IF YOU FAVOR FREEDOM
... YOU MUST FAVOR STATEHOOD FOR THE
DISTRICT OF COLUMBIA

A BRIEFING BOOKLET ON THE ISSUES SURROUNDING
STATEHOOD FOR THE PEOPLE OF THE DISTRICT OF
COLUMBIA

This booklet was prepared by the Office of Congressman Walter E.
Fauntroy under the Sponsorship of the District of Columbia Statehood
Commission chaired by Josephine Butler and the District of Columbia
Statehood Compact Commission chaired by Arrington Dixon. It is
designed to provide information for those who have an interest in
Statehood for the District of Columbia. Research, writing and editing
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October, 1986
FACT SHEET
ON D.C. STATEHOOD

More than 700,000 Americans residing in the District of Columbia are
taxed and carry the same burdens of citizenship as all other Americans,
yet these American citizens have no representation in the Senate, and
one “non-voting” Delegate in the House of Representatives.

This blight on our democracy exists despite the fact that:

- Residents of the District pay over a billion dollars annually in taxes
to the Federal Treasury—more total federal taxes than nine states pay.

- The per capita tax payment for District residents is $500 above the
  national average—a payment higher than 49 states.

- The population of the District of Columbia is larger than that of
  four states.

- District residents have fought and died in every war since the War
  for Independence, and during the Vietnam War, D.C. had more
  casualties than ten states, and more killed per capita than 47 states.

- Of 115 nations with elected national legislatures, only the United
  States denies representation in the legislature to citizens of the
  capital city.

- There is no constitutional prohibition against providing statehood
  for the District of Columbia.

House Resolution 325 is a proposed bill which would grant State-
hood to the District of Columbia. If approved by Congress by a majority
vote in both the U.S. Senate and the House of Representatives, it will
give the District:

- Two Senators,
- The number of House Members its population demands (1 or 2),
- The number of Presidential electors commensurate with its
  population,
- Participation in the ratification of constitutional amendments, and
- Sovereignty.

PREFACE

Throughout history, our government has espoused the virtues of
democracy to the world. Unfortunately, for more than 700,000
residents, and for the nation as a whole, that democracy comes to a
screeching halt at the borders of the District of Columbia. The gates to
equality are closed within view of the Washington Monument.
Freedom is illusory for those who happen to live here.

Instead, we have a colonial like environment, symbolized by a
Congress which serves as overseer and sometimes sits as the largest
local government in the United States. From time to time putting aside
critical consideration of matters such as Libya, South Africa, El Salvador,
Nicaragua, Lebanon, the tax bill, the deficit, and other matters of
national and international import—while purely local matters, affecting
only the District of Columbia, are bantered about. The harsh reality is
that the law allows any Member of this mammoth 435-Member body,
for any reason, or for no reason—indeed even arbitrarily or
capriciously—to interfere or intervene in the affairs of the people of
Washington, D.C. It is a state of affairs which the Founding Fathers
would not and did not tolerate. It is a state of affairs which inevitably
will, one day, no longer be tolerated by the residents of the District of
Columbia and the people of this nation.

Statehood for the District, as embodied in H.R. 325, would further the
principles of democracy which the Founding Fathers framed for all
American citizens and would swing the suffrage pendulum back to
where it was before December, 1800, when Congress moved to its
Potomac site and inadvertently disenfranchised District residents. H.R.
325 is in no way incompatible with Congress’ continued exclusive
jurisdiction over the District because there would still be a seat of
government. It does not present difficult constitutional problems
concerning its implementation. Most importantly, it would further the
principles of democracy that the Founding Fathers intended to have
flourish among all citizens.

The 1803 proponents of a return of voting rights to the District of
Columbia stated that the disenfranchisement was “an experiment in
how far free men can be reconciled to live without rights.” It is simply
time to end this unfruitful experiment.

October, 1986

WALTER E. FAUNTOY
MEMBER OF CONGRESS
INTRODUCTION

American citizens moving from any city in any of the 50 states into Washington, D.C. may be overwhelmed with the fact that they are moving to the Nation’s Capital, the seat of government. Ironically, they would also be overwhelmed with the fact that as they become residents of the District of Columbia they shed their rights as full-fledged citizens of the United States. Since its establishment, Washington has undergone many physical changes and various forms of government, however, its residents do not enjoy the same status as residents of other states. Despite its population, the District is denied any representation in the Senate, and has only one non-voting Delegate in the House of Representatives. At the same time, the local government of Washington has limited, delegated powers which can be taken away at the command of Congress. Although the residents of Washington, D.C. pay taxes and carry the same burdens of citizenship as all other Americans, they lack the most fundamental rights of citizenship; sovereignty and the right to fully participate in the federal government. They are victims of “taxation without representation.” These glaring inconsistencies have led the people of Washington to demand Statehood.

Facts which underscore Washington, D.C.’s demand to be recognized as a state are reflected in statistics that show that the District of Columbia compares in scope and size to many states and even surpasses some states in certain areas. The population of the District is larger than that of four states. The 700,000 Americans who reside in the District of Columbia pay well over a billion dollars annually in federal taxes to the Federal Treasury, more total federal taxes than that paid by nine States. The per capita tax payment for District residents is more than $500.00 above the national average, a per capita tax payment which is higher than that of 49 states. Moreover, District residents have fought and died in every U.S. related war since the War for Independence. Of note, during the Vietnam War, Washington, D.C. had more casualties than 10 states, and more residents killed per capita than 47 states.

It is also widely accepted that the District of Columbia meets the historic standards for admission of a State to the Union, the predominant provisions being, supportive resources and population, the desire of the people, and the commitment to democracy. It is facts such as the aforementioned that impact the question of why the people who live in the home of the federal government are denied the conventional American rights of controlling their own government and securing due representation in both Houses of Congress. This booklet addresses the myriad of issues involved in the quest by the people of Washington, D.C. for equal status and full American citizenship through Statehood.
CHAPTER 1

CREATING THE DISTRICT OF COLUMBIA

THE PURPOSE OF THE FEDERAL DISTRICT

THE FEDERAL DISTRICT WAS CREATED TO ENABLE CONGRESS TO HAVE EXCLUSIVE JURISDICTION OVER ITS SURROUNDINGS, WHICH IS NOT INCOMPATIBLE WITH STATEHOOD FOR THE PEOPLE WHO RESIDE IN THE NATION'S CAPITAL.

History often reveals that minor incidents propel the occurrence of major events. The creation of Washington, D.C. as the permanent seat of government was one such event. The incident which gave rise to this event took place in June, 1783.

Meeting in Philadelphia, the still seat-less Congress (which up to this time had also met in several other cities as the exigencies of war demanded) was threatened by a band of mutinous soldiers, dissatisfied because Congress had failed to pay for their military services. Congress requested protection from the Pennsylvania militia but was refused, and for two days was held in a state of siege. Congress was outraged. The glaring inadequacies of the itinerant government were quite apparent. The desirability of a capital controlled exclusively by the Federal Government was emphasized.

Four years later, in 1787, as a direct result of the incident, Congress resolved that: "The Congress shall have power... to exercise legislation in all cases whatsoever over such District (not exceeding ten miles square) as may by the cession of particular states, and the acceptance of Congress, become the seat of government of the United States..." (Set forth in Article One of the Constitutional Convention, the seventeenth paragraph of Section Eight.)

With the issue of who should control the capital settled, there remained the provocative question of where to locate the permanent seat of government. Rivalry for the location was intense, and liberal offers came from many states. New York offered to cede the township of Kingston; Maryland offered the city of Annapolis; Rhode Island, Newport; New Jersey, Trenton. Sectional jealousies, the fear that one section of the country might gain economically or politically over the other, was the principle barrier toward an expeditious selection of a location. Northerners favored a site on the Delaware, the South favored the Potomac. The slavery question had its influence as well.
While the ensuing debates in the House were acrimonious, the gravity of the situation was not undermined. One member of the House stated, "... the peace of the United States, depends as much on this as on any other question which can come before Congress." On August 27, 1789, in the House of Representatives, Mr. Scott of Pennsylvania moved "[T]hat a permanent residence ought to be fixed for the general government of the United States at some convenient place as near the center of wealth, population and extent of territory as may be consistent with the convenience to the navigation of the Atlantic Ocean..." This motion was agreed to by a vote of 27 to 23. There was then general agreement that the capital would be located no farther north than New York nor south than Virginia. Progress was being made.

