, at A1.

198 *Id.*

199 *See, e.g.,* Subcomm. Hearing, *supra* note 176, at 2 (opening statement of Davis) ("[Revitalization] is not only in the best interest of the District but also of the region and, indeed, the entire country. I strongly believe that the economic health and quality of government in the District is of vital concern to the suburbs.").

200 *Who's in Charge? Marion Barry and Newt Gingrich promised a revolution. They've delivered a city that still can't pay bills. The reasons are as old as Washington,* Part 1 of 2, The Washington Post Magazine, Dec. 18, 1995, at W12.

201 Felicity Berringer, The Transition; *Washington Greets Clinton with Open Arms,* N.Y. Times, Nov. 19, 1992.

202 Davis A. Vise & Peter Baker, *Clinton Wary of Increasing Funds for D.C., Barry Lauds Control Board as it Requests More Money,* Wash. Post, Dec. 13, 1996, at A1 (quoting Clinton as saying he wanted to make the District a "real priority" and work with Congress "to try to do more to help the District"); *see also Hillary Clinton Steps Up Effort to Help D.C.,* Wash. Post, Dec. 18, 1997, at A1 (discussing Hillary Clinton's commitment to the District).

203 Exec. Order No. 13,189, William Jefferson Clinton, January 15, 2001. However, President Clinton's successor, President Bush, has not activated the task force during his presidency.

204 In truth, President Clinton was–at first–skeptical about the Control Board's 1996 proposal to shift the responsibility for millions of dollars in District services to the federal government. Vise & Baker, *supra* note 80. After prompting from then-First Lady Hillary Clinton, however, the President and his Administration became supportive of the plan to increase federal support to the District. *Clinton Proposes US Run Many DC Services,* Wash. Post, Jan. 14, 1997, at A1; see also Hillary Clinton Steps Up Effort to Help D.C., Wash. Post, Dec. 18, 1997, at A1 ("The first lady had strongly urged the president to display more leadership on District matters.")

205 *Clinton Proposes U.S. Run Many DC Services,* Wash. Post, Jan. 14, 1997, at A1.

206 Raines Testimony at 7.

207 *Clinton Proposes U.S. Run Many DC Services,* Wash. Post, Jan. 14, 1997, at A1.

208 Raines Testimony at 9.

209 *Id.*

210 *Id.*

211 *Id.* at 8.

212 *Id.*

213 *Id.*

214 *Id.* at 9.

215 *Id.*

216 *Id.*

217 *Id.*

218 *Id.*

219 *Id.*

220 *Id.*

221 *Id.*

222 *Id.*

223 *Id.*

224 *Clinton Proposes U.S. Run Many DC Services,* Wash. Post, Jan. 14, 1997, at A1.

225 Raines Testimony.

226 *Id.*

227 *The President's National Capital Revitalization and Self-Government Improvement Plan: Hearing Before the Subcomm. on the District of Columbia,* 105th Cong. (April 30, 1997) (prepared testimony of Edward DeSeve, Controller, Office of Management and Budget) ("DeSeve Testimony").

228 James Wright, *Norton calls Clinton's Economic Plan for D.C. a 'Wonderful Start',* Washington Afro-American, March 15, 1997. The economic arm of the proposal was introduced publicly more than two months after the unveiling of the core provisions of the revitalization plan.

229 White House Briefing, Remarks of President Clinton (Mar. 11, 1997).

230 David A. Vise, *Clinton's Plan for D.C. Meets with Resistance, Key GOP Lawmakers Criticize Aid Proposal,* Wash. Post, Jan. 15, 1997, at A01.

231 Raines Testimony.

232 *Id.*

233 Raines Testimony.

234 *Id.*

235 *Id.*

236 *Clinton Proposes US Run Many DC Services,* Wash. Post, Jan. 14, 1997, at A1.

237 *Id.*

238 *Id.*

239 *Id.* In the months following the release of the Administration proposal, Brimmer became critical of the proposal, saying it failed to address enough of the city's needs. Nonetheless, Brimmer remained supportive of the plan. See Vincent S. Morris, *District Leaders Bristle at Idea of City Manager; New Federal Relationship OK'd,* Wash. Times, June 17, 1997, at A1.

240 David A. Vise, Clinton's *Plan for D.C. Meets with Resistance, Key GOP Lawmakers Criticize Aid Proposal,* Wash. Post, January 1, 1997, at A01.

241 *See, e.g., Town Meeting Tells Clinton: Fix Crime First,* Wash. Post, Feb. 13, 1997. Perhaps ironically, those who feared an encroachment on home rule under the President's plan would find the version passed by Congress to be near draconian in the way it removed power from the city council and the Mayor.

242 Raines Testimony. Similar concerns were voiced over the Plan's failure to address the running of St. Elizabeth's. Because the federal government did not have any experience running a mental institution, the Administration felt questions involving St. Elizabeth's were best left answered by District officials. *Id.*

243 David A. Vise, *White House Outlines Conditions for Increased Aid* to D.C., Wash. Post, April 12, 1997, at C01.

244 *Id.*

245 David A. Vise, D.C. Council Approves U.S. Aide Plan; Turnaround Doesn't End Dispute Over Annual Payment, Wash. Post, May 10, 1997, at B1.

246 *Id.*

247 *Id.*

248 *Id.*

249 David A. Vise, *D.C. Proposal Meets with Resistance,* wash. post, Jan 15, 1997, at A01.

250 *Id.*

251 *Id.*

252 Vincent S. Morris, *District Leaders Bristle at Idea of City Manager; New Federal Relationship OK'd,* Wash. Times, May 17, 1997, at A1 (quoting the MOU); David A. Vise, *White House Outlines Conditions for Increased Aid to D.C.,* Wash. Post, April 12, 1997, at C01.

253 Subcomm. Hearing, *supra* note 176 (Opening statement of Rep. Davis).

254 *Id.*

255 The congressional committees with jurisdiction over the revitalization plan were the Senate Committee on Government Affairs, Subcommittee on Oversight of Government Management, Restructuring, and the District of Columbia; the House Committee on Government Reform and Oversight, Subcommittee on the District of Columbia; and the D.C. subcommittees of the House and Senate Appropriations Committees.

256 Subcomm. Hearing, *supra* note 176 (Opening statement of Eleanor Holmes Norton).

257 Hearings were held throughout the spring of 1997. The Subcomm. on Gov't Reform and Oversight of the House Committee on Government Reform and Oversight held hearings on February 20. The Subcomm on Gov't Reform and Oversight held a joint hearing with the Subcomm. on the District of Columbia on March 13. The Subcomm. on the District of Columbia held hearings on March 25, April 25 and May 22. The Subcomm. on Oversight of Government Management, Restructuring, and the District of Columbia of the Senate Committee on Gov't Affairs held a hearing on May 13.

258 P.L. 105-32, Title VII ("Revitalization Act") §§ 11101-11002, as attached to Balanced Budget Act.

259 Revitalization Act §§ 11241-11242, as attached to Balanced Budget Act.

260 Revitalization Act § 11302, as attached to Balanced

Budget Act.

261 Revitalization Act § 11201, as attached to Balanced Budget Act.

262 Revitalization Act §§ 11402-11405, as attached to Balanced Budget Act.

263 Revitalization Act § 11501 *et seq.,* as attached to Balanced Budget Act.

264 Revitalization Act § 11601, as attached to Balanced Budget Act.

265 Revitalization Act § 11602, as attached to Balanced Budget Act.

266 Revitalization Act.

267 *Id.*

268 By 1997, when negotiations over the revitalization act had begun in earnest, the Control Board had taken a much stronger hand in management of the city's finances than in its early years under Andrew Brimmer. The Control Board's most prominent attempt at management of city agencies was its intervention in the management of the District's public schools, an action opposed by the District's elected officials and a majority of its residents and largely considered a failure. *See, e.g., Editorial, So Much To Do, So Little Time,* Wash. Times, May 30, 1998, at C2.

269 Revitalization Act § 11102, as attached to Balanced Budget Act.

270 Revitalization Act § 11105, as attached to Balanced Budget Act.

271 *Id.*

272 *Id.*

273 Editorial, *A Big Win for the District,* Wash, Post, July 31, 1997, at A14.

274 Norton explained in other Op-Eds published at the time that she had "briefed the press on the good news before the dust had settled on the bad news. I knew that home rule had not come out whole, but, lacking the full details, I concentrated on the "big win." Eleanor Holmes Norton, *The Loss is Personal,* Wash. Post, August 27, 1997, at A19.

275 Control Board, Order of August 5, 1997. Also, cite to 8/6/97 Post Article discussing protests (Hamil Harris, A6).

276 DeSeve Testimony, supra note 227.

277 Alvin Peabody, *Former, Current D.C. Council Members Reflect on Loss of Influence,* Wash. Informer, August 13, 1997, at 13.

278 David A. Vise, Rivlin Vows to Work for D.C. Home Rule; Control Board Swearing-In Brings Praise, Wash. Post, June 20, 1998, at B01.

279 David A. Vise, *D.C. Mayor to Regain Powers on Jan. 2; Williams to Direct City's Daily Affairs,* Wash. Post, Dec. 21, 1998, at A1; *see also,* David A. Vise, *D.C. Board Cedes Power to Williams,* Wash. Post, Dec. 22, 1998, at A01.

280 Pub. L. 106-1, signed into law March 5, 1999.

281 Sections 602 and 602(5) of the Home Rule Act. ("The Council shall have no authority to pass any act contrary to the provisions of this Act except as specifically provided in this Act, or to-- . . . (5) impose any tax on the whole or any portion of the personal income, either directly or at the source thereof, of any individual not a resident of the District."); Editorial, *The District's Tax Bill,* Baltimore Sun, May 19, 2006, at 14A.

282 *Pass Commuter Tax, but Not for Schools,* Wash. Bus. Journal, Jan. 16, 1998.

283 36 Stat. 542

284 For example, the District also suffers from a "relatively low sales tax capacity due, in part, to a disproportionate share of sales to the federal government and other tax exempt purchasers." GAO Report, 03-666, at 9.

285 *Id.* at 2.

286 *Id.* at 4, 8.

287 *Id.*

288 Revitalization Act

289 *Id.*

290 Congresswoman Norton has dubbed these proposals as the Free and Equal D.C. Series.

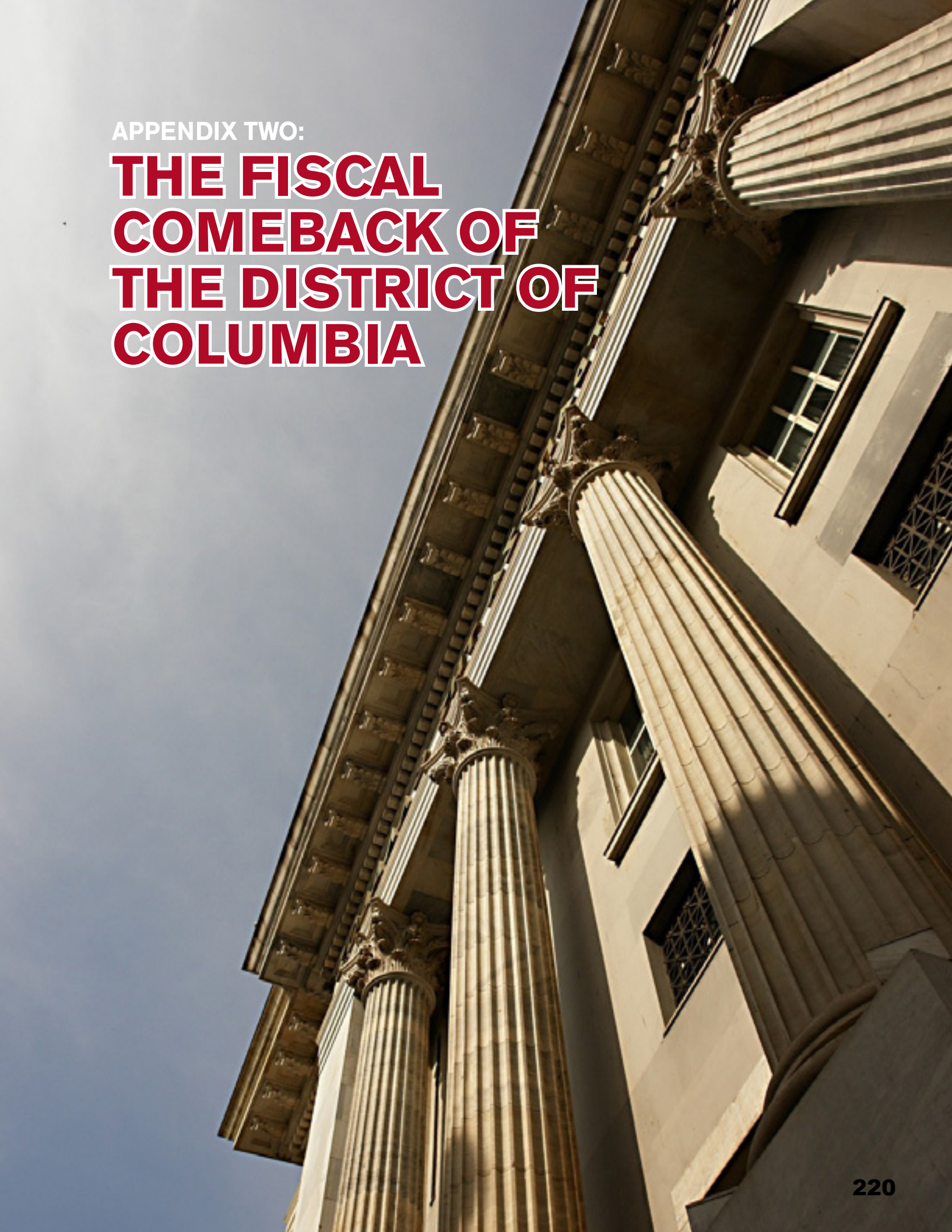
291 Subcomm. Hearing, *supra* note 176 (opening statement of Eleanor Holmes Norton).

292 Subcomm. Hearing, *supra* note 176 at 20-21.

293 District of Columbia Fair Federal Compensation Act of 2002, H.R. 3923, 107th Cong. (2002).

294 District of Columbia Fair Federal Compensation Act of 2004, H.R. 4269, 108th Cong. (2004); District of Columbia Fair Federal Compensation Act of 2005, HR 1586, 109th Cong. (2005).

295 Statement of Congresswoman Eleanor Holmes Norton upon the introduction of the Fair Federal Compensation Act, April 12, 2005.



APPENDIX TWO:

THE FISCAL COMEBACK OF THE DISTRICT OF COLUMBIA

Dr. Julia Friedman,
The George Washington University

The District of Columbia's fiscal health has vastly improved from the ruins of 10 years ago. As the previous chapter described, the District's budget was in disarray in the early 1990s, hitting rock bottom in FY1994. On the revenue side of the budget, the tax system of accounts functioned so poorly that tax payments have been characterized (only partly tongue in cheek) as gifts from civic minded citizens and businesses. With millions of tax returns piled on the floors of the tax department, it was impossible to assess taxes accurately and enforce their collection, and there was very little accounting for non-tax revenues.[296]

On the expenditure side, the city government had little control over how and when the budget money actually went out the door due to outdated technology and inadequate personnel and administrative policies. Computer systems were generally two to three decades behind those of other cities and states. The city could not track information or effectively monitor and manage expenditures. Personnel had not been adequately trained for the job and managers too often failed in oversight of staff and funds. Policies and procedures embodying professional standards for each job were not in place. These problems contributed to the city's overspending. For example, the public hospital lost many tens of millions of dollars annually while the public schools equally overspent their annual allotments.

The single-most dramatic evidence of fiscal failure in the District came with the completed audit for FY1994 when the District showed a $335 million operating budget deficit. With appropriated actual operating expenditures of $3.34 billion, this deficit was more than 10 percent of the actual budget.[297] With no extraordinary means of generating revenue and no way of controlling spending, the city all but collapsed, heralding federal action. Congress quickly enacted the D.C. Fiscal Responsibility and Management Assistance Act of 1995, which created the "Control Board" that began operations on October 1, 1995—the starting day of FY1996.[298]

Since then, Washington has made dramatic financial progress, in large part due to the hard work of the government of the District of Columbia. The city government took a number of steps to get its financial house in order, including exerting control over operating expenditures, engaging in better budget preparation, and impressive planning for future expenditures; all of this led to sound revenue generation and improved and expanded service delivery. These economic improvements resulted in 11 years of balanced budgets, investment-grade credit ratings, and a larger economy. In short, the District has done its part to restore fiscal stability as expected and required by Congress in the Control Act. Washington's revenue limitations however, prevent it from providing all of the services needed by its population and businesses, and from building and maintaining the infrastructure expected in a city of the District's world prominence. The District government continues to face an inherent inability to finish this work in the absence of further commitments by the Federal Government.[299]

This chapter documents the District's fiscal comeback, and in particular the essential role that the D.C. government played in that recovery. It begins by reviewing the steps that the city government took to maintain

"The District's local anti-deficiency law, enacted after the Control Period, prevents agency heads from overspending a current budget, and its violation could result in termination or even more severe actions."

the financial stability established by the Control Board. These actions include instituting professional fiscal management and oversight procedures in the Office of the Chief Financial Officer (OCFO), restraining spending and managing expenditures in the operating budget, and improving revenue collection and capacity. The chapter then reports on indicators of Washington's financial health, including an accumulated fund balance, cash balances, and bond ratings. It concludes that despite the extraordinary financial strides made, the District still lacks the resources it needs to provide the services and infrastructure worthy of a great capital city.

The District's Part in its Fiscal Comeback

Financial Progress under the Office of the Chief Financial Officer

While the Control Board set the city's financial recovery in motion, the government of the District of Columbia played a major part in its realization, starting in the OCFO.

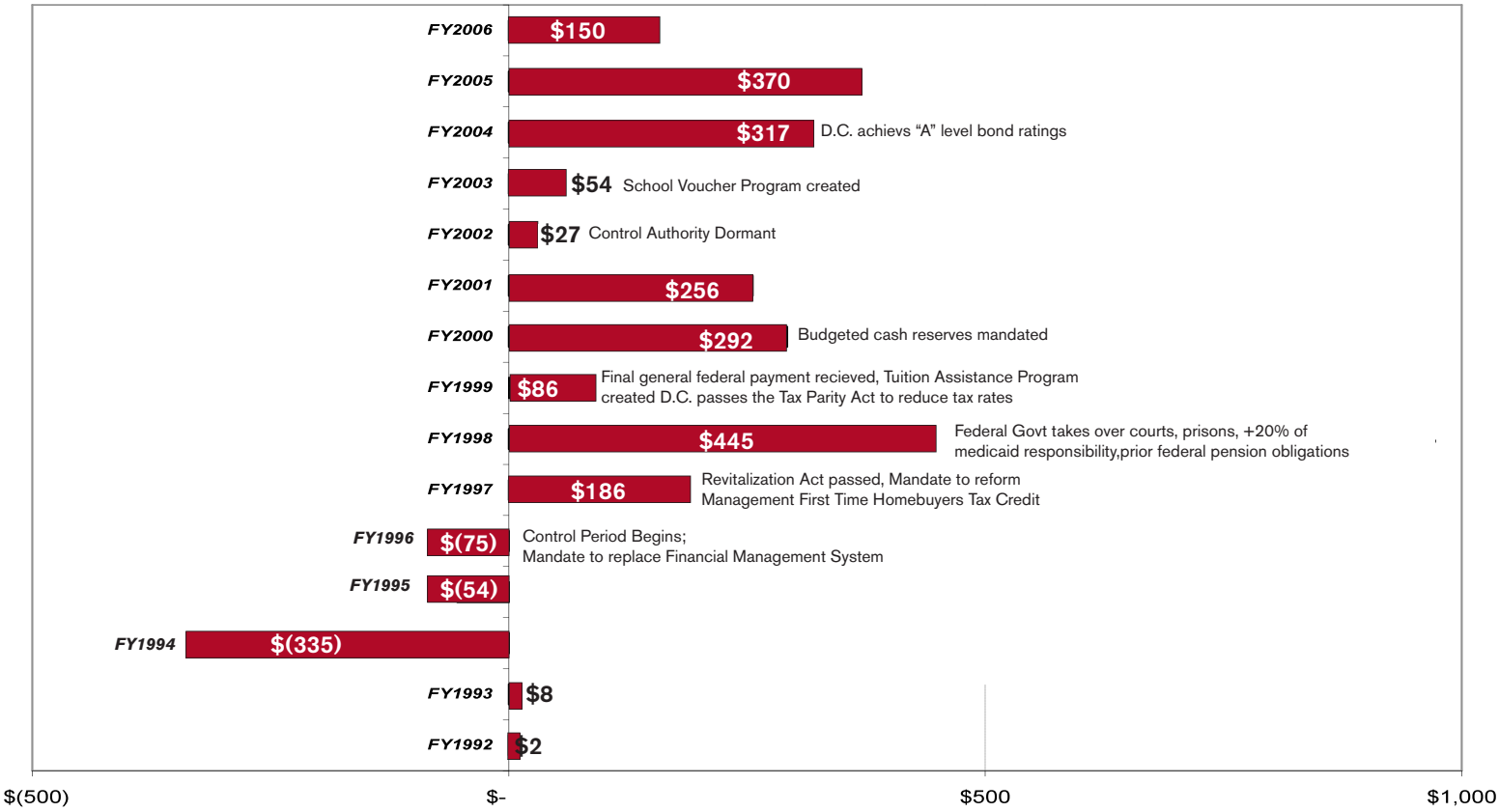
The legislation that created the Control Board also removed the OCFO from the Mayor's office and made it an independent agency–a status that it still holds. The D.C. Office's degree of independence is without precedence among state and local governments. All lead staff and personnel, as well as fiscal personnel in other city departments, are appointed by and serve at the pleasure of the CFO.

The OCFO has broad oversight and direct supervision of the financial and budgetary functions of the District government. Indeed, it performs all of the city's financial activities, including budget and cash management, accounting, revenue estimation and collection, and borrowing. No other city department can carry out these functions. The OCFO's independence provides strong re-assurance that these functions are administered with the requisite professionalism and transparency while insulating financial decisions from political influence.

In 1995, the Control Board appointed Anthony Williams to serve as the CFO. After the city posted overspent budgets in FY1995 and FY1996, Williams pledged that he would control spending to balance the FY1997 budget or he and his chief managers would resign. Accordingly, Williams moved aggressively to improve fiscal management and cut expenditures quickly. These actions, combined with unexpected revenue growth, put the District on the path toward financial recovery with a $186 million surplus in FY1997.

Elected Mayor in 1998, Williams appointed Natwar Gandhi as CFO in 2000 and together with the D.C. Council they shepherded the District toward fiscal solvency. By FY2001, the city had balanced five consecutive budgets (each with a surplus), restored its access to capital markets and improved bond rating, and

District of Columbia, Year-end Operating Budget Balance, $M, FY1992-FY20006
Significant Federal Actions



repaid all advances made by the U.S. Treasury during the early Control Period years.[300] This financial progress enabled the Control Board to dissolve a year earlier than scheduled.

Since regaining Home Rule autonomy, the city has balanced its operating budget every year, replacing the deficit it once accumulated with annual budget surpluses, as shown in the table below. As a result of on-going annual surpluses, the District now has a sizeable balance in the General Fund of $1.494 billion at the end of FY2007. The General Fund balance is the cumulative sum of all annual surpluses and deficits beginning with Home Rule.

Fiscal Discipline to Prevent Overspending

Over the past decade, the District's spending has been strictly disciplined. The District's local anti-deficiency law, enacted after the Control Period, prevents agency heads from overspending a current budget, and its violation could result in termination or even more severe actions. The District's lawmakers have clearly affirmed the intent to stay within spending authorities. Indeed, the city only achieved its impressive string of eleven balanced budgets because it was willing to make some very difficult decisions in order to maintain its fiscal health. Perhaps one of the most painful decisions came in FY2000, when the city chose to close D.C. General Hospital, the city's only full-service public hospital. Many residents used D.C. General for primary and routine care, as well as for emergency and hospital care. Yet with the hospital's expenditures exceeding budgeted revenues by as much as $90 million a year, there was no way to keep the hospital open without risking the District's newly-found financial stability.

The city continued to make hard choices in order to balance the budget for the next

Photo by Michael Bonfigli

several years due to unexpected events that negatively impacted revenues. As FY2001 came to a close in September, Washington was doubly impacted by the national recession and the September 11th terrorist attacks. In the aftermath of the latter, tourists and business travelers stayed away from Washington, driven off in part by fears of Anthrax and planes in the federal no-fly zone, which resulted in a loss in revenues from the hospitality industry. Almost immediately, a second impact further discouraged travelers as two snipers began a random shooting spree, killing a number of local residents for unknown reasons. The final blow against revenue followed in a few months when the sudden drop in the financial markets produced double-digit decrease in tax revenues: D.C. taxpayers with investment and other non-wage incomes both owed less and were due refunds because they over-estimated their tax payment. Had the city gone through with its planned expenditures, these revenue crises would have created shortfalls of more than $100 million in FY2002 and nearly $325 in FY2003. Instead, the District closed the gaps and balanced its budget by cutting expenditures in all categories except for public works.

The District's lawmakers are also disciplined about spending when they consider future programs. In order to create a new program, lawmakers must identify funding for it. Any proposal for a new program must be accompanied by a fiscal impact statement that attests to the availability or absence of funds for that program. Prepared mostly by the OCFO, fiscal impact statements are intended to be impartial and professional assessments of programmatic revenues and costs. The CFO must also certify that funds are available before expenditures can be mandated.

One way to see the resolve of the District government in budget control is to review the pattern of expenditures over time. The table below reports the audited level of operational expenditures by the District across selected

Total Expenditures by Selected Major Category of Service, local funds, $M

TOTAL EXPENDITURES *(from local funds only)*	FY1997 *local only*	FY2001 *local only*	FY2002 *local only*	FY2004 *local only*	FY2007 *local only*
Government Direction and Support	94.4	178.1	248.0	215.0	334.9
Economic Development and Regulation	60.4	54.5	56.1	61.7	205.9
Public Safety and Justice	988.3	634.7	628.5	727.7	912.3
Public Education	630.1	920.8	894.3	968.8	1226.1
Public School AY Advance		41.7	31.9	53.2	
Human Support Services	930.4	780.8	736.5	1099.1	1472.4
Write-off Mental Health Receivables					6.8
Public Works	230.8	287.4	297.4	303.5	353.6
Receiverships		324.7	337.0		
Control Authority	3.2				
Total of above categories:	**2937.6**	**3222.7**	**3229.7**	**3429.0**	**4512.0**
Compound Growth Rate since last year of control period			0.2%	2.1%	5.8%

Sources: Table A-5, CAFRs of FY1997, FY2001, FY2004, FY2007.

“The District had to wait roughly half a decade after the Control Period for expenditures to offset the rate of inflation and, finally, begin to make real headway on delayed expenditure needs in the identified categories.”

major expenditure categories in FY1997-2007. Expenditures are reported only for local funds. The columns for FY1997 and FY2001 represent years under the (Control) Authority. The remaining years show the District operating after the Control Period.

The impacts of the Revitalization Act in shifting prison expenditures to the Federal Government and increasing the federal Medicaid reimbursement are clear. Between FY1997 and FY2001 local expenditures on Public Safety and Justice dropped about $350 million and expenditures on human support services are down about $150 million. Recall that the general Federal Payment of $660 million annually also was removed by the FY1997 Act.

For these selected categories combined, local expenditures were virtually unchanged between FY2001 and FY2002.[301] The annual growth equivalent had not quite returned to the rate of inflation even by FY2004. The District had to wait roughly half a decade after the Control Period for expenditures to offset the rate of inflation and, finally, begin to make real headway on delayed expenditure needs in the identified categories.

As in the national economy, the financial markets, and state and local governments everywhere, the District enjoyed financial recovery between FY2003 and FY2007. By FY2005, the District could purchase roughly as much as in FY2001 in the selected categories, after adjusting for inflation. In subsequent years, growth in expenditure was strong and the District had an opportunity to catch-up with some real deferred needs in both capital and operating services. Successful programs in schools, health and human services, housing, public safety, and other areas require continuity – the needs of people are not resolved in a single fiscal year – and the District was able to get started.

Inevitably, long-term growth likely has peaked, although the audited financial statement for FY2008 is not yet available to confirm this. The District's future capacity to address deferred needs is further reduced. The District's revenues, particularly the individual income tax revenues, are subject to swings in the financial markets with roughly a year's delay. Because revenues constrain expenditures, spending in the selected categories is very likely to have grown more slowly after the impact of the housing "bubble" in 2007 and the crisis in financial institutions in 2008. Peak-to-peak, between 2000 and 2007 the financial markets as measured by the S&P 500 Index changed very little[302]. This means that baseline growths in the District's revenues are very likely to be more limited than in the few "glory years" of FY2004 -2007.

Tools to Manage Expenditures

In addition to restraining spending, the District government also took control of its expenditures by creating and implementing three budget management tools: performance-based budgeting, the Agency Management Program, and service-level budgeting.

In FY2001, the D.C. Council passed a law requiring performance-based budgeting (PBB). PBB links expenditures to the programs and activities that they fund by providing information on a program's estimated costs, activities, and performance measures. By linking expenditures to these performance indicators, PBB allows budget managers to assess if the city is spending public dollars on programs that are achieving their desired goals. PBB also illustrates how a program is spending the funds allocated to it, which enables policy makers to evaluate if a program's level of funding is adequate to support the goals it is expected to achieve. To illustrate, if the initial goal is to serve people with the HIV virus, then the PBB process could say how much budget actually is spent and if the outcome is achieved.[303] Not all goals can be achieved. Not all goals

"The District's revenues…are subject to swings in the financial markets. This means that baseline growths in the District's revenues are very likely to be more limited than in the few "glory years" of FY2004 -2007."

can be achieved within budget. At its best, PBB also would deliver this information.

The District first implemented PBB in FY2003 among seven major agencies–the Department of Public Works, Transportation, Motor Vehicles, Fire and Emergency Medical Services, Human Services, and the Office of the Chief Financial Officer. In FY2004, the city implemented PBB for 25 more agencies, with 24 more added in FY2005. PBB was implemented for the remaining agencies in subsequent years with all city agencies now using Performance-Based Budgeting.

PBB also allows the District to track common administrative expenses across city agencies through an effort called the Agency Management Program (AMP). The city began using the AMP in 2004 to track spending in 13 categories of activities including personnel, training, property management, information technology, financial services, and labor-management relations. The process intends to provide consistency in budgeting and performance reporting. It also helps budget managers identify costs such as expenditures for on-board personnel across the government.

In FY2005, the D.C. Council mandated yet another level of budget control by requiring service-level budgeting for 20 specific services. Service-level budgeting is intended to provide even greater transparency about agency budgets by providing information on the cost and effectiveness of specific service-level activities. The city implemented 12 service-level budgets in FY2008 for services including the Investigative Field Operations service of the MPD and the Fire/Rescue Operations of FEMS.[304]

In short, these tools–performance-based budgeting, the Agency Management Program, and service-level budgeting–help policy makers monitor and manage expenditures more effectively. Using District funds more efficiently has contributed greatly to the District's current strong financial health.

Improved Revenue Collection, Capacity, and Estimation

In addition to strictly managing expenditures, the District's growth in revenue generation since FY1997 is a striking success. Total tax revenue grew by 92 percent and gross revenues increased almost 53 percent from FY1997 to FY2007.[305] The District took three important steps to make this possible: (1) D.C. made improvements to its current revenue collection capacity; (2) it improved its overall financial health and, thus, its capacity to generate revenue – especially through the real estate market; and (3) it developed cautious estimates of future revenues.

Improved revenue collection contributed to the District's dramatic growth. Income tax collections, for example, are now fully linked with federal tax filings, allowing

the tax department to cross-check with taxpayer information provided federally. Business tax filers are inter-linked and the tax administration can easily follow franchise tax, sales tax remissions, personal property tax, and other taxes for any single business – without opening a single paper return. Multiple improvements in tax administration and tax collection also encouraged taxpayers to be more forthcoming with complete tax information and disclosure, producing improved voluntary compliance and much greater efficiency in the administrative cost of collection taxes.

Better tax administration and high voluntary compliance, however, were not the only factors positively affecting the District's revenue generation. The hard work the District put into balancing budgets, building a general fund surplus, and gaining access to credit markets also helped expand its revenue capacity. Indeed, the government's improved financial condition was central to restoring confidence in the District as a place to invest in real estate–the bedrock of any economy.

Real property turnover and rising real property prices were crucial to the District's economic recovery. In FY1991, property sales dropped 40 percent below the FY1990 level. They remained stagnant for several years as the District sunk deeper into fiscal crisis. Sales only exceeded this stagnated "floor" in FY1998 once the city government began to show signs of fiscal stability.[306] The city's improved economic climate, combined with good national economic circumstances, renewed interest in buying real estate in the District, both commercial property and residential. Indeed, from FY1997 to FY2007, the District experienced a very strong 17 percent annualized growth rate in revenue from the transfer tax, which is assessed when a real estate deed is recorded in a new owner's name.

In addition to improving revenue collection and expanding revenue capacity, the District has enhanced its revenue estimation procedures. Cautious revenue estimates have been the key to the city's budgeting success. Because the District's budget must be approved by Congress, there is a long lead-time between when the estimates are made (usually in February for budget preparation) and when the audit of actual budget performance is completed (two years later in January). A number of unexpected events could impact the city's revenue flow over a two-year time period, as did the 2001 terrorist attacks and the drop in the financial markets discussed earlier in the chapter.

If the District's estimates of anticipated revenues exceed the revenues that it actually generates two years later, the city will face a major funding shortfall. Cautious revenue estimates produced by the OCFO help protect the city from this type of fiscal crisis.

Revenue estimates are subject to political pressures and most jurisdictions have some kind of political "buy-in" process to achieve general support for the estimate. This support comes at the high price of potential failure to balance the budget. To its great credit, the District has not politicized the estimates, allowing the revenue estimating function to be entirely professional.

Measuring Success in Financial Recovery

The District government's work over the last decade allowed it to make great strides. The financial turnaround can be measured by three additional indicators of financial well being: the general fund balance, cash reserve mandates, and bond ratings.

The General Fund Balance

A comfortable General Fund Balance is an indicator of financial success and security. It is an accounting storehouse of funds committed to future purposes and of funds whose use is not yet restricted. There are

Historic Bond Ratings for D.C.

Year	Moody's	Standard's & Poor's	Fitch
May 2007 – Present	A1	A+	A+
April 2004 – May 2007	A2	A+/ A	A-/ A
June 2003 – April 2004	Baa1	A-	A-
March 2001 – June 2003	Baa1	BBB+	BBB+
June 1999 – March 2001	Baa3	BBB/BBB+	BBB
March 1998 – June 1999	Ba1	BB/BBB	BB+
April 1995 – March 1998	Ba/ Ba2	B	BB
Dec. 1994 – April 1995	Baa	A-	BBB+
November 1984 – Dec. 1994	Baa	A/A-	No rating/ A-

several reserved "savings accounts" within the city's FY2007 General Fund Balance of $1.494 billion. The reserved amounts total $1.135 billion and include, among other items, $309 million in cash to cover emergency and contingency expenditures, $327 million in escrow for debt service payments, and $35 million designated for post employment benefits. An additional $359 million in the General Fund Balance is unreserved, although some of that total is already claimed for designated purposes such as supplemental expenditures and other post employment benefits. About $81 million of the total is both unreserved and not designated for identified future expenditures.

Cash Reserve Mandates

The Federal Appropriations Act of 2000 amended the District of Columbia Financial Responsibility and Management Assistance Authority of 1995 to require a general cash reserve of $150 million with specific restrictions for its use. The District's emergency and contingency reserves of $309 million are a result of this federal design for the District during this financial recovery period. It also required that the District have an annual positive fund balance of at least four percent of the projected expenditures for the forthcoming year. As of 2004, the federal law required DC to budget and carry two cash reserves: the Emergency Reserve at two percent of the expenditures through 2009 and Contingency Reserve at four percent of annual expenditures through 2009. The District, each year, has met this requirement.

Bond Ratings

Bond ratings issued by rating agencies are a central indicator of a city's financial well being. The ratings quantify the risk associated with lending long term capital to a municipality. They are based on criteria that evaluate the government's economic standing and capacity to deliver services.

The District's bond ratings have improved dramatically since the beginning of the Control Period. The improvements are significant as an indicator of the District's financial recovery, and the higher quality ratings allow the District access to long term capital bonds at more favorable interest rates. The chart above shows the change in the District's bond rating since 1984.

The "A" category ratings indicate that the District has strong attributes as a borrower, and the attachment of "+" suggests that loan quality is approaching "High", according to

Photo by Michael Bonfigli

"But fiscal recovery, even fiscal excellence, is not the same as excellent, or even adequate, government services. It is a necessary but not a sufficient condition."

rating agency standards. The lowest ratings in 1995-1998 implied that D.C. bonds were predominantly "Speculative" investments.

Rating agencies base bond ratings on a number of things. Most important is the inherent credit quality of the loan, which signals if the borrower has the funds to pay it back. Other considerations for jurisdictions include the quality of the infrastructure, programs and systems used to manage the city/state, the long-term outlook for the economy and its linkage to the success of the local government, and the commitment of local leaders and managers to fiscal health. Improvements in all these areas benefited the city's bond ratings.

Even with the strong improvement in ratings, the District's credit position is below that of cities like Baltimore, New York, San Antonio, and Chicago. Rating agencies are aware of the budgetary pressures and constraints that surround the District. Current ratings are a signal achievement for the District and higher ratings are possible. Still, the District has a long way to go to move to the highest ranks of regard from potential credit holders.

Conclusion

From FY1996 to FY2001, the District and the Federal Government have partnered in a very effective, consistent, and on-going financial recovery process. Beginning in FY2002, the city has accomplished this same financial success without on-going federal management. The last ten years produced remarkable results and helped to secure the fiscal health of the District.

The economy rebounded and tax revenues grew by 92 percent between FY1997 and FY2007, a clear indicator of the benefits of better government. This, coupled with the benefits of the 1997 Revitalization Act, allowed moderate growth in expenditures as the government recovered its sure footing. Nothing but praise can or should be written about the fundamental accomplishments shared by all who worked for this outcome.

But fiscal recovery, even fiscal excellence, is not the same as excellent, or even adequate, government services. It is a necessary but not a sufficient condition. Along with the fiscal recovery, we have learned of financial challenges that result from the revenue constraints the Federal Government places on the District as the Nation's Capital, as explained in Alice M. Rivlin's chapter. As DeRenzis and Garrison described, the District cannot finance, produce, and maintain the physical infrastructure needed to support a great city and national capital.[307] This is a problem for the long term. Starting from far behind, with deferred maintenance never going away, it is hard to imagine ever catching up. Just as importantly, Washington has not yet been able to serve many of its residents well enough to sustain a turn-around in their economic well-being. These ten years have seen growth in the wealth of a small number of residents – very good news as these are the generators of revenue and revenue growth. However, they also have seen a reduction in D.C.'s middle class and stubbornly high poverty rates. The city has had to defer investment in its human services in order to maintain fiscal stability.

To be both a world class city and fiscally stable, the District needs to be able to support more services, on both the capital and operating sides of the budget. Providing more services will require, an adequate tax base, which is not created by even the rapid growth of the last decade. The tax base needs to cover substantially all incomes earned in the city, as well as substantially all real property located in the city, as is the case for state and local governments throughout the country. If this is not possible, then an equivalent alternative in the form of federal support is needed.

If D.C. is to be a world class city, then much more is needed. An adequate city educates children adequately, transports people adequately and provides housing and health care adequately. A world class city provides these services in a manner to be emulated, world-over. As Chapter Two by DeRenzis and Garrison[308] described, the makings of D.C. as a world class city, achieving this national goal requires a much greater reach.

ENDNOTES

296 This story is often told by Natwar M. Gandhi who began his tenure as head of the tax agency in January 1997.

297 FY1997 CAFR, Table A-4, p. 41.

298 District of Columbia Financial Responsibility and Management Assistance Act, Pub. L. 104-8 (1995).

299 U.S. Gen. Accounting Office, GAO-03-666, District of Columbia Structural Imbalance and Management Issues (2003) ("GAO Report") (proving this for FY2000, demonstrating an operating budget shortfall of roughly $0.5 to $1.1 billion dollars a year.

300 The Authority is dormant rather than extinct. A Control Period is automatically reinstated if the District defaults on loans or bond, or fails to make required cash payments relating to pensions, payroll, or benefits.

301 Because expenditures by the receiverships overlapped with components of economic development, public safety and justice, and human support services, it is not possible to describe growth rates in the specific categories of the data in the table.

302 T. Rowe Price Report, Issue 100, Summer 2008, at 9.

303 Please note that these goals are not stated in the District's budget process although similar goals are in the budgets. These examples are provided to clarify the purpose of PBB.

304 The information about PBB is taken from Chapter 2, Strategic Budgeting, of the FY2008 Proposed Budget and Financial Plan, Volume 1, Executive Summary. The twelve service-level budgets are named on page 2-5.

305 As reported in Table A-5, FY2007 CAFR and Table A-4, FY1997 CAFR. The growth of Gross Revenues was smaller because there was a federal general purpose payment of $645 million in FY1997 that did not repeat in later years. The growth in tax revenues translates to an annualized rate of about 6.7%, well above inflation and nominal growth in other areas of the economy.

306 The total value of sales is as shown by transfer tax revenue.

307 *See supra* Chp. 2.

308 *See supra* Chp. 2.

Photo by Michael Bonfigli

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Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Timber & Lumber Co.,* 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

DOBBS, STATE HEALTH OFFICER OF THE MISSISSIPPI DEPARTMENT OF HEALTH, ET AL. *v.* JACKSON WOMEN'S HEALTH ORGANIZATION ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 19–1392. Argued December 1, 2021—Decided June 24, 2022

Mississippi's Gestational Age Act provides that "[e]xcept in a medical emergency or in the case of a severe fetal abnormality, a person shall not intentionally or knowingly perform . . . or induce an abortion of an unborn human being if the probable gestational age of the unborn human being has been determined to be greater than fifteen (15) weeks." Miss. Code Ann. §41–41–191. Respondents—Jackson Women's Health Organization, an abortion clinic, and one of its doctors—challenged the Act in Federal District Court, alleging that it violated this Court's precedents establishing a constitutional right to abortion, in particular *Roe* v. *Wade*, 410 U. S. 113, and *Planned Parenthood of Southeastern Pa.* v. *Casey*, 505 U. S. 833. The District Court granted summary judgment in favor of respondents and permanently enjoined enforcement of the Act, reasoning that Mississippi's 15-week restriction on abortion violates this Court's cases forbidding States to ban abortion pre-viability. The Fifth Circuit affirmed. Before this Court, petitioners defend the Act on the grounds that *Roe* and *Casey* were wrongly decided and that the Act is constitutional because it satisfies rational-basis review.

Held: The Constitution does not confer a right to abortion; *Roe* and *Casey* are overruled; and the authority to regulate abortion is returned to the people and their elected representatives. Pp. 8–79.

(a) The critical question is whether the Constitution, properly understood, confers a right to obtain an abortion. *Casey*'s controlling opinion skipped over that question and reaffirmed *Roe* solely on the basis of *stare decisis*. A proper application of *stare decisis*, however, requires an assessment of the strength of the grounds on which *Roe*

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was based. The Court therefore turns to the question that the *Casey* plurality did not consider. Pp. 8–32.

(1) First, the Court reviews the standard that the Court's cases have used to determine whether the Fourteenth Amendment's reference to "liberty" protects a particular right. The Constitution makes no express reference to a right to obtain an abortion, but several constitutional provisions have been offered as potential homes for an implicit constitutional right. *Roe* held that the abortion right is part of a right to privacy that springs from the First, Fourth, Fifth, Ninth, and Fourteenth Amendments. See 410 U. S., at 152–153. The *Casey* Court grounded its decision solely on the theory that the right to obtain an abortion is part of the "liberty" protected by the Fourteenth Amendment's Due Process Clause. Others have suggested that support can be found in the Fourteenth Amendment's Equal Protection Clause, but that theory is squarely foreclosed by the Court's precedents, which establish that a State's regulation of abortion is not a sex-based classification and is thus not subject to the heightened scrutiny that applies to such classifications. See *Geduldig* v. *Aiello*, 417 U. S. 484, 496, n. 20; *Bray* v. *Alexandria Women's Health Clinic*, 506 U. S. 263, 273–274. Rather, regulations and prohibitions of abortion are governed by the same standard of review as other health and safety measures. Pp. 9–11.

(2) Next, the Court examines whether the right to obtain an abortion is rooted in the Nation's history and tradition and whether it is an essential component of "ordered liberty." The Court finds that the right to abortion is not deeply rooted in the Nation's history and tradition. The underlying theory on which *Casey* rested—that the Fourteenth Amendment's Due Process Clause provides substantive, as well as procedural, protection for "liberty"—has long been controversial.

The Court's decisions have held that the Due Process Clause protects two categories of substantive rights—those rights guaranteed by the first eight Amendments to the Constitution and those rights deemed fundamental that are not mentioned anywhere in the Constitution. In deciding whether a right falls into either of these categories, the question is whether the right is "deeply rooted in [our] history and tradition" and whether it is essential to this Nation's "scheme of ordered liberty." *Timbs* v. *Indiana*, 586 U. S. ___, ___ (internal quotation marks omitted). The term "liberty" alone provides little guidance. Thus, historical inquiries are essential whenever the Court is asked to recognize a new component of the "liberty" interest protected by the Due Process Clause. In interpreting what is meant by "liberty," the Court must guard against the natural human tendency to confuse what the Fourteenth Amendment protects with the Court's own ardent views about the liberty that Americans should enjoy. For this reason,

the Court has been "reluctant" to recognize rights that are not mentioned in the Constitution. *Collins* v. *Harker Heights*, 503 U. S. 115, 125.

Guided by the history and tradition that map the essential components of the Nation's concept of ordered liberty, the Court finds the Fourteenth Amendment clearly does not protect the right to an abortion. Until the latter part of the 20th century, there was no support in American law for a constitutional right to obtain an abortion. No state constitutional provision had recognized such a right. Until a few years before *Roe*, no federal or state court had recognized such a right. Nor had any scholarly treatise. Indeed, abortion had long been a *crime* in every single State. At common law, abortion was criminal in at least some stages of pregnancy and was regarded as unlawful and could have very serious consequences at all stages. American law followed the common law until a wave of statutory restrictions in the 1800s expanded criminal liability for abortions. By the time the Fourteenth Amendment was adopted, three-quarters of the States had made abortion a crime at any stage of pregnancy. This consensus endured until the day *Roe* was decided. *Roe* either ignored or misstated this history, and *Casey* declined to reconsider *Roe*'s faulty historical analysis.

Respondents' argument that this history does not matter flies in the face of the standard the Court has applied in determining whether an asserted right that is nowhere mentioned in the Constitution is nevertheless protected by the Fourteenth Amendment. The Solicitor General repeats *Roe*'s claim that it is "doubtful . . . abortion was ever firmly established as a common-law crime even with respect to the destruction of a quick fetus," 410 U. S., at 136, but the great common-law authorities—Bracton, Coke, Hale, and Blackstone—all wrote that a post-quickening abortion was a crime. Moreover, many authorities asserted that even a pre-quickening abortion was "unlawful" and that, as a result, an abortionist was guilty of murder if the woman died from the attempt. The Solicitor General suggests that history supports an abortion right because of the common law's failure to criminalize abortion before quickening, but the insistence on quickening was not universal, see *Mills* v. *Commonwealth*, 13 Pa. 631, 633; *State* v. *Slagle*, 83 N. C. 630, 632, and regardless, the fact that many States in the late 18th and early 19th century did not criminalize pre-quickening abortions does not mean that anyone thought the States lacked the authority to do so.

Instead of seriously pressing the argument that the abortion right itself has deep roots, supporters of *Roe* and *Casey* contend that the abortion right is an integral part of a broader entrenched right. *Roe* termed this a right to privacy, 410 U. S., at 154, and *Casey* described it as the freedom to make "intimate and personal choices" that are "central to personal dignity and autonomy," 505 U. S., at 851. Ordered

liberty sets limits and defines the boundary between competing interests. *Roe* and *Casey* each struck a particular balance between the interests of a woman who wants an abortion and the interests of what they termed "potential life." *Roe*, 410 U. S., at 150; *Casey*, 505 U. S., at 852. But the people of the various States may evaluate those interests differently. The Nation's historical understanding of ordered liberty does not prevent the people's elected representatives from deciding how abortion should be regulated. Pp. 11–30.

(3) Finally, the Court considers whether a right to obtain an abortion is part of a broader entrenched right that is supported by other precedents. The Court concludes the right to obtain an abortion cannot be justified as a component of such a right. Attempts to justify abortion through appeals to a broader right to autonomy and to define one's "concept of existence" prove too much. *Casey*, 505 U. S., at 851. Those criteria, at a high level of generality, could license fundamental rights to illicit drug use, prostitution, and the like. What sharply distinguishes the abortion right from the rights recognized in the cases on which *Roe* and *Casey* rely is something that both those decisions acknowledged: Abortion is different because it destroys what *Roe* termed "potential life" and what the law challenged in this case calls an "unborn human being." None of the other decisions cited by *Roe* and *Casey* involved the critical moral question posed by abortion. Accordingly, those cases do not support the right to obtain an abortion, and the Court's conclusion that the Constitution does not confer such a right does not undermine them in any way. Pp. 30–32.

(b) The doctrine of *stare decisis* does not counsel continued acceptance of *Roe* and *Casey*. *Stare decisis* plays an important role and protects the interests of those who have taken action in reliance on a past decision. It "reduces incentives for challenging settled precedents, saving parties and courts the expense of endless relitigation." *Kimble* v. *Marvel Entertainment, LLC*, 576 U. S. 446, 455. It "contributes to the actual and perceived integrity of the judicial process." *Payne* v. *Tennessee*, 501 U. S. 808, 827. And it restrains judicial hubris by respecting the judgment of those who grappled with important questions in the past. But *stare decisis* is not an inexorable command, *Pearson* v. *Callahan*, 555 U. S. 223, 233, and "is at its weakest when [the Court] interpret[s] the Constitution," *Agostini* v. *Felton*, 521 U. S. 203, 235. Some of the Court's most important constitutional decisions have overruled prior precedents. See, *e.g., Brown* v. *Board of Education*, 347 U. S. 483, 491 (overruling the infamous decision in *Plessy* v. *Ferguson*, 163 U. S. 537, and its progeny).

The Court's cases have identified factors that should be considered in deciding when a precedent should be overruled. *Janus* v. *State, County, and Municipal Employees*, 585 U. S. ___, ___–___. Five factors

discussed below weigh strongly in favor of overruling *Roe* and *Casey*. Pp. 39–66.

(1) *The nature of the Court's error*. Like the infamous decision in *Plessy* v. *Ferguson*, *Roe* was also egregiously wrong and on a collision course with the Constitution from the day it was decided. *Casey* perpetuated its errors, calling both sides of the national controversy to resolve their debate, but in doing so, *Casey* necessarily declared a winning side. Those on the losing side—those who sought to advance the State's interest in fetal life—could no longer seek to persuade their elected representatives to adopt policies consistent with their views. The Court short-circuited the democratic process by closing it to the large number of Americans who disagreed with *Roe*. Pp. 43–45.

(2) *The quality of the reasoning*. Without any grounding in the constitutional text, history, or precedent, *Roe* imposed on the entire country a detailed set of rules for pregnancy divided into trimesters much like those that one might expect to find in a statute or regulation. See 410 U. S., at 163–164. *Roe*'s failure even to note the overwhelming consensus of state laws in effect in 1868 is striking, and what it said about the common law was simply wrong. Then, after surveying history, the opinion spent many paragraphs conducting the sort of fact-finding that might be undertaken by a legislative committee, and did not explain why the sources on which it relied shed light on the meaning of the Constitution. As to precedent, citing a broad array of cases, the Court found support for a constitutional "right of personal privacy." *Id.,* at 152. But *Roe* conflated the right to shield information from disclosure and the right to make and implement important personal decisions without governmental interference. See *Whalen* v. *Roe*, 429 U. S. 589, 599–600. None of these decisions involved what is distinctive about abortion: its effect on what *Roe* termed "potential life." When the Court summarized the basis for the scheme it imposed on the country, it asserted that its rules were "consistent with," among other things, "the relative weights of the respective interests involved" and "the demands of the profound problems of the present day." *Roe*, 410 U. S., at 165. These are precisely the sort of considerations that legislative bodies often take into account when they draw lines that accommodate competing interests. The scheme *Roe* produced *looked* like legislation, and the Court provided the sort of explanation that might be expected from a legislative body. An even more glaring deficiency was *Roe*'s failure to justify the critical distinction it drew between pre- and post-viability abortions. See *id*., at 163. The arbitrary viability line, which *Casey* termed *Roe*'s central rule, has not found much support among philosophers and ethicists who have attempted to justify a right to abortion. The most obvious problem with any such

argument is that viability has changed over time and is heavily dependent on factors—such as medical advances and the availability of quality medical care—that have nothing to do with the characteristics of a fetus.

When *Casey* revisited *Roe* almost 20 years later, it reaffirmed *Roe*'s central holding, but pointedly refrained from endorsing most of its reasoning. The Court abandoned any reliance on a privacy right and instead grounded the abortion right entirely on the Fourteenth Amendment's Due Process Clause. 505 U. S., at 846. The controlling opinion criticized and rejected *Roe*'s trimester scheme, 505 U. S., at 872, and substituted a new and obscure "undue burden" test. *Casey*, in short, either refused to reaffirm or rejected important aspects of *Roe*'s analysis, failed to remedy glaring deficiencies in *Roe*'s reasoning, endorsed what it termed *Roe*'s central holding while suggesting that a majority might not have thought it was correct, provided no new support for the abortion right other than *Roe*'s status as precedent, and imposed a new test with no firm grounding in constitutional text, history, or precedent. Pp. 45–56.

(3) *Workability*. Deciding whether a precedent should be overruled depends in part on whether the rule it imposes is workable—that is, whether it can be understood and applied in a consistent and predictable manner. *Casey*'s "undue burden" test has scored poorly on the workability scale. The *Casey* plurality tried to put meaning into the "undue burden" test by setting out three subsidiary rules, but these rules created their own problems. And the difficulty of applying *Casey*'s new rules surfaced in that very case. Compare 505 U. S., at 881–887, with *id.,* at 920–922 (Stevens, J., concurring in part and dissenting in part). The experience of the Courts of Appeals provides further evidence that *Casey*'s "line between" permissible and unconstitutional restrictions "has proved to be impossible to draw with precision." *Janus*, 585 U. S., at ___. *Casey* has generated a long list of Circuit conflicts. Continued adherence to *Casey*'s unworkable "undue burden" test would undermine, not advance, the "evenhanded, predictable, and consistent development of legal principles." *Payne*, 501 U. S., at 827. Pp. 56–62.

(4) *Effect on other areas of law*. *Roe* and *Casey* have led to the distortion of many important but unrelated legal doctrines, and that effect provides further support for overruling those decisions. See *Ramos* v. *Louisiana*, 590 U. S. ___, ___ (KAVANAUGH, J., concurring in part). Pp. 62–63.

(5) *Reliance interests*. Overruling *Roe* and *Casey* will not upend concrete reliance interests like those that develop in "cases involving property and contract rights." *Payne*, 501 U. S., at 828. In *Casey*, the controlling opinion conceded that traditional reliance interests were

not implicated because getting an abortion is generally "unplanned activity," and "reproductive planning could take virtually immediate account of any sudden restoration of state authority to ban abortions." 505 U. S., at 856. Instead, the opinion perceived a more intangible form of reliance, namely, that "people [had] organized intimate relationships and made choices that define their views of themselves and their places in society . . . in reliance on the availability of abortion in the event that contraception should fail" and that "[t]he ability of women to participate equally in the economic and social life of the Nation has been facilitated by their ability to control their reproductive lives." *Ibid.* The contending sides in this case make impassioned and conflicting arguments about the effects of the abortion right on the lives of women as well as the status of the fetus. The *Casey* plurality's speculative attempt to weigh the relative importance of the interests of the fetus and the mother represent a departure from the "original constitutional proposition" that "courts do not substitute their social and economic beliefs for the judgment of legislative bodies." *Ferguson* v. *Skrupa*, 372 U. S. 726, 729–730.

The Solicitor General suggests that overruling *Roe* and *Casey* would threaten the protection of other rights under the Due Process Clause. The Court emphasizes that this decision concerns the constitutional right to abortion and no other right. Nothing in this opinion should be understood to cast doubt on precedents that do not concern abortion. Pp. 63–66.

(c) *Casey* identified another concern, namely, the danger that the public will perceive a decision overruling a controversial "watershed" decision, such as *Roe*, as influenced by political considerations or public opinion. 505 U. S., at 866–867. But the Court cannot allow its decisions to be affected by such extraneous concerns. A precedent of this Court is subject to the usual principles of *stare decisis* under which adherence to precedent is the norm but not an inexorable command. If the rule were otherwise, erroneous decisions like *Plessy* would still be the law. The Court's job is to interpret the law, apply longstanding principles of *stare decisis*, and decide this case accordingly. Pp. 66–69.

(d) Under the Court's precedents, rational-basis review is the appropriate standard to apply when state abortion regulations undergo constitutional challenge. Given that procuring an abortion is not a fundamental constitutional right, it follows that the States may regulate abortion for legitimate reasons, and when such regulations are challenged under the Constitution, courts cannot "substitute their social and economic beliefs for the judgment of legislative bodies." *Ferguson*, 372 U. S., at 729–730. That applies even when the laws at issue concern matters of great social significance and moral substance. A law regulating abortion, like other health and welfare laws, is entitled to a

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"strong presumption of validity." *Heller* v. *Doe*, 509 U. S. 312, 319. It must be sustained if there is a rational basis on which the legislature could have thought that it would serve legitimate state interests. *Id.,* at 320.

Mississippi's Gestational Age Act is supported by the Mississippi Legislature's specific findings, which include the State's asserted interest in "protecting the life of the unborn." §2(b)(i). These legitimate interests provide a rational basis for the Gestational Age Act, and it follows that respondents' constitutional challenge must fail. Pp. 76–78.

(e) Abortion presents a profound moral question. The Constitution does not prohibit the citizens of each State from regulating or prohibiting abortion. *Roe* and *Casey* arrogated that authority. The Court overrules those decisions and returns that authority to the people and their elected representatives. Pp. 78–79.

945 F. 3d 265, reversed and remanded.

ALITO, J., delivered the opinion of the Court, in which THOMAS, GORSUCH, KAVANAUGH, and BARRETT, JJ., joined. THOMAS, J., and KAVANAUGH, J., filed concurring opinions. ROBERTS, C. J., filed an opinion concurring in the judgment. BREYER, SOTOMAYOR, and KAGAN, JJ., filed a dissenting opinion.

SUPREME COURT OF THE UNITED STATES

No. 19–1392

THOMAS E. DOBBS, STATE HEALTH OFFICER OF THE MISSISSIPPI DEPARTMENT OF HEALTH, ET AL., PETITIONERS *v.* JACKSON WOMEN'S HEALTH ORGANIZATION, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

[June 24, 2022]

JUSTICE ALITO delivered the opinion of the Court.

Abortion presents a profound moral issue on which Americans hold sharply conflicting views. Some believe fervently that a human person comes into being at conception and that abortion ends an innocent life. Others feel just as strongly that any regulation of abortion invades a woman's right to control her own body and prevents women from achieving full equality. Still others in a third group think that abortion should be allowed under some but not all circumstances, and those within this group hold a variety of views about the particular restrictions that should be imposed.

For the first 185 years after the adoption of the Constitution, each State was permitted to address this issue in accordance with the views of its citizens. Then, in 1973, this Court decided *Roe* v. *Wade*, 410 U. S. 113. Even though the Constitution makes no mention of abortion, the Court held that it confers a broad right to obtain one. It did not claim that American law or the common law had ever recognized

such a right, and its survey of history ranged from the constitutionally irrelevant (*e.g.*, its discussion of abortion in antiquity) to the plainly incorrect (*e.g.*, its assertion that abortion was probably never a crime under the common law). After cataloging a wealth of other information having no bearing on the meaning of the Constitution, the opinion concluded with a numbered set of rules much like those that might be found in a statute enacted by a legislature.

Under this scheme, each trimester of pregnancy was regulated differently, but the most critical line was drawn at roughly the end of the second trimester, which, at the time, corresponded to the point at which a fetus was thought to achieve "viability," *i.e.*, the ability to survive outside the womb. Although the Court acknowledged that States had a legitimate interest in protecting "potential life,"[1] it found that this interest could not justify any restriction on previability abortions. The Court did not explain the basis for this line, and even abortion supporters have found it hard to defend *Roe*'s reasoning. One prominent constitutional scholar wrote that he "would vote for a statute very much like the one the Court end[ed] up drafting" if he were "a legislator," but his assessment of *Roe* was memorable and brutal: *Roe* was "not constitutional law" at all and gave "almost no sense of an obligation to try to be."[2]

At the time of *Roe*, 30 States still prohibited abortion at all stages. In the years prior to that decision, about a third of the States had liberalized their laws, but *Roe* abruptly ended that political process. It imposed the same highly restrictive regime on the entire Nation, and it effectively struck down the abortion laws of every single State.[3] As

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[1] *Roe* v. *Wade*, 410 U. S. 113, 163 (1973).

[2] J. Ely, The Wages of Crying Wolf: A Comment on *Roe* v. *Wade*, 82 Yale L. J. 920, 926, 947 (1973) (Ely) (emphasis deleted).

[3] L. Tribe, Foreword: Toward a Model of Roles in the Due Process of Life and Law, 87 Harv. L. Rev. 1, 2 (1973) (Tribe).

Justice Byron White aptly put it in his dissent, the decision represented the "exercise of raw judicial power," 410 U. S., at 222, and it sparked a national controversy that has embittered our political culture for a half century.[4]

Eventually, in *Planned Parenthood of Southeastern Pa.* v. *Casey*, 505 U. S. 833 (1992), the Court revisited *Roe*, but the Members of the Court split three ways. Two Justices expressed no desire to change *Roe* in any way.[5] Four others wanted to overrule the decision in its entirety.[6] And the three remaining Justices, who jointly signed the controlling opinion, took a third position.[7] Their opinion did not endorse *Roe*'s reasoning, and it even hinted that one or more of its authors might have "reservations" about whether the Constitution protects a right to abortion.[8] But the opinion concluded that *stare decisis*, which calls for prior decisions to be followed in most instances, required adherence to what it called *Roe*'s "central holding"—that a State may not constitutionally protect fetal life before "viability"—even if that holding was wrong.[9] Anything less, the opinion claimed, would undermine respect for this Court and the rule of law.

