DISTRICT OF COLUMBIA BAR

District of Columbia Affairs Community

Statement of the District of Columbia Affairs Community of the District of Columbia Bar on S. 51 -- the Washington, D.C. Admission Act -- Presented to the United States Senate Committee on Homeland Security & Governmental Affairs

The District of Columbia Affairs Community of the District of Columbia Bar (the "Community") commends the Committee on Homeland Security & Governmental Affairs for holding a hearing on an important matter of public concern, S. 51 – The Washington, D.C. Admission Act (the "Bill") – on June 22, 2021. The Community respectfully submits the following statement in support of the Bill which, if enacted, would grant Statehood to the residents of the District of Columbia.[1]

The Community consists of D.C. Bar members who are concerned about issues relating to the laws and government of the District of Columbia. The legislation falls within the Community's special expertise and jurisdiction over Home Rule issues and relates closely and directly to the administration of justice. The Community has consistently advocated for full and equal citizenship rights for District of Columbia residents through budget and legislative autonomy, Congressional voting rights, and full Home Rule.

[1] The views expressed herein are presented on behalf of the D.C. Affairs Community, a voluntary association of individuals, most but not necessarily all of whom are members of the D.C. Bar. The D.C. Bar itself made no monetary contribution to fund the preparation or submission of this statement. Moreover, the views expressed herein have been neither approved nor endorsed by the D.C. Bar, its Board of Governors, or its general membership.

Nothing compromises the administration of justice in the District of Columbia more than denying its residents the equal rights of self-determination enjoyed by the residents of the 50 current states. District residents are denied Congressional representation in the selection of both local and federal judges. The District's own elected Attorney General is denied the authority to enforce local criminal laws. District residents cannot petition their government because they have no voting representative. District residents pay federal taxes like all other Americans but do not have a vote in the federal legislature that determines whether to tax and how to spend those taxes. District residents have fought in every war since the Revolution and yet do not have an elected representative who can vote on whether to go to war. The District's National Guard forces are not its own to call upon in the event of civil unrest, and the Metropolitan Police Department may be commandeered by the President.

Residents of the District have no vote in Congress on federal measures that would overturn laws duly enacted by the Council of the District of Columbia; and the District's local budget containing its own taxpayer-raised revenue (over $8.6 billion in recent years) cannot become law until Congress affirms it. District residents have no vote on riders that Congress proposes to add to the District budget, even if those riders would undo decisions made by local legislators accountable to District residents. There is no legitimate reason why federal budget impasses should force a shut-down of the District of Columbia, alone among the 50 current states, and prevent it from spending its own locally raised tax dollars. These undemocratic constraints on District self-determination

(and many others) negatively impact upon the administration of justice in the Nation's Capital.

If adopted into law, the Bill would remedy these injustices by admitting into the Union as the 51st state, on an equal footing with the other 50 current states. Admission would occur upon approval by the voters of the District of Columbia of the State Constitution and joining the Union. Among other things, the Bill provides that the State of Washington, Douglass Commonwealth would hold elections for two Senators and one Representative in Congress; and the Mayor and members of the Council and the Chair of the Council at the time of admission would be deemed the new state's Governor, members of the House of Delegates, and the President of the House of Delegates, respectively. A portion of the existing District of Columbia, to include the White House, the Capitol Building, the United States Supreme Court Building, other Federal buildings, monuments and military property would remain in the new capital district and thus remain under Federal control for purposes of serving as the seat of the government of the United States.

Some have argued that the District of Columbia, a separate federal jurisdiction since 1801, cannot constitutionally be made a state.[2] Our considered view is that the Bill is constitutional. The Constitution, Article I, Section 8, Clause 17 (the "District Clause") gives Congress the power to legislate for "such District (not exceeding ten miles square) as may, by cession of particular states, and the acceptance of Congress, become the seat

[2] See H.R. Rep. No. 116-433, at 190-92 (2020) (Minority views).

of the government[.]" First, by its plain language, this clause is permissive, not mandatory: Congress *may* create a special federal District if it accepts the cession of land from a state, but it is not required to do so. Second, although the Constitution's District Clause limits the *maximum* size of the federal District to ten miles square, there is no minimum size. The Bill does not eliminate the separate federal jurisdiction over the national capital; it merely reduces its size to the parts of the city constituting the federal core. Accordingly, the Bill is solidly within Congress's power under the Constitution's Article IV, Section 3 to admit new states into the Union and "to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States."

The Bill also includes conforming statutory changes. The Bill strikes Title 3, United State Code, section 21, considering the existing District of Columbia to be a state for purposes of the election of the President and Vice President of the United States. It further provides for expedited repeal of the 23rd Amendment, which allows the District of Columbia to appoint electors as if it were a state.[3] The Bill also establishes a Statehood Transition Commission ("Statehood Commission") to assist with an orderly transition to statehood for two years after the admission of the State. It would be expected that the Statehood Commission will address any technical issues that might arise surrounding the establishment of the new State and the reduced federal district.

[3] The resulting federal district would be largely unpopulated. To avoid disenfranchising any individuals remaining in the Capital, the Bill makes it clear that states would allow

The Bill would put District of Columbia residents on an equal playing field with other Americans and is a substantial remedy for the long denial of self-determination, because Statehood would guarantee to the residents of the District of Columbia full Congressional voting representation, budget and legislative autonomy, and all of the rights that the people of the current 50 United States enjoy.

As the United States continues to bring democratic values and ideals to nations historically governed by tyrants, the Community urges Congress to correct a lingering injustice in its own shadow, namely, the denial of equality and full democracy to the more than 712,000 residents who live in the Nation's Capital.

This statement was approved by the Community's Steering Committee by a unanimous vote of four of its elected members, with one abstention due to recusal. For further information please contact: Community Steering Committee member and public statements representative Daniel Mayer, Esq. at dmayer3@gmail.com.

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any residents of the Capital to vote absentee in Federal elections in the State of their most recent domicile.