Later that year, on September 22, the vexatious question was nearly settled in favor of Pennsylvania. However, Congress adjourned on September 29, postponing the matter until the next session, when a different conclusion would be reached. This conclusion was greatly influenced by another burning question for Congress concerning the assumption by the Federal Government of the Revolutionary War debts of the states. Northern states were anxious for the passage of such a bill, while the South was opposed. Alexander Hamilton, the Secretary of Treasury, saw in the two questions an opportunity for compromise whereby the North and the South would get what they both desired; assumption of the war debts, and the seat of government, respectively.

Meanwhile, the Assembly of Virginia passed an act ceding to the United States ten square miles of its territory. At the time of the passage of Virginia's act, a resolution was also passed asking the cooperation of Maryland in urging Congress to fix the seat of government upon the banks of the Potomac, and promising to advance $210,000 toward the cost of erecting public buildings. The suggestion was also made that Maryland advance two-fifths of that amount. Maryland agreed and later released $72,000.

**ESTABLISHING THE SEAT OF GOVERNMENT**

On June 28, 1790, Congress having reconvened, the bill establishing a permanent seat of government was again brought forth and amended by inserting, "... on the River Potomac at some place between the mouth of the Eastern Branch and Connongochegue." Finally, on July 16, 1790, by a vote of 32 to 20, the act was passed entitled, "An Act Establishing the Temporary and Permanent Seat of the Government of the United States." The word "temporary" applied to Philadelphia whose disappointment in not becoming the nation's capital was
appeased by Congress holding sessions there for a ten-year period, until December, 1800. The following month, the funding of the war debts bill proposed by Hamilton became law. At last, after one of the keenest and most prolonged fights in the annals of Congress, which included a series of important compromises, George Washington was able to select the site upon which the capitol would be built.

The question of the franchise for the District received little attention either during the drafting of the Constitution or during the debates on the location of the seat of government. The Continental Congress was faced with the awesome responsibility of creating the government of a new nation and had many other problems to solve. The strong concern with freedom from dependence on a state overshadowed whatever concerns Congress may have had about the impact the future location of the Federal District might have on the citizens residing therein. Moreover, the drafters of the Constitution did not know where the district they created would be located. Thus, there was no opportunity to be concerned about an unidentifiable group of citizens.

"... [wherever] they may have this district, they must possess it from the authority of the State within which it lies; and that State may stipulate the conditions of the cession. Will not such State take care of the liberties of its own people?"

Congress accepted the cession of the District of Columbia by Maryland and Virginia in 1790. Each State’s cession agreement provided that its respective jurisdiction over District residents and land would continue until Congress accepted the cession and provided by law for their government. In accepting the cession, Congress stated that the laws of the states would continue until the Capitol relocated and “could otherwise by law provide.” Consequently, District residents voted in either Maryland and Virginia until December, 1800, when Congress moved to the Potomac site.

Less than a month later, Congress passed legislation to freeze the laws of the two states. The bill was intended to “allow Congress at some future period...to enter on a system of legislation in detail, and to have established numerous police regulations.” The immediate consequence to District residents was their disenfranchisement.

Opponents of this bill said it was superfluous in its supposed addition to District laws, and the price of reducing residents to “the state of subjects, and deprived of their political rights” was too high; but the passage of the bill served to reduce the uncertainty which existed over the exact laws which would govern the District. This enabled Congress to postpone indefinitely the enactment of legislation affecting the rights of a handful of citizens.

THE DISENFRANCHISEMENT

Some concern, however, was expressed about the interests of the citizens of the Federal District. James Madison in the “Federalist No. 43,” stated that:

"The inhabitants of the District will find sufficient inducements of interest to become willing parties of the cession; as they will have had their voice in election of the government which is to exercise authority over them; as a municipal legislature for local purposes, derived from their own suffrages, will, of course, be allowed them...every imaginable objection seems to be obviated."

It is unlikely that the phrase “will have had their voice” meant that residents would really never again have a voice in District affairs conducted at the national level. On the contrary, there was an assumption of participation in that “every imaginable objection” had been taken under consideration. That is, the Founding Fathers could hardly be expected to allow a citizenry to have a voice at one time, but never again. Moreover, it was widely assumed that those states which would cede the land for the District would provide for the rights of the affected residents. The North Carolina ratification debates noted that:
WASHINGTON, D.C. — THE EARLY YEARS

POPULATION IN THE NEW CAPITAL

When Congress moved to the District of Columbia there were only 3,200 residents. This number was far less than the 50,000 residents required for Statehood, and far less than the 30,000 required by the Constitution for the establishment of a Congressional District. The sparse population probably helped justify Congress’ lack of attention to the representation issue; further, the growth of the District could not be foreseen by Congress; it was anticipated that most persons residing there would be connected with the federal government and that many of them would return home for part of the year. Certainly Congress did not foresee the eventual disenfranchisement of 700,000 persons—fourteen times the minimum number of persons originally required for Statehood. The lack of full voting representation for the District can thus be historically rationalized, but it can no longer be justified.

It is believed that many of the residents were construction workers fabricating this “City of Magnificent Intentions.” Initially, Georgetown was the most popular area in which to reside for the high officials. However, commuting the distances between Georgetown and the Congressional buildings eventually took its toll. Because of the great distances between settlements and scattered homes, the Washington area was also once called the “City of Magnificent Distances.” Eventually the Capitol Hill area grew and became residential and commercial as well.

It had been predicted that Washington would indeed be a flourishing city mainly because it was the seat of government. Washington was envisioned to become a beautiful city of great dignity that symbolized the ideals of this new nation. During its growth, Washington took on many characteristics like that of any other contemporary, American community of its size. However, because of the nature of its origin, many of Washington’s problems were quite unique. Washington continued to grow in population, government and business during both peace and war times, yet it failed to adequately develop many vital public services such as street improvement and sanitation systems. Most citizens had to struggle with these inadequacies.
Inundated with the politically zealous, it is quite ironic that the citizens of Washington were and are still politically impotent. As Washington continued to grow throughout the years in both population and industry, citizens witnessed little change in the political situation.

Since 1801, Washington’s political status has been the subject of much debate. The citizens have struggled to acquire varied status, including a territorial government, home-rule, constitutional voting rights, and now Statehood.

Beginning in 1802 and beyond, Washington experienced many forms of local government. The first consisted of a mayor, who was appointed annually by the President of the United States, and a council of twelve members, elected annually by the people. Starting in 1820, the Mayor was elected by the people, and served a two year term. This lasted until a territorial form of government was developed in 1871. Provided by an Act of Congress, the territorial government consisted of a governor, a board of public works, and a legislative assembly. Eleven members of the legislative assembly made up the Council, the other twenty-two members were called the House of Delegates. This territorial status also allowed the District to have a Delegate in the United States House of Representatives. In 1874, the territorial form of government was abolished. Advised by Congress, the President appointed a commission composed of three civilians who were to serve a three year term. The commissioner system went through various forms, but by the end of World War II, District citizens realized they needed a government more responsive to their needs. Their desire was strong, but any change to Washington’s administration was opposed by certain influential congress members. Thus, the commissioner system existed until 1973, when the “Home Rule Bill” (Public Law 93-198, the District of Columbia Self-Government and Metropolitan Reorganization Act) passed Congress. In 1974, the citizens of Washington, D.C., elected a mayor and a thirteen member council to represent their local government, the form of government existing today.

CHAPTER III

THE DISTRICT OF COLUMBIA TODAY

There is little resemblance between the District of Columbia today and the District of Columbia in 1791. Its physical character has been transformed from an 18th century colony to the location of the fastest growing metropolitan area in the nation. Its population has fluctuated from 3,200 in 1800 to more than 700,000 in 1986, at one time reaching a high of 800,000.

The make-up of the District’s population has also changed dramatically. Originally, the District was assumed to be a part-time residence for federal employees who traveled here for a brief period of political activity and returned to their legal and active residencies in the states. It became, however, the sole, permanent home for many tax-paying American citizens and a thriving community of commercial and international, as well as governmental businesses, all of which are intricately involved in its development and growth.