Paradoxically, the judgment in *Casey* did a fair amount of overruling. Several important abortion decisions were

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[4] See R. Ginsburg, Speaking in a Judicial Voice, 67 N. Y. U. L. Rev. 1185, 1208 (1992) ("*Roe* . . . halted a political process that was moving in a reform direction and thereby, I believed, prolonged divisiveness and deferred stable settlement of the issue").

[5] See 505 U. S., at 911 (Stevens, J., concurring in part and dissenting in part); *id.,* at 922 (Blackmun, J., concurring in part, concurring in judgment in part, and dissenting in part).

[6] See *id*., at 944 (Rehnquist, C. J., concurring in judgment in part and dissenting in part); *id.,* at 979 (Scalia, J., concurring in judgment in part and dissenting in part).

[7] See *id*., at 843 (joint opinion of O'Connor, Kennedy, and Souter, JJ.).

[8] *Id*., at 853.

[9] *Id*., at 860.

overruled *in toto*, and *Roe* itself was overruled in part.[10] *Casey* threw out *Roe*'s trimester scheme and substituted a new rule of uncertain origin under which States were forbidden to adopt any regulation that imposed an "undue burden" on a woman's right to have an abortion.[11] The decision provided no clear guidance about the difference between a "due" and an "undue" burden. But the three Justices who authored the controlling opinion "call[ed] the contending sides of a national controversy to end their national division" by treating the Court's decision as the final settlement of the question of the constitutional right to abortion.[12]

As has become increasingly apparent in the intervening years, *Casey* did not achieve that goal. Americans continue to hold passionate and widely divergent views on abortion, and state legislatures have acted accordingly. Some have recently enacted laws allowing abortion, with few restrictions, at all stages of pregnancy. Others have tightly restricted abortion beginning well before viability. And in this case, 26 States have expressly asked this Court to overrule *Roe* and *Casey* and allow the States to regulate or prohibit pre-viability abortions.

Before us now is one such state law. The State of Mississippi asks us to uphold the constitutionality of a law that generally prohibits an abortion after the 15th week of pregnancy—several weeks before the point at which a fetus is now regarded as "viable" outside the womb. In defending this law, the State's primary argument is that we should reconsider and overrule *Roe* and *Casey* and once again allow each State to regulate abortion as its citizens wish. On the other side, respondents and the Solicitor General ask us to

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[10] *Id.*, at 861, 870, 873 (overruling *Akron* v. *Akron Center for Reproductive Health, Inc.*, 462 U. S. 416 (1983), and *Thornburgh* v. *American College of Obstetricians and Gynecologists*, 476 U. S. 747 (1986)).

[11] 505 U. S., at 874.

[12] *Id.*, at 867.

reaffirm *Roe* and *Casey*, and they contend that the Mississippi law cannot stand if we do so. Allowing Mississippi to prohibit abortions after 15 weeks of pregnancy, they argue, "would be no different than overruling *Casey* and *Roe* entirely." Brief for Respondents 43. They contend that "no half-measures" are available and that we must either reaffirm or overrule *Roe* and *Casey*. Brief for Respondents 50.

We hold that *Roe* and *Case*y must be overruled. The Constitution makes no reference to abortion, and no such right is implicitly protected by any constitutional provision, including the one on which the defenders of *Roe* and *Casey* now chiefly rely—the Due Process Clause of the Fourteenth Amendment. That provision has been held to guarantee some rights that are not mentioned in the Constitution, but any such right must be "deeply rooted in this Nation's history and tradition" and "implicit in the concept of ordered liberty." *Washington* v. *Glucksberg,* 521 U. S. 702, 721 (1997) (internal quotation marks omitted).

The right to abortion does not fall within this category. Until the latter part of the 20th century, such a right was entirely unknown in American law. Indeed, when the Fourteenth Amendment was adopted, three quarters of the States made abortion a crime at all stages of pregnancy. The abortion right is also critically different from any other right that this Court has held to fall within the Fourteenth Amendment's protection of "liberty." *Roe*'s defenders characterize the abortion right as similar to the rights recognized in past decisions involving matters such as intimate sexual relations, contraception, and marriage, but abortion is fundamentally different, as both *Roe* and *Casey* acknowledged, because it destroys what those decisions called "fetal life" and what the law now before us describes as an "unborn human being."[13]

Stare decisis, the doctrine on which *Casey*'s controlling

[13] Miss. Code Ann. §41–41–191(4)(b) (2018).

opinion was based, does not compel unending adherence to *Roe*'s abuse of judicial authority. *Roe* was egregiously wrong from the start. Its reasoning was exceptionally weak, and the decision has had damaging consequences. And far from bringing about a national settlement of the abortion issue, *Roe* and *Casey* have enflamed debate and deepened division.

It is time to heed the Constitution and return the issue of abortion to the people's elected representatives. "The permissibility of abortion, and the limitations, upon it, are to be resolved like most important questions in our democracy: by citizens trying to persuade one another and then voting." *Casey*, 505 U. S., at 979 (Scalia, J., concurring in judgment in part and dissenting in part). That is what the Constitution and the rule of law demand.

I

The law at issue in this case, Mississippi's Gestational Age Act, see Miss. Code Ann. §41–41–191 (2018), contains this central provision: "Except in a medical emergency or in the case of a severe fetal abnormality, a person shall not intentionally or knowingly perform . . . or induce an abortion of an unborn human being if the probable gestational age of the unborn human being has been determined to be greater than fifteen (15) weeks." §4(b).[14]

To support this Act, the legislature made a series of factual findings. It began by noting that, at the time of enactment, only six countries besides the United States "permit[ted] nontherapeutic or elective abortion-on-demand after the twentieth week of gestation."[15] §2(a). The legisla-

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[14] The Act defines "gestational age" to be "the age of an unborn human being as calculated from the first day of the last menstrual period of the pregnant woman." §3(f).

[15] Those other six countries were Canada, China, the Netherlands,

ture then found that at 5 or 6 weeks' gestational age an "unborn human being's heart begins beating"; at 8 weeks the "unborn human being begins to move about in the womb"; at 9 weeks "all basic physiological functions are present"; at 10 weeks "vital organs begin to function," and "[h]air, fingernails, and toenails . . . begin to form"; at 11 weeks "an unborn human being's diaphragm is developing," and he or she may "move about freely in the womb"; and at 12 weeks the "unborn human being" has "taken on 'the human form' in all relevant respects." §2(b)(i) (quoting *Gonzales* v. *Carhart*, 550 U. S. 124, 160 (2007)). It found that most abortions after 15 weeks employ "dilation and evacuation procedures which involve the use of surgical instruments to crush and tear the unborn child," and it concluded that the "intentional commitment of such acts for nontherapeutic or elective reasons is a barbaric practice, dangerous for the maternal patient, and demeaning to the medical profession." §2(b)(i)(8).

Respondents are an abortion clinic, Jackson Women's Health Organization, and one of its doctors. On the day the Gestational Age Act was enacted, respondents filed suit in Federal District Court against various Mississippi officials, alleging that the Act violated this Court's precedents establishing a constitutional right to abortion. The District

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North Korea, Singapore, and Vietnam. See A. Baglini, Charlotte Lozier Institute, Gestational Limits on Abortion in the United States Compared to International Norms 6–7 (2014); M. Lee, Is the United States One of Seven Countries That "Allow Elective Abortions After 20 Weeks of Pregnancy?" Wash. Post (Oct. 8, 2017), www.washingtonpost.com/news/fact-checker/wp/2017/10/09/is-the-united-states-one-of-seven-countries-that-allow-elective-abortions-after-20-weeks-of-preganacy (stating that the claim made by the Mississippi Legislature and the Charlotte Lozier Institute was "backed by data"). A more recent compilation from the Center for Reproductive Rights indicates that Iceland and Guinea-Bissau are now also similarly permissive. See The World's Abortion Laws, Center for Reproductive Rights (Feb. 23, 2021), https://reproductiverights.org/maps/worlds-abortion-laws/.

Court granted summary judgment in favor of respondents and permanently enjoined enforcement of the Act, reasoning that "viability marks the earliest point at which the State's interest in fetal life is constitutionally adequate to justify a legislative ban on nontherapeutic abortions" and that 15 weeks' gestational age is "prior to viability." *Jackson Women's Health Org.* v. *Currier*, 349 F. Supp. 3d 536, 539–540 (SD Miss. 2019) (internal quotation marks omitted). The Fifth Circuit affirmed. 945 F. 3d 265 (2019).

We granted certiorari, 593 U. S. ___ (2021), to resolve the question whether "all pre-viability prohibitions on elective abortions are unconstitutional," Pet. for Cert. i. Petitioners' primary defense of the Mississippi Gestational Age Act is that *Roe* and *Casey* were wrongly decided and that "the Act is constitutional because it satisfies rational-basis review." Brief for Petitioners 49. Respondents answer that allowing Mississippi to ban pre-viability abortions "would be no different than overruling *Casey* and *Roe* entirely." Brief for Respondents 43. They tell us that "no half-measures" are available: We must either reaffirm or overrule *Roe* and *Casey*. Brief for Respondents 50.

II

We begin by considering the critical question whether the Constitution, properly understood, confers a right to obtain an abortion. Skipping over that question, the controlling opinion in *Casey* reaffirmed *Roe*'s "central holding" based solely on the doctrine of *stare decisis*, but as we will explain, proper application of *stare decisis* required an assessment of the strength of the grounds on which *Roe* was based. See *infra,* at 45–56.

We therefore turn to the question that the *Casey* plurality did not consider, and we address that question in three steps. First, we explain the standard that our cases have used in determining whether the Fourteenth Amendment's reference to "liberty" protects a particular right. Second,

we examine whether the right at issue in this case is rooted in our Nation's history and tradition and whether it is an essential component of what we have described as "ordered liberty." Finally, we consider whether a right to obtain an abortion is part of a broader entrenched right that is supported by other precedents.

A

1

Constitutional analysis must begin with "the language of the instrument," *Gibbons* v. *Ogden*, 9 Wheat. 1, 186–189 (1824), which offers a "fixed standard" for ascertaining what our founding document means, 1 J. Story, Commentaries on the Constitution of the United States §399, p. 383 (1833). The Constitution makes no express reference to a right to obtain an abortion, and therefore those who claim that it protects such a right must show that the right is somehow implicit in the constitutional text.

Roe, however, was remarkably loose in its treatment of the constitutional text. It held that the abortion right, which is not mentioned in the Constitution, is part of a right to privacy, which is also not mentioned. See 410 U. S., at 152–153. And that privacy right, *Roe* observed, had been found to spring from no fewer than five different constitutional provisions—the First, Fourth, Fifth, Ninth, and Fourteenth Amendments. *Id.*, at 152.

The Court's discussion left open at least three ways in which some combination of these provisions could protect the abortion right. One possibility was that the right was "founded . . . in the Ninth Amendment's reservation of rights to the people." *Id.,* at 153. Another was that the right was rooted in the First, Fourth, or Fifth Amendment, or in some combination of those provisions, and that this right had been "incorporated" into the Due Process Clause of the Fourteenth Amendment just as many other Bill of Rights provisions had by then been incorporated. *Ibid*; see

also *McDonald* v. *Chicago*, 561 U. S. 742, 763–766 (2010) (majority opinion) (discussing incorporation). And a third path was that the First, Fourth, and Fifth Amendments played no role and that the right was simply a component of the "liberty" protected by the Fourteenth Amendment's Due Process Clause. *Roe*, 410 U. S., at 153. *Roe* expressed the "feel[ing]" that the Fourteenth Amendment was the provision that did the work, but its message seemed to be that the abortion right could be found *somewhere* in the Constitution and that specifying its exact location was not of paramount importance.[16] The *Casey* Court did not defend this unfocused analysis and instead grounded its decision solely on the theory that the right to obtain an abortion is part of the "liberty" protected by the Fourteenth Amendment's Due Process Clause.

We discuss this theory in depth below, but before doing so, we briefly address one additional constitutional provision that some of respondents' *amici* have now offered as yet another potential home for the abortion right: the Fourteenth Amendment's Equal Protection Clause. See Brief for United States as *Amicus Curiae* 24 (Brief for United States); see also Brief for Equal Protection Constitutional Law Scholars as *Amici Curiae*. Neither *Roe* nor *Casey* saw fit to invoke this theory, and it is squarely foreclosed by our precedents, which establish that a State's regulation of abortion is not a sex-based classification and is thus not subject to the "heightened scrutiny" that applies to such classifications.[17] The regulation of a medical procedure that

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[16] The Court's words were as follows: "This right of privacy, whether it be founded in the Fourteenth Amendment's concept of personal liberty and restrictions upon state action, as we feel it is, or, as the District Court determined, in the Ninth Amendment's reservation of rights to the people, is broad enough to encompass a woman's decision whether or not to terminate her pregnancy." 410 U. S., at 153.

[17] See, *e.g., Sessions* v. *Morales-Santana*, 582 U. S. 47, ___ (2017) (slip op., at 8).

only one sex can undergo does not trigger heightened constitutional scrutiny unless the regulation is a "mere pretex[t] designed to effect an invidious discrimination against members of one sex or the other." *Geduldig* v. *Aiello*, 417 U. S. 484, 496, n. 20 (1974). And as the Court has stated, the "goal of preventing abortion" does not constitute "invidiously discriminatory animus" against women. *Bray* v. *Alexandria Women's Health Clinic*, 506 U. S. 263, 273–274 (1993) (internal quotation marks omitted). Accordingly, laws regulating or prohibiting abortion are not subject to heightened scrutiny. Rather, they are governed by the same standard of review as other health and safety measures.[18]

With this new theory addressed, we turn to *Casey*'s bold assertion that the abortion right is an aspect of the "liberty" protected by the Due Process Clause of the Fourteenth Amendment. 505 U. S., at 846; Brief for Respondents 17; Brief for United States 21–22.

2

The underlying theory on which this argument rests—that the Fourteenth Amendment's Due Process Clause provides substantive, as well as procedural, protection for "liberty"—has long been controversial. But our decisions have held that the Due Process Clause protects two categories of substantive rights.

The first consists of rights guaranteed by the first eight Amendments. Those Amendments originally applied only to the Federal Government, *Barron ex rel. Tiernan* v. *Mayor of Baltimore*, 7 Pet. 243, 247–251 (1833) (opinion for the Court by Marshall, C. J.), but this Court has held that the Due Process Clause of the Fourteenth Amendment "incorporates" the great majority of those rights and thus makes them equally applicable to the States. See *McDonald*, 561

[18] We discuss this standard in Part VI of this opinion.

U. S., at 763–767, and nn. 12–13. The second category—which is the one in question here—comprises a select list of fundamental rights that are not mentioned anywhere in the Constitution.

In deciding whether a right falls into either of these categories, the Court has long asked whether the right is "deeply rooted in [our] history and tradition" and whether it is essential to our Nation's "scheme of ordered liberty." *Timbs* v. *Indiana*, 586 U. S. ___, ___ (2019) (slip op., at 3) (internal quotation marks omitted); *McDonald*, 561 U. S., at 764, 767 (internal quotation marks omitted); *Glucksberg*, 521 U. S., at 721 (internal quotation marks omitted).[19] And in conducting this inquiry, we have engaged in a careful analysis of the history of the right at issue.

Justice Ginsburg's opinion for the Court in *Timbs* is a recent example. In concluding that the Eighth Amendment's protection against excessive fines is "fundamental to our scheme of ordered liberty" and "deeply rooted in this Nation's history and tradition," 586 U. S., at ___ (slip op., at 7) (internal quotation marks omitted), her opinion traced the right back to Magna Carta, Blackstone's Commentaries, and 35 of the 37 state constitutions in effect at the ratification of the Fourteenth Amendment. 586 U. S., at ___–___ (slip op., at 3–7).

A similar inquiry was undertaken in *McDonald*, which held that the Fourteenth Amendment protects the right to keep and bear arms. The lead opinion surveyed the origins of the Second Amendment, the debates in Congress about

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[19] See also, *e.g., Duncan* v. *Louisiana*, 391 U. S. 145, 148 (1968) (asking whether "a right is among those 'fundamental principles of liberty and justice which lie at the base of our civil and political institutions'"); *Palko* v. *Connecticut*, 302 U. S. 319, 325 (1937) (requiring "a 'principle of justice so rooted in the traditions and conscience of our people as to be ranked as fundamental'" (quoting *Snyder* v. *Massachusetts*, 291 U. S. 97, 105 (1934))).

the adoption of the Fourteenth Amendment, the state constitutions in effect when that Amendment was ratified (at least 22 of the 37 States protected the right to keep and bear arms), federal laws enacted during the same period, and other relevant historical evidence. 561 U. S., at 767–777. Only then did the opinion conclude that "the Framers and ratifiers of the Fourteenth Amendment counted the right to keep and bear arms among those fundamental rights necessary to our system of ordered liberty." *Id.*, at 778; see also *id.*, at 822–850 (THOMAS, J., concurring in part and concurring in judgment) (surveying history and reaching the same result under the Fourteenth Amendment's Privileges or Immunities Clause).

Timbs and *McDonald* concerned the question whether the Fourteenth Amendment protects rights that are expressly set out in the Bill of Rights, and it would be anomalous if similar historical support were not required when a putative right is not mentioned anywhere in the Constitution. Thus, in *Glucksberg*, which held that the Due Process Clause does not confer a right to assisted suicide, the Court surveyed more than 700 years of "Anglo-American common law tradition," 521 U. S., at 711, and made clear that a fundamental right must be "objectively, deeply rooted in this Nation's history and tradition," *id.*, at 720–721.

Historical inquiries of this nature are essential whenever we are asked to recognize a new component of the "liberty" protected by the Due Process Clause because the term "liberty" alone provides little guidance. "Liberty" is a capacious term. As Lincoln once said: "We all declare for Liberty; but in using the same word we do not all mean the same thing."[20] In a well-known essay, Isaiah Berlin reported that "[h]istorians of ideas" had cataloged more than

[20] Address at Sanitary Fair at Baltimore, Md. (Apr. 18, 1864), reprinted in 7 The Collected Works of Abraham Lincoln 301 (R. Basler ed. 1953).

200 different senses in which the term had been used.[21]

In interpreting what is meant by the Fourteenth Amendment's reference to "liberty," we must guard against the natural human tendency to confuse what that Amendment protects with our own ardent views about the liberty that Americans should enjoy. That is why the Court has long been "reluctant" to recognize rights that are not mentioned in the Constitution. *Collins* v. *Harker Heights*, 503 U. S. 115, 125 (1992). "Substantive due process has at times been a treacherous field for this Court," *Moore* v. *East Cleveland*, 431 U. S. 494, 503 (1977) (plurality opinion), and it has sometimes led the Court to usurp authority that the Constitution entrusts to the people's elected representatives. See *Regents of Univ. of Mich.* v. *Ewing*, 474 U. S. 214, 225–226 (1985). As the Court cautioned in *Glucksberg*, "[w]e must . . . exercise the utmost care whenever we are asked to break new ground in this field, lest the liberty protected by the Due Process Clause be subtly transformed into the policy preferences of the Members of this Court." 521 U. S., at 720 (internal quotation marks and citation omitted).

On occasion, when the Court has ignored the "[a]ppropriate limits" imposed by "'respect for the teachings of history,'" *Moore,* 431 U. S., at 503 (plurality opinion), it has fallen into the freewheeling judicial policymaking that characterized discredited decisions such as *Lochner* v. *New York*, 198 U. S. 45 (1905). The Court must not fall prey to such an unprincipled approach. Instead, guided by the history and tradition that map the essential components of our Nation's concept of ordered liberty, we must ask what the *Fourteenth Amendment* means by the term "liberty." When we engage in that inquiry in the present case, the clear answer is that the Fourteenth Amendment does not protect

[21] Four Essays on Liberty 121 (1969).

the right to an abortion.[22]

B

1

Until the latter part of the 20th century, there was no support in American law for a constitutional right to obtain an abortion. No state constitutional provision had recognized such a right. Until a few years before *Roe* was handed down, no federal or state court had recognized such a right. Nor had any scholarly treatise of which we are aware. And although law review articles are not reticent about advocating new rights, the earliest article proposing a constitutional right to abortion that has come to our attention was published only a few years before *Roe*.[23]

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[22] That is true regardless of whether we look to the Amendment's Due Process Clause or its Privileges or Immunities Clause. Some scholars and Justices have maintained that the Privileges or Immunities Clause is the provision of the Fourteenth Amendment that guarantees substantive rights. See, *e.g., McDonald* v. *Chicago*, 561 U. S. 742, 813–850 (2010) (THOMAS, J., concurring in part and concurring in judgment); *Duncan*, 391 U. S., at 165–166 (Black, J., concurring); A. Amar, Bill of Rights: Creation and Reconstruction 163–180 (1998) (Amar); J. Ely, Democracy and Distrust 22–30 (1980); 2 W. Crosskey, Politics and the Constitution in the History of the United States 1089–1095 (1953). But even on that view, such a right would need to be rooted in the Nation's history and tradition. See *Corfield* v. *Coryell*, 6 F. Cas. 546, 551–552 (No. 3,230) (CC ED Pa. 1823) (describing unenumerated rights under the Privileges and Immunities Clause, Art. IV, §2, as those "fundamental" rights "which have, at all times, been enjoyed by the citizens of the several states"); Amar 176 (relying on *Corfield* to interpret the Privileges or Immunities Clause); cf. *McDonald*, 561 U. S., at 819–820, 832, 854 (opinion of THOMAS, J.) (reserving the question whether the Privileges or Immunities Clause protects "any rights besides those enumerated in the Constitution").

[23] See R. Lucas, Federal Constitutional Limitations on the Enforcement and Administration of State Abortion Statutes, 46 N. C. L. Rev. 730 (1968) (Lucas); see also D. Garrow, Liberty and Sexuality 334–335 (1994) (Garrow) (stating that Lucas was "undeniably the first person to fully

Not only was there no support for such a constitutional right until shortly before *Roe*, but abortion had long been a *crime* in every single State. At common law, abortion was criminal in at least some stages of pregnancy and was regarded as unlawful and could have very serious consequences at all stages. American law followed the common law until a wave of statutory restrictions in the 1800s expanded criminal liability for abortions. By the time of the adoption of the Fourteenth Amendment, three-quarters of the States had made abortion a crime at any stage of pregnancy, and the remaining States would soon follow.

Roe either ignored or misstated this history, and *Casey* declined to reconsider *Roe*'s faulty historical analysis. It is therefore important to set the record straight.

2

a

We begin with the common law, under which abortion was a crime at least after "quickening"—*i.e.*, the first felt movement of the fetus in the womb, which usually occurs between the 16th and 18th week of pregnancy.[24]

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articulate on paper" the argument that "a woman's right to choose abortion was a fundamental individual freedom protected by the U. S. Constitution's guarantee of personal liberty").

[24] The exact meaning of "quickening" is subject to some debate. Compare Brief for Scholars of Jurisprudence as *Amici Curiae* 12–14, and n. 32 (emphasis deleted) ("'a quick child'" meant simply a "live" child, and under the era's outdated knowledge of embryology, a fetus was thought to become "quick" at around the sixth week of pregnancy), with Brief for American Historical Association et al. as *Amici Curiae* 6, n. 2 ("quick" and "quickening" consistently meant "the woman's perception of fetal movement"). We need not wade into this debate. First, it suffices for present purposes to show that abortion was criminal by *at least* the 16th or 18th week of pregnancy. Second, as we will show, during the relevant period—*i.e.,* the period surrounding the enactment of the Fourteenth Amendment—the quickening distinction was abandoned as States criminalized abortion at all stages of pregnancy. See *infra*, at 21–

The "eminent common-law authorities (Blackstone, Coke, Hale, and the like)," *Kahler* v. *Kansas*, 589 U. S. ___, ___ (2020) (slip op., at 7), *all* describe abortion after quickening as criminal. Henry de Bracton's 13th-century treatise explained that if a person has "struck a pregnant woman, or has given her poison, whereby he has caused abortion, if the foetus be already formed and animated, and particularly if it be animated, he commits homicide." 2 De Legibus et Consuetudinibus Angliae 279 (T. Twiss ed. 1879); see also 1 Fleta, c. 23, reprinted in 72 Selden Soc. 60–61 (H. Richardson & G. Sayles eds. 1955) (13th-century treatise).[25]

Sir Edward Coke's 17th-century treatise likewise asserted that abortion of a quick child was "murder" if the "childe be born alive" and a "great misprision" if the "childe dieth in her body." 3 Institutes of the Laws of England 50–51 (1644). ("Misprision" referred to "some heynous offence under the degree of felony." *Id.*, at 139.) Two treatises by Sir Matthew Hale likewise described abortion of a quick child who died in the womb as a "great crime" and a "great misprision." Pleas of the Crown 53 (P. Glazebrook ed. 1972); 1 History of the Pleas of the Crown 433 (1736) (Hale). And writing near the time of the adoption of our Constitution, William Blackstone explained that abortion of a "quick" child was "by the ancient law homicide or manslaughter" (citing Bracton), and at least a very "heinous misdemeanor" (citing Coke). 1 Commentaries on the Laws of England 129–130 (7th ed. 1775) (Blackstone).

English cases dating all the way back to the 13th century corroborate the treatises' statements that abortion was a crime. See generally J. Dellapenna, Dispelling the Myths

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[25] Even before Bracton's time, English law imposed punishment for the killing of a fetus. See Leges Henrici Primi 222–223 (L. Downer ed. 1972) (imposing penalty for any abortion and treating a woman who aborted a "quick" child "as if she were a murderess").

of Abortion History 126, and n. 16, 134–142, 188–194, and nn. 84–86 (2006) (Dellapenna); J. Keown, Abortion, Doctors and the Law 3–12 (1988) (Keown). In 1732, for example, Eleanor Beare was convicted of "destroying the Foetus in the Womb" of another woman and "thereby causing her to miscarry."[26] For that crime and another "misdemeanor," Beare was sentenced to two days in the pillory and three years' imprisonment.[27]

Although a pre-quickening abortion was not itself considered homicide, it does not follow that abortion was *permissible* at common law—much less that abortion was a legal *right*. Cf. *Glucksberg*, 521 U. S., at 713 (removal of "common law's harsh sanctions did not represent an acceptance of suicide"). Quite to the contrary, in the 1732 case mentioned above, the judge said of the charge of abortion (with no mention of quickening) that he had "never met with a case so barbarous and unnatural."[28] Similarly, an indictment from 1602, which did not distinguish between a pre-quickening and post-quickening abortion, described abortion as "pernicious" and "against the peace of our Lady the Queen, her crown and dignity." Keown 7 (discussing *R.* v. *Webb*, Calendar of Assize Records, Surrey Indictments 512 (1980)).

That the common law did not condone even pre-quickening abortions is confirmed by what one might call a proto-felony-murder rule. Hale and Blackstone explained a way in which a pre-quickening abortion could rise to the level of a homicide. Hale wrote that if a physician gave a woman "with child" a "potion" to cause an abortion, and the woman died, it was "murder" because the potion was given "*unlawfully* to destroy her child within her." 1 Hale 429–430 (emphasis added). As Blackstone explained, to be

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[26] 2 Gentleman's Magazine 931 (Aug. 1732).
[27] *Id.*, at 932.
[28] *Ibid.*

"murder" a killing had to be done with "malice aforethought, . . . either express or implied." 4 Blackstone 198 (emphasis deleted). In the case of an abortionist, Blackstone wrote, "the law will imply [malice]" for the same reason that it would imply malice if a person who intended to kill one person accidentally killed a different person:

> "[I]f one shoots at A and misses *him*, but kills B, this is murder; because of the previous felonious intent, which the law transfers from one to the other. The same is the case, where one lays poison for A; and B, against whom the prisoner had no malicious intent, takes it, and it kills him; this is likewise murder. *So also*, if one gives *a woman with child* a medicine to procure abortion, and it operates so violently as to kill the woman, *this is murder* in the person who gave it." *Id.*, at 200–201 (emphasis added; footnote omitted).[29]

Notably, Blackstone, like Hale, did not state that this proto-felony-murder rule required that the woman be "with quick child"—only that she be "with child." *Id.*, at 201. And it is revealing that Hale and Blackstone treated abortionists differently from *other* physicians or surgeons who caused the death of a patient "without any intent of doing [the patient] any bodily hurt." Hale 429; see 4 Blackstone 197. These other physicians—even if "unlicensed"—would not be "guilty of murder or manslaughter." Hale 429. But a physician performing an abortion would, precisely because his aim was an "unlawful" one.

In sum, although common-law authorities differed on the severity of punishment for abortions committed at different

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[29] Other treatises restated the same rule. See 1 W. Russell & C. Greaves, Crimes and Misdemeanors 540 (5th ed. 1845) ("So where a person gave medicine to a woman to procure an abortion, and where a person put skewers into the woman for the same purpose, by which in both cases the women were killed, these acts were clearly held to be murder" (footnotes omitted)); 1 E. East, Pleas of the Crown 230 (1803) (similar).

points in pregnancy, none endorsed the practice. Moreover, we are aware of no common-law case or authority, and the parties have not pointed to any, that remotely suggests a positive *right* to procure an abortion at any stage of pregnancy.

b

In this country, the historical record is similar. The "most important early American edition of Blackstone's Commentaries," *District of Columbia* v. *Heller*, 554 U. S. 570, 594 (2008), reported Blackstone's statement that abortion of a quick child was at least "a heinous misdemeanor," 2 St. George Tucker, Blackstone's Commentaries 129–130 (1803), and that edition also included Blackstone's discussion of the proto-felony-murder rule, 5 *id.*, at 200–201. Manuals for justices of the peace printed in the Colonies in the 18th century typically restated the common-law rule on abortion, and some manuals repeated Hale's and Blackstone's statements that anyone who prescribed medication "unlawfully to destroy the child" would be guilty of murder if the woman died. See, *e.g.*, J. Parker, Conductor Generalis 220 (1788); 2 R. Burn, Justice of the Peace, and Parish Officer 221–222 (7th ed. 1762) (English manual stating the same).[30]

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[30] For manuals restating one or both rules, see J. Davis, Criminal Law 96, 102–103, 339 (1838); Conductor Generalis 194–195 (1801) (printed in Philadelphia); Conductor Generalis 194–195 (1794) (printed in Albany); Conductor Generalis 220 (1788) (printed in New York); Conductor Generalis 198 (1749) (printed in New York); G. Webb, Office and Authority of a Justice of Peace 232 (1736) (printed in Williamsburg); Conductor Generalis 161 (1722) (printed in Philadelphia); see also J. Conley, Doing It by the Book: Justice of the Peace Manuals and English Law in Eighteenth Century America, 6 J. Legal Hist. 257, 265, 267 (1985) (noting that these manuals were the justices' "primary source of legal reference" and of "practical value for a wider audience than the justices").

For cases stating the proto-felony-murder rule, see, *e.g.*, *Commonwealth* v. *Parker*, 50 Mass. 263, 265 (1845); *People* v. *Sessions*, 58 Mich.

The few cases available from the early colonial period corroborate that abortion was a crime. See generally Dellapenna 215–228 (collecting cases). In Maryland in 1652, for example, an indictment charged that a man "Murtherously endeavoured to destroy or Murther the Child by him begotten in the Womb." *Proprietary* v. *Mitchell*, 10 Md. Archives 80, 183 (1652) (W. Browne ed. 1891). And by the 19th century, courts frequently explained that the common law made abortion of a quick child a crime. See, *e.g.*, *Smith* v. *Gaffard*, 31 Ala. 45, 51 (1857); *Smith* v. *State*, 33 Me. 48, 55 (1851); *State* v. *Cooper*, 22 N. J. L. 52, 52–55 (1849); *Commonwealth* v. *Parker*, 50 Mass. 263, 264–268 (1845).

c

The original ground for drawing a distinction between pre- and post-quickening abortions is not entirely clear, but some have attributed the rule to the difficulty of proving that a pre-quickening fetus was alive. At that time, there were no scientific methods for detecting pregnancy in its early stages,[31] and thus, as one court put it in 1872: "[U]ntil the period of quickening there is no *evidence* of life; and whatever may be said of the feotus, the law has fixed upon this period of gestation as the time when the child is endowed with life" because "foetal movements are the first clearly marked and well defined *evidences of life*." *Evans* v. *People*, 49 N. Y. 86, 90 (emphasis added); *Cooper*, 22 N. J. L., at 56 ("In contemplation of law life commences at the moment of quickening, at that moment when the embryo gives *the first physical proof of life*, no matter when it first received it" (emphasis added)).

594, 595–596, 26 N. W. 291, 292–293 (1886); *State* v. *Moore*, 25 Iowa 128, 131–132 (1868); *Smith* v. *State*, 33 Me. 48, 54–55 (1851).

[31] See E. Rigby, A System of Midwifery 73 (1841) ("Under all circumstances, the diagnosis of pregnancy must ever be difficult and obscure during the early months"); see also *id.,* at 74–80 (discussing rudimentary techniques for detecting early pregnancy); A. Taylor, A Manual of Medical Jurisprudence 418–421 (6th Am. ed. 1866) (same).

The Solicitor General offers a different explanation of the basis for the quickening rule, namely, that before quickening the common law did not regard a fetus "as having a 'separate and independent existence.'" Brief for United States 26 (quoting *Parker*, 50 Mass., at 266). But the case on which the Solicitor General relies for this proposition also suggested that the criminal law's quickening rule was out of step with the treatment of prenatal life in other areas of law, noting that "to many purposes, in reference to civil rights, an infant *in ventre sa mere* is regarded as a person in being." *Ibid*. (citing 1 Blackstone 129); see also *Evans,* 49 N. Y., at 89; *Mills* v. *Commonwealth*, 13 Pa. 631, 633 (1850); *Morrow* v. *Scott*, 7 Ga. 535, 537 (1849); *Hall* v. *Hancock*, 32 Mass. 255, 258 (1834); *Thellusson* v. *Woodford*, 4 Ves. 227, 321–322, 31 Eng. Rep. 117, 163 (1789).

At any rate, the original ground for the quickening rule is of little importance for present purposes because the rule was abandoned in the 19th century. During that period, treatise writers and commentators criticized the quickening distinction as "neither in accordance with the result of medical experience, nor with the principles of the common law." F. Wharton, Criminal Law §1220, p. 606 (rev. 4th ed. 1857) (footnotes omitted); see also J. Beck, Researches in Medicine and Medical Jurisprudence 26–28 (2d ed. 1835) (describing the quickening distinction as "absurd" and "injurious").[32] In 1803, the British Parliament made abortion

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[32] See *Mitchell* v. *Commonwealth*, 78 Ky. 204, 209–210 (1879) (acknowledging the common-law rule but arguing that "the law should punish abortions and miscarriages, willfully produced, at any time during the period of gestation"); *Mills* v. *Commonwealth*, 13 Pa., 631, 633 (1850) (the quickening rule "never ought to have been the law anywhere"); J. Bishop, Commentaries on the Law of Statutory Crimes §744, p. 471 (1873) ("If we look at the reason of the law, we shall prefer" a rule that "discard[s] this doctrine of the necessity of a quickening"); I. Dana, Report of the Committee on the Production of Abortion, in 5 Transactions

a crime at all stages of pregnancy and authorized the imposition of severe punishment. See Lord Ellenborough's Act, 43 Geo. 3, c. 58 (1803). One scholar has suggested that Parliament's decision "may partly have been attributable to the medical man's concern that fetal life should be protected by the law at all stages of gestation." Keown 22.

In this country during the 19th century, the vast majority of the States enacted statutes criminalizing abortion at all stages of pregnancy. See Appendix A, *infra* (listing state statutory provisions in chronological order).[33] By 1868, the year when the Fourteenth Amendment was ratified, three-quarters of the States, 28 out of 37, had enacted statutes making abortion a crime even if it was performed before quickening.[34] See *ibid.* Of the nine States that had not yet

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of the Maine Medical Association 37–39 (1866); Report on Criminal Abortion, in 12 Transactions of the American Medical Association 75–77 (1859); W. Guy, Principles of Medical Forensics 133–134 (1845); J. Chitty, Practical Treatise on Medical Jurisprudence 438 (2d Am. ed. 1836); 1 T. Beck & J. Beck, Elements of Medical Jurisprudence 293 (5th ed. 1823); 2 T. Percival, The Works, Literary, Moral and Medical 430 (1807); see also Keown 38–39 (collecting English authorities).

[33] See generally Dellapenna 315–319 (cataloging the development of the law in the States); E. Quay, Justifiable Abortion—Medical and Legal Foundations, 49 Geo. L. J. 395, 435–437, 447–520 (1961) (Quay) (same); J. Witherspoon, Reexamining *Roe*: Nineteenth-Century Abortion Statutes and The Fourteenth Amendment, 17 St. Mary's L. J. 29, 34–36 (1985) (Witherspoon) (same).

[34] Some scholars assert that only 27 States prohibited abortion at all stages. See, *e.g.*, Dellapenna 315; Witherspoon 34–35, and n. 15. Those scholars appear to have overlooked Rhode Island, which criminalized abortion at all stages in 1861. See Acts and Resolves R. I. 1861, ch. 371, §1, p. 133 (criminalizing the attempt to "procure the miscarriage" of "any pregnant woman" or "any woman supposed by such person to be pregnant," without mention of quickening). The *amicus* brief for the American Historical Association asserts that only 26 States prohibited abortion at all stages, but that brief incorrectly excludes West Virginia and Nebraska from its count. Compare Brief for American Historical Association 27–28 (citing Quay), with Appendix A, *infra*.

criminalized abortion at all stages, all but one did so by 1910. See *ibid.*

The trend in the Territories that would become the last 13 States was similar: All of them criminalized abortion at all stages of pregnancy between 1850 (the Kingdom of Hawaii) and 1919 (New Mexico). See Appendix B, *infra*; see also *Casey*, 505 U. S., at 952 (Rehnquist, C. J., concurring in judgment in part and dissenting in part); Dellapenna 317–319. By the end of the 1950s, according to the *Roe* Court's own count, statutes in all but four States and the District of Columbia prohibited abortion "however and whenever performed, unless done to save or preserve the life of the mother." 410 U. S., at 139.[35]

This overwhelming consensus endured until the day *Roe* was decided. At that time, also by the *Roe* Court's own count, a substantial majority—30 States—still prohibited abortion at all stages except to save the life of the mother. See *id.*, at 118, and n. 2 (listing States). And though *Roe* discerned a "trend toward liberalization" in about "one-third of the States," those States still criminalized some abortions and regulated them more stringently than *Roe* would allow. *Id.*, at 140, and n. 37; Tribe 2. In short, the

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[35] The statutes of three States (Massachusetts, New Jersey, and Pennsylvania) prohibited abortions performed "unlawfully" or "without lawful justification." *Roe*, 410 U. S., at 139 (internal quotation marks omitted). In Massachusetts, case law held that abortion was allowed when, according to the judgment of physicians in the relevant community, the procedure was necessary to preserve the woman's life or her physical or emotional health. *Commonwealth* v. *Wheeler*, 315 Mass. 394, 395, 53 N. E. 2d 4, 5 (1944). In the other two States, however, there is no clear support in case law for the proposition that abortion was lawful where the mother's life was not at risk. See *State* v. *Brandenberg,* 137 N. J. L. 124, 58 A. 2d 709 (1948); *Commonwealth* v. *Trombetta*, 131 Pa. Super. 487, 200 A. 107 (1938).

Statutes in the two remaining jurisdictions (the District of Columbia and Alabama) permitted "abortion to preserve the mother's health." *Roe*, 410 U. S., at 139. Case law in those jurisdictions does not clarify the breadth of these exceptions.

"Court's opinion in *Roe* itself convincingly refutes the notion that the abortion liberty is deeply rooted in the history or tradition of our people." *Thornburgh* v. *American College of Obstetricians and Gynecologists*, 476 U. S. 747, 793 (1986) (White, J., dissenting).

d

The inescapable conclusion is that a right to abortion is not deeply rooted in the Nation's history and traditions. On the contrary, an unbroken tradition of prohibiting abortion on pain of criminal punishment persisted from the earliest days of the common law until 1973. The Court in *Roe* could have said of abortion exactly what *Glucksberg* said of assisted suicide: "Attitudes toward [abortion] have changed since Bracton, but our laws have consistently condemned, and continue to prohibit, [that practice]." 521 U. S., at 719.

3

Respondents and their *amici* have no persuasive answer to this historical evidence.

Neither respondents nor the Solicitor General disputes the fact that by 1868 the vast majority of States criminalized abortion at all stages of pregnancy. See Brief for Petitioners 12–13; see also Brief for American Historical Association et al. as *Amici Curiae* 27–28, and nn. 14–15 (conceding that 26 out of 37 States prohibited abortion before quickening); Tr. of Oral Arg. 74–75 (respondents' counsel conceding the same). Instead, respondents are forced to argue that it "does [not] matter that some States prohibited abortion at the time *Roe* was decided or when the Fourteenth Amendment was adopted." Brief for Respondents 21. But that argument flies in the face of the standard we have applied in determining whether an asserted right that is nowhere mentioned in the Constitution is nevertheless protected by the Fourteenth Amendment.

Not only are respondents and their *amici* unable to show

that a constitutional right to abortion was established when the Fourteenth Amendment was adopted, but they have found no support for the existence of an abortion right that predates the latter part of the 20th century—no state constitutional provision, no statute, no judicial decision, no learned treatise. The earliest sources called to our attention are a few district court and state court decisions decided shortly before *Roe* and a small number of law review articles from the same time period.[36]

A few of respondents' *amici* muster historical arguments, but they are very weak. The Solicitor General repeats *Roe*'s claim that it is "'doubtful' . . . 'abortion was ever firmly established as a common-law crime even with respect to the destruction of a quick fetus.'" Brief for United States 26 (quoting *Roe*, 410 U. S., at 136). But as we have seen, great common-law authorities like Bracton, Coke, Hale, and Blackstone all wrote that a post-quickening abortion was a crime—and a serious one at that. Moreover, Hale and Blackstone (and many other authorities following them) asserted that even a pre-quickening abortion was "unlawful" and that, as a result, an abortionist was guilty of murder if the woman died from the attempt.

Instead of following these authorities, *Roe* relied largely on two articles by a pro-abortion advocate who claimed that Coke had intentionally misstated the common law because of his strong anti-abortion views.[37] These articles have

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[36] See 410 U. S., at 154–155 (collecting cases decided between 1970 and 1973); C. Means, The Phoenix of Abortional Freedom: Is a Penumbral or Ninth-Amendment Right About To Arise From the Nineteenth-Century Legislative Ashes of a Fourteenth-Century Common-Law Liberty? 17 N. Y. L. Forum 335, 337–339 (1971) (Means II); C. Means, The Law of New York Concerning Abortion and the Status of the Foetus, 1664–1968: A Case of Cessation of Constitutionality, 14 N. Y. L. Forum 411 (1968) (Means I); Lucas 730.

[37] See 410 U. S., at 136, n. 26 (citing Means II); 410 U. S., at 132–133, n. 21 (citing Means I).

been discredited,[38] and it has come to light that even members of Jane Roe's legal team did not regard them as serious scholarship. An internal memorandum characterized this author's work as donning "the guise of impartial scholarship while advancing the proper ideological goals."[39] Continued reliance on such scholarship is unsupportable.

The Solicitor General next suggests that history supports an abortion right because the common law's failure to criminalize abortion before quickening means that "at the Founding and for decades thereafter, women generally could terminate a pregnancy, at least in its early stages."[40] Brief for United States 26–27; see also Brief for Respondents 21. But the insistence on quickening was not universal, see *Mills*, 13 Pa., at 633; *State* v. *Slagle*, 83 N. C. 630, 632 (1880), and regardless, the fact that many States in the

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[38] For critiques of Means's work, see, *e.g.*, Dellapenna 143–152, 325–331; Keown 3–12; J. Finnis, "Shameless Acts" in Colorado: Abuse of Scholarship in Constitutional Cases, 7 Academic Questions 10, 11–12 (1994); R. Destro, Abortion and the Constitution: The Need for a Life-Protective Amendment, 63 Cal. L. Rev. 1250, 1267–1282 (1975); R. Byrn, An American Tragedy: The Supreme Court on Abortion, 41 Ford. L. Rev. 807, 814–829 (1973).

[39] Garrow 500–501, and n. 41 (internal quotation marks omitted).

[40] In any event, *Roe*, *Casey*, and other related abortion decisions imposed substantial restrictions on a State's capacity to regulate abortions performed after quickening. See, *e.g.*, *June Medical Services L. L. C.* v. *Russo*, 591 U. S. ___ (2020) (holding a law requiring doctors performing abortions to secure admitting privileges to be unconstitutional); *Whole Woman's Health* v. *Hellerstedt*, 579 U. S. 582 (2016) (similar); *Casey*, 505 U. S., at 846 (declaring that prohibitions on "abortion before viability" are unconstitutional); *id.*, at 887–898 (holding that a spousal notification provision was unconstitutional). In addition, *Doe* v. *Bolton*, 410 U. S. 179 (1973), has been interpreted by some to protect a broad right to obtain an abortion at any stage of pregnancy provided that a physician is willing to certify that it is needed due to a woman's "emotional" needs or "familial" concerns. *Id.*, at 192. See, *e.g.*, *Women's Medical Professional Corp.* v. *Voinovich*, 130 F. 3d 187, 209 (CA6 1997), cert. denied, 523 U. S. 1036 (1998); but see *id.*, at 1039 (THOMAS, J., dissenting from denial of certiorari).

late 18th and early 19th century did not criminalize pre-quickening abortions does not mean that anyone thought the States lacked the authority to do so. When legislatures began to exercise that authority as the century wore on, no one, as far as we are aware, argued that the laws they enacted violated a fundamental right. That is not surprising since common-law authorities had repeatedly condemned abortion and described it as an "unlawful" act without regard to whether it occurred before or after quickening. See *supra*, at 16–21.

Another *amicus* brief relied upon by respondents (see Brief for Respondents 21) tries to dismiss the significance of the state criminal statutes that were in effect when the Fourteenth Amendment was adopted by suggesting that they were enacted for illegitimate reasons. According to this account, which is based almost entirely on statements made by one prominent proponent of the statutes, important motives for the laws were the fear that Catholic immigrants were having more babies than Protestants and that the availability of abortion was leading White Protestant women to "shir[k their] maternal duties." Brief for American Historical Association et al. as *Amici Curiae* 20.

Resort to this argument is a testament to the lack of any real historical support for the right that *Roe* and *Casey* recognized. This Court has long disfavored arguments based on alleged legislative motives. See, *e.g.*, *Erie* v. *Pap's A. M.*, 529 U. S. 277, 292 (2000) (plurality opinion); *Turner Broadcasting System, Inc.* v. *FCC*, 512 U. S. 622, 652 (1994); *United States* v. *O'Brien*, 391 U. S. 367, 383 (1968); *Arizona* v. *California*, 283 U. S. 423, 455 (1931) (collecting cases). The Court has recognized that inquiries into legislative motives "are a hazardous matter." *O'Brien*, 391 U. S., at 383. Even when an argument about legislative motive is backed by statements made by legislators who voted for a law, we

have been reluctant to attribute those motives to the legislative body as a whole. "What motivates one legislator to make a speech about a statute is not necessarily what motivates scores of others to enact it." *Id.,* at 384.

Here, the argument about legislative motive is not even based on statements by legislators, but on statements made by a few supporters of the new 19th-century abortion laws, and it is quite a leap to attribute these motives to all the legislators whose votes were responsible for the enactment of those laws. Recall that at the time of the adoption of the Fourteenth Amendment, over three-quarters of the States had adopted statutes criminalizing abortion (usually at all stages of pregnancy), and that from the early 20th century until the day *Roe* was handed down, every single State had such a law on its books. Are we to believe that the hundreds of lawmakers whose votes were needed to enact these laws were motivated by hostility to Catholics and women?

There is ample evidence that the passage of these laws was instead spurred by a sincere belief that abortion kills a human being. Many judicial decisions from the late 19th and early 20th centuries made that point. See, *e.g.*, *Nash* v. *Meyer*, 54 Idaho 283, 301, 31 P. 2d 273, 280 (1934); *State* v. *Ausplund*, 86 Ore. 121, 131–132, 167 P. 1019, 1022–1023 (1917); *Trent* v. *State*, 15 Ala. App. 485, 488, 73 S. 834, 836 (1916); *State* v. *Miller*, 90 Kan. 230, 233, 133 P. 878, 879 (1913); *State* v. *Tippie*, 89 Ohio St. 35, 39–40, 105 N. E. 75, 77 (1913); *State* v. *Gedicke*, 43 N. J. L. 86, 90 (1881); *Dougherty* v. *People*, 1 Colo. 514, 522–523 (1873); *State* v. *Moore*, 25 Iowa 128, 131–132 (1868); *Smith,* 33 Me., at 57; see also *Memphis Center for Reproductive Health* v. *Slatery*, 14 F. 4th 409, 446, and n. 11 (CA6 2021) (Thapar, J., concurring in judgment in part and dissenting in part) (citing cases).

One may disagree with this belief (and our decision is not based on any view about when a State should regard prenatal life as having rights or legally cognizable interests),

but even *Roe* and *Casey* did not question the good faith of abortion opponents. See, *e.g., Casey*, 505 U. S., at 850 ("Men and women of good conscience can disagree . . . about the profound moral and spiritual implications of terminating a pregnancy even in its earliest stage"). And we see no reason to discount the significance of the state laws in question based on these *amici*'s suggestions about legislative motive.[41]

C

1

Instead of seriously pressing the argument that the abortion right itself has deep roots, supporters of *Roe* and *Casey* contend that the abortion right is an integral part of a broader entrenched right. *Roe* termed this a right to privacy, 410 U. S., at 154, and *Casey* described it as the freedom to make "intimate and personal choices" that are "central to personal dignity and autonomy," 505 U. S., at 851. *Casey* elaborated: "At the heart of liberty is the right to define one's own concept of existence, of meaning, of the universe, and of the mystery of human life." *Ibid.*

The Court did not claim that this broadly framed right is absolute, and no such claim would be plausible. While individuals are certainly free *to think* and *to say* what they

[41] Other *amicus* briefs present arguments about the motives of proponents of liberal access to abortion. They note that some such supporters have been motivated by a desire to suppress the size of the African-American population. See Brief for African-American Organization et al. as *Amici Curiae* 14–21; see also *Box* v. *Planned Parenthood of Ind. and Ky., Inc.*, 587 U. S. ___, ___–___ (2019) (THOMAS, J., concurring) (slip op., at 1–4). And it is beyond dispute that *Roe* has had that demographic effect. A highly disproportionate percentage of aborted fetuses are Black. See, *e.g.*, Dept. of Health and Human Servs., Centers for Disease Control and Prevention (CDC), K. Kortsmit et al., Abortion Surveillance—United States, 2019, 70 Morbidity and Mortality Report, Surveillance Summaries, p. 20 (Nov. 26, 2021) (Table 6). For our part, we do not question the motives of either those who have supported or those who have opposed laws restricting abortions.

wish about "existence," "meaning," the "universe," and "the mystery of human life," they are not always free *to act* in accordance with those thoughts. License to act on the basis of such beliefs may correspond to one of the many understandings of "liberty," but it is certainly not "ordered liberty."

Ordered liberty sets limits and defines the boundary between competing interests. *Roe* and *Casey* each struck a particular balance between the interests of a woman who wants an abortion and the interests of what they termed "potential life." *Roe*, 410 U. S., at 150 (emphasis deleted); *Casey*, 505 U. S., at 852. But the people of the various States may evaluate those interests differently. In some States, voters may believe that the abortion right should be even more extensive than the right that *Roe* and *Casey* recognized. Voters in other States may wish to impose tight restrictions based on their belief that abortion destroys an "unborn human being." Miss. Code Ann. §41–41–191(4)(b). Our Nation's historical understanding of ordered liberty does not prevent the people's elected representatives from deciding how abortion should be regulated.

Nor does the right to obtain an abortion have a sound basis in precedent. *Casey* relied on cases involving the right to marry a person of a different race, *Loving* v. *Virginia*, 388 U. S. 1 (1967); the right to marry while in prison, *Turner* v. *Safley*, 482 U. S. 78 (1987); the right to obtain contraceptives, *Griswold* v. *Connecticut*, 381 U. S. 479 (1965), *Eisenstadt* v. *Baird*, 405 U. S. 438 (1972), *Carey* v. *Population Services Int'l*, 431 U. S. 678 (1977); the right to reside with relatives, *Moore* v. *East Cleveland*, 431 U. S. 494 (1977); the right to make decisions about the education of one's children, *Pierce* v. *Society of Sisters*, 268 U. S. 510 (1925), *Meyer* v. *Nebraska*, 262 U. S. 390 (1923); the right not to be sterilized without consent, *Skinner* v. *Oklahoma ex rel. Williamson*, 316 U. S. 535 (1942); and the right in certain circumstances not to undergo involuntary surgery, forced

administration of drugs, or other substantially similar procedures, *Winston* v. *Lee*, 470 U. S. 753 (1985), *Washington* v. *Harper*, 494 U. S. 210 (1990), *Rochin* v. *California*, 342 U. S. 165 (1952). Respondents and the Solicitor General also rely on post-*Casey* decisions like *Lawrence* v. *Texas*, 539 U. S. 558 (2003) (right to engage in private, consensual sexual acts), and *Obergefell* v. *Hodges*, 576 U. S. 644 (2015) (right to marry a person of the same sex). See Brief for Respondents 18; Brief for United States 23–24.

These attempts to justify abortion through appeals to a broader right to autonomy and to define one's "concept of existence" prove too much. *Casey*, 505 U. S., at 851. Those criteria, at a high level of generality, could license fundamental rights to illicit drug use, prostitution, and the like. See *Compassion in Dying* v. *Washington*, 85 F. 3d 1440, 1444 (CA9 1996) (O'Scannlain, J., dissenting from denial of rehearing en banc). None of these rights has any claim to being deeply rooted in history. *Id.*, at 1440, 1445.

What sharply distinguishes the abortion right from the rights recognized in the cases on which *Roe* and *Casey* rely is something that both those decisions acknowledged: Abortion destroys what those decisions call "potential life" and what the law at issue in this case regards as the life of an "unborn human being." See *Roe*, 410 U. S., at 159 (abortion is "inherently different"); *Casey*, 505 U. S., at 852 (abortion is "a unique act"). None of the other decisions cited by *Roe* and *Casey* involved the critical moral question posed by abortion. They are therefore inapposite. They do not support the right to obtain an abortion, and by the same token, our conclusion that the Constitution does not confer such a right does not undermine them in any way.

2

In drawing this critical distinction between the abortion right and other rights, it is not necessary to dispute *Casey*'s claim (which we accept for the sake of argument) that "the

specific practices of States at the time of the adoption of the Fourteenth Amendment" do not "mar[k] the outer limits of the substantive sphere of liberty which the Fourteenth Amendment protects." 505 U. S., at 848. Abortion is nothing new. It has been addressed by lawmakers for centuries, and the fundamental moral question that it poses is ageless.

Defenders of *Roe* and *Casey* do not claim that any new scientific learning calls for a different answer to the underlying moral question, but they do contend that changes in society require the recognition of a constitutional right to obtain an abortion. Without the availability of abortion, they maintain, people will be inhibited from exercising their freedom to choose the types of relationships they desire, and women will be unable to compete with men in the workplace and in other endeavors.

Americans who believe that abortion should be restricted press countervailing arguments about modern developments. They note that attitudes about the pregnancy of unmarried women have changed drastically; that federal and state laws ban discrimination on the basis of pregnancy;[42] that leave for pregnancy and childbirth are now guaranteed by law in many cases;[43] that the costs of medical care asso-

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[42] See, *e.g.*, Pregnancy Discrimination Act, 92 Stat. 2076, 42 U. S. C. §2000e(k) (federal law prohibiting pregnancy discrimination in employment); Dept. of Labor, Women's Bureau, Employment Protections for Workers Who Are Pregnant or Nursing, https://www.dol.gov/agencies/wb/pregnant-nursing-employment-protections (showing that 46 States and the District of Columbia have employment protections against pregnancy discrimination).

[43] See, *e.g.*, Family and Medical Leave Act of 1993, 107 Stat. 9, 29 U. S. C. §2612 (federal law guaranteeing employment leave for pregnancy and birth); Bureau of Labor Statistics, Access to Paid and Unpaid Family Leave in 2018, https://www.bls.gov/opub/ted/2019/access-to-paid-

ciated with pregnancy are covered by insurance or government assistance;[44] that States have increasingly adopted "safe haven" laws, which generally allow women to drop off babies anonymously;[45] and that a woman who puts her newborn up for adoption today has little reason to fear that the baby will not find a suitable home.[46] They also claim that many people now have a new appreciation of fetal life and that when prospective parents who want to have a child view a sonogram, they typically have no doubt that what they see is their daughter or son.

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and-unpaid-family-leave-in-2018.htm (showing that 89 percent of civilian workers had access to unpaid family leave in 2018).

[44] The Affordable Care Act (ACA) requires non-grandfathered health plans in the individual and small group markets to cover certain essential health benefits, which include maternity and newborn care. See 124 Stat. 163, 42 U. S. C. §18022(b)(1)(D). The ACA also prohibits annual limits, see §300gg–11, and limits annual cost-sharing obligations on such benefits, §18022(c). State Medicaid plans must provide coverage for pregnancy-related services—including, but not limited to, prenatal care, delivery, and postpartum care—as well as services for other conditions that might complicate the pregnancy. 42 CFR §§440.210(a)(2)(i)–(ii) (2020). State Medicaid plans are also prohibited from imposing deductions, cost-sharing, or similar charges for pregnancy-related services for pregnant women. 42 U. S. C. §§1396o(a)(2)(B), (b)(2)(B).

[45] Since *Casey*, all 50 States and the District of Columbia have enacted such laws. Dept. of Health and Human Servs., Children's Bureau, Infant Safe Haven Laws 1–2 (2016), https://www.childwelfare.gov/pubPDFs/safehaven.pdf (noting that safe haven laws began in Texas in 1999).

[46] See, *e.g.*, CDC, Adoption Experiences of Women and Men and Demand for Children To Adopt by Women 18–44 Years of Age in the United States 16 (Aug. 2008) ("[N]early 1 million women were seeking to adopt children in 2002 (*i.e.*, they were in demand for a child), whereas the domestic supply of infants relinquished at birth or within the first month of life and available to be adopted had become virtually nonexistent"); CDC, National Center for Health Statistics, Adoption and Nonbiological Parenting, https://www.cdc.gov/nchs/nsfg/key_statistics/a-keystat.htm#adoption (showing that approximately 3.1 million women between the ages of 18–49 had ever "[t]aken steps to adopt a child" based on data collected from 2015–2019).

Both sides make important policy arguments, but supporters of *Roe* and *Casey* must show that this Court has the authority to weigh those arguments and decide how abortion may be regulated in the States. They have failed to make that showing, and we thus return the power to weigh those arguments to the people and their elected representatives.

D

1

The dissent is very candid that it cannot show that a constitutional right to abortion has any foundation, let alone a "'deeply rooted'" one, "'in this Nation's history and tradition.'" *Glucksberg*, 521 U. S., at 721; see *post*, at 12–14 (joint opinion of BREYER, SOTOMAYOR, and KAGAN, JJ.). The dissent does not identify *any* pre-*Roe* authority that supports such a right—no state constitutional provision or statute, no federal or state judicial precedent, not even a scholarly treatise. Compare *post*, at 12–14, n. 2, with *supra,* at 15–16, and n. 23. Nor does the dissent dispute the fact that abortion was illegal at common law at least after quickening; that the 19th century saw a trend toward criminalization of pre-quickening abortions; that by 1868, a supermajority of States (at least 26 of 37) had enacted statutes criminalizing abortion at all stages of pregnancy; that by the late 1950s at least 46 States prohibited abortion "however and whenever performed" except if necessary to save "the life of the mother," *Roe*, 410 U. S., at 139; and that when *Roe* was decided in 1973 similar statutes were still in effect in 30 States. Compare *post*, at 12–14, nn. 2–3, with *supra,* at 23–25, and nn. 33–34.[47]

The dissent's failure to engage with this long tradition is

[47] By way of contrast, at the time *Griswold* v. *Connecticut*, 381 U. S. 479 (1965), was decided, the Connecticut statute at issue was an extreme outlier. See Brief for Planned Parenthood Federation of America, Inc. as *Amicus Curiae* in *Griswold* v. *Connecticut*, O. T. 1964, No. 496, p. 27.

devastating to its position. We have held that the "established method of substantive-due-process analysis" requires that an unenumerated right be "'deeply rooted in this Nation's history and tradition'" before it can be recognized as a component of the "liberty" protected in the Due Process Clause. *Glucksberg*, 521 U. S., at 721; cf. *Timbs*, 586 U. S., at ___ (slip op., at 7). But despite the dissent's professed fidelity to *stare decisis*, it fails to seriously engage with that important precedent—which it cannot possibly satisfy.

The dissent attempts to obscure this failure by misrepresenting our application of *Glucksberg*. The dissent suggests that we have focused only on "the legal status of abortion in the 19th century," *post,* at 26, but our review of this Nation's tradition extends well past that period. As explained, for more than a century after 1868—including "another half-century" after women gained the constitutional right to vote in 1920, see *post*, at 15; Amdt. 19—it was firmly established that laws prohibiting abortion like the Texas law at issue in *Roe* were permissible exercises of state regulatory authority. And today, another half century later, more than half of the States have asked us to overrule *Roe* and *Casey*. The dissent cannot establish that a right to abortion has *ever* been part of this Nation's tradition.

2

Because the dissent cannot argue that the abortion right is rooted in this Nation's history and tradition, it contends that the "constitutional tradition" is "not captured whole at a single moment," and that its "meaning gains content from the long sweep of our history and from successive judicial precedents." *Post*, at 18 (internal quotation marks omitted). This vague formulation imposes no clear restraints on what Justice White called the "exercise of raw judicial power," *Roe*, 410 U. S., at 222 (dissenting opinion), and while the dissent claims that its standard "does not mean

anything goes," *post*, at 17, any real restraints are hard to discern.