Although the home of the federal government, Washington is often misconceived as a haven for federal employees. Contrary to this popular misconception, Washington has a thriving private sector. Actually, about 70 percent of the District’s residents are employed outside of the Federal and local Government. Of the more than 4 million federal jobs throughout the U.S., fewer than six percent are located within the District of Columbia. Unknown by many is the fact that many of the Federal jobs in the District are held by residents of Maryland and Virginia who commute to the District daily, many by way of the much needed Metro subway system. Moreover, the lion’s share of the top-paying federal jobs in the Washington metropolitan area belong to the residents of Virginia and Maryland.

It is claimed by some that the population of the District lacks diversity and that District residents are narrow in their interests. To the contrary, the District is quite diverse, perhaps more diverse than the population of all the states. Residents have come from across the United States to make their homes in the District. Each of the 50 states is well represented in the District’s population. A wide range of interests and values are reflected in its people. While the United States is the melting pot of the world, the District of Columbia is the melting pot of the United States.
In 1791, the District of Columbia was not seen as a permanent home for a large number of American citizens. The inescapable fact is, that is what it has become.

Today the District has two governing bodies, the local government and the United States Congress. The local government includes an elected Mayor and Council who have authority to pass laws and enact a budget. However, Congress retains veto power over laws passed by the District as well as its budget, and Congress exercises jurisdiction over federal property as well. In addition, in passing the Home Rule Act, Congress imposed certain limitations on the District's ability to pass laws and levy taxes. In reality, Congress still has ultimate control over the governing of the District. The crowning paradox of this situation is that a nation dedicated to representative government has frequently forbidden the residents of its capital city the right to control their own affairs.
CHAPTER IV

LOCAL SELF GOVERNMENT

HOME RULE

In 1973, Washington residents finally regained limited local governmental control when Congress passed the “Home Rule Act.” In the preamble to that Act, Congress made its intent clear:

“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; to 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.” (emphasis supplied)

Under the Home Rule Act, the District of Columbia Council and Mayor administer local affairs. The Council and Mayor have legislative and taxing authority over all local matters except:

1. Income tax on nonresidents;
2. Height limitations on buildings;
3. Property of the United States;
4. Jurisdiction of the D.C. Courts;
5. U.S. Courts, U.S. Attorney, U.S. Marshall; and

Initially, the Mayor and the Council had no authority over the criminal laws of the District, but that limitation was removed in 1979.

Except for emergency acts, charter amendments or budget acts, all legislation adopted by the Council and approved by the Mayor is transmitted to the Speaker of the House and the President of the Senate for layover of a 30-day period (60 days for criminal laws) in which at least either the House or the Senate is in session, before becoming law. Congress can veto the legislation during that 30-day (or 60-day) period by both Houses adopting a concurrent resolution of disapproval, and by the President signing that resolution.

In the House, concurrent resolutions of disapproval are referred to the House District of Columbia Committee, and if approved, brought to a vote on the Floor by an expedited procedure. In the Senate, disapproval resolutions and other District matters are referred to the Subcommittee on Governmental Efficiency and the District of Columbia of the Governmental Affairs Committee.

THE D.C. VOTING RIGHTS AMENDMENT

The D.C. Voting Rights Amendment was a proposed Amendment to the Constitution of the United States. If it had been ratified, it would have allowed the citizens of the District of Columbia to elect two Senators and the number of Representatives their population demands (1 or 2). Citizens of the District currently have no representation whatsoever in the Senate and only one nonvoting Delegate in the House of Representatives.

In 1978, the D.C. Voting Rights Amendment was passed by two-thirds of the House of Representatives (289-127) and by two-thirds of the Senate (67-32). It then went to the States for ratification. Three-fourths (38) of the states must ratify a proposed Amendment. The D.C. Amendment expired in September, 1985, having been ratified by 16 states.
CHAPTER V

THE UNITED STATES AND THE WORLD COMMUNITY—WE STAND ALONE

EVEN THE SOVIET UNION AND SOUTH AFRICA PROVIDE FOR REPRESENTATION IN THEIR NATIONAL LEGISLATURES OF CITIZENS RESIDING IN THEIR CAPITAL AREAS.

IN THE WORLD COMMUNITY — THE UNITED STATES STANDS ALONE

The United States is the only Nation in the world with a representative, democratic constitution, that denies voting representation in the national legislature to the citizens of the capital.

On May 8, 1985, the Congress in Brazil unanimously approved a constitutional amendment which, among other things, provides that the citizens of its capital city, Brasilia, will be represented in the Congress for the first time. As a result of Brazil’s action, the United States now stands entirely alone in the world community on the matter of representation to the citizens of their capital.

Even the Soviet Union and South Africa provide for representation in their national legislatures of citizens residing in their capital areas (see below).

The vast majority of nations in the world community with national legislatures do not discriminate against residents of the capital city with respect to representation in the legislature. In these nations the citizens of the capital are represented in the national legislature in the same way that all other citizens of the nation are represented. Thus, the citizens of London have voting representation in the British Parliament, and the citizens of Paris have voting representation in the National Assembly of France.

Seventeen nations in the world community are federations (with a constitution and a federal system of government). Those nations are: Argentina, Australia, Austria, Brazil, Cameroon, Canada, India, Malaysia, Mexico, Nigeria, Pakistan, Switzerland, the United States, Venezuela, West Germany and Yugoslavia. Of obvious note among these nations is the Soviet Union, in which residents of Moscow are represented in the national legislature.

Only one of these federal nations, the United States, denies the citizens of the capital city the right to representation in the national legislature. In fact, many federal nations that extend the rights of representation to the residents of the capital have molded their governments after our own. Yet, on this basic issue of representation, they have taken the lead and surpassed us.

Six of these federal nations have actually adopted the United States constitutional concept of a separate federal capital city under national jurisdiction: Argentina (Buenos Aires), Australia (Canberra), Brazil (Brasilia), India (New Delhi), Mexico (Mexico City), and Venezuela (Caracas).

Two other examples are instructive. Canberra was accorded full representation in the Australian Parliament in 1967, after it was determined that the capital had a significant permanent resident population. Canberra, like the District of Columbia, was a planned city, built on land that was largely uninhabited. In addition, Mexico City was given full voting representation in 1928, only a few years after the ratification of the Mexican Constitution.

EXPERIENCE OF FOREIGN NATIONS WITH ELECTED NATIONAL LEGISLATURES

A. Nations that exclude their capital cities from representation in their legislatures:
   — United States (Washington, D.C.)

B. Nations that grant representation to their capital city in their legislatures:
CHAPTER VI

STATEHOOD: NEW COLUMBIA

THE STATEHOOD INITIATIVE

AN INITIATIVE TO PRESENT TO THE REGISTERED QUALIFIED ELECTORS OF THE DISTRICT OF COLUMBIA FOR THEIR APPROVAL OR DISAPPROVAL THE PROPOSITION OF CALLING A STATEHOOD CONSTITUTIONAL CONVENTION WITH ELECTED DELEGATES, FOR THE PURPOSE OF FORMING A CONSTITUTION, AND OTHERWISE PROVIDING A PROCESS FOR THAT PORTION OF THE TERRITORY NOW KNOWN AS THE DISTRICT OF COLUMBIA TO BE ADMITTED IN THE UNION AS A STATE ON EQUAL WITH OTHER STATES.

As the hopes and high expectation for Home Rule failed to materialize in significant political and human terms for the citizenry of the District of Columbia; and as the Voting Rights Amendment, which passed by two-thirds vote of each body of Congress, began to languish in State legislatures across the land, with little realistic forecast of acquiring the necessary two-thirds of the states to ratify such Constitutional amendment, the quest for full and equal status as American Citizens failed to be silenced among the District Population. Unwilling to wait, refusing to be further compromised and alienated from their political heritage, they acted.

On July 10, 1979 an Initiative was filed with the Board of Elections and Ethics of the District of Columbia seeking qualification on the Ballot, under the newly established Initiative, Referendum and recall legislation of the District Charter. The Initiative presented the question of Statehood for the District of Columbia to the Electors, and further included the total enabling legislation for the process of statehood should the people of the District of Columbia vote to follow such path.

On November 4, 1980 the Statehood Initiative won the approval of a vast majority of District Voters, in excess of 60%, and became the first popular Initiative to win voter approval in the District’s 180 year history. The 51st Star was rising!

A “Constitution for the State of New Columbia (as the new State will be called),” was approved by duly elected delegates from the District of Columbia on May 29, 1982, and adopted by a vote of the people of the District of Columbia in an election held November 2, 1982. The Constitution and a petition for Statehood was transmitted by the Mayor of Washington, D.C. to the Congress of the United States on September 9, 1983.

THE CASE FOR D.C. STATEHOOD

The District is the only political and geographical entity within the United States whose citizens bear the responsibilities of government without sharing in the appropriate privileges of government.

The importance of “taxation without representation” takes on its fullest significance when considered in light of what the missing representation means. Congress decides on legislation affecting the District as well as the states. However, only the District lacks a respectable share of input in the enactment of the very laws which affect its residents.

Representation by only one non-voting Delegate provides little more than a formal voice. Since 1971, the District of Columbia has been represented in the House of Representatives by one popularly elected delegate, who may vote in committee but not on the floor. This situation provides little more than a formal voice in legislative matters.

Nonetheless, the ability to elect one non-voting Delegate is important. Interestingly enough, the very fact of this presence, albeit a somewhat cloistered presence, adds reality to the issue of Statehood.

If 700,000 residents are entitled to only one Representative in the House of Representatives, in effect, they are each only one-fifth of a citizen. The non-voting Delegate from the District must represent almost twice as many people as any one of the 435 Representatives. The nearly three-quarters of a million persons living in the District of Columbia is more than the number of persons represented by almost one-fifth of the Members of the Senate. The net effect is that the D.C. Delegate represents, without a vote, more than five times as many persons as any other Representative. The result of this gross under-representation is felt daily by the taxpaying Americans of Washington, D.C., who must rely on a single Representative to reflect their legislative interests and to provide constituent services.
District residents bear all the burdens of citizenship, but do not share the most cherished right of citizenship—full representation in the Congress. In addition to paying federal taxes, District residents also pay local taxes, and are subject to all the laws of the United States as well as treaties made with foreign governments.

Other relevant facts further pinpoint the contradiction:

Residents of the District pay over a billion dollars annually in taxes to the Federal Treasury more total federal taxes than nine states pay.

The per capita tax payment for District residents is over $500 above the national average, a payment higher than 49 States.

The population of the District of Columbia is larger than that of four states.

District residents have fought and died in every war since the War of Independence. And during the Vietnam War, the District of Columbia had more casualties than ten states, and more killed per capita than 47 states.

CHAPTER VII

CONSTITUTIONAL AND LEGAL ISSUES SURROUNDING D.C. STATEHOOD


Chairman Peter W. Rodino, Jr.

There are several constitutional and legal issues that have been raised in connection with granting Statehood to the nonfederal part of the District of Columbia. A listing and a discussion by constitutional scholars of these issues follows:

1. Is it necessary to repeal Article I, Section 8, Clause 17 of the Constitution prior to going forward with a Statehood bill?

Response by Peter W. Rodino, Jr., Chairman, Committee on the Judiciary, United States House of Representatives

A narrow reading of the various constitutional provisions which address voting representation in the House and Senate seems to limit such representation to the several states of the United States. Article I, Section 2, Clause 1, states, “The House of Representatives shall be composed of Members chosen every second year by the people of several states, and the electors in each state shall have the qualifications requisite for electors of the most numerous branch of the state legislature.” Amendment 17 states in pertinent part, “the Senate of the United States shall be composed of two Senators from each state,
elected by the people thereof, for six years; and each Senator shall have one vote.” Similar provisions are found at Article I, Section 2, Clauses 2 through 4; Article I, Section 3, Clauses 1 through 3; Article I, Section 4, Clause 1; and Article V. Granting Statehood to the District represents the legislative vehicle most consistent with these provisions of the Constitution.

There seems to be no relevant constitutional provision which expressly prohibits the Congress from creating a state out of parts of the District. Article I, Section 8, Clause 17, establishes that the seat of government shall not exceed ten miles square. Indeed, the District of Columbia was reduced from a perfect ten miles square in 1846 to its current size of 67 square miles when Virginia petitioned Congress to have its land retroceded. Thus, there is a ceiling but no floor on the size of the seat of Government.

Moreover, according to the terms of cession, the District was “to be forever ceded and relinquished to the Congress and government of the United States, in full and absolute right and exclusive jurisdiction.” Taken together with the plenary power of Congress to dispose of federal property pursuant to Article IV, Section 3, Clause 2, and to admit new states under Clause 1 of Article IV, Section 3, it seems clear that Congress possesses the requisite authority to establish statehood for the District by statute.

The authority for admitting new states into the union is vested solely in the Congress of the United States by Section 3 of Article IV of the Constitution which states:

“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.”

No limitations are placed upon the powers of Congress to admit new states except as provided in this clause. There is no clause in the Constitution which expressly prohibits the Congress from creating a State out of parts of the District of Columbia.

The article does not set forth any specific procedure for admission, and over the years, new states have been admitted through a variety of means. No admission, however, has required ratification by the other states. Each admission has been accomplished by a simple majority vote in each House.

There has indeed been a great deal of flexibility in the admission of states. Most have petitioned Congress as territories. In response to those petitions, Congress has passed “enabling acts” allowing the territory to draft a constitution and, upon submission of the constitution to Congress, an act of admission was passed. Seventeen states have gained admission without enabling acts, and four states (Kentucky, Maine, Vermont and West Virginia) were never organized as territories and were admitted by simple congressional acts. Thus, four states, like the District of Columbia, had been parts of other states prior to admission.

It may be argued that the exclusive congressional power over the District, pursuant to Article I, Section 8, Clause 17 of the Constitution, is so absolute and unconditional as to empower Congress to create out of the District any form of government it chooses, even a state government. Over the years, Congress has organized a variety of governments for the District of Columbia, including the current “Home Rule” Government. In fact, in 1871, Congress established a “Territorial government” in the District, with a governor and bicameral legislature. That government, like many before and after it, was subsequently abolished by Congress.

That Congress can affect the status of the District of Columbia by statute, notwithstanding the U.S. Constitution, is further supported by a series of Supreme Court decisions. In Loughborough vs. Blake, a case decided in 1820, the Court ruled that Congress could directly tax D.C. residents in spite of Article I, Section 2 of the Constitution which provides that direct taxes are to be apportioned “among the several states which may be included in this union.” In 1889, the Court upheld the authority of the Congress to exercise commerce power to regulate business across District borders, despite Constitutional language found in Article I, Section 8, which empowers Congress to regulate commerce “among the several states.” Similarly, in the case of National Mutual Insurance Company vs. Tidewater (1949), the Supreme Court upheld a federal statute which included the District under diversity jurisdiction in federal courts along with the states. And in a 1953 case, Columbia vs. John R. Thompson Co., the Court held that Congress, by statute, could delegate to the District of Columbia the power to enact local legislation, without violating the Constitution.

II. Does the federal government or will the new state owe any obligation to the state of Maryland, which ceded the land to create the District of Columbia?
Response by Peter Raven-Hansen, Professor of Constitutional Law, George Washington University Law Center

Article IV provides that “no new state shall be formed or erected within the jurisdiction of any other state...without the consent of the legislatures of the states concerned as well as of the Congress.” This limitation comes into play if divestiture by the United States of the non-federal part of the District of Columbia causes it to revert back to Maryland. The original terms of cession of land for the District by Maryland and the judicial gloss on similar acts of cession suggest that the divestiture would not cause such a reversion.

The original act of cession was unconditional, and the act of Maryland ratifying the cession unequivocally acknowledged the land,

“... to be forever ceded and relinquished to the Congress and Government of the United States [in] full and absolute right and exclusive jurisdiction, as well as of soil of persons residing or to reside thereon, pursuant to the tenor and effect of the eighth section of the first article of the Constitution of the Government of the United States.”

In contrast, most state cession statutes and consents expressly provide for reversion of the ceded land upon termination of federal use or ownership. Since Maryland, no less than other states ceding land to federal jurisdiction, can be charged with knowledge of how to frame a reverter provision, the omission of such a provision in the original cession of land for the District is significant. Moreover, Congress in 1846 assumed that retrocession of the county of Alexandria to Virginia, whose terms of cession were identical to Maryland’s, was not automatic upon abandonment of the territory by the United States, but that it needed Virginia’s consent. The express terms of the original cession and its omission of a reverter provision therefore suggest that the United States can dispose of the non-federal part of the District as it sees fit in its “absolute right,” and that the land will not automatically revert to Maryland if now divested by the United States in favor of a new state.