The largely limitless reach of the dissenters' standard is illustrated by the way they apply it here. First, if the "long sweep of history" imposes any restraint on the recognition of unenumerated rights, then *Roe* was surely wrong, since abortion was never allowed (except to save the life of the mother) in a majority of States for over 100 years before that decision was handed down. Second, it is impossible to defend *Roe* based on prior precedent because all of the precedents *Roe* cited, including *Griswold* and *Eisenstadt*, were critically different for a reason that we have explained: None of those cases involved the destruction of what *Roe* called "potential life." See *supra*, at 32.

So without support in history or relevant precedent, *Roe*'s reasoning cannot be defended even under the dissent's proposed test, and the dissent is forced to rely solely on the fact that a constitutional right to abortion was recognized in *Roe* and later decisions that accepted *Roe*'s interpretation. Under the doctrine of *stare decisis*, those precedents are entitled to careful and respectful consideration, and we engage in that analysis below. But as the Court has reiterated time and time again, adherence to precedent is not "'an inexorable command.'" *Kimble* v. *Marvel Entertainment, LLC*, 576 U. S. 446, 455 (2015). There are occasions when past decisions should be overruled, and as we will explain, this is one of them.

3

The most striking feature of the dissent is the absence of any serious discussion of the legitimacy of the States' interest in protecting fetal life. This is evident in the analogy that the dissent draws between the abortion right and the rights recognized in *Griswold* (contraception), *Eisenstadt* (same), *Lawrence* (sexual conduct with member of the same sex), and *Obergefell* (same-sex marriage). Perhaps this is

designed to stoke unfounded fear that our decision will imperil those other rights, but the dissent's analogy is objectionable for a more important reason: what it reveals about the dissent's views on the protection of what *Roe* called "potential life." The exercise of the rights at issue in *Griswold*, *Eisenstadt*, *Lawrence*, and *Obergefell* does not destroy a "potential life," but an abortion has that effect. So if the rights at issue in those cases are fundamentally the same as the right recognized in *Roe* and *Casey*, the implication is clear: The Constitution does not permit the States to regard the destruction of a "potential life" as a matter of any significance.

That view is evident throughout the dissent. The dissent has much to say about the effects of pregnancy on women, the burdens of motherhood, and the difficulties faced by poor women. These are important concerns. However, the dissent evinces no similar regard for a State's interest in protecting prenatal life. The dissent repeatedly praises the "balance," *post*, at 2, 6, 8, 10, 12, that the viability line strikes between a woman's liberty interest and the State's interest in prenatal life. But for reasons we discuss later, see *infra,* at 50–54, 55–56, and given in the opinion of THE CHIEF JUSTICE, *post,* at 2–5 (opinion concurring in judgment), the viability line makes no sense. It was not adequately justified in *Roe*, and the dissent does not even try to defend it today. Nor does it identify any other point in a pregnancy after which a State is permitted to prohibit the destruction of a fetus.

Our opinion is not based on any view about if and when prenatal life is entitled to any of the rights enjoyed after birth. The dissent, by contrast, would impose on the people a particular theory about when the rights of personhood begin. According to the dissent, the Constitution *requires* the States to regard a fetus as lacking even the most basic human right—to live—at least until an arbitrary point in a pregnancy has passed. Nothing in the Constitution or in

our Nation's legal traditions authorizes the Court to adopt that "'theory of life.'" *Post*, at 8.

III

We next consider whether the doctrine of *stare decisis* counsels continued acceptance of *Roe* and *Casey*. *Stare decisis* plays an important role in our case law, and we have explained that it serves many valuable ends. It protects the interests of those who have taken action in reliance on a past decision. See *Casey*, 505 U. S., at 856 (joint opinion); see also *Payne* v. *Tennessee*, 501 U. S. 808, 828 (1991). It "reduces incentives for challenging settled precedents, saving parties and courts the expense of endless relitigation." *Kimble*, 576 U. S., at 455. It fosters "evenhanded" decisionmaking by requiring that like cases be decided in a like manner. *Payne*, 501 U. S., at 827. It "contributes to the actual and perceived integrity of the judicial process." *Ibid*. And it restrains judicial hubris and reminds us to respect the judgment of those who have grappled with important questions in the past. "Precedent is a way of accumulating and passing down the learning of past generations, a font of established wisdom richer than what can be found in any single judge or panel of judges." N. Gorsuch, A Republic, If You Can Keep It 217 (2019).

We have long recognized, however, that *stare decisis* is "not an inexorable command," *Pearson* v. *Callahan*, 555 U. S. 223, 233 (2009) (internal quotation marks omitted), and it "is at its weakest when we interpret the Constitution," *Agostini* v. *Felton*, 521 U. S. 203, 235 (1997). It has been said that it is sometimes more important that an issue "'be settled than that it be settled right.'" *Kimble*, 576 U. S., at 455 (quoting *Burnet* v. *Coronado Oil & Gas Co*., 285 U. S. 393, 406 (1932) (Brandeis, J., dissenting)). But when it comes to the interpretation of the Constitution—the "great charter of our liberties," which was meant "to en-

dure through a long lapse of ages," *Martin* v. *Hunter's Lessee,* 1 Wheat. 304, 326 (1816) (opinion for the Court by Story, J.)—we place a high value on having the matter "settled right." In addition, when one of our constitutional decisions goes astray, the country is usually stuck with the bad decision unless we correct our own mistake. An erroneous constitutional decision can be fixed by amending the Constitution, but our Constitution is notoriously hard to amend. See Art. V; *Kimble*, 576 U. S., at 456. Therefore, in appropriate circumstances we must be willing to reconsider and, if necessary, overrule constitutional decisions.

Some of our most important constitutional decisions have overruled prior precedents. We mention three. In *Brown* v. *Board of Education*, 347 U. S. 483 (1954), the Court repudiated the "separate but equal" doctrine, which had allowed States to maintain racially segregated schools and other facilities. *Id*., at 488 (internal quotation marks omitted). In so doing, the Court overruled the infamous decision in *Plessy* v. *Ferguson*, 163 U. S. 537 (1896), along with six other Supreme Court precedents that had applied the separate-but-equal rule. See *Brown*, 347 U. S., at 491.

In *West Coast Hotel Co.* v. *Parrish*, 300 U. S. 379 (1937), the Court overruled *Adkins* v. *Children's Hospital of D. C.*, 261 U. S. 525 (1923), which had held that a law setting minimum wages for women violated the "liberty" protected by the Fifth Amendment's Due Process Clause. *Id.*, at 545. *West Coast Hotel* signaled the demise of an entire line of important precedents that had protected an individual liberty right against state and federal health and welfare legislation. See *Lochner* v. *New York*, 198 U. S. 45 (1905) (holding invalid a law setting maximum working hours); *Coppage* v. *Kansas*, 236 U. S. 1 (1915) (holding invalid a law banning contracts forbidding employees to join a union); *Jay Burns Baking Co.* v. *Bryan*, 264 U. S. 504 (1924) (holding invalid laws fixing the weight of loaves of bread).

Finally, in *West Virginia Bd. of Ed.* v. *Barnette*, 319 U. S.

624 (1943), after the lapse of only three years, the Court overruled *Minersville School Dist.* v. *Gobitis*, 310 U. S. 586 (1940), and held that public school students could not be compelled to salute the flag in violation of their sincere beliefs. *Barnette* stands out because nothing had changed during the intervening period other than the Court's belated recognition that its earlier decision had been seriously wrong.

On many other occasions, this Court has overruled important constitutional decisions. (We include a partial list in the footnote that follows.[48]) Without these decisions,

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[48] See, *e.g.*, *Obergefell* v. *Hodges*, 576 U. S. 644 (2015) (right to same-sex marriage), overruling *Baker* v. *Nelson*, 409 U. S. 810 (1972); *Citizens United* v. *Federal Election Comm'n*, 558 U. S. 310 (2010) (right to engage in campaign-related speech), overruling *Austin* v. *Michigan Chamber of Commerce*, 494 U. S. 652 (1990), and partially overruling *McConnell* v. *Federal Election Comm'n*, 540 U. S. 93 (2003); *Montejo* v. *Louisiana*, 556 U. S. 778 (2009) (Sixth Amendment right to counsel), overruling *Michigan* v. *Jackson*, 475 U. S. 625 (1986); *Crawford* v. *Washington*, 541 U. S. 36 (2004) (Sixth Amendment right to confront witnesses), overruling *Ohio* v. *Roberts*, 448 U. S. 56 (1980); *Lawrence* v. *Texas*, 539 U. S. 558 (2003) (right to engage in consensual, same-sex intimacy in one's home), overruling *Bowers* v. *Hardwick*, 478 U. S. 186 (1986); *Ring* v. *Arizona*, 536 U. S. 584 (2002) (Sixth Amendment right to a jury trial in capital prosecutions), overruling *Walton* v. *Arizona*, 497 U. S. 639 (1990); *Agostini* v. *Felton*, 521 U. S. 203 (1997) (evaluating whether government aid violates the Establishment Clause), overruling *Aguilar* v. *Felton*, 473 U. S. 402 (1985), and *School Dist. of Grand Rapids* v. *Ball*, 473 U. S. 373 (1985); *Seminole Tribe of Fla.* v. *Florida*, 517 U. S. 44 (1996) (lack of congressional power under the Indian Commerce Clause to abrogate States' Eleventh Amendment immunity), overruling *Pennsylvania* v. *Union Gas Co.*, 491 U. S. 1 (1989); *Payne* v. *Tennessee*, 501 U. S. 808 (1991) (the Eighth Amendment does not erect a *per se* bar to the admission of victim impact evidence during the penalty phase of a capital trial), overruling *Booth* v. *Maryland*, 482 U. S. 496 (1987), and *South Carolina* v. *Gathers*, 490 U. S. 805 (1989); *Batson* v. *Kentucky*, 476 U. S. 79 (1986) (the Equal Protection Clause guarantees the defendant that the State will not exclude members of his race from the jury venire on account of race), overruling *Swain* v. *Alabama*, 380 U. S. 202 (1965); *Garcia* v. *San Antonio*

Metropolitan Transit Authority, 469 U. S. 528, 530 (1985) (rejecting the principle that the Commerce Clause does not empower Congress to enforce requirements, such as minimum wage laws, against the States "'in areas of traditional governmental functions'"), overruling *National League of Cities* v. *Usery*, 426 U. S. 833 (1976); *Illinois* v. *Gates*, 462 U. S. 213 (1983) (the Fourth Amendment requires a totality of the circumstances approach for determining whether an informant's tip establishes probable cause), overruling *Aguilar* v. *Texas*, 378 U. S. 108 (1964), and *Spinelli* v. *United States*, 393 U. S. 410 (1969); *United States* v. *Scott*, 437 U. S. 82 (1978) (the Double Jeopardy Clause does not apply to Government appeals from orders granting defense motions to terminate a trial before verdict), overruling *United States* v. *Jenkins*, 420 U. S. 358 (1975); *Craig* v. *Boren*, 429 U. S. 190 (1976) (gender-based classifications are subject to intermediate scrutiny under the Equal Protection Clause), overruling *Goesaert* v. *Cleary*, 335 U. S. 464 (1948); *Taylor* v. *Louisiana*, 419 U. S. 522 (1975) (jury system which operates to exclude women from jury service violates the defendant's Sixth and Fourteenth Amendment right to an impartial jury), overruling *Hoyt* v. *Florida*, 368 U. S. 57 (1961); *Brandenburg* v. *Ohio*, 395 U. S. 444 (1969) (*per curiam*) (the mere advocacy of violence is protected under the First Amendment unless it is directed to incite or produce imminent lawless action), overruling *Whitney* v. *California*, 274 U. S. 357 (1927); *Katz* v. *United States*, 389 U. S. 347, 351 (1967) (Fourth Amendment "protects people, not places," and extends to what a person "seeks to preserve as private"), overruling *Olmstead* v. *United States*, 277 U. S. 438 (1928), and *Goldman* v. *United States*, 316 U. S. 129 (1942); *Miranda* v. *Arizona*, 384 U. S. 436 (1966) (procedural safeguards to protect the Fifth Amendment privilege against self-incrimination), overruling *Crooker* v. *California*, 357 U. S. 433 (1958), and *Cicenia* v. *Lagay*, 357 U. S. 504 (1958); *Malloy* v. *Hogan*, 378 U. S. 1 (1964) (the Fifth Amendment privilege against self-incrimination is also protected by the Fourteenth Amendment against abridgment by the States), overruling *Twining* v. *New Jersey*, 211 U. S. 78 (1908), and *Adamson* v. *California*, 332 U. S. 46 (1947); *Wesberry* v. *Sanders*, 376 U. S. 1, 7–8 (1964) (congressional districts should be apportioned so that "as nearly as is practicable one man's vote in a congressional election is to be worth as much as another's"), overruling in effect *Colegrove* v. *Green*, 328 U. S. 549 (1946); *Gideon* v. *Wainwright*, 372 U. S. 335 (1963) (right to counsel for indigent defendant in a criminal prosecution in state court under the Sixth and Fourteenth Amendments), overruling *Betts* v. *Brady*, 316 U. S. 455 (1942); *Baker* v. *Carr*, 369 U. S. 186 (1962) (federal courts have jurisdiction to consider constitutional challenges to state redistricting plans), effectively overruling in part *Colegrove*, 328 U. S. 549;

American constitutional law as we know it would be unrecognizable, and this would be a different country.

No Justice of this Court has ever argued that the Court should *never* overrule a constitutional decision, but overruling a precedent is a serious matter. It is not a step that should be taken lightly. Our cases have attempted to provide a framework for deciding when a precedent should be overruled, and they have identified factors that should be considered in making such a decision. *Janus* v. *State, County, and Municipal Employees*, 585 U. S. ___, ___–___ (2018) (slip op., at 34–35); *Ramos* v. *Louisiana*, 590 U. S. ___, ___–___ (2020) (KAVANAUGH, J., concurring in part) (slip op., at 7–9).

In this case, five factors weigh strongly in favor of overruling *Roe* and *Casey*: the nature of their error, the quality of their reasoning, the "workability" of the rules they imposed on the country, their disruptive effect on other areas of the law, and the absence of concrete reliance.

A

The nature of the Court's error. An erroneous interpretation of the Constitution is always important, but some are more damaging than others.

The infamous decision in *Plessy* v. *Ferguson*, was one

Mapp v. *Ohio*, 367 U. S. 643 (1961) (the exclusionary rule regarding the inadmissibility of evidence obtained in violation of the Fourth Amendment applies to the States), overruling *Wolf* v. *Colorado*, 338 U. S. 25 (1949); *Smith* v. *Allwright*, 321 U. S. 649 (1944) (racial restrictions on the right to vote in primary elections violates the Equal Protection Clause of the Fourteenth Amendment), overruling *Grovey* v. *Townsend*, 295 U. S. 45 (1935); *United States* v. *Darby*, 312 U. S. 100 (1941) (congressional power to regulate employment conditions under the Commerce Clause), overruling *Hammer* v. *Dagenhart*, 247 U. S. 251 (1918); *Erie R. Co.* v. *Tompkins*, 304 U. S. 64 (1938) (Congress does not have the power to declare substantive rules of common law; a federal court sitting in diversity jurisdiction must apply the substantive state law), overruling *Swift* v. *Tyson*, 16 Pet. 1 (1842).

such decision. It betrayed our commitment to "equality before the law." 163 U. S., at 562 (Harlan, J., dissenting). It was "egregiously wrong" on the day it was decided, see *Ramos,* 590 U. S., at ___ (opinion of KAVANAUGH, J.) (slip op., at 7), and as the Solicitor General agreed at oral argument, it should have been overruled at the earliest opportunity, see Tr. of Oral Arg. 92–93.

Roe was also egregiously wrong and deeply damaging. For reasons already explained, *Roe*'s constitutional analysis was far outside the bounds of any reasonable interpretation of the various constitutional provisions to which it vaguely pointed.

Roe was on a collision course with the Constitution from the day it was decided, *Casey* perpetuated its errors, and those errors do not concern some arcane corner of the law of little importance to the American people. Rather, wielding nothing but "raw judicial power," *Roe*, 410 U. S., at 222 (White, J., dissenting), the Court usurped the power to address a question of profound moral and social importance that the Constitution unequivocally leaves for the people. *Casey* described itself as calling both sides of the national controversy to resolve their debate, but in doing so, *Casey* necessarily declared a winning side. Those on the losing side—those who sought to advance the State's interest in fetal life—could no longer seek to persuade their elected representatives to adopt policies consistent with their views. The Court short-circuited the democratic process by closing it to the large number of Americans who dissented in any respect from *Roe*. "*Roe* fanned into life an issue that has inflamed our national politics in general, and has obscured with its smoke the selection of Justices to this Court in particular, ever since." *Casey*, 505 U. S., at 995–996 (opinion of Scalia, J.). Together, *Roe* and *Casey* represent an error that cannot be allowed to stand.

As the Court's landmark decision in *West Coast Hotel* illustrates, the Court has previously overruled decisions that

wrongly removed an issue from the people and the democratic process. As Justice White later explained, "decisions that find in the Constitution principles or values that cannot fairly be read into that document usurp the people's authority, for such decisions represent choices that the people have never made and that they cannot disavow through corrective legislation. For this reason, it is essential that this Court maintain the power to restore authority to its proper possessors by correcting constitutional decisions that, on reconsideration, are found to be mistaken." *Thornburgh*, 476 U. S., at 787 (dissenting opinion).

B

The quality of the reasoning. Under our precedents, the quality of the reasoning in a prior case has an important bearing on whether it should be reconsidered. See *Janus*, 585 U. S., at ___ (slip op., at 38); *Ramos*, 590 U. S., at ___–___ (opinion of KAVANAUGH, J.) (slip op., at 7–8). In Part II, *supra*, we explained why *Roe* was incorrectly decided, but that decision was more than just wrong. It stood on exceptionally weak grounds.

Roe found that the Constitution implicitly conferred a right to obtain an abortion, but it failed to ground its decision in text, history, or precedent. It relied on an erroneous historical narrative; it devoted great attention to and presumably relied on matters that have no bearing on the meaning of the Constitution; it disregarded the fundamental difference between the precedents on which it relied and the question before the Court; it concocted an elaborate set of rules, with different restrictions for each trimester of pregnancy, but it did not explain how this veritable code could be teased out of anything in the Constitution, the history of abortion laws, prior precedent, or any other cited source; and its most important rule (that States cannot protect fetal life prior to "viability") was never raised by any

party and has never been plausibly explained. *Roe*'s reasoning quickly drew scathing scholarly criticism, even from supporters of broad access to abortion.

The *Casey* plurality, while reaffirming *Roe*'s central holding, pointedly refrained from endorsing most of its reasoning. It revised the textual basis for the abortion right, silently abandoned *Roe*'s erroneous historical narrative, and jettisoned the trimester framework. But it replaced that scheme with an arbitrary "undue burden" test and relied on an exceptional version of *stare decisis* that, as explained below, this Court had never before applied and has never invoked since.

1

a

The weaknesses in *Roe*'s reasoning are well-known. Without any grounding in the constitutional text, history, or precedent, it imposed on the entire country a detailed set of rules much like those that one might expect to find in a statute or regulation. See 410 U. S., at 163–164. Dividing pregnancy into three trimesters, the Court imposed special rules for each. During the first trimester, the Court announced, "the abortion decision and its effectuation must be left to the medical judgment of the pregnant woman's attending physician." *Id.*, at 164. After that point, a State's interest in regulating abortion for the sake of a woman's health became compelling, and accordingly, a State could "regulate the abortion procedure in ways that are reasonably related to maternal health." *Ibid.* Finally, in "the stage subsequent to viability," which in 1973 roughly coincided with the beginning of the third trimester, the State's interest in "the potentiality of human life" became compelling, and therefore a State could "regulate, and even proscribe, abortion except where it is necessary, in appropriate medical judgment, for the preservation of the life or health of the mother." *Id.,* at 164–165.

This elaborate scheme was the Court's own brainchild. Neither party advocated the trimester framework; nor did either party or any *amicus* argue that "viability" should mark the point at which the scope of the abortion right and a State's regulatory authority should be substantially transformed. See Brief for Appellant and Brief for Appellee in *Roe* v. *Wade*, O. T. 1972, No. 70–18; see also C. Forsythe, Abuse of Discretion: The Inside Story of *Roe* v. *Wade* 127, 141 (2012).

b

Not only did this scheme resemble the work of a legislature, but the Court made little effort to explain how these rules could be deduced from any of the sources on which constitutional decisions are usually based. We have already discussed *Roe*'s treatment of constitutional text, and the opinion failed to show that history, precedent, or any other cited source supported its scheme.

Roe featured a lengthy survey of history, but much of its discussion was irrelevant, and the Court made no effort to explain why it was included. For example, multiple paragraphs were devoted to an account of the views and practices of ancient civilizations where infanticide was widely accepted. See 410 U. S., at 130–132 (discussing ancient Greek and Roman practices).[49] When it came to the most important historical fact—how the States regulated abortion when the Fourteenth Amendment was adopted—the Court said almost nothing. It allowed that States had tightened their abortion laws "in the middle and late 19th century," *id*., at 139, but it implied that these laws might have

[49] See, *e.g.*, C. Patterson, "Not Worth the Rearing": The Causes of Infant Exposure in Ancient Greece, 115 Transactions Am. Philosophical Assn. 103, 111–123 (1985); A. Cameron, The Exposure of Children and Greek Ethics, 46 Classical Rev. 105–108 (1932); H. Bennett, The Exposure of Infants in Ancient Rome, 18 Classical J. 341–351 (1923); W. Harris, Child-Exposure in the Roman Empire, 84 J. Roman Studies 1 (1994).

been enacted not to protect fetal life but to further "a Victorian social concern" about "illicit sexual conduct," *id.*, at 148.

Roe's failure even to note the overwhelming consensus of state laws in effect in 1868 is striking, and what it said about the common law was simply wrong. Relying on two discredited articles by an abortion advocate, the Court erroneously suggested—contrary to Bracton, Coke, Hale, Blackstone, and a wealth of other authority—that the common law had probably never really treated post-quickening abortion as a crime. See *id.*, at 136 ("[I]t now appear[s] doubtful that abortion was ever firmly established as a common-law crime even with respect to the destruction of a quick fetus"). This erroneous understanding appears to have played an important part in the Court's thinking because the opinion cited "the lenity of the common law" as one of the four factors that informed its decision. *Id.*, at 165.

After surveying history, the opinion spent many paragraphs conducting the sort of fact-finding that might be undertaken by a legislative committee. This included a lengthy account of the "position of the American Medical Association" and "[t]he position of the American Public Health Association," as well as the vote by the American Bar Association's House of Delegates in February 1972 on proposed abortion legislation. *Id.*, at 141, 144, 146 (emphasis deleted). Also noted were a British judicial decision handed down in 1939 and a new British abortion law enacted in 1967. *Id.*, at 137–138. The Court did not explain why these sources shed light on the meaning of the Constitution, and not one of them adopted or advocated anything like the scheme that *Roe* imposed on the country.

Finally, after all this, the Court turned to precedent. Citing a broad array of cases, the Court found support for a constitutional "right of personal privacy," *id.,* at 152, but it conflated two very different meanings of the term: the right

to shield information from disclosure and the right to make and implement important personal decisions without governmental interference. See *Whalen* v. *Roe*, 429 U. S. 589, 599–600 (1977). Only the cases involving this second sense of the term could have any possible relevance to the abortion issue, and some of the cases in that category involved personal decisions that were obviously very, very far afield. See *Pierce*, 268 U. S. 510 (right to send children to religious school); *Meyer*, 262 U. S. 390 (right to have children receive German language instruction).

What remained was a handful of cases having something to do with marriage, *Loving*, 388 U. S. 1 (right to marry a person of a different race), or procreation, *Skinner*, 316 U. S. 535 (right not to be sterilized); *Griswold*, 381 U. S. 479 (right of married persons to obtain contraceptives); *Eisenstadt*, 405 U. S. 438 (same, for unmarried persons). But none of these decisions involved what is distinctive about abortion: its effect on what *Roe* termed "potential life."

When the Court summarized the basis for the scheme it imposed on the country, it asserted that its rules were "consistent with" the following: (1) "the relative weights of the respective interests involved," (2) "the lessons and examples of medical and legal history," (3) "the lenity of the common law," and (4) "the demands of the profound problems of the present day." *Roe*, 410 U. S., at 165. Put aside the second and third factors, which were based on the Court's flawed account of history, and what remains are precisely the sort of considerations that legislative bodies often take into account when they draw lines that accommodate competing interests. The scheme *Roe* produced *looked* like legislation, and the Court provided the sort of explanation that might be expected from a legislative body.

c

What *Roe* did not provide was any cogent justification for the lines it drew. Why, for example, does a State have no

authority to regulate first trimester abortions for the purpose of protecting a woman's health? The Court's only explanation was that mortality rates for abortion at that stage were lower than the mortality rates for childbirth. *Id.*, at 163. But the Court did not explain why mortality rates were the only factor that a State could legitimately consider. Many health and safety regulations aim to avoid adverse health consequences short of death. And the Court did not explain why it departed from the normal rule that courts defer to the judgments of legislatures "in areas fraught with medical and scientific uncertainties." *Marshall* v. *United States*, 414 U. S. 417, 427 (1974).

An even more glaring deficiency was *Roe*'s failure to justify the critical distinction it drew between pre- and post-viability abortions. Here is the Court's entire explanation:

> "With respect to the State's important and legitimate interest in potential life, the 'compelling' point is at viability. This is so because the fetus then presumably has the capability of meaningful life outside the womb." 410 U. S., at 163.

As Professor Laurence Tribe has written, "[c]learly, this mistakes 'a definition for a syllogism.'" Tribe 4 (quoting Ely 924). The definition of a "viable" fetus is one that is capable of surviving outside the womb, but why is this the point at which the State's interest becomes compelling? If, as *Roe* held, a State's interest in protecting prenatal life is compelling "after viability," 410 U. S., at 163, why isn't that interest "equally compelling before viability"? *Webster* v. *Reproductive Health Services*, 492 U. S. 490, 519 (1989) (plurality opinion) (quoting *Thornburgh*, 476 U. S., at 795 (White, J., dissenting)). *Roe* did not say, and no explanation is apparent.

This arbitrary line has not found much support among philosophers and ethicists who have attempted to justify a right to abortion. Some have argued that a fetus should not

be entitled to legal protection until it acquires the characteristics that they regard as defining what it means to be a "person." Among the characteristics that have been offered as essential attributes of "personhood" are sentience, self-awareness, the ability to reason, or some combination thereof.[50] By this logic, it would be an open question whether even born individuals, including young children or those afflicted with certain developmental or medical conditions, merit protection as "persons." But even if one takes the view that "personhood" begins when a certain attribute or combination of attributes is acquired, it is very hard to see why viability should mark the point where "personhood" begins.

The most obvious problem with any such argument is that viability is heavily dependent on factors that have nothing to do with the characteristics of a fetus. One is the

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[50] See, *e.g.*, P. Singer, Rethinking Life & Death 218 (1994) (defining a person as "a being with awareness of her or his own existence over time, and the capacity to have wants and plans for the future"); B. Steinbock, Life Before Birth: The Moral and Legal Status of Embryos and Fetuses 9–13 (1992) (arguing that "the possession of interests is both necessary and sufficient for moral status" and that the "capacity for conscious awareness is a necessary condition for the possession of interests" (emphasis deleted)); M. Warren, On the Moral and Legal Status of Abortion, 57 The Monist 1, 5 (1973) (arguing that, to qualify as a person, a being must have at least one of five traits that are "central to the concept of personhood": (1) "consciousness (of objects and events external and/or internal to the being), and in particular the capacity to feel pain"; (2) "reasoning (the developed capacity to solve new and relatively complex problems)"; (3) "self-motivated activity (activity which is relatively independent of either genetic or direct external control)"; (4) "the capacity to communicate, by whatever means, messages of an indefinite variety of types"; and (5) "the presence of self-concepts, and self-awareness, either individual or racial, or both" (emphasis deleted)); M. Tooley, Abortion & Infanticide, 2 Philosophy & Pub. Affairs 37, 49 (Autumn 1972) (arguing that "having a right to life presupposes that one is capable of desiring to continue existing as a subject of experiences and other mental states").

state of neonatal care at a particular point in time. Due to the development of new equipment and improved practices, the viability line has changed over the years. In the 19th century, a fetus may not have been viable until the 32d or 33d week of pregnancy or even later.[51] When *Roe* was decided, viability was gauged at roughly 28 weeks. See 410 U. S., at 160. Today, respondents draw the line at 23 or 24 weeks. Brief for Respondents 8. So, according to *Roe*'s logic, States now have a compelling interest in protecting a fetus with a gestational age of, say, 26 weeks, but in 1973 States did not have an interest in protecting an identical fetus. How can that be?

Viability also depends on the "quality of the available medical facilities." *Colautti* v. *Franklin*, 439 U. S. 379, 396 (1979). Thus, a 24-week-old fetus may be viable if a woman gives birth in a city with hospitals that provide advanced care for very premature babies, but if the woman travels to a remote area far from any such hospital, the fetus may no longer be viable. On what ground could the constitutional status of a fetus depend on the pregnant woman's location? And if viability is meant to mark a line having universal moral significance, can it be that a fetus that is viable in a big city in the United States has a privileged moral status

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[51] See W. Lusk, Science and the Art of Midwifery 74–75 (1882) (explaining that "[w]ith care, the life of a child born within [the eighth month of pregnancy] may be preserved"); *id.*, at 326 ("Where the choice lies with the physician, the provocation of labor is usually deferred until the thirty-third or thirty-fourth week"); J. Beck, Researches in Medicine and Medical Jurisprudence 68 (2d ed. 1835) ("Although children born before the completion of the seventh month have occasionally survived, and been reared, yet in a medico-legal point of view, no child ought to be considered as capable of sustaining an independent existence until the seventh month has been fully completed"); see also J. Baker, The Incubator and the Medical Discovery of the Premature Infant, J. Perinatology 322 (2000) (explaining that, in the 19th century, infants born at seven to eight months' gestation were unlikely to survive beyond "the first days of life").

not enjoyed by an identical fetus in a remote area of a poor country?

In addition, as the Court once explained, viability is not really a hard-and-fast line. *Ibid.* A physician determining a particular fetus's odds of surviving outside the womb must consider "a number of variables," including "gestational age," "fetal weight," a woman's "general health and nutrition," the "quality of the available medical facilities," and other factors. *Id.*, at 395–396. It is thus "only with difficulty" that a physician can estimate the "probability" of a particular fetus's survival. *Id.*, at 396. And even if each fetus's probability of survival could be ascertained with certainty, settling on a "probabilit[y] of survival" that should count as "viability" is another matter. *Ibid.* Is a fetus viable with a 10 percent chance of survival? 25 percent? 50 percent? Can such a judgment be made by a State? And can a State specify a gestational age limit that applies in all cases? Or must these difficult questions be left entirely to the individual "attending physician on the particular facts of the case before him"? *Id.*, at 388.

The viability line, which *Casey* termed *Roe*'s central rule, makes no sense, and it is telling that other countries almost uniformly eschew such a line.[52] The Court thus asserted raw judicial power to impose, as a matter of constitutional law, a uniform viability rule that allowed the States less freedom to regulate abortion than the majority of western democracies enjoy.

d

All in all, *Roe*'s reasoning was exceedingly weak, and academic commentators, including those who agreed with the

[52] According to the Center for Reproductive Rights, only the United States and the Netherlands use viability as a gestational limit on the availability of abortion on-request. See Center for Reproductive Rights, The World's Abortion Laws (Feb. 23, 2021), https://reproductiverights.org/maps/worlds-abortion-laws.

decision as a matter of policy, were unsparing in their criticism. John Hart Ely famously wrote that *Roe* was "not constitutional law and g[ave] almost no sense of an obligation to try to be." Ely 947 (emphasis deleted). Archibald Cox, who served as Solicitor General under President Kennedy, commented that *Roe* "read[s] like a set of hospital rules and regulations" that "[n]either historian, layman, nor lawyer will be persuaded . . . are part of . . . the Constitution." The Role of the Supreme Court in American Government 113–114 (1976). Laurence Tribe wrote that "even if there is a need to divide pregnancy into several segments with lines that clearly identify the limits of governmental power, 'interest-balancing' of the form the Court pursues fails to justify any of the lines actually drawn." Tribe 4–5. Mark Tushnet termed *Roe* a "totally unreasoned judicial opinion." Red, White, and Blue: A Critical Analysis of Constitutional Law 54 (1988). See also P. Bobbitt, Constitutional Fate 157 (1982); A. Amar, Foreword: The Document and the Doctrine, 114 Harv. L. Rev. 26, 110 (2000).

Despite *Roe*'s weaknesses, its reach was steadily extended in the years that followed. The Court struck down laws requiring that second-trimester abortions be performed only in hospitals, *Akron* v. *Akron Center for Reproductive Health, Inc.*, 462 U. S. 416, 433–439 (1983); that minors obtain parental consent, *Planned Parenthood of Central Mo.* v. *Danforth*, 428 U. S. 52, 74 (1976); that women give written consent after being informed of the status of the developing prenatal life and the risks of abortion, *Akron*, 462 U. S., at 442–445; that women wait 24 hours for an abortion, *id.*, at 449–451; that a physician determine viability in a particular manner, *Colautti*, 439 U. S., at 390–397; that a physician performing a post-viability abortion use the technique most likely to preserve the life of the fetus, *id.,* at 397–401; and that fetal remains be treated in a humane and sanitary manner, *Akron*, 462 U. S., at 451–452.

Justice White complained that the Court was engaging in "unrestrained imposition of its own extraconstitutional value preferences." *Thornburgh*, 476 U. S., at 794 (dissenting opinion). And the United States as *amicus curiae* asked the Court to overrule *Roe* five times in the decade before *Casey*, see 505 U. S., at 844 (joint opinion), and then asked the Court to overrule it once more in *Casey* itself.

2

When *Casey* revisited *Roe* almost 20 years later, very little of *Roe*'s reasoning was defended or preserved. The Court abandoned any reliance on a privacy right and instead grounded the abortion right entirely on the Fourteenth Amendment's Due Process Clause. 505 U. S., at 846. The Court did not reaffirm *Roe*'s erroneous account of abortion history. In fact, none of the Justices in the majority said anything about the history of the abortion right. And as for precedent, the Court relied on essentially the same body of cases that *Roe* had cited. Thus, with respect to the standard grounds for constitutional decisionmaking—text, history, and precedent—*Casey* did not attempt to bolster *Roe*'s reasoning.

The Court also made no real effort to remedy one of the greatest weaknesses in *Roe*'s analysis: its much-criticized discussion of viability. The Court retained what it called *Roe*'s "central holding"—that a State may not regulate previability abortions for the purpose of protecting fetal life—but it provided no principled defense of the viability line. 505 U. S., at 860, 870–871. Instead, it merely rephrased what *Roe* had said, stating that viability marked the point at which "the independent existence of a second life can in reason and fairness be the object of state protection that now overrides the rights of the woman." 505 U. S., at 870. Why "reason and fairness" demanded that the line be drawn at viability the Court did not explain. And the Justices who authored the controlling opinion conspicuously

failed to say that they agreed with the viability rule; instead, they candidly acknowledged "the reservations [some] of us may have in reaffirming [that] holding of *Roe*." *Id.*, at 853.

The controlling opinion criticized and rejected *Roe*'s trimester scheme, 505 U. S., at 872, and substituted a new "undue burden" test, but the basis for this test was obscure. And as we will explain, the test is full of ambiguities and is difficult to apply.

Casey, in short, either refused to reaffirm or rejected important aspects of *Roe*'s analysis, failed to remedy glaring deficiencies in *Roe*'s reasoning, endorsed what it termed *Roe*'s central holding while suggesting that a majority might not have thought it was correct, provided no new support for the abortion right other than *Roe*'s status as precedent, and imposed a new and problematic test with no firm grounding in constitutional text, history, or precedent.

As discussed below, *Casey* also deployed a novel version of the doctrine of *stare decisis*. See *infra*, at 64–69. This new doctrine did not account for the profound wrongness of the decision in *Roe*, and placed great weight on an intangible form of reliance with little if any basis in prior case law. *Stare decisis* does not command the preservation of such a decision.

C

Workability. Our precedents counsel that another important consideration in deciding whether a precedent should be overruled is whether the rule it imposes is workable—that is, whether it can be understood and applied in a consistent and predictable manner. *Montejo* v. *Louisiana*, 556 U. S. 778, 792 (2009); *Patterson* v. *McLean Credit Union*, 491 U. S. 164, 173 (1989); *Gulfstream Aerospace Corp.* v. *Mayacamas Corp.*, 485 U. S. 271, 283–284 (1988). *Casey*'s "undue burden" test has scored poorly on the workability scale.

1

Problems begin with the very concept of an "undue burden." As Justice Scalia noted in his *Casey* partial dissent, determining whether a burden is "due" or "undue" is "inherently standardless." 505 U. S., at 992; see also *June Medical Services L. L. C.* v. *Russo*, 591 U. S. ___, ___ (2020) (GORSUCH, J., dissenting) (slip op., at 17) ("[W]hether a burden is deemed undue depends heavily on which factors the judge considers and how much weight he accords each of them" (internal quotation marks and alterations omitted)).

The *Casey* plurality tried to put meaning into the "undue burden" test by setting out three subsidiary rules, but these rules created their own problems. The first rule is that "a provision of law is invalid, if its purpose or effect is to place a *substantial obstacle* in the path of a woman seeking an abortion before the fetus attains viability." 505 U. S., at 878 (emphasis added); see also *id.*, at 877. But whether a particular obstacle qualifies as "substantial" is often open to reasonable debate. In the sense relevant here, "substantial" means "of ample or considerable amount, quantity, or size." Random House Webster's Unabridged Dictionary 1897 (2d ed. 2001). Huge burdens are plainly "substantial," and trivial ones are not, but in between these extremes, there is a wide gray area.

This ambiguity is a problem, and the second rule, which applies at all stages of a pregnancy, muddies things further. It states that measures designed "to ensure that the woman's choice is informed" are constitutional so long as they do not impose "an undue burden on the right." *Casey*, 505 U. S., at 878. To the extent that this rule applies to previability abortions, it overlaps with the first rule and appears to impose a different standard. Consider a law that imposes an insubstantial obstacle but serves little purpose. As applied to a pre-viability abortion, would such a regulation be constitutional on the ground that it does not impose a "*substantial* obstacle"? Or would it be unconstitutional on

the ground that it creates an "*undue* burden" because the burden it imposes, though slight, outweighs its negligible benefits? *Casey* does not say, and this ambiguity would lead to confusion down the line. Compare *June Medical*, 591 U. S., at ___–___ (plurality opinion) (slip op., at 1–2), with *id.,* at ___–___ (ROBERTS, C. J., concurring) (slip op., at 5–6).

The third rule complicates the picture even more. Under that rule, *"[u]nnecessary health* regulations that have the purpose or effect of presenting a *substantial obstacle* to a woman seeking an abortion impose an *undue burden* on the right." *Casey*, 505 U. S., at 878 (emphasis added). This rule contains no fewer than three vague terms. It includes the two already discussed—"undue burden" and "substantial obstacle"—even though they are inconsistent. And it adds a third ambiguous term when it refers to "*unnecessary* health regulations." The term "necessary" has a range of meanings—from "essential" to merely "useful." See Black's Law Dictionary 928 (5th ed. 1979); American Heritage Dictionary of the English Language 877 (1971). *Casey* did not explain the sense in which the term is used in this rule.

In addition to these problems, one more applies to all three rules. They all call on courts to examine a law's effect on women, but a regulation may have a very different impact on different women for a variety of reasons, including their places of residence, financial resources, family situations, work and personal obligations, knowledge about fetal development and abortion, psychological and emotional disposition and condition, and the firmness of their desire to obtain abortions. In order to determine whether a regulation presents a substantial obstacle to women, a court needs to know which set of women it should have in mind and how many of the women in this set must find that an obstacle is "substantial."

Casey provided no clear answer to these questions. It said that a regulation is unconstitutional if it imposes a

substantial obstacle "in a large fraction of cases in which [it] is relevant," 505 U. S., at 895, but there is obviously no clear line between a fraction that is "large" and one that is not. Nor is it clear what the Court meant by "cases in which" a regulation is "relevant." These ambiguities have caused confusion and disagreement. Compare *Whole Woman's Health* v. *Hellerstedt*, 579 U. S. 582, 627–628 (2016), with *id.,* at 666–667, and n. 11 (ALITO, J., dissenting).

2

The difficulty of applying *Casey*'s new rules surfaced in that very case. The controlling opinion found that Pennsylvania's 24-hour waiting period requirement and its informed-consent provision did not impose "undue burden[s]," *Casey*, 505 U. S., at 881–887, but Justice Stevens, applying the same test, reached the opposite result, *id.,* at 920–922 (opinion concurring in part and dissenting in part). That did not bode well, and then-Chief Justice Rehnquist aptly observed that "the undue burden standard presents nothing more workable than the trimester framework." *Id.*, at 964–966 (dissenting opinion).

The ambiguity of the "undue burden" test also produced disagreement in later cases. In *Whole Woman's Health*, the Court adopted the cost-benefit interpretation of the test, stating that "[t]he rule announced in *Casey* . . . requires that courts consider the burdens a law imposes on abortion access *together with the benefits those laws confer*." 579 U. S., at 607 (emphasis added). But five years later, a majority of the Justices rejected that interpretation. See *June Medical*, 591 U. S. ___. Four Justices reaffirmed *Whole Woman's Health*'s instruction to "weigh" a law's "benefits" against "the burdens it imposes on abortion access." 591 U. S., at ___ (plurality opinion) (slip op., at 2) (internal quotation marks omitted). But THE CHIEF JUSTICE—who cast

the deciding vote—argued that "[n]othing about *Casey* suggested that a weighing of costs and benefits of an abortion regulation was a job for the courts." *Id.,* at ___ (opinion concurring in judgment) (slip op., at 6). And the four Justices in dissent rejected the plurality's interpretation of *Casey*. See 591 U. S., at ___ (opinion of ALITO, J., joined in relevant part by THOMAS, GORSUCH, and KAVANAUGH, JJ.) (slip op., at 4); *id.,* at ___–___ (opinion of GORSUCH, J.) (slip op., at 15–18); *id*., at ___–___ (opinion of KAVANAUGH, J.) (slip op., at 1–2) ("[F]ive Members of the Court reject the *Whole Woman's Health* cost-benefit standard").

This Court's experience applying *Casey* has confirmed Chief Justice Rehnquist's prescient diagnosis that the undue-burden standard was "not built to last." *Casey*, 505 U. S., at 965 (opinion concurring in judgment in part and dissenting in part).

3

The experience of the Courts of Appeals provides further evidence that *Casey*'s "line between" permissible and unconstitutional restrictions "has proved to be impossible to draw with precision." *Janus*, 585 U. S., at ___ (slip op., at 38).

Casey has generated a long list of Circuit conflicts. Most recently, the Courts of Appeals have disagreed about whether the balancing test from *Whole Woman's Health* correctly states the undue-burden framework.[53] They have disagreed on the legality of parental notification rules.[54]

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[53] Compare *Whole Woman's Health* v. *Paxton*, 10 F. 4th 430, 440 (CA5 2021), *EMW Women's Surgical Center, P.S.C.* v. *Friedlander*, 978 F. 3d 418, 437 (CA6 2020), and *Hopkins* v. *Jegley*, 968 F. 3d 912, 915 (CA8 2020) (*per curiam*), with *Planned Parenthood of Ind. & Ky., Inc.* v. *Box*, 991 F. 3d 740, 751–752 (CA7 2021).

[54] Compare *Planned Parenthood of Blue Ridge* v. *Camblos*, 155 F. 3d 352, 367 (CA4 1998), with *Planned Parenthood of Ind. & Ky., Inc.* v. *Ad-*

They have disagreed about bans on certain dilation and evacuation procedures.[55] They have disagreed about when an increase in the time needed to reach a clinic constitutes an undue burden.[56] And they have disagreed on whether a State may regulate abortions performed because of the fetus's race, sex, or disability.[57]

The Courts of Appeals have experienced particular difficulty in applying the large-fraction-of-relevant-cases test. They have criticized the assignment while reaching unpredictable results.[58] And they have candidly outlined *Casey*'s many other problems.[59]

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ams, 937 F. 3d 973, 985–990 (CA7 2019), cert. granted, judgment vacated, 591 U. S. ___ (2020), and *Planned Parenthood, Sioux Falls Clinic* v. *Miller*, 63 F. 3d 1452, 1460 (CA8 1995).

[55] Compare *Whole Woman's Health* v. *Paxton*, 10 F. 4th, at 435–436, with *West Ala. Women's Center* v. *Williamson*, 900 F. 3d 1310, 1319, 1327 (CA11 2018), and *EMW Women's Surgical Center, P.S.C.* v. *Friedlander*, 960 F. 3d 785, 806–808 (CA6 2020).

[56] Compare *Tucson Woman's Clinic* v. *Eden*, 379 F. 3d 531, 541 (CA9 2004), with *Women's Medical Professional Corp.* v. *Baird*, 438 F. 3d 595, 605 (CA6 2006), and *Greenville Women's Clinic* v. *Bryant*, 222 F. 3d 157, 171–172 (CA4 2000).

[57] Compare *Preterm-Cleveland* v. *McCloud*, 994 F. 3d 512, 520–535 (CA6 2021), with *Little Rock Family Planning Servs.* v. *Rutledge*, 984 F. 3d 682, 688–690 (CA8 2021).

[58] See, *e.g., Bristol Regional Women's Center, P.C.* v. *Slatery*, 7 F. 4th 478, 485 (CA6 2021); *Reproductive Health Servs.* v. *Strange*, 3 F. 4th 1240, 1269 (CA11 2021) (*per curiam*); *June Medical Servs., L.L.C.* v. *Gee*, 905 F. 3d 787, 814 (CA5 2020), rev'd, 591 U. S. ___; *Preterm-Cleveland*, 994 F. 3d, at 534; *Planned Parenthood of Ark. & Eastern Okla.* v. *Jegley*, 864 F. 3d 953, 958–960 (CA8 2017); *McCormack* v. *Hertzog*, 788 F. 3d 1017, 1029–1030 (CA9 2015); compare *A Womans Choice–East Side Womens Clinic* v. *Newman*, 305 F. 3d 684, 699 (CA7 2002) (Coffey, J., concurring), with *id.*, at 708 (Wood, J., dissenting).

[59] See, *e.g., Memphis Center for Reproductive Health* v. *Slatery*, 14 F. 4th 409, 451 (CA6 2021) (Thapar, J., concurring in judgment in part and dissenting in part); *Preterm-Cleveland*, 994 F. 3d, at 524; *Planned Parenthood of Ind. & Ky., Inc.* v. *Commissioner of Ind. State Dept. of*

Casey's "undue burden" test has proved to be unworkable. "[P]lucked from nowhere," 505 U. S., at 965 (opinion of Rehnquist, C. J.), it "seems calculated to perpetuate give-it-a-try litigation" before judges assigned an unwieldy and inappropriate task. *Lehnert* v. *Ferris Faculty Assn.*, 500 U. S. 507, 551 (1991) (Scalia, J., concurring in judgment in part and dissenting in part). Continued adherence to that standard would undermine, not advance, the "evenhanded, predictable, and consistent development of legal principles." *Payne*, 501 U. S., at 827.

D

Effect on other areas of law. *Roe* and *Casey* have led to the distortion of many important but unrelated legal doctrines, and that effect provides further support for overruling those decisions. See *Ramos*, 590 U. S., at ___ (opinion of KAVANAUGH, J.) (slip op., at 8); *Janus*, 585 U. S., at ___ (slip op., at 34).

Members of this Court have repeatedly lamented that "no legal rule or doctrine is safe from ad hoc nullification by this Court when an occasion for its application arises in a case involving state regulation of abortion." *Thornburgh*, 476 U. S., at 814 (O'Connor, J., dissenting); see *Madsen* v. *Women's Health Center, Inc.*, 512 U. S. 753, 785 (1994) (Scalia, J., concurring in judgment in part and dissenting

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Health, 888 F. 3d 300, 313 (CA7 2018) (Manion, J., concurring in judgment in part and dissenting in part); *Planned Parenthood of Ind. & Ky., Inc.* v. *Box*, 949 F. 3d 997, 999 (CA7 2019) (Easterbrook, J., concurring in denial of reh'g en banc) ("How much burden is 'undue' is a matter of judgment, which depends on what the burden would be . . . and whether that burden is excessive (a matter of weighing costs against benefits, which one judge is apt to do differently from another, and which judges as a group are apt to do differently from state legislators)"); *National Abortion Federation* v. *Gonzales*, 437 F. 3d 278, 290–296 (CA2 2006) (Walker, C. J., concurring); *Planned Parenthood of Rocky Mountains Servs. Corp.* v. *Owens*, 287 F. 3d 910, 931 (CA10 2002) (Baldock, J., dissenting).

in part); *Whole Woman's Health*, 579 U. S., at 631–633 (THOMAS, J., dissenting); *id.,* at 645–666, 678–684 (ALITO, J., dissenting); *June Medical*, 591 U. S., at ___–___ (GORSUCH, J., dissenting) (slip op., at 1–15).

The Court's abortion cases have diluted the strict standard for facial constitutional challenges.[60] They have ignored the Court's third-party standing doctrine.[61] They have disregarded standard *res judicata* principles.[62] They have flouted the ordinary rules on the severability of unconstitutional provisions,[63] as well as the rule that statutes should be read where possible to avoid unconstitutionality.[64] And they have distorted First Amendment doctrines.[65]

When vindicating a doctrinal innovation requires courts to engineer exceptions to longstanding background rules, the doctrine "has failed to deliver the 'principled and intelligible' development of the law that *stare decisis* purports to secure." *Id*., at ___ (THOMAS, J., dissenting) (slip op., at 19) (quoting *Vasquez* v. *Hillery*, 474 U. S. 254, 265 (1986)).

E

Reliance interests. We last consider whether overruling *Roe* and *Casey* will upend substantial reliance interests.

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[60] Compare *United States* v. *Salerno*, 481 U. S. 739, 745 (1987), with *Casey*, 505 U. S., at 895; see also *supra,* at 56–59.

[61] Compare *Warth* v. *Seldin*, 422 U. S. 490, 499 (1975), and *Elk Grove Unified School Dist.* v. *Newdow*, 542 U. S. 1, 15, 17–18 (2004), with *June Medical*, 591 U. S., at ___ (ALITO, J., dissenting) (slip op., at 28), *id*., at ___–___ (GORSUCH, J., dissenting) (slip op., at 6–7) (collecting cases), and *Whole Woman's Health*, 579 U. S., at 632, n. 1 (THOMAS, J., dissenting).

[62] Compare *id.*, at 598–606 (majority opinion), with *id.,* at 645–666 (ALITO, J., dissenting).

[63] Compare *id.*, at 623–626 (majority opinion), with *id*., at 644–645 (ALITO, J., dissenting).

[64] See *Stenberg* v. *Carhart*, 530 U. S. 914, 977–978 (2000) (Kennedy, J., dissenting); *id.,* at 996–997 (THOMAS, J., dissenting).

[65] See *Hill* v. *Colorado*, 530 U. S. 703, 741–742 (2000) (Scalia, J., dissenting); *id.*, at 765 (Kennedy, J., dissenting).

See *Ramos*, 590 U. S., at ___ (opinion of KAVANAUGH, J.) (slip op., at 15); *Janus*, 585 U. S., at ___–___ (slip op., at 34–35).

1

Traditional reliance interests arise "where advance planning of great precision is most obviously a necessity." *Casey*, 505 U. S., at 856 (joint opinion); see also *Payne*, 501 U. S., at 828. In *Casey*, the controlling opinion conceded that those traditional reliance interests were not implicated because getting an abortion is generally "unplanned activity," and "reproductive planning could take virtually immediate account of any sudden restoration of state authority to ban abortions." 505 U. S., at 856. For these reasons, we agree with the *Casey* plurality that conventional, concrete reliance interests are not present here.

2

Unable to find reliance in the conventional sense, the controlling opinion in *Casey* perceived a more intangible form of reliance. It wrote that "people [had] organized intimate relationships and made choices that define their views of themselves and their places in society . . . in reliance on the availability of abortion in the event that contraception should fail" and that "[t]he ability of women to participate equally in the economic and social life of the Nation has been facilitated by their ability to control their reproductive lives." *Ibid.* But this Court is ill-equipped to assess "generalized assertions about the national psyche." *Id.*, at 957 (opinion of Rehnquist, C. J.). *Casey*'s notion of reliance thus finds little support in our cases, which instead emphasize very concrete reliance interests, like those that develop in "cases involving property and contract rights." *Payne*, 501 U. S., at 828.

When a concrete reliance interest is asserted, courts are equipped to evaluate the claim, but assessing the novel and

intangible form of reliance endorsed by the *Casey* plurality is another matter. That form of reliance depends on an empirical question that is hard for anyone—and in particular, for a court—to assess, namely, the effect of the abortion right on society and in particular on the lives of women. The contending sides in this case make impassioned and conflicting arguments about the effects of the abortion right on the lives of women. Compare Brief for Petitioners 34–36; Brief for Women Scholars et al. as *Amici Curiae* 13–20, 29–41, with Brief for Respondents 36–41; Brief for National Women's Law Center et al. as *Amici Curiae* 15–32. The contending sides also make conflicting arguments about the status of the fetus. This Court has neither the authority nor the expertise to adjudicate those disputes, and the *Casey* plurality's speculations and weighing of the relative importance of the fetus and mother represent a departure from the "original constitutional proposition" that "courts do not substitute their social and economic beliefs for the judgment of legislative bodies." *Ferguson* v. *Skrupa*, 372 U. S. 726, 729–730 (1963).

Our decision returns the issue of abortion to those legislative bodies, and it allows women on both sides of the abortion issue to seek to affect the legislative process by influencing public opinion, lobbying legislators, voting, and running for office. Women are not without electoral or political power. It is noteworthy that the percentage of women who register to vote and cast ballots is consistently higher than the percentage of men who do so.[66] In the last election in November 2020, women, who make up around 51.5 percent of the population of Mississippi,[67] constituted

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[66] See Dept. of Commerce, U. S. Census Bureau (Census Bureau), An Analysis of the 2018 Congressional Election 6 (Dec. 2021) (Fig. 5) (showing that women made up over 50 percent of the voting population in every congressional election between 1978 and 2018).

[67] Census Bureau, QuickFacts, Mississippi (July 1, 2021), https://www.

55.5 percent of the voters who cast ballots.[68]

3

Unable to show concrete reliance on *Roe* and *Casey* themselves, the Solicitor General suggests that overruling those decisions would "threaten the Court's precedents holding that the Due Process Clause protects other rights." Brief for United States 26 (citing *Obergefell*, 576 U. S. 644; *Lawrence*, 539 U. S. 558; *Griswold*, 381 U. S. 479). That is not correct for reasons we have already discussed. As even the *Casey* plurality recognized, "[a]bortion is a unique act" because it terminates "life or potential life." 505 U. S., at 852; see also *Roe*, 410 U. S., at 159 (abortion is "inherently different from marital intimacy," "marriage," or "procreation"). And to ensure that our decision is not misunderstood or mischaracterized, we emphasize that our decision concerns the constitutional right to abortion and no other right. Nothing in this opinion should be understood to cast doubt on precedents that do not concern abortion.

IV

Having shown that traditional *stare decisis* factors do not weigh in favor of retaining *Roe* or *Casey*, we must address one final argument that featured prominently in the *Casey* plurality opinion.

The argument was cast in different terms, but stated simply, it was essentially as follows. The American people's belief in the rule of law would be shaken if they lost respect for this Court as an institution that decides important cases based on principle, not "social and political pressures." 505 U. S., at 865. There is a special danger that the public will

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census.gov/quickfacts/MS.

[68] Census Bureau, Voting and Registration in the Election of November 2020, Table 4b: Reported Voting and Registration, by Sex, Race and Hispanic Origin, for States: November 2020, https://www.census.gov/data/tables/time-series/demo/voting-and-registration/p20-585.html.

perceive a decision as having been made for unprincipled reasons when the Court overrules a controversial "watershed" decision, such as *Roe*. 505 U. S., at 866–867. A decision overruling *Roe* would be perceived as having been made "under fire" and as a "surrender to political pressure," 505 U. S., at 867, and therefore the preservation of public approval of the Court weighs heavily in favor of retaining *Roe*, see 505 U. S., at 869.

This analysis starts out on the right foot but ultimately veers off course. The *Casey* plurality was certainly right that it is important for the public to perceive that our decisions are based on principle, and we should make every effort to achieve that objective by issuing opinions that carefully show how a proper understanding of the law leads to the results we reach. But we cannot exceed the scope of our authority under the Constitution, and we cannot allow our decisions to be affected by any extraneous influences such as concern about the public's reaction to our work. Cf. *Texas* v. *Johnson*, 491 U. S. 397 (1989); *Brown*, 347 U. S. 483. That is true both when we initially decide a constitutional issue *and* when we consider whether to overrule a prior decision. As Chief Justice Rehnquist explained, "The Judicial Branch derives its legitimacy, not from following public opinion, but from deciding by its best lights whether legislative enactments of the popular branches of Government comport with the Constitution. The doctrine of *stare decisis* is an adjunct of this duty, and should be no more subject to the vagaries of public opinion than is the basic judicial task." *Casey*, 505 U. S., at 963 (opinion concurring in judgment in part and dissenting in part). In suggesting otherwise, the *Casey* plurality went beyond this Court's role in our constitutional system.

The *Casey* plurality "call[ed] the contending sides of a national controversy to end their national division," and claimed the authority to impose a permanent settlement of the issue of a constitutional abortion right simply by saying

that the matter was closed. *Id.,* at 867. That unprecedented claim exceeded the power vested in us by the Constitution. As Alexander Hamilton famously put it, the Constitution gives the judiciary "neither Force nor Will." The Federalist No. 78, p. 523 (J. Cooke ed. 1961). Our sole authority is to exercise "judgment"—which is to say, the authority to judge what the law means and how it should apply to the case at hand. *Ibid.* The Court has no authority to decree that an erroneous precedent is *permanently* exempt from evaluation under traditional *stare decisis* principles. A precedent of this Court is subject to the usual principles of *stare decisis* under which adherence to precedent is the norm but not an inexorable command. If the rule were otherwise, erroneous decisions like *Plessy* and *Lochner* would still be the law. That is not how *stare decisis* operates.

The *Casey* plurality also misjudged the practical limits of this Court's influence. *Roe* certainly did not succeed in ending division on the issue of abortion. On the contrary, *Roe* "inflamed" a national issue that has remained bitterly divisive for the past half century. *Casey*, 505 U. S., at 995 (opinion of Scalia, J.); see also R. Ginsburg, Speaking in a Judicial Voice, 67 N. Y. U. L. Rev. 1185, 1208 (1992) (*Roe* may have "halted a political process," "prolonged divisiveness," and "deferred stable settlement of the issue"). And for the past 30 years, *Casey* has done the same.

Neither decision has ended debate over the issue of a constitutional right to obtain an abortion. Indeed, in this case, 26 States expressly ask us to overrule *Roe* and *Casey* and to return the issue of abortion to the people and their elected representatives. This Court's inability to end debate on the issue should not have been surprising. This Court cannot bring about the permanent resolution of a rancorous national controversy simply by dictating a settlement and telling the people to move on. Whatever influence the Court may have on public attitudes must stem from the

strength of our opinions, not an attempt to exercise "raw judicial power." *Roe*, 410 U. S., at 222 (White, J., dissenting).

We do not pretend to know how our political system or society will respond to today's decision overruling *Roe* and *Casey*. And even if we could foresee what will happen, we would have no authority to let that knowledge influence our decision. We can only do our job, which is to interpret the law, apply longstanding principles of *stare decisis*, and decide this case accordingly.

We therefore hold that the Constitution does not confer a right to abortion. *Roe* and *Casey* must be overruled, and the authority to regulate abortion must be returned to the people and their elected representatives.

V

A

1

The dissent argues that we have "abandon[ed]" *stare decisis*, *post,* at 30, but we have done no such thing, and it is the dissent's understanding of *stare decisis* that breaks with tradition. The dissent's foundational contention is that the Court should never (or perhaps almost never) overrule an egregiously wrong constitutional precedent unless the Court can "poin[t] to major legal or factual changes undermining [the] decision's original basis." *Post*, at 37. To support this contention, the dissent claims that *Brown* v. *Board of Education*, 347 U. S. 483, and other landmark cases overruling prior precedents "responded to changed law and to changed facts and attitudes that had taken hold throughout society." *Post,* at 43. The unmistakable implication of this argument is that only the passage of time and new developments justified those decisions. Recognition that the cases they overruled were egregiously wrong on the day they were handed down was not enough.

The Court has never adopted this strange new version of

stare decisis—and with good reason. Does the dissent really maintain that overruling *Plessy* was not justified until the country had experienced more than a half-century of state-sanctioned segregation and generations of Black school children had suffered all its effects? *Post,* at 44–45.

Here is another example. On the dissent's view, it must have been wrong for *West Virginia Bd. of Ed.* v. *Barnette*, 319 U. S. 624, to overrule *Minersville School Dist.* v. *Gobitis*, 310 U. S. 586, a bare three years after it was handed down. In both cases, children who were Jehovah's Witnesses refused on religious grounds to salute the flag or recite the pledge of allegiance. The *Barnette* Court did not claim that its reexamination of the issue was prompted by any intervening legal or factual developments, so if the Court had followed the dissent's new version of *stare decisis,* it would have been compelled to adhere to *Gobitis* and countenance continued First Amendment violations for some unspecified period.

Precedents should be respected, but sometimes the Court errs, and occasionally the Court issues an important decision that is egregiously wrong. When that happens, *stare decisis* is not a straitjacket. And indeed, the dissent eventually admits that a decision *could* "be overruled just because it is terribly wrong," though the dissent does not explain when that would be so. *Post*, at 45.

2

Even if the dissent were correct in arguing that an egregiously wrong decision should (almost) never be overruled unless its mistake is later highlighted by "major legal or factual changes," reexamination of *Roe* and *Casey* would be amply justified. We have already mentioned a number of post-*Casey* developments, see *supra*, at 33–34, 59–63, but the most profound change may be the failure of the *Casey* plurality's call for "the contending sides" in the controversy about abortion "to end their national division," 505 U. S., at

867. That has not happened, and there is no reason to think that another decision sticking with *Roe* would achieve what *Casey* could not.

The dissent, however, is undeterred. It contends that the "very controversy surrounding *Roe* and *Casey*" is an important *stare decisis* consideration that requires upholding those precedents. See *post,* at 55–57. The dissent characterizes *Casey* as a "precedent about precedent" that is permanently shielded from further evaluation under traditional *stare decisis* principles. See *post,* at 57. But as we have explained, *Casey* broke new ground when it treated the national controversy provoked by *Roe* as a ground for refusing to reconsider that decision, and no subsequent case has relied on that factor. Our decision today simply applies longstanding *stare decisis* factors instead of applying a version of the doctrine that seems to apply only in abortion cases.

3

Finally, the dissent suggests that our decision calls into question *Griswold*, *Eisenstadt*, *Lawrence*, and *Obergefell*. *Post*, at 4–5, 26–27, n. 8. But we have stated unequivocally that "[n]othing in this opinion should be understood to cast doubt on precedents that do not concern abortion." *Supra*, at 66. We have also explained why that is so: rights regarding contraception and same-sex relationships are inherently different from the right to abortion because the latter (as we have stressed) uniquely involves what *Roe* and *Casey* termed "potential life." *Roe*, 410 U. S., at 150 (emphasis deleted); *Casey*, 505 U. S., at 852. Therefore, a right to abortion cannot be justified by a purported analogy to the rights recognized in those other cases or by "appeals to a broader right to autonomy." *Supra*, at 32. It is hard to see how we could be clearer. Moreover, even putting aside that these cases are distinguishable, there is a further point that the dissent ignores: Each precedent is subject to its own *stare*

decisis analysis, and the factors that our doctrine instructs us to consider like reliance and workability are different for these cases than for our abortion jurisprudence.

B

1

We now turn to the concurrence in the judgment, which reproves us for deciding whether *Roe* and *Casey* should be retained or overruled. That opinion (which for convenience we will call simply "the concurrence") recommends a "more measured course," which it defends based on what it claims is "a straightforward *stare decisis* analysis." *Post*, at 1 (opinion of ROBERTS, C. J.). The concurrence would "leave for another day whether to reject any right to an abortion at all," *post*, at 7, and would hold only that if the Constitution protects any such right, the right ends once women have had "a reasonable opportunity" to obtain an abortion, *post*, at 1. The concurrence does not specify what period of time is sufficient to provide such an opportunity, but it would hold that 15 weeks, the period allowed under Mississippi's law, is enough—at least "absent rare circumstances." *Post*, at 2, 10.

There are serious problems with this approach, and it is revealing that nothing like it was recommended by either party. As we have recounted, both parties and the Solicitor General have urged us either to reaffirm or overrule *Roe* and *Casey*. See *supra*, at 4–5. And when the specific approach advanced by the concurrence was broached at oral argument, both respondents and the Solicitor General emphatically rejected it. Respondents' counsel termed it "completely unworkable" and "less principled and less workable than viability." Tr. of Oral Arg. 54. The Solicitor General argued that abandoning the viability line would leave courts and others with "no continued guidance." *Id.*, at 101. What is more, the concurrence has not identified any of the

more than 130 *amicus* briefs filed in this case that advocated its approach. The concurrence would do exactly what it criticizes *Roe* for doing: pulling "out of thin air" a test that "[n]o party or *amicus* asked the Court to adopt." *Post*, at 3.

2

The concurrence's most fundamental defect is its failure to offer any principled basis for its approach. The concurrence would "discar[d]" "the rule from *Roe* and *Casey* that a woman's right to terminate her pregnancy extends up to the point that the fetus is regarded as 'viable' outside the womb." *Post*, at 2. But this rule was a critical component of the holdings in *Roe* and *Casey*, and *stare decisis* is "a doctrine of preservation, not transformation," *Citizens United* v. *Federal Election Comm'n*, 558 U. S. 310, 384 (2010) (ROBERTS, C. J., concurring). Therefore, a new rule that discards the viability rule cannot be defended on *stare decisis* grounds.

The concurrence concedes that its approach would "not be available" if "the rationale of *Roe* and *Casey* were inextricably entangled with and dependent upon the viability standard." *Post*, at 7. But the concurrence asserts that the viability line is separable from the constitutional right they recognized, and can therefore be "discarded" without disturbing any past precedent. *Post*, at 7–8. That is simply incorrect.

Roe's trimester rule was expressly tied to viability, see 410 U. S., at 163–164, and viability played a critical role in later abortion decisions. For example, in *Planned Parenthood of Central Mo.* v. *Danforth*, 428 U. S. 52, the Court reiterated *Roe*'s rule that a "State may regulate an abortion to protect the life of the fetus and even may proscribe abortion" at "the stage *subsequent to viability*." 428 U. S., at 61 (emphasis added). The Court then rejected a challenge to Missouri's definition of viability, holding that the State's definition was consistent with *Roe*'s. 428 U. S.,

at 63–64. If viability was not an essential part of the rule adopted in *Roe*, the Court would have had no need to make that comparison.

The holding in *Colautti* v. *Franklin*, 439 U. S. 379, is even more instructive. In that case, the Court noted that prior cases had "stressed viability" and reiterated that "[v]iability is the critical point" under *Roe*. 439 U. S., at 388–389. It then struck down Pennsylvania's definition of viability, *id.*, at 389–394, and it is hard to see how the Court could have done that if *Roe*'s discussion of viability was not part of its holding.

When the Court reconsidered *Roe* in *Casey*, it left no doubt about the importance of the viability rule. It described the rule as *Roe*'s "central holding," 505 U. S., at 860, and repeatedly stated that the right it reaffirmed was "the right of the woman to choose to have an abortion *before viability*." *Id.*, at 846 (emphasis added). See *id.*, at 871 ("The woman's right to terminate her pregnancy *before viability* is the most central principle of *Roe* v. *Wade*. It is a rule of law and a component of liberty we cannot renounce" (emphasis added)); *id.*, at 872 (A "woman has a right to choose to terminate or continue her pregnancy *before viability*" (emphasis added)); *id.*, at 879 ("[A] State may not prohibit any woman from making the ultimate decision to terminate her pregnancy *before viability*" (emphasis added)).

Our subsequent cases have continued to recognize the centrality of the viability rule. See *Whole Women's Health*, 579 U. S., at 589–590 ("[A] provision of law is constitutionally invalid, if the 'purpose or effect' of the provision 'is to place a substantial obstacle in the path of a woman seeking an abortion *before the fetus attains viability*'" (emphasis deleted and added)); *id.*, at 627 ("[W]e now use *'viability'* as the relevant point at which a State may begin limiting women's access to abortion for reasons unrelated to maternal health" (emphasis added)).

Not only is the new rule proposed by the concurrence inconsistent with *Casey*'s unambiguous "language," *post*, at 8, it is also contrary to the judgment in that case and later abortion cases. In *Casey*, the Court held that Pennsylvania's spousal-notification provision was facially unconstitutional, not just that it was unconstitutional as applied to abortions sought prior to the time when a woman has had a reasonable opportunity to choose. See 505 U. S., at 887–898. The same is true of *Whole Women's Health*, which held that certain rules that required physicians performing abortions to have admitting privileges at a nearby hospital were facially unconstitutional because they placed "a substantial obstacle in the path of women seeking *a previability abortion*." 579 U. S., at 591 (emphasis added).

For all these reasons, *stare decisis* cannot justify the new "reasonable opportunity" rule propounded by the concurrence. If that rule is to become the law of the land, it must stand on its own, but the concurrence makes no attempt to show that this rule represents a correct interpretation of the Constitution. The concurrence does not claim that the right to a reasonable opportunity to obtain an abortion is "'deeply rooted in this Nation's history and tradition'" and "'implicit in the concept of ordered liberty.'" *Glucksberg*, 521 U. S., at 720–721. Nor does it propound any other theory that could show that the Constitution supports its new rule. And if the Constitution protects a woman's right to obtain an abortion, the opinion does not explain why that right should end after the point at which all "reasonable" women will have decided whether to seek an abortion. While the concurrence is moved by a desire for judicial minimalism, "we cannot embrace a narrow ground of decision simply because it is narrow; it must also be right." *Citizens United*, 558 U. S., at 375 (ROBERTS, C. J., concurring). For the reasons that we have explained, the concurrence's approach is not.

The concurrence would "leave for another day whether to reject any right to an abortion at all," *post*, at 7, but "another day" would not be long in coming. Some States have set deadlines for obtaining an abortion that are shorter than Mississippi's. See, *e.g.*, *Memphis Center for Reproductive Health* v. *Slatery*, 14 F. 4th, at 414 (considering law with bans "at cascading intervals of two to three weeks" beginning at six weeks), reh'g en banc granted, 14 F. 4th 550 (CA6 2021). If we held only that Mississippi's 15-week rule is constitutional, we would soon be called upon to pass on the constitutionality of a panoply of laws with shorter deadlines or no deadline at all. The "measured course" charted by the concurrence would be fraught with turmoil until the Court answered the question that the concurrence seeks to defer.

Even if the Court ultimately adopted the new rule suggested by the concurrence, we would be faced with the difficult problem of spelling out what it means. For example, if the period required to give women a "reasonable" opportunity to obtain an abortion were pegged, as the concurrence seems to suggest, at the point when a certain percentage of women make that choice, see *post*, at 1–2, 9–10, we would have to identify the relevant percentage. It would also be necessary to explain what the concurrence means when it refers to "rare circumstances" that might justify an exception. *Post*, at 10. And if this new right aims to give women a reasonable opportunity to get an abortion, it would be necessary to decide whether factors other than promptness in deciding might have a bearing on whether such an opportunity was available.

In sum, the concurrence's quest for a middle way would only put off the day when we would be forced to confront the question we now decide. The turmoil wrought by *Roe* and *Casey* would be prolonged. It is far better—for this Court

and the country—to face up to the real issue without further delay.

VI

We must now decide what standard will govern if state abortion regulations undergo constitutional challenge and whether the law before us satisfies the appropriate standard.

A

Under our precedents, rational-basis review is the appropriate standard for such challenges. As we have explained, procuring an abortion is not a fundamental constitutional right because such a right has no basis in the Constitution's text or in our Nation's history. See *supra,* at 8–39.

It follows that the States may regulate abortion for legitimate reasons, and when such regulations are challenged under the Constitution, courts cannot "substitute their social and economic beliefs for the judgment of legislative bodies." *Ferguson*, 372 U. S., at 729–730; see also *Dandridge* v. *Williams*, 397 U. S. 471, 484–486 (1970); *United States* v. *Carolene Products Co.*, 304 U. S. 144, 152 (1938). That respect for a legislature's judgment applies even when the laws at issue concern matters of great social significance and moral substance. See, *e.g., Board of Trustees of Univ. of Ala.* v. *Garrett*, 531 U. S. 356, 365–368 (2001) ("treatment of the disabled"); *Glucksberg*, 521 U. S., at 728 ("assisted suicide"); *San Antonio Independent School Dist.* v. *Rodriguez*, 411 U. S. 1, 32–35, 55 (1973) ("financing public education").

A law regulating abortion, like other health and welfare laws, is entitled to a "strong presumption of validity." *Heller* v. *Doe*, 509 U. S. 312, 319 (1993). It must be sustained if there is a rational basis on which the legislature could have thought that it would serve legitimate state interests. *Id.,* at 320; *FCC* v. *Beach Communications, Inc.*, 508 U. S.

307, 313 (1993); *New Orleans* v. *Dukes*, 427 U. S. 297, 303 (1976) (*per curiam*); *Williamson* v. *Lee Optical of Okla., Inc.*, 348 U. S. 483, 491 (1955). These legitimate interests include respect for and preservation of prenatal life at all stages of development, *Gonzales*, 550 U. S., at 157–158; the protection of maternal health and safety; the elimination of particularly gruesome or barbaric medical procedures; the preservation of the integrity of the medical profession; the mitigation of fetal pain; and the prevention of discrimination on the basis of race, sex, or disability. See *id.*, at 156–157; *Roe*, 410 U. S., at 150; cf. *Glucksberg*, 521 U. S., at 728–731 (identifying similar interests).

B

These legitimate interests justify Mississippi's Gestational Age Act. Except "in a medical emergency or in the case of a severe fetal abnormality," the statute prohibits abortion "if the probable gestational age of the unborn human being has been determined to be greater than fifteen (15) weeks." Miss. Code Ann. §41–41–191(4)(b). The Mississippi Legislature's findings recount the stages of "human prenatal development" and assert the State's interest in "protecting the life of the unborn." §2(b)(i). The legislature also found that abortions performed after 15 weeks typically use the dilation and evacuation procedure, and the legislature found the use of this procedure "for nontherapeutic or elective reasons [to be] a barbaric practice, dangerous for the maternal patient, and demeaning to the medical profession." §2(b)(i)(8); see also *Gonzales*, 550 U. S., at 135–143 (describing such procedures). These legitimate interests provide a rational basis for the Gestational Age Act, and it follows that respondents' constitutional challenge must fail.

VII

We end this opinion where we began. Abortion presents

a profound moral question. The Constitution does not prohibit the citizens of each State from regulating or prohibiting abortion. *Roe* and *Casey* arrogated that authority. We now overrule those decisions and return that authority to the people and their elected representatives.

The judgment of the Fifth Circuit is reversed, and the case is remanded for further proceedings consistent with this opinion.

It is so ordered.

APPENDICES

A

This appendix contains statutes criminalizing abortion at all stages of pregnancy in the States existing in 1868. The statutes appear in chronological order.

1. Missouri (1825):

> Sec. 12. "That every person who shall wilfully and maliciously administer or cause to be administered to or taken by any person, any poison, or other noxious, poisonous or destructive substance or liquid, with an intention to harm him or her thereby to murder, or thereby *to cause or procure the miscarriage of any woman then being with child*, and shall thereof be duly convicted, shall suffer imprisonment not exceeding seven years, and be fined not exceeding three thousand dollars."[69]

2. Illinois (1827):

> Sec. 46. "Every person who shall wilfully and maliciously administer, or cause to be administered to, or taken by any person, any poison, or other noxious or

[69] 1825 Mo. Laws p. 283 (emphasis added); see also, Mo. Rev. Stat., Art. II, §§10, 36 (1835) (extending liability to abortions performed by instrument and establishing differential penalties for pre- and post-quickening abortion) (emphasis added).

destructive substance or liquid, with an intention to cause the death of such person, *or to procure the miscarriage of any woman, then being with child*, and shall thereof be duly convicted, shall be imprisoned for a term not exceeding three years, and be fined in a sum not exceeding one thousand dollars." [70]

3. New York (1828):

Sec. 9. "Every person who shall administer *to any woman pregnant with a quick child*, any medicine, drug or substance whatever, or shall use or employ any instrument or other means, with intent thereby to destroy such child, unless the same shall have been necessary to preserve the life of such mother, or shall have been advised by two physicians to be necessary for such purpose, shall, in case the death of such child or of such mother be thereby produced, be deemed guilty of manslaughter in the second degree."

Sec. 21. "Every person who shall willfully administer *to any pregnant woman*, any medicine, drug, substance or thing whatever, or shall use or employ any instrument of other means whatever, with intent thereby to procure the miscarriage of any such woman, unless the same shall have been necessary to preserve the life of such woman, or shall have been advised by two physicians to be necessary for that purpose; shall, upon conviction, be punished by imprisonment in a county jail not more than one year, or by fine not exceeding five hundred dollars, or by both such fine and imprisonment."[71]

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[70] Ill. Rev. Code §46 (1827) (emphasis added); see also Ill. Rev. Code §46 (1833) (same); 1867 Ill. Laws p. 89 (extending liability to abortions "by means of any instrument[s]" and raising penalties to imprisonment "not less than two nor more than ten years").

[71] N. Y. Rev. Stat., pt. 4, ch. 1, Tit. 2, §9 (emphasis added); Tit. 6, §21

4. Ohio (1834):

Sec. 1. "Be it enacted by the General Assembly of State of Ohio, That any physician, or other person, who shall wilfully administer *to any pregnant woman* any medicine, drug, substance, or thing whatever, or shall use any instrument or other means whatever, with intent thereby to procure the miscarriage of any such woman, unless the same shall have been necessary to preserve the life of such woman, or shall have been advised by two physicians to be necessary for that purpose, shall, upon conviction, be punished by imprisonment in the county jail not more than one year, or by fine not exceeding five hundred dollars, or by both such fine and imprisonment."

Sec. 2. "That any physician, or other person, who shall administer *to any woman pregnant with a quick child*, any medicine, drug, or substance whatever, or shall use or employ any instrument, or other means, with intent thereby to destroy such child, unless the same shall have been necessary to preserve the life of such mother, or shall have been advised by two physicians to be necessary for such purpose, shall, in case of the death of such child or mother in consequence thereof, be deemed guilty of high misdemeanor, and, upon conviction thereof, shall be imprisoned in the penitentiary not more than seven years, nor less than one year."[72]

5. Indiana (1835):

Sec. 3. "That every person who shall wilfully administer *to any pregnant woman*, any medicine, drug, substance or thing whatever, or shall use or employ any instrument or other means whatever, with intent

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(1828) (emphasis added); 1829 N. Y. Laws p. 19 (codifying these provisions in the revised statutes).

[72] 1834 Ohio Laws pp. 20–21 (emphasis deleted and added).

thereby to procure the miscarriage of any such woman, unless the same shall have been necessary to preserve the life of such woman, shall upon conviction be punished by imprisonment in the county jail any term of [time] not exceeding twelve months and be fined any sum not exceeding five hundred dollars."[73]

6. Maine (1840):

Sec. 13. "Every person, who shall administer *to any woman pregnant with child, whether such child be quick or not*, any medicine, drug or substance whatever, or shall use or employ any instrument or other means whatever, with intent to destroy such child, and shall thereby destroy such child before its birth, unless the same shall have been done as necessary to preserve the life of the mother, shall be punished by imprisonment in the state prison, not more than five years, or by fine, not exceeding one thousand dollars, and imprisonment in the county jail, not more than one year."

Sec. 14. "Every person, who shall administer *to any woman, pregnant with child, whether such child shall be quick or not*, any medicine, drug or substance whatever, or shall use or employ any instrument or other means whatever, with intent thereby to procure the miscarriage of such woman, unless the same shall have been done, as necessary to preserve her life, shall be punished by imprisonment in the county jail, not more than one year, or by fine, not exceeding one thousand dollars."[74]

7. Alabama (1841):

Sec. 2. "Every person who shall wilfully administer *to any pregnant woman* any medicines, drugs, substance or thing whatever, or shall use and employ any

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[73] 1835 Ind. Laws p. 66 (emphasis added).

[74] Me. Rev. Stat., Tit. 12, ch. 160, §§13–14 (1840) (emphasis added).

instrument or means whatever with intent thereby to procure the miscarriage of such woman, unless the same shall be necessary to preserve her life, or shall have been advised by a respectable physician to be necessary for that purpose, shall upon conviction, be punished by fine not exceeding five hundred dollars, and by imprisonment in the county jail, not less than three, and not exceeding six months."[75]

8. Massachusetts (1845):

Ch. 27. "Whoever, maliciously or without lawful justification, with intent to cause and procure the miscarriage *of a woman then pregnant with child*, shall administer to her, prescribe for her, or advise or direct her to take or swallow, any poison, drug, medicine or noxious thing, or shall cause or procure her with like intent, to take or swallow any poison, drug, medicine or noxious thing; and whoever maliciously and without lawful justification, shall use any instrument or means whatever with the like intent, and every person, with the like intent, knowingly aiding and assisting such offender or offenders, shall be deemed guilty of felony, if the woman die in consequence thereof, and shall be imprisoned not more than twenty years, nor less than five years in the State Prison; and if the woman doth not die in consequence thereof, such offender shall be guilty of a misdemeanor, and shall be punished by imprisonment not exceeding seven years, nor less than one year, in the state prison or house of correction, or common jail, and by fine not exceeding two thousand dollars."[76]

9. Michigan (1846):

Sec. 33. "Every person who shall administer *to any*

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[75] 1841 Ala. Acts p. 143 (emphasis added).

[76] 1845 Mass. Acts p. 406 (emphasis added).

woman pregnant with a quick child, any medicine, drug or substance whatever, or shall use or employ any instrument or other means, with intent thereby to destroy such child, unless the same shall have been necessary to preserve the life of such mother, or shall have been advised by two physicians to be necessary for such purpose, shall, in case the death of such child or of such mother be thereby produced, be deemed guilty of manslaughter."

Sec. 34. "Every person who shall wilfully administer *to any pregnant woman* any medicine, drug, substance or thing whatever, or shall employ any instrument or other means whatever, with intent thereby to procure the miscarriage of any such woman, unless the same shall have been necessary to preserve the life of such woman, or shall have been advised by two physicians to be necessary for that purpose, shall, upon conviction, be punished by imprisonment in a county jail not more than one year, or by a fine not exceeding five hundred dollars, or by both such fine and imprisonment."[77]

10. Vermont (1846):

Sec. 1. "Whoever maliciously, or without lawful justification with intent to cause and procure the miscarriage *of a woman, then pregnant with child,* shall administer to her, prescribe for her, or advise or direct her to take or swallow any poison, drug, medicine or noxious thing, or shall cause or procure her, with like intent, to take or swallow any poison, drug, medicine or noxious thing, and whoever maliciously and without lawful justification, shall use any instrument or means whatever, with the like intent, and every person, with the like intent, knowingly aiding and assisting such offenders, shall be deemed guilty of felony, if the woman die in consequence thereof, and shall be imprisoned in

[77] Mich. Rev. Stat., Tit. 30, ch. 153, §§33–34 (1846) (emphasis added).

the state prison, not more than ten years, nor less than five years; and if the woman does not die in consequence thereof, such offenders shall be deemed guilty of a misdemeanor; and shall be punished by imprisonment in the state prison not exceeding three years, nor less than one year, and pay a fine not exceeding two hundred dollars."[78]

11. Virginia (1848):

Sec. 9. "Any free person who shall administer *to any pregnant woman*, any medicine, drug or substance whatever, or use or employ any instrument or other means with intent thereby to destroy the child with which such woman may be pregnant, or to produce abortion or miscarriage, and shall thereby destroy such child, or produce such abortion or miscarriage, unless the same shall have been done to preserve the life of such woman, shall be punished, if the death of a quick child be thereby produced, by confinement in the penitentiary, for not less than one nor more than five years, or if the death of a child, not quick, be thereby produced, by confinement in the jail for not less than one nor more than twelve months."[79]

12. New Hampshire (1849):

Sec. 1. "That every person, who shall wilfully administer *to any pregnant woman*, any medicine, drug, substance or thing whatever, or shall use or employ any instrument or means whatever with intent thereby to procure the miscarriage of any such woman, unless the same shall have been necessary to preserve the life of such woman, or shall have been advised by two physicians to be necessary for that purpose, shall, upon conviction, be punished by imprisonment in the county jail

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[78] 1846 Vt. Acts & Resolves pp. 34–35 (emphasis added).
[79] 1848 Va. Acts p. 96 (emphasis added).

not more than one year, or by a fine not exceeding one thousand dollars, or by both such fine and imprisonment at the discretion of the Court."

Sec. 2. "Every person who shall administer *to any woman pregnant with a quick child*, any medicine, drug or substance whatever, or shall use or employ any instrument or means whatever, with intent thereby to destroy such child, unless the same shall have been necessary to preserve the life of such woman, or shall have been advised by two physicians to be necessary for such purpose, shall, upon conviction, be punished by fine not exceeding one thousand dollars, and by confinement to hard labor not less than one year, nor more than ten years."[80]

13. New Jersey (1849):

"That if any person or persons, maliciously or without lawful justification, with intent to cause and procure the miscarriage *of a woman then pregnant with child*, shall administer to her, prescribe for her, or advise or direct her to take or swallow any poison, drug, medicine, or noxious thing; and if any person or persons maliciously, and without lawful justification, shall use any instrument or means whatever, with the like intent; and every person, with the like intent, knowingly aiding and assisting such offender or offenders, shall, on conviction thereof, be adjudged guilty of a high misdemeanor; and if the woman die in consequence thereof, shall be punished by fine, not exceeding one thousand dollars, or imprisonment at hard labour for any term not exceeding fifteen years, or both; and if the woman doth not die in consequence thereof, such offender shall, on conviction thereof, be adjudged guilty of a misdemeanor, and be punished by fine, not exceed-

[80] 1849 N. H. Laws p. 708 (emphasis added).

ing five hundred dollars, or imprisonment at hard labour, for any term not exceeding seven years, or both."[81]

14. California (1850):

Sec. 45. "And every person who shall administer or cause to be administered or taken, any medical substances, or shall use or cause to be used any instruments whatever, with the intention *to procure the miscarriage of any woman then being with child*, and shall be thereof duly convicted, shall be punished by imprisonment in the State Prison for a term not less than two years, nor more than five years: Provided, that no physician shall be affected by the last clause of this section, who, in the discharge of his professional duties, deems it necessary to produce the miscarriage of any woman in order to save her life."[82]

15. Texas (1854):

Sec. 1. "If any person, with the intent to procure the miscarriage *of any woman being with child*, unlawfully and maliciously shall administer to her or cause to be taken by her any poison or other noxious thing, or shall use any instrument or any means whatever, with like intent, every such offender, and every person counselling or aiding or abetting such offender, shall be punished by confinement to hard labor in the Penitentiary not exceeding ten years."[83]

16. Louisiana (1856):

Sec. 24. "Whoever shall feloniously administer or cause to be administered any drug, potion, or any other thing to any woman, for the purpose of procuring a premature delivery, and whoever shall administer or

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[81] 1849 N. J. Laws pp. 266–267 (emphasis added).
[82] 1850 Cal. Stats. p. 233 (emphasis added and deleted).
[83] 1854 Tex. Gen. Laws p. 58 (emphasis added).

cause to be administered *to any woman pregnant with child*, any drug, potion, or any other thing, for the purpose of procuring abortion, or a premature delivery, shall be imprisoned at hard labor, for not less than one, nor more than ten years."[84]

17. Iowa (1858):

Sec. 1. "That every person who shall willfully administer *to any pregnant woman*, any medicine, drug, substance or thing whatever, or shall use or employ any instrument or other means whatever, with the intent thereby to procure the miscarriage of any such woman, unless the same shall be necessary to preserve the life of such woman, shall upon conviction thereof, be punished by imprisonment in the county jail for a term of not exceeding one year, and be fined in a sum not exceeding one thousand dollars."[85]

18. Wisconsin (1858):

Sec. 11. "Every person who shall administer *to any woman pregnant with a child* any medicine, drug, or substance whatever, or shall use or employ any instrument or other means, with intent thereby to destroy such child, unless the same shall have been necessary to preserve the life of such mother, or shall have been advised by two physicians to be necessary for such purpose, shall, in case the death of such child or of such mother be thereby produced, be deemed guilty of manslaughter in the second degree."[86]

Sec. 58. "Every person who shall administer *to any pregnant woman*, or prescribe for any such woman, or advise or procure any such woman to take, any medicine, drug, or substance or thing whatever, or shall use

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[84] La. Rev. Stat. §24 (1856) (emphasis added).

[85] 1858 Iowa Acts p. 93 (codified in Iowa Rev. Laws §4221) (emphasis added).

[86] Wis. Rev. Stat., ch. 164, §11, ch. 169, §58 (1858) (emphasis added).

or employ any instrument or other means whatever, or advise or procure the same to be used, with intent thereby to procure the miscarriage of any such woman, shall upon conviction be punished by imprisonment in a county jail, not more than one year nor less than three months, or by fine, not exceeding five hundred dollars, or by both fine and imprisonment, at the discretion of the court."

19. Kansas (1859):

Sec. 10. "Every person who shall administer *to any woman, pregnant with a quick child*, any medicine, drug or substance whatsoever, or shall use or employ any instrument or other means, with intent thereby to destroy such child, unless the same shall have been necessary to preserve the life of such mother, or shall have been advised by a physician to be necessary for that purpose, shall be deemed guilty of manslaughter in the second degree."

Sec. 37. "Every physician or other person who shall wilfully administer *to any pregnant woman* any medicine, drug or substance whatsoever, or shall use or employ any instrument or means whatsoever, with intent thereby to procure abortion or the miscarriage of any such woman, unless the same shall have been necessary to preserve the life of such woman, or shall have been advised by a physician to be necessary for that purpose, shall, upon conviction, be adjudged guilty of a misdemeanor, and punished by imprisonment in a county jail not exceeding one year, or by fine not exceeding five hundred dollars, or by both such fine and imprisonment."[87]

20. Connecticut (1860):

Sec. 1. "That any person with intent *to procure the*

[87] 1859 Kan. Laws pp. 233, 237 (emphasis added).

miscarriage or abortion of any woman, shall give or administer to her, prescribe for her, or advise, or direct, or cause or procure her to take, any medicine, drug or substance whatever, or use or advise the use of any instrument, or other means whatever, with the like intent, unless the same shall have been necessary to preserve the life of such woman, or of her unborn child, shall be deemed guilty of felony, and upon due conviction thereof shall be punished by imprisonment in the Connecticut state prison, not more than five years or less than one year, or by a fine of one thousand dollars, or both, at the discretion of the court."[88]

21. Pennsylvania (1860):

Sec. 87. "If any person shall unlawfully administer *to any woman, pregnant or quick with child, or supposed and believed to be pregnant or quick with child*, any drug, poison, or other substance whatsoever, or shall unlawfully use any instrument or other means whatsoever, with the intent to procure the miscarriage of such woman, and such woman, or any child with which she may be quick, shall die in consequence of either of said unlawful acts, the person so offending shall be guilty of felony, and shall be sentenced to pay a fine not exceeding five hundred dollars, and to undergo an imprisonment, by separate or solitary confinement at labor, not exceeding seven years."

Sec. 88. "If any person, with intent *to procure the miscarriage of any woman*, shall unlawfully administer to her any poison, drug or substance whatsoever, or shall unlawfully use any instrument, or other means whatsoever, with the like intent, such person shall be guilty of felony, and being thereof convicted, shall be sentenced to pay a fine not exceeding five hundred dol-

[88] 1860 Conn. Pub. Acts p. 65 (emphasis added).

lars, and undergo an imprisonment, by separate or solitary confinement at labor, not exceeding three years."[89]

22. Rhode Island (1861):

Sec. 1. "Every person who shall be convicted of wilfully administering *to any pregnant woman, or to any woman supposed by such person to be pregnant*, anything whatever, or shall employ any means whatever, with intent thereby to procure the miscarriage of such woman, unless the same is necessary to preserve her life, shall be imprisoned not exceeding one year, or fined not exceeding one thousand dollars."[90]

23. Nevada (1861):

Sec. 42. "[E]very person who shall administer, or cause to be administered or taken, any medicinal substance, or shall use, or cause to be used, any instruments whatever, with the intention *to procure the miscarriage of any woman then being with child*, and shall be thereof duly convicted, shall be punished by imprisonment in the Territorial prison, for a term not less than two years, nor more than five years; provided, that no physician shall be affected by the last clause of this section, who, in the discharge of his professional duties, deems it necessary to produce the miscarriage of any woman in order to save her life."[91]

24. West Virginia (1863):

West Virginia's Constitution adopted the laws of Virginia when it became its own State:

"Such parts of the common law and of the laws of the State of Virginia as are in force within the boundaries

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[89] 1861 Pa. Laws pp. 404–405 (emphasis added).
[90] R. I. Acts & Resolves p. 133 (emphasis added).
[91] 1861 Nev. Laws p. 63 (emphasis added and deleted).

of the State of West Virginia, when this Constitution goes into operation, and are not repugnant thereto, shall be and continue the law of this State until altered or repealed by the Legislature."[92]

The Virginia law in force in 1863 stated:

Sec. 8. "Any free person who shall administer to, or cause to be taken, *by a woman*, any drug or other thing, or use any means, with intent to destroy her unborn child, or to produce abortion or miscarriage, and shall thereby destroy such child, or produce such abortion or miscarriage, shall be confined in the penitentiary not less than one, nor more than five years. No person, by reason of any act mentioned in this section, shall be punishable where such act is done in good faith, with the intention of saving the life of such woman or child."[93]

25. Oregon (1864):

Sec. 509. "If any person shall administer *to any woman pregnant with child*, any medicine, drug or substance whatever, or shall use or employ any instrument or other means, with intent thereby to destroy such child, unless the same shall be necessary to preserve the life of such mother, such person shall, in case the death of such child or mother be thereby produced, be deemed guilty of manslaughter."[94]

26. Nebraska (1866):

Sec. 42. "Every person who shall willfully and maliciously administer or cause to be administered to or taken by any person, any poison or other noxious or destructive substance or liquid, with the intention to

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[92] W. Va. Const., Art. XI, §8 (1862).

[93] Va. Code, Tit. 54, ch. 191, §8 (1849) (emphasis added); see also W. Va. Code, ch. 144, §8 (1870) (similar).

[94] Ore. Gen. Laws, Crim. Code, ch. 43, §509 (1865).

cause the death of such person, and being thereof duly convicted, shall be punished by confinement in the penitentiary for a term not less than one year and not more than seven years. And every person who shall administer or cause to be administered or taken, any such poison, substance or liquid, with the intention *to procure the miscarriage of any woman then being with child*, and shall thereof be duly convicted, shall be imprisoned for a term not exceeding three years in the penitentiary, and fined in a sum not exceeding one thousand dollars."[95]

27. Maryland (1868):

Sec. 2. "And be it enacted, That any person who shall knowingly advertise, print, publish, distribute or circulate, or knowingly cause to be advertised, printed, published, distributed or circulated, any pamphlet, printed paper, book, newspaper notice, advertisement or reference containing words or language, giving or conveying any notice, hint or reference to any person, or to the name of any person real or fictitious, from whom; or to any place, house, shop or office, when any poison, drug, mixture, preparation, medicine or noxious thing, or any instrument or means whatever; for the purpose of producing abortion, or who shall knowingly sell, or cause to be sold any such poison, drug, mixture, preparation, medicine or noxious thing or instrument of any kind whatever; or where any advice, direction, information or knowledge may be obtained *for the purpose of causing the miscarriage or abortion of any woman pregnant with child, at any period of her pregnancy*, or shall knowingly sell or cause to be sold any medicine, or who shall knowingly use or cause to be used any means

[95] Neb. Rev. Stat., Tit. 4, ch. 4, §42 (1866) (emphasis added); see also Neb. Gen. Stat., ch. 58, §§6, 39 (1873) (expanding criminal liability for abortions by other means, including instruments).

whatsoever for that purpose, shall be punished by imprisonment in the penitentiary for not less than three years, or by a fine of not less than five hundred nor more than one thousand dollars, or by both, in the discretion of the Court; and in case of fine being imposed, one half thereof shall be paid to the State of Maryland, and one-half to the School Fund of the city or county where the offence was committed; provided, however, that nothing herein contained shall be construed so as to prohibit the supervision and management by a regular practitioner of medicine of all cases of abortion occurring spontaneously, either as the result of accident, constitutional debility, or any other natural cause, or the production of abortion by a regular practitioner of medicine when, after consulting with one or more respectable physicians, he shall be satisfied that the foetus is dead, or that no other method will secure the safety of the mother."[96]

28. Florida (1868):

Ch. 3, Sec. 11. "Every person who shall administer *to any woman pregnant with a quick child* any medicine, drug, or substance whatever, or shall use or employ any instrument, or other means, with intent thereby to destroy such child, unless the same shall have been necessary to preserve the life of such mother, or shall have been advised by two physicians to be necessary for such purpose, shall, in case the death of such child or of such mother be thereby produced, be deemed guilty of manslaughter in the second degree."

Ch. 8, Sec. 9. "Whoever, with intent *to procure miscarriage of any woman*, unlawfully administers to her, or advises, or prescribes for her, or causes to be taken by her, any poison, drug, medicine, or other noxious thing, or unlawfully uses any instrument or other

[96] 1868 Md. Laws p. 315 (emphasis deleted and added).

means whatever with the like intent, or with like intent aids or assists therein, shall, if the woman does not die in consequence thereof, be punished by imprisonment in the State penittentiary not exceeding seven years, nor less than one year, or by fine not exceeding one thousand dollars."[97]

29. Minnesota (1873):

Sec. 1. "That any person who shall administer *to any woman with child*, or prescribe for any such woman, or suggest to, or advise, or procure her to take any medicine, drug, substance or thing whatever, or who shall use or employ, or advise or suggest the use or employment of any instrument or other means or force whatever, with intent thereby to cause or procure the miscarriage or abortion or premature labor of any such woman, unless the same shall have been necessary to preserve her life, or the life of such child, shall, in case the death of such child or of such woman results in whole or in part therefrom, be deemed guilty of a felony, and upon conviction thereof, shall be punished by imprisonment in the state prison for a term not more than ten (10) years nor less than three (3) years."

Sec. 2. "Any person who shall administer *to any woman with child*, or prescribe, or procure, or provide for any such woman, or suggest to, or advise, or procure any such woman to take any medicine, drug, substance or thing whatever, or shall use or employ, or suggest, or advise the use or employment of any instrument or other means or force whatever, with intent thereby to cause or procure the miscarriage or abortion or premature labor of any such woman, shall upon conviction thereof be punished by imprisonment in the state prison for a term not more than two years nor less than

[97] 1868 Fla. Laws, ch. 1637, pp. 64, 97 (emphasis added).

one year, or by fine not more than five thousand dollars nor less than five hundred dollars, or by such fine and imprisonment both, at the discretion of the court."[98]

30. Arkansas (1875):

Sec. 1. "That it shall be unlawful for any one to administer or prescribe any medicine or drugs *to any woman with child*, with intent to produce an abortion, or premature delivery of any foetus before the period of quickening, or to produce or attempt to produce such abortion by any other means; and any person offending against the provision of this section, shall be fined in any sum not exceeding one thousand ($1000) dollars, and imprisoned in the penitentiary not less than one (1) nor more than five (5) years; provided, that this section shall not apply to any abortion produced by any regular practicing physician, for the purpose of saving the mother's life."[99]

31. Georgia (1876):

Sec. 2. "That every person who shall administer *to any woman pregnant with a child*, any medicine, drug, or substance whatever, or shall use or employ any instrument or other means, with intent thereby to destroy such child, unless the same shall have been necessary to preserve the life of such mother, or shall have been advised by two physicians to be necessary for such purpose, shall, in case the death of such child or mother be thereby produced, be declared guilty of an assault with intent to murder."

Sec. 3. "That any person who shall wilfully administer *to any pregnant woman* any medicine, drug or substance, or anything whatever, or shall employ any instrument or means whatever, with intent thereby to

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[98] 1873 Minn. Laws pp. 117–118 (emphasis added).
[99] 1875 Ark. Acts p. 5 (emphasis added and deleted).

procure the miscarriage or abortion of any such woman, unless the same shall have been necessary to preserve the life of such woman, or shall have been advised by two physicians to be necessary for that purpose, shall, upon conviction, be punished as prescribed in section 4310 of the Revised Code of Georgia."[100]

32. North Carolina (1881):

Sec. 1. "That every person who shall wilfully administer *to any woman either pregnant or quick with child*, or prescribe for any such woman, or advise or procure any such woman to take any medicine, drug or substance whatever, or shall use or employ any instrument or other means with intent thereby to destroy said child, unless the same shall have been necessary to preserve the life of such mother, shall be guilty of a felony, and shall be imprisoned in the state penitentiary for not less than one year nor more than ten years, and be fined at the discretion of the court."

Sec. 2. "That every person who shall administer *to any pregnant woman*, or prescribe for any such woman, or advise and procure such woman to take any medicine, drug or any thing whatsoever, with intent thereby to procure the miscarriage of any such woman, or to injure or destroy such woman, or shall use any instrument or application for any of the above purposes, shall be guilty of a misdemeanor, and, on conviction, shall be imprisoned in the jail or state penitentiary for not less than one year or more than five years, and fined at the discretion of the court."[101]

33. Delaware (1883):

Sec. 2. "Every person who, with the intent to procure

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[100] 1876 Ga. Acts & Resolutions p. 113 (emphasis added).

[101] 1881 N. C. Sess. Laws pp. 584–585 (emphasis added).

the miscarriage *of any pregnant woman or women supposed by such person to be pregnant*, unless the same be necessary to preserve her life, shall administer to her, advise, or prescribe for her, or cause to be taken by her any poison, drug, medicine, or other noxious thing, or shall use any instrument or other means whatsoever, or shall aid, assist, or counsel any person so intending to procure a miscarriage, whether said miscarriage be accomplished or not, shall be guilty of a felony, and upon conviction thereof shall be fined not less than one hundred dollars nor more than five hundred dollars and be imprisoned for a term not exceeding five years nor less than one year."[102]

34. Tennessee (1883):

Sec. 1. "That every person who shall administer *to any woman pregnant with child, whether such child be quick or not*, any medicine, drug or substance whatever, or shall use or employ any instrument, or other means whatever with intent to destroy such child, and shall thereby destroy such child before its birth, unless the same shall have been done with a view to preserve the life of the mother, shall be punished by imprisonment in the penitentiary not less than one nor more than five years."

Sec. 2. "Every person who shall administer any substance with the intention *to procure the miscarriage of a woman then being with child*, or shall use or employ any instrument or other means with such intent, unless the same shall have been done with a view to preserve the life of such mother, shall be punished by imprisonment in the penitentiary not less than one nor more than three years."[103]

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[102] 1883 Del. Laws, ch. 226 (emphasis added).

[103] 1883 Tenn. Acts pp. 188–189 (emphasis added).

35. South Carolina (1883):

Sec. 1. "That any person who shall administer *to any woman with child*, or prescribe for any such woman, or suggest to or advise or procure her to take, any medicine, substance, drug or thing whatever, or who shall use or employ, or advise the use or employment of, any instrument or other means of force whatever, with intent thereby to cause or procure the miscarriage or abortion or premature labor of any such woman, unless the same shall have been necessary to preserve her life, or the life of such child, shall, in case the death of such child or of such woman results in whole or in part therefrom, be deemed guilty of a felony, and, upon conviction thereof, shall be punished by imprisonment in the Penitentiary for a term not more than twenty years nor less than five years."

Sec. 2. "That any person who shall administer *to any woman with child*, or prescribe or procure or provide for any such woman, or advise or procure any such woman to take, any medicine, drug, substance or thing whatever, or shall use or employ or advise the use or employment of, any instrument or other means of force whatever, with intent thereby to cause or procure the miscarriage or abortion or premature labor of any such woman, shall, upon conviction thereof, be punished by imprisonment in the Penitentiary for a term not more than five years, or by fine not more than five thousand dollars, or by such fine and imprisonment both, at the discretion of the Court; but no conviction shall be had under the provisions of Section 1 or 2 of this Act upon the uncorroborated evidence of such woman."[104]

36. Kentucky (1910):

Sec. 1. "It shall be unlawful for any person to prescribe or administer *to any pregnant woman, or to any*

[104] 1883 S. C. Acts pp. 547–548 (emphasis added).

woman whom he has reason to believe pregnant, at any time during the period of gestation, any drug, medicine or substance, whatsoever, with the intent thereby to procure the miscarriage of such woman, or with like intent, to use any instrument or means whatsoever, unless such miscarriage is necessary to preserve her life; and any person so offending, shall be punished by a fine of not less than five hundred nor more than one thousand dollars, and imprisoned in the State prison for not less than one nor more than ten years."

Sec. 2. "If by reason of any of the acts described in Section 1 hereof, the miscarriage of such woman is procured, and she does miscarry, causing the death of the unborn child, whether before or after quickening time, the person so offending shall be guilty of a felony, and confined in the penitentiary for not less than two, nor more than twenty-one years."

Sec. 3. "If, by reason of the commission of any of the acts described in Section 1 hereof, the woman to whom such drug or substance has been administered, or upon whom such instrument has been used, shall die, the person offending shall be punished as now prescribed by law, for the offense of murder or manslaughter, as the facts may justify."

Sec. 4. "The consent of the woman to the performance of the operation or administering of the medicines or substances, referred to, shall be no defense, and she shall be a competent witness in any prosecution under this act, and for that purpose she shall not be considered an accomplice."[105]

37. Mississippi (1952):

Sec. 1. "Whoever, by means of any instrument, medicine, drug, or other means whatever shall willfully and

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[105] 1910 Ky. Acts pp. 189–190 (emphasis added).

knowingly cause *any woman pregnant with child* to abort or miscarry, or attempts to procure or produce an abortion or miscarriage, unless the same were done as necessary for the preservation of the mother's life, shall be imprisoned in the state penitentiary no less than one (1) year, nor more than ten (10) years; or if the death of the mother results therefrom, the person procuring, causing, or attempting to procure or cause the abortion or miscarriage shall be guilty of murder."

Sec. 2. "No act prohibited in section 1 hereof shall be considered as necessary for the preservation of the mother's life unless upon the prior advice, in writing, of two reputable licensed physicians."

Sec. 3. "The license of any physician or nurse shall be automatically revoked upon conviction under the provisions of this act."[106]

B

This appendix contains statutes criminalizing abortion at all stages in each of the Territories that became States and in the District of Columbia. The statutes appear in chronological order of enactment.

1. Hawaii (1850):

Sec. 1. "Whoever maliciously, without lawful justification, administers, or causes or procures to be administered any poison or noxious thing *to a woman then with child*, in order to produce her mis-carriage, or maliciously uses any instrument or other means with like intent, shall, if such woman be then quick with child, be punished by fine not exceeding one thousand dollars and imprisonment at hard labor not more than five years. And if she be then not quick with child, shall be punished by a fine not exceeding five hundred dollars,

[106] 1952 Miss. Laws p. 289 (codified at Miss. Code Ann. §2223 (1956) (emphasis added)).

and imprisonment at hard labor not more than two years."

Sec. 2. "Where means of causing abortion are used for the purpose of saving the life of the woman, the surgeon or other person using such means is lawfully justified."[107]

2. Washington (1854):

Sec. 37. "Every person who shall administer *to any woman pregnant with a quick child*, any medicine, drug, or substance whatever, or shall use or employ any instrument, or other means, with intent thereby to destroy such child, unless the same shall have been necessary to preserve the life of such mother, shall, in case the death of such child or of such mother be thereby produced, on conviction thereof, be imprisoned in the penitentiary not more than twenty years, nor less than one year."

Sec. 38. "Every person who shall administer *to any pregnant woman, or to any woman who he supposes to be pregnant*, any medicine, drug, or substance whatever, or shall use or employ any instrument, or other means, thereby to procure the miscarriage of such woman, unless the same is necessary to preserve her life, shall on conviction thereof, be imprisoned in the penitentiary not more than five years, nor less than one year, or be imprisoned in the county jail not more than twelve months, nor less than one month, and be fined in any sum not exceeding one thousand dollars."[108]

3. Colorado (1861):

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[107] Haw. Penal Code, ch. 12, §§1–2 (1850) (emphasis added). Hawaii became a State in 1959. See Presidential Proclamation No. 3309, 73 Stat. c74–c75.

[108] Terr. of Wash. Stat., ch. 2, §§37–38, p. 81 (1854) (emphasis added). Washington became a State in 1889. See Presidential Proclamation No. 8, 26 Stat. 1552–1553.

Sec. 42. "[E]very person who shall administer substance or liquid, or who shall use or cause to be used any instrument, of whatsoever kind, with the intention *to procure the miscarriage of any woman then being with child*, and shall thereof be duly convicted, shall be imprisoned for a term not exceeding three years, and fined in a sum not exceeding one thousand dollars; and if any woman, by reason of such treatment, shall die, the person or persons administering, or causing to be administered, such poison, substance or liquid, or using or causing to be used, any instrument, as aforesaid, shall be deemed guilty of manslaughter, and if convicted, be punished accordingly."[109]

4. Idaho (1864):

Sec. 42. "[E]very person who shall administer or cause to be administered, or taken, any medicinal substance, or shall use or cause to be used, any instruments whatever, with the intention *to procure the miscarriage of any woman then being with child*, and shall be thereof duly convicted, shall be punished by imprisonment in the territorial prison for a term not less than two years, nor more than five years: *Provided*, That no physician shall be effected by the last clause of this section, who in the discharge of his professional duties, deems it necessary to produce the miscarriage of any woman in order to save her life."[110]

5. Montana (1864):

Sec. 41. "[E]very person who shall administer, or cause to be administered, or taken, any medicinal substance, or shall use, or cause to be used, any instru-

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[109] 1861 Terr. of Colo. Gen. Laws pp. 296–297. Colorado became a State in 1876. See Presidential Proclamation No. 7, 19 Stat. 665–666.

[110] 1863–1864 Terr. of Idaho Laws p. 443. Idaho became a State in 1890. See 26 Stat. 215–219.

ments whatever, with the intention *to produce the miscarriage of any woman then being with child*, and shall be thereof duly convicted, shall be punished by imprisonment in the Territorial prison for a term not less than two years nor more than five years. *Provided*, That no physician shall be affected by the last clause of this section, who in the discharge of his professional duties deems it necessary to produce the miscarriage of any woman in order to save her life."[111]

6. Arizona (1865):

Sec. 45. "[E]very person who shall administer or cause to be administered or taken, any medicinal substances, or shall use or cause to be used any instruments whatever, with the intention *to procure the miscarriage of any woman then being with child*, and shall be thereof duly convicted, shall be punished by imprisonment in the Territorial prison for a term not less than two years nor more than five years: Provided, that no physician shall be affected by the last clause of this section, who in the discharge of his professional duties, deems it necessary to produce the miscarriage of any woman in order to save her life."[112]

7. Wyoming (1869):

Sec. 25. "[A]ny person who shall administer, or cause to be administered, or taken, any such poison, substance or liquid, or who shall use, or cause to be used, any instrument of whatsoever kind, with the intention *to procure the miscarriage of any woman then being with child*, and shall thereof be duly convicted, shall be imprisoned for a term not exceeding three

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[111] 1864 Terr. of Mont. Laws p. 184. Montana became a State in 1889. See Presidential Proclamation No. 7, 26 Stat. 1551–1552.

[112] Howell Code, ch. 10, §45 (1865). Arizona became a State in 1912. See Presidential Proclamation of Feb. 14, 1912, 37 Stat. 1728–1729.

years, in the penitentiary, and fined in a sum not exceeding one thousand dollars; and if any woman by reason of such treatment shall die, the person, or persons, administering, or causing to be administered such poison, substance, or liquid, or using or causing to be used, any instrument, as aforesaid, shall be deemed guilty of manslaughter, and if convicted, be punished by imprisonment for a term not less than three years in the penitentiary, and fined in a sum not exceeding one thousand dollars, unless it appear that such miscarriage was procured or attempted by, or under advice of a physician or surgeon, with intent to save the life of such woman, or to prevent serious and permanent bodily injury to her."[113]

8. Utah (1876):

Sec. 142. "Every person who provides, supplies, or administers *to any pregnant woman*, or procures any such woman to take any medicine, drug, or substance, or uses or employs any instrument or other means whatever, with intent thereby to procure the miscarriage of such woman, unless the same is necessary to preserve her life, is punishable by imprisonment in the penitentiary not less than two nor more than ten years."[114]

9. North Dakota (1877):

Sec. 337. "Every person who administers *to any pregnant woman*, or who prescribes for any such woman, or advises or procures any such woman to take any medicine, drug or substance, or uses or employs

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[113] 1869 Terr. of Wyo. Gen. Laws p. 104 (emphasis added). Wyoming became a State in 1889. See 26 Stat. 222–226.

[114] Terr. of Utah Comp. Laws §1972 (1876) (emphasis added). Utah became a State in 1896. See Presidential Proclamation No. 9, 29 Stat. 876–877.

any instrument, or other means whatever with intent thereby to procure the miscarriage of such woman, unless the same is necessary to preserve her life, is punishable by imprisonment in the territorial prison not exceeding three years, or in a county jail not exceeding one year."[115]

10. South Dakota (1877): *Same as North Dakota.*

11. Oklahoma (1890):

Sec. 2187. "Every person who administers *to any pregnant woman*, or who prescribes for any such woman, or advises or procures any such woman to take any medicine, drug or substance, or uses or employs any instrument, or other means whatever, with intent thereby to procure the miscarriage of such woman, unless the same is necessary to preserve her life, is punishable by imprisonment in the Territorial prison not exceeding three years, or in a county jail not exceeding one year."[116]

12. Alaska (1899):

Sec. 8. "That if any person shall administer *to any woman pregnant with a child* any medicine, drug, or substance whatever, or shall use any instrument or other means, with intent thereby to destroy such child, unless the same shall be necessary to preserve the life of such mother, such person shall, in case the death of such child or mother be thereby produced, be deemed

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[115] Dakota Penal Code §337 (1877) (codified at N. D. Rev. Code §7177 (1895)), and S. D. Rev. Penal Code Ann. §337 (1883). North and South Dakota became States in 1889. See Presidential Proclamation No. 5, 26 Stat. 1548–1551.

[116] Okla. Stat. §2187 (1890) (emphasis added). Oklahoma became a State in 1907. See Presidential Proclamation of Nov. 16, 1907, 35 Stat. 2160–2161.

guilty of manslaughter, and shall be punished accordingly."[117]

13. New Mexico (1919):

Sec. 1. "Any person who shall administer *to any pregnant woman any medicine*, drug or substance whatever, or attempt by operation or any other method or means to produce an abortion or miscarriage upon such woman, shall be guilty of a felony, and, upon conviction thereof, shall be fined not more than two thousand ($2,000.00) Dollars, nor less than five hundred ($500.00) Dollars, or imprisoned in the penitentiary for a period of not less than one nor more than five years, or by both such fine and imprisonment in the discretion of the court trying the case."

Sec. 2. "Any person committing such act or acts mentioned in section one hereof which shall culminate in the death of the woman shall be deemed guilty of murder in the second degree; *Provided*, however, an abortion may be produced when two physicians licensed to practice in the State of New Mexico, in consultation, deem it necessary to preserve the life of the woman, or to prevent serious and permanent bodily injury."

Sec. 3. "For the purpose of the act, the term "pregnancy" is defined as that condition of a woman *from the date of conception to the birth of her child*."[118]

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District of Columbia (1901):

Sec. 809. "Whoever, with intent *to procure the miscarriage of any woman*, prescribes or administers to her

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[117] 1899 Alaska Sess. Laws ch. 2, p. 3 (emphasis added). Alaska became a State in 1959. See Presidential Proclamation No. 3269, 73 Stat. c16.

[118] N. M. Laws p. 6 (emphasis added). New Mexico became a State in 1912. See Presidential Proclamation of Jan. 6, 1912, 37 Stat. 1723–1724.

any medicine, drug, or substance whatever, or with like intent uses any instrument or means, unless when necessary to preserve her life or health and under the direction of a competent licensed practitioner of medicine, shall be imprisoned for not more than five years; or if the woman or her child dies in consequence of such act, by imprisonment for not less than three nor more than twenty years."[119]

[119] §809, 31 Stat. 1322 (1901) (emphasis added).

SUPREME COURT OF THE UNITED STATES

No. 19–1392

THOMAS E. DOBBS, STATE HEALTH OFFICER OF THE MISSISSIPPI DEPARTMENT OF HEALTH, ET AL., PETITIONERS *v.* JACKSON WOMEN'S HEALTH ORGANIZATION, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

[June 24, 2022]

JUSTICE THOMAS, concurring.

I join the opinion of the Court because it correctly holds that there is no constitutional right to abortion. Respondents invoke one source for that right: the Fourteenth Amendment's guarantee that no State shall "deprive any person of life, liberty, or property without due process of law." The Court well explains why, under our substantive due process precedents, the purported right to abortion is not a form of "liberty" protected by the Due Process Clause. Such a right is neither "deeply rooted in this Nation's history and tradition" nor "implicit in the concept of ordered liberty." *Washington* v. *Glucksberg*, 521 U. S. 702, 721 (1997) (internal quotation marks omitted). "[T]he idea that the Framers of the Fourteenth Amendment understood the Due Process Clause to protect a right to abortion is farcical." *June Medical Services L. L. C.* v. *Russo*, 591 U. S. ___, ___ (2020) (THOMAS, J., dissenting) (slip op., at 17).

I write separately to emphasize a second, more fundamental reason why there is no abortion guarantee lurking in the Due Process Clause. Considerable historical evidence indicates that "due process of law" merely required executive and judicial actors to comply with legislative enactments and the common law when depriving a person of

life, liberty, or property. See, *e.g., Johnson* v. *United States*, 576 U. S. 591, 623 (2015) (THOMAS, J., concurring in judgment). Other sources, by contrast, suggest that "due process of law" prohibited legislatures "from authorizing the deprivation of a person's life, liberty, or property without providing him the customary procedures to which freemen were entitled by the old law of England." *United States* v. *Vaello Madero*, 596 U. S. ___, ____ (2022) (THOMAS, J., concurring) (slip op., at 3) (internal quotation marks omitted). Either way, the Due Process Clause at most guarantees *process*. It does not, as the Court's substantive due process cases suppose, "forbi[d] the government to infringe certain 'fundamental' liberty interests *at all*, no matter what process is provided." *Reno* v. *Flores*, 507 U. S. 292, 302 (1993); see also, *e.g., Collins* v. *Harker Heights*, 503 U. S. 115, 125 (1992).

As I have previously explained, "substantive due process" is an oxymoron that "lack[s] any basis in the Constitution." *Johnson*, 576 U. S., at 607–608 (opinion of THOMAS, J.); see also, *e.g., Vaello Madero*, 596 U. S., at ___ (THOMAS, J., concurring) (slip op., at 3) ("[T]ext and history provide little support for modern substantive due process doctrine"). "The notion that a constitutional provision that guarantees only 'process' before a person is deprived of life, liberty, or property could define the substance of those rights strains credulity for even the most casual user of words." *McDonald* v. *Chicago*, 561 U. S. 742, 811 (2010) (THOMAS, J., concurring in part and concurring in judgment); see also *United States* v. *Carlton*, 512 U. S. 26, 40 (1994) (Scalia, J., concurring in judgment). The resolution of this case is thus straightforward. Because the Due Process Clause does not secure *any* substantive rights, it does not secure a right to abortion.

The Court today declines to disturb substantive due process jurisprudence generally or the doctrine's application in other, specific contexts. Cases like *Griswold* v. *Connecticut*,

381 U. S. 479 (1965) (right of married persons to obtain contraceptives)*; *Lawrence* v. *Texas*, 539 U. S. 558 (2003) (right to engage in private, consensual sexual acts); and *Obergefell* v. *Hodges*, 576 U. S. 644 (2015) (right to same-sex marriage), are not at issue. The Court's abortion cases are unique, see *ante,* at 31–32, 66, 71–72, and no party has asked us to decide "whether our entire Fourteenth Amendment jurisprudence must be preserved or revised," *McDonald*, 561 U. S., at 813 (opinion of THOMAS, J.). Thus, I agree that "[n]othing in [the Court's] opinion should be understood to cast doubt on precedents that do not concern abortion." *Ante,* at 66.

For that reason, in future cases, we should reconsider all of this Court's substantive due process precedents, including *Griswold*, *Lawrence*, and *Obergefell*. Because any substantive due process decision is "demonstrably erroneous," *Ramos* v. *Louisiana*, 590 U. S. ___, ___ (2020) (THOMAS, J., concurring in judgment) (slip op., at 7), we have a duty to "correct the error" established in those precedents, *Gamble* v. *United States*, 587 U. S. ___, ___ (2019) (THOMAS, J., concurring) (slip op., at 9). After overruling these demonstrably erroneous decisions, the question would remain whether other constitutional provisions guarantee the myriad rights that our substantive due process cases have generated. For example, we could consider whether any of the rights announced in this Court's substantive due process cases are "privileges or immunities of citizens of the United States" protected by the Fourteenth Amendment. Amdt.

**Griswold* v. *Connecticut* purported not to rely on the Due Process Clause, but rather reasoned "that specific guarantees in the Bill of Rights"—including rights enumerated in the First, Third, Fourth, Fifth, and Ninth Amendments—"have penumbras, formed by emanations," that create "zones of privacy." 381 U. S., at 484. Since *Griswold,* the Court, perhaps recognizing the facial absurdity of *Griswold*'s penumbral argument, has characterized the decision as one rooted in substantive due process. See, *e.g., Obergefell* v. *Hodges*, 576 U. S. 644, 663 (2015); *Washington* v. *Glucksberg*, 521 U. S. 702, 720 (1997).

14, §1; see *McDonald*, 561 U. S., at 806 (opinion of THOMAS, J.). To answer that question, we would need to decide important antecedent questions, including whether the Privileges or Immunities Clause protects *any* rights that are not enumerated in the Constitution and, if so, how to identify those rights. See *id.*, at 854. That said, even if the Clause does protect unenumerated rights, the Court conclusively demonstrates that abortion is not one of them under any plausible interpretive approach. See *ante,* at 15, n. 22.

Moreover, apart from being a demonstrably incorrect reading of the Due Process Clause, the "legal fiction" of substantive due process is "particularly dangerous." *McDonald*, 561 U. S., at 811 (opinion of THOMAS, J.); accord, *Obergefell*, 576 U. S., at 722 (THOMAS, J., dissenting). At least three dangers favor jettisoning the doctrine entirely.

First, "substantive due process exalts judges at the expense of the People from whom they derive their authority." *Ibid.* Because the Due Process Clause "speaks only to 'process,' the Court has long struggled to define what substantive rights it protects." *Timbs* v. *Indiana*, 586 U. S. ___, ___ (2019) (THOMAS, J., concurring in judgment) (slip op., at 2) (internal quotation marks omitted). In practice, the Court's approach for identifying those "fundamental" rights "unquestionably involves policymaking rather than neutral legal analysis." *Carlton*, 512 U. S., at 41–42 (opinion of Scalia, J.); see also *McDonald*, 561 U. S., at 812 (opinion of THOMAS, J.) (substantive due process is "a jurisprudence devoid of a guiding principle"). The Court divines new rights in line with "its own, extraconstitutional value preferences" and nullifies state laws that do not align with the judicially created guarantees. *Thornburgh* v. *American College of Obstetricians and Gynecologists*, 476 U. S. 747, 794 (1986) (White, J., dissenting).

Nowhere is this exaltation of judicial policymaking clearer than this Court's abortion jurisprudence. In *Roe* v. *Wade*, 410 U. S. 113 (1973), the Court divined a right to

abortion because it "fe[lt]" that "the Fourteenth Amendment's concept of personal liberty" included a "right of privacy" that "is broad enough to encompass a woman's decision whether or not to terminate her pregnancy." *Id.,* at 153. In *Planned Parenthood of Southeastern Pa.* v. *Casey*, 505 U. S. 833 (1992), the Court likewise identified an abortion guarantee in "the liberty protected by the Fourteenth Amendment," but, rather than a "right of privacy," it invoked an ethereal "right to define one's own concept of existence, of meaning, of the universe, and of the mystery of human life." *Id.*, at 851. As the Court's preferred manifestation of "liberty" changed, so, too, did the test used to protect it, as *Roe*'s author lamented. See *Casey*, 505 U. S., at 930 (Blackmun, J., concurring in part and dissenting in part) ("[T]he *Roe* framework is far more administrable, and far less manipulable, than the 'undue burden' standard").