The original act of cession, however, also clearly indicated that the cessions was “pursuant to the tenor” of Article I, Section 8, Clause 17, for the creation of a district for the seat of government. In S.R.A., Inc. v. Minnesota, the Supreme Court stated that an act of cession in accordance with Clause 17 impliedly required reversion of the ceded land to the state upon termination of federal use. It reasoned that any other construction of such cessions would create either “no man’s lands” outside state or federal jurisdiction, or “numerous isolated islands of federal jurisdiction” over lands put to no federal use.

S.R.A. may, however, be distinguishable. By divesting the non-federal part of the District in favor of a new state, the United States would create neither a “no man’s land” nor an island of useless federal jurisdiction; it would simply surrender federal jurisdiction to state jurisdiction. Therefore, the rationale of S.R.A. is seemingly inapplicable to divestiture of the non-federal part of the District. Moreover, S.R.A.’s rule of implied reverter was dictum, and dictum at that, in a case in which the original cession apparently was not framed in the sweeping language of Maryland’s cession of land for the District. It is therefore at least doubtful that any implied reverter provision, necessitating the consent of Maryland to the admission of New Columbia to the Union, should be read into Maryland’s apparently unqualified act of cession.

The Courts have, in any event, assumed a highly deferential and circumspect stance towards second-guessing the non-private uses to which the United States puts lands ceded by the states. Indeed, when the retrocession of the county of Alexandria from the District to Virginia was challenged, the Supreme Court declined to hear the challenge. Although its refusal was nominally based on an application of estoppel against the challenger, language in the decision suggests that an alternative basis might have been application of the political question doctrine, as the Court noted the principle that the judiciary is bound by the acts of political departments. It is arguable, therefore, that no court would review a construction by the United States of the Maryland cession that would allow the United States plenarily to surrender its jurisdiction over the nonfederal part of the District in favor of a new state.

III. What will become of the 23rd Amendment to the U.S. Constitution?

Response by Stephen Saltzburgh, Professor of Constitutional Law, University of Virginia Law School

I am persuaded myself as to the 23rd Amendment that here again constitutional scholars could probably come in and have a field day trying to deal with this.

The truth is, I don’t know why anybody cares about what happens with the 23rd Amendment except in one respect. There is something that you would want to be very careful about I believe in dealing with the 23rd Amendment.

As I understand the proposal, and this may not be in its latest form, what is envisioned is a state, the State of New Columbia, and an enclave which would essentially be the seat of government, so that Article I,
Section 8, of the Constitution, providing for a seat would be satisfied. There would be a seat of government.

I think that as long as you are very careful to provide as follows, that any person who claims to reside in the enclave shall be deemed to be a resident of the state of New Columbia for purposes of voting, what would happen to the 23rd Amendment is it would be effectively there on the books, but it would be impossible for anybody to raise a question about it.

The reason being that the people in the District would, as a state, have their representatives in the Senate, have their representatives in the House, and be represented according to population, and in the Senate equally, as provided in the Constitution, that the 23rd Amendment would then, if you looked at it, it would provide technically, still Congress would have the power to provide for representation in the electoral college.

Congress would not exercise the power. There would be no voters in the enclave to complain. Therefore, I think that the truth is the 23rd Amendment would simply be ineffective. No one would have standing to raise a valid question, I believe. And the Supreme Court would regard this if someone tried to challenge it, I think, as totally political.

It would, of course, be, if one believed that tidiness were desirable, one could then repeal the 23rd Amendment.

My feeling, though, is that every time you tinker with the Constitution it’s so costly it would be better to leave it alone, knowing that no one can really do anything with it. It’s not important if there’s a state. And not to bother with the cost of trying to have a repealer for something that will do no one any harm I believe.

Response by Peter Raven Hansen, Professor of Constitutional Law, George Washington University Law Center.

The 23rd Amendment will become moot, either on the theory that it is no longer applicable by its terms and intent to any existing political jurisdiction, or on a theory of implied repeal by the act of admission of "New Columbia" to the Union.

The amendment provides for participation in the electoral college of "the District constituting the seat of Government of the United States." Were Congress to admit the non-federal part of the District of Columbia as a state, that area would no longer be applicable to it. While any remaining federal enclave might then constitute the seat of government, that enclave would contain only a tiny resident population, most of whom could and presumably would be afforded the right by statute to vote in New Columbia elections after the practice in other federal enclaves, if they otherwise satisfy lawful state voting requirements. A fair reading of the intent of the 23rd Amendment would conclude that it was not to extend electoral college suffrage to whatever area constituting the seat of government, regardless of population, size or location, but rather that it was only to extend that government at the time the amendment was proposed or ratified. The result would be to render the amendment a dead letter which is perhaps untidy, but not wholly unprecedented as a matter of constitutional law.

Alternatively, an act admitting New Columbia to the Union can be viewed as an implied repeal of the 23rd Amendment. Of course, it is a truism that the Constitution cannot be amended by ordinary legislation. But an act of admission is not ordinary legislation. Rather, it is what might be called constitutional enabling legislation, by which Congress expressly enables or triggers specific constitutional provisions regarding the rights and privileges of statehood. It is not therefore the admission act alone, but rather the constitutional provisions for national suffrage that it enables, that impliedly repeals the 23rd Amendment.

Legislation subjecting the states without their consent to private suits for damages in federal courts supplies a rough analogy. It is now well-established that the states have a constitutionally based immunity to unconsented suits for damages in federal court, incorporated in part in the 11th Amendment. Yet, Congress has by statute authorized private suits for damages against states that discriminate in employment on grounds of race, color, religion, sex or national origin. The Supreme Court upheld that statute in Fitzpatrick v. Bitzer, reasoning that Congress had not simply legislated under Article I, but had legislated pursuant to the 14th Amendment's "necessarily limited," even though it nowhere expressly repealed, the 11th Amendment.

It was held in Fitzpatrick v. Bitzer that: When Congress acts pursuant to [that enforcement provision], not only is it exercising legislative authority that is plenary within the terms of the constitutional grant, it is exercising authority under one section of a constitutional amendment whose other sections by their own terms embody limitations on state authority.
Thus, legislation under the enforcement provisions of the 14th Amendment can work “a pro tanto repeal of the Eleventh Amendment and the incorporated doctrine of sovereign immunity.”

By analogous reasoning, when Congress acts pursuant to the admission provision of Article IV, not only is it exercising plenary legislative authority, it is exercising authority that puts in operation other constitutional provisions in Article II and the 12th Amendment which by their own terms control national suffrage by people of the states. The act of admission therefore impliedly repeals the 23rd Amendment.

IV. Can Congress impose limitations on the District as a condition for admission as a state, and if so, what kind of limitations?

Response by J. Otis Cochran, Professor of Constitutional Law, University of Tennessee School of Law

The answer to this question, unlike most arising from the issue of statehood for the District, is fairly straightforward, primarily because there is judicial precedent on point. Congressional “conditions” on admission to statehood have appeared in the past and have generated some constitutional challenges. These cases indicate that Congress may impose whatever conditions on admission that it deems wise, but that the binding effect of those “conditions” may be severely limited or non-existent after statehood is achieved, depending upon the substantive nature of the restrictions.

In Coyle v. Oklahoma, the Enabling Act of June 16, 1906, had provided for admission of Oklahoma to the Union on condition that the state capital not be moved from Guthrie to Oklahoma City before 1913. After Oklahoma’s admission to the Union, the state passed a law providing for removal of the state capital to Oklahoma City in 1910. The issue in the case was whether Oklahoma could be bound by the conditions in the Enabling Statute of 1906.

The Court distinguished three types of “conditions” that might be placed upon admission to statehood. First, that which is satisfied upon admission: that is, binding the admittee only until it has achieved statehood. A demand that the proposed state constitution conform to certain congressional requirements at the time of admission would be such a condition. Second, there is the condition that is intended by Congress to bind the state at a future time and which is within the scope of the conceded powers of Congress over the subject. Thirdly, Congress may attempt to enforce a restriction which operates to limit the powers of the new state with respect to matters which would otherwise be exclusively within the sphere of state power.