Now, in this case, the nature of the purported "liberty" supporting the abortion right has shifted yet again. Respondents and the United States propose no fewer than three different interests that supposedly spring from the Due Process Clause. They include "bodily integrity," "personal autonomy in matters of family, medical care, and faith," Brief for Respondents 21, and "women's equal citizenship," Brief for United States as *Amicus Curiae* 24. That 50 years have passed since *Roe* and abortion advocates still cannot coherently articulate the right (or rights) at stake proves the obvious: The right to abortion is ultimately a policy goal in desperate search of a constitutional justification.

Second, substantive due process distorts other areas of constitutional law. For example, once this Court identifies a "fundamental" right for one class of individuals, it invokes the Equal Protection Clause to demand exacting scrutiny of statutes that deny the right to others. See, *e.g., Eisenstadt* v. *Baird*, 405 U. S. 438, 453–454 (1972) (relying on *Griswold* to invalidate a state statute prohibiting distribution

of contraceptives to unmarried persons). Statutory classifications implicating certain "nonfundamental" rights, meanwhile, receive only cursory review. See, *e.g., Armour* v. *Indianapolis*, 566 U. S. 673, 680 (2012). Similarly, this Court deems unconstitutionally "vague" or "overbroad" those laws that impinge on its preferred rights, while letting slide those laws that implicate supposedly lesser values. See, *e.g.*, *Johnson*, 576 U. S., at 618–621 (opinion of THOMAS, J.); *United States* v. *Sineneng-Smith*, 590 U. S. ___, ___–___ (2020) (THOMAS, J., concurring) (slip op., at 3–5). "In fact, our vagueness doctrine served as the basis for the first draft of the majority opinion in *Roe* v. *Wade*," and it since has been "deployed . . . to nullify even mild regulations of the abortion industry." *Johnson,* 576 U. S., at 620–621 (opinion of THOMAS, J.). Therefore, regardless of the doctrinal context, the Court often "demand[s] extra justifications for encroachments" on "preferred rights" while "relax[ing] purportedly higher standards of review for less-preferred rights." *Whole Woman's Health* v. *Hellerstedt*, 579 U. S. 582, 640–642 (2016) (THOMAS, J., dissenting). Substantive due process is the core inspiration for many of the Court's constitutionally unmoored policy judgments.

Third, substantive due process is often wielded to "disastrous ends." *Gamble*, 587 U. S., at ___ (THOMAS, J., concurring) (slip op., at 16). For instance, in *Dred Scott* v. *Sandford*, 19 How. 393 (1857), the Court invoked a species of substantive due process to announce that Congress was powerless to emancipate slaves brought into the federal territories. See *id.,* at 452. While *Dred Scott* "was overruled on the battlefields of the Civil War and by constitutional amendment after Appomattox," *Obergefell*, 576 U. S., at 696 (ROBERTS, C. J., dissenting), that overruling was "[p]urchased at the price of immeasurable human suffering," *Adarand Constructors, Inc.* v. *Peña*, 515 U. S. 200, 240 (1995) (THOMAS, J., concurring in part and concurring in judgment). Now today, the Court rightly overrules *Roe* and

Casey—two of this Court's "most notoriously incorrect" substantive due process decisions, *Timbs*, 586 U. S., at ___ (opinion of THOMAS, J.) (slip op., at 2)—after more than 63 million abortions have been performed, see National Right to Life Committee, Abortion Statistics (Jan. 2022), https://www.nrlc.org/uploads/factsheets/FS01AbortionintheUS.pdf. The harm caused by this Court's forays into substantive due process remains immeasurable.

* * *

Because the Court properly applies our substantive due process precedents to reject the fabrication of a constitutional right to abortion, and because this case does not present the opportunity to reject substantive due process entirely, I join the Court's opinion. But, in future cases, we should "follow the text of the Constitution, which sets forth certain substantive rights that cannot be taken away, and adds, beyond that, a right to due process when life, liberty, or property is to be taken away." *Carlton*, 512 U. S., at 42 (opinion of Scalia, J.). Substantive due process conflicts with that textual command and has harmed our country in many ways. Accordingly, we should eliminate it from our jurisprudence at the earliest opportunity.

SUPREME COURT OF THE UNITED STATES

No. 19–1392

THOMAS E. DOBBS, STATE HEALTH OFFICER OF THE MISSISSIPPI DEPARTMENT OF HEALTH, ET AL., PETITIONERS *v.* JACKSON WOMEN'S HEALTH ORGANIZATION, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

[June 24, 2022]

JUSTICE KAVANAUGH, concurring.

I write separately to explain my additional views about why *Roe* was wrongly decided, why *Roe* should be overruled at this time, and the future implications of today's decision.

I

Abortion is a profoundly difficult and contentious issue because it presents an irreconcilable conflict between the interests of a pregnant woman who seeks an abortion and the interests in protecting fetal life. The interests on both sides of the abortion issue are extraordinarily weighty.

On the one side, many pro-choice advocates forcefully argue that the ability to obtain an abortion is critically important for women's personal and professional lives, and for women's health. They contend that the widespread availability of abortion has been essential for women to advance in society and to achieve greater equality over the last 50 years. And they maintain that women must have the freedom to choose for themselves whether to have an abortion.

On the other side, many pro-life advocates forcefully argue that a fetus is a human life. They contend that all human life should be protected as a matter of human dignity

and fundamental morality. And they stress that a significant percentage of Americans with pro-life views are women.

When it comes to abortion, one interest must prevail over the other at any given point in a pregnancy. Many Americans of good faith would prioritize the interests of the pregnant woman. Many other Americans of good faith instead would prioritize the interests in protecting fetal life—at least unless, for example, an abortion is necessary to save the life of the mother. Of course, many Americans are conflicted or have nuanced views that may vary depending on the particular time in pregnancy, or the particular circumstances of a pregnancy.

The issue before this Court, however, is not the policy or morality of abortion. The issue before this Court is what the Constitution says about abortion. The Constitution does not take sides on the issue of abortion. The text of the Constitution does not refer to or encompass abortion. To be sure, this Court has held that the Constitution protects unenumerated rights that are deeply rooted in this Nation's history and tradition, and implicit in the concept of ordered liberty. But a right to abortion is not deeply rooted in American history and tradition, as the Court today thoroughly explains.[1]

On the question of abortion, the Constitution is therefore neither pro-life nor pro-choice. The Constitution is neutral and leaves the issue for the people and their elected representatives to resolve through the democratic process in the

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[1]The Court's opinion today also recounts the pre-constitutional common-law history in England. That English history supplies background information on the issue of abortion. As I see it, the dispositive point in analyzing American history and tradition for purposes of the Fourteenth Amendment inquiry is that abortion was largely prohibited in most American States as of 1868 when the Fourteenth Amendment was ratified, and that abortion remained largely prohibited in most American States until *Roe* was decided in 1973.

States or Congress—like the numerous other difficult questions of American social and economic policy that the Constitution does not address.

Because the Constitution is neutral on the issue of abortion, this Court also must be scrupulously neutral. The nine unelected Members of this Court do not possess the constitutional authority to override the democratic process and to decree either a pro-life or a pro-choice abortion policy for all 330 million people in the United States.

Instead of adhering to the Constitution's neutrality, the Court in *Roe* took sides on the issue and unilaterally decreed that abortion was legal throughout the United States up to the point of viability (about 24 weeks of pregnancy). The Court's decision today properly returns the Court to a position of neutrality and restores the people's authority to address the issue of abortion through the processes of democratic self-government established by the Constitution.

Some *amicus* briefs argue that the Court today should not only overrule *Roe* and return to a position of judicial neutrality on abortion, but should go further and hold that the Constitution *outlaws* abortion throughout the United States. No Justice of this Court has ever advanced that position. I respect those who advocate for that position, just as I respect those who argue that this Court should hold that the Constitution legalizes pre-viability abortion throughout the United States. But both positions are wrong as a constitutional matter, in my view. The Constitution neither outlaws abortion nor legalizes abortion.

To be clear, then, the Court's decision today *does not outlaw* abortion throughout the United States. On the contrary, the Court's decision properly leaves the question of abortion for the people and their elected representatives in the democratic process. Through that democratic process, the people and their representatives may decide to allow or limit abortion. As Justice Scalia stated, the "States may, if they wish, permit abortion on demand, but the Constitution

does not *require* them to do so." *Planned Parenthood of Southeastern Pa.* v. *Casey*, 505 U. S. 833, 979 (1992) (opinion concurring in judgment in part and dissenting in part).

Today's decision therefore does not prevent the numerous States that readily allow abortion from continuing to readily allow abortion. That includes, if they choose, the *amici* States supporting the plaintiff in this Court: New York, California, Illinois, Maine, Massachusetts, Rhode Island, Vermont, Connecticut, New Jersey, Pennsylvania, Delaware, Maryland, Michigan, Wisconsin, Minnesota, New Mexico, Colorado, Nevada, Oregon, Washington, and Hawaii. By contrast, other States may maintain laws that more strictly limit abortion. After today's decision, all of the States may evaluate the competing interests and decide how to address this consequential issue.[2]

In arguing for a *constitutional* right to abortion that would override the people's choices in the democratic process, the plaintiff Jackson Women's Health Organization and its *amici* emphasize that the Constitution does not freeze the American people's rights as of 1791 or 1868. I fully agree. To begin, I agree that constitutional rights apply to situations that were unforeseen in 1791 or 1868—such as applying the First Amendment to the Internet or the Fourth Amendment to cars. Moreover, the Constitution authorizes the creation of new rights—state and federal, statutory and constitutional. But when it comes to creating new rights, the Constitution directs the people to the various processes of democratic self-government contemplated by the Constitution—state legislation, state constitutional amendments, federal legislation, and federal constitutional

[2] In his dissent in *Roe*, Justice Rehnquist indicated that an exception to a State's restriction on abortion would be constitutionally required when an abortion is necessary to save the life of the mother. See *Roe* v. *Wade*, 410 U. S. 113, 173 (1973). Abortion statutes traditionally and currently provide for an exception when an abortion is necessary to protect the life of the mother. Some statutes also provide other exceptions.

amendments. See generally Amdt. 9; Amdt. 10; Art. I, §8; Art. V; J. Sutton, 51 Imperfect Solutions: States and the Making of American Constitutional Law 7–21, 203–216 (2018); A. Amar, America's Constitution: A Biography 285–291, 315–347 (2005).

The Constitution does not grant the nine unelected Members of this Court the unilateral authority to rewrite the Constitution to create new rights and liberties based on our own moral or policy views. As Justice Rehnquist stated, this Court has not "been granted a roving commission, either by the Founding Fathers or by the framers of the Fourteenth Amendment, to strike down laws that are based upon notions of policy or morality suddenly found unacceptable by a majority of this Court." *Furman* v. *Georgia*, 408 U. S. 238, 467 (1972) (dissenting opinion); see *Washington* v. *Glucksberg*, 521 U. S. 702, 720–721 (1997); *Cruzan* v. *Director, Mo. Dept. of Health*, 497 U. S. 261, 292–293 (1990) (Scalia, J., concurring).

This Court therefore does not possess the authority either to declare a constitutional right to abortion *or* to declare a constitutional prohibition of abortion. See *Casey*, 505 U. S., at 953 (Rehnquist, C. J., concurring in judgment in part and dissenting in part); *id.,* at 980 (opinion of Scalia, J.); *Roe* v. *Wade*, 410 U. S. 113, 177 (1973) (Rehnquist, J., dissenting); *Doe* v. *Bolton*, 410 U. S. 179, 222 (1973) (White, J., dissenting).

In sum, the Constitution is neutral on the issue of abortion and allows the people and their elected representatives to address the issue through the democratic process. In my respectful view, the Court in *Roe* therefore erred by taking sides on the issue of abortion.

II

The more difficult question in this case is *stare decisis*—that is, whether to overrule the *Roe* decision.

The principle of *stare decisis* requires respect for the

Court's precedents and for the accumulated wisdom of the judges who have previously addressed the same issue. *Stare decisis* is rooted in Article III of the Constitution and is fundamental to the American judicial system and to the stability of American law.

Adherence to precedent is the norm, and *stare decisis* imposes a high bar before this Court may overrule a precedent. This Court's history shows, however, that *stare decisis* is not absolute, and indeed cannot be absolute. Otherwise, as the Court today explains, many long-since-overruled cases such as *Plessy* v. *Ferguson*, 163 U. S. 537 (1896); *Lochner* v. *New York*, 198 U. S. 45 (1905); *Minersville School Dist.* v. *Gobitis*, 310 U. S. 586 (1940); and *Bowers* v. *Hardwick*, 478 U. S. 186 (1986), would never have been overruled and would still be the law.

In his canonical *Burnet* opinion in 1932, Justice Brandeis stated that in "cases involving the Federal Constitution, where correction through legislative action is practically impossible, this Court has often overruled its earlier decisions." *Burnet* v. *Coronado Oil & Gas Co.*, 285 U. S. 393, 406–407 (1932) (dissenting opinion). That description of the Court's practice remains accurate today. Every current Member of this Court has voted to overrule precedent. And over the last 100 years beginning with Chief Justice Taft's appointment in 1921, every one of the 48 Justices appointed to this Court has voted to overrule precedent. Many of those Justices have voted to overrule a substantial number of very significant and longstanding precedents. See, *e.g., Obergefell* v. *Hodges*, 576 U. S. 644 (2015) (overruling *Baker* v. *Nelson*); *Brown* v. *Board of Education*, 347 U. S. 483 (1954) (overruling *Plessy* v. *Ferguson*); *West Coast Hotel Co.* v. *Parrish*, 300 U. S. 379 (1937) (overruling *Adkins* v. *Children's Hospital of D. C.* and in effect *Lochner* v. *New York*).

But that history alone does not answer the critical question: When precisely should the Court overrule an erroneous constitutional precedent? The history of *stare decisis* in

this Court establishes that a constitutional precedent may be overruled only when (i) the prior decision is not just wrong, but is egregiously wrong, (ii) the prior decision has caused significant negative jurisprudential or real-world consequences, and (iii) overruling the prior decision would not unduly upset legitimate reliance interests. See *Ramos* v. *Louisiana*, 590 U. S. ___, ___–___ (2020) (KAVANAUGH, J., concurring in part) (slip op., at 7–8).

Applying those factors, I agree with the Court today that *Roe* should be overruled. The Court in *Roe* erroneously assigned itself the authority to decide a critically important moral and policy issue that the Constitution does not grant this Court the authority to decide. As Justice Byron White succinctly explained, *Roe* was "an improvident and extravagant exercise of the power of judicial review" because "nothing in the language or history of the Constitution" supports a constitutional right to abortion. *Bolton*, 410 U. S., at 221–222 (dissenting opinion).

Of course, the fact that a precedent is wrong, even egregiously wrong, does not alone mean that the precedent should be overruled. But as the Court today explains, *Roe* has caused significant negative jurisprudential and real-world consequences. By taking sides on a difficult and contentious issue on which the Constitution is neutral, *Roe* overreached and exceeded this Court's constitutional authority; gravely distorted the Nation's understanding of this Court's proper constitutional role; and caused significant harm to what *Roe* itself recognized as the State's "important and legitimate interest" in protecting fetal life. 410 U. S., at 162. All of that explains why tens of millions of Americans—and the 26 States that explicitly ask the Court to overrule *Roe*—do not accept *Roe* even 49 years later. Under the Court's longstanding *stare decisis* principles, *Roe*

should be overruled.[3]

But the *stare decisis* analysis here is somewhat more complicated because of *Casey*. In 1992, 19 years after *Roe*, *Casey* acknowledged the continuing dispute over *Roe*. The Court sought to find common ground that would resolve the abortion debate and end the national controversy. After careful and thoughtful consideration, the *Casey* plurality reaffirmed a right to abortion through viability (about 24 weeks), while also allowing somewhat more regulation of abortion than *Roe* had allowed.[4]

I have deep and unyielding respect for the Justices who wrote the *Casey* plurality opinion. And I respect the *Casey* plurality's good-faith effort to locate some middle ground or compromise that could resolve this controversy for America.

But as has become increasingly evident over time, *Casey*'s

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[3] I also agree with the Court's conclusion today with respect to reliance. Broad notions of societal reliance have been invoked in support of *Roe*, but the Court has not analyzed reliance in that way in the past. For example, American businesses and workers relied on *Lochner* v. *New York*, 198 U. S. 45 (1905), and *Adkins* v. *Children's Hospital of D. C.*, 261 U. S. 525 (1923), to construct a laissez-faire economy that was free of substantial regulation. In *West Coast Hotel Co.* v. *Parrish*, 300 U. S. 379 (1937), the Court nonetheless overruled *Adkins* and in effect *Lochner*. An entire region of the country relied on *Plessy* v. *Ferguson*, 163 U. S. 537 (1896), to enforce a system of racial segregation. In *Brown* v. *Board of Education*, 347 U. S. 483 (1954), the Court overruled *Plessy*. Much of American society was built around the traditional view of marriage that was upheld in *Baker* v. *Nelson*, 409 U. S. 810 (1972), and that was reflected in laws ranging from tax laws to estate laws to family laws. In *Obergefell* v. *Hodges*, 576 U. S. 644 (2015), the Court nonetheless overruled *Baker*.

[4] As the Court today notes, *Casey*'s approach to *stare decisis* pointed in two directions. *Casey* reaffirmed *Roe*'s viability line, but it expressly overruled the *Roe* trimester framework and also expressly overruled two landmark post-*Roe* abortion cases—*Akron* v. *Akron Center for Reproductive Health, Inc.*, 462 U. S. 416 (1983), and *Thornburgh* v. *American College of Obstetricians and Gynecologists*, 476 U. S. 747 (1986). See *Casey*, 505 U. S., at 870, 872–873, 878–879, 882. *Casey* itself thus directly contradicts any notion of absolute *stare decisis* in abortion cases.

well-intentioned effort did not resolve the abortion debate. The national division has not ended. In recent years, a significant number of States have enacted abortion restrictions that directly conflict with *Roe*. Those laws cannot be dismissed as political stunts or as outlier laws. Those numerous state laws collectively represent the sincere and deeply held views of tens of millions of Americans who continue to fervently believe that allowing abortions up to 24 weeks is far too radical and far too extreme, and does not sufficiently account for what *Roe* itself recognized as the State's "important and legitimate interest" in protecting fetal life. 410 U. S., at 162. In this case, moreover, a majority of the States—26 in all—ask the Court to overrule *Roe* and return the abortion issue to the States.

In short, *Casey*'s *stare decisis* analysis rested in part on a predictive judgment about the future development of state laws and of the people's views on the abortion issue. But that predictive judgment has not borne out. As the Court today explains, the experience over the last 30 years conflicts with *Casey*'s predictive judgment and therefore undermines *Casey*'s precedential force.[5]

In any event, although *Casey* is relevant to the *stare decisis* analysis, the question of whether to overrule *Roe* cannot be dictated by *Casey* alone. To illustrate that *stare decisis* point, consider an example. Suppose that in 1924 this Court had expressly reaffirmed *Plessy* v. *Ferguson* and upheld the States' authority to segregate people on the basis of race. Would the Court in *Brown* some 30 years later in

[5] To be clear, public opposition to a prior decision is not a basis for overruling (or reaffirming) that decision. Rather, the question of whether to overrule a precedent must be analyzed under this Court's traditional *stare decisis* factors. The only point here is that *Casey* adopted a special *stare decisis* principle with respect to *Roe* based on the idea of resolving the national controversy and ending the national division over abortion. The continued and significant opposition to *Roe*, as reflected in the laws and positions of numerous States, is relevant to assessing *Casey* on its own terms.

1954 have reaffirmed *Plessy* and upheld racially segregated schools simply because of that intervening 1924 precedent? Surely the answer is no.

In sum, I agree with the Court's application today of the principles of *stare decisis* and its conclusion that *Roe* should be overruled.

III

After today's decision, the nine Members of this Court will no longer decide the basic legality of pre-viability abortion for all 330 million Americans. That issue will be resolved by the people and their representatives in the democratic process in the States or Congress. But the parties' arguments have raised other related questions, and I address some of them here.

First is the question of how this decision will affect other precedents involving issues such as contraception and marriage—in particular, the decisions in *Griswold* v. *Connecticut*, 381 U. S. 479 (1965); *Eisenstadt* v. *Baird*, 405 U. S. 438 (1972); *Loving* v. *Virginia*, 388 U. S. 1 (1967); and *Obergefell* v. *Hodges*, 576 U. S. 644 (2015). I emphasize what the Court today states: Overruling *Roe* does *not* mean the overruling of those precedents, and does *not* threaten or cast doubt on those precedents.

Second, as I see it, some of the other abortion-related legal questions raised by today's decision are not especially difficult as a constitutional matter. For example, may a State bar a resident of that State from traveling to another State to obtain an abortion? In my view, the answer is no based on the constitutional right to interstate travel. May a State retroactively impose liability or punishment for an abortion that occurred before today's decision takes effect? In my view, the answer is no based on the Due Process Clause or the *Ex Post Facto* Clause. Cf. *Bouie* v. *City of Columbia*, 378 U. S. 347 (1964).

Other abortion-related legal questions may emerge in the

future. But this Court will no longer decide the fundamental question of whether abortion must be allowed throughout the United States through 6 weeks, or 12 weeks, or 15 weeks, or 24 weeks, or some other line. The Court will no longer decide how to evaluate the interests of the pregnant woman and the interests in protecting fetal life throughout pregnancy. Instead, those difficult moral and policy questions will be decided, as the Constitution dictates, by the people and their elected representatives through the constitutional processes of democratic self-government.

* * *

The *Roe* Court took sides on a consequential moral and policy issue that this Court had no constitutional authority to decide. By taking sides, the *Roe* Court distorted the Nation's understanding of this Court's proper role in the American constitutional system and thereby damaged the Court as an institution. As Justice Scalia explained, *Roe* "destroyed the compromises of the past, rendered compromise impossible for the future, and required the entire issue to be resolved uniformly, at the national level." *Casey*, 505 U. S., at 995 (opinion concurring in judgment in part and dissenting in part).

The Court's decision today properly returns the Court to a position of judicial neutrality on the issue of abortion, and properly restores the people's authority to resolve the issue of abortion through the processes of democratic self-government established by the Constitution.

To be sure, many Americans will disagree with the Court's decision today. That would be true no matter how the Court decided this case. Both sides on the abortion issue believe sincerely and passionately in the rightness of their cause. Especially in those difficult and fraught circumstances, the Court must scrupulously adhere to the Constitution's neutral position on the issue of abortion.

Since 1973, more than 20 Justices of this Court have now

grappled with the divisive issue of abortion. I greatly respect all of the Justices, past and present, who have done so. Amidst extraordinary controversy and challenges, all of them have addressed the abortion issue in good faith after careful deliberation, and based on their sincere understandings of the Constitution and of precedent. I have endeavored to do the same.

In my judgment, on the issue of abortion, the Constitution is neither pro-life nor pro-choice. The Constitution is neutral, and this Court likewise must be scrupulously neutral. The Court today properly heeds the constitutional principle of judicial neutrality and returns the issue of abortion to the people and their elected representatives in the democratic process.

SUPREME COURT OF THE UNITED STATES

No. 19–1392

THOMAS E. DOBBS, STATE HEALTH OFFICER OF THE MISSISSIPPI DEPARTMENT OF HEALTH, ET AL., PETITIONERS *v.* JACKSON WOMEN'S HEALTH ORGANIZATION, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

[June 24, 2022]

CHIEF JUSTICE ROBERTS, concurring in the judgment.

We granted certiorari to decide one question: "Whether all pre-viability prohibitions on elective abortions are unconstitutional." Pet. for Cert. i. That question is directly implicated here: Mississippi's Gestational Age Act, Miss. Code Ann. §41–41–191 (2018), generally prohibits abortion after the fifteenth week of pregnancy—several weeks before a fetus is regarded as "viable" outside the womb. In urging our review, Mississippi stated that its case was "an ideal vehicle" to "reconsider the bright-line viability rule," and that a judgment in its favor would "not require the Court to overturn" *Roe* v. *Wade*, 410 U. S. 113 (1973), and *Planned Parenthood of Southeastern Pa.* v. *Casey*, 505 U. S. 833 (1992). Pet. for Cert. 5.

Today, the Court nonetheless rules for Mississippi by doing just that. I would take a more measured course. I agree with the Court that the viability line established by *Roe* and *Casey* should be discarded under a straightforward *stare decisis* analysis. That line never made any sense. Our abortion precedents describe the right at issue as a woman's right to choose to terminate her pregnancy. That right should therefore extend far enough to ensure a reasonable opportunity to choose, but need not extend any further—

certainly not all the way to viability. Mississippi's law allows a woman three months to obtain an abortion, well beyond the point at which it is considered "late" to discover a pregnancy. See A. Ayoola, Late Recognition of Unintended Pregnancies, 32 Pub. Health Nursing 462 (2015) (pregnancy is discoverable and ordinarily discovered by six weeks of gestation). I see no sound basis for questioning the adequacy of that opportunity.

But that is all I would say, out of adherence to a simple yet fundamental principle of judicial restraint: If it is not necessary to decide more to dispose of a case, then it is necessary *not* to decide more. Perhaps we are not always perfect in following that command, and certainly there are cases that warrant an exception. But this is not one of them. Surely we should adhere closely to principles of judicial restraint here, where the broader path the Court chooses entails repudiating a constitutional right we have not only previously recognized, but also expressly reaffirmed applying the doctrine of *stare decisis*. The Court's opinion is thoughtful and thorough, but those virtues cannot compensate for the fact that its dramatic and consequential ruling is unnecessary to decide the case before us.

I

Let me begin with my agreement with the Court, on the only question we need decide here: whether to retain the rule from *Roe* and *Casey* that a woman's right to terminate her pregnancy extends up to the point that the fetus is regarded as "viable" outside the womb. I agree that this rule should be discarded.

First, this Court seriously erred in *Roe* in adopting viability as the earliest point at which a State may legislate to advance its substantial interests in the area of abortion. See *ante,* at 50–53. *Roe* set forth a rigid three-part framework anchored to viability, which more closely resembled a regulatory code than a body of constitutional law. That

framework, moreover, came out of thin air. Neither the Texas statute challenged in *Roe* nor the Georgia statute at issue in its companion case, *Doe* v. *Bolton*, 410 U. S. 179 (1973), included *any* gestational age limit. No party or *amicus* asked the Court to adopt a bright line viability rule. And as for *Casey*, arguments for or against the viability rule played only a *de minimis* role in the parties' briefing and in the oral argument. See Tr. of Oral Arg. 17–18, 51 (fleeting discussion of the viability rule).

It is thus hardly surprising that neither *Roe* nor *Casey* made a persuasive or even colorable argument for why the time for terminating a pregnancy must extend to viability. The Court's jurisprudence on this issue is a textbook illustration of the perils of deciding a question neither presented nor briefed. As has been often noted, *Roe*'s defense of the line boiled down to the circular assertion that the State's interest is compelling only when an unborn child can live outside the womb, because that is when the unborn child can live outside the womb. See 410 U. S., at 163–164; see also J. Ely, The Wages of Crying Wolf: A Comment on *Roe* v. *Wade*, 82 Yale L. J. 920, 924 (1973) (*Roe*'s reasoning "mistake[s] a definition for a syllogism").

Twenty years later, the best defense of the viability line the *Casey* plurality could conjure up was workability. See 505 U. S., at 870. But see *ante,* at 53 (opinion of the Court) (discussing the difficulties in applying the viability standard). Although the plurality attempted to add more content by opining that "it might be said that a woman who fails to act before viability has consented to the State's intervention on behalf of the developing child," *Casey*, 505 U. S., at 870, that mere suggestion provides no basis for choosing viability as the critical tipping point. A similar implied consent argument could be made with respect to a law banning abortions after fifteen weeks, well beyond the point at which nearly all women are aware that they are pregnant, A. Ayoola, M. Nettleman, M. Stommel, & R. Canady, Time

of Pregnancy Recognition and Prenatal Care Use: A Population-based Study in the United States 39 (2010) (Pregnancy Recognition). The dissent, which would retain the viability line, offers no justification for it either.

This Court's jurisprudence since *Casey,* moreover, has "eroded" the "underpinnings" of the viability line, such as they were. *United States* v. *Gaudin*, 515 U. S. 506, 521 (1995). The viability line is a relic of a time when we recognized only two state interests warranting regulation of abortion: maternal health and protection of "potential life." *Roe*, 410 U. S., at 162–163. That changed with *Gonzales* v. *Carhart*, 550 U. S. 124 (2007). There, we recognized a broader array of interests, such as drawing "a bright line that clearly distinguishes abortion and infanticide," maintaining societal ethics, and preserving the integrity of the medical profession. *Id.,* at 157–160. The viability line has nothing to do with advancing such permissible goals. Cf. *id.,* at 171 (Ginsburg, J., dissenting) (*Gonzales* "blur[red] the line, firmly drawn in *Casey*, between previability and postviability abortions"); see also R. Beck, *Gonzales*, *Casey*, and the Viability Rule, 103 Nw. U. L. Rev. 249, 276–279 (2009).

Consider, for example, statutes passed in a number of jurisdictions that forbid abortions after twenty weeks of pregnancy, premised on the theory that a fetus can feel pain at that stage of development. See, *e.g.,* Ala. Code §26–23B–2 (2018). Assuming that prevention of fetal pain is a legitimate state interest after *Gonzales*, there seems to be no reason why viability would be relevant to the permissibility of such laws. The same is true of laws designed to "protect[] the integrity and ethics of the medical profession" and restrict procedures likely to "coarsen society" to the "dignity of human life." *Gonzales*, 550 U. S., at 157. Mississippi's law, for instance, was premised in part on the legislature's finding that the "dilation and evacuation" procedure is a "barbaric practice, dangerous for the maternal patient, and

demeaning to the medical profession." Miss. Code Ann. §41–41–191(2)(b)(i)(8). That procedure accounts for most abortions performed after the first trimester—two weeks before the period at issue in this case—and "involve[s] the use of surgical instruments to crush and tear the unborn child apart." *Ibid.*; see also *Gonzales*, 550 U. S., at 135. Again, it would make little sense to focus on viability when evaluating a law based on these permissible goals.

In short, the viability rule was created outside the ordinary course of litigation, is and always has been completely unreasoned, and fails to take account of state interests since recognized as legitimate. It is indeed "telling that other countries almost uniformly eschew" a viability line. *Ante,* at 53 (opinion of the Court). Only a handful of countries, among them China and North Korea, permit elective abortions after twenty weeks; the rest have coalesced around a 12–week line. See The World's Abortion Laws, Center for Reproductive Rights (Feb. 23, 2021) (online source archived at www.supremecourt.gov) (Canada, China, Iceland, Guinea-Bissau, the Netherlands, North Korea, Singapore, and Vietnam permit elective abortions after twenty weeks). The Court rightly rejects the arbitrary viability rule today.

II

None of this, however, requires that we also take the dramatic step of altogether eliminating the abortion right first recognized in *Roe*. Mississippi itself previously argued as much to this Court in this litigation.

When the State petitioned for our review, its basic request was straightforward: "clarify whether abortion prohibitions before viability are always unconstitutional." Pet. for Cert. 14. The State made a number of strong arguments that the answer is no, *id.*, at 15–26—arguments that, as discussed, I find persuasive. And it went out of its way to make clear that it was *not* asking the Court to repudiate

entirely the right to choose whether to terminate a pregnancy: "To be clear, the questions presented in this petition do not require the Court to overturn *Roe* or *Casey*." *Id.,* at 5. Mississippi tempered that statement with an oblique one-sentence footnote intimating that, if the Court could not reconcile *Roe* and *Casey* with current facts or other cases, it "should not retain erroneous precedent." Pet. for Cert. 5–6, n. 1. But the State never argued that we should grant review for that purpose.

After we granted certiorari, however, Mississippi changed course. In its principal brief, the State bluntly announced that the Court should overrule *Roe* and *Casey*. The Constitution does not protect a right to an abortion, it argued, and a State should be able to prohibit elective abortions if a rational basis supports doing so. See Brief for Petitioners 12–13.

The Court now rewards that gambit, noting three times that the parties presented "no half-measures" and argued that "we must either reaffirm or overrule *Roe* and *Casey*." *Ante,* at 5, 8, 72. Given those two options, the majority picks the latter.

This framing is not accurate. In its brief on the merits, Mississippi in fact argued at length that a decision simply rejecting the viability rule would result in a judgment in its favor. See Brief for Petitioners 5, 38–48. But even if the State had not argued as much, it would not matter. There is no rule that parties can confine this Court to disposing of their case on a particular ground—let alone when review was sought and granted on a different one. Our established practice is instead not to "formulate a rule of constitutional law broader than is required by the precise facts to which it is to be applied." *Washington State Grange* v. *Washington State Republican Party*, 552 U. S. 442, 450 (2008) (quoting *Ashwander* v. *TVA*, 297 U. S. 288, 347 (1936) (Brandeis, J., concurring)); see also *United States* v. *Raines*, 362 U. S. 17, 21 (1960).

Following that "fundamental principle of judicial restraint," *Washington State Grange*, 552 U. S., at 450, we should begin with the narrowest basis for disposition, proceeding to consider a broader one only if necessary to resolve the case at hand. See, *e.g., Office of Personnel Management* v. *Richmond*, 496 U. S. 414, 423 (1990). It is only where there is no valid narrower ground of decision that we should go on to address a broader issue, such as whether a constitutional decision should be overturned. See *Federal Election Comm'n* v. *Wisconsin Right to Life, Inc.*, 551 U. S. 449, 482 (2007) (declining to address the claim that a constitutional decision should be overruled when the appellant prevailed on its narrower constitutional argument).

Here, there is a clear path to deciding this case correctly without overruling *Roe* all the way down to the studs: recognize that the viability line must be discarded, as the majority rightly does, and leave for another day whether to reject any right to an abortion at all. See *Webster* v. *Reproductive Health Services*, 492 U. S. 490, 518, 521 (1989) (plurality opinion) (rejecting *Roe*'s viability line as "rigid" and "indeterminate," while also finding "no occasion to revisit the holding of *Roe*" that, under the Constitution, a State must provide an opportunity to choose to terminate a pregnancy).

Of course, such an approach would not be available if the rationale of *Roe* and *Casey* was inextricably entangled with and dependent upon the viability standard. It is not. Our precedents in this area ground the abortion right in a woman's "right to choose." See *Carey* v. *Population Services Int'l*, 431 U. S. 678, 688–689 (1977) ("underlying foundation of the holdings" in *Roe* and *Griswold* v. *Connecticut*, 381 U. S. 479 (1965), was the "right of decision in matters of childbearing"); *Maher* v. *Roe*, 432 U. S. 464, 473 (1977) (*Roe* and other cases "recognize a constitutionally protected interest in making certain kinds of important decisions free from governmental compulsion" (internal quotation marks

omitted)); *id.*, at 473–474 (*Roe* "did not declare an unqualified constitutional right to an abortion," but instead protected "the woman from unduly burdensome interference with her freedom to decide whether to terminate her pregnancy" (internal quotation marks omitted)); *Webster*, 492 U. S., at 520 (plurality opinion) (*Roe* protects "the claims of a woman to decide for herself whether or not to abort a fetus she [is] carrying"); *Gonzales*, 550 U. S., at 146 (a State may not "prohibit any woman from making the ultimate decision to terminate her pregnancy"). If that is the basis for *Roe*, *Roe*'s viability line should be scrutinized from the same perspective. And there is nothing inherent in the right to choose that requires it to extend to viability or any other point, so long as a real choice is provided. See *Webster*, 492 U. S., at 519 (plurality opinion) (finding no reason "why the State's interest in protecting potential human life should come into existence only at the point of viability").

To be sure, in reaffirming the right to an abortion, *Casey* termed the viability rule *Roe*'s "central holding." 505 U. S., at 860. Other cases of ours have repeated that language. See, *e.g., Gonzales*, 550 U. S., at 145–146. But simply declaring it does not make it so. The question in *Roe* was whether there was any right to abortion in the Constitution. See Brief for Appellants and Brief for Appellees, in *Roe* v. *Wade*, O. T. 1971, No. 70–18. How far the right extended was a concern that was separate and subsidiary, and—not surprisingly—entirely unbriefed.

The Court in *Roe* just chose to address both issues in one opinion: It first recognized a right to "choose to terminate [a] pregnancy" under the Constitution, see 410 U. S., at 129–159, and then, having done so, explained that a line should be drawn at viability such that a State could not proscribe abortion before that period, see *id.*, at 163. The viability line is a separate rule fleshing out the metes and bounds of *Roe*'s core holding. Applying principles of *stare decisis*, I would excise that additional rule—and only that

rule—from our jurisprudence.

The majority lists a number of cases that have stressed the importance of the viability rule to our abortion precedents. See *ante,* at 73–74. I agree that—whether it was originally holding or dictum—the viability line is clearly part of our "past precedent," and the Court has applied it as such in several cases since *Roe*. *Ante,* at 73. My point is that *Roe* adopted two distinct rules of constitutional law: one, that a woman has the right to choose to terminate a pregnancy; two, that such right may be overridden by the State's legitimate interests when the fetus is viable outside the womb. The latter is obviously distinct from the former. I would abandon that timing rule, but see no need in this case to consider the basic right.

The Court contends that it is impossible to address *Roe*'s conclusion that the Constitution protects the woman's right to abortion, without also addressing *Roe*'s rule that the State's interests are not constitutionally adequate to justify a ban on abortion until viability. See *ibid*. But we have partially overruled precedents before, see, *e.g., United States* v. *Miller*, 471 U. S. 130, 142–144 (1985); *Daniels* v. *Williams*, 474 U. S. 327, 328–331 (1986); *Batson* v. *Kentucky*, 476 U. S. 79, 90–93 (1986), and certainly have never held that a distinct holding defining the contours of a constitutional right must be treated as part and parcel of the right itself.

Overruling the subsidiary rule is sufficient to resolve this case in Mississippi's favor. The law at issue allows abortions up through fifteen weeks, providing an adequate opportunity to exercise the right *Roe* protects. By the time a pregnant woman has reached that point, her pregnancy is well into the second trimester. Pregnancy tests are now inexpensive and accurate, and a woman ordinarily discovers she is pregnant by six weeks of gestation. See A. Branum & K. Ahrens, Trends in Timing of Pregnancy Awareness Among US Women, 21 Maternal & Child Health J. 715, 722

(2017). Almost all know by the end of the first trimester. Pregnancy Recognition 39. Safe and effective abortifacients, moreover, are now readily available, particularly during those early stages. See I. Adibi et al., Abortion, 22 Geo. J. Gender & L. 279, 303 (2021). Given all this, it is no surprise that the vast majority of abortions happen in the first trimester. See Centers for Disease Control and Prevention, Abortion Surveillance—United States 1 (2020). Presumably most of the remainder would also take place earlier if later abortions were not a legal option. Ample evidence thus suggests that a 15-week ban provides sufficient time, absent rare circumstances, for a woman "to decide for herself" whether to terminate her pregnancy. *Webster*, 492 U. S., at 520 (plurality opinion).*

III

Whether a precedent should be overruled is a question "entirely within the discretion of the court." *Hertz* v. *Woodman*, 218 U. S. 205, 212 (1910); see also *Payne* v. *Tennessee*, 501 U. S. 808, 828 (1991) (*stare decisis* is a "principle of policy"). In my respectful view, the sound exercise of that discretion should have led the Court to resolve the case on the narrower grounds set forth above, rather than overruling *Roe* and *Casey* entirely. The Court says there is no "principled basis" for this approach, *ante,* at 73, but in fact it is firmly grounded in basic principles of *stare decisis* and judicial restraint.

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*The majority contends that "nothing like [my approach] was recommended by either party." *Ante,* at 72. But as explained, Mississippi in fact pressed a similar argument in its filings before this Court. See Pet. for Cert. 15–26; Brief for Petitioners 5, 38–48 (urging the Court to reject the viability rule and reverse); Reply Brief 20–22 (same). The approach also finds support in prior opinions. See *Webster*, 492 U. S., at 518–521 (plurality opinion) (abandoning "key elements" of the *Roe* framework under *stare decisis* while declining to reconsider *Roe*'s holding that the Constitution protects the right to an abortion).

The Court's decision to overrule *Roe* and *Casey* is a serious jolt to the legal system—regardless of how you view those cases. A narrower decision rejecting the misguided viability line would be markedly less unsettling, and nothing more is needed to decide this case.

Our cases say that the effect of overruling a precedent on reliance interests is a factor to consider in deciding whether to take such a step, and respondents argue that generations of women have relied on the right to an abortion in organizing their relationships and planning their futures. Brief for Respondents 36–41; see also *Casey*, 505 U. S., at 856 (making the same point). The Court questions whether these concerns are pertinent under our precedents, see *ante,* at 64–65, but the issue would not even arise with a decision rejecting only the viability line: It cannot reasonably be argued that women have shaped their lives in part on the assumption that they would be able to abort up to viability, as opposed to fifteen weeks.

In support of its holding, the Court cites three seminal constitutional decisions that involved overruling prior precedents: *Brown* v. *Board of Education*, 347 U. S. 483 (1954), *West Virginia Bd. of Ed.* v. *Barnette*, 319 U. S. 624 (1943), and *West Coast Hotel Co.* v. *Parrish*, 300 U. S. 379 (1937). See *ante,* at 40–41. The opinion in *Brown* was unanimous and eleven pages long; this one is neither. *Barnette* was decided only three years after the decision it overruled, three Justices having had second thoughts. And *West Coast Hotel* was issued against a backdrop of unprecedented economic despair that focused attention on the fundamental flaws of existing precedent. It also was part of a sea change in this Court's interpretation of the Constitution, "signal[ing] the demise of an entire line of important precedents," *ante,* at 40—a feature the Court expressly disclaims in today's decision, see *ante,* at 32, 66. None of these leading cases, in short, provides a template for what the Court does today.

The Court says we should consider whether to overrule *Roe* and *Casey* now, because if we delay we would be forced to consider the issue again in short order. See *ante*, at 76–77. There would be "turmoil" until we did so, according to the Court, because of existing state laws with "shorter deadlines or no deadline at all." *Ante*, at 76. But under the narrower approach proposed here, state laws outlawing abortion altogether would still violate binding precedent. And to the extent States have laws that set the cutoff date earlier than fifteen weeks, any litigation over that timeframe would proceed free of the distorting effect that the viability rule has had on our constitutional debate. The same could be true, for that matter, with respect to legislative consideration in the States. We would then be free to exercise our discretion in deciding whether and when to take up the issue, from a more informed perspective.

* * *

Both the Court's opinion and the dissent display a relentless freedom from doubt on the legal issue that I cannot share. I am not sure, for example, that a ban on terminating a pregnancy from the moment of conception must be treated the same under the Constitution as a ban after fifteen weeks. A thoughtful Member of this Court once counseled that the difficulty of a question "admonishes us to observe the wise limitations on our function and to confine ourselves to deciding only what is necessary to the disposition of the immediate case." *Whitehouse* v. *Illinois Central R. Co.*, 349 U. S. 366, 372–373 (1955) (Frankfurter, J., for the Court). I would decide the question we granted review to answer—whether the previously recognized abortion right bars all abortion restrictions prior to viability, such that a ban on abortions after fifteen weeks of pregnancy is necessarily unlawful. The answer to that question is no, and there is no need to go further to decide this case.

I therefore concur only in the judgment.

SUPREME COURT OF THE UNITED STATES

No. 19–1392

THOMAS E. DOBBS, STATE HEALTH OFFICER OF THE MISSISSIPPI DEPARTMENT OF HEALTH, ET AL., PETITIONERS *v.* JACKSON WOMEN'S HEALTH ORGANIZATION, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

[June 24, 2022]

JUSTICE BREYER, JUSTICE SOTOMAYOR, and JUSTICE KAGAN, dissenting.

For half a century, *Roe* v. *Wade*, 410 U. S. 113 (1973), and *Planned Parenthood of Southeastern Pa.* v. *Casey*, 505 U. S. 833 (1992), have protected the liberty and equality of women. *Roe* held, and *Casey* reaffirmed, that the Constitution safeguards a woman's right to decide for herself whether to bear a child. *Roe* held, and *Casey* reaffirmed, that in the first stages of pregnancy, the government could not make that choice for women. The government could not control a woman's body or the course of a woman's life: It could not determine what the woman's future would be. See *Casey*, 505 U. S., at 853; *Gonzales* v. *Carhart*, 550 U. S. 124, 171–172 (2007) (Ginsburg, J., dissenting). Respecting a woman as an autonomous being, and granting her full equality, meant giving her substantial choice over this most personal and most consequential of all life decisions.

Roe and *Casey* well understood the difficulty and divisiveness of the abortion issue. The Court knew that Americans hold profoundly different views about the "moral[ity]" of "terminating a pregnancy, even in its earliest stage." *Casey*, 505 U. S., at 850. And the Court recognized that "the

State has legitimate interests from the outset of the pregnancy in protecting" the "life of the fetus that may become a child." *Id.*, at 846. So the Court struck a balance, as it often does when values and goals compete. It held that the State could prohibit abortions after fetal viability, so long as the ban contained exceptions to safeguard a woman's life or health. It held that even before viability, the State could regulate the abortion procedure in multiple and meaningful ways. But until the viability line was crossed, the Court held, a State could not impose a "substantial obstacle" on a woman's "right to elect the procedure" as she (not the government) thought proper, in light of all the circumstances and complexities of her own life. *Ibid.*

Today, the Court discards that balance. It says that from the very moment of fertilization, a woman has no rights to speak of. A State can force her to bring a pregnancy to term, even at the steepest personal and familial costs. An abortion restriction, the majority holds, is permissible whenever rational, the lowest level of scrutiny known to the law. And because, as the Court has often stated, protecting fetal life is rational, States will feel free to enact all manner of restrictions. The Mississippi law at issue here bars abortions after the 15th week of pregnancy. Under the majority's ruling, though, another State's law could do so after ten weeks, or five or three or one—or, again, from the moment of fertilization. States have already passed such laws, in anticipation of today's ruling. More will follow. Some States have enacted laws extending to all forms of abortion procedure, including taking medication in one's own home. They have passed laws without any exceptions for when the woman is the victim of rape or incest. Under those laws, a woman will have to bear her rapist's child or a young girl her father's—no matter if doing so will destroy her life. So too, after today's ruling, some States may compel women to carry to term a fetus with severe physical anomalies—for example, one afflicted with Tay-Sachs disease, sure to die

within a few years of birth. States may even argue that a prohibition on abortion need make no provision for protecting a woman from risk of death or physical harm. Across a vast array of circumstances, a State will be able to impose its moral choice on a woman and coerce her to give birth to a child.

Enforcement of all these draconian restrictions will also be left largely to the States' devices. A State can of course impose criminal penalties on abortion providers, including lengthy prison sentences. But some States will not stop there. Perhaps, in the wake of today's decision, a state law will criminalize the woman's conduct too, incarcerating or fining her for daring to seek or obtain an abortion. And as Texas has recently shown, a State can turn neighbor against neighbor, enlisting fellow citizens in the effort to root out anyone who tries to get an abortion, or to assist another in doing so.

The majority tries to hide the geographically expansive effects of its holding. Today's decision, the majority says, permits "each State" to address abortion as it pleases. *Ante*, at 79. That is cold comfort, of course, for the poor woman who cannot get the money to fly to a distant State for a procedure. Above all others, women lacking financial resources will suffer from today's decision. In any event, interstate restrictions will also soon be in the offing. After this decision, some States may block women from traveling out of State to obtain abortions, or even from receiving abortion medications from out of State. Some may criminalize efforts, including the provision of information or funding, to help women gain access to other States' abortion services. Most threatening of all, no language in today's decision stops the Federal Government from prohibiting abortions nationwide, once again from the moment of conception and without exceptions for rape or incest. If that happens, "the views of [an individual State's] citizens" will not matter. *Ante*, at 1. The challenge for a woman will be to finance a

trip not to "New York [or] California" but to Toronto. *Ante*, at 4 (KAVANAUGH, J., concurring).

Whatever the exact scope of the coming laws, one result of today's decision is certain: the curtailment of women's rights, and of their status as free and equal citizens. Yesterday, the Constitution guaranteed that a woman confronted with an unplanned pregnancy could (within reasonable limits) make her own decision about whether to bear a child, with all the life-transforming consequences that act involves. And in thus safeguarding each woman's reproductive freedom, the Constitution also protected "[t]he ability of women to participate equally in [this Nation's] economic and social life." *Casey*, 505 U. S., at 856. But no longer. As of today, this Court holds, a State can always force a woman to give birth, prohibiting even the earliest abortions. A State can thus transform what, when freely undertaken, is a wonder into what, when forced, may be a nightmare. Some women, especially women of means, will find ways around the State's assertion of power. Others—those without money or childcare or the ability to take time off from work—will not be so fortunate. Maybe they will try an unsafe method of abortion, and come to physical harm, or even die. Maybe they will undergo pregnancy and have a child, but at significant personal or familial cost. At the least, they will incur the cost of losing control of their lives. The Constitution will, today's majority holds, provide no shield, despite its guarantees of liberty and equality for all.

And no one should be confident that this majority is done with its work. The right *Roe* and *Casey* recognized does not stand alone. To the contrary, the Court has linked it for decades to other settled freedoms involving bodily integrity, familial relationships, and procreation. Most obviously, the right to terminate a pregnancy arose straight out of the right to purchase and use contraception. See *Griswold* v. *Connecticut*, 381 U. S. 479 (1965); *Eisenstadt* v. *Baird*, 405 U. S. 438 (1972). In turn, those rights led, more recently,

to rights of same-sex intimacy and marriage. See *Lawrence* v. *Texas*, 539 U. S. 558 (2003); *Obergefell* v. *Hodges*, 576 U. S. 644 (2015). They are all part of the same constitutional fabric, protecting autonomous decisionmaking over the most personal of life decisions. The majority (or to be more accurate, most of it) is eager to tell us today that nothing it does "cast[s] doubt on precedents that do not concern abortion." *Ante*, at 66; cf. *ante*, at 3 (THOMAS, J., concurring) (advocating the overruling of *Griswold*, *Lawrence*, and *Obergefell*). But how could that be? The lone rationale for what the majority does today is that the right to elect an abortion is not "deeply rooted in history": Not until *Roe*, the majority argues, did people think abortion fell within the Constitution's guarantee of liberty. *Ante*, at 32. The same could be said, though, of most of the rights the majority claims it is not tampering with. The majority could write just as long an opinion showing, for example, that until the mid-20th century, "there was no support in American law for a constitutional right to obtain [contraceptives]." *Ante*, at 15. So one of two things must be true. Either the majority does not really believe in its own reasoning. Or if it does, all rights that have no history stretching back to the mid-19th century are insecure. Either the mass of the majority's opinion is hypocrisy, or additional constitutional rights are under threat. It is one or the other.

One piece of evidence on that score seems especially salient: The majority's cavalier approach to overturning this Court's precedents. *Stare decisis* is the Latin phrase for a foundation stone of the rule of law: that things decided should stay decided unless there is a very good reason for change. It is a doctrine of judicial modesty and humility. Those qualities are not evident in today's opinion. The majority has no good reason for the upheaval in law and society it sets off. *Roe* and *Casey* have been the law of the land for decades, shaping women's expectations of their choices when an unplanned pregnancy occurs. Women have relied

on the availability of abortion both in structuring their relationships and in planning their lives. The legal framework *Roe* and *Casey* developed to balance the competing interests in this sphere has proved workable in courts across the country. No recent developments, in either law or fact, have eroded or cast doubt on those precedents. Nothing, in short, has changed. Indeed, the Court in *Casey* already found all of that to be true. *Casey* is a precedent about precedent. It reviewed the same arguments made here in support of overruling *Roe*, and it found that doing so was not warranted. The Court reverses course today for one reason and one reason only: because the composition of this Court has changed. *Stare decisis*, this Court has often said, "contributes to the actual and perceived integrity of the judicial process" by ensuring that decisions are "founded in the law rather than in the proclivities of individuals." *Payne* v. *Tennessee*, 501 U. S. 808, 827 (1991); *Vasquez* v. *Hillery*, 474 U. S. 254, 265 (1986). Today, the proclivities of individuals rule. The Court departs from its obligation to faithfully and impartially apply the law. We dissent.

I

We start with *Roe* and *Casey*, and with their deep connections to a broad swath of this Court's precedents. To hear the majority tell the tale, *Roe* and *Casey* are aberrations: They came from nowhere, went nowhere—and so are easy to excise from this Nation's constitutional law. That is not true. After describing the decisions themselves, we explain how they are rooted in—and themselves led to—other rights giving individuals control over their bodies and their most personal and intimate associations. The majority does not wish to talk about these matters for obvious reasons; to do so would both ground *Roe* and *Casey* in this Court's precedents and reveal the broad implications of today's decision. But the facts will not so handily disappear. *Roe* and *Casey* were from the beginning, and are even more now, embedded

in core constitutional concepts of individual freedom, and of the equal rights of citizens to decide on the shape of their lives. Those legal concepts, one might even say, have gone far toward defining what it means to be an American. For in this Nation, we do not believe that a government controlling all private choices is compatible with a free people. So we do not (as the majority insists today) place everything within "the reach of majorities and [government] officials." *West Virginia Bd. of Ed.* v. *Barnette*, 319 U. S. 624, 638 (1943). We believe in a Constitution that puts some issues off limits to majority rule. Even in the face of public opposition, we uphold the right of individuals—yes, including women—to make their own choices and chart their own futures. Or at least, we did once.

A

Some half-century ago, *Roe* struck down a state law making it a crime to perform an abortion unless its purpose was to save a woman's life. The *Roe* Court knew it was treading on difficult and disputed ground. It understood that different people's "experiences," "values," and "religious training" and beliefs led to "opposing views" about abortion. 410 U. S., at 116. But by a 7-to-2 vote, the Court held that in the earlier stages of pregnancy, that contested and contestable choice must belong to a woman, in consultation with her family and doctor. The Court explained that a long line of precedents, "founded in the Fourteenth Amendment's concept of personal liberty," protected individual decisionmaking related to "marriage, procreation, contraception, family relationships, and child rearing and education." *Id.*, at 152–153 (citations omitted). For the same reasons, the Court held, the Constitution must protect "a woman's decision whether or not to terminate her pregnancy." *Id.*, at 153. The Court recognized the myriad ways bearing a child can alter the "life and future" of a woman and other

members of her family. *Ibid.* A State could not, "by adopting one theory of life," override all "rights of the pregnant woman." *Id.*, at 162.

At the same time, though, the Court recognized "valid interest[s]" of the State "in regulating the abortion decision." *Id.*, at 153. The Court noted in particular "important interests" in "protecting potential life," "maintaining medical standards," and "safeguarding [the] health" of the woman. *Id.*, at 154. No "absolut[ist]" account of the woman's right could wipe away those significant state claims. *Ibid.*

The Court therefore struck a balance, turning on the stage of the pregnancy at which the abortion would occur. The Court explained that early on, a woman's choice must prevail, but that "at some point the state interests" become "dominant." *Id.*, at 155. It then set some guideposts. In the first trimester of pregnancy, the State could not interfere at all with the decision to terminate a pregnancy. At any time after that point, the State could regulate to protect the pregnant woman's health, such as by insisting that abortion providers and facilities meet safety requirements. And after the fetus's viability—the point when the fetus "has the capability of meaningful life outside the mother's womb"—the State could ban abortions, except when necessary to preserve the woman's life or health. *Id.*, at 163–164.

In the 20 years between *Roe* and *Casey*, the Court expressly reaffirmed *Roe* on two occasions, and applied it on many more. Recognizing that "arguments [against *Roe*] continue to be made," we responded that the doctrine of *stare decisis* "demands respect in a society governed by the rule of law." *Akron* v. *Akron Center for Reproductive Health, Inc.*, 462 U. S. 416, 419–420 (1983). And we avowed that the "vitality" of "constitutional principles cannot be allowed to yield simply because of disagreement with them." *Thornburgh* v. *American College of Obstetricians and Gynecologists*, 476 U. S. 747, 759 (1986). So the Court, over and

over, enforced the constitutional principles *Roe* had declared. See, *e.g.*, *Ohio* v. *Akron Center for Reproductive Health*, 497 U. S. 502 (1990); *Hodgson* v. *Minnesota*, 497 U. S. 417 (1990); *Simopoulos* v. *Virginia*, 462 U. S. 506 (1983); *Planned Parenthood Assn. of Kansas City, Mo., Inc.* v. *Ashcroft*, 462 U. S. 476 (1983); *H. L.* v. *Matheson*, 450 U. S. 398 (1981); *Bellotti* v. *Baird*, 443 U. S. 622 (1979); *Planned Parenthood of Central Mo.* v. *Danforth*, 428 U. S. 52 (1976).

Then, in *Casey*, the Court considered the matter anew, and again upheld *Roe*'s core precepts. *Casey* is in significant measure a precedent about the doctrine of precedent—until today, one of the Court's most important. But we leave for later that aspect of the Court's decision. The key thing now is the substantive aspect of the Court's considered conclusion that "the essential holding of *Roe* v. *Wade* should be retained and once again reaffirmed." 505 U. S., at 846.

Central to that conclusion was a full-throated restatement of a woman's right to choose. Like *Roe*, *Casey* grounded that right in the Fourteenth Amendment's guarantee of "liberty." That guarantee encompasses realms of conduct not specifically referenced in the Constitution: "Marriage is mentioned nowhere" in that document, yet the Court was "no doubt correct" to protect the freedom to marry "against state interference." 505 U. S., at 847–848. And the guarantee of liberty encompasses conduct today that was not protected at the time of the Fourteenth Amendment. See *id.*, at 848. "It is settled now," the Court said—though it was not always so—that "the Constitution places limits on a State's right to interfere with a person's most basic decisions about family and parenthood, as well as bodily integrity." *Id.*, at 849 (citations omitted); see *id.*, at 851 (similarly describing the constitutional protection given to "personal decisions relating to marriage, procreation, contraception, [and] family relationships"). Especially

important in this web of precedents protecting an individual's most "personal choices" were those guaranteeing the right to contraception. *Ibid.*; see *id.*, at 852–853. In those cases, the Court had recognized "the right of the individual" to make the vastly consequential "decision whether to bear" a child. *Id.*, at 851 (emphasis deleted). So too, *Casey* reasoned, the liberty clause protects the decision of a woman confronting an unplanned pregnancy. Her decision about abortion was central, in the same way, to her capacity to chart her life's course. See *id.*, at 853.

In reaffirming the right *Roe* recognized, the Court took full account of the diversity of views on abortion, and the importance of various competing state interests. Some Americans, the Court stated, "deem [abortion] nothing short of an act of violence against innocent human life." 505 U. S., at 852. And each State has an interest in "the protection of potential life"—as *Roe* itself had recognized. 505 U. S., at 871 (plurality opinion). On the one hand, that interest was not conclusive. The State could not "resolve" the "moral and spiritual" questions raised by abortion in "such a definitive way that a woman lacks all choice in the matter." *Id.*, at 850 (majority opinion). It could not force her to bear the "pain" and "physical constraints" of "carr[ying] a child to full term" when she would have chosen an early abortion. *Id.*, at 852. But on the other hand, the State had, as *Roe* had held, an exceptionally significant interest in disallowing abortions in the later phase of a pregnancy. And it had an ever-present interest in "ensur[ing] that the woman's choice is informed" and in presenting the case for "choos[ing] childbirth over abortion." 505 U. S., at 878 (plurality opinion).

So *Casey* again struck a balance, differing from *Roe*'s in only incremental ways. It retained *Roe*'s "central holding" that the State could bar abortion only after viability. 505 U. S., at 860 (majority opinion). The viability line, *Casey* thought, was "more workable" than any other in marking

the place where the woman's liberty interest gave way to a State's efforts to preserve potential life. *Id.*, at 870 (plurality opinion). At that point, a "second life" was capable of "independent existence." *Ibid.* If the woman even by then had not acted, she lacked adequate grounds to object to "the State's intervention on [the developing child's] behalf." *Ibid.* At the same time, *Casey* decided, based on two decades of experience, that the *Roe* framework did not give States sufficient ability to regulate abortion prior to viability. In that period, *Casey* now made clear, the State could regulate not only to protect the woman's health but also to "promot[e] prenatal life." 505 U. S., at 873 (plurality opinion). In particular, the State could ensure informed choice and could try to promote childbirth. See *id.*, at 877–878. But the State still could not place an "undue burden"—or "substantial obstacle"—"in the path of a woman seeking an abortion." *Id.*, at 878. Prior to viability, the woman, consistent with the constitutional "meaning of liberty," must "retain the ultimate control over her destiny and her body." *Id.*, at 869.

We make one initial point about this analysis in light of the majority's insistence that *Roe* and *Casey*, and we in defending them, are dismissive of a "State's interest in protecting prenatal life." *Ante*, at 38. Nothing could get those decisions more wrong. As just described, *Roe* and *Casey* invoked powerful state interests in that protection, operative at every stage of the pregnancy and overriding the woman's liberty after viability. The strength of those state interests is exactly why the Court allowed greater restrictions on the abortion right than on other rights deriving from the Fourteenth Amendment.[1] But what *Roe* and *Casey* also recognized—which today's majority does not—is that a woman's

[1] For this reason, we do not understand the majority's view that our analogy between the right to an abortion and the rights to contraception and same-sex marriage shows that we think "[t]he Constitution does not permit the States to regard the destruction of a 'potential life' as a matter

freedom and equality are likewise involved. That fact—the presence of countervailing interests—is what made the abortion question hard, and what necessitated balancing. The majority scoffs at that idea, castigating us for "repeatedly prais[ing] the 'balance'" the two cases arrived at (with the word "balance" in scare quotes). *Ante*, at 38. To the majority "balance" is a dirty word, as moderation is a foreign concept. The majority would allow States to ban abortion from conception onward because it does not think forced childbirth at all implicates a woman's rights to equality and freedom. Today's Court, that is, does not think there is anything of constitutional significance attached to a woman's control of her body and the path of her life. *Roe* and *Casey* thought that one-sided view misguided. In some sense, that is the difference in a nutshell between our precedents and the majority opinion. The constitutional regime we have lived in for the last 50 years recognized competing interests, and sought a balance between them. The constitutional regime we enter today erases the woman's interest and recognizes only the State's (or the Federal Government's).