The first type of condition presents no real constitutional problem. Clearly, Congress may approve or reject admission to statehood for any reason it sees fit. If Congress does not approve of a proposed state constitution, it may clearly so inform the potential state, and condition admission upon a state constitution that meets its approval. After statehood is achieved, however, the sovereign state has full authority to change its constitution as it sees fit, subject to the restrictions of the federal constitution. Such changes could include removal of the changes demanded by Congress as conditions to admission.

The constitutional issue arises when Congress attempts to bind the new state to the conditions for statehood after it has achieved that status. The “Equal Footing Doctrine” provides that the states admitted to the Union subsequent to the approval of the federal constitution are to be entities of equal status with the original thirteen states. Article IV, Section 3 of the Federal Constitution grants Congress the authority to admit new states to the Union. The varying powers and the authority of “states” within the federal framework are defined by the Federal Constitution. Were Congress permitted to exact permanently binding restrictions on state authority as a condition for admission to the Union, the relationship between Congress and all states admitted after the original thirteen would be ultimately determined, not by the Constitution, but by Congress itself. Such a situation would fly in the face of the clear intent of the framers.

Thus, any congressional restrictions or expansion of state authority in its statehood enabling acts cannot bind the state under Congress’ Article IV, Section 3, authority to admit new states. Congress, however, yields powers under the Constitution, pursuant to which it can legislate with respect to the states. If a conditional admission to statehood is to be binding in the future, it must be done pursuant to the constitutional legislative powers granted to Congress over all states. Congress may, therefore, include in an enabling act conditions relating only to matters within its sphere of powers, such as regulation of interstate commerce and disposition of public lands. Such conditions take their binding effect from Congress’ legislative power over the states, not from an extortion of conditions for statehood.
V. Can the Congress re-write the proposed Constitution submitted by the District?

Response by Peter W. Rodino, Jr., Chairman Committee on the Judiciary, United States House of Representatives

The remaining issues which you asked me to address can be combined. To wit, can the Congress impose limitations on the District as a condition for admission as a state, and can Congress rewrite the proposed Constitution submitted by the District? In the past, Congress has imposed conditions prior to the admission of certain states. For example, Congress prohibited recall elections for judges as a condition precedent to statehood for Arizona. Oklahoma was admitted to the Union by Congress on the condition that the location of the state capital be fixed at a place certain for a specified period of time. And Congress admitted Louisiana as a state on the condition that religious liberties be guaranteed. But while conditions may be imposed as a prerequisite to statehood, the lasting effect of such conditions really depends on whether they violate the “Equal Footing Doctrine.”

This doctrine was first articulated in the Northwest Ordinance of 1887. Although the framers elected not to incorporate the doctrine into the U.S. Constitution, the principal has for many years been a part of American Constitutional Law. In Permoli vs. Municipality No. 1, an 1845 Supreme Court decision, the Court stated,

“All Congress intended was to declare in advance, to the people of the territory, the fundamental principles their constitution should contain; this was every way proper under the circumstances. Having accepted the constitution and admitted the state “on an equal footing with the original states in all respects whatever,” in express terms, by the act of 1812, Congress was precluded from assuming that the...(conditions) had not been complied with....”

In 1911, the Supreme Court, in Coyle vs. Oklahoma, struck down the condition which had been imposed by Congress on the location of Oklahoma’s capital. In Reynolds vs. Sims, a 1964 Supreme Court case, the Court ruled that determining the size of its legislative body is a matter within the discretion of a state.

The Court has however, upheld a limit on the right of a state to tax federal land, Stearns vs. Minnesota, a case decided in 1900. In matters clearly within the domain of the United States, e.g., Indians as wards of the United States, the Court has said congressionally imposed conditions are not violative of this doctrine. Thus, so long as the Congress does not impose conditions that are unique to a particular state and that are not continuing in nature, the requirement that each state be admitted on an equal status should be satisfied.

Imposing conditions prior to admission of a state is tantamount to writing, at least in part, that state’s constitution. In Coyle and Permoli, the Court reasoned that Congress could inject itself into the content of a state’s constitution. Whether a state is forever bound by Congress’ rewrite depends first upon acceptance by the people of that state and ultimately upon an interpretation of the “Equal Footing Doctrine.”

Response by Peter Raven-Hansen, Professor of Constitutional Law, George Washington University Law Center

The foregoing analysis indicates that the answer to this question is clearly yes, subject to ratification of the final proposed constitution by the people of the District in accordance with the principles of republican government. In fact, the Supreme Court has expressly said so at least twice. Coyle v. Smith stated that “Congress may require, under penalty of denying admission, that the organic laws of the new state at the time of admission shall be such as to meet its approval.” And in Permoli v. Municipality No. 1 of New Orleans, the Court approved Congress’ pre-admission specification of several terms of the Louisiana constitution.

All Congress intended, was to declare in advance, to the people of the territory, the fundamental principles their constitution should contain; this was every way proper under the circumstances. The instrument having been duly formed and presented, it was for the national legislature to judge whether it contained the proper principles, and to accept it if it did or reject it if it did not.
CHAPTER VIII

D.C. STATEHOOD ECONOMICS: FACTS AND FIGURES

While the residents of the District of Columbia are well aware of the tax burden they bear, few are aware of the revenue generated by the District.

Some have suggested that the District cannot support itself without an agricultural or industrial base, but with the movement toward a high-tech, service-oriented society, D.C. has the potential to be a national leader. The District of Columbia is a national leader in the communications field, the tourism industry, and the services field where many national headquarters are located here.

The following findings should be of interest:

- Residents of D.C. pay more taxes per capita (per person) than residents in any other state, except Alaska.

- D.C. pays a greater portion of the total federal tax burden than eight other states.

- D.C. contributes more to social insurance (social security) than six other states.

- D.C. pays more excise taxes than seven other states.

- D.C. earnings by industry are very diverse and rank higher in the following categories:
  - Communications, rank higher than twenty-five states;
  - Finance, Insurance, and Real Estate, rank higher than fourteen states;
  - Hotels and lodging, rank higher than twenty-seven states;
  - Business Services, rank higher than thirty states;
  - Legal Services, rank higher than forty-one states;

The Metro System Connects the Region Enhancing Washington, D.C.'s viability.
(Courtesy of the Martin Luther King Library)
• Educational Services, rank higher than forty-three states;

D.C. also generates more revenue on the state and local levels than twelve states; makes more on retail trade than eight states, and more from amusement and recreation than nine states.

Of course, whether any provisions of the state constitution required by Congress and ratified by the people of New Columbia are enforcable as federal law admission, or whether they are only state law subject to amendment by New Columbia, would depend upon whether they satisfy the equal footing test discussed above.

Just as there are several legal and constitutional issues that have been raised concerning statehood for Washington, D.C., there are also several key financial issues that have been raised. Experts have addressed these issues and experts from their responses follow:

I. What effect, if any, will statehood have on the Federal payment?

Response by Attorney Matthew Watson, Former Auditor, District of Columbia

“Although not legally compelled to, the President has supported and the Congress has regularly appropriated Federal payments for the District of Columbia. Upon admission as a state, the District would have no greater or lesser entitlement to receive continued payments. But, there is no reason to believe that the payments would not continue, both because it is right that the Government pay its fair share of the burdens it imposes on the District, and because it would be in the Federal Government’s best interest. Certainly, the Federal Government will desire to maintain the high quality of the city which is its capital, both for the services upon which the Government itself must rely and the general environment. While I believe that the District is financially viable as a state even without the continuance of the Federal payment, there would certainly be some decline in the quality of services if the District does not receive some contribution from its major property owner. Such a decline in the quality of life in the nation’s capital is not likely to be acceptable to the Federal interest and it is therefore likely that the Federal Government will choose to make a fair contribution for its own upkeep.”

II. Will the state be treated differently than the current government for purposes of Federal grants and loans, i.e., revenue sharing, highway funds, H.U.D. programs, etc.?

Response by Andrew F. Brimmer, PhD, Economist

“A comprehensive examination of the District government’s receipts under major Federal Government programs was undertaken. The results indicate that — if the District of Columbia were to become a state — it would neither gain nor lose any significant level of Federal funds.

At the present time, the District of Columbia receives Federal funding as follows:

Where funding is available to local governments only, the District is funded as a local government — e.g., the Department of Housing and Urban Development, Community Development Block Grant Program.