B

The majority makes this change based on a single question: Did the reproductive right recognized in *Roe* and *Casey*

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of any significance." *Ante*, at 38. To the contrary. The liberty interests underlying those rights are, as we will describe, quite similar. See *infra*, at 22–24. But only in the sphere of abortion is the state interest in protecting potential life involved. So only in that sphere, as both *Roe* and *Casey* recognized, may a State impinge so far on the liberty interest (barring abortion after viability and discouraging it before). The majority's failure to understand this fairly obvious point stems from its rejection of the idea of balancing interests in this (or maybe in any) constitutional context. Cf. *New York State Rifle & Pistol Assn., Inc.* v. *Bruen*, 597 U. S. ___, ___, ___–___ (2022) (slip op., at 8, 15–17). The majority thinks that a woman has *no* liberty or equality interest in the decision to bear a child, so a State's interest in protecting fetal life necessarily prevails.

exist in "1868, the year when the Fourteenth Amendment was ratified"? *Ante*, at 23. The majority says (and with this much we agree) that the answer to this question is no: In 1868, there was no nationwide right to end a pregnancy, and no thought that the Fourteenth Amendment provided one.

Of course, the majority opinion refers as well to some later and earlier history. On the one side of 1868, it goes back as far as the 13th (the 13th!) century. See *ante*, at 17. But that turns out to be wheel-spinning. First, it is not clear what relevance such early history should have, even to the majority. See *New York State Rifle & Pistol Assn., Inc.* v. *Bruen*, 597 U. S. ___, ___ (2022) (slip op., at 26) ("Historical evidence that long predates [ratification] may not illuminate the scope of the right"). If the early history obviously supported abortion rights, the majority would no doubt say that only the views of the Fourteenth Amendment's ratifiers are germane. See *ibid.* (It is "better not to go too far back into antiquity," except if olden "law survived to become our Founders' law"). Second—and embarrassingly for the majority—early law in fact does provide some support for abortion rights. Common-law authorities did not treat abortion as a crime before "quickening"—the point when the fetus moved in the womb.[2] And early American law followed the common-law rule.[3] So the criminal law of that early time might be taken as roughly consonant with

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[2] See, *e.g.*, 1 W. Blackstone, Commentaries on the Laws of England 129–130 (7th ed. 1775) (Blackstone); E. Coke, Institutes of the Laws of England 50 (1644).

[3] See J. Mohr, Abortion in America: The Origins and Evolution of National Policy, 1800–1900, pp. 3–4 (1978). The majority offers no evidence to the contrary—no example of a founding-era law making pre-quickening abortion a crime (except when a woman died). See *ante*, at 20–21. And even in the mid-19th century, more than 10 States continued to allow pre-quickening abortions. See Brief for American Historical Association et al. as *Amici Curiae* 27, and n. 14.

Roe's and *Casey*'s different treatment of early and late abortions. Better, then, to move forward in time. On the other side of 1868, the majority occasionally notes that many States barred abortion up to the time of *Roe*. See *ante*, at 24, 36. That is convenient for the majority, but it is window dressing. As the same majority (plus one) just informed us, "post-ratification adoption or acceptance of laws that are *inconsistent* with the original meaning of the constitutional text obviously cannot overcome or alter that text." *New York State Rifle & Pistol Assn., Inc.*, 597 U. S., at ___–___ (slip op., at 27–28). Had the pre-*Roe* liberalization of abortion laws occurred more quickly and more widely in the 20th century, the majority would say (once again) that only the ratifiers' views are germane.

The majority's core legal postulate, then, is that we in the 21st century must read the Fourteenth Amendment just as its ratifiers did. And that is indeed what the majority emphasizes over and over again. See *ante*, at 47 ("[T]he most important historical fact [is] how the States regulated abortion when the Fourteenth Amendment was adopted"); see also *ante*, at 5, 16, and n. 24, 23, 25, 28. If the ratifiers did not understand something as central to freedom, then neither can we. Or said more particularly: If those people did not understand reproductive rights as part of the guarantee of liberty conferred in the Fourteenth Amendment, then those rights do not exist.

As an initial matter, note a mistake in the just preceding sentence. We referred there to the "people" who ratified the Fourteenth Amendment: What rights did those "people" have in their heads at the time? But, of course, "people" did not ratify the Fourteenth Amendment. Men did. So it is perhaps not so surprising that the ratifiers were not perfectly attuned to the importance of reproductive rights for women's liberty, or for their capacity to participate as equal members of our Nation. Indeed, the ratifiers—both in 1868 and when the original Constitution was approved in 1788—

did not understand women as full members of the community embraced by the phrase "We the People." In 1868, the first wave of American feminists were explicitly told—of course by men—that it was not their time to seek constitutional protections. (Women would not get even the vote for another half-century.) To be sure, most women in 1868 also had a foreshortened view of their rights: If most men could not then imagine giving women control over their bodies, most women could not imagine having that kind of autonomy. But that takes away nothing from the core point. Those responsible for the original Constitution, including the Fourteenth Amendment, did not perceive women as equals, and did not recognize women's rights. When the majority says that we must read our foundational charter as viewed at the time of ratification (except that we may also check it against the Dark Ages), it consigns women to second-class citizenship.

Casey itself understood this point, as will become clear. See *infra*, at 23–24. It recollected with dismay a decision this Court issued just five years after the Fourteenth Amendment's ratification, approving a State's decision to deny a law license to a woman and suggesting as well that a woman had no legal status apart from her husband. See 505 U. S., at 896–897 (majority opinion) (citing *Bradwell* v. *State*, 16 Wall. 130 (1873)). "There was a time," *Casey* explained, when the Constitution did not protect "men and women alike." 505 U. S., at 896. But times had changed. A woman's place in society had changed, and constitutional law had changed along with it. The relegation of women to inferior status in either the public sphere or the family was "no longer consistent with our understanding" of the Constitution. *Id.*, at 897. Now, "[t]he Constitution protects all individuals, male or female," from "the abuse of governmental power" or "unjustified state interference." *Id.*, at 896, 898.

So how is it that, as *Casey* said, our Constitution, read

now, grants rights to women, though it did not in 1868? How is it that our Constitution subjects discrimination against them to heightened judicial scrutiny? How is it that our Constitution, through the Fourteenth Amendment's liberty clause, guarantees access to contraception (also not legally protected in 1868) so that women can decide for themselves whether and when to bear a child? How is it that until today, that same constitutional clause protected a woman's right, in the event contraception failed, to end a pregnancy in its earlier stages?

The answer is that this Court has rejected the majority's pinched view of how to read our Constitution. "The Founders," we recently wrote, "knew they were writing a document designed to apply to ever-changing circumstances over centuries." *NLRB* v. *Noel Canning*, 573 U. S. 513, 533–534 (2014). Or in the words of the great Chief Justice John Marshall, our Constitution is "intended to endure for ages to come," and must adapt itself to a future "seen dimly," if at all. *McCulloch* v. *Maryland*, 4 Wheat. 316, 415 (1819). That is indeed why our Constitution is written as it is. The Framers (both in 1788 and 1868) understood that the world changes. So they did not define rights by reference to the specific practices existing at the time. Instead, the Framers defined rights in general terms, to permit future evolution in their scope and meaning. And over the course of our history, this Court has taken up the Framers' invitation. It has kept true to the Framers' principles by applying them in new ways, responsive to new societal understandings and conditions.

Nowhere has that approach been more prevalent than in construing the majestic but open-ended words of the Fourteenth Amendment—the guarantees of "liberty" and "equality" for all. And nowhere has that approach produced prouder moments, for this country and the Court. Consider an example *Obergefell* used a few years ago. The Court

there confronted a claim, based on *Washington* v. *Glucksberg*, 521 U. S. 702 (1997), that the Fourteenth Amendment "must be defined in a most circumscribed manner, with central reference to specific historical practices"—exactly the view today's majority follows. *Obergefell*, 576 U. S., at 671. And the Court specifically rejected that view.[4] In doing so, the Court reflected on what the proposed, historically circumscribed approach would have meant for interracial marriage. See *ibid.* The Fourteenth Amendment's ratifiers did not think it gave black and white people a right to marry each other. To the contrary, contemporaneous practice deemed that act quite as unprotected as abortion. Yet the Court in *Loving* v. *Virginia*, 388 U. S. 1 (1967), read the Fourteenth Amendment to embrace the Lovings' union. If, *Obergefell* explained, "rights were defined by who exercised them in the past, then received practices could serve as their own continued justification"—even when they conflict with "liberty" and "equality" as later and more broadly understood. 576 U. S., at 671. The Constitution does not freeze for all time the original view of what those rights guarantee, or how they apply.

That does not mean anything goes. The majority wishes people to think there are but two alternatives: (1) accept the original applications of the Fourteenth Amendment and no others, or (2) surrender to judges' "own ardent views," ungrounded in law, about the "liberty that Americans should enjoy." *Ante*, at 14. At least, that idea is what the majority *sometimes* tries to convey. At other times, the majority (or, rather, most of it) tries to assure the public that it has no designs on rights (for example, to contraception) that arose only in the back half of the 20th century—in other words,

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[4] The majority ignores that rejection. See *ante*, at 5, 13, 36. But it is unequivocal: The *Glucksberg* test, *Obergefell* said, "may have been appropriate" in considering physician-assisted suicide, but "is inconsistent with the approach this Court has used in discussing other fundamental rights, including marriage and intimacy." 576 U. S., at 671.

that it is happy to pick and choose, in accord with individual preferences. See *ante*, at 32, 66, 71–72; *ante*, at 10 (KAVANAUGH, J., concurring); but see *ante*, at 3 (THOMAS, J., concurring). But that is a matter we discuss later. See *infra*, at 24–29. For now, our point is different: It is that applications of liberty and equality can evolve while remaining grounded in constitutional principles, constitutional history, and constitutional precedents. The second Justice Harlan discussed how to strike the right balance when he explained why he would have invalidated a State's ban on contraceptive use. Judges, he said, are not "free to roam where unguided speculation might take them." *Poe* v. *Ullman*, 367 U. S. 497, 542 (1961) (dissenting opinion). Yet they also must recognize that the constitutional "tradition" of this country is not captured whole at a single moment. *Ibid.* Rather, its meaning gains content from the long sweep of our history and from successive judicial precedents—each looking to the last and each seeking to apply the Constitution's most fundamental commitments to new conditions. That is why Americans, to go back to *Obergefell*'s example, have a right to marry across racial lines. And it is why, to go back to Justice Harlan's case, Americans have a right to use contraceptives so they can choose for themselves whether to have children.

All that is what *Casey* understood. *Casey* explicitly rejected the present majority's method. "[T]he specific practices of States at the time of the adoption of the Fourteenth Amendment," *Casey* stated, do not "mark[ ] the outer limits of the substantive sphere of liberty which the Fourteenth Amendment protects." 505 U. S., at 848.[5] To hold otherwise—as the majority does today—"would be inconsistent

[5] In a perplexing paragraph in its opinion, the majority declares that it need not say whether that statement from *Casey* is true. See *ante*, at 32–33. But how could that be? Has not the majority insisted for the prior 30 or so pages that the "specific practice[]" respecting abortion at the

with our law." *Id.*, at 847. Why? Because the Court has "vindicated [the] principle" over and over that (no matter the sentiment in 1868) "there is a realm of personal liberty which the government may not enter"—especially relating to "bodily integrity" and "family life." *Id.*, at 847, 849, 851. *Casey* described in detail the Court's contraception cases. See *id.*, at 848–849, 851–853. It noted decisions protecting the right to marry, including to someone of another race. See *id.*, at 847–848 ("[I]nterracial marriage was illegal in most States in the 19th century, but the Court was no doubt correct in finding it to be an aspect of liberty protected against state interference"). In reviewing decades and decades of constitutional law, *Casey* could draw but one conclusion: Whatever was true in 1868, "[i]t is settled now, as it was when the Court heard arguments in *Roe* v. *Wade*, that the Constitution places limits on a State's right to interfere with a person's most basic decisions about family and parenthood." *Id.*, at 849.

And that conclusion still held good, until the Court's intervention here. It was settled at the time of *Roe*, settled at the time of *Casey*, and settled yesterday that the Constitution places limits on a State's power to assert control over an individual's body and most personal decisionmaking. A multitude of decisions supporting that principle led to *Roe*'s recognition and *Casey*'s reaffirmation of the right to choose; and *Roe* and *Casey* in turn supported additional protections for intimate and familial relations. The majority has em-

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time of the Fourteenth Amendment precludes its recognition as a constitutional right? *Ante*, at 33. It has. And indeed, it has given no other reason for overruling *Roe* and *Casey*. *Ante*, at 15–16. We are not mindreaders, but here is our best guess as to what the majority means. It says next that "[a]bortion is nothing new." *Ante*, at 33. So apparently, the Fourteenth Amendment might provide protection for things wholly unknown in the 19th century; maybe one day there could be constitutional protection for, oh, time travel. But as to anything that was known back then (such as abortion or contraception), no such luck.

barrassingly little to say about those precedents. It (literally) rattles them off in a single paragraph; and it implies that they have nothing to do with each other, or with the right to terminate an early pregnancy. See *ante*, at 31–32 (asserting that recognizing a relationship among them, as addressing aspects of personal autonomy, would ineluctably "license fundamental rights" to illegal "drug use [and] prostitution"). But that is flat wrong. The Court's precedents about bodily autonomy, sexual and familial relations, and procreation are all interwoven—all part of the fabric of our constitutional law, and because that is so, of our lives. Especially women's lives, where they safeguard a right to self-determination.

And eliminating that right, we need to say before further describing our precedents, is not taking a "neutral" position, as JUSTICE KAVANAUGH tries to argue. *Ante*, at 2–3, 5, 7, 11–12 (concurring opinion). His idea is that neutrality lies in giving the abortion issue to the States, where some can go one way and some another. But would he say that the Court is being "scrupulously neutral" if it allowed New York and California to ban all the guns they want? *Ante*, at 3. If the Court allowed some States to use unanimous juries and others not? If the Court told the States: Decide for yourselves whether to put restrictions on church attendance? We could go on—and in fact we will. Suppose JUSTICE KAVANAUGH were to say (in line with the majority opinion) that the rights we just listed are more textually or historically grounded than the right to choose. What, then, of the right to contraception or same-sex marriage? Would it be "scrupulously neutral" for the Court to eliminate those rights too? The point of all these examples is that when it comes to rights, the Court does not act "neutrally" when it leaves everything up to the States. Rather, the Court acts neutrally when it protects the right against all comers. And to apply that point to the case here: When the Court decimates a right women have held for 50 years, the Court is

not being "scrupulously neutral." It is instead taking sides: against women who wish to exercise the right, and for States (like Mississippi) that want to bar them from doing so. JUSTICE KAVANAUGH cannot obscure that point by appropriating the rhetoric of even-handedness. His position just is what it is: A brook-no-compromise refusal to recognize a woman's right to choose, from the first day of a pregnancy. And that position, as we will now show, cannot be squared with this Court's longstanding view that women indeed have rights (whatever the state of the world in 1868) to make the most personal and consequential decisions about their bodies and their lives.

Consider first, then, the line of this Court's cases protecting "bodily integrity." *Casey*, 505 U. S., at 849. "No right," in this Court's time-honored view, "is held more sacred, or is more carefully guarded," than "the right of every individual to the possession and control of his own person." *Union Pacific R. Co.* v. *Botsford*, 141 U. S. 250, 251 (1891); see *Cruzan* v. *Director, Mo. Dept. of Health*, 497 U. S. 261, 269 (1990) (Every adult "has a right to determine what shall be done with his own body"). Or to put it more simply: Everyone, including women, owns their own bodies. So the Court has restricted the power of government to interfere with a person's medical decisions or compel her to undergo medical procedures or treatments. See, *e.g.*, *Winston* v. *Lee*, 470 U. S. 753, 766–767 (1985) (forced surgery); *Rochin* v. *California*, 342 U. S. 165, 166, 173–174 (1952) (forced stomach pumping); *Washington* v. *Harper*, 494 U. S. 210, 229, 236 (1990) (forced administration of antipsychotic drugs).

Casey recognized the "doctrinal affinity" between those precedents and *Roe*. 505 U. S., at 857. And that doctrinal affinity is born of a factual likeness. There are few greater incursions on a body than forcing a woman to complete a pregnancy and give birth. For every woman, those experiences involve all manner of physical changes, medical treatments (including the possibility of a cesarean section), and

medical risk. Just as one example, an American woman is 14 times more likely to die by carrying a pregnancy to term than by having an abortion. See *Whole Woman's Health* v. *Hellerstedt*, 579 U. S. 582, 618 (2016). That women happily undergo those burdens and hazards of their own accord does not lessen how far a State impinges on a woman's body when it compels her to bring a pregnancy to term. And for some women, as *Roe* recognized, abortions are medically necessary to prevent harm. See 410 U. S., at 153. The majority does not say—which is itself ominous—whether a State may prevent a woman from obtaining an abortion when she and her doctor have determined it is a needed medical treatment.

So too, *Roe* and *Casey* fit neatly into a long line of decisions protecting from government intrusion a wealth of private choices about family matters, child rearing, intimate relationships, and procreation. See *Casey*, 505 U. S., at 851, 857; *Roe*, 410 U. S., at 152–153; see also *ante*, at 31–32 (listing the myriad decisions of this kind that *Casey* relied on). Those cases safeguard particular choices about whom to marry; whom to have sex with; what family members to live with; how to raise children—and crucially, whether and when to have children. In varied cases, the Court explained that those choices—"the most intimate and personal" a person can make—reflect fundamental aspects of personal identity; they define the very "attributes of personhood." *Casey*, 505 U. S., at 851. And they inevitably shape the nature and future course of a person's life (and often the lives of those closest to her). So, the Court held, those choices belong to the individual, and not the government. That is the essence of what liberty requires.

And liberty may require it, this Court has repeatedly said, even when those living in 1868 would not have recognized the claim—because they would not have seen the person making it as a full-fledged member of the community. Throughout our history, the sphere of protected liberty has

expanded, bringing in individuals formerly excluded. In that way, the constitutional values of liberty and equality go hand in hand; they do not inhabit the hermetically sealed containers the majority portrays. Compare *Obergefell*, 576 U. S., at 672–675, with *ante*, at 10–11. So before *Roe* and *Casey*, the Court expanded in successive cases those who could claim the right to marry—though their relationships would have been outside the law's protection in the mid-19th century. See, *e.g.*, *Loving*, 388 U. S. 1 (interracial couples); *Turner* v. *Safley*, 482 U. S. 78 (1987) (prisoners); see also, *e.g.*, *Stanley* v. *Illinois*, 405 U. S. 645, 651–652 (1972) (offering constitutional protection to untraditional "family unit[s]"). And after *Roe* and *Casey*, of course, the Court continued in that vein. With a critical stop to hold that the Fourteenth Amendment protected same-sex intimacy, the Court resolved that the Amendment also conferred on same-sex couples the right to marry. See *Lawrence*, 539 U. S. 558; *Obergefell*, 576 U. S. 644. In considering that question, the Court held, "[h]istory and tradition," especially as reflected in the course of our precedent, "guide and discipline [the] inquiry." *Id.*, at 664. But the sentiments of 1868 alone do not and cannot "rule the present." *Ibid.*

Casey similarly recognized the need to extend the constitutional sphere of liberty to a previously excluded group. The Court then understood, as the majority today does not, that the men who ratified the Fourteenth Amendment and wrote the state laws of the time did not view women as full and equal citizens. See *supra*, at 15. A woman then, *Casey* wrote, "had no legal existence separate from her husband." 505 U. S., at 897. Women were seen only "as the center of home and family life," without "full and independent legal status under the Constitution." *Ibid.* But that could not be true any longer: The State could not now insist on the historically dominant "vision of the woman's role." *Id.*, at 852. And equal citizenship, *Casey* realized, was inescapably con-

nected to reproductive rights. "The ability of women to participate equally" in the "life of the Nation"—in all its economic, social, political, and legal aspects—"has been facilitated by their ability to control their reproductive lives." *Id.*, at 856. Without the ability to decide whether and when to have children, women could not—in the way men took for granted—determine how they would live their lives, and how they would contribute to the society around them.

For much that reason, *Casey* made clear that the precedents *Roe* most closely tracked were those involving contraception. Over the course of three cases, the Court had held that a right to use and gain access to contraception was part of the Fourteenth Amendment's guarantee of liberty. See *Griswold*, 381 U. S. 479; *Eisenstadt*, 405 U. S. 438; *Carey* v. *Population Services Int'l*, 431 U. S. 678 (1977). That clause, we explained, necessarily conferred a right "to be free from unwarranted governmental intrusion into matters so fundamentally affecting a person as the decision whether to bear or beget a child." *Eisenstadt*, 405 U. S., at 453; see *Carey*, 431 U. S., at 684–685. *Casey* saw *Roe* as of a piece: In "critical respects the abortion decision is of the same character." 505 U. S., at 852. "[R]easonable people," the Court noted, could also oppose contraception; and indeed, they could believe that "some forms of contraception" similarly implicate a concern with "potential life." *Id.*, at 853, 859. Yet the views of others could not automatically prevail against a woman's right to control her own body and make her own choice about whether to bear, and probably to raise, a child. When an unplanned pregnancy is involved—because either contraception or abortion is outlawed—"the liberty of the woman is at stake in a sense unique to the human condition." *Id.*, at 852. No State could undertake to resolve the moral questions raised "in such a definitive way" as to deprive a woman of all choice. *Id.*, at 850.

Faced with all these connections between *Roe*/*Casey* and judicial decisions recognizing other constitutional rights,

the majority tells everyone not to worry. It can (so it says) neatly extract the right to choose from the constitutional edifice without affecting any associated rights. (Think of someone telling you that the Jenga tower simply will not collapse.) Today's decision, the majority first says, "does not undermine" the decisions cited by *Roe* and *Casey*—the ones involving "marriage, procreation, contraception, [and] family relationships"—"in any way." *Ante*, at 32; *Casey*, 505 U. S., at 851. Note that this first assurance does not extend to rights recognized after *Roe* and *Casey*, and partly based on them—in particular, rights to same-sex intimacy and marriage. See *supra*, at 23.[6] On its later tries, though, the majority includes those too: "Nothing in this opinion should be understood to cast doubt on precedents that do not concern abortion." *Ante*, at 66; see *ante*, at 71–72. That right is unique, the majority asserts, "because [abortion] terminates life or potential life." *Ante*, at 66 (internal quotation marks omitted); see *ante*, at 32, 71–72. So the majority depicts today's decision as "a restricted railroad ticket, good for this day and train only." *Smith* v. *Allwright*, 321 U. S. 649, 669 (1944) (Roberts, J., dissenting). Should the audience for these too-much-repeated protestations be duly satisfied? We think not.

The first problem with the majority's account comes from JUSTICE THOMAS's concurrence—which makes clear he is not with the program. In saying that nothing in today's opinion casts doubt on non-abortion precedents, JUSTICE THOMAS explains, he means only that they are not at issue

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[6] And note, too, that the author of the majority opinion recently joined a statement, written by another member of the majority, lamenting that *Obergefell* deprived States of the ability "to resolve th[e] question [of same-sex marriage] through legislation." *Davis* v. *Ermold*, 592 U. S. ___, ___ (2020) (statement of THOMAS, J.) (slip op., at 1). That might sound familiar. Cf. *ante*, at 44 (lamenting that *Roe* "short-circuited the democratic process"). And those two Justices hardly seemed content to let the matter rest: The Court, they said, had "created a problem that only it can fix." *Davis*, 592 U. S., at ___ (slip op., at 4).

in this very case. See *ante*, at 7 ("[T]his case does not present the opportunity to reject" those precedents). But he lets us know what he wants to do when they are. "[I]n future cases," he says, "we should reconsider all of this Court's substantive due process precedents, including *Griswold*, *Lawrence*, and *Obergefell*." *Ante*, at 3; see also *supra*, at 25, and n. 6. And when we reconsider them? Then "we have a duty" to "overrul[e] these demonstrably erroneous decisions." *Ante*, at 3. So at least one Justice is planning to use the ticket of today's decision again and again and again.

Even placing the concurrence to the side, the assurance in today's opinion still does not work. Or at least that is so if the majority is serious about its sole reason for overturning *Roe* and *Casey*: the legal status of abortion in the 19th century. Except in the places quoted above, the state interest in protecting fetal life plays no part in the majority's analysis. To the contrary, the majority takes pride in not expressing a view "about the status of the fetus." *Ante*, at 65; see *ante*, at 32 (aligning itself with *Roe*'s and *Casey*'s stance of not deciding whether life or potential life is involved); *ante*, at 38–39 (similar). The majority's departure from *Roe* and *Casey* rests instead—and only—on whether a woman's decision to end a pregnancy involves any Fourteenth Amendment liberty interest (against which *Roe* and *Casey* balanced the state interest in preserving fetal life).[7]

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[7] Indulge a few more words about this point. The majority had a choice of two different ways to overrule *Roe* and *Casey*. It could claim that those cases underrated the State's interest in fetal life. Or it could claim that they overrated a woman's constitutional liberty interest in choosing an abortion. (Or both.) The majority here rejects the first path, and we can see why. Taking that route would have prevented the majority from claiming that it means only to leave this issue to the democratic process—that it does not have a dog in the fight. See *ante*, at 38–39, 65. And indeed, doing so might have suggested a revolutionary proposition: that the fetus is itself a constitutionally protected "person," such that an abortion ban is constitutionally *mandated*. The majority therefore chooses the second path, arguing that the Fourteenth Amendment does

According to the majority, no liberty interest is present—because (and only because) the law offered no protection to the woman's choice in the 19th century. But here is the rub. The law also did not then (and would not for ages) protect a wealth of other things. It did not protect the rights recognized in *Lawrence* and *Obergefell* to same-sex intimacy and marriage. It did not protect the right recognized in *Loving* to marry across racial lines. It did not protect the right recognized in *Griswold* to contraceptive use. For that matter, it did not protect the right recognized in *Skinner* v. *Oklahoma ex rel. Williamson*, 316 U. S. 535 (1942), not to be sterilized without consent. So if the majority is right in its legal analysis, all those decisions were wrong, and all those matters properly belong to the States too—whatever the particular state interests involved. And if that is true, it is impossible to understand (as a matter of logic and principle) how the majority can say that its opinion today does not threaten—does not even "undermine"—any number of other constitutional rights. *Ante*, at 32.[8]

Nor does it even help just to take the majority at its word. Assume the majority is sincere in saying, for whatever reason, that it will go so far and no further. Scout's honor. Still, the future significance of today's opinion will be decided in the future. And law often has a way of evolving

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not conceive of the abortion decision as implicating liberty, because the law in the 19th century gave that choice no protection. The trouble is that the chosen path—which is, again, the solitary rationale for the Court's decision—provides no way to distinguish between the right to choose an abortion and a range of other rights, including contraception.

[8] The majority briefly (very briefly) gestures at the idea that some *stare decisis* factors might play out differently with respect to these other constitutional rights. But the majority gives no hint as to why. And the majority's (mis)treatment of *stare decisis* in this case provides little reason to think that the doctrine would stand as a barrier to the majority's redoing any other decision it considered egregiously wrong. See *infra*, at 30–57.

without regard to original intentions—a way of actually following where logic leads, rather than tolerating hard-to-explain lines. Rights can expand in that way. Dissenting in *Lawrence*, Justice Scalia explained why he took no comfort in the Court's statement that a decision recognizing the right to same-sex intimacy did "not involve" same-sex marriage. 539 U. S., at 604. That could be true, he wrote, "only if one entertains the belief that principle and logic have nothing to do with the decisions of this Court." *Id.*, at 605. Score one for the dissent, as a matter of prophecy. And logic and principle are not one-way ratchets. Rights can contract in the same way and for the same reason—because whatever today's majority might say, one thing really does lead to another. We fervently hope that does not happen because of today's decision. We hope that we will not join Justice Scalia in the book of prophets. But we cannot understand how anyone can be confident that today's opinion will be the last of its kind.

Consider, as our last word on this issue, contraception. The Constitution, of course, does not mention that word. And there is no historical right to contraception, of the kind the majority insists on. To the contrary, the American legal landscape in the decades after the Civil War was littered with bans on the sale of contraceptive devices. So again, there seem to be two choices. See *supra*, at 5, 26–27. If the majority is serious about its historical approach, then *Griswold* and its progeny are in the line of fire too. Or if it is not serious, then . . . what *is* the basis of today's decision? If we had to guess, we suspect the prospects of this Court approving bans on contraception are low. But once again, the future significance of today's opinion will be decided in the future. At the least, today's opinion will fuel the fight to get contraception, and any other issues with a moral dimension, out of the Fourteenth Amendment and into state

legislatures.[9]

Anyway, today's decision, taken on its own, is catastrophic enough. As a matter of constitutional method, the majority's commitment to replicate in 2022 every view about the meaning of liberty held in 1868 has precious little to recommend it. Our law in this constitutional sphere, as in most, has for decades upon decades proceeded differently. It has considered fundamental constitutional principles, the whole course of the Nation's history and traditions, and the step-by-step evolution of the Court's precedents. It is disciplined but not static. It relies on accumulated judgments, not just the sentiments of one long-ago generation of men (who themselves believed, and drafted the Constitution to reflect, that the world progresses). And by doing so, it includes those excluded from that olden conversation, rather than perpetuating its bounds.

As a matter of constitutional substance, the majority's opinion has all the flaws its method would suggest. Because laws in 1868 deprived women of any control over their bodies, the majority approves States doing so today. Because those laws prevented women from charting the course of their own lives, the majority says States can do the same again. Because in 1868, the government could tell a pregnant woman—even in the first days of her pregnancy—that she could do nothing but bear a child, it can once more impose that command. Today's decision strips women of agency over what even the majority agrees is a

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[9] As this Court has considered this case, some state legislators have begun to call for restrictions on certain forms of contraception. See I. Stevenson, After *Roe* Decision, Idaho Lawmakers May Consider Restricting Some Contraception, Idaho Statesman (May 10, 2022), https://www.idahostatesman.com/news/politics-government/state-politics/article261207007.html; T. Weinberg, "Anything's on the Table": Missouri Legislature May Revisit Contraceptive Limits Post-*Roe*, Missouri Independent (May 20, 2022), https://www.missouriindependent.com/2022/05/20/anythings-on-the-table-missouri-legislature-may-revisit-contraceptive-limits-post-roe/.

contested and contestable moral issue. It forces her to carry out the State's will, whatever the circumstances and whatever the harm it will wreak on her and her family. In the Fourteenth Amendment's terms, it takes away her liberty. Even before we get to *stare decisis*, we dissent.

II

By overruling *Roe*, *Casey*, and more than 20 cases reaffirming or applying the constitutional right to abortion, the majority abandons *stare decisis*, a principle central to the rule of law. "*Stare decisis*" means "to stand by things decided." Black's Law Dictionary 1696 (11th ed. 2019). Blackstone called it the "established rule to abide by former precedents." 1 Blackstone 69. *Stare decisis* "promotes the evenhanded, predictable, and consistent development of legal principles." *Payne*, 501 U. S., at 827. It maintains a stability that allows people to order their lives under the law. See H. Hart & A. Sacks, The Legal Process: Basic Problems in the Making and Application of Law 568–569 (1994).

Stare decisis also "contributes to the integrity of our constitutional system of government" by ensuring that decisions "are founded in the law rather than in the proclivities of individuals." *Vasquez*, 474 U. S., at 265. As Hamilton wrote: It "avoid[s] an arbitrary discretion in the courts." The Federalist No. 78, p. 529 (J. Cooke ed. 1961) (A. Hamilton). And as Blackstone said before him: It "keep[s] the scale of justice even and steady, and not liable to waver with every new judge's opinion." 1 Blackstone 69. The "glory" of our legal system is that it "gives preference to precedent rather than . . . jurists." H. Humble, Departure From Precedent, 19 Mich. L. Rev. 608, 614 (1921). That is why, the story goes, Chief Justice John Marshall donned a plain black robe when he swore the oath of office. That act personified an American tradition. Judges' personal preferences do not make law; rather, the law speaks through

them.

That means the Court may not overrule a decision, even a constitutional one, without a "special justification." *Gamble* v. *United States*, 587 U. S. ___, ___ (2019) (slip op., at 11). *Stare decisis* is, of course, not an "inexorable command"; it is sometimes appropriate to overrule an earlier decision. *Pearson* v. *Callahan*, 555 U. S. 223, 233 (2009). But the Court must have a good reason to do so over and above the belief "that the precedent was wrongly decided." *Halliburton Co.* v. *Erica P. John Fund, Inc.*, 573 U. S. 258, 266 (2014). "[I]t is not alone sufficient that we would decide a case differently now than we did then." *Kimble* v. *Marvel Entertainment, LLC*, 576 U. S. 446, 455 (2015).

The majority today lists some 30 of our cases as overruling precedent, and argues that they support overruling *Roe* and *Casey*. But none does, as further described below and in the Appendix. See *infra*, at 61–66. In some, the Court only partially modified or clarified a precedent. And in the rest, the Court relied on one or more of the traditional *stare decisis* factors in reaching its conclusion. The Court found, for example, (1) a change in legal doctrine that undermined or made obsolete the earlier decision; (2) a factual change that had the same effect; or (3) an absence of reliance because the earlier decision was less than a decade old. (The majority is wrong when it says that we insist on a test of changed law or fact alone, although that is present in most of the cases. See *ante*, at 69.) None of those factors apply here: Nothing—and in particular, no significant legal or factual change—supports overturning a half-century of settled law giving women control over their reproductive lives.

First, for all the reasons we have given, *Roe* and *Casey* were correct. In holding that a State could not "resolve" the debate about abortion "in such a definitive way that a woman lacks all choice in the matter," the Court protected women's liberty and women's equality in a way comporting with our Fourteenth Amendment precedents. *Casey*, 505

U. S., at 850. Contrary to the majority's view, the legal status of abortion in the 19th century does not weaken those decisions. And the majority's repeated refrain about "usurp[ing]" state legislatures' "power to address" a publicly contested question does not help it on the key issue here. *Ante*, at 44; see *ante*, at 1. To repeat: The point of a right is to shield individual actions and decisions "from the vicissitudes of political controversy, to place them beyond the reach of majorities and officials and to establish them as legal principles to be applied by the courts." *Barnette*, 319 U. S., at 638; *supra*, at 7. However divisive, a right is not at the people's mercy.

In any event "[w]hether or not we . . . agree" with a prior precedent is the beginning, not the end, of our analysis—and the remaining "principles of *stare decisis* weigh heavily against overruling" *Roe* and *Casey*. *Dickerson* v. *United States*, 530 U. S. 428, 443 (2000). *Casey* itself applied those principles, in one of this Court's most important precedents about precedent. After assessing the traditional *stare decisis* factors, *Casey* reached the only conclusion possible—that *stare decisis* operates powerfully here. It still does. The standards *Roe* and *Casey* set out are perfectly workable. No changes in either law or fact have eroded the two decisions. And tens of millions of American women have relied, and continue to rely, on the right to choose. So under traditional *stare decisis* principles, the majority has no special justification for the harm it causes.

And indeed, the majority comes close to conceding that point. The majority barely mentions any legal or factual changes that have occurred since *Roe* and *Casey*. It suggests that the two decisions are hard for courts to implement, but cannot prove its case. In the end, the majority says, all it must say to override *stare decisis* is one thing: that it believes *Roe* and *Casey* "egregiously wrong." *Ante*, at 70. That rule could equally spell the end of any precedent with which a bare majority of the present Court disagrees.

So how does that approach prevent the "scale of justice" from "waver[ing] with every new judge's opinion"? 1 Blackstone 69. It does not. It makes radical change too easy and too fast, based on nothing more than the new views of new judges. The majority has overruled *Roe* and *Casey* for one and only one reason: because it has always despised them, and now it has the votes to discard them. The majority thereby substitutes a rule by judges for the rule of law.

A

Contrary to the majority's view, there is nothing unworkable about *Casey*'s "undue burden" standard. Its primary focus on whether a State has placed a "substantial obstacle" on a woman seeking an abortion is "the sort of inquiry familiar to judges across a variety of contexts." *June Medical Services L. L. C.* v. *Russo*, 591 U. S. ___, ___ (2020) (slip op., at 6) (ROBERTS, C. J., concurring in judgment). And it has given rise to no more conflict in application than many standards this Court and others unhesitatingly apply every day.

General standards, like the undue burden standard, are ubiquitous in the law, and particularly in constitutional adjudication. When called on to give effect to the Constitution's broad principles, this Court often crafts flexible standards that can be applied case-by-case to a myriad of unforeseeable circumstances. See *Dickerson*, 530 U. S., at 441 ("No court laying down a general rule can possibly foresee the various circumstances" in which it must apply). So, for example, the Court asks about undue or substantial burdens on speech, on voting, and on interstate commerce. See, *e.g.*, *Arizona Free Enterprise Club's Freedom Club PAC* v. *Bennett*, 564 U. S. 721, 748 (2011); *Burdick* v. *Takushi*, 504 U. S. 428, 433–434 (1992); *Pike* v. *Bruce Church, Inc.*, 397 U. S. 137, 142 (1970). The *Casey* undue burden standard is the same. It also resembles general standards that courts

work with daily in other legal spheres—like the "rule of reason" in antitrust law or the "arbitrary and capricious" standard for agency decisionmaking. See *Standard Oil Co. of N. J.* v. *United States*, 221 U. S. 1, 62 (1911); *Motor Vehicle Mfrs. Assn. of United States, Inc.* v. *State Farm Mut. Automobile Ins. Co.*, 463 U. S. 29, 42–43 (1983). Applying general standards to particular cases is, in many contexts, just what it means to do law.

And the undue burden standard has given rise to no unusual difficulties. Of course, it has provoked some disagreement among judges. *Casey* knew it would: That much "is to be expected in the application of any legal standard which must accommodate life's complexity." 505 U. S., at 878 (plurality opinion). Which is to say: That much is to be expected in the application of any legal standard. But the majority vastly overstates the divisions among judges applying the standard. We count essentially two. THE CHIEF JUSTICE disagreed with other Justices in the *June Medical* majority about whether *Casey* called for weighing the benefits of an abortion regulation against its burdens. See 591 U. S., at ___–___ (slip op., at 6–7); *ante*, at 59, 60, and n. 53.[10] We agree that the *June Medical* difference is a difference—but not one that would actually make a difference in the result of most cases (it did not in *June Medical*), and not one incapable of resolution were it ever to matter. As for lower courts, there is now a one-year-old, one-to-one Circuit split about how the undue burden standard applies to state laws that ban abortions for certain reasons, like fetal abnormality. See *ante*, at 61, and n. 57. That is about it, as far as we can see.[11] And that is not much. This Court

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[10] Some lower courts then differed over which opinion in *June Medical* was controlling—but that is a dispute not about the undue burden standard, but about the "*Marks* rule," which tells courts how to determine the precedential effects of a divided decision.

[11] The rest of the majority's supposed splits are, shall we say, unim-

mostly does not even grant certiorari on one-year-old, one-to-one Circuit splits, because we know that a bit of disagreement is an inevitable part of our legal system. To borrow an old saying that might apply here: Not one or even a couple of swallows can make the majority's summer.

Anyone concerned about workability should consider the majority's substitute standard. The majority says a law regulating or banning abortion "must be sustained if there is a rational basis on which the legislature could have thought that it would serve legitimate state interests." *Ante*, at 77. And the majority lists interests like "respect for and preservation of prenatal life," "protection of maternal health," elimination of certain "medical procedures," "mitigation of fetal pain," and others. *Ante*, at 78. This Court will surely face critical questions about how that test applies. Must a state law allow abortions when necessary to protect a woman's life and health? And if so, exactly when? How much risk to a woman's life can a State force

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pressive. The majority says that lower courts have split over how to apply the undue burden standard to parental notification laws. See *ante*, at 60, and n. 54. But that is not so. The state law upheld had an exemption for minors demonstrating adequate maturity, whereas the ones struck down did not. Compare *Planned Parenthood of Blue Ridge* v. *Camblos*, 155 F. 3d 352, 383–384 (CA4 1998), with *Planned Parenthood of Ind. & Ky., Inc.* v. *Adams*, 937 F. 3d 973, 981 (CA7 2019), cert. granted, judgment vacated, 591 U. S. ___ (2020), and *Planned Parenthood, Sioux Falls Clinic* v. *Miller*, 63 F. 3d 1452, 1460 (CA8 1995). The majority says there is a split about bans on certain types of abortion procedures. See *ante*, at 61, and n. 55. But the one court to have separated itself on that issue did so based on a set of factual findings significantly different from those in other cases. Compare *Whole Woman's Health* v. *Paxton*, 10 F. 4th 430, 447–453 (CA5 2021), with *EMW Women's Surgical Center, P.S.C.* v. *Friedlander*, 960 F. 3d 785, 798–806 (CA6 2020), and *West Ala. Women's Center* v. *Williamson*, 900 F. 3d 1310, 1322–1324 (CA11 2018). Finally, the majority says there is a split about whether an increase in travel time to reach a clinic is an undue burden. See *ante*, at 61, and n. 56. But the cases to which the majority refers predate this Court's decision in *Whole Woman's Health* v. *Hellerstedt*, 579 U. S. 582 (2016), which clarified how to apply the undue burden standard to that context.

her to incur, before the Fourteenth Amendment's protection of life kicks in? Suppose a patient with pulmonary hypertension has a 30-to-50 percent risk of dying with ongoing pregnancy; is that enough? And short of death, how much illness or injury can the State require her to accept, consistent with the Amendment's protection of liberty and equality? Further, the Court may face questions about the application of abortion regulations to medical care most people view as quite different from abortion. What about the morning-after pill? IUDs? In vitro fertilization? And how about the use of dilation and evacuation or medication for miscarriage management? See generally L. Harris, Navigating Loss of Abortion Services—A Large Academic Medical Center Prepares for the Overturn of *Roe* v. *Wade*, 386 New England J. Med. 2061 (2022).[12]

Finally, the majority's ruling today invites a host of questions about interstate conflicts. See *supra*, at 3; see generally D. Cohen, G. Donley, & R. Rebouché, The New Abortion Battleground, 123 Colum. L. Rev. (forthcoming 2023), https://ssrn.com/abstract=4032931. Can a State bar women from traveling to another State to obtain an abortion? Can a State prohibit advertising out-of-state abortions or helping women get to out-of-state providers? Can a State inter-

[12] To take just the last, most medical treatments for miscarriage are identical to those used in abortions. See Kaiser Family Foundation (Kaiser), G. Weigel, L. Sobel, & A. Salganicoff, Understanding Pregnancy Loss in the Context of Abortion Restrictions and Fetal Harm Laws (Dec. 4, 2019), https://www.kff.org/womens-health-policy/issue-brief/understanding-pregnancy-loss-in-the-context-of-abortion-restrictions-and-fetal-harm-laws/. Blanket restrictions on "abortion" procedures and medications therefore may be understood to deprive women of effective treatment for miscarriages, which occur in about 10 to 30 percent of pregnancies. See Health Affairs, J. Strasser, C. Chen, S. Rosenbaum, E. Schenk, & E. Dewhurst, Penalizing Abortion Providers Will Have Ripple Effects Across Pregnancy Care (May 3, 2022), https://www.healthaffairs.org/do/10.1377/forefront.20220503.129912/.

fere with the mailing of drugs used for medication abortions? The Constitution protects travel and speech and interstate commerce, so today's ruling will give rise to a host of new constitutional questions. Far from removing the Court from the abortion issue, the majority puts the Court at the center of the coming "interjurisdictional abortion wars." *Id.*, at ___ (draft, at 1).

In short, the majority does not save judges from unwieldy tests or extricate them from the sphere of controversy. To the contrary, it discards a known, workable, and predictable standard in favor of something novel and probably far more complicated. It forces the Court to wade further into hotly contested issues, including moral and philosophical ones, that the majority criticizes *Roe* and *Casey* for addressing.

B

When overruling constitutional precedent, the Court has almost always pointed to major legal or factual changes undermining a decision's original basis. A review of the Appendix to this dissent proves the point. See *infra*, at 61–66. Most "successful proponent[s] of overruling precedent," this Court once said, have carried "the heavy burden of persuading the Court that changes in society or in the law dictate that the values served by *stare decisis* yield in favor of a greater objective." *Vasquez*, 474 U. S., at 266. Certainly, that was so of the main examples the majority cites: *Brown* v. *Board of Education*, 347 U. S. 483 (1954), and *West Coast Hotel Co.* v. *Parrish*, 300 U. S. 379 (1937). But it is not so today. Although nodding to some arguments others have made about "modern developments," the majority does not really rely on them, no doubt seeing their slimness. *Ante*, at 33; see *ante*, at 34. The majority briefly invokes the current controversy over abortion. See *ante*, at 70–71. But it has to acknowledge that the same dispute has existed for

decades: Conflict over abortion is not a change but a constant. (And as we will later discuss, the presence of that continuing division provides more of a reason to stick with, than to jettison, existing precedent. See *infra*, at 55–57.) In the end, the majority throws longstanding precedent to the winds without showing that anything significant has changed to justify its radical reshaping of the law. See *ante*, at 43.

1

Subsequent legal developments have only reinforced *Roe* and *Casey*. The Court has continued to embrace all the decisions *Roe* and *Casey* cited, decisions which recognize a constitutional right for an individual to make her own choices about "intimate relationships, the family," and contraception. *Casey*, 505 U. S., at 857. *Roe* and *Casey* have themselves formed the legal foundation for subsequent decisions protecting these profoundly personal choices. As discussed earlier, the Court relied on *Casey* to hold that the Fourteenth Amendment protects same-sex intimate relationships. See *Lawrence*, 539 U. S., at 578; *supra*, at 23. The Court later invoked the same set of precedents to accord constitutional recognition to same-sex marriage. See *Obergefell*, 576 U. S., at 665–666; *supra*, at 23. In sum, *Roe* and *Casey* are inextricably interwoven with decades of precedent about the meaning of the Fourteenth Amendment. See *supra*, at 21–24. While the majority might wish it otherwise, *Roe* and *Casey* are the very opposite of "'obsolete constitutional thinking.'" *Agostini* v. *Felton*, 521 U. S. 203, 236 (1997) (quoting *Casey*, 505 U. S., at 857).

Moreover, no subsequent factual developments have undermined *Roe* and *Casey*. Women continue to experience unplanned pregnancies and unexpected developments in pregnancies. Pregnancies continue to have enormous physical, social, and economic consequences. Even an uncompli-

cated pregnancy imposes significant strain on the body, unavoidably involving significant physiological change and excruciating pain. For some women, pregnancy and childbirth can mean life-altering physical ailments or even death. Today, as noted earlier, the risks of carrying a pregnancy to term dwarf those of having an abortion. See *supra*, at 22. Experts estimate that a ban on abortions increases maternal mortality by 21 percent, with white women facing a 13 percent increase in maternal mortality while black women face a 33 percent increase.[13] Pregnancy and childbirth may also impose large-scale financial costs. The majority briefly refers to arguments about changes in laws relating to healthcare coverage, pregnancy discrimination, and family leave. See *ante*, at 33–34. Many women, however, still do not have adequate healthcare coverage before and after pregnancy; and, even when insurance coverage is available, healthcare services may be far away.[14] Women also continue to face pregnancy discrimination that interferes with their ability to earn a living. Paid family leave remains inaccessible to many who need it most. Only 20 percent of private-sector workers have access to paid family leave, including a mere 8 percent of workers in the bottom

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[13] See L. Harris, Navigating Loss of Abortion Services—A Large Academic Medical Center Prepares for the Overturn of *Roe* v. *Wade*, 386 New England J. Med. 2061, 2063 (2022). This projected racial disparity reflects existing differences in maternal mortality rates for black and white women. Black women are now three to four times more likely to die during or after childbirth than white women, often from preventable causes. See Brief for Howard University School of Law Human and Civil Rights Clinic as *Amicus Curiae* 18.

[14] See Centers for Medicare and Medicaid Services, Issue Brief: Improving Access to Maternal Health Care in Rural Communities 4, 8, 11 (Sept. 2019), https://www.cms.gov/About-CMS/Agency-Information/OMH/equity-initiatives/rural-health/09032019-Maternal-Health-Care-in-Rural-Communities.pdf. In Mississippi, for instance, 19 percent of women of reproductive age are uninsured and 60 percent of counties lack a single obstetrician-gynecologist. Brief for Lawyers' Committee for Civil Rights Under Law et al. as *Amici Curiae* 12–13.

quartile of wage earners.[15]

The majority briefly notes the growing prevalence of safe haven laws and demand for adoption, see *ante*, at 34, and nn. 45–46, but, to the degree that these are changes at all, they too are irrelevant.[16] Neither reduces the health risks or financial costs of going through pregnancy and childbirth. Moreover, the choice to give up parental rights after giving birth is altogether different from the choice not to carry a pregnancy to term. The reality is that few women denied an abortion will choose adoption.[17] The vast majority will continue, just as in *Roe* and *Casey*'s time, to shoulder the costs of childrearing. Whether or not they choose to parent, they will experience the profound loss of autonomy and dignity that coerced pregnancy and birth always impose.[18]

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[15] Dept. of Labor, National Compensation Survey: Employee Benefits in the United States, Table 31 (Sept. 2020), https://www.bls.gov/ncs/ebs/benefits/2020/employee-benefits-in-the-united-states-march-2020.pdf#page=299.

[16] Safe haven laws, which allow parents to leave newborn babies in designated safe spaces without threat of prosecution, were not enacted as an alternative to abortion, but in response to rare situations in which birthing mothers in crisis would kill their newborns or leave them to die. See Centers for Disease Control and Prevention (CDC), R. Wilson, J. Klevens, D. Williams, & L. Xu, Infant Homicides Within the Context of Safe Haven Laws—United States, 2008–2017, 69 Morbidity and Mortality Weekly Report 1385 (2020).

[17] A study of women who sought an abortion but were denied one because of gestational limits found that only 9 percent put the child up for adoption, rather than parenting themselves. See G. Sisson, L. Ralph, H. Gould, & D. Foster, Adoption Decision Making Among Women Seeking Abortion, 27 Women's Health Issues 136, 139 (2017).

[18] The majority finally notes the claim that "people now have a new appreciation of fetal life," partly because of viewing sonogram images. *Ante*, at 34. It is hard to know how anyone would evaluate such a claim and as we have described above, the majority's reasoning does not rely on any reevaluation of the interest in protecting fetal life. See *supra*, at 26, and n. 7. It is worth noting that sonograms became widely used in

Mississippi's own record illustrates how little facts on the ground have changed since *Roe* and *Casey*, notwithstanding the majority's supposed "modern developments." *Ante*, at 33. Sixty-two percent of pregnancies in Mississippi are unplanned, yet Mississippi does not require insurance to cover contraceptives and prohibits educators from demonstrating proper contraceptive use.[19] The State neither bans pregnancy discrimination nor requires provision of paid parental leave. Brief for Yale Law School Information Society Project as *Amicus Curiae* 13 (Brief for Yale Law School); Brief for National Women's Law Center et al. as *Amici Curiae* 32. It has strict eligibility requirements for Medicaid and nutrition assistance, leaving many women and families without basic medical care or enough food. See Brief for 547 Deans, Chairs, Scholars and Public Health Professionals et al. as *Amici Curiae* 32–34 (Brief for 547 Deans). Although 86 percent of pregnancy-related deaths in the State are due to postpartum complications, Mississippi rejected federal funding to provide a year's worth of Medicaid coverage to women after giving birth. See Brief for Yale Law School 12–13. Perhaps unsurprisingly, health outcomes in Mississippi are abysmal for both women and children. Mississippi has the highest infant mortality rate in the country,

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the 1970s, long before *Casey*. Today, 60 percent of women seeking abortions have at least one child, and one-third have two or more. See CDC, K. Kortsmit et al., Abortion Surveillance—United States, 2019, 70 Morbidity and Mortality Weekly Report 6 (2021). These women know, even as they choose to have an abortion, what it is to look at a sonogram image and to value a fetal life.

[19] Guttmacher Institute, K. Kost, Unintended Pregnancy Rates at the State Level: Estimates for 2010 and Trends Since 2002, Table 1 (2015), https://www.guttmacher.org/sites/default/files/report_pdf/stateup10.pdf; Kaiser, State Requirements for Insurance Coverage of Contraceptives (May 1, 2022), https://www.kff.org/state-category/womens-health/family-planning; Miss. Code Ann. §37–13–171(2)(d) (Cum. Supp. 2021) ("In no case shall the instruction or program include any demonstration of how condoms or other contraceptives are applied").

and some of the highest rates for preterm birth, low birthweight, cesarean section, and maternal death.[20] It is approximately 75 times more dangerous for a woman in the State to carry a pregnancy to term than to have an abortion. See Brief for 547 Deans 9–10. We do not say that every State is Mississippi, and we are sure some have made gains since *Roe* and *Casey* in providing support for women and children. But a state-by-state analysis by public health professionals shows that States with the most restrictive abortion policies also continue to invest the least in women's and children's health. See Brief for 547 Deans 23–34.

The only notable change we can see since *Roe* and *Casey* cuts in favor of adhering to precedent: It is that American abortion law has become more and more aligned with other nations. The majority, like the Mississippi Legislature, claims that the United States is an extreme outlier when it comes to abortion regulation. See *ante*, at 6, and n. 15. The global trend, however, has been toward increased provision of legal and safe abortion care. A number of countries, including New Zealand, the Netherlands, and Iceland, permit abortions up to a roughly similar time as *Roe* and *Casey* set. See Brief for International and Comparative Legal Scholars as *Amici Curiae* 18–22. Canada has decriminalized abortion at any point in a pregnancy. See *id.*, at 13–15. Most Western European countries impose restrictions on abor-

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[20] See CDC, Infant Mortality Rates by State (Mar. 3, 2022), https://www.cdc.gov/nchs/pressroom/sosmap/infant_mortality_rates/infant_mortality.htm; Mississippi State Dept. of Health, Infant Mortality Report 2019 & 2020, pp. 18–19 (2021), https://www.msdh.ms.gov/msdhsite/_static/resources/18752.pdf; CDC, Percentage of Babies Born Low Birthweight by State (Feb. 25, 2022), https://www.cdc.gov/nchs/pressroom/sosmap/lbw_births/lbw.htm; CDC, Cesarean Delivery Rate by State (Feb. 25, 2022), https://www.cdc.gov/nchs/pressroom/sosmap/cesarean_births/cesareans.htm; Mississippi State Dept. of Health, Mississippi Maternal Mortality Report 2013–2016, pp. 5, 25 (Mar. 2021), https://www.msdh.ms.gov/msdhsite/_static/resources/8127.pdf.

tion after 12 to 14 weeks, but they often have liberal exceptions to those time limits, including to prevent harm to a woman's physical or mental health. See *id.*, at 24–27; Brief for European Law Professors as *Amici Curiae* 16–17, Appendix. They also typically make access to early abortion easier, for example, by helping cover its cost.[21] Perhaps most notable, more than 50 countries around the world—in Asia, Latin America, Africa, and Europe—have expanded access to abortion in the past 25 years. See Brief for International and Comparative Legal Scholars as *Amici Curiae* 28–29. In light of that worldwide liberalization of abortion laws, it is American States that will become international outliers after today.

In sum, the majority can point to neither legal nor factual developments in support of its decision. Nothing that has happened in this country or the world in recent decades undermines the core insight of *Roe* and *Casey*. It continues to be true that, within the constraints those decisions established, a woman, not the government, should choose whether she will bear the burdens of pregnancy, childbirth, and parenting.

2

In support of its holding, see *ante*, at 40, the majority invokes two watershed cases overruling prior constitutional precedents: *West Coast Hotel Co.* v. *Parrish* and *Brown* v. *Board of Education*. But those decisions, unlike today's, responded to changed law and to changed facts and attitudes that had taken hold throughout society. As *Casey* recognized, the two cases are relevant only to show—by stark contrast—how unjustified overturning the right to choose is. See 505 U. S., at 861–864.

West Coast Hotel overruled *Adkins* v. *Children's Hospital*

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[21] See D. Grossman, K. Grindlay, & B. Burns, Public Funding for Abortion Where Broadly Legal, 94 Contraception 451, 458 (2016) (discussing funding of abortion in European countries).

of D. C., 261 U. S. 525 (1923), and a whole line of cases beginning with *Lochner* v. *New York*, 198 U. S. 45 (1905). *Adkins* had found a state minimum-wage law unconstitutional because, in the Court's view, the law interfered with a constitutional right to contract. 261 U. S., at 554–555. But then the Great Depression hit, bringing with it unparalleled economic despair. The experience undermined—in fact, it disproved—*Adkins*'s assumption that a wholly unregulated market could meet basic human needs. As Justice Jackson (before becoming a Justice) wrote of that time: "The older world of *laissez faire* was recognized everywhere outside the Court to be dead." The Struggle for Judicial Supremacy 85 (1941). In *West Coast Hotel*, the Court caught up, recognizing through the lens of experience the flaws of existing legal doctrine. See also *ante*, at 11 (ROBERTS, C. J., concurring in judgment). The havoc the Depression had worked on ordinary Americans, the Court noted, was "common knowledge through the length and breadth of the land." 300 U. S., at 399. The *laissez-faire* approach had led to "the exploiting of workers at wages so low as to be insufficient to meet the bare cost of living." *Ibid.* And since *Adkins* was decided, the law had also changed. In several decisions, the Court had started to recognize the power of States to implement economic policies designed to enhance their citizens' economic well-being. See, *e.g.*, *Nebbia* v. *New York*, 291 U. S. 502 (1934); *O'Gorman & Young, Inc.* v. *Hartford Fire Ins. Co.*, 282 U. S. 251 (1931). The statements in those decisions, *West Coast Hotel* explained, were "impossible to reconcile" with *Adkins*. 300 U. S., at 398. There was no escaping the need for *Adkins* to go.

Brown v. *Board of Education* overruled *Plessy* v. *Ferguson*, 163 U. S. 537 (1896), along with its doctrine of "separate but equal." By 1954, decades of Jim Crow had made clear what *Plessy*'s turn of phrase actually meant: "inherent[ ] [in]equal[ity]." *Brown*, 347 U. S., at 495. Segregation

was not, and could not ever be, consistent with the Reconstruction Amendments, ratified to give the former slaves full citizenship. Whatever might have been thought in *Plessy*'s time, the *Brown* Court explained, both experience and "modern authority" showed the "detrimental effect[s]" of state-sanctioned segregation: It "affect[ed] [children's] hearts and minds in a way unlikely ever to be undone." 347 U. S., at 494. By that point, too, the law had begun to reflect that understanding. In a series of decisions, the Court had held unconstitutional public graduate schools' exclusion of black students. See, *e.g.*, *Sweatt* v. *Painter*, 339 U. S. 629 (1950); *Sipuel* v. *Board of Regents of Univ. of Okla.*, 332 U. S. 631 (1948) (*per curiam*); *Missouri ex rel. Gaines* v. *Canada*, 305 U. S. 337 (1938). The logic of those cases, *Brown* held, "appl[ied] with added force to children in grade and high schools." 347 U. S., at 494. Changed facts and changed law required *Plessy*'s end.

The majority says that in recognizing those changes, we are implicitly supporting the half-century interlude between *Plessy* and *Brown*. See *ante*, at 70. That is not so. First, if the *Brown* Court had used the majority's method of constitutional construction, it might not ever have overruled *Plessy*, whether 5 or 50 or 500 years later. *Brown* thought that whether the ratification-era history supported desegregation was "[a]t best . . . inconclusive." 347 U. S., at 489. But even setting that aside, we are not saying that a decision can *never* be overruled just because it is terribly wrong. Take *West Virginia Bd. of Ed.* v. *Barnette*, 319 U. S. 624, which the majority also relies on. See *ante*, at 40–41, 70. That overruling took place just three years after the initial decision, before any notable reliance interests had developed. It happened as well because individual Justices changed their minds, not because a new majority wanted to undo the decisions of their predecessors. Both *Barnette* and *Brown*, moreover, share another feature setting them apart from the Court's ruling today. They protected individual

rights with a strong basis in the Constitution's most fundamental commitments; they did not, as the majority does here, take away a right that individuals have held, and relied on, for 50 years. To take *that* action based on a new and bare majority's declaration that two Courts got the result egregiously wrong? And to justify that action by reference to *Barnette*? Or to *Brown*—a case in which the Chief Justice also wrote an (11-page) opinion in which the entire Court could speak with one voice? These questions answer themselves.

Casey itself addressed both *West Coast Hotel* and *Brown*, and found that neither supported *Roe*'s overruling. In *West Coast Hotel*, *Casey* explained, "the facts of economic life" had proved "different from those previously assumed." 505 U. S., at 862. And even though "*Plessy* was wrong the day it was decided," the passage of time had made that ever more clear to ever more citizens: "Society's understanding of the facts" in 1954 was "fundamentally different" than in 1896. *Id.*, at 863. So the Court needed to reverse course. "In constitutional adjudication as elsewhere in life, changed circumstances may impose new obligations." *Id.*, at 864. And because such dramatic change had occurred, the public could understand why the Court was acting. "[T]he Nation could accept each decision" as a "response to the Court's constitutional duty." *Ibid.* But that would not be true of a reversal of *Roe*—"[b]ecause neither the factual underpinnings of *Roe*'s central holding nor our understanding of it has changed." 505 U. S., at 864.

That is just as much so today, because *Roe* and *Casey* continue to reflect, not diverge from, broad trends in American society. It is, of course, true that many Americans, including many women, opposed those decisions when issued and do so now as well. Yet the fact remains: *Roe* and *Casey* were the product of a profound and ongoing change in women's roles in the latter part of the 20th century. Only a dozen years before *Roe*, the Court described women as "the center

of home and family life," with "special responsibilities" that precluded their full legal status under the Constitution. *Hoyt* v. *Florida*, 368 U. S. 57, 62 (1961). By 1973, when the Court decided *Roe*, fundamental social change was underway regarding the place of women—and the law had begun to follow. See *Reed* v. *Reed*, 404 U. S. 71, 76 (1971) (recognizing that the Equal Protection Clause prohibits sex-based discrimination). By 1992, when the Court decided *Casey*, the traditional view of a woman's role as only a wife and mother was "no longer consistent with our understanding of the family, the individual, or the Constitution." 505 U. S., at 897; see *supra*, at 15, 23–24. Under that charter, *Casey* understood, women must take their place as full and equal citizens. And for that to happen, women must have control over their reproductive decisions. Nothing since *Casey*—no changed law, no changed fact—has undermined that promise.

C

The reasons for retaining *Roe* and *Casey* gain further strength from the overwhelming reliance interests those decisions have created. The Court adheres to precedent not just for institutional reasons, but because it recognizes that stability in the law is "an essential thread in the mantle of protection that the law affords the individual." *Florida Dept. of Health and Rehabilitative Servs.* v. *Florida Nursing Home Assn.*, 450 U. S. 147, 154 (1981) (Stevens, J., concurring). So when overruling precedent "would dislodge [individuals'] settled rights and expectations," *stare decisis* has "added force." *Hilton* v. *South Carolina Public Railways Comm'n*, 502 U. S. 197, 202 (1991). *Casey* understood that to deny individuals' reliance on *Roe* was to "refuse to face the fact[s]." 505 U. S., at 856. Today the majority refuses to face the facts. "The most striking feature of the [majority] is the absence of any serious discussion" of how

its ruling will affect women. *Ante*, at 37. By characterizing *Casey*'s reliance arguments as "generalized assertions about the national psyche," *ante*, at 64, it reveals how little it knows or cares about women's lives or about the suffering its decision will cause.

In *Casey*, the Court observed that for two decades individuals "have organized intimate relationships and made" significant life choices "in reliance on the availability of abortion in the event that contraception should fail." 505 U. S., at 856. Over another 30 years, that reliance has solidified. For half a century now, in *Casey*'s words, "[t]he ability of women to participate equally in the economic and social life of the Nation has been facilitated by their ability to control their reproductive lives." *Ibid.*; see *supra*, at 23–24. Indeed, all women now of childbearing age have grown up expecting that they would be able to avail themselves of *Roe*'s and *Casey*'s protections.

The disruption of overturning *Roe* and *Casey* will therefore be profound. Abortion is a common medical procedure and a familiar experience in women's lives. About 18 percent of pregnancies in this country end in abortion, and about one quarter of American women will have an abortion before the age of 45.[22] Those numbers reflect the predictable and life-changing effects of carrying a pregnancy, giving birth, and becoming a parent. As *Casey* understood, people today rely on their ability to control and time pregnancies when making countless life decisions: where to live, whether and how to invest in education or careers, how to allocate financial resources, and how to approach intimate and family relationships. Women may count on abortion access for when contraception fails. They may count on abortion access for when contraception cannot be used, for

[22] See CDC, K. Kortsmit et al., Abortion Surveillance—United States, 2019, 70 Morbidity and Mortality Weekly Report 7 (2021); Brief for American College of Obstetricians and Gynecologists et al. as *Amici Curiae* 9.

example, if they were raped. They may count on abortion for when something changes in the midst of a pregnancy, whether it involves family or financial circumstances, unanticipated medical complications, or heartbreaking fetal diagnoses. Taking away the right to abortion, as the majority does today, destroys all those individual plans and expectations. In so doing, it diminishes women's opportunities to participate fully and equally in the Nation's political, social, and economic life. See Brief for Economists as *Amici Curiae* 13 (showing that abortion availability has "large effects on women's education, labor force participation, occupations, and earnings" (footnotes omitted)).

The majority's response to these obvious points exists far from the reality American women actually live. The majority proclaims that "'reproductive planning could take virtually immediate account of any sudden restoration of state authority to ban abortions.'" *Ante*, at 64 (quoting *Casey*, 505 U. S., at 856).[23] The facts are: 45 percent of pregnancies in the United States are unplanned. See Brief for 547 Deans 5. Even the most effective contraceptives fail, and effective contraceptives are not universally accessible.[24] Not all sexual activity is consensual and not all contraceptive choices are made by the party who risks pregnancy. See Brief for Legal Voice et al. as *Amici Curiae* 18–19. The Mississippi law at issue here, for example, has no exception for rape or incest, even for underage women. Finally, the

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[23] Astoundingly, the majority casts this statement as a "conce[ssion]" from *Casey* with which it "agree[s]." *Ante*, at 64. In fact, *Casey* used this language as part of describing an argument that it *rejected*. See 505 U. S., at 856. It is only today's Court that endorses this profoundly mistaken view.

[24] See Brief for 547 Deans 6–7 (noting that 51 percent of women who terminated their pregnancies reported using contraceptives during the month in which they conceived); Brief for Lawyers' Committee for Civil Rights Under Law et al. as *Amici Curiae* 12–14 (explaining financial and geographic barriers to access to effective contraceptives).

majority ignores, as explained above, that some women decide to have an abortion because their circumstances change during a pregnancy. See *supra*, at 49. Human bodies care little for hopes and plans. Events can occur after conception, from unexpected medical risks to changes in family circumstances, which profoundly alter what it means to carry a pregnancy to term. In all these situations, women have expected that they will get to decide, perhaps in consultation with their families or doctors but free from state interference, whether to continue a pregnancy. For those who will now have to undergo that pregnancy, the loss of *Roe* and *Casey* could be disastrous.

That is especially so for women without money. When we "count[] the cost of [*Roe*'s] repudiation" on women who once relied on that decision, it is not hard to see where the greatest burden will fall. *Casey*, 505 U. S., at 855. In States that bar abortion, women of means will still be able to travel to obtain the services they need.[25] It is women who cannot afford to do so who will suffer most. These are the women most likely to seek abortion care in the first place. Women living below the federal poverty line experience unintended pregnancies at rates five times higher than higher income women do, and nearly half of women who seek abortion care live in households below the poverty line. See Brief for 547 Deans 7; Brief for Abortion Funds and Practical Support Organizations as *Amici Curiae* 8 (Brief for Abortion Funds).

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[25] This statement of course assumes that States are not successful in preventing interstate travel to obtain an abortion. See *supra*, at 3, 36–37. Even assuming that is so, increased out-of-state demand will lead to longer wait times and decreased availability of service in States still providing abortions. See Brief for State of California et al. as *Amici Curiae* 25–27. This is what happened in Oklahoma, Kansas, Colorado, New Mexico, and Nevada last fall after Texas effectively banned abortions past six weeks of gestation. See *United States* v. *Texas*, 595 U. S. ___, ___ (2021) (SOTOMAYOR, J., concurring in part and dissenting in part) (slip op., at 6).

Even with *Roe*'s protection, these women face immense obstacles to raising the money needed to obtain abortion care early in their pregnancy. See Brief for Abortion Funds 7–12.[26] After today, in States where legal abortions are not available, they will lose any ability to obtain safe, legal abortion care. They will not have the money to make the trip necessary; or to obtain childcare for that time; or to take time off work. Many will endure the costs and risks of pregnancy and giving birth against their wishes. Others will turn in desperation to illegal and unsafe abortions. They may lose not just their freedom, but their lives.[27]

Finally, the expectation of reproductive control is integral to many women's identity and their place in the Nation. See *Casey*, 505 U. S., at 856. That expectation helps define

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[26] The average cost of a first-trimester abortion is about $500. See Brief for Abortion Funds 7. Federal insurance generally does not cover the cost of abortion, and 35 percent of American adults do not have cash on hand to cover an unexpected expense that high. Guttmacher Institute, M. Donovan, In Real Life: Federal Restrictions on Abortion Coverage and the Women They Impact (Jan. 5, 2017), https://www.guttmacher.org/gpr/2017/01/real-life-federal-restrictions-abortion-coverage-and-women-they-impact#:~:text=Although%20the%20Hyde%20Amendment%20bars,provide%20abortion%20coverage%20to%20enrollees; Brief for Abortion Funds 11.

[27] Mississippi is likely to be one of the States where these costs are highest, though history shows that it will have company. As described above, Mississippi provides only the barest financial support to pregnant women. See *supra*, at 41–42. The State will greatly restrict abortion care without addressing any of the financial, health, and family needs that motivate many women to seek it. The effects will be felt most severely, as they always have been, on the bodies of the poor. The history of state abortion restrictions is a history of heavy costs exacted from the most vulnerable women. It is a history of women seeking illegal abortions in hotel rooms and home kitchens; of women trying to self-induce abortions by douching with bleach, injecting lye, and penetrating themselves with knitting needles, scissors, and coat hangers. See L. Reagan, When Abortion Was a Crime 42–43, 198–199, 208–209 (1997). It is a history of women dying.

a woman as an "equal citizen[]," with all the rights, privileges, and obligations that status entails. *Gonzales*, 550 U. S., at 172 (Ginsburg, J., dissenting); see *supra*, at 23–24. It reflects that she is an autonomous person, and that society and the law recognize her as such. Like many constitutional rights, the right to choose situates a woman in relationship to others and to the government. It helps define a sphere of freedom, in which a person has the capacity to make choices free of government control. As *Casey* recognized, the right "order[s]" her "thinking" as well as her "living." 505 U. S., at 856. Beyond any individual choice about residence, or education, or career, her whole life reflects the control and authority that the right grants.

Withdrawing a woman's right to choose whether to continue a pregnancy does not mean that no choice is being made. It means that a majority of today's Court has wrenched this choice from women and given it to the States. To allow a State to exert control over one of "the most intimate and personal choices" a woman may make is not only to affect the course of her life, monumental as those effects might be. *Id.*, at 851. It is to alter her "views of [herself]" and her understanding of her "place[] in society" as someone with the recognized dignity and authority to make these choices. *Id.*, at 856. Women have relied on *Roe* and *Casey* in this way for 50 years. Many have never known anything else. When *Roe* and *Casey* disappear, the loss of power, control, and dignity will be immense.

The Court's failure to perceive the whole swath of expectations *Roe* and *Casey* created reflects an impoverished view of reliance. According to the majority, a reliance interest must be "very concrete," like those involving "property" or "contract." *Ante*, at 64. While many of this Court's cases addressing reliance have been in the "commercial context," *Casey*, 505 U. S., at 855, none holds that interests must be analogous to commercial ones to warrant *stare de-*

cisis protection.[28] This unprecedented assertion is, at bottom, a radical claim to power. By disclaiming any need to consider broad swaths of individuals' interests, the Court arrogates to itself the authority to overrule established legal principles without even acknowledging the costs of its decisions for the individuals who live under the law, costs that this Court's *stare decisis* doctrine instructs us to privilege when deciding whether to change course.

The majority claims that the reliance interests women have in *Roe* and *Casey* are too "intangible" for the Court to consider, even if it were inclined to do so. *Ante*, at 65. This is to ignore as judges what we know as men and women. The interests women have in *Roe* and *Casey* are perfectly, viscerally concrete. Countless women will now make different decisions about careers, education, relationships, and whether to try to become pregnant than they would have when *Roe* served as a backstop. Other women will carry pregnancies to term, with all the costs and risk of harm that involves, when they would previously have chosen to obtain an abortion. For millions of women, *Roe* and *Casey* have been critical in giving them control of their bodies and their lives. Closing our eyes to the suffering today's decision will impose will not make that suffering disappear. The majority cannot escape its obligation to "count[] the cost[s]" of its decision by invoking the "conflicting arguments" of "contending sides." *Casey*, 505 U. S., at 855; *ante*, at 65. *Stare decisis* requires that the Court calculate the costs of a decision's repudiation on those who have relied on the decision,

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[28] The majority's sole citation for its "concreteness" requirement is *Payne* v. *Tennessee*, 501 U. S. 808 (1991). But *Payne* merely discounted reliance interests in cases involving "procedural and evidentiary rules." *Id.*, at 828. Unlike the individual right at stake here, those rules do "not alter primary conduct." *Hohn* v. *United States*, 524 U. S. 236, 252 (1998). Accordingly, they generally "do not implicate the reliance interests of private parties" at all. *Alleyne* v. *United States*, 570 U. S. 99, 119 (2013) (SOTOMAYOR, J., concurring).

not on those who have disavowed it. See *Casey*, 505 U. S., at 855.

More broadly, the majority's approach to reliance cannot be reconciled with our Nation's understanding of constitutional rights. The majority's insistence on a "concrete," economic showing would preclude a finding of reliance on a wide variety of decisions recognizing constitutional rights—such as the right to express opinions, or choose whom to marry, or decide how to educate children. The Court, on the majority's logic, could transfer those choices to the State without having to consider a person's settled understanding that the law makes them hers. That must be wrong. All those rights, like the right to obtain an abortion, profoundly affect and, indeed, anchor individual lives. To recognize that people have relied on these rights is not to dabble in abstractions, but to acknowledge some of the most "concrete" and familiar aspects of human life and liberty. *Ante*, at 64.

All those rights, like the one here, also have a societal dimension, because of the role constitutional liberties play in our structure of government. See, *e.g.*, *Dickerson*, 530 U. S., at 443 (recognizing that *Miranda* "warnings have become part of our national culture" in declining to overrule *Miranda* v. *Arizona*, 384 U. S. 436 (1966)). Rescinding an individual right in its entirety and conferring it on the State, an action the Court takes today for the first time in history, affects all who have relied on our constitutional system of government and its structure of individual liberties protected from state oversight. *Roe* and *Casey* have of course aroused controversy and provoked disagreement. But the right those decisions conferred and reaffirmed is part of society's understanding of constitutional law and of how the Court has defined the liberty and equality that women are entitled to claim.

After today, young women will come of age with fewer

rights than their mothers and grandmothers had. The majority accomplishes that result without so much as considering how women have relied on the right to choose or what it means to take that right away. The majority's refusal even to consider the life-altering consequences of reversing *Roe* and *Casey* is a stunning indictment of its decision.

D

One last consideration counsels against the majority's ruling: the very controversy surrounding *Roe* and *Casey*. The majority accuses *Casey* of acting outside the bounds of the law to quell the conflict over abortion—of imposing an unprincipled "settlement" of the issue in an effort to end "national division." *Ante*, at 67. But that is not what *Casey* did. As shown above, *Casey* applied traditional principles of *stare decisis*—which the majority today ignores—in reaffirming *Roe*. *Casey* carefully assessed changed circumstances (none) and reliance interests (profound). It considered every aspect of how *Roe*'s framework operated. It adhered to the law in its analysis, and it reached the conclusion that the law required. True enough that *Casey* took notice of the "national controversy" about abortion: The Court knew in 1992, as it did in 1973, that abortion was a "divisive issue." *Casey*, 505 U. S., at 867–868; see *Roe*, 410 U. S., at 116. But *Casey*'s reason for acknowledging public conflict was the exact opposite of what the majority insinuates. *Casey* addressed the national controversy in order to emphasize how important it was, in that case of all cases, for the Court to stick to the law. Would that today's majority had done likewise.

Consider how the majority itself summarizes this aspect of *Casey*:

> "The American people's belief in the rule of law would be shaken if they lost respect for this Court as an institution that decides important cases based on principle, not 'social and political pressures.' There is a special

> danger that the public will perceive a decision as having been made for unprincipled reasons when the Court overrules a controversial 'watershed' decision, such as *Roe*. A decision overruling *Roe* would be perceived as having been made 'under fire' and as a 'surrender to political pressure.'" *Ante*, at 66–67 (citations omitted).

That seems to us a good description. And it seems to us right. The majority responds (if we understand it correctly): well, yes, but we have to apply the law. See *ante*, at 67. To which *Casey* would have said: That is exactly the point. Here, more than anywhere, the Court needs to apply the law—particularly the law of *stare decisis*. Here, we know that citizens will continue to contest the Court's decision, because "[m]en and women of good conscience" deeply disagree about abortion. *Casey*, 505 U. S., at 850. When that contestation takes place—but when there is no legal basis for reversing course—the Court needs to be steadfast, to stand its ground. That is what the rule of law requires. And that is what respect for this Court depends on.

"The promise of constancy, once given" in so charged an environment, *Casey* explained, "binds its maker for as long as" the "understanding of the issue has not changed so fundamentally as to render the commitment obsolete." *Id.*, at 868. A breach of that promise is "nothing less than a breach of faith." *Ibid.* "[A]nd no Court that broke its faith with the people could sensibly expect credit for principle." *Ibid.* No Court breaking its faith in that way would *deserve* credit for principle. As one of *Casey*'s authors wrote in another case, "Our legitimacy requires, above all, that we adhere to *stare decisis*" in "sensitive political contexts" where "partisan controversy abounds." *Bush* v. *Vera*, 517 U. S. 952, 985 (1996) (opinion of O'Connor, J.).

Justice Jackson once called a decision he dissented from a "loaded weapon," ready to hand for improper uses. *Korematsu* v. *United States*, 323 U. S. 214, 246 (1944). We fear

that today's decision, departing from *stare decisis* for no legitimate reason, is its own loaded weapon. Weakening *stare decisis* threatens to upend bedrock legal doctrines, far beyond any single decision. Weakening *stare decisis* creates profound legal instability. And as *Casey* recognized, weakening *stare decisis* in a hotly contested case like this one calls into question this Court's commitment to legal principle. It makes the Court appear not restrained but aggressive, not modest but grasping. In all those ways, today's decision takes aim, we fear, at the rule of law.

III

"Power, not reason, is the new currency of this Court's decisionmaking." *Payne*, 501 U. S., at 844 (Marshall, J., dissenting). *Roe* has stood for fifty years. *Casey*, a precedent about precedent specifically confirming *Roe*, has stood for thirty. And the doctrine of *stare decisis*—a critical element of the rule of law—stands foursquare behind their continued existence. The right those decisions established and preserved is embedded in our constitutional law, both originating in and leading to other rights protecting bodily integrity, personal autonomy, and family relationships. The abortion right is also embedded in the lives of women—shaping their expectations, influencing their choices about relationships and work, supporting (as all reproductive rights do) their social and economic equality. Since the right's recognition (and affirmation), nothing has changed to support what the majority does today. Neither law nor facts nor attitudes have provided any new reasons to reach a different result than *Roe* and *Casey* did. All that has changed is this Court.

Mississippi—and other States too—knew exactly what they were doing in ginning up new legal challenges to *Roe* and *Casey*. The 15-week ban at issue here was enacted in 2018. Other States quickly followed: Between 2019 and 2021, eight States banned abortion procedures after six to

eight weeks of pregnancy, and three States enacted all-out bans.[29] Mississippi itself decided in 2019 that it had not gone far enough: The year after enacting the law under review, the State passed a 6-week restriction. A state senator who championed both Mississippi laws said the obvious out loud. "[A] lot of people thought," he explained, that "finally, we have" a conservative Court "and so now would be a good time to start testing the limits of *Roe*."[30] In its petition for certiorari, the State had exercised a smidgen of restraint. It had urged the Court merely to roll back *Roe* and *Casey*, specifically assuring the Court that "the questions presented in this petition do not require the Court to overturn" those precedents. Pet. for Cert. 5; see *ante*, at 5–6 (ROBERTS, C. J., concurring in judgment). But as Mississippi grew ever more confident in its prospects, it resolved to go all in. It urged the Court to overrule *Roe* and *Casey*. Nothing but everything would be enough.

Earlier this Term, this Court signaled that Mississippi's stratagem would succeed. Texas was one of the fistful of States to have recently banned abortions after six weeks of pregnancy. It added to that "flagrantly unconstitutional" restriction an unprecedented scheme to "evade judicial

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[29] Guttmacher Institute, E. Nash, State Policy Trends 2021: The Worst Year for Abortion Rights in Almost Half a Century (Dec. 16, 2021), https://www.guttmacher.org/article/2021/12/state-policy-trends-2021-worst-year-abortion-rights-almost-half-century; Guttmacher Institute, E. Nash, L. Mohammed, O. Cappello, & S. Naide, State Policy Trends 2020: Reproductive Health and Rights in a Year Like No Other (Dec. 15, 2020), https://www.guttmacher.org/article/2020/12/state-policy-trends-2020-reproductive-health-and-rights-year-no-other; Guttmacher Institute, E. Nash, L. Mohammed, O. Cappello, & S. Naide, State Policy Trends 2019: A Wave of Abortion Bans, But Some States Are Fighting Back (Dec. 10, 2019), https://www.guttmacher.org/article/2019/12/state-policy-trends-2019-wave-abortion-bans-some-states-are-fighting-back.

[30] A. Pittman, Mississippi's Six-Week Abortion Ban at 5th Circuit Appeals Court Today, Jackson Free Press (Oct. 7, 2019), https://www.jacksonfreepress.com/news/2019/oct/07/mississippis-six-week-abortion-ban-5th-circuit-app/.

scrutiny." *Whole Woman's Health* v. *Jackson*, 594 U. S. ___, ___ (2021) (SOTOMAYOR, J., dissenting) (slip op., at 1). And five Justices acceded to that cynical maneuver. They let Texas defy this Court's constitutional rulings, nullifying *Roe* and *Casey* ahead of schedule in the Nation's second largest State.

And now the other shoe drops, courtesy of that same five-person majority. (We believe that THE CHIEF JUSTICE's opinion is wrong too, but no one should think that there is not a large difference between upholding a 15-week ban on the grounds he does and allowing States to prohibit abortion from the time of conception.) Now a new and bare majority of this Court—acting at practically the first moment possible—overrules *Roe* and *Casey*. It converts a series of dissenting opinions expressing antipathy toward *Roe* and *Casey* into a decision greenlighting even total abortion bans. See *ante*, at 57, 59, 63, and nn. 61–64 (relying on former dissents). It eliminates a 50-year-old constitutional right that safeguards women's freedom and equal station. It breaches a core rule-of-law principle, designed to promote constancy in the law. In doing all of that, it places in jeopardy other rights, from contraception to same-sex intimacy and marriage. And finally, it undermines the Court's legitimacy.

Casey itself made the last point in explaining why it would not overrule *Roe*—though some members of its majority might not have joined *Roe* in the first instance. Just as we did here, *Casey* explained the importance of *stare decisis*; the inappositeness of *West Coast Hotel* and *Brown*; the absence of any "changed circumstances" (or other reason) justifying the reversal of precedent. 505 U. S., at 864; see *supra*, at 30–33, 37–47. "[T]he Court," *Casey* explained, "could not pretend" that overruling *Roe* had any "justification beyond a present doctrinal disposition to come out differently from the Court of 1973." 505 U. S., at 864. And to overrule for that reason? Quoting Justice Stewart, *Casey*

explained that to do so—to reverse prior law "upon a ground no firmer than a change in [the Court's] membership"—would invite the view that "this institution is little different from the two political branches of the Government." *Ibid.* No view, *Casey* thought, could do "more lasting injury to this Court and to the system of law which it is our abiding mission to serve." *Ibid.* For overruling *Roe*, *Casey* concluded, the Court would pay a "terrible price." 505 U. S., at 864.

The Justices who wrote those words—O'Connor, Kennedy, and Souter—they were judges of wisdom. They would not have won any contests for the kind of ideological purity some court watchers want Justices to deliver. But if there were awards for Justices who left this Court better than they found it? And who for that reason left this country better? And the rule of law stronger? Sign those Justices up.

They knew that "the legitimacy of the Court [is] earned over time." *Id.*, at 868. They also would have recognized that it can be destroyed much more quickly. They worked hard to avert that outcome in *Casey*. The American public, they thought, should never conclude that its constitutional protections hung by a thread—that a new majority, adhering to a new "doctrinal school," could "by dint of numbers" alone expunge their rights. *Id.*, at 864. It is hard—no, it is impossible—to conclude that anything else has happened here. One of us once said that "[i]t is not often in the law that so few have so quickly changed so much." S. Breyer, Breaking the Promise of *Brown*: The Resegregation of America's Schools 30 (2022). For all of us, in our time on this Court, that has never been more true than today. In overruling *Roe* and *Casey*, this Court betrays its guiding principles.

With sorrow—for this Court, but more, for the many millions of American women who have today lost a fundamental constitutional protection—we dissent.

APPENDIX

This Appendix analyzes in full each of the 28 cases the majority says support today's decision to overrule *Roe* v. *Wade*, 410 U. S. 113 (1973), and *Planned Parenthood of Southeastern Pa.* v. *Casey*, 505 U. S. 833 (1992). As explained herein, the Court in each case relied on traditional *stare decisis* factors in overruling.

A great many of the overrulings the majority cites involve a prior precedent that had been rendered out of step with or effectively abrogated by contemporary case law in light of intervening developments in the broader doctrine. See *Ramos* v. *Louisiana*, 590 U. S. ___, ___ (2020) (slip op., at 22) (holding the Sixth Amendment requires a unanimous jury verdict in state prosecutions for serious offenses, and overruling *Apodaca* v. *Oregon*, 406 U. S. 404 (1972), because "in the years since *Apodaca*, this Court ha[d] spoken inconsistently about its meaning" and had undercut its validity "on at least eight occasions"); *Ring* v. *Arizona*, 536 U. S. 584, 608–609 (2002) (recognizing a Sixth Amendment right to have a jury find the aggravating factors necessary to impose a death sentence and, in so doing, rejecting *Walton* v. *Arizona*, 497 U. S. 639 (1990), as overtaken by and irreconcilable with *Apprendi* v. *New Jersey*, 530 U. S. 466 (2000)); *Agostini* v. *Felton*, 521 U. S. 203, 235–236 (1997) (considering the Establishment Clause's constraint on government aid to religious instruction, and overruling *Aguilar* v. *Felton*, 473 U. S. 402 (1985), in light of several related doctrinal developments that had so undermined *Aguilar* and the assumption on which it rested as to render it no longer good law); *Batson* v. *Kentucky*, 476 U. S. 79, 93–96 (1986) (recognizing that a defendant may make a prima facie showing of purposeful racial discrimination in selection of a jury venire by relying solely on the facts in his case, and, based on subsequent developments in equal protection law, rejecting part of *Swain* v. *Alabama*, 380 U. S. 202 (1965), which had imposed a more demanding evidentiary

burden); *Brandenburg* v. *Ohio*, 395 U. S. 444, 447–448 (1969) (*per curiam*) (holding that mere advocacy of violence is protected by the First Amendment, unless intended to incite it or produce imminent lawlessness, and rejecting the contrary rule in *Whitney* v. *California*, 274 U. S. 357 (1927), as having been "thoroughly discredited by later decisions"); *Katz* v. *United States*, 389 U. S. 347, 351, 353 (1967) (recognizing that the Fourth Amendment extends to material and communications that a person "seeks to preserve as private," and rejecting the more limited construction articulated in *Olmstead* v. *United States*, 277 U. S. 438 (1928), because "we have since departed from the narrow view on which that decision rested," and "the underpinnings of *Olmstead* . . . have been so eroded by our subsequent decisions that the 'trespass' doctrine there enunciated can no longer be regarded as controlling"); *Miranda* v. *Arizona*, 384 U. S. 436, 463–467, 479, n. 48 (1966) (recognizing that the Fifth Amendment requires certain procedural safeguards for custodial interrogation, and rejecting *Crooker* v. *California*, 357 U. S. 433 (1958), and *Cicenia* v. *Lagay*, 357 U. S. 504 (1958), which had already been undermined by *Escobedo* v. *Illinois*, 378 U. S. 478 (1964)); *Malloy* v. *Hogan*, 378 U. S. 1, 6–9 (1964) (explaining that the Fifth Amendment privilege against "self-incrimination is also protected by the Fourteenth Amendment against abridgment by the States," and rejecting *Twining* v. *New Jersey*, 211 U. S. 78 (1908), in light of a "marked shift" in Fifth Amendment precedents that had "necessarily repudiated" the prior decision); *Gideon* v. *Wainwright*, 372 U. S. 335, 343–345 (1963) (acknowledging a right to counsel for indigent criminal defendants in state court under the Sixth and Fourteenth Amendments, and overruling the earlier precedent failing to recognize such a right, *Betts* v. *Brady*, 316 U. S.

455 (1942));[31] *Smith* v. *Allwright*, 321 U. S. 649, 659–662 (1944) (recognizing all-white primaries are unconstitutional after reconsidering in light of "the unitary character of the electoral process" recognized in *United States* v. *Classic*, 313 U. S. 299 (1941), and overruling *Grovey* v. *Townsend*, 295 U. S. 45 (1935)); *United States* v. *Darby*, 312 U. S. 100, 115–117 (1941) (recognizing Congress's Commerce Clause power to regulate employment conditions and explaining as "inescapable" the "conclusion . . . that *Hammer* v. *Dagenhart*, [247 U. S. 251 (1918)]," and its contrary rule had "long since been" overtaken by precedent construing the Commerce Clause power more broadly); *Erie R. Co.* v. *Tompkins*, 304 U. S. 64, 78–80 (1938) (applying state substantive law in diversity actions in federal courts and overruling *Swift* v. *Tyson*, 16 Pet. 1 (1842), because an intervening decision had "made clear" the "fallacy underlying the rule").

Additional cases the majority cites involved fundamental factual changes that had undermined the basic premise of the prior precedent. See *Citizens United* v. *Federal Election Comm'n*, 558 U. S. 310, 364 (2010) (expanding First Amendment protections for campaign-related speech and citing technological changes that undermined the distinctions of the earlier regime and made workarounds easy, and overruling *Austin* v. *Michigan Chamber of Commerce*, 494 U. S. 652 (1990), and partially overruling *McConnell* v. *Federal Election Comm'n*, 540 U. S. 93 (2003)); *Crawford* v. *Washington*, 541 U. S. 36, 62–65 (2004) (expounding on the Sixth Amendment right to confront witnesses and rejecting the prior framework, based on its practical failing to keep

[31] We have since come to understand *Gideon* as part of a larger doctrinal shift—already underway at the time of *Gideon*—where "the Court began to hold that the Due Process Clause fully incorporates particular rights contained in the first eight Amendments." *McDonald* v. *Chicago*, 561 U. S. 742, 763 (2010); see also *id.*, at 766.

out core testimonial evidence, and overruling *Ohio* v. *Roberts*, 448 U. S. 56 (1980)); *Mapp* v. *Ohio*, 367 U. S. 643, 651–652 (1961) (holding that the exclusionary rule under the Fourth Amendment applies to the States, and overruling the contrary rule of *Wolf* v. *Colorado*, 338 U. S. 25 (1949), after considering and rejecting "the current validity of the factual grounds upon which *Wolf* was based").

Some cited overrulings involved *both* significant doctrinal developments *and* changed facts or understandings that had together undermined a basic premise of the prior decision. See *Janus* v. *State, County, and Municipal Employees*, 585 U. S. ___, ___, ___–___ (2018) (slip op., at 42, 47–49) (holding that requiring public-sector union dues from nonmembers violates the First Amendment, and overruling *Abood* v. *Detroit Bd. of Ed.*, 431 U. S. 209 (1977), based on "both factual and legal" developments that had "eroded the decision's underpinnings and left it an outlier among our First Amendment cases" (internal quotation marks omitted)); *Obergefell* v. *Hodges*, 576 U. S. 644, 659–663 (2015) (holding that the Fourteenth Amendment protects the right of same-sex couples to marry in light of doctrinal developments, as well as fundamentally changed social understanding); *Lawrence* v. *Texas*, 539 U. S. 558, 572–578 (2003) (overruling *Bowers* v. *Hardwick*, 478 U. S. 186 (1986), after finding anti-sodomy laws to be inconsistent with the Fourteenth Amendment in light of developments in the legal doctrine, as well as changed social understanding of sexuality); *United States* v. *Scott*, 437 U. S. 82, 101 (1978) (overruling *United States* v. *Jenkins*, 420 U. S. 358 (1975), three years after it was decided, because of developments in the Court's double jeopardy case law, and because intervening practice had shown that government appeals from midtrial dismissals requested by the defendant were practicable, desirable, and consistent with double jeopardy values); *Craig* v. *Boren*, 429 U. S. 190, 197–199, 210, n. 23 (1976) (holding that sex-based classifications are subject to intermediate

scrutiny under the Fourteenth Amendment's Equal Protection Clause, including because *Reed* v. *Reed*, 404 U. S. 71 (1971), and other equal protection cases and social changes had overtaken any "inconsistent" suggestion in *Goesaert* v. *Cleary*, 335 U. S. 464 (1948)); *Taylor* v. *Louisiana*, 419 U. S. 522, 535–537 (1975) (recognizing as "a foregone conclusion from the pattern of some of the Court's cases over the past 30 years, as well as from legislative developments at both federal and state levels," that women could not be excluded from jury service, and explaining that the prior decision approving such practice, *Hoyt* v. *Florida*, 368 U. S. 57 (1961), had been rendered inconsistent with equal protection jurisprudence).

Other overrulings occurred very close in time to the original decision so did not engender substantial reliance and could not be described as having been "embedded" as "part of our national culture." *Dickerson* v. *United States*, 530 U. S. 428, 443 (2000); see *Payne* v. *Tennessee*, 501 U. S. 808 (1991) (revising procedural rules of evidence that had barred admission of certain victim-impact evidence during the penalty phase of capital cases, and overruling *South Carolina* v. *Gathers*, 490 U. S. 805 (1989), and *Booth* v. *Maryland*, 482 U. S. 496 (1987), which had been decided two and four years prior, respectively); *Seminole Tribe of Fla.* v. *Florida*, 517 U. S. 44 (1996) (holding that Congress cannot abrogate state-sovereign immunity under its Article I commerce power, and rejecting the result in *Pennsylvania* v. *Union Gas Co.*, 491 U. S. 1 (1989), seven years later; the decision in *Union Gas* never garnered a majority); *Garcia* v. *San Antonio Metropolitan Transit Authority*, 469 U. S. 528, 531 (1985) (holding that local governments are not constitutionally immune from federal employment laws, and overruling *National League of Cities* v. *Usery*, 426 U. S. 833 (1976), after "eight years" of experience under that regime showed *Usery*'s standard was unworkable and, in practice, undermined the federalism principles the decision sought

to protect).

The rest of the cited cases were relatively minor in their effect, modifying part or an application of a prior precedent's test or analysis. See *Montejo* v. *Louisiana*, 556 U. S. 778 (2009) (citing workability and practical concerns with additional layers of prophylactic procedural safeguards for defendants' right to counsel, as had been enshrined in *Michigan* v. *Jackson*, 475 U. S. 625 (1986)); *Illinois* v. *Gates*, 462 U. S. 213, 227–228 (1983) (replacing a two-pronged test under *Aguilar* v. *Texas*, 378 U. S. 108 (1964), and *Spinelli* v. *United States*, 393 U. S. 410 (1969), in favor of a traditional totality-of-the-circumstances approach to evaluate probable cause for issuance of a warrant); *Wesberry* v. *Sanders*, 376 U. S. 1, 4 (1964), and *Baker* v. *Carr*, 369 U. S. 186, 202 (1962) (clarifying that the "political question" passage of the minority opinion in *Colegrove* v. *Green*, 328 U. S. 549 (1946), was not controlling law).

In sum, none of the cases the majority cites is analogous to today's decision to overrule 50- and 30-year-old watershed constitutional precedents that remain unweakened by any changes of law or fact.

117TH CONGRESS
1ST SESSION

H. R. 51

AN ACT

To provide for the admission of the State of Washington, D.C. into the Union.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Washington, D.C. Admission Act".

(b) TABLE OF CONTENTS.—The table of contents of this Act is as follows:

TITLE I—STATE OF WASHINGTON, D.C.

Subtitle A—Procedures for Admission

SEC. 101. ADMISSION INTO THE UNION.

(a) IN GENERAL.—Subject to the provisions of this Act, upon the issuance of the proclamation required by

section 103(a), the State of Washington, Douglass Commonwealth is declared to be a State of the United States of America, and is declared admitted into the Union on an equal footing with the other States in all respects whatever.

(b) CONSTITUTION OF STATE.—The State Constitution shall always be republican in form and shall not be repugnant to the Constitution of the United States or the principles of the Declaration of Independence.

(c) NONSEVERABILITY.—If any provision of this section, or the application thereof to any person or circumstance, is held to be invalid, the remaining provisions of this Act and any amendments made by this Act shall be treated as invalid.

SEC. 102. ELECTION OF SENATORS AND REPRESENTATIVE.

(a) ISSUANCE OF PROCLAMATION.—

(1) IN GENERAL.—Not more than 30 days after receiving certification of the enactment of this Act from the President pursuant to section 403, the Mayor shall issue a proclamation for the first elections for 2 Senators and one Representative in Congress from the State, subject to the provisions of this section.

(2) SPECIAL RULE FOR ELECTIONS OF SENATORS.—In the elections of Senators from the State

pursuant to paragraph (1), the 2 Senate offices shall be separately identified and designated, and no person may be a candidate for both offices. No such identification or designation of either of the offices shall refer to or be taken to refer to the terms of such offices, or in any way impair the privilege of the Senate to determine the class to which each of the Senators shall be assigned.

(b) RULES FOR CONDUCTING ELECTIONS.—

(1) IN GENERAL.—The proclamation of the Mayor issued under subsection (a) shall provide for the holding of a primary election and a general election, and at such elections the officers required to be elected as provided in subsection (a) shall be chosen by the qualified voters of the District of Columbia in the manner required by the laws of the District of Columbia.

(2) CERTIFICATION OF RESULTS.—Election results shall be certified in the manner required by the laws of the District of Columbia, except that the Mayor shall also provide written certification of the results of such elections to the President.

(c) ASSUMPTION OF DUTIES.—Upon the admission of the State into the Union, the Senators and Representative elected at the elections described in subsection (a)

shall be entitled to be admitted to seats in Congress and to all the rights and privileges of Senators and Representatives of the other States in Congress.

(d) EFFECT OF ADMISSION ON HOUSE OF REPRESENTATIVES MEMBERSHIP.—

(1) PERMANENT INCREASE IN NUMBER OF MEMBERS.—Effective with respect to the Congress during which the State is admitted into the Union and each succeeding Congress, the House of Representatives shall be composed of 436 Members, including any Members representing the State.

(2) INITIAL NUMBER OF REPRESENTATIVES FOR STATE.—Until the taking effect of the first apportionment of Members occurring after the admission of the State into the Union, the State shall be entitled to one Representative in the House of Representatives upon its admission into the Union.

(3) APPORTIONMENT OF MEMBERS RESULTING FROM ADMISSION OF STATE.—

(A) APPORTIONMENT.—Section 22(a) of the Act entitled ''An Act to provide for the fifteenth and subsequent decennial censuses and to provide for apportionment of Representatives in Congress'', approved June 18, 1929 (2 U.S.C. 2a(a)), is amended by striking ''the then

existing number of Representatives'' and inserting ''436 Representatives''.

(B) EFFECTIVE DATE.—The amendment made by subparagraph (A) shall apply with respect to the first regular decennial census conducted after the admission of the State into the Union and each subsequent regular decennial census.

SEC. 103. ISSUANCE OF PRESIDENTIAL PROCLAMATION.

(a) IN GENERAL.—The President, upon the certification of the results of the elections of the officers required to be elected as provided in section 102(a), shall, not later than 90 days after receiving such certification pursuant to section 102(b)(2), issue a proclamation announcing the results of such elections as so ascertained.

(b) ADMISSION OF STATE UPON ISSUANCE OF PROCLAMATION.—Upon the issuance of the proclamation by the President under subsection (a), the State shall be declared admitted into the Union as provided in section 101(a).

Subtitle B—Seat of Government of the United States

SEC. 111. TERRITORY AND BOUNDARIES.

(a) IN GENERAL.—Except as provided in subsection (b), the State shall consist of all of the territory of the District of Columbia as of the date of the enactment of

this Act, subject to the results of the metes and bounds survey conducted under subsection (c).

(b) EXCLUSION OF PORTION REMAINING AS SEAT OF GOVERNMENT OF UNITED STATES.—The territory of the State shall not include the area described in section 112, which shall be known as the ''Capital'' and shall serve as the seat of the Government of the United States, as provided in clause 17 of section 8 of article I of the Constitution of the United States.

(c) METES AND BOUNDS SURVEY.—Not later than 180 days after the date of the enactment of this Act, the President (in consultation with the Chair of the National Capital Planning Commission) shall conduct a metes and bounds survey of the Capital, as described in section 112(b).

SEC. 112. DESCRIPTION OF CAPITAL.

(a) IN GENERAL.—Subject to subsection (c), upon the admission of the State into the Union, the Capital shall consist of the property described in subsection (b) and shall include the principal Federal monuments, the White House, the Capitol Building, the United States Supreme Court Building, and the Federal executive, legislative, and judicial office buildings located adjacent to the Mall and the Capitol Building (as such terms are used in section 8501(a) of title 40, United States Code).

(b) GENERAL DESCRIPTION.—Upon the admission of the State into the Union, the boundaries of the Capital shall be as follows: Beginning at the intersection of the southern right-of-way of F Street NE and the eastern right-of-way of 2nd Street NE;

(1) thence south along said eastern right-of-way of 2nd Street NE to its intersection with the northeastern right-of-way of Maryland Avenue NE;

(2) thence southwest along said northeastern right-of-way of Maryland Avenue NE to its intersection with the northern right-of-way of Constitution Avenue NE;

(3) thence west along said northern right-of-way of Constitution Avenue NE to its intersection with the eastern right-of-way of 1st Street NE;

(4) thence south along said eastern right-of-way of 1st Street NE to its intersection with the southeastern right-of-way of Maryland Avenue NE;

(5) thence northeast along said southeastern right-of-way of Maryland Avenue NE to its intersection with the eastern right-of-way of 2nd Street SE;

(6) thence south along said eastern right-of-way of 2nd Street SE to the eastern right-of-way of 2nd Street SE;

(7) thence south along said eastern right-of-way of 2nd Street SE to its intersection with the northern property boundary of the property designated as Square 760 Lot 803;

(8) thence east along said northern property boundary of Square 760 Lot 803 to its intersection with the western right-of-way of 3rd Street SE;

(9) thence south along said western right-of-way of 3rd Street SE to its intersection with the northern right-of-way of Independence Avenue SE;

(10) thence west along said northern right-of-way of Independence Avenue SE to its intersection with the northwestern right-of-way of Pennsylvania Avenue SE;

(11) thence northwest along said northwestern right-of-way of Pennsylvania Avenue SE to its intersection with the eastern right-of-way of 2nd Street SE;

(12) thence south along said eastern right-of-way of 2nd Street SE to its intersection with the southern right-of-way of C Street SE;

(13) thence west along said southern right-of-way of C Street SE to its intersection with the eastern right-of-way of 1st Street SE;

(14) thence south along said eastern right-of-way of 1st Street SE to its intersection with the southern right-of-way of D Street SE;

(15) thence west along said southern right-of-way of D Street SE to its intersection with the eastern right-of-way of South Capitol Street;

(16) thence south along said eastern right-of-way of South Capitol Street to its intersection with the northwestern right-of-way of Canal Street SE;

(17) thence southeast along said northwestern right-of-way of Canal Street SE to its intersection with the southern right-of-way of E Street SE;

(18) thence east along said southern right-of-way of said E Street SE to its intersection with the western right-of-way of 1st Street SE;

(19) thence south along said western right-of-way of 1st Street SE to its intersection with the southernmost corner of the property designated as Square 736S Lot 801;

(20) thence west along a line extended due west from said corner of said property designated as Square 736S Lot 801 to its intersection with the southwestern right-of-way of New Jersey Avenue SE;

(21) thence southeast along said southwestern right-of-way of New Jersey Avenue SE to its intersection with the northwestern right-of-way of Virginia Avenue SE;

(22) thence northwest along said northwestern right-of-way of Virginia Avenue SE to its intersection with the western right-of-way of South Capitol Street;

(23) thence north along said western right-of-way of South Capitol Street to its intersection with the southern right-of-way of E Street SW;

(24) thence west along said southern right-of-way of E Street SW to its end;

(25) thence west along a line extending said southern right-of-way of E Street SW westward to its intersection with the eastern right-of-way of 2nd Street SW;

(26) thence north along said eastern right-of-way of 2nd Street SW to its intersection with the southwestern right-of-way of Virginia Avenue SW;

(27) thence northwest along said southwestern right-of-way of Virginia Avenue SW to its intersection with the western right-of-way of 3rd Street SW;

(28) thence north along said western right-of-way of 3rd Street SW to its intersection with the northern right-of-way of D Street SW;

(29) thence west along said northern right-of-way of D Street SW to its intersection with the eastern right-of-way of 4th Street SW;

(30) thence north along said eastern right-of-way of 4th Street SW to its intersection with the northern right-of-way of C Street SW;

(31) thence west along said northern right-of-way of C Street SW to its intersection with the eastern right-of-way of 6th Street SW;

(32) thence north along said eastern right-of-way of 6th Street SW to its intersection with the northern right-of-way of Independence Avenue SW;

(33) thence west along said northern right-of-way of Independence Avenue SW to its intersection with the western right-of-way of 12th Street SW;

(34) thence south along said western right-of-way of 12th Street SW to its intersection with the northern right-of-way of D Street SW;

(35) thence west along said northern right-of-way of D Street SW to its intersection with the eastern right-of-way of 14th Street SW;

(36) thence south along said eastern right-of-way of 14th Street SW to its intersection with the northeastern boundary of the Consolidated Rail Corporation railroad easement;

(37) thence southwest along said northeastern boundary of the Consolidated Rail Corporation railroad easement to its intersection with the eastern shore of the Potomac River;

(38) thence generally northwest along said eastern shore of the Potomac River to its intersection with a line extending westward the northern boundary of the property designated as Square 12 Lot 806;

(39) thence east along said line extending westward the northern boundary of the property designated as Square 12 Lot 806 to the northern property boundary of the property designated as Square 12 Lot 806, and continuing east along said northern boundary of said property designated as Square 12 Lot 806 to its northeast corner;

(40) thence east along a line extending east from said northeast corner of the property designated as Square 12 Lot 806 to its intersection with the western boundary of the property designated as Square 33 Lot 87;

(41) thence south along said western boundary of the property designated as Square 33 Lot 87 to its intersection with the northwest corner of the property designated as Square 33 Lot 88;

(42) thence counter-clockwise around the boundary of said property designated as Square 33 Lot 88 to its southeast corner, which is along the northern right-of-way of E Street NW;

(43) thence east along said northern right-of-way of E Street NW to its intersection with the western right-of-way of 18th Street NW;

(44) thence south along said western right-of-way of 18th Street NW to its intersection with the southwestern right-of-way of Virginia Avenue NW;

(45) thence southeast along said southwestern right-of-way of Virginia Avenue NW to its intersection with the northern right-of-way of Constitution Avenue NW;

(46) thence east along said northern right-of-way of Constitution Avenue NW to its intersection with the eastern right-of-way of 17th Street NW;

(47) thence north along said eastern right-of-way of 17th Street NW to its intersection with the southern right-of-way of H Street NW;

(48) thence east along said southern right-of-way of H Street NW to its intersection with the northwest corner of the property designated as Square 221 Lot 35;

(49) thence counter-clockwise around the boundary of said property designated as Square 221 Lot 35 to its southeast corner, which is along the boundary of the property designated as Square 221 Lot 37;

(50) thence counter-clockwise around the boundary of said property designated as Square 221 Lot 37 to its southwest corner, which it shares with the property designated as Square 221 Lot 818;

(51) thence south along the boundary of said property designated as Square 221 Lot 818 to its southwest corner, which it shares with the property designated as Square 221 Lot 40;

(52) thence south along the boundary of said property designated as Square 221 Lot 40 to its southwest corner;

(53) thence east along the southern border of said property designated as Square 221 Lot 40 to its intersection with the northwest corner of the property designated as Square 221 Lot 820;

(54) thence south along the western boundary of said property designated as Square 221 Lot 820 to its southwest corner, which it shares with the property designated as Square 221 Lot 39;

(55) thence south along the western boundary of said property designated as Square 221 Lot 39 to its southwest corner, which is along the northern right-of-way of Pennsylvania Avenue NW;

(56) thence east along said northern right-of-way of Pennsylvania Avenue NW to its intersection with the western right-of-way of 15th Street NW;

(57) thence south along said western right-of-way of 15th Street NW to its intersection with a line extending northwest from the southern right-of-way of the portion of Pennsylvania Avenue NW north of Pershing Square;

(58) thence southeast along said line extending the southern right-of-way of Pennsylvania Avenue NW to the southern right-of-way of Pennsylvania Avenue NW, and continuing southeast along said southern right-of-way of Pennsylvania Avenue NW to its intersection with the western right-of-way of 14th Street NW;

(59) thence south along said western right-of-way of 14th Street NW to its intersection with a line

extending west from the southern right-of-way of D Street NW;

(60) thence east along said line extending west from the southern right-of-way of D Street NW to the southern right-of-way of D Street NW, and continuing east along said southern right-of-way of D Street NW to its intersection with the eastern right-of-way of 13½ Street NW;

(61) thence north along said eastern right-of-way of 13½ Street NW to its intersection with the southern right-of-way of Pennsylvania Avenue NW;

(62) thence east and southeast along said southern right-of-way of Pennsylvania Avenue NW to its intersection with the western right-of-way of 12th Street NW;

(63) thence south along said western right-of-way of 12th Street NW to its intersection with a line extending to the west the southern boundary of the property designated as Square 324 Lot 809;

(64) thence east along said line to the southwest corner of said property designated as Square 324 Lot 809, and continuing northeast along the southern boundary of said property designated as Square 324 Lot 809 to its eastern corner, which it

shares with the property designated as Square 323 Lot 802;

(65) thence east along the southern boundary of said property designated as Square 323 Lot 802 to its southeast corner, which it shares with the property designated as Square 324 Lot 808;

(66) thence counter-clockwise around the boundary of said property designated as Square 324 Lot 808 to its northeastern corner, which is along the southern right-of-way of Pennsylvania Avenue NW;

(67) thence southeast along said southern right-of-way of Pennsylvania Avenue NW to its intersection with the eastern right-of-way of 4th Street NW;

(68) thence north along a line extending north from said eastern right-of-way of 4th Street NW to its intersection with the southern right-of-way of C Street NW;

(69) thence east along said southern right-of-way of C Street NW to its intersection with the eastern right-of-way of 3rd Street NW;

(70) thence north along said eastern right-of-way of 3rd Street NW to its intersection with the southern right-of-way of D Street NW;

(71) thence east along said southern right-of-way of D Street NW to its intersection with the western right-of-way of 1st Street NW;

(72) thence south along said western right-of-way of 1st Street NW to its intersection with the northern right-of-way of C Street NW;

(73) thence west along said northern right-of-way of C Street NW to its intersection with the western right-of-way of 2nd Street NW;

(74) thence south along said western right-of-way of 2nd Street NW to its intersection with the northern right-of-way of Constitution Avenue NW;

(75) thence east along said northern right-of-way of Constitution Avenue NW to its intersection with the northeastern right-of-way of Louisiana Avenue NW;

(76) thence northeast along said northeastern right-of-way of Louisiana Avenue NW to its intersection with the southwestern right-of-way of New Jersey Avenue NW;

(77) thence northwest along said southwestern right-of-way of New Jersey Avenue NW to its intersection with the northern right-of-way of D Street NW;

(78) thence east along said northern right-of-way of D Street NW to its intersection with the northeastern right-of-way of Louisiana Avenue NW;

(79) thence northeast along said northwestern right-of-way of Louisiana Avenue NW to its intersection with the western right-of-way of North Capitol Street;

(80) thence north along said western right-of-way of North Capitol Street to its intersection with the southwestern right-of-way of Massachusetts Avenue NW;

(81) thence southeast along said southwestern right-of-way of Massachusetts Avenue NW to the southwestern right-of-way of Massachusetts Avenue NE;

(82) thence southeast along said southwestern right-of-way of Massachusetts Avenue NE to the southern right-of-way of Columbus Circle NE;

(83) thence counter-clockwise along said southern right-of-way of Columbus Circle NE to its intersection with the southern right-of-way of F Street NE; and

(84) thence east along said southern right-of-way of F Street NE to the point of beginning.

(c) EXCLUSION OF BUILDING SERVING AS STATE CAPITOL.—Notwithstanding any other provision of this section, after the admission of the State into the Union, the Capital shall not be considered to include the building known as the ''John A. Wilson Building'', as described and designated under section 601(a) of the Omnibus Spending Reduction Act of 1993 (sec. 10–1301(a), D.C. Official Code).

(d) CLARIFICATION OF TREATMENT OF FRANCES PERKINS BUILDING.—The entirety of the Frances Perkins Building, including any portion of the Building which is north of D Street Northwest, shall be included in the Capital.

SEC. 113. RETENTION OF TITLE TO PROPERTY.

(a) RETENTION OF FEDERAL TITLE.—The United States shall have and retain title to, or jurisdiction over, for purposes of administration and maintenance, all real and personal property with respect to which the United States holds title or jurisdiction for such purposes on the day before the date of the admission of the State into the Union.

(b) RETENTION OF STATE TITLE.—The State shall have and retain title to, or jurisdiction over, for purposes of administration and maintenance, all real and personal property with respect to which the District of Columbia

holds title or jurisdiction for such purposes on the day before the date of the admission of the State into the Union.

SEC. 114. EFFECT OF ADMISSION ON CURRENT LAWS OF SEAT OF GOVERNMENT OF UNITED STATES.

Except as otherwise provided in this Act, the laws of the District of Columbia which are in effect on the day before the date of the admission of the State into the Union (without regard to whether such laws were enacted by Congress or by the District of Columbia) shall apply in the Capital in the same manner and to the same extent beginning on the date of the admission of the State into the Union, and shall be deemed laws of the United States which are applicable only in or to the Capital.

SEC. 115. CAPITAL NATIONAL GUARD.

(a) ESTABLISHMENT.—Title 32, United States Code, is amended as follows:

(1) DEFINITIONS.—In paragraphs (4), (6), and (19) of section 101, by striking ''District of Columbia'' each place it appears and inserting ''Capital''.

(2) BRANCHES AND ORGANIZATIONS.—In section 103, by striking ''District of Columbia'' and inserting ''Capital''.

(3) UNITS: LOCATION; ORGANIZATION; COMMAND.—In subsections (c) and (d) of section 104,

by striking ''District of Columbia'' both places it appears and inserting ''Capital''.

(4) AVAILABILITY OF APPROPRIATIONS.—In section 107(b), by striking ''District of Columbia'' and inserting ''Capital''.

(5) MAINTENANCE OF OTHER TROOPS.—In subsections (a), (b), and (c) of section 109, by striking ''District of Columbia'' each place it appears and inserting ''Capital''.

(6) DRUG INTERDICTION AND COUNTER-DRUG ACTIVITIES.—In section 112(h)—

(A) by striking ''District of Columbia,'' both places it appears and inserting ''Capital,''; and

(B) in paragraph (2), by striking ''National Guard of the District of Columbia'' and inserting ''Capital National Guard''.

(7) ENLISTMENT OATH.—In section 304, by striking ''District of Columbia'' and inserting ''Capital''.

(8) ADJUTANTS GENERAL.—In section 314, by striking ''District of Columbia'' each place it appears and inserting ''Capital''.

(9) DETAIL OF REGULAR MEMBERS OF ARMY AND AIR FORCE TO DUTY WITH NATIONAL GUARD.—

In section 315, by striking ''District of Columbia'' each place it appears and inserting ''Capital''.

(10) DISCHARGE OF OFFICERS; TERMINATION OF APPOINTMENT.—In section 324(b), by striking ''District of Columbia'' and inserting ''Capital''.

(11) RELIEF FROM NATIONAL GUARD DUTY WHEN ORDERED TO ACTIVE DUTY.—In subsections (a) and (b) of section 325, by striking ''District of Columbia'' each place it appears and inserting ''Capital''.

(12) COURTS-MARTIAL OF NATIONAL GUARD NOT IN FEDERAL SERVICE: COMPOSITION, JURISDICTION, AND PROCEDURES; CONVENING AUTHORITY.—In sections 326 and 327, by striking ''District of Columbia'' each place it appears and inserting ''Capital''.

(13) ACTIVE GUARD AND RESERVE DUTY: GOVERNOR'S AUTHORITY.—In section 328(a), by striking ''District of Columbia'' and inserting ''Capital''.

(14) TRAINING GENERALLY.—In section 501(b), by striking ''District of Columbia'' and inserting ''Capital''.

(15) PARTICIPATION IN FIELD EXERCISES.—In section 503(b), by striking ''District of Columbia'' and inserting ''Capital''.

(16) NATIONAL GUARD SCHOOLS AND SMALL ARMS COMPETITIONS.—In section 504(b), by striking ''District of Columbia'' and inserting ''Capital''.

(17) ARMY AND AIR FORCE SCHOOLS AND FIELD EXERCISES.—In section 505, by striking ''National Guard of the District of Columbia'' and inserting ''Capital National Guard''.

(18) NATIONAL GUARD YOUTH CHALLENGE PROGRAM.—In subsections (c)(1), (g)(2), (j), (k), and (l)(1) of section 509, by striking ''District of Columbia'' each place it appears and inserting ''Capital''.

(19) ISSUE OF SUPPLIES.—In section 702—

(A) in subsection (a), by striking ''National Guard of the District of Columbia'' and inserting ''Capital National Guard''; and

(B) in subsections (b), (c), and (d), by striking ''District of Columbia'' each place it appears and inserting ''Capital''.

(20) PURCHASES OF SUPPLIES FROM ARMY OR AIR FORCE.—In subsections (a) and (b) of section 703, by striking ''District of Columbia'' both places it appears and inserting ''Capital''.

(21) ACCOUNTABILITY: RELIEF FROM UPON ORDER TO ACTIVE DUTY.—In section 704, by striking ''District of Columbia'' and inserting ''Capital''.

(22) PROPERTY AND FISCAL OFFICERS.—In section 708—

(A) in subsection (a), by striking ''National Guard of the District of Columbia'' and inserting ''Capital National Guard''; and

(B) in subsection (d), by striking ''District of Columbia'' and inserting ''Capital''.

(23) ACCOUNTABILITY FOR PROPERTY ISSUED TO THE NATIONAL GUARD.—In subsections (c), (d), (e), and (f) of section 710, by striking ''District of Columbia'' each place it appears and inserting ''Capital''.

(24) DISPOSITION OF OBSOLETE OR CONDEMNED PROPERTY.—In section 711, by striking ''District of Columbia'' and inserting ''Capital''.

(25) DISPOSITION OF PROCEEDS OF CONDEMNED STORES ISSUED TO NATIONAL GUARD.—In paragraph (1) of section 712, by striking ''District of Columbia'' and inserting ''Capital''.

(26) PROPERTY LOSS; PERSONAL INJURY OR DEATH.—In section 715(c), by striking ''District of Columbia'' and inserting ''Capital''.

(b) CONFORMING AMENDMENTS.—

(1) CAPITAL DEFINED.—

(A) IN GENERAL.—Section 101 of title 32, United States Code, is amended by adding at the end the following new paragraph:

''(20) 'Capital' means the area serving as the seat of the Government of the United States, as described in section 112 of the Washington, D.C. Admission Act.''.

(B) WITH REGARDS TO HOMELAND DEFENSE ACTIVITIES.—Section 901 of title 32, United States Code, is amended—

(i) in paragraph (2), by striking ''District of Columbia'' and inserting ''Capital''; and

(ii) by adding at the end the following new paragraph:

''(3) The term 'Governor' means, with respect to the Capital, the commanding general of the Capital National Guard.''.

(2) TITLE 10, UNITED STATES CODE.—Title 10, United States Code, is amended as follows:

(A) DEFINITIONS.—In section 101—

(i) in subsection (a), by adding at the end the following new paragraph:

''(19) The term 'Capital' means the area serving as the seat of the Government of the United States, as described in section 112 of the Washington, D.C. Admission Act.'';

(ii) in paragraphs (2) and (4) of subsection (c), by striking ''District of Columbia'' both places it appears and inserting ''Capital''; and

(iii) in subsection (d)(5), by striking ''District of Columbia'' and inserting ''Capital''.

(B) DISPOSITION ON DISCHARGE.—In section 771a(c), by striking ''District of Columbia'' and inserting ''Capital''.

(C) TRICARE COVERAGE FOR CERTAIN MEMBERS OF THE NATIONAL GUARD AND DEPENDENTS DURING CERTAIN DISASTER RESPONSE DUTY.—In section 1076f—

(i) in subsections (a) and (c)(1), by striking ''with respect to the District of Columbia, the mayor of the District of Columbia'' both places it appears and inserting ''with respect to the Capital, the commanding general of the Capital National Guard''; and

(ii) in subsection (c)(2), by striking ''District of Columbia'' and inserting ''Capital''.

(D) PAYMENT OF CLAIMS: AVAILABILITY OF APPROPRIATIONS.—In paragraph (2)(B) of section 2732, by striking ''District of Columbia'' and inserting ''Capital''.

(E) MEMBERS OF ARMY NATIONAL GUARD: DETAIL AS STUDENTS, OBSERVERS, AND INVESTIGATORS AT EDUCATIONAL INSTITUTIONS, INDUSTRIAL PLANTS, AND HOSPITALS.—In section 7401(c), by striking ''District of Columbia'' and inserting ''Capital''.

(F) MEMBERS OF AIR NATIONAL GUARD: DETAIL AS STUDENTS, OBSERVERS, AND INVESTIGATORS AT EDUCATIONAL INSTITUTIONS, INDUSTRIAL PLANTS, AND HOSPITALS.—In section 9401(c), by striking ''District of Columbia'' and inserting ''Capital''.

(G) READY RESERVE: FAILURE TO SATISFACTORILY PERFORM PRESCRIBED TRAINING.—In section 10148(b)—

(i) by striking ''District of Columbia,'' and inserting ''Capital,''; and

(ii) by striking ''District of Columbia National Guard'' and inserting ''Capital National Guard''.

(H) CHIEF OF THE NATIONAL GUARD BUREAU.—In section 10502(a)(1)—

(i) by striking ''District of Columbia,'' and inserting ''Capital,''; and

(ii) by striking ''District of Columbia National Guard'' and inserting ''Capital National Guard''.

(I) VICE CHIEF OF THE NATIONAL GUARD BUREAU.—In section 10505(a)(1)(A)—

(i) by striking ''District of Columbia,'' and inserting ''Capital,''; and

(ii) by striking ''District of Columbia National Guard'' and inserting ''Capital National Guard''.

(J) OTHER SENIOR NATIONAL GUARD BUREAU OFFICERS.—In subparagraphs (A) and (B) of section 10506(a)(1)—

(i) by striking ''District of Columbia,'' both places it appears and inserting ''Capital,''; and

(ii) by striking ''District of Columbia National Guard'' both places it appears and inserting ''Capital National Guard''.

(K) NATIONAL GUARD BUREAU: GENERAL PROVISIONS.—In section 10508(b)(1), by striking ''District of Columbia'' and inserting ''Capital''.

(L) COMMISSIONED OFFICERS: ORIGINAL APPOINTMENT; LIMITATION.—In section 12204(b), by striking ''District of Columbia'' and inserting ''Capital''.

(M) RESERVE COMPONENTS GENERALLY.—In section 12301(b), by striking ''District of Columbia National Guard'' both places it appears and inserting ''Capital National Guard''.

(N) NATIONAL GUARD IN FEDERAL SERVICE: CALL.—In section 12406—

(i) by striking ''District of Columbia,'' and inserting ''Capital,''; and

(ii) by striking ''National Guard of the District of Columbia'' and inserting ''Capital National Guard''.