Where funding is available to state governments only, the District is designated by the statute or regulations to receive Federal funds along with the 50 states and U.S. Territories or is treated as if it were a state.

Where Federal funding is available to state and local governments or to local governments through the state, the District generally is treated as a state.

On balance, then, the District of Columbia is presently treated as a state. There are few, if any, major funding sources that would become available to the District as a result of statehood. The major programs funded to local governments generally have provisions for state funding where the local government is not an applicant.”

III. What are the expected transition costs of statehood?

Response by Attorney Matthew Watson, Former Auditor, District of Columbia

“Transition costs, of themselves, are likely to be minimal, and should be of no concern in making a determination as to whether to approve statehood. However, although the District now performs at its own expense almost all activities which it would be required to perform as a state, several programs which the state would be required to take over from the Federal Government would have cost implications which are not merely transition costs, but which would continue indefinitely.
Three of these Federally performed functions are involved in the criminal justice system. Currently the District Government does not have authority to criminally prosecute other than traffic and petty misdemeanor offenses. The local criminal prosecution function is conducted by the United States Attorney for the District of Columbia. Upon admission to statehood, the new state would have full criminal prosecution authority and responsibility. The new state would not take over the entire function of the United States Attorney's office. That office would still exist, as it does in all other states, to prosecute Federal offenses and to represent the United States civilly, but in a considerably smaller form. That part of the U.S. Attorney's office which prosecutes local cases in Superior Court currently has approximately 110 lawyers who are paid by the Federal Department of Justice. With support costs, the new state would have to undertake an expenditure of approximately $10 million per year to perform these functions. The District should properly bear this cost, together with the authority to choose the chief prosecutor.

Similarly, the United States Marshall also performs various functions in support of the Superior Court, including courthouse security and prisoner transportation, as well as service of process and execution of eviction orders. These functions, currently financed by the Federal Government, would become the responsibility of the new state, with cost implications of several million dollars per year.

Although all sentenced District prisoners are technically charged to the care and custody of the U.S. Attorney General, most actually serve their sentences in District operated and financed institutions. Nevertheless, over 1600 District prisoners are in Federal institutions and halfway houses. The District reimburses the Federal Government nearly $25 million per year for these correctional services. Upon, the District's, achieving statehood, it is likely that this privilege would stop. It is difficult to determine whether it would be more or less expensive for the District to provide these services on its own.

The District government has also benefited over the years from its ability to participate in Federal employee benefit programs. Currently, District employees are eligible to participate in Federal health benefit plans. In addition, permanent employees, other than police, firefighters, teachers and judges, are covered by the Civil Service Retirement System. State governments do not have the right to participate in these Federal programs. In fact, regardless of statehood, the Office of Management and Budget has recently informed the District that it will not be permitted to enroll new employees in the programs after October 1, 1987. It is likely that the District will be able to obtain group health coverage which is reasonably competitive to current costs. The potential retirement costs are much more threatening. With regard to the Civil Service Retirement System, the District is treated as a Federal Agency. The employee contributes 7% of wages, which is matched by the District. The District's contribution is now approximately $50 million per year. Although the Civil Service actuarial estimate that the cost above the employee contribution is at least double the agency share, the District, like any Federal agency, has no further obligation other than the initial 7% which it contributes. When District employees retire, any deficiencies in the funding are made up by the Federal Government. Statehood could cause even existing District employees to be dropped from the Federal retirement system. Even without having to cover all District employees in a new retirement system, it is likely that the benefits will have to be considerably reduced to be affordable to the District. If all District employees were to be dropped from the Federal system, the District might face increased annual costs of $50 to $100 million to match current benefits. Even under the existing Home Rule government, the District will begin covering new employees in its own retirement system starting in FY 1988. The OMB requirement of only covering new employees, however, will make the transition gradual. Statehood might trigger a much quicker change with attendant significant increases in costs.”

IV. How will taxing authority be affected — commuter, sales, residential and commercial property, federal property, use, value-added, etc.?

Response by Andrew F. Brimmer, PhD, Economist

“The Government of the District of Columbia collects revenues from taxes, fees, grants under Federal programs, and other miscellaneous sources, in much the same way as other states and local governments within the United States. Its position differs from that of other jurisdictions because of (1) the Federal payments it receives to compensate for costs associated with the presence of the Federal Government, and (2) the Federal restrictions placed on its taxing authority and on its budgetary discretion.

Although the Federal payment is a small part of total revenue for the District of Columbia, the Congress has authority to appropriate the entire District budget. Further, the District of Columbia is prohibited

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from taxing (1) earnings of workers residing outside of the District, (2) property owned by the Federal Government, or (3) property owned by certain organizations, such as the National Geographic Society, the National Academy of Sciences, and others exempted from taxation under Federal laws.

Property taxes and income taxes are the leading sources of tax revenues, followed closely by sales taxes. These, along with several minor tax sources, have been providing over 70 percent of total general fund revenues in recent years. The remaining revenue sources include the Federal payment, which had been about 20 percent of total revenues but is now a declining share. Miscellaneous charges and fines, including licenses and permits, service charges, etc., provide about 5 percent of total revenue, and the net receipts form the lottery now amount to nearly 2 percent of total general fund revenues.

Sales and use taxes, estimated at $365.6 million for FY 1986, account for 16 percent of the revenues total. Taxes on alcoholic beverages, cigarettes, hotel occupancy, motor fuel, and motor vehicle sales, collectively, account for an additional 3.2 percent, making total sales and excise taxes $438.4 million or 19.2 percent of the total in FY 1986.

Gross receipts taxes, including the public utilities tax and insurance tax, are estimated at $101.0 million in FY 1986. The utilities tax is $80.8 million of this amount, or 3.5 percent of total revenues. The insurance tax at $21.1 million is one percent of the total. A financial institutions tax had provided one percent of total revenues in FY 1982 and 1983 but, it has now lapsed and provides no revenues in FY 1986.

The individual income tax is estimated to provide $451.4 million in FY 1986. This would provide 19.7 percent of total revenues, making it the largest single source of general fund revenues in this year. The tax on corporations is estimated at $92.9 million or 4.1 percent, with the franchise surtax adding another $6 million or 0.2 percent. Taxes on nonincorporated business are estimated at $26.8 million, or 1.2 percent of total revenues. Total income taxes, therefore, would provide 25.2 percent of total revenues and $577.1 million in FY 1986.

Other taxes, including inheritance or estate taxes, deed recordation tax, and deed transfer tax, each provide about one percent of total revenues. Collectively, they amount to $61.2 million of the estimated FY 1986 total, or 2.7 percent.

Consequently, total tax revenues are estimated at $1.661.2 million or 72.7 percent of the total for FY 1986. The remaining 27.3 percent include the Federal payments and various receipts from selected charges, fines, and lottery operations. The total of these charges and other nontax receipts account for 6.9 percent of total revenues or $157 million in FY 1986.

The regular Federal payment to the District of Columbia is estimated to fall to 18 percent of total District revenues in FY 1986. Although Congress had appropriated $425 million for the annual payment, the Gramm-Rudman Hollings Amendment is expected to sequester $12.6 million of this amount. Therefore, the FY 1986 Federal payment is estimated at $412.4 million.

The Federal payment to the District in assuming responsibility for St. Elizabeth's Hospital is also subject to reduction. This payment had been budgeted at $25 million, but is now estimated at $23.9 million under the effects of Gramm-Rudman. On the other hand, revenue sharing and other Federal programs, which are expected to contribute $17.6 million and $14 million, respectively, in FY 1986, will expire thereafter, reducing total Federal contributions even further in future years.

Forecasts of revenue growth in the District of Columbia for the next five years are substantially lower than the actual growth rate in the recent past. Mainly, this reflects the expectation for more moderate economic growth following the period of rapid recovery from the 1982 recession. It does not, however, allow for a future recession in the forecast period nor for any radical changes in Federal budget policies affecting the District.

The overall growth of revenues in the next five years is forecast to grow at a 5.9 percent annual rate, compared to the 8.7 percent rate discussed above from FY 1982 through FY 1986. As in the past, the three largest contributors to the revenues — property tax, sales tax, and income tax — are expected to grow faster than the average rate and contribute the bulk of total revenues.