(O) RESULT OF FAILURE TO COMPLY WITH STANDARDS AND QUALIFICATIONS.—In

section 12642(c), by striking ''District of Columbia'' and inserting ''Capital''.

(P) LIMITATION ON RELOCATION OF NATIONAL GUARD UNITS.—In section 18238—

(i) by striking ''District of Columbia,'' and inserting ''Capital,''; and

(ii) by striking ''National Guard of the District of Columbia'' and inserting ''Capital National Guard''.

SEC. 116. TERMINATION OF LEGAL STATUS OF SEAT OF GOVERNMENT OF UNITED STATES AS MUNICIPAL CORPORATION.

Notwithstanding section 2 of the Revised Statutes relating to the District of Columbia (sec. 1–102, D.C. Official Code) or any other provision of law codified in subchapter I of chapter 1 of the District of Columbia Official Code, effective upon the date of the admission of the State into the Union, the Capital (or any portion thereof) shall not serve as a government and shall not be a body corporate for municipal purposes.

Subtitle C—General Provisions Relating to Laws of State

SEC. 121. EFFECT OF ADMISSION ON CURRENT LAWS.

(a) LEGISLATIVE POWER.—The legislative power of the State shall extend to all rightful subjects of legislation

in the State, consistent with the Constitution of the United States (including the restrictions and limitations imposed upon the States by article I, section 10) and subject to the provisions of this Act.

(b) CONTINUATION OF AUTHORITY AND DUTIES OF MEMBERS OF EXECUTIVE, LEGISLATIVE, AND JUDICIAL OFFICES.—Upon the admission of the State into the Union, members of executive, legislative, and judicial offices of the District of Columbia shall be deemed members of the respective executive, legislative, and judicial offices of the State, as provided by the State Constitution and the laws of the State.

(c) TREATMENT OF FEDERAL LAWS.—To the extent that any law of the United States applies to the States generally, the law shall have the same force and effect in the State as elsewhere in the United States, except as such law may otherwise provide.

(d) NO EFFECT ON EXISTING CONTRACTS.—Nothing in the admission of the State into the Union shall affect any obligation under any contract or agreement under which the District of Columbia or the United States is a party, as in effect on the day before the date of the admission of the State into the Union.

(e) SUCCESSION IN INTERSTATE COMPACTS.—The State shall be deemed to be the successor to the District

of Columbia for purposes of any interstate compact which is in effect on the day before the date of the admission of the State into the Union.

(f) CONTINUATION OF SERVICE OF FEDERAL MEMBERS ON BOARDS AND COMMISSIONS.—Nothing in the admission of the State into the Union shall affect the authority of a representative of the Federal Government who, as of the day before the date of the admission of the State into the Union, is a member of a board or commission of the District of Columbia to serve as a member of such board or commission or as a member of a successor to such board or commission after the admission of the State into the Union, as may be provided by the State Constitution and the laws of the State.

(g) SPECIAL RULE REGARDING ENFORCEMENT AUTHORITY OF UNITED STATES CAPITOL POLICE, UNITED STATES PARK POLICE, AND UNITED STATES SECRET SERVICE UNIFORMED DIVISION.—The United States Capitol Police, the United States Park Police, and the United States Secret Service Uniformed Division may not enforce any law of the State in the State, except to the extent authorized by the State. Nothing in this subsection may be construed to affect the authority of the United States Capitol Police, the United States Park Police, and

the United States Secret Service Uniformed Division to enforce any law in the Capital.

SEC. 122. PENDING ACTIONS AND PROCEEDINGS.

(a) STATE AS LEGAL SUCCESSOR TO DISTRICT OF COLUMBIA.—The State shall be the legal successor to the District of Columbia in all matters.

(b) NO EFFECT ON PENDING PROCEEDINGS.—All existing writs, actions, suits, judicial and administrative proceedings, civil or criminal liabilities, prosecutions, judgments, sentences, orders, decrees, appeals, causes of action, claims, demands, titles, and rights shall continue unaffected by the admission of the State into the Union with respect to the State or the United States, except as may be provided under this Act, as may be modified in accordance with the provisions of the State Constitution, and as may be modified by the laws of the State or the United States, as the case may be.

SEC. 123. LIMITATION ON AUTHORITY TO TAX FEDERAL PROPERTY.

The State may not impose any tax on any real or personal property owned or acquired by the United States, except to the extent that Congress may permit.

SEC. 124. UNITED STATES NATIONALITY.

No provision of this Act shall operate to confer United States nationality, to terminate nationality lawfully

acquired, or to restore nationality terminated or lost under any law of the United States or under any treaty to which the United States is or was a party.

TITLE II—INTERESTS OF FEDERAL GOVERNMENT

Subtitle A—Federal Property

SEC. 201. TREATMENT OF MILITARY LANDS.

(a) RESERVATION OF FEDERAL AUTHORITY.—

(1) IN GENERAL.—Subject to paragraph (2) and subsection (b) and notwithstanding the admission of the State into the Union, authority is reserved in the United States for the exercise by Congress of the power of exclusive legislation in all cases whatsoever over such tracts or parcels of land located in the State that, on the day before the date of the admission of the State into the Union, are controlled or owned by the United States and held for defense or Coast Guard purposes.

(2) LIMITATION ON AUTHORITY.—The power of exclusive legislation described in paragraph (1) shall vest and remain in the United States only so long as the particular tract or parcel of land involved is controlled or owned by the United States and held for defense or Coast Guard purposes.

(b) AUTHORITY OF STATE.—

(1) IN GENERAL.—The reservation of authority in the United States under subsection (a) shall not operate to prevent such tracts or parcels of land from being a part of the State, or to prevent the State from exercising over or upon such lands, concurrently with the United States, any jurisdiction which it would have in the absence of such reservation of authority and which is consistent with the laws hereafter enacted by Congress pursuant to such reservation of authority.

(2) SERVICE OF PROCESS.—The State shall have the right to serve civil or criminal process in such tracts or parcels of land in which the authority of the United States is reserved under subsection (a) in suits or prosecutions for or on account of rights acquired, obligations incurred, or crimes committed in the State but outside of such lands.

SEC. 202. WAIVER OF CLAIMS TO FEDERAL PROPERTY.

(a) IN GENERAL.—As a compact with the United States, the State and its people disclaim all right and title to any real or personal property not granted or confirmed to the State by or under the authority of this Act, the right or title to which is held by the United States or subject to disposition by the United States.

(b) EFFECT ON CLAIMS AGAINST UNITED STATES.—

(1) IN GENERAL.—Nothing in this Act shall recognize, deny, enlarge, impair, or otherwise affect any claim against the United States, and any such claim shall be governed by applicable laws of the United States.

(2) RULE OF CONSTRUCTION.—Nothing in this Act is intended or shall be construed as a finding, interpretation, or construction by Congress that any applicable law authorizes, establishes, recognizes, or confirms the validity or invalidity of any claim referred to in paragraph (1), and the determination of the applicability to or the effect of any law on any such claim shall be unaffected by anything in this Act.

Subtitle B—Federal Courts

SEC. 211. RESIDENCY REQUIREMENTS FOR CERTAIN FEDERAL OFFICIALS.

(a) CIRCUIT JUDGES.—Section 44(c) of title 28, United States Code, is amended—

(1) by striking ''Except in the District of Columbia, each'' and inserting ''Each''; and

(2) by striking ''within fifty miles of the District of Columbia'' and inserting ''within fifty miles of the Capital''.

(b) DISTRICT JUDGES.—Section 134(b) of such title is amended in the first sentence by striking ''the District of Columbia, the Southern District of New York, and'' and inserting ''the Southern District of New York and''.

(c) UNITED STATES ATTORNEYS.—Section 545(a) of such title is amended by striking the first sentence and inserting ''Each United States attorney shall reside in the district for which he or she is appointed, except that those officers of the Southern District of New York and the Eastern District of New York may reside within 20 miles thereof.''.

(d) UNITED STATES MARSHALS.—Section 561(e)(1) of such title is amended to read as follows:

''(1) the marshal for the Southern District of New York may reside within 20 miles of the district; and''.

(e) CLERKS OF DISTRICT COURTS.—Section 751(c) of such title is amended by striking ''the District of Columbia and''.

(f) EFFECTIVE DATE.—The amendments made by this section shall apply only to individuals appointed after the date of the admission of the State into the Union.

SEC. 212. RENAMING OF FEDERAL COURTS.

(a) RENAMING.—

(1) CIRCUIT COURT.—Section 41 of title 28, United States Code, is amended—

(A) in the first column, by striking ''District of Columbia'' and inserting ''Capital''; and

(B) in the second column, by striking ''District of Columbia'' and inserting ''Capital; Washington, Douglass Commonwealth''.

(2) DISTRICT COURT.—Section 88 of such title is amended—

(A) in the heading, by striking ''**District of Columbia**'' and inserting ''**Washington, Douglass Commonwealth and the Capital**'';

(B) by amending the first paragraph to read as follows:

''The State of Washington, Douglass Commonwealth and the Capital comprise one judicial district.''; and

(C) in the second paragraph, by striking ''Washington'' and inserting ''the Capital''.

(3) CLERICAL AMENDMENT.—The item relating to section 88 in the table of sections for chapter 5 of such title is amended to read as follows:

''88. Washington, Douglass Commonwealth and the Capital.''.

(b) CONFORMING AMENDMENTS RELATING TO COURT OF APPEALS.—Title 28, United States Code, is amended as follows:

(1) APPOINTMENT OF JUDGES.—Section 44(a) of such title is amended in the first column by striking ''District of Columbia'' and inserting ''Capital''.

(2) TERMS OF COURT.—Section 48(a) of such title is amended—

(A) in the first column, by striking ''District of Columbia'' and inserting ''Capital'';

(B) in the second column, by striking ''Washington'' and inserting ''Capital''; and

(C) in the second column, by striking ''District of Columbia'' and inserting ''Capital''.

(3) APPOINTMENT OF INDEPENDENT COUNSELS BY CHIEF JUDGE OF CIRCUIT.—Section 49 of such title is amended by striking ''District of Columbia'' each place it appears and inserting ''Capital''.

(4) CIRCUIT COURT JURISDICTION OVER CERTIFICATION OF DEATH PENALTY COUNSELS.—Section 2265(c)(2) of such title is amended by striking ''the District of Columbia Circuit'' and inserting ''the Capital Circuit''.

(5) CIRCUIT COURT JURISDICTION OVER REVIEW OF FEDERAL AGENCY ORDERS.—Section 2343

of such title is amended by striking ''the District of Columbia Circuit'' and inserting ''the Capital Circuit''.

(c) CONFORMING AMENDMENTS RELATING TO DISTRICT COURT.—Title 28, United States Code, is amended as follows:

(1) APPOINTMENT AND NUMBER OF DISTRICT COURT JUDGES.—Section 133(a) of such title is amended in the first column by striking ''District of Columbia'' and inserting ''Washington, Douglass Commonwealth and the Capital''.

(2) DISTRICT COURT JURISDICTION OF TAX CASES BROUGHT AGAINST UNITED STATES.—Section 1346(e) of such title is amended by striking ''the District of Columbia'' and inserting ''Washington, Douglass Commonwealth and the Capital''.

(3) DISTRICT COURT JURISDICTION OVER PROCEEDINGS FOR FORFEITURE OF FOREIGN PROPERTY.—Section 1355(b)(2) of such title is amended by striking ''the District of Columbia'' and inserting ''Washington, Douglass Commonwealth and the Capital''.

(4) DISTRICT COURT JURISDICTION OVER CIVIL ACTIONS BROUGHT AGAINST A FOREIGN STATE.—Section 1391(f)(4) of such title is amended by strik-

ing ''the District of Columbia'' and inserting ''Washington, Douglass Commonwealth and the Capital''.

(5) DISTRICT COURT JURISDICTION OVER ACTIONS BROUGHT BY CORPORATIONS AGAINST UNITED STATES.—Section 1402(a)(2) of such title is amended by striking ''the District of Columbia'' and inserting ''Washington, Douglass Commonwealth and the Capital''.

(6) VENUE IN DISTRICT COURT OF CERTAIN ACTIONS BROUGHT BY EMPLOYEES OF EXECUTIVE OFFICE OF THE PRESIDENT.—Section 1413 of such title is amended by striking ''the District of Columbia'' and inserting ''Washington, Douglass Commonwealth and the Capital''.

(7) VENUE IN DISTRICT COURT OF ACTION ENFORCING FOREIGN JUDGMENT.—Section 2467(c)(2)(B) of such title is amended by striking ''the District of Columbia'' and inserting ''Washington, Douglass Commonwealth and the Capital''.

(d) CONFORMING AMENDMENTS RELATING TO OTHER COURTS.—Title 28, United States Code, is amended as follows:

(1) APPOINTMENT OF BANKRUPTCY JUDGES.—Section 152(a)(2) of such title is amended in the first column by striking ''District of Columbia'' and

inserting ''Washington, Douglass Commonwealth and the Capital''.

(2) LOCATION OF COURT OF FEDERAL CLAIMS.—Section 173 of such title is amended by striking ''the District of Columbia'' and inserting ''the Capital''.

(3) DUTY STATION OF JUDGES OF COURT OF FEDERAL CLAIMS.—Section 175 of such title is amended by striking ''the District of Columbia'' each place it appears and inserting ''the Capital''.

(4) DUTY STATION OF JUDGES FOR PURPOSES OF TRAVELING EXPENSES.—Section 456(b) of such title is amended to read as follows:

''(b) The official duty station of the Chief Justice of the United States, the Justices of the Supreme Court of the United States, and the judges of the United States Court of Appeals for the Federal Circuit shall be the Capital.''.

(5) COURT ACCOMMODATIONS FOR FEDERAL CIRCUIT AND COURT OF FEDERAL CLAIMS.—Section 462(d) of such title is amended by striking ''the District of Columbia'' and inserting ''the Capital''.

(6) PLACES OF HOLDING COURT OF COURT OF FEDERAL CLAIMS.—Section 798(a) of such title is amended—

(A) by striking ''Washington, District of Columbia'' and inserting ''the Capital''; and

(B) by striking ''the District of Columbia'' and inserting ''the Capital''.

(e) OTHER CONFORMING AMENDMENTS.—

(1) SERVICE OF PROCESS ON FOREIGN PARTIES AT STATE DEPARTMENT OFFICE.—Section 1608(a)(4) of such title is amended by striking ''Washington, District of Columbia'' and inserting ''the Capital''.

(2) SERVICE OF PROCESS IN PROPERTY CASES AT ATTORNEY GENERAL OFFICE.—Section 2410(b) of such title is amended by striking ''Washington, District of Columbia'' and inserting ''the Capital''.

(f) DEFINITION.—Section 451 of title 28, United States Code, is amended by adding at the end the following new undesignated paragraph:

''The term 'Capital' means the area serving as the seat of the Government of the United States, as described in section 112 of the Washington, D.C. Admission Act.''.

(g) REFERENCES IN OTHER LAWS.—Any reference in any Federal law (other than a law amended by this section), rule, or regulation—

(1) to the United States Court of Appeals for the District of Columbia shall be deemed to refer to the United States Court of Appeals for the Capital;

(2) to the District of Columbia Circuit shall be deemed to refer to the Capital Circuit; and

(3) to the United States District Court for the District of Columbia shall be deemed to refer to the United States District Court for Washington, Douglass Commonwealth and the Capital.

(h) EFFECTIVE DATE.—This section and the amendments made by this section shall take effect upon the admission of the State into the Union.

SEC. 213. CONFORMING AMENDMENTS RELATING TO DEPARTMENT OF JUSTICE.

(a) APPOINTMENT OF UNITED STATES TRUSTEES.—Section 581(a)(4) of title 28, United States Code, is amended by striking ''the District of Columbia'' and inserting ''the Capital and Washington, Douglass Commonwealth''.

(b) INDEPENDENT COUNSELS.—

(1) APPOINTMENT OF ADDITIONAL PERSONNEL.—Section 594(c) of such title is amended—

(A) by striking ''the District of Columbia'' the first place it appears and inserting ''Wash-

ington, Douglass Commonwealth and the Capital''; and

(B) by striking ''the District of Columbia'' the second place it appears and inserting ''Washington, Douglass Commonwealth''.

(2) JUDICIAL REVIEW OF REMOVAL.—Section 596(a)(3) of such title is amended by striking ''the District of Columbia'' and inserting ''Washington, Douglass Commonwealth and the Capital''.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect upon the admission of the State into the Union.

SEC. 214. TREATMENT OF PRETRIAL SERVICES IN UNITED STATES DISTRICT COURT.

Section 3152 of title 18, United States Code, is amended—

(1) in subsection (a), by striking ''(other than the District of Columbia)'' and inserting ''(subject to subsection (d), other than the District of Columbia)''; and

(2) by adding at the end the following new subsection:

''(d) In the case of the judicial district of Washington, Douglass Commonwealth and the Capital—

''(1) upon the admission of the State of Washington, Douglass Commonwealth into the Union, the Washington, Douglass Commonwealth Pretrial Services Agency shall continue to provide pretrial services in the judicial district in the same manner and to the same extent as the District of Columbia Pretrial Services Agency provided such services in the judicial district of the District of Columbia as of the day before the date of the admission of the State into the Union; and

''(2) upon the receipt by the President of the certification from the State of Washington, Douglass Commonwealth under section 315(b)(4) of the Washington, D.C. Admission Act that the State has in effect laws providing for the State to provide pretrial services, paragraph (1) shall no longer apply, and the Director shall provide for the establishment of pretrial services in the judicial district under this section.''.

Subtitle C—Federal Elections

SEC. 221. PERMITTING INDIVIDUALS RESIDING IN CAPITAL TO VOTE IN FEDERAL ELECTIONS IN STATE OF MOST RECENT DOMICILE.

(a) REQUIREMENT FOR STATES TO PERMIT INDIVIDUALS TO VOTE BY ABSENTEE BALLOT.—

(1) IN GENERAL.—Each State shall—

(A) permit absent Capital voters to use absentee registration procedures and to vote by absentee ballot in general, special, primary, and runoff elections for Federal office; and

(B) accept and process, with respect to any general, special, primary, or runoff election for Federal office, any otherwise valid voter registration application from an absent Capital voter, if the application is received by the appropriate State election official not less than 30 days before the election.

(2) ABSENT CAPITAL VOTER DEFINED.—In this section, the term ''absent Capital voter'' means, with respect to a State, a person who resides in the Capital and is qualified to vote in the State (or who would be qualified to vote in the State but for residing in the Capital), but only if the State is the last place in which the person was domiciled before residing in the Capital.

(3) STATE DEFINED.—In this section, the term ''State'' means each of the several States, including the State.

(b) RECOMMENDATIONS TO STATES TO MAXIMIZE ACCESS TO POLLS BY ABSENT CAPITAL VOTERS.—To af-

ford maximum access to the polls by absent Capital voters, it is the sense of Congress that the States should—

(1) waive registration requirements for absent Capital voters who, by reason of residence in the Capital, do not have an opportunity to register;

(2) expedite processing of balloting materials with respect to such individuals; and

(3) assure that absentee ballots are mailed to such individuals at the earliest opportunity.

(c) ENFORCEMENT.—The Attorney General may bring a civil action in the appropriate district court of the United States for such declaratory or injunctive relief as may be necessary to carry out this section.

(d) EFFECT ON CERTAIN OTHER LAWS.—The exercise of any right under this section shall not affect, for purposes of a Federal tax, a State tax, or a local tax, the residence or domicile of a person exercising such right.

(e) EFFECTIVE DATE.—This section shall take effect upon the date of the admission of the State into the Union, and shall apply with respect to elections for Federal office taking place on or after such date.

SEC. 222. REPEAL OF OFFICE OF DISTRICT OF COLUMBIA DELEGATE.

(a) IN GENERAL.—Sections 202 and 204 of the District of Columbia Delegate Act (Public Law 91–405; sec-

tions 1–401 and 1–402, D.C. Official Code) are repealed, and the provisions of law amended or repealed by such sections are restored or revived as if such sections had not been enacted.

(b) CONFORMING AMENDMENTS TO DISTRICT OF COLUMBIA ELECTIONS CODE OF 1955.—The District of Columbia Elections Code of 1955 is amended—

(1) in section 1 (sec. 1–1001.01, D.C. Official Code), by striking ''the Delegate to the House of Representatives,'';

(2) in section 2 (sec. 1–1001.02, D.C. Official Code)—

(A) by striking paragraph (6),

(B) in paragraph (12), by striking ''(except the Delegate to Congress for the District of Columbia)'', and

(C) in paragraph (13), by striking ''the Delegate to Congress for the District of Columbia,'';

(3) in section 8 (sec. 1–1001.08, D.C. Official Code)—

(A) by striking ''Delegate,'' in the heading, and

(B) by striking ''Delegate,'' each place it appears in subsections (d), (h)(1)(A), (h)(2), (i)(1), (j)(1), (j)(3), and (k)(3);

(4) in section 10 (sec. 1–1001.10, D.C. Official Code)—

(A) by striking subparagraph (A) of subsection (a)(3), and

(B) in subsection (d)—

(i) by striking ''Delegate,'' each place it appears in paragraph (1), and

(ii) by striking paragraph (2) and redesignating paragraph (3) as paragraph (2);

(5) in section 11(a)(2) (sec. 1–1001.11(a)(2), D.C. Official Code), by striking ''Delegate to the House of Representatives,'';

(6) in section 15(b) (sec. 1–1001.15(b), D.C. Official Code), by striking ''Delegate,''; and

(7) in section 17(a) (sec. 1–1001.17(a), D.C. Official Code), by striking ''except the Delegate to the Congress from the District of Columbia''.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect upon the admission of the State into the Union.

SEC. 223. REPEAL OF LAW PROVIDING FOR PARTICIPATION OF SEAT OF GOVERNMENT IN ELECTION OF PRESIDENT AND VICE-PRESIDENT.

(a) IN GENERAL.—Chapter 1 of title 3, United States Code, is amended—

(1) by striking section 21; and

(2) in the table of sections, by striking the item relating to section 21.

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect upon the date of the admission of the State into the Union, and shall apply to any election of the President and Vice-President taking place on or after such date.

SEC. 224. EXPEDITED PROCEDURES FOR CONSIDERATION OF CONSTITUTIONAL AMENDMENT REPEALING 23RD AMENDMENT.

(a) JOINT RESOLUTION DESCRIBED.—In this section, the term ''joint resolution'' means a joint resolution—

(1) entitled ''A joint resolution proposing an amendment to the Constitution of the United States to repeal the 23rd article of amendment''; and

(2) the matter after the resolving clause of which consists solely of text to amend the Constitution of the United States to repeal the 23rd article of amendment to the Constitution.

(b) EXPEDITED CONSIDERATION IN HOUSE OF REPRESENTATIVES.—

(1) PLACEMENT ON CALENDAR.—Upon introduction in the House of Representatives, the joint resolution shall be placed immediately on the appropriate calendar.

(2) PROCEEDING TO CONSIDERATION.—

(A) IN GENERAL.—It shall be in order, not later than 30 legislative days after the date the joint resolution is introduced in the House of Representatives, to move to proceed to consider the joint resolution in the House of Representatives.

(B) PROCEDURE.—For a motion to proceed to consider the joint resolution—

(i) all points of order against the motion are waived;

(ii) such a motion shall not be in order after the House of Representatives has disposed of a motion to proceed on the joint resolution;

(iii) the previous question shall be considered as ordered on the motion to its adoption without intervening motion;

(iv) the motion shall not be debatable; and

(v) a motion to reconsider the vote by which the motion is disposed of shall not be in order.

(3) CONSIDERATION.—When the House of Representatives proceeds to consideration of the joint resolution—

(A) the joint resolution shall be considered as read;

(B) all points of order against the joint resolution and against its consideration are waived;

(C) the previous question shall be considered as ordered on the joint resolution to its passage without intervening motion except 10 hours of debate equally divided and controlled by the proponent and an opponent;

(D) an amendment to the joint resolution shall not be in order; and

(E) a motion to reconsider the vote on passage of the joint resolution shall not be in order.

(c) EXPEDITED CONSIDERATION IN SENATE.—

(1) PLACEMENT ON CALENDAR.—Upon introduction in the Senate, the joint resolution shall be placed immediately on the calendar.

(2) PROCEEDING TO CONSIDERATION.—

(A) IN GENERAL.—Notwithstanding rule XXII of the Standing Rules of the Senate, it is in order, not later than 30 legislative days after the date the joint resolution is introduced in the Senate (even though a previous motion to the same effect has been disagreed to) to move to proceed to the consideration of the joint resolution.

(B) PROCEDURE.—For a motion to proceed to the consideration of the joint resolution—

(i) all points of order against the motion are waived;

(ii) the motion is not debatable;

(iii) the motion is not subject to a motion to postpone;

(iv) a motion to reconsider the vote by which the motion is agreed to or disagreed to shall not be in order; and

(v) if the motion is agreed to, the joint resolution shall remain the unfinished business until disposed of.

(3) FLOOR CONSIDERATION.—

(A) IN GENERAL.—If the Senate proceeds to consideration of the joint resolution—

(i) all points of order against the joint resolution (and against consideration of the joint resolution) are waived;

(ii) consideration of the joint resolution, and all debatable motions and appeals in connection therewith, shall be limited to not more than 30 hours, which shall be divided equally between the majority and minority leaders or their designees;

(iii) a motion further to limit debate is in order and not debatable;

(iv) an amendment to, a motion to postpone, or a motion to commit the joint resolution is not in order; and

(v) a motion to proceed to the consideration of other business is not in order.

(B) VOTE ON PASSAGE.—In the Senate the vote on passage shall occur immediately following the conclusion of the consideration of the

joint resolution, and a single quorum call at the conclusion of the debate if requested in accordance with the rules of the Senate.

(C) RULINGS OF THE CHAIR ON PROCEDURE.—Appeals from the decisions of the Chair relating to the application of this subsection or the rules of the Senate, as the case may be, to the procedure relating to the joint resolution shall be decided without debate.

(d) RULES RELATING TO SENATE AND HOUSE OF REPRESENTATIVES.—

(1) COORDINATION WITH ACTION BY OTHER HOUSE.—If, before the passage by one House of the joint resolution of that House, that House receives from the other House the joint resolution—

(A) the joint resolution of the other House shall not be referred to a committee; and

(B) with respect to the joint resolution of the House receiving the resolution—

(i) the procedure in that House shall be the same as if no joint resolution had been received from the other House; and

(ii) the vote on passage shall be on the joint resolution of the other House.

(2) TREATMENT OF JOINT RESOLUTION OF OTHER HOUSE.—If one House fails to introduce or consider the joint resolution under this section, the joint resolution of the other House shall be entitled to expedited floor procedures under this section.

(3) TREATMENT OF COMPANION MEASURES.—If, following passage of the joint resolution in the Senate, the Senate receives the companion measure from the House of Representatives, the companion measure shall not be debatable.

(e) RULES OF HOUSE OF REPRESENTATIVES AND SENATE.—This section is enacted by Congress—

(1) as an exercise of the rulemaking power of the Senate and House of Representatives, respectively, and as such is deemed a part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in that House in the case of the joint resolution, and supersede other rules only to the extent that it is inconsistent with such rules; and

(2) with full recognition of the constitutional right of either House to change the rules (so far as relating to the procedure of that House) at any time, in the same manner, and to the same extent as in the case of any other rule of that House.

TITLE III—CONTINUATION OF CERTAIN AUTHORITIES AND RESPONSIBILITIES

Subtitle A—Employee Benefits

SEC. 301. FEDERAL BENEFIT PAYMENTS UNDER CERTAIN RETIREMENT PROGRAMS.

(a) CONTINUATION OF ENTITLEMENT TO PAYMENTS.—Any individual who, as of the day before the date of the admission of the State into the Union, is entitled to a Federal benefit payment under the District of Columbia Retirement Protection Act of 1997 (subtitle A of title XI of the National Capital Revitalization and Self-Government Improvement Act of 1997; sec. 1–801.01 et seq., D.C. Official Code) shall continue to be entitled to such a payment after the admission of the State into the Union, in the same manner, to the same extent, and subject to the same terms and conditions applicable under such Act.

(b) OBLIGATIONS OF FEDERAL GOVERNMENT.—

(1) IN GENERAL.—Any obligation of the Federal Government under the District of Columbia Retirement Protection Act of 1997 which exists with respect to any individual or with respect to the District of Columbia as of the day before the date of the admission of the State into the Union shall remain in effect with respect to such an individual and

with respect to the State after the admission of the State into the Union, in the same manner, to the same extent, and subject to the same terms and conditions applicable under such Act.

(2) D.C. FEDERAL PENSION FUND.—Any obligation of the Federal Government under chapter 9 of the District of Columbia Retirement Protection Act of 1997 (sec. 1–817.01 et seq., D.C. Official Code) with respect to the D.C. Federal Pension Fund which exists as of the day before the date of the admission of the State into the Union shall remain in effect with respect to such Fund after the admission of the State into the Union, in the same manner, to the same extent, and subject to the same terms and conditions applicable under such chapter.

(c) OBLIGATIONS OF STATE.—Any obligation of the District of Columbia under the District of Columbia Retirement Protection Act of 1997 which exists with respect to any individual or with respect to the Federal Government as of the day before the date of the admission of the State into the Union shall become an obligation of the State with respect to such an individual and with respect to the Federal Government after the admission of the State into the Union, in the same manner, to the same

extent, and subject to the same terms and conditions applicable under such Act.

SEC. 302. CONTINUATION OF FEDERAL CIVIL SERVICE BENEFITS FOR EMPLOYEES FIRST EMPLOYED PRIOR TO ESTABLISHMENT OF DISTRICT OF COLUMBIA MERIT PERSONNEL SYSTEM.

(a) OBLIGATIONS OF FEDERAL GOVERNMENT.—Any obligation of the Federal Government under title 5, United States Code, which exists with respect to an individual described in subsection (c) or with respect to the District of Columbia as of the day before the date of the admission of the State into the Union shall remain in effect with respect to such individual and with respect to the State after the admission of the State into the Union, in the same manner, to the same extent, and subject to the same terms and conditions applicable under such title.

(b) OBLIGATIONS OF STATE.—Any obligation of the District of Columbia under title 5, United States Code, which exists with respect to an individual described in subsection (c) or with respect to the Federal Government as of the day before the date of the admission of the State into the Union shall become an obligation of the State with respect to such individual and with respect to the Federal Government after the admission of the State into the Union, in the same manner, to the same extent, and sub-

ject to the same terms and conditions applicable under such title.

(c) INDIVIDUALS DESCRIBED.—An individual described in this subsection is an individual who was first employed by the government of the District of Columbia before October 1, 1987.

SEC. 303. OBLIGATIONS OF FEDERAL GOVERNMENT UNDER JUDGES' RETIREMENT PROGRAM.

(a) CONTINUATION OF OBLIGATIONS.—

(1) IN GENERAL.—Any obligation of the Federal Government under subchapter III of chapter 15 of title 11, District of Columbia Official Code—

(A) which exists with respect to any individual and the District of Columbia as the result of service accrued prior to the date of the admission of the State into the Union shall remain in effect with respect to such an individual and with respect to the State after the admission of the State into the Union, in the same manner, to the same extent, and subject to the same terms and conditions applicable under such subchapter; and

(B) subject to paragraph (2), shall exist with respect to any individual and the State as the result of service accrued after the date of

the admission of the State into the Union in the same manner, to the same extent, and subject to the same terms and conditions applicable under such subchapter as such obligation existed with respect to individuals and the District of Columbia as of the date of the admission of the State into the Union.

(2) TREATMENT OF SERVICE ACCRUED AFTER TAKING EFFECT OF STATE RETIREMENT PROGRAM.—Subparagraph (B) of paragraph (1) does not apply to service accrued on or after the termination date described in subsection (b).

(b) TERMINATION DATE.—The termination date described in this subsection is the date on which the State provides written certification to the President that the State has in effect laws requiring the State to appropriate and make available funds for the retirement of judges of the State.

Subtitle B—Agencies

SEC. 311. PUBLIC DEFENDER SERVICE.

(a) CONTINUATION OF OPERATIONS AND FUNDING.—

(1) IN GENERAL.—Except as provided in paragraph (2) and subsection (b), title III of the District of Columbia Court Reform and Criminal Procedure

Act of 1970 (sec. 2–1601 et seq., D.C. Official Code) shall apply with respect to the State and to the public defender service of the State after the date of the admission of the State into the Union in the same manner and to the same extent as such title applied with respect to the District of Columbia and the District of Columbia Public Defender Service as of the day before the date of the admission of the State into the Union.

(2) RESPONSIBILITY FOR EMPLOYER CONTRIBUTION.—For purposes of paragraph (2) of section 305(c) of such Act (sec. 2–1605(c)(2), D.C. Official Code), the Federal Government shall be treated as the employing agency with respect to the benefits provided under such section to an individual who is an employee of the public defender service of the State and who, pursuant to section 305(c) of such Act (sec. 2–1605(c), D.C. Official Code), is treated as an employee of the Federal Government for purposes of receiving benefits under any chapter of subpart G of part III of title 5, United States Code.

(b) RENAMING OF SERVICE.—Effective upon the date of the admission of the State into the Union, the State may rename the public defender service of the State.

(c) CONTINUATION OF FEDERAL BENEFITS FOR EMPLOYEES.—

(1) IN GENERAL.—Any individual who is an employee of the public defender service of the State as of the day before the date described in subsection (d) and who, pursuant to section 305(c) of the District of Columbia Court Reform and Criminal Procedure Act of 1970 (sec. 2–1605(c), D.C. Official Code), is treated as an employee of the Federal Government for purposes of receiving benefits under any chapter of subpart G of part III of title 5, United States Code, shall continue to be treated as an employee of the Federal Government for such purposes, notwithstanding the termination of the provisions of subsection (a) under subsection (d).

(2) RESPONSIBILITY FOR EMPLOYER CONTRIBUTION.—Beginning on the date described in subsection (d), the State shall be treated as the employing agency with respect to the benefits described in paragraph (1) which are provided to an individual who, for purposes of receiving such benefits, is continued to be treated as an employee of the Federal Government under such paragraph.

(d) TERMINATION.—Subsection (a) shall terminate upon the date on which the State provides written certifi-

cation to the President that the State has in effect laws requiring the State to appropriate and make available funds for the operation of the office of the State which provides the services described in title III of the District of Columbia Court Reform and Criminal Procedure Act of 1970 (sec. 2–1601 et seq., D.C. Official Code).

SEC. 312. PROSECUTIONS.

(a) ASSIGNMENT OF ASSISTANT UNITED STATES ATTORNEYS.—

(1) IN GENERAL.—In accordance with subchapter VI of chapter 33 of title 5, United States Code, the Attorney General, with the concurrence of the District of Columbia or the State (as the case may be), shall provide for the assignment of assistant United States attorneys to the State to carry out the functions described in subsection (b).

(2) ASSIGNMENTS MADE ON DETAIL WITHOUT REIMBURSEMENT BY STATE.—In accordance with section 3373 of title 5, United States Code—

(A) an assistant United States attorney who is assigned to the State under this section shall be deemed under subsection (a) of such section to be on detail to a regular work assignment in the Department of Justice; and

(B) the assignment of an assistant United States attorney to the State under this section shall be made without reimbursement by the State of the pay of the attorney or any related expenses.

(b) FUNCTIONS DESCRIBED.—The functions described in this subsection are criminal prosecutions conducted in the name of the State which would have been conducted in the name of the United States by the United States attorney for the District of Columbia or his or her assistants, as provided under section 23–101(c), District of Columbia Official Code, but for the admission of the State into the Union.

(c) MINIMUM NUMBER ASSIGNED.—The number of assistant United States attorneys who are assigned under this section may not be less than the number of assistant United States attorneys whose principal duties as of the day before the date of the admission of the State into the Union were to conduct criminal prosecutions in the name of the United States under section 23–101(c), District of Columbia Official Code.

(d) TERMINATION.—The obligation of the Attorney General to provide for the assignment of assistant United States attorneys under this section shall terminate upon written certification by the State to the President that the

State has appointed attorneys of the State to carry out the functions described in subsection (b).

(e) CLARIFICATION REGARDING CLEMENCY AUTHORITY.—

(1) IN GENERAL.—Effective upon the admission of the State into the Union, the authority to grant clemency for offenses against the District of Columbia or the State shall be exercised by such person or persons, and under such terms and conditions, as provided by the State Constitution and the laws of the State, without regard to whether the prosecution for the offense was conducted by the District of Columbia, the State, or the United States.

(2) DEFINITION.—In this subsection, the term ''clemency'' means a pardon, reprieve, or commutation of sentence, or a remission of a fine or other financial penalty.

SEC. 313. SERVICE OF UNITED STATES MARSHALS.

(a) PROVISION OF SERVICES FOR COURTS OF STATE.—The United States Marshals Service shall provide services with respect to the courts and court system of the State in the same manner and to the same extent as the Service provided services with respect to the courts and court system of the District of Columbia as of the day before the date of the admission of the State into the

Union, except that the President shall not appoint a United States Marshal under section 561 of title 28, United States Code, for any court of the State.

(b) TERMINATION.—The obligation of the United States Marshals Service to provide services under this section shall terminate upon written certification by the State to the President that the State has appointed personnel of the State to provide such services.

SEC. 314. DESIGNATION OF FELONS TO FACILITIES OF BUREAU OF PRISONS.

(a) CONTINUATION OF DESIGNATION.—Chapter 1 of subtitle C of title XI of the National Capital Revitalization and Self-Government Improvement Act of 1997 (sec. 24–101 et seq., D.C. Official Code) and the amendments made by such chapter—

(1) shall continue to apply with respect to individuals convicted of offenses under the laws of the District of Columbia prior to the date of the admission of the State into the Union; and

(2) shall apply with respect to individuals convicted of offenses under the laws of the State after the date of the admission of the State into the Union in the same manner and to the same extent as such chapter and amendments applied with respect to individuals convicted of offenses under the

laws of the District of Columbia prior to the date of the admission of the State into the Union.

(b) TERMINATION.—The provisions of this section shall terminate upon written certification by the State to the President that the State has in effect laws for the housing of individuals described in subsection (a) in correctional facilities.

SEC. 315. PAROLE AND SUPERVISION.

(a) UNITED STATES PAROLE COMMISSION.—

(1) PAROLE.—The United States Parole Commission—

(A) shall continue to exercise the authority to grant, deny, and revoke parole, and to impose conditions upon an order of parole, in the case of any individual who is an imprisoned felon who is eligible for parole or reparole under the laws of the District of Columbia as of the day before the date of the admission of the State into the Union, as provided under section 11231 of the National Capital Revitalization and Self-Government Improvement Act of 1997 (sec. 24–131, D.C. Official Code); and

(B) shall exercise the authority to grant, deny, and revoke parole, and to impose conditions upon an order of parole, in the case of

any individual who is an imprisoned felon who is eligible for parole or reparole under the laws of the State in the same manner and to the same extent as the Commission exercised in the case of any individual described in subparagraph (A).

(2) SUPERVISION OF RELEASED OFFENDERS.—The United States Parole Commission—

(A) shall continue to exercise the authority over individuals who are released offenders of the District of Columbia as of the day before the date of the admission of the State into the Union, as provided under section 11233(c)(2) of the National Capital Revitalization and Self-Government Improvement Act of 1997 (sec. 24–133(c)(2), D.C. Official Code); and

(B) shall exercise authority over individuals who are released offenders of the State in the same manner and to the same extent as the Commission exercised authority over individuals described in subparagraph (A).

(3) CONTINUATION OF FEDERAL BENEFITS FOR EMPLOYEES.—

(A) CONTINUATION.—Any individual who is an employee of the United States Parole

Commission as of the later of the day before the date described in subparagraph (A) of paragraph (4) or the day before the date described in subparagraph (B) of paragraph (4) and who, on or after such date, is an employee of the office of the State which exercises the authority described in either such subparagraph, shall continue to be treated as an employee of the Federal Government for purposes of receiving benefits under any chapter of subpart G of part III of title 5, United States Code, notwithstanding the termination of the provisions of this subsection under paragraph (4).

(B) RESPONSIBILITY FOR EMPLOYER CONTRIBUTION.—Beginning on the later of the date described in subparagraph (A) of paragraph (4) or the date described in subparagraph (B) of paragraph (4), the State shall be treated as the employing agency with respect to the benefits described in subparagraph (A) which are provided to an individual who, for purposes of receiving such benefits, is continued to be treated as an employee of the Federal Government under such subparagraph.

(4) TERMINATION.—The provisions of this subsection shall terminate—

(A) in the case of paragraph (1), on the date on which the State provides written certification to the President that the State has in effect laws providing for the State to exercise the authority to grant, deny, and revoke parole, and to impose conditions upon an order of parole, in the case of any individual who is an imprisoned felon who is eligible for parole or reparole under the laws of the State; and

(B) in the case of paragraph (2), on the date on which the State provides written certification to the President that the State has in effect laws providing for the State to exercise authority over individuals who are released offenders of the State.

(b) COURT SERVICES AND OFFENDER SUPERVISION AGENCY.—

(1) RENAMING.—Effective upon the date of the admission of the State into the Union—

(A) the Court Services and Offender Supervision Agency for the District of Columbia shall be known and designated as the Court Services and Offender Supervision Agency for

Washington, Douglass Commonwealth, and any reference in any law, rule, or regulation to the Court Services and Offender Supervision Agency for the District of Columbia shall be deemed to refer to the Court Services and Offender Supervision Agency for Washington, Douglass Commonwealth; and

(B) the District of Columbia Pretrial Services Agency shall be known and designated as the Washington, Douglass Commonwealth Pretrial Services Agency, and any reference in any law, rule or regulation to the District of Columbia Pretrial Services Agency shall be deemed to refer to the Washington, Douglass Commonwealth Pretrial Services Agency.

(2) IN GENERAL.—The Court Services and Offender Supervision Agency for Washington, Douglass Commonwealth, including the Washington, Douglass Commonwealth Pretrial Services Agency (as renamed under paragraph (1))—

(A) shall continue to provide pretrial services with respect to individuals who are charged with an offense in the District of Columbia, provide supervision for individuals who are offenders on probation, parole, and supervised re-

lease pursuant to the laws of the District of Columbia, and carry out sex offender registration functions with respect to individuals who are sex offenders in the District of Columbia, as of the day before the date of the admission of the State into the Union, as provided under section 11233 of the National Capital Revitalization and Self-Government Improvement Act of 1997 (sec. 24–133, D.C. Official Code); and

(B) shall provide pretrial services with respect to individuals who are charged with an offense in the State, provide supervision for offenders on probation, parole, and supervised release pursuant to the laws of the State, and carry out sex offender registration functions in the State, in the same manner and to the same extent as the Agency provided such services and supervision and carried out such functions for individuals described in subparagraph (A).

(3) CONTINUATION OF FEDERAL BENEFITS FOR EMPLOYEES.—

(A) CONTINUATION.—Any individual who is an employee of the Court Services and Offender Supervision Agency for Washington, Douglass Commonwealth as of the day before

the date described in paragraph (4), and who, on or after such date, is an employee of the office of the State which provides the services and carries out the functions described in paragraph (4), shall continue to be treated as an employee of the Federal Government for purposes of receiving benefits under any chapter of subpart G of part III of title 5, United States Code, notwithstanding the termination of the provisions of paragraph (2) under paragraph (4).

(B) RESPONSIBILITY FOR EMPLOYER CONTRIBUTION.—Beginning on the date described in paragraph (4), the State shall be treated as the employing agency with respect to the benefits described in subparagraph (A) which are provided to an individual who, for purposes of receiving such benefits, is continued to be treated as an employee of the Federal Government under such subparagraph.

(4) TERMINATION.—Paragraph (2) shall terminate on the date on which the State provides written certification to the President that the State has in effect laws providing for the State to provide pretrial services, supervise offenders on probation, parole,

and supervised release, and carry out sex offender registration functions in the State.

SEC. 316. COURTS.

(a) CONTINUATION OF OPERATIONS.—

(1) IN GENERAL.—Except as provided in paragraphs (2) and (3) and subsection (b), title 11, District of Columbia Official Code, as in effect on the date before the date of the admission of the State into the Union, shall apply with respect to the State and the courts and court system of the State after the date of the admission of the State into the Union in the same manner and to the same extent as such title applied with respect to the District of Columbia and the courts and court system of the District of Columbia as of the day before the date of the admission of the State into the Union.

(2) RESPONSIBILITY FOR EMPLOYER CONTRIBUTION.—For purposes of paragraph (2) of section 11–1726(b) and paragraph (2) of section 11–1726(c), District of Columbia Official Code, the Federal Government shall be treated as the employing agency with respect to the benefits provided under such section to an individual who is an employee of the courts and court system of the State and who, pursuant to either such paragraph, is

treated as an employee of the Federal Government for purposes of receiving benefits under any chapter of subpart G of part III of title 5, United States Code.

(3) OTHER EXCEPTIONS.—

(A) SELECTION OF JUDGES.—Effective upon the date of the admission of the State into the Union, the State shall select judges for any vacancy on the courts of the State.

(B) RENAMING OF COURTS AND OTHER OFFICES.—Effective upon the date of the admission of the State into the Union, the State may rename any of its courts and any of the other offices of its court system.

(C) RULES OF CONSTRUCTION.—Nothing in this paragraph shall be construed—

(i) to affect the service of any judge serving on a court of the District of Columbia on the day before the date of the admission of the State into the Union, or to require the State to select such a judge for a vacancy on a court of the State; or

(ii) to waive any of the requirements of chapter 15 of title 11, District of Columbia Official Code (other than section

11–1501(a) of such Code), including subchapter II of such chapter (relating to the District of Columbia Commission on Judicial Disabilities and Tenure), with respect to the appointment and service of judges of the courts of the State.

(b) CONTINUATION OF FEDERAL BENEFITS FOR EMPLOYEES.—

(1) IN GENERAL.—Any individual who is an employee of the courts or court system of the State as of the day before the date described in subsection (e) and who, pursuant to section 11–1726(b) or section 11–1726(c), District of Columbia Official Code, is treated as an employee of the Federal Government for purposes of receiving benefits under any chapter of subpart G of part III of title 5, United States Code, shall continue to be treated as an employee of the Federal Government for such purposes, notwithstanding the termination of the provisions of this section under subsection (e).

(2) RESPONSIBILITY FOR EMPLOYER CONTRIBUTION.—Beginning on the date described in subsection (e), the State shall be treated as the employing agency with respect to the benefits described in paragraph (1) which are provided to an individual

who, for purposes of receiving such benefits, is continued to be treated as an employee of the Federal Government under such paragraph.

(c) CONTINUATION OF FUNDING.—Section 11241 of the National Capital Revitalization and Self-Government Improvement Act of 1997 (section 11–1743 note, District of Columbia Official Code) shall apply with respect to the State and the courts and court system of the State after the date of the admission of the State into the Union in the same manner and to the same extent as such section applied with respect to the Joint Committee on Judicial Administration in the District of Columbia and the courts and court system of the District of Columbia as of the day before the date of the admission of the State into the Union.

(d) TREATMENT OF COURT RECEIPTS.—

(1) DEPOSIT OF RECEIPTS INTO TREASURY.—Except as provided in paragraph (2), all money received by the courts and court system of the State shall be deposited in the Treasury of the United States.

(2) CRIME VICTIMS COMPENSATION FUND.—Section 16 of the Victims of Violent Crime Compensation Act of 1996 (sec. 4–515, D.C. Official Code), relating to the Crime Victims Compensation

Fund, shall apply with respect to the courts and court system of the State in the same manner and to the same extent as such section applied to the courts and court system of the District of Columbia as of the day before the date of the admission of the State into the Union.

(e) TERMINATION.—The provisions of this section, other than paragraph (3) of subsection (a) and except as provided under subsection (b), shall terminate on the date on which the State provides written certification to the President that the State has in effect laws requiring the State to appropriate and make available funds for the operation of the courts and court system of the State.

Subtitle C—Other Programs and Authorities

SEC. 321. APPLICATION OF THE COLLEGE ACCESS ACT.

(a) CONTINUATION.—The District of Columbia College Access Act of 1999 (Public Law 106–98; sec. 38–2701 et seq., D.C. Official Code) shall apply with respect to the State, and to the public institution of higher education designated by the State as the successor to the University of the District of Columbia, after the date of the admission of the State into the Union in the same manner and to the same extent as such Act applied with respect to the District of Columbia and the University of the Dis-

trict of Columbia as of the day before the date of the admission of the State into the Union.

(b) TERMINATION.—The provisions of this section, other than with respect to the public institution of higher education designated by the State as the successor to the University of the District of Columbia, shall terminate upon written certification by the State to the President that the State has in effect laws requiring the State to provide tuition assistance substantially similar to the assistance provided under the District of Columbia College Access Act of 1999.

SEC. 322. APPLICATION OF THE SCHOLARSHIPS FOR OPPORTUNITY AND RESULTS ACT.

(a) CONTINUATION.—The Scholarships for Opportunity and Results Act (division C of Public Law 112–10; sec. 38–1853.01 et seq., D.C. Official Code) shall apply with respect to the State after the date of the admission of the State into the Union in the same manner and to the same extent as such Act applied with respect to the District of Columbia as of the day before the date of the admission of the State into the Union.

(b) TERMINATION.—The provisions of this section shall terminate upon written certification by the State to the President that the State has in effect laws requiring the State—

(1) to provide tuition assistance substantially similar to the assistance provided under the Scholarships for Opportunity and Results Act; and

(2) to provide supplemental funds to the public schools and public charter schools of the State in the amounts provided in the most recent fiscal year for public schools and public charter schools of the State or the District of Columbia (as the case may be) under such Act.

SEC. 323. MEDICAID FEDERAL MEDICAL ASSISTANCE PERCENTAGE.

(a) CONTINUATION.—Notwithstanding section 1905(b) of the Social Security Act (42 U.S.C. 1396d(b)), during the period beginning on the date of the admission of the State into the Union and ending on September 30 of the fiscal year during which the State submits the certification described in subsection (b), the Federal medical assistance percentage for the State under title XIX of such Act shall be the Federal medical assistance percentage for the District of Columbia under such title as of the day before the date of the admission of the State into the Union.

(b) TERMINATION.—The certification described in this subsection is a written certification by the State to the President that, during each of the first 5 fiscal years

beginning after the date of the certification, the estimated revenues of the State will be sufficient to cover any reduction in revenues which may result from the termination of the provisions of this section.

SEC. 324. FEDERAL PLANNING COMMISSIONS.

(a) NATIONAL CAPITAL PLANNING COMMISSION.—

(1) CONTINUING APPLICATION.—Subject to the amendments made by paragraphs (2) and (3), upon the admission of the State into the Union, chapter 87 of title 40, United States Code, shall apply as follows:

(A) Such chapter shall apply with respect to the Capital in the same manner and to the same extent as such chapter applied with respect to the District of Columbia as of the day before the date of the admission of the State into the Union.

(B) Such chapter shall apply with respect to the State in the same manner and to the same extent as such chapter applied with respect to the State of Maryland and the Commonwealth of Virginia as of the day before the date of the admission of the State into the Union.

(2) COMPOSITION OF NATIONAL CAPITAL PLANNING COMMISSION.—Section 8711(b) of title 40, United States Code, is amended—

(A) by amending subparagraph (B) of paragraph (1) to read as follows:

''(B) four citizens with experience in city or regional planning, who shall be appointed by the President.''; and

(B) by amending paragraph (2) to read as follows:

''(2) RESIDENCY REQUIREMENT.—Of the four citizen members, one shall be a resident of Virginia, one shall be a resident of Maryland, and one shall be a resident of Washington, Douglass Commonwealth.''.

(3) CONFORMING AMENDMENTS TO DEFINITIONS OF TERMS.—

(A) ENVIRONS.—Paragraph (1) of section 8702 of such title is amended by striking ''the territory surrounding the District of Columbia'' and inserting ''the territory surrounding the National Capital''.

(B) NATIONAL CAPITAL.—Paragraph (2) of section 8702 of such title is amended to read as follows:

''(2) NATIONAL CAPITAL.—The term 'National Capital' means the area serving as the seat of the Government of the United States, as described in section 112 of the Washington, D.C. Admission Act, and the territory the Federal Government owns in the environs.''.

(C) NATIONAL CAPITAL REGION.—Subparagraph (A) of paragraph (3) of section 8702 of such title is amended to read as follows:

''(A) the National Capital and the State of Washington, Douglass Commonwealth;''.

(b) COMMISSION OF FINE ARTS.—

(1) LIMITING APPLICATION TO THE CAPITAL.—Section 9102(a)(1) of title 40, United States Code, is amended by striking ''the District of Columbia'' and inserting ''the Capital''.

(2) DEFINITION.—Section 9102 of such title is amended by adding at the end the following new subsection:

''(d) DEFINITION.—In this chapter, the term 'Capital' means the area serving as the seat of the Government of the United States, as described in section 112 of the Washington, D.C. Admission Act.''.

(3) CONFORMING AMENDMENT.—Section 9101(d) of such title is amended by striking ''the District of Columbia'' and inserting ''the Capital''.

(c) COMMEMORATIVE WORKS ACT.—

(1) LIMITING APPLICATION TO CAPITAL.—Section 8902 of title 40, United States Code, is amended by adding at the end the following new subsection:

''(e) LIMITING APPLICATION TO CAPITAL.—This chapter applies only with respect to commemorative works in the Capital and its environs.''.

(2) DEFINITION.—Paragraph (2) of section 8902(a) of such title is amended to read as follows:

''(2) CAPITAL AND ITS ENVIRONS.—The term 'Capital and its environs' means—

''(A) the area serving as the seat of the Government of the United States, as described in section 112 of the Washington, D.C. Admission Act; and

''(B) those lands and properties administered by the National Park Service and the General Services Administration located in the Reserve, Area I, and Area II as depicted on the map entitled 'Commemorative Areas Washington, DC and Environs', numbered 869/

86501 B, and dated June 24, 2003, that are located outside of the State of Washington, Douglass Commonwealth.''.

(3) TEMPORARY SITE DESIGNATION.—Section 8907(a) of such title is amended by striking ''the District of Columbia'' and inserting ''the Capital and its environs''.

(4) GENERAL CONFORMING AMENDMENTS.—Chapter 89 of such title is amended by striking ''the District of Columbia and its environs'' each place it appears in the following sections and inserting ''the Capital and its environs'':

(A) Section 8901(2) and 8901(4).

(B) Section 8902(a)(4).

(C) Section 8903(d).

(D) Section 8904(c).

(E) Section 8905(a).

(F) Section 8906(a).

(G) Section 8909(a) and 8909(b).

(5) ADDITIONAL CONFORMING AMENDMENT.—Section 8901(2) of such title is amended by striking ''the urban fabric of the District of Columbia'' and inserting ''the urban fabric of the area serving as the seat of the Government of the United States, as

described in section 112 of the Washington, D.C. Admission Act''.

(d) EFFECTIVE DATE.—This section and the amendments made by this section shall take effect on the date of the admission of the State into the Union.

SEC. 325. ROLE OF ARMY CORPS OF ENGINEERS IN SUPPLYING WATER.

(a) CONTINUATION OF ROLE.—Chapter 95 of title 40, United States Code, is amended by adding at the end the following new section:

''§ 9508. Applicability to Capital and State of Washington, Douglass Commonwealth

''(a) IN GENERAL.—Effective upon the admission of the State of Washington, Douglass Commonwealth into the Union, any reference in this chapter to the District of Columbia shall be deemed to refer to the Capital or the State of Washington, Douglass Commonwealth, as the case may be.

''(b) DEFINITION.—In this section, the term 'Capital' means the area serving as the seat of the Government of the United States, as described in section 112 of the Washington, D.C. Admission Act.''.

(b) CLERICAL AMENDMENT.—The table of sections of chapter 95 of such title is amended by adding at the end the following:

SEC. 326. REQUIREMENTS TO BE LOCATED IN DISTRICT OF COLUMBIA.

The location of any person in the Capital or Washington, Douglass Commonwealth on the day after the date of the admission of the State into the Union shall be deemed to satisfy any requirement under any law in effect as of the day before the date of the admission of the State into the Union that the person be located in the District of Columbia, including the requirements of section 72 of title 4, United States Code (relating to offices of the seat of the Government of the United States), and title 36, United States Code (relating to patriotic and national organizations).

TITLE IV—GENERAL PROVISIONS

SEC. 401. GENERAL DEFINITIONS.

In this Act, the following definitions shall apply:

(1) The term ''Capital'' means the area serving as the seat of the Government of the United States, as described in section 112.

(2) The term ''Council'' means the Council of the District of Columbia.

(3) The term ''Mayor'' means the Mayor of the District of Columbia.

(4) Except as otherwise provided, the term ''State'' means the State of Washington, Douglass Commonwealth.

(5) The term ''State Constitution'' means the proposed Constitution of the State of Washington, D.C., as approved by the Council on October 18, 2016, pursuant to the Constitution and Boundaries for the State of Washington, D.C. Approval Resolution of 2016 (D.C. Resolution R21–621), ratified by District of Columbia voters in Advisory Referendum B approved on November 8, 2016, and certified by the District of Columbia Board of Elections on November 18, 2016.

SEC. 402. STATEHOOD TRANSITION COMMISSION.

(a) ESTABLISHMENT.—There is established the Statehood Transition Commission (hereafter in this section referred to as the ''Commission'').

(b) COMPOSITION.—

(1) IN GENERAL.—The Commission shall be composed of 18 members as follows:

(A) Three members appointed by the President.

(B) Two members appointed by the Speaker of the House of Representatives.

(C) Two members appointed by the Minority Leader of the House of Representatives.

(D) Two members appointed by the Majority Leader of the Senate.

(E) Two members appointed by the Minority Leader of the Senate.

(F) Three members appointed by the Mayor.

(G) Three members appointed by the Council.

(H) The Chief Financial Officer of the District of Columbia.

(2) APPOINTMENT DATE.—

(A) IN GENERAL.—The appointments of the members of the Commission shall be made not later than 90 days after the date of the enactment of this Act.

(B) EFFECT OF LACK OF APPOINTMENT BY APPOINTMENT DATE.—If one or more appointments under any of the subparagraphs of paragraph (1) is not made by the appointment date specified in subparagraph (A), the authority to make such appointment or appointments shall expire, and the number of members of the Commission shall be reduced by the number

equal to the number of appointments so not made.

(3) TERM OF SERVICE.—Each member shall be appointed for the life of the Commission.

(4) VACANCY.—A vacancy in the Commission shall be filled in the manner in which the original appointment was made.

(5) NO COMPENSATION.—Members shall serve without pay, but shall receive travel expenses, including per diem in lieu of subsistence, in accordance with applicable provisions under subchapter I of chapter 57 of title 5, United States Code.

(6) CHAIR AND VICE CHAIR.—The Chair and Vice Chair of the Commission shall be elected by the members of the Commission—

(A) with respect to the Chair, from among the members described in subparagraphs (A) through (E) of paragraph (1); and

(B) with respect to the Vice Chair, from among the members described in subparagraphs (F) and (G) of paragraph (1).

(c) STAFF.—

(1) DIRECTOR.—The Commission shall have a Director, who shall be appointed by the Chair.

(2) OTHER STAFF.—The Director may appoint and fix the pay of such additional personnel as the Director considers appropriate.

(3) NON-APPLICABILITY OF CERTAIN CIVIL SERVICE LAWS.—The Director and staff of the Commission may be appointed without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and may be paid without regard to the provisions of chapter 51 and subchapter III of chapter 53 of that title relating to classification and General Schedule pay rates, except that an individual so appointed may not receive pay in excess of the rate payable for level V of the Executive Schedule under section 5316 of such title.

(4) EXPERTS AND CONSULTANTS.—The Commission may procure temporary and intermittent services under section 3109(b) of title 5, United States Code, at rates for individuals not to exceed the daily equivalent of the rate payable for level V of the Executive Schedule under section 5316 of such title.

(d) DUTIES.—The Commission shall advise the President, Congress, the Mayor (or, upon the admission of the State into the Union, the chief executive officer of the

State), and the Council (or, upon the admission of the State into the Union, the legislature of the State) concerning an orderly transition to statehood for the District of Columbia or the State (as the case may be) and to a reduced geographical size of the seat of the Government of the United States, including with respect to property, funding, programs, projects, and activities.

(e) POWERS.—

(1) HEARINGS AND SESSIONS.—The Commission may, for the purpose of carrying out this Act, hold hearings, sit and act at times and places, take testimony, and receive evidence as the Commission considers appropriate.

(2) OBTAINING OFFICIAL DATA.—The Commission may secure directly from any department or agency of the United States information necessary to enable it to carry out this Act. Upon request of the Chair of the Commission, the head of that department or agency shall furnish that information to the Commission.

(3) MAILS.—The Commission may use the United States mails in the same manner and under the same conditions as other departments and agencies of the United States.

(4) ADMINISTRATIVE SUPPORT SERVICES.—Upon the request of the Commission, the Administrator of General Services shall provide to the Commission the administrative support services necessary for the Commission to carry out its responsibilities under this Act.

(f) MEETINGS.—

(1) IN GENERAL.—The Commission shall meet at the call of the Chair.

(2) INITIAL MEETING.—The Commission shall hold its first meeting not later than the earlier of—

(A) 30 days after the date on which all members of the Commission have been appointed; or

(B) if the number of members of the Commission is reduced under subsection (b)(2)(B), 90 days after the date of the enactment of this Act.

(3) QUORUM.—A majority of the members of the Commission shall constitute a quorum, but a lesser number of members may hold hearings.

(g) REPORTS.—The Commission shall submit such reports as the Commission considers appropriate or as may be requested by the President, Congress, or the Dis-

trict of Columbia (or, upon the admission of the State into the Union, the State).

(h) TERMINATION.—The Commission shall cease to exist 2 years after the date of the admission of the State into the Union.

SEC. 403. CERTIFICATION OF ENACTMENT BY PRESIDENT.

Not more than 60 days after the date of the enactment of this Act, the President shall provide written certification of such enactment to the Mayor.

SEC. 404. SEVERABILITY.

Except as provided in section 101(c), if any provision of this Act or amendment made by this Act, or the application thereof to any person or circumstance, is held to be invalid, the remaining provisions of this Act and any amendments made by this Act shall not be affected by the holding.

Passed the House of Representatives April 22, 2021.

Attest:

Clerk.

117TH CONGRESS
1ST SESSION

H. R. 51

AN ACT

To provide for the admission of the State of Washington, D.C. into the Union.