Property taxes are forecast to grow at an average annual rate of 7.8 percent and contribute 23.1 percent of total revenues in FY 1991, two percentage points higher than its contribution in FY 1986. Sales taxes are forecast to grow slightly faster at 8.0 percent annually and provide 21.2 percent of total revenues in FY 1991 compared to 19.2 percent in FY 1986. The individual income tax is forecast to grow at 7.9 percent per
annum during the forecast period which is faster than the rates of
growth forecast for income taxes of both incorporated and
unincorporated businesses. This is a reverse of the experience in the
recent past when business income was expanding rapidly. Total income
taxes in FY 1991 would provide 27.4 percent of total revenues compared
to 25.2 percent in FY 1986. Consequently, these three major sources of
tax revenues would provide 71.7 percent of total revenue in FY 1991
compared to 65.5 percent in FY 1986.

Lesser tax sources such as the public utilities tax and the insurance tax
grow more slowly than the rate forecast for total revenues. The public
utilities tax is forecast to grow at 5.4 percent annually, the same rate as
in the past four years, but it is still below the 5.9 percent forecast for
total revenues. Other taxes, including inheritance taxes are forecast to
increase at roughly one-half their growth rates in the recent past.
However, they would continue to grow at an average annual rate of 6.7
percent which is slightly higher than the rate forecast for total revenues.

Because of the above average growth rates for most tax revenues,
their collective growth rate from FY 1986 through FY 1991 is forecast at
7.6 percent annually compared to 5.9 percent for total revenues. The
locally-generated nontax revenues which are forecast to grow at the
same 5.9 percent rate as total revenues brings the overall growth rate
for local (tax and nontax) revenues down to 7.4 percent compared to 9.3
percent in the prior four years. In FY 1991 total local revenues would
provide 85.7 percent of total revenues compared to 79.5 percent
provided in FY 1986.

The obvious retarding effect on growth of total revenues for the
District of Columbia lies in the projected decline in contributions from
Federal sources. Total Federal revenues are projected to decline at an
average annual rate of 1.4 percent, and in FY 1991 they would
contribute only 14.3 percent of total revenues Compared to 20.5
percent in FY 1986. At the same time, the regular Federal payment to
the District is included at $425 million which is the level budgeted for FY
1986 prior to the reductions imposed by Gramm-Rudman. At this level
it would provide only 14 percent of general fund revenues as compared
to an average of nearly 20 percent during the last five years.

Under current legislation enacted by Congress, the Government of
the District of Columbia is prohibited from taxing the District earnings
of nonresidents. If the District of Columbia were to become a state, it
could impose a commuter tax. Such a tax on all nonresident earnings
would have yielded about $454 million in 1984 (the last year for which
actual earnings data are available). Estimates made by Brimmer &
STATEMENTS ON D.C. STATEHOOD

SENATOR EDWARD M. KENNEDY (D-MA) — "The time has come at long last to end the unacceptable status of the District of Columbia as America's last colony."

CONGRESSMAN MORRIS K. UDALL (D-AZ) — "I am pleased ... to have the opportunity to lend my support for Statehood for the District of Columbia."

"The people of the District of Columbia by far have been the citizens longest denied basic democratic rights. Yet the reasons for granting the District statehood remain compelling.

SENATOR ARLEN SPECTER (R-PA) — "I believe that Home Rule for the District of Columbia is a very important item that has to be respected and expanded as we work through the relationship between the Federal Government and the District of Columbia..."

"... every consideration should be given to the question of statehood for the District of Columbia, and my instincts are in favor of it."

SENATOR DANIEL K. INOUYE (D-HA) — "I testify today as one who fought for statehood for Hawaii, and serves in Congress as a result of our achieving that goal. I have been the pride and benefits which accrue from sovereign status. Therefore, I am obviously in favor of statehood for the District of Columbia."

CONGRESSMAN DON EDWARDS (D-CA) — "Today, I am ... enthusiastic about the prospect of admitting the 700,000 of this community as the 51st State of the Union."

"I have always considered the issue of voting rights or statehood for Washington, D.C. as a civil rights issue, because what is happening under the present arrangement is that 700,000 people are denied their rights; and it is not good."

CONGRESSMAN WILLIAM H. GRAY (D-PA) — "Many remain uncertain regarding the merits of statehood for the District of Columbia. However, when juxtaposed with taxation without representation, dependency on the congressional budget process for appropriation of local funds, Federal control of the local judicial appointments and prosecutorial processes, and fundamental notions of democracy the logical and legal bases for statehood are very compelling."

"Statehood merely represents the vehicle by which District citizens, citizens of this United States — are afforded the same citizenship rights as all other United States citizens. No more! No less!"

CONGRESSMAN PETER W. RODINO, JR. (D-NJ) — "The failure of this Congress to grant full citizenship to the residents of the District is a gross inequity and in conflict with the fundamental precepts of our democracy which are the right to vote and to self-determination. This nation will commemorate the Bicentennial of the Constitution in 1987. What better celebration than the commitment of this Congress to extend self-determination to all of its citizens at last."

JOHN HECHINGER (D.C. Businessman) — "I believe growth and economic development in the District are at risk so long as we have overlapping and shared jurisdiction by the District and Federal governments. I strongly support H.R. 325, to provide for the creation of a state out of the non-federal parts of the District of Columbia. As a businessman, I do not want to continue to run my business under a system where the last word may not be the last word."

HON. MARION S. BARRY (Mayor, Washington, D.C.) — "... it's an idea whose time has come. I don't like to pay the bill, yet not be able to have anything to say about what happens to the money that I pay. I think that's the attitude of the citizens of the District of Columbia."

"I just hope that 435 voting Members of the House will continue to get the message that we ought to have the right to govern ourselves, a commitment to democratic freedoms as anyone else."

HON. DAVID A. CLARKE (Chairman, Council of the District of Columbia) — "While the Constitution should not be repressive, it should be sufficiently granted in Federal and District experience that the forthcoming debates on statehood will have to focus on Statehood itself, and our cause cannot be waylaid by those who would profess sympathy for our cause but inability to proceed because of this or that provision."

"We in the District of Columbia live under this system without the power to vote for the people who can apply it. It is no exaggeration that
we live under taxation without representation and, worse, without the power of self-determination to decide the use of our own locally collected taxes.”

JOSEPHINE BUTLER (Chairperson, D.C. Statehood Commission) — “The constitution, with its proposed amendments, will certainly make the task of the statehood commission easier. D.C. Law 3-171 which created the statehood commission mandates that the commission promote statehood for the District in the city and elsewhere. I feel that the amendments will bring a tremendous enhancement to these efforts.”

CHARLES CASSELL (President, D.C. Statehood Constitutional Convention) — “The issue is statehood for the District of Columbia. The issue is representative government for New Columbia. The issue is political equity for nearly 700,000 Americans living in the Nation’s Capital. The issue is American democracy for American citizens, no matter where they live. The issue is the removal of colonialism in the continental United States of American now. The issue is the projection to the world of American fidelity to American principles as well as abhorrence of undemocratic societies elsewhere.”

JOSEPH M. SELLERS (Member, Washington Council of Lawyers and a Member of the Task Force on the Constitution for the State of New Columbia) — “We trust that the work of the task force will remind us all that the residents of the District of Columbia are pursuing seriously and vigorously the goal of attaining statehood. We urge those who adhere to this most basic principle of self-determination upon which this Nation was founded to lend a hand to this effort.”

CHAPTER X

CONCLUSION

Statehood for the District would further the principles of democracy which the Founding Fathers framed for all American citizens.

District representation in Congress would swing the suffrage pendulum back to where it was before December, 1800, when Congress moved to its Potomac site and inadvertently disenfranchised District residents. House Resolution 325 is in no way incompatible with Congress’ continued exclusive jurisdiction over the seat of government. It does not present difficult constitutional problems concerning its implementation. Most importantly, it would further the principles of democracy that the Founding Fathers intended to have flourish among all citizens.

The 1803 proponents of a retrocession of the voting rights measure stated that the disenfranchisement was “an experiment in how far freemen can be reconciled to live without rights.” It is simply time to end this unfruitful experiment.
REFERENCES WHICH MAY BE CONSULTED


D.C. STATEHOOD

This is a 51-star flag, intended to meet the argument that the District of Columbia cannot become a state because there is no room on the flag for another